

Children's Law Center of Indiana



CHINS

1/26/10

In **Anonymous Hospital v. A.K.**, 920 N.E.2d 704 (Ind. Ct. App. 2010), an interlocutory appeal, the Court reversed the trial court's denials of Hospital's petition for preliminary determination of law and motion for summary judgment in a child abuse reporting medical malpractice case initiated by the child's parents. The parents (Parents) took their eleven-month-old daughter to the hospital due to an unexplained fever. The treating physician at Hospital ordered a urine analysis. Lab analyses of two urine samples were found to contain sperm. Based upon the lab results, Hospital personnel contacted Child Protective Services and law enforcement to advise them of the situation. The child was admitted to the hospital and during her hospitalization, a third urine sample was obtained and analyzed, but no sperm was found to be present in the sample. Two days after the child's hospital admission, Child Protective Services came to Hospital, investigated, and gave permission to discharge the child from Hospital. During the investigation, a detective spoke with the child's twelve-year-old step-brother, who admitted that he had masturbated, had not cleaned himself, and had held the child while she was unclothed. Hospital's pathologist told the detective that there were no signs of penetration, and the findings were most compatible with external contamination by semen. Parents filed a complaint against the Hospital, alleging medical malpractice. IC 34-18-11-1 provides that trial courts can make preliminary determinations on affirmative defenses or issues of law or fact while the proposed complaint is pending with the medical review panel. Hospital filed a petition for preliminary determination and motion for summary judgment in the trial court while the complaint was pending with the panel. The trial court held a hearing and denied Hospital's petition and motion. Hospital appealed.

Appellate Court's standard of review is whether there exists a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. *Id.* at 706. All facts and reasonable inferences drawn therefrom are construed in favor of the non-movant. *Id.*

The Court determined that Hospital was immune from liability for reporting suspected child abuse and there was no evidence to rebut presumption that Hospital acted in good faith. *Id.* at 708. The Court noted IC 31-33-5-1, -2, and -4 which require an individual who has reason to believe that a child is a victim of child abuse or neglect to immediately make a report to either the Department of Child Services or the local law enforcement agency. *Id.* at 706.

A person who makes such a report is immune from both civil and criminal liability for doing so; however, immunity will not attach if the person making the report has acted maliciously or in bad faith. IC 31-33-6-1 and -2. *Id.* at 707. The person making the report is presumed to have acted in good faith. IC 31-33-6-3. *Id.* Parents complained of four examples of purported bad faith, which they maintained destroyed Hospital's statutory immunity. Parents' examples of bad faith on the part of Hospital were: (1) Hospital reported suspected abuse before a managing care doctor became involved in the case; (2) there was a question whether the second urine sample was collected and/or tested prior to authorities becoming involved in the case; (3) a "wet specimen" was not obtained until after the authorities were notified; (4) the father's request to independently test the specimens was denied. The Court was not persuaded by Parents' arguments of purported bad faith, stating: (1) the fact that Hospital reported possible child abuse without delay suggests that Hospital had a good faith belief that the child was in immediate danger; (2) there is no requirement that a managing care doctor must be involved in a decision to report suspect child abuse or neglect, and the statute makes clear that time is of the essence in such a situation by requiring that abuse or neglect "shall be immediately" reported; (3) two different analyses of the child's urine showed sperm and either one of them would trigger the duty to report; there is no requirement that a reporter wait for confirmation from a second test; (4) the father's request for independent testing was made one month after the visit to Hospital; therefore Hospital's response to the father's request to obtain the samples had no bearing on Hospital's good faith in reporting at the time of the incident. *Id.* at 707-08.

The Court concluded that Hospital's immunity extended to the underlying examination, tests, and diagnosis that triggered the report of suspected child abuse. *Id.* at 710. Parents claimed that Hospital's testing of the child's urine was negligent and the results were erroneous; therefore, Hospital's statutory immunity for reporting suspected child abuse did not extend to Hospital's negligent misdiagnosis. The Court, having found no case law on this subject from Indiana courts, found case law from other states to be persuasive. *Id.* at 708. For example, in D.L.C. and J.L.C. v. Walsh, 908 S.W.2d 791 (Mo. Ct. App. 1995), in response to a father's and daughter's medical malpractice action against physicians and a hospital for alleged negligent misdiagnosis of child sexual abuse, the Missouri Court of Appeals determined that the state's statutory immunity applied not only to the report of suspected child abuse but also to the underlying diagnosis, because the Missouri statute provided immunity for anyone "participating" in the "making" of a report. D.L.C. at 798, quoted in Anonymous Hospital at 708. The Court noted that IC 31-33-6-1 provides immunity for any person who "makes or causes to be made" a report of suspected child abuse, which is similar to the language of the Missouri statute. *Id.* The Court also reviewed Hazlett v. Evans, 943 F. Supp. 785 (E.D. Ky. 1996), in which the hospital and physician who reported suspected child abuse of a one-month-old child with a brain injury were sued by parents for wrongful misdiagnosis of Shaken Baby Syndrome. In determining whether the physician could be held liable for misdiagnosis of the child which resulted in the report of suspected child abuse, the district court noted that other courts across the country have determined that "the intent of the immunity statutes are to ensure that health care professionals and others who work with children will not be stifled and unwilling to report such abuse for fear of reprisal from upset and sometimes wrongly accused parents." Hazlett, 943 F. Supp. at 787-88,

quoted in Anonymous Hospital at 709. The Hazlett court reasoned that unless parents could show bad faith on the part of the doctor when he reported the suspected child abuse, he should be afforded the immunity granted by statute for his reporting as well as his underlying diagnosis. Anonymous Hospital at 710.

The Court also considered the purposes for the child abuse reporting statute as stated by the Indiana state legislature at IC 31-33-1-1, namely: (1) to encourage effective reporting of suspected child or neglect; (2) to provide prompt investigation of reports of child abuse or neglect; and (3) to provide protection for an abused or neglected child from further abuse or neglect. Id. at 709. The Court stated that: (1) the legislature's stated goals are better met when individuals attempting to comply with the reporting statute can do so without fear of civil liability; (2) to decide otherwise would have a chilling effect on the reporting of child abuse; (3) health care providers would be placed in a "Catch 22" – report suspected abuse and be subject to civil liability, or fail to report suspected abuse and be subject to criminal liability; this illogical result cannot be what our legislature intended. Id. The Court determined that, having found no evidence of bad faith, the immunity provided to Hospital pursuant to IC 31-33-6-1 includes immunity not only for the report of suspected abuse, but also for the underlying examination, tests, and diagnosis that triggered such report. Id. at 710. The Court in so holding joined the ranks of several courts across the country that have determined that statutory immunity applies not only to the report of suspected child abuse, but also to the underlying diagnosis, including courts in Georgia, Wyoming, Iowa, Ohio, and Michigan.