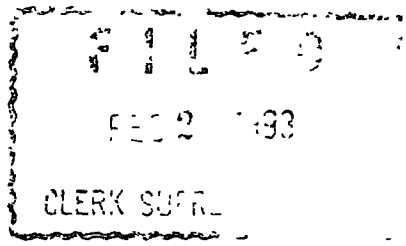
IN THE COURT OF APPEALS OF IOWA

No. 2-498 / 91-1874



SHIRLEY A. TOOMEY,

Appellant,

vs.

IOWA DEPARTMENT OF HUMAN SERVICES,

Appellee.

Appeal from the Iowa District Court for Wapello County, James P. Rielly, Judge.

The petitioner appeals the district court's order on judicial review affirming the respondent's decision which refused to expunge a child abuse report naming the petitioner as a perpetrator of child abuse on her daughter. **REVERSED AND REMANDED.**

Shirley Toomey, Ottumwa, pro se.

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

Heard by Oxberger, C.J., and Hayden and Habhab, JJ. Sackett, J., takes no part.

HAYDEN, J.

This appeal arises from a refusal by the Iowa Department of Human Services (DHS) to expunge or correct a founded child abuse report filed against petitioner, Shirley Toomey. The founded child abuse report stemmed from a 1986 incident in which Toomey attempted to discipline her twelve-year-old daughter after the child returned home from a visit with her father. The petitioner backhanded the daughter in the mouth, unintentionally causing the daughter's lip to bleed.

In May 1988, approximately two years later, the Iowa DHS received information regarding the incident. On June 10, 1988, DHS filed a report with the Iowa Child Abuse Information Registry claiming petitioner physically abused her daughter. Notification was sent to petitioner on the same date. Subsequent juvenile court proceedings resulted in a determination the daughter was a child in need of assistance and eventual placement of the daughter with the father.

In August 1988 Toomey filed a request with DHS to expunge the child abuse report pursuant to Iowa Code section 235A.19(2)(a). After the administrative law judge filed an order to show good cause, petitioner filed a withdrawal of appeal. Consequently, the appeal was dismissed.

Later petitioner appealed a modification of her dissolution decree. On October 24, 1989, the court of

appeals affirmed the district court's modification. The court also admonished the Department of Human Services to show more sensitivity regarding the labeling of a parent as a child abuser.

On November 7, 1989, the petitioner filed another request with DHS to expunge the child abuse report. DHS refused to change its finding in the abuse report and granted petitioner an evidentiary hearing. A hearing was held on May 1-2, 1990. After the hearing, an administrative law judge entered a proposed decision affirming DHS's finding of child abuse. The judge determined the finding was correct, the provisions of chapter 232 regarding child abuse were not unconstitutionally vague, DHS did not violate the petitioner's liberty interests, and DHS was not bound by the dicta in the court of appeals' opinion in the marriage dissolution case.

Upon the request of Toomey, the director of DHS reviewed the decision of the administrative law judge. On September 14, 1990, DHS issued a corrected final decision refusing to expunge the child abuse report against the petitioner. In October 1990 the petitioner filed a petition for judicial review of DHS's decision.

On October 28, 1991, the district court entered a ruling affirming DHS's decision. The court determined substantial evidence supported the finding petitioner was a child abuser, petitioner failed to meet her burden of

showing the provisions of chapter 232 were unconstitutional, the actions of DHS did not deprive petitioner of her rights to privacy and due process, and DHS was not bound by dicta in the court of appeals' opinion regarding the modification of petitioner's dissolution decree. The petitioner now appeals.

The scope of review in cases arising out of the Iowa Administrative Procedures Act is limited to the corrections of errors. Office of Consumer Advocate v. Iowa State Commerce Comm'n, 465 N.W.2d 280, 281 (Iowa 1991); Iowa Code § 17A.19(8)(e) (1991). Iowa Code section 17A.19(8)(f) provides in a contested case the reviewing court shall grant relief from an agency decision which is unsupported by substantial evidence made before the agency when that record is viewed as a whole. Iowa Code § 17A.19(8)(f) (1991); Dubuque City Assessor's Office v. Dubuque Human Rights Comm'n, 484 N.W.2d 200, 202 (Iowa 1992) (citing Eaton v. Iowa Dep't of Job Serv., 376 N.W.2d 915, 916-17 (Iowa App. 1985)). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Id. at 202 (citing Eaton, 376 N.W.2d at 917). The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Id. (citing Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986)).

Petitioner contends the district court erred in affirming the agency's determination she physically abused her daughter. Toomey argues her actions toward her daughter did not rise to the level of child abuse. We agree the actions of Toomey do not constitute child abuse pursuant to Iowa Code section 232.68(2)(a).

The State, as parens patrie, has the duty to assure every child within its borders receives proper care. In re Dameron, 306 N.W.2d 743, 745 (Iowa 1981). A parent, however, also has an interest in the integrity of the family unit. Id. The State's interest in protecting children is not absolute. Alsager v. District Court, 406 F. Supp. 10, 22 (S.D. Iowa 1975). The State's interest "must be balanced against the parents' countervailing interest in being able to raise their children in an environment free from government interference." Id.

Our courts recognize parents have the right, if they are so inclined, to inflict reasonable corporal punishment in connection with the rearing of their children. In re W.G., 349 N.W.2d 487, 487 (Iowa 1984), cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (1985). This parental right must be exercised reasonably. Id. at 487-88. A parent has the right to chastise her child but such chastisement must not amount to cruelty, inhumanity, or go beyond the line of reasonable correction. Id. (State v. Bitman, 13 Iowa 485, 486 (1862)).

The abuse report was based on one isolated incident in which petitioner backhanded her daughter when disciplining the child. Evidence shows petitioner does not deny striking the child. The child's lip was cut because petitioner was wearing rings on her fingers at the time and a ring cut the child's lip. This court may not agree with the method of discipline used by petitioner; however, we agree with petitioner in that her actions did not constitute child abuse and we cannot categorize petitioner as a child abuser based on the incident.

Petitioner also argues DHS must be bound by statements made by this court in In re Marriage of Toomey, No. 89-430 (Iowa App. Oct. 24, 1989). In In re Marriage of Toomey this court admonished DHS to be more sensitive with regard to labeling a parent's behavior as child abuse. Toomey, slip op. at 7. The case involved a modification of a dissolution decree between petitioner and her former husband. DHS was not a party to the action.

Our statements in Toomey have no import in this case. In this case we make our own independent conclusion. We reverse the district court decision. We agree with petitioner in that her action of striking her daughter one time as a means of discipline does not constitute child abuse. We determine this as a matter of law.

In summary we conclude the district court erred in finding petitioner physically abused her daughter. We reverse the district court's ruling affirming the DHS's

finding of child abuse and remand to the district court to enter an order consistent with this opinion. See Montgomery v. Iowa Dep't of Human Servs., 409 N.W.2d 703, 707 (Iowa App. 1987); Iowa Code § 235A.18(2)(c, (1991).

REVERSED AND REMANDED.