No. 18-

IN THE

Supreme Court of the United States

ABHIJIT PRASAD,

Petitioner,

v.

WILL LIGHTBOURNE, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL-SIXTH APPELLATE DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

In 2010, Petitioner Abhijit Prasad was investigated by Defendants' California child welfare agency, who told Prasad he was reported to the Child Abuse Central Index ("CACI"), a database established pursuant to California's Child Abuse and Neglect Reporting Act ("CANRA"), for alleged sexual abuse of his daughters, as reported by the mother. Further, that he would remain listed until age 100, although Prasad was never charged or convicted of a crime. California's Sixth District Court of Appeals ruled the "sub-standard investigation", as determined by the trial court, is sufficient for a parent's lifetime inclusion in CACI. (*Prasad v. Lightbourne*, Mar 14, 2018 decision, H043780, unpublished, App. *infra*, 30a.) On June 13, 2018, the California Supreme Court denied review of that ruling in case number S247924, App. *infra*, 52a.

CANRA and associated regulations compel California child welfare agencies to investigate child abuse allegations and place individuals in CACI, which is maintained by California's Department of Justice ("DOJ"). Inclusion occurs prior to affording any due process rights. Inclusion in CACI immediately deprives an individual of their reputation and the fundamental rights to family privacy and autonomy, employment and freedom from police surveillance.

CANRA allows for a post-deprivation hearing by way of an administrative hearing, which is conducted by a hearing officer, selected by Defendants, who has no legal knowledge, skills, or training, to determine whether it is "more likely than not that abuse occurred", with the caveat that a hearing is only required in certain circumstances.

1) Does CANRA's post-deprivation hearing scheme violate due process?

2) Is CANRA's "substantiated" requirement for CACI listing unconstitutional?

3) Does CANRA violate equal protection?

4) Does CANRA violate separation of powers?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

The parties to the proceeding in the court whose judgment is sought to be reviewed are:

1) Abhijit Prasad, Plaintiff, and Petitioner.

2) County of Santa Clara, Defendant, and Respondent.

3) Will Lightbourne, in his official capacity as the Director, Department of Social Services, County of Santa Clara, Defendant, and Respondent.

There are no corporations involved in this proceeding.

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JURISDICTION OF THE SUPREME COURT

The jurisdiction of this Court to review the Judgment of the Sixth District Court of Appeals decision, and denial of Review by the California Supreme Court on June 13, 2018, is invoked under 28 U.S.C. § 1257(a).

"Because it is my name! Because I cannot have another in my life . . .

> *How may I live without my name? I have given you my soul; leave me my name!*"

—Arthur Miller, *The Crucible*

TO THE HONORABLE CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT

I. Issues Presented

1. Whether California Penal Code Sections 11169, subd. (a), and 11165.12 which mandate for a substantiated referral, lifetime inclusion in the CACI database based on a Social Worker's "Sub-standard Investigation", and whose Investigation did not comply with the California Penal Code, California Manual of Policies and Procedures, and the regulations contained in the California Administrative Code, violates the Due Process Clause of the Constitution?

2. Whether California Penal Code Sections 11169, subd. (a), and 11165.12 which mandate for a substantiated referral, lifetime inclusion in the CACI database based on an opinion of a Social Worker, and DCFS' Hearing

Officer, who have no legal knowledge, skills, or training, to determine "more likely than not that abuse occurred", violates the Due Process Clause of the Constitution?

Pursuant to the United States Constitution, and the 5th and 14th amendments, Petitioner respectfully submits review should be granted, for the reasons set forth below.

Review is necessary to resolve conflicts for lifetime inclusion in California's Child Abuse Central Index and national databases that share information, by and states and the federal government; between State laws, Appellate Districts, and Federal Decisions, which is necessary to secure uniformity of decision, and to settle important questions of law for the application of the Due Process and Equal Protection Rights of the individuals who face lifetime inclusion in the national databases. State law, Appellate Districts, and Federal decisions have long questioned - and many times rejected - current standards for inclusion of a parent, relative or guardian for lifetime inclusion in CACI national databases.

II. Right of the Reported Person(s) In Different States, To Review And Challenge Records In Child Abuse And Neglect Databases.

Many States use the records that are maintained in central registries for background checks for persons seeking employment to work with children and for prospective foster and adoptive parents. Those databases of information are then shared among the states and federal government, without a court order. Therefore, several due process and protection issues arise, when a State maintains a central registry that identifies

individuals accused of and found to have committed child abuse or neglect, even though no criminal charges have ever been filed, or a criminal conviction obtained.

In some States, persons whose names are listed as alleged perpetrators in a central registry have asserted that the listing of their names and personal information in the registry deprives them of a constitutionally protected interest without due process of law.

A. The Pending Georgia Supreme Court Decision

In *Georgia Department of Human Services Et Al. v. Addison*, No. S18A0803 the Georgia Supreme Court heard oral arguments on May 9, 2018 to decide very similar issues, as those raised herein. There, the State is appealing a Dougherty County court ruling that declares Georgia's Child Abuse Registry unconstitutional. In that case, the appeal stems from a lawsuit brought by five Dougherty County teachers and school administrators, including Loy Addison. According to the State, following a series of incidents in which several students allegedly groped other students, a child abuse investigator for the Dougherty County Division of Family and Children Services substantiated reports of child abuse on the basis that the five teachers and school administrators were inadequately supervising the students. Subsequently, all five were placed on the Child Abuse Registry. Tammy Frazier, a child abuse investigator for the Dougherty County Division of Family and Children Services, did an investigation. Following her investigation, Ms. Frazier concluded that each allegation of child abuse due to inadequate supervision had been substantiated. Like California in Georgia, a "substantiated case" means child

abuse has been confirmed based upon a "preponderance of the evidence." Also Georgia, like California law requires the name, age, sex, race, Social Security number, birthdate, and a summary of the case be included on the registry. Access to the information on the registry is available in some states only to child abuse investigators, their designees, law enforcement, and any state agency that licenses entities related to childcare services. In Georgia, unlike California, an individual there placed on the list, has 10 days after receiving notice to file a written request for a hearing before an administrative law judge. An adverse ruling by the administrative law judge may be appealed to the superior court and then to Georgia's appellate courts.

There, after receiving Notices of Inclusion, Addison and the others promptly requested a hearing before the administrative law judge to appeal Frazier's determinations. Prior to the administrative hearing, the five also filed a lawsuit in Dougherty County Superior Court against the State and three of its officers in their official and individual capacities, challenging the constitutionality of the registry. In their petition, they sought a "declaratory judgment" from the court, asking the court to "declare" the registry unconstitutional, and injunctive relief, asking the court to command or prevent certain actions. Following a hearing, the trial court ruled in their favor, declaring Georgia Code § 49-5-180 through § 49-5-187, as well as the rules and regulations governing the Child Protective Services Information System, unconstitutional. The trial court prohibited the State from including any of the five teachers and administrator as a substantiated child abuser on the computerized Child Abuse Registry and from disclosing any of the information. The State now appeals to the Georgia Supreme Court.

There, the State argues the State Supreme Court should reverse the superior court's order. First, the claims by Addison and the others against the State and the named defendants in their official capacities are barred by sovereign immunity – the legal doctrine that protects the government or its departments from being sued without consent. "Absent a legislative waiver, sovereign immunity bars suits for injunctive and declaratory relief against the State, its departments and agencies, and its officers and employees sued in their official capacities – even when the relief sought pertains to the constitutionality of a state statute," the State argues in briefs. Second, the superior court should have dismissed the lawsuit for failure to exhaust administrative remedies. "By ruling on Appellees' [i.e. Addison et al.] petition for declaratory judgment and injunctive relief before that hearing took place, the superior court violated the well-established rule that courts may not interrupt administrative proceedings in process or grant declaratory relief concerning a constitutional question that could have been raised on appeal from the administrative decision," the State argues. Third, the trial court erroneously invalidated the registry on various constitutional grounds. It erred in holding that the registry statute violated due process and equal protection. And, it erred by holding that the actions of the child abuse investigator violated separation of powers under the Georgia Constitution. "The investigator was not acting in a combined executive and judicial capacity in substantiating claims of abuse against Appellees because, among other things, her substantiations were subject to review by an Administrative Law Judge…," the State's attorneys argue.

Attorneys for Addison and the other school officials argue the trial court correctly ruled that Georgia Code § 49-5-180 through § 49-5-187, and the rules and regulations governing the Child Abuse Registry, are unconstitutional. They allow the Division of Family and Children Services to investigate an allegation of child abuse, and then "unilaterally" place an individual on the registry prior to affording the individual any due process rights, including the right to notice and an opportunity for a hearing. A person placed on the registry, "is immediately deprived of one's reputation and the fundamental rights to family privacy and autonomy, employment, and freedom from police surveillance," the attorneys argue in briefs. As in California, the Attorneys there argued in their briefs, "Furthermore, the child abuse investigator "is given unconstitutional statutory authority to be the investigator of the facts of an alleged act of child abuse and at the same time given judicial authority to rule on the sufficiency of the evidence" to place an individual on the registry in violation of separation of powers." There, as in Prasad, the investigator – Frazier – conducted a "cursory, careless, and haphazard investigation" into the allegations, concluding they were "substantiated" without "weighing the evidence" available to her and without knowing the definition of "preponderance of the evidence," the State argues. And, although an individual placed on the registry may appeal to an Administrative Law Judge, such a judge "has no authority to rule on a challenge to the constitutionality of any statute or rule," the attorneys contend. They therefore properly raised their constitutional claims in the superior court. The school officers' attorneys also argue that sovereign immunity does not bar their claims. They carefully crafted their petition to be consistent with the Georgia Supreme

Court's 2017 decision in *Lathrop v. Deal,* 801 S.E.2d 867 (2017), which stated that state officials may be sued in their individual capacities to prevent them from attempting to enforce an unconstitutional statute, the State contends.

B. Current State Statutes Fail To Comply With Due Process Rights Of Individuals Placed In The Databases.

In California, *Penal* Code section 11170(a)(2) provides that the submitting agency is responsible for the accuracy and completeness of the report required by CANRA and states that the DOJ is only responsible for ensuring that the CACI accurately reflects the report it receives from the submitting agency. Accordingly, the DOJ presumes that the information provided by the submitting agency on the Child Abuse or Severe Neglect Indexing Form ("BCIA 8583") is accurate. The DOJ does not conduct an investigation to verify the accuracy of the information submitted nor does it investigate the quality or accuracy of the abuse or severe neglect investigation conducted by the submitting agency.

C. No States Have A Specific Provision Allowing Minors To Challenge Inclusion In These Databases.

In California, Parents, but not minors, who had been erroneously listed in California's CACI satisfied "plus" criterion of the "stigma-plus" test for determining whether reputational harm qualifies as liberty interest protected under Due Process Clause; tangible burden was imposed on parents' ability to obtain rights or status recognized by state law, since state statutes mandated

that licensing agencies search CACI prior to granting some rights and benefits including receiving placement or custody or relative's child, and since CACI would be reflexively consulted prior to conferral of other legal rights even absent statutory mandate. U.S. Const. Amend. XIV; Cal. Penal Code § 11170(a, b). *Humphries v. County of Los Angeles*, 554 F.3d 1170 (9th Cir. 2009), as amended, (Jan. 30, 2009).

Approximately 30 States, the District of Columbia, American Samoa, and Puerto Rico provide an individual the right to request an administrative hearing to contest the findings of an investigation of a report and to have an inaccurate report expunged or deleted from the registry. In Louisiana, New Hampshire, and North Carolina, a person who wishes to challenge a report must petition the court for a hearing. In Delaware, an individual who has successfully completed a service plan may petition the court to have his or her name removed from the central registry. In Wyoming, any person who has been named in a substantiated report of child abuse or neglect has the right to submit to the registry a statement concerning the incident.[1]

D. When Records Must Be Expunged

The terms "expunction" or "expungement" refer to the procedures used by States to maintain and update their central registries and record keeping by removing old or inaccurate records.

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1. https://www.childwelfare.gov/systemwide/laws_policies/statutes/registry.cfm

Under the Child Abuse Prevention and Treatment Act (CAPTA), in order to receive a Federal grant, States must submit plans that include provisions and procedures for the prompt expunction of records of unsubstantiated or false cases if the records are accessible to the general public or are used for purposes of employment or other background checks. CAPTA does, however, allow State child protective services agencies to retain information on unsubstantiated reports in their casework files to assist in future risk and safety assessment. Approximately 40 States, the District of Columbia, American Samoa, and Guam have provisions in statute for the expunction of certain child abuse and neglect reports. Statutes vary as to expunction standards and procedures. For example, the time specified for the expunction of unfounded or undetermined reports generally ranges from immediately upon determination to 10 years. A few States, however, do not permit unfounded reports to be placed on the registry at all. No states allow minors to challenge this listing until, at a minimum, age 18. In California, a person who is under age 18 has no ability to contest this inclusion.

California DOJ regulations state "(a) When a notarized written request is received by DOJ (see Penal Code § 11170(g)) from a person listed in the CACI only as a victim of child abuse or neglect who wishes to be removed from CACI, and that person is 18 years of age or older, the DOJ will also: (1) remove the person's name, address, social security number and date of birth (and any other descriptive information about the person) from the CACI. The DOJ will also notify the person in writing that his/her name and descriptor information have been removed from the CACI." California Code of Regulations, Title 11, § 900 et seq. However, there is no provision for review of the DOJ records prior to age 18.

E. How Different States Classify Child Abuse Records

Records of child abuse and neglect reports are maintained by State child protection or social services agencies available statewide to aid in the investigation, treatment, and prevention of child abuse cases and to provide statistical information for staffing and funding purposes. In many States, such as California these records and the results of investigations are maintained in databases, often known as central registries.

Following an investigation, States classify child abuse records in a variety of ways, depending on the State's statutory language. The classification "unsubstantiated" often is ascribed to situations in which investigators have been unable to confirm the occurrence of abuse or neglect. Other terms for unsubstantiated can include "unfounded," "not indicated," or "unconfirmed." The classification "substantiated" often is given to a report when a determination has been made that abuse or neglect likely did occur. Other terms for substantiated include "founded," "indicated," or "confirmed." Several States maintain all investigated reports of abuse and neglect in their central registries, while other States maintain only substantiated reports.

A primary purpose of California's CACI statutes is to permit authorized entities to locate prior reports detailing investigations of known or suspected child abuse or severe neglect. The submitting agency must permanently retain investigative reports for which it has submitted a BCIA 8583, or earlier version thereof, if the investigative report substantiated allegations of abuse

or severe neglect unless the agency, acting pursuant to court order or otherwise, determines that the allegations investigated are unfounded. If the investigative report was inconclusive about the existence of child abuse or severe neglect, the report must be retained for ten years unless there is an investigation of subsequent allegations of child abuse or severe neglect against the same child or by the same suspect(s) which determines the allegations are not unfounded. If the investigation of subsequent allegations is inconclusive, the original investigative report and the subsequent investigative report must be retained for ten years after filing the BCIA 8583 for the subsequent instance of abuse or severe neglect with DOJ. When the subsequent investigation determines that the subsequent allegations of abuse or severe neglect are substantiated, all prior remaining investigative reports involving the same victims or suspects must be retained permanently. Penal Code sections 11169(a), 11169(c), 11170(a)(1), 11170(a)(2), and 11170(a)(3).

In California, some courts have found, "Because recordation in CACI as a probable child abuser impinges upon fundamental rights", the Superior Court must exercise its independent judgment in determining whether the evidence before the Department established that the report is "substantiated." *Saraswati v. County of San Diego* (2011) 202 Cal.App.4th 917, 928 [independent review warranted by "the right to familial and informational privacy impacted when a parent is publicly identified as a possible abuser of his or her child"]. The due process requirements provided pursuant to *Burt v. County of Orange* (2004) 120 Cal.App.4th 473 and the Ninth Circuit held that Child Abuse Neglect Reporting Act ("CANRA") did not prevent the Los Angeles Sheriff's Department

("LASD") from creating a procedure that could have afforded the Humphries a means to challenge their Index listing. *Humphries v. County of Los Angeles*, 554 F.3d 1170, 1179, 1202 (9th Cir. 2009) ("Humphries")[2]

It is clear currently in California, that the burden should be on the Department of Social Services to prove, "it more likely than not that child abuse or neglect, as defined, occurred" to be able to substantiate the allegations for lifetime inclusion in CACI. In this case, due to the allegations occurring in 2009, the burden was placed on Prasad to disprove phantom allegations, by dealing with phantom rules for CACI hearings in 2009-2010, and to challenge the allegations, and phantom evidence.

Some State and Federal courts, but not all, agree that a person whose name is placed in the CACI index is entitled to due process protections which include *a fair opportunity* to challenge the findings that resulted in the person's name being placed in the index. See, e.g., *Burt v. County of Orange* (2004), supra, 120 Cal.App.4th 273; *Humphries v. County of Los Angeles* (9th Cir.2008) 547 F.3d 1170.

It is fundamentally unfair, and a perversion of due process rights to deny those rights because the CACI hearing in this case was held in 2010; to relieve the party who has the burden of proof from the obligation

2. Unless otherwise indicated, further statutory citations are to the California Penal Code, and citations to CANRA refer to the California current statute, amended as of January 1, 2012. Citations to earlier provisions of CANRA, in effect through 2011 but amended as of 2012 by 2011 Cal. Stat. 468 (A.B. 717), are indicated by "(through 2011)" following the citation.

to come forward and meet that burden with lies, deceit, and a lack of due process protections as occurred here in 2010; and instead shift to the other party the obligation to anticipate and discuss allegations never given to him; discuss evidence never given to him; anticipate procedures that did not comply with due process requirements; and have a social worker without any legal knowledge, skills, or training, be allowed to lie her way to, "it more likely than not that child abuse or neglect, occurred, because she met the mother, but did not ever talk to Prasad." (Cal. Pen. Code, § 11165.12, subd. (b).) Penal Code section 11165.6 defines child abuse or neglect to include sexual abuse as defined under Penal Code § 11165.1, which includes "[t]he intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose." (Id., subd. (a)(4).). There was no evidence that Petitioner ever did what his ex-wife accused him of, and no criminal charges were ever filed.

III. Prasad Background And Statement Of The Case

Petitioner Abhijit Prasad ("Prasad") requests review of the decision of the Court of Appeal, Sixth Appellate District, App., *infra*, 1a-40a, which affirmed the trial court's denial of his petition for writ of administrative mandamus against the Santa Clara County Department of Social Services. ("Department"), App., *infra*, 43a-51a. In his first appeal, Prasad challenged the Department's

determination that child abuse allegations levied against him regarding his child(ren), by his ex-wife were substantiated. (Prasad v. Sessions (Jan. 22, 2015, H039167) [2015 Cal.App.UnpubWrit of Mandate Lexis 393] (Prasad I).

Here, Prasad sought review twice of his lifetime inclusion in the databases, first due to the wrong standard of review, and then based on the Court's ruling that a "sub-standard investigation" is sufficient for lifetime inclusion in the CACI database.

In the first appeal, the Appellate Court determined the trial court applied the incorrect standard of review, the appellate court reversed and remanded the matter for a new hearing in which the trial court was ordered to exercise its independent judgment on the evidence.

Following remand, the trial court conducted a new hearing and again denied Prasad's petition for writ of administrative mandate. App., *infra*, 43a-51a. This time the Superior Court ruled among other things, a "substandard investigation" is sufficient for a parent's lifetime inclusion into the CACI database. That decision is contrary to State and Federal due process requirements, App., *infra*, 51a.

Prasad appealed again, arguing the trial court erred because its denial of his petition for writ of mandate was based on incorrect legal standards. He also argued the trial court erroneously denied his motion for reconsideration, App., *infra*, 41a-42a and his request for fees and costs associated with the underlying writ proceeding and attorney fees on appeal. Lastly, he claims there were severe deficiencies with the administrative proceeding.

A. The Departments' Referrals, Single Investigation, And CACI Hearings

In 2009, Prasad was in the midst of a contentious separation from his (now ex-) wife Komal Rattan. The two had separated in 2007 and eventually divorced in June 2010. Throughout their separation, Prasad and Rattan shared legal custody of their two young daughters and Prasad had visitation rights. During the family law proceedings, there were multiple reports to different child welfare agencies, in different counties, against Prasad by his ex-wife. The prior child abuse reports referred by the ex-wife, were all closed as unfounded.

On November 16, 2009, Santa Clara Social Services "Department" received another report from the ex-wife, this time that Prasad had sexually abused his daughters, who were then aged six and four years old. Prasad was never told the alleged abuse took place at Prasad's home sometime between September 2008 and July 2009, or what the allegations were.

Chancellor was the assigned social worker, and was told, per the Mother, one of the girls had rashes and yeast infections in her genital area (no medical evidence was ever provided), and mother claimed both girls told Rattan that Prasad pinched their 'private area' and bathed with them. Around this same period of time Rattan claimed she observed her daughters kissing each other and laying on top of each other while naked. Rattan also reported that Prasad has a history of committing domestic violence. (It was Rattan who was convicted of domestic violence, not Prasad). The matter was referred to a Department social worker, Nana Chancellor, for investigation. On November

23, 2009, Chancellor met with Rattan and the two girls. Chancellor claimed, while the girls played, Chancellor and Rattan spoke quietly so that they would not overhear. Rattan described past incidents of domestic violence by Prasad, many of which were committed in their daughters' presence. Rattan said the older daughter recently told her that Prasad takes baths with them and pinches them in 'their privates.' None of these allegations were ever reported by the girls to Chancellor, as they did not speak English in 2009, as ruled by Judge Huber in the Superior Court decision. In November 2009, Chancellor closed the November 2009 referral for sexual abuse, inconclusive. Chancellor never interviewed Prasad.

On December 30, 2009, Rattan who had just returned from India, contacted Chancellor because Prasad was scheduled to pick up their daughters that afternoon. Chancellor had a new referral opened and assigned to her the same day. Chancellor did not interview the girls, doctors, teachers, family members, and would not interview Prasad because, she said, "the police were conducting an investigation". However, "that Prasad sent Chancellor nearly 100 pages of documents prior to the January 13, 2010 family court hearing". Chancellor went to a January 13, 2010 Family Law hearing and testified against Prasad, although she never met him, or interviewed him. Chancellor claimed, "Once police are involved in an investigation of child sexual abuse, Chancellor would not ask the children detailed questions about the claims unless law enforcement personnel were present". Chancellor claimed, "Detective Cogburn scheduled a multi-disciplinary interview (MDI) with Rattan and the older daughter for February 1, 2010, but that Chancellor did not attend that interview". App.,

infra, 5a-6a. The children never talked to Detective Cogburn, and Prasad was never arrested or charged with a crime. Prasad never received the MDI evidence prior to the CACI Hearings. However, Chancellor found the allegation of sexual abuse by Prasad against the child(ren) was substantiated, and on February 9, 2010, Chancellor advised Prasad that she had reported her findings to the California Department of Justice for inclusion in the Child Abuse Central Index (CACI). She further advised him of his right to an administrative grievance hearing.

B. Prasad's Grievance Hearings

DSS conceded Prasad was never interviewed by Chancellor, RT. 1/5/16; pg. 17, lines 7-8; and Prasad did not know what the DCS report allegations were; that there were alleged statements of police officers that he never saw or heard; that he could bring witnesses; or that there had been a Multi-disciplinary Interview ("MDI") of the children until the grievance hearing, ten months after Chancellor's sub-standard or limited investigation. Prasad Declaration, CT Vol 2, pg. 331, lines 1-24. Prasad was not allowed to take the records with him or show it to his attorney, only read them there; then the first hearing had to be continued due to DSS' failure to turn over prior to the hearing exculpatory evidence, or documents were heavily redacted. RONNI: "Yeah but you cannot take the document at home though. MARK: Okay." MA, Exh. 3, pg. 122, (7/15/10 Grievance Hearing Transcript).

At the second Grievance hearing on August 10, 2010 Prasad for the first time heard the testimony of the Social Worker, but was not allowed to cross-examine her. CT Vol 2, pg. 331, lines 1-24. Prasad never received the MDI

report, or alleged statements from police officers from Respondents; therefore, he was unable to cross-examine the social worker about lies about Prasad having a criminal record, the child's alleged inconsistent statements because they did not speak English; and a statement from one child that he received from the MDI interview years later, "I do not know what a boy's pee- pee looks like, do you", all of which goes directly to the issues of child abuse. MA Exh. 3, pg. 118-162.

The procedure held was as follows: "MARK: "As you go through your testimony why don't we back that as you go through your testimony you can say here's, that's probably a better idea so why don't we back track the way this usually goes and the way I want to proceed is we ask the social worker to give a statement regarding her referral and what her investigation is and I may ask her some questions if you have question you can ask them through me and kind of get some clarity about the specific referral. Once the social worker is done with that then it's your turn to present your information regarding this allegation what information you have and I will accept the exhibits at that time and I may ask to clarify or sometimes I do not quite understand how it relates so I am going to look for some clarity, at the end of that then we can do some follow up whether there is additional questions or if it looks like I have everything I need then I'll close the hearing, alright." MA, Exh. 3, pg. 127 (8/10/10 Grievance Hearing Transcript). Prasad did not agree. Then Lane said:

"MARK: Procedures are that I ask this County to present their case first and I will ask them a couple of questions and for some clarity and then when County if done then I ask the complainant to present their position,

I mean I again ask you questions and you can present your exhibits whatever, once that is done we would do some follow up. That is the kind of process that we set up to do this so that's how I do it." MA, Exh. 3, pg. 127 (8/10/10 Grievance Hearing Transcript). In reviewing the transcripts of the grievance hearings, Prasad was interrupted 44 times, and was repeatedly prevented from presenting his case. MA, Exh. 3, pgs. 118-160. Prasad Declaration, CT Vol 2, pg. 331, lines 1-24.

At oral argument, the Superior Court acknowledged and agreed the evidence showed the children did not speak English, and mother translated everything. RT. 1/5/2016: pg. 6; lines 1-23. Then in the Court's decision, he ruled the social worker did interview the girls in English. App., *infra*, 47a; CT. Vol 2, pg. 314, lines 1-18 and footnote 1. Prasad was never able to cross-examine the worker to establish she lied about the interview of the girls, MDI interview, or that Prasad did not have a criminal record, and no criminal proceeding were pending or occurred. Prasad Declaration, CT Vol 2, pg. 331, lines 1-24. The Superior Court did not address denial of Prasad's due process rights, including, but not limited to, the lack of fairness in the administrative hearing, and the refusal of the hearing officer to allow Prasad to cross-examine the Worker, obtain the MDI report, or forensic interviews, and/or present his evidence in the hearing. Prasad Declaration, CT Vol 2, pg. 331, lines 1-24. MA, Exhibit 3, pgs. 118-160.

The trial court order mentions that "Detective Cogburn also told Chancellor that the forensic interviewer had found the older daughter to be reliable". App., *infra*, 48a. This is again Chancellor's hearsay statement. There

is no evidence in the entire administrative record of the MDI interview at the hearing, or that Ms. Wanda Reub found the older daughter to be reliable or credible. Neither Detective Cogburn, who observed the interview from behind a two-way glass per the Declaration of Ronnie Smith, ever said that older daughter spoke English, was reliable, or credible. Smith, and the worker provided unsupported hearsay statements, and the social worker lied in the August 2010 grievance hearing, asserting that there was an ongoing criminal case against Prasad, whereas she knew Prasad never had any arrest or criminal court case, as the Police closed the case long before the hearing, and the case was a DA reject. The MDI or forensic interview report was never given to Prasad, and was not a part of the record, only the hearsay statements of the social worker that Prasad was not allowed to cross-examine. Prasad Declaration, CT Vol 2, pg. 331, lines 1-24.

The Appellate Court's ruling was based on the Superior Court decision, stating "Finally, Prasad argued at length that because Chancellor failed to conduct a thorough investigation (e.g., interview other family members, the nannies, and Rattan's boyfriend) and follow the policies and procedures set forth in the California Social Services Manual of Policies and Procedures (e.g., visit Prasad's home and interview Prasad), it follows that the Department's decision was contrary to the weight of the evidence. "Prasad cited no legal authority, and the Court is aware of none, supporting his contention that a failure to conduct a thorough investigation and comply with applicable policies and procedures means, as a matter of law, that the administrative decision was contrary to the weight of the evidence. Moreover, as a matter of common sense, Prasad's position is not well- taken. It is possible

that a substandard investigation, which violates various policies and procedures, could still generate sufficient evidence to substantiate a report of sexual abuse. Thus, the thoroughness of the investigation and its compliance with applicable policies and procedures does not necessarily bear whether the administrative decision is supported by the weight of the evidence." App., *infra*, 50a-51a; CT. Vol 2, pg. 316; lines 7-19. This assertion is in error, as the legal requirements of social worker investigations, and grievance review hearings are mandatory due process requirements, as the case law holds. The Court denied Appellant's Petition for a Writ of Mandate on January 12, 2016 and the order was filed on January 25, 2016. CT pgs. 311-317. App., *infra*, 43a-51a.

On February 2, 2016 Prasad filed a Motion for Reconsideration CT Vol. 2, pgs. 318-328, with a Request for Judicial Notice, with new cases attached, CT Vol. 2, pgs. 329-330 (numbered in error by the Clerk), and exhibits are included as MA with Declaration of Diane B. Weissburg, Esq., CT. Vol. 2, pgs. 333-334, Exhibit 3, pgs.1-115; and Declaration of Abhijit Prasad, CT. Vol. 2, pgs.330-332.

Respondents filed an opposition CT. Vol. 2, pgs. 335-344. Respondents asserted that the investigation while in-sufficient, was enough, and that they did comply with mandatory time requirements because State Regulation MPP 31-021.31 included the requirement of holding CACI hearings until criminal charges are resolved. RT. 4/29/2016: pgs. 35-36; lines 27-28 and 1-6. However, Respondents knew Prasad never had criminal charges filed against him, and MPP 31-021.31 did not apply. RT. 4/29/2016: pg. 40; lines 5-25.

Prasad filed a Reply In Support, CT. Vol. 2, 345-354, and Oral arguments were held April 29, 2016. During those arguments, Prasad again asserted, the MPP legal requirements of social worker investigations are mandatory; the record is not adequate; the court allowed in evidence not included with the Record; Prasad was denied due process; and grievance review hearings requirements including timeframes and evidence disclosures are mandatory. Appellant also included new Case Law and Statutory Law on the issues including, but not limited to Assembly Bill 717; *B.H., a Minor, v. County of San Bernardino*, (2015) 62 Cal. 4th 168; *State Dept. of State Hospital v. Superior Court (Novoa)*, (2015), 61 Cal 4th 339; and *Hudson v. County of Fresno*, 2015 Cal. App. Unpub. LEXIS 7000. While unpublished, *Hudson* was directly on point and in that case Court determined that "the statutes authorizing the adoption of the DSS Manual and the content of the regulations in chapter 31-100 of the DSS Manual clearly demonstrate that those regulations are law making and not merely interpretive of existing statutory provisions." This case was submitted to the court as information only as it was not citable, but for the proposition that, in other words, the regulations created specific legal requirements that do not exist outside the regulations; and *Jones v County of Los Angeles*, (2015) 802 F.3d. 990. (9th Cir.), was submitted for the proposition that, "In the area of child abuse, as with the investigation and prosecution of all crimes, the state is constrained by the substantive and procedural guarantees of the Constitution. The fact that the suspected crime may be heinous—whether it involves children or adults—does not provide cause for the state to ignore the rights of the accused or any other parties." *Jones* supra. MA, Exhibit 3, pgs. 1-117.

The Superior Court stated, "So he chooses to defend himself and he doesn't raise these issues." RT. 4/29/16: pg. 40, lines 26-27. As the record showed, Prasad did raise these issues at both grievance hearings, but was interrupted 44 times. MA Exhibit 3, pgs. 118-160. Further, all of the denials of Prasad's due process rights were raised in the Original Writ of Mandate, First Amended Writ, and Second Amended Writ of Mandate; as well as Prasad's Opening and Reply Brief in his first Appeal, Supplemental Brief, and Reply In Support. RT. 4/29/2016: pg.39; lines 4-12. Prasad did not even know the allegations that he was defending himself against at the Hearing until the hearing, because Chancellor never told him the allegations. MA, Exhibit 3, pg. 126, CT Vol 2, pg. 331, line 7. Chancellor also lied at the hearing asserting Prasad had criminal charges pending. The Social Worker testified that Mr. Prasad's "case" was still pending in Criminal Court, although the Tracy Police completed their investigation in April 2010 and declined to press charges against Prasad. MA, Exhibit 3, pgs. 129-130, CT Vol 2, pg. 331, lines 22-23. During the administrative hearing Prasad repeatedly attempted to read exhibits into the record and provide explanations of their relevance, and the Review Officer repeatedly stopped him and said that Review Officer would read the exhibits after the hearing, and would not allow Prasad to show bias, prejudice, or the history of referrals and there relevance. MA, Exhibit 3, pg. 132. Prasad contends and as the transcript of the hearing shows, Prasad was "cut off and interrupted 44 times during the hearing." MA, Exhibit 3, pgs. 118-160. CT. Vol. 2, pgs. 331, line 14-15. The hearing officer "refused" Mr. Prasad's attempts to bring in information about Ex-Wife's prior allegations of child abuse. MA, Exhibit 3, pgs. 132-133, CT. Vol. 2, pgs. 331, line 16-18, and "told [Mr.

Prasad] not to talk about the previous abuse cases that were unfounded." MA, Exhibit 3, pgs. 132-133.

Finally, Prasad did not receive copies of the social workers reports including the MDI. No copy of the MDI was entered into evidence. Then the Review Officer asked Prasad more than once to comment on the contents of the MDI, but Prasad had never seen or read the MDI and it was not part of the record. MA, Exhibit 3, pgs. 132-133., CT. Vol. 2, pgs. 331, line 10- 11.

The Superior Court denied the Motion on May 13, 2016. App., *infra*, 41a-42a. The Court did not rule on the Request for Judicial Notice. Denial of the Motion was received by Appellant on May 20, 2016. Final Judgment was signed by the Superior Court on January 25, 2016. MA Exhibit 1, pgs. 1-3.

During the hearings, Prasad testified the abuse allegations were false and he believed Chancellor did not undertake a proper investigation. Chancellor could not tell him when the alleged abuse occurred and he denied ever bathing with his daughters. He complained that he had not seen his daughters since July 2009 and Rattan would often not let him know where the children were. He said his children went to the doctor and there was no evidence that they had been molested. Prasad also said Rattan previously falsely accused him of engaging in domestic violence and he believes she has coached the daughters to make false allegations of abuse against him. He said he has not been arrested and no criminal charges were filed against him arising out of the alleged molestations.

On August 23, 2010, the hearing officer issued a written recommendation and summary of findings in which he recommended that Chancellor's original findings, i.e., that the claims of molestation were substantiated as to the older daughter and inconclusive as to the younger daughter, remain unchanged. The hearing officer concluded that the 'statements of [Chancellor] and the information in the case regarding the MDI interview of [the older daughter] substantiate the allegation of sexual abuse.' As to the younger daughter, the hearing officer concluded '[t]he allegation of sexual abuse . . . is less clear and there was no supporting MDI regarding her statements. Therefore I am recommending that this allegation continue to be classified as inconclusive.' The hearing officer's recommendation was confirmed by the agency director on August 25, 2010.

C. Prasad Files Petitions For Writ Of Mandate To Superior Court

Prasad subsequently filed a petition for writ of mandate against the Department seeking review and reversal of the Department's decision. Specifically, he sought an order directing the Department to 'abate the recommendation finding to "Unfounded," dismiss the underlying proceeding results and so advise Respondent State of its action.

Prasad filed a memorandum of points and authorities in support of his petition, in which he argued, in pertinent part: (1) the trial court must conduct an independent review of the evidence admitted at the administrative hearing; (2) his due process rights were violated by misrepresentations, confirmatory bias and falsehoods

made by Chancellor; (3) he was not adequately apprised of the dates of the alleged molestations; (4) the grievance hearing officer did not permit him to adequately present his case, thus denying his right to a fair hearing; and (5) the determination that the abuse allegations were substantiated was not supported by the evidence.

In opposition, the Department argued that the administrative decision does not substantially affect a fundamental vested right and thus the trial court should review the decision only to determine if it is supported by substantial evidence rather than conduct an independent review of the evidence. The Department further argued that Prasad's due process rights were not violated, the grievance hearing officer did not prevent him from presenting his case, and there was substantial evidence to support the administrative decision. Prasad filed a Writ of Mandate, and at the hearing on Prasad's first writ petition, there was no discussion about the appropriate standard of review. The trial court's subsequent order denied the petition, rejecting Prasad's due process arguments and concluding 'the Department's finding is supported by substantial evidence.' " (Fns. omitted.)

D. Prasad's First Appeal and The First Appellate Court's Opinion

On appeal, Prasad argued the trial court should have exercised its independent judgment when reviewing the Department's ruling. The Department conceded. On January 22, 2015, the Appellate Court issued their decision on Prasad's appeal. They agreed with Prasad and the Department, and reversed and remanded the matter to the trial court so it could conduct a new hearing and

apply the correct standard of review. They further held that Prasad was entitled to his costs on appeal.

E. The First Appeal Is Remanded

After the first appeal was remanded, the Superior Court then ordered both parties to file Supplemental Briefs for the remanded hearing on Prasad's Petition for Writ of Mandate that was to be held on October 23, 2015. Appellant filed his Brief on October 14, 2015, Clerk's Transcript ("CT")[3], pgs. 297-303, incorporating by reference the original Writ of Mandate, First Amended Writ of Mandate, Second Amended Writ of Mandate, and Respondents filed their Brief on October 16, 2015, CT pgs. 304-310. Oral Argument in the Superior Court was held twice, the first January 5, 2016, Reporter's Transcript ("RT"), 1/5/2016: pgs. 1-27. In Prasad's Supplemental Brief, and at the January 5, 2016 oral argument Prasad asserted Respondents Grievance Hearings violated his due process rights (Prasad objected to the proceedings, and Respondents and Lane interrupted him 44 times); and State law by not complying with the due process mandatory requirements of California MPP regulations in effect in 2010 including but not limited to, §§ 31-003, 31-021, 31-105.111-117, 31-115, 31-125, 31-410, and 31-501; Motion to Augment ("MA") Exhibit 4, pgs.12-21, and 23-50; violated Penal Code §11169(a); violated California Code of Regulations, Title 11, § 900 et seq.; and violated State decisional law governing grievance hearing requirements. CT. Vol. 2, pgs. 297-302, RT. 1/5/16; pgs. 1-27.

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3. Clerk's Transcript, Reporter's Transcript, and Motion to Augment will be provided with the Brief after the Court grants review.

F. Prasad's Motion for Costs and Attorney Fees

On May 4, 2015, Prasad filed a motion for costs and attorney fees seeking $116,597.78. Prasad sought attorney fees to compensate the attorney he retained to contest his placement in the CACI database, the attorney he retained when he lost the grievance hearing, the attorney he retained to prepare the opening brief on appeal following the denial of his writ of mandate, and his present attorney, who he retained to complete the briefing for his first appeal. He also sought attorney fees for the legal work incurred following this court's remand.

On May 20, 2015, the Department filed a motion to tax costs. The Department argued the bulk of the attorney fees requested by Prasad should be denied, because it was premature to award costs for the underlying litigation before the trial court entered a final judgment in the matter. The Department also insisted Prasad was entitled to only $1,637 for his costs on appeal.

On June 25, 2015, the trial court held a hearing on Prasad's motion for costs and attorney fees. Following the hearing, the trial court issued a written order granting in part and denying in part the Department's motion to tax costs. The court concluded Prasad's request for costs and fees related to the underlying litigation was premature, and denied Prasad's motion without prejudice until the litigation was decided. It found Prasad was entitled to his costs on appeal but was not entitled to his attorney fees on appeal. The court concluded this court's unpublished decision in Prasad I did not confer a significant benefit to the public. Thereafter, it allowed Prasad to recover a total of $2,212 in costs on appeal.

G. Prasad's Second Writ Of Mandate Hearing

Prasad and the Department filed supplemental briefs with the trial court in preparation for the second hearing on Prasad's petition for writ of mandate. Soon after, a second hearing was held. During the hearing, Prasad argued the Department failed to conduct a proper investigation into the allegations of child sexual abuse.

On January 25, 2016, the trial court denied Prasad's petition for writ of mandate after exercising its independent judgment. App., *infra*, 43a-51a. The trial court concluded the administrative findings, which substantiated the allegation of child sexual abuse as to Prasad's older daughter, were not contrary to the weight of the evidence. In its written decision, the court rejected Prasad's claim that the Department's failure to conduct a thorough investigation and comply with applicable policies and procedures meant, as a matter of law, that there was insufficient evidence. The trial court reasoned that "a substandard investigation, which violates various policies and procedures, could still generate sufficient evidence to substantiate a report of sexual abuse." App., *infra*, 51a.

a. Prasad's Motion for Reconsideration In The Superior Court

On February 2, 2016, Prasad filed a motion for reconsideration over the trial court's denial of his petition for writ of mandate. He argued several cases relevant to the trial court's decision had been decided. He also claimed that new facts, such as his inability to cross-examine the social worker at the grievance hearing and his inability to review evidence, had recently come to light.

The trial court held a hearing on Prasad's motion for reconsideration on April 29, 2016. On May 13, 2016, the trial court denied the motion. App., *infra*, 41a-42a. Prasad subsequently filed a notice of appeal over the trial Court's denial of his petition for writ of mandate.

H. The Court of Appeals Decision Violated Prasad's Due Process Rights

In the second appeal to the Sixth District, the Court of Appeals,

1. Affirmed Prasad's life-time exclusion in the CACI statewide databases, even though the investigation did not comply with due process, the requirements of the California Penal Code, California Administrative Code, and California Manual of Policies and Procedures, and that there was a "sub-standard investigation" App., *infra*, 30a-31a;

2. Affirmed Prasad's life-time exclusion in the CACI statewide databases even though the police did not complete their investigation until April 2010; and no arrest and/or criminal charges were filed;

3. Affirmed Prasad's life-time exclusion in the CACI statewide databases even though the hearing occurred prior to the police investigation being completed; prior to MDI interviews being completed; without interviewing Prasad; without interviewing the children's doctors; without interviewing the children in their native language (children did not speak English, and the Social Worker did not speak Hindu);

4. Affirmed Prasad was substantiated for sexual abuse by social worker (even before any investigation was complete), just because "she [meaning Nana Chancellor] believed the allegations to be substantiated" (emphasis added) App., *infra*, 34a;

5. Affirmed Prasad actually had the right to cross-examine Santa Clara employees during the grievance hearing (Prasad was denied that right by the Hearing Officer's rules), and forfeited his constitutional rights for failing to request the right, even though Prasad objected 44 times. This was after the fact that the grievance officer had stated firmly that he would terminate the hearing, if Prasad did not follow what he wanted.

MARK: If you, at some point I will ask Ms. Chancellor to give me her statements, I will ask you to give me your statements and then we will proceed from there, but if you choose not to do the oath at that point I will have to terminate the hearing. It was clear that Prasad did not forfeit his rights, instead the hearing officer forcibly deprived him of his rights. Department also conceded that they never interviewed Prasad, and also a violation of his constitutional rights.

6. Prasad's Due Process rights were violated when the Court of Appeals ruled, "The trial court and the Department referenced the MDI through statements made by Chancellor at the family court hearing in January 2010 and her investigative narrative. These documents and transcripts were all a part of the administrative record and were presented to the hearing officer prior to the hearing." App., *infra*, 32a. While there was a family court hearing that took place in January 2010, (it took place on

January 13, 2010, January 21, 2010), but the MDI interview took place on February 1, 2010. The MDI was not a part of administrative hearing nor the administrative record for cases H043780 and H039167. Chancellor lied in the administrative hearing that Prasad had a case in criminal court as well as at the family court (7.15.2010 hearing: p.14), whereas no criminal case was opened against Prasad in any court anytime (criminal or otherwise). The family court had already ruled after Chancellor testified that "Orders [meaning visitation orders] remain in effect" (emphasis added) after Ms. Chancellor had testified (RT 1/13/2010: 83:6) in her presence, which indicated nothing was pending.

7. Affirmed, "that Chancellor claimed that Detective Cogburn subsequently informed her after she closed the second referral substanted for abuse, that the older daughter had provided information consistent with what she had told Chancellor and the 'forensic interviewer had found her to be reliable." App., *infra*, 6a. No record or evidence supports this. Detective Cogburn did testify on March 1, 2010 in the family law court, after S's MDI interview, "Detective Cogburn, stated he watched the entire MDI interview of S. live, did not arrest, charge or prosecute Prasad, which seriously undermines Chancellor's claim that older daughter provided interview consistent to what she told Chancellor. The Court of Appeals ruled, "The older daughter told Detective Cogburn her father got in the bathtub with her and her sister, that he has touched her bottom and vagina, and that he has asked that she touch his privates," App., *infra*, 6a, whereas the second daughter never met Detective Cogburn under any setting, and he never interviewed her.

IV. CONCLUSION

It is respectfully requested that this Court resolve the conflicts in the Appellate Districts, and Federal Courts about the due process rights of parents, relatives, and guardians who face lifetime inclusion in the statewide databases, and for minors who have no right of review at all. Due Process mandates that this Honorable Court grant this petition for review.

Dated:August 24, 2018

Respectfully submitted,

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APPENDIX

APPENDIX A — DECISION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SIXTH APPELLATE DISTRICT, FILED MARCH 14, 2018

COURT OF APPEAL OF THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT

H043780

(Santa Clara County
Super. Ct. No. 1-11-CV203380)

ABHIJIT PRASAD,

Plaintiff and Appellant,

v.

WILL LIGHTBOURNE,

Defendant and Respondent.

March 14, 2018, Opinion Filed

This is appellant Abhijit Prasad's second appeal over the trial court's denial of his petition for writ of administrative mandamus against the Santa Clara County Department of Social Services (Department). In his first appeal, Prasad challenged the Department's determination that child abuse allegations levied against him by his older daughter were substantiated. (*Prasad v. Sessions* (Jan. 22, 2015, H039167) [2015 Cal.App.Unpub.

Lexis 393] (*Prasad I*).)[1] After determining the trial court applied the incorrect standard of review, we reversed and remanded the matter for a new hearing in which the trial court was ordered to exercise its independent judgment on the evidence. Following our remand, the trial court conducted a new hearing and again denied Prasad's petition for writ of administrative mandate.

Prasad has appealed again, arguing the trial court erred because its denial of his petition for writ of mandate was based on incorrect legal standards. He also argues the court erroneously denied his motion for reconsideration and his request for fees and costs associated with the underlying writ proceeding and attorney fees on appeal. Lastly, he claims there were deficiencies with the administrative proceeding. We find no merit in any of Prasad's contentions and affirm the trial court's order.

Background[2]

1. The First Hearing

"In 2009, Prasad was in the midst of a contentious separation from his (now ex-) wife Komal Rattan. The two had separated in 2007 and eventually divorced in June 2010. Throughout their separation, Prasad and Rattan shared legal custody of their two young daughters and Prasad had visitation rights.

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1. We granted the Department's request to take judicial notice of the record and the decision in *Prasad I*.

2. The facts underlying the first administrative hearing are recounted in detail in *Prasad I*. We recite the facts again here for completeness.

Appendix A

"On November 16, 2009, the Department received a report that Prasad had possibly sexually abused his daughters, who were then aged six and four years old. The alleged abuse took place at Prasad's home sometime between September 2008 and July 2009. One of the girls had rashes and yeast infections in her genital area, and both girls told Rattan that Prasad pinched their 'private area' and bathed with them. Around this same period of time Rattan observed her daughters kissing each other and laying on top of each other while naked. Rattan also reported that Prasad has a history of committing domestic violence.

"The matter was referred to a Department social worker, Nana Chancellor, for investigation. On November 23, 2009, Chancellor met with Rattan and the two girls. While the girls played, Chancellor and Rattan spoke quietly so that they would not overhear. Rattan described past incidents of domestic violence by Prasad, many of which were committed in their daughters' presence. Rattan said the older daughter recently told her that Prasad takes baths with them and pinches them in 'their privates.' Rattan thinks the older daughter told her this because the girls were supposed to resume visitations with Prasad and they do not want to do so.

"Chancellor then met with the older daughter at one end of the room while Rattan and the younger daughter played at the other end. Chancellor reported the older daughter maintained 'good eye contact, communicated clearly, and appeared to be answering questions openly.' She told Chancellor she understood what it meant to tell the truth and promised to do so. The older daughter said

she does not like visiting with Prasad because he hits them in the head with his fist when they get in trouble. She saw him hit their mother in the head and bump her mother's head into the wall. While visiting her father, he makes them take baths and climbs into the bathtub with them. He pinches their bottoms while in the bath, which hurts and makes them cry. The older daughter denied that he pinched their vaginas. However, on more than one occasion, her father told them to touch his privates but they refused because '[i]t's disgusting.' He would get mad and kept saying 'touch my butt' repeatedly.

"Chancellor next met with the younger daughter, who 'appeared to understand everything asked of her but at times appeared to have a difficult time providing clear answers to the questions asked.' The younger daughter said she was scared of her father, who spanks her with her pants off when she gets in trouble. He is always mad at her mother. At her father's house, he makes her take baths and gets in the bathtub with her, which she does not like. At this point of the interview, the younger daughter walked to the other side of the room and climbed into her mother's arms.

"Chancellor began talking to Rattan again who told her she did sometimes see small bruises on the girls' bottoms, but they never said that Prasad had pinched them. In the last year, her younger daughter kept coming home with severe rashes in her vaginal area after visiting with Prasad. The pediatrician found that the girl had a yeast infection and urinary tract infection.

"On December 30, 2009, Rattan contacted Chancellor because Prasad was scheduled to pick up their daughters that afternoon. Chancellor called Detective Nathan Cogburn with the Tracy Police Department, who was in charge of the criminal investigation into the allegations against Prasad. Chancellor wanted to discuss contacting Prasad so she could ask him to forego visitation until the next court hearing, scheduled for January 13, 2010. Detective Cogburn agreed that Chancellor could do so, so long as she did not inform Prasad of the specific allegations or advise him he was being investigated by police as well as the Department.

"Chancellor spoke with Prasad, who agreed not to seek visitation with his daughters until the next hearing in family court or until he heard otherwise from Chancellor. He was polite and stressed his desire to cooperate, but also spent more than 30 minutes on the phone telling Chancellor how Rattan was mentally ill and was brainwashing their older daughter.

"Prasad sent Chancellor nearly 100 pages of documents prior to the January 13, 2010 family court hearing. These documents included some of Rattan's medical records, multi-page letters from Prasad describing his fitness as a father, his concerns about Rattan's mental stability and propensity to lie, as well as many photos depicting his daughters engaged in various activities such as swim lessons, birthday parties, etc., during their visits with him.

"Chancellor testified at the January 13 hearing and repeated what she had been told by Rattan and the two girls during their November 23, 2009 interview. However,

because the Tracy Police Department had asked her not to interview Prasad due to the ongoing police investigation, Chancellor found the allegations of abuse to be inconclusive at that time.

"Once police are involved in an investigation of child sexual abuse, Chancellor would not ask the children detailed questions about the claims unless law enforcement personnel were present. Detective Cogburn scheduled a multi-disciplinary interview (MDI) with Rattan and the older daughter for February 1, 2010, but Chancellor did not attend that interview. Detective Cogburn subsequently informed Chancellor the older daughter had provided information consistent with what she had told Chancellor and the 'forensic interviewer had found her to be reliable.' The older daughter told Detective Cogburn her father got 'in the bathtub with her and her sister, that he has touched her bottom and vagina, and that he has asked that she touch his privates.'

"Based on this information, Chancellor found the allegation of sexual abuse by Prasad against the older daughter was substantiated. She found the allegation of sexual abuse by Prasad against the younger daughter to be inconclusive. On February 9, 2010, Chancellor advised Prasad that she had reported her findings to the California Department of Justice for inclusion in the Child Abuse Central Index (CACI). She further advised him of his right to an administrative grievance hearing.

"Prasad requested an administrative grievance hearing, which was initially scheduled for July 15, 2010. At that hearing, the Department sought to introduce a redacted document containing the social worker's findings,

but that document had not been timely provided to Prasad. The hearing was continued so Prasad could review the document in detail.

"At the August 10, 2010 hearing, a hearing officer considered the documentary evidence submitted by the parties as well as the testimony of Chancellor and Prasad. Chancellor testified first, and essentially recounted what she was told during her interviews with Rattan and the two daughters. She also testified that on February 2, 2010, she received a call from Detective Cogburn who told her the older daughter's MDI was consistent with the allegations she made to Chancellor. Detective Cogburn directed her not to discuss the allegations with Prasad.

"Prasad testified the abuse allegations were false and he believed Chancellor did not undertake a proper investigation. Chancellor could not tell him when the alleged abuse occurred and he denied ever bathing with his daughters. He complained that he had not seen his daughters since July 2009 and Rattan would often not let him know where the children were. He said his children went to the doctor and there was no evidence that they had been molested. Prasad also said Rattan previously falsely accused him of engaging in domestic violence and he believes she has coached the daughters to make false allegations of abuse against him. He said he has not been arrested and no criminal charges were filed against him arising out of the alleged molestations.

"The exhibits that Prasad submitted at the hearing consisted, in part, of copies of various filings in the family court proceedings, various police reports, e-mails, documents related to the nannies he employed to help

care for his daughters and multiple photographs of his daughters engaging in various activities, such as swim lessons and watching fireworks, during their visits with him.

"On August 23, 2010, the hearing officer issued a written recommendation and summary of findings in which he recommended that Chancellor's original findings, i.e., that the claims of molestation were substantiated as to the older daughter and inconclusive as to the younger daughter, remain unchanged. The hearing officer's recommendation extensively reviewed the relevant evidence, summarized the testimony provided and concluded that the 'statements of [Chancellor] and the information in the case regarding the MDI interview of [the older daughter] substantiate the allegation of sexual abuse.' As to the younger daughter, the hearing officer concluded '[t]he allegation of sexual abuse . . . is less clear and there was no supporting MDI regarding her statements. Therefore I am recommending that this allegation continue to be classified as inconclusive.' The hearing officer's recommendation was confirmed by the agency director on August 25, 2010.

"Prasad subsequently filed a petition for writ of mandate against the Department seeking review and reversal of the Department's decision. Specifically, he sought an order directing the Department to 'abate the recommendation finding to "Unfounded," dismiss the underlying proceeding results and so advise Respondent State of its action.'

"Prasad filed a memorandum of points and authorities in support of his petition, in which he argued, in pertinent

part: (1) the trial court must conduct an independent review of the evidence admitted at the administrative hearing; (2) his due process rights were violated by misrepresentations, confirmatory bias and falsehoods made by Chancellor; (3) he was not adequately apprised of the dates of the alleged molestations; (4) the grievance hearing officer did not permit him to adequately present his case, thus denying his right to a fair hearing; and (5) the determination that the abuse allegations were substantiated was not supported by the evidence.

"In opposition, the Department argued that the administrative decision does not substantially affect a fundamental vested right and thus the trial court should review the decision only to determine if it is supported by substantial evidence rather than conduct an independent review of the evidence. The Department further argued that Prasad's due process rights were not violated, the grievance hearing officer did not prevent him from presenting his case, and there was substantial evidence to support the administrative decision.

"At the hearing on Prasad's petition, there was no discussion about the appropriate standard of review. The trial court's subsequent order denied the petition, rejecting Prasad's due process arguments and concluding 'the Department's finding is supported by substantial evidence.'" (Fns. omitted.)

2. Prasad's First Appeal and This Court's Opinion

On appeal, Prasad argued the trial court should have exercised its independent judgment when reviewing the

Department's ruling. The Department conceded. On January 22, 2015, we issued our decision on Prasad's appeal. We agreed with Prasad and the Department, and reversed and remanded the matter to the trial court so it could conduct a new hearing and apply the correct standard of review. We further held that Prasad was entitled to his costs on appeal.

3. Prasad's Motion for Costs and Attorney Fees

On May 4, 2015, Prasad filed a motion for costs and attorney fees seeking $116,597.78. Prasad sought attorney fees to compensate the attorney he retained to contest his placement in the CACI database, the attorney he retained when he lost the grievance hearing, the attorney he retained to prepare the opening brief on appeal following the denial of his writ of mandate, and his present attorney, who he retained to complete the briefing for his first appeal. He also sought attorney fees for the legal work incurred following this court's remand.

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On June 25, 2015, the trial court held a hearing on Prasad's motion for costs and attorney fees. Following the hearing, the trial court issued a written order granting in part and denying in part the Department's motion to tax

costs. The court concluded Prasad's request for costs and fees related to the underlying litigation was premature, and denied Prasad's motion without prejudice until the litigation was decided. It found Prasad was entitled to his costs on appeal but was not entitled to his attorney fees on appeal. The court concluded this court's unpublished decision in *Prasad I* did not confer a significant benefit to the public. Thereafter, it allowed Prasad to recover a total of $2,212 in costs on appeal.

4. The Second Hearing

Prasad and the Department filed supplemental briefs with the trial court in preparation for the second hearing on Prasad's petition for writ of mandate. Soon after, a second hearing was held. During the hearing, Prasad argued the Department failed to conduct a proper investigation into the allegations of child sexual abuse.

On January 25, 2016, the trial court denied Prasad's petition for writ of mandate after exercising its independent judgment. The trial court concluded the administrative findings, which substantiated the allegation of child sexual abuse as to Prasad's older daughter, were not contrary to the weight of the evidence. In its written decision, the court rejected Prasad's claim that the Department's failure to conduct a thorough investigation and comply with applicable policies and procedures meant, as a matter of law, that there was insufficient evidence. The trial court reasoned that "a substandard investigation, which violates various policies and procedures, could still generate sufficient evidence to substantiate a report of sexual abuse."

5. The Motion for Reconsideration

On February 2, 2016, Prasad filed a motion for reconsideration over the trial court's denial of his petition for writ of mandate. He argued several cases relevant to the trial court's decision had been decided. He also claimed that new facts, such as his inability to cross-examine the social worker at the grievance hearing and his inability to review evidence, had recently come to light.

The trial court held a hearing on Prasad's motion for reconsideration on April 29, 2016. On May 13, 2016, the trial court denied the motion. Prasad subsequently filed a notice of appeal over the trial court's denial of his petition for writ of mandate.[3]

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3. We note that Prasad references facts in his briefs without providing citations to the record in violation of California Rules of Court, rule 8.204(a)(2)(C). For example, he confusingly states in his reply brief: "Then Prasad learned after spending $200,000.00 and five years later during a Family Law hearing, he was not in the CACI database. Respondents then sent a form to the State in April 2015 putting Prasad in CACI, without conducting a due process compliant 'Active Investigation,' and/or allowing a hearing as mandated by Administrative Code § 901(a), or MPP 31-021." (*Sic.*) He then claims the issues raised in this appeal are not moot, because he needs "this court to issue a decision, to prevent Respondents from entering Prasad in CACI again." "If a party fails to support an argument with the necessary citations to the record, that portion of the brief may be stricken and the argument deemed to have been waived." (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856, 85 Cal. Rptr. 2d 521.) Furthermore, to the extent Prasad's claim is based on facts outside the record, we will not consider it. (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 102, 134 Cal. Rptr. 3d 622.)

Appendix A

DISCUSSION

On appeal, Prasad challenges the trial court's denial of his petition for writ of administrative mandate and its denial of his motion for reconsideration. He argues the court denied his writ petition based on incorrect legal principles. He also argues his grievance hearing was procedurally unfair. He further claims his motion for reconsideration should have been granted based on new law and facts. Lastly, he claims the trial court's grant in part of the Department's motion to tax costs was made in error. We address each of Prasad's claims separately and explain why they lack merit.

1. Denial of Prasad's Petition for Writ of Mandate

a. Fairness of the Grievance Hearings

i. Overview

On appeal, Prasad argues the grievance hearing was procedurally unfair and deprived him of his due process rights. Prasad alleges the existence of numerous procedural irregularities and defects. For example, he argues he was interrupted numerous times during both grievance hearings, precluding him from presenting his case. He also maintains he was denied access to all the information related to the allegations at issue, he was not given the opportunity to cross-examine Chancellor, and the trial court erroneously relied on evidence not within the administrative record. He further claims the grievance hearings were not held in a timely manner.

"Where, as here, the issue is whether a fair administrative hearing was conducted, the petitioner is entitled to an independent judicial determination of the issue." (*Pomona Valley Hospital Medical Center v. Superior Court* (1997) 55 Cal.App.4th 93, 101, 63 Cal. Rptr. 2d 743.) Thus, "[a] challenge to the procedural fairness of the administrative hearing is reviewed de novo on appeal because the ultimate determination of procedural fairness amounts to a question of law." (*Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 482, 22 Cal. Rptr. 3d 772.)

ii. Analysis

a. Timeliness of the Hearing

First, Prasad claims the grievance hearing was not timely held. He claims the Department repeatedly delayed the hearing without his consent. On review of the administrative record, we disagree with Prasad's assessment of the timeliness of the grievance hearing. Although there were delays with the hearing date, each delay was properly communicated to Prasad, and Prasad either consented to the delays or the delays were justified under the governing regulations.

The State Department of Social Services Manual of Policies and Procedures (DSS Manual)[4] section 31-021.4

4. Prasad included portions of the DSS Manual as exhibits to his reply in support of his motion for reconsideration below. On appeal, he requested this court augment the record to include his reply in support of his motion for reconsideration and its accompanying exhibits, which this court granted. The DSS Manual can also be

requires grievance hearings be scheduled within 10 business days and held no later than 60 calendar days from the date the request for a grievance hearing is received by the county, unless both the county and the complainant agrees otherwise.

Prasad requested a grievance hearing in a signed letter dated March 8, 2010. It is unclear when the Department received the letter. A social worker from the Department, Dana Sugiyama, responded to Prasad's request on March 26, 2010. She informed Prasad that his grievance hearing would be held on April 27, 2010, and he had an appointment on April 20, 2010, to inspect the evidence the Department intended to present against him at the hearing.

Subsequently, on April 14, 2010, Prasad was told in a letter that his grievance hearing had been put on hold, because the child abuse allegations against him had become the subject of a pending criminal case. According to DSS Manual section 31-021.3.31, requests for grievance hearings will be denied if the "allegation of child abuse and/or severe neglect resulting in the referral to CACI is pending before the court."

On May 27, 2010, Prasad informed the Department the criminal case against him had been dismissed and again requested a grievance hearing. Ronni Smith, a social worker for the Department, wrote Prasad a letter informing him that his hearing was now set for June

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accessed online at <http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/Child-Welfare-Services-Regulations> (as of Mar. 14, 2018).

24, 2010, and he had an appointment on June 8, 2010, to examine the evidence that would be presented against him. On June 7, 2010, Prasad advised the Department he had not received the letter written by Smith. Thereafter, Smith rescheduled the grievance hearing to July 15, 2010, giving Prasad an appointment on June 10, 2010, to review the evidence that would be presented against him. Prasad was informed of these dates with a letter.

At the July 15, 2010 hearing, the Department sought to introduce a redacted document containing the social worker's findings, but that document had not been timely provided to Prasad. The hearing was continued so Prasad could review the document in detail. Prasad did not object to the continuance. Ultimately, Prasad's grievance hearing was held on August 10, 2010.

Based on the Department's correspondence with Prasad, which was included in the administrative record, we are satisfied that Prasad was sufficiently apprised of the dates set for his grievance hearings. Furthermore, the delays with the hearing date were properly communicated to him. Prasad either agreed to the delays or the delays were warranted under the DSS Manual, such as when Prasad became the subject of a criminal investigation. (DSS Manual, § 31-021.3.)

b. Ability to Review Evidence

Next, Prasad argues he was deprived of the opportunity to review the Department's evidence against him. After reviewing the administrative record, we find this contention fails.

As previously discussed, the Department memorialized conversations with Prasad and kept records of the letters sent to him. Each time the Department set a date for Prasad's grievance hearing, he was given an appointment to examine the evidence against him. There is no indication that Prasad was prevented from attending his appointment to review the evidence or that he was somehow barred from accessing the information. DSS Manual section 31-021.6.62 provides that the "county, complainant and his or her representatives, if any, shall be permitted to *examine* all records and evidence related to the . . . original referral that prompted the CACI listing . . . ." (Italics added.) The record reflects the Department complied with this regulation.

Prasad, however, claims he never received *copies* of the Department's evidence. Assuming this is true, Prasad's contention would still fail. Prasad does not cite to any authority—nor are we aware of any authority on the matter—that requires the Department to furnish copies. On appeal, Prasad insists DSS Manual regulations do not preclude him from making copies of documents to take with him, citing to Welfare and Institutions Code section 827, subdivision (a)(1)(D). That statute, however, deals with juvenile court records, and is inapplicable to the administrative proceedings at issue here. Thus, we find his argument that he was deprived of an opportunity to review the evidence against him to be meritless.

c. Advisement of Right to an Attorney at the Hearing

Likewise, Prasad's claim that he was not advised he was permitted to have an attorney or representative with him at the grievance hearing as set forth under DSS Manual section 31-021.4.42 is easily rejected by a review of the record. When Prasad was notified that an allegation of child abuse had been substantiated against him, he was given a form to fill out should he wish to have a grievance hearing. On this form was a printed advisement informing Prasad that he was entitled to have an attorney present at the hearing to assist him. Prasad filled this form out and even furnished the name and contact information for an attorney. During the hearing on his motion for reconsideration, Prasad argued the attorney he indicated on the form was his family law attorney, and at that time he did not understand there was a distinction between his placement in the CACI database and his other family law issues. Prasad's own misunderstanding does not negate the fact that he was advised of the right to have an attorney present at the hearing. Since the record reflects he was advised of his right to have an attorney, his claim that he did not receive such an advisement fails.

d. Denial of Opportunity to Present His Case

Next, Prasad claims he was denied a fair hearing, because he was not given the opportunity to fully present his case. He argues he was not allowed to cross-examine Chancellor, and he was unable to fully explain his position because he was interrupted by the hearing officer approximately 44 times.

First, we find Prasad's claim that he was deprived of an opportunity to cross-examine Chancellor to be an inaccurate assessment of the facts. In his declaration supporting his motion for reconsideration, Prasad claimed the hearing officer refused his request to conduct a cross-examination. That is not what occurred. According to the transcript of the hearing, the hearing officer told Prasad he could indirectly ask Chancellor questions by posing questions through the hearing officer.[5] It does not appear Prasad attempted to do so. Nor did Prasad request permission to cross-examine Chancellor himself during the hearing.[6]

Thus, assuming Prasad had the right to cross-examine Chancellor during the grievance hearing, he has forfeited it for failing to request it below. A party who does not timely assert his or her constitutional rights forfeits them. (*People v. $17,522.08 United States Currency* (2006) 142 Cal.App.4th 1076, 1084, 48 Cal. Rptr. 3d 519 [right to a jury trial forfeited for failing to request one below]; *People v. Skiles* (2011) 51 Cal.4th 1178, 1189, 126 Cal. Rptr. 3d 456, 253 P.3d 546 [deprivation of right to cross-examination forfeited for failing to raise it in trial court]; *People v.*

5. The hearing officer stated in part: "[T]he way this usually goes and the way I want to proceed is we ask the social worker to give a statement regarding her referral and what her investigation is and I may ask her some questions if you have questions you can ask them through me and kind of get some clarity about the specific referral. . . ." On appeal, Prasad claims he did not agree to this format for the hearing. This claim is contrary to the transcript of the hearing, which reflects that he did agree.

6. Prasad said "Yeah" and "okay" after the hearing officer explained the process he wished to follow during the grievance hearing.

Tafoya (2007) 42 Cal.4th 147, 64 Cal. Rptr. 3d 163, 164 P.3d 590 [ruling precluding cross-examination forfeited on appeal for failing to raise it in trial court].) This is true even of self-represented litigants, as Prasad was during his grievance hearing. Self-represented litigants are not entitled to special treatment. (*People v. $17,522.08 United States Currency, supra*, at p. 1084.)

Furthermore, the hearing officer's interruptions did not deprive Prasad of an opportunity to present his case. The grievance hearing transcript reflects the hearing officer did not deliberately interrupt Prasad in an effort to undermine his testimony. In many instances, the hearing officer stopped Prasad when he deviated from the issues pertinent to the hearing. In other instances, the hearing officer interrupted Prasad so he could ask clarifying questions and obtain additional information relevant to the matters at hand. As a result, Prasad was not deprived of a fair hearing.

e. Unfairly Crediting Chancellor's Evidence

Prasad also claims the grievance hearing was procedurally unfair, because the hearing officer failed to properly consider *all* the evidence before him when he conducted his independent review and instead only believed Chancellor's testimony and evidence. Prasad argues the situations contemplated in *Gonzalez v. Santa Clara County Dept. of Social Services* (2014) 223 Cal.App.4th 72, 167 Cal. Rptr. 3d 148 (*Gonzalez*) and *Norasingh v. Lightbourne* (2014) 229 Cal.App.4th 740, 176 Cal. Rptr. 3d 868 (*Norasingh*) are applicable here and warrant reversal of the hearing officer's decision.

Prasad's premise that the hearing officer demonstrated some sort of bias by believing Chancellor's testimony is not well taken. At the grievance hearing, it was the hearing officer's role to examine the evidence and independently determine if the allegations of child abuse should be substantiated. (*Gonzalez, supra*, 223 Cal.App.4th at p. 101.) In so doing, the hearing officer was tasked with examining all the evidence—evidence supporting the allegations *and* evidence negating the allegations. To perform his duties, the hearing officer was required to make some credibility determinations to come to his ultimate conclusion on the matter. Evidence in favor of a substantiated finding will likely be contrary to evidence in favor of an inconclusive finding. Thus, the fact that the hearing officer credited Chancellor's testimony and evidence over Prasad's evidence does not necessarily indicate Prasad was deprived of a fair hearing.

Furthermore, the cases cited by Prasad do not aid him. In *Gonzalez*, a mother was reported for child abuse after she spanked her then 12-year-old daughter using a wooden spoon. (*Gonzalez, supra*, 223 Cal.App.4th at p. 75.) On appeal, we held that the hearing officer abused his discretion when it excluded the testimony of her daughter. (*Ibid.*) The hearing officer made no effort to determine whether there was good cause to exclude the daughter's testimony. (*Id.* at p. 98.) Furthermore, the daughter's testimony was material, because she denied making certain statements to the social worker. (*Id.* at p. 99.) *Gonzalez* is readily distinguishable. Unlike in *Gonzalez*, the hearing officer in Prasad's case did not refuse to admit or exclude Prasad's evidence.

Prasad's reliance on *Norasingh* is also misguided. In *Norasingh*, the appellant was denied protective supervision services under the "In-Home Supportive Services Program" (IHSS). (*Norasingh, supra*, 229 Cal. App.4th at p. 744.) Under IHSS regulations, protective supervision was available only "'for observing the behavior of nonself-directing, confused, mentally impaired, or mentally ill persons'" and could not be authorized "'[w]hen the need is caused by a medical condition and the form of the supervision required is medical.'" (*Id.* at p. 754.) Thus, the appellate court concluded reversal was required, because reviewing the record convinced the court that the social worker and the administrative law judge were operating under a misapprehension that the appellant's psychogenic seizures were a medical condition, precluding her from receiving protective supervision for dangerous behaviors related to the seizures. (*Id.* at p. 757.)

Prasad mischaracterizes *Norasingh*. He summarizes *Norasingh* as holding that the hearing officer erred when he found the social worker's testimony took precedence over all other evidence that was submitted. That is not what happened. The *Norasingh* court found the social worker and administrative law judge fundamentally misunderstood the nature of the appellant's condition. Thus, reversal was necessary. In contrast, there is no indication here that Chancellor was operating under some fundamental misconception regarding the nature of the alleged abuse. Therefore, the hearing officer's reliance on her evidence does not require reversal of his decision.

Based on the foregoing, we do not believe the hearing officer's determination that Chancellor and the evidence

she presented was credible demonstrates that Prasad was deprived of a fair grievance hearing.

f. "Standard of Proof" for the Administrative Review

Next, Prasad vaguely claims the administrative review procedure utilized by the Department "lacked any standard of proof for the Director[] and the grievance officer to apply." It is not clear what Prasad is referring to when he claims the process lacked a "standard of proof." To the extent Prasad is referencing the duties of the grievance officer and the trial court, the statutory scheme sets forth exactly what "standard of proof" is applicable. The Department finds a report is substantiated if, based on its examination of the evidence, it is "'more likely than not that child abuse . . . occurred.'" (*Gonzalez, supra*, 223 Cal.App.4th at p. 85; Pen. Code, § 11165.12, subd. (b).) Thus, "[t]he question before the hearing officer, and the trial court, was whether the evidence established a 'substantiated' report of 'child abuse.' (Pen. Code, § 11169, subd. (a).)" (*Gonzalez, supra*, at p. 85.) There is nothing in the record that indicates the hearing officer or the trial court ignored these duties.

g. Breach of Mandatory Duties

Lastly, Prasad argues his due process rights were violated, because "[t]he statutes authorizing the adoption of the DSS Manual and the content of the regulations in chapter 31-100 of the DSS Manual clearly demonstrate that those regulations are law making and not merely interpretive of existing statutory provisions." He claims

he was denied a fair hearing, because the Department breached these mandatory duties. He explains that "the regulations created specific legal requirements that do not exist outside the regulations" and implores this court to hold "the regulations in chapter 31-100 of the DSS Manual" to be "quasi-legislative," creating mandatory duties for the Department to follow.

In support of his argument, Prasad cites to *State Dept. of State Hospitals v. Superior Court* (2015) 61 Cal.4th 339, 188 Cal. Rptr. 3d 309, 349 P.3d 1013 (*State Hospitals*). In *State Hospitals*, our Supreme Court concluded the Sexually Violent Predators Act (SVPA) (Welf. & Inst. Code, § 6600 et seq.) conferred a mandatory duty on the State Department of Mental Health (DMH). Thus, the plaintiff's complaint sufficiently alleged DMH breached its mandatory duty, because it failed to evaluate an inmate with *two* practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, as required under former Welfare and Institutions Code section 6601, subdivision (d). (*State Hospitals, supra*, at p. 350.) Prasad does not explain how *State Hospitals*, which dealt with the SVPA, is applicable here. He merely argues *State Hospitals* is directly on point, because like in *State Hospitals*, the Department admitted it breached the "mandatory duties" set forth under the DSS Manual when it undertook the subpar investigation.

State Hospitals, however, does not hold that the DSS Manual created mandatory duties. Additionally, even if it were applicable here, Prasad does not explain or provide legal analysis on how breaching mandatory duties while investigating a claim of child abuse renders the subsequent grievance hearing procedurally unfair. Thus, we must

find Prasad waived this argument for failing to develop it on appeal. "An appellant must provide an argument and legal authority to support his contentions. This burden requires more than a mere assertion that the judgment is wrong. 'Issues do not have a life of their own: If they are not raised or supported by argument . . ., [they are] . . . waived.' [Citation.] It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived."[7] (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852, 57 Cal. Rptr. 3d 363.)

7. This argument is one of several made by Prasad that are either poorly developed on appeal or unsupported by legal analysis or citations to authority. For example, in the same section where he claims a violation of his due process rights, Prasad makes several generalized arguments pertaining to the evidence presented at the hearing. He argues the trial court relied on hearsay statements made by Chancellor, such as the fact that the officers investigating the allegations of abuse told Chancellor that the forensic interviewer had found Prasad's older daughter to be credible. Prasad, however, does not provide any citation to authority or legal analysis explaining how or why relying on Chancellor's statements is erroneous in the context of an administrative hearing. In fact, strict adherence to the normal rules of evidence is unnecessary in the context of administrative hearings. (See Gov. Code, § 11513.) Having failed to support his argument, we find this claim waived. (*Benach v. County of Los Angeles, supra*, 149 Cal.App.4th at p. 852.) We address other unsupported or vague arguments throughout this opinion.

b. Substantial Evidence Supported the Trial Court's Denial

i. Overview

Under Penal Code section 11169, an agency must forward "substantiated" reports of "child abuse." (Pen. Code, § 11169, subd. (a).) A "substantiated report" is defined as "a report that is determined by the investigator who conducted the investigation to constitute child abuse or neglect, as defined in [Penal Code] Section 11165.6, based upon evidence that makes it more likely than not that child abuse or neglect, as defined, occurred." (Pen. Code, § 11165.12, subd. (b).) Penal Code section 11165.6 defines child abuse or neglect to include sexual abuse as defined under Penal Code section 11165.1, which includes "[t]he intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose." (*Id.*, subd. (a)(4).)

"Section 1094.5 of the Code of Civil Procedure governs judicial review by administrative mandate of any final decision or order rendered by an administrative agency. A trial court's review of an adjudicatory administrative decision is subject to two possible standards of review depending upon the nature of the right involved.

[Citation.] If the administrative decision substantially affects a fundamental vested right, the trial court must exercise its independent judgment on the evidence. [Citations.] The trial court must not only examine the administrative record for errors of law, but must also conduct an independent review of the entire record to determine whether the weight of the evidence supports the administrative findings. [Citation.] If, on the other hand, the administrative decision neither involves nor substantially affects a fundamental vested right, the trial court's review is limited to determining whether the administrative findings are supported by substantial evidence." (*Wences v. City of Los Angeles* (2009) 177 Cal. App.4th 305, 313, 99 Cal. Rptr. 3d 199.)

Courts have concluded that "the familial and informational privacy rights identified in *Burt* [*v. County of Orange* (2004) 120 Cal.App.4th 273, 15 Cal. Rptr. 3d 373] are sufficient to establish that there is substantial impact on fundamental vested rights when . . . a parent is listed on the CACI." (*Saraswati v. County of San Diego* (2011) 202 Cal.App.4th 917, 928, 135 Cal. Rptr. 3d 671 (*Saraswati*).) Thus, trial courts must exercise their independent judgment when determining whether a report before the Department is substantiated. (*Gonzalez, supra*, 223 Cal.App.4th at p. 84.) On appeal following the trial court's judgment, the reviewing court must apply the substantial evidence standard of review and uphold the trial court's decision if it is supported by substantial evidence. (*Id.* at pp. 84-85.)

ii. Analysis

When it denied Prasad's petition for writ of administrative mandate, the trial court reasoned that "[i]t is possible that a substandard investigation, which violates various policies and procedures, could still generate sufficient evidence to substantiate a report of sexual abuse." Prasad argues the trial court's conclusion is not well-taken. He claims Chancellor's investigation was faulty and did not comport with procedures set forth in the DSS Manual, because Chancellor closed the investigation before the MDI interview, did not interview Prasad, did not visit Prasad's home, and did not interview other family members. Prasad insists the substandard investigation by Chancellor could not sufficiently amount to evidence substantiating the child sexual abuse claims; thus, the trial court should not have relied on it when it made its independent review.

We first address Prasad's claim that Chancellor's investigation cannot amount to substantial evidence, because she did not comply with the procedures generally set forth under the DSS Manual and California Code of Regulations, title 11, section 901.

We find Prasad's conclusory citations to the DSS Manual and the California Code of Regulations do not aid him. In particular, Prasad relies on California Code of Regulations, title 11, section 901, subdivision (a) (DOJ Rule 901(a)). This section was repealed and replaced with new text in 2010. Both parties, however, cite to the old version of DOJ Rule 901(a), which defined an "active investigation"

as one in which, at a minimum, included: "assessing the nature and seriousness of the known or suspected abuse; conducting interviews of the victim(s) and any known suspect(s) and witness(es) when appropriate and/or available; gathering and preserving evidence; determining whether the incident is substantiated, inconclusive, or unfounded; and preparing a report that will be retained in the files of the investigating agency." (Former Cal. Code Regs., tit. 11, § 901, subsequently amended operative Jan. 5, 2010.)[8]

Assuming without deciding that the requirements set forth under former DOJ Rule 901(a) apply in this case, we disagree with Prasad's determination that Chancellor's investigation was substandard under its definition. Prasad reiterates that Chancellor failed to interview him. Former DOJ Rule 901(a), however, does not absolutely require a suspect be interviewed. Interviews are mandated "when appropriate and/or available." (DOJ Rule 901(a).) As the Department notes, Chancellor did not initially interview Prasad, because there was a pending criminal investigation against him and the police department asked Chancellor not to conduct an interview. Although she did

8. The current version of California Code of Regulations, title 11, section 901 is titled "Form Required for Submitting Report of Suspected Child Abuse or Severe Neglect." This section mandates that agencies required to report instances of known or suspected child abuse or severe neglect for inclusion in the CACI must make the report on the "BCIA 8583" form. (Cal. Code Regs., tit. 11, § 901.) The definition of "active investigation" found in the former version of Code of Regulations, title 11, section 901 is no longer found in the California Code of Regulations.

not speak with Prasad about the allegations, Chancellor received and considered numerous documents from Prasad which he claimed were exculpatory.

Prasad, however, argues the regulations found in the DSS Manual required Chancellor to interview Prasad, visit Prasad's home, and interview other family members. He does not specify which regulations mandate these interviews. Upon our review, it appears that DSS Manual section 31-125.2 specifies that "[t]he social worker investigating the referral shall have in-person contact with all of the children alleged to be abused, neglected or exploited, and at least one adult who has information regarding the allegations." DSS Manual section 31-125.2.22.221, subdivision (b) states that a social worker shall conduct an in-person investigation with "[a]ll parents who have access to the child(ren) alleged to be at risk of abuse, neglect, or exploitation."[9]

Assuming DSS Manual section 31-125.2.22.221 required Chancellor to conduct an in-person interview with Prasad, we find the trial court correctly concluded that a substandard investigation can still generate sufficient evidence to substantiate a report of child sexual abuse. As defined in Penal Code section 11165.12,

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9. As noted in the previous part of this opinion, Prasad argued the statutes authorizing the adoption of the DSS Manual and the contents of the regulations found in Chapter 31-100 demonstrate the manual has the force of law. Again, Prasad does not cite to any legal authority for this claim. Nor does he provide any analysis, aside from this conclusory assertion. We therefore treat this point as waived. (*Benach v. County of Los Angeles, supra*, 149 Cal.App.4th at p. 852.)

a report of child abuse is substantiated if the investigator determines it is more likely than not that it occurred based on the evidence. Certainly, the social worker's failure to conduct certain interviews, such as an in-person interview with Prasad, bears on whether the report was substantiated. Such omissions—or lack of evidence—tend to indicate the report is unfounded or inconclusive. However, the omissions do not automatically render the decision reached by the Department, the hearing officer, and the trial court erroneous.

Prasad strenuously argued to the trial court that Chancellor's investigation was substandard. Thus, it is clear the trial court was aware of and considered the alleged deficiencies that occurred during the investigation. Prasad also presented his own evidence refuting the claims of abuse. However, the trial court was also presented with evidence obtained from the Department's investigations. Exercising its independent judgment, the court found the evidence, despite its deficiencies, established that the report was substantiated. In other words, the court concluded that notwithstanding the alleged problems with Chancellor's investigation, her investigation still generated sufficient evidence to conclude it is more likely than not the abuse occurred.

Next, Prasad claims the trial court and the Department relied on evidence that was not in the administrative record, such as the contents of the MDI, Chancellor's qualifications as an expert, her testimony that Prasad had an open criminal case against him, and her testimony at a custody hearing at family law court. Prasad is correct that

it appears the actual MDI is not a part of the administrative record. The trial court and the Department referenced the MDI through statements made by Chancellor at the family court hearing in January 2010 and her investigative narrative. These documents and transcripts were all a part of the administrative record and were presented to the hearing officer prior to the hearing.

The statute governing evidence in administrative proceedings, Government Code section 11513, subdivision (d), provides in pertinent part: "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."[10] Here Chancellor's statements about the MDI interview, although hearsay, *supplemented* her own investigation of the allegations, including her interview with Prasad's daughters. Thus, the hearing officer and the trial court properly considered it as evidence.[11]

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10. As discussed earlier, Prasad argued that the hearing officer erred when he considered hearsay evidence during the grievance hearing. Prasad, however, does not provide any argument or analysis on whether the normal rules of evidence applicable in trial proceedings should apply in the administrative context.

11. In his briefs on appeal, Prasad claims he was never provided with this evidence. However, according to the declaration of the Department's custodian of records, the transcript and investigative narrative were documents Prasad himself submitted as exhibits prior to the grievance hearing.

Lastly, Prasad makes an underdeveloped argument that the Legislature's placement of this statute in the Penal Code implies that one must be charged and convicted of a *crime* before placement in the CACI.[12] This argument is without merit. The plain language of Penal Code section 11165.12 rebuts Prasad's claim. A substantiated report is one in which an investigator determines, based on the evidence, is *more likely than not* that child abuse or neglect occurred. (Pen. Code, § 11165.12.) Penal Code section 11169 requires agencies to forward all substantiated reports for inclusion in the CACI. If the Legislature had intended for a substantiated report—and thus inclusion in the CACI—to *only* arise from criminal *convictions*, it would have worded the statute differently.

Gonzalez, supra, 223 Cal.App.4th at page 89 does not aid Prasad's claim. In *Gonzalez*, we noted that "the placement of CANRA supports an inference that it was aimed at criminal conduct, and that the Legislature expected its application to be guided by at least some of the substantive principles of criminal law." (*Ibid.*) Although CANRA is aimed at criminal *conduct*, in no way did we imply in *Gonzalez* that a report cannot be substantiated unless there is a criminal *conviction*.

Based on the foregoing, we do not find the trial court erred when it denied Prasad's petition for writ

12. In his opening brief, Prasad states that "[Child Abuse and Neglect Reporting Act] CANRA contemplates criminal acts of child abuse before placement of a person in the CACI database. [Citation.] Prasad was never arrested or charged with a crime for child abuse."

of administrative mandate. There is sufficient evidence in the record to support its decision. After the first referral, the record reflects Chancellor interviewed both daughters about the alleged abuse. During the interview, both girls confirmed to Chancellor that Prasad pinched their bottoms and Prasad climbed into the bathtub with them. The daughters' statements were consistent with the statements made by Rattan. Police also confirmed the older daughter's statement to Chancellor was consistent with her statements to the forensic interviewer at her MDI, and the forensic interviewer found her to be a reliable witness. While investigating the allegations, Chancellor received numerous documents from Prasad that he claimed were exculpatory. However, based on her training and experience, she believed the allegations to be substantiated.

Thus, substantial evidence supported the trial court's determination that based on its independent review, the allegations of child abuse against him were substantiated.

2. Denial of the Motion for Reconsideration

a. Standard of Review

Under Code of Civil Procedure section 1008, subdivision (a), a party affected by an order granted by the court may seek reconsideration of the order based on new law or facts. "The party seeking reconsideration must provide not just new evidence or different facts, but a satisfactory explanation for the failure to produce it at an earlier time." (*Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1457, 45 Cal. Rptr. 2d 695.) We review a trial court's

ruling on a motion for reconsideration under the abuse of discretion standard. (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212, 37 Cal. Rptr. 3d 338.)

b. Analysis

After the trial court denied his petition for writ of mandate, Prasad filed a motion for reconsideration based on new law and facts. After considering his arguments, the trial court denied the motion for reconsideration. Upon review of Prasad's motion, we find the denial was not an abuse of discretion.

First, Prasad's motion did not cite applicable new law. Prasad cited to *B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 195 Cal. Rptr. 3d 220, 361 P.3d 319 (*B.H.*). In *B.H.*, our Supreme Court concluded that a sheriff's department had a mandatory and ministerial duty to cross-report child abuse allegations made to a 911 operator to the child welfare agency under CANRA (Pen. Code, § 11164 et seq.), the failure to cross-report supported a finding of a breach of a mandatory duty establishing public entity liability, and the investigating officer did not have a duty to report investigative findings to the child welfare agency under Penal Code section 11166, subdivision (a). (*B.H., supra*, at p. 175.) *B.H.* has no bearing on the issues presented in this case.

Prasad also cited to *State Hospitals, supra*, 61 Cal.4th 339. As we explained earlier, our Supreme Court in *State Hospitals* concluded the SVPA conferred a mandatory duty on the DMH. (*State Hospitals, supra*, at p. 350.)

State Hospitals had nothing to do with Prasad's claim that Chancellor's failure to follow former DOJ Rule 901(a) and the DSS Manual rendered the evidence obtained from her investigation insufficient to substantiate the child abuse allegations.

Lastly, Prasad also cited to an unpublished decision of the Fifth District Court of Appeal, *Hudson v. County of Fresno* (Sept. 30, 2015, F067460, F065798) [2015 Cal. App.Unpub. LEXIS 7000]. Although he argues the case is entirely on point, Prasad's reliance on it is in violation of California Rules of Court, rule 8.1115, which provides that "an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action." *Hudson* cannot be considered "new law" requiring the trial court to grant the motion for reconsideration.

In any event, we find Prasad's reliance on cases like *B.H.* and *State Hospitals* demonstrates he possesses a fundamental misunderstanding of the law. *B.H.* and *State Hospitals* concern whether an agency's breach of mandatory duties renders a government entity liable for injury. (*B.H., supra*, 62 Cal.4th 168; *State Hospitals, supra*, 61 Cal.4th 339.) On appeal, Prasad argues the DSS Manual and former DOJ Rule 901(a) imposed certain mandatory duties on the investigating social worker. However, he is *not* arguing that due to its breach of duties, the Department of Social Services caused him injury. Rather, he is arguing the breach of the duties rendered the investigation—and the resulting evidence—insufficient as

a matter of law. This is entirely different than the legal issues implicated in *B.H.* and *State Hospitals*.

Furthermore, we find Prasad's motion for reconsideration did not allege new facts. In his motion, Prasad argued he was deprived of a fair grievance hearing, because he was interrupted multiple times during the hearing, was not permitted to cross-examine Chancellor, and was not given the opportunity to review the evidence that was going to be presented against him. It appears Prasad made these arguments below during the writ proceedings. Thus, Prasad does not allege new facts that would warrant granting the motion for reconsideration.

3. Fees and Costs

a. Fees and Costs Related to Underlying Writ Proceedings

After this court's remand, Prasad filed a motion for attorney fees and costs in the amount of $116,597.78, plus an additional $5,000 to compensate his attorney for bringing the motion for fees. The trial court denied the motion without prejudice.

A prevailing party in a civil lawsuit is entitled to his or her costs. (Code Civ. Proc., § 1032, subd. (a)(4).) "If any party recovers other than monetary relief and in situations other than as specified, the 'prevailing party' shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not . . . ." (*Ibid.*) "A plaintiff will be considered a prevailing party

when the lawsuit yields the primary relief sought in the case." (*Pirkig v. Dennis* (1989) 215 Cal.App.3d 1560, 1566, 264 Cal. Rptr. 494, disapproved on a different point in *Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1330, 104 Cal. Rptr. 3d 219, 223 P.3d 77.) We review the trial court's prevailing party determination for an abuse of discretion. (*City of Santa Maria v. Adam* (2016) 248 Cal.App.4th 504, 516, 203 Cal. Rptr. 3d 758.)

Here, the trial court denied Prasad's motion for costs and fees related to the underlying writ proceeding without prejudice, because the motion was premature. We agree with the court's conclusion. At the time Prasad filed his motion for costs and fees related to the original writ proceeding, the trial court had not yet conducted the second hearing on Prasad's writ petition. Thus, even though a prevailing party is entitled to his or her costs, there was no prevailing party at the time the court denied the motion for costs and fees.

b. Attorney Fees on Appeal

Prasad's motion for costs and fees also requested his attorney fees on appeal under Code of Civil Procedure section 1021.5. The trial court denied the request, finding that this court's unpublished decision did not confer a significant benefit to the public.

Code of Civil Procedure section 1021.5 was enacted by the Legislature to provide courts with the authority to award attorney fees under a private attorney general theory. (*Bui v. Nguyen* (2014) 230 Cal.App.4th 1357, 179

Cal. Rptr. 3d 523 (*Bui*).) Code of Civil Procedure section 1021.5 provides: "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any." The moving party for an award of fees must satisfy each element listed in in Code of Civil Procedure section 1021.5. (*RiverWatch v. County of San Diego Dept. of Environmental Health* (2009) 175 Cal.App.4th 768, 775, 96 Cal. Rptr. 3d 362.) We review the trial court's ruling for an abuse of discretion. (*Id.* at p. 776.)

Here, the trial court did not address all three of the elements that must be satisfied before attorney fees may be awarded under Code of Civil Procedure section 1021.5. The court focused on the first element, whether a significant benefit had been conferred to the public. A "significant benefit" can be either pecuniary or nonpecuniary, and the trial court is "required to determine the significance of the benefit as well as the size of the group favorably impacted by making 'a realistic assessment, in light of all the circumstances, of the gains which have resulted in a particular case.'" (*Bui, supra*, 230 Cal.App.4th at p. 1366.)

Appendix A

On appeal in *Prasad I*, we found the court applied the wrong standard of review when it considered his petition for writ of mandate. This conclusion was based on settled law. (See *Saraswati, supra*, 202 Cal.App.4th at p. 928; *Gonzalez, supra*, 223 Cal.App.4th at p. 84.) Accordingly, the trial court did not err when it determined our decision in *Prasad I* did not confer a significant public benefit, and it did not abuse its discretion when it denied Prasad's motion for attorney fees.

DISPOSITION

The order denying the petition is affirmed.

_____
Premo, Acting P. J.

WE CONCUR:

_____
Mihara, J.

_____
Grover, J.

APPENDIX B — ORDER OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA, FILED MAY 13, 2016

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

Case No.: 1-11-CV-203380

ABHIJIT PRASAD,

Petitioner,

vs.

WILL LIGHTBOURNE *et al.*,

Respondents.

ORDER AFTER HEARING

MOTION FOR RECONSIDERATION

The above-entitled matter came on regularly for hearing on April 29, 2016 at 9:00 AM in Department 73, the Honorable Joseph H. Huber presiding. The appearances are as stated in the record. The Court, having read and considered the supporting and opposing papers, and having heard and considered the arguments of counsel, and good cause appearing therefore, makes the following order:

Petitioner's Motion to Reconsider is DENIED.

Appendix B

SO ORDERED.

Dated: May 13, 2016

s/
Honorable Joseph H. Huber
Judge of the Superior Court

APPENDIX C — ORDER OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA, FILED JANUARY 25, 2016

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

Case No. 2011-1-CV-203380

ABHIJIT PRASAD,

Petitioner,

vs.

WILL LIGHTBOURNE, *et al.*,

Respondents.

ORDER RE: PETITION FOR WRIT OF MANDATE

The petition for writ of mandate by petitioner Abhijit Prasad came on for hearing before the Honorable Joseph H. Huber on January 5, 2016, at 9:00 a.m. in Department 21. The matter was submitted on that date. After full consideration of the authorities, papers, evidence, and arguments presented by each party, the Court makes the following rulings:

Petitioner Abhijit Prasad ("Prasad") petitions for writ of mandate against respondent Santa Clara County Department of Social Services (the "Department"), challenging the Department's determination that the child

abuse allegations made against him were substantiated rather than unfounded.

I. Procedural Background

As the parties are aware, the court (Hon Patricia M. Lucas) previously upheld the Department's administrative decision, finding it was supported by substantial evidence and rejecting Prasad's due process arguments. That decision was reversed by the Sixth District Court of Appeal, which found that the court applied the wrong standard in reviewing the Department's determination. *(Prasad v. Sessions* (Cal. Ct. App., Jan. 22, 2015, H039167) [2015 WL 289962, pp. 1, 5-6].) The Court of Appeal remanded the matter to the superior court to apply the correct standard of review, independent judgment. *(Ibid.;* see *Gonzalez v. Santa Clara County Dept. of Social Services* (2014) 223 Cal.App.4th 72, 84 ["Because recordation in CACI as a probable child abuser impinges upon fundamental rights, the superior court must exercise its independent judgment in determining whether the evidence before the Department established that the report is 'substantiated.'"].)

II. Legal Standard

When a trial court reviews a final administrative decision that substantially affects a fundamental vested right, the trial court not only examines the administrative record for errors of law but also conducts an independent review of the entire record, in a limited trial de novo, to determine whether the weight of the evidence supports

the administrative findings. (*Wences v. City of Los Angeles* (2009) 177 Cal.App.4th 305, 313 citing *Bixby v. Pierno* (1971) 4 Cal .3d 130, 143.)

"In exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative findings ...." *(Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817 (*"Fukuda"*); see also *San Dieguito Union High School Dist. v. Commission on Professional Competence* (1982) 135 Cal.App.3d 278, 288 [the administrative agency's "factual finding is entitled to substantial weight even in an 'independent judgment' hearing before the superior court"].) "The presumption of correctness is the starting point for the trial court's review, but this rebuttable presumption may be overcome by the evidence. When applying the independent judgment test, the trial court may reweigh the evidence and substitute its own findings for those of the [administrative agency], after first giving due respect to the [administrative agency's] findings." *(Breslin v. City and County of San Francisco* (2007) 146 Cal.App.4th 1064, 1077 (*"Breslin"*) citing *Fukuda, supra,* 20 Cal. 4th at p. 818.)

Ultimately, "the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence." (*Fukuda, supra,* 20 Cal.4th at p. 817.) Thus, Prasad has the burden of proof to show that the Department's decision was not supported by the weight of the evidence—that is, that the decision was not supported by the preponderance of the evidence. (See *Breslin,*

supra, 146 Cal.App.4th at p. 1077; see also *Chamberlain v. Ventura County Civil Service Com.* (1977) 69 Cal.App.3d 362, 369 [preponderance of the evidence "simply means what it says, viz., that the evidence on one side outweighs, preponderates over, is more than, the evidence on the other side, not necessarily in number of witnesses or quantity, but in its effect on those to whom it is addressed"].)

III. Analysis

Upon review, the Court finds that Prasad does not meet his burden of proving that the administrative finding—that the report of sexual abuse was substantiated—is contrary to the weight of the evidence.

A "substantiated report" means a report that is determined to constitute child abuse based upon evidence that makes it more likely than not that child abuse occurred. (Pen. Code, § 11165.12, subd. (b).) Penal Code section 11165.1, subdivision (b)(4) defines sexual abuse, in part, as "[t]he intentional touching of the genitals or intimate parts, including the ... genital area ... and buttocks ... of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose."

The record reflects that the Department received a report that Prasad sexually abused his two young daughters, ages four and six, at his home sometime between September 2008 and July 2009.

Appendix C

In response to the report of sexual abuse, a Department social worker, Nana Chancellor ("Chancellor"), interviewed Prasad's (now ex-) wife Komal Rattan ("Rattan") and their daughters on November 23, 2009. Chancellor spoke quietly with Rattan so the girls could not hear. Rattan told Chancellor of past incidents of domestic violence and said the older daughter recently told her that Prasad takes baths with them and pinches them in "their privates." Rattan told Chancellor she did sometimes see small bruises on the girls' bottoms.

Next, Chancellor met with the older daughter at one end of the room while Rattan and the younger daughter played at the other end. Chancellor reported the older daughter maintained good eye contact, communicated clearly, and appeared to be answering questions openly." The older daughter told Chancellor she understood what it meant to tell the truth and promised to do so. She told Chancellor, while visiting her father, he made them take baths, climbed into the bathtub with them, and pinched their bottoms, which hurts and makes them cry. The older daughter told Chancellor that, on more than one occasion, her father told them to touch his privates but they refused because "[i]t's disgusting."[1] She informed Chancellor that

1. According to Chancellor's report, the older daughter said the phrase "it's disgusting" to her in Hindi and Rattan provided the translation. At oral argument, Prasad contended that the girls did not speak English at the time of their interview with Chancellor and, thus, Rattan must have been translating the entirety of the girls' statements. There is no evidence in the record that the girls did not speak English. In fact, the evidence permits the contrary inference as Chancellor stated that she spoke with the girls separately from

Prasad would get mad and kept saying "touch my butt" repeatedly. Chancellor found the older daughter to be credible and reliable.

Lastly, Chancellor met with the younger daughter, who stated that Prasad made her take baths and would get in the bathtub with her, which she did not like.

A few months later, Chancellor received a call from Detective Nathan Cogburn with the Tracy Police Department, who told her that the older daughter had undergone a multidisciplinary interview ("MDI") and told the interviewer that her father got "in the bathtub with her and her sister, that he has touched her bottom and vagina, and that he has asked that she touch his privates." Detective Cogburn also told Chancellor that the forensic interviewer had found the older daughter to be reliable.

This evidence was sufficient to substantiate the report of sexual abuse as it establishes that Prasad intentionally touched the buttocks of his older daughter for purposes of sexual arousal or gratification. Prasad asserted at oral argument that there is no evidence showing that the alleged pinching was performed for purposes of sexual arousal or gratification. The Court disagrees. The record shows that the older daughter told Chancellor and the forensic interviewer that, while in the bath, Prasad not

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their mother, and Chancellor indicated that she interviewed the older daughter at the other end of the room so the conversation could not be overheard. Moreover, with the exception of the single phrase noted above, there is no indication that Rattan translated or otherwise took part in Chancellor's conversation with the older daughter.

only pinched her bottom, but repeatedly told her to touch his privates. These facts, taken together, permit the inference that the forceful pinching of the girls' bottoms was done for purposes of sexual arousal or gratification.

The evidence Prasad presented to the Department does not alter this determination. Prasad submitted sworn deposition testimony from nannies he employed to look after the girls. The nannies testified that they watched the girls on the weekends when the girls stayed with Prasad, they would bathe the girls in the morning in the shower, and they never saw Prasad in the bathtub with the girls. Prasad asserts that this evidence demonstrates that he never bathed in the tub with the girls as the nannies were always present when the girls were at his home and they were responsible for washing the girls. Prasad's argument is not well-taken. The record reflects that Prasad had visitation with his daughters every other weekend *and* overnight visitations with them during the week—specifically on Wednesdays. The nannies either testified that they could not recall watching the girls during the week or that they never watched the girls during the week. Since, the evidence demonstrates that the nannies were not always present when the girls were at Prasad's home, their testimony does not undermine the older daughter's statements.

Prasad also submitted photographs of his bathroom, shower, and bathtub to the Department. At oral argument, Prasad suggested that it would have been impossible for him to fit into the bathtub with his daughters; however,

it is not possible to make such a determination from the photographs and Prasad provides no other evidence supporting his assertion.[2]

Prasad further argued that the older daughter was coached by Rattan to make the subject allegations of sexual abuse. While the administrative record contains evidence that Prasad and Rattan were in the midst of a contentious separation and frequently made reports of abuse against one another, there is no evidence in the record that the older daughter was lying or coached by Rattan. In fact, there is evidence that both the social worker and the forensic interviewer found the older daughter's statements to be credible.

Finally, Prasad argued at length that because Chancellor failed to conduct a thorough investigation (e.g., interview other family members, the nannies, and Rattan's boyfriend) and follow the policies and procedures set forth in the California Social Services Manual of Policies and Procedures (e.g., visit Prasad's home and interview Prasad), it follows that the Department's

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2. At oral argument, Prasad indicated that his older daughter told the forensic interviewer that his nephew would also take baths with them. Prasad argued that this further demonstrated that the allegations were impossible and the older daughter was not reliable. Prasad's argument lacks merit because he relies on facts that are not contained in the administrative record. There is no evidence in the administrative record that the older daughter made inconsistent statements to the forensic interviewer or that she claimed during the MDI interview that Prasad's nephew was also present in the bathtub when the alleged sexual abuse occurred.

decision was contrary to the weight of the evidence. Prasad cited no legal authority, and the Court is aware of none, supporting his contention that a failure to conduct a thorough investigation and comply with applicable policies and procedures means, as a matter of law, that the administrative decision was contrary to the weight of the evidence. Moreover, as a matter of common sense, Prasad's position is not well-taken. It is possible that a substandard investigation, which violates various policies and procedures, could still generate sufficient evidence to substantiate a report of sexual abuse. Thus, the thoroughness of the investigation and its compliance with applicable policies and procedures does not necessarily bear whether the administrative decision is supported by the weight of the evidence.

For the foregoing reasons, Prasad's petition is DENIED.

January 12, 2016

/s/_____
Joseph H. Huber
Judge of the Superior Court

APPENDIX D — DENIAL OF REVIEW OF THE SUPREME COURT OF CALIFORNIA, FILED JUNE 13, 2018

Court of Appeal, Sixth Appellate District -
No. H043780

S247924

IN THE SUPREME COURT OF CALIFORNIA

En Banc

ABHIJIT PRASAD,

Plaintiff and Appellant,

v.

WILL LIGHTBOURNE,

Defendant and Respondent.

The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice