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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1797**

In re the Matter of Troy Kenneth Scheffler (Rosemary Franzen).

**Filed September 11, 2023
Affirmed in part, reversed in part, and remanded
Reyes, Judge**

Office of Administrative Hearings
File No. 71-0325-38723

Troy Scheffler, Merrifield, Minnesota (self-represented relator)

R. Reid LeBeau, II, Jacobson, Magnuson, Anderson & Halloran, P.C., St. Paul, Minnesota
(for respondent Rosemary Franzen)

Considered and decided by Reyes, Presiding Judge; Ross, Judge; and Bjorkman,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this certiorari appeal, relator challenges the decision of a panel of three administrative-law judges on his complaint alleging campaign-practice violations. Relator argues that the panel erred by (1) determining that relator failed to establish probable cause for a claim asserted under Minn. Stat. § 211B.04 (2022) and (2) imposing an insufficient penalty against respondent. We affirm in part, reverse in part, and remand.

FACTS

In the November 2022 general election, relator Troy Kenneth Scheffler and respondent Rosemary Franzen were both candidates for the same seat on the Crow Wing County Commission. Franzen was the incumbent candidate and has served as a Crow Wing County Commissioner since 2006.

On August 26, 2022, Franzen made a campaign disbursement in the amount of \$1,065.97 for campaign materials to hang on the doors of residents' homes (the door hangers). The door hangers had two sides. One side included a partial disclaimer that said: "Prepared and Paid for by Volunteers for Franzen." The other side displayed a picture of Franzen with her spouse, provided background information about Franzen, and included a statement at the bottom indicating: "If you have questions or concerns, please call me at [telephone number], or email me at [email address]." Franzen distributed approximately 2,500 door hangers beginning in early September 2022. Franzen also distributed campaign lawn signs that read "Rosemary FRANZEN FOR COUNTY COMMISSIONER." In the lower left corner of the sign in significantly smaller font it had the statement "Prepared and Paid for by Volunteers for Franzen," with a mailing address.

On October 3, 2022, Franzen filed her initial campaign-finance report which covered the period from August 26, 2022, through October 3, 2022. The report identified a total of \$600 in contributions received and the disbursement for the door hangers in the amount of \$1,065.97.

On October 10, 2022, Scheffler filed a complaint with the Office of Administrative Hearings (OAH), alleging that Franzen (1) violated campaign-finance reporting

requirements under Minn. Stat. § 211A.02 (2022) by failing to file a timely campaign-finance report and (2) prepared and distributed door hangers and lawn signs that lacked prominent disclaimers as required by Minn. Stat. § 211B.04.

In an October 21, 2022 order, an administrative-law judge (ALJ) determined that probable cause supported the premise that Franzen violated section 211A.02 regarding the reporting requirement and section 211B.04 as to the door hangers. But the ALJ determined that no probable cause existed to support the claim that Franzen violated section 211B.04 as to the lawn signs.

Based on the ALJ's probable-cause findings, the case was then assigned to a panel of three ALJs. By an order dated November 16, 2022, the panel determined that Franzen violated section 211A.02 by failing to file a timely campaign financial report and violated section 211B.04 by distributing door hangers without a sufficient disclaimer. The panel assessed a civil penalty of \$50 for the reporting violation and \$100 for the door-hanger violation.

On November 28, 2022, Scheffler filed a petition for reconsideration with the chief ALJ. The chief ALJ dismissed the petition, stating that Minn. Stat. §§ 211B.01-.37 (2022) do not provide a mechanism for the chief judge to review a panel's decision; rather, the appellate process is governed by Minn. Stat. §§ 14.63-.69 (2022).

In December 2022, Scheffler filed a certiorari appeal to this court, seeking review of the OAH’s October 21, 2022 and November 16, 2022 orders.¹

DECISION

I. The OAH did not err in its penalty assessment as to the reporting and door-hanger violations.

Scheffler contends that the OAH erred in assessing Franzen’s penalty. We are not persuaded.

When evaluating the OAH’s imposition of a penalty, just as when evaluating other decisions by an agency, we presume the penalty is correct and “defer[] to an agency’s expertise and its special knowledge in the field of its technical training, education, and experience.” *See Fine v. Bernstein*, 726, N.W.2d. 137, 142 (Minn. App. 2007) (citation omitted), *rev. denied* (Minn. Apr. 17, 2007). To ensure consistency, the OAH developed the penalty matrix as guidance, which “provides a range of penalties for infractions based on the gravity and willfulness of the violation found.” *Id.* at 149. Each penalty is assessed to reflect the specific facts of the case. *See id.*

A. Reporting violation

Scheffler contends that the OAH erred by (1) finding that Franzen’s reporting violation was inadvertent because Franzen knew the applicable law and (2) failing to consider the impact of the violation on the early absentee voting which began on September 23, 2022, approximately one month before the general election.

¹ On January 18, 2023, Franzen moved to dismiss this appeal, arguing that Scheffler lacked standing and failed to exhaust administrative remedies. This court denied the motion in a February 7, 2023 special-term order.

Under section 211A.02, subdivision 1, candidates must file an initial campaign-finance report within 14 days after exceeding \$750 in campaign contributions or expenditures. Here, Franzen made a campaign disbursement of \$1,065.97 on August 26, 2022. Franzen did not file her report until October 3, 2022, which was after the reporting deadline.

Franzen claimed that she was unaware of the reporting deadline. Franzen explained that, in her prior campaigns, she never reached the threshold disbursement amount triggering reporting, and that another Crow Wing County commissioner told her that the report was due by October 24, 2022.

The OAH found that Franzen’s “report was still made more than one month before the general election. Voters had ample time to review the report prior to voting.” The OAH determined that Franzen’s “failure to [] file her initial campaign financial report [timely] was an inadvertent error, and there is no evidence that this issue had any impact on voters.” Further, nothing in the record indicates the level of impact on the absentee voters. As a result, Scheffler fails to carry the burden of showing that the OAH’s findings were unsupported by the record, viewed in its entirety. *See Bernstein*, 726, N.W.2d. at 142. The penalty matrix provides a presumptive range of \$0 to \$250. Because the record supports this penalty, we conclude that the OAH did not err by assessing a \$50 penalty for the reporting violation.

B. Door-hanger violation

Under Minnesota law, it is unlawful to prepare or disseminate most types of campaign material without prominently disclosing the name and address of the person or

committee that prepared or disseminated the material. § 211B.04, subd. 1(a), (b). The address in a disclaimer must be either the committee’s mailing address or the committee’s website if the website includes the committee’s mailing address. *Id.* Here, the OAH found that Franzen violated section 211B.04, subdivision 1(b), by not including an address or a website where the address can be found on her door hangers.

In assessing the penalty for the door-hanger violation, the panel considered the fact that the door hangers included Franzen’s photograph, telephone number, and email address. The OAH determined that Franzen’s failure to comply strictly with section 211B.04 was “inadvertent and had little to no impact on voters,” and that “there [was] no evidence that any person was confused or unsure about who prepared and paid for the material.” Furthermore, the penalty matrix provides a presumptive range of \$0 to \$250. The OAH assessed Franzen a \$100 penalty related to the door hangers, which is within that presumptive range.

Because substantial evidence in the record supports the OAH’s determination, we conclude that the OAH did not err in its penalty assessment with regard to the door hangers.

II. The OAH erred by determining that Scheffler failed to establish probable cause for the lawn-sign claim.

Scheffler asserts that the OAH erred by dismissing the lawn-sign claim without interpreting and applying the statute requiring a disclaimer to be “prominently include[d].” We agree.

“Agency decisions are presumed correct, and this court defers to an agency’s expertise and its special knowledge in the field of its technical training, education, and

experience.” *Bernstein*, 726 N.W.2d. at 142. We will reverse an agency’s decision “only when it constitutes an error of law, when the findings are arbitrary and capricious, or when the findings are unsupported by substantial evidence.” *Id.* “An agency’s conclusions are not arbitrary and capricious if a rational connection between the facts found and the choice made is articulated.” *Id.* “[T]he appealing party bears the burden of establishing that the findings of the agency are unsupported by the evidence in the record, considered in its entirety.” *Id.*

Minnesota’s campaign-practice law requires any person “who participates in the preparation or dissemination of campaign material” to “*prominently* include the name and address of the person or committee causing the material to be prepared or disseminated,” in accordance with statutorily prescribed disclaimer language. § 211B.04, subd. 1(a) (emphasis added).

In a civil case, probable cause requires “a bona fide belief in the existence of facts essential under the law for the action and such as would warrant a person of ordinary caution, prudence and judgment, under the circumstances, in entertaining it.” *Weinberger v. Maplewood Review*, 668 N.W.2d 667, 674 (Minn. 2003) (quotation omitted).

Following a probable-cause hearing, the ALJ found that there was not probable cause that a violation of section 211B.04 had occurred regarding Franzen’s lawn signs. In an October 21, 2022 order, the ALJ stated:

Minn. Stat. § 211B.04 does not define what constitutes a “prominent” disclaimer for campaign signs. [. . .] Contrary to [Scheffler]’s assertions, there is no requirement that disclaimers on lawn signs be in large enough font to be visible by individuals while driving past or from five feet away.

[Scheffler] *did not offer evidence* establishing that font size of the disclaimer on [Franzen's] signs is so small as to be in violation of the statute.

(Emphasis added.)

The OAH's finding that Scheffler did not offer evidence is not supported by the record. Scheffler alleged that Franzen failed to comply with the prominent-disclaimer requirement under section 211.B.04, subdivision 1(a), because the disclaimer on her lawn signs was printed in "microscopic" font, blended in with the rest of the colored material, and was only noticeable "within a couple feet of the sign." Scheffler also submitted pictures of the lawn signs. While Scheffler did not identify any caselaw or statute establishing a specific font-size requirement for the disclaimers, he offered evidence of pictures that supports a probable-cause determination under the circumstances. Moreover, although the statute does not expressly require that disclaimers be visible from five feet away, as Scheffler argued, the OAH still must interpret the statute requiring campaign materials to "prominently include" certain information and apply it to the facts of the instant case. *See Pietsch v. Minnesota Bd. of Chiropractic Examiners*, 683 N.W.2d 303, 306 (Minn. 2004) (reviewing ALJ's application of law to facts).

We conclude that the OAH erred by dismissing the lawn-sign claim for lack of probable cause. Accordingly, we reverse and remand the claim for the OAH for a factual

finding on whether the disclaimer in the instant case is “prominently include[d]” within the meaning of the statute, as interpreted by the OAH.

Affirmed in part, reversed in part, and remanded.²

² Scheffler also contends that Franzen “mocked the court, its orders, statute” and “its imposed penalty.” None of these arguments have merit or legal support. Nor does Scheffler appear to request any remedy. We therefore decline to further address these arguments.