STATE OF MINNESOTA
IN COURT OF APPEALS
A09-442

Richard Andrew Bennett,
Relator,

vs.

Commissioner of Human Services,
Respondent.

Filed January 5, 2010
Affirmed
Ross, Judge

Minnesota Department of Human Services
File No. 21678153

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Lori Swanson, Attorney General, Ricardo Figueroa, Assistant Attorney General, 900 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2127 (for respondent)

Considered and decided by Toussaint, Chief Judge; Wright, Judge; and Ross, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

In early 2007, work-therapy assistant Richard Bennett was found by Nicollet County Social Services to have sexually abused his girlfriend's daughter. The Department of Human Services licensing division therefore disqualified Bennett from

any employment that would expose him to contact with persons receiving certain direct-care services, and the department gave Bennett 30 days to request reconsideration. About one year later, a jury acquitted Bennett of all criminal charges arising from the 2007 allegations, and Bennett then asked the department to reconsider his employment disqualification based on his claim of innocence supported by the acquittal. The department refused and deemed the 2007 disqualification to be conclusive because Bennett's reconsideration request was untimely.

Bennett now appeals by writ of certiorari and challenges his permanent disqualification from direct-contact employment with licensed facilities, asserting that the department erred by treating the unappealed-from abuse determination and the untimely challenged disqualification as conclusive. Bennett also argues that the department violated his privilege against self-incrimination. Because Bennett's failure to timely seek reconsideration bars his late challenge and because disqualifying him administratively before the criminal case ended did not violate his privilege against self-incrimination, we affirm.

FACTS

In late 2006, Richard Andrew Bennett was accused of sexually assaulting his girlfriend's 17-year-old and 15-year-old daughters over a 7- or 8-year span. The state filed criminal charges on February 6, 2007, charging Bennett with multiple felony counts of criminal sexual conduct. Two days later, Nicollet County Social Services informed Bennett that it had investigated and determined that maltreatment occurred. The county

advised Bennett that he had 15 days to request reconsideration. Bennett did not request reconsideration.

Bennett was employed with St. Peter Regional Treatment Center. The county promptly reported its maltreatment finding to the department. The department reviewed the county's determination and concluded that the evidence indicated serious and recurring maltreatment. The department also concluded that a preponderance of the evidence established that Bennett had committed fourth-degree criminal sexual conduct. On February 16, 2007, the department sent Bennett a notice of permanent disqualification from employment at direct-care facilities. The notice informed Bennett that he had 30 days to request reconsideration of the disqualification.

Bennett did not ask the department to reconsider, but he did later successfully challenge the criminal charges. Eleven months after he was disqualified from direct-care employment, a jury acquitted Bennett of all charges. Bennett also successfully petitioned the district court to seal the records of the criminal matter.

Nearly one year after he received the department's disqualification letter, Bennett finally requested that the department reconsider his disqualification. The department sent Bennett a second notice of permanent disqualification, citing the same grounds for disqualification as those in the February 16, 2007 notice (serious and recurring maltreatment and fourth-degree criminal sexual conduct).

Bennett again requested reconsideration. The department affirmed the disqualification on procedural grounds because Bennett had not timely requested reconsideration.

D E C I S I O N

I

On certiorari appeal from an agency's quasi-judicial action, this court reviews the record to determine whether (1) the agency had jurisdiction; (2) the agency followed the correct procedure; and (3) the agency's determination of the merits of the controversy was "arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Rodne v. Comm'r of Human Servs.*, 547 N.W.2d 440, 444 (Minn. App. 1996) (quotation omitted). Bennett argues that sufficient evidence does not exist to support his disqualification because he was acquitted of the criminal charges. We do not reach the merits of his innocence argument because the appeal of his disqualification is procedurally barred.

A disqualified individual may request reconsideration within 30 days of a disqualification decision. Minn. Stat. § 245C.21, subd. 2 (2008). This time period can be increased to 90 days for good cause shown. Minn. Stat. § 256.045, subd. 3(10) (2008). It is undisputed that Bennett failed to appeal his disqualification within 30 days of receiving the initial notice in February 2007 or to seek a good-cause extension. Because he failed to request a hearing within the time prescribed by statute, his disqualification is conclusive and further proceedings are barred. *See* Minn. Stat. § 245C.29, subd. 2(a)(3)(iii) (2008); *Smith v. Minn. Dep't of Human Servs.*, 764 N.W.2d 388, 390, 392

(Minn. App. 2009). The department's disqualification was therefore not arbitrary, unreasonable, fraudulent, made under an error of law, or unsupported by the evidence. *See Smith*, 764 N.W.2d at 392.

II

Bennett contends that the department violated his privilege against self-incrimination. *See* U.S. Const. amend. V; Minn. Const. art. I, § 7. He argues that if he had timely challenged the maltreatment determination, he would have been required to exercise his right to a contested hearing while criminal charges were pending against him. He maintains that he would have then invoked his privilege against self-incrimination at the contested-case hearing to preserve the privilege for the criminal proceedings. He further argues, citing *Parker v. Hennepin County Dist. Ct.*, 285 N.W.2d 81 (Minn. 1979), that the human-services judge would have been allowed to draw an adverse inference from his invocation of the privilege.

Bennett's argument is not persuasive. First, his series of if-then contentions rests on mere speculation. He was never compelled to provide any incriminating testimony. He made no statements to county officials during the maltreatment investigation, except telling a child-protection worker that his attorney would want to be present during any meeting between him and the county. No administrative hearing ever occurred.

Second, any administrative hearing that would have resulted from his timely request for reconsideration would have happened only *after* the criminal proceedings were resolved. An administrative hearing is available to an individual found to have mistreated a minor under Minnesota Statutes section 626.556 (2008), after he exercises

his right to seek administrative reconsideration. Minn. Stat. § 256.045, subd. 3(a)(9) (2008). But a hearing under subdivision 3(a)(9)

> is only available when there is no juvenile court or adult criminal action pending. If such action is filed in either court while an administrative review is pending, *the administrative review must be suspended until the judicial actions are completed*. If the juvenile court action or criminal charge is dismissed or the criminal action overturned, the matter may be considered in an administrative hearing.

Id., subd. 3(b) (2008) (emphasis added). Bennett would not have been forced to choose between defending administrative charges and defending criminal charges. Administrative review would have paused until the criminal proceedings had run their course. Given this statutory safeguard, Bennett's privilege against self-incrimination would not have been in jeopardy even if he had appealed his maltreatment determination or his initial disqualification in a timely manner. A request for reconsideration in either context simply does not itself implicate the Fifth Amendment.

We recognize the formality of our holding. If Bennett had timely appealed the maltreatment determination, the administrative hearing would have commenced when the criminal proceedings terminated; and if he were to prevail *now* in obtaining the administrative hearing that he failed to request sooner, the parties would be in the identical practical positions as if he had timely made the request through an administrative appeal. In other words, the state would not be prejudiced if Bennett obtained the hearing he now seeks because the same delay would have occurred by operation of statute if Bennett had made his request to reconsider in a timely fashion. But

we are constrained to follow the statutory procedural bar, and so we hold that Bennett's failure to request a hearing within the prescribed time bars any further proceedings.

Affirmed.