

# Child Law

The newsletter of the Illinois State Bar Association's Section on Child Law

## Editor's Note

BY HON. ROBERT J. ANDERSON

I hope that all of you are staying safe and well in this strange time! The focus of this issue of our newsletter is on child protection matters. However, all of us need to take care of ourselves to be sure we can effectively advocate for our clients. In dealing with child welfare matters, in whatever capacity, we often see, work on, or hear about horrific things happening to children. Dealing with these traumatic events, can have a negative impact on our own mental health. Thankfully, as set out in one of our articles in this newsletter on compassion fatigue, the Lawyers Assistance

Program (LAP) is there as a resource for us. The article has ideas and resources that will benefit us all.

In this strange time of the COVID-19 pandemic, court appointed special advocate (CASA) programs throughout Illinois continue to provide a critically important service for children in the child protection system. I know firsthand how important their work is in helping children and families in our system. As a judge in juvenile court, I have seen a case where the CASA volunteer literally saved the life

*Continued on next page*

## Compassion Fatigue: How to Stay Healthy When Working in Unhealthy Settings

BY DR. DIANA UCHIYAMA

How can it be, that even after long periods of time have passed since I worked on a particular criminal case, that I can still remember autopsy and crime scene photos and the devastating and detailed testimony from certain trials? Compassion fatigue, also known as secondary trauma, takes place when we take on the suffering of the setting we work in and the people with whom we work. In other words, it is the cumulative physical, emotional, and

psychological effect resulting from working in a helping capacity with people who are experiencing trauma, stress and suffering. In the legal world, certain settings can result in higher levels of compassion fatigue including criminal law, family law, juvenile law, immigration law, personal injury, medical malpractice, and guardianship work. In these settings, we often see, hear and witness unbelievable and oftentimes

*Continued on next page*

### Editor's Note

1

### Compassion Fatigue: How to Stay Healthy When Working in Unhealthy Settings

1

### Illinois Association of Court Appointed Special Advocates Update

4

### DCFS Odds and Ends

5

### Making the Best Case for Your Client in a Case With DCFS

6

### 'What Did She Know; And When Did She Know It?': *In re Z.L.*

7

### Brace for Impact: How the Department of Children and Family Services Should Adopt Federal Aviation Administration Investigation Procedures

9

## Co-Parenting During COVID-19

CONTINUED FROM PAGE 1

of a child. Their work is always helpful, and another article updates us on how CASA is dealing with our new pandemic reality.

I am constantly impressed with how generous lawyers are with their time and talents. This newsletter is an excellent example of that generosity with articles from several lawyers, and a future lawyer, dealing with DCFS issues; a case note on a new case that deals with when a parent is on notice that her partner is an unsafe caregiver; and, finally, a fascinating argument from a law student on how the child welfare

system might learn something about how to prevent future abuse of children from the Federal Aviation Administration. My thanks to all our authors for their hard work!

Please stay safe and well, all of you. Hopefully, our world will begin to allow us to see each other in person soon. I don't know about you; but I am getting tired of Zoom! Enjoy!

Bob Anderson, editor for this issue of the newsletter is a retired circuit judge from DuPage County. ■

## Compassion Fatigue: How to Stay Healthy When Working in Unhealthy Settings

CONTINUED FROM PAGE 1

unspeakable suffering and trauma, that other people do not ever witness. As a result, it can have a huge negative impact on our mental health, physical health, and overall well-being.

Compassion fatigue is often considered an occupational workplace hazard of working in settings where empathy and compassion are necessary to do the work; yet, make us vulnerable to developing anxiety, depression, substance use problems, and ruminating thoughts related to the work we do. Additionally, our own personal history or temperament may increase compassion fatigue especially if we are highly empathic, highly anxious, pessimistic by nature, and have a personal history of trauma or abuse. The hope in writing this article is to make legal professionals aware that what we do, who we are, where we come from, and how we manage these complicated pieces that make us unique as human beings, are as important as the body of knowledge we have in our brain related to our practice field.

As a result of professional environments where compassion and empathy are needed to engage in the work we do, lawyers and judges in these settings are much more susceptible to developing symptoms of

compassion fatigue and Secondary or Vicarious Trauma. When I teach legal professionals and legal communities about compassion fatigue, I often say that it would be wise to place a danger or caution sign on areas of law that may result in deterioration in health and wellness functioning. Most lawyers are never taught, that certain areas of law, result in higher levels of compassion fatigue. They have no idea they are at risk and have never been taught they need to engage in preventative measures to minimize the negative impact their work has on their overall functioning.

In order to avoid compassion fatigue, it is critical to understand what the signs and symptoms are. The list of symptoms can include but are not limited to the following:

- Chronic physical exhaustion
- Chronic emotional exhaustion
- Irritability
- Pessimism and cynicism
- Difficulty Sleeping
- Ruminations
- Intrusive thoughts
- Health Problems including headaches
- Weight loss or weight gain
- Low job satisfaction
- Inability to feel pleasure

## Child Law

This is the newsletter of the ISBA's Section on Child Law. Section newsletters are free to section members and published at least four times per year. Section membership dues are \$30 per year. To subscribe, visit [www.isba.org/sections](http://www.isba.org/sections) or call 217-525-1760.

### OFFICE

ILLINOIS BAR CENTER  
424 S. SECOND STREET  
SPRINGFIELD, IL 62701  
PHONES: 217-525-1760 OR 800-252-8908  
WWW.ISBA.ORG

### EDITOR

Hon. Robert J. Anderson  
Elizabeth P. Butler  
Elizabeth E. Clarke  
Angela Baker Evans  
Bridget L. Schott

### PUBLICATIONS MANAGER

Sara Anderson

✉ [sanderson@isba.org](mailto:sanderson@isba.org)

### CHILD LAW SECTION COUNCIL

Amanda G. Highlander, Chair  
Missy L. Greathouse, Vice-Chair/CLE Coordinator  
Jessica Noel Hudspeth, Secretary  
Robert O. Ackley  
Josette C. Allen  
Hon. Robert J. Anderson, Newsletter Editor  
Maria E. Barreiro  
Hallie Marie Bezner  
Elizabeth P. Butler, Newsletter Editor  
Elizabeth E. Clarke, Newsletter Editor  
Kaitlyn Susan Costello  
Lisa L. Dunn  
Angela Baker Evans, Newsletter Editor  
Lisa M. Giese  
Jared A. Giuffre  
Susan M. Goldberg  
Mark D. Hassakis  
Deanna L. Hoyt  
Hon. Martin J. Mengarelli  
Lisa K. Nelson  
Hon. Thomas M. O'Shaughnessy  
Christine-Ann Prusank  
Rebekah Rashidfarokhi  
Cristina Rizen M. Rizen  
Lindsay J. Roalfs  
Bridget L. Schott, Newsletter Editor  
Sarah Holst Schryer  
Amy Silberstein Rebecca Silberstein  
Jeremy N. Spitzer  
January Stramaglia  
Tracy L. Weaver  
Jessica L. Weiner  
Joanna Wells  
Masah S. SamForay, Esq, Board Liaison  
Tamika R. Walker, Board Liaison  
Melissa L. Burkholder, Staff Liaison  
Pamela J. Kuzniar, CLE Committee Liaison  
Jennifer A. Shaw, CLE Coordinator

DISCLAIMER: This newsletter is for subscribers' personal use only; redistribution is prohibited. Copyright Illinois State Bar Association. Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association or Editors, and likewise the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

Articles are prepared as an educational service to members of ISBA. They should not be relied upon as a substitute for individual legal research.

The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

- Disinterest in friendships and relationships
- Isolation
- Difficulty concentrating
- Feelings of hopelessness and powerlessness
- Excessive use of alcohol, drugs, food, shopping, gambling, or other numbing behaviors
- Poor self-care
- Loss of pleasure in the work you do
- Increased negativity both at work and at home
- Feelings of anger toward others including clients and colleagues
- Feeling less effective and competent in your work setting
- Demands of work environment difficult to manage and intrude on your personal time
- Denial about the impact the work is having on your wellbeing

Now that we know the signs and symptoms, how do we prevent compassion fatigue from happening to us as individuals and collectively as a group of legal professionals? We must recognize that if we want to have a higher quality of life, we must be able to recognize the impact our work is having on us, both positively and negatively. Oftentimes we are avoidant of recognizing that we have become unhealthy and blame external factors for our unhappiness. I encourage everyone to take inventory of your health and wellbeing on a continual basis, since certain cases or types of cases may trigger us more significantly. The antidote to compassion fatigue is first and foremost awareness of the impact it has on us, followed closely by believing that self-care is as important to longevity and competency in the legal work we do.

Some strategies to implement in managing your legal career and work include some of the following tips:

- Make self-care part of your daily routine, also known as “Put your oxygen mask on first, before helping others around you to do the same.”
- Be kind and forgiving to yourself and practice self-compassion daily
- Find a mentor or colleague to whom you can turn to express how you are feeling and the impact the work is

having on you

- Create a community of like-minded legal professionals and friends, as connection minimizes anxiety, depression, and feelings of hopelessness
- Continue to educate yourself about the impact compassion fatigue may negatively have on your work and personal life
- Acceptance related to the work we do and the ongoing suffering we may see or experience, with the recognition that there are positive benefits to our work as well, including celebrating the small victories to increase our positive feelings
- Be reality based about what you are capable of, and if you cannot manage your health and wellbeing, it may be necessary to change your work environment
- Create some sense of meaning and purpose to the work you do, and recognize that some levels of suffering are universal and over which you have no control, no matter how hard you work
- Develop a healthier lifestyle, including good nutrition and diet, restful and healthy amounts of sleep, some healthy level of exercise and movement in your day, and having hobbies and areas of interest outside of work.

The good news is compassion fatigue is treatable and manageable in the short and long term. It requires a level of personal vigilance and commitment to ourselves that often requires examining our own beliefs related to self-care and separation of ourselves from our identity at work. We often do not recognize that as individuals, as a profession, and as a society, we place more emphasis on billable hours, high caseloads, and a work-horse mentality, than making our own health, self-care, and wellness a priority. This must change if we want to have a long, prosperous legal career combined with a long, prosperous and healthy personal lifestyle.

I challenge all legal professionals, to take time to think about the past year, and how you managed your personal and work lives.

Were you successful in maintaining a healthy lifestyle, while managing the stressors of the ever-changing work environment? Or did you struggle like a good majority of individuals this past year. This can be a beacon, a guidepost, a roadmap, of what needs to improve in your life as you move into the future. It creates evidence of a trail of hits, misses, or a combination of both and helps to ascertain what areas of your life you need to improve upon, to lead a healthier and more sustainable life.

If you feel you cannot manage your difficulties alone, please turn to someone who can help you. LAP can assist you in creating a healthier version of you and can provide guidance and support through a consultation and evaluation. We have support groups to help create a community of legal professionals, and clinicians to help you navigate personal struggles. Please reach out to us and know that all services at LAP are free, confidential and with immunity.■

---

*LAP's mission is to help, protect, and educate our legal community about addiction, mental health and wellness. If you or someone you know needs support with mental health or wellbeing, do not hesitate to contact LAP. Our services are cost-free, 100% confidential.*

*gethelp@illinoislap.org  
312-726-6607*

*Real Problems. Real Help. Real Experts.™*

# Illinois Association of Court Appointed Special Advocates Update

BY MARI CHRISTOPHERSON

When a family is in crisis and becomes involved in the child welfare system, a court appointed special advocate (CASA) volunteer may be appointed by a judge to advocate for the best interest of the child. This highly trained volunteer is someone from the child's community. Their responsibility is to get to know the child, their parents, their family and everyone else involved in the case. A CASA volunteer will advocate for the child's safety, permanency and well-being while in foster care.

CASA volunteers provide a consistent presence in a child's life while working collaboratively with everyone involved on the case. CASA volunteers stay by the child's side during their time in foster care, advocating for the child's voice to be heard and for the needs of the child and family.

At the local level, the 31 CASA programs in Illinois do the hands-on work of recruiting, training and supervising these dedicated volunteers. At the state level, Illinois CASA partners with the programs to provide training, coaching and other resources. We provide continual education and training so that volunteers will have a better understanding of the system and the needs of children and families.

As the statewide membership organization, we work to connect each part of the CASA community and empower the local programs to perform at their highest level. Illinois CASA also works to improve the child protection system by working collaboratively with our stakeholders and community partners and advocate for positive public policy changes.

This past year has been challenging for all of us and has pushed the Illinois CASA network to grow and adapt in ways we never imagined. Through it all, the CASA spirit has never been stronger. CASA staff, board members, volunteers, partners and supporters have all stepped up to ensure that the quality of advocacy for children and

families never wavered.

While its impact is universal, there is widespread evidence to show that the COVID-19 pandemic is hitting the most vulnerable among us the hardest. For children who have experienced abuse or neglect or for those who are at-risk of maltreatment, social isolation and economic uncertainty brought on by COVID-19, there are far-reaching consequences.

For every child who has experienced abuse or neglect, having a caring, consistent adult—someone who listens, checks in, follows up, holds the system accountable and puts the child's best interests before all others—can make all the difference. At this unprecedented time for children, CASA and GAL volunteers are more important than ever.

Across the state, the 31 local CASA programs have gone virtual for their information sessions, volunteer trainings, swearing-in ceremonies and other events – staying committed to safe practices for volunteers, children and families. Despite the challenges and setbacks, we are taking the lessons learned and moving forward stronger and with new tools to support children and families in the child welfare system.

The CASA community is committed to keeping staff, volunteers and families safe amid the COVID-19 pandemic and make a difference for the children and families they serve. Using videoconferencing to connect with children, participate in the legal process and keep in contact with families, CASA volunteers were able to ensure children's safety and well-being. In cases where in-person contact is necessary, CASA programs work with volunteers to put essential safety measures in place.

The state office has responded to the COVID-19 by providing new opportunities for our local programs to connect. We created a weekly call to provide up to date information and resources for local program

leadership, staff and volunteers. We allocated \$75,000 in funding to local CASA programs to purchase technology and software so that all programs had the resources to seamlessly move to working remotely. We refocused our webinars and trainings around how programs and volunteers can adapt. The most popular webinar we offered in 2020 was "Zoom 101" attended by more than 500 participants.

In July, Illinois CASA was awarded a grant of \$886,595.00 as part of the Illinois Criminal Justice Authority's Coronavirus Emergency Relief Fund. The program is designed to address the educational challenges faced by up to 8,000 youth in care in response to COVID-19 restrictions on in-person learning in the 2021 academic year. E-learning for school age children and teens during the final trimester of the 2020 academic year proved very difficult for youth in care and their families. These high-risk youth are often already behind in school due to the chaotic lifestyles they experienced before coming into care; many school age children don't know how to study; an e-learning curriculum requires self-motivation, which may be lacking; and teachers who are already overwhelmed in a new teaching environment will likely not allow them to provide individual attention to these students. The need for educational assistance may be the only way we can keep our youth in school, bring them up to grade standards, and relieve their stress.

Even before the pandemic, 2020 was a momentous year for the CASA network. Awarded its first ever state funding in July of 2019, Illinois CASA passed through \$2.3 million dollars to our local programs. The funding allowed us to increase the number of children appointed to CASA from serving 5,758 children in 2019 to 8583 in 2020—an increase of 49 percent during the pandemic. Additionally, 7 new counties opened, and the State Office launched a volunteer recruitment

campaign. The CASA network needs volunteers in all areas of the state, and we continue to focus our messaging statewide to reflect that the CASA network is made of welcoming and inclusive organizations.

We are looking forward to a new year of endless possibilities and brighter futures, especially for the children and families of

Illinois. We hope all of the readers of the ISBA Child Law newsletter might think about donating their time and talents to the CASA network. We really need new volunteers in almost every county in which we operate. There are 1,200 children assigned to the program right now who are being served by staff. Please visit the Illinois CASA

website: [www.illinoiscasa.org](http://www.illinoiscasa.org) for more information on how you can donate your time, expertise and financial support.

Mari Christopherson is the executive director of Illinois CASA. ■

# DCFS Odds and Ends

BY JARED A. GIUFFRE

Handling cases under the Juvenile Court Act (“JCA”) and administrative cases with the (Department of Children and Family Services) “DCFS” can be a labyrinthine challenge for any practitioner. This article is designed to provide a brief summary of three areas with unique rules that anyone jumping into this area of practice should be aware of. Please note, this article is not intended to be an exhaustive resource and more of a basic primer for these issues.

## Intervention

First up: when a potential client wants to intervene into a Juvenile abuse or neglect case. Juvenile matters are closed to the public and only a certain enumerated people are afforded the right to participate in the proceedings under the JCA. In practice, most parties seeking to intervene are relatives who want to get either guardianship of a child or are seeking placement of the child. Intervention is determined solely by the JCA, and not by 735 ILCS 5/2-408 (the civil intervention statute,) and those grounds are limited to a narrow set of circumstances:

If your client is the current foster parent of the minor<sup>1</sup> they may intervene if, after adjudication, there is a motion to restore the minor to any prior parent/guardian/legal custodian found to have abused or neglected the minor.<sup>2</sup> However, the sole purpose of intervention is to request that the minor be placed with the foster parent as opposed to the prior parent/guardian/legal custodian.

If your client is a foster parent, and the minor’s placement is being terminated, and the minor has been in the foster home for more than one year, the foster parents shall

have both standing and intervenor status.<sup>3</sup>

Finally, if your client is a foster parent, they may be granted intervenor status if a court finds it is in the best interest of the minor.<sup>4</sup>

The common theme of this list is your client must be or must have been a foster parent. Notably absent from this is are relatives of the minor child. If your client is the grandmother, aunt or uncle of the minor, they are likely not going to be eligible to intervene. Any motion to intervene will be met with an objection from a DCFS regional counsel, and likely denied by the court. However, relatives may still have the ability to address the court, if not participate in the proceedings.

Most often, the reason behind a relative seeking to intervene is to ask for placement of the minor. However, seeking a specific placement of the minor is seeking a remedy the court cannot provide, as the court is not authorized to order specific placements.<sup>5</sup>

Subpoenas for Unfounded Reports

Second up: if your client is seeking access to unfounded DCFS investigations. When a hotline report is made to DCFS and an investigation is commenced, there will be one of two results, either that report will be indicated, or it will be deemed unfounded. Illinois law, specifically the Abused and Neglected Child Reporting Act<sup>6</sup> (“ANCRA”), treats these situations very differently. As a practitioner representing parents, it is important to know the distinction and what information you can get about certain reports.

In practice, this issue comes up most often in family law cases where a subpoena is

issued for records relating to an unfounded investigation or for a DCFS investigator’s testimony regarding an unfounded investigation.

ANCRA is very specific in providing “[n]o information shall be released unless it prominently states the report is “indicated,” and only information from “indicated” reports shall be released...”<sup>7</sup> Which, while in-artfully said, means that information regarding an “unfounded” report will not be released at all. In most case the Department will make a general denial of the existence of the investigation. However, there are several exceptions to this general prohibition namely, that information concerning these reports may be released to:

1. State’s Attorneys: for prosecution purposes related to the transmission of false reports of child abuse or neglect and for the purposes of screening and prosecuting a petition filed under the JCA alleging a subsequent allegation of abuse or neglect relating to the same child, a sibling of the child, or the same perpetrator;
2. The parties to the proceedings filed under the JCA: regarding previously unfounded reports regarding the same child, a sibling of the child, or the same perpetrator for purposes of hearings under Sections 2-10 and 2-21 of the Juvenile Court Act of 1987;
3. Attorneys and guardians ad litem appointed under the JCA: shall receive the reports set forth in Section 7.14 of ANCRA.

4. The subject of an unfounded investigation: The subject of an unfounded investigation, with a properly executed release, may obtain a copy of the investigation, however there are strict timelines to request this information.

If your client is not on the narrow list above (or outside of the timeframe to request the information), your subpoena or request for information will be met with a response from a DCFS regional counsel, or the attorney general, denying access to the requested information or seeking to quash the subpoena.

### Dismissal of Expungement Appeal Hearings

Finally: if your client has a pending criminal or JA case and is seeking to appeal an indicated finding. If your client is indicated for child abuse or neglect, they have the right to seek administrative review of that decision before an administrative law judge.<sup>8</sup> From the date that a client is notified via mail that they have been indicated, they have 60 days to file their appeal. Once that appeal is requested, there are certain circumstances that will result in that expungement appeal being dismissed.<sup>9</sup>

The most common reason that

expungement appeals are dismissed are for “concurrent jurisdiction.” Namely, that there is a pending criminal case or JA case based on the same set of facts or circumstances giving rise to the indicated finding, and the appellant is a party to that case.<sup>10</sup> Once the appeal is dismissed for this reason, the appellant will have 60 days from the end of that criminal or JA case to re-file the appeal (or file in the first place<sup>11</sup>). However, the result of those proceeding can have a dramatic impact on the appeal.

If there has been a criminal finding or an adjudication, then the indicated finding is not subject to appeal.<sup>12</sup> This is most often brought up in the circumstance of an adjudication in a JA case. The wild card in this category are plenary orders of protection. Whether or not the issuance of the plenary will constitute a finding of abuse will depend greatly on how the order is written and on what the court finds. Often times the DCFS regional counsel will obtain a transcript of the proceedings if the findings are not contained in the written order.

In rare circumstances the appeal may be dismissed due to the age of the appeal.<sup>13</sup> Going past the 60-day deadline will result in the appeal being dismissed. However, the Department will allow a reasonable time after the sixty (60) day deadline before

dismissing the case.

Hopefully this summary will clear up some issues a practitioner may have on these issues and assist in better guiding their clients through these issues. ■

---

JARED A. GIUFFRE  
Regional Counsel  
Department of Children and Family Services  
200 N. Center St., Ste D, Alton, IL 62002  
Phone: (618) 304-0434  
Email: jared.giuffre@illinois.gov

*Jared is a regional counsel for the Department of Children and Family Services in the Southern Region where he is assigned to Madison, Bond and Jefferson counties. Prior to joining DCFS, he was in private practice primarily practicing family, criminal, and juvenile law in the Macoupin, Madison and Montgomery county areas.*

1. Or a foster parent who had been the foster parent of the minor for more than one year.
2. 705 ILCS 405/1-5(2)(b).
3. 705 ILCS 405/1-5(2)(c).
4. 705 ILCS 405/1-5(2)(d).
5. See 705 ILCS 405/1-5(2)(b) and 705 ILCS 405/2-28(2).
6. 325 ILCS 5/ et al.
7. 325 ILCS 5/7.8.
8. Ill. Admin. Code tit. 89 § 336.80
9. Ill. Admin. Code tit. 89 § 336.190
10. § 336.190(b)
11. § 336.190(e)
12. § 336.190(c).
13. § 336.190(d)(e).

# Making the Best Case for Your Client in a Case With DCFS

BY JANUARY STRAMAGLIA

DCFS investigations are often a factor on which our cases hinge, and best practices for working with, against, or around DCFS are vital to our practices. With the recent holding in *Custody of H.J.*, 2021 IL App (4th) 200401, it's an opportune time to refresh the basics for assisting our clients whose cases include DCFS investigations.

In *Custody of H.J.*, in October 2015, two children were removed from their parents by DCFS and placed with a foster parent. It was nearly a year and a half

later—March 2017—when the maternal grandparents finally discovered that the children were removed from their parents. The DCFS caseworker had failed to notify the maternal grandparents at the outset of the case. And, compounding this error, the DCFS supervisor failed to follow up on the caseworker's failure and so the entire department ignored the DCFS's policy of notification. When the maternal grandparents contacted DCFS, even though the delay was entirely the fault of DCFS, the

caseworker informed them that they could not adopt the children. The parental rights were terminated in December 2017, despite the objections of the grandparents, who were ready and willing to adopt. After in excess of 17 days of hearings, the foster parent was granted an adoption over the objections of the maternal grandparents. In addition to the clear reasoning that biological relation to the children does not override the best interests of the child, this case demonstrates that the mistakes, or even the blatant disregard for

the DCFS policies by caseworkers, may not be something we can remedy by appeal.

So, as conscientious practitioners, we must be on alert to identify and address any missteps during or after the DCFS investigation that might leave our clients—whether they are children, parents, grandparents, foster parents, guardians, or any other interested party—in a disadvantageous position. With that in mind, here are some basic measures to take when you hear DCFS is involved.

1. Find out the status of the Department of Children and Family Services case. “The Child Protective Service Unit shall determine, within 60 days, whether the report is “indicated” or “unfounded.” 325 ILCS 5/7.12.
2. Gather all the information about the DCFS case. “Upon request, a subject of a report shall be entitled to receive a copy of all information contained in the central register pertaining to his case.” 325 ILCS 5/7.19.
3. See if you still have time to appeal the DCFS case or advise client to hire counsel to appeal the DCFS case. “Within 60 days after the notification

of completion of the Child Protective Service Unit investigation... the perpetrator named in the notification may request the Department to amend the record...” 325 ILCS 5/7.16.

4. Demand a timely hearing if appropriate. “Such hearing shall be held within a reasonable time after the perpetrator’s request.” 325 ILCS 5/7.16.
5. Demand a timely decision if appropriate. “The decision shall be made, in writing, at the close of the hearing, or within 60 days thereof, and shall state the reasons upon which it is based.” 325 ILCS 5/7.16. If DCFS fails to conduct a timely hearing, the court may expunge the abuse finding. *Montalbano v. Illinois Department of Children & Family Services* (2003) 343 Ill.App.3d 471, 797 N.E.2d 1078.
6. Determine if the records from DCFS are admissible in your proceeding. “All records concerning reports of child abuse and neglect ... shall be confidential.” 325 ILCS 5/11 “Notwithstanding any other

provision of law to the contrary, an unfounded report shall not be admissible in any judicial or administrative proceedings” except in some proceedings under the Juvenile Court Act of 1987. 325 ILCS 5/7.14 However, “[a] court, upon its finding that access to such records may be necessary for the determination of an issue before such court; however such access shall be limited to in camera inspection, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it.” 325 ILCS 5/11.1.

7. Consider going on the offensive if the report made was clearly false. “Any person who knowingly transmits a false report to the Department commits the offense of disorderly conduct.” 325 ILCS 5/4(m).■

---

*January Stramaglia is a domestic relations attorney primarily practicing in Cook County. She started her legal career in Silicon Valley, where she practiced family law for several years.*

# ‘What Did She Know; And When Did She Know It?': *In re Z.L.*

BY SARAH HOLST SCHRYER

Under what circumstances should a non-abusive parent face the removal of her children for the actions of his or her partner? When is a parent “on notice” that his or her partner is possibly abusive and therefore an unsafe caregiver, and for how long? These are among the thorny issues faced in juvenile abuse and neglect court and addressed in a recent decision, *In re Z.L.*, 2020 IL App (1st) 200151, in which the first district held that the trial court erred in ruling for the state.

K.G. and E.L., Sr. had two sons. After their younger son, T.L., died at five weeks of age in 2007 while in E.L. Sr.’s care, the Department of Children and Family Services (DCFS) took custody of their surviving

oldest son. At the time of his death, T.L. had numerous injuries consistent with physical abuse, including blunt trauma to the liver, serious injuries to the left side of his head, an occipital fracture, and rib injury. The parents contended that at least some of the injuries were caused by misapplication of forceps during T.L.’s delivery. In 2010, the court terminated the wardship and returned the surviving son to K.G. and E.L. Sr.’s care over the state’s objection, although the reasons for that decision are not clear from the record in this case. Over the next eight years, the couple had three more daughters. The youngest, Z.L., was born prematurely and had several serious medical conditions which

kept her in the hospital for several weeks after birth. A month after baby Z.L. was released from the hospital, K.G. left all four children with E.L., Sr. while she went to a job interview. E.L., Sr. called K.G. while she was away and said Z.L. had stopped breathing during a feeding but began breathing again after he provided CPR. K.G. returned home and took the baby to the pediatrician’s office, but it was closed. She took the baby to the emergency room, but left because it was crowded. The next morning, she took Z.L. to the pediatrician and was referred to the hospital after Z.L. projectile vomited. At the hospital, Z.L. was diagnosed with abusive head trauma. DCFS soon took custody of

all four children, and the state petitioned to make all four children wards of the court. This case pertains only to the allegations against K.G., the children's mother.

At trial on the state's petition, the doctor who treated and diagnosed Z.L. testified that the diagnosis of abusive head trauma was based on findings of subdural hemorrhages, subarachnoid hemorrhages and abnormalities in the MRI images, as well as the symptom of projectile vomiting. The radiologist who interpreted Z.L.'s images testified the MRI images could be consistent with a stroke, but nonetheless concluded Z.L. had been abused because of the concurrent subdural hemorrhages which were caused by the tearing of bridging veins to the brain. Z.L.'s pediatrician testified none of the couple's children showed signs of abuse or neglect and that premature babies were prone to subdural hemorrhages because their immature blood vessels break easily. Another doctor testified as an expert for K.G., opining that Z.L. suffered a stroke. The state did not argue that K.G. had physically abused Z.L. The state's theory as to K.G. was anticipatory neglect on the basis that she subjected her children to an injurious environment by placing them in E.L., Sr.'s care, knowing their infant son had died eleven years earlier while in his care. The state offered no evidence of any incidents other than T.L.'s death that would alert K.G. that E.L. Sr. was an unsafe caregiver. The trial court ruled against K.G. and granted the petitions for wardship for all four children, who were placed in foster care.

By the time of the dispositional hearing, E.L. Sr. had moved to Ohio and he and K.G. had separated. E.L. Sr. and other family members testified at the dispositional hearing about several lines of possible Native American heritage, which E.L. Sr. only learned about after moving to Ohio. Testimony at the dispositional hearing revealed that all the children wanted to return to K.G.'s care, that the oldest son in particular was suffering severe stress from being in foster care, and that K.G. had completed all recommended services and treatment. The trial court stated it was not satisfied with K.G.'s completion of all recommended services and treatment because DCFS should have recommended

more services and treatment for K.G. The court made the children wards of the court and K.G. appealed.

As an initial matter, all parties agreed on appeal that the case had to be vacated and remanded for the trial court to send appropriate notice to the Bureau of Indian Affairs and the relevant Native American tribes. The court was directed to follow procedures contained in the Indian Child Welfare Act of 1978, 25 U.S.C. § 1912(a) (2012) if any tribe or nation sought to intervene in the remanded case.

That left the more significant remaining issue of whether K.G. had been satisfactorily proven to have neglected her children. The appellate court's analysis details the existing case law on anticipatory neglect by a non-offending caregiver like K.G., all reinforcing that such a finding must be supported by evidence that the parent knew or should have known the caregiver was unsafe. The only such evidence presented against K.G. was that T.L. died more than a decade earlier in his father's care. The appellate court sharply noted that by the state's logic, K.G. was no more neglectful of her children than the DuPage County trial court itself was—because the trial court returned K.G. and E.L. Sr.'s oldest child to their care, knowing that another child had died in E.L. Sr.'s care. The state also made no effort to refute K.G.'s contention in the proceedings that a second autopsy had eventually "cleared" her and E.L. Sr. of any abuse of T.L. This further weakened any basis for saying K.G. was on notice that E.L. Sr. was a dangerous caregiver. The first district also found that the trial court erred by failing to take into account the changed circumstances after K.G. and E.L. Sr. separated and he moved out of state, because this meant K.G. would no longer be leaving her children in his care. The guardian *ad litem* argued to the appellate court that K.G. also was neglectful because she failed to call 911 after learning of Z.L.'s condition and decided not to wait for care at the crowded emergency room but return the next morning instead. These, too, were rejected by the Appellate court as adequate premises for finding neglect. There was no evidence a 911 call would have resulted in any advice other than to take Z.L. for medical care, which

is what K.G. did. And the court notes that remaining at the emergency room with Z.L. could easily be framed as the *more* neglectful choice, because it would have necessitated leaving the other children in E.L. Sr.'s care for an even longer period of time while K.G. sat in a hospital waiting room. To the appellate court, the entire case against K.G. consisted of the single incident of T.L.'s death while in E.L. Sr.'s care many years earlier. The court's holding here includes language likely to be cited frequently by counsel for non-offending parents: "The evidence of a single injury on a single occasion cannot support the inference that the children lived for years, or even for days, in an injurious environment." *In re Z.L.*, ¶ 40. The appellate court vacated the trial court's ruling against K.G. on the grounds that the state failed to prove she neglected her children, and remanded the case for the appropriate notifications to the Bureau of Indian Affairs and relevant tribes and any further proceedings consistent with the court's order. ■

---

*Sarah Holst Schryer is an assistant state's attorney in Tazewell County. She prosecutes felony crimes against children, including sexual abuse, physical abuse, and child homicide.*



# Brace for Impact: How the Department of Children and Family Services Should Adopt Federal Aviation Administration Investigation Procedures

BY MARY KATE ROESCH

---

The Federal Aviation Administration investigates accidents with the purpose of determining what caused the accident and how to prevent the same thing from happening again, and it would be beneficial to apply these investigation procedures to the Department of Children and Family Services. I am currently in my third year of law school, and I worked in a foster care agency prior to starting my legal education. With my background and education, I have noticed that there is a common narrative that we seem to hear about, more and more, that involves the severe abuse and often deaths of children who have connections with the Department of Children and Family Services. While this narrative is apparent throughout the country, I think that this issue must be broken down by state or county. Illinois recently made a few adjustments to the state budget to allow for more funding for DCFS; however, funneling money into an agency does not fix the problems. Changes need to be made to the entire child welfare system, and I think it needs to start with how these kinds of cases are handled.

Currently, there are child death review teams for nine different regions in Illinois.<sup>14</sup> These teams consist of individuals across multiple disciplines and agencies.<sup>15</sup> While in theory these death review teams are a great idea, they do not seem to be working, as there were 123 children who died in 2019 despite having contact with the Department of Children and Family Services.<sup>16</sup> I believe that there should be an office within the Department of Children and Family Services that focuses on not only investigating cases of further abuse or deaths of children with

connections to the child welfare system, but also focuses on the prevention of these occurrences. I am not sure if this should be directly under the Department on a statewide basis, or if it should be broken down further by region, county, or agency. At any of these levels, it would lead to the assurance that the rules are being followed and the most important goal is being reached, that the children are being kept safe. I believe having a system like this in place would lead to far less occurrences of these stories that we continue to hear. This would add yet another safety net that would conceivably be able to catch every case that is not already caught at another level, and it would hopefully lead to a better overall child welfare system.

When looking at possible ways to approach these kinds of cases, while it may not seem logical, the Federal Aviation Administration comes to mind. The Federal Aviation Administration has an Office of Accident Investigation & Prevention. The mission of this office is, “to make air travel safer through investigation, data collection, risk analysis, and information sharing.”<sup>17</sup> When there is an accident relating to aviation, this office investigates the incident and gathers information in order to avoid another accident for the same or similar reasons. There are several factors that go into aviation accidents, and in one Federal Aviation Administration report, it states that, “it is generally accepted that aviation accidents are typically the result of a chain of events that often culminate with the unsafe acts of operators (aircrew).”<sup>18</sup> When the Federal Aviation Administration investigates accidents, it collects and analyzes

aircraft incident reports as they provide information for accident prevention.<sup>19</sup> “Aircraft incident investigations may result in regulatory changes, issuance of Airworthiness Directives (AD’s), revised procedures, standards, policy, etc.”<sup>20</sup> The purpose of an aviation investigation is not only to determine what happened to cause the accident, but also to determine how to prevent a similar accident from occurring again. Prevention occurs in many ways depending on the nature of the investigation and incident, but policy changes often occur after these investigations.

I think it is fair to argue that child welfare cases could and should be investigated and treated similarly to how the Federal Aviation Administration handles aviation accidents. When a child with connections to the child welfare system dies or suffers further abuse, there is an investigation. However, having a separate office within the Department of Children and Family Services, similar to the Federal Aviation Administration’s Office of Accident Investigation and Prevention, to investigate and prevent further similar incidents would be beneficial.

This could be done at a federal level similar to the Federal Aviation Administration, or it could be broken down further by state, county, or even agency. I think it would be more beneficial to have this at a federal or state level in order to have access to more information and to allow for a greater reach with respect to policies and regulations. If there was an office dedicated to investigation and prevention within the child welfare system that specifically worked with the child death and abuse cases of children who have connections to

the child welfare system, it is not likely that the repeated occurrences of these kinds of incidents would be as common. Having an office that investigates these situations and then gathers as much information to prevent something similar from happening again could lead to policy changes which could greatly impact and shape the child welfare system. By having an office of investigation and prevention on either a federal or state level under a government agency, I think it may be easier for policy changes to occur since there would be a governmental entity seeking change.


Even though at first glance it may not seem that the Federal Aviation Administration and the Department of Child and Family Services or the child welfare system have much in common, there should be a similar goal with regard to accident investigations. The goal of an aviation accident investigation is to determine what caused the accident to happen and how

to prevent the same kind of accident from happening again. We hear about children experiencing further abuse, and in some circumstances death, even after having contact with the child welfare system which is a system that is supposed to protect them. When these incidents occur, the goal of the investigation should be similar to that of the Federal Aviation Administration. As much information as possible should be collected to determine what caused it to occur, but the focus should also be on how to prevent it from happening again by changing policies, procedures, and regulations. Accidents happen every day, and the focus should not only be on what caused the child to experience further suffering, but also how to prevent something like this from happening again to another innocent child.

Mary Kate “Katie” Roesch is a third-year law student at Southern Illinois University School of Law. She currently works in the Juvenile Justice Clinic at the Southern Illinois






University School of Law, and she hopes to pursue a legal career in the area of juvenile law or child welfare law. She can be contacted at [mary.roesch@siu.edu](mailto:mary.roesch@siu.edu). ■

1. Illinois Department of Children and Family Services, *Child Death Review Team*, [https://www2.illinois.gov/dcf/aboutus/policy/Pages/com\\_communications\\_CDRT.aspx](https://www2.illinois.gov/dcf/aboutus/policy/Pages/com_communications_CDRT.aspx).
2. *Id.*
3. Sophia Tareen, *123 Children Died in 2019 Despite Contact with Illinois DCFS, Agency Inspector General Finds*, Chicago Tribune, January 6, 2020, <https://www.chicagotribune.com/news/breaking/ct-illinois-child-welfare-deaths-2019-20200106-hbrzua2rsb-d3rfyeoogwqmjfgi-story.html>.
4. Federal Aviation Administration, *Office of Accident Investigation and Prevention*, [https://www.faa.gov/about/office\\_org/headquarters\\_offices/avs/offices/avpl](https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/avpl).
5. Federal Aviation Administration, *Human Error and Commercial Aviation Accidents: A Comprehensive, Fine-Grained Analysis Using HFACS*, [https://www.faa.gov/data\\_research/research/med\\_humanfacs/oamtechreports/2000s/media/200618.pdf](https://www.faa.gov/data_research/research/med_humanfacs/oamtechreports/2000s/media/200618.pdf).
6. Federal Aviation Administration, *Order 8020.11C*, [https://www.faa.gov/documentLibrary/media/Order/8020.11C\\_.pdf](https://www.faa.gov/documentLibrary/media/Order/8020.11C_.pdf).
7. *Id.*



**ILLINOIS STATE  
BAR ASSOCIATION**

# DON'T PRACTICE WITHOUT US

 <b>Free On-Demand CLE</b>	 <b>E-Clips</b>	 <b>Fastcase</b>
 <b>ISBA Central Communities</b>	 <b>Illinois Lawyer Finder</b>	

**isba.org/membership-benefits**

**memberservices@isba.org | (800) 252-8908**