

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0300**

Minnesota Department of Corrections,
Relator,

vs.

Nathan Knutson,
Respondent.

**Filed October 24, 2022
Reversed and remanded
Larkin, Judge**

Bureau of Mediation Services
File No. 20PA2533

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Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Jesson, Judge.

SYLLABUS

An arbitrator's decision under Minn. Stat. § 43A.33, subd. 3(d) (2020), is reviewed under the common-law standard of review applicable to a quasi-judicial decision that is not subject to the Minnesota Administrative Procedure Act.

OPINION

LARKIN, Judge

In this certiorari appeal, relator Minnesota Department of Corrections (DOC) challenges an arbitrator's decision, under Minn. Stat. § 43A.33, subd. 3(d), reinstating

respondent to his position as associate warden of operations at the DOC. We reverse and remand for reconsideration in light of the errors identified in this opinion.

FACTS

In 1999, respondent Nathan Knutson began his career at the DOC as a student intern. In 2001, the DOC hired Knutson as an employee. He steadily advanced over the ensuing years and ultimately reached the position of assistant commissioner of corrections, one of the top positions at the DOC.

In 2020, Knutson attended a convention in San Diego. He met a lower ranking female DOC employee at the convention, and the two began a relationship, which included phone calls and text messages. The female employee's supervisor reported the relationship. The DOC commenced an internal investigation and ordered Knutson to turn over his DOC-issued cell phone. As a result of the investigation, the DOC demoted Knutson to the position of associate warden of operations.

During the investigation, the DOC discovered phone records that raised concerns about Knutson's interactions with GTL, a company that provided the DOC with electronics and security hardware. The DOC therefore commenced a second investigation and placed Knutson on investigatory leave. The DOC instructed Knutson not to discuss the investigation with other DOC employees.

The second investigation addressed five allegations: (1) Knutson failed to disclose a conflict of interest involving GTL; (2) Knutson solicited liquor and meals from a GTL representative; (3) Knutson used his position to secure benefits, including goods from MINNCOR, a DOC division that manufactures goods using inmate labor; (4) Knutson

omitted or misrepresented facts during the first investigation; and (5) Knutson interfered with the second investigation.

The DOC issued a report with the following findings: (1) the evidence was “inconclusive” regarding whether Knutson failed to disclose a conflict involving GTL, (2) Knutson committed “ethical breaches” by requesting food and liquor from a GTL representative, (3) Knutson used or attempted to use his position to obtain benefits, (4) Knutson misrepresented facts during the first investigation, and (5) Knutson interfered with the second investigation.

Following the second investigation, the DOC terminated Knutson’s employment for violating DOC policies. Knutson appealed the termination under Minn. Stat. § 43A.33 (2020), which provides grievance procedures for resolution of disciplinary disputes involving state employees. The case was assigned to an arbitrator, who received evidence regarding the allegations at a four-day hearing.

The arbitrator determined that Knutson did not have a conflict of interest involving GTL and did not solicit liquor or meals. The arbitrator also determined that Knutson did not use his position to obtain personal benefits. As to the allegation that Knutson misrepresented facts during the first investigation, the arbitrator determined that Knutson had “already been disciplined” for that conduct via his prior demotion and that additional discipline would “constitute double jeopardy.” As to Knutson’s alleged interference with the second investigation, the arbitrator found that Knutson contacted DOC employees shortly after his suspension “in direct contravention to the instructions he had been given.”

The arbitrator ultimately concluded that termination “was not proportionate” given Knutson’s length of service, work record, the less seriousness nature of the violations, and the circumstances surrounding the violations. The arbitrator explained:

Based on the fact that only one of five allegations was proven, I believe termination was not an appropriate remedy. Two of the allegations, 2 and 3, appear to be examples of “piling on.” Their inclusion detracted from the overall credibility of the DOC case. While I am well aware of and sympathetic to the Commissioner’s laudable desire to uniformly discipline managers and line employees when policy violations occur, each case must be independently analyzed. Harshness in the name of sending a message or for the purpose of setting an example is ultimately unfair. The primary object of discipline is to correct rather than punish. Given what he has brought upon himself, I seriously doubt that [Knutson] will ever be a recidivist. Only one allegation was proven by a preponderance of the evidence. While not excusing or ignoring an act of insubordination, the totality of circumstances, length of service, work record, and the circumstances surrounding the violation, make a one-month suspension without pay far more proportional.

The arbitrator modified the DOC’s termination of Knutson’s employment to a one-month suspension without pay and directed the DOC to reinstate Knutson to “his former or [a] similar classified position.”

The DOC petitioned this court for a writ of certiorari, which this court issued. In July 2021, this court filed a precedential special-term opinion holding that the decision of the arbitrator constituted a final decision of the Bureau of Mediation Services (BMS), subject to review via certiorari under the Minnesota Administrative Procedure Act (MAPA), Minn. Stat. §§ 14.001-.69 (2020 & Supp. 2021). *Minn. Dep’t of Corr. v.*

Knutson, 963 N.W.2d 503, 503 (Minn. App. 2021), *aff'd in part, rev'd in part, and remanded*, 976 N.W.2d 711 (Minn. 2022).

Knutson petitioned the supreme court for review of our special-term opinion, arguing that any review should be in the district court under the Uniform Arbitration Act, rather than by certiorari review in this court. The supreme court granted review, and we stayed this appeal.

In June 2022, the supreme court issued a decision affirming in part, reversing in part, and remanding. *Knutson*, 976 N.W.2d at 719. The supreme court concluded that because Knutson and the DOC did not enter into an agreement to arbitrate, the Uniform Arbitration Act did not apply. *Id.* at 718. The supreme court held that the arbitrator's decision is reviewable by a writ of certiorari issued by this court under Minn. R. Civ. App. P. 115.01 and Minn. Stat. § 606.01 (2020), but that BMS was not a proper party to the appeal. *Id.* at 719. The supreme court declined to address the appropriate standard of review for the arbitrator's decision because the issue was not raised by the parties. *Id.* at 719 n.7.

This court dissolved the stay and reinstated the appeal, and the parties provided supplemental briefing on the applicable standard of review.

ISSUES

- I. What standard of review applies to an arbitrator's decision under Minn. Stat. § 43A.33?
- II. Did the arbitrator err in applying Minn. Stat. § 43A.33?
- III. Did the arbitrator err in concluding that Knutson did not violate the code of ethics in his requests and inquiries involving certain goods and services?
- IV. Did the arbitrator err in refusing to consider whether Knutson omitted or misrepresented facts during the first investigation?

- V. Did the arbitrator ignore the requirements of Knutson’s high-level position and the DOC commissioner’s discretion to determine that Knutson could not fulfill those high-level requirements?

ANALYSIS

I.

Minn. Stat. § 43A.33 provides grievance procedures for the resolution of disciplinary disputes involving state employees. Subdivision 3 of that statute refers specifically to the procedure for employees, like Knutson, who are not covered by a collective bargaining agreement. Minn. Stat. § 43A.33, subd. 3(a). That subdivision requires notice to be provided to an employee who has been discharged, advising that they “may elect to appeal the action” to BMS. *Id.*, subd. 3(b). If an employee exercises that right, the commissioner of BMS must “provide both parties with a list of potential arbitrators” according to the rules of BMS “to hear the appeal.” *Id.*, subd. 3(d). The selected arbitrator must then conduct a hearing pursuant to the rules of BMS. *Id.*

The Minnesota Supreme Court held that an arbitrator’s decision issued under section 43A.33, subdivision 3, “is a quasi-judicial decision subject to certiorari review.” *Knutson*, 976 N.W.2d at 712. But because the parties did not ask the supreme court to determine “what standard of review applies to a certiorari appeal of the decision of an arbitrator appointed under section 43A.33,” the supreme court declined to address that issue. *Id.* at 719 n.7.

The standard of review set forth in MAPA applies by its terms to decisions issued in contested cases by entities that have statewide jurisdiction and that are authorized by law to make rules or adjudicate contested cases. *See* Minn. Stat. §§ 14.02, subds. 2

(defining agency), 3 (defining contested case), .63 (governing judicial review of decisions in contested cases); *see also State by Archabal v. County of Hennepin*, 495 N.W.2d 416, 421 (Minn. 1993) (holding that “there is no contested case here and no judicial review under [] MAPA”); *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992) (explaining that “[t]he county, not having statewide jurisdiction, is not subject to [MAPA]”).¹ The MAPA standard also applies when incorporated by another statute. *See* Minn. Stat. §§ 93.50 (providing for review under MAPA of decisions by the commissioner of natural resources), 115.05, subd. 11 (providing for review under MAPA of certain decisions of the pollution control agency or its commissioner), 116D.04, subd. 10 (providing for review under MAPA of certain environmental-review decisions), 216B.52, subd. 1 (providing for review under MAPA of decisions by the public utilities commission) (2020). The arbitrator’s decision here is not subject to MAPA by its terms, nor does the governing statute incorporate the MAPA standard.

A quasi-judicial decision not subject to MAPA is reviewed under the common-law standard of review as follows:

On certiorari appeal from a quasi-judicial agency decision not subject to the [Minnesota] Administrative Procedure Act, we examine the record to review 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.

¹ MAPA also exempts certain agencies and types of decisions from its application, in whole or in part. *See* Minn. Stat. § 14.03, subd. 2. For example, decisions by the commissioner of corrections are not subject to MAPA’s contested-case procedures. *Id.*, subd. 2(b).

Anderson v. Comm’r of Health, 811 N.W.2d 162, 165 (Minn. App. 2012) (quotation omitted), *rev. denied* (Minn. Apr. 17, 2012).

Nonetheless, Knutson cites *City of Richfield v. Law Enforcement Labor Servs., Inc.*, and argues that we should apply the standard of review applicable to arbitration awards, that is, “arbitrators serve as the final judge of both law and fact.” 923 N.W.2d 36, 40 (Minn. 2019) (quotation omitted). But *City of Richfield* is distinguishable because it involved parties that had entered into an arbitration agreement. *Id.* at 39. That case was therefore reviewed under the Uniform Arbitration Act. *See id.* at 41 (citing Minn. Stat. § 572B.23(a) (2018)). Given the lack of an arbitration agreement in this case and the resulting inapplicability of the Uniform Arbitration Act, Knutson fails to present a persuasive argument for use of an arbitral standard of review. *See Knutson*, 976 N.W.2d at 718 (concluding that “Knutson and the [DOC] were not parties to an agreement to arbitrate, and the review procedures of the Uniform Arbitration Act do not apply”).

Based on the supreme court’s holding that the decision of an arbitrator appointed under section 43A.33, subdivision 3, is a quasi-judicial decision subject to certiorari review, we hold that an arbitrator’s decision under Minn. Stat. § 43A.33, subd. 3(d), is reviewed under the common-law standard of review applicable to a quasi-judicial decision that is not subject to MAPA.²

² The MAPA scope of review is similar to the common law scope of review. *Staehele v. City of St. Paul*, 732 N.W.2d 298, 304 n.1 (Minn. App. 2007).

II.

Having clarified the standard of review, we turn to the substantive issues. The arbitrator was tasked with determining whether the DOC had “just cause” to discharge Knutson. *See* Minn. Stat. § 43A.33, subd. 3(d). Just cause is defined by statute to include “consistent failure to perform assigned duties, substandard performance, insubordination, and serious violation of written policies and procedures, provided the policies and procedures are applied in a uniform, nondiscriminatory manner.” *Id.*, subd. 2.

However,

[i]f the arbitrator finds that there exists sufficient grounds for institution of the appointing authority’s action but the hearing record establishes extenuating circumstances, the arbitrator may reinstate the employee, with full, partial, or no pay, or may modify the appointing authority’s action.

Id., subd. 3(d).

The DOC contends that the arbitrator erred in applying section 43A.33. Specifically, the DOC argues that the arbitrator erred by “modify[ing] the discipline with no findings or record support for extenuating circumstances.”

The arbitrator cited section 43A.33 in rendering his decision. He found that Knutson contacted coworkers in violation of the DOC’s no-contact directive and that such contact constituted insubordination, which in turn provided “just cause for disciplinary action.” But the arbitrator determined that termination “was not proportionate” given Knutson’s length of service and work record, the less seriousness nature of the violations, and the circumstances surrounding the violations. Although the arbitrator did not use the phrase “extenuating circumstances” and referred to “the bounds of reasonableness,” the

arbitrator's approach is consistent with section 43A.33 in that he identified circumstances to justify reinstating Knutson's employment at the DOC.

The DOC contends that the arbitrator's reasons for excusing Knutson's insubordination are arbitrary and unsupported by the record. The DOC is correct regarding some of the arbitrator's findings, but not others. For example, the DOC argues that the arbitrator erred in finding that Knutson's interference with the investigation was only "partially proven." In making that finding, the arbitrator reasoned that there was no "evidence that the investigation was in any [way] hindered." The DOC notes that its policy does not require an investigation to be hindered by the interference. The relevant policy states that "[s]taff must not discuss any aspect of an ongoing investigation with any person, other than their union representative or [human resources] without prior approval." Given the unequivocal language of the relevant DOC policy (i.e., "must not discuss any aspect"), the arbitrator erred by finding that Knutson's interference with the investigation was not fully proven.

The DOC further argues that the arbitrator acted arbitrarily by considering the magnitude of Knutson's insubordination. We are not persuaded that the magnitude of Knutson's interference is beyond the bounds of the "extenuating circumstances" that the arbitrator was permitted to consider.

The DOC next argues that the arbitrator erred in finding that Knutson's state of mind excused his violation of the no-contact directive. The arbitrator noted that DOC employees described Knutson as "shaken" and "distraught" prior to his unauthorized contact with DOC employees and that Knutson's actions were therefore "more understandable." In

addition, DOC wardens had been authorized to contact Knutson “out of concern” for his “well-being,” so long as they did not discuss the investigation. The DOC acknowledges that Knutson was distraught after he learned about the second investigation, but the DOC argues that Knutson’s distress was “short-lived.” We are not persuaded that the arbitrator erred in considering Knutson’s state of mind.

The DOC also argues that the arbitrator erroneously found that Knutson’s impermissible contacts with employees all occurred “in the hours shortly after [his] demotion and suspension” and that “[n]o further contacts occurred” after Knutson was admonished later that day. In fact, the record shows that Knutson contacted a DOC warden the day after he was placed on investigatory leave and admonished for contacting other employees. The arbitrator erred by failing to consider that communication.

The DOC further argues that Knutson’s long tenure with the agency “d[id] not warrant a lesser discipline.” The record shows that Knutson had a long career with the DOC and was considered a “great employee.” The DOC points to evidence indicating that Knutson’s long tenure made his violations more egregious because, as a supervisor, he understood and had applied the relevant DOC policies.

The DOC does not persuade us that the arbitrator erred by considering Knutson’s length of service and work record as circumstances supporting reinstatement. Moreover, a determination as to whether Knutson’s tenure and work record made his violations more or less egregious is fact dependent and requires weighing of the evidence. This court does not find facts or reweigh the evidence on appeal. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *Nyberg v. R.N. Cardozo & Brother, Inc.*, 67 N.W.2d 821, 823 (Minn. 1954).

Thus, we will not substitute our judgment regarding the impact of Knutson's length of service and work record for that of the arbitrator.

In sum, the arbitrator properly considered extenuating circumstances under section 43A.33, but some of the arbitrator's findings regarding those circumstances were erroneous.

III.

The DOC contends that the arbitrator erred in concluding that Knutson did not violate the code of ethics for executive branch employees in his requests and inquiries involving certain goods and services. The code of ethics prohibits the "use or attempted use of the employee's official position to secure benefits, privileges, exemptions or advantages for the employee or the employee's immediate family or an organization with which the employee is associated which are different from those available to the general public." Minn. Stat. § 43A.38, subd. 5(1) (2020). An employee who intentionally violates the code of ethics "shall be subject to disciplinary action." Minn. Stat. § 43A.39, subd. 2 (2020).

The first personal-benefits allegation stemmed from Knutson's inquiry regarding whether MINNCOR³ could donate a manufactured chair to his son's youth hockey association. The arbitrator found that Knutson first considered buying the chair, but he changed his mind when informed of the price. The arbitrator found that Knutson then asked MINNCOR's operations director if MINNCOR could donate the chair and the

³ MINNCOR is an employment program maintained by the DOC that is engaged in commercial activities using inmate labor. Minn. Stat. § 241.27 (2020)

operations director told him that the chair could not be donated, and “[t]hat was the end of the matter.” The arbitrator determined that there was nothing unethical about Knutson’s inquiry.

The director of MINNCOR operations testified that MINNCOR had donated “obsolete paper that turns yellow” to local schools and had done “printing for conferences,” but he conceded that donations were uncommon. A series of text messages between Knutson and the operations director shows that after Knutson learned that the chair was \$250, he sought a donation of the chair and offered \$40 instead of \$250. He texted, “You donating one of those chairs. Want me to give you \$40 or something?” Although Knutson testified that he “would never go from \$250 to \$40, backwards like that” and stated that he “initiated 40 because [he] had no idea what the cost of a chair would be,” the text messages indicate otherwise. Knutson’s actions constituted an attempt to use his position to secure a benefit, different from those available to the general public, for an organization with which he was affiliated. The arbitrator erred by not treating Knutson’s request for the chair as an ethical violation.

The second personal-benefit allegation was based on a text from Knutson to MINNCOR’s operations director asking if MINNCOR could create mousepads with DOC and GTL logos displaying the names “Juan” or “John Carlos Bryan.” Knutson testified that he intended to give the mousepads to a GTL representative.

The arbitrator determined that there was nothing unethical about the mousepad request. The record shows that the name that Knutson requested on the mousepads was part of an inside joke between Knutson and the GTL representative. The arbitrator found

that MINNCOR's operations director saw nothing wrong with the request, there was no follow-up, the mousepads were never made, MINNCOR had not charged other DOC managers for personalized mousepads, and the mousepads cost only 32 to 37 cents to produce.

The DOC argues that the arbitrator erroneously dismissed the mousepad allegation because there is no de minimis exception to the code of ethics and no requirement that an attempt to obtain a benefit be successful. Indeed, section 43A.38, subdivision 5(1), does not require actual coercion, it prohibits even attempts to secure benefits, and it contains no exception based on the de minimis value of the benefit sought. And although testimony indicated that MINNCOR had prepared mousepads for DOC employees, nothing in the record indicates that MINNCOR produced mousepads to be given to non-DOC employees. The arbitrator therefore erred by not treating Knutson's request for the mousepads as an ethical violation.

The third personal-benefit allegation concerned Knutson's request for a subordinate to have a basketball signed for him by the Minnesota Timberwolves during a scheduled charity appearance at the DOC. The arbitrator found that no autographs were obtained and that Knutson did not pressure the subordinate to get the autographs. Thus, the arbitrator determined that Knutson's request was not unethical.

The DOC argues that the arbitrator erred by dismissing the basketball allegation. Again, the code of ethics prohibits attempts to obtain benefits, and it does not require actual coercion. *See* Minn. Stat. § 43A.38, subd. 5(1). The arbitrator therefore erred by not treating Knutson's request for the signatures as an ethical violation.

In sum, the arbitrator erred in concluding that Knutson did not violate the code of ethics in his requests and inquiries involving certain goods and services.

IV.

The DOC contends that the arbitrator erred in refusing to consider whether Knutson omitted or misrepresented facts during the first investigation. The arbitrator found that the evidence supporting that claim was previously considered when demoting Knutson and that additional discipline would “constitute double jeopardy.”

During the first investigation, Knutson made inconsistent statements regarding his DOC phone records. For example, when asked by the investigator if his DOC phone still contained text messages from the female employee, Knutson responded that he did not “believe so” but that he had “no idea” when he would have deleted them. Knutson later told the investigator that he had not cleaned out his call log and text messages in several months.

The first investigation led the DOC to conclude that Knutson did not fully cooperate with the investigation and had made false statements to the investigator. That conclusion was based on findings that “Knutson exhibited a nervous demeanor, was deceptive, and made conflicting statements about whether records of his call and text messages” with the DOC female employee “would still be in his DOC cell phone.”

The record shows that after Knutson was placed on investigatory leave at the start of the second investigation, he admitted that he had deleted communications on his DOC phone because he did not want to accidentally tap his phone and contact the DOC female employee. Thus, the second investigation revealed new evidence that Knutson had omitted

or misrepresented facts during the first investigation. We agree with the DOC that the misrepresentation finding in the second investigation was based on new evidence and that the arbitrator erred by not considering that evidence as support for the DOC's action.

The DOC also argues that the arbitrator erred by relying on double jeopardy because "Knutson's administrative appeal of his discharge was not a labor arbitration" and thus "the standards and doctrine of labor arbitrations have no relevance to the question of whether the DOC had just cause to discharge Knutson under Minn. Stat. § 43A.33."

In *Skeim v. Independent School District Number 115*, the supreme court noted that the concept of double jeopardy has been imported from criminal law and applied in the context of labor-arbitration cases. 234 N.W.2d 806, 814 (Minn. 1975). In that case, teachers had refused to teach on Columbus Day, and the school board withheld payment for that day and refused to adhere to two negotiated salary increases. *Id.* at 809. The teachers sued for injunctive and other relief. *Id.* at 808. The supreme court determined that the teachers were obligated to teach on Columbus Day and that the school board properly refused to grant one pay increase but that the refusal to grant the second pay increase was an unreasonable double punishment. *Id.* at 809-10, 814.

We need not decide if the DOC was prohibited from disciplining Knutson under the reasoning in *Skeim* because this case is distinguishable. Here, Knutson's admission constituted new evidence that directly established that his prior statements regarding his DOC phone were not truthful and therefore provided additional support for a "just cause" termination. The arbitrator should have considered that new evidence when assessing the DOC's decision to terminate Knutson's employment.

V.

The DOC contends that the arbitrator improperly ignored the requirements of Knutson's high-level position and the DOC commissioner's discretion to determine that Knutson could not fulfill those high-level requirements. As support, the DOC points to caselaw indicating that government employers may hold employees in supervisory positions to a higher standard.

The arbitrator recognized that Knutson was held to a higher ethical standard based on his position, stating, "I understand [that] DOC and law enforcement personnel are held to some undefined 'higher standard.'" Nonetheless, the arbitrator determined that the circumstances did not justify termination of Knutson's employment. We similarly recognize that the DOC commissioner has discretion to enforce the standards expected of high-level executive employees. Nevertheless, the arbitrator was authorized to order reinstatement of Knutson's employment based on extenuating circumstances, which is the crux of the arbitrator's decision here.

DECISION

The DOC has established several errors justifying relief. The arbitrator erred by finding that Knutson's interference with the investigation was not fully proven. The arbitrator erred in failing to consider Knutson's communication to a DOC warden the day after he was directed to not contact DOC employees. The arbitrator erred by failing to treat Knutson's requests for donation of a chair to his son's youth hockey association, custom mousepads, and signatures on a basketball as ethical violations. Lastly, the arbitrator erred

by failing to consider new evidence establishing that Knutson misrepresented facts during the first investigation.

In its prayer for relief, the DOC asks this court to reverse the administrative decision reinstating Knutson and hold that the DOC had just cause to discharge him. In the alternative, the DOC asks this court to vacate the administrative decision and remand for rehearing.

A determination of whether extenuating circumstances justified discipline short of termination requires weighing of the evidence. This court does not reweigh the evidence on appeal. *Sefkow*, 427 N.W.2d at 210. Given the arbitrator’s determination that the circumstances justified reinstatement of Knutson’s employment at the DOC, we remand the case to the arbitrator to determine—in light of the errors identified in this opinion and the standard set forth in section 43A.33, subdivision 3(d)—whether extenuating circumstances justify modification of the DOC’s action.

The DOC asks us to appoint a different arbitrator on remand. While the DOC is entitled to an unbiased decisionmaker, there is a presumption of regularity in administrative proceedings, and the party claiming otherwise has the burden of proof. *Buchwald v. Univ. of Minn.*, 573 N.W.2d 723, 727 (Minn. App. 1998), *rev. denied* (Minn. Apr. 14, 1998). The DOC failed to advance any claim of bias or otherwise support its request for a different arbitrator with argument or citation to legal authority. The request is therefore waived. *See Christie v. Est. of Christie*, 911 N.W.2d 833, 837 n.4 (Minn. 2018) (deeming appellants’ “suggestion” waived for failure to provide analysis or legal authority).

Reversed and remanded.