

foster home and the petitioner disputed SRS' actions through a review with the district SRS office and an appeal to the Commissioner of SRS.

The petitioner disputed the facts upon which SRS relied at these review hearings to no avail. The Commissioner supported the decision to move the child made by the district office and advised the petitioner in a written decision dated February 27, 2002 that she could appeal to the Human Services Board for further hearing if she disagreed with his decision.

The petitioner did file such an appeal and SRS moved to dismiss the appeal relying on former Board decisions that foster parents have no cognizable "legal interest" in SRS's placement decision. The petitioner opposed the dismissal saying that the Commissioner had informed her that she was entitled to a hearing before the Human Services Board and that the "hearings" which took place within the Department "lacked any semblance" of due process. She specifically objected to the fact that the Commissioner's hearing officer used information available to him outside of the hearings and the fact that the state produced no witnesses in its behalf. She particularly wants a forum to dispute certain accusations made by SRS that she had spanked the child in her care. She

agrees, however, that SRS has taken no action at this time with regard to her foster care license.

The Board has had occasion in at least three prior cases to consider the standing of both foster and natural parents to bring appeals concerning SRS placement of foster children and whether the Board has subject matter jurisdiction over such appeals. Fair Hearings No. 7,809, 9,455 and 15,108. In Fair Hearing No. 9,455, 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 of children in its custody. Moreover, the board ruled, because adoption of minors is within the jurisdiction of the probate court, the Board would not have subject matter jurisdiction in such matters.

In Fair Hearing No. 7,809, 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 Juvenile 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.

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 discussed in Fair Hearing No. 7,809 (which quoted extensively from a prior decision, Fair Hearing No. 6,435), it is the juvenile court that has the "ultimate say as to what is in the child's best interest" (citing In re G.F., 142 Vt. 273,281 [1982]). Assuming jurisdiction in this matter would in effect place the Board in the position of "second guessing" the court under whose authority SRS acts in placement matters.

As discussed by the Board in both Fair Hearings Nos. 7,809 and 9,455, cases such as these 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 juvenile court "proceeding"¹. In that

¹The Board has general oversight over decisions and actions by SRS that affect only the petitioner that are not

case the question was whether a natural mother of a child in SRS custody could appeal a decision by SRS denying her reimbursement for her own psychotherapy. As the Board pointed out in those fair hearings, SRS decisions regarding placement of children in its custody are at the "heart" of CHINS proceedings and, thus, must be considered within the exclusive jurisdiction of the juvenile court.

For the above reasons, it must be concluded that the petitioner does not have legal standing to appeal a decision by SRS regarding the placement of a child formerly living in the petitioner's foster home and that 33 V.S.A. § 5503 precludes the Board from taking subject matter jurisdiction over the petitioner's appeal. The fact that the Commissioner of SRS informed the petitioner that she could take her appeal here does not confer jurisdiction upon this Board. Although this advice certainly created some confusion for the petitioner and raised her hopes that there would be a further review, it was certainly the better course for SRS to let the Board decide if it has jurisdiction than to make that decision itself by not informing the petitioner of her right to appeal.

inextricably tied to questions regarding the best interests of the child.

A final word is in order with regard to the petitioner's disagreement with findings made by the Commissioner regarding her discipline of her young foster child. While the Board does not have jurisdiction over placements made by SRS, it does have jurisdiction over a grievance filed by a licensee of SRS who is "aggrieved by . . . agency action affecting . . . her . . . license." 3 V.S.A. § 3091(a). The petitioner admits at this point that SRS has not taken any action affecting her license based upon the alleged incident. Therefore, an appeal under this section would be premature. However, if a licensing action is taken based upon these allegations, the petitioner would have a right to be heard on the underlying allegations before the Board.

ORDER

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

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