

Judge comes down on Texas CPS in twins case

State agency hit with rare sanction for taking custody of Spring infants

by Terri Langford
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Rushed casework by Texas Child Protective Services resulted in a rare if not unprecedented legal sanction against the agency Friday for trying to take premature infant twins from their parents without proving it was justified.

Not only did state District Judge Michael Schneider rule against CPS for what he termed a "groundless cause of action," he ordered that \$32,000 of the Spring family's attorney fees be paid by the agency.

And as if to drive his point home, he ordered the caseworker and her supervisor to write the court a report proving they understand the state's child removal statutes within 30 days.

"The offensive conduct by (CPS) has significantly interfered with the legitimate exercise of the traditional core functions of this court," Schneider wrote in a 13-page order filed on Friday.

The twins were returned to their parents earlier this month on the judge's order.

Darcy and Tye Miller had been taking their twin girls, born last December, almost weekly to their pediatrician because of concerns about their weight. At birth, one weighed less than 5 pounds and the other 6 pounds.

When their older child's bronchitis was passed to one of the girls, Darcy Miller brought her to Methodist Willowbrook. When the baby didn't get better, the hospital referred the family to Texas Children's Hospital.

After a Jan. 27 chest X-ray at Texas Children's revealed several healing rib fractures, doctors confronted Darcy Miller and asked if she knew how they got there.

When she said she didn't, doctors asked the family to bring in the infant's twin sister and the older brother. Before their father arrived with the other children, CPS had been called.

"To me, it wasn't until they called CPS that a red flag went up in my head," said Darcy Miller, a teacher. "They made it sound like they wanted to do the other X-rays to make sure they (other children) were OK."

Not notified of hearing

After finding fractures in the same place as the other twin, CPS asked the Millers to voluntarily place all three of their children with in-laws while the investigation was conducted.

The Millers cooperated, but also contacted an attorney to advise them of the process. Five days later, they were notified that CPS had requested — and been granted — legal custody of all three children on an emergency basis.

Neither the Millers nor their attorney, Dennis Slate, were notified of the custody hearing. Nor was Judge Schneider informed that the agency made a voluntary agreement with the family, which could have changed his mind about granting legal custody to CPS so quickly.

But the Millers fought back. And the attorney appointed by the court to represent the girls, Evan Glick, sided with the family.

"I completely agree with what Judge Schneider did," said Glick. "I think CPS ... just rushed this. They breached their own agreement (with the Millers)."

The children's parents also hired an expert witness, Dr. Charles Hyman.

Glick said "reasonable medical evidence" offered to the court by Hyman showed the fractures could have been caused by lifting the children.

He surmised that because there was no evidence of internal bleeding or bruising and it could not be determined when the micro-fractures occurred, there had been no abuse.

Officials from Texas Children's Hospital would not comment specifically on the Miller case, but in a statement said, "we use our expertise and established guidelines to make medical evaluations and are required to provide those evaluations to state and local authorities when concerned for the safety of the child."

Schneider also declined to discuss the case. In his order, however, the judge zeroed in on a lack of disclosure by CPS' parent agency, the Texas Department of Family and Protective Services.

"TDFPS has acted in bad faith based on the following ... waiting hours after illegally obtaining the temporary emergency order before informing the Millers that the order had been obtained," Schneider wrote. "The court finds it especially egregious and indicative of bad faith that TDFPS waited until 5 p.m. ... after the close of business of the courts and the District Clerk's office."

CPS officials are considering an appeal, as is the Texas attorney general on the agency's behalf.

"We don't believe that actions taken by CPS, in good faith and solely for the protection of two infant girls and their 2-year old brother, should be punished," said Patrick Crimmins, spokesman for the agency. "We will be carefully considering all legal options, including whether or not appealing this order is the most productive use of the court's time and resources, as well as time and resources that could be better spent protecting the children of Harris County." Agency cites obligation

Crimmins insisted that any call about possible child abuse from a medical professional is taken

seriously.

"When medical professionals from Texas Children's Hospital notify us about possible child abuse, and that testing and examinations have revealed rib fractures in twin baby girls, our obligation is to investigate thoroughly," the CPS spokesman said.

Darcy Miller said she was overwhelmed but pleased by the judge's decision to send her children home.

"It hasn't really hit me," she told the Chronicle. "Everyone is very elated and excited. I'm still a little nervous. We were trying to cooperate with CPS and then they go in and get custody of my kids. It really affected me.

"I don't know how many other families have been accused of harming their family and their children have been taken away and it's just not fair."