

SUPREME COURT OF VERMONT

In re R.P.

189 Vt. 31 (2010) · Decided October 29, 2010

SUMMARY

The Vermont Supreme Court considered whether a Human Services Board hearing officer had authority to require the Department for Children and Families to submit a written offer of proof during a fair hearing concerning placement on the child protection registry. The court held that the hearing officer had implied authority to require the offer of proof, but that the Board acted prematurely in reversing DCF's substantiation decision before allowing DCF to comply with the order. The court reversed and remanded for additional proceedings.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Skoglund, J.; Burgess; Dooley; Johnson; Reiber; Skoglund
JURISDICTION	Vermont
DECIDED	October 29, 2010
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Department for Children and Families appealed the Human Services Board's reversal of its determination that petitioners should be included in the child protection registry for placing their children at risk of harm.
STANDARD OF REVIEW	The court reviewed the Human Services Board's handling of the interlocutory evidentiary ruling and its reversal of DCF's substantiation decision for legal error, applying the statutory requirements that the Board or hearing officer issue written findings of fact and enter an order based on those findings.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	Department for Children and Families v. Petitioners R.P.

TOPICS

agency adjudication interlocutory appeal administrative law appellate procedure evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a Human Services Board hearing officer had authority to require DCF to submit a written offer of proof before completing the fair hearing.
2. Whether the Human Services Board erred by reversing DCF's substantiation decision based solely on DCF's failure to comply with the hearing officer's offer-of-proof directive before factual findings and application of the governing legal standard had been completed.

HOLDINGS

1. A Human Services Board hearing officer has authority to require an offer of proof when that authority is necessarily implied to enable the Board to conduct fair hearings effectively and efficiently, and the authority is consistent with the Board's procedural rules.
2. The Board erred by reversing DCF's substantiation decision because DCF had not yet been given the opportunity to comply with the offer-of-proof order, and the hearing officer had not made findings of fact or explicitly evaluated the facts under the governing legal standard.

KEY QUOTATIONS

“DCF was entitled to the opportunity to comply with the Board’s order, and the Board acted prematurely in reversing DCF’s substantiation decision under the circumstances here.” (at 36)

“We thus conclude that while the Board properly upheld the hearing officer’s preliminary evidentiary ruling, it erred in reversing DCF’s decision to substantiate petitioners for placing their children at risk of harm.” (at 37)

FACTUAL BACKGROUND

DCF investigated petitioners after determining that they had allowed E.W., an adult with multiple convictions for sexual offenses against children, regular and sometimes unsupervised contact with their four young daughters for more than eighteen months. Petitioners knew of E.W.'s criminal and substance-abuse history, allowed him to stay in their home, and continued contact with him after being advised of the risks he posed to children. DCF concluded that a reasonable person would believe petitioners had placed the children at significant risk of sexual abuse and substantiated the report.

PROCEDURAL HISTORY

DCF substantiated a report and notified petitioners that it intended to include them in the child protection registry. An administrative reviewer upheld the substantiation, after which petitioners appealed to the Human Services Board. During the Board proceedings, the hearing officer ordered DCF to submit a written offer of proof; when DCF did not comply in the manner directed, the Board reversed DCF's substantiation decision. DCF appealed to the Supreme Court of Vermont.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the hearing officer for additional proceedings, including allowing DCF the opportunity to comply with the offer-of-proof order and continuing the fair hearing as appropriate.

CASES CITED

- In re Houston, 2006 VT 59, ¶ 9, 180 Vt. 535, 904 A.2d 1174 (mem.)

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