

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5552-14T2

DEPARTMENT OF CHILDREN AND
FAMILIES, DIVISION OF CHILD
PROTECTION AND PERMANENCY,

Petitioner-Respondent,

v.

J.P.,

Respondent-Appellant.

Submitted April 4, 2017 – Decided April 24, 2017

Before Judges Espinosa and Suter.

On appeal from the Department of Children and
Families, Division of Child Protection and
Permanency.

Williams Law Group, L.L.C., attorneys for
appellant (Allison Williams, of counsel;
Elizabeth D. Burke, on the brief).

Christopher S. Porrino, Attorney General,
attorney for respondent (Andrea M. Silkowitz,
Assistant Attorney General, of counsel; Toni
Lynn Imperiale, Deputy Attorney General, on the
brief).

PER CURIAM

J.P.¹ appeals the July 21, 2013 administrative decision by the Division of Child Protection and Permanency (DCPP), which "established" J.P.'s children were neglected, and identified him as a person responsible for the neglect. We reverse and remand to the Office of Administrative Law (OAL) for a hearing.

In March 2015, Mary, the twelve-year-old child of J.P. and I.P., confided to a schoolmate that she had attempted suicide twice because her father, J.P., was violent. The parent of that child emailed the school. The school contacted DCPP, which commenced an investigation.

Mary has three younger siblings, including Jesse, who at the time was six, and Ethan, who was just six months old. DCPP interviewed the family members. Mary confirmed to the DCPP worker that she had attempted suicide by sticking a paperclip in an electric outlet because her father was upset by her grades. Mary contemplated suicide by taking pills because her father was threatening her mother, I.P., with divorce and to send I.P. back to Colombia, her native country. Mary confirmed she had written a suicide letter in the past. She told the DCPP worker her father cursed at her. She denied that he had locked her out of the house

¹ We have used initials or fictitious names throughout this opinion to maintain the privacy of the parties and the children.

without a coat when it was cold. She was afraid of her father because he threatened to kill her mother.

I.P. did not speak English. She had been a surgeon in Colombia before meeting J.P. She married J.P. and moved to the United States when Mary was five. She denied knowledge of Mary's reported suicide attempts. Under questioning by the DCPD worker, I.P. acknowledged J.P. was verbally abusive to her, pushed and shoved her, and controlled their finances. J.P. had threatened to keep the children here and send her back to Colombia. That evening, I.P. applied for and received a temporary restraining order against J.P. She dismissed it three weeks later.²

J.P. was retired from government service. He was not aware of Mary's suicide attempt and reported that she tended to exaggerate things. He wanted Mary to have a psychological examination, and expressed that he might consider divorcing I.P. He denied any domestic violence.

In a letter to J.P. dated July 21, 2015, DCPD advised that its investigation determined "neglect was Established for Substantial Risk of Physical Injury/Environment Injurious to Health and Welfare with regard to [the three children of J.P.]" The letter stated that J.P. was "identified as a person responsible

² After the restraining order was dismissed, the family reunited.

for the neglect." The letter referenced certain DCPD regulations and advised J.P. that the finding of "established" neglect was not disclosed to entities outside of DCPD except pursuant to N.J.S.A. 9:6-8.10a, although a record of the finding was to be maintained by DCPD.

Because the regulations did not authorize an administrative hearing, J.P. appealed the DCPD finding he was "established" for neglect. J.P. contends on appeal that DCPD's finding was arbitrary, capricious and unreasonable. He contends his right to due process was violated because DCPD denied him the opportunity to contest this finding in an adjudicative hearing.

Our scope of review of this administrative agency decision is limited. "The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div.) (citations omitted), certif. denied, 188 N.J. 219 (2006). "It is settled that '[a]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference.'" Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001) (alteration in original) (citing In re Appeal by Progressive Cas. Ins. Co., 307 N.J. Super. 93, 102 (App. Div. 1997)).

An abused or neglected child is defined in pertinent part as:

a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent . . . to exercise a minimum degree of care . . . in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, . . . or by any other acts of a similarly serious nature requiring the aid of the court

[N.J.S.A. 9:6-8.21(c)(4)(b).]

DCPP is the agency charged with investigating child abuse and neglect. DCPP's regulations allow for four types of findings. See N.J.A.C. 3A:10-7.3(c)(1)-(4). Two of these, "substantiated" and "established," require a finding of child abuse under N.J.S.A. 9:6-8.21(c). N.J.A.C. 3A:10-7.3(c)(1)-(2). The other two findings, "not established" and "unfounded," are made when the investigation does not indicate child abuse under the statute. N.J.A.C. 3A:10-7.3(c)(3)-(4).

An "established" finding occurs when "the preponderance of the evidence indicates that a child is an 'abused or neglected child' as defined [above], but the act or acts committed or omitted do not warrant a finding of substantiated."³ N.J.A.C. 3A:10-

³ "An allegation shall be 'substantiated' if the preponderance of the evidence indicates that a child is an 'abused or neglected

7.3(c)(2). Although the regulations allow for a hearing where DCPD's investigation has "substantiated" child abuse or neglect, the regulations do not authorize a hearing when the finding of child abuse or neglect is "established."

We recently held in the case of New Jersey Division of Child Protection & Permanency v. V.E., __ N.J. Super. __ (App. Div. 2017) (slip op. at 37), that "when [DCPD] finds parental conduct establishes abuse or neglect of a child, subjecting the individual to the ramifications of disclosure set forth in various identified statutes, a party who seeks to challenge that finding shall be entitled to an administrative hearing."

In V.E., DCPD investigated an allegation that V.E. had abused or neglected her child. Following its investigation, but without an administrative hearing, DCPD made a finding that "established" abuse and neglect by V.E. We found that administrative determination to have "broad impact." Id. at 26. The impact included the release of DCPD's "abuse and neglect records" pursuant to N.J.S.A. 9:6-8.10a(b) to "[a] lengthy list of institutions, governmental entities, and persons," and to DCPD for future actions

child' as defined in N.J.S.A. 9:6-8.21 and either the investigation indicates the existence of any of the circumstances in N.J.A.C. 3A:10-7.4 or substantiation is warranted based on consideration of the aggravating and mitigating factors listed in N.J.A.C. 3A:10-75." N.J.A.C. 3A:10-7.3(c)(1).

involving child care placement and termination of parental rights. Id. at 21. "[A]n established finding is a conclusion abuse or neglect occurred, as defined by N.J.S.A. 9:6-8.21(c)(4)." Id. at 27. As such, we held in V.E. that due process required an administrative hearing for an "established" finding of abuse or neglect. Id. at 33. We concluded appellate review alone of DCPD's administrative finding was not adequate because "the determination of disputed facts, including credibility determinations, [was] not the function of this court." Id. at 36 (citing N.J. Div. of Youth & Family Servs. v. M.R., 314 N.J. Super. 390, 411-12 (App. Div. 1998)). Thus in V.E., we reversed the DCPD's denial of an adjudicative hearing and remanded the matter to the OAL. Id. at 40.

V.E. applies to this appeal because there was an administrative finding that the allegation of abuse or neglect by J.P. was "established" under the same regulations that we examined in V.E. He also was denied the ability under the regulations to have an administrative hearing to contest this finding. We reverse DCPD's denial of an adjudicative hearing and remand this matter to the OAL for proceedings consistent with V.E. and this opinion.

Reversed and remanded.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION