

5. No court proceeding has been brought pursuant to Title 33-683(d) against [petitioner].

ORDER

The petitioner's motion to expunge is denied and the case should be remanded for hearing.

REASONS

The Vermont statute protecting children against sexual abuse requires that certain persons report suspected child abuse, see generally 33 V.S.A. 683(d), and protects the confidentiality of those reports as follows:

(d) The name of the person making the report, or any person mentioned in the report shall be confidential unless the person making the report specifically requests disclosure or unless a judicial proceeding results therefrom or unless a court, after a hearing, finds probable cause to believe that the report was not made in good faith and orders the department to make the name available.

33 V.S.A. § 683(d)

The Department is required to investigate reports it receives, and if the report is substantiated, to offer assistance to the child and his family. 33 V.S.A. § 685.

The Department is also required to keep records of its abuse investigations as follows:

(a) The commissioner of social and rehabilitation services shall 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.

(b) If no court proceeding is brought pursuant to § 683(d) within six months of the date of the notice to the person complained about, or if the court after hearing, determines that the report was not made in good faith, the unsubstantiated report shall be destroyed.

(c) The commissioner shall adopt regulations to permit use of the registry while preserving confidentiality of the records.

(d) Written records maintained in the registry shall only be disclosed to the commissioner or person designated by him to receive such records, persons assigned by the commissioner to investigate reports, the person reported on, or a state's attorney. In no event shall records be made available for employment purposes, for credit purposes, or to a law enforcement agency other than the state's attorney. Any person who violates this subsection shall be fined not more than \$500.00. A person may, at any time, apply to the human services board for relief if he has reasonable cause to believe that contents of the registry are being misused. All registry records relating to an individual child shall be destroyed when the child reaches the age of majority. All registry records relating to a family or siblings within a family shall be destroyed when the youngest sibling reaches the age of majority. All registry records shall be maintained according to the name of the child who has been abused or neglected.

(e) A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him on the grounds that it is unfounded or not otherwise expunged in accordance with this section. The board shall hold a fair hearing under section 3091 of Title 3 on the application at which hearing the burden shall be on the commissioner to establish that the record shall not be expunged.

33 V.S.A. § 686

The petitioner maintains that the provision at § 686(b) above, requires that the report finding that he sexually abused a child must be destroyed because no court proceeding was brought by the Department pursuant to § 683(d) within

six months of his receiving notice of the finding on March 10, 1989. He urges this reading based on the plain language of the statute which he says evidences a legislative intent "to allow a limited amount of time between the notification to the person complained of and a proceeding brought pursuant to § 683(d), in order to force the Commissioner to act within a six month period or to expunge from his registry records regarding the investigation of the person."

The plain language of the statute does not support the petitioner's interpretation. 33 V.S.A. § 686(a) requires that "an unsubstantiated report shall be destroyed unless the person complained about requests within 30 days that the report not be destroyed." (emphasis supplied) That section makes no mention of the destruction of substantiated reports,¹ but rather clearly requires the Department to destroy the records of an investigation which it feels was not substantiated unless the alleged perpetrator makes a timely request to halt their destruction.

§ 686(b) further provides that "if no court proceeding is brought pursuant to § 683(d) within six months of the date of the notice to the person complained about, or if the court after hearing, determines that the report was not made in good faith, the unsubstantiated report shall be destroyed." Again this section requires the Department to destroy only unsubstantiated reports, if within six months of the notice to the petitioner certain court actions are

not initiated, or, upon a judgement by a court that the report was made in bad faith. This section does not mention substantiated reports.

In this matter, the Department has placed the report in the registry as being substantiated. Therefore, none of the above regulations regarding the destruction of unsubstantiated reports has any applicability. Furthermore, the petitioner seems to misunderstand the plainly stated purpose of the provisions of § 683(d) which allow the disclosure of the identity of reporters, victims and witnesses only in three cases: where a judicial proceeding arises from the report; where a court finds probable cause to find the report was not made in good faith; or where the person making the report to the Department specifically requests it. This provision does not require the Department (or any one else) to take any court action. Rather it provides a mechanism for preserving the confidentiality of reports. The provisions of § 686(b) regarding the destruction of records, seek to preserve unsubstantiated records which ordinarily would have been destroyed, throughout any Court process which may be initiated by anyone including, presumably, the criminal authorities and the alleged perpetrator. If neither the alleged perpetrator, criminal authorities or anyone else begins a court proceeding regarding this matter within six months, the Department is required to destroy the unsubstantiated report. Clearly the thrust of this regulation is to destroy

unsubstantiated reports (not substantiated ones), and to protect the confidentiality of all reports, subject to some narrow exceptions and time lines geared at preserving the rights of the alleged perpetrator, and not to require the Department to initiate any court proceedings.

The petitioner's motion to expunge SRS's finding that he sexually abused a child (J.T.) based on the grounds set forth above is denied.

FOOTNOTES

¹Cf. § 686(d) which does not require the destruction of substantiated reports when the youngest sibling in a family reported upon obtains the age of majority.

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