

COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Coleman and Willis

DOMINIC MUSOLINO

v. Record No. 2185-98-1

COMMONWEALTH OF VIRGINIA,  
DEPARTMENT OF SOCIAL SERVICES

MEMORANDUM OPINION\*  
PER CURIAM  
MAY 4, 1999

FROM THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH  
A. Bonwill Shockley, Judge

(Robert L. Samuel, Jr.; Michelle A. Hughes;  
Clark & Stant, P.C., on brief), for  
appellant.

(Mark L. Earley, Attorney General; Ashley L.  
Taylor, Jr., Deputy Attorney General;  
Siran S. Faulders, Senior Assistant Attorney  
General; Daniel J. Poynor, Assistant  
Attorney General; Cheryl A. Wilkerson,  
Assistant Attorney General, on brief), for  
appellee.

Dominic Musolino appeals the decision of the circuit court affirming the determination by the Virginia Department of Social Services (DSS) that allegations of sexual abuse, level one, by Musolino were founded. On appeal, Musolino contends that the trial court erred by determining that there was substantial evidence in the agency's record to support the finding by clear and convincing evidence. Upon reviewing the record and briefs of the parties, we conclude that this appeal is without merit.

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\*Pursuant to Code § 17.1-413, recodifying Code § 17-116.010, this opinion is not designated for publication.

Accordingly, we summarily affirm the decision of the trial court. See Rule 5A:27.

The standard of review of an agency's factual findings on appeal to a circuit court is limited to determining whether substantial evidence in the agency record supports its decision. See Code § 9-6.14:17; Turner v. Jackson, 14 Va. App. 423, 429-30, 417 S.E.2d 881, 886 (1992). On appeal, we do not disturb factual findings if credible evidence supports them. See James v. Capitol Steel Constr. Co., 8 Va. App. 512, 515, 382 S.E.2d 487, 488 (1989). "The reviewing court may reject the agency's findings of fact only if, considering the record as a whole, a reasonable mind would necessarily come to a different conclusion." Johnston-Willis, Ltd. v. Kenley, 6 Va. App. 231, 242, 369 S.E.2d 1, 7 (1988).

DSS found, among other things, that, beginning the morning after the alleged sexual abuse incident, the child's mother observed a red mark on the child's cheek; the child displayed regressive behavior; the child told her mother that Musolino forced his penis into her mouth and told her to suck it, then struck her when she refused; and the child "consistently related the sexual abuse." The record supports the agency's finding that the four-year-old child described the incident consistently to her mother, the DSS worker, and a detective. The limited physical evidence and the mother's testimony were also

consistent with the child's description of events. At no time did the child suggest that someone other than Musolino was the perpetrator. Therefore, because the record does not necessarily lead to a conclusion different than that found by the agency, we affirm the decision of the circuit court denying Musolino's petition for review.

Accordingly, the decision of the circuit court is summarily affirmed.

Affirmed.