

Arguments Proceed in Federal Lawsuit

by Nicholas Bolzman, HSLDA Litigation Assistant

Case: *Loudermilk Family v. Administration for Children, Youth & Families*
Filed: March 3, 2006

The summary judgment process is underway in the federal lawsuit Home School Legal Defense Association filed on behalf of the Loudermilk family. This story began in 2005 when, based on a two-month-old anonymous tip, two social workers and six sheriff's deputies insisted on entering and inspecting the Loudermilks' Arizona home. Since these officials had no search warrant, the Loudermilks denied entry, based on their 4th Amendment rights. However, the social workers persisted, threatening to take away the children immediately.

The Loudermilks called HSLDA for assistance. HSLDA Staff Attorney Thomas Schmidt reiterated to the social workers, sheriff's deputies, and even the assistant attorney general—whom the social workers had called for guidance—that the officials had no right to enter the home or take away the children; but all to no avail. Despite the lack of legal authority, the social workers, backed by the sheriff's deputies and assistant attorney general, began to fill out paperwork to immediately remove the children.

Faced with the choice between sacrificing their 4th Amendment rights and losing their children, the Loudermilks chose the former and allowed the social workers and sheriff's deputies to inspect the home. Five minutes later, the officials had determined that the allegations were completely false and left.

HSLDA filed a federal lawsuit on behalf of the Loudermilk family, alleging that the search violated the 4th Amendment and that the unjustified threat to remove the children was a separate constitutional violation of the family's 14th Amendment right to privacy and family integrity. Our first victory came on September 27, 2007, when the judge denied the social workers' and assistant attorney general's motion to dismiss the claims. The judge stated, "Defendants persisted in their threats to remove the children if Plaintiff Parents did not consent to the search, stating that [they] could arrest or handcuff the Parents in front of the children. Based on the allegations set forth in the Amended Complaint, viewed in Plaintiff's favor, no reasonable official would have believed that his or her conduct was authorized by state or constitutional law." With regard to the assistant attorney general, the court ruled that "Plaintiffs have sufficiently alleged that [the attorney] . . . by 'threat' exerted 'coercive pressure' on them to allow the search of their home so that their children would not be removed."

This ruling allowed the case to proceed to the discovery phase, where the testimony of everyone involved was gathered. No surprises were found during this process, as all witnesses generally agree about what took place on the Loudermilks' doorstep. At the close of discovery, the social workers, sheriff's deputies, and assistant attorney general have filed

a motion for summary judgment, claiming that no violation occurred and the trial should not proceed. They continue to insist that the Loudermilks freely consented to the search, and thus there was no 4th Amendment violation.

HSLDA responded, citing the evidence from discovery that demonstrates that the “consent” was granted under duress, and not voluntary under the 4th Amendment, case precedent, or even the sheriff department’s own policy. Furthermore, the officials involved showed a blatant disrespect for the Loudermilks’ 4th and 14th Amendment rights, and should be held liable for this abuse of their authority. We are awaiting the judge’s decision on this matter.

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Judge Upholds Family’s Right to Day in Court

April 1, 2010

HSLDA

In a federal lawsuit filed March 3, 2006, and reported earlier in the *Home School Court Report*, HSLDA sued two child protective service workers who showed up at the Loudermilk family’s door, accompanied by numerous sheriff’s deputies, two months after an anonymous tipster had reported the family.

After winning the first round almost three years ago, when the judge ruled in the family’s favor in refusing to dismiss the case, we have been fighting the state’s attempt to have the investigators declared immune from litigation. The state argued that the family had voluntarily allowed the investigators into the home—an assertion that ignores the fact the social worker had said the Loudermilk children would be removed for 72 hours if the parents did not permit entry!

On March 31, 2010, the judge denied the state’s motion for summary judgment, stating that “The disputed questions of fact on these [consent] issues ... preclude summary judgment.” He ruled that a jury must determine whether the Loudermilks were coerced by the CPS investigators and sheriff’s deputies.

“We are grateful that the judge is taking this matter seriously and making sure that a family’s right to be together is protected,” said Darren Jones, staff attorney with HSLDA. “The Loudermilks are doing a service to all families by their willingness to stand up against unjustified state intervention, not just at the initial contact, but for the four years this case has been going on.”

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