

NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

ONslow COUNTY

2005 AUG 22 PM 2: 12

05 CVS 2615

ONslow COUNTY, O.S.C

HEATHER CHRISTIE BAKER, as)
Personal Representative of the Estate)
of Kayla Yvonne Allen,)
)
Plaintiff,)

v.)

ONslow COUNTY DEPARTMENT)
OF SOCIAL SERVICES; ROGER E.)
PENROD, in his capacity as Director of)
Onslow County Department of Social)
Services; LORETTA KEELIN, in her)
capacity as Child Protective Services)
Program Manager for Onslow County)
Department of Social Services; ALLISON)
RADFORD, in her capacity as Social)
Worker for Onslow County Department)
of Social Services; DENNA SMITH,)
in her capacity as Social Worker for)
Onslow County Department of Social)
Services; and SARA ZUBORN, in her)
capacity as Social Worker for Onslow)
County Department of Social Services,)
)
Defendants.)

**COMPLAINT
(JURY TRIAL DEMAND)**

Plaintiff, complaining of the Defendants, alleges as follows:

NATURE OF ACTION

This action involves claims for damages arising from the Defendants' negligence in failing to provide protection from harm and to assure a safe environment to Kayla Yvonne Allen, a seven year old child allegedly forcibly poisoned at the Onslow County home of her legal

guardian, Carolyn Ann Futrell, who was subsequently arrested and now awaits trial for this child's murder. Plaintiff's claims are brought pursuant to N.C.G.S. §28A-18-1 and N.C.G.S. §28A-18-2, as well as any other applicable statutes and common law of North Carolina.

PARTIES

1. Plaintiff Heather Christie Baker has been duly appointed Administratrix of the Estate of Kayla Yvonne Allen by the Clerk of Superior Court of Onslow County, and is acting in the capacity of personal representative of the estate in the institution of this wrongful death action.
2. This action is brought pursuant to the N.C.G.S. §28A-18-1 and N.C.G.S. §28A-18-2, and is brought within two years of the death of Kayla Yvonne Allen.
3. Kayla Yvonne Allen, formerly in the care and custody of Carolyn Ann Futrell, died on August 24, 2003 at 333 Futrell Loop Road in Richlands, North Carolina (hereinafter "the Carolyn Futrell home").
4. Defendant Onslow County Department of Social Services (hereinafter "OCDSS") is an agency and political subdivision of the County of Onslow, North Carolina, operating in Onslow County, North Carolina, with responsibility for social service programs in Onslow County, and by statute is subject to suit. Defendant OCDSS is charged with administering those social services and public assistance programs as defined in N.C.G.S. §108A and including those child protection investigatory and other child protection services which are the subject matter of this action.
5. Defendant Roger E. Penrod, upon information and belief, at all relevant times, was the Director of OCDSS, as well as a citizen and resident of Onslow County. At all relevant

times, Defendant Penrod acted in his official capacity as Director of Defendant Onslow DSS and within the course and scope of his employment. Under N.C.G.S. §108A-14, Defendant Penrod was charged with the duty and responsibility to investigate reports of child abuse and neglect and take appropriate action to protect such children, and for ensuring that Child Protective Services were provided for all within his county who are found and/or suspected of being abused, neglected or dependent (§7B-302).

6. Defendant Loretta Keelin, upon information and belief, is a citizen and resident of Onslow County. At all relevant times, Defendant Keelin was employed by Defendant OCDSS as a Child Protective Services Program Manager, in which capacity she performed certain ministerial functions, including the investigation of allegations of neglect and/or abuse within the Carolyn Futrell home and the implementation of Defendant OCDSS's child protective services policies.
7. Defendant Allison Radford, upon information and belief, is a citizen and resident of Onslow County. At all relevant times, Defendant Radford was employed by Defendant OCDSS as a social worker, in which capacity she performed certain ministerial functions, including the investigation of allegations of neglect and/or abuse within the Carolyn Futrell home and the implementation of Defendant OCDSS's child protective services policies. At all relevant times, Defendant Radford was acting as the agent, actual or apparent, of Defendant OCDSS as well as Defendants Penrod and Keelin.
8. Defendant Denna Smith, upon information and belief, is a citizen and resident of Onslow County. At all relevant times, Defendant Smith was employed by Defendant OCDSS as a social worker, in which capacity Defendant Smith performed certain ministerial

functions, including the investigation of allegations of neglect and/or abuse within the Carolyn Futrell home and the implementation of Defendant OCDSS's child protective services policies. At all relevant times, Defendant Smith was acting as the agent, actual or apparent, of Defendant OCDSS as well as Defendants Penrod and Keelin.

9. Defendant Sara Zuborn, upon information and belief, is a citizen and resident of Onslow County. At all relevant times, Defendant Zuborn was employed by Defendant OCDSS as a social worker, in which capacity Defendant Zuborn performed certain ministerial functions, including the investigation of allegations of neglect and/or abuse within the Carolyn Futrell home and the implementation of Defendant OCDSS's child protective services policies. At all relevant times, Defendant Zuborn was acting as the agent, actual or apparent, of Defendant OCDSS as well as Defendants Penrod and Keelin.
10. At all relevant times, Defendants Penrod, Keelin, Radford, Smith, and Zuborn (hereinafter "the Individual OCDSS Defendants) were acting within the course and scope of their employment with Defendant OCDSS, and Defendant OCDSS is liable as principal for all injuries caused by the acts and omissions of the Individual OCDSS Defendants acting within the course and scope of their employment.

JURISDICTION, VENUE, WAIVER OF IMMUNITY

11. This Court has jurisdiction over Defendant OCDSS and its employees, including the Individual OCDSS Defendants, as well as the subject matter of this action, and venue is proper in this county.
12. Upon information and belief, pursuant to N.C.G.S. Sect. 153A-435, Defendant OCDSS has waived sovereign immunity for itself and its employees, including Defendants

Penrod, Keelin, Radford, Smith, and Zuborn, by the purchase of liability insurance.

FACTUAL BACKGROUND

Events Leading to Kayla's Death

13. Kayla Yvonne Allen (hereinafter "Kayla") was born on November 10, 1995 in Detroit, Michigan. Kayla was allegedly murdered on August 24, 2003.
14. Nicole Renee Allen (hereinafter "Nicole Allen" or "Nicole") was Kayla's biological mother.
15. There is no father identified on Kayla's Certificate of Live Birth. Upon information and belief, the identity of Kayla's biological father is unknown.
16. Nicole's parental rights regarding Kayla, and the unknown father's parental rights, were terminated by order of District Court Judge Sara C. Seaton in April 2003, in Onslow County.
17. Diane Lynn Goike (hereinafter "Diane Goike" or "Diane") was Nicole's mother and Kayla's grandmother.
18. Heather Christine Baker, (hereinafter "Heather Baker" or "Heather" when she is referenced in her individual capacity, and not as personal representative), is Nicole Allen's half-sister and Kayla's aunt.
19. Jeffrey Ronald Allen (hereinafter "Jeff Allen" or "Jeff") is Nicole Allen's brother and Kayla's uncle.
20. Carolyn Ann Futrell (hereinafter "Carolyn Futrell" or "Carolyn") had legal custody of Kayla when she died in August 2003. Carolyn has gone by other names earlier in time, including but not limited to Carolyn Langford, Carolyn Ochoa, and Carolyn Allen.

21. In October 1997 the District Court in Onslow County granted temporary custody of Kayla to her uncle, Jeff Allen, and Carolyn Futrell, who was Jeff's girlfriend at that time. Pursuant to this Court Order, Jeff and Carolyn would have custody of Kayla until April 1998.
22. In April 1998 the District Court in Onslow County decided to leave temporary custody with Jeff Allen and Carolyn Futrell.
23. In May 1998 Heather Baker and her husband, Tim Baker, traveled from their home in Michigan to Jacksonville, North Carolina in order to attend Jeff Allen and Carolyn Futrell's wedding. When they arrived, Heather and Tim found that Kayla, only two years old, had a black eye. Upon information and belief, responding to Heather's questions, Kayla told Heather that she fell off the bed, and this fall caused her black eye. In turn, upon information and belief, Carolyn told Heather she was out of the room when this happened to Kayla, and that Jeff Allen was not home at the time.
24. Furthermore, during this visit Heather Baker and Tim Baker saw Carolyn Futrell repeatedly strike Kayla's hand, apparently for playing with her food.
25. On Saturday, May 16, 1998, Carolyn Futrell and Jeff Allen were married.
26. Soon after returning to Michigan from their visit to Jacksonville for the wedding, Heather Baker called Defendant OCDSS and filed a report alleging abuse and/or neglect of Kayla by Carolyn Futrell concerning Kayla's black eye and the repeated striking on Kayla's hands.
27. A couple of days later, in a letter dated May 20, 1998, Theresa M. Phinni, a social worker employed by Defendant OCDSS, informed Heather Baker that OCDSS would not

investigate Heather's report of Kayla being abused or neglected by Carolyn Futrell because "...[t]he reported allegations do not meet the legal definition of abuse or neglect." This OCDSS letter to Heather was signed only by Ms. Phinni.

28. In November 1998, upon information and belief, Carolyn Futrell's sister reported Carolyn and Jeff Allen to OCDSS for threatening to put hot sauce on the tongue of one of Carolyn Futrell's sons. Upon information and belief, OCDSS characterized this report as "...allegations of abuse - cruel or unusual punishment of a child other than Kayla by Carolyn Futrell."
29. Upon information and belief, in late November 1998 the OCDSS completed their investigation of this report involving the hot sauce and their conclusion was "...substantiated inappropriate discipline and injurious environment by Carolyn Futrell and Jeffrey Allen." Upon information and belief, ultimately "the case was transferred to case planning / case management for ongoing services. Extensive treatment services, including parenting classes, were provided through April 1, 1999."
30. In May 1999, in Onslow County, District Court Judge W.M. Cameron granted "full care, custody and control" of Kayla to Carolyn Futrell and Jeff Allen.
31. In April 2000, twelve months after getting legal custody of Kayla, upon information and belief, Carolyn Futrell and Jeff Allen separated.
32. In early March 2001, upon information and belief, Jeff Allen "relinquished any custody issues and rights" concerning Kayla to Carolyn in their Separation and Property Settlement Agreement.

33. On or about March 22, 2001 Heather Baker called Defendant OCDSS because she was concerned for Kayla's safety after hearing that Jeff Allen had left Kayla with Carolyn Futrell following their separation.
34. A few days after Heather Baker's report, in a letter dated March 26, 2001, Denna Smith informed Heather that the OCDSS would not conduct any investigation concerning her recent call to OCDSS because, "...[t]here are no allegations of abuse or neglect by a parent or caretaker." This OCDSS letter to Heather was signed only by Defendant Smith.
35. In August 2001 the divorce of Carolyn Futrell and Jeff Allen was finalized in court.
36. In early June 2002, upon information and belief, Diane Goike made a trip from her home in Michigan to Richlands, North Carolina for the purpose of seeing her granddaughter, Kayla, and eventually taking the child back to Michigan for a planned vacation.
37. When Diane Goike had an opportunity to see Kayla in Richlands on or about June 8, 2002, upon information and belief, Diane became very disturbed when she observed numerous bruises on Kayla's face, arms, and buttocks.
38. Later that same day, upon information and belief, Diane Goike told Heather Baker during a phone call that, given the numerous bruises she observed, as Kayla's grandmother, she felt compelled to immediately take Kayla away from Carolyn Futrell. Heather tried unsuccessfully to talk Diane out of immediately taking Kayla back to Michigan without permission from Carolyn.
39. As a result of the grandmother taking Kayla without permission, an Onslow County Warrant for Arrest was issued for Diane Goike on or about June 8, 2002 : "...there is probable cause to believe that on or about the date of offense shown and in the county

named above the defendant named above unlawfully, willfully and feloniously did kidnap Kayla, a person under the age of 16 years by unlawfully removing the victim from one place to another, without the consent of the victim's parent or legal guardian."

40. Upon information and belief, two officers with the City of Taylor Police Department were dispatched to Diane Goike's home in Michigan on June 10, 2002 to recover Kayla, after the Jacksonville, N.C. Police Department had alerted the Taylor Police Department to Kayla's kidnaping. The Incident Report for this police visit gives more detail:

- (a) Upon the arrival of Police Officer Raboczky and Police Officer Grima at Diane Goike's home, the officers were invited in and Diane called six year old Kayla to come out of the bedroom.
- (b) Diane Goike explained to the officers that she was Kayla's grandmother and that she had gone to Richlands to eventually bring Kayla back to Michigan, with permission, for a month-long vacation.
- (c) Upon her arrival in North Carolina, however, Diane Goike saw several bruises on her granddaughter's body, which Kayla told Diane were caused by Carolyn Futrell.
- (d) Diane Goike told the police officers that, feeling helpless, she did not know what else to do other than take Kayla immediately back to Michigan, without permission.
- (e) Before leaving North Carolina, Diane Goike wrote Carolyn Futrell a note in which Diane confronted Carolyn on Kayla's allegations of abuse by Carolyn.
- (f) Diane Goike then had Kayla show the police officers several bruises that were on the child's face, arms, and buttocks.

- (g) When asked by the police officers about who had hurt her, Kayla responded "My Aunt-Mom", and when asked by the officers what had caused the bruises, Kayla said that her "Aunt-Mom Carolyn" had spanked her on her buttocks with a spatula a couple of days before. Kayla also told the police officers that Carolyn Futrell had banged her head on a bedroom dresser.
 - (h) The police officers stated in their report that Kayla had appeared fearful when speaking about Carolyn Futrell.
 - (i) The officers transported Diane Goike and Kayla to the Taylor Police Department where Diane was held without bond awaiting extradition.
41. The next day, upon information and belief, a Child Protective Services ("CPS") worker with the Family Independence Agency of Michigan spoke by phone with an unidentified Detective at the Onslow County Sheriff's Office. This Detective said that he had spoken with an OCDSS worker concerning Kayla's allegations of abuse by Carolyn Futrell. This Detective reported to the Michigan CPS worker that the OCDSS worker told him the OCDSS had been with Carolyn's family in March, and at that time they had found no abnormalities nor any evidence of abuse or neglect. This Detective informed the Michigan CPS worker that the Onslow County Sheriff's Office would work with the OCDSS to investigate Kayla's abuse allegations after the child returned to North Carolina. Lastly, this Detective said he intended to interview Kayla when she returned to NC.
42. On June 12, 2002, two days after Diane Goike was taken into custody, Heather Baker filed a report with Defendant OCDSS. Heather described Kayla's bruises and alleged that

those bruises were caused by Carolyn Futrell's abuse and/or neglect of Kayla. Upon information and belief, this report by Heather was filed with Allison Radford.

43. Starting that same day and continuing over the next few days, upon information and belief, one or more CPS workers with the Family Independence Agency of Michigan spoke with one or more unidentified OCDSS employees concerning Kayla's allegations of abuse by Carolyn Futrell. At one point, a Michigan CPS worker received a phone message from an unidentified OCDSS employee stating that she had interviewed a person regarding Kayla's allegations of abuse by Carolyn Futrell. During this time, Kayla resided in a foster home where she had been placed by the Family Independence Agency of Michigan.
44. On June 14, 2002 Heather Baker called the OCDSS to inquire about the status of the report that she had filed a couple of days earlier alleging abuse and/or neglect of Kayla by Carolyn Futrell. Upon information and belief, Defendant Radford told Heather she would not discuss the case with Heather because she was not Kayla's parent or guardian.
45. A little more than a week after the officers from the Taylor Police Department interviewed Kayla, on June 18, 2002, the Family Independence Agency of Michigan dismissed the case concerning Kayla's allegations of abuse by Carolyn Futrell, upon information and belief, based on representations made by one or more unidentified employees of Defendant OCDSS to the Michigan CPS workers, as well as the results of its own limited investigation. Kayla was then released directly to Carolyn Futrell, who had traveled to Michigan to retrieve Kayla.

46. A couple of weeks later, on July 5, 2002, Heather Baker called Allison Radford for an update because Heather had not received any correspondence from Defendant OCDSS in connection with her June 12 report to OCDSS concerning Kayla. Heather told Defendant Radford she was trying to find out whether the OCDSS was investigating her report about Kayla's bruises and, in particular, if the OCDSS had found out how or where Kayla had gotten her bruises. For the second time in three weeks, upon information and belief, Heather was not given any information by Defendant Radford about whether Heather's report had been accepted for investigation or not.
47. In mid-July 2002, upon information and belief, Defendant OCDSS received a second report, from a second person, which alleged abuse and/or neglect of Kayla by Carolyn Futrell.
48. In mid-August 2002, upon information and belief, Defendant OCDSS received a third report, from a third person, which alleged abuse and/or neglect of Kayla by Carolyn Futrell.
49. Almost two full months after Heather Baker made her June 12, 2002 report to Defendant OCDSS alleging abuse and/or neglect by Carolyn Futrell, in a letter from Allison Radford dated August 14, 2002, Heather was first informed about the status of her report, specifically that: "We will investigate based on the allegations. At the completion of the investigation, you will be notified of the findings."
50. In late October 2002 Heather Baker was told by Allison Radford during a phone call that Heather's June 12, 2002 report to OCDSS concerning the bruises found on Kayla, and Kayla's own allegations of abuse by Carolyn Futrell, had been determined by the OCDSS

to be unsubstantiated. Providing further details, upon information and belief, Defendant Radford told Heather the OCDSS had determined that the bruises which Diane Goike found on Kayla in June 2002 were the result of the child falling while roller skating. Defendant Radford added that this determination was made after one or more employees of Defendant OCDSS spoke with personnel at a skating rink, as well as Kayla's pediatrician and a child psychologist, during a four-and-a-half month investigation of this matter by the OCDSS.

51. Soon thereafter, Heather Baker received a letter from Allison Radford dated October 31, 2002 which stated, "[t]he assessment has been completed and we were unable to substantiate the abuse or neglect." This OCDSS letter to Heather was signed only by Defendant Radford.
52. Around five weeks later, on or about December 11, 2002, Heather Baker appealed to Loretta Keelin for reconsideration of the series of allegations of abuse by Carolyn Futrell that had been made by Kayla, herself, as well as Heather and the two other unknown reporters during the summer of 2002. In particular, Heather Baker wrote the following in a December 11, 2002 email to Defendant Keelin: "I understand her case that was being investigated over the summer concerning abuse has been closed as of Oct. 28th.... I am very concerned about Kayla eventhough [*sic*] I live so far away.... This past case was not the only time there was ever a report given where there was a concern of abuse toward Kayla. I have personally seen with my own eyes as well as my husband where she had a black eye when she was 2 and I reported it then. I have seen her at least 2 other times where she has visible bruises on her cheek or cheeks.... When she was here visiting she

didn't want to go home.... I will continue to write and e-mail anyone who will listen because there have been way too many cases where this exact type of situation has happened and sadly the child ends up severely [*sic*] injured or dead."

53. About five days later, Loretta Keelin responded to Heather Baker in an email message dated December 16, 2002: "I am aware that you are the reporter on our last investigation regarding your niece, therefore I am able to speak with you about this. I have requested the case record in order for me to review it. I will make contact with you after that time."
54. In late February 2003, upon information and belief, Defendant OCDSS received a report alleging "neglect-inappropriate discipline" of Kayla by Carolyn Futrell from a person other than Heather Baker.
55. On March 14, 2003 Heather Baker and Tim Baker went to the OCDSS office and filed a report with Denna Smith concerning possible abuse and/or neglect of Kayla by Carolyn Futrell.
56. After going to the OCDSS office, on that same day Heather Baker and Tim Baker went to the Onslow County Sheriff's Office to file a criminal complaint alleging child abuse concerning Kayla. The Narrative section of an Onslow County Sheriff's Office Incident Report dated March 14, 2003 states that when Heather, Tim, and Nicole Allen saw Kayla in the hallway at the courthouse the previous day - - for the court hearing to terminate Nicole's parental rights as regards Kayla - - Kayla had a "bumpy, jagged scratch on [her] neck that was about two inches long and a quarter of an inch wide." This Incident Report also states that Heather and Tim showed a Detective George, of the Sheriff's Office, four

pictures of the several bruises on Kayla taken, upon information and belief, by Diane Goike in June 2002.

57. In a letter dated March 14, 2003 -- apparently prepared on the same day that Heather Baker had filed her report with Defendant OCDSS concerning Kayla -- Sara Zuborn informed Heather that the OCDSS was not going to investigate because "[t]here is no indication that the mark was caused by a parent or caretaker." This OCDSS letter to Heather was signed only by Defendant Zuborn.
58. In April 2003, as stated earlier, District Court Judge Sara C. Seaton granted the Order to terminate the parental rights of Nicole Allen and "John Doe" as regards Kayla.
59. In June 2003 Heather Baker wrote an email to Paul Waddle, the Program Consultant for Children Services Section of the North Carolina Division of Social Services, which stated in relevant part: "I too appreciate you taking the time to review my prior emails to you. If Mr. Rodger [sic] Penrod is the director of Onslow counties [sic] DSS [I] wonder why he will or has not yet addressed my concerns in any of this since I have e-mailed him in the past as it was recommended I do. As director I would have thought I would have received better recognition to address my issues with his department...."
60. Fourteen months after Kayla told law enforcement officials in Michigan that physical abuse by Carolyn Futrell caused the bruises found on her body in June 2002, Onslow County Sheriffs's Office deputies were dispatched to the Carolyn Futrell home on August 24, 2003 to investigate Kayla's death. According to a Press Release from Onslow County Sheriff Ed Brown issued in May 2004, when Carolyn Futrell was arrested in connection with the homicide of Kayla:

- (a) While searching the Carolyn Futrell home, Onslow County Sheriff Office Evidence Technicians and Detectives discovered a water bottle containing a suspicious liquid in Kayla's bedroom.
 - (b) This water bottle was found in a location such that it was hidden from one's normal view of the bedroom.
 - (c) The Evidence Technicians and Detectives found additional suspicious items in Kayla's bedroom during their search that day.
61. The day after Kayla was allegedly killed by Carolyn Futrell, Heather Baker called OCDSS employee Angela Noble to inform the OCDSS of Kayla's tragic death, and to file a report based on Heather's concern for the two other children remaining in the Carolyn Futrell home, Rafael Ochoa III and Joshua Ochoa -- Carolyn's two sons from one of her previous marriages.
62. In a letter dated August 25, 2003 -- apparently prepared on the same day that Heather Baker had filed her report with Defendant OCDSS -- OCDSS social worker Talaisha Caldwell informed Heather that, after reviewing Heather's report concerning Rafael Ochoa III and Joshua Ochoa, Defendant OCDSS "...will investigate based on the allegations. At the completion of the investigation, you will be notified of the findings."
63. Also on August 25, 2003, Dr. William Kelly performed an autopsy on Kayla's body at Onslow Memorial Hospital in Jacksonville. Dr. Kelly's written report for this autopsy includes the following:
- (a) "Kayla Allen was a 7 year old white female.... She was found in a bed unresponsive, face down with vomit and blood on her face and pillow...."

- (b) "At autopsy, there is evidence of insecticide poisoning. The content is similar to the bottle content found under the pillow."
 - (c) "This is an acute ingestion of the insecticide Permethrin with carriers being Ethylbenzene and Xylene, components present in the commercial product Atroban. The relative concentration of the above components in the stomach are similar to the contents in the bottle found under the pillow and therefore consistent with ingestion of the bottle contents."
 - (d) "The most likely direct cause of death is aspiration of the organic solvents present in the Permethrin product."
 - (e) "In this pathologist' s opinion, the cause of death is insecticide poisoning."
64. Two days after Kayla's death Heather Baker received an email from Paul Waddle, the Program Consultant for Children Services Section of the North Carolina Division of Social Services, stating: "My contact with Onslow County Department of Social Services indicates the autopsy has been completed, and the criminal investigation has begun."
65. Approximately one week later, on September 2, 2003, Heather Baker sent an email to Loretta Keelin which included copies of their respective emails that had been exchanged in December 2002. This new email was sent by Heather to serve as a reminder to Defendant Keelin about what she had told Heather nine months earlier, in December 2002: "I have requested the case record [for Kayla] in order for me to review it. I will make contact with you after that time." Heather sent this email because she had never heard back from Defendant Keelin regarding any review of Kayla's case record, despite

Defendant Keelin's representation to Heather that she would personally review the record and then report back to Heather.

66. In December 2003 Heather Baker received an email from Sherry Dillard, a Child Welfare Services Consultant with the North Carolina Department of Social Services, which stated that "...DSS has taken drastic measures to assure the safety of the surviving children" in the Carolyn Futrell home.
67. In late February or early March 2004, Heather Baker received an OCDSS letter regarding her August 25, 2003 call to OCDSS employee Angela Noble -- during which Heather had expressed concern about the two other children remaining in the Carolyn Futrell home -- and the corresponding August 25, 2003 letter signed by OCDSS social worker Talaisha Caldwell. This new OCDSS letter, dated February 26, 2004 and signed by a different OCDSS employee, Kelly Wilt, informed Heather that "[n]eglect was substantiated, however, ongoing services were not deemed appropriate at this time."
68. On March 2, 2004 Heather Baker called the office of Ernie Lee, an Assistant District Attorney in the Onslow County District Attorney's Office, to express her disagreement with the OCDSS' decision not to remove the two other children from the Carolyn Futrell home given the fact that Kayla's death at the same residence was currently being investigated as a homicide.
69. On May 20, 2004 Carolyn Futrell was arrested by the Onslow County Sheriff's Office in connection with the homicide of Kayla; Carolyn was charged with felony child abuse and murder.

70. According to a May 20, 2004 Press Release from Onslow County Sheriff Ed Brown:
“The method of murder was an insecticide poison imploded into the body of 7-year-old Kayla Allen.”
71. Upon information and belief, Carolyn Futrell had to force the toxic contents of her water bottle into Kayla because the child would have had “gag reflex” reactions to the insecticide poison used by Carolyn to kill Kayla.
72. Upon information and belief, Kayla was conscious during the forced ingestion of this insecticide poison, and for some period of time following that ingestion.
73. Upon information and belief, after ingestion of the insecticide poison Kayla experienced confusion, disorientation, muscle jerking, seizures, severe pain, and extensive vomiting, before finally succumbing to the insecticide mixture, and dying.
74. On September 27, 2004, Superior Court Judge Charles Henry decided, upon information and belief, that there existed enough evidence of the fact that Kayla’s death was “especially heinous, atrocious and cruel” so as to warrant possible capital punishment for Carolyn Futrell.
75. Upon information and belief, during the three year period leading up to Kayla’s death in August 2003, no less than six reports about Kayla being abused and/or neglected by Carolyn Futrell were made to the Onslow County DSS or law enforcement officials in Onslow County and in Taylor, Michigan.

Defendants’ Obligations

76. Upon information and belief, in North Carolina each county department of social services operates its own child protective services.

77. Upon information and belief, in North Carolina the state Division of Social Services in the Department of Health and Human Services issues a policy manual, and the state Social Services Commission issues rules for child protective services.
78. Upon information and belief, in North Carolina protective services for children known or alleged to be abused or neglected are mandated by State law, and the county Director of Social Services is responsible for provision on these protective services.
79. In more detail, upon information and belief, in North Carolina county directors of social services are responsible for ensuring that child protective services are provided for all children who are abused or neglected. To this end, upon information and belief, North Carolina law and administrative rule require the county director of social services to be responsible for receiving reports of abuse and neglect as well as making a prompt and thorough investigative assessment in order to ascertain (1) the facts of the case, (2) the extent of the injury or condition resulting from the abuse or neglect, and (3) the risk of harm to the child.
80. In North Carolina, any person who has reason to suspect that a child is being abused or neglected is required by law to report their concerns to the DSS (N.C.G.S. §7B-301).
81. If the conditions described in the report would, if true, meet the definition of child abuse or neglect, and the alleged perpetrator is a parent or caretaker by statutory definition, and if the alleged victim is under 18 years old, the county DSS where the child resides is required to initiate an investigative assessment of all children residing in the home to determine if protective services are needed (N.C.G.S. §7B-302).

82. Upon information and belief, in North Carolina all reports involving bruises must be responded to by the department of social services within 24 hours because a bruise is defined as an injury.
83. Upon information and belief, in North Carolina a child is abused, for the purpose of the reporting law, if the child's parent, guardian, custodian, or caretaker inflicts – or allows someone else to inflict – on the child a serious, non-accidental physical injury.
84. Upon information and belief, in North Carolina a child is abused, for the purpose of the reporting law, if the child's parent, guardian, custodian, or caretaker creates – or allows to be created – a substantial risk of serious, non-accidental physical injury.
85. Upon information and belief, in North Carolina, for the purpose of the reporting law, no statute defines “serious physical injury”.
86. Upon information and belief, in North Carolina, for the purpose of the reporting law, a child who is put at risk of or receives an injury that cannot be characterized as serious, but that results from inappropriate care, supervision, or discipline, may be neglected.
87. Upon information and belief, in North Carolina, within five working days after receiving a report of suspected abuse and/or neglect, the department of social services must give the person who made the report a written notice of:
 - (a) whether the report has been accepted for investigation; and,
 - (b) whether the report has been referred to the appropriate state or local law enforcement agency.

88. Upon information and belief, in North Carolina, this written notice is required after every report of suspected abuse and/or neglect unless the person who made the report specifically asks the department of social services not to give the notice.
89. Furthermore, upon information and belief, in North Carolina, when the department of social services does not accept a report of suspected abuse and/or neglect for investigation, the written notice must inform the reporter of:
- (a) the fact that the department will not conduct an investigation;
 - (b) the basis for that decision; and,
 - (c) the reporter's right to ask for a review of the decision and the procedures for making that request for review.
90. Upon information and belief, in North Carolina, any report of suspected abuse and/or neglect that is not accepted for investigation, or "screened-out", by the department of social services requires a two-party review, with one of the parties in a management position.
91. Upon information and belief, in North Carolina, a person whose report of suspected abuse and/or neglect is accepted for investigation is entitled to a second notification when the investigation is completed.
92. Upon information and belief, a State Child Fatality Review will be conducted when any county department of social services in North Carolina has had involvement with the child or family within the 12 months preceding the child's death and abuse or neglect is suspected to be a factor in the death of the child.

93. According to the State Child Fatality Review Findings and Recommendations, Onslow County, March 2004, which had as its subject the death of Kayla Allen:
- (a) “In 2000, DSS instituted a protocol as a result of the Biennial Review ensuring systematic referral’s [sic] to the D.A.’s office and law enforcement when CPS reports alleging abuse were received.”
 - (b) “The Department of Social Services did not consistently provide notification to the D.A.’s office upon receipt of Child Protective Services reports alleging abuse.”
 - (c) “DSS has experienced a high turnover rate in social work staff. This has led to increases in case load size over state standards and impacts the provision of services.”
94. Upon information and belief, a State Child Fatality Review report is intended to provide information that can be put to constructive use in preventing future fatalities and, significantly, it is not the purpose of these reports to determine whether a person, group, or agency could have prevented a fatality.
95. Upon information and belief, OCDSS Director Roger E. Penrod was responsible for the hiring, supervision, training, and retention of OCDSS employees providing services to Kayla, including the OCDSS employees named as Defendants herein, i.e., the Individual OCDSS Defendants.
96. Upon information and belief, OCDSS Child Protective Services Program Manager Loretta Keelin provided services to Kalya and, upon information and belief, was also responsible for the training and supervision of other OCDSS employees providing

services to Kayla, including the OCDSS employees named as Defendants herein, i.e., the Individual OCDSS Defendants.

97. OCDSS Social Worker Allison Radford directly provided services to Kayla and, upon information and belief, undertook to oversee other OCDSS employees providing services to Kayla.
98. OCDSS Social Worker Denna Smith directly provided services to Kayla and, upon information and belief, undertook to oversee other OCDSS employees providing services to Kayla.
99. OCDSS Social Worker Sara Zuborn directly provided services to Kayla and, upon information and belief, undertook to oversee other OCDSS employees providing services to Kayla.
100. At all relevant times, the Individual OCDSS Defendants were acting within the course and scope of their employment with Defendant OCDSS, and Defendant OCDSS is liable as principal for all injuries caused by their acts and omissions of each of the Individual OCDSS Defendants as well as the acts and omissions of other OCDSS employees acting within the course and scope of their employment.
101. At all relevant times hereto, Allison Radford was acting as the agent, actual or apparent, of Defendant OCDSS as well as Defendant Penrod and Defendant Keelin.
102. At all relevant times hereto, Denna Smith was acting as the agent, actual or apparent, of Defendant OCDSS as well as Defendant Penrod and Defendant Keelin.
103. At all relevant times hereto, Sara Zuborn was acting as the agent, actual or apparent, of Defendant OCDSS as well as Defendant Penrod and Defendant Keelin.

104. Defendant OCDSS and its employees, including the OCDSS employees named as Defendants herein, i.e., the Individual OCDSS Defendants, had a duty to protect, care for, and provide services to Kayla in accordance with applicable laws, regulations, rules, policies, guidelines, and standards of practice.
105. As a direct and proximate result of the Defendants' negligent acts and omissions described herein, Kayla suffered serious personal injury, including severe emotional distress, pain and suffering, and, ultimately, death, resulting in damages and expenses exceeding \$10,000, which Plaintiff is entitled to recover of the Defendants, jointly and severally.

FIRST CLAIM FOR RELIEF

Survivorship Claim: Personal Injury

106. All other allegations of the Complaint are realleged and incorporated herein by reference.
107. Defendant OCDSS and its employees, including the OCDSS employees named as Defendants herein, i.e., the Individual OCDSS Defendants, had a duty to protect, care for, and provide services to Kayla in accordance with applicable laws, regulations, rules, policies, guidelines, and standards of practice.
108. Defendant OCDSS and the Individual OCDSS Defendants were negligent and breached their duty to Kayla in the following ways:
- (a) by failing to provide a timely and thorough investigative assessment of the facts regarding the existence of the abuse by Carolyn Futrell which was alleged by Kayla, herself, in June 2002;

- (b) by failing to properly assess the nature and extent of the injury to Kayla, in the form of the several bruises on different parts of her body, which was discovered and reported to the OCDSS in June 2002;
- (c) by failing to take appropriate protective measures for Kayla during the time when the OCDSS was doing its investigative assessment of the allegations of abuse by Carolyn Futrell which were made by Kayla, herself, in June 2002;
- (d) by failing to adequately and sufficiently assess the risk of harm to and need for protection of Kayla;
- (e) by failing to properly investigate or take appropriate protective measures when Heather Baker and others made reports of suspected abuse and/or neglect of Kayla by Carolyn Futrell;
- (f) by failing to consistently convey to the Onslow County Sheriff's Office the several reports of abuse regarding Kayla which were received by OCDSS during the three-year period before her death;
- (g) by failing to consistently have a two-level review of abuse and/or neglect reports concerning Kayla that were not accepted for investigation, or "screened-out", and have all related documents signed by the social worker and his or her supervisor;
- (h) by failing to provide a continuity of services to Kayla;
- (i) by failing to respond timely to Heather Baker, and perhaps others, regarding the status of each respective report of abuse and/or neglect of Kayla by Carolyn Futrell which was made to the OCDSS by the reporter(s); and,
- (j) in such other ways as will be shown by evidence at trial.

109. Additionally, upon information and belief, Defendant OCDSS as well as Defendant Penrod and Defendant Keelin were negligent and breached their duty to Kayla:
- (a) by failing to hire or assign employees who were qualified and competent to provide necessary services to Kayla;
 - (b) by failing to adequately train and supervise OCDSS employees;
 - (c) by failing to make sufficient efforts as regards the retention of OCDSS employees so as to provide continuity of services to Kayla;
 - (d) by failing to make sufficient efforts as regards the retention of OCDSS employees so as to not have case loads of a size which exceeded state standards and, as a result, negatively affected the provision of services to Kayla; and,
 - (e) in such other ways as will be shown by evidence at trial.
110. At all times relevant hereto, the Individual OCDSS Defendants were acting as the agents, actual or apparent, of Defendant OCDSS. As a consequence, the negligence of Defendant Penrod, in his official capacity, or of Defendants Keelin, Radford, Smith, and Zuborn, in their official capacities, is imputed to Defendant OCDSS under the doctrines of respondent superior or apparent and/or ostensible agency.
111. Defendants knew or should have known that their acts and omissions created a serious risk of harm and injury to Kayla.
112. The various injuries to Kayla inflicted by Carolyn Futrell during the three years before Kayla's death gave rise to damages which are recoverable by Plaintiff pursuant to N.C.G.S. §28A-18-1.

113. As a direct and proximate result of the Defendants' negligent acts and omissions described herein, Kayla suffered serious personal injury, including severe emotional distress, pain and suffering, and, ultimately, death, resulting in damages and expenses exceeding \$10,000, which Plaintiff is entitled to recover of the Defendants, jointly and severally.

SECOND CLAIM FOR RELIEF

Wrongful Death

114. All other allegations of the Complaint are realleged and incorporated herein by reference.

115. Defendant OCDSS and its employees, including the OCDSS employees named as Defendants herein, i.e., the Individual OCDSS Defendants, had a duty to protect, care for, and provide services to Kayla in accordance with applicable laws, regulations, rules, policies, guidelines, and standards of practice.

116. Defendant OCDSS and the Individual OCDSS Defendants were negligent and breached their duty to Kayla in the following ways:

- (a) by failing to provide a timely and thorough investigative assessment of the facts regarding the existence of the abuse by Carolyn Futrell which was alleged by Kayla, herself, in June 2002;
- (b) by failing to properly assess the nature and extent of the injury to Kayla, in the form of the several bruises on different parts of her body, which was discovered and reported to the OCDSS in June 2002;

- (c) by failing to take appropriate protective measures for Kayla during the time when the OCDSS was doing its investigative assessment of the allegations of abuse by Carolyn Futrell which was alleged by Kayla, herself, in June 2002;
- (d) by failing to adequately and sufficiently assess the risk of harm to and need for protection of Kayla;
- (e) by failing to properly investigate or take appropriate protective measures when Heather Baker and others made reports of suspected abuse and/or neglect of Kayla by Carolyn Futrell;
- (f) by failing to consistently convey to the Onslow County Sheriff's Office the several reports of abuse regarding Kayla which were received by OCDSS during the three-year period before her death;
- (g) by failing to consistently have a two-level review of abuse and/or neglect reports concerning Kayla that were not accepted for investigation, or "screened-out", and have all related documents signed by the social worker and his or her supervisor;
- (h) by failing to provide a continuity of services to Kayla;
- (i) by failing to respond timely to Heather Baker, and perhaps others, regarding the status of each respective report of abuse and/or neglect of Kayla by Carolyn Futrell which was made to the OCDSS by the reporter(s); and,
- (j) in such other ways as will be shown by evidence at trial.

117. Additionally, upon information and belief, Defendant OCDSS as well as Defendant Penrod and Defendant Keelin were negligent and breached their duty to Kayla:

- (a) by failing to hire or assign employees who were qualified and competent to provide necessary services to Kayla;
- (b) by failing to adequately train and supervise OCDSS employees;
- (c) by failing to make sufficient efforts as regards the retention of OCDSS employees so as to provide continuity of services to Kayla;
- (d) by failing to make sufficient efforts as regards the retention of OCDSS employees so as to not have case loads of a size which exceed state standards and, as a result, negatively affected the provision of services to Kayla; and,
- (e) in such other ways as will be shown by evidence at trial.

118. At all times relevant hereto, the Individual OCDSS Defendants were acting as the agents, actual or apparent, of Defendant OCDSS. As a consequence, the negligence of Defendant Penrod, in his official capacity, or of Defendants Keelin, Radford, Smith, and Zuborn, in their official capacities, is imputed to Defendant OCDSS under the doctrines of respondent superior or apparent and/or ostensible agency.

119. Defendants knew or should have known that their acts and omissions created a serious risk of harm to Kayla.

120. The death of Kayla gave rise to the damages enumerated in N.C.G.S. §28A-18-2(b), as set forth below.

121. As a direct and proximate result of the Defendants' negligent acts and omissions described herein, Kayla suffered serious personal injury, including severe emotional distress, pain and suffering, and, ultimately, death, resulting in damages and expenses

exceeding \$10,000, which Plaintiff is entitled to recover of the Defendants, jointly and severally.

THIRD CLAIM FOR RELIEF

Punitive Damages

122. All other allegations of the Complaint are realleged and incorporated herein by reference.
123. Under the law, Kayla could have recovered punitive damages had she survived.
124. All Defendants acted with actual malice insofar that some or all of their acts and omissions were done in a manner which evidences a reckless and wanton disregard of Kayla's rights.
125. All Defendants engaged in wanton conduct insofar that some or all of their acts and omissions were done in conscious and intentional disregard of or indifference to the rights and safety of Kayla.
126. Upon information and belief, the Defendants' conduct which constituted a reckless and wanton disregard of, or a conscious and intentional disregard of and indifference to, the rights and/or safety of Kayla includes but is not limited to:
 - (a) disregard for the allegations of abuse by Carolyn Futrell made by Kayla, herself, to law enforcement officers and others;
 - (b) disregard for the concerns about Kayla's safety expressed by Heather Baker and others in abuse and/or neglect reports made to the OCDSS;
 - (c) disregard for their own investigative findings that substantiated one or more of the several reports of the abuse and/or neglect of Kayla by Carolyn Futrell made to the OCDSS;

- (d) disregard for such other additional acts of abuse and neglect of Kayla by Carolyn Futrell known to the Defendants; and,
 - (e) disregard of applicable laws, regulations, rules, policies, guidelines, and standards of practice.
127. Upon information and belief, the Defendants either knew or should have known that such reckless and wanton disregard of, or a conscious and intentional disregard of and indifference to, the rights and/or safety of Kayla was likely to cause Kayla serious personal injury, including severe emotional distress, pain and suffering, and ultimately, death.
128. The various acts and omissions of the Defendants which demonstrated the actual malice and/or wanton conduct were the proximate cause of Kayla's injuries, including her death.
129. The death of Kayla gave rise to the damages enumerated in N.C.G.S. §28A-18-2(b), as set forth below.
130. Given that the conditions established by N.C.G.S. §28A-18-2(b)(5) are satisfied, punitive damages should be awarded in this case.

DAMAGES

131. As a direct and proximate result of the various acts and omissions of the Defendants, as alleged above, Plaintiff Heather Christie Baker, as Personal Representative of the Estate of Kayla Yvonne Allen, is entitled to recover damages for personal injury and for death by wrongful acts as provided by N.C.G.S. §28A-18-1 and N.C.G.S. §28A-18-2, including but not limited to compensation for Kayla's pain and suffering as well as punitive damages.

JURY DEMAND

132. Plaintiff hereby demands a jury trial of all issues in this case, but for any "issues of law or fact relating to insurance in this action" (N.C.G.S. §153A-435(b)).

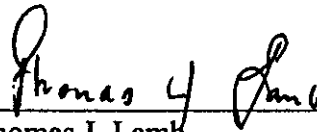
PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that she have and recover judgment against the Defendants, jointly and severally, as follows:

1. That Plaintiff have and recover judgement against the Defendants for compensatory and punitive damages incurred in excess of Ten Thousand Dollars (\$10,000.00);
2. That the Defendants be taxed with the costs and prejudgement interest and attorney's fees to the extent allowed by law; and,
3. That Plaintiff may have such other and further relief as the Court may deem just and proper.

This the 22nd day of August, 2005.

LAW OFFICES OF THOMAS J. LAMB, P.A.



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