In the
Missouri Court of Appeals
Western District

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| **IN RE THE MATTER OF TARYN WILLIAMS,** | ) | |
| | ) | **WD75693** |
| **Respondent,** | ) | |
| | ) | **OPINION FILED: July 23, 2013** |
| **v.** | ) | |
| | ) | |
| **STATE OF MISSOURI, DEPARTMENT OF SOCIAL SERVICES, CHILDREN'S DIVISION, CHILD ABUSE AND NEGLECT REVIEW BOARD,** | ) | |
| | ) | |
| **Appellant.** | ) | |

**Appeal from the Circuit Court of Jackson County, Missouri**
The Honorable Marco A. Roldan, Judge

Before Division Three: Lisa White Hardwick, Presiding Judge, Mark D. Pfeiffer, Judge and Cynthia L. Martin, Judge

The Children's Division of the Department of Social Services of the State of Missouri ("Children's Division") appeals the trial court's judgment ordering the removal of Taryn Williams's ("Williams") name from the Central Registry of child abuse and neglect perpetrators ("Central Registry") because the Children's Division did not comply with the mandatory thirty- and ninety-day time limitations set out in sections 210.145 and

210.152, respectively.[1] The Children's Division contends that the trial court erred in concluding that: (1) it had not established good cause for delaying completion of its child abuse investigation; (2) the statutorily imposed time limitations for completion of child abuse investigations and for providing notice to alleged perpetrators are mandatory; and (3) Williams's due process rights were implicated by the child abuse investigation. We affirm.

## Factual and Procedural History

The relevant facts are not in dispute. On October 13, 2010, a call was received by the child abuse hotline reporting the sexual maltreatment of a minor child by Williams. On that same date, the Children's Division began its investigation into the allegations. On November 13, 2010, the Children's Division updated its information system explaining that the conclusion of its investigation was delayed due to "co-investigation with law enforcement." Specifically, the Children's Division investigator, Monica Morgan ("Morgan"), testified that the delay caused by co-investigation was due to waiting to obtain text messages and photos from the minor child's cell phone in the possession of the Blue Springs police department. On February 17, 2011, approximately 128 days after beginning its investigation, the Children's Division completed its investigation and concluded that the child abuse allegations had been substantiated. It reached this conclusion based on information in its possession within the first thirty days

[1] All references to sections 210.145 and 210.152 are to RSMo Cum. Supp. 2010 except as otherwise indicated. Portions of Chapter 210, including sections 210.145 and 210.152, were amended by the General Assembly in 2011 and 2012. The amendments are not applicable to our discussion, but in any case would not alter the outcome reached in our Opinion. We do note that section 210.145.14, which is of essential relevance to this case, was renumbered by virtue of these amendments to section 210.145.15.

of its investigation, and without the benefit of the text messages and photos from the minor child's cell phone, which it never received.[2] On February 22, 2011, approximately 133 days after beginning its investigation, the Children's Division notified Williams of its determination.

Williams timely sought review of the Children's Division's determination. After a hearing in September 2011, the Child Abuse and Neglect Review Board ("Review Board") upheld the Children's Division's determination and entered Williams's name in the Central Registry. On October 13, 2011, Williams filed a petition for *de novo* judicial review. After an evidentiary hearing, the trial court reversed the decision of the Review Board finding, in pertinent part: (1) that the Children's Division's stated reason for the delayed conclusion of its investigation, "co-investigation with law enforcement," did not constitute good cause; (2) that sections 210.145 and 210.152 impose ***mandatory***, not directory, time limitations for completing child abuse investigations and for providing notice to the alleged perpetrator of the investigation's determination; and (3) that the right to timely written notice of any determination made by the Children's Division based on an investigation of alleged abuse is a due process right that is guaranteed by both section 210.152.2 and the due process clause of the Missouri Constitution, article I, section 10. Accordingly, the trial court ordered that Williams's name be immediately removed from the Central Registry.

[2] Morgan testified that she failed to ask for permission to look at the minor child's phone during her initial interviews with the child, and thus before the phone was confiscated by the police, though she knew at the time from the child's mother that "inappropriate" text messages and photos were contained on the child's phone. Morgan testified that she did not diligently attempt to obtain the requested text messages and photos from the police after the cell phone was taken by them.

This appeal followed.

## Standard of Review

"'We review court-tried cases according to the standard set forth in *Murphy v. Carron,* 536 S.W.2d 30, 32 (Mo. banc 1976).'" *Herron v. Barnard*, 390 S.W.3d 901, 908 (Mo. App. W.D. 2013) (quoting *Golden Rule Ins. Co. v. R.S.,* 368 S.W.3d 327, 334 (Mo. App. W.D. 2012)). "According to this standard, reversal is warranted where the trial court's judgment is 'not supported by substantial evidence, it is against the weight of the evidence, it misstates the law, or it misapplies the law.'" *Id.* (citation omitted). "Questions of law arising in court-tried cases are reviewed *de novo*." *Id.* at 910.

## Analysis

The Children's Division raises three points on appeal. First, it argues that the trial court erred in concluding that its co-investigation with law enforcement was not "good cause" for delaying completion of its child abuse investigation. Second, it argues, that the statutory time limits imposed on the Children's Division to complete an investigation and to afford notice to perpetrators about the disposition of an investigation are merely directory and not mandatory. Third, it argues that the trial court erred in removing Williams's name from the Central Registry because the statutory time limits associated with child abuse investigations do not implicate due process rights. We begin with the Children's Division's second point, as it is dispositive of this appeal.

"'An administrative agency possesses only such . . . authority as it has been granted by the legislature.'" *Petet v. State*, 32 S.W.3d 818, 822 (Mo. App. W.D. 2000) (quoting *Jenkins v. Dir. of Revenue*, 858 S.W.2d 257, 260 (Mo. App. W.D. 1993)). The

Children's Division's authority to investigate hotline reports of abuse or neglect is derived from Chapter 210. *Id.*

Relevant to this case, two statutes set forth distinct limits on the Children's Division's authority. Section 210.145.14[3] provides:

> ***Within thirty days of an oral report*** of abuse or neglect, the local office ***shall update the information*** in the information system. The information system shall contain, at a minimum, the determination made by the division as a result of the investigation, identifying information on the subjects of the report, those responsible for the care of the subject child and other relevant dispositional information. The ***division shall complete all investigations within thirty days, unless good cause for the failure to complete the investigation is documented in the information system***. . . .

(Emphasis added.) Section 210.152.2 provides:

> ***Within ninety days after receipt of a report*** of abuse or neglect ***that is investigated, the alleged perpetrator*** named in the report and the parents of the child named in the report, if the alleged perpetrator is not a parent, ***shall be notified in writing of any determination made by the division based on the investigation***[.]

(Emphasis added.) Section 210.152.2 then expresses the only two "notification" options available to the Children's Division. The Children's Division must notify the alleged perpetrator either that it has, or has not, determined that abuse or neglect exists by a preponderance of the evidence.[4] Section 210.152.2(1), (2).

Here, the Children's Division did not complete its investigation within thirty days as required by section 210.145.14. The Children's Division also failed to notify Williams about the outcome of its investigation within ninety days as required by section 210.152.2. The Children's Division argues in its second point on appeal that the thirty-

[3] As noted in footnote number 1, this section has been renumbered as section 210.145.15.

[4] The preponderance standard applies to all reports of abuse or neglect after August 28, 2004. Prior to that time, a probable cause finding was required. Section 210.152.2(1).

and ninety-day time limitations in sections 210.145.14 and 210.152.2 are merely directory, and alternatively, that an investigation extended for "good cause" under section 210.145.14 correspondingly extends the notification period described in section 210.152.2. The Children's Division's second point on appeal thus requires resolution of two questions: (i) what did the legislature intend by the use of the word "shall" in sections 210.145.14 and 210.152.2; and (ii) did the legislature intend the "good cause" exception in section 210.145.14 to permit an investigation to extend beyond the ninety-day notification time limit set forth in section 210.152.2?

"The goal of statutory analysis is to ascertain the intent of the legislature, as expressed in the words of the statute." *United Pharmacal Co. of Mo., Inc. v. Mo. Bd. of Pharmacy*, 208 S.W.3d 907, 909 (Mo. banc 2006). "This goal is achieved by giving the language used its plain and ordinary meaning." *Id*. at 910. We resort to rules of statutory construction to resolve any ambiguity in the meaning of a statute only when "legislative intent cannot be determined from the plain meaning" of the statute. *Id*.

***(a) The legislature's intent in using "shall" in sections 210.145.14 and 210.152.2***

We begin with the Children's Division's contention that the word "shall" as used in sections 210.145.14 and 210.152.2 was intended by the legislature to be merely directory and not mandatory. We disagree.

Our Southern District recently addressed the same issue and determined that the time limitations described in sections 210.145.14 and 210.152.2 are mandatory, and not

directory. *Frye v. Levy*, No. SD32307, 2013 WL1914393 (Mo. App. S.D. May 9, 2013).[5] As in this case, the Children's Division in *Frye* appealed a trial court judgment ordering removal of Frye's name from the Central Registry because the Children's Division failed to abide by the thirty- and ninety-day time limitations set out in sections 210.145 and 210.152.[6] *Id.* at *1. On appeal, the *Frye* court affirmed the trial court's judgment finding that both time limitations are mandatory, and that because Frye did not receive notification of the disposition of the investigation within ninety days as required by section 210.152.2, her name must be removed from the Central Registry.[7] *Id.*

The *Frye* court first considered the plain meaning of "shall" which is "will have to" or "used in laws, regulations, or directives to express what is mandatory." *Id.* at *3 (quoting MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1143 (11th ed. 2005)). The *Frye* court noted that although the plain meaning "should end discussion on the interpretation of 'shall' . . . decisions interpreting 'shall' to mean something other than a mandatory directive in other contexts compel us to further examine the statute at issue." *Id.* Here, the Children's Division repeats the refrain it urged in *Frye*, relying on decisions which have construed the word "shall" in statutes addressing the powers of administrative

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[5] This case remains subject to resolution of a post-opinion application for transfer to the Missouri Supreme Court.

[6] The *Frye* court's references to section 210.145 are to RSMo Cum. Supp. 2004, and its references to section 210.152 are to RSMo Cum. Supp. 2005.

[7] Although unclear from the *Frye* opinion, it appears that the Children's Division may also have claimed, as it does here, that it met the good cause exception in section 210.145.14 as the Children's Division had noted a delay in its investigation due to certain reports being unavailable including police reports and medical records. The Southern District concluded that no further analysis was necessary once it found that the ninety-day time limitation in section 210.152 was mandatory and not complied with by the Children's Division.

agencies as merely directory.[8] The Children's Division's urged construction ignores, however, that Chapter 210 was intended by the legislature to balance two important and competing interests--the protection of children and the protection of the rights of a person accused of abuse or neglect. As the *Frye* Court noted:

> [T]he "clear intent of the legislature in enacting" Chapter 210 "was for the [Children's] Division to immediately investigate hotline calls and to doggedly pursue those investigations to their conclusion." . . . "The statutory language simply cannot be read to allow the [Children's] [D]ivision to place investigations on the back-burner and to revisit those investigations at its convenience."

*Id.* at *3 (quoting *Petet*, 32 S.W.3d at 823).

We agree with the Southern District. Though there are, indeed circumstances where the word "shall" has been construed as directory, and not as a mandatory constraint on an administrative agency's powers, the cases cited by the Children's Division do not involve a statute where a statutory time constraint was designed to balance the competing interests of a potential victim and an alleged perpetrator. *See Pitts v. Williams*, 315 S.W.3d 755, 759-60 (Mo. App. W.D. 2010) ("The legislature acknowledges that these cases [referencing Chapter 210 and citing section 210.145.1] involve the balancing of multiple priorities: the safety of the child, retention of the family unit, and the due process rights of the alleged perpetrator. . . . To harmonize these sometimes competing priorities, our legislature established a series of procedures to be implemented by the

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[8] *Farmers & Merchants Bank and Trust Co. v. Dir. of Revenue*, 896 S.W.2d 30, 33 (Mo. banc 1995) (noting that *usually* "statutes directing the performance of an act by a public official within a specified time period are directory, not mandatory," and holding that director did not lose power to rule on a refund claim after the statutory time frame to do so expired); *Citizens for Environmental Safety, Inc. v. Mo. Dept. of Natural Resources*, 12 S.W.3d 720, 724-26 (Mo. App. S.D. 1999) (holding department of natural resources did not lose power to rule on a permit application though the statutorily and regulatory prescribed times for doing so had expired).

Children's Division."). The word "shall" as used in section 210.145.14 and 210.152.2 must be construed in this context. *Farmers & Merchants Bank & Trust Co. v. Dir. of Revenue*, 896 S.W.2d 30, 32 (Mo. banc 1995) ("Whether the statutory word 'shall' is mandatory or directory is a function of context.").

We also observe that there would be no need for a "good cause" exception in section 210.145.14 if the word "shall" as used in that statute was merely directory and not mandatory. "The usual presumption is that words in a rule or statute are not intended to be meaningless." *State ex rel. Mo. Pacific R. Co. v. Koehr*, 853 S.W.2d 925, 926-27 (Mo. banc 1993). The *Frye* court similarly concluded, noting that "[t]he word shall in section 210.145 must thus be read as being mandatory, as interpreting it as merely directory would render the expressed good cause exception meaningless." *Frye*, No. SD32307, 2013 WL1914393 at *4.

Finally, we are influenced in our conclusion that the legislature intended "shall" as used in sections 210.145.14 and 210.152.2 to be mandatory by a 2007 amendment to Chapter 210. "Statutory amendments may be used to clarify or restate legislative intent . . . and subsequent statutes may be considered in construing the previously enacted statutes . . . in order to ascertain the uniform and consistent purpose of the legislature." *Mo. Hosp. Ass'n v. Air Conservation Comm'n,* 874 S.W.2d 380, 398 (Mo. App. W.D. 1994). In 2007, section 210.145.14 was amended to provide, immediately following discussion of the "good cause" exception for completing an investigation within thirty days, that "[i]f a child involved in a pending investigation dies, the investigation ***shall remain open until the division's investigation surrounding the death is completed***."

Section 210.145.14, RSMo Cum. Supp. 2007 (emphasis added). We are to "proceed on the theory that the General Assembly intended to accomplish something by [an] amendment." *Garrard v. State Dept. of Public Health and Welfare*, 375 S.W.2d 582, 589 (Mo. App. 1964). Here, the amendment to section 210.145.14 accomplished two objectives. It made clear that a child's death is "good cause" for extending an investigation as a matter of law. And, important for our purposes, it made clear that a child's death permits an investigation to extend indefinitely. As to this latter objective, if "shall" were merely directory, there would have been no need to legislate that an investigation could extend indefinitely in the case of the death of a child.

The *Frye* court similarly relied on the 2007 amendment to Chapter 210 to conclude that the amendment "strongly indicates that use of 'shall' throughout the child abuse and neglect investigation statutes was intended to be mandatory, thereby divesting the Children's Division of authority to act on any particular case once the time limits--***absent any relevant exception***--had been breached." *Frye*, No. SD32307, 2013 WL1914393 at *5 (emphasis added).

As it did in *Frye*, here the Children's Division contends that the absence of an expressed statutory sanction for "tardy compliance" with the time limits set forth in sections 210.145.14 and 210.152.2 requires us to conclude that the legislature intended the word "shall" as merely directory, rather than mandatory. *Id.* at *5. We reject this argument. "While that is one factor to consider in the analysis, it is not [a] *per se* rule because in considering all the relevant factors in a specific case, '[w]hether the statutory word 'shall' is mandatory or directory is a function of context[.]'" *Id.* (quoting *Farmers &*

*Merchants Bank & Trust Co. v. Dir. of Revenue*, 896 S.W.2d at 32). The context here "overwhelmingly indicates that, even in the absence of a specific expressed sanction, the use of 'shall'" in sections 210.145.14 and 210.152.2 is mandatory and not directory. *Id.*

***(b) Whether the "good cause" exception in section 210.145.14 permits investigations to extend beyond the mandatory ninety-day time limit in section 210.052.2***

Our conclusion that the General Assembly's use of the word "shall" in sections 210.145.14 and 210.152.2 imposes mandatory time constraints begs a second issue raised by the Children's Division's second point relied on. The Children's Division argues that even if the time limits in sections 210.145.14 and 210.152.2 are mandatory, the "good cause" exception in section 210.145.14 operates by necessary implication to permit an extension of the ninety-day notification time limit in section 210.152.2. We disagree.

The differing mandatory time limits in sections 210.145.14 and 210.152.2 already build in a sixty-day cushion between the required time for concluding an investigation (thirty days), and the required time for notifying an alleged perpetrator about the conclusion of an investigation (ninety days). The plainly apparent explanation for this "cushion" is that section 210.145.14 permits investigations to be extended beyond thirty days for "good cause." Although section 210.145.14 fails to specify an outside time frame within which an investigation extended for "good cause" must be completed, the mandatory time limit for notification about the results of an investigation set forth in section 210.152.2 necessarily operates as this outside parameter.

Any ambiguity on this point is resolved by reference to section 210.183, which addresses the written notification to be sent to an alleged perpetrator at the

*commencement* of an investigation. *PDQ Tower Servs., Inc. v. Adams*, 213 S.W.3d 697, 698 (Mo. App. W.D. 2007) ("A provision in a statute must be read in harmony with the entire section."). In *Frye*, the Southern District looked to Section 210.183.1[9] to support its conclusion that the flexibility afforded the Children's Division in section 210.145.14 is constrained by the ninety-day time limit in section 210.152.2. *Frye*, No. SD32307, 2013 WL1914393 at *4. The version of section 210.183.1 at issue in *Frye* provided that the Children's Division "shall provide the alleged perpetrator with a written description of the investigation process" once a report of abuse or neglect is filed, which notice ***must*** advise an alleged perpetrator that:

> The [Children's] [D]ivision shall make every reasonable attempt to complete the investigation within thirty days. ***Within ninety days you will receive*** a letter from the [Children's] Division ***which will inform you of [the outcome of the investigation]***.

*Id.* (quoting section 210.183.1 RSMo Cum. Supp. 2004) (emphasis added). The *Frye* court concluded that section 210.183.1 aligns with sections 210.145 and 210.152 in that "a slight equivocation is allowed for the initial thirty-day limit stated in section 210.145, which aligns with the good-cause exception in that section," and "no such equivocation . . . is stated in conjunction with the ninety-day limit provided in section 210.152." *Id.*

We agree that the legislatively crafted written notice to alleged perpetrators at the commencement of an investigation required by section 210.183.1 captures the General Assembly's intent with respect to the interplay of sections 210.145.14 and 210.152.2. Section 210.183.1 expressly states that the Children's Division will make a "reasonable"

[9] The *Frye* court's references to section 210.183 are to RSMo Cum. Supp. 2004.

attempt to complete its investigation within thirty days, consistent with the opportunity for a "good faith" extension of the thirty-day time limit set forth in section 210.145.14. At the same time, the written notice required by section 210.183.1 unequivocally states that an alleged perpetrator "***will***" be informed of the outcome of an investigation within ninety days, consistent with the plain language of section 210.152.2. Were we to interpret the "good cause" exception in section 210.145.14 as permitting an investigation to extend indefinitely, and even beyond the ninety-day notification time limit in section 210.152.2, we would be forced to rewrite the written notice crafted by the General Assembly in section 210.183.1. It is not our province to do so. "We cannot usurp the function of the General Assembly, or by construction, rewrite its acts." *Marshall v. Marshall Farms, Inc.*, 332 S.W.3d 121, 128 (Mo. App. S.D. 2010).

Our conclusion that section 210.183.1 serves to resolve any ambiguity about whether an investigation extended for "good cause" under section 210.145.14 can extend beyond the ninety-day time limit for notification set forth in section 210.152.2 is reinforced by the General Assembly's 2007 amendment of Section 210.183.1. Consistent with the 2007 amendment to section 210.145.14, which afforded the Children's Division an *unlimited* amount of time to investigate reports of abuse or neglect where a child has died, the General Assembly modified the written notice required by section 210.183.1 to provide:

> The division shall make every reasonable attempt to complete the investigation within thirty days, except if a child involved in the pending investigation dies, the investigation shall remain open until the division's investigation surrounding the death is completed. ***Otherwise, within ninety***

> ***days you will receive a letter from the Division which will inform you of one of the following***:
>
> (1) That the Division has found insufficient evidence of abuse or neglect; or
>
> (2) That there appears to be by a preponderance of the evidence reasons to suspect the existence of child abuse or neglect in the judgment of the Division . . . .

Section 210.183.1 RSMo Cum. Supp. 2007 (emphasis added).

The collective import of the 2007 amendments to sections 210.145.14 and 210.183.1 is clear. Had section 210.145.14 already authorized the Children's Division to extend investigations for "good cause" beyond the ninety-day time limit for notification in section 210.152.2, there would have been no need to amend section 210.183.1 to require the written notice to alleged perpetrators to advise that the results of an investigation would be provided within ninety days *unless* the investigation involves the death of a child.

We conclude that although the "good cause" exception in section 210.145.14 operates to extend the thirty-day time frame for completing an investigation, it does not permit an investigation to continue beyond the ninety-day time frame for notification in section 210.152.2 unless the investigation involves the death of a child. In all other circumstances, the ninety-day notification requirement of section 210.152.2 is mandatory. *See Pitts*, 315 S.W.3d at 760 ("When the Children's Division investigates a report of abuse or neglect ***it must***, within ninety days of receiving the initial report, notify the alleged perpetrator in writing of its finding.") (emphasis added). The plain language of section 210.152.2, read in tandem with the balance of Chapter 210, thus required the

Children's Division to advise Williams within ninety days of the commencement of its investigation either that the report against her was, or was not, substantiated by a preponderance of the evidence. Section 210.152.2(1), (2). Under the facts in this case,[10] once the time frame for notification passed, the Children's Division had no statutory authority to take any further action on Williams's case, including placing her name in the Central Registry. *See Frye*, No. SD32307, 2013 WL1914393 at *6 ("Because the ninety-day notice requirement of section 210.152 is mandatory, we find that the Children's Division had no statutory authority to take any further action on [Frye's] case when it failed to notify her of the results of the investigation within ninety days of the initial allegation of neglect.").

Point Two is denied.

In light of this determination, the Children's Division's assertion in Point One that it met the good cause exception to the thirty-day time limit imposed in section 210.145.14 is denied as moot. Regardless whether good cause was established to extend the thirty-day time limit for completion of an investigation, the Children's Division had no statutory authority to extend the ninety-day time limit for notification described in section 210.152.2. The Children's Division's assertion in Point Three that the trial court erred in alternatively concluding that due process considerations independently required it to treat the time limit in section 210.052.2 as mandatory and not merely directory is also denied

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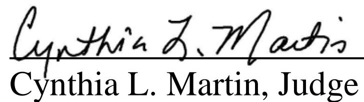
[10] As we discuss, *supra*, a different result would be required in the event of an investigation involving the death of a child.

as moot, as we have determined the time limit to be mandatory as a function of legislative intent, independent of due process concerns.[11]

**Conclusion**

We affirm the trial court's judgment finding the statutorily imposed time limitation set forth in section 210.152.2 to be mandatory and ordering the removal of Williams's name from the Central Registry.


Cynthia L. Martin, Judge

All concur

[11] Although Point Three is denied as moot, we note that it cannot be seriously argued that due process rights are not implicated by child abuse investigations pursuant to Chapter 210. *See* section 210.145.1(3), which provides: "The division shall develop protocols which give priority to . . . [p]roviding due process for those accused of child abuse or neglect;" *Pitts v. Williams*, 315 S.W.3d 755, 759-60 (Mo. App. W.D. 2010) (In reference to Chapter 210 and citing section 210.145.1, "[t]he legislature acknowledges that these cases involve the balancing of multiple priorities: the safety of the child, retention of the family unit, and the due process rights of the alleged perpetrator. . . . To harmonize these sometimes competing priorities, our legislature established a series of procedures to be implemented by the Children's Division."); *Jamison v. State*, 218 S.W.3d 399, 407 (Mo. banc 2007) (the Supreme Court held that placement of names in Central Registry without providing notice and opportunity to be heard violates alleged perpetrators due process rights).