STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0490

Michael K. Grewe,
Appellant,

vs.

Minnesota Department of Human Services,
Respondent,

Hennepin County Human Services and Public Health Department,
Respondent.

Filed February 10, 2014
Affirmed
Peterson, Judge

Hennepin County District Court
File No. 27-CV-12-4099

Michael K. Grewe, Minneapolis, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Seth Evan Dickey, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Department of Human Services)

Michael O. Freeman, Hennepin County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services and Public Health Department)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Halbrooks, Judge.

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

PETERSON, Judge

Appellant challenges the district court's summary-judgment affirmance of an order issued by respondent Minnesota Department of Human Services that dismissed as time-barred appellant's challenge of his disqualification from direct-contact work in licensed facilities. We affirm.

FACTS

From 2003 until 2009, appellant Michael K. Grewe was a party in a child-protection proceeding in Hennepin County. On January 8, 2004, Hennepin County notified appellant that it had determined that he was responsible for substantiated maltreatment of a child.

In 2007, respondent Minnesota Department of Human Services (DHS) conducted a background study of appellant, pursuant to a request by a DHS-licensed provider, and determined that a preponderance of the evidence showed that, during the incident that resulted in the 2004 maltreatment determination, appellant committed acts that met the definition of second-degree criminal sexual conduct under Minn. Stat. § 609.343 (2006). As a result, on November 21, 2007, DHS notified appellant that he was permanently disqualified from providing direct-contact services to individuals served by programs licensed by DHS. Appellant brought the disqualification notification to the attorney who was representing him in the child-protection proceeding, but appellant did not file a request for reconsideration of the disqualification determination.

In 2010, another DHS-licensed provider requested a background study of appellant. In a letter dated December 30, 2010, DHS notified appellant that a DHS licensing review showed that past investigations had substantiated conduct that permanently disqualified appellant from providing direct-contact services in DHS-licensed programs.

Appellant filed a request for reconsideration of the December 30, 2010 determination. By letter dated March 1, 2011, DHS notified appellant that the correctness of his 2007 disqualification is conclusive because he failed to request reconsideration of the 2007 disqualification determination, and he is permanently disqualified. Following a hearing for the sole purpose of determining whether appellant was barred from appealing his disqualification because he filed it more than three years after he received DHS's 2007 notice of his permanent disqualification, a human-services judge recommended dismissing appellant's appeal because appellant did not request reconsideration of the 2007 disqualification determination. The DHS commissioner adopted the recommended order.

Appellant appealed the commissioner's order to the district court. The district court granted DHS's summary-judgment motion on the ground that appellant received the 2007 disqualification notice and did not request reconsideration. The district court also denied appellant's motion for amended findings. This appeal followed.

D E C I S I O N

"On appeal from the district court's appellate review of an administrative agency's decision, [this court] does not defer to the district court's review, but instead

independently examines the agency's record and determines the propriety of the agency's decision." *Johnson v. Minn. Dep't of Human Servs.*, 565 N.W.2d 453, 457 (Minn. App. 1997). The commissioner's decision on disqualification is a quasi-judicial agency decision that is not subject to the Administrative Procedure Act (APA), Minn. Stat. §§ 14.63-.69 (2012). *Anderson v. Comm'r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012), *review denied* (Minn. Apr. 17, 2012). On certiorari appeal from a quasi-judicial agency decision not subject to the APA, this court reviews "'questions affecting the jurisdiction of the [agency], the regularity of its proceedings, and, as to the merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.'" *Id.* (quoting *Rodne v. Comm'r of Human Servs.*, 547 N.W.2d 440, 444 (Minn. App. 1996)).

An individual who is the subject of a disqualification may request a reconsideration of the disqualification by submitting a written request for reconsideration to the commissioner of human services within 30 days of receipt of the notice of disqualification. Minn. Stat. § 245C.21, subd. 1, 1a(c) (2012). Following a decision on a request for reconsideration, an individual who is disqualified based on a finding by a preponderance of the evidence that the person committed acts that meet the definition of second-degree criminal sexual conduct[1] may request a fair hearing under Minn. Stat. § 256.045, subd. 3(a)(10) (2012), unless the disqualification is deemed conclusive under

[1]The right to request a fair hearing also applies to individuals who are found to have committed acts that meet the definitions of other crimes. The crimes are listed in Minn. Stat. § 245C.15 (2012).

Minn. Stat. § 245C.29 (2012). Minn. Stat. § 245C.27, subd. 1(a) (2012). Under Minn. Stat. § 245C.29, subd. 2(a)(2)(ii), the disqualification is deemed conclusive if the individual did not request reconsideration under section 245C.21 (2012).

Appellant argues that a fair hearing under Minn. Stat. § 256.045, subd. 3(a)(10) (2012) was not available to him in 2007 because the juvenile court proceeding was still pending, and Minn. Stat. § 256.045, subd. 3(b) (2012), provides that a hearing is available only when no district court action is pending.[2] But in making this argument, appellant fails to recognize that an individual may request a fair hearing only after a decision on a request for reconsideration. Minn. Stat. § 245C.27, subd. 1(a); *see also* Minn. Stat. § 256.045, subd. 3(a)(10) (stating that disqualified individual may request hearing following a reconsideration decision issued under Minn. Stat. § 245C.23) (2012). Because appellant did not request reconsideration of the 2007 disqualification, there was no decision on a request for reconsideration, and appellant was not entitled to request a fair hearing.

Furthermore, because appellant did not request reconsideration of the 2007 disqualification determination, the disqualification is deemed conclusive under Minn. Stat. § 245C.29, subd. 2(a)(2)(ii). Appellant's challenge to the 2007 permanent disqualification is, therefore, time-barred. *See Smith v. Minn. Dep't of Human Servs.*,

[2]Appellant also makes several arguments based on his claim that he requested reconsideration of the 2004 maltreatment determination. It is not clear from the record what reconsideration appellant requested in 2004. But the record does show that appellant did not request reconsideration of the 2007 disqualification. Thus, it is immaterial whether appellant requested reconsideration in 2004 because events in 2004 did not eliminate the need to request reconsideration of the 2007 disqualification.

764 N.W.2d 388, 391-92 (Minn. App. 2009) (holding challenge to disqualification time barred when person failed to timely request fair hearing following reconsideration); *see also* Minn. Stat. § 245C.27, subd. 1(a) (stating that individual not entitled to fair hearing on issue of correctness of disqualification if it is conclusive). And because the 2007 disqualification is permanent, reconsideration of the December 30, 2010 determination would not affect the 2007 disqualification.

Affirmed.