STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant, v ELIZABETH ANN EDENSTROM, Defendant-Appellee.	FOR PUBLICATION August 5, 2008 No. 277291 Wayne Circuit Court LC No. 06-100037 Advance Sheets Version

Before: Zahra, P.J., and Cavanagh and Jansen, JJ.

ZAHRA, P.J. *(concurring in part and dissenting in part).*

I concur in the majority's conclusion that an act of neglect need not be willful in order to be reportable under MCL 333.21771. I also concur in the majority's conclusion that defendant is not absolved from culpability under MCL 333.21771 merely because she concluded that the incident here at issue was an "accident." However, I dissent from the majority's conclusion that the injury sustained by William Devine was not the result of "harmful neglect" merely because the employee providing care to the injured patient "performed the duties she was assigned to perform, in the manner that she was trained to perform them." In my opinion, the fact that an employee followed a deficient and hazardous policy to assist oxygen-dependent patients to smoke does not abate the negligence of the Rivergate Health Care Center, which created this policy, nor does it relieve defendant of her duty to report this incident under MCL 333.21771.

I also dissent from the majority's conclusion that defendant is absolved from the duty to report under MCL 333.21771 because her decision not to report the incident was based on her postincident investigation. The statute makes it very clear that an administrator must immediately report instances of harmful neglect to the Department of Community Health, previously the Department of Public Health. An administrator who chooses not to report on the basis of his or her postincident investigation runs the risk that a decision not to report will be reviewed by law-enforcement authorities. This statute is written to encourage over-reporting of possible violations of the Public Health Code. Requiring nursing-home administrators to report incidents that may rise to the level of abuse, mistreatments or neglect as soon as they become aware of the incidents is more in line with the statute's language and intention than, as the majority seems to do here, unilaterally allowing an administrator to decide whether an incident is reportable, after conducting an internal investigation. See, generally, *People v Gubachy*, 272 Mich App 706, 710; 728 NW2d 891 (2006) (the court must consider the object of the statute, the

harm it is designed to remedy, and apply a reasonable construction that best accomplishes the statute's purpose).

Finally, although not addressed in the majority opinion, I conclude that defendant's argument that the statute does not provide a penalty for a violation of MCL 333.21771(2) is without merit. I conclude that the plain language of MCL 333.1299 provides that violations of the Public Health Code are punishable as misdemeanors. The statute does not specifically criminalize a failure to report, although a different statute criminalizes violations of two of the other subsections of the statute. See MCL 333.21771(2); MCL 333.21799c(1)(e) (providing that violations of MCL 333.21771[1] and MCL 333.21771[6] constitute misdemeanors punishable by up to one year in prison, a fine of between $1,000 and $10,000, or both). Nonetheless, the catchall provision of the Public Health Code applies here. The catchall provision states:

> (1) A person who violates a provision of this code for which a penalty is not otherwise provided is guilty of a misdemeanor.
>
> (2) A prosecuting attorney having jurisdiction and the attorney general knowing of a violation of this code, a rule promulgated under this code, or a local health department regulation the violation of which is punishable by a criminal penalty may prosecute the violator. [MCL 333.1299.]

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006). The Legislature is presumed to have intended the meaning it plainly expressed. *People v Petty*, 469 Mich 108, 114; 665 NW2d 443 (2003). Clear statutory language must be enforced as written. *People v Gillis*, 474 Mich 105, 115; 712 NW2d 419 (2006). If the plain and ordinary meaning of the language is clear, judicial construction is normally neither necessary nor permitted. *People v Weeder*, 469 Mich 493, 497; 674 NW2d 372 (2004).

The plain and ordinary meaning of the language of MCL 333.1299 is clear, and judicial construction is not necessary. See *Weeder, supra*. MCL 333.1299(1) clearly states that a person who violates a section of the Public Health Code for which a penalty has not been provided is guilty of a misdemeanor. This language is not ambiguous, and this statute should be enforced as written.

I would reverse the order of dismissal granted by the circuit court, reinstate the order denying dismissal issued by the district court, and remand for further proceedings.

/s/ Brian K. Zahra