

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

VERMONT SUPREME COURT  
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2008-242

FEB 4 2009

FEBRUARY TERM, 2009

In re Fred LaTour

} APPEALED FROM:  
}  
}  
} Human Services Board  
}  
}  
} FAIR HEARING NO. 21,173

In the above-entitled cause, the Clerk will enter:

Petitioner appeals the Human Services Board's decision affirming substantiation of a report finding that he abused a child in his care by exposing the child to a risk of sexual abuse. We affirm.

In the first week of April 2007, petitioner provided weekend respite care in his home for a fourteen-year-old juvenile who was a foster child in the care of the Department for Children and Families (DCF). The day before the juvenile arrived at his home, petitioner bailed out of jail and brought home a twenty-year-old acquaintance charged with sexually assaulting a young woman. Soon after the juvenile arrived, petitioner allowed the child to enter the adult's room and spend time with him unsupervised. Within minutes, the juvenile informed petitioner that the adult had molested him. Although petitioner was a mandatory reporter of suspected child abuse, 33 V.S.A. § 4913(a), he did not report the accusation of abuse to DCF or other authorities, and he allowed the adult to remain in his home with the juvenile for the remainder of the weekend. Petitioner testified that the juvenile continued to want to spend time with the adult the entire weekend. When petitioner brought the juvenile back to his foster family, he advised the juvenile to talk to his foster family about what had happened over the weekend.

The juvenile reported the incident with the twenty-year-old adult to his foster family, and the adult later pled guilty to a criminal charge based on the incident. Following an investigation, DCF substantiated petitioner as having abused the juvenile by placing him at risk of harm in the form of sexual abuse. See *id.* § 4915 (setting forth procedure for investigating and substantiating allegations of abuse). Petitioner sought review of the report of abuse, which was upheld

administratively and then by the Board. The Board concluded that petitioner's "grossly negligent acts and omissions" and "stunningly cavalier attitude" placed the juvenile at risk of harm of sexual abuse, and thus amounted to abuse within the meaning of the relevant statutory provisions. See *id.* § 4912(2), (4) (defining "abused or neglected child" as one whose health or welfare is harmed or at substantial risk of harm as a result of acts or omissions of other persons; defining "[r]isk of harm" as "a significant danger that a child will suffer serious harm other than by accidental means").

On appeal, petitioner argues that he did not act in a grossly negligent manner by bringing the juvenile into contact with an adult charged with sexual assault, and allowing the juvenile to enter the adult's room fully clothed with the door open. In making this argument, petitioner does not contest any of the Board's material findings, but rather attempts to minimize and rationalize his actions by providing his version of the context in which the incident occurred. He explains that he was unaware of the adult's complete criminal record, and that the juvenile's foster mother had told him not to believe anything the juvenile said. Petitioner states that he did not report the alleged molestation to the authorities because he did not know whether to believe the juvenile's allegation. According to petitioner, instead of reporting the incident, he tried to keep the juvenile and adult apart as much as possible during the weekend, and he told the juvenile to bar his door at night.

On appeal from the Board's determinations regarding allegations of abuse, "we employ a deferential standard of review." *K.G. v. Dep't of Soc. & Rehab. Servs.*, 171 Vt. 529, 530 (2000) (mem.); see *In re Bushey-Combs*, 160 Vt. 326, 329 (1993) (stating that judicial deference applies to Board's findings and orders). Upon review of the record, we find no basis for overturning the Board's conclusions that petitioner engaged in grossly negligent conduct that exposed the juvenile in his care to a risk of harm in the form of sexual abuse. We have described gross negligence as "more than an error of judgment, momentary inattention, or loss of presence of mind; rather, it amounts to a failure to exercise even a slight degree of care and an indifference to the duty owed to another." *Hardingham v. United Counseling Serv. of Bennington County*, 164 Vt. 478, 481 (1995) (quotations omitted).

To the extent that the Board was required to find gross negligence before determining that abuse occurred, the evidence supported the Board's conclusion. Having brought the juvenile into a house with an accused sex offender and, almost immediately, hearing the juvenile's first-hand complaint of sexually assaultive behavior by the accused, petitioner told the juvenile to bar his door and to stay away from the accused. Understanding that the juvenile continued to want contact with the accused, petitioner took no other affirmative protective action for the benefit of the juvenile. Moreover, knowing his obligation to report abuse allegations, petitioner instead charged the juvenile with self-reporting the incident to his foster family after the weekend. Although he maintains that he was uncertain about the allegation, petitioner's instruction to the juvenile to stay away from, and to bar his door against, the accused, and to disclose the contact to his foster family, reflects petitioner's recognition that the complaint was of some significance. Nevertheless, rather than directly assume responsibility for the juvenile's safety or report the allegation as required, petitioner failed to do either and delegated those functions entirely to the juvenile. Considering all of the circumstances, petitioner's wholesale lack of care and

indifference to the duty he owed to the juvenile were sufficiently evident to support the Board's determination.

Affirmed.

BY THE COURT:

  
\_\_\_\_\_  
Denise R. Johnson, Associate Justice

  
\_\_\_\_\_  
Marilyn S. Skoglund, Associate Justice

  
\_\_\_\_\_  
Brian L. Burgess, Associate Justice