IN THE SUPREME COURT OF PENNSYLVANIA

IN RE: Y.W.-B.	**:**	**1 EAP 2021**
Consolidated Appeals of: J.B.,	**:**	
Mother	**:**	
IN RE: N.W.-B.,	**:**	**2 EAP 2021**
Consolidated Appeals of: J.B.,	**:**	
Mother	**:**	

REPLY BRIEF ON BEHALF OF PETITIONER, J.B., MOTHER OF Y.W.-B. AND N.W.-B.

Appeal By Allowance from the Order of the Superior Court of Pennsylvania entered October 8, 2020, for the cases at No. 1642 and 1642 EDA 2019, Affirming in part and Reversing in part the trial court's order of June 11, 2019, entered by the Honorable Joseph Fernandes, docketed at CP-51-DP-00002108-2013 and CP-51-DP-004204-2016.

By: Michael Angelotti
7950 Henry Ave., 7A
Philadelphia, PA 19128
angelottim@yahoo.com
267-901-6506
Pa. Attorney I.D. 89697
Counsel for J.B.

Dated: April 12, 2021

TABLE OF CONTENTS

TABLE OF CITATIONS

INTRODUCTION

J.B. (Mother) files this Reply Brief in response to the brief filed by the Philadelphia Department of Human Services (DHS). This case is about the standard created by the Superior Court below, and whether that standard falls below the protections guaranteed by the Fourth Amendment and Article 1, Section 8.

In Mother's Opening Brief to this Court, our argument centered around two basic themes, that: (1) the Superior Court's standard fell below the standards required by the Fourth Amendment; and, (2) the Superior Court's standard fell below the standards required by the Article 1, Section 8 of the Pennsylvania Constitution. DHS's brief presents additional concerns as it aligns with the Superior Courtt in proposing a new, lesser standard for probable cause. We address these concerns below.

1. DHS's argument is opaque, and we clarify their argument.

DHS does not directly address the issues accepted for review by this Court. Rather, DHS's brief meanders back and forth between what it states are a county agency's operating policies, analyzing a Superior Court case from twenty years ago, rather than the one on appeal here in Y.W.-B., 2020 Pa. Super. 245, and what it claims is the factual history of the instant case. DHS never squarely

acknowledges either its own position, the standard created by the Superior Court below, or its constitutional implications.

To be precise, the issues accepted for review are:

1. Did the Superior Court err in creating a rule of law that violates Article 1, Section 8 of the Pennsylvania Constitution, when it ruled that where a Pennsylvania Child Protective Services agency receives a report that alleges that a child is in need of services, and that there is a fair probability that there is evidence that would substantiate that allegation in a private home, where the record does not display a link between the allegations in the report and anything in that private home, then that government agency shall have sweeping authority to enter and search a private home?

2. Did the Superior Court err in creating a rule of law that violates the Fourth Amendment of the United States Constitution, when it ruled that where a Pennsylvania Child Protective Services agency receives a report that alleges that a child is in need of services, and that there is a fair probability that there is evidence that would substantiate that allegation in a private home, where the record does not display a link between the allegations in the report and anything in that private home, and there was no showing of particularity, then that government agency shall have sweeping authority to enter and search a private home?

This case is about whether the Superior Court departed from the then current state of the law, and crafted a standard which falls below the guarantees of the

Fourth Amendment and Article 1, Section 8. Mother respectfully offered a standard for application to cases in which a county agency files a Motion to Compel Cooperation. DHS's proposed standard is difficult to locate in its Brief.

Stripped of its opacity, DHS's proposed standard matches our so-called "strawman, sky-is-falling" (*See* Brief for DHS at 38, 42) argument. For all of Chicken Little's histrionics, if one recalls the original fable, at the end of the story, disaster did, in fact, ensue. A fox eats him and his friends.

Aesop told us a similar story, about the Boy Who Cried Wolf. The thing is, at the end of that fable, there actually was a wolf. The wolf really did eat up all of the sheep. Here, the standard for which DHS advocates, the standard set by the Superior Court below, is that wolf. It is the exception that hungrily swallows the rule – the protections provided by the Pennsylvania and United States Constitutions.

DHS bristles at the consideration of any of the traditional concepts meant to guard the Constitutionally protected interests of the Fourth Amendment or Article 1, Section 8: reliability, a nexus requirement, particularity. But DHS offers no alternative suggestions or safeguards. So, stripped of its opacity, what DHS's argument really is, is that in **every** case where a county agency receives a GPS report and files a Motion to Compel Cooperation, a home search is justified, due to an agency's regulatory obligation under 55 Pa. Code 3490.232(f). This goes

further than the standard created in In re: Petition to Compel Cooperation with Child Abuse Investigation, 875 A.2d 365 (Pa. Super. 2005). The standard that DHS advocates for even goes further than the standard created in In the Interest of Y.W.-B., 2020 Pa. Super. 245. Both the standard advocated by DHS, and even the standard created in Y.W.-B. below fall below the minimum protections provided by the Fourth Amendment and Article 1, Section 8.

2. DHS's meandering obscures the facts of this matter.

Instead of presenting a clear suggested standard for this Court's consideration, DHS's argument takes a turn and obscures the record in this matter. Precision in the choice of words is important, because in this context, they can have the force of law. The saying is often repeated that bad facts make bad law. The same holds especially true for imprecise words and standards.

DHS chose the term "neglect" with precision as one of the themes of its case. This choice of terms was so important to them that it is used sixty-two times in DHS's Brief, repeated in staccato fashion in the belief that through repetition, it would stick. The fact is though, this word was chosen by DHS, not the trial court. The trial court never made a finding that Mother (or Father) was neglecting the Children. Surprisingly, even though DHS uses the term sixty-two times, the word does not appear once in the Notes of Testimony or the trial court's opinion. DHS goes so far as to append the words "of neglect" to the Superior Court's standard,

where they did not appear. *Compare* DHS's Brief, p. 13, 47 with In the Interest of Y.W.-B. and N.W.-B., 2020 PA Super. 245, p. 13, 24. The term also does not appear in the regulatory definition of General Protective Services, *See* 55 Pa. Code 3490.223, or within the regulatory description of services available for families receiving General Protective Services from a county agency, *See* 55 Pa. Code 3490.235.

The reason that we point out that DHS has chosen to repeat the word "neglect" throughout its Brief despite the fact that it does not appear in the record is not to be pedantic. It is because the choice of words matters, and that the use of the word "neglect" where it does not appear – especially in relation to the standard created by the Superior Court below, can have the force of law, and because DHS's term alters what the holding below was and what the record below represented.

DHS, throughout its Brief, also insists that the trial court "found Mother to be evasive," and that this should be a factor taken into consideration in the totality of the circumstances in this matter. See, e.g., Brief for DHS at p. 12, 18, 31. The term "evasive" appears twelve times in DHS's Brief. As an initial matter, for as many times as DHS repeats the term "evasive," there is not one mention of the word "evasive" anywhere in the record before the trial court. It appears nowhere in the Notes of Testimony, nor does it appear in the trial court's opinion. The trail

court made no such finding, period. It also appears nowhere in the Superior Court's opinion in this matter.[1] Likewise, the trial court made no negative credibility findings against Mother. Like "negligent," the term evasive" belongs to DHS, not to the trial court, was chosen with precision and used repeatedly throughout DHS's Brief for effect.

Additionally, DHS's assertion that Mother failed to answer the trial court's questions is just simply false. In fact, DHS selectively edits and twists a quote from the trial court so that it misleadingly alters the meaning of the quote. DHS states that "the issuing authority -- in this case, the Court of Common Pleas -- properly found it significant for the need to assess the home that Mother "refuse[d] to answer the trial court's questions regarding Mother's ability to care for Children." Trial court opinion at 7 (citing Testimony of 6/11/19 at 13)." *See* Brief for DHS at 31. This altered quote is neither what the trial court said, nor does it represent the record. The trial court noted that Mother attempted to refuse to answer questions, and the trial court is referring to one question on page 13 of the June 11, 2019 transcript when Mother asked the relevance of the question. A review of the transcript reveals that Mother did not, as DHS repeatedly[2] states

[1] The Superior Court uses the term "evade" three times, and only in reference to whether this matter was moot – capable of repetition yet likely to evade review.

[2] DHS repeats this misrepresentation of the record and the trial court's opinion in several places in its Brief. On page 5 of DHS's Brief, DHS states that "she did not directly answer" the trial court's questions.

"refuse to answer questions." Mother answered every single question that the trial court posed to her. DHS's statement to the contrary is simply false. DHS's tactic here of misrepresenting the record and the trail court's statement is confusing, as it is both unnecessary and obvious.

DHS addresses Amicus Curiae HSLDA's statement that Mother was not being evasive, and may have felt threatened. *See* Brief for DHS, p. 32. DHS insists that determining Mother's demeanor was "not Amicus's call," but instead was the trial court's unreviewable decision. As for DHS's question as to whether Mother felt threatened or mistrustful of DHS, fortunately, Judge Fernandes addressed this issue on the record. Judge Fernandes said "the parents don't really trust the social workers," (N.T., 6/11/19, p. 25), "they don't believe (DHS) will do the right thing," (N.T., 6/11/19, p. 25), "sometimes they have concerns about workers coming in and out of their home," (N.T., 6/11/19, p. 12), and where "they're strangers or it's people that they don't know, they get a little bit suspicious

---

Again, on page 8 of DHS's Brief, DHS states that "The Court first explained that Mother "refuse[d] to answer the trial court's questions regarding Mother's ability to care for Children, including questions regarding Mother's income, Mother's employment status, Mother's ability to feed Children, and where Children received medical care.""

Further down on page 8 of DHS's brief, DHS counts "Mother's refusal to answer the Court's questions" as one of the factors in the totality of the circumstances to be considered in this matter.

These statements that Mother refused to answer the trial court's questions is not what the trial court said, and they are substantively false statements.

of what people come to their home, okay? But otherwise, they have eventually complied." (N.T., 6/11/19). Addressing Mother directly about this issue, Judge Fernandes also said that "I realize you're intimidated by DHS and you don't readily trust them," (N.T., 6/18/19, p. 17), "I realize you don't see eye to eye with DHS," (N.T., 6/18/19, p. 19, and that "you may not trust them." (N.T., 6/18/19, p. 20). Thus, DHS's question over whether or not the trial court recognized that Mother felt intimidated or mistrustful of DHS is answered by consulting the record in this case.

Amicus Curiae Support Center for Child Advocates lends a contribution to the discussion, specifically that a party's history could be part of a totality of the circumstances consideration. Mother has no specific quarrel with the consideration of an individual's history in a probable cause determination, where that history is relevant and admissible. This should not, however, simply be an opportunity to besmirch an individual, for example, the manner in which Amicus Support Center highlights past convictions for theft or trespassing. (*See* SSCA Brief, p. 19). Of course, in Pennsylvania, in order for evidence to be admissible, it must first be relevant. *See* Pa.R.E. 402. Also, previous criminal convictions are subject to limited admissibility as character evidence. *See* Pa.R.E. 405. Also, evidence is not admissible where there would be unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

See Pa.R.E. 403. One fails to see the probative value or the relevance of a past theft or trespassing conviction to the matter under consideration here beyond simple character assassination.

This Court should decline to embrace any unnecessary mischaracterization of the record in this matter. Meandering through a skewed view of the facts in this case is needless. This is a clear case of the appropriateness of the standard set forth by the Superior Court.

3. Our proposed standard is an application of Constitutional Law, not Criminal Law.

Mother finds it important to relate that the standard required for government intrusion into a home is one imposed by the Constitutions of the Commonwealth and of the United States, not the field of substantive law applied in a particular proceeding. DHS suggests that Mother imports inapposite criminal law concepts and standards here. *See* Brief for DHS, p. 15. No, Mother suggests that this Court analyze this matter using Constitutional law principles. Certainly, DHS does not suggest that we are applying the Crimes Code. The constitutional issues in question simply arise more frequently in the context of a criminal investigation. Tellingly, for all of the effort that it puts into arguing that "criminal law" is inapposite, DHS cites extensively and exclusively to cases which arose in criminal courts to describe the standard for probable cause. *See* Brief for DHS, p. 16 – 18.

A home deserves no less constitutional protection, however, simply because eventual proceedings which arise from an intrusion are civil rather than criminal. DHS certainly would not argue that the results of such a search could not potentially lead to a criminal charge. It is the governmental intrusion into a home that is at issue here, not the particular branch of the court which a matter may eventually reach. Indeed, DHS simply ignores the fact that neither the Fourth Amendment nor Article 1, Section 8 make any distinction between criminal or civil matters. Contrast this with the Fifth, Sixth and Seventh Amendments, which do draw distinctions between criminal and civil matters. The Pennsylvania Constitution also contains several sections which do draw distinctions between criminal and civil matters, unlike Article 1, Section 8.

4. We briefly address DHS's policy arguments.

In addressing Mother's policy argument regarding Article 1, Section 8, DHS insists that Mother has waived any advocacy concerning the policy implications of the Superior Court's decision. However, Mother's contention is that the standard created by the Superior Court in Y.W.-B. is unconstitutional. Mother could hardly raise this issue in the trial court, or even before the Superior Court, as these were both prior to the Superior Court setting forth the Y.W.-B. standard. Mother raised this argument at her first opportunity.

In its policy argument, DHS asserts that there are built in protections to combat the potential disparate impact of the standard it advocates. DHS is mistaken. DHS's standard, as related above, asserts that probable cause would exist, and a search would be warranted, in each and every case of a GPS investigation, because of the regulatory requirement that a county agency enters and evaluates a home. In such instances, a judge would not serve as a gate keeper to ensure compliance with the Constitutions of the Commonwealth and the United States. This is because there would be no gate to keep.

5. DHS's proposed standard falls short of Constitutionality.

Mother recognizes that probable cause is the appropriate standard for a search of a home. Mother's argument is that the standard set in Y.W.-B. below departs from a probable cause analysis and is overly broad. The Superior Court below departed from the standard set in Petition to Compel, and the standard it created falls short of Constitutionality.

The decision below incorporates the concurrence by Judge Beck from Petition to Compel. It does so in its Opinion in bold. *See* Y.W.B., p. 14. However, the concurrence from that case was not the law applied by Petition to Compel.

The law in Pennsylvania, and for that matter, in the United States, is clear. In order to enter and search a home, a children and youth agency must present probable cause. Id. at 376. Despite DHS's arguments, there is "no social worker exception to the structures of the Fourth Amendment." Id.

Compliance with the Fourth Amendment and Article 1, Section 8 would not unduly inhibit a county agency from doing its job. As the court stated in In re: Petition to Compel stated, the agency is free to conduct its investigation. The Court stated that the agency's investigation may include "**collecting additional facts to support the issuance of a search warrant**." Id. at 379. If the agency requests to enter a family's home, and the family refuses, the agency may petition the court to order the family to allow the agency to enter, the court noted. Id. The Petition to Compel court went on to state that the probable cause standard for a motion to compel cooperation was the standard for the "**issuance of a search warrant**." Id.

There is nothing unreasonable about requiring a nexus between a search of a home and potential evidence in that home, there is nothing unreasonable about requiring some specificity or particularity, and there is nothing unreasonable about requiring some credibility from the source of the allegations. Mother's argument to this Court is for a return to reasonableness, for a return to the probable cause

standard, and for a return to the traditional protections intended to guard that standard. Mother respectfully suggested a potential rule in her Opening Brief.

CONCLUSION

For the foregoing reasons, and the reasons expressed in our Opening Brief, J.B., respectfully requests that this Court vacate the rule established by the Superior Court. The rule falls short of the protections of both the Fourth Amendment and Article 1, Section 8 of the Pennsylvania Constitution.

Respectfully submitted,

/S
Michael Angelotti
Counsel for J.B.

Pa.R.A.P. 2135(d) CERTIFICATION

The undersigned certifies that this brief complies with the requirements of Pa.R.A.P. 2135, that where a reply brief exceeds fifteen pages, it must contain a certification that it does not exceed 7,000 words. A word count conducted by Microsoft Word 2019, the application used to prepare this brief, determined that this brief contains 2,914 words, and is thus compliant with Pa.R.A.P. 2135(a)(l).

Respectfully Certified,

/S
Michael Angelotti, Esq