

NOTICE
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2014 IL App (5th) 130235-U

NO. 5-13-0235

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

ARSENE BABASSANA,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Williamson County.
)	
v.)	No. 10-MR-204
)	
THE DEPARTMENT OF CHILDREN AND)	
FAMILY SERVICES; ERWIN McEWEN,)	
Director of Children and Family Services;)	
MICHAEL MASON, Administrative Law Judge,)	
Department of Children and Family Services; and)	
NELSON ADAMS, Investigation Supervisor,)	
Department of Children and Family)	
Services,)	Honorable
)	Brad K. Bleyer,
Defendants-Appellees.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Chapman and Spomer concurred in the judgment.

ORDER

¶ 1 *Held:* Decision of Director of DCFS denying plaintiff's request to expunge indicated findings of child abuse against him was not against the manifest weight of the evidence and did not deny plaintiff his due process rights.

¶ 2 Plaintiff appeals the decision of defendant, the Illinois Department of Children and Family Services (DCFS), which rendered indicated findings of child abuse against him.

The circuit court affirmed DCFS's administrative decision after finding that the decision

was not against the manifest weight of the evidence. The circuit court also determined that there had been no due process violation which would render the administrative proceeding void. We affirm.

¶ 3 In September of 2002, DCFS received a report of suspected child abuse of six-year-old I.F., the daughter of plaintiff's former paramour. I.F. had been diagnosed with genital warts in her rectal area. In late September of 2002, DCFS indicated findings of child abuse against plaintiff. DCFS made several attempts to locate plaintiff during its investigation in order to interview him and to notify him of the indicated findings, but DCFS was unsuccessful in determining plaintiff's whereabouts. As a result, DCFS could not notify plaintiff of the indicated findings. In May of 2010, plaintiff learned of the indicated findings and contacted DCFS. At that point, DCFS gave him written notice of the indicated findings. Plaintiff subsequently requested an administrative hearing to expunge the indicated findings. After the hearing, the administrative law judge recommended that the indicated findings be upheld. Plaintiff then administratively appealed this decision. On November 23, 2010, DCFS's Director issued a final administrative decision adopting the findings, conclusions, and recommendations of the administrative law judge and denying plaintiff's request to expunge the indicated findings of abuse against him. Plaintiff next filed a complaint for administrative review, and the circuit court of Williamson County affirmed the Director's decision. Plaintiff now appeals to this court contending that the decisions of the circuit court and the administrative law judge were against the manifest weight of the evidence and that his due process rights were violated.

¶ 4 The record reveals that, from the summer of 2001 until December of 2001 or January of 2002, plaintiff was living in the same household with I.F. and her mother, plaintiff's then paramour. In the fall of 2001, I.F.'s mother was diagnosed with genital warts. She denied having them prior to her relationship with plaintiff. After plaintiff's relationship with I.F.'s mother ended, and he moved out of the household, I.F. started complaining that her bottom hurt. Her mother noticed bumps near I.F.'s rectal area. Because I.F. continued to complain about her bottom hurting, in July of 2002, her mother took her to be examined. I.F. was diagnosed with genital warts in her rectal area. Her mother, however, did not know of or suspect any sexual abuse of her daughter.

¶ 5 In August of 2002, I.F.'s mother found in the glove compartment of her car a copy of a medical exam for plaintiff, dated July 26, 2001, in which the doctor diagnosed plaintiff with penile warts. She then turned the report over to DCFS. As noted in the recommendation and opinion of the administrative law judge, I.F. was examined on September 9, 2002, by Dr. Lorand, Chair of the Division of Child Protective Services at Cook County Hospital. Dr. Lorand testified she found warts under the urethral area as well as multiple warts and lesions around the outside of I.F.'s anus. The examination also revealed a raised hypopigmented scar approximately 1.5 centimeters in length that extended into the anus, a scar which she believed was consistent with penetrating trauma to the rectum. Dr. Lorand's opinion, to a reasonable degree of medical certainty, was that I.F. was a victim of sexual abuse. I.F. was next interviewed by a social worker at the Williamson County Child Advocacy Center. During that interview, I.F. stated that plaintiff used to live with her and her mother, but denied that anyone had sexually abused

her. The social worker noted, however, that I.F.'s demeanor during the interview was consistent with that of a child who had been sexually abused and was afraid to disclose the abuse.

¶ 6 DCFS contacted the local police department, but they refused to get involved as the alleged perpetrator was then living in Chicago. The Chicago police department was also unwilling to get involved. DCFS next contacted the Illinois State Police office in Chicago to request assistance in interviewing plaintiff. They too refused to assist because the alleged sexual abuse did not occur within the Chicago area jurisdiction. DCFS attempted to conduct its own investigation, but was unsuccessful in its efforts to locate plaintiff either at his residence or reported place of employment. At the conclusion of the investigation, DCFS determined that there was credible evidence to indicate findings of child abuse against plaintiff, even though plaintiff could not be located or interviewed. DCFS therefore indicated the report against plaintiff on or about September 26, 2002.

¶ 7 According to plaintiff, he learned of the indicated findings against him in May of 2010 when, in his pursuit of a social work degree, he applied for, and was denied, an internship with Catholic Charities. Plaintiff contacted DCFS and was sent a letter advising him that he had been indicated. Plaintiff then made a written request for an appeal of the indicated findings. Ultimately an administrative hearing was set for October 14, 2010. The evidence at the hearing revealed that plaintiff had had bumps on his penis since he was 15 years old which he believed were scars resulting from his circumcision. I.F.'s mother had noticed the bumps and was concerned that plaintiff may have cancer. Because of her concern, plaintiff was examined at Cook County Hospital on

July 26, 2001. It is the report from this examination that I.F.'s mother found in the glove compartment of her car nearly a year later. After the examination, plaintiff did not think he had penile warts and further testified that he had never had penile warts, still believing he had scarring from his circumcision. The Cook County Hospital report does show a question mark before the diagnosis of penile warts.

¶ 8 Plaintiff further testified that after his relationship ended with I.F.'s mother, he moved out, eventually relocating to Chicago, and started attending a nearby university while working at the Bedford Park Walmart. He reported that he came to the United States as a refugee in 1997, and became a permanent resident in 2002 before becoming a naturalized citizen in 2010. During the time he was a permanent resident, he was required to update his address with the United States Immigration and Naturalization Service and the Illinois Secretary of State each time he moved. Plaintiff claimed he had done so with every move. DCFS, on the other hand, reported that their investigators could not locate plaintiff to interview him during the investigation or to notify him of the indicated findings, and several different police agencies refused to investigate because of jurisdictional issues. DCFS noted that it had sent an investigator to plaintiff's purported home address but plaintiff apparently did not live there. An investigator also went to the Bedford Park Walmart to locate plaintiff, but the investigator was told by the manager that he was not familiar with plaintiff. These attempts, according to DCFS, complied with DCFS regulations. Accordingly, the report was closed even though DCFS could not locate plaintiff. After DCFS indicated plaintiff and closed its case, the Illinois State Police then stepped in to pursue its own criminal investigation of plaintiff. One of the

agents was able to locate plaintiff at the Bedford Park Walmart and interviewed plaintiff there about the allegations of sexual abuse. Plaintiff testified he was surprised by the allegations and denied any inappropriate contact with I.F. or having any type of sexually transmitted disease, despite the medical records to the contrary. Plaintiff further reported that where he came from, it was unacceptable for a man to have sexual relations with a child. He attributed the allegations by I.F. to her mother's anger at him for not proposing marriage and suspected that another gentleman friend of I.F.'s mother was responsible for the abuse.

¶ 9 The agent interviewed I.F.'s maternal uncle who stated that I.F. had disclosed to him in November of 2002 that plaintiff had touched the private area between her legs with his hand and his private part. Another agent interviewed I.F. in March of 2003 at I.F.'s therapist's office. I.F. told the agent that one night she had been asleep in her bedroom face down on her belly when she was awakened by plaintiff pulling her pink pajama bottoms down. I.F. continued on that plaintiff then unzipped his pants, pulled his blue boxer shorts down, and straddled her from the rear on top of her. She saw bumps on plaintiff's "private" and then described his actions of taking his penis and guiding it around her anus and moving it in and out of her "butt." She further reported having gooey stuff on her bottom and found blood on the toilet paper when she wiped herself the next morning. I.F. also explained that plaintiff told her that if she told anyone he would do the same thing to her mother. The case against plaintiff was closed, however, when I.F.'s mother refused to cooperate with the State's Attorney's office.

¶ 10 Even though plaintiff continued to deny sexually abusing I.F., the administrative hearing judge issued a recommended decision that the Director deny plaintiff's request to expunge the indicated findings. The Director issued the final administrative decision adopting and incorporating the administrative law judge's findings and denied plaintiff's request to expunge the indicated findings. The circuit court subsequently affirmed the Director's decision.

¶ 11 Plaintiff first argues on appeal that the administrative law judge and the circuit court erred in finding that the indicated finding against him was not against the manifest weight of the evidence. We initially note that appeals are taken from the Director's final decision. Only the Director of DCFS has the authority under the law to make a final decision in a case on behalf of DCFS. *Bolger v. Department of Children & Family Services*, 399 Ill. App. 3d 437, 448, 926 N.E.2d 416, 426 (2010). Secondly, the Director's factual findings are deemed *prima facie* true and correct and will not be disturbed on review unless against the manifest weight of the evidence. *Lyon v. Department of Children & Family Services*, 209 Ill. 2d 264, 271, 807 N.E.2d 423, 430 (2004); 735 ILCS 5/3-110 (West 2002). It is the Director's function, as the fact finder, to weigh the evidence, determine the credibility of the witnesses, and resolve conflicts in the evidence. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 540, 870 N.E.2d 273, 297 (2006) (*per curiam*). If there is anything in the record which fairly supports the Director's decision, that decision is not against the manifest weight of the evidence. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88, 606 N.E.2d 1111, 1117 (1992). Here the decision of the Director is supported in the

record, and we cannot say the decision denying expungement of the indicated findings is against the manifest weight of the evidence. The medical evidence and witness testimonies are consistent with a finding of sexual abuse of I.F. by plaintiff. While plaintiff invites this court to reweigh the evidence and reassess credibility, that is something this court simply cannot do. *Bolger*, 399 Ill. App. 3d at 448, 926 N.E.2d at 427.

¶ 12 We further note the administrative law judge is charged with taking necessary steps to develop a full and fair record that contains all relevant facts. 89 Ill. Adm. Code § 336.120(b)(6) (2000). As long as the evidence is relevant and helpful in determining whether the perpetrator abused or neglected the minor, it may be admitted and relied on. 89 Ill. Adm. Code § 336.120(b)(9) (2000). All of the evidence admitted during plaintiff's hearing was relevant to the matters at issue. Additionally, plaintiff had the opportunity during the hearing to examine the witnesses and contest the evidence. There was no error.

¶ 13 Plaintiff also contends on appeal that he was denied procedural due process because DCFS did not notify him of the indicated findings in 2002. Contrary to plaintiff's assertions, he was not denied procedural due process under the circumstances presented. DCFS made reasonable, although unsuccessful, efforts in 2002 to locate plaintiff to notify him of the investigation and indicated findings. DCFS personnel attempted to locate him both at his reported home address and workplace in Chicago. DCFS also requested assistance from two local police departments as well as the Illinois

State Police, although each agency declined to assist due to jurisdictional issues. DCFS's efforts were more than reasonable. DCFS was not required to exhaust each and every possible avenue to locate plaintiff. More importantly, once DCFS learned of plaintiff's whereabouts in 2010, DCFS immediately sent him written notification of the indicated findings. After plaintiff received the notice, he requested, received, and participated in an administrative hearing. We agree with the circuit court that the delay in providing plaintiff notice of the indicated findings did not offend due process in this instance. Due process requires notice reasonably calculated to apprise interested parties of the pendency of the action and the opportunity to be heard at a meaningful time and in a meaningful manner. *Lyon*, 209 Ill. 2d at 277, 807 N.E.2d at 433. Due process does not require that the State must provide actual notice, but rather that it attempted to provide actual notice. *People ex rel. Devine v. \$30,700.00 United States Currency*, 199 Ill. 2d 142, 156-57, 766 N.E.2d 1084, 1092-93 (2002). Here DCFS exercised reasonable efforts to locate plaintiff to advise him of the investigation and indicated findings. Its delay in notifying plaintiff of the indicated findings prior to plaintiff's making his location known to DCFS was justified. More importantly, once he received notice in 2010, plaintiff requested, received, and participated in an administrative hearing and received a final administrative decision by DCFS's Director. Plaintiff received all the process to which he was entitled to challenge the indicated findings. See *Miller v. Hill*, 337 Ill. App. 3d 210, 217, 785 N.E.2d 532, 540 (2003) (defective notice rendered harmless when party received complete and meaningful opportunity to present case during hearing in which they fully participated).

¶ 14 For the foregoing reasons, we affirm the decision of the Director of DCFS, as affirmed by the circuit court of Williamson County, refusing to expunge the indicated findings against plaintiff.

¶ 15 Affirmed.