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August 10, 2000

Opinion No. 00-128

Confidentiality of Juvenile Court Records Pursuant to Tenn. Code Ann. § 37-1-153(a)(5)

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**QUESTIONS**

1. Does the media have a “legitimate interest” in juvenile court proceedings, particularly in reference to a “high profile case,” such that they have the right to inspect juvenile court records and files that are, otherwise, protected as confidential by Tenn. Code Ann. § 37-1-153(a)(5).

2. Do reports and files submitted as evidence at trial by the Department of Human Services (hereinafter “DHS”) and/or the Department of Children’s Services (hereinafter “DCS”) become a record of the juvenile court and cease being records of the submitting agency.

**OPINIONS**

1. No. The media’s interest in confidential juvenile court records and files as a source of potentially newsworthy information does not qualify as a “legitimate interest” within the meaning of Tenn. Code Ann. § 37-1-153(a)(5).

2. No. Even though reports and files submitted as evidence to the court by DHS or DCS become part of the juvenile court record, such reports still maintain their character as records of the submitting agency.

**ANALYSIS**

**I.**

Although Tenn. Code Ann. § 37-1-153(a) places strict limitations on the parties permitted to inspect juvenile court files and records, subsection (5) creates an exception, by permission of the court, for any “person or agency or institution having a *legitimate interest* in the proceeding or work of the court.”

Tenn. Code Ann. § 37-1-153(a)(5) (emphasis added). In determining which parties fall within this general exception, the word “interest” assumes central importance.

According to *Black’s Law Dictionary*, “interest” is the “most general term that can be employed to denote a right, claim, title or legal share in something.” *Black’s Law Dictionary*, 812 (6<sup>th</sup> ed. 1990). There is little controlling Tennessee case law to further expound on the definition of “interest” in the context of this statute; however, consideration of case law from other jurisdictions provides some guidance. Generally, a party may have an “interest” in the litigation, in the context of this statute, if: (1) the party has a property interest in the cause of action, *see Cimarusti v. Superior Court*, 94 Cal. Rptr.2d 336, 341 (Cal. Ct. App. 2000); *Ex Parte State Farm Fire & Cas. Co.*, 529 So.2d 975, 976 (Ala. 1988) (stating that a liability insurer of a child in a civil action had a right to prosecute its defense of the child’s claim through the use of confidential records and proceedings that are essential and material to its case); (2) the party will suffer any particular hardship if disclosure is prohibited, *see State of Wisconsin v. Bellows*, 582 N.W.2d 53, 60 (Wis. Ct. App. 1998) (citing *State, ex rel. Herget v. Circuit Court*, 267 N.W.2d 309 (Wis. 1978); or (3) the interest rises to the level of “compelling need.” *See In re Jessica, et al.*, 1999 WL 775753, at \*2 (Conn. Super. Ct. 1999).

For instance, the confidentiality of juvenile court records could be waived if “the information is essential to the plaintiff’s case and cannot be obtained with reasonable effort from other sources.” *Milz v. Threshermen’s Mut. Ins. Co.*, 1983 WL 161426, at \* 5 (Wis. Ct. App. 1983) (citations omitted). *See also, In re Jessica*, at \* 2 (stating that compelling need requires prior exhaustion of other means of discovery); *In the Interest of A.W., et al.*, 230 So.2d 200, 204 (Fla. Dist. Ct. App. 1970) (stating the grandparents had a proper interest in the proceeding for custody such that access to confidential records was appropriate). Also, confidentiality may need to yield “to the right of the defendant to be provided with material necessary to his defense.” *People v. McFadden*, 683 N.Y.S.2d 694, 695-96 (N.Y. Sup. Ct. 1998). Juvenile court records and files may also be released in order to protect the rights of a victim. *See In re Jessica*, at \* 2; *Thibodeaux v. Judge, Juvenile Div. of the Fourteenth Judicial Dist. Court*, 377 So.2d 508, 510 (La. Ct. App. 1979); *Hickey v. Eighth Judicial Dist. Court*, 782 P.2d 1336, 1338-39 (Nev. 1989) (stating that juvenile court records were properly disclosed as they related to a father’s negligence for the tortious conduct of his minor child). Further, the United States Supreme Court has held that a criminal defendant’s constitutional right to confrontation may outweigh the juvenile’s right to confidentiality. *Davis v. Alaska*, 415 U.S. 308, 319-20, 94 S.Ct. 1105, 1112, 39 L.Ed.2d 347 (1974). *See also, State v. Ness*, 1999 WL 451155 (Minn. Ct. App. 1999); *State v. Morales*, 630 P.2d 1015, 1018 (Ariz. 1981); *Commonwealth v. Two Juveniles*, 491 N.E.2d 234, 238 (Mass. 1986). Finally, the right to impeach even a juvenile witness may supercede the need to protect juvenile court records and files. *Daniels v. Nat’l Fire Ins. Co.*, 394 So.2d 683 (La. Ct. App. 1981).

Thus, it is clear, in the states surveyed, that a party with a “legitimate interest” in the proceedings extends beyond those whose sole concern is the best interest of the minor child. It is also clear that “legitimate interest” does not contemplate disclosure to parties “whose only interest [in the proceedings] is curiosity” since mere curiosity does not provide a property right or suggest hardship or compelling need. *Ex Parte State Farm Fire & Cas. Co.*, 529 So.2d at 977. Notwithstanding the rights granted by the

First Amendment, this limitation extends to the media as well as individuals since the “First Amendment generally grants the press no right to information about a trial superior to that of the general public.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 609-10, 98 S.Ct. 1306, 1317-18, 55 L.Ed.2d 570 (1978) (citations omitted). Accordingly, neither the media nor the public at large should have access to court files and records declared confidential by statute, *Abernathy v. Whitley*, 838 S.W.2d 211, 214 (Tenn. Ct. App. 1992), since the media has no right to discover information that is not generally available to the public. *Davis v. East Baton Rouge Parish Sch. Bd.*, 78 F.3d 920, 926-27 (5th Cir.1996). If this were not the case and the media were permitted to by-pass the general prohibitions of confidentiality, statutes requiring confidentiality would be of no effect since all confidential information would, essentially, be available to any inquiring eye. Thus, neither the media’s nor the public’s interest in confidential court files and records is sufficient to override the general confidentiality requirements of Tenn. Code Ann. § 37-1-153(a)(5).

## II.

All evidence presented at trial, oral or documentary, becomes a part of the trial court record. *See* Tenn. R. App. Proc. 29(a). Pursuant to Tennessee Rule of Evidence 803(6), reports created by DCS or DHS will be admitted into evidence as records of regularly conducted activity. Accordingly, these reports will become part of the trial court record.

Nevertheless, these reports do not lose their character as agency records simply because they have been included in the record of the trial court proceedings. Therefore, these reports must still receive the treatment due an agency record which is clearly demonstrated in the context of confidentiality. In reference to DCS records, Tenn. Code Ann. § 37-5-107(a) provides that:

[a]ny person or entity, including the commission, who is provided access to records under this provision shall be required to maintain such records in accordance with state and federal laws and regulations regarding confidentiality.

A similar provision for DHS records can be found in Tenn. Code Ann. § 71-1-131(a)(7)(A)(ii). Accordingly, a court in possession of DHS or DCS reports or files must honor the confidentiality required by statute - through redaction, closing the proceedings, or sealing the record - even though the agency reports or files have been entered as evidence into trial court proceedings and records that would otherwise be open for public viewing and inspection. *See State v. James*, 1995 WL 468433 (Tenn. Ct. App. 1995); *In re D.R.*, 624 N.E.2d 1120 (Ohio Comm. Ct. 1993); *State v. Hoke*, 520 S.E.2d 186, 197 (W.Va. 1999); *In the Matter of Katherine B.*, 596 N.Y.S.2d 847, 852 (N.Y. App.

Div. 1993). Thus, it is evident that, even as a part of a trial court record, DHS and DCS reports and files remain confidential agency documents.

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