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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3739-21**

KIDCABOO, LLC,

Petitioner-Appellant,

v.

**NEW JERSEY MOTOR VEHICLE
COMMISSION,**

Respondent-Respondent.

Submitted September 12, 2023 – Decided October 11, 2023

Before Judges Enright and Paganelli.

On appeal from the New Jersey Motor Vehicle Commission.

Cynthia L. Grossman (Giordani Baker Grossman & Ripp LLP), attorney for appellant.

Matthew J. Platkin, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Amy Chung, Deputy Attorney General, on the brief).

PER CURIAM

Appellant, Kidcaboo, LLC, (Kidcaboo) challenges the June 21, 2022, final agency decision of the New Jersey Motor Vehicle Commission (NJMVC) denying its application for a transportation network company (TNC) permit. We affirm.

I.

"[T]he [NJ]MVC is one of the agencies responsible for implementing" the Transportation Network Company Safety and Regulatory Act, (ACT) N.J.S.A. 39:5H-1 to -27. Malzberg v. Josey, 473 N.J. Super. 537, 553 n.6 (App. Div. 2022). N.J.S.A. 39:5H-27 authorizes the NJMVC "to adopt . . . rules and regulations to implement" the ACT, and N.J.A.C. 13:21-26.3(a) provides "[t]he Chief Administrator (of NJMVC, N.J.S.A. 39:5H-2) may deny an application for a [TNC] permit."

In its permit application, Kidcaboo describes itself as a TNC with a primary focus on youth. It explains that its riders are children ages five to seventeen. "The 'user' of Kidcaboo's digital network . . . who requests a Kidcaboo 'prearranged ride' for a 'rider' is the rider's legal parent or guardian who is over the age of [eighteen]." "No 'user' or 'rider' under the age of [eighteen] may request a ride or create an account on Kidcaboo's 'digital network.'"

In denying Kidcaboo's permit application, NJMVC determined, among other reasons: (1) "Kidcaboo's business model does not meet the statutory definition of a TNC . . . because [t]he [ACT] contemplates that the TNC 'rider' is the same person that logs onto the digital network to request a ride . . . [and] [u]nder Kidcaboo's proposed business model, the person using the digital network to request the ride . . . is different from the person who actually receives the ride. . . ."; (2) the protections provided in the ACT, and Sami's Law¹, must be available to the riders and an unaccompanied minor is unable to implement the precautions, leaving "the youngest of the State's residents vulnerable to the dangers the Legislature was trying to prevent"; and (3) Kidcaboo's proposal, to transport children to and from school, renders the Kidcaboo vehicles "school

¹ Sami's Law amended the ACT to provide additional safety measures after Samantha (Sami) Josephson mistakenly got into a vehicle and was stabbed to death. N.J.S.A. 39:5H-23 (b)(1)(2) and (c)(1)(2).

buses," N.J.S.A. 39:1-1, and Kidcaboo drivers and their vehicles do not comply with the applicable statutes and regulations.^{2 3}

II.

"Our review of administrative agency action is limited." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011), (citing In re Herrmann, 192 N.J. 19, 27-28 (2007)). "An administrative agency's final quasi-judicial decision will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Ibid. (quoting Herrmann, 192 N.J. at 27-28).

On appellate review, the court examines:

- (1) whether the agency's action violates express or implied legislative polices, that is, did the agency follow the law;

² NJMVC "accepts Kidcaboo's representations on appeal that: (1) '[a]nyone seeking a ride from Kidcaboo . . . can receive one,' regardless of their age" and therefore no longer maintains "age discrimination" as a reason to deny the permit and (2) "it will not 'provid[e] childcare services' that would require it to be licensed by the Department of Children and Families" and therefore no longer maintains this type of licensure as a reason to deny the permit.

³ Kidcaboo notes that "only '[a] child under the age of eight years and less than [fifty-seven] inches in height . . . need be in a restraint system which is equipped with a five-point harness. . . ." N.J.S.A. 39:3-76.2a(c). NJMVC accepts this as Kidcaboo's representation that it would "not transport children covered by N.J.S.A. 39:3-76.2a(c)." Therefore, NJMVC no longer maintains this reason to deny the permit.

(2) whether the record contains substantial evidence to support the findings on which the agency based its action; and

(3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant facts.

[Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (citing In re Stallworth, 208 N.J. 182, 194 (2011) quoting In re Carter, 191 N.J. 474, 482 (2007)).]

Where an agency's decision satisfies these criteria, we accord substantial deference to its fact-finding and legal conclusions, recognizing "the agency's 'expertise and superior knowledge of a particular field.'" Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 10 (2009) (quoting Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)). We do not "substitute [our] own judgment for the agency's." Id., at 10 (quoting In re Carter, 191 N.J. at 483 (2007)). The party challenging the final administrative action has the burden to demonstrate grounds for reversal. Lavezzi v. State, 219 N.J. 163, 171 (2014) (citing In re J.S., 431 N.J. Super. 321, 329 (App. Div. 2013)).

"It is settled that '[a]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference.'" Wnuck v. N.J. Div. of Motor Vehicles,

337 N.J. Super. 52, 56 (App. Div. 2001) (citations omitted). "Although we recognize that deference is generally given to an administrative agency charged with interpretation of the law, we are not bound by the agency's legal opinions." Levine v. State, Dep't of Transp., 338 N.J. Super. 28, 32 (App. Div. 2001) (citations omitted). Further, "we are 'in no way bound by [an] agency's interpretation of a statute or its determination of a strictly legal issue.'" Dep't. of Children & Families v. T.B., 207 N.J. 294, 302 (2011) (quoting Mayflower Sec. Co. v. Bureau of Sec. in Div. of Consumer Affairs of Dep't of L. and Pub. Safety, 64 N.J. 85, 93 (1973)).

Our Court has instructed that:

When we examine a statute, "our goal is to discern and effectuate the Legislature's intent. [Thus, t]he plain language of the statute is our starting point." Patel v. N.J. Motor Vehicle Comm'n, 200 N.J. 413, 418 (2009) (quotation marks and citations omitted) (alteration in original).

We begin by "read[ing] and examin[ing] the text of the act and draw[ing] inferences concerning the meaning from its composition and structure." 2A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutory Construction § 47:1 (7th ed. 2007). That common sense canon of statutory construction is reflected also in the legislative directive codified at N.J.S.A. 1:1-1:

In the construction of the laws and statutes of this state, both civil and criminal, words and phrases shall be read and construed with their context,

and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language.

If a plain-language reading of the statute "leads to a clear and unambiguous result, then our interpretative process is over. . . ." Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 195-96 (2007) (citations omitted) (alteration in original).

[State v. Hupka, 203 N.J. 222, 231-32 (2010).]

We read the statutory words "in context with related provisions so as to give sense to the legislation as a whole." DiProspero v. Penn., 183 N.J. 477, 492 (2005).

III.

NJMVC interprets the ACT to prohibit splitting the roles of a ride requester and the actual rider. NJMVC contends that the ACT only "refers to 'a ride requested by a rider' [and] 'a requesting rider'; and it never refers to a 'user' or a person requesting a ride for another person[,] N.J.S.A. 39:5H-2." Therefore, NJMVC argues that since Kidcaboo "seeks to separate the prearranged ride (which would be received by the minor rider) from everything else (which would be handled by the rider's parents or guardian)," Kidcaboo's permit application must be denied because its planned operation would be contrary to the statute.

Kidcaboo argues that the "conclusion that only the person who accesses a TNC digital network to schedule a prearranged ride can be a rider is misguided, unjustified, and contrary to New Jersey's rules of statutory construction, N.J.S.A. 1:1-1 [] which require[s] that 'words and phrases shall be read and construed with their context and . . . given their generally accepted meaning, according to the approved usage of the language.'"

According to N.J.S.A. 39:5H-2, a "prearranged ride" means:

[T]he provision of transportation by a [TNC] driver to a [TNC] rider, beginning when a driver accepts a ride requested by a rider through a digital network controlled by a [TNC], continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the personal vehicle. . . . (Emphasis added).

"It is settled that '[a]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference.'" Wnuck, 337 N.J. Super. at 56 (citations omitted). Allowing for that deference leads us to conclude that the NJMVC correctly interpreted the statute. Moreover, our own reading of the plain language of the statute leads us to the same conclusion. T.B., 207 N.J. at 302. The statute, specifically in three unmistakable places, provides that the rider and

the requester must be one and the same. The legislative language allows for no other interpretation.

Since Kidcaboo's proposed business plan splits or separates the ride requester from the rider, it is contrary to the statute and, therefore, the NJMVC appropriately denied the application for a TNC permit.⁴

IV.

Interpretation of statutory language, must be "read . . . in context with related provisions . . . [and] give sense to the legislation as a whole." DiProspero, 183 N.J. at 492. "The A[CT] serves to protect drivers as well as 'the riding public.'" Malzberg, 473 N.J. Super. at 553 (quoting "an excerpt from the NJMVC website"). Therefore, the statutory interpretation of a "prearranged ride," N.J.S.A. 39:5H-2, must be conducted in context with the Legislature's goal of protecting, in the matter at bar, unaccompanied minor riders, ages five to seventeen. The analysis logically includes whether the unaccompanied minor can effectively, if at all, implement the statutory protections.

The statutory protections include: (1) that "[a TNC] shall provide to a [TNC] rider on its website or digital network a picture of the [TNC] driver that

⁴ Although this determination could conclude our analysis, for completeness, we evaluate the parties' other contentions.

is to provide the prearranged ride and the license plate number of the driver's personal vehicle that is to be used to provide the prearranged ride prior to the rider entering the driver's personal vehicle," N.J.S.A. 39:5H-8; (2) the ability "to report a complaint about a driver of a prearranged ride suspected of driving under the influence of a controlled dangerous substance or alcohol," N.J.S.A. 39:5H-14(b); (3) a "two[-]dimensional barcode or other machine-readable code or image . . . capable of being scanned by a rider to confirm the identity of the driver of a prearranged ride and the personal vehicle that is to be used to provide the prearranged ride," N.J.S.A. 39:5H-23(c); and (4) a "display [of] credential placards on the driver and passenger side rear windows of the driver's personal vehicle at all times while the driver is . . . providing a prearranged ride," N.J.S.A. 39:5H-23(d)(2).

In addition to complying with these statutory protections, Kidcaboo offers its own safety enhancements: a "Kidcaboo shirt"; "code word"; "GPS monitoring availability to parents"; and Kidcaboo's own GPS monitoring and dual-facing dash cams.

Nonetheless, NJMVC explains that:

While Kidcaboo users would receive information about Kidcaboo drivers, they would not be physically present to use this information to protect minor riders. Forwarding this information to minor riders, who

would have to protect themselves, would be problematic. Nothing in the record indicates that all minor riders would have smart phones (and know how to use them). Nor does the record support the ability of all minor riders to match the Kidcaboo driver's license plate and photograph, to check the driver's credential placard, to scan the driver's barcode, to figure out that a Kidcaboo shirt is genuine, or to use a code word. Even adult riders make mistakes about TNC drivers and have been harmed. As for the ride itself, GPS tracking does not (and dash cams may not) show what is happening inside the vehicle as it travels, dash cam video may not be monitored properly, and minor riders are unlikely to be able to evaluate whether the driver is impaired and, if so, to report the driver immediately.

Kidcaboo argues that the NJMVC's reasoning is "equivocal," "absolutely baseless," "profoundly inaccurate" and "totally baseless." Kidcaboo avers that its "safety protocols are every bit as strict as those prescribed by the [ACT]" and that it is "more cautious than statutorily required." Further, Kidcaboo argues that "the inference that a parent/guardian sufficiently concerned about their child to prearrange and pay for rides to school and after-school activities for their child would fail to avail themselves of and benefit from Kidcaboo's safety protocols to assure the maximum protection for their children is specious."

However, absent from Kidcaboo's analysis is how the unaccompanied minor, as young as five years old, could or would effectively implement the statutory protections. We view Kidcaboo's arguments as a plea for us to

"substitute [our] own judgment for the agency's." Circus Liquors, 199 N.J. at 10. We decline that invitation. "It is well-established that a reviewing court 'must be mindful of, and deferential to, the agency's "expertise and superior knowledge of a particular field.'"" Malzberg, 473 N.J. Super. at 553-54 (quoting Circus Liquors, 199 N.J. at 10). In offering that deference, we find no error in NJMVC's denial of the TNC permit. Kidcaboo has failed to sustain its burden to demonstrate grounds for reversal. Lavezzi, 219 N.J. at 171.

V.

NJMVC determined that Kidcaboo's proposal, "to transport children to and from school," renders the Kidcaboo drivers as school bus drivers and their "personal vehicle," N.J.S.A. 39:5H-2, a "school bus" under N.J.S.A. 39:1-1.⁵ Therefore, NJMVC noted that:

[1] Statutes and regulations . . . impose requirements for drivers as well as vehicles used to transport children to and from school. Drivers are required to have a commercial driver license (CDL), passenger (P) endorsement, school (S) endorsement and comply with other medical reporting and background check requirements, none of which, except background

⁵ "'School bus' means every motor vehicle operated by, or under contract with, a public or governmental agency, or religious or other charitable organization or corporation, or privately operated for the transportation of children to or from school for secular or religious education, which complies with the regulation of the New Jersey Motor Vehicle Commission"

checks, TNC drivers are required to have under the TNC A[CT]";

....

[2] N.J.S.A. 18A:39:20.1 only allows certain limited exceptions where vehicle and licensure requirements are not required for the transportation of children to and from school. The exceptions include qualified school personnel, State employees, or parents. Kidcaboo drivers do not fall within any of the enumerated exceptions.;

....

[3] [S]chool bus drivers must submit certain information to the Commissioner of the Department of Education before being employed as school bus drivers. There is no mention of compliance with this or even any interaction with the Commissioner of the Department of Education in Kidcaboo's Application. See N.J.S.A. 18A:39-19.1.; and

....

[4] All school buses (vehicles transporting children to and from school) are subject to N.J.S.A. 39:3B-2[7]⁶, which incorporates many federal regulations beyond the need for a CDL and other endorsements, including special training, driver age, medical qualifications, mandatory minimum insurance, drug testing, and other driver operations and qualification requirements. There is no indication that Kidcaboo drivers will meet these training and qualification requirements.

⁶ The NJMVC decision cites N.J.S.A. 39:3-B-26, however, it appears the correct cite is N.J.S.A. 39:3-B-27 (Compliance with certain federal regulations required for school bus operations).

Therefore, since Kidcaboo's permit application failed to address these additional issues, the NJMVC denied the application.

Kidcaboo, without denying the statutory application of the "school bus" framework to its proposed business operation, instead argues that "it is reasonably apparent that the legislative intent was to provide TNC's with the flexibility necessary to transport children to school." Kidcaboo observes that when the [ACT] was adopted in February 2017, it provided that "[a TNC] driver shall not be required to register the driver's personal vehicle used to provide prearranged rides as a commercial for hire . . . vehicle." Therefore, Kidcaboo baldly concludes that the language of the ACT "effected a change in the law thereby vitiating the contrary provision of the school bus law." We reject this argument.

When considering whether a statute has been expressly repealed, "it is not essential to identify a specific provision in order to effect its express repeal, [however] it is necessary to describe the provision with reasonable certainty." N.J. Ass'n of Sch. Adm'rs v. Schundler, 211 N.J. 535, 555 (2012) (quoting N.J. State Policemen's Benevolent Ass'n v. Town of Morristown, 65 N.J. 160, 164 (1974)). Similarly, a modification of a statute must be expressly stated. Accardi v. North Wildwood, 145 N.J. Super. 532, 546 (1976). Here, there is no express

indication that the ACT repealed, modified, or vitiated any aspect of the definition of "school bus" under N.J.S.A. 39:1-1.

Further, "[t]here is a strong presumption against repealing statutory provisions by implication." Voss v. Tranquilino, 206 N.J. 93, 95 (2011). "A finding of repeal by implication 'requires clear and compelling evidence of th[at] legislative intent, and such intent must be free from reasonable doubt.'" Ibid. (quoting Twp. Of Mahwah v. Bergen Cnty. Bd. of Tax'n, 98 N.J. 268, 280-81 (1985)). Further, an implied modification of a statute must be established by clear and compelling evidence. Accardi, 145 N.J. Super. at 546. "Every reasonable construction should be applied to avoid a finding of implied repealer." Mahwah, 98 N.J. at 281. Here, there is no implied repeal, modification, or any indication that the Legislature intended to "vitate" any aspect of the definition of "school bus" under N.J.S.A. 39:1-1.

Moreover, we reject any argument that the Legislature's determination to allow a TCN driver to avoid the requirement to "register the driver's personal vehicle used to provide prearranged rides as a commercial or for hire . . . vehicle," N.J.S.A. 39:5H-3, carried with it the permission to avoid the vast web of protections surrounding school buses and the transportation of children to and from school. N.J.S.A. 39:1-1.

In sum, we are not persuaded that "there is a clear showing [that NJMVC's decision] is "arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Russo, 206 N.J. at 27.

We affirm.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



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