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Attorneys help find child-welfare agencies negligent

By Adolfo Pesquera



Joel Fass, Stacie Schmerling and Howard Talenfeld

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Defense attorney: Maritza Pena for ChildNet, Marlow, Connell, Abrams, Adler, Newman & Lewis, Coral Gables; Ralph L. McGrath Jr. for DCF, Law Offices of Ralph L. McGrath Jr., Fort Lauderdale

Settlement amount: \$2.2 million

Details: On Nov. 10, 2003, two kindergarten-age sisters were placed with their grandparents, pursuant to a state shelter order generated off a report that the mother, a stripper, abused drugs and acted inappropriately with men in front of her daughters.

Case: I.N. and G.N., minor children, v. Florida Department of Children and Family Services and Childnet Inc.

Case no: CACE07-005405

Description: Culpable negligence

Filing date: March 12, 2007

Settlement date: March 11, 2013

Judge: Broward Circuit Judge Carol-Lisa Phillips

Plaintiff attorneys: Howard Talenfeld, Stacie

Six months later, Broward Circuit Judge Arthur Birken ordered ChildNet — Broward's agency for caring for abused, abandoned and neglected children — have the girls examined by a licensed sex-abuse therapist. Childnet did not comply.

The grandparents, on advice of an attorney, retained forensic psychologist Dr. Amy Swan. On Sept. 14, 2004, Swan reported age-inappropriate sexual behaviors and recommended supervised visits and therapy with a doctoral-level clinician.

Instead, ChildNet relied on sandplay therapist Joanna DeAngelo, continued recommending reunification with the mother and allowed unsupervised visits.

Swan's second report, in December 2004, expressed "grave concerns" about a "rush for reunification." At a Jan. 12, 2005, hearing, ChildNet misled Circuit Judge John Bowman, stating nothing in Swan's sessions revealed sexual abuse.

Bowman insisted on hearing directly from Swan, and he refused to qualify DeAngelo as a sex-abuse therapist, but she kept seeing the girls at ChildNet's direction. Swan's opinion, two months later, led Bowman to repeat Birken's order for a licensed psychologist. Dr. Sheila Rapa was given the job.

Supervised visits began April 2005. Linda Weinman, the supervisor, later testified ChildNet never mentioned disclosures of the mother sexually abusing the girls, nor did ChildNet give her, as Rapa directed, a best practices guide for supervised visits with sexually abused children. Weinman learned of the mother's situation eight months later through a grandparent.

On July 7, 2005, a new abuse report led to a Broward Sheriff's Office investigation.

Twenty days later, for the first time, ChildNet changed the case plan goal from reunification to long-term relative care, but the change was noted as "due to the mother's positive drug screen," making no mention of the criminal sex-abuse investigation.

ChildNet didn't implement a safety plan based on sex abuse until Oct. 3, 2005. Two weeks later, The incest allegation was verified by BSO based on statements of the victims, their father, Swan, Rapa and a supervised visitations counselor.

Despite all the evidence, ChildNet told Bowman at a Jan. 23, 2006, hearing it would not object to reunification and made the claim that supervised visits during a criminal investigation were "really for the mother's protection."

According to the court transcript, Bowman said that if ChildNet thought the state attorney's case was specious and the court should not listen to the sheriff's investigators, Childnet should state so for the record.

"I have rarely heard such compelling testimony and convincing testimony as Dr. Rapa in a case. I have little doubt that some form of sexual abuse has occurred in this case," Bowman said.

"The only extraordinary circumstances, I think, would be the Department's (and ChildNet's) clear desire to try to reunify the mother without any regard to the experts. To say that's ignoring red flags, based on Dr. Rapa's testimony, is an understatement; it's an agenda. Okay?"

Fourteen months later, the grandparents filed a civil damages lawsuit for culpable negligence.

Plaintiff case: The grandparents' case rested on the 26-month period during which ChildNet and the Department of Children and Family Services ignored warnings of the grandparents, a school teacher, psychological experts, verified abuse reports and two judges.

Despite all of the findings, ChildNet and DCF denied sex abuse took place and defended themselves against the grandparents' lawsuit "with a scorched earth defense, taking more than 60 depositions and spending hundreds of thousands of dollars in expert and attorneys fees," plaintiff counsel Joel Fass said.

Plaintiffs asserted the defendants violated their duties as defined in common and statutory law, administrative rule, operating procedure and court orders.

Concurrent with the negligence lawsuit, Porter on Feb. 18, 2009, entered final judgment terminating parental rights, finding that, "due to the sexual abuse, the children cannot be returned to the mother as she was the perpetrator."

Defendant's case: Defense attorneys did not respond for comment. According to the court record, the defendants asserted statutory qualified immunity, since the agencies were performing actions in good faith and pursuant to a case plan. They argued immunity could be overcome only if the court should find they acted in bad faith or for a malicious purpose or that their acts exhibited wanton and willful disregard of human rights and safety.

In ChildNet's motion for final summary judgment, they stated, "No facts in their Sixth Amended Complaint" support ChildNet's "alleged wanton and willful disregard for the plaintiffs' rights and safety, nor the required culpable negligence to avoid the application of" state law.

Outcome: The case was set for trial in January. After the plaintiffs filed their response to the defendants' motion to dismiss the case, the defendants agreed to settle. ChildNet paid up to its maximum policy limit of \$2 million, and DCF paid up to its statutory cap of \$200,000.

Comments: "These girls had grandparents with means who pursued this case in dependency court. What about those children who have no one to advocate for them? It was only on the courthouse steps that they paid full policy limits — and still deny any guilt. This leaves us to wonder whether any lesson was learned at all," Howard Talenfeld said.