

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

C.S.,

Appellant,

v.

MISSOURI DEPARTMENT OF SOCIAL SERVICES, CHILDREN'S DIVISION,

Respondent.

DOCKET NUMBER WD78800

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: March 22, 2016

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Jack R. Grate, Judge

JUDGES

Division Two: Martin, P.J., and Pfeiffer and Mitchell, JJ.

CONCURRING.

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

C.S.,)
)
) **Appellant,**)
) **v.**) **OPINION FILED:**
) **March 22, 2016**
) **MISSOURI DEPARTMENT OF SOCIAL**)
) **SERVICES, CHILDREN’S DIVISION,**)
)
) **Respondent.**)

WD78800

Jackson County

Before Division Two Judges: Cynthia L. Martin, Presiding Judge, and Mark D. Pfeiffer and Karen King Mitchell, Judges

C.S. appeals the trial court’s judgment upholding the Department of Social Services, Children’s Division’s (Division) determination that C.S. should be placed on the Central Registry of individuals determined to have committed child abuse or neglect. Because there is sufficient evidence for the trial court to have determined that C.S. sexually abused his adopted son, K.S.W., we affirm the trial court’s judgment.

AFFIRMED.

Division Two holds:

1. In appeals from placement on the Central Registry, the trial court conducts a *de novo* judicial review of the Division’s determination. A trial *de novo*, although in theory an appeal of the administrative hearing, is an original proceeding and is not an exercise of review jurisdiction. Thus, when the alleged perpetrator seeks *de novo* judicial review in the circuit court, that court conducts a fresh hearing on the matter and is not limited in any way by the previous decisions of the Division. Rather, the parties are afforded the opportunity for a full hearing on all issues.
2. Accordingly, appellate review of the trial court’s judgment is that of an appeal from a judge-trying case—the circuit court’s judgment will be affirmed unless there is no

substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law.

3. In juvenile court proceedings wherein the juvenile court must determine whether clear and convincing evidence exists that the child is in need of care because the parents neglected to provide the care necessary for the child's well being, the court may take jurisdiction over the child only if it finds that the allegations of the Juvenile Officer's petition are proven by clear and convincing evidence. There is no similar limitation in the statutes governing placement on the Central Registry. Rather, the statutes provide for a *de novo* review. Accordingly, the Division is not limited at trial to presenting evidence only of allegations it specifically made in its initial finding of abuse.
4. Additionally, procedural due process is not violated by allowing the Division to present evidence of conduct that was not alleged in its initial finding of abuse. Due process requires notice and the opportunity to be heard. Here, C.S. had the opportunity to depose all of the Division's witnesses, as well as to propound interrogatories to the Division in order to determine what conduct the Division alleged constituted abuse. C.S. was, moreover, allowed the use of subpoenas to obtain any materials or witnesses he wished to present at trial, and was also allowed to fully participate at the trial. This is sufficient for due process purposes.
5. Missouri courts recognize a special hearsay exception, in non-jury sexual abuse cases where (1) the best interest of the child is the primary concern; (2) sexual abuse may have occurred, or has been threatened; (3) the child might not be competent or reasonably expected to testify to it; and (4) there is a substantial basis that the statements are true. In such cases, the out-of-court statements of an alleged victim of abuse is admissible for its truth, despite being hearsay. This hearsay exception applies to cases involving the placement on the Central Registry.
6. The rationale for the exception is to protect minors from the emotional trauma that testifying to abuse, especially against a parent, may cause a minor. Where the purported victim is no longer a minor at the time of trial, that rationale disappears. Accordingly, the hearsay exception does not apply where the child is no longer a minor at the time of trial.
7. The trial court's judgment will be affirmed if, excluding the inadmissible hearsay statements from K.S.W., there is sufficient evidence to conclude that C.S. abused K.S.W.
8. Abuse is defined as any physical injury, sexual abuse, or emotional abuse inflicted on a child other than by accidental means by those responsible for the child's care, custody, and control. The legislature has instructed that the child welfare system be implemented to ensure that the safety and welfare of children is paramount. This mandates that the definition of abuse not be artificially restrictive, but rather must be read to encompass all potentially abusive conduct.
9. C.S.'s own admissions establish that he allowed K.S.W., his adopted son, to cuddle with C.S. in his bed, while C.S. was nude and aware that he sometimes had erections during

these times. These admissions support a finding that C.S. lured the child into bed for the purpose of his own sexual gratification. This, combined with C.S.'s remaining admission—that he encouraged K.S.W. to engage in self-fellatio by suggesting easier ways to achieve the act; that C.S. showed K.S.W. material containing sexual content and advice on ways to masturbate; and C.S. took K.S.W. on a bike trip where he intentionally did not bring extra clothes, resulting in them sleeping together naked—is sufficient to support a finding of sexual abuse.

10. A procedural due process claim focuses not on the merits of a deprivation, but on whether the State circumscribed the deprivation with constitutionally adequate procedures. A party alleging a procedural violation must show that he was prejudiced by the violation.
11. Substantive due process protects individual liberty against certain governmental actions regardless of the fairness of the procedures used to implement them. To establish a violation of an individual's substantive due process rights, the plaintiff must demonstrate two elements: (1) a protected property interest to which the Fourteenth Amendment's due process protection applies, and (2) that the governmental action was truly irrational.
12. The Division's failure to complete its investigation within the required statutory time frame does not implicate either procedural or substantive due process. The subject of an investigation does not have a due process interest in the length of an investigation unless the length of the investigation prejudices the subject.
13. The fact that C.S. was required to live outside of his home during the investigation does not show that he was prejudiced for procedural due process purposes. Prejudice, as it pertains to due process, means that the party's ability to effectively try his case was somehow compromised, not that he was personally inconvenienced in his private life.
14. C.S.'s inability to live in his house during the investigation also does not violate substantive due process. C.S. was being investigated for the sexual abuse of a child. Other children were living in the home during the investigation. Requiring C.S. to live outside the home was directly related to the Division's interest of protecting these children, and far from the sort of "truly irrational" conduct that would violate substantive due process.

Opinion by: Karen King Mitchell, Judge

March 22, 2016

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