



STORAGE NAME: h6525.CJC

DATE: 3/10/2017

March 9, 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 6525 - Representative Grant
Relief/C.M.H./Department of Children and Families

THIS IS AN EXCESS JUDGMENT CLAIM FOR \$5,076,543.08, BASED ON A JURY VERDICT AWARDING DAMAGES TO C.M.H. FOR PHYSICAL AND SEXUAL ABUSE CAUSED BY THE NEGLIGENT FOSTER PLACEMENT OF A KNOWN SEXUALLY AGGRESSIVE CHILD BY THE DEPARTMENT OF CHILDREN AND FAMILIES ("DCF"). DCF HAS PAID \$100,000 OF THE JUDGMENT PURSUANT TO SECTION 768.28, F.S.

DCF DOES NOT OPPOSE THIS CLAIM.

FINDING OF FACT:

Standard of Review

Findings of fact are supported by a preponderance of evidence. The Special Master collected, considered, and included in the record, any reasonably believable information that the Special Master found to be relevant or persuasive in the matter under inquiry. The claimant had the burden of proof on each required element of the claim.

On September 6, 2002, the Department of Children and Families ("DCF") placed J.W., a 10 year old foster child with a history of sexually aggressive behavior towards younger children, in the home of Christopher and Theresa Hann ("The

Hanns"). The Hanns were not licensed or trained foster parents and had no expertise in providing therapeutic services to a child with pervasive social, emotional, psychological, behavioral, and psychiatric problems. Further, despite a specific request, DCF failed to provide the Hanns', who shared the home with their own two young children, with any information regarding J.W.'s psychosocial and behavioral history.

DCF's placement of J.W. in the Hanns' home directly contradicted prior recommendations by DCF providers that J.W. not have access to young children and that his caregivers be able to provide adequate supervision in the home, be informed about his sexual issues, and receive training to deal with such issues. The placement also departed from DCF's own operating procedures and rules regarding the placement of foster children who have been sexually abused or who are sexually aggressive.

The negligent placement resulted in the physical, emotional, and sexual abuse of C.M.H., the Hanns' 8 year old son, by J.W.

Background of J.W. and History of DCF Involvement

J.W. was born in 1992 to a teenage single mother with a history of mental illness and homelessness. She did not receive prenatal care and attempted suicide during the third month of her pregnancy by inhaling butane. While in his mother's care and custody, J.W. was subjected to extreme neglect, cruelty, and physical and sexual abuse.

At an early age, J.W. began to exhibit symptoms of Post-Traumatic Stress Disorder related to his repeated abuse and neglect. His behaviors led to his dismissal from several pre-schools and ultimately, a mental health and medical intervention.

Due to the ongoing abuse, J.W. was removed from his mother's home by DCF and placed in foster care when he was 4 years old. Tragically, while in foster care, J.W. was sexually assaulted by another foster child and when J.W. returned to the care of his mother at age 5 ½, he was severely psychotic. He began setting fires, burning himself on at least one occasion, and intentionally running into the path of oncoming cars. J.W. was diagnosed with non-specified psychosis, major depression with psychotic features; adjustment disorder with mixed disorder of conduct and emotion; and attention deficit hyperactivity disorder and was treated with anti-psychotic medication.

After receiving additional reports of sexual abuse, DCF placed J.W. back into foster care where he resided on and off for approximately the next five years. He would go on to be involuntarily hospitalized at least twice more at the age of 9, due to psychotic behaviors.

Initial Exhibitions of Sexually Aggressive Behavior by J.W.

In 2002, while living with his mother, J.W. began to exhibit sexually aggressive behavior towards other neighborhood children. On June 14, a Family Services Counselor for DCF (the "DCF Counselor"), referred J.W. to Camelot Community Care, a DCF provider of child welfare and behavioral health services, for intensive therapeutic in-home services. However, realizing the severity of his behavioral and mental disturbances, in a communication to Camelot on June 24, the DCF Counselor noted that J.W. needed to be in a residential treatment center as soon as possible.

Camelot accepted the referral to provide in-home mental health services to J.W. as an "emergency temporary solution while DCF [sought] residential placement", concluding that J.W. was "a danger" in the home. However, the Camelot in-home counselor assigned to J.W.'s case did not have experience with sexual trauma and Camelot's initial treatment plan failed to include any specific goals or specialized treatment for sexual abuse.

On July 5, J.W.'s mother informed Camelot that J.W. was continuing to engage in inappropriate sexual behaviors with younger children. A child safety determination conducted by Camelot on July 12, found that based on J.W.'s history, a sibling was likely to be in immediate danger of moderate to severe harm if J.W. was not supervised. Camelot recommended that J.W.'s parents keep him separated from younger siblings at night to preclude inappropriate touching and provide eye contact during the day whenever J.W. interacted with younger children.

However, DCF would remove J.W. from his mother's custody in August of 2002 after she abandoned her children at a friend's home. J.W. was temporarily sheltered in the home of a family friend, a non-relative placement.

A subsequent Comprehensive Behavioral Health Assessment of J.W. conducted at the behest of DCF, found that, in terms of temporal consistency of problems, J.W.'s issues had begun more than two years earlier and remained generally consistent over time. The assessment therefore concluded that J.W. "should not have unsupervised access to . . . any younger, or smaller children wherever he resides." The CBHA goes on to state that, "**J.W.'s caregivers must be informed about these issues and must be able to demonstrate that they can provide adequate levels of supervision in order to prevent further victimization. These issues should be strongly considered in terms of making decisions about both temporary and long term care and supervision of J.W.**"

Inappropriate placement with Hanns

On September 6, 2002, the DCF Counselor removed J.W. from

his temporary placement with a family friend due to allegations that he had been sexually abused by a member of the household.¹ He was thereafter immediately placed with Christopher and Theresa Hann.

Christopher and Theresa Hann were former neighbors of J.W. and his natural family. The couple lived with their two children, a daughter, age 16, and a son, C.M.H., age 8. They were not licensed or trained foster parents but had developed a profound empathy for the neighborhood boy, who would often seek shelter in the Hann home when left alone by his mother. Observing the troubled and chaotic family dynamic in his natural home, Theresa Hann had offered to care for J.W. J.W.'s mother also lobbied to have J.W. placed with the Hann family.

Despite the willingness of the Hanns to care for J.W., his placement in the Hann home violated DCF rules. DCF is required to obtain prior court approval for all non-relative placements. This requirement eliminates the use of non-relative placements in lieu of emergency shelter care.² The DCF Counselor failed to obtain the required court approval prior to placing J.W. in the Hann home. She also failed to notify DCF's legal department of the allegation of sexual abuse of J.W. in the initial temporary placement or his subsequent placement in the Hann home until November 5, 2002, two months later. Prior to even seeking court approval, the DCF Counselor was required to refer the Hanns for foster home licensing, and inform the court if the non—relative placement did not become licensed as required.³ The Hanns were never licensed or trained as foster parents.

Additionally, the placement directly contradicted previous recommendations by DCF providers regarding placement for J.W. due to his sexually aggressive behavior. The DCF Counselor placed J.W. in a home with an 8 year old child after receiving a warning from Camelot two months earlier that a sibling would be in danger in a home with J.W. The Comprehensive Behavioral Health Assessment completed just one week prior to the placement, also recommended that J.W. not have unsupervised access to younger children. Due to his troubling history of sexual abuse and such warnings by DCF providers, DCF was prohibited by its own operating procedures from placing J.W. in a home with a younger child.⁴ Further, the Hanns, without knowledge of J.W.'s ongoing inappropriate sexual behavior with younger children, allowed J.W. to share a

¹ The DCF Counselor failed to report the abuse allegation as required by s. 39.201, Florida Statutes. The incident was ultimately reported by Theresa Hann. The perpetrator would later confess to and be convicted of the offense of child molestation.

² Rule 65C-11.004(2).

³ *Id.*

⁴ DCF Operating Procedure 175-88 The Prevention and Placement of Child Victims and Aggressors Involved in Child-On-Child Sexual Abuse, Sexual Assault, Seduction Or Exploitation In Substitute Care; See *a/so* Rule 65C-13.015(2)(b); See *a/so* Rule 65C-30.001(24); s. 409.145(2)(d), F.S.

bedroom with their son, C.M.H. DCF rules explicitly prohibit placing a sexually aggressive child in a bedroom with another child.⁵ The DCF Counselor knew of the planned sleeping arrangements prior to placing J.W. in the Hann home and did not convey the prohibition to the Hanns.

Moreover, DCF failed to provide any information regarding J.W.'s troubling history of child-on-child sexual abuse to the Hann family, or any information on his background generally, even after a specific request by Christopher Hann for such information. DCF is required by law to share with caregivers, psychological, psychiatric and behavioral histories; and comprehensive behavioral assessments and other social assessments – such information is often found in the child resource record⁶. DCF acknowledged during the litigation of this action that no evidence of a child resource record was found for J.W.⁷ Additionally, for the purpose of preventing the reoccurrence of child-on-child sexual abuse, DCF must provide caregivers of sexual abuse victims and aggressors with written, complete, and detailed information and strategies related to such children including the date of the sexual abuse incident(s), type of abuse, narrative outlining the event, type of treatment received, and outcome of the treatment, in order to “provide a safe living environment for all of the children living in the home”.⁸

Not only did DCF fail to comply with these requirements, the DCF Counselor erroneously informed Christopher Hann that she was not allowed to give them such information because they were only a temporary placement. However, J.W. would remain in the Hann home for approximately three years wherein his behavioral problems continued and quickly escalated.

Inappropriate behavior of J.W. in Hann Residence

Within a few weeks of J.W.'s placement with the Hann family, Theresa Hann would report to Camelot that J.W. was violently lashing out at members of the household, including C.M.H. Camelot recommended to the DCF Counselor that the Hanns place a one way monitor in the bedroom the boys shared. The DCF Counselor agreed and promised to pass the recommendation along to the Hanns. No evidence was presented that the Hanns were ever informed of the

⁵ *Id.* at 6.

⁶ A Child's Resource Record means a standardized record developed and maintained for every child entering out-of-home care that contains copies of the basic legal, demographic, available and accessible educational, and available and accessible medical and psychological information pertaining to a specific child. The CRR remains in the home where the child is placed and will accompany the child(ren) if there is a change in placement. This allows consistent and complete information to be available to those who are caring for the child(ren). Rule 65C-30.001(24).

⁷ CF Operating Pamphlet 15-7 Records Retention Schedule.

⁸ *Id.* at 6.

recommendation or obtained the monitor.

On October 24, 2002, J.W.'s troubling behavior further escalated when after a physical altercation with C.M.H., he pulled a knife on the younger child and was stopped from further assaulting C.M.H. by Christopher Hann. Christopher Hann immediately informed Camelot of the incident and J.W. was again made to undergo a mental health assessment. The DCF Counselor later acknowledged that at this point in time, she should have considered removing J.W. from the Hann residence because of the immediate danger he posed to himself, the Hanns, and their son.

However, the DCF Counselor did not remove J.W. and a week later he engaged in inappropriate sexual behavior with a younger child who was visiting the Hann home. Theresa Hann reported the incident to DCF. During the course of its investigation, DCF learned that the children were not under the direct supervision of any adult at the time of the incident – a failure that DCF providers had warned would lead to harm of other children when left alone with J.W. At this time, DCF was again required to give immediate consideration to the safety of C.M.H.⁹ But, in spite of the inability of the Hanns, who both worked outside of the home, to adequately supervise J.W. and his continuing access to young children, DCF did not remove J.W. from the Hann home.

Camelot began pressuring the DCF Counselor to set up a psychosexual evaluation for J.W., something the DCF Counselor should have done months earlier pursuant to DCF operating procedures.¹⁰ In fact, Camelot had requested such an evaluation upon J.W.'s placement with the Hanns, and again two days before his inappropriate sexual behavior with a child visiting the Hann home. Camelot notes indicate that they reiterated to the DCF Counselor that “[J.W.] needed specific sexual counseling by a specialist in this area.” In the absence of any action by the DCF Counselor, Camelot advised Christopher Hann that a new safety plan would be implemented prohibiting the boys from sharing a room and requiring that J.W. be under close adult supervision when other children were present. Such recommendations had already been a demonstrable failure at preventing J.W. from perpetuating sexual abuse on other children. Further, Christopher Hann, still without knowledge of J.W.'s extensive history of sexual abuse as a victim and aggressor, informed Camelot that the family disagreed with and would not follow the safety plan.

⁹ CFOP 175-88: “If a . . . child-on-child sexual abuse incident occurred or is suspected to have occurred, immediate consideration will be given to the safety of all children residing in the placement.”

¹⁰ The family services counselor must initiate a referral for a clinical consultation with a professional trained in childhood sexual abuse within three working days for any child that has been identified as the victim of sexual abuse or as a sexual aggressor. Despite the allegations of sexual abuse in the initial non-relative placement, no referral was made for such a consultation until July 15, 2003, approximately one year after DCF first learned of J.W.'s sexual abuse and aggressive behavior.

By November 2002, C.M.H. began to exhibit behavioral problems which Camelot directly attributed to J.W. being in the home. His grades in school began to drop, and in one school year he went from being an "A", "B", or "C" student to failing grades.

The Hann family, overwhelmed with the number of providers involved in J.W.'s care and the disruption to the family, canceled the services of Camelot in December 2002. On its discharge form, signed by the DCF Counselor, Camelot recommended that J.W. be placed in residential treatment center. However, no change in placement was initiated by DCF.

In June of 2003, J.W. began expressing sexually inappropriate behavior towards C.M.H. Following escalation in J.W.'s behavior, now directed towards C.M.H., DCF finally secured the psychosexual evaluation for J.W. but still did not remove him from the Hann home. The evaluation found that J.W. "fit the profile of a sexually aggressive child due to the fact that he continues to engage in extensive sexual behaviors and with children younger than himself". Further they found that J.W. "[presented] a risk of potentially becoming increasingly more aggressive" and "continuing sexually inappropriate behaviors". They warned that J.W. "may potentially seek out victims who are children and coerce them to engage in sexual activity" and again recommended sexual specific counseling for J.W. and appropriate training for his caregivers.

In October 2003, the Hann family requested that J.W. be placed in a therapeutic treatment facility as they did not feel equipped to provide him with the services and interventions he needed. Therapeutic placement was authorized for J.W. and he was referred to a care facility. However, the Hanns were told that if J.W. was removed from their home, they may not be permitted visitation privileges with him at the facility in which he would be placed. This was the source of considerable angst on the part of the Hanns who did not want to be the next in a series of parental figures who "abandoned" J.W. Ultimately, the Hanns made the decision to maintain J.W. in their home and requested additional services to treat his ongoing issues. They also began training to become therapeutic foster parents.

C.M.H.'s problems due to J.W.'s presence in the home continued at school. From late 2003 to early 2004, C.M.H. began to act out and have more conflicts in school. In January he would receive a student discipline referral for ongoing behavioral problems in the classroom. He also began gaining weight in the first quarter of 2004 and would subsequently gain approximately 40 pounds over the next two years.

Closure of DCF Dependency Case

On March 3, 2004, Theresa Hann was diagnosed with terminal cancer. Christopher Hann contacted DCF within 48 hours of the diagnosis to stop the process of having J.W. placed with the family as long term non-relative caregivers and asked that he be placed elsewhere. The DCF Counselor visited the home within 24 hours and informed the family that "we'll get on it".

However, nothing was done, and contrary to the express wishes of the Hanns and without their knowledge, on April 12, 2004, DCF had the Hanns declared as "long term non-relative caregivers" of J.W. DCF subsequently closed J.W.'s dependency case, leaving him in the care and custody of the Hanns.

Because the Hanns were not a part of the foster care system, once DCF closed its dependency case, the Hann family lost approximately 50% of the services and counseling that had been provided to the family. The Hanns would later directly attribute the subsequent resurgence in J.W.'s inappropriate sexual behavior to the loss of counseling services.

J.W.'s sexual abuse of C.M.H.; Removal from Hann home

The Hanns, left with almost no support from DCF, grew desperate and more hopeless as they grappled with Theresa Hann's illness and J.W.'s continuing deviant behavior.

C.M.H.'s troubles also continued. An April 2005 treatment plan from a child development center noted that he had begun to have nightmares and became frustrated at the slightest inconvenience. He presented for treatment with avoidance of thoughts, feelings, or conversations about sexual trauma. The treatment plan also indicated that Theresa Hann's diagnosis of terminal cancer and intensive chemotherapy treatments were contributing to C.M.H.'s increasing separation anxiety (related to his mother) and grief issues. He was diagnosed with Posttraumatic Stress Disorder.

At that time, Christopher Hann wrote DCF and the juvenile judge requesting an emergency hearing to move J.W. to a residential placement. He explained that although they were doing all they could for the family and J.W., they could no longer cope. He described his wife's diagnosis of terminal cancer and J.W.'s escalating sexual behaviors. There was no response to his request and J.W. remained in the Hann home.

A June 16, 2005, report from Child & Family Connections, the lead agency for community based-care in Palm Beach County, described J.W.'s personality and behavior, the high risk of

sexual behavior problems and increasing aggression, his excessive masturbation, rubbing up against Theresa Hann, seeking out younger children, lies, and refusal to take responsibility for his actions. The report noted that the Hanns "[had] been told that it is not a matter of will J.W. perpetrate on their son again, but a matter of when.....[J.W. was] in need of a more restrictive setting with intensive services specializing in sexual specific treatment." Additionally, it was noted that J.W.'s previous therapist, current therapist, and a psychosexual evaluation all recommended a full-time group home facility specializing in sexual specific treatment. The report concluded that J.W.'s condition was "so severe and the situation so urgent that treatment [could not] be safely attempted in the community."

On July 29, 2005, after a physical altercation between J.W. and Theresa Hann, C.M.H., then ten years old, disclosed to his parents that approximately two years prior J.W. had forced him to engage in a sex act while the boys were at a sleep over. Chris Hann called Girls & Boys Town and demanded that J.W. be removed from the home immediately. Later that same day, DCF finally removed J.W. from the Hann home.

LITIGATION HISTORY:

On April 14, 2006, Christopher and Theresa Hann, individually, and as natural parents and legal guardians of C.M.H., filed a negligence action against the Department of Children and Families, Father Flanagan's Boys' Home, Camelot Care Centers, Inc., and Camelot Community Care, Inc. in the 15th Judicial Circuit Court, in and for Palm Beach County, based upon the physical, sexual, and psychological abuse sustained by C.M.H. from a foster child, J.W., who was placed with the family in 2002 by the Department of Children and Families.

The parties litigated the action for nearly eight years during which time Theresa Hann succumbed to cancer. On August 14, 2013, shortly before trial, Christopher Hann and C.M.H. settled with Father Flanagan's Boys' Home for \$340,000.

After a four week jury trial in October of 2013, the jury found that the Department of Children and Families and Christopher and Theresa Hann were each negligent and that such negligence was a legal cause of injury to Christopher Hann and C.M.H. The jury assessed 50% of the fault to Christopher Hann and Theresa Hann and 50% of the fault to DCF.

The jury determined that total damages to Christopher Hann were \$0 and that total damages to C.M.H. were as follows:

Future Medical Expenses	\$	250,000.00
Lost Earning Ability	\$	250,000.00

Past Pain & Suffering	\$ 6,000,000.00
<u>Future Pain & Suffering</u>	<u>\$ 3,500,000.00</u>
TOTAL DAMAGES	\$ 10,000,000.00

Reduced to reflect the Department of Children and Families proportionate share of liability, a final judgment was entered against DCF in the amount of \$5,000,000 (including post judgment interest at the rate of 4.75% per annum¹¹) on November 8, 2013. On January 2, 2014, the court entered a final cost judgment in the amount \$176,543.08.

The jury found no negligence on the part of Camelot Community Care, Inc. or Father Flanagan's Boys' Home.

On January 31, 2014, DCF appealed the Final Cost Judgment to the Fourth District Court of Appeal. The appeal was dismissed on March 10, 2014, due to a filing error. No further appeals have been taken and the time for review has expired.

DCF has paid \$100,000.00 of the final judgment pursuant to the statutory cap on liability imposed by section 768.28, Florida Statutes.

CLAIMANT'S POSITION:

Claimant asserts DCF was negligent and directly liable for the injuries suffered by C.M.H. as a result of the sexual abuse due to placing J.W., a known sexually aggressive child in the Hann home and failing to remove J.W. when DCF was aware placement was inappropriate and dangerous.

RESPONDENT'S POSITION:

DCF agrees to not oppose the claim bill and request any amount awarded in the bill funded from the General Revenue Fund.

CONCLUSION OF LAW:

Whether or not there is a jury verdict or a settlement agreement every claim bill against the State must be reviewed de novo against the four standard elements of negligence.

Duty

From a de novo review of the evidence, I find that DCF had a duty to maintain the safety of any child residing in a placement with J.W, a known sexually aggressive child.

Specifically, DCF had a duty to exercise reasonable care when placing child aggressors involved in child-on-child sexual abuse or sexual assault in substitute care; to provide caregivers of child sexual aggressors with written, detailed and complete information of the child's history to help prevent the reoccurrence of child-on-child sexual abuse; to establish

¹¹ Since the Department of Children and Families cannot pay this claim until the claim bill successfully becomes a law, it has been legislative polity not to award post-judgment interest.

appropriate safeguards and strategies to provide a safe living environment for all children living in the foster home with a child sexual aggressor; to ensure that the foster family of a child sexual aggressor is properly trained and equipped to meet the serious needs of the child; and to generally exercise reasonable care under the circumstances.

Breach

A preponderance of the evidence establishes that DCF breached its duty by:

- Placing J.W., a known sexually aggressive child in the Hann home without legal authority and in contravention of recommendations by DCF providers that J.W. not have access to young children;
- Failing to ensure the Hanns were duly licensed and trained as required by department rule, thus ensuring they were capable of safely caring for a child with J.W.'s needs;
- Failing to fully and completely inform the Hanns of J.W.'s history, risk, and the danger he posed to C.M.H. as required by department rule;
- Failing to ensure that adequate safety precautions were in place to prevent the reoccurrence of child-on-child sexual abuse as required by department rule; and
- Failing to remove J.W. from the Hann home when it became clear that the placement was inappropriate and dangerous to C.M.H.

Causation

The sexual, physical, and emotional abuse suffered by C.M.H. was the direct and proximate result of DCF's failure to fulfill its duties regarding the foster placement of a known sexually aggressive child.

Damages

Damages in the amount of \$5,000,000 are reasonable under the circumstances and fully supported by the weight of the evidence.

C.M.H. was initially diagnosed with Post Traumatic Stress Disorder in 2005. Thomas N. Dikel, Ph.D. reaffirmed the diagnosis in 2010, and found that C.M.H.'s severe PTSD was caused by his "experiences of child-on-child sexual abuse, exacerbated and magnified by his mother's diagnosis of stage 4, metastatic colon cancer".

He was re-evaluated by Dr. Stephen Alexander in October 2014 who found that C.M.H. continued to suffer from PTSD and major depression, but had become more dysfunctional since his initial evaluation due to lack of services. Dr. Alexander attributed the majority of C.M.H.'s psychological trauma to the illness and death of his mother but noted that due to J.W.'s

presence in the home during this time, the two events have become inextricably intertwined in his psyche.

A life care continuum was formulated by Darlene M. Carruthers of Comprehensive Rehabilitation Consultants, Inc., to determine the funds necessary to provide for the counseling and support needed by C.M.H. as a direct consequence of the sexual abuse he experienced. It was determined that the cost for medical care, psycho-therapies, educational and support services, as well as transportation and housing, would be \$2,237,399.72 over C.M.H.'s life.

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 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total \$731.47.

RECOMMENDATIONS:

Accordingly, I recommend that House Bill 6525 be reported **FAVORABLY.**

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Grant, House Sponsor
Senator Braynon, Senate Sponsor
Barbara Crosier, Senate Special Master