

DECEMBER 2017

**SETTLEMENT - SNOHOMISH COUNTY**

CHEYENE GILLIGAN AND KEVIN LEWIS v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES (DSHS)

**Number:** 16-2-19723-31

**Settlement Date:** 10/25/17

**Plff Atty:** David P. Moody & Ian M. Bauer of Hagens Berman Sobol Shapiro (Seattle)

**Def. Atty:** Deborah Severson & Steven Abel, Office of the Attorney General (Seattle)

**Def. Med.:** Renee Bibeault MD (Psychiatrist/Damages) Kirkland, excluded from performing CR 35 exam; Russell Vandenberg MD (Psychiatrist/Damages) Bellevue, both experts

**Def. Exp.:** Marsha Hedrick Ph.D. (Psychologist/Damages) Seattle; William Partin CPA (Economist/Damages) Bellevue; Carl Gann (Vocational Rehabilitation/Damages) Tacoma

**Judge:** Hon. Michael T. Downes

**Special Discovery Master:** Hon. Bruce Heller (ret.)

**STATE & DSHS NEGLIGENCE**

**EMOTIONAL DISTRESS**

Plff Kevin, male age 36, and Plff Cheyene, minor female age 9. On 1/31/15, Plff Cheyene Gilligan and her two younger brothers were rescued from an abandoned home in Lake Stevens, Washington, where they had been left to fend for themselves. Cheyenne (age 7) was the oldest child in the home. The conditions of the home and the children were horrific, causing experienced law enforcement officers to need to step outside to collect themselves. The home had no heat, no food, and the carpets were "black with filth." Buckets of human waste lined the hallways. The temperature inside the home was 40 degrees. Cheyene and her 3-year-old brother were huddled together for warmth on a filthy, urine-soaked couch. Behind a locked door, Cheyene's baby brother was hypothermic and near death. Cheyene told first responders that she and her brothers were "left at home by themselves like usual." She told medical staff that she hadn't been bathed in years, and that she had been repeatedly physically assaulted by her mother and her mother's partner. She described the conditions of the home in

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**Facts Cont'd:** graphic detail, explaining, among other things: (1) that she had to fight with rats for food; (2) that she was responsible for the care of her younger brother; and (3) that she was locked in her room for up to eight days at a time. Cheyene's family had a long history with the Department of Social and Health Services (DSHS). Cheyene and her biological mother, Amanda Foley, both tested positive for methamphetamines at Cheyene's birth. On the basis of this and other risk factors, Cheyene was removed from Foley's care when she was 12 days old and placed into foster care. While in DSHS-approved foster placement, three of Cheyene's ribs were fractured. Medical evidence indicated that the injury was due to a "forceful squeezing action" inflicted while Cheyene was in DSHS care. DSHS' records documented that Cheyene's foster parent had a history of assaulting foster children, noting that she was "known to bonk kids on the head" when "stressed out." Cheyene was returned to her biological mother in 2009. Over the years that followed, DSHS received numerous warnings of abuse and neglect from medical personnel, school employees and family members. Among other things, DSHS was informed that (1) Foley was exposing her children to incest; (2) Foley and her male partners were abusing drugs; (3) Foley's half-brother and romantic partner threw a car seat containing their 4-month-old son against the wall, causing a skull fracture; (4) the children were locked in their rooms all day with no food; (5) medical providers suspected domestic violence between Foley and her male partners; (6) Foley had again tested positive for methamphetamines at the birth of another child; and (7) Cheyene was hungry and appeared very dirty at school, and her family home had no power. Notwithstanding these increasingly-dire warnings, DSHS failed to conduct any meaningful investigation and failed to intervene to protect Cheyene and her siblings. While Cheyene lived in horrific conditions with Foley, her biological father, Plff Kevin Lewis, had no idea she existed. DSHS, on the other hand, was informed that Kevin was Cheyene's father on multiple occasions beginning in late December of 2007, but took no action to locate him or otherwise inform him that he had a daughter. After Cheyene's rescue, Kevin learned that she was his daughter and promptly stepped forward to offer her a safe home. In return, DSHS pursued Kevin for back child support accrued during the time period while Cheyene was being abused by her mother, even

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**Facts Cont'd:** though DSHS had, for years, failed to make any effort to locate Kevin. DSHS did not have a liability expert. Its own administrators described the social work performed in Cheyene's case as "dangerous and inadequate" in numerous, critical respects. DSHS' 30(b)(6) designees testified that every single Child Protective Services (CPS) investigation between Cheyene's birth and her rescue was insufficient and incomplete. DSHS retained Dr. Renee Bibeault, a psychiatrist whose practice focuses "exclusively on women's mental health," to perform a CR 35 examination of Cheyene. Dr. Bibeault was disqualified from evaluating Cheyene due to her lack of expertise in evaluating child victims of trauma.

**Injuries:** Severe emotional distress; abuse and neglect.

**Result:** PLAINTIFF SETTLEMENT for \$4,240,000. (The settlement included \$4,000,000 for Plff Cheyene and \$240,000 for Plff Kevin. In addition, in May of 2017, Plffs' counsel discovered that DSHS had improperly withheld numerous documents responsive to Plffs' discovery requests. Plffs were awarded \$100,000 in sanctions and \$28,752 in attorneys' fees and costs for DSHS' discovery violations. In September 2017, Plffs' counsel discovered that DSHS had again improperly withheld numerous documents responsive to Plffs' discovery requests. Plffs were awarded an additional \$20,000 in sanctions, with DSHS stipulating to payment of an additional \$30,000 in attorneys' fees and costs. Overall Plffs were awarded \$178,752 in sanctions for DSHS' discovery violations.)