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**Domestic Violence Centers Retain Confidentiality Right**

by Emily Umbright

Joining the ranks of lawyers and religious clergy, domestic violence shelters hold the right to protect confidentiality of their residents, the Missouri Supreme Court ruled on Tuesday - even in instances of suspected child abuse and neglect.

The decision came after a juvenile officer alleged a mother residing at Hope House, located in Independence, Mo., failed to provide stable housing for her two children, who, the officer claimed, were also placed in danger as a result of the mother's involvement in a violent domestic relationship.

After two hearings in which the Jackson County juvenile division awarded custody rights to the mother under supervision, the officer, in seeking a modification as well as in making the allegations, subpoenaed the director of Hope House and any records pertaining to the mother and her children.

When the juvenile division denied the shelter's motion to quash the subpoena, Hope House appealed, seeking a writ of prohibition based on Section 455.220 RSMo 2000, which sets out the confidentiality requirements given to domestic violence shelters.

Confidentiality serves the purpose of protecting the women fleeing abusive relationships from their abusers, the shelter argued, in addition to displaying a level of trust that keeps women coming back to the shelter.

"If the victim's residence at a shelter is discovered by the abuser," Judge Richard B. Teitelman demonstrated in the opinion, "not only is the victim's safety imperiled, but the safety and security of other shelter residents is threatened as well.

"The secrecy of these communications is necessary not only as a corollary to the requirement that the victim's identity be protected, but also to encourage victims to seek refuge from their abusers without fear of retribution for informing third parties about the abusive relationship," he reasoned later.

State funding is also contingent upon confidentiality compliance, Hope House attorney Mary Weir added.

“They must comply with those confidentiality requirements,” she said. “That’s what the statute says, so if they were to violate those, the statute says they will lose their funding.”

In direct conflict to the statute governing confidentiality of domestic violence shelters was Section 210.140, which the juvenile officer relied upon in an effort to obtain the records.

Section 210.140 limits confidentiality to communication strictly between a client and attorney or a confessor and a clergyperson in instances of suspected child abuse or neglect.

“The only limitation that could apply in this case is that on a legally recognized ‘privileged communication,’ which the statute does not define,” Teitelman defined. “By its plain meaning, a ‘privileged communication’ is a traditionally recognized evidentiary privilege, such as physician-patient and husband-wife.”

The Supreme Court differentiated between the “privileged communication” described in Section 210.140 and the confidentiality requirements found in Section 455.220 by determining the confidentiality requirements serve the purpose of protecting someone’s life, “not simply to foster open communication.”

“Furthermore, unlike the limited scope of the privileged communications referenced in section 210.140, the section 455.220 confidentiality requirements also apply to an array of information beyond any communications between a resident and shelter worker,” Teitelman rationalized. “Even the resident’s identity must remain confidential.

“Finally, the confidential requirements may not be waived at any time except at the option of the resident when testimony is ordered,” he continued. “The section 455.220 confidentiality requirements are not privileged communications within the meaning of section 210.140.”

While the majority found the consequences of the confidentiality requirements weighed more heavily on the outcome than the definition of privileged communication, a minority, voiced by Judge Stephen N. Limbaugh Jr., dissented.

“On the whole, the best interests of children who are at risk due to abuse or neglect are not well served by section 455.220, because it creates a testimonial privilege that precludes the discovery and admission of evidence that children have been abused or neglected by a parent,” Limbaugh wrote in attempt to reconcile the two statutes.

“Instead, the best interests of children are better served by a truth-seeking process in which all testimony and other evidence relevant to the allegations of abuse and neglect are discoverable and admissible,” he continued. “Indeed, that is the very purpose of section 210.140 - to promote the best interests of children at risk by eliminating the privilege in order to further that truth-seeking process.”

While he found the confidentiality requirements perilous to children suspected of abuse victim, Limbaugh emphasized his opinion that such requirements only be waived in instances where abuse or neglect is suspected.

According to statistics cited in the opinion from the U.S. Department of Justice, an estimated 2 million women are assaulted by partners each year. Such attacks result in “at least 21,000 hospitalizations, 99,800 days in the hospital, and 39,000 visits to personal physicians annually in the United States,” Teitelman took from American Medical Association statistics.

In addition to the threat of lost state funding posed by not meeting confidentiality requirements, Weir said that federal law imposes compliance with a code of confidentiality in order to receive funding.

“It really clears it up because shelters know there’s this law that says we’ve got to protect confidentiality and at times are faced with subpoenas for records,” she said, “and now they’ve got a ruling that certainly clears it up.”

Chief Judge Ronnie L. White and Judges Michael A. Wolff and Laura Denvir Stith made up the majority that concurred with Teitelman. Judges Duane Benton and William Ray Price Jr. joined Limbaugh in the dissent.

State ex rel. Hope House Inc., realtor, vs. Commissioner Molly M. Merrigan, circuit court of Jackson County, Missouri Family Court Division, respondent; No. SC85638; Handed down April 13.

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