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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1764**

In re the Matter of Anthony Ray Salin,
Appellant,

vs.

Commissioner of Wadena County Human Services,
Respondent.

**Filed September 3, 2019
Affirmed
Slieter, Judge**

Wadena County District Court
File No. 80-CV-17-605

Anthony Ray Salin, Brainerd, Minnesota (*pro se* appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kyra L. Ladd, Wadena County Attorney, Michelle D. Mahlen, Assistant County Attorney,
Wadena, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Halbrooks, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Wadena County Human Services (WCHS) determined that appellant Anthony Ray Salin maltreated a vulnerable adult. Because appellant abandoned his department of human services (DHS) appeal of the maltreatment determination, and did so after being repeatedly

warned by the human services judge that leaving the hearing would result in an abandonment of his appeal, the district court correctly ruled that appellant abandoned his appeal. Therefore, we affirm.

FACTS

This appeal arises out of WCHS's determination that appellant maltreated a vulnerable adult. In June 2013, the state charged appellant with one count of domestic assault by strangulation, one count of domestic assault, one count of fifth-degree assault, and one count of fourth-degree damage to property. The alleged victim of these offenses is E.M.J., a vulnerable adult. Appellant and E.M.J. have one joint child. Appellant and E.M.J. were in a romantic relationship at the time of the offenses.

Because the incidents involved a vulnerable adult, WCHS investigated. In September 2013, WCHS determined that appellant maltreated E.M.J. In September and October 2013, appellant requested WCHS reconsider its maltreatment determination. WCHS denied those requests. Appellant appealed the maltreatment determination to DHS.

In January 2014, the first human services judge suspended the appeal pending the criminal proceedings that arose out of the same conduct. By October 2014, all of appellant's criminal charges were dismissed.

In May 2015, appellant informed a second human services judge that there were ongoing district court proceedings related to the circumstances that lead to the maltreatment determination. The second human services judge ordered that appellant's DHS appeal be "suspended until the completion of the district court proceedings."

In April 2016, appellant's DHS appeal was taken out of suspension and eventually reassigned to a third human services judge. The final appeal hearing was scheduled for November 17, 2016 at the Wadena County Courthouse.

In October 2016, appellant requested to continue and suspend the November 17, 2016 hearing, claiming that the guardianship proceeding and the CHIPS proceeding involving appellant and E.M.J.'s joint child were both ongoing. The third human services judge granted the continuance but denied appellant's request to suspend the case.

The third human services judge commenced a hearing on the appeal on January 18, 2017. At the end of the first day, the matter was set for an additional hearing date on April 24, 2017, but later continued to July 10, 2017.

When the hearing continued on July 10, appellant asked that he be allowed to appeal directly to the district court as an interim appeal. The third human services judge denied this request, told appellant that the hearing would continue and that appellant could then appeal to the district court. This exchange followed:

Appellant: Okay, well then the mo-, the hearing can move on forward without me because I know what my rights are and the laws are, as well as the said vulnerable adult's rights are and they are being violated. I do not trust your judgment. I'm going to walk out the door now and you can mail me your determination after you get the 2017 neuropsychological assessment, which you already put in correspondence. Thank you, your honor, have a good day.

HSJ: Do you understand [appellant] that if you leave the hearing I will treat your, I will treat your appeal as being abandoned and I'll issue a dismissal accordingly. I want to make sure you understand that.

Appellant: Then I'm requesting that this be send [sic] to me and I provide it to my attorney, so we can reconsider with the commissioner because there has been several complaints provided on you and notarized complaints from the said vulnerable adult as well as myself, based on your orders and overruling everything including state law.

HJS: Do you understand what I'm telling you, that if you leave, I'll have no choice - -

Appellant: This can only be used against me in a direct care case - -

HSJ: Do you understand that - -

Appellant: - - so I'm taking the chance.

HSJ: So you understand that if you leave here and refuse to proceed with the hearing despite my ruling in the motion, you're understanding I'll treat this as abandoned and dismiss it? Do you understand that?

Appellant: That, that's up to you. I object to that too and that I already filed a motion.

HSJ: Do you understand what I'm telling you? I understand that you object to it, I get that.

Appellant: Okay.

HSJ: Do you understand what I'm telling you?

Appellant: Okay.

HSJ: You do.

Appellant: It, it doesn't matter to me your Honor. You're violating rights.

HSJ: But do you or don't you; do you or don't you understand what I just told you?

Appellant: And then we'll communicate with [sic] commissioner and we'll take it under advisement with other attorneys.

HSJ: Do you - -

Appellant: Please send the compact disc of this hearing to me - -

HSJ: - - understand - -

Appellant: - - at my address, I'll put it in writing.

HSJ: Then - -

Appellant: Thank you, your Honor, have a good day.

HSJ: Okay, then for the record, I'll state that I find [appellant] understands that if he leaves here and he has left the room, walked out of the hearing and I treat that as a refusal to proceed with the hearing and I treat it as an abandonment of the appeal and I intend to issue an order dismissing the appeal on that basis.

The third human services judge issued an order dismissing the appeal. Appellant requested reconsideration of the dismissal—this request was denied by a reviewing human services judge.

Appellant appealed this decision to the district court. Appellant argued that the DHS appeal should have been suspended because district court actions arising out of the same circumstances were pending. The district court upheld the reviewing human services judge's determination that appellant abandoned the appeal. The district court also determined that the criminal charges against appellant were dismissed before the suspension of the DHS appeal was lifted and that the CHIPS and guardianship files were unrelated to appellant's DHS appeal. This appeal follows.

DECISION

On appeal from a district court's review of the DHS commissioner's order, we "review[] the commissioner's order independently, giving no deference to the district court's review." *Zahler v. Minn. Dep't of Human Servs.*, 624 N.W.2d 297, 301 (Minn. App. 2001), *review denied* (Minn. June 19, 2001).

In reviewing the commissioner's decision, we apply the standard of review set forth in the Minnesota Administrative Procedure Act. *See, e.g.*, Minn. Stat. § 14.69 (2018); *Brunner v. State of Minn. Dep't of Pub. Welfare*, 285 N.W.2d 74, 75 (Minn. 1979); *Zahler*, 624 N.W.2d at 301. Under that standard:

[T]he court may affirm the decision of the agency or remand the case for further proceedings; or [] may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Minn. Stat. § 14.69.

The third human services judge found that appellant abandoned his DHS appeal by leaving the appeal hearing. Pursuant to Minn. Stat. § 256.0451, subd. 13 (2018), "[i]f a person involved in a fair hearing appeal fails to appear at the hearing, the human services

judge may dismiss the appeal.” Appellant left the hearing after being warned several times that if appellant left the hearing, the human services judge would consider his appeal abandoned. Appellant does not appear to challenge the dismissal of his appeal, but our review of the third human services judge’s decision shows that it is not unlawful, arbitrary and capricious, or unsupported by substantial evidence. The third human services judge properly dismissed appellant’s appeal.

Appellant makes numerous arguments, many of which are unrelated to his DHS appeal, but he appears to contend that his DHS appeal should have remained suspended because related district court proceedings were not yet resolved. In the interests of completeness, we will briefly address this argument.

Minn. Stat. § 256.045, subd. 3(b) (2018), provides that if an “action is filed in district court while an administrative review is pending that arises out of some or all of the events or circumstances on which the [DHS] appeal is based, the administrative review must be suspended until the judicial actions are completed.” Based on this statute, the second human services judge suspended appellant’s appeal while the criminal matter was pending. Once the criminal matter was complete, the suspension was lifted.

Appellant argues that three district court proceedings should have resulted in his DHS appeal being suspended: (1) the criminal proceedings related to his alleged assault of E.M.J., (2) the CHIPS proceeding involving appellant and E.M.J.’s joint child, and (3) E.M.J.’s guardianship proceedings.

Our review of the record shows that both the CHIPS proceeding and E.M.J.'s guardianship are unrelated to appellant's DHS appeal and that the DHS appeal was properly stayed only during the pendency of the related criminal proceedings.

Affirmed.