



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 6535](#) - Representative Tramont
Relief/L.E./DCF

SUMMARY

This is an uncontested claim for \$3.8 million by L.E., a minor (hereinafter referred to as "L.E." or "Claimant"), against the Florida Department of Children and Families ("DCF") based on a settlement agreement with DCF for injuries sustained by L.E. This claim arises out of a negligence claim against DCF as the agency is statutorily designated to investigate allegations of abuse, abandonment or neglect, and to protect the children of the state.

FINDINGS OF FACT

Timeline of Events

L.E., a female, was born on July 29, 2019 at Rockledge Regional Hospital in Brevard County, Florida. L.E.'s biological parents are Stephanie Hylard ("Hylard") and Dexter Williams, Sr. ("Williams"). Hylard tested positive for amphetamines upon delivery of L.E. L.E. also tested positive for amphetamines. Hylard told hospital staff that she had taken Adderall the day before delivery to "calm down," but denied any other drug use. However, the hospital had records of treating Hylard with suboxone due to her IV drug use a year prior to the delivery of L.E.

While at the hospital, approximately 8 hours after L.E.'s birth, Hylard and Williams became engaged in a physical altercation with each other. Hylard threw a "5-pound phone charger" at Williams and proceeded to jump on him and began hitting him. Nursing staff broke up the altercation and Williams left the hospital. Subsequently at 9:00 p.m. on July 29, 2019, Hylard checked herself out of the hospital, against medical advice leaving L.E. in the NICU.

On September 25, 2019, L.E. was brought to Rockledge Regional Medical Center with critical and life-threatening injuries, including:

- Skull fracture;
- Left front parietal subdural hematoma with bilateral frontal, temporal, parietal cortical edema and encephalomalacia;

- Healing fractures of the left 6th and 7th ribs;
- Healing fracture of the right 8th rib;
- Acute fractures to the right 10th and 11th ribs;
- Pelvic fracture;
- Cortical buckling of the right proximal tibial medial metaphysis;
- Obvious bruising on her face and head; and
- Multiple eccymotic lesions to the forehead, suspicious of fingerprints.

While in the hospital L.E. experienced a seizure. Further, doctors diagnosed L.E. with Child Abuse Syndrome and called the Cocoa Police Department. Both the Cocoa Police and DCF responded to the hospital. Hylard admitted to police that the bruising on L.E.'s face and head were present and visible on September 21, 4 days prior. She further told police that she and Williams had discussed L.E. probably needing medical care as early as Saturday September 21; however, they did not bring L.E. to the hospital until September 25. It was also discovered that Hylard had applied makeup to L.E.'s face in an attempt to cover the bruising prior to bringing her to the hospital.

L.E. was transferred to Nemours Children's Hospital in Orlando, where she was noted to have:

- Significant and non-accidental intracranial injury resulting in persistent altered mental state and seizures;
- Intermittent left-gaze deviation and tongue thrusting;
- Spontaneous movements in the upper and lower extremities, bilaterally;
- Significant inadequate weight gain since birth;
- Small circular bruising to her forehead with multiple distinct lesions and a central erythematous lesion;
- Tachypnea;
- Tachycardia;
- Healing rib fractures;
- Long bone fracture; and
- Had not eaten for several days and had been vomiting.

Initial DCF Investigation

Two different reports were called into the Florida Child Abuse Hotline ("Hotline") reporting interfamily violence and a substance exposed newborn. Child Protective Investigator ("CPI") Kelly Plantier was assigned to the case. CPI Plantier conducted a criminal history search of Hylard which identified a criminal history including:

- Aggravated domestic assault;
- Multiple charges of domestic battery;
- Aggravated battery on a pregnant woman;
- Improper exhibition of a dangerous weapon;
- Multiple violations of a domestic violence injunction;
- Child neglect without great bodily harm;
- Aggravated assault; and
- Felony child abuse.

Hylard had an extensive history of at least six suicide attempts and eight psychiatric inpatient admissions as an adult. Hylard had three other children prior to L.E.: G.G., a son born on June 12, 2013; A.G., a daughter born on March 9, 2015, and a son born on October 13, 2016 (Hylard placed this child up for adoption). Hylard had an extensive history with DCF including:

- Hotline reports of family violence (2014).
- Verified findings for family violence and inadequate supervision (2014).
- Verified findings for inadequate supervision, failure to protect, and substance misuse (2015) which resulted in the children being sheltered.

- Verified findings for family violence (2016).
- Hotline report of physical injury, allegations of inadequate supervision, and a suicide attempt by Hylard (2017).
- Allegations of inadequate supervision, physical injury, and substance misuse (2017).
- Allegations of inadequate supervision (2019).

In 2016, the biological father of G.G. and A.G. was assigned full custody of the children with his then-wife; they were subsequently divorced, but the children remained living with the (now) ex-wife. Hylard was granted minimal timesharing with the children and had them every other weekend and for 4 hours on Wednesdays.

Dexter Williams also had a significant history with DCF, including:

- Verified findings for bone fracture to his child, K.G. (2013) which resulted in the child being sheltered and placed in a medical foster home.
- Hotline reports of family violence (2013).
- Hotline allegation of inadequate supervision (2017).
- Hotline allegations of asphyxiation, environmental hazards, physical injury, sexual molestation and sexual battery, and drug use (services accepted) (2018).
- Hotline report of physical injury (2018).
- Hotline report of inadequate supervision (2019)

After leaving the hospital, CPI Plantier went to Hylard and Williams' home to conduct an initial home visit. When CPI Plantier arrived at the home of Hylard and Williams on or about July 29, 2019, Williams had his two other children living in the house with him; Williams refused to allow CPI Plantier to interview the children.

Hylard returned to Rockledge hospital on July 30, 2019. Also, on July 30, 2019, Colleen Estrada, L.E.'s maternal grandmother, contacted CPI Plantier and expressed concerns for L.E.'s safety if L.E. were allowed to go home with Williams and Hylard. Estrada again contact CPI Plantier on July 31, 2019 with concerns for L.E.

CPI Plantier requested the police call-out records for the address of Hylard and Williams' home. The records showed over 40 calls regarding the address between January 5, 2016 and September 25, 2019, including:

- 6 different call-outs for suspicious activity (2 arrests made);
- Animal complaint/bite;
- 15 different call-outs for "Disturbance" with one arrest made;
- 2 different call-outs for Tow/Vehicle Repossession;
- 5 different call-outs for Agency assist;
- 4 different call-outs for police services;
- Aggravated assault (1 arrest made);
- 2 call-outs for aggravated battery (2 arrests made);
- 3 call-outs for welfare checks;
- Battery (1 arrest made); and
- 2 call-outs for burglary.

First Present Danger Safety Plan (Responsible Party: Rockledge Regional Hospital)

On July 31, 2019, DCF acknowledged that L.E. was at imminent risk of removal due to the identification of present or impending danger, and a safety plan was initiated. The safety plan directed Rockledge Regional Medical Center not to discharge L.E. to Hylard or Williams until they had both met with DCF and a formalized safety plan was put into place. Specifically, the first safety plan required:

- Rockledge Regional Hospital to keep L.E. admitted and not to discharge her Hylard and/or Williams until DCF had cleared the child to go home.

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- In the event that Hylard and/or Williams were present at the hospital and acting violent or impulsive, that L.E. be moved to a safe location and security and DCF be called.

After receiving a call from Hylard on August 1, 2019, inquiring about L.E.'s release from the hospital, the hospital social worker called CPI Plantier. CPI Plantier advised the social worker that "the parents have not consented or met with [DCF] to complete the safety plan of care for L.E. and baby CAN NOT be discharged at this time to them until they have met/made contact with [CPI Plantier]."

By August 1, 2019, DCF completed a Child Present Danger Assessment finding the "concerns for the family and child conditions are significant" and that Hylard and/or Williams were "violent, impulsive, or acting dangerously in ways that have seriously harmed the child or will likely seriously harm the child." Thus, DCF deemed L.E. to be at child at imminent risk due to a present and impending danger.¹

Concurrently, on or before August 1, DCF referred the case to Community Based Care of Brevard, Inc., d/b/a Brevard Family Partnership² ("BFP") for Safety Management Services.³ A Safety Management Intake Staffing was held with DCF, BFP, and Brevard CARES.⁴ At the staffing, BFP acknowledged that L.E. was a child at imminent risk due to a present and impending danger; and affirmatively, and contractually, undertook the responsibility for L.E.'s safety.

Second Present Danger Safety Plan (Party Responsible for L.E.: Christy Cooke)

In collaboration DCF and BFP, created a second subsequent "present danger" safety plan⁵ that was executed on August 1, 2019. The safety plan directed L.E. to be placed with Christy Cooke ("Cooke") a friend and co-worker of Hylard's. Under the second safety plan, L.E. was to reside with Cooke until termination of the safety plan, during which BFP and DCF were to make visits and phone calls and refer services as they deemed appropriate. Specifically, the safety plan provided that:

- L.E. will be placed on an out of home safety plan with family friends, Christy and Jamie Cooke.
- The Cookes will facilitate family time between Hylard and Williams and L.E.
- If the parents are observed in physical confrontations, exhibit out of control behaviors, or there are concerns of drug or alcohol use, the Cookes will move the child to a safe location and notify law enforcement and DCF.
- Alan Logue, a family friend, will make unannounced drop-in visits on Saturdays and

¹ "Present danger" is defined as an immediate, significant, and clearly observable family condition, child condition, individual behavior or action or family circumstances which are in the process of occurring and which obviously endanger or threaten to endanger a child and require immediate action to protect a child.

² Community Based Care of Brevard, Inc., d/b/a Brevard Family Partnership, is a Florida corporation with its principal place of business in Melbourne, Florida. BFP was and is the Community Based Care Lead Agency in Brevard County pursuant to [s. 409.986, F.S.](#) BFP was an independent contractor of DCF providing child welfare services, including case management services, to children in the custody of the State of Florida in Brevard County, including L.E.

³ Safety Management Services (also referred to as Non-Judicial In-Home Services) are crisis response services for children at risk of removal from parental care when DCF has identified a present danger.

⁴ Brevard CARES, Inc., is a Florida corporation with its principal place of business in Brevard County. CARES holds itself out, publicly, as a non-profit organization offering services designed to prevent child abuse and neglect by providing resources to strengthen families so that children may remain safely at home.

⁵ As stated on the face of the safety plan entered by DCF, "per [s. 39.301\(9\)\(a\)\(6\), F.S.](#), implementation of a safety plan is required because the child is at imminent risk of removal due to the identification of present or impending danger. Services contained in this safety plan are required to prevent removal of the child from the home. Absent these services, foster care is the planned arrangement for the child." DCF, *Child Safety Plan* (Aug. 1, 2019).

Sundays to ensure the Hylard/Williams home (to ensure the safety of the other children that were also subject to the safety plan) environment is calm and consistent. Mr. Logue will notify law enforcement and DCF of any concerns about the children or the parents' behavior.

- Tara Govert, the wife of G.G. and A.G.'s biological father, will continue to adhere to the visitation orders set for Hylard's other children, A.G. and G.G., dropping the children to the mother's home. Govert will take the children and contact law enforcement and DCF if she observes any concerning behaviors by the parents.
- Safety Management services will be involved with the family 3-5 days per week to ensure that the children are safe in the home. Safety Management services will take the children to a safe location and contact law enforcement and DCF if there are any concerns about the children's' safety.
- DCF will continue to monitor the safety plan and compliance with the plan by checking in with the family on a weekly basis through phone calls and unannounced visits to the home.

As such, BFP referred Hylard to the following services, as conditions of the safety plan:

- Mental health counseling for Hylard to be provided by Circles of Care.
- Substance abuse evaluation and counselling to be provided by Aspire Behavioral Health Partners, Inc.⁶

BFP subsequently noted concerns for Hylard's "flat effect" and her bond with L.E. Williams and Hylard were subsequently referred for family counseling services. On August 7, 2019, BFP completed a Family Assessment of Needs and Strengths which identified multiple areas of concern in which further action was needed, including a need for substantial help expressing feelings and thoughts, a history of inadequate supervision, and limited necessary parenting skills.

Subsequently, on August 12, 2019, DCF and BFP determined that the out-of-home safety plan with Cooke should continue through August 26.

As part of the second safety plan, Hylard was required to submit to urinalysis drug testing and her initial substance abuse evaluation and assessment was scheduled with Aspire for August 8, 2019. On her way to Aspire for her drug assessment, Hylard stopped at a smoke shop and purchased "clean urine." Upon arriving at Aspire, Hylard was given a urine receptacle and directed to the bathroom to collect her urine specimen. With respect to the drug test, no one from Aspire:

- Accompanied Hylard to the bathroom;
- Observed the collection of Hylard's urine sample;
- Searched Hylard's purse or personal belongings for contraband or containers of urine used to falsify a drug test;
- Prevented or prohibited Hylard from bringing her purse into the bathroom with her while collecting the sample; or
- Monitor, observe, or control the urine sample in any manner.

As such, Hylard was able to bring a container of "clean urine" into the testing facility, pour the "clean urine" into the specimen cup, and provide her sample to Aspire for testing.

Unsurprisingly, the sample tested negative for substances and was provided to DCF and BFP. Just six days later, on August 14, Aspire discharged Hylard and closed its case with her. On that same day, Circles of Care conducted its initial assessment of Hylard and identified that she:

- Had engaged in daily use of amphetamine and dextroamphetamine;
- Was at high risk for emotional disturbance; and

⁶ Aspire Health Partners, Inc., is a Florida corporation with its principal place of business in Cocoa, Brevard County. Aspire is a behavioral healthcare organization that provides behavioral healthcare services, including substance abuse assessments, at its location in Cocoa.

- Showed evidence of recent severe stressful event and problems with coping.

Circles of Care diagnosed Hylard with “severe amphetamine-type substance abuse disorder” and “bipolar 1 disorder” and determined Hylard needed “high intensity community-based services.” All of these diagnoses were made on the very day that Aspire released her from its program having found no indicators or need for continued services.

On August 16, 2019, BFP Family Engagement Coordinator, Natalie Harpold attempted an announced visit at the home; no one was there and when asked about missing the visit, Hylard told Harpold that she had forgotten about it.

On August 19, 2019, BFP Family Advocate, Debra Bragg-Carson made her first visit to the Hylard/Williams home to perform an assessment. As part of the assessment, BFP gave Hylard and Williams an Adult-Adolescent Parenting Inventory to complete. Based upon her responses to the Parenting Inventory, Hylard demonstrated a “high risk” due to her “strong belief in the value of corporal punishment.” Among other things, her responses to the inventory reflected her belief that hitting, spanking, and slapping children is appropriate and required.

Third Present Danger Safety Plan (Party Responsible for L.E.: Hylard and Williams)

On August 21, 2019 a mere two days after BFP’s Bragg-Carson’s initial visit to the home, BFP and DCF approved placement of L.E. back with Hylard and Williams.⁷ The third “present danger safety plan” specifically provided that:

- L.E. and the other children will be under the care of parents, Hylard and Williams.
- Alan Logue, a family friend, will make unannounced visits on Saturdays and Sundays to ensure the safety of the children in the home. Mr. Logue will contact DCF and law enforcement with any concerns.
- Tara Govert will continue to adhere to the visitation schedule for A.G. and G.G., dropping them off for the scheduled visitation. Govert will immediately notify law enforcement and DCF of any concerns.
- Safety Management services will continue to be involved with the family 3-5 days per week. Safety Management will remove the children and immediately notify DCF and law enforcement if there are any observed concerns.
- DCF will continue to monitor the safety plan by checking in with the family on a weekly basis through phone calls and unannounced visits to the home. DCF CPI will remove the children and immediately call law enforcement if any concerns are observed.
- Christy Cooke will make unannounced visits to the home during weekdays between 4 p.m. and 9 p.m. to ensure that the home environment is calm and consistent. If any concerning behaviors are observed Cooke will take the children to a safe location and immediately call law enforcement and DCF.⁸

An August 22 biophysical assessment of Hylard conducted by Circles of Care documented an extensive substance abuse history including the use of “methamphetamines, speed, uppers, crank, marijuana, pot, and hashish” and recommended a referral for a Psychiatric Evaluation.

On August 26, 2019 BFP’s Bragg-Caron made her second visit to the home. On August 28, Circles of Care made its second visit to the home and documented Hylard as exhibiting a “flat effect” and mental health issues.

The third present danger safety plan was terminated on August 30, 2019 and a new “impending danger safety plan” was entered.

⁷ Cooke had previously told DCF and BFP that she would be unable to care for L.E. after August 21, as her partner was undergoing surgery and would need her help.

⁸ The Third Present Danger Safety Plan was terminated on August 30, 2010; the reason provided for termination was that “the plan is no longer needed.”

On September 9, 2019, DCF entered a chronological note into its FSFN database stating that both findings for substance exposed newborn and household violence will be “verified” and that “the children have been deemed unsafe on the Family Functioning Assessment (“FFA”) and impending danger has been found at the closure of its investigation.”

On September 16, 2019, BFP terminated its services explaining that “Family closed successfully” and that “the parents had made great progress.” The day AFTER BFP terminated its services due to “successful completion” and “great progress,” BFP noted in its Final Care Plan that Hylard’s counseling had been delayed and the BFP was still awaiting results from Aspire.

Then, just 49 days after its implementation, BFP terminated its Child Safety Plan and Safety Management Services on September 18, 2019. Subsequently, on September 24, 2019, DCF closed its investigation into the abuse Hotline allegations, a mere 54 days from its inception.

Second DCF Investigation (In Response to the September 25 Hospitalization)

After L.E. had been brought to the hospital in critical condition, staff with the Child Protection Team (“CPT”) interviewed her half-siblings. The siblings, who lived in the home with Hylard, Williams, and L.E., reported that they witnessed violent abuse of L.E. in the home. They told investigators that:

- When L.E. cries, Williams punches her in the chest hard with a closed fist;
- Recently when they were playing a video game, they heard L.E. cry, at which point Williams grabbed her and violently shook her; and
- Hylard and Williams had brought L.E. into the bedroom at which point the kids heard a loud thud and saw Hylard and Williams engaged in a “tug of war” with one grabbing L.E. by the arms and the other grabbing her by the legs.

Hylard and Williams were arrested and charged with aggravated child abuse of L.E. causing great bodily harm and child neglect with great bodily harm. Hylard pled guilty and was sentenced to 7 years in prison. She is currently incarcerated with a projected release date of September 4, 2025. Williams was adjudicated guilty and sentenced to 11 years in prison. Williams is currently incarcerated with a projected release date of December 20, 2029.

Following the arrest of Hylard and Williams, surveillance footage was obtained from inside the family’s home as evidence. The surveillance footage revealed Hylard violently shaking and hitting L.E.’s siblings on the morning of September 25, 2019, prior to bringing L.E. to the hospital. Claimant’s experts testified that the violent thrashing and hitting observed in the surveillance footage of young children was highly consistent with the mechanism by which L.E.’s injuries were inflicted. The Special Master reviewed the disturbing surveillance footage and agreed with the experts as to the apparent similarity of the violent and abusive behavior.

Termination of Parental Rights

On December 4, 2019, a Final Judgment of Termination of Parental Rights and Disposition as to Hylard and Williams was entered. On March 22, 2022, a Final Judgment of Adoption was entered and L.E.’s maternal grandparents, Colleen and Gustavo Estrada, officially adopted her. L.E. resides with her adoptive parents in Chicago, Illinois.

POSITIONS OF CLAIMANT AND RESPONDENT

Claimant’s Position

Claimant argues that she is entitled to the remaining \$3.8 million outstanding from the \$4 million settlement agreement with DCF. Claimant argues that DCF was negligent in its acts and

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omissions in its capacity as the state authority to investigate allegations of child abuse, abandonment, and neglect, and to protect and ensure the safety of the children of Florida. Claimant, which resulted in severe and catastrophic injuries to L.E.

Respondent's Position

Respondent does not oppose the passage of the claim bill. However, Respondent argues that it was not negligent and denies any and all liability related to the injuries sustained by L.E. DCF asserts that the injuries and damages alleged in the initial lawsuit remain unproven and further asserts that such injuries, if caused in-fact, were directly caused by the unforeseeable, intervening, superseding, criminal acts of Stephanie Hylard and/or Dexter Williams, Sr., and that neither Hylard or Williams were ever in any way employed or otherwise affiliated with DCF.

CONCLUSIONS OF LAW

Negligence

Negligence in General

"Negligence" is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances.⁹ Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances.¹⁰ It is important to note, that negligence, as applied to this case, is not whether there was a deviation from or failure to follow DCF procedures and Florida law, but rather, whether DCF acted reasonably.

Regardless of whether there is a jury verdict or settlement agreement, each claim bill is reviewed *de novo* in light of the elements of negligence. The fundamental elements of an action for negligence, which a claimant must establish, are:

- Duty: The existence of a duty recognized by law requiring the respondent to conform to a certain standard of conduct for the protection of others including the claimant.
- Breach: A failure on the part of the respondent to perform that duty.
- Causation: An injury or damage to the claimant proximately caused by the respondent.
- Damages.

The standard evidentiary burden in a negligence case is proof by "the greater weight of the evidence." Florida law set forth in [Standard Jury Instruction 401.3](#) defines "greater weight of the evidence" as the more persuasive and convincing force and effect of the entire evidence in the case. Further, in a claim for negligence, the Claimant is not required to prove the violation of any particular statute, policy, training material, or code; rather, must prove the four elements of common law negligence. While violations of specific codes or statutes are evidence of negligence, such violations are not, themselves, conclusive evidence of negligence.¹¹

Respondeat Superior

Under the common law *respondeat superior* doctrine, an employer is liable for the negligence of its employee when the:

- Individual was an employee when the negligence occurred;
- Employee was acting within the course and scope of his or her employment; and
- Employee's activities were of a benefit to the employer.¹²

⁹ 38 Fla. Jur 2d Negligence s. 1.

¹⁰ Fla. Standard Jury Instruction [401.4](#) at 57.

¹¹ [Fla. Standard Jury Instruction 401.9](#) at 63, *Violation of Statute, Ordinance or Regulation as Evidence of Negligence*.

¹² *Iglesia Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So. 2d 353 (Fla. 3d DCA 2001).

For conduct to be considered within the course and scope of the employee's employment, such conduct must have:

- Been of the kind for which the employee was employed to perform;
- Occurred within the time and space limits of his employment; and
- Been due at least in part to a purpose serving the employment.¹³

Duty

Child Protective Investigations and the Department of Children and Families

DCF has a statutory and common law duty to reasonably investigate, supervise, and protect the welfare of children in the state. The mission and purpose of DCF, as provided in [s. 20.19, F.S.](#), is to work in partnership with local communities to protect the vulnerable, promote strong economically self-sufficient families, and advance personal and family recovery and resiliency. To this end, DCF must develop a strategic plan for fulfilling its mission and establish a set of measurable goals, objectives, performance standards, and quality assurance requirements to ensure that DCF is accountable to the people of Florida.¹⁴ Further, it is the goal of DCF to protect the best interest of children by ensuring that, first and foremost, children are protected from abuse and neglect.¹⁵

Further, [chapter 39](#) of the Florida Statutes requires DCF to establish, maintain, and operate a central abuse hotline capable of receiving all reports of known or suspected child abuse, abandonment, or neglect. Upon receiving an abuse report, DCF has a duty to properly investigate the allegations. The hotline must be available twenty-four hours a day, seven days a week.¹⁶ Thus, DCF has a statutory duty to protect children under their care and children with whom reports of abuse, abandonment, or neglect have been made. The hotline must enable DCF to:

- Accept reports for investigation when there is reasonable cause to suspect that a child has been or is being abused or neglected or has been abandoned.
- Determine whether the allegations made by the reporter require an immediate or a 24-hour response.
- Immediately identify and locate previous reports or cases of child abuse, abandonment, or neglect through the use of an automated tracking system.
- Track critical steps in the investigative process to ensure compliance with all requirements for any report of abuse, abandonment, or neglect.
- When appropriate, refer reporters who do not allege abuse, abandonment, or neglect to other organizations or sources that may better resolve the reporter's concerns.
- Serve as a resource for the valuation, management, and planning of preventative and remedial services for children who have been abused, abandoned, or neglected.
- Initiate and enter into agreements with other states for the purposes of gathering and sharing information contained in reports on child maltreatment to further enhance programs for the protection of children.
- Promote public awareness of the central abuse hotline through community-based partner organizations and public service campaigns.¹⁷

Section [39.203, F.S.](#), provides civil and criminal immunity from liability in all cases of child abuse, abandonment, or neglect to any person, official, or institution participating in good faith in any act authorized or required under [chapter 39](#), or reporting in good faith any instance of child

¹³ *Spencer v. Assurance Co. of Am.*, 39 F.3d 1146 (11th Cir. 1994) (applying Florida law).

¹⁴ 57 Fl. Jur. 2d. *Welfare* §7 (August 2024) *citing to* [s. 20.19\(1\)\(b\), F.S.](#)

¹⁵ S. 409.986(2)(a), F.S.

¹⁶ [S. 39.101\(1\), F.S.](#)

¹⁷ [S. 39.101\(1\)\(b\), F.S.](#)

abuse, abandonment, or neglect to DCF or law enforcement.¹⁸ However, it has been well established through case law that the immunity provided under section [39.203, F.S.](#), applies to those reporting suspected maltreatment, and does not apply, in general, to DCF, the agency charged with protecting children in the state of Florida.^{19 20}

Additionally, court precedent has established that the actions of DCF and its employees and agents are “operational level” activities which are not shielded by immunity.²¹ As such, the state’s waiver of sovereign immunity in tort actions against the agency pursuant to [s. 768.28, F.S.](#), applies to the present matter and DCF is not afforded complete immunity for negligent actions.

With respect to newborn L.E., DCF, at a minimum, had a clear duty to:

- Ensure the health, welfare, and safety of L.E.
- Use reasonable and prudent care in the investigation of abuse reports concerning L.E.
- Ensure all available relevant information, including criminal histories, police call-outs, mental health histories, substance abuse histories, medical records, and child welfare records were gathered and reviewed when assessing risk to L.E.
- Meet with and interview relevant collateral contacts, including treating medical providers, family members, and friends.
- Ensure appropriate safety measures are implemented.
- Ensure a proper safety plan is put into place.
- To monitor community-based care lead agencies to ensure the required services are being provided and complied with and the child is being protected from further harm.
- To ensure that subcontracted providers or providers to whom care, treatment and assessment is referred, use reasonable care in the performance of their delegated duties.

Breach

Once a duty is found to exist, whether a defendant was negligent in fulfilling that duty is a

¹⁸ S. [39.203\(1\), F.S.](#)

¹⁹ See *Urquhat v. Helmich*, 947 So. 2d 539, 541 (Fla. 1st DCA 2006), providing that the good faith immunity afforded by section [39.203, F.S.](#), applies broadly to any person who makes a report of child abuse and that the Legislature purposefully left room for the possibility that the reporting procedure might be used for an improper purpose. As such, if an unfounded report is made, the parent of the child has some legal recourse to assert a claim against the reporter and the person making the report would be immune from liability only if the report was made in good faith. See also *Ross v. Blank*, 958 So. 2d 437 (Fla. 4th DCA 2007), which provides further discussion of *Urquhat* and the distinction between the mandatory reporting requirement of doctors and other professionals under [s. 39.201, F.S.](#), and the grant of immunity provided to those who make a report by [s. 39.203, F.S.](#)

²⁰ See *Floyd v. Department of Children and Families*, 855 So. 2d 204 (Fla. 1st DCA 2003), in which the court held that statutory immunity from liability for good faith participation in child protection actions or reporting suspected abuse, abandonment, or neglect did not apply to protect DCF from liability for wrongful death for alleged negligence in returning the child to the mother despite reports of abuse and knowledge that the mother’s live-in boyfriend, who subsequently murdered the child, had a history of abuse.

²¹ *Department of Health and Rehabilitative Services v. Yamuni*, 529 So. 2d 258, 259 (Fla. 1988), citing to *Commercial Carrier Corp. v. Indian River County*, 371 So. 2d 1010 (Fla. 1979) for an extensive discussion of the broad scope of the legislative waiver of sovereign immunity under [s. 768.28, F.S.](#), and the exception to such waiver for “policy-making, planning or judgmental government functions.” Under *Commercial Carrier*, policy-making, planning, or judgmental activities by a state agency may be immune from tort liability even with the state’s waiver of sovereign immunity. However, if the actions in question do not rise to the basic level of policy making, and are, rather, operational level activities, there is a waiver of sovereign immunity and the agency may be liable in a tort claim. See also *Evangelical United Brethren Church v. State*, 67 Wash. 2d 246, 407 P. 2d 440 (1965) and *Johnson v. State*, 69 Cal. 2d 782 Cal.Rptr. 240, 447 P. 2d 352 (1968).

question for the finder of fact.²² A fact finder must decide whether a defendant exercised the degree of care that an ordinarily prudent person, or child protective investigator in this instance, would have under the same or similar circumstances.²³

From a review of the totality of the evidence presented on this matter, I find that DCF failed to take the following steps, which a reasonable and prudent person would have taken while L.E. was under its care and protection:

- Use reasonable care to thoroughly and diligently investigate the allegations contained in the abuse reports.
- Review all relevant information, specifically including Hyland and Williams' substance abuse, mental health, medical records, criminal histories, child abuse histories, and child welfare records when assessing risk specific to L.E. Specifically, DCF failed to understand the true severity of the parents' substance abuse and mental health issues, seemingly taking the parents at their word, despite acknowledging that the parents appeared to be "savvy to the system" and having actual knowledge of the parents history of lying to investigators.
- Considering the totality of the evidence, including the pattern of historic abuse reports made to the Hotline against the parents which clearly illustrated a chronic pattern of violence, confrontations, abuse, and child endangerment. Further, a reasonable and prudent person would have kept better track of the various lead agencies and subcontractors to ensure the timelines reported by each were not in contradiction to each other.
- Ensuring that the safety mechanisms put into place were being complied with.²⁴
- Implementing appropriate safety plans which ensured the protection of L.E.²⁵
- Referring L.E. to the dependency court (also referred to as "judicial services") system.
- Ensuring that all risk factors were appropriately assessed and found to be satisfactorily resolved prior to closing out an investigation.
- Monitoring BFP's performance and requiring appropriate corrective action and compliance to ensure L.E.'s safety.

It would have been prudent, and in fact was required by DCF policy, regulation, laws, and operating procedures, for the Department to conduct a more thorough review of the case based on the totality of the circumstances and evidence available. The sheer number of police call-outs in the 2 years leading up to the injuries to L.E., combined with the criminal history of both

²² *Yamuni*, 529 So. 2d at 262.

²³ *Russel v. Jacksonville Gas Corp.*, 117 So. 2d 29, 32 (Fla 1st DCA 1960) (defining negligence as, "the doing of something that a reasonable and prudent person would not ordinarily have done under the same or similar circumstances, or the failure to do that which a reasonable and prudent person would have done under the same or similar circumstances").

²⁴ During the hearing on the matter, a number of witnesses who were listed in the safety plans as responsible parties for conducting unannounced visits and checks on the home and on L.E. testified. They all testified similarly, explaining that when they would arrive at the home, the parents refused to let them past the front door and into the actual house. Further, they testified that they rarely had the opportunity to observe L.E. in an unclothed state; whether during a bath, or diaper change, or even requesting clothes to be removed to check for bruises, scratches, and marks that would otherwise not be discoverable underneath her clothing. Thus, despite having third parties commit to making home visits and checking on L.E., their actual opportunity to truly observe and safety and physical status of L.E. and the home were severely limited.

²⁵ Specifically, I found that the decision to return L.E. to the parent's home in late August when Cooke could no longer keep custody of her was a severe breach of DCF's duties. From the records reviewed, DCF had actual knowledge of significant concerns to L.E.'s safety, and had actual knowledge, or should have known that the parents were not in compliance with the previous safety plans and services. A reasonable and prudent person, with the same knowledge or access to the same knowledge that DCF had, would not have returned newborn L.E. to the volatile home of Hyland and Williams. Despite DCF's historic emphasis on keeping children in their homes rather than out-of-home placements, a reasonable and prudent person would have determined an out-of-home placement to be necessary for the safety of L.E.

parents and the records available from DCF's own prior investigations, would have constituted a present danger threat requiring L.E. to be either be placed in out-of-home care under a safety plan, or sheltered through the dependency court process. A reasonable and prudent person would not have returned L.E. to her parent's home based upon the actual knowledge and evidence that was available at the time that decision was made.

DCF failed to take precursory and required steps that a reasonable and prudent person would have taken in this case. For these reasons, I find that DCF breached its duty of care owed to L.E.

Causation

Legal Cause

Negligence is a legal cause of loss, injury, or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss, injury, or damage, so that it can reasonably be said that, but for the negligence, the loss, injury, or damage would not have occurred.²⁶

Concurring Cause

In order to be regarded as a legal cause of loss, injury, or damage, negligence need not be the only cause.²⁷ Negligence may be a legal cause of loss, injury, or damage even though it operates in combination with the act of another, some natural cause, or some other cause if the negligence contributes substantially to producing such loss, injury, or damage.²⁸

Intervening Cause

In order to be regarded as a legal cause of loss, injury, or damage, negligence need not be its only cause. Negligence may also be a legal cause of loss, injury, or damage even though it operates in combination with the act of another, some natural cause, or some other cause occurring after the negligence occurs if such other cause was itself reasonably foreseeable and the negligence contributes substantially to producing such loss, injury, or damage or the resulting loss, injury, or damage was a reasonably foreseeable consequence of the negligence and the negligence contributes substantially to producing it.²⁹

In order to prove negligence, the claimant must show that the breach of duty caused the specific injury or damage to the plaintiff.³⁰ Proximate cause is generally concerned with "whether and to what extent the defendant's conduct foreseeably and substantially caused the specific injury that actually occurred."³¹ To prove proximate cause, the Claimant here must submit evidence that there is a natural, direct, and continuous sequence between DCF's negligence and L.E.'s injuries such that it can be reasonably said that but for DCF's negligence, the abuse to L.E. would not have occurred.

It is not enough for a finding of negligence that DCF breached its duties to L.E. Rather, the evidence must show that DCF's breach was a cause of the damages caused to L.E. The element of causation is the trickiest and most problematic of the four elements in this matter. After all, Claimant is attributing a violent and heinous act committed by the child's parents to

²⁶ Restatement (Second) of Torts s. 431 (1965).

²⁷ *Goldschmidt v. Holman*, 571 So. 2d 422 (Fla. 1990).

²⁸ *Hernandez v. State Farm Fire and Cas. Co.*, 700 So. 2d 451, 453 (Fla. 4th DCA 1997), *citing to Little v. Miller*, 311 So. 2d 116 (Fla. 4th DCA 1975).

²⁹ 6 Fla. Prac., Personal Injury & Wrongful Death Actions s. 3:6, *citing to Tampa Elec. Co. v. Jones*, 138 Fla. 746, 190 So. 26, 27 (1939).

³⁰ *Stahl v. Metro Dade Cnty.*, 438 So. 2d 14 (Fla. 3rd DCA 1983).

³¹ *Amora*, 944 So. 2d at 431.

DCF through negligence. It should be emphasized that causation is not an easy burden to bear, especially when the “bad act” was clearly committed by Hylard and Williams, and neither DCF nor its CPIs were the ones to violently shake and strike L.P., inflicting life-altering permanent damage

Florida law and legal case history have clearly established that DCF has been statutorily placed in a significant position with a tremendous responsibility to keep the children of Florida safe. The Special Master does not take DCF’s responsibilities lightly, and acknowledges the heightened position the department has been placed in. However, DCF has been tasked with the great responsibility of protecting the children of Florida from abuse, abandonment, and neglect, and the imposition of such a great responsibility does not lessen the weight given to its actions and inactions. DCF must hold itself and its investigators to the highest of standards and ensure that all reasonable and prudent steps are taken to ensure the safety of the children in the state.

Thus, the issue of causation cannot simply be dismissed because the parents was the bad actors. Rather, the situation must be assessed to determine whether DCF’s actions or inactions were a contributing legal cause of L.E.’s injuries. In the instant case, DCF clearly fell short of its basic duties and responsibilities.³² DCF’s negligent investigation, failure to oversee its lead agencies and subcontractors, and returning L.E. to the custody and care of her parents in contradiction with all actual knowledge and evidence of significant threats of present danger, placed L.E. in a dangerous situation and subjected her to serious harm. L.E.’s injuries were a reasonably foreseeable consequence of returning her to a home with volatile, violent, and unstable parents without appropriate safety mechanisms in place. I find that DCF’s failures to act reasonably were a legal cause to L.E.’s injuries.

Damages

To sustain a negligence claim, the plaintiff must prove actual loss or damages resulting from the injury, and the amount awarded must be precisely commensurate with the injury suffered.³³ Actual damages may be “economic damages,” that is, financial losses that would not have occurred but for the injury giving rise to the cause of action, such as lost wages and costs of medical care. Actual damages may also be “non-economic damages,” that is, nonfinancial losses that would not have occurred but for the injury giving rise to the cause of action, such as pain and suffering, physical impairment, and other nonfinancial losses authorized under general law.³⁴

Claimant retained a number of experts in this matter to testify with respect to the damages sustained by L.E. In June of 2024, experts created a life care plan detailing the need for treatment, services, and equipment necessary to maximize L.E.’s medical and rehabilitative potential. Based upon a review of medical records, including records from Nemours Children’s Hospital (Orlando) and Lurie Children’s Hospital (Illinois), L.E. was diagnosed with:

- Shaken baby syndrome.
- Traumatic brain injury.
- Seizure after head injury.
- Short stature (child).
- Tight heel cords, acquired, bilateral.³⁵

³² It should be noted that CPI Plantier’s investigation of L.E. was more thorough than other similar cases brought before the Special Master this Legislative session. CPI Plantier identified the risk factors properly and determined a present danger threat to L.E. However, DCF failed to take a number of steps to ensure L.E.’s safety, despite CPI Plantier’s investigation, findings, and grave concerns for L.E.’s safety if returned to the parents. The decision was made to cease services and close the case, blatantly disregarding the safety and well-being of L.E.

³³ *McKinley v. Gualtieri*, 338 So. 3d 429 (Fla. 2d DCA 2022); *Birdsall v. Coolidge*, 93 U.S. 64 (1876).

³⁴ FLJUR MEDMALP § 107.

³⁵ This can cause pain, stiffness, and a limited range of motion in the ankle and foot.

- Microcephaly.³⁶
- Esotropia.³⁷
- Amblyopia of the right eye.³⁸
- Developmental delay.
- Poor fine motor skills.
- Lack of coordination.
- Feeding difficulties.
- Oral phase dysphagia.
- Weight loss.
- Cerebral palsy.

In reviewing medical records and expert testimony and reports relating to L.E.'s medical conditions and prognosis for her future, I found the following to be particularly significant:

- Defense expert, Dr. Elizabeth Gilles (retained by BFP and Brevard CARES, Inc.), opined that L.E.'s injuries were inflicted "during severe, repetitive, abusive head injury." She further testified that L.E. is a "globally-delayed girl with multiple developmental issues encompassing all domains...[L.E.] will require extensive services and regular reevaluation by a multidisciplinary team." Dr. Gilles additionally opined, within a reasonable degree of medical certainty, that L.E. will have "permanent deficits [to] multiple domains..." Dr. Gilles also stated that, within a reasonable degree of medical certainty, L.E.'s epilepsy will need to be monitored and treated for the duration of her life.
- Claimant's expert, Dr. Stephen Nelson, a specialist in pediatrics and neurology, opined that due to her injuries, L.E., "more likely than not, will be unable to graduate high school, live independently, or be gainfully employed, and instead, will require 24-hour supervision and assistance with her activities of daily living. The full nature and extent of her disabilities will become more obvious over time, as there is great separation between her and her age-matched peers." Dr. Nelson testified that with therapy, supervision, and mental care, L.E.'s life expectancy remains "normal" and identified her life expectancy to be 80.5 years.
- Claimant's expert, Dr. Lisa Settles, a specialist in psychology, concluded that L.E. will require "special education programming in order to fulfill educational goals...and will more likely than not require supervision in her daily living." Further, Dr. Settles opined that "L.E.'s cognitive deficits, motor impairments, vision issues, and seizures, will prevent her from being able to care for a home and drive independently. L.E. will be able to learn simple routines and tasks with repetition that can be used in an employment setting. The jobs that she will be capable of doing will most likely not have very high earning potential, but they will allow her the opportunity to socialize and provide her purpose and a sense of contributing meaningfully to society."
- Claimant's expert, Dr. Shawn Gough-Fibkins, testified to the following with respect to the age and severity of the injuries documented at the time of her hospitalization:
 - L.E. had multiple sets of rib fractures, some were 2 weeks old and others were less than 7 days old.
 - The rib fractures were likely sustained by an adult grabbing her around the chest cavity and squeezing, thrashing, and shaking her. He testified that these kinds of

³⁶ Microcephaly refers to a condition where a baby's head is much smaller than expected. Centers for Disease Control, *Microcephaly*, <https://www.cdc.gov/birth-defects/about/microcephaly.html#:~:text=Microcephaly%20is%20a%20condition%20where,or%20stoppe d%20growing%20after%20birth>. (last visited March 26, 2025). With respect to L.E., her mother (Estrada) testified that, at 5 years old, L.E. currently wears a size 9-month hat.

³⁷ Estropia is an eye condition in which one or both of the eyes turn inward; it is sometimes referred to as being "cross-eyed." *Cleveland Clinic, What is Estropia?*, <https://my.clevelandclinic.org/health/diseases/23145-esotropia> (last visited March 26, 2025).

³⁸ Amblyopia refers to a condition of

injuries are not seen in events such as car accidents, but are frequently seen in incidents of child abuse.

- L.E. had a “very large, branching skull fracture” that essentially covered her entire skull bone. The specific images of her skull showed significant trauma applied directly to the skull bone.
- L.E. had a tear in the brain (“brain loss”) and no swelling was present; which indicates that the tear was a subacute tear which had happened 2-3 weeks prior to the imaging.
- L.E. also had multiple brain tears that were “acute,” meaning that they were newer than the subacute tear; Dr. Gough-Fibkins opined that these were likely less than 7 days old.
- He further opined that a direct blow to the head likely caused the acute tears, explaining that it was either a direct impact with someone or something hitting L.E. in the head.
- Further, the imaging revealed a combination of head injuries including, shaking, minor traumas, and direct impact.
- Dr. Gough-Fibkins testified that a CT scan of L.E.’s brain revealed “chronic” blood in the brain, which appears as darker in color, and evidences trauma that occurred 2-3 weeks prior to the CT scan.
- When asked about the likelihood of repair to the damage sustained to L.E.’s brain, he stated, “honestly, if I can see it on the CT scan, it is too late. From my experience, these are horrific brain injuries that are devastating for a child...these are as horrific as they come.”
- Claimant’s expert, Darlene Carruthers, testified in regards to the life plan for L.E. She testified that L.E. will require:
 - Significant behavioral programming.
 - Multiple types of therapies.
 - Support for her parents (the Estradas).
 - Services apart from what the school system provides through her Individualized Education Plan (“IEP”) in conjunction with a number of accommodations through the school system and her IEP.
 - Constant supervision by another person; she will always have to live with family or have someone working with her when she becomes an adult to ensure proper care, supervision, and assistance.
 - Extra and specialized attention and care; in addition to what the Estradas can provide L.E. as her parents, if they are unavailable, a random babysitter will not be sufficient in terms of the care, supervision, and assistance L.E. needs.
- In conjunction with the life plan created by Darlene Carruthers, economist, Dr. Raffa, identified the value of the care L.E. will require for the remainder of her life. Dr. Raffa identified L.E.’s financial needs over her lifetime to range from \$45 million to \$60 million; Dr. Raffa reduced that range to a present-day value of \$11 million to \$17 million. The value is dependent on whether she receives in-home care or receives treatment and care from a residential facility, as well as other variables including, but not limited to, therapies needed, medical procedures and surgeries that will arise, assistive and supportive equipment and accommodations, and various medications.
- Claimant’s expert, Natalie Otten, a nurse care manager for National Care Advisers, has worked with L.E. for the 16 months preceding the hearing on the claim bill and continues to work with and assist L.E. and the Estradas. She testified that L.E. receives a number of services and therapies that the Estradas have to pay privately as Medicaid does not cover a number of treatments and therapies needed by L.E.

Despite being a happy 5-year old who enjoys spending time with her family at their home in Chicago, L.E. has endured significant trauma and injury and will continue to suffer from those injuries throughout the rest of her life.

AMOUNT OF CLAIM BILL

STORAGE NAME: h6535.CIV

DATE: 3/26/2025

The claim bill is based upon a \$4 million settlement and Consent Final Judgment entered by the court as to DCF, specifically. To date, Claimant has received the \$200,000 statutory limit from DCF. As such, the claim bill seeks a payment of the remainder of the settled amount, which is \$3.8 million.

COLLATERAL SOURCES

Colleen Estrada receives an enhanced adoption subsidy, due to L.E.'s medical needs, in the amount of \$2,000 per month. She will continue to receive that enhanced subsidy until L.E. turns 18.

Claimant settled with Aspire, Inc. for \$100,000. Claimant also settled her claims against Brevard CARES for \$3,250,000.

LITIGATION AND LEGISLATIVE HISTORY

Claimant filed her initial lawsuit in July of 2022 against Community Based Care of Brevard, Inc., d/b/a Brevard Family Partnership; Brevard CARES, Inc., Aspire Health Partners, Inc., and DCF. Community Based Care of Brevard, Inc., d/b/a Brevard Family Partnership was granted summary judgment by the court and was dismissed from the matter.

This claim is being heard for the first time during the 2025 Legislative session.

ATTORNEY AND LOBBYING FEES

If the bill passes, Claimant attests that attorney fees will not exceed 20% of the total amount awarded (\$760,000) and lobbying fees will not exceed 5% of the total amount awarded (\$190,000). There are no other outstanding costs.

RECOMMENDATION

Based upon the evidence presented and the totality of the circumstances, I recommend that CS/HB 6535 be reported FAVORABLY.

Respectfully submitted,

SARAH R. MATHEWS

House Special Master