Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2014-000354-001 DT 04/22/2015

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
J. Eaton
Deputy

NANCY SAXTON

RANDAL STUDER

v.

THE LAKES COMMUNITY ASSOCIATION (001)
ARIZONA DEPARTMENT OF FIRE BUILDING AND LIFE SAFETY (001)

CHARLES E MAXWELL
MARY D WILLIAMS

OFFICE OF ADMINISTRATIVE HEARINGS
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Appellant Nancy Saxton (Saxton) asks this Court to review the Decision of the Administrative Law Judge, dated June 2, 2014, which the Director of the Office of Administrative Hearings certified as the Final Administrative Decision for the Department of Fire, Building, and Life Safety (DFB&LS) and thus for Appellee, the Lakes Community Association (LCA). For the following reasons, this Court affirms that Decision.

I. FACTUAL BACKGROUND.

On November 5, 2012, Saxton filed with the LCA a Demand To Inspect Financial Records. On November 28, 2012, the LCA sent a response stating it was preparing the records. On November 29, 2012, Saxton filed with the LCA another Demand To Inspect Financial Records.

On December 6, 2012, Saxton received one set of records; on December 14, 2012, Saxton received a second set of records; and on January 8, 2013, Saxton received a third set of records. The LCA had redacted large portions of these records. On September 27, 2013, Saxton received a letter from the LCA's attorney offering to allow Saxton to view un-redacted documents in the attorney's office, but Saxton did not do so.

On November 25, 2013, Saxton filed a petition with the DFB&LS contending the LCA had violated the provisions of A.R.S. § 33–1805. On April 29, 2014, ALJ M. Douglas held an Administrative Hearing at which time Saxton and three other witnesses testified. On June 2, 2014, ALJ Douglas issued an Administrative Law Judge Decision making the following conclusions: (1) The

DFB&LS did not have jurisdiction because Saxton had not sought to resolve the dispute through arbitration before filing the petition with the DFB&LS; (2) the DFB&LS did not have jurisdiction because Saxton did not file her petition within the 1-year statute of limitations; and (3) the LCA did provide Saxton the opportunity to view un-redacted records. ALJ Douglas further made a Recommended Order that the matter be dismissed.

Because the LCA did not take any action to accept, reject, or modify that Recommended Order by July 7, 2014, on July 10, 2014, the Director of the Office of Administrative Hearings issued his Certification that the Decision of the ALJ was now the Final Administrative Decision of the DFB&LS. On July 24, 2014, Saxton filed a Notice of Appeal for Judicial Review of Administrative Decision. This Court has jurisdiction pursuant to A.R.S. § 12–124(A) and A.R.S. § 12–905(A).

II. GENERAL STANDARDS FOR REVIEW.

The Arizona statutory authority and case law define the scope of administrative review:

> In reviewing an agency's decision pursuant to the Administrative Review Act, the superior court ***must*** affirm the agency action unless it is "not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion."

Carlson v. Arizona St. Pers. Bd., 214 Ariz. 426, 153 P.3d 1055, ¶ 13 (Ct. App. 2007) (emphasis added), *quoting* A.R.S. § 12–910(E).

> The court must defer to the agency's factual findings and affirm them if supported by substantial evidence. If an agency's decision is supported by the record, substantial evidence exists to support the decision even if the record also supports a different conclusion.

Gaveck v. Arizona St. Bd. of Podiatry Exam., 222 Ariz. 433, 215 P.3d 1114, ¶ 11 (Ct. App. 2009) (citations omitted).

> [I]n ruling on the sufficiency of the evidence in administrative proceedings, courts should show a certain degree of deference to the judgment of the agency based upon the accumulated experience and expertise of its members.

Croft v. Arizona St. Bd. of Dent. Exam., 157 Ariz. 203, 208, 755 P.2d 1191, 1196 (Ct. App. 1988).

> A trial court may not function as a "super agency" and substitute its own judgment for that of the agency where factual questions and agency expertise are involved.

DeGroot v. Arizona Racing Comm'n, 141 Ariz. 331, 336, 686 P.2d 1301, 1306 (Ct. App. 1984).

> [The reviewing court must] view the evidence in a light most favorable to upholding the Board's decision and "will affirm that decision if it is supported by any reasonable interpretation of the record."

Baca v. Arizona D.E.S., 191 Ariz. 43, 46, 951 P.2d 1235, 1238 (Ct. App. 1998) (cites omitted).

> A question of statutory interpretation involves a question of law, and [the reviewing court] is not bound by the trial court's or the agency's conclusions [about] questions of law.

Siegel v. Arizona St. Liq. Bd., 167 Ariz. 400, 401, 807 P.2d 1136, 1137 (Ct. App. 1991).

> On appeal, [the reviewing court] is free to draw its own conclusions in determining if the Board properly interpreted the law; however, the Board's interpretation of statutes and . . . regulations is entitled to great weight.

Baca, 191 Ariz. at 45–46, 951 P.2d at 1237–38.

> Judicial deference should be given to agencies charged with the responsibility of carrying out specific legislation, and ordinarily an agency's interpretation of a statute or regulation it implements is given great weight. However, the agency's interpretation is not infallible, and courts must remain the final authority on critical questions of statutory construction.

U.S. Parking Sys. v. City of Phoenix, 160 Ariz. 210, 211, 772 P.2d 33, 34 (Ct. App. 1989) (citations omitted).

III. ISSUE: WAS THERE SUBSTANTIAL EVIDENCE TO SUPPORT THE ACTION OF THE AGENCY, AND WAS THE ACTION OF THE AGENCY CONTRARY TO LAW, ARBITRARY AND CAPRICIOUS, OR AN ABUSE OF DISCRETION.

Saxton asks this Court to vacate what is now the Final Administrative Decision of the DFB&LS (and thus the LCA) and order the LCA to provide to her un-redacted records. Saxton has provided to this Court authorities and arguments in support of her position. The LCA asks this Court to affirm the Final Administrative Decision of the DFB&LS (and thus the LCA), and has provided to this Court authorities and arguments in support of its position.

In reviewing the actions of an agency, the Arizona Court of Appeals has said the following:

> The court may not intervene if there is "any" evidence to support the administrative decision, and should not weigh the evidence in making that determination. We will not substitute our judgment for that of the agency if it was persuaded by the probative force of the evidence before it. We will not substitute our judgment for that of the board, even where the question is faulty or debatable and one in which we would have reached a different conclusion had we been the original arbiter of the issues raised by the application.

Blake v. City of Phoenix, 157 Ariz. 93, 96, 754 P.2d 1368, 1371 (Ct. App. 1988); *accord, Stant v. City of Maricopa Employee Merit Board,* 234 Ariz. 196, 319 P.3d 1002, ¶ 18 (Ct. App. 2014). This Court agrees with the ALJ that Saxton was required to resolve the dispute through arbitration before filing the petition with the DFB&LS and thus the DFB&LS did not have jurisdiction.

On the issue of the statute of limitations, if Saxton's cause of action accrued on November 19, 2012, the date by which she had not received the requested records, then her petition filed on November 25, 2013, with the DFB&LS was not timely and her claim would be barred by the statute of limitations. On the other hand, if Saxton's cause of action accrued on December 6, 2012, when Saxton received the set of records with redactions, then her petition filed on November 25, 2013, with the DFB&LS was timely and her claim would not be barred by the statute of limitations. This Court concludes that, because Saxton's claim is not that she did not receive the records in a timely manner and is instead that the records she did receive had impermissible redactions, that cause of action did not accrue until she received the records and saw they were redacted.

On the issue of supplying Saxton with records, this Court concludes the LCA did provide Saxton with the opportunity to view un-redacted records, and further concludes Saxton's decision not to go to the LCA's attorney's office to view those records does not give to Saxton a cause of action.

Finally, this Court concludes the authorities and arguments provided by the LCA are well-taken, and this Court adopts those authorities and arguments in support of its decision.

IV. CONCLUSION.

Based on the foregoing, this Court concludes the DFB&LS did not have jurisdiction because Saxton did not attempt to resolve the dispute through arbitration before filing the petition with the DFB&LS, and further concludes the LCA did provide Saxton with the opportunity to view un-redacted records. This Court further determines there is no just reason to delay entry of judgment and no further matters remain pending, and thus this judgment is entered pursuant to Rule 54(c).

If any party wishes to appeal this Court's Decision to the Arizona Court of Appeals, that party must do so pursuant to A.R.S. § 12–913 and Rule 9(a) of the Arizona Rules of Civil Appellate Procedure. *See Eaton v. AHCCCS,* 206 Ariz. 430, 79 P.3d 1044, ¶ 7 (Ct. App. 2003) ("The [Arizona Court of Appeals] will allow an administrative decision to stand if there is any credible evidence to support it, but, because we review the same record, we may substitute our opinion for that of the superior court." "And when consideration of the administrative decision involves the legal interpretation of a statute, this court reviews *de novo* the decisions reached by the administrative officer and the superior court."); *accord, Pendergast v. Arizona St. Ret. Sys.*, 234 Ariz. 535, 323 P.3d 1186, ¶ 10 (Ct. App. 2014) ("On appeal, we review de novo the superior court's judgment, reaching the same underlying issue as the superior court: whether the administrative action was not supported by substantial evidence or was illegal, arbitrary and capricious, or involved an abuse of discretion."), *quoting Carlson v. Arizona St. Pers. Bd.*, 214 Ariz. 426, 153 P.3d 1055, ¶ 13 (Ct. App. 2007); *Pima Cty. Hum. Rts. Comm. v. Arizona D.H.S.,* 232 Ariz. 177, 303 P.3d 71, ¶ 7 (Ct. App. 2013) ("Because the superior court did not hold an evidentiary hearing or admit any new evidence, we review its judgment *de novo*, 'reaching the same underlying issue as the superior court.' "); *Blancarte v. Arizona D.O.T.*, 230 Ariz. 241, 282 P.3d 442, ¶ 7 (Ct. App. 2012) ("Applying a *de novo* review of the superior court's decision . . . ."); *Ritland v. Arizona St. Bd. Med. Exam.,* 213 Ariz. 187, 140 P.3d 970, ¶ 7 (Ct. App. 2006) ("In reviewing the Board's decision, we are not bound by the superior court's judgment because we review the same record.").

IT IS THEREFORE ORDERED affirming the Decision of the Administrative Law Judge, dated June 2, 2014, which the Director of the Office of Administrative Hearings certified as the Final Administrative Decision for the Department of Fire, Building, and Life Safely (DFB&LS) and thus for Appellee, the Lakes Community Association (LCA).

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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