

SUPREME COURT OF VERMONT

In re E.C.

1 A.3d 1007 (2010) · No. No. 09-040 · Decided June 2, 2010

SUMMARY

The Vermont Supreme Court affirmed the Human Services Board's reversal of the Department's substantiation of abuse against an individual assistant who dunked a developmentally disabled student three times during a swimming-pool therapy session. The Court held that 33 V.S.A. § 6902(1)(E) contains a subjective intent requirement but applies an objective standard to whether conduct should reasonably be expected to cause serious emotional distress. It concluded that the Board applied the proper standard and made sufficient findings to support its decision.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Chief Justice Reiber; Justice Dooley; Justice Johnson; Justice Skoglund; Justice Burgess
JURISDICTION	Vermont
DECIDED	June 2, 2010
DOCKET	No. 09-040
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Department appealed the Human Services Board's reversal of its substantiation of abuse by E.C. The Vermont Supreme Court affirmed the Board's decision.
STANDARD OF REVIEW	The Court deferred to the Board's decisions and would not set aside its findings unless clearly erroneous. It reviewed whether the Board applied the proper legal standard, whether the evidence reasonably supported the findings, and whether the findings reasonably supported the conclusions. The record was construed in the manner most favorable to the Board's conclusions.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Department of Disabilities, Aging and Independent Living v. E.C.

TOPICS

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QUESTIONS PRESENTED

1. Whether 33 V.S.A. § 6902(1)(E) establishes an objective standard for determining whether intentional conduct should reasonably be expected to cause intimidation, fear, humiliation, degradation, agitation, disorientation, or other serious emotional distress to a vulnerable adult.
2. Whether the Human Services Board properly applied that standard in reversing the Department's substantiation of abuse.
3. Whether the Board made sufficient findings of fact to support its decision.

HOLDINGS

1. Section 6902(1)(E) contains a subjective intent element and an objective result element: the conduct must be intentional, and it must be conduct that should reasonably be expected to cause the listed forms of distress.
2. The Board acted within its discretion in concluding that E.C.'s conduct could not reasonably be expected to cause the statutory forms of serious emotional distress, and the facts did not establish abuse as a matter of law.
3. The Board's findings were sufficient to support its reversal of the Department's substantiation, even though some findings appeared in the reasons section rather than the formal findings-of-fact section.

KEY QUOTATIONS

“The plain meaning of the statute indicates that it has both subjective and objective elements.” (1 A.3d at 1009)

“The mental element of the statute is subjective—the individual in question must have acted intentionally. The result of the individual's behavior is measured by an objective standard—whether it is reasonably to be expected that the individual's behavior will result in serious emotional distress in the vulnerable adult.” (1 A.3d at 1009)

“Rather than relying on abstract definitions, we must evaluate the meaning of these terms in the context of the statute.” (1 A.3d at 1010)

“The application of an objective reasonableness test does not preclude the Board from considering the actual consequences of petitioner's conduct to assist it in determining how a reasonable person would view such conduct.” (1 A.3d at 1012)

FACTUAL BACKGROUND

E.C. had worked for approximately seventeen years as an individual assistant for special-needs students and had assisted A.M., a nineteen-year-old vulnerable adult with significant physical and developmental impairments, for four years. During a pool-based physical therapy session, A.M. refused to perform abdominal crunches, and E.C. unexpectedly placed her hands on his shoulders and dunked him underwater three times over approximately twenty-five seconds. A.M. then refocused and completed the remainder of his therapy program; the Board found that he was agitated before and during the dunking but not afterward.

PROCEDURAL HISTORY

The Department investigated a report that E.C., an individual assistant for special-needs students, abused a vulnerable adult by dunking him underwater three times during a swimming-pool physical therapy session. The Department substantiated abuse under 33 V.S.A. § 6902(1)(B) and (E), but the Human Services Board reversed after a fair hearing. The Department timely appealed to the Vermont Supreme Court.

DISPOSITION

affirmed

CASES CITED

- In re P.J., 2009 VT 5, ¶ 7, 185 Vt. 606, 969 A.2d 133 (mem.)
- Zingher v. Dep't of Aging & Disabilities, 163 Vt. 566, 572, 664 A.2d 256, 259 (1995)
- In re Tinker, 165 Vt. 621, 622, 686 A.2d 946, 948 (1996) (mem.)
- Harrington v. Dep't of Employ. Sec., 142 Vt. 340, 344, 455 A.2d 333, 336 (1982)
- In re Entergy Nuclear Vt. Yankee Discharge Permit, 2009 VT 124, ¶ 36, 989 A.2d 563
- Chayer v. Ethan Allen, Inc., 2008 VT 45, ¶ 10, 183 Vt. 439, 954 A.2d 783
- Devers-Scott v. Office of Prof'l Regulation, 2007 VT 4, ¶ 34, 181 Vt. 248, 918 A.2d 230
- In re Kleven, 736 N.W.2d 707 (Minn. Ct. App. 2007)
- Williams v. Watkins, 379 S.C. 530, 665 S.E.2d 243, 246 (App. 2008)
- MacDonough-Webster Lodge No. 26 v. Wells, 2003 VT 70, ¶ 11 n. 2, 175 Vt. 382, 834 A.2d 25
- Park's Adm'r v. Am. Home Missionary Soc'y, 62 Vt. 19, 25, 20 A. 107, 108 (1890)
- Murphy v. City of Aventura, 616 F. Supp. 2d 1267, 1274-75 (S.D. Fla. 2009)
- Almond v. Tarver, 468 F. Supp. 2d 886, 899 (E.D. Tex. 2006)
- Fluor Alaska, Inc. v. Mendoza, 616 P.2d 25, 27 (Alaska 1980)
- Krupp v. Krupp, 126 Vt. 511, 514, 236 A.2d 653, 655 (1967)
- In re Twenty-Four Elec. Utils., 160 Vt. 227, 237, 627 A.2d 355, 361 (1993)
- LaFountain v. Employ. Sec. Bd., 133 Vt. 42, 45, 330 A.2d 468, 470 (1974)
- Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405, 110 S. Ct. 2447, 110 L. Ed. 2d 359 (1990)
- Salmon v. Dep't of Pub. Health & Addiction Servs., 259 Conn. 288, 788 A.2d 1199, 1208 (2002)
- Nat'l Labor Relations Bd. v. Deauville Hotel, 751 F.2d 1562, 1569 (11th Cir. 1985)
- DeBusk v. Johns Hopkins Hosp., 342 Md. 432, 677 A.2d 73, 76 (1996)

