

ARKANSAS STATE CLAIMS COMMISSION

JUN 05 2013

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BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

- Mr. Mrs. Ms. Miss

Custodian Lesia Lovejoy for minor Allyson Lovejoy

Do Not Write in These Spaces Claim No. 13-0867-CC Date Filed June 5, 2013 Amount of Claim \$ 135,000.00+ Fund DHS/CFS

State of Arkansas, Respondent DHS/Children & Family Svcs.

COMPLAINT

Negligence, Failure to Follow Procedure, Pain & Suffering, Mental Anguish, Other (Future Expenses)

Lesia Lovejoy for Allyson Lovejoy the above named Claimant, of 2170 Usain Fayetteville Arkansas 72703 479-966-9511 County of Washington represented by Alan Harry McDemore

of Department of Human Services (DHS) In excess of \$135,000

Month, day, year and place of incident or service: See Attached

Explanation:

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?

when? March 2013; to whom? Attorney General's Office, Victims Reparation; and that the following action was taken thereon: pending (Most that can be collected: \$25,000)

and that \$ pending was paid thereon: (2) Has any third person or corporation an interest in this claim? NO

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 verify believes that they are true.

Lesia Lovejoy (Print Claimant/Representative Name) Lesia Lovejoy (Signature of Claimant/Representative)

SWORN TO and subscribed before me at FAYETTEVILLE ARKANSAS

(SEAL) on this 3rd day of JUNE 2013

(Signature of Notary Public)

SFI- R7/99

My Commission Expires: JUNE 28 2020

TED A. BIGBEE WASHINGTON COUNTY NOTARY PUBLIC - ARKANSAS My Commission Expires June 28, 2020 Commission No. 12476834

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Arkansas State Claims Commission
AUG 06 2013

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

RECEIVED

- Mr.
- Mrs.
- Ms.
- Miss

Custodian
Lesia Lovejoy for minor Allyson Lovejoy

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces

Claim No. _____

Date Filed _____
(Month) (Day) (Year)

Amount of Claim \$ _____

Fund _____

AMENDED
COMPLAINT

Lesia Lovejoy for Allyson Lovejoy the above named Claimant, of 2110 Lisa Lane Fayetteville
(Name) (Street or R.F.D. & No.) (City)

Ark 72703 479-966-9511 County of Washington represented by Harry McDermott
(State) (Zip Code) (Daytime Phone No.) (City)

of P.O. Box 8361, Fayetteville, AR 72703-8361 479-444-7853 Same
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.) any:

State agency involved: Department of Human Services Amount sought: In excess of \$135,000

Month, day, year and place of incident or service: See Attached

Explanation:

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?

(Yes or No) : when? March 2013 ; to whom? Attorney General's office, Victims
Reparation : and that the following action was taken thereon: pending (Most that can be collected: \$25,000)

and that \$ pending 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 verify believes that they are true:

Lesia Lovejoy (Print Claimant/Representative Name) Lesia Lovejoy (Signature of Claimant/Representative)

SWORN TO and subscribed before me at FAYETTEVILLE ARKANSAS
(City) (State)

(SEAL) on this 5TH 3RD day of AUGUST JUNE 2013
(Date) (Month) (Year)

[Signature] (Notary Public)

SF1-R799

My Commission Expires: JUNE 28 2020
(Month) (Year)

TED A. BIGBEE
WASHINGTON COUNTY
NOTARY PUBLIC - ARKANSAS
My Commission Expires June 28, 2020
Commission No. 12376884

TED A. BIGBEE
WASHINGTON COUNTY
NOTARY PUBLIC - ARKANSAS
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Summary of Gross Negligence of the Department of Human Services which resulted in the rape and severe mental damage to Allyson Lovejoy.

The records of the Department of Human Services (DHS) and the two affidavits, medical reports, and police records attached clearly show the DHS committed gross negligence. The DHS failed its responsibility to adequately investigate whether or not Stacy Whetstine and her two year old daughter Allyson Lovejoy needed a Family In Need of Supervision (FINS) case to be filed with the Circuit Court in order to protect Allyson from her mother's neglect. Right after Allyson was raped when she turned three years old, Stacy Whetstine explained to Allyson's therapist that she did not wish to keep custody of Allyson, she could not take care of Allyson, she had difficulty bonding with Allyson, and she wanted to put her up for adoption.

At first, Stacy Whetstine's friends reported to the DHS that Allyson was being sexually abused By Stacy's boyfriend and Stacy was locking her up in a closet. At the same time Allyson's grandmother reported to DHS that Allyson appeared marijuana intoxicated around her mother. After unbelievably only talking to Stacy Whetstine and her roommate, DHS determined there was no need for it to file a FINS case to protect Allyson or to have Allyson tested for THC.

Someone next reported to DHS that Stacy Whetstine was driving home drunk from work and picking up Allyson on the way. After unbelievably only talking to Stacy Whetstine and her roommate, DHS determined there was no need for it to file a FINS case to protect Allyson.

Someone next reported to DHS that Allyson had boils that were not being treated by Stacy Whetsine. After only talking to Stacy Whetstine, DHS determined there was no need for it to file a FINS case to protect Allyson.

Allyson's grandmother next reported that Stacy Whetsine's babysitter had exclusively cared for Allyson for three weeks because the babysitter was afraid to give Allyson back to her mother. This was substantiated by Stacy Whetstine's live-in boyfriend who told the grandmother that Stacy had told him that Allyson was away from home for a month because Allyson was visiting relatives in Missouri. DHS unbelievably only interviewed Stacy Whetstine about this three week abandonment allegation. Stacy Whetstine told DHS the babysitter kept Allyson for only three days because Stacy and the babysitter just kept missing each other. DHS then did nothing else to investigate Stacy Whetstine's neglect.

Three months later two year old Allyson was anally raped on June 24, 2011, at her new babysitter's house named Margaret Fields. Although the witnesses' testimony was contradictory as to whether it was Margaret's acquaintance Lance Cooksey, or her son Avery Clark, or both who raped Allyson, all witnesses agreed that Allyson had been raped. The lab report showed that Allyson had an acute anal injury which was consistent with anal penetration and Allyson's anus was secreting fluid which was evidence of semen being in her body. Allyson's therapist reported that Allyson was not able to talk when her therapy began but that she did point out the vagina and buttocks

on the drawing that was provided. (See psychology evaluation attached as exhibit h.)

At present Allyson is not able to talk about the specifics of the rape and only talks about the clean-up and the pain. Allyson did state at one time the offender was a boy which because of her age could have meant a man.

Margaret Fields, the mother and girlfriend of the alleged rapists "cleaned" Allyson up after the rape and "washed" all of her clothes.

On June 25, 2011, Stacy Whetstine allowed Allyson to live with her grandmother Lesia Lovejoy. Lesia immediately enrolled Allyson in therapy where her therapist noted Allyson had high anxiety, depression, withdrawal, aggression, lying, tantrums, and was smearing her feces. The therapist also determined that Stacy Whetstine never bonded with her daughter, could not take care of her, and did not want to keep custody of her. Stacy Whetstine attended one family counseling with Allyson, then failed to show up for any others, and changed her phone number to prevent Allyson's therapist from calling her anymore.

On or about August 9, 2011, Lesia Lovejoy reported to the Department of Human Services Hotline that Stacy Whetstine had abandoned Allyson in her care on June 25, 2013, and her attempts to return Allyson Lovejoy to her mother have failed because Stacy would not return her phone calls. Even though Stacy Whetstine could take her daughter back at any time, DHS unbelievably found after only talking with Stacy Whetstine that there was not sufficient evidence that Stacy Whetstine had abandoned

her daughter to a babysitter. DHS accepted Stacy's statement she and the babysitter had just kept missing each other. DHS also unbelievably found that there was not sufficient evidence that Stacy abandoned her daughter when she let Allyson live with her grandmother for three months.

In order to get a FINS case established to enable Allyson to go to Children's House and for the Court to protect Allyson from her mother, Lesia Lovejoy in September of 2011 signed over Allyson's custody to her son Mitchell Lovejoy, Allyson's father. He filed for a private FINS case for the Circuit Court to protect Allyson which enabled Allyson to go to Children's House. The therapist reported that Allyson's father was attending family therapy sessions and appeared as if he wanted to eventually get custody of his daughter.

As of May 2013, Stacy Whetstine is requesting that the Circuit Court terminate her parental rights to Allyson Lovejoy.

As of April 20, 2013, Allyson has a primary diagnosis of an Anxiety Disorder. Allyson's anxiety results in her experiencing feelings of panic, fear of the future, withdrawal, depression, poor boundaries, fearfulness, hyper vigilance, poor social skills, poor communication skills, low self-confidence, aggression in the home, oppositional/disruptive behaviors in the home, and poor regulation of emotions. She suffers from the following difficulties resulting from trauma: demonstrates and engages in trauma play; demonstrates hyper vigilance on a daily basis; difficulty concentrating;

inconsistent boundaries with others; low self-confidence and withdrawal; and lack of trust in adults. These symptoms have manifested themselves at home, school, and the community. As a result of Allyson's trauma caused by the gross negligence of DHS, Allyson therapist has opined that Allyson will have a lifetime struggle dealing with her trauma, and without continued therapy, Allyson will most likely deteriorate.

As a result of DHS's gross negligence and the neglect of her mother, Allyson has suffered severe pain, mental anguish, and will have to battle with her emotional instability for the rest of her life. For the last two years it has cost \$30,000 for Allyson to have individual therapy treatment, it has cost her \$15,000 for two years of speech and occupational therapy. This does not count her family therapy sessions. Allyson will need to have Arkansas award her at least \$125,000 to continue her to have the therapy she will need for two more years, and an additional 35,000 which can be invested so that she will have enough money to pay for the therapy her therapist has determined she will need for the rest of her life. See exhibit .

In order to avoid taking any blame for its gross negligence, DHS filed with the prosecutor's office five out of sequence and mixed up reports opining: (1) there was no evidence that Stacy Whetstine was neglecting Allyson because Stacy told it that Stacy did not lose Allyson and it was only her and her babysitter missing each other which caused Allyson to be kept from her care; and (2) it was not proven Allyson had been raped because the witnesses' testimony was contradictory and that it was possible that Allyson's anal damage was caused by her defecating after a severe constipation. The

negligence of the DHS is proven not only by its own records but the affidavit attached as exhibit L.

A/O: Alleged Offender

a/v: alleged victim

Any typing below in italics is a proven incorrect statement made by the declarant.

I. Department of Human Services reports to the Washington County Prosecutor

1. On November 3, 2010, Lesia Lovejoy, the grandmother of **a/v** Allyson Lovejoy born 6-7-2008, called the Arkansas Child Abuse Hotline to report it appeared Allyson had droopy eyes because her mother, **A/O** Stacy Whetstine, might be smoking marijuana in her presence. On or about this time someone, or other people, called the Arkansas Child Abuse Hotline to report allegations of sexual abuse of Allyson Lovejoy by **A/O** Arica Riley and that Allyson Lovejoy had been locked up in a closet by her mother.

The DHS report to the prosecutor attached did not mention the hotline reports of sexual abuse or closet imprisonment. Nonetheless, the report showed Tiffany Simpson, the Department of Human Services family Services worker, interviewed Stacy Whetstine and her roommate about Arica Riley and his alleged sexual abuse as well as asked Stacy Whetstine and her roommate about the allegations of closet imprisonment.

On November 5, 2010, the Department of Human Services' employee Nirika Morris reported she was unable to locate or contact Stacy Whetstine.

On November 8, 2010, the Department of Human Services' employee Tiffany Simpson located and observed Allyson and noted she had no signs of abuse or neglect. Tiffany Simpson did not examine Allyson's body for indications of sexual abuse nor did she take Allyson to be examined by the Sexual Assault Nurse Examiner at the Arkansas State Police Crimes Against Children Division.

On November 8, 2010, Tiffany Simpson noted that **A/O** Aric Riley did not live in the home and she was not given any information as to how to locate him.

On November 8, 2010, the Department of Human Services' employee Tiffany Simpson interviewed Stacy Whetstine who told her she smoked marijuana but never around her daughter Allyson. She told Tiffany Simpson that **she used to have a friend named Aric but did not talk to him anymore because he was teaching Allyson inappropriate words.** Stacy Whetstine told Tiffany Simpson that when she smokes marijuana she has Allyson stay with her aunt and that she had smoked marijuana about three days ago. **Stacy Whetstine told her she had cut off old friends so now they are harassing her and trying to take her child away from her.** Tiffany Simpson **reported Stacy Whetstine tested positive for THC (marijuana) on November 8, 2010.**

On December 6, 2010, the Department of Human Services' employee Tiffany Simpson interviewed Stacy Whetstine who told her the person who called in the report was her friend who had called her up to apologize for making this false report to the DHS.

Tiffany Simpson did not ask Stacy for this person's name of address or phone number. Stacy admitted she worked in a bar and that someone could have seen her leaving the bar and picking up her daughter. Stacy informed Tiffany Simpson her roommate Jacqueline Byers and her trade off watching their children while the other goes to work. Tiffany Simpson reported Stacy Whetstine at this time was tested negative for illegal substances and that she appeared healthy.

On December 6, 2010, the Department of Human Services' employee Tiffany Simpson interviewed Jacqueline Byers, Stacy Whetstine's roommate, who told her it was Stacy Whetstine's ex-friends who made the sexual abuse and closet imprisonment report. Jacqueline told her Stacy Whetstine had just started working in a bar and that Stacy does not come home from work drunk. **When asked about the other things mentioned in the hotline report, Jacqueline told Tiffany she knew nothing of men being over or her daughter Brianna or Allyson being closed up in a room. Jacqueline explained that Brianna was reported scratching her vaginal area because she just puts her hands in her pants. Jacqueline "said" she looked at Brianna's vagina and she did not see any marks or a rash and she took Brianna to a doctor who said nothing was wrong.**

On December 21, 2010, Tiffany Simpson found the report of Stacy Whetstine locking up Allyson in a closet or smoking marijuana around Allyson or Arica Riley being abusive to Allyson was unsubstantiated and that the Department of Human Services did not need to file a Family In Need of Supervision (FINS) case to protect Allyson. See the DHS report to the prosecutor that was given to Lesia Lovejoy attached as exhibit a.

2. On November 24, 2010, a report was made to the hotline that **AO** Stacy Whetstine was driving home from work drunk and picking up her two year old daughter.

On December 6, 2010, Tiffany Simpson noted Brianna, date of birth 6-7-07, appeared healthy and developmentally appropriate.

Tiffany Simpson attached her above interviews in paragraph 1 to her report and noted that Jacqueline's last name was Byers and not Myers.

On December 21, 2010, Tiffany Simpson found the report Stacy Whetstine was driving home drunk with her daughter was unsubstantiated and there was no need to open a FINS case. See the DHS report to the prosecutor that was given to Lesia Lovejoy attached as exhibit b.

3. On or about April 9, 2011, someone called the Department of Human Services Hotline to report neglect on the part of Stacy Whetstine because her daughter Allyson Lovejoy had boils on her body that were not being treated.

On or about April 9, 2011, Lesia Lovejoy called the Department of Human Services' Hotline to inform DHS that she, the grandmother of Allyson Lovejoy, had proof that Stacy Whetstine had abandoned Allyson for three weeks. She specifically reported to DHS as follows:

Lesia had called Stacy Whetstine to ask her if she could have visitation with her granddaughter Allyson. Stacy Whetstine told her that Allyson was with her babysitter Brandy and she had not heard from her babysitter for three days.

After Lesia Lovejoy offered to help Stacy Whetstine find Allyson, Stacy Whetstine in front of Lesia made cell phone arrangements with her babysitter Brandy to pick up Allyson at Crossover Terrace Apartments, 4081 Jonnell Drive, Fayetteville, AR, building #2867, apartment 8. When Lesia and Stacy Whetstine arrived there, the babysitter's boyfriend said Brandy had just left with Allyson. Lesia pointed out to the boyfriend that Brandy was just made aware Stacy Whetstine was on her way over to pick up Allyson and that she was going to call the police if Allyson was not produced within 20 minutes. Stacy Whetstine then in front of Lesia got on her cell phone and called Brandy and made arrangements for Stacy Whetstone to pick up Allyson at the E Z Mart on Weddington. After Stacy Whetstine left the E Z Mart with Allyson, Lesia found out from Brandy, and her friend that was with her, that she had had Allyson for the last three weeks. The babysitter did not want to give Stacy back her daughter because Stacy was doing methamphetamines. They asked for money because they had been feeding and clothing Allyson for the last three weeks.

After this, Lesia immediately called Reggie Cooper, Stacy Whetstine's live in boyfriend, who said that he had not seen Allyson for one month. He informed Lesia that Stacy Whetstine had told him that Allyson Lovejoy was staying with relatives in Missouri.

While Lesia Lovejoy had noticed boils on Allyson, she did not report this on the DHS hotline.

In the DHS report to the prosecutor attached, DHS employee Tiffany Simpson incorrectly stated DHS had been informed on its hotline that Allyson had been missing for only three days.

On April 21, 2011, Tiffany Simpson went to Allyson's home; but only hearing what sounded like a child and a dog after no one answered the door, Tiffany Simpson left.

On April 26, 2010, Tiffany Simpson talked to Stacy Whetstine on the phone who informed her she made contact with her babysitter but the baby sitter left the places where she had Allyson each time Stacy reached them. **Stacy informed Tiffany Simpson that Allyson was not missing for three days because the babysitter and her had just kept missing each other.** Stacy Whetstine told her Allyson did not have a diaper rash but did have a staph infection and was taken to the doctor who prescribed an ointment for it. Stacy Whetstine told her she was working two jobs and she could be located at Coleman's Day Care in Springdale.

On April 27, 2010, Tiffany Simpson observed two year old Allyson and found no diaper rash. Tiffany Simpson reports that Allyson nodded her head yes when she was asked if she liked school and if her mother was nice. She reported Allyson appeared healthy.

Tiffany Simpson negligently did not interview Lesia Lovejoy, Reggie Smith, and the babysitter whose address was known by Lesia. Tiffany Simpson negligently did not file a Family In Need of Supervision (FINS) case and quit working on the case.

Tiffany Simpson reported to the prosecutor that on June 24, 2011, the Arkansas State Police Crimes Against Children Division Investigator Wills found out from Stacy Whetstine that she had changed babysitters to Margaret Fields. Stacy Whetstine reported to Investigator Willis that Allyson was at Margaret Fields house when Allyson's sexual abuse occurred. Stacy Whetstine reported to Investigator Willis that Margaret Fields called her and told her that the police were going to call Stacy and would not say anything else other than Allyson had been touched. Stacy Whetstine reported to Investigator Willis that when she picked up Allyson she said her butt hurt and the Sexual Assault Nurse Examiner told Stacy that Allyson had an acute anal injury. Stacy Whetstine reported that Melissa, Margaret's friend, stated that Margaret's son Avery had pulled Allyson's diaper down and tried to penetrate him in broad daylight in Margaret's backyard. *Stacy Whetstine falsely reported that Allyson's doctor said Allyson was borderline autistic. Stacy Whetstine falsely reported that Allyson's father was in jail for beating up Allyson.*

Tiffany Simpson negligently found the report of negligence or neglect of Stacy Whetstine concerning her daughter Allyson was unsubstantiated and a FINS case did not have to be opened because Allyson was residing in the home of her grandmother Lesia Lovejoy. Just because Stacy Whetsine temporarily let Allyson live with her grandmother Lesia Lovejoy in no way excused a FINS case not being immediately opened to protect Allyson from her mother's neglect or her decision to abandon Allyson at Allyson's grandmother's house.

Lesia Lovejoy at that time had custody of her other grandchild Cheyanne Lovejoy because a FINS case had been opened on Cheyanne and Cheyanne's mother. Cheyanne's mother was found not to be able to care for Cheyanne and the Circuit Court ordered that Lesia Lovejoy have custody over Cheyanne until Cheyanne's mother demonstrated to the Circuit Court that she was able to take care of Cheyanne. **Lesia Lovejoy did not want to have custody of Allyson but agreed to accept Stacy Whetsine's offer to let Allyson live in her house because Stacy Whetstine's past actions had clearly demonstrated to her Stacy was endangering Allyson's life.** See the DHS report to the prosecutor that was given to Lesia Lovejoy attached as exhibit c.

On June 25, 2011, Stacey Whetstine allowed her daughter to live with Lesia Lovejoy who immediately put her in therapy. The therapist noted after meeting with Stacy Whetstine that Stacy admitted she was never able to bond with her daughter and admitted was unable to care for her. The therapist documented that Stacy Whetstine

only made one family therapy session and that afterwards changed her number so that the therapist could no longer contact her.

While Allyson was living with her grandmother, Stacy Whetstine ignored her daughter while her daughter was living with Lesia Lovejoy from June 25, 2011, through and including September 2011, by only seeing her daughter for on two one-hour visits. As of May 2013, Stacy Whetstine is continuing her request for the Circuit Court to allow her to give up her parental rights to Allyson.

4. On or about August 9, 2011, Lesia Lovejoy called the Department of Human Services Hotline to report that Stacy Whetstine had abandoned Allyson Lovejoy in her care since June 25, 2011, and her attempts to return Allyson Lovejoy to her mother Stacy Whetstine have failed because Stacy would not return her phone calls.

On August 10, 2011, Tiffany Simpson observed Allyson and found her speech was delayed and could not be interviewed.

On August 10, 2011, Tiffany Simpson spoke with Lesia Lovejoy but did not document what was said.

On September 5, 2011, DHS worker Cindy Edrington reported that she went to a FINS hearing concerning Cheyanne Lovejoy and Cheyanne's mother where Mitchell Lovejoy, the father of Cheyanne had been released from prison and paroled to the home of his

mother Lesia Lovejoy. Mitchel Lovejoy was adjudicated the father of Allyson Lovejoy at the hearing and Allyson was placed in the custody of Lesia Lovejoy. On September 5, 2011, Lesia Lovejoy told the DHS family services worker she did not want to keep custody of Allyson and to make other arrangements for her granddaughter's care.

On October 14, 2011, DHS worker Cindy Edrington reported that Lesia Lovejoy informed her she was willing to have custody of Allyson for as long as was necessary.

On October 14, 2011, Stacy Whestone told DHS worker Cindy Edrington that Lesia Lovejoy never told her she no longer wanted to care for Allyson. Stacy Whestone told Cindy Edrington that Lesia Lovejoy wanted to have custody of Allyson after Allyson was sexually assaulted. She told Cindy Edrington she gave Lesia Lovejoy permission to take custody as she was having a difficult pregnancy and felt Lesia could better meet the needs of Allyson. *She falsely told Cindy Edrington that Lesia Lovejoy asked her to call DHS and say she had custody of Allyson.* She correctly told Cindy Edrington that Lesia Lovejoy wanted DHS to set up a FINS case so that Allyson could go to Children's House. Cindy Edrington noted Stacy Whetstine was healthy and appeared to be invested in the well-being of Allyson.

DHS family services worker Cindy Edrington reported that Lesia Lovejoy's complaint was unsubstantiated in that the DHS did not need to file a FINS case providing protective services for Allyson in that the Circuit Court ordered that Lesia Lovejoy have

temporary custody and that Lesia was now willing to keep custody of Allyson. See the DHS report to the prosecutor that was given to Lesia Lovejoy attached as exhibit d.

5. A report was made on the Department of Human Services hotline that Stacy was inadequately supervising her daughter Allyson.

On June 24, 2011, Investigator Willis interviewed the now three year old Allyson. Allyson was difficult to understand. Allyson did not disclose any abuse but she did keep pointing to the vaginal and buttocks area of the girl drawing and the penis on the boy drawing.

On June 24, 2011, Investigator Willis was provided by Nurse Sue Stockton her report which showed there was an anal fissure noted at the 12:00 position on Allyson.

On June 24, 2011, Investigator Willis interviewed Stacy Whetstine who said when the abuse occurred she was at work at Coleman's Children Academy. She told him Margaret Fields was her babysitter and the abuse occurred at her babysitter's house during the daytime. Stacy told him she got a text from Margaret telling her the police were going to call her and that Allyson had been touched. When she picked up Allyson all Allyson would tell her was that her butt hurt. The nurse at the children's protective center, Sue Stockton, told her that Allyson had an acute anal injury. Stacy Whetstine reported that Melissa told her she had caught Avery with his pants down on top of Allyson with her diaper down trying to penetrate her. *Stacy Whetstine falsely told the*

investigator that she had failed her drug test so there was a FINS case on her where she was tested randomly. Stacy said she would no longer take Allyson to Margaret's house and she would protect Allyson.

On June 24, 2011, Detective Pleimann and Investigator Willis met with Margaret Fields who reported to them that her son Avery told her it was Lance Cooksey, an acquaintance of Margaret Fields, who taught him how to penetrate Allyson front and back.

On June 24, 2011, Willis observed the interview of the nine year old Avery Clark who said a man with a mustache told him to put his front end onto the back end of a three year old girl. Avery said he saw the man do it two times on the same day to the three year old. He said the man keeps sneaking over.

On June 27, 2011, Detective Pleimann spoke to Stacy Whetstine who denied leaving Allyson with whomever and that she takes care of her child when she is not going to class or working.

On July 27, 2011, Moreland, the Arkansas State Police Investigator for Crimes Against Children, talked to Allyson's therapist Amanda who said Allyson is still not talking and when she does she cannot understand her.

On July 27, 2011, Moreland talked to Tonya who lives with Lesia Lovejoy. Tonya told him that before the sexual assault happened she had told Stacy Whetstine that she knew Margaret Fields and not to leave Allyson there. Tonya stated that Stacy Whetstine does not want Allyson and would drop her off whenever she could with whoever she could. Tonya said Allyson is talking better and doing great since she has been with her grandmother Lesia Lovejoy.

On July 28, 2011, Detective Pleimann found out that Avery Clark had been removed from Margaret Fields' custody and placed with his father.

DHS negligently found that the allegations that Stacy Whetstine left Allyson with people who are not able to take care of her and that Allyson was sexually molested was unsubstantiated. See the DHS report to the prosecutor that was given to Lesia Lovejoy attached as exhibit e.

II. Police Reports on the sexual assault on Allyson Lovejoy.

On August 28, 2012, Detective Michael Charles of the Farmington Police reported that on June 24, 2011, a former Detective Chris Pleimann received a report that Margaret Fields' boyfriend Lance Cooksey raped Allyson Lovejoy at Margaret Field's home. Lesia Lovejoy reported to the police that Margaret Fields contacted a friend about the rape and then washed all the clothing Allyson was wearing prior to calling the police.

Detective Michael Charles reported that the crime lab report shows that Allyson had a prostrate fluid that is secreted when semen is present and there was an indication of Allyson's anus being torn. The crime lab also reported that Allyson's oral cavity could have contained semen but her saliva had broken it down. There was also an acute tearing of Allyson's anus which was consistent with "a disclosure of anal penetration." (See medial Summary attached to police report.) Allyson's therapist reported that Allyson was not able to talk when her therapy began but that she pointed out the vagina and buttocks on the drawing that was provided. (See psychology evaluation attached as exhibit h.) At present Allyson is not able to talk about the specifics of the rape and only talks about the clean-up and the pain. Allyson did state at one time the offender was a boy which because of her age could have meant a man.

On August 29, 2012, Detective Michael Charles reported Lesia Lovejoy gave him permission to talk with Allyson's therapist and also informed him that Allyson tells her it was a man and not a boy who hurt her. Lesia Lovejoy reported that Margaret Fields washed Allyson's clothes after the rape.

On September 18, 2012, the therapist reported to Detective Michael Charles that Allyson had at one point called the alleged offender a boy; but, because of her age that could mean an adult male. She reported that Allyson just talks about having to clean up and about the pain.

On October 11, 2012, Detective Charles reported that **Margaret Fields informed him that the only reason she kept Allyson was that Stacy Whetstine told her she had been leaving her at an unknown address where a blonde female and a male had been molesting her.** Margaret informed him that a Melissa Gross had told her she walked in on Avery Clark, Margaret's son was who trying to molest Allyson. Margaret informed him that she talked with her son Avery and that he told her he did not realize that what he had done to Allyson would hurt her. Margaret did not know the location of either Melissa Gross or Lance Cooksey.

The narrative taken by Detective William Redford of incident showed that Margaret Fields' incident report was contradicted by her testimony at the FINS hearing over her son Avery Clark. **The only consistent story was that Avery was seen molesting Allyson.**

The narrative taken by Detective William Redford showed that Melissa Gross told him that on the date of the sexual assault she saw blood on Allyson's leg and that there was blood in her stool. After watching Margaret clean Allyson, Margaret Fields told her that her boyfriend Lance Cooksey had taken Allyson Lovejoy and Avery Clark to show Avery what to do to little girls. After hearing this Margaret and Melissa took Avery to the Child Safety Center. **Melissa further told him that when Margaret called Stacy and informed her what happened, Stacy seemed unconcerned and would not be by to pick up Stacy until later.** See police report given to Lesia Lovejoy attached as exhibit f.

III. Ozark Guidance September 12, 2011, Evaluation of Allyson Lovejoy After Her June 24, 2011, Rape.

On September 12, 2011 Amanda Cude-Woods, Allyson's therapist stated that Allyson was diagnosed on July 7, 2011. On that date Allyson appeared to have moderate to significant developmental delays. **Allyson was diagnosed with an adjustment disorder and the therapist also suspected a diagnosis of attachment disruption due to reports of Lesia Lovejoy of Stacy Whetstine's neglect.**

On June 24, 2011, Allyson was seen at the Children's Safety Center and Stacy Whetstine at that time allowed Allyson to live with her grandmother Lesia Lovejoy. Phone calls with Stacy Whetstine showed the therapist a stark contrast to what was being observed by the therapist. Stacy Whetstine stated to the therapist that Allyson "back talked" her, Allyson had been banging her head on the floor since she was 9 months old, and that she was told by a doctor that Allyson was mildly autistic. **Stacy reported to the therapist that she did not wish to get custody of Allyson as she could not take care of Allyson. She reported that she had difficulty bonding with Allyson and wanted to put her up for adoption.** Stacy Whetstine made her first appointment with the therapist but missed Allyson's next two therapy appointments and then changed her number so that the therapist could no longer contact her. Allyson's father Mitchell Lovejoy, after being released on parole, participated in one therapy session and expressed interest in continuing to be an active participant in therapy sessions as he wanted to get custody of Allyson.

See Allyson's therapy report dated September 12, 2011, that was submitted to the Circuit Court Judge attached as exhibit g.

IV. Ozark Guidance April 20, 2013, Evaluation of Allyson Lovejoy

As of April 20, 2013, Allyson has a primary diagnosis of Anxiety Disorder and a secondary diagnosis of Parent-Child Relationship Problems. Allyson's anxiety results in her experiencing feelings of panic, fear of the future, withdrawal, depression, poor boundaries, fearfulness, hyper vigilance, poor social skills, poor communication skills, low self-confidence, aggression in the home, oppositional/disruptive behaviors in the home, and poor regulation of emotions. She manifests the following difficulties resulting from her trauma at home, school, and the community: demonstrates and engages in trauma play; demonstrates hyper vigilance on a daily basis; difficulty concentrating; inconsistent boundaries with others; low self-confidence and withdrawal; and lack of trust in adults. Although Allyson has displayed positive benefits from her weekly individual therapy, as a result of her trauma Allyson will have a lifetime struggle dealing with her trauma, and without continued therapy, Allyson will most likely deteriorate. See Allyson's therapy report dated April 20, 2013, attached as exhibit h.

V. February 17, 2013, Medical Report of Allyson from NWA Pediatric Clinic

Allyson's speech and fine motor delays are not connected with any physical disability or defect and may relate to her negative early childhood experience. See exhibit i.

VI. FINS Adjudications Concerning Allyson Lovejoy and Stacy Whetstine

On July 31, 2011, the Washington County Circuit Judge set a show cause hearing to enable Stacy Whetstine to explain why she was breaking court orders by not keeping her visits with Allyson, not submitting to weekly drug tests, and not keeping a stable home or employment. See court order attached as exhibit j.

VII. Allyson Lovejoys Birth Certificate

Allyson Lovejoy's birth certificate is attached as exhibit k.

VIII. Expert Affidavit Concerning The Negligence of DHS

Expert's opinion as to the negligence of DHS Family Services Worker Tiffany Simpson and that such negligence caused the severe mental and physical damage of Allyson Lovejoy is attached as exhibit L.

IX. Request For Compensation

As a result of DHS's negligence and the neglect of her mother, Allyson has suffered severe pain, mental anguish, and will have to battle with her emotional instability for the rest of her life. For the last two years it has cost more than \$30,000 for Allyson to have individual therapy treatment and it has cost her \$15,000 for two years of speech and occupational therapy. This does not count her family therapy sessions. Allyson will need to have Arkansas award her at least \$90,000 to continue her to have the therapy she will need for two more years, and an additional \$35,000 which can be invested so that she will have enough money to pay for her therapy which her therapist has

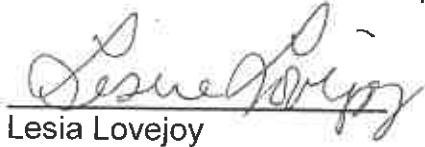
determined she will need for the rest of her life. See exhibit m. Any money for her pain and suffering and her future diminished quality of life would be very much appreciated. Thank you so much very much for considering Allyson's complaint against the DHS and Tiffany Simpson.

Respectfully submitted,



Lesia Lovejoy
Claimant for Allyson Lovejoy
2170 Lisa Lane
Fayetteville, Arkansas 72703
479-966-9511

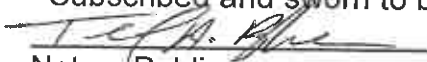
Comes now Lesia Lovejoy, and for her affidavit states the above facts are true and correct and are within her own personal knowledge.



Lesia Lovejoy

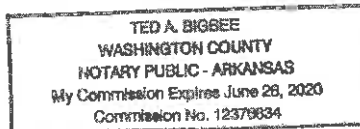
STATE OF ARKANSAS
COUNTY OF WASHINGTON

Subscribed and sworn to before me on this ^{TRD} ~~31st~~ ^{3RD} day of June 2013.



Notary Public

My commission expires: JUNE 28, 2020



Incident # 12-00387

Farmington Police Dept.

Report Date 08/28/12

Page 1 of 8

Incident Report

Report Time 12:21 PM

| | | | | |
|--------------------|---------------------------|----------------|-------------------------------|-------------------|
| Status Active | Exception Clearance | Date | Reporting Officer | ORI/Agency |
| | | Not Applicable | F-2 Thompson, Michael Charles | AR0720500 |
| | Assigned Officer | Entered By | | Approving Officer |
| | Thompson, Michael Charles | | MCT | |
| Assisting Officers | | | | |

| | |
|------------------|----------------|
| Complainant | |
| Name Arkansas | Contact Name |
| Business Address | Business Phone |

| | |
|--|------|
| Offenses | |
| Incident Location 112 Neal Farmington, AR 72730 | Zone |

| Earliest Possible Date | Time | Latest Possible Date | Time |
|------------------------|-------|----------------------|-------|
| 08/28/2012 | 12:21 | 08/28/2012 | 12:21 |

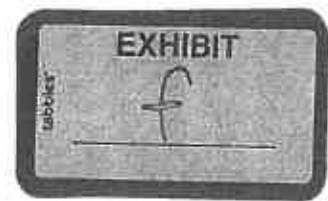
| # | Statute/Code | Description | Fel/Misd | Att/Comp | Loc | Bias | Wpn | CATypes |
|---|--------------|---|----------|-----------|-----|------|-----|---------|
| 1 | 5-14-103A(4) | RAPE / ORAL OR ANAL INTERCOURSE / PERSON LESS THAN 14 YOA | Felony | Completed | 20 | 88 | 99 | O |
| 2 | 5-27-205A(1) | CONTRIBUTING TO DELINQUENCY OF A MINOR / ADULT ENCOURAGES MINOR TO COMMIT | Misd | Completed | 20 | 88 | 99 | P |
| 3 | 5-2-403 | ACCOMPLICES | Misd | Completed | 20 | 88 | 99 | |

| | | |
|----|------------------------|--------------|
| MO | Method Of Entry n/a | # Prems 0 |
|----|------------------------|--------------|

| | | | | | | |
|----------------|---|---|---|--|--|--|
| Location Types | 05 Commercial/Off Bldg 06 Construction Site 01 Air/Bus/Train Terminal 02 Bank/S&L 03 Bar/Night Club 04 Church/Synag/Temple | 12 Grocery/Supermarket 13 Hwy/Road/Alley 07 Convenience Store 08 Dept/Discount Store 09 Drug Str/Dr Off/Hosp 10 Field/Woods 11 Govt/Public Bldg | 19 Rental Storage Facility 20 Residence/Home 21 Restaurant 22 School/College 23 Service/Gas Station 24 Specialty Store 25 Unknown/Other | Bias Motivation Codes ANTI- 11 White 12 Black | 24 Moslem 25 Other Religion 26 Multi-religious group 27 Atheist/Agnostic 31 Arab 32 Hispanic 33 Other Ethnicity 41 Gay (male) | 42 Lesbian 43 Homosexual 44 Heterosexual 45 Bisexual 51 Phys Disability 52 Mental Disability 88 None 99 Unknown |
|----------------|---|---|---|--|--|--|

| | | | | | |
|----------------------------|---|---|--|--|--|
| Suspected Of Using None | Criminal Activity Types B Buying/Receiving P Possessing/Concealing D Distributing/Selling E Exploiting Children | C Cultivating/Manuf/Publishing O Operating/Promoting/Assisting T Transport/Import/Transmit U Using/Consuming | Weapon Type(s) 11 Firearm (Auto) 12 Handgun (Auto) 13 Rifle (Auto) 14 Shotgun (Auto) 15 Other Firearm | 20 Knife/Cutting Instr 30 Blunt Object 35 Motor Vehicle 40 Personal Weapons 50 Poison 60 Explosives | 65 Fire/Incendiary Device 70 Drugs/Narc./Sleeping Pills 85 Asphyxiation 90 Other 95 Unknown 99 None |
|----------------------------|---|---|--|--|--|

| | | | | | | |
|-------------------------------------|--------------|---|-------------|---|------------|-----------------|
| Victim # 1 | | Event #s Related 1,2,3 | | | | |
| SSN/ID/TIN | Title | Name | DOB | Age | Sex | Resident Status |
| | | Lovejoy, Allyson | 06/07/2008 | 4 | M | Unknown |
| Race | Ethnicity | Home Phone | Work Phone | Other Phone | DL (#, ST) | |
| White | Not Hispanic | (479)313-2791 | | | | |
| US Citizen | Legal Alien | Doc Type | Immig Doc # | Nationality | | |
| Yes | | | | | | |
| Home Address | | | | Employer | | |
| 2170 N Lisa ,Fayetteville, AR 72703 | | | | | | |
| Work Address | | | | Occupation | | |
| | | | | | | |
| Victim Type | Injury Type | Aggravated Assault/Homicide Circumstances | | Relationship To Suspect | | |
| Individual | None, | None | | <small>#1 N/A #2 N/A #3 N/A</small> | | |
| Justifiable Homicide Circumstances | | | | Taken to: (Hospital Name) | | |
| None | | | | | | |
| Injury Description | | | | | | |



27

| Suspect #1 | | | | | | | | | | |
|--|---------------|---------------------------|-------------------------------|-------------|-------------|-------------------|-----------|------------------|--------------------------------|--|
| SSN/ID/TIN 432-47-0638 | | Title | Name Cooksey, Lance Edward | | | DOB 04/11/1967 | Age 45 | Sex M | Resident Status Nonresident | |
| Race White | | Ethnicity Not Hispanic | | Home Phone | Work Phone | Other Phone | | DL (#, ST) AR | | |
| US Citizen Yes | Legal Alien | Doc Type | | Immig Doc # | Nationality | | | | | |
| Home Address 1558 Hwy 71, West Fork, AR 72774 | | | | | | Employer | | | | |
| Work Address | | | | | | Occupation | | | | |
| Height 6' 0" | Weight 204 | Eyes Blue | Build | | AKA | | | | | |
| Appearance | | HairColor Brown | Hair Style | | Teeth | Beard/Facial Hair | Demeanor | Speech | Voice | |
| | | Dexterity | Hair Length | | Complexion | | | | | |

| Suspect #2 | | | | | | | | | | |
|---|-------------|---------------------------|------------------------------------|-------------|-------------|-------------------|-----------|------------|-----------------------------|--|
| SSN/ID/TIN 678-01-7099 | | Title | Name Mr Clark, Avry Micheal Lee | | | DOB 08/01/2001 | Age 11 | Sex M | Resident Status Resident | |
| Race White | | Ethnicity Not Hispanic | | Home Phone | Work Phone | Other Phone | | DL (#, ST) | | |
| US Citizen Yes | Legal Alien | Doc Type | | Immig Doc # | Nationality | | | | | |
| Home Address 112 Neal ST, Farmington, AR 72730 | | | | | | Employer | | | | |
| Work Address | | | | | | Occupation | | | | |
| Height - | Weight - | Eyes | Build | | AKA | | | | | |

| Suspect #3 | | | | | | | | | | |
|---|---------------|---------------------------|----------------------------|-------------|----------------------|------------------------------|-----------|------------------|-----------------------------|--|
| SSN/ID/TIN 431-41-9941 | | Title | Name Fields, Margaret M | | | DOB 01/10/1979 | Age 33 | Sex F | Resident Status Resident | |
| Race White | | Ethnicity Not Hispanic | | Home Phone | Work Phone | Other Phone (479)856-8815 | | DL (#, ST) AR | | |
| US Citizen Yes | Legal Alien | Doc Type | | Immig Doc # | Nationality | | | | | |
| Home Address 112 Neal ST, Farmington, AR 72730 | | | | | | Employer | | | | |
| Work Address | | | | | | Occupation | | | | |
| Height 5' 2" | Weight 105 | Eyes Blue | Build | | AKA | | | | | |
| Appearance | | HairColor Brown | Hair Style | | Teeth | Beard/Facial Hair | Demeanor | Speech | Voice | |
| | | Dexterity | Hair Length | | Complexion Medium | | | | | |

Narrative & Statements

Narrative - Thompson, Michael Charles - 8/28/2012 (Initial)

Former Officer Chris Pleimann received a report on June 24, 2011, that Allyson had been raped after an unreported domestic had occurred between Margret Fields and Lance Cooksey at 112 Neal St. After the alleged unreported domestic Mr. Cooksey allegedly raped Allyson. According to what information I have been able to obtain from Lisa Lovejoy, Grandmother, Margaret contacted a friend prior to preporting the incident and washed all clothing prior to contacting the police.

At this time I am awaiting a full copy of all information obtained from the Crimes Against Children Division and State Police as to their respective parts of the investigation.

I have reviewed what information we currently have including crime lab reports which indicate that there was a P30 indicator which is a prostate fluid secreted and not semen as indicated but that it is secretated at the same time and is present when semen secretated. The crime lab also stated that given it was the oral cavity that it could have been semen but that the saliva could have broke down the semen. There is also an indication of tearing of the anus of the victim at the 12 o'clock position consistent with disclosure.

All information regarding the alleged occurance came into the Farmington Police Department through a third party reporting it to the DHS HotLine.

Narrative - Thompson, Michael Charles - 8/29/2012 (Investigative)

On August 28, 2012, at approximately 12:45 PM I contacted Lesa Lovejoy, Grandma to Allyson, to advise her that I had been reassigned to her case and that we were attempting to gather all information to move forward that we could.

Lesa advised me that Allyson is in thearpy at Childrens House seeing thearpist Marium Martin-Biggie(unsure spelling) 479-927-1232 and that she has signed releases with the thearpist to speak with all the investigators involved with the case.

According to Lesa, Allyson continually states that a man not a boy did this to her.

Lesa stated that during a FINS case Margret Fields who currently is listed as a suspect since according to the third party would have been there during or allowed the child to be in the position where she could be raped and washed the clothes that she had on after knowing she was raped testeified that she washed the previously mentioned clothes.

Lesa further stated that back in July she found a blue checkered dress that has blood she believes was from the time of the incident and was from the domestic that was suppose to have occurred prior and that when she found it she was instructed to keep it and she put it in a plastic bag where it has been for approximately 13 months.

Narrative - Thompson, Michael Charles - 9/6/2012 (Investigative)

attempted to contact Richard Forte to obtain transcript from FINS involving Margret Fields and Avery Clark where she disclosed facts related to this case.

Narrative - Thompson, Michael Charles - 9/12/2012 10:00:00 AM (Investigative)

Made contact with Margret Fields at court and got current address and phone number:

112 Neal St.
Farmington AR 72730
479-856-8815

Narrative - Thompson, Michael Charles - 9/12/2012 2:00:00 PM (Investigative)

left message for Mr. Forte with number and cell number for him to call me back

Narrative - Thompson, Michael Charles - 9/17/2012 2:41:00 AM (Investigative)

Left message for Forte in reference to getting transcript of FINS Case where Margret Fields is suppose to have confirmed some of the allegations in the orginal complaint and with Marium Martin-Biggie, Allyson's counselor, in reference to current disclosures that the child is making.

Narrative - Thompson, Michael Charles - 9/18/2012 9:00:00 AM (Investigative)

On 09/17/12 was contacted by Cpl. Bowen advising that Mr. Forte had returned my call about getting the transcript and that he was not able to release that information to me that I would need to contact the prosecutor.

Narrative & Statements

Narrative - Thompson, Michael Charles - 9/18/2012 9:25:00 AM (Investigative)

Attempted to contact Michael Clark who is Avery Clark's father, to speak with him about Avery and what he had witnessed when attending the FINS hearing where he was given custody of Avery from Margaret. Mr. Clark did not answer the phone and a message was left that i was attempting to return a previous call about Avery and was needing to know if he was the legal guardian before I could speak with him.

Narrative - Thompson, Michael Charles - 9/18/2012 9:29:00 AM (Investigative)

Left message with prosecutors office for Case Coordinator to call me back reference to finding out which prosecutor handled the Fields FINS.

Narrative - Thompson, Michael Charles - 9/18/2012 11:44:00 AM (Investigative)

Received call back from Pros. Office and was advised to contact Leta Darlin at 973-8412 in reference to getting the transcript.

Narrative - Thompson, Michael Charles - 9/18/2012 12:21:00 PM (Investigative)

Received call from Marium Martin-Biggie in reference to her being Allysons counselor. She stated there has been no further disclosure and that the only disclosure was at the beginning of therapy and that there were no specifics given about the offender. She stated that Allyson just talks about having to clean up and the pain. She did stated that Allyson has at one point called the alleged offender a boy but given her age that could be an adult male or a juvenile male.

Narrative - Thompson, Michael Charles - 9/25/2012 8:56:00 AM (Investigative)

p30 is confirmatory test for semen. per crime lab.

Narrative - Thompson, Michael Charles - 10/10/2012 2:25:00 PM (Investigative)

Margret Fields came into the Police Department to advise that her Ex-Husband Michael Clark was harrassing her via text messaging in reference to being charged with Felony Child Neglect charges stemming from this case. margret however did not bring the phone and could not show the text messages. I inquired with Margret if she by any chance knew Lance Cookseys whereabouts and she stated she had not seen him since the night he broke into her house.

Narrative - Thompson, Michael Charles - 10/11/2012 11:30:00 AM (Investigative)

Magret Fields returned to the Farmington Police Department to show me one text that stated "You should be hearing from the Farmington Police about child endangerment charges". The text showed to have come through to her phone on Wednesday September 19, 2012, at 4:31 PM. I ask if she had responded to the text and she stated she had but was unable to find those responses and said all other text were just text regarding custody issues.

Margret was concerned about whether charges were going to be filed against her and I informed her that I was not sure at this time where the investigation would go and that I could not tell her either way. She then went on to tell me that the only reason she kept Allyson was that Stacey, bio mom, had been leaving her at an unknown address in Fayetteville with a blond female and a male where they had been molesting Allyson. She stated that she had Stacey bring her Allyson so that she would not be in danger.

Margret also stated that she had heard from Melissa Gross that she had walked in on Avery Clark trying to molest Allyson. Margret stated that according to Melissa that they both had their clothes on.

Margret stated that she talked to Avery and that he told her that he did not realize that what he had done could hurt Allyson but that she did not remember the time or date of the conversation.

Margret does not know the whereabouts of either Lance Cooksey or Melissa Gross.

Narrative - Thompson, Michael Charles - 10/18/2012 (Investigative)

Motion has been presented to the Judge and has been signed the order after waiting the 10 days for the private attorneys to respond. Should be receiving soon.

Narrative - Redfern, William Kevin - 11/6/2012 (investigative)

On 11/06/2012 at about 9:10AM Prosecutor Leta Darlin was phoned regarding the FINS transcripts on Margaret Fields.

Narrative & Statements**Narrative - Redfern, William Kevin - 11/14/2012 3:30:00 PM (Initial)**

Was phoned by Mitchell Lovejoy who stated lives in Springdale telephone # 479-935-0767. Lovejoy was wanting information on case for upcoming custody hearing....none was given besides the case was under investigation.

Narrative - Redfern, William Kevin - 11/16/2012 (Investigative)

Met with Feilds on 11/15/12 at residence 112 Neal Street who stated she was leaving but would provide a written statement on incident and have it ready when I arrived to meet with her on 11/16/12. Interviewed Feilds 11/16/12 at 10:00AM at her residence 112 Neal Street Farmington in referenceto the case. Feilds provided a written statement, but not of the incident requested. Feilds is suppose to deliever a written statement on the incident on the correct incident on(11/16/2012....Feilds new phone # 479-8238

Narrative - Redfern, William Kevin - 11/19/2012 4:00:00 PM (Investigative)

Met with Margerate fields in office lobby who provided the written statements about the incident

Narrative - Redfern, William Kevin - 11/26/2012 9:15:00 AM (Investigative)

Attempted to phone Mellisa Gross at 479-267-7446 in referance to Lovejoy incident . Gross has a court date the 11/05/2012 1:00PM at Johnson City Court.

Narrative - Redfern, William Kevin - 11/27/2012 4:15:00 PM (Investigative)

Melissa Gross came to the PD and provided a written statement. This statement was also recorded both will be added to case file.

Narrative - Redfern, William Kevin - 12/5/2012 (Investigative)

Spoke with Lance Cookseys P/O Cody Meldrow 479-443-8000. Cody stated Cooksey was required to check in 12/19/12 at 12:00PM. I advised Cody I would attend to interview Cooksey

Narrative - Redfern, William Kevin - 12/17/2012 (Investigative)

Spoke with P/O Cody Maldrow about Cooksey's check in 12/19/12 at 12:00PM. Also confirmed conducting interview on Cooksey at P/O office.

Narrative - Redfern, William Kevin - 12/19/2012 (Investigative)

Met with Lance cooksey at the Parole office in Fayetteville. Cooksey provided a written statement about the Lovejoy incident which will be added to the case file.

Narrative - Virgin, Billie Jo - 1/2/2013 (Initial)

Sent to pros for review.

Narrative - Redfern, William Kevin - 1/7/2013 (Initial)

On 10/29/12 I was assigned to further investigate the above-referenced case, which had occurred on or about 6/23/11. Captain Thompson stated on 10/11/2012 he spoke with Margaret Fields about text messages Fields had received concerning custody issues with her ex husband. Fields was also concerned if she would be charged in the Allyson Lovejoy incident. Fields stated the only reason she kept Lovejoy was because Whetstine, Lovejoy's biological mom, had been leaving her at an unknown address in Fayetteville with a blond female and a male where they had been molesting Lovejoy. She stated that she had Whetstine bring her Lovejoy so that she would not be in danger. Fields also stated that she talked to her minor son, Avery Clark, about the incident, and he told her he did not realize what he had done could hurt Lovejoy, but she did not remember the time or date of the conversation.

On Thursday 11/15/2012 I met briefly with Margaret Fields at her residence at 112 Neal Street. I explained to Fields I wanted to talk with her about an incident, which occurred on 6/23/2011 at her residence. Fields stated she was short of time right at the moment, but could meet with me the next day Friday 11/16/2012 at about 10:00AM. Captain Thompson and myself met with Fields in her residence where I spoke to Fields about the incident. Fields stated she didn't remember or was unsure the dates and times of this incident concerning Lovejoy. Fields changed her story numerous times when confronted with her previous statements related to the incident, which were documented in a FINS ADJUDICATION TESTIMONY that is added to this case file. Fields also appeared to talk in circles making very little or no sense of the incident. I asked Fields if she would provide me with written statement about the incident she agreed. This interview was recorded and will be added to the case file.

Fields met with me again on Monday 11/19/2012 at the Farmington Police Department where she provided me with a written statement on her account of incident. Fields stated on or about 06/23/2011 she was having a barbeque when [Lance Cooksey] showed up at her residence having vehicle problems. Fields stated her son, [Avery Clark], Melissa Gross and Allyson Lovejoy were at her residence going in and out all day during the barbeque. Fields stated at one point Cooksey asked if the kids could play with the water guns and went to the back of the residence to fill them up at the faucet. Fields said at or about 6/23/11 she was potty training Lovejoy who after wiping herself had blood on her fingers. Fields said she cleaned up Lovejoy with Gross being there to help. Fields said she then phoned Lovejoy's mother, Stacy Whetstine, to tell her about the blood. Fields said Whetstine informed her it had happened before and to let her soak in the bathtub. Fields stated she let her soak in the tub but also asked Whetstine to come and get Lovejoy but she refused.

Fields continued that on or about 06/24/11 her and Gross were downstairs looking at the damages caused from the incident where Cooksey broke into the house the night before in which the police were called. Fields said Gross went back inside to get her keys and stated she observed Avery Clark lying next to Lovejoy and to check it out. Fields said when she asked Clark about it he said he was just doing what Lance had showed him how to do to Lovejoy. Fields said she then phoned Detective Pleimann and the Farmington Police Department and also the Arkansas State Police Hotline about the incident. Fields stated Whetstine took Lovejoy to the Child Safety Center over the incident where they interviewed Lovejoy. However, due to her age and speech, she could not be understood.

Melissa Gross. On 11/26/12 at about 4:15PM I met with Melissa Gross at the Farmington Police Department where was interviewed about the incident. Gross's interview was video recorded and written statement about the incident was provided by Gross. The following is a summary of that statement. Gross stated she spent the night with fields and Lance Cooksey showed up sometime the next day and we all had a barbeque. Gross said during the barbeque Clark was trying to hump on her and she asked him to quit

Narrative Statements

several times and so did Fields. Gross said she finally took Clark outside to play basketball in an attempt to occupy him. Gross stated Cooksey was by the grill and, Lovejoy was with Fields while she and Clark played basketball.

Gross said Lovejoy was having problems going to the restroom that night and the next morning, and that Lovejoy was constipated. Gross said the next morning while she was outside Fields asked her to come into the bathroom and look. Gross stated when she arrived she observed blood on the back of Lovejoy's leg and some in the stool. Gross said Fields cleaned Lovejoy up and phoned Whetstine about the incident. Gross stated Whetstine seemed unconcerned about the incident and told Fields she would arrive when she was done.

Sometime after that Gross said the children were outside playing on the swing set then came into the residence. Gross said she walked in the residence and caught Clark on top of Lovejoy in the front room. Gross said she took Clark and went and informed fields about the incident. Gross said Fields had a talk with Clark about his actions, but Clark would not tell her why he had been on top of Lovejoy. Gross said sometime around midnight Cooksey started running in and out the house talking to himself and saying people were out to get her and Fields. Gross said Cooksey told them men look for women that can have kids and rape them. Gross said when Cooksey went outside again she told Fields to lock the door and phone the police. Gross said Cooksey began beating on the door then kicked the door in. Gross said she observed Cooksey enter the residence with a gun, and she ran to the kid's bedroom that were asleep and locked the door. Gross said her first concern was for the safety of the children, but Fields had locked herself inside the bathroom unconcerned for the children's safety. Gross said that's about when the police arrived.

Gross said after the police left, Fields was in the room talking to Clark about had happened again. Gross said Fields came out of the room and told her Cooksey had taken Clark and Lovejoy behind the residence and showed him what to do to girls. Gross said Fields instructed Clark to tell her what had happened. Gross stated Clark said Cooksey had showed him what to do to little girls. Gross stated her and Fields then took Clark to the safety center.

I asked Gross if Cooksey and Fields was a couple at that time. Gross stated Cooksey had been staying at the residence on and off, and that Fields and Cooksey had a "thing".

On 12/19/2012 I met with and interviewed Lance Cooksey at the Probation/Parole Office on N. College Ave in Fayetteville. Cooksey provided me with a written statement concerning the events which occurred at 112 Neal Street on or about 06/24/11. The following is a summary of that interview and statement. Cooksey stated he had pickup troubles so he had his pickup towed to Fields residence. Cooksey said he had been staying at Fields residence on and off for about one month prior to the incident and that he and Fields had been in a relationship.

Cooksey said on the day in question he was at the residence working on his truck for a period of time. Cooksey continued he went to the store and bought food to grill for a barbeque out front. Cooksey stated he was up stairs talking to Fields and her friend (Gross) whose name he could not recall. Cooksey said after a time Lovejoy who Fields had been babysitting came to Fields and said she hurt and grabbed her anus. Cooksey said Fields and Gross took Lovejoy to the bathroom then returned and told him about bleeding from Lovejoy's anus.

Cooksey said he phoned the emergency room about it and was informed he needs to be the mother to bring Lovejoy to them. Cooksey said her phoned Whetstine and asked her to take Lovejoy to the emergency

Narrative & Statements

room. Cooksey stated Whetstine said she didn't have any money for gas so he offered to buy her some if she would take the Lovejoy to the ER. Cooksey said Whetstine phoned back later telling them to give the girl a coke. Cooksey said he phoned his mother Kathryn Cooksey to ask what could be wrong with Lovejoy. Kathryn instructed him to phone his sister about what to do for Lovejoy. Cooksey said he was told by his sister to prepare an Epsom salt bath and have the girl sit in it. Cooksey said he made the bath and Fields and Gross put Lovejoy in the bath for a long while. Cooksey said he was not present when Lovejoy was bathed.

Cooksey said Fields then put the children to bed while he and Gross talked. Cooksey continued he went to take a shower and when he returned Fields and Gross told him they heard something outside. Cooksey said he went outside to look things over and when he returned the front door was locked. Cooksey said Fields accused him of talking to someone outside and would not let him in or give him his puppy. Cooksey stated after trying to get his puppy for about two hours he kicked in the door. Cooksey said he went into the residence up the stairs no further than the kitchen retrieved his dog, then went outside stood in the road and waited on the police.

I asked Cooksey about the sex toys located in his pickup; Cooksey denied any knowledge of the items. Cooksey stated he had no windows in his truck so anyone could have left stuff inside. Cooksey did state he had gotten his Stevens 22 caliber rifle out of his vehicle. I asked Cooksey if he was consuming or had consumed any kind of drugs at or around the time of the incident he stated no his truck was broken down so he couldn't go get any. Cooksey said he believed Fields and Gross were taking some prescription medication. Cooksey said he overheard Gross stating she had stolen the medication from a bed-ridden patient she had been caring for before she was accused of it and fired. I asked Cooksey why he thought Fields and Gross were using drugs? Cooksey said they would talk crazy about sucky puss and sucky pie and a guy called Ziggy dressed in black. Cooksey said it was a crazy time and it didn't make sense to him. I asked Cooksey why he thinks anyone would accuse him. Cooksey stated one time he had slapped Clark on the arm for spitting on Lovejoy. Cooksey said Clark stated he would get him and that's the only thing he could think of. I asked Cooksey about Clark and Cooksey said he thinks Clarks suffers from a lack of discipline and that there is nothing wrong with him besides that.

A P30 indicator was reported from the crime lab, which was obtained through a swab of Lovejoy's oral cavity. A P30 indicator, which is a prostate fluid secreted and not semen as indicated, but it is secreted at the same time and is present when semen is secreted. The crime lab also stated given it was the oral cavity it could have been semen, but saliva could have broken down the semen. There is also an indication of tearing of the anus of the victim at the 12 o'clock position consistent with disclosure. The SANE nurse stated Lovejoy had an anal fissure that was consistent with a disclosure of anal penetration however it can also be caused by constipation. Due to the P30 indicator there is probable cause to believe there was sexual contact or sexual penetration occurred. However, because of the degraded condition of the sample, no definitive DNA could be extracted which could tie the suspect to the incident. Fields and Gross have both given several different accounts of this incident therefore are not creditable. Cooksey's statement on the incident provided no definitive evidence therefore without further evidence will be considered inconclusive.

Clark being caught with Lovejoy is the only constant in all stories. Whether Clark and Lovejoy were clothed or not or whether sexual contact occurred is inconclusive at this time. Clark has however been known to lie or fabricate stories when he is afraid of getting into trouble therefore his credibility is also in question. The case will be forwarded to the Prosecutor for review in an attempt to gain prosecution in this case.

CHILDREN'S SAFETY CENTER MEDICAL RECORD

CSC# 1106 B5297

Labs: Yes No

Date of exam 6-24-2011 Time of exam 1830
Nurse Examiner: Sue Stockton, R.N. SANE-AP or Irene Whittaker, RN, BSN, SANE

Others present during exam

Andrew Lentz, advocate

Client's Name Allyson Lovejoy Age 3 Sex

Race Am Indian DOB 6-7-08 SS#

Mailing Address: 401 W. 24th St, Apt 124 City Fayetteville

State AR Zip 72701 Home phone 479-313-2791

Mother's name Stacy Whitstine Father's name Mitchell Lovejoy
(in prison)

Legal guardian if not Mother/Father

Insurance Medicaid Policy # 6590119201

PCP or referring physician: Dr. Cheryl Hennigan

Referral source Bob Willis ASP Det Chris Pleiman Farmington PD Date of referral 6-24-11

Has client been interviewed? Yes No Number of interviews? 1

Has client had previous sexual abuse exam? Yes No Records attached?

If yes, where and when?

Alleged offender name: Avery Clark - 9 yrs old
Lance Cooksey Age of Alleged offender: 44 y

Relationship to client friend of babysitter Date of last contact: 6-23-2011

Contacts with A.O. one time more than one time 2 different offenders

Alleged offender in the home? Yes No

Agencies involved: A.S.P./C.A.C.D. Law Enforcement Medical Personnel
 D.H.S. Therapist

Signature Sue Stockton

Sane ASP
SANE, INC.

Children's Safety Center

Allyson Lovejoy

Information from the forensic interview was reviewed for the purpose of obtaining history for this medical exam.

(Y) N

Historian for additional information: *mother: Stacy Whetstone*

1. History

Alleged contact: (circle all that apply)

- Genital by
 - Penis
 - Finger/Hand
 - Mouth
 - Foreign object
- Anal by
 - Penis
 - Finger/Hand
 - Mouth
 - Foreign object
- Oral by
- Other acts

Additional information:

*pen contact
with mother*

mother was at work, left 3:40 Allegory & Margaret Field to babysit Margaret went inside the house, lance was alone - children (Allyson and Owen) in the back yard.

mother left work today Margaret noted blood in child's pants last pm and ran

Neighbor, Melissa walked into living room of Margaret's house and witnessed

away trying to put his penis in on upper child.

Illnesses Y N
"borderline autistic", *remains on penis in*
Medications Y N *on upper child.*

Prior physical injuries Y N

Menstruation history:
Menarche Y N
Pads _____ Age: _____
Tampons _____ Last period: _____

after panties noted blood, child

child changed - Margaret washed clothing - this clothing was collected today
Signed: _____ Date: *6-24-2011*

*Sue Stackton per
Same AAP*

3. Symptoms (circle all that apply)

GI and GU system review

- Y N Abdominal Pain
- Y N Vulvar Pain
- Y N Dysuria
- Y N Urinary Tract Infections
- Y N Enuresis (Day or Night) *potty training*
- Y N Vaginal discharge or bleeding?
- Y N Rectal pain or bleeding
- Y N Constipation
- Y N Stool incontinence
"butt hurts" per child

General system review

- Y N HEENT
- Y N Respiratory *asthma*
- Y N Cardiovascular
- Y N Skin
- Y N Endocrine
- Y N Hematology
- Y N Neurological

Behavioral or emotional

- Y N Sleep disturbances
- Y N Eating disorders *over eats*
- Y N School problems
- Y N Sexual acting out
- Y N Fear, anger or depressed mood
- Y N Other *Oppositional, defiant, clingy*

4. Post assault hygiene (N/A > 72 hours)

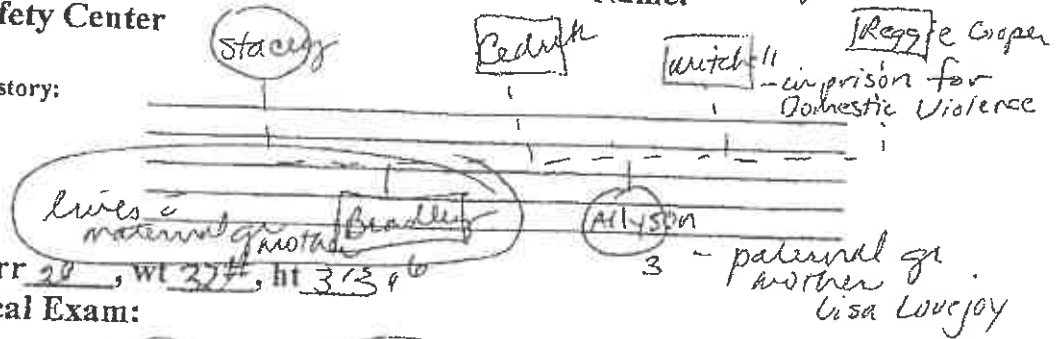
- Urinated Y N
- Defecated Y N
- Bath/shower Y N
- Genital wipe Y N
- Douche Y N
- Tampon use Y N
- Brush teeth Y N
- Change clothes Y N
- Condom used Y N *unknown*

clothing is at Margaret's. Margaret washed clothing.

Children's Safety Center

Name: *Allyson Lovejoy*

5. Family/Social History:



VS: hr 98, rr 20, wt 27#, ht 3'3 1/2"

General Physical Exam:

1. Mental Status

(circle all that apply)

Alert

Cooperative

Irritable

Lethargic

Combative

Unconscious

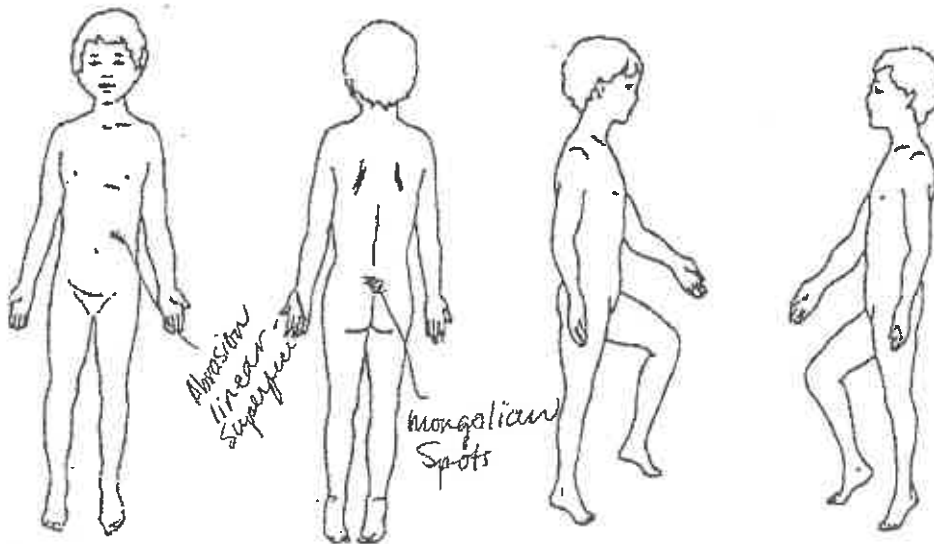
2. Physical Findings (AB=Abnormal, N=Normal)

poor verbal skills

Head AB N
 Ears/Eyes AB N
 Oral cavity AB N
 Throat AB N
 Neck AB N
 Chest AB N

Heart/CV AB N
 Abdomen AB N
 Lymph Nodes AB N
 Back/Limbs AB N
 Skin AB N
 Neuro AB N

2. Record Abnormal Findings



Photograph Taken

Y

N

Signed:

*Sue Stackton RN
Sane 447*

Date: *6/24/2011*

3

Children's Safety Center

Name: *Allyson Lovejoy*

Anal Genital Exam

1. Female/Male General exam

- Tanner Stage
- Breast 1 2 3 4 5 (N/A male)
- Genitals 1 2 3 4 5
- Inguinal Adenopathy Y N
- Bruising Inner Thighs Y N
- Markings on Perineum Y N
- Vulvovaginal discharge Y N
- Condyloma acuminatum Y N
- Other lesions Y N

3. Female genital (AB=abnormal, N=normal)

- Labia majora AB N
- Labia minora/clitoris AB N
- Urethral opening AB N
- Vestibule AB N
- Hymen AB N *crenate*
- Fossa navicularis AB N
- Vagina AB N
- Posterior fourchette AB N

Positions used for exam:

- Supine: Lithotomy
- Frogleg
- Knee chest

Photos Taken

- Y
- Digital
- Video DVD

Exam done with:

- Magnification
- Direct visualization

- N
- Polaroid
- 35 mm

3. Male Genital (AB=abnormal, N=normal)

- Penis AB N
- Circumcised Y N
- Scrotum AB N
- Testes AB N

4. Female/Male Anal Exam

- Buttocks AB N
- Perianal skin AB N
- Tone AB N
- Anal spasm Y N
- Anal laxity Y N

Method of observation for anal tone:

- Observation
- Digital exam

Positions for anal exam:

- Supine: Lithotomy
- Knee chest
- Lat
- Frogleg

Additional description if needed:

Allyson was cooperative in the ano-genital exam. She tolerated positions well. Her mother was present during the examination.

A colonoscope was used to visualize a crescentic shaped hymen. No acute injuries to the hymen were noted. Anal fissure was noted at 12:00 o'clock in both frog leg and knee-chest positions. No active bleeding noted at this time. An SAE kit was collected. Swabs were collected. Cool air dried and sealed for kit.

Signed:

*Sue S. Tucker RN
Same ANP*

Date: 6-24-11

Mother brought clothing that child was wearing when she peeked her up at baby sitters house.

Children's Safety Center

Name: *Allyson Lovejoy*

Medical Summary:

Physical/laboratory findings of sexual abuse/assault are: (check appropriate boxes)

Absent

- Significance: neither confirms nor negates a history of sexual abuse/assault
- Absence in relation to the history available to the examiner:
 - Consistent
 - Inconsistent
 - Insufficient history

Indeterminate

• These findings may support a child's disclosure of abuse, but findings in this category have also been reported in children with no history or abuse or insufficient research exists to state their significance.

anal pressure (acute) is consistent with a disclosure of anal penetration

Diagnostic of Trauma and/or Sexual Contact

• Age

Acute/fresh

Healed (age cannot be determined)

Additional summary: (if needed)

Treatments prescribed or recommended:

see discharge form

Referrals:

- Lab work
- Follow-up exam
- Counseling

Children's Safety Center
614 E. Emma, Suite 200
Springdale, AR. 72764
479-872-6183

Signed:

Don Stackman
Sam Arp

Date: *6-24-11*

Children's Safety Center



Date: 6-24-2011

Allyson Whetstone Lovejoy was seen at the Children's Safety Center today.

We performed the following tests:

- 1). acute anal injury
- 2). SAE kit
- 3). _____
- 4). _____
- 5). _____

We will have tests results in 4 days to 2 weeks, depending on the type of test. Sexual assault evidence is collected and sent to the Arkansas State Crime Lab. Your Law Enforcement Officer will receive these results.

Our recommendations are:

- 1). Make an appointment with your doctor for blood tests for RPR, HIV, Hep B/C now and repeat the tests in 3 months. Send all results to Law Enforcement and the Children's Safety Center.
- 2). Consider age appropriate therapy.
- 3). Inform your doctor of all medical concerns.
- 4). warm baths, push fluids, fiber and fruit to keep stools soft
- 5). recommend recheck in 2-3 weeks
- 6). _____

Children's Safety Center
614 E. Emma, Suite 200
Springdale, Arkansas 72764
(479)872-6183

Chain of Custody Form

Patient Name: Allison Lovejoy Wheaton Patient ID#: 110065297

Name of Forensic Nurse Examiner: Sue Stockton RN SANE AAP

Evidence Includes:

Sexual Assault Evidence Kit

① Allys pink shorts sz 3T polka dots

Clothing (Number of Bags) 2

② small brown tee shirt

OES Report

Forensic Records (pages) _____

Photographic Evidence

Digital Photos (Number of Photos) _____ #of discs _____

Print Film (Number of Photos) _____

Other: _____

| Date | Time | From (Print name & sign) | To (Print name & sign) | Date | Time |
|-----------|------|---|--|-----------|------|
| 6-24-2011 | 2035 | Sue Stockton RN Sign: <i>[Signature]</i> | Chris Pleigman F20 Sign: <i>[Signature]</i> | 6-24-2011 | 2035 |
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State Crime Laboratory
P.O. Box 8500
3 Natural Resources Drive
Little Rock, Arkansas 72215



An ASCLD/LAB Accredited Laboratory
(Since December 13, 2004)

Laboratory Services
(501) 227-5747

REPORT OF LABORATORY ANALYSIS

Investigating Officer/Agency/Address

Chris Pleimann
Farmington Police Department
City Hall
P.O. Box 150
Farmington, AR 72730

Laboratory Case Number: 2011-013838

Page 1 of 1

Agency Case Number: 11-00295

Suspect(s):

Lance Cooksey

Victim(s):

Allyson Lovejoy

Date of Report: 10/28/2011

I do hereby attest and confirm as specified by A.C.A. 12-12-313, that the information listed below is a true and accurate report of the results of analysis performed of evidence received in a sealed condition at the Arkansas State Crime Laboratory.

The evidence listed below has been analyzed utilizing the Applied Biosystems Yfiler PCR kit, specific for human, male DNA. The following loci have been examined: **DYS456, DYS389I, DYS390, DYS389II, DYS458, DYS19, DYS385, DYS393, DYS391, DYS439, DYS635, DYS392, Y-GATA-H4, DYS437, DYS438, and DYS448.** All results and conclusions contained in this report are based on the utilization of the above, non autosomal STR markers.

Items Examined:

- Q1 Vaginal swabs
- Q2 Oral swabs
- Q3 Rectal swabs
- Q4-TL Tape lifts from underwear

Results:

No Y-chromosomal DNA profile was obtained from Q1, Q2, Q3, or Q4-TL.

Samples have been retained.

Morgan Nixon, Forensic DNA Analyst

Harry McDermott's Affidavit

I am an attorney who has been practicing law Arkansas for over thirty years. During a part of my career as an attorney, I represented the Arkansas Department of Human Family Services. Pursuant to this practice of law, I am very familiar with the investigative policies of the Department of Human Services, and constantly advised DHS Family Services Workers and oversaw their investigative practices.

As a result of this work experience, I am able to give expert testimony as to the reasonable degree of care, skill, and diligence ordinarily possessed and exercised by DHS Family Service Workers and investigators providing DHS services in Arkansas.

Based upon Lesia Lovejoy's affidavit and the medical reports, the police record, and the reports of the DHS Family Service Workers or Investigators to the prosecutor attached to it, I can testify as an expert that the DHS employee Tiffany Simpson committed gross negligence. Had Tiffany Simpson acted with a reasonable degree of care, she would have timely opened a Family In Need Of Services' case concerning Stacy Whetstine in order to protect Allyson Lovejoy. A timely filed FINS' petition would have prevented Stacy Whetstine from continuing her practice of dropping off her two year old daughter with whomever she could. This practice eventually ended up with Stacy Whetstine dropping Allyson off with a babysitter who because of her parental actions was judicially determined not capable of caring for her own nine year old son, much less Allyson. A timely filed FINS case would have quickly revealed that Stacy Whetstine was not able to bond with her daughter and was not capable of caring for her two old daughter.



Tiffany Simpson was undisputedly made aware for over two years before Allyson Lovejoy was raped that the DHS was receiving reports that Stacy Whetstine was endangering the life of her daughter:

1. On or about November 3, 2010, Stacy Whetstine's friend reported to the DHS that Allyson Lovejoy was being sexually abused by Stacy Whetstine's boyfriend Arica Riley and that Stacy was locking up her daughter in a closet.
2. At the same time Allyson's grandmother reported to DHS that Allyson appeared to be marijuana intoxicated around her mother.
3. Tiffany Simpson after unbelievably only talking to Stacy Whetstine and her roommate and drug testing Stacy Whetstine positive for marijuana use, negligently determined there was no need for the DHS to file a FINS case to protect Allyson and did not have Allyson tested for THC. This was negligent because Tiffany Simpson made no effort to identify the name of Stacy Whetstine's friend who reported the abuse. She could have determined her name because Stacy informed her that her friend had apologized to her on the phone for falsely reporting her on the DHS Hotline. Tiffany Simpson's interview of Stacy's friend would have verified that the friend had reported a false report to DHS or would have substantiated that Stacy Whetstine was lying to her.
4. Someone next reported to DHS that Stacy Whetstine was driving home drunk from work and picking up Allyson on the way. After only talking to Stacy Whetstine and her

roommate and no one where Stacy worked, Tiffany Simpson determined there was no need for it to file a FINS case to protect Allyson.

5. Someone next reported to DHS that Allyson had boils that were not being treated by Stacy Whetsine. After only talking to Stacy Whetstine, Tiffany Simpson determined there was no need for it to file a FINS case to protect Allyson.

6. With the above known background of all these people calling in to the DHS Hotline complaining about how Stacy Whetstine was endangering her two year old daughter, Tiffany Simpson was next made aware on or about April 9, 2011, that Allyson's grandmother reported that Stacy Whetsine's babysitter had exclusively cared for Allyson for three weeks because the babysitter and her friend were afraid to give Allyson back to her mother. Allyson's grandmother Leisa Lovejoy knew the address of the babysitter and did not make an unidentified reporter on the DHS Hotline. Stacy Whetstine's three week abandonment was substantiated to the grandmother by Stacy Whetstine's live-in boyfriend named Reggie Cooper who told the grandmother that Stacy had told him that Allyson was away from home for a month because Allyson was visiting relatives in Missouri. Tiffany Simpson unbelievably only interviewed Stacy Whetstine about this three week abandonment allegation. With a background of constant complaints of Stacy Whetstine's endangering her two year old daughter, Tiffany Simpson believed Stacy Whetstine when she told her the babysitter had kept her two year old daughter for only three days because Stacy and the babysitter had just kept missing each other. Tiffany Simpson committed gross negligence when she did nothing else to investigate

Stacy Whetstine's very possible neglect of abandoning Allyson with whoever would take her.

7. While serving as a DHS Family Services attorney I noticed very fat and lazy family services workers who did everything they could to not file a petition with the juvenile court to protect endangered children because their case loads were already too heavy. I do not know that if the very fat Tiffany Simpson had such a heavy case load or if she had such a lazy work ethic when she was investigating the last complaint filed against Stacy Whetstine which might have caused her not to have the time or the motivation to investigate the three week abandonment complaint reported. Nonetheless, Tiffany Simpson was required under the DHS investigative policies to interview Lesia Lovejoy and note the contents of the interview on the DHS computer CHRIS program. The DHS records clearly show she failed to do this.

Had Tiffany Simpson done what she was required to do and interview Lesia Lovejoy, she would have after the interview with Lesia Lovejoy been required to also interview the babysitter whose address could have been given to her by the grandmother, as well as interview Stacy Whetstine's live-in boyfriend and the babysitter's friend. Interviewing the grandmother Lesia Lovejoy, the baby sitter, the baby sitter's friend, and Stacy Whetstine's live-in boyfriend would have clearly shown to Tiffany Simpson that Stacy Whetstine had definitely abandoned her two year old daughter and very possibly was endangering her as well. Obtaining such information that was available to a DHS Family Services worker or investigator would have required Tiffany Simpson under DHS

policies to file a FINS petition to protect Allyson Lovejoy as well as subject Stacy to a methamphetamine drug test.

Around three months after the hotline report of the grandmother, Allyson who was now three years old was anally raped on June 24, 2011, at the home of her new babysitter named Margaret Fields. Although the witnesses' testimony was contradictory as to whether it was Margaret's acquaintance Lance Cooksey, or her son Avery Clark, or both who raped Allyson, all witnesses agreed that Allyson had been sexually assaulted. The lab report showed Allyson had an acute anal injury which was consistent with anal penetration and Allyson's anus was secreting fluid which was evidence of semen being present in her body. Allyson's therapist reported that Allyson was not able to talk when her therapy began, but Allyson did point out the vagina and buttocks on the drawing that was provided. At present Allyson is not able to talk about the specifics of the rape and only talks about the clean-up and the pain. Allyson did state at one time the offender was a boy which because of her age could have meant a man.

On June 25, 2011, one day after the rape, Stacey Whetstine allowed her daughter to live with Lesia Lovejoy who immediately put her in therapy. The therapist noted after meeting with Stacy Whetstine that Stacy admitted she was never able to bond with her daughter and Stacy admitted to her was unable to care for her. Stacy Whetstine ignored her daughter while her daughter was living with Lesia Lovejoy from June 25, 2011, through September 2011, by only seeing her daughter during that time for only two one-hour visits. Stacy Whetstine is currently asking the Circuit Court to allow her to

give up her parental rights to Allyson. Margaret Fields, Allyson's previous babysitter, has had her ten year old son removed from her custody.

This is not a case where a grandmother is undermining her daughter because she wants to be the custodian of her grandchild. Lesia Lovejoy is on record of informing the Circuit Court and DHS that she did not want to be the custodian of Allyson and only allowed her Stacy Whetstine her from her mbecause she was afraid to

As a direct and proximate result of Tiffany Simpson's negligence in not interviewing witnesses she was required to do under DHS policies and not timely filing a Family In Need Of Services petition, she directly and proximately caused a newly turned three year old to be anally raped.

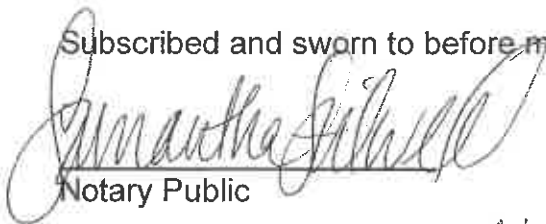
Further affiant sayeth not.



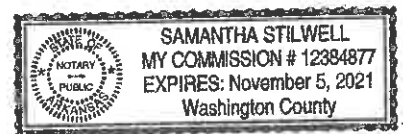
Harry McDermott

STATE OF ARKANSAS
COUNTY OF WASHINGTON

Subscribed and sworn to before me on this 3rd day of June, 2013.



Notary Public



My commission expires: November 5, 2021

TYPEPRINT
IN
PERMANENT
BLACK INK
FOR
INSTRUCTIONS
SEE
HANDBOOK

ARKANSAS DEPARTMENT OF HEALTH
Division of Vital Records

CERTIFICATE OF LIVE BIRTH - 103

08 017340

| | | | |
|--|---|---|---|
| 1. CHILD'S NAME (First, Middle, Last) ALLYSON ELIZABETH LOVEJOY | | 2. DATE OF BIRTH (Month, Day, Year) June 7, 2008 | 3. TIME OF BIRTH 12:34 PM |
| 4. SEX Female | 5. CITY, TOWN, OR LOCATION OF BIRTH Johnson | | 6. COUNTY OF BIRTH Washington |
| 7. PLACE OF BIRTH Hospital | | 8. FACILITY NAME (If not institution, give street and number) WILLOW CREEK WOMEN'S HOSPITAL | |
| 9. I certify that this child was born alive at the place and time and on the date stated. Signature: <i>Vicki Buchanan, RHIA</i> | | 10. DATE SIGNED (Month, Day, Year) 6/18/08 | 11. ATTENDANT'S NAME AND TITLE (If other than certifier) (Type/Print) ROBERT HIX M.D. |
| 12. CERTIFIER'S NAME AND TITLE (Type/Print) VICKI BUCHANAN RHIA | | 13. ATTENDANT'S MAILING ADDRESS (Street and Number or Rural Route Number, City or Town, State, Zip Code) 4301 GREATHOUSE SPRINGS ROAD SUITE A Johnson, AR 727410544 | |
| 14. DATE FILED BY REGISTRAR (Month, Day, Year) JUN 20 2008 | | 15. REGISTRAR'S SIGNATURE <i>Michael A. Adams</i> | |
| 16a. MOTHER'S NAME (First, Middle, Last) STACY MARIE WHEATSTONE | | 16b. MAIDEN SURNAME WHEATSTONE | 17. MOTHER'S DATE OF BIRTH (Month, Day, Year) May 12, 1989 |
| 18. BIRTHPLACE (State or Foreign Country) ARKANSAS | 19a. RESIDENCE - STATE ARKANSAS | 19b. COUNTY Washington | 19c. CITY OR TOWN, AND ZIP CODE Fayetteville 72701 |
| 19d. STREET AND NUMBER OR RURAL ROUTE 1155 INDIAN TRAIL | | 19e. INSIDE CITY LIMITS? Yes | 20. MOTHER'S MAILING ADDRESS (If different from residence address, enter Street or Box Number, City, State, and Zip Code) |
| 21. FATHER'S NAME (First, Middle, Last) MITCHELL KELLY LOVEJOY | | 22. DATE OF BIRTH (Month, Day, Year) June 14, 1988 | 23. BIRTHPLACE (State or Foreign Country) ARKANSAS |
| 24a. I certify that the personal information provided on this certificate is correct to the best of my knowledge and belief. (Signature of Parent or Other Informant) | | | 24b. Do you want a social security number for your baby? Yes |
| INFORMATION FOR MEDICAL AND HEALTH USE ONLY | | | |
| 25. OF HISPANIC ORIGIN? | 26. RACE - American Indian | 27. EDUCATION | 28. OCCUPATION AND BUSINESS INDUSTRY |

CHILD

CERTIFIER ATTENDANT

MOTHER

FATHER

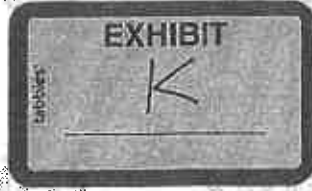
INFORMANT



THIS IS TO CERTIFY THAT THE ABOVE IS A TRUE AND CORRECT COPY OF THE CERTIFICATE ON FILE IN THE ARKANSAS DEPARTMENT OF HEALTH.

3-05-2013

Paul W. Johnson
Paul W. Johnson
State Registrar



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3675228

VR-112

JUL 05 2013

RECEIVED

**BEFORE THE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS**

LESIA LOVEJOY

CLAIMANT

VS.

CLAIM #13-0867-CC

**STATE OF ARKANSAS
DHS/DCFS**

RESPONDENT

ANSWER

Comes on the Respondent herein and for answer states:

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

| | |
|-----------------|------------|
| Agency Number: | 0710 |
| Cost Center: | 417361 |
| Internal Order: | HS5X00XX |
| Fund: | DCF - 2600 |
| Fund Center: | 883 |

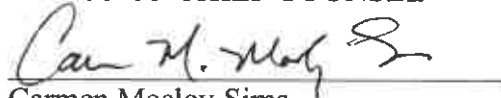
2. Claimant's allegations with respect to DHS' involvement with the family, diligence in completing investigations, and protective services offered are deliberately misleading and even patently false, and those allegations are denied. Additional factual clarifications will be provided in later proceedings and pleadings.
3. Claimant's demeaning personal attacks on DHS employees are denied in both substance and principle.
4. Claimant's demand of restitution for past and future medical expenses and therapy is similarly false and misleading, as all of the child's expenses have been and will foreseeably be covered entirely by grant and public entitlement funds.
5. All allegations not specifically admitted in this Answer are denied. DHS demands Claimant provide strict proof of all elements of her claim.

6. Pleading affirmatively, Claimant has failed to state a claim for which relief may be granted.

WHEREFORE, Respondent prays this Commission discharge Respondent from any liability herein.

Respectfully submitted,

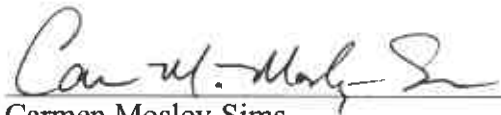
ARKANSAS DEPARTMENT
OF HUMAN SERVICES
OFFICE OF CHIEF COUNSEL



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 Answer on Lesia Lovejoy, 2170 Lisa Lane, Fayetteville, AR 72703, by depositing same in the U.S. Mail in a properly addressed envelope with adequate postage thereon this 5th day of July, 2013.



Carmen Mosley-Sims
Attorney

For Judiciary

IN THE ARKANSAS STATE CLAIMS COMMISSION

LESIA LOVEJOY as custodian of minor
ALLYSON LOVEJOY (DOB: 6-7-08)

RECEIVED

vs.

No. 13-0867-CC

JUL 29 2014

Arkansas State Claims Commission

Arkansas

STATE OF ARKANSAS
DHS/DCFS

RESPONDENTS

MOTION FOR SUMMARY JUDGMENT

Comes now Respondent, the Arkansas Department of Health and Human Services; Arkansas Department of Children and Family Services, and submits the following Motion for Summary Judgment and states:

Introduction:

Claimant seeks damages against the State on behalf of Allyson Lovejoy, her granddaughter in her custody, for the sexual assault perpetrated on her by her biological mother's babysitter's son. Claimant asserts that DHS is liable for the sexual assault against her granddaughter as the State did not open a Family In Need of Services case after the Claimant called the child-abuse hotline on multiple occasions alleging neglect by the biological mother.

Allyson Lovejoy was sexually assaulted as a result of the criminal act of her mother's babysitter's son, A.C., age 9, an Underage Juvenile Offender (UJO). As will be more fully explained below, Claimant's allegations against the Department of Human Services fail as matter of law.

I. Factual Background

Claimant made her first hotline call to the Department on November 3, 2010 when she saw Allyson "laying on a chair" (Exhibit A, p 9) and she noticed that the child's pupils were

52

“really big” (Exhibit A, p. 9). In her deposition testimony on February 14, 2014 Claimant stated that before she made the hotline call she was thinking that Allyson had been given too much Benadryl. She also testified that she was “talking to some of her [the mother’s] friends and they told me that she had been smoking pot around her [Allyson] (Exhibit A, p. 9). However, Claimant’s hotline call provided a significantly different factual scenario. Notably in Claimant’s hotline call, Claimant stated that she “walked by there [Stacy’s apartment] and smelled pot coming from the apartment” (Exhibit B, p. 6). She also stated in the hotline call that she saw them smoking marijuana in front of the child (Exhibit B, p. 6).

During Claimant’s deposition she admitted that the facts reported to the hotline were fabrications; that she did not *actually* smell marijuana coming from the apartment nor did she ever see Stacy, the child’s mother, smoke pot in front of Allyson (Exhibit A, p. 9). Yet, despite these fabrications, the Department accepted this call and conducted an investigation in order to determine whether there was immediate danger to the health or physical well-being of the child as required by law. See Arkansas Code Ann. § 12-18-1001 (a)(3).

Investigation 1502558 was conducted by the Department of Human Services and allegations of immediate danger to the health or physical well-being of Allyson were unsubstantiated (Exhibit C, p. 9). The DHS worker made contact with Ms. Whetstine and Allyson and noted no health or safety issues. (Exhibit C, p. 5). Throughout the investigation the Department made contact with and interviewed the child’s mother and others in the home. No concerns were noted. DHS concluded the investigation with the following unsubstantiated summary:

“A report was taken for substance misuse due to the a/v being seen with droopy eyes and the A/O possibly smoking marijuana around the child. The home in which the

child resides was observed by the worker to have no health or safety issues. ... Worker did not find a preponderance of evidence to support the allegation of substance misuse. The child appeared to be healthy and developmentally appropriate. The A/O admitted to smoking marijuana three days prior to the date of the report while the child was with a relative. The A/O tested negative for all substances on a surprise drug screening administered on 12/6/2010. A check with local PD showed no drug or alcohol related incidents with A/O. Worker recommends that this report be found UNSUBSTANTIATED and no case be opened.” (Exhibit C, p. 9).

On November 24, 2010 the child abuse hotline received an anonymous call alleging that Stacy Whetstine, the child’s mother, was driving Allyson home from daycare while intoxicated (Exhibit D, p.12), drug abuse on the part of the child’s mother (Exhibit D, p. 13), that Stacy was a prostitute (Exhibit D, p. 21), and inadequate supervision (Exhibit D, p. 24). The Department again, accepted this and conducted an investigation to determine whether there was immediate danger to the health or physical well-being of the child as required by Arkansas Code Ann. § 12-18-1001(a)(3).

In the course of investigation 1505250 the Department interviewed Jacqueline Byers, who lived in the home, Stacey Whetstine (A/O), and Fayetteville PD (Exhibit E). After conducting interviews and viewing the children in the home the following summary was provided unsubstantiating the call:

“A report was taken for Inadequate Supervision due to the A/O allegedly driving home from a bar drunk and picking up the 2yo child. Worker did not find a preponderance of evidence to support the allegation of inadequate supervision. There is no record with the police of any drug or alcohol related incidents. The other person in the home and the A/O informed worker that the A/O was most likely seen driving from a bar since the A/O works at one. See individual interview screens. The A/O denies the allegations against her and no other collaterals came forward. Worker recommends this report be found UNSUBSTANTIATED and no case be opened.” (Exhibit E, p. 9).

On April 9, 2011, Claimant made a third call into the child abuse hotline (Exhibit F). This incident involved the mother leaving Allyson in the care of her babysitter for several days. (Exhibit F, p. 3). At the time of the hotline call, Allyson was already with Claimant (Exhibit F, p. 13). The hotline reporter informed Claimant that there was not enough stated to open an investigation as there was no immediate threat of harm to the child, Allyson, however the reporter documented the situation and told Claimant to call back if any additional information is available. (Exhibit F, p. 24).

On April 15, 2011, Claimant made a fourth hotline call (Exhibit G). In this hotline call Claimant stated that six months earlier the child, Allyson, was with the same babysitter referred to in her previous call, that the babysitter's (Brandi) boyfriend was a sex offender and that they didn't know whether or not anything happened to Allyson. (Exhibit G, p. 4). Six days after her April 9th call, Claimant's story changed and she reported now that the mother had been doing drugs in the car with Allyson (Exhibit G, p.5), there were boils on Allyson's bottom (Exhibit G, p. 5), and that a glass "crack" pipe was observed in the child's, Allyson's, car seat (Exhibit G, p.12). This call was accepted and another investigation was conducted. (Exhibit G, p.23).

Investigation 1524332 began based upon allegations received that the child had been missing for three days and for Medical Neglect due to the child having boils on her body that went untreated (Exhibit H). The report indicated that the child was taken by the putative paternal grandmother (Exhibit H, p. 2) Through the course of this investigation the Department observed Allyson and saw no rash or boils, (Exhibit H, p. 2), interviewed the mother, Stacy Whetstone, (Exhibit H. p. 2), and interviewed staff at Allyson's daycare. The follow conclusion was provided by the Department:

"Worker did not find a preponderance of evidence to support the allegations of Medical Neglect. There were no boils, rashes, marks, or injuries to the child when seen by

worker. There was also no evidence of where any boils once were.¹ The daycare staff had not seen any boils on the child. Worker did not find a preponderance of evidence to support the allegation of Inadequate Supervision. The A/O disclosed that she did not lose the child nor was the child missing; however she and the babysitter kept missing each other. The child was then being babysat by another friend by the name of Margaret. See ref#1533874 for interviews with Margaret.” ... Worker recommends this report be found UNSUBSTANTIATED and no case be opened due to lack of a preponderance of evidence and the child now being in the custody of the putative paternal grandmother. (Exhibit H, p. 2).

On June 24, 2011, Margaret Fields, the child’s new babysitter, called the child abuse hotline to report that her son, A.C., had been caught attempting to penetrate the child, Allyson (Exhibit I, p. 8). Two investigations were conducted after receiving this hotline call, one from the Crimes Against Children Division of the Arkansas State Police (1533864, Exhibit J) and another investigation by the Department of Human Services (1533874, Exhibit K).

The CACD report concluded that there was not a preponderance of evidence to support all the allegations. (Exhibit J, p. 2). The summary stated that the A/O, Lance Kirksey, hired an attorney and refused to be interviewed concerning the allegations ... that Margaret and Melissa have given several difference accounts of this story and therefore are not credible ... Avery has been known to lie when he is afraid of getting in trouble and therefore his credibility in in question ... Allyson has an anal fissure and the SANE nurse stated this was consistent with a disclosure of anal penetration however it can also be caused by other things like constipation ... therefore the allegations of sexual contact and sexual penetration will be unsubstantiated ...

The Department’s Investigation however found that there was a preponderance of evidence to support some of the allegations. The Department’s investigative summary concluded:

“Upon investigation, there is a preponderance of evidence to support the allegations. A witness had reportedly observed that the UJO has AVs diaper off and was attempting to

¹ Not surprising as during Claimant’s Deposition she stated that the boils went away after she applied ointment to the area (Exhibit A, p. 18).

penetrate her. Mother of the UJO reported that her son told her that an adult man showed him 'what do to on a girl'. UJO reportedly disclosed to his mother that he was 'trying to put it (penis) in but couldn't.' AV was interviewed as the CSC, but lacks the verbal skills to make a disclosure. SANE Nurse examined AV and she was found to have an anal injury. Both AV and UJO have separate FINS cases ... Due to a preponderance of evidence this report will be marked TRUE, but EXEMPTED (UJO) for Sexually Aggressive Behaviors." (Exhibit K, p.2.)"

A foster care case was not opened due to the fact that the UJO and AV did not live together.

On August 8, 2011, Claimant made another call to the child abuse hotline alleging that the biological mother would not take custody of Allyson. (Exhibit L, p.9). Claimant stated that she wanted to give custody back to the mother since she couldn't afford "day care and stuff." (Exhibit L, p. 9).² Claimant stated that she took Allyson to her mother's apartment but the mother refused answer the door (Exhibit L, p. 15). The hotline call was accepted and an abandonment investigation was initiated.

The investigation stated that the reason for the investigation was for abandonment; however the worker did not find a preponderance of evidence to support the allegation due to the fact that the A/O denied that the grandmother ever requested that she resume care of the child. Also, the fact that a court has placed legal and physical custody with the grandmother ... "at this time the grandmother desire to retain custody ... it is recommended that this case be found UNSUBSTANTIATED as to abandonment on the A/O. It is noted that a protective services case was opened through a FINS adjudication on 9/15/11" (Exhibit M, p. 2). On September 15, 2011 Allyson Lovejoy was adjudicated to be a Family in Need Of Services and legal custody was placed with Claimant. (Exhibit N).

² It is very curious that for the past several months Claimant attempted to get Allyson out of the mother's custody but has now changed her mind.

Claimant now brings this action against the Department claiming Allyson was somehow sexually assaulted as a result of the negligence by the Department of Human Services and seeks damages.

Summary Judgment Standard.

Summary Judgment is to be granted when it is clear that there are no genuine issues of material fact to be litigated, and the party is entitled to judgment as a matter of law. *Harrisburg Sch. Dist. No. 6 v. Neal*, 2011 Ark. 233, 381 S.W.3d 811. Once the moving party has established a prima facie entitlement to summary judgment, the opposing party must meet proof with proof and demonstrate the existence of a material issue of fact. *Id.* The evidence is viewed in the light most favorable to the party against whom the motion is filed, resolving all doubts and inferences against the moving party. *Id.*

When viewed in the light most favorable to Claimant, this cause of action must be dismissed as the Department is not liable for the criminal acts of third parties and as the Claimant cannot show that the Department was negligent in that DHS owed Claimant no duty to open a Family In Need of Services “FINS” case; that the alleged acts or failures to act were not the proximate cause of the Claimant’s alleged injuries; that the negligence of an intervening actor is the true cause of Claimant’s alleged injuries; and a failure to show damages. As such, this Motion for Summary Judgment should be granted and the Claimant’s Complaint must be dismissed.

II. DHS IS NOT LIABLE FOR THE CRIMINAL ACTS OF THIRD PARTIES ✓

Claimant has no recognized cause of action against DHS for the sexual assault of Allyson Lovejoy at the hands of his mother’s babysitter’s son. Factually, Allyson was not in DHS custody at the time of the sexual assault. Legally, DHS had no duty to the child to protect her

from the criminal acts of third parties. See *Deshaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189 (1989).

In *Deshaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189 (1989), a case factually similar to the claim asserted herein, the mother of a child who had been beaten by the father brought a civil rights action against the state social service workers who received actual complaints that the child was being abused by the father but who failed to remove the child from the father's custody. The parents of the child were divorced and the father was awarded custody. The child was abused again and subsequently suffered such traumatic head injuries from that abuse that he was confined to an institution for the mentally retarded. The mother sued the state social services workers.

On appeal, the United States Supreme Court found that the state had no constitutional duty to protect the child from his father even after receiving reports of possible abuse. The Supreme Court stated that nothing in the constitution required the State to protect the life, liberty or property of child against the acts of a third party. *Id.* at 195. The Supreme Court noted however that a duty may be created in some instances where the State under took a "special relationship" with the individual such as where the State knew of abuse by the father and undertook prior action to protect the child. *Id.* at 197. However, having stated that, the Supreme Court found no such "special relationship" therein explaining that such "special relationship" exists only where the State takes someone into custody. Such was not the case in *Deshaney* and such was not the case here.

Subsequently, in *Forrester v. Bass*, 397 F.3d 1047 (8th Cir. 2005), the Eight Circuit Court of Appeals held that no affirmative duty could be imposed upon state social service workers because of an "expectation of action" under state child-welfare statutes. The court

found that no relationship could be found when the child was never in foster care. This was consistent with an earlier Eighth Circuit decision finding that the state is required to protect only those who are in its custody, or the state must have taken affirmative steps that created the danger that resulted in harm to the individual. *Avalos v. City of Glenwood*, 382 F.3d 792, 799 (8th Cir. 2004). Arkansas state courts have followed suit. *See, e.g., Rudd v. Pulaski County Special School Dist.*, 341 Ark. 794, 801, 20 S.W.3d 310, 314-15 (2000) (the Arkansas Supreme Court found there was no special relationship under the Arkansas Civil Rights Act even where school district was aware that a student who shot another student had propensities for violence); *Dorothy J. v. Little Rock S.D.*, 794 F.Supp. 1405 (E.D. Ark. 1992) (court refused to find a “special relationship” between the state and a student who was placed in a community-based program for people with mental disabilities, even when the state was aware of the violent propensities of another student placed there); *First Commercial Trust Co. v. Lorcin*, 321 Ark. 210, 215 (1995) citing *Delahanty v. Hinckley*, 564 A.2d 758 (D.C. 1989) (“[i]n general no liability exists in tort for harm resulting from the criminal acts of third parties, although liability for such harm sometimes may be imposed on the basis of some special relationship between the parties”).

Since Allyson was not in DHS custody, there was no “special relationship” creating any possible duty to protect the child from private acts of violence by the mother’s babysitter’s son, Avery Clark.

Consequently, there is no legal authority or precedent in this state to impose a “special relationship” between DHS and Allyson where the child was never placed in DHS custody. Absent such relationship, DHS had no duty of care to protect Allyson from the criminal acts of A.C., the Underage Juvenile Offender. Significantly, the United States Supreme Court declined

to impose a “special relationship” in the *DeShaney* case where the child was not in state custody notwithstanding (1) actual knowledge by the state social service workers of repeated child abuse and (2) the agency’s intervention with this particular child by recommending a safety plan to protect the him from further abuse and by making visits to check on his welfare. Since the United States Supreme Court failed to find a special relationship under the facts established in *DeShaney*, no court could possibly find one here.

Aside from the lack of any duty to this child, the Department was not negligent in this matter as (1) there was no duty to open a FINS Case (2) Claimant cannot show that the actions of the Department were the proximate cause of Claimant’s injuries, and (3) the criminal acts of the underage juvenile offender, A.C., were not foreseeable to DHS. It is well settled law in Arkansas that for negligence to be actionable, the injury must be foreseeable.

III. DHS WAS NOT NEGLIGENT

In order to establish a *prima facie* case of negligence, a Claimant must demonstrate that the Respondent breached the standard of care, that damages were sustained, and that the Respondent’s actions were the proximate cause of those damages. *Union Pac. R.R. Co. v. Sharp*, 330 Ark. 174, 952 S.W.2d 658 (1997). Claimant has not established a *prima facie* case as there was no duty upon DHS to open a FINS case, it is clear that the alleged actions or inactions taken by DHS were not the proximate cause of Claimant’s alleged injuries as there was an independent intervening act which is the true cause of Claimant’s alleged injuries, and the Claimant has suffered no damages due to the actions of the Department.

A. The Department of Human Services Owed No Duty to Claimant to Open a Family In Need of Services Case.

An essential element of negligence is that the Respondent owed a duty of care to the Claimant. *Young v. Paxton*, 316 Ark. 655, 660, 873 S.W.2d 546, 549 (1994). The question of whether a duty is owed is always a question of law and never one of fact. *VanDeveer v. RTJ, Inc.*, 81 Ark.App. 379, 385, 101 S.W.3d 881, 884 (2003). By law, the Department of Human Services owed Claimant no duty to open a FINS case.

Arkansas Code Annotated § 9-27-2-310 (3) shows that there is no affirmative duty on the part of the Department of Human Services to petition the Court to open a family in need of services case. The statute states:

“Petitions for ... family in need of services *may* be filed by:

- (A) Any adult; or
- (B) Any member ten (10) years of age or older of the immediate family alleged to be in need of services.”

Ark. Code Ann. § 9-27-310 (3) (emphasis added).³

The basic rule of statutory construction is to give effect to the intent of the General Assembly. *Wal-Mart Stores, Inc. v. D.A.N. Joint Venture III, L.P.*, 374 Ark. 489, 288 S.W.3d 627 (2008). When reviewing issues of statutory interpretation, courts first construe a statute just as it reads, giving the words their ordinary and usually accepted meaning in the common language. *Id.* When the language of a statute is plain and unambiguous conveying a clear and definite meaning, the court does not resort to the rules of statutory construction. *Id.*

The language of Ark. Code Ann. § 9-27-310 (3) is clear and unambiguous, and in using the word “may” the legislature made their intent clear in that they placed no affirmative duty on *anyone*, including the Department of Human Services, to open a family in need of services case.

³ It is important to note that the statute provides that “any adult” may petition the court to open a family in need of services case, meaning that claimant had the authority to petition the court if she felt it was necessary.

The use of the word “may” in § 9-27-310 (3) clearly means that whoever petitions the court to open a family in need of services matter has discretion: discretion on whether to petition the court or not. In no way does use of the term “may” create any duty upon the Department of Human Services to act. The Department of Human Services cannot be found negligent when they owed no duty to Claimant as a matter of law.⁴ As such, summary judgment should be granted for the Department.

B. Failure to Show Proximate Cause

In order to make a *prima facie* claim of negligence, Claimant must show that the alleged negligence of the Department of Human Services was the proximate cause of the damages sustained. Proximate cause is defined as “that which in a natural and continuous sequence unbroken by any efficient intervening cause, produced the injury, and without which the result would not have occurred.” *Union Pac. R.R. Co. v. Sharp*, 330 Ark. 174, 952 S.W.2d 658 (1997). Similarly, the Arkansas Supreme Court held in order to prove proximate cause, a plaintiff must show that but for the alleged negligence, the result in the underlying action would have been different. *Nash v. Hendricks*, 369 Ark. 60, 250 S.W.3d 541 (2007).

In the present case, Claimant argues that it was the negligence of the Arkansas Department of Human Services in not opening a family in need of services case was the proximate cause of the child’s injuries, which occurred at the child’s babysitter’s home, and while the child was in the babysitter’s care and supervision. Such a claim blatantly fails to show proximate cause to the injury. In a family in need of services case, the Department of Human

⁴ The only affirmative duty on the part of the Department of Human Services is found in Ark. Code Ann. § 12-18-602 “Initiation of the Investigation” which clearly states that the Department shall cause an investigation to be made upon receiving initial notification of suspected child maltreatment. This is evidenced by the term “shall” as opposed to the term “may” found in Ark. Code Ann. § 9-27-310 (3).

Services is not required to take custody of the child, at most the child's custody may be transferred to another family member. See Ark Code Ann. § 9-27-332. Therefore, even if a family in need of services case were opened, that in and of itself would not have prevented the mother from using her babysitter to watch her child or would it have prevented the criminal acts of the babysitter's son. This fact when added that there were never any allegations of abuse or neglect made against this babysitter (Margaret Fields) show that the alleged negligence of the Department of Human Services is not the proximate cause of the Claimant's injuries as Claimant cannot show that but for the alleged negligence, the underlying action would have been different. Because Claimant is unable to show proximate cause, summary judgment should be granted in favor of the Department of Human Services.

Further, depositions taken from Allyson's speech therapist and occupational therapy therapist show that the fact that Allyson requires Occupational Therapy and Speech therapy is in no way indicative that the child suffered any time of traumatic event in her past, as it is often the case that children with no traumatic events in their past still require these services (See Exhibit Q, p. 14 & Exhibit P, p. 20).

C. The Intervening Negligence of a Third Party is the True Cause of Claimant's Alleged Injuries.

Summary Judgment should be granted to the Department of Human Services as any damages Claimant has suffered were due to the intervening negligence of a third party. Negligence of a third party is a valid defense if it is the sole proximate cause of the injury and/or damages sustained. *W.M. Bashlin Co. v. Smith*, 277 Ark. 406, 643 S.W.2d 526 (1982). Independent intervening causes excludes liability for the earlier negligent act of another party. *Id.*⁵

⁵ The Department maintains that it did not act negligently.

Claimant alleges that child suffered injuries while at the babysitter's home. The babysitter's negligence in not properly supervising the child while in her care is the independent intervening cause which excludes the Department of Human Services from being found liable for any alleged damages suffered by Claimant. As such, summary judgment should be granted in favor of the Department of Human Services.

D. Claimant Has No Monetary Damages

Claimant in her Petition claims that she has suffered monetary damages of several tens of thousands of dollars for therapy services for Allyson, but after discovery between the parties it is clear that Claimant has suffered absolutely no monetary damages whatsoever. In a letter from Michael Lanier, Director of the organization which provided Allyson with therapy at Children's House stated that Claimant made no payment to Children's House for the services provided to Allyson nor was any payment ever requested (Exhibit O).

Claimant also testified that she was not out any pocket expenses for the occupational therapy and speech therapy Allyson currently receives at All Aboard Pediatric Therapy as she qualifies for Medicaid and Medicaid has paid for all therapy services for Allyson. (Exhibit A, p. 28)

Conclusion

In Conclusion Claimants Petition against the Department of Human Services must be dismissed as DHS is not liable for criminal acts by third parties and was not negligent.

Respectfully submitted,



Nader Afsordeh, Ark. Bar 2010253
Arkansas Department of Human Services
Office of Policy and Legal Services
P.O. Box 1437 – Slot S260
Little Rock, AR 72203
Tel: 501-320-6351
Fax: 501-682-1390
Email: nader.afsordeh@dhs.arkansas.gov

CERTIFICATE OF SERVICE

I, the undersigned, to hereby certify that on this 29th day of July, 2014 a copy of the foregoing was served upon the named individuals by sending via email, facsimile, or United States Mail, postage paid.

Harry McDermott
Attorney for Claimant
PO Box 8361
Fayetteville, AR 72703



Nader G. Afsordeh
Attorney at Law

AUG 14 2014

IN THE ARKANSAS STATE CLAIMS COMMISSION

LESIA LOVEJOY as custodian of minor
ALLYSON LOVEJOY (DOB: 6-7-08)

CLAIMANT RECEIVED

vs.

No. 13-0867-CC

STATE OF ARKANSAS
DHS/DCFS

RESPONDENTS

RESPONDENT'S REPLY TO CLAIMANT'S RESPONSE
TO MOTION FOR SUMMARY JUDGMENT

Comes now Respondent, the Arkansas Department of Human Services, Arkansas Department of Children and Family Services (hereinafter "DCFS"), and submits the following Reply to Claimant's Response to Motion for Summary Judgment.

Claimant makes several accusations and mischaracterizations in her Brief in opposition to summary judgment that DCFS misrepresented the applicability of certain legal authority in filings with this Commission. Such is not the case. Claimant's mischaracterizations are simply wrong and without legal merit.

Claimant argues that DCFS misrepresented case law as being relevant to this claim which she argues is irrelevant. It is this that she characterizes as some sort of lie. *See* Claimant's Brief. However, it is apparent from Claimant's arguments that she simply disagrees with the applicability of the legal authorities cited by Respondent. Significantly, Claimant fails to assert that the law cited is misquoted or otherwise fails to state the point as claimed by Respondent. Instead, Claimant simply argues the cases cited do not apply here because, as she argues, the context is different.

For the reasons fully explained in Respondent's opening Brief, the legal authorities cited are correct, current and applicable to this case. Moreover, they are dispositive of issues raised in Claimant's claim.

I. Claimant's First Accusation Against DCFS

First, Claimant takes issue with Respondent's point that DHS/DCFS owed the child no duty to open or file a Family In Need of Services ("FINS") case. *See* Arkansas Code Annotated §9-27-310 (b)(3). Section 9-27-310(b)(3)(A) provides that "any adult" may file a FINS petition or a dependency-neglect petition. This would include the child's grandmother, who is the Claimant here. She most likely was in the best position to file any such petition if deemed to be necessary. Yet, Claimant failed to do and now blames Respondent. However, the statute imposes no duty on DCFS to file any such petition.

The statute provides:

9-27-310. Commencement of proceedings

(a) Proceedings shall be commenced by filing a petition with the circuit clerk of the circuit court or by transfer by another court.

(b)(1) The prosecuting attorney shall have sole authority to file a delinquency petition or petition for revocation of probation.

(2) Only a law enforcement officer, prosecuting attorney, or the Department of Human Services or its designee may file a dependency-neglect petition seeking ex parte emergency relief.

(3) *Petitions for dependency-neglect or family in need of services may be filed by:*

(A) *Any adult; or*

(B) *Any member ten (10) years of age or older of the immediate family alleged to be in need of services.*

(4) Petitions for paternity establishment may be filed by:

(A) The biological mother;

(B) A putative father;

(C) A juvenile; or

(D) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

(c) Concurrent with filing, a copy of any petition that requests that the Department of Human Services take custody or provide family services shall be mailed to the Director of the Department of Human Services and to the attorney of the local Office of Chief Counsel of the Department of Human Services by the petitioner.

(d)(1) A person may submit to the intake officer for investigation a complaint of acts or omissions that if substantiated would constitute delinquency.

(2) Upon substantiation, the intake officer may refer the matter to the prosecuting attorney or an appropriate agency.

(e) No fees, including, but not limited to, fees for filings, copying, or faxing, including petitions for adoption, petitions for guardianships, summons, or subpoenas shall be charged or collected by the circuit clerk or sheriff's office in cases brought in the circuit court under this subchapter by a governmental entity or nonprofit corporation, including, but not limited to, the prosecuting attorney, an attorney ad litem appointed in a dependency-neglect case, or the Department of Human Services.

(f) If the circuit clerk's office has a fax machine, the circuit clerk, in cases commenced in the circuit court under this subchapter by a governmental entity or nonprofit corporation, including, but not limited to, the prosecuting attorney, an attorney ad litem appointed in a dependency-neglect case, or the Department of Human Services shall accept facsimile transmissions of any papers filed under this subchapter as described in Rule 5 of the Arkansas Rules of Civil Procedure.

(Italics added).

Thus, Respondent correctly stated in its Brief that a “[p]etition for dependency-neglect or family in need of services may be filed by *any* adult.” Ark. Code Ann. § 9-27-310(b)(3)(A) (emphasis added).

In order for Claimant to prevail on the merits of its negligence claim, it must prove that the Respondent owed a duty to the child and that duty was breached. She must further prove that the injury was proximately caused by a breach of such duty. In other words, Claimant must establish that but for the Department’s inaction, nothing else could have been done that would have prevented the injury caused by the criminal act of a third party. The statute here imposes no such duty on Respondent. In fact, it shows the very opposite - that “any adult” may file a FINS petition. Consequently, there was no statutory duty incumbent upon the Respondent to open a FINS petition as claimed.¹ Claimant Lisa Lovejoy could have (and, if appropriate, should have) filed her own FINS petition if she believed the child was in need of services to protect her from a third person. There is no deception in that argument. Claimant’s simple disagreement with Respondent’s argument on the law does not make the claims untruthful and Claimant should not be allowed to toss around baseless accusations of misrepresentation particularly where such claims are without legal merit.

II. Claimant’s Second Accusation against DCFS.

Second, as stated earlier, it is apparent that Claimant’s characterizations here are simply about points of law with which she disagrees.² In citing *DeShaney v. Winnebago County Dep’t*

¹ It is curious that until Claimant’s pretrial brief, there is no mention of the Department of Human Services opening a Dependency Neglect case. Such an addition to her claims should be disallowed by this commission as it was not in her original Complaint or her Amended Complaint.

² This is arguably the same interpretation mandated by the Supreme Court, the Eight Circuit, and Arkansas State Courts.

of *Social Serv.*, 489 U.S. 189 (1989), DCFS concluded that it had no “duty” to the child to protect her from the criminal acts of third parties in this instance.

Though the *DeShaney* opinion is in the context of a 14th Amendment Due Process claim, the court’s ruling on a state agency’s “duty” to children not in their custody transcends that context in which the cases were brought. In order for the 14th Amendment to be applicable in that case, Court had to recognize a legal duty must by the state agency to the child. This would be the same type of duty that must also be found in the negligence action before this Commission. Thus, before a state agency can be held to be negligent, the agency must have a duty to protect to protect the child. The *DeShaney* decision cited by Respondent clearly stated that it imposed no affirmative duty on state child welfare absent special circumstances not present here. *Id.* at 196. The *DeShaney* decision is attached hereto as Exhibit A, with relevant portions highlighted.

If Claimant disagrees with the applicability of the case law presented by the Respondent, then that would be a fair, although incorrect, argument. However, asserting that Respondent somehow misrepresented the applicability of the case is improper and unprofessional. Claimant’s argument should be disregarded as being without merit. This is particularly true where, as is the case here, Respondent correctly cited the case law and there is no assertion that the case fails to state as cited or otherwise misquoted.

Moreover, additional authority exists that supports Respondent’s legal points not previously cited. *See Terry B. v. Gilkey*, 229 F.3d 680 (8th Cir. 2000) attached hereto as Exhibit B.

In *Terry*, two siblings sued the Arkansas Department of Human Services for damages to compensate for the physical, emotional, and sexual abuse that they assert that they suffered after the Arkansas Department of Human Services took them from an inpatient psychiatric hospital and delivered them to their aunt and uncle, who had obtained guardianship of them. *Id.* at 681. The Plaintiffs argued that there was an affirmative duty upon the Arkansas Department of Human Services to protect the children from the abuse of their aunt and uncle. *Id.* at 682. The Eighth Circuit rejected that argument, holding

There is at least one insuperable barrier to this argument, and that is that the children admitted in the trial court, that the DHS lost, and that their aunt and uncle gained, custody of them in the probate court hearing, which took place on the day that the defendants Gilkey and Mahomes removed them from the inpatient psychiatric facility. *Since the DHS lost custody on that date, the state exercised no restraint of the children's liberty after that date and therefore no longer had a duty, if one ever existed, to protect them with respect to subsequent events.*"

The reasoning cited by Respondent in its Motion for Summary Judgment was a statement of the current state of the law in the United States and Arkansas, and was not, by any stretch of the imagination, a lie as claimed.

III. Claimant's Third Accusation Against DCFS

Claimant next argues that Respondent was intentionally untruthful in its Motion for Summary Judgment when it cited *Forrester v. Bass*, 397 F.3d 1047 (8th Cir. 2005), (attached as Exhibit C) another Eighth Circuit Opinion, which stated that no affirmative duty could be imposed upon state social service workers because of an "expectation of action" under state child welfare statutes.

Relevant portions that were used in forming Respondent's argument are below:

“Attempting to sidestep *DeShaney*, Forrester argued, and the district court agreed, the due process claims in Count I are not based on the Due Process Clause, but **instead are based on Missouri's child protection status that confer on abused and neglect children an entitlement to receive investigative as well as preventative and protective services.** *DeShaney* expressly declined to consider whether the relevant child protection status gave the plaintiff an “entitlement” to due process protection. Our analysis begins by examining first whether the child protection statutes that confer any protected interests. Only if we find a protected interest (and therefore a duty to protect that interest that would be required in Claimant's claims against Respondent) do we examine whether the deprivation of the protect interest was done in accordance with due process ... In *Meyers*, 810 F.2d 1469, we concluded the Minnesota Child welfare statute, as most, establishes guidelines to be followed as a matter of state law and neither confers nor embodies any constitutionally-protected right. *Id.* The following year, in *Doe*, we noted that although the plaintiffs desired or even expected the social services set forth in the Minnesota statute, they had no legitimate claim of entitlement.”
Forrester, at 1055-1057.

Claimant is free to disagree with Respondent, the Supreme Court, the Eighth Circuit, and Arkansas State Courts, but to label the Respondent's assertions as a “lie” is disingenuous and unprofessional.

IV. Claimant's Fourth Accusation.

Claimant then believes that Respondent's statement that no special relationship existed between the Department and Allyson Lovejoy is a "lie" despite each case cited by Respondent makes it clear that the only time a special relationship exists is when the state has constrained the liberty of an individual by having that individual placed in its custody. See *DeShaney* at 190; *Forrester* at 1058; *Terry* at 682.

V. Medical Claims

Interestingly, Claimant argues "The DHS has misrepresented to the Commission [sic] the claimant has made for claim for past medical expenses" but then offers nothing to rebut the facts presented in Respondent's Motion for Summary Judgment. To reiterate the argument made in Respondent's Motion, Claimant's own testimony, taken during her deposition as well as the letter from Children's House show that Claimant has not paid or been asked to pay for any service Allyson has received.

VI. Testimony from Jacklyn D. Fratesti and Ashley H. Miller

Claimant lastly claims the Department was intentionally untruthful to the Commission when there is a clear factual basis for the Respondent's assertion as it relates to the testimony of Allyson's Speech and Occupational Therapist. See Respondent's Motion for Summary Judgment, Exhibit Q, p. 14 for the following exchange:

Q: The fact that a child has an articulation disorder and needs to get Speech Therapy, even years of Speech Therapy, does that necessarily mean that that child was traumatized in some way in the past?

A: No. No

Q: So there are children who just develop these patterns of speech?

A: Yes

The other exchange may be seen in Respondent's Motion for Summary Judgment Exhibit P, p. 20:

Q: Does it necessarily indicate something traumatic happened to this child to make them that way?

A: No.

Q: So is it fair to say that some kids are just born with needs like this?

A. Yes.

Claimant makes several laud and baseless accusations against Respondent for "lying" but offers **not one case**, in any court, with a factual situation similar to the one before the Commission wherein the Respondent has a duty to protect individuals from the criminal acts of third parties. The Commission should ignore these baseless, disingenuous, and unprofessional accusations made by Claimant in her Response and grant the Department's Motion for Summary Judgment.

Respectfully submitted,



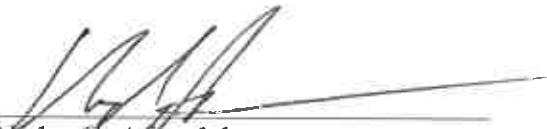
Nader Afsordeh, Ark. Bar 2010253
Arkansas Department of Human Services
Office of Policy and Legal Services
P.O. Box 1437 – Slot S260
Little Rock, AR 72203

Tel: 501-320-6351
Fax: 501-682-1390
Email: nader.afsordeh@dhs.arkansas.gov

CERTIFICATE OF SERVICE

I, the undersigned, to hereby certify that on this 14th day of August, 2014 a copy of the foregoing was served upon the named individuals by sending via email, facsimile, or United States Mail, postage paid.

Harry McDermott
Attorney for Claimant
PO Box 8361
Fayetteville, AR 72703



Nader G. Afsordeh
Attorney at Law

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 135,000.00

Claim No. 13-0867-CC

Lesia Lovejoy, Custodian
For Minor Allyson Lovejoy Claimant

Attorneys
Harry McDermott, Attorney Claimant

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

Mark White, Chief Counsel
Brenda Jackson, Accts. Payable
Nader Afsordeh, Attorney Respondent
Jerry Berry, Fiscal Officer

Date Filed June 5, 2013

Type of Claim Negligence, Failure to Follow
Procedure, Pain & Suffering,
Mental Anguish, Other, Future Expenses

FINDING OF FACTS

This claim was filed for negligence, failure to follow procedure, pain and suffering, mental anguish, other and future expenses in the amount of \$135,000.00 against the Arkansas Department of Human Services/Division of Children and Family Services.

Present at a hearing August 15, 2014, was the Claimant, represented by Harry McDermott, Attorney, and the Respondent, represented by Nader Afsordeh, Attorney.

After hearing oral arguments on it, the Arkansas State Claims Commission unanimously grants the Respondent's "Motion for Summary Judgment" for the reasons contained therein. Specifically, the child involved in this claim was not in the custody of the Respondent, Department of Human Services/Children and Family Services. There was an intervening criminal act by a third party which was unforeseeable. The Respondent cannot be held liable for such acts as the child was not in Respondent's custody.

Therefore, this claim is hereby unanimously denied and dismissed.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

Upon consideration of all the facts, as stated above, the Claims Commission hereby **unanimously grants the Respondent's "Motion for Summary Judgment"**. This claim is hereby denied and dismissed.

Date of Hearing August 15, 2014

Date of Disposition August 15, 2014

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