

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH DEPARTMENT

Matter of Lauren v New York State Office of Children & Family
Services

147 A.D.3d 1322, 47 N.Y.S.3d 537 (N.Y. App. Div. 4th Dep't 2017) · Decided February 3, 2017

SUMMARY

The petitioner sought review under CPLR article 78 of a determination denying her request to amend and seal an indicated report of maltreatment concerning a foster child. The Appellate Division, Fourth Department, unanimously confirmed the determination and dismissed the petition, holding that substantial evidence supported the finding of maltreatment and its relevance to childcare.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Department
WRITING FOR THE COURT	J.P. Smith; DeJoseph; NeMoyer; Troutman; Scudder
JURISDICTION	New York
DECIDED	February 3, 2017
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner brought a CPLR article 78 proceeding challenging an administrative determination made after a fair hearing. The proceeding was transferred to the Appellate Division to review whether the determination denying amendment and sealing of an indicated maltreatment report was supported by substantial evidence.
STANDARD OF REVIEW	Whether the administrative determination is supported by substantial evidence in the record. When substantial evidence supports the agency's determination, the court may not substitute its judgment for that of the agency even if a contrary result is viable.
PRECEDENTIAL VALUE	Published Appellate Division decision
PARTIES	Lauren v. New York State Office of Children & Family Services

TOPICS

- judicial review of agency action
- administrative law
- agency adjudication
- evidence
- appellate procedure

PRACTICE AREAS

administrative law

child welfare

judicial review

QUESTIONS PRESENTED

1. Whether the agency's determination that petitioner committed maltreatment was supported by substantial evidence.
2. Whether the determination that the maltreatment was relevant and reasonably related to childcare was supported by substantial evidence.
3. Whether hearsay evidence presented at the fair hearing could support the agency's determination.

HOLDINGS

1. The determination denying petitioner's request to amend and seal the indicated maltreatment report was supported by substantial evidence in the record.
2. Hearsay evidence alone may constitute sufficient evidence to support an administrative determination when it is sufficiently reliable and probative.
3. To establish maltreatment, the agency must show by a fair preponderance of the evidence that the child's physical, mental, or emotional condition was impaired or in imminent danger of impairment because petitioner failed to exercise a minimum degree of care in providing appropriate supervision or guardianship.

KEY QUOTATIONS

“Substantial evidence is such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact . . . [,] [and] hearsay evidence alone, if it is sufficiently reliable and probative, may constitute sufficient evidence to support a determination” (147 A.D.3d at 1323)

“To establish maltreatment, the agency was required to show by a fair preponderance of the evidence that the physical, mental or emotional condition of the child had been impaired or was in imminent danger of becoming impaired because of a failure by petitioner to exercise a minimum degree of care in providing the child with appropriate supervision or guardianship” (147 A.D.3d at 1323)

FACTUAL BACKGROUND

An indicated report alleged that petitioner maltreated a foster child. After a fair hearing, the agency denied petitioner's request to amend the report to an unfounded report and seal it. The agency determined that petitioner committed maltreatment and that the maltreatment was relevant and reasonably related to childcare.

PROCEDURAL HISTORY

The respondent agency denied petitioner's request to amend an indicated report of maltreatment concerning a foster child to an unfounded report and to seal it. Supreme Court, Erie County, transferred the CPLR article 78 proceeding to the Appellate Division, Fourth Department. The Appellate Division unanimously confirmed the determination and dismissed the petition.

DISPOSITION

dismissed

CASES CITED

- Matter of Dawn M. v New York State Cent. Register of Child Abuse & Maltreatment, 138 A.D.3d 1492, 1493-1494 (N.Y. App. Div. 2016)
- Matter of Theresa WW. v New York State Off. of Children & Family Servs., 123 A.D.3d 1174, 1175 (N.Y. App. Div. 2014)
- Matter of Bounds v Village of Clifton Springs Zoning Bd. of Appeals, 137 A.D.3d 1759, 1760 (N.Y. App. Div. 2016)
- Matter of Gerald HH. v Carrion, 130 A.D.3d 1174, 1175 (N.Y. App. Div. 2015)
- Matter of Danielle G. v Schauseil, 292 A.D.2d 853, 854 (N.Y. App. Div. 2002)
- Matter of Fermin-Perea v Smarts, 95 A.D.3d 439, 440 (N.Y. App. Div. 2012)

OPINION

PER CURIAM.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Erie County [James H. Dillon, J.], entered May 13, 2016) to review a determination of respondent.

The determination denied petitioner's request that an indicated report of maltreatment be amended to unfounded. It is hereby ordered that the determination is unanimously confirmed without costs and the petition is dismissed. Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking to annul a determination made after a fair hearing that denied her request to amend an indicated report of maltreatment with respect to a foster child to an unfounded report, and to seal it (see Social Services Law § 422 [8] [a] [v]; [c] [ii]).

Petitioner contends that the determination that she committed an act of maltreatment and that such maltreatment was relevant and reasonably related to childcare is not supported by substantial evidence. We reject that contention. “ ‘It is well established that our review is limited to whether the determination to deny the request to amend and seal the [indicated] report is supported by substantial evidence in the record’ ” (Matter of Dawn M. v New York State Cent.

Register of Child Abuse & Maltreatment, 138 AD3d 1492, 1493 [2016]; see Matter of Theresa WW. v New York State Off. of Children & *1323Family Servs., 123 AD3d 1174, 1175 [2014]). “Substantial evidence is such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact... [,] [and] hearsay evidence alone, if it is sufficiently reliable and probative, may constitute sufficient evidence to support a determination” (Dawn M., 138 AD3d at 1493 [internal quotation marks omitted]; see Matter of Bounds v Village of Clifton

Springs Zoning Bd. of Appeals, 137 AD3d 1759, 1760 [2016]). “To establish maltreatment, the agency was required to show by a fair preponderance of the evidence that the physical, mental or emotional condition of the child had been impaired or was in imminent danger of becoming impaired because of a failure by petitioner to exercise a minimum degree of care in providing the child with appropriate supervision or guardianship” (Matter of Gerald HH. v Carrion, 130 AD3d 1174, 1175 [2015]; see 18 NYCRR 432.1 [b] [1] [ii]).

If there is substantial evidence in the record supporting the administrative agency’s determination, we “cannot substitute [our] own judgment for that of the administrative agency, even if a contrary result is viable” (Matter of Danielle G. v Schauseil, 292 AD2d 853, 854 [2002]; see Matter of Fermin-Perea v Smarts, 95 AD3d 439, 440 [2012]). Upon our review of the testimony and the evidence presented at the fair hearing, we conclude that the determination “that petitioner maltreated the subject child[] and that such maltreatment was relevant and reasonably related to childcare... is supported by substantial evidence” CDawn M., 138 AD3d at 1494).

Present — Smith, J.P., DeJoseph, NeMoyer, Troutman and Scudder, JJ.