

H.A.L. v. Foltz, No. 07-15791 (11th Cir. 12/15/2008) (11th Cir., 2008)

The Eleventh Circuit Court of Appeals in Atlanta upheld the right of three foster siblings to sue for damages resulting from sexual abuse committed against them while in foster care. The precedent setting decision (H.A.L. v. Foltz) focused on the unsupervised placement of three pre-school-aged foster children with two adolescent and teenage foster kids known to be sexual predators. Left alone together in the same home, the younger foster children reportedly were repeatedly raped by the older boys.

As filed by their parents on behalf of plaintiffs H.A.L., J.H.L., and S.L.L., (identified in the case by their initials for purposes of protecting the minors' identities) the action was a 42 U.S.C. § 1983 claim against Defendants Ed Foltz ("Foltz"), Deborah Jones ("Jones"), and Virginia Jordan ("Jordan"). All three are employees with the Florida Department of Children and Families ("DCF"). In the motion, the plaintiffs alleged that the Defendants had violated the children's Fourteenth Amendment substantive due process rights to physical safety and to be free from an unreasonable risk of harm.

Plaintiffs further alleged that the Defendants' deliberate indifference resulted in a failure to prevent child-on-child sexual abuse suffered by the three children while they were in the custody of Florida's foster-care system.

The 11th Circuit Court in Atlanta let stand this civil rights action brought by the younger boys. Lead counsel was Howard Talenfeld, partner with Colodny, Fass, Talenfeld, Karlinsky & Abate. Shortly after the opinion was released, the case, including the state court action for negligence, settled for \$2.925 million for the three children.

Revealed amid the evidence were numerous disturbing realities. Among them were that the state placed the younger children in a home where a known, sexually aggressive child lived, and where both foster parents worked, leaving the younger kids at the mercy of the older child. State case workers performed no background check. Finally, no plan was drafted or implemented to prevent the child-on-child abuse that eventually occurred.

Ultimately, the court ruled that the state was not entitled to qualified immunity from liability under § 1983 for its alleged "deliberate indifference to foster children's clearly established substantive due process right to be reasonably safe from sexual abuse."

The H.A.L. case reveals the urgent need for advocacy on the part of those who often are left helpless in foster care or the social service system. The outcome also represents critical and significant issues. This was the first case nationally to recognize that children have a right to be protected from child-on-child sex abuse in a foster-care situation when workers know they're placing children in harm's way. It exposed mishandling of documentation essential to protecting children in the system.

Additionally, H.A.L. revealed that the state often eventually spends millions of dollars defending itself in such cases. DCF Secretary George Sheldon admitted defense of “indefensible” claims can be expensive. He “vowed to reform the way his agency fights youngsters who sue it,” according to a Miami Herald article.

For more information, visit this site:

<http://www.ca11.uscourts.gov/opinions/ops/200715791.pdf>

(30)