



# SWAN Legal Services Initiative

## March Legal Report

VOLUME 2, ISSUE 9

2016

### INSIDE THIS ISSUE:

K.K., B.P.S.,  
C.S. v. Berks 2  
County, et al.

SPOTLIGHT:  
V.L. v. E.L. et 2  
al.

#### 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)

## U.S. District Court, M.D. Pennsylvania

**Feistl v. Luzerne Intermediate Unit, et al.**

Date of Decision: March 24, 2016

Cite: 2016 WL 1162325

### Facts and Procedural Posture:

The plaintiff suffered from various maladies which caused her to suffer chronic pain and fatigue, as well as difficulty in daily activities such as standing, walking and sleeping. The defendants, her employers and coworkers, became aware of the plaintiff's condition in 2010 when she was approved for intermittent FMLA leave. In April 2013, the plaintiff left a personal bag containing her possessions in a locked office controlled by the defendants. One of the defendants allegedly entered the locked room, searched the plaintiff's bag, and found medication prescribed to the plaintiff. Shortly afterward, the plaintiff was visited at her residence by Luzerne County Children and Youth Services (CYS), who indicated that they had received an anonymous tip of "concerns at work" that the plaintiff was using drugs and endangering her children. At the home visit, CYS found no drugs but requested that the plaintiff undergo a drug screening. She tested negative for drug use. Based on the allegation, the plaintiff believed that one of the defendants made a false report. Approximately one year later, following a series of suspensions and sanctions, the defendants terminated her employment. The plaintiff filed numerous civil allegations against the defendants. The defendants filed a motion to dismiss the plaintiff's complaint.

### Rationale:

The plaintiff argues that the defendants' actions, specifically the report to CYS, were retaliatory. The defendants claimed they were mandatory reporters and could have been subject to criminal sanctions had they failed to report. The court, relying on the Child Protective Services Law that was in effect at the time of the alleged violations in 2013, noted that the plaintiff's children were not under the "care, supervision, guidance, or training" of the defendants as required by 23 Pa.C.S. 6311(a); therefore, the defendants were not mandated to report suspected abuse. However, the statute also provides that, where the reporter acted in good faith in reporting, they are entitled to immunity from civil liability. The court found that alleged motives or allegations of maliciousness are not enough to overcome the presumption of good faith as provided in 23 Pa.C.S. 6318 and, therefore, dismissed the plaintiff's claim.

# U.S. District Court, E.D. Pennsylvania

**K.K., B.P.S., C.S., et al. v. Berks County et al.**

Date of Decision: March 31, 2016

Cite: 2016 WL 1274052

## Facts and Procedural Posture:

Plaintiff T.K. (hereinafter known as “nephew”) was born in October 2010 to a father with a history of perpetrating sexual assaults and a mother with substance abuse issues. A safety plan was put into place allowing nephew to live with his father and grandmother. When he reached ten months old, the family thought it was in his best interest to live with plaintiffs B.P.S. and K.K. (“aunt” and “uncle”). Two months later, a dependency petition was filed by Berks County Children and Youth Services (CYS) deeming nephew dependent. He was placed in kinship care with aunt and uncle. Eight months later, nephew’s half-sister (hereinafter “niece”) was born and immediately placed with aunt and uncle. In February 2013, CYC received a three-year-old police report alleging that uncle had raped a 17-year-old woman. Niece and nephew were removed from the home but were told the nephew could return only if uncle moved out, agreed to have no contact with him, and submitted to a psychosexual evaluation. They agreed.

Upon investigation, CYC learned the allegation against uncle was baseless but still required him to receive an evaluation. It concluded that it did “not appear that minors in his care [were] at risk.” One month later, CYC lifted the safety plan but still did not return niece. Aunt and uncle adopted nephew later that year, but niece was never placed back in their care. Plaintiffs claim that the actions of CYC violated a number of their constitutional rights. Specifically, they claim that they were not afforded an opportunity to challenge any of the decisions in violation of their due process rights.

## Rationale:

While parents have constitutionally protected rights regarding the custody and care of their children, a foster parent’s rights are not so readily apparent. This is because the relationship that develops between a foster parent and foster child originates from a state-created arrangement. When a state interferes with a foster family, the state is interfering with a family that “has its source in state law and contractual arrangements” rather than its own separate origins. *Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816, 845 (1977). However, aunt and uncle contended that they are not ordinary foster parents since they are related to the children and have origins outside of “state law and contractual arrangements.” Because the third circuit was not previously presented with the issue of whether kinship foster parents are entitled to rights that ordinary foster parents are not, the court looked to other courts for guidance.

It is well established that unless a constitutional right was “clearly established” at the time of the challenged conduct, individual state actors are protected from suits for damages. *Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2080 (2011). The court noted in their review of existing case law that the other circuit courts had not reached a consensus in determining whether kinship foster families possess some constitutional liberty interests. Thus, the court found the CYC employees could not be expected to have known that dealing with a kinship foster family carries a potential risk of violating constitutional protections. Even if it was determined that the plaintiff’s possessed the rights they claim, they were not clearly established at the time, and therefore the court found the defendants to be immune to such claims.<sup>1</sup>

**SPOTLIGHT:** *V.L. v. E.L. et al.*- The United States Supreme Court granted certiorari where a biological mother’s former same-sex partner filed a petition seeking visitation with the biological mother’s children, whom the former partner had formally adopted in Georgia prior to relocating to Alabama. The Alabama courts found that the Georgia court had no subject-matter jurisdiction to enter a judgment allowing the same-sex partner to adopt the children while still recognizing the biological mother’s parental rights. Upon review, the Supreme Court held that the Georgia court had subject-matter jurisdiction to hear and decide the original adoption petition; therefore, the Alabama court had an obligation to apply “full faith and credit” as required by the U.S. Constitution. Under the Full Faith and Credit Clause of the U.S. Constitution, a state may not disregard the judgment of a sister state because it disagrees with the reasoning underlying the judgment or deems it to be wrong on the merits. As such, the case was reversed and remanded for further proceedings.

The full case can be found using cites 2016 WL 854160 or 84 USLW 349.

<sup>1</sup>The court also recognized a potential First Amendment claim but noted the defendants would be immune for the same reasoning.