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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0044

In the Matter of the Revocation of the Family Child Care License of Kathleen Stoeser

Filed December 10, 2012
Affirmed
Hooten, Judge

Minnesota Department of Human Services
File No. 15-1800-21935-2

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Considered and decided by Hooten, Presiding Judge; Peterson, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Relator appeals by writ of certiorari the order of the commissioner of the department of human services denying her motion for reconsideration and upholding the revocation of her in-home daycare license and her disqualification as a licensed daycare provider. Because there was substantial evidence that relator was responsible for serious maltreatment, the decision of the commissioner was neither arbitrary nor capricious, and

the commissioner did not abuse her discretion in disqualifying relator as a licensed daycare provider, we affirm.

FACTS

Relator Kathleen Stoeser and her husband, Larry Stoeser,[1] were married in 1972. Relator has operated a licensed daycare in her home for more than 30 years; Stoeser worked outside their home for a majority of that time. Relator held a C-3 daycare license, which allowed her to care for up to 14 children and required the presence of a second adult caregiver.[2] Beginning in 2001 or 2002, after sustaining back injuries at work and becoming disabled, Stoeser assumed the role of a helper for relator's daycare. Both relator, as the license holder, and Stoeser, as a helper, were required to complete the statutorily required training, which included "training in establishing and maintaining an environment that ensures children's health, safety, and nourishment, including child abuse, maltreatment, prevention, and reporting." Minn. Stat. § 245A.50, subd. 7(6) (2010).

On August 30, 2010, a Kandiyohi County child protection investigator received a report alleging that Stoeser sexually molested a minor, F.G., while she was at relator's daycare. In an interview, F.G. stated that, within the past year, Stoeser touched her

[1] Throughout this opinion relator Kathleen Stoeser will be referred to as "relator" and Larry Stoeser will be referred to as "Stoeser."

[2] Minn. R. 9502.0367 (2011) provides that a C-3 license allows for the care of 14 children with no more than 4 toddlers or infants or no more than 3 infants. A second adult caregiver is required when there is more than one infant or toddler present. An "adult" is defined as "a person at least 18 years of age," Minn. R. 9502.0315, subp. 2 (2011), and a "caregiver" is defined as a "provider, substitute, helper, or another adult giving care in the residence." Minn. R. 9502.0315, subp. 6 (2011).

vaginal area about seven times, both under and over her clothes. She stated that Stoeser masturbated and ejaculated in her presence and that the abuse occurred in the living and dining room of the residence during nap time.

The investigator interviewed approximately 30 other children who received daycare services at relator's home and was advised by four other children that Stoeser had sexually abused them. One child alleged that, sometime in 2003, she was lying on Stoeser's lap when he placed his hand between her pants and underwear in her vaginal area. Another child stated that sometime in 2004, Stoeser put his hand and tongue in her vaginal area. One child alleged that Stoeser kissed her belly and vaginal area over her clothing sometime in 2010. Finally, one child stated that, sometime in 2010 during naptime, Stoeser touched her vaginal area.

Stoeser admitted to touching F.G.'s vaginal and buttocks areas and masturbating in her presence and admitted that this occurred on approximately seven to ten occasions while relator was in another room supervising other children. Stoeser also admitted to sexually abusing other children inside the home, both in the living room and a back room, usually during nights or late evenings, while relator was sleeping. He explained that these acts were "done very discreetly" and the contacts could last between 10 and 15 minutes. Stoeser pleaded guilty to two counts of second-degree criminal sexual conduct and was sentenced to 36 months in prison.

When relator was confronted about Stoeser's sexual abuse, she vigorously denied having any knowledge that he was sexually abusing children and indicated that if she had known, she would have asked him to leave. However, she conceded that she had been

concerned that Stoeser was depressed. She volunteered that she had to prompt Stoeser to get out of bed and shower in the morning, often reporting that she often felt like she was the parent and he was the child. Relator reasoned that because of his back problems, Stoeser used pain pills that may have affected his sleeping habits and made it difficult for him to get up in the morning. Relator also noted that she had to prompt Stoeser to correctly supervise the children.

Relator claimed that Stoeser was merely a part-time "helper" because she did not have 14 children every day. She explained that "[h]e'd come and go pretty much freely, what he wanted to do." His main duties were to be outside with some of the children to make sure they were not hurting each other and to "lay on the floor in the other room while the kids were taking naps to make sure that they wouldn't be jumping all over each other" while she took care of infants. Relator maintained that it was her job, as the person in charge of the daycare, to provide the children with attention and physical contact. She indicated that she would not let Stoeser change diapers or let the children sit in his lap because she felt it was inappropriate.

On January 26, 2011, Kandiyohi County Human Services made a determination that there had been maltreatment by relator for "neglect involving sexual abuse," that the maltreatment was serious and recurring, and that she was disqualified from providing licensed care. Because relator had already been issued a one-year conditional license in

2004 for her failure to provide adequate supervision of the children in her care, the department revoked her daycare license. Relator appealed.[3]

Relator filed an administrative appeal, and an ALJ recommended affirming the determination of serious maltreatment and relator's resulting disqualification and revocation, concluding that the department had demonstrated by a preponderance of the evidence that relator failed to protect children in her care from her husband's abuse when reasonably able to do so. The commissioner of the Minnesota Department of Human Services affirmed the decision and denied relator's request for reconsideration. Relator now seeks review of the commissioner's decision, arguing that she should be allowed to continue her daycare business because she had no knowledge of Stoeser's sexual abuse.

D E C I S I O N

Administrative-agency decisions are presumed to be correct and "may be reversed only when they are arbitrary and capricious, exceed the agency's jurisdiction or statutory authority, are made upon unlawful procedure, reflect an error of law, or are unsupported by substantial evidence in view of the entire record." *In re Revocation of the Family Child Care License of Burke*, 666 N.W.2d 724, 726 (Minn. App. 2003); *see also* Minn. Stat. § 14.69 (2010). "In reviewing an agency's decision on a legal issue, this court is not bound by the agency's ruling." *Burke*, 666 N.W.2d at 726. "A reviewing court must defer to the agency's fact-finding process and be careful not to substitute its findings for those of the agency." *Id.* A reviewing court does not retry facts or make credibility

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[3] Although there was a determination that Stoeser had committed serious maltreatment of the children within the meaning of Minn. Stat. § 245C.02, subd. 18 (a) (2010), relator does not contest this determination or the facts relating to Stoeser's abuse.

determinations, but must defer to an agency's credibility determinations. *In re Appeal of Rocheleau*, 686 N.W.2d 882, 891 (Minn. App. 2004), *review denied* (Minn. Dec. 22, 2004). An actual determination of credibility is necessarily implicit in a fact-finder's decision when there is conflicting evidence. *Vang v. A-1 Maint. Serv.*, 376 N.W.2d 479, 482 (Minn. App. 1985); *see also Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 205 (Minn. App. 2004) (holding that, when reviewing an agency's decision, appellate courts must defer to the commissioner's ability to weigh conflicting evidence), *review denied* (Minn. Mar. 30, 2004).

1. Determination of Serious Maltreatment

"The commissioner shall disqualify an individual who is the subject of a background study from any position allowing direct contact with persons receiving services from the license holder" upon receipt of information showing that "an investigation results in an administrative determination listed under section 245C.15, subdivision 4, paragraph (b)." Minn. Stat. § 245C.14, subd. 1(a)(3) (2010).

> An individual is disqualified under section 245C.14 if less than seven years has passed since a determination or disposition of the individual's . . . substantiated serious or recurring maltreatment of a minor under section 626.556 . . . for which: (i) there is a preponderance of evidence that the maltreatment occurred, and (ii) the subject was responsible for the maltreatment.

Minn. Stat. § 245C.15, subd. 4(b)(2) (2010).

"'Serious maltreatment' means sexual abuse" and includes neglect resulting "in criminal sexual conduct against a child or vulnerable adult." Minn. Stat. § 245C.02, subd. 18(a), (d) (2010). "Neglect" includes a "failure by a person responsible for a

child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so," and a "failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so." Minn. Stat. § 626.556, subd. 2(f)(1), (2) (2010).

Relator argues that there is insufficient evidence to support the determination of serious maltreatment or neglect because there was no evidence that she knew or should have known about her husband's criminal sexual conduct. In rejecting relator's argument that there was no evidence that she should have known about her husband's abuse of the children, the ALJ explained:

> Although there is no compelling evidence that [relator] was aware of her husband's actions, there was evidence to suggest that she was aware that something was not quite right about her husband. She stated that, although he was one of the caregivers, she did not have him change diapers or take the children to the bathroom and she did not permit the little girls to sit in his lap. Although she may not have been able to articulate her reasons or may have set these limits because of concerns about the likelihood of inappropriate sexual contact, the limitations seem odd.

The ALJ also noted Stoeser's problems functioning at home and his seemingly distant relationship with relator, stating:

> Although none of these circumstances alone would warrant the revocation of the license, when combined with the number of occasions that sexual contact occurred and the number of victims, it is apparent that [relator] was not sufficiently alert to what was occurring in her home or the difficulties her husband was experiencing.

Based upon the evidence produced at the evidentiary hearing, the ALJ found that relator had committed serious maltreatment or neglect "by failing to protect children in her care from her husband's criminal sexual conduct when reasonably able to do so."

Relator claims that the ALJ erred in making this determination because she failed to use general principles of negligence in assessing whether she failed to protect children from conditions or actions that seriously endangered their physical or mental health "when reasonably able to do so." She argues that because there is no evidence that she knew about the child abuse in her daycare and no one complained about any child abuse, the ALJ should have found that she had "reasonably" satisfied her duty to protect the children from sexual abuse by her husband.

In construing the statutory duty imposed upon a daycare provider to protect a child from child abuse, we do not agree with relator's claim that the only pertinent inquiry in determining neglect is whether relator actually knew or had reason to know about Stoeser's sexual abuse. First, relator's narrow construction of what constitutes "neglect" under section 626.556, subdivision 2(f) (2010), violates the canon of statutory construction which requires that we "effectuate the intention of the legislature." Minn. Stat. § 645.16 (2010). The legislature has indicated that "the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse." Minn. Stat. § 626.556, subd. 1 (2010); *see also Bjerke v. Johnson*, 742 N.W.2d 660, 670 (Minn. 2007) ("Minnesota has expressed a particularly strong interest in protecting children from sexual abuse."). Thus, construction of the statutes relating to the revocation of daycare licenses and disqualification of persons

serving as daycare providers must be done so as to further this state's strong public policy of protecting children from sexual abuse.

Second, general principles of negligence do not relieve relator from the duty to protect children in her care from sexual abuse by her husband on multiple occasions over an eight-year period. "Under common law principles, there is generally no duty to protect strangers from the criminal actions of a third party." *State v. Back*, 775 N.W.2d 866, 870 (Minn. 2009). However, if there is a special relationship between two persons, in which one entrusted his or her safety to the other, and the other has accepted that entrustment, the law recognizes a duty upon the one who has accepted that entrustment "to protect against, or to control, the criminal behavior of third parties." *Id.* This special duty to protect others from the criminal acts of third parties has been recognized on multiple occasions. *See Bjerke*, 742 N.W.2d at 667 (addressing situation where homeowner invites a child to his or her home and the child is sexually abused by an employee of homeowner); *Erickson v. Curtis Inv. Co.*, 447 N.W.2d 165, 168–70 (Minn. 1989) (addressing situation where an owner and operator of a security-protected parking ramp invites the general public to use its facility); *Delgado v. Lohmar*, 289 N.W.2d 479, 483−84 (Minn. 1979) (acknowledging that "special relationships exist between parents and children, masters and servants, possessors of land and licensees, common carriers and their customers, or people who have custody of a person with dangerous propensities"); *Sylvester v. Nw. Hosp. of Minneapolis*, 236 Minn. 384, 386–87, 53 N.W.2d 17, 19 (1952) (recognizing a special relationship between a hospital and a patient giving rise to a duty to protect the patient from harm).

It is well settled that a special relationship exists between a daycare provider and the daycare's children. *See Andrade v. Ellefson*, 391 N.W.2d 836, 842 (Minn. 1986); *Laska v. Anoka Cnty.*, 696 N.W.2d 133, 138–39 (Minn. App. 2005), *review denied* (Minn. Aug. 16, 2005). A "special relationship" giving rise to a duty to protect another from harm exists when a person "has custody of another person under circumstances in which that other person is deprived of normal opportunities of self-protection." *Bjerke*, 742 N.W.2d at 665 (quoting *Harper v. Herman*, 499 N.W.2d 472, 474 (Minn. 1993)). In *Andrade*, the supreme court noted that, as to daycare facilities, "small children . . . are a particular protected class" consisting of "uniquely vulnerable persons . . . left by their working parents in a home other than their own, and left in the care of another person for some period of less than 24 hours of the day." 391 N.W.2d at 842. In recognizing that child abuse often takes place in clandestine settings and often with an admonition from the abuser to the children to remain silent, the dissent in *H.B. ex rel. Clark v. Whittemore*, explained:

> It is this pattern of secrecy, typical of childhood sexual abuse, that is behind the requirement of state law that certain individuals with frequent contact with children are required to report to public authorities any abuse described to them by children. The policy favoring protection against such abuse is so strong that persons who violate the "mandatory reporting" requirement may face criminal charges. These provisions are legislative acknowledgement that children are, as to sexual abuse, deprived of the normal opportunities to protect themselves. And this 'dependence' on others for protection and assistance is precisely the type of circumstances under which we have previously said a duty may arise.

552 N.W.2d 705, 710–11 (Minn. 1996) (Gardebring, J., dissenting) (citations omitted).[4] These same public policy considerations have been the basis upon which the court has expanded this special duty not only to daycare providers, but also to counties investigating and licensing daycare providers. *See Andrade*, 391 N.W.2d at 843 ("[T]he statutory mandate to protect a certain class . . . is so overwhelmingly dominant that we have no difficulty in finding a 'special relation' exists between the county and the small children in the day care homes that it inspects for licensure.").

A daycare provider is not only required to protect children from harm and abuse while they are in daycare, but also has an interrelated duty to adequately supervise the children. A provider is required to comply with the capacity limits regarding the number of children in the daycare and must be "the primary provider of care in the residence." Minn. R. 9502.0365, subp. 5 (2011). If a daycare provider fails to adequately supervise the children and the children are sexually abused by an employee while working for the daycare, the daycare provider may be liable under theories of negligent supervision and respondeat superior. *See L.M. by S.M. v. Karlson*, 646 N.W.2d 537 (Minn. App. 2002) (noting that an employer may be liable for intentional torts, including inappropriate sexual touching, of its employees acting within their scope of employment), *review denied* (Minn. Aug. 20, 2002).

Minnesota law imposes upon a daycare provider a duty of supervision and a special duty to protect children under his or her supervision from sexual abuse. While

[4] In *Clark*, the dissent was critical of the majority for refusing to expand this special duty to the manager of a trailer park, who had been informed by children living in the park that one of the park tenants was sexually abusing them.

relator is correct that there is no statute, rule, or case law that fully discusses the nature and extent of these duties, particularly within the context of a daycare provider, there is no support for her position that this special duty is not triggered absent actual or constructive knowledge that abuse is taking place. In fact, Minnesota cases dealing with the duty of those entrusted with the care of children find a broader duty to protect and supervise notwithstanding the lack of knowledge of sexual abuse by a provider. For example, in *Karlson*, this court affirmed the district court's dismissal of a minor victim's negligent hiring and retention claims against a daycare provider because there was insufficient evidence disqualifying the sexual abuser from being hired or indicating that the daycare provider had any actual knowledge that the employee was sexually abusing the children. 646 N.W.2d at 544. Yet, this court reversed the district court's granting of summary judgment relative to the minor victim's negligent supervision and respondeat superior claims because there was a genuine issue of material fact regarding the foreseeability of sexual abuse by daycare workers. *Id.* at 542–544. And in *Bjerke*, it was held that a caretaker of a minor who was sexually abused by another adult living at the caretaker's home was not entitled to summary judgment relative to the minor's personal-injury claims for damages due to the sexual abuse, notwithstanding the minor's admission that she went to "considerable lengths" to keep the relationship a secret from the caretaker. 742 N.W.2d at 664.

Based upon our review of the statutes and case law, we do not find any support for relator's argument that, simply because she did not have actual knowledge of Stoeser's

sexual abuse, the finding of maltreatment was improper.[5] Rather, relator, as is evidenced by her required training as a daycare provider under Minn. Stat. § 245A.50, subd. 7(6), had to establish and maintain a daycare ensuring the children's health and safety, which included the prevention and reporting of child abuse and maltreatment. Within the context of this broader duty imposed upon daycare providers, this court must determine whether there was substantial evidence that relator failed to protect children in her daycare from sexual abuse when "reasonably able to do so." It is undisputed that relator failed to protect children in her daycare from multiple acts of sexual abuse by her husband over an eight-year period. Thus, the only factual issue in dispute is whether she was "reasonably able" to prevent Stoeser's abuse.

[5] Relator's reliance upon *In re Temporary Immediate Suspension of Family Child Care License of Strecker*, 777 N.W.2d 41 (Minn. App. 2010) is misplaced. *Strecker* is distinguishable from the instant case because there is no reasonable dispute here that numerous minor children were sexually assaulted by Stoeser while at relator's daycare operation. In contrast, the critical issue in *Strecker* was whether there was reasonable cause to believe that the child sustained his injuries while under the licensee's supervision. Additionally, relator cites *Burke*, 666 N.W.2d at 728 and *In re Ins. Agents' Licenses of Kane*, 473 N.W.2d 869, 877 (Minn. App. 1991), *review denied* (Minn. Sept. 25, 1991), for the proposition that the phrase "reasonably able to do so" implies knowing or having reason to know that something untoward is going on. *Burke* addresses the appropriateness of the revocation of a daycare license as a sanction, and not a determination of serious maltreatment. 666 N.W.2d at 728. *Kane* involved the revocation of insurance licenses based upon the misrepresentation of insurance products and involved an analysis of whether the misrepresentation at issue required an element of scienter. 473 N.W.2d at 876–77. This court concluded that the terms "misrepresenting" and "misleading" in sections 60A.17, subdivision 6c(a)(3), (6) and 72A.20, subdivisions 1 and 2 (1988), did require some element of scienter, as opposed to a requirement of intent or willfulness, but that culpability was relevant only to the extent of sanctions. *Id.* at 877. In contrast, there are no words or phrases in sections 245C.02, subd. 18, 245C.15, subd. 4(b)(2), or 626.556 that implicate any scienter requirement.

There is substantial evidence in the record in support of the ALJ's conclusion that relator failed to protect children in her care from Stoeser's extended sexual abuse when reasonably able to do so. First, despite finding that relator did not have actual knowledge of Stoeser's sexual abuse, the ALJ also implicitly found incredible relator's claim that she did not have reason to know of the sexual abuse of children by her husband. Relator admitted that she was aware that something was not quite right about Stoeser, noting that she acted as his parent at times, that he was frequently medicated, and that she had to constantly prompt him to get out of bed and care for children. Relator was also acutely aware that sexual contact with the children was strictly prohibited, as evidenced by the fact that her son, who was involved in a sexual assault, was not allowed to live with her because of concerns about his contact with children in her daycare. As noted by the ALJ, it was "odd" that relator prohibited her husband from participating in normal daycare activities such as changing children or letting children sit in his lap, the implication being that relator either suspected or was concerned that Stoeser would be sexually inappropriate with children. The record also calls into question relator's general credibility beyond her assertion that she was unaware of Stoeser's acts of sexual abuse. For instance, the ALJ found that relator represented to county officials that she was unaware of a child protection report as of the afternoon of August 30, 2010, at which time she knew her husband was in jail and was being interviewed relative to sexual acts that took place at the daycare.

Second, nothing in the record supports the conclusion that relator did not reasonably have the ability, as the licensed provider of daycare services in her residence,

to prevent her husband from molesting at least five children under her direct supervision over an extended period of time. The testimony at the hearing indicated that Stoeser, as evidenced by relator's own admissions and by the number of complaints about lapses in supervision, was not performing adequately as the required second adult caregiver at the daycare. The ALJ found numerous complaints regarding relator's daycare and licensing history and correction orders issued by the Minnesota Department of Human Services, including: (1) in 2001, a correction order was issued because Stoeser was giving children rides on his motorcycle without their parents' permission; (2) in 2002, a correction order was issued because relator was caring for 20 children while her license was only for 14 children and because no well test was on file; (3) in 2004, a correction order and a conditional license were issued for relator's lack of supervision when a child was hit by a car while riding a bicycle in the street in front of her house; and (4) in 2005, an unsubstantiated complaint was made that relator was not adequately supervising the children.

While the consideration of each of these complaints, standing alone, may not have been sufficient to support a finding that relator did not adequately supervise her daycare, all of these complaints, when joined with the numerous acts of sexual abuse which occurred over an eight-year period, demonstrate that relator failed to provide the children with the care and attention necessary to protect them from harm. This situation was the result of, and exacerbated by, the fact that her husband, as the second adult caregiver, could "come and go pretty much freely" and do "what he wanted to do," leaving relator with almost all of the primary duties of a daycare requiring two working adults.

There is no evidence that relator attempted to remedy this potentially dangerous overextension of her ability to provide necessary supervision and care, even though she knew or should have known that this would make it more difficult for her to pay sufficient attention to the needs and concerns of children in her care as contemplated by section 626.556, subdivision 2(f)(1)–(2),[6] including protecting the children from sexual abuse. There is no evidence that relator made any attempts to implement any plans to prevent abuse of the children.

2. Set Aside of Disqualification

Relator argues that her seven-year disqualification under Minn. Stat. § 245C.15, subd. 4 (2010), should have been set aside because Stoeser was sentenced to prison for three years and there is no indication that children were endangered by anyone other than Stoeser. "The commissioner may set aside the disqualification if the commissioner finds that the individual has submitted sufficient information to demonstrate that the individual does not pose a risk of harm to any person served by the applicant, license holder, or other entities as provided in this chapter." Minn. Stat. § 245C.22, subd. 4(a) (2010).

> In determining whether the individual has met the burden of proof by demonstrating the individual does not pose a risk of harm, the commissioner shall consider:
> (1) the nature, severity, and consequences of the event or events that led to the disqualification;
> (2) whether there is more than one disqualifying event;
> (3) the age and vulnerability of the victim at the time of the event;
> (4) the harm suffered by the victim;
> (5) vulnerability of persons served by the program;

[6] These requirements are also set forth in Minn. R. 9502.0365, subp. 5 and Minn. R. 9502.0315, subp. 29a (2011).

> (6) the similarity between the victim and persons served by the program;
> (7) the time elapsed without a repeat of the same or similar event;
> (8) documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and
> (9) any other information relevant to reconsideration.

Id., subd. 4(b) (2010). When making the review, "the commissioner shall give preeminent weight to the safety of each person served by the license holder, applicant, or other entities as provided in this chapter over the interests of the disqualified . . . license holder [.]" *Id.*, subd. 3 (2010). "[A]ny single factor under subdivision 4, paragraph (b), may be determinative of the commissioner's decision whether to set aside the individual's disqualification." *Id.*

Relator is not able to show that the commissioner's refusal to set aside her disqualification was arbitrary or capricious or unsupported by substantial evidence. It is undisputed that there were multiple incidents of child abuse involving multiple victims over an eight-year period which took place in relator's daycare, and that she failed to protect the children from this abuse. The commissioner specifically notes that relator has neither accepted responsibility for the numerous acts of child abuse that occurred in her daycare nor sought guidance or training as to how she could prevent child abuse in the future. There was no evidence that relator, who is still married to Stoeser, had established or explored any proposals as to how she would protect children in her daycare from Stoeser once he was released from prison. In dealing with the dangers presented by relator remaining, and possibly living with, a convicted sex offender, the commissioner

properly focused on the victims and the safety of children over the interests of the disqualified license holder.

3. Revocation of License

Finally, relator argues that the department abused its discretion by revoking her license. "Absent a clear abuse of discretion, a reviewing court must also defer to an agency's choice of sanction." *Burke*, 666 N.W.2d at 726. Statute and agency rules "reflect a relative hierarchy of sanctions, increasingly severe based on the effect of the violations." *Id.* at 727. "[T]he commissioner may suspend or revoke the license . . . of a license holder who does not comply with applicable law or rule." Minn. Stat. § 245A.07, subd. 1(a) (2010). "When applying sanctions authorized under this section, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program." *Id.*

> The commissioner may suspend or revoke a license, or impose a fine if a license holder fails to comply fully with applicable laws or rules, if a license holder, a controlling individual, or an individual living in the household where the licensed services are provided or is otherwise subject to a background study has a disqualification which has not been set aside under section 245C.22[.]

Id., subd. 3(a) (2010).

"Violations that are grounds for recommending license revocation or denial include, but are not limited to . . . disqualifying . . . conduct listed in Minnesota Statutes, section 245C.15, that has not been set aside under Minnesota Statutes, section 245C.22[.]" Minn. R. 9543.0100, subp. 3(B) (2011). "The agency may recommend

license suspension rather than revocation . . . if the agency submits information demonstrating . . . revocation is not warranted; and suspension . . . rather than revocation . . . is in the best interests of persons served by the program, and . . . would not pose a risk of harm to persons served by the program." Minn. R. 9543.0100, subp. 4 (2011). "[T]he commissioner has broad discretion in fashioning an appropriate sanction, . . . [b]ut the statute and rules detail the many considerations involved in an enforcement action to ensure that the commissioner exercises that discretion within distinct parameters." *Burke*, 666 N.W.2d at 727. "[T]he severity of an administrative sanction must reflect the seriousness of the violation." *Id.* at 728.

Relator argues that the revocation of her license is extreme in light of the considerations set forth in *Burke*. However, this matter is distinguishable in that numerous children at relator's daycare were victims of criminal sexual abuse while in a vulnerable setting. The ALJ's order provides a detailed account of relator's lack of appreciation for risk and the seriousness of the harm resulting in her disqualification and revocation. *Burke* involved "no evidence . . . of deliberate or callous disregard for the children" and no "evidence of injury or near injury to the children." *Id.* at 728.

The record does not establish that the commissioner failed to exercise discretion within the required parameters, especially considering "the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program." Minn. Stat. § 245A.07, subd. 1(a). Given the severity of Stoeser's criminal conduct, one cannot reasonably argue that the revocation fails to reflect the seriousness of the violation in light of the severity and effect of the

violation on the health and safety of children served by relator's daycare. Relator fails to substantiate the appropriateness of a less severe sanction aside from her blanket assertion that revocation is too severe given her lack of knowledge of Stoeser's criminal sexual conduct. The law's emphasis is on the nature of the acts resulting in revocation and the effect on those served by the relevant program. Revocation of relator's daycare license did not constitute an abuse of discretion.

Affirmed.