

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

W.C. (In Re: L.C.), :
Petitioner :
 :
v. : No. 1918 C.D. 2007
 : Submitted: July 3, 2008
Department of Public Welfare, :
Respondent :

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FRIEDMAN

FILED: August 29, 2008

W.C. petitions *pro se* for review of the August 23, 2007, final order of the Secretary of the Department of Public Welfare (DPW) that upheld the June 14, 2007, order of DPW's Bureau of Hearings and Appeals (BHA), adopting the recommendation of an Administrative Law Judge (ALJ) and denying W.C.'s request to expunge an indicated report of child abuse. We affirm.

W.C. is the natural mother of L.C., who was born on August 26, 1991. On November 23, 2005, the Lehigh County Children and Youth Services (CYS) received an oral report alleging that W.C. refused to get L.C. necessary mental health treatment. At the time, L.C. lived with his mother and M.C., his natural father, and CYS had an open case file on the family.¹ In response to the November

¹ On September 23, 2005, CYS investigated allegations that W.C. had been neglecting L.C.'s mental health issues. (O.R.) Following a visit to L.C.'s home, CYS sent L.C.'s parents a **(Footnote continued on next page...)**

23, 2005, allegations, CYS caseworkers came to L.C.'s residence that same day and, based on L.C.'s appearance and behavior, determined that immediate intervention was needed. CYS removed L.C. from the home and took him to Lehigh Valley Hospital - Muhlenberg Center (Muhlenberg), where he was diagnosed with pervasive developmental disorder and obsessive compulsive disorder. L.C. remained in Muhlenberg and was treated by psychiatrist John F. Campion, M.D., from November 24, 2005, until December 23, 2005, when L.C. was discharged to the custody of his father.²

Ashley Gorga, a CYS caseworker in the child protective services intake unit, conducted an investigation, which included interviews with both of L.C.'s parents, Dr. Campion and L.C.'s primary care physician. On January 6, 2006, Gorga filed an indicated report of child abuse pursuant to the Child Protective Services Law (Law),³ 23 Pa. C.S. §§6301-6385, naming W.C. as

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letter recommending that L.C. be evaluated for mental illness. The letter indicated that if there were no evaluation by November 28, 2005, CYS would pursue a protective service order to compel one. (O.R.)

² Although L.C. lived with both his parents during the time in question, the record does not explain why M.C. was not included in the indicated report.

³ Under the Law's definitional section, an "Indicated report" is

A child abuse report made pursuant to this chapter if an investigation by the county agency or the Department of Public Welfare 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.

(Footnote continued on next page...)

perpetrator and determining that W.C.’s failure to obtain mental health treatment for L.C. caused him serious mental injury by interfering with his ability to accomplish age appropriate developmental and social tasks.⁴ W.C. requested expungement of the indicated report, which was denied on grounds that the report is accurate and maintained in a manner consistent with the Law. W.C. then

(continued...)

(3) An admission of the acts of abuse by the perpetrator.

23 Pa. C.S. §6303(a).

Relevant to the present case, the term “Child abuse” shall mean

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to ... a child under 18 years of age.

...

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide essentials of life, including adequate medical care, which endangers a child’s life or development or impairs the child’s functioning.

23 Pa. C.S. §§6303(b)(ii) and (iv).

⁴ “Serious mental injury” is defined as

A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that:

(1) renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child’s life or safety is threatened; or

(2) seriously interferes with a child’s ability to accomplish age-appropriate developmental and social tasks.

23 Pa. C.S. §6303(a).

requested a hearing before BHA, and the matter was assigned to an ALJ to make recommended findings of fact and conclusions of law.⁵ At the March 6, 2007, hearing, W.C. testified on her own behalf, and CYS presented the testimony of Gorga and Dr. Campion, an expert in child and adolescent psychology.

Based on this evidence, the ALJ made the following relevant findings of fact, which were adopted by DPW.

3. W.C. knew that L.C. suffered from behavioral problems as early as 1996.

4. W.C. observed L.C. become hyperactive and uncontrollable when he was as young as five or six years old in school.

...

6. L.C. continued to have bursts of hyperactivity for which W.C. sought no treatment.

...

8. L.C. suffered periods of depression, obsessive behavior, aggression, lability, and defiance.

9. W.C. did not have L.C. examined by mental health professionals, despite the recommendation of her family doctor that W.C. do so.

⁵ Section 6341(a)(2) of the Law provides, in pertinent part, that “[a]ny 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 this chapter.” 23 Pa. C.S. §6341(a)(2). If the request is refused, the perpetrator has a right, upon request, to a hearing before the secretary or a designated agent of the secretary. Section 6341(c) of the Law, 23 Pa. C.S. §6341(c).

10. In 2004, W.C. read a book entitled, “Is This Your Child”, which indicated that much childhood mental illness could be explained by exposure to fungus or mold.

11. W.C. noticed mold growths in her apartment complex and had tests conducted on her apartment and in the HVAC ducts and examinations of the premises to confirm her suspicion that L.C. was subjected to excessive mold.

12. W.C. felt that her suspicions were confirmed when the tests came back with mold growth, but did not ask to move to a new apartment in her apartment complex or move to a different apartment complex.

13. Before and after the mold tests, W.C. attempted to get [L.C.] examined for mold and fungal infections at the same, or a similar, clinic operated by the authors of “Is This Your Child”, but did not succeed in doing so.

14. [L.C.] displayed none of the clinical symptoms of a mold or fungal infection.

15. For three months prior to November 2005, [L.C.’s] behavior deteriorated so much that he required help to toilet himself.

16. Lehigh County CY5 attempted to get [W.C.] to take [L.C.] to a psychiatrist, but [W.C.] considered it more important for him to have an anti-fungal antibiotic first, before she would consider taking him for psychiatric care.

...

18. When Lehigh County CY5 came to remove [L.C.] from [W.C.’s] residence, [L.C.] would not open his eyes or look a person straight into the face, and required assistance to leave the apartment.

...

21. [L.C.] suffered from “bizarre behavior” when he was admitted to the hospital.

22. [L.C.] had no “socialization skills”, from being isolated in [W.C.’s] apartment.

23. [L.C.] looked like a “feral child” when first admitted to the hospital.

24. [L.C.] refused to eat, urinate, defecate, or leave his room for several days after his admission.

25. When he eventually did leave his room, [L.C.] kept his eyes closed and shuffled alongside of the wall, feeling his way with his hands.

26. W.C. initially refused consent to give L.C. any medications, unless the anti-fungal drug Nystatin was prescribed as well.

27. Dr. Champion saw no symptoms of fungal or mold infection in [L.C.] but prescribed Nystatin as a way to obtain [W.C.’s] consent so that [L.C.] [could get] the anti-psychotic and anti-anxiety medications, which the doctor judged, that L.C. really needed.

28. Dr. Champion opined [W.C.’s] fixation with fungal infections was unfounded, a hindrance and harmed L.C.’s mental health.

29. [L.C.] improved after Dr. Champion prescribed anti-psychotic and anti-anxiety drugs.

...

32. [L.C.] remained medicated on Zoloft and improved sufficiently to enter public school.

...

37. Ms. Gorga is credible.

38. Dr. Champion is credible.

39. The Appellant is partially credible.

(ALJ's Findings of Fact, Nos. 3-4, 6, 8-16, 18, 21-29, 32, 37-39) (citations omitted).

The ALJ determined that the indicated report should not be expunged, concluding that there was sufficient evidence to show that L.C.'s bizarre behavior did not result from exposure to mold, as W.C. claimed, but from W.C.'s failure to obtain treatment for L.C.'s mental health needs. The ALJ noted that, by the time L.C. was removed from W.C.'s custody, his mental health was rapidly deteriorating; he had no level of socialization; he would not open his eyes; and he could no longer shower or toilet himself alone. The ALJ also observed that once L.C. was in Muhlenberg, where he was properly diagnosed and received appropriate care and medication, L.C. became a different person, who was and is a normal teenager. The ALJ noted further that none of L.C.'s doctors believed that his emotional problems resulted from the presence of mold in W.C.'s apartment, and, in fact, W.C.'s own mold report shows nothing more than normal amounts of ordinary mold in the apartment. The ALJ found that W.C. ignored pertinent medical advice and common sense and, instead, focused solely on obtaining treatment for mold, thereby continuing L.C.'s illness and interfering with his treatment. Finally, the ALJ stated:

If [W.C.] truly believed that mold was the cause of [L.C.'s] increasing behavioral problems, she simply had to move out of her apartment. ... Since she did not take

this simplest and most obvious of steps, her failure contributes to the inference from the other evidence that she was neglectful and because of her neglect, her son's mental health deteriorated drastically until he was rescued in November 2005.

(ALJ's op. at 9.) Accordingly, the ALJ recommended denial of W.C.'s appeal.

By order dated June 14, 2007, BHA adopted the ALJ's recommendation in its entirety. Subsequently, W.C. filed for reconsideration, which was granted by the Secretary of DPW on July 5, 2007. On August 23, 2007, the Secretary entered a final order upholding BHA's order, and W.C. petitioned this court for review.

On appeal,⁶ W.C. essentially argues that the decision not to expunge the indicated report of child abuse against her was not supported by substantial evidence.⁷ More specifically, W.C. contends that the CYIS investigation report

⁶ This court's scope of review is limited to determining whether necessary findings of fact are supported by substantial evidence, whether there is an error of law, and whether constitutional violations occurred. *B.E. v. Department of Public Welfare*, 654 A.2d 290 (Pa. Cmwlth. 1995). In an expungement case, the child protective services agency has the burden of establishing by substantial evidence that the indicated report of abuse is accurate and being maintained in a manner consistent with law. *J.S. v. Department of Public Welfare*, 328 Pa. 243, 596 A.2d 1114 (1991). "Substantial evidence" is "[e]vidence which outweighs inconsistent evidence and which a reasonable person would accept as adequate to support a conclusion." 23 Pa. C.S. §6303(a). In determining whether substantial evidence exists to support a finding of fact, this court is to give the party in whose favor the appealed decision was rendered, in this case, CYIS, the benefit of all inferences that can logically be drawn from the evidence. *B.J.K. v. Department of Public Welfare*, 773 A.2d 1271 (Pa. Cmwlth. 2001).

⁷ In her "Statement of Questions Involved," W.C. presents the following seven questions.

(1) Who is the medical professional that told me in 2003 to take my son to a psychiatrist?

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contains false statements and an unsubstantiated accusation and that the testimony from Dr. Champion and Gorga is filled with exaggerations and inaccuracies. Moreover, W.C. asserts that she did nothing to cause L.C. “non-accidental serious mental injury.” To the contrary, W.C. maintains that everything she did was in an effort to get her son the best treatment possible for his symptoms without his having to “suffer with a future of the consequences of mind-altering drugs.” (W.C.’s brief at 10.) We must reject W.C.’s arguments.

As much as W.C. would urge us to accept her view of the situation, in expungement cases, the Secretary of DPW, or the Secretary’s proper designee, is to be considered the ultimate arbiter of fact. *B.J.K. v. Department of Public Welfare*, 773 A.2d 1271 (Pa. Cmwlth. 2001). When the fact-finder has determined the weight and credibility of evidence, this court will not disturb such determinations

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- (2) What exactly occurred on 1/26/03 as noted in the “Child Protective Service Investigation Report” (“date of incident” noted as 1/26/03 through 11/23/05”)?
- (3) What exactly did I do to cause my son “non-accidental serious mental injury” as stated in the applicable law?
- (4) Why did Ashley Gorga state in the “Child Protective Service Investigation Report” that I did not believe my son had any mental health issues?
- (5) Are false statements allowed to be used in reports and hearings by caseworkers, management, and lawyers of Lehigh County Children and Youth Services?
- (6) What evidence is there that I am not credible?
- (7) Is a Lehigh County Children and Youth Services employee or lawyer credible if they make false statements against a so-called “perpetrator”?

(W.C.’s brief at 3.) In each case, W.C. answers the question posed by claiming that it was not addressed. *Id.*

on review. *Id.* Here, the credited witness testimony and supporting documentation fully supports the ALJ's findings, which, in turn, support the conclusion that, whatever her motive, W.C.'s actions constituted abuse within the meaning of the Law in that her actions only prolonged L.C.'s illness and interfered with his timely diagnosis and successful treatment.

Accordingly, because there is substantial evidence in support of the indicated report of child abuse, we affirm the Secretary's decision not to expunge that report.

ROCHELLE S. FRIEDMAN, Judge

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	:	
Department of Public Welfare,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 29th day of August, 2008, the order of the Department of Public Welfare, dated August 23, 2007, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Judge