Julie Q. v. DCFS

In a unanimous decision issued on March 21, 2013, the Illinois Supreme Court affirmed the decision of the Second District Appellate Court in *Julie Q. v. DCFS,* 2013 IL 113783, and reinforced the holding of that court that the "environment injurious" allegation, also known as "Allegation 60," is void as a matter of law. In 2001, DCFS promulgated Allegation 60 as a DCFS rule at 89 Ill. Admin. Code 300, Appendix B, under which it investigates and indicates allegations of "environment injurious." The holding of the Supreme Court determined that any indicated finding issued under this 2001 rule is unauthorized, void as a matter of law, and should be expunged.

The decision relies on the undisputed legislative history surrounding the phrase "environment injurious" as used within the definition of "neglected child" under the Illinois Abused and Neglected Child Reporting Act ("ANCRA"), from which DCFS derives its authority to adopt rules. It cites specifically the decision of the General Assembly to remove the language "environment injurious" from ANCRA's definition of "neglected child" effective July 1, 1980. The Illinois Supreme Court squarely rejected DCFS's contention that the legislature's stated concern about the ambiguity of "environment injurious" in 1980 gave DCFS implicit authorization to subsequently offer its own definition of "environment injurious" by enacting Allegation 60, noting that "DCFS was without authority to reinsert a definition of neglect into the Act that had been deleted by the legislature." Further, the Court determined that the legislature's 2012 amendment to ANCRA, which carried out the intentions of the 1980 General Assembly to provide a clearer definition of "environment injurious" by delineating that it only occurs when the "likelihood of harm to the child's health, physical well-being, or welfare" is the result of "a blatant disregard of parent or caretaker responsibilities," quoting Pub. Act No. 97-803 (eff. July 13, 2012), serves to "reinforce[] our conclusion that the environment-injurious language was removed from the 1980 version of the statute . . . ." The clear import of this decision is that any indicated finding issued under Allegation 60 is void. Because DCFS has yet to amend Allegation 60 to conform to the July 13, 2012 law, we believe it cannot rely on it as authorized but must issue a new rule that comports with the legislative definition.

Any case in which there is an indicated finding based on Allegation 60 should be subject to a motion for expungement as a matter of law under *Julie Q*. DCFS had been seeking to avoid compliance with the Second District Appellate Court decision while *Julie Q*. was pending in the Illinois Supreme Court. Now that the Illinois Supreme Court has spoken clearly and unambiguously, each Allegation 60 finding that is currently being maintained against a parent or caregiver should be expunged as a matter of law.

Please Note: The Second District Appellate Court's decision regarding evidence that is inadmissible at DCFS hearings, including double hearsay contained in an investigative file and evidence of collateral bad acts, remains good law, untouched by the Illinois Supreme Court's decision. *See Julie Q. v. DCFS*, 963 N.E.2d 401, 357 Ill. Dec. 448 (2d Dist. 2011) (investigator admitted that "she decided to indicate plaintiff for neglect based on information she obtained after reading the notes from [another investigator], whom she had never met and who did not testify.

The record reflects that the ALJ both admitted into evidence and considered [the second investigator's] notes. Although, under the Administrative Procedures Act, hearsay is admissible if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs, the hearsay relied upon in this matter does not fit this definition"). The Second District's evidentiary rulings may be relied upon in any case involving evidentiary objections to unreliable hearsay or "other bad acts" evidence, but is not by itself an across-the-board basis for expungement.

We encourage any attorney handling a DCFS expungement appeal or circuit court administrative review that includes an Allegation 60 finding against the client to bring the *Julie Q.* decision to the attention of the administrative law judge or circuit court judge and request a prompt decision in conformity with the*Julie Q.* holding. It is possible that DCFS will itself voluntarily expunge all of the pending Allegation 60 findings (we will be requesting that relief generally and also pressing DCFS for a new rule in conformity with P.A. 97-803), but we urge the attorneys in our pro bono network and our colleagues handling these cases to press for this relief on each client's behalf. If you wish to use the summary set forth in paragraphs 1-2 above to make your case, or to adapt that description for your own use, please feel free to do so.