

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-05/18-385
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Appeal of)
)

INTRODUCTION

Petitioner appeals the decision by the Department for Children and Families ("DCF" or "Department") substantiating her for sexual abuse of her infant daughter. The following facts are adduced from filings submitted by the parties (including a Motion for Summary Judgment made by the Department) and judicial decisions that are a matter of record. Petitioner has filed one response and requested an opportunity to respond further to numerous factual findings made in other judicial forums regarding the same allegations at issue here. She was given until April 8, 2019 but has not responded to date.

FINDINGS OF FACT

1. Petitioner's substantiation stems from a report made on December 14, 2015 that petitioner's then-seven-year-old daughter had been sexually abused by petitioner's husband. In the course of the investigation of this allegation, petitioner reported that she had also sexually

abused her daughter when the daughter was an infant, by digitally penetrating her vagina and making oral contact with her genitalia.

2. The subsequent investigation of petitioner resulted in a recommendation to substantiate her for sexual abuse, a recommendation that petitioner appealed on March 7, 2016 by requesting a Commissioner's Review. The Commissioner's Review was postponed for a period of time due to parallel criminal and family court proceedings related to the same allegations.

3. Petitioner reprised her Commissioner's Review request in March 2018, and the Department's Registry Review Unit held a review meeting with her on March 8, 2018. A Commissioner's Review decision dated March 29, 2018 upheld petitioner's substantiation.¹

4. As noted above, petitioner has been involved in parallel proceedings involving the same allegations at issue here and/or related to her (the same) child. This includes a Child In Need of Supervision (CHINS) matter; a Termination of Parental Rights (TPR) hearing; and a criminal charge of

¹ It is noted that the Board did not receive petitioner's appeal of this decision until May 4, 2018. However, petitioner initially filed her Board appeal with the Registry Review Unit on April 26, 2018, although the Board did not receive it until several days later. In any event, there is no dispute that petitioner's Board appeal was timely filed.

sexual assault. Petitioner appealed the TPR trial court decision to the Vermont Supreme Court; this appeal was pending while her Board appeal was also pending (the Court ultimately issued a decision on petitioner's appeal in November 2018).

5. The CHINS matter was initiated on November 3, 2015, before the allegations at issue in this appeal were reported. Although involving the same child, the CHINS allegations were based on a different issue, alleging that the child was "without proper parental care." The CHINS petition was adjudicated with a stipulated order entered on November 23, 2015 that at the time of the petition, the child "was at risk of emotional harm" as a result of being exposed to the volatile relationship between petitioner and the child's father. A conditional custody order at the time also placed the child in petitioner's custody.

6. It was following the CHINS stipulation, in December 2015, that petitioner reported to the police that the child had reported being sexually assaulted by her father. During the course of this investigation, petitioner reported that she had sexually assaulted her child years before, when the child was an infant, at the father's request. This led to

further oversight and a development of a new case plan by the Department's Family Services Division.

7. Ultimately, however, petitioner was subject to a Termination of Parental Rights order by the Family Division of Superior Court, entered into on April 10, 2018. This order included the following determination: that when the child was an infant, petitioner "engaged in digital penetration of [the child] and performed oral sex on [the child]" following which she sent digital images of this conduct to the child's father (who was not living with her at the time).

8. Petitioner appealed this order to the Vermont Supreme Court, which upheld the decision to terminate petitioner's parental rights. Among the findings that the court specifically analyzes and upholds is petitioner's admission that she sexually assaulted her daughter at the time in question, when her daughter was an infant.

9. Petitioner also entered into a plea agreement and six-month deferred sentence in a criminal case regarding the same allegations of sexual assault of her daughter. This April 5, 2017 plea was to "domestic assault," which was based on an amended charge with the following factual allegation:

"attempted to cause bodily injury to a family or household member, to wit: by putting her mouth on [the child's] vulva."

10. Petitioner was given an opportunity to respond to these various court adjudications and has not proffered any relevant evidence that would address them (to the extent the adjudications could be rebutted). Petitioner has filed an argument with several attachments, but without dispute as to her underlying admission of sexually assaulting her daughter. Petitioner's argument and documentation focuses on her work to address her parenting issues and her own victimization by the child's father, who was convicted of and incarcerated for sexual assault of their daughter.

11. Based on the above record, it is found that petitioner digitally penetrated and performed oral sex on her infant daughter, taking photos of these acts and transmitting these photos to the father.

ORDER

The Department's substantiation of petitioner is affirmed.

REASONS

The Department for Children and Families is required by statute to investigate reports of child abuse and to maintain

a registry of all investigations unless the reported facts are unsubstantiated. 33 V.S.A. §§ 4914, 4915, and 4916. The Department has the burden of proving by a preponderance of evidence that petitioner's conduct constitutes sexual abuse as defined by the statute.

The pertinent sections of the statute define abuse and harm as follows:

(2) An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An "abused or neglected child" also means a child who is sexually abused or at substantial risk of sexual abuse by any person. . . .

. . . (8) "Sexual abuse" consists of any act or acts by any person involving sexual molestation or exploitation of a child included but not limited to incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual abuse also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts a sexual conduct, sexual excitement or sadomasochistic abuse involving a child.

33 V.S.A. § 4912.²

² These are the statutory definitions in effect at the time of the incidents in question. Subsequent amendments to the statute have not materially changed the definitions with respect to the nature of the allegations against petitioner, nor would those amendments affect the outcome here, even if they were applicable.

The record of petitioner's penetration of her infant daughter's vagina and mouth to vulva contact, and subsequent transmission of images of these acts to the child's father, cannot be disputed. The child abuse statute clearly allows for the admission of the numerous court orders confirming this conduct, as they concerned the same allegations involved in the substantiation: ". . .adjudications that arose out of the same incident of abuse or neglect for which the person was substantiated, whether by verdict, by judgment, or by a plea of any type, including a plea resulting in a deferred sentence, shall be competent evidence in a hearing held under this subchapter." 33 V.S.A. § 4916b(4).

Petitioner's conduct clearly meets the definition of sexual abuse under the statute, as it was sexual molestation, assault and exploitation of her daughter. While petitioner may or may not be able to support her claim that she is a competent parent and that she has addressed the circumstances leading to her involvement in numerous legal matters concerning the conduct at issue here, that is not relevant to the Board's review of her substantiation (it may, however, be relevant - at least in part - to any expungement request made by petitioner).

Therefore, the evidence establishes petitioner's substantiation for sexual abuse and the Board must affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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