

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

E.C., :
Petitioner :
 :
v. : No. 2013 C.D. 2007
 : Submitted: April 7, 2008
Department of Public Welfare, :
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE McCLOSKEY

FILED: May 13, 2008

E.C. (Petitioner) petitions for review of an order of the Department of Public Welfare, Bureau of Hearings and Appeals (Bureau) sustaining the decision of the Department of Public Welfare (the Department), denying expungement of Petitioner's name from the ChildLine Registry.¹

Petitioner, his brother J.C. and his sister D., were adjudicated dependant and placed in foster care with Mr. and Mrs. Mt., from July, 2004, through August, 2005. The three siblings resided in the home with Mr. and Mrs.

¹ The Department's regulations provide that ChildLine is a unit of the Department that operates a statewide toll-free system for receiving and maintaining reports of suspected child abuse, along with making referrals for investigation. 55 Pa. Code §3490.4. The ChildLine Registry is maintained in accordance with the Child Protective Services Law (CPS Law), 23 Pa. C.S. §§6301-6385.

Mt., their three children, Bo., Ag., and My, My's fiancé, and several other foster children. At the foster home, J.C. and Petitioner shared a bedroom.

In August, 2005, J.C. was transferred to another foster home. At that foster home, in July, 2006, he informed S.K., his foster mother, that Petitioner had sexually molested him when they had resided with Mr. and Mrs. Mt. Following an investigation, the Lancaster County Children and Youth Services (C&Y) filed an indicated report of child sexual abuse naming Petitioner as the perpetrator and J.C. as the victim. A report of child abuse was then lodged with ChildLine.

Petitioner requested administrative review of the indicated report. Following review, the Department sustained the finding that an indicated report of child abuse had been established. Petitioner then appealed to the Bureau seeking expungement on the basis that the evidence presented did not support a finding of abuse. The Bureau held a hearing on the matter.

A hearing was held before an Administrative Law Judge (ALJ). At the hearing, J.C. testified that he was born on June 18, 1996, and had four siblings. He explained that he lived with Mr. and Mrs. Mt. for thirteen months, along with two of his siblings, Petitioner and D.

J.C. stated that in August, 2005, he was playing a board game with Petitioner in their room. After they finished the game, Petitioner asked if he could put his penis in J.C.'s bottom. J.C. told him that he did not know if it was right to do that, but agreed to let him do it. Petitioner told him not to tell anyone and if he did, Petitioner would not talk to him anymore. Afterwards, J.C. went to the bathroom and noticed that his bottom was "gooey." (R.R. at 68a). He also stated that his stomach was queasy. J.C. testified that Petitioner put his penis into J.C.'s

bottom on more than one occasion. However, he was not sure when the other incidents occurred.

J.C. testified that in July, 2006, he was talking to his new foster mother, S.K., and he told her what Petitioner had done. He testified that the conversation with S.K. began after S.K. discovered J.C. and another boy playing with an air pump.

Andrea Taroli, M.D., testified next on behalf of C&Y. She was qualified as an expert in the area of child abuse and forensic pediatrics. She examined J.C. on July 27, 2006.

J.C. informed her that Petitioner had put his penis in J.C.'s bottom. He stated that Petitioner made him bend over the bed while it was done. He told her that it hurt and that he did bleed. He stated that Petitioner did it to him "a lot of times." (R.R. at 75a). Dr. Taroli testified that J.C. told her that the abuse started "two months before he was nine years old" and the last time it happened was when he was nine years old. (R.R. at 78a). J.C. also told her that S.K. had discovered him playing in a sexual manner with an air pump. S.K. asked him why he was behaving in such a way and he then told her about the things Petitioner had done to him.

Doctor Taroli stated that she conducted a physical examination of J.C. and did not find any physical evidence of abuse. However, she did not expect to find any evidence of abuse as evidence of anal penetration would not be visible a year later. Doctor Taroli diagnosed J.C. as having been abused in the manner that he had described. She found him to be very credible.

Robin M. Boyer, a caseworker for C&Y, also testified on behalf of C&Y. She explained that the incidents were alleged to have occurred in Lancaster

County. However, at the time the incidents were reported, J.C. was living in Wyoming County and Petitioner was living in Berks County. Therefore, Wyoming County Children and Youth was contacted to do an assessment of J.C. She then interviewed Petitioner and discussed the incident with the local Police Department. At the conclusion of the investigation, C&Y determined that the report was indicated.

Janice Dudish, a caseworker from Berks County Children and Youth, testified on behalf of Petitioner. She was asked about J.C.'s reputation for truthfulness. However, when she testified that she had little contact with J.C. and her opinion was based on what she had read in reports, there was an objection as to hearsay. The objection was sustained.

Kerri Cahill, a caseworker for Open Door International, also testified on behalf of Petitioner. She was J.C.'s caseworker at the time he lived with Mr. and Mrs. Mt. She stated that he had been reported as untruthful by his former foster care parents and by his school. However, when he was placed with his current foster family, in September, 2005, his reviews had dramatically changed as the current foster family had worked with him in depth. In fact, at his six month review in March, 2006, J.C. was evaluated as being extremely truthful.

Petitioner also testified. He stated that he was born on August 22, 1990. He agreed that he lived with J.C. from July, 2004, through August, 2005, in a foster home. He also agreed that he shared a room with J.C. while living at the foster home. However, he denied ever touching J.C. in a sexual way. He claimed he always told the truth, even if it got him in trouble, but J.C. lied to get attention.

On cross-examination, Petitioner was questioned about sexual incidents that occurred between him and his foster brother Bo. Petitioner admitted

that he had a sexual relationship with Bo. which lasted a few months. When asked if he had a sexual relationship with any other males, he responded, “Not really, once or twice, but it wasn’t really any big thing.” (R.R. at 89a).

Following the hearing, the ALJ determined that J.C., Dr. Taroli, Robin Boyer, Jenny Dudesh and Kerri Cahill were credible witnesses. He determined that Petitioner was not credible.

The ALJ found that Petitioner was fourteen or older and living in the same household at the time the incidents were alleged to have occurred, therefore, he met the definition of a perpetrator. The ALJ also rejected Petitioner’s allegations that J.C. was not truthful. He noted that J.C. openly admitted that he had a problem with lying in the past. He also found that J.C. testified in a thoughtful, straight forward and candid manner. The Bureau adopted the recommendation of the ALJ in its entirety.

Petitioner now appeals to this Court.² Petitioner argues that the Bureau erred in determining that he met the definition of a perpetrator as defined by Section 6303 of the CPS Law, 23 Pa. C.S. § 6303. Petitioner also argues that the Bureau erred in determining that there was substantial evidence of sexual abuse and failed to address the issue of whether C&Y conducted a proper, unbiased investigation.

The county agency has the burden of proof in an expungement case and the critical issue to be determined is whether or not the indicated report is

² Our scope of review is limited to determining whether legal error has been committed, whether constitutional rights have been violated, or whether the necessary findings of fact are supported by substantial evidence. K.J. v. Department of Public Welfare, 767 A.2d 609 (Pa. Cmwlth.), petition for allowance of appeal denied, 567 Pa. 750, 788 A.2d 381 (2001).

accurate. A.O. v. Department of Public Welfare, 838 A.2d 35 (Pa. Cmwlth. 2003). The county agency must establish by substantial evidence that the indicated report is accurate. Bucks County Children and Youth Social Services Agency v. Department of Public Welfare, 808 A.2d 990 (Pa. Cmwlth. 2002).

An "indicated report" is defined as:

A child abuse report made pursuant to this chapter if an investigation by the county agency or the Department of Public Welfare determines that substantial evidence of the alleged abuse exists based on any of the following:

- (1) Available medical evidence.
- (2) The child protective service investigation.
- (3) An admission of the acts of abuse by the perpetrator.

Section 6303(a) of the CPS Law, 23 Pa. C.S. § 6303(a).

Petitioner first alleges that the Bureau erred in determining that he met the definition of a perpetrator as defined by Section 6303(a). This Section defines a "perpetrator" as "a person who has committed child abuse and is a parent of a child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent." Id. "An individual residing in the same home as a child" is defined by this Section as "[a]n individual who is 14 years of age or older and who resides in the same home as the child." Id. Petitioner alleges that C&Y failed to establish that he was fourteen years of age or older at the time of the alleged sexual abuse.

Petitioner was fourteen years old as of August 22, 2004 and, thus, was "14 years of age or older" from that point in time onward. J.C. testified that he was sexually abused in August, 2005. Obviously, Petitioner was fourteen years old

at that time. Petitioner argues that J.C. first stated that the abuse occurred in August, 2004, thereby making his testimony contradictory. We disagree. At the hearing, J.C. initially testified that the first incident occurred in 2004. He quickly corrected himself by stating that he meant 2005. (R.R. at 68a). He further stated that the abuse began in 2005 and he believed it happened in August.

Dr. Taroli testified that J.C. told her that the abuse started “two months before he was nine years old” and the last time it happened was when he was nine years old. (R.R. at 78a). This results in April, 2005, being the alleged starting point, with the abuse continuing until sometime after J.C.’s birthday in June, 2005.

While the actual starting dates of the abuse are inconsistent, inconsistent evidence does not necessarily negate a finding of abuse. Substantial evidence is needed to maintain an indicated report of child abuse. Evidence that is substantial is “evidence which so preponderates in favor of a conclusion that it outweighs, in the mind of the fact-finder, any inconsistent evidence and reasonable inferences drawn therefrom.” R.P. v. Department of Public Welfare, 820 A.2d 882, 885 (Pa. Cmwlth. 2003). The Bureau is the ultimate finder of fact. D.T. v. Department of Public Welfare, 873 A.2d 850 (Pa. Cmwlth. 2005).

The Bureau found J.C. and Dr. Taroli to be credible. While the two statements made by J.C. have inconsistencies, the inconsistencies are outweighed by the preponderance of the evidence. Both statements allege that the abuse occurred in 2005 and Petitioner was fourteen years of age or older throughout all of 2005. Therefore, as the Bureau accepted the evidence that the abuse occurred in 2005, substantial evidence supported the Bureau’s conclusion that Petitioner met the definition of a perpetrator. The Bureau further accepted J.C.’s testimony that

he was nine years old when the last incident of sexual abuse occurred. J.C. was nine years old on June 18, 2005. At that time, Petitioner was fourteen years and nine months old. This further constitutes substantial evidence to support the Bureau's conclusion that Petitioner met the definition of a perpetrator. As such, Petitioner's first allegation of error is denied.

Petitioner's second allegation is that the Bureau erred in determining that there was substantial evidence of abuse. Here, Petitioner once again challenges the inconsistencies as to when the abuse occurred. Petitioner also claims that J.C. was inconsistent as to whether or not there was bleeding after the alleged abuse occurred and as to how many times Petitioner placed his penis into his bottom. Petitioner further claims that J.C. was a known liar and should have been deemed not credible.

As noted above, inconsistencies in statements do not negate a finding of abuse, as long as substantial evidence of record has been established. The Bureau determines the weight and credibility of the evidence and this Court will not disturb the determinations of the Bureau on review. D.T., 873 A.2d at 853.

Additionally, Petitioner's assertions that J.C. cannot be deemed credible because he is a liar are meritless. Petitioner presented the testimony of Ms. Dudish to establish J.C.'s reputation for truthfulness. Her testimony was rejected by the ALJ as hearsay, since her opinion was based solely on what she had read in reports. Petitioner then presented the testimony of Kerri Cahill. She testified that while J.C. had been reported as untruthful in the past, his reviews had dramatically changed following his placement in September, 2005, with his current foster family. In March, 2006, he was actually evaluated as being extremely truthful. As such, the only witness that insisted that J.C. was a liar was Petitioner

and the ALJ deemed him to be not credible. Thus, we reject Petitioner's second allegation of error.

Petitioner's final allegation of error is that the Bureau failed to consider whether C&Y conducted a proper, unbiased investigation. Petitioner alleges that C&Y indicated a report of sexual abuse without interviewing the alleged victim, without conducting an "in depth" interview of Petitioner and without interviewing other persons living in the Mt. foster home.

There is no evidence that C&Y conducted an improper, biased investigation. The Department's regulations provide that C&Y "shall, if possible, conduct an interview with those persons who are known to have or may reasonably be expected to have, information relating to the incident of suspected child abuse..." 55 Pa. Code § 3490.55(d). Also, these regulations state that:

When investigating cases of suspected child abuse and a subject is located in a county other than where the abuse occurred, the county agency shall either make contact in the county where the subject is located or request the county where the subject is located to conduct the interview. The county agency where the subject is located shall assist in the investigation as required by this section.

55 Pa. Code § 3490.55(j).

As such, it was proper for C&Y to contact Wyoming County Children and Youth to interview J.C. As to Petitioner, C&Y did interview him. Petitioner complains this interview was not "in depth," yet Ms. Boyer testified that Petitioner refused a second interview. (R.R. at 82a). Petitioner never denied this allegation. Petitioner cannot refuse an interview and then complain that he was not interviewed "in-depth."

Petitioner also fails to establish that C&Y had any obligation to interview other members of the foster home. J.C. had alleged that the abuse occurred privately in the room he shared with Petitioner. Thus, C&Y was within its discretion not to interview persons who were never alleged to have knowledge of the abuse.³ Furthermore, if Petitioner believed that any of these persons had information helpful to his defense, he was free to present them at the hearing. Therefore, Petitioner's final allegation of error is denied.

Accordingly, the order of the Bureau is affirmed.

JOSEPH F. McCLOSKEY, Senior Judge

³ In K.J. v. Department of Public Welfare, the petitioner claimed the report was deficient because it did not contain "medical or psychological evidence regarding the participants and family members or any 'in-depth' interviews with the family members or interviews with the police." 767 A.2d at 612. We concluded that the law did not provide "that the indicated report must include all or any of the matters" the petitioner claimed were lacking in the investigation. Id.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

E.C.,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2013 C.D. 2007
	:	
Department of Public Welfare,	:	
Respondent	:	

ORDER

AND NOW, this 13th day of May, 2008, the order of the Department of Public Welfare, Bureau of Hearings and Appeals is affirmed.

JOSEPH F. McCLOSKEY, Senior Judge