STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0801

In re the Matter of the Alleged Misuse of Access to DVS Data by Andrew Brackett.

Filed March 31, 2025
Affirmed
Wheelock, Judge

Department of Public Safety

Joseph A. Kelly, Rebecca L. Duren, Kelly & Lemmons, P.A., St. Paul, Minnesota (for relator Andrew Brackett)

Keith Ellison, Attorney General, Cory J. Marsolek, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Department of Public Safety)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Relator Andrew Brackett appeals respondent Minnesota Department of Public Safety's permanent revocation of his access to a state driver- and vehicle-services information database. We affirm.

FACTS

Officers A.C. and A.K. were working at the University of Minnesota Police Department (UMN PD) in early January 2021 with then-officer Brackett when Brackett asked A.C. if he could run a license-plate search with her computer. A.C. was logged in

to the Police Information Management System (the database). The database provides officers with nonpublic data that includes Minnesota driver's-license and license-plate information.

After A.C. agreed, Brackett entered a plate number into the database, looked at the search results, and deleted the information he obtained from the search. Minutes later, A.C. overheard Brackett tell A.K. that the plate he ran belonged to a woman at his gym whom he found attractive. He explained that he left the gym at the same time as she did and noted her license-plate number. A.C. then asked Brackett what he planned to do with the information from his search, and Brackett said that he "was just curious."

A.C. reported the incident to her supervisor, and Brackett was charged with misuse of nonpublic data in violation of Minn. Stat. § 609.43(2) (2020). Brackett pleaded guilty, and thereafter, he was discharged from his position with UMN PD.

At the time Brackett committed the offense, Minn. Stat. § 171.12, subd. 1a(b) (2020) (subdivision 1a(b)), required the Minnesota Department of Public Safety (the department) to "immediately and permanently revoke the authorization of any individual who willfully . . . accessed . . . data [including from the database] in violation of state or federal law." Minn. Stat. § 171.12, subd. 1a(b). Accordingly, in April 2022, when the department received notice of Brackett's nonbusiness search, it began an audit of the incident to verify that Brackett willfully accessed data from the database in violation of state or federal law.

Department staff spoke with the chief law-enforcement officer supervising Brackett, who provided documentation of Brackett's data misuse. Another UMN PD officer also

verified that Brackett had misused data. Based on this information, department staff concluded that Brackett had conducted a search of the database for a nonbusiness purpose in violation of Minnesota and federal laws. Brackett's audit was submitted to senior department staff for review and approval, and it included a recommendation for permanent revocation of Brackett's access to the database in accordance with subdivision 1a(b).

The department approved its audit of Brackett's data misuse on August 1, 2023, finding that he had violated the law and permanently revoking his access to the database. In a September 11, 2023 letter, the department set forth its findings of fact and conclusions of law along with a description of its audit process, findings, and determination. The department expressly determined that Brackett violated Minn. Stat. § 168.346, subd. 1 (2020), and the federal Driver's Privacy Protection Act, 18 U.S.C. § 2721 (2018). The department also concluded that subdivision 1a(b) applied and required permanent revocation of Brackett's access to the database. The department sent the September 11 letter to UMN PD via certified mail and an encrypted email in which it also requested that UMN PD notify Brackett of the revocation of his access to the database. Brackett received a copy of the department's findings and letter via an email from department staff in March 2024.

Brackett appeals.

DECISION

"An agency's quasi-judicial determinations will be upheld unless they are unconstitutional, outside the agency's jurisdiction, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious."

Carter v. Olmsted Cnty. Hous. & Redev. Auth., 574 N.W.2d 725, 729 (Minn. App. 1998). "The relator has the burden of proof when challenging an agency decision." *Minn. Ctr. for Env't Advoc. v. Minn. Pollution Control Agency*, 660 N.W.2d 427, 433 (Minn. App. 2003).

Brackett argues that, when he received notice in March 2024 of the department's September 2023 decision to revoke his access to the database, subdivision 1a(b) had been amended to no longer mandate immediate and permanent revocation of access for those who unlawfully use the database, and thus, the department's decision to revoke his access to the database is based on an error of law and cannot be upheld. His argument succeeds or fails based on whether the current or the previous subdivision applies to him. To support his argument that the current version applies, he relies on language in the session law. Because Brackett's argument is based on the legislature's 2023 amendment to the subdivision, we begin our analysis with a brief background of it.

Prior to October 1, 2023, subdivision 1a(b) was identical to the version in effect at the time of Brackett's unlawful use of the database: "The commissioner must immediately and permanently revoke the authorization of any individual who willfully entered, updated, accessed, shared, or disseminated data in violation of state or federal law." Minn. Stat. § 171.12, subd. 1a(b) (2022).

In 2023, the legislature amended subdivision 1a(b) to state: "If the commissioner determines that an individual willfully entered, updated, accessed, shared, or disseminated data in violation of state or federal law, the commissioner must impose disciplinary action." Minn. Stat. § 171.12, subd. 1a(b) (2024); 2023 Minn. Laws ch. 68, art. 6, § 11, at 3443. "Disciplinary action" for misuse can include revocation. Minn. Stat. § 171.12, subd. 1a(e)

(2024).[1] The session law enacting these amendments expressly stated: "**EFFECTIVE DATE.** This section is effective October 1, 2023. Paragraphs (b), (c), and (e) apply to audits of data use that are open on or after October 1, 2023." 2023 Minn. Laws ch. 68, art. 6, § 11, at 3443.

Returning to Brackett's argument, he relies on his assertion that he did not receive notice of the department's decision until after the amendments became effective, pointing to language in a statute that provides for judicial review of quasi-judicial agency decisions through a writ of certiorari, Minn. Stat. § 606.01 (2024),[2] to argue that he did not receive "due notice" of the revocation of his access to the database. He further relies on the language in the session law enacting the amendments to section 171.12, subdivision 1(a), that states they "apply to audits of data use that are open on or after October 1, 2023," to argue that, because he did not receive notice of the audit's completion until March 2024, the department's "audit" of his data use was "open" after October 1, 2023. Because Brackett's argument hinges on the meanings of "audit" and "open" as used in the "EFFECTIVE DATE" section of the session law, we apply the rules of statutory interpretation.

[1] The amendments also require the commissioner to forward the matter to the appropriate prosecuting authority for prosecution and to establish a process that allows someone subject to disciplinary action to appeal the action. 2023 Minn. Laws ch. 68, art. 6, § 11, at 3443 (amending Minn. Stat. § 171.12, subd. 1a).

[2] Section 606.01 provides, "No writ of certiorari shall be issued, to correct any proceeding, unless such writ shall be issued within 60 days after the party applying for such writ shall have received due notice of the proceeding sought to be reviewed thereby." Minn. Stat. § 606.01.

The interpretation and application of law to undisputed facts is a question of law that we review de novo. *Mattice v. Minn. Prop. Ins. Placement*, 655 N.W.2d 336, 340 (Minn. App. 2002), *rev. denied* (Minn. Mar. 18, 2003). The first step in statutory interpretation is to determine whether the language in the law is ambiguous. *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017); *Cent. Specialties, Inc. v. Minn. Dep't of Transp.*, 5 N.W.3d 409, 421 (Minn. App. 2024) (applying this aspect of *Thonesavanh*). A law is ambiguous only if it is subject to more than one reasonable interpretation. *Thonesavanh*, 904 N.W.2d at 435. We construe words and phrases "according to rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08(1) (2024). "If the legislature's intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and we apply the statute's plain meaning." *State v. Stay*, 935 N.W.2d 428, 430 (Minn. 2019) (quotation omitted); *Broadway Child Care Ctr., Inc. v. Minn. Dep't of Hum. Servs.*, 955 N.W.2d 626, 631 (Minn. App. 2021) (quotation omitted). Chapter 171 of the Minnesota Statutes does not provide definitions of "audit" or "open," so we turn to dictionary definitions. *See State v. Haywood*, 886 N.W.2d 485, 490 (Minn. 2016) ("In the absence of a statutory definition, we look to dictionary definitions to determine the plain meaning of words."); *Sterry v. Minn. Dep't of Corr.*, 8 N.W.3d 224, 233 (Minn. 2024) ("[Appellate courts] often look to dictionary definitions when determining the plain meaning of undefined words in the context of a statute.").

Because Brackett argues that he succeeds if an "audit" of his conduct was "open" when he received the March 2024 notice, we begin with a consideration of whether the

term "audit" as used in the session law is ambiguous. An "audit" is "a thorough examination or evaluation." *The American Heritage Dictionary of the English Language* 117 (5th ed. 2018). The plain meaning of audit—as an examination or evaluation—is reasonable and consistent with the context of section 171, subdivision 1a, as applied to conduct involving the database. This subdivision concerns the security of the nonpublic data in the database, limits access to certain individuals acting within their "official duties," requires that all access to the database be recorded in a "data audit trail," and mandates that the commissioner of public safety establish procedures to ensure these requirements are met. 2023 Minn. Laws ch. 68, art. 6, § 11, at 3443 (amending section 171, subdivision 1a). Here, the legislature stated that the amendments to subdivision 1a(b) "apply to *audits* of data use that are open on or after October 1, 2023." *Id.* (emphasis added). We understand audit, here, to mean "a thorough examination or evaluation" of data use. We cannot discern another reasonable interpretation of the term audit, and Brackett has not provided us with one. We therefore conclude that the term audit as used in the session law is not ambiguous.

We next consider whether the term "open" as used in the session law is ambiguous. When something is "open," it is "not yet decided; subject to further thought." *American Heritage*, *supra*, at 1234. The plain meaning of open—as not yet decided—is reasonable and consistent with the context of section 171, subdivision 1a, which obliges the commissioner to establish procedures to ensure the security of the database and monitor access to it. 2023 Minn. Laws ch. 68, art. 6, § 11, at 3443 (amending section 171, subdivision 1a). Open indicates that the commissioner's decision relating to an unlawful use of the database has not yet been reached. Here, the session law states that the

subdivision 1a(b) amendments "apply to audits of data use that are *open* on or after October 1, 2023." *Id.* (emphasis added). As used in the relevant text, we understand "open" to mean "not yet decided" or "subject to further thought" from the time the audit begins until senior department staff approves or "closes" the audit because, at the time the audit is approved, the question of whether an unlawful use occurred is decided and no longer subject to further thought. We cannot discern another reasonable interpretation of the term open, and Brackett has not provided us with one. We therefore conclude that the term "open" as used in the session law is not ambiguous.

Because the legislature's intent is discernible from the plain language it used in the session law, statutory construction is neither necessary nor permitted, and we must apply the session law's plain meaning here. The session law states that the amendments to subdivision 1a(b) "apply to audits of data use that are open on or after October 1, 2023." *Id.* Senior department staff approved the audit recommending permanent revocation of Brackett's access to the database on August 1, 2023, and the department permanently revoked Brackett's access to the database on September 11, 2023. Brackett's audit was not open or "subject to further thought" after August 1 because the department approved the audit on that date. Therefore, the audit or "thorough examination or evaluation" of Brackett's data use was not open on or after October 1, 2023. Because our application of the plain language of the session law shows that Brackett's audit was not open on or after October 1, 2023, the amendments to subdivision 1a(b) did not apply. Rather, the subdivision 1a(b) language in effect during Brackett's unlawful data use and the audit of that use required immediate and permanent revocation of Brackett's access to the

database.[3] Therefore, we conclude that the department's decision to revoke Brackett's access to the database is not based on legal error.[4]

Affirmed.

[3] In reaching this conclusion, we also observe that the legislature did not include any language in its amendments to section 171.12 to indicate that the amendments are to be applied retroactively. "No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." Minn. Stat. § 645.21 (2024).

[4] In his principal brief, Brackett appears to argue that this court must either resolve Brackett's case using the 2023 amendments or reverse the agency's decision because Brackett received notice of his revocation in March 2024, which was after October 1, 2023. We are not persuaded by this argument because, rather than directing the amendments to apply to audits in which individuals receive notice of the department's decision on or after October 1, 2023, the legislature directed the amendments to apply to "audits" that were "open" on or after October 1, 2023.

In his reply brief, Brackett argues that the amelioration doctrine compels this court to apply the amendments to section 171.12 here. Because this argument was raised only in his reply brief, it is not properly before us and we do not consider it. *See Wood v. Diamonds Sports Bar & Grill, Inc.*, 654 N.W.2d 704, 707 (Minn. App. 2002), *rev. denied* (Minn. Feb. 26, 2003).