

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Juzarian
28607

FILE: B-214719

DATE: June 25, 1984

MATTER OF: Court Leave

DIGEST:

Employee summoned to appear on several occasions in juvenile court proceedings in Pennsylvania concerning her son requests court leave under 5 U.S.C. § 6322. The employee is not entitled to court leave since she was summoned as a party to the proceedings under a Pennsylvania statute which provides that the court shall summon the parents, guardian, or custodian, and any other persons as appear to the court to be "proper or necessary parties to the proceeding."

The matter presented to us by the Defense Logistics Agency is whether an employee of the Defense Industrial Supply Center is entitled to court leave in connection with her attendance under subpoena at a juvenile court proceeding involving her son.¹ The employee is not entitled to court leave under 5 U.S.C. § 6322 since she was summoned to court proceedings in her capacity as the juvenile's parent as a party to the proceedings.

The employee was absent from work on November 14, and 23, 1983, and on December 2, and 13, 1983, in connection with her attendance in juvenile court at hearings for her son charged with being delinquent. In connection with these absences the employee has requested that she be granted a total of 32 hours of court leave. The agency advises that it has not granted the requested court leave since there is some doubt as to whether the employee was in fact summoned as a witness for purposes of the court leave provisions.

The subpoena issued by the Court of Common Pleas of Philadelphia, Family Division, for the hearing dated November 14, 1983, does not mention the employee by name. The block on that subpoena which denotes the charge states

¹ The request for an advance decision is presented by Mr. R. J. Fitzgerald, Comptroller, Headquarters, Defense Personnel Support Center, Defense Logistics Agency, Philadelphia, Pennsylvania.

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"Cert of Parent" which indicates that the proceeding may have been initiated upon the request of a parent of the juvenile. The next subpoena which was issued for the November 23, 1983 hearing was specifically addressed to the employee by name. However, the two subpoenas for the December 2 and 13 hearings were addressed to the juvenile and his "parent." The agency has obtained a statement by a court clerk dated February 21, 1984, which provides that the employee did appear in court on the dates in question "as a witness" in the juvenile matter.

Section 6322 of title 5, United States Code, provides that an employee is entitled to leave, without loss of, or reduction in, pay, or leave to which he otherwise is entitled, when in response to a summons in connection with a judicial proceeding he serves as a juror or as a witness on behalf of any party when the United States, the District of Columbia, or a state or local government is a party to the proceeding.

The Commonwealth of Pennsylvania would appear to be a party to a delinquency proceeding under its Juvenile Act. 42 Pa. C.S.A. §§ 6301-6365. The Commonwealth's role under the Juvenile Act is to protect the public interest and to supervise and rehabilitate youthful offenders. 42 Pa. C.S.A. § 6301(b)(2). See In Interest of McDonough, 430 A.2d 308, 312 (Pa. Super. Ct. 1981). Also, see 42 Pa. C.S.A. §§ 6334(1) and 6336(b).

We have held that the authority of 5 U.S.C. § 6322 to grant court leave does not extend to an employee who is the plaintiff in the action. See Wilma Pasake, 59 Comp. Gen. 290 (1980), and James L. Sweeney, B-201602, April 1, 1981. Furthermore, we have held that an individual summoned into court as a defendant in the court action concerned is not entitled to court leave. See 62 Comp. Gen. 87 (1982). Neither the language of 5 U.S.C. § 6322 nor the legislative history indicate that court leave is available to an employee who is summoned to a court action as a party to the proceeding. See 62 Comp. Gen. 87, supra.

Under the Juvenile Act the court may order a disposition in a juvenile case which would affect the parent-child relationship. Pursuant to a finding of delinquency, the court may place conditions and limitations on the child's continued residence with his or her parents. Furthermore, the court may transfer temporary legal custody

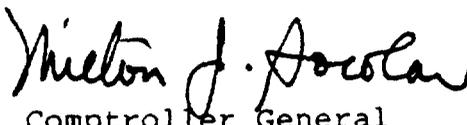
of the child to another individual or to an agency, or commit the child to an institution. See 42 Pa. C.S.A. §§ 6351 and 6352. Thus, it is clear that the parents of a juvenile are interested parties to a proceeding under the Juvenile Act.

The pertinent Pennsylvania statute regarding juvenile court hearings provides as follows with regard to the attendance of the juvenile's parents at the proceedings:

"The court shall direct the issuance of a summons to the parents, guardian, or other custodian, a guardian ad litem, and any other persons as appear to the court to be proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. The summons shall also be directed to the child if he is 14 or more years of age or is alleged to be a delinquent. * * *"
42 Pa. C.S.A. § 6335.

The above provision clearly shows that in a juvenile court proceeding the parents, guardian or other custodian are to be issued a summons as proper or necessary parties to the proceedings not merely as witnesses. Thus, in juvenile court proceedings the parent or parents of the juveniles are ordinarily summoned in their parental capacity as parties to the proceeding. In this instance, the fact that only one subpoena mentioned the employee by name supports the view that, pursuant to 42 Pa. C.S.A. § 6335, the employee was summoned to the juvenile court proceedings as a party to the case. We do not view the court clerk's statement, that the employee appeared as a witness as sufficient evidence to establish that the employee had been summoned as a witness where Pennsylvania law directs that the juvenile's parents are to be subpoenaed as parties to the matter.

In accordance with the above, since the employee was summoned as a party to the juvenile court proceedings and not as a witness she is not entitled to court leave under 5 U.S.C. § 6322.

for 
Comptroller General
of the United States