



STORAGE NAME: h6511.CJC

DATE: 3/16/2017

March 16, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6511 - Representative Miller
Relief/L.T./Department of Children and Families

THIS IS AN UNCONTESTED CLAIM FOR \$800,000 BASED ON A SETTLEMENT AGREEMENT BETWEEN THE CLAIMANT AND THE DEPARTMENT OF CHILDREN AND FAMILIES FOR DAMAGES SUFFERED BY L.T. WHILE IN FOSTER CARE SUPERVISION. THE DEPARTMENT HAS ALREADY PAID \$200,000.

FINDING OF FACT:

In August of 1995, L.T. was removed from her family by the Department of Children and Families ("DCF"), and placed with her maternal great uncle, Eddie Thomas, and his wife Vickie Thomas. DCF conducted a background check on Eddie Thomas revealing prior convictions for possession of narcotics equipment and larceny. Initial background checks did not reveal any prior history of violence, sex offenses or child abuse. DCF conducted a home study and determined that the Thomas's were capable of providing a safe home environment for L.T.

In September 1996, DCF was notified that on September 9, 1996, the State Attorney's Office filed an information charging Eddie Thomas with "lewd, lascivious, or indecent assault on a child under 16 years of age". After multiple "hung" juries, Eddie Thomas pled no contest in April 1997 to committing a lewd, lascivious, and indecent act on a child under the age of 16.

Eddie Thomas was placed on five years' probation, required to attend sexual abuse counseling, and required to register as a sex offender. On May 9, 1997, only one month after Eddie Thomas entered his plea deal, DCF recommended, and the judge approved, an order allowing Eddie Thomas to return home and have unsupervised contact with the children. Despite knowing that L.T. would remain in the custody of a registered sex offender, DCF recommended to the court the permanent, long-term placement of L.T. in the Thomas home and further recommended that the children be removed from protective services, with no further supervision by the department. On March 3, 2000, the court approved L.T.'s long term placement with Mr. and Mrs. Thomas, and removed the children from continued protective services.

On March 24, 2003, an abuse hotline call to DCF reported that L.T. was being abused by Eddie Thomas and that both Mr. and Mrs. Thomas were using drugs in the children's presence. DCF conducted an investigation by interviewing the children in front of Mrs. Thomas, one of the alleged perpetrators of abuse. DCF further conducted background checks and drug screens which returned negative results concluding that L.T. was not at risk of abuse and closed the case.

On February 24, 2005, L.T. ran away from the Thomas home and was subsequently picked up by a Gadsden County Sheriff's deputy. She reported to the deputy that she had been exposed to extensive drug use in the Thomas home and had been physically, sexually, and emotionally abused by Mr. and Mrs. Thomas. The DCF child protection team concluded that "there are verified findings of sexual molestation of L.T. by her uncle, Eddie Thomas". L.T. was subsequently removed from the home and placed in the home of Vicki McSwain.

L.T. has been the subject of multiple Baker Act proceedings and suicide attempts, and has been in and out of inpatient and outpatient psychiatric facilities. L.T. has been diagnosed with depression, post-traumatic stress disorder and anxiety disorder as a direct and proximate result of the abuse she sustained while under DCF's supervision while being cared for by Mr. and Mrs. Thomas. L.T. will continue to require therapeutic treatment throughout the rest of her life.

As of today, L.T. still suffers from depression and receives treatment from a therapist. Her diagnosis includes Post Traumatic Stress Disorder. L.T. is now married and has two children. She is pursuing a degree from Florida State College at Jacksonville and wishes to pursue a career as a child therapist focusing on aiding child abuse victims.

LITIGATION HISTORY:

A lawsuit was brought on L.T.'s behalf by her guardian, Vicki McSwain, in state and federal courts alleging negligence pursuant to s. 768.28, Florida Statutes, and civil rights

violations pursuant to 42 U.S.C. s. 1983. The civil rights claims were disposed of by the trial court, but the negligence claims continued to be litigated, and a jury trial of the case was set in Leon County. The parties attended a court-ordered mediation and on June 21, 2010, the parties agreed to a mediated settlement under which L.T. would receive \$1,000,000, of which \$200,000 has been paid, and the balance of which would be submitted through a claim bill that the Department of Children and Families would agree to support. The remaining \$800,000 would be paid from General Revenue funds and placed into a special needs trust.

CLAIMANT'S POSITION:

Claimant asserts that the Department of Children and Families was negligent when it allowed L.T. to stay in the same home as Eddie Thomas, a registered sex offender.

RESPONDENT'S POSITION:

The Department of Children and Families will not oppose, obstruct or delay the passage of the claims bill or direct its representatives, agents or lobbyist to oppose obstruct or delay the passage of said claims bill in the amount of \$800,000.

CONCLUSION OF LAW:

I find that the Department breached its duty of care owed to L.T. DCF has a non-delegable duty to ensure the safety of its dependent children. DCF failed to exercise reasonable care, thereby breaching this duty, when DCF knowingly left L.T. in the home of a registered sex offender. It was foreseeable by the DCF that by leaving L.T. in the home that it was more than likely that she would be sexually abused. DCF's own experts concurred that "under no set of circumstances should DCF have left a child in the custody of Mr. Thomas". The culmination of DCF's actions, continuing to allow L.T. to be placed in the home and under the care of a registered sex offender, breached DCF's duty of care.

The breach of DCF's duty led to L.T. being raped in the Foster Home resulting in substantial emotional injury to L.T. The settled upon amount for damages is reasonable under the circumstances. It is likely a jury would have awarded a greater amount.

ATTORNEY'S/
LOBBYING FEES:

Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 10% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total \$2,000.

LEGISLATIVE HISTORY:

House Bill 3531 by Representative Miller and Senate Bill 26 by Senator Negron were filed during the 2016 Legislative Session. The Senate Bill was heard in two committees but died in Senate Appropriations. The House Bill died in the Civil Justice Subcommittee.

House Bill 3551 by Representative Miller and Senate Bill 40 by

Senator Ring were field during the 2015 Legislative Session. The Senate Bill was heard in two committees but died in Senate Appropriations Committee. The House Bill died in the House Civil Justice Subcommittee.

HB 3525 by Representative Pafford and SB 46 by Senator Ring were filed during the 2014 Legislative Session. Neither bill was ever heard in any committee.

HB 541 by Representative Caldwell and SB 24 by Senator Ring were filed during the 2013 Legislative Session. Neither bill was ever heard in any committee.

HB 1161 by Representative Nehr and SB 18 by Senator Ring was filed during the 2012 Legislative Session. Neither bill was ever heard in any committee.

SB 28 by Senator Ring was filed during the 2011 Legislative Session. The bill was never heard in any committee.

RECOMMENDATIONS:

I respectfully recommend that HB 6511 be reported **FAVORABLY**.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Miller, M., House Sponsor
Senator Benacquisto, Senate Sponsor
Mary Kraemer, Senate Special Master