

IN THE COURT OF APPEALS OF IOWA

No. 0-801 / 10-0392
Filed January 20, 2011

J.S.,
Petitioner-Appellant,

vs.

**IOWA DEPARTMENT OF HUMAN
SERVICES**,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, D. J. Stovall, Judge.

J.S. appeals from the district court's decision on judicial review affirming the Department of Human Service's denial of her request to correct and expunge a founded child abuse report and remove her name from the state child abuse registry. **AFFIRMED.**

David A. Morse and Kristine M. Dreckman of Rosenberg & Morse, Des Moines, for appellant.

Thomas J. Miller, Attorney General and Paul F. Kraus, Assistant Attorney General, for appellee.

Heard by Eisenhauer, P.J., Potterfield and Doyle, JJ.

EISENHAUER, P.J.

J.S. appeals from the district court's decision on judicial review affirming the Department of Human Service's denial of her request to correct and expunge a founded child abuse report and remove her name from the state child abuse registry. She contends her due process rights were violated when the child was allowed to participate as a party in the proceedings without proper notice. She also contends the assessment of the child abuse allegation was determined on improper grounds and the agency's final decision is not supported by substantial evidence. We affirm.

I. Background Facts and Proceedings. On July 17, 2007, a confidential informant contacted the Department of Human Services (DHS) regarding allegations of child abuse perpetrated on Ja.S. by her mother, J.S. At the time, Ja.S. was seventeen years of age and living with her parents and younger sister. By all accounts, the relationship between J.S. and Ja.S. was strained.

Ja.S. made two prior allegations against her mother. Following an incident in October 2006 where Ja.S. had taken the family vehicle without permission, she told her friends her mother had physically assaulted her. She later admitted she had lied. The DHS investigated and did not confirm the allegation. In April 2007, Ja.S. claimed her mother had assaulted her with a baseball bat. A child protective worker (CPW) investigated and determined the report was not confirmed. Ja.S. has also made allegations that her grandfather sexually abused her as a young child.

The allegations at issue here date from the evening of July 15, 2007, when J.S. and her younger daughter returned home after a swim meet. Soon after they returned, the father left the home for his shift as a long-distance truck driver and the younger child went to bed. J.S. discovered that a bathroom drawer had been broken and confronted Ja.S. about it. According to Ja.S., a physical altercation ensued in which J.S. shoved her to the ground and began hitting her with the wooden front panel of the drawer.

Ja.S. worked as a swimming instructor at the YMCA. Although the pool area was hot and humid, she wore sweatshirts inside, which covered the bruises on her arm that she claims she sustained in the altercation. When co-workers noticed the bruises on her upper arm, Ja.S. claimed she received them from working with her swimming students. Ja.S. eventually told her supervisor the bruises were caused when her mother struck her several times with the wood panel.

When the altercation was investigated, Ja.S. repeated to the child protective worker (CPW) her mother had struck her with the wood panel five or six times. The CPW observed the bruising to Ja.S.'s arm, which was described as "a large bruise on her upper left arm and what appeared to be a grab mark on her left forearm." Ja.S. refused to allow the CPW to photograph the injury. Ja.S. averted her eyes, appeared to be scared, and cried at points during the interview. Ja.S. asked the CPW to not speak with J.S. about the incident because she feared J.S. would be very mad and blame her.

Ja.S.'s supervisor reported seeing fresh bruises on Ja.S.'s arms following weekends when she was at home with her family. The supervisor also reported that on one occasion, J.S. had left an angry voicemail for Ja.S., screaming at her with profane language and calling her names. On July 16, 2007, the supervisor observed bruising on Ja.S.'s arm, describing a "significant" bruise on her upper left arm approximately the size of a baseball and a smaller "severe" bruise to her forearm, which appeared "discolored like a deep bruise."

When interviewed by the CPW, J.S. denied the abuse and indicated she was frustrated with Ja.S. and unable to understand why Ja.S. would make the accusations. The two other family members also denied knowledge of the abuse, although the father had left for work and the younger daughter was asleep at the time. The father did admit that he and J.S. had been involved in physical altercations during their marriage.

Following the investigation, the CPW determined the physical abuse allegation was confirmed. The DHS issued a notice of child abuse assessment on August 14, 2007, which placed J.S. on the state child abuse registry for a ten-year period. On September 6, 2007, J.S. filed a request to correct and expunge the assessment, and to have her name removed from the child abuse registry.

The matter was tried before an administrative law judge in July 2008. On October 31, 2008, the proposed findings were issued, affirming the DHS's decision. J.S. timely requested review by the Director of the DHS. On July 27, 2009, the agency upheld the initial determination of abuse and the decision to place J.S. on the child abuse registry.

J.S. filed a petition for judicial review on August 7, 2009. The district court affirmed the final action of the DHS in its February 3, 2010 order, finding substantial evidence supported the agency's decision. J.S. filed a timely appeal.

II. Scope and Standard of Review. We apply the standards of judicial review set forth in the Iowa Administrative Procedure Act, Iowa Code chapter 17A (2009), in our review of the agency's findings concerning child abuse reports. See Iowa Code § 235A.19(3); *Mauk v. Iowa Dep't Human Servs.*, 617 N.W.2d 909, 911 (Iowa 2000). When the claimed error lies with the agency's findings of fact, the proper question on review is whether substantial evidence supports those findings when the record is viewed as a whole. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). "Substantial evidence" is statutorily defined as

the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.

Iowa Code § 17A.19(10)(f)(1).

To the extent we must determine constitutional issues, our review is de novo. *Drake Univ. v. Davis*, 769 N.W.2d 176, 181 (Iowa 2009).

III. Due Process. J.S. first contends her due process rights were violated when Ja.S. was allowed to participate as a party in the proceedings without proper notice to J.S. Ja.S. was eighteen years old by this time, and participated in the hearing through counsel. There is no dispute J.S. objected to the agency on this basis. However, a review of her petition for judicial review reveals the

only issue raised by J.S. to be, “The agency failed to base its findings on a preponderance of the evidence, required by the Iowa Administrative Code.”

Issues not raised before the district court, including constitutional issues, cannot be raised for the first time on appeal. *Garwick v. Iowa Dep’t of Transp.*, 611 N.W.2d 286, 288 (Iowa 2000). Because the issue is not properly before our court, we decline to address it on appeal.

IV. Improper Grounds. J.S. next contends the original child abuse assessment was determined on improper grounds. Specifically, she contends the CPW based her finding of abuse on the fact this was the third report of abuse being investigated. She cites the CPW’s assessment, in which she states:

This worker also explained to [J.S.] that because this is the third incident where [Ja.S.] has had bruises on her and reports to the DHS, the outcome of the assessment will be confirmed and founded for physical abuse with her as the perpetrator.

Based on this, she argues the CPW did not base her decision upon the credibility of the parties, the physical evidence, or eyewitness accounts, but rather solely on the fact this was the third investigation. She argues this was an improper ground by which to make a confirmed finding of abuse.

As stated above, the only issue raised in J.S.’s petition for judicial review is the issue of whether substantial evidence supports the agency’s finding. Accordingly, this issue is not preserved for our review.

V. Substantial Evidence. Finally, J.S. contends the final decision of the DHS was not supported by substantial evidence. She argues Ja.S. has a history of telling lies and other unconfirmed child abuse reports damage her credibility as a witness. She claims Ja.S. was acting out and making claims of abuse as a

way of getting back at her for punishing Ja.S.'s behavior. The sole issue before us on appeal is whether there is substantial evidence to support Ja.S.'s claims of physical abuse by J.S.

As noted by the administrative law judge in his proposed findings, this case ultimately involves two differing versions of events by the only people involved—J.S. and Ja.S. The administrative law judge found Ja.S. to be more credible, and therefore accepted her versions of events. The administrative law judge made the following extensive findings regarding witness credibility:

Regarding the credibility determination, [Ja.S.] was poised and confident. She admitted to her past mistakes and admitted when she had not told the truth in the past. She made eye contact, and she described the situation in detail and consistent with what she had told the Department, her supervisor at work, and the social worker she had met with. She never attempted to be evasive when asked questions during cross examination. On the other hand, appellant [J.S.] rarely made eye contact with the judge or anyone while testifying, instead looking down most of the time, which seemed an odd thing coming from a college professor who speaks to students daily. She also rarely altered her facial expression, which was held in what appeared to be an artificial pose not present during other times in the hearing. She was also evasive several times during cross examination, especially when asked questions about the alleged physical altercation with her husband.

[Ja.S.] also credibly testified that her mother had hit her on numerous other occasions. This conflicted with both [Ja.S.]'s mother's and father's testimonies. The father [] was not credible in his testimony; he attempted in his testimony to greatly minimize the conflicts between his wife and he, and between [Ja.S.] and her mother. Because his testimony was not credible, his testimony that [Ja.S.] had the bruises before he left that Sunday night is given no weight.

Another reason for the finding of fact that [Ja.S.]'s story was more believable was the way it came to light. This was not a case of filing a report in order to get even with her mother; it came to light only when she was questioned by her supervisor, who had noticed the bruises. Even then, [Ja.S.] reluctantly told the supervisor about the source of the bruises, at first claiming they were injuries caused by her swimming students, which the supervisor, based on her

experience, knew was unlikely. Also weighing in favor of [Ja.S.]’s position was the fact that the evidence indicated that the appellant has a significant temper, also known as “anger issues.” This evidence included, among other evidence, the testimony from [Ja.S.]’s work supervisor, who heard the mother call [Ja.S.] a “bitch” and yell at her over the phone in a very angry tone.

Where the evidence is in conflict or where reasonable minds might disagree about the conclusion to be drawn from the evidence, the court must give appropriate deference to the agency’s findings. *Freeland v. Employment Appeal Bd.*, 492 N.W.2d 193, 197 (Iowa 1992). It is the agency’s duty as the trier of fact, not the reviewing court, to determine the credibility of the witnesses, to weigh the evidence, and to decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-95 (Iowa 2007).

[C]ourts should broadly and liberally apply those findings to uphold rather than to defeat the agency’s decision. Evidence is not insubstantial merely because it would have supported contrary inferences. It is substantial when a reasonable mind could accept it as adequate to reach the same findings. The determining factor is not whether the evidence supports a different finding but whether the evidence supports the finding actually made.

IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 632 (Iowa 2000) (citations omitted).

Given the strong credibility findings made by the administrative law judge, and broadly applying the agency’s findings to uphold its decisions, we conclude reasonable minds could accept the agency’s findings as adequate to reach the same decision. The record, as a whole, supports a finding J.S. struck Ja.S. with the wood panel. Because the agency’s action is supported by substantial evidence, we affirm.

AFFIRMED.