

importance and value.² The trial court must give due deference to the agency's resolution of evidentiary conflicts and may not substitute its judgment for that of an administrative agency, especially in areas of administrative expertise.³

BACKGROUND

In August 2010 Appellant applied for a one-year educational aide permit. Appellant's application was subsequently denied by the State Board of Education ("Board") because of a 2005 misdemeanor theft without consent conviction. Appellant requested and received a hearing before the Board. The hearing officer recommended that Appellant's application be denied and that he remain ineligible for three years. The Board accepted the hearing officer's recommendation to deny Appellant's application, but instead ordered Appellant's ineligibility permanently. Appellant then appealed to this Court pursuant to R.C. 119.12.

DISCUSSION

In his first Assignment of Error, Appellant argues that "the State Board of Education's decision to deny an educational aide license [...] pursuant to R.C. 3319.31(B)(1) and (B)(2)(c) was arbitrary, capricious, unreasonable, and not supported by the preponderance of substantial, reliable and probative evidence, and was contrary to law." R.C. 3319.31(B)(1) and (B)(2)(c) provide that the Board may refuse to issue a license to an applicant; may limit a license it issues to an applicant; and may suspend, revoke, or limit a license that has been issued to any person for 1) engaging in an immoral act, incompetence, negligence, or conduct that is unbecoming to the applicant's or person's position;⁴ or 2) a conviction of a theft offense.⁵

² *Id.* (internal citation omitted).

³ *Gaither-Thompson v. Ohio Civ. Rights Comm.*, 176 Ohio App.3d 493, 2008-Ohio-2559, ¶ 16 (1st Dist. 2008).

⁴ R.C. 3319.31(B)(1).

⁵ R.C. 3319.31(B)(2)(c).

Appellant asserts that his educational aide permit was denied under both of these provisions as a result of his 2005 misdemeanor conviction of theft without consent. Appellant argues that the Board's order is not supported by substantial, reliable and probative evidence because 1) a conviction for a misdemeanor theft does not automatically warrant the denial of a permit; and 2) the evidence presented is not substantial enough to support a finding that Appellant engaged in conduct unbecoming of an educator. Appellee argues that Appellant concedes that he pled no contest to theft without consent in violation of R.C. 2913.02, and therefore the Board acted in accordance with its authority under the law.

On appeal, this Court may not substitute its judgment for that of the administrative agency. In light of the evidence of Appellant's conviction, this Court finds that the Board's order is supported by reliable, probative and substantial evidence. First, Appellant admits that he pled no contest to the offense, rendering any evidence of the conviction reliable. Second, Appellant was convicted of a theft offense. This type of offense falls squarely within the purview of R.C. 3319.31(B)(2)(c), making it extremely relevant. Lastly, the evidence of a conviction is substantial to the issue before the Court. Even without considering the allegation that Appellant involved a minor student in his theft offense, this Court finds that evidence of a conviction bears some importance to whether an applicant should be granted an educational aide permit. Therefore, the Court finds that the Board's order is supported by reliable, probative and substantial evidence.

The Court need not consider Appellant's second assignment of error.

CONCLUSION

Accordingly, IT IS THE ORDER OF THE COURT that Appellant's Assignments of Error are OVERRULED.

Be it so Ordered.

Date: 10-14-16

COURT OF COMMON PLEAS
ENTER
JUDGE TOM HEBKIN
THE CLERK SHALL SERVE NOTICE
TO PARTIES PURSUANT TO CIVIL
RULE 58 WHICH SHALL BE TAXED
AS COSTS HEREIN.