

State of Michigan
State Office of Administrative hearings and rules

In the matter of
Denise Bruns
Petitioner,
v.

Docket No. 2008-835
Agency No. X0654322P

Kent County
Department of Human Services,
Respondent,

Agency: Department of Human Services
Case Type: Reconsideration

PETITION FOR EXPUNGMENT
OF PETITIONER'S NAME FROM CENTRAL REGISTRY

JURISDICTIONAL STATEMENT

Petitioner Ms. Bruns name has been improperly added to the registry section 722.627(3) "if the investigation of a report fails to disclose evidence of abuse or neglect the information identifying the subject of the report shall be expunged from the central registry." Pursuant to MCL 722.627 further provides that "[a] person who is the subject of a report of record...may request the department to expunge from the central registry a report or record in which no relevant and accurate evidence of abuse or neglect is found to exist." Pursuant to MCL 722.627 (5) & (6) Petitioner Ms. Bruns is the subject of a report or record made under this act and therefore may request the department to expunge an inaccurate report or record from the central registry and local office file.

And, (6) "If the department refuses a request for amendment or expunction under subsection (5), or fails to act within 30 days after receiving the request, the department shall hold a hearing to determine by a preponderance of the evidence whether the report or record in whole or in part should be amended or expunged from the central registry on the grounds that the report or record is not relevant or accurate evidence of abuse or neglect. The hearing shall be held before a hearing officer appointed by the department and shall be conducted as prescribed by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Pursuant to Haines v. Kerner 92 Sct 594, also See Power 914 F2d 1459 (11th Cir1990), "Pleadings in this case are being filed by Petitioner In Propria Persona, wherein pleadings are to be considered without regard to technicalities. Propria pleadings are not to be held to the same high standards of perfection as practicing lawyers". also See Hulsey v. Ownes 63 F3d 354 (5th Cir 1995). also See In Re: HALL v. BELLMON 935 F.2d 1106 (10th Cir. 1991) " however in artfully pleaded, the pro se complaint, we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

Ms. Bruns a pro se litigant presents relevant and Accurate Evidence the facts attached as exhibits are plead with federal rule 26 “” sufficient to expunge her name which have been has been improperly added to the registry section MCL 722.627(3) the information identifying the subject of the report shall be expunged from the central registry.” in which “no relevant and accurate evidence of abuse or neglect is found”.

RELEVANT AND ACCURATE EVIDENCE

The facts are being pled with particularity as required by Federal Rule 26. (C) (i) a written statement that the person has signed or otherwise adopted or approved; or (ii) a contemporaneous stenographic, mechanical, electrical, or other recording — or a transcription of it — that recites substantially verbatim the person's oral statement.

In direct contrast to Bolden’s original allegations Oliver Bruns Affidavit states: July 28, 2008, “I would like to correct and put on the record that my mother has never abuse me or any of my siblings. The Child Protective Service Worker exaggerated and pushed the situation far beyond a point of reason. She accused my mother Denise Bruns of abuse to my brother Josiah Bruns and Sister Alida Bruns.” (Exhibit 26)

“Kent County CPS has investigated the Petitioner Ms. Bruns has been investigated 26 times, 16 which were screened out 10 investigated and none substantiated. On September 8, 2008 CPS Bolden recanted her original testimony and the report was erred, which “she did not correct and she could not substantiate her original allegations.”

CPS Nyela Bolden and the agency December 5, 2007 report is void and should be stricken in its entirety as it is contain speculation, fabrication and inadmissible hearsay:

Risk assessment narratives

On September 8, 2008 Bolden recantation of her original allegations could not be substantiated is corroborated by Oliver Bruns affidavit and Alida’s repeated requests to return home with the Petitioner because she is in regular conflict with her father.

Forensic Interview should be struck and the record corrected:

Specifically, on November 21, 2007 CPS Bolden December 5, 2007 reported “I utilizing the Forensic Interviewing Method Also, present was his father Kim Bruns and Step mother Sandy Bruns.” (Exhibit 21)

It is clearly established Nyela Bolden a professional failure to follow the proper Forensic Interview protocol and process during the November 21, 2007 **interview “contaminated” the child witness**, put words into his mouth of false allegations of abuse that really did not occur clearly establishing the minor child’s responses to questions were not reliable. (EX 26)

CONSTITUTIONAL RIGHT TO LEGAL COUNSEL

Pursuant to MCL 712A.17c (7) and Child Abuse Prevention and Treatment Act (CAPTA) requires the state to provide and appoint a lawyer Guardian Ad Litem to represent “ALL” the children Oliver (DOB 7/21/90) and Alida Bruns (5/27/97).

Failure to appoint legal representation for Oliver and Alida violates and deprives them of due process and public policy supports a child’s right to counsel: pursuant to MCL 722.630, MCL 712A.17c (7) and MCR 3.915(B)(2) and a meaningful relationship with their mother.

The December 11, 2008 decision and order merely generalized, unsubstantiated claims speculative statements of belief and inadmissible hearsay none of which are based on personal knowledge, such reports do not create genuine issues of material fact as to those claims. *Thomas v. Int’l Bus. Machs.*, 48 F.3d 478, 485 (10th Cir. 1995). The December 11, 2008 order applied no accurate and relevant evidence. *See Carey*, 500 F. Supp. at 583. It contains statement without

factual support, prefaced by phrases as may not be included in an order “I believe” or “upon information and belief” or those made upon an “understanding,” are properly subject to a motion to strike. *Tavery v. United States*, 32 F.3d 1423, 1426 n.4 (10th Cir. 1994) (citing *Carey v. Beans*, 500 F. Supp. 580, 583 (E.D. Pa. 1980). (See Exhibit Attached)

Third party’s description of a witness’s supposed testimony is not suitable for Petitioners name to be placed on Central Registry Category II for future Child Abuse.

The judge must render a decision that is just, according to the evidence viewed against the plain language of the Law.

A child’s statements were hearsay and inadmissible at trial under the U.S. Supreme Court case, *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), because the child did not testify at the November 13, 2008 Administrative Hearing and there was no opportunity for cross-examination of the child. The child's statements were inadmissible, the child welfare agency failed to present preponderance evidence that the child had been abused.

Pursuant to MCL 722.627 further provides that Petitioner Ms. Bruns “[a] person who is the subject of a report of record...may request the department to expunge from the central registry a report or record in which no relevant and accurate evidence of abuse or neglect is found to exist.”

Ms. Bruns characterizes errors on evidentiary rulings as reviewed under a denovo standard when the abuse of discretion standard clearly applies. Moreover, all the parties failed to adequately identify purported errors at the time of the November 21, 2007 original interview, December 5, 2007 report, or the December 11, 2008 Administrative hearing, decision and order. Ms. Bruns has provided adequate records to demonstrate error, not to mention prejudicial error as shown in this case just alleging abuse, neglect and threatened harm is not enough to place her name on central registry as a category II high risk for future abuse.

Prayer for Relief:

The facts clearly presented conclude the excluded evidence and violations of due process and public policy supports a child’s right to counsel would have changed the outcome of the December 11, 2008 hearing.

- A) Kent County CPS agency was on a witch hunt after investigating Petitioner Ms. Bruns 26 times since 1994, 16 were screened out, 10 investigated and none substantiated.
- B) Kent County CPS Bolden a professional failure to follow the proper Forensic Interview protocol and process **“contaminated” the child witness**, put words into his mouth of false allegations of abuse that really did not occur. (Ex)
- C) Failure to appoint legal representation for Oliver and Alida violated and deprived them of due process and public policy supports a child’s right to counsel.
- D) On September 8, 2008 CPS Bolden recanted her original allegations, testified her December 5, 2007 report was erred, which “she did not correct and “there are “NO” substantiations against the Petitioner Ms. Bruns corroborated by Oliver Bruns affidavit and her criminal history returned with no results.

This court must expunge Ms. Bruns name from Central Registry unless it can prove and establish a preponderance of evidence and facts in support of the claims in the December 5, 2007 report and December 11, 2008 order which would not entitle Ms. Bruns to relief of expungement.

I DECLARE THAT THE STATEMENTS ABOVE ARE TRUE TO THE BEST OF MY INFORMATION, KNOWLEDGE AND BELIEF.

Dated this _____ Day of November, 2010

Respectfully submitted,

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