



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

October 8, 2014

To:

Hon. John S. Jude
Circuit Court Judge
Racine County Courthouse
730 Wisconsin Ave.
Racine, WI 53403

Rose Lee
Clerk of Circuit Court
Racine County Courthouse
730 Wisconsin Ave.
Racine, WI 53403

Jill M. Kastner
Legal Action of Wisconsin
230 W. Wells St., Ste. 800
Milwaukee, WI 53203

John P. Serketich
Assistant Corporation Counsel
730 Wisconsin Ave., Fl. 10
Racine, WI 53403-1238

You are hereby notified that the Court has entered the following opinion and order:

2014AP1229-FT

Sonja Blake v. Racine County HSD (L.C. #2013CV1876)

Before Brown, C.J., Reilly and Gundrum, JJ.

Sonja Blake appeals from a circuit court order affirming a decision of the Racine County Human Services Department, in which the Department revoked Blake's certification as a child caregiver. Pursuant to a presubmission conference and this court's order of June 24, 2014, the parties submitted memorandum briefs. *See* WIS. STAT. RULE 809.17(1) (2011-12).¹ Upon review of those memoranda and the record, we affirm the order of the circuit court.

In 1986, Blake was convicted of misdemeanor welfare fraud in violation of WIS. STAT. § 49.12(9) (1985-86). The charge stemmed from Blake's failure to report two vehicles—a

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

motorcycle and a car—registered to her as assets in 1985, resulting in overpayments in her public assistance.

Years later, Blake took training courses and became a childcare provider. The Department certified her as a child caregiver in 2001.

On February 1, 2010, the Department revoked Blake’s certification pursuant to a new law, which created a permanent bar to holding a certification as a child caregiver for anyone convicted of an “offense involving fraudulent activity as a participant in the Wisconsin Works program....” WIS. STAT. § 48.685(5)(br)5. The Department based its decision on Blake’s 1986 conviction.

Blake appealed her revocation to a hearing examiner, who upheld the Department’s decision based on (1) the descriptive title of Blake’s conviction; and (2) information contained in the criminal complaint. The circuit court affirmed the decision. This court, however, reversed, concluding that the conviction and uncorroborated complaint, by themselves, were insufficient to show that Blake had engaged in fraudulent activity, as necessary to justify the revocation. *See Blake v. Racine County Human Services Dept.*, 2013 WI App 45, ¶17, 347 Wis. 2d 499, 831 N.W.2d 439. Accordingly, we remanded the matter for another hearing.

On remand, the Department presented additional evidence and testimony from two individuals who had since retired but were involved in Blake’s fraud investigation: the Department’s fraud coordinator, Mary Hartog, and Racine County Sheriff’s Department investigator Patrick Ketterhagen.

Hartog testified to the benefits process during the time period in question. She explained the reporting requirement for ownership of vehicles and described how individuals like Blake had to sign and swear to the contents of an application for benefits twice a year to maintain their eligibility.

Meanwhile, Ketterhagen corroborated the criminal complaint by testifying that he subscribed and swore to its contents when he signed it and that it reflected what was in his reports.² According to the complaint, Ketterhagen had obtained certificates of title issued in 1985 to two vehicles registered to Blake—a motorcycle and a car. He also obtained admissions from Blake that she was aware of her reporting requirements and knew that she should have reported at least one of her vehicles.³

The examiner also heard from Blake. Although Blake denied engaging in fraudulent conduct, she admitted that (1) she had been receiving public assistance for approximately fifteen years, including the year 1985; (2) she signed two applications for benefits that year; (3) she indicated on the applications that she did not own any vehicles; and (4) she was aware that there was an asset level that she had to meet in order to obtain public assistance.

Ultimately, the examiner upheld the Department's decision, finding the testimony of the Department's witnesses to be credible and concluding Blake had engaged in fraudulent activity

² Although Ketterhagen did not have an independent recollection of Blake's case, the examiner could rely upon his sworn complaint as a record of regularly conducted activity. *See* WIS. STAT. § 908.03(6).

³ Blake told Ketterhagen that she did not feel she had to report ownership of the car because it did not run. She later testified that her husband worked on the car and ultimately got it running.

while participating in a public assistance program. The circuit court affirmed the decision. This appeal follows.

On appeal, Blake challenges the sufficiency of the evidence relied upon to revoke her certification. In an administrative review proceeding, this court reviews the administrative agency's decision and not that of the circuit court. *Id.*, ¶8. Our examination of the sufficiency of the evidence asks whether there was enough evidence for a reasonable person to reach a conclusion, i.e., “more than ‘a mere scintilla’ of evidence and more than ‘conjecture and speculation.’” *Id.*, ¶8 (quoting *Gehin v. Wisconsin Grp. Ins. Bd.*, 2005 WI 16, ¶48, 278 Wis. 2d 111, 692 N.W.2d 572).

Here, the evidence establishes that Blake was on public assistance in 1985 and was aware of an asset level that she had to meet in order to obtain it. The evidence further establishes that Blake twice applied for benefits that year without disclosing her ownership of vehicles, even though she knew, by her own admission, that she should have reported at least one of them per the reporting requirements. From these facts, the examiner observed, “I believe that any reasonable person would come to the conclusion that Ms. Blake decided not to report the motor vehicles for fear of losing some or all of her assistance. This was an intentional act of omission that constitutes fraud.” We are persuaded that there was enough evidence for the examiner to reach this conclusion. Accordingly, we affirm.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is affirmed.

Diane M. Fremgen
Clerk of Court of Appeals