

Texas judge orders rare \$127,000 sanction against CPS after wrongful removal of children

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The trouble that eventually landed the Bright family in court started back in July.

It was a hot, Texas summer day and Melissa Bright let her kids — 2-year-old Charlotte and 5-month-old Mason — play in the sprinkler outside their Tomball home.

When she put the baby down on a lawn chair so she could help Charlotte strip off wet clothes, she heard a thud. Mason had fallen the 19 inches from the chair to the cement driveway below.

The tumble launched a months-long legal case with Texas Child Protective Services that began with the removal of the children from the Brights' home and ended Thursday with a Harris County judge ordering what may be the largest-ever sanctions against the agency.

After a five-day hearing, Juvenile Court Judge Mike Schneider ordered the state to come up with new regional training for workers and pay more than \$127,000 for wrongfully removing the couple's children and allegedly lying about the case in court.

Now, attorneys for parents Melissa and Dillon Bright are calling for the firing of the CPS workers involved and asking for prosecutors to investigate for possible criminal charges.

"They lied in their affidavit, they lied in their sworn removal testimony and they have — when questioned about those lies — taken the Fifth," said family lawyer Dennis Slate.

"When the Harris County District Attorney ran for office said that she would investigate perjury claims within the Harris County courts," he said. "She needs to live up to that campaign promise and look into this case and bring the appropriate action."

The ruling late Thursday by the judge came weeks after caseworker Lavar Jones shocked the courtroom by pleading his Fifth Amendment right against self-incrimination repeatedly during a removal hearing in which the judge ordered CPS to stay away from the two young children before ultimately giving them back to the parents.

It's an unusual case that offers repeated examples of CPS missteps, but the Brights' attorneys say it's also a sign of a "broken system" and highlights the need for more accountability from the agency tasked with making decisions as to whether parents are fit to keep their children.

The agency offered a short comment on the decision.

"In light of today's ruling, we are reviewing our options," said CPS spokeswoman Tejal Patel,

"including our right to appeal."



When she heard her baby fall, a panicked Melissa called her husband, then dialed 911. At the hospital, the child abuse prevention team at first told CPS that Melissa's explanation of the injury was a likely one, according to court records.

But the next day, an MRI revealed that Mason had a second fracture — a smaller, hairline crack — and bleeding in his brain.

The second fracture, the abuse team decided, would have come from a second incident. And when Melissa couldn't offer an alternate explanation, the team deemed the injuries were "consistent with child abuse."

So, as the Brights struggled with medical decisions, the bills those would entail and the difficulties of parenting from the hospital, they also needed to fend off accusations of child abuse.

They agreed to an in-home monitoring plan, but before Mason left the hospital, CPS supervisor Niesha Edwards instead decided the kids would have to go live with Dillon's mother in Baytown, more than an hour away.

Meanwhile, the Texas Children's Hospital hematology department found that Mason likely had a blood clotting disorder. That could have explained how a fall from a lawn chair could generate so much bleeding and so many problems, but it also meant that there could be more problems ahead — and there were.

The head injury didn't heal as planned, so before baby Mason left the hospital, doctors drilled a hole in his skull to relieve pressure. Afterwards, according to the Brights, doctors warned that if the family wanted to avoid a second surgery it was important to keep the child from crying.

But, the Brights said, that would require nursing, and CPS wouldn't allow Melissa to live with the child.

The baby went to Baytown, but caring for a medically fragile child eventually became too much for Dillon's mother, and the Brights asked to move the baby closer to home with an aunt and uncle in Tomball.

But the agency delayed its response, repeatedly promising answers and failing to deliver, records show. Eventually, Dillon called caseworker Jones, according to court records, and told him that since CPS hadn't followed through on getting approval and the current plan was quickly becoming infeasible, the Brights planned to bring the kids home.

So they did.

Twenty-two days passed.

Then, on Sept. 18, Jones texted to ask how the kids were, and Melissa sent along happy photos and a health update.

The next day, the state — without notifying the Brights — filed a petition asking for emergency custody of the children who, officials said, were in "immediate and continuing danger." The parents were never told that the court would hold a removal hearing the same day.

Jones didn't tell the court about the diagnosed blood disorder, which could have explained some of the medical problems. And he didn't mention that the parents had gotten a second medical opinion that explained the second, hairline fracture.

So, just after noon on Sept. 19, a court approved the removal.

"It didn't even dawn on me that he was going to show up and take our kids," Melissa told the Chronicle. "It wasn't even on our radar, especially after it being so long."

That night, the children were separated and both taken to foster care. The caseworker didn't even leave behind a copy of the order of removal as required by law, family attorney Slate said.

A few weeks later, in early October, the parents, their lawyers, CPS workers and county attorneys showed up in court again for a three-day hearing to figure out whether the state had enough cause to keep the kids.

When questioned about the earlier claims he'd made during the Sept. 19 emergency hearing and about the agency's reasons for removing the kids, Jones pleaded the Fifth, making for a case the judge found thoroughly unconvincing.

"It is not possible," Schneider said in court last month, "to look at the facts and imagine that the agency actually felt there was any sort of urgent need for protection to remove the children."

When Schneider sided with the Brights, the case moved to a November sanctions hearing, where Slate and fellow attorney Stephanie Proffitt argued that the agency's efforts to take the kids were based on such groundless arguments that they should be forced to pay the family for legal fees and other costs, a total of more than \$127,000.

Over the course of five days, the court heard testimony from the Brights, a program director and supervisor Edwards, who claimed so frequently that she didn't know, couldn't answer or didn't understand the questions that Slate eventually asked whether she had any knowledge that made her qualified to make decisions.

Slate and Proffitt laid out a litany of accusations, including claims that workers had altered computer records to match an affidavit, intentionally failed to turn over incriminating text messages, and plowed ahead with the "bad faith" removal to avoid telling their program director they had not checked on the kids for 22 days.

"We're not here to get a pound of flesh from CPS," Slate said. "I haven't solved the riddle of why they would — knowing they were going to be caught in a perjury trap — continue going on with the case, except that they didn't want to tell their program director. It's baffling to me."

Stephen Dieu with the Harris County Attorney's Office, which represented CPS in the hearing, accused the family's attorneys of "cherry-picking" text messages and records, and argued repeatedly that the agency was protected by sovereign immunity.

"There are legal remedies but this is not the one," he said. "The department cannot be sanctioned."

But a look back at agency records would show that's not true. Seven years ago, Slate and Proffitt won a \$32,000 sanction in another case involving a "groundless" removal where the agency didn't tell the parents about the emergency hearing and waited hours to take the kids after courts closed.

"When we got the sanctions in 2011, we really thought that would open somebody's eyes," Proffitt said. "There are only a handful of cases in Harris County that have even filed for sanctions. There's no repercussions."

This time, there were.

In a scathing ruling from the bench on Thursday, Schneider dinged the agency for being "dishonest" and possibly "malicious," saying the entire removal and subsequent legal battle never would have happened if the agency had told the Brights about the emergency removal hearing and given them a chance to defend themselves at the start.

"We do need to deal with the issue of how we make sure this doesn't happen again," he said, before ordering the agency to pay \$127,000 and giving them two weeks to create the new training program for the Houston region.

But, Schneider said, there was one thing the family requested that he said he could not order: an apology.