SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3844-16T1

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Respondent,

v.

K.Y.,

Appellant.

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Submitted January 29, 2018 - Decided February 28, 2018

Before Judges Whipple and Rose.

On appeal from the Department of Children and Families, Division of Child Protection and Permanency, Docket No. AHU 17-0167.

Williams Law Group, LLC, attorneys for appellant (Allison Williams, of counsel and on the brief; Melissa Barrella, on the brief).

Gurbir S. Grewal, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Christina Duclos, Deputy Attorney General, on the brief).

PER CURIAM

Defendant K.Y.[1] appeals from a March 28, 2017 final decision of the Department of Children and Families ("DCF") denying her administrative appeal of an August 2, 2002 substantiated finding of abuse or neglect. Because we are not satisfied defendant received adequate notice of the finding, we vacate DCF's order and remand for an administrative hearing.

We glean the following facts and procedural history from the scant record on appeal. By correspondence dated August 2, 2002, the Division of Child Protection and Permanency ("Division")[2] substantiated an allegation of physical abuse stemming from a May 3, 2002 referral that defendant abused her son K.B, who was seven-years-old at the time. No further information is contained in the August 2 correspondence. The Division claims it forwarded the August 2 correspondence to defendant at her last known address via regular mail.

However, defendant claims she first learned of the Division's substantiated finding upon receipt of correspondence dated March

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[1] We use initials to protect the family's privacy interests. See R. 1:38-3(d)(12).

[2] Pursuant to L. 2012, c. 16, effective June 29, 2012, the Division of Youth and Family Services became known as the Division of Child Protection and Permanency. Although the Division's earlier actions occurred when the Division was still known as the Division of Youth and Family Services, we refer to the agency under its current name.

24, 2017 from her employer. The March 24 correspondence indicated defendant was suspended without pay because a Child Abuse Record Information ("CARI") background check revealed the Division had substantiated an incident of child abuse or neglect by defendant. Upon receipt of the March 24 correspondence, defendant replied by correspondence, also dated March 24, 2017, to DCF's Administrative Hearing Unit acknowledging "an issue in 2002" that the Division investigated, for which her family received therapy. Defendant claimed, however, she never received notice that the findings were substantiated. Defendant requested an opportunity to appeal the substantiated finding.

By correspondence dated March 28, 2017, the Division declined defendant's request for an appeal. Among other things, the Division indicated defendant failed to appeal the 2002 substantiated finding within twenty days, as required by regulation. N.J.A.C. 3A:5-2.5(a). The Division indicated further that, by failing to timely appeal the substantiated finding, defendant also waived her right to a hearing pursuant to N.J.A.C. 3A:5-2.5(f).

Our role in reviewing the final decision of an administrative agency is limited. In re Taylor, 158 N.J. 644, 656 (1999). We review administrative decisions to determine whether: (1) the decision violates express or implied legislative policies; (2) is

unsupported by substantial evidence in the record; and (3) the agency made a decision "that could not reasonably have been made on a showing of the relevant factors." In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp., 216 N.J. 370, 385 (2013) (quoting Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995)). While we accord a "strong presumption of reasonableness" to an agency's "exercise of statutorily delegated responsibility[,]" City of Newark v. Nat. Res. Council in Dep't of Envtl. Prot., 82 N.J. 530, 539 (1980), we owe no deference to an agency's interpretation or application of a statute, if it is contrary to the language of the statute or "'undermines the Legislature's intent.'" N.J. Div. of Youth & Family Servs. v. T.B., 207 N.J. 294, 302 (2011) (quoting Reilly v. AAA Mid-Atl. Ins. Co. of N.J., 194 N.J. 474, 485 (2008)).

Moreover, if our review of the record satisfies us that the agency's finding is clearly mistaken or erroneous, the decision is not entitled to judicial deference and must be set aside. L.M. v. State of N.J., Div. of Med. Assistance & Health Servs., 140 N.J. 480, 490 (1995). We may not simply "rubber stamp" an agency's decision. Taylor, 158 N.J. at 657. Applying these principles here, we conclude DCF's decision cannot stand.

"[T]he Due Process Clause provides that certain substantive rights -- life, liberty, and property -- cannot be deprived except

pursuant to constitutionally adequate procedures." Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541 (1985). In order to trigger procedural due process rights, a property interest must take the form of "a 'legitimate claim of entitlement.'" Nicoletta v. N. Jersey Dist. Water Supply Comm'n, 77 N.J. 145, 154-55 (1978) (quoting Bd. of Regents v. Roth, 408 U.S. 564, 577 (1972)).

"[O]nce it is determined that the Due Process Clause applies, 'the question remains what process is due.'" Loudermill, 470 U.S. at 541, (quoting Morrissey v. Brewer, 408 U.S. 471, 481 (1972)). We are mindful that "'due process is flexible and calls for such procedural protections as the particular situation demands.'" N.J. Div. of Youth & Family Servs. v. R.D., 207 N.J. 88, 119 (2011) (quoting Morrissey, 408 U.S. at 481). "'Simply put, not all situations calling for procedural safeguards call for the same kind of procedure.'" Jamgochian v. N.J. State Parole Bd., 196 N.J. 222, 240 (2008) (quoting State ex rel. D.G.W., 70 N.J. 488, 502 (1976)). In the context of abuse or neglect cases, due process requires that a parent have "'adequate notice and [an] opportunity to prepare and respond.'" N.J. Div. of Child Prot. & Permanency v. S.W., 448 N.J. Super. 180, 193 (App. Div. 2017) (quoting N.J. Div. of Youth & Family Servs. v. N.D., 417 N.J. Super 96, 109 (App. Div. 2010)). Further, inclusion in the central abuse registry gives rise to a constitutionally protected liberty

interest in reputation warranting due process protections. In re. Allegations of Sexual Abuse at E. Park High Sch., 314 N.J. Super. 149, 160-61 (App. Div. 1998).

The Division's investigation of abuse or neglect must be completed, and a report issued within seventy-two hours. N.J.S.A. 9:6-8.11. Once completed, the Division must "notify the alleged perpetrator and others of the outcome of its investigation." Dep't of Children & Families v. D.B., 443 N.J. Super. 431, 441-42 (App. Div. 2015) (quoting E. Park, 314 N.J. Super. at 155). When the Division determines an allegation of child abuse or neglect is substantiated, the responsible party's name is entered into the Division's child abuse registry. See N.J. Div. of Child Prot. & Permanency v. V.E., 448 N.J. Super. 374, 391 (1998) (citing N.J.A.C. 3A:10-7.3(d)).

"A 'substantiated' finding applies to the most severe cases, and specifically results in matters involving death or near death, inappropriate sexual conduct, serious injuries requiring significant medical intervention, or repeated acts of physical abuse." Id. at 389 (citing N.J.A.C. 3A:10-7.4). Substantiated findings are subject to a CARI check, and require termination from employment with a childcare agency. N.J.S.A. 30:5B-6.4(c).

At the time of the finding of abuse or neglect, here, the regulation pertaining to notice of the right to appeal from a

substantiated finding did not specify a particular method of service. N.J.A.C. 10:129A-3.4(b) and (c) (repealed 2005). The current regulations require "written notification by either personal service or regular and certified mail to the perpetrator of each substantiated allegation." N.J.A.C. 3A:10-7.6(a)(2). Because the current notice regulation was not in effect at the time of the present referral, the Division maintains it was not required to provide notice under that later-adopted regulation. Defendant counters she did not receive the August 2, 2002 correspondence. The August 2 correspondence does not indicate the manner of service on defendant, nor has the Division provided proof of service.

We are persuaded there is insufficient proof of service of the Division's August 2, 2002 correspondence with the substantiated finding. Because due process requires defendant receive "adequate notice and [an] opportunity to prepare and respond" to the allegations of abuse or neglect, N.D., 417 N.J. Super. at 109, we vacate the order without prejudice and remand for an administrative hearing.

Vacated and remanded. We do not retain jurisdiction.