

JUN 07 2013

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BEFORE THE STATE CLAIMS COMMISSION  
Of the State of Arkansas

- Mr.
- Mrs.
- Ms.
- Miss

Judy Freeman Claimant

Do Not Write in These Spaces		
Claim No.	13-0880-CC	
Date Filed	June 7, 2013 (Month) (Day) (Year)	
Amount of Claim	\$2,500,000.00	
Fund	DHS/CFS	

State of Arkansas, Respondent

DHS/Children & Family Services

Failure to follow procedure  
COMPLAINT & emotional distress

Judy Freeman the above named Claimant, of 2000 Savannah, Fort Smith (City)

AR, 72901 (479) 221-0959 County of Sebastian represented by Robert Kelly (Legal Counsel, if any, for Claimant)

of 9 Court Street, Fort Smith, AR 72901 (479) 242-1190 (479) 242-1191 says: (Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: Arkansas Department of Human Services Amount sought: \$2.5 Million

Month, day, year and place of incident or service: June 11, 2010

Explanation: Claimant's daughter, Emily Choyens Freeman (18 mos), died while in the Department's custody. Claimant requested possession of Emily's remains in order to dispose of her remains according to her wishes. The Department's agent, Dustin Hore, refused to release Emily's remains in violation of Ark. Code Ann. § 20-17-102(d)(1)(D). The Department retained possession of Emily's remains and made the funeral arrangements for final disposition. Claimant was told by Dustin Hore that she would not be allowed to attend the funeral service. Claimant was further told by Officer Bailey of the Fort Smith Police Department that she would be arrested if she attempted to attend the funeral.

As a result of the Department's unlawful and outrageous actions, claimant was denied the right to dispose of her daughter's remains according to her wishes and suffered and continues to suffer extreme emotional distress. Additionally, the Department failed to provide services and assist claimant in making appropriate funeral arrangements in violation of its own policy.

Claimant has obtained an order of disbursement from the circuit court of Polk County, Arkansas.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated. (1) Has claim been presented to any state department or officer thereof? NO when? \_\_\_\_\_ to whom? \_\_\_\_\_ (Yes or No) (Month) (Day) (Year) (Department)

and that the following action was taken thereon: \_\_\_\_\_ and that \$ \_\_\_\_\_ was paid thereon: (2) Has any third person or corporation an interest in this claim? NO if so, state name and address (Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows: \_\_\_\_\_ and was acquired on \_\_\_\_\_, in the following manner: \_\_\_\_\_

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

Judy Freeman Judy Freeman Robert Kelly, AR  
(Print Claimant/Representative Name) (Signature of Claimant/Representative)

Robert Kelly, AR SWORN TO and subscribed before me at Fort Smith AR  
(City) (State)

(SEAL) on this 4th day of June, 2013  
(Date) (Month) (Year)

Mandy M. Salazar  
(Notary Public)  
My Commission Expires: 7-19-19  
(Month) (Day) (Year)



JUN 07 2013

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BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

- Mr. Mrs. Ms. Miss

Thomas Freeman

Claimant

Do Not Write in These Spaces
Claim No. 13-0880-CC
Date Filed June 7, 2013
Amount of Claim \$2,500,000.00
Fund DHS/CFS

State of Arkansas, Respondent

DHS/ Children & Family Services

Failure to follow procedure & emotional distress

COMPLAINT

Thomas Freeman

the above named Claimant, of 2000 Savannah, Fort Smith

AR 72901 (479) 221-0959

County of Sebastian

represented by Robert Kelly

of 9 Court St, Fort Smith, AR 72901

(City)

(State)

(Zip Code)

(Phone No.)

(Fax No.)

says:

State agency involved: Arkansas Department of Human Services amount sought: \$2.5 Million

Month, day, year and place of incident or service: June 11, 2010

Explanation: Claimant's daughter, Emily Chryse Freeman (Blair), died while in the Department's custody. Claimant requested possession of Emily's remains in order to dispose of her remains according to her wishes. The Department's Agent, Dustin Hove, refused to release Emily's remains in violation of Ark. Code Ann. § 20-17-102(d)(1)(D). The Department retained possession of Emily's remains and made the funeral arrangements for final disposition. Claimant was told by Dustin Hove that he would not be allowed to attend the funeral service. Claimant was further told by Officer Bailey of the Mena Police Department that he would be arrested if he attempted to attend the funeral.

As a result of the Department's unlawful and outrageous actions, claimant was deprived of the right to dispose of his daughter's remains according to his wishes and suffered and continues to suffer extreme emotional distress. Additionally, the Department failed to provide services and assist claimant in making appropriate funeral arrangements in violation of its own policy.

Claimant was detained on a writ of disturbance from the Circuit Court of Polk County, Arkansas.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?

NO when? to whom? (Yes or No) (Month) (Day) (Year) (Department)

and that the following action was taken thereon:

and that \$ was paid thereon: (2) Has any third person or corporation an interest in this claim? No; if so, state name and address

(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows:

: and was captured on, in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

Thomas Freeman (Print Claimant/Representative Name)

Thomas Freeman (Signature of Claimant/Representative)

Robert Kelly, Atty

SWORN TO and subscribed before me at Fort Smith AR

(SEAL) on this 4th day of June 2013 (Date) (Month) (Year)



Mandy M. Salazar (Notary Public) My Commission Expires: 7-19-19 (Month) (Day) (Year)

BEFORE THE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

JUL 05 2013

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THOMAS FREEMAN and  
JUDY FREEMAN

CLAIMANTS

VS.

CLAIM #13-0880 CC

STATE OF ARKANSAS,  
DEPARTMENT OF HUMAN SERVICES,  
DIVISION OF CHILDREN AND FAMILY  
SERVICES

RESPONDENT

ANSWER

Comes on Respondent, the State of Arkansas, Department of Human Services, Division of Children and Family Services ("DCFS"), and for its Answer to the Complaint states as follows:

1. Respondent denies liability in the above referenced claim. Account information is:

Agency Number:	0710
Cost Center	417376
Internal Order #	HS5X00XX
Fund	DCFS 2600
Fund Center	883

2. DCFS denies liability on this claim. DCFS disputes all issues of liability and damages. The claimants suffered no severe "emotional distress." Claimants' purported "emotional distress" is not genuine. [REDACTED]

Thereafter,

Claimants failed and refused (1) [REDACTED]

[REDACTED] and (2) failed and refused to visit the child during the end of life hospice care given in the [REDACTED] home. In other words, Claimants failed to visit their child while the child was

dying. Now they claim "emotional distress." The child was very ill and succumbed to natural causes due to a rare congenital condition. Though claimants' allege "emotional distress," their lack of involvement with their child in the months prior to the child's death, both while the child was in the hospital and while under hospice care, shows otherwise. DCFS followed its own policies with regard to the funeral and did not know or have any reason to believe that the claimants would purportedly suffer from "emotional distress" when they had little to no contact with the child for months before the child died.

3. The child was very seriously ill when [REDACTED] for health and safety reasons in August, 2009 [REDACTED]. The child [REDACTED] until she died of natural causes approximately ten (10) months later. The child was approximately 18 months old at the time of death and had been [REDACTED] for more than one-half (1/2) the child's life. During the ten (10) months [REDACTED] the claimants failed to remedy the conditions [REDACTED].

4. Though Claimants now assert "emotional distress," their lack of any involvement, contact, or visitation with the child prior to death shows otherwise. Despite the child's serious illness and lengthy hospitalization, the claimants rarely visited the child. DCFS even offered the parents a gas card to pay their transportation fuel costs for hospital visits but to no avail. Claimants failed to visit with the child once the child was placed on end of life hospice care. Based upon the claimants' lack of involvement with the child prior to death, there could be and was no severe "emotional distress" suffered by them based upon the funeral arrangements paid for by DCFS. Consequently, the actions of DCFS here were neither outrageous nor extreme, and certainly caused no real, severe "emotional distress" as is now claimed.

5. Significantly, unlike the claimants' lack of involvement with the child for most of the child's life, [REDACTED] were continuously involved in the care and support of the child. [REDACTED] were constantly with the child while in the hospital and allowed end of life hospice care to be provided to the child in their home.

6. Under the law, claims for alleged intentional infliction of "emotional distress" (otherwise known as claims for "outrage") are examined on a case by case basis. Based upon the facts of this case, established through the acts and, more appropriately here, the omissions of the parents, there was no intentional infliction by DCFSS and no severe "emotional distress." Merely claiming "emotional distress" for purposes of stating a claim does not make it so. *See Marlax v. Daniel*, 368 Ark. 505(2007). The distress claims now asserted are highly suspect and improbable.

7. DCFSS provided and paid for a memorial service for the claimants separate from the one provided for [REDACTED]

WHEREFORE, Respondent moves that this Commission deny the claim and discharge Respondent from any liability herein.

Respectfully submitted,

ARKANSAS DEPARTMENT  
OF HUMAN SERVICES  
Division of Children and Family Services

By:



Richard Rosen, AR Bar #97164  
Office of Policy and Legal Services  
P.O. Box 1437, Slot S260  
Little Rock, Arkansas 72203  
telephone # (501) 320-6334  
rich.rosen@arkansas.gov

CERTIFICATE OF SERVICE

This is to certify that I mailed a copy of the foregoing Answer, postage prepaid, this 5th day of July, 2013 to:

Robert Kelly, Esquire  
9 Court Street  
Ft. Smith, AR 72901

A handwritten signature in cursive script that reads "Richard Rosen". The signature is written in black ink and is positioned above the printed name and title.

Rich Rosen  
Attorney



**Office of Policy and Legal Services**

richard.rosen@dhs.arkansas.gov  
700 W Main Street, Donaghey South  
PO Box 1437, Slot S-260 · Little Rock, AR 72203-1437  
501-320-6334 · Fax: 501-682-1390 · TDD: 501-682-8933



March 10, 2014

Norman L. Hodges, Director  
Arkansas Claims Commission  
101 E. Capitol Ave, Suite 410  
Little Rock, AR 72201

RE: Freeman vs. DHS – Claim #13-0880-CC

Dear Mr. Hodges:

I bring to the Commission's attention a typographical error on page one (1) of Respondent's Brief that inadvertently changed the meaning of the sentence.

On page one (1) of Respondent's Brief, the sentence states: "The Court found that the findings were not 'uncontested' by the Freemans, who were represented by counsel at the hearing" The sentence should read "The Court found that the findings were 'uncontested' by the Freemans, who were represented by counsel at the hearing." The placement of the word "not" before uncontested was in error.

I apologize for the confusion.

Sincerely,

A handwritten signature in black ink that reads "Rich Rosen". The signature is written in a cursive, slightly slanted style.

Rich Rosen  
Attorney for Respondent

RNR/ddc  
CC: Robert Kelly, Esquire

Arkansas  
State Claims Commission  
MAR 13 2014  
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Arkansas  
State Claims Commission  
APR 10 2014

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BEFORE THE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

THOMAS FREEMAN and  
JUDY FREEMAN

CLAIMANTS

VS.

CLAIM #13-0880-CC

STATE OF ARKANSAS,  
DEPARTMENT OF HUMAN SERVICES,  
DIVISION OF CHILDREN AND FAMILY  
SERVICES

RESPONDENT

Respondent's Trial Brief

Comes now Respondent, the State of Arkansas, Department of Human Services, Division of Children and Family Services ("DCFS"), and submits the following points and authorities:

*Introduction*

The Claimants herein, seek \$2,500,000 from the Arkansas Department of Human Services, Division of Children and Family Service ("DCFS") claiming "extreme emotional distress" because they were unable to dispose of their [REDACTED] s body after [REDACTED] died of natural causes while in DHS foster care. Their [REDACTED], [REDACTED] n, died of a terminal illness approximately ten (10) months after [REDACTED] was [REDACTED] [REDACTED] County, Arkansas and placed into custody by the State of Arkansas, due to "parental unfitness" and "neglect." [REDACTED] was placed into the DHS custody after the Court found the child was "[REDACTED]" under Arkansas law and that removal from the parents was necessary to protect [REDACTED] health and safety. See Exhibit 1- Adjudication Order. The Court found that the findings were [REDACTED] "uncontested" by the Freemans, who were represented by counsel at the hearing. [REDACTED] was 18 months old when [REDACTED] died.



For reasons more fully explained below, the claim against DCFS should be denied because: (1) the Freemans had no disposition rights under Arkansas law at the time that [REDACTED] died; (2) DCFS complied with its guidelines for arranging funerals for children in DHS custody; and (3) the Claimants admitted that they suffered no "emotional distress" as a result of any inability to make the burial arrangements for [REDACTED]. As will be seen from Claimants' depositions and as discussed below, the Freemans' testimony established that they were unwilling and unable to assume liability for the funeral and burial arrangements, and were estranged from [REDACTED] as evidenced by the finding of parental unfitness, as well as their failure to visit [REDACTED] in the hospital, moving away and then having no contact with [REDACTED] in the weeks and months before she died of her terminal illness.

**Claimants Forfeited Any Right To Disposition Under Arkansas Law**

Per the Complaint filed herein, Claimants argue that DCFS violated their rights under Ark. Code Ann. §20-17-102(d)(1)(D) when DHS refused to release [REDACTED]'s body to them after [REDACTED] died. Claimants assert that this purported violation caused them to suffer damages in the amount of \$2,500,000 for their "emotional distress."<sup>1</sup> However, Claimants' arguments under are without merit for there (3) reasons.

First, Ark. Code Ann. §20-17-102(d)(1)(D) pertains to the rights of the surviving children of the decedent and [REDACTED], being an 18 month old child, had no surviving children. Claimants cited the wrong subsection. The statute provides for the right to control the remains of a deceased person. It states:

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<sup>1</sup> Per their respective answers to Interrogatory No. 3, they see \$1,000,000 for emotional distress and \$1,500,000 for punitive damages. See Exhibits 2 and 3 - Answers to Interrogatory No. 2, p. 3.

(d)(1) The right to the disposition of the remains of a deceased person, the location, manner, and conditions of disposition, and arrangements for funeral goods and services to be provided vests in the following in the order named, provided such person is eighteen (18) years of age and is of sound mind:"

\* \* \*

(D) Fourth, the sole surviving child of the decedent or if there is more than one (1) child of the decedent, the majority of the surviving children.

Consequently, Claimant's arguments here are without merit and should be dismissed.

Ark. Code Ann. §20-17-102(d)(1)(D) does not afford them any rights to disposition as claimed and the claim was never amended.

Second, even if Claimants had cited the correct subsection, their claim would still be without merit. To the extent that Claimants had any such disposition rights at all, they forfeited such rights under Ark. Code Ann. §20-17-102 (e)(1)(C).

Under Ark. Code Ann. §20-17-102 (e)(1), the statute provides that "[a] person entitled under this section to the right of disposition shall forfeit that right, with the right passing to the next qualifying person as listed in this section, in the following circumstances." One of the circumstances is listed under §20-17-102 (e)(1)(C) is an unwillingness to assume liability for the costs of the funeral. Section 20-17-102 (e)(1)(C) states:

Any person who possess the right of disposition, but who is unwilling to assume the liability for the costs of such arrangements and disposition if sufficient resources are not available in the decedent's estate to pay such costs at the time that costs became due and payable.

Thus, unless the Freemans were willing to assume the costs of the funeral, they forfeited their right to disposition. The undisputed testimony of both Claimants established that they

neither had the means nor the inclination to assume financial liability for [REDACTED]'s funeral and burial expenses. Moreover, the testimony showed that the Freemans moved just before [REDACTED] died and were not available to make the arrangements at the time that they were made.<sup>2</sup>

The evidence on this point is clear. Judy Freeman testified:

1. that Claimants made no arrangements for the disposition, funeral, or burial for [REDACTED], or for a [REDACTED] marker (JF depo 41/23-42/1);
2. that none of her siblings, none of the Freeman brothers or sisters, and none of Mr. Freeman's parents made any arrangements for the disposition, funeral, or burial for [REDACTED], or for [REDACTED] marker (JF depo 42/2-7);
3. that neither the Freemans nor their family members made any arrangements for disposition of [REDACTED]'s body before [REDACTED] burial (JF depo 49/7-11);
4. that the Freemans did not pay for the funeral or burial (JF depo 46/20-15);
5. that the Freemans did not contribute any money to pay for [REDACTED]'s grave marker (JF depo 47/1-2);
6. that neither she nor Mr. Freeman were any financial position to pay thousands of dollars for [REDACTED]'s funeral (JF depo 43/9-13); and
7. that the Freemans did not make any arrangements to incur any debt to pay for [REDACTED]'s funeral, burial, or disposition (depo 43/14-17); and

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<sup>2</sup> Ms. Gorden, the DCFS case worker, testified that she attempted to reach the Freemans as [REDACTED] was dying but could not locate them (AG depo 45/21-22; 47/14-17). She also went to their home but they had moved and even the dog was gone (AG depo 46/17-23). Mr. Freeman admitted that they moved to Ft. Smith a few weeks before [REDACTED] died (TF depo 12/2-4; 13/9-12; 14/12-13).

8. that DHS paid for [REDACTED]'s funeral and burial (JF depo 43/18-19).

Mr. Freeman's testimony was no different. Mr. Freeman testified:

1. that he did not contact any funeral homes to make his own arrangements (TF depo 86/24-87/2);
2. none of his brothers, sisters or any grandparents made any arrangements or any inquiries into the disposition, burial, funeral, or any marker for [REDACTED] (TF depo 91/20-24);
3. that Claimants did not have the finances to pay for a funeral (TF depo 93/3-5); and
4. DHS said it would pay for [REDACTED]'s funeral and burial (TF depo 94/11-14).

Consequently, the undisputed testimony established that Claimants forfeited any existing right to disposition when, per Ark. Code Ann. §20-17-102 (e)(1)(C), they failed to assume and were unable and unwilling to assume liability for the costs thereof.

It is undisputed that Claimants failed to even inquire about arrangements for [REDACTED]'s funeral and burial at any time prior to [REDACTED] burial. When asked at deposition "What arrangements did you make?" Mr. Freeman testified "We didn't make any." (TF depo 88/4-5). Though, Mr. Freeman conceded that something had to be done with the body (TF depo 92/7-9), he failed to take any action on his own, only complaining of the actions taken by DHS. Just as DHS had to step in to care for [REDACTED] while [REDACTED] was alive, DHS had to make the funeral arrangements in [REDACTED] death. The Freemans failed to even provide a burial [REDACTED] for [REDACTED] or an grave marker. Instead, Claimants relied upon the generosity of DHS and [REDACTED]'s foster parents. The foster parents purchased [REDACTED]'s burial [REDACTED] and purchased the grave marker (ND depo 36/4-6; 37/3-5).

Despite the claims made here, the Freemans happily utilized the arrangements made by DHS, attended the memorial service at the funeral home, and invited their family and guests to attend as well. Mrs. Freeman's testimony on this point is particularly revealing. When asked about the arrangements made by DHS, Mrs. Freeman testified:

1. she had no problem with the visitation/service at the funeral home (JF depo 40/11-17);
2. she was satisfied with the way [REDACTED] looked in the open casket (JF depo 42/8-11);
3. it was an appropriate casket (JF depo 42/21-23);
4. she was satisfied with the way [REDACTED] was dressed for burial (JF depo 42/17-20);
5. it was an appropriate service for [REDACTED] (JF depo 44/12-16);
6. the funeral home had staff present to assist the family (JF depo 44/17-19);
7. an appropriate announcement was placed in the newspaper (JF depo 43/20-25); and
8. the family was able to and did place personal items into the casket (JF depo 42/25-43/2), which gave her comfort (JF depo 43/3-4).

The only concern that Mrs. Freeman had about the arrangements was that the funeral home posted [REDACTED]'s name on the board, as guests walked in, as "[REDACTED]" not as "[REDACTED]" (40/13-16).<sup>3</sup>

Moreover, despite Mr. Freeman's claims that he made demand for the body to DHS, he admitted that DHS did not have [REDACTED]'s body at the time of the claimed demand (TF depo 92/7-9). The body had already been taken from the [REDACTED] home by the County Coroner and delivered

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<sup>3</sup> This comment was odd because [REDACTED]'s name is [REDACTED]" not "[REDACTED]" as stated by Mrs. Freeman. [REDACTED] was called [REDACTED] not [REDACTED]

directly to the funeral home, where it remained until burial.<sup>4</sup> Thus, Mr. Freeman's claims that DHS somehow denied them disposition rights are incorrect because DHS simply did not have possession of the body at the time. Moreover, Mrs. Freeman, who was not married to Mr. Freeman, never claimed she made any such demand on DHS at all.

Consequently, Claimants forfeited any claim to disposition rights under §20-17-102 because they were unable and unwilling to assume liability for the costs thereof. Moreover, as shown above, the Freemans made no such arrangements and made no attempt to make any such arrangements on their own. They relied upon DHS to make the arrangements and then utilized the arrangements made.

Finally, Claimants *also* forfeited any right to disposition under Ark. Code. Ann §20-17-102(e)(1)(D) because they were "estranged" from ██████ as defined therein. As stated above, the right of disposition is not absolute. The statute identifies instances where the rights are forfeited. One of those instances where the right is forfeited is an unwillingness to assume liability for the funeral costs. Another instance is where the parties are estranged from one another.

Section 20-17-102(e)(1)(D)(i) provides that the right is forfeited "[w]hen the person entitled to the right of disposition and the decedent were estranged at the time of death." The statute defines "estranged" to mean "a physical and emotional separation from the decedent at

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<sup>4</sup> Ms Gurdon, the DFCS case worker, testified that something had to happen with the body so the it went to the funeral home (AG depo 51/1-4) as it could not be left in the ██████'s home (AG depo 51/13-14). None of the Freeman family stepped forward (AG depo 52/4). She stated that the body went to the funeral home because there was no other place for it to go (AG depo 52/11-15). The Freeman family did not contact her about arrangements in advance of ██████'s death nor did any of the Freeman relatives (AG depo 52/6-10).

the time of death which existed for a period of time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.” Ark. Code Ann. §20-17-102(e)(1)(D)(ii)(a).

There is no question that the Freemans were estranged from [REDACTED]. [REDACTED] was removed from their home by a [REDACTED] on proven allegations of parental unfitness. See Exhibit 1 - [REDACTED]. Claimants then visited [REDACTED] only four (4) times over the next ten (10) months despite [REDACTED] serious medical problems, lengthy hospitalizations, and terminal illness.<sup>5</sup> Claimants failed to pay any financial support for [REDACTED] while [REDACTED] was in foster care (TF depo 58/2-5) and failed to send [REDACTED] any gifts, cards, candy or clothes while [REDACTED] was in foster care (AG depo 58/14-17). Significantly, Claimants failed to maintain contact with [REDACTED] and were unable to be located after they learned that [REDACTED] was dying (AG depo 45/17-22). They failed to maintain contact with the case worker in violation of the Circuit Court Order. See Exhibit 1 - Adjudication Order, p. 3. The Freemans moved from Mena to Ft. Smith without informing DHS that they had moved (AG depo 35/1-16). Significantly, the Freemans moved to Ft. Smith and after they were told that [REDACTED] was dying (AG depo 47/14-17). Mr. Freeman admitted that the reason they moved was “Judy particularly did not want to be in that area any longer” (TF depo 14/18-20).

Consequently, the testimony introduced established that the Freemans and [REDACTED] were estranged as defined by statute and that they forfeited any right to disposition under this subsection, as well as the one forfeited under (e)(1)(C) discussed above.

Though Claimants may assert that that subsection (e)(1)(E) applies here because DHS had custody and demand was purportedly made with 48 hours, per the statute, the exceptions are

<sup>5</sup> Mr. Freeman admitted that they only visited [REDACTED] four (4) times (TF depo 27/8; 62/16; 66/18; 70/7).

not exclusive. In other words, the Freemans forfeited any such right of disposition if any one of the circumstances listed applied. Once the Freemans forfeited their rights, whether they made any demand on DHS is irrelevant. Claimants did not regain their rights to disposition after forfeiture upon subsequent demand on DHS. Moreover, for the reasons explained above, any such demand would have been for no good reason, as Claimants made no actual arrangements for disposition of the body.

Finally, the statute provides for instances where disposition rights conflict and authorizes the filing of a petition in the circuit court to quickly resolve any conflicting claims. *See* Ark. Code, Ann §20-17-102(e)(2). Claimants could have, but did not, file a petition to seek disposition of the body as is allow by the statute and no such petition was ever filed by their family or by their attorney prior to burial (JF depo 45/15-19).

#### DCFS Complied With Its Guidelines For Arranging Funerals

Though Claimants assert that DHS failed to follow its own policy on arranging funerals for children in foster care, such claim is incorrect. DHS did comply with its own policy. Per DHS Procedure IX-B6 governing funeral arrangements for children in foster care, DHS will "Assist parents with funeral arrangements, considering the religious and cultural beliefs of the family, and finances as deemed appropriate..." *See* Exhibit 4. The policy then directs "upon approval from the DCFS Director make the funeral arrangements with the help of the foster parents if the Division has guardianship or the parents are unable to assume this responsibility." As discussed above, the Freemans, as parents, forfeited their rights to disposition and failed to assume any responsibility for the funeral arrangements. Moreover, the Freemans were nowhere to be found in advance of [REDACTED]'s death and the body could not be left in the [REDACTED]'s home (AG depo 51/13-14). None of the Freeman family stepped forward (AG depo 52/4).



Consequently, DHS did follow its own procedures despite Claimants' arguments otherwise.

**Claimants Suffered No Emotional Distress Caused By  
Their Lack of Involvement With The Funeral Arrangements**

Claimants assert that they suffered "emotional distress" because they were denied their right to dispose of ██████'s body as they wished. They even assert that DHS's actions in making the arrangements were "outrageous." However, Claimants admitted in their depositions and in their answers to Interrogatory No. 3 that all of the injuries claimed herein were caused by ██████'s death, not by the denial of any right to disposition. See Exhibit 2 and 3 for Answers to Interrogatory No. 3.

In Interrogatory No. 3(a), Claimants were each asked to "Please identify and itemize all injuries that you assert you suffered due to the acts complained of in this lawsuit." (original emphasis). Each Claimant replied "Claimant experienced grief and sorrow over the death of his [her] ██████, and has experienced anxiety, depression, paranoia, shame, sleeplessness, and periods of crying and nausea. Claimant continues to experience those symptoms to some degree."

However, the claim here is not one about ██████'s death, cause of death or wrongful death.<sup>6</sup> Instead, it is a claim against DHS for a perceived or purported denial of disposition rights to the body *after* ██████ died. As such, the injuries and distress caused by the death itself

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<sup>6</sup> Both Claimants concede that ██████ died of natural causes. See T. Freeman depo 97/2-5, and J. Freeman depo 13/20-14/1. Consequently, both Claimants readily admitted in their depositions that DHS was not responsible for ██████'s death and that this claim is not a claim for ██████ wrongful death. See T. Freeman depo 96/21-25 and J. Freeman depo 14/2-4, 51/4-6.

are not compensable here. Thus, to the extent that Claimants assert any claim for anxiety, crying, depression, sleeplessness, paranoia and shame, those injuries and that distress were not, by their own admission, proximately caused by the acts complained of in the claim.

Claimants' testimony is consistent with their interrogatory answers. Mr. Freeman testified that his emotional injuries of sleeplessness, upset, and anxiety were due to ██████'s death (TF depo 102/1-17; 105/2-6). He also testified that his injuries included crying (TF depo 99/1-7), inability to function (TF depo 100/5), and paranoia about what is said about him on the internet (TF depo 99/1-7; 109/12-14; 110/8-13; 11/10-12). He actually denied suffering from any depression, discomfort and embarrassment (TF depo 106/5-9). He stated that the family even went to grief counseling a few times to discuss "how we felt of ██████'s death" (TF depo 35/19) and about their "feelings about ██████ passing" (TF depo 37/7-12). These visits were not about distress purportedly caused by the denial of disposition rights. Claimants did not see any other health professional and were prescribed no medications (TF depo 37/19-22; 38/14-17; 109/2-3).

Consequently, based upon his sworn testimony and sworn answers to discovery, Mr. Freeman suffered no compensable injury related to the claim made here. Instead, all of the emotional distress identified by Mr. Freeman was caused by ██████'s death, not by the funeral arrangements as originally claimed.<sup>7</sup>

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<sup>7</sup> Mr. Freeman's claims that he was unable to function are equally disingenuous as he never was able to work the entire 18 months of ██████'s life (TF depo 19/6-8), only visited ██████ 4 times in 10 months, and was found by the ██████ County to be an unfit, neglectful parent. Thus, Mr. Freeman's inability to function was established long before ██████ died. Moreover, his claim that he is unable to eat much is refuted by his admission that he is 5'9" tall and weighs 230 pounds.

Mrs. Freeman's "distress" is, likewise, unrelated to the claim. In her deposition testimony, Mrs. Freeman stated her injuries were stress, crying, being scared of DHS and that she "do[es]n't want to deal with it." (JF depo 50/12-22). Like Mr. Freeman, she too admitted that the stress was caused by ██████'s death stating that she was "very stressed out that ██████ passed away." (JF depo 51/2). She also conceded that her crying was because ██████ died (JF depo 56/19-57/1). She testified that she had no other symptoms (JF depo. 50/23-24).

Consequently, the injuries asserted here by Mrs. Freeman were, by her own admission, not caused by the events complained of in the claim. Moreover, it is difficult to imagine that Mrs. Freeman could suffer severe emotional distress from not making burial arrangements when neither she nor Mr. Freeman bothered to visit ██████ more than four (4) times in the last ten months of ██████'s life and moved 1.5 hours away from ██████ as ██████ was dying simply because "Judy particularly did not want to be in that area any longer." See TF depo 14/18-20.

Significantly, neither Claimant incurred any "out of pocket" expenses (JF depo 54/22-24) (TF depo 115/21-22).

Moreover, to the extent that Claimants rely on the tort of "outrage" (also known as intentional infliction of emotional distress), such reliance is mistaken. Arkansas Courts have stated that discomfort, upset, embarrassment, anxiety, loss of sleep and depression do not meet the mental distress element of the tort of outrage. *Coombs v. J.B. Hunt Transport*, \_\_ Ark. App. 24, 388 S.w.3d 456 (2012). The tort of outrage was never intended to give redress for every slight or indignity that one must endure. *Jones. v. Clinton*, 990 F. Sup 657 (E.D. Ark. 1998).

Conclusion

For the reasons stated above, Claimants forfeited any right to disposition under Arkansas law and have no actual injuries resulting from any claimed denial of their rights. Moreover, DHS complied with its procedures in arranging the funeral. Consequently, Claimants' claim against DCFS should be denied.

Respectfully submitted,

ARKANSAS DEPARTMENT  
OF HUMAN SERVICES  
Division of Children and Family Services

By: Richard Rosen

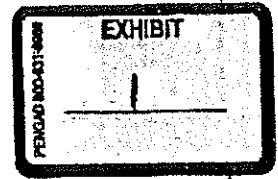
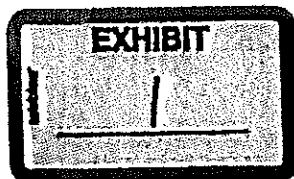
Richard Rosen, AR Bar #97164  
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P.O. Box 1437, Slot S260  
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telephone # (501) 320-6334  
rich.rosen@dhs.arkansas.gov

CERTIFICATE OF SERVICE

This is to certify that I mailed a copy of the foregoing trial brief, postage prepaid, this 5<sup>th</sup> day of March, 2014 to:

Robert Kelly, Esquire  
9 Court Street  
Ft. Smith, AR 72901

Richard Rosen  
Rich Rosen



21

Arkansas  
State Claims Commission

APR 10 2014

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EXHIBIT  
3

EXHIBIT  
1  
Thomas

- B. A summary of the current child maltreatment investigation including medical information pertaining to the death, however, the name of the alleged offender shall not be disclosed.
- C. All relevant risk and safety assessments completed on the child.
- D. Information about criminal charges, if known; and
- E. Any action taken by the Department of Human Services or the Crimes Against Children Division of the Department of Arkansas State Police, including personnel action and licensing action.

**INFORMATION NOT TO BE RELEASED**

Concerning the fatality of a child, the Department of Human Services shall not release:

- A. Information on siblings of the child
- B. Attorney-client communications
- C. Any information if release of such information would jeopardize a criminal investigation

**PROCEDURE IX-B5: Arkansas Child Death Review Panel**

08/2013

Based on the information entered in the online National Child Death Review Case Reporting System, any child fatality cases meeting the criteria for review by the Arkansas Child Death Review Panel will be assigned to the local child fatality review teams for review and recommendations. Division staff will cooperate as appropriate to provide all needed information to the local child fatality review teams.

**PROCEDURE IX-B6: Guidelines for Funeral Arrangements for Children in Out-of-Home Placement**

08/2013

The Family Service Worker will:

- A. Notify the County Supervisor in the child's initiating county and the parent's resident county. The County Supervisor will then obtain the Area Director's approval to make initial funeral arrangements.
- B. Assist parents with funeral arrangements, considering the religious and cultural beliefs of the family, and finances as deemed appropriate and meet with funeral homes to obtain cost estimates.
  - 1) A local Funeral Director will be used.
  - 2) Allowable expenses include customary costs such as a casket, grave opening, flowers, appropriate clothing, and a reasonably-priced grave marker.
  - 3) Prior approval from the DCFS Director will be received before contracting for final arrangements.
- C. Upon approval from the DCFS Director make the funeral arrangements with the help of the foster parents if the Division has guardianship or the parents are unable to assume this responsibility.
- D. Pay expenses by routing the CFS-334: Foster Care Authorization for Billing if child has savings, use a DHS Requisition obtained through the DHS-1914 process or a state Purchasing Card.





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BEFORE THE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

THOMAS FREEMAN and  
JUDY FREEMAN

CLAIMANTS

VS.

CLAIM #13-0880-CC

STATE OF ARKANSAS,  
DEPARTMENT OF HUMAN SERVICES,  
DIVISION OF CHILDREN AND FAMILY  
SERVICES

RESPONDENT

**Respondent's Witness and Exhibit Lists**

Comes now Respondent, Arkansas Department of Human Services, Division of Children and Family Services ("DCFS") and for its witness and exhibit list, states as follows:

**Witness List**

DCFS expects to call the following individuals as witnesses:

- |    |                                       |  |
|----|---------------------------------------|--|
| 1. | Alisha Gorden (DCFS case worker)      | via deposition testimony and in person |
| 2. | Nancy Diffie (Emily's foster mother)- | via deposition testimony               |
| 3. | Pastor Steven Squires                 | via deposition testimony               |
| 4. | Thomas Freeman (Claimant)             | via deposition testimony               |
| 5. | Judy Freeman                          | via deposition testimony               |
| 6. | DCFS representative                   | in person (possible)                   |
| 7. | Representative of Children's Hospital | in person (possible)                   |

**Exhibit List**

1. Deposition of Alisha Gorden, including exhibits;
2. Deposition of Nancy Diffie;
3. Deposition of Steven Squires;
4. Deposition of Thomas Freeman, including exhibits;
5. Deposition of Judy Freeman, including exhibits;
6. Thomas Freeman's Answers to Respondent's Interrogatories;
7. Judy Freeman's Answers to Respondent's Interrogatories; and
8. Adjudication Order entered by the Circuit Court of Polk County, Arkansas;

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Respectfully submitted,

Arkansas Department of Human Services  
Division of Children and Family Services

By: Richard Rosen

Richard Rosen, AR Bar #97164  
Office of Policy and Legal Services  
P.O. Box 1437, Slot S260  
Little Rock, Arkansas 72203  
telephone # (501) 320-6334  
rich.rosen@dhs.arkansas.gov

**CERTIFICATE OF SERVICE**

This is to certify that I mailed a copy of the foregoing witness and exhibit list, postage prepaid, this 5th day of March, 2014 to:

Robert Kelly, Esquire  
9 Court Street  
Ft. Smith, AR 72901

Richard Rosen

BEFORE THE STATE CLAIMS COMMISSION  
Of The State of Arkansas

THOMAS FREEMAN and  
JUDY FREEMAN, Claimants

V. Claim No. 13-0880-CC

ARKANSAS DEPARTMENT OF HUMAN SERVICES/  
DIVISION OF CHILDREN & FAMILY SERVICES, Respondent

Arkansas  
State Claims Commission  
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CLAIMANTS' PREHEARING BRIEF

This claim is set for hearing before the Commission on April 10, 2014. In anticipation of that hearing, Claimants, Thomas Freeman and Judy Freeman, submit this brief detailing the facts and law pertinent to their claims.

FACTUAL BACKGROUND

The facts underlying this matter are uncomplicated and largely undisputed. The Respondent's Answer filed herein contains no denial of the Claimants' allegations that it retained custody and possession of the body of the Claimants' deceased daughter and that the Claimants were denied custody and possession of the body.

Claimants' daughter, Emily Cheyenne Freeman, was born on December 16, 2008, and was removed from the Claimants' home by the Respondent sometime during the month of August 2009. At the time of Emily's removal for failure to thrive, Claimants had four (4) other minor children residing with them in their home, including a three year old daughter. None of those children were removed by the Respondent from Claimants' care and custody. Subsequent to her removal, it was discovered that Emily was very ill suffering from a rare congenital condition affecting her lungs that ultimately caused her death. Emily remained in the Respondent's custody in foster care through the date of her death on June 11, 2010, and her subsequent burial on June 13, 2010.

On the date of their daughter's death, Claimants requested possession of her body in order to dispose of her remains according to their wishes. Claimants were advised by the Respondent through its agent, Dustin Horn, that they were not getting Emily's body back and that the Respondent did not have to give her back to the Claimants. The Department retained possession and custody of Emily's remains and made funeral arrangements for final disposition. Claimants were not involved in any decision regarding the disposition of Emily's body nor regarding funeral arrangements. Claimants were told by the Respondent that they could have a visitation on Saturday, June 12, 2010, but that they would not be allowed to attend the funeral service on Sunday, June 13, 2010. Claimants understood that if they and their family attempted to attend Emily's funeral service, they would be arrested.

Claimants contend in this matter that as Emily's parents they had common law and statutory rights to their daughter's body including the right to control the disposition of her remains, including the location, manner, and conditions of disposition, and the arrangements for funeral goods and services to be provided. Furthermore, Claimants maintain that these rights vested in them at the time of Emily's death.

Additionally, Respondent's own policies and procedures provided guidelines that would have assisted the Claimants in making appropriate funeral arrangements for their daughter. Respondent did not provide that assistance to the Claimants.

Claimants contend that the Respondent's actions deprived them of their vested rights resulting in their suffering and continuing to suffer severe emotional distress. They maintain that the Respondent's actions were willful and wanton, such that its conduct was beyond all bounds of decency. Specifically, the Respondent intentionally, recklessly, or negligently withheld Emily's body from the Claimants, interfered with their vested and lawful possession of her body,

interfered with their right to bury their daughter, and interfered with their right to make arrangements for funeral goods and services. The Respondent knew or should have known that such actions would result in severe emotional distress being suffered by the Claimants.

### LEGAL DISCUSSION

#### I. RIGHTS TO CONTROL DISPOSITION OF A DECEDENT'S REMAINS.

##### A. Common Law Right.

Arkansas courts recognize that a quasi-property right in dead bodies vests in the nearest relatives of a deceased person. *Travelers Ins. Co. v. Smith*, 991 S.W.2d 591, 595 (Ark. 1999); *Crockett v. Essex*, 19 S.W.3d 585, 589 (Ark. 2000)(following *Travelers*, in recognizing the vesting of a quasi-property right in dead bodies); see *Vogelaar v. U.S.* 665 F. Supp. 1295, 1306 (E.D. Mich. 1987)(stating that "[f]ew things are more cherished, respected, or sacred than the right to bury our dead."). The right arises out of a family's duty to bury their dead and includes "possession and custody of the body for burial, to prevent the corpse from disturbances after burial, or to remove it to a proper place." *Travelers* at 596; see *Crockett* at 589 (recognizing the right as "possession, custody, and control of the body for purposes of burial").

Arkansas courts further recognize that the rights to possession, custody and control of a dead body "are within the protection of the law." *Crockett* at 589; *Travelers* at 597 (recognizing that common law has imposed civil liability "for the wrongful interference with that right"); see *Teasley v. Thompson*, 165 S.W.2d 940, 942 (Ark. 1942)(stating "that the right of possession for burial is a legal right coupled with certain duties which the courts will protect and that an unlawful interference with these rights is a basis for suit for damages.").

##### B. Statutory Right.

This quasi-property right was recognized and codified into Arkansas law in the Arkansas

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Final Disposition Rights Act of 2009 (2009 Ark. Acts 402)(codified at Ark. Code Ann. § 20-17-102 *et seq.*)(*"Act"*). The Act provides in part:

(d)(1) The right to control the disposition and remains of a deceased person, the location manner, and conditions of disposition, and arrangements for funeral goods and services to be provided vests in the following in the order named, provided such person is eighteen (18) years of age or older and is of sound mind:

(A) First, a person appointed by the decedent in the decedent's declaration of final disposition executed before his or her death, in accordance with this section;

(B) Second, the surviving spouse;

(C) Third, the sole surviving child of the decedent or if there is more than one (1) child of the decedent, the majority of the surviving children;

(D)(i) *Fourth, the surviving parent or parents of the decedent.*

Ark. Code Ann. § 20-17-102(d)(1)(A)-(D)(i) (Emphasis added).

The Act further provides in part:

(e)(1) A person entitled under this section to the right of disposition shall forfeit that right, with the right passing to the next qualifying person as listed in this section, in the following circumstances:

(E) Where the Department of Human Services has custody of the decedent and a person authorized under subsection (d)(1) of this section has not claimed the right to possession of the decedent's remains within forty-eight (48) hours following the decedent's death.

Ark. Code Ann. § 20-17-102(e)(1) ..(E).

The Act is clear and straightforward in that the right of disposition of a dead body vests in surviving parents, particularly, where minor children are involved. Where the body is in the custody of the Department of Humans Services, the person or persons holding that right have forty-eight (48) hours in which to claim possession of the body or the right is deemed to be forfeit.

In this case, Claimants are the surviving parents of Emily, and they requested possession

of her body from the Respondent on the day of her death. The Respondent refused to relinquish custody of the body to the Claimants. Thus, as a matter of common law and statutory law, Claimants have an action against the Respondent for its wrongful interference with their right to the possession, custody and control of their daughter's body for purposes of arranging the disposition of her remains and conducting a suitable funeral service. Accordingly, the Respondent is liable for any and all damages suffered by the Claimants, including severe emotional distress, caused by its wrongful interference.

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**II. OUTRAGE.**

**A. In General.**

The Arkansas Supreme Court outlines the elements for the tort of outrage as follows:

"(1) the actor intended to inflict emotional distress or knew or should have known that emotional distress was the likely result of his conduct; (2) the conduct was 'extreme and outrageous,' was 'beyond all possible bounds of decency,' and was 'utterly intolerable in a civilized society'; (3) the actions of the defendant were the cause of the plaintiff's distress; and (4) the emotional distress sustained by the plaintiff was so severe that no reasonable person could be expected to endure it."

*Crockett*, 19 S.W.3d at 589 (quoting *McQuay v. Guntharp*, 331 Ark. 466, 470-471, 963 S.W.2d 583, 585 (1998)). The Court gives the claim a "narrow view" and "requires clear-cut proof to establish the elements", but that requirement does not mean "proof greater than a preponderance of the evidence." *Crockett* at 389 (quoting *McQuay*). An outrage claim "does not open the doors of the doors of the court to every slight insult or indignity one must endure in life." *Travelers*, 991 S.W.2d at 595.

**B. Cases Involving Outrage and the Disposition of Dead Bodies.**

**I. *Travelers Ins. Co. v. Smith*, 991 S.W.2d 591 (Ark. 1999).**

The Court has had occasion to consider the tort of outrage in connection with the disposition of dead bodies in other cases. In *Travelers*, the embalming of the decedent's body

was delayed five days so Travelers Insurance Company could arrange for and obtain an autopsy to determine the cause of death. *Id.* at 593. The autopsy was never obtained causing the embalming delay, and the funeral was held one week following the decedent's death. *Id.* at 594. By the time the embalming process had begun, the body had deteriorated such that it was not presentable for visitation or an open casket funeral as desired by the Smith family. *Id.* at 594.

The Smiths brought suit against Travelers alleging the tort of outrage. *Id.* at 594. The evidence presented to the jury showed that Travelers failed to promptly obtain an autopsy and, consequently, hindered the embalming of the body delaying the funeral and the Smith's grieving process. *Id.* at 597. The Smith family testified to the exacerbation of their grief due to the delay in having the funeral, the inability to have an open casket funeral, their lack of understanding the delay, and emotional and psychic disturbances, such as crying and nightmares. *Id.* at 597.

The jury found in the Smith family's favor awarding them compensatory and punitive damages. *Id.* at 594. The trial court denied Travelers' motion for judgment notwithstanding the verdict which alleged that the jury's verdict was not supported by substantial evidence, and Travelers then appealed the denial of its motion. *Id.* at 593.

The Court held that the trial did not err in denying Travelers' motion. *Id.* at 597. In reaching its holding, the Court was "[m]indful of the importance in which our society and the common law has held the family's right to bury their dead, and the civil liability imposed for the wrongful interference with that right." *Id.* at 597. The Court found that there was substantial evidence to support the findings that Traveler's conduct was intolerable, that Travelers "should have known that its actions would cause deep and severe emotional distress to [the Smiths]" and that Travelers' "acted in reckless disregard of that fact." *Id.* at 597.

2. *Growth Properties I v. Cannon*, 669 W.W.2d 447 (Ark. 1984).



In *Growth Properties I v. Cannon*, 669 W.W.2d 447 (Ark. 1984), the corporation operating a cemetery drove heavy construction vehicles across graves occupied deceased members of the Cannon family and exposed the vaults to view. *Id.* at 449. Some members of the Cannon family complained to the corporation, others refrained from frequenting the burial sites, and at least one was told by a corporation employee "not to come back until the work was finished if she found it upsetting." *Id.* at 449. Eight members of the Cannon family brought suit alleging severe mental anguish and distress (or outrage) among other claims. *Id.* at 448. In a bench trial, the judge awarded the Cannons compensatory and punitive damages. *Id.* at 448.

The corporation appealed contending that the trial court erred because the Cannons had presented no proof of actual damage, but had rather made "vague references to feeling bad about it, or being 'heartsick'." *Id.* at 448. The Court rejected their contention stating:

[T]he essence of the tort of outrage is the injury to the plaintiff's emotional well-being because of outrageous treatment by the defendant. If the conduct is sufficiently flagrant to give rise to the tort, then the injury the law seeks to redress is the anguish itself and it need not rest, parasitically, on more demonstrative loss or injury.

*Id.* at 448. The Court further stated that "mental anguish itself is the actual damage, and proof of special damage in terms of out-of-pocket expenses of exact pecuniary measurement is not essential to a recovery of compensatory damages." *Id.* at 448.

The corporation also argued that the trial court erred in awarding punitive damages as evidence of malice, willfulness or wantonness was lacking. *Id.* at 449. The Court likewise rejected the argument stating that conscious indifference to the consequences of one's actions, if sufficiently wanton, will sustain a punitive damage award. *Id.* at 449-450. The Court found that the Cannons had shown that the corporation had "engaged in a prolonged and callous desecration of the graves of their kinsman." *Id.* at 450. While recognizing that opinions differ widely

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regarding "conduct that merely offends and that which is so outrageous as to be intolerable in a civilized society," the Court stated that "we cannot say the supporting evidence was wholly without substance *in view of the deep human feelings involved.*" *Id.* at 450 (emphasis added).

3. *Crockett v. Essex, 19 S.W.3d 585 (Ark. 2000).*

In *Crockett*, the Crockett family sued Essex and a funeral home alleging negligence and intentional acts constituting extreme and outrageous conduct on the part of the defendants stemming from the manner in which a family member's funeral was conducted. *Id.* at 587. The Crocketts contended that the defendants urged them to hurry and shorten the funeral service, that the funeral procession was conducted in such a way that some mourners were left behind and others had to drive at excessive speeds to keep up with the procession, that the defendants acted annoyed and hurried the committal, that Essex drove over graves and grave stones to bring a handicapped family member to the graveside and thus shorten the service, and that Essex did not pay proper attention at the graveside. *Id.* at 587. The defendants moved for summary judgment on the basis that the Crocketts had failed to establish any of their causes of action, and the trial court granted their motion. *Id.* at 588.

In affirming the trial court, the Court first reviewed its outrage cases that dealt with death including *Travelers (supra)*, *Growth Properties I (supra)*, and *Neff v. St. Paul Fire and Marine Ins. Co.*, 304 Ark. 18, 799 S.W.2d 795 (1990). *Id.* at 589. The Court then noted that the Crocketts had failed to present proof to refute evidence submitted by the defendants in their summary judgment motion. *Id.* at 590. Nevertheless, even had evidence been presented, the opinion suggests that the Court would have found that the facts alleged by the Crocketts could not support an action for outrage when the rude and unprofessional behavior of the defendants is compared to the mishandling of a body as in *Travelers* and the desecration of family members'

graves as is *Growth Properties I*. *Id.* at 590.

4. *Neff v. St. Paul Fire & Marine Ins. Co.*, 799 S.W.2d 795 (Ark. 1996).

*Neff* involved the release of a stillborn fetus to the custody of the mother's husband by a medical center. *Id.* at 795. The husband was subsequently arrested for driving while intoxicated, and both he and the fetus were taken into custody by law enforcement officials. *Id.* at 795. The mother brought suit against the medical center for intentional infliction of emotional distress alleging that medical center lacked the authority to deliver the fetus to her husband and for the medical center's advice that she go pick up the fetus at the detention center holding her husband and the fetus. *Id.* at 796-797. Defendant filed for summary judgment which was granted by the trial court. *Id.* at 796.

In affirming the grant of summary motion, the Court looked at relevant case law and Arkansas statutes and determined that the medical center had the legal right to release the remains to either the mother or the husband. *Id.* at 796-797. As such, the medical center's action was privileged and not subject to an outrage claim even though it could be well aware that its action is certain to result in emotional distress. *Id.* at 797. Additionally, the advice given to the mother to pick up the fetus at the detention center, while ill-advised, was not coercive did not rise to the level of intolerable conduct. *Id.* at 797.

C. **Summary.**

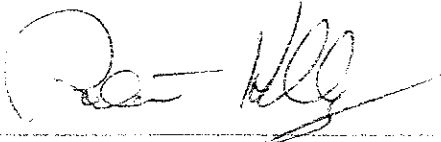
No Arkansas case was found involving the tort of outrage where a family was completely deprived of its right to the possession, custody and control of their loved one's body. If facts such as the mishandling of a body and the desecration of graves, some of whom had been long buried, support findings of severe emotional distress, it is unimaginable that a family deprived of their sacred right to bury their dead would not suffer severe emotional distress.

CONCLUSION

This brief is submitted for the purposes set forth herein. By submission, Claimants are not waiving any right to present additional legal argument and precedent based on the facts and evidence presented at trial.

Respectfully submitted,

Judy Freeman, Claimant  
Thomas Freeman, Claimant

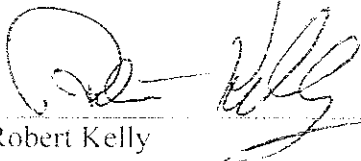
By:   
Robert Kelly (2002145)  
Attorney for Plaintiff

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robert@robertkellylawfirm.com

CERTIFICATE OF SERVICE

I, Robert Kelly, hereby certify that on March 3, 2014, I served a true and correct copy of the foregoing Claimant Judy Freeman's Answers to Respondent's First Set of Interrogatories and Requests for Production, including an electronic copy, by U.S. Mail addressed to:

Richard Rosen, Esq.  
Office of Policy and Legal Services  
P.O. Box 1437, Slot S260  
Little Rock, Arkansas 72203

  
Robert Kelly

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BEFORE THE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

JUDY FREEMAN and  
JUDY FREEMAN

CLAIMANTS

VS.

CLAIM #13-0880-CC

STATE OF ARKANSAS,  
DEPARTMENT OF HUMAN SERVICES,  
DIVISION OF CHILDREN AND FAMILY SERVICES

RESPONDENT

**CLAIMANTS' AMENDED EXHIBIT AND WITNESS LIST**

Claimants, Judy Freeman and Thomas Freeman, submit the following amended list of exhibits and witnesses they expect to introduce into evidence and call to testify at the hearing of this matter on April 10, 2014.

**EXHIBITS**

- No. 1: Series of nine (9) photographs of Emily Freeman;
- No. 2: Arkansas Department of Human Services Court Report for 05/03/2010 review hearing;
- No. 3: Polk County Circuit Court Review Order for May 3, 2010 review hearing;
- No. 4: Judy Freeman Referral and Psychological Evaluation;
- No. 5: Thomas Freeman Referral and Psychological Evaluation;
- No. 6: Division of Children and Family Contact Form, dated 08/10/2009;
- No. 7: DCFS Contact Form, dated 08/19/2009;
- No. 8: DCFS Policy IX-B: Child Death, Near-Fatalities & Significant Injuries; and
- No. 9: Funeral Home Receipt.

Claimants reserve the right to introduce depositions for purposes of impeachment, if a witness is unavailable, or other purposes consistent with the Arkansas Rules of Civil Procedure and Arkansas Rules of Evidence;

Claimants reserve the right to introduce Plaintiff's exhibits; and

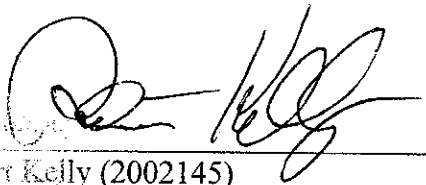
Absent a stipulation between the parties, Claimants reserve the right to introduce any document produced or identified in Respondent's responses to Claimants' discovery requests.

**WITNESSES**

1. Claimant, Thomas Freeman;
2. Claimant, Judy Freeman;
3. Timothy Freeman, 2000 Savannah, Fort Smith, Arkansas 72901 (479-414-5644);
4. Misty Freeman, 2000 Savannah, Fort Smith, Arkansas 72901;
5. Charles Freeman, 1115 Lincoln St., Van Buren, Arkansas 72956 (479-652-1493);
6. Kim Cuttingham, 1115 Lincoln St., Van Buren, Arkansas 72956 (479-652-1493);
7. Mike Simpson, 100 128 S. 4784 Road, Muldrow, Oklahoma 74908 (479-216-1830);
8. Mike Freeman, P.O. Box 992, Center, Colorado 81125 (719-937-3551) - Possible;
9. Barbie Freeman, P.O. Box 992, Center, Colorado 81125 (719-937-3551) - Possible;
10. Cecile Blucker, Director, Division of Children and Family Services, P.O. Box 1437, Slot S560, Little Rock, Arkansas 72203 (501-682-8770);
11. Claimants reserve the right to call Respondent's witnesses; and
12. Absent a stipulation between the parties, Claimants reserve the right to call any other individual identified or discussed in discovery documents or depositions.

Respectfully submitted,

Judy Freeman, Claimant  
Thomas Freeman, Claimant



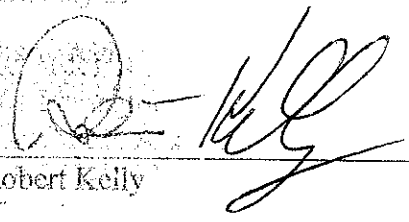
By: Robert Kelly (2002145)  
Attorney for Plaintiff

ROBERT KELLY LAW FIRM, PLLC  
401 Lexington Ave.  
Fort Smith, Arkansas 72901  
479-242-1190  
479-242-1191 (Fax)  
robert@robertkellylawfirm.com

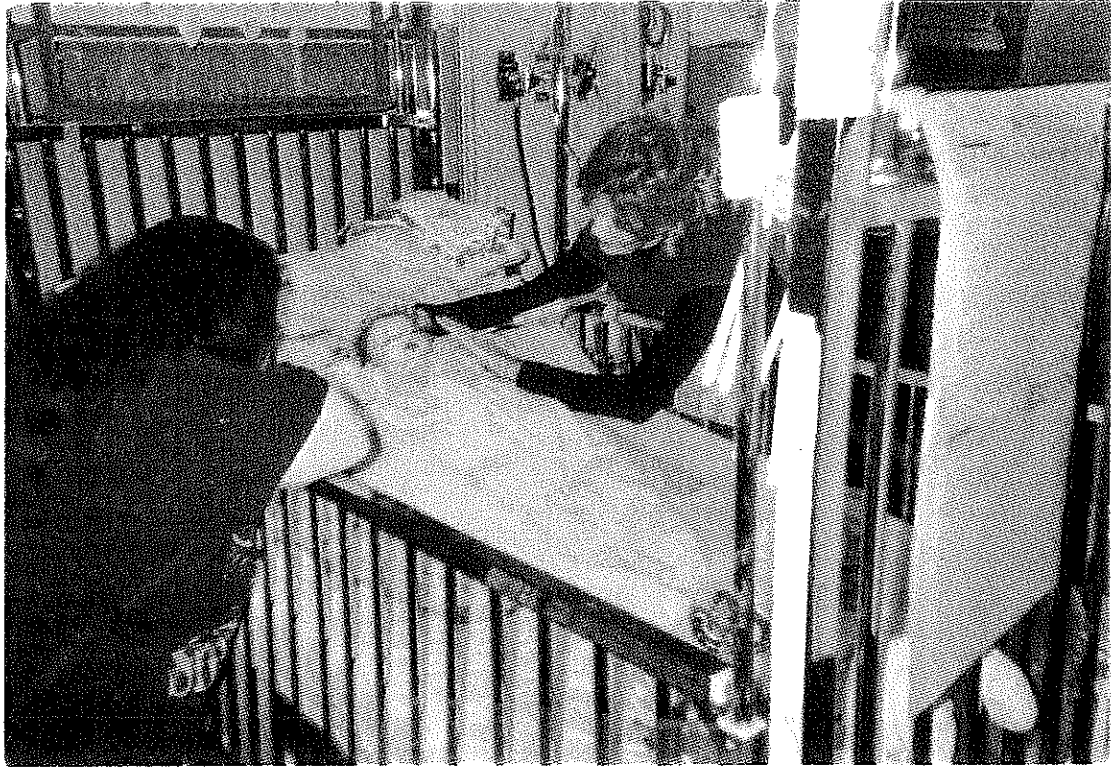
**CERTIFICATE OF SERVICE**

I, Robert Kelly, hereby certify that on March 27, 2014, I served a true and correct copy of the foregoing by U.S. Mail addressed to:

Richard Rosen, Esq.  
Office of Policy and Legal Services  
P.O. Box 1437, Slot S260  
Little Rock, Arkansas 72203



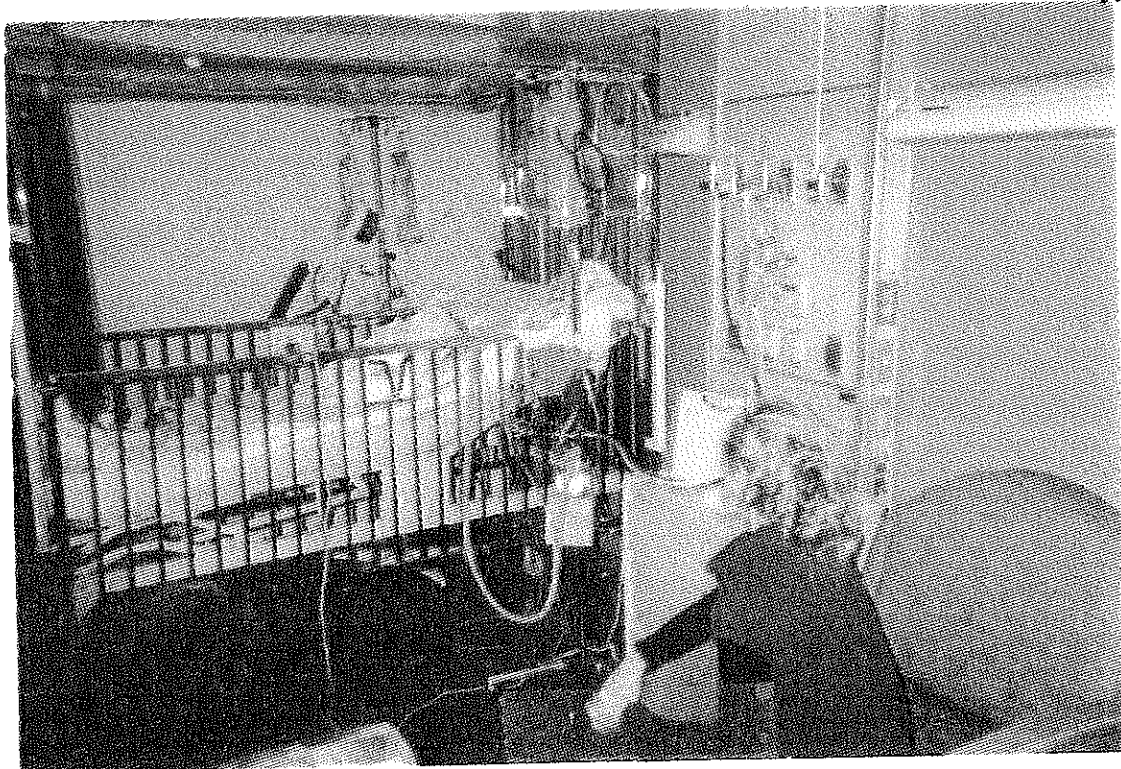
Robert Kelly



Arkansas Claims Commission

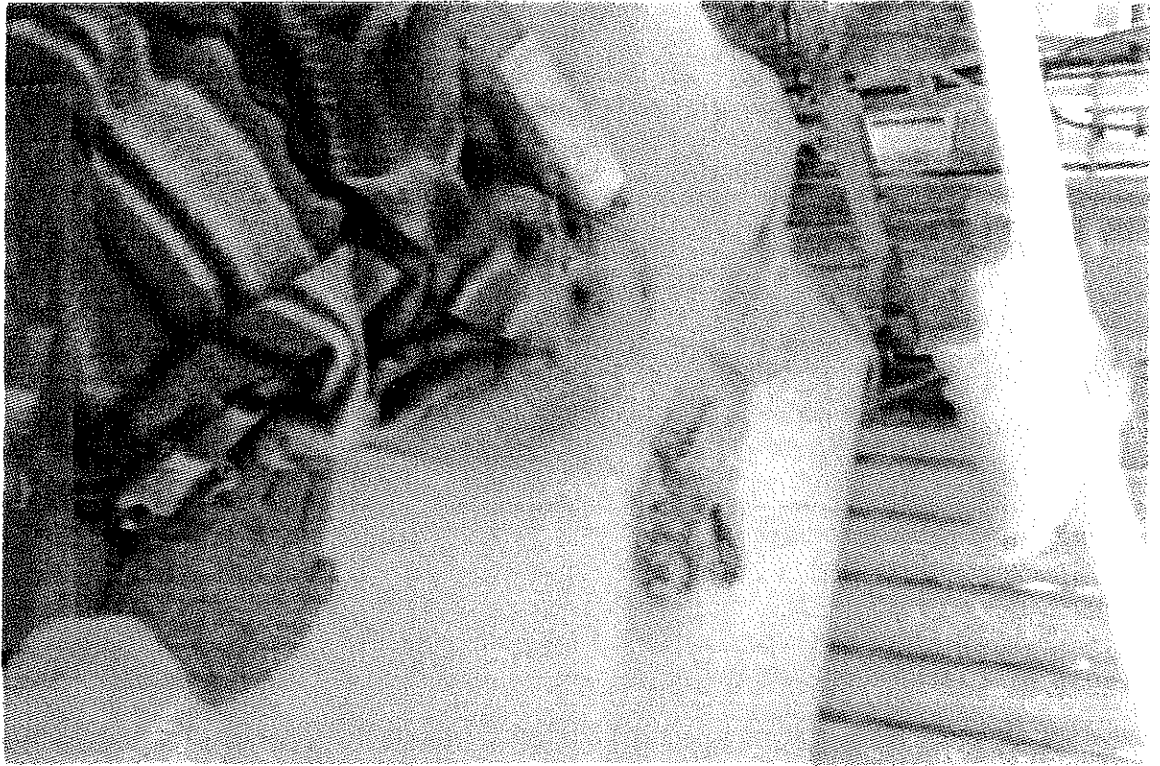
MAR 31 2014

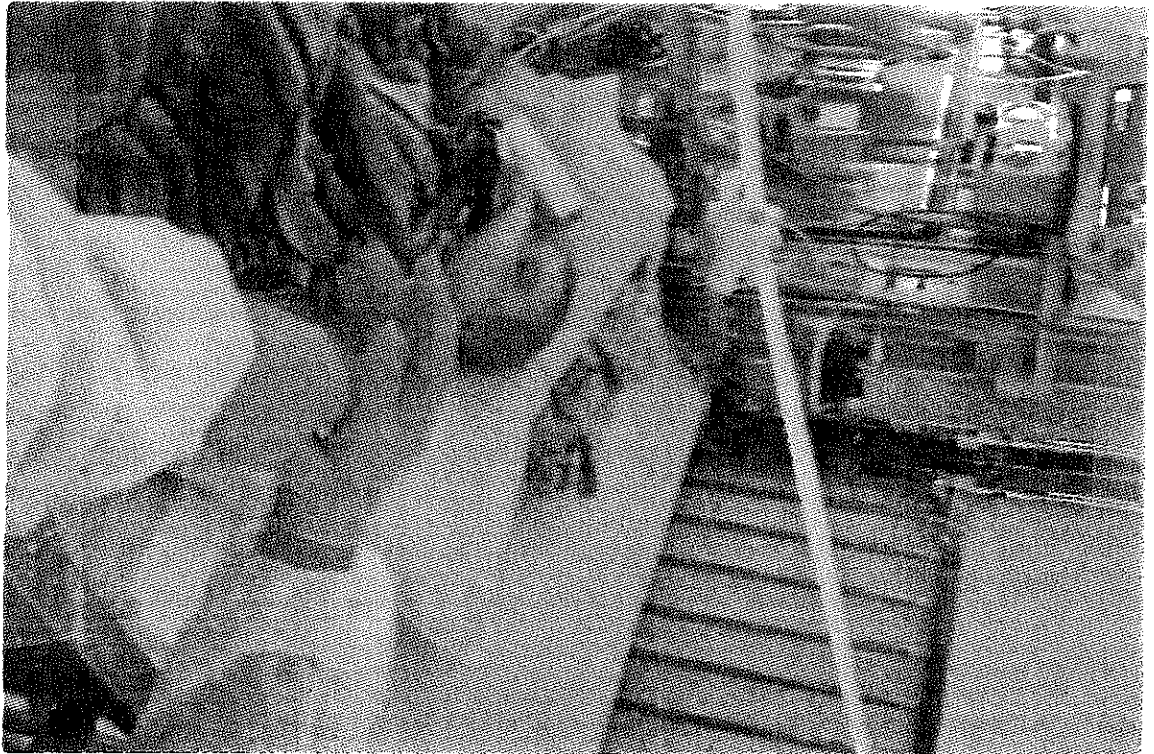
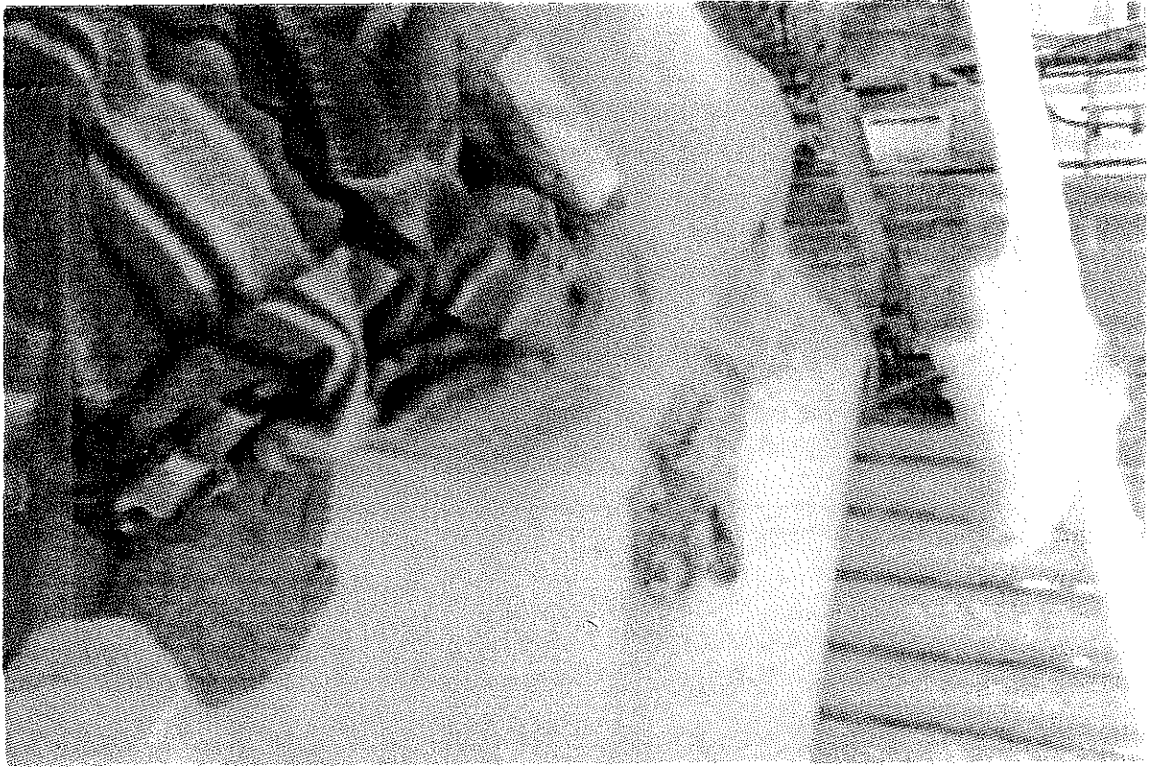
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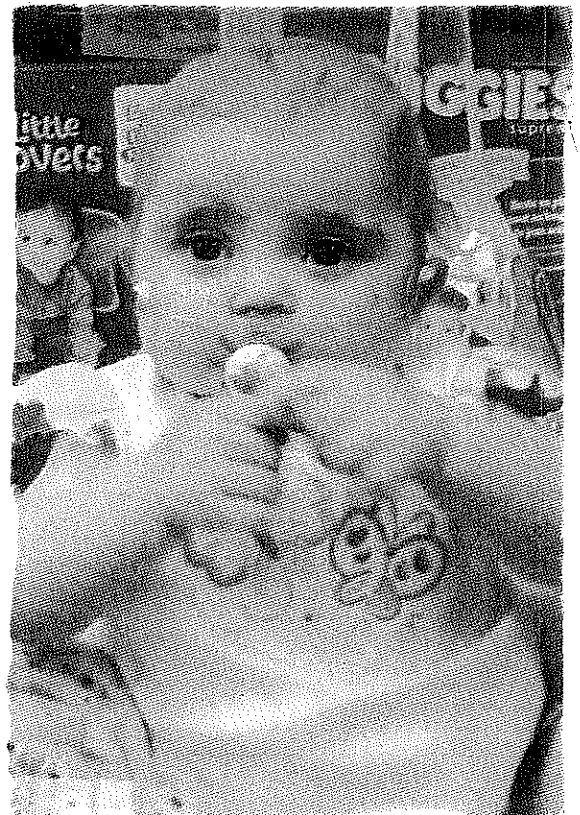
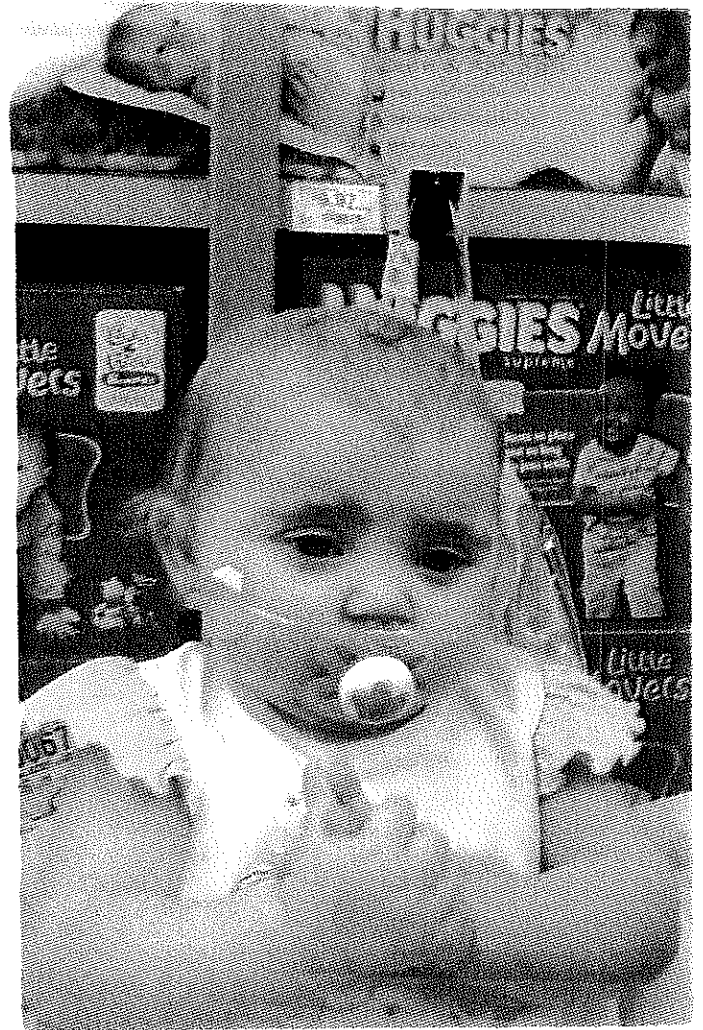
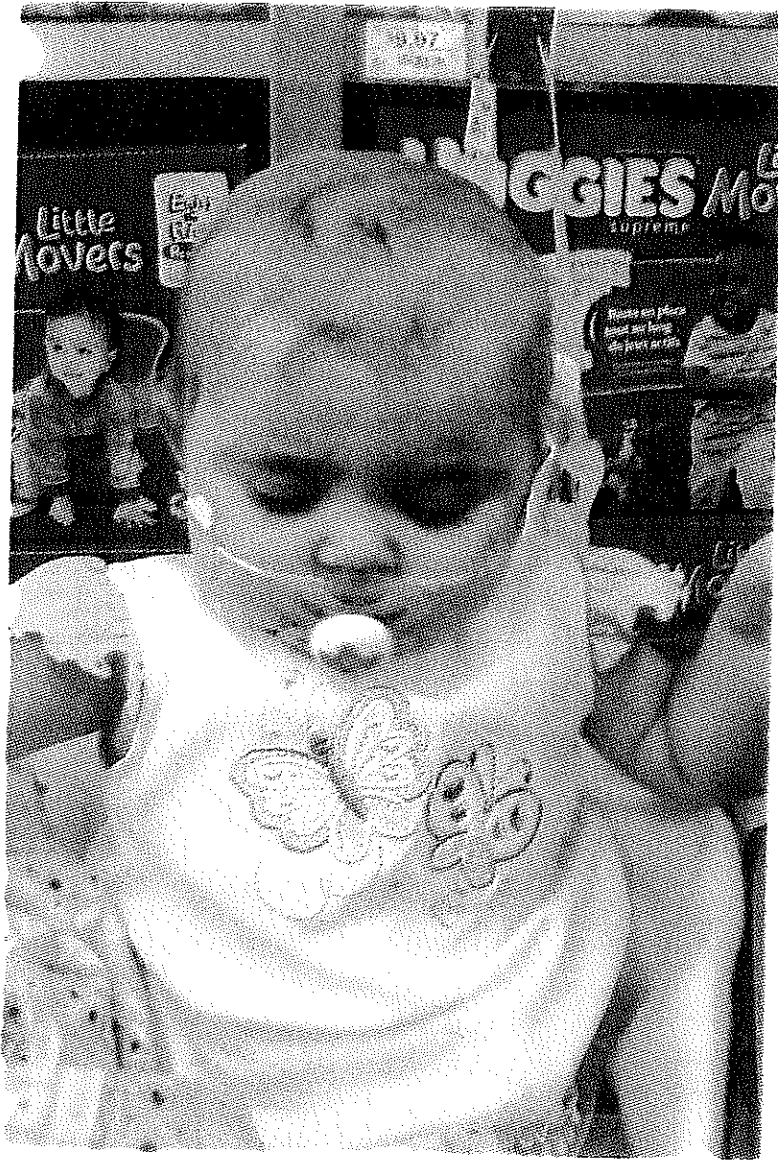
CLAIMANT  
EXHIBIT: 1 40











Arkansas Department of Human Services

5/3/2010

COURT REPORT

Arkansas Claims Commission

I. COURT INFORMATION

MAR 31 2014

Hearing Type: Court Review

County of Jurisdiction: Polk (Mena)

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Hearing Date: 05/03/2010

Judge's Name:

Hon J W Looney

II. CHILD(REN)

Name

Date of Birth

EMILY C. FREEMAN

12/16/2008

III. DHHS RECOMMENDATIONS

Return Home

Continued Foster Care and Work With Family

Placement With Relatives

Proceed Toward Custody With Parental Rights Terminated

None of the Above

The Department continues to work with Emily Freeman. The Department recommends the continuing of medical care for Emily and services for the parents.

IV. FAMILY PROGRESS

A. Child Welfare Background and Reasons for Intervention:

Emily was brought into foster care on August 4, 2009 due to Medical Neglect and Environmental Neglect. Emily was previously diagnosed with Failure to Thrive and was not adequately gaining weight. Emily had been given a feeding tube previously in May. Emily also has chronic aspiration. The parents were unable to properly care for Emily. The home was not air conditioned and was extremely dirty for Emily's fragile state. The family had pets in and out of the home. On August 13, 2009, Emily was taken by ambulance to Arkansas Children's Hospital where she stayed until September 24, 2009. It was determined that Emily has a chronic lung condition. Emily's chronic aspiration was detrimental to her lungs. Emily has recently undergone numerous steroid treatments in attempt to improve the function of the lungs. On March 23, 2010, Dr. Com determined that the steroid treatment was not improving the quality of the lungs and a lung transplant needed to be considered. St. Louis Children's hospital reports they will not transplant a child who is in foster care. Emily is progressively getting worse. A second lung biopsy was conducted to determine the reason for the decrease in lung capacity. Those results have not been made clear at this time. Emily was admitted in Arkansas Children's Hospital on March 24, 2010 and remains in the hospital at this time. Emily is in Intermediate Care due to having to have High Flow Oxygen. Emily is currently receiving oxygen at 7 liters.

CLAIMANT  
EXHIBIT:

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**B. Child(ren)'s Situation (physical, emotional, educational, psycho-social) Including Current Health and Safety Needs and Current Placement (Independent Living, if appropriate):**

Emily appeared to have no bond with her parents when she was brought into care. The parents were unable to comfort Emily. Emily remained on a "wedge" for the majority of the day. Emily was born December 16, 2008. Emily's birth weight was 6 pounds and 2 ounces. On August 3, 2009 Emily weighed 10 pounds and 15 ounces. Emily is currently in foster care where she is able to receive the medical needs necessary to provide her with the most comfortable life possible. The foster mom has attended every doctor's appointment and received strict instructions on caring for Emily. The foster mom has the resources to take Emily to Arkansas Children's Hospital for emergencies or regular appointments. The foster mom has received instructions for physical therapy to improve with Emily's developmental delays. When Emily was brought into care, she was developmentally delayed. Emily was unable to sit up on her own, she made no eye contact, she could not roll over and she did not crawl. Since being in foster care, Emily has gained the strength to say "momma," "mimi," and Emily is now able to sit up on her own. Emily has also gained the strength to reach for people and toys. Emily has the ability and grip toys. On 02/22/10, Emily was admitted into the ICU Unit at Children's Hospital due to a worsening condition of her lungs. Emily was given major doses of steroids and antibiotics. It has also been recently approved to receive the RSV immunization shot. In February, Emily was given the plan of three days of steroids once per month. In March, Emily was admitted into Arkansas Children's Hospital.

**C. Children's Adjustment in Placement and Progress in School:**

Emily has learned to bond. Emily has adjusted very well in foster care. Emily has her own room at the foster home that is provided with the medical equipment, such as oxygen tanks, monitor for her oxygen levels, suction and a bed with the correct elevation for feeding. Emily recognizes the foster mom, and the caseworker.

**D. Parent's Current Living Situation (Financial, Physical, Mental, and Emotional):**

The parents have made improvements to their home. The parents report that they do not let anyone smoke in their home. Thomas and Judy are currently unemployed. The worker visited the home on 12/31/09 and 01/28/10. The home is very crowded with the family members that currently live there. The parents have a dog that stays in the home. Both occasions the dog has been in the home laying on the beds. The worker observed the dog's food and water dish in the kitchen. The family also had a small electrical fire in the home. Thomas and Judy had CDM Electric to come to the home and replace the outlet.

**E. Parent's Progress on Disposition Order/Court Order/Treatment Plan/Efforts to Correct Conditions(s):**

Thomas and Judy Freeman have completed both parenting classes. Currently specialized parenting classes are being arranged to assist the parents in learning how to care for Emily's needs. Thomas and Judy have completed their psychological evaluations. During the evaluation Thomas Freeman states he could see no reason for Emily being in foster care. Thomas was also unable to explain any anomalies that would require hospitalization of Emily. The worker has filled out Referrals for counseling. At this time, specialized parenting classes have not been set up due to Emily's fragile state and unpredictability of her health.

**F. Visitation (Between Child(ren) and Parents, Relatives, Siblings, etc., and Results):**

Visitation occurs approxiametly once a week. Due to Emily's fragile condition, if she is sick, she is unable to attend visitations. Emily's immune system is unable to fight infections. Dr. Fox stated in writing, that he recommend Emily's visits be limited to once per week. During Emily's stay at Arkansas Children's Hospital, the parents made to visits. The worker explained to the parents that they were welcome to come to the hospital and stay more than one hour. The first visit the parents stayed for two hours and the second visit the parents stayed for fourty-five minutes. Emily was recently hospitalized again at Children's from December 16-22, 2009. Thomas and Judy called, but did not visit the hospital. The worker made it clear they were welcome at the hospital. During visitations, Emily may begin to choke and cry. The parents respond by giving Emily back to the foster mom until she is calm. On 01/19/10, despite Emily still recovering from a respiratory infection, the foster mom took her to the doctor for a check up. The foster mom attempted to contact the parents for visitation while she was in town and was unable to reach them. The end of February, the foster mom brought Emily into Mena for a doctor's appointment. The parents were contacted to meet the foster mom. The parents had many other people present with them when they met the foster mom. The parents had a short visit. Emily has been hospitalized since March 24, 2010. The parents have been to Little Rock one time approxiametly a week after Emily was admitted. They stayed for about three hours. The parents stated they would be back to Children's Hospital the next day for Emily's lung biopsy. The parents did not show to the hospital. The parents called later and stated they could not afford the gas. The Department was able to get a twenty dollar gas card for the parents. The parents have not contacted the Department to receive the gas card. The parents have not been back to visit.

**G. Permanency Plan:(Include Independent Living Information, if Appropriate):**

Reunification with the parents is still the goal. Although, Emily will not qualify for a lung transplant.

**H. Additional Information (location of siblings, services offered, etc.):**

There are five other siblings. [REDACTED], who is the oldest, lives with her mother in Oklahoma. These four children and Judy's father live also live in the home with Thomas and Judy. When the worker visits the home, Thomas and Judy have cousins, and uncles staying in the home.

**V. RELATIVE'S INTEREST**

**Child** EMILY CHEYENNE FREEMAN  
**Relative** No Relative Identified

**Notified Date**  
00/00/0000

**Provisional Home**  
**Kinship Guardianship**

**Foster Home**  
**Desires Visitation**

V. RELATIVE'S INTEREST

VI. SIGNATURES

*Alise Gordon*

Family Service Worker

\_\_\_\_\_  
Supervisor

*5/3/10*  
Date

*5/3/10*  
Date



IN THE CIRCUIT COURT OF POLK COUNTY, ARKANSAS  
JUVENILE DIVISION

ARKANSAS DEPARTMENT OF HUMAN SERVICES

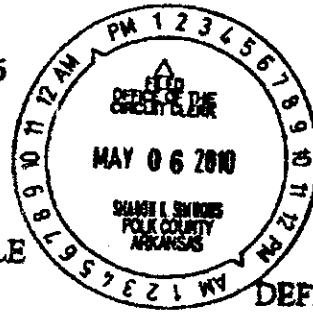
PLAINTIFF

VS.

CASE NO. JV-2009-0036

JUDY FREEMAN, MOTHER  
THOMAS FREEMAN, FATHER OF:

EMILY CHEYENNE FREEMAN (DOB: 12/16/08), FEMALE  
JUVENILE



DEFENDANTS

REVIEW ORDER

On this 3<sup>rd</sup> day of May, 2010, the above entitled cause of action is presented to the Court for further disposition and review, the Honorable J.W. Looney presiding. Present before the Court were:

Juvenile: Emily Freeman/excused

Attorney Ad Litem: Lana Davis

Mother: Judy Freeman

Her Attorney: Tom Wilson

Father: Thomas Freeman

His Attorney: Tom Wilson

DCFS: Alisa Gorden

ADHS Attorney: Cecilia Dyer

From the testimony, exhibits, statements of the parties and counsel, the record herein, and other things and matters presented, the Court, noting the best interests, welfare, health and safety, case plan and appropriate statutory placement alternatives, does hereby ORDER, ADJUDGE AND DECREE:

1. This Court possesses jurisdiction of the parties and the subject matter before it, due notice of this proceeding having been provided to the mother and father via notice in open Court at the previous hearing.

CLAIMANT  
EXHIBIT:

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2. This care was thoroughly reviewed by this Court on this date and the juvenile is in need of the services of the Arkansas Department of Human Services. Custody with the parents is contrary to the welfare of the juvenile and continuation in the custody of the Arkansas Department of Human Services is in the best interest of and necessary to the protection of the juvenile's health and safety.

3. A prepared by Alisa Gorden of the Arkansas Department of Human Services volunteer was identified and considered and shall be entered into the record.

4. The goal of this case shall continue to be reunification. The concurrent plan for this case shall be dual tracking.

5. The Court finds that the Arkansas Department of Human Services has made reasonable efforts to provide services to achieve the goal of reunification, including, but not limited to, foster care, visitation, medical/dental care, transportation, home visits, referrals, and case management.

7. The Court finds that the mother and the father have partially complied with the case plan and the orders of this Court. Specifically, the parents are not employed and their home is not safe or suitable for Emily to live there.

8. The Court finds the visitation plan is appropriate for the juvenile and the parents. Visitation shall be arranged by the Department of Human Services at the recommendation of Emily's doctors.

9. The mother and father are ordered to follow all of this Court's orders and the ADHS case plan.

10. The Arkansas Department of Human Services is ordered to continue custody of the juvenile and provide services to the family. The Department shall assist, as able, with transportation for the parents.

11. The juvenile is ordered to remain in the custody of the Arkansas Department of Human Services.

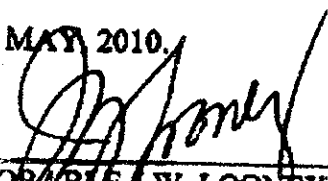
12. If the Department is responsible for paying for services for the parent(s), the Court orders the parent(s) to pay for or reimburse the Department for failure to keep appointments for drug/alcohol screens, drug/alcohol assessments, psychological evaluations or other services funded by the Department.

13. The Court authorizes the Arkansas Department of Human Services or its agents when acting as custodian of the juvenile to enter consent to specific medical, dental or mental health treatment and procedures as required in the opinion of a duly authorized or licensed physician, dentist, surgeon, or psychologist, whether or not such care is rendered on an emergency basis or on an inpatient or outpatient basis, and the Court consents to such care. That the Order entered April 29, 2010, shall remain in full force and effect.

14. Prior orders of this Court which do not conflict with this order shall remain in full force and effect.

15. Jurisdiction of this cause is continued with a permanency planning hearing scheduled for the 7<sup>th</sup> day of June, 2010, at 1:00 o'clock p.m. All parties present have received notice of said hearing and no further notice of hearing shall be required.

IT IS SO ORDERED, EFFECTIVE THIS 3<sup>RD</sup> DAY OF MAY, 2010.

  
\_\_\_\_\_  
THE HONORABLE J.W. LOONEY  
Circuit Judge  
DATE: 5-5-10

**DISTRIBUTION:**

- ADHS Attorney**
- Attorney Ad Litem**
- Mother and Father's Attorney**
- DCFS Caseworker**
- CASA**

**LEWIS CAMPBELL, LPE**

Arkansas Claims Commission

Pine Bluff Psychological Associates  
3010 W. 28<sup>th</sup> St.  
Pine Bluff AR 71603

MAR 31 2014

RECEIVED

PHONES: 501.771.9910 OR 501.454.7502

FAX: 501.327.5619

**PSYCHOLOGICAL ASSESSMENT REFERRAL FORM**

Caseworker: Alisa Gorden Phone #: 479-394-3100  
Email: Donna.Gorden@arkansas.gov  
Supervisor: Dustin Horn  
Email: Dustin.Horn@arkansas.gov  
Date of referral: 10/05/2009 County: Polk Area: 3  
Court date: 10/05/2009

**CLIENT INFORMATION**

Name: Judy Freeman DOB: [REDACTED]  
Social Security #: [REDACTED] Race: W Sex: F  
Home Address: [REDACTED]  
Is the psych eval court ordered? Yes X No       
Does client have active case w/ DCFS? Yes X No       
If YES, please specify type of DCFS case:  
     protective services X foster care      supportive services       
adoption

Social history provided by: X client      caseworker

**NOTE: This information is vital for a thorough psychological evaluation**

**REASON FOR REFERRAL:**

To determine the appropriateness of the parents for possible placement with the children involved. To determine any psychological needs of the client in order to better serve the family.

CLAIMANT  
EXHIBIT:

4

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Lewis Campbell LPE  
License # 82-30-E  
Training Resources, Inc.  
PO Box 94696  
North Little Rock, AR 72190  
501.771.9910 (phone)  
501.758.7116 (fax)

**PSYCHOLOGICAL EVALUATION**

NAME: Judy Freeman  
ID: [REDACTED]  
AGE: [REDACTED]  
SEX: Female  
DOB: [REDACTED]

EXAMINER: Lewis Campbell  
TEST DATE: 11/03/2009  
COUNTY: Polk  
TEST SITE: Mena  
CASEWORKER: Alisa Gorden  
PHONE: 479-394-3100

**TESTS ADMINISTERED**

WAIS-III  
Beck Depression Inventory  
Incomplete Sentences  
MMPI-II

**REASON FOR REFERRAL**

Judy Freeman's 7-month old special-needs child was taken into custody because she failed to thrive. There were also suggestions of environmental neglect but these were not specific.

**BACKGROUND HISTORY**

Judy was born and raised in Oklahoma and Arkansas. She went to school in Arkoma, Oklahoma. She reports being in special education the entire 12 years. She denied any medical conditions and takes no medication.

She is not currently employed. She is looking for a job. Her last job was in a video rental store.

The client reported no problems growing up. Her parents were divorced when she was three. She states her life was sheltered. However, she says she likes to be alone and has always been somewhat of a loner.

## TEST RESULTS

### WAIS-III

Verbal IQ	76				
Performance IQ	105				
Full Scale IQ	88				
Vocabulary	15	4	Picture Completion	22	12
Digit Span Fwd.	8	7	Matrix Reasoning	14	9
Digit Span Bkwd.	5		Information	10	6
Similarities	16	7	Block Design	41	10

This instrument is a standardized assessment of intelligence with a mean of 100 and a standard deviation of 15. The subtest scores are scaled from one to twenty. The average score will rest somewhere between eight and twelve.

### Beck Depression Inventory-II

Nothing significant.

### Incomplete Sentences

The client filled out this form. There was some grandiosity. For example, most women "would lay down and cry but not me."

### MMPI-II

The client filled out this form. From her responses an apparently valid profile was developed. The profile indicates someone who has a tendency to be guarded and rigid in her responses. She showed freedom from stress. The person profiled is inclined to feel badly. She is pessimistic but shows no sensitivity to psychological upsets. She does not be inclined to fit the traditional wifely role, and may prefer outdoor activities. This person appears to be anxious and tense and may perceive herself as an outsider. A woman with this profile may have trouble with nurturing skills.

## SUMMARY

Judy Freeman is seen as a 31-year-old Caucasian female who functions in the borderline range of intelligence. Because of the extreme difference between her Verbal and Performance IQ, the Performance IQ could be a better indicator of her overall functioning than is her Full Scale IQ. At the same time, she does have trouble with word symbols.

This would indicate that she has trouble assimilating verbal directives and probably learns better from hands on demonstrations.

Judy showed no evidence of psychological trauma. She may tend to convert stress to physiological symptoms. She is, by her own admission, a loner and may have trouble forming relationships.

Judy may be able to use words that she does not comprehend. For instance, she verbalized some insight to the baby's problems. Whether she could internalize this into a plan of care would be a different issue.

## DIAGNOSIS

AXIS I: Child Endangerment  
Specific Reading Disability  
AXIS II: Deferred  
AXIS III: None  
AXIS IV:  
AXIS V: GAF = 55

## RECOMMENDATIONS

For this lady to have custody of her child, it is felt she should be able to do the following:

- a. Demonstrate maintenance of a clean home environment;
- b. Be able to demonstrate care for her child;
- c. Cooperate with the requirements of DHS and the Courts.

Lewis Campbell MS  
LPE-I



*Lewis Campbell*

Lewis Campbell, MS. LPE-I

Licensed Psychological Examiner

#82-30EI

**LEWIS CAMPBELL, LPE**  
Pine Bluff Psychological Associates  
3010 W. 28<sup>th</sup> St.  
Pine Bluff AR 71603

MAR 31 2014

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PHONES: 501.771.9910 OR 501.454.7502

FAX: 501.327.5619

**PSYCHOLOGICAL ASSESSMENT REFERRAL FORM**

Caseworker: Alisa Gorden Phone #: 479-394-3100  
Email: Donna.Gorden@arkansas.gov  
Supervisor: Dustin Horn  
Email: Dustin.Horn@arkansas.gov  
Date of referral: 10/05/2009 County: Polk Area: 3  
Court date: 10/05/2009

**CLIENT INFORMATION**

Name: Thomas Freeman DOB: [REDACTED]  
Social Security #: [REDACTED] Race: W Sex: M  
Home Address: [REDACTED]  
Is the psych eval court ordered? Yes  No   
Does client have active case w/ DCFS? Yes  No   
If YES, please specify type of DCFS case:  
protective services  foster care  supportive services   
adoption   
Social history provided by:  client  caseworker

**NOTE: This information is vital for a thorough psychological evaluation**

**REASON FOR REFERRAL:**

To determine the appropriateness of the parents for possible placement with the children involved. To determine any psychological needs of the client in order to better serve the family.

CLAIMANT  
EXHIBIT: 5

Lewis Campbell LPE  
License # 82-30-E  
Training Resources, Inc.  
PO Box 94696  
North Little Rock, AR 72190  
501.771.9910 (phone)  
501.758.7116 (fax)

**PSYCHOLOGICAL EVALUATION**

NAME: Thomas Freeman  
ID: [REDACTED]  
AGE: [REDACTED]  
SEX: Male  
DOB: [REDACTED]

EXAMINER: Lewis Campbell  
TEST DATE: 11/03/2009  
COUNTY: Polk  
TEST SITE: Mena  
CASEWORKER: Alisa Gorden  
PHONE: 479-394-3100

**TESTS ADMINISTERED**

WAIS-III  
Wide Range Achievement Test  
MMPI-II

**REASON FOR REFERRAL**

Thomas Freeman's 7-month old special-needs child, [REDACTED], was taken into custody because she failed to thrive. There were also suggestions of environmental neglect but these were not specific.

**BACKGROUND HISTORY**

Mr. Freeman was raised around Hatfield and finished the 12<sup>th</sup> grade at Hatfield School. He was in special education due to a reading disability.

He states his mother raised him alone, but there was a great deal of love and respect taught in the home.

Mr. Freeman was married before and has two children from a previous relationship. [REDACTED] and [REDACTED]. He married his present wife. They divorced and now they live together again. He has five children from this relationship. [REDACTED]

[REDACTED] and [REDACTED] is in foster care due to failure to thrive. Mr. Freeman could see no reason for this. He could not explain any physical anomalies which would require hospitalization.

His last regular job was at a casino in Oklahoma. He states he worked there for about 18 months before moving back to Polk County to care for his aging mother.

This gentleman was quite congenial. He appeared to have little insight into the present problem. Rapport was easy to maintain. The client has no reading skills and, as a result, the tests were taken orally.

## TEST RESULTS

### WAIS-III

Verbal IQ	88				
Performance IQ	90				
Full Scale IQ	88				
Vocabulary	33	8	Picture Completion	23	13
Digit Span Fwd.	7	6	Matrix Reasoning	12	8
Digit Span Bkwd.	4		Information	14	4
Similarities	21	9	Block Design	31	8

This instrument is a standardized assessment of intelligence with a mean of 100 and a standard deviation of 15. The subtest scores are scaled from one to twenty. The average score will rest somewhere between eight and twelve.

### Wide Range Achievement Test

This instrument was given to assess the client's academic functioning. This test indicates that he reads on the 1<sup>st</sup> grade level and performs mathematical calculations on the 3<sup>rd</sup> grade level.

### MMPI-II

This instrument was given to the client with the aid of a recorded reader. He was asked to respond "True" or "False" to each statement. From his responses an apparently valid profile was developed. The profile gave no indication of significant emotional concerns. It did indicate someone who is inclined to be rigid and defensive.

## SUMMARY

Thomas Freeman is seen as a [REDACTED] Caucasian male who functions intellectually in the low average range. He has a significant learning disability. The large discrepancy between the Similarities subtest on the WAIS-III and the reading subtest on the Wide

Range Achievement Test would indicate that the client has the ability to comprehend terms that he cannot distinguish by the letter symbols.

The client showed no evidence of significant emotional problems. He does appear to be somewhat naive. He is either unaware of the seriousness of his daughter, Emily's, problems or is defensive and in denial about the severity of this problem.

The client appears to be quite embarrassed by his lack of reading skills. He expects to be put down because of this. People working with him should go out of their way to communicate in a language he can understand. The environment should be one on which he would be free to ask questions. At the same time, he would require a high degree of accountability, as he appears to be somewhat deficient in internal motivation.

### DIAGNOSIS

- AXIS I: Specific Learning Disability  
Child Endangerment
- AXIS II: None
- AXIS III: None
- AXIS IV: Lack of adequate employment
- AXIS V: GAF = 55

### RECOMMENDATIONS

There seems to be no psychological reason why this client should not be given custody of his children. For successful reunification, the following conditions must be met:

1. He should be held accountable for finding and maintaining adequate employment and a sufficiently safe and clean domicile for his children.
2. The client should have ongoing parent training. This training should be hands on and depend as little as possible on verbal interaction.
3. The client should comply with the recommendations of DHS and the Court.
4. All people working with this individual should have access to this report.

Lewis Campbell MS  
LPE-I

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*Lewis Campbell*

Lewis Campbell, MS. LPE-I  
Licensed Psychological Examiner  
#82-30EI

**CONTACT**

<b>Contact Date</b> 08/19/2009	<b>Time</b> 09:53 am	<b>Location</b> Face to Face (Home)
<b>Status</b> Completed		
<b>Staff Person Name</b> Alisa Gorden		
<b>Purpose</b> Family Contact - Weekly		
<b>Client/Collateral Participant</b> [REDACTED]	<b>Role</b> Client	
<b>Client/Collateral Participant</b> [REDACTED]	<b>Role</b> Client	
<b>Client/Collateral Participant</b> [REDACTED]	<b>Role</b> Client	
<b>Client/Collateral Participant</b> [REDACTED]	<b>Role</b> Client	

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**CLAIMANT  
EXHIBIT:**

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**Non-Client/Collateral Participant**

Colton - A friend of the family's

**Comments**

Worker went to check on the progress of the house. [redacted] stated to the worker that Judy and Thomas were in town. The family was painting and cleaning. They had also put under pending along the bottom of the trailer. [redacted] was washing dishes in the kitchen. The kitchen was considerably cleaner and there was food in the refrigerator. The family also had a window unit to help cool the house.

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**CONTACT**

<b>Contact Date</b> 08/19/2010	<b>Time</b> 10:30 am	<b>Location</b> Face to Face (DHS Office)
<b>Status</b> Completed		
<b>Staff Person Name</b> Kimberlee Davis		
<b>Purpose</b> Closure Staffing		
<b>Client/Collateral Participant</b>		<b>Role</b>

Arkansas Claims Commission

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**CLAIMANT  
EXHIBIT:**

7

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**Non-Client/Collateral Participant**

Dustin Horn, DCFS Supervisor

**Comments**

Worker discussed case with supervisor. The family has been referred to counseling. They are living in Ft. Smith and there are no other services that the Department can offer them at this time.

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**POLICY IX-B: CHILD DEATH, NEAR-FATALITIES & SIGNIFICANT INJURIES**

MAR 31 2014

07/2009

RECEIVED

The Division of Children and Family Services County Office will immediately (within one hour) notify the appropriate Area Director and the Assistant Director of Community Services and initiate action to ensure the safety of other children in the home when DCFS becomes aware of a child death, near-fatality, or significant injury that may be the result of maltreatment and occurs on an active case or a case that has been active within the past 12 months.

The Assistant Director of Community Services will immediately (within one hour) notify the Division Director who will notify the DHS Deputy Director, Office of Chief Counsel (OCC), and the Department Public Information Officer.

The Division will follow established Department of Human Services policy and procedure governing the reporting of incidents (see DHS Administrative Policy 1090 "Incident Reporting"). The Division will not automatically issue press releases on cases of child fatality, near-fatality, or significant injury but will respond to requests for information as they are received.

Pursuant to Ark. Code Ann. §12-18-103 a near-fatality means an act that, as certified by a physician, places a child in serious or critical condition. As such, the Division will rely on the involved medical facility's designation of the child's condition in determining if a particular incident meets the criteria of near-fatality as defined by law. A serious injury, which is included in the category of near-fatalities, is an injury that may cause death or which is likely to result in substantial permanent impairment. Significant injury means a non-accidental injury requiring hospitalization or the attention of an Emergency Medical Technician, a paramedic, or a physician.

The Division will assist the parents in making funeral arrangements or take other actions deemed necessary by the Area Director.

**PROCEDURE IX-B1: Significant Injury**

07/2009

In the case of significant injury the county office will immediately (within 24 hours or as required by the Director) prepare a written briefing on the situation that caused the significant injury to the child and submit it to the Assistant Director of Community Services. The briefing will be forwarded to the DCFS Director and to the DHS Director's Office when appropriate.

The county office must notify the DHS Communications Director by phone within one hour of the occurrence of incidents that have received or are expected to receive media attention.

**PROCEDURE IX-B2: Near-Fatality**

07/2009

In the case of a near-fatality (or serious injury) the county will immediately (within 24 hours or as required by the Director) prepare a written briefing on the situation that caused the near-fatality (or serious injury) and submit it to the Assistant Director of Community Services who will forward it to the following entities:

- A. CPS Manager
- B. DHS Chief Counsel
- C. DCFS Director
- D. DHS Public Information Officer
- E. DHS Deputy Director over DCFS

The CPS Manager will enter information on the near-fatality (or serious injury) on the tracking log and will request updated information from the counties as needed. Within 72 hours of the near-fatality (or serious injury), the CPS

Manager will arrange a meeting with DCFS staff to ascertain information involving facts surrounding the near-fatality (or serious injury). The meeting will include the following:

- A. DCFS Director
- B. OCC
- C. Area Director
- D. County Supervisor/Investigative Supervisor
- E. FSW
- F. Central Office Personnel Manager
- G. Appropriate staff as needed

The county office must notify the DHS Communications Director by phone within one hour of the occurrence of incidents that have received or are expected to receive media attention.

### **PROCEDURE IX-B3: Child Death Notification and Incident Reporting**

07/2009

All DCFS employees must report an incident that may affect the health and safety of DHS clients, employees, volunteers, and others on DHS premises or while receiving DHS services, and occurrences that interrupt or prevent the delivery of services, to the:

- A. County Supervisor
- B. Area Director
- C. Assistant Director of Community Services
- D. OCC
- E. DCFS Division Director
- F. DHS Director's office

An incident includes the death of a child who was in DHS custody, in a Protective Services or Supportive Services case, or who died under conditions believed to have been caused by child maltreatment. The death of a child, or the sibling, who was the subject of a maltreatment report within the preceding 12 months must also be reported.

County personnel will immediately (within 24 hours or as required by the Director) compile a detailed briefing package, including the briefing summary document and the checklist of documents attached for review, and forward it to the Assistant Director of Community Services. The Assistant Director of Community Services will forward a copy to the CPS Manager. Appropriate field personnel will be in direct contact with the Assistant Director of Community Services in order to develop a clear understanding of the circumstances surrounding the incident. The CPS Manager will arrange a meeting with DCFS staff within 72 hours of the death in order to ascertain to the facts surrounding the child's death. The meeting will include the following:

- A. DCFS Director
- B. OCC
- C. Area Director
- D. County Supervisor/Investigative Supervisor
- E. FSW
- F. Central Office Personnel Manager
- G. Any other needed staff

The Assistant Director of Community Services will notify the Child Welfare Agency Licensing Unit Manager in all cases that involve a child residing in a licensed facility or DCFS Foster Home.

The CPS Manager will be the point person for follow-up and subsequent briefings of the Assistant Director, Division Director, and Deputy Director.

The Employee will:

- A. Complete and transmit the DHS Incident Reporting Screen data fields in IRIS to the DCFS Director's office and the DHS Director's office, along with the CFS-329: Child Death Notification, via the Client Advocate, no later than the end of the second business day following the incident (see DHS Policy 1090).
- B. Submit a follow-up or final IRIS report if information submitted in the initial report is incomplete. The follow-up or final report should be submitted to the DCFS Director and DHS Director's office as soon as the additional information becomes available.
- C. Complete and transmit the DHS Incident Reporting Screen data fields in IRIS (use the Incident Report Information System link on the DHS Gold home page) to the DCFS Director's office and the DHS Director's office, along with the CFS-329, via the Client Advocate, no later than the end of the second business day following the incident (see DHS Policy 1090).
- D. Submit a follow-up or final IRIS report if information submitted in the initial report is incomplete. The follow-up or final report should be submitted to the DCFS Director and DHS Director's office as soon as the additional information becomes available.

The County Supervisor will:

- A. Notify the Area Director.
- B. Notify law enforcement as appropriate.
- C. Report maltreatment to the Child Abuse Hot-line immediately.
- D. Assign a Family Service Worker to go immediately to the home if other children may be there.
- E. Route a briefing memo with the CFS-329: Child Death Notification attached to the Assistant Director of Community Services within 24 hours or by close of business on the next day.
- F. Obtain a copy of autopsy report if one is available and notify parents if an autopsy is done for a child in foster care (The Family Service Worker may be asked to complete this task).

The Area Director will:

- A. Notify the Assistant Director of Community Services, who will in turn notify the DCFS Director immediately by telephone and follow-up with written notification.
- B. Expeditiously provide all information requested by the Child Death Review Committee. Needed information includes but is not limited to:
  - 1) briefing on the family
  - 2) previous or pending child maltreatment allegations
  - 3) previous or current open cases on the child and family
  - 4) services provided
  - 5) medical information
  - 6) mental health information
  - 7) police reports
  - 8) coroner's report
  - 9) toxicology or lab reports
  - 10) autopsy report
  - 11) All risk and safety assessments completed on the child

The Assistant Director for Community Services will:

- A. Notify the DHS Communications Director by telephone within one hour of occurrence if the incident is expected to receive media attention.
- B. Notify the DHS Chief Counsel within one hour of the occurrence.
- C. Forward the briefing memo with the CFS-329 attached to the CPS Manager, the DCFS Director, the DHS Public Information Officer, and to the DHS Deputy Director over DCFS.
- D. Discuss relevant details of the case with the Communications Director to determine the type of information that will be released to the media. Pertinent information that can be released will include disclosable information as provided by the DHS Disclosure Policy (DHS Policy Group 4009).
  - 1) Any information concerning siblings or attorney-client communications will not be released.

The Family Service Worker will:

- A. Immediately go to the home to ascertain the safety of other children remaining in the home and pursue protective custody if necessary.
- B. Provide any services to the family as needed.
- C. Share all information about prior contacts with the family with agency staff and law enforcement who are investigating the case.
- D. Send a copy of the incident report to the Child Death Review Committee Chairperson (CPS Manager) within three business days of the occurrence if the death occurred under one of the following circumstances:
  - 1) The child or sibling was a client in a protective services case during the previous 12 months.
  - 2) The child or sibling was a client in an open, out-of-home placement, or supportive services case.
  - 3) The child or a sibling was a subject of a pending child maltreatment investigation, or an investigation within the preceding 12 months.

The State Police Crimes Against Children Division will:

- A. Investigate child maltreatment allegations according to established procedures.
- B. Coordinate with law enforcement and relinquish their case to them if the possibility of criminal charges is involved and law enforcement prefers to assume responsibility.
- C. Initiate needed affidavits for legal action.
- D. Keep the county office advised of the status of the investigation, including initial notification when appropriate.
- E. Share all information with the parents, offender and victim.

### **PROCEDURE IX-B4: Disclosure of Information on Fatalities**

07/2009

#### **PENDING**

Upon request, the Division shall release the following information to the general public when an investigation is pending on a report of a fatality of a child to the Child Abuse Hotline:

- A. Age, race, and gender of the child
- B. Date of the child's death
- C. Allegations or preliminary cause of death
- D. County and placement of the child at the time of incident leading to the child's death
- E. Generic relationship of the alleged offender to child
- F. Agency conducting the investigation
- G. Legal action taken by the department
- H. Services offered or provided by the department now and in the past
- I. Name of the child

#### **TRUE AND UNSUBSTANTIATED REPORTS**

Upon request, the Department of Human Services shall release the following information to the general public when the investigative determination is true or unsubstantiated on a report of a fatality of a child:

- A. A summary of previous child maltreatment investigations
  - 1) If the previous investigation was determined true, the disclosure shall not include the name of the adult offender until due process is satisfied or the name of any offender who was under 18 years of age at the time of the act or omission of child maltreatment.
  - 2) If the previous investigation was determined unsubstantiated, the disclosure shall not include the name of the person alleged to be the offender.
- B. All risk and safety assessments completed on the child
- C. Information about criminal charges, if known
- D. Any action taken by the Department of Human Services or the Crimes Against Children Division of the Department of Arkansas State Police, including personnel action and licensing action
- E. A summary of the current child maltreatment investigation, including:
  - 1) The nature and extent of the child's present and past injuries

- 2) Medical information pertaining to the death
- 3) The name of the offender in a true report if due process has been satisfied or the offender has been arrested
  - a. However, the name of an alleged offender shall not be disclosed in an unsubstantiated report

**INFORMATION NOT TO BE RELEASED**

Concerning the fatality of a child, the Department of Human Services shall not release:

- A. Information on siblings of the child
- B. Attorney-client communications
- C. Any information if release of such information would jeopardize a criminal investigation

**PROCEDURE IX-B5: Disclosure of Information on Near-Fatalities**

07/2009

**PENDING**

Upon request, the Division shall release the following information to the general public when an investigation is pending on a report of a near-fatality of a child to the Child Abuse Hotline:

- A. Age, race, and gender of the child
- B. Date of the child's near-fatality
- C. Allegations or preliminary cause of the near-fatality
- D. County and placement of the child at the time of incident leading to the near-fatality
- E. Generic relationship of the alleged offender to child
- F. Agency conducting the investigation
- G. Legal action taken by the department
- H. Services offered or provided by the department now and in the past

**TRUE AND UNSUBSTANTIATED REPORTS**

Upon request, the Department of Human Services shall release the following information to the general public when the investigative determination is true or unsubstantiated on a report of a near-fatality of a child:

- A. A non-identifying summary of any previous child maltreatment investigations
- B. A non-identifying summary of the current child maltreatment investigation, including:
  - 1) The nature and extent of the child's present and past injuries
  - 2) Medical information pertaining to the incident
- C. Information about criminal charges, if known
- D. Any action taken by the department or the Crimes Against Children Division of the Department of Arkansas State Police, including personnel action and licensing action

**INFORMATION NOT TO BE RELEASED**

Concerning the near-fatality of a child, the Department of Human Services shall not release:

- A. Information on siblings of the child
- B. Attorney-client communications
- C. Any information if release of such information would jeopardize a criminal investigation

**PROCEDURE IX-B6: Child Death Incident Intake**

07/2009

The Assistant Director of Community Services, upon receiving notification of a child death from field offices, will relay it to the CPS Manager.

The CPS Manager will:

- A. Notify the Manager of the Crimes Against Children Division (CACD) of a child death where the circumstances meet the criteria for the Child Death Review Committee.
- B. Gather information regarding the death of the child to present to the Death Review Committee.

**PROCEDURE IX-B7: Multidisciplinary Child Death Review Committee**

06/2011

The Division of Children and Family Services shall convene a Multidisciplinary Child Death Review Committee for the purpose of reviewing DCFS actions and previous involvement with the child and family in order to identify the actions of DCFS or any other provider that may have had interaction with the child when a child has died under one of the following circumstances:

- A. The child or sibling was a client in a protective service case during the previous 12 months.
- B. The child or a sibling was a client in an open, out-of-home placement, or supportive services case and the death was not due to natural causes.
- C. The child or a sibling was a subject of a pending child maltreatment assessment, or of an assessment within the preceding 12 months.
- D. The DCFS Director requests review.

**COMPOSITION AND DUTIES**

The Multidisciplinary Child Death Review Committee will:

- A. Consist of persons as specified by the DCFS Director that may include but are not limited to the following persons:
  - 1) DCFS Director
  - 2) DCFS Assistant Director, Community Services
  - 3) DCFS Mental Health Specialist
  - 4) Manager of Child Protective Services (Chairperson)
  - 5) A physician representative from Arkansas Children's Hospital
  - 6) A physician representative from Division of Behavioral Health (as appropriate)
  - 7) A representative from the Crimes Against Children Unit of the Arkansas State Police
  - 8) A representative from the Arkansas Child Abuse Rape and Domestic Violence Commission
  - 9) A County Coroner
  - 10) DCFS Executive Staff
  - 11) A representative from the Administrative Office of the Courts
- B. Meet monthly or as needed based on a decision of the Division and Committee.
  - 1) The child-death-briefing packet will be given to each member as the packet becomes available.
  - 2) The committee will be given an agenda prior to the meeting when possible.
- C. Hear and consider all relevant material related to cases scheduled for review.
- D. Recommend to the Director appropriate actions as deemed necessary and desirable to protect other children in the home or other corrective actions.
- E. Utilize their areas of expertise to develop recommendations as to how each provider can improve the services provided to families to ensure that children are safe.
- F. Review the following information:
  - 1) Briefing on the family
  - 2) Previous or pending child-maltreatment allegations
  - 3) Previous or current open cases on the child and family
  - 4) Services provided
  - 5) Medical information
  - 6) Mental health information
  - 7) Police reports
  - 8) Coroner's report
  - 9) Toxicology or lab reports
  - 10) Autopsy report



**PROCEDURE IX-B8: Guidelines for Funeral Arrangements for Children in Out-of-Home Placement**

07/2009

The Family Service Worker will:

- A. Notify the County Supervisor in the child's initiating county and the parent's resident county. The County Supervisor will then obtain the Area Director's approval to make initial funeral arrangements.
- B. Assist parents with funeral arrangements and finances as deemed appropriate and meet with funeral homes to obtain cost estimates. Allowable expenses include customary costs such as a casket, grave opening, flowers, appropriate clothing and a reasonably-priced grave marker.
- C. Receive prior approval from the DCFS Director before contracting for final arrangements.
- D. Upon approval from the DCFS Director make the funeral arrangements with the help of the foster parents if the Division has guardianship or the parents are unable to assume this responsibility.
- E. Use a local Funeral Director.
- F. Consider the religious and cultural patterns of the family.
- G. Pay expenses by routing the CFS-334, Foster Care Authorization for Billing if child has savings, use a DHS Requisition obtained through the DHS-1914 process, or a state Purchasing Card.

RESPONSE TO  
REQUEST FOR PRODUCTION  
NUMBERS 1 AND 7  
FUNERAL HOME RECEIPT

Arkansas Claims Commission

MAR 31 2014

RECEIVED

CLAIMANT  
EXHIBIT:

9

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STATE CLAIMS COMMISSION DOCKET  
OPINION

Amount of Claim \$ 2,500,000.00

Claim No. 13-0880-CC

Thomas & Judy Freeman Claimant  
vs.

Attorneys  
Robert Kelly, Attorney Claimant

DHS/Division of Children and Family Services Respondent  
State of Arkansas

Breck Hopkins, Chief Counsel  
Brenda Jackson, Accts. Payable Respondent  
Rich Rosen, Attorney

Date Filed June 7, 2013

Jerry Berry, Fiscal Officer  
Type of Claim Failure to Follow Procedure & Emotional Distress

FINDING OF FACTS

This claim was filed for failure to follow procedure and emotional distress in the amount of \$2,500,000.00 against the Department of Human Services/Division of Children and Family Services. This matter was heard before the Arkansas State Claims Commission on Thursday, April 10, 2014. The Claimants, Thomas and Judy Freeman, appeared in person with their legal counsel Mr. Robert Kelly, and the Respondent, Department Human Services, Division of Children and Family Services, appeared through its' legal counsel, Mr. Richard Rosen.

The circumstances which led to the filing of this claim are indeed tragic, but the Claims Commission unanimously denies and dismisses the claim.

The Claimants alleged that the Respondent had failed to follow its own procedures for burials and that it had caused great emotional distress to the Freeman family by not allowing them to bury their young child, Emily Cheyenne Freeman. After hearing the testimony of each witness the Claimants called in support of their claim, reviewing the depositions of other witnesses and the exhibits introduced by both parties, the Claims Commission unanimously finds that the Claimants has waived any rights to the child's body under the Arkansas Final Disposition Rights Act of 2009.

Many of the facts were undisputed. Emily Freeman had been removed from the Claimants home by an order of the Circuit Court of Polk County, Arkansas, Juvenile Division, entered November 6, 2009, following a hearing on October 5, 2009, at which the Claimants were present and represented by counsel. This followed an emergency order which had been entered in the same court on August 7, 2009, by which the child was placed in the custody of the Respondent.

Continued

(See Back of Opinion Form)

CONCLUSION

Upon consideration of all the facts, as stated above, Claims Commission unanimously denied and dismissed this claim for Claimant's failure to prove by a preponderance of the evidence any liability on the part of the Respondent.

Date of Hearing April 10, 2014

Date of Disposition April 10, 2014

[Signature] Chairman  
[Signature] Commissioner  
[Signature] Commissioner

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\*\*Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33

The Respondent had been involved with the family and the child through a protective service case prior to the removal of the child from the home. The court found that the child was "dependent-neglected" due to allegations of parental unfitness and neglect due to failure to thrive, and environmental concerns in the home. The Claimants were also specifically ordered to provide the court and the Respondent in writing of any change of mailing address.

The Respondent placed the child in a foster home and the child improved. However, the child was later diagnosed with what was found to be an incurable lung disease and was admitted to Arkansas Children's Hospital. The child's condition did not improve and, after it became apparent the child would not live, it was returned to the home of the foster family for hospice assistance. The child died there of natural causes June 11, 2010.

One of the critical issues of fact was whether the Claimants had abandoned the child within the meaning of the statute. The Commission finds that the child had been abandoned. In reviewing the evidence, the Commission considered several factors, including:

- 1) The decision to place the child in the Respondent's custody was proper under the facts then existing,
- 2) The Claimants did not avail themselves to the opportunities given them to visit the child,
- 3) The Claimants did not comply with the courts directive concerning employment and environmental concerns at their residence,
- 4) During his psychological evaluation, the father stated that he could see no reason for the child being in foster care, or that the child had any anomalies that would require hospitalization of the child and
- 5) After the child was hospitalized at ACH on March 24, 2010, the Claimants only visited with the child one time, for three hours; when they did not show for the child's lung biopsy, they called and said they could not afford the gas; the Respondent arranged a gas card for the Claimants, but the Claimants did not contact the Respondent to pick up the card.

A review hearing was held in the Polk County Circuit Court on May 3, 2010, shortly before the child's death. The court found that the Respondent had made all reasonable efforts to provide the services to achieve the goal of reunification, and that while the parents had partially complied with the case plan, they were still not employed and their home was not "safe or suitable" for the child to live there. Testimony received during the May 3, 2010, hearing confirmed that the Claimants had moved to Fort Smith. The Claimants stated that they were afraid of harassment if they stayed in Polk County and that they thought by moving they might be able to get the juvenile case transferred to Sebastian County. No facts were offered by the Claimants to support their concern that there was a "conspiracy" against them. The Claimants did not report their new address to the court, or to the Respondent, as required by court order.

There was conflicting testimony, including some from members of the Claimants family, about the events surrounding the making of the funeral arrangements and the "visitation" that they attended. Claimants alleged that the Respondent took the child after its death, but testimony showed that the child's body was picked up by the Polk County coroner's office. The Claimants further alleged that the Respondent prevented them from attending the funeral service that was held the day after the visitation, but one of Claimant's own witnesses testified that it was the Polk County Sheriff who told the Claimants that they could not attend the services. It was undisputed that the Claimants did not avail themselves of the statute that would have allowed them to seek court intervention to claim the body. From the testimony, it appeared that the Claimants and their family were given free access to the child's open casket during the visitation periods and took advantage of the offer from a minister for remarks of comfort. From the testimony of the parties in their depositions, and before the commission, the Commission is not convinced that the Claimants had the financial means to pay for the child's funeral.

In her deposition, Mrs. Freeman admitted that she had no problem with the visitation/service at the funeral home; that she was satisfied with the way the child looked in the open casket; that she was satisfied with the way the child was dressed; that the family had been allowed to place personal items in the casket, and that an appropriate announcement had been placed in the newspaper. However, at the hearing, the Claimants alleged that they should be compensated for the "outrageous conduct" of the Respondent in not allowing them to participate in the planning of the funeral and in not surrendering the child's body to them.

The overwhelming evidence shows that, by court order, the Claimants had forfeited their rights to the child's disposition or to assume any responsibility for the funeral arrangements for their child.

**For all the foregoing reasons, the claim is hereby unanimously denied and dismissed.**

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Arkansas  
State Claims Commission  
MAY 27 2014  
RECEIVED

BEFORE THE STATE CLAIMS COMMISSION  
Of The State of Arkansas

THOMAS FREEMAN and  
JUDY FREEMAN, Claimants

V. Claim No. 13-0880-CC

ARKANSAS DEPARTMENT OF HUMAN SERVICES/  
DIVISION OF CHILDREN & FAMILY SERVICES, Respondent

CLAIMANTS' MOTION FOR RECONSIDERATION

This matter was heard before the Commission on April 10, 2014, and the Commission faxed its decision to the Claimants' counsel on April 14, 2014. The Commission denied and dismissed the Claimants' claim based upon its finding "that the Claimants ha[d] waived any rights to the child's body under the Arkansas Final Disposition Rights Act of 2009." Comm'n Docket Opinion.

The Claimants now come and respectfully request that the Commission reconsider its decision in light of a legal question. Specifically, whether under the orders of the Polk County Circuit Court the Respondent had the legal right to give possession and control of the disposition of the child's body to the foster parent over the Claimants' rights to possession and control of their daughter's body. In other words, the Respondent had no legal authority to determine whether or not the Claimants had waived their rights to their daughter's body. Claimants contend in this motion that the Respondent had no such discretion or legal right under the orders of the Circuit Court.

In support of their contention, the Claimants submit the following undisputed facts:

1. The juvenile case involving the Claimants' daughter and all parties to the case were under the jurisdiction of the Polk County Circuit Court. **See Claimant Exh. 3.** In its May 3, 2010 Review Order, the Circuit Court specifically states that it "possesses jurisdiction of the

*parties and the subject matter* before it." ***Id.* at para. 1 (emphasis added).**

2. The Circuit Court specifically ordered the Respondent to "provide services to the [Claimants'] family". ***Id.* at para. 10.**

3. Per the May 3, 2010 Review Order and Alisa Gorden's Court Report, the goal of the case was to be reunification. ***See Claimant Exh. 3 at para. 4 and Claimant Exh. 2 at Sec. IV(G).***

4. At the time it entered its May 3, 2010 Review Order, the Circuit Court was aware that the Claimants' daughter had a chronic lung disease and was in a terminal state of the disease. ***See Claimant Exh. 3 at para. 13 (referencing its April 29, 2010 Order (Respondent's Response to Request for Production, bates label 43, 44)).***

5. Nancy Diffie was the foster parent of the Claimants' daughter. ***See Diffie Dep. at 7:17-19.***

6. After the death of the Claimants' daughter, Nancy Diffie was told by the Respondent that she had the right to control the disposition of the body and that "[she was] told to make whatever plans we wanted to make." ***See Diffie Dep. at 49:10-23 and 50:23-51:2.***

7. Nancy Diffie was told she had the right "because [the Claimants] had not been involved with Emily and come to see her, that basically they had abandoned her the last three months." ***See Diffie Dep. at 49:20-23.***

8. Alisa Gorden was the Respondent's caseworker assigned to the juvenile case. ***See Gorden Dep. at 25:16-18.***

9. After the death of the Claimants' daughter, Alisa Gorden understood that Ms. Diffie "was to make the decisions following the death of Emily," because she "had had Emily in her care for so many months." ***See Gorden Dep. at 85:4-7.***

10. The Respondent's "Guidelines for Funeral Arrangements for Children in Out-of-Home Placement" provides that the Family Service Worker will "[a]ssist parents with funeral arrangements and finances . . . ." **See Claimant Exh. 8 at Procedure IX-B8.**

11. The funeral expenses were billed to Alisa Gorden and paid by the Respondent. **See Claimant Exh. 9.**

**I. THE RESPONDENT HAD NO LEGAL RIGHT TO GIVE POSSESSION AND CONTROL OF THE DISPOSITION OF EMILY'S BODY TO MS. DIFEE OVER THE RIGHTS OF THE CLAIMANTS.**

As of the May 3, 2010 review hearing, the Circuit Court was well aware of Emily's dire condition having entered an order just four days prior giving the Respondent discretion whether to escalate medical treatments and whether resuscitation efforts would be made. **See Respondent's Response to Request for Production, bates label 43, 44.** The Circuit Court would have also been made aware through Ms. Gorden's court report of the issues with regard to the Claimants' visitation with Emily and with regard to the questions about their whereabouts.

Yet, the Circuit Court directed that the case goal would continue to be Emily's reunification with the Claimants and further ordered the Respondent to provide services to the Claimants' family. In fact, the Circuit Court in its Review Order made no findings of abandonment of Emily by the Claimants nor any findings of contempt based upon the Claimants' alleged failure to give notice to it and the Respondent about their moving to Fort Smith.

Very simply, at the time of Emily's death, the Respondent was subject to the Circuit Court's order to provide services to the Claimants. Furthermore, the Respondent's own policy required that it give assistance to the Claimants in the form of funeral arrangements and finances. The Respondent had no authority to circumvent the Circuit Court's jurisdiction as expressed in its order to provide services, nor even as required by its own policy, in order to give Ms. Diffee



possession and control over the disposition of Emily's remains.

More to the point, the Respondent had no legal authority to make determinations that would or could effectively terminate the Claimants' rights as parents to their daughter's body since it was under the Circuit Court's order to provide services to the Claimants. Nevertheless, the Respondent's unilateral decision that the Claimants had abandoned their daughter in effect terminated their parental rights as they related to the disposition of their daughter's body.

In so doing, the Respondent invaded the province of the Circuit Court which had exclusive jurisdiction over the parties and subject matter before it.<sup>1</sup> In exercising equity jurisdiction over minors, a "circuit court has the inherent authority to protect the integrity of the proceedings and to safeguard the rights of the litigants before it." *Ark. Dept. of Human Services v. Shelby*, 2012 Ark. 54, at 4. The Respondent's unilateral decision not only calls in question the integrity of the proceedings in the Circuit Court, it also tramples the Claimants' rights, by favoring one who was not even a party to the litigation before the Circuit Court. And this, in spite of the fact that the Claimants' parental rights over Emily had not been terminated by the Circuit Court.

The Respondent's contention that the Claimants had waived any right to control the disposition of their daughter's body is nothing more than a post hoc rationalization of its decisions to deny the Claimants' lawful request for possession and control of Emily's body. The undisputable evidence in this case shows that the Respondent's decision to favor Ms. Diffie over the Claimants was made after Emily's death and after the Claimants right to Emily's body had vested pursuant to the Final Disposition Rights Act of 2009.

Any notion that the Respondent was following that Act in its decision to favor Ms. Diffie

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<sup>1</sup> Under the Arkansas Juvenile Code of 1989, Arkansas circuit courts have "exclusive, original jurisdiction of and shall be the sole court for . . . proceeding in which a juvenile is alleged to be dependent or dependent neglected. . . ." § 9-27-306(a)(1)...(B), including proceedings for the termination of parental rights § 9-27-306(a)(1)(E).

over the Claimants is dispelled when the Claimants' forfeited rights should have passed to next qualifying person listed in the Act. **See Ark. Code Ann. § 20-17-102(e)(1)**. Pursuant to the Act, the Claimants' rights would have passed to surviving siblings and then to surviving grandparent. **See Ark. Code Ann. § 20-17-102(d)(1)(E), (F)**. Alisa Gorden's deposition testimony shows that there was a grandfather in the home at the time Emily was removed. **See Gorden Dep. at 13:6-7**. If the Respondent were intent on following the Act, then an effort should have been made to determine whether the grandfather was qualified or whether there was another qualified person able to exercise the rights allegedly forfeited by the Claimants. However, the Respondent made no such effort, but rather, unilaterally decided to allow Ms. Diffie to exercise those rights over the rights of Claimants.

The Respondent unilaterally denied the Claimants the right to control the disposition of their daughter's body and refused to provide them services that it ultimately provided to Ms. Diffie. The contention that the Claimants were unwilling to assume the financial responsibility for the funeral costs is nothing more than a red herring as the Respondent's own policy would have provided the Claimants with assistance in not only making funeral arrangements, but with the finances as well. **See Claimant Exh. 8 at Procedure IX-B8**.

The Respondent was as much subject to the orders of the Circuit Court to provide services as were the Claimants to provide notice of any residence changes to the Court and to the Department.<sup>2</sup> Fundamental fairness would require that all parties in litigation be held to the same standards of compliance to court orders. Otherwise, there is little basis for justice.

The preponderance of the evidence in this case shows that the Respondent without legal authority willfully and wantonly denied the Claimants the right to control the disposition of their daughter's body; and, consequently, the Claimants have suffered severe emotional distress as a

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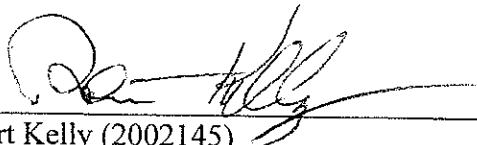
<sup>2</sup> The Respondent was able to contact the Claimants and inform them of Emily's death on the same day of her death.

result of the Respondent's actions and are entitled to fair and just compensation.

The Claimants respectfully request that the Commission reconsider its decision in light of the legal question regarding the Respondent's legal authority to favor Ms. Diffie over them and to deny them their legal rights.

Respectfully submitted,

Judy Freeman, Claimant  
Thomas Freeman, Claimant

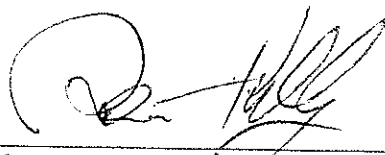
By:   
Robert Kelly (2002145)  
Attorney for Plaintiff

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401 Lexington Ave.  
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**CERTIFICATE OF SERVICE**

I, Robert Kelly, hereby certify that on May 23, 2014, I served a true and correct copy of the foregoing Claimant Judy Freeman's Answers to Respondent's First Set of Interrogatories and Requests for Production, including an electronic copy, by U.S. Mail addressed to:

Richard Rosen, Esq.  
Office of Policy and Legal Services  
P.O. Box 1437, Slot S260  
Little Rock, Arkansas 72203

  
Robert Kelly

Arkansas  
State Claims Commission

MAY 30 2014

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BEFORE THE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

THOMAS FREEMAN and  
JUDY FREEMAN

CLAIMANTS

VS.

CLAIM #13-0880-CC

STATE OF ARKANSAS,  
DEPARTMENT OF HUMAN SERVICES,  
DIVISION OF CHILDREN AND FAMILY  
SERVICES

RESPONDENT

**DCFS Response to Claimant's Motion for Reconsideration**

Comes now Respondent, the State of Arkansas, Department of Human Services, Division of Children and Family Services ("DCFS"), and submits the following response to Claimant's Motion for Reconsideration of the Commission's Order dated April 10, 2014:

1. Claimants' motion seeks reconsideration of the Commission's Order dated April 10, 2014, denying their claim for "failure to prove by a preponderance of the evidence any liability on the part of the Respondent."
2. Per Rule 7.1, "Petitions for Re-Hearing and/or Motions for Reconsideration will only be entertained if they set forth new or additional evidence which was not available to the moving party at the time of the scheduled hearing."
3. Claimants' motion, however, fails to set forth any new or additional *evidence* as required by Commission Rule 7.1. Instead, the motion asserts only additional *argument* in support of the previously denied claim for damages. Consequently, Claimants' motion fails to meet the requirements for reconsideration under the Rules and should summarily be denied.

4. The motion should also be denied because the Arkansas Final Disposition Rights Act, Ark. Code Ann. §20-17-10, clearly provides for forfeiture of claimed burial disposition rights under the factual circumstances found by the Commission in its Order. Per the complaint filed herein, Claimants asserted rights to disposition under Ark. Code Ann. §20-17-102. However, the same statute provided for forfeiture of those rights under the factual circumstances found by the Commission in its Order. Thus, the Commission correctly found that Claimant's forfeited their rights to disposition under Ark. Code Ann. §20-17-102.

5. In addition, Claimants' current posit that the grandfather might have paid for the funeral is *contrary to the testimony presented by the Claimants' themselves*. Specifically, Claimant Judy Freeman testified that neither the Freemans *nor their family members* made any arrangements for disposition of Emily's body before her burial (JF depo 49/2-11). Claimant Thomas Freeman testified that none of his brothers, sisters or *any grandparents* made any arrangements or any inquiries into the disposition, burial, funeral, or any marker for Emily (TF depo 91/20-24). Thus, Claimant's arguments otherwise are contrary to the evidence and should be rejected.

5. For the reasons stated above, DHS/DCFS respectfully moves that the motion for reconsideration be denied pursuant to Rule 7.1 and this claim be dismissed, as previously ordered by this Commission.

Respectfully submitted,

ARKANSAS DEPARTMENT  
OF HUMAN SERVICES  
Division of Children and Family Services

By: Richard Rosen

Richard Rosen, AR Bar #97164  
Office of Policy and Legal Services  
P.O. Box 1437, Slot S260  
Little Rock, Arkansas 72203  
telephone # (501) 320-6334  
rich.rosen@dhs.arkansas.gov

**CERTIFICATE OF SERVICE**

This is to certify that I mailed a copy of the foregoing response, postage prepaid, this 30<sup>th</sup> day of May, 2014 to:

Robert Kelly, Esquire  
9 Court Street  
Ft. Smith, AR 72901

Richard Rosen  
Rich Rosen

STATE CLAIMS COMMISSION DOCKET  
OPINION

Amount of Claim \$ 2,500,000.00

Claim No. 13-0880-CC

<u>Thomas &amp; Judy Freeman</u>	Claimant	<b>Attorneys</b>	<u>Robert Kelly, Attorney</u>	Claimant
vs.			<u>Breck Hopkins, Chief Counsel</u>	
<u>DHS/Children &amp; Family Services</u>	Respondent		<u>Rich Rosen, Attorney</u>	
<u>State of Arkansas</u>			<u>Brenda Jackson, Accts. Payable</u>	Respondent
			<u>Jerry Berry, Fiscal Officer</u>	
Date Filed <u>June 7, 2013</u>		Type of Claim	<u>Failure to Follow Procedure &amp; Emotional Distress</u>	

FINDING OF FACTS

The Claims Commission hereby unanimously denies Claimant's "Motion for Reconsideration" for the Claimant's failure to offer evidence that was not previously available. Therefore, the Commission's April 10, 2014, order remains in effect.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously denies Claimant's "Motion for Reconsideration" for the Claimant's failure to offer evidence that was not previously available. Therefore, the Commission's April 10, 2014, order remains in effect.

Date of Hearing June 12, 2014

Date of Disposition June 12, 2014

Richard Mays Chairman  
Bill Lancaster Commissioner  
Bernard Commissioner

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BEFORE THE STATE CLAIMS COMMISSION  
Of The State of Arkansas

THOMAS FREEMAN and  
JUDY FREEMAN, Claimants

V. Claim No. 13-0880-CC

ARKANSAS DEPARTMENT OF HUMAN SERVICES/  
DIVISION OF CHILDREN & FAMILY SERVICES, Respondent

Arkansas  
State Claims Commission  
JUL 14 2014  
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NOTICE OF APPEAL TO THE ARKANSAS GENERAL ASSEMBLY

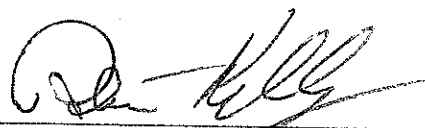
Notice is hereby given that the Claimants, Thomas Freeman and Judy Freeman, appeal to the Arkansas General Assembly from the Claims Commission's decision rendered in this case on April 10, 2014, and its subsequent denial of Claimants' Motion for Reconsideration dated June 12, 2014, and received by the Claimants on July 3, 2014.

This appeal is taken pursuant to Ark. Code Ann. § 19-10-211.

Dated this 11<sup>th</sup> day of July, 2014.

Respectfully submitted,

Judy Freeman, Claimant  
Thomas Freeman, Claimant

By:   
Robert Kelly (2002145)  
Attorney for Plaintiff

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