

IN THE COURT OF APPEALS OF IOWA

No. 7-062 / 06-0351
Filed March 28, 2007

KIM WYATT,
Petitioner-Appellee,

vs.

**IOWA DEPARTMENT OF HUMAN SERVICES
and/or IOWA DEPARTMENT OF INSPECTIONS
AND APPEALS,**
Respondents-Appellants.

Appeal from the Iowa District Court for Johnson County, Douglas S.
Russell, Judge.

The respondent appeals from the district court's order on judicial review.

REVERSED.

Thomas J. Miller, Attorney General, and John Lundquist, Assistant
Attorney General, for appellants.

Vernon P. Squires and Nikki J. Johnson of Bradley & Riley, P.C., Cedar
Rapids, for appellee.

Heard by Sackett, C.J. and Mahan and Eisenhauer, JJ.

EISENHAUER, J.

The Iowa Department of Inspections and Appeals (Department) appeals from the district court's order on judicial review. The Department contends the district court erred in finding Kim Wyatt did not commit an assault and reversing its order placing her on the Dependant Adult Abuse Registry. Because Wyatt committed an assault on patient E.W., we reverse.

I. Background Facts and Proceedings. On March 2, 2004, E.W., an eighty-two-year-old male, was admitted to the University of Iowa Hospitals and Clinics in Iowa City. While a nurse was attempting to administer an IV to E.W., he became agitated and two additional nurses were sought to assist. E.W. began yelling for help. At that time, Wyatt entered the room, grabbed a pillow, and put it over E.W.'s mouth in an attempt to stop his screaming. Wyatt claims she was attempting to muffle his shouts because she was concerned the noise could adversely affect the health of one of her patients in an adjacent room. Another nurse twice asked Wyatt to remove the pillow before Wyatt complied.

Wyatt's actions were reported to a nurse manager. After an investigation was conducted, a report of suspected adult abuse was forwarded to the Department. On April 13, 2004, the Health Facilities Division of the Department found Wyatt committed dependant adult abuse in the form of assault and unreasonable punishment. Wyatt appealed to an administrative law judge who reversed in a March 10, 2005 decision. The Department then appealed to the Director. On May 9, 2005, the Director reversed the administrative law judge's proposed decision and affirmed the Department's original finding that Wyatt

assaulted a dependent adult. Wyatt then filed a petition for judicial review. On January 20, 2006, the district court reversed the Director.

II. Scope and Standard of Review. The Iowa Administrative Procedure Act, chapter 17A of the 2005 Iowa Code, governs judicial review of administrative agency decisions. Section 17A.19 authorizes the district court to review such decisions. “A person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof under this chapter.” Iowa Code § 17A.19(1). “In judicial review proceedings, the district court functions in an appellate capacity to correct errors of law.” *Greater Cmty. Hosp. v. Public Employment Relations Bd.*, 553 N.W.2d 869, 871 (Iowa 1996).

The court shall reverse, modify, or grant other appropriate relief from agency action if such action was based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency. Iowa Code § 17A.19(10)(c). The court shall not give deference to the view of the agency with respect to particular matters that have not been vested by a provision of law in the discretion of the agency. *Id.* § 17A.19(11)(b). “As with all appellate challenges to interpretation of the statutes governing an agency’s work, we defer to the expertise of the agency but reserve for this court the final interpretation and construction of pertinent statutes.” *Second Injury Fund of Iowa v. Braden*, 459 N.W.2d 467, 468 (Iowa 1990).

III. Analysis. Dependant adult abuse occurs when the willful or negligent acts or omissions of a caretaker causes “[p]hysical injury to, or injury which is at

a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult.” Iowa Code § 235B.2(5)(a)(1)(a) (2003). The Iowa Administrative Code uses the same definition of adult abuse. Iowa Admin. Code r. 441-176.1(235B) (2003). While Iowa Code section 235B.2 does not define “assault,” the Administrative Code states, “‘Assault’ means ‘assault’ as defined in Iowa Code section 708.1.” *Id.* Section 708.1 states in pertinent part:

A person commits an assault when, without justification, the person does any of the following:

1. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.

2. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

The question before us is whether Wyatt assaulted E.W. The Director analyzed the issue and found that she did:

In the context of this case, did the Appellant intend to place the pillow over the patient’s mouth? Record testimony indicated she did—the Appellant intended physical contact. Can the placement of a pillow over the mouth of a patient be considered insulting or offensive? It is hard to envision that a reasonable person would think not. In this deciding official’s view, the act described in this record was insulting and offensive. Two nurses assistance must have believed the same as twice they asked the Appellant to remove the pillow from “their” patient’s mouth.

The district court reversed because the Director “interpreted 708.1 as requiring only general intent, when in fact it requires specific intent, which has not been proven in this matter.”

In debating the sufficiency of the evidence, the parties have disagreed on whether assault is a specific intent or general intent crime. We agree with the

supreme court and do not find it helpful to set our discussion in that context. As the supreme court noted in *State v. Bedard*, 668 N.W.2d 598 (Iowa 2003), regardless of whether assault is a specific intent or general intent crime, the State must prove that the defendant intended his act to cause pain or injury to the victim or to result in physical contact that would be insulting or offensive to the victim. There is no dispute Wyatt intended to put the pillow over E.W.'s mouth. We agree with the Department that this behavior was insulting and offensive. Therefore, substantial evidence supports the Director's conclusion that Wyatt intended an act which resulted in physical contact that was insulting or offensive to E.W. Because we conclude an assault occurred, we need not address whether a "negligent assault" constitutes dependent adult abuse under Iowa Code § 235B.2(5)(a). As Wyatt committed dependent adult abuse, the district court must be reversed.

Wyatt argues on appeal that Department's appeal of the administrative law judge's proposed decision was untimely, and therefore this court should affirm the district court as a procedural matter. Pursuant to an administrative rule, the Department had fifteen days to appeal the proposed decision, which was dated March 10, 2005. Iowa Admin. Code r. 481-10.25(1) (10A, 17A). The fifteen-day time period runs from the date of mailing the decision or from the date of actual delivery to a party if another means of delivery is utilized. *Id.* r. 10.1 (10A, 17A). Here, the decision was sent to the Health Facilities Division via "local" mail and the Department's prosecuting attorney did not receive a copy until March 30, 2005. An appeal was filed the same day, well within fifteen days

of the prosecuting attorney's receipt of the decision. Accordingly, the appeal was timely filed.

We reverse the district court's order and affirm the Department's decision finding Wyatt committed dependant adult abuse.

REVERSED.

Sackett, C.J., dissents.

SACKETT, C.J. (dissenting)

I respectfully dissent.

This is a troublesome case. A nurse operating in an extremely stressful situation momentarily puts a pillow on an unruly patient's face in an attempt to muffle his screams, which screams threaten the well-being of a second patient. The pillow caused the first patient no injury and he made no complaint. The Iowa Department of Inspections & Appeals held the nurse was guilty of dependent adult abuse. The administrative law judge and the district court judge disagree.

There may have been another more acceptable way to silence the first patient and address the emergency, however, the situation demanded immediate action and the nurse obviously did not have the opportunity to consider all options. I am unwilling to believe the legislature intended the action of this nurse in this emergency situation meets the definition of elder abuse. I would affirm the district court and the administrative law judge and reverse the agency.