

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,489
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department of Social and Rehabilitation Services (SRS) denying her application for a foster care license to provide care for her grandson. The petitioner also appeals several other actions taken by SRS as part of a court proceeding involving her grandson: namely, SRS' opposition to her obtaining party status in the CHINS (Child in Need of Supervision) proceeding, SRS' refusal to grant her visitation with her grandson as part of the CHINS case and what she believes are SRS' attempts to place her grandson for adoption. An issue involving a denial of a legally exempt child care registration certificate with regard to caring for another grandson which was part of the original appeal was resolved in favor of the petitioner prior to the hearing.

FINDINGS OF FACT

1. The petitioner is the grandmother of a child who was taken into custody by SRS for the second time in February of

2001 as part of a CHINS proceeding. The petitioner has been very unhappy with SRS' actions with regard to the whole matter. She believes that there was no reason for the child to be taken into custody and that his mother can adequately care for him. She disagrees with the foster placement arranged for him by SRS and the restrictions SRS has placed on her with regard to visiting with him. Thus far, she has not been able to obtain party status in the CHINS proceeding to bring her grievances before the family court.

2. The petitioner wrote two letters to the governor in regard to this matter in March and April of 2001. In these letters she complained about the conduct of the police who would not allow her to take her grandson the night they arrested her daughter and the refusal of SRS to allow her to be involved with the process. She also expressed a fear that SRS was arranging for her grandson's adoption instead of trying to reunite the family. She decried the fact that she had recently filed a motion to get party status in the proceeding which had been denied by the family court. She accused the police and SRS of being inconsistent and telling lies with regard to her daughter and grandson.

3. On June 1, 2001, the petitioner filed an application to receive a foster care license in order to become the

caretaker for her grandson. The application asked for the names of her own children but the petitioner put only her grandson's name. The petitioner was also asked by SRS if she had received mental health services or counseling, whether she had ever filed in court for a relief from abuse order, and whether she had been involved "with SRS or a similar out-of-state agency". The petitioner answered no to all of these questions.

4. The licensing division of SRS received the above application and investigated it both by reviewing files in the custody division, interviewing workers in that division and by interviewing the petitioner herself on two occasions on October 24 and Nov. 2, 2001. The issues explored at the interviews revolved about the petitioner's past experience with children and her family's life. The petitioner, citing her children's privacy and the passage of time, refused to discuss her children.

5. After the investigation was finished, the investigator discussed the findings with his supervisor. They both determined that the foster care license would not be granted based on concerns about: 1) the petitioner's honesty and reliability stemming from some discrepancies found in the application; 2) the petitioner's past child care practices; 3)

state agency intervention with regard to four of her children; 4) the petitioner's lack of judgment with regard to her own daughter's parenting problems and the needs of her grandson; and, 5) the small likelihood that the petitioner could work cooperatively with SRS.

6. The petitioner was informed of the Department's decision in a letter dated December 13, 2001. That letter stated specifically that the petitioner had misled the Department in her application by failing to state; 1) that two of the petitioner's sons had been in the custody of New York state and that two of her daughters had been in the custody of the state of Vermont; 2) that the petitioner had received counseling with regard to one of her sons; and 3) that the petitioner had obtained restraining orders against an abusive spouse in New York state. The letter cites other substantive problems including the petitioner's lack of cooperation in discussing some problems her other grown children have had; the fact that four children had been in the custody of state agencies reflecting poorly on her parenting skills; the fact that the petitioner has opposed and criticized the case plan for her grandson and attacked the motivations of the SRS caseworkers; and the fact that she minimized the seriousness

of her daughter's problems (substance abuse and domestic violence) and their impact on the child.

7. The petitioner asked the Commissioner for a review of her denial for a foster care license and the other issues she had raised to the governor. The Commissioner refused to intervene in decisions involving the CHINS petition stating that the petitioner could bring them up to the family court as a grandparent and did not necessarily need party status to do so. The Commissioner did not doubt the petitioner's concern for her grandson but would not overturn the denial of the kinship foster care application. The Commissioner's reason was that he did not feel the petitioner could collaborate and cooperate with SRS on her grandson's care and did not feel the petitioner could be honest and open with the Department about her grandson. The Commissioner was aware and agreed that the petitioner had been cooperative with SRS when her youngest daughter was in custody. However, he believed that her current negative view of SRS made a successful collaboration unlikely.

8. At the hearing the petitioner characterized the change of custody of her grandson from her daughter to SRS as a big misunderstanding. She described the "only" charge against her daughter as drinking. She said she doesn't see a

problem with her grandson going back to his mother. She demonstrated considerable hostility towards the SRS licensor and the SRS social worker and suspects them of conspiring to block her access to her grandson. She also clearly believes that the social worker's motivation in dealing with her is based upon his desire to place her grandson for adoption with friends of his.

9. The petitioner testified that she did not try to mislead SRS on her application. She said she had been involved with "programs" regarding her sons but did not regard these as counseling services. She said she misunderstood the questions about her own involvement with state welfare agencies. She did not dispute the allegation that she had not been forthcoming about her own prior abuse issues nor that she failed to list her children. She did not provide the names of her six children because they are all grown and none live with her now. She could not see how it would be important for SRS to have that information. She defends most of her omissions based on the fact that they were old problems and did not reflect on her current abilities. While that may be true, it must be found that the petitioner did deliberately fail to disclose important information requested on the form.

10. The petitioner does not disagree that four of her children have been in state custody, one very briefly. She blames her loss of custody with regard to her two older sons on an abusive first husband. She does not disagree that her youngest daughter was deemed in needs of services by a court but states that the girl was nevertheless returned to her custody and that she cooperated with SRS in a management plan. The Department agrees that the latter is true. The petitioner has largely refused to discuss her current relationships with her adult children because she does not believe they are relevant to her current application and does not want to violate the privacy rights of her children. She does admit that she is currently estranged from her two oldest boys whom, she said, blame her for their problems.

11. Six witnesses testified on behalf of the petitioner. Four of these witnesses were persons who have known the petitioner for several years from a church organization and believe she is a good, trustworthy and responsible person. They described the petitioner as a person who had overcome a great deal of adversity in her younger life (including being in foster care herself) who had become a responsible employed person (she is a licensed nursing aid) and who lives by "Christian values". Several said the petitioner had cared

successfully for their elderly relatives. None of these witnesses has any knowledge of the petitioner's daughter and grandson and the issues they face.

12. Two of the petitioner's daughters testified on her behalf. Her youngest daughter, who had been in SRS custody, testified that her mother is a good role model and was a good mother to her, helping her overcome many problems in her youth. Her other daughter, the mother of the child in custody, testified that the petitioner is a good mother and would be a good person to care for her own son (the petitioner's grandson). She feels that her own mother can give her son things that another foster parent cannot.

ORDER

The decision of the Department of Social and Rehabilitation Services denying the petitioner's application for a kinship foster license is affirmed. All questions involving decisions made by the family court and SRS in relation to custody, foster care placement and visitation are dismissed as being under the exclusive jurisdiction of the family court.

REASONS

The petitioner has spent a frustrating year trying to get access to her young grandson. The family court has granted custody to SRS and has approved its decisions with regard to foster placement of her grandson and its restrictions on visitation with the rest of the family members. To date, the petitioner, who apparently does not have an attorney, has been unable to become a party to the proceedings. It is unclear what other legal steps she may be able to take to get the court to hear her grievances.

What is clear is that the Board can make no legal ruling interfering with what has happened in the family court in a CHINS (Child in Need of Supervision) petition. The legislature and the Supreme Court have made it clear that the family court has exclusive jurisdiction over a "proceeding" in a juvenile matter. 33 V.S.A. § 633, In re Susan Kirkpatrick 147 Vt. 637, 523 A.2d 1251 (1987). While the Board has been held to have jurisdiction when the matter involves assistance, benefits or social services which are collateral to court proceedings (e.g. who will pay for counseling sessions), Id. at 638, the matters raised by the petitioner are far from collateral. Her concerns--the custody, placement and visitation regarding her grandson--are central issues for a

court in a CHINS petition. 33 V.S.A. § 654. Such core issues in the court proceeding are never reviewable by the Board.

Thus, SRS' request to dismiss those issues must be granted.

The Board does have jurisdiction to hear whether the Department of Social and Rehabilitation Services has erred in failing to a kinship foster care license to the petitioner. 3 V.S.A. § 3091(a). The petitioner has applied for a "kinship" license which operates under the same rules and regulations as a normal license. The Department operates with more flexibility in granting such a license since it normally wants to approve a foster placement with a relative, if at all possible. A person, even a relative, cannot take a child in SRS custody into foster care for more than fifteen days unless she has a foster care license. 33 V.S.A. 3501.

The Commissioner has adopted regulations governing foster care licenses pursuant to his authority at 33 V.S.A. § 306. The goal of the regulations is to "assure the care and safety of children who must live in homes other than their own". Reg. 010, Licensing Regulations for Family Foster Care, Sept. 1, 1992. A person who is unwilling or unable to meet the regulations will have her application denied. Id. at 010.

The Department has refused to grant the petitioner a foster care license because it contends that she is unwilling

or unable to meet the following regulations set forth in the above-cited manual:

103 Applicants and licensees shall:

103.1 Provide complete and truthful information on the licensing application and the licensing process.

103.2 Cooperate fully with the licensor(s) in determining if all licensing regulations have been and continue to be met.

201 Applicants and licensees shall exhibit:

201.2 Knowledge of child development and the needs of children.

201.7 Responsible care and/or planning for their children, including children who are not in the applicant's or licensee's custody.

301 Foster parents shall meet the physical, emotional, developmental and educational needs of each foster child, in accordance with the child's case plan.

306 Foster parents shall take reasonable steps to safeguard foster children from hazards.

The facts found in this case support violations of the regulations at 103.1 and 103.2 requiring the provision of complete and truthful information and cooperation in determining whether the regulations have been met. The facts also indicate that the petitioner does not understand the seriousness of the behavior of her grandson's mother and the need of her grandson to be protected from neglect and abuse at

the hands of that parent in violation of the regulations at 201.2 and 306. Finally, the facts support a violation of regulation 301 in that the petitioner's attitude towards the SRS caseworker made it very unlikely that she could cooperate with carrying out the child's needs as set forth in a case plan.

The fact that the petitioner's children were themselves in state custody for one reason or another does not per se indicate that the petitioner is unable to understand child development and the needs of children. Those facts standing alone cannot form the basis for the decision unless they have been explored and specifically linked to one of the above regulations. Therefore, a violation of 201.7 cannot be upheld as the Department relied upon the petitioner's children's having been in state custody to make that finding. However, even without this finding, the petitioner's refusal to allow exploration of her past parenting difficulties, coupled with her hostility toward the caseworkers, police and court and her lack of understanding of the seriousness of her grandson's home situation provide ample reason for the Department to conclude that the child would not be safe or cared for in the petitioner's home. The decision of the Department denying the kinship foster care license should be affirmed as a rational

decision supported by the facts and consistent with the
adopted regulations of the Department. 3 V.S.A. § 3091(d).

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