

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

J.J.,  
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Petitioner :  
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v. : No. 2480 C.D. 2009  
: Submitted: May 21, 2010  
Department of Public Welfare, :  
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Respondent :  
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BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE FLAHERTY

FILED: August 5, 2010

J.J. petitions for review from a decision of the Department of Public Welfare (DPW) which upheld the order of the Bureau of Hearings and Appeals (Bureau) denying J.J.'s request for expunction of her name from the ChildLine Registry, pursuant to the Child Protective Services Law (Law), 23 Pa. C.S. §§6301-6386. We affirm.

On December 7, 2007, Carbon County Children and Youth Services (CYS) investigated a report of physical abuse committed on Jo.J., who was thirteen years old at the time of the incident, by his mother, J.J. On December 6, 2007, Jo.J. came home from school and heard his parents, J.J. and P.J., arguing. Jo.J. grabbed some clothing and got into a vehicle to leave

with P.J., his father. P.J. accelerated rapidly, as J.J. ran towards the vehicle with a shovel. J.J. hit the car with the shovel twice. P.J. and Jo.J. left.

On December 7, 2007, before school, P.J. and Jo.J. returned to the house. J.J. hid her car because she did not want P.J. to know that she was home. Jo.J. waited in the vehicle while P.J. went into the home. J.J. approached the vehicle in which Jo.J. was sitting and punctured two tires. Jo.J. beeped the horn to alert P.J. of J.J.'s presence. P.J. and J.J. began having a conversation in the driveway. P.J. came back to the vehicle, began to drive forward as J.J. was coming after the vehicle with a knife. J.J. hit the back of the vehicle and ran towards the front and hit a window. P.J. and Jo.J. continued to drive with two flat tires as J.J. was running towards them. J.J. got into her Jeep and proceeded to drive after P.J. and Jo.J. J.J. hit P.J.'s vehicle from behind and P.J.'s vehicle wrecked into a tree.

Upon hitting the tree, the airbags deployed. Jo.J.'s eye was hurt and he was scared and in pain. Jo.J. had to cover his eye and could not blink. Jo.J. had a cut on his right leg which caused severe pain and a burning sensation. Jo.J. had severe neck pain and was transported by ambulance to the hospital. Jo.J. had cuts on his eye, received medication and was required to wear an eyepatch. J.J. admits puncturing the tires. J.J. knew that Jo.J. was in P.J.'s vehicle when she struck it from behind.

The Administrative Law Judge (ALJ) found Jo.J. and P.J.'s testimony credible and J.J.'s testimony not credible. The ALJ stated as follows:

The question is whether or not the actions of the Appellant constituted physical child abuse. The CYS has the burden of proving that the

Appellant's actions resulted in serious bodily injury to Jo.J....

I find that the CYS has met this burden. There is substantial evidence that there was a temporary impairment of Jo.J.'s physical functioning. As previously indicated, Jo.J., after the incident, was transported by ambulance to the hospital, had severe pain in his neck and right leg. In addition, Jo.J. suffered abrasions to his right eye, was required to take medication and wear an eyepatch.

The credible evidence, including the testimony of Jo.J. and P.J. clearly establishes the fact that the Appellant drove her vehicle into the back of the vehicle in which Jo.J. was riding. It is clear that Jo.J. and P.J. were consistent in their testimony as the situation progressed. Jo.J. was consistent when describing the incident during the difficult circumstances while testifying during the hearing.

ALJ decision, at 7-8. The ALJ recommended that the appeal be denied. The Bureau adopted the recommendation of the ALJ in its entirety and denied J.J.'s appeal. J.J. then appealed to the DPW, which upheld the Bureau's order. J.J. now petitions this court for review.<sup>1</sup>

J.J. contends that the ALJ failed to apply the appropriate standard which required a showing that J.J.'s actions were a gross violation of her duty of care and that the evidence presented failed to establish that J.J.'s actions were a gross violation of her duty of care.

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<sup>1</sup> Our review is limited to determining whether constitutional rights have been violated, whether an error of law has been committed and whether the findings of fact are supported by substantial evidence. B.E. v. Department of Public Welfare, 654 A.2d 290 (Pa. Cmwlth. 1995).

Specifically, J.J. contends that the evidence supports the position that the accident on December 7, 2007, was caused by snowy, slippery and icy road conditions. J.J. points out that Jo.J. testified that the road was slippery and covered with snow and ice. J.J. further notes that she was traveling between 20 and 25 miles per hour at the time she struck P.J.'s vehicle. Prior to this incident, J.J. was described as a nurturing parent who never even used corporal punishment. (N.T. at 10-20, 55). J.J. states that following her husband's car at 20 to 25 miles per hour was not unreasonable and that her actions could not reasonably be expected to cause the injuries sustained. Thus, a finding of abuse was not appropriate.

Section 6341 of the Law, entitled Amendment or expunction of information, states in pertinent part as follows:

(a) General rule.- At any time:

(1) The secretary may amend or expunge any record under this chapter upon good cause shown and notice to the appropriate subjects of the report.

(2) Any person named as a perpetrator... in an indicated report of child abuse may...request the secretary to amend or expunge an indicated report on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this chapter.

23 Pa. C.S. §6341. The burden of proof in an expunction hearing is on the agency to show, by substantial evidence, that the indicated report of abuse is accurate. Bucks County Children and Youth Services v. Commonwealth, Department of Public Welfare, 808 A.2d 990 (Pa. Cmwlth. 2002). Substantial evidence is "evidence which outweighs inconsistent evidence

and which a reasonable person would accept as adequate to support a conclusion.” 23 Pa. C.S. §6303(a)(1).

The term “child abuse” is defined in the Law as follows:

(b) Child abuse.-

(1) The term “child abuse” shall mean any of the following:

(i) Any recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

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(iii) Any recent act, failure to act or series of such acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to...a child under 18 years of age.

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(2) No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child’s welfare, such as inadequate housing, furnishings, income, clothing and medical care....

23 Pa. C.S. §6303(b). The county agency bears the burden of proving in an expungement case that the actions of the perpetrator constitute child abuse within the meaning of the statute. B.J.K. v. Department of Public Welfare, 773 A.2d 1271 (Pa. Cmwlth. 2001). This case turns on whether J.J.’s actions in puncturing the tires of P.J.’s car while her son was in the car and then chasing after P.J.’s car, bumping into the car and causing P.J.’s car to

wreck into a tree, constitutes “child abuse” under the definitions set forth above.

J.J. contends that she did not abuse Jo.J. because the car wreck was an accident. The ALJ determined that J.J.’s actions in hitting the back of P.J.’s car was not accidental and such resulted in serious physical injury to Jo.J. The ALJ further determined that J.J.’s actions created an imminent risk of serious physical injury to Jo.J. Although the Law does not define the term “accidental”, in P.R. v. Department of Public Welfare, 569 Pa. 123, 801 A.2d 478 (2002), our Supreme Court addressed the challenge of differentiating between child abuse and accidental injury. If a child’s injury is nonaccidental then it is considered child abuse. To determine whether an injury is nonaccidental, the Court has directed that we apply the criminal negligence standard, which is defined as follows:

A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor’s failure to perceive it, considering the nature and intent of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor’s situation.

Id., at 137-138, 801 A.2d at 487.

In the present controversy, J.J. pursued her husband and Jo.J. over an icy road when they were in a vehicle whose tires she had just deflated with a knife. The ensuing collision was the direct result of her bumping into the back of P.J.’s vehicle and resulted in serious physical injury to Jo.J., her child. Her actions were a gross deviation from the

standard of care a reasonable person would have observed in this situation. A reasonable person would not have punctured the tires knowing her child was inside the car and certainly would not have chased the vehicle, on icy roads, wrecking into the back of it and, thus, causing it to crash into a tree. J.J.'s conduct was a gross deviation from the standard of care objectively expected under the circumstances. Such findings are supported by substantial evidence of record. The DPW did not err in upholding the order of the Bureau.

Accordingly, we must affirm the decision of the DPW.

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JIM FLAHERTY, Senior Judge

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**ORDER**

AND NOW, this 5<sup>th</sup> day of August, 2010 the order of the Department of Public Welfare in the above-captioned matter is hereby affirmed.

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JIM FLAHERTY, Senior Judge