

Domestic Violence Agency Wins Missouri Supreme Court Protection of Records

[In a major victory for the Missouri domestic violence movement, on April 13, 2004 the Missouri Supreme Court affirmed that staff and volunteers of domestic violence shelters have an absolute statutory right to confidentiality of communications with the women and children to whom they provide services.]

[To read the full Supreme Court decision, go to the Website of the Office of State Courts Administrator, [<http://www.osca.state.mo.us/>] Click on the Supreme Court, then click on opinions. Under 4/13/04, click on State ex rel Hope House Inc...for the full opinion. – Colleen Coble Missouri Coalition Against Domestic Violence Executive Director]

This slip opinion is subject to revision and may not reflect the final opinion adopted by the Court.

Opinion, Supreme Court of Missouri

Case Style: State ex rel. Hope House, Inc., Relator v. Commissioner Molly M. Merrigan, Circuit Court of Jackson County, Missouri, Family Court Division, Respondent.

Case Number: SC85638

Handdown Date: 04/13/2004

Appeal From: Original Proceeding in Prohibition

Counsel for Appellant: Mary F. Weir

Counsel for Respondent: Polly S. Bartle, Melissa A. Stanosheck, Teresa L. Steelman, A. Renae Adamson, Lynn W. Judkins

Opinion Summary: In September 2002, Maria Martinez left her two children with a caregiver at the New House domestic violence shelter. The children were placed in protective custody, and in November 2002, the juvenile division of the circuit court ordered that the children remain in their mother's custody under the supervision of the division of family services. Martinez and her children subsequently moved from three different domestic violence shelters, the last being Hope House, Inc. The juvenile division held dispositional hearings in January and July 2003 and both times maintained the children in Martinez's custody. The juvenile officer subsequently sought to modify disposition, alleging that Martinez failed to maintain stable housing because she lived in three different domestic violence shelters between October 2002 and January 2003, when

she was discharged from Hope House, and that she had been involved in a domestically violent relationship. During the course of the ensuing litigation, Hope House's director was served a subpoena duces tecum ordering her to appear and to produce any and all of the shelter's records relating to Martinez and her children. Hope House filed a motion to quash the subpoena, but the juvenile division overruled the motion. Hope House seeks a writ of prohibition.

WRIT MADE ABSOLUTE AS MODIFIED.

Court en banc holds: The court abused its discretion in requiring Hope House to produce statutorily protected information.

(1) Section 455.220.1(5), RSMo 2000, codifies the strict confidentiality policy necessary for a shelter effectively to provide a safe harbor for domestic violence victims. This statute prohibits shelters from releasing any potentially identifying information about the domestic violence victim, including name, former residences, place of employment and the victim's physical description, as well as from releasing information about the advocacy services the shelter provides to the individual. By its terms, the statute requires all shelter workers or volunteers, even those who do not directly work with victims, to maintain confidentiality at all times.

(2) Under section 455.220.2, an individual cannot waive the section 455.220.1(5) confidentiality requirement until testimony is sought regarding shelter records and information, even if making such a waiver at an earlier time would benefit that individual. When information or records are requested, the decision of whether to waive confidentiality is left to the individual.

(3) Section 210.410, RSMo 2000, limits application of some evidentiary privileges in situations involving abuse and neglect. The only limitation that could apply in this case is that on a legally recognized "privileged communication," which the statute does not define. By its plain meaning, a "privileged communication" is a traditionally recognized evidentiary privilege, such as physician-patient and husband-wife.

(4) The section 455.220 confidentiality requirements are not legally privileged communications subject to the limitations of section 210.140. The confidentiality requirements apply to all shelter workers and volunteers, regardless of whether they have any contact with the individual resident. They also apply to an array of information beyond communications between a resident and a worker, as even the resident's identity and location must remain confidential. Confidentiality under section 455.220 is mandated to ensure the physical safety of all persons involved with the shelter and cannot be waived except at the resident's option when testimony is ordered.

Dissenting opinion by Judge Limbaugh: The author would find that the court was justified in ordering Hope House to produce its records and would quash the writ. The author notes that a statutory conflict arises because section 455.220 establishes a legally recognized privilege that presumably applies to communications involving child abuse

and neglect, while section 210.140 mandates that legally recognized privileges (except those pertaining to attorneys and to clergy) shall not apply to communications involving child abuse and neglect. The author would resolve the conflict in light of the overriding expression of legislative intent, stated in section 211.011, RSMo 2000, that the “child welfare policy of this state is what is in the best interests of the child.” The author writes that, to the extent the section 455.220 confidentiality rules encourage domestic violence victims to seek the protection of shelters for themselves and their children, that benefit is outweighed by the detriment caused when the parent seeking shelter may be abusing or neglecting the children. The author would hold that section 210.140 constitutes an exception to the confidentiality rules of section 455.220 in cases of child abuse or neglect.