No. SC93653

IN THE MISSOURI SUPREME COURT

TARYN WILLIAMS,

Respondent,

v.

STATE OF MISSOURI,
DEPARTMENT OF SOCIAL SERVICES, CHILDREN'S DIVISION,
CHILD ABUSE AND NEGLECT REVIEW BOARD,

Appellant.

Appeal from the Sixteenth Judicial Circuit, Jackson County, Missouri, Honorable Marco A. Roldan, Circuit Judge

SUBSTITUTE BRIEF OF APPELLANT STATE OF MISSOURI

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receipt of a report in that when good cause for a delayed conclusion exists, the statute imposing a ninety–day limit on notification of the Division's conclusion to the alleged perpetrator is directory, and not mandatory.

II. The trial court erred in finding as fact that co–investigation with law enforcement was not good cause for the Children's Division's delayed conclusion of a child abuse investigation because the finding is against the weight of the evidence in that, though the Division's investigator had gathered within 30 days all the evidence upon which she later determined that abuse occurred, she was relying upon law enforcement, to no avail, to obtain a transcript of text messages from the child's cell phone carrier that would directly prove and corroborate other evidence of abuse more convincingly than the transcript prepared by the child's mother if the alleged perpetrator, who declined to be interviewed, were to deny authoring the texts.

TABLE OF AUTHORITIES

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JURISDICITONAL STATEMENT

This is an appeal by the State of Missouri from a judgment of the Circuit Court of Jackson County removing Taryn Williams' name from the Central Registry of child abuse and neglect perpetrators. § 512.020 RSMo. This appeal does not involve any of the categories reserved for the exclusive jurisdiction of the Missouri Supreme Court. Mo. Const. art. V, § 3. The Missouri Court of Appeals, Western District, which had jurisdiction, § 477.070, issued its decision and affirmed the judgment of the circuit court. This Court granted transfer. Mo. Const. art. V, § 10; Rule 83.04.

STATEMENT OF FACTS

Judgment's findings of fact

Child abuse

The Children's Division of the Department of Social Services and Taryn Williams stipulated that the following facts form a basis for finding by a preponderance of the evidence that Williams sexually maltreated a person who was under the age of eighteen years and, thus, was a child within the meaning of § 210.110(4) RSMo.[1] A2–A3; Petitioner's Ex. No. 2 (Stipulation), A24–A25.[2] On October 13, 2010, a call was received by the child abuse hotline reporting sexual maltreatment of the child by Williams. A2. Between June and September of 2010, the child, a male, was 16 years old and Williams was 22 years old. A2. During that time, Williams had the care, custody, and control of the child as a volunteer swim coach with the Blue Springs High

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[1] All statutory citations are to the most recent version of the Revised Statutes of Missouri, with the exception of § 210.145.14 and § 210.152.2, explained in footnote 4.

[2] "A" refers to the Substitute Appendix to this brief. "LF" refers to the Legal File. "T" refers to the transcript. All of the parties' exhibits that were admitted into evidence have been electronically filed with the Court of Appeals.

School and the Dolphin swim team, in which the child was a participant. A2. During that time and while she was the child's coach, Williams had sexual intercourse on at least two occasions and oral sex on at least one occasion with the child. A2. Williams sent to the child via text message pictures of her unclothed breast, genitals, and buttocks. A2. Williams also sent to the child sexually explicit text messages and requested that the child send her a nude picture of himself, and the child complied with this request. A2. Williams admitted to a sexual relationship with the child. A2.

Investigation time line

After an evidentiary hearing, the trial court also found the following facts. On October 13, 2010, the Children's Division began its investigation of the allegations of sexual maltreatment by Williams. A3. On November 13, the Division updated its information system with the reason for a delayed conclusion to its investigation. A7. On February 17, 2011, approximately 128 days after beginning its investigation, the Division completed its investigation. A3. On February 18, the Division prepared written notice of its determination, and on February 22, approximately 133 after beginning its investigation, notified Williams of its determination that it substantiated the report of abuse. A3.

The trial court found that Williams timely requested in March 2011 an administrative review of the Division's determination by the Child Abuse and

Neglect Review Board, which held a hearing in September 2011 and upheld the Division's determination. A3. Thereafter, Williams timely filed her petition for de novo judicial review. A3.

Good cause for delayed conclusion

After the evidentiary hearing, the trial court also found that the Division's reason for delaying the conclusion of its investigation beyond 30 days, "co–investigation with law enforcement," was not "good cause" as required by statute. A8. The Division's determination was not based upon additional evidence, but upon evidence received within the 30–day period. A8. The trial court found that the Division's investigator testified that she obtained sufficient evidence to substantiate the report of child abuse against Williams within the first 30 days of the investigation and that she determined that Williams committed child abuse based upon the evidence that she obtained during the first 30 days. A7. The evidence is itemized in the investigator's Investigation Summary and CS–21 Letter mailed to Williams. A7; Petitioner's Exs. No. 3 (Investigatition Summary) and No. 7 (CS–21 Letter, notice of investigative determination).

The trial court found that the investigator's Delayed Conclusion Report lists "co–investigation with law enforcement" as the reason for the delay. A6; Petitioner's Ex. No. 12 (Delayed Conclusion Report). The specific reason for the delayed conclusion was that the Division was waiting to obtain text

messages and photos from the child's cell phone that was in the possession of the Blue Springs Police Department. A6.

The trial court found that the investigator noted in her investigation summary on October 13, 2010, that inappropriate text messages and photos were allegedly exchanged between Williams and the child and that they were contained in the child's cell phone. A6. The Division's investigator and a detective from the Blue Springs Police Department were present when the Child Protection Center interviewed the child and his parents on October 19. A6. At that interview, the child's mother gave the detective a copy of a twelve–page log that she compiled from the child's cell phone of the verbatim text messages. A6. At that interview, the Division's investigator did not ask for permission to look at the child's cell phone. A7. The investigator visited the child's mother between October 13 and 19, but did not ask for permission to look at the child's cell phone. A7. The investigator obtained a copy of the log on October 29. A7.

The trial court found that the investigator testified that she could have asked for permission to look at the child's cell phone from the child, the child's mother, or the Blue Springs detective, but she did not do so. A7. The investigator did not seek a subpoena for the child's or Williams' cell phone records and did not consult with counsel about how to obtain such a subpoena. A7. The investigator did not ask Williams' counsel for Williams'

cell phone records. A7. The investigator did not request on a weekly basis that law enforcement provide her the text messages and photos. A7. The investigator did not obtain the text messages or the photos from law enforcement. A7.

Judgment's conclusions of law

The judgment concluded that § 210.145 and § 210.152 RSMo impose mandatory time limits for completing a child abuse and neglect investigation and for providing written notice to the alleged perpetrator of the investigation's conclusion. A9. The judgment also concluded that these mandatory time limits are due process rights guaranteed by section 10 of Article I of the Missouri Constitution. A9.

Judgment's operative provision

The judgment reversed the decision of the Review Board and ordered Williams' name to be immediately removed from the Central Registry of child abuse and neglect perpetrators. A15.

The evidence

Child's cell phone, transcript of text messages

In the summer of 2010, the mother of the child noticed a drastic change in the child's demeanor and attitude; he had just turned 16 years old. T10, 11. Mother thought he was slipping into a depression. T10. She asked him

about it, but he told her he could not talk about it. T10. He also told her that his cell phone was broken. T11.

When mother got her son's cell phone to take it to its carrier, she looked through the phone and found sexually explicit photographs of and 276 text messages from Williams to her son, all either sexual or threatening in nature. T11. Because the carrier would not give her a transcript of the text messages without a court order, mother created over a week's time a 12–page long, verbatim transcript of the text messages. T16, 20, 21–22, 24; Petitioner's Ex. No. 5 (Text Messages), A33. Eventually, in the first week of September 2010, her son broke down in tears, confessed to a sexual relationship with Williams, and said that he did not know what to do. T10, 11. Williams, who was 21 years old, was the child's swim coach. T12.

Mother immediately reported the matter to her son's head swim coach. T12. The school told her that the coach told Williams she was not allowed to coach anymore. T12. When Williams continued to contact her son by Facebook and text messages, mother contacted the head coach again and gave him a copy of the 12–page transcript of text messages, and the head coach told Williams to stay away from the child. T12, 20. When Williams still persisted in her contacts, mother contacted the head coach, who spoke to Williams' family. T12–13. The next day, the child received Facebook and text messages in code in the form of punctuation marks. T13.

This led to the child's mother meeting with Williams and her mother and giving them a copy of the 12–page transcript of text messages. T13, 20. At the meeting, Williams admitted to having sexual intercourse with the child at least twice at her parent's house. T13. Mother reported the matter to the Blue Springs Police Department on September 30. T13, 46–47.

On October 13, mother met with the principal of Blue Springs High School and a school district officer. T14, 19, 27. The district's officer reported mother's allegations of sexual abuse of her son by Williams to the Children's Division that day, and the Division's investigation of mother's allegations commenced. T19–20, 27, 47. The district's officer told mother that a Blue Springs detective would contact her. T14. The detective telephoned mother and told her he would be at the Child Protective Services (CPC) forensic interview of the child. T14.

Mother had more contact with the Division's investigator than with the Blue Springs Police Department, and was of the opinion that the police discounted the allegations of abuse because Williams was a woman and the child was a young man. T24. The police told mother that if an older male was the alleged perpetrator and a female the victim, it would be a different matter. T24–25. The last contact mother had with the police was when she found for them the sexually explicit photographs on the cell phone. T25. The police never returned the cell phone to mother. T25.

Investigation time line

On October 13, 2010, the Division received the report that Williams had sexually abused the child, assigned an investigator with 12 years of experience conducting investigations of allegations of child abuse and neglect, and the investigator began an investigation. T19–20, 27, 30, 32, 47. On that day, the investigator contacted a detective with the Blue Springs police, who told her that he was waiting for the CPC interview of the child before he proceeded with his investigation. T37.

The Division contacts law enforcement about every report of abuse or neglect it receives. T33. Law enforcement has the option to conduct its own criminal investigation. T33. When the Division and law enforcement conduct joint investigations of reports of abuse or neglect, the Division wants to obtain any evidence of abuse or neglect that law enforcement may have that the Division does not. T34.

On October 19, the CPC forensic interview of the child occurred. T19, 27 ; Petitioner's Ex. No. 4 (CPC Interview), A27. At the interview, the investigator and the child's mother met the detective, and at the detective's request, mother gave him the child's cell phone. T14, 19, 37. Until that time, mother was in sole possession of the cell phone. T20. The investigator did not ask for the child's cell phone before October 19, when mother gave it to the detective, because the investigator was waiting for the child's forensic

interview to be conducted. T51. And the investigator did not ask for the child's cell phone on and after October 19 because she was letting the police obtain the official records from the phone. T51–52. In addition, the investigator did not ask Williams or her counsel for Williams' cell phone because she was told, as discussed below, that Williams was not speaking with her. T56–57.

At the forensic interview, the investigator asked mother to show her the transcript of the text messages on her son's cell phone, and mother did and told the investigator that her son and Williams had sex. T22, 52, 54. Mother also told the investigator that sexually explicit photographs were on the cell phone, but the investigator did not look at them and never saw them. T22, 35. The investigator was not allowed to interview the child at this time. T40, 48, 50.

On October 21, the investigator attempted to contact Williams by calling her cell phone, but had to leave a message. T64, 72. In return, the investigator received a call from Williams' counsel who told her that Williams would not consent to be interviewed. T64–65, 72–73. The investigator never received any information from Williams or her counsel. T67.

On October 29, the investigator first met with mother in her home and received from mother a copy of the 12–page transcript of text messages. T35, 50, 51, 54. The transcript corroborated that sexual activity had occurred. T54.

On November 1, the detective told the investigator that he was not doing anything until the victim's parents contacted him. T37.

On November 8, the detective told the investigator that he sent a letter to the parents asking them whether they wanted to proceed and that he had not attempted to obtain the cell phone records. T14, 37,

Within 30 days after receipt of the report of abuse by Williams (November 12) , the investigator had interviewed 11 people, including the child, the child's parents, law enforcement, swim coaches, and other children, and several of these people multiple times. T40, 48, 54. Some of the interviews corroborated that sexual activity had occurred. T54. But the investigator had not completed her investigation because of co–investigation with law enforcement. T33, 40.

The investigator was waiting to obtain documents and information from law enforcement. T33. Those documents and information consisted of the "official cell phone record texts," sexually explicit photographs, an interview with Williams if law enforcement could obtain one, and a police report. T35, 43–44. The investigator understood from the detective that he would obtain the sexually explicit photographs from the cell phone and the cell phone's text messages from the cell phone's carrier. T35–36. The detective never told the investigator that he was not investigating the alleged sexual abuse by Williams. T33.

Thirty–one days after receipt of the report (November 13), the investigator entered into the Division's information system that the conclusion of the investigation would be delayed because of "co–investigation with law enforcement." T41; Petitioner's Ex. No. 12 (Delayed Conclusion Report). She believed November 13 to be the 30th day after receipt of the report of abuse by Williams. T41–42. At the time she received the investigation, October 13, the investigator had delayed concluding less than 5 investigations. T74.

Thirty–three days after receipt of the report (November 15), the investigator received an e–mail from mother with a chronology of events that mother had created and a waiver to search the child's cell phone and a release for the child's medical records, both dated November 8 and from the Blue Springs police, that mother had signed. T15, 16, 38–39; Respondent's Ex. No. 15 (November 15, 2010, e–mail with attachments). The investigator could not open the attached chronology. T38. The investigator had additional contacts with mother after November 15. T44.

Eighty–nine days after receipt of the report (January 10, 2011), the investigator contacted the detective, who told her that the case was sitting in the prosecuting attorney's office; he had obtained photographs of a female's breast, buttocks, and vaginal area from the cell phone, but he would not release them to the investigator; and he had not obtained the cell phone

records yet and would seek to obtain them only if the prosecuting attorney told him to investigate the case. T37.

One hundred twenty–six days after receipt of the report (February 16), the investigator again contacted the detective, who told her that he was waiting to hear from the prosecuting attorney and he would send her what he has, but he did not send anything. T37. After the investigator spoke with the detective, the investigator met with her supervisor that day, and they decided to conclude the investigation because the investigator had no more information than she had on November 10, 2010, and it was clear she was not going to get any further information from the detective. T45, 71. The investigator never received anything from the detective even as late as September 2011, when the Review Board hearing was held. T44

One hundred twenty–seven days after receipt of the report (February 17), the investigator concluded the investigation. T32. She found by a preponderance of the evidence that Williams committed sexual abuse of the child. T32. She found each and every one of the facts in the stipulation to be true by a preponderance of the evidence. T32; Petitioner's Ex. No. 2 (Stipulation), A24–25.

Also on the one hundred twenty–seventh day (February 17), the investigator sent Williams a notice of the investigation process because she usually gives such a notice to the alleged perpetrator when they meet, but in

this case, Williams refused to meet with her. T71; Petitioner's Ex. No. 11 (CS–24 Letter, notice of investigative process).

One hundred twenty–eight days after receipt of the report (February 18), the notice to Williams of the investigation's conclusion was prepared and mailed to Williams. Petitioner's Ex. No. 7, (CS21 Letter, notice of determination), page 9 of 9.

Good cause for delayed conclusion

The investigator testified that the potential of her being a witness in a legal proceeding, either a civil or criminal, affected her investigation. T65. She was concerned that the transcript of the text messages was prepared by the child's mother. T55, 65. She knew that the Blue Springs Police Department could obtain, and wanted that department to obtain, a transcript of the text messages from the cell phone's carrier through a court order. T66, 76. She did not believe she had the power to obtain a court order or to issue a subpoena. T56, 66. She was waiting to conclude her investigation after she received those records from the police. T66. She believed the records would have supported the evidence of child abuse that she already possessed. T46.

After 30 days into the investigation when she entered a delayed conclusion into the Division's information system, the investigator believed that she needed additional information to insure that her findings were true and accurate. T68. Although she ultimately concluded the investigation

without additional information, she would have preferred to decide the investigation with additional information. T68.

The investigator had accumulated within the first 30 days of the investigation all the evidence she used to determine that Williams committed sexual abuse. T48, 76. That evidence is detailed in the CS–21 Letter. T76; Petitioner's Ex. No. 7 (CS–21 Letter, notice of investigative determination).

POINTS RELIED ON

I.

The trial court erred in ordering Taryn Williams' name to be removed from the Central Registry of child abuse and neglect perpetrators, because the Children's Division has authority to investigate reports of abuse and neglect beyond ninety days after receipt of a report in that when good cause for a delayed conclusion exists, the statute imposing a ninety–day limit on notification of the Division's conclusion to the alleged perpetrator is directory, and not mandatory.

Farmers & Merchants Bank and Trust Co. v. Director of Revenue

896 S.W.2d 30 (Mo. 1995)

Artman v. State Bd. of Registration for the Healing Arts,

918 S.W.2d 247 (Mo. 1996)

Utility Service Co., Inc. v. Department of Labor and Indus. Relations,

331 S.W.3d 654 (Mo. 2011)

Citizens for Environmental Safety, Inc. v. Missouri Dept. of Natural Resources, 12 S.W.3d 720 (Mo. App. S.D. 1999)

§ 210.145.14 RSMo

§ 210.152.2 RSMo

II.

The trial court erred in finding as fact that co-investigation with law enforcement was not good cause for the Children's Division's delayed conclusion of a child abuse investigation because the finding is against the weight of the evidence in that, though the Division's investigator had gathered within 30 days all the evidence upon which she later determined that abuse occurred, she was relying upon law enforcement, to no avail, to obtain a transcript of text messages from the child's cell phone carrier that would directly prove and corroborate other evidence of abuse more convincingly than the transcript prepared by the child's mother if the alleged perpetrator, who declined to be interviewed, were to deny authoring the texts.

Superior Gearbox Co. v. Edwards,

869 S.W.2d 239 (Mo. App. S.D. 1994)

Roach v. Consolidated Forwarding Co.,

665 S.W.2d 675 (Mo. App. E.D. 1984)

III.

The trial court erred in ordering Taryn Williams' name to be removed from the Central Registry of child abuse and neglect perpetrators, because child abuse and neglect investigations do not

implicate due process rights in that those investigations are administrative investigations that do not adjudicate or make binding determinations of legal rights.

Artman v. State Bd. of Registration for the Healing Arts,

928 S.W.2d 247 (Mo. 1996)

Jamison v. Department of Soc. Servs.,

218 S.W. 3d 399 (Mo. 2007)

STANDARD OF REVIEW

An appellate court reviews a court–tried case pursuant to § 210.152 under the *Murphy v. Carron* standard — whether the judgment is supported by substantial evidence, is against the weight of the evidence, or erroneously declares or applies the law. *Jamison v. Department of Soc. Servs.*, 218 S.W. 3d 399, 404 (Mo. 2007).

In this case, the trial court erroneously declared that the time limits in § 210.145.14 and § 210.152.2 are mandatory and part of procedural due process. Those limits apply to completion of investigations of reports of child abuse and neglect, notice to alleged perpetrators, and updates of the information system. This court reviews questions of law de novo. *Jamison*, 218 S.W.3d at 404.

In addition, the trial court's finding of fact that good cause did not exist to delay completion of the investigation is against the weight of the evidence. Whether a finding of fact is against the weight of the evidence is analyzed by identifying a challenged factual proposition essential to the judgment, the evidence favorable to that proposition, the evidence contrary to that proposition, and demonstrating why the favorable evidence and reasonable inferences therefrom, in light of all the evidence, is so lacking in probative value that it fails to induce belief in that proposition. *In re I.G.P.*, 375 S.W.3d

112, 127 (Mo. App. W.D. 2012); *Houston v. Crider*, 317 S.W.3d 178, 187 (Mo. App. S.D. 2010).

ARGUMENT

I.

The trial court erred in ordering Taryn Williams' name to be removed from the Central Registry of child abuse and neglect perpetrators, because the Children's Division has authority to investigate reports of abuse and neglect beyond ninety days after receipt of a report in that when good cause for a delayed conclusion exists, the statute imposing a ninety–day limit on notification of the Division's conclusion to the alleged perpetrator is directory, and not mandatory.

Introduction

Swift conclusions to administrative investigations of child abuse and neglect reports protect the children of this state. But when good and sufficient reasons exist to delay conclusions, the legislature did not intend to exonerate alleged perpetrators by applying a time limit on investigations without regard to the merits of reports of abuse and neglect, prejudice to alleged perpetrators, or safety of children. When the legislature created the time limit on investigations of child abuse and neglect reports, it was well settled that appellate courts interpret statutes placing time limits on administrative decision making to be directory, and not mandatory. *Farmers & Merchants Bank and Trust Co. v. Director of Revenue*, 896 S.W.2d 30, 33

(Mo. 1995). And it was well settled that alleged wrongdoers have no due process rights during administrative investigations. *Artman v. State Bd. of Registration for the Healing Arts*, 918 S.W.2d 247, 250–51 (Mo. 1996). Finally, it was well settled that remedial statutes are construed to meet the cases within the evil they are designed to remedy. *Utility Service Co., Inc. v Department of Labor and Indus. Relations*, 331 S.W.3d 654, 658 (Mo. 2011). The question in this case, then, is whether these principles of law will be upset to turn a statute that the legislature intended to be a sword to protect victims of child abuse and neglect into a shield to exonerate alleged perpetrators of abuse and neglect.[3]

The statutes

To determine the meaning of a statute, and to ascertain the intent of the legislature, the starting point is the plain language of the statue. *Utility Service Co.*, 331 S.W.3d at 658; *Bauer v. Transitional Sch. Dist. of the City of St. Louis*, 111 S.W.3d 405, 408 (Mo. 2003). One statute creates a good cause

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[3] Two other cases involve delayed conclusions to investigations of child abuse and neglect reports. Case No. SC93653 is pending before this Court. The Western District of the Court of Appeals has ordered Case No. WD75673 held in abeyance pending its decision in a related case involving the alleged perpetrator.

exception to completion of investigations of child abuse and neglect reports within thirty days of receipt of reports. Section 210.145.14 states in relevant part:

> Within thirty days of an oral report of abuse or neglect, the local office shall update the information in the information system. ... The division shall complete all investigations within thirty days, unless good cause for the failure to complete the investigation is documented in the information system. If a child involved in a pending investigation dies, the investigation shall remain open until the division's investigation surrounding the death is completed. If the investigation is not completed within thirty days, the information system shall be updated at regular intervals and upon the completion of the investigation.

§ 210.145.14; A19.[4]

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[4] Citations to § 210.145.14 and § 210.152.2 are to the version of the Revised Statutes of Missouri in effect at the time of the investigation, October 2010 through February 2011. Since that time, subsection 14 of § 210.145 has been renumbered as section 15. The statutes were admitted into evidence as Petitioner's Exs. Nos. 8 and 9, and they appear in the Substitute Appendix to this brief.

Another statue, which has no good cause exception, requires notification of alleged perpetrators of conclusions to investigations within ninety–days of receipt of reports. Section 210.152.2 states in relevant part:

> Within ninety days after receipt of a report of abuse or neglect that is investigated, the alleged perpetrator named in the report ... shall be notified in writing of any determination made by the division based on the investigation.

§ 210.152.2; A21. The statute goes on to specify that the Children's Division must advise the alleged perpetrator either that it has determined abuse or neglect exists or that it has not determined abuse or neglect exists. § 210.152.2(1), (2); A22.[5]

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[5] The Division's Child Welfare Manual (CWM), § 4.1.10 Delayed Conclusions, though it does not have the force and effect of law as it has not been promulgated as a rule, *Young v. Children's Division*, 284 S.W.3d 553, 560 (Mo. 2009), instructs workers to complete all investigations within 30 days unless good cause for failure to complete is documented in the information system. Petitioner's Ex. No. 10 (CWM § 4.1.10 Delayed Conclusions); A40. If the investigation is not completed within 30 days, the Manual instructs workers to conduct "weekly follow–up contacts" with those persons from whom additional information is sought. A40. The Manual lists 6

The Division must contact the local law enforcement agency immediately upon receipt of a report of abuse or neglect and request the assistance of the agency in the Division's investigation. § 210.145.5. The law enforcement agency must either assist the Division or provide, within 24 hours, a written explanation of why law enforcement will not assist the investigation. § 210.145.5.

The legislature's intent

No one doubts that a thirty–day or even a ninety–day limit on completion of investigations of reported abuse and neglect protects the children of this state. But when "good and sufficient reason" for delay exists, and not just an "arbitrary whim or caprice," *Superior Gearbox Co. v.*

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examples of situations, not all inclusive, in which a delayed conclusion may be appropriate, including "co–investigation with law enforcement in which alleged perpetrator has not been interviewed." A40. In addition, the Manual states that conclusions should be delayed only "15 days past the 30–day conclusion deadline. Therefore, all investigations/family assessments shall be complete within 45 days." A40. The Manual also states: "Notify alleged perpetrator, parents, non–custodial parents, in writing, when status determination will be delayed beyond 90 days from receipt of a CA/N report." A41.

Edwards, 869 S.W.2d 239, 244 (Mo. App. S.D. 1994) (defining good cause), construing § 210.145.14 and § 210.152.2 to allow investigations of reported abuse and neglect to extend beyond ninety days after receipt of a report also would serve to protect the children of this state. Applying a ninety–day limit would be contrary to the child welfare policy of this state and only serve to frustrate the purposes of the Child Abuse Act, encourage arbitrary decision making, and exonerate alleged perpetrators without a foundation in fact. Moreover, alleged perpetrators would not suffer prejudice from delayed conclusions.

"The child welfare policy of this state is what is in the best interest of the child." § 1.092. The purpose of the Child Abuse Act, §§ 210.108–210.188, and the Central Registry, § 210.110 (3), is to protect both the child who is the victim of abuse or neglect and other children with whom a perpetrator may come into contact. *Jamison*, 218 S.W.3d at 402, 410 (the State has a "strong" and "significant" interest in both). Another purpose is to "provid[e] services in response to reports of child abuse or neglect." *T.J. v. Department of Soc. Servs.*, 305 S.W.3d 469, 472 n. 3 (Mo. App. E.D. 2010); § 210.109.3(5).

Because these are the purposes of the Child Abuse Act, § 210.145.14 and § 210.152.2 are remedial statutes. Remedial statutes "should be construed so as to meet the cases which are clearly within [their] spirit or reason ... or within the evil which [they] are designed to remedy, provided

such interpretation is not inconsistent with the language used." *Utility Service Co.*, 331 S.W.3d at 658. When good cause for delay exists, construing § 210.152.2 to allow investigations of reported abuse and neglect to extend beyond ninety days after receipt of a report would protect children.[6]

Child care and service providers and child protection officials, who are authorized to obtain information in the Central Registry, become aware that a person has committed abuse or neglect when they request the Division for information in the Central Registry about the person. § 210.150.1–.2. If the person is in fact a perpetrator, but has not been determined to be so by the Division and therefore her name is not in the registry, child care and service providers and child protection officials' ability to protect children is impaired. An automatic decision at the ninety–day mark exonerating an alleged perpetrator stops an investigation that if allowed to proceed, could ultimately lead to the protection of children. That result is not what the legislature intended.

Automatic decisions at the ninety–day mark encourage arbitrary decision making without foundation in fact. This Court may "look to the effect of ruling one way or the other," that is, whether "[m]ore would be gained by a declaration that the requirement ... is mandatory." *Hedges v. Department of*

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[6] The existence of good cause is discussed in Argument II.

Soc. Servs., 585 S.W.2d 170, 172 (Mo. App. K.C. 1979). To require exoneration of alleged perpetrators at the ninety–day mark, regardless of what the facts may or may not be and whether investigations are complete, would be the antithesis of good decision making. In fact, it would not be decision making at all. If the Division were to automatically cease investigation at the ninety–day mark, many investigations would never reach a conclusion. Instead of doggedly pursuing investigations, the Division would abandon them once it became apparent that investigations could not be completed in time to issue notice on the ninetieth day. That result is not what the legislature intended.

And where there may be some foundation in fact to conclude an investigation at the thirty–day or the ninety–day mark, requiring decisions at those times would encourage decision making on only the barest minimum of evidence, placing at risk decisions that are challenged in subsequent litigation and, in some cases, unfairly penalizing investigations over matters the Division does not control. For example, in a joint investigation with law enforcement, law enforcement may learn that additional evidence does not exist or if additional evidence does exist, it may become lost or destroyed. Finally, law enforcement may decide to abandon the pursuit of additional evidence, which is apparently what happened in this case. That result is not what the legislature intended.

Except possibly in the case of extreme delay (which does not exist here because the conclusion was only thirty–eight days late), the alleged perpetrator is not prejudiced by delayed conclusions. In this case, it is impossible to imagine how Williams could be prejudiced from a delayed conclusion. This is not a case where the alleged perpetrator asserted throughout the proceedings that she did no wrong. She stipulated at trial that she sexually maltreated the child. A2–A3; Petitioner's Ex. No. 2 (Stipulation), A24–A25. In that circumstance, to exonerate Williams for failure to conclude the investigation after thirty days or after ninety days, or even for failure to notify her after ninety days, would be particularly disturbing. That result is not what the legislature intended.

Moreover, no liberty or property interest of an alleged perpetrator, or even of a person the Division has determined to have committed abuse or neglect, is affected until her name is placed on the Central Registry. A name is placed in the Registry only after review of a Division determination by the Review Board or else after the perpetrator does not seek review of the determination. *Jamison*, 218 S.W.3d at 408–10. Only then do child care and service providers, child protection officials, and state regulators have access to the names of persons who were subjects of child abuse and neglect investigations. § 210.150.1–.2.

The mere stigma of being the subject of a child abuse or neglect investigation, even one that comes to the attention of an employer before it is concluded, does not rise to the level of a constitutionally protected liberty or property interest. *Jamison*, 218 S.W.3d at 406. The stigma of being the subject of a child abuse or neglect investigation is nothing compared to the stigma plus of being an adjudicated perpetrator whose professional licensure and employability is effectively ended. *Jamison*, 218 S.W.3d at 406–07.

Due process protections do not apply to child abuse and neglect investigations because they are investigatory only and do not adjudicate or determine any legal rights.[7] *Artman*, 918 S.W.2d at 250–51. The legislature directed the Division in § 210.145.1(3) to "develop protocols which give priority to ...[p]roviding due process for those accused of child abuse and neglect." The Division implemented the legislature's directive in a manner consistent with *Artman* and *Jamison* by promulgating a regulation, 13 CSR 35–32.025, that specifies the procedures due to alleged perpetrators before the Child Abuse and Neglect Review Board.

No presumption of prejudice arises from delayed conclusions. Though the Division's investigators are not quasi–judicial officials, they are entitled

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[7] Unless, as explained below at pages 43–44 in discussing the *Petet* decision, investigations exonerate alleged perpetrators.

to the presumption of regularity in their investigations. "Administrative agencies by their nature perform a combination of investigatory and adjudicatory functions. To permit them to do so does not violate the strictures of the due process clause absent an actual showing of bias." *State of Missouri ex rel. Martin–Erb v. Missouri Comm'n on Human Rights*, 77 S.W.3d 600, 609 (Mo. 2002) (internal quotation marks and citations omitted).[8]

Finally, a report of abuse or neglect is not admissible in any child custody proceeding. § 210.145.18. A court on its own motion, or at the request of a party, may make an off–the–record inquiry to determine whether a report has been made, but only for the purpose of staying the proceeding until the investigation is complete. § 210.145.18(2). A mere report of child abuse or neglect or a pending investigation of a report, even a delayed one, is not prejudicial to the alleged perpetrator.

The remedial purpose of a Maryland statute that requires investigations of reports of child abuse and neglect to be concluded within 60 days of receipt means that delayed conclusions need not be dismissed in order to protect alleged perpetrators. Because the statute did not provide for a sanction for noncompliance with the 60–day requirement, a Maryland court looked to "the overall purpose of the statue to determine whether dismissal

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[8] There is no evidence of bias in this case.

[of the finding of neglect] would further the statute's purpose." *Owens v. Prince George's County Dept. of Soc. Servs.*, 957 A.2d 191, 199 (Md. Spec. App. 2008). The court found that the statute's remedial purpose would not be served by dismissal of the findings of neglect.

> The express purpose of the 60 day provisions ... is to protect children by attempting to ensure that after a report of neglect of abuse comes to the attention of the Department, more than 60 days should not elapse before a report is completed by the Department. Nothing in the subtitle indicates that its purpose is to protect persons charged with neglect or abuse. Instead, ..., the purpose is to protect neglect and abuse victims.
>
> . . . .
>
> The purpose of [the statute] is to protect children — not to protect persons alleged to have neglect or abused children. That purpose will not be served by dismissing charges in cases where the Department fails to complete its investigation within 60 days.

Owens, 957 A.2d at 199, 202 (investigation concluded 142 days after receipt of report). The Maryland court's reasoning applies equally as well here, in Missouri.

The trial court's judgment means that investigations of reports of child abuse and neglect must be concluded ninety days after receipt of reports —

no matter the strength or weakness of the evidence, no matter the impossibility of prejudice to the alleged perpetrator, and no matter the safety or risk of harm to the child. That would be an absurd result. That result is not what the legislature intended.

Time limits are directory

Whether a statute is mandatory or directory usually arises in the context, as it does here, of whether the failure to do a certain act results in the "invalidity of the government measure." *State ex rel. Hunter v. Lippold*, 142 S.W.3d 241, 244 (Mo. App. W.D. 2004). Here, when the trial court ordered the Division to remove Taryn Williams' name from the Central Registry of child abuse and neglect perpetrators, it essentially declared invalid the Division's conclusion that Williams sexually maltreated the child because its conclusion was made after the ninety–day mark.

But the trial court's order was mistaken. "If the statute fails to prescribe a result in the event the act is not performed within the time period, the act is usually directory. In other words, the failure to timely perform the act does not invalidate the governmental action in question." *Id.* (internal citation omitted). Usually, "statutes directing the performance of an act by a public official within a specified time period are directory, not mandatory." *Farmers & Merchants Bank*, 896 S.W.2d at 33.

The presence or absence of a penalty provision is one method for determining whether a time limit is directory or mandatory. *Bauer*, 111 S.W.3d at 408. Here, § 210.145.14 does not impose a sanction upon the Division for delayed conclusion of an investigation or for failure to update the information system at regular intervals. And § 210.152.2 does not impose a sanction upon the Division for delayed notification of the alleged perpetrator of its conclusion.

The trial court believed that § 210.165.1, which makes "any person" who violates "any provision" of section 210.110 to 210.165 "guilty of a class A misdemeanor," was such a sanction. A10; § 210.165.1. But that penalty does not apply to the Division, and it does not directly flow from or relate to non–compliance. A sanction that makes a time limit mandatory would be, for example, to prohibit the Division, if it made a delayed conclusion or notice, from placing the name of the perpetrator in the Central Registry. No such sanction exists here.

Another method for determining whether a time limitation is directory or mandatory is the presence or absence of the statutory word "shall," but whether "shall" is directory or mandatory is a function of "context and legislative intent." *Bauer*, 111 S.W.3d at 408. Both subsection 14 of § 210.145 and subsection 2 of § 210.152 use the word "shall," other subsections of both statutes use the words "shall" and "may," and subsection 1 of § 210.183 uses

the words "shall" and "will." But the mere use of these words — without more, without context — does not tell us, however, whether the legislature intended for "shall" in §§ 210.145.14 and 210.152.2 to be directory or mandatory.

Perhaps the words "and no more" after a time limit in a statute that does not contain a sanction, but does use the word "shall," could provide sufficient context to make the statute mandatory. Those words do not exist here. And perhaps the words "and the Division shall not have authority to investigate thereafter" or "and the Division must dismiss reports of abuse or neglect thereafter" after the time limit in § 210.145.14 could provide sufficient context to make that statute mandatory. Those words do not exist here, either.

Referring to language in the mandatory disposition of detainers statute, this Court said:

> These sections amply demonstrate the legislature's ability to specify that dismissal is required if a time limit is not met. The absence of similar language in sections [of the sexually violent predator statutes] negates any similar legislative intent to require dismissal if the 90–day time limit in these statutes is not met.

In re Donaldson, 214 S.W.3d 331, 332–33 (Mo. 2007). Neither § 210.145.14 or § 210.152.2 contains language that the Division shall no longer investigate or

must dismiss reports of abuse or neglect after 30 days or after 90 days, or after not updating its information system during an investigation, or that the Division's investigative conclusions must be rescinded if notice of them is not given after ninety days. The statutes are directory, not mandatory

Agencies retain authority to decide

Granted an administrative agency possesses only that authority expressly conferred or reasonably implied by statute. *State ex rel. Riverside Joint Venture v. Missouri Gaming Comm'n*, 969 S.W.2d 218, 220 (Mo. 1998). But every judicial decision that has examined the question has held that once the legislature authorizes a state agency to make a decision, the agency's failure to decide within a prescribed time limit does not result in the loss of authority to decide.

For example, the Director of Revenue does not lose authority to deny a tax refund when he does not rule on the refund claim within the statutorily required 120 days. *Farmers & Merchants Bank*, 896 S.W.2d at 33. Otherwise, automatic resolution of refund claims in favor of the taxpayer would frustrate "well–considered, though tardy" resolution of claims, which could be decided in the taxpayer's favor and, therefore, avoid the necessity and expense of further litigation. *Id.* Automatic resolution of refund claims in favor of the taxpayer might even force "blanket denials" of all claims, which would lead to further litigation and expense. *Id.*

The Department of Natural Resources does not lose authority to grant a sanitary landfill permit when it does not rule on the permit application within the statutorily required 24 months and the regulatory required 120 days. *Citizens for Environmental Safety, Inc. v. Missouri Dept. of Natural Resources*, 12 S.W.3d 720, 724–26 (Mo. App. S.D. 1999). There, this Court pointed out that lack of authority of a court to review a state agency's decision, when the party seeking judicial review filed its petition out of time, is not the same question as a state agency's authority to decide in the first place. *Id.* at 725. Neither is the lack of authority of an agency to reopen a final decision the same question as the agency's authority to decide initially. *Id.* at 726. The question is not the same in both instances because the agency's and the citizen's interest in finality of the decision has arisen. Here, because no decision on the merits of the report of abuse was made by the 30th or even the 90th day after receipt, no finality interest has arisen.

For that reason, the *Petet* decision is distinguishable from this case. Williams was the subject of an investigation and, as such, has no interest in the finality of an administrative determination. Petet, on the other hand, was an exonerated alleged perpetrator, who had an interest in the finality of that determination. In *Petet*, the Division concluded its investigation, and concluded it within 90 days of receipt of the report of abuse or neglect, and determined that the alleged perpetrator had not committed abuse or neglect.

Petet v. Department of Soc. Servs., 32 S.W.3d 818, 820 (Mo. App. W.D. 2000). Two years later, without documenting in its information system any reason for doing so, the Division took up its investigation again and reversed itself and found that the allege perpetrator had committed abuse or neglect. *Petet*, 32 S.W.3d at 820, 823.[9]

Here the Division did not timely conclude an investigation, determine that the alleged perpetrator did or did not commit abuse or neglect, and take up the investigation again years later. Rather, the Division documented good cause for delay and concluded its investigation late. Here, whether the Division can decide Williams' case in the first place cannot be decided by application of a finality interest she does not possess.

More cases illustrate that once authority is acquired by a state agency, the agency's failure to comply with time limits does not result in the loss of authority to make a decision. The Labor and Industrial Relations Commission does not lose authority to render a final award of compensation when it does not make the award within the statutorily required 90 days. *Seeley v. Anchor Fence Co.*, 96 S.W.3d 809, 815–17 (Mo. App. S.D. 2002). Otherwise, procedure would overcome substance, the employer would prevail

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[9] The legislature has modified somewhat the finality of administrative exonerations of alleged perpetrators. § 210.152.3.

when it suffers no prejudice from a delayed decision, and the remedial purpose of the Workers' Compensation Law would be frustrated. *Id.*

A circuit court does not lose authority to grant a full order of protection when it does not schedule the hearing on the application for protection within the statutorily required 15 days or continue the hearing for good cause when it sets the hearing outside the 15–day period. *Jenkins v. Croft*, 63 S.W.3d 710, 713 (Mo. App. S.D. 2002). There, once the court acquired authority by the filing of a petition, it did not thereafter lose authority because it did not abide by time limits for hearing the petition. Responding to the alleged abuser's argument that the word "shall" meant the statute's time limits are mandatory, the Court said:

> As applied to time limitations, however, Missouri courts have applied a somewhat different rule of construction. When a statute provides what results shall follow a failure to comply with its terms it is mandatory and must be obeyed, if it merely requires certain things to be done without prescribing the results that follow, the statute is merely discretionary.

Jenkins v. Croft, 63 S.W.3d at 713.

A juvenile court does not lose authority over a child because of failures by the Division to comply with timelines to file status reports and develop case and service plans and because of failures by the court to comply with

timelines to hold dispositional review, status review, and permanency hearings and to provide written notice to the parent. *In re P.L.O.*, 131 S.W.3d 782, 787 n. 2, 787–88 (Mo. 2004). [10]

And a probationary employee who has had his probation extended, but has not been notified of the extension as required by regulation, remains on probation unless he can demonstrate prejudice. *Hedges,* 585 S.W.2d at 172.

Finally, the provision of § 210.145.14 that permits investigations involving a child's death to remain open "until ... completed," does not indicate that the legislature intended that investigations not involving a child's death be completed within ninety days. The amendment only serves to clarify the legislature's intent in death cases. The Division's delayed decision making and notice does not result in the loss of the Division's authority to make a decision.

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[10] One judicial decision does hold a time–limit statute to be mandatory. But in that case, the time limit was not on agency decision making. And the statute imposed a date–specific deadline, March 15, 1999, an "absolute deadline of extreme significance." *Bauer,* 111 S.W.3d at 408. On that date, Missouri's long–standing desegregation cases in federal court were settled, and federal court–ordered financial obligations of the state took effect. *Id.* No similar litigation or financial obligation is involved here.

II.

The trial court erred in finding as fact that co–investigation with law enforcement was not good cause for the Children's Division's delayed conclusion of a child abuse investigation because the finding is against the weight of the evidence in that, though the Division's investigator had gathered within 30 days all the evidence upon which she later determined that abuse occurred, she was relying upon law enforcement, to no avail, to obtain a transcript of text messages from the child's cell phone carrier that would directly prove and corroborate other evidence of abuse more convincingly than the transcript prepared by the child's mother if the alleged perpetrator, who declined to be interviewed, were to deny authoring the texts.

Good cause to delay exists

The factual proposition essential to the judgment that is against the weight of the evidence is that co–investigation with law enforcement is not good cause for delayed completion of the Division's investigation. A8 ¶20. Good cause is a "good and sufficient reason," rather than an "arbitrary whim or caprice." *Superior Gearbox Co. v. Edwards*, 869 S.W.2d 239, 244 (Mo. App. S.D. 1994) (equating good cause with sufficient cause and just cause for

dismissal from employment); *Roach v. Consolidated Forwarding Co.*, 665 S.W.2d 675, 679–81 (Mo. App. E.D. 1984) (same).

The reason expressed by the trial court in favor of the proposition that good cause for delay did not exist is that as it turned out "the decision to make the finding of abuse was not based upon that additional evidence, but upon evidence received within the 30 day period, therefore, the Division did not show 'good cause' for delay." A8 ¶20. The court also noted that the Division's investigator never obtained text messages and photos from law enforcement, but substantiated the allegation of abuse relying upon evidence she obtained during the first 30 days of the investigation. A7 ¶s. She testified that within the first 30 days of the investigation, she obtained sufficient evidence to substantiate the allegation of abuse and did rely upon that evidence to substantiate the allegation. A7 ¶t. The Investigation Summary, CS–21 Letter (notice of investigative determination), and the investigator's testimony establish that all the evidence used by the Division to support its finding of abuse was discovered during the first 30 days of the investigation. A7 ¶u.

But there is evidence contrary to the proposition that good cause for a delayed conclusion did not exist. The investigator was planning to obtain from law enforcement evidence that would directly prove and corroborate evidence of abuse more convincingly than a transcript of text messages that

she possessed. T33, 40, 46, 66. Williams had admitted to the child's mother to having sexual intercourse with the child at least twice at her parent's house. T13. And the child had told his mother that he had sexual intercourse with Williams two times, Petitioner's Ex. No. 4 (CPC Interview page 04 of 06), A30, and he told a forensic interviewer that he had sexual intercourse with Williams two times and oral sex once, T19, 27, A31.

The investigator possessed a transcript of some 276 text messages sent from Williams to the child's cell phone, all of a sexual or threatening nature. T11, 35, 50, 51, 54; Petitioner's Ex. No. 5 (Text Messages); A33. The transcript, which mother had shown and given to the investigator, directly proved and corroborated evidence that sexual activity occurred between the child and Williams.[11] T22, 52, 54. But this transcript was prepared by the

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[11] For example: "10:16pm Tue, Aug 24 660/675 [The child]: Yeah, a baby...I don't know what to think about. I mean, I know its more than likely just a late period, but God I wish I could be a father ...." "10:22pm Tue, Aug 24 659/675 [The child]: and you'd make a wonderful mom...." "8:42pm Sat, Aug 28 556/675 Taryn Williams: (sent explicit photo) this help? Lol" "8:52pm Sat, Aug 28 554/675 [The child]: You sent me a pic of yourself topless and you're saying we can't hook up!" "9:32pm Sat, Aug 28 552/675 Taryn Williams: (sent explicit photo) what about my ass" A33.

child's mother after she learned that the cell phone's carrier would not provide her with a transcript without a court order. T16, 20, 21–22, 24. Williams had refused to be interviewed by the investigator, T64–65, 71–73, and the investigator was concerned that in the future, Williams might deny authoring the texts. T65.

The investigator believed that if she obtained a transcript of the text messages prepared by the cell phone's carrier, her case before the Review Board and any other future civil or criminal litigation would not be damaged by any denial by Williams that she authored the texts. T55, 65. As the investigator put it:

> I wanted official phone records. I didn't want any point for the alleged perpetrator to come back and say I didn't do something and for it to be overturned at the CAN [Child Abuse and Neglect] Review Board. I wanted a strong case.

T65. And:

> Well, Ms. Williams wasn't interviewed, I didn't have a statement from her, as well as [the child's mother] had typed out the text by went [sic] to CAN [Child Abuse and Neglect] Review Board and Ms. Williams tried to contest that she didn't send those texts. If I had something official from law enforcement, I could say this is

official, it came off the phone, you did send these texts, because otherwise it could be her word against the child.

T55. In addition to a transcript of the texts prepared by the cell phone's carrier, the investigator wanted the police to obtain the sexually explicit photographs on the cell phone (which mother had also told the investigator about T22, 35), an interview with Williams if she would grant it, and a police report. T35, 43–44. The investigator did not have the authority to obtain a court order to issue a subpoena for the cell phone records, but knew that law enforcement could obtain the records. T56, 66, 76.

The investigator understood from the detective that he would attempt to obtain these items. T35–36. The detective never told the investigator that he was not investigating. T33. He first told the investigator that he was waiting for the forensic interview before he would proceed. T37. Then he told the investigator that he was waiting for the child's parents to contact him before he would proceed; he had sent them a waiver to search the child's cell phone and a medical release, which they signed. T37; Respondent's Ex. No. 15 (November 15, 2010, e–mail with attachments). Then he told the investigator that he had obtained sexually explicit photographs from the cell phone, but that he would not give them to her, he was waiting for the prosecuting attorney to tell him to proceed. T37.

This evidence is more than enough to show that the investigator had a "good and sufficient reason" and was not acting on an "arbitrary whim or caprice" when she delayed concluding the investigation. *Superior Gearbox Co. v. Edwards*, 869 S.W.2d at 244; *Roach v. Consolidated Forwarding Co.*, 665 S.W.2d at 679–81. And in light of this evidence, the evidence that good cause did not exist —there was sufficient evidence to conclude the investigation before the delay and during the delay the investigator received no additional evidence and concluded the investigation — is not convincing.

As mentioned above, that reasoning would encourage concluding child abuse and neglect investigations on only the barest minimum of evidence, placing at risk decisions that are challenged in subsequent litigation and, in some cases, unfairly penalizing investigations over matters the Division does not control. That reasoning also would discourage investigators from pursuing potentially exculpatory evidence. That result is not what the legislature intended.

Other facts related to good cause

In addition to its primary reason for finding that good cause to delay concluding the investigation did not exist, the trial court found that the investigator "testified that she did not diligently attempt to obtain the text messages and photos and failed to follow division policy of maintaining weekly contacts with law enforcement to obtain requested reports." A7 ¶r.

The investigator's failure to follow the Child Welfare Manual's policy of "weekly follow–up contacts" to obtain needed information after the conclusion of an investigation is delayed, A40, does not convincingly show the absence of good cause. After she delayed concluding the investigation on November 13, 2010, the investigator learned from the child's mother on November 15 that the mother and the child's father signed that day a waiver to search the cell phone and a medical release. T37; Respondent's Ex. No. 15 (November 15, 2010, e–mail with attachments). Then, the investigator contacted the detective about obtaining the text messages and photographs on January 10 and February 16, 2011, before she concluded the investigation. T37. The Division does not find anywhere in the record that the investigator testified that she was not diligent.

The trial court found that the investigator did not ask for permission to look at the child's cell phone when she attended the child's forensic interview on October 19, 2010, and that she could have requested access to the cell phone from the child, the child's parents, and the detective, but did not. A7 ¶¶j, n, o. The trial court also found that the investigator did not seek or consult with counsel for the Division about an investigative subpoena for the cell phone records, A7 ¶p, or request Williams' cell phone records from her attorney, A7 ¶q.

None of these facts convincingly show the absence of good cause. The investigator testified that she did not ask for the child's cell phone from the child's mother before October 19, when the mother gave the phone to the detective at the forensic interview, because she was waiting for the forensic interview to be conducted. T51. The investigator did not ask the detective for the phone because she decided to let him obtain the phone's information. T51. This was a joint investigation with the possibility that criminal charges could be filed. Certainly, the investigator had reason to rely upon law enforcement to gather the evidence here in a manner that preserved its integrity so that it could be used in a criminal prosecution. Potential technical and chain of custody issues exist especially in gathering electronic evidence from cell phones and other devices.

The investigator testified that she did not have the power to obtain a court order or to issue a subpoena. T56, 66. No statutory authority exists for the Division to issue an investigatory subpoena or to seek a court order compelling third parties to produce documents and records in a child abuse or neglect investigation. And the investigator testified that she did not ask Williams' counsel for Williams' cell phone records because Williams' counsel had told the investigator that Williams was not speaking to her. T56–57. Certainly, the investigator had reason to rely on Williams' counsel's representation that Williams would not cooperate in the investigation.

Sufficient evidence of good cause to delay concluding the child abuse investigation exists. The evidence of the absence of good cause is against the weight of the evidence.

III.

The trial court erred in ordering Taryn Williams' name to be removed from the Central Registry of child abuse and neglect perpetrators, because child abuse and neglect investigations do not implicate due process rights in that those investigations are administrative investigations that do not adjudicate or make binding determinations of legal rights.

Due process protections do not apply to child abuse and neglect investigations because they are merely investigatory and do not adjudicate or determine legal rights.[12] *Artman*, 928 S.W.2d at 250–51. In any event, failure to abide by statutory deadlines to complete investigations of child abuse and neglect reports is not a violation of due process. "[A] violation of state procedures does not automatically equate to a violation of ... due process rights." *Mann v. Vogel*, 707 F.3d 872, 881–82 (7th Cir. 2013) (additional 60–

[12] Unless, as explained above at pages 43–44 in discussing the *Petet* decision, investigations exonerate alleged perpetrators.

day delay to balance duties to protect children and to make determinations upon proper investigation and review not violation of due process).

A paraphrase of the holding in *Artman* applies to the circumstances of this case: "So long as before her name is placed in the Central Registry, the alleged child abuse or neglect perpetrator has a meaningful hearing with notice and an effective opportunity to defend, due process is satisfied." *See* 928 S.W.2d at 251. In effect, the *Jamison* decision, requiring a hearing before the Child Abuse and Neglect Review Board before a person's name can be placed in the registry, applies *Artman* to the child abuse and neglect context. *Jamison*, 218 S.W.3d at 408–10.

As mentioned above, being the subject of a child abuse or neglect investigation does not create a constitutionally protected liberty or property interest. *Jamison*, 218 S.W.3d at 406. No liberty or property interest of an alleged perpetrator, or even of a person the Division has determined to have committed abuse or neglect, is affected until her name is placed in the Central Registry, which occurs after review of a determination by the Review Board or else after the perpetrator does not seek review of the determination. *Jamison*, 218 S.W.3d at 408–10.

Only at that point, at the Review Board hearing or relinquishment of that hearing, could any legal right of the alleged perpetrator be affected and the procedural protections of due process apply. *Id.* Only then, after the

Review Board hearing or relinquishment of that hearing, may a perpetrator's name may be placed in the Central Registry and become subject to discovery by child care and service providers, child protection officials, and state regulators. *Id.*; § 210.150.1–.2.

For that reason, the trial court was mistaken in concluding that due process of law, including statutory time limit and notice provisions, applied to the Division's investigation.

CONCLUSION

For the reasons stated above, the judgment should be reversed and this case remanded to the circuit court.

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CERTIFICATES OF SERVICE AND COMPLIANCE

I hereby certify that the Substitute Brief of Appellant State of Missouri and Substitute Appendix of Appellant State of Missouri was filed electronically and served via Missouri CaseNet this 30th day of September, 2013, upon Christopher Mirakian and J.R. Hobbs.

I hereby certify that I signed the original of this brief and that it contains the information required by Rule 55.03, complies with the limitations contained in Rule 84.06 (b), and contains 11,477 words exclusive of cover, signature block, and certificates.

/s/ Gary L. Gardner