IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

No. 45 WAP 2019
In the Interest of: D.R., a minor,
Appeal of: Fayette County Children and Youth Services.

No. 46 WAP 2019
In the Interest of: A.R., a minor,
Appeal of: Fayette County Children and Youth Services.

No. 47 WAP 2019
In the Interest of: G.R., a minor,
Appeal of: Fayette County Children and Youth Services.

No. 48 WAP 2019
In the Interest of: R.R., a minor,
Appeal of: Fayette County Children and Youth Services.

No. 49 WAP 2019
In the Interest of: C.R., a minor,
Appeal of: Fayette County Children and Youth Services.

BRIEF OF APPELLEE PARENTS

David J. Russo, Esq., PA ID 93191
192 West High Street
Waynesburg, PA 15370
724-627-9466
Counsel for Parents

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COUNTERSTATEMENT OF THE CASE

On Oct. 12th, 2018 Appellee Father was representing a client against Children and Youth Services of Greene County at the office of Greene County CYS. (RR 52a, 54a-55a, 103a-104a, 32a-34a) Greene County CYS is located in the Fort Jackson Building in Waynesburg Pennsylvania. (*Id.*) It should be noted that the Fort Jackson building and the Greene County CYS office are under high definition camera surveillance at all times. (*Id.*) On Oct. 12th, 2018 at the time of Appellee's presence at the Fort Jackson building there were numerous CYS workers, supervisors and employees present. (*Id.*)

Approximately 2 and ½ weeks later, on Oct. 29th, 2018 an anonymous reporting source initiated a referral though ChildLine alleging Appellee "appeared to be under the influence of an unknown substance", "with a child in his care", at the Fort Jackson building on the Oct. 12th, 2018 date. (RR 46a, 9a-10a) [It should be noted that no evidence has been submitted suggesting the police or authorities were contacted by CYS alleging Appellee was publicly intoxicated on the Oct. 12th, 2018 date. It should also be noted that under the Child Protective Services Law (hereinafter referred to as the CPSL) any CYS worker making a report under the CPSL must make said report within 24 to 48 hours of the alleged incident. There was no report filed against appellee with Childline or CYS before the Oct.

29th, 2018 report.]

Although no abuse or neglect was alleged against Appellee Father CYS, without notice to the Appellees went to Appellees' children's school on Nov. 2nd, 2018 and interrogated their 7-year-old child. (RR 47a, 56a, 11a) No evidence of abuse or neglect was found in the interrogation of the child and the caseworker found no safety concerns with said child. (RR 55a-56a)

Magically, a second "alleged" report was filed against Appellee Father on Nov. 5th, 2018 shortly after the interrogation of the child revealed no safety concerns. (RR 80a) The second report stated Father appeared somewhere in Washington County, PA "completely out of it". (RR 47a) No children were alleged to be with Appellee during the second report. (RR 48a) No abuse, neglect or failure to parent was alleged in the report. (RR 47a-48a) The second report was of an alleged observation in Washington County, Appellee lives in Greene County, but the report was made directly to Fayette County CYS by email, presumptively personal email! (RR 47a-48a, 67a-68a) Therefore, who ever made this alleged report was aware there was an open investigation in Fayette County. There would be no other reason why the report was made directly to Fayette County, especially by email. After the second report was made, CYS went back to the Children's school on Nov. 7th, 2018 and interrogated the remaining 4 children, again unbeknownst to Appellee Parents. Again, no safety concerns or evidence of abuse,

neglect or failure to parent was found with the children. (RR 69a, 78a)

Shortly after the second interrogation of Appellee's children resulted in no safety concerns or evidence of abuse or neglect, a third report was filed on Nov. 14th, 2018, and again was made directly to Fayette County Children and Youth services, this time by phone. (RR 62a-64a) The third report was even more vague, did not involve children and appeared to be a collection of rumors made collectively through a single reporting source. Although the full contents of the third report are unknown it has been disclosed through bits and pieces that the report stated, "many people are concerned Father has a serious problem", "Father may have injured himself", "Father may be taking a medication he shouldn't be on", "There is domestic violence in the home, charges filed and then dismissed because of Mother's refusal to testify" and so on. (RR 47a-49a, 62a-64a, 84a)

Thereafter, CYS allegedly went to the home on multiple occasions leaving letters at the home. CYS began calling Father's Law Practice repeatedly, leaving messages on the answering machine and demanding entry into the home and an "observable" urine sample from Father. (RR 89a) "Observable" urine sample was defined by the CYS Attorney Dedola as requiring himself and/or another male worker to observe Father's penis urinating into a cup. [It should be noted that this will never occur under any circumstances, regardless of penalty of law to Appellee Father] Father did contact CYS and spoke with them on more than one occasion

during Nov. /Dec. Father informed CYS he may be retaining an attorney so they would stop harassing his law office. (RR 72a-77a) CYS faxed a consent form to Appellee's law office which was never returned to CYS, nor ever signed. (Id.) CYS took it upon themselves to contact Noah Geary's law office without written consent or permission from Appellees, and disclose the case facts with him when they were specifically told not to by Father. (Id.) Shortly thereafter the phone calls stopped during the last 2 weeks of December 2018. It should be noted the Caseworker, "Tanisha Reed", who interviewed the children and who received the 2nd report by email magically stopped working for the agency between the dates of interviewing the children and the date CYS filed their Motion. (Id.)

On Dec. 14th, 2018, CYS filed a "Motion to Compel" cooperation with their investigation. (RR 9a) This "Motion to Compel" was filed (and apparently presented to the Greene County Court of Common Pleas) *ex parte* on the same date. (RR 9a, 15a) The Motion did not contain a verification, was not served on Appellee Parents, was not a "Petition" as required by the CPSL, and sat in the Court Administration/Clerk of Court's Office for 32 days before CYS decided to serve it on Parents. (RR 19a-25a) This was some 77 days after the first alleged report, 70 days after the second report and 61 days after the third report. (Id.) What should also be noted is that the day the Motion was presented to the Greene County Court, Dec. 14th, 2018, the Court recused itself before the Motion was presented, or

at the same time. (RR 13a-14a) What is more concerning is that after President Judge Toothman recused himself from the case he went back and entered an order 4 hours later sealing the case from Appellees so they would not have access or knowledge of the "Motion to Compel" until Attorney Dedola decided to serve parents with the Motion. (RR 15a) The order of "recusal", the order "sealing the record from parents" and the "Motion to Compel" sat for 32 days without serving Appellee Parents. Parents were not only ignorant of the fact any case actually existed until they were served in Jan. 2019 with the Motion, they have never been given access to the sealed envelopes in the case record.

On Jan 15th, 2019 two CYS workers appeared at Appellee Father's law practice and served Appellees with the Motion to Compel. (RR 19a) The Motion to Compel was then presented a second time to the Court on January 18th, 2019. (RR 19a, 35a-36a)

Having no proper notice, Father quickly filed objections, a Motion for Recusal and a request for a continuance. (RR 31a-36a) Although Appellee Father has two active cases with Judge Solomon he denied all motions except for a continuance, and then only continued the case 10 days depriving Appellees adequate time to seek counsel or prepare for the case.

10 days later, over the objections of Appellees a hearing took place before Judge Solomon. As a result of said hearing, Judge Solomon issued an order forcing

Appellees to comply with CYS, allow CYS into their home and forced Appellee Father into multiple "observable" urine tests for the agency. Failing to comply with the order would result in sanction against Mother and Father. (RR 39a, 40a) It should be noted Mother was under a court order, and facing sanctions when no report was ever filed against her, no allegations made against her nor was CYS requesting an order against her. Judge Solomon took it upon himself to issue an order against Mother for no reason but to force Father's compliance. (Id.)

Several points of contention should be noted. First, there has been no abuse, neglect of failure to parent alleged against either appellant. It was admitted by Appellant, Agency that no abuse or neglect had been alleged against Father, only that there were concerns…of possible intoxication with a child present. (See Appellant's reproduced record at pg. 78a, line 17-25) Although CYS had no cause to interrogate Appellee's 5 children, they were all taken out of class, informed CYS was going to question them and then questioned thoroughly by a case worker. It must also be noted, Appellant stated on record these random, observable urine tests are routine in the agency's investigation. (See Appellant's reproduced record at pg. 90a, line 1-4)

SUMMARY OF THE ARGUMENT

The Appellee's case raises, *inter alia* issues of statutory construction of CPSL law and the permissibility of government drug testing of private citizens based on random hearsay information submitted by anonymous sources when no actual statutory authority exist for such government intrusion, the application of said "observable" urine testing as a "search and seizure" under the scrutiny of Fourth Amendment, U.S. Constitutional protections and protections under Article I, Section 8 of the Pennsylvania Constitution. This case also raises issues of public policy concern arising out of the application such forced "observed" drug testing on private citizens where no probable cause exists for said testing, and the subsequent ramifications of refusal to comply with such personal government intrusion.

Appellees are the parents of 5 children. Appellee Father is an attorney who practices in Greene County, Pennsylvania. On October 12, 2018 Appellee, Father was representing a client against Children and Youth Services of Greene County Pennsylvania in the Fort Jackson building in Waynesburg, Pennsylvania. Said interactions were under high definition video monitoring at all times. Nothing concerning happened during Father's stay at the county office building. Some two and a half weeks later, on Oct. 29, 2018 an "alleged" report was made and referred

to Fayette County Children and Youth Services alleging Father was at the Fort Jackson building in Greene County 2 ½ weeks earlier and "appeared to be under the influence of an unknown substance" and allegedly had a child in his care. No allegation of "abuse of neglect" was made. 2 additional reports were made to CYS neither of which concerned children. CYS interview the 5 children and found no concerns of abuse or neglect. CYS thereafter filed a Petition to enter the Parents house, force "observable" urine testing on Father and thereafter force parents' full compliance with said "investigation". The Court thereafter entered an order granting all relief. Said issues were appealed and the order was found to be procedurally defective, statutorily defective and constitutionally defective by the Superior Court of Pennsylvania. The only issue before the Supreme Court is whether forcible "observed" urine testing on private citizens is permissible by a government agency when no statutory authority exists for said search, and when no probable cause exists for a Fourth Amendment "Search and Seizure".

Appellee's contend that CYS lacks the statutory authority under the CPSL (Child Protective Services Law) to execute, with or without a court order "observable drug testing" on private citizens in a "free" society pursuant to anonymous unverified allegations and without a finding of dependency as defined by the CPSL.

Parents further contend that the application of forced "observable" urine

testing of private citizens amounts to a clear warrantless "Search and Seizure" under Fourth Amendment to the U.S. Constitution and Article I, Section 8 of the Pennsylvania Constitution and requires the same standard of criminal probable cause to execute said search.

Parents also contend that the implication of random drug testing without "probable cause" will lead to the unjust physically forced urine testing of private citizens, the imprisonment of said private citizens for failing to comply court orders compelling said drug testing, or will lead to the inevitable exile of said parents from their children by creating a statutorily "unrecognized" reason to place children in foster care or remove them from their parents to force compliance with said "observable" urine testing.

ARGUMENT

I. The is no statutory authority permitting forced drug testing of private citizens during CPSL investigations.

The Superior Court of Pennsylvania found in previous appellate history of this case "we conclude that there is no statutory authority for a CYS agency to petition for a drug test prior to a dependency adjudication." *In the Interest of D.R.*, 216 A.3d 286.

Counsel will first address the proverbial "elephant" in the room. Child and

Youth Services was investigating the "report" against Father under **55 Pa. Code § 3490.55. Investigation of reports of suspected child abuse.** In order for the initial investigation to take place there must have been a report of "child abuse" as defined by the statute. The only report against father containing the allegation that a child was present was that he appeared under the influence of an unknown substance, at the Fort Jackson building 2 ½ weeks earlier. This occurred while Father was with CYS and CYS staff, yet CYS found nothing concerning, or abuse of any kind in that if they did see any concern they had 48 hours to report said abuse or call the police to assist. Yet Appellant is asking the court to determine this report as one of child abuse under the statute. Child is abuse is clearly defined as: **55 Pa. Code § 3490.4. Definitions.** A cursory reading of the definition of abuse clearly evidences that there was no right to start an investigation against Appellees to begin with. Allowing such a report to be construed as child abuse will sure open the door for any phone call made to CYS, regardless of the allegation being claimed investigable. Again, Appellant openly admitted that there was no abuse or neglect alleged against Father. (RR 78a)

The investigation of the "alleged" report under **55 Pa. Code § 3490.55(d)** grants CYS the authority to do several things, none of which is to forcibly subject parents to "observable" urine testing. [See **55 Pa. Code § 3490.55(d)(1-7)**] The Superior Court properly recognized this in its opinion and ruling on Parents case.

For the Supreme Court of Pennsylvania to allow such drug testing would go beyond interpreting the statutes and CPSL law and engage in an act of creating statutory law where none exist. The Supreme Court allowing the drug testing of parents during a CPSL investigation would amount to nothing less than creating a statutory provision in the CPSL in opposition to the Statutory Construction Act.

Commonwealth v. Rushing, 99 A.3d 416 (2014)

"To determine the legislature's intent with respect to the phrase "place of isolation," 18 Pa.C.S.A. § 2901(a), we necessarily turn to the Statutory Construction Act. 1 Pa.C.S.A. §§ 1501 *et seq*. The objective of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Id. § 1921(a). The best indication of the legislature's intent is the plain language of the statute. When considering statutory language, "[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage." Id. § 1903(a). Further, when the words of a statute are clear and unambiguous, there is no need to go beyond the plain meaning of the language of the statute "under the pretext of pursuing its spirit." Id. § 1921(b) Thus, only when the words of a statute are ambiguous, should a reviewing court seek to ascertain the intent of the General Assembly through considerations of the various factors found in Section 1921(c). Id. § 1921(c); see generally Bayada Nurses Inc. v. Com. Dept. Labor and Indus., 607 Pa. 527, 8 A.3d 866, 880-81 (Pa. 2010)."

A detailed review of the Appellants brief clearly evidences he can cite no statutory authority for a compelled drug test of private individuals during a CPSL investigation. Appellant's only argument is that **Pa. Rule of Civil Procedure, Rule 1915.8 Custody and Visitation Provisions,** *explanatory comment* allows for the drug testing of private individuals during custody disputes. This Rule is not

applicable to CPSL investigation as persons in child custody disputes have availed themselves to the jurisdiction of the court, they are not involuntarily being forced into investigation/litigation by CYS on anonymous, unverified hearsay reports, or in the present case double, and potentially triple hearsay reports.

It should be noted that CPSL law is governed by the Pa. Rules of Juvenile Procedure, which are complete and very detailed. The Pa. Rules of Custody and Visitation are approximately 20 pages long, as compared to the Pa. Rules of Juvenile Procedure, Dependency, which are approximately 49 pages long. Just by volume alone it can be deduced the state legislature did not intend the courts to borrow the Child Custody rules to supplement the Juvenile Rules. This also leads way to the massive amount of legislation and policies in the Pennsylvania Code, Pennsylvania Department of Health and other provisions promulgated regarding the CPSL which contain no statutory authority for drug testing private citizens as a means of investigation. The Appellant also cites *Luminella v. Marcocci*, 814 A.2d 711 (Pa. Super 2002), a child custody case allowing the drug testing of parents in child custody cases. Said case again has no relevance in the CPSL arena because the rules and law defining the intrusions into the life of private citizens during CPSL investigations is governed by the Pa. Rules of Juvenile Procedure and 55 Pa. Code § 3490. To extend *Luminella* supra. to CPSL investigations allows CYS to continue to merge any rule they see fit in the Pa. Rules of Civil Procedure,

Criminal Procedure or otherwise into the Pa. Rules of Juvenile Procedure and therefore supplement CPSL at their convenience.

Wherein this Court would add a statutory provision allowing the Urine Testing of private citizens in CPSL investigations or find that the Pa. Rules of Civil Procedure can supplement the Juvenile Rules to allow such testing of individuals it then constitutes a search and violates Constitutional "Search and Seizure" protections.

II. Subjecting private citizens to observable urine testing in CPSL investigations violates the search and seizure provisions of the Fourth Amendment to the U.S. Constitution and Article I Section 8 of the Pennsylvania Constitution.

The **Fourth Amendment to the U.S. Constitution** specifically states:

"The right of the People to be secure in their persons (*emphasis added*), houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the placed to be search and the things to be seized."

U.S. Const. amend. IV.

Article I, Section 8 of the Pennsylvania Constitution provides:

§ 8. Security from searches and seizures

"The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor

without probable cause, supported by oath or affirmation subscribed to by the affiant."

The Courts have clearly ruled that the taking of blood, breath, or urine as parts of the body, excrement or bodily expulsion by the government is a search pursuant to Fourth Amendment standards. "The Amendment thus prohibits "unreasonable searches," and our cases establish that the taking of a blood sample or the administration of a breath test is a search." See *Skinner v. Railway Labor Executives' Assn.*, 489 602, 616—617 (1989); *Schmerber v. California*, 384 U.S 757, 767-768 (1966)

See also: **SUPREME COURT OF THE UNITED STATES on Writ of Cert.** "BIRCHFIELD, PETITIONER 14-1468 v. NORTH DAKOTA" Requiring a Search Warrant and Criminal Probable Cause for the issuance of said warrant for body fluids.

There has been a clear determination by the courts that taking urine, blood or breath samples constitutes a search of the body, or "person" as the U.S. Constitution defines it. Any grant of power to a government agency extending drug testing provisions under CPSL investigations would be subverting the warrant provisions of the U.S. Constitution and Pennsylvania Constitution. Clearly "Probable Cause" is needed when allegations are made by anonymous sources and collected through hearsay information, or in this case double hearsay leading to the

government's desire to conduct a search of the body. In Appellees case, the agency argues that through the testimony of Supervisor Pegg the agency had shown that "probable cause" exists. Upon the review of the hearing transcript it is obvious that the Supervisor had not spoken to anyone; none of the reporting sources and none of the children. For some reason the agency avoided bringing anyone to the hearing that had spoken to either the reporting sources or the children. This amounts to a warrant being issued on double hearsay, i.e. the Supervisor said, that a caseworker said, that a reporting source said something, and no one testified that the reporting source actually saw anything, or if they were going on rumor. This is at the very minimum double hearsay, if not triple hearsay or further removed. CPSL anonymous reporting doesn't meet the most minimum standard of "informant" based warrants.

"In the case of *In the Interest of O. A.*, 552 Pa. 666, 717 A.2d 490 (1998), our Supreme Court explained that the reliability of an informant should be established by some objective facts that would enable any court to conclude that the informant was reliable. The Supreme Court also reiterated the principle espoused in *Gates* that where the reliability of the informant is not established, then the facts and circumstances surrounding the tip must provide sufficient indicia of reliability to support a finding of probable cause."

See *Commonwealth v. Smith*, 2001 PA Super 284 (2001)

In the instant case the only testifying witness was the supervisor who could not testify to taking any of the reports, only that she was told about the reports by case workers who took the reports from anonymous reporting sources. No

determination of credibility was or could be made and the order should never have been issued, as probable cause is needed to effectuate a search warrant of the body.

Issue II(a) The Observing of urinating genitalia of private citizens by untrained medical professionals invokes privacy expectations protected by the Fourth Amendment to the U.S Constitution and Pennsylvania Constitution.

The Court has already determined CPSL investigations are subject to Fourth Amendment protections. *In re Petition to Compel* ,875 A.2d 365 (2005) "We hold that the CPSL and specifically 55 Pa. Code § 3490.55(i), which mandates a "home visit" at least once during the investigation period, are subject to the limits of existing Fourth Amendment jurisprudence." *In re Petition to Compel,* supra. "Although it does not constitute binding precedential authority on this court, we agree with the federal courts' analysis in *Good, supra*, and *Walsh*, and hold that the Fourth Amendment and Article I, Section 8 apply to the CPSL and the regulations written to implement it." *In re Petition to Compel,* supra. at 377 Appellant's argument is certainly a stretch wherein they request the court interpret the CPSL to allow drug testing during investigations wherein no statutory authority exist, but in the event this Court the court makes that leap over the plain text of the statute and finds that the statute allows for drug testing of private individuals, who are not under criminal indictment and do not have children dependent on the agency the court should recognize the Forth Amendment protections have already been

applied to CPSL investigations and this particular area of "observable urine testing" infringes on the most private aspects of a person's lives requiring constitutional protections.

Appellant is requesting that he or one of his workers be allowed to view Father's penis urinating. It must be recognized that if the court grants this request this case will apply to both men and women alike across the state of Pennsylvania. Therefore, appellants request is to have his agency view penises and vaginas. Appellant, nor his case workers are medically trained personal. Caseworkers are generally, 18 to 24 years of age with little education and no medical training or medical education, hence young kids some of which can't even buy cigarettes in Pennsylvania as the age of purchasing tobacco has been increased to 21.

Appellee contends, there can be no more of an expectation of privacy then in one's own genitalia, hence this is why we wear cloths. The question as to whether this privacy interest is equal to the expectation of privacy we have in our houses/homes can be answered by the entrance into the home by an authorized individual, which would result in the individual being charged with crime, therefore we have a great expectation of privacy that our homes will not be entered unlawfully. The same analysis can be applied to the unauthorized viewing of someone's genitalia, which would also result in a crime, therefore we have an

expectation of privacy in our genitalia not being see by unauthorized individuals.

The expectation of privacy in not having our genitalia observed by young non-medical personal, no less observing the genitalia urinating must also be scrutinized under First Amendment Constitutional rights. All individuals have a right to freely practice religion in the United States. The Court finding that Fourth Amendment Protections do not apply to "observable urine drug testing" would infringe on those individuals who religion, culture or belief(s) do not allow their person or their spouse to have their genitalia observed by third persons.

"There are few activities in our society more personal or private than the passing of urine. Most people describe it by euphemisms, if they talk about it at all. It is a function traditionally performed without public observation; indeed, its performance in public is generally prohibited by law, as well as social custom." *Skinner* supra. at 617 (quoting *Nat'l Treasury Emps. Union v. Von Raab*, 816 F.2d 170, 175 (5th Cir. 1987)).

In determining the intrusiveness of a urine test the Court must consider what complete information can be gained from the test. Technology has advanced so quickly in the last decade. It is possible to use DNA from your urine to find your family ancestry, all of your medical problems and potential genetic medical problems. You family origin, your eye color and your genetic makeup can all be

ascertained through your DNA. (See http://www.forensicdnacenter.com/forensic-faqs.html#3) See also *Theodore v. Del. Valley Sch. Dist.*, 575 Pa. 321(2003) citing "State-compelled toxicological (blood, breath, or urine) testing is a search for purposes of the Fourth Amendment, as well as for purposes of Pa. Const. art. I, § 8." Due to the intrusiveness of the compelling of "observed urine testing", the religious, cultural and privacy factors offensive to the individual being tested and/or their spouse, any random drug testing must meet and comply with the constitutional protections afforded by the Fourth Amendment to the U.S. Constitution and Article I, Section 8 of the Pennsylvania Constitution and should be prohibited in CPSL investigations as previously ruled upon by the Superior Court of Pennsylvania.

It should again be noted that CPSL investigations are based on hearsay information from anonymous sources wherein no investigation into the reliability of the reporting source is made or presented before investigation. Allowing the random drug testing of private citizens by non-medical personal with the exposure of urinating genitalia based upon hearsay information from anonymous reporting sources undermines the very foundation of a free society.

Issue II(b) The privacy expectation of persons subject to urine testing and protections afforded to those individuals by the Fourth Amendment of the U.S. Constitution outweigh the probability of finding evidence of abuse in a CPSL investigation.

It must be recognized in the Appellee's case that no actual allegation of abuse was made to the Appellant. The only "report" that was made concerning a child was the first report, which did not contain an actual allegation of abuse, only that Father appeared under the influence of an unknown substance and had a child with him. The actual request for "observed urine testing" in an attempt to prove Father has a substance in his system 2 ½ weeks after the alleged citing of Father, only went to prove the possibility of Father having a substance in his system weeks later, not at the time of the report. Again, Father was at CYS, under high definition camera surrounded by CYS employees yet no concerns were made by CYS, the police were not called or protective custody was not sought after by CYS and the video footage was never reviewed or sought after by CYS of Fayette County. After all five children were interviewed CYS concluded there was no evidence or concern of abuse with the children. "As we interpret the statute and agency regulations, C&Y must file a verified petition alleging facts amounting to probable cause to believe than an act of child abuse or neglect has occurred and evidence relating to such abuse will be found in the home." *In re Petition to Compel* supra. at 377. In Appellees case no act of abuse or neglect was alleged and any evidence

from a urine test would not have evidenced an act of abuse or neglect. See, e.g., *Schmerber v. California*, 384 U.S. 757, 769-70 (1966) ("The interests in human dignity and privacy which the Fourth Amendment protects forbid any such intrusions [beyond the body's surface] on the mere chance that desired evidence might be obtained.")

In Appellee's case no abuse or neglect was alleged, urine testing Father weeks later would not have lead to evidence of abuse or neglect, and on the mere suspicion that Appellant might find something in Appellee's urine the Fourth Amendment protections against unlawful search and seizure protect individuals from such personal and intimate government intrusion (such as observing a urinating penis (or vagina)) and outweigh any alleged government interest Appellant contends in his brief.

CYS interviewed all five of Father's children and found no evidence of child abuse or neglect. (RR. 68a-69a). The result of a drug test of Father's urine, especially coming three months after the initial allegations, would not alter CYS's apparent conclusion that there was no evidence of child abuse or neglect and the basic minimum discovery would be the potential for Father having something in his urine.

Essentially, if no abuse or neglect has been alleged, as admitted by Appellant, the presence of a drug in someone's system evidences only that there

was "potentially" a drug used by the investigated, at some point in time in the past, assuming the drug test is accurate. The intrusion of forcing an individual into an observed drug test far outweighs the governments in proving nothing more than gathering evidence of speculation, that a drug may have been present at some point in time in the past in the person's system. There is simply no probative value in the gathering of such evidence. *In re Petition to Compel* (Id.) requires evidence of the abuse to be found in the place searched before the government intrusion can even be considered, no less meet the standard of probable cause needed to warrant the intrusion.

III. The enforcement of compelled drug testing of private citizens leads to public policy concerns resulting from an individual's right to refuse being subjected to "observable urine testing".

This Court finding that the CPSL statutorily allows the random drug testing of parents before their children have been adjudicated dependent on the agency, or by court order, not supported by sufficient Fourth Amendment probable cause will inevitably lead to the forcible extraction of bodily fluids, the incarceration of parents for refusing to comply, or the exile of parents from their children by creating an un-codified and non-statutory reason to apply for a shelter care order and remove children into foster care for failing to comply with observed drug testing.

Appellant admittedly did not have sufficient evidence to file a dependency case against parents or adjudicate the children in Appellee's case. This was the reason the case was filed as a Juvenile Misc. case and not a Dependency Action, there was no actual allegations of abuse or neglect and no evidence of abuse or neglect. The Appellant admitted at the hearing that there was no abuse alleged. Only that there were concerns…of possible intoxication with a child present. (See Appellant's reproduced record at pg. 78a, line 17-25) Additionally it must be stated that Appellant agency fully admitted to the court that this was a "routine" practice to drug test individuals without an allegation of abuse or neglect. (See Appellant's reproduced record at pg. 90a, line 1-4) Given the Appellant/agencies admission that there is no abuse or neglect involved in this case, and that the forcible observable drug testing is a routine practice, the inevitable consequences of not complying with said drug testing must analyzed. Additionally, the court's order promised sanctions if the order was not complied with, so any remand of the order compelling Father to comply will be met with sanctions when not complied with. These are the same repercussions and punitive measures all individuals subject to this testing will be met with if compliance is not acquiesced to.

In the event the police have a warrant to enter a home, failing to open the door results in forced entry, violent in nature to the residents. When the court issues an order, or a warrant for a DNA sample of a prisoner, or criminally indicted

person and the person refuses to comply the sample if forcibly taken. In DUI circumstances, if a person fails to comply with a breath test their license is automatically surrendered for a year, regardless of guilt of the DUI itself. If a prisoner goes on a hunger strike the court can order them to be forcible fed by the guards. If someone convicted of a crime and is under "adult probationary supervision" and refuses to comply with a drug test the court violates the individual on their probation and send them to jail. In all of these circumstances the individual is a ward of the state or criminal probable cause has been established for the search. In the Appellee's case there is no allegation of criminal activity, indictment, or search warrant established by criminal probable cause.

Failure to comply with a civil court order can result in civil contempt sanctions. "The purpose of a civil contempt order is to coerce the contemnor to comply with a court order." *See* Gunther v. Bolus, 2004 PA Super 8, 853 A.2d 1014, 1016 (Pa. Super. 2004), *appeal denied*, 578 Pa. 709, 853 A.2d 362 (2004). "In civil contempt, the contemnor "is able to purge himself of the contempt and thus holds the key to the jailhouse door"; that is, he may relieve himself of the sanction by complying with the court's order." Diamond v. Diamond, 715 A.2d 1190, 1194 (Pa. Super. 1998). In Appellee's case, as will be in all similar cases the order was filed as a Juvenile Misc. case, civil in nature. Failure to comply may result in imprisonment with the purge condition to comply, urinate in front of a

caseworker and expose your penis or vagina to them. Essentially, the effect of granting Appellant's issue will be to give statewide authority to fill the prisons with individuals who are alleged to be on drugs by anonymous hearsay reports and refused to show their penises or vagina's to caseworkers.

The only other foreseeable impact resulting from failing to comply with the Appellant's routine activities of drug testing individuals will be to take the non-complying parties' children through a "shelter care order" for emergency custody, essentially exiling them from their parents. The impact on dependency law will be to essentially grant cause for adjudication if a parent does not comply with "observable urine testing" based on allegations of impairment or drug use without an actual report of abuse or neglect and without establishing criminal probable cause for a warrant.

The negative implications of granting Appellant's requested relief will only lead to continued violation of constitutional rights of Pennsylvania parents, unjustifiable enforcement or "observed urine test", harassment against parents by anonymous reporting sources based on hearsay, and the unjustifiable exile of parents from their children.

Conclusion

Pennsylvania CPSL contains no statutory provision allowing for the drug testing of individuals in CPSL investigations. Any statutory creation by the court allowing for the permissible "observable urine testing" will result in the violation of thousands of Pennsylvania parents' constitutional rights, the wrongful persecution and prosecution of those parents, and/or the unjustified exile and removal of children from their parents. For the aforementioned reasons Appellee(s) respectfully request this court to affirm the decision of the Superior Court of Pennsylvania vacating the court's order.

PROOF OF SERVICE

I hereby certify that on this date I am serving the foregoing documents upon the persons and in the manner indicated below:

Service by regular U.S. first class mail, addressed as follows:

Attorney for Appellant
Anthony S. Dedola
51 East South Street
Uniontown PA, 15401

THE LAW OFFICE OF DAVID J. RUSSO, ESQ.

By:_____
DAVID J. RUSSO, Esquire
Attorney for Appellee

CERTIFICATE OF COMPLIANCE

Pursuant to the Pa. Appellate Rules of Procedure, Rule 2135 Appellee certifies that this brief complies with the word count limitation. Appellee's brief contains less than 7,000 words, more specifically according to the word processor word count Appellees brief contains 6,236 words.

By: _____
DAVID J. RUSSO, Esquire
Attorney for Appellee

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the Public Access Police of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Date: Jan 2, 2020

David J. Russo, Esquire