IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

ANY CHARITY UNLIMITED, LLC, dba DCR TITLE SERVICES; DAVID GALATI; CHARLES J. GALATI; and ROBERT T. GALATI,
Petitioners/Appellants,

v.

ARIZONA DEPARTMENT OF TRANSPORTATION, *Respondent/Appellee*.

No. 1 CA-CV 14-0789
FILED 5-19-2016

Appeal from the Superior Court in Maricopa County
No. LC2013-000351-001
The Honorable Crane McClennen, Judge

AFFIRMED

COUNSEL

Kutak Rock LLP, Scottsdale
By Michael W. Sillyman, Paige A. Martin
Counsel for Petitioners/Appellants

Arizona Attorney General's Office, Phoenix
By Leslie A. Coulson
Counsel for Respondent/Appellee

MEMORANDUM DECISION

Judge John C. Gemmill delivered the decision of the Court, in which Presiding Judge Andrew W. Gould and Judge Margaret H. Downie joined.

G E M M I L L, Judge:

¶1 Appellants Any Charity Unlimited, LLC (dba DCR Title Services) and David, Robert, and Charles Galati (collectively "Appellants") appeal the Maricopa County Superior Court's judgment affirming the administrative order of the Arizona Department of Transportation ("ADOT"). For the following reasons, we affirm.

BACKGROUND

¶2 David, Robert, and Charles[1] are the owners and operators of Any Charity, a third-party alternative to the Motor Vehicle Division ("MVD") for certain services. Any Charity is a company that accepts donated vehicles and facilitates the sale of those vehicles to support charitable organizations. Any Charity provides services similar to those offered by the MVD, including vehicle titles and registrations and abandoned vehicle inspections. To provide these services, Appellants were required to enter into a "third-party authorization agreement" with ADOT. David, Robert, and Charles were also required to obtain individual certification as title and registration processors and vehicle inspectors.

¶3 In January 2012, ADOT sent Appellants a cease and desist order and notice that their third-party authorization and individual certifications had been canceled. The order and cancellations were based on allegations that Appellants misused their authority to transfer the title of abandoned vehicles in violation of their third-party authorization agreement. Appellants submitted a timely request for an administrative hearing regarding ADOT's cancellation.

[1] For clarity and convenience, we will refer to parties by their first names from time to time throughout this decision. No disrespect is intended by the use of first names.

¶4 Administrative Law Judge ("ALJ") Matthew Reed (hereinafter "the ALJ") held a four-day hearing at which he heard witness testimony and admitted exhibits. Appellants were represented by counsel during the hearing, but ADOT did not send an attorney or other representative to prosecute the case against Appellants. After considering the evidence, the ALJ issued a 58-page decision finding that Charles, Robert, and David violated multiple state laws and ADOT rules. Accordingly, the ALJ found sufficient evidence existed to support the cancellation of Any Charity's third-party authorization and cancellation of the individual certifications of Charles, Robert, and David.

¶5 Appellants then moved for a rehearing. The ALJ denied Appellants' motion and affirmed the cancellation of Any Charity's third-party authorization and the certifications of David and Charles. The ALJ amended his decision by reducing Robert's punishment to a suspension of his license, holding that his conduct was insufficient to warrant cancelling his certificate.[2]

¶6 Appellants filed a timely appeal from the ALJ's order in Maricopa County Superior Court. They also filed a request for an evidentiary hearing under Arizona Revised Statutes ("A.R.S") section 12-910, which the superior court denied. After briefing and oral argument, the superior court affirmed the ALJ's decision. Appellants timely appeal, and this court has jurisdiction under A.R.S. §§ 12-120.21(A)(1) and 12-913.

DISCUSSION

I. Superior Court's Jurisdiction to Hear Administrative Appeal

¶7 Appellants argue that the superior court lacked subject-matter jurisdiction to hear their administrative appeal. They claim the relevant statutes and administrative rules do not allow ADOT's Director ("the Director") to delegate cancellation or suspension powers to an ALJ. Accordingly, Appellants argue the ALJ's decision in this case was non-final and the superior court was not authorized to decide their appeal. "We review de novo the superior court's exercise of jurisdiction and any issue of statutory interpretation." *Stapert v. Ariz. Bd. of Psychologist Exam'rs*, 210 Ariz. 177, 179, ¶ 7 (App. 2005).

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[2] The ALJ also credited Robert for the time he already served while the motion for rehearing was pending and deemed his suspension to be served in its entirety.

¶8 The rules governing the suspension or cancellation of ADOT's third-party authorizations are found in Arizona Revised Statutes and Title 17 of the Arizona Administrative Code. Under A.R.S. § 28-5108, the Director of ADOT is given the authority to cancel or suspend a third-party authorization in the event of misconduct by the third-party or certificate holder after the Director holds a hearing:

> On determining that grounds for suspension or cancellation of an authorization or certification, or both, exist, the director shall give written notice to the third party or certificate holder to appear at a hearing before the director to show cause why the authorization or certification should not be suspended or canceled.

A.R.S. § 28-5108(E). At the hearing, an ALJ "shall preside" and conduct a "fair and impartial" hearing. Ariz. Admin. Code R17-1-505(A). In addition, an ALJ may:

> 1. Issue a subpoena for the attendance of a relevant witness or for the production of relevant documents or things, and
>
> 2. Question a witness.

Ariz. Admin. Code R 17-1-505(B).

¶9 Appellants argue the Director is required to personally conduct the hearing and issue a decision in order to produce a final, legally-binding result. We reject such an interpretation. The legislature has defined the duties of the Director to include the ability to "[d]elegate functions, duties or powers as the director deems necessary to carry out the efficient operation of the department." A.R.S. § 28-363(A)(4).[3] In so doing, the legislature afforded wide discretion to the Director to delegate his duties, including those of determining whether good cause exists to cancel

[3] Appellants argue that under A.R.S. § 38-462, the Director does not have the power to delegate duties to an ALJ, because an ALJ is not a deputy of ADOT. But A.R.S. § 38-462 neither governs nor limits the Director's authority to delegate his or her duties. Furthermore, A.R.S. § 28-363(A)(4) specifically grants the Director discretion to delegate as he or she deems necessary for the efficient operation of the department. We therefore reject this argument.

or suspend a third-party authorization. Furthermore, reading A.R.S. § 28-5108 as requiring the Director to personally conduct all proceedings regarding the cancellation and suspension of a third-party authorization would likely undermine the legislature's intent to promote ADOT's "efficient operation." *See* A.R.S. § 28-363(A)(4); *see also Calik v. Kongable*, 195 Ariz. 496, 501, ¶ 20 (1999) (explaining that when interpreting statutes, the court "should avoid hypertechnical constructions that frustrate legislative intent" (internal quotation omitted)).

¶10 Acting in accordance with A.R.S. § 28-363(A)(4), the Director delegated his duties by promulgating agency rules allowing an ALJ to preside over, call witnesses during, and issue a decision after an administrative hearing. *See* Ariz. Admin. Code R17-1-505. Accordingly, the ALJ, acting on behalf of the Director, was authorized to make a final and binding decision in this matter. Appellants filed a timely notice of appeal from that decision, and the superior court's exercise of jurisdiction over that appeal was not error.

II. Due Process Rights

¶11 Appellants also argue the administrative proceedings violated their due process rights under the United States and Arizona constitutions. When a licensee is faced with the suspension or revocation of a state-issued license, the licensee is entitled to a fair hearing that comports with due process before such a penalty can be enforced. *Nunnally v. Moore*, 116 Ariz. 508, 509 (App. 1977) (citing *Bell v. Burson*, 402 U.S. 535, 539 (1971)). We review de novo a claim that due process violations occurred in an administrative hearing. *See State v. Rosengren*, 199 Ariz. 112, 116, ¶ 9 (App. 2000).

A. ALJ's Exercise of Prosecutorial and Judicial Roles

¶12 Appellants argue they were denied due process because the ALJ acted as both the prosecutor and the adjudicator during the initial administrative hearing. In general, an ALJ should be disinterested from the agency in question in order to facilitate a fair and impartial result. *Ariz. State Ret. Bd. v. Gibson*, 2 Ariz. App. 609, 613 (1966). Nevertheless, combining "investigatory, prosecutorial, and adjudicatory functions in an agency employee does not necessarily violate due process." *Comeau v. Ariz. State Bd. of Dental Exam'rs*, 196 Ariz. 102, 108, ¶ 26 (App. 1999). An overlap of investigative, prosecutorial, and adjudicative functions is permissible so long as no actual bias or partiality results. *Id.*; *Sigmen v. Ariz. Dept. of Real*

Estate, 169 Ariz. 383, 388 (App. 1991); *Rouse v. Scottsdale Unified Sch. Dist. No. 48*, 156 Ariz. 369, 374 (App. 1987).

¶13 Appellants argue that although it may be acceptable for an agency as a whole to combine prosecutorial and adjudicative functions, vesting both of these roles in a single hearing officer is inherently biased and contrary to due process. But in *Martin v. Superior Court in & for Maricopa Cnty.*, 135 Ariz. 258, 260 (1983), our Supreme Court held that a non-criminal license suspension hearing is not devoid of due process when the individual hearing officer acts as both the prosecutor and the adjudicator. In that case, a hearing officer determined whether Arizona's implied consent law[4] authorized the suspension of a driver's license after a driver pulled over on suspicion of driving under the influence of alcohol refused to submit to sobriety tests. *Id.* at 258–59. At the hearing, the driver was represented by counsel, but ADOT had no counsel or other legal representative present. *Id.* at 259. The hearing officer questioned witnesses, including the arresting officer and the driver. *Id.* Ultimately, the hearing officer found that the implied consent law was applicable and affirmed the suspension of the driver's license. *Id.* Our Supreme Court explained that these proceedings did not violate the driver's constitutional rights:

> There is nothing prejudicial about a hearing officer handling a non-criminal license-suspension hearing without a prosecutor present to move the case forward. Given the limited scope of the hearing, the adequacy of judicial review and the presence of the respondent's counsel, this combination of adjudicative and prosecutorial functions does not violate due process or equal protection. We have reviewed the record of the hearing and find that respondent received a fair and impartial hearing.

Id. at 261.

¶14 The logic of *Martin* is applicable here. Appellants were represented by counsel at all times during the hearing. The hearing focused on a single issue: whether, in the context of a non-criminal hearing, ADOT correctly determined that grounds existed to revoke the third-party authorization certificates of Appellants under A.R.S. § 28-5108(D). Although the issue was more complex than the driver's license suspension in *Martin*, there is nothing to indicate that the ALJ was unqualified or incapable of impartially adjudicating the issue. The ALJ was statutorily

[4] *See* A.R.S. § 28-1321.

empowered to hear disputes involving third-party authorization licenses, *see* A.R.S. § 28-5108(E), as well as other disputes involving fact-intensive licensing issues, *see* A.R.S. § 28-4494 (automobile dealership licensing); § 28-4456 (automobile franchise regulation); § 28-8244 (aircraft registration and taxation). The ALJ's role at the hearing was consistent with his statutory authority and administrative function.

¶15 Moreover, absent evidence to the contrary, we assume that a hearing officer is unbiased. *Berenter v. Gallinger*, 173 Ariz. 75, 82 (App. 1992); *Maxwell v. Civil Service Comm'n of Tucson*, 146 Ariz. 524, 526 (App. 1985). There is no indication in this record that Appellants did not receive a fair or impartial hearing. The ALJ's decision and the portions of the transcript provided to this court reflect that he acknowledged flaws in the investigation, explained how he arrived at his conclusions in light of those flaws, and made numerous findings in Appellants' favor. Appellants have not shown that actual bias or prejudice exists. *See Comeau*, 196 Ariz. at 108, ¶ 26. We therefore discern no due process violation as a result of the ALJ's adjudicative role.

B. Investigative Misconduct

¶16 Appellants also claim they were denied due process through misconduct during the investigation. In their motion for rehearing, Appellants argued the ADOT investigators fabricated evidence, made serious mistakes during the investigation, and employed coercive tactics that tainted any evidence they may have discovered. The ALJ found the investigative reports were poorly prepared; the detectives misidentified the sources of numerous exhibits, and testimony at the hearing contradicted the information contained in the reports. The ALJ nevertheless determined the evidence presented at the hearing, independent of the flawed investigative reports, was sufficient to support a finding of misconduct by Appellants. On appeal, Appellants argue the ALJ erred when he denied their motion for a rehearing on the basis of fraud in the investigation. We review an administrative agency's decision to determine whether it was "arbitrary, capricious or an abuse of [ ] discretion." *Outdoor Sys., Inc. v. Ariz. Dep't of Transp.*, 171 Ariz. 263, 264 (App. 1992); *Edwards v. Ariz. Dep't of Transp./Motor Vehicle Div.*, 176 Ariz. 137, 140 (App. 1993) (citing *Ontiveros v. Ariz. Dep't of Transp.*, 151 Ariz. 542, 543 (App. 1986)).

¶17 The ALJ did not err by denying Appellants request for rehearing on the basis of the flawed investigation. Appellants acknowledge that during the initial hearing, the ALJ recognized "serious mistakes made

in the investigation." After reviewing the investigative reports, the ALJ declined to consider any of the information contained therein as evidence. Instead, he questioned the authors of the reports and relevant witnesses and considered "only the testimony and evidence provided at the hearing." Such a decision was within the discretion of the ALJ and did not violate Appellants' due process rights. That this evidence may have been initially obtained through an improperly conducted investigation does not preclude its use during the administrative hearing. *See Tornabene v. Bonine ex rel. Ariz. Highway Dep't*, 203 Ariz. 326, 336, ¶ 26 (App. 2002) (declining to extend the Fourth Amendment's exclusionary rule to an administrative licensing hearing). [5]

C. Notice of Hearing

¶18 Next, Appellants argue they were deprived of due process by insufficient notice of hearing. They claim the final notice of hearing was vague, inadequate, and did not sufficiently identify the claims ADOT had made against them.

¶19 We decline to address this argument because Appellants raise it for the first time on appeal. Appellants did not request a more detailed statement of the allegations against them before the initial hearing, nor did they contest the sufficiency of the notice of hearing in their motion for rehearing. Failure to raise this issue before the administrative tribunal precludes us from reviewing the issue. *See DeGroot v. Ariz. Racing Comm'n*, 141 Ariz. 331, 340 (App. 1984).[6]

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[5] ADOT argues Appellants also waived their due process arguments regarding the ALJ's prosecutorial role and the improper investigation by failing to raise them at the initial hearing. Failure to raise an issue at the administrative level generally precludes this court from addressing it. *DeGroot v. Ariz. Racing Comm'n*, 141 Ariz. 331, 340 (App. 1984). But Appellants raised both of these issues at the administrative level by arguing them in their motion for rehearing. We therefore reject ADOT's waiver argument as to those two issues.

[6] Moreover, Appellants have not demonstrated that they were prejudiced by any allegedly deficient notice. *See, e.g., John M. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 320, 325, ¶ 18 (App. 2007); *Monica C. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 89, 95, ¶ 26 (App. 2005).

III. Sufficiency of the Evidence

¶20 Appellants also argue that even if they were not deprived of due process by the administrative proceedings, the evidence presented therein was insufficient to support the cancellation and suspension of their third-party authorization licenses under A.R.S. § 28-5108. We will not substitute our judgment for that of the administrative agency, nor will we re-weigh the evidence. *Winkleman v. Ariz. Navigable Stream Adjudication Comm'n*, 224 Ariz. 230, 238, ¶ 14 (App. 2010); *Golob v. Ariz. Med. Bd.*, 217 Ariz. 505, 509, ¶ 11 (App. 2008). Our review of the sufficiency of the evidence is instead limited to determining whether substantial evidence supports the administrative decision. *Id.* We will reverse only if the hearing officer acted arbitrarily, capriciously, or abused his discretion. *Outdoor Sys. Inc.*, 171 Ariz. at 264.

¶21 A third-party authorization license may be suspended if the licensee violates a state law or an ADOT rule or policy. A.R.S. § 28-5108. Appellants' arguments focus on two categories of findings made by the ALJ: 1.) that Charles and David Galati violated state laws and ADOT policy in their handling of abandoned vehicles, and 2.) that David and Robert Galati improperly accessed MVD records in violation of state law and ADOT policy. Because substantial evidence exists to support the ALJ's finding of wrongdoing in both categories, we discern no abuse of discretion.

A. Abandoned Vehicles

¶22 The ALJ found Appellants committed punishable violations in their handling of several abandoned vehicles. On appeal, Appellants challenge the ALJ's determination as to four vehicles: a 2004 Pace Boat Trailer, a 1980 Tioga Motor Home, a 1967 Ford Mustang, and a 1997 Metal Craft Boat Trailer.

1. The 2004 Pace Boat Trailer

¶23 Appellants contest the ALJ's finding that Charles Galati violated forgery laws by instructing his employee to sign an Abandoned Vehicle Report ("AVR") regarding a boat trailer. By signing, the employee purported to certify that the trailer had been both abandoned and towed. But a detective who interviewed the employee testified that the employee had no knowledge of the boat trailer. In a sworn statement by the employee, she said the AVR was already filled out when she was asked to sign it, and that she had not seen the trailer to certify that the information

stated on the AVR was correct. The ALJ found that the employee's statement was more credible than Charles' testimony contradicting it, and concluded that Charles violated forgery law by causing the employee to sign the AVR.[7]

¶24 Appellants argue the ALJ's determination was not supported by substantial evidence because Charles' testimony contradicted the employee's statement. Appellants also claim that a post-hearing declaration by the employee corroborates Charles' testimony, and that the court erred by denying an evidentiary hearing to consider that declaration. But even if the ALJ had considered the employee's second — allegedly contradictory — declaration, it would not have been an abuse of discretion for him to conclude that substantial evidence supported a finding that forgery was committed. If a record contains inconsistent factual conclusions, "there is substantial evidence to support an agency's decision that elects either conclusion." *Outdoor Sys., Inc.*, 171 Ariz. at 264. We will not substitute our judgment for that of the ALJ. *Id.* Because substantial evidence exists to support his determination, there was no abuse of discretion.

2. The 1980 Tioga Motor Home

¶25 The ALJ also found numerous abandoned vehicle violations regarding a motor home found at a Lake Roosevelt marina. The ALJ determined that the boat never left the marina, and therefore, the AVR prepared by David Galati violated both forgery and public records statutes.[8] The ALJ also found that Charles Galati violated the forgery and public records statutes by denying knowledge of the owner of the motor home.

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[7] The relevant forgery statute provides: "A person commits forgery if, with intent to defraud, the person . . . [f]alsely makes, completes, or alters a written instrument." A.R.S. § 13-2002(A)(1).

[8] The relevant public records statute provides: "A person commits tampering with a public record if, with the intent to defraud or deceive, such person knowingly . . . [r]ecords, registers or files or offers for recordation, registration or filing in a governmental office or agency a written statement which has been falsely made, completed or altered or in which a false entry has been made or which contains a false statement or false information[.]" A.R.S. § 13-2407(A)(3).

¶26 The ALJ heard conflicting testimony regarding whether the motor home had been towed from the marina and found "the evidence the [motor home] did not leave Lake Roosevelt [was] more persuasive than the evidence it did." This evidence included testimony from a witness who worked at the marina where the motor home was located. She testified that the marina paid to have the vehicle towed. David, however, testified that while Appellants in fact towed the motor home, they never charged the marina for doing so. The ALJ also considered the motor home's AVR, which indicated the motor home was located at Lake Pleasant, not at Lake Roosevelt. Furthermore, when David inspected the motor home, he reported its location was at a Phoenix address, not at the Lake Roosevelt marina.

¶27 In addition, the ALJ considered an exhibit showing that Charles ran a DMV report on the abandoned motor home. The report contained the name of the vehicle's owner. Nonetheless, in executing the AVR for the motor home, Charles certified that he had no knowledge of the owner of record.

¶28 Viewing, as we must, the evidence in the light most favorable to sustaining the ALJ's decision, *Baca v. Ariz. Dep't of Econ. Sec.*, 191 Ariz. 43, 46 (App. 1998), we conclude the record contains substantial evidence to support the ALJ's determination that violations occurred regarding the motor home. As this court has explained, conflicting evidence is still substantial evidence. *Shaffer v. Ariz. State Liquor Bd.*, 197 Ariz. 405, 409, ¶ 20 (App. 2000). Although there was evidence in the record to support the opposite finding, the ALJ did not abuse his discretion by concluding that the motor home was never towed from the Lake Roosevelt Marina. Similarly, there was no abuse of discretion in the ALJ's determination that Charles failed to disclose information about the title holder of record.

3. The 1967 Mustang

¶29 Appellants next contest the ALJ's findings that Charles Galati violated forgery laws when he completed an AVR for an abandoned Ford Mustang. Richard Roseburg was the possessor of the Mustang and contacted Charles for help transferring title to the car. Roseburg testified that he told Charles the vehicle was encumbered by a lien, and as a result, Roseburg was having trouble selling it. Accordingly, the ALJ determined that Charles knew a lien existed on the Mustang because he was informed of the lien by Roseburg. The ALJ therefore determined that Charles

violated the forgery statute by executing an AVR stating he had no information about the "legal owner or lienholder."

¶30 Appellants argue Roseburg was not a credible witness, and his testimony therefore is not substantial evidence. But it is the role of the ALJ, not of this court, to determine the credibility of witnesses and evidence. *Siler v. Ariz. Dep't of Real Estate*, 193 Ariz. 374, 382, ¶ 41 (App. 1998). Because there is evidence in the record to support the ALJ's findings, we will not disturb them. The ALJ did not err.

4. The 1997 Metal Craft Boat Trailer

¶31 Appellants also argue the ALJ improperly determined that David Galati violated notary laws by notarizing an AVR for a Metal Craft boat trailer. They assert that A.R.S. § 41-328, which prohibits an officer of any named party to a document from notorizing that document, does not apply to members of an LLC.

¶32 Even if the word "officers" does not include members of an LLC, we agree with the ALJ that David's position with the company made it improper for him to notarize the AVR. The notary statute also prohibits an individual from notarizing a document from which he "will receive any direct material benefit." A.R.S. § 41-328(C). After hearing evidence about David's role in the LLC, the ALJ found that David realizes a "direct material benefit" from the LLC's business dealings. *See* § 41-328(C). Although Appellants argue that the transfer of the trailer's title was merely a "pass-through" and was not of material benefit to Any Charity, the ALJ determined that Any Charity's extent of ownership of the trailer did constitute a direct material benefit to Any Charity, and therefore, to David Galati. Because sufficient evidence existed to support this finding, the ALJ did not abuse his discretion when he determined that David's notorization of the AVR was inappropriate.

B. Access of MVD Records

¶33 The ALJ also determined that David improperly accessed MVD driving records without a legitimate business purpose, in violation of ADOT rules limiting the access of such records. At the hearing, the ALJ examined evidence showing that David had in fact accessed these records. He also heard testimony from David that he "really had no reason" to do so. Accordingly, evidence exists in the record to support the ALJ's findings, and the ALJ did not err.

¶34 In his decision denying Appellant's request for rehearing, the ALJ also found that Robert Galati stored (but did not access) drivers' license information in his desk without a business purpose. Appellants contend that because ADOT never alleged that Robert improperly stored drivers' license information, Robert had no opportunity to defend against that claim at the administrative level. In superior court, Appellants argued Robert's storage of the records was secure and the ALJ lacked evidence to support the findings in his denial on rehearing. We disagree. Robert testified that he was storing the records in his desk to use them for "marketing," which is not recognized as a legitimate business purpose for the records. Sufficient evidence therefore exists to support the ALJ's findings that Robert stored the records in a manner inconsistent with their proper business purpose.

¶35 We also reject Robert's argument that it is unfair to hold him responsible for improper storage of the drivers' license records because he was not specifically accused of this violation. We conclude instead that it was appropriate for the ALJ to consider improper storage of records in conjunction with determining whether Robert accessed them in an inappropriate manner. The ALJ referred to an "Information Access and Non-Disclosure Agreement" that Robert signed, which outlines the requirements of accessing and handling MVD records. Upon signing it, Robert agreed to store drivers' license records "in a secure manner with proper regard for privacy and confidentiality and in accordance with applicable policies, standards and procedures." Improper storage of the records, therefore, is encompassed within the broader claim of improper access. Accordingly, Robert had adequate notice and opportunity to defend against ADOT's claims.

IV. Denial of Evidentiary Hearing

¶36 Finally, Appellants argue the superior court erred when it denied their request for an evidentiary hearing under A.R.S. § 12-910(A). Appellants assert that proper judicial review of an administrative decision mandates the superior court hold an evidentiary hearing if one is requested by a party. We review de novo the interpretation of a statute. *City of Phoenix v. Harnish*, 214 Ariz. 158, 161, ¶ 6 (App. 2006).

¶37 A party to an administrative appeal may request an evidentiary hearing under A.R.S. § 12-910(A)–(E):

> A. An action to review a final administrative decision shall be heard and determined with convenient speed. If requested by a party to an action within thirty days after filing a notice of appeal, the court shall hold an evidentiary hearing, including testimony and argument*, to the extent necessary to make the determination required by subsection E of this section*. The court may hear testimony from witnesses who testified at the administrative hearing and witnesses who were not called to testify at the administrative hearing.
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> E. The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

(Emphasis added).

¶38 Appellants argue this statute requires the court to hold an evidentiary hearing if one is requested: "If requested by a party . . . the court *shall* hold an evidentiary hearing[.]" *Id.* But the statute goes on to give the court leeway to determine whether such a hearing is required: "the court shall hold an evidentiary hearing . . . to the extent necessary to make the determination required by subsection E." *Id.* The statute therefore affords the court discretion to decline a party's request for a hearing if such a hearing is not required to determine whether substantial evidence supports the agency's action. *See* A.R.S. § 12-910(E); *see also Curtis v. Richardson*, 212 Ariz. 308, 312, ¶ 11 (App. 2006) ("Section 12-910 requires an evidentiary hearing *only* upon a showing that a hearing is necessary for the court's determination on review."); *Shaffer v. Ariz. State Liquor Bd.*, 197 Ariz. 405, 408, ¶ 13 (App. 2000) (explaining that § 12-910 does not require the superior court to conduct a de novo review of additional evidence on appeal). Accordingly, we review the superior court's denial of Appellants' request for an evidentiary hearing in this case for an abuse of discretion.

¶39 When a court has the facts necessary to make a determination, it does not abuse its discretion by declining to hold an additional evidentiary hearing. *See, e.g.*, *Am. Power Prods., Inc. v. CSK Auto, Inc.*, 235

Ariz. 509, 513, ¶ 10 (App. 2014). As we have explained, substantial evidence existed in the record to support the ALJ's findings. Accordingly, it was not an abuse of discretion for the superior court to determine that an additional evidentiary hearing was unnecessary to determine whether the agency's decision could be upheld. *See* A.R.S. § 12-910(E).

CONCLUSION

¶40 For the reasons set forth above, we affirm the superior court's decision in favor of ADOT. Because they are not the successful parties on appeal, we also deny Appellants' requests for attorney fees and costs under A.R.S. §§ 12-341.01 and 12-348.