FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-513 / 91-2006

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EMMANUEL NTOW,

Appellant,

vs.

IOWA DEPARTMENT OF HUMAN SERVICES,

Appellee.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

Petitioner appeals a decision of the district court affirming the Department of Human Services' refusal to expunge a founded report of sexual abuse from the Child Abuse Information Registry. **AFFIRMED.**

Ray Sullins, Des Moines, until his withdrawal, and then Jacqueline Jorgensen, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General; John M. Parmeter, Special Assistant Attorney General; and Mary K. Wickman, Assistant Attorney General, for appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

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DONIELSON, J.

The petitioner in this case, Emmanuel Ntow, married C.N. in April 1987. Several children lived in their household, including A.J., a girl born on November 4, 1977. Although C.N. is not A.J.'s biological mother, she has cared for A.J. since her birth.

In September 1989, A.J. alleged that in the summer of that year Ntow had touched and kissed her breasts under her clothing on at least two occasions. The Department of Human Services (DHS) conducted an investigation. A.J. was interviewed twice and was consistent in her allegations. When interviewed by telephone, C.N. stated she believed A.J.'s allegations and had placed her in the home of T.G., an adult sister of A.J. Ntow denied the allegations.

On December 14, 1989, DHS issued a report concluding the allegations of sexual abuse were founded. Ntow filed a petition with DHS requesting expungement of the report from the Child Abuse Information Registry, pursuant to Iowa Code section 235A.19(2). DHS denied his request on July 30, 1990. Ntow appealed and an evidentiary hearing was held on February 12, 1991.

Mark Brown, a judicial court officer, testified that due to the allegations of sexual abuse, a child in need of assistance (CHINA) petition had been filed on behalf of A.J. On March 9, 1990, A.J. was adjudicated to be a child in need of assistance and a no-contact order was issued against Ntow. A.J. was placed in the care of B.G., another

adult sister of A.J. He testified A.J. was still attending counseling for sexual abuse victims.

B.G. testified A.J. consistently maintained Ntow had sexually abused her. She stated she believed A.J. B.G. admitted that in about 1985 A.J. had alleged her brother, E.G., had sexually abused her and that A.J. had later recanted her allegations.

C.N. denied telling DHS she believed A.J.'s allegations about Ntow. She testified A.J. had lied about E.G. because he had been in prison at that time, and she believed A.J. was lying about Ntow. She stated Ntow often had arguments with her children, especially the four boys (C.B., J.B., B.B., and E.G.), because they would bring guns and drugs into the home.

Patty McAndrew, a child protective investigator with DHS, testified she had conducted the investigation regarding A.J.'s allegations. She stated she found A.J. very credible. She testified she interviewed A.J. on two occasions and her allegations were very consistent each time. She also stated C.N. had told her she had moved A.J. to the home of T.G. because of the sexual abuse. After her investigation, she concluded the sexual abuse allegations were founded.

Ntow testified he was originally from Ghana, in West Africa. He came to the United States in 1979 to attend Iowa State University, where he obtained a degree in business administration. He stated he had a difficult time

getting along with C.N.'s children and he believed A.J.'s allegations arose from this fact. He testified A.J. had asked him to move out of the house. He denied committing sexual abuse.

The administrative law judge (ALJ) concluded Ntow fondled and kissed A.J.'s breasts under her clothing on at least two occasions during the summer of 1989. The ALJ issued a proposed decision affirming DHS's denial of expungement. On May 9, 1991, DHS adopted the proposed decision as its final decision.

Ntow filed a petition for judicial review. The district court found there was substantial evidence to support the finding of DHS that Ntow had sexually abused A.J. The court affirmed the DHS. Ntow has appealed.

The district court, when exercising the power of judicial review over agency action, is functioning in an appellate capacity to correct errors at law. Sharp v. Employment Appeal Board, 479 N.W.2d 280, 282 (Iowa 1991). We, like the district court, are bound by the agency's findings of fact if those findings are supported by substantial evidence. Id. We are not, however, bound by the agency's legal conclusions but may correct misapplications of law. Id.

In a contested case the court shall grant relief from an agency decision which is not supported by substantial evidence in the record made before the agency when that record is viewed as a whole. Henry v. Iowa Department of

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Job Service, 391 N.W.2d 731, 734 (Iowa App. 1986). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Gilliam v. Atlantic Bottling Co., 453 N.W.2d 230, 232 (Iowa App. 1990). The question is not whether the evidence might support a different finding, but whether the evidence supports the findings actually made. Id. The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. Lithcote Co. v. Ballenger, 471 N.W.2d 64, 66 (Iowa App. 1991).

We conclude there is clearly substantial evidence in the record to support a founded report of sexual abuse. While there was evidence A.J. may have been lying, there was also evidence A.J. was credible. We note A.J. consistently made her allegations concerning Ntow over a period of time.

We affirm the decision of the district court and DHS refusing to expunge the founded report of sexual abuse from the Child Abuse Information Registry. Costs of this appeal are assessed to Ntow.

AFFIRMED.