



## THE FLORIDA SENATE

### SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
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January 29, 20026

The Honorable Ben Albritton  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **SB 6** – Senator Calatayud  
**HB 6507** – Representative Tramont  
Relief of L.E. by the Department of Children and Families

### SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM BILL COMPENSATING L.E., A MINOR, INJURED DUE TO THE NEGLIGENCE OF THE DEPARTMENT OF CHILDREN AND FAMILIES, IN THE AMOUNT OF \$4 MILLION.

#### FINDINGS OF FACT:

L.E.<sup>1</sup> is a 5 year old minor, born July 29, 2019, in Brevard County, Florida. She suffers from Shaken Baby Syndrome after being abused by her birth parents within weeks of her birth. Her injuries were severe, and the effects will likely leave her disabled for life.

Those primarily at fault for her injuries are the biological parents, Dexter Williams, Sr. and Stephanie Hylard. Both are currently incarcerated with the Florida Department of Corrections after being found guilty of aggravated child abuse of L.E.<sup>2</sup> The criminal charges relate to numerous occasions in September of 2019 in which L.E. was shaken. Her ribs were broken from the strength of the grip while her brain was

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<sup>1</sup> L.E. are the initials of the injured child. The initials are used to protect the identity of the child. The Special Master knows the full name and identity of the child and her adoptive parents.

<sup>2</sup> Dexter was sentenced to 11 years and Stephanie sentenced to 7 years. Source: Florida D.O.C. Inmate Search.

damaged by the shaking and by contact with a hard surface. Her ribs have healed, but her brain will never fully recover.

The question that this claim bill explores is the liability of the state in placing L.E. in the care and custody of her natural parents. That is, was DCF negligent in deciding to forego foster care placement and instead place L.E. in the care and custody of Williams and Hylard?

### **Birth and Initial Investigation**

At the time of L.E.'s birth on July 29, 2019, her biological father, Dexter Williams, Sr. and biological mother, Stephanie Hylard, were an unmarried couple living together in a home in Cocoa Beach, Florida. He was 28, she was 26. Dexter had two children from a prior relationship. He had been awarded primary residence of these two children. Stephanie also had two children from a prior relationship. Their primary residence was with their biological father and they periodically visited Stephanie. Stephanie had a third child who was surrendered for adoption. While pregnant with L.E. she was talking to an adoption agency about surrender.

The initial DCF notes pointed out that Dexter and Stephanie "have an extensive and concerning history with DCF and law enforcement."<sup>3</sup> Stephanie's two children were previously in foster care, and Dexter's 6-month-old daughter was placed in shelter after doctors discovered broken bones that suggested abuse.<sup>4</sup> Altogether, one or both of them had been named in 24 DCF investigations between 2013 and 2019.

At that time, Stephanie was on pre-trial release on a 2018 felony charge of battery on a pregnant person.<sup>5</sup> Brevard County court records show that Stephanie had been involved in 28 court cases, including 9 civil cases related to domestic or dating violence, 6 misdemeanor arrests related to domestic violence incidents, and the 2018 battery.<sup>6</sup> The clerk's records show that Dexter, as of the birth of L.E., had been involved in

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<sup>3</sup> DCF notes of 07/29/2019, record DCF00681.

<sup>4</sup> *Id.* at DCF00682.

<sup>5</sup> Brevard Circuit Case No. 05-2018-CF-019734-AXXX-XX. The pregnant person was Dexter's former live-in girlfriend, and she was carrying a baby that presumably was Dexter's. The fight occurred in the driveway of Dexter's trailer.

<sup>6</sup> Records of the Brevard County Clerk of Courts, public search page at: [https://vmatrix1.brevardclerk.us/beca/beca\\_splash.cfm](https://vmatrix1.brevardclerk.us/beca/beca_splash.cfm)

12 court cases, including 2 related to domestic violence incidents and a 2014 misdemeanor arrest for domestic battery.

The hospital performed routine bloodwork immediately after L.E.'s birth. That bloodwork revealed that Stephanie was under the influence of amphetamines and that amphetamines had crossed the placental barrier and were in the infant's blood. Florida hospitals are required by law to report suspected child abuse. Accordingly, the hospital properly called the DCF abuse hotline to report the test results. Hours after the birth, Dexter and Stephanie got into an argument in her hospital room during which she threw an object at Dexter.<sup>7</sup> The hospital properly reported this domestic violence incident to the abuse hotline. Stephanie checked out of the hospital against medical advice, leaving the infant.

DCF dispatched a Senior Child Protective Investigator (a state employee, hereinafter "CPI") who promptly responded to the two reports.<sup>8</sup> The CPI queried the DCF databases and discovered the numerous past investigations of Dexter and Stephanie where the two had been investigated for domestic violence and child abuse. She discovered the numerous brushes with law enforcement officials (see above). She interviewed the hospital staff. She interviewed Dexter and Stephanie and went to their home.

There is inconsistent evidence regarding whether the CPI interviewed the two other children of Dexter that lived full-time with Dexter and Stephanie. It is clear that she did not interview the two other children of Stephanie who lived with Dexter and Stephanie on alternating weekends. Statutes require that DCF interview other children living in the household within 24 hours of the initial report.<sup>9</sup> Interviewing other children in the house is vital to these investigations.<sup>10</sup> The parent can object to the interview, but DCF may obtain a court order to compel an interview.<sup>11</sup> The CPI in her deposition testified that Dexter

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<sup>7</sup> Two different accounts describe the object as a 5-pound cell phone charger brick. Either the weight or the description of the item is incorrect. It is believed that the argument was over whether to keep the newborn or surrender her for adoption.

<sup>8</sup> Note that a "senior" CPI was appointed. A senior CPI has more training and experience.

<sup>9</sup> Section 39.301(9)(a)2., F.S.

<sup>10</sup> The practice manual says that children are the "most unbiased source for information" and "are also the least guarded in disclosing sensitive information." Procedure 18-2.c.(4) of CFOP 170-5.

<sup>11</sup> Section 39.301(12), F.S.

would not give permission to interview his children.<sup>12</sup> However, the DCF case notes indicate that the siblings were interviewed but gave no useful information.<sup>13</sup> In later interviews conducted by local law enforcement officials some of the other children in the house freely discussed the living conditions in the home.<sup>14</sup> The greater weight of the evidence is that the DCF case note incorrectly indicated that the sibling interview had occurred. It is possible that the entry was falsified in order to claim compliance with the statute. Had DCF interviewed those children while L.E. was still in the hospital, DCF may have discovered a house full of anger and abuse, the parents then would have been referred to services and perhaps to the criminal justice system, and L.E. would likely have been placed in foster care and never injured. The false entry or the failure to insist on an interview of these children were mistakes, the first of many in this matter.

### **First Placement After Birth**

At this point, newborn L.E. was still safely in the hospital nursery. Of course, she could not stay there long. The DCF employees still had a long history of encounters with child protective services and the criminal justice system, the hospital records showing illegal drug use by the mother that had affected the newborn, and an aggravated battery domestic violence incident within hours of birth. Based on this information, the CPI pursued an out-of-home placement of the newborn who would shortly be discharged from the hospital. DCF policy rightfully required the CPI to first see if the parents would consent to an out-of-home placement before invoking legal remedies. She discussed the issue with the parents who agreed that the newborn infant should not immediately go home with them. Per DCF policy, an out-of-home placement must first look to qualified and willing relatives, then qualified and willing friends, and, if none, then the child is placed in foster care.

The parents were unable to offer an acceptable family placement, but suggested a placement with a family friend. The family friend they offered was Cristy Cooke, Stephanie's supervisor at the Sonic drive-in restaurant in Cocoa Beach. She passed the background screening. However, Christy was

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<sup>12</sup> Deposition of Kelly Plantier, 91 (Sept. 11, 2023).

<sup>13</sup> DCF Chronological Notes Report, entry dated July 30, 2019.

<sup>14</sup> Video Exhibits 11,14, 17 and 20, (Sept. 25, 2019).

in fact not a close friend but better described as an acquaintance. She had no experience with babies, had no supplies (e.g. no crib, bottles, clothes, etc.), and she could only keep the infant for three weeks as her wife was scheduled for a surgical procedure. She also had no plan for daycare for L.E. and ended up taking L.E. to work with her at Sonic. So, instead of a quiet dark peaceful environment for the newborn to transition from the womb, L.E. spent large parts of the first few weeks of her life in a car seat at a busy loud and bright drive-in restaurant. It is important to note that the placement violated DCF policy. That policy provides that out-of-home placement with a non-relative is only appropriate when the child has a prior relationship with the caregiver.<sup>15</sup> As a newborn infant, L.E. had no close relationship to anyone other than her birth mother. The placement with Cristy Cooke was the second mistake committed by DCF. Fortunately, that placement did not appear to cause permanent harm.

### **L.E. Is Placed with Her Biological Parents**

Less than three weeks after taking custody of L.E., Cristy Cooke spoke to DCF to say that her wife's surgery was happening and that she could no longer keep L.E. This was not a surprise. At this point, Dexter and Stephanie were cooperating with the few requests of DCF. They were showing interest in the infant, and Stephanie had passed a drug test (but only because she cheated on it).<sup>16</sup> The CPI still thought that out-of-home placement was appropriate, and that the newborn was not safe if placed with the parents.<sup>17</sup>

This left foster care as the appropriate placement. Her supervisors at DCF, however, disagreed. They directed that the newborn live with Dexter and Stephanie, who would continue to receive services from the lead agency. The "lead agency" is a private entity that contracts with DCF to provide services to families. On August 21, 2019, DCF made its third and biggest mistake in this matter in ignoring the judgment of the CPI and placing the vulnerable 23-day-old infant in the full-time care of Dexter and Stephanie.

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<sup>15</sup> F.A.C. 65C-29.003(3)(a)1.c.

<sup>16</sup> In a deposition from prison, Stephanie admitted that she was still using illegal drugs at the time. She also admitted that she purchased clean urine from a local head shop prior to her drug test, and the drug test monitor did not watch the discharge of the sample and allowed Stephanie to bring her purse into the bathroom for the collection of the sample. Deposition of Stephanie Hylard, 179 (Oct. 2, 2023).

<sup>17</sup> Deposition of Kelly Plantier at 161.

It is hard to understand this decision. Barely three weeks had elapsed. Dexter and Stephanie both had a long history of abusing children. The likelihood that they would abuse L.E. should have been clear to anyone. Stephanie's drug treatment counseling was still in the evaluation stage, no treatment had been provided.<sup>18</sup> Both parents had exhibited violent behavior on numerous occasions in their lives, yet no anger management therapy or treatment had even been offered, let alone completed. The siblings had not been interviewed. Yet, it seems that DCF policy and practice, at least in this office at that time, was to prioritize family togetherness with the belief that so long as services were being provided to the family, no harm would come to a child.

One employee of the lead agency who was particularly strong in opposing shelter was not realistic in her thinking, saying that past behavior is not a good indication of future behavior.<sup>19</sup> She also thought the main need of the parents was to learn to communicate with each other.<sup>20</sup> It is clear from the record that Dexter and Stephanie were faking cooperation while continuing to exhibit dangerous behaviors. The DCF management, and the lead agency, were duped.

### **L.E. is Abused**

It did not take long for trouble to occur. The evidence shows that sometime in early September, L.E. suffered rib fractures and head trauma consistent with child abuse by shaking.<sup>21</sup> This is a mere two to three weeks after Dexter and Stephanie assumed custody of L.E. Further rib fractures occurred approximately two weeks later, together with head trauma from a "direct blow" to the head.<sup>22</sup> One sibling who witnessed

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<sup>18</sup> Deposition of Jennifer Brown, a mental health counselor. Her first counseling appointment with Stephanie was on August 28, a week after L.E. was placed with Dexter and Stephanie. At page 45.

<sup>19</sup> Deposition of Natalie Harpold, 50 (Sept. 13, 2023).

<sup>20</sup> *Id.* at page 166. Note that she said this knowing of the physical abuse! Why or how she could not see that anger management was the problem and was the needed therapy is unclear if not unbelievable.

<sup>21</sup> Deposition of Dr. Shawn Gough-Fibkins, 31-32, 36 (June 14, 2024). "So the way these fractures occur, which are classic fractures of child abuse, is the child is grabbed around the chest cavity with adult-sized hands, squeezed, lifted and shaken. And when you do that to these ribs, which are not like your ribs or my ribs, they are softer, and the way -- the relationship of the hand to the chest and the way it's squeezed and -- and thrashed essentially, the ribs don't fracture -- they -- they tend to fracture in this posterior pattern."

<sup>22</sup> *Id.* at page 28.

the abuse of L.E. said that Dexter shook L.E. because her crying interfered with his video game.<sup>23</sup>

Meanwhile, the lead agency was supposed to be providing safety services to protect L.E. The services were clearly inadequate and inappropriate. For instance, an employee of the lead agency met with Dexter and Stephanie on September 21, 2019, to give them a parenting lesson in rewards and praise for good behavior<sup>24</sup> (as opposed to punishment for bad behavior). It is unclear how this would be relevant to a newborn who does not understand language or the concepts of right and wrong.

The therapy was also wholly ineffective, as just three days later Stephanie appeared to scream at, and is shown to have physically abused Dexter's two other children by blows to the head and threatening with a closed fist. The video did not record audio, but it appears that Stephanie was angry at the children for not getting dressed fast enough.<sup>25</sup>

Believing that they saw progress, however, on September 9, 2019, the supervision level with the lead agency had been decreased from supervision by the Safety Management Team to NonJudicial In-Home Services. A discharge summary note of September 16, 2019, said that Dexter and Stephanie had "graduated" and the "family closed successfully."<sup>26</sup> Dexter and Stephanie were notified of this on September 17, 2019. Note that by that date L.E.'s ribs had been broken by abuse some one to two weeks earlier, and again on or around that day.

On Saturday, September 21, 2019, Cristy Cooke (the Sonic manager who cared for L.E. for three weeks) received a text from Stephanie that included a picture of L.E., who was at this point just shy of eight weeks old. This was the one month anniversary of L.E. living with Dexter and Stephanie. Cristy noted that L.E. appeared to have a finger-sized indent in her head. Stephanie commented about feeding issues and odd behavior. Cristy urged Stephanie to take L.E. for medical

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<sup>23</sup> Video Exhibit 20 (Sept. 25, 2019).

<sup>24</sup> Deposition of Debra Brag-Caron, 126 (Oct. 6, 2023).

<sup>25</sup> Video Exhibit 43, channel 8 (Sept. 24, 2019). This is video only, no audio was recorded. Dexter had installed video cameras throughout the home, the recordings were seized by law enforcement officials during a lawful search of the home.

<sup>26</sup> DCF Progress Notes (Sept. 16, 2019)

care.<sup>27</sup> On Monday, September 23, 2019, an employee of the lead agency visited the home and noted lethargy in L.E., but did nothing. Medical testimony was that lethargy may indicate brain damage, and thus it should have been investigated. However, it wasn't until Wednesday, September 25, 2019, that Stephanie finally took L.E. for medical treatment. Law enforcement was contacted, and Dexter and Stephanie were arrested. The four young children in the house were interviewed and two described the abuse on L.E.<sup>28</sup>

### **Injuries Found**

L.E. was brought to the local hospital emergency room at 10:34 am on September 25, 2019. She was one month and 27 days old. The primary complaint identified by Stephanie was that L.E. was “not eating right.”<sup>29</sup> Shortly after arrival, the doctors discovered head injuries and broken ribs indicative of child abuse. DCF and law enforcement were contacted.<sup>30</sup> The medical staff further discovered cerebral edema (which is fluid in the brain, usually indicating bleeding from trauma), skull fracture, and multiple rib fractures, all of which indicated “child abuse syndrome.”<sup>31</sup> L.E. started suffering seizures.<sup>32</sup>

The local hospital recognized the need for specialized care, and L.E. was transferred to Nemours Children's Hospital in Orlando. She stayed there until October 3 (eight days). The final diagnosis of medical issues found: child physical abuse, multiple rib fractures, skull fracture, retinal hemorrhage, traumatic subdural hematoma, failure to thrive, and malnutrition.<sup>33</sup> They noted that L.E. was only two ounces heavier than at birth. The lack of weight gain was unusual in a newborn and a sign of neglect.<sup>34</sup>

### **Current Status of L.E.**

L.E. currently resides in Chicago with her adoptive parents. She is enrolled in Medicaid. She receives physical therapy,

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<sup>27</sup> Deposition of Cristy (Cooke) Rall, 92 -121 (Sept. 28, 2023).

<sup>28</sup> Video Exhibits 11 and 20 (Sept. 25, 2019).

<sup>29</sup> Rockledge Regional Medical Center records, 6 (Sept. 25, 2019).

<sup>30</sup> *Id.* at page 12.

<sup>31</sup> *Id.* at page 13.

<sup>32</sup> *Id.* at page 14.

<sup>33</sup> Nemours at 14.

<sup>34</sup> *Id.* at 17.

speech therapy, nursing services and counseling through the exceptional student education (ESE) programs of the local school district.<sup>35</sup> Her adoptive mother receives payments from a special needs trust created after the recoveries from the other defendants to the action.<sup>36</sup>

L.E. appeared at the Special Master hearing in Tallahassee on February 10, 2025. She appeared cheerful with relatively normal affect for a 5-year-old. She appears small for her age, and showed minor difficulty with balance and movement. A 2024 psychological test resulted in an IQ score of 81, which is low average.<sup>37</sup> The psychologist opines that L.E., as an adult, will be able to learn basic repetitive tasks that might qualify her for low level employment, but she will not be able to live alone and her impulsive nature would make long-term employment with any one employer difficult.<sup>38</sup>

### **Measure of Damages**

At the outset, it should be noted that the Special Master did not receive an adequate presentation regarding damages. As is typical in claim bill hearings, the claimant presented a life care plan followed by an economic analysis of those costs adjusted to current levels after factoring projected investment earnings and the effects of inflation. The same evidence would be expected in a jury trial. However, in a normal jury trial the defense would cross examine the experts and would present alternatives. Typically, the competing experts would be far apart, and the jury would work it out. Here, DCF did not challenge the damages.

Additionally, the life care plan includes suspected inflated figures, excessive utilization of services, and inclusion of charges for medical services that likely will be covered by Medicaid or private insurance. These flaws are obvious and call into question the claimant's demands and the amount of the settlement. For instance, the life care plan contemplates hiring a full-time aide to follow L.E. around school. It contemplates a lifetime of 24/7 live-in help (i.e. personal care attendant). The plan charges full price for medical services, apparently ignoring Medicaid coverage. The plan includes the

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<sup>35</sup> Deposition of Colleen Estrada, 16 (Apr. 23, 2024).

<sup>36</sup> Testimony of Colleen Estrada, claim bill hearing Tallahassee (Feb. 10, 2025).

<sup>37</sup> *Confidential Psychological Evaluation*, Dr. Lisa Settles, Psy.D., 12 (June 7, 2024).

<sup>38</sup> *Id.* at 24.

cost of ordinary items like electric toothbrushes. Apparent questionable estimated expenses include a custom stroller at \$5,700 and a lifetime of tricycles.

The economist employed by the claimant estimates the present value to fund the life care plan to range between \$11.6 million and \$17.6 million.<sup>39</sup>

No evidence was presented regarding noneconomic damages.

#### LITIGATION HISTORY:

The guardian of L.E. filed a civil action against the Department of Children and Families on June 21, 2022. DCF was not the only defendant accused of negligence in the action, co-defendants were the Brevard Family Partnership (the lead agency) and Aspire Health Partners (a subcontractor of the lead agency). The claimant had settled with all defendants before trial. Aspire agreed to and has paid the sum of \$100,000. Brevard Family Partnership agreed to and has paid the sum of \$3,250,000. DCF agreed to a settlement of \$4 million, of which \$200,000 has been paid and the remaining \$3.8 million is payable at the discretion of the Legislature.

DCF agreed to not oppose this claim bill. As such, DCF did not furnish any evidence, call any witness, or make any argument against the claim.

The biological parents Dexter Williams, Sr. and Stephanie Hyland were not named as defendants in the lawsuit. They could have been named as defendants for the intentional tort of battery.

The guardianship for L.E. has already collected a total of \$3.55 million in this case, \$3.25 million from the lead agency, \$100,000 from a subcontractor of the lead agency, and \$200,000 from DCF. After attorney fees and costs, \$600,000 was used to purchase two long-term annuities, the second of which is guaranteed through the remainder of L.E.'s life. The remaining sum of just over \$1.1 million went into a special needs trust.

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<sup>39</sup> Raffa, *Economic Loss Analysis in the Matter of L.E.* (Feb. 20, 2023).

Parental rights in Dexter and Stephanie were terminated by the circuit court. L.E. was legally adopted by her maternal grandmother and her husband. The adoptive mother is Stephanie Hylard's biological mother.

The parents were convicted of aggravated child abuse and felony child neglect. Dexter Williams, Sr. is currently in the custody of the Florida Department of Corrections with an estimated release date of December 30, 2029. Stephanie Hylard is currently in the custody of the Florida Department of Corrections with an estimated release date of September 10, 2025.<sup>40</sup> Upon release she will serve 10 years drug offender probation.<sup>41</sup>

CONCLUSIONS OF LAW:

The Department of Children and Families is a state agency wholly controlled by the State of Florida. The state is liable for negligence by DCF, its employees and contractors, under the doctrine of *respondeat superior*. Claims against DCF are subject to the legal concept of sovereign immunity. Under sovereign immunity, the state is not liable in tort for the action (or inaction) of DCF or its employees. Pursuant to constitutional authority, however, the state has enacted a partial waiver of its sovereign immunity for actions that would be negligent if committed by a private actor. If the waiver applies, the state will pay a final judgment or settlement up to \$200,000 for a single injured party. The remainder of the judgment or settlement is only payable upon approval of a claim bill.

The waiver of sovereign immunity only applies to an action or a failure to act that is negligent if committed by a private actor. These are commonly referred to as "operational level" actions or inactions. There is no waiver, and no right to recovery, for a planning level function of government. So, for example, a decision on whether to install a stop light at an intersection is a planning level decision not subject to a tort claim, but if the light is installed a failure to maintain the light is likely operational.

The leading case sets a four part test for whether the waiver applies.<sup>42</sup>

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<sup>40</sup> <https://pubapps.fdc.myflorida.com/OffenderSearch/InmateInfoMenu.aspx>

<sup>41</sup> Sentencing Order, *State v. Stephanie Hylard*, July 17, 2020, at 2. Brevard County Case No. 2019CF47368-A.

<sup>42</sup> *Trianon Park Condominium Assn. v. City of Hialeah*, 468 So.2d 912 (Fla. 1985).

(1) Does the challenged act, omission, or decision necessarily involve a basic governmental policy, program, or objective? (2) Is the questioned act, omission, or decision essential to the realization or accomplishment of that policy, program, or objective as opposed to one which would not change the course or direction of the policy, program, or objective? (3) Does the act, omission, or decision require the exercise of basic policy evaluation, judgment, and expertise on the part of the governmental agency involved? (4) Does the governmental agency involved possess the requisite constitutional, statutory, or lawful authority and duty to do or make the challenged act, omission, or decision? If these preliminary questions can be clearly and unequivocally answered in the affirmative, then the challenged act, omission, or decision can, with a reasonable degree of assurance, be classified as a discretionary governmental process and nontortious, regardless of its un wisdom. If, however, one or more of the questions call for or suggest a negative answer, then further inquiry may well become necessary, depending upon the facts and circumstances involved.<sup>43</sup>

In the context of child abuse investigations, there are two leading Florida Supreme Court cases. In a 1988 case alleging that the agency did not place an infant in protective custody despite evidence of prior abuse, the court found that an action or inaction by a child protective investigator will nearly always be operational in nature.<sup>44</sup> In a 1995 case, however, the court found that decisions by the agency regarding which services to provide a dependent child are considered planning level, warning that “making [DCF] liable for tort damages for its mistakes in judgment in carrying out this task would considerably impair the exercise of that function. . . . the courts, through tort actions, are ill-suited to second-guess

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<sup>43</sup> *Com. Carrier Corp. v. Indian River Cnty.*, 371 So. 2d 1010, 1019 (Fla. 1979) (finding negligent maintenance of a traffic signal to be operational). See also *Trianon Park Condominium Assoc., Inc. v. City of Hialeah*, 468 So.2d 912 (Fla. 1985) (finding failure of city building inspector to discover construction flaws to be a planning level function for which no liability applies).

<sup>44</sup> *Dept. of Health and Rehabilitative Services v. Yamuni*, 529 So.2d 258 (Fla. 1985).

[DCF's] decisions as to the provision and choice of services each time there is an unsatisfactory outcome."<sup>45</sup>

In this case, DCF did not argue the issue at the trial court prior to settlement, so we can only speculate as to how the court might rule had they filed a motion to dismiss. The Special Master finds that the greater weight of case law leads to the legal conclusion that the actions and inactions by DCF in this case were operational in nature.

If a court were to find that ordinary negligence law applies, the court that would hear this matter would be required to decide whether the basic elements of negligence are proven, namely: duty, breach, causation and damages.

The duty of DCF in this regard is best stated in the first two paragraphs of the purposes and intent section of the governing statute:

39.001 Purposes and intent; personnel standards and screening.—

(1) PURPOSES OF CHAPTER.—The purposes of this chapter are:

(a) To provide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development; to ensure secure and safe custody; to promote the health and well-being of all children under the state's care; and to prevent the occurrence of child abuse, neglect, and abandonment.

(b) To recognize that most families desire to be competent caregivers and providers for their children and that children achieve their greatest potential when families are able to support and nurture the growth and development of their children. Therefore, the Legislature finds that policies and procedures that provide for prevention and intervention through the department's child protection system should be based on the following principles:

1. The health and safety of the children served shall be of paramount concern.

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<sup>45</sup> *Dept. of Health and Rehabilitative Services v. B.J.M.*, 656 So.2d 906, 914 (Fla. 1985).

2. The prevention and intervention should engage families in constructive, supportive, and nonadversarial relationships.

3. The prevention and intervention should intrude as little as possible into the life of the family, be focused on clearly defined objectives, and keep the safety of the child or children as the paramount concern.

4. The prevention and intervention should be based upon outcome evaluation results that demonstrate success in protecting children and supporting families.

Complying with these statements of policy is the measure of DCF's duty, and their failure to comply with the duties is evidence of breach.

In determining the legal duty that DCF owed to L.E., the Special Master looked to DCF materials outlining the standards for out-of-home placement. Section 39.301(14)(c)1., F.S, states that DCF must by rule establish “[c]riteria that are factors requiring that the department take the child into custody, petition the court as provided in this chapter, or, if the child is not taken into custody or a petition is not filed with the court, conduct an administrative review.” That requirement is over 20 years old, but no rule has ever been promulgated. Similarly, the DCF practice manual does not discuss criteria.<sup>46</sup> Because DCF has not specified the standard, a court would have to speculate as to legal duty and breach based on the broad statements in statute and the court's common sense.

What appears evident, upon review of the entire file, is that DCF in this case prioritized the family-centered goals at the expense of ensuring safety of the infant.<sup>47</sup> Safety was supposed to be the “paramount concern” of DCF. It was not. If safety had been the paramount concern, L.E. would have gone straight from the hospital to foster care. Ignoring the high likelihood that Dexter and Stephanie's past and present behavior would likely continue and thus lead to abuse of the vulnerable newborn was negligent. The only expert on child

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<sup>46</sup> CFOP 170-5 Child Protective Investigations

<sup>47</sup> The testimony of a lead agency employee is illustrative of this attitude. She testified that she had concerns about the placement, but believed that the role of the lead agency was to keep families together by providing services. Deposition of Jami White, 70 (Aug. 9, 2024).

abuse systems testified that L.E. should have been placed in foster care at birth.<sup>48</sup>

Had it gone to a jury, this negligence claim would have been subject to the comparative fault statute.<sup>49</sup>

ATTORNEY FEES:

The claimant's attorney has received fees in the amount of \$1,390,000 from settlements related to claims against private entities that were claimed to be partially responsible for L.E.'s injuries, and from the partial payment of the settlement with DCF. The claimant's attorney will limit the fees on any recovery against the State resulting from this claim bill to the statutory limit of 25%. Past court costs advanced by the plaintiff attorneys, including expert witness fees, do not appear unreasonable and have already been reimbursed from other recoveries.

RECOMMENDATIONS:

The undersigned recommends consideration of a lower claim amount that considers the substantial recoveries already paid and the insufficient proof of monetary damages.

As to liability, the undersigned recommends that the bill be reported FAVORABLY.

Respectfully submitted,

Nathan L. Bond  
Senate Special Master

cc: Secretary of the Senate

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<sup>48</sup> Deposition of Joyce Taylor, 43 (Aug. 6, 2024).

<sup>49</sup> Section 768.81, F.S.