

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 18,515  
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Appeal of )  
 )

INTRODUCTION

The petitioners (Mr. and Mrs. H.) request expungement from the Department of Social and Rehabilitation Services (SRS) child abuse and neglect registry of a substantiation made in 1994 that they abused children who were residing in their home at the time.

FINDINGS OF FACT

1. In January 1994, SRS received a report from a school principal that two sisters, ages ten and twelve, were distraught and fearful regarding things that were going on in their home. An SRS investigator and a town police officer were sent that day to interview the girls at the school. The interviews took place in the presence of the school nurse.

2. Although both the school nurse and the SRS investigator at that time testified at the hearing in this matter as to the general scope of the 1994 interview, neither had a specific recollection of the details of the girls' allegations. However, the police officer who conducted the

interview of the girls with the SRS investigator offered direct testimony of the interview based on her memory, which appeared to have been refreshed somewhat prior to the hearing by a review of, or being provided with information regarding, the Department's records in the matter.

3. The police officer testified that during the interview in 1994 the girls, who resided at that time with their father in the petitioners' home (see *infra*), were fearful and complained about receiving abusive discipline from the petitioners.

4. Based on the girls' allegations, SRS supervised them and their father finding another place to live. It does not appear that the girls had any contact with the petitioners after the investigation.

5. Following its investigation SRS substantiated the girls' allegations as child abuse by the petitioners and placed its report of the investigation in its child abuse registry. Although the petitioners deny being informed of SRS's actions until recently<sup>1</sup>, the police officer who had

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<sup>1</sup> It appears the petitioners are presently seeking approval through the Department of PATH to be paid for providing "legally exempt" child care services to a recipient of RUFA benefits.

conducted the investigation testified credibly that she hand delivered a written notice of SRS's actions to the petitioners in June 1994.<sup>2</sup>

6. There is no dispute in this matter that in January 1994 the girls and their father (a single parent) were living with several other adults and children in the petitioners' home. The girls' father worked nights, and during that time the girls were in the care of the petitioners.

7. The girls are now ages twenty and twenty-two. They currently reside in different towns in Florida. At the hearing they testified separately by telephone. Both appeared to have a good recollection of the events in question and both sounded intelligent, assured, and credible. Other than accusing them of being "liars", and disputing some of the details of their testimony, the petitioners offered no explanation of why the girls' prior allegations and present testimony should not be believed.

8. The girls described the petitioners as harsh and bizarre disciplinarians. They testified that Mr. H. would

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<sup>2</sup> The petitioners attach significance to the fact that the Department's notice, dated June 30, 1994, does not have their correct house number in the address. However, the police officer testified credibly that the petitioners were well known to her at the time and that she, in fact, delivered the letter to the petitioners at their actual address.

frequently (several times a week) rouse them and the other children in the household in the middle of the night with "fire drills", often followed by "family meetings". At these times, Mr. H. would require them to write "essays" as punishment for minor infractions like leaving dishes unwashed. The girls testified that they were sometimes required to remain awake for hours on school nights until they completed these essays. Every morning they were then required to get up early to complete morning chores before going to school.

9. Another witness, who also lived with the petitioners at this time when he was a child, credibly corroborated the girls' testimony regarding the nature and frequency of these middle-of-the-night incidents. Even a witness called by the petitioners acknowledged the occurrence of these rituals (although she disputed their frequency).

10. Both girls testified about one incident in particular detail, because it is the one that led them to approach the staff at their school the next day in January 1994. As punishment for some infraction, Mr. H. made the younger one stand outside barefoot in her nightgown on an unheated porch for about an hour late on a cold night. Although no physical injury other than extreme prolonged discomfort was alleged, both girls recalled having been

particularly frightened and upset by this incident. Neither the petitioners nor any other witness disputed this particular allegation.

11. The girls also testified that they were frequently required to help the petitioners in their office cleaning business on school nights. They also described other incidents in which Mr. H. either physically (e.g., hitting and grabbing by the hair) or abusively (e.g., trying to make them eat a dead animal) punished them. They also described incidents in which Mr. H. made derogatory comments regarding racial features of their appearance (both girls are Asian, and were adopted by their father) and in which he engaged in frighteningly rough horseplay with them in the pool. The girls also testified that the petitioners threatened them not to tell their father of their treatment. The petitioners did dispute these allegations.<sup>3</sup>

12. At the hearing Mrs. H. pointed out that the girls' allegations were against her husband, not her. While this is for the most part true, there is no claim on her part or indication that she was not equally responsible for the girls

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<sup>3</sup> No findings are made at this time regarding certain other testimony by the girls regarding incidents that were not reported to or investigated by SRS when they allegedly occurred.

when their father was at work or that she was unaware or disapproving of her husband's treatment of the girls. To the contrary, her posture at the hearing was to defend her husband's character and attack the girls' veracity. By their testimony and demeanor at the hearing, neither of the petitioners struck the hearing officer as credible individuals.

ORDER

The petitioners' request to expunge the 1994 report of child abuse from the Department's registry is denied.

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)

The statute at 33 V.S.A. § 4912 defines abuse and neglect, in pertinent part, as follows:

- (2) An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare . . .
- (3) "Harm" to a child's health or welfare can occur when the parent or other person responsible for his welfare:
  - (A) Inflicts, or allows to be inflicted, upon the child, physical or mental injury . . .
  - . . .
- (4) "Risk of harm" means a significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury, neglect, emotional maltreatment or sexual abuse.
  - . . .
- (7) "Emotional maltreatment" means a pattern of malicious behavior which results in impaired psychological growth and development.

The Department has presented credible and convincing evidence in this matter that in 1994 the petitioners committed actual and threatened physical and emotional harm to two girls in their care through the use of above-described cruel,

bizarre, and disproportional punishments and physical and verbal interactions. For these reasons the petitioners' request to expunge this report of child abuse from the Department's registry is denied.

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