STATE OF MICHIGAN

COURT OF APPEALS

MARY K. BECKER-WITT,

Petitioner-Appellee/Cross-Appellant,

v

BOARD OF EXAMINERS OF SOCIAL WORKERS, DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES,

Respondent-Appellant/Cross-Appellee.

FOR PUBLICATION
April 24, 2003
9:05 a.m.

No. 226923
Manistee Circuit Court
LC No. 98-009087-AA

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Respondent appeals by leave granted a trial court order reversing its revocation of petitioner's social worker's license. Petitioner also filed a cross-appeal. We reverse.

The child protection law, MCL 722.623(1), provides in pertinent part that a social worker who has reasonable cause to suspect child abuse must immediately make an oral report of the suspected abuse, and then file a written report within seventy-two hours of the oral report. Here, an administrative law judge (ALJ) found that petitioner had reasonable cause to believe that one of her clients sexually abused the client's child. The ALJ further found that petitioner failed to properly report the sexually abuse. The ALJ found that petitioner's failure to comply with the child protection law constituted both gross negligence and incompetence, as defined by the occupational code, MCL 339.604(e) and (g). Based on the ALJ's findings, respondent revoked petitioner's license.

However, the trial court reversed the agency's decision. In support of its ruling, the trial court opined that respondent had essentially abandoned the allegations of incompetence. In addition, the trial court noted that petitioner could not have been grossly negligent absent ordinary negligence. The trial court also noted that petitioner could only be negligent if she was somehow negligent in treating the client. The trial court ruled that, even if petitioner failed to comply with the child protection law, petitioner did not owe a duty to her client's child. Thus, the trial court ruled that respondent failed to establish petitioner's negligence, thereby preventing a finding that she was grossly negligent. Finally, the trial court opined that respondent was

without jurisdiction to enforce sanctions for a violation of the child protection law where our Legislature only expressly provided civil and criminal penalties.

On appeal, respondent contends that the trial court erred in reversing respondent's administrative decision to revoke petitioner's social worker's license. Generally, an "administrative agency decision is reviewed by the circuit court to determine whether the decision was authorized by law and supported by competent, material, and substantial evidence on the whole record." *Barak v Oakland Co Drain Comm'r*, 246 Mich App 591, 597; 633 NW2d 489 (2001), quoting *Michigan Ed Ass'n Political Action Committee (MEAPAC) v Secretary of State*, 241 Mich App 432, 443-444; 616 NW2d 234 (2000). "Substantial evidence" is defined as "any evidence that reasonable minds would accept as adequate to support the decision; it is more than a mere scintilla of evidence but may be less than a preponderance of the evidence." *Barak, supra* at 597, quoting *MEAPAC, supra* at 444.

We review a trial court's review of an agency decision to determine "'whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings.'" *Dignan v Mich Pub School Employees Ret Bd*, __ Mich __; __ NW2d __ (Docket No. 231533, issued 10/29/2002), slip op p 3, quoting *Boyd v Civil Service Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996). This is essentially a "clearly erroneous" standard of review.[1] *Dignan, supra* at slip op p 3, citing *Boyd, supra* at 234-235.

First, respondent challenges the trial court's conclusion that respondent was without jurisdiction to enforce the child protection law. Here, respondent penalized petitioner under the occupational code, which provides that a person is subject to penalties if he or she commits either "an act of gross negligence in practicing an occupation," MCL 339.604(e), or "an act which demonstrates incompetence," MCL 339.604(g). Respondent found that petitioner's failure to comply with the child protection law constituted both gross negligence and incompetence. Where, as here, the purported act of gross negligence or incompetence is the violation of a separate statutory scheme that is closely related to the occupation at issue, we do not believe that an agency is "enforcing" the separate statutory scheme. Accordingly, the trial court erred in ruling that respondent's lack of jurisdiction to enforce the child protection law prevented it from penalizing petitioner.

Next, respondent contends that the trial court erred in reversing its finding that petitioner's failure to comply with the child protection law constituted an act demonstrating both gross negligence and incompetence.[2] The occupational code defines "incompetence" as "a

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[1] A finding is clearly erroneous where, after reviewing the entire record, we are "left with a definite and firm conviction that a mistake has been made." *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

[2] Respondent contends that the trial court erred in failing to even consider whether petitioner's purported violation of the child protection law constituted incompetence. As noted above, the trial court essentially ruled that respondent had abandoned this issue. We agree with respondent's contention that the record does not indicate that respondent ever abandoned this claim.

departure from, or a failure to conform to, minimal standards of acceptable practice for the occupation," MCL 339.104(8). As noted above, the occupational code provides for penalties where a person commits "an act which demonstrates incompetence." MCL 339.604(g). Thus, the occupational code plainly provides that a single act of incompetence may lead to penalties. Here, the trial court's rulings assumed that petitioner violated the child protection law—a statutory provision that is professionally relevant to social workers. Indeed, we believe that respondent could find that failing to comply with this professionally relevant statutory provision was a failure to conform to a minimal standard of acceptable practice. Accordingly, respondent could have found that petitioner committed an act demonstrating "incompetence" under the occupational code.

However, the occupational code does not define "gross negligence." As noted above, the trial court ruled that petitioner could not have been grossly negligent because she only owed a legal duty to her client.

Indeed, our Supreme Court has ruled that there can be no gross negligence in the absence of a legal duty. *Maiden v Rozwood*, 461 Mich 109, 135; 597 NW2d 817 (1999). Whether a duty is owed is a question of law. *Beaudrie v Henderson*, 465 Mich 124, 130; 631 NW2d 308 (2001). In *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 15; 596 NW2d 620 (1999), we noted that a duty of care may derive from either a statute or "the basic rule of the common law, which imposes on every person engaged in the prosecution of any undertaking an obligation to use due care, or to so govern his action as not to unreasonably endanger the person or property of others." "'Such duty of care may be a specific duty owing to the plaintiff by the defendant, or it may be a general one owed by the defendant to the public, of which the plaintiff is a part.'" *Id.*, quoting *Clark v Dalman*, 379 Mich 251, 261; 150 NW2d 755 (1967).

Here, it is undisputed that petitioner owed her client a legal duty. However, we believe that the child protection law also imposed a legal duty on petitioner, on behalf of her client's children, to report her client's suspected child abuse. Indeed, the purpose of the child protection law is to protect abused and neglected children. See *Williams v Coleman*, 194 Mich App 606, 614-615; 488 NW2d 464 (1992). Alternatively, petitioner may have owed a duty to the public to report the suspected child abuse. *Cipri, supra* at 15. Accordingly, we believe that the trial court's interpretation of gross negligence was too narrow; as a matter of law, we are not persuaded that petitioner only owed a legal duty to her client. Consequently, the trial court erred to the extent that it ruled that respondent could not have found petitioner to be grossly negligent.

However, petitioner contends that the trial court properly reversed the revocation of her license because respondent failed to prove petitioner's gross negligence or incompetence. Indeed, it is well established that we may affirm where the trial court reaches the right result, but for the wrong reason. *People v Jory*, 443 Mich 403, 425; 505 NW2d 228 (1993). This issue requires our examination of the evidence introduced below.

As a preliminary matter, we note that petitioner challenges the ALJ ruling admitting her prior testimony. Ordinarily, a trial court's decision to admit evidence is reviewed for an abuse of discretion. *People v Cain*, 238 Mich App 95, 122; 605 NW2d 28 (1999). "An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion." *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). It should

be noted that a somewhat relaxed evidentiary standard applies to administrative hearings: "[T]he rules of evidence as applied in a nonjury civil case in circuit court shall be followed as far as practicable, but an agency may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." MCL 24.275.

Having reviewed petitioner's prior testimony, we believe that there is ample evidentiary support for the ALJ's finding that petitioner had reasonable cause to suspect that her client committed an act of abuse.[3] Moreover, two family independent agency employees testified that petitioner's client's files did not reveal any evidence that petitioner ever made an oral or written report of the possible abuse.[4] As such, we believe that there was substantial evidence supporting the ALJ's finding that petitioner violated the child protection law. *Barak*, *supra* at 597. As a result, we reject petitioner's contention that there is an alternate basis for affirming the trial court's ruling.

Petitioner's remaining contentions of error were not addressed by the trial court below.[5] Consequently, we decline to address them on appeal. *Herald Co v Ann Arbor Public Schools*, 224 Mich App 266, 278; 568 NW2d 411 (1997).

Reversed. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Mark J. Cavanagh

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[3] Petitioner contends that her prior testimony was inadmissible as hearsay, MRE 802. However, MRE 801(d)(2)(A) states that a statement that would otherwise be hearsay is not considered hearsay if the statement offered against a party and is the party's own statement. Here, petitioner was obviously a party. Thus, her prior statements—at trial or otherwise—were not hearsay. Accordingly, petitioner's trial testimony was admissible. Again, we need not reverse where the right result is reached, but for the wrong reason. *Jory*, *supra* at 425.

[4] We are not persuaded that this "negative evidence" was inadmissible pursuant to MRE 803(10). The admissibility of this evidence is further supported by the relaxed evidentiary rules that apply to administrative hearings. MCL 24.275.

[5] We also reject petitioner's contention that respondent's brief failed to comply with MCR 7.212(C)(6).