

Matter of Jean-Baptiste v SCO Family of Servs.

2011 NY Slip Op 32490(U)

July 22, 2011

Supreme Court, Nassau County

Docket Number: 16776/10

Judge: F. Dana Winslow

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. F. DANA WINSLOW,

Justice

**TRIAL/IAS, PART 4
NASSAU COUNTY**

**In the Matter of the Application of
PIERRE JEAN-BAPTISTE and VENIESE
JEAN-BAPTISTE,**

Petitioners,

**MOTION SEQ. NO.: 001, 002
MOTION DATE: 5/3/11**

**For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules,**

-against-

INDEX NO.: 16776/10

SCO FAMILY OF SERVICES,

Respondent.

The following papers having been read on the motion (numbered 1-5):

| | |
|---|----------|
| Notice of Petition..... | 1 |
| Verified Answer to Petition..... | 2 |
| Notice of Motion..... | 3 |
| Affirmation in Opposition..... | 4 |
| Affidavit in Reply..... | 5 |

Application pursuant to CPLR Article 78 by petitioners Pierre Jean-Baptiste and Veniese Jean-Baptiste to, *inter alia*, annul the determination of respondent SCO Family of Services (SCO) dated May 6, 2010, which concluded that petitioners' residence located at 419 Pine Place, Uniondale, New York could no longer be maintained as a foster home and would be closed effective May 28, 2010, is determined as follows.

Motion by respondent SCO pursuant to CPLR 1001(a) and 1003 to dismiss the proceeding for failure to join an indispensable party is determined as follows.

BACKGROUND

Since in or about 2005, petitioners, who allege that they possess a certificate for the care of children at board with the Nassau County Department of Social Services, have operated a foster home for the care of children at 419 Pine Street, Uniondale, New York

under the auspices of respondent SCO,¹ a not-for-profit foster care agency authorized by the New York State Office of Children's and Family Services to provide foster care services.² According to petitioners, they have successfully housed several children since in or about 2005 when their relationship with the Salvation Army began.

From June 24, 2009 to January, 2010, a seventeen-year-old boy named Matthew boarded at petitioners' residence. Petitioners describe Matthew as uncommunicative and "a difficult child, who did not want to participate in personal hygiene and refused to

¹While petitioners claim that respondent SCO was formerly known as Salvation Army, respondent SCO avers that the allegation is inaccurate. Rather, SCO absorbed the Salvation Army Program and is a contract service provider to the Nassau County Department of Social Services.

²Social Services Law §371(10)(a) defines an authorized agency as:

"[A]ny agency, association, corporation, institution, society or other organization which is incorporated or organized under the laws of this state with corporate power or empowered by law to care for, to place out or to board out children, which actually has its place of business or plant in this state and which is approved, visited, inspected and supervised by the office of children and family services or which shall submit and consent to the approval, visitation, inspection and supervision of such office as to any and all acts in relation to the welfare of children performed or to be performed under this title; provided, however, that on and after June first, two thousand seven, such term shall not include any for-profit corporation or other for-profit entity or organization for the purposes of the operation, management, supervision or ownership of agency boarding homes, group homes, homes including family boarding homes of family free homes, or institutions which are located within this state."

§371(19) defines a foster parent as:

"any person with whom a child, in the care, custody or guardianship of an authorized agency, is placed for temporary or long-term care, and "foster child" shall mean any person, in the care, custody or guardianship of an authorized agency, who is placed for temporary or long-term care."

A therapeutic foster parent is defined in §371[20] as:

"a foster parent who is certified or licensed pursuant to section three hundred seventy-five or section three hundred seventy-six of this article, or otherwise approved and who has successfully completed a training program developed by professionals experienced in treating children who exhibit high levels of disturbed behavior, emotional disturbance or physical or health needs. For any such child placed in their care, such parent shall assist in the implementation of the therapeutic treatment portion of the family service plan required by section four hundred nine-e of this article.

follow rules of the house.” They maintain, which respondent SCO denies, that the agency failed to notify them that Matthew suffered from bipolar disorder for which he takes medication. Although they attempted to elicit help from the Home Finding Supervisor to deal with the difficult situation they were experiencing, they allege that their calls for help were ignored.

In an undated letter sent to respondent SCO “several months ago,” petitioners set forth their concerns *vis-a-vis* the agency’s failure to communicate and this lack of responsiveness on the part of the Home Finder. They therefore requested an opportunity to speak their minds and clarify the situation as to their future service with the agency. A meeting was held on May 5, 2010 at which the parties’ respective concerns were discussed including:

petitioners’ lack of ability to manage therapeutic children with behavior issues;

petitioners’ lack of understanding of the unique needs of therapeutic children with severe behavioral issues;

petitioners’ difficulty in communicating with agency staff members regarding the children’s needs and personal concerns;

petitioners’ inappropriate/hostile reaction to children’s behavior during an agency meeting; and

petitioners’ failure to attend a requested meeting to discuss issues and concerns presented by the Home Finding Supervisor.

Petitioners’ allegations of staff “slights” toward them and lack of responsiveness to their alleged calls for help were also discussed.

By letter dated May 6, 2010, the director of the Therapeutic Foster Boarding Home Program, Mineola site at SCO Family of Services, informed petitioners that respondent SCO had concluded that it was unable to maintain petitioners’ residence as a foster home and it would be closed effective May 28, 2010.

Petitioners contest the legitimacy of respondent SCO’s action contending that it is without merit, retaliatory and discriminatory based upon their Haitian national origin and

the purported language barrier respondent falsely believed existed.

ANALYSIS

Pursuant to CPLR §7803(3), the relevant question is whether a determination was made in violation of lawful procedure, was affected by error or law, was arbitrary and capricious or an abuse of discretion. *Halperin v City of New Rochelle*, 24 AD3d 768, 770 [2nd Dept.]. Judicial review of an administrative determination is limited to an evaluation of whether that determination is consistent with lawful procedures, whether it is arbitrary or capricious and whether it is a reasonable exercise of the agency's discretion. *Birch Tree Partners, LLC v Town of East Hampton*, 78 AD3d 693, 694 [2nd Dept. 2010]. An arbitrary action is one without sound basis in reason and is generally taken without regard to the facts. *Matter of Pell v Board of Education*, 34 NY2d 222, 231 [1974]. A penalty imposed by an agency will be upheld unless it is so disproportionate to the offense as to be shocking to one's sense of fairness thus constituting an abuse of discretion. *Kelly v Sofir*, 96 NY2d 32, 38 [2001] (citations and quotation marks omitted).

With respect to the certification of foster parents, the requirements are set forth primarily in §374 through §378 of the Social Service Law and 18 NYCRR §443. Social Services Law §376 provides that:

“[a]n authorized agency which shall board out any child or minor under the age of eighteen years shall issue to the person receiving such child and/or minor for board a certificate to receive board or keep a child/or minor under the age of eighteen years.”

Before a certificate can be issued, the agency is required to investigate the home evaluating such information, as *inter alia*,

- age;
- health;
- physical functioning;
- income;
- marital status;
- employment of the applicants;
- information regarding the physical facilities of the prospective foster home;
- the names of those persons who will be sharing living accommodations with the child in foster care, including the names of persons 18 years of age or

older living in the home;
 whether any other application for certification or approval
 has ever been made, whether such application was
 accepted or rejected and, if rejected, the reasons therefor.

18 NYCRR Social Services §443.2(b)(12).

Under Social Services Law §379(1), a certificate or license to receive, board or keep
 any child and/or minor under the age of eighteen years

“may be revoked for cause by the authorized agency or the
 commissioner of social services by which it was issued * * *
 [and] may be revoked for cause by the commissioner.”

In the event the agency denies certification of the foster parents or decertifies them,
 the foster parents may appeal the denial to certify or decertify. The appeal is directly to
 the Supreme Court by way of an Article 78 proceeding by filing a Notice of Petition and a
 Petition alleging abuse of discretion. Carrieri, Practice Commentaries, McKinney’s Cons
 Laws of N.Y. Book 52A, Social Services §377 (2010).

It appears from the parties’ submissions that respondent complied with the
 procedure governing non-renewal or revocation of a certificate or letter of approval set
 forth in 18 NYCRR § 443.11(a) and (b) which includes:

(a) (1) advising the foster parents before the expiration date of
 the certificate or letter of approval foster parents must be
 advised that the agency does not plan to renew the certificate
 or approval;

(2) non-renewal or revocation of a certified or approved foster
 parent may be based upon such factors as failure to meet one
 or more of the criteria for certification or approval set forth in
 this Part or upon lack of need for a foster home with its
 particular characteristics;

(3) the reasons for non-renewal or revocation must be
 specified in a letter postmarked at least 20 days before the
 expiration date or the decertification date of the certificate or
 approval.

(b) the agency is required to arrange for the foster parent or relative foster parent to meet with an official of the agency to review the decision and the reasons for the agency decision.

Public welfare agencies such as respondent are accorded wide discretion in the discharge of their duties. No provision of the Social Services Law, however, restricts the exercise of respondent's discretion in determining the proper placement of children in a particular foster home. *Matter of Bonner v Monroe County Dept. of Social Servs.*, 286 AD2d 874, 875 [4th Dept. 2001]. In this regard, Social Services Law §378(5) provides that:

“[t]he department shall establish and may alter or amend regulations governing the issuing and revocation of such licenses and certificates [to receive, board or keep any child and/or minor] and prescribing standards, records, accommodations and equipment for the care of children and/or minors received under such licenses and certificates.”

According to the affidavit of the Director of Services to the Children Unit of the Nassau County Department of Social Services, the Nassau County Department of Social Services had no foster children in petitioners' foster home when respondent chose to close the home. Although the Department had a contract with respondent SCO, it avers that it had no role or responsibility in said respondent's decision to close petitioners' foster home and generally has no input on the closure of any voluntary agency's foster home with which it had contracts. According to the affidavit, Matthew Phillips was placed in petitioners' home during the period June 26, 2009 through Jan. 16, 2010.³

The Court finds that under the circumstances extant, respondent SCO's decision to close petitioners' foster home was not arbitrary, capricious or an abuse of discretion given the respondent's duty to comply with all certification and approval requirements set forth in 18 NYCRR Part 443 and to approve or deny applications for certification as a foster home. 18 NYCRR § 443.2.

Petitioners' application pursuant to CPLR Article 78, inter alia, to annul the

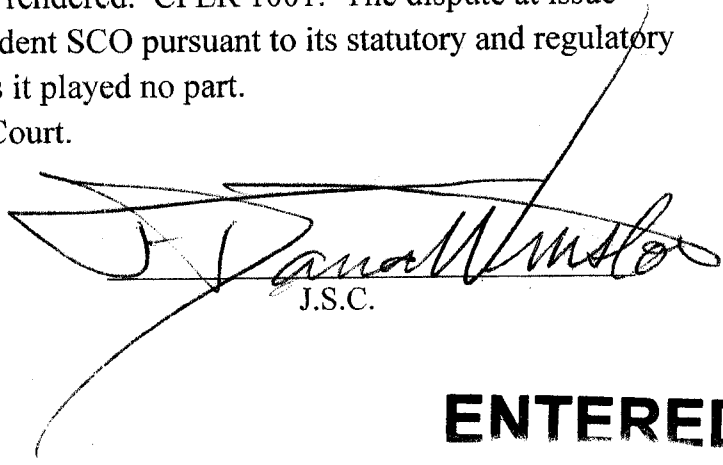
³Petitioners' home had originally been certified by the Nassau County Department of Social Services during the period September 3, 2004 to August 23, 2005, at which time petitioners requested that the home be closed. Thereafter petitioners allege they began a relationship with the Salvation Army in or about 2005.

determination of respondent SCO which resulted in the closing of petitioners' home as a foster care home is **denied** and the petition is hereby **dismissed**.

Motion by respondent SCO to dismiss the proceeding on the grounds that petitioners have failed to join a necessary party is **denied** as moot. In any event, the Nassau County Department of Social Service is not an indispensable party to this proceeding. This is not a situation in which complete relief cannot be accorded the parties to this action in the absence of Nassau County Department of Social Services or in which said Department may be inequitably affected by judgment rendered. CPLR 1001. The dispute at issue involves the decision rendered by respondent SCO pursuant to its statutory and regulatory authority in which the Department attests it played no part.

This constitutes the Order of the Court.

Dated: *July 22*, 2011


J.S.C.

ENTERED
SEP 19 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE