BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

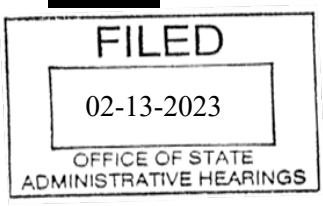
S D,
Petitioner,

v.

DHS, DIVISION OF FAMILY AND CHILDREN SERVICES,
Respondent.

Docket No.:
-OSAH-DFCS-SAA-44-Fry

Agency Reference No.:



INITIAL DECISION

I. SUMMARY OF PROCEEDINGS

The hearing in this matter was held on January 12, 2023, before the undersigned administrative law judge of the Office of State Administrative Hearings ("OSAH"). The hearing's purpose was to determine whether Respondent Department of Human Services, Family and Children Services ("DFCS" or Respondent) properly denied Petitioner S D's application for adoption assistance benefits. At the hearing, Ms. D was represented by Lori Anderson, Esq.. Respondent was represented by Frank Twitty with DFCS and other DFCS representatives (Toney McLemore, Donita McCoy, Chelsea Howard).

After careful consideration of the evidence and the arguments of the parties, Respondent's decision to deny Petitioner's application for benefits is hereby **REVERSED** and the Petitioner's application shall be deemed by the agency to have been approved and shall be processed on that basis immediately.

II. FINDINGS OF FACT

1.

S D requested ongoing Adoption Assistance on August 12, 2022, for relatives, D B., Ka B. and Ke B. These children were previously adopted by D S, who is Petitioner S D's mother and the children's biological great grandmother. All three children were previously in foster care and placed with D S for adoption. They were deemed eligible for state (non-IV-E) funded adoption assistance as DFCS-involved adoptions. Ms. S adopted the children and received adoption assistance until her death. Due to what was described by Respondent as a mistake by the caseworker because the original plan had been to place K.B. with his brother, the caseworker overrode K.B.'s Title IV-E eligibility status making him eligible. This

apparently was done on multiple occasions. As a result, he received Title IV-E benefits. D S died on June 24, 2020, and the children came under the care of C and S D. (Testimony of Ms. D and Mr. Twitty)

2.

On August 20, 2020, Currey Hitchens of Atlanta Legal Aid (on behalf of the D), asked Dekalb DFCS staff, Sean Kennedy, about the D's eligibility to receive the adoption assistance for the children following the death of D S. Mr. Kennedy informed Ms. Hitchens that the new adoptive parents needed to apply for adoption assistance before they adopted the children themselves. He indicated the children would remain eligible. (Ex. A to OSAH-1 Exhibit October 28, 2022, ltr. to Toney McLemore from attorney Lori Anderson)

3.

According to SSAU, the D family later applied for ongoing adoption assistance. The adoption assistance applications were submitted to the Social Services Administration Unit (SSAU) by DFCS staff, Toney McLemore, on August 12, 2022. The applications for ongoing adoption assistance were denied by the SSAU on August 18, 2022 due to the adoptions being private, non-DFCS involved adoptions which did not meet Title IV-E funding criteria, as determined by Rev Max. DFCS policy requires that children in private, non-DFCS custody adoptions be Title IV-E eligible in order to qualify for ongoing monthly adoption assistance. (See Exhibit 1: DFCS Child Welfare Policy Manual – Section 12.1, pp. 6-7; and Exhibit 2: DFCS Child Welfare Policy Manual - Section 12.2, p.6).[1]

4.

The children were found to have been eligible for state funded (not Title IV-E) adoption assistance in their original (prior) adoption by the Rev Max Unit, so were to be ineligible for Title IV-E adoption assistance in the subsequent adoption by the D family. See Exhibit 3: Social Security Act 473(a)(2)(C)(ii) [42 USC 673(a)(2)(C)] and Exhibit 4: Federal Child Welfare Policy Manual, Policy Section – 8.2 B. Eligibility. The children were deemed eligible for Non-Recurring Only funds for adoption-related costs (up to $1500.00 per child) on August 18th, 2022. Non-Recurring funds do not require eligibility for Title IV-E funding, but only that Special Needs criteria are met. In this case, "sibling group" special needs criteria were met. Toney McLemore, Dekalb DFCS staff, provided written notification of the denial of ongoing adoption assistance on 10/27/2022. Lori Anderson, attorney with Atlanta Legal

1 Petitioner's Exhibits P-1 through P-7 were admitted.

Aid, sent a letter requesting a Fair Hearing and appeal of the denial of adoption assistance for Mr. and Mrs. D[redacted] on October 28, 2022. Toney McLemore sent the Fair Hearing Request form to the Ms. Anderson for sharing with the family on or after November 16th, 2022. The Fair Hearing Request form was returned to Mr. McLemore on November 22, 2022, along with supporting letter and documentation.

5.

Prior to the start of the hearing, the parties met in an attempt to resolve the dispute. During that time, Respondent produced the adoption assistance agreements for the children. Petitioner had not seen these or had an opportunity to review them prior to the hearing. As a result of their review, Petitioner withdrew the appeal as to all of the children except for Ke[redacted] B. The contract for K.B. is dated April 30, 2014, and is signed by both parties. The contract was admitted as exhibit P-7 without objection. On the first page of the document, the box regarding Title IV-E eligibility is checked "yes."

6.

DFCS SAA representative Mr. Twitty testified that during a look back associated with the current application process DFCS found that K.B. was erroneously entered into the system as IV-E eligible. He stated that the caseworker overrode the entry, apparently because his adoption status had been keyed to placement with his older brother. The placement with the brother apparently did not happen. Nevertheless, DFCS entered into the 2014 contract and apparently the DFCS caseworker continued to override the entry so that D[redacted] S[redacted] continued to receive payments based on K.B.'s eligibility for Title IV-E benefits. Mr. Twitty acknowledged that no one from the time of these events in 2014 was available to testify. Thus, his conclusion was based on a reconstruction from documents and system entries that were not authenticated and contained hearsay that Petitioner objected to. During the hearing, the Court requested supplementation of the documents Respondent referred to as the basis for its reconstruction that K.B. had been found to be not eligible. Respondent provided those documents and Petitioner renewed the authentication and hearsay objections. Additionally the documents contained financial information for the birth parents that according to Respondent, also supports a finding of ineligibility. Petitioner also objected to this information as hearsay. It is also years old and basically incapable of being verified as there are no source documents for this information. Those objections are well founded. As such, the information provided by the Respondent in the documents that were submitted after the hearing and any additionally comments provided by Respondent in connection with those documents including information associated with K.B.'s eligibility status and the underlying financial information

associated with his birth family is inadmissible because it is hearsay, has not been properly authenticated and given its age and the lack of any witness who can testify as to what transpired, is given no credibility and no weight by the Court as the finder of fact. The supplemental documents are excluded and not admitted into evidence.

7.

The Court finds as a matter of fact that there is no admissible evidence that the designation of K.B.'s eligibility was done unintentionally or was a mistake in any form. The only explanation we have is that an entry was overridden, allegedly due to a difference in adoption status. That might have some evidentiary weight if it just happened and was discovered promptly after the "error" was made. Here the act of overriding an entry was repeated multiple times over several years. That conduct was subject to review, and nothing was done to correct it. The Court finds that the evidence accordingly shows that the conduct was knowingly and intentionally carried out and repeated on multiple occasions and that the contract was knowingly entered into.

III. CONCLUSIONS OF LAW

1.

The burden of proof rests with Petitioner. Ga. Comp. R. & Regs. r. 616-1-2-.07(1)(e). The evidentiary standard is preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4). The trier of fact determines the credibility of witnesses and the weight to be given their testimony, and is not obligated to accept a witness's testimony, even if it is not contradicted, and may accept or reject all or part of the testimony. O.C.G.A. § 24-6-630; *Tate v. State*, 264 Ga. 53(1) (1994); *Parham v. Swift Transp. Co.*, 292 Ga. App. 53, 56 (2008) ("As the trier of fact, the ALJ was free to determine what portions of the evidence he would consider, what weight such evidence would be given, and the credibility of any witnesses or testimony."); *State v. Betsill*, 144 Ga. App. 267, 240 S. E. 2d 781 (1977).

2.

The Adoption Assistance and Child Welfare Act of 1980, also known as Title IV-E of the Social Security Act, creates a joint federal--state program that provides federal funds to participating states to pay for certain foster care and adoption expenses. In enacting Title IV-E, Congress stated that its purpose was to enable each state "to provide . . . adoption assistance for children with special needs[.]" 42 U.S.C. § 670. The program requires that states with plans approved under the Act "shall enter into adoption assistance agreements … with the adoptive parents of children with special needs." 42 U.S.C. § 673(a)(1)(A).

3.

Under federal law the state agency, in this case Respondent, "must actively seek ways to promote the adoption assistance program." 45 C.F.R. § 1356.40(f). According to Georgia's Adoption Assistance Manual, "[t]he availability of [a]doption [a]ssistance shall be discussed with anyone expressing interest in adopting child(ren) with special needs. An Application shall be submitted for any person who requests [a]doption [a]ssistance for child(ren) being adopted…." *Adoption Assistance Manual, Section 109.2*. Further, "[i]t is important that any family adopting a child outside of DFCS custody be made aware of the eligibility criteria and the eligibility determination prior to finalization." *Adoption Assistance Manual, Section 109.3*.[2]

4.

Title IV-E of the Social Security Act provides that if children met the adoption assistance eligibility requirements at the time of a prior adoption and are eligible to be adopted again because their adoptive parent dies, they are to be treated as if the eligibility circumstances at the time of the prior adoption still exist. More particularly, 42 USC 673(a)(2)(C) states:

> A child shall be treated as meeting the requirements of this paragraph for the purpose of paragraph (l)(B)(ii) if -
>
> (i) in the case of a child who is not an applicable child for the fiscal year (as defined in subsection (e)), the child-
>
> (1) meets the requirements of subparagraph (A)(i)(II);
>
> (II) was determined eligible for adoption assistance payments under this part with respect to a prior adoption;
>
> (Ill) is available for adoption because--
>
> (aa) the prior adoption has been dissolved, and the parental rights of the adoptive parents have been terminated; or
>
> (bb) the child's adoptive parents have died; and
>
> (IV) fails to meet the requirements of subparagraph (A)(i) but would meet such requirements if--
>
> (aa) the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part; and
>
> (bb) the prior adoption were treated as never having occurred[.]

5.

It is clear from the above that the federal government intended for children who have been deemed eligible for adoption assistance to remain eligible for those benefits in the event that their adoptive parent dies. Cutting off

2 The federal policy is substantially similar stating "[i]t is incumbent upon the State agency to notify prospective adoptive parents about the availability of adoption assistance for the adoption of a child with special needs…. [as the] primary goal of the title IV-E adoption assistance program is to provide financial support to families who adopt difficult-to-place-children from the public child welfare system." The Federal Child Welfare Policy Manual section 8.2.) (www.acf hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy-dsp.jsp?citID=176).

children who were previously in DFCS care from financial support frustrates the purpose and intention of these benefits, which is to encourage adoption of at-risk children by ensuring financial and familial stability.

6.

While the policy here is clear that the intent of the program is to encourage future adoptions in cases of previous eligibility, this case raises a slightly different set of circumstances since the burden of proof is on the Petitioner to establish, at a minimum, a prima facie case that Petitioner is eligible. In this case, the operative issue centers around the 2014 signed contract between Respondent and K.B.'s grandmother. Given that K.B. is a beneficiary of the contract, he (and those who can act on his behalf) can enforce the contract. O.C.G.A. § 9-2-20(b). There is no evidence in the record that the contract was terminated. Thus, for the purposes here, the contract is in effect and enforceable.

7.

Respondent appears to argue that it should not be held to its contractual obligations because someone back in the day made a mistake by entering into this contract. There was also a representation that the contract was system generated and that it simply perpetuated the override error that should not have been made in the first place. As to the latter point, the signature on the contract was not "system" generated. It is clearly a human signature. That person that signed on behalf of respondent was authorized and had authority to bind the Department to a contractual obligation. That is what happened. If a contractual obligor, the state or otherwise, could avoid a contract simply because it turns out later to have been a bad idea or that they should not have signed it, binding legal obligations under a contract would have no meaning.

8.

The Department can only avoid its contractual obligations on the basis of a mistake if it can show that it was an unintentional act, omission or error arising from ignorance, surprise, imposition or misplaced confidence. O.C.G.A. § 23-2-21 (a "mistake relievable in equity is some unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence"). As noted above the Court found as a matter of fact that there is no admissible evidence that the designation of K.B.'s eligibility was done unintentionally or was a mistake in any form. The Court further found that the evidence shows that the conduct was knowingly and intentionally carried out and repeated on multiple occasions and that the contract was knowingly executed by Respondent. Additionally, if a mistake of fact is to be relieved, it must be complained of in a reasonable time. O.C.G.A. § 23-2-24. There is no question that

Respondent's challenge was not brought within a reasonable time. Although as noted below an OSAH court does not have power to grant equitable relief, the Court finds as a matter of fact and law that Respondent would not be entitled to such relief under Title 23 of the Georgia Code.

9.

The section of the Georgia Code that covers recissions or reformation of contracts makes it clear that only a court with equitable powers has the authority to rescind or reform a contract. The Georgia Code sections cited above appear in Title 23, Equity, Chapter 2, Grounds for Equitable Relief, Article 2, Accident and Mistake. OSAH is an executive branch court, rather than a judicial one, and all equity jurisdiction is vested in the Superior Court. Accordingly, an OSAH judge lacks such jurisdiction. O.C.G.A. § 23-1-1. Until a court with equitable powers rescinds or reforms the 2014 contract, the Department is bound by the contractual obligations contained therein, including K.B.'s eligibility for Title IV-E benefits.

10.

When a party bears the burden of proof, that party can discharge his or her burden by establishing a prima facie case. *Hyer v. Holmes & Co.*, 12 Ga. App. 837, 846 (1913). Thereafter, the adversary must produce "evidence to meet the prima facie case, or to produce evidence sufficient to create a state of equipoise between his proof and that of the adversary." *Complete Auto Transit, Inc. v. Baggett*, 107 Ga. App. 415, 416 (1963). Once there is a state of equipoise, the party with the burden of proof must elicit testimony or adduce evidence to remove the case from the state of equipoise or otherwise that party fails to meet his burden of proof. *Wall v. Wall*, 15 Ga. App. 156, 159 (1914). Here, Petitioner established a prima facie case on the basis of the 2014 contract. Respondent's explanation that it was a mistake, based only on hearsay, unauthenticated documents, and unreliable information from almost a decade ago, was totally inadequate to place the matter in a state of equipoise. Accordingly, Petitioner showed by a preponderance of the evidence that K.B. is eligible for Title IV-E benefits.

IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Department's decision to deny Petitioner's application for IV-E adoption assistance is **REVERSED** and the Petitioner's application shall be deemed by the agency to have been approved and processed on that basis immediately.

SO ORDERED, this 13th day of February, 2023.

John Fry
Administrative Law Judge