



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
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DATE	COMM	ACTION
2/2/17	SM	Favorable
2/22/17	JU	Fav/CS
4/17/17	AHS	Recommend: Favorable
	AP	

February 2, 2017

The Honorable Joe Negrón
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 50** – Judiciary Committee and Senator Audrey Gibson
Relief of Eddie Weekley and Charlotte Williams

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM BILL BY EDDIE WEEKLEY AND CHARLOTTE WILLIAMS OF THE ESTATE OF FRANKLIN WEEKLEY, FOR \$1 MILLION, BASED ON A FINAL JUDGMENT SUPPORTED BY A SETTLEMENT AGREEMENT BETWEEN MR. WEEKLEY AND MS. WILLIAMS AND THE AGENCY FOR PERSONS WITH DISABILITIES AS COMPENSATION FOR THE DEATH OF FRANKLIN WEEKLEY AT THE SUNLAND CENTER IN MARIANNA IN 2002.

CURRENT STATUS:

A claim bill for these Claimants was first filed in the 2008 Session.

An administrative law judge from the Division of Administrative Hearings, serving as a Senate Special Master, held a de novo hearing on the 2008 version of this bill, SB 30 (2008). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported FAVORABLY.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Barbara M. Crosier. My responsibilities were to review the records relating to the claim bill, be available for questions from Senators, and determine

whether any changes have occurred since the hearing before Judge T. Kent Wetherell, which if known at the hearing, might have significantly altered the findings or recommendations in the report.

According to counsel for the parties, there have been no substantial changes in the facts and circumstances for the underlying claim. Accordingly, I find no cause to alter the findings and recommendations of the original report.

For the reasons set forth above, the undersigned recommends that Senate Bill 50 (2017) be reported favorably.

Respectfully submitted,

Barbara M. Crosier
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute, in conformity with a recent opinion of the Florida Supreme Court, does not include the limits on costs, lobbying fees, and other similar expenses, which were included in the original bill.



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
02/05/08	SM	Fav/1 amendment

February 5, 2008

The Honorable Ken Pruitt
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 30 (2008)** – Senator Al Lawson
HB 451 (2008) – Representative Matthew Meadows
Relief of Eddie Weekly and Charlotte Williams

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR \$1 MILLION AGAINST THE AGENCY FOR PERSONS WITH DISABILITIES ARISING OUT OF THE DEATH OF FRANKLIN WEEKLY AT THE SUNLAND CENTER IN MARIANNA IN 2002.

FINDINGS OF FACT:

Franklin Weekly was committed to the care of the Department of Children and Family Services (DCF) in 1999 after he was determined to be incompetent to stand trial for the alleged arson of his home. Franklin was 15 years old at the time, but he had the mental capacity of a first grader and Franklin was mildly retarded with an IQ between 52 and 65.

Franklin was initially placed in group homes in Orlando and Ft. Walton Beach. However, those facilities proved to be inadequate for Franklin because of his behavioral problems and because he ran away on several occasions.

In November 2001, Franklin was transferred by court order to the Sunland Center (Sunland) in Marianna. DCF recommended to the court that Franklin be placed at Sunland because it was a more secure facility and could provide the constant supervision that Franklin required. DCF and Sunland

staffs were aware that Franklin did not have “survival skills” and that he would be at risk of serious injury or death if he ran away from the facility.

DCF was, at the time, responsible for operating Sunland. When the Agency for Persons with Disabilities (APD) was created in 2004, it became responsible for operating Sunland.

At Sunland, Franklin lived in the Hayes House with 22 other developmentally disabled individuals. The house had three exits, only two of which had locked doors. The door right across from Franklin’s room did not lock.

On December 5, 2002, Franklin was involved in several altercations with other residents and staff members that required him to be physically restrained. He also attempted to run away that day.

Two staff members, Gertrude Sims and James Duncan, were on duty at the Hayes House the night of December 5. Their shift started at 10:15 p.m. and went to 6:15 a.m. the following day.

The primary job duties of Ms. Sims and Mr. Duncan were custodial in nature, e.g., doing laundry, mopping floors, etc. They were also responsible for making sure that all of the residents were accounted for throughout the night, and to that end, Ms. Sims was responsible for making “rounds” on the residents every 30 minutes to be sure they were asleep in their beds.

Ms. Sims testified in her deposition that she made her rounds every 30 minutes from 10:30 p.m. to 5:30 a.m. and that she observed Franklin sleeping in his bed each time she checked his room. She and Mr. Duncan also testified that at least one of them was stationed at all times at a desk near the unlocked door across from Franklin’s room.

Notwithstanding this testimony, the more persuasive evidence establishes that the door was not being watched for at least a short period after Ms. Sims made her 5:30 a.m. rounds because Ms. Sims and Mr. Duncan were tending to a resident who had soiled himself. Mr. Duncan testified in his deposition that the soiled resident was in Room D, which was Franklin’s room and that he recalled seeing Franklin sleeping, but

Ms. Sims testified that the soiled resident was in Room B. Ms. Sims' testimony is more credible because she had been working at the Hayes House for a number of years, whereas Mr. Duncan was "pulled" to the Hayes House just for that night because of a staffing issue.

While Ms. Sims and Mr. Duncan were tending to the resident in Room B and the unlocked doors were unsupervised, Franklin left the Hayes House through those doors. Mr. Duncan discovered that Franklin was missing after he finished helping Ms. Sims with the soiled resident and he made his way into Franklin's room to mop the connected bathroom.

Ms. Sims and Mr. Duncan notified Sunland's main office that Franklin was missing, and a search for Franklin on the Sunland campus was immediately commenced. Local law enforcement was also notified. They assisted in the search.

Franklin's parents were notified of his disappearance at approximately 8:30 a.m., and they immediately came to the Sunland to help in the search. It not entirely clear whether or to what extent they were allowed to help in the search, but Franklin's father testified that at some point the family was told that they could no longer assist in the search on the Sunland property.

One of the buildings on the Sunland campus searched in the days following Franklin's disappearance was a dilapidated building known as the "boiler building." The building was several hundred yards from the Hayes House and was being used for storage. The doors on the building were chained and padlocked, but there was enough space for a person to fit between the doors and get into the building.

Butch Edwards, the maintenance and construction supervisor at Sunland, testified that he went into the building during the search for Franklin but that he saw no sign of him. He testified that he could not get all the way to the back of the building because it was full of junk.

Sunland suspended the search for Franklin after approximately 2 weeks. His family continued to search for him, and from time to time there were unconfirmed sightings of Franklin reported around Northwest Florida. At some point,

Franklin's parents were accused of harboring Franklin by Sunland staff and/or local law enforcement of harboring Franklin. In January 2003, Franklin was found in contempt of the Order committing him to Sunland due to his apparent elopement from the facility.

In October 2004, contractors hired to demolish the dilapidated boiler building found what turned out to be Franklin's remains in a basement of the building. The only clothing found with the remains was decomposed underwear and an undershirt with Franklin's name written on them.

There is no credible evidence that Franklin ever left the Sunland campus after he ran away from the Hayes House. The weather on the day of his disappearance was very cold, and it is more likely than not that Franklin died of exposure to the elements in the building where he was ultimately found.

In January 2005, the Bay County Medical Examiner determined that the remains were those of Franklin. A death certificate was issued and the remains were released to Franklin's parents for burial. However, it was not until 2007 that DCF and APD formally acknowledged that the remains were those of Franklin. DNA tests performed by the Florida Department of Law Enforcement (FDLE) confirmed that the remains are Franklin's.

FDLE commenced an investigation into Franklin's disappearance in 2007. The FDLE investigation was still open as of the date of the Special Master hearing, but the claimants' attorney represented that it was his understanding that the FDLE investigation would soon be closed based upon a lack of evidence of a crime having been committed in relation to Franklin's disappearance and death.

Franklin was survived by his parents, Eddie Weekly and Charlotte Wheeler, and a younger brother. Franklin's parents are not married, but they have been together for 23 years.

Franklin's parents are developmentally disabled and are unable to work. His father receives assisted living services from the local Association for Retarded Citizens. To be eligible for such services, a person has to have an IQ below 70.

By all accounts, Franklin and his parents had a very close relationship. Franklin wanted to go home to his parents and Franklin's parents wanted him to come home. Franklin's parents were "devastated" by Franklin's disappearance and death.

Special needs trusts have been established for Franklin's parents because of their developmental disabilities. The trusts are subject to federal law (e.g., 42 U.S.C. § 1396p), which requires that any assets remaining in the trust upon the beneficiary's death first be used to repay state Medicaid benefits.

APD provided an affidavit stating that it does not have funds available to pay this claim. The affidavit represents that APD might lose federal funding and that its ability to provide necessary services to disabled individuals would be "seriously impaired" if APD was required to pay this claim from its budget without an additional appropriation of General Revenue.

In July 2004, in response to Franklin's disappearance, DCF adopted a detailed protocol to be followed when a Sunland resident goes missing. The protocol requires, among other things, that the perimeter of the facility be immediately secured and that "an intense immediate area search, expanding outward of the last contact site" be conducted.

LEGAL PROCEEDINGS:

In 2004, before Franklin's remains were found, Franklin's parents filed a lawsuit against DCF that sought to require DCF to resume searching for Franklin. After Franklin's remains were discovered, the suit was amended to allege a wrongful death claim. The suit also included a civil rights claim under 42 U.S.C. § 1983 against Ms. Sims and Mr. Duncan.

The case was settled through mediation in June 2007, after DCF and APD acknowledged that the remains found at Sunland were Franklin's. The settlement agreement required APD to pay Franklin's parents a total of \$1.3 million.

The settlement was approved by the circuit court in August 2007. The Order approving the settlement requires the proceeds to be paid into "a Medicaid-compliant special needs trust account."

APD has paid Franklin's parents \$300,000, with \$200,000 attributed to the tort claims and \$100,000 attributed to the civil rights claim. APD agreed as part of the settlement to support a claim bill for the remaining \$1 million.

Franklin's parents received \$184,464.38 from the initial \$300,000 payment. Those funds were split equally, with each parent receiving \$92,231.19.

The remainder of the initial payment went to attorney's fees and costs. The claimants' attorney agreed to take only \$37,500 in fees from the initial payment, which is half of the 25% attorney's fee for the initial payment. The remainder of the fee was "deferred" until the claim bill is paid.

CLAIMANT'S POSITION:

- DCF, the predecessor agency to APD, had a duty to safeguard Franklin's well-being while he was at Sunland, and DCF's failure to adequately supervise Franklin on the night he disappeared was the direct and proximate cause of his death.
- The \$1.3 million in damages agreed to by the parties are reasonable under the circumstances.

AGENCY'S POSITION:

- APD admits liability and supports the claim bill.
- APD does not have the funds available to pay the claim without an additional appropriation of General Revenue.

CONCLUSIONS OF LAW:

APD is the successor agency to DCF with respect to the operation of Sunland. Therefore, APD is the agency responsible for paying this claim even though the incident giving rise to the claim occurred while DCF operated Sunland. See Ch. 2004-267, § 87(3), Laws of Fla.

DCF had a duty to safeguard Franklin's well-being while he was confined at Sunland. That duty was breached when Sunland staff left the unlocked doors across from Franklin's room at the Hayes House unsupervised. Franklin's elopement and death were foreseeable consequences of the staff's failure to adequately supervise him because Sunland staff knew that he was an elopement risk and that he lacked the skills to survive if he did elope. The failure of the Sunland staff to supervise Franklin was a direct and proximate cause of his death.

There is no evidence that Franklin had any earning capacity as a result of his mental retardation. The \$1.3 million in damages agreed to by the parties are attributable to the non-economic damages (e.g., mental anguish) suffered by Franklin's parents as a result of his disappearance and death.

There is no way to place a value on the mental anguish suffered by a parent who loses a child, and a jury may have awarded far more than \$1.3 million in damages to Franklin's parents if this case had gone to trial. The amount agreed to by the parties in the mediated settlement is within the range of reasonableness for such an award. Indeed, in the recent Martin Anderson case, the Legislature approved a claim bill for \$5 million for the parents of a child who died while in the custody of the State.

LEGISLATIVE HISTORY:

This is the first year that this claim has been presented to the Legislature.

ATTORNEY'S FEES AND LOBBYIST'S FEES:

The Order approving the parties' settlement states that the circuit court will determine the amount of attorney's fees to be paid from the proceeds of the claim bill. However, that is an issue for the Legislature, not the circuit court. See Gamble v. Wells, 450 So.2d 850 (Fla. 1984).

The claimants' attorney provided an affidavit stating that attorney's fees are limited to 25%, as required by Section 768.28(8), F.S. There are no outstanding costs.

In order to maximize the proceeds that were paid to Franklin's parents, the claimants' attorney took only \$37,500 in attorney's fees out of the initial payment, rather than the \$75,000 (i.e., 25% of the \$300,000 payment) that he could have taken. The other \$37,500 of attorney's fees related to the initial payment was "deferred" until payment of the claim bill.

The lobbyist's fees are not included as part of the 25 percent attorney's fee. The lobbyist's fees are an additional 5 percent, which is \$50,000 of the \$1 million claim.

The Legislature is free to limit the fees and costs paid in connection with a claim bill as it sees fit. Gamble v. Wells, supra. The bill does so by stating that "[t]he total amount paid for attorney's fees, lobbying fees, costs and other similar

expenses relating to this claim may not exceed 25 percent of the amount awarded [by the bill].”

If this language remains in the bill, Franklin’s parents will receive a total of \$750,000. The remaining \$250,000 will go to attorney’s fees and lobbyist’s fees.

If this language were not in the bill, Franklin's parents would receive \$662,500. The claimants’ attorney would receive \$287,500 (i.e., \$37,500 in fees “deferred” from the initial payment plus \$250,000 in fees related to the claim bill) and the lobbyist would receive \$50,000.

OTHER ISSUES:

The bill should be amended to clarify that the payment to Franklin’s parents will go to their special needs trust, as required by the court order approving the settlement agreement.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 30 be reported FAVORABLY, as amended.

Respectfully submitted,

T. Kent Wetherell
Senate Special Master

cc: Senator Al Lawson
Representative Matthew Meadows
Faye Blanton, Secretary of the Senate
House Committee on Constitution and Civil Law
Counsel of Record