COURT OF APPEALS
DECISION
DATED AND FILED

July 8, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP2673 **Cir. Ct. No. 2005CV7738**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

CARL E. RUCKER AND
RUCKER DETECTIVE AGENCY,

PETITIONERS-APPELLANTS,

V.

DEPARTMENT OF REGULATION & LICENSING,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: CHRISTOPHER R. FOLEY, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Carl E. Rucker and the Rucker Detective Agency (collectively referred to as "Rucker and his agency") appeal from the circuit court's order affirming the order of the Department of Regulation & Licensing ("Department") imposing a suspension and costs on Carl E. Rucker ("Rucker"),

and reprimanding and limiting the license of the Rucker Detective Agency ("Detective Agency") for unprofessional conduct. Rucker and his agency raise ten issues on appeal of which only four were even arguably preserved. We conclude that Rucker and his agency have waived their right to review six of the issues they now raise for failing to raise those issues in their circuit court petition, and that they have failed to adequately raise and brief one of the claims that they had arguably preserved, namely that the circuit court "erred … [by] upholding the department's actions in this case." Therefore, we affirm.

¶2 Rucker owns and operates the Detective Agency that employed Roberta Gamez and Willie J. Ikner who were assigned to work as security guards at E. R. Wagner Manufacturing Company; however, neither had a valid private security permit. The Department issued a complaint, charging Rucker and his agency with unprofessional conduct for assigning Gamez and Ikner to perform private security personnel duties without a valid permit, and for providing false information to the Department about Gamez and an alleged Detective Agency accountant. Following an evidentiary hearing, the Department issued its findings and conclusions that Rucker and his agency had committed unprofessional conduct on all of the claims, except that involving false information about the alleged accountant. For those violations, the Department imposed on Rucker the costs of the proceeding, a ninety-day suspension from practicing as a private detective, and reprimanded the Detective Agency and limited its license for four years by requiring it to file quarterly reports regarding specific information about its employees and their professional status. Rucker and his agency filed a motion to reopen the Departmental hearing, which was denied. Rucker and his agency then filed a second motion to reopen the hearing and sought reconsideration. The Department also denied these motions. Rucker and his agency then filed a petition

for judicial review by the circuit court, which affirmed the Department's order. Rucker and his agency appeal from the circuit court's order affirming the Department's order.

¶3 In this appeal, Rucker and his agency raise the following issues:

> 1. Whether WFEA [Wisconsin Fair Employment Act] sec. 111-321, 111.322 and 111.325 applies [sic] to administrative agency hearings in contested cases.
>
> 2. Whether the department's agents, including its prosecuting officers engaged in misconduct by hindering Rucker's attempt to retain counsel.
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> 3. Whether petitioner was singled out as a minority small business owner for repeated investigations.
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> 4. Whether it was double jeopardy by putting Rucker under two investigations for an offense … which he had readily admitted in the first instance.
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> 5. Did the department's administrative law judge err by denying repeated requests to hold hearings in Milwaukee to accommodate witnesses for RDA [Rucker Detective Agency] and Rucker who could not travel to Madison due to emergency illness?
>
> 6. Did the administrative law judge err by denying Rucker's rebuttal tape recorded conversation between himself and individual investigators?
>
> 7. Whether Wis. Stats. 440.26(5)(c)(2)(5m)(3), [sic] and (4) and rules promulgated by DRL [Department of Regulation and Licensing] exempt certain employees of RDA from obtaining a license from DRL.
>
> 8. Whether Wis. Stats. 801.58 applies to administrative law judges.
>
> 9. Did the DRL's prosecutor engage in misconduct by telling employees not to attend a deposition in Milwaukee?
>
> 10. Whether the [c]ircuit [c]ourt … erred in … upholding the department's actions in this case.

Rucker did not raise six of these issues in his circuit court petition for judicial review of the Department's order. They were thus not preserved for appeal. *See* ***Wirth v. Ehly***, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980) (generally, an appellate court will not review an issue raised for the first time on appeal), *superseded on other grounds by* WIS. STAT. § 895.52. Rucker and his agency have not persuaded us to deviate from that general rule.

¶4 In his circuit court petition for judicial review from the Department's decision, Rucker and his agency raised the following issues:

> The evidence fails to substantiate the DRL's claim that Gamez performed work for which a permit was required while lacking the appropriate permit. Gamez' testimony lacks credibility, and there is insufficient proof outside that testimony to establish conduct contrary to Wis. Adm. Code § RL 35.01(13).
>
> The evidence fails to substantiate the DRL's claim that Ikner performed work for which a permit was required while lacking the appropriate permit. No direct testimony supports that claim, and the hearsay evidence presented by DRL representatives is insufficiently particular to support the claim. Additionally, the calendar page proffered by the DRL as "proof" that Ikner performed security work without the requisite permit is insufficient to establish conduct contrary to Wis. Adm. Code § 35.01(13).
>
> The evidence fails to substantiate that Rucker provided false information to the DRL contrary to Wis. Adm. Code § RL 35.01(18) with regard to Gamez. Likewise, the evidence fails to substantiate that Rucker provided false information to the DRL contrary to Wis. Adm. Code § RL 35.01(18) with regard to Ikner. Throughout these proceedings Rucker has insisted that Gamez and Ikner were assigned duties for which no permits were required. Absent proof that Gamez and Ikner were assigned duties for which they needed permits but had none, grounds for the false information charges disappear.
>
> Rucker was prejudiced by the lack of due process and/or by the failure of the department to give appropriate consideration for the fact that he appeared *pro se*. The due process violations include, but are not limited to: the

> DRL's failure to timely prosecute claims regarding Gamez; the DRL investigator's [sic] failure to properly identify themselves; the DRL investigator's [sic] failure to provide reasonable grounds for the intrusive inquiries being made; the DRL's inappropriate interference with Rucker's ability to obtain counsel; the DRL's failure to present witnesses for deposition; the premature termination of the hearing (which resulted in violations of Rucker's right to fully cross-examine the key witness against him, to call his own witnesses, and to testify on his own behalf); and the improper denial of multiple defense motions. As a result of those due process violations, Rucker was unfairly prevented from presenting valid defenses.

¶5 Rucker and his agency arguably preserved four of the ten issues they raise on appeal by raising them in their circuit court petition for judicial review. Those four issues are: whether the Department "engaged in misconduct by hindering Rucker's attempt to retain counsel"; whether WIS. STAT. § "440.26(5)(c)(2)(5m)(3), [sic] and (4) and rules promulgated by DRL exempt certain employees of RDA from obtaining a license from DRL"; whether "the DRL's prosecutor engage[d] in misconduct by telling employees not to attend a deposition in Milwaukee" and "[w]hether the Circuit Court … erred in [its] ruling upholding the department's actions in this case."

¶6 This court reviews the Department's decision, not that of the circuit court. *See* ***Estate of Szleszinski v. LIRC***, 2007 WI 106, ¶22, 304 Wis. 2d 258, 736 N.W.2d 111. An appellate court's scope of review in certiorari proceedings is the same as that of the circuit court. *See* ***State ex rel. Palleon v. Musolf***, 117 Wis. 2d 469, 473, 345 N.W.2d 73 (Ct. App. 1984), *aff'd*, 120 Wis. 2d 545, 356 N.W.2d 487 (1984). "Our review is limited to (1) whether the agency kept within its jurisdiction; (2) whether it acted according to law; (3) whether it acted arbitrarily, oppressively, or unreasonably; and (4) whether the evidence was sufficient that the

agency might reasonably make the order or determination in question." ***Estate of Szleszinski***, 304 Wis. 2d 258, ¶22.

> We may not substitute our judgment for that of the division; we inquire only whether substantial evidence supports the division's decision. If substantial evidence supports the division's determination, it must be affirmed even though the evidence may support a contrary determination. "Substantial evidence is evidence that is relevant, credible, probative, and of a quantum upon which a reasonable fact finder could base a conclusion."

Von Arx v. Schwarz, 185 Wis. 2d 645, 656, 517 N.W.2d 540 (Ct. App. 1994) (citations omitted). We review the evidence to ensure that the decision was not arbitrary and capricious. *See* ***State ex rel. Solie v. Schmidt***, 73 Wis. 2d 76, 79-80, 242 N.W.2d 244 (1976).

¶7 Rucker and his agency contend that the Department "engaged in misconduct by hindering [their] attempt to retain counsel." During cross-examination a Department Enforcement Division lawyer, Mark Herman, admitted that, in response to lawyers inquiring about representing Rucker and his agency in this matter, he (Herman) snickered and said, "did you get the money in advance." At the hearing Rucker and his agency also claimed that Department lawyer Claudia Berry Miran responded to a telephone inquiry about Rucker and his agency at that time, by saying, "oh, you're the second one [lawyer] that called here today." Rucker and his agency contend that those derogatory remarks dissuaded those inquiring lawyers from representing them and interfered with their ability to retain counsel.

¶8 Rucker and his agency were notified of their right to representation when the complaint was served shortly after April 30, 2004. They were encouraged to obtain representation at a prehearing conference on January 14,

2005. Approximately two weeks later, Rucker notified the Administrative Law Judge that they were actively seeking representation, and "believe[d] [t]he[y] [were] close" to doing so. Rucker and his agency have failed to show that the remarks of Herman or Miran constituted misconduct or prevented them from retaining counsel.

¶9 The next issue is whether WIS. STAT. § 440.26(5)(c)2. (1999-2000) provided an exemption for certain employees to engage in private security work without a permit.[1] Section 440.26(5)(c) allowed exemptions to the permit requirement under certain circumstances; however, there is no evidence that Gamez, Ikner, or the Detective Agency had complied with those statutory requisites to qualify for an exemption.[2] The Department's findings demonstrate that there was substantial evidence that neither Gamez, Ikner nor the Detective Agency met those exemption requirements. Consequently, Rucker and his agency have not met their burden to overturn the Department's order.

¶10 Rucker and his agency also contend that the Department engaged in misconduct by "telling employees not to attend a deposition in Milwaukee." In support of this claim, Rucker and his agency refer to Department paralegal Theodore Nehring's affirmative response to the question that "[o]n advice of [Department] Attorney Miran, you didn't go to the deposition?" First, Rucker and his agency have not shown that Nehring was obliged to attend the deposition, or

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

[2] Rucker and his agency cite several subsections of WIS. STAT. § 440.26(5), all dealing with various exemptions to the permit requirement. Rucker and his agency have not met the requisites to exempt them or their employees, Gamez and Ikner, from the permit requirements.

second, that it was improper for Miran to have so advised a Department employee. Rucker and his agency have not met their burden to establish that the Department engaged in "misconduct" by discouraging one of its employees to attend an alleged deposition scheduled by Rucker and his agency.

¶11 Lastly, Rucker and his agency claim that "the Circuit Court judge erred in his ruling upholding the department's actions in this case." This claim lacks the specificity required to adequately raise an issue. *See* WIS. STAT. RULE 809.19(1) (2005-06). On appeal, Rucker and his agency criticize the result, referring to various instances of perceived unfairness that are legally inconsequential at this stage of the proceedings. *See* ***Reiman Assocs., Inc. v. R/A Adver., Inc.***, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981) (issues not argued or briefed are deemed abandoned).

> [Rucker and his agency]'s brief is so lacking in organization and substance that for us to decide [t]h[e] issues, we would first have to develop them. We cannot serve as both advocate and judge. In light of [Rucker and his agency]'s inadequate briefing of these remaining issues, we decline to address them. *See* Rule 809.83(2), Stats.

State v. Pettit, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (footnote omitted).

¶12 The Department's order explicitly finds the facts and applies its conclusions of law to those facts. There is substantial evidence that Gamez and Ikner were engaged as private security guards without valid permits, as required. There is also substantial evidence that Rucker and his agency provided false information to the Department while it was investigating the Gamez claim. Insofar as the other complaints Rucker and his agency raise, they either waived them by failing to raise them in their circuit court petition for judicial review, or

by inadequately briefing them on appeal. Rucker and his agency have a high burden to overturn the findings and conclusions of the Department. They have not met that burden.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2005-06).