IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DAVID STANZAK, Appellant, v. THE WASHINGTON STATE DEPARTMENT OF HEALTH; MARY SELECKY, Secretary of Health, in her individual and official capacity; CHRISTOPHER SWANSON, Department of Health employee, in his individual and official capacity, TAMMY KELLEY, Disciplinary Program Manager, Department of Health, in her individual and official capacity; and JOHN AND JANE DOES 1 THROUGH 10, in their individual and official capacities, Respondents.	No. 39681-5-II UNPUBLISHED OPINION

Armstrong, P.J. — David Stanzak sued the Department of Health, seeking relief from an order suspending his clinical social worker license. The trial court dismissed the complaint for lack of subject matter jurisdiction and failure to state a claim for which relief could be granted. On appeal, Stanzak argues that (1) a superior court has jurisdiction to grant relief from a void agency decision and (2) the order suspending his license is void because the Department of Health lacked subject matter jurisdiction to conduct a disciplinary hearing. We hold that the secretary of health had authority to conduct Stanzak's disciplinary hearing and, accordingly, affirm the dismissal of his complaint.

FACTS

In 2001, the Department of Health (Department) granted David Stanzak a license to

practice as an independent clinical social worker in Washington State. In 2006, a patient filed a complaint against Stanzak with the Department. After investigating the complaint, the Department filed charges against Stanzak for professional misconduct under the Uniform Disciplinary Act (UDA), RCW 18.130.180(1).

The Department conducted an adjudicative hearing, presided over by a health law judge. Upon finding that Stanzak committed professional misconduct as defined by the UDA, the presiding officer suspended Stanzak's clinical social worker license for two years.

Stanzak did not petition for judicial review.[1] Instead, 79 days after the Department's final order, he filed this action in superior court, seeking declaratory judgment, a preliminary injunction, a statutory writ of prohibition, and a statutory writ of mandamus. Stanzak alleged that the Department was without statutory or constitutional authority to conduct the proceedings against him and that the Department could not revoke his license without a hearing by the Office of Administrative Hearings. The Department moved to dismiss for failure to state a claim for which relief could be granted and for lack of subject matter jurisdiction. The trial court granted the motion and dismissed the claim with prejudice.

ANALYSIS

Stanzak assigns error to the trial court's dismissal of his complaint. He argues that a superior court has authority to grant relief to a party complaining of an invalid administrative agency action. The Department responds that the Administrative Procedures Act (APA), chapter 34.05 RCW, provides the exclusive means for judicial review of an agency action. Because

[1] A petition for judicial review of an agency's order must be filed within 30 days of service of the final order. RCW 34.05.542(2).

Stanzak did not file a timely petition for judicial review under the APA, the Department contends that the trial court properly dismissed Stanzak's complaint for lack of subject matter jurisdiction.

We review de novo rulings on motions to dismiss for failure to state a claim under CR 12(b)(6) and motions to dismiss for lack of subject matter jurisdiction under CR 12(b)(1). *Reid v. Pierce County*, 136 Wn.2d 195, 200-01, 961 P.2d 333 (1999); *Fontana v. Diocese of Yakima*, 138 Wn. App. 421, 425, 157 P.3d 443 (2007).

As a threshold matter, we acknowledge that the APA provides the exclusive means for judicial review of an agency decision. RCW 34.05.510. Moreover, where the APA applies, the statutory writs of mandamus and prohibition do not apply. RCW 7.24.146; RCW 7.16.360. But a superior court still has inherent power to review an administrative agency's decision under a constitutional writ for certiorari.[2] Wash. Const. art. IV, § 6; *Saldin Sec., Inc. v. Snohomish County*, 134 Wn.2d 288, 292, 949 P.2d 370 (1998). A superior court always has jurisdiction to hear a complaint alleging that a state agency acted in excess of its jurisdiction. *Bridle Trails Cmty. Club v. City of Bellevue*, 45 Wn. App. 248, 252, 724 P.2d 1110 (1986). Even where a petitioner fails to specifically request a constitutional writ for certiorari, where the pleadings sufficiently raise the issue, the court can consider it. *Bridle Trails*, 45 Wn. App. at 254; *see also City of Bellevue v. East Bellevue Cmty. Council*, 138 Wn.2d 937, 942, 983 P.2d 602 (1999). The court's authority to issue such a writ, however, is discretionary. *Saldin*, 134 Wn.2d at 292-93. But here, even if the superior court had exercised its discretion to review the Department's decision, Stanzak's claim that the Department acted without authority fails.

[2] The Washington State Constitution, article IV, section 6, provides that superior courts shall have the power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and habeas corpus.

Stanzak argues that the order revoking his license is void because the Department lacked authority under the UDA to conduct disciplinary hearings for social workers charged with professional misconduct. According to Stanzak, under chapter 34.12 RCW, only the Office of Administrative Hearings can hold disciplinary hearings involving clinical social workers charged with professional misconduct.

When interpreting a statute, our primary objective is to ascertain the legislature's intent. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). Where the statute's words are plain and unambiguous, we apply the statute as written. *Enter. Leasing, Inc. v. City of Tacoma*, 139 Wn.2d 546, 552, 988 P.2d 961 (1999). We attempt to discern the "plain meaning" of a statutory provision from the ordinary meaning of its language, the context of the statute, related provisions, and the statutory scheme as a whole. *Campbell*, 146 Wn.2d at 10-12. We construe statutes to avoid strained or absurd results. *Tingey v. Haisch*, 159 Wn.2d 652, 663-64, 152 P.3d 1020 (2007). If, after this inquiry, the statute is still open to two different but reasonable interpretations, we may turn to legislative history to resolve any ambiguities. *Cockle v. Dep't of Labor & Indus*., 142 Wn.2d 801, 808, 16 P.3d 583 (2001).

The UDA was enacted to provide uniform disciplinary procedures for licensed heath care professionals. RCW 18.130.010. RCW 18.130.040(2)(a) designates the secretary of health as the disciplinary authority for the professionals listed in that subsection, including social workers. RCW 18.130.040(2)(b) specifies a smaller number of boards and commissions that function as the disciplinary authority for professions listed in that subsection. Licensed clinical social workers are not administered by a board or commission and are therefore subject to the secretary of health's

disciplinary authority. RCW 18.130.040(2)(a)(xi).

A disciplining authority has authority to investigate complaints of professional misconduct and to hold hearings. RCW 18.130.050(2), (3). A disciplining authority also has authority "[t]o use a presiding officer as authorized in RCW 18.130.095(3) or the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings." RCW 18.130.050(10). RCW 18.130.095(3) provides that "[o]nly upon the authorization of a disciplinary authority identified in RCW 18.130.040(2)(b), the secretary, or his or her designee, may serve as the presiding officer for any disciplinary proceedings of the disciplinary authority authorized under this chapter." These statutes require the relevant board or commission to authorize the use of a presiding officer in a disciplinary hearing of a health care professional whose profession is subject to that board's or commission's authority. RCW 18.130.050(10), .095(3).

Stanzak, however, reads these two provisions as limiting the secretary of health's ability to conduct disciplinary hearings involving clinical social workers. He asserts that the secretary, or his or her designee, may serve as the presiding officer for any disciplinary hearing only if (1) the individual subject to the proceedings is a member of a health care profession indentified in RCW 18.130.040(2)(b) and (2) the board or commission for the relevant professional authorizes the secretary, or his or her designee, to serve as the presiding officer. Stanzak reasons that where, as here, the first condition is not met, the only remaining option under the UDA is a hearing conducted by the Office of Administrative Hearings.

Stanzak's argument fails. First, RCW 18.130.095(3) is inapplicable to this case. A social worker is not subject to the board's or commission's authority under RCW 18.130.040(2)(b).

The requirement that the appropriate board or commission must authorize the use of a presiding officer does not apply where the board or commission has no authority to begin with.

Second, the UDA specifically authorizes "the disciplining authority . . . [t]o hold hearings as provided in this chapter." RCW 18.130.050(3). Because the secretary of health has authority to discipline clinical social workers, this provision unequivocally grants the secretary the authority to conduct hearings.[3] RCW 18.130.050(3). To construe RCW 18.130.050(10) as limiting the secretary's ability to hold hearings would contradict the unambiguous provisions of RCW 18.130.050(3). *Cockle*, 142 Wn.2d at 809 (holding that statutes must not be construed in a manner that renders any portion of them meaningless or superfluous). Thus, when analyzed in the context of the section as a whole, RCW 18.130.050(10) governs the use of presiding officers, not the authority to conduct hearings.

RCW 18.130.050(10) permits the disciplining authority—either the secretary of health or a board or commission—to delegate authority to conduct a hearing when done according to related provisions and statutes.[4] Despite Stanzak's best efforts to frame the issue as a jurisdictional one, RCW 18.130.050(10) does not implicate the disciplining authority's ability to hold a hearing. *Yow v. Dep't of Health Unlicensed Practice Program*, 147 Wn. App. 807, 816,

[3] Moreover, RCW 18.130.020(10) defines "[s]ecretary" as "the secretary of health or the secretary's designee." A secretary's designee has the same authority to conduct hearings under RCW 18.130.050(3) as the secretary.

[4] In his reply brief, Stanzak contends that this interpretation makes it optional for the secretary to delegate authority even where a board or commission oversees a particular health care profession. But RCW 18.130.050(10) gives the "disciplining authority" the power to delegate. Accordingly, this provision authorizes (1) a board or commission to delegate authority to the secretary or secretary's designee and (2) the secretary to delegate authority to the Office of Administrative Hearings.

199 P.3d 417 (2008) (whether a health law judge properly presided at the hearing is not a question of jurisdiction). Stanzak's strained interpretation leads to a result contrary to the legislature's intention to provide the Department with jurisdiction to discipline health care professionals, including social workers.

Finally, although Stanzak attempts to distinguish *Yow*, we find it instructive. In *Yow*, 147 Wn. App. at 815, Division One of this court considered whether a Department order was void. Yow argued that the Department lacked subject matter jurisdiction when it appointed a health law judge to preside over the hearing instead of referring the matter to the Office of Administrative Hearings. *Yow*, 147 Wn. App. at 815. The court, however, determined that the health law judge was authorized to conduct the hearing. *Yow*, 147 Wn. App. at 817. Stanzak points to the fact that in *Yow*, the secretary of health had specific statutory authority to adjudicate claims over whether medicine is being practiced without a license. *Yow*, 147 Wn. App. at 816; RCW 18.130.090. He claims that in contrast, no specific provision grants the secretary authority to hear a professional misconduct charge against a social worker. But as demonstrated above, this is not the case. Under RCW 18.130.050(3), the disciplining authority, in this case the secretary of health, has authority to conduct hearings. As in *Yow*, Stanzak has failed to raise an issue that implicates the Department's subject matter jurisdiction.[5]

Because the agency decision was not illegal, Stanzak has no grounds for relief. The trial

[5] Stanzak also argues that the unauthorized procedure used to find that he committed professional misconduct violated his right to due process. He argues that the Department ignored a substantive procedural restriction that required the matter to be adjudicated by the Office of Administrative Hearings. As demonstrated above, no such requirement exists and Stanzak's due process argument accordingly fails.

court was not required to review the agency decision under its inherent power of review.

We affirm the trial court's dismissal of Stanzak's complaint.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, P.J.

We concur:

Hunt, J.

Quinn-Brintnall, J.