

STATE OF MICHIGAN
COURT OF APPEALS

BRENDA L. JACKSON,

Petitioner-Appellee,

v

DEPARTMENT OF ENERGY, LABOR &
ECONOMIC GROWTH,

Respondent-Appellant.

UNPUBLISHED

June 23, 2011

No. 297762

Ottawa Circuit Court

LC No. 09-001440-AA

Before: TALBOT, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

Respondent Department of Energy, Labor & Economic Growth appeals by leave granted the circuit court's order reversing the Department's decision to refuse to file the articles of organization for a limited liability company (LLC) that had been submitted by petitioner Brenda Jackson. Because we conclude that, under the Michigan Limited Liability Company Act (the LLC Act), see MCL 450.4101 *et seq.*, the Department did not have the authority to refuse to file the articles of organization at issue here, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

The underlying facts are undisputed. Jackson submitted articles of organization for an LLC under the name "Ottawa Guardian Services, LLC", which the Department refused to file. The Department explained that, as a matter of policy, it treated the word "guardian" as a caution word. It did so because, under its interpretation of Michigan law, it is not lawful for an LLC to act as a fiduciary. The Department came to this conclusion on the basis of a provision within the Banking Code of 1999, MCL 487.11101 *et seq.*, which generally authorizes only individuals and certain corporations to act as a fiduciary. See MCL 487.11105(2).

In response, Jackson amended the statement of purpose in the articles of organization to clarify that the LLC would not be involved in the business of banking. The Department again rejected the filing. Jackson then took the position that the filing should be accepted, despite the provisions of the Banking Code, because the Estates and Protected Individuals Code, MCL 700.1101 *et seq.*, authorized an LLC to act as a guardian or conservator. See MCL 700.1106(h), (n), and (t); MCL 700.5106(1). Nevertheless, the Department continued to reject her proposed filing.

Jackson appealed the Department's decision to the circuit court. The circuit court concluded that the Department's interpretation of the relevant statutes was "myopic" and created "unnecessary conflict" between the relevant statutes. Accordingly, it set aside the refusal and ordered the Department to accept the articles of organization for filing. This appeal followed.

II. THE DEPARTMENT'S REVIEW

A. STANDARDS OF REVIEW

On appeal, the Department argues that the circuit court erred when it concluded that it was lawful for an LLC to act as a fiduciary. Because an LLC cannot lawfully act as a fiduciary, Jackson could not form an LLC to act in a fiduciary capacity. For that reason, the Department maintains, the circuit court should have affirmed the Department's decision to refuse Jackson's filings. "On direct review of an agency decision, a trial court must determine whether the administrative action was authorized by law and whether the agency decision was supported by competent, material, and substantial evidence on the whole record." *Mantei v Michigan Pub School Employees Retirement Sys*, 256 Mich App 64, 71; 663 NW2d 486 (2003). "This Court reviews 'a lower court's review of an agency decision to determine "whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings.'" *Department of Labor & Economic Growth, Unemployment Ins Agency v Dykstra*, 283 Mich App 212, 222; 771 NW2d 423 (2009) (citation omitted). In this case, because there are no facts in dispute, our review is essentially limited to determining whether the Department's decision was authorized by law. This Court reviews de novo the proper interpretation and application of statutes. *Granger Land Dev Corp v Department of Treasury*, 286 Mich App 601, 608; 780 NW2d 611 (2009).

B. ANALYSIS

In order to form an LLC, the organizing member or members must file the articles of organization with the Department. MCL 450.4202; MCL 450.4203. The LLC's existence begins when the Department endorses and files the LLC's articles. MCL 450.4104(6); MCL 450.4202(2). Although the Department must approve the articles for filing, its review of the articles is quite limited: "If a document . . . substantially conforms to the requirements of this act, the administrator shall endorse upon it the word 'filed' with his or her official title and the date of receipt and of filing, and shall file and index the document . . . in his or her office." MCL 450.4104(2). The LLC Act does not provide the administrator with any discretion to look beyond the documents actually submitted; he or she must simply review the documents, determine whether the documents substantially conform with the LLC Act's requirements, and, if they do, must endorse and file them. See *Carter v Ann Arbor City Attorney*, 271 Mich App 425, 439; 722 NW2d 243 (2006) (explaining that act is ministerial when the nature of the act is prescribed and defined by law with such precision and certainty that nothing is left to the individual's discretion). That is, the Department's administrator has a purely ministerial role: he or she must endorse and file the articles, if the articles substantially conform with the filing requirements. See *Wolverine Power Supply Coop, Inc v DEQ*, 285 Mich App 548, 561; 777 NW2d 1 (2009) (noting that the word "'shall' is mandatory; it expresses a directive, not an option."). Accordingly, if the articles of organization were facially in compliance with the LLC Act, the administrator had to endorse and file the articles, *even if* the administrator personally

suspected—or indeed knew—that the organizing member intended to use the LLC to engage in business activities that the administrator believed were unlawful for an LLC.

Here, Jackson signed the articles of organization as required by MCL 450.4103. In addition, the articles also included the entity’s name, address, and indicated that the intended duration of the LLC was perpetual as required by MCL 450.4203(1). Moreover, Jackson provided that the LLC was formed to engage in any lawful activity for which an LLC may be formed, as specifically permitted under MCL 450.4203(1)(b). Thus, on its face, the articles of organization complied with MCL 450.4203 as well.

The only remaining basis for concluding that Jackson’s articles of organization did not comply with the LLC Act must relate to the LLC’s proposed name: “Ottawa Guardian Services, LLC.” The Legislature provided for certain limitations on the names that may be used by an LLC. One limitation is that an LLC’s name may not include “a word or phrase, or abbreviation or derivative of a word or phrase, that indicates or implies that the company is formed for a purpose other than the purpose or purposes permitted by its articles of organization.” MCL 450.4204(3)(a). Here, the Department contends that it is unlawful for an LLC to act as a fiduciary under Michigan’s banking laws. And, because the use of the term “Guardian” implies that the LLC will act as a type of fiduciary—a guardian—the name does not comply with the limitations imposed under MCL 450.4204(3)(a). However, even assuming that it is unlawful for an LLC to act as a guardian—a question we decline to answer—we cannot conclude that the name “Ottawa Guardian Services, LLC” implicates the limitation stated under MCL 450.4204(3)(a).

MCL 450.4204(3)(a) requires the administrator to examine the name and determine whether the name “indicates or implies” that the LLC is formed for a purpose or purposes “*other than the purpose or purposes permitted by its articles of organization.*” MCL 450.4204(3)(a) (emphasis added). That is, the administrator must compare the proposed name to the purposes for which the LLC is formed and determine whether the name indicates or implies that the LLC is not actually being formed for those purposes. Here, Jackson stated that she was forming the LLC to “engage in any activity within the purposes for which a limited liability company may be formed.” The LLC Act provides that an LLC may be formed for “any lawful purpose for which a domestic corporation or a domestic partnership could be formed” MCL 450.4201. Because the articles essentially include any and all lawful purposes, the administrator’s review was limited to determining whether the name indicated or implied that the LLC was not actually being formed for *any lawful purpose*.¹

¹ The facts here can readily be distinguished from those in *Smith v Director, Corporation & Securities Bureau*, 79 Mich App 107; 261 NW2d 228 (1977). In that case, the organizers of a corporation tried to form a corporation with a statement of *purpose* that was plainly unlawful. Specifically, the organizers stated that the corporation was formed to provide loans that would be usurious under Michigan law. *Id.* at 109. This Court concluded that articles of incorporation that “state an unlawful corporate purpose do not substantially conform” to the requirements of the Business Corporation Act and, for that reason, could be rejected. *Id.* at 110. This case does

One can imagine an array of services that an LLC might lawfully perform under the rubric of “Ottawa Guardian Services, LLC” that do not include the provision of fiduciary services. Indeed, the Department concedes that it has filed articles for “hundreds” of entities with the word “guardian” in the name. And, on its face, Jackson’s chosen name for the LLC does not *necessarily* indicate or imply that the LLC will engage in fiduciary services to the exclusion of any other lawful business activity. Notwithstanding that, the Department contends that it can refuse to file the articles because Jackson actually intends to offer fiduciary services. But the Legislature did not provide the Department with the authority to look beyond the documents actually submitted in determining whether to endorse and file articles. The Department’s review was limited to determining whether the LLC’s name substantially conformed to the requirements of MCL 450.4204(2)(a). Therefore it could not consider Jackson’s intent. And, even assuming that the LLC might later engage in business that it cannot lawfully pursue under Michigan law, such an occurrence would be a matter for the Attorney General—not for the administrator assigned to review the LLC’s proposed articles of organization. See MCL 450.4803 (providing the attorney general with the authority to bring an action to dissolve an LLC for, among other things, conducting its business in an unlawful manner). Given the limited nature of its review, we must conclude that—as a matter of law—the Department exceeded the scope of its authority to review a documentary submission under the LLC Act.

We recognize the trial court reversed the Department’s decision on an alternative basis. Nevertheless, this Court will affirm the circuit court’s ruling when it reached the correct result, even if for a different reason. See *Hess v Cannon Twp*, 265 Mich App 582, 596; 696 NW2d 742 (2005). Rather than reaching a determination as to appropriateness of the Department’s understanding of the law, the trial court should have instead concluded that the Department misapplied the law when it determined that it had the authority to refuse to file Jackson’s articles on the basis of its belief about her actual intent to provide fiduciary services through her LLC. The Department’s review was limited to the documents actually submitted and, on its face, the articles do not indicate or imply that Jackson’s company will not engage in *any* lawful activity. Therefore, the Department exceeded its statutory authority when it refused to endorse and file the articles of organization.

Affirmed. As the prevailing party, Jackson may tax her costs. MCR 7.219(A).

/s/ Michael J. Talbot
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly

not involve a stated purpose that is plainly unlawful; this case involves a statement of lawful purposes with a name that *might* suggest an unlawful purpose, but that is also consistent with lawful purposes.