

**Juvenile Case Decided by the
North Carolina Court of Appeals**

March 2, 2010

Responsible Individual List Statute Unconstitutional

Abuse and Neglect: Responsible Individuals List Unconstitutional

- Statutory procedures that allow placing an individual's name on the Responsible Individuals List without a meaningful hearing are unconstitutional under the NC Constitution.
- The statutory procedures deprive individuals of procedural due process.

In re W.B.M., ___ N.C. App. ___, ___ S.E.2d ___ (3/2/10).

<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/090205-1.pdf>

Facts: In response to a report of abuse or "serious neglect," DSS conducts an investigative assessment. ("Serious neglect" is not defined in the Juvenile Code, but is defined in 10A NCAC .0104 (b)(3) as "conduct, behavior, or inaction that evidences a disregard of consequences of such magnitude as to constitute an unequivocal danger to a child's health, welfare or safety.") Under the statutory scheme at issue in this case (in Articles 3 and 3A of G.S. Chapter 7B), if DSS substantiates that a child is abused or seriously neglected and identifies an individual responsible for the abuse or neglect, the state DHHS places that individual's name on a Responsible Individuals List, which may be accessed for limited purposes relating to certain types of employment, provision of foster care, adoption, and other child-related activities.

An individual whose name is placed on the Responsible Individuals List may have DSS's determination reviewed by the DSS director and, if unsuccessful, by the district court. The individual has the option of seeking review by the district attorney after the director's review and before filing a petition for expunction in district court. At each review the issue is whether DSS's determination was supported by "substantial evidence." That question may be raised with respect to the substantiation of abuse or serious neglect, with respect to identification of a responsible individual, or both. In district court the burden is on DSS to prove by a preponderance of the evidence that the determination was based on substantial evidence. An individual can lose the right to seek expunction in certain circumstances, including a criminal conviction or the filing of a juvenile petition based on the same circumstances.

In this case, after an investigative assessment based on a report by the child's mother, DSS substantiated sexual abuse and identified petitioner as the responsible individual. Petitioner, the child's biological father, consistently denied that he had abused the child and raised questions about the mother's boyfriend. Law enforcement interviewed the child, but did not interview the petitioner or pursue an investigation. DSS did not file a petition and closed its case because petitioner lived in another county and the mother and child moved to another county. Petitioner followed the statutory procedures for seeking expunction and was unsuccessful in the reviews by the director and the district attorney and in the expunction action in district court. When, months after the expunction hearing, no order had been entered in district court, petitioner filed a motion to have his name removed from the list and to have the statutory scheme declared unconstitutional. The court entered its order denying the expunction motion and, after a hearing, denied petitioner's motion for removal of his name from the Responsible Individuals List and for a declaration that the statute was unconstitutional. Petitioner appealed from that order.

Held: Reversed.

1. Petitioner’s motion was sufficient to preserve for appellate review the issue of the statute’s constitutionality.
2. Placement of an individual’s name on the Responsible Individuals List adversely affects a constitutionally protected liberty interest, because it imposes a stigma and hinders the individual in opportunities related to employment, adoption, and providing care for children.
3. Determining the adequacy of the statutory procedures for placing a person’s name on the list requires application of the balancing test prescribed in *Matthews v. Eldridge*, 424 U.S. 319 (1976), which involves weighing (i) the private interest involved, (ii) the state’s countervailing interest, and (iii) the risk of erroneous deprivation of a person’s constitutionally protected interest. In this case, both the individual’s liberty interest and the state’s interest in protecting children are substantial. A DSS assessment is “plainly insufficient to support the loss of liberty that accompanies listing on the RIL.”
4. When feasible, the state must provide notice and a hearing before depriving an individual of a protected interest, in order to minimize the possibility of erroneous deprivations. Providing a pre-deprivation hearing would not be unduly burdensome on the state in relation to the liberty interest at stake. As written, “the RIL procedures are unconstitutional under Article I, Section 19 of the North Carolina Constitution because they violate an individual’s due process rights by listing the individual on the RIL prior to a hearing.”
5. In a proper pre-deprivation hearing,
 - a. preponderance of the evidence is the correct standard of proof; however,
 - b. the issue at the hearing must be whether the individual abused or seriously neglected the juvenile, not just whether the director’s decision was correct based on information available when the decision was made.

The courts’ opinions can be accessed from
<http://www.aoc.state.nc.us/www/public/html/opinions.htm>.

Earlier case summaries can be found at
http://www.sog.unc.edu/programs/dss/case_summaries.html.



Janet Mason
School of Government
The University of North Carolina at Chapel Hill
Campus Box 3330, Knapp-Sanders Building
Chapel Hill, NC 27599-3330
T: 919.966.4246 F: 919.962.2706
www.sog.unc.edu