

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

E.O. In Re: A.V.,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2750 C.D. 2010
	:	Submitted: June 3, 2011
Department of Public Welfare,	:	
	:	
Respondent	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE BROBSON**

FILED: September 14, 2011

Petitioner E.O. (E.O.) petitions for review of an order of the Department of Public Welfare, Bureau of Hearings and Appeals (Department), which adopted the recommendation of the Administrative Law Judge (ALJ). The ALJ dismissed E.O.’s appeal of her request to have the Department expunge from the ChildLine Abuse & Neglect Registry maintained by the Department a founded report of child abuse identifying E.O. as a perpetrator of child abuse.¹ We affirm the Department’s order.

¹ ChildLine is a state-wide operation for the receipt of reports of suspected child abuse, the referral of reports to appropriate governmental agencies for investigation, and the maintenance of child abuse reports. Section 6332 of the Child Protective Services Law (Law), 23 Pa. C.S. § 6332. When a report of child abuse is deemed to be founded, ChildLine maintains the information regarding the child abuse. Section 6338(a) of the Law, 23 Pa. C.S. § 6338(a). A founded report of child abuse is defined as a report of child abuse made following “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 plea or a finding of guilt to a criminal

E.O. is the mother of A.V., who was born on June 27, 1999. J.V. is A.V.'s father. A.V. had a seizure on September 19, 1999, and her parents sought medical treatment for A.V. the following day, September 20, 1999. On September 22, 1999, Lancaster County Children and Youth Services (LCCYS) received a referral regarding A.V., indicating that her parents had physically abused her based upon unexplained physical injuries, including bilateral subdural hematomas, a skull fracture, and a rib fracture.

On November 29, 1999, the Court of Common Pleas of Lancaster County (trial court) conducted a dependency hearing, which resulted in an order that included a determination that *both parents* physically abused A.V. under the Law. On November 30, 1999, a caseworker for LCCYS, Amanda Gallelo, completed her child abuse investigation concerning A.V. and filed a founded report of child abuse, identifying E.O. as a co-perpetrator of physical child abuse. The founded report referred to the trial court's dependency proceedings, which Ms. Gallelo attended, noting the trial court's determination that A.V. had been abused and identifying her injuries consistently with the injuries described above. The founded report stated that A.V.'s parents were her sole caretakers, and that they both denied inflicting A.V.'s injuries.

On December 10, 1999, the Department sent notice to E.O. that she was identified as a perpetrator of child abuse in a founded report. On July 17, 2009, E.O. filed an appeal of the December, 1999, notice. The Bureau of Hearings and Appeals dismissed the appeal as untimely, but the acting Secretary of Public Welfare set aside the dismissal order and directed the Bureau to "determine the

charge involving the same factual circumstances involved in the allegation of child abuse." Section 6303 of the Law, 23 Pa. C.S. § 6303.

nature of the Founded Report and, if appropriate, conduct a hearing on the merits.”² The Bureau assigned the matter to the ALJ, who conducted a hearing during which E.O. did not testify.

The ALJ, in addition to making factual findings (as summarized above), concluded that substantial evidence supported the identification of E.O. as a perpetrator of child abuse in the founded report. The ALJ relied upon the testimony of Ms. Gallelo regarding the scope of the dependency hearings and relied upon the trial court’s order, which expressly provides that both E.O. and A.V.’s father had abused A.V. under the Law. The ALJ ultimately concluded that the doctrine of res judicata precluded E.O. from seeking to re-litigate the pertinent issues of whether A.V. was abused and who committed the abuse.

On appeal, E.O. raises the following issues for our review:³ (1) whether the Department erred as a matter of law in applying a presumption that E.O. was a perpetrator of child abuse; and (2) whether substantial evidence supports the Department’s finding that E.O. was a perpetrator of abuse against A.V. Additionally, LCCYS raises the question of the whether we may affirm the

² Section 6341 of the Law, 23 Pa. C.S. § 6341, provides the mechanism for a person identified in a child abuse report to seek to have her record expunged:

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.

(Emphasis added).

³ This Court’s review of an order denying an appeal of a request to expunge a founded report of child abuse is limited to determining whether substantial evidence supports the necessary factual findings, whether constitutional rights were violated, or whether errors of law were committed. *E.D. v. Dep’t of Public Welfare*, 719 A.2d 384, 387 (Pa. Cmwlth. 1998); 2 Pa. C.S. § 704.

Department's order because E.O. has not established that the Secretary abused his discretion. LCCYS also argues that the ALJ properly applied estoppel principles in rejecting E.O.'s expungement request.

We begin by addressing E.O.'s contention that the ALJ applied an erroneous presumption warranting reversal of the Department's order. E.O. bases her argument almost entirely upon Section 6381(d) of the Law, 23 Pa. C.S. § 6381(d), which relates to evidentiary standards and provides that certain evidence of abuse constitutes prima facie evidence that a parent or care provider abused a child.⁴ As the record and the ALJ's decision indicate, however, the ALJ did not engage in an analysis of LCCYS's burden of proof, but rather, based his decision upon estoppel grounds and the legal doctrine precluding collateral attack of a related order.⁵

⁴ Section 6381(d) of the Law, 23 Pa. C.S. § 6381(d) provides:

(d) Prima Facie evidence of abuse.—Evidence that a child has suffered child abuse of such a nature as would ordinarily not be sustained or exist except by reason of the acts or omissions of the parent or other person responsible for the welfare of the child shall be prima facie evidence of child abuse by the parent or other person responsible for the welfare of the child.

⁵ In the course of his hearing, the ALJ specifically referred to the collateral attack doctrine. That doctrine, which precludes a litigant from seeking to obtain a favorable outcome in a proceeding through the use of a challenge to a previous related judicial determination, *see J.G. v. Department of Public Welfare*, 795 A.2d 1089 (Pa. Cmwlth. 2002), is a relative of res judicata (or claim preclusion) and collateral estoppel (or issue preclusion). In *Klein v. Whitehead*, 389 A.2d 374, 385-87 (Md. Ct. Spec. App.), *cert. denied*, 283 Md. 734 (1978), the Maryland Court of Special Appeals described the differences between estoppel doctrines and the collateral attack doctrine as follows:

The prohibition against collateral attack upon a judgment . . . is related to, but yet quite different from, the effect of estoppel by judgment (direct or collateral). Estoppel by judgment comes into play when a person seeks not to attack the existence or validity of a judgment or decree, but rather to question the effect of that

The ALJ did not base his decision upon an examination of Section 6381(d) of the Law. As indicated above, the Secretary's remand directed the ALJ to consider the question of whether the order the trial court issued in the dependency hearing was sufficient for the purpose of maintaining the founded report of child abuse by E.O. The matter before the ALJ did not require him to engage in an analysis of whether Section 6381(d) applied. Consequently, because E.O. does not challenge the estoppel and collateral attack reasoning underlying the ALJ's order, E.O. is bound by the ALJ's legal conclusion that estoppel principles preclude re-litigation of the question of whether E.O. abused A.V.⁶

E.O. also asserts in her second issue that substantial evidence does not support the ALJ's decision. E.O. relies upon this Court's decision in *C.S. v. Department of Public Welfare*, 972 A.2d 1254 (Pa. Cmwlth.), *appeal denied*, 604

judgment or decree upon him. Conceding that the judgment exists and is valid, he asserts that it does not apply to or settle the issues sought to be litigated in the subsequent proceeding. This, as we have explained, the law does not permit because, if the person was a party to the earlier proceeding . . . he is bound by the existing judgment and the adjudications upon which it is based. The prohibition against collateral attack, on the other hand, prevents a person from challenging the validity of the existing judgment—from attacking the judgment itself rather than merely its scope or effect Precedent aside, the very rationale for the rule prohibiting collateral attack demands its application to this type of proceeding Estoppel by judgment and the prohibition against collateral attack would quickly become empty and meaningless terms, and those bedrock concepts in the law that they are designed to protect—indeed whose protection is their sole *raison d'être*—would soon crumble.

⁶ When a party fails to identify an issue in her statement of issues presented, and, when a party fails to present any discussion or citation relating to an issue, this Court may conclude that the party has waived the issue. Pennsylvania Rule of Appellate Procedure 2116; *In Re Estate of Ryerss*, 987 A.2d 1231, 1236 n.7 (Pa. Cmwlth. 2009). E.O. waived the opportunity to consider the ALJ's application of estoppel principles by failing to raise or discuss the issue in her brief.

Pa. 708, 987 A.2d 162 (2009), where this Court addressed an appeal from a denial of a request for expungement of an *indicated* report based upon a dependency adjudication in which a trial court determined that both parents abused their child. This Court, in evaluating the question of whether *the collateral attack doctrine* precluded litigation regarding the identity of the child abuser, held that, in order to maintain an indicated report of child abuse based upon an adjudication in a dependency proceeding, the judicial adjudication must contain substantial evidence as to the identity of the abuser. Although the Court in *C.S.* adopted this holding by reference to its holding in a case involving a founded report, *K.R. v. Department of Public Welfare*, 950 A.2d 1069 (Pa. Cmwlth. 2008), the present case is distinguishable from *C.S.* because the trial court's order contains a specific determination that E.O. (as one of A.V.'s parents) abused A.V. *under the Child Protective Services Law* and the issue before the Court related to the collateral attack doctrine and not collateral estoppel.⁷

E.O. was independently represented by counsel during the dependency proceedings, and the trial court provided E.O. with notice of her right to appeal that order. Further, LCCYS issued the founded report within ten days of the trial court's dependency proceeding, and E.O. was advised at that time of the consequences of a founded report. E.O. elected not to challenge either the trial court's determination in the dependency proceeding that she abused A.V. or the founded report (until approximately ten years later). Simply stated, the trial court's

⁷ We also reiterate that, although Pennsylvania courts have held in certain circumstances that a party may not assert collateral estoppel affirmatively or defensively when the burden of proof in the two cases is different, see, for example, *Lyness v. State Board of Medicine*, 561 A.2d 362, 370 (Pa. Cmwlth. 1989), *rev'd on other grounds*, 529 Pa. 535, 605 A.2d 1204 (1992), (observing that when burden of proof differs in two proceedings in which factual determinations may be same, there is no identity of issues), as noted above, E.O. has not challenged the ALJ's application of the doctrine of collateral estoppel.

adjudication is sufficient to support the ALJ's determination that the Department is properly maintaining the founded report that E.O. abused A.V.

Our conclusion is also supported by case law that identifies the manner in which we may exercise review of a Department decision in circumstances similar to those at issue in this case. In *G.M. v. Department of Public Welfare*, 954 A.2d 91 (Pa. Cmwlth. 2008), this Court reviewed the Department's denial of a father's request to expunge a founded report of child abuse. In a 1987 dependency proceeding, a trial court determined that G.M. had abused his daughter. G.M. made his expungement request approximately ten years later. G.M., in apparent reference to the Secretary's authority to consider expungement requests *at any time*, argued that he had established good cause for expungement because he had been rehabilitated. In discussing our review of such a case, we stated:

As a general rule, the Law provides that the Secretary of the DPW (Secretary) may amend or expunge any record at any time upon good cause shown and notice to the appropriate subjects of the report. Clearly this section grants the Secretary, and the Secretary's agents, the discretionary authority to amend any record upon good cause shown. 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. Here the [Department] held that the founded child abuse report was accurate and was being maintained in accordance with the Law. In so holding, the [Department] chose to look to the trial court's findings of child abuse and dependency, as well as Petitioner's own admission that he engaged in the abusive conduct, rather than to Petitioner's claims of rehabilitation. Based on this record, we cannot say that the [Department] acted in bad faith, fraudulently, capriciously or otherwise abused its power in refusing to expunge Petitioner's record.

Accordingly, there is no basis on which to reverse the denial of Petitioner's appeal from that decision.

G.M., 954 A.2d at 93 (citations and emphasis omitted). Similarly, in this case, we cannot conclude that the Department abused its discretion in refusing to expunge the founded report. E.O. has not asserted any bad faith or capricious or fraudulent action on the part of the Department in its decision.

Accordingly, we affirm the Department's order denying E.O.'s request to expunge the founded report identifying her as a perpetrator of child abuse.

P. KEVIN BROBSON, Judge

