

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
DEPARTMENT OF CHILDREN AND FAMILIES
CENTRAL ADMINISTRATIVE OFFICE
600 WASHINGTON STREET, 6th FLOOR
BOSTON, MASSACHUSETTS 02111**

Linda S. Spears
Commissioner

Voice: (617) 748-2000
FAX: (617) 261-7428

IN THE MATTER OF

KS

#2017- 0318

FAIR HEARING DECISION

KS appeals the Department of Children and Families' (hereinafter "DCF" or "the Department") decision to support allegations of neglect pursuant to G.L. c. 119, §§51A and B.

Procedural History

On February 11, 2017, the Department received a 51A report alleging neglect of K by her father, KS. The Department screened-in the report for a non-emergency response. On March 6, 2017, the Department approved the decision that the allegation of neglect of K by KS was supported.

The Department notified KS of its decision and his right to appeal. KS made a timely request for a Fair Hearing to appeal the Department's decision. A hearing was held at the DCF Arlington Area Office on April 19, 2017. KS, KS's mother (hereinafter "paternal grandmother"), the Department response worker, the Department response supervisor and the Department on-going social worker testified at the hearing.

The hearing was digitally recorded and transferred to compact disc.

The hearing record was held open until May 19, 2017, to allow the Department to submit relevant police reports and KS to submit video and/or audio recordings of the incident, emergency medical services records and photographs and a recording of a 911 call.

The Department submitted the following at and after the hearing.

- Exhibit A: 51A report received 2/11/2017
- Exhibit B: 51B report approved 3/6/2017
- Exhibit C: Police Incident Report
- Exhibit D: Police Supplementary Report #2
- Exhibit E: Police Supplementary Report #3

KS submitted no evidence prior to May 19, 2017, nor did he request additional time.

The hearing record was closed on May 19, 2017.

The Hearing Officer attests to having no prior involvement, personal interest or bias in this matter.

Issue to be Decided

The issue presented in this Fair Hearing is whether, based upon the evidence and the hearing record as a whole, and on the information available at the time of and subsequent to the response, the Department's decision or procedural action, in supporting the 51A report violated applicable statutory or regulatory requirements, or the Department's policies or procedures, and resulted in substantial prejudice to the Appellant; if there is no applicable statute, policy, regulation or procedure, whether the Department failed to act with a reasonable basis or in a reasonable manner which resulted in substantial prejudice to the Appellant; for a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, whether there was reasonable cause to believe that a child had been abused or neglected. 110 CMR 10.05

Findings of Fact

1. KS (hereinafter "father") and AR (hereinafter "mother") are the parents of K (age 3 years, 11 months at the time in question). (Exhibit A, p. 1).
2. Father and mother have been involved in a relationship for the past 6 years. They lived together for 5 years prior to the events in question here. (Exhibit B, p. 2; Testimony of father).
3. By all accounts, father and mother have had a very volatile and toxic relationship and they argue often. K has been exposed to the arguments and the arguments scare her. She describes her parents as arguing all the time and it is very "bad and

- creepy." She hides under the blankets when her parents are fighting. (Exhibit B, pp. 2, 3; Testimony of father; Testimony of paternal grandmother).
4. Mother is known to have a history of mental instability and she can be verbally and physically aggressive with father and others and often in K's presence. (Testimony of paternal grandmother).
 5. On Saturday, February 11, 2017, mother and father were having an argument. It lasted about 3 and half hours. The argument became physical. (Exhibit B, p. 2; Exhibit C).
 6. According to mother, father was out of control. Father was swearing and they were pushing each other. He hit her in the face causing her to bleed and knocking her down. Mother hit him back. K was screaming for them to stop arguing and telling father to leave mother alone. Mother called paternal grandmother to come get father. Mother took K and went into another room. While in another room, mother heard father break two televisions. (Exhibit B, p. 2; Exhibit C).
 7. According to father, he and mother were arguing. Mother was yelling and swearing at him and hitting him. He was video taping her and telling her to stop it. He tried to leave several times, but she would not let him. He denied hitting mother intentionally causing her to bleed. He said he struck her accidentally. He was sitting on the bed and she was standing over him. She was punching him in the face and broke his glasses. He stood up and pushed her away. In the course of doing so, his head hit her under her chin and she started bleeding from a small cut on her chin. (Testimony of father).
 8. In any case, mother called police who responded to the home. Police observed blood on mother's shirt and face. She described the incident as noted in the finding regarding her version of events. Responding officers believed that mother was more involved in the incident turning violent than she admitted; however, police arrested father. During the police response, paternal grandmother arrived. She told police that she has seen altercations between mother and father in the past. She said she has video of one such incident on her phone, but she did not have the video to show the officer. She said that she had been at the home prior to the incident that morning. (Exhibit A, p. 4; Exhibit C; Exhibit E).
 9. The following day, paternal grandmother went to the police station to "clarify" the information she provided the day before. She said that she was present when the altercation between mother and father occurred. She said mother was yelling at father and pushing her finger in his face repeatedly and charging at him. Father was sitting on the bed. Father stood up and somehow mother was hit in the face and began bleeding from the nose. She did not know how mother was hit in the face. Afterward, she left to go shopping at the Dollar Store. Mother called her asking her to get father out of the home or she was calling police. When she returned to the home, father had already been placed in custody. (Exhibit E).

10. On February 11, 2017, the Department received a 51A report alleging neglect of K by father due to the above incident. The Department screened-in the report for a non-emergency response. (Exhibit A).
11. The Department response worker spoke with mother who reported that they were arguing and father lost control. He hit her and knocked her down. She admitted that she hit him back. (Exhibit B, p. 2).
12. The Department response worker obtained copies of the police incident reports related to the incident. (Testimony of the response worker).
13. The Department response worker attempted to reach father during the response, but she did not speak with him prior to the conclusion of the response. (Exhibit B, pp. 2, 3, 4).
14. On March 6, 2017, the Department approved the decision that father neglected K by exposing her to an incident of violence between him and mother as well as on-going arguing in K's presence. (Exhibit B, pp. 4-5).
15. Father testified at the hearing as noted in the above findings. He stated that he has various forms of evidence including reports, photographs and audio and video recordings to show that mother was the sole aggressor on the day in question. He played a brief portion of a recording on the day in question. During that recording, mother can be heard yelling and swearing at father telling him to get out while father is video recording her and threatening to put the video on Facebook. K can be heard crying. (Testimony of father).
16. Father was provided an opportunity to submit any relevant evidence; however, he made no submission nor any request for additional time during the time allotted.
17. Paternal grandmother testified at the hearing. She described the morning in question similar to what she told police on the day after the incident. I find paternal grandmother's testimony that she observed the event that caused mother to bleed highly questionable since she did not tell police she was a direct witness to what occurred when she spoke to police immediately following the incident. It was not until the following day that she returned to the police to report she was a witness and, at that time, she provided an account corroborating father's version of events.

Analysis

In order to "support" a report of abuse or neglect, the Department must have reasonable cause to believe that an incident of abuse or neglect by a caretaker occurred.

"Reasonable cause to believe" means a collection of facts, knowledge or observations which tend to support or are consistent with the allegations, and when viewed in light of

the surrounding circumstances and credibility of persons providing information, would lead one to conclude that a child has been abused or neglected.” 110 C.M.R. 4.32(2)

“[A] presentation of facts which create a suspicion of child abuse is sufficient to trigger the requirements of s. 51A.” Care and Protection of Robert, 408 Mass. 52, 63 (1990) This same reasonable cause standard of proof applies to decisions to support allegations under s. 51B. Id. at 64; M.G.L. c. 119, s. 51B “Reasonable cause” implies a relatively low standard of proof which, in the context of 51B, serves a threshold function in determining whether there is a need for further assessment and/or intervention. Id. at 64

As K's parent, father is her caretaker under Department regulations. 110 CMR 2.00

“Neglect means failure by a caretaker, either deliberately or through negligence or inability, to take those actions necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition.” 110 CMR 2.00

The Department made the decision that father neglected K by exposing her to the reported incident as well as on-going arguing between him and mother.

Father does not dispute that he and mother have a highly volatile relationship and that they have had arguments on an on-going basis. He denied becoming physically aggressive during the reported incident or at any other time.

It is undisputed that mother and father have had a "toxic" relationship since the beginning and that they have had on-going verbal arguments. Although father minimized the extent of physical violence, paternal grandmother testified that she has observed mother to be physically violent on an on-going basis since the day she met her. During the Department's response, K was clear that her parents fight all the time and that it scares her and she hides under the blankets when they fight. She did not identify one parent over the other as being more aggressive, verbally or physically.

Regardless of the extent of either party's responsibility for initiating and perpetuating arguments and physical aggression, it is fairly clear that K has been exposed to the on-going conflict between the parents and both parents were aware of it. There is no evidence that either parent took any steps to alleviate the situation or ensure that K was shielded from their conflict prior to the Department's involvement.

Considering all of the evidence, I find that there is reasonable cause to believe that K has been exposed to significant verbal conflict and some degree of physical violence which is detrimental to her emotional wellbeing. Although father may not be solely or even primarily responsible, I find that he contributed to some extent and failed to take any action to prevent her from being exposed to the on-going conflicts between him and mother and, therefore, he neglected her under Department regulations.

The fact that the Department did not also find mother responsible does not necessitate that the finding against father be reversed.

Conclusion and Order

The Department's decision to support allegations of neglect of K by father was made in conformity with Department regulations and with a reasonable basis and therefore, the Department's decision is AFFIRMED.

This is the final administrative decision of the Department. If the Appellant wishes to appeal this decision, he may do so by filing a complaint in the Superior Court for the county in which he lives, or within Suffolk County, within thirty (30) days of the receipt of this decision. (See, M.G.L. c. 30A, s. 14.)

Anne L. Dale Nialetz
Anne L. Dale Nialetz,
Administrative Hearing Officer

12-6-17
Date

Susan Diamantopoulos
Susan Diamantopoulos
Fair Hearing Supervisor