

ORIGINAL

IN THE SUPREME COURT OF OHIO

Case No. 2014-1122

STATE OF OHIO ex rel. Stephanie Y. Clough

Relator

v.

FRANKLIN COUNTY CHILDREN'S SERVICES, OHIO et al.,

Respondents

RELATOR'S RESPONSE TO REPORT OF SPECIAL MASTER

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RELATOR, PRO SE

and

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FILED
JUN 01 2015
CLERK OF COURT
SUPREME COURT OF OHIO

RESPONDENTS

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COUNSEL OF RECORD

Now comes the State of Ohio, on relation to one of its citizens, Stephanie Y. Clough (hereinafter, "Relator"), who hereby files her Response to the Report of Special Master filed on May 28, 2015 pertaining to her Original Action in Mandamus filed on July 3, 2014.

Special Master Judge Spicer's report is consistent with Relator's statements that Franklin County Children Service's (FCCS) didn't follow the law or established procedures in investigating and deciding the alleged abuse of her minor daughter. This case presents the very argument for disclosure of public agency records. Public disclosure laws are established to promote honesty and transparency and to ensure accountability. The statute governing the maintenance of public children services records is O.R.C. 5153.17 - The public children services agency shall prepare and keep written records of investigations of families, children, and foster homes, and of the care, training, and treatment afforded children, and shall prepare and keep such other records as are required by the department of job and family services. Such records shall be confidential, but, except as provided by division (B) of section 3107.17 of the Revised Code, shall be open to inspection by the agency, the director of job and family services, and the director of the county department of job and family services, and by other persons upon the written permission of the executive director. This has been established through statutes and case law. *State ex rel. Edinger v. C.C.D.C.F.S.*, 2005-Ohio-5453, ¶¶ 6-7 (8th Dist.). Statutes contained in R.C. 3107.17 (B) deal with adoption records and are not relevant in this matter. FCCS's assertion that their investigative records are confidential and not accessible within an exception to the confidentiality is incorrect. Public disclosure laws are just the opposite, the agency must decide in favor of releasing records, unless it can be clearly shown that the specific records are squarely covered under law as "must not release". FCCS cannot point to any law restricting the release of FCCS records, in fact, Chief Legal Counsel Anne O'Leary in two separate letters responding to Relator's request to review her case file through her agent, Steve

LaTourette, Ms. O'Leary clearly stated that Director Spinning has discretion to release the documents but chooses not to do so. Relator's Evidential Exhibit B – Letter from Anne C. O'Leary dated April 28, 2014, "executive director did not find good cause to release the records", and Relator's Evidential Exhibit D – Letter from Anne C. O'Leary dated May 20, 2014, "executive director is not exercising his discretion to release the records". FCCS cannot now claim they are legally prohibited from releasing the records after going on record saying they may be released under their discretion.

Furthermore, under O.R.C. 1347.08 – Rights of person who are subject of personal information, Relator is a subject of the aforementioned case record and she has a right under law to inspect and copy any personal information for which she is the subject that is maintained in the case file. This right specifically applies to the records reviewed by Judge Spicer, identified as page fifty-nine (59) referencing a recommendation of counseling for the parents. Relator referenced in her Supplemental Original Action in Mandamus, page 5, paragraph 14, that Director Eric Fenner, following Relator's grievance hearing on March 2, 2010, responded on March 5, 2010 stating "We are not able to substantiate abuse at this time based on the historical conflicts between you and the father of your children". Director Fenner went on to say, "What is obvious to me is that the present and historical conflict between you and the father of your children is quite serious and requires professional intervention". Relator never received any letter described only as page fifty-nine (59) "a letter dated July 13, 2014 referencing a recommendation of counseling for the parents". Since Relator never receive such a letter it is logical to assume that FCCS was the recipient of the letter. Relator submits that Director Fenner's letter and the letter received by FCCS by an undisclosed third party proves that FCCS's decision turned on improper and probable illegal outside influence. Additionally, the date listed by Judge Spicer on the letter, July 13, 2014, cannot be correct. Judge Spicer notes that the

“Activity Log Report” references the investigative time span from June 25, 2009 through July 24, 2009. Judge Spicer also notes that the case was closed following the determination that the report of abuse was unsubstantiated with letters to the parents dated July 24, 2009. Relator submits that the date of the record referred to as page fifty-nine was most likely July 13, 2009. If this were true, the hearings conducted pertaining to the custody and alleged abuse of the minor child had not been concluded by that time. Dr. Philip Scribano, Director CAC, didn’t testify until August 4, 2009. Additionally, during the hearings no evidence was presented, nor was any decree made by the trial court that counseling was ordered or even recommended. Furthermore, a court appointed psychologist found the Relator to have no mental health issues. Any letter received by FCCS purporting that the Relator required counseling is blasphemy and was an illegal attempt to inhibit and influence FCCS’s investigation. Since the aforementioned letter pertains to personal information regarding the Relator, she has the absolute right under law to inspect and copy the letter.

The accounting by Judge Spicer of the records purported to be the entire case file by FCCS legal assistant Erin Morgan, is indicative of multiple improprieties. In order of mention, but not all inclusive, pending review of the file:

Pages ten (10) through nineteen (19), described as “Family Assessment Detail” was dated as July 24, 2009 but was unsigned. It is highly suspicious that this document wasn’t signed when the letters issued to the parents announcing the case disposition were dated the same date and were signed by Dana Robertson, the assigned case worker rendering the decision. Unsigned the document is not official or complete. It also leaves the impression that this document was created at a later date, especially in light of additional improprieties.

Pages twenty-five (25) through fifty-four (54), entitled “Activity Log Report”. The activity referenced the time span from June 25, 2009 through July 24, 2009. It was noted that

some information from the Children's Advocacy Center (CAC) was included in this portion of the file as CAC had participated in the investigation of the allegations via interviews and physical exam. This information was not recorded during the above time period in the Activity Log Report and any reference that the Children's Advocacy Center (CAC) participated in the investigation is not correct. Relator had directly contacted the Executive Director of CAC, Dr. Philip Scribano, due to FCCS's failure to promptly investigate her claim of abuse to her minor daughter by the hand of her father. There was no joint investigation by FCCS and CAC although FCCS was required to do so under a signed Memorandum of Understanding, Relator's Evidential Exhibit G. Relator filed a grievance on September 28, 2009, in response to the initial disposition issued by Dana Robertson on July 24, 2009. Relator met with Jesse Looser, grievance hearing officer, on October 13, 2009. During this hearing Mr. Looser told the Relator that he had no knowledge that CAC and Dr. Philip Scribano had been involved in the investigation because there was no notation whatsoever of CAC involvement noted in the file. Mr. Looser confirmed in writing to the Relator on October 29, 2009 that he had obtained a copy of Dr. Scribano's medical report and assessment. Mr. Looser had instructed the Relator and Dr. Scribano, after having learned and confirmed his report findings, of his intention of changing the disposition to "indicative of abuse". This was documented in an email from Dr. Scribano, Relator's Evidential Exhibit U, dated February 3, 2010. Mr. Looser only learned of CAC's involvement during the grievance process, therefore, if any mention of CAC involvement exists in the Activity Log within the time period of June 25, 2009 and July 24, 2009 it was falsely and illegally entered at a later date. CAC's involvement was not part of the record prior to the initial disposition issued on July 24, 2009. Clearly the entries to the Activity Log Report were falsified later after the disposition had been issued and after Mr. Looser had reviewed the file. This is clear evidence of

a “cover up” and demonstrates illegal action. No public agency can hid under the shroud of confidentiality protection in order to conceal illegal activity.

Page fifty-five (55) administrative document to waive required time-line to make contact on June 25, 2009 and June 29, 2009. Relator had complained in her grievance hearings about FCCS’s failure to meet state mandated contact times and an excessive delay in conducting interviews. Mr. Looser made no mention of the contact time waivers in his written response. Again, it would appear this administrative document was created later to cover for FCCS’s failure to follow state mandated contact time-lines. Mr. Looser also confirmed that Ms. Robertson only scheduled an interview after being contacted by Relator’s attorney on day five, and US Representative Steve LaTourette on day 6 following the initial complaint on June 24, 2009. This is also why the Relator sought out Dr. Philip Scribano and the Children’s Advocacy Center because she felt her complaint was not receiving proper attention by FCCS.

Page fifty-eight (58) references a letter sent to the father, no date listed or author noted, apparently to satisfy some rule or regulation applicable in the case. If the letter was to satisfy a rule or regulation, the appropriate rule or regulation should have been noted. Rules and regulations are not confidential. The word “apparently” requires further explanation together with citing the appropriate rule or regulation.

Page fifty-nine (59), noted previously, undisclosed author and addressee. Date is obviously wrong; July 13, 2014 is not during the investigation time period of June 25, 2009 through July 24, 2009 when the case was closed. If the date is indeed correct, the document was attached to the record ten (10) days after Relator file her Original Action in Mandamus. Relator never received any such letter, therefore FCCS must have been the recipient. This letter obviously contains personal information pertaining to the Relator and she is entitled under law to inspect and copy said letter.

Pages sixty (60) and sixty-one (61) notes from a written interview. It was not noted what interview the notes pertained to, however, if they pertained to the Relator, she has an absolute right to inspect and copy them. It raises suspicion when some documents do not describe the subject of the document.

What is most glaring in Judge Spicer's report is that it is void of any mention of the significant amount of evidence Relator submitted during her three grievance hearings. Or, the presentation Relator's father made to FCCS Board of Trustees on April 29, 2010. Relator furnished additional evidence when she met with Jesse Looser on October 13, 2009, Pamela Schirner on December 15, 2009, and Director Eric Fenner on March 2, 2010. During the hearing with Director Fenner, Relator presented a massive amount of evidence indicating that the father had provided several different accounts of the incident and most importantly Relator submitted several new pictures of another suspicious unexplained injury to Relator's minor daughter following visitation with her father that Director Fenner found very troubling. He told the Relator that he would personally call the Director of Cuyahoga County Children Service's and ask them to open an investigation. Without any explanation, he changed his mind and apparently destroyed the pictures and the other evidence submitted by the Relator. Director Fenner did refer to the evidence submitted by the Relator during the hearing but not the pictures in his response to her dated March 5, 2010, Relator's Evidential Exhibit H. Relator has the right under FCCS Consumer Rights, to insert any document in the record and review any notes pertaining to any FCCS comments following any hearing. It appears FCCS violated their own board approved consumer rights pertaining to her right to submit and insert documents in her case file.

Additionally, Relator had requested an independent review of her case file by the Ohio department of Jobs and Family Services (ODJFS). In her request, Relator identified multiple inconsistencies and improper actions by FCCS and submitted a list of questions requiring

explanation. Gary Stought, ODJFS, sent Relator a letter dated May 6, 2011, submitted as Respondents Evidential Exhibit 3, stating that FCCS's investigation and decision was compliant with Ohio law. This isn't a factual statement given the inconsistencies in the Activity Log's and letters issued by FCCS personal in conjunction with statements made and questions presented to Gary Stought when Relator requested the independent review of her case file. Clearly there wasn't an independent review performed. Based on the limited report of the case file by Judge Spicer, Gary Stought could never have actually reviewed the case file but falsified doing so.

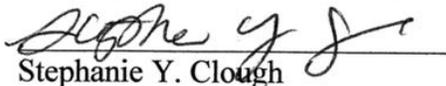
Relator submits that although Judge Spicer noted that his report didn't include all his notes as a precaution against unintended disclosure of confidential information, enough detail was included to validate Relator's claims that she is not only entitled to inspect and copy the record under law, there is clear evidence of impropriety on the part of FCCS and an undisclosed third party at a minimum. Clearly, FCCS is attempting to falsely conceal improper and probable illegal activity under the shroud of confidentiality. The threshold for disclosure is that the public entity must point to the law that expressly prohibits releasing the information. FCCS has failed to present any statute that the records Relator seeks are classified as "must not release". Furthermore, confidentiality laws cannot be used to conceal illegal activity. There is certainly enough noted in Judge Spicer's report that a reasonable person would conclude that the investigation was improperly handled by FCCS. As a result of FCCS's failure to abide by the rules governing the investigation and disposition of Relator's complaint, Relator and her children were recipients of a grave injustice that continues to harm them to this day.

Additionally, it appears that Judge Spicer seems to suggest but does not confirm that all the pertinent and required documents are present in FCCS's case file, however, he makes no inference to their authenticity. Clearly, Relator has proven that at least some of the records were created at a later date and include information that was not present during the span of the

investigation or at the time of the disposition. There may have been conflicting accounts of the incident from the parents, but Relator's minor daughter's interviews were strong and consistent. Furthermore, Dr. Philip Scribano issued a probable finding for abuse. Finally, it doesn't matter and is of no consequence what records are present in the file, Relator is legally entitled to inspect and copy all the records pertaining to herself and her minor daughter. Fundamentally, Judge Spicer's Report of Special Master is of no value to this Honorable Court in deciding this case. Relator is firmly entitled under law and FCCS Board approved Consumer Rights to inspect and copy FCCS case records pertaining to herself and her minor daughter. FCCS Board approved Consumer Rights are consistent with and compliant with applicable law granting the Executive Director authority to release records.

In order to correct an obvious injustice and to hold those accountable, this Honorable Court must issue a Mandamus directed at FCCS ordering them to make available Relator's case file for inspection and copying without further delay.

Respectfully submitted


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CERTIFICATE OF SERVICE

I hereby certify that I served the above *Motion in Response to Report of Special Master* filed by Relator *Stephanie Y. Clough* to the following by regular U.S. Mail this 30 day of May, 2015.

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