IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dauphin County Social Services for Children and Youth, Petitioner	:	
v.	:	No. 129 C.D. 2010
	:	Submitted: July 9, 2010
Department of Public Welfare, Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN FILED: August 18, 2010

Dauphin County Social Services for Children and Youth (C&Y) petitions for review of the December 31, 2009, order of the Department of Public Welfare (DPW) adopting the recommendation of the administrative law judge to grant expunction of two indicated reports of child sexual abuse issued by C&Y pursuant to the Child Protective Services Law (Law) against D.W. 23 Pa. C.S. §§6301 – 6386. We affirm.

De.W. and M.W. are the son and daughter, respectively, of D.W. De.W. was born on September 25, 2001, and M.W. was born on January 28, 2003. During February and March of 2007, C&Y received reports that M.W. and De.W. had been sexually abused. Following medical exams and forensic interviews of the subject children, C&Y completed two indicated reports of child sexual abuse against the children's father, D.W.

D.W. filed an appeal pursuant to section 6341 of the Law, seeking to expunge the two reports on the grounds that they were inaccurate.[1] At the hearing before the administrative judge, the children's godmother, the forensic interviewer, the medical examiner, and the C&Y caseworker testified on behalf of C&Y. D.W. testified on his own behalf. De.W. also testified.[2] The godmother, with whom the children lived during the week, testified that several times after M.W. returned home from weekend visits with D.W., M.W reported that D.W. had touched her "bottom" and had instructed De.W. to do the same. (R.R. 43, 45.) The forensic interviewer and C&Y caseworker testified that De.W. and M.W. gave similar accounts during their interviews, describing incidents where D.W. would touch the inside of M.W.'s "bladder" or "pee-pee" and would force De.W. to do the same. (R.R. at 32 – 33, 57.) The medical examiner testified that, although M.W. spontaneously disclosed that D.W. and De.W. had touched her "bladder," M.W.'s physical exam revealed no signs of sexual abuse. (R.R. at 37.)

De.W. testified that he had no recollection of what he told the forensic examiner, that there were no incidents involving touching M.W. and that he did not know why he would have told the interviewer that there had been any such incidents. (R.R. at 27.) D.W. also denied the alleged incidents of sexual abuse, suggesting that the children may have made them up in response to a stressful family situation. (R.R. at 65 – 66.)

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[1] Any person named as a perpetrator in an indicated report of child abuse may request the secretary to amend or expunge an indicated report on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with the Law. 23 Pa. C.S. §6341.

[2] M.W. was deemed unavailable to testify due to the likely emotional distress it would have caused her. (R.R. at 24.)

The administrative judge admitted the hearsay evidence submitted by the godmother, interviewer and caseworker. However, the judge found that this evidence did not constitute substantial evidence to support the accuracy of the indicated reports because it was not otherwise corroborated. Moreover, the administrative judge found that the hearsay evidence was incredible given De.W.'s denial of any incidents of abuse and D.W.'s credible testimony in that regard. The administrative judge determined that C&Y had failed to meet its burden of proof[3] and, therefore, recommended that DPW grant D.W.'s expunction request. DPW adopted the administrative judge's recommendation, and C&Y now petitions this court for review of DPW's final decision.[4]

C&Y argues that the administrative judge erred as a matter of law in determining that C&Y did not prove by substantial evidence that D.W. sexually abused De.W. and M.W. According to C&Y, the testimony and reports produced by the interviewer, caseworker, medical examiner, and godmother should constitute corroborative evidence in support of the admitted hearsay evidence and, together, provide substantial evidence that the indicated report is accurate. We disagree.

An indicated report of alleged abuse must be supported by substantial evidence based on available medical evidence, the child protective service

[3] In an appeal requesting expunction of an indicated report, the appropriate county agency carries the burden of proof to demonstrate that the report is accurate and is consistent with the Law. 23 Pa. C.S. §6341(a),(c).

[4] Our scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with law or whether the necessary findings of fact are supported by substantial evidence. Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704.

investigation, or an admission of the acts of abuse by the perpetrator. 23 Pa. C.S. §6303(a). Substantial evidence is "evidence which outweighs inconsistent evidence and which a reasonable person would accept as adequate to support a conclusion." *Id.*

Hearsay evidence in conjunction with other admissible corroborative evidence may *in toto* constitute substantial evidence.[5] *A.Y. v. Department of Public Welfare*, 537 Pa. 116, 641 A.2d 1148 (1994).[6] However, the evidence C&Y relies on to corroborate the hearsay testimony is not independent corroborative evidence. Rather, each is, itself, hearsay.

In *York County Children and Youth Services v. Department of Public Welfare*, 668 A.2d 185 (Pa. Cmwlth. 1995), this court found that a grandmother's

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[5] Hearsay evidence of a child's statement made describing sexual abuse is admissible if: 1) the evidence is relevant, and the time, content and circumstances of the statement provide sufficient indicia of reliability; and 2) the child either testifies at the proceeding or is found by the court to be unavailable as a witness. Section 5986(a) of the Judicial Code, 42 Pa. C.S. §5986(a).

[6] Corroborative evidence may not be necessary under limited circumstances where

> a) the statement was accurately recorded by audio or video equipment;
> b) the audio-visual record discloses the identity and at all times included the images and/or voices of all individuals present during the interview of the minor; and
> c) the statement was not made in response to questioning calculated to lead the minor to make a particular statement and was not the product of improper suggestion.

A.Y., 537 Pa. 126, 641 A.2d at 1153. Although C&Y contended that there was a videotape of the forensic interview, (R.R. at 30), it failed to produce it as evidence. Therefore, none of the above circumstances are present in this case.

recounting of a child's out-of-court statements did not constitute independent corroborative evidence. Similarly, in this case, the testimony of each witness regarding what the children had told them constituted hearsay. These hearsay statements were not independent corroborative evidence, but, rather, were the very pieces of evidence requiring additional corroboration in the first place.

The reports prepared by the interviewer also fail to provide independent corroborative evidence. The reports merely summarized each child's statements as opposed to providing any additional independent evidence supporting the allegations made by those statements. In *Mortimore v. Pennsylvania Department of Public Welfare*, 697 A.2d 1031 (Pa. Cmwlth. 1997), this court found that a prepared report can serve as corroborative evidence. However, in that case, the doctor's report described medical evidence in support of the alleged sexual abuse, completely independent of any statements made by the victim. *Id.* Here, the interviewer's reports did not provide any medical evidence in support of the children's statements, but, rather, contained just the statements themselves. Moreover, the medical exam provided no physical evidence of abuse. The interviewer's reports are just as much hearsay as the accompanying oral testimony.[7] Because hearsay evidence cannot corroborate itself, neither the oral testimonies nor the written reports can be used to corroborate the hearsay.

[7] The report prepared by the medical examiner could have provided the kind of corroborative evidence necessary to constitute substantial evidence. However, because the medical examiner found no medical evidence of sexual abuse, the report fails to corroborate the hearsay evidence.

Here, the administrative judge weighed the evidence and found it did not provide substantial evidence to support the accuracy of the indicated report. Instead, he believed De.W. and D.W. that the incidents of sexual abuse never occurred. Determinations of weight and credibility are for the fact-finder, and, on appeal, this court will not disturb those determinations. *Children & Youth Services Division, Department of Human Services, County of Northampton v. Department of Public Welfare*, 520 A.2d 1246 (Pa. Cmwlth. 1987).

Accordingly, because the administrative judge's recommendation as adopted by DPW, contains no error and is supported by substantial evidence, we affirm.

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ROCHELLE S. FRIEDMAN, Senior Judge

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O R D E R

AND NOW, this 18th day of August, 2010, the order of the Department of Public Welfare, dated December 31, 2009, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge