

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Daniel K. Criswell,
Appellant-Petitioner,

v.

Douglas G. Carter, as
Superintendent of the Indiana
State Police, and the Indiana
State Police,
Appellee-Respondents

April 26, 2023

Court of Appeals Case No.
22A-MI-2253

Appeal from the Marion Superior
Court

The Honorable Kurt Eisgruber,
Judge

Trial Court Cause No.
49D06-1911-MI-48303

Memorandum Decision by Judge Weissmann
Judges Bailey and Foley concur.

Weissmann, Judge.

- [1] The Indiana State Police (ISP) fired Daniel Criswell (Daniel) for throwing a rock through the window of his ex-wife's car and for interfering with the subsequent investigation into potential ISP misconduct. The ISP Review Board and the local trial court both upheld his termination. On appeal, Daniel argues that the ISP's decision to terminate him was an arbitrary and capricious agency action, unsupported by substantial evidence. We disagree and affirm.

Facts¹

- [2] When Daniel's ex-wife, Stephanie Criswell (Stephanie), needed a new car, Daniel helped Stephanie select an Audi A-4 being sold by Pete and Pamela Passon. The Passons and Stephanie executed a BMV form Bill of Sale (Passon Bill of Sale) conveying the car to Stephanie for \$500. But despite the listed price, Daniel gave the Passons an envelope containing \$3,000 in cash to complete the purchase. The Passons passed along the car's title to Daniel a short time later, although the title did not list any details about the car's new owner. Stephanie drove the car after the purchase, but no one registered it with the BMV or paid taxes on the vehicle at this time.
- [3] About a month later, during an argument with Stephanie, Daniel picked up a rock from their driveway and threw it at the Audi, breaking the rear window.

¹ We held an oral argument in this case on April 6, 2023, at East Central High School in St. Leon, Indiana. We thank the school for hosting, the counsel for their quality advocacy, and the students for their questions.

Neither party reported the incident to police. But later that month, ISP learned of allegations that Daniel had battered Stephanie and assigned Sergeant Jason Fajt to investigate.

[4] Nothing came of the battery allegations, but through Sergeant Fajt's investigation, ISP learned about the rock throwing incident. When interviewed by Sergeant Fajt, both Daniel and Stephanie confirmed that Daniel threw a rock at the Audi, and Daniel further admitted to breaking the car's rear window. Stephanie also referred to the car as "my car" multiple times and never suggested that Daniel owned the Audi. Appellant's Supp. App. Vol. II, p. 79. A title check on the car with the BMV showed Stephanie as the owner, although she had registered the vehicle nearly a month after the window was broken and had listed a purchase date after the incident as well. When Sergeant Fajt interviewed the Passons, they also identified Stephanie as the car's owner and provided Sergeant Fajt with a copy of the Passon Bill of Sale.

[5] Sergeant Fajt uploaded the Passon Bill of Sale into ISP's Records Management System (RMS). Four days later, Daniel e-mailed Sergeant Fajt a copy of a hand-written document that Daniel claimed was a bill of sale showing that he sold the Audi to Stephanie two weeks after he threw the rock through its window. Daniel also provided Sergeant Fajt with an insurance card demonstrating that the Audi was insured under his name during the incident and a repair bill for the Audi's window showing him as the owner. After concluding his investigation, Sergeant Fajt gave his report and evidence to the

Morgan County prosecutor, who ultimately declined to file criminal charges against Daniel.

- [6] The case was then assigned to ISP Sergeant Timothy Isenberg to conduct an internal investigation into whether Daniel's actions amounted to misconduct. One of the first steps Sergeant Isenberg took was to re-interview Daniel. Although little new information came to light, Sergeant Isenberg became suspicious when Daniel appeared so well-prepared for his interview that it "seemed as if Daniel knew every question that would be asked." Appellant's App. Vol. II, p. 24. An RMS access audit later revealed that Daniel had accessed the investigation against him hundreds of times, including up to 34 times in the four days between Sergeant Fajt uploading the Passon Bill of Sale and Daniel coming forward with his own handwritten bill of sale.
- [7] When Sergeant Isenberg confronted Daniel with the RMS audit results, Daniel admitted accessing the RMS but claimed he merely wanted to review the investigation results because he was concerned about the accuracy of the information available to other State Troopers. Daniel also admitted to emailing his bill of sale to Sergeant Fajt in response to seeing the Passon Bill of Sale on the RMS. Daniel attempted to justify this behavior by presenting a text message he received from Sergeant Fajt stating, "You are always welcome to send me something that clears you." Appellant's App. Vol. III, p. 121.
- [8] ISP Superintendent Douglas Carter determined that Sergeant Isenberg's investigation warranted bringing misconduct charges against Daniel. The two

relevant charges alleged that Daniel committed criminal mischief by breaking the Audi's window and that he interfered with the subsequent investigation into the incident. After holding an evidentiary hearing on the charges, Superintendent Carter found the evidence supported the misconduct charges and terminated Daniel's employment.

[9] Daniel sought review of his termination with the ISP Board. The six-member Board issued Findings of Fact and Conclusions of Law, upholding Daniel's termination. The Board noted that because it was undisputed that Daniel threw a rock through the Audi's window, the only issue was whether Daniel owned the Audi at the time. Ultimately, the Board unanimously concluded that substantial evidence supported Superintendent Carter's finding that Stephanie owned the car. The Board also upheld the interference charge, finding substantial evidence that Daniel accessed information about the investigations against him on the RMS over 400 times and that he acted on the information to try to mislead investigators.

[10] Because the Board concluded that substantial evidence existed for both misconduct findings, it upheld Daniel's termination. Daniel then sought judicial review of that administrative decision with the trial court, which also affirmed his termination.

Discussion and Decision

[11] Indiana Code § 4-21.5-5-14 provides the standard of review for agency decisions, which this Court has described as follows:

We will reverse the administrative decision only if it is: (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to a constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; or (5) unsupported by substantial evidence.

Walker v. State Bd. of Dentistry, 5 N.E.3d 445, 448 (Ind. Ct. App. 2014). The agency serves as the factfinder and reviewing courts are “prohibited from reweighing the evidence or judging the credibility of witnesses and must accept the facts as found by the administrative body.” *Id.* An administrative decision may not be overturned simply because the reviewing court would have reached a different result. *Id.* As the challenging party, Daniel bears the “burden of demonstrating the invalidity” of ISP’s action. *Id.*

[12] Daniel attacks the Board’s decision to uphold his termination in two ways: (1) as arbitrary and capricious; and (2) as unsupported by substantial evidence. Although related to each other, these terms have distinct meanings. An agency’s decision is “arbitrary and capricious when it is made without consideration of the facts and lacks any basis that may lead a reasonable person to make the decision made by the administrative agency.” *Winters v. City of Evansville*, 29 N.E.3d 773, 778 (Ind. Ct. App. 2015) (quoting *Ind. Real Est. Comm’n v. Martin*, 836 N.E.2d 311, 313 (Ind. Ct. App. 2005)). Put another way, an agency’s decision is arbitrary and capricious if it is “patently unreasonable,” *Bd. of Dirs. of Bass Lake Conservancy Dist. v. Brewer*, 839 N.E.2d 699, 701 (Ind. 2005), or is “issued in disregard of the undisputed facts and circumstances.”

Gary Police Civ. Serv. Comm’n v. City of Gary, 124 N.E.3d 1266, 1272 (Ind. Ct. App. 2019).

[13] As for Daniel’s other claim for relief, that the ISP Board’s decision was not supported by substantial evidence, he must show that the evidence amounts to less than “a scintilla.” *Ind. Dep’t of Nat. Res. v. Prosser*, 132 N.E.3d 397, 401 (Ind. Ct. App. 2019) (quoting *State v. Carmel Healthcare Mgmt., Inc.*, 660 N.E.2d 1379, 1384 (Ind. Ct. App. 1996)). In other words, substantial evidence is “something less than a preponderance of the evidence.” *Id.*

[14] The ISP fired Daniel for violating ISP Personnel Rules. Before discharging, demoting, or suspending an ISP employee for cause, the ISP Superintendent must present the individual with the charges in writing. Ind Code § 10-11-2-15. Although initially charged with six violations, Superintendent Carter determined that only two supported Daniel’s termination. *See Appellant’s App. Vol. III*, pp. 132-33.

I. Criminal Mischief Charge

[15] The ISP charged Daniel with committing criminal mischief, in violation of Ind. Code § 35-43-1-2, for “recklessly, knowingly, or intentionally damag[ing] the property of another without the person’s consent when he damaged the rear window of a 2007 Audi owned by Stephanie Criswell . . . in violation of Regulation 7, Section 7-3(1).” *Appellant’s App. Vol. III*, p. 132.

[16] Daniel’s primary defense as to this charge is very simple: he contends that he—not Stephanie—owned the Audi when he threw the rock through the window.

As criminal mischief involves damaging another's property, Daniel could not have committed criminal mischief if his ownership claim is true. But Daniel's attempts to construe the record to support his arguments run into two main problems: (1) there is substantial evidence supporting the agency's determination that Stephanie owned the Audi; and (2) Daniel's efforts to convince us otherwise amount to a request to reweigh the evidence.

[17] Substantial evidence supports the ISP Board's finding that Stephanie owned the Audi when Daniel broke its window. For starters, it is uncontested that the first document reflecting a change of ownership in the car, the Passon Bill of Sale, bears Stephanie's name. Although the Passon Bill of Sale lists an incorrect purchase price, this does not render the whole document "fraudulent," as Daniel claims. Appellant's Br., p. 27. Daniel provides no argument grounded in law that the entire document should be thrown out for the mistaken purchase price.

[18] The circumstances of the sale also signal that Stephanie became the owner of the Audi before the incident. Stephanie needed a new car following an automobile accident, and she drove the Audi following its purchase. Daniel tries to rebut this evidence by showing that he paid for insurance on the vehicle and through his handwritten bill of sale. Appellant's App. Vol. III, p. 72, 90. That said, paying the car's insurance does not establish ownership. And the ISP Board reasonably determined that the legitimacy of Daniel's bill of sale is doubtful given its handwritten format and connection to Daniel's interference

with the ISP's investigation by accessing the RMS and seeing the Passon Bill of Sale in evidence.

- [19] In sum, Daniel's efforts to show on appeal that he owned the Audi amount to an improper request to reweigh the evidence. *Walker v. State Bd. of Dentistry*, 5 N.E.3d 445, 448 (Ind. Ct. App. 2014) ("Courts that review administrative determinations are prohibited from reweighing the evidence . . ."). Though some evidence exists in the record suggesting that Daniel owned the Audi at the relevant time, we do not find the ISP Board impermissibly exercised its judgment in deciding that this evidence was outweighed by the evidence showing Stephanie as the owner.

II. Interference with ISP Investigation

- [20] Turning to the second charge justifying Daniel's termination, Daniel first makes a technical argument based on an alleged mismatch between the written charges against him and the text of the ISP regulation he violated before pivoting back to his argument that the ISP Board's decision to uphold this charge was arbitrary, capricious, and unsupported by substantial evidence.
- [21] As written in the charges, the ISP alleged Daniel interfered with a "prosecution." Appellant's App. Vol. II, pp. 28-29. Daniel claims this charge as written does not apply to his actions. He points out that Regulation 7, Section 7-3(12) has two parts. It prohibits ISP employees from knowingly: (1) "interfering with or impeding cases assigned to other employees for *internal investigation*;" or (2) "interfering with any investigation, arrest, or *prosecution*

brought by other employees of the Department or by any other agency or person.” *Id.* (emphasis added).

[22] Daniel argues that there is a distinction in Regulation 7-3(12) between a “prosecution” and an “internal investigation.” He claims the written charges specify that Daniel interfered with a prosecution—not the internal investigation he, in fact, faced. Therefore, in Daniel’s view, he could not have interfered with a criminal prosecution by accessing incident reports in the RMS because the prosecutor had declined to bring criminal charges against him.

[23] In his own words, Daniel accuses the ISP of playing “an unfair game of blindman’s bluff,” Appellant’s Br., p. 21, essentially arguing that he did not have effective notice of the charges against him. We disagree. The behavior causing the violation—inappropriately accessing the RMS to gain information about an investigation of him—was explicitly stated in the charges. The written charges also identify the Regulation that Daniel violated, and he presents no argument on why accessing internal information on the RMS is not a violation. Any inaccuracy between the written charge’s use of “prosecution” versus “internal investigation” is non-prejudicial, harmless error that affords Daniel no relief because he had full notice of the allegations against him. *Adams v. State*, 967 N.E.2d 568, 572 (Ind. Ct. App. 2012) (“It is well-established that an error based on a lack of notice is subject to the harmless error doctrine, which requires the appellant to demonstrate prejudice as a result of the lack of notice.”).

[24] Substantial evidence also supports the finding that Daniel interfered with the investigation. The RMS access logs show Daniel viewed documents pertinent to the investigation against him in excess of 400 times. Appellant’s App. Vol. II, pp. 133-150. Although both sides agree that an undetermined number of these were duplicate views, Daniel admits he accessed the RMS during the investigation “a lot.” Appellant’s Supp. App. Vol. III, p. 112.

[25] Daniel attempts to counter the impropriety of his actions by pointing out that, although he was suspended, viewing the RMS did not violate ISP rules at the time. To be fair, the ISP Superintendent admitted that after this incident, the rules were changed to formally prohibit an officer on administrative leave from accessing the RMS. Appellant’s Supp. App. Vol. II, pp. 50-52. But this argument misunderstands the reasons behind Daniel’s termination. The ISP did not fire Daniel “solely” for accessing the RMS, as he claims. Appellant’s Br., p. 23 (emphasis omitted). Rather, as the written charge against him states, it was Daniel’s *interference* with the investigation—that is, what he did with the information he accessed from the RMS—that prompted his termination. As the ISP Board found, Daniel’s improper viewing of the RMS only emerged after investigators became suspicious about his knowledge and preparedness for the investigation. This coupled with Daniel’s submission of his own handwritten bill of sale just four days after the Passon Bill of Sale was uploaded into the RMS, supports the inference that Daniel used the information to interfere with the investigation, not out of his own curiosity, as he describes it.

[26] Finding no error in Daniel’s termination by the ISP, we affirm.²

Bailey, J., and Foley, J., concur.

² We decline to address Daniel’s argument that the Board’s decision upholding his termination “violates public policy” as being an improper claim for relief. Judicial review of an agency decision is governed by the standards set forth in Indiana Code § 4-21.5-5-14. These standards contain no reference to public policy. Indeed, our Supreme Court has declined to consider notions of public policy when dealing with agency decisions. *See Ind. Alcohol & Tobacco Comm’n v. Spirited Sales, LLC*, 79 N.E.3d 371, 383 (Ind. 2017) (affirming agency decision and finding that it would be “inappropriate” to weigh “any public policy considerations” as these “are matters to be resolved through the political process”).