

Attorneys pushing N.H. to live up to agreement on child protection

By JENNIFER L. SAUNDERS
Democrat Staff Writer

CONCORD — Attorneys representing the most vulnerable children in New Hampshire have asked a federal court to order the state to live up to its five-year-old promise to protect child victims of abuse and neglect.

The motion is the latest development in the Eric L. class action lawsuit, which resulted in a settlement in 1997 between the state and the plaintiffs. Filed late Thursday afternoon in U.S. District Court in Concord, the motion requests a finding that the state is not in compliance with the 1997 settlement agreement, an order to comply and an extension of the settle-

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"Eric L. is critically important to children in New Hampshire who've been abused and neglected. It asks DCYF (the Division for Children, Youth and Families) to do its job in protecting these children," said Kenneth J.

Barnes, litigation director at New Hampshire Legal Assistance and one of the plaintiff attorneys in the Eric L. lawsuit.

☆ **Protection**
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The original Eric L. lawsuit, brought in 1991 by the Disability Rights Center, Inc. and the Franklin Pierce Law Center, alleged that DCYF's policies and procedures violated the constitutional and federal rights of children served by the agency. The case resulted in a 1997 settlement agreement that required sweeping reforms to "promote the health, safety and well-being of children referred to DCYF pursuant to the Child Protection Act."

As part of those requirements, DCYF was required to improve case worker training and supervision and complete timely assessments of allegations of abuse and neglect.

Perhaps the most graphic example of the need for more timely response to such allegations is the beating death of 21-month-old Kassidy Bortner, Barnes noted.

Kassidy died on Nov. 9, 2000 following months of abuse at the hands of her mother's boyfriend, Chad E. Evans. Many individuals were aware of the ongoing abuse, including Kassidy's mother, and a little more than a week before the toddler's death Evans' estranged wife called DCYF to report her suspicions of the abuse.

"The call to DCYF came in on one day, and she was dead nine days later. Nine days is not one day... Clearly, a lot can happen to a child in nine days. These children are lacking the protection they deserve when a report of abuse or neglect is made," Barnes said.

The terms of the agreement also required greater efforts to identify and locate absent parents of DCYF-involved children, more visits and improved medical care to children in foster

Timeline of Eric L. lawsuit and Kassidy Bortner murder case

□ **Aug. 19, 1991** — Original Eric L. complaint in U.S. District Court for the District of New Hampshire against Department of Health and Human Services Commissioner Harry Bird and Division for Children and Youth Services Director Richard Chevrefils. Class action civil rights complaint alleges that the state's treatment of abused and neglected children and children in out-of-home care violates the constitution and federal law. Lead plaintiff's attorney is Brice Friedman of the Franklin Pierce Law School's Civil Practice Clinic.

□ **June 16, 1997** — A settlement agreement reached by the plaintiffs and DHHS Commissioner Terry Morton is filed in U.S. District Court. The agreement covers reforms in 12 areas of child protection, to be phased in at various points during the five-year agreement. DCYF to appoint a monitor to supervise its performance under the agreement. That monitor would report to a three-person Oversight Panel, which would issue an annual report. Oversight Panel consists of Richard Cohen of Disabilities Rights Center Inc. for the plaintiffs, Tricia Lucas of the DHHS Commissioners Office for the state, and independent member Christina Crowe of the Judge Baker Children's Center in Boston.

□ **July 29, 1997** — Settlement approved by Judge McAuliffe.

□ **Sept. 1, 1997** — Settlement agreement takes effect.

□ **Jan. 15, 1999** — First Oversight Panel report covers the first 13 months of settlement agreement. Panel finds that monitor's reports and DCYF data are insufficient. DCYF in full compliance with only 16 of 73 obligations, in partial compliance with 16. Panel has concerns about whether DCYF has the resources to carry out responsibilities of the agreement.

□ **Aug. 2000** — Amanda Bortner brings her daughter Kassidy to live with her boyfriend, Chad E. Evans, at his

Rochester home.

□ **Oct. 31, 2000** — Tristan Evans witnesses facial bruises on Kassidy for the second time and makes an anonymous report to the Department of Health and Human Services.

□ **Nov. 1, 2000** — A Division for Children, Youth and Families caseworker receives a referral on Kassidy Bortner of Rochester. At about this time, the case worker leaves a message at the Evans residence in Rochester.

□ **Nov. 9, 2000** — Kassidy Bortner dies in Kittery, Maine, from blunt force injuries to her head and abdomen sustained at the Rochester home where she lived with her mother and Evans. DCYF case worker leaves second message at the Evans residence.

□ **Nov. 16, 2000** — Evans is arrested in connection with Kassidy's death and subsequently indicted on charges of second-degree murder and multiple counts of assault.

□ **Dec. 1, 2000** — Second Oversight Panel report again cites lack of information and data. "...More than three years of the five-year term of the agreement have passed and few of the procedures, practices and reforms ... have been fully implemented," the report says. Recommendations include "a clear and articulated vision for an improved child protection system," a comprehensive human resources plan, a comprehensive review of its computer system, and improved corrective action plans when problems are not identified.

□ **Nov. 14, 2001** — Amanda Bortner is arraigned on charges of endangering the welfare of a child for failing to protect Kassidy from the abuse that claimed her life.

□ **Dec. 21, 2001** — Third Oversight Panel report in Eric L.: "In most of the areas affecting the well-being of children, DCYF has not demonstrated substantial progress, let alone substantial compli-

ance." And, "Having watched the valiant, but slow efforts at DCYF, we can only shudder for the child whose vulnerability is now ..." At the same time, in Strafford County Superior Court in Dover, Evans is convicted of beating Kassidy Bortner to death.

□ **March 2002** — With Eric L. settlement agreement due to expire Sept. 1, and DCYF not in compliance with agreement, attorneys for the plaintiffs and the state begin negotiations.

□ **June 2002** — The parties agree to mediation.

□ **Summer 2002** — Parties agree to extend Eric L. agreement to Dec. 1, 2002, then to Jan. 31, 2003.

□ **July 2002** — Mediation produces a "term sheet" for a proposed resolution. Resolution includes the addition of 60 workers to child protection staff. DHHS proposes shifting those jobs from elsewhere within the department. Proposal must be approved by Joint Legislative Fiscal Committee, then the Executive Council.

□ **July 31, 2002** — Fiscal Committee discusses and tables the request.

□ **Sept. 18, 2002** — Fiscal Committee votes not to remove the request from the table for action.

□ **Nov. 25, 2002** — Amanda Bortner is convicted on two counts of endangering the welfare of a child in connection with Kassidy's death.

□ **Jan. 3, 2003** — Amanda Bortner receives the maximum sentence possible under New Hampshire law: two years in jail.

□ **Jan. 13, 2003** — Kassidy Bortner Child Protection Accountability Act presented in Concord.

□ **Jan. 16, 2003** — Eric L. plaintiffs' attorneys file motion requesting a finding that the state is not in compliance with the 1997 settlement agreement, an order to comply and an extension of the settlement agreement.

alleged that DCYF's policies and procedures violated the constitutional and federal rights of children served by the agency. The case resulted in a 1997 settlement agreement that required sweeping reforms to "promote the health, safety and well-being of children referred to DCYF pursuant to the Child Protection Act."

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The terms of the agreement also required greater efforts to identify and locate absent parents of DCYF-involved children, more visits and improved medical care to children in foster care or other placements, closer monitoring of cases, reduced multiple placements, more training and support for foster parents and transition services for youth nearing their 18th birthdays.

Those requirements are also critically important, Barnes said, as children who have suffered abuse or neglect need the proper medical and mental health care to overcome their scars — both physical and emotional. For example, he said, a disproportionate number of children who are serviced by DCYF go on to become part of the state's criminal population in later years.

"They are scarred. It's just tragic how they're lives can be ruined. We really are reaping

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