

**[J-81-2013]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

**CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, STEVENS, JJ.**

G.V.,	:	No. 13 MAP 2013
	:	
Appellee	:	Appeal from the Order of the
	:	Commonwealth Court at No. 125 CD
	:	2011, dated July 12, 2012, vacating the
v.	:	Order of the Department of Public
	:	Welfare's Bureau of Hearings and Appeals
	:	at No. 021-10-0066 dated December 29,
DEPARTMENT OF PUBLIC WELFARE,	:	2010
	:	
Appellant	:	
	:	
LANCASTER COUNTY CHILDREN AND	:	
YOUTH SERVICES, Intervenor	:	ARGUED: October 15, 2013

**OPINION**

**MR. JUSTICE McCAFFERY**

**DECIDED: April 29, 2014**

The Department of Public Welfare (“DPW”) appeals from the Commonwealth Court’s vacatur and remand of a denial of expungement of an indicated report of child abuse from the statewide ChildLine Registry (“Registry”). DPW challenges the determination that clear and convincing evidence, as opposed to substantial evidence, is required to maintain an indicated report of child abuse. Upon review, we reverse and remand.

In September 2009, Lancaster County Children and Youth Services (“CYS”) received a referral that G.V. had been sexually abusing C.S., his 16-year-old great niece, of whom G.V. and his wife, T.V., had custody. CYS conducted an investigation,

and on November 5, 2009, filed an “indicated” report against G.V. after finding that “substantial evidence” existed that G.V. had sexually abused C.S. A summary of the indicated report was also filed with the Registry, as required under the Child Protective Services Law, 23 Pa.C.S. §§ 6301-6386 (“CPS Law”). Shortly thereafter, G.V. was informed that he was listed as a perpetrator in the Registry, and he asked that DPW expunge the report on the grounds that it was inaccurate and/or maintained in a manner inconsistent with the CPS Law. Expungement was denied, and G.V. appealed pursuant to Section 6341(c) of the CPS Law. A hearing was held before an administrative law judge at which several witnesses testified, including G.V., C.S., T.V., an adult daughter of G.V. and T.V., a long-standing friend and neighbor of G.V., and the CYS social worker. Thereafter, the administrative law judge issued an adjudication and recommendation concluding that the indicated report was supported by substantial evidence and that the summary of the indicated report was being maintained in a manner consistent with both the CPS Law and DPW regulations. The administrative law judge found that C.S.’s testimony was credible, and that G.V.’s testimony was incredible due to internal inconsistencies, as well as to other evidence showing that G.V. regularly hid his activities from family members. Upon G.V.’s appeal, the Bureau of Hearings and Appeals adopted the administrative law judge’s recommendation and denied expungement. After his motion for reconsideration was denied, G.V. appealed to the Commonwealth Court.

The Commonwealth Court vacated and remanded in a 5-2 opinion authored by Judge Anne E. Covey. G.V. v. Dep’t of Pub. Welfare, 52 A.3d 434 (Pa.Cmwlt. 2012) (en banc). It agreed that the indicated report of sexual abuse was supported by substantial evidence as required under the CPS Law, but observed that there is no legislative mandate or directive indicating what standard of proof is required at an

expungement hearing in order to maintain a summary of the indicated report in the Registry. Following the lead of this Court in R. v. Dep't of Pub. Welfare, 636 A.2d 142 (Pa. 1994), the Commonwealth Court looked to the seminal administrative law decision of Mathews v. Eldridge, 424 U.S. 319 (1976), for guidance in assessing a due process claim for violation of an individual's right to protect his or her reputation.<sup>1</sup> It applied the Mathews factors, and based thereon concluded that the adverse effects on an alleged child abuse perpetrator's reputation and employment opportunities required that evidence presented at an expungement hearing be clear and convincing in order to maintain the summary of the report in the Registry. The court noted that reputation is a constitutionally protected interest in Pennsylvania,<sup>2</sup> and because the Registry information may be disclosed upon inquiry to employers, school districts, and boy scout, girl scout and other organizations, there is a real threat that persons not specifically authorized to receive the information will be made aware of the allegations, thus posing a risk of unconstitutional deprivation of an individual's privacy interest. While the

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<sup>1</sup> The three distinct factors that must be considered are as follows:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements will entail.

R. v. Dep't of Pub. Welfare, 636 A.2d 142, 146 (Pa. 1994).

<sup>2</sup> "All men ... have certain inherent and inalienable rights, among which are those of ...protecting ... reputation." Pa.Const. Article I, Section 1.

majority recognized the government's interest, expressly detailed in Section 6302(a) of the CPS Law, in providing effective child protective services in order to prevent abused children from suffering further injury and impairment, it nonetheless concluded:

Accordingly, as we are statutorily constrained to protect the child from injury or impairment, we hold that substantial evidence must support a determination of whether child abuse has occurred, but there must be clear and convincing evidence of child abuse to maintain statutorily[ ]designated information from an indicated report on the ChildLine Registry.

G.V., supra at 446 (emphasis omitted).<sup>3, 4</sup>

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<sup>3</sup> The Commonwealth Court's decision changes the standard of proof it has applied in numerous previous expungement cases. Prior to the instant case, when DPW had shown that an indicated report was supported by substantial evidence at an expungement hearing and expungement had been denied, those denials had been affirmed. See, e.g., F.R. v. Dep't of Pub. Welfare, 4 A.3d 779 (Pa.Cmwth. 2010) (denying expungement where substantial evidence supported indicated report that father caused bruises on child); D.T. v. Dep't of Pub. Welfare, 873 A.2d 850 (Pa.Cmwth. 2005) (holding that substantial evidence existed to support an indicated report of child sex abuse against a child-care provider, thus warranting denial of the provider's request to expunge the report); A.O. v. Dep't of Pub. Welfare, 838 A.2d 35 (Pa.Cmwth. 2003) (concluding that substantial evidence supported indicated report that daycare provider's son had abused a child so as to support denial of request for expungement). Since its decision in the instant case, the Commonwealth Court has been noting the new standard and either applying it directly or remanding for its application. See, e.g., T.T. v. Dep't of Pub. Welfare, 48 A.3d 562 (Pa.Cmwth. 2012); A.S. v. Dep't of Pub. Welfare, No. 148 C.D. 2012 (Pa.Cmwth. filed 12/14/12); C.H. v. Dep't of Pub. Welfare, No. 815 C.D. 2012 (Pa.Cmwth. filed 11/13/12); D.J. v. Dep't of Pub. Welfare, No. 1980 C.D. 2011 (Pa.Cmwth. filed 9/17/12); J.M. v. Dep't of Pub. Welfare, No. 18 C.D. 2012 (Pa.Cmwth. filed 9/12/12).

<sup>4</sup> Prior Commonwealth Court decisions have also required only substantial evidence in other administrative cases where loss of reputation and employment were at risk. See, e.g., Boguslawski v. Dep't of Educ., 837 A.2d 614 (Pa.Cmwth. 2003) (holding that revocation of a teacher's certificate for immorality and intemperance was supported by substantial evidence, notwithstanding his acquittal on criminal charges for improperly touching a child); and Ruane v. Shippensburg Univ., 871 A.2d 859 (Pa.Cmwth. 2005) (...continued)

Judge Bonnie Brigance Leadbetter dissented, joined by Judge Robert E. Simpson, opining that even under a clear and convincing standard, the result of this case would be denial of the request for expungement, based on the administrative law judge's definitive and unequivocal credibility determination that the abuse had occurred.

Judge Simpson also dissented, and was joined by Judge Leadbetter, because he discerned no constitutional flaw in applying the "substantial evidence" standard used to place an indicated child abuse report in the Registry, as the evidentiary standard for maintaining an indicated child abuse report in the Registry. He stated that, just as in R. v. Dep't of Pub. Welfare, 636 A.2d 142 (Pa. 1994), any potential adverse effect on G.V.'s reputation occasioned by the maintenance of the indicated report in the Registry is limited because of the numerous "legislatively imposed controls" in the CPS Law that limit release of information to only certain individuals. G.V., supra at 449 (Simpson, J., dissenting) (citation omitted). He also observed that G.V. does not claim to want to work or volunteer with children, and there is no suggestion of a specific financial or associational deprivation which might be created by the maintenance of the summary of the indicated report in the Registry. He opined further that maintaining a record of indicated child abuse based on a substantial evidence standard is rationally related to the government's interest in "complete reporting of suspected child abuse." Id. at 450, citing 23 Pa.C.S. § 6302(b) (setting forth the legislature's purpose in enacting the Child Protective Services Law).

The issue accepted for review is the following:

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(continued...)

(holding that a classmate's testimony of sexual assault provided substantial evidence to support a student's suspension from the university).

Whether Commonwealth Court erred in requiring a “clear and convincing” evidentiary standard of proof in child abuse expunction cases under the Child Protective Services Law (CPSL), 23 Pa.C.S. §§ 6301-6386, where the legislature had established substantial evidence as the required standard of proof.

G.V. v. Dep’t of Pub. Welfare, 66 A.3d 252 (Pa. 2013).<sup>5</sup>

This Court has described the broad purpose of the Child Protective Services Law as follows:

The need to prevent child abuse and to protect abused children from further injury is critical. The legislature sought to encourage greater reporting of suspected child abuse in order to prevent further abuse and to provide rehabilitative services for abused children and their families. The Act also establishes a statewide central registry for the maintenance of indicated and founded reports of child abuse, as identifying perpetrators of abuse serves to further protect children. Recognizing that identifying someone as a child abuser can profoundly impact that person's reputation, the release of such information is advocated only in certain limited venues. [R]eports of indicated and founded abuse identifying the perpetrator can be released to law enforcement, social work agencies, employers in child care services and other related venues[].

P.R. v. Dept of Pub. Welfare, 801 A.2d 478, 483 (Pa. 2002) (citations omitted).

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<sup>5</sup> The issue presented is a question of law; accordingly, our standard of review is de novo and our scope is plenary. Glatfelter Pulpwood Co. v. Commonwealth, 61 A.3d 993, 998 (Pa. 2013).

A report of child abuse is characterized as an “indicated report” if an investigation by the county agency or DPW determines that “substantial evidence” of the alleged abuse exists based on available medical evidence, the child protective service investigation, or an admission of the facts of abuse by the perpetrator. 23 Pa.C.S. § 6303. “Substantial evidence” is evidence that outweighs inconsistent evidence and which a reasonable person would accept as adequate to support a conclusion. *Id.* The CPS Law requires DPW to maintain a statewide registry consisting of summaries of indicated reports of child abuse. 23 Pa.C.S. § 6331. The burden is on the appropriate county agency to show that the indicated report of abuse is accurate and being maintained in a manner consistent with the CPS Law. See 23 Pa.C.S. §§ 6303, 6341(c). After a summary of an indicated report is entered in the Registry, the perpetrator is notified that his or her ability to obtain employment in a child-care facility or program or a public or private school may be adversely affected by the entry of the report in the Registry. 23 Pa.C.S. § 6338(a). When an individual seeks employment that would bring him or her in direct contact with children or in which there is a significant likelihood of regular contact with children, or when a person resides in a “family day-care home,” that person must provide a certification, obtained within the preceding year from DPW, of whether he or she is named in the Registry as a perpetrator in an indicated report of child abuse. 23 Pa.C.S. §§ 6344(a), (b)(2), 6344.1(a), (b), 6344.2.

DPW argues here that the Commonwealth Court’s decision conflicts both with precedential case law and with legislative mandate. It notes that an expungement hearing may be requested on the grounds that the indicated report is inaccurate or maintained in a manner inconsistent with the CPS Law; accordingly, it posits that maintenance of an indicated report for which there is substantial evidence of the abuse

is consistent with its very definition. DPW also notes that indicated reports are “generally confidential” under the CPS Law, and further that the General Assembly narrowly tailored the use and dissemination of the indicated reports. DPW argues that protecting children from abuse should outweigh any interest a child abuse perpetrator has in reputation and potential employment.

Appellee argues that this case presents the opportunity referenced by this Court in J.S. v. Dep’t of Pub. Welfare, 596 A.2d 1114, 1116 n.2 (Pa. 1991), to address the balance between the statutory duties of public agencies under the CPS Law and an individual’s right of reputation guaranteed under the Pennsylvania Constitution. He relies upon Santosky v. Kramer, 455 U.S. 745, 756 (1982) (observing that a clear and convincing evidentiary standard is required in government-initiated proceedings that threaten an individual with stigma).

As noted above, the substantial evidence standard provided for in the CPS Law requires evidence that outweighs inconsistent evidence, and which a reasonable person would accept as adequate to support a conclusion. In contrast, the clear and convincing standard requires “evidence that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” Commonwealth v. Lee, 935 A.2d 865, 883 (Pa. 2007) (citation omitted). This Court has mandated application of the clear and convincing standard when

... the individual interests at stake in a state proceeding are both particularly important and more substantial than mere loss of money. Notwithstanding the state’s civil labels and good intentions, the Court has deemed this level of certainty necessary to preserve fundamental fairness in a variety of government-initiated proceedings that threaten the individual involved with a significant deprivation of liberty or stigma.



Commonwealth v. Maldonado, 838 A.2d 710, 715 (Pa. 2003) (citation omitted).

While this Court has not heretofore directly addressed the issue accepted for review, it has consistently applied the substantial evidence standard to DPW's burden of proof in expungement cases, notwithstanding the reservation expressed in dicta in J.S., supra.<sup>6</sup> In R. v. Dep't of Pub. Welfare, 636 A.2d 142, 145 (Pa. 1994), an appeal from the denial of expungement of an indicated report, then-Chief Justice Nix, writing for the majority, relied upon the general requirement that an administrative agency adjudication must be supported by substantial evidence, citing 2 Pa.C.S. § 704, in rejecting a due process challenge to the hearing process. The substantial evidence requisite has been articulated as part of this Court's standard of review,

Our review requires that the agency decision be affirmed absent a finding that constitutional rights were violated, an error of law was committed, that the procedure before the agency was contrary to statute, or that the findings of fact are not supported by substantial evidence.

P.R., supra at 481.

Most recently, in reviewing the reversal of the denial of a request for expungement, we noted the pendency of the instant case and applied the extant substantial evidence standard. R.A. v. Dep't of Pub. Welfare, 82 A.3d 370, 381 n.14 (Pa. 2013).

Looking to the Mathews factors, we conclude that the Commonwealth Court did not err in determining that preservation of one's reputation is a recognized and

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<sup>6</sup> Then-Chief Justice Nix, in a dissenting posture, "strongly disagreed" with any notion that the clear and convincing evidence standard should be adopted in expungement matters. J.S. v. Dep't of Pub. Welfare, 596 A.2d 1114, 1116 n.1 (Pa. 1991) (Nix, C.J., dissenting).

protected interest under Pennsylvania's constitution. R. v. Dep't of Pub. Welfare, 636 A.2d 142, 149 (Pa. 1994). However, in resolving R., an appeal from a denial of expungement, this Court focused on the extent to which the information contained in an indicated report is readily available or accessible, and specifically on the circumstances under which R's identity could be revealed. We observed that Section 6340(a) of the CPS Law provides that only a limited number of people in a limited set of situations have access to the confidential statewide Registry. We thus concluded that R. was not being stigmatized in the eyes of the general public, and the adverse effects on his reputation were very limited.

Here, the Commonwealth Court did not hew to our extended analysis in R. pertaining to the statutory limitations on dissemination of the information contained in the Registry. Rather, it concluded that the actual use of the Registry

... by the statutorily[ ]designated government officials, law enforcement and other entities and individuals in responding to the inquiries of employers, school districts, churches, boy and girl scouts, and other organizations[,] creates the very real potential and probability for disclosure to groups and individuals not specifically authorized to receive the information.

G.V., supra at 444.

In so concluding, the Commonwealth Court engaged in impermissible speculation that ignored the essence of this Court's opinion:

It is apparent from these legislatively imposed controls that R. is not being stigmatized in the eyes of the general public. To the contrary, his identity is disclosed to a small number of

persons in a very narrow range of situations with the understanding that it will not be revealed to any unauthorized individuals. Therefore, any adverse effects on his reputation are very limited.

R., supra at 150.

Having thus taken a wrong turn in assessing the first Mathews factor (affected private interest), the Commonwealth Court inevitably erred in its assessment of the second Mathews factor (risk of erroneous deprivation of such interest). Because it overstated both the potential and the probability for disclosure to groups and individuals not specifically authorized to receive the Registry information, the court similarly overestimated the potential risk of deprivation of a fundamental interest and overvalued the benefit of employing the clear and convincing standard of proof.

The Commonwealth Court also erred in its analysis of the third Mathews factor, to wit, the government's interest in addressing the urgent need of abused children for protection from further injury and impairment. After quoting Section 6302 and its expression of the Commonwealth's interest in encouraging more complete reporting of suspected child abuse, the court reiterated its previous conclusions in rejecting CYS's argument that the clear and convincing standard would essentially require a criminal conviction before information could be maintained in the Registry:

The issue here is whether the pursuit of this [governmental] interest by requiring substantial evidence outweighs the risk of an erroneous deprivation of G.V.'s inherent reputational and livelihood interests and personal freedoms. ... First, the clear and convincing evidence standard is less burdensome than the beyond a reasonable doubt standard. Second, a lesser burden of proof does not offer adequate protection against a potential erroneous

deprivation of an individual's inherent rights  
and freedoms.

G.V., supra at 446.

The court then proceeded to quote further from the CPS Law and did not return to explain its reasoning regarding its weighing of the competing interests.

As noted above, this Court has recognized that the Commonwealth's interests in the need to prevent child abuse and to protect abused children from further injury is fostered by maintenance of the statewide central registry identifying perpetrators of abuse. P.R., supra at 483 (citations omitted). The government's interest in addressing the urgent need of abused children for protection from further injury and impairment encompasses both the child or children who were actually abused by the perpetrator, as well as any children who may potentially be abused by the perpetrator. This goal of protection of any potential victims of a perpetrator identified in an indicated report was largely ignored by the Commonwealth Court in its assessment of the governmental interest at stake here. As stated by Amicus Curiae, the City of Philadelphia, "But for the protection of the public interest of preventing future abuse by those who have abused children previously, the Childline [R]egistry would be wholly useless." Brief for Amicus Curiae, the City of Philadelphia, at 6. We conclude that the Commonwealth Court failed to fully appreciate the legitimate governmental interest in the protection of both actual and potential victims of indicated perpetrators of child abuse.

Accordingly, we hold that the Commonwealth Court erred in requiring a "clear and convincing" evidentiary standard of proof in child abuse expunction cases under the Child Protective Services Law, 23 Pa.C.S. §§ 6301-6386, and that the proper standard of proof is the legislatively established substantial evidence standard. Thus, we reverse the order of the Commonwealth Court and remand this case for that court to review pursuant to the substantial evidence standard.

Mr. Chief Justice Castille, Messrs. Justice Eakin and Baer, Madame Justice Todd and Mr. Justice Stevens join the opinion.

Mr. Justice Saylor files a concurring opinion.

Mr. Justice Baer files a concurring opinion in which Mr. Chief Justice Castille joins.