

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-361

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

MAY TERM, 2009

MAY 29 2009

In re Patricia and Fred Stewart	}	APPEALED FROM:
	}	
	}	
	}	Human Services Board
	}	
	}	FAIR HEARING NO. T-01/08-13

In the above-entitled cause, the Clerk will enter:

Petitioners appeal pro se from the denial of their application for a foster care license. We affirm.

Petitioners are the great-grandparents of children who are in the custody of the Department for Children and Families (DCF). In July 2007, petitioners applied for a foster care license to allow them to take care of these children. DCF denied the application, finding that petitioners were not in compliance with certain licensing regulations. Petitioners appealed to the Human Services Board, which upheld DCF's decision. The Board explained that DCF was entitled to a high degree of deference and discretion in foster care matters. Its regulations regarding foster care licensing are designed to ensure that children are placed in safe and caring homes, and the regulations provide that no licenses will be granted to individuals who were unwilling or unable to meet the regulatory requirements. DCF had determined that petitioners here were unwilling or unable to meet regulations that required a " 'commitment to foster care, and the ability and willingness . . . to work cooperatively in support of the child's case plan' " and it also found that petitioners failed to exhibit " 'sound judgment.' " (quoting Licensing Regulations for Family Foster Care §§ 010[3], 322, 201.4 (Sept. 1, 1992).) The Board found that DCF acted within its discretion in reaching this conclusion in light of petitioners' history and their attitude toward DCF. The Board thus affirmed the denial of petitioners' application. Petitioners appealed.

Petitioners challenge several of the Board's findings. They first state that their only disagreement with DCF was that they were being denied visitation with their great-grandchildren, and that the children should not have been in DCF custody when petitioners were available to care for them. The Board does not appear to have indicated otherwise in its order. Indeed, it recognized that the family court had exclusive jurisdiction over custody and visitation issues, and it did not address these issues in its decision. The import of petitioners' first argument is thus unclear. Petitioners also argue that DCF and the Board should not have considered their actions in a 2002 case involving petitioners' daughter in reaching their decisions. Finally, petitioners claim that DCF and the Board erroneously concluded that they would be unwilling or unable to work with DCF to meet the children's needs.

Petitioners fail to show that the Board erred. See Hall v. Dep't of Social Welfare, 153 Vt. 479, 486-87 (1990) (Board's findings will stand where the record contains any credible evidence that fairly and reasonably supports them). DCF cited violations of numerous regulations in support of its decision to deny petitioners' application. Petitioners appear to focus on Regulation 010 (foster parents must be

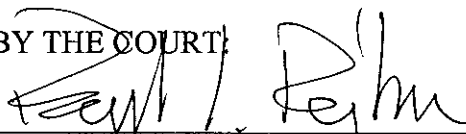
committed to foster care and have the ability and willingness to work cooperatively in support of the child's case plan) and Regulation 322 ("Foster parents shall cooperate with the child placing agency in case planning and in carrying out the case plan."). There is credible evidence in the record to support DCF's finding that petitioners did not comply with these requirements, and the evidence equally supports the Board's decision to uphold DCF's action.

First, both DCF and the Board could properly consider petitioners' behavior in the 2002 case. The record indicates that petitioners' grandchildren were subject to a temporary order of detention, and their mother (petitioners' daughter) refused to relinquish the children. Two of the children were apparently found hiding in petitioners' basement, and a police officer indicated that one of the petitioners, Mrs. Stewart, became "verbally volatile and uncooperative." While petitioners offer an explanation about the circumstances surrounding this incident, they fail to show that the incident itself was irrelevant to an assessment of their ability to work constructively with DCF. There was also other evidence demonstrating petitioners' refusal to cooperate with DCF. In 2006, for example, DCF was attempting to locate petitioners' daughter, who had petitioners' great-grandchildren in her care. The great-grandchildren were the subject of an emergency detention order due to an allegation of extreme neglect. When a police officer spoke to Mrs. Stewart, she indicated that her daughter was "in hiding," and she would not reveal her whereabouts.

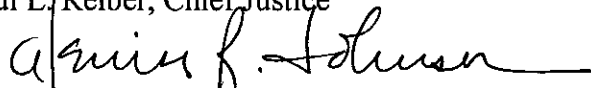
The record also shows that petitioners have consistently accused DCF employees, the police, and others of lying. DCF found this pattern quite concerning. It explained that, while it was certainly possible that miscommunications might occur, petitioners had asserted that the statements of three social workers, their supervisor, the Rutland Family Services' district director, a member of the Residential Licensing Unit and her supervisor, medical professionals, two police officers, and members of the local family court, had treated them and their granddaughter unfairly and had made false statements against them. DCF found that the record did not support petitioners' perception of events, and it was "unlikely that so many people, with such different accountabilities, would reach similar conclusions falsely or unfairly." DCF also noted petitioners' unwillingness to work with one of its social workers regarding visitation with the children. Rather than contact the social worker as instructed, DCF explained, petitioners instead began reaching out to other government entities, providing them with negative and inaccurate information about visitation. DCF found that such behavior did not indicate a willingness to work with it in partnership toward the best interest of the children. Given this and other evidence, the Board did not err in upholding DCF's conclusion that petitioners were unlikely to cooperate with DCF and affirming the denial of petitioners' application for a foster care license.

Affirmed.

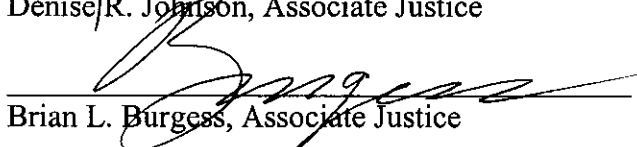
BY THE COURT:



Paul L. Reiber, Chief Justice



Denise R. Johnson, Associate Justice



Brian L. Burgess, Associate Justice