

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| T.H., | : | |
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| Petitioner | : | |
| | : | |
| v. | : | No. 367 C.D. 2010 |
| | : | Submitted: October 29, 2010 |
| Department of Public Welfare, | : | |
| | : | |
| Respondent | : | |
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BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FLAHERTY

FILED: December 30, 2010

T.H. petitions this court for review from a decision of the Department of Public Welfare, Bureau of Hearings and Appeals (DPW) which adopted the recommendation of the administrative law judge (ALJ) denying T.H.’s request for expunction of his name from the ChildLine Registry, pursuant to the Child Protective Services Law (CPSL), 23 Pa. C.S. §§6301-6386. We affirm.

On November 17, 2006, an indicated report of child abuse was filed against T.H.¹ On February 22, 2007, T.H. was informed that his

¹ An “indicated report” is defined as a “child abuse report made pursuant to this chapter if an investigation by the county agency or the Department of Public
Footnote continued on next page...

request to expunge the report was denied. On February 26, 2007, T.H. filed an appeal requesting that his name be expunged from the ChildLine Registry.

A hearing was thereafter conducted before an ALJ. The ALJ determined that the subject child, J.H., is a male who was approximately 17 years old at the time of the alleged incident of physical abuse. T.H. is J.H.'s adoptive father. The facts as found by the ALJ are as follows:

4. On October 4, 2006, T.H. confronted J.H. because he did not attend church youth group and went to work instead. (N.T. 100).
5. T.H. was waiting home for J.H. (N.T. 100).
6. T.H. grabbed J.H. by the neck and collar. (N.T. 64, 90).
7. J.H. was thrown to the ground by T.H. and hit his chin on a granite countertop. (N.T. 117).
8. T.H. was larger than J.H. and after throwing him to the ground sat on top of J.H. (N.T. 100).
9. T.H. was holding J.H. down. (N.T. 101).
10. On October 5, 2006, the day following the incident, J.H. was upset and asked to see his school counselor. (N.T. 111, 112).
11. On October 5, 2006, the [name redacted from transcript] County CYS interviewed J.H. at

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. (3) An admission of the acts of abuse by the perpetrator.” 23 Pa. C.S. §6303(a).

school and observed that J.H. had bruises all over and broken blood vessels in his eyes. (N.T. 15).

12. On October 6, 2006, J.H. was examined by forensic pediatrician, [name redacted]. (Exhibit C-3).

13. Dr. [name redacted] observed injuries on J.H.'s face and neck. (Exhibit C-3, N.T.).

14. Dr. [name redacted] concluded that J.H. suffered physical abuse, including an act of strangulation which caused a significant risk of asphyxia and neurological compromise or death. (Exhibit C-3).

15. Dr. [name redacted] is an expert in the area of forensic pediatrics. (Exhibit C-2).

16. Dr. [name redacted] concluded to a reasonable degree of medical certainty that her physical findings resulted from increased intracranial pressure, increased pressure in the face and head from the restriction of blood flow from the head back down to the cardiovascular system. (N.T. 66).

17. Significant force would have to be exerted to restrict the blood flow in the neck to cause petechiae. (N.T. 66).

18. J.H. was at a significant risk of death or disability from the mechanical asphyxia due to strangulation based upon a reasonable degree of medical certainty. (N.T. 73).

19. J.H. suffered severe pain from the attack upon him by T.H. (N.T. 73).

ALJ Decision, Findings of Fact at 1-2. The ALJ found the expert witness pediatrician and a casework supervisor for the County Services for Children

and Youth (CYS), credible and T.H., C.H., and J.H. not credible.² Based upon the above, the ALJ recommended that T.H.’s request to expunge the indicated report of child abuse be denied. The DPW adopted the recommendation of the ALJ in its entirety. This appeal followed.³

We initially observe that the proper inquiry into whether an indicated report of child abuse should be expunged or maintained is whether the report is accurate. K.J. v. Department of Public Welfare, 767 A.2d 609 (Pa. Cmwlth.), petition for allowance of appeal denied, 567 Pa. 750, 788 A.2d 381 (2001). CYS has the burden of establishing by substantial evidence that an indicated report of child abuse is accurate. Bucks County Children and Youth Social Services Agency v. Department of Public Welfare, 808 A.2d 990 (Pa. Cmwlth. 2002).

Substantial evidence is “evidence which outweighs inconsistent evidence and which a reasonable person would accept as adequate to support a conclusion.” 23 Pa. C.S. §6303(a)(1). “[I]n determining whether a finding of fact is supported by substantial evidence, the Court must give the party in whose favor the decision was rendered the benefit of all reasonable and logical inferences that may be drawn from the evidence of record; the weight and credibility to be accorded to the evidence is solely within the province of the ... fact finder.” S.T. v. Department of Public Welfare, Lackawanna County Office, Children, Youth & Family Services, 681 A.2d 853, 856 (Pa.

² C.H. is the natural mother of J.H.

³ This court’s review is limited to determining whether constitutional rights were violated, whether an error of law was committed, or whether necessary findings are supported by substantial evidence. J.G. v. Department of Public Welfare, 795 A.2d 1089 (Pa. Cmwlth. 2002).

Cmwlth. 1996)(citing Bucks County Children & Youth Services v. Department of Public Welfare, 613 A.2d 48, 50 (Pa. Cmwlth. 1992)), appeal denied, 547 Pa. 747, 690 A.2d 1165 (1997).

The county agency bears the burden of proving in an expungement case that the actions of the perpetrator constitute child abuse within the meaning of the statute. B.J.K. v. Department of Public Welfare, 773 A.2d 1271 (Pa. Cmwlth. 2001). This case turns on whether T.H.’s actions in fighting with his son constitute “child abuse” under the CPSL.⁴

Essentially, T.H. argues that his reputation is at stake in this matter, and that CYS has failed to meet its burden of proof in this matter and also failed to show malicious intent. Further, T.H. argues that the ALJ erred in finding T.H., C.H. and J.H. not credible, in applying the wrong standard in determining whether there was child abuse in this case, in relying on hearsay references, and in determining that J.H. suffered severe pain.

⁴ The term “child abuse” is defined in the CPSL as follows:

(b) Child abuse.-

(1) The term “child abuse” shall mean any of the following:

(i) Any recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(iii) Any recent act, failure to act or series of such acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to...a child under 18 years of age.

23 Pa. C.S. §6303(b).

In this case, there is ample evidence to support a factual finding that T.H. caused the petechiae and bruising on J.H.'s face and neck.⁵ First, it is not disputed that T.H. grabbed J.H. by the collar, threw him to the ground and had placed him in a headlock position. Second, the testimony of all witnesses support the ALJ's finding that T.H. caused the petechia and bruising.

T.H. admitted to confronting J.H. about J.H. missing youth group for work. T.H. further admitted to grabbing J.H. by his shirt collar, then ending up on top of J.H. on the ground, having his arm wrapped around his neck and trying to get J.H. to calm down. N.T. at 90, 101. Thus, there is substantial evidence to support the ALJ's finding that T.H.'s actions caused the injuries J.H. suffered.

Likewise, there is substantial evidence to support the ALJ's finding that J.H. suffered severe pain and was at a significant risk of death or disability from the mechanical asphyxia due to strangulation. In reviewing the ALJ's finding, this court gives great deference to the fact finder's reasonable inferences and judgments of credibility. S.T. This court has held that "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., 681 A.2d at 856-857.

In the present controversy, there was testimony from the medical expert who stated, "the child was at significant risk of death or

⁵ CYS' expert witness pediatrician testified that petechiae are "small ruptured blood vessels under the skin." N.T. at 65.

disability from the mechanical asphyxia due to strangulation.” N.T. at 73.

The medical expert’s report indicates as follows:

patient describes a physical altercation with his adoptive father in which he sustained an injury to his left mandible by contact with a granite countertop. He also describes strangulation with the experience of not being able to breathe. This description is supported by the presence of petechiae of the face and about the ears, which occur by venous congestion resulting from occlusion of venous blood flow. Also supporting his description are multiple petechial injuries of his anterior neck, with some linear component caused by the skin and/or clothing folding upon itself by both pressure and friction caused by the strangulation. [T]his act of strangulation, with survival by physical residual, reflects an event which caused significant risk of asphyxia and neurological compromise or death. The child currently has no symptoms. He should be referred for competent psychological counseling.

Medical Report; Exhibit C-3, at 2. Thus, there was substantial evidence presented that supports the ALJ’s determination that J.H. suffered severe pain or was at imminent risk of suffering severe pain or having his physical functioning significantly impaired, as the medical expert determined J.H. was at significant risk of death or disability from the mechanical asphyxia due to strangulation.

With substantial evidence supporting the factual premises upon which the ALJ made his determination, the next issue is what the proper standard is for determining child abuse in a case where the injury suffered by the child is a result of corporal punishment, and whether the ALJ applied that standard. This court has recently addressed this issue in F.R. v.

Department of Public Welfare, 4 A.3d 779 (Pa. Cmwlth. 2010) and determined that “the Crimes Code standard applies in criminal proceedings, while the CPSL standard applies to administrative proceedings. This does not imply that corporal punishment is barred under the CPSL, but rather that the standard of determining when corporal punishment crosses the threshold into child abuse is different in the criminal and administrative contexts.” Id., at 785. Thus, Section 509 of the Crimes Code, 18 Pa. C.S. § 509, does not apply in this case.

Under the CPSL, “child abuse” is defined as “[a]ny recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age” or “[a]ny recent act, failure to act or series of such acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to...a child under 18 years of age.” 23 Pa. C.S. §6303(b)(1)(i) and (iii). Section 6303(a) defines “serious physical injury” as an injury that “causes a child severe pain; or ...significantly impairs a child’s physical functioning, either temporarily or permanently.” “Nonaccidental” is defined as “[a]n injury that is the result of an intentional act that is committed with disregard of a substantial and unjustifiable risk.” 23 Pa. C.S. §6303(a).

T.H. contends the ALJ failed to correctly apply the criteria for when a parent can administer corporal punishment with respect to a child, as set forth by the Supreme Court in P.R. v. Department of Public Welfare, 569 Pa. 123, 801 A.2d 478 (2002). In P.R., the standard set forth is whether or not the parent’s actions equal that of criminal negligence as set forth in 18 Pa. C.S. §302(b)(4):

A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and intent of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

P.R., 569 Pa. at 137-138, 801 A.2d at 487.

T.H. argues that J.H. was never in any substantial risk of death, disfigurement, serious bodily injury, gross degradation, extreme pain or mental distress, or any other condition sustaining a determination of "abuse." Further, there was no malicious intent involved nor was malicious intent attempted to be proven.

In F.R. this court addressed what criteria must be applied as follows:

The Crimes Code specifically addresses this in the criminal context in limiting the force used to that which is "not designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme pain or mental distress or gross degradation." Section 509(l)(ii) of the Crimes Code. But, the limit placed on corporal punishment in an administrative setting is defined by the CPSL as "severe physical injury." Section 6303(b)(1)(i) and (iii) of the Law. These two statutes, therefore, act in tandem to create a very limited safe harbor in which parents may use corporal punishment without being found to have engaged in child abuse—one couched in the criminal world; one couched in the administrative world. Thus, an indicated report of child abuse under the CPSL may be proper in a situation in

which criminal charges are not. This is what the Supreme Court recognized in P.R., it is what was found to be the purpose and legislative intent behind the statutes, and it is why the Supreme Court used the criminal negligence standard in applying the CPSL to corporal punishment cases. In this way, these considerations work hand-in-hand and create a workable statutory scheme that upholds the General Assembly's intent to protect children and to provide parents choices in raising and reasonably disciplining their children.

F.R. at 787-788. The ALJ, in applying the criminal negligence standard, specifically found that T.H.'s intentional act of restraining J.H., throwing him to the ground and putting him in a headlock caused J.H. to suffer or to be in imminent danger of suffering severe pain and functional impairment based on the lack of air supply and bruising. While T.H. may not have acted with malicious intent in disciplining J.H., T.H. did lose control of his emotions and caused injuries, having acted with disregard to the substantial and unjustifiable risk to J.H. Thus, the ALJ properly applied the criminal negligence standard in this case.

Accordingly, we affirm the decision of the DPW.

JIM FLAHERTY, Senior Judge

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| | : | |
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ORDER

AND NOW, this 30th day of December, 2010 the order of the Department of Public Welfare in the above-captioned matter is affirmed.

JIM FLAHERTY, Senior Judge