

MAY 2000

PIERCE COUNTY

DAMON BECKMAN, BILL COALTER & ERIC BUSCH v. STATE OF WASHINGTON, DSHS; DSHS CASEWORKERS (GOODLOE, STREWEL & AHO)

Number: 98-2-05579-6

Trial Date: 2/7/00 (6-week trial)

Plff Atty: David P. Moody; J. Richard Creatura of Gordon, Thomas & Honeywell (Seattle)

Def. Atty: Loretta Lamb; Roger Gerdes; Stan Bastian; Jan Capps of Office of Attorney General, State of Washington

Def. Med.: Philip G. Lindsay MD (Physiatrist/Internal Medicine) Seattle

Plff Exp.: Jon R. Conte Ph.D. (Professor of Social Work - University of Washington) Seattle; David T. Rollins Ph.D. (Rehabilitationalist) Portland OR; Stephen Sulzbacher Ph.D. (Professor at the University of Washington and Children's Hospital) Seattle; Eugene Edgar Ph.D (Professor of Special Education -University of Washington and Children's Hospital) Seattle

Def. Exp.: David Knowles Ph.D (Economist) Seattle; Kathy Leitch (Assistant Secretary for DSHS)

Trial Judge: Hon. Brian Tollefson

DEPARTMENT OF SOCIAL HEALTH & SERVICE NEGLIGENCE; CIVIL RIGHTS VIOLATIONS--
*SUMMARY JUDGMENT

SEXUAL & PHYSICAL ABUSE

9/94-7/96 - Plffs, three (3) males, ages 26, 26, 45, developmentally disabled citizens. Plffs three (3) developmentally disabled men (all with IQ of less than 60) contended they were raped, beaten and tortured in a state-licensed adult family home between 9/94-7/96. Damon Beckman (age 26, IQ approximately 60) was tortured between 9/94-7/96. Eric Busch (age 26, IQ approximately 40) was tortured between 7/95-7/96. (Plff Busch was only in the house sporadically for "respite care" and medicaid personal care for approximately 500 hour total.) Bill Coalter (age 45, IQ approximately 50) was tortured between 2/96-6/96 (4 months). Other than making rudimentary gestures or occasionally speaking one or two word phrases, none of these men are able to communicate verbally or articulate what is happening to them, Each of these men is severely disabled and requires 24 hour care and supervision. The Plffs brought claims against Def. DSHS, four (4) individual DSHS caseworkers (Beth Stremel, Cheri Aho, Karen Kaufman and Martha Goodloe) and two (2) state-licensed caregivers (Troy and Andrew Nelson). The Plffs brought claims for negligence and civil rights violations. At trial, the evidence was overwhelming that Def. DSHS ignored repeated warnings of abuse and torture while the Plffs were confined to the state-facility. These warnings were made and communicated to DSHS and its caseworkers both orally and in numerous written letters and facsimiles. These warnings were continually ignored by the DSHS and its caseworkers.

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The Plffs also offered an abundance of evidence that Def. DSHS should never have issued a license to Troy Nelson in the first place. All the while, DSHS and the Plff's very own DSHS caseworkers (who were also receiving the warnings) continued to place the developmentally disabled men under the care of Troy Nelson and pay the alleged abusers to "care" for these vulnerable men. Witnesses testified that the licensee/abuser, Troy Nelson, had been fired for suspicions of having inappropriate contact with developmentally disabled men at a prior place of employment, had physically and emotionally abused another disabled individual in his mother's home and had submitted references from non-existent persons. Def. contended that there was no report of abuse made at the time to DSHS and that Troy Nelson was fired from the facility for failing to account for funds. Caseworker Stremel contended she did not believe that there was sufficient information upon which to take action. Plff contended that the state did not look into any of these warnings before granting a license to Troy Nelson. Plff also contended that of crucial importance was the testimony from an independent health care professional who testified that he specially and unequivocally warned the DSHS supervisor in charge of placement (Def. Beth Stremel) that DSHS should not "under any circumstances" place developmentally disabled men under the care of Troy Nelson. Less than ten (10) days after that warning was received, DSHS began to place the first of these three (3) developmentally disabled men (Damon Beckman) into the state-licensed facility operated by Troy Nelson. Plffs contended that after months and months of repeated warnings of abuse, the Office of the Attorney General investigated the state-licensed facility and determined that the developmentally disabled Plffs had been "physically and sexually abused for several months at least." The determinations were made by the lead investigator for the Office of the Attorney General's Medicaid Fraud Control Unit, after conducting over twenty (20) separate interviews and working on the case for two (2) full months. The lead investigator for the Office of the Attorney General was called to testify as the first witness by the Plffs at trial. The Attorney General's very own investigator testified that the abuse included oral copulation, sodomy, burning and psychological torture. Plffs contended that the abuse was occurring the entire time that the warnings of abuse were being ignored by DSHS and its caseworkers. The investigator also testified that DSHS "stonewalled" his attempts to obtain information once he began to follow leads in the case. In 7/96 Def. DSHS conducted its own internal investigation and arrived at the same conclusions that the Office of the Attorney General had made. Def. DSHS itself determined that the Plffs had been "physically and sexually abused." Additionally, the current Assistant Secretary for DSHS, Kathy Leitch, determined that at least one (1) DSHS caseworker "allowed the ongoing physical and sexual abuse of several vulnerable young men." Def. DSHS contended they took the Medicaid Fraud conclusion at face value, and revoked the adult family home license on 7/19/96. The Nelsons originally contested the license revocation and then withdrew their request for a hearing. Defs. further contended that this matter was reviewed by the Kitsap County Prosecutor on two (2) separate occasions and they determined not to file any criminal charges against the Nelsons based on the evidence obtained by the Medicaid Fraud investigator.

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Injuries: The Attorney General's very own investigator testified that the abuse included oral copulation, sodomy, burning and psychological torture. The Plffs called over twenty (20) witnesses, including community members who recounted repeated attempts to warn DSHS that the developmentally disabled Plffs were being sexually, emotionally and physically abused during the times in which they were residing within the state-licensed facility.

Settlement: Early in the case, on 9/22/98 before discovery was complete, DSHS offered to have a judgment taken against it in the amount of \$600,000. This offer was rejected, and the Plffs made no offer to settle the case at that time. The parties participated in two (2) formal mediation sessions (before separate mediators) prior to trial. The two mediations failed. One (1) month before trial, the Plff wrote a letter to Defs. offering to settle for a bottom-line amount \$29,500,000. The first mediation occurred in 4/99. At the first mediation, Def. DSHS made a "final offer" to settle the entire case (all three [3] Plffs) for \$1,000,000 million dollars. On 4/30/99 DSHS made a second offer of \$1,500,000. The Plffs did not believe that Def. DSHS was negotiating in good faith and terminated the mediation. The second mediation occurred in 8/99. Plff dropped their settlement demand to \$16,000,000. In consultation with the Secretary and Deputy Secretary of DSHS, as well as the Department of General Administrations's Risk Manager (all of whom attended the mediation), DSHS increased their offer to settle for \$2,500,000. This offer was rejected. Def. DSHS left the mediation without the benefit of Plff's final offer. One month before trial, Plffs wrote a letter to Def. DSHS offering to settle for \$7,300,000. After further consultation with DSHS and GA officials Defs. increased their offer to settle the entire case (all three [3] Plffs) for \$2,650,000. The Plffs did not respond to the offer by Def. DSHS. Plff asked the jury for \$57,000,000. Def. asked jury for Defense Verdict (requested during closing arguments.)

Result: PLAINTIFF VERDICT for \$17,800,000. Total compensatory damages were awarded in the amount of \$9,800,000. Compensatory damages included \$5,800,000 for past and future health care costs, and \$4,000,000 for pain and suffering. Total punitive damages were awarded in the amount of \$8,000,000. Plff Bill Coalter was awarded \$8,250,000; Plff Damon Beckman was awarded \$4,940,000; Plff Eric Bush was awarded \$4,610,000. The Plffs sought compensatory damages pursuant to negligence theories and punitive damages pursuant to federal civil rights law (42 U.S.C. 1983). At trial, the Plff called over twenty (20) witnesses. Of those, the Plffs called four (4) expert witnesses. Def. DSHS called approximately fifteen (15) witnesses at trial. Two (2) expert witnesses.

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Plff contended at trial that, Def. DSHS attempted to persuade the jury that its determinations were merely internal department "findings" and should not be interpreted as "judicial determinations." Def. DSHS attempted to persuade the jury that there was no way of telling what may had happened since the Plffs could not speak for themselves. Despite its own determinations and the determinations of the Attorney General's Office, Def. DSHS argued that the Plffs were not injured and, if they had been injured the damages were not great and did not have any lasting physical or psychological effects. The jury deliberated for almost five (5) days. On Thursday, 3/23/00, the jury returned a total verdict of \$17,800,000 dollars. The jury concluded that DSHS was 60% liable for the abuse of Plffs and that the Adult Family Home Operators that abused Plffs were 40% at liable. However, because the former operators of the home have no money, DSHS likely will have to pay the entire \$17,800,000 verdict under RCW 4.22.070. Defs. contended that prior verdicts and settlements for similar allegations of long-term sexual abuse by providers licensed by DSHS have usually been resolved for less than \$500,000 per person, including the OK Boys Ranch settlements that were brought by Plff's law firm. Jury verdicts involving similar allegations of sexual abuse have rarely exceeded \$1,000,000 per person. These factors, coupled with the relatively novel legal theories the Plffs were alleging, led the AG's office, DSHS officials and GA officials to conclude that paying more than \$3,000,000 in settlement would not be objectively responsible. On 4/14/00, the judgments (totaling \$17,800,000 were entered in Pierce County Superior Court). Plffs' civil rights claims against the fourth state employee were dismissed by the court for lack of evidence on a directed verdict motion heard during trial. *Partial Summary Judgment - 12/98, Hon. Brian Tollefson granted Plff's motion for partial summary judgment ruling that DSHS was negligent as a matter of law for the period of time from 3/25/96 (first report of abuse) through 7/19/96 (license revoked) due to inadequate investigation of the abuse allegations. The question of whether this negligence caused any damages to Plffs was left for the jury. The jury also had to decide whether DSHS negligently licensed the home, whether the three (3) DSHS employees violated the Plff's civil rights, and whether DSHS caused any damages to the Plffs. The Plffs later brought another pre-trial motion for Summary Judgment arguing that the two (2) DSHS employees violated the Plff's civil rights as a matter of law. DSHS cross-moved for summary judgment arguing that the civil rights claims should be dismissed because no clearly established federal law was violated and that the actions of the individual employees were protected by immunity. The Court denied both of these motions, leaving the civil rights claims for the jury to decide. On 5/12/00, the court will hear the Plff's motion for attorneys fees and costs pursuant to statute (42 U.S.C §1983.)