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VICTORIOUS MOM: Deanna Fogarty recently won a \$4.9 million judgement against the County of Orange after social workers wrongfully took her children away from her.

MARK RIGHTMIRE, THE ORANGE COUNTY REGISTER

Monday, May 21, 2007

Mom sees social services win as help for others

Seal Beach mother wins case against county, hopes to help families in system.

By PEGGY LOWE
The Orange County Register

The threat came first: "If you don't submit to me, you'll never see your kids again."

Then the Orange County social worker produced a document, telling her she must sign it.

Suddenly, Deanna Fogarty-Hardwick was faced with the social services version of a Solomonic choice: Sign a paper that says you're a bad parent, or lose your children. Fogarty-Hardwick refused to sign it that day in 2000 and the very worst happened: Her two daughters, then ages 6 and 9, were placed in the Orangewood Children's home and then in foster care.

"That's when I thought, 'OK, this is a nightmare,'" Fogarty-Hardwick said. "This is America."

But last week, after a painful seven-year battle with the Orange County Social Services Department, the Seal Beach mother won a second major victory, coming after a record-setting \$4.9 million jury verdict against the county.

Superior Court Judge Ronald Bauer handed down a permanent injunction against the agency, ruling that it must have "articulable evidence" to suspect that a child has been abused or neglected by a parent before making any allegations in court.

And in what many parental advocates say is even more significant, Bauer also ordered the social services department to stop requiring a parent to sign what's called an "agency-parent temporary agreement" unless the agency has some reasonable evidence to suggest the parents are hurting their children.

Those rulings won't help Fogarty-Hardwick, who had been wrongfully accused of telling her daughters that their father was trying to take them away from her. She already feels vindicated by the jury's ruling that her parental rights had been violated by the county. But she hopes it will do something to protect other parents she heard from during her trial.

"This is an abuse-of-power case, when someone has incredible power and they exercise it over you," Fogarty-Hardwick said. "If they become part of the problem, how can they help? And if no one is there to hold them accountable, how will anyone know there's a problem?"

The outcome of Fogarty-Hardwick's case shocked lawyers who specialize in these lawsuits, and it set the parental-rights community buzzing. Parents rarely bring cases against social services departments, because of protracted legal battles and governmental immunity laws. The cases also are hard to prove because most of the agencies' decisions are made in secret as a result of confidentiality laws.

Jan Saalfeld, a Marin County lawyer who has specialized in child dependency appeals for 16 years, said she has never seen a ruling like the one Bauer made last week.

"This gives the appearance that the court is quite concerned that this is not just a singular event and says it won't be repeated in the future," Saalfeld said. "The court is showing substantial concern that this could happen again."

Michael Riley, chief deputy director of the Social Services Agency, disagreed, saying the judge's ruling simply orders the department do to what it has always done, "which is follow the law."

"The whole idea of the premise made by the plaintiff that we remove children in a cavalier fashion is completely unfounded," Riley said.

Citing confidentiality laws, Riley said he couldn't comment on specifics of the case. But he denied that his social workers did anything wrong. The agency always has evidence before making an allegation, and Orange County has one of the lowest removal rates in the state, he said. Of the 34,293 child abuse reports the department received in 2006, only 1,900 children were removed from their homes, he said.

The county is appealing the jury's decision, including the additional \$6,000 in punitive damages against the two social workers on Fogarty-Hardwick's case.

During the 16-day trial earlier this year, the county's lawyers told the jury that Fogarty-Hardwick was a former Miss California and called her the "Nordstrom mom" in an attempt to turn the jury against her. That didn't work, as jury members later told Fogarty-Hardwick's lawyers. The county also allowed the social worker that threatened her to

testify, and the jury came to believe, as Fogarty-Hardwick's lawsuit claimed, that she and a supervisor had "intentionally misinformed" a judge who then handed down the order to take the children.

After her daughters were put in foster care in 2000, Fogarty-Hardwick decided to give her ex-husband full custody, hoping to protect her daughters. She was then allowed two monitored visits per month for two years, but finally won 50-50 custody in 2006.

Today, Fogarty-Hardwick isn't bitter, nor is she anti-social services. She says with a laugh that she knew the social worker in question was so bad because her first one had been so good.

But she admits that this "unfortunate adventure" has been devastating to her, her parents and their extended family. Her only hope now is that the appeal also goes her way – a process that will take several years – and that other parents won't have to experience what she endured.

"You just try to find good out of something horrible," she said. "We have a wonderful decision that could help a lot of people and must be preserved."

Contact the writer: 714-285-2862 or plowe@oregister.com

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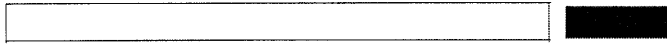
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May 21, 2007

SSA director: workers acted 'appropriately'

Ran out of that pesky thing called white space in writing my story today about the Seal Beach mom who won a huge victory over the county's social services agency.

Seems social services officials aren't too worried about the case. Check out the e-mail sent to staff last week from the director, **Ingrid Harita**, telling workers that their legal costs will be covered by the county, even in a case like this. (In addition to the big \$4.9 million judgement against the county, the jury also found against the two social workers for \$6,000 in punitive damages.) In the e-mail I obtained, Harita also tells her staff that the agency's own "investigation" found that they had done everything "entirely appropriately." Obviously, a jury didn't agree. Click below for the email.

-- Peggy Lowe

Also, the lawyers I contacted last week who specialize in child dependency cases were thrilled with the injunction, especially the second part of the decision. Judge Ronald Bauer barred social services from forcing parents to sign a document that essentially lays out the case they have against them. Trouble is, most often the agency doesn't have any evidence, so in signing the document, the parents have just given them the goods.

Rich Pfeiffer, a Santa Ana lawyer, said social workers "routinely" make that threat to parents. The injunction is significant because it will change how the agency works its cases, he says.

"They basically cannot threaten (parents) that 'if you don't sign this, we're going to take your kids,' which they do now," he said.

Here's the e-mail:

M E M O

May 11, 2007

TO: SSA Staff

FROM: Ingrid Harita, Director
Michael Riley, Chief Deputy Director

SUBJECT: Recent Court Actions

As you are all aware, recently an Orange County Superior Court jury returned a verdict against the Social Services Agency and two of our employees in the amount of \$4,912,856.

This lawsuit arises out of allegations made by the plaintiff against SSA and the social workers who were involved in the handling of her family's dependency action. The lawsuit is still in progress with another court hearing set to take place on 5-14-07. There will be no final judgment in the

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case until after that hearing so the information we can share at this time is limited because we cannot jeopardize any subsequent actions the County deems necessary in this case.

You need to be aware that when the claim was initially filed back in 2000, Risk Management conducted an investigation into what transpired during the dependency action. It was determined at that time that the social workers involved in this case acted entirely appropriately and certainly were within the scope of their employment throughout the events that transpired in this case. Once the lawsuit was filed, the County provided a defense attorney for all the parties involved and the County will continue to provide defense counsel to all of the parties throughout the rest of this case. A united defense was and is being presented that is protecting the County and the individual employees involved.

Many questions have arisen that cannot easily be addressed in this email. However, you all need to be aware that the actions you take while in the course and scope of your employment as a County social worker entitle you to be defended at the County's expense if you are named in a lawsuit as a result of doing your job. California Government Code section 825. The Government Code requires the County to provide you with a defense in any such case, and unless there is a reservation of rights, requires the County to pay any general damages against the County or the employees that may be awarded in the case.

The pending case also included a small punitive damages award against two of the individual social workers involved. The Government Code does not require the County to pay punitive damages, but generally permits the County to pay punitive damages awarded against an employee when the Board of Supervisors determines the action took place in the scope of employment, the employee acted in good faith, and payment is in the best interests of the County.

It is the longstanding policy of the Social Services Agency, CEO Risk Management, the County Counsel's office and the Board of Supervisors to stand behind County employees who undertake their job performance in good faith on behalf of the County and the people we serve.

Posted at May 21, 2007 07:13 AM

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Another black-eyed and worst "denial".

Enforce the law does not mean to make threat. If one can not distinguish the different, does not deserve to hold that position including parties involved.

Posted by: octaxpayer at May 21, 2007 09:29 AM

the taxpayers are outraged by that judgement award too. way too much money.

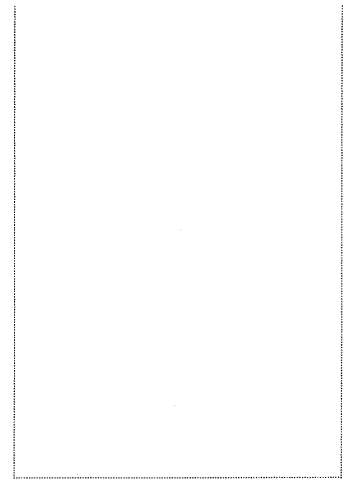
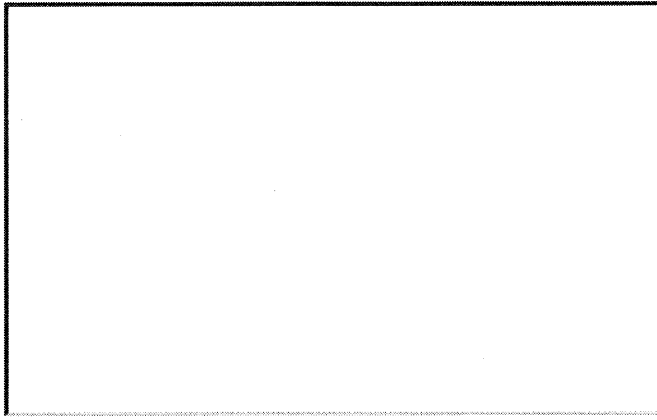
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