



SWAN Legal Services Initiative

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Pennsylvania Commonwealth Court

Pittsburgh Action Against Rape v. Department of Public Welfare

Date of Decision: July 14, 2015

Cite: 1082C.D. 2014

Holding:

Affirmed order directing a sexual assault counselor to testify at an expungement hearing. Section 6381(c) of the Child Protective Services Law (CPSL) permits the admission of testimony that would otherwise be inadmissible as privileged communication between a sexual assault counselor and a patient.

Facts and Procedural Posture:

A father requested a hearing to expunge an indicated report where he was identified as a perpetrator of sexual abuse. At the request of the Washington County Children and Youth Social Services, the Bureau of Hearings and Appeals served a subpoena on a sexual assault counselor employed at Pittsburgh Action Against Rape (PAAR). PAAR filed a motion to quash the subpoena, arguing that the counselor's communications with the child were privileged under Section 5945.1 (b) of the Judicial Code, and the child did not consent to waive the privilege. The administrative law judge (ALJ) orally denied PAAR's motion to quash the subpoena as well as their request to stay the proceedings pending an appeal of that decision. The counselor subsequently testified at the hearing and PAAR filed a petition with the Pennsylvania Commonwealth Court to review the ALJ's ruling compelling the counselor to testify.

Issue:

Whether privileged or confidential communications between a sexual assault counselor and their patient is admissible as evidence in child abuse expungement proceedings?

Rationale:

Although Section 5945.1 (b) of the Judicial Code creates a privilege that protects disclosure of confidential communications between a sexual assault counselor and a victim, that privilege is not absolute in the context of an expungement hearing. The purpose of the CPSL is to encourage a more complete reporting of child abuse and to prevent further abuse of children. In enacting Section 6381 (c) of the CPSL, the General Assembly took privilege into consideration and provided for special and specific protection in child abuse and expungement proceedings. By permitting sexual assault counselors to testify over a claim of privilege it ensures that the overall purpose of the CPSL is met, and necessary information surrounding the circumstances of the abuse is not excluded.

D.M. v. Department of Public Welfare

Date of Decision: July 27, 2015
Cite: 1463 C.D. 2014

Holding:

Affirmed order dismissing an appeal to expunge a founded report. Where court action is initiated, an abuse report can remain with a pending status until the Pennsylvania Department of Public Welfare (DPW)¹ is informed a final determination is made, and the evidence to support the founded report is not limited to the record created as part of the underlying court action.

Facts and Procedural Posture:

DPW received a report of alleged sexual abuse by D.M., a staff member and supervisor of a residential facility. A child living at the residential facility alleged that D.M. made sexual comments and tried to engage her in sexual activities. DPW completed an investigation and filed a CY-48 with the status of “pending criminal court action” due to criminal charges being filed. D.M. subsequently entered a plea of no contest to the charge of harassment.

After the criminal sentencing order and colloquy transcript were filed, a second CY-48 report was filed with a “founded” status. D.M. was notified of the final status of the report and requested a hearing to expunge it. An administrative law judge (ALJ) recommended dismissing the appeal based on the finding that D.M. met the definition of a perpetrator under the Child Protective Services Law (CPSL), his no contest plea to the criminal charge was based on the same facts, and circumstances in the abuse allegation and his sexually explicit conversations met the CPSL definition of sexual abuse or exploitation. DPW issued a final order adopting the ALJ’s recommendation and D.M. appealed.

No Contest

While not admitting guilt, a criminal defendant’s plea that does not dispute the charge. Also termed *nolo contendere*.

Issues:

1. Whether the record from D.M.’s criminal proceeding contains sufficient facts to serve as the basis for a founded report?
2. Whether a report of suspected child abuse based upon court action must be reported as “unfounded” if it is not finalized within 60 days of the date of criminal sentencing?

Rationale:

The court determined that D.M.’s plea of no contest was considered a judicial adjudication, and the factual basis for that plea was identical to the factual basis of the CY-48 report. The court reasoned it was immaterial that D.M.’s employment as a staff member of a residential facility was not mentioned during the criminal proceedings. The CY-48 included D.M.’s employment and was submitted to the ALJ who properly considered the entire record. The requirement of a judicial adjudication does not limit DPW from looking outside of that proceeding for facts to demonstrate substantial evidence to maintain the report on the statewide database; it only serves to inform the type of report that is filed and the procedure that must be followed.

With respect to the timing issue, the court reasoned that neither the CPSL nor the regulations require a final status determination to be made within 60 days of a judicial adjudication. The regulations only require that a new CY-48 be filed when a final determination in the pending matter is made. This interpretation is not only consistent with the plain language of the statute, but also follows the General Assembly’s intent of encouraging more complete reporting of suspected child abuse.

¹ The Department of Public Welfare became the Department of Human Services effective November 24, 2014.

Juvenile Court Rules

Rule 1182

- Amends Rule 1182 initially adopted on September 11, 2014, to clarify that eligibility and training requirements apply to all masters, including current masters.
- All provisions of the new rule are effective August 1, 2017.

Rules 1120, 1149, 1210, 1240, 1242, 1330, 1408, 1409, 1512, 1514, 1515, 1608, 1609, 1610, 1611, and 1635

- Rule modifications and additions reflect requirements of Act 55 of 2013, and ensure the court is inquiring about family finding efforts at each proceeding and making necessary orders to ensure compliance.
- Effective October 1, 2015. A copy of the new rules can be found on the [Pennsylvania Court's website](#).