[Cite as *Fisher v. Franklin Cty. Dept. of Job & Family Servs.*, 2012-Ohio-6169.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Kathy Fisher,	:	
Appellant-Appellant,	:	
		No. 12AP-467
v.	:	(C.P.C. No. 11CVF-09-11594)
Franklin County Department of Job & Family Services,	:	(REGULAR CALENDAR)
	:	
Appellee-Appellee.	:	

D E C I S I O N

Rendered on December 27, 2012

Maguire and Schneider, LLP, and *Gary D. Andorka*, for appellant.

Ron O'Brien, Prosecuting Attorney, and *Jeffery C. Rogers*, for appellee.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Appellant, Kathy Fisher, appeals from a judgment of the Franklin County Court of Common Pleas that affirmed a decision of the appellee, the Franklin County Department of Job and Family Services ("the Department"), revoking appellant's limited Type B child care certificate. Because the trial court did not abuse its discretion, we affirm that judgment.

I. Factual and Procedural Background

{¶ 2} Since 2001, appellant has held a limited Type B child care certificate issued by the Department that was valid for her residence at 1643 Kent Street in Columbus, Ohio. On July 19, 2011, following an internal audit of its certified child care providers, the Department notified appellant that it proposed to revoke appellant's certification for her noncompliance with two requirements of the Ohio Administrative Code. Specifically, the Department alleged that appellant failed to notify it within 24 hours or on the next working day of any change in household composition, in violation of Ohio Adm.Code 5101:2-14-58(DD), and that she misrepresented, falsified or withheld information, in violation of Ohio Adm.Code 5101:2-60(B)(6). Both charges arose from appellant's alleged failure to inform the Department that her nephew lived in her residence. Appellant requested and received a hearing concerning the charges.

{¶ 3} At the hearing, the Department submitted appellant's 2008 and 2009 annual applications for her certification. In neither did she disclose that her nephew lived in her house.[1] The Department also submitted various documents from 2007, 2009, 2010 and 2011 in which appellant's nephew identified the 1643 Kent Street address as his home address. Appellant denied that her nephew ever lived at 1643 Kent Street. She testified that she owned a building consisting of four townhouses, 1643, 1645, 1647 and 1649 Kent Street, and that her nephew rented 1647 Kent Street from her. To prove this, she presented documentation her nephew submitted to the State of Ohio in December 2010 in which he used the 1647 Kent Street address as his home address. She also presented utility bills from 2011 with her nephew's name and 1647 Kent Street as his residence.

{¶ 4} Based on this evidence, the appeal review officer found that appellant's nephew did not currently live with appellant but that he did live with her for some period of time between when she first received her certification and December 2010. In light of that factual finding, the review officer concluded that appellant violated Ohio Adm.Code 5101:2-14-58(DD) by not informing the Department that her nephew lived at her

[1] It appears likely that the Department would have rejected appellant's applications if her nephew lived with her because of her nephew's past criminal convictions.

residence.[2] Accordingly, the review officer concurred with the Department's proposed revocation of appellant's certification. Appellant appealed that decision to the Franklin County Court of Common Pleas, which found the decision to be supported by reliable, probative and substantial evidence and affirmed the revocation.

II. The Appeal

{¶ 5} Appellant appeals and assigns the following error:

> The Court of Common Pleas erred by finding that there was reliable, probative and substantial evidence supporting the appellee's decision to revoke Appellants limited type B child care certificate.

A. Standard of Review

{¶ 6} Both parties agree that this appeal is governed by R.C. Chapter 2506. *See Joseph v. Muskingum Cty. Dept. of Job and Family Servs.*, 5th Dist. No. CT2011-0004, 2011-Ohio-3024, ¶ 20; *Elam v. Cuyahoga Cty. Dept. of Employment and Family Servs.*, 8th Dist. No. 95969, 2011-Ohio-3588, ¶ 10. Pursuant to R.C. 2506.04, the trial court has to consider the whole record and must determine whether the administrative decision is unconstitutional, illegal, arbitrary, capricious, unreasonable or unsupported by the preponderance of substantial, reliable, and probative evidence. In determining whether a preponderance of substantial, reliable, and probative evidence supports the decision, the trial court must examine and weigh the evidence, but due deference must be given to the agency's resolution of evidentiary conflicts. *Krumm v. Upper Arlington City Council*, 10th Dist. No. 05AP-802, 2006-Ohio-2829, ¶ 8-9.

{¶ 7} In contrast, this court applies a more limited scope of review. R.C. 2506.04 allows the court of appeals to examine the common pleas court's judgment only on questions of law. The review does not include the extensive power granted to the common pleas court to weigh the preponderance of substantial, reliable, and probative evidence. *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 147 (2000). "It is incumbent on the trial court to examine the evidence. Such is not the charge of the

[2] The review officer could not conclude that appellant submitted false information in her 2008 or 2009 applications because it could not conclude exactly when appellant's nephew actually lived with her, just that he did live with her at some point before December 2010. Therefore, the review officer dismissed that charge.

appellate court." *Lorain City Bd. of Edn. v. State Emp. Relations Bd.*, 40 Ohio St.3d 257, 261 (1988). Our review does include whether the trial court abused its discretion. *Joseph* at ¶ 24, citing *Kisil v. Sandusky*, 12 Ohio St.3d 30, 34, fn.4 (1984); *Crawford-Cole v. Lucas Cty. Dept. of Job and Family Servs.*, 6th Dist. No. L-11-1177, 2012-Ohio-3506, ¶ 11. Although an abuse of discretion is typically defined as an unreasonable, arbitrary, or unconscionable decision, *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983), we note that no court has the authority, within its discretion, to commit an error of law. *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, ¶ 70.

B. Analysis—Did the trial court abuse its discretion when it affirmed the Department's Decision?

{¶ 8} Appellant argues that the Department's decision was based on illegal evidence because she was the victim of a fraud offense apparently perpetrated by her nephew. Specifically, appellant points to two letters that the Department presented at the hearing that were allegedly signed by her in which she indicated that her nephew paid her rent to live at the 1643 Kent Street address. Appellant claims the Department could not rely on those documents because her signatures on the letters were forged. However, the review officer did not consider those letters as evidence of appellant's nephew's residence because it conceded some discrepancy in the appearance of her signature on those letters and the appearance of her signature in other documents she admittedly signed. Instead, the review officer based its conclusion on the other evidence in the record.

{¶ 9} Appellant does not contest any of the other evidence in the record, as described above, which supports the Department's finding that appellant's nephew lived with her for some period of time between when she first received her certification and December 2010, and that she did not disclose this to the Department. This violation of the Ohio Administrative Code constitutes grounds for the Department to revoke appellant's certification. Ohio Adm.Code 5101:2-14-60. Accordingly, the trial court did not abuse its discretion when it affirmed the Department's decision to revoke appellant's certification. We overrule appellant's assignment of error.

III. Conclusion

{¶ 10} Having overruled appellant's assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT and FRENCH, JJ., concur.