

NO. A09-371

State of Minnesota
In Court of Appeals

Christine Strecker,

Relator,

vs.

Minnesota Department of Human Services,
Respondent,
Ramsey County Community Human Services,
Respondent.

APPELLATE BRIEF OF RELATOR CHRISTINE STRECKER

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STATEMENT OF LEGAL ISSUES

I. WHETHER THE DECISION OF THE MINNESOTA DEPARTMENT OF HUMAN SERVICES IS ARBITRARY, CAPRICIOUS, UNSUPPORTED BY THE EVIDENCE, AND AN ERROR OF LAW.

The Minnesota Department of Human Services issued a final order which rejected a decision by Administrative Law Judge Linda Close that held that the Department had failed to meet its burden of proving that Relator Christine Strecker posed an imminent risk of harm to the children in her daycare.

Authority:

Minn. Stat. §§ 14.69(e), 245A.07, subds. 2, 2a, 245A.08, subd. 3(a) (2008).

In re Burke, 666 N.W.2d 724, 726 (Minn. App. 2003)

State v. Lee, 585 N.W.2d 378, 382-83 (Minn. 1998).

Minn. Ctr. For Env'tl. Advocacy v. Minn. Pollution Control Agency, 644 N.W.2d 457, 466 (Minn. 2002).

STATEMENT OF CASE

On September 29, 2008, the Minnesota Department of Human Rights (Department) ordered the temporary immediate suspension of a license held by Christine Strecker to provide family child care. *A.18-19*. Citing Minn. Stat. § 245A.07, the sole basis for the order was that

On September 17, 2008, Ramsey County Human Services received a report regarding your home. [...]. Due to the serious nature of the report under investigation, Ramsey County Human Services cannot ensure the safety of the persons served in your program. The Commissioner of the Department of Human Services finds that the health, safety, and rights of children in your care are in imminent risk of harm. Therefore the Commission is immediately suspending your license to provide Family Child Care.

A. 18. Strecker appealed the order and a hearing was held before Administrative Law Judge (ALJ) Linda Close. *A.10-17.*

Approximately 6 days after the hearing, and prior to the issuance of the ALJ's order, the Department¹ issued a letter stating that it had completed its investigation and found that Strecker had committed physical abuse of a minor child in her care. *A.347.* A demand for production of all additional investigation in support of the finding of abuse was made. *A.358.* A review of the response to the demand evidences that no further investigation was conducted, nor any further evidence collected, after the December 10, 2008 hearing. *A.358-373.* Therefore, the only evidence allegedly supporting the December 16, 2008 finding of physical abuse was the same as that which had been presented at the December 10, 2008 hearing.

On or about January 15, 2009, the ALJ entered an order in which she concluded that "[t]he Department has failed to demonstrate reasonable cause to believe that there is a risk of imminent harm to the health or safety of children served by [Strecker]" and recommended that "the Order of Temporary Immediate Suspension suspending the family child care license of [Strecker] be RESCINDED." *A. 15.*

The decision of the ALJ was then reviewed and rejected by the Minnesota Department of Human Services. *A.5-9.* The Department adopted the Findings of Fact

¹ The letter was issued on Ramsey County Human Services Department's letterhead. *A.347.* However, the letter is appropriately treated as being issued from the Minnesota State Department because it reflects the findings and will of the state department. *A.43-44, A.430.*

made by the ALJ. *A.6.* The Department also adopted the ALJ's conclusions of law 1-6 and 8-9. *Id.*

The Department, however, reached a different legal conclusion than the ALJ with regard to conclusion of law number 7 as to which it stated:

Conclusion 7 is modified and adopted as follows:

7. The Department ~~has failed to demonstrate~~ reasonable cause to believe that there is a risk of imminent harm to the health or safety of children served by the Respondent.

A.6 The basis for the Department's differing legal conclusion was that the ALJ "place[d] upon the Department a higher burden of proof than required for a temporary immediate suspension." *A.8.* Although the Department reached a different legal conclusion than that reached by the ALJ, it did not cite a single case supporting its position. *A.8-9.*

In this matter, Strecker appeals the final decision of the Department to order Temporary Immediate Suspension of Strecker's license. *A.1.* As to the finding of physical abuse, Strecker has filed an administrative appeal of the same, citing the findings and conclusions of the ALJ who had reached a difference conclusion based upon the very same evidence. *A.374-429, A.432.* Strecker is awaiting a hearing.

STATEMENT OF FACTS

Background

Christine Strecker is a graduate of the University of Wisconsin with a BS in Home Economics. *A.65, 127.* As a part of her degree, she took many classes related to child development with the specific intent of caring for children. *A.65-67, 128-129.* In 2002,

she became licensed by the State of Minnesota to provide in-home daycare for 12 or fewer children. *A.77, 130-131.*

During the time period that Strecker was licensed by the Department, Strecker did not have a single complaint regarding the care she provided, nor any evidence of a criminal history. *A.38-39, 41.* During the time period that the Department² supervised her license it found her to be pleasant, cooperative, intelligent, very patient, nice and kind. *A.40.* In fact, according to the Department, Strecker is nicer, more educated and more intelligent than the average daycare provider. *A.40, 42.* On prior inspections conducted by the Department, there was no evidence of abuse or maltreatment. *A.41.* To the contrary, all of the kids seemed happy. *A.42.*

On September 16, 2008, Strecker was caring for a six month old, J.H., and at some point during the day, believed that he was having a seizure. *A.85.* Strecker called 911 and J.H. was transported to the hospital. *A.86.*

The fact that J.H. suffered a traumatic injury was not disputed in this matter. Rather, what was disputed was the Department's conclusion that, amongst the persons involved, there was reasonable cause to believe that Strecker caused the injury and posed an imminent risk of harm. *A.24, 44.*

Undisputed findings of fact

As set forth above, the Department adopted the Findings of Fact made by the ALJ. *A.6.* Strecker similarly does not dispute the Findings of Fact made by the ALJ. And,

² The Department actually supervised Strecker's license by assigning a Ramsey County employee, Muriel Leko, to supervise the licensing file. *A.27-28.*

therefore, the following Findings of Fact made by the ALJ serve as an appropriate statement of the facts of this matter:

1. Until September 29, 2008, Respondent operated a daycare center in her home in St. Paul, Minnesota. Respondent was first licensed to provide child care in 2002. Respondent is a native of St. Paul. She attended college at the University of Wisconsin, where she majored in Home Economics, with a focus on Child and Family. She is 39 years old, and is married to John Strecker, a machinist at Wilson Tool International. They have two children, one in 4th grade and the other in 6th grade. Respondent teaches gymnastics once or twice a week at the Roseville Gymnastics Center. When Respondent leaves to teach gymnastics in the late afternoon, her husband watches any remaining daycare children for about ten minutes until the parents pick the children up.

2. Respondent's license entitled her to care for up to twelve children. On September 16, 2008, Respondent had in her care six children. One of these children was J.H., who had begun coming to Respondent's daycare about two months earlier. J.H. was six months old in September 2008.

3. On Friday, September 12, 2008, J.H.'s mother had picked him up early, around 2:30 p.m. or 3:00 p.m., to take him to the doctor for a well-child checkup. The examining physician noted no problems.

4. When J.H. arrived at daycare on Tuesday, September 16, 2008, around 8:30 a.m., he did not appear to be sick, cranky, or distressed. He napped for about an hour in the morning and later had lunch. Respondent put him down for his afternoon nap around 1:00 p.m. When she went to get him up from his nap around 3:30 p.m., he was still sleeping in his crib upstairs. She let J.H. sleep and attended to the other children while he slept. When she returned, J.H. was awake and lying in his crib.

Respondent brought him downstairs, changed his diaper and put him on the carpeted floor while she let the older children outside to play. When Respondent returned, it appeared that J.H. was having a seizure. Respondent was familiar with seizures, because she had previously cared for a child who had high temperature seizures. At that time, she had learned how to care for a child having a seizure.

5. Respondent immediately called 911. A police officer arrived first, followed by an ambulance. Respondent called J.H.'s father, and accompanied J.H. in the ambulance to the ER at St. John's Hospital. A CT scan revealed a subdural hematoma, or bleeding in the brain. J.H.'s parents came to the hospital. Without letting Respondent know, J.H. and his parents thereafter went to another hospital.

6. The following day, Maureen Sicora, an investigator with the Roseville Police Department, called Respondent to come to the police department to discuss what had happened. Respondent was interviewed there by Investigator Sicora and a Ramsey County Child Protection Worker, Jenny Neujahr, for about two hours. Respondent denied shaking or hurting J.H. in any way. She stated that she does not discipline by physical means, either with daycare children or her own

7. On September 17, 2008, J.H. underwent an MRI of the brain at Children's Hospital. The MRI confirmed the existence of a right side subdural hematoma. Dr. Mark Hudson noted that, absent any history of accidental trauma, abusive head trauma was the primary consideration.

8. On September 19, 2008, J.H. underwent an ophthalmologic examination by Dr. Susan Schloff at Children's Hospital. Dr. Schloff found J.H. to have retinal hemorrhages in both eyes. Her report is contained in a longer report by Dr. Hudson. Dr. Hudson noted that retinal hemorrhages cannot be dated accurately. He also stated that the subdural hematoma seen on CT scan could have been the result of an injury occurring on September

16th or days before that.

9. Also on September 19th, Ms. Neujahr consulted with her supervisor about developing a safety plan for J.H.'s care once he was released from the hospital. They developed a plan that required a grandparent to be present with J.H.'s parents at all times upon J.H.'s release from the hospital. The parents and paternal grandmother signed the plan.

10. On September 23, 2008, Ms. Neujahr went to Respondent's home for a walk through. Ms. Neujahr asked Respondent whether she was willing to take a polygraph test, and Respondent said she would. Subsequently, Respondent spoke with an attorney, who advised her to refuse a polygraph, and she did not take one. Respondent provides daycare for the two children of Mark Koenig, a Minneapolis police officer. Officer Koenig testified at hearing. He stated that, until learning the Roseville police use polygraphs, he was unaware of any police department in the State of Minnesota that uses polygraphs.

11. On September 29, 2008, the Department called Ms. Leko to discuss what had happened to J.H. The Department had received a copy of the Children's Hospital report about J.H. Ms. Leko had not reached a conclusion about whether to recommend a temporary immediate suspension. She knew from a conversation with Ms. Neujahr that there had been problems with the polygraph that J.H.'s mother took. She also knew that the mother had had a DWI and the father had anxiety and depression problems. She knew these facts, and they made her think that an immediate suspension of Respondent's license was not appropriate. In addition, Ms. Leko had consulted with the County Attorney, who did not support a temporary immediate suspension.

12. The Department told Ms. Leko that she needed to recommend an immediate suspension of the Respondent's child care license. The County Attorney then told her that she had to follow the directive of the

Department. Ms. Leko therefore wrote a letter to the Department recommending the immediate suspension. In the letter, she told the Department that the County Attorney had reviewed the situation and did not support an immediate suspension. On September 29, 2008, the Department issued the order of temporary immediate suspension.

13. Ms. Leko testified that there had been no negative licensing actions against Respondent and no complaints against her prior to the September 29, 2008 suspension. She described her encounters with Respondent as pleasant, and Respondent as cooperative, patient, and intelligent. She testified that Respondent is more educationally qualified than most, if not all, of the licensees she works with. When Ms. Leko has made drop-in visits, she has found the children happy and well attended to, they were not acting out against Respondent and did not seem distressed.

14. Dr. William Ford is a neuroradiologist who was called as an expert witness on Respondent's behalf. Dr. Ford reviewed J.H.'s September 16, 2008 CT scan and the MRI of September 17, 2008. He testified that blood deteriorates over time and that analyzing blood deterioration in the MRI permits the expert viewer to determine a time frame for an injury. Meth hemoglobin, the third stage of blood deterioration, was present on the September 17th MRI of J.H.'s head. It takes meth hemoglobin at least three to seven days to form. Based on his analysis of the MRI, Dr. Ford opined that the injury to J.H. occurred at least five days before the MRI. He consulted with Dr. Mark Meyer, his partner in practice who is also a neuroradiologist, and Dr. Meyer agreed with Dr. Ford's conclusion that the injury had occurred at least five days before the September 17th MRI.

15. Dr. Robert C. Ramsay reviewed Dr. Schloff's report of her ophthalmologic examination of J.H. His report states that the "timing of

retinal hemorrhages is not totally precise." He stated that the type of hemorrhage seen in J.H. could have been present for five to seven days.

16. During the course of his work as a police officer, Officer Koenig has investigated over 300 cases involving sexual and physical abuse and neglect of children. He has interviewed numerous daycare providers both for purposes of his work and for the personal purpose of placing his own children in daycare. He began bringing his children to Respondent for care in 2006. Officer Koenig has known Respondent since 1986, when they were in school together. He has never heard any negative comments about Respondent's care of children, and he does not believe children in Respondent's care are at imminent risk for their health or safety. If Respondent's license were reinstated, he would return his children to her care.

17. In addition to Officer Koenig, five other daycare parents submitted letters of support for Respondent, they describe a "loving and safe environment" provided by a person of "genuine character and calming personality." Parents aver that they would return their children to be cared for Respondent, and they praised Respondent as a "wonderful" provider who uses discipline appropriately.

18. Following the September 29, 2008, Order of Temporary Immediate Suspension, Respondent appealed, resulting in this hearing. Upon request of counsel for Respondent, the matter was continued from its original setting of November 3, 2008 to December 10, 2008.

ARGUMENT

STANDARD OF REVIEW

Although decisions of the Department enjoy the presumption of correctness, they may be reversed when

they are arbitrary and capricious, exceed the agency's jurisdiction or statutory authority, are made upon unlawful procedure, reflect an error of law, or are unsupported by substantial evidence in view of the entire record.

In re Burke, 666 N.W.2d 724, 726 (Minn. App. 2003). Further, the judiciary is not bound by an agency's ruling on a legal issue. *Id.*

This case, at this juncture, turns on the Department's legal conclusion of whether reasonable cause existed. Review of the legal conclusion of whether reasonable cause exists is de novo. *State v. Lee*, 585 N.W.2d 378, 382-83 (Minn. 1998).

II. THE DECISION OF THE DEPARTMENT OF HUMAN SERVICES IS ARBITRARY, CAPRICIOUS, UNSUPPORTED BY THE EVIDENCE, AND AN ERROR OF LAW.

An order for the temporary immediate suspension of a daycare license is only valid where DHS proves that reasonable cause exists to believe that the actions of the day care provider pose an imminent risk of harm to the health, safety, or rights of the children in her care. Minn. Stat. § 245A.07, subds. 2, 2a (2008). "Reasonable cause" is synonymous with "probable cause" which is defined to be "a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused to be guilty." *State v. Sorenson*, 270 Minn. 186, 196, 134 N.W.2d 115, 122-123 (1965).

An agency's finding of "reasonable cause" must be supported by substantial evidence. Minn. Stat. § 14.69(e) (agency decision must be supported by substantial evidence), 245A.08, subd. 3(a) (burden of proof in a contested cause hearing); *Matter of Mayo*, 1990 WL 181223 (Minn. App. Nov. 27, 1990)(unpublished). Substantial evidence means "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. For Env'tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

In this case, the decision of the Department is not supported by substantial evidence in this matter nor a rational decision. *A.9*; *See Beaty v. Min. Bd. of Teaching*, 354 N.W.2d 466, 472 (Minn. App. 1987)(findings of ALJ should not be taken lightly) and *Markwardt v. State, Water Res. Bd.*, 254 N.W.2d 371, 374 (Minn. 1977) (agency decisions that reflect only its will and not its judgment is subject to reversal). Rather, it is clear that the decision of the Department reflects its zealous desire to advance its political goal of "advanc[ing] safety and security of the children in care" without regard to the fair and rational treatment of licensees, who typically do not have the resources to adequately represent themselves against the will of the Department.

Medical evidence does not allow for reasonable cause

First, when the evidence is considered in its entirety, there is insufficient evidence in the record that would allow a reasonable mind to conclude that the injury suffered by J.H. occurred on September 16, 2008 while in the Strecker's care. The record in this

matter establishes that the reliable method for determining the time period for the injury-causing event is a review of J.H.'s CT and MRI scans by a neuroradiologist.

Both parties agreed that the existence of retinal hemorrhages cannot be used to date an injury. *A.13*. Rather, determination is made by the nature of the injury and to a greater extent the age of the blood on the brain.

With regard to the nature of the injury, the Department entered into evidence a written opinion of Pediatric Dr. Mark Hudson, which stated "the subdural hematoma appears to be acute to subacute, suggesting that that injury could have occurred on the day of injury, but could have also occurred prior to presentation." *A.107*. Dr. Hudson's sole reliance on the nature of the subdural hematoma was refuted by Neuroradiologist Dr. William Ford who testified:

When I back up that up and look at the CT scan and notice that the attenuation is low and also that there's no mass effect, which is usually the case in an acute subdural, you know, that would imply that there's been some time that has passed since that thing was there.

*A.528, see also A.527.*³

Because of the presentation of the injury, Neuroradiologist Dr. William Ford further testified that additional evaluation of the injury, and more specifically the age of the blood, had to be undertaken in order to determine a timeline for the injury-causing event. *A.527-528*. Dr. Ford testified that he and another neuroradiologist in this practice, Dr. Meyers, reviewed the CT and MRI scans of J.H. *A.531*. Ford further testified that

³ The fact that the subdural hematoma was small, as noted by neuroradiologist Dr. Ford, is corroborated by the neuroradiological records of the Children's neuroradiologist (which were incorporated into Dr. Hudson's opinion) in which that neuroradiologist noted too that the injury was "small" *A.101*.

evaluating the age of the blood on the brain is the reliable method for dating an injury even in 6 month olds. A.525-528, 532 He further testified that both doctors concluded that because of the age of the blood depicted in the MRIs, the injury had to have occurred before September 16, 2008. A.527-531.

At the hearing, the Department stipulated to Dr. Ford's qualifications and did not rebut the evidence presented by Dr. Ford. A.523-524, A.531-533. Furthermore, Dr. Hudson written opinion did not offer any testimony regarding the age of the blood and its use in dating the injury. Dr. Hudson is not a neuroradiologist and, although he did consult with a neuroradiologist regarding J.H.'s MRIs, there is nothing in his reports that indicated that he had consulted with a neuroradiologist to discuss the age of the blood in order to date the injury. A.98-107. In short, the undisputed, reliable evidence in this matter, thus, established that the injury did not occur on January 16, 2008. A.16; *Ruether v. State*, 455 N.W.2d 475 (Minn. 1990)(appellate court should defer to determinations by trier of fact regarding the apportionment of weight an credibility to medical evidence). Accordingly, there was insufficient evidence in the record that would allow a reasonable mind to conclude that Strecker poses an imminent risk of harm.

The Department, in an attempt to overcome its failure to provide medical evidence at the hearing in this matter that would support its position, posited a new argument in its final order, arguing:

While it is not conclusive that the injury was inflicted upon J.H. while in Licensee's case on September 16th, the record is clear that as near as can be medically determined, J.H. could have been injured on a day and at a time when he may have been in Licensee's care.

A.9. The Department does not cite to any evidence to support its argument. Under 245A.07, the Department was required to produce evidence meeting its burden of proof at the time of the hearing. It did not and it cannot.

The Department, in making its zealous post-hoc argument in order to impose its will, seems to have forgotten the evidence and its own position at the hearing.⁴ The evidence in this matter, when viewed in its totality, establishes a timeline for injury that places J.H. strictly in the care of persons other than Strecker. As set forth above, the complete, credible, and reliable medical evidence establishes that an injury could not have occurred on Tuesday, September 16, 2008 when J.H. was in Strecker's care. The evidence also establishes that the last time that J.H. was in Strecker's care was approximately 2:30-3:00 p.m. on September 12, 2008. *A.486, 54, 561*. The medical evidence further established that the injury did not occur prior to 2:00 pm. on September 12, 2008 because when J.H. was examined by his pediatrician on the afternoon of September 13, 2008, he was found normal—no retinal hemorrhages, no tonsillar injuries, and no swelling to his head or other indication of a head injury, nor was there any other indication of injury. *A.486*. Therefore, the timeline for injury in this matter places J.H.

⁴ Leading up to, and at the time of the hearing, the Department's theory in support of the order for temporary immediate suspension was that J.H. had to have been injured while in Strecker's care on September 16, 2008 because J.H. was clear for injuries as determined by J.H.'s pediatrician at a scheduled visit on September 13, 2008 and was reported by the parents to be fine through the weekend and Monday, when he was in their exclusive care, until they dropped him off for care on Tuesday, September 16, 2008. *A.438-442*. It is notable that the Department's position at hearing was not even supported by the record collected by them in which the mother of J.H. stated that J.H. was inconsolable on Sunday, September 14, 2008. *A.416*. Therefore, he was not "fine" during their charge.

solely in the care of the parents, not Strecker and the Department erred when it concluded otherwise.

Considering all of the foregoing, there is no reliable medical evidence in this matter that establishes a timeline for injury that places J.H. in Christine Strecker's care. The Department's uncited and unsupported conclusion otherwise, is directly contrary to the (1) totality of the medical evidence; (2) the opinions of the licensing supervision and the prosecuting attorney, and (3) the ALJ, who had an opportunity to see, hear and review the evidence. The record then clearly demonstrates that the Department's conclusion resulted only from its will and not reasonable judgment.

Stecker's own testimony does not allow for reasonable cause

In addition to the medical evidence in the record, the non-medical evidence also absolved Stecker of any wrongdoing. Strecker provided an interview in which she denied harming J.H. But more importantly, the investigators concluded that "she was completely open and honest about what happened that day." A.481. The ALJ clearly found Strecker's testimony to be credible because it to accepted her allegations. A.11. Finally, the Department is not now in a position to reject the credible testimony of Strecker which does not allow for a finding that she harmed J.H. because it adopted the findings of fact made by the ALJ which made no finding of fact that Strecker harmed the child, nor that Strecker was incredible. A.6. Therefore, there is no finding of fact or evidence in the record that Strecker did something or failed to do something that caused harm to J.H.

Eyewitness evidence does not allow for reasonable cause

Child Protection Services interviewed the children in Strecker's care, as well as Strecker's own children (the interviews of Strecker's children were conducted without Strecker's knowledge). *A.483-485, 118*. All of the children denied seeing Strecker ever using corporal punishment and denied any conduct by Strecker that would have resulted in injury to J.H. *A.483-485, A.114-116*. Therefore, in addition to the medical evidence and self-report, eye witness testimony did not allow for a reasonable belief that Strecker posed an imminent risk of harm.

Evidence of character, habit and routine does not allow for reasonable cause

Furthermore, un rebutted evidence of habit and character of Strecker was entered into the record and further established that the evidence, when viewed in its entirety, as it must be under the standard of proof, did not allow for a reasonable belief that Strecker posed an imminent risk of harm. One of the parents who had children in Strecker's care is a Minneapolis Police Officer who had worked in the child protection unit. As the ALJ found, he provided credible testimony that "he has known [Strecker] for more than twenty years, during which time he has never seen her exhibit behavior resulting in her hurting a youngster." *A.17*.⁵ Other parents who had children in Strecker's care during the relevant time period, and previously, also provided similar evidence. *Id.* The Department never objected to the parental letters in support of Strecker. *A.562, 143-147*.

⁵ The majority of Officer Koenig's testimony was received without objection. *A.490-511*.

The Department criticized the ALJ for relying on such evidence and reached a contrary conclusion to the ALJ, stating:

Similarly, the fact that Licensee has a long history of providing care without violations and that many parents offer support for the program's continuation and vouch for the quality of care are appropriate considerations in determining the final licensing action, if any; however, they do not make inherently incredible the possibility that Licensee caused J.H. injury and, thereby, poses an imminent risk of harm to the children in her daycare.

A.9. In so concluding, the Department has misconstrued what constitutes relevant evidence and legally erred as to the application of its burden of proof.

As set forth above, the Department bears the burden of proving reasonable cause as supported by the record when viewed in its entirety. *Minn. Ctr. For Env'tl. Advocacy*, 644 N.W.2d at 466. The Department must do more than show that there is a *possibility* that Strecker caused J.H.'s injury. It must show that when the record is viewed in its entirety there exists reasonable cause to believe that Strecker poses an imminent risk of harm. It is well-established in case law, that evidence of habit and character, "is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice." Minn. R. Evid. 406, see also Minn. R. Evid. 405; *Ture v. State*, 681 N.W.2d 9, 17 (Minn. 2004). Therefore, it was appropriate for the ALJ to consider such evidence in reaching her conclusion and it was an error of law for the Department to reject the relevancy of such evidence and then fail to apply it when determining whether it had met its burden of proof.

Evidence related to parents and failure to investigate parents

Finally, adverse evidence regarding the parents and the Department's failure to completely investigate the parents militated against the Department meeting its burden to prove that the evidence. First, the evidence shows that following his normal well-child visit, J.H. exhibited distress while in his mother's care beginning on Sunday where according to the mother

he wouldn't stop crying that day when she put him down. She said she then just put him down and let him cry a bit till he went to sleep. She said that both Saturday and Sunday he was off his routine due to pictures and other things.

*A.416 (quotations omitted).*⁶ The evidence further established that J.H. was not released to his parents again until a safety plan was put in place which required supervision of the parents and J.H. by one of the grandparents of J.H. *A.408-409.*

Moreover, evidence was presented at the hearing that the mother had problems passing her interview and polygraph test and that she had a positive criminal history for a crime involving the misuse of alcohol. *A.477-479.* In addition, the father reported problems with anxiety and depression during his interview. *A.479.* These revelations were contrary to some of the statements made by them during their previous interviews with the Department, *A.413-416;* yet, there was no further follow-up with the parents and instead J.H. was deemed "fine" while in their care.

At the time of the hearing, the Department's staff testified that such evidence regarding the parents was relevant to her initial "determination that a Temporary

⁶ On Sunday, September 14, 2009, the father left the home again before 9:45 a.m. to attend a Vikings football game and was gone again for most of the day. *Id.*

Immediate Suspension was not proper in this action.” A.46 (*emphasis added*). Because Department staff relied on this evidence in formulating its own opinions, the ALJ properly considered such evidence, in reaching her decision that the temporary immediate suspension of the Strecker’s license was not supported.

The Department, however, in issuing its final order in this matter, again reversed its position from the time of hearing and took a new position post-hearing, that such evidence was not relevant and again legally erred in its application of the burden of proof. Specifically, the Department stated in its final order that

Neither does the Administrative Law Judge’s reasoning that one of the parents may be culpable make inherently incredible that Licensee could have inflicted harm.

A.9. Again, it is the Department’s burden to prove that, when the evidence is viewed in its entirety, there is reasonable cause to believe that Strecker posed an imminent risk of harm. Case law establishes that the completeness of the investigation conducted by the Department is probative of whether the Department has met its burden of proving reasonable cause. *See Allen v. Osco Drug, Inc.*, 265 N.W.2d 639, 643-644 (Minn. 1978) (holding that prosecutor’s failure to investigate other easily verifiable information was relevant to determination of probable cause in malicious-prosecution action). Therefore, it was appropriate for the ALJ to consider such evidence in reaching her conclusion and it was an error of law for the Department to reject the relevancy of such evidence and then fail to apply it when determining whether it had met its burden of proof.

Totality of evidence does not allow for finding of reasonable cause

It is clear from the record in this matter that the Department's decision related solely to the exercise of its political will and not reasonable judgment as evidenced by the following:

1. The unrefuted, reliable, and competent medical evidence establishes a timeline for injury which places J.H. strictly in the care of persons other than Strecker at the time of his injury;

2. Strecker was interviewed, denied the allegations, and determined to be credible by the investigators, the ALJ and the Department who adopted the findings of fact in this regard;

3. Eyewitnesses provided statements that they did not observe Strecker act in any manner so as to cause harm to J.H.;

4. There were no witnesses testifying that Strecker harmed J.H.;

5. Witnesses provided evidence regarding the character, habit and routine of Strecker that established that it was unlikely that she acted in a manner so as to cause harm to J.H.

6. The parents of J.H. did not unqualifiedly pass their polygraphed interviews, made inconsistent statements, and were not further investigated;

7. There is no other circumstantial evidence in the record tying J.H.'s injuries to something that Strecker did or did not do;

8. Strecker's licensing supervisor did not believe that the evidence obtained from the investigation allowed for reasonable cause to believe that Strecker posed an

imminent risk of harm and the imposition of the temporary immediate suspension of Strecker's license;

And,

9. The prosecuting attorney who consulted with Strecker's licensing field supervisor concurred that that the evidence obtained from the investigation did not appear to allow for reasonable cause to believe that Strecker posed an imminent risk of harm and the imposition of the temporary immediate suspension of Strecker's license.

In sum, it is clear from a reading of the final order of the Department in conjunction with all of the evidence in this matter, that the Department's sole basis for imposing the Order for Temporary Suspension upon Christine Strecker is that it suspects that Strecker harmed J.H. and that it is, according to the Department, possible that she did so. *A.9.* Mere suspicions, without more, are insufficient to meet the Department's burden of proof. *Musgjerd v. Commissioner of Public Safety*, 384 N.W.2d 571, 574 (Minn. App. 1986). Accordingly, the Department did not meet its burden of proof in this matter and the order for temporary immediate suspension of Strecker's license should be reversed.

Department's actions on December 16, 2008 further evidence its political, as opposed to rational motivations.

The Department's abuse of power and exercise of its political will, as opposed to reasoned judgment, is further evidence by its conduct six days after the hearing. The Department, without further investigation, six days after the hearing, on December 16, 2008, issued an Order concluding that "physical abuse occurred, of which [Strecker is]

responsible [...] that the physical abuse was serious and disqualifies you from any position allowing direct contact with, or access to, persons receiving services from the licensed program. *A.347*. As set forth above, there is nothing in the evidence that would support such a conclusion.

More importantly the timing of the Department's actions is important because it did not even wait for the ALJ to issue her findings of fact and conclusions of law which would be addressing the very same issues relevant to a finding of abuse by Strecker. Clearly, such conduct evidences the Department's impertinence to the judicial process and its own licensees in favor of advancing its political will.

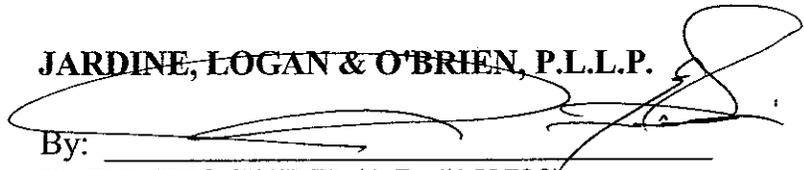
Further, the Department had an interest in defending its own conduct and December 16, 2008 findings at the time that it issued its final order on the Temporary Immediate Suspension on February 11, 2009. The ALJ's decision in this matter essentially rendered the Department's December 16, 2008 findings of abuse improper. Therefore, on February 11, 2009, the Department was required to adopt positions different than it had at the hearing and engage in post-hoc rationalization in order to overcome the adverse findings of the ALJ which did not support the Department's irrational and zealous attempts to advance its political will.

CONCLUSION

For all of the foregoing reasons, Relator Christine Strecker is entitled to an order from this Court reversing the decision of the Minnesota Department of Human Services to temporarily and immediately suspend the license of Christine Strecker.

Dated: 5/28/09

~~JARDINE, LOGAN & O'BRIEN, P.L.L.P.~~



By: _____

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