

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9247
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social and Rehabilitation Services (hereinafter SRS) "founding" a report against him of sexual abuse of his son, and he seeks to have this report expunged from the SRS registry.

FINDINGS OF FACT

1. On October 20, 1986, SRS received a report from a social worker at the Medical Center Hospital of Vermont that a fourteen year old boy who was admitted with a prolapsed rectum (a portion of the rectum extending from the anus causing pain) was suspected of having been sexually abused.

2. The report was assigned for investigation to the supervisor of social work in the Burlington District office, who holds a bachelor's degree in social work and who, at the time of the report, had worked at SRS for four and a half years and had over 50 hours of training in identifying sexual abuse. At that time she had experience investigating about 450 reports of child abuse, of which 25% were sexual abuse.

3. The SRS investigator contacted the police department and was accompanied to the hospital to interview

the child by a detective who was the lead investigator and coordinator of the Burlington sexual assault unit and who himself had investigated over 200 cases of alleged sexual assault. Prior to the interview, the worker spoke with both the hospital social worker and the attending physician to gather background information and to explore their concerns.

4. The boy was interviewed in his hospital room by the social worker and the police officer. His father, with whom the boy had lived since 1985, and who had been present in the hospital room, was asked to leave. The boy was agitated, scared, resistant and refused to speak with the social worker whom he said "did the work of the devil". He stated that a Massachusetts social worker had lied about information he gave her and had caused a lot of trouble. He was more comfortable with the police officer but asked that no notes be taken of their conversation. For that reason, notes were not taken and no tape recording was made. The interview lasted about one and a half hours.

5. Based on the testimony of the police officer who took notes immediately after the interview, it is found that the boy revealed that his father frequently went into the bathroom with him to clean him up after his bowel movements and that he enjoyed this attention although he was confused by it. He also disclosed that his father had on several occasions washed his "pee pee" with soapy hands or a washcloth. There is no evidence that the boy's remarks were in any way suggested to him or coerced against his will.

Rather they were responses to open ended questions concerning whether anyone had ever touched him in the genital area. The boy also spontaneously volunteered that he and his father read the Bible and were not sinners. He repeatedly asked for confirmation that what he was describing was not sexual abuse. The term "sexual abuse" had not been used by the interviewers. The boy exhibited extreme concern over what might happen to his father.

6. Based on the child's consistency, anxious affect, and concern for the parent, the investigating social worker felt that the child's statements were credible and continued the investigation. She spoke with a teacher at his school and a social worker for the state of Massachusetts who told her that a "finding" that the boy had been sexually abused was made in that state in 1984 based on the report of a school psychologist.

7. The Massachusetts school psychologist was interviewed by the department and it was discovered that the boy had made disclosures to her during the course of therapy sessions she had with the child 2-4 times per week from September of 1982 to June of 1985.

8. The school psychologist who treated the boy has a Master's in Child Development from Smith College, where she has also been an instructor, and has all course work completed for a Ph.D. she has yet to get. At the time of her therapy sessions with the boy, she had worked as a school psychologist specializing in learning disabilities

for over ten years and had dealt with 25-45 children who had reported being sexually abused. She was assigned to the petitioner's son because the school was concerned that he was very aggressive and acting out.

9. Based on the school psychologist's testimony the following findings are made: At the time of her therapeutic relationship with the boy, he was living with his mother following his parent's divorce. At that time the boy functioned in a delayed and infantile way but was in no way physically handicapped and could care for himself at school.

The boy was obsessed with keeping secrets, suspicious that the psychologist would "blab all the secrets" and exhibited regressive behavior including an increasing frequency and duration of visits to the school bathroom. Based on these behaviors, the psychologist reported in the spring of 1983, to the Massachusetts authorities (as she was required to do by law) that she suspected sexual abuse. However, that report could not be substantiated.

10. In February of 1984, during the course of their therapy, the boy revealed that his father had taken him into the bathroom and locked the door while he tried on clothing, including underpants. The boy stated that he felt he was too big a boy for that. He also revealed that his father had taken him into the bathroom and wiped his rear, touched his penis and that his father made him watch while he urinated before him. The boy stated that he did not want to do this but his father had told him this was "how Dads show

love to their sons." The boy did not say, and was not asked, how many times these events occurred but from his grammatical use of the plural, the psychologist concluded it was more than once. The boy's statements about his father indicated both love and fear for him. His disclosures were spontaneous, and not the result of any questioning or investigation on the part of the therapist. Because the therapist had no reason to believe that the boy's statements were fabricated, she again reported his statements to the Massachusetts welfare authorities. This second report was substantiated. The boy continued to repeat these statements periodically through the next year.

11. The department's investigator determined to "found" the report of sexual abuse based on his medical condition and the boy's disclosures to both her and to the school psychologist. Pursuant to department protocol, the petitioner was given an opportunity for an interview with the police officer investigating the matter. However, due to possible criminal proceedings, the petitioner was advised by his attorney to make no statement at that time.

12. The alleged victim, who is now 17 years old, was called as a witness by his father. He had some difficulty understanding his obligations and the questions. He testified with regard to his interviews with both the school psychologist and the SRS investigator and the police detective. He admitted that he had made the statements they testified to but stated that they were "lies" he had been

pressured to tell because they were "bugging him" and that he was asked about "sexual abuse" "a lot". He stated that he had to be careful with social workers because they make you lie and he doesn't want them supervising him and his dad although he could not give an example of any threat or specific pressure being put on him to disclose information.

When the boy was pressed to state specifically what statements he had made which were lies he said that his father had never touched his penis or make him watch while he went to the bathroom. When asked why he had made up those things, he replied "to make the social worker happy".

When asked how and why that description came to his mind or why he thought the social worker would be made happy by it, he could not answer. The boy's testimony repeated themes of love for his father; his desire to stay with his father and not to go to a foster home, or see his father go to jail; his belief that his father is good and has not done anything bad; and his dislike of his mother, psychologists and social workers. (Although he said there was one male social worker he liked until he started "working against him".) He also spontaneously answered (without questioning) that his father had not helped him to think about this or told him to keep secrets although he admitted that he and his father had discussed his interview at the hospital on several occasions, were very upset about it and had agreed that the lies" had to be set straight. He did not recant his statements that his father had been wiping him and he stated

further that he had been doing that since Massachusetts because of his bowel movements. He further added that he knew the doctors and nurses at the hospital did not like his dad helping him in the bathroom but that he liked it. He also admitted that when his dad had to leave the hospital for 2 days, he was able to help himself and that the doctors could find no organic reason for the prolapsed rectum.

13. The petitioner testified in his own behalf stating that he has cleaned up his son's bowel movements for some time because he needs it due to "bowel problems". At first he said this occurred in Massachusetts and then said it only happened in Vermont when the rectum prolapsed. After his son moved in with him in Vermont in 1986, he noticed the prolapsed rectum but didn't know what it was and after speaking with several doctors, put him in the hospital where they could find no cause for it. He acknowledges that the doctors at the hospital told him it was not necessary or appropriate to wipe his son after bowel movements. He stated that he takes "the Lord's" advice, and not the doctor's, on that issue. He denied spending a lot of time in the bathroom with his son and denies having him "model" underpants although he says he did go in the bathroom with him just to have him try on the pants. The petitioner at first denied even talking with his son about the interview in the hospital and then after being pressed, said he might have talked about it and added that his son had said he lied at the interview because he was being harassed. He says his

son never told him what he lied about or what was said at the interview.

14. Based on the testimony of the victim and the child it is further found:

- a. That the boy made all the statements testified to by the school psychologist, the social worker, and the police detective.
- b. That the boy's statements are found to be credible because they were volunteered; made in terms understandable by the child ("pee pee"); were against the child's strong interests in staying with his father; were made, for the most part, with the belief that those actions were not appropriate; were made over a period of at least 3 years and consistently described similar events; and were made with no secondary gain in mind, that is, an outside reward or threat.
- c. The boy's attempt to recant some of his statements (the penis washing and viewing of his father's urination) are totally unconvincing. The boy's unsolicited insistence that his father had not told him what to say together with his repeated wooden phrase of "I lied because they were bugging me" with an inability to relate any specifics especially as to what inspired these stories, strongly indicated that the boy had been encouraged or even coached to recant his story.

In addition, because the boy was clearly feeling enormous pressure to avoid hurting his father or going to a foster home, his statements at the hearing are found to be far less reliable than those he made in the prior interview where he was not so aware of what was at stake. The boy's recantation of his statements is found to be not credible.

d) That no cause could be established for the child's prolapsed rectum; that the child's father spent time with him in the bathroom at the hospital during which time he admittedly touched his anal area to wipe him; and that this behavior was considered unnecessary by the hospital staff because the boy does not need assistance with his bowel movements.

e) That serious doubt has been cast on the credibility of the petitioner based upon his denial and then equivocation regarding discussing the contents of the hospital interview with his son in light of his son's testimony that they did discuss it and were very upset. The petitioner's testimony regarding the duration of his anus wiping activity is also contradicted by his son's testimony that this event occurred regularly at least 2 years before his hospitalization. The discrepancies within his own testimony regarding

these time frames of his toileting assistance and between his testimony and that of his son's (whom he called as his own witness) are ample ground for discrediting the petitioner's testimony denying the reported events.

ORDER

The decision of SRS to place in the registry a "finding" that the petitioner had sexually abused his son is affirmed.

REASONS

The Vermont statutes protecting abused children require the Commissioner of Social and Rehabilitation Services to investigate reports that a child has been abused by any person within seventy-two hours of such report. See 33 V.S.A. § 682 et seq. "Sexual abuse" is specifically defined by statute as follows:

(8) "Sexual abuse" consists of any act by any person involving sexual molestation or exploitation of a child including 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.

As part of its investigation, the commissioner is required, "to the extent that it is reasonable" to include "the identity of the person responsible for such abuse or neglect." 33 V.S.A. § 685(b)(4). The commissioner is further required to:

". . .maintain a registry which shall contain written records of all investigations initiated under section 685 unless the commissioner or his designee determines after investigation that the reported facts are unfounded, in which case, after notice to the person complained about, the unsubstantiated report shall be destroyed unless the person complained about requests within 30 days that the report not be destroyed. A report shall be considered to be unfounded if it is not based upon accurate and reliable information that would lead a reasonable person to believe that a child is abused or neglected." 33 V.S.A. § 686(a).

The statute places two burdens on the Department which must be met by the usual civil standard of a preponderance of the evidence. The first burden is to establish that its decision to place in its registry a report of child abuse is based upon information which is both accurate and reliable.

Second, the Department must show that the information relied upon constitutes a reasonable basis for concluding that a child has been abused or neglected. See Fair Hearings No. 8110, 8816.

The Department has met its first burden of showing that the information relied upon is both accurate and reliable. The "information" relied upon consisted of the teenaged boy's statements, first-hand observations and opinions of the boy's long term therapist, and the observations of hospital personnel with regard to the boy's physical condition and the prolonged presence of his father in the bathroom with him.¹ The boy's statements were made over several years, were in response to neutral questioning, were consistent and were against his interest in staying with his father, giving them a high degree of probable accuracy in

reflecting the events which occurred. Moreover, both father and son actually agreed under oath that the 14-year-old boy was being wiped after bowel movements. There is little suggesting that the boy's statements to the schools psychologist and social worker were inaccurate or unreliable. His attempted recantation of certain portions of his prior statements at the hearing was unconvincing as it was strongly tainted by bias (hatred of social workers), secondary gain (desire to stay with his father) and lack of specificity (his inability to recall threats that may have been used against him or the inspiration for the "lies" he told). Furthermore, the child's parroting and re-parroting of phrases, his lack of spontaneity in giving responses and his unsolicited insistence that the recantation was his idea, suggests strongly that he had been coached by someone. There is no reason to believe that the child's "recantation" was accurate or reliable.

Similarly, there was no evidence to suggest that the observations and opinions of the child's therapist, a well-trained person who had considerable experience in assessing sexual abuse and who spent considerable time with the child, was anything but accurate and reliable. Neither was there any evidence suggesting that there was a medical reason for the boy to need assistance in the bathroom or that the department's information was incorrect in its belief that the boy's father had been observed going into the bathroom with him and regularly wiping him after bowel movements

while he was in the hospital and at other times during the previous three years.

The petitioner has denied all activities except wiping his son. However, his persistence in this bizarre and unnecessary practice shows that he is inclined to aberrant behavior and reflects adversely on his credibility with regard to the other allegations. The information relied upon by the department can be characterized as very accurate and reliable because it was based on consistent reports from several sources including the victim and perpetrator themselves.

The department's second burden is to show that the information constitutes a reasonable basis for concluding that the child has been abused. Certainly, there can be little doubt that washing a fourteen year old's penis, viewing him in a locked bathroom modeling underwear, and forcing him to watch while his father urinated meet the definition of "sexual abuse" found at 33 V.S.A. § 682(8) in that they are acts which involve "sexual molestation" (touching his penis), "exploitation" (viewing the child in underwear) and "lewd and lascivious acts" (urinating before the child). The petitioner has not expressed any dispute over so classifying these acts, most probably because he denies them. The petitioner has suggested, however, that the act to which he admits, wiping the boy after bowel movements, is not an act of sexual abuse. That could be so if the boy were unable to perform this function for himself.

However, the evidence clearly shows that the boy was capable of caring for his own toileting needs and that the petitioner had been so advised by the boy's doctors who even attempted to discourage his practice. The boy himself clearly expressed a sense that he was too big for such treatment and that it was inappropriate. Given that context, it must be concluded that the father's motives in wiping this fourteen-year old boy after his bowel movements were not those of assisting his son but rather to gratify his own desires. That being the case, it must be found that the petitioner's wiping practices alone would constitute a reasonable basis for concluding that this child was being sexually molested by his father, an act which is defined as "sexual abuse" at 33 V.S.A. § 682(8). Therefore, it was reasonable for the Department to conclude that both the practices admitted to by the petitioner and others reported by the boy constitute harms which are defined as "sexual abuse" in the child protection statutes.

As the Department has met its burden on both counts, its decision "finding" that the petitioner sexually abused his minor son must be upheld.

FOOTNOTES

¹The latter facts were placed into evidence by testimony given by the petitioner and his son.

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