

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

D. D.,	:		
	:	Petitioner	
	:		
v.	:		No. 1454 C.D. 2009
	:		
Department of Public Welfare,	:		Submitted: March 26, 2010
Respondent	:		

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: May 21, 2010

In this appeal, D.D. (Mother), representing herself, petitions for review of a final order of the Secretary of the Department of Public Welfare (DPW) upholding an order of the Bureau of Hearings and Appeals (BHA) denying’s Mother’s request for expunction of four *founded*¹ reports of child abuse from the ChildLine Registry (ChildLine). Mother claims DPW violated her federal and state due process rights by dismissing her appeal of the *founded* reports without an administrative hearing. Mother also raises numerous evidentiary and legal challenges to the *founded* reports and the underlying judicial determination of abuse. Upon review, we affirm.

¹ The Child Protective Services Law (CPSL), 23 Pa. C.S. §§6301-85, defines a *founded* report as “[a] child abuse report made pursuant to this chapter if there has been any judicial adjudication based on a finding that a child who is a subject of the report has been abused, including the entry of a plea of guilty or nolo contendere or a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegation of child abuse.” 23 Pa. C.S. §6303 (emphasis added). In the case of either *indicated* or *founded* reports, the information is placed in the Statewide central register. 23 Pa. C.S. §6338(a).

I. Background

Mother is the natural mother of two boys: Mi.B. and A.D. Jr., and two girls: K.D. and M.D. Mi.B. was born during Mother's senior year of high school in 1987. In 1990, Mother married A.D., Sr. (Father) and had K.D., A.D. Jr. and M.D. with him.

In March, 2000, the Lawrence County Children and Youth Services (CYS), took emergency custody of A.D. Jr., after he came to school with a black eye. A.D. Jr. told the school nurse, and later a CYC caseworker, that Father punched him. The same day, CYC also took custody of K.D., Mi.B. and M.D. after they told CYC caseworkers that Father frequently beat them. The children also told CYC that Mother hit them at times.

In addition, CYC immediately petitioned the Court of Common Pleas of Lawrence County (trial court) for a dependency adjudication under the Juvenile Act.² At a hearing before a juvenile master (Master), Danielle Black (Caseworker) stated that in March, 2000, she received a call from A.D. Jr.'s school. A.D. Jr.'s eye was badly swollen and black and blue. A.D. Jr. stated Father punched him. Caseworker also talked to Mother, who told her that A.D. Jr.'s eye injury occurred when he moved while being punished by Father with a belt.

Caseworker noticed K.D. also had a black eye and detained her. Mother and Father then came to the school and picked up Mi.B. and M.D. From the school, they went to CYC. Caseworker interviewed Mi.B., who stated Father

² 42 Pa. C.S. §§6301-65.

beat him with such things as mop sticks, boards and extension cords. Mi.B. stated Father mostly hit him, but Mother also hit him at times. Mi.B. also told Caseworker that Mother and Father got into fights, and one time Mother used a knife to keep Father away. Mi.B. also told Caseworker he broke his leg when Father grabbed him and threw him down. Mi.B. was afraid of Father and did not want to go home.

M.D. also told Caseworker that Father hit her. M.D. also stated Father threatened them with a gun. Father shot the gun into the ground and told the children he would shoot them if they did not behave.

School Nurse also testified. A.D. Jr. came to school with a black eye. He told School Nurse that Father hit him and this was not the first time. School Nurse also talked to K.D., who stated Father beat her with a board.

Mi.B. testified *in camera* that he was 12 years old. He stated Father beat him severely many times, and one time all the children were beaten with a cord and then a stick for going into Father's room. Mi.B. also testified Father shot a gun into the floor.

K.D. testified that Father beats her with a belt when she gets in trouble. K.D. also stated Mother hits her with a spoon. K.D. was not afraid of Mother and wanted to go home.

Mother testified she was aware of all allegations. She stated the children must be disciplined. When they do not say who did something, they get a “whipping.” Mother further stated Mi.B. was suspended from school because of problems. Mother also stated Father did not break Mi.B.’s leg. Rather, Mi.B. broke his leg when he ran and kicked an organ leg; they took him to the hospital. Mother also stated she hits the children on the hands with a spoon, and the gun was a play gun.

Mother further testified she does care for her children and she is trying to work with them so they turn out alright. She did not think they are in any danger in the home. She would do everything necessary and suggested by CYS to keep the children. Mother was never accused of abuse in the past. Mother also testified she was abused as a child in foster care.

Following the hearing, Master filed a report making the following findings:

1. The Master finds that due notice was given all parties interested and they were served copies of the Petition and Notice of Hearing.
2. All the provisions of the [Juvenile Act] have been complied with and the parties were given an opportunity to be heard.
3. The minor, [Mi.B.], was born January 13, 1987.
4. The minor, [K.D.], was born February 18, 1991.
5. The minor, [A.D. Jr.], was born June 12, 1992.
6. The minor, [M.D.], was born August 2, 1993.

* * *

9. The minors are subject to frequent and harsh beatings by [Father], and also at times by [Mother.]

10. [A.D. Jr.] had a severe black eye as was shown to the school nurse.

11. The physical abuse was severe.

12. The minor [sic] are dependent within the [Juvenile Act].

Trial Ct. Op., 04/04/2000, at 5-6.

In discussing the evidence, Master stated (with emphasis added):

The evidence was clear and convincing that these children had been beaten and severely beaten by [Father]. [Mother] also stated that she felt that the children need “whipping” when they misbehaved. They did misbehave many times at home and at school. She also stated she would like to have the children returned and would be willing to do anything necessary and required by [CYS] to have the children returned. However, the Master felt that in a situation like this and the perpetrator still living in the home the Master could not return the children to the home at this time.

Id. at 5.

Approving the Master’s report, the trial court filed an order adjudicating the four children dependent and placing them in foster care. Trial Ct. Order, 04/04/2000. Neither Mother nor Father appealed the trial court’s adjudication.

Shortly thereafter, CYS, citing the trial court's adjudication,³ filed a *founded* report of child abuse for each of the four children with ChildLine. See Child Prot. Serv. Investigation Reports of K.D., M.D., A.D. Jr., and Mi.B., filed 04/24/2000. The reports identified Mother and Father as perpetrators. Id.

In March, 2008, Mother eventually appealed the four *founded* reports on the basis that the court proceedings did not specifically identify the person responsible for the abuse. However, the BHA dismissed Mother's appeals. In its order, the BHA reasoned:

The above docketed appeal(s) **IS** hereby **DISMISSED** because [Mother] failed to provide sufficient reasons why this matter should not be dismissed. Specifically, an Order issued by the Court of Common Pleas of Lawrence County which found the minors are subject to frequent and harsh beatings by [Father] and also at times by [Mother], and further, the physical abuse was severe. Also, the Court found the minor[s] are dependent within the [Juvenile Act].

BHA Order, 09/26/2008.

³ Because the trial court approved the juvenile master's report in its entirety, we refer to the juvenile master's recommendation as the trial court opinion and the juvenile master's findings as the trial court's findings. See 42 Pa. C.S. §6305(d) (“[u]nless a rehearing is ordered, the findings and recommendations become the findings and order of the court when confirmed in writing by the judge.”).

Although the Secretary granted Mother's application for reconsideration, the Secretary ultimately upheld the BHA's order. Mother's petition for review followed.⁴

II. Issues

In her Statement of Questions Involved, Mother sets forth the following 23 issues:

(0) I believe/(Whether) ALJ/LCCYS/DPW erred as a close review of the record will reveal the total absence of evidence indicating abuse, as defined by [23 Pa. C.S. §6303], directed at the children by Appellants (A.D. and D.D.).

(1) I believe/(Whether) DPW erred and violated Appellants federal and state due process right to notice and opportunity to be heard by dismissing her appeal without an administrative hearing.

(2) I believe/(Whether) DPW erred by failing to apply the correct standard necessary to change the status for a child abuse report from "indicated" to "founded," specifically when the trial court did not make a finding that Appellants abused the minors.

(3) I believe/(Whether) ALJ/LCCYS/DPW violated due process rights to notice and opportunity to be heard at an expunction, or judicial dependency, hearing.

(4) I believe/(Whether) ALJ/LCCYS/DPW did not present substantial evidence, that the injury resulted from criminal negligence, to sustain a finding of child abuse.

⁴ Our review in expunction cases is limited to determining whether substantial evidence supports the necessary findings of fact, whether errors of law were committed or whether constitutional rights were violated. F.V.C. v. Dep't of Pub. Welfare, 987 A.2d 223 (Pa. Cmwlth. 2010).

(5) I believe/(Whether) DPW's order denying expunction is not supported by substantial evidence because the County's investigation was incomplete as it did not consider accidental injury in disciplining a child.

(6) I believe/(Whether) ALJ erred in admitting the minor children's hearsay statements into the record without first making the findings prescribed by statute that are the precondition to admitting hearsay statements, and erred in finding that minors' hearsay statements were corroborated by medical evidence.

(7) I believe/(Whether) a finding of child abuse deprived Appellants due process rights which affected, and still effects, our ability to work, our status and reputation in society, and our constitutional right to parent our children.

(8) I believe/(Whether) ALJ/LCCYS/DPW erred in whether injury sustained caused severe pain to minor child consistent with law.

(9) I believe/(Whether) improper admission of minors' hearsay statements over Petitioners (Appellants) objection, violated Appellants constitutional right to due process.

(10) I believe/(Whether) no substantial evidence existed to support findings of fact.

(11) I believe/(Whether) LCCYS/DPW erred in not establishing, by substantial evidence, that the indicated/founded report of abuse is accurate and being maintained in a manner consistent with law.

(12) I believe/(Whether) the ALJ's decision not to expunge name from the Childline Registry was an error of law and not supported by substantial evidence. Specifically, the act and injury, did not amount to criminal negligence, and that the evidence the ALJ impermissibly relied upon was hearsay.

(13) I believe/(Whether) ALJ/LCCYS/DPW/BHA erred in basing its decision on hearsay evidence when it failed to grant petition for expungement because the hearsay testimony of (all parties involved), the Agency's evidence, failed to meet the necessary standard for the admissibility of hearsay evidence and that the evidence did not satisfy the standard to support a report of indicated/founded abuse.

(14) I believe/(Whether) no weight and credibility of evidence were solely within the province of the fact finder.

(15) I believe/(Whether) LCCYS/DPW incorrectly concluded that the indicated/founded report of child abuse was in accordance with the Law.

(16) I believe/(Whether) ALJ/LCCYS/DPW deprived Appellants fundamental right to reputation without due process and committed an error of law.

(17) I believe/(Whether) LCCYS caseworker's egregious conduct and actions, in filing an uncorroborated and incorrect investigative report and testimony, deprived Appellants fundamental rights, and thus, should be compensated for.

(18) I believe that/(Whether) trial counsel rendered ineffective assistance through inaction and failing to challenge testimony or file any motions, which contributed to the trial court outcome.

(19) I believe/(Whether) the ALJ/LCCYS erred as no clear and convincing evidence, under the Juvenile Act of 1999, was ever established that the minors were not [sic] "without proper parental care or control from either parent necessary for their physical, mental, or emotional health and such care and control from either parent is not immediately available."

(20) I believe/(Whether) the ALJ/LCCYS erred as our constitutional rights to due process were violated when

hearsay evidence presented was not permitted to cross-examination, as required by law.

(21) I believe/(Whether) the provisions of the Law purportedly setting forth the standard for the burden of proof in proceedings to maintain or expunge an indicated/founded report of child abuse are not valid.

(22) I believe/(Whether) the ALJ erred in reaching its conclusion due to a gross abuse of discretion.

Pet'r.'s Br., Statement of Questions Involved.

III. Discussion

At the outset, we note the Child Protective Services Law (CPSL), 23 Pa. C.S. §§6301-85, sets forth the procedure by which an individual named as a perpetrator in an *indicated*⁵ or *founded* report of child abuse may request that DPW expunge the report. 23 Pa. C.S. §6341. Section 6341 provides (with emphasis added):

(a) **General rule.**—At any time:

(1) The secretary may amend or expunge any record under this chapter upon good cause shown and notice to the appropriate subjects of the report.

(2) Any person named as a perpetrator ... in an indicated report of child abuse may, within 45 days of being notified of the status of the report, request the secretary to amend or expunge an indicated report on the

⁵ The CPSL defines an *indicated* report as “[a] child abuse report made pursuant to this chapter if an investigation by the county agency determines that substantial evidence of the alleged abuse exists based on any of the following: (1) Available medical evidence. (2) The child protective service investigation. (3) An admission of the acts of abuse by the perpetrator.” 23 Pa. C.S. §6303.

grounds that it is inaccurate or it is being maintained in a manner inconsistent with this chapter.

* * *

(c) Review of refusal of request.—If the secretary refuses the request under subsection (a)(2) or does not act within a reasonable time, but in no event later than 30 days after receipt of the request, the perpetrator ... shall have the right to a hearing before the secretary or a designated agent of the secretary to determine whether the summary of the indicated report in the Statewide central register should be amended or expunged on the grounds that it is inaccurate or that it is being maintained in a manner inconsistent with this chapter. The perpetrator ... shall have 45 days from the date of the letter giving notice of the decision to deny the request in which to request a hearing. The appropriate county agency and appropriate law enforcement officials shall be given notice of the hearing. The burden of proof in the hearing shall be on the appropriate county agency. The department shall assist the county agency as necessary.

23 Pa. C.S. §§6341(a) and (c).

Under 23 Pa. C.S. §6341(a)(2), a perpetrator named in an *indicated* report of child abuse has the right to appeal the Secretary's order denying amendment or expunction. An *indicated* report maybe based solely on an investigator's report. C.S. v. Dep't of Pub. Welfare, 879 A.2d 1274 (Pa. Cmwlt. 2005) (C.S. (2005)). Consequently, a citizen's reputation or right to obtain work in the child-care or education fields may be adversely affected on the basis of an investigator's report alone. Id. Therefore, DPW must give notice to a perpetrator named in an *indicated* report that he or she will be granted a hearing upon request. Id. Further, if a hearing is requested, the government agency bears the burden at hearing of proving child abuse by the alleged perpetrator. Id.

However, there is no similar provision affording a perpetrator named in a *founded* report the right to an administrative hearing following the Secretary's denial of his or her expunction request. K.R. v. Dep't of Pub. Welfare, 950 A.2d 1069 (Pa. Cmwlth. 2008) (citing J.G. v. Dep't of Pub. Welfare, 795 A.2d 1089 (Pa. Cmwlth. 2002)). A *founded* report is based on a judicial adjudication wherein the government alleging child abuse by the perpetrator met its burden of proving it. C.S. (2005). In an expunction request by an individual named as a perpetrator in a *founded* report, the Secretary may rely on the trial court's findings of abuse in the underlying judicial adjudication to dismiss the expunction request where the judicial adjudication also named the individual as the perpetrator of the abuse. C.J. v. Dep't of Pub. Welfare, 960 A.2d 494 (Pa. Cmwlth. 2008) (citing K.R.) An administrative hearing following denial of the expunction request is not mandated because the named perpetrator had a full and fair opportunity to defend against the allegations in the underlying judicial adjudication. Id. That individual cannot thereafter collaterally attack the trial court's dependency and abuse findings in an expunction request under the CPSL. Id.

Here, Mother contends DPW violated her due process rights to notice and an opportunity to be heard by dismissing her appeal without an administrative hearing. Citing 23 Pa. C.S. §6338(a) (disposition of *founded* and *indicated* reports)⁶ and 23 Pa. C.S. §6341(c) (amendment or expunction of information;

⁶ 23 Pa. C.S. §6338(a) provides (with emphasis added):

(a) General Rule.—When a report of suspected child abuse ... is determined by the appropriate county agency to be a founded report or an indicated report, the information concerning that report of suspected child abuse shall be expunged immediately from the pending complaint file, and an appropriate entry shall be made in

(Footnote continued on next page...)

review of refusal of request), Mother asserts she did not receive notice she had 45 days to appeal the report of abuse and her right to a hearing if her appeal is denied. Therefore, Mother argues, DPW denied her statutory right to an administrative hearing on the merits with an opportunity to cross-examine witnesses, present evidence and challenge any evidence against her. C.S. (2005).

We disagree. As noted above, the statutory provisions upon which Mother relies apply to *indicated* reports, not *founded* reports. Here, the four *founded* reports naming Mother and Father as perpetrators of abuse were based on the trial court's dependency adjudication. Because Mother is seeking expunction of *founded* reports, the notice and hearing provisions in 23 Pa. C.S. §§6341(a)(2) and (c) are inapplicable. C.J.; K.R. Mother had a full and fair opportunity to defend against the abuse allegations against her in the dependency hearing. Id.

Nonetheless, Mother is entitled to seek expunction of a *founded* report under 23 Pa. C.S. §6341(a) (1) (“At any time: ... [t]he secretary may amend or expunge any record upon good cause shown”). Section 6341(a)(1) grants the

(continued...)

the Statewide central register. Notice of the determination must be given to the subjects of the report, other than the abused child, and to the parent or guardian of the affected child or student along with an explanation of the implications of the determination. Notice given to perpetrators of child abuse ... shall include notice that their ability to obtain employment in a child-care facility or program or a public or private school may be adversely affected by entry of the report in the Statewide central register. The notice shall also inform the recipient of his right, within 45 days after being notified of the status of the report, to appeal an indicated report, and his right to a hearing if the request is denied.

Secretary, and her agents, the *discretionary authority* to amend or expunge *any record* upon good cause shown. G.M. v. Dep't of Pub. Welfare, 954 A.2d 91 (Pa. Cmwlth. 2008). “Our courts will not review the actions of government bodies or administrative tribunals involving the exercise of discretion in the absence of bad faith, fraud, capricious action or abuse of power.” Id. at 93.

A named perpetrator in a *founded* report enjoys a right to a limited appeal from the Secretary’s order denying expunction without a hearing. K.R.; C.J.; J.G. Our review in such an appeal is not one of substantial evidence; rather, it one of law regarding the named perpetrator’s due process rights. K.R.

Where a *founded* report is based on a judicial determination in a non-criminal proceeding, such as a dependency adjudication, in which the court makes a finding that child abuse occurred, but does not make a finding that the named perpetrator abused the child, the perpetrator named in the report is entitled to an administrative hearing. The Secretary must then determine whether the judicial adjudication relied upon constitutes sufficient evidence to support a *founded* report against the named perpetrator. J.G. We note the scope of the appeal is limited to determining whether the underlying adjudication supports a *founded* report that the named perpetrator is responsible for the abuse. Id. This limited review does not permit a named perpetrator to collaterally attack or otherwise challenge the underlying judicial determinations. Id.

Here, Mother asserts that the trial court did not make specific findings in the dependency adjudication that the four minors were abused and that Mother and Father perpetrated the abuse. Mother claims instead that the trial court solely

evaluated whether the minors should be declared dependent under the Juvenile Act because of lack of parental care and control.

Mother further asserts the trial court's decision states (with emphasis added), "However, the Master felt in a situation like this and the perpetrator still living in the home, the Master could not return the children to the home at this time." Trial Ct. Op. at 5. Mother argues the court's reference to a single perpetrator is an obvious reference to Father, not her.

We disagree. As noted above, the trial court found (with emphasis added):

9. The minors are subject to frequent and harsh beatings by the father, [AD. Sr.], and also at times by the mother.

* * *

11. The physical abuse was severe.

Trial Ct. Op. at 6; F.F. Nos. 9, 11.

Moreover, Item C of the *founded* reports for K.D., M.D. and A.D. Jr. identifies "D.D." as the mother. See DPW's Reproduced Record (R.R.) at 1a, 3a and 4a (1). Item D further identifies "A.D. Sr." as the father. Item F names "PARENTS" as the perpetrators. Id. at 1a, 3a, 4a (1). As to Mi. B., Item F of the founded report identifies "D.D./A.D. Sr." as the perpetrators. Id. at 4a (3).

After reviewing the trial court's dependency adjudication, we reject Mother's contention that the trial court did not specifically find that she abused the four children. Rather, Finding of Fact No. 9 plainly states the children were

subject to frequent and harsh beatings by Father, and at times, by Mother. We therefore hold the trial court's dependency adjudication sufficiently identifies Mother as a perpetrator of child abuse. K.R. But cf. C.S. v. Dep't of Pub. Welfare, 972 A.2d 1254 (Pa. Cmwlth.), appeal denied, ___ Pa. ___, 987 A.2d 162 (2009) (C.S. (2009)) (family court's finding in dependency proceeding that "the parents" abused the minor, without a specific finding that "the father" perpetrated the abuse, required a remand for an administrative hearing at which DPW or the county agency had the burden to prove the father abused the minor).

As discussed above, the Secretary may rely on the factual findings in the dependency adjudication to dismiss Mother's appeal from the *founded* reports of child abuse without a hearing where the underlying dependency adjudication named her as a perpetrator of the abuse. C.J.; K.R.; J.G. Here, the BHA's order dismissing Mother's appeal specifically references the trial court's adjudication finding the minors were subject to frequent and harsh beatings by Father, and also at times by Mother, and that the physical abuse was severe. Represented by counsel, Mother had a full and fair opportunity to defend against the allegations in the dependency hearing. Id. Therefore, Mother is collaterally estopped from challenging the four *founded* child abuse reports.⁷ In short, Mother's due process

⁷ In C.J., we recognized res judicata applies in expunction proceedings where the findings in a dependency adjudication establish child abuse by a named perpetrator. "Res judicata encompasses two related, but distinct principles: technical res judicata and collateral estoppel." 960 A.2d at 499. Technical res judicata provides, where a final judgment on the merits exists, a future lawsuit on the same cause of action is precluded." Id. "Collateral estoppel acts to foreclose litigation in a subsequent action where issues of law or fact were litigated and necessary to a previous judgment." Id. "[C]ollateral estoppel bars a subsequent lawsuit where (1) an issue decided in a prior action is identical to one presented in a later action; (2) the prior action resulted in a final judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action; and (4), **(Footnote continued on next page...)**

rights were not violated by the denial of her expunction request without an administrative hearing, and she cannot use her 2008 expunction request to relitigate the trial court's findings of child abuse. C.J.; K.R.

For the same reasons, we conclude the remaining issues Mother raises in this appeal constitute a collateral attack on the trial court's findings of abuse and are beyond the scope of this Court's limited review of the Secretary's denial of Mother's expunction request. C.J.; K.R.; J.G. Mother did not appeal the trial court's April, 2000 dependency adjudication, which resulted in CYS immediately filing four *founded* reports of child abuse naming her as a perpetrator. Therefore, Mother is now precluded from challenging the trial court's determinations of child abuse on the grounds they are not supported by substantial evidence or not in accord with the CPSL. C.J.; K.R.

Because the BHA's order dismissing Mother's appeal of the *founded* reports specifically references the trial court's adjudication finding Mother a perpetrator of child abuse against Mi.B., A.D. Jr., K.D. and M.D., we discern no error or abuse of discretion in the Secretary's order upholding it. C.J.; G.M.; K.R.; J.G. Accordingly, we affirm.

ROBERT SIMPSON, Judge

(continued...)

the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action." Id.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

D. D.,	:
	:
Petitioner	:
	:
v.	:
	:
Department of Public Welfare,	:
	:
Respondent	:
	:

No. 1454 C.D. 2009

ORDER

AND NOW, this 21st day of May, 2010, the order of the Secretary of the Department of Public Welfare is **AFFIRMED**.

ROBERT SIMPSON, Judge