

# March 2022

# Legal Report

## SWAN Legal Services Initiative

*A monthly publication from the SWAN Legal Training Team*

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## COMMONWEALTH COURT OF PENNSYLVANIA

**In re: Appeal of S.H.****Date of Decision:** March 4, 2022**Cite:** 896 C.D. 2020

**Holding:** The trial court's order to enforce subpoenas on school employees was vacated and remanded for further proceedings, where the trial court did not address the school employees' objections to the subpoenas prior to ordering their enforcement.

**Facts and Procedural Process:** S.H., a teacher, was indicated as a perpetrator of abuse of two minor students. S.H. appealed the reports and a hearing was scheduled at the BHA. Prior to the hearing, S.H. requested the issuance of subpoenas to compel the appearance of witnesses and documents, including school employees ("Employees") and records. Employees objected, asserting that the documents were privileged and confidential under HIPAA and FERPA, and did not appear at the scheduled hearing. S.H. subsequently filed a motion in the Montgomery County Court of Common Pleas to enforce the subpoenas. Employees opposed the motion and filed a cross-motion, and an argument was held. The Court of Common Pleas then transferred the matter to Philadelphia County, where the noncompliance with the subpoena occurred. The Philadelphia trial court granted Teacher's motion to enforce the subpoenas. Employees appealed.

**Issues:**

1. Whether the trial court's order is appealable as a collateral order under PA. R.A.P. 313(b).
2. Whether the trial court lacked jurisdiction to enforce the subpoenas.
3. Whether the trial court erred in enforcing the subpoenas without first ruling on School Employees' objections and cross-motion for a protective order, thus denying them due process.
4. Whether the subpoenas are overly broad and unduly burdensome; were sought in bad faith; and seek confidential and privileged medical, educational and employment information protected by HIPAA and FERPA.

**Rationale:** Once the court determined that the trial court's order was a collateral order appealable under PA. R.A.P. 313(b), the court focused on the remaining issues. The court first noted that The Child Protective Services Law and the Department regulations are silent on enforcement of subpoenas. However, the Department's regulation on hearings under the Child Protective Services Law states that they "will be conducted under 2 Pa. C.S. §§501-508 and 701-704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure ("GRAPP"))." Despite the fact that the CPSL is silent in regards to the issue of subpoena issuance and enforcement, these other areas of law are not, thus providing a default mechanism for their enforcement.

Despite this, however, the trial court granted S.H.'s motion to enforce the subpoenas without ruling on Employees' objections to the subpoenas and their cross-motion for a protective order. The court found that the subject of a subpoena must be given an opportunity to challenge the subpoena's validity and its relevance. By not allowing this, the court denied Employees' due

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process. The appellate court thus vacated the trial court's order and remanded the matter for further proceedings on Employees' objections to the subpoenas and their cross-motion for a protective order. Further, the trial court is directed to determine whether the information sought was protected by HIPAA and FERPA.

## SPOTLIGHT CASE

In *ChildFirst Services, Inc., v. Department of Human Services*, ChildFirst, a non-profit corporation that operates child residential facilities, petitioned the court for review of an order granting DHS's Motion to Dismiss ChildFirst's Complaint, where ChildFirst alleged they were entitled to injunctive relief due to breach of a settlement. Upon review, the Court found that the BHA does not have the authority to award compensatory damages for breaches of settlement agreements.

## DISTRICT COURT

### Moore v. Morrison

**Date of Decision:** March 18, 2022

**Cite:** 2022 WL 824102

**Holding:** The District Court for the Eastern District of Pennsylvania granted the Plaintiffs' *in forma pauperis* (IFP) application and dismissed the amended complaint with prejudice pursuant to U.S.C. §1915 (e)(2)(B)(ii) for failure to state a claim within the time period required by the statute of limitations.

**Facts and Procedural Posture:** Husband and Wife sought leave to proceed in this action under 42 U.S.C. §1983, IFP, in which they challenged the removal of their children from their home in January 2017. After two failed filed complaints due to deficiencies in the filings, the amended complaint was accepted on December 16, 2021, by the court. In the complaint, Plaintiffs alleged that the children were given to relatives whom they contend do not qualify for kinship due to the toxic relationship they had with the Defendants. The Plaintiffs contend that the Defendants used their mental disabilities against them in obtaining their children. The Plaintiffs are seeking \$25 million dollars for pain and suffering.

### *Did you know?*

*In forma pauperis* allows a person without financial means to bring suit without liability for the costs of the suit.

### **Issues:**

1. Whether the Plaintiffs should be granted leave to proceed with this action IFP.
2. Whether the Amended Complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or asserts a claim against a defendant immune from monetary relief.

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**Rationale:**

The Court reviewed the relevant statute, 28 U.S. §1915(a)(1) to determine if the plaintiffs met the requirements to proceed under IFP. To do so, the litigants must prove that they are unable to pay the costs of a legal action. After a review of the plaintiffs' financial statement and their IFP application, the Court determined that the plaintiffs were unable to pay the costs of a suit and hence granted their leave to proceed IFP.

The Court next examined the amended complaint; to survive dismissal "a complaint must contain sufficient factual matter, accepted as true, to `state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662,678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

The plaintiffs are seeking relief of the removal of their children under 42 U.S.C. §1983. Section 1983 clearly states that a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States and must show that the alleged deprivation was committed by a person acting under color of state law. Since the plaintiffs' claim arose in Pennsylvania, they are subjected to the relevant statutory limitations to bring such an action, which is two years (when the plaintiff can file suit and obtain relief). The Court examined the amended complaint and found that the plaintiffs knew in January 2017 that their children were removed from their care and placed in kinship care. Hence their claims related to the removal of the children must be raised in court by January of 2019. The Court did not find any basis for equitable tolling of the statute as the plaintiffs' time to file a complaint was clearly beyond the two-year statute of limitations. The Court dismissed the amended complaint.

## LEGISLATION SPOTLIGHTS

**BILLS SIGNED**

On March 3, the President signed into law H.R. 4445, the "Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021", which invalidates pre-dispute arbitration agreements that preclude a party from filing a lawsuit in court involving sexual assault or sexual harassment, at the election of the party alleging such conduct. H.R. 4445 can be viewed at the link provided below.

<https://www.whitehouse.gov/briefing-room/legislation/2022/03/03/bills-signed-h-r-4445>.

On March 15, 2022, the President signed into law S.1543 Suicide Training and Awareness Nationally Delivered for Universal Prevention Act of 2021 (STANDUP Act of 2021). This bill requires the Department of Health and Human Services (HHS), when awarding certain grants for priority mental-health needs, to give preference to state, tribal, and local educational agencies that plan to implement evidence-based suicide awareness and prevention training policies. S.1543 can be viewed at the link provided below.

<https://www.congress.gov/117/plaws/publ100/PLAW-117publ100.pdf>