IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| DANIEL SPINTZ[1], | § | |
| A minor, by and through his | § | |
| guardian and grandmother, | § | |
| Marie Lee Spintz, | § | No. 378, 2019 |
| | § | |
| Respondent Below, | § | Court Below: Family Court |
| Appellant, | § | of the State of Delaware |
| | § | |
| v. | § | File No. CN18-02618 |
| | § | Petition No. 18-11460 (N) |
| DIVISION OF FAMILY SERVICES, | § | |
| | § | |
| Petitioner Below, | § | |
| Appellee. | § | |

Submitted: February 5, 2020
Decided: May 1, 2020

Before **SEITZ**, Chief Justice; **VALIHURA** and **MONTGOMERY-REEVES**, Justices.

Upon appeal from the Family Court. **AFFIRMED**.

Stephen E. Jenkins, Esquire, (*argued*) Ashby & Geddes, Wilmington, Delaware, *for Respondent-Appellant Daniel Spintz*.

Islanda L. Finamore, Esquire, (*argued*) Department of Justice, Wilmington, Delaware, *for Petitioner-Appellee State of Delaware*.

[1] The Court previously assigned pseudonyms to the parties under Supreme Court Rule 7(d).

**MONTGOMERY-REEVES**, Justice:

This appeal concerns whether the Division of Family Services ("DFS") provided adequate notice of its intent to substantiate and place Appellant Daniel Spintz on the Child Protection Registry.[2]

DFS investigated allegations that Spintz, a minor, sexually assaulted his younger sister. After its investigation, DFS determined to substantiate and place Spintz on the Child Protection Registry. To place a minor on the Child Protection Registry after substantiating an accusation of abuse, DFS must take two steps. First, DFS must send notice of its intent to substantiate the child (hereafter the "Notice of Intent to Substantiate" or "Notice") to both the child and the child's guardian by certified mail. Second, DFS must file a petition for substantiation with the Family Court (hereafter the "Petition for Substantiation" or "Petition").

On November 27, 2017, DFS sent Spintz and his guardian the Notice through certified and regular mail. The certified mail was not successfully delivered and returned to DFS. On April 10, 2018, after the conclusion of parallel delinquency proceedings, DFS filed the Petition with the Family Court. DFS also sent Spintz and his guardian the Petition with a copy of the Notice attached for reference. Spintz claims that he did not receive the Notice mailed in November 2017 and only became

[2] *See* 16 *Del. C.* § 921.

aware of the substantiation proceedings in April 2018 when he received the Notice attached to the Petition.

On September 24, 2018, Spintz moved to dismiss DFS's Petition for Substantiation. First, Spintz argued that Delaware law required DFS to send the Notice to Spintz before it filed the Petition. Second, Spintz argued that the Family Court could not consider mail receipt evidence showing that DFS initially sent the Notice on November 27, 2017. Third, Spintz argued that even if the court considered the evidence of the November 27, 2017 mailing, that evidence also showed that the certified mail was not delivered to Spintz or his guardian; thus, constitutional due process required DFS to provide actual notice to Spintz and his guardian, which DFS did not do until April 10, 2018, after Spintz pled delinquent in parallel delinquency proceedings and after DFS filed the Petition.

The Family Court commissioner denied Spintz's motion, holding that Delaware law does not require DFS to send the Notice before filing the Petition. Further, the commissioner rejected Spintz's arguments that the court should not consider the mail receipt evidence and that DFS's notice violated Spintz's due process rights. Thus, the commissioner concluded that the Notice sent with the Petition on April 10, 2018, satisfied all statutory and constitutional notice requirements. On review, the Family Court affirmed the commissioner's order. Spintz now appeals the Family Court's decisions.

After considering the parties' arguments and the record on appeal, this Court holds that Delaware law requires DFS to send the Notice of Intent to Substantiate before DFS files the Petition for Substantiation. Therefore, DFS did not meet its notice requirement by sending the Notice with the already-filed Petition. That, however, does not change the ultimate outcome of this appeal because DFS introduced evidence showing that it sent the Notice by certified mail on November 27, 2017, long before it filed the Petition. DFS also sent the Notice by regular mail at that time; and it sent the Notice a second time on April 10, 2018, which Spintz received. Based on this evidence, this Court concludes that DFS provided adequate notice that satisfied statutory and constitutional requirements.

Thus, this Court affirms the Family Court's holding on the alternative basis discussed more fully in this Opinion.

## I. BACKGROUND

In November 2017, Daniel Spintz, who was then 16, was accused of sexually assaulting his younger sister.[3] DFS opened an independent investigation into the alleged conduct, confirmed the assault allegations, and sought to substantiate[4] and place Spintz on the Child Protection Registry.[5] On November 27, 2017, DFS sent

[3] App. to Opening Br. 35 ("A__" hereafter).
[4] 16 *Del. C.* § 902(31) ("'Substantiation' means a finding by a preponderance of the evidence that abuse or neglect has occurred.").
[5] A5.

its Notice of Intent to Substantiate to Spintz and his guardian by certified and regular mail.[6] Receipts produced by DFS indicate that the postal service returned the certified letters as undelivered because the intended recipients were not present to sign for them.[7]

In November 2017, the State initiated parallel delinquency proceedings and charged Spintz with four counts of Second Degree Rape for the same conduct that was the focus of the DFS investigation.[8] The DFS substantiation proceedings were stayed during the course of the parallel delinquency proceedings.[9] On April 9, 2018, Spintz pled delinquent of the lesser-included offense of Fourth Degree Rape.[10]

### A. The Petition for Substantiation

On April 10, 2018, following Spintz's adjudication of delinquency in the parallel proceedings, DFS resumed the substantiation proceedings and filed the Petition for Substantiation with the Family Court to place Spintz on the Child Protection Registry.[11] The same day, DFS also mailed a copy of the Petition to Spintz and attached a copy of the Notice that it originally sent on November 27,

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[6] A110-11.
[7] *Id.*
[8] A1-6.
[9] *See* 16 *Del. C.* § 927 ("Proceedings under §§ 925 and 925A of this title, including the duty to file a Petition for Substantiation, are automatically stayed in any matter in which a criminal or delinquency proceeding involving the same incident of abuse or neglect is pending.").
[10] A8, 11.
[11] A7.

2017.[12] On July 31, 2018, DFS filed a motion for automatic placement, arguing that that Spintz's adjudication of delinquency for Fourth Degree Rape provided sufficient evidence of abuse to place Spintz on the Child Protection Registry without an evidentiary hearing.[13]

On July 13, 2018, the Family Court set Spintz's first Call of the Calendar for September 18, 2018, and appointed counsel to represent him.[14] On August 1, 2018, Spintz's counsel requested discovery from DFS regarding the substantiation and the delinquency adjudication.[15] On September 10, 2018, in partial response to defense counsel's request, DFS produced its "facts notes" related to the Spintz matter.[16]

### B. The September 18, 2018 Call of the Calendar

On September 18, 2018, the Family Court held a Call of the Calendar to address DFS's motion for automatic placement.[17] At that hearing, the parties' discussion focused on whether the incident in the Petition for Substantiation was the

[12] A8-24.
[13] A24-40. Parallel delinquency adjudications may be dispositive of substantiation proceedings involving the same incident. Under 16 *Del. C.* § 927(b), a "[c]onviction of a crime involving the same incident of abuse or neglect is final, binding and determinative of the issue of abuse or neglect and of the person's entry on the Registry at the Child Protection Level designated for such offense."
[14] A23. Counsel was appointed in compliance with 16 *Del. C.* § 925(d), which states that "[t]he Family Court shall appoint counsel for any unrepresented child against whom a Petition for Substantiation has been filed."
[15] A41-46.
[16] A70.
[17] A74-86.

same incident that resulted in Spintz's adjudication of delinquency.[18] Spintz's counsel asked the Family Court commissioner to order additional discovery so that he could "know the facts of the case before [being] forced to contest the motion [for automatic placement]."[19]

DFS responded that it had already given Spintz's counsel all "facts notes related to this incident" and that it was "unclear as to what else [DFS could] provide, given that this is an automatic placement by statute."[20] DFS insisted that it was "at a loss" as to what additional evidence would inform Spintz's adjudication of delinquency but stated that it was "willing to provide anything else that's needed."[21] Ultimately DFS agreed to rest on the materials attached to its motion to support automatic placement.[22] Satisfied that DFS was willing to stand on the evidence attached in its motion, the presiding Family Court commissioner denied defense counsel's request for additional discovery and granted the parties a week to brief whether there was a statutory basis to automatically place Spintz on the Child Protection Registry.[23]

[18] *Id.*
[19] A75-76.
[20] A78, 81-82.
[21] A81, 83.
[22] A85.
[23] A82-86.

### C. Spintz's Motion to Dismiss the Petition Based on Inadequate Notice

On September 24, 2018, Spintz filed his response to the DFS motion for automatic placement.[24] In it, Spintz argued, for the first time, that DFS "failed to prove it provided [adequate] notice."[25] Specifically, Spintz stated that 16 *Del. C.* § 924 required DFS to send the Notice before filing the Petition, and there was no evidence in the record that DFS sent the Notice until April 10, 2018, after DFS filed the Petition.[26] On September 28, 2018, DFS responded to this new argument by producing two certified mail receipts showing that it first sent the Notice on November 27, 2017, months before DFS filed the Petition.[27] To address the newly raised issue of whether DFS satisfied its statutory notice requirements, the Family Court treated Spintz's response as a motion to dismiss the Petition for Substantiation and requested briefing.[28]

On March 29, 2019, after considering the parties' supplemental briefs on the notice issue, the Family Court commissioner denied Spintz's motion to dismiss and granted DFS's motion for automatic placement, holding that the Notice DFS sent on April 10, 2018, was sufficient.[29] On May 9, 2019, the Family Court issued an

[24] A88-95.
[25] *Id.*
[26] *Id.*
[27] A105-11.
[28] A123.
[29] Opening Br. Ex. B.

opinion affirming the commissioner's order and placing Spintz on the Child Protection Registry at Level IV.[30]

On August 26, 2019, Spintz filed a notice of appeal, arguing that the Family Court erred in holding that DFS provided adequate notice and by relying on DFS's mail receipts.

## II. STANDARD OF REVIEW

This Court reviews a trial court's statutory interpretation and legal conclusions *de novo* "to determine whether a trial court erred as a matter of law in formulating and applying legal precepts."[31] If the trial court "correctly applied the law, our review is limited to abuse of discretion."[32] "To the extent that the issues on appeal implicate [findings] of fact, we conduct a limited review of the factual findings of the trial court to assure that they are sufficiently supported by the record and are not clearly wrong."[33]

## III. ANALYSIS

To resolve this appeal, this Court must answer three questions. First, does Delaware law require DFS to send the Notice before it files the Petition? Second,

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[30] *Id.* Ex. A.
[31] *Smith v. Guest*, 16 A.3d 920, 933-36 (Del. 2011) (quoting *Wilson v. Sico*, 713 A.2d 923, 924 (Del. 1998)).
[32] *Hall v. Div. of Family Servs.*, 2013 WL 434134, at *1 (Del. Feb. 4, 2013).
[33] *Id.* (citing *Powell v. Dep't of Servs. for Children, Youth & Their Families*, 963 A.2d 724, 731 (Del. 2008)).

did the Family Court err when it considered evidence that DFS sent the Notice before filing the Petition? Third, and finally, did DFS's notice violate Spintz's constitutional due process rights? For the reasons that follow, the answer to the first question is "yes" and the answer to each of the latter questions is "no."

### A. DFS Must Provide Notice of Intent to Substantiate Before Filing the Petition to Substantiate

Spintz argues that the Family Court misinterpreted 16 *Del. C.* § 924 when it held that DFS could send the Notice of Intent to Substantiate after it filed the Petition for Substantiation.[34] Instead, Spintz argues that "DFS is required by 16 *Del. C.* § 924 to provide . . . Notice of its Intent to Substantiate to a minor *before* it files a Petition to Substantiate."[35]

#### 1. The parties agree that the Notice must be sent before the Petition is filed

On appeal, DFS appears to agree with Spintz and concedes that Section 924 requires that the Notice be mailed by certified mail before the Petition is filed. DFS titled a section of its argument "Section 925(a) Suggests that the Petition Be Filed After The Notice."[36] Within that section, DFS acknowledges that "[t]he Delaware Code requires that the Petition for Substantiation be filed 'no later than 45 days after the Notice of Intent to Substantiate *was sent* to the child," adding emphasis to "was

[34] Opening Br. 14.
[35] *Id.*
[36] Answering Br. 10.

sent."[37] DFS further argues in its answering brief that "[h]ere, the statute is not ambiguous. The statute requires that Notice of Intent to Substantiate be sent by certified mail to the minor's last known address and *thereafter* that the Division file its Petition for Substantiation."[38] Finally, at oral argument, DFS maintained that it must send the Notice before it can file the Petition:

> **Ms. Finamore:** So with regard to minors, I think that notice letter serves more just as a trigger at this point for the petition to be filed. So it could be sent the first day and then it comes to our office to file the petition and it could be sent on day 1 to the respondent by certified mail, and then it comes to our office. And if we're thoroughly efficient, we could get the petition out that next day. It usually takes some time. We have the 45 days, and so we do file it within those 45 days. But I think the notice letter at this point for minors specifically -- obviously, adults have a different issue with the notice letter, but for minors, I really think it's a trigger to the petition being filed. It says that, "Hey, the Division is closing their case and they're making a finding and we need a petition to be filed so that we can proceed in Family Court," because that notice letter does not put the minor on the registry. It does not result in placement until such time as the hearing occurs in Family Court and the order's issued. . . . ***I think it has to go out by certified mail and following the certified mail, it results in the petition being filed.***
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> **The Court:** . . . Is it still your position that the notice does not have to go to the minor before the petition is filed?
>
> **Ms. Finamore:** I'm sorry, maybe I'm misunderstanding. ***I think the notice letter, it does have to be mailed prior to the petition being filed, so it goes out in the mail certified mail. And at that point, after it has***

[37] *Id.*

[38] *Id.* (emphasis added).

> ***been mailed by certified mail, then the petition can be filed.***[39]

Thus, both parties to this appeal agree that Section 924 requires DFS to provide the Notice of Intent to Substantiate before it can file the Petition for Substantiation. While the parties agree that DFS must send the Notice first, their agreed-upon interpretation of the statute conflicts with the Family Court's interpretation of the statute.

### 2. The Family Court held that DFS did not need to send the Notice before the filing the Petition

After reviewing Section 924, the Family Court held that the statutory language unambiguously "places no time requirement on providing Notice of Intent to Substantiate."[40] Based on that reading, the Family Court commissioner's March 29, 2019 order held that "the 'Notice' [was] attached to DFS's Petition to Substantiate, and thus provided Respondent with any statutory requirement for the Notice."[41]

The Family Court's August 5, 2019 opinion affirmed the commissioner's order, stating that "[a]s counterintuitive as it may seem, Notice of Intent to Substantiate is not required in advance [of filing the Petition to Substantiate]. . . . As

[39] Oral Arg. Tr. 24-26 (emphasis added).
[40] Opening Br. Ex. A, at 11.
[41] Opening Br. Ex. B, at 3.

such, nothing in 16 *Del. C.* § 924 prohibits DFS from providing Notice at the same time the Petition for substantiation is filed."[42]

Therefore, as the parties' interpretation of the notice requirement differs from the Family Court's, we must first resolve what the statute requires before turning to the adequacy of the Notice.

### 3. The Child Protection Registry Statute requires DFS to send the Notice before filing the Petition

"The rules of statutory construction are well settled. They are 'designed to ascertain and give effect to the intent of the legislators, as expressed in the statute.'"[43] When interpreting a statute, the Court must first "determine whether the statute is ambiguous, because if it is not, then 'the plain meaning of the statutory language controls.'"[44] "When the language and intent of a statute are clear, no ambiguity exists and the Court will not engage in construing or interpreting the statute."[45] If, however, "a statute is reasonably susceptible of different conclusions or interpretations, it is ambiguous."[46] When statutory language is ambiguous, courts turn to the rules of statutory construction, and "each part or section [of the statute]

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[42] Opening Br. Ex. A, at 10-11.
[43] *Dewey Beach Enters., Inc. v. Bd. of Adjustment of Town of Dewey Beach*, 1 A.3d 305, 307 (Del. 2010).
[44] *Chase Alexa, LLC v. Kent Cty. Levy Ct.*, 991 A.2d 1148, 1151 (Del. 2010) (citations omitted).
[45] *Newtowne Village Serv. Corp. v. Newtowne Rd. Dev. Co., Inc.*, 772 A.2d 172, 175-76 (Del. 2001).
[46] *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1246 (Del. 1985) (citations omitted).

should be read in light of every other part or section to produce an [sic] harmonious whole."[47] "Courts should also ascribe a purpose to the General Assembly's use of statutory language, and avoid construing it as surplusage, if reasonably possible."[48]

Title 16, Chapter 9, Subchapter II of the Delaware Code (hereafter the "Child Protection Registry Statute" or "the Statute") requires DFS to maintain the Child Protection Registry, which "contains information about persons who have been substantiated for abuse or neglect" of children.[49] The Statute states that "[t]he primary purpose of the Child Protection Registry is to protect children and to ensure the safety of children in child care, health care and public educational facilities."[50] Further, the Statute requires that "[t]his [Child Protection Registry] subchapter must be liberally construed so that these purposes may be realized."[51]

When DFS determines to substantiate a child for abuse and enter the child on the Child Protection Registry, DFS must send a Notice of Intent to Substantiate and file a Petition for Substantiation before the child may be entered on the Registry. Section 924(a)(3) governs the notice DFS must send to a child:

> If the Division determines from its investigation that it intends to substantiate a child and enter the child on the Child Protection Registry, ***it shall give written notice to the child and the child's parent, guardian, and legal***

[47] *Id.* at 1245.
[48] *In re Krafft-Murphy Co., Inc.*, 82 A.3d 696 (Del. 2013) (citations omitted).
[49] 16 *Del. C.* § 921.
[50] *Id.*
[51] *Id.*

> ***custodian by certified mail, return receipt requested, at the child's last known address***. The written notice must:
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> (a) Briefly describe the alleged incident of abuse or neglect;
>
> (b) Advise the child that the Division intends to substantiate the allegations and enter the child on the Child Protection Registry for the incident of abuse or neglect at a designated Child Protection Level;
>
> (c) State the consequences of being entered on the Registry at the designated level, including whether the child will be reported as substantiated for abuse or neglect in response to a Child Protection Registry check made pursuant to Chapter 85 of Title 11 or Chapter 3 of Title 31;
>
> (d) Inform the child that a hearing will be held in the Family Court before the child is entered on the Child Protection Registry;
>
> (e) Provide notice to the child's guardian ad litem or attorney if the child is in DSCYF custody.[52]

Section 925(a) requires DFS to file the Petition for Substantiation with the Family Court "no later than 45 days after the notice of intent to substantiate was sent to the child."[53] Once DFS files the Petition, the Family Court schedules a substantiation hearing where the child and the child's counsel may appear and contest the child's placement on the Child Protection Registry.[54]

We agree with the Family Court that the Child Protection Registry Statute's plain language lacks any specific timing requirement for providing the Notice to a child. Since Section 924's language is silent on whether the Notice must be sent

[52] *Id.* § 924(3) (emphasis added).
[53] *Id.* § 925(a).
[54] *Id.* §§ 924, 925.

before the Petition, the Family Court reasonably concluded that the Statute did not affirmatively require Notice to be sent first. But, we do not think the analysis can stop there because Spintz's contrary interpretation is also reasonable. Spintz argues that the absence of affirmative language in Section 924 reveals an ambiguity in the Statute and that the text and the statutory scheme implicitly require that the Notice be sent before the Petition. Thus, as there are two reasonable competing interpretations of the same statutory language, this Court interprets the notice requirement in context with the entire Statute to resolve this ambiguity.[55]

Here, the text and overall scheme of the Child Protection Registry Statute show that the General Assembly intended that DFS send the Notice before filing the Petition. First, Section 924's use of the word "notice" indicates that the Notice should precede the Petition.[56] While Section 924 details what DFS must include in the Notice, it does not define the word "notice."[57] Therefore, we assign "notice" its plain meaning and turn to dictionary definitions for guidance.[58] Black's Law Dictionary defines notice as "[a] legal notification or warning that is delivered in a

[55] *Dewey Beach Enters., Inc.*, 1 A.3d at 307-08.
[56] 16 *Del. C.* § 924(a)(3).
[57] *See id.* § 902 (omitting any definition for "notice").
[58] 1 *Del. C.* § 303 ("Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the English language."); *see also Pennewell v. State*, 977 A.2d 800, 801 (Del. 2009).

written format or through a formal announcement."[59] Likewise, Merriam-Webster defines notice as "warning or intimation of something,"[60] and Oxford defines notice as "[n]otification or warning of something, especially to allow preparations to be made."[61] As Spintz correctly points out, "one would expect that if a statute requires a government agency to give notice of an intent to do something, then that notice should come, in advance, of the thing it intends to do."[62] To effectively serve as an advance "warning" of DFS's intent to substantiate, the Notice must precede the Petition for Substantiation.

Second, Section 925, which governs how DFS files the Petition for Substantiation, states that DFS must file the Petition "no later than 45 days ***after*** the notice of intent to substantiate ***was sent*** to the child."[63] By conditioning the time limit to file the Petition on when DFS first sends the Notice, the General Assembly appears to have contemplated that the Notice would precede the Petition. By contrast, if DFS were permitted to file the Petition before it sent Notice, then Section

[59] *Notice*, BLACK'S LAW DICTIONARY, https://thelawdictionary.org/notice-2/ (last visited Apr. 19, 2020).
[60] *Notice*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/notice (last visited Mar. 19, 2020).
[61] *Notice*, LEXICO, https://www.lexico.com/en/definition/notice. (last visited Mar. 19, 2020).
[62] Opening Br. 15.
[63] 16 *Del. C.* § 925(a)(2) (emphasis added).

925's 45-day time limit would be largely superfluous. Thus, Section 925 evidences an overall statutory scheme that requires the Notice to come before the Petition.

Third, and finally, comparing the Statute's treatment of children with its treatment of adults also supports this Court's conclusion that the Notice must precede the Petition. Section 924(a)(2) governs the Notice that must be provided to adults, and it contains nearly identical language to that in 924(a)(3) concerning children.[64] There is only one major difference between Section 924's treatment of an adult and a child; an adult, unlike a child, must request a hearing. If the adult responds to the Notice and requests a hearing within 30 days, DFS must then file a Petition to Substantiate.[65] If the adult fails to request a hearing within 30 days, the adult forfeits the right to a hearing and is automatically placed on the Child Protection Registry according to the designation level in the Notice.[66] Therefore, because DFS's obligation to file the Petition is contingent on the adult's response to

[64] *Compare* 16 *Del. C.* § 924(a)(2) *with* 16 *Del. C.* § 924(a)(3). Whether DFS seeks to substantiate an adult or a child, both subsections require DFS to inform the individual that it intends to substantiate them, to state the consequences of being placed on the Child Protection Registry, and to send the Notice to the individual's last known address by certified mail. *Id.*

[65] 16 *Del. C.* § 925(a).

[66] *Id.* § 924(b) ("A person, other than a child, who fails to request a hearing as provided in subsection (a) of this section must, at the expiration of 30 days from the date of mailing of the notice of intent to substantiate the allegations of abuse or neglect and enter the person on the Registry, be entered on the Child Protection Registry at the Child Protection Level designated in the notice.").

the Notice, Section 924(a)(2) requires DFS to send the Notice to adults before it files the Petition.

A child is always entitled to a substantiation hearing and does not need to request that DFS file the Petition. Therefore, since the child's response does not "trigger" DFS's obligation to file the Petition, the requirement in the adult provision (that DFS send the Notice first) arguably is not present in the provision for children. However, the Statute as a whole consistently provides more process for a child, not less. For example, in addition to being guaranteed a hearing, a child's guardian must also receive Notice and a child in substantiation proceedings also has a statutory right to appointed counsel that is not afforded to adults.[67] By removing the procedural hurdle of requiring a response to the Notice, it appears to this Court that the General Assembly intended only to afford a child an extra procedural safeguard. It would be unreasonable to hold that, by attempting to provide more process to children in substantiation proceedings, the General Assembly inadvertently stripped children of the right to advance notice relating to those very proceedings.[68] Thus, the fact that Section 924 requires the Notice to be sent to adults before the Petition

[67] *Id.* §§ 924, 925.

[68] *See Coastal Barge Corp.*, 492 A.2d at 1247 (citations omitted) ("The golden rule of statutory interpretation . . . is that unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result.").

reinforces this Court's conclusion that the Statute requires at least the same level of process for children.

Construing the Statute's text in context with the statutory scheme, this Court agrees with the parties and holds that Section 924 requires DFS to send a child the Notice of Intent to Substantiate by certified mail before it may file the Petition for Substantiation.[69] Therefore, the Family Court erred in holding that DFS satisfied Section 924 when it sent Spintz a copy of the Notice attached to the already-filed Petition on April 10, 2018.

### B. The Family Court did not Err by Considering Evidence that DFS Mailed the Notice Before Filing the Petition

Having determined that the Notice sent on April 10, 2018, did not satisfy DFS's statutory notice requirements, we now turn to whether the court properly considered additional evidence showing that DFS in fact sent the Notice before filing the Petition. On September 28, 2018, DFS introduced two mail receipts showing that it first mailed the Notice to Spintz and his guardian by certified mail on November 27, 2017, months before DFS filed the Petition for Substantiation in April

[69] This Court's interpretation is further bolstered by DFS's own representations to this Court concerning its common practice of sending the Notice before the Petition. *See Public Water Supply Co. v. DiPasquale*, 735 A.2d 378, 382 n.8 (Del. 1999) ("[W]here an agency interpretation is longstanding and widely enforced, a reviewing court would ordinarily accord greater weight to the underlying agency interpretation of the statute in determining, for itself, the optimal interpretation.").

2018.[70] The Family Court considered the mail receipts as relevant, admissible evidence and referenced the November 2017 attempt to send notice by certified mail in its decisions.[71]

Spintz argues the Family Court erred when it considered the two mail receipts.[72] He claims that, at the Call of the Calendar on September 18, 2018, DFS waived its right to submit any further evidence and was barred from introducing the mail receipts after that date.[73] Specifically, Spintz contends that at the Call of the Calendar "Mr. Spintz agreed not to pursue discovery and in return DFS agreed to stand on the record it had already established—a record that did not show any attempt to serve the Notice of Intent to Substantiate until the Petition was filed in April 2018."[74] Therefore, Spintz argues that DFS violated the parties' agreement by introducing the mail receipts ten days after agreeing to submit no further evidence.[75]

DFS denies that it waived its right to introduce the mail receipts.[76] It argues that the receipts addressed a new issue that Spintz did not raise until briefing on September 24, 2018, a week after the Call of the Calendar agreement to stand on the

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[70] A110-11.
[71] Opening Br. Ex. A, at 12; *Id.* Ex. B, at 3. Since the Family Court ultimately based its decision on the Notice in April 2018, the court did not rely on the Notice in November 2017 to reach its conclusions. *Id.*
[72] Opening Br. 4, 32-35.
[73] *Id.*
[74] *Id.* at 33.
[75] *Id.* at 4, 32-35.
[76] Answering Br. 3, 17-21.

record. Therefore, DFS argues that the mail receipts were outside the scope of the parties' agreement and the Family Court properly considered them as additional evidence.[77]

Here, the Family Court properly considered the mail receipts because it is clear that DFS never agreed to waive its right to respond to Spintz's notice argument.

On September 18, 2018, the parties met for the first Call of Calendar to discuss Spintz's substantiation and DFS's motion for automatic placement.[78] A person qualifies for automatic placement on the Child Protection Registry when DFS can substantiate that an incident of abuse resulting in a conviction is "based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate . . . ."[79] At the Call of the Calendar, Spintz's counsel sought additional discovery from DFS to address whether Spintz's adjudication of delinquency for Fourth Degree Rape concerned the same incident of abuse as the Notice and the Petition.[80] DFS responded that it had provided Spintz all the proof necessary to show that the proceedings concerned the same incident and stated that it was "at a loss as to what

[77] *Id.*
[78] A74-86.
[79] 16 *Del. C.* § 923(b)(4); *see also id.* § 927(b).
[80] A78.

[it] need[ed] to still provide."[81] Still, DFS represented to the Court that it was "willing to provide anything else that's needed."[82]

After the Family Court commissioner expressed reluctance to ordering more discovery, Spintz's counsel proposed that "if the State rests with their motion and says they've got everything in the motion that they want the Court to have, then I would like an opportunity . . . to brief that, whether they set forth a statutory basis [for automatic placement]."[83] Since Spintz's counsel did not identify anything missing from the evidence already provided, DFS agreed to stand on its motion in exchange for providing no further discovery on the motion.[84] The Family Court commissioner accepted the parties' agreement, denied Spintz's discovery request, and gave the parties "one week to respond to the Motion for Automatic Placement."[85]

Six days later, Spintz filed his answer to the motion for automatic placement and raised a new issue concerning the Notice.[86] In his answer, Spintz argued for the first time that the record lacked any evidence that DFS made an "attempt to prove that it followed the statutory mandate and sent the notices by certified mail, return

[81] A80-83.
[82] *Id.*
[83] A81.
[84] A84-85.
[85] A86.
[86] A88-95.

receipt requested, or in fact sent the notices at all."[87] On September 18, 2018, DFS responded by providing two receipts showing that DFS had sent the Notice via certified mail to Spintz and his guardian on November 27, 2017.[88] Though the mail receipts directly rebutted Spintz's claim that DFS did not send notice, Spintz argues that the parties' agreement at the Call of the Calendar prevented DFS from responding with any new evidence to address his after-the-fact notice argument. Spintz is incorrect.

While Spintz characterizes the parties' agreement as a broad waiver preventing DFS from submitting any additional evidence, the agreement was actually much more limited. A review of the transcript confirms that DFS only agreed to rest on its evidence showing that the delinquency and substantiation proceedings involved the same incident of abuse. The discussion at the Call of the Calendar revolved entirely around whether the incidents were the same, and the parties never discussed or appeared to consider any other topic when reaching their agreement. At no point before or during the Call of the Calendar did Spintz ever mention the adequacy of the Notice or challenge any aspect of the Petition for Substantiation.[89] DFS never had any reason to believe that notice was contested.

[87] A91.
[88] A110-11.
[89] A74-86.

Therefore, it never agreed to limit its ability to respond to Spintz's argument, which was outside the scope of the parties' discussion of the motion.

As DFS did not waive its right to introduce the certified mail receipts on September 28, 2019, this Court concludes that the Family Court did not err when it considered those receipts as evidence.[90]

Further, the certified mail receipts show that DFS sent the Notice, return receipt requested, to Spintz and his guardian at their last known addresses on November 27, 2017.[91] Therefore, the receipts show that DFS sent the Notice, as required by the Statute, before filing the Petition for Substantiation, which was not filed until April 10, 2018.

### C. DFS's Notice Satisfied Constitutional Due Process

Finally, the parties' primary dispute concerns whether DFS satisfied due process and made adequate attempts to ensure that Spintz actually received the Notice.[92]

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[90] Opening Br. 33.

[91] A110-11.

[92] At times throughout his briefs, Spintz appears to argue that Delaware law may also require DFS to provide actual notice. *See e.g.*, Reply Br. 1 ("In his opening brief, Mr. Spintz argued that under the canons of statutory construction and established United States Supreme Court case law on when actual notice is required, DFS was required to provide him with actual notice of its intent to substantiate before the Petition was filed."). However, a close review of Spintz's briefs reveals that his argument actually has two separate parts. First, Spintz argues that "the statutory text contains strong inferences that the Notice must be sent out promptly, and certainly before the Petition for Substantiation is served and filed." *Id.* at 8. Second, he argues that because DFS knew its certified mail was not delivered, it was "constitutionally required [by due process] to use its unique information

While Spintz concedes that the certified mail receipts "prove that DFS followed the statute and sent out notice by Certified Mail, they also prove neither Mr. Spintz nor his Guardian received them."[93] Spintz argues that "[s]tatutory Notice is not much good if there is no real attempt to make sure that [the] intended recipients receive the notice" and that due process required DFS to take additional steps to provide notice when it knew its first attempt failed.[94] Further, Spintz argues that since DFS did not attempt to provide actual notice before he entered his delinquency plea agreement, Spintz was denied due process in those proceedings because he did not know "that a plea of the criminal case would almost certainly result in his name being placed on the [Child Protection] Registry."[95]

DFS responds that it provided notice consistent with its due process obligations and asserts that, in this case, it did make additional efforts to ensure Spintz received the Notice.[96] Further, DFS argues that it had no obligation to inform

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on the Spintz's to try and get the Notice to them." Opening Br. 29-30. Thus, Spintz argues that the Statute requires the Notice to be sent before the Petition and that due process separately requires actual notice. *Id.* at 26-27 ("If the Court, however, finds Mr. Spintz's first argument to be correct and that a proper reading of the statute requires DFS to attempt to provide prompt notice, then the next issue is whether the notice provided by DFS met applicable [due process] standards.").

[93] Opening Br. 28.

[94] *Id.* at 28-31.

[95] *Id.* at 31. While the parties sometimes refer to Spintz's delinquency proceedings in their briefs as "criminal" proceedings, Spintz is a minor and "a Family Court adjudication of delinquency is a civil proceeding." *G.D. v. State*, 389 A.2d 764, 765 (Del. 1978); *see also Cannon v. State*, 181 A.3d 615, 617 (Del. 2018).

[96] Answering Br. 3, 14-16.

Spintz of the collateral consequences of entering a plea agreement in his delinquency proceedings and that the duty to inform Spintz of those consequences fell on the "attorney . . . appointed to him and . . . the Court [that] reviewed the plea agreement."[97]

For the reasons that follow, this Court agrees with DFS and holds that DFS's notice satisfied constitutional due process.

### 1. DFS provided Spintz with constitutional notice before any deprivation

Spintz concedes that the Child Protection Registry Statute does not require DFS to attempt actual notice, but he says such an attempt nonetheless was required here. Pointing to the United States Supreme Court's decision in *Jones v. Flowers*, [98] Spintz argues that, once DFS became aware that its certified mail was unsuccessful, due process obligated DFS to take additional steps to provide notice.[99]

When alerting someone of a potential deprivation of their rights, due process requires "the government to provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'"[100] In *Jones*, the United States

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[97] *Id.*
[98] 547 U.S. 220 (2006).
[99] Opening Br. 29-31.
[100] *Jones*, 547 U.S. at 226 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

Supreme Court considered what due process requires "when the government becomes aware prior to [a] taking that its attempt at notice has failed."[101] In that case, the Arkansas Commissioner of State Lands sent notice of a tax sale via certified mail to Jones, whose taxes were overdue.[102] The certified mail was returned to the Commissioner as "unclaimed."[103] The State Lands office followed up with a newspaper advertisement and then sold Jones's house as part of a tax sale.[104] The United States Supreme Court held that the Commissioner's attempt at notice violated due process and ruled that "[w]hen mailed notice of a tax sale is returned unclaimed, a State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so."[105]

The Court reasoned that, while actual notice was not required, "there were several reasonable steps the State could have taken" to notify Jones once it knew that Jones did not receive the certified mail.[106] For instance, the Commissioner could have posted the notice to Jones's door or could have resent the notice via regular mail.[107] As the State took neither of those steps, the Court held that "[t]he

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[101] *Id.*
[102] *Id.* at 220.
[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.* at 234-235.
[107] *Id.* at 235.

Commissioner's effort to provide notice to Jones of an impending tax sale of his house was insufficient to satisfy due process given the circumstances of this case."[108]

Here, assuming *arguendo* that the standard used in *Jones* to assess the taking of real property in a tax sale extends to the substantiation proceedings in this case, DFS satisfied that standard. First, DFS took "additional reasonable steps" to ensure Spintz received notice consistent with the holding in *Jones*. DFS represented that, along with certified mail, it also sent copies of the Notice via regular mail to both Spintz and his guardian that were never returned.[109] Jones specifically held that "[o]ne reasonable step . . . would be for the State to resend the notice by regular mail, so that a signature was not required."[110] Therefore, by sending copies of the Notice by regular mail like the Court suggested in *Jones*, DFS demonstrated a reasonable added attempt to ensure that Spintz was aware of the substantiation proceedings.

Second, unlike in *Jones* where the State did not notify Jones of the tax sale "before selling his property,"[111] here DFS successfully provided Spintz with actual notice of the substantiation proceedings before Spintz suffered any deprivation. Under *Jones*, due process requires the government to make reasonable attempts to provide notice "*prior to [a] taking*."[112] Here, Spintz's placement on the Child

[108] *Id.* at 239.
[109] Oral Arg. 18; A159.
[110] 547 U.S. at 234.
[111] *Id*. at 220.
[112] *Id.* (emphasis added).

Protection Registry is analogous to the property sale, or "taking," in *Jones*.[113] Therefore, due process required DFS to attempt to provide Spintz with actual notice before the Family Court placed him on the Registry. Under the Child Protection Registry Statute, the Family Court could not place Spintz on the Registry until the hearing.[114] Therefore, none of Spintz's liberty interests could be adversely affected prior to his hearing. It is uncontested that Spintz received actual notice of DFS's intent to substantiate him by April 10, 2018, when DFS sent the Notice together with the Petition. As such, in this case, Spintz received actual notice long before his deprivation, his first Call of the Calendar on September 18, 2018, or his placement on the Child Protection Registry on May 9, 2019.

Thus, Spintz suffered no deprivation of due process, and DFS's notice was constitutionally adequate.

### 2. DFS has no obligations in connection with Spintz's delinquency proceedings

Despite receiving actual notice before his substantiation proceedings, Spintz argues that he suffered an additional deprivation entirely separate from his placement on the Child Protection Registry. Namely, he argues that he was deprived

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[113] Instead of depriving Spintz of property, Spintz argues that placement on the Child Protection Registry invokes due process by implicating his liberty interests. Opening Br. 24 (citing *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971) ("Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and the opportunity to be heard are essential.")).

[114] 16 *Del. C.* § 924.

of due process in his parallel delinquency proceedings because he did not receive the Notice before he entered the plea agreement in his delinquency case on April 9, 2018.[115] Because a guilty or delinquent plea to rape in criminal or delinquency proceedings qualifies offenders for automatic placement on the Child Protection Registry, Spintz argues that he needed to receive the Notice from DFS first in order to fully understand the consequences of the agreement.[116]

Spintz's argument concerning his plea agreement fails because it is premised on incorrect statements of both law and fact. First, DFS did not owe any constitutional duty to provide Spintz the Notice of Intent to Substantiate in relation to the delinquency proceedings. The Notice, and the substantiation process as a whole, are proceedings that are entirely separate from the State's pursuit of criminal or delinquency adjudications. While DFS does rely on final judgments in criminal and delinquency proceedings to substantiate individuals, that reliance does not extend a duty to DFS to provide notice in those parallel proceedings.[117] Thus, DFS simply had no obligation to notify Spintz that his plea could result in his placement on the Child Protection Registry.

Second, contrary to Spintz's assertions in briefing, the record shows that the Family Court did in fact inform Spintz of the potential consequences of entering the

[115] Opening Br. 26-31.
[116] *Id.*
[117] 16 *Del. C.* §§ 923, 927.

plea, including the possibility that he would be placed on the Child Protection Registry. Before Spintz entered his delinquency plea, the Family Court presented Spintz a plea colloquy form.[118] On that form, Spintz represented that he freely and voluntarily entered the plea agreement, that no one forced him to enter the plea, and that he understood he waived certain constitutional rights by entering the plea.[119] The form also asked, "[i]s this an offense which may result in registration as a sex offender or on the child protection registry?"[120] Spintz checked the box marked "yes" and signed his name on the following page to signal his assent to the agreement.[121] His counsel and his guardian also signed the same.[122] Thus, Spintz suffered no deprivation by not having the Notice when he accepted the plea bargain.

## IV. CONCLUSION

The Child Protection Registry statute requires DFS to send a child the Notice of Intent to Substantiate before it files the Petition for Substantiation. Therefore, the Family Court was incorrect when it held that mailing Spintz the Notice with the already-filed Petition satisfied DFS's statutory requirements. However, the Family Court properly considered evidence showing that DFS satisfied those requirements when it first mailed Spintz copies of the Notice months before it filed the Petition.

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[118] A222.
[119] *Id.*
[120] *Id.*
[121] A222-23.
[122] *Id.*

Finally, the Family Court correctly held that DFS's notice satisfied constitutional due process.

Thus, this Court affirms the Family Court's holding for the reasons discussed in this Opinion.