



# COMMONWEALTH of VIRGINIA

## Office of the Governor

Office of the Children's Ombudsman  
Eric J. Reynolds, Esq., Director

### REPORT OF INVESTIGATION Findings and Recommendations Regarding the Hampton Social Services Department involvement with Brittany Whitworth, Tylee Ralsten and Freyja Whitworth.

*Pursuant to Va. Code § 2.2-446, a record of the Office of the Children's Ombudsman is confidential, shall only be used for purposes set forth in Chapter 4.4 of Title 2.2, Subtitle I, Part A of the Code of Virginia, is not subject to court subpoena, and is not discoverable in a legal proceeding.*

**Date of report:** June 29, 2022

**OCO File No.:** 2022-18

**OASIS Case Nos.:** 2643152 and 2657395

The Office of the Children's Ombudsman ("OCO") receives complaints with respect to children who have been alleged to have been abused or neglected, are receiving child protective services, are in foster care, or are placed for adoption. The OCO is authorized to investigate such complaints "alleging that an administrative act is contrary to law, rule, or policy; imposed without an adequate statement of reason; or based on irrelevant, immaterial, or erroneous grounds." Va. Code § 2.2-441.

On January 26, 2022, the OCO received a complaint regarding a child protective services ("CPS") referral made to the Hampton City Social Services Department ("HCDSS" or the "agency"). The claimant is Brittany Whitworth, mother of Tylee Ralsten (DOB 10/29/2013) and Freyja Whitworth (DOB 03/09/2020).

Ms. Whitworth expressed the following concerns:

1. "My children were seized by CPS worker on December 17, 2021, after the signing of an unexplained safety plan on December 7, 2021."
2. "This is a malicious attempt by the paternal grandmother of Tylee Ralsten to gain custody and using CPS as the tool."
3. Incorrect information was included in the Family Partnership Meeting notes, indicating that "both Mr. Milligan and Ms. Whitworth are convicted felons and have possession of a gun." Note: Ms. Whitworth is not a convicted felon and currently holds a concealed carry permit.
4. "They have taken away my rights to parent, to teach, and to nurture my children."

For our preliminary assessment, we spoke with Ms. Whitworth, reviewed information she provided us, and reviewed agency records in the OASIS system. We identified issues that required further review, prompting us to initiate an investigation. A phone call was held with the Director and Deputy Director of HCDSS, the Family Services Supervisor, and the Family Services Specialist. This report summarizes the issues we identified, the findings we made following our investigation, and where applicable, recommendations.

### **Background Information.**

HCDSS received a CPS referral on December 7, 2021, reporting concerns about domestic violence, substance abuse, firearms in the home, and a recent social media post in which the mother documented substance abuse and stated that she needed a place to go. A protective order was in effect against Robert Milligan, listing the protected parties as Ms. Whitworth and Freyja, due to an alleged death threat. A safety plan was signed by Ms. Whitworth and the agency, stating that “Ms. Whitworth agrees to remain sober at all times as the caretaker of the children. Ms. Whitworth will follow stipulations of the protective order. Neither Tylee nor Freyja will have contact with Mr. Milligan at this time. The Family Services Specialist agrees to support the family as needed.”

The protective order was set to expire on December 17, 2021 at 8:30 am. However, on December 16, 2021, HCDSS received a second referral expressing additional concerns about the children’s safety, significant drug use in the home, and a domestic violence incident that included Mr. Milligan attempting to run Ms. Whitworth over with her car. [REDACTED]

[REDACTED] When HCDSS CPS workers responded to the call the evening of December 16<sup>th</sup>, Mr. Milligan, Ms. Whitworth, and the children were found to be in the same home, in violation of the protective order and safety plan.

When the CPS worker made a follow-up visit the following day, Mr. Milligan was again at the home in violation of the safety plan. The worker discussed out-of-home placement for the children and, because Mr. Milligan and Ms. Whitworth were unable to identify any family members that could take the children, Tylee and Freyja were placed in respite care with an agency resource family in the Hampton Emergency Families for Children/Family Stabilization Services program. The CPS worker had Ms. Whitworth and Mr. Milligan sign an agency Respite Care Placement Agreement.

A Family Partnership Meeting (“FPM”) was held at HCDSS on December 20, 2021. As a result of the FPM, the decision was made for the parents to receive services and for the children to remain in respite care for up to 21 days.

Case contacts include some details about attempts to schedule virtual visits between Ms. Whitworth and the children. In person visits were not permitted given that the children were placed in respite care, per agency policy. While the children were in respite care the agency and Ms. Whitworth attempted to identify an alternate placement option, but there were barriers identified for all of them. Ms. Whitworth and Mr. Milligan were adamantly against Ms. Bound, Tylee’s paternal grandmother, being the placement option.

On January 4, 2022, the Department received the results of the parents’ hair and urine drugs screens from December 21, 2021. [REDACTED]

Ms. Whitworth's screens were positive for marijuana. Based on the positive drug screens, the children's young ages, and concerns about Ms. Whitworth's ability to provide adequate protection, the agency decided to file for removal and request a temporary custody transfer to Ms. Bound. On January 6, 2022, Ms. Whitworth was notified that her children had been formally removed.

On February 28, 2022, the court held a dispositional hearing. Custody of Tylee and Freyja was permanently transferred to Ms. Bound and the case as closed. HCDSS ceased providing any further services or support to Ms. Whitworth.

**Finding No. 1:** The agency did not provide services and support for this family to prevent removal from their home.

**Virginia Department of Social Services Child and Family Services Manual, Part B. Section 1.6.2 Definition of foster care prevention services** *[Emphasis added in bold]*

22 VAC 40-201-20. Foster Care Prevention Services.

- A. The local department shall first make reasonable efforts to keep the child in his home.
- B. The local department shall make diligent efforts to locate and assess relatives or other alternative caregivers to support the child remaining in his home or as placement options if the child cannot safely remain in his home.
- C. **The local department shall provide services pursuant to § 63.2-905 of the Code of Virginia to the child and birth parents or custodians to prevent the need for foster care placement when the child is abused and neglected as defined in § 63.2-100 of the Code of Virginia or has been found to be a child in need of services as defined in § 16.1-228 of the Code of Virginia by the court or as determined by the family assessment and planning team.**
- D. **Any services available to a child in foster care shall also be available to a child and his birth parents or custodians to prevent foster care placement and shall be based on an assessment of the child's and birth parents' or custodians' needs.**
- E. **Appropriate services shall be provided to prevent foster care placement or to stabilize the family situation provided the need for the service is documented in the local department's written plan** or in the IFSP used in conjunction with accessing CSA funds.
- F. Children at imminent risk of entry into foster care shall be evaluated by the local department as reasonable candidates for foster care based on federal regulations, 45 CFR1356.60(c).
- G. **The local department shall develop a written plan for the implementation of wrap around services prior to removing a child from his home. As long as the risk of removal from the home continues, services shall be provided to address identified needs. In the event that the child can no longer be safely maintained in the home, the local department shall document why the support and services considered and provided were not sufficient to maintain the child in his home.**
- H. Prior to removing the child from the custody of his parents, the local department shall make diligent efforts to notify in writing all adult relatives that the child is being removed or is likely to be removed and explain the options to relatives to participate in the care and placement of the child including eligibility as a kinship foster parent and the services and supports that may be available for children placed in such a home.

The Virginia Department of Social Services (“VDSS”) Child and Family Services Manual describes the guiding principles for prevention which include:

- Families are fundamental to children’s optimal development. Children do best when they can grow up in their own families and remain safely connected to their mother, father, siblings, and extended family members throughout their life.
- All families can benefit from information and help in connecting with resources as they meet the challenges of parenthood and family life.
- Building protective factors strengthens a family’s ability to promote optimal development for their children and reduces the risk of abuse and neglect.
- Supporting the stability of the family, while maintaining the child’s safety is a more effective and less traumatic alternative than separating the child and family.

The safety plan signed on December 7, 2021 stated that the “Family Services Specialist agrees to support the family as needed.” However, there is nothing in the record that indicates that any support was provided. The circumstances indicated that domestic violence and substance abuse were issues, yet no appropriate services were offered to assist Ms. Whitworth with addressing these issues. There is no record of a written plan for wrap-around services offered to prevent the children from having to be removed.

**Finding No. 2:** An in-home services case was not opened as required by VDSS policy.

**Virginia Department of Social Services Child and Family Services Manual, Part B, Section 2.4 Opening a case** (Emphasis added by OCO.)

The Code of Virginia and federal law require that child welfare information be maintained in the statewide child welfare information system. *When safety factors or risk factors have been identified the opening of an In-Home services case should occur without delay.* The case must be opened electronically in the child welfare information system and opened through the case connect function within the family assessment or investigation, when applicable. The case must have a primary worker assigned within three (3) business days of opening.

When the agency made the decision that the children could not safely remain in the home, an in-home services case should have been opened to provide a framework for visits, services, assessments and a service plan.

At the FPM held on December 20, 2021 after the children were removed, it was agreed that the family would receive services. The notes from the FPM state that the department agreed to connect Ms. Whitworth with Genesis Counseling to have a psychological evaluation completed. Later in the FPM notes it is stated that Ms. Whitworth was to make her own appointment and provide appointment dates to DSS by December 27, 2021. She was also instructed to see her primary care physician to address a medical condition she reported and to seek out counseling and psychiatry services.

The record does not reflect that the agency opened up an In-Home Services case and Ms.

Whitworth was not offered any services except for the referral for a psychological evaluation. After custody was transferred to Ms. Bound, Ms. Whitworth's attorney asked about services for her and was told:

*Regarding services the Department would like Ms. Whitworth to engage in, the Department is not requiring Ms. Whitworth engage in any services at this time since the removal orders were entered and custody was transferred to a family member, nor has the Court ordered Ms. Whitworth to engage in any services to my knowledge. Based on the Department's own investigations, the entry of the removal orders, and the adjudication of abuse/neglect, the Department has determined your client is not an appropriate caretaker at this point in time and therefore the Department is not currently in a position to recommend Ms. Whitworth as a placement at the dispositional hearing next month. Therefore, the Department is not seeking to implement any services with your client at this time. That said, for instructional purposes, in foster care cases generally (please note, this is a removal to custody transfer case, not a foster care case) some typical recommendations the Department makes are that parents engage in: substance abuse assessment /treatment (services usually through the CSB), the free parenting courses Hampton Healthy Families offers, complete a psychological/psychiatric evaluation (detailed report), and outpatient therapy. These are all services your client should be able to access through her Medicaid insurance should she wish to engage in any of those services.*

Assistance by the agency as part of an In-Home services case could have addressed some or all of the issues that led to the children's removal from Ms. Whitworth and could have helped maintain their connection and relationship. Ms. Whitworth reached out to HCDSS, both on her own and through her attorney, while her children were placed in respite care and after custody was temporarily transferred to Ms. Bound by the court. She received the following response via email on January 24, 2022:

*Just a reminder, this is NOT a foster care case. The children are in the physical and legal custody of Mrs. Bound which was transferred to her on 1/6/22. Services provided through DSS are not required, service plans with specified goals are not created, and visitation is typically held between the parent and respective family member who has the children.*

This was not a foster care case, but the agency was incorrect about whether services should be provided. The Prevention and In-Home Services to Families guidance went into effect April 30, 2021 and should have been applied in this case.

**Conclusion.** We commend the agency's decision to place the children with a relative whom the children knew, but Ms. Whitworth was given no clear plan for the children to return home and was offered no services to assist her in addressing the safety issues that led to the children's removal.

State guidance states that "[c]hildren do best when they can grow up in their own families and remain safely connected to their mother, father, siblings, and extended family members throughout their life." When the agency determines that it is unsafe for the children to remain home, the agency

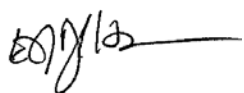
should be supporting the family so that the children can maintain a positive relationship with the parents and offer services to assist the parents in addressing the safety needs of the home. The agency should reassess its policy to not allow visits to occur while children are placed with the agency's respite families. Regular contact can help maintain the parent-child relationship during periods of separation. Also, closing the case when custody is legally transferred to a relative after such a short period of time and refusing to work with the parent to regain custody of their children does not promote the parent-child connection and may not result in true permanence.

The concerns expressed by Ms. Whitworth mirror those we have heard from parents across the state when local departments of social services engage in diversionary practices to prevent children from entering formal foster care. When an agency intervenes and determines that children cannot safely remain in their home, they owe it to families to provide services and support that can lead to their reunification.

While we appreciate that HCDSS engaged the court in this process, we were disappointed to see that the Prevention and In-Home Services to Families guidance was not followed. This guidance was created for situations like this, where a child cannot be safely maintained in their home but they are not entering foster care. The goal is to protect the children while maintaining family bonds and giving parents support and tools so they may work towards reunification.

In this case, Ms. Whitworth was given little support and only a few months to remedy the issues that led to the children's removal from her home. Her children are now placed with a relative with whom she has a very strained relationship that makes visitation a challenge. Moreover, she faces difficult legal barriers if she were to seek custody through the court system as she has lost her parental presumption.

The child welfare system involves a delicate balance between ensuring child safety and preserving families. Laws and VDSS guidance are in place to protect both of these interests to ensure that a child's right to safety and permanence is maintained while respecting parental rights and due process. Agency practices that bypass these processes established for government intervention in a family can upset this balance.



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