

Profoundly Handicapped Woman Awarded Millions for Years of Abuse

Kimberly Godwin is a 32-year-old profoundly retarded woman. She was born in February 1971 in West Palm Beach. Kimberly has an un-testable IQ, but experts estimate her to function at the level of an 18-month-old toddler. Kimberly is non-verbal, usually incontinent, and stands less than 4 feet tall. She resides with her father, Jimmy Godwin, and her stepmother, Diane, in rural Telogia, Florida, near Tallahassee. Kimberly's natural mother, Darlene Godwin, died of breast cancer in 1998.

When she was approximately ten years old, Kimberly's many special needs prompted social workers to encourage Kimberly's parents to consent to her placement in a private, HRS-contracted group home for the developmentally disabled. Those social workers, who were employed by the Florida Department of Health and Rehabilitative Services (HRS), now known as the Department of Children and Families (DCF), initially placed Kimberly in the Manor Group Home in West Palm Beach. Tragically, several years later, Kimberly was beaten and confirmed as abused in that facility. At her parents' insistence, HRS relocated Kimberly to another private contracted group home called the Schenck Group Home, located in Ft. Pierce.

Kimberly's abuse didn't stop there. Between 1987 and 1992, multiple signs of abuse and neglect were documented by the day program Kimberly attended, by her physician, and even by several DCF employees. Then, in December 1991, it was discovered that Kimberly had been raped and impregnated by the 16-year-old son of the group home operator. He stood 6 feet 2 inches tall – a giant compared to Kimberly's tiny, 3 foot 11 inch frame.

Even after Kimberly's pregnancy was diagnosed in December of 1991, DCF left Kimberly in the Schenck Group Home for almost two months before her parents were finally contacted and advised of her condition. Even then, contact came not from DCF, but by a court appointed victim's advocate in a criminal case filed against the perpetrator.

Darlene Godwin was finally notified of Kimberly's abuse and condition in late January of 1992. She immediately contacted attorney Lance Block to assist

her in regaining custody of her daughter and addressing Kimberly's medical needs.

Discovery revealed that DCF's supervision of the group home was so inadequate that the agency had been unaware that the perpetrator was living in the home and sharing a room with other group home residents. Moreover, even though the home's operator was paid more than \$100,000

per year, the facility had no employees and no nighttime supervision. Evidence presented at trial revealed that the group home operator had concealed Kimberly's rape and pregnancy until Kimberly was more than five months pregnant. Only after the school principal insisted, in writing, did DCF finally have Kimberly tested for pregnancy.

When Mr. Block began work on the civil case in late January 1992, Kimberly was more than five months pregnant and still living in the group home where she had been raped. Although she was an adult and profoundly retarded, Kimberly had never been legally declared mentally incompetent. Her family felt that Kimberly was not physically, mentally, or emotionally capable of carrying a baby to term and delivering it, much less providing care for a child after birth. However, no competent physician would terminate the pregnancy without the consent of a legal guardian, and thus far no one had been appointed. Mr. Block immediately filed a petition to appoint Mrs. Godwin as Kimberly's temporary, emergency guardian. To have sought permanent guardianship status would require lengthy notice provisions and stringent evidentiary requirements, which would have taken months to accomplish, thereby making it impossible to carry out an abortion in a timely manner. ***Continued on next page.***



*Kimberly Godwin and her father
in West Palm Beach in 1998*

In accordance with the emergency guardianship rules, the court appointed an attorney ad litem for Kimberly, as the prospective ward. The attorney ad litem was surprisingly contentious, arguing that there was no legal basis for an emergency guardianship. He maintained that the fetus should have a guardian appointed, and was steadfastly opposed to the abortion planned for Kimberly. However, during a lengthy evidentiary hearing, where testimony was elicited from the Godwin family and Kimberly's physicians, the court granted the petition appointing Mrs. Godwin as Kimberly's temporary guardian, and thereby approved the abortion. Kimberly's court-appointed attorney ad litem immediately appealed the decision. However, the Fourth District quickly affirmed the trial court's decision, and the Florida Supreme Court dismissed a subsequent petition for certiorari, also filed by the attorney ad litem. Mr. Block associated appellate specialist Philip Burlington, Esquire to assist with the appeal.

Immediately after the hearing, Darlene Godwin rushed Kimberly to the closest hospital. By then, Kimberly was lethargic and feverish. DCF and the group home had failed to provide Kimberly with medical care during the course of her pregnancy, and she was suffering from pneumonia, dehydration, and anemia. Kimberly remained hospitalized for almost a week. After her discharge from the hospital, her pregnancy was terminated, after which Kimberly returned home to north Florida to reside with her parents. She has resided there ever since.

In 1995, suit was filed against the group home and DCF, alleging negligence and violations under Chapter 393.13(3) of the Florida Statutes, known as the "Bill of Rights of the Developmentally Disabled." Over a span of almost five years, dozens of depositions were taken to uncover the truth about Kimberly's ordeal while under state care. Countless trial dates were postponed due to motions for continuance filed by DCF and as a consequence of an overburdened 19th Judicial Circuit docket. During that time, Darlene Godwin lost her courageous four-year battle with breast cancer, and she died in 1998.

At mediation in the fall of 1999, DCF and the uninsured group home offered Kimberly and her father, Jimmy, now acting as the guardian, \$50,000 to settle the case. The offer was summarily rejected.

The civil trial began in March 2000 in Ft. Pierce and lasted almost two weeks. Mr. Block tried the case with assistance from his Searcy Denney associate, Harry

Shevin. Evidence was presented that Kimberly, who could not describe the trauma she had endured or the damage it had caused, suffered enormously from the abuse and neglect she experienced while living under state care. At trial, Kimberly's father described her as "numb" and "zombie-like" upon her return home. Within a few months, her numbness turned to anger, violence, self-abuse, and destruction of property in the home. Her mother's testimony, taken by deposition before her death, was corroborative. Kimberly's behavioral therapist testified that Kimberly exhibited severe behavioral dysfunction consistent with chronic physical and sexual abuse of a profoundly retarded person. Her teachers at the day program testified that Kimberly became more withdrawn and that her self-abusive behavior intensified after her rape and while she was pregnant. The Assistant State Attorney, who prosecuted the perpetrator criminally, also testified at the trial, stating that Kimberly had moaned in open court at the sight of the rapist during his attendance at a sentencing hearing.

From an economic standpoint, Kimberly's father testified that he could no longer trust DCF to safely care for his daughter due to her abuse history in state-contracted group homes. Even if returning Kimberly to his rural home meant that her rights to community-based services would be adversely affected, her family had no intention of returning Kimberly to the state's care. Evidence was therefore presented to fund a private life care plan for Kimberly, whereby she could receive adequate services within the safe confines of her family home.

Continued on page 14.



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(Continued from page five.)

On March 29, 2000, the jury returned a verdict of \$8 million for four separate violations of Kimberly's rights, the largest verdict ever under Florida's Bill of Rights statute. Specifically, the jury awarded \$5 million for economic damages and \$3 million for Kimberly's mental pain and suffering and other non-economic losses.

Florida Statute 768.76 provides for sovereign immunity protection for governmental/municipal entities such as the DCF. A claim brought by a single individual is capped under this statute at only \$100,000 per occurrence, regardless of the severity of the damage done. Given the capped exposure afforded by this statute, the Department was required to pay \$100,000 per occurrence, or a total of \$400,000 for the four separate violations found by the jury. The Governor's office, however, initially took the position that DCF should only pay \$100,000. In order to obtain payment in excess of the \$100,000 single-occurrence cap, Mr. Block filed a Petition for Writ of Mandamus. After a hearing on that issue, the per occurrence limits of \$400,000 were finally paid by the state.

In order to seek payment of the remaining \$7.6 million awarded by the jury in this case, a claims bill was subsequently filed in the Florida Legislature. Bill sponsors included Senators Ken Pruitt and Al Lawson, as well as Representatives Nancy Argnenziano, Gaston Cantens, Richard Macheck, Sandy Murman, Ann Gannon, and Susan Bucher. A two-day long legislative hearing was held before House and Senate Special Masters, who issued a recommendation that only \$2.6 million be paid to Kimberly's guardianship. The Governor's office and DCF officials, including then Secretary Kearney, intensely lobbied legislative leaders behind the scenes, urging them to either not fund or only partially fund the Godwin claims bill. However, a committed legislative contingency, combined with favorable media coverage and numerous editorials, helped persuade the legislature to vote overwhelmingly in favor of the bill during the 2002 session, and Governor Bush signed the bill into law.

The bill, as passed, provided for a present value structured settlement of the entire \$7.6 million balance owed on the judgment. Unfortunately, Mr. Block ran into roadblocks from the legal staffs of the Comptroller and Attorney General, and the Comptroller refused to execute the necessary documents to formalize the terms of the structured settlement. Once again, an action seeking a Writ of Mandamus was filed in order to require the Comptroller, on behalf of the state, to execute the necessary documents. Two hearings were held in the fall of 2002 before an agreement was finally reached. In December 2002, Jimmy Godwin, as his daughter's guardian, signed a structured settlement agreement with Chief Financial Officer Tom Gallagher, who signed on behalf of the state. Kimberly Godwin's entire verdict was therefore paid and her case was concluded after almost eleven years of litigation.