



following an incident at Shuman Juvenile Detention Center (Shuman Center), where Petitioner was formerly employed as a Youth Care Worker (YCW). At the time of the incident, D.L., the alleged victim of abuse, was a 14-year old resident at Shuman Center. The CYF investigation determined that Petitioner pushed a metal door into D.L.'s forehead, choked D.L., and then slammed D.L.'s head into the floor. Based on the investigation and medical evidence, CYF found that Petitioner was a perpetrator of child abuse. Petitioner appealed, requesting that the indicated report be expunged, and a hearing was held before an administrative law judge (ALJ) on March 27 and June 21, 2007.

It was undisputed that at approximately 8:30 p.m. on May 28, 2006, D.L. and another Shuman Center resident, R.T., began fighting in a common area of Unit G, which quickly involved nearly all 12 residents of Unit G. Because only two YCW's were present on Unit G, a facility-wide emergency known as an "Emerson" call was declared. Within minutes, a number of additional Shuman Center staff, including Petitioner, arrived on Unit G.

D.L. testified that his altercation with R.T. ended when YCW Jana Dorsey, a person he knew prior to the incident, arrived on Unit G and held him to the ground. YCW Dorsey and YCW David Hopkins then escorted D.L. to Room 4 and locked him inside. Once Unit G was secure, D.L. stated that YCW Roy Griffin and Petitioner were the only staff-members that remained on Unit G. D.L.

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**(continued . . .)**

- (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(a).

testified that his only injury when he was placed in Room 4 was a preexisting sore on his lower right lip.

After he was secured in Room 4, D.L. stated that he observed Petitioner unlock and enter the room of another Unit G resident, which prompted him to yell at Petitioner from behind his locked door. Petitioner then left the other resident's room and began arguing with D.L. According to D.L., Petitioner entered D.L.'s room and, in pushing open the door, struck D.L. on the forehead with the metal door. D.L. testified that Petitioner took him to the ground, facedown, and proceeded to drive the left side of D.L.'s face into the floor two or three times. Petitioner then left D.L.'s room and locked the door behind him. When D.L. noticed he was bleeding from above his left eye, he asked YCW Griffin to summon the nurse. After being examined by the nurse, D.L. was taken to the Children's Hospital of Pittsburgh where he received sutures to close the laceration above his left eye. According to D.L., the pain he suffered as a result of the injuries was minimal.

Testifying on behalf of CYF was Wayne McNeil, who conducted the investigation and filed the indicated report of child abuse against Petitioner. In finding that physical abuse had occurred, McNeil testified that he personally interviewed Petitioner, D.L. and nine Shuman Center staff-members; reviewed photographs of D.L.'s injuries; and read the nurse's report and incident reports obtained from the Shuman Center. According to McNeil, the statements made by D.L. during his investigatory interview were consistent with D.L.'s testimony at the administrative hearing.

Next, CYF presented the testimony of YCW Dorsey. YCW Dorsey stated that upon entering Unit G in response to the "Emerson," she immediately

restrained D.L. YCW Dorsey testified that she knew D.L. well before the May 28, 2006, incident because he was a former resident of Unit H, her assigned unit. After D.L. was subdued, YCW Dorsey stated she escorted D.L. to Room 4 with the assistance of YCW Hopkins. She noticed that D.L.'s lower lip was injured and after she locked D.L. in his room, she asked Nurse Kendra James to examine D.L. YCW Dorsey then returned to Unit H. YCW Dorsey testified that D.L. had no injuries other than the sore on his lip when she left Unit G.

YCW Hopkins corroborated YCW Dorsey's testimony. YCW Hopkins testified that upon entering Unit G he noticed YCW Dorsey restraining a resident on the floor and assisted her. Nurse James arrived moments later to examine the resident. YCW Hopkins testified he remained in the room while Nurse James examined the resident and stated that he observed no injuries other than an injured lip. When Nurse James was finished, YCW Hopkins testified that the resident remained in his room with the door locked. YCW Hopkins did not know D.L. but after viewing photographs he identified D.L. as the resident he and YCW Dorsey restrained and returned to his room.

Nurse James testified that she arrived on Unit G after the "Emerson" to check residents for injuries. Nurse James stated that she entered Room 4 to treat D.L.'s lip at the request of YCW Dorsey. Nurse James testified that she examined D.L.'s entire face and that he had no injuries other than the sore on his lip, which was insignificant and did not require treatment. Nurse James then left Unit G to dispense medications in a different unit but returned to Unit G shortly thereafter. Nurse James stated that when she saw D.L. the second time, he had a significant bruise to the top of his forehead and a laceration above his left eye. Nurse James testified that the injuries were so significant compared to her first examination of

D.L. that she was not sure it was the same resident; however, after viewing the resident's medical records she confirmed it was D.L. Nurse James stated that she took D.L. to the nurse's office where she treated him and took pictures of his injuries. Nurse James then sent D.L. to the Children's Hospital of Pittsburgh, where he received sutures to close the laceration.

The final witness called by CYF was YCW Jessica Klippahn. After all residents of Unit G were secured, YCW Klippahn, who knew D.L., testified that he called out her name from inside his room. According to YCW Klippahn, she approached D.L.'s room and was able to view his face as they spoke through the window of his locked door. YCW Klippahn stated that she observed no injuries on D.L.'s face other than a sore on his lip. YCW Klippahn left Unit G while Nurse James was checking the residents and did not return.

Petitioner, testifying on his own behalf, denied ever having entered D.L.'s room on the date in question. Although assigned to Unit G on that day, Petitioner was searching residents after visitation concluded in the admissions area of Shuman Center when the "Emerson" was called. When he returned to Unit G in response to the "Emerson," Petitioner stated that he saw D.L. kicking another resident on the ground and ran to restrain him. Petitioner testified that he and YCW Darnell Farrow tackled D.L. simultaneously, causing D.L. to hit the left side of his head on the hard tile floor. Petitioner stated that he picked up D.L. and placed him in Room 4, but that he was unable to lock the door because he had lost his key. According to Petitioner, D.L.'s back was to him the entire time and he never got a look at his face.

After order had been restored on Unit G, Petitioner testified that D.L. began yelling and accusing Petitioner of injuring him, prompting Petitioner to

summon Wing Supervisor Donald Poindexter. According to Petitioner, it was not until after he returned to Unit G with Poindexter that Nurse James examined D.L.'s injuries for the first time. Petitioner testified that he observed Nurse James check on Rooms 5 and 6 when she initially responded to the "Emerson" call, but that she did not check on Room 4 until she returned to Unit G for the second time.

YCW Farrow testified that he was with Petitioner when the "Emerson" was called and arrived on Unit G at the same time as Petitioner. According to YCW Farrow, YCW Dorsey was mistaken as to the identity of the resident she was restraining. YCW Farrow testified that YCW Dorsey was covering R.T. on the ground, not D.L., and that D.L. was standing over them, trying to hit R.T. with a broomstick. YCW Farrow recalled that he and Petitioner tackled D.L., causing D.L. to hit his head on the floor. YCW Farrow further testified that he observed Petitioner take D.L. to Room 4 and YCW Dorsey take R.T., who "had a little cut on his lip," to Room 5. June 21 Hearing Transcript, Page 115. When asked if he knew who D.L. was at the time of the incident, YCW Farrow answered in the negative.

Supervisor Donald Poindexter testified that when he arrived on Unit G, D.L. was already inside Room 4 and Petitioner was escorting another resident to Room 1. Poindexter stated that he did not observe Petitioner have any interaction with D.L. Poindexter further testified that Nurse James did not examine D.L. during her first visit to Unit G. According to Poindexter, he observed Nurse James examine the residents that were initially placed in Rooms 5 and 6, but did not see Nurse James or any other staff member enter Room 4. Poindexter testified that only Petitioner, YCW Griffin, and Supervisor Desire Hickman remained on Unit G after he left. Poindexter stated he did not return to Unit G until approximately 15

minutes later, when Petitioner informed him that Unit G was still loud and chaotic and that a resident had accused Petitioner of injuring him. Poindexter testified that Nurse James returned to Unit G five minutes later, and at that point examined D.L. for the first time.

Supervisor Hickman also testified on behalf of Petitioner. According to Hickman, YCW Dorsey was covering R.T. on the ground, not D.L., and D.L. was kicking R.T. when she arrived on Unit G. Hickman testified that she observed Petitioner and YCW Farrow tackle D.L., causing D.L. to hit his head on the hard floor. Hickman further stated that she observed Petitioner place D.L. in Room 4 and that she then instructed YCW Dorsey and YCW Hopkins to put R.T. in Room 5. Hickman testified that she had not been familiar with D.L. or R.T. prior to May 28, 2006. Hickman stated that Petitioner departed Unit G seconds after her, and at no time did she observe Petitioner enter Room 4, except when he initially placed D.L. there.

YCW Dominick Loffredo, who was on Unit G at the time of the incident, testified that D.L. sustained the injury above his left eye as a result of a punch landed by R.T. during the initial physical altercation, before Petitioner arrived on Unit G. YCW Loffredo stated that he observed Petitioner and YCW Farrow tackle D.L. while YCW Dorsey subdued R.T. on the ground with the assistance of YCW Hopkins. According to YCW Loffredo, he left after Unit G was secure and did not return until after his break at 10:00 p.m.

YCW Roy Griffin was also present on Unit G during the physical altercation between D.L. and R.T. YCW Griffin testified that he was on Unit G during the entire period in question and that he did not observe Petitioner have any physical contact with D.L. YCW Griffin further stated that D.L. admitted to him

on May 29, 2006, that the cut above his left eye was a preexisting injury he sustained outside of Shuman Center, and that it was reopened during the May 28, 2006, incident. YCW Griffin memorialized D.L.'s statements in an incident report dated May 29, 2006, but testified that he had not noticed a mark or scar above D.L.'s left eye prior to May 29, 2006.

YCW James Allen Alston, Jr., who transported D.L. to the Children's Hospital of Pittsburgh, also testified that D.L.'s injury appeared to be preexisting. Based on personal experience, YCW Alston opined that the laceration above D.L.'s eye looked like a scar that had been reopened. YCW Alston filed an incident report to that effect upon returning with D.L. from the hospital on the morning of May 29, 2006.

The ALJ found the witnesses presented by CYF to be credible, except that he did not find credible that part of D.L.'s testimony with respect to the pain he suffered. The ALJ found that D.L. minimized the pain he suffered from his injury in order to project a "tough guy" image. ALJ Adjudication at 9. The ALJ noted that "[t]he bruising and laceration depicted in the photographs in evidence, would, without question, cause a child severe pain." *Id.* The ALJ did not credit the testimony of Petitioner or Petitioner's witnesses. Based on his findings, the ALJ concluded Petitioner was a perpetrator of child abuse against D.L. Accordingly, the ALJ recommended that Petitioner's petition to expunge the indicated report be denied. On October 30, 2007, the Bureau adopted the recommendation of the ALJ in its entirety, making the recommendation a final adjudication of the Department. Petitioner now seeks this Court's review.<sup>2</sup>

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<sup>2</sup> Our scope of review in expunction proceedings is limited to determining whether the necessary findings of fact were supported by substantial evidence, whether errors of law were committed, **(Footnote continued on the next page . . .)**



On appeal, Petitioner contends that the Bureau erred. Specifically, Petitioner argues that there is no substantial evidence to support (1) the finding that Petitioner intentionally assaulted D.L. or (2) that D.L. suffered a serious physical injury.

The Law defines “child abuse,” in relevant part, as “any recent act . . . by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.” 23 Pa.C.S. §6303(b)(1)(i). An injury is considered “nonaccidental” if it is “the result of an intentional act that is committed with disregard of a substantial and unjustifiable risk.” 23 Pa.C.S. §6303(a). The term “serious physical injury” includes any injury that “causes a child severe pain.” *Id.*

In a child abuse expunction hearing, the county agency bears the burden of proving by substantial evidence that the actions of the perpetrator constitute child abuse. 23 Pa.C.S. §6341(c); *D.T. v. Department of Public Welfare*, 873 A.2d 850, 852-53 (Pa. Cmwlth. 2005). Under the Law, 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). This Court has described substantial evidence as “evidence which so preponderates in favor of a conclusion that it outweighs, in the mind of the factfinder, any inconsistent evidence and reasonable inferences drawn therefrom.” *R.P. v. Department of Public Welfare*, 820 A.2d 882, 885 n.8 (Pa. Cmwlth. 2003) (internal citation and quotation omitted).

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or whether constitutional rights were violated. *K.J. v. Department of Public Welfare*, 767 A.2d 609, 611 (Pa. Cmwlth. 2001).

We address, first, Petitioner's contention that there is no substantial evidence to support the finding that he intentionally assaulted D.L. Petitioner argues that the only direct evidence that he intentionally assaulted D.L. is the testimony of D.L. himself, which Petitioner asserts cannot be regarded as credible because it was directly contradicted by the testimony of YCW Loffredo, YCW Griffin, and Petitioner. Petitioner further contends that the testimony of all of his witnesses, including his own, was consistent and credible.

This Court has consistently held that weight and credibility determinations are resolved by the finder of fact. *D.T.*, 873 A.2d at 853; *B.J.K. v. Department of Public Welfare*, 773 A.2d 1271, at 1276 (Pa. Cmwlth. 2001); *K.J.*, 767 A.2d at 613. In the case *sub judice*, the ALJ credited D.L.'s testimony about his assault by Petitioner. It is well-settled that the testimony of the subject child alone may constitute substantial evidence to support an indicated report of child abuse. *D.T.*, 873 A.2d at 854 (citing *G.S. v. Department of Public Welfare*, 521 A.2d 87, 90 (Pa. Cmwlth. 1987)).

Further, D.L.'s testimony that he was intentionally assaulted by Petitioner was corroborated by circumstantial evidence in the testimony of YCW Dorsey, YCW Hopkins, Nurse James, and YCW Klippahn. All these witnesses contradicted Petitioner's testimony that D.L. suffered the laceration above his left eye accidentally during the altercation with R.T.. Their testimony supports the finding that D.L. suffered the injury *after* he was placed in his room. Most notable was the testimony of Nurse James and YCW Dorsey. Nurse James stated unequivocally that she examined D.L. twice on May 28, 2006, and that her initial examination did not reveal a bruise on his forehead or a laceration above his left

eye. YCW Dorsey testified credibly that she was well-acquainted with D.L. and that it was her, not Petitioner, who restrained D.L.

The testimony of Petitioner and of his witnesses was in direct conflict with D.L.'s testimony on the question of how D.L. sustained his eye injury. The finding could have gone either way, but the ALJ, who observed all the witnesses who testified, chose to accept CYF's version of the incident. Although Petitioner might not agree with the ALJ's determinations, they were, nevertheless, "within the discretion of the fact finder, the [Bureau]" and cannot be disturbed on appeal. *D.T.*, 873 A.2d at 853.

Next, we address Petitioner's assertion that the ALJ's finding that D.L. sustained a serious physical injury is not supported by substantial evidence. Petitioner maintains that this finding is not supported by substantial evidence because D.L. testified that he did not suffer "severe pain" as a result of his injuries, and the ALJ erred in making a finding of fact contrary to D.L.'s testimony.

The testimony of the subject child is not necessary for a finding that the child suffered severe pain as a result of the injuries inflicted upon him; such a finding can be supported by circumstantial evidence. *B.J.K.*, 773 A.2d at 1276; *S.T. v. Department of Public Welfare*, 681 A.2d 853, 856-57 (Pa. Cmwlth. 1996); *D.N. v. Department of Public Welfare*, 562 A.2d 433, 436 (Pa. Cmwlth. 1989). These cases are controlling in this matter.

In *B.J.K.*, this Court affirmed the Bureau's determination that a 13-year-old child suffered severe pain as a result of injuries sustained from being beaten about the face and body with a belt. Although the subject child testified "that she did not feel any pain," the Bureau found otherwise, looking to the nature

and extent of the subject child's injuries, and the age of the subject child at the time of the incident. *B.J.K.*, 773 A.2d at 1274, 1276.

Similarly, in *S.T.*, we affirmed the Bureau's finding that a 4-year-old child suffered severe pain as a result of bruises to his face and ear, even though there was no testimony from either the subject child or a medical witness pertaining to pain. *S.T.*, 681 A.2d at 856-57. We held witness testimony that the subject child winced and screamed when the bruised area was touched, itself, was sufficient to establish that the subject child suffered an injury that resulted in severe pain. *Id.* at 856. The Bureau's finding was also supported by photographs depicting the subject child's injuries. This Court stated, "regardless of the absence of testimony from either the victim or a medical witness, photographs depicting injuries may provide substantial evidence to support a finding that the child suffered severe pain." *Id.* at 856-57.

Finally, in *D.N.*, this Court upheld the Bureau's finding of severe pain, notwithstanding the absence of testimony from the caseworker who conducted the investigation, the subject child, or any medical expert regarding pain. *D.N.*, 562 A.2d at 436. The Bureau "inferred" that the subject child sustained injuries that caused severe pain based upon the nature and extent of the injuries as depicted in photographs and the age of the child at the time of the incident. We found such an inference to be reasonable. *Id.*

Here, D.L. denied suffering severe pain. However, the ALJ found that D.L. was attempting to portray himself as a "tough guy" and did not credit D.L.'s statement minimizing his pain. In finding that D.L.'s injuries "would, without question, cause a child severe pain," the ALJ examined the photographs in evidence depicting the bruising and laceration; considered that the wound was iced

to prevent swelling and numbed before sutures were administered; and noted that the resulting scar was visible at the time of the administrative hearing. ALJ Adjudication at 9. As the case law teaches, circumstantial evidence can support a finding of severe pain. Here, such evidence exists in the form of photographs and medical records, which evidence supports the ALJ's finding that D.L. suffered severe pain.

For these reasons, the Bureau's order denying Petitioner's request to expunge the report of indicated child abuse is affirmed.

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MARY HANNAH LEAVITT, Judge

