

**STATE OF LOUISIANA IN
THE INTEREST OF E.C.**

*

NO. 2011-CA-1826

*

COURT OF APPEAL

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

* * * * *

APPEAL FROM
JUVENILE COURT ORLEANS PARISH
NO. 2009-146-03-DQ-B/F, SECTION "F"
Honorable Mark Doherty, Judge

* * * * *

Judge Roland L. Belsome

* * * * *

(Court composed of Judge James F. McKay, III, Judge Roland L. Belsome, Judge Joy Cossich Lobrano)

Leon A. Cannizzaro, Jr.
District Attorney
Matthew Caplan
Assistant District Attorney
619 South White Street
New Orleans, LA 70119

COUNSEL FOR APPELLEE

Martha S. Morgan, General Counsel
Office of Juvenile Justice
7919 Independence Blvd.
P.O. Box 66458
Baton Rouge, LA 70896

COUNSEL FOR APPELLANT

**APPEAL CONVERTED TO WRIT;
WRIT DENIED.**

AUGUST 2, 2012

This matter was initially filed as an appeal taken from an order rendered by juvenile court. An order is an interlocutory judgment and therefore not appropriate for appeal. La. C.C.P. arts. 1841 and 2083(C). Appeals erroneously taken on interlocutory judgments can be converted and reviewed as an application for supervisory writ, which we find appropriate in this matter. *See Ordoyne v. Ordoyne*, 2007-0235 (La. App. 4 Cir. 4/2/08), 982 So.2d 899; *Ganier v. Inglewood Homes, Inc.*, 2006-0642 (La. App. 4 Cir. 11/8/06), 944 So.2d 753; Rule 4-3, Uniform Rules – Courts of Appeal.

Additionally, this Court was informed through the State’s brief that the order appealed from had been complied with prior to this matter being docketed. As a general rule, a case or issue is moot when “the parties no longer possess a sufficient degree of adversity” or “when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *State v. Rochon*, 11-0009 (La. 10/25/11), 75 So.3d 876 at 884 (citing *Powell v. McCormack*, 395 U.S. 486, 496, 89 S.Ct. 1944, 1951, 23 L.Ed.2d 491(1969)). Here the State contends that although the Office of Juvenile Justice ultimately complied with the order in

this particular case, there remains a sufficient degree of adversity on the issue as to warrant this Court's review.

The issue presented on review is whether the current law prevents State treatment facilities from releasing confidential information regarding the treatment of detained juvenile offenders to the district attorney. More specifically, is the district attorney entitled to interview employees of the Office of Juvenile Justice (OJJ) and to review reports and records generated by those employees prior to a post-disposition sentence review hearing?

The OJJ has taken the position that confidentiality is crucial to the operation and purpose of its facilities. Contrarily, the State argues that in order to prepare for a sentence review hearing, information must be obtained from the OJJ facilities and staff members in order to determine whether the juvenile has complied with the terms and conditions of his adjudication and sentencing. In this case, the juvenile court judge found that the district attorney is authorized by statute to obtain the confidential information on the detained juvenile. The juvenile court examined and interpreted several statutes to develop its reasoning for allowing the information to be accessed by the district attorney. On review this Court finds, as the juvenile court did, that the statutes read *in pari materia* allow for such disclosure.

The primary article on the issue is La. Ch.C. art. 412.¹ Section A of the article provides for the confidentiality of records and reports in juvenile

¹ Art. 412, titled Confidentiality of records; disclosure exceptions; sanctions reads in part:

A. Records and reports concerning all matters or proceedings before the juvenile court, except traffic violations, are confidential and shall not be disclosed except as expressly authorized by this Code. Any person authorized to review or receive confidential information shall preserve its confidentiality in the absence of express authorization for sharing with others.

proceedings from authorized persons. The latter sections of the article identify who is authorized to review the confidential records and reports of a proceeding. Specifically, 412 (C) states that “[r]ecords and reports in individual cases may be released to parties, their counsel or other legal representatives...” La. Ch. C. art. 412(C). The OJJ does not dispute that the district attorney is a “party” as anticipated by 412 (C). Further, 412 (D)(6) specifically lists the district attorney’s office as an appropriate party to receive confidential information when the “information is relevant and necessary to the performance of their respective duties and enhances services to the child or his family...” As written, the statute permits the district attorney access to records or reports upon request; there is no special authorization or court order necessary.

B. Nonidentifying information of a general nature, including statistics, is not confidential and may be released without a court order. By court order, an individual may be authorized to review confidential records and reports, including case file samples, for the purpose of collecting nonidentifying general information, including statistics. The court order shall specify the type of information authorized for review and bind the reviewer to preserving the confidentiality of any identifying information reviewed.

C. Records and reports in individual cases may be released to parties, their counsel or other legal representatives, and court-appointed special advocates (CASAs) in accordance with discovery and disclosure provisions of this Code.

D. When such information is relevant and necessary to the performance of their respective duties and enhances services to the child or his family, the court may authorize the release of records, reports, or certain information contained therein to appropriate individuals representing:

- (1) Other courts and court-affiliated programs.
- (2) The Department of Children and Family Services.
- (3) The office of juvenile justice of the Department of Public Safety and Corrections.
- (4) The Department of Health and Hospitals.
- (5) The Department of Education or the local school in which the child is a student.
- (6) The local district attorney's office.
- (7) A multidisciplinary investigative child abuse team.
- (8) A child advocacy center.
- (9) A truancy and assessment center.
- (10) Other child serving agencies or programs.
- (11) The attorney general's office.

E. For good cause when the information is material and necessary to a specific investigation or proceeding, the court may order the release of individual records and reports, or certain information contained therein, to a petitioner, limited to the specific purpose for which the court authorizes release.

F. The court may release records and reports concerning any proceeding, except adoption, to an adult who, as a child, was the subject of the proceeding. For good cause, the court may also order release of records and reports to the counsel or other appropriate legal representative of a child, still a minor, who was the subject of any proceedings, except adoption.

Although the OJJ relies on the language of R.S. 46:1923(A)² to support the prohibition of disclosure of confidential information of juvenile delinquents receiving treatment, La. R.S. 15:574.12(B)³ clearly allows the department to release this type of confidential information to district attorneys. We find that the juvenile court correctly interpreted La. R.S. 15:574.12(B) as providing an exception on the prohibition set forth in La. R.S. 46:1923.

This Court acknowledges that it is essential to maintain the confidentiality of juvenile proceedings from outside parties and interests. However, this Court finds no error in the juvenile court's determination that the statutes allow the district attorney access to confidential information regarding juveniles subject to adjudication proceedings. This Court further finds that the juvenile court was within its statutory authority when ordering the OJJ to allow the district attorney access to OJJ staff that work with or participate in the juvenile's rehabilitation and treatment.

APPEAL CONVERTED TO WRIT; WRIT DENIED.

² With respect to any child for whom care and treatment services are either directly or indirectly provided by the department pursuant to this Chapter to a child alleged or found to be delinquent or in need of supervision, it shall be unlawful, except for purposes directly connected with the administration of this Chapter or upon the consent of such child or the attorney for such child, or upon the specific order of the court pursuant to the provisions of Code of Criminal Procedure Art. 875 and R.S. 13:1564 through R.S. 13:1724, both inclusive, for any individual agency, organization, or facility to knowingly solicit, disclose, receive, or make use of, or authorize, permit, participate in, or acquiesce in the use of any information in or derived from such child's legal, social, medical, or psychological records, or obtained, directly or indirectly, from the records, papers, files, or communication by or to the department or any individual, agency, organization, or facility utilized by the department for the provision of such care and treatment services for such child.

La. R.S. 46:1923

³ Information may be released upon request without special authorization, subject to other restrictions that may be imposed by federal law or by other provisions of state law, to the Board of Parole, the Board of Pardons, the governor, the sentencing judge, counsel for the juvenile in a delinquency matter, a district attorney or law enforcement agency, the personnel and legal representatives of the Department of Public Safety and Corrections, corrections services and youth services, including student interns, appropriate governmental agencies, or officials when access to such information is imperative for discharge of the responsibilities of the requesting agency, official, or court officer and the information is not reasonably available through any other means, and court officers with court orders specifying the information requested.

La. R.S. 15:574.12

NOT DESIGNATED FOR PUBLICATION