

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

COLLEEN STUCKY	:	
	:	C.A. CASE NO. 2008 CA
Plaintiff-Appellee	:	108
v.	:	T.C. NO. 07 CV 1484
CLARK COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES	:	(Civil appeal from Common Pleas Court)
Defendant-Appellant	:	
	:	

OPINION

Rendered on the 9th day of October, 2009.

COLLEEN STUCKY, 21 James Court, South Charleston, Ohio 45368
Plaintiff-Appellee

CHERI B. HASS, Atty. Reg. No. 0065157 and PAUL M. BERNHART, Atty. Reg. No.
0079543, 400 S. Fifth Street, Suite 200, Columbus, Ohio 43215
Attorneys for Defendant-Appellant

DONOVAN, P.J.

{¶ 1} Defendant-appellant Clark County Department of Job and Family Services (hereinafter “CJFS”) appeals a decision of the Clark County Court of Common Pleas, General Division, which overturned an administrative decision issued by appellant and

affirmed by the State Personnel Board of Review, ordering the ten-day suspension without pay of plaintiff-appellee Colleen Stucky. Appellant filed a timely notice of appeal with this Court on November 14, 2008.

I

{¶ 2} The incident which forms the basis for the instant appeal occurred in August of 2005, while Stucky was employed by CJFS as a social worker. Stucky testified that she had been employed by CJFS as a social worker since May of 1995. Stucky first became involved with the household of Angelina Inman and Richard Dixon in November of 2004, when she began making monthly home visits at the Inman-Dixon residence after Angelina was charged with child endangering. The charge was later dropped.

{¶ 3} While they did not have any children together, both Richard and Angelina had minor children from previous relationships that lived with them. Specifically, Angelina's two sons and Richard's daughter, A.D., lived with them. The monthly home visits which began in November of 2004, subsequently ended in March of 2005, and Stucky informed Richard and Angelina that she was closing their case. Due to an administrative error, however, the case remained open.

{¶ 4} In August of 2005, CJFS received a referral regarding living conditions at the Inman-Dixon residence, and Stucky was assigned to investigate the matter. On Thursday, August 18, 2005, Stucky, along with social worker Beth Moore, traveled to the Inman-Dixon residence in order to investigate. Upon arriving at the residence, Stucky and Moore knocked on the front door, but no one answered.

{¶ 5} Stucky returned by herself to the Inman-Dixon residence at approximately

11:00 a.m. the following day on August 19, 2005, and encountered both Richard and Angelina, as well as A.D. and the two boys, in the house. Upon observing the poor condition in which the house was kept, Stucky immediately went outside and called local law enforcement in order to effectuate the removal of the children.

{¶ 6} Shortly thereafter, law enforcement arrived, and the three children were removed from the residence. Jack Spencer, the biological father of Angelina's two boys, was contacted, and he took temporary custody of his children. In regards to the temporary placement of A.D., Richard suggested that she could stay with Angelina's mother, Violet Inman. Stucky contacted Violet in order to confirm that she would be willing to take temporary custody of A.D. Violet stated that she could take care of A.D., but not until after 3:30 p.m. that afternoon when she got off work. Law enforcement found A.D.'s placement with Violet to be acceptable. All parties present agreed that Stucky could take care of A.D. until Violet got off work at 3:30 p.m. Stucky then left the residence with A.D.

{¶ 7} At approximately 4:11 p.m., Stucky called Violet to say that she was running late. Stucky also questioned Violet regarding day care options for A.D. while Violet was at work. Violet informed Stucky that she could not take custody of A.D. because she was an alcoholic who drank every night. At this point, Stucky decided to allow A.D. to remain at her house for the weekend. It is undisputed that Stucky did not attempt to contact anyone at CJFS to inform them that she decided to take care of A.D.

{¶ 8} On the morning of Saturday, August 20, 2005, Stucky called Barbara Whalen, A.D.'s maternal grandmother, in order to retrieve the phone number of A.D.'s mother, Terry Booth, who lived in New York. We find it noteworthy that A.D. had just returned to Ohio

after spending three months in New York with her mother, Terry, when she was removed from Richard's custody on August 19, 2005. Barbara supplied Stucky with Terry's phone number, and Stucky contacted Terry in order to inform her of the events that had recently transpired. Terry stated that she would be willing to take immediate custody of A.D. On Sunday, August 21, 2005, Terry, accompanied by her mother, Barbara, met with Stucky and took custody of A.D.

{¶ 9} Stucky testified at the pre-disciplinary hearing that after she arrived at work on Monday, August 22, 2005, she went directly to her supervisor's, Larry Parks, office and explained to him that she had taken A.D. home with her over the weekend. Stucky also testified that she made the arrangements for an emergency shelter hearing in order to determine who would gain custody of A.D., as well as Angelina's two boys. After the emergency shelter hearing, custody of A.D. was given to Terry Booth, and custody of Angelina's two boys was given to Jack Spencer.¹

{¶ 10} Stucky admitted at the pre-disciplinary hearing she made certain misstatements to the judge at the emergency shelter hearing. In particular, Stucky testified that she told the judge that in April of 2005, she instructed her supervisor to either remove all of the children from the Inman-Dixon residence or remove her from the case. Stucky further admitted that she stated this to the judge at the shelter hearing in order to mistakenly give the impression that CJFS had reason to remove the children from the residence, when, in fact, no such reason existed. Moreover, Stucky admitted that all she had really done was

¹At the time of the hearing before the administrative law judge on October 11 & 12, 2006, Angelina had regained custody of her two sons.

recommend to her supervisor in April of 2005 that the case be closed.

{¶ 11} Stucky also testified that she told the judge and other family members present at the shelter hearing that prior to taking A.D. to her home, she informed he CJFS of her decision to take personal custody of A.D. for the weekend and that the agency approved of her actions. Stucky acknowledged that she did not inform anyone at CJFS of her decision to take personal custody of A.D. for the weekend. Stucky also admitted at her suspension hearing that she was aware that she had violated agency policy and that she had no personal authority to decide on the proper placement for A.D. under the circumstances.

{¶ 12} As a result of her actions, Stucky was charged with violating CJFS internal policy for taking A.D. to her home over the weekend and for misstating facts during the emergency shelter care hearing. A pre-disciplinary hearing was held on October 11 & 12, 2006, wherein Stucky was represented by counsel and given an opportunity to explain her conduct.

{¶ 13} The administrative law judge issued a decision on September 28, 2007. Stucky was given a ten-day suspension, without pay, for her actions. Stucky appealed her punishment, and on October 29, 2007, the State Personnel Board of Review upheld the decision of the administrative law judge. Stucky then appealed the decision of the State Personnel Board of Review to the Clark County Court of Common Pleas. In a judgment entry filed on May 16, 2008, the trial court reversed the decision of the State Personnel Board of Review and administrative law judge, rescinded Stucky's ten-day suspension, and reinstated her pay and benefits for those days. The trial court also awarded Stucky attorney's fees and costs as part of its judgment.

{¶ 14} It is from this judgment that the CJFS now appeals.

II

{¶ 15} CJFS's sole assignment of error is as follows:

{¶ 16} "THE TRIAL COURT ABUSED ITS DISCRETION BY FINDING THAT THE SPBR ORDER WAS NOT BASED ON RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE."

{¶ 17} In its sole assignment, CJFS contends that the trial court abused its discretion when it reversed the decision of the State Personnel Board of Review and administrative law judge which found that Stucky violated CJFS policy by taking A.D. to her home over the weekend and for misstating pertinent facts during the emergency shelter care hearing.²

{¶ 18} Pursuant to R.C. § 119.12, when a common pleas court reviews an order of an administrative agency, the court must consider the entire record in order to determine if the agency's order is supported by reliable, probative, and substantial evidence and is in accordance with law. *Harrison v. Franklin Cty. Bd. Of Mental Retardation & Developmental Disabilities*, Franklin App. No. 05AP-81, 2005-Ohio-5096. The court must give deference to the agency's resolution of factual conflicts unless they are clearly unsupportable. *Jackson v. Ohio Dept. of Rehab. & Corr.*, Montgomery App. No. 22580, 2009-Ohio-896.

{¶ 19} To be "reliable," evidence must be dependable and true within a reasonable probability. To be "probative," evidence must be relevant, or, in other words, tend to prove the issue in question. To be "substantial," must have importance and value. *Our Place*,

² It should be noted that Stucky failed to file a responsive brief in the instant appeal.

Inc. v. Ohio Liquor Control Comm. (1992), 63 Ohio St.3d 570, 571.

{¶ 20} In reviewing the record for reliable, probative, and substantial evidence, the trial court ““must appraise all [of] the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof.”” *AmCare, Inc. v. Ohio Dept. of Job & Family Servs.*, 161 Ohio App.3d 350, 2005-Ohio-2714, quoting *Lies v. Ohio Veterinary Med. Bd.* (1981), 2 Ohio App.3d 204, 207. In doing so, the trial court must give due deference to the administrative resolution of evidentiary conflicts because the agency, as the factfinder, is in the best position to observe the manner and demeanor of the witnesses. *Univ. Of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111. “The findings of the agency are by no means conclusive.” *Id.* Thus, the trial court may reverse an administrative order when the trial court determines that the agency’s findings are based upon improper inferences, testimony that is internally inconsistent, testimony that is impeached by evidence of a prior inconsistent statement, or other questionable evidence. *Ohio Historical Soc. v. State Emp. Relations Bd.* (1993), 66 Ohio St.3d 466, 471.

{¶ 21} This Court’s standard of review, however, is much more limited than that of the trial court. In reviewing the trial court’s determination that the SPBR’s order was not supported by reliable, probative, and substantial evidence, our role is limited to determining whether the trial court abused its discretion. *Lorain City Bd. of Ed. v. State Emp. Relations Bd.* (1988), 40 Ohio St.3d 257, 261. An abuse of discretion means more than an error of law or judgment; it implies that the trial court’s attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. When applying the abuse of discretion standard, an appellate court may not merely substitute its judgment

for that of the trial court. *Berk v. Mathews* (1990), 53 Ohio St.3d 161, 169. On the question of whether the agency's, or the trial court's, order was in accordance with the law, however, this Court's review is plenary. *Kistler v. Ohio Bur. Of Worker's Comp.*, Franklin App. No. 04AP-1095, 2006-Ohio-3308.

{¶ 22} At the pre-disciplinary hearing, Stucky testified as follows during cross-examination:

{¶ 23} "Q: So is it your testimony today that you have absolutely no knowledge that you should not have taken that child home for the weekend?"

{¶ 24} "A: I'm not stating that.

{¶ 25} "Q: Well, I guess we kind of need to go one way or the other. Either you knew you shouldn't have taken the child home or you had no idea you shouldn't have taken the child home.

{¶ 26} "A: I'm not stating that. *I'm stating what I think I did was a good thing for that child.*

{¶ 27} "Q: It was a good thing for the child. Did it violate agency policy or not to your knowledge?"

{¶ 28} "A: *I think it violated agency policy.* I think in the Ohio Revised Code it states that a child can be with a non-relative if the child has a bond with that relative, and if that person is going to look out for that child's best interests, and keep that child's cultural interests intact. And that's what I did.

{¶ 29} "Q: Did you seek authorization from anyone to take –

{¶ 30} "A: No.

{¶ 31} "Q: – the child home?"

{¶ 32} “A: No, I did not.

{¶ 33} “Q: Who had authority at that point in time to place the child?

{¶ 34} “A: What are – what are you talking about?

{¶ 35} “Q: Well, if law enforcement has the authority to do the removal, isn’t it also law enforcement that has the authority to do the placement?

{¶ 36} “A: Correct.

{¶ 37} “Q: *Do you have any authority yourself individually to place a child in the – under those circumstances?*

{¶ 38} “A: The child was placed with Violet and that fell through.

{¶ 39} “Q: *Do you have any authority yourself under those circumstances to place a child?*

{¶ 40} “A: No.”

{¶ 41} The above excerpt clearly establishes that Stucky was aware that she was violating agency policy by taking A.D. to her home for the weekend. Stucky did not have the authority to place A.D., much less in her own home, and she admitted as much in her testimony. The record further establishes that Stucky made no attempt to contact the agency in order to make alternate arrangements for the child after placement with Violet Inman became impossible.

{¶ 42} CJFS’s Policy and Procedure Manual, which was in effect at the time Stucky committed the infractions, states as follows:

{¶ 43} “If a suitable relative is not available to assume temporary custody or guardianship, CCFCS will explore placement with a suitable nonrelative who has a relationship with the child and/or family. CCFCS shall only place children in

substitute care settings that are licensed, certified, or approved by the agency of the state having responsibility for licensing, certifying or approving facilities of the type in which the child is placed or in homes of relatives and nonrelatives approved by the PCSA or PCPA in accordance with rule 5101:2-42-18 of the Administrative Code.”

{¶ 44} The language used in CJFS’s policy manual mirrored the language in Ohio Administrative Code § 5101:2-42-05, which states in pertinent part:

{¶ 45} “(D) A [public children services agency (PCSA)] or [private child placing agency (PCPA)] shall determine and make placements only in substitute care settings listed in this rule. The following listing represents the order of least-restrictive to most-restrictive settings for a child in custody of a PCSA or PCPA.

{¶ 46} “(2) The home of a suitable non-relative, as defined in Rule 5101:2-1-01 of the Administrative Code certified as a family foster home by the Ohio Department of Human Services, another state with authority for licensure, certification, or approval pursuant to Section 5103.02 of the Revised Code, or which is licensed/certificated/approved by another state.”

{¶ 47} The administrative law judge correctly found that Stucky could not properly be considered a “nonrelative who has a relationship with the child and/or family.” Stucky was simply the social worker assigned to investigate and monitor the Inman-Dixon residence, and she did so for less than five months prior to the removal of the children in August of 2005. Stucky’s status as the social worker for the Inman-Dixon household did not qualify as the type of “relationship”

contemplated by the administrative rule. Were we to find otherwise, then a social worker would be considered to have a “relationship” with the children in every household that he or she investigates, which, in turn, would permit the social worker to be considered as substitute care provider. That is not the role of a social worker.

{¶ 48} More importantly, Stucky’s home was not approved or licensed as a family foster home by the state of Ohio or any other state. Thus, Stucky did not qualify as a substitute care provider as contemplated by CJFS’s policy manual or the Ohio Administrative Code. By her own admission, Stucky was aware that she was violating CJFS policy when she made the unilateral decision to place A.D. in her home for the weekend. Stucky did not possess the authority to order the emergency placement of A.D., and she did not qualify as a substitute care provider as contemplated by law.

{¶ 49} It is also apparent from Stucky’s own testimony that she made misleading and untrue statements during the emergency shelter hearing. The record clearly establishes that Stucky told the judge at the shelter hearing that in April of 2005, she instructed her supervisor to either remove all of the children from the Inman-Dixon residence or remove her from the case. Stucky testified that she said this to the judge at the shelter hearing in order to give the false impression that CJFS had reason to remove the children from the residence, when, in fact, no such reason existed. Stucky testified at the pre-disciplinary hearing that in actuality, she had no basis upon which to remove the children from the home, rather she testified that she did not personally approve of Richard and Angelina’s parenting style.

{¶ 50} The record also establishes that Stucky made misleading statements to the judge at the shelter hearing when she stated that she had received the approval of her supervisors at CJFS before she decided to take A.D. home for the weekend. Stucky testified that she did not inform anyone at CJFS of her decision to take personal custody of A.D. for the weekend. Stucky's supervisor's at CJFS could not approve or disapprove of her decision if they were not informed in the first place. Moreover, Stucky admitted that she was aware that she had violated agency policy and that she had no personal authority to decide on the proper placement for A.D. under the circumstances.

{¶ 51} In its judgment entry reversing the decision of the State Personnel Board of Review and administrative law judge, the trial court improperly relied upon the testimony of the judge who presided over the shelter hearing. Specifically, the trial court pointed out that the judge testified that he was not "misled" and that he was given "sufficient facts" during the shelter hearing to make a decision in the case. While the judge believed that he was provided relevant and accurate information at the shelter hearing, Stucky's own subsequent testimony established that she intentionally made misleading statements to the judge at the shelter hearing in order to gain a favorable ruling regarding the placement of A.D.

{¶ 52} Additionally, the trial court placed improper weight on its own philosophical view of the duties and discretion of a social worker. The trial court found that Stucky's behavior in this case was justified under the circumstances because she was acting in the best interests of A.D. We disagree. As the administrative law judge held, we find that while Stucky may have had the best

intentions in regards to A.D.'s care, she ignored the rules and disregarded the policies of her employer, CJFS, designed specifically to protect and aid all of the parties involved in the delicate, but sometimes necessary, process of placing children who have been removed from unfit homes.

{¶ 53} Thus, the trial court abused its discretion when it reversed the decision of the State Personnel Board of Review and administrative law judge which found that Stucky violated CJFS policy by placing A.D. in her home for the weekend, as well as misstating facts during the emergency shelter care hearing.

{¶ 54} CJFS's sole assignment of error is sustained.

III

{¶ 55} CJFS's sole assignment of error having been sustained, the judgment of the trial court is reversed, and this matter is remanded with instructions to reinstate the State Personnel Board of Review's order.

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BROGAN, J. and FAIN, J., concur.

Copies mailed to:

Colleen Stucky
Cheri B. Hass
Paul M. Bernhart
Hon. Douglas M. Rastatter