

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2011

PHILADELPHIA, TUESDAY, DECEMBER 17, 2020

An **ALM** Publication

Court Upholds \$4.5M Child Abuse Jury Verdict Against Phila. Public Defenders

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Of the Legal staff

For three and a half years, a twin brother and sister living with foster parents Wayne and Rosella Keeny were taken to the basement of their Lancaster County home, told to lie down on a freezer, and were beaten either by hand or with household objects, lawyers for the children said.

A lawsuit against the foster parents, the agency that placed the children with them, and the Defender Association of Philadelphia—tasked with safeguarding the children's interests in court—resulted in a \$4.5 million verdict by a Philadelphia jury, which a Pennsylvania appeals court has now affirmed, rejecting the argument from the Defender Association that it is immune from liability.

The plaintiffs settled their case against the foster agency, Bethanna, prior to trial. The case against the Keenys and the Defender Association went to trial on claims that the association failed to act once reports of abuse were made, including allegations that one of the children was made to sit on the floor without underwear.

The children were removed from their mother's home in Philadelphia because she could no longer care for

them. However, their biological father learned of their whereabouts and sought reunification. They are now in his care.

At the conclusion of a nearly two-week trial Nov. 21, 2018, the jury found the Defender Association 55% liable in the case; Bethanna, 20% liable; Wayne Keeny, 20% liable; and Rosella Keeny 5% liable for child abuse.

After the verdict was handed down, the Defender Association appealed on the grounds that it was protected from liability by "judicial and/or quasi-judicial immunity."

According to Superior Court Judge Maria McLaughlin's Wednesday opinion in *Z.F.I. v. Bethanna*, the defenders essentially asked the court to create a new law in its favor.

"The Defender Association is asking us to establish a new immunity, which is not for us to do. Although it contends we would not be creating new law, but rather extending existing principles, we disagree," McLaughlin said. "The Defender Association concedes that it has not cited any existing Pennsylvania statute, rule, or case law establishing that a guardian ad litem enjoys immunity. It instead cites cases from other states and statements in a federal decision to make what are fundamentally policy arguments that we should extend immunity to it."

McLaughlin said it wasn't the court's role to do so.

"Rather, the Superior Court is an error-correcting court and we leave policy questions to the Supreme Court and the General Assembly," she said.

Additionally, McLaughlin said the evidence supported the plaintiffs' argument that the Defender Association failed to safeguard the children.

"Plaintiffs' evidence was sufficient to establish that the Defender Association breached its duty of care by failing to investigate once it became aware that one of the children had reported, 'I sit on the floor with my panties down,'" McLaughlin said.

Kline & Specter attorneys Nadeem Bezar and Charles Becker handled the case for the plaintiffs, identified in court papers as ZF1 and ZF2.

"We are heartened that the Superior Court affirmed the judgment of the lower court and rejected all of the defender's arguments," the lawyers said in a statement. "The court's decision underscores that attorneys representing children particularly during critical court hearings need to listen and consider all vital evidence."

The Defender Association did not respond to a request for comment.