

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. A-05/11-295  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Family Services Division, denying her request to expunge her name from the child protection registry for substantiation of risk of harm to her daughter, KV, dating from 2001. The issue is whether the Department abused its discretion when it denied petitioner's request for expungement.

The petitioner filed for fair hearing on May 20, 2011 disputing the underlying substantiation and the denial of her expungement request. The Board heard the substantiation appeal first and entered an Order on January 9, 2012 upholding the substantiation for risk of harm. The case was remanded to the hearing officer for further action.

The following is based upon the arguments by the parties and upon the underlying record.

FINDINGS OF FACT

1. This case stems from the Department substantiating petitioner for risk of harm to her daughter, KV. KV was six years old at the time and a kindergarten student. Petitioner lived with DL who acted as a father to KV.

On or about December 11, 2001, a Petition was filed with the Family Court that KV was a child in need of supervision (CHINS). DL admitted on the record that he used a paddle and wooden cutting board to spank KV and that he made KV stand in the corner for inordinate periods of time. KV had bruising consistent with DL's spanking KV with a paddle or wooden cutting board. Petitioner observed some of these events and did not intercede on behalf of KV. The Family Court found that petitioner failed to protect KV from harm. Based on this finding by the Family Court, the Board granted the Department's Motion for Summary Judgment based on collateral estoppel in the above case; the Board's Order to uphold the substantiation based on risk of harm was entered January 9, 2012.

2. Petitioner denied the underlying allegations that she observed DL spank KV with a paddle and a wooden cutting board without intervening on behalf of KV during the expungement review process with the Department.

3. Petitioner requested expungement during January 2011. Petitioner requested expungement after her application for certification as a Legally Exempt Child Care provider was denied. She indicated she was unaware of the substantiation until that time. At the time petitioner requested expungement, petitioner was enrolled in a LNA program; her goal is to become a registered nurse.

4. Petitioner's case was assigned to NR, registry reviewer.

5. Petitioner submitted seven letters of support from friends and co-workers attesting that petitioner is a good parent and attesting that petitioner did not act inappropriately with her children. Six of the writers have known petitioner for at least ten years.

Petitioner submitted a letter of support from KW (formerly KV) that petitioner is a "great mom" and that DL was abusive, not her mother. KW also wrote that she sees her mother regularly and that her mother treats her other children appropriately.

Petitioner submitted a letter from PG, Home School Coordinator who indicated that he has known petitioner since when a referral was made by the school regarding petitioner's son. PG indicated that petitioner cooperated with the school

to resolve the problem and continues to meet monthly about her son.

Petitioner was accompanied by an employee from the local domestic violence program to her meeting with the registry reviewer. The employee indicated that petitioner was good with her children.

Petitioner supplemented the materials with KV's records from the local mental health agency covering the period from August 13, 2002 through November 9, 2006 when KV was discharged from treatment. KV was diagnosed with reactive attachment disorder of infancy and early childhood. Petitioner participated in KV's counseling.

6. The Commissioner's Review of April 20, 2011 denied petitioner's request for expungement. Petitioner timely appealed to the Human Services Board.

7 The Commissioner's Review documented the six factors considered in expungement requests as follows:

- a. Nature of Substantiation. Petitioner was substantiated for placing her daughter, KV, at risk of physical harm. Her parental rights to KV were terminated in December 2005.
- b. Number of substantiations. One.
- c. Time elapsed since the substantiation. More than nine years.

d. Circumstances that would indicate a similar incident are unlikely. Petitioner denies that DL used a paddle and wooden cutting board to discipline KV. The reviewer found these denials not credible. The reviewer noted the continued involvement by the Department based on reports since 2001. Although the reports were not substantiated, services were put in place. The reviewer points to continuing Department interactions and concerns.

e. Activities that indicate person changed behavior or circumstances such as therapy, employment or education. Petitioner has been employed at a range of jobs. Petitioner was attending a four-month program to become a LNA during the review with the goal of becoming a registered nurse.

f. References attesting good moral character. Petitioner submitted seven letters of recommendation, a letter from KV, and a letter from PG. She was accompanied by a worker from the domestic violence program who stated petitioner was good with her children based on the worker's observations of petitioner while petitioner was in the shelter.

8. The Commissioner's Review focuses on a number of factors.

The reviewer looked at the petitioner's involvement with the Department since December 2011 including a review of case plans over time. The reviewer noted the lack of documentation of petitioner attending various services and lack of documentation regarding therapy, parenting classes and anger management.

The reviewer noted concerns with petitioner's credibility stemming, in part, from petitioner's continued

denials regarding risk of harm caused by not intervening when DL used a wooden cutting board or paddle to discipline KV. The reviewer noted that the record from Family Court did not support petitioner's contentions that she was coerced into giving up parental rights; the Order delineated the voluntariness of petitioner's relinquishment of parental rights to KV.

The reviewer also noted the therapy notes for KV as not supportive of claims that the therapy addressed petitioner's parenting skills. KV was the client. The reviewer included the following quote from the initial evaluation in 2002 that "client suffering from inconsistent and at times inadequate and inappropriate parenting which has created lack of bonding and trust in ability of mother to parent child".

The reviewer concluded that petitioner did not meet her burden of showing that her name should be removed from the registry.

ORDER

The Department's decision is affirmed.

REASONS

The overarching purpose of the statutes governing the reporting of abuse is to protect children. 33 V.S.A. §

4911(1). The child protection registry is a tool that is used to further this purpose by providing certain employers and volunteer groups a means to check the suitability of individuals seeking employment or volunteer work with children.

Petitioner's decision to seek expungement is based on her desire to become a registered nurse. Petitioner continues to deny the underlying substantiation for risk of harm.

The expungement process is governed by 33 V.S.A § 4916c. The applicable provisions are found in 33 V.S.A. § 4916c(b), which state:

The person shall have the burden of proving that a reasonable person would believe that he or she no longer presents a risk to the safety or well-being of children. Factors to be considered by the commissioner shall include:

- (1) The nature of the substantiation that resulted in the person's name being placed on the registry.
- (2) The number of substantiations, if more than one.
- (3) The amount of time that has elapsed since the substantiation.
- (4) The circumstances of the substantiation that would indicate whether a similar incident would be likely to occur.
- (5) Any activities that would reflect upon the person's changed behavior or circumstances, such as therapy, employment or education.

(6) References that attest to the person's good moral character.

A person may appeal to the Human Service Board if the commissioner denies his/her request for expungement.

The Board's review is set out in 33 V.S.A. § 4916c(e), which states:

The person shall be prohibited from challenging his or her substantiation at hearing, and the sole issue before the board shall be whether the commissioner abused his or her discretion in denial of the petition for expungement. The hearing shall be on the record below, and determinations of credibility of witnesses made by the commissioner shall be given deference by the board.

The sole issue before the Board is whether the Department abused its discretion when it denied petitioner's request for expungement. The burden is on the petitioner to show that the Department abused its discretion.

Abuse of discretion arises when the decision is made for untenable reasons or the record has no reasonable basis for the decision. State v. Putnam, 164 Vt. 558, 561 (1996); USGen New England, Inc. v. Town of Rockingham, 177 Vt. 193 (2004). Abuse of discretion can extend to a failure to exercise authority. In Re: T.S., 144 Vt. 592, 593 (1984). If the Department has a reasonable basis for their decision, the Board must affirm the Department's decision, even in those situations, in which the Board or another trier of fact



may have reached a different conclusion based on the information at hand.

The Department based their decision on a number of factors including the petitioner's failure to take responsibility for the underlying substantiation, the petitioner's failure to provide documentation that she completed services, and the department's concerns with petitioner's credibility.

The petitioner submitted a letter to the Board stating she understands why she was put on the registry but would like to be off the list. Petitioner points to her involvement with her children including KV. Petitioner writes that she terminated her parental rights so that KV could be adopted and have more security. She adds that she had problems getting documentation. She objects to the Department looking at past reports that were not substantiated as a basis for its decision.

In expungement cases, the Board does not do a de novo review of the evidence but looks at whether there is an abuse of discretion. The Board is limited to looking at the record below and is bound by deference to the Commissioner's credibility determinations of witnesses. The Department has made specific credibility determinations regarding

petitioner. The Board must defer to the Department's credibility determination.

The issue is whether the Department has any reasonable basis for its decision. The Department found that petitioner had not met her burden of proof that she no longer posed a danger to children after considering the information petitioner provided and the statutory criteria.

The Department had a reasonable basis based upon concerns over petitioner's continuing denial, lack of services, and the Department's history with the petitioner. The Department did not abuse its discretion in this case. The Department's decision is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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