

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,761

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Appeal of )

)

INTRODUCTION

The petitioner appeals to the Human Services Board for an order expunging from the "registry" maintained by the Department of Social and Rehabilitation Services (SRS)

a report of child sexual abuse allegedly perpetrated by him. The issue is whether the report was "substantiated" within the meaning of the pertinent statutes.

FINDINGS OF FACT

In 1987 the Department received a report that a twelve-year-old girl had been sexually abused by her father two years previously (in 1985). After receiving the report the Department sent an experienced child abuse investigator to interview the girl. The interview took place in the nurse's office at the school the girl was attending.

Following its interview with the girl the Department determined that the report of sexual abuse was "founded", and it placed the petitioner's name in its registry of child abuse. Although criminal charges were also filed against the petitioner at the time, the case was dropped when, according to the petitioner, the prosecution did not produce any witnesses on the day the matter was scheduled to go to court. The Department never interviewed the petitioner; and, as was its unfortunate practice at the time, the Department never notified the petitioner that his name had been placed in the SRS child abuse registry.

The petitioner learned of his name being in the registry when, recently, SRS denied his wife (the petitioner had remarried) permission to have her children (who are in SRS custody) be placed in her and the petitioner's home. When the petitioner protested that SRS hadn't interviewed him at the time his name had been placed in its registry, SRS sent another investigator to interview him and to again interview the girl. Following those interviews SRS affirmed its decision that the report of sexual abuse was "substantiated". The petitioner then requested an expungement hearing.

At the hearing the girl, who is now nineteen, testified that when she was ten years old she and her younger brother had spent the night with their father while their mother was in the hospital. At the time the girl's mother and father were divorced. She said her father had taken her and her brother to stay at their aunt's (the father's sister's house), and that when it came time for bed her father took her into his room while her younger brother was sent to sleep in a separate room--although the prior arrangement had been for the girl to have her own room and her brother to sleep in the father's room.

The girl testified that once in the bedroom, her father had her lie down on the bed and told her to put her hand, and then her mouth on his penis. She also said he briefly fondled her breasts and genital area, but stopped when she protested.

The girl also testified that her father then threatened to "make my life miserable" if she told anyone. However, the girl's mother found out when the girl's younger brother later complained that he had been made to sleep that night in another room. The girl testified that her father had recently threatened to burn her house down.

Both SRS investigators who had interviewed the girl testified that her allegations and descriptions of the event have remained consistent since they were first reported. The investigator who initially interviewed the girl (in 1987) testified that the girl's mother had told SRS that she had not reported the incident after it happened, but changed her mind (two years later) after the petitioner made threats against her.

The girl's mother testified at the hearing that she had never been notified of the petitioner's court date, but that the petitioner had later gloated to her and other family members that the charges against him had been dismissed.

The girl's younger brother, who is now a teenager, also testified at the hearing. He stated that he recalls the petitioner taking his sister into the bedroom with him on a night that they spent at their aunt's house and making him sleep in a separate bedroom.

At the hearing the petitioner denied not only that the above event took place, but also that his children had ever stayed overnight with him at his sister's house.

Although, seven years in retrospect, it must be concluded that the initial SRS investigation in this matter was cursory (consisting, apparently, of only the interview, two years after the fact, with the complaining witness), the hearing officer must now weigh the credibility of the Department's evidence against that of the petitioner based on the testimony of the witnesses who testified at the hearing.

The testimony and demeanor of the girl and her brother were consistent, and struck the hearing officer as credible. Neither of the petitioner's children appeared to be under the influence of their mother--or anyone else--and no "vendetta" against the petitioner was apparent. To the contrary, it was clear that both children were extremely

reluctant to confront their father; and their fear of him was palpable.

The petitioner, on the other hand, though he vigorously denied the allegations, did not present any corroborating witnesses as to his innocence, and offered no theory or explanation as to why his children would make the allegations if they weren't true.<sup>(1)</sup> Much of the petitioner's "defense" was that after the

alleged incident SRS continued to allow the children to visit him. SRS explained, however, that this visitation was considered "supervised" by the petitioner's new wife. The petitioner's claims--that he did not have his drivers license at the time (and thus could not have driven his children to his sister's house) and that his sister would not have allowed him to sleep with his daughter--simply did not ring true.

Based on all the evidence adduced at the hearing it is found that the allegations of sexual abuse against the petitioner made by his daughter are credible.

### ORDER

The petitioner's application to expunge the report of child sexual abuse made against him is denied.

### REASONS

The petitioner has made application for an order expunging the record of the alleged incident of child abuse from the SRS registry. This application is governed by 33 V.S.A. § 4916 which provides in pertinent part 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 4915 of this Title unless the commissioner or the commissioner's designee determines after investigation that the reported facts are unsubstantiated, in which case, after notice to the person complained about, the records shall be destroyed unless the person complained about requests within one year that it not be destroyed.

...

(h) A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him or her on the grounds that it is unsubstantiated 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.

Pursuant to this statute, the Department has the burden of establishing that a record containing a finding of child abuse should not be expunged. The Department has the burden of demonstrating by a preponderance of the evidence introduced at the hearing not only that "the report is based upon accurate and reliable information", but also that the information "would lead a reasonable person to believe that

a child has been abused or neglected". 33 V.S.A. § 4912(10) and Fair Hearings No. 11,322, 10,136, 8646, and 8110.

In this case there can be no question that if the girl's allegations are credited, the petitioner's actions constituted "sexual abuse" (which includes "sexual molestation or exportation of a child including but not limited to incest, prostitution, rape, sodomy or any level and lascivious conduct involving a child") within the meaning of 33 V.S.A. § 3912(3). As found above, the girl's testimony, and that of her brother, was indeed credible. Therefore, it must be concluded that the Department has met its burden of proof under the statute; and the petitioner's request to expunge the report in question is denied.

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1. Before the hearing began the hearing officer offered to continue the matter to allow the petitioner to obtain legal counsel. The petitioner declined this offer and elected to proceed with the hearing.