[Cite as *Cole v. Ohio Dept. of Mental Health & Addiction Servs.*, 2017-Ohio-1375.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104975

ELOC COLE I, ET AL.

APPELLANTS

vs.

OHIO DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES

APPELLEE

JUDGMENT:
AFFIRMED

Administrative Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-16-862781

BEFORE: E.A. Gallagher, P.J., McCormack, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: April 13, 2017

ATTORNEY FOR APPELLANTS

James J. Leo
James J. Leo Law Office
P.O. Box 280
Medina, Ohio 44258

ATTORNEY FOR APPELLEE

Mike DeWine
Ohio Attorney General
BY: Stephanie Deters
Assistant Attorney General
Health and Human Services
30 East Broad Street, 26th Floor
Columbus, Ohio 43215

EILEEN A. GALLAGHER, P.J.:

{¶1} Appellants Eloc Cole I, Eloc Cole II and The Farmington (collectively, "appellants" or "the facilities") appeal the decision of the Cuyahoga County Court of Common Pleas (the "common pleas court") affirming an order of appellee Ohio Department of Mental Health and Addiction Services ("MHAS" or "the agency") in which it revoked the adult care facility ("ACF") licenses of Eloc Cole I and Eloc Cole II and denied the renewal of The Farmington's ACF license pursuant to R.C. 5119.34(F)(2)(a) and Ohio Adm.Code 5122-33-05(G). Appellants contend that there is insufficient reliable, probative and substantial evidence to uphold the revocation and nonrenewal of appellants' licenses, that the agency and common pleas court misinterpreted and misapplied Ohio Adm.Code 5122-33-23(B)(15) and Ohio Adm.Code 5122-33-16 and that Eloc Cole II should not have been held to have violated Ohio Adm.Code 5122-33-16(B) because it was impossible for it to comply with the rule. Finally, appellants contend that that the agency failed to comply with the procedures set forth in R.C. 119.07 in suspending admissions at the facilities without a timely hearing, violating their right to due process. For the reasons that follow, we affirm the decision of the common pleas court.

Factual and Procedural Background

{¶2} Appellants are ACFs located in Cuyahoga County. ACFs are residential care facilities that provide accommodations, supervision and personal care services to unrelated adults. Juanita Ladson, a licensed ACF operator since 1999, is the owner and

manager of each of the ACFs involved in the case. ACFs are required to be licensed by MHAS and are required to have written resident agreements with each resident of the facility, memorializing the terms of residency at the facility including the services to be provided by the ACF and the rent and any additional sums to be paid to the ACF for such services. Ohio Adm.Code 5122-33-16. Among the items addressed in the resident agreement is whether the ACF is to manage the resident's finances.

{¶3} In January 2015, MHAS received a complaint from Connections: Health Wellness and Advocacy ("Connections"), a local behavioral healthcare agency, regarding suspicious transactions involving the bank account of one of its clients, J.C. J.C. had been a resident of Eloc Cole I from February 2014 until sometime in late October 2014, when he was transferred to a nursing home.[1] On January 6, 2015, J.C.'s case worker, Lisa Rich, visited him at the nursing home. During her visit, Rich took J.C. to the bank so that he could withdraw money to purchase snacks and cigarettes. While at the bank, they obtained a copy of J.C.'s bank statement. In reviewing the bank statement, Rich noticed four $500 ATM withdrawals on September 22, 2014 and October 1, 16 and 31, 2014 — two of which had occurred on dates J.C. had been hospitalized or in a lock-down room at the nursing home. Rich testified that she asked J.C. about the transactions and that he said he knew nothing about them. When Rich asked J.C. how he obtained funds when he was at Eloc Cole I, J.C. told Rich that he received his spending money from

[1]Ladson testified that J.C. was transferred from a hospital to the nursing home on "maybe October 26 or so," but that because he had paid rent through October 2014, she listed his discharge date as October 31, 2014.

Ladson, i.e., $20 on Mondays and sometimes $20 on Friday. J.C.'s resident agreement with Eloc Cole I expressly stated that J.C. did not wish to have Eloc Cole I manage his funds.

{¶4} Rich reported the suspicious transactions on J.C.'s bank statement to her supervisor and her supervisor, in turn, notified Michelle Myers, the residential specialist at the Cuyahoga County Alcohol, Drug Addiction and Mental Health Services ("ADAMHS") Board. Based on the concerns raised by Connections, the ADAMHS Board and MHAS commenced an investigation into Ladson's handling of resident finances. During the course of its investigation, MHAS discovered potential financial misconduct by Ladson involving J.C. and two other individuals — another resident of Eloc Cole I, C.B., and a resident of Eloc Cole II, E.H.

{¶5} C.B. was a resident of Eloc Cole I from October 2010 through June 2015. Although C.B.'s resident agreement did not authorize Eloc Cole I to provide transportation services or cable services for C.B.[2] sometime after C.B. signed his resident agreement, Eloc Cole I began charging C.B. an additional $61 each month (beyond the sum specified in the resident agreement) for cable ($50 per month), a newspaper ($10 per month) and transportation ($1 per month). Ladson could not state when Eloc Cole I began charging C.B. an additional $61 per month for these services.

{¶6} E.H. was a resident of Eloc Cole II from August 2013 until late May or early June 2015. Although E.H. expressly stated in his resident agreement that he did not wish

[2]C.B.'s resident agreement did indicate that the facility would provide a local

to have the facility manage his funds, in or around February 2014, Ladson took him to the Social Security Administration ("SSA") office where he completed paperwork making her the payee of his social security insurance ("SSI") benefit payments and opened a checking account in the name of "EH Benef Juanita Ladson Rep Payee" from which to manage E.H.'s funds. Ladson thereafter received SSI checks as a payee for E.H. There was no documentation in E.H.'s file amending his resident agreement or otherwise demonstrating that E.H. had requested that Ladson manage his funds and there was no evidence Ladson had provided E.H. with a complete or final accounting of his funds after he left the facility.

{¶7} On February 20, 2015, MHAS issued a suspension of admissions notice (the "February 20, 2015 notice") to Ladson relating to Eloc Cole I, Eloc Cole II and The Farmington, ordering her to "immediately suspend admission of residents to all of your facilities" pending further investigation. The notice stated that she had violated Ohio Adm.Code 5122-33-23 by: (1) withdrawing funds from a resident's bank account on multiple occasions "without permission or authorization from the resident" and (2) "requiring a resident to pay an additional $61 per month for cable, without identifying the charge in the resident agreement." MHAS directed Ladson to submit a written plan of correction along with supporting documentation addressing various concerns outlined in the notice by March 9, 2015, and stated that "effective immediately," Ladson was precluded from exercising any personal control over any resident's funds. The notice

---

newspaper; however, no additional charge was indicated for that service.

further stated that the order suspending admissions would be terminated when MHAS "has received and approved the corrective actions required" and advised Ladson that she could request a conference on the order of suspension.

{¶8} On March 11, 2015, Ladson submitted her initial plan of correction. The following day, a telephone conference was held regarding the suspension of admissions (the "March 12, 2015 telephone conference"). Ladson, appellants' counsel and various representatives of MHAS and the ADAMHS Board participated in the telephone conference and discussed Ladson's alleged financial misconduct involving J.C. and C.B. At the conclusion of the conference, Howard Henry, staff counsel for MHAS's bureau of legal services, indicated that MHAS would issue an order continuing the suspension of admissions while it reviewed the plan of correction Ladson had submitted. Appellants' counsel stated that he had no objection to the proposed course of action and further indicated that it "sounds like a fine plan." Accordingly, on March 17, 2015, MHAS issued an adjudication order continuing the suspension of admissions (the "suspension order") "[u]ntil such time as the plan of correction has been reviewed and implemented." Several weeks later, at the request of MHAS, Ladson submitted additional information and documentation that was allegedly missing from her initial plan of correction.

{¶9} On July 13, 2015, MHAS sent a letter to Ladson notifying her that it sought to revoke the ACF licenses for Eloc Cole I and Eloc Cole II and to deny The Farmington's application to renew its ACF license (the "July 13, 2015 notice"). The July 13, 2015 notice listed ten charges consisting of violations of R.C. 5119.34, Ohio

Adm.Code 5122-33-12(A)(3) and (5), Ohio Adm.Code 5122-33-16(B)(2) and (4), Ohio Adm.Code 5122-33-21(C)(3) and Ohio Adm.Code 5122-33-23(B)(15). The July 13, 2015 notice did not specifically identify the residents involved in each of the charges.

{¶10} Ladson requested a hearing on the proposed action and a hearing was originally scheduled for October 19, 2015. Ladson's counsel also requested that MHAS disclose the identity of the residents involved in each of the charges at issue. MHAS complied with his request. Because it had not identified the residents in the July 13, 2015 notice, on October 5, 2015, MHAS sent a letter to Ladson rescinding the July 13, 2015 notice and indicating that MHAS would "reissu[e] the proposed revocation and denial of renewal application under separate cover."

{¶11} On October 16, 2015, MHAS reissued its notice of proposed action (the "October 16, 2015 notice"). The October 16, 2015 notice was nearly identical to the July 13, 2015 notice except that the October 16, 2015 notice identified the residents involved in each of the charges against Ladson by their initials.[3] Once again, Ladson requested a hearing on the proposed action.

{¶12} A hearing was held on January 25 and 26, 2016, before a hearing examiner. In support of its proposed action, MHAS offered testimony from Ladson (on cross-examination), Rich, Myers, Terri Hill (behavioral standard surveyor for MHAS) and Janel Pequignot (chief of licensure and certification for MHAS). MHAS's witnesses

[3]The October 16, 2015 notice also removed references to criminal charges that had been previously filed against Ladson; charges that had been dismissed on August 24, 2015.

testified regarding the charges against Ladson and the results of its investigation, explaining that MHAS was seeking revocation because Ladson: (1) had exploited J.C. and made unauthorized ATM withdrawals from J.C.'s bank account when she was not authorized under the resident agreement to manage his funds, (2) had charged C.B. additional sums for services not included in his resident agreement, (3) had received checks as payee for E.H. when she was not authorized under the resident agreement to manage his funds and (4) had failed to provide a final accounting of the funds she had received as E.H.'s SSI payee to E.H. when he left the facility. MHAS also argued that because Ladson was both the individual involved in the exploitation of J.C. and the owner and manager of the facilities at issue, there was no one to supervise her to protect residents from her actions. MHAS sought to deny The Farmington's application for renewal of its ACF license based on the same charges.

{¶13} Ladson testified on her own behalf at the hearing, denying any wrongdoing. Ladson explained that when J.C. moved into Eloc Cole I in February 2014, his prior caregiver gave her an ATM card linked to his checking account along with the passcode. Ladson indicated that J.C.'s monthly SSI benefit check was deposited into the account and that she promptly changed the passcode and began making transactions using the ATM card to pay J.C.'s rent. According to Ladson, J.C.'s ATM card remained "in his book" at the facility until it was time to go to the bank. Sometimes J.C. would be present when she made ATM withdrawals using his ATM card and other times she "just did it

[her]self." During the March 12, 2015 telephone conference, she stated: "I kind of took over his whole financial affairs. Yes, I did."[4]

{¶14} Ladson admitted making four $500 ATM withdrawals from J.C.'s bank account on September 22, October 1, October 16 and October 31. She initially testified at the hearing that the $500 she withdrew on October 1 was used to pay part of J.C.'s rent, i.e., that $243 went to Ladson for rent and the remaining funds went to J.C. for his "pocket money" to purchase cigarettes and coffee. However, she later testified that all four ATM withdrawals were for the purpose of "tak[ing] care of some funeral arrangements [for] J.C."[5] Ladson testified that when she withdrew money from J.C.'s account, she placed the cash in an envelope in a safe at the facility to which only she had access.

{¶15} Ladson claimed that prior to October 2014, she and J.C. had discussed taking money out of his bank account and putting it aside for his advanced directives. Although she withdrew $2,000 from J.C.'s account, Ladson testified that she never, in

---

[4]The March 12, 2015 telephone conference was recorded. A transcript of the telephone conference was introduced as an exhibit at the January 2016 hearing.

[5]Ladson also testified that she withdrew the funds from J.C.'s account because she was concerned that if his bank account balance exceeded $2,000, he would lose his eligibility for certain SSI benefits. Accordingly, as J.C.'s bank account balance began to grow, she withdrew funds from his bank account. Noting that "such action might suggest an attempt by [Ladson] to defraud a government agency", the hearing examiner indicated that he chose not to rely on such testimony. Furthermore, although Ladson claimed that she timed the withdrawals to avoid an excess balance of funds in J.C.'s account, after she made the four ATM withdrawals on September 22, 2014, October 1, 2014, October 16, 2014 and October 31, 2014, J.C.'s account balances were $596.12, $819.12, $319.12 and $540.12, respectively.

fact, set up any advanced directives because "he was not there for us to plan it." She indicated that when she spoke with J.C. regarding saving and planning for his funeral, their discussions "never matured to [the] point" of actually planning for his funeral — just to the point of her withdrawing funds from J.C.'s bank account. There was no documentation supporting any of Ladson's claims.

{¶16} Shortly after J.C. moved to the nursing home, Ladson destroyed J.C.'s ATM card and purchased a $2,000 cashier's check payable to "J.C. Advanced Directives." Ladson then brought the check, dated November 7, 2014, to J.C.'s nursing home. The check was negotiated by the nursing home on November 19, 2014. Ladson claimed that she received no compensation or other personal or monetary benefit from handling J.C.'s funds and that she did it simply because it was "the thing to do."

{¶17} With respect to C.B., Ladson testified that when C.B. moved into Eloc Cole I, the facility only had standard cable provided to a single television in a common area shared by all residents at a cost of approximately $25 per month. She stated that C.B. enjoyed watching television and requested more channels but that she told him she could not afford it. Ladson testified that C.B. told her he would pay for the upgraded cable and that they orally agreed to upgrade the cable and "split the bill." Accordingly, a cable box was installed in C.B.'s room that gave him access to expanded cable channels. She indicated that the total cost of the upgraded cable was initially $79 per month but later increased to $110 per month on average.[6]

[6]As part of her plan of correction, Ladson produced a cable bill for the facility dated February

{¶18} Ladson testified that she and C.B. made similar arrangements with respect to the newspaper. She indicated that at the time C.B. moved into the facility, she was receiving a local newspaper only on Sundays. Because C.B. wanted a local newspaper every day, he orally agreed to pay an additional $10 per month to cover the cost of a daily newspaper as well as an additional $1 each month to transport him back and forth to the bank and store.

{¶19} Ladson produced a handwritten document that she claimed had been signed by C.B. referencing a "monthly cost" of $774 for rent, $50 for cable, $10 for a newspaper and $1 for "transportation to bank." The handwritten document, which Ladson stated was written by "[o]ne of the staff people," included a partial date of "Sept. 19" (but no year), and Ladson could not state when it was prepared and executed. On February 19, 2015, C.B. executed a formal "Resident Agreement Addendum" authorizing the additional $61 in monthly charges.

{¶20} With respect to E.H., Ladson testified that E.H. required 24/7 supervision and had developmental and severe mental disabilities. She indicated that several months after E.H. signed the resident agreement, she, E.H. and E.H.'s case manager went to the SSA office because they were "trying * * * to get his finances straight." After E.H.'s case manager left for another appointment, E.H. signed documents enabling Ladson to

---

12, 2015 which showed a total monthly charge of $112.53, consisting of $74.51 plus taxes, fees and surcharges for "Time Warner Cable Promotion" that "Includes Starter TV, Standard TV" and additional charges totaling $35.17 plus taxes, fees and surcharges for a cable box, additional premium channels and an on-demand movie.

become his SSI payee. Ladson testified that E.H. was also present when she set up the bank account to manage his funds. Although Ladson claimed that she became E.H.'s payee at his request and with his consent, E.H.'s resident agreement was never updated to authorize her to manage his funds.

{¶21} Ladson testified that she was E.H.'s SSI payee from approximately January or February 2014 until approximately February or March 2015. Ladson acknowledged that she failed to submit complete financial records to MHAS related to the time period in which she was managing E.H.'s funds and, specifically, that she did not provide financial records for at least eight months in 2014 when she was managing E.H.'s funds or a final accounting when E.H. left Eloc Cole II.

{¶22} Ladson testified that on April 10, 2015, after she received a "cease and desist order" from MHAS, she withdrew $1,227 from the bank account she used to manage E.H.'s funds and delivered a cashier's check in that amount to the SSA along with an uncashed SSI check payable to her as E.H.'s payee in the amount of $501. A balance of $.81 remained in the account. Ladson testified that she did not give E.H. a final accounting of his funds because he left suddenly, without a forwarding address, in late May or early June 2015, and that neither E.H. nor his case manager ever requested an accounting of his funds. Ladson testified that she located E.H., in January 2016, at Lutheran Hospital[7] but that when she went back to speak with him a couple of days later,

[7]Ladson testified that she had been looking for E.H. at that time because she needed him to sign "some HIPPA release documents."

he was gone. As of the date of the hearing, Ladson still possessed $.81 of E.H.'s funds in the bank account she had set up to manage his funds.

{¶23} On March 29, 2016, the hearing examiner issued his report and recommendation. He recommended that the ACF licenses for Eloc Cole I and Eloc Cole II be revoked and that the renewal application for The Farmington be denied. Specifically, the hearing examiner found that Ladson, without written authorization to manage J.C.'s funds, had withdrawn $2,000 from his bank account in violation of Ohio Adm.Code 5122-33-12(A)(3) and (5) and Ohio Adm.Code 5122-33-16(B)(2) and (4) and had exploited J.C. in violation of Ohio Adm.Code 5122-33-23(B)(15). He further found that Ladson had improperly charged C.B. additional monthly fees for cable, newspapers and transportation in violation of Ohio Adm.Code 5122-33-16(B)(2) and (4), had improperly become E.H.'s SSI payee without any documentation showing that E.H. had requested her to manage his funds in violation of Ohio Adm. Code 5122-33-16(B)(4) and failed to provide a final accounting to E.H. in violation of Ohio Adm. Code 5122-33-21(C)(3). The hearing examiner held that although none of Ladson's misconduct involved The Farmington, the findings involving the other ACFs she owned and operated justified the denial of The Farmington's license renewal under Ohio Adm. Code 5122-33-03(F)(2).

{¶24} Ladson filed objections to the hearing examiner's report and recommendation. She argued that the report and recommendation were "missing many critical facts" related to the case and were, therefore, "significantly flawed." She

disputed the claim that she was an "unfit manager" and argued that the hearing examiner's determination that she had violated various administrative rules was not supported by the record. Ladson also claimed that her due process rights had been violated because MHAS suspended the admission of residents at her facilities without a timely hearing.

{¶25} On May 22, 2016, the director of MHAS overruled Ladson's objections, approved the findings of fact, conclusions of law and recommendations of the hearing examiner and entered an adjudication order (1) revoking the ACF licenses of Eloc Cole I and Eloc Cole II and denying the renewal of The Farmington's ACF licenses (the "adjudication order"). Appellants appealed the adjudication order to the Cuyahoga County Court of Common Pleas pursuant to R.C. 119.12.

{¶26} On September 19, 2016, the common pleas court affirmed the adjudication order, concluding that the order "is supported by reliable, probative, and substantial evidence and is in accordance with law."

{¶27} Appellants appealed the decision of the common pleas court, raising the following six assignments of error for review:

> Assignment of Error No. 1: The lower court erred in affirming the charge that Eloc Cole I financially exploited resident JC when Ms. Ladson accessed his bank account to assist him with a funeral pre-need matter, because Ms. Ladson did so with JC's permission and there is no evidence whatsoever that Ms. Ladson received a "personal or monetary benefit, profit, or gain" — a legislative element of a financial exploitation charge — from her involvement.
> Assignment of Error No. 2: The lower court erred in affirming the charge that Eloc Cole I improperly billed JC for assisting him with the pre[-] need

matter because Eloc I [sic] did not bill him whatsoever for such assistance and MHAS has misinterpreted and misapplied O.A.C. 5122-33-16.

Assignment of Error No. 3: The lower court erred [in] affirming the charge that Eloc Cole I improperly billed services to resident CB that he did not agree to, because the record reveals that CB did request additional services and CB agreed, in writing, to pay for them; and there is nothing in the law that precludes and [sic] adult care facility from amending its residential agreement to provide additional services that a resident requests and agrees to pay for.

Assignment of Error No. 4: The lower court erred in affirming the charge that Eloc Cole II improperly billed resident EH for helping him manage his funds, because Eloc Cole II did not bill him whatsoever for such assistance and there is no evidence otherwise; and MHAS has misinterpreted and misapplied O.A.C. 5122-33-16.

Assignment of Error No. 5: The lower court erred in finding that affirming that [sic] Eloc Cole II failed to give EH a proper final accounting of his funds, because EH left that facility with no advance notice and did leave a forwarding address at which he could be located, which made giving a final accounting impossible.

Assignment of Error No. 6: The lower court erred in holding MHAS's actions were in accordance with the law when, in fact, MHAS violated Eloc's due process rights by taking away its ability to accept new clients before giving it an administrative hearing, by failing to follow procedures of R.C. 119.07, and by failing to give it a timely hearing.

Law and Analysis

Authority of MHAS

{¶28} Pursuant to R.C. 5119.34(F)(2)(a), MHAS may issue an order suspending the admission of residents to an ACF or refuse to renew or revoke an ACF's license if it finds that the facility is not in compliance with the rules adopted by the agency, including rules establishing the rights of residents and the procedures to protect such rights. Ohio Adm.Code 5122-33-05(G) similarly provides, in relevant part:

> If any adult care facility fails to comply with any requirement of Chapter 5119. of the Revised Code or with any rule of this chapter or rule 5122-33-28 of the Administrative Code, the director may do any one or all of the following:
>
> (1) In accordance with Chapter 119. of the Revised Code, deny, revoke, or refuse to renew the license of the facility;
>
> (2) Give the facility an opportunity to correct the violation, in accordance with section 5119.34 of the Revised Code;
>
> (3) Issue an order suspending the admission of residents to the facility, in accordance with section 5119.34 of the Revised Code
> * * *[.]

Standard of Review

{¶29} When an order of an administrative agency is appealed pursuant to R.C. 119.12, the court of common pleas must affirm the agency's order if it is "supported by reliable, probative, and substantial evidence and is in accordance with law." R.C. 119.12(M); *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621, 614 N.E.2d 748 (1993). The review by the common pleas court is "'neither a trial de novo nor an appeal on questions of law only, but a hybrid review in which the court 'must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof."'" *Zingale v. Ohio Casino Control Comm.*, 8th Dist. Cuyahoga No. 101381, 2014-Ohio-4937, ¶ 23, quoting *Lies v. Ohio Veterinary Med. Bd.*, 2 Ohio App.3d 204, 207, 441 N.E.2d 584 (1st Dist.1981), quoting *Andrews v. Bd. of Liquor Control*, 164 Ohio St. 275, 280, 131 N.E.2d 390 (1955). The common pleas court "must give due deference to the administrative agency's resolution of evidentiary conflicts, but the findings of the agency are not conclusive." *Zingale* at ¶ 23.

{¶30} An appellate court's review of an administrative order is more limited. *Bd. of Edn. of Rossford Exempted Village School Dist. v. State Bd. of Edn.*, 63 Ohio St.3d 705, 707, 590 N.E.2d 1240 (1992); *Lorain City Bd. of Edn. v. State Emp. Relations Bd.*, 40 Ohio St.3d 257, 260-261, 533 N.E.2d 264 (1988). With respect to the evidentiary basis for the agency's order, appellate review is limited to whether the common pleas court abused its discretion:

> While it is incumbent on the trial court to examine the evidence, this is not a function of the appellate court. The appellate court is to determine only if the trial court has abused its discretion, i.e., being not merely an error of judgment, but perversity of will, passion, prejudice, partiality, or moral delinquency * * *. Absent an abuse of discretion on the part of the trial court, a court of appeals may not substitute its judgment for [that of an administrative agency] or a trial court. Instead, the appellate court must affirm the trial court's judgment.

Zingale at ¶ 24, quoting *Pons* at 621. "'The fact that the court of appeals * * * might have arrived at a different conclusion than did the administrative agency is immaterial. Appellate courts must not substitute their judgment for those of an administrative agency or a trial court absent the approved criteria for doing so.'" *Bd. of Edn. of Rossford* at 707, quoting *Lorain City Bd. of Edn.* at 261.

{¶31} Where issues of law are involved, however, the appellate court exercises plenary review. *Zingale* at ¶ 25. "[I]ssues of law require an 'independent determination of the law to be applied to the facts found by the agency and held by the common pleas court to be supported by reliable, probative and substantial evidence.'" *Copley v. Ohio Dept. of Health*, 4th Dist. Lawrence No. 09CA31, 2010-Ohio-5416, ¶ 12, quoting

Ruckstuhl v. Ohio Dept. of Commerce, 11th Dist. Geauga No. 2008-G-2873, 2009-Ohio-3146, ¶ 22.

{¶32} Following a thorough review of the record, we conclude that appellants have not shown that the common pleas court abused its discretion or otherwise erred in determining that the agency's order is supported by reliable, probative and substantial evidence and is in accordance with the law.

Financial Exploitation in Violation of Ohio Adm.Code 5122-33-23(B)(15)

{¶33} In their first assignment of error, appellants argue that the common pleas court erred in affirming the agency's finding that Eloc Cole I exploited J.C. in violation of Ohio Adm.Code 5122-33-23(B)(15) because there was no evidence that Ladson benefitted personally from her withdrawals from J.C.'s bank account. Appellants also challenge the "vicarious charges" that Eloc Cole II and The Farmington violated Ohio Adm.Code 5122-33-12(A)(3) and (5) based on Ladson's failure to protect J.C.'s rights. Appellants' arguments are meritless.

{¶34} Under Ohio Adm.Code 5122-33-23(B)(15), an ACF facility "must assure the rights of a resident * * * to be free from abuse, neglect, or exploitation." "Exploitation" is defined as "the unlawful or improper utilization of an adult resident or his or her resources for personal or monetary benefit, profit, or gain." Ohio Adm.Code 5122-33-23(A)(2).

{¶35} Appellants contend that the agency ignored the "critical, legislative element of financial exploitation" because the October 2015 notice, the hearing examiner's report

and recommendation and the May 22, 2016 adjudication order do not specifically reference Ohio Adm.Code 5122-33-23(A)(2). Appellants further claim that Ladson could not have "exploited" J.C. because (1) Ladson testified that she and J.C. had previously discussed her provision of "pre-need services" and had knowledge of her "pre-need withdrawals," (2) Ladson did not charge J.C. any fee for the "pre-need services" she provided and (3) Ladson delivered the funds to J.C.'s nursing home within a week or two of his departure from Eloc Cole I.

{¶36} Appellants' claims are not supported by the record. Although the hearing examiner did not cite specifically to Ohio Adm.Code 5122-33-23(A)(2), it is nevertheless clear from his report and recommendation that he applied the definition of exploitation set forth in Ohio Adm.Code 5122-33-23(A)(2) and specifically considered whether Ladson had benefited personally from her withdrawal of J.C.'s funds when determining that she had violated Ohio Adm.Code 5122-33-23(B)(15). As he explained:

> In response to the specific charge of exploitation, Respondent argues that she did not exploit JC because she withdrew the money to prepay JC's funeral expenses and there was no evidence that Respondent personally benefited, profited, or gained from her withdrawal of $2,000.00 from JC's bank account. * * *
>
> The Hearing Officer disagrees with Respondent's argument because there is circumstantial evidence that Respondent intended to exploit JC because Respondent took the opportunity to withdraw the funds at times when JC was unavailable to stop her and that Respondent personally benefited by having the funds that she improperly withdrew from JC's bank account readily available to her for her personal use should the need to use JC's funds arise. The Hearing Officer finds Respondent's testimony that she withdrew JC's funds to use for JC's benefit incredible because Respondent

never used JC's funds for advanced directives as she stated or took any action for this purpose.

{¶37} There was no dispute in this case that Ladson withdrew $2,000 from J.C.'s bank account. The only dispute was, whether in doing so, Ladson "exploited" J.C. Evidence can be direct or circumstantial. Both types of evidence "inherently possess the same probative value." *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph one of the syllabus. There was no direct evidence that Ladson withdrew the funds from J.C.'s bank account for her personal use and benefit; however, there was ample circumstantial evidence to support that conclusion.

{¶38} Although Ladson claimed that she withdrew the funds with J.C.'s authorization and consent to be used for advance directives, there was no documentation to support her claim, J.C.'s case manager knew nothing about it and it was undisputed that no steps had been taken to set up any advance directives for J.C. The funds Ladson withdrew from J.C.'s bank account were not deposited into another bank account for that purpose; they were allegedly stored in a safe to which only Ladson had access. In addition, Ladson's testimony regarding the ATM withdrawals was, at times, contradictory. For example, Ladson initially claimed that the ATM withdrawal she made on October 1 was, in part, for J.C.'s rent. She later claimed it was all for advance directives. Furthermore, the last two ATM withdrawals (on October 16 and 31, 2014) were made (1) when J.C. was in a lock-down room at a hospital and (2) after J.C. had already been moved to the nursing home (and Ladson knew he would not be returning to

her facility). When asked why she made the withdrawals at that time, Ladson could not explain her actions. She testified:

> Q. For some reason, you took out $1,500 this month?
>
> A. Yes.
>
> Q. And I'm wondering why was this month special other than the fact that the client wasn't there? He was in the hospital. I'm asking you: Why did you take out $1,500 in one month?
>
> A. I cannot answer that except advanced directives.

{¶39} Although Ladson ultimately returned the funds to J.C. after he left Eloc Cole I, that does not mean that she did not personally benefit from the use of his funds during the time they were in her possession or under her exclusive control. Appellants have not shown that the common pleas court abused its discretion or otherwise erred in upholding the agency's determination that Eloc Cole I violated Ohio Adm.Code 5122-33-23(B)(15).

{¶40} Pursuant to Ohio Adm.Code 5122-33-12(A)(3) and (5),

> The owner of an ACF may serve as the manager or shall arrange for an individual to serve as the manager. The owner, manager, or both shall be responsible for administering and managing all aspects of the facility including, but not limited to the following functions: * * *
>
> (3) Supervising the staff to ensure acceptable performance of assigned job duties and continued compliance with Chapter 5119. of the Revised Code and this chapter; * * *
>
> (5) Protecting the rights of residents * * * [.]

{¶41} In this case, the agency found that because Ladson was the owner and manager of all three facilities and because she was the one who exploited J.C., she could not properly supervise herself or otherwise protect the rights of the residents of the three

facilities against her actions. Appellants have not shown that the common pleas court abused its discretion or otherwise erred in upholding the agency's determination that the facilities violated Ohio Adm.Code 5122-33-12(A)(3) and (5) based on Ladson's financial exploitation of J.C. Appellants' first assignment of error is overruled.

Violation of Ohio Adm. Code 5122-33-16

{¶42} Appellants' second, third and fourth assignments of error relate to the interpretation and application of Ohio Adm.Code 5122-33-16. In their second and fourth assignments of error, appellants argue that Ohio Adm.Code 5122-33-16 prohibits only "improper billing" for services not provided for in the resident agreement. They contend that the common pleas court erred in affirming the MHAS's "charges" that the facilities "improperly billed" J.C. for assisting with his advanced directives and "improperly billed" E.H. for helping him manage his funds in violation of Ohio Adm.Code 5122-33-16 because Eloc Cole I and Eloc Cole II did not bill them for these services. In their third assignment of error appellants argue that the trial court erred in affirming MHAS's charge that Eloc Cole I improperly billed C.B. for additional services because C.B. agreed in writing to pay for them and there is nothing that precludes the amendment of a resident agreement. Once again, appellants' arguments are meritless.

{¶43} Ohio Adm.Code 5122-33-16 provides in relevant part:

> (A) An ACF shall enter into a written resident agreement with each prospective resident prior to beginning residency in the facility. The agreement shall be signed and dated by the manager or owner and the prospective resident * * *.

> (B) The agreement required by paragraph (A) of this rule shall include at least the following items: * * *
>
> (2) A statement that no charges, fines, or penalties will be assessed against the resident other than those stipulated in the agreement; * * *
>
> (4) A written explanation of the extent and types of services the facility will provide to the resident.

"Improper Billing" under Ohio Adm.Code 5122-33-16

{¶44} First, as it relates to J.C. and E.H., the agency's "charges" that Eloc Cole I and Eloc Cole II violated Ohio Adm.Code 5122-33-16 were not based on "improper billing." MHAS never asserted that Ladson was improperly charging J.C. or E.H. additional fees. As it relates to J.C., the basis of the charge was that, although per the resident agreement, Ladson was not authorized to handle J.C.'s funds, she nevertheless withdrew funds from his bank account, providing a "service" that he did not authorize under his resident agreement. The evidence was undisputed that (1) Ladson withdrew $2,000 from J.C.'s account and (2) his resident agreement did not authorize Eloc Cole I to manage his funds. Similarly, with respect to E.H., the evidence was undisputed that (1) Ladson became a payee for E.H.'s SSI benefits and actively managed his funds and (2) his resident agreement stated that Eloc Cole II was not to manage his funds. Thus, as they relate to J.C. and E.H., the agency's findings that the facilities violated Ohio Adm.Code 5122-33-16 were based on the fact that Ladson had managed funds for J.C. and E.H. in contravention of the express terms of their written resident agreements.

{¶45} Appellants' argument that Ohio Adm.Code 5122-33-16 can be violated only where there is "an excessive and/or un-agreed charge" is not persuasive. In *Zingale,*

supra, this court explained the standard by which Ohio courts interpret administrative rules as follows:

> Courts interpret administrative rules in the same manner as statutes. The primary goal in construing an administrative rule is to ascertain and give effect to the intent of the rule-making authority. The rule-making authority's intent "'is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation.'" Thus, when interpreting an administrative rule, courts first look to text of the rule, "'reading words and phrases in context and construing them according to the rules of grammar and common usage.'" If the language is plain and unambiguous, courts must apply it as written. "'The interpretation of statutes and administrative rules should follow the principle that neither is to be construed in any way other than as the words demand.'"
>
> Moreover, related provisions must be read in pari materia. In reading statutes and administrative rules in pari materia, "court[s] must give a reasonable construction that provides the proper effect to each." "All provisions * * * bearing upon the same subject matter should be construed harmoniously unless they are irreconcilable."

Zingale, 8th Dist. Cuyahoga No. 101381, 2014-Ohio-4937, at ¶ 80, quoting *State v. Montague*, 4th Dist. Athens No. 12CA25, 2013-Ohio-5505, ¶ 8-9 (citations omitted.).

{¶46} Furthermore, courts are required to give deference to an agency's reasonable interpretation of rules that it administers. "'[C]ourts * * * must give due deference to an administrative interpretation formulated by an agency that has accumulated substantial expertise, and to which the General Assembly has delegated the responsibility of implementing the legislative command.'" *Bernard v. Unemployment Comp. Review Comm.*, 136 Ohio St.3d 264, 2013-Ohio-3121, 994 N.E.2d 437, ¶ 12, quoting *Swallow v. Indus. Comm.*, 36 Ohio St.3d 55, 57, 521 N.E.2d 778 (1988); *see also Phillips v.*

Petroleum Underground Storage Tank Release Comp. Bd., 8th Dist. Cuyahoga No. 91245, 2009-Ohio-626, ¶ 29 ("A reviewing court must give deference to an administrative agency's interpretation of its own rules and regulations where such interpretation is consistent with the statutory law and the plain language of the rules.").

{¶47} The purpose of Ohio Adm.Code 5122-33-16 is to protect residents by making certain it is clear to all involved what services are to be provided by the facility and what services are not to be provided by the facility. This is particularly important with respect to fund management because if a resident requests that the facility manage the resident's funds and the facility agrees to do so, additional rules and protections apply. *See, e.g.*, Ohio Adm.Code 5122-33-21(C)(1). The information required under Ohio Adm.Code 5122-33-16(B) is not limited to services for which additional costs are assessed, and appellants have cited no authority to support their argument that Ohio Adm.Code 5122-33-16(B) is violated only when a facility "improperly bills" a resident for services not specified in the resident agreement. The clear and plain language of the rule supports the agency's interpretation.

{¶48} It was undisputed that Eloc Cole I and Eloc Cole II provided services — i.e., Ladson managed the funds of J.C. and E.H. — that E.H. and J.C. did not authorize in their resident agreements with the facilities. Because the resident agreements did not contain "[a] written explanation" of these services the facility "provide[d] to the resident," the agency's determination that Ladson violated Ohio Adm.Code 5122-33-16(B) by managing J.C. and E.H.'s funds in contravention of their resident

agreements was not unreasonable, was in accordance with the law and was supported by the record.

Effect of Amended Resident Agreement

{¶49} With respect to C.B., it was undisputed that Eloc Cole I charged C.B. an additional $61 each month for services that were not specified in his resident agreement. Although the law does not preclude a resident and facility from amending a resident agreement, the issue in this case was that Eloc Cole I charged C.B. for additional services for as long as four years or more before an addendum to the resident agreement authorizing the charges was executed. Although appellants claim that Eloc Cole I entered into an oral agreement with C.B. that he would pay the additional charges for the additional services, Ohio Adm.Code 5122-33-16 requires that the resident agreement be in writing.

{¶50} Appellants have not shown that the common pleas court abused its discretion or otherwise erred in upholding the agency's determination that Eloc Cole I and Eloc Cole II violated Ohio Adm.Code 5122-33-16(B) with respect to J.C., C.B. and E.H. Appellants' second, third and fourth assignments of error are overruled.

Final Accounting under Ohio Adm.Code 5122-33-21(C)(3)

{¶51} In their fifth assignment of error, appellants argue that the common pleas court erred in affirming the agency's determination that Eloc Cole II failed to give E.H. a final accounting in violation of Ohio Adm.Code 5122-33-21(C)(3). Where an ACF "takes responsibility for a resident's money," Ohio Adm.Code 5122-33-21(C)(3) requires the facility to "provide [the] resident with a final accounting and return all of the resident's property to him or her at the time of permanent transfer or discharge." Although Eloc Cole II should not have been managing E.H.'s funds — given that it was not authorized to do so under his resident agreement — once Ladson took responsibility

for E.H.'s funds by becoming his SSI payee and opening a bank account for his benefit, Eloc Cole II was required to comply with Ohio Adm.Code 5122-33-21, including its final accounting requirement.

{¶52} As indicated above, appellants do not dispute that Ladson assumed responsibility for E.H.'s funds and did not provide a final accounting to E.H. when he left Eloc Cole II. Rather, appellants claim that Eloc Cole II was unable to provide a final accounting to E.H. because it had no advance notice E.H. was leaving the facility and no way of determining where he went after he left. Eloc Cole II contends that because it was "impossible" for Ladson to provide a final accounting to E.H., Eloc Cole II could not have violated Ohio Adm.Code 5122-33-21(C)(3).

{¶53} The record reflects that Ladson made no attempt to comply with the final accounting requirement and there are serious credibility issues with her testimony. There is nothing in the record to suggest that Ladson ever prepared or even attempted to prepare a final accounting of E.H.'s funds at or near the time he left the facility. Further, although Ladson testified that E.H. was removed from the facility by his case manager, she did not contact E.H.'s case manager or otherwise make any effort to obtain a forwarding address for E.H.

{¶54} Appellants have not shown that the common pleas court abused its discretion or otherwise erred in upholding the agency's determination that Eloc Cole II failed to provide a final accounting of E.H.'s funds in violation of Ohio Adm.Code 5122-33-21(C)(3). Accordingly, appellants' fifth assignment of error is overruled.

Suspension of Admissions and Due Process

{¶55} In their sixth and final assignment of error, appellants contend that they were denied due process because they were not given a timely hearing on MHAS's suspension of admissions pursuant to R.C. 119.07. Although appellants do not dispute

that they received a timely hearing with respect to the proposed revocation of Eloc Cole I and Eloc Cole II's ACF licenses and the proposed denial of renewal of The Farmington's ACF license (as set forth in the October 16, 2015 notice), they contend that the eleven-month period between February 20, 2015 (when the suspension of admissions commenced) and January 25, 2016 (when the hearing was held on the October 16, 2015 notice) was "too long" and violated their right to due process.

{¶56} This appeal, however, involves the agency's decision to revoke the ACF licenses of Eloc Cole I and Eloc Cole II and to deny the renewal of The Farmington's ACF license — not the suspension order. Appellants have not claimed any violation of R.C. 119.07 or their due process rights with respect to the order revoking the ACF licenses of Eloc Cole I and Eloc Cole II and denying the renewal of The Farmington's ACF license.

{¶57} Even assuming R.C. 119.07 applied to the February 20, 2015 suspension of admissions and even assuming the suspension order was invalid due to a failure to comply with R.C. 119.07, *see* R.C. 119.06, appellants have not established that the agency would thereafter be precluded from revoking Eloc Cole I and Eloc Cole II's ACF licenses and denying the renewal of The Farmington's ACF license.

{¶58} Furthermore, appellants have not established that their due process rights were violated with respect to the suspension of admissions. R.C. 5119.34(F)(2) and Ohio Adm.Code 5122-33-27 govern the suspension of admissions to an ACF. R.C. 5119.34(F)(2) provides:

> The department may issue an order suspending the admission of residents to the facility or refuse to issue or renew and may revoke a license if it finds any of the following:
>
> (a) The facility is not in compliance with rules adopted by the director pursuant to division (L) of this section;
>
> (b) Any facility operated by the applicant or licensee has been cited for a pattern of serious noncompliance or repeated violations of statutes or rules during the period of current or previous licenses;
>
> (c) The applicant or licensee submits false or misleading information as part of a license application, renewal, or investigation.

Proceedings initiated to deny applications for full or probationary licenses or to revoke such licenses are governed by Chapter 119. of the Revised Code. An order issued pursuant to this division remains in effect during the pendency of those proceedings.

{¶59} Ohio Adm.Code 5122-33-27 provides, in relevant part:

> (A) If the director determines that an adult care facility is in violation of Chapter 5119. of the Revised Code, he or she may immediately issue an order suspending the admission of residents to the facility. This order shall be effective immediately without prior hearing, and no residents shall be admitted to the facility until termination of the order. * * *
>
> (B) The director shall give written notice of the order of suspension to the facility by certified mail, return receipt requested, or shall provide for delivery of the notice in person. If requested by the facility in a letter mailed or delivered not later than two working days after it has received the notice, the director shall hold a conference with representatives of the facility concerning the suspension. The conference shall be held not later than seven days after the director receives the request.
>
> (C) The notice sent by the director shall contain all of the following:
>
> (1) A description of the violation;
>
> (2) A citation of the statute or rule violated;
>
> (3) A description of the corrections required for termination of the order of suspension; and
>
> (4) Procedures for the facility to follow to request a conference on the order of suspension.

> (D) At the conference the director shall discuss with the representatives of the facility the violation cited in the notice provided for in paragraph (B) of this rule and shall advise the representatives in regard to correcting the violations. Not later than five days after the conference, the director shall issue another order either upholding or terminating the suspension. If the director issues an order upholding the suspension, the facility may request an adjudication hearing pursuant to Chapter 119. of the Revised Code, but the notice and hearing under that chapter shall be provided after the order is issued, and the suspension shall remain in effect during the hearing process unless terminated by the director or until ninety days have elapsed after a timely request for an adjudication hearing is received by the director, whichever is sooner.

(Emphasis added.)

{¶60} Appellants were not denied a timely hearing on the suspension order because they never requested an adjudication hearing with respect to the suspension order.[8] Appellants only requested a hearing "concerning [the agency's] notice (of July 13, 2015) issued to them" and "concerning [the agency's] notice (of October 16, 2015) issued to them." Further, when the agency indicated, at the conclusion of the March 12,

[8]There is nothing in the record that indicates whether the agency gave appellants notice of their right to request an adjudication hearing concerning the suspension order. Because appellants have not raised the issue and we do not believe, in any event, it is determinative for the reasons stated above, we do not address the issue further here.

2015 telephone conference, that it would issue an order continuing the suspension of admissions while it reviewed Ladson's plan of correction, appellants' counsel indicated that he had no objection to the proposed course of action.

{¶61} Based on the record before us, appellants have not shown that their due process rights were violated. Accordingly, appellants' sixth assignment of error is overruled.

{¶62} Judgment affirmed.

It is ordered that appellee recover from appellants the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

_____

EILEEN A. GALLAGHER, PRESIDING JUDGE

TIM McCORMACK, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR