

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,670
)
Appeal of)

INTRODUCTION

The petitioners appeal the decision by the Department of Social and Rehabilitation Services (SRS) to limit their visitation with their grandchildren who are in SRS custody pursuant to a CHINS proceeding. The Department has moved to dismiss the petitioners' appeal. The issues are whether the Board has subject matter jurisdiction over this action and whether the petitioners have legal standing to obtain the relief they are seeking on behalf of the children.

DISCUSSION

The facts necessary to frame the Department's Motion to Dismiss are not in dispute. The petitioners are the grandparents of two children who are in SRS custody. The children are the subject of CHINS proceedings in Family Court. The petitioners allege that SRS is not acting in the children's best interest by placing restrictions on the amount and circumstances of their visitations with their grandchildren.

Although this appears to be the first case involving grandparents, the Board has had several occasions to consider the standing of foster and natural parents to bring appeals

concerning SRS supervision of foster children and whether the Board has subject matter jurisdiction over such appeals. In Fair Hearing Nos. 15,108 and 9455 the Board held that even though 3 V.S.A. § 3091(a), as a general matter, gives foster parents the right to "request a hearing" before the Board, foster parents do not have "any enforceable legal interest" in a case that involves SRS's placement and supervision of children in its custody.

In Fair Hearing No. 7809, the Board considered the appeal against SRS by the natural parent of a child in SRS custody pursuant to a CHINS order. In that case the Board held that because the CHINS statutes give the family court "exclusive jurisdiction" in all "proceedings" regarding the placement and disposition of those children, the Board does not have subject matter jurisdiction to consider a parent's appeal of a placement decision made by SRS pursuant to a CHINS proceeding.

It must be concluded that the same reasoning applies to appeals brought by grandparents of children in SRS custody. 33 V.S.A. § 5503 provides:

(a) The juvenile court shall have exclusive jurisdiction over all proceedings concerning any child who is...a child in need of care or supervision brought under the authority of this chapter, except as otherwise provided in this chapter.

(b) The orders of the juvenile court under the authority of this chapter shall take precedence over any order of any court of this state, except an order establishing child support, to the extent inconsistent herewith.

As the Board has noted in all the above prior decisions

(see also Fair Hearing No. 6435), it is the juvenile (now family) court that, by law, has the "ultimate say as to what is in the child's best interest" (citing In re G.F., 142 Vt. 273,281 [1982]). As was the case in Fair Hearing No. 15,108, even though it may be that the petitioners herein have been unsuccessful in challenging SRS's decisions in family court, this failure alone is not sufficient to confer jurisdiction on the Board. As noted in that case, to rule otherwise would have the affect of "asking the Board to second guess the court".

As also discussed by the Board in the above-cited Fair Hearings, cases such as this are clearly distinguishable from In re Kirkpatrick, 147 Vt. 637 (1987), in which the Vermont Supreme Court ruled that the Board can hear matters not part of a family court "proceeding" (in that case whether a natural mother of a child in SRS custody could appeal a decision by SRS denying her reimbursement for her own psychotherapy). In this case, there can be no question that decisions regarding the terms and circumstances of these children's interaction with their family are crucial to their best interests. As the Board pointed out in the above fair hearings, such decisions by SRS are at the "heart" of CHINS proceedings and, thus, must be considered within the exclusive review and jurisdiction of the family court.

For the above reasons, it must be concluded that the petitioners do not have legal standing before the Board to

appeal a decision by SRS regarding their visitation of their grandchildren and that 33 V.S.A. § 5503 precludes the Board from taking subject matter jurisdiction over the petitioners' appeal.

ORDER

The Department's Motion to Dismiss the petitioners' appeal is granted.

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