Diana

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401-6002	
THE PEOPLE OF THE STATE OF COLORADO In the Interest Of: Child: R[redacted] M[redacted] Petitioner: JEFFERSON COUNTY DIVISION OF CHILDREN, YOUTH AND FAMILIES, Respondents: [redacted] Special Respondents: [redacted] and [redacted]	▲ COURT USE ONLY ▲ Case Number: 11JV682 Div.: 10 Ctrm.: 4-C

ORDER

THIS MATTER comes before the Court on the Guardian *ad Litem*'s *Motion for Judicial Review*. The Court, after reviewing the pleadings, case file, and applicable rules and law hereby issues the following findings of fact and Order.

I. FACTS

THE COURT FINDS that Petitioner and the Guardian *ad Litem* agree on the facts at issue: in April 2011, the Jefferson County Department of Children, Youth, and Families ("the Division") received a report in which R[redacted] M[redacted] ("the child") reported two separate incidents of inappropriate sexual contact, each with a different younger niece ("the original incidents"). The Division reported the original incidents to law enforcement. The Division filed a dependency and neglect case, and the Court held a temporary custody hearing on May 4, 2011. At that time, the Court issued protective orders pursuant to C.R.S. § 19-3-207(2.5) and appointed Stacey Nickolaus as Guardian *ad litem*. The Court adjudicated the child dependent and neglected with respect to Respondent Father on July 11, 2011. The Court adopted a treatment plan for the child and Respondent Father on July 28, 2011.

The treatment plan for the child included a psycho-sexual evaluation. During that evaluation, the child reported the events that resulted in the filing of the dependency and neglect case, but included (1) the names and approximate addresses of the alleged victims from the original incidents ("the additional information"); and (2) one additional incident of inappropriate sexual touching with one of the above-mentioned nieces ("the additional incident"). As a mandatory-reporter under C.R.S. § 19-3-304(2)(n), the therapist conducting the psycho-sexual evaluation reported the information to the Division. The Division then contacted Ms. Nickolaus. The Division believed it needed to report the additional information from the original incident, as well as the additional incident to the police under C.R.S. § 19-3-304(2)(m). Ms. Nickolaus maintained that the disclosures were protected under the order previously entered by the Court under C.R.S. § 19-3-207(2.5).

On October 20, 2011, the Court entered an order allowing the Division to report to law enforcement all of the child's disclosures during the psycho-sexual evaluation. Diana Richett entered a limited appearance as Guardian *ad litem* for the purpose of preparing the motion for judicial review and timely submitted a *Motion for Judicial Review* on October 31, 2011. The Petitioner timely filed *Petitioner's Response to Guardian* ad litem *'s Motion for Judicial Review* with the Court on November 17, 2011. Ms. Richett filed a *Reply to Petitioner's Response to Guardian* ad litem *'s Motion for Judicial Review* on December 5, 2011. Petitioner submitted a *Reply to Guardian* ad litem *'s Reply to Petitioner's Response to Guardian* ad Litem *'s Motion for Judicial Review* on December 7, 2011.

In her *Reply to Petitioner's Response to Guardian* ad litem *'s Motion for Judicial Review*, Ms. Richett argues, among other things, that Petitioner's Response was not timely and was improperly served. Service was timely under this Court's interpretation of C.R.C.P. Rule 121, Section 1-15, as it existed in 2011, which allowed for 18 days for response.

Ms. Richett argues that the Magistrate erred when she denied Ms. Nickolaus' request to find that all of the child's disclosures made during the course of court-ordered treatment were protected under the order entered pursuant to § 19-3-207(2.5).

II. ANALYSIS

Findings of fact made by the Magistrate may not be altered unless clearly erroneous. *See* C.R.M. Rule 7(a)(9). This Court understands the current request for review as a request to review the Magistrate's legal conclusions. This Court reviews the Magistrate's legal conclusions *de novo*.

A. C.R.S. § 19-3-207(2.5) does not abrogate the duty to report under C.R.S. § 19-3-304.

The Magistrate found that C.R.S. § 19-3-207(2.5) and C.R.S. § 19-3-304 "stand alone" and "cannot be read in conjunction." *See* Order of October 20, 2011, ¶ 4. In what this Court considers an expansion upon this conclusion in the following paragraph of her Order, the Magistrate states "[n]othing in [§ 19-3-207(2.5)] relieves a required reporter of his or her duty [under § 19-3-304]." This Court, guided by the plain language of the statute and a review of the legislative debate concerning C.R.S. § 19-3-207(2.5), agrees.

The language of the statute indicates that it does not abrogate the mandatory reporting statute. In interpreting C.R.S. § 19-3-207(2.5), the Court first looks to the plain language of the statute. *See DeWitt v. Tara Woods L.P.*, 214 P.3d 466, 467 (Colo. App. 2008). The statute's plain language indicates that the protective order applies to the trial phase of a subsequent case. In contrast, the reporting statute applies as soon as a mandatory reporter "has reasonable cause to know or suspect that a child has been subjected to abuse or neglect." C.R.S. § 19-3-304.

Recordings of the legislative debate surrounding the recent passage of C.R.S. § 19-3-207(2.5) indicate that C.R.S. § 19-3-207(2.5) does not abrogate mandatory reporting. During debate on the statute, considered before passage as House Bill 1108, the Senate Judiciary

Committee heard from witnesses on March 8, 2004. That day Douglas Wilson, then with the Peublo's Public Defender's Office, acted as a witness for the Senate Judiciary Committee. Mr. Wilson addressed the proposed-statute's relationship with the reporting statute directly. Mr. Wilson stated, "this does not abrogate the reporting requirement. The professional person still has to report anything that is said to the therapist in this particular bill." Mr. Wilson later reiterated, "this [proposed protective order statute] has no impact on that reporting statute." The legislative debate indicates that the legislature's intent was to pass a protective order statute that did not conflict with the mandatory reporting statute.

In conclusion, the plain language of the statute, as well as debate surrounding the passage of C.R.S. § 19-3-207(2.5) indicate that the legislature did not intend for the mandatory reporting statute to be abrogated by the protective order statute. The Court, therefore, AFFIRMS the Magistrate's conclusion that the mandatory reporting statute is not abrogated by C.R.S. § 19-3-207(2.5).

B. Incidents related to those which form the basis for a dependency or neglect case need not be separately reported.

The Court disagrees with the Magistrate's conclusion that the protective order statute requires the Division to report (1) additional information related to the original incident that led to the filing of the ongoing dependency or neglect case, or (2) information indicating additional incidents sufficiently related to the ongoing dependency or neglect case. The Court's conclusion is based upon the purpose of C.R.S. § 19-3-207(2.5) and the Children's Code, as well as binding case law.

As a threshold matter, the Court notes that the protective order the Court put into place in this case supports a treatment plan that was mandated by statute. *See* C.R.S. § 19-3-508(1)(e)(I) ("When the decree does not terminate the parent-child legal relationship, the court *shall* approve an appropriate treatment plan . . . .") (emphasis added).

1. The purpose of C.R.S. § 19-3-207(2.5), as a protective order statute, is to support a child's treatment by shielding him from self-incrimination in subsequent delinquency or criminal cases based on facts revealed in court-ordered treatment.

If the protective order statute is held not to apply and the additional statements regarding the original incidents are separately reported, they could lead to a subsequent delinquency case against the child. If the additional incidents involving the same victim and same child are separately reported, they could lead to a subsequent delinquency case against the child. The specter of a subsequent delinquency case would be a barrier to the honest communication between the child and his therapist that is crucial to a successful therapeutic outcome.

The legislature intended for C.R.S. § 19-3-207(2.5) to offer similar protections for children in treatment in a dependency or neglect case as the law already provides to adults in treatment in a dependency and neglect case. During the March 8, 2004 debate before the Senate

Judiciary Committee on House Bill 1108, Kent Spangler, then Deputy Director of the Office of the Child's Representative stated:

> We have dysfunctional parents and we wish that's where it stopped, but some of those characteristics come down to the children, and if that sibling can't disclose what's going on, the younger ones can't get the treatment they need . . . This (proposed statute) allows the same protection that we offer adults under the same scenario.

Later, during the same Senate Judiciary Committee meeting, Patrick Vance, then a Guardian *ad litem*, testified that children have the same 5th Amendment rights against self-incrimination as do adults (an argument also made by Ms. Richett in her *Motion for Judicial Review* [p. 3]); therefore, children involved in court-ordered treatment could refuse, lawfully, to continue that treatment without protection against statements made in treatment being used against them in subsequent delinquency or criminal cases.

Here the separate reporting of the additional information regarding the original incidents and the separate reporting of the additional incidents involving the same victim and child could expose the child to delinquency charges. The threat of subsequent delinquency charges would have a chilling effect on the child's ability to develop a strong therapeutic relationship where he could make progress in resolving the issues that brought him to the attention of the Court.

Accordingly, if the protective order does not apply here, and the threat of subsequent delinquency case is not mitigated, the purpose, expressed by the legislature, of C.R.S. § 19-3-207(2.5) is defeated.

2. Case law allows for a liberal reading of the protective order statute.

According to case law, protective order statutes may be read liberally. In *People v. District Court*, 731 P.2d 652 (Colo. 1987), the Colorado Supreme Court stressed that a statute governing protective orders may be read liberally so as to effectuate appropriate treatment plans. "The requirement . . . that the court order an appropriate treatment plan implicitly authorizes the court to issue such orders as are reasonably necessary to implement that mandate." *Id.* at 657. The Supreme Court "recognize(d) that the types of protective orders specifically described (in the statute) do not expressly encompass the type of order entered here. However, we do not construe that statute to limit the nature of protective orders a court may enter." *Id.* The Supreme Court's analysis in *People v. District Court* aligns with the General Assembly's declaration, in the enactment of the Children's Code that "the provisions of this title shall be liberally construed to serve the welfare of children and the best interest of society." C.R.S. § 19-1-102(2). Accordingly, this Court reads C.R.S. § 19-3-207(2.5) liberally, keeping in mind the welfare of children and the best interest of society.

3. The Division need not report the names and approximate addresses of the alleged victims from the original incidents. These subsequent disclosures are deemed sufficiently related to the original incident for the Court to conclude that the Division has complied with its duty to report.

If the names and addresses of alleged victims are sufficiently related to the conduct upon which the dependency or neglect adjudication is based, then the Court would find that the Division complied with its duty to report when it reported the original incident to law enforcement. In *People v. District Court, supra*, respondent parents refused to participate in therapy if their in-treatment statements could be used against them in criminal prosecutions; the court, therefore, granted protective orders preventing criminal prosecution based on past conduct "related" to the adjudication. *Id.* at 659. The Supreme Court, in *People v. District Court, supra*, held that the trial court's protective orders did not interfere with the People's mandatory reporting obligation because the conduct had already been reported, forming the basis of the dependency and neglect proceeding. *Id.* at 658. The facts here are closely analogous to the facts in *District Court,* in which the Court concluded: "[a]lthough it may be that the protected statements might yield additional information concerning the nature and extent of the misconduct, we conclude that the duty to report has been performed and the protective orders can be implemented without violation of the reporting requirement ...." *Id. at 658.* Here, the child could similarly have refused to participate further in treatment if his statements could be used against him in a criminal or juvenile delinquency proceeding. The Magistrate, in recognition of this fact, granted the protections of C.R.S. § 19-3-207(2.5), which prohibits any statement a juvenile makes to a professional in the course of court-appointed treatment from being entered into evidence in a criminal or juvenile delinquency case. The child subsequently made the statements providing additional information during his active participation in court-ordered treatment. Because the child's statements relate to the facts upon which the adjudication had been based, because he made the statements in the course of a court-ordered treatment, and because the statements do not relate to future misconduct, the Court finds the Division's duty to report the information to law enforcement under C.R.S. § 19-3-204(2) has already been met. Accordingly, the Division has no further duty to report the additional information concerning the original incidents to law enforcement.

4. The Division need not report the additional incident of touching, because it is sufficiently related to the original incident for the Court to conclude that the Division has complied with its duty to report.

The additional incident of touching relates to the conduct upon which the dependency and neglect adjudication is based; the Division need not report it to law enforcement. First, the Supreme Court's reasoning in *People v. District Court, supra,* applies here, just as it does in the case of the additional information regarding the original incidents; the victim of the alleged "sexual touching" was a niece also allegedly victimized in one of the original incidents of sexual touching. Second, the goal of the legislature, in enacting the reporting statute, is to gain a "complete reporting of child abuse in order to protect the best interest of the children of the state *and to offer protective services* in order to prevent any further harm to a child suffering from abuse." *People v. District Court, supra,* (emphasis added). The General Assembly has declared that the purposes of the Children's Code are "to secure for each child subject to these provisions

such care and guidance, preferably in his own home, as will best serve his welfare and the interests of society." C.R.S. § 19-1-102(1)(a).

It must also be noted that C.R.S. § 19-3-207 contains no prohibition against police producing any evidence against the juvenile that is secured through their independent efforts or investigation. Rather, the prohibition is against gathering the evidence from the juvenile's statements made in court-ordered treatment.

III. CONCLUSION

1. THE COURT FINDS that the reporting statute is not abrogated by the protective order statute. The Division complied with their duty to report when they made an initial report concerning the sexual abuse by the child to law enforcement officers. This report is the subject of the dependency or neglect action. Therefore, the Court finds that the Division need report neither the names and approximate addresses of the alleged victims from the original incidents nor the additional incident of touching to law enforcement.

2. THE COURT, THEREFORE, ORDERS the Magistrate's Order of October 20, 2011, **AFFIRMED in part** and **REVERSED in part** and ORDERS:

   A. Any treatment providers in the dependency and neglect case report any information obtained from the child during court-ordered treatment directly to the Jefferson County Division of Children, Youth and Families rather than law enforcement.

   B. The Division has complied with their duty to report since they made an initial report concerning the sexual abuse by the child to law enforcement officers. This report is the subject of the dependency or neglect action.

   C. The Division is precluded by § 19-3-207 and specifically § 19-3-207(2.5) from reporting to law enforcement any additional statements made by the child during court-ordered treatment unless his statements relate to future misconduct.

Done in Golden, Colorado, this 27 day of January, 2012.

BY THE COURT:

Ann Gail Meinster
District Court Judge