



month-old son, B.W., sustained second degree burns to 15% of his body. C.W. either left B.W. unsupervised or inappropriately supervised by her teenage brother while she went upstairs to get a bottle. B.W. was burned by scalding water from the first floor bathroom sink. On December 17, 2009, CYS prepared and filed an indicated report<sup>1</sup> (CY-48) of child abuse based on physical neglect/lack of supervision. C.W. was named as one of the alleged perpetrators.

C.W. appealed the indicated report to the Bureau.<sup>2</sup> The Bureau held a hearing on August 11, 2010, at which testimony was taken and exhibits were submitted. Following receipt of C.W.'s subsequent conviction for endangering the welfare of a child, which involved the same child and the same incident, the indicated report was amended to a founded report.<sup>3</sup> On November 16, 2010, the ALJ issued on C.W. a rule to show cause why her appeal should not be dismissed.

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<sup>1</sup> Section 6303(a) of the CPSL, *as amended*, 23 Pa. C.S. §6303(a), defines an “indicated report” is as:

A child abuse report made pursuant to this chapter if an investigation by the county agency or the [DPW] determines that substantial evidence of the alleged abuse exists based on any of the following:

- (1) Available medical evidence.
- (2) The child protective service investigation.
- (3) An admission of the acts of abuse by the perpetrator.

<sup>2</sup> The investigative report initially named C.W.'s parents, W.W. and E.W. as additional perpetrators. W.W. and E.W. also appealed the indicated report. The appeal of W.W. and E.W. was granted and the indicated report was expunged.

<sup>3</sup> Section 6303(a) of the CPSL, defines a “founded report” as:

A child abuse report made pursuant to this chapter if there has been any judicial adjudication based on a finding that a child who is a subject of the report has been abused, including the entry of a plea of guilty or nolo contendere or a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegation of child abuse.

C.W. requested that the Bureau stay proceedings pending the outcome of her appeal of the criminal conviction before the Superior Court. The ALJ, relying upon *L.C. v. Department of Public Welfare*, 892 A.2d 1040 (Pa. Cmwlth. 2009), recommended that the Bureau dismiss C.W.'s appeal because a criminal conviction is res judicata until overturned. The Bureau adopted the ALJ's recommendation and dismissed C.W.'s appeal. This appeal followed.

C.W. argues that her request to have the report of child abuse expunged should be granted. She maintains that because she did not receive notice until the day of the hearing that the charges of lack of supervision and physical neglect were deemed to be related to non-accidental injury, her right to due process was violated. C.W. also argues that the Bureau's decision is not supported by substantial evidence.

C.W. asserts that the case at hand is procedurally identical to *R.P. v. Department of Public Welfare*, 820 A.2d 882 (Pa. Cmwlth. 2003). In *R.P.*, the perpetrator argued that her right to due process was violated when the county pursued the case under a theory of neglect, not intentional injury, in an investigation report (CY-48), which alleged that "Child sustained an injury while not being adequately supervised. There is evidence of physical neglect resulting in an injury per CPS law." The perpetrator further asserted that counsel for the county confirmed at the administrative hearing that the county was proceeding on an allegation of neglect and that the caseworker testified that the initial allegation in this case was "lack of supervision resulting in a physical injury." While declining to specifically address the perpetrator's due process claim, the court stated:

Nevertheless, it is too plain for argument that due process requires an express and unequivocal notice in order for a hearing to be meaningful. Said notice was lacking here,

and Petitioner was denied an opportunity for a fair hearing ....

*Id.* at 888.

C.W.'s argument that this case is procedurally identical to *R.P.* and that she was deprived of due process is without merit. The cases are procedurally different as the alleged perpetrator in *R.P.* was not adjudicated guilty of child abuse in criminal court. Unlike in *R.P.*, the amendment of the investigative report from indicated to founded was based upon a criminal conviction rather than the result of administrative finding. Further, C.W. was afforded the opportunity to refute the allegations during the criminal proceeding.<sup>4</sup> The question of due process was rendered moot in this proceeding.

C.W. also argues that the Bureau's decision is not supported by substantial evidence. Bureau's decision to dismiss C.W.'s appeal was based upon C.W.'s conviction for misdemeanor endangerment of the welfare of a child. Section 6303(a) of the CPSL, 23 Pa. C.S. §6303(a), defines "founded report" as a child abuse report made pursuant to any "judicial adjudication" of guilt to a criminal charge involving the same factual circumstances involved in the alleged child abuse. Thus, the Bureau's dismissal of C.W.'s appeal was proper because any

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<sup>4</sup> C.W. argues that the only box checked on the investigative report was lack of supervision under Section 4, Physical Neglect and that there was no indication that the CYS considered this to be a non-accidental injury. The court notes that under Section 4 there is no box for non-accidental injury and that the caseworker checked the most appropriate option. Further, on the second page of the investigative report the case worker stated that the physician opined that the injuries the child sustained were not consistent with the statement of the perpetrator. Additionally, unlike in *R.P.* where the county asserted that it was pursuing an allegation of neglect, counsel for CYS explicitly stated at the hearing: "The event is the same for each of the three alleged perpetrators, and it is a lack of supervision which resulted in an injury to the child which was nonaccidental." Reproduced Record at 89.

reconsideration of the evidence would constitute an impermissible collateral attack upon C.W.'s criminal conviction.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

