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DCF gets a grilling from judges over 4-year-old's care

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EMILY MICHOT / MIAMI HERALD STAFF

Barbara Toledo with Our Kids, speaks to the entire Miami-Dade dependency court bench Tuesday morning August 20, 2013 during a very rare "en banc" hearing. The hearing by the five judges was with an investigator and lawyers for the Department of Children and Families. The judges wanted an explanation from the DCF workers about a case involving a now four year old boy. The judges also wanted explanations on DCF policies and practices handling cases involving children.

Miami-Dade County's entire child welfare bench presided over a virtually unprecedented hearing Tuesday in which the five judges grilled lawyers and an investigator with the Department of Children & Families over "systemic" failures that have left children dead or gravely injured.

They used the plight of a 4-year-old boy to pull back the curtain on problems occurring throughout the state. The boy was not present.

The 4-year-old has not been killed or tortured, as some Floridian youngsters have. He has simply been subjected to a "violent, unstable and dangerous home" with the agency repeatedly refusing to remove him for his own safety. His parents, allegedly, have engaged in fistfights, stalking, a knifing and a kidnapping, the

judges said. The boy's father has ignored court orders to stay away from the child's mom, who has a bad drinking problem. DCF's abuse hotline has received at least three calls that domestic violence left the boy in peril.

Through it all, DCF has taken no action to place him in a safer environment. The judges, some of whom have presided over the family's travails, wanted to know why.

"This is what's troubling me," said Circuit Judge Michael A. Hanzman. "The minute I read the [court records], there was no question that this was not a case where the child could be left at home. Reasonable minds could not differ."

"This is what I call a no-brainer," Hanzman added.

The little boy, who is not being identified by the Miami Herald to protect his privacy, first came to the agency's attention in 2009, when the hotline received a report that his parents had been fighting violently over what DCF investigator Jose Antonio Garza described as "infidelity issues." Police arrested the father for breaking into the mother's home, locking her in a laundry room and kidnapping the child.

The investigation went nowhere, because the boy's mother told investigators she had moved to Pennsylvania — a claim Garza later admitted may have been a lie. What's worse, the judges said, DCF apparently made no effort to determine where the then-infant was living.

"The case was closed, and the investigator moved on to other cases," a DCF attorney, Christy Lopez-Acevedo, told the judges.

In 2009, child protection investigators got another chance to help the boy, when the hotline received a report that his mother had knifed the father. The mom — whose mental illnesses had led to at least one involuntary commitment — was arrested, and DCF "verified" the allegation that the parents' family violence was a threat to the boy's safety.

Still no removal. DCF's solution this time: referring the family to a domestic violence program in Homestead. But nobody at the agency followed up to ensure that the parents were actively "engaged" in the counseling and treatment that the program, Project SOS, had to offer. They weren't.

"They never started a single service," Hanzman said.

"What good are these services," asked Circuit Judge Cindy Lederman, "if the parents don't succeed in them, don't complete the program and don't modify their behavior? Isn't it dangerous to just walk away after making a referral?"

When the boy's predicament was raised yet again with DCF's child abuse hotline in 2013, DCF asked Judge Rosa Figarola to order the parents to accept the help they had rejected three years earlier.

Figarola had another idea: She ordered DCF to remove the youngster from his parents, arguing no amount of counseling could render the boy safe.

At Tuesday's hearing, Hanzman challenged the agency to "give me an argument or a rationale for looking at this set of facts where you leave a 4-year-old home in the circumstances of this case?"

Lopez-Acevedo, DCF's lawyer, refused to answer, calling that information the agency's "work product."

She said judges, too, are guilty of leaving children in harm's way when they sometimes refuse to remove a child the agency thinks is in danger.

Several of the judges reacted angrily to that.

"We do get denied," Lopez-Acevedo said.

Figarola, who has presided over domestic violence cases in the past, and other judges took issue with the department's policy of claiming children are safe from spousal violence because one partner has obtained a stay-away order from the other, or because the department has imposed a "safety plan" in which one or both parents promise to avoid violence.

“Oh, we’ve got an injunction — now the kids are safe,” Figarola said. “Oh, my God!”

“If he wants to get her, he’s going to get her.”

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