



# SWAN Legal Services Initiative

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### LSI Training Team

#### Division Manager

Rachel Meaker, Esq.

#### Training Specialists

Alyssa Cowan, Esq.

Ilene Dubin, Esq.

Jennifer Gelet, Esq.

Lauren Peters, Esq.

Contact the team:

[lsiwarmline@diakon-swan.org](mailto:lsiwarmline@diakon-swan.org)

471 JPLwick Drive  
P.O. BOX 4560  
Harrisburg, PA 17111

[www.diakon-swan.org](http://www.diakon-swan.org)

## Pennsylvania Superior Court

**M.L. v. J.G.M**

Date of Decision: January 4, 2016

Cite: 716 MDA 2015

### Holding:

Vacated and remanded to trial court for proceeding to determine whether paternity by estoppel principles apply, where father’s motion for blood tests to determine paternity was granted prior to determining whether paternity by estoppel applies.

### Facts and Procedural Posture:

Mother and Father were married in 2001; had a daughter, E.M., in 2005; and separated in 2011. Shortly after the separation, father administered a home DNA test that excluded him as the father of E.M. He subsequently terminated his relationship with E.M., filed a petition to terminate support and sought a psychological evaluation to evaluate the bond between them. Following the evaluation, he filed a motion pursuant to the Uniform Act on Blood Tests to Determine Paternity, 23 Pa.C.S.A. 5104(c). The trial court granted the motion and Mother appealed, claiming paternity by estoppel should apply, thus precluding paternity testing.

### Rationale:

The court, relying on a recent Supreme Court finding, noted that the doctrine of paternity by estoppel continues to pertain in Pennsylvania, applying “only where it can be shown, on a developed record, that it is in the best interests of the involved child.” *K.E.M. v. P.C.S.*, 38 A.3d 798 (Pa. 2012). The court found that paternity by estoppel requires an inquiry of the father-child relationship as well as the child’s best interests and not just a “preliminary analysis” after ordering paternity testing. Although the trial court ordered a psychological evaluation of the bond between father and E.M., no evaluation was in the certified record. Thus, the court directed the trial court to hold a hearing on the issue of paternity and determine whether estoppel principles apply.

**Fetterman v. Westmoreland County  
Children's Bureau, et. al.**

Date of Decision: January 6, 2016  
Cite: 2016 WL 69663

**Holding:**

Motion to Dismiss granted where the Plaintiff failed to state a viable claim under the "state-created danger" doctrine.

**Facts and Procedural Posture:**

Baby Natalee was born on December 7, 2011, six weeks premature and addicted to opiates due to mother's drug use during pregnancy. Westmoreland County Children's Bureau (WCCB) was contacted, and a caseworker was assigned to determine whether a safety plan was needed. Baby Natalee was released from the hospital on December 9, 2011 under the care and control of her parents. Mother allegedly suffered from a mental breakdown the next day and gave the baby to the paternal grandmother/plaintiff, who lived in Indiana County.

On December 12, 2011, the WCCB caseworker visited the home where the parents were staying. She learned that Father was currently on probation, there were previous reports of domestic violence in the home and there had been a previous investigation/case with Indiana County Children & Youth Services (ICCYS). An ICCYS caseworker performed a risk assessment of paternal grandmother's home and informed WCCB of safety concerns if the baby remained in the parents' custody.

Paternal grandmother also called the WCCB caseworker on multiple occasions to report ongoing mental health concerns of the mother and signs of abuse on Natalee's older brother. On December 15, 2011, the WCCB caseworker called paternal grandmother and "directed and ordered" that the baby be returned to the parents. The parents picked up the baby from paternal grandmother's home that evening. No caseworkers were present.

In the days following, WCCB allegedly took no action to follow up on or assess the safety of the baby, despite numerous phone calls from the paternal grandmother. On December 27, 2011, Baby Natalee died from blunt head trauma, among other injuries. Paternal grandmother filed suit against the agency and the caseworkers<sup>1</sup>, claiming a violation of substantive due process. WCCB subsequently filed a Motion to Dismiss.

**Rationale:**

The general rule is that "a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause;" however, the "state-created danger" doctrine provides a limited exception to this rule. There are four elements that constitute the "state-created danger" exception:

- 1) the harm ultimately caused was foreseeable and fairly direct;
- 2) a state actor acted with a degree of culpability that shocks the conscience;
- 3) a relationship between the state and the plaintiff existed such that the plaintiff was a foreseeable victim of the defendant's acts; and
- 4) a state actor affirmatively used his or her authority in a way that created a danger to the citizen or rendered the citizen more vulnerable to danger than had the state not acted at all.

*Bright v. Westmoreland County*, 443 F.3d 276, 281 (3d Cir. 2006).

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<sup>1</sup>The suit against the individual caseworkers was dismissed as being untimely.

**Fetterman (cont'd)**

The court analyzed elements two and four in concluding the Plaintiff failed to state a viable claim. For the second element, the court acknowledged the difficult decisions children and youth agencies face each day. It further noted that, although the WCCB was aware of the risks, there was no concrete knowledge that Baby Natalee would be harmed by her parents. Even if WCCB ultimately made a “bad decision” to reunite the baby with her parents, WCCB’s actions were not so faulty that they shock the conscience. For the fourth element, the court found that the baby was never in the physical custody of WCCB, and they did not legally place her in the custody of her parents. The court concluded that the telephone call from the caseworker directing the Plaintiff to return the child did not constitute a sufficient affirmative use of authority to prove a “state-created danger” existed.

**SPOTLIGHT — U.S. District Court, E.D. Pennsylvania**

**Kane v. Chester County, et al.** — In accordance with the Federal Rules of Civil Procedure 26(b) (1), the plaintiff/guardian ad litem requested all documents related to a minor child who resided in the same foster home as his clients and was responsible for their abuse. The Defendant, Children’s Home of Reading Youth and Family Services (CHOR), provided some of the requested documents but withheld others due to confidentiality restrictions.

The Plaintiff filed a Motion to Compel the remaining documents. CHOR sought a protective order to bar the discovery of such documents to protect the privacy of the minor and other individuals contained in his records. CHOR cited confidentiality provisions contained in the Pennsylvania Code to support their position.

The court turned to *Pearson v. Miller*, 211 F.3d 57 (3d Cir. 2000), for a framework that considers the relationship between state confidentiality provisions and federal discovery requirements. The flexible approach it provides is focused less on state statutes and more on accommodating the discovery interests with the confidentiality interests of third parties referenced in the requested materials.

The court concluded the records sought by the Plaintiff were relevant to the present action and were sought for the legitimate purpose of developing the case. As such, preventing discovery of these records would be unwarranted. To balance the discovery needs with the need to protect sensitive information, the court concluded that any sensitive information contained within the documents should be redacted and ordered further restrictions.

The complete opinion can be found using cite **2016 WL 320589**.