

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

J.G.,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
	:	
Department of Public Welfare,	:	No. 2101 C.D. 2009
Respondent	:	Submitted: May 14, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: June 30, 2010

J.G. (Petitioner) petitions this Court for review of the October 1, 2009 order of the Pennsylvania Department of Public Welfare (DPW) adopting in its entirety the recommendation of the Administrative Law Judge (ALJ) denying Petitioner’s request to expunge an indicated report of child abuse filed against him under Pennsylvania’s Child Protective Services Law (CPSL).<sup>1</sup> The sole issue presented for this Court’s review is whether the evidence adduced at the hearing before the DPW was sufficient to support the indicated report of child abuse. For the reasons that follow, we affirm the DPW’s order.

On December 17, 2008, York County Children and Youth Services (CYS) received an oral report of child abuse, alleging that Petitioner was having nude pictures of A.R., the 12 year old daughter of his girlfriend, L.R., taken by L.R. CYS

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<sup>1</sup> 23 Pa.C.S. §§ 6301-6386.

filed an indicated report of child abuse against Petitioner and L.R. on January 16, 2009. Petitioner timely appealed from the filing of the indicated report. On September 25, 2009, the ALJ recommended that the appeal be denied. On October 1, 2009, the DPW adopted the recommendation of the ALJ in its entirety. Petitioner appealed to this Court.<sup>2</sup>

Petitioner argues that the evidence adduced at the hearing before the DPW was insufficient to support the indicated report of child abuse. Specifically, Petitioner contends there was no evidence to prove the necessary elements of sexual abuse or sexual exploitation required to prove imminent risk of sexual abuse or sexual exploitation. We disagree.

Initially, we note that “in expungement proceedings, the county agency or DPW has the burden of proving by substantial evidence that the alleged perpetrator’s conduct falls within one of the definitions of child abuse set forth in Section 6303(b)(1) of the CPSL.” *C.S. v. Dep’t of Pub. Welfare*, 972 A.2d 1254, 1259 (Pa. Cmwlth. 2009). “For the purpose of an expungement proceeding, substantial evidence is [e]vidence which outweighs inconsistent evidence and which a reasonable person would accept as adequate to support a conclusion.” *Id.* (Quotation marks omitted). Section 6303(b)(1)(iii) of the CPSL, 23 Pa.C.S. § 6303(b)(1)(iii) states the term child abuse shall mean: “Any recent act, failure to act or series of such acts or failures to act by a perpetrator which creates an imminent risk of . . . sexual abuse or sexual exploitation of a child under 18 years of age.” Section 6303(a) of the CPSL, 23 Pa.C.S. § 6303(a) defines sexual abuse or sexual exploitation as:

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<sup>2</sup> Our scope of review in an appeal from a DPW adjudication is limited to a determination of whether constitutional rights were violated, errors of law were committed, or necessary findings of fact were not supported by substantial evidence. *Burroughs v. Dep’t of Pub. Welfare*, 606 A.2d 606 (Pa. Cmwlth. 1992).

(3) Any of the following offenses committed against a child:

- (i) Rape.
- (ii) Sexual assault.
- (iii) Involuntary deviate sexual intercourse.
- (iv) Aggravated indecent assault.
- (v) Molestation.
- (vi) Incest.
- (vii) Indecent exposure.
- (viii) Prostitution.
- (ix) Sexual abuse.
- (x) *Sexual exploitation*.

(Emphasis added). Finally:

To substantiate imminent risk of . . . sexual abuse/exploitation:

- (A) a specific act or failure to act must be documented;
- (B) the act or failure to act must result in risk of abuse; i.e., be supported by substantial evidence that . . . sexual abuse/exploitation would have occurred;
- (C) the risk of abuse must have been imminent;

. . . .

(2) For risk of sexual abuse/exploitation, ‘imminent’ means the specific time frame during which the child was exposed to risk of such abuse.

. . . .

(F) for alleged imminent risk of sexual abuse or sexual exploitation:

- (1) there must be substantial evidence that an action on the part of the alleged perpetrator placed the child at imminent risk of sexual abuse/exploitation; or
- (2) there must be substantial evidence that the alleged perpetrator had known or should have known of the risk of sexual abuse and failed to exercise reasonable judgment in preventing such risk.

*C.K. v. Dep’t of Pub. Welfare*, 869 A.2d 48, 53-54 (Pa. Cmwlth. 2005) (citing proposed regulations in the Office of Children, Youth and Families Bulletin, 3490-95-02).

At the hearing, L.R. testified that Petitioner asked her to take nude photos of A.R., and she did in fact attempt to take the photos but L.R.'s private parts were not visible in said photos. In addition, Detective Donald Hopple testified that he interviewed Petitioner regarding his solicitation of said photos via emails to L.R. and Detective Hopple said Petitioner had admitted to making a request for photos but stated that he did not mean it, and it was only for sexual fantasy. Sherry Arnold, an intake worker for CYS testified that she was at the same interview and remembers Petitioner stating that the request for pictures was for fantasy. Ms. Arnold also testified that she had a conversation with L.R. wherein L.R. admitted taking the requested photos.

The ALJ found that L.R., Detective Hopple, and Ms. Arnold testified credibly. Based on their testimony, the ALJ found that Petitioner had solicited L.R. to take nude photos of her daughter, and L.R. did in fact take the photos. Clearly, this evidence outweighs the inconsistent evidence of Petitioner who denied soliciting the photos, and denied that the emails containing the solicitation were from him even though he admitted the email address was his, and that nobody else had access to his computer. A reasonable person would accept this evidence as adequate to support the conclusion that Petitioner did in fact put A.R. in imminent risk of sexual exploitation. Accordingly, there was substantial evidence to support the indicated report of child abuse.

For all of the above reasons, the order of the DPW is affirmed.

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JOHNNY J. BUTLER, Judge

