

# February 2021

# Legal Report

## SWAN Legal Services Initiative

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### **In This Issue:**

**J.F. v. Department of Human Services**

SPOTLIGHT

**Commonwealth v. Hudson-Greenly**

**In Re Ajaj**

**Federal Legislation**

**Pennsylvania Legislation**

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## SUPREME COURT OF PENNSYLVANIA

**J.F. v. Department of Human Services****Date of Decision:** February 17, 2021**Citation:** 72 MAP 2019**Holdings:**

1. The Pennsylvania Supreme Court (Supreme Court) affirmed the Commonwealth Court's decision granting an administrative hearing to a Mother named as a perpetrator in a founded report of child abuse, where the founded designation was attained by Mother's voluntary entry into an Accelerated Rehabilitative Disposition.

**Facts and Procedural Posture:** On May 17, 2017, Mother left her 15-month-old twins at home, alone from 12:00 a.m. until 7:30 a.m. while she went to the bar to drink. At 2:00 a.m. police responded to a report of public drunkenness and discovered Mother, who was semi-conscious, and transported her to the emergency room. At 6:30 a.m. law enforcement received a call requesting a check on Mother's unattended children, and at 7:30 am the children's father met police at the home, where the children were found unattended but sleeping in their cribs. As a result of this incident, Mother was subsequently charged with two counts of endangering the welfare of minors. On July 6, 2017, the county agency filed two indicated Child Protective Services (CPS) reports of child abuse identifying Mother as the perpetrator. The indicated reports were based on Mother's admissions to the agency and to police that she had left the children home alone while she went to the bar to drink. Mother subsequently requested an appeal hearing regarding the indicated reports of abuse. While Mother's appeal was pending, Mother entered into Accelerated Rehabilitative Disposition (ARD) for both counts of endangering the welfare of children. As a result of Mother's acceptance into ARD, the agency changed the status of Mother's CPS reports from indicated to founded and filed a motion to dismiss Mother's appeal. The Administrative Law Judge (ALJ) issued a recommendation and Adjudication to grant the county agency's motion to dismiss and the Bureau of Hearings and Appeals (BHA) entered an order wholly adopting the ALJ's recommendation. Mother then appealed to the Commonwealth Court, who reversed the BHA decision. The county agency then appealed to the Supreme Court.

**Issue:**

1. Is a perpetrator of child abuse entitled to an administrative hearing on the facts of a founded report of child abuse after entry into ARD?

**Rationale:** In their analysis, the Court first looked to the Pennsylvania Administrative Agency Law (AAL) to determine whether founded reports of abuse constitute an "adjudication", thus triggering the right to a hearing under the AAL. §101 of the AAL defines an adjudication as "any final order, decree, decision, determination or ruling by an agency affecting the personal property rights, privileges, immunities, duties, liabilities, or obligations," of a party. The Court then distinguished prior case law which held that while founded reports of child abuse provide limited impact to the constitutional right to reputation for perpetrators, that the deprivation

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involved here goes beyond just impacting reputation, as it impacts a persons ability to obtain employment, housing, consideration as a foster parents, and their ability to participate in volunteer activities. The Court further opined that since these reports will restrict an individual's ability to participate in opportunities otherwise available to others, that it constitutes consequences sufficient to meet the definition of adjudication pursuant to the AAL.

The Court then turned its analysis to §504 of the AAL which states that "No adjudication of a Commonwealth agency shall be valid" unless an individual is afforded "reasonable notice of a hearing and an opportunity to be heard." The Court then noted that while other court proceedings provide evidentiary hearings in which named perpetrators can present evidence, cross-examine witnesses, and make arguments to attack the merits of the child abuse report, that ARD does not provide these opportunities, as courts in ARD proceedings issue a discretionary order without ever making any factual determinations on the merits. As ARD proceedings do not provide named perpetrators with the opportunity to challenge the allegations on the record, it is not sufficient to provide the requisite "opportunity to be heard" and therefore, does not meet the requirements of §504 of the AAL. As such, the Court affirmed the Commonwealth Court decision and ruled that Mother should be afforded a full and fair opportunity to be heard on the record before the BHA.

Justice Mundy issued a dissenting opinion.

## SPOTLIGHT

### *Superior Court of Pennsylvania*

#### **Commonwealth v. Hudson-Greenly:**

On July 12, 2019, the appellant was found guilty on charges of endangering the welfare of a minor and simple assault. The convictions arose from allegations that the appellant and a co-defendant had subjected the 11-year-old victim to numerous instances of abuse which included repeatedly striking the child on various parts of her body, forcing the child to stand with her back against a wall with her knees bent for extended periods of time while a pot was placed underneath of her in case she needed to urinate, taking the child outside and pouring water over her head, and prohibiting her from eating or sleeping. Upon the request of the Commonwealth, the Court admitted prior statements of the minor victim into evidence and allowed the minor victim to testify by a contemporaneous alternative method (closed-circuit television). The appellant was subsequently sentenced to serve two to five years of incarceration for these offenses, and the appellant filed a post-sentence motion for a new trial, which was denied. The appellant then appealed to the Superior Court, claiming that the trial court had erred by allowing the victim to testify via a contemporaneous alternative method. The Superior Court looked to the record of the case and saw that the trial court heard testimony from the child's adoptive mother who noted the negative reactions that the child had upon seeing the appellant in the community, and testified that the child would not be able to testify if she saw the appellant in the courtroom. The record also contained the observations of the trial court judge who

observed the child physically tremble and repeatedly squeezing a stress ball when asked about the possibility of seeing the appellant in court. As such, the Superior Court affirmed the trial court's ruling, as the defendant failed to demonstrate how allowing the child to testify via contemporaneous alternative method prejudiced the defendant, and as the record supported a finding that the appellant's presence would have caused serious emotional distress and impaired the victim's ability to communicate in the courtroom.

### **In Re Ajaj:**

This is a criminal/custody case that does not involve dependent youth. This case began in August of 2017, when Mother and Father took their children on a trip to Iraq. While in Iraq, Mother and her uncles abducted the children and took them to an undisclosed location. Father went through extensive efforts to locate and attain the return of his children including, meeting with representatives from the United States Embassy in Baghdad, retaining counsel, and contacting the U.S. Department of State's Office of Children's Issues, who opened a case on the matter. Father also sought and attained sole legal and physical custody of the children by way of an emergency custody order issued by the Family Court in Montgomery County. After granting the emergency petition, the family court scheduled a custody hearing and when Mother did not appear at the hearing, the court subsequently issued a bench warrant for Mother's arrest and affirmed the award of sole legal and physical custody to Father. On May 31, 2019, Father filed a private criminal complaint seeking to charge Mother with interference with custody of children and concealment of the whereabouts of a child. The Commonwealth disapproved of the complaint citing evidentiary issues, however, when Father drafted a petition for review of the disapproval, the trial court scheduled a hearing. At the hearing, the Commonwealth argued policy considerations including the Commonwealth's policy of not approving private complaints alleging a felony, the Commonwealth's use of caution in criminalizing actions of parents involved in custody disputes, and the availability of alternative civil as well as federal remedies for Father. After hearing the evidence, the trial court issued an order granting Father's petition and reversing the disapproval of his private criminal complaint. The Commonwealth then appealed claiming that the trial court erred by overturning their disapproval where the Commonwealth acted in good faith and the private criminal complainant did not demonstrate that the Commonwealth's disapproval was an abuse of discretion. The Superior Court examined the record of the case and affirmed the trial court's decision as not only did the Commonwealth raise their policy considerations argument in an untimely manner, but that the Commonwealth's arguments deviated from moral rectitude and sound thinking under the facts as developed in the custody proceedings and as summarized in Father's complaint and exhibits. As such, the Court affirmed the ruling of the trial court.

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## *Federal Legislation*

### **Executive Order Establishing a Taskforce for the Reunification of Families**

On February 2, 2021, President Biden issued an executive order establishing a taskforce in an effort to reunite children who were separated from their families at the United States-Mexico border. The Taskforce shall include the Secretary of Homeland Security, the Secretary of State, the Secretary of Health and Human Services, and the Attorney General. The duties of the Taskforce include identifying children who were separated from their families at the border, facilitating the reunification of the children with their families, and providing regular progress reports to the President. For more information on the executive order, please [click here](#).

## *Pennsylvania Legislation*

### **Corrective Amendment to the Regulations for Child Care Providers**

On February 13, 2021, the Department of Human Services (DHS) issued a corrective amendment to 55 Pa. Code §3290.4. The corrective amendment was issued to remove the definition of "random sample" from §3290.4, as the definition was inadvertently added to Regulations for Child Care Providers from the Human Services Code. For more information on the corrective amendment, please [click here](#).