



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

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DATE	COMM	ACTION
1/15/08	SM	Unfavorable

January 15, 2008

The Honorable Ken Pruitt
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 54 (2008)** – Senator Arthenia Joyner
HB 1223 (2008) – Representative Geri Thompson
Relief of Daniel Decembre

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR \$1.8 MILLION ARISING FROM A STIPULATED SETTLEMENT AGREEMENT BETWEEN DESNAR AND MIGNONE DECEMBRE, AS PARENTS AND GUARDIANS OF DANIEL DECEMBRE, AND THE ORANGE COUNTY SCHOOL BOARD FOR INJURIES THAT DANIEL RECEIVED WHEN HE WAS ATTACKED BY A PIT BULL ON THE CAMPUS OF RIDGEWOOD PARK ELEMENTARY SCHOOL.

FINDINGS OF FACT:

On March 4, 2003, after regular classes had ended at Ridgewood Park Elementary School in Orlando, Daniel Decembre, then 8 years old, was talking with a friend while waiting for his after-school tutoring class to begin. Daniel saw a large dog running straight for him and he began to run toward a playground area where there were teachers and other students. Daniel tripped and fell down as he ran across a broad drainage swale. The dog jumped on top of Daniel and began to maul him, biting him repeatedly on his face and head.

A teacher drove her car over to the area and tried without success to knock the dog away with the car. Other teachers

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threw things at the dog. One teacher beat the dog with an umbrella until it finally stopped its attack.

Daniel's injuries were extensive. He was taken via air ambulance to the hospital. He had deep lacerations of both cheeks, his eyelids, and chin. He lost much of his right ear and his left ear had to be amputated. He has undergone four subsequent surgeries to repair the damage to his face and eyes.

Daniel suffered permanent physical injuries to his face and head. He will need several more surgeries and a prosthetic ear implant which must be replaced every 2 to 5 years (to account for his growth) until he reaches physical maturity. He has recurring pain on the left side of his head, some facial nerve damage, and the tear duct of his left eye continually runs.

The incident also caused Daniel lasting psychological trauma. He has frequent nightmares and is now afraid to be near dogs. The incident, subsequent surgeries, and his recovery caused Daniel to fall a year behind in school. Unfortunately, he is regularly teased at school due to his disfigurement.

The dog belonged to a man who lived in a house adjacent to the school grounds. He said that the dog bolted through the front door when his daughter came into the house. There was no explanation in the record for why the dog's owner did not immediately run after the dog and arrive sooner to prevent or to help stop the dog's attack on Daniel. The evidence only shows that owner arrived after the attack had ended and took the dog back to his house. The owner was issued a citation and he paid a fine. The pit bull was put to sleep.

In the 3 years preceding the attack on Daniel, officials at Ridgewood Park Elementary had called Orange County Animal Services 19 times to have dogs removed from the school campus. None of the prior incidents had involved a dog bite or attack on a student or adult.

LITIGATION HISTORY:

Claimants sued the School Board in the circuit court for Orange County in 2005. The case was successfully mediated and the parties entered into a Stipulated

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Settlement Agreement in November 2007 which called for payment to Desnar and Mignone Decembre, individually and as the parents and guardians of Daniel, the sovereign immunity limit of \$200,000 and for the School Board to take a neutral position on the passage of a claim bill for an additional \$1.8 Million.

The Decembres did not sue the dog owner for Daniel's injuries because his homeowner's insurance did not cover dog bites, and he had no significant assets.

CLAIMANTS' POSITION:

The School Board is liable in negligence for failing to take reasonable steps to prevent dogs from entering the school campus and attacking students.

SCHOOL BOARD'S POSITION:

The School Board denies liability for negligence, but believes the settlement is fair and reasonable under the circumstances.

CONCLUSIONS OF LAW:

There are many reasons for entering into a settlement agreement other than the perceived merits of the claim and, therefore, I am not precluded from reviewing the terms of the parties' settlement agreement in this matter and determining whether they are reasonable under the totality of the circumstances.

The School Board has a duty to take reasonable measures to protect its students from foreseeable injuries. Even though no student had previously been bitten by a dog on the campus of Ridgewood Park Elementary, a dog attack was foreseeable because dogs had previously entered the campus. The fencing around the campus was in disrepair in several places, but the pit bull that attacked Daniel came through the front gate that is always open during school hours to allow for children to arrive at the campus by school bus or by car, as well as for teachers, other school employees, and visitors. Whether the School Board breached its duty to protect Daniel comes down to the question of whether the School Board, using reasonable means, could have prevented a dog from entering the campus through the front gate.

Calling Animal Services was a responsible action to take when dogs were found on the school campus. Claimants argued that, because dogs had been removed from the

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school on 19 previous occasions, something more should have been done to keep dogs out. Claimant's attorneys suggested that the School Board should have posted someone at the front gate to prevent a dog from entering and should have erected interior fencing so that a dog entering the front gate could not easily get to the area where Daniel was attacked.

I am not persuaded that these are reasonable measures nor that the failure to implement these measures shows that the School Board was negligent. It was not adequately explained how the suggested precautions would have prevented this dog from entering through the wide front gate and attacking one of numerous students and adults who were in the front of the school. While interior fencing would have made it much harder for the pit bull to get to where Daniel was standing on the day he was attacked, interior fencing would not have prevented the dog from entering through the front gate and attacking someone else.

Almost every school is set up with a perimeter fence and a front gate that is open during school hours to admit students, teachers, and many others who enter on foot as well as in school buses and private vehicles. Claimant's position in this case, in essence, is that all schools are negligent in not adopting an alternative setup that will prevent dogs from entering through the front gate during school hours and attacking students. However, no reasonable measures to "dog-proof" a school were identified by Claimants and none are apparent to me. Therefore, the evidence presented to me does not demonstrate that Daniel's injuries resulted from the negligence of the School Board.

However, because of the horrific nature of the incident and the severity of Daniel's injuries, which are depicted in several dramatic photographs taken just after the dog attack, the School Board faced the real risk that a jury would find the School Board liable and award a much larger damage award than the \$2 million settlement figure.

ATTORNEY'S FEES AND
LOBBYIST'S FEES:

Claimant's attorneys agree to limit their fees to 25 percent of any amount awarded by the Legislature as required by s. 768.28(8), F.S. They have not acknowledged their awareness of the provision of the bill that requires the

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lobbyist's fee and costs to be included in the 25 percent figure.

OTHER ISSUES:

The School Board is self-insured. If the claim bill is passed, the award would be paid from the School Board's General Funds.

LEGISLATIVE HISTORY:

This is the first claim bill ever filed in this matter.

RECOMMENDATIONS:

Although I believe the School Board acted reasonably in settling the case for \$2 million because it risked a much larger jury verdict against it, I cannot recommend payment of the claim because the evidence presented to me does not persuade me that the School Board was liable for Daniel Decembre's injuries. Therefore, I recommend that Senate Bill 54 (2008) be reported UNFAVORABLY.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Arthenia Joyner
Representative Geri Thompson
Faye Blanton, Secretary of the Senate
Tom Thomas, House Special Master
House Committee on Constitution and Civil Law
Counsel of Record