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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

HOWARD K. CARRUTH,

Plaintiff and Respondent,

v.

HOUSING AUTHORITY OF
THE CITY OF LOS ANGELES,

Defendant and Appellant.

B266509

(Los Angeles County
Super. Ct. No. BS150569)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert H. O'Brien, Judge. Affirmed.

Joseph L. Stark & Associates and Joseph L. Stark for Defendant and Appellant.

Howard K. Carruth, in pro. per., for Plaintiff and Respondent.

INTRODUCTION

The Housing Authority of the City of Los Angeles (Housing Authority) appeals from a judgment granting a petition for writ of mandate directing the Housing Authority to set aside its decision terminating participation by Howard K. Carruth in the Section 8 housing program. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Carruth applied for Section 8 subsidized housing in March 2000. He was accepted and moved into the subsidized apartment at issue in this case on March 15, 2007.¹ His son was an authorized tenant in the apartment.

In March 2014, the Section 8 Investigations Unit (SIU) received an anonymous referral indicating that Carruth was married to Ana Luz Mejia and that she was living in the apartment.² The SIU conducted an investigation, which revealed that Carruth married Mejia in 1999. Her driver's license listed the apartment as her address, and public records also indicated that she may have lived in the apartment. Public records also

¹ The record contains evidence that the Housing Authority provided housing subsidies to Carruth as early as March 2001. In light the Housing Authority's undisputed contention that Carruth moved into the subsidized unit at issue in March 2007, any earlier subsidies presumably related to a different unit. No party addresses this anomaly.

² Documents in the record refer to Mejia by various names, including "Ana Luz Carruth" and "Ana Luz." For simplicity, we refer to her as "Mejia."

indicted that during this same time period, Mejia may have owned a cosmetology business. Additionally, in 2011, 2012, and 2013, Carruth filled out eligibility questionnaires in which he reported that he was single.

The SIU requested an informal hearing. It recommended terminating Carruth from the Section 8 program for having an unauthorized tenant and unreported income and for fraud. It further recommended charging Carruth over \$130,000 for housing subsidies he had received and banning him from the Section 8 program for 10 years or until his debt to the Housing Authority was repaid.

At the hearing, Carruth stated that he and Mejia stayed together only five months after they were married, and she did not live with him. There was nothing he could do about Mejia using his address on her driver's license.

Carruth provided a letter from his landlord stating that, according to the landlord's records, Carruth and his son were the occupants of the apartment. He provided a letter from Mejia stating that she had not lived with Carruth since 2000. He provided an unsworn "affidavit" stating that he filed as single on his tax returns and did not intend to mislead anyone.

Housing Authority records indicated that on February 4, 2014 (i.e., before the SIU received the anonymous referral concerning Carruth and Mejia), Carruth asked "to add his wife Ana to [the] contract." On February 24, "[t]he spouse was added to family composition and to the voucher. Voucher will be upgraded to 2 bedrooms." Carruth's 2013 eligibility questionnaire, on which he checked his marital status as single, listed Mejia (identified as "Ana Luz Carruth") as his wife under

the request that he list all members who will live in the unit. Mejia's signature was also on the form.

After considering the evidence, the Housing Authority concluded that Carruth had permitted Mejia "to receive mail and reside in the unit as an unauthorized tenant." He also "failed to provide [his] true marital status on eligibility documents and attempted to add [Mejia] to the family composition on February 4, 2014." Additionally, he "provided no evidence to show that [Mejia] resides at another address." According to the hearing officer, Carruth's "failure to disclose true and complete information concerning [his] marital status and permitting [Mejia] to reside and/or use the address of the assisted unit constitutes fraud and resulted in a . . . retro charge in the amount of \$130,513.00 for the period January 25, 200[1] to April 1, 2014."³ Carruth was terminated from the Section 8 program and banned from participating in any public housing programs for 10 years.

Carruth filed a petition for writ of administrative mandate on August 21, 2014, seeking to overturn the Housing Authority's

³ The SIU's investigative report stated that Carruth owed the Housing Authority \$130,513 for subsidies from March 15, 2007, to "EOP," which apparently means "end of participation." An interoffice memorandum authored by the SIU investigator, however, stated that the total for January 25, 2001, through end of participation was "estimated at \$130,513." And a separate spreadsheet in the administrative record reflected a total of \$134,100 for the "Fraud Period" from January 25, 2001, through August 1, 2014. Carruth moved into the apartment at issue on March 15, 2007, and the record contains no evidence or allegation that Mejia ever resided with him at any previous subsidized address.

decision. He complained that the SIU “did not physically investigate the unit to determine[] if someone else lived in the unit, instead reply [*sic*] on data information.” He also stated that he previously wrote “separated” or “divorced” on Housing Authority documents, and after he started writing “single,” no one questioned him.

The Housing Authority opposed the petition, arguing that Carruth was not legally separated or divorced from Mejia, the letter from his landlord did not establish that Mejia did not live in the apartment as an unauthorized tenant, and the letter from Mejia was unauthenticated, unsworn, and had no indicia of reliability.

The trial court granted the petition. It found that the Housing Authority’s finding that Carruth permitted Mejia to live in the apartment “is not supported by substantial evidence. The primary evidence introduced to show that [Mejia] lived at the property without authorization were the results [of] an ‘Accurint’ search made under [Mejia’s] name and the address listed on [Mejia’s] driver’s license. This is insufficient. There is no indication that the information from the Accurint database is accurate and [the Housing Authority] offer[s] no explanation as to where the information from the database comes from, or why it is reliable. Indeed, the results of that search indicate that [Mejia] lived at multiple other addresses during the period in question, so even if the Accurint results are taken at face value they would support a finding that [Carruth] did not allow [Mejia] to live in the unit. . . . As for the driver’s license, this does not establish that [Mejia] actually lived in the unit for any specific period of time; she may have simply listed [Carruth’s] address for convenience.” For these reasons and others, the court found that

“the weight of the evidence is against a finding that [Carruth] allowed [Mejia] to live in the subsidized unit without [the Housing Authority’s] permission.”

The court also found “[t]he weight of the evidence shows that [Carruth] did not intentionally and knowingly make false statements to” the Housing Authority. His statements indicated that he considered himself single even though he was technically still married, because he did not live with Mejia. “Importantly, there was no showing that listing himself as married or single would have impacted his ability to receive subsidized housing benefits in any way.” Carruth’s “answers to the questionnaires appear to have been the result of a mistake, not an intent to defraud.”

The court entered judgment in favor of Carruth and issued a writ of mandate directing the Housing Authority to set aside its decision.⁴

DISCUSSION

Code of Civil Procedure section 1094.5 “governs judicial review by administrative mandate of any final decision or order

⁴ On August 10, 2015, the trial court entered an order granting the petition and directing Carruth to prepare a proposed judgment and writ. On August 28, 2015, the Housing Authority filed its notice of appeal, purporting to appeal from the “judgment” entered on August 10. The court entered judgment a few days later, on September 1. We liberally construe the notice of appeal to refer to the September 1 judgment rather than the August 10 order; so construed, it is timely. (See Cal. Rules of Court, rules 8.100(a)(2), 8.104(d)(2); *Sheet Metal Workers Internat. Assn., Local Union No. 104 v. Rea* (2007) 153 Cal.App.4th 1071, 1074, fn. 2.)

rendered by an administrative agency. A trial court's review of an adjudicatory administrative decision is subject to two possible standards of review depending upon the nature of the right involved. (Code Civ. Proc., § 1094.5, subd. (c).) If the administrative decision substantially affects a fundamental vested right, the trial court must exercise its independent judgment on the evidence. [Citations.] The trial court must not only examine the administrative record for errors of law, but must also conduct an independent review of the entire record to determine whether the weight of the evidence supports the administrative findings. [Citation.] If, on the other hand, the administrative decision neither involves nor substantially affects a fundamental vested right, the trial court's review is limited to determining whether the administrative findings are supported by substantial evidence. [Citations.]” (*Wences v. City of Los Angeles* (2009) 177 Cal.App.4th 305, 313.)

Here, the trial court exercised its independent judgment, reviewed the administrative record, and determined that the agency's decision was against the weight of the evidence. On appeal, the Housing Authority concedes that it was proper for the trial court to exercise its independent judgment, stating that the court “was obliged to apply the ‘independent judgment’ test.”

“On appeal from a decision of a trial court applying its independent judgment, we review the trial court's findings rather than those of the administrative agency. [Citation.] Specifically, we review the trial court's factual findings for substantial evidence. In doing so, we must resolve all conflicts in favor of . . . the party prevailing below. Further, we cannot reweigh the evidence. Thus, we do not determine whether substantial evidence would have supported a contrary judgment, but only

whether substantial evidence supports the judgment actually made by the trial court. [Citations.]” (*Norasingh v. Lightbourne* (2014) 229 Cal.App.4th 740, 753; see also *Wences v. City of Los Angeles, supra*, 177 Cal.App.4th at p. 318.) The question is whether there is any substantial evidence, contradicted or uncontradicted, to support the trial court’s conclusion that the weight of the evidence does not support the Housing Authority’s findings of fact. (*Norasingh, supra*, at p. 753.) “‘We uphold the trial court’s findings unless they so lack evidentiary support that they are unreasonable.’ [Citation.]” (*Ibid.*) We review the trial court’s legal conclusions de novo. (*Coastal Environmental Rights Foundation v. California Regional Water Quality Control Bd.* (2017) 12 Cal.App.5th 178, 190.)

The Housing Authority presents four arguments for reversal of the judgment. We conclude that none of them has merit.

First, the Housing Authority argues that the trial court’s finding that Carruth did not act with intent to defraud was not a valid basis to grant the petition because, under applicable regulations, Carruth’s provision of false information (i.e., that he was single when he was in fact married) was a sufficient basis for termination of his housing subsidy without any “showing of intent or scienter.” The argument fails because no such claim was presented at or before the administrative hearing. The “Notice of Intended Action” that was sent to Carruth alleged that he “committed fraud in connection with a federal housing program.” The SIU investigative report sustained allegations of “fraud” and “unauthorized tenant” and recommended that Carruth’s housing subsidy “be terminated for fraud.” At the administrative hearing, the SIU investigator stated that “[t]he

allegations in this case are unauthorized tenant . . . and fraud.” The hearing officer found that Carruth’s conduct “constitutes fraud” and banned him from participating in any public housing program “for a period of ten years due to [f]raud.” The Housing Authority cites no authority for the proposition that we may reverse the trial court on a basis that was never alleged, addressed, or decided in the administrative hearing. We are aware of none. (See generally *Hagopian v. State of California* (2014) 223 Cal.App.4th 349, 371 [administrative remedies must be exhausted before judicial relief may be sought].)

Second, the Housing Authority cites several cases concerning jury trials in which the judges engaged in improper questioning of witnesses and commentary on the evidence, and the Housing Authority argues that the trial court violated the rules articulated in those cases by “abandon[ing] its role of arbiter in favor of a role as advocate for Mr. Carruth.” We disagree. The cases cited by the Housing Authority are inapplicable, because this was not a jury trial. In addition, the hearing on Carruth’s petition was not reported, and the Housing Authority did not provide a settled statement.⁵ (See Cal. Rules of Court, rule 8.137.) We consequently have no basis to conclude that the trial court engaged in any intemperate or otherwise improper conduct at the hearing, so we must reject any such

⁵ The Housing Authority’s designation of record requested the reporter’s transcript for the hearing on the petition on August 10, 2015. But the designation of record identifies the name of the reporter as “none.” The minute order from the hearing likewise identifies the reporter as “NONE.” We conclude that the hearing was not reported. No reporter’s transcript was ever filed in this court.

contention. (See *Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362 [the appellant bears the burden of providing a sufficient record to show error].) The clerk’s transcript contains no evidence that the trial court assumed the role of “advocate for Mr. Carruth” other than the fact that the court ruled in Carruth’s favor. For all of these reasons, we conclude that the Housing Authority’s second argument lacks merit.

Third, the Housing Authority argues that because the administrative agency’s decision is entitled to “a strong presumption of correctness” (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817) and Carruth’s written submissions were deficient, the petition should have been denied.⁶ Again, we are not persuaded. Carruth did not file a trial brief, but his petition, though short and inelegantly phrased, does articulate the grounds on which he contended that the Housing Authority erred: Mejia never lived with him at the subsidized address; the Housing Authority “did not physically investigate the unit” to determine whether she lived there, instead relying on “mail or DMV information”; and he innocently failed to describe himself as married because he only lived with Mejia very briefly after their wedding. The petition was sufficient to apprise the court of the issues presented and to afford a basis on which the court could discharge its duty to review the administrative record and exercise its independent judgment to determine whether the

⁶ The Housing Authority also contends that at the hearing, Carruth “stated that he had nothing substantive to offer to the court.” None of the Housing Authority’s assertions about what transpired at the hearing is supported by the record, however, because we do not have a reporter’s transcript or a settled statement.

agency's findings were against the weight of the evidence. The Housing Authority's argument does not show that the court committed legal error or that its findings of fact were not supported by substantial evidence. The argument thus fails to provide any basis for reversal.

Fourth and finally, the Housing Authority argues that there is more than sufficient evidence that Carruth violated applicable regulations. The argument is of no consequence under the applicable standard of review. The question before us is not whether there is substantial evidence to support the agency's findings, which were rejected by the trial court. Rather, the question is whether there is substantial evidence to support the findings that the trial court made. (See *Norasingh v. Lightbourne, supra*, 229 Cal.App.4th at p. 753.) The Housing Authority does not argue that the court's findings are not supported by substantial evidence.

For all of the foregoing reasons, we conclude that the Housing Authority has not articulated any valid basis for reversal. We therefore must affirm the judgment. (See *Kim v. Konad USA Distribution, Inc.* (2014) 226 Cal.App.4th 1336, 1351-1352 [the appellant bears the burden of demonstrating reversible error].)

DISPOSITION

The judgment is affirmed. Carruth is awarded his costs on appeal.

MENETREZ, J.*

We concur:

ZELON, Acting P. J.

SEGAL, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.