IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

LINDSAY RIDGELL, *Plaintiff/Appellant*,

v.

ARIZONA DEPARTMENT OF CHILD SAFETY, *Defendant/Appellee*.

No. 1 CA-CV 21-0069
FILED 3-31-2022
AMENDED PER ORDER FILED 4-5-2022

Appeal from the Superior Court in Maricopa County
No. LC2020-000113-001
The Honorable Daniel J. Kiley, Judge

REVERSED

COUNSEL

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OPINION

Presiding Judge Randall M. Howe delivered the opinion of the court, in which Judge Brian Y. Furuya and Judge Michael J. Brown joined.

H O W E, Judge:

¶1 Lindsay Ridgell appeals the Director of the Department of Child Safety's decision to place her on the Department's Central Registry for prenatally exposing her infant to marijuana. The Central Registry is a repository of substantiated instances of child abuse and neglect. The Central Registry is used to determine a person's qualification for employment with a "child welfare agency" or an entity that contracts with the State to "provide direct service to children or vulnerable adults." A.R.S. § 8–804(B)(3), (4). Ridgell argues that the Arizona Medical Marijuana Act ("AMMA"), A.R.S. §§ 36–2801 to –2819, precludes her from being placed on the Central Registry for her medical marijuana use that exposed her unborn child to marijuana.

¶2 The Director erred in placing Ridgell on the Central Registry. A person may be placed on the Central Registry if her newborn infant has been exposed to certain drugs, including marijuana, but only if that exposure did not result from medical treatment administered by a health

professional. A.R.S. § 8–201(25)(c). The evidence shows that Ridgell was certified under AMMA to use marijuana medically to treat chronic nausea. The doctor who certified Ridgell's eligibility for using medical marijuana knew that she was pregnant. Because the use of marijuana under AMMA "must be considered the equivalent of the use of any other medication under the direction of a physician," A.R.S. § 36–2813(C), the exposure of Ridgell's infant to marijuana resulted from medical treatment and did not constitute neglect under A.R.S. § 8–201(25)(c).

FACTS AND PROCEDURAL HISTORY

¶3 Ridgell obtained a medical marijuana card after being diagnosed with irritable bowel syndrome ten years ago and has used medical marijuana since then. She continued to use marijuana even after she became pregnant in September 2018. The following month, she complained to her doctor that she suffered from anxiety, lack of restful sleep, nausea, and lack of appetite, and the doctor prescribed an over-the-counter sleep aid to help with nausea and sleep and restarted her on anxiety medication. The doctor's records did not show that Ridgell used medical marijuana.

¶4 In November 2018, Ridgell went to an emergency room because of nausea, and a doctor diagnosed her with hyperemesis gravidarum—extreme morning sickness—and prescribed an anti-emetic drug. Emergency room staff documented that she had used medical marijuana in the past and had a medical marijuana card but did not record that she was currently using marijuana. At a follow-up appointment with her OBGYN, her doctor noted that the previously prescribed drug "work[ed] better" for Ridgell's nausea and refilled the prescription. He stopped the prescription after Ridgell improved. Ridgell's OBGYN's records do not show that she had mentioned her medical marijuana use in seeking treatment for her hyperemesis gravidarum.

¶5 Ridgell renewed her medical marijuana card in late December 2018, telling the certifying doctor that she was pregnant. The certifying doctor, Kim Muhammad, identified "chronic nausea [due to] slow gastric emptying" as Ridgell's "debilitating medical condition." As A.R.S. § 13–3620 required, she warned Ridgell that marijuana use during pregnancy might risk being reported to the Department during pregnancy or at the birth by persons who are required to report. Dr. Muhammad then certified that "in [my] professional opinion [I] believe that the qualifying patient is likely to receive therapeutic or palliative benefit from . . . the use of

marijuana to treat or alleviate the qualifying patient's debilitating medical condition."

¶6 In February 2019, Ridgell returned to the emergency room complaining of nausea and vomiting. The records did not report any medical marijuana use, and the doctor prescribed a different anti-emetic drug than was prescribed the previous November. In March 2019, she visited another doctor for lower back pain. In the records' "medications to continue section" for that visit, marijuana use was not indicated. In May 2019, Ridgell again saw her OBGYN, telling the doctor she had stopped taking medical marijuana in September 2018, when she found out she was pregnant.

¶7 Two days after seeing her OBGYN, Ridgell gave birth to S.H. A minute after his birth, he stopped breathing and required resuscitation. After exhibiting "jitteriness," he was transferred to Phoenix Children's Hospital and evaluated for a stroke and neonatal cerebral irritability. The hospital performed a drug test, which was positive for marijuana, Buspar, caffeine, and Benadryl, and diagnosed him with intrauterine addictive drug exposure.

¶8 The hospital consequently notified the Department that S.H. had been born substance-exposed, which constitutes neglect under A.R.S. § 8–201(25)(c) if the exposure was not caused by treatment administered by a healthcare professional, and the Department began an investigation. Once the Department receives a report of neglect, it can substantiate the report if probable cause exists, A.R.S. § 8–811(E), (K) and (M)(2), which means "some credible evidence" that abuse or neglect occurred, A.A.C. § R21-1-501 (13). If substantiated, the neglecting parent is placed on the Department's Central Registry as having neglected or abused a child. Placement on the Central Registry is a factor in determining a person's qualification for employment "with a child welfare agency" or an entity that contracts with the State to "provide direct service to children or vulnerable adults." A.R.S. § 8–804(B)(3), (4).

¶9 Ridgell reported to the Department's investigator that she had a medical marijuana card and used marijuana a couple of times a week to help her with sleep and her irritable bowel syndrome. She first stated that she had informed her OBGYN that she had used medical marijuana, but later admitted that she had not disclosed her marijuana use to her OBGYN or the hospital. During the investigation, S.H. was released from the hospital and remained healthy: his "jitteriness" was never linked to Ridgell's marijuana use. After the Department completed its investigation,

it informed Ridgell that it intended to enter a finding of neglect on its Central Registry for exposing S.H. to marijuana.

¶10 Ridgell requested a hearing, stating that she had a medical marijuana card and used marijuana because of her hyperemesis gravidarum. She argued that AMMA included an immunity provision that protects users from being "subject to arrest, prosecution or penalty in any manner, or denial of any right or privilege" if their use and possession complied with AMMA, A.R.S. § 36–2811(B), and that placement on the Central Registry constituted a penalty. She also argued that AMMA's anti-discrimination provision, A.R.S. § 36–2813(D), modified "neglect" under A.R.S. § 8–201(25), which meant that she could be placed on the Central Registry only if the Department showed that her marijuana use had caused an unreasonable risk of danger to S.H.

¶11 An administrative law judge ("ALJ") conducted a hearing and heard testimony from Ridgell and a Department investigator. Ridgell testified that she had told her OBGYN that she used medical marijuana and that it worked better for her extreme nausea and vomiting during her pregnancy than the prescribed medication. She claimed to have returned to using medical marijuana with her doctor's permission.

¶12 The ALJ rejected Ridgell's argument that A.R.S. § 36–2813(D) modified "neglect" under A.R.S. § 8–201(25)(c). The ALJ found Ridgell credible, however, and found that she had disclosed her medical marijuana use to her doctors and that they had directed that use. The ALJ directed the Department to amend its finding because Ridgell "used medical marijuana under her doctors' care and according to their instructions during her pregnancy."

¶13 On review, the Director rejected the ALJ's decision, finding that Ridgell's medical records showed that the only doctor she had informed of her medical marijuana use was Dr. Muhammad, whom she saw only to comply with medical marijuana certification. The Director found that Ridgell's marijuana use was not under a doctor's care and that her lack of communication with her treating doctors about her use created an unreasonable risk to S.H.'s health and safety. The Director accordingly substantiated the neglect allegation under A.R.S. § 8–201(25)(c).

¶14 Ridgell sought review in the superior court. The superior court ruled that AMMA's immunity provision applied to Ridgell's entry in the Department's Central Registry because she was a qualified patient, and the entry affected her employability. It concluded, however, that for the

immunity provision to apply, a healthcare professional must have administered the marijuana to her. It then ruled that the Director did not abuse its discretion in finding that S.H.'s prenatal exposure to marijuana did not result from medical treatment administered to him or Ridgell and that Ridgell therefore neglected S.H. under A.R.S. § 8–201(25)(c). The superior court rejected Ridgell's argument that AMMA's certification procedure constituted "administration" under A.R.S. § 8–201(25)(c) and rejected her argument that AMMA overrode the definition of neglect in A.R.S. § 8–201(25)(c). Ridgell timely appealed.

DISCUSSION

¶15 Ridgell argues that the Director erred in finding that she had neglected S.H. and in placing her on the Central Registry because her marijuana use complied with AMMA. Although the parities disagree about many facts in this case, they do not dispute the facts critical to resolving the issue on appeal. This court reviews legal questions, including statutory interpretation, de novo. A.R.S. § 12–910(F); *see also Lagerman v. Ariz. State Ret. Sys.*, 248 Ariz. 504, 507 ¶ 13 (2020). This court interprets statutes to give effect to the legislature's or voters' intent, looking first to the statutory language itself. *Baker v. Univ. Physicians Healthcare*, 231 Ariz. 379, 383 ¶ 8 (2013) (legislative statute); *Ariz. Citizens Clean Elections Comm'n v. Brain*, 234 Ariz. 322, 324 ¶ 11 (2014) (voter-initiated statute). When two statutes appear to conflict, courts will harmonize their language to give each effect. *UNUM Life Ins. Co. of Am. v. Craig*, 200 Ariz. 327, 329 ¶ 12 (2001).

¶16 As a threshold matter, although the parties agree that Ridgell is a "qualifying patient" under AMMA, A.R.S. § 36–2801(15), the Department asserts that she still cannot claim its protection. AMMA protects a qualified patient from any "penalty" or "denial of any right or privilege" for AMMA-compliant marijuana use, A.R.S. § 36–2811(A)–(B), and this immunity is broad, "carving out only narrow exceptions from its otherwise sweeping grant of immunity," *Reed-Kaliher v. Hogatt*, 237 Ariz. 119, 139 ¶ 8 (2015). The Department nevertheless argues that a finding of neglect and subsequent placement on the Central Registry is not a "penalty" or denial of a "right or privilege." But public employment is a privilege, *see, e.g.*, *Am. Commc'ns Ass'n, C.I.O., v. Douds*, 339 U.S. 382, 405 (1950), and placement on the Central Registry adversely affects a person's qualification for employment with a "child welfare agency" or an entity that contracts with the State to "provide direct service to children or vulnerable adults," A.R.S. § 8–804(B)(3), (4). Thus, because placing Ridgell on the Central Registry adversely affects her public employment prospects,

AMMA protects her marijuana use if she otherwise complies with its requirements.

¶17 Because AMMA governed Ridgell's marijuana use, its provisions had to be considered in determining whether to place her on the Central Registry. The Director placed Ridgell on the Central Registry because her marijuana use prenatally exposed her infant to marijuana, which he found constituted neglect under A.R.S. § 8–201(25)(c). Although Ridgell argued that the exposure did not constitute neglect because it resulted from "a medical treatment administered to the mother or the newborn infant by a health professional," A.R.S. § 8–201(25)(c), the Director rejected that argument because, in his view, Ridgell did not use marijuana under her doctor's care or instructions. The Director noted that Ridgell told no doctor of her marijuana use but Dr. Muhammad, who did nothing more than certify her qualifications for the medical marijuana card.

¶18 The Director's reading of A.R.S. § 8–201(25)(c), however, fails to consider the effect of AMMA. Under AMMA, a "qualifying patient" is presumed to be "engaged in the medical use of marijuana" if the patient possesses a medical marijuana registration card and an allowable amount of marijuana. A.R.S. § 36–2811(A). "Medical use" means, among other things, the "administration . . . of marijuana . . . to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with [that] condition." A.R.S. § 36–2801(11). Moreover, "[f]or purposes of medical care . . . a registered qualifying patient's authorized use of marijuana must be considered the equivalent of the use of any other medication under the direction of a physician and does not constitute the use of an illicit substance." A.R.S. § 36–2813(C).

¶19 No one disputes that Ridgell is a qualifying patient under AMMA whom Dr. Muhammad authorized to use marijuana to treat chronic nausea or that she used only allowable amounts of marijuana. Under AMMA, then, she is presumed to have taken marijuana for "medical use," which means taking it to treat or alleviate her medical condition or symptoms. And her marijuana use is the equivalent of taking any other medication under the direction of a physician. This means that the exposure of Ridgell's infant to marijuana was "the result of medical treatment administered to the mother" as allowed under A.R.S. § 8–201(25)(c). Because Ridgell did not neglect her infant under A.R.S. § 8–201(25)(c), the Director erred in placing her on the Central Registry.

¶20 Although the Department conceded at oral argument that a mother's marijuana use may be considered part of medical treatment, it

argues that Ridgell's marijuana use in this case cannot be considered as medical treatment. They argue that because no doctor but Dr. Muhammad knew she was using medical marijuana to treat her chronic nausea, and Dr. Muhammad did not direct the dosage or timing of her marijuana use, her marijuana use was not administered as part of medical treatment. But this argument contradicts A.R.S. § 36–2813(C), which expressly provides that marijuana use authorized under AMMA "must be considered the equivalent of the use of any other medication under the direction of a physician." Thus, by definition, using marijuana under AMMA is medical treatment "administered" to Ridgell by a health professional. Taking marijuana as Dr. Muhammad authorized is the same as taking any other medication "under the direction of a physician." Contrary to the Director's findings otherwise, whether any of Ridgell's other doctors knew she was taking medical marijuana for her chronic nausea—and any dispute about that fact—is irrelevant.

¶21 The Department also argues that Ridgell was not "engaging in the medical use of marijuana" under AMMA because she obtained her registration based on chronic nausea caused by "slow gastric emptying," but was using marijuana to address chronic nausea caused by hyperemesis gravidarum. This argument cuts so fine that it misses an important part of the relevant statute. Marijuana use is proper under AMMA not only to "treat or alleviate a registered qualifying patient's debilitating medical condition," A.R.S. § 36–2801(11), but also "symptoms associated with the patient's debilitating medical condition," *id.* Chronic nausea is a symptom of both "slow gastric emptying" and hyperemesis gravidarum, and Ridgell took medical marijuana to alleviate that symptom. That use thus constitutes "medical use" of marijuana under AMMA, regardless of the precise cause of the nausea. *See* A.A.C. § R9–17–201(11) (allowing medical marijuana use for "[a] chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces severe nausea"). The Department's arguments do not alter that the Director erred in placing Ridgell on the Central Registry.

¶22 Because the Director so erred, we need not consider the parties' arguments about a statutory presumption of neglect or the exposure putting the infant in unreasonable danger. Ridgell's marijuana use was protected under AMMA, and that protection extends to prenatally exposing her infant to marijuana. The extent of that protection may be unwise. The United States Government does not recognize the medicinal value of marijuana, 21 U.S.C. § 812(c) (1999); *see United States v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483, 491 (2001) ("[T]he [Controlled Substance Act] reflects a determination that marijuana has no medical

benefits worthy of an exception."), and the Center for Disease Control and Prevention warns of the effects of marijuana use during pregnancy, *Pregnancy: What You Need to Know About Marijuana Use and Pregnancy*, https://www.cdc.gov/marijuana/health-effects/pregnancy.html (last visited Mar. 4, 2022) (stating that prenatal exposure could be linked to problems with attention, memory, problem-solving skills, and behavior in children later in life and recommends that mothers do not use marijuana while pregnant). AMMA itself requires warnings at marijuana dispensaries, on the Arizona Department of Health Services' public website, and on a user's medical marijuana registration card itself about the dangers of marijuana use on fetuses. *See* A.R.S. § 36–2803(B), (D); A.R.S. § 36–2804.04(A)(8).

¶23 But marijuana's proper role in society has been long debated, and the wisdom of legislation is not for this court to decide. *See State v. Leuck*, 107 Ariz. 49, 51 (1971) ("Defendant in effect questions the legislative wisdom of prohibiting possession of marijuana. It is not this Court's function to pass judgment upon the wisdom of legislation."). AMMA protects Ridgell's use of medical marijuana, and the Director consequently erred in placing her on the Central Registry for neglect.

CONCLUSION

¶24 We reverse the Director's decision and the superior court's affirmance of that decision. As the prevailing party, Ridgell is entitled to her costs on appeal in compliance with ARCAP 21.