

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 9795  
 )  
Appeal of )

INTRODUCTION

The petitioners appeal the decision by the Department of Social and Rehabilitation Services denying them a license to care for any more foster children in their home other than the two foster children currently residing in their home, whom the petitioners are currently seeking to adopt.

FINDINGS OF FACT

The petitioners have been licensed foster home providers for several years. On or about November 6, 1989, the Department's chief investigator received a phone call from the adult son of R.B. from one of R.B.'s earlier marriages. The son told the Department that R.B. had sexually abused his (the son's) two sisters when they were children living with R.B. some twenty years ago. The son stated that he was now a sexual abuse counselor, and that he feared that foster children in his father's (R.B.'s) home might be at risk.

On that same date, the investigator called one of R.B.'s adult daughters who had been identified by R.B.'s son. She reported that R.B. had, on several occasions, indulged in sexually inappropriate behavior with her and her sister when they were adolescents. The sister also reported that criminal

charges had been filed against her father, but had been dropped when she and her sister refused to testify in court. At the time of the alleged incidents, R.B. and his family were living in Massachusetts.

On November 7, 1989, the investigator spoke with the Chief of Police of the town in Massachusetts where R.B then lived. He confirmed that R.B. in June 1969, had been indicted for assault and battery and sexual assault of minor children, but that the case was dropped when the children later refused to testify.

On November 8, 1989, another SRS investigator spoke with several children who were either residing in the petitioners' home or who had resided there in the recent past. None of these children had anything negative to report about either of the petitioners.

On November 14, 1989, the second investigator spoke with the other adult daughter of R.B. who had been named by R.B.'s son. She would not discuss details, but stated that R.B. had molested her when she was a young girl.

From the outset, R.B. has vigorously denied that the incidents took place. Other family members--a step-brother, another former wife, and a sister of the two girls who claimed to have been abused--all spoke well (to the Department) of R.B.'s character (although the daughter said she believed her sisters were, in fact, abused by R.B.; but that at the time her father had had an alcohol problem, and

that it should not be held against him). At the hearing, the petitioners again denied the allegations, stating that an old family grudge led the children in question to make these charges at this time. The petitioners were not represented at the hearing and called no witnesses in their own behalf. They left the hearing after the close of the Department's presentation of evidence after the hearing officer explained to them their legal burden in the matter. (see infra).

ORDER

The Department's decision is affirmed.

REASONS

The roles of the Department and the Human Services Board in appeals of foster home licensing decisions was set forth in detail in Fair Hearing No. 8688, decided by the Board on July 14, 1988:

The Department of Social and Rehabilitation Services is charged by statute to design programs "to provide substitute care of children only when the family, with the use of available resources, is unable to provide the necessary care and protection to assure the right of any child to sound health and normal physical, mental, spiritual and moral development." 33 V.S.A. § 2591(5). This obligation imposed by statute has been previously described by the Board as a "grave and unenviable responsibility" which, in effect, places the Department in an in loco parentis posture. Fair Hearing Nos. 6505 and 8168. The Department has further been given considerable discretion by statute to promulgate regulations and to administer licenses governing foster care facilities, including the power to deny or revoke licenses. See 33 V.S.A. §§ 2594, 2595 and 2596.

The Department is specifically authorized "to prescribe standards and conditions to be met" for licensure. 33 V.S.A. § 2596(b)(1). With regard to

foster care licensing, the department has promulgated regulations which set minimum standards which must be met by foster care licensees. Among those standards are the following:

Regulation 103.7 - A license may be denied if it has been substantiated that the applicant has ever abused or neglected a child or the applicant's own children have been placed in foster care or a residential treatment facility under circumstances tending to show that the applicant was unable or unwilling to care for the child, unless the primary reason for placement was the physical illness of the parent (from which s/he recovered), mental retardation or physical handicap of the child.

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The Department is, in addition, empowered by the legislature to revoke a license for cause after a hearing. 33 V.S.A. § 2596. In this instance, the Department argues that it has reason to believe that actions occurred in the petitioner's home which violated its regulations as set forth above and that those violations constitute "cause" for revocation of the license.

In a statutory scheme which gives so much discretion to the Department to determine how children in its custody will be cared for and by whom, the Board has consistently held that the petitioner must show that the Department acted arbitrarily, either in making its factual findings, or in its determination of the existence of cause in order to justify reversal of the decision. . . .

As in Fair Hearing No. 9688, the petitioners herein have failed to demonstrate that the Department acted arbitrarily or unreasonably in choosing to credit the allegations of three separate children of R.B. by a previous marriage, and in concluding that because of these reported past incidents of sexual abuse of R.B.'s children the

petitioners should not continue to be licensed as a foster home.<sup>1</sup>

The petitioners do not dispute that R.B.'s children made the accusations in question. As was also the case in Fair Hearing No. 8688, however, the petitioners dispute the credibility of the allegations and proffer an explanation (albeit vague) as to the motivation of their accusers. Even if the hearing officer was personally persuaded otherwise, however, neither he nor the Board can substitute their judgements for that of the Department if the Department's decision was reasonable and not arbitrary. In this case, it must be concluded that the Department acted reasonably and within the parameters of its statutory discretion. See supra. Therefore, the Department's decision is affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

FOOTNOTES

<sup>1</sup>As noted in the introduction, the Department's decision was actually to deny the petitioners a license to care for any foster children other than two children who currently reside with the petitioners, and whom the petitioners are seeking to adopt. The following letter to the petitioners from the Commissioner of Social and Rehabilitation Services more fully sets forth the basis of the Department's decision. (It should be noted, however, that the status of the two girls who reside with the petitioners is not at issue in the instant proceeding. It is for the Probate Court to determine whether the petitioners can adopt the two girls in question.)

"After carefully reviewing all of the material concerning your situation, including hearing from numerous witnesses in Morrisville, I have come to the following determination:

1. That a serious question exists as to whether R.B. engaged in highly inappropriate sexual

behavior with two of his own biological daughters approximately twenty years ago in Massachusetts. Furthermore, that he did engage in excessive alcohol consumption during that period and for a period of time thereafter;

2. That this information was not known by the Department at the time of your initial foster care licensing study, nor was it made available until it was presented to the Department by R.B.'s children;
3. That there appears to have been no occurrence of inappropriate sexual behavior since that time, and no reoccurrence of excessive alcohol consumption for a number of years;
4. That you have successfully cared for a number of foster children over the past three years, most notably H.L. and K.G., whom you are in the process of adopting;
5. That H.L. and K.G. consider themselves to be your children and a permanent part of your family, and that their removal from your home would likely cause severe and, possibly, irreparable trauma to these two young children.

As a result of these determinations, it is my decision that your foster home license should continue to be limited to H.L. and K.G. However, no additional children will be placed in your home. The reason for this decision is twofold:

1) H.L. and K.G. have become, for all intents and purposes, members of your family. They appear to be safe and well cared for. To remove them will interrupt adoption proceedings and will probably cause irreparable harm;

2) Had the questions concerning R.B.'s past been brought up at the time of initial licensing, your home would not have been approved for foster care. With this information now available, and in the absence of compelling placement issues such as those which are present for H.L. and K.G., there is no justification for placing additional children in your home. Therefore, your foster care license will be limited to H.L. and K.G. only. This is a difficult decision; however, it is one which I am compelled to make, given the responsibility which state law confers upon me for purposes of ensuring the safety of children in out-of-

home placement."

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