



Special Master's Final Report

The Honorable Daniel Perez
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: [HB 6515](#) - Representative Barnaby
Relief/Michael Barnett/Department of Children and Families

SUMMARY

This is a claim for \$296,400, based on a settlement agreement, against the Department of Children and Families (DCF) for injuries and damages arising from the department's negligence when Diane Barnett, Daniel Barnett, and Bryan Barnett were murdered and Ryan Barnett was shot in their home by their step-father, Patrick Dell, on September 27, 2010.

FINDINGS OF FACT

Michael Barnett is the father of Daniel Barnett (age 10), Diane Barnett (age 13), Bryan Barnett (age 14), and Ryan Barnett (age 15), children he had with Ms. Natasha Whyte-Dell. Ms. Whyte-Dell (mother) was married to Mr. Patrick Dell (Dell) on October 5, 2006, and shared a home with him, the four Barnett children, another child of Ms. Whyte-Dell (Jevon Nelson, age 11), and Dell's 2 young children (ages 1 and 3). Michael Barnett and the mother split custody of their four children with the children living part-time with the mother and part-time with the father. Dell and the mother lived with the aforementioned children in a home in Riviera Beach, Florida during their relationship. The mother filed a petition for dissolution of marriage on September 10, 2008, but the matter was voluntarily dismissed on February 3, 2009.

History of Domestic Disputes

Dell and the mother had an extensive history of domestic disputes from 2007 through 2010. From 2007-2010 the Riviera Beach Police Department (RBPd) responded to the Dell home 34 times. Of those 34 calls, at least 11 involved domestic disputes with the children present. One call log entry from the RBPd stated that the operator could hear the teenage son in the background during a domestic dispute on March 16, 2008.

The mother filed two separate petitions for injunction for protection against domestic violence

against Dell; one in 2008 and the second in May of 2010. In the petition for injunction from 2008, the mother alleged that Dell was physically and verbally abusive to her in front of the children and while the children were present in the home. In the 2008 petition, the mother stated that she feared for her life and her children's lives, and provided details illustrating how the oldest child, Ryan, had tried to intervene in her defense. The mother further wrote that "she do[es] not know what my husband will do next." The court granted the injunction and the matter was disposed of on April 17, 2008.

The mother filed a second petition for an injunction for protection against domestic violence against Dell on May 18, 2010. In the 2010 petition the mother explained that Dell had been living in his car in front of the house for approximately one month and had been reported being seen in public attempting to buy a gun. In the petition, the mother again told the court that she was in fear for her safety and the safety of her children. The mother stated in the petition that Dell had told her "her last days are going to be bitter." The court granted a temporary injunction against Dell until November 28, 2010.

Of particular note is an incident which occurred on December 20, 2009, when the police responded to the home of Ms. Shawana Habersham, a close longtime friend of the mother. Dell approached Ms. Habersham's residence while the mother and Ms. Habersham were outside. Dell charged at the mother with a knife and the two women retreated inside of the home and locked the door. Dell continued to threaten the mother and told the mother "your family is going to cry today...you will be going to the morgue." Dell proceeded to slash all four of the mother's tires and carved an "x" into Ms. Habersham's driveway. In her statement to police following this incident, the mother reported that Dell's threats and violence had been increasing and that she was, again, in fear for her life and the lives of her children. Dell was arrested and charged with aggravated assault with a deadly weapon and criminal mischief for his actions.

The Department of Children and Families (DCF) received an abuse report regarding the December 20, 2009 incident on January 26, 2010. The DCF abuse report alleged that Dell accused the mother of having an affair with the neighbors and had threatened the mother and another female with a knife. The abuse report further alleged that Dell had become increasingly threatening, violent, and aggressive towards the mother and the frequency of domestic disputes had increased in the home. The report alleged that the children were present for many of the physical and verbal altercations between the mother and Dell.

George Shahood-DCF Child Protective Investigator

In response to the abuse report and the allegations contained therein, DCF opened an investigation into the welfare of the children. Mr. George Shahood was assigned as the child protective investigator responsible for investigating the report. Mr. Shahood was hired as an investigator in August of 2009. Prior to being hired by DCF, Mr. Shahood had not had any work experience with children, had no experience in social work, and had no training or education in social work, psychology, or any area related to social investigations and the well-being of children. In fact, Mr. Shahood's degree was in Sports Administration. Mr. Shahood had been unemployed for approximately two years preceding his employment with DCF.

According to Mr. Shahood, his training with DCF consisted of being assigned a mentor investigator and attending about a month of classes or "analytical book training" to supplement the on the job experience. By Mr. Shahood's own account, he did not receive his own, independent caseload until the end of 2009.

Mr. Shahood was involved in his own domestic dispute in September of 2010, when he was arrested for felony battery on a pregnant female, his then-fiancée. He pled no contest to the offense. According to the records provided, Mr. Shahood was relieved of his position with DCF in February of 2011. According to the materials reviewed, DCF did not take any steps to review or evaluate Mr. Shahood's caseload in light of his own domestic violence towards his fiancée.

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Mr. Shahood worked as a Child Protective Investigator with DCF for approximately 18 months in total.

By Mr. Shahood's own account, he estimated having worked around 120 cases during his employment as an investigator. In all of his cases, Mr. Shahood did not once find evidence supporting the removal of a child or children from a home. From his own testimony, Mr. Shahood explained that he was glad he never had to remove a child from a home. In his deposition, he stated that those cases involved significantly more paperwork, time, and court appearances.

Mr. Shahood's Investigation of Dell and the Mother

In response to the DCF abuse report, Mr. Shahood commenced his investigation into the allegations of violence and the welfare of the children. During his investigation, Mr. Shahood conducted a "grid check" of the Whyte-Dell residence, which included reviewing the calls into law enforcement. Mr. Shahood spoke with the mother and attempted to speak with Dell, but Dell refused to discuss the allegations with him.

Mr. Shahood did not attempt to obtain any police records and did not speak to anyone at the state attorney's office regarding the arrest of Dell during the December 20, 2009, incident. Mr. Shahood did not speak with Ms. Habersham, who was present at the time of the December 20, 2009 incident, nor did he attempt to speak to any neighbors, friends, or family members other than Dell and the children. Mr. Shahood closed his investigation after only 30 days and found no threat to the welfare of the children. Mr. Shahood's only advice to the mother and the children was to call 911 in case any future domestic incidents occurred.

Date of the Murders: September 27, 2010

On September 27, 2010, at around 2:00 a.m., Dell entered the home he had previously shared with the mother. Dell proceeded to shoot the mother and five of the seven children in the home. Dell did not shoot the two young children he had in common with the mother and left them asleep in their room. Dell murdered Daniel, Diane, and Bryan Barnett; Jevon Nelson; and Natasha Whyte-Dell before exiting the home and turning the gun on himself. Dell attempted to murder Ryan Barnett, whom he shot in the throat and neck, but Ryan pretended to be dead long enough for Dell to leave the room, after which Ryan called 911.

LITIGATION HISTORY

Michael Barnett (Barnett), individually and as natural father and guardian of Ryan Barnett, and as the Personal Representative of the Estates of Daniel Barnett, Diane Barnett, and Bryan Barnett, filed a complaint for wrongful death and personal injury damages against DCF. Barnett alleged that DCF, as the agency charged with the duty to ensure the health, welfare, and safety of children in Florida, was negligent in its capacity and failed to ensure the safety and welfare of the Barnett children.

In its response to Barnett's complaint, DCF raised the affirmative defense of sovereign immunity and argued that it was only responsible to pay a claim of the statutory maximums (at the time in 2010) of \$100,000 per person or \$200,000 for the entire incident. In response, Barnett argued that separate and distinct shooting incidents occurred as to each individual child and that the separate gunshots, in separate locations, resulting in the death of four separate individuals, and the injury to a fifth child were separate incidents or occurrences for the purposes of recovery under sovereign immunity limits.

The trial judge agreed with Barnett's interpretation, but the Fourth District Court of Appeal (Fourth DCA) reversed the trial court's decision and strictly construed the sovereign immunity statute. As such, the Fourth DCA held that all four murders as well as Ryan's injuries, were part of one single

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incident. The case was appealed to the Florida Supreme Court where the Court ultimately upheld the Fourth DCA's decision.

Following the Florida Supreme Court's ruling, the parties agreed to settle the case with a payment of the remaining cap of \$160,000 and with a specific consent agreement that an additional amount of \$296,400 would be entered in favor of Barnett. However, the agreement was reached with the understanding that Barnett would have to appeal to the Legislature through the claim bill process to recover the additional agreed-upon amount.

POSITIONS OF CLAIMANT AND RESPONDENT

Claimant's Position

Barnett argues that DCF was negligent in its capacity as the agency overseeing and ensuring the welfare of Florida's children. Barnett alleges that DCF failed to adequately investigate abuse allegations and negligently exposed his children to a man who had previously threatened the children and their mother and was known to law enforcement to be dangerous and violent.

Barnett argued that DCF repeatedly ignored the clear and obvious threats and danger presented by Dell because of his repeated and improper association with the Barnett children.

Respondent's Position

DCF acknowledges that the 2010 shooting deaths of the Barnett family were tragic. However, DCF argues that there had only ever been one report involving Dell that was brought to the agency's attention. As such, DCF contends that it was not negligent or responsible in any way for the deaths of the Barnett children. DCF specifically argues that the sole investigation into Dell took place eight months prior to the tragic shooting, which was not a foreseeable event. DCF argues that a finding of negligence could create a precedent of an unattainable standard in future investigations. However, it should be noted the DCF entered into a settlement with Mr. Barnett, which is the basis of this claim bill.

DCF alleges that it does not have funds within its existing budget available to allocate to the payment of the settlement amount under the claim bill. Should the bill pass, DCF requests the Legislature allocate additional corresponding funds to the Department for payment of the claim bill.

CONCLUSIONS OF LAW

Regardless of whether there is a jury verdict or settlement, each claim bill is reviewed *de novo* in light of the elements of negligence.

Duty

DCF has a duty to reasonably investigate, supervise, and protect the welfare of children in the state. Section 415.103, F.S., requires DCF to establish and maintain a central abuse hotline that receives abuse reports and creates standards for the hotline that DCF must maintain. Upon receiving an abuse report, DCF has a duty to properly investigate the allegations.

Breach

After reviewing the materials provided by both parties and conducting a hearing on the matter, it is apparent that DCF did not conduct a sufficient investigation into the allegations included in the abuse report. By his own statements, Mr. Shahood reported that he chose not to access police records or contact the state attorney, and neglected to conduct even a cursory investigation through collateral sources close to the family. By his own admission, Mr. Shahood had access to

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the police reports and call records and was authorized to speak with friends, family, and neighbors, and chose not to, and closed the investigation after only thirty days.

By his own admissions, Mr. Shahood stated that, based on his experience, a pattern of threatening behavior and violence is anything more than one incident, noting that had he been aware of the 34 different calls to the home by RBPd and the two domestic violence injunctions against Dell, he may have deemed there to be a pattern or abusive behavior which would, at the very least, possibly have warranted additional investigation.

DCF was also negligent in its employment of Mr. Shahood. Particularly, after Mr. Shahood, himself, had been arrested for battery on his pregnant fiancée, DCF should have taken steps to ensure there was no conflict of interest between his actions and the actions he was tasked to investigate. DCF did no such review. Further, Mr. Shahood had no experience relative to the role of a child protective investigator when he was hired by DCF.

Following the tragic murders, the regional director for DCF, Perry Borman, admitted that the case was not handled properly. Further, new processes were put into place so that DCF now receives copies of any requests for injunctions filed with the Palm Beach County Clerk of Courts. In his deposition, Mr. Borman stated that he believed DCF (and Mr. Shahood) could have been “more robust in our investigation.” He further stated that it would have been imperative for the investigator to do as many collateral interviews and contacts as possible.

Mr. Borman admitted that Mr. Shahood failed to access the 2008 injunction in his investigation and that it would have been appropriate for him, as the investigator, to have accessed that record. On September 28, 2010, Mr. Borman stated publicly that there were points in the investigation that could have and should have been conducted better and investigated more fully.

In response to being asked what went wrong in the Barnett matter, Mr. Borman, the Southeast Regional Director of DCF at the time, stated that “the agency could have taken over half [a] dozen steps to guarantee the family’s safety.”

Causation

The most difficult aspect of this matter is whether DCF’s breach was the cause of the tragic loss of life for the Barnett children and the injuries sustained by Ryan Barnett. It is impossible to say whether a more robust investigation by DCF would have saved the Barnett children. However, it is important to emphasize that a more comprehensive investigation - not an overly intrusive or detailed investigation - but simply a better cursory investigation of the records available to Mr. Shahood, would have alerted the agency to the history of domestic disputes and abuse.

It is not a stretch to believe that, had Mr. Shahood reviewed even just the police records, he would have had evidence demonstrating a pattern of abuse and an increase in threatening and abusive behavior by Dell. As such, he would have, and should have, continued the investigation, which may likely have resulted in protective measures for the safety and wellbeing of the Barnett children.

The most cursory of reviews of the records available, but not accessed, by Mr. Shahood would have triggered the need for further investigation under DCF’s policies surrounding threatened harm, maltreatment of family, failure to protect the children, and an overall escalation in violence by Dell.

Based on the evidence in the record, I find that the Claimant has proven that DCF’s negligence was a proximate cause that led to the deaths and injuries to the Barnett children. DCF should have known that a man with such an extensive history of threatening and abusive behavior would pose a threat to the children living in the home. This case was more than a tragic accident. It is reasonably foreseeable that, following a proper investigation, DCF would have taken steps to

protect the Barnett children from Dell.

Damages

There is no doubt that Michael Barnett, as the father to Daniel, Diane, and Bryan Barnett, suffered an incomprehensible loss. Further, Ryan Barnett suffered not only the tragic loss of his siblings and mother, but suffered significant injuries himself which required intensive medical and psychological treatment.

In Claimant's filings, he has posited that a reasonable estimate of the case's value is in excess of \$8 million based on the loss of life and extent of physical and emotional damage.

By stark contrast, Claimant is only seeking to be compensated for the settled amount of \$296,400. Had this matter proceeded to a jury trial, the awarded damages would have likely been significantly higher, closer to the \$8 million estimate.

AMOUNT OF CLAIM BILL

This is a claim bill seeking \$296,400 in compensation to Mr. Barnett and R.B. for injuries and damages sustained as a result of DCF's negligence. The claim bill is based on a settlement between DCF and Mr. Barnett.

ATTORNEY AND LOBBYING FEES

If the claim bill passes, Claimant attests that the attorney fee will not exceed 25 percent of the total amount awarded (\$74,100), and lobbying fees will not exceed 5 percent of the total amount awarded (\$14,820). Outstanding costs are \$2,501.

RECOMMENDATION

Based on the evidence presented, I recommend that House Bill 6515 be reported FAVORABLY.

Respectfully submitted,

SARAH R. MATHEWS

House Special Master