

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 18,243  
 )  
Appeal of )

INTRODUCTION

The petitioners appeal a decision by the Department of Social and Rehabilitation Services (SRS) to revoke their foster care license based on alleged violations of licensing regulations.

FINDINGS OF FACT

1. The petitioners, Mr. and Mrs. D. are a married couple who live in Brattleboro. Mrs. D. had provided respite care for children in foster care in the past and the couple was interested in becoming foster parents. In the summer of 2002, the couple was encouraged by a friend and neighbor, who is the director of a crisis center for juveniles, to become the foster parents of an eleven-year-old girl who was living in the center until she could be placed. The child was (and still is) in SRS custody and is a client of the Springfield District Office.

2. The petitioners filed a joint application for a foster care license with SRS on August 14, 2002. After a

background check by the licensing division and a home visit by the social worker, the couple was approved for a foster license limited to the care of the eleven-year-old girl, Christina.

3. On August 20, 2002, Christina was brought to the D. home by her social worker and a parent educator. The social worker sat down with Mr. and Mrs. D. and went over a "placement checklist" containing important information about Christina. Included in that information was the fact that Christina had been sexually abused by many perpetrators including three men who were specifically named, one of whom was W.M, a man who had been her stepfather. Mr. and Mrs. D. were told that Christina's mother had not protected her from these sexual predators and was not to have any contact with her other than that set up and supervised by the social worker. The social worker told Mr. and Mrs. D. that the mother had kidnapped Christina from a foster placement in the past and had been convicted of custodial interference. However, the social worker did not expect that contact with the mother was an imminent threat since she lived in a distant town and did not know where the current placement was. Since Mr. and Mrs. D. have no other children, the social worker talked with them at length about placing strict rules on

Christina which could be backed off of once she had built trust. The entire conversation lasted about four hours and ended with the social worker telling them to call any time if there were any concerns.

4. In addition to the specific information about Christina, Mr. and Mrs. D. were told by the social worker that all foster parents were required to undergo parenting training within the next year to retain their licenses. The social worker left a packet of information containing the rules and regulations for foster care and a schedule for foster parent classes to be held in the Springfield district office (which had jurisdiction over the child). On September 9, 2002, the resource coordinator for parent training in the Springfield office also left a message on Mr. and Mrs. D.'s answering machine reminding them that the first day of parent training in Springfield was coming up soon.

5. On September 16, 2002, Mr. D. called the Brattleboro resource coordinator to ask some questions about rearing an eleven-year-old girl. He had questions about cleanliness and development which were answered by the resource coordinator. She also told Mr. D. that he could come in and pick up a book being used in parenting training so long as he joined the Brattleboro classes which were in progress or the Springfield

training which was starting that night. She said Mr. D. told her he could not attend now and she emphasized that the book is no substitute for the class. Thereafter, she called the Springfield resource coordinator to report the conversation.

6. Mr. and Mrs. D. were also informally getting information from their neighbor, the director of the crisis center, who reported to the parent educator at SRS that the family needed more support. The combination of never having been parents and very different parenting styles was causing problems for them. She described Mrs. D. as being reluctant to give Christina many freedoms while her husband felt the opposite.

7. The parent educator followed up by contacting the Springfield office to let them know that Mr. D. needed assistance. The resource coordinator, with the assistance of the parent educator, prepared a packet of information on parenting a twelve-year-old child which was delivered to Mr. and Mrs. D. by the social worker during her next visit on the nineteenth of September. The parent educator asked the Springfield foster parent support worker to contact Mr. and Mrs. D. to see if they needed help in getting up to speed with the Springfield class since they had missed the first session. The foster parent support worker left a message on Mr. and

Mrs. D.'s phone answering machine offering her assistance in getting them up to speed on either the Springfield or Brattleboro classes. She heard nothing from them.

8. On September 19, 2002, the social worker made her first visit to the home. She told Mr. and Mrs. D. that a parent training had started in Springfield and that she had not seen them there. Mr. D. said he felt awkward starting a class that was already in progress and said he would start next time around. The social worker reminded them that the classes were mandatory and that they should show up in Springfield on Monday.

9. On Sunday afternoon, September 29, 2002, Mr. D. was home alone with Christina while Mrs. D. was at work. Christina asked if she could go alone downtown on her bicycle and Mr. D. told her she could so long she stayed on the main street and was back in an hour. After about a half an hour, Mr. D. went downtown to run an errand and saw Christina in the back seat of a car coming into the parking lot where he had parked his car.

10. What happened next is not entirely clear as Mr. D. related slightly different versions of the event over time. What is clear is that the car pulled in and parked in the lot and that Christina's mother and another man were in the car.

For some minutes (from ten to thirty) Mr. D. watched Christina either in the back of or standing along side of the car until the car finally left. He did not attempt to intervene to get her away from the persons she was talking with. Christina got on her bike that had been left in the parking lot and rode to the D.'s home.

11. Mr. D. waited until Mrs. D. came home from work then confronted Christina about what had happened. Christina denied seeing anyone downtown at first but later told others that she had run into her mother in the parking lot and that they went shopping together at a store for about a half hour before returning afterward to the parking lot where they had met. Mr. and Mrs. D. decided that they would contact SRS about this event but that they would wait until the next evening when they would see the social worker in connection with a scheduled visitation with her mother.

12. The next evening, the social worker brought Christina back to the D.'s home after a supervised visit with her mother. At that point, the social worker told the parents she was in a hurry because she had to get to a parenting class and encouraged them to attend the class as well. She told them that another foster parent had offered to help them catch up to the class in Springfield or Brattleboro. As the social

worker was leaving, Mrs. D. turned to her husband and said should we tell her [what happened yesterday]. Mr. D. said that it could wait since the social worker was in a hurry and that they could tell her later. The social worker said that she needed to know anything important about Christina immediately and that she could miss her class if necessary.

13. Mr. and Mrs. D. then told the social worker what had happened. The social worker reported that Mr. D. told her that he recognized the male in the car as W.M., one of the men who had been listed as an abuser of Christina. During the conversation, Mrs. D. also said that parenting Christina was difficult and that she was worried about the stress because she was pregnant. She described the situation as particularly difficult because Christina listened only to Mr. D. who allowed her freedoms that she disagreed with. The social worker asked if they thought Christina needed a different placement and they said no. They all agreed to talk later that week about the problems. This incident was not reported to the licensors at SRS for over a week as the social worker was more focused initially on Christina's safety and on how this might affect future visitation with her mother.

14. The following Friday, October 4, 2002, SRS received a report containing an unrelated allegation with regard to Mr.

and Mrs. D. Pursuant to its procedures, SRS removed Christina from the home until it could conduct an investigation regarding the report.

15. On October 9, 2002, the SRS licensor called Mr. and Mrs. D. to say she had been assigned to investigate the report that had been received on the fourth. Before she could interview the petitioners, the licensor was contacted by both the social worker and parent educator who said that in addition to the complaint received on October 4, they had become concerned that Mr. D. could not follow a case plan, could not provide adequate supervision and had developed an unhealthy relationship with Christina.

16. On October 29, 2002, the licensor and the parent educator who had worked with the couple went to interview Mr. and Mrs. D. in their home. Shortly after the conversation began, Mrs. D. received a phone call that her mother was urgently ill and had been taken to a hospital. Mrs. D. became very upset but Mr. D. insisted that the interview proceed. Under the circumstances, the licensor refused to proceed and encouraged Mrs. D. to attend to her mother.

17. The interview was rescheduled for November 5, 2002 at which time the licensor and the parent educator asked specific questions about what actually happened on the Sunday

in late September when Mr. D. saw Christina in a car with her mother and another man. The testimony of both of these witnesses, who took notes at the time, was that the petitioner said he watched the child in the car with her mother and W.M., for about half an hour. He said he recognized the mother from pictures Christina had shown him and that he knew the male was W.M. because he knew him as a man who lived next door to his workplace. Both witnesses testified that Mr. D. stated that he doubted that W.M. was a child molester and that he "seemed like a good guy to me." They also testified that he said at that time that when he left the parking lot, Christina was still in the car with her mother and W.M.

18. Following this interview and interviews with the child, the crisis center director, the social worker and others, the SRS licensing division determined to revoke Mr. and Mrs. D.'s foster care license. Mr. and Mrs. D. were notified on December 10, 2002, that the revocation was based on Mr. D.'s allowing Christina to have an unsupervised meeting with her mother and a man who had sexually abused her in violation of various SRS regulations.

19. Mr. and Mrs. D. appealed and the Commissioner held a hearing on the matter. After listening to the evidence, the Commissioner upheld the decision of the licensing division on

February 21, 2003 and notified Mr. and Mrs. D. of the same. The Commissioner's representative testified that the decision to revoke was based on Mr. D.'s failure to intervene when he saw the child with her mother and the male, on the fact that he had doubted the male's dangerousness based on his personal knowledge of him, the fact that he had offered different accounts of what happened on that Sunday at various times and had finally denied that he even knew W.M. after telling three SRS employees that he did know him. The Commissioner's representative also quoted Mr. D. as having told him that he was "sick and tired of being unfairly treated by all of these women" that the allegations were "fabrications", and that he was being "screwed over". He also described Mr. D. as having lost his temper (slamming the table and leaving) when asked to explain the discrepancies in his statements about W.M. These incidents led the Commissioner to believe that Mr. D. lacked sound judgment, could not keep a child safe and could not be trusted to follow a case plan.

20. SRS called a parent trainer as an expert<sup>1</sup> on the psychological and developmental needs of foster children as

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<sup>1</sup> This witness has a master's degree in child development, many years in child and family therapy and supervision, and currently works for UVM as a community training specialist. She did the research that is the basis for

part of its case. She testified that a child who has been sexually abused has to be protected from re-traumatization, especially that which occurs through re-exposure to her abusers. She also testified that it is important to attend training in order to deal with the special needs of these children who may appear "normal" but who may have very different reactions to events than children who have not been traumatized. She further testified that a foster parent who encounters a child in a dangerous situation needs to immediately intervene to remove the child from the source of danger and to report the situation at once to the social worker. While she believes that this would be common sense for anyone who had been advised that certain situations were dangerous for the child, these specific procedures would have been taught and emphasized in parent training classes.

21. Mr. D. contends that the problems that arose with Christina were a direct result of SRS's failure to offer him

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the foster parent training provided by SRS. She is also a foster parent and an adoptive parent.

any training. He denied being told of the trainings or receiving any information other than the packet from SRS on the developmental needs of a twelve year old. However, in light of the many witnesses who testified to contacting him, his denials are not credible. The evidence does indicate that Mr. and Mrs. D. did not find it necessary or convenient to attend the trainings at the first possible opportunity.

22. Mr. D. further testified that he never told anyone that he knew W.M., the male who was in the car, and that all testimony by others that he identified him and made comments as to his likely dangerousness were total fabrications. However, the hearing officer finds the sworn testimony of the three SRS employees to whom he reported on at least two separate occasions not only his knowledge of W.M. but how he knew him and where he lived to be entirely credible. The reports the three SRS workers made as to Mr. D.'s assessment of W.M.'s being a "good guy" are also found credible.

23. Mr. D. also denied that the child was allowed contact with her mother and W.M. for more than ten minutes. However, those allegations are again found to lack credibility in light of the consistent testimony of at least two other witnesses who had noted at the time in writing that he

originally reported the child was allowed contact for a half an hour.

24. Based on the above evidence it is found that Mr. and Mrs. D. were duly informed of the dangers to the child in their care and were specifically advised not to let her have contact with certain persons. It is also found that SRS repeatedly encouraged Mr. and Mrs. D. to attend training to deal with this child and learn procedures for ensuring her safety but they failed to take part in those trainings. It is further found that Mr. D. came upon his foster child in a car in the presence of persons she was not allowed to have contact with; that he failed to take any action to remove her from their presence; that she remained in the presence of these harmful persons for a half an hour more until those persons drove away; that Mr. D. did not see the importance of making an immediate report of this incident to SRS although, at the urging of his wife and the social worker he did so the next evening; that Mr. D. told at least three persons that he knew the male in the car, knew his name and where he lived and that he considered him a "good guy" even though SRS had warned that he was dangerous to the child; and that he later denied knowing the male or making these statements.

ORDER

The decision of SRS revoking the petitioners' foster care license is affirmed.

REASONS

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 his or her application revoked. Id. at 010.

SRS has proposed to revoke the petitioner's foster care license because it contends that they are unwilling or unable to meet the following regulations set forth in the above-cited manual:

- 201.5 Applicants and licensees shall exhibit sound judgment.
- 306 Foster parents shall take reasonable steps to safeguard foster children from hazards,
- 322 Foster parents shall cooperate with the child placing agency in case planning and in carrying out the case plan.

The facts found in this case support SRS in its belief that the petitioners are unable to meet the requirements found in the above regulations. While it may have been debatable whether the petitioner's original failure to directly intervene in and report the situation he came upon was unsound or unreasonable or merely the result of a lack of training, his subsequent actions questioning the dangerousness of one of the listed perpetrators, making and then denying statements about the event, and characterizing personnel he works with as fabricators who are out to get him, leave no doubt that SRS has ample grounds to believe that these regulations cannot be met by the petitioners. As SRS has acted in accordance with its regulations, the Board is bound to affirm the decision. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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