

DA 19-0068

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 301N

CARRIE A. PINTAR, d/b/a AMAZING TAXI,

Petitioner and Appellant,

v.

STATE OF MONTANA, MONTANA HUMAN RIGHTS BUREAU,
and MONTANA PUBLIC SERVICE COMMISSION,

Respondents and Appellees.

APPEAL FROM: District Court of the Sixth Judicial District,
In and For the County of Park, Cause No. DV 2018-107
Honorable Brenda R. Gilbert, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Carrie A. Pintar, Self-represented, Livingston, Montana

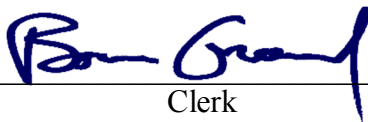
For Appellee:

Justin Kraske, Luke Casey, Public Service Commission, Helena, Montana

Submitted on Briefs: November 6, 2019

Decided: December 31, 2019

Filed:


Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court’s quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Petitioner and Appellant Carrie A. Pintar, d/b/a Amazing Taxi (Pintar), appeals the Decision and Order Affirming Decision of Human Rights Commission issued by the Montana Sixth Judicial District Court, Park County, on January 9, 2019. We affirm, addressing the following dispositive issues: (1) whether the District Court erred by affirming the Final Agency Decision of the Montana Human Rights Commission (HRC); and (2) whether the District Court abused its discretion by not conducting oral argument.

¶3 On March 6, 2017, Lyft, Inc. (Lyft) filed an Application for Certificate of Compliance for Class E Transportation Network Carriers with the Montana Public Service Commission (PSC). Pintar formally protested Lyft’s application, alleging that Lyft did not meet the standard of fitness required for a Class E carrier. The PSC subsequently scheduled a hearing on Lyft’s application for June 5, 2017, pursuant to § 69-12-321(1)(b), MCA. Prior to the hearing, PSC staff prepared a hearing script to be used by the Commissioner presiding over the hearing—in this case PSC chairman Brad Johnson (Johnson). On June 3, 2017, PSC staff sent a copy of the Lyft hearing script to Pintar. The hearing script noted the hearing was to be confined to evidence related to Lyft’s fitness as a motor carrier, and asked the parties to confine their “case-in-chiefs [sic] to under an hour.”

¶4 Pinter appeared before the PSC for the hearing on Lyft’s application on June 5, 2017. Though the hearing script asked the parties to contain their arguments to one hour, the hearing ultimately lasted nearly four hours. Pinter asked Commissioner Travis Kavulla to recuse himself from the hearing, but Kavulla did not recuse himself and participated in the hearing. Pinter appeared pro se, while Lyft was represented by counsel. At various times during the hearing, counsel for Lyft objected to Pinter’s lines of questioning—typically for going beyond the scope of the hearing. Chairman Johnson would then allow Pinter to explain why her questioning was relevant to Lyft’s fitness as a motor carrier before ruling on the objection. After the completion of the hearing, Pinter requested a new hearing in front of the PSC and filed a complaint before the Montana Human Rights Bureau (HRB), alleging that the PSC unlawfully discriminated against her on the basis of sex.

¶5 When a complaint alleges illegal discrimination, HRB is required to “informally investigate the matters set out in the complaint promptly and impartially to determine whether there is reasonable cause to believe that the allegations are supported by a preponderance of the evidence.” Section 49-2-504(1), MCA. In this case, the HRB investigator conducted an informal investigation, in which he obtained position statements from Pinter and the PSC; reviewed a transcript of the June 5, 2017 hearing; and watched the nearly four-hour video of the June 5, 2017 hearing. Following this informal investigation, the HRB investigator issued a Final Investigative Report on February 1, 2018, which found no reasonable cause to believe unlawful discrimination occurred as charged in Pinter’s complaint. After receipt of the Final Investigative Report finding no unlawful discrimination occurred, HRB issued a notice of dismissal pursuant to

§ 49-2-504(7)(b), MCA, on February 2, 2018. In accordance with § 49-2-504(7)(b)(i), MCA, Pintar elected to continue with the administrative process and appealed to the HRC on February 8, 2018.

¶6 Section 49-2-511(1), MCA, requires objections be filed with the HRC within 14 days after HRB issues its notice of dismissal. In this case, however, Pintar was unable to open the HRB record and complete her brief, so she dismissed her appeal on March 5, 2018. HRC issued an Order of Dismissal on March 7, 2018. After Pintar explained to the HRC that she dismissed her appeal due to the issues with the transmission of the HRB record—not voluntarily—to the HRC, the HRC issued an Order Nunc Pro Tunc Re-Setting Briefing Schedule, allowing Pintar’s objections to proceed. The HRC set a briefing schedule and noted it had meetings scheduled for the week of May 14, 2018, in Helena. After the parties briefed the matter, the HRC noted no party requested oral argument on Pintar’s objections. The HRC considered the matter at its May 18, 2018, meeting, and subsequently issued its Final Agency Decision pursuant to § 49-2-511(2)(b), MCA, which overruled Pintar’s objections and affirmed the findings of the HRB, on May 29, 2018.

¶7 In accordance with § 49-2-511(3)(b), MCA, Pintar appealed the decision of the HRC to the District Court by filing a Petition for Judicial Review on June 26, 2018. On August 24, 2018, the District Court issued an Order Setting Briefing Schedule, which, in relevant part, stated that “[a]ny party may request oral arguments at any time after all briefing is complete.” Pintar thereafter requested oral argument on her Petition in her opening brief but did not request oral argument in either her reply brief or “after all briefing is complete.” The District Court did not hold a hearing on the Petition, and issued its

Decision and Order Affirming Decision of Human Rights Commission on January 9, 2019. Pintar appeals.

¶8 As a preliminary matter, we note the PSC urges this Court to utilize the standard of review “applicable to informal agency decisions” rather than the standard of review for agency decisions provided by the Montana Administrative Procedures Act (MAPA) at § 2-4-704(2), MCA. Because Pintar petitioned the District Court pursuant to § 49-2-511(3)(b), MCA, for judicial review of HRC’s § 49-2-511(2)(b), MCA, notice of dismissal, she was entitled to review of the decision “pursuant to part 7” of MAPA. Section 2-4-604(5), MCA. Part 7 of MAPA provides for judicial review of contested cases. Section 2-4-702, MCA. Thus, even though Pintar appeals the results of HRB’s informal investigation, which were upheld by the HRC, we review this appeal as though it were a contested case and not simply an informal agency decision.

¶9 In accordance with the foregoing discussion, we note that MAPA governs actions before the HRC. *Bollinger v. Billings Clinic*, 2019 MT 42, ¶ 26, 394 Mont. 338, 434 P.3d 885. MAPA provides the standard of judicial review of agency decisions:

The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

- (a) the administrative findings, inferences, conclusions, or decision are:
 - (i) in violation of constitutional or statutory provisions;
 - (ii) in excess of the statutory authority of the agency;
 - (iii) made upon unlawful procedure;

(iv) affected by other error of law;

(v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Section 2-4-704(2), MCA. “Under this standard of review, which applies to both the district court’s review of the agency decision and this Court’s review of the district court’s decision, a reviewing court may not substitute its judgment for that of the administrative agency, but instead reviews the entire record to determine if the agency’s findings of fact are clearly erroneous and its conclusions of law are correct.” *KB Enters., LLC v. Mont. Human Rights Comm’n*, 2019 MT 131, ¶ 6, 396 Mont. 134, 443 P.3d 498 (citing *Bollinger*, ¶ 26). A finding is clearly erroneous if it is not supported by substantial evidence, if the agency misapprehended the effect of evidence, or if our review of the record convinces us that a mistake has been made. *KB Enters.*, ¶ 6 (citing *Jones v. All Star Painting Inc.*, 2018 MT 70, ¶ 14, 391 Mont. 120, 415 P.3d 986).

¶10 “Administrative findings of fact may not be disturbed on judicial review if they are supported by substantial evidence in the record.” *Peretti v. Dep’t of Revenue*, 2016 MT 105, ¶ 18, 383 Mont. 340, 372 P.3d 447. Substantial evidence is more than a mere scintilla of evidence but may be less than a preponderance of the evidence. *KB Enters.*, ¶ 9 (citing *Peretti*, ¶ 18).

¶11 After reviewing the evidence, we find the HRC’s decision to uphold the finding of the HRB investigator that no unlawful discrimination occurred is supported by substantial

evidence and is not clearly erroneous. Pinter appeared, pro se, at a PSC hearing regarding Lyft's fitness as a motor carrier. Pinter alleges various reasons why she believes discrimination occurred, from the pre-hearing script to incidents during the hearing, which we do not find persuasive. For example, Pinter alleges she suffered unlawful discrimination on the basis of sex due to the hearing script's time limits. Setting aside the fact that both sides, including Lyft's male attorney, were supposedly limited by the hearing script's time limits, the actual hearing lasted nearly four hours—not one hour as Pinter claimed to the HRB investigator. Pinter also alleges she suffered unlawful discrimination on the basis of sex because the entire PSC participated in the hearing, when only two are required. PSC Commissioners appearing at a PSC hearing do not constitute discrimination. Pinter further claims the HRB investigator abused his power by not listening to a separate hearing, but the Final Investigative Report clearly lays out the investigator's reason for doing so—he observed no evidence of discrimination after watching Pinter's hearing. The remainder of Pinter's objections to HRB's investigation are similarly unpersuasive. Substantial evidence exists in the record to support the HRC's finding that no unlawful discrimination occurred.

¶12 Ultimately, Pinter participated in a four-hour PSC hearing, which the PSC reasonably limited to the issues before the Commission at the hearing. While Pinter was frustrated by these limitations, she was allowed a full opportunity to participate, and had some objections to her questions sustained and some overruled. It appears her frustrations are due to the struggle of a pro se litigant attempting to navigate a formal hearing, not due to any unlawful discrimination on the basis of sex. The HRB investigator correctly found

no unlawful discrimination occurred, the HRC correctly adopted this decision as its Final Agency Decision, and the District Court correctly upheld the HRC's Final Agency Decision.

¶13 The second issue we must address is whether the District Court abused its discretion by not conducting oral argument on Pintar's Petition for Judicial Review.

¶14 "The review must be conducted by the court without a jury and must be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof of the irregularities may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs." Section 2-4-704(1), MCA. We review a district court's rulings regarding control of pretrial and trial proceedings for abuse of discretion. *City of Missoula v. Mt. Water Co.*, 2016 MT 183, ¶ 18, 384 Mont. 193, 378 P.3d 1113 (citations omitted). A district court abuses its discretion when it acts arbitrarily without conscientious judgment or exceeds the bounds of reason. *Seltzer v. Morton*, 2007 MT 62, ¶ 65, 336 Mont. 225, 154 P.3d 561 (citation omitted).

¶15 Pintar initially requested oral argument in her Petition for Judicial Relief. After the filing of the Petition, the District Court issued its Order Setting Briefing Schedule, which stated "[a]ny party may request oral arguments at any time after all briefing is complete." Pintar then requested oral argument again in her opening brief but did not request oral argument after briefing was completed. The PSC did not request oral argument at all. As no party requested oral argument after all briefing was completed—as set forth in the court's Order Setting Briefing Schedule—the District Court did not hold oral argument.

¶16 The District Court did not act arbitrarily or exceed the bounds of reason by not holding oral argument. The court set forth a clear instruction on when to make a request for oral argument, and no request for oral argument was made upon completion of the briefing. The District Court has discretion to control proceedings before it and did not abuse its discretion by not conducting oral argument.

¶17 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶18 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ LAURIE McKINNON