

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

W.M. v. Department of Health and Rehabilitative Services

553 So. 2d 274 (Fla. 1st DCA 1989) · No. No. 88-2727 · Decided November 28, 1989

SUMMARY

The Florida First District Court of Appeal affirmed an administrative order denying W.M.'s request to expunge a child-abuse registry report. The court held that the child's deposition was admissible under Florida Rule of Civil Procedure 1.330 and could support the agency's findings. It also held that reclassifying the report from "indicated substantiated" to "confirmed" did not violate the ex post facto doctrine because the governing statute was protective rather than penal.

CASE DETAILS

COURT	District Court of Appeal of Florida, First District
WRITING FOR THE COURT	Per Curiam; Ervin, Judge; Shivers, C.J.; Joanos, J.
JURISDICTION	Florida
DECIDED	November 28, 1989
DOCKET	No. 88-2727
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a final administrative order of the Department of Health and Rehabilitative Services denying a request to expunge an abuse-registry report.
PRECEDENTIAL VALUE	Published Florida district court of appeal opinion; precedential within the applicable jurisdiction unless altered by subsequent authority.
PARTIES	W.M. v. Department of Health and Rehabilitative Services

TOPICS

- judicial review of agency action
- administrative law
- hearsay
- evidence
- ex post facto

PRACTICE AREAS

- administrative law
- evidence
- constitutional law
- health law
- child protection

QUESTIONS PRESENTED

1. Whether the hearing officer improperly admitted and relied on the child's deposition as hearsay in the administrative expunction proceeding.
2. Whether applying the statutory reclassification of the abuse report from indicated substantiated to confirmed violated the ex post facto doctrine.

HOLDINGS

1. A deposition of a witness who is outside the state is admissible under Florida Rule of Civil Procedure 1.330(a)(3)(B), even without a separate showing of unavailability under section 90.804, and the hearing officer may rely on that deposition to support findings when it is admissible over objection in a civil proceeding.
2. Applying section 415.504 to reclassify the report from indicated substantiated to confirmed did not violate the ex post facto doctrine because section 415.504 is not a penal statute.

KEY QUOTATIONS

"To summarize, because the deposition was admissible under Rule 1.330, the hearing officer did not err in admitting it or relying on its contents to support his findings." (553 So. 2d at 277)

"Finally, although section 415.504(4)(d)3b refers to employment disqualification, section 415.504 as a whole is directed to the maintenance of accurate information in the abuse registry, not license revocation, which would be instituted under Chapter 402, Florida Statutes." (553 So. 2d at 278)

FACTUAL BACKGROUND

In 1980, HRS received a report alleging that W.M., an employee at a private school, had inflicted excessive corporal punishment on an eight-year-old child. HRS initially classified the report as indicated substantiated and later reclassified it as confirmed under statutory amendments, potentially disqualifying W.M. from employment in a child-care facility. At the administrative hearing, HRS introduced the child's deposition, taken during discovery, and the hearing officer relied on it and other evidence in recommending denial of expunction.

PROCEDURAL HISTORY

HRS denied W.M.'s request to expunge a report concerning alleged excessive corporal punishment, and W.M. requested administrative review. After a formal hearing, the hearing officer recommended denial of expunction, and HRS adopted that recommendation in a final order dated September 22, 1988. W.M. appealed to the First District Court of Appeal, which affirmed.

DISPOSITION

affirmed

CASES CITED

- *Juste v. Department of Health & Rehabilitation Services*, 520 So. 2d 69 (Fla. 1st DCA 1988)
- *Harris v. Game & Fresh Water Fish Commission*, 495 So. 2d 806 (Fla. 1st DCA 1986)

- *Dinter v. Brewer*, 420 So. 2d 932, 934 (Fla. 3d DCA 1982)
- *Johns-Manville Sales Corp. v. Janssens*, 463 So. 2d 242, 259 (Fla. 1st DCA 1984), review denied, 467 So. 2d 999 (Fla. 1985)
- *Chrysler Corp. v. Wolmer*, 499 So. 2d 823 (Fla. 1986)
- *State ex rel. Vining v. Florida Real Estate Commission*, 281 So. 2d 487 (Fla. 1973)
- *School Board of Pinellas County v. Noble*, 384 So. 2d 205 (Fla. 1st DCA 1980), review denied, 389 So. 2d 1114 (Fla. 1980)
- *Lester v. Department of Professional & Occupational Regulations, State Board of Medical Examiners*, 348 So. 2d 923 (Fla. 1st DCA 1977)
- *United States v. Donofrio*, 450 F.2d 1054 (5th Cir. 1971)
- *DeBock v. State*, 512 So. 2d 164 (Fla. 1987), cert. denied, 484 U.S. 1025 (1988)
- *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969)
- *Glover v. State*, 474 So. 2d 886, 894 (Fla. 1st DCA 1985)