

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. B-04/10-194  
 )  
Appeal of )

INTRODUCTION

The Department for Children and Families, Family Services Division, substantiated petitioner for risk of physical harm to a child on or about March 18, 2010. On or about April 15, 2010, petitioner's attorney filed a request for fair hearing before the Human Services Board.

Telephone status conferences were held on May 3, 2010 and June 3, 2010. During the June 3 telephone status conference, petitioner's attorney confirmed that petitioner was deceased but would not withdraw the fair hearing request. A briefing deadline was set.

The Department filed a Motion to Dismiss. Petitioner's attorney did not respond. The issue is whether the petitioner's death renders the case moot.

DISCUSSION

The Board addressed mootness in Fair Hearing No. 17,272 stating on pages 5-6 that:

[t]he Vermont Supreme Court has said that as a general rule a case becomes moot "when the issues presented are

no longer 'live' or the parties lack a legally cognizable interest in the outcome." In re S.H., 141 Vt. 278, 280 (1982) quoting from United States Parole Commission v. Geraghty, 445 U.S. 388, 396 (1980) (quoting Powell v. McCormack, 395 U.S. 486, 496 (1969)).

See also Fair Hearing Nos. 18,450 & 18,476, A-10/09-539, and B-04/10-217.

Fair Hearing Nos. 18,450 & 14,876 is the first Board case to address whether an action survives the death of a petitioner. The Board found that an appeal does not survive a petitioner's death.

There is no active controversy in this case nor is there a party such as an estate that has a legal interest in the outcome of this case.

ORDER

The Motion to Dismiss filed by the Department is granted.

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