

and social security. Ross knew that I.G. was a widow, lived alone, and that neither of her daughters lived in the area. Ross visited I.G. frequently at her home. Ross had keys to I.G.'s house and a joint bank account with her. The money in the joint account was I.G.'s.

Ross was taking community college classes to become a licensed practical nurse. He talked with I.G. about the possibility of going to medical school. Ross and I.G. often discussed "where [he] was financially and what [his] goals were." Ross said I.G. insisted that he allow her to help him financially. Ross said I.G. gave him money so he could focus on school, work less, and spend more time with her. He accepted numerous checks from I.G. between May 2003 and August 2007 and used the money to "furnish [himself] with living expenses, tuition [sic], et cetera." Ross did not keep any record of the amounts received from I.G., nor did he attempt to repay her.

In December 2004, I.G. fell at home, sustained bone fractures, and was admitted to the hospital. She moved to a nursing facility and stayed for about one month. During this time, Adult Protective Services (APS) received a report alleging that I.G. was being financially exploited by Ross. A Department of Social and Health Services (Department) social worker, Rhodora Mann, investigated the allegations. While I.G. was in the nursing facility, her daughters discovered concerning information about I.G.'s finances. They discovered that I.G. had written approximately \$5,000 in checks to Ross and that she had incurred substantial credit card debt and bank overdraft fees. I.G. admitted that she gave the money to Ross for tuition, rent, a computer, and other expenses. I.G. told Mann she did this because she supported Ross's dream of becoming a doctor and because she and Ross loved each other as friends. I.G.

believed Ross's parents were unable to help him and he was "always struggling" financially. According to Mann, I.G. appeared to be "quite infatuated" with Ross.

I.G. told Mann that Ross would move in with her when she was discharged and would help her by driving her to appointments. Ross, on the other hand, denied that he ever planned to move in with I.G. He claimed he told I.G. that they could "realistically consider" living together once he completed his degree. Mann attempted to contact Ross several times to discuss the allegations, but without success.

When I.G. moved back into her home, she refused her daughters' offers to hire assistance. Based on her conversations with I.G.; the social worker at the nursing facility; I.G.'s daughter, Betty Johnson; and I.G.'s neighbor, Mann closed the case in August 2005, finding that the evidence of exploitation was inconclusive.

Within a month of closing the first investigation, APS received a second complaint. According to the referral, nothing had been done about the financial exploitation reported in December 2004. The referral raised no new allegations nor provided any new information. Since she had recently interviewed I.G. in person, Mann called I.G. on the telephone. I.G. admitted, as she had before, that she was still giving money to Ross, because she wanted to help him and because he was kind to her. I.G. reported that she was still visiting her sister on a weekly basis, that she received help from her neighbor when needed, and reported no physical problems other than chronic back pain. I.G.'s neighbor confirmed that although I.G. was still recovering from surgery, she was "independent and able to care for herself." Mann was again unsuccessful in her attempts to contact Ross. Mann concluded that I.G. "does not appear to meet the definition of [a] vulnerable adult as she is not unable to care for

herself and is not receiving services” and closed the case.

More than a year and a half later, in August 2007, I.G. again fell in her home. After falling, I.G. lay on the floor for over 14 hours before calling for help. I.G. had not seen a physician in over a year and was not taking her prescribed medications.¹ Her house was “[u]nlivable,” “in a total state of filth,” and “unsafe.” I.G. had an untreated infected wound and was admitted to the hospital. At this time, I.G. was extremely hard of hearing, completely incontinent, unable to use the toilet by herself, change herself, or bathe, and was only able to bear minimal weight. I.G. exhibited cognitive deficits, for example by failing to recognize her daughter. Two more complaints were lodged with APS, one again alleging financial exploitation and the other alleging that I.G. was no longer able to care for herself.

After I.G. was hospitalized, Johnson took over I.G.’s finances and gained access to her checkbooks and banking records. She discovered the extent to which I.G. had transferred money to Ross and how it had impacted her financial situation. Specifically, Johnson learned that I.G. had not been paying her bills, had lost her senior property tax exemption because she had not paid property taxes, had lost her long distance and cable service, and was in danger of having her water and gas shut off. I.G. had also purchased a telephone for Ross and had been paying his monthly bill.

In addition, Johnson found out that in November 2006, I.G. had taken out a loan of approximately \$40,000 using her home as collateral. I.G. wrote a check for \$35,000

¹ According to I.G.’s medical records, she suffered from numerous medical conditions including congestive heart failure, diabetes, chronic hypertension, incontinence, degenerative joint disease, reflux, and osteoporosis.

to Ross and wrote “[I]loan” on the check. Ross deposited the check into the joint bank account he shared with I.G., obtained a cashier’s check made out to himself for the same amount, and deposited the money into his individual account. The interest rate on the bank loan was 11 percent. I.G. said Ross helped her procure the loan and spoke to the lender on the telephone because I.G. could not hear well enough to do so. I.G. could not remember completing loan paperwork nor could she remember how she found the lender. I.G. said Ross “worried” about what her family would say about the loan and that he talked to a lawyer “to make sure he couldn’t get in trouble.” The monthly loan payment consumed most of I.G.’s pension funds and by the time Johnson discovered the loan, I.G. was six or seven months delinquent and was being threatened with foreclosure. When financial issues were raised with her at the hospital, I.G. expressed extreme anxiety about losing her home, which she intended for one of her daughters to inherit.

Based on her review of I.G.’s records, Johnson estimated that I.G. gave Ross as much as \$80,000 in total.² Johnson opined that I.G. did not have enough income to give money away and adequately meet her own needs. She said that I.G.’s behavior of not paying her own bills while giving away substantial sums of money and paying bills for other people was out of character and inconsistent with I.G.’s prior practices.

Mann made another unannounced visit to Ross’s apartment during the 2007 investigation and found him there. Ross did not deny accepting money from I.G. He initially said that he and I.G. “financially supported each other.” Later in an interview at

² The Department estimated that Ross accepted at least \$60,000 from I.G.

Mann's office he admitted that he was the only recipient of the money. He maintained that he never asked I.G. for money, and she was "making" him take it. He said he intended to repay all the money that I.G. gave him, but admitted he had kept no record of how much he had accepted.³ He said the last time he received any money was probably July 2006. Initially, Ross denied knowing about the loan encumbering I.G.'s home, but when confronted with the evidence of it, he told Mann she needed to talk to I.G. Ross explained that he and I.G. cared about each other, were always "giving each other gifts," and maintained that it was I.G.'s right to give him money if she wanted to. He admitted that I.G. might be vulnerable, but only became so "recently."

Mann obtained medical documents, which she had not obtained in the course of her previous investigations showing that I.G. had been diagnosed with dementia since November 2004 and again in 2006. Mann also received confirmation that, contrary to Ross's statements in his interview, he had received at least \$40,000 from I.G. since July 2006.

The Department found that I.G. had been a vulnerable adult since November 2004 and that Ross had personally and financially exploited her. The Department notified Ross of its findings. The consequence of a Department finding of exploitation is that the perpetrator's name is placed in a statewide database, which could result in ineligibility for employment that includes unsupervised access to vulnerable adults and children. See WAC 388-71-01280; WAC 388-71-0540; 0551, RCW 74.39A.050(8). Ross requested a hearing.

³ At other times, Ross insisted that I.G. gave him, rather than loaned him, the money.

Following a two-day hearing before an Administrative Law Judge (ALJ), the ALJ issued an initial order affirming the Department's findings. The ALJ found by a preponderance of the evidence that I.G. met the definition of a vulnerable adult no later than the beginning of 2006 "due to her declining physical and mental conditions." The ALJ further concluded that Ross financially and personally exploited I.G.

Ross petitioned for review to the Department's Board of Appeals (Board). In its review decision and final order, the Board determined that the findings of fact set forth in the ALJ's initial order were supported by substantial evidence and adopted them. The Board noted that I.G. suffered from a "myriad of medical afflictions, including dementia and total incontinence of bowel and bladder, which affected her ability to care for herself as early as December 1, 2004." The Board further noted that the dementia was also listed as a primary diagnosis in March 2006. The Board determined:

The fact that she did survive on her own for periods of time does not prove that she was functionally able to care for herself. The fact that she was failing to meet her monthly financial obligations and was failing to keep an acceptably clean abode is evidence of her inability to functionally care for herself.

The Board upheld the ALJ's determination of financial exploitation, finding that Ross's use of I.G.'s resources was improper:

The Appellant accepted literally thousands of dollars from an elderly woman who was not independently wealthy nor could be assumed to be independently wealthy based on her modest living accommodations. Even if the Appellant was not aware of I.G.'s actual monthly financial resources, the fact that the Appellant was involved in procuring the home loan for I.G. is evidence that he was aware of her limited financial resources. As well meaning as the Appellant may have been in initially befriending I.G., he seriously compromised this relationship when he accepted and used thousands of dollars from I.G. for his own benefit, especially when he made no real attempts to repay the funds in a timely

manner.

The Board also concluded that Ross exerted undue influence over I.G. compelling her to act in a manner that was inconsistent with her past behavior:

The Appellant knew, or should have recognized, that I.G. was elderly, socially isolated, and susceptible to the attentions and affections of a considerably younger male who offered friendship, attention, and assistance. The Appellant's fostering this relationship/friendship to a point where I.G. was willing to give him money well in excess of her financial means is evidence of undue influence.

The Board denied Ross's motion for reconsideration.

Ross filed a petition for review in superior court. The superior court reversed the Board's final order. In its letter ruling, the court explained that it was "unable to find that I.G. was a vulnerable adult at any time relevant." The court observed:

The Department itself only found I.G. to be a vulnerable adult over a period of time in hindsight. Twice before the hearing she was either found not to be vulnerable or findings were inconclusive. Ms. Mann, the Department's expert, herself could not find I.G. vulnerable until the final complaint and investigation. How could a young caregiver at the start of his nursing career expect to know any more than the Department's expert?

The court further noted that the extent of I.G.'s dementia was never quantified, the issues of self-neglect and clutter predated I.G.'s relationship with Ross, and that I.G. received emotional benefits from the relationship. Because it found that I.G. was not a vulnerable adult, the court declined to address exploitation.

The Department appeals.

DISCUSSION

Judicial review of a final administrative decision is governed by the Washington Administrative Procedure Act (WAPA). RCW 34.05.570. When reviewing agency action, this court "sits in the same position as the superior court, applying the standards

of the WAPA directly to the record before the agency.” Tapper v. Emp’t Sec. Dep’t, 122 Wn.2d 397, 402, 858 P.2d 494 (1993). Appellate review is of the Board’s decision, not the decision of the superior court. Buechel v. Dep’t of Ecology, 125 Wn.2d 196, 202, 884 P.2d 910 (1994).

On review, a court may grant relief from an administrative decision only if the party challenging the agency’s order shows: (1) the agency erroneously interpreted or applied the law; (2) the decision is not based on substantial evidence; or (3) the decision is arbitrary or capricious. RCW 34.05.570(3); Tapper, 122 Wn.2d at 402; Premera v. Kreidler, 133 Wn. App. 23, 31, 131 P.3d 930 (2006). The party challenging the agency action bears the burden of demonstrating its invalidity. Pres. Our Islands v. Shorelines Hearings Bd., 133 Wn. App. 503, 515, 137 P.3d 31 (2006), review denied, 162 Wn.2d 1008, 175 P.3d 1092 (2008).

Our factual review is confined to the record before the ALJ and the Board. RCW 34.05.558; Port of Seattle v. Pollution Control Hearings Bd., 151 Wn.2d 568, 587, 90 P.3d 659 (2004). When a party asserts that an agency action is not supported by substantial evidence, we examine the record to determine if sufficient evidence exists to persuade a fair-minded person of the correctness of the order. Id. at 588. We do not weigh witness credibility or substitute our judgment for the agency’s findings of fact. Id.

The Washington legislature enacted abuse of vulnerable adults act, chapter 74.34 RCW, based on its determination that vulnerable adults may be in particular need of protection from abuse, neglect, abandonment, or exploitation. RCW 74.34.005; Schumacher v. Williams, 107 Wn. App. 793, 798, 28 P.3d 792 (2001). APS

is responsible for investigating allegations of abuse or exploitation against a vulnerable adult. RCW 74.34.005.

A vulnerable adult includes a person who is “[s]ixty years of age or older who has the functional, mental, or physical inability to care for himself or herself” or a person who is “[a]dmitted to any facility.” Former RCW 74.34.020(16)(a), (d) (2007). The statute prohibits exploitation, defined as “exerting undue influence over a vulnerable adult” and causing that person to act in a way that is inconsistent with relevant past behavior. Former RCW 74.34.020(2)(d). The statute also prohibits financial exploitation, or use of the vulnerable adult’s income that is illegal or improper and for the “profit or advantage” of someone other than the vulnerable adult. Former RCW 74.34.020(6). Exploitation or financial exploitation can only occur under the statute when the adult is vulnerable. Former RCW 74,34.020(2)(d), (6).

Ross does not dispute that by August 2007, I.G. had become a vulnerable adult. He does, however, challenge the Department’s determination that I.G. was vulnerable prior to that time. He points out that the Department previously determined the allegations to be inconclusive and as of January 2006, found that I.G. did not meet the statutory definition of a vulnerable adult. The superior court also recognized that “I.G. may have let things go a bit” by August 2007. But, like Ross, the court expressed concern that the Department’s conclusion about I.G.’s vulnerability in August 2007 was inconsistent with its determination in 2004-2005 and was, therefore, merely “hindsight” and speculation.

But, the Department’s failure to substantiate I.G.’s vulnerability and exploitation at an earlier point in time does not mean that I.G. was not, in fact, vulnerable and being

exploited. It is just as likely that the Department's conclusions resulted from partial information or an incomplete investigation. The conclusions reached by the Department following previous investigations must be viewed in the context of those investigations, including information reported to the Department and additional information obtained.

It is notable here that the Department conducted only minimal investigation after receiving the 2005 complaint. The Department had just concluded its first investigation when it received the second report, which was essentially a follow-up to the first report. Having no new information, the Department merely spoke to I.G. and her neighbor by telephone again before closing the investigation. Mann explained that at the time, I.G. "presented as alert and oriented." I.G. and her neighbor maintained that I.G. was able to meet her own needs for the most part and Mann took those assertions at face value. But, Mann admitted that when she made her determination about I.G.'s vulnerability, she lacked full information about her medical and mental conditions and the extent of her financial mismanagement.⁴ The additional information and documentation obtained during the 2007 investigation undermined the Department's previous assessment that I.G. was not vulnerable and provided the full picture of her relationship with Ross. Based on the "all of the information in its totality" Mann was able to determine in 2007 that I.G. was vulnerable and was being exploited from 2004 onward.

I.G.'s living conditions and financial circumstances as of August 2007

⁴ Mann explained that she had not requested medical documentation during the 2004 investigation because I.G. met the vulnerability requirement by virtue of her admission to a nursing facility. She said her focus in the initial investigation was to determine whether exploitation was established.

demonstrated that she lacked the mental and/or functional ability to care for herself at that time. The evidence also established that these conditions had not arisen suddenly, but had become progressively worse over time. I.G. was clinically diagnosed with dementia since at least 2004. The financial records obtained in 2007 revealed the extent to which I.G. had been transferring income to Ross while simultaneously failing to manage her own affairs in the months and years preceding her August 2007 hospitalization.

Even assuming I.G. was vulnerable at least from early 2006, Ross asserts the evidence was insufficient to establish that he knew she was functionally or mentally unable to care for herself. He points again to the Department's determination in January 2006 that I.G. appeared to be meeting her own needs, to the absence of evidence that he was aware of her medical diagnoses, and to the fact that her home had always been "messy." Given these facts, he claims it is unreasonable to conclude that he should have realized I.G.'s vulnerable condition.

In its ruling, the superior court also found it anomalous that the Department was unable to determine that I.G. was vulnerable in 2004-2005, while Ross, who had no expertise in the matter, was expected to know "more than the Department's expert." But, the Department did not have to prove that Ross knew that I.G. was vulnerable. Furthermore, evidence in the record supports the inference that he knew or should have known of her condition. In 2007, Ross conceded that I.G. was both "gullible" and vulnerable. Yet, he claimed he did not notice the progressive deterioration of her mental condition or physical surroundings. This claim was not persuasive in light of the fact that Ross's interaction with I.G. was extensive. In comparison, Mann had

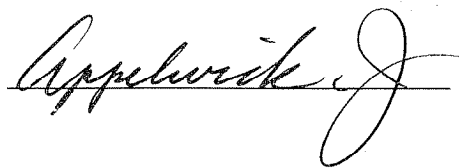
approximately five conversations with her during the course of the first two investigations.

Evidence in the record also indicates that Ross was or should have been aware of I.G.'s limited financial resources. While Ross asserted to have no knowledge of I.G.'s finances, it is undisputed that he had access to her bank account for several years. When interviewed by Mann, Ross denied knowing about the loan I.G. took out on his behalf. He then admitted to accepting the money, but denied assisting I.G. with the loan. His denial directly conflicts with I.G.'s statements and it is undisputed that I.G. could not have called or visited a lender without assistance. Ross knew that I.G. periodically overdraw her account, had problems with unpaid or late bills, and frequent problems with her bank account due to her propensity for giving out financial information over the telephone. When he talked to Mann, Ross minimized the amount of money he had received from I.G. and falsely claimed that he had received no money for over a year. Ross's omissions and denials indicated that he was conscious of I.G.'s condition and of the impropriety of accepting significant financial support from her.

Finally, Ross contends that his use of I.G.'s assets did not amount to financial exploitation, because it was not "improper." Ross points out that "improper" is not defined in the statute. He also asserts that his use of the funds cannot be improper since I.G. gave him the money for school and living expenses and he used it for exactly those purposes. Financial exploitation is defined as the "illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage." Former RCW 74.34.020(6). Ross's contentions are unavailing. Ross

clearly expended tens of thousands of I.G.'s funds for his own "profit or advantage," not for I.G.'s benefit. He does not assert otherwise. It was improper to do so, because I.G. was a vulnerable adult. Ross also knew that I.G. wished to remain in her own home, yet the evidence supports the conclusion that he arranged the loan that encumbered her home. The loan was improper, because she lacked the cash flow to service the loan. And, he increased the risk of loss of her home through foreclosure when he did nothing to help I.G. to make the payments on the loan. He put her at risk by receiving the financial gifts. This was improper.

In sum, Ross's arguments on appeal essentially challenge the Department's evaluation of the evidence. Taking into account the Department's role as fact finder in assessing the persuasiveness and credibility of the evidence presented below, we conclude that substantial evidence in the record supports its findings that I.G. was a vulnerable adult and that exploitation occurred. We reverse the order of the superior court and affirm the Board's final order.



WE CONCUR:

