STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1294

Phillip Mycal Simpson,
Relator,

vs.

James C. Backstrom,
in his official capacity as Dakota County Attorney, et al.,
Respondents.

Filed May 31, 2011
Affirmed
Ross, Judge

Dakota County Employee Relations Department

Patrick J. Kelly, Daniel J. Cragg, Kelly & Lemmons, P.A., St. Paul, Minnesota (for relator)

James C. Backstrom, Dakota County Attorney, Jay R. Stassen, Assistant Dakota County Attorney, Hastings, Minnesota (for respondents)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

The dispute in this appeal originates from a romantic triangle involving two Dakota County corrections officers and one inmate. We must decide whether Dakota County must indemnify and defend corrections officer Phillip Simpson in a lawsuit filed against Simpson and the county by a former inmate. The inmate, who is the current boyfriend of the other corrections officer—the mother of Simpson's child—alleges among other things that Simpson illegally disclosed his medical information obtained during his incarceration. Simpson made the allegedly privacy-violating disclosures during a child-custody proceeding in which he sought to keep the inmate from his child. We affirm the county's decision not to defend and indemnify Simpson because the alleged disclosures were made outside the duties of Simpson's employment.

FACTS

Phillip Simpson and Emily Bonniwell, corrections officers in the Dakota County Sheriff's Office, became romantically involved and conceived a child born in 2009. The relationship ended and Bonniwell began dating J.O., whom she met while he was a jail inmate.

Bonniwell and Simpson began a child-custody dispute in 2010. In it, Simpson sought to prevent J.O. from having contact with their son. He submitted to the district court the following affidavit, which became the primary subject of J.O.'s lawsuit:

> Mr.[O.] has been in the Dakota County jail more than once. He has a serious chemical problem and has had at least four (4) DUIs. His driver's license is cancelled for inimical to

> public safety. I knew he talks [sic] medication, Lithium, for [sic] mental health records. Emily has been very involved with him, taking [the child] to be with Mr. [O.]. I ask that Emily be ordered not to allow any contact between Mr.[O.] and [the child].

Simpson also allegedly told Bonniwell's mother that J.O. is an ex-inmate, is on lithium, and is bipolar. And he allegedly telephoned J.O.'s probation officer and left a message to report that J.O. had consumed alcohol in violation of a probation condition.

J.O. sued Simpson and Dakota County for violating his privacy rights under the Minnesota Health Records Act and for defamation arising out of Simpson's statement to the child's grandmother and his leaving the allegedly false message with J.O.'s probation officer.

The Dakota County Attorney concluded that the county was not required to defend and indemnify Simpson under Minnesota Statutes section 466.07 (2010) because Simpson's actions were not taken "in the performance of [his] duties" as a corrections officer. Although the record does not indicate the source that defines the procedure to appeal that decision, the county attorney informed Simpson that he could appeal his decision to a three-member panel comprised of county officials. Simpson appealed, and the panel upheld the county attorney's decision refusing to defend or indemnify him.

Simpson petitions this court to review by writ of certiorari.

D E C I S I O N

Simpson challenges the county's decision not to defend or indemnify him. A county's determination not to defend and indemnify an employee under Minnesota

Statutes section 466.07 is quasi-judicial, and it is therefore subject to certiorari review by this court. *See Minn. Ctr. for Envtl. Advocacy v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999) (defining quasi-judicial decisions as those that involve investigating disputed claims and weighing evidentiary facts, applying those facts to a prescribed standard, and binding decisions on those disputed claims); *State v. Tokheim*, 611 N.W.2d 375, 376 (Minn. App. 2000) (requiring writ of certiorari to invoke review of quasi-judicial decisions). Our review of quasi-judicial decisions is limited to whether the fact findings are supported by substantial evidence and the decision is affected by error of law, made upon unlawful procedure, or arbitrary and capricious. Minn. Stat. § 14.69 (2010).

Simpson contends that Dakota County's decision not to defend and indemnify him was based on legal errors and unsupported fact findings. Municipalities must defend and indemnify their employees for damages arising from tort liability if the employees incurred the liability while they were "acting in the performance of the duties of the position" and were not malfeasant, negligent, or acting in bad faith. Minn. Stat. § 466.07, subd. 1. The county determined that it would not defend or indemnify Simpson because it deemed Simpson's allegedly tortious actions as alleged by J.O. not to have occurred while Simpson was acting in the performance of his duties.

Simpson contends that section 466.07 is ambiguous and that we should cure the ambiguity by reading into it respondeat-superior principles and holding that an employee's actions need only be "foreseeable, related to and connected with acts otherwise within the scope of employment" to fit the acting-in-the-performance-of-duties

requirement. We decline to do so. If a statute is not ambiguous, its plain and ordinary meaning is conclusive. Minn. Stat. § 645.08 (2010). The clause "acting in the performance of the duties of the position" is not ambiguous. Its terms have a readily understandable, single meaning. The county needed only to determine whether Simpson was "acting" (as in, taking some action or engaging in some conduct) "in the performance of the duties of the position" (as in, while fulfilling some requirement and expectation of a corrections officer). Under the plain language, the county must defend and indemnify an employee's conduct that occurs while the employee is acting to satisfy his duties, not conduct that might merely be "foreseeable" but which has only some distant connection to the workplace.

Before we can consider whether Simpson was acting in the performance of the duties of his position when he committed the acts alleged in J.O.'s suit, we must also resolve the parties' dispute about the scope of the record on certiorari appeal. Simpson argues that we should look only to J.O.'s civil complaint to determine whether the county must defend and indemnify him. Because we are reviewing the county's decision, we must examine its decision in light of the information that was before it. *See In re Expulsion of N.Y.B.*, 750 N.W.2d 318, 324 (Minn. App. 2008) (construing the scope of the record in school-board expulsion case as anything considered by the quasi-judicial school board either at the hearing or at its subsequent meeting). We will therefore consider all of the relevant facts in the record, including the exhibits and testimony received at the county's hearing.

The county found that Simpson's allegedly offending actions—his submitting the affidavit to the child-custody court, his making statements to his child's grandmother, and his telephoning J.O.'s probation officer—all occurred entirely outside of his duties as a probation officer. Without discussing why, we have previously characterized as a "finding" a district court's post-trial determination of whether a person was acting in the performance of the duties of his position under section 466.07. *Indep. Sch. Dist. No. 404 v. Castor*, 670 N.W.2d 758, 763 (Minn. App. 2003). The parties here do not directly address whether the county's determination was a factual finding or a legal holding or both, just as it does not appear that the question was at issue in *Castor*. We will therefore also treat the determination as a fact finding for the purposes of this appeal. We affirm quasi-judicial agency findings if they are supported by substantial evidence, *Indep. Sch. Dist. No. 192 v. Minn. Dept. of Educ.*, 742 N.W.2d 713, 719 (Minn. App. 2007), *review denied* (Minn. Mar. 18, 2008), which is defined as "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety," *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn. 2002). The finding here is supported by substantial evidence.

The record supports the finding that Simpson's affidavit was submitted outside of his work hours and did not arise from his assigned duties. It related only to his personal child-custody dispute. We recognize that the record suggests that acquiring J.O.'s confidential medical information may have been part of a correctional officer's duties.

But J.O.'s complaint does not suggest any wrongdoing in nor allege any liability for Simpson's *acquiring* of the information; he alleges that Simpson is liable only for improperly *disclosing* that information during his child-custody proceedings.

Simpson's telling the child's grandmother about J.O. also occurred outside his job duties. It happened at the grandmother's house and away from the workplace. And although Simpson's telling J.O.'s probation officer about his drinking alcohol might in theory be a sort of law-enforcement-information-sharing duty, in fact it was not related to Simpson's job duties for two reasons. First, J.O. was no longer an inmate; the record does not indicate that it is part of Simpson's job duties to monitor the conduct of former inmates. Simpson does not explain, and we cannot imagine, how a corrections officer's normal duties would tend to expose him to a former inmate's conditions of release or to his post-incarceration alleged probation violations. Probation officers monitor offenders after release or as an alternative to incarceration, but corrections officers generally monitor offenders only during their incarceration. Second, nothing in the record suggests that county corrections officers are expected to make misconduct reports to probation officers whether or not the inmate has been released. The county's finding that Simpson's job duties do not include communications with the child's grandmother and with J.O.'s probation officer is well supported.

We have found no legal error, unlawful procedure, or unreasonable finding in the county's decision not to defend and indemnify Simpson. His allegedly improper disclosure of and false statements about J.O. being entirely personal and beyond the

scope of his job duties, the public, through his public employer, has no obligation to defend or indemnify him for that conduct under section 466.07.

Affirmed.