

# December 2020

## Legal Report

### SWAN Legal Services Initiative

*A monthly publication from the SWAN Legal Training Team*

---

#### **In This Issue:**

S.B. v. S.S.

Z.F.1 by & through Parent v. Bethanna

Lowe v. Lancaster County Children and Youth Social Services

Taylor F. v. Lawrence County

*Legislation Spotlight:*

Pa. Code § 65.44 Confidentiality Issues

Combat Online Predators Act, P.L. No: 1116-249

Supporting Foster Youth & Families through the Pandemic Act

#### **Legal Training Team**

Division Manager  
Lauren Peters, Esq.

#### Training Specialists

Alyssa H. Holstay, Esq.  
Shawn Sangster, Esq.  
Sara Steeves, Esq.  
Rachel Thiessen, Esq.

471 JPL Wick Drive  
P.O. BOX 4560  
Harrisburg, PA 17111  
[www.diakon-swan.org](http://www.diakon-swan.org)

[lsiwarmline@diakon-swan.org](mailto:lsiwarmline@diakon-swan.org)



## SPOTLIGHT

**S.B. v. S.S.****Date of Decision:** December 22, 2020**Citation:** No: No. 39 WAP 2019, 2020 WL

In a custody proceeding, Father moved for sanctions to prohibit Mother and her counsel from speaking publicly about the case including allegations of sexual abuse by Father. After Father was granted sole custody, Mother posted a press conference by her counsel with a link to view Child's testimony and forensic interview. Allegheny Court of Common Pleas issued a gag order. Mother and counsel appealed. The Superior Court affirmed the order. Mother and counsel appealed, and *allocatur* was granted. The PA Supreme Court affirmed the gag order holding that:

***Did you know?*** 

“Allocatur” is Latin for “it is allowed.” In this case it means, permission to appeal.

1. The gag order was content neutral under First Amendment free speech clause;
2. The gag order furthered important governmental interest of protecting child's emotional well-being and privacy;
3. The gag order was sufficiently narrowly tailored to serve important governmental interest;
4. The gag order was not unconstitutionally vague; and
5. Free speech protections afforded by Federal and State Constitutions were coextensive with respect to the gag order.

Chief Justice Saylor filed a concurring opinion in which J. Dougherty joined. J. Wecht filed a dissenting opinion in which J. Donohue joined.

**Z.F.1 by & through Parent v. Bethanna****Date of Decision:** December 16, 2020**Cite:** 244 A.3d 482 (2020), 2020 PA Super 286

Twin children were placed in foster care in 2011 when they were 17 months old. The Child Advocacy Unit of the Defender Association was named counsel and guardian ad litem of Children. Bethanna, an agency that certifies and oversees foster homes, placed Children with Foster Parents. Father was not identified until three years into the case. In 2014, after visiting with Children, Father informed DHS, his attorney, and the Bethanna caseworker, that he suspected abuse in the foster home. On multiple occasions, including during a 2014 permanency review hearing, Father expressed concerns that Children were being spanked and one child was made to sit on the floor with her panties off. In 2015, the allegations of abuse were investigated and confirmed. In 2016, Children were reunified with Father and continued to have emotional and behavioral difficulties.

Children by and through Father brought action against the Defender Association, Bethanna and Foster Parents seeking damages for abuse that Children allegedly suffered while Children lived in the Foster Parents' home. Following the jury trial, a total of \$4.5 million in damages were

awarded to the children. Defender Association appealed, citing several issues, including whether the Defender Association was immune from suit while serving the court in the capacity of a guardian ad litem, committed legal malpractice in handling allegations of abuse when they first surfaced, and whether their conduct during or after the 2014 dependency hearing causally related to the harm suffered by Children. Upon review, the Court concluded that there is no guardian ad litem immunity and declined to establish a new form of immunity. Next, the Court looked into the potential breach in the standard of care that the Defender Association owed Children. The Court found that once the allegations were made in court, in the presence of the Defender Association attorney, there was an affirmative duty to get more information about the alleged abuse. The Court then turned to the question of causation and held that there was sufficient evidence, including expert testimony, for the jury to conclude that the Defender Association's professional negligence was a factual cause of harm to Children and that they suffered actual damage as a result of the Defender Association's negligent conduct.

## UNITED STATES DISTRICT COURT, E.D. PENNSYLVANIA

**Lowe v. Lancaster County Children and Youth Social Services**

**Date of Decision:** December 8, 2020

**Citation:** No.5:20-cv-1413, 2020 WL 7223416

### **Holdings:**

1. Mother failed to state a claim for a substantive due process violation because Defendants' decision to remove Child from Mother's custody, where other children resided, after receiving a complaint from Father that Child had molested another child was not conscience-shocking.
2. There are insufficient allegations to support a procedural due process claim because Mother received the protections to which she was entitled.
3. The Monell liability claim is dismissed because Mother failed to plead specific factual allegations of a policy or custom and, instead, made only conclusions and boilerplate accusations.
4. Motion to Dismiss is granted.

**Facts and Procedural Posture:** Mother was primary caretaker of a ten-year-old Child. Child spent every other weekend with Father. On August 6, 2018, during a visit, Father reported that Child molested his nine-year-old sister and Father wanted Child out of the house. Police, Lancaster County Children and Youth Services (LCCYS) and Mother came to Father's house. Mother was prevented from taking custody of Child and LCCYS was granted temporary custody at an emergency hearing. Two days later, a shelter care hearing took place and LCCYS presented to the Court that Father, not Mother was the primary caretaker. LCCYS was granted custody of Child pending a disposition hearing scheduled for October 22, 2018. On September 26, 2018, the investigation determined that the molestation allegations were unfounded. Approximately two weeks later, LCCYS filed to withdraw its petition for temporary custody and Child was returned to Mother. In total, Child was separated from Mother for 66 days.

**Issues:**

1. Did defendants violate Child's or Mother's substantive due process rights by removing Child from Mother and retaining custody without reasonable suspicion of abuse or imminent danger of abuse?
2. Did defendants violate Child's or Mother's procedural due process rights by failing to advise Mother of or by putting false information in the emergency petition seeking custody of Child and by failing to include relevant exculpatory and explanatory information in the petition thereby denying Mother the right to an informal ruling by the court?
3. Does LCCYS have Monell claim liability by violating Child's or Mother's constitutional rights by developing and maintaining policies or customs of removing children from their natural families and placing them in institutions, as well as failing to properly supervise and train caseworkers?
4. Should Defendants' Motion to Dismiss be granted?

**Rationale:** The Court first looked at the substantive due process claim noting that a plaintiff must show: 1) the interest at issue is protected by the substantive due process clause, and 2) that the government's deprivation of that protected interest "shocks the conscience." *Kane v. Barger*, 902 F.3d 185, 192 (3d Cir. 2018). Here the Court found that Defendants had "reasonable and articulable evidence" that Child abused another child and that the four children in Mother's home were in imminent danger if Child was allowed to remain in his mother's custody. Therefore, the decision to place Child in foster care was not conscience shocking.

Next, the Court turned to the procedural due process claim. The Court found that Mother was not entitled to notice for the emergency hearing and that she received notice and the opportunity to be heard two days later at the shelter care hearing. The Court explained that regardless of whether allegedly false information was presented in the petition or to the court, the named social worker defendants would be absolutely immune because they were performing prosecutorial roles.

Third, the Court looked at the Monell claim. Under Monell, a local government entity may be liable under 42 U.S.C. § 1983 if the plaintiff can show either: 1) an employee acted pursuant to a formal policy or a standard operating procedure; 2) the alleged violations were taken by a person with policy-making authority; or 3) an official with such authority has ratified the unconstitutional actions of a subordinate. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). The Court concluded that this claim failed as no factual allegations were pled, only "legal conclusions and Boilerplate accusations."

Finally, the Court found that Mother had failed to state a claim on all three counts and granted Defendants' Motion to Dismiss.

**Did you know?** 

Prosecutorial immunity is the absolute immunity that prosecutors in the United States have in initiating a prosecution and presenting the state's case. The concept flows from the U.S. Supreme Court's 1976 holding in *Imbler v. Pachtman* that prosecutors cannot face civil lawsuits for prosecutorial abuses, no matter how severe. Through PA case law this immunity has been applied to child welfare agency case workers. *See Hughes v. Long*, 242 F.3d 121, 125 (3d Cir. 2001) (holding that social workers are entitled to "absolute immunity for actions involving the initiation and prosecution of child custody or dependency proceedings").

## UNITED STATES DISTRICT COURT, W.D. PENNSYLVANIA

Taylor F. v. Lawrence County**Date of Decision:** December 28, 2020**Citation:** No.18-1397, 2020 WL 7695407**Holding:** Defendants' motion for summary judgement is granted.

**Facts and Procedural Posture:** In 2013, Mother was 17 years old and was a witness to a murder committed by her friend. Mother was combative with police after the incident and was placed in juvenile detention. Her infant son was placed into foster care. A service plan was implemented that required Mother to refrain from criminal activity among other objectives in order to have her son returned to her care. Over the next few years, Mother had several criminal charges against her including a stabbing incident and multiple drug charges. Mother testified against her friend in the murder trial in April of 2016. In exchange for her testimony, some of her pending criminal charges were lessened. Six months later, the court determined that she had met her goals and reunified her with her son.

Mother alleged that Defendants conspired to keep her son in foster care until she testified in the murder case. Mother brought a §1983<sup>1</sup> claim against Lawrence County, Lawrence County Children and Youth, and the Lawrence County District Attorney. Additionally, she alleged that Child was mistreated in foster care and brought related state claims for assault and battery against the District Attorney. Before the Court is Defendants' motion for summary judgment.

**Issue:** Should Defendants' motion for summary judgement be granted?

**Rationale:** Mother raised procedural and substantive due process and conspiracy claims arising out of Defendants' act of removing Child from her custody and keeping them separated until Mother testified in the murder trial. After reviewing the notices and hearings that occurred in this case the Court found no procedural due process violation. Additionally, the Court found no substantive due process violation. The Court concluded that removal was warranted based on Mother's confinement in juvenile detention and continued placement was necessary due to Mother continuing to receive criminal charges. The Court found no evidence to suggest that Child's placement was conditioned on Mother's testimony at the murder trial.

Mother further asserted a claim on behalf of Child against the County and CYS for failing to protect Child while he was in foster care. The Court found that all appropriate steps were taken when Mother expressed concerns about bruising, which turned out to be Mongolian spots and concerns about Child losing weight, which were promptly addressed.

Lastly, Mother asserted state law claims against the DA for assault and battery which were dismissed. Defendants' motion for summary judgement was granted.

---

<sup>1</sup> §1983 of Title 42 of the U.S. Code makes a person liable for depriving another of any rights, privileges, or immunities secured by the U.S. Constitution and laws while acting under color of any statute, ordinance, regulation, or custom.

## LEGISLATION SPOTLIGHT

**Pa. Code § 65.44 Confidentiality Issues**

The Superior Court of Pennsylvania has adopted an amendment to its published Operating Procedures. Effective January 1, 2021 the names of the parties in a caption for an appeal from a divorce, equitable distribution, custody, visitation or child support decision shall include the full names of the parties. The Court, in its discretion, may order that the names of the parties listed in the caption be initialized if the Court determines that a child may be identified from the full names of the parties in the caption.

Read the text of the amendment [here](#).

***Federal Legislation*****Combat Online Predators Act, P.L. No: 1116-249**

Passed on December 22, 2020 this bill increases the maximum prison term for a stalking offense, if the victim is under 18 years of age.

Read the text of the bill [here](#).

**Supporting Foster Youth & Families through the Pandemic Act**

The *Supporting Foster Youth & Families through the Pandemic Act* is part of the more than five thousand-page federal stimulus bill signed into law on December 27, 2020. Key provisions of the Act include:

- Placing a moratorium on aging out of foster care and allowing for re-entry into care,
- Waiving education and work requirements for extended foster care during the pandemic,
- Providing \$400 million in Chafee funds, which will help youth with housing, education, employment, financial management, emotional support and support services, and
- Expanding Chafee eligibility through age 26.

Read the text of the bill [here](#).