

IN THE SUPREME COURT OF IOWA

ROMOKE OLUTUNDE,)
)
 Petitioner-Appellant,)
)
 v.) S.C. CASE NO. 17-1650
)
 IOWA DEPT. OF HUMAN SERVICES,)
 CHARLES M. PALMER, DIRECTOR)
)
 Respondents-Appellees.)

APPEAL FROM
THE IOWA DISTRICT COURT FOR LINN COUNTY
THE HONORABLE PATRICK R. GRADY, JUDGE

APPELLANT'S REPLY BRIEF AND
REQUEST FOR ORAL ARGUMENT

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Statement of Issues Presented for Review

- 1. Substantial evidence did not exist in the district court or administrative record to support a finding of dependent adult abuse against J.N. because neither the Department nor the District Court possessed sufficient evidence to find Romoke committed dependent adult abuse against J.N.**
- 2. The District Court incorrectly concurred with the Department's interpretation of the *Mosher* decision and incorrectly applied the Department's flawed interpretation to the facts of this case.**

Mosher v. Dep't of Inspections & Appeals, Health Facilities Div., 671 N.W.2d 501 (Iowa 2003)

Statement of the Case

The statement of the case provided by Romoke in her main brief properly summarizes the case. However, in response to the Department's statement of the case, Romoke provides this supplement.

Pursuant to Iowa Rule of Appellate Procedure 6.903(3), appellee's brief must conform to the requirements of 6.903(2). *See* Iowa. R. App. P. 6.903(3). Iowa Rule of Appellate Procedure 6.903(2)(e) requires all statements made in the statement of the case be supported by appropriate references to the record or the appendix in accordance with Iowa Rule of Appellate Procedure 6.904(4).

As such, the following statements within appellee's brief must be stricken from the Appellee's statement of the case as no citation to the record exists: "Finally, the waiver facility in question, All Ages Care, was essentially being shut down by the Medicaid authorities at the time of this investigation. The reports and appellate record related to this appeal contain a fair amount of extraneous material attributable to the other investigations (and chaos) that ensued during the demise of All Ages Care." (Appellee's Brief, p.7).

Argument

- 1. Substantial evidence did not exist in the district court or administrative record to support a finding of dependent adult abuse against J.N. because neither the Department nor the District Court possessed sufficient evidence to find Romoke committed dependent adult abuse against J.N.**

The District Court erred by finding Romoke committed dependent adult abuse because substantial evidence did not exist in the Administrative Record that Romoke committed dependent adult abuse upon J.N. First, Romoke testified that she did not administer prescription medication to J.N., did not work in the residences for All Ages Care on a regular basis, and did not regularly work at All Ages Care. App. at 162-163 (Tr. 352:20-353:1), 133-134 (Tr. 323:12-324:14), 145-146 (Tr. 335:16-336:18)). The Department neither provided evidence to the contrary, nor provided a specific date and time where Romoke committed dependent adult abuse by depriving “the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult's life or health” due to her “willful or negligent acts or omissions” as a caretaker of J.N.

Second, As the ALJ stated in her Proposed Decision, she found one (1) date where J.N.'s medications were not given as prescribed. (App. at 57). The Department did not prove that Romoke failed to provide minimum care for J.N.'s welfare. Specifically, All Ages Care produced records indicating that J.N.

was provided with her medications for the month of March 2014. (App. at 694-697). The allegations related to the denial of critical care by the Department as alleged in Worker Fuchs' report were related to the administration of medications to J.N. during the month of March 2014. *All* of the information related to the bubble packs and whether the medication was administered accurately arose not from Department worker Fuchs' first-hand knowledge and investigation, but from hearsay from Director Bawek and others at REM regarding the bubble-packs and passed or unpassed medication. No photographic proof exists in the record regarding said bubble packs. Fuchs testified to the ALJ that she neither saw the "bubble packs" of medication at issue prior to preparing her report. (App. at 394-395 (Tr. 72:19-73:2)).

Romoke maintains neither the Department nor the District Court had sufficient evidence to make a finding of dependent adult abuse and based their decision upon an irrational, illogical, or wholly unjustifiable application of law to fact, ultimately prejudicing the substantial rights of Romoke and hereby requests this Court overrule the district court's judgement affirming the Department's final decision and order the expungement of Romoke's name from the dependent adult abuse registry.

2. The District Court incorrectly concurred with the Department’s interpretation of the *Mosher* decision and incorrectly applied the Department’s flawed interpretation to the facts of this case.

The District Court erred by adopting the Department’s interpretation of the *Mosher* decision because both the Department and the District Court misinterpret the Supreme Court’s direct act requirement suggested by *Mosher*. The District Court found, “Under the facts of this case, where Petitioner is the owner and director of the facility where the abuse allegedly occurred, the Court finds that the holding of *Mosher* regarding a person qualifying as a caretaker at the time of each specific act of abuse is met.” (App. at 1554).

This analysis is at odds with the Supreme Court’s analysis regarding whether or not a person who allegedly commits an act of dependent adult abuse must be present at the time of the specific act. The Court in *Mosher* stated, “the requisite elements of exploitation of a “dependent adult” by a “caretaker” must be present at the time of the specific act providing a basis for DIA’s determination that Mosher committed “dependent adult abuse.” *Mosher*, 671 N.W.2d at 511–12.

While the facts in *Mosher* apply to a financial exploitation case of dependent adult abuse, the logic applies that Romoke, to be found to have committed dependent adult abuse against J.N., would personally have to act or

fail to act as a caretaker and be present at the time of the specific act to provide a basis for DIA's determination that Romoke committed dependent adult abuse by failing to provide the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult's life or health. See *Mosher v. Dep't of Inspections & Appeals, Health Facilities Div.*, 671 N.W.2d 501, 511–12 (Iowa 2003).

The Department neither proved during District Court review nor presented evidence during the administrative appeal that Romoke was present at the time of the alleged act of denial of critical care which formed the basis for the Department's determination that Romoke committed dependent adult abuse against J.N. or that Romoke failed to provide the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a J.N.'s life or health.

Appellees cite in their brief that “[i]t is important that this type of situation does generate a report and the importance of this type of case with regard to someone like J.N. cannot be over-emphasized.” (Appellee's Brief, p. 24). It is not disputed that J.N. is and was a dependent adult at the time of the alleged dependent adult abuse. However, the Appellee attempts to minimize the harm to Romoke of a founded dependent adult abuse report by maximizing the importance of the generation of a report for “someone like J.N.” *Id.* Romoke

acknowledges the importance of protection of dependent adults and does not dispute that it is in the public's interest to protect dependent adults.

However, under the facts of this case, if the Department is permitted to extend the definition of "caretaker" to *any* individual in an ownership position within a dependent adult care system, such as Romoke, and for the District Court to ultimately affirm a founded dependent adult abuse report without direct proof of a specific act or omission by Romoke, the result of Department interpretation of the definition of "caretaker" would be arbitrary and capricious with the potential for abuse by the Department.

Conclusion

This court should overrule the district court's judgement affirming the Department's final decision and order the expungement of Romoke's name from the dependent adult abuse registry as the Department's final decision and District Court's affirmation of said final decision was an illogical application of law to fact, ultimately prejudicing the substantial rights of Romoke Olutunde.

Request for Oral Argument

Counsel for Appellant respectfully requests to be heard in oral argument upon submission of this case.

Respectfully submitted,

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Certificate of Service

Pursuant to Iowa Appellate Procedure 6.701 and 6.901, the undersigned hereby certifies that on the 3rd day of April 2018, the Brief was filed with the Supreme Court via EDMS and electronically served on all parties of record.

/s/ Andrew B. Howie

Andrew B. Howie

Certificate of Compliance with Typeface Requirements and Type-Volume Limitation

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

this brief has been prepared in a proportionally spaced typeface using Garamond in 14 point font and contains 1,256 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or

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/s/ Andrew B. Howie

Signature

April 3, 2018

Date