

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

MOTION FOR RECONSIDERATION
OF ENTRY DECLINING ORIGINAL ACTION IN MANDAMUS

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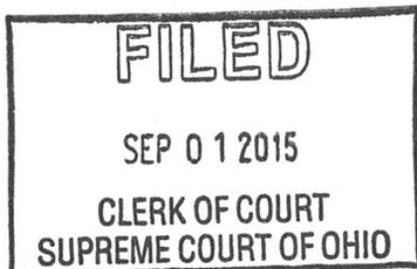
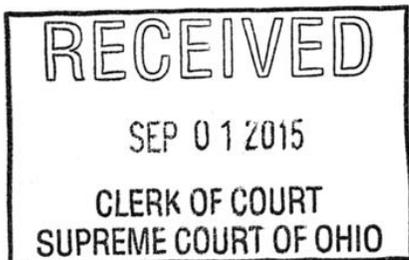
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COUNSEL OF RECORD



Now comes the State of Ohio, on relation to one of its citizens, Stephanie Y. Clough (hereinafter, "Relator"), who respectively requests this Honorable Court to reconsider its decision to decline her Original Action in Mandamus. This Court's contention that the records Relator seeks are confidential under R.D. 2151.421(H)(1), and R.C. 5153.17, and thus are not subject to disclosure under R.C. 149.43(A)(1)(v) is not a proper application of the legislature's intention or of current law.

R.C. 2151.421 refers to the reporting of child abuse or neglect. The report referred to in section H, subsection 1, deals with the reporting of a suspected incident of child abuse. Relator is acutely aware that the rule of confidentiality mandated under this statute is intended to protect those who report suspected abuse in order to ensure that private citizens will readily do so without fear of repercussion. However, this particular statute is not applicable in the present matter because Relator reported the suspected abuse to the proper authorities and the full details of the incident are readily available in the public domain. There is no confidentiality to be maintained and protected concerning this report.

Even assuming this Court takes a broader definition of the records covered under R.C. 2151.421(H)(1), the General Assembly, as well as case law, has provided for some limited exceptions to the confidentiality set forth in 2151.421(H)(1). Specifically, R.C. 5153.17 states: "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”. Clearly the legislature never intended to mandate absolute confidentiality or a total ban on disclosure. The statute states that “[s]uch records * * * shall be open to inspection * * * by other persons, upon the written permission of the executive director. R.C. 5153.17 does not state that the children’s services investigative records must never be released, which would require denial of any request for disclosure, it merely places limits on their release.

Relator disputes this Court’s contention that Franklin County Children Services (“FCCS”) Grievance and Consumer Rights Policies do not grant Relator the clear right to review her and her minor child’s case records. Pursuant to R.C. 5153.17, although FCCS has a duty to keep child-abuse records confidential, such confidentiality is not absolute. FCCS’s Board approved policies grant the right of the Relator to review her case file as long as the law does not prohibit access. R.C. 5153.17 provides exceptions to the mandate of confidentiality for public children services agency records so as to allow them to be released at the discretion of the Executive Director, thus their release is not prohibited by law. Therefore, FCCS Board policies are fully compliant with existing law. Additionally, it is reasonable to assume that the FCCS Board of Trustee’s, when adopting “Client’s Rights,” contemplated the procedures under which the records would be made available by the agency. Since the “Client’s Rights” pamphlet does not state that a client may never review their records, a problem arises when a public services agency such as FCCS attempts to redefine the scope of its policies and procedures that were originally enacted in order to afford public transparency and accountability. This makes the need for full disclosure of the documents even more compelling.

Furthermore, Chief Legal Counsel, Anne C. O’Leary, wrote in her reply to Relator’s agent, dated May 20, 2014, “... that while the executive director may authorize the release of

certain records, he is not exercising his discretion to do so regarding these records". (Relator's Exhibit B). Ms. O'Leary thus admitted that it is permissible under law to release the documents Relator seeks. Relator has clearly established that FCCS's Grievance and Consumer Rights Polices are in conformance with all applicable laws, thus are enforceable.

The basic fact of this case is that the Relator is embattled in a contentious custody dispute. Hearings on establishing parental rights were scheduled for July 10, 2009 and July 13, 2009. Following a visit with her father on June 21, 2009, Relator's minor daughter was presented with an injury of blunt force trauma to her eye, or in layman's terms, a black eye. Two days later Relator's minor daughter disclosed that her father had punched her in the eye. Relator followed all the appropriate procedures; she called both the local police and FCCS. On July 1, 2009, Dana Robertson, a case representative from FCCS, interviewed the Relator, Relator's minor daughter, and Relator's mother who was present for the transfer of the minor children and who was staying with the Relator to help care for the children. The initial feedback from FCCS was that the Relator's minor daughter's statement and those of the Relator and Relator's mother taken in isolation were consistent and supported Relator's complaint of suspected child-abuse. Relator also contacted Nationwide Children's Hospital's Center for Child and Family Advocacy ("CAC"), and a second interview was conducted on July 9, 2009. Relator's minor daughter's interviews with both FCCS and CAC were clear and consistent. Relator's minor daughter strongly stated, while making a punching gesture with her fist, that the injury to her eye was at the hand of her father. CAC immediately issued a report of a probability finding for abuse and recommended further investigation by FCCS. CAC also recommended that the perpetrator be separated from the child. Relator's attorney prepared and filed a Child Protection order, which included the CAC report, with the Trial Court on July 10, 2009. Inexplicably, the Trial Court

took no action on the protection order and refused to appoint a Guardian ad Litem as is required by law in cases of suspected child abuse. Furthermore, the Trial Court began the parental rights hearing in violation of the law that states that a report of suspected child abuse takes precedence over any other court proceedings. The Report of Special Master, the Honorable Kenneth J. Spicer, indicated that FCCS received a letter dated July 13, 2009. The content and the author were not disclosed. FCCS Director Eric Fenner in a letter to the Relator dated March 5, 2010, following her grievance hearing, stated, "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 further states, "The present and historical conflict between you and the father of your children is quite serious and requires professional intervention". (Relator's Exhibit H). Clearly there were intentional and non-meritorious charges presented against the Relator. FCCS's disposition turned on the substantial likelihood of evidence, possibly fraudulent, presented against the Relator, not on the injury or testimony of the minor child which was clear and consistent. Shortly after receiving the letter, FCCS issued a disposition of "unsubstantiated" which resulted in the Relator losing custody of her children.

In any event, a government agency may not hide under a shroud of confidentiality in order to conceal criminal conduct. R.C. 2921.12 deals with the tampering with evidence. R.C. 2921.12(A) states: No person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall do any of the following: (1) Alter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation; (2) Make, present, or use any record, document, or thing, knowing it to be false and with purpose to mislead a public official who is or may be engaged in such proceeding or investigation, or with purpose to corrupt the outcome of

any such proceeding or investigation. R.C. 2921.12 Section (B) states, "Whoever violates this section is guilty of tampering with evidence, a felony of the third degree". Relator submits that FCCS is claiming a confidential privilege in order to conceal violation of R.C. 2921.12(A). It is indisputable that FCCS began an investigation on July 1, 2009, which was abruptly concluded on July 24, 2009 well short of the normal time period for completing such an investigation. It was also confirmed in Chief Legal Counsel's affidavit made under an order of truth that FCCS did not participate in the investigation with CAC as required under law by R.C. 2151.421. Under O.R.C. 2151.421, when multiple child protective service agencies exist in the same county they must establish protocols for the joint investigation and deciding of cases of alleged abuse under a Memorandum of Understanding (MOU). FCCS was covered under an MOU signed by the Executive Director of FCCS, Eric Fenner, and the Executive Director of CAC, Dr. Philip Scribano (Relator's Exhibit G). CAC interviewed Relator's minor child and issued a probability finding for abuse which was sent to FCCS with a recommendation to investigate and also to separate the perpetrator from the child. FCCS had been invited to attend the interview and although MOU procedures required it, a representative from FCCS failed to attend. During the scheduling process for the grievance hearing on October 13, 2009, with Jessie Looser, FCCS Social Administrator, Relator learned that the CAC report was not present in the case file and alerted him to its absence. After receiving the report, and speaking to Dr. Scribano, Mr. Looser indicated he was going to change FCCS's disposition to "indicative of abuse". Mr. Looser later changed his mind, but never offered any explanation for doing so. Not only was there no mention of CACs involvement in FCCS's file of this case, Relator suspects that someone inside FCCS intentionally mislaid or destroyed CAC's report in order to facilitate a disposition of "unsubstantiated". Furthermore, as noted in Special Master's Spicer's Report, the "Family

"Assessment Detail" was not signed as required under statutes pertaining to investigative records. It is highly suspicious that the case worker assigned to Relator's case, Dana Robertson, could sign the Parent/Guardian Disposition Letter dated July 24, 2009, yet fail to sign the investigative document that was required to be signed and approved prior to issuing a disposition. Relator submits that there is a very strong likelihood that FCCS abruptly terminated the investigation upon receiving the letter dated July 13, 2009. It is highly unlikely that Dana Robertson, a low level case worker, would make a decision of this magnitude without receiving direction from someone possessing significant authority and influence. Prior to Relator's grievance hearing with Mr. Looser on October 13, 2009 there was no mention in the case file whatsoever of CAC's involvement in the case. Now according to Special Master Spicer's Report, the "Activity Log Report" spanning the time period from June 25, 2009 until July 24, 2009 contained information that CAC had participated in the investigation via interviews and physical exams. Relator submits that the appearance of an investigation was prepared later as a cover up and that's why the "Family Assessment Detail" could not be signed. Relator submits that creating the "Family Assessment Detail" electronically but not affixing the required signatures would be akin to Relator filing this document without her signature. This Court wouldn't and shouldn't accept an unsigned document as an official document. The "Family Assessment Detail" shouldn't be considered an investigative report in the absence of the required signatures.

The timeline for FCCS's disposition and the letter dated July 13, 2009 is also very troubling. As previously noted, Relator's hearing to determine parental rights only began on July 10, 2009 with the father presenting his evidence and didn't conclude until August 4, 2009 with the testimony from Dr. Philip Scribano, Director of CAC. Relator presented her evidence on July 13, 2009. The Trial Court ignored Relator's Child Protection Order filed on July 10, 2009

and proceeded with the parental rights hearing in violation of laws that require the prioritizing of child abuse allegations over any other matter. The Trial Court also did not appoint a Guardian ad Litem to protect the minor child's interests as required by law. It was obvious to the Relator by the demeanor of the Trial Court that her allegation of abuse was decided and dismissed before she stepped into the court room or before the Trial Court took any evidence. Given the date of the letter, and the coincidence that the Trial Court and FCCS both failed to properly investigate the allegation of abuse, Realtor feels she has a right to determine for herself whether or not the letter dated July 13, 2009 has any bearing on her case. Relator submits that FCCS would not have abruptly aborted its investigation unless they did so based on the request of someone possessed of significant authority and influence. If there is any connection with the July 13, 2009 letter between the Trial Court and FCCS's ultimate disposition, that would be a very serious violation of law and Relator's civil rights. Relator submits that the facts support more than a mere suspicion of improper or illegal intervention and criminal actions to justify "Good cause" to release the documents under the exemption to confidentiality contained in R.C. 5153.17.

As previously stated, the Trial Court used FCCS's disposition of "unsubstantiated" as justification for taking Relator's children away from her and appointing their father as legal guardian and residential parent. This occurred despite Dr. Scribano's testimony on August 4, 2009, taken after learning of FCCS disposition, in which he was still fully convinced and supportive of his finding of abuse and strongly rejected any chance that the minor child could have been coached. Any confidentiality claim is clearly outweighed by the public interest in a full examination of the basis of any judgment that results in the removal of a child from one of their parents. "Parents facing loss of parental rights in an action instituted by a county children services board may be entitled to the production of agency records as a matter of due process".

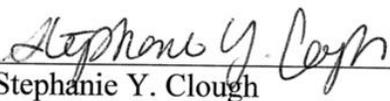
Davis v. Trumbull Cty. Children Serv. Bd., 24 Ohio App.3d at 184. This Court properly stated that “Good cause” is established when the requester shows that the disclosure is in the best interests of the child or the due process rights of the requester are implicated. *Swartzentruber v. Orrville Grace Church*, 163 Ohio App.3d 96, 2005-Ohio-4264, 836 N.E.2d 619, ¶9 (9th Dist.), quoting *Johnson v. Johnson*, 134 Ohio App.3d 585, N.E.2d 1144 (3d Dist. 1999). Relator’s due process rights and the due process rights of her minor child have certainly been violated. This Court cannot use the rationale that because Relator presented no evidence that she and her minor child’s rights of due process are currently in jeopardy, or that her minor child is in any danger, as justification for ignoring the fact that their rights were violated in the past. It is of “no fault” on the part of the Relator that it has taken six years for her to obtain justice. Relator has been stonewalled and denied access by numerous state agencies for too long. The Trial Court also quashed two subpoenas prior to the final order being issued. This is not what the founding fathers intended when establishing the judicial branch under Article III, Section 1 of the U.S. Constitution.

An agency of the state cannot be allowed to be the sole judge determining the investigative disposition of a case of child abuse and then be the sole judge on whether to divulge their records. This is precisely why the Public Records Act and FCCS’s “Client’s Rights” were enacted, to ensure the transparency and accountability of the agencies entrusted with the protection of our minor children. The exception to the confidentiality of public children’s services investigative records covered under R.C. 5153.17 and FCCS’s “Client’s Rights” were instituted for the very purpose Relator seeks the records, to scrutinize and prevent improper and illegal actions by a government agency entrusted with protecting our children, and for possible future civil action. Relator submits that the mere suspicion of improper intervention

affecting FCCS's disposition of her case, and their possible tampering with evidence, provides this Court with sufficient "Good cause" for disclosure of the records she seeks. For this Court to deny Relator the records she seeks would raise the question of this Court's complacency and/or unwillingness to perform an act or duty required under law and in compliance with the Ohio Judicial Code of Conduct.

WHEREAS, for the above reasons, Relator requests that this court reconsider and reverse its prior order and issue a writ to FCCS for the disclosure of the documents Relator seeks.

Respectfully submitted,



Stephanie Y. Clough
Relator, Pro se

CERTIFICATE OF SERVICE

I hereby certify that I served the above *Motion for Reconsideration for Entry Declining Original Action in Mandamus filed by Relator Stephanie Y. Clough* to the following by regular U.S. Mail this 31 day of August, 2015.

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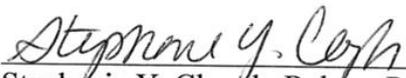
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