

Jay Howell & Associates

A PROFESSIONAL ASSOCIATION

Attorneys at Law

644 Cesery Boulevard, Suite 300

Jacksonville, Florida 32211

(904) 680-1234 • Fax (904) 680-1238

www.jayhowell.com

CHILD ABUSE OR PARENTAL DISCIPLINE?

By Jay C. Howell

The State Attorney's Office in Central Florida alleged that in the Summer of 1999 the Defendant spanked his 6-year-old daughter. There were no eyewitnesses to the event other than the child and her father. The child sustained dark bruising covering both of her buttocks. She received medical attention at a hospital. Photographs were taken of the child's injuries, showing bruises on the child's buttocks as well as bruising on the child's upper thigh and upper back.

The motive or explanation for the beating was unclear. The State asserted that the child had not wiped herself or flushed the toilet after she went to the bathroom, and that this had angered the parent. The defense argued that the punishment was in response to the child getting into a medicine cabinet, into the father's girlfriend's cigarettes, and pushing her brother.

The State Attorney's Office charged the Defendant parent with child abuse, alleging that he exceeded the bounds of permissible discipline by using excessive force, but agreed that his conduct was more the result of a loss of temper than a matter of willful malice.

Before the trial judge, the Defendant argued that he was exempt from the crime of "simple child abuse" as long as he was disciplining his child, regardless of his motive. The trial judge agreed and dismissed the charges against him. The State appealed.

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The appellate court examined the history of the Florida legislature's attempt to draw a line between parental discipline and criminal behavior. Citing an established common law tradition which permits reasonable parental discipline, the court concluded that current child abuse laws do not exempt parents from prosecution for child abuse, but attempted to find the boundary between permissible parental discipline and prohibited child abuse.

Previous appellate court decisions in Florida had recognized the "well established principle" that a parent, or one acting in place of the parents, does not commit a crime by inflicting corporal punishment on a child subject to his authority, if he remains within the legal limit of that authority. Another appellate court in Florida had previously ruled that a mother punishing her 7-year-old son for stealing money from her by hitting him with a belt, leaving bruising on his shoulders, back and arms, **was** sufficient to sustain a charge of child abuse. In yet another case, the court found that a parent who spanked his 8-year-old daughter with a leather belt causing bruising on the buttocks and right hip, **was not** sufficient to support a felony charge of aggravated child abuse.

In deciding this case, the appellate court recognized that drawing a line between prohibited child abuse and permissible corporal punishment, administered by parents who believe in this form of discipline, is not an easy task. Since we live in a state where the common law has now been replaced in large part by statutes, this difficult task is principally a legislative function. Ruling that the misdemeanor child abuse charges were appropriate in this case, the appellate court reversed the trial judge and stated that whether the corporal punishment of the child in this case was excessive enough to become a crime of child abuse was a question of fact for resolution by the jury or judge hearing all the evidence at trial.

The case is *State vs. McDonald*, and can be found at 785 So. 2nd, 640 (Fla. 2nd DCA 2001).