



STORAGE NAME: h1223.SLC.doc

DATE: 4/23/2008

April 23, 2008

SPECIAL MASTER'S FINAL REPORT

The Honorable Marco Rubio
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 1223 - Representative G. Thompson
Relief/Daniel Decembre/Orange County School Board

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR \$1.8 MILLION ARISING FROM A STIPULATED SETTLEMENT AGREEMENT BETWEEN DESNAR AND MIGNONE DECEMBRE, AS PARENTS AND GUARDIANS OF DANIEL DECEMBRE, AND THE ORANGE COUNTY SCHOOL BOARD FOR INJURIES THAT DANIEL RECEIVED WHEN HE WAS ATTACKED BY A PIT BULL ON THE CAMPUS OF RIDGEWOOD PARK ELEMENTARY SCHOOL.

FINDING OF FACT:

On March 4, 2003, after regular classes had ended at Ridgewood Park Elementary School in Orlando, Daniel Decembre, then 8 years old, was talking with a friend while waiting for his after-school tutoring class to begin. Daniel saw a large dog running straight for him and he began to run toward a playground area where there were teachers and other students. Daniel tripped and fell down as he ran across a broad drainage swale. The dog jumped on top of Daniel and began to maul him, biting him repeatedly on his face and head.

A teacher drove her car over to the area and tried without success to knock the dog away with the car. Other teachers threw things at the dog. One teacher beat the dog with an umbrella until it finally stopped its attack.

Daniel's injuries were extensive. He was taken via air ambulance to the hospital. He had deep lacerations of both

cheeks, his eyelids, and chin. He lost much of his right ear and his left ear had to be amputated. He has undergone four subsequent surgeries to repair the damage to his face and eyes.

Daniel suffered permanent physical injuries to his face and head. He will need several more surgeries and a prosthetic ear implant which must be replaced every 2 to 5 years (to account for his growth) until he reaches physical maturity. He has recurring pain on the left side of his head, some facial nerve damage, and the tear duct of his left eye continually runs.

The incident also caused Daniel lasting psychological trauma. He has frequent nightmares and is now afraid to be near dogs. The incident, subsequent surgeries, and his recovery caused Daniel to fall a year behind in school. He is regularly teased at school due to his disfigurement.

The dog belonged to a man who lived in a house adjacent to the school grounds. He said that the dog bolted through the front door when his daughter came into the house. There was no explanation in the record for why the dog's owner did not immediately run after the dog and arrive sooner to prevent or to help stop the dog's attack on Daniel. The evidence only shows that the owner arrived after the attack had ended and took the dog back to his house. The owner was issued a citation and he paid a fine. The dog, a pit bull, was put to sleep.

In the 3 years preceding the attack on Daniel, officials at Ridgewood Park Elementary had called Orange County Animal Services 19 times to have dogs removed from the school campus. None of the prior incidents had involved a dog bite or attack on a student or adult.

Claimants sued the School Board in the circuit court for Orange County in 2005. The case was successfully mediated and the parties entered into a Stipulated Settlement Agreement in November 2007 that called for payment to Desnar and Mignone Decembre, individually and as the parents and guardians of Daniel, the sovereign immunity limit of \$200,000 and for the School Board to take a neutral position on the passage of a claim bill for an additional \$1.8 Million. The Decembres did not sue the dog owner for Daniel's injuries because his homeowner's insurance did not cover dog bites, and he had no significant assets.

The Decembres are from Haiti and came to Florida on work visas. However, those visas have expired and they are presently seeking legal immigration status. Therefore, Daniel has not been eligible to receive medical services paid for by Medicaid.

CONCLUSION OF LAW:

At the Special Master's level, every claim bill, whether based on a settlement or not, must be measured anew against the four standard elements of negligence: duty, breach of duty, proximate cause, and damages. If, and only if, all four elements are satisfied, can liability be found.

The School Board has a duty to take reasonable measures to protect its students from foreseeable injuries. Even though no student had previously been bitten by a dog on the campus of Ridgewood Park Elementary, a dog attack was foreseeable because dogs had previously entered the campus. The fencing around the campus was in disrepair in several places, but the pit bull that attacked Daniel came through the front gate that is always open during school hours to allow for children to arrive at the campus by school bus or by car, as well as for teachers, other school employees, and visitors. Whether the School Board breached its duty to protect Daniel comes down to the question of whether the School Board, using reasonable means, could have prevented a dog from entering the campus through the front gate.

Calling Animal Services was a responsible action to take when dogs were found on the school campus. Claimants argued that, because dogs had been removed from the school on 19 previous occasions, something more should have been done to keep dogs out. Claimant's attorneys suggested that the School Board should have posted someone at the front gate to prevent a dog from entering and should have erected interior fencing so that a dog entering the front gate could not easily get to the area where Daniel was attacked. The record does not support a conclusion that these are reasonable measures nor that the failure to implement these measures shows that the School Board was negligent.

It was not demonstrated how the suggested precautions would have prevented this dog from entering through the wide front gate and attacking one of numerous students and adults who were in the front of the school. While interior fencing would have made it much harder for the pit bull to get to where Daniel was standing on the day he was attacked, interior fencing would not have prevented the dog from entering through the front gate and attacking someone else. Therefore, the evidence presented does not demonstrate that Daniel's injuries resulted from the negligence of the School Board.

LEGISLATIVE HISTORY:

This is the first claim bill ever filed in this matter.

SOURCE OF FUNDS:

If the claim bill is passed, the award would be paid from the School Board's General Funds.

ATTORNEY'S/
LOBBYING FEES:

The attorney for the claimant has provided an affidavit to the effect that his fees will be limited to 25 percent of all gross amounts paid to the Claimants as the result of a claim bill. The affidavit states that all costs, including costs for professional lobbying services, will be borne by the client in addition to the 25% for attorney's fees. The agreed upon lobbying fees for this claim are five percent of any claim bill amount. Outstanding costs are \$33,987.11.

The bill, however, requires that the attorney's fees, lobbyist's fee and costs are limited to no more than 25 percent of the total amount awarded by the Legislature.

RECOMMENDATIONS:

The evidence presented does not demonstrate that the School Board is liable for Daniel Decembre's injuries. Therefore, I recommend this claim be reported UNFAVORABLY.

Respectfully submitted,

TOM THOMAS
House Special Master

cc: Representative Thompson
Senator Joyner
Senate Special Master Canter