2013 IL App (2d) 101316-U
No. 2-10-1316
Order filed June 21, 2013



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| YANICK WRIGHT and JEAN PAUL WRIGHT,<br><br>Plaintiffs-Appellants,<br><br>v.<br><br>THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES and ERWIN McEWEN, as Director of the Department of Children and Family Services,<br><br>Defendants-Appellees. | ) | Appeal from the Circuit Court of Lake County.<br><br>No. 10-MR-659<br><br>Honorable Raymond J. McKoski, Judge, Presiding. |

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Burke and Justice Jorgensen concurred in the judgment.

**ORDER**

¶ 1 *Held*: The agency allegation under which plaintiffs were indicated for child neglect was recently declared void by our supreme court. Therefore, we reversed the trial court's judgment affirming the agency's decision, and we vacated the indicated finding.

¶ 2 Plaintiffs, Yanick[1] and Jean Paul Wright, appeal the trial court's ruling affirming the indicated finding of neglect made by defendants, the Department of Children and Family Services

[1]Plaintiff's name is also spelled "Yannick" in portions of the record.

(DCFS) and Erwin McEwen, in his capacity as director of DCFS. The indicated finding was based on Allegation No. 10/60, which is titled "Substantial Risk of Physical Injury/Environment Injurious to Health and Welfare" (Allegation 60). The underlying incident occurred on May 10, 2009, when plaintiffs' six-year-old son allegedly saw plaintiffs fighting and hitting each other. In their brief, plaintiffs argue that there was no evidence in the record supporting DCFS's conclusion that a child viewing a single incident of domestic violence has been placed in an injurious environment.

¶ 3 After briefing was concluded in this appeal, defendants moved to suspend proceedings because leave to appeal to the supreme court had be sought in the case of *Julie Q. v. Department of Children and Family Services*, 2011 IL App (2d) 100643. There, this court held that Allegation 60 is void *ab initio* because it exceeds the scope of authority granted to DCFS under the Abused and Neglected Child Reporting Act (Act) (325 ILCS 5/1 *et seq.* (West 2008)). *Id.* ¶ 43. The supreme court granted leave to appeal in *Julie Q.*, and the stay in the instant appeal continued until May 2013, when defendants informed this court that the supreme court had issued its opinion. The supreme court affirmed our decision that Allegation 60 is void. *Julie Q. v. Department of Children and Family Services*, 2013 IL 113783, ¶ 44. Here, the indicated finding was likewise based on Allegation 60, so we reverse the trial court's ruling and vacate DCFS's indicated finding.

¶ 4 I. BACKGROUND

¶ 5 In May 2009, DCFS notified plaintiffs that it was conducting an investigation based on a report of suspected abuse and/or neglect. On June 30, 2009, DCFS notified plaintiffs that they were indicated for "Substantial Risk of Physical Injury/Environment Injurious to Health and Welfare by Neglect." The letter stated that an indicated finding meant that DCFS's investigation found credible evidence of child abuse or neglect.

¶ 6 Plaintiffs appealed the finding, and an administrative hearing took place on January 29, 2010. The administrative law judge made the following factual findings. Plaintiffs were married in August 2002 and were the parents of Jean Paul Wright (born March 29, 2003) and Dominic Wright (born March 8, 2005). Plaintiff Jean Paul was stationed by the Navy in Italy for several years, away from his family. When he returned, plaintiffs sought marital counseling due to his long absence. In April 2009, Yanick found an e-mail a woman in Italy had sent to Jean Paul, and they argued about this. Jean Paul choked Yanick, but she did not report this incident. On May 10, 2009, plaintiffs got into another argument about the e-mail. Jean Paul sent the children upstairs to play video games. Plaintiffs continued to argue, and Yanick hit Jean Paul and scratched his face. Jean Paul pushed Yanick off of him and then admittedly " 'lost it.' " He punched Yanick in the mouth with his fist, knocking her to the floor, and then struck her several times in the head. Plaintiffs' six-year-old son was at the top of the stairs and saw his parents fighting and hitting each other. Jean Paul noticed that Yanick was crying and had blood on her, and he was upset and left the home. Yanick called the police, who also observed two lacerations on Jean Paul's face. Yanick was transported to the hospital and released after treatment. DCFS investigator Gloria Miley was assigned to investigate. She interviewed the six-year-old child, who had a speech impediment, at school. Miley was able to understand him, and he said that he was at the top of the stairs and saw his parents fighting in the home.

¶ 7 The administrative law judge concluded that a preponderance of the evidence showed that plaintiffs created an environment injurious to the minors' health and welfare. Specifically, the evidence showed that plaintiffs got into an argument and hit one another while both minors were

home, and one minor witnessed the incident. The administrative law judge recommended that plaintiffs' request to have the indicated findings of child neglect against them expunged be denied.

¶ 8 On March 15, 2010, DCFS's director informed plaintiffs that he was adopting and incorporating the administrative law judge's decision. Therefore, he concurred with the decision to deny their request for expungement of the indicated finding under Allegation 60.

¶ 9 On April 19, 2010, plaintiffs filed a complaint for administrative review in the trial court. On October 19, 2010, the trial court affirmed the administrative decision. It found sufficient evidence that plaintiffs' acts of domestic violence were witnessed by their child. It further took "judicial notice" that a child who witnessed domestic violence was a secondary victim and at risk to suffer long-term consequences from the experience, including adverse physical and psychological effects.

¶ 10 Following the trial court's denial of their motion to reconsider, plaintiffs timely appealed.

¶ 11 II. ANALYSIS

¶ 12 In an appeal to the appellate court following the decision by a circuit court on administrative review, we review the decision of the administrative agency rather than the circuit court's judgment. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386 (2010). Where the dispute is an agency's conclusion on a point of law, we review the agency's decision *de novo*. *Id.* Also, the interpretation of agency regulations is a question of law to which we apply *de novo* review. *Julie Q.*, 2011 IL App (2d) 100643, ¶ 26. Finally, the scope of powers that enabling legislation confers to an administrative agency is a question of statutory interpretation which we review *de novo*. *Julie Q.*, 2013 IL 113783, ¶ 20.

¶ 13 Plaintiffs were indicated under the version of Allegation 60 in effect in 2009. The relevant version of Allegation 60, entitled "Substantial Risk of Physical Injury/Environment Injurious to Health and Welfare" states that the allegation is to be used "when the type or extent of harm is undefined but the total circumstances lead a reasonable person to believe that the child is in substantial risk of physical health or loss or impairment of bodily functions (abuse)." 89 Ill. Adm. Code 300, app. B, No. 10/60. Allegation 60 includes one instance of neglect as "placing a child in an environment that is injurious to the child's health and welfare." *Id.*

¶ 14 As mentioned, in *Julie Q.* our supreme court held that Allegation 60 is void. It reasoned as follows. The Act requires DCFS to protect a child's health, safety, and best interests after receiving a report of possible child abuse or neglect. *Id.* ¶ 21. The Act includes a list of mandatory reporters and authorizes DCFS to maintain a registry of individuals found to have abused or neglected a child. *Id.* The version of the Act in effect in 2009 listed four circumstances under which child neglect could be found: (1) a child was not receiving adequate medical care or other care necessary for the child's well-being, including adequate food, clothing, and shelter; (2) a child was abandoned; (3) a child was provided with interim crisis intervention services and could not return home; (4) and a baby was born with a controlled substance in his or her system. *Id.* ¶ 22 (citing 325 ILCS 5/3 (West 2008)). Before 1980, the Act also defined a neglected child as a child who was placed in " 'an environment injurious to the child's welfare.' " *Id.* (quoting Pub. Act 79-65 (eff. July 1, 1975)). This language was deleted in 1980 (*id.* (citing Pub. Act. 81-1077 (eff. July 1, 1980))), though similar language was reinserted in 2012 (*id.* (citing Pub. Act. 97-803 (eff. July 13, 2012))).

¶ 15 Our supreme court continued as follows. An administrative agency has only those powers the legislature granted to it in its enabling statute. *Id.* ¶ 24. Therefore, a decision made without

statutory authority is without jurisdiction and is void. *Id.* Because the legislature removed the injurious environment language in 1980, creating a presumption of an intended material change in the law, and there was no evidence of contrary legislative intent in the legislative history to rebut this presumption, "DCFS was without authority to reinsert a definition of neglect into the Act that had been deleted by the legislature." *Id.* ¶¶ 30-35. The legislature inserted new injurious environment language in 2012, but such action clearly showed that this definition was not present in the prior version of the Act. *Id.* ¶ 37. In the interim, DCFS did not have the authority to include the injurious environment language in its definition of neglect. *Id.* ¶ 42. As such, Allegation 60 exceeded the scope of DCFS's authority under the Act and was void. *Id.* ¶ 44.

¶ 16 Here, as in *Julie Q.*, plaintiffs were indicated based on Allegation 60 for an incident occurring in 2009. As Allegation 60 had been found to be void by our supreme court, we reverse the trial court's decision and vacate DCFS's indicated finding. Based on this resolution, we need not address whether DCFS's decision was clearly erroneous. See *id.*

¶ 17 III. CONCLUSION

¶ 18 For the foregoing reasons, we reverse the decision of the Lake County circuit court and vacate DCFS's indicated finding.

¶ 19 Vacated and reversed.