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Court of Appeals No. 70138-0
King County Superior Court No. 12-2-17504-7 SEA

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

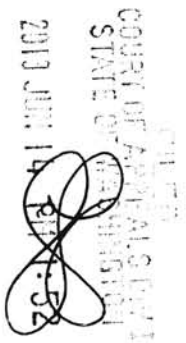
Estera Grandinaru,

Appellant,

v.

Washington State
Department of Social and Health Services,

Respondent.



APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Bruce Heller, Judge

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

I. ASSIGNMENTS OF ERROR

The Superior Court erred when it affirmed the Board of Appeals' determination that Ms. Grandinaru financially exploited a vulnerable adult.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

The Board of Appeals erred as a matter of law when it concluded that taking one cubic centimeter of a vulnerable adult's morphine in an attempt to commit suicide constitutes financial exploitation within the meaning of RCW 74.34.020(6). The Superior Court erred in affirming the Board of Appeals' erroneous legal conclusion.

III. STATEMENT OF THE CASE

A. Procedural History

On May 2, 2011, the Department of Social and Health Services ("DSHS" or "Department"), Appellee, issued a Notice of Preliminary Findings advising Estera Grandinaru, Appellant, that a DSHS investigation had resulted in a "substantiated finding" of financial exploitation against her. See Certified Administrative Record ("CR") at 103.

Ms. Grandinaru timely requested an administrative hearing. A hearing was held before Administrative Law Judge ("ALJ") Carolyn

Pinkett on August 24, 2011. See Transcript ("TR") at 1. On October 26, 2011, Judge Pinkett issued an initial order reversing the Department's substantiated finding and dismissed the case against Ms. Grandinaru. See CR at 37.

The Department appealed to the Board of Appeals ("BOA" or "Board"). The BOA reversed Judge Pinkett's initial order and issued a final order reinstating the substantiated finding against Ms. Grandinaru after concluding that she engaged in financial exploitation of a vulnerable adult in violation of RCW 74.34.200(2). See CR at 1. Ms. Grandinaru sought review of the Board's order in the King County Superior Court. On March 1, 2013, the Superior Court, the Honorable Bruce Heller presiding, issued a decision affirming the Board's order. See Clerk's Papers ("CP") at 47. The instant appeal followed.

B. Facts

The formal findings of fact underlying the BOA's determination are not in dispute. Ms. Grandinaru was the co-owner of Bellevue Rose Adult Family Home. Findings of Fact ("FF") at 1. Ms. Grandinaru suffers from depression and has a history of suicidal ideation. See FF 4. Before the events leading up to the charges in this case, Ms. Grandinaru tried to commit suicide by ingesting her own prescription medications on two previous occasions. See id. Ms. Grandinaru had experienced a

difficult divorce in 2009, and was recommended for partial-day hospitalization by physicians at Overlake Hospital as a result of her depression. See id. Unfortunately, Ms. Grandinaru could not participate in the program because she could not afford it. See id.

On October 12, 2010, Ms. Grandinaru's father, who also owned an adult family home, asked Ms. Grandinaru to pick up some medicine for one of his residents. See FF 7. Ms. Grandinaru was experiencing symptoms of depression and stress resulting from her divorce. See id. Ms. Grandinaru took Elaine's[1] morphine and drove to a park-and-ride, where she attempted to commit suicide by ingesting one-half capful of concentrated morphine (approximately one cubic centimeter or 20 milligrams). See FF 7-8. Her father later found her at the park-and-ride and she was taken to Overlake Hospital where she was admitted to the emergency room and subsequently transferred to the psychiatric ward for suicidal ideation. See FF 7; CR at 95.

Katherine Ander, a DSHS investigator, testified that as a registered nurse, Ms. Grandinaru had the authority to possess patients' prescription medications and delegate duties relating to the administration of medications at the time the incident underlying this case occurred. See

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[1] Elaine was a patient at Ms. Grandinaru's adult care home. FF 3. Elaine's last name has been omitted in order to protect her privacy.

TR at 32. Ms. Ander explained that her investigation revealed that Ms. Grandinaru was in charge of medication administration in her own adult care home and in her father's adult care home (a common practice in adult care homes). See id. Ms. Ander also testified that there was no evidence that Ms. Grandinaru was addicted to morphine. TR at 23, 51. The morphine ingested by Ms. Grandinaru was prescribed to Elaine, the alleged victim, as part of a "comfort kit." FF 3. Testimony at the hearing established that Elaine did not require morphine during her stay at the home. Id. Ms. Ander concluded that Ms. Grandinaru's use of Elaine's morphine was an isolated incident and did not qualify as "drug diversion," the practice of taking a patient's prescription medications for personal use or distribution. See TR at 40, 51. Ms. Ander conceded on the record that there would have been no objective medical benefit to Ms. Grandinaru from taking the medication. TR at 49.

IV. ARGUMENT

A. Standard of Review

Under the Administrative Procedure Act ("APA"), when reviewing agency action, the Court of Appeals sits "in the same position as the superior court, applying the standards of the APA directly to the record before the agency." Tapper v. Empl. Sec. Dep't, 122 Wn.2d 397, 402 (1993). An agency action may be reversed if the agency has "erroneously

interpreted or applied the law." RCW 34.05.570(3)(d). When a court reviews an agency's interpretation or application of a statute the "error of law standard" applies. Postema v. Pollution Control Hearings Bd., 142 Wn. 2d 68, 77 (2000). Under the error of law standard, a court may "substitute its interpretation of the law for the agency's." Id.

B. The Board of Appeals Erred as a Matter of Law When it Concluded that Ms. Grandinaru Financially Exploited a Vulnerable Adult.

The Board erroneously concluded that the ingestion of a patient's morphine in a failed suicide attempt constitutes "financial exploitation" as defined in RCW 74.34.020(6). Because Ms. Grandinaru did not profit or gain an advantage from her failed suicide attempt, her actions did not rise to the level of financial exploitation as that term is defined in the statute. The Board's order should therefore be reversed.

1. *The Board's definition of the term "financial exploitation" conflicts with the plain language of the statue.*

RCW 74.34.020(6) defines the term "financial exploitation" as:

> [T]he illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for person's or entity's *profit or advantage* other than for the vulnerable adult's profit or advantage.

RCW 74.34.020(6) (emphasis added). It is axiomatic that where "a statute is clear on its face, its meaning [should] be derived from the language of

the statute alone." Densley v. Dep't Ret. Sys., 162 Wn.2d 201, 219 (2007) (quoting Kilian v. Atkinson, 147 Wn.2d 16, 20 (2002)) (alteration in original). In other words, "courts should assume the Legislature means exactly what it says in a statute and apply it as written." Id. (internal citation and quotation marks omitted). It is clear from the plain language of RCW 74.34.020(6), that a finding of financial exploitation requires that an alleged exploiter receive some sort of "profit" or "advantage" from his or her actions. See RCW 74.34.020(6).

It is undisputed that Ms. Grandinaru ingested the morphine for the sole purpose of ending her own life in a failed suicide attempt. See FF 7-8. Nor was it contended below that Ms. Grandinaru profited from her attempt to commit suicide. TR at 69. However, the BOA concluded that Ms. Grandinaru gained an advantage by taking Elaine's morphine. See FF 10. The BOA adopted the following definition of the term "advantage": "benefit, gain, especially benefit resulting from some course of action." Based upon this definition, the BOA reasoned that because taking Elaine's morphine enabled Ms. Grandinaru to "carry out her suicide decision," she had used Elaine's property to her advantage, and that her actions therefore fall within the scope of RCW 7.4.34.020(6).

The BOA's conclusion is unsupported by the evidence and contrary to the plain text of the statute. Even if one adopts the Board's

definition of the term "advantage," Ms. Grandinaru's conduct still does not fit within the scope of RCW 74.34.020(6). It is simply not reasonable to construe an attempt to commit suicide as an act taken for the *benefit* or *gain* of the actor. The evidence in the record supports this conclusion. Ms. Ander, the DSHS investigator, conceded on the record that no medical professional would classify a suicide attempt as an act carried out for the person's benefit. TR at 49.

2. *The Board's construction leads to absurd results.*

The absurdity of the Board's decision is best demonstrated by comparing Ms. Grandinaru's actions to those of a hypothetical actor who attempts to commit suicide by other means, like the use of a vulnerable adult's gun or rope. Based upon the Board's construction of RCW 74.34.020(6) in Ms. Grandinaru's case, a person who attempts to commit suicide by shooting herself with a vulnerable adult's gun financially exploits the vulnerable adult, because she uses the vulnerable adult's property to her "advantage." The result would be the same in the case of a person who attempted to commit suicide by hanging herself with a rope belonging to a vulnerable adult. This absurd reading of RCW 73.34.020(6) cannot stand.

Washington courts have long recognized that a statute must not be interpreted in a way that leads to absurd results. See Hangartner v. City of

Seattle, 151 Wn.2d 439, 448 (2004) ("We will not interpret a statute in a manner that leads to an absurd result."); State v. J.P., 149 Wn.2d 444, 450 (2003) ("[A] reading that results in absurd results must be avoided because it will not be presumed that the legislature intended absurd results.") (internal citation and quotation marks omitted). It is difficult to imagine a result more absurd than the one that flows from the BOA's decision in this case. In order to force Ms. Grandinaru's actions into the definition of "financial exploitation," the Board concluded that as a matter of law, an attempt to commit suicide is an act that is taken for one's advantage. This unreasonable legal conclusion must be reversed. See Hangartner, 151 Wn.2d at 448.

3. *The Board's definition of "financial exploitation" violates the canon against superfluity.*

Additionally, the Board's construction of the term financial exploitation runs contrary to the canon against superfluity. "[I]t is a fundamental principle of statutory construction that courts must not construe statutes so as to nullify, void or render meaningless or superfluous any section or words of the statute." In re Dependency of K.D.S., 176 Wn.2d 644, 656 (2013); Taylor v. City of Redmond, 89 Wn.2d 315, 319 (1977). RCW 74.34.020(6) defines the term "financial exploitation," but the Board's decision in Ms. Grandinaru's case reads the

word "financial" right out of the statute. The word "financial" qualifies the word "exploitation" in RCW 74.34.020(6). The word "financial" is defined by Merriam-Webster's Dictionary as: "relating to finance or financiers." Merriam-Webster's Dictionary Online, http://www.merriam-webster.com/dictionary/financial. The word finance is in turn defined as: "money or other liquid resources of a government, business, group, or individual." Merriam-Webster's Dictionary Online, http://www.meriam-webster.com/dictionary/finance. Thus, it is clear from the statute's text that the type of exploitation that the legislature sought to prevent was exploitation related to a vulnerable adult's finances, i.e., the vulnerable adult's liquid resources, and that the *profit* or *advantage* gained by the other person must be quantifiable in monetary terms. See RCW 74.34.020(6).

This conclusion is supported by the examples of financial exploitation provided in the statute. One example of financial exploitation provided in the statute is "the use of deception . . . by a person or entity in a position of trust . . . to obtain or use the property, income, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult." RCW 74.34.020(6)(a). Another is: "the breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or guardianship appointment that results in the

unauthorized sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult." RCW 74.34.020(6)(b). It is evident from the foregoing examples that the individuals targeted by the statute are trustees, fiduciaries, and other individuals who may pose a threat of misappropriating vulnerable adult's financial assets.

The Board's construction of RCW 74.34.020(6) renders the word "financial" superfluous because it stretches the statute beyond the financial realm to reach actions, like an attempt to commit suicide, that are completely unrelated to the vulnerable adult's finances and that represent no financial gain or benefit. It cannot be seriously contended that Ms. Grandinaru received a financial benefit from her attempt to commit suicide or that her actions had an adverse impact on Elaine's financial assets.[2] Accordingly, because the BOA's construction of RCW 74.34.020(6) voids the word "financial" as used in the statute, it violates the canon against superfluity. Taylor, 89 Wn.2d at 319.

4. *The initial construction adopted by the ALJ presiding over Ms. Grandinaru's hearing is more consistent with the language of the statute.*

The construction of "financial exploitation" that was adopted by the ALJ presiding over Ms. Grandinaru's hearing is more consistent with

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[2] It was established at the hearing that Ms. Grandinaru ingested approximately 1 cubic centimeter of morphine, and that Elaine never needed the morphine in the first place. See FF 3, 7.

the language of RCW 74.34.020(2) than the construction adopted by the BOA. The ALJ concluded that Ms. Grandinaru's actions did not amount to financial exploitation because "[suicide] would not have been beneficial, or profitable, for the appellant." CR at 44.

It appears that the main reason that the ALJ and the BOA reached different outcomes in Ms. Grandinaru's case is that the former evaluated Ms. Grandinaru's actions from an objective perspective, whereas the latter evaluated Ms. Grandinaru's actions from Ms. Grandinaru's perspective at the time of her suicide attempt. In other words, the ALJ considered whether Ms. Grandinaru's actions were objectively beneficial or advantageous to her, while the BOA considered whether Ms. Grandinaru subjectively believed that suicide would be beneficial. See CL 10. But, as demonstrated above, RCW 74.34.020(6) requires that the *profit* or *advantage* flowing from the act of exploitation be financially quantifiable. Thus, even if Ms. Grandinaru subjectively believed that she would benefit by committing suicide, her actions did not constitute financial exploitation because they did not result in financial gain.

Finally, the BOA made much of the fact that Ms. Grandinaru had formed the intent to commit suicide prior to the time that she took Elaine's morphine. See CL 10. But Ms. Grandinaru's intent at the time she took Elaine's morphine is irrelevant to the question of whether Ms. Grandinaru

used Elaine's morphine to her "profit or advantage." Because Ms. Grandinaru obtained no quantifiable profit or advantage from her suicide attempt, her purely self-destructive act cannot be classified as financial exploitation within the meaning of RCW 74.34.020(6).

V. CONCLUSION

For the foregoing reasons the Court should reverse the order of the Board of Appeals and dismiss the proceedings against Ms. Grandinaru.

DATED this 13th day of June, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I served by United States Mail one copy of the foregoing on:

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DATED this 13th day of June, 2013.

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