

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,030
)
Appeal of)

INTRODUCTION

The petitioner appeals actions taken by the Department of Social and Rehabilitation Services (SRS) in regard to the placement and adoption of his child. SRS has moved to dismiss this matter as not within the jurisdiction of the Board.

DISCUSSION

The petitioner's appeal was initiated by a letter written on September 24, 2002 in which he set forth a grievance regarding SRS' failure to return his daughter to his custody and plans to place her for adoption. He also complained that the SRS workers are ignoring his questions about the caseplan, are not keeping in touch with him and are inappropriately including children in the case plan review meetings. At a telephone status conference on jurisdiction held on October 10, 2002, the petitioner stated that he has been involved in the CHINS (Children In Need of Services) petition regarding this child in family court in Rutland County in which SRS took custody from his ex-wife and that he has an attorney

representing him appointed by the Court. He has a hearing scheduled for October 17, 2002 before that Court. He plans at that hearing to ask for a new attorney as he does not feel he has been well represented by his present attorney.

The Board has had occasion in several prior cases to consider whether the Board has subject matter jurisdiction over appeals involving matters in the juvenile court. Fair Hearing Nos. 7,809, 9,455, 15,108, and 17,726. In Fair Hearing No. 7,809, the Board considered the appeal against SRS by the natural parent of a child in SRS custody pursuant to a CHINS order. In that case the Board held that because the CHINS statutes give the Juvenile Court "exclusive jurisdiction" in all "proceedings" regarding the placement and disposition of those children, the Board does not have subject matter jurisdiction to consider a parent's appeal of a placement decision made by SRS pursuant to a CHINS proceeding.

33 V.S.A. § 5503 provides:

(a) The juvenile court shall have exclusive jurisdiction over all proceedings concerning any child who is . . . a child in need of care or supervision brought under the authority of this chapter, except as otherwise provided in this chapter.

(b) The orders of the juvenile court under the authority of this chapter shall take precedence over any order of any court of this state, except an order establishing child support, to the extent inconsistent herewith.

As discussed in Fair Hearing No. 7,809 (which quoted extensively from a prior decision, Fair Hearing No. 6,435), it is the juvenile court that has the "ultimate say as to what is in the child's best interest" (citing In re G.F., 142 Vt. 273,281 [1982]). Assuming jurisdiction in this matter would in effect place the Board in the position of "second guessing" the court under whose authority SRS acts in placement matters.

As discussed by the Board in both Fair Hearings Nos. 7,809 and 9,455, cases such as these are clearly distinguishable from In re Kirkpatrick 147 Vt. 637 (1987), in which the Vermont Supreme Court ruled that the Board can hear matters not part of a juvenile court "proceeding"¹. In that case the question was whether a natural mother of a child in SRS custody could appeal a decision by SRS denying her reimbursement for her own psychotherapy. As the Board pointed out in those fair hearings, SRS decisions regarding placement of children in its custody are at the "heart" of CHINS proceedings and, thus, must be considered within the exclusive jurisdiction of the juvenile court.

¹The Board has general oversight over decisions and actions by SRS that affect only the petitioner that are not inextricably tied to questions regarding the best interests of the child.

For the above reasons, it must be concluded that 33 V.S.A. § 5503 precludes the Board from taking subject matter jurisdiction over the petitioner's appeal because it is properly and solely before the Juvenile Court. The petitioner does not know who told him to appeal these issues to the Human Services Board because he has spoken with so many persons in this matter. He does not even know if the advice came from an SRS employee. Nevertheless, he complained that the workers should be trained to tell people where to appeal or not to appeal so as to avoid the futility of appealing to the wrong place. While it is surely an inconvenience² to the petitioner to take an appeal to a forum which has no jurisdiction, it is undoubtedly better to have the forum decide whether it can hear the matter than to have an SRS district worker make that decision. An erroneous decision by an SRS worker about the proper appeal forum has the potential of prejudicing an individual with regard to his appeal rights.

² The investment made by the petitioner in this appeal was faxing a letter to the Board on September 24, 2002 and going to the Newport District Office, in his hometown, for a "status conference regarding jurisdiction" on October 10, 2002 which lasted less than half an hour. A written recommendation of "no jurisdiction" was prepared at the petitioner's request on the day of the hearing so that he might take it to his court hearing on October 17.

ORDER

SRS' Motion to Dismiss this case is granted as the Board lacks subject matter jurisdiction over this appeal.

#