

NO. 42070-8-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

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STATE OF WASHINGTON
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THOMAS GOLDSMITH, III,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF SOCIAL
AND HEALTH SERVICES,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

The issue in this case is whether Thomas Goldsmith, III (“Mr. Goldsmith” or “Appellant”), mentally abused his father. This case stems from a substantiated finding of mental abuse made by the Department of Social and Health Services (“Department”) against Mr. Goldsmith. The Department’s Board of Appeals (“BOA”) entered a Final Order affirming the Office of Administrative Hearings (“OAH”) Initial Order, which found that Mr. Goldsmith mentally abused his father, Thomas Sr. During the time that this abuse occurred, Thomas Sr. was 98 years old and suffered from several conditions requiring him to have round-the-clock care to complete activities of daily living. In 2006, Thomas Sr. had executed a Durable Power of Attorney, naming Capitol Guardianship Services (“CGS”) as his attorney in fact. In 2009, a full guardianship of Thomas Sr.’s estate was established.

During the final years of Thomas Sr.’s life, he was subjected to relentless pressure by his son, Mr. Goldsmith. His son had significant disagreements with CGS because Mr. Goldsmith believed that CGS was mishandling his father’s financial future. The disagreements between Mr. Goldsmith and his father intensified to the point where Thomas Sr., a vulnerable adult, threatened to call the police if his son did not leave his house. The disagreements between CGS and Mr. Goldsmith intensified to

the point that CGS signed a declaration in support of a vulnerable adult protection order (“VAPO”) protecting Thomas Sr. from Mr. Goldsmith. That VAPO later resulted in an order restricting the visitation that Mr. Goldsmith could have with his father. The visitation restriction remained in effect until Thomas Sr. died in March 2009.

II. RESTATEMENT OF THE ISSUES

- (1) Should the BOA Final Order be affirmed given that RCW 74.34.210 is not at issue and that subject matter jurisdiction was not lost when Thomas Sr. died before the administrative hearing took place?
- (2) Should the BOA Final Order be affirmed when the evidence showed that Mr. Goldsmith relentlessly harassed and yelled at his 98-year-old father concerning finances, causing Thomas Sr. to not eat, to cry, and to become noncompliant with caregiver instructions?

III. RESTATEMENT OF THE CASE

On October 30, 2008, the Department received an allegation that Mr. Goldsmith was mentally abusing his father. Agency Record (“AR”) at 21. After investigation and review of the allegation, the Department issued a substantiated finding of mental abuse of a vulnerable adult and notified Mr. Goldsmith of its findings on February 20, 2009. AR at 214-

20. In response, Mr. Goldsmith requested an administrative hearing at the OAH, which was held on June 23, 2009. AR at 1.

The issue at the administrative hearing was whether the Department's substantiated finding of mental abuse should be affirmed. AR at 1. The Department's witnesses at the hearing included: (1) two of Thomas Sr.'s caregivers, Beata Bryl and Ava League; (2) CGS director Leesa Camerota and assistant director Janet Franklin¹; and (3) Department social worker Jacqueline Heinselmann.

At the time the mental abuse occurred, Thomas Sr. was 98 years old and suffered from unsteady gait, a hearing impairment, a heart condition, and macular degeneration. AR at 17-18. He used a walker, hearing aids, and supplemental oxygen and required 24-hour caregivers to assist him with locomotion, toileting, personal hygiene, meal preparation, and housework. AR at 18. In 2006, Thomas Sr. executed a Durable Power of Attorney naming Leesa Camerota, the executive director of CGS, his attorney in fact, granting her all powers over his assets and liabilities. AR at 226-31. Mr. Goldsmith was not the attorney in fact, and no evidence was ever presented indicating that he was ever Thomas Sr.'s financial advisor. Thomas Sr. was later declared incapacitated, and a full

¹ Janet Franklin was assistant director from April 2008 to October 2008. Tr. 100:8-10. During this same time period, Ms. Camerota was director. Tr. 150:18-22.

guardianship of the estate was entered on February 17, 2009. AR at 246-61.

Mr. Goldsmith felt that the cost of care and the household funds were not being properly managed by CGS, to the point where he felt that his parents would become bankrupt. Testimony of Janet Franklin (“Testimony of Franklin”), Tr. 107, 128. Mr. Goldsmith testified that he was upset with CGS and that he had expressed those concerns with his father. Testimony of Thomas Goldsmith, III (“Testimony of Goldsmith”), Tr. 190:6. Indeed, Mr. Goldsmith argues that he would explain to his father that “his financial house was on fire or that his financial ship was sinking.” Appellant’s Opening Brief at 20.

However, Mr. Goldsmith’s concerns over his parents’ finances were not well-founded. Thomas Sr. had enough funds to last him and his wife 18 months at their current rate of spending. Testimony of Franklin, Tr. 118:1-8. In addition, there were alternative plans to account for the potential shortfall, including the availability of several real estate assets. Tr. 125:3-4; *see also* Testimony of Leesa Camerota (“Testimony of Camerota”), Tr. 158:10-12 (there were other options and other approaches to the potential of running out of money). Regardless, having 18 months in liquid assets for two clients in their late nineties is sufficient. Testimony of Camerota, Tr. 166:23-25.

Rather than simply expressing concerns to his father, the evidence showed that Mr. Goldsmith and Thomas Sr. would have heated arguments about finances. Every single caregiver employed at Thomas Sr.'s residence reported that yelling occurred between Mr. Goldsmith and Thomas Sr. Testimony of Franklin, Tr. 112:5-10; AR at 224. According to the caregivers, Mr. Goldsmith created a stress-filled environment that was intolerable to the point that the caregivers themselves felt threatened. Tr. 106:2-10. The verbal fights between Mr. Goldsmith and Thomas Sr. would always concern finances. Testimony of Beata Bryl ("Testimony of Bryl"), Tr. 132-33. These fights would cause Thomas Sr. to cry, refuse to take his medication, and otherwise become noncompliant with caregiver instructions. Testimony of Ava League ("Testimony of League"), Tr. 144-45.

The constant financial pressure exerted by Mr. Goldsmith led Leesa Camerota and Janet Franklin to file a declaration in October 2008 in support of a VAPO protecting Thomas Sr. In their declaration, they stated that Thomas Sr. had become visibly shaken because Mr. Goldsmith would not honor his father's request to stop arguing about financial matters. AR at 223. They described Mr. Goldsmith's actions as intolerable and abusive and stated that his pressuring was relentless. AR at 224. The VAPO eventually led to an agreed visitation order in the guardianship

action that had been filed for Thomas Sr. and his wife Helen. AR at 221-22.² This Order required that visits by Mr. Goldsmith could be no longer than four hours per week and that Mr. Goldsmith could not discuss finances with his parents. AR at 221.

The Initial Order issued by OAH affirmed the Department's substantiated finding of mental abuse. AR at 93. Mr. Goldsmith appealed to the Department's BOA, and on May 11, 2010, it affirmed the Initial Order of the OAH. AR at 33. Mr. Goldsmith sought judicial review of the BOA decision at superior court. Clerk's Papers ("CP") at 3-4. The court denied Mr. Goldsmith's Petition for Review and his Motion to Vacate the Review Decision and Final Order on April 15, 2011. CP at 76-78.

IV. ARGUMENT

A. Standard of Review

Under the Administrative Procedure Act ("APA"), Mr. Goldsmith must demonstrate the invalidity of the Final Order. RCW 34.05.570(1)(a); *Hillis v. Dep't of Ecology*, 131 Wn.2d 373, 381, 932 P.2d 139 (1997). Mr. Goldsmith argues the following five reasons under RCW 34.05.570(3) for why the Final Order is invalid: (1) the Final Order was outside of the

² "The November 14, 2008, Agreed Order for Visitation was prompted by heated arguments concerning finances that occurred between father and son" AR at 269 (Guardian Ad Litem Recommendations for Visitation).

Department's authority; (2) the Department engaged in unlawful procedure or decision-making process; (3) the Department erroneously interpreted or applied the law; (4) the Final Order is not supported by substantial evidence; and (5) the Final Order is arbitrary and capricious. Appellant's Opening Brief at 34.

When reviewing an administrative agency decision, the court reviews issues of law de novo. *Brown v. Dep't of Health Dental Disciplinary Bd.*, 94 Wn. App. 7, 12, 972 P.2d 101 (1999) (citing *Kellum v. Dep't of Retirement Sys.*, 61 Wn. App. 288, 291, 810 P.2d 523 (1991)). The court can substitute its judgment for that of the administrative body. *Id.* However, the court accords substantial weight to the agency's interpretation of the law it administers, especially when the issue falls within the agency's expertise. *Id.* (citing *Haley v. Med. Disciplinary Bd.*, 117 Wn.2d 720, 728, 818 P.2d 1062 (1991)).

The reviewing court sustains an agency finding of fact if it is supported by substantial evidence "when viewed in light of the whole record before the court." *Heinmiller v. Dep't of Health*, 127 Wn.2d 595, 607, 903 P.2d 433 (1995), *cert. denied*, 518 U.S. 1006 (1996). Substantial evidence is "a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order." *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hrg's Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091

(1998) (citation omitted). This Court applies the standards of RCW 34.05 directly to the record before the agency, sitting in the same position as the superior court. *Burnham v. Dep't of Soc. & Health Servs.*, 115 Wn. App. 435, 438, 63 P.3d 816 (2003).

B. The Department's Investigation Into The Abuse Of Vulnerable Adults

The Abuse of Vulnerable Adults, chapter 74.34 RCW (the "Act"), requires the Department to investigate allegations of abandonment, abuse, exploitation, and neglect of vulnerable adults. A "vulnerable adult" is defined to include a person such as Thomas Sr.: over the age of 60 having the functional, mental, or physical inability to care for himself and having been found incapacitated under chapter 11.88 RCW. RCW 74.34.020(16)(a), (b).

If the Department concludes that the allegation is founded on a more likely than not basis, the Department notifies the alleged perpetrator of an initial finding and the right to contest the finding in an administrative hearing. *See* WAC 388-71-0100 to -01280. At the conclusion of the administrative hearing, either the alleged perpetrator or the Department may request administrative review of the initial order by the Department's BOA. WAC 388-71-01265. The BOA's decision is the final decision of the Department. RCW 34.05.464(4); WAC 388-71-01275(3). The

Department's procedure in this case did not differ from the authority just cited; thus, the Final Order entered in this case is within the authority granted to the Department and is not inconsistent with WAC. RCW 34.05.570(3)(b), (h).

C. The Court Had Jurisdiction To Hear This Matter

The Department's authority to issue a finding, and this Court's subject matter jurisdiction, arises from duly enacted legislation from the State of Washington. The Department has promulgated regulations whereby the identifying information of individuals with substantiated findings of abuse, neglect, financial exploitation, or abandonment is placed on a state registry. RCW 74.39A.050; WAC 388-71-01280. The Department is required to use this registry to inform it as to whether or not to grant a license to a residential long-term facility or to allow an individual to work in a position having unsupervised access to vulnerable adults. RCW 74.39A.050(8); WAC 388-76-10120(3)(h)-(j); WAC 388-76-10180(1)(h)-(j).

The Department also must notify the Department of Health ("DOH") if a person suspected of abuse, neglect, financial exploitation, or abandonment is licensed by DOH. RCW 74.34.063(5). DOH may then use this information when considering whether to deny, suspend, modify, or revoke a residential treatment facility license. WAC 246-337-035(1).

The death of a vulnerable adult does not defeat these legislative mandates and does nothing to deprive the Court of authority over the subject matter.

1. RCW 74.34.210 Does Not Apply To Vulnerable Adult Abuse Investigations

Mr. Goldsmith cites to RCW 74.34.210 and *In Re Pers. Restraint of Acorn*, 122 Wn. App. 886, 95 P.3d 1272 (2004), for the proposition that “an action for protection ceased to have a reason to exist upon the death of [Thomas Sr.]” Appellant’s Opening Brief at 29, 30. This argument is misplaced because the Department’s actions in this case did not involve a VAPO or an action for damages, and the death of Thomas Sr. is not relevant to this proceeding. No statutory construction analysis is needed. RCW 74.34.210 allows for an order for protection of a vulnerable adult to be brought by the vulnerable adult, the vulnerable adult’s legal guardian or fiduciary, or another interested person. RCW 74.34.210. It further allows an action for damages to be brought by the vulnerable adult, the legal guardian, or by family members in some cases. *Id.* The Department is not allowed to bring an action for damages. *See id.* This statute has nothing to do with the action that the Department initiated in this case.

The Act makes clear that the parties to this dispute are the Department, as the state agency required to issue findings against perpetrators of abuse, abandonment, exploitation, or neglect of vulnerable

adults, and the alleged perpetrator. RCW 74.34.067(4) requires the Department to prepare and retain a report of its investigation and finding, and RCW 74.34.068(1) requires the Department to notify the alleged perpetrator of its finding. The Department's hearing regulations afford alleged perpetrators the right to contest the finding in an administrative hearing. WAC 388-71-01265. The parties to such a hearing are the Department and the alleged perpetrator. The vulnerable adult victim is not a party to the proceeding. Hence, as with a criminal prosecution in which the crime victim is not a party (and may or may not be a witness), the death of the victim does not deprive the Court of jurisdiction over the subject matter.

2. The Death Of Thomas Sr. Does Not Deprive The Court Of The Power Or Authority To Render A Judgment

The death of the vulnerable adult does not negate the legislature's directives under the Act to the Department. The Act does not merely authorize the Department to offer protective services to a vulnerable adult victim. The Act imposes numerous additional obligations on the Department to issue and retain findings against perpetrators for the purpose of protecting the vulnerable adult victim and other vulnerable adults. The Department is required to report potential criminal conduct to law enforcement authorities, is required to report allegations to other

licensing or certifying entities, is authorized to share information with facilities and other service providers of vulnerable adults, is required to retain the results of the finding on file, and is required to use the findings in making subsequent licensing and contracting decisions. RCW 74.34.063(2), (5); RCW 74.34.067(3), (4), (8); RCW 74.34.068(2). Thus, the legislature identified a number of important functions for the findings made by the Department, which serve to protect not just the vulnerable adult victim, but other vulnerable adults as well.

In this case, the need for the Department to take action is quite apparent. Mr. Goldsmith's mother, Helen, a vulnerable adult herself, could be subject to the same abuse that Mr. Goldsmith was found to have given to his father. However, even if Mr. Goldsmith argues that there is no risk that he will commit abuse in the future, such argument does not dilute the Department's authority or jurisdiction under the Act. The Department is entitled to retain such findings on file, as authorized by the Act, even if the prospect of perpetrators such as Mr. Goldsmith seeking a DSHS-issued license or contract is remote. Final findings are matters of public record and may be requested and obtained by persons or entities in other states.

Mr. Goldsmith's contention that the death of his father extinguishes subject matter jurisdiction is incorrect and ignores the

purpose and motives of the state legislature when it passed the Act. Further, it would defeat the purposes of the Act, in that the death of the vulnerable adult victim would prevent the Department from retaining substantiated findings, thereby potentially thwarting the Department's ability to refuse to contract with or license a perpetrator in the future. Such an absurd result would defeat the stated goals in the Act of protecting vulnerable adults.

3. A Vulnerable Adult Abuse Investigation Is Not Analogous To A Wrongful Death Action

Mr. Goldsmith relies on *Schumacher v. Williams*, 107 Wn. App. 793, 28 P.3d 792 (2001), for the proposition that the instant action here should have been brought by Thomas Sr. or his estate. In *Schumacher*, a boarding home resident died due to severe hot water burns. *Id.* at 796. Despite the estate having no economic loss, the brother of the resident, who was not financially dependent on the resident, filed an action as the personal representative of the estate under RCW 74.34.210, among other statutes. *Id.* The court held that RCW 74.34.210 does not extend to siblings of the deceased who are not dependent on the decedent for support. *Id.* at 802.

As stated above though, the parties to the action are the Department and the alleged perpetrator, Mr. Goldsmith. Whether or not

Thomas Sr. survived the administrative hearing is irrelevant to this case. He was alive when the incidents of abuse took place, and that is all that matters. This is not a wrongful death action, and neither party is seeking damages from the other. This action is completely separate from actions brought under RCW 74.34.210.

D. Substantial Evidence Supports The Finding That Mr. Goldsmith Willfully Abused Thomas Sr.

Mr. Goldsmith assigns as error Findings of Fact 6, 7, 8, 9, 10, and 11, but does not specify why these findings are incorrect. Further, no argument is given as to why these findings are erroneous. An assignment of error not argued in the appellant's brief is deemed abandoned. *Brown*, 94 Wn. App. at 13 (citing *Pappas v. Hershberger*, 85 Wn.2d 152, 153, 530 P.2d 642 (1975)). Assuming that Mr. Goldsmith is arguing that these findings lack substantial evidence, the Department produced five different witnesses to demonstrate how Thomas Sr. was mentally abused by his son. Each of the referenced findings is supported with citations to the relevant exhibit or portion of the transcript. Substantial evidence supports each of these findings.

1. The Definition Of Mental Abuse

The Washington Legislature has determined that vulnerable adults may be in particular need of protection from abuse. *Kraft v. Dep't of Soc.*

& Health Servs., 145 Wn. App. 708, 717, 187 P.3d 798 (2008), *review denied*, 165 Wn.2d 1018 (2009). Abuse is defined as any willful action or inaction causing injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. RCW 74.34.020(2). Abuse includes mental abuse. *Id.* Mental abuse means any willful action or inaction of mental or verbal abuse. RCW 74.34.020(2)(c). It includes coercion, harassment, and verbal assault such as ridiculing, intimidating, yelling, or swearing. *Id.* Willful is defined as “the nonaccidental action or inaction by an alleged perpetrator that he/she knew or reasonably should have known could cause harm, injury or a negative outcome.” WAC 388-71-0105.

2. Mr. Goldsmith’s Actions Were Willful Because They Were Non-accidental

Without question, Mr. Goldsmith’s actions were non-accidental. Mr. Goldsmith had stated to CGS employees and his parents that his life depended on his parents’ money. Testimony of Franklin, Tr. 107:14-15. Mr. Goldsmith felt that his parents’ finances were not being properly managed by CGS, to the point where he felt that his parents would become bankrupt. Tr. 107, 128. Mr. Goldsmith testified that he was upset with CGS and that he had expressed those concerns with his father. Testimony of Goldsmith, Tr. 190. All five caregivers reported instances of yelling

altercations between Mr. Goldsmith and Thomas Sr. Testimony of Franklin, Tr. 112. These verbal fights would always concern finances. Testimony of Bryl, Tr. 132. Leesa Camerota and Janet Franklin, in their joint declaration for a VAPO, described Mr. Goldsmith's pressuring of his parents as relentless. AR at 224. In fact, caregivers reported the stress created by Mr. Goldsmith was becoming increasingly intolerable and that the caregivers themselves were feeling threatened. Tr. 106.

Even when Mr. Goldsmith was told that his yelling and constant financial pressure were having an adverse effect on his father, his actions continued. Ms. Franklin discussed with Mr. Goldsmith that his father wanted peace in the house when their children visited and that Mr. Goldsmith's financial criticism was not beneficial. Tr. 112. In another instance, Thomas Sr. asked his power of attorney to write to Mr. Goldsmith and request that he shorten his upcoming visit to them due to the amount of stress that was caused when he visited, which she did. Testimony of Camerota, Tr. 161; AR at 334.

In response to these requests, Mr. Goldsmith's abuse of his father would continue. Mr. Goldsmith stated that he was carrying out his responsibilities as a son. Tr. 113. Mr. Goldsmith now argues in his brief that he was merely carrying out his obligations as his father's financial advisor. Appellant's Opening Brief at 34. However, neither reason put

forth by Mr. Goldsmith justifies putting Thomas Sr. through the pain and stress he did. Further, Mr. Goldsmith was not his father's financial advisor because Thomas Sr. had decidedly chosen CGS to have "all powers of an absolute owner over [Thomas Sr.'s] assets and liabilities" AR at 226.

3. Mr. Goldsmith's Actions Were Willful In That He Knew, Or Should Have Known, That His Actions Were Causing Thomas Sr. Harm, Injury, Or A Negative Outcome

Thomas Sr. was 98 years old at the time of the mental abuse. AR at 17. Thomas Sr. had a heart condition that required use of an oxygen unit, had macular degeneration, had to use a walker or scooter to move around, and had hearing aids. Testimony of Franklin, Tr. 102. Caregivers were required to assist Thomas Sr. with hygiene, incontinence, showering, shaving, meal preparation, and changing and refilling the oxygen bottles. Tr. 103. Given the constant care that Thomas Sr. needed, any reasonable person would know that the yelling and harassment coming from Mr. Goldsmith would injure Thomas Sr. Indeed, there were several instances where Mr. Goldsmith saw firsthand the harm he was causing his father. During a meeting between CGS and the Goldsmith family, Mr. Goldsmith made a comment stating that his life depends on his parents' money. Testimony of Franklin, Tr. 107. At that point,

Thomas Sr. put his head down on the table and stated that he could not go on like this and that it was just too much. Tr. 107. At other times, Thomas Sr. would become reddened in the face, he would pound on the table, and he would yell back at Mr. Goldsmith. Tr. 128. Once, Ms. Bryl walked in on a very heated argument between Mr. Goldsmith and Thomas Sr. in which Thomas Sr. was very angry and was ordering Mr. Goldsmith to get out of the house or he would call the police. Tr. 135. Still, Mr. Goldsmith refused to leave until Ms. Bryl asked him to leave. Tr. 135. A reasonable person would know that these constant financial yelling matches with a 98-year-old vulnerable adult could cause harm, injury, or a negative outcome.

4. Thomas Sr. Was Injured As A Result Of The Verbal Assaults By Mr. Goldsmith

At the end of these yelling episodes with his son, Thomas Sr. would sometimes cry and state that there was nobody there to help him. Testimony of League, Tr. 144. Other times, after a heated discussion with his son, Thomas Sr. would become noncompliant with caregiver instructions, to the point of soiling himself or refusing to take medication. Tr. 144. Thomas Sr. would tell others that he felt he was facing bankruptcy, even though that was not the case. Testimony of Franklin, Tr. 106. It came to the point where Thomas Sr. no longer looked forward

to visits from Mr. Goldsmith and wished that he would not come. Testimony of League, Tr. 143. A caregiver for Thomas Sr. testified that after Mr. Goldsmith would leave following a verbal altercation, it would take a while for her to calm Thomas Sr. down because he was so upset. Testimony of Bryl, Tr. 133.

Further evidence of injury can be found by the VAPO filed to protect Thomas Sr. In a joint declaration from Leesa Camerota and Janet Franklin, they state that they have witnessed Thomas Sr. being drawn into yelling with Mr. Goldsmith and becoming visibly shaken because Mr. Goldsmith will not honor his request to stop talking and arguing about financial matters. AR at 223. They describe the pressuring by Mr. Goldsmith as relentless and his actions as abusive and intolerable. AR at 224. Eventually, an agreed visitation order was entered, limiting visits between Mr. Goldsmith and his father to four hours of visitation per week, with the added provision that no financial or legal matters be discussed by Mr. Goldsmith. AR at 235-36.

If harm results from improper action, that action is labeled abuse. *Brown v. Dep't of Soc. & Health Servs.*, 145 Wn. App. 177, 183, 185 P.3d 1210 (2008) (quoting *R.J.M. v. State*, 946 P.2d 855, 863 n.9 (Alaska 1997)). That Thomas Sr. was visibly shaken, crying, noncompliant with caregiver instructions, and unwilling to see Mr. Goldsmith, all of which

led to an agreed order of visitation, constitute substantial evidence that Thomas Sr. was harmed or injured by Mr. Goldsmith's improper actions.

5. Expert Testimony Is Not Required To Show That Thomas Sr. Was Injured

The proper standard of proof involving abuse of a vulnerable adult is a preponderance of the evidence. *Kraft v. Dep't of Soc. & Health Servs.*, 145 Wn. App. 708, 716, 187 P.3d 798 (2008), *review denied*, 165 Wn.2d 1018 (2009). Mr. Goldsmith argues that there was no testimony by a qualified witness that Thomas Sr. suffered injury. Appellant's Opening Brief at 35. Mr. Goldsmith further argues that only physicians and surgeons should be allowed to testify and give expert opinions with respect to medical conditions. *Id.*

Mr. Goldsmith's arguments fail for two reasons. First, administrative hearings proceed under significantly relaxed rules of evidence. *Ingram v. Dep't of Licensing*, 162 Wn.2d 514, 524, 173 P.3d 259 (2007). By their own provisions, the rules of evidence apply only to court proceedings. *Id.* at 525. In an administrative hearing, evidence is admissible if, in the judgment of the presiding officer, it is the kind of evidence on which reasonably prudent persons are accustomed to rely on in the conduct of their affairs. RCW 34.05.452. Second, the caregivers were not giving expert opinion with regard to Thomas Sr.'s medical

condition during their testimony. They testified as to the verbal altercations between Mr. Goldsmith and Thomas Sr. and to the harm that these arguments caused Thomas Sr. Any opinions expressed by the caregivers would fit under ER 701 in that the opinions were rationally based on the perception of the witnesses.

The testimony heard in this case is similar to the testimony heard in *Kraft v. Department of Social & Health Services*. In *Kraft*, several witnesses testified that they witnessed Ms. Kraft angrily pointing a finger at a vulnerable adult and telling her that she could not go home and that her parents did not love her, among other things. *Kraft*, 145 Wn. App. at 712-13. These same witnesses testified that the vulnerable adult was visibly hurt by what Ms. Kraft had told her. *Id.* No expert testimony was required for these witnesses to testify as to how the vulnerable adult was harmed by Ms. Kraft's mental abuse. Similarly, in this case, the testimony of Janet Franklin, Ava League, Beata Bryl, and Leesa Camerota constitute substantial evidence that Mr. Goldsmith mentally abused Thomas Sr. and that Thomas Sr. was injured by this abuse.

E. Alleged Errors Not Supported By Briefing Must Be Deemed Abandoned

Finally, Mr. Goldsmith argues that the BOA Final Order was outside of its authority, is arbitrary and capricious, and that the

Department engaged in unlawful procedure or decision-making process. However, other than Mr. Goldsmith's arguments that have been addressed above, the specific reasons for these alleged errors have not been explained in the appellant's brief. Therefore, as with his failure to argue why the findings of fact should be reversed, these assignments of error should be deemed abandoned. *Brown*, 94 Wn. App. at 13.

V. CONCLUSION

Mr. Goldsmith has not identified any reasons under RCW 34.05.570 as to why the Final Order should be reversed. Because there were no errors of law and because substantial evidence supports the findings of fact, the Department respectfully requests that this Court affirm the BOA Final Order.

RESPECTFULLY SUBMITTED this 9th day of September, 2011.

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CERTIFICATE OF SERVICE

I certify that on September 9, 2011, I served a copy of the foregoing Brief of Respondent by ABC Legal Services on Don W. Taylor, Attorney for Appellant, at Owens Davies Fristoe Taylor & Schultz, P.S., 1115 West Bay Drive NW, Suite 302, Olympia, Washington 98502-4668.

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