An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-625

No. COA20-875

Filed 16 November 2021

Wake County, No. 17 CVS 7610

DAVID GORLESKY, Plaintiff,

v.

CABARRUS COUNTY DEPARTMENT OF SOCIAL SERVICES, Defendant.

Appeal by Plaintiff from judgment entered 25 August 2020 by Judge William R. Bell, Judge Phyllis M. Gorham, and Judge Rebecca W. Holt in Wake County Superior Court. Heard in the Court of Appeals 22 September 2021.

*Batch, Poore, & Williams, PC, by Sydney Batch and J. Patrick Williams, for Plaintiff-Appellant.*

*Cabarrus County Attorney, Richard M. Koch, for Defendant-Appellee Cabarrus County Department of Social Services.*

*Attorney General Joshua H. Stein, by Assistant Attorney General John H. Schaeffer, for amicus curiae.*

WOOD, Judge.

¶ 1 Plaintiff David Gorlesky ("Plaintiff") appeals a judgment from a panel of three superior court judges ("the panel") finding N.C. Gen. Stat. § 7B-302 constitutional and denying Plaintiff declaratory relief. In his sole argument on appeal, Plaintiff

contends the panel erred in finding Section 7B-302 constitutional. After careful review of the record and applicable law, we affirm the judgment of the panel.

## I. Factual and Procedural Background

¶ 2 Plaintiff and his wife were licensed foster care parents with Children's Home Society. Through Children's Home Society, Plaintiff and his wife fostered two minor children. After the children were in Plaintiff's care for approximately one year, Plaintiff filed a petition to adopt the minor children.

¶ 3 On July 25, 2016, one of the minor children was injured while in Plaintiff's care. Following this incident, the Burke County Department of Social Services ("Burke County DSS") accepted a report alleging child abuse. The minor children were removed from Plaintiff's home upon the commencement of the investigation of the allegations. However, Burke County DSS had a conflict of interest and transferred the case to Cabarrus County Department of Social Services ("Cabarrus County DSS").

¶ 4 On September 21, 2016, Cabarrus County DSS substantiated the allegations of child abuse. Specifically, Cabarrus County DSS found one of the minor children suffered a non-accidental injury caused by Plaintiff. Eight days later, on September 28, 2016, Plaintiff requested that the Cabarrus County DSS Director, Ben Rose ("Rose"), review the abuse substantiation. Rose "thoroughly reviewed the . . .file as it relates" to Plaintiff and "thoroughly reviewed the [Cabarrus County DSS] file which

resulted in the substantiation of abuse" and found "[t]he evidence more than met the legal standard of preponderance of the evidence required by N.C. Gen. Stat. § 7B-323(b)." The North Carolina Department of Health and Human Services ("NCDHHS") ombudsman also reviewed the relevant files and "did not dispute the substantiation of abuse as found by [Cabarrus County DSS]." Thereafter, Cabarrus County DSS informed Plaintiff it would place him on the Responsible Individuals List ("RIL").[1] Rose did not meet with Plaintiff to discuss the decision.

¶ 5 In October 2016, Plaintiff filed a petition for judicial review, seeking to prevent Cabarrus County DSS from placing his name on the RIL. In February 2017, Cabarrus County DSS conceded it did not timely notify Plaintiff of its substantiation of abuse. Because Cabarrus County DSS did not timely notify Plaintiff of its substantiation, it did not place Plaintiff on the RIL. Cabarrus County DSS did not overturn its substantiation of abuse and reported "the substantiation of abuse to the Central Registry maintained by DHHS."[2] The minor children were not returned to

---

[1] Pursuant to N.C. Gen. Stat. § 7B-311(b), the North Carolina Department of Health and Human Services must maintain a list of responsible individuals. This list may be provided to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children.

[2] Pursuant to N.C. Gen. Stat. § 7B-320, the director of a county department of social services is required to notify the perpetrator of abuse or neglect of the substantiation of maltreatment and the department's intent to place the perpetrator's name on the RIL. N.C. Gen. Stat. § 7B-320 (a)-(c) (2020). Here, Cabarrus County DSS did not timely notify Plaintiff of the substantiation of abuse. When Cabarrus County DSS "filed the mandatory proceeding

Plaintiff's care, and Plaintiff's foster care license expired. Plaintiff sought licensure through a different foster care agency but was denied. He has not obtained re-licensure as a foster parent, alleging this is "due to his name being included in the Central Registry of abuse and neglect." Plaintiff purports to have been informed that so long as his name remained on the Central Registry, he would not qualify for foster parent licensure and no children would be placed in his care.

¶ 6 Thereafter, Plaintiff filed a compliant for declaratory judgment, arguing N.C. Gen. Stat. § 7B-302 was unconstitutional. A panel of three Superior Court judges was assigned to hear Plaintiff's case.[3] After hearing arguments, the panel found N.C. Gen. Stat. § 7B-302 constitutional. Plaintiff timely appealed, but his notice of appeal inadvertently misstated the statutory authority under which Plaintiff had a right to appeal. Thereafter, Plaintiff filed a petition for writ of certiorari ("PWC") seeking review of his appeal. In our discretion, we deny Plaintiff's PWC.

## II. Discussion

¶ 7 In his sole argument on appeal, Plaintiff contends the panel erred in finding Section 7B-302 constitutional when it found instances where Section 7B-302 can be

---

for determination of [Plaintiff's] placement on the [RIL], [Plaintiff's] counsel . . . filed a motion to dismiss on the basis of untimely notice. Because notice was not timely, [Cabarrus County DSS]" did not place Plaintiff's name on the RIL.

[3] Pursuant to N.C. Gen. Stat. § 1-267.1(a1), "any facial challenge of an act of the General Assembly . . . shall be heard and determined by a three-judge panel of the Superior Court of Wake County." N.C. Gen. Stat. § 1-267.1(a1) (2020); *see also* N.C. Gen. Stat. § 1-81.1(a1); N.C. Gen. Stat. § 1A-1, Rule 42(b)(4).

applied constitutionally. We disagree.

¶ 8 Generally, "in a declaratory judgment action where the trial court decides questions of fact, we review the challenged findings of fact and determine whether they are supported by competent evidence." *Calhoun v. WHA Med. Clinic, PLLC*, 178 N.C. App. 585, 596-97, 632 S.E.2d 563, 571 (2006) (citation omitted), *disc. review denied*, 361 N.C. 350, 644 S.E.2d 5-6 (2007). We review the trial court's conclusions of law *de novo*. *McConnell v. McConnel*, 151 N.C. App. 622, 626, 566 S.E.2d 801, 804 (2002) (citation omitted). However, this Court reviews constitutional challenges *de novo*. *Cooper v. Berger*, 370 N.C. 392, 413, 809 S.E.2d 98, 110-11 (2018) (citations omitted). "In exercising *de novo* review, we presume that laws enacted by the General Assembly are constitutional, and we will not declare a law invalid unless we determine that it is unconstitutional beyond a reasonable doubt." *Id.* at 413, 809 S.E.2d at 111 (citations omitted) (emphasis added).

¶ 9 "A facial challenge to a legislative [a]ct is, of course, the most difficult challenge to mount successfully." *U.S. v. Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 2100, 95 L. Ed. 2d 697, 707 (1987). There is a presumption that "any act passed by the legislature is constitutional, and the court will not strike it down if such legislation can be upheld on any reasonable ground." *Ramsey v. N.C. Veterans Comm'n*, 261 N.C. 645, 647, 135 S.E.2d 659, 661 (1964) (citation omitted). A plaintiff challenging a statute as facially unconstitutional "must establish that no set of circumstances

exists under which the [a]ct would be valid." *Salerno*, 481 U.S. at 745, 107 S. Ct. at 2100, 95 L. Ed. 2d at 707. In contrast, an "as-applied" challenge requires the Court to determine whether a legislative act is a reasonable regulation as applied to this particular plaintiff. *See State v. Whitaker*, 201 N.C. App. 190, 204, 689 S.E.2d 395, 403 (2009) (citation omitted).

¶ 10 In the present appeal, Plaintiff argues the trial court erred in finding N.C. Gen. Stat. § 7B-302 constitutional. Section 7B-302 provides the process by which a director of social services must assess reports of abuse, neglect, and dependency. N.C. Gen. Stat. § 7B-302 (2020). Section 7B-302(a) requires the director of the department of social services to conduct either a family assessment or an investigative assessment. N.C. Gen. Stat. § 7B-302(a). Thereafter, Subsection (a) mandates the director to determine the extent of the abuse, neglect, and risk of harm to the juvenile and whether protective services are necessary. N.C. Gen. Stat. § 7B-302(a), (c).

¶ 11 Subsection (a1)(1) of Section 7B-302 provides, "[t]he department shall disclose confidential information to any federal, State, or local government entity or its agent, or any private child placing or adoption agency licensed by [NCDHHS], in order to protect a juvenile from abuse or neglect." N.C. Gen. Stat. § 7B-302(a1)(1). Plaintiff argues Section 7B-302 is unconstitutional because, while a perpetrator may appeal the decision to place his name on the RIL, there is "no such procedural due process . . . to allow alleged perpetrators of serious neglect or abuse to challenge

substantiations of neglect or abuse that result in their names being placed in the Central Registry that is maintained [NC]DHHS." *See* N.C. Gen. Stat. § 7B-302(a1)(1); N.C. Gen. Stat. § 7B-323. Plaintiff further contends that the disclosures of Section 7B-302(a1)(1) permit county departments of social services to provide the identity of perpetrators on the Central Registry.

¶ 12 Once the department of social services substantiates abuse or neglect, the decision is recorded in the Central Registry. N.C. Gen. Stat. § 7B-311(a). The Central Registry is maintained by NCDHHS and is a confidential database that contains information pertaining to "abuse, neglect, and dependency cases and child fatalities that are the result of alleged mistreatment." N.C. Gen. Stat. § 7B-311(a). The Central Registry is maintained "for study and research and for other appropriate disclosure." N.C. Gen. Stat. § 7B-311(a).

¶ 13 In addition to maintaining the Central Registry, NCDHHS maintains a list of responsible individuals. N.C. Gen. Stat. § 7B-311(b). The RIL may be provided to "child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children." N.C. Gen. Stat. § 7B-311(b). Access to the Central Registry is limited to:

> (1) staff of the Division of Social Services and staff of the Office of the Secretary of the Department of Health and Human Services who require access in the course of

> performing duties pertinent to management, maintenance and evaluation of the [C]entral [R]egistry and evaluation of and research into abuse and neglect cases reported in accordance with Chapter 7B, Article 3. . . .

10A N.C. Admin. Code 70A.0102(b)(1) (2020). Other individuals who may access the Central Registry include: "individuals who may receive approval to conduct studies of cases in the [C]entral [R]egistry"; "the county director in order to identify whether a child who is the subject of an abuse, neglect or dependency investigation has been previously reported as abused or neglected"; or "the Chief Medical Examiner's office and law enforcement in the event of a child fatality and there is a need to determine if their investigation . . . should consider" maltreatment. 10A N.C. Admin. Code 70A.0102(b)(2-4). While the RIL "shall identify parents, guardians, caretakers or custodians who have been identified as responsible individuals," information in the RIL "shall be used exclusively for the purpose of determining current or prospective employability or fitness to care for or adopt children." 10A N.C. Admin. Code 70A.0102(c); *see also* N.C. Gen. Stat. § 7B-311(b) (permitting NCDHHS to provide information from the RIL, not the Central Registry, "to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services.").[4]

---

[4] While this Court previously held that a deprivation of a liberty interest occurs when an individual is placed on the RIL without notice and an opportunity to be heard, Plaintiff

¶ 14 Notably, Plaintiff does not contend N.C. Gen. Stat. § 7B-311 is unconstitutional; rather, Plaintiff challenges the validity of Section 7B-302. Plaintiff's argument appears to conflate the two statutes, as he argues that being placed upon the Central Registry without a hearing deprived him of a liberty interest while challenging the wrong statutory section. Plaintiff specifically argues that "[t]he trial court erred in finding [Section] 7B-302 constitutional when it found that there are instances where the statute can be applied constitutionally."

¶ 15 The panel recognized Plaintiff's conflation of the two statutes, noting Section "7B-302 does not include any discussion of the processes related to the Central Registry at all. As Plaintiff acknowledges in its brief, placement of the alleged offender's name on the Central Registry is governed by [N.C. Gen. Stat.] § 7B-311." The panel further noted, "A review of [N.C. Gen. Stat.] § 7B-302 confirms that this statute does not address the disclosure of an alleged perpetrator's name from the Central Registry." Ultimately, the panel concluded that

> [w]ithout evidence of a clear nexus between the disclosures a county department of social services is authorized to make pursuant to [N.C. Gen. Stat.] § 7B-302 and the disclosure of an alleged perpetrator of abuse's name from the Central Registry to third parties, this Court cannot find that [N.C. Gen. Stat.] § 7B-302 is unconstitutional in all of its applications.

---

was not placed on the RIL. *See In re W.B.M.*, 202 N.C. App. 606, 617, 621, 690 S.E.2d 41, 48, 52 (2010).

A careful review of the applicable law reveals Section 7B-302 requires the director of a county department of social services to reveal "whether there is a finding of abuse, neglect, or dependency, whether the . . . department . . . is taking action . . ., and what action it is taking" to the person reporting an allegation of abuse, neglect, or dependency. N.C. Gen. Stat. § 7B-302(g). Nothing within Section 7B-302 permits a county department of social services to disclose the identity of a perpetrator of abuse, neglect, or dependency to third parties.

¶ 16 Moreover, the panel correctly noted that there are numerous instances in which Section 7B-302(a1)(1) could be applied constitutionally. These examples include but are not limited to instances where a child was abused or neglected but a county department of social services is unable to confirm the identity of the perpetrator, or a previously abused child is about to be adopted. In both examples, the identity of the alleged perpetrator is not a necessary disclosure.

¶ 17 After careful review, we hold the panel did not err in concluding Section 7B-302 is constitutional when it found there are circumstances in which it could be applied constitutionally. Although Plaintiff contends the disclosures of Section 7B-302(a1)(1) would permit a county department of social services to disclose the identity of an individual on the Central Registry, Section 7B-302(a1)(1) does not use the term "perpetrator." Moreover, only the State Department of Health and Human Services may disclose information on the Central Registry under certain enumerated

circumstances. *See* 10A N.C. Admin. Code 70A.0102. Accordingly, Cabarrus County DSS was without the authority to disclose Plaintiff's information on the Central Registry.

## III. Conclusion

¶ 18 In our discretion, we deny Plaintiff's PWC and affirm the judgment of the panel because Plaintiff has pursued an action under the wrong statute, against the wrong defendant. It is so ordered.

AFFIRMED.

Judges DILLON and COLLINS concur.

Report per Rule 30(e).