June 18, 2019

New Jersey Appellate Division Rules in Favor of Day Pitney Pro Bono Client, Holds Indigent Defendants Have a Right to Counsel in Administrative Child Abuse Proceedings

In a case of first impression, the New Jersey Appellate Division held yesterday that someone charged with substantiated child abuse by the state has a constitutional right to appointed counsel, even if she cannot afford counsel, in administrative proceedings commenced after the charges are filed and on any related appeals. The Court found that the consequences of a substantiated finding of child abuse are so severe and the proceedings are sufficiently complicated, that counsel is necessary under the New Jersey Constitution. The Court also reversed the finding of child abuse and remanded the matter for further proceedings before the Office of Administrative Law.

A mother of an 11 year old girl had been charged with substantiated child abuse by the state of New Jersey as a result of interference with child reunification therapy between the father and daughter. Although an Administrative Law Judge had found in favor of the mother, the Division of Child Protection and Permanency reversed and placed her on the Child Abuse Registry. The mother had attempted to appeal the decision but had been initially unsuccessful. The New Jersey Supreme Court appointed Michael K. Furey, Esq. of Day Pitney as the mother's counsel on a pro bono basis, remanding the case to the Appellate Division for further proceedings. Mr. Furey and Michael Fialkoff, Esq., also of Day Pitney, represented the mother before the Appellate Division. They refiled and briefed the mother's appeal. Mr. Furey argued the appeal before a three-judge panel of the Appellate Division.

This is the first time the courts have recognized a right to counsel in administrative proceedings in New Jersey. It is presently uncertain whether the state will appeal the decision to the Supreme Court or pursue the child abuse charges against the mother.

Key Contacts



Michael L. Fialkoff

Partner

Parsippany, NJ | (973) 966-8139

mfialkoff@daypitney.com



Michael K. Furey

Of Counsel

Parsippany, NJ | (973) 966-8110

mfurey@daypitney.com