



1996

# Recent Developments: C.S. v. Prince George's County Department of Social Services: Court of Appeals Clarifies Procedural Mechanisms for Those Who Have Been Accused of Child Abuse or Neglect

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## Recommended Citation

Heydon, Beverly I. (1996) "Recent Developments: C.S. v. Prince George's County Department of Social Services: Court of Appeals Clarifies Procedural Mechanisms for Those Who Have Been Accused of Child Abuse or Neglect," *University of Baltimore Law Forum*: Vol. 27 : No. 1 , Article 6.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol27/iss1/6>

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## *C.S. v. Prince George's County Department Of Social Services*

In a unanimous decision, the Court of Appeals of Maryland in *C.S. v. Prince George's County Department of Social Services*, 343 Md. 14, 680 A.2d 470 (1996), held that alleged child abusers have the right to an independent contested case hearing within the meaning of the Administrative Procedure Act. Specifically, the court decided that before an alleged abuser's name is added to a central registry computer system, the individual is entitled to a full trial-like hearing with judicial review of the investigating agency's decision.

After an investigation of C.S., an alleged child abuser, the Prince George's County Department of Social Services ("PGDSS") concluded that there was sufficient evidence to show that C.S. was a child abuser. The PGDSS made a finding that the incident was "indicated" abuse, meaning there was credible evidence that abuse, neglect, or sexual abuse occurred. This finding also indicated that the evidence was unsatisfactorily refuted. C.S. was notified that his name would be added to a computerized central registry system used by the State of Maryland to track abuse and neglect cases and child abusers.

Upon being notified that his case was "indicated," C.S. requested an administrative hearing to appeal the finding. First, the department reviewed its records and decided that the finding should

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By Beverly Heydon

not be changed. Thereafter, the department's records were forwarded to the Office of Administrative Hearings ("OAH"), the agency responsible for conducting appeals. After a hearing, the administrative law judge ("ALJ") upheld the finding of "indicated" child abuse. C.S. filed a petition for judicial review and a motion to stay the ALJ's order in the Circuit Court for Prince George's County. The circuit court dismissed the petition because PGDSS was not a state agency. C.S. then appealed to the Court of Special Appeals of Maryland. Prior to review by the intermediate appellate court, the Court of Appeals of Maryland granted certiorari.

As a way of introduction, the court reviewed Maryland's statutory procedures for investigating, reporting, and detecting child maltreatment, contained in Family Law Article sections 5-701 through 5-715. *PGDSS*, 343 Md. 14, 680 A.2d 470, 472 (1996). Chief Judge Murphy, delivering the opinion for the court, began the

analysis by discerning the legislature's intent and reviewing the legislative history pertaining to central registries and the dispersement of information relating to alleged child abusers.

First, the court noted that between 1963 and 1966 the legislature adopted provisions that criminalized child abuse, required physicians to report alleged abuse to the police or the local welfare department, gave welfare agencies the authority to remove at-risk children from their home, and authorized the use of central registries. *Id.* at 24, 680 A.2d at 475. The overall effect of the legislature's enactment of these statutes was to balance "the need to report and investigate child abuse with its desire to protect those who have been falsely accused." *Id.*

Further research by the court showed that in 1973 the legislature amended the central registry provision to provide that "the State Department of Social Services *shall* and each local Department of Social Services *may* maintain a central registry of cases." *Id.* at 25, 680 A.2d at 475-76 (emphasis added). In 1977, the legislature made provisions allowing alleged child abusers the right to appeal a decision made by a local department to enter their name onto a central registry. *Id.* The legislature further required local departments to enact regulations to protect alleged abusers. *Id.* at 26, 680 A.2d at 476. Specifically, alleged

abusers had the right to be notified that their name was being added to the central registry. *Id.* Alleged abusers also had the right to appeal the department's decision and have their name removed from the registry after seven years if no further action had been taken against them, and if they requested that their name be removed. *Id.* at 26-27, 680 A.2d at 476. In 1994, this section was again amended, providing for the automatic removal after seven years. *Id.*

The court further found that in 1981 the legislature restricted access to the central registry information. *Id.* at 27, 680 A.2d at 477. Only those agencies who were investigating a report of suspected child abuse could obtain information from the registry. *Id.* This included the Social Services Administration, protective services staff, and law enforcement personnel. *Id.*

Upon further review of the legislative scheme, the court discovered that administrative reviews were added to the procedural protections in 1993 when the legislature enacted Chapter 318, which allowed alleged abusers to request an administrative review of the findings made by a local department. *Id.* at 28, 680 A.2d at 477. In addition to the previously existing hearings under section 5-715, the administrative review created an additional mechanism allowing alleged abusers a method to negate the findings made by the department. *Id.*

After a thorough examination of the legislative history and the

legislature's intent in enacting child abuse laws, the court concluded that the legislature went to great lengths to afford procedural protections to individuals accused of child maltreatment. *Id.* at 30, 680 A.2d at 478. Of utmost concern to the legislature was that the information disseminated in a central registry system be accurate. *Id.*

Next, the court turned to the hearing procedures codified as sections 5-706.1 and 5-706.2. These statutes are implemented in the Department of Human Resources's regulations at COMAR 07.02.26, providing a limited review of the record rather than a hearing. *Id.* The court held that COMAR 07.02.07.19 "fails to properly implement the legislative scheme because the Chapter 318 hearing was created by the legislature as a new and independent means of review." *Id.* at 31, 680 A.2d at 478. Thus, the court decided that the legislature intended for the hearing required by section 5-715 to create a second review. *Id.*

The court then determined what type of relief C.S. was entitled to under section 5-715. *Id.* at 32, 680 A.2d at 478. Resolution of this issue focused on the definition of a "contested case" within sections 10-210 through 10-217 of the Administrative Procedure Act ("APA"). *Id.* A contested case is defined in section 10-202(d)(1) of the APA, as "a right, duty, statutory entitlement, or privilege of a person that is required by statute or constitution to be determined only

after an opportunity for an agency hearing." *Id.* The court decided that a hearing under section 5-715 fell within the definition of a contested case. *Id.* at 33, 680 A.2d at 479. Therefore, it was improper to provide C.S. with only a limited hearing. *Id.*

In *C.S. v. Prince George's County Department of Social Services*, the Court of Appeals of Maryland held that alleged child abusers were entitled to a contested case hearing within the meaning of the APA. Alleged child abusers are now entitled to a full trial-like hearing before their name may be entered into a central registry. While the decision recognizes that accused child abusers are entitled to due process before their name is entered into a central registry, the court's decision could result in an overwhelming number of appeals. Overall, the court's decision provides a fair balance between the goal of protecting children, and simultaneously affording equitable rights to those accused of child abuse or neglect.