

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROBERTA’S CROSSROADS, INC.,

UNPUBLISHED

October 8, 1996

Petitioner-Appellant,

and

BEMIS TRANSITIONAL FACILITY and  
TUTTLE HILL HOUSE,

Petitioners,

v

No. 169343

LC No. 92-044216-AA

DEPARTMENT OF SOCIAL SERVICES,

Respondent-Appellee.

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Before: Markman, P.J., and McDonald and M. J. Matuzak,\* JJ.

PER CURIAM.

This action arises out of petitioner Roberta’s Crossroads’ attempt to obtain licensing from respondent for two adult foster care homes – Bemis Transitional Facility and Tuttle Hill House. Petitioner appeals by right the circuit court order affirming respondent’s decision to deny its applications for licenses. We affirm.

The facilities at issue were intended to provide care for individuals with closed head injuries. At the time of the filing of this appeal, the facilities were operating under a license granted to Roberta Schrock under the corporate name “Roberta’s Inc.” Following complaints in the mid-1980s, respondent investigated whether the Tuttle Hill and Bemis licenses should be renewed. A hearing was scheduled before hearing referee Michael R. Corman to investigate allegations of improper training by the facilities’ staff, inaccurate and fraudulent bookkeeping and incident reports, inappropriate residents, and insufficient finances.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

On May 12, 1988, before the hearing began, the parties entered into a stipulation under which the hearing would be held in abeyance for six months or until a date selected by the Administrative Law Judge. Under the stipulation, Schrock was to form a new corporation to run the facilities and apply for licensing in the name of the newly formed corporation and respondent was to expeditiously evaluate the applications. The stipulation provided that the board of directors of the new corporation was to be comprised of five individuals, including Roberta Schrock; Schrock was not to become chair of the board for at least one year; the remaining four directors were to be independent of Schrock, and the appointments of the other directors required respondent's approval. Further, Schrock was to be prohibited from programmatic or financial involvement in the operation of the facilities for a period of one year. If these requirements were complied with and respondent issued licenses to Roberta's Crossroads, Schrock was to withdraw her then-pending appeals relating to the licenses of Roberta's, Inc.

Hearing referee Corman extended the time for petitioner to comply with the stipulation until March 9, 1989, but refused to further extend the time for compliance. In an apparent attempt to comply with the stipulation, Schrock formed the petitioner corporation, Roberta's Crossroads, Inc., to take over the operation of the Tuttle Hill and Bemis facilities.<sup>1</sup> The bylaws of Roberta's Crossroads indicate an effort to comply with the stipulation. However, petitioner failed to timely comply with the terms of the stipulation. On March 28, 1990, hearing referee Corman denied petitioners' motion to enforce the stipulation of May 1988, finding that "as of March 9, 1989, the stipulation relied on by counsel was without any force or effect and was, for all intents and purposes, a nullity."

Respondent then issued a notice of intent to deny Roberta's Crossroads' applications for licenses for the facilities. In response, petitioner requested a hearing. Regarding the relationship between Roberta's Crossroads and Roberta's, Inc., hearing referee Karen Jacobs stated:

The department clearly, and rightfully, was looking for a change in the way the organizations were run so as to preclude the underlying non-compliances found in prior hearings from occurring again. The Applicant relies extensively on the language of the Bylaws of the new corporation to establish that Roberta Schrock's separation from the day-to-day operation of the corporation had been accomplished. These Bylaws and the way they were drafted give every indication that they were created to fulfill the letter of the stipulation for a very limited period of time. They were not created to respond to the department's underlying concerns, or to preclude future noncompliances. . . . The burden in the case at hand was on the Applicant to establish that this corporation was more than a veil, that the corporate structure had a substance which responded to the valid concerns of the department, that those who had previously run the facility would not run the facility under a future license. . . . The preponderance of the evidence is that Ms. Schrock continued to be very involved in the day-to day operation of the facilities, despite her disclaimers.

Hearing referee Jacobs accordingly considered evidence relating to the prior operation of the facilities by Roberta's, Inc. She found that petitioner had insufficient administrative capability and financial

stability, MCL 400.713(3); MSA 16.610(63)(3), 1979 AC, R 400.2112(1) and 1979 AC, R 400.2302(3), and thus recommended that respondent deny petitioner's applications for licenses for the facilities. Respondent followed this recommendation and denied petitioner's license applications. The circuit court affirmed. Petitioner Roberta's Crossroads now appeals to this Court.

Petitioner preliminarily argues that hearing referee Jacobs erroneously allowed respondent to reopen its proofs after stating that it rested its case. This Court reviews decisions regarding motions to reopen evidence for an abuse of discretion. *Terhaar v Hoekwater*, 182 Mich App 747, 753; 452 NW2d 905 (1990).

On the first day of the hearing, respondent purported to rest its case, stating that it would largely rely on exhibits it filed with the hearing referee. Petitioner's attorney then moved for dismissal of the allegations that petitioner lacked administrative capability, claiming that respondent failed to present a prima facie case. In response, respondent argued that the exhibits presented adequate evidence of petitioner's lack of administrative capability, but offered to present testimonial evidence if the hearing referee desired. Hearing referee Jacobs ruled as follows:

Well, my underlying concern is that we're talking about a state agency licensing an organization that serves people of the State, and that there is a basic social responsibility to be sure that that is done responsibly. And the State closing its case prematurely does not seem like the sort of basis upon which we ought to issue licenses. So if you wish to pursue any further testimony, I would permit reopening your case.

Hearing referee Jacobs articulated sound reasons for reopening the proofs. Further, because only a few minutes elapsed between the time respondent initially rested and the hearing referee allowed reopening of the proofs, we do not understand how petitioner could have been prejudiced thereby. Accordingly, we find no abuse of discretion in the hearing referee's decision to reopen the proofs.

Petitioner next argues that the findings and recommended decision of hearing referee Jacobs were not supported by competent, material and substantial evidence on the whole record as required by MCL 24.306; MSA 3.560(206). Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. *Birmingham School District v Buck*, 204 Mich App 286, 293; 514 NW2d 528 (1993).

Petitioner's main argument on appeal is that Roberta's Crossroads is a completely distinct entity from Schrock and that evidence relating to Schrock's previous operation of the two facilities is irrelevant to Roberta's Crossroads' applications for licenses for these facilities. The evidence indicated that while Schrock made efforts to formally limit her role in Roberta's Crossroads, she remained intimately involved with the day-to-day operation of the two facilities at issue. Schrock was the sole shareholder in Roberta's Crossroads. Although article XIII of Roberta's Crossroads' bylaws purported to restrict Schrock's participation in the corporation, the first twelve articles of the bylaws granted extensive authority to the sole shareholder. As the majority shareholder, the bylaws allowed Schrock to take action without board approval. Schrock was a member of the board of directors and

was also the company's vice president; no other board members were also officers. Schrock was closely involved with the selection of board members, and two members of the Roberta's Crossroads board were long-standing friends of Schrock. Schrock represented the corporation during portions of the hearing before referee Jacobs and made the decision to appeal the denial of petitioners' licenses. Charles Jax, the president of Roberta's Crossroads, was acting as program director for the two facilities and reported directly to Schrock at the time of the hearing. Schrock was familiar with the residents of the facilities and their payment arrangements. At the hearing before referee Jacobs, respondent's licensing consultant testified that he found that Roberta's Crossroads and Schrock "were essentially the same" and that Roberta's Crossroads "was basically Roberta Schrock wrapped in a new cloak." Accordingly, we believe that there was competent, material and substantial evidence that Schrock remained intimately involved in the operation of the facilities. Because of this close relationship, Schrock's past history in operating the facilities was relevant to the determination whether to grant Roberta's Crossroads' applications for licenses for them.

There was evidence to the effect that Roberta's Crossroads lacked the financial stability to operate the facilities. Absent income from other sources, petitioner had funds sufficient to operate the Tuttle Hill and Bemis facilities for only two weeks. Testimony indicated that such a surplus was insufficient to accommodate emergencies or periods of decreased income. By way of comparison, respondent generally expected a new group home facility to have sufficient funds to operate for three months without further income. Respondent sought to avoid a sudden closure or curtailment of the facilities that would leave the residents without services. Here, financial considerations were especially crucial because of evidence that the petitioner facilities had lacked funding in the past and services had suffered as a consequence. Petitioner argues that there are no guidelines for determining whether a facility is "financially stable." However, "the construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons." *Nelligan v Gibson Insulation Co*, 193 Mich App 274, 281; 483 NW2d 460 (1992). Therefore, competent, material and substantial evidence supported the referee's finding that petitioner lacked the financial stability to properly operate the facilities.

There was further evidence to the effect that petitioners lacked the administrative capability to operate the facilities. The Tuttle Hill program description advertised education, physiatry and neuropsychology services for its residents. The program description for the Bemis facility stated that neuropsychology services, social work programs, educational specialists and physiatry services would be available to its residents. However, the education and experience of the staff and limited time commitment of outside specialists did not reflect an ability to actually provide the services advertised. Further, under Schrock, the facilities had a history of violations of the rules of the Michigan Administrative Code, including inadequate and improperly trained staff, inadequate treatment plans, admitting violent residents who were incompatible with the other residents of the facilities, failure to report and document incidents, misrepresentations to respondent and repeated failure to cooperate with respondent's investigations. Therefore, competent, material and substantial evidence supported the referee's finding that petitioner lacked the administrative capability to properly operate the facilities.

For these reasons, we conclude that the findings and recommendation of hearing referee Jacobs were supported by competent, material and substantial evidence on the whole record.

Affirmed.

/s/ Stephen J. Markman

/s/ Gary R. McDonald

/s/ Michael J. Matuzak

<sup>1</sup> Because it would have been illegal for the Tuttle Hill and Bemis facilities to be operated by Roberta's Crossroads without Department of Social Services licensure (the subject of this suit), the facilities were still being operated by Roberta's, Inc., pending an appeal of the denial of Roberta's, Inc.'s, request for re-licensing. That appeal is distinct from the instant appeal.