

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,678
)
Appeal of)

INTRODUCTION

The petitioner requests expungement from the Department of Social and Rehabilitation Services (SRS) child abuse registry a finding made in 1994 that she physically abused her daughter.

FINDINGS OF FACT

1. In February 1994, SRS received a report that a three-year-old girl had been physically abused by her mother, who is the petitioner in this matter. The report was initially made by the child's father and his wife at that time, from whom the father is now divorced.

2. A hearing in this matter was held on December 4, 2002. The Department presented the testimony of the child's father and his ex-wife regarding their report of the incident. They testified that they contacted SRS after they noticed a bruise on the girl's buttocks. According to them, the girl stated that her mother (the petitioner) had hit her with a "stick".

3. By their demeanor at the hearing neither the father nor his ex-wife impressed the hearing officer as credible witnesses. They admitted that at the time of the alleged incident they were involved in a bitter custody battle with the petitioner (which they lost). The father also admitted that SRS had previously substantiated child abuse charges against him involving his children.

4. At the hearing SRS also introduced the written report of its investigator in February 1994. The report notes that the child's father was present when the child was interviewed. The child allegedly told the investigator that her mother had "spanked" her with "a hand". The interviewer reported a "fingermark bruise" on the girl's right buttock. In separate places the report notes "custody issues", "issues of 'coaching' by father", and "bruise was not seriously injurious".

5. The report also includes notes of an alleged statement by the child's therapist that the child had made the same allegation in the therapist's presence when questioned by the father, but that the therapist also stated that the father "is pushing to get her" and that she could not say if the child was being coached. At the hearing the Department did

not call the therapist and conceded that she would not be a supportive witness for the Department at this time.

6. The petitioner testified at the hearing and denied ever hitting her children. The girl, herself, now twelve years old, testified that her mother never hit her and that she does not remember the investigation in question. It was plainly apparent at the hearing that the girl is extremely uncomfortable around her father. It was also apparent that the girl has a close relationship with her mother, with whom she has lived since the time in question.

7. An older child of the petitioner also testified at the hearing. She stated that her mother had never hit her and that she had never seen her mother hit her sisters. She also stated that her father had been physically abusive toward her.

8. The petitioner and her daughters appeared to be credible witnesses.

ORDER

The finding that the petitioner physically abused her daughter shall be expunged from the Department's registry.

REASONS

The Department of Social and Rehabilitation Services is required by statute to investigate reports of child abuse and

to maintain a registry of all investigations unless the reported facts are "unsubstantiated". 33 V.S.A. §§ 4914, 4915 and 4916.

The statute further provides:

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 not substantiated 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. § 4916(h)

In order to sustain its burden of proof, SRS is required to show as a preliminary matter that its investigation was sufficient to conclude that report was "based upon accurate and reliable information that would lead a reasonable person to believe that a child is abused . . ." See 33 V.S.A. § 4912(10), Fair Hearing No. 16,230. At hearing, the Department's burden of proof is by a preponderance of evidence. In re Bushey-Combs, 160 Vt. 326 (1993).

In this case, it cannot be concluded either that the Department's initial investigation resulted in "accurate and reliable information that would lead a reasonable person to believe that a child is abused" or that its decision was supported by a modicum, much less a preponderance, of evidence

presented at the hearing. In 1994 the child was never interviewed or questioned by anyone outside the presence of her father, who the Department knew was in a custody fight with the petitioner and who, himself, had abused his children in the past. The child's therapist at that time raised concerns that the father was coaching the child. And, at the time of the investigation the child's "injury" was not deemed to be serious.

At this time, the child is uncomfortable with her father and denies that her mother ever hit her. The father's testimony at the hearing was inconsistent with what the child allegedly reported to the Department in 1994 and was otherwise not credible.

Inasmuch as the Department has utterly failed to meet its burden of proof in this matter, the report in question must be expunged from the Department's registry.

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