

ARKANSAS STATE CLAIMS COMMISSION

MAY 15 2012

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BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

- Mr. Mrs. Ms. Miss

Maurice "Trey" Clark, III, as Special Administrator of the Estate of Maurice "Beau" Clark, Jr., deceased vs. State of Arkansas, Respondent DHS/Division of Youth Svcs.

Do Not Write in These Spaces Claim No. 12-0819-CC Date Filed May 15, 2012 Amount of Claim \$ 1,000,000.00 Fund DHS/DYS

Wrongful Death

COMPLAINT

Maurice "Trey" Clark, III, as Special Administrator, the above named Claimant, of 820 N. Jackson Little Rock Arkansas 72205 501-993-3702 County of Pulaski represented by Law Office of David H. Williams & Brian Brooks 212 Center Street Little Rock AR 72201 501-372-0038 501-376-9347 P.O. Box 603 Greenvillage AR 72538 501-733-3487 State agency involved: DHS - Division of Youth Services Amount sought: \$1,000,000.00 Month, day, year and place of incident or service: June 30, 2009 Explanation: please see attached.

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? (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 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. Maurice "Trey" Clark, III, as Special Administrator (Print Claimant/Representative Name) Administrator (Signature of Claimant/Representative)

SWORN TO and subscribed before me at Little Rock Arkansas

(SEAL) on this 15 day of May 2012 (Date) (Month) (Year)

SFI- R7/99

My Commission Expires Charlotte K. Mallion (Notary Public) NOTARY PUBLIC STATE OF ARKANSAS PULASKI COUNTY My Commission Expires 5-24-2014 (Day) (Year)

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 1,000,000.00

Claim No. 12-0819-CC

Maurice "Trey" Clark, III Claimant
Special Administrator of the Est. of
Maurice "Beau" Clark, Jr., deceased
DHS/Children & Family Services
State of Arkansas Respondent

Date Filed May 15, 2012

Attorneys
David H. Williams, Attorney Claimant

Breck Hopkins, Chief Counsel
Carmen Mosley-Sims, Attorney Respondent
Brenda Jackson, Accts. Payable
Jerry Berry, Fiscal Officer
Type of Claim Wrongful Death

FINDING OF FACTS

This claim was filed for Wrongful Death in the amount of \$1,000,000.00 against the DHS/Division of Youth Services.

Present at an oral hearing on the Respondent's "Motion to Dismiss" on November 14, 2012 was the Claimant, represented by David Williams and the Respondent, represented by Carmen Mosley-Sims, Assistant Attorney General.

The Claims Commission hereby unanimously denies and dismisses the Respondent's "Motion to Dismiss." Therefore, this claim will proceed to hearing as scheduled.

IT IS SO ORDERED.

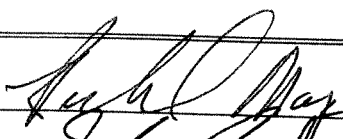

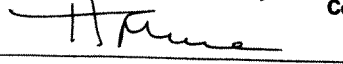
(See Back of Opinion Form)

CONCLUSION

Upon consideration of all the facts, as stated above, the Claims Commission hereby unanimously denies the Respondent's "Motion to Dismiss." Therefore, this claim will proceed to hearing as scheduled.

Date of Hearing November 14, 2012

Date of Disposition November 14, 2012


Chairman

Commissioner

Commissioner

**Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.

LAW OFFICE OF DAVID H. WILLIAMS, PLLC
TRIAL LAWYER

Preserve the American Jury

212 CENTER STREET
CENTRE PLACE, 2ND FLOOR
LITTLE ROCK, ARKANSAS 72201

www.dhwlaw.net

TELEPHONE
(501) 372-0038
FAX (501) 376-9347
Toll Free (877) 492-3030

Of Counsel
Andy Payne
Payne Mitchell Law Group
Licensed in Texas and Arkansas
www.paynemitchell.com

David H. Williams, Attorney
david@dhwlaw.net
Charlotte Mallion, Paralegal
charlotte@dhwlaw.net
Kate Lachowsky, Attorney
kate@dhwlaw.net
Andrea Heredia, Office Manager
andrea@dhwlaw.net

Maurice "Trey" Clark, III as Special Administrator
of the Estate of Maurice "Beau" Clark, Jr., deceased

Claimant

vs.

State of Arkansas

Respondent

Explanation for Arkansas Claims Commission Complaint

On May 1, 2009, Antonio Terry was granted an early release from residential custody at Arkansas Juvenile Assessment and Treatment Center ("AJATC"), the DYS facility located in Alexander, Arkansas, against the strong opposition of his counseling team. The team warned of Terry's violent, sociopathic tendencies and history. The warning should have been heeded because on June 30, 2009, 67-year-old Maurice "Beau" Clark, Jr., was robbed at gunpoint and killed by Antonio Terry and three of Terry's cousins during an invasion of Mr. Clark's home at 7 Lark Place in Little Rock, Arkansas. Mr. Clark, a retired electric lineman, father of three and grandfather of four, was praised as a stabilizing force in the community who looked out for his neighbors. Antonio Terry shot Mr. Clark in the head with a .22-caliber rifle. Little Rock police contended that the four teens stole two guns, a flat-screen television, and Mr. Clark's black Chevrolet Cavalier. Terry was charged with capital murder, theft of property and fleeing. In August 2010, he was sentenced to 65 years in prison by Circuit Judge Herb Wright.

Residential services for AJATC are provided by G4S Youth Services, LLC, a private company. Terry's AJATC treatment and services were managed by the Serious and Violent Offender Reentry Initiative ("SVORI") case coordinator. This was Terry's third commitment to DYS at age 16. His prior charges included residential burglary, theft of property, terroristic threatening, third degree assault, disorderly conduct and unauthorized use of a vehicle, yet he was still released "against the recommendations of the Treatment Team." Jacobia Twiggs,

Placement and Intake Coordinator at DYS, made the decision to release him from residential custody into community-based treatment.

According to the Case Management Report by Tommy Branch, SVORI Case Coordinator within DYS, while Terry was on aftercare, he was on GPS monitoring. However, Terry cut off the ankle bracelet so he would not be able to be tracked. When Mr. Branch followed up with Terry's monitoring worker Gerald Johnson, Mr. Branch was told that no repercussions existed for cutting the ankle bracelet off. Mr. Johnson went on to say that all his team would do is put another monitoring strap on Terry. On May 27, 2009, just a month prior to Mr. Clark's death, Mr. Branch received a phone call from Terry's mother who believed Terry "was out of control" and that "we need to do something with him." Terry was threatening to kill someone; he stated "if I had a gun then I would blow everybody mother F----- head off." In an emergency meeting called by Mr. Branch, it was determined that Terry had been stealing from his minister.

Similarly, on June 15, 2009, just two weeks before Terry killed Mr. Clark, a meeting between Terry, Terry's mother, Mr. Branch, and Steve Nawojczyk, the Staff Development and Training Administrator, took place in which Terry's mother explained her concerns about Terry "being out and that she [Terry's mother] was unable to control him due to his not being home and him being on drugs." According to Mr. Nawojczyk's Memorandum to Mr. Angel on July 20, 2009, Mr. Branch and Mr. Nawojczyk told Terry's mother that the only option was a revocation request from the courts. They went on to say that if Terry was not compliant, they [Mr. Branch and Mr. Nawojczyk] would petition the court for revocation. Also on June 15, 2009, Mr. Nawojczyk ordered mandatory weekly drug testing and anger management sessions for Terry. Clearly, Terry should never have been released early from his treatment program.

Thus, after his early release against the strong opposition of the G4S Treatment Team, Terry violated the terms of his release by cutting off his ankle bracelet, his mother reported to Tommy Branch that Terry said, "if I had a gun then I would blow everybody mother F----- head off," the DYS Community Care group learned that Terry stole from his minister, and Terry's mother told them he was out of control. In a July 20, 2009 memo from Steve Nawojczyk to Ron Angel, he reports telling Terry's mother that the only option for getting Terry off the streets is a revocation request from the courts in response to her pleas that Terry was back on drugs and out of control. Yet, DYS released Terry into the community and allowed him to remain there without any consequences until he murdered Mr. Clark.

The likely reason for the early release that resulted in the murder was to clear out bed space.

At a June 2010 hearing to determine whether Terry should be tried as an adult, Judge Wright criticized the state Youth Services Division, which administers the juvenile-justice system, saying the agency had failed Terry by releasing him early from a youthful-offender lockup. Terry had served 3 ½ months in a juvenile-detention center for burglary and theft. He was released early, despite numerous recommendations that he needed to spend at least eight months in the center's treatment programs. Judge Wright stated that juvenile-court Judge Wiley Branton had "begged" youth services officials to put Terry in long-term detention so he could undergo therapy, counseling and education. Juvenile-court judges can only recommend detention; they cannot order it.

With felony convictions for theft and burglary, misdemeanor assault and terroristic threatening in the four years before Mr. Clark's killing, Terry had been through three

detentions, one for almost a year. He had been on probation twice and was in an intensive supervision-release program at the time of Mr. Clark's slaying. On January 21, 2009, after being charged with residential burglary and theft of property on December 17, 2008, Terry appeared in front of Judge Branton who stated, "This is the juvenile's third DYS commitment, and he has apparently learned nothing positive...in his latest burglary offense, this juv[enile] paired up with another chronically delinquent juv[enile]. He did not comply with his DYS aftercare, as related by Felicia Carter. This juv[enile] is still in need of substantial rehabilitation and a long-term DYS commitment."

Terry's therapists recommended against his release, and Terry's mother complained that her son was a "walking time bomb" after he resumed drug use and associated with people of bad character after his release. She said the youth agency, part of DHS, had ignored her requests for help in getting him into rehabilitative services.

After learning that Terry murdered Mr. Clark, Ron Angel, Director of the Division of Youth Services, initiated an investigation into the circumstances leading to Terry's release from residential custody. On July 16, 2009, Mr. Angel called a meeting of several of his staff members who he believed had knowledge regarding Terry's release, including Kim Lukett, DYS Assistant Director for Residential Services, the aforementioned Tommy Branch, SVORI Case Coordinator within DYS, the aforementioned Jacobia Twiggs, Placement and Intake Coordinator within DYS, and Elbert Grimes, DYS Assistant Director for Community-Based Services. In this meeting, when Ron Angel asked staff members if anyone had knowledge that the G4S treatment team voiced concerns about the release of Terry prior to his release, all responded in the negative.

Shortly after the July 16, 2009, meeting between Mr. Angel and his staff, Mr. Angel was approached by staff member Tommy Branch and informed that staff member Jacobia Twiggs was aware of concerns voiced by the G4S treatment team regarding Terry's release. Mr. Branch reported that when he went to get certain paperwork signed for Terry's release, Timothy Johnson of G4S specifically voiced concerns about Terry being released. Mr. Branch further reported to Mr. Angel that before he left Mr. Johnson's office, he called Ms. Twiggs and informed her of Mr. Johnson's concerns. Mr. Branch reported that Ms. Twiggs told him to go ahead and get the paperwork signed. This prompted Mr. Angel to interview several witnesses individually, including Mr. Branch, and to collect statements from them. During this time, Mr. Angel also met with Ms. Twiggs and asked her whether she had knowledge of the concerns voiced by the treatment team prior to Terry's release. Ms. Twiggs denied having any such knowledge.

After reviewing the witness statements, Mr. Angel concluded that Ms. Twiggs had not been truthful in her statements about whether she had knowledge of concerns raised by the treatment team prior to Terry's release into aftercare. Mr. Angel then met with DHS Director John Selig, DHS Deputy Director Steve Jones, Breck Hopkins from DHS' Office of Chief Counsel, and others, and the group discussed options for possible disciplinary measures. Mr. Angel also determined that Mr. Branch had been untruthful in the July 16, 2009, meeting by failing to acknowledge that prior to Terry's release into aftercare, Mr. Branch and Ms. Twiggs were made aware of concerns raised by the G4S treatment team about Terry's release. However, Mr. Angel did not discipline Mr. Branch because he came to Mr. Angel immediately after the meeting concluded and acknowledged that he and Ms. Twiggs had such information.

On July 23, 2009, Mr. Angel held a meeting with Ms. Twiggs in his office where he notified her that he was considering disciplinary action against her. Mr. Angel also informed Ms. Twiggs that he would meet with her again on July 27, 2009, for her to provide any rebuttal or extenuating factors. During this period, Mr. Angel consulted with Melissa Nickols, who works in IT for DYS, and asked Ms. Nickols to obtain the release summary for Terry from RiteTrack, the computer database for DYS. Mr. Angel received a document providing the information stored in RiteTrack relating to the requested report and it showed that it had been electronically "signed" in RiteTrack by Ms. Twiggs on April 30, 2009, at 8:33 p.m., the day prior to Terry's release. Ms. Twiggs had made an entry stating that Terry

"is being released against the recommendations of the Treatment Team. He has a serious history of criminal behavior and associations, including gang involvement (Folk Nation). Although he does seem to want to make changes to become a more productive citizen, he continues to demonstrate criminal thinking with his covert behaviors and noncompliance with rules. A.T. [Terry] needs to make further improvements in these areas if he is going to be able to progress into a functioning citizen. He is still believed to be a risk to the community and himself at this time."

Mike Cormier, who works for DHS contractor Handel Information Technologies on RiteTrack, and Melissa Nickols subsequently confirmed to Mr. Angel that a person could not change the information stored in RiteTrack after they closed the document. Thus, Ms. Twiggs' entry into RiteTrack demonstrates that she had knowledge that Terry was being released against the recommendations of his treatment team.

On July 27, 2009, Mr. Angel met with Ms. Twiggs and Mr. Lockett. Ms. Twiggs provided her rebuttal of the evidence Mr. Angel presented in the July 23, 2009, meeting. She provided her rebuttal verbally, as well as in writing, in the form of emails in support of her position that there was no written communication between Ms. Twiggs, Ms. Carter, or any G4S staff concerning Terry's release. Ms. Twiggs again told Mr. Angel that she did not have any specific knowledge of concerns regarding Terry's release into aftercare prior to the release.

Following this meeting, Mr. Angel met with Mr. Selig, Mr. Lockett, Mr. Hopkins, and others, and Mr. Angel briefed them on the outcome of the disciplinary interview with Ms. Twiggs and the conclusions he reached regarding her continued falsification regarding Terry's release against the recommendations of the treatment team. Ultimately, Mr. Angel came to the conclusion that he could no longer trust Ms. Twiggs, and he terminated her employment. Mr. Angel noted in his July 23 and 30, 2009, letters to Ms. Twiggs that she was being terminated for violating the minimum conduct standards for DHS employees. In his July 23, 2009, letter, Mr. Angel explained that Ms. Twiggs was asked three times whether she knew about any concerns from the treatment team regarding Terry's release and three times she replied in the negative. Mr. Angel also explained in that same letter that Ms. Twiggs failed to consider appropriate factors in determining to release Terry and eight other juveniles.

Despite this being Terry's third commitment to DYS at age 16, and having such charges as residential burglary, theft of property, terroristic threatening, third degree assault, disorderly conduct and unauthorized use of a vehicle, he was released "against the recommendations of the Treatment Team" because DYS needed bed space. Additionally, numerous troubling statements were made by personnel who worked directly with Terry. For instance, Felicia Carter, a SVORI case coordinator, stated that Terry "was not ready to be released. [He] had some criminal thinking areas that required additional intervention. I [Ms. Carter] voiced my concerns to my immediate supervisor and Assistant Director. However, during this time, DYS

was releasing a massive amount of juvenile[sic]; therefore [Terry] was chosen to be released.” Similarly, in Jacobia Twiggs’ Affidavit, she stated “AJATC census was 141, Mr. Angel wanted to ‘empty’ the juvenile detention centers as well as reduce AJATC’s census.” But for DYS’s gross negligence, Mr. Clark would be alive today.

Maurice “Trey” Clark, III, as Special Administrator, brings this claim for the benefit of Maurice “Beau” Clark, Jr.’s estate and his wrongful-death beneficiaries due to negligence on the part of the Arkansas Department of Human Services Division of Youth Services and its employees and agents in the decision to release Terry that was a proximate cause of the death of Maurice “Beau” Clark, Jr., and for all damages allowable under AMI (Civil) 2216, including Maurice “Beau” Clark, Jr.’s loss of life, reasonable value of funeral expenses, conscious pain and suffering, and medical expenses attributable to the fatal injury.

Please review the attached exhibits:

Exhibit A: Declaration of Ron Angel with witness statements from Elbert Grimes, Tommy Branch, Felicia Carter, Steve Nawojczyk, Dr. Darrin Kirkendall, Timothy Johnson, and Todd Speight;

Exhibit B: Declaration of Mike Cormier with the April 2009 RiteTrack Discharge/Transfer Summary for Antonio Terry;

Exhibit C: Selected pages of the deposition of Tommy Branch with Exhibit 9 to his deposition;

Exhibit D: Affidavit of Jacobia Twiggs;

Exhibit E: Selected pages of the deposition of Todd Speight;

Exhibit F: Selected pages of the deposition of Elbert Grimes;

Exhibit G: Selected pages of the deposition of Ron Angel with Exhibit 7 to his deposition; and

Exhibit H: Correspondence between Mr. Angel and Ms. Twiggs

BEFORE THE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

ARKANSAS STATE
CLAIMS COMMISSION

OCT 05 2012

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CLAIMANT

MAURICE "TREY" CLARK, III,
as Special Administrator of the Estate of
MAURICE "BEAU" CLARK, JR., deceased

VS.

CLAIM #12-0819-CC

STATE OF ARKANSAS
DHS/DYS

RESPONDENT

RESPONDENT'S MOTION TO DISMISS THE CLAIM

Respondent the Arkansas Department of Human Services (DHS or "the Agency") Division of Youth Services (DYS or "the Division"), by and through counsel Carmen M. Mosley-Sims, states as follows as its motion to dismiss Claimant's claim, pursuant to Ark. R. Civ. Proc. 12(b)(6).

1. Claimant filed the above-captioned claim on or about May 15, 2012. This cause of action, as evidenced by the caption of the case, is a survivor action pursuant to Ark. Code Ann. §16-62-101.
2. Taking all of Claimant's factual assertions in the Claim as true, it is clear that the essential elements of the claim cannot be met.
 - a. The Division breached no duty to Mr. Clark in releasing the juvenile A.T. DYS' actions placed Mr. Clark in no more danger than any other member of the general public, and DYS had no special relationship to Mr. Clark or knowledge of information with respect to Mr. Clark which would create a duty to warn or protect him upon the release of A.T. Moreover, DYS did not breach any established standard in weighing the various considerations in making its release decision. Claimant's only assertion is that DYS did not follow the

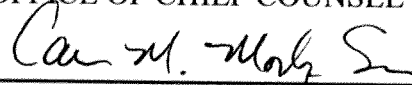
recommendations of its contracted residential provider. This fact does not establish negligence per se, nor does it create a duty to Mr. Clark which did not previously exist.

- b. Even if DYS had breached a duty to Mr. Clark in releasing the juvenile A.T., that action was not the proximate cause of Mr. Clark's death. As admitted in Claimant's claim, Mr. Clark was killed two months after the release through the deliberate and intentional acts of a third party – Antonio Terry, who pled guilty to and is currently incarcerated for Mr. Clark's murder. Those acts constitute a superceding cause for which DYS bears no liability. While it is undisputed that, had DYS not released A.T., Antonio Terry would not have committed the murder, Mr. Clark's death was not the result of a natural, foreseeable, and unbroken chain of events caused by the release.
3. Claimant suggests in his claim that DYS should have revoked the juvenile A.T.'s aftercare at some point after May 15, 2012. Even if DYS were under an affirmative obligation to exercise its authority to petition for revocation of aftercare, the clear and unequivocal law at the time did not permit revocation in A.T.'s case. DYS cannot be held liable for its failure to take an action it had no authority to take.
4. It is the public policy of the State of Arkansas to hold state officials harmless in the exercise of their discretion with respect to the release of individuals convicted or adjudicated for criminal offenses, as evidenced by Ark. Code Ann. §19-10-204(b)(1)(A)(iii). Although this statute does not specifically mention the Division of Youth Services, the principles underlying this denial of jurisdiction hold true in this case, and the Commission should decline to award damages which contravene public policy.

WHEREFORE, for the foregoing reasons, the DHS Division of Youth Services respectfully requests the Arkansas Claims Commission to dismiss the claim of the Estate of Maurice "Beau" Clark, Jr., in its entirety and with prejudice.

Respectfully submitted,

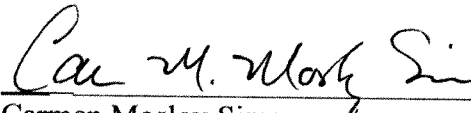
ARKANSAS DEPARTMENT
OF HUMAN SERVICES
OFFICE OF CHIEF COUNSEL



Carmen Mosley-Sims
Attorney – Bar #2003216
P.O. Box 1437, Slot S260
Little Rock, Arkansas 72203
Telephone # (501) 320-6295

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing Response on David H. Williams, 212 Center Street, Little Rock, AR 72201, by e- this 4th day of October, 2012.



Carmen Mosley-Sims
Attorney

ARKANSAS STATE
CLAIMS COMMISSION

OCT 05 2012

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BEFORE THE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

MAURICE "TREY" CLARK, III,
as Special Administrator of the Estate of
MAURICE "BEAU" CLARK, JR., deceased

CLAIMANT

VS.

CLAIM #12-0819-CC

STATE OF ARKANSAS
DHS/DYS

RESPONDENT

**RESPONDENT'S BRIEF IN SUPPORT
OF MOTION TO DISMISS THE CLAIM**

The death of Maurice "Beau" Clark, Jr., was an undeniable tragedy. Mr. Clark was shot needlessly by four young men who invaded his home in southwest Little Rock in late June 2009. The crime not only took Mr. Clark's life, but altered the lives of those four young men, and the families of everyone involved. The staff and management of the Division of Youth Services (DYS) were especially saddened to learn that one of the offenders was one of its own youth – a juvenile released two months previously from residential treatment, and for whom extensive efforts were being made to help him make positive, constructive choices in the community.

It is understandable that Mr. Clark's family, in their anger and distress over the crime, would seek recompense from somewhere. The murderers and their families lack the resources to make a lawsuit against them meaningful. They have, therefore, chosen to pursue this claim against DHS/DYS to gain access to the public coffers. For the reasons set out in this brief, the claim should be dismissed in its entirety.

FACTUAL HISTORY

On a motion to dismiss, the facts as set out in the initial pleading are taken as true, while conclusions of law and generalities are not admitted. *Nelms v. Morgan Portable Bldg. Corp.*, 305

Ark. 284, 288, 808 S.W.2d 314, 316 (1991). The factual assertions as set out in Claimant's claim and attachments are therefore admitted for the purpose of this motion only.¹ Conclusions of law and generalities, however, are not admitted.²

The relevant facts, as set out in Claimant's claim and admitted for the purpose of this motion are as follows: On Tuesday, June 30, 2009, between 1:00 and 2:00 p.m., four young men – all cousins – broke into the home of Beau Clark in the Baseline neighborhood of Little Rock. One of the men carried a rifle and shot Mr. Clark in the arm and in the face before all four fled the scene in Mr. Clark's black Chevrolet Cavalier. Once the four offenders were apprehended, it was determined that Antonio Terry (hereinafter "Terry"), the man who carried the gun and shot Mr. Clark, was on aftercare with the Division of Youth Services. Specifically, Terry was a participant in a grant-funded program called SVORI, through which DYS offered extensive wrap-around services following release to assist juvenile offenders in reintegrating to their community.³

Terry, then 16 years old, had been released two months prior to the crime. At the time of his release, Terry had begun making progress in treatment, and his treatment team objected to his release. DYS had received an influx of commitments of juveniles who needed to begin treatment, however, and so the clinical staff were asked to select juveniles whose treatment could be

¹ If this matter goes to hearing, DYS intends to put forth extensive evidence regarding the foreseeability of the murder at the time the juvenile A.T. was released, the protocols that were followed by DYS staff in releasing him and other juveniles, the culpability and involvement of the other men who committed the murder, and other relevant factual matters.

² DYS denies that the division or any of its staff were negligent in releasing A.T., for example. Other generalities and conclusions of law which are disputed will be addressed in this brief.

³ SVORI stands for the Serious and Violent Offender Re-Entry Initiative, a nationwide program which allowed grantees in each state to set their own inclusion criteria. SVORI was a program for community-based services and did not affect length of stay in residential treatment. Despite its name, in Arkansas the SVORI program for juveniles was not only for youth who had committed serious or violent offenses. The eligibility criteria for the program included youth who had committed serious and violent crimes (A or Y class felonies), multiple recidivists, and/or youth who were at high risk of reoffending. At the time of his last release from DYS, Terry had never committed a serious or violent crime. His most serious offenses were Residential Burglary and Theft of Property, B and C felonies respectively, and no gun was involved in any of his past offenses. He was part of the SVORI program because of his history of committing minor offenses, leading to multiple commitments to DYS.

continued in the community through outpatient therapy, aftercare supervision, electronic monitoring, and other services. The DYS clinical staff compiled a list of thirteen juveniles, including Terry, who were either close to completing treatment, or whose treatment needs could be met in the community. The treatment team—the staff of the private contractor that managed the treatment facility where Terry was assigned—objected to the release of most of these juveniles, including Terry. Terry's former SVORI case manager also expressed concerns about Terry's readiness to be released. DYS Director Ron Angel became aware of some of the more stringent objections and some of the juveniles on the list were not released, however Mr. Angel was never made aware that there were objections to Terry's release. Terry was released to his mother's custody to receive SVORI aftercare services despite his therapist's and his former case manager's concerns that he was just beginning to progress in treatment and was at risk of reoffending.⁴ The SVORI supervisor and assistant director of community programs were aware of Terry's progress in residential treatment and made no objections to his transfer to SVORI services.

Terry performed poorly on aftercare, despite the efforts of his SVORI team to continue his treatment. He missed therapy appointments, disregarded house rules and curfew, and cut off his electronic ankle monitor. His mother reported suspected drug use and at one point reported Terry had made an angry outburst that "if I had a gun I would blow everybody mother f----- head off."⁵ Terry had been assigned a mentor—a minister at his church—and it was discovered

⁴ The language used in the contracted provider's discharge summary was that Terry was a "risk to the community and himself" which is standard language in juvenile services indicating a risk of recidivism. The discharge summary was reviewed and release was authorized by DYS Placement Manager Jacobia Twiggs, a member of the DYS clinical staff. Ms. Twiggs was later fired because, during the root cause analysis following Terry's release, Ms. Twiggs repeatedly misrepresented her knowledge of the treatment team's objections.

⁵ In a prior interview with court intake staff, Terry reported carrying a gun in the past but never using it. The one crime against a person in his record, Third Degree Assault, involved an angry dispute with a school bus driver in which Terry, then age 13, threw rocks at the bus. Terry undisputedly had a history of issues with anger. Terry also admitted in the intake interviews to being involved in a North Little Rock branch of the Folk Nation gang,

that he had stolen from the minister, although the minister did not press charges. At an emergency meeting regarding Terry's performance on aftercare, Terry and his mother were informed that revocation of aftercare was the next step.⁶ To ward off that possibility, Terry asked to get back into boxing, and the SVORI supervisor determined to require more frequent drug testing and anger management sessions. The date that Terry was to begin his boxing program was the date he committed the murder of Mr. Clark. That same date, Terry committed a solo armed robbery of a neighbor of his cousin as she was pulling out of her driveway. It is unknown where Terry, age 16, got the gun he used in both crimes, a .22 caliber rifle.

ARGUMENT

To state a *prima facie* case for negligence, a claimant must allege facts which establish that the respondent owed a duty of care to the claimant, that the respondent breached that duty, that the claimant suffered damages, and that the breach of the duty of care was the proximate cause of the damages suffered. *Marlar v. Daniel*, 368 Ark. 505, 508, 247 S.W.3d 473, 476 (2007); *Arkansas Kraft v. Cottrell*, 313 Ark. 465, 470, 855 S.W.2d 333, 336-7 (1993). There is no dispute that Mr. Clark suffered damages. Claimant has failed to assert any facts establishing that DYS' actions breached any duty of care owed to Mr. Clark. Moreover, Claimant admits the essential fact: that Mr. Clark's injuries were caused by his murderers – the men who invaded his home and intentionally shot him. The fact that DYS had provided residential treatment to the man who wielded the weapon two months previously and released him to continue his treatment

presumably during the years that his family lived in North Little Rock. Terry had gang tattoos consistent with this claim. Following the murder, Terry's mother claimed to the media that she told DYS that she was concerned Terry was running with gang members again. None of the individuals involved in Terry's aftercare recall Ms. Terry expressing such concerns. Neither Terry nor any of his cousins who were involved in Mr. Clark's murder were charged with any gang-related offenses. It is unknown whether Terry was affiliating with the North Little Rock gang after his most recent release.

⁶ As will be discussed later in this brief, revocation of aftercare was not legally plausible in this case because the statute authorizing revocation of aftercare requires a court order directing the juvenile to comply with the terms and conditions of aftercare. No such order had been entered in Terry's case. It is undisputed, however, that the SVORI staff told Terry and his mother that revocation was the next step.

in the community does not make DYS liable for Terry and his co-conspirators' deliberate and willful criminal acts.

Duty of Care

Arkansas Code Ann. § 9-28-210 provides that length-of-stay determinations for juveniles committed to DYS are the “exclusive responsibility of the division [of Youth Services], and committed juveniles shall be reintegrated to society at a pace determined by the seriousness of the committing offense, aggravating or mitigating circumstances, community compatibility, and clinical prognosis.” Ark. Code Ann. § 9-28-210(a)(2). The Division is under a statutory mandate to release a juvenile upon a determination that release of the juvenile is in the best interest of the juvenile and the state. Ark. Code Ann. § 9-28-210(c)(1). The Division must consider, at a minimum, the following factors in making release determinations: (1) the circumstances of the committing offense; (2) any recommendations of the committing judge;⁷ (3) any recommendations of the probation officer of the committing court; (4) the juvenile’s previous delinquency record; (5) the availability of community programs; and (6) the stability of the juvenile’s home environment. Ark. Code Ann. § 9-28-210(c)(3). This statute does not prohibit DYS from considering additional factors in determining the best interests of the state and the juvenile in making release decisions, so long as release decisions are based on objective eligibility criteria. The six factors listed above, however, are the only factors that must be considered, and no mandatory weight is prescribed to any of them.

Claimant asserts by implication that DYS must have been negligent in releasing the juvenile Terry because, obviously, he went out and killed someone and he could not have killed anyone if he had not been released. The fact that an injury occurred does not lead to a

⁷ As reflected in this statute and in Ark. Code Ann. 9-27-330, the recommendations of the committing court are not controlling on DYS in placement or release determinations, but simply must be considered.

presumption of negligence, however. In fact, under Arkansas law, negligence can never be presumed but must be proven by the claimant. *Cottrell*, 313 Ark. at 470, 855 S.W.2d at 336.

The Division of Youth Services did not owe a duty of care of Mr. Clark to keep any juveniles off the street who might rob and kill him. It did not owe a duty of care to strictly follow the recommendations of the therapists and case managers employed by its private contractors. It did not even owe a duty to Mr. Clark or anyone in the general public to follow its own internal protocols regarding information sharing. If there was a duty owed, it was to consider the best interests of the state and of the juvenile in making release determinations. The undisputed facts of the case establish that DYS had a substantial number of youth who had just been committed who needed to be placed in treatment programs, that Terry met the initial criteria for release consideration, and that Terry was part of a program specifically designed and administered to assist high-risk youth in reintegrating to the community. No facts were asserted in the claim regarding the circumstances of Terry's committing offense, and there is no indication that it involved use of a weapon, or threatened or actual violence against another person. Similarly, no facts were asserted regarding any previous history of violence against persons, with the exception of one adjudication for Third Degree Assault.⁸ No facts were asserted regarding the stability of Terry's home environment, although it appears that Terry's mother was concerned, involved, and at least attempting to make her son comply with his treatment directives.

The Commission should not find that DYS has a duty to refrain from releasing any juvenile until all factors weigh in favor of release. DYS is required to release juveniles if doing so is in the best interest of the juvenile and the state. There is rarely, if ever, a case where all of the factors to be considered support release. If DYS becomes liable for the willful criminal acts

⁸ Under Ark. Code Ann. § 5-13-207, Third Degree Assault is a C Misdemeanor requiring only creation of an "apprehension of imminent physical injury in another person."

of all of the juveniles committed to its case once those juveniles are released, then the Division's discretion in making release determinations will be paralyzed, treatment of juveniles committed to DYS will be further and further delayed, and the youth and the communities of Arkansas will suffer. Claimant has not pled any facts establishing that DYS breached its duty of care, and so the claim should be dismissed in its entirety.

Proximate Cause

Under Arkansas law, even a negligent actor is only liable for the consequences which are the "natural and *probable* consequences" of his or her act or omission "such as might reasonably have been foreseen as probable." *Larson Mach. Inc. v. Wallace*, 268 Ark. 192, 208, 600 S.W.2d 1, 9 (1980). The element of proximate cause requires that the negligent act for which damages are claimed be "that which in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred." *Ouachita Wilderness Institute, Inc. v. Mergen*, 329 Ark. 405, 415, 947 S.W.2d 780, 785 (1997). Questions of causation arise particularly when there is an intervening act which more directly causes the injury, as is the case here. If there is an intervening act which is the more direct and overpowering cause of an injury, it is a "superceding act" which erases the original negligence. Intervening acts which are a "normal response to a situation created by the actor's conduct" are not superceding acts if "the manner in which [they are] done is not extraordinarily negligent." *Id.*

In *Mergen*, for example, the appellant was a juvenile rehabilitation camp housing juvenile offenders. Mergen, the appellee, was an employee of the camp and an instructor to the juvenile residents. Mergen, while supervising outdoor activities, left his car keys in his coat pocket and stored his coat in an unlocked office, which was apparently the only place to store personal belongings on the campus. Later, while the juveniles were in a dining hall watching movies,

Mergen left the juveniles with one other supervisor to attend to an administrative matter. When he returned, he saw that two juveniles were missing. A search ensued, but the juveniles had already taken Mergen's keys from the unlocked office, stolen his vehicle, and were able to leave the campus with the vehicle. Ultimately, the juveniles crashed the vehicle. Mergen sued OWI for property damages. *Id.* at 411.

The Court first acknowledged that OWI's argument that it owed Mergen no duty may have had merit, but was not preserved for appeal purposes. Analyzing OWI's argument regarding proximate cause, the court found that the plaintiff had offered evidence that prevented directed judgment. OWI had failed to provide adequate staff to supervise the juveniles during the time when the escape occurred, and also failed to provide a secure location for staff to store personal belongings. Moreover, in regards to timing of negligent acts, the gate which would have prevented the juveniles from leaving the campus with Mergen's vehicle was left unlocked by OWI staff, ultimately leading to the need for the police chase that ended in the damage to Mergen's property.

In this claim, it is clear that not just one, but multiple extraordinarily negligent and intentional acts intervened between DYS' release of Terry and Terry's ultimate murder of Mr. Clark. The actual intentional, premeditated, criminal actions of Terry and his co-conspirators is far from the least of these intervening acts, however others acts also occurred which led to the ultimate tragedy.

First, there is the length of time between the release and the murder. Two full months passed, during which time Terry was in the physical and legal custody of his mother. There is no reason to believe that, even if Terry had not been released on May 1, he would not have been released at some later date prior to the robbery and still had the opportunity to kill Mr. Clark.

DYS offered the same types of services to Terry in the community that they offered at the residential program where he was assigned – individual and group therapy, drug treatment, and individualized case management – so Terry was not deprived of treatment opportunities by being released on May 1 as opposed to June 20. Even assuming *arguendo* that Terry’s release was an act of negligence, the lapse of time and provision of treatment opportunities in the interim abated that negligence to the point of having no causal relationship to the ultimate murder. We reach a point where we cannot assume that, had Terry not been released on that date, he would not have committed the murder nonetheless.

Second, there is the criminal act of some unknown person that allowed Terry to obtain the firearm he used to commit his crimes. Terry was the only person on that date with a gun. He was prohibited by law from buying or possessing one, and DYS staff certainly did not provide him one (nor is it alleged that they did), so he must have obtained the weapon through the criminal acts of himself or a third party. According to the facts asserted by Claimant, as late as May 27, 2009, almost a month after his release, Terry did not own or have access to a gun, or he would not have made the outburst that he did. At some point after that date, then, Terry must have unlawfully purchased the gun from someone else, had the gun unlawfully gifted to him by someone else, or unlawfully stole it from someone else. DYS did not release Terry in a condition where he could have murdered someone with a firearm, nor did DYS staff ever become aware that Terry had access to a gun. The intervening act of him obtaining that weapon illegally and covertly was in itself a superceding act leading directly to the murder.

Finally, the presence and participation of Terry’s co-conspirators, none of whom were under DYS supervision, abates the alleged negligence of Terry’s release. Although Terry had the gun on that date, it is unknown where he got the weapon or if it would have been used by one of

the other offenders if Terry had not been present. Claimant has not asserted any facts which should give rise to an assumption that, if Terry had not been present, the gun would not have been present or used just as it was on that date. Terry was not the oldest person involved in the home invasion, nor is he alleged to have been the ringleader or instigator of the act. It can easily be assumed that the three cousins would have committed the crime regardless of whether Terry was present, and Mr. Clark may easily have been injured or killed in that event.

None of these acts, including Terry's own act of deciding to invade the home of another person and to pull the trigger to end that person's life, amounts to the ordinary negligence of leaving your car keys in a jacket pocket, or stepping out to sign a form while your co-worker watches the kids. The criminal acts in this case were extraordinary in their depravity, and they, combined with the lapse of time and participation of offenders not connected to DYS, served to divert the flow of Terry's release from DYS to its natural and probable consequences.

Lack of Legal Authority

Claimant has asserted by implication that DYS staff were negligent in failing to revoke Terry's aftercare once it became clear that Terry was not adjusting well to life at home under his mother's supervision. Leaving aside for the sake of argument that the DYS staff were acting well within their discretion to attempt additional community-based interventions before seeking to return Terry to a secure residential setting, Claimant's assertion of negligence must still fail. It is clear from the statute relating to revocation of aftercare that, before aftercare can be revoked, the committing court must have ordered the juvenile to comply with the terms and conditions of aftercare. Ark. Code Ann. § 9-27-364(a). Claimant has not alleged that any such order was entered in Terry's juvenile case, and DYS submits to the Commission that no such order was in place. Even if DYS staff had requested legal assistance from the DHS Office of Chief Counsel to

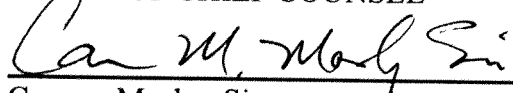
revoke Terry's aftercare, any competent attorney would have advised DYS that such a petition could not be filed in good faith in compliance with Rule 11 of the Arkansas Code of Professional Conduct. Even if such a petition were filed, the court could not have lawfully revoked Terry's aftercare when he had never been ordered to comply with aftercare terms. Since negligence requires first a breach of some duty of care under the law, DYS cannot be found negligent for failing to do something which was prohibited by law, or which would, at best, have been fruitless in the prevention of the injury in question.

CONCLUSION

In light of the arguments detailed above and the facts of this case as pled in Claimant's initial documents, DYS asks that the Commission dismiss Claimant's claim in its entirety.

Respectfully submitted,

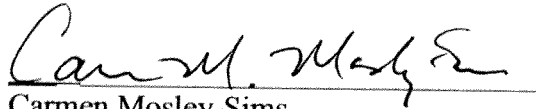
ARKANSAS DEPARTMENT
OF HUMAN SERVICES
OFFICE OF CHIEF COUNSEL



Carmen Mosley-Sims
Attorney – Bar #2003216
P.O. Box 1437, Slot S260
Little Rock, Arkansas 72203
Telephone # (501) 320-6295

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing Response on David H. Williams, 212 Center Street, Little Rock, AR 72201, by e- this 4thrd day of October, 2012.



Carmen Mosley-Sims
Attorney

OCT 24 2012

RECEIVED

BEFORE THE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

MAURICE "TREY" CLARK, III

CLAIMANT

VS.

CLAIM #12-0819-CC

STATE OF ARKANSAS DHS/DYS

RESPONDENT

RESPONSE TO RESPONDENT'S MOTION TO DISMISS

Comes now the Claimant, Maurice "Trey" Clark, III, by and through his attorney David H. Williams, and for his Response to Respondent's Motion to Dismiss, states:

1. The Respondent, State of Arkansas DHS/DYS moves to dismiss the Estate's claim on the following bases:

(a) That is the public policy of the State of Arkansas that it owes no duty whatsoever to the citizens of this State to protect them from the foreseeable risks of harm at the hands of offenders in the Serious and Violent Offender Reintegration Initiative (SVORI, a federally granted program) who DYS releases into the community;

(b) That even if it is public policy to protect citizens and control these early-released offenders, that DYS did not breach any legal duty it might have had to citizens or Mr. Clark to protect and control;

(c) That even if DYS had a duty to protect and control from foreseeable risks of harm at the hands of early-released violent offenders, DYS's action in releasing Antonio Terry into the Serious and Violent Offender program was not the proximate cause of Maurice Clark's death as Terry's murder of him was a superseding cause for which DYS bears no liability; and,

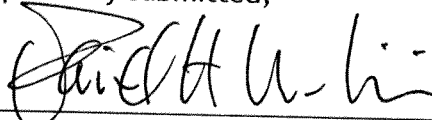
(d) That DYS had no duty to protect and control after Antonio Terry repeatedly violated the conditions of his early release by taking action to revoke Antonio Terry's early

release, and in fact, knowingly and deliberately refusing to take action to revoke Terry's early release after a request was made by Terry's caseworkers to do so.

2. The motion of DYS is without merit as is set out in the Estate's brief.

WHEREFORE, Claimant prays that Respondent's Motion to Dismiss be denied and for all other proper and equitable relief to which he may be entitled.

Respectfully submitted,



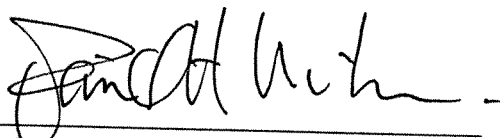
David H. Williams
Attorney at Law AR S. Ct. No. 75139
Law Office of David H. Williams, PLLC
Centre Place Building
212 Center Street, 2nd Floor
Little Rock, AR 72201
Phone: 501-372-0038
Fax: 501-376-9347

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on Defendant this 24th day of October 2012, as indicated.

Carmen Mosley-Sims
Arkansas Department of Human Services
Office of Chief Counsel
P.O. Box 1437, Slot S260
Little Rock, AR 72203
via:

- Regular Mail
- Telecopier (fax)
- Electronic Transmission (Ark. R. Civ. P. 5(b)(2))



DAVID H. WILLIAMS

OCT 24 2012

BEFORE THE CLAIMS COMMISSION
OF THE RESPONDENT OF ARKANSAS

RECEIVED

MAURICE "TREY" CLARK, III

CLAIMANT

VS.

CLAIM #12-0819-CC

STATE OF ARKANSAS DHS/DYS

RESPONDENT

BRIEF IN SUPPORT OF CLAIMANT'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS

Introduction

Respondent moves to dismiss Claimant's claim, pursuant to Arkansas Rule of Civil Procedure 12(b)(6), for failure to state sufficient facts to constitute a claim. Although it quibbles in footnoted commentary, Respondent admits that the Claimant's facts are taken as true. Indeed it should. Attached to the Claimant's detailed, five-page explanation of claim are eight exhibits which include: (A) Declaration of Ron Angel with witness statements from Elbert Grimes, Tommy Branch, Felicia Carter, Steve Nawojczyk, Dr. Darrin Kirkendall, Timothy Johnson, and Todd Speight. This declaration is a pleading filed by the Respondent in the federal lawsuit by Jacobia Twiggs over her firing as a result of this incident; (B) Declaration of Mike Cormier with April 31, 2009, RiteTrack Discharge Transfer Summary for Antonio Terry; and (C) deposition excerpts of Tommy Branch; (D) Affidavit of Jacobia Twiggs; (E) deposition excerpts of Todd Speight; (F) deposition excerpts of Elbert Grimes; (G) deposition excerpts of Ron Angel; and (H) selected correspondence between Angel and Twiggs concerning her firing. One can hardly envision a more factually rich and detailed claim than this. Furthermore, in the Respondent's Factual History it admits, for the purpose of this motion, the basic facts as set out by Claimant, including Terry's angry outburst made two weeks before he shot Maurice Clark in the head and reported to his SVORI team supervisor and assistant director of community programs (Tommy Branch and Steve Nawojczyk) that "if I

had a gun I would blow everybody motherf----- head off.” What these admitted facts establish is that:

- No one in charge of *treatment* wanted Mr. Terry released;
- Everyone in charge of treatment thought Mr. Terry was a danger to himself and anyone he happened to come in contact with;
- Mr. Terry was released as an administrative decision to open beds, not as a treatment decision because he was getting better;
- After release, Mr. Terry exhibited even greater signs of danger to himself and to anyone he happened to come into contact with;
- The Respondent steadfastly refused to take any action to remove this obvious threat to public safety even after acknowledging that it needed to do so;
- As a direct result of the Respondent’s actions, Mr. Terry put a gun to Mr. Clark’s head, pulled the trigger, and killed him.

Even with these admitted facts establishing that a young man, who the Respondent’s own treatment team said should not be released on the public, cold-bloodedly executed Mr. Clark, the Respondent moves to dismiss. It does so by arguing that, as a matter of law, taking these facts as true, the Respondent owed no duty whatsoever to protect Maurice Clark from the person the Respondent loosed on him, and this Commission does not have jurisdiction to hear this claim. That argument is as wrong legally as it is morally. The reasons why follow.

The Commission’s Jurisdiction

The Respondent’s primary argument is that DYS owes no duty whatsoever to anyone, not the citizens of Arkansas in general or Mr. Clark in particular, to take reasonable measures

to protect them from foreseeable risks of harm at the hands of violent offenders it sets loose into the community. It claims that this is the public policy of Arkansas. Morally, one would hope the Respondent is wrong. Legally, one knows it is for numerous reasons.

First, the statute on which the Respondent relies does not apply to DYS. The Respondent argues that the Claims Commission does not have jurisdiction over this claim citing Ark. Code Ann. § 19-10-204(b)(1)(A)(iii), which is a subsection of the general statute creating the Claims Commission's jurisdiction. It reads that the Commission has no jurisdiction over claims against the Department of Corrections for acts committed by inmates on release. The Respondent argues that this subsection should apply to DYS by implication.

DYS is not mentioned anywhere or in any way in the statute, and the Commission cannot read it in. Statutes are to be interpreted as written, and when they are clear on their faces, are not subject to interpretation or addition by implication. *Alexander v. Bush, Judge*; 199 Ark. 562; 134 S.W.2d 519. If the Legislature had intended for DYS to be excluded from the jurisdiction of the Claims Commission it would have listed DYS. It did not. Thus, the Commission has jurisdiction over this claim.

Second, DYS skews the facts in an attempt to avoid the duty it owed Mr. Clark, but when those facts are correctly viewed, DYS clearly did owe a duty of reasonable care to Mr. Clark that it breached. In fact, the Respondent admitted long ago the essential fact undergirding the claim: Antonio Terry's early release into the Serious and Violent Offender Initiative (SVORI) after care program was erroneous. (*See testimony of DYS Director Ron Angel attached hereto as Ex. "1".*) The Respondent's contrary quibbling notwithstanding, Terry had an extensive history of violence. His treatment team and his caseworker, Felicia

Carter, objected to Terry's release in the strongest possible terms, stating he would be a risk to the community and himself. After released, Terry repeatedly violated the terms of his release. The administrator of the SVORI program, Steve Nawojczyk, requested that Terry be revoked and that he be returned to custody. This request was denied by DYS Assistant Director Elbert Grimes. Both actions were grossly negligent, and approach being consciously and deliberately indifferent. If either had not happened (the release or the refusal to revoke the release) Mr. Clark would be alive today. Try as it might, DYS cannot skirt this responsibility by claiming no duty.

Third, DYS is wrong to argue that it simply exercised unfettered, unreviewable discretion in releasing Mr. Terry. The Division of Youth Services was created by the Legislature with Act 1261 of 1995, and is codified at Ark. Code. Ann. §§ 9-28-201-302. One stated purpose for its creation was to provide oversight of reforms in the juvenile justice system by an organization with special expertise in the problems of juvenile offenders. The Powers and Duties of DYS are extensive and set out in Ark. Code. Ann. § 9-28-203. One duty is the management of the Serious and Violent Offender Initiative program (to which Antonio Terry had been classified and assigned). Factors governing the release of juveniles are set out in Ark. Code Ann. § 9-28-210.

The Orders of Commitment for Antonio Terry enumerate and reference the statutes of the Arkansas Juvenile Code that establish the public policy for the State of Arkansas in regard to juveniles. (Ex. "2" - *Commitment Order of Judge Wiley Branton, dated January 21, 2009*). Judge Branton's Order references Ark. Code. Ann. § 9-28-210, the statute regarding the release of juveniles. In particular, subsection (c)(3) reads: "In determining whether the

release of a juvenile is in *the best interest of both the Respondent and the juvenile*, the division *shall consider* the circumstances of the committing offense, any recommendations of the committing judge, any recommendations of the probation officer of the committing court, the juvenile's previous delinquency record, the availability of community programs, and the stability of the juvenile's home environment." (Emphasis added). The Legislature used the mandatory "shall," thus requiring DYS to consider these factors when making a release decision.

The Respondent agrees with this legal reality under its heading on "Duty of Care," but then it goes further and asserts that DYS can consider additional factors so long as those decisions are ultimately based on "objective criteria." In this respect, DYS fails its own stated criteria because Mr. Terry was released for *wholly subjective reasons*, namely need more bed space. The evidence as set out in the explanation of the claim and exhibits, particularly Ron Angel's deposition, is that Antonio Terry was released in the face of his violent history and short time in treatment over the strong objections of his case worker, Felicia Carter, and the Treatment Team at Alexander that Terry was not ready and that he posed a significant risk to the community and himself, simply because bed space was needed. All objective criteria were rejected by Elbert Grimes and Kim Lockett, assistant directors under Angel, who just did not think the objections were good enough in their minds. In other words, they made a *purely subjective* decision.

The need for more bed space was in part created by Ron Angel himself who had only recently negotiated a reduction of 22 bed spaces. Furthermore, the treatment team had offered an alternative list of eligible juveniles to be released, which was rejected by DYS.

And to make matters worse, Elbert Grimes had apparently ignored the recent criticism by Judge Wiley Branton that “DYS was just a revolving door” for juveniles who were not getting the treatment they needed.

Further evidence of the public policy of the Respondent of Arkansas regarding juvenile release decisions is found in Ark. Code Ann. § 9-28-210(a)(4)(B)(iii), which reads that the court must consider *the protection of public safety* when making a final release decision, and (d)(2) which reads that the committing court’s decision may recommend that DYS release a juvenile from its custody at any time but in doing so must set out the reasons in writing and why the release is deemed in the *best interest of the juvenile and society*. Therefore, the statutes regarding the release of juveniles are replete with references to “the best interests of both the Respondent and the juvenile”, “the protection of public safety”, and “the best interest of the juvenile and society.” Contrary to the Respondent’s argument, the public policy of the Respondent of Arkansas quite clearly includes imposing upon DYS a duty to protect the safety of citizens like Mr. Clark when making release decisions.

DYS’s negligent failure to abide by the statutes and the policy of the Respondent of Arkansas with respect to the release of Mr. Terry continued with its decision to ignore Act 710 of 1997. This Act, codified at section § 9-28-701, et seq., addresses Community-Based Sanctions. The Legislature found that community-based sanction programs should be implemented by DYS as part of community-based provider contracts. This legislation further provided that DYS shall ensure that each judicial district has a continuum of sanctions available through its contract with community-based providers, which sanctions include but not are not limited to: electronic monitoring, or intensive supervision; short-term detention;

mandatory parental participation; community service; restitution, and other sanctions. The Legislature mandated that the Director of DYS ensure that criteria are established to make the program work. It further directed that a community-based sanction be used for juvenile offenders who fail to comply with aftercare plans, for revocation of probation, for contempt of court for failure to comply with any valid court order. DYS may impose any community-based sanction on a juvenile who is in aftercare as a result of having been committed.

Ron Angel, the Director of DYS testified that *he did not review or consider any* of the matters or factors that are mandatory to be reviewed by Ark. Code Ann. § 9-28-207 when he decided to release Antonio Terry. Elbert Grimes, Assistant Director for Community Based Services, conceded that he did not review or consider any of these matters when he overruled Felicia Carter's objections to Antonio Terry's release. Ron Angel testified that Kim Luckett, his Assistant Director for Residential Services, did not inquire or investigate further the Treatment Team's objections to Antonio Terry's release when he overruled their objections to Antonio Terry's release. DYS admitted and conceded that it did not impose any sanctions on Antonio Terry as set out in the Sanctions legislation after his multiple violations of the terms and conditions of his release into Aftercare, including cutting off his ankle bracelet, associating with the Folk Gang nation of which he was a member, failing his drug test, stealing from his church mentor, violating by his curfew, and threatening to commit murder with his statement made two weeks before Maurice Clark's murder in which he confirmed to his after care workers, Tommy Branch and Steve Nawojczyk, that "if I had a gun, I would blow everybody motherf____s head off."

DYS violated the public policy of the Respondent of Arkansas when it decided to release Antonio Terry into the community over the objections of his caseworker and his Treatment Team, and when it failed to supervise Antonio Terry properly after his release into aftercare. These violations were negligence that caused Mr. Clark's death. Dismissal cannot be allowed under these circumstances.

The Duty to Control and Protect

The Respondent contends that DHS had no "special relationship" with Maurice Clark that would create a duty to warn or protect him from Antonio Terry upon Terry's release. The Respondent does not correctly analyze the "special relationship" principle. This failure is where the motion goes off track. Once it is corrected, denial of the motion is required.

This "special relationship" duty is taken from the Restatement (2nd) of Torts, Sections 316 through 320, which define various "special relations" that, in accordance with the general principle stated in Section 315, give rise to the duty of a party to control the actions and conduct of a third person and to protect the public. A duty to control and protect in regard to a "special relationship" is found to exist in two situations. One is where the Respondent has assumed a "special custodial or other relationship" with the third person (Antonio Terry), which imposes a duty upon the actor (DYS) to control the third person's conduct as to prevent him from causing harm to another (members of the general public like Maurice Clark). The second is where the Respondent has affirmatively placed an individual in a position of danger from third parties. The critical error in the Respondent's motion is its attempt to rebut that a "special relationship" existed between DHS and Maurice Clark. That focus is incorrect. Mr. Clark is not the person to whom DHS had the "special relationship."

Antonio Terry is. DYS owed the duty to protect and control Mr. Terry, the person with whom it had a special relationship, to Maurice Clark and other members of the general public.

Delving further into the Restatement solidifies the point. Section 319 reads: “One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm.” Restatement (2nd) of Torts. And that is the case here. DYS took charge of Mr. Terry, a person who DYS’s own records demonstrate was “likely to cause bodily harm to others if not controlled.” It breached that duty in two ways as explained above, and the result was Mr. Clark’s death. Liability attaches to that negligence. The Respondent simply misconstrues the Restatement. No “special relationship” between the Respondent and Maurice Clark is asserted. It is the relationship between DYS and Antonio Terry that is subject to this principle and from which the duty to control and protect flows.

The Arkansas Supreme Court recognized this duty to control and protect in *Shepherd v Washington County*, 331 Ark. 480, 962 S.W.2d 779 (1988). *Shepherd* is a civil rights case brought under the Arkansas Civil Rights Act in which an inmate with a history of violent tendencies was transported from the county jail to a private medical clinic for treatment and disarmed the lone deputy escorting him, and then killed him, killed Mrs. Shepherd’s husband who was at the clinic at the time, and then committed suicide. The court held that the Respondent had a duty to protect the public from the inmate under the civil rights act and cited the Restatement of Torts in support of its opinion. This claim is nothing more than a

straightforward application of the same legal principles, and the Respondent is simply wrong to convolute those principles so badly.

The Respondent also argues that Antonio Terry's murder of Maurice Clark was an intervening superseding cause for which DYS bears no liability. Generally, one is not responsible for the criminal acts of third persons. However, again, the Restatement (2nd) of Torts recognizes that situations exist in which the criminal act does not exonerate the one who created the situation that allowed the crime to occur. The first situation is found in Section 448, which provides that when the actor (DYS) realized or should have realized the likelihood that his actions might create a situation that afforded the third person the opportunity to commit the crime, the crime is not a superseding intervening cause. The second is found in Section 449, which holds that the actor (DYS) is not exonerated from being liable for harm if the likelihood that the third person (Antonio Terry) may act in a particular manner is the hazard or one of the hazards that make the actor negligent, even if the actor's conduct in creating the situation is innocent, negligent, intentionally tortious, or criminal.

Both sections apply to this case. DYS should have realized (in fact did realize according to its admissions) that its actions might create the situation that allowed Mr. Terry the opportunity to murder Mr. Clark. If Mr. Terry had not been loosed on the public, Mr. Clark would be alive today, and if DYS had met its duty of reasonable care, Mr. Terry would not have been roaming the streets. Likewise, the likelihood that Mr. Terry would act as he did is the very hazard that makes DYS negligent. Mr. Terry was likely to act as he did, and that is why DYS was negligent in releasing him and in failing to revoke that release.

The Arkansas Supreme Court cited these sections of the Restatement of Torts with approval in *Keck v American Employment Agency, Inc.*, 279 Ark. 294, 625 S.W.2d 2 (1983). There, an employment agency sent Mrs. Keck to a prospective employer who abducted and raped her. The Court found that the employment agency failed to investigate the background of the prospective employer; failed to ascertain whether he was involved in a legitimate business, and failed to warn Mrs. Keck that no background check had been completed on the prospective employer. Thus, it was negligent even though the prospective employer committed a criminal act. Here, DYS had a wealth of information regarding Antonio Terry's violent history and acknowledges a complete breakdown in the chain of command leading to the admitted erroneous release of Terry, which Director Ron Angel has testified never should have occurred. It was negligent and liable for its negligence even though Mr. Terry committed a crime.

Cases from other states have imposed liability under analogous facts even where questions of immunity existed. For example, an Arizona case examined liability where a child molester's parole officer never made any inquiry as to where the child molester was employed as he was required to do. The child molester went to work as a teacher in a middle school where he molested children. The court held no immunity existed because the parole officer failed to enforce the conditions of the court ordered probation. *Acevedo v Pima County Adult Probation Dept.*, 142 Ariz. 319, 690 P.2d 38 (1984).

In a Utah case, an offender had a history of sexual assaults. He attacked a child after being conditionally released into the community from a youth detention center. The Utah Court held that the superintendent of the detention center had an ongoing duty to control

him, and that this duty required an “active, ongoing concern” for the juvenile and the community. *Doe v Arguelles*, 716 P.2d 279 (Utah 1985). In cases from California and Nevada, courts held that (1) where a youth was placed in a foster home by the Respondent, the Respondent owed a duty to inform the foster parent of any matter that its agents knew or should have known that might endanger the family. *Johnson v State*, 69 Cal 2d 782, 4478 P. 2d 352 (1969); (2) that the Respondent was not immune and had a duty to supervise and control an inmate who escaped from a state “honor camp” and committed a rape. *State v Silva*, 478 P.2d 591 (Nev. 1970).

One Washington case held that a parole officer had a duty to take reasonable precautions to protect anyone foreseeably endangered by parolees’ dangerous propensities. *Taggart v State of Washington*, 118 Wash. 2d 198 (1992). Foreseeability is a question of fact, not law, said that court. Another Washington case found a similar duty existed on the part of a city probation counselor and a county pretrial release counselor for failure to supervise a probationer properly who raped a six year old girl while awaiting trial. The probationer had an extensive history of sexual misconduct and had violated the terms of his pretrial release. *Hertog v. City of Seattle*, 139 Wash. 2d 265, 979 P. 2d 400 (1999).

The Supreme Court of South Carolina found liability on the part of juvenile probation officers under its Torts Claims Act despite the fact that the Act provided for immunity for governmental action for legislative, judicial or quasi-judicial action or inaction. *Faile v. S.C. Dept. of Juvenile Justice*, 350 S.C. 315, 566 S.E 2d 536 (2002). In that case, a juvenile with nine prior referrals to the Dept. of Juvenile Justice, who was on probation at the time, attacked a nine-year-old boy. In that case, the probation officers did not weigh the

considerations and make an informed decision. They had an alternative placement facility for the juvenile but failed to consider it.

The cases do not end there. Other cases from other jurisdictions which provide support for the underlying public policy to provide redress and remedy for wrongful release are: *Gregory v Kilbride*, 150 N.C. App 601, 565 S.E.2d 685 (2002); *Semler v. Psychiatric Institute of Washington, D.C.*, 538 F.2d 121, cert denied, 429 U.S. 827 (4th Circuit, 1976); *Hicks v United States*, 511 F.2d 407 (D.C. Circuit, 1975); *Bradley Center, Inc., v Essner*, 296 S.E.2d 693 (Ga. 1982). The Respondent notably ignored all of this precedent.

The great weight of authority is against the Respondent's argument that it owed no duty to Mr. Clark. The Restatements and the cases direct just the opposite. The motion must be denied.

The Respondent's Proximate Cause Argument

The Respondent's last-ditch argument is an attack on proximate cause that is conjured up from nothing. The Respondent forgets that proximate cause is almost always a fact question if reasonable minds could differ over the causation. The Respondent argues that too much time passed between Terry's release and Maurice Clark's murder; that the murder itself was an independent, intervening criminal act for which the Respondent has no responsibility; that another intervening act was on the part of the person from whom Terry got the .22 rifle that he used to murder Maurice Clark; that maybe one of the other three juveniles killed Clark instead of Terry (even though Terry pleaded guilty to the murder of Maurice Clark and admitted he was the trigger man); or that maybe one of those other three would have killed Mr. Clark even if Mr. Terry had never been released (a nonsensical notion that would remove

all tort liability for all purposes for all time because it is possible that some other thing could happen in every situation at any time). These are all factual matters for the Commission to decide. They are not the stuff of motions to dismiss.

The Respondent cites the case of *Ouachita Wilderness Institute, Inc. v. Mergen*, 329 Ark 405, 947 S.W.2d 780 (1997), as its “intervening cause” case. This case just so happens to concern a juvenile who had been committed to DYS and then sent to a private contractor juvenile rehabilitation camp operated by Ouachita Wilderness. Mark Mergen was an employee of Ouachita and an outdoor instructor. Some juveniles he was supervising stole his pickup and wrecked it. Mergen sued his employer for simple negligence over his property damage. The Arkansas Supreme Court discussed the law of intervening cause stating in relevant part that “The mere fact that other causes intervene between the original act of negligence and the injury for which recovery is sought is not sufficient to relieve the original actor of liability if the injury is the natural and probable consequence of the original negligent act of omission and is such as might reasonable have been foreseen as probable. . . . An intervening cause will not excuse the original misconduct but will help to be the result of it. Moreover, the intervening act or omission of a third person is not a superseding cause when the original actor’s negligent conduct is a substantial factor in bringing about an injury, if the actor, at the time of his negligent conduct, realized that a third person might so act . . .”

The court found that sufficient evidence existed for the jury to find OWI negligent. The Director of OWI admitted that it failed to keep sufficient staff to supervise the juveniles. Employees were not provided with a safe place to keep their personal things, while keys to

OWI vehicles were kept in a locked cabinet in a locked office. The gate to the facility had been left unlocked on the night of the theft.

Ouachita Wilderness supports the Clark Estate's claim, rather than the other way around. It establishes that proximate cause is a question fact even when a criminal act intervenes. It establishes that were DYS fails to meet its duty of reasonable care and one of its charges commits a crime, liability may follow. One is mystified that the Respondent even cited this case.

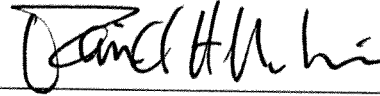
One final thought is appropriate. The Respondent points the accusing finger at all manner of wrongful acts, as noted above, and claims that they were the causes of Mr. Clark's death. Not once does the Respondent recognize what it has already admitted: if it had met its duty of reasonable care under the circumstance of Mr. Terry's release, or if it had acted reasonably and revoked that release, Mr. Terry would not have procured a rifle, he would not have broken into Mr. Clark's house, and he would not have put the gun to Mr. Clark's head and pulled the trigger. In other words, if the Respondent had not breached its duty, Mr. Clark would be alive today. So ends the proximate-cause argument.

Conclusion

In fact, so ends the motion. The Respondent acknowledges that it erred when it loosed Mr. Terry on the innocent public, which included Mr. Clark. Mr. Terry should have been confined and DYS knew it. He was released to make bed space, not based on any objective factor. Mr. Clark is dead today because that error was made. An error is a deviation from what is reasonable under the circumstances. In other words, it is negligence.

And those harmed by negligence can recover the damage caused. Mr. Clark's estate can recover from the Respondent for his death. The motion must be denied.

Respectfully submitted,



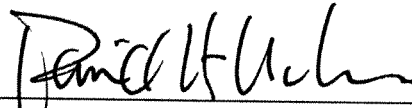
David H. Williams
Attorney at Law AR S. Ct. No. 75139
Law Office of David H. Williams, PLLC
Centre Place Building
212 Center Street, 2nd Floor
Little Rock, AR 72201
Phone: 501-372-0038
Fax: 501-376-9347

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on Defendant this 24th day of October 2012, as indicated.

Carmen Mosley-Sims
Arkansas Department of Human Services
Office of Chief Counsel
P.O. Box 1437, Slot S260
Little Rock, AR 72203
via:

Regular Mail
 Telecopier (fax)
 Electronic Transmission (Ark. R. Civ. P. 5(b)(2))



DAVID H. WILLIAMS

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 1,000,000.00

Claim No. 12-0819-CC

Maurice "Trey" Clark, III, Special
Administrator of the Dept. of
Maurice "Beau" Clark, Jr., deceased **Claimant**

Attorneys

David H. Williams, Brian Brooks, Attorney **Claimant**

DHS/Children & Family Services
State of Arkansas **Respondent**

Breck Hopkins, Chief Counsel
Brenda Jackson, Accts. Payable
Carmen Mosley-Sims, Attorney **Respondent**
Jerry Berry, Fiscal Officer

Date Filed May 15, 2012

Type of Claim Wrongful death

FINDING OF FACTS

This claim was filed for wrongful death in the amount of \$1,000,000.00 against the Department of Human Services/Children and Family Services.

Present at an oral hearing on November 14, 2012 was the Claimant, represented by David Williams and Brian Brooks and the Respondent, represented by Carmen Mosley-Sims, Department of Human Services Assistant General Counsel. Negligence was unanimously found on the part of the Respondent. A hearing on the damages portion of the claim will be held on December 13, 2012.

The Claims Commission will proceed with the hearing as scheduled.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

Upon consideration of all the facts and the unanimously finding of negligence on the part of the Respondent, **the Claims Commission will proceed with the hearing as scheduled.**

November 14, 2012


Date of Hearing _____

November 14, 2012

Date of Disposition _____


Chairman


Commissioner


Commissioner

**Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act 879

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CLAIMANT

BEFORE THE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

MAURICE "TREY" CLARK, III,
Personal Representative of
the Estate of Maurice Clark, Jr.

VS.

CLAIM #12-0819-CC

STATE OF ARKANSAS DHS/DYS

RESPONDENT

CLAIMANT'S AMENDMENT TO DAMAGES CLAIM

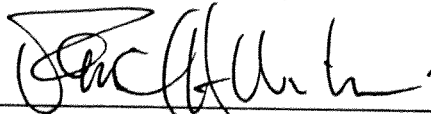
Comes now the Claimant, Maurice "Trey" Clark, III, by and through his attorneys David H. Williams and Brian G. Brooks, and for his Amendment to the Estate's damages claim, states as follows:

1. Claimant incorporates all factual allegations and causes of action made in his initial complaint by reference as set forth word for word, liability for which has already been determined by the Commission. This amendment is for the purpose of amending the demand made by the original complaint. An award has not yet been made.
2. Ark. Rule Civ. P. 8, regarding General Rules of Pleadings, states in section (a) that claims for unliquidated damages, a demand containing no specified amount of money shall limit recovery to an amount less than required for federal court jurisdiction in diversity of citizenship cases, unless language of the demand indicates that the recovery sought is in excess of such amount." Section (f) states that all pleadings shall be liberally construed so as to do substantial justice. Rule 1.2 of The Claims Commissions rules and regulations states that the rules shall be liberally construed and 8.1 states that the Arkansas Rules of Civil Procedure shall apply. Rule 1.5 states that an amount, if known, shall be set out in the claim.

3. Pursuant to those Rules and Ark. R. Civ. P. 15(b), Claimant amends his claim FOR damages to request an amount in excess of that required in federal diversity action, pursuant to the evidence presented, but of not less than \$5 million.

WHEREFORE, for reasons stated above, Claimant amends his claim for damages, and for all proper relief to which the Estate is entitled.

Respectfully submitted,



David H. Williams
Attorney at Law AR S. Ct. No. 75139
Law Office of David H. Williams, PLLC
Centre Place Building
212 Center Street, 2nd Floor
Little Rock, AR 72201
Phone: 501-372-0038
Fax: 501-376-9347

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on Defendant this 19 day of November 2012, as indicated.

Carmen Mosley-Sims
Arkansas Department of Human Services
Office of Chief Counsel
P.O. Box 1437, Slot S260
Little Rock, AR 72203
via:

- Regular Mail
- Telecopier (fax)
- Electronic Transmission (Ark. R. Civ. P. 5(b)(2))



DAVID H. WILLIAMS

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 5,000,000.00

Claim No. 12-0819-CC

Maurice "Trey" Clark, III, Special
Administrator of the Jst. of Claimant
Maurice "Beau" Clark, Jr., deceased

Attorneys

David H. Williams, Brian Brooks, Attorneys Claimant

DHS/Division of Youth Services Respondent
State of Arkansas

Breck Hopkins, Chief Counsel
Brenda Jackson, Accts. Payable
Carmen Mosley-Sims, Attorney Respondent
Jerry Berry, Fiscal Officer

Date Filed May 15, 2012

Type of Claim Wrongful death

FINDING OF FACTS

This claim was filed for wrongful death in the amount of \$5,000,000.00 against the Department of Human Services/Division of Youth Services.

Present at an oral hearing on December 13, 2012 was the Claimant, represented by David Williams and Brian Brooks and the Respondent, represented by Carmen Mosley-Sims, Department of Human Services Assistant General Counsel.

The Respondent agency had Antonio Terry in its custody. He was in the SVORI program for severe, violent and chronic offenders and had been in the Respondent's custody at various times prior to his final May 1, 2009, release. There was very strong DHS/DYS staff opposition to Terry's final release from custody. Judge Wiley Branton in his last commitment order of January 21, 2009, argued for "substantial rehabilitation and a long term DYS commitment." Professional DYS employees argued for the same, but agency leadership overruled their repeated concerns. Terry had a lengthy history of involvement in a gang and escalating bad behavior such as aggression, drug abuse, refusal to attend school, extremely disruptive behavior at school, unauthorized use of a vehicle, refusal to adhere to terms and conditions of release, possession of a gun, sale of drugs, verbal and physical assaults beginning in the early teens, stealing a moped, uncontrolled anger, burglary and convictions for theft of property, assault and terroristic threatening.

Terry was released to the control of his mother. A mother who had been charged and convicted multiple times of various criminal offenses, who had had five children by various men, had at least once child living with her relatives and was then living with and older man. This dysfunctional home environment was not conducive to any needed family support system for Antonio Terry. While the Respondent had the authority to make the decision to release Terry the disastrous consequences that followed are the subject of this claim.

After his release, Terry had told DYS employees Tommy Branch and Steve Nawojczyk that if he had a gun he would blow everybody's "MFing" head off. Following his release Terry had cut off his monitoring ankle bracelet to prevent his being tracked. There were no negative results of this action for Terry. The ankle bracelet was simply reattached by DYS personnel. There was a meeting with Terry, his mother and DYS personnel on June 15, 2009, where Terry's mother stated she was unable to control him, that she was concerned about his being out, that Terry was on drugs, had again become involved with the FOLK gang and was stealing from his mentor at church. Terry tested positive for drugs in June 2009. None of this led to the Respondent's revoking Terry's freedom.

The result of the Respondent's decision and subsequent lack of action was the June 30, 2009, murder of 67 year old Maurice "Beau" Clark, Jr. Terry and three others invaded the Clark house where upon Mr. Clark was hit with the butt of a rifle, then dragged upstairs where money was demanded, saying he had no money the invaders ransacked the house and placed stolen items in Mr. Clark's vehicle. During this time Terry shot Mr. Clark in the shoulder and, after beginning to exit the house, Terry returned to shoot Mr. Clark in the mouth and then fled. This all occurred in a 15-20 minute time frame. Little Rock Police Department first responder Officer Linda Mandrell arrived at the house very shortly thereafter and found Mr. Clark alive, with a pulse and movement. Mr. Clark was subsequently transported to a hospital where he died. Terry was convicted of the murder of Mr. Clark and was also charged with the aggravated robbery of an elderly woman which had occurred earlier on June 30, 2009.

Having previously found the Respondent liable in this claim the Claims Commission unanimously awards the Claimant the amount of \$1,500,000.00 for the "pain and suffering" of the deceased and the "mental anguish" this unnecessary and wrongful death caused the Claimant.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

Upon consideration of all the facts, as stated above, the Claims Commission unanimously awarded this claim in the amount of \$1,500,000.00 and will include the claim in a claims payment bill submitted to the 89th Arkansas General Assembly, 2013 Legislative Session for subsequent approval and payment.

Date of Hearing December 13, 2012

Date of Disposition December 13, 2012

Richard Mayes
Chairman

[Signature]
Commissioner

[Signature]
Commissioner

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CLAIMANT

BEFORE THE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

MAURICE "TREY" CLARK, III

VS.

CLAIM #12-0819-CC

STATE OF ARKANSAS
DHS/DYS

RESPONDENT

NOTICE OF APPEAL

Respondent the Arkansas Department of Human Services (DHS) Division of Youth Services (DYS), by and through counsel Carmen M. Mosley-Sims, states as follows as its notice of appeal of the above-captioned matter:

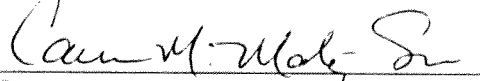
1. On December 13, 2012, the Claims Commission entered a written opinion finding the Respondent DHS/DYS liable to Claimant in the amount of \$1,500,000.00 for the murder of Mr. Maurice Clark, Jr. by Antonio Terry and his co-conspirators. This opinion was received by Respondent on December 19, 2012, by fax, with an original copy later received by mail.
2. The Commission erred in its decision for all of the following reasons, any one of which warrants reversal of the decision and dismissal of the claim:
 - a. The murder in this case was not caused by DHS/DYS, was not foreseeable based on Terry's behavioral and delinquency history, and could not have been prevented through the exercise of its reasonable and lawful duties.
 - b. The Commission disregarded the legal standards of duty of care, proximate cause, as well as the public policy of the State of Arkansas in finding liability and awarding damages against the State.

- c. The Commission substituted its own judgment as to whether Terry should have been released and the services that should have been provided to him for that of the Division – without considering all of the clinical and administrative factors that must go into any release or treatment decision.
- d. The Commission failed to grant DYS’ motions to compel Claimant to respond to discovery requests for relevant information.
- e. The Commission refused to grant DYS’ motions for continuances based on Claimants repeated failure to respond to discovery and failure to disclose material facts and witnesses prior to the hearings of this matter.
- f. The Commission found facts not supported by evidence of record based entirely on the unsupported assertions of Claimant’s attorneys, and disregarded factual findings of the circuit court as well as sworn admissions by the murderers themselves.
- g. Although multiple other individuals – known and unknown – bear the overwhelming weight of responsibility for this killing, the Commission refused to apportion fault in this case, in essence setting up an unconstitutional appropriation of funds to pay the debts of third parties.
- h. The \$1,500,000.00 awarded by the Commission was for “pain and suffering” and “mental anguish,” an inflated amount not consistent with the undisputed evidence of the record or previous awards in the State of Arkansas.

WHEREFORE, Respondent respectfully requests the Claims Subcommittee of the Joint Budget Committee of the Arkansas General Assembly to review this matter and reverse the Commission’s decision.

Respectfully submitted,

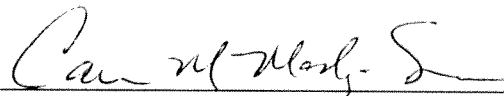
ARKANSAS DEPARTMENT
OF HUMAN SERVICES
OFFICE OF POLICY & LEGAL SERVICES



Carmen M. Mosley-Sims
Managing Attorney – Bar #2003216
P.O. Box 1437, Slot S260
Little Rock, Arkansas 72203
Telephone # (501) 682-1366

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing Answer on David H. Williams, 212 Center Street, Little Rock, AR 72201, by depositing same in the U.S. Mail in a properly addressed envelope with adequate postage thereon, and by e-mail this 22nd day of January, 2013.



Carmen M. Mosley-Sims
Attorney