

petitioner was advised at that time that the Board would only have jurisdiction to consider the Department's "substantiation" of abuse against her children, and that the Board could not decide custody matters. The case was continued to allow the Department to conduct a Commissioner's Review of its substantiation of abuse and to allow the petitioner to consult with her attorney regarding any further appeal of this decision.

On November 7, 2005 the Department notified the petitioner and the Board that its Commissioner Review had upheld the decision to substantiate the report of abuse. On November 9, 2005 the Department filed a motion with the Board to dismiss any aspect of the petitioner's appeal dealing with the children's Family Court case plan.

At a status conference held on January 24, 2006 the Department represented that it was prepared to follow any ruling of the Family Court in the pending CHINS proceedings regarding the allegations of abuse and the custody and placement of the petitioner's children. The hearing officer directed that the matter be continued pending the Family Court's ruling. The matter was continued again following status conferences held on February 27, March 8, and May 25, 2006 based on the parties' representations that the matter

was still pending in Family Court and the Department's request to stay the fair hearing pending the Family Court's decision.

On April 2, 2007 the Department notified the Board that the proceedings in Family Court had concluded. A status conference was held on May 14, 2007. At this time the Department represented to the Board that the Family Court had terminated the petitioner's parental rights with her children and that this decision had been upheld by the Vermont Supreme Court. Based on this, the Department represented that it was rescinding its substantiation of abuse against the petitioner. The petitioner did not in any way dispute the Department's representations, but insisted that she wanted to proceed with her appeal with the Human Services Board "to get my children back". Pursuant to the hearing officer's direction, on June 18, 2007 the Department filed a motion to dismiss the matter based on mootness and lack of subject matter jurisdiction.

In its motion the Department confirmed that on March 28, 2007 the Vermont Supreme Court had affirmed the decision of the Family Court terminating the petitioner's parental rights regarding the children in question, and that based on this decision the Department had decided to expunge from its child

abuse registry any report of child abuse regarding the petitioner's children.

ORDER

The petitioner's appeal is dismissed for mootness and lack of subject matter jurisdiction.

REASONS

Under 33 V.S.A. § 4916(h) (since amended) the petitioner could "apply to the human services board for an order expunging from the (child abuse and neglect) registry a record concerning him or her on the grounds that it is unsubstantiated or not otherwise expunged in accordance with this section." As noted above, the Department has unilaterally expunged this matter from its registry. Clearly, the petitioner's appeal regarding expungement is now moot.

The above notwithstanding, the petitioner has indicated that she wishes to pursue an appeal with the Board to "get my children back". The Board has repeatedly held, as has the Vermont Supreme Court, that the family court has "exclusive jurisdiction" over all proceedings concerning any child who is alleged or adjudicated to be a child in need of care or supervision (CHINS) pursuant to 33 V.S.A. § 633(a). See

e.g., Fair Hearing No. 18,351, In Re Susan Kirkpatrick, 147 Vt. 637, 638 (1987).

Unfortunately, it appears that the petitioner has exhausted her court appeals in this regard. Under the law the Board has no role in reviewing those court decisions. As the Board can only hear cases that are statutorily under its jurisdiction, it cannot hear this matter and it must be dismissed. 3 V.S.A. § 3091(a).

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