

COMMONWEALTH COURT OF PENNSYLVANIA

S.D. v. Department of Human Services

S.D. · No. No. 1814 C.D. 2015 · Decided August 9, 2016

SUMMARY

The Commonwealth Court of Pennsylvania affirmed the dismissal of S.D.’s appeal seeking expungement of an indicated child-abuse report from the ChildLine registry. The court held that the appeal was untimely because a telephone call did not satisfy the applicable written-filing requirement and that nunc pro tunc relief was unwarranted because there was no administrative breakdown.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Mary Hannah Leavitt, President Judge; Patricia A. McCullough, Judge; Dan Pellegrini, Senior Judge
JURISDICTION	Pennsylvania
DECIDED	August 9, 2016
DOCKET	No. 1814 C.D. 2015
DISPOSITION	affirmed
PROCEDURAL POSTURE	S.D. petitioned for review of the Department of Human Services Bureau of Hearings and Appeals adjudication dismissing as untimely her appeal from denial of her request to expunge an indicated child-abuse report. The Commonwealth Court affirmed.
STANDARD OF REVIEW	The Court reviewed whether constitutional rights were violated, an error of law was committed, or necessary findings of fact were unsupported by substantial evidence.
PRECEDENTIAL VALUE	unpublished
PARTIES	S.D. v. Department of Human Services

TOPICS

- judicial review of agency action
- administrative law
- appellate procedure
- preservation of error
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether S.D.'s alleged telephone call constituted a timely and valid appeal from the Department's denial of her request to expunge the indicated child-abuse report.
2. Whether S.D. was entitled to appeal nunc pro tunc based on an alleged breakdown in the administrative process caused by the Department's notice, which included a telephone number.

HOLDINGS

1. A telephone call did not perfect S.D.'s appeal because the applicable statute and regulation required a filed appeal to be made in writing and postmarked within 45 days of the Department's notification letter.
2. S.D. was not entitled to nunc pro tunc relief because the Department's notice did not cause a breakdown in the administrative process.

KEY QUOTATIONS

“S.D.’s telephone call did not perfect an appeal under the applicable statute and regulation.” (6)

“Because the notice unambiguously stated that the appeal had to be in writing, S.D. did not demonstrate a breakdown in the administrative process by reason of the language of the notification letter.” (7)

FACTUAL BACKGROUND

S.D. was listed as a perpetrator in an indicated child-abuse report in 2008. The Department denied her request to amend or expunge the report and advised her that a hearing request had to be submitted in writing within 45 days. S.D. did not submit a written appeal until approximately seven years later, although she testified that she had telephoned the Department within the deadline. The Department had no record of an oral appeal, and the ALJ found S.D.'s testimony not credible.

PROCEDURAL HISTORY

S.D. was notified in May 2008 that the Department had denied her request to amend or expunge an indicated report and that any hearing request had to be submitted in writing within 45 days. She did not file a written appeal until May 2015. After a July 2015 hearing, the ALJ recommended dismissal as untimely and denied nunc pro tunc relief; the Bureau adopted the recommendation and dismissed the appeal. S.D. sought review in the Commonwealth Court.

DISPOSITION

affirmed

CASES CITED

- G.M. v. Department of Public Welfare, 957 A.2d 377, 379 n.1 (Pa. Cmwlth. 2008)

- J.C. v. Department of Public Welfare, 720 A.2d 193, 197 (Pa. Cmwlth. 1998)

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