STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1949

In re the Matter of: James Steinbach,
Appellant,

vs.

Commissioner of Department of Human Services,
Respondent,

McLeod County Social Services,
Respondent.

Filed August 5, 2019
Affirmed
Hooten, Judge

McLeod County District Court
File No. 43-CV-18-688

Karlowba R. Adams Powell, Powell Law Office, West St. Paul, Minnesota (for appellant)

Michael K. Junge, McLeod County Attorney, Zachary L. Lyngaas, Assistant County Attorney, Glencoe, Minnesota (for respondent county)

Considered and decided by Reilly, Presiding Judge; Hooten, Judge; and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

HOOTEN, Judge

Appellant challenges a district court order affirming a maltreatment determination by respondent commissioner of human services. Because there is substantial evidence that appellant was responsible for maltreatment of a vulnerable adult, and the therapeutic-conduct exception does not apply to his unilateral decision to reduce the vulnerable adult's medication, we affirm.

FACTS

On November 15, 2016, respondent McLeod County Social Services (MCSS) received a report alleging that appellant James Steinbach maltreated S.S., his then 98-year-old mother. Steinbach lived near S.S. and cared for her daily. She suffered from numerous health issues, requiring a home care aide to assist her in daily activities.

One of those health issues was hypothyroidism, and S.S. was required to take daily thyroid medication. Medical records from 2013 show that S.S. was "fairly non-compliant" with taking her medications. Steinbach was present for S.S.'s appointment in October 2013, when her physician discussed the importance of taking her medications, explaining to both of them that "it is very important that she does take [her thyroid medication] on a daily basis." In January and June of 2014, S.S. was taking her medication and her lab results showed that her thyroid stimulating hormone (TSH) levels were normal.

Although the record is unclear, at some time before S.S. started seeing a physician at a new clinic in September 2015, she had stopped taking her thyroid medication. Medical records from her new clinic show that the thyroid medication she was previously taking

was not listed as a current prescription. When S.S. was hospitalized for a separate issue in March 2016, her treating physicians diagnosed her with hypothyroidism and prescribed the same thyroid medication that she was prescribed in 2013 and 2014, but at a lower dose. At an appointment the next month, her physician noted that after a few weeks of taking the thyroid medication, she had an allergic reaction to it and was then prescribed a different thyroid medication.

Steinbach testified that he began administering S.S.'s medications in March 2016, when physicians prescribed her thyroid medication a second time. He believed that S.S. was not adjusting well to the new medication. So, without any medical knowledge or training, he altered her medication by removing part of each daily pill by "pinch[ing] a little corner off." He did not consult with S.S.'s physicians or disclose that he was reducing her dose, even though her physicians had previously stressed to him the importance of taking her pill daily. In September and November 2016, lab results showed that S.S.'s thyroid was functioning at "critical" levels. Based on the lab results, and because she was experiencing symptoms that may have been caused by her dosage being "way too low," her physician increased her dosage. Following S.S.'s visit in November, her doctor noted that S.S. had missed two follow-up appointments and when asked about it, Steinbach was "a little evasive" and seemed "a little suspicious of healthcare."

After receiving a report that Steinbach abused S.S. by keeping her from family members and adjusting her medication, MCSS investigated the report by conducting interviews and reviewing medical records and other information. In May 2017, MCSS determined that the allegation that Steinbach maltreated S.S. was substantiated.

Steinbach submitted a request for reconsideration of the maltreatment determination, which MCSS denied. Steinbach then appealed to the Minnesota Department of Human Services, and an evidentiary hearing was held before a human-services judge (HSJ). The HSJ found that by a preponderance of the evidence Steinbach maltreated S.S. because he independently adjusted her thyroid medication. The HSJ recommended that the commissioner of human services affirm MCSS's maltreatment determination based on Steinbach's interference with S.S.'s medication. The commissioner adopted the HSJ's recommendation.

Steinbach requested reconsideration, which was denied because he had submitted no new evidence or legal arguments. Steinbach appealed the denial for review by the district court. Following a hearing, the district court affirmed the maltreatment finding, concluding that substantial evidence existed that Steinbach unilaterally altered S.S.'s medication without her physicians' knowledge and against their directives.

Steinbach appeals.

D E C I S I O N

Steinbach argues that the commissioner's decision is not supported by substantial evidence and was arbitrary and capricious. "We need not give any deference to the district court's decision," *In re O'Boyle*, 655 N.W.2d 331, 334 (Minn. App. 2002), but we defer to agency decisions as they "enjoy a presumption of correctness," *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977).

Upon review, we may reverse an administrative decision if it is not supported by substantial evidence or is arbitrary and capricious. *In re Excess Surplus Status of Blue*

Cross & Blue Shield of Minn., 624 N.W.2d 264, 277 (Minn. 2001); *Sweet v. Comm'r of Human Servs.*, 702 N.W.2d 314, 318 (Minn. App. 2005), *review denied* (Minn. Nov. 15, 2005). Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Zahler v. Minn. Dept. of Human Servs.*, 624 N.W.2d 297, 301 (Minn. App. 2001), *review denied* (Minn. June 19, 2001) (quotation omitted). An agency's decision is arbitrary and capricious if the agency

> (a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise.

Citizens Advocating Responsible Dev. v. Kandiyohi Cty. Bd. of Comm'rs, 713 N.W.2d 817, 832 (Minn. 2006).

Minn. Stat. § 626.5572, subd. 15 (2018), defines maltreatment as abuse, neglect, or financial exploitation. Relevant here, neglect is defined as:

> (a) The failure or omission by a caregiver to supply a vulnerable adult with care or services, including but not limited to, food, clothing, shelter, health care, or supervision which is:
>
> (1) reasonable and necessary to obtain or maintain the vulnerable adult's physical or mental health or safety, considering the physical and mental capacity or dysfunction of the vulnerable adult; and
>
> (2) which is not the result of an accident or therapeutic conduct.
>
> (b) The absence or likelihood of absence of care or services, including but not limited to, food, clothing, shelter, health care, or supervision necessary to maintain the physical and mental health of the vulnerable adult which a reasonable person would deem essential to obtain or maintain the

> vulnerable adult's health, safety, or comfort considering the physical or mental capacity or dysfunction of the vulnerable adult.

Minn. Stat. § 626.5572, subd. 17 (2018).

In this case, the commissioner found that MCSS proved by a preponderance of the evidence that Steinbach maltreated S.S. by unilaterally adjusting her medication over a period of time. Steinbach argues that his conduct of altering her medication dosage does not constitute maltreatment. In support of his argument, he points to evidence that, before he intervened, S.S. regularly failed to take her medication and S.S.'s physician indicated that her symptoms may have been caused by another medication. But neither fact supports a finding that Steinbach's reduction of S.S.'s prescribed medication, without consulting her medical professionals and with no medical knowledge or training himself, does not constitute neglect.

We conclude that Steinbach's conduct in adjusting S.S.'s medication constitutes neglect as he intentionally failed to supply her with her prescribed dosage over a period of time. Steinbach removed part of S.S.'s daily thyroid medication as he believed the medication was causing her to become drowsy. He testified that he "pinched a little corner off" sometime after he started giving S.S. her pills in March 2016 and lasting apparently until her physician increased her dosage in late 2016. He also told MCSS that he stopped giving S.S. her thyroid medication in December 2016. A reasonable person, believing that the current dosage caused negative side effects, would have brought S.S. to be seen by her physician or at least would have consulted with S.S.'s physician. The unreasonableness of Steinbach's actions is underscored by the fact that he heard directly from S.S.'s physician

in 2013 that S.S. needed to take her daily dose. Instead of consulting her current physicians, he adjusted the size of her prescribed pills by an unknown amount for what may have been a period of more than half a year. We therefore conclude that more than substantial support exists for the commissioner's finding of maltreatment.

Steinbach also argues that the maltreatment decision was arbitrary and capricious because the commissioner relied on factors not intended by the legislature, the decision was implausible, and no rational connection exists between the facts and the maltreatment finding. While Steinbach asserts these three grounds to show that the decision is arbitrary and capricious, he does not point to any specific facts and provides no support for his wide-reaching arguments. Instead, he essentially argues a second time that the maltreatment decision is not supported by substantial evidence by stating "the underlying conduct does not rise to the level of abuse contemplated by the legislature." Accordingly, Steinbach's arbitrary-and-capricious argument lacks support for meaningful review. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 465 (Minn. 1944) ("[T]he burden of showing error rests upon the one who relies upon it.").

Steinbach argues alternatively that the commissioner's maltreatment finding was erroneous because Steinbach's actions qualify as therapeutic conduct. But Steinbach did not raise a therapeutic-conduct defense to the HSJ or on appeal to the district court. The HSJ therefore did not address whether the therapeutic-conduct exception applied to Steinbach's interference with S.S.'s medication. Appellate courts generally will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). And, this court gives no deference to the district court's

review of an agency decision. *Zahler*, 624 N.W.2d at 301. We therefore need not consider this argument.

Even if Steinbach had timely raised a therapeutic-conduct exception, his argument would fail because the exception does not apply to his conduct. The legislature created two exceptions to a caregiver's conduct that qualifies as neglect; specifically, when a caregiver's failure to supply requisite care to a vulnerable adult is "the result of an accident or therapeutic conduct." Minn. Stat. § 626.5572, subd. 17(a)(2). Therapeutic conduct is care that is "done in good faith in the interests of the vulnerable adult." Minn. Stat. § 626.5572, subd. 20 (2018).

Steinbach argues that, because he ensured that S.S. took her thyroid medication starting in March 2016, his conduct was therapeutic even though he reduced the size of her pills by some amount. He asserts that S.S.'s physicians did not determine that her dose was too low until he began reducing her medication, and therefore his conduct benefited her. Steinbach's argument is illogical. S.S.'s lab results show that, during the time Steinbach was reducing her dosage, her TSH levels were extremely high, consistent with hypothyroidism. In September 2016, her TSH levels reported as 36.05, when a normal level would be between 0.35 and 5.50. In response to these results and her reported side effects of drowsiness, S.S.'s physicians increased her dosage. But the physicians were unaware that S.S. was not taking her full dose because Steinbach thought she needed her dose to be slowly increased to the full dosage of her prescribed medication. And according to his brief, when S.S.'s physician increased her dosage, Steinbach ceased interfering with her medication, realizing that "the dose was too low, and once [it was upped] he gave her

the higher dose as prescribed." But Steinbach was not qualified to reduce her medication, and interfering with her treatment plan is not conduct done in good faith in S.S.'s best interests.

Steinbach also argues that, even if his conduct was not therapeutic, he was not negligent because his interference with the medication did not injure or harm S.S. When a caregiver "makes an error in the provision of therapeutic conduct to a vulnerable adult which does not result in injury or harm which reasonably requires medical . . . care," no neglect occurred. Minn. Stat. § 626.5572, subd. 17(c)(4). But as mentioned previously, during the time that Steinbach testified he started "pinching off" part of her pill, S.S.'s TSH levels were critical and she had numerous side effects. Her physician also noted that her reported side effects "could have been explained by her being on way too low of a thyroid dose." While S.S.'s medical records following this visit do not address any ongoing concerns with the reported side effects and her TSH levels decreased, Steinbach's interference with S.S.'s medication was harmful to S.S.'s progress in treatment and constitutes caregiver neglect.

Affirmed.