ASCEND JUSTICE

2016 Safety Plan Settlements

In 2016, three major federal civil rights cases were filed, each of which challenged the illegal removal of children from their parents. DCFS removed the children without regard to the constitutional requirements governing the taking of "protective custody" without parental consent and without a court order. Each of the cases also challenged the imposition of involuntary so-called "safety plans," under which the children were sent to live with relatives and contact with their parents was restricted, all without any court review. DCFS claimed that the safety plans were voluntary agreements, but the facts of each case showed the plans were highly coercive and denied the families due process of law.

While each case focused on DCFS removals and safety plan policies, each had a very different context: the *L.W.* case involved discrimination based on a false claim that the mother had an alleged mental illness; the *A.B.* case involved violations of the rights of a domestic violence victim who was fleeing her abuser; and the *W.M.* case challenged the DCFS practices and abuses of power in the process of hospital discharges of injured children when the children are cleared to go home but DCFS's Hotline had been called.

L.W. v. Simpson

In this first-ever federal civil rights case, alleging discrimination in violation of the Americans with Disabilities Act, mother Bridgett J. and her 18-month-old daughter, L.W., were separated from each other, with DCFS taking protective custody of L.W. without any court review, because Hotline callers claimed Bridgett was a "paranoid schizophrenic" who was not taking her medication. This claim was absolutely false: Bridgett had never been diagnosed with this mental health condition and she had no prescription that she was disregarding. That did not stop DCFS from demanding that Bridgett admit herself into a hospital for a psychiatric assessment while her daughter was separated from her. The DCFS supervisor later admitted that DCFS had absolutely no basis to make this demand. However, after making these demands the DCFS investigator insisted that the only way Bridgett could reside with L.W. was if she signed a "safety plan" that limited her access to her daughter to contact that was supervised by the family members who had called the Hotline and made the accusations in the first place. Then, DCFS labeled Bridgett neglectful under the "environment injurious" allegation, which the Illinois Supreme Court had declared void in March of 2013. Bridgett and L.W.'s rights were restricted under the coerced safety plan, never reviewed by any court of law, for eight months. The plan was lifted only after Bridgett sought legal assistance from the Center. The Center also fought successfully to have her neglect allegation unfounded.

A certified teacher and a social worker with an M.S.W. degree, Bridgett could not work in her profession during the time the neglect finding was registered against her. With the Center's help, Bridgett sued for violating her constitutional rights, which were established under the Center's landmark case, *Dupuy v. Samuels*, which protects persons who work with children from unfair abuse and neglect findings. In addition, the complaint challenged the unlawful separation of L.W. from her mother on substantive and procedural due process grounds under the 14th Amendment

and as an unlawful seizure of L.W. under the 4th Amendment. The complaint also included both claims under the Americans with Disabilities Act and the Rehabilitation Act, due to the discrimination against Bridgett based on the misperception of her alleged psychiatric disability. After this case was filed, the DCFS defendants moved to dismiss it. The federal court denied that request as to the claims regarding the unconstitutional removal of the child from her mother and the safety plan that ensued after the removal, but granted the motion to dismiss the disability discrimination complaints and the claims against the DCFS Director and DCFS itself. After Bridgett asked the court to reconsider these rulings, the federal court issued an opinion reinstating the disability discrimination claims. This was our first successful disability discrimination suit against child protection investigators.

After months of discovery, settlement talks began in earnest. Magistrate Maria Valdez was especially instrumental in forging a fair and comprehensive settlement. In addition to compensation for L.W. and Bridgett, the final settlement called for revising and clarifying standards for the removal of children and the imposition of safety plans. The settlement also called for DCFS to initiate a comprehensive new mental health policy and procedure, and to end the use of alleged mental illness as a "risk" category on its safety assessment tool (known as CERAP). This case established a precedent for future discriminatory removals of children from parents with alleged but unsubstantiated claims of mental health conditions.

A.B. et al v. Holliman et al

Rochelle V. fled domestic violence, taking her twin toddlers with her to stay with a relative. When her abuser's family member called the Hotline against her, DCFS demanded that she leave the home where she was staying and relocate to a domestic violence shelter due to a false allegation that there was mold in the basement. As soon as a domestic violence shelter admitted her, however, DCFS changed its demands and insisted that the children had to stay with the abuser's family members or they would be taken into foster care. Terrified for her children, Rochelle acquiesced, crying as she signed the "safety plan" form. Rochelle and the twins were separated for seven weeks. What contact Rochelle was allowed with her children was supervised by the abuser's family, while the abuser had unlimited contact with the children. At the end of the safety plan, moreover, DCFS and the assigned child welfare agency, Children's Home and Aid of Illinois ("CHAID") refused to assist Rochelle in getting the children back. Then, a new Hotline call, initiated by the abuser's family again, led to an impasse for several days when Rochelle did not even know where her children were. The entire ordeal, including all the demands and restrictions put on Rochelle, were not accompanied by any due process whatsoever.

Rochelle sought our help several weeks after she had already been separated from her children. After extensive advocacy and after Rochelle filed a petition for relief in domestic relations court to establish that the abuser had no right to keep the children, the children were finally returned to Rochelle and she has maintained full custody ever since.

Two weeks after the children were returned home, we assisted Rochelle and the twins with filing a federal civil rights complaint alleging that the coerced safety plan violated the children's 4th

Amendment rights and violated Rochelle's and the twins' 14th amendment due process rights. Both DCFS investigative staff and CHAID were sued for monetary damages and declaratory remedies to amend the safety plan policies under which Rochelle and the children were separated. The attorneys conducted extensive discovery and just at the point when the team was preparing to ask the Court for a judgment in Rochelle's and the twins' favor, DCFS indicated an interest in settling all three federal suits that raised claims about unlawful safety plans. Eight months of settlement negotiations ensued, over which Magistrate Judge Sidney Shenkier presided in this case.

Because this litigation also raised claims that focused on safety plans, including their enforcement and use by private agencies such as CHAID, the safety plan policy remedies that were common to all three cases were spelled out in the most detail in the settlement of this case. Specifically, DCFS's duty to revise the Safety Plan Rights and Responsibilities forms used by staff was detailed in the *A.B.* settlement, with the new form attached to federal court settlement itself.

W.M. et al v. Giscombe et al

In December of 2013, W.M., a four-month-old infant, had a serious cough. His mother took him to his pediatrician's office where he was diagnosed with croup. Thanks to medication he was prescribed, W.M. was feeling much better by the time of his follow up appointment the next day. But while waiting in the examination room, W.M. lurched out of his mother's arms and fell to the floor, suffering a serious head injury.

W.M. was admitted to the hospital and remained overnight for observation. When the parents asked about taking him home the next day, the M.'s were told they could not leave the hospital with their son due to a "hospital hold" placed on the child by DCFS. The M.'s were held in limbo at the hospital with their son for several days, when DCFS finally came to the hospital to interview them. The parents were told by DCFS that in order to leave the hospital with their son, they had to abide by a safety plan under which their son would stay at the home of a relative. Even though Erica was breastfeeding W.M. at the time, Erica and Mark were forbidden from staying overnight with W.M.

The safety plan continued for nearly three months, during which time very little investigation of the underlying claim of abuse was conducted. After doctors who were on contract with DCFS said that the evidence they found was inconclusive, DCFS took protective custody of W.M. anyway. Contrary to the constitutional requirements established in *Hernandez v. Foster*, W.M. was taken without either probable cause or exigent circumstances, as the federal complaint later alleged. When the case came before the juvenile court, the juvenile court determined that there was no probable cause to support the finding that W.M. was neglected and W.M. was finally returned home. After the court's decision, DCFS continued to threaten Erica with an "indicated" finding for abusive head injury, which would have serious consequences on her career as a high school teacher and her ability to support her family. Fortunately, she prevailed.

As in the *A.B.* case, discovery was complete and the team was preparing to ask for summary judgment when DCFS indicated that they believed the case could be settled. Magistrate Geraldine Soat Brown presided over the settlement negotiations. The parties agreed that DCFS can no longer utilize the "rule out" policy, where DCFS takes protective custody of children when it cannot rule out abuse; instead, DCFS must have specific evidence giving rise to probable cause to believe that the child was abused by his parents or guardians before they take protective custody. Additionally, the parties agreed to do away with the "hospital hold" policy, where DCFS tells hospitals that parents may not leave with their children until further notice from DCFS. This is a coercive practice that effectively takes custodial control from parents and sets the stage for unlawful safety plan demands that the parents cannot refuse, in violation of the fundamental rights as a family.

What's Wrong with DCFS Safety Plans and What the Settlements Accomplish in Limiting Their Use As Instruments of Coercive Family Separations Without Due Process

Not all of the problems with safety plans will be solved through litigation, but we have reached major agreements that (a) safety plans are not to be threatened and used unless DCFS first determines that it has grounds to take protective custody of a child and communicates the grounds to the parent who is under investigation; this is instead of making a threat and demanding family separations without ever assessing whether there is probable cause or an immediate threat of harm to a child; (b) families are given clearer choices about who will provide care under safety plans, assuming grounds do exist; and (c) DCFS has a clear duty to end safety plans promptly whenever probable cause and imminent risk no longer exists, and to assist parents in restoring custody to the status quo before DCFS intervened.

Improvements in safety plan practices have been a long-term agenda item of ours, including through legislative advocacy. In 2014, S.B. 2909, which was enacted into law in P.A. 98-830, the Family Protection Act, which the Center drafted and negotiated, created the first legal obligation for DCFS to inform parents and caregivers of their rights under safety plans. These settlements take that legislation to the next level, by specifying the limited circumstances under which safety plans can be used by DCFS and more clearly delineating the rights of parents when safety plans are being used to separate families and restrict parental rights during investigations.