

IN THE COURT OF APPEALS OF IOWA

No. 7-694 / 97-336

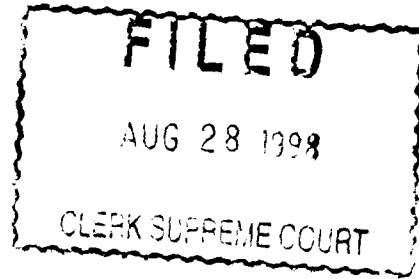
LYNDA MUELLER,

Appellant,

vs.

**IOWA DEPARTMENT OF INSPECTIONS
AND APPEALS and IOWA DEPARTMENT
OF HUMAN SERVICES,**

Appellee.



Appeal from the Iowa District Court for Woodbury County, Robert Clem,
Judge.

Lynda Mueller appeals from the district court's ruling affirming the appellee's
decision upholding a finding of child abuse against her and refusing to expunge the
child abuse report. **AFFIRMED.**

Jack A. Faith, Sioux City, for appellant.

Thomas J. Miller, Attorney General, and Mary K. Wickman, Assistant
Attorney General, for appellee.

Decided en banc.

PER CURIAM

The petitioner, Lynda Mueller, appeals from the district court's ruling affirming the agency's decision upholding a finding of child abuse against her and refusing to expunge the child abuse report. She claims the agency erred as a matter of law in determining her actions constituted a denial of critical care by failing to provide proper supervision with an immediate threat of harm. See 441 Iowa Administrative Code rule 175.1. Mueller further claims the agency's decision was not supported by substantial evidence. We affirm the district court.

Background facts and proceedings. On June 23, 1993, Mueller, a licensed day care provider, left a two-year-old child alone at her house when she was going to take the children in her care to a park. As they prepared to leave for the park, Mueller and two of the six children had to leave the van but subsequently returned. Mueller was unaware the two-year-old child also left the van and went into the backyard of Mueller's property.

The backyard was surrounded by a chain link fence with locked gates. Mueller testified a back injury prevented her from turning around to see the rear seat where the child was supposed to be. Mueller did not discover the child was missing until she returned to the residence approximately forty-five minutes later.

A Department of Human Services worker discovered the child, unattended in an enclosed area, crying. The police were then called. The officer noted the child appeared hot and thirsty and commented on the heat and humidity of the day.

Mueller falsely told the investigating police officer she had been in the basement of her home when the social worker arrived. Mueller claims the child was not in any danger because the backyard was fenced and child-proofed.

The respondent, the Iowa Department of Human Services (DHS), made a founded child abuse report for denial of critical care. Mueller requested DHS correct the finding to show no child abuse was committed by her or, in the alternative, that the finding be expunged. DHS denied the request. Mueller's request for a review of that decision led to contested case proceedings before the respondent, the Iowa Department of Inspections and Appeals. The administrative law judge for that department issued a proposed decision affirming the DHS's denial to expunge or correct the finding that Mueller denied critical care to a child. Thereafter, Mueller then appealed said proposed decision to DHS. That department, on September 6, 1996, adopted as its final decision the proposed decision of the administrative law judge, thereby refusing to expunge or correct the finding that Mueller had denied critical care to a child in her care and had committed an act of child abuse.

In reaching its decision, DHS determined Mueller's conduct in leaving a two-year-old child unattended for forty-five minutes constituted a failure to provide critical care by not providing proper supervision while the child was in immediate threat of harm or injury. Iowa Code § 232.68(2)(d); Iowa Admin. Code § 441-175.1. DHS determined there was such a threat because the child might have been injured or a stranger could have seriously injured or abducted her.

Mueller filed a timely petition for judicial review challenging the agency's decision. Mueller claimed the decision was not supported by substantial evidence and the agency erred as a matter of law in determining she denied critical care to a child in her care by not providing proper supervision.

After a hearing, the district court entered a ruling in January 1997 affirming the agency decision. The court concluded the determination that Mueller denied critical care to a child under Iowa Administrative Code section 441-175.1 was supported by substantial evidence which showed she left a two-year-old child unattended. The court further concluded that finding a lack of proper supervision was correct because a two-year-old child was capable of finding trouble or danger even in a supposedly safe area. The court further concluded the child was in immediate threat of serious harm, injury, or death because of the increased danger she could be injured while being left unsupervised for that period of time.

Scope of review. Our review of agency action is governed by the Iowa Administrative Procedure Act (IAPA), Iowa Code chapter 17A. *City of Davenport v. PERB*, 264 N.W.2d 307, 311 (Iowa 1978). When we review a district court decision on the validity of agency action, we ask only whether the district court has correctly applied the law. *Jackson County Pub. Hosp. v. PERB*, 280 N.W.2d 426, 429 (Iowa 1979). The district court acts "in an appellate capacity to correct errors of law on the part of the agency. In our review of such action by the district court, we merely apply the standards of section 17A.19(8) to the agency action to determine

whether our conclusions are the same as those of the district court." *Teleconnect Co. v. Iowa State Commerce Comm'n*, 404 N.W.2d 158, 161-62 (Iowa 1987) (citations omitted). If our conclusions are the same, we must affirm. *Norland v. Iowa Dep't of Job Service*, 412 N.W.2d 904, 908 (Iowa 1987).

Errors of law. Mueller first argues the administrative law judge committed an error of law in applying the standard for determining "denial of critical care" found in the Child Protective Services Investigation Handbook. She asserts the standard, "the child *must* be in immediate threat of serious harm, injury, or death" does not allow the court to speculate about the possibility of injury to the child. (Emphasis added.) Because "law issues are determinable by the judiciary alone," *Iowa Malleable Iron Co. v. Iowa Employment Sec. Comm'n*, 195 N.W.2d 714, 717 (Iowa 1972) (citation omitted), we owe an agency only limited deference on matters of law, including statutory interpretation. *Des Moines Indep. Community School Dist. v. Department of Job Serv.*, 376 N.W.2d 605, 609 (Iowa 1985); *see also Brumley v. Iowa Dep't of Job Serv.*, 292 N.W.2d 126, 128 (Iowa 1980).

After reviewing the language of the statute, the Administrative Code, and the handbook, our conclusions are the same as those of the district court and the administrative law judge. Mueller argues the threats of harm to the child cited by the court would be the same whether supervised or not. The issue, however, is whether the child was in immediate threat of harm, injury, or death. The statutes do not require evidence that physical harm or injury or death actually take place. The

determinative question is whether there is immediate threat of serious harm or injury or death. We conclude the district court did not err in its conclusions of law, which were in accord with those of the agency.

Substantial evidence. Mueller next asserts the fact findings of the agency are not supported by substantial evidence. An agency's findings are binding on the us if supported by substantial evidence. *New Homestead v. Iowa Dep't of Job Serv.*, 322 N.W.2d 269, 270 (Iowa 1982). "Evidence is not insubstantial merely because it would have supported contrary inferences. It is substantial when a reasonable mind could accept it as adequate to reach the same findings." *Id.* (citation omitted); *accord Ray v. Iowa Dep't of Job Serv.*, 398 N.W.2d 191, 193 (Iowa App.1986). We do not ask whether the evidence could support different findings, but whether the evidence supports the findings actually made. *Ward v. Iowa Dep't of Trans.*, 304 N.W.2d 236, 237-238 (Iowa 1981).

At the time of the incident, Mueller was a licensed day care provider. She was still recuperating from an automobile accident. It was her first day caring for the children without an assistant. After loading the children for the trip to the park and then leaving the van with one child to use the bathroom in her house, Mueller did not confirm all the children were in the van and secure before departing. When loading and unloading children at the park, Mueller did not confirm all the children were in the van and secure before leaving the park. Substantial evidence exists in the record from which a reasonable person could reach the conclusion reached by the agency.

We conclude the district court, exercising appellate review of the agency action, committed no errors of law in its review. We also conclude the decisions of the court and of the agency are supported by substantial evidence in the record as a whole. Consequently, we affirm the district court.

AFFIRMED.

All judges concur except Sackett, J., who specially concurs.

SACKETT, J. (specially concurring)

Lynda Mueller, a licensed child care provider, while caring for six small children took five of the children to the park and left the sixth child unattended for forty-five minutes in her fenced back yard. The child suffered no injury other than he may have been a bit thirsty. There is no claim she left the child intentionally. She has been determined to be a child abuser and found to have denied critical care to the child.

I have no quarrel with the argument Mueller was negligent in leaving the child. I also recognize error in judgment or any negligence, no matter how significant or how slight, on the part of a caretaker may result in a child being subjected to harm or being harmed. Children throughout the years have been exposed to harm and have suffered accidents, even when in the care of the most conscientious caretakers.

I am bound in this case to apply the rules promulgated by the Department. Consequently, I have no choice but to agree with the majority this negligence or error in judgment on Mueller's part that created a possibility the child could be harmed is child abuse as defined by the Department's rules.