



STORAGE NAME: h6539.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 6539 - Representative Byrd
Relief/Eddie Weekley and Charlotte Williams/Agency for Persons with Disabilities

THIS IS AN UNCONTESTED CLAIM FOR \$1,000,000 BASED ON A SETTLEMENT AGREEMENT ENTERED INTO BETWEEN EDDIE L. WEEKLEY AND CHARLOTTE WILLIAMS, AS CO-PERSONAL REPRESENTATIVES OF THE ESTATE OF FRANKLIN W. WEEKLEY, DECEASED, AND THE AGENCY FOR PERSONS WITH DISABILITIES, AS OPERATORS OF THE MARIANNA SUNLAND CENTER, BASED ON THE NEGLIGENCE OF THE AGENCY, WHO FAILED TO PROVIDE FRANKLIN WEEKLEY WITH A SAFE AND SECURE ENVIRONMENT, PROTECTION, AND REASONABLE SUPERVISION WHILE IN DEPARTMENTAL CUSTODY.

FINDING OF FACT:

Early Life and Commitment

Franklin W. Weekley ("Franklin"), born August 14, 1984, was raised along with two siblings by his parents, Eddie Weekley and Charlotte Williams, in the town of Milton, Florida.

Early in life, Franklin began displaying developmental delays, prompting his parents to enroll him in the exceptional students program at his elementary school. When assessed, Franklin was diagnosed with mild mental retardation, a seizure disorder, schizoaffective disorder, and major depression with psychotic

features. Franklin's IQ was determined to be 52 by an adolescent psychiatrist.

In 1999, Franklin was detained by juvenile authorities for allegedly starting a fire in a bedroom of his family's home, and declared incompetent to proceed to trial due to his diminished mental capacity. Consequently, Franklin was committed to the Florida Department of Children and Family Services (DCF) in an effort to place him in an appropriate treatment and living setting.

2001 Transfer to Marianna Sunland Center

Initially transferred to group homes in Orlando and Fort Walton Beach, Florida, Franklin was deemed an elopement risk following several successful attempts at running away from each group home. This precipitated his transfer in November, 2001 to the Marianna Sunland Center (Sunland), a developmental services institution then operated by DCF. Here, Franklin was assigned to the "Hayes House", a cottage style house on Sunland premises occupied by 22 other adult male residents.

Sunland was chosen as the appropriate residential setting for Franklin in part because of assurances made by the department that it was a safe and secure facility equipped to handle a resident with the behavior and elopement issues Franklin had previously exhibited. However, within three weeks of his arrival at the facility, a Sunland behavioral analysis committee reviewing Franklin's placement concluded that Sunland was not an appropriate placement for Franklin, noting "[Franklin] would be more appropriately place in a younger adults program than at Sunland."

Despite this assessment, no transfer was initiated. Instead, staff was instructed to maintain "strict visual one-on-one observation at all times [for Franklin], as he has a history of elopement and has made threats since admission." In fact, during Franklin's first nine months at Sunland, staff documented 29 acts of physical aggression, 6 suicide threats, 4 self-injurious incidents, and 8 elopement attempts.

Notwithstanding these incidents, and despite Sunland's own behavioral analysis committee's belief that Sunland was not the appropriate setting for Franklin, a representative for DCF testified at a November, 2002 involuntary commitment hearing that Sunland was a safe and secure environment for Franklin, noting, "[t]he positive things that we have going on with him, we can provide all the security needed ... [w]e have all the staff on board that needs to provide him with the services that I feel he needs."

Confrontations with Facility Staff

Although Franklin's individualized Support Plan noted that

“quick confrontation, too many demands, complex instructions, ultimatums and loud voices” were ineffective behavioral modification tools for the youth. Numerous times during his residency at Sunland, Franklin engaged in physical and violent confrontations with facility staff. Frequently, these confrontations necessitated the use of manual restraints in a process where Franklin would be “taken to the mat” by staff, despite staff’s apparent lack of Professional Crisis Management training. Additionally, Franklin was often committed to solitary confinement during his stay at Sunland – sometimes overnight, and sometimes for periods of several days.

Disappearance from Sunland

During the early morning hours of December 5, 2002, Franklin declined breakfast, complaining of respiratory and stomach illnesses. Staff’s efforts to force him to drink prompted a very aggressive physical altercation with staff, during which Franklin suffered a laceration to the back of his ear. Later in the day, Franklin engaged in three separate altercations with staff, each requiring staff to take him “to the mat” by their own admission. The last log entry noted by the staff indicated that Franklin was apprehended while attempting to elope through a bathroom window.

When the third shift at Sunland began that night, direct care staff correctly reviewed the daily log notes, but both staff members later testified that they were unaware of the incredibly stressful events endured by Franklin earlier in the day. In fact, the house supervisor, Gertrude Sims, testified that she had a complete lack of knowledge regarding Franklin’s aggressive tendencies and propensity for elopement.

The staff-on-duty reported that their actions during the third shift that night consisted primarily of mopping floors and washing clothes, and that the exit doors located across the hall from Franklin’s room remained unlocked at all times during the shift. Although Sims testified that there were several instances throughout the night shift where both she and the other staff member, James Duncan, were performing duties that would prevent constant monitoring of the unlocked doors, Duncan testified that there was continuous observation of the unlocked doors.

During questioning, Duncan had no explanation for how Franklin successfully eloped during what he represented was staff’s constant observation of the Hayes House doors. Highlighting this inconsistency, Sims additionally testified that no precautions were ever made to prevent Franklin from eloping during the night in question.

Around 5:30 a.m. on the morning of December 6, 2002, it was discovered that Franklin Weekley was no longer in his room at the Hayes House.

The Ensuing Search for Franklin Weekley

Following the revelation that Franklin had gone missing, staff members Sims and Duncan began a search of the premises immediately surrounding the Hayes House. Around 9:15 a.m., Superintendent Tracy Clemmons directed Sims and Duncan to submit a written statement of the night's events and to leave for the day.

Nearly three hours went by following Franklin's disappearance before Franklin's parents were notified that their son had gone missing from Sunland. They immediately made the more than two-hour drive to Sunland to assist in the search efforts, but were informed by Clemmons that they were not permitted to participate in the search of Sunland grounds. Instead, they were instructed to conduct their own search outside of the perimeter fence if they wished to participate.

The search officially continued for the next 11 days, and was ultimately expanded to include searches of off-premises businesses and stores in the area. Shortly thereafter, the department discharged Franklin from Sunland and participated in an order holding Franklin in contempt of court for violating the order committing him to Sunland.

Skeletal Remains Discovered

On October 28, 2004, an independent contractor was hired to demolish an old building (known as "Brunner B Building") located approximately 500 yards from the Hayes House on Sunland premises. During the demolition process, one of the workers found skeletal remains located in the basement of the building.

The building where Franklin's remains were discovered was an old boiler room that was abandoned and locked by Sunland maintenance staff. At the time of Franklin's disappearance, however, the building would have been dilapidated to the point where the front entrance was secured by only a chain and padlock. Staff testified that it would be possible to gain entrance to the building by shimmying through the space found between the door and its frame.

The Superintendent of Maintenance later testified that at the time Franklin disappeared in 2002, he considered the building to have been extremely dangerous to anyone who attempted entrance.

The only clothing found at the scene of discovery were partially-deteriorated underpants and an undershirt bearing Franklin's initials on the label. An entire search of the basement area was conducted, and no evidence of shoes, socks, jeans, shirt or jacket was found.

Despite the presence of Franklin's initials on the articles of clothing found in the boiler room basement, the department refused to admit the skeletal remains were Franklin's for several years.

The medical examiner, a forensic anthropologist, and a forensic odontologist hired by the State all agreed that their examination of the remains were consistent with being Franklin's. Despite its own experts' conclusions, however, the department insisted on obtaining DNA evidence before it would admit that the remains were Franklin's. Without objection from his parents, DNA samples were obtained and compared to the skeletal remains at the FDLE laboratory in Jacksonville. Short Tandem Repeat (STR) testing was performed, but rendered inconclusive results due to the degradation of the skeletal sample. These samples were then transferred to the FBI DNA laboratory in Quantico, Virginia, where they underwent mitochondrial DNA testing which, in April 2007, once again resulted in inconclusive results due to the remains' degradation.

In June, 2007, however, the state finally admitted that the remains located were indeed Franklin Weekley's, and requested mediation.

LITIGATION HISTORY:

On March 1, 2004, the parents of Franklin Weekley filed a five-count complaint against the Department of Children and Family Services and Tracy Clemmons, Gertrude Sims and James Duncan individually for writ of habeus corpus, determination of presumptive death, negligence, civil rights violations under 42 USC §1983, and neglect of a vulnerable adult under s. 415.1111, F. S.

As the lawsuit was filed approximately eight months before the youth's skeletal remains were discovered, the primary focus at that time was to compel the department to resume or at least fund a comprehensive search of the Sunland premises and surrounding properties.

When the skeletal remains were found on October 28, 2004, the complaint was amended so that wrongful death and survival claims were substituted for the habeus corpus claim.

In June, 2007, the claimants and the department entered into a Settlement Agreement, whereby the department agreed to pay the claimants \$1.3 million. Of this amount, \$300,000 has already been paid pursuant to the statutory cap on liability imposed by s. 768.28, F.S.

The Agency for Persons with Disabilities, the successor agency to the Department of Children and Family Services in this matter, fully supports passage of this claims bill, concluding "the Agency had not properly fulfilled its duty to

care for Mr. Weekley and that the failure was a proximate cause of his disappearance and death.”

Additionally, then Governor Crist issued an Order requiring the Florida Department of Law Enforcement to launch a full-scale criminal investigation into the events surrounding the disappearance and death of Franklin Weekley.

CONCLUSION OF LAW:

Whether or not there is a jury verdict or a settlement agreement, as there is here, every claims bill must be based on facts sufficient to meet the preponderance of evidence standard.

Duty

From my review of the evidence, I find that the State had a duty to Franklin Weekley, following his commitment and custody with the Department, to provide the youth with a safe and secure environment, protection, and 24-hour supervision.

Specifically, once Sunland was selected as an appropriate residential and treatment destination for Weekley following his elopement attempts at other group homes – in part because of the Department’s representation during Weekley’s commitment reviews that Sunland amounted to a safe and secure living arrangement for a youth exhibiting the elopement tendencies and behavioral issues that Weekly had repeatedly demonstrated – the Department had a duty to, in fact, provide Weekley with the safe and secure environment it assured to him and his family.

Moreover, after Sunland’s own “Temporary Behavior Management Procedures” identified that Weekley needed “strict visual one-on-one observation at all times as he has a history of elopement and has made threats since admission,” staff at Sunland assumed a duty to provide this sort of close visual attention. Consistent with this notion, an Order Continuing Involuntary Admission to Residential Services was issued by a circuit court judge roughly two weeks before his disappearance. This Order indicated that Weekley, “lacks basic survival and self-care skills to such a degree that close supervision and habilitation in a residential setting is necessary and, if not provided, would result in a real and present threat of substantial harm to [Weekley’s] well-being; and because of [Weekley’s] degree of mental retardation, he is likely to physically injure others if allowed to remain at liberty.”

Breach

A preponderance of the evidence establishes that the Department breached their duty to provide Franklin Weekley with a safe and secure environment, protection, and 24-hour supervision.

Franklin was housed with 22 other adult males in his residence

at the Hayes House, despite Sunland's own recommendation that a young adults program would provide a more appropriate living arrangement for the child. Moreover, despite the facility's knowledge of the flight risk posed by Franklin, and frequent threats made by Franklin, the youth was apparently successful in escaping unnoticed through an unlocked and unmonitored exit, in contravention of both the Court's and the facility's instructions to maintain strict, visual one-on-one observation of the youth during his time at Sunland.

Finally, staff at Sunland breached its duty to provide a safe and secure environment to Franklin by permitting an abandoned boiler room located nearby the Hayes House to fall into a state of disrepair, and failing to properly secure such premises to dissuade resident elopement attempts in the building.

Causation

The negligence of the Department and staff at the Marianna Sunland Center were the legal (proximate) cause of the damages suffered by Franklin Weekley and his parents.

Damages

Franklin's parents' pain and suffering claims, outlined in their wrongful death suit against the State, are both tragic and this settlement contemplates their loss.

Franklin's parents initially contested his commitment to the State, and at all times thereafter wanted the child to remain at home with them. Sunland's records are replete with observations of the various behavioral and placement committees regarding the close-knit structure of Franklin's family, and how it was both his parents' and Franklin's goal to have the youth returned home with them as soon as possible.

When the State announced that it was canceling all efforts to search for Franklin after only 11 days, Franklin's parents continued tirelessly for months to search for their son. They passed out hundreds of leaflets, contacted various missing persons and children's bureaus, hospitals and morgues.

With the parents languishing in uncertainty for almost two full years, in October 2004 the skeletal remains were discovered with dilapidated underwear bearing Franklin's name. The medical examiner, a forensic anthropologist, and a forensic odontologist hired by the State all agreed that their examination of the remains were consistent with being Franklin's. Despite its own experts' conclusions, however, the department insisted on obtaining DNA evidence before it would admit that the remains were Franklin's.

It took until June 2007, a full four-and-a-half years after Franklin's disappearance, for the State to acknowledge that the remains were indeed the remains of Franklin Weekley

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 \$221.38

RECOMMENDATIONS:

The bill should be amended to reflect any amount awarded will be placed in a special needs trust.

Accordingly, I respectfully recommend House Bill 6539 be reported **FAVORABLY**.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Byrd, House Sponsor
Senator Gibson, Senate Sponsor
Barbara Crosier, Senate Special Master