

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

STACY JACOBSON,)
)
 Petitioner,)
)
 v.) No. 22-0662-I
)
 TENNESSEE DEPARTMENT OF)
 CHILDREN’S SERVICES,)
)
 Respondent.)

RESPONSE TO PETITIONER’S MOTION TO ALTER OR AMEND

Respondent Tennessee Department of Children’s Services, by and through its counsel of record, the Attorney General and Reporter for the State of Tennessee, and hereby submits this Response to Petitioner’s Motion to Alter or Amend this Court’s Final Order.

INTRODUCTION AND BACKGROUND

On January 7, 2020, an E-911 call was received reporting an unresponsive fourteen-year-old boy. (Pet. at ¶ 4.) Emergency personnel were dispatched, and after arrival and inspection of the child, he was pronounced dead at the scene. (*Id.* at ¶ 5.) That same day, a referral of death as a result of suspected child abuse was made to the Tennessee Department of Children’s Services (“Department” or “DCS”) pursuant to Tenn. Code Ann. § 37-1-403(c)(1) and § 37-1-405(a)(1). (*Id.* at ¶ 7.) An investigation was subsequently convened by a Child Protective Investigative Team (“CPIT”) pursuant to Tenn. Code Ann. § § 37-1-406(b). *See* Attachment 2 to Jacobson Decl., Case Recording Summary at p. 1.

The investigation by the CPIT resulted in the issuance of criminal indictments on June 10, 2021, against the seven adults who had been residing in the home at the time of the death. *See* Affidavit of Timothy Beacham attached hereto as Exhibit 1 and incorporated herein by this reference. With the issuance of these indictments, DCS subsequently closed its investigation on June 29, 2021. (Pet. at ¶ 14.)

On August 4, 2021, Plaintiff, a resident of Shelby County and a reporter for WREG television station in Memphis, made a public records request for a copy of the DCS case file concerning this investigation. *See* Attachment One to McAdoo Declaration. On August 12, General Counsel for DCS responded by informing Plaintiff that a redacted copy of the file was available on the Department's website and that, as required by the Public Records Act, the file had been redacted consistent with state law, specifically: Tenn. Code Ann. § 37-1-409, § 37-1-612, § 37-5-107, Tenn. R. Crim. P. 16 and 2013 Davidson County Chancery Court Order. *Id.*

While acknowledging that the file was available on DCS' website, on August 23, 2021, Plaintiff sent a follow-up request for "the full case file for Case No. 2020-008," in order "to receive DCS's formal response so I am fully informed as to the legal bases for the redactions." *Id.* That same day, counsel for Plaintiff requested that the Department include "the prior investigations in the released case file for Case No. 2020-008." *Id.* General Counsel for the Department responded on August 26, and again on September 9, with the legal basis for the Department's redactions and otherwise declined to provide copies of the prior case files. On May 9, 2022, Plaintiff filed suit against the Department pursuant to Tenn. Code Ann. § 10-7-505.

A show cause hearing was held before this Court on June 3, 2022. On June 23, 2022, this Court issued a Memorandum and Final Order finding that, pursuant to Tenn. R. Crim. P. 16, the Petitioner did not have the right of access to the requested records during the pendency of the

criminal prosecutions relating to the child's death and any collateral challenges to the results of those criminal proceedings. On July 22, 2022, Petitioner filed a motion to alter or amend the Final Order pursuant to Tenn. R. Civ. P. 59.

STANDARD OF REVIEW

“The purpose of a Rule 59.04 motion to alter or amend a judgment is to provide the trial court with an opportunity to correct errors before the judgment becomes final.” *In re M.L.D.*, 182 S.W.3d 890, 895 (Tenn. Ct. App. 2005). Tennessee courts have held that a Rule 59.04 motion may be granted “when the controlling law changes before the judgment becomes final; when previously unavailable evidence becomes available; or to correct a clear error of law or to prevent injustice.” *Id*; see also 2 Lawrence A. Pivnick, TENNESSEE CIRCUIT COURT PRACTICE § 28.4 (2016). However, the injustice at issue must be a “true injustice,” because judgments of a court of record “are not to be lightly changed, altered, amended or set aside, but only done upon very clear, convincing, cogent evidence that a true injustice has been done to the complaining party.” *Myers v. Myers*, 891 S.W.2d 216, 220 (Tenn. Ct. App. 1994).

A Rule 59 motion should not be used to raise or present new, previously untried or unasserted theories or legal arguments. *In re M.L.D.*, 182 S.W.3d at 895. Moreover, Rule 59.04 motions are also not opportunities to re-litigate the issues previously adjudicated. *Burris v. Burris*, 512 S.W.3d 239, 247 (Tenn. Ct. App. 2016) (citing *Vaccarella v. Vaccarella*, 49 S.W.3d 307, 312 (Tenn. Ct. App 2001)). Thus, Rule 59.04 is not intended to provide a second bite at the apple for a party who failed to prove his strongest case. *Milwee v. Peachtree Cypress Investment Company*, 510 F.Supp. 284, 289-90 (E.D. Tenn. 1978) (citing 9 Wright & Miller, *Federal Practice and Procedure: Civil 722*, § 2582) (“Motions made under [Rule 59] are not intended to be utilized to relitigate old matters nor to allow a party to present his case under a new theory.”) “In practice,

because of the narrow purposes for which they are intended, Rule 59[] motions typically are denied.” 11 Charles A. Wright, Arthur R. Miller, FEDERAL PRACTICE & PROCEDURE CIVIL § 2810.1 (3rd ed. 2016).

ARGUMENT

Petitioner’s motion to alter or amend is not based on any newly discovered evidence, nor does it assert a change in the controlling law or evidence or a clear error of law or injustice that needs to be corrected. Rather, Petitioner’s motion argues that the Court simply failed to address “whether the Department was permitted to withhold in their entirety the Department’s records of prior investigations related to the deceased child.” Pet. Memo. at 4. Petitioner argues that even if these “prior investigations” are not subject to disclosure during the pendency of the criminal prosecution, she is still entitled to redacted copies of these records.

Petitioner’s argument that she is entitled to redacted copies of the “prior investigations” is based entirely on the language found in Tenn. Code Ann. § 37-5-107(c)(4)(C). That statute provides as follows:

(C) Following the closure of an investigation for a child abuse or neglect fatality, the department shall release the final disposition of the case, whether the case meets criteria for a child death review and the *full case file*. The case file may be redacted to comply with the confidentiality requirements of this section.

Tenn. Code Ann. § 37-5-107(c)(4)(C) (emphasis added). The statute does not define what constitutes the “full case file” but Petitioner argues that “full case file” should be construed as including any prior cases/or investigations, relying solely on the dictionary definition of the term “full.” Petitioner is wrong for several reasons.

First, as a practical matter, the Department treats each case file as a separate case file. As the records themselves reflect, each case file is assigned as separate Case ID number and the status

of each case file (active and open or closed) is recorded in each file. And because the Department treats the case file for each investigation separately, it has always interpreted section 37-5-107(c)(4)(C)'s "full case file" requirement to refer to the full case file *of the investigation of the child abuse or neglect that resulted in the fatality or near fatality*.

Second, this interpretation is consistent with the legislative intent expressed in Tenn. Code Ann. § 37-5-107(4)(A). That provision states the public disclosure requirement of a child abuse or neglect fatality or near fatality is in order to comply with the Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. § 5106a(b)(2)(B)(x). CAPTA requires states to have a plan providing for the public disclosure of this information to receive federal funding. *See* 42 U.S.C. § 5106a.

But CAPTA only requires the disclosure of certain information that pertains to the case of child abuse and neglect that results in a child fatality or near fatality. Indeed, guidance provided in the Child Welfare Policy Manual ("CWPM") issued by the Children's Bureau, an office of the Administration for Children & Families in the U.S. Department of Health & Human Services, specifically counsels against the disclosure of certain information:

Question I.

Is it permissible under the Child Abuse Prevention and Treatment Act (CAPTA) for the State to disclose to the public information in the child abuse and neglect record that does not pertain to the case of child abuse and neglect that results in a child fatality or near fatality.

Answer

No. Except as discussed below, States must preserve the confidentiality of all child abuse and neglect reports and records in order to protect the rights of the child and family. Consistent with 106(b)(2)(B)(viii) of CAPTA, reports and records made and maintained pursuant to the purposes of CAPTA shall be made

available only to the entities and under the circumstances described in section 106(b)(2)(B)(viii)(I-VI) of CAPTA.

As the question implies, a State must release findings or information to the public about a case of child abuse or neglect which results in a child's fatality or near fatality consistent with section 106(b)(2)(B)(x) of CAPTA in accordance with section 2.1A.4, Q/A # 8 of the CWPM. . . (emphasis added).

CWPM, Section 2.1A.1, Q/A #8; *see also* [About | The Administration for Children and Families \(hhs.gov\)](#).

The CWPM contains further guidance about information that should *not* be disclosed as part of the CAPTA's public disclosure requirements:

Question 7.

In a case of child abuse or neglect that results in a child fatality or near fatality, is the State required to provide information on the child's siblings, or other children in the household?

Answer

Generally no. *The information about another child in the household who is not a fatality or near fatality victim is not subject to the CAPTA public disclosure requirement unless this information is pertinent to the child abuse or neglect that led to the fatality or near fatality.* This information in fact may be protected by the confidentiality requirements applicable to titles IV-B/IV-E of the Social Security Act. Finally, States also should ensure that they are complying with any other relevant Federal confidentiality laws. . . . (emphasis added).

CWPM, Section 2.1A.4, Q/A #7.

Finally, the CWPM provides specific guidance about what information must be disclosed in a case of child abuse or neglect that results in a fatality or near fatality:

Question 8.

Section 106(b)(2)(B)(x) of the CAPTA requires states to provide for the public disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality.

Under this provision is there information that a state must disclose to the public?

Answer

Yes. States must develop procedures for the release of information including but not limited to: the cause of and circumstances regarding the fatality or near fatality; the age and gender of the child; information describing *any previous reports or child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality*; the result of any such investigations; and the services provided by and actions of the State on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.

State policies must ensure compliance with any other relevant federal confidentiality laws, including the confidentiality requirements applicable to titles IV-B and IV-E of the Social Security Act. States may allow exceptions to the release of information in order to ensure the safety and well-being of the child, parents and family or when releasing the information would jeopardize a criminal investigation, interfere with the protection of those who report child abuse or neglect or harm the child or the child's family. (emphasis added).

CWPM, Section 2.1A.4, Q/A #8.

Thus, CAPTA does not require public disclosure of *all* prior reports or investigations. Rather, as this guidance from the CWPM clearly reflects, information concerning prior investigations should *only* be disclosed if it is “pertinent to the child abuse or neglect that led to the fatality or near fatality”. See CWPM, Section 2.1A.1, Q/A #8. Such information is otherwise confidential and CAPTA requires the Department to maintain the confidentiality of that information so as to protect the rights of the child and the family.

Here, as this Court is aware from its *in camera* inspection, the prior case files contain information on the decedent's siblings and/or other children in the household. And as the above-quoted guidance from the CWPM indicates, “information about another child in the household who is not a fatality or near fatality victim is *not* subject to the CAPTA public disclosure

requirement unless this information is pertinent to the child abuse or neglect that led to the fatality or near fatality.” *See* CWPM, Section 2.1A.4, Q/A #7 (emphasis added). The Department submits that the information contained in these prior case files is not pertinent to the child abuse or neglect that led to the decedent’s death, as is apparent from the *in camera* inspection.

And because this information is concerning other children and is not pertinent to the child abuse or neglect that led to the decedent’s death, then pursuant to Tenn. Code Ann. §§ 37-1-409(b), 37-1-612(a) and (b) and § 10-7-504(l), the information is confidential and not subject to disclosure. Both the plain language of these statutes and the appellate court cases construing §§ 37-1-409 and 37-1-612 make it clear that a report or information obtained from the investigation of a report of abuse or child sexual abuse is confidential and not subject to disclosure except in certain enumerated exceptions, of which responding to a public records request is not included. *See, e.g., Strickland v. Strickland*, No. M2012-00603-COA-R3-CV, 2012 WL 6697296, at *6 (Tenn. Ct. App. Dec. 21, 2012) (holding that DCS employee’s testimony, which divulged details of investigation into report of abuse, is confidential “[u]nder plain language of the statute”); *Am. First Mort. Corp. v. LaJoie*, No. 03A01-9404-CV-00148, 1994 WL 666900, at *1 (Tenn. Ct. App. Nov. 30, 1994) (“The department’s records concerning a report or information obtained from an investigation of a report of harm to a child are confidential and may not be disclosed except upon waiver or as provided in the Statute.”); and *State v. Hall*, No. E2006-02403-CCA-R3CD, 2007 WL 2917784, at *2 (Tenn. Crim. Ap. Oct. 9, 2007) (noting that Tenn. Code Ann. § 37-1-612 makes all reports of child sexual abuse confidential).

Accordingly, Petitioner’s arguments that the Department was without authority in withholding the prior case files is without merit and this Court properly dismissed the Petition for Access.

CONCLUSION

For these reasons, the Department respectfully request that this Court deny the Petitioner’s Motion to Alter or Amend.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response has been sent by email transmission and/or by first class U.S. Mail, postage prepaid, to:

Paul R. McAdoo
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this 22nd day of August 2022.

/s/ Janet M. Kleinfelter
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