

## White and Williams Obtains Dismissal of Civil Rights Claims Against Medical Providers Arising From A Child Abuse Evaluation

4.2.18

On April 2, 2018, the United States District Court for the Middle District of Pennsylvania issued its decision in *K.S. v. O'Dell, et al.* and dismissed civil rights claims brought against two physicians who performed a medical evaluation during a child abuse investigation. The court held that Plaintiffs failed to state viable claims for a deprivation of substantive due process and an unlawful seizure, and denied leave to amend, holding that any amendment would be futile.

White and Williams was retained to defend two physicians from civil rights claims arising from a medical evaluation they performed at the request of a local child protective services agency (CPS). At the time, CPS was in the midst of a child abuse investigation due to their receipt of several reports that the child at issue had possibly been abused by the mother's boyfriend.

During their evaluation, the physicians observed unusual bruising and scratches on the child, however, the child's mother and her boyfriend could not provide credible explanations for these injuries. When asked how he was injured, the child repeatedly told the physicians that his mother's boyfriend had caused the injuries. Based on the results of their evaluation and the child's medical history, the physicians ultimately suspected non-accidental trauma as the cause of the injuries and reported their findings to CPS.

The mother's boyfriend was subsequently arrested and charged with assault. Months later, these charges were dropped after the child's mother secured an opinion from a hematologist who opined that the child had a blood disorder which could explain some, but not all, of the child's injuries.

Plaintiffs filed suit against the physicians under 42 U.S.C. § 1983, alleging: (i) a deprivation of substantive due process in violation of the Fourteenth Amendment and (ii) an unlawful seizure in violation of the Fourth Amendment. The crux of Plaintiffs' claims was that the physicians had misrepresented the scope of their work-up, because Plaintiffs believed the work-up should have included specialized testing to determine whether the child had a certain blood disorder.

Drawing on favorable case law obtained in similar matters, the White and Williams team moved to dismiss the complaint, arguing that the Plaintiffs had improperly recast a non-actionable difference of medical opinion as a "misrepresentation." Simply put, the law allows medical providers in such situations to exercise their independent medical judgment in issuing diagnoses and deciding whether to make a mandated report of suspected child abuse. Therefore, allegations that more testing should have been done cannot form the basis of a civil rights claim.

The Middle District agreed and held that the Plaintiffs' claims were neither misrepresentations nor valid. Moreover, the court held that the physicians were not state actors for purposes of the boyfriend's arrest and, therefore, could not be liable for the police's actions. As a result, the court dismissed all of the Plaintiffs' claims against the physicians with prejudice and denied leave to amend as futile.

The physicians were represented by Charles Eppolito, III and Geoffrey F. Sasso.

