



# In re: L.J.B., 2018 Pa. LEXIS 6807 (Pa. 2018)

Topics Covered: Pregnant Women's Rights

## **Outcome: Very Favorable**

### **Issue**

The issue in this case was whether a pregnant woman's use of illegal drugs can constitute child abuse under the Pennsylvania Child Protective Services Law (CPSL), 23 Pa.C.S. §§ 6301, et seq.

### **AMA interest**

The AMA opposes criminal sanctions against pregnant women for harmful behavior toward their fetuses.

### **Case summary**

An expectant mother tested positive for opiates, benzodiazepines, and marijuana. After she gave birth, the child (L.J.B.) suffered from withdrawal symptoms. Two weeks later, the Clinton County (Pennsylvania) Department of Children and Youth Services (CYS) sued the mother for child abuse under CPSL and sought an order of emergency protective custody. The court ordered CYS to assume protective custody over the child.

However, the court observed that CPSL "does not provide for finding of abuse due to actions taken by an individual upon a fetus." It then found that the mother had not committed child abuse, as the mother's drug abuse had occurred before the child was born. CYS appealed from this finding.

The Superior Court found that a "fetus" or "unborn child" would not be a "child" under the CPSL. Once born, however, the fetus becomes a child. At that point, the mother's actions while pregnant could cause harm to the child. Therefore, it concluded: "If CYS establishes that through Mother's prenatal illegal drug use she 'intentionally, knowingly or recklessly' caused, or created a reasonable likelihood of bodily injury to Child after birth, a finding of 'child abuse' would be proper." The trial court's finding that the mother had not committed child abuse under the CPSL was reversed.

The case was appealed to the Pennsylvania Supreme Court, which by a split decision, ruled in the mother's favor (affirming the trial court but reversing the Superior Court). It found that the CPSL does not apply to harm caused to a fetus.

### **Litigation Center involvement**

The Litigation Center, along with the Pennsylvania Medical Society, the American College of Obstetricians and Gynecologists, and numerous other health care advocacy organizations, filed an amicus brief in the Pennsylvania Supreme Court to support the mother.

Supreme Court of Pennsylvania brief