

Federal Court Jury lowers the BOOM on DSS!!! Awards \$4.6 million to Father and Daughter over illegal custody documents and illegal actions!!! Intimidation and illegal Threats!!! The County, DSS, DSS Director and DSS Lawyer were in cahoots!!! County taxpayers are most likely liable to have to pay up!!! Cleveland County Commissioners better pay very close attention!!! Report, arguendo and “I told you so’s” by Robert A. Williams

Editor’s Note:

This case will be heard “around the world” by those thousands upon thousands who have been screwed over royally by the Departments of Social Services. But, don’t believe me. Read these series of news articles developed by the Carolina 10 Public Press for yourselves!!!

Editor's Note II:

Carolina Public Press is an independent nonprofit news organization dedicated to nonpartisan, in-depth and investigative news built upon the facts and context North Carolinians need to know. Our award-winning, breakthrough journalism dismantles barriers and shines a light on the critical overlooked and under-reported issues facing our state's 10.2 million residents. Your support funds important public interest journalism.

Editor's Note III:

These series of articles are from the start to the finish of a major Federal Case in Asheville, NC. For maximum impact, please start here and read straight through. I will give you a hint. The Jury ruled against DSS et al and awarded the Father and daughter \$4.6 Million. This and a few other such rulings and I believe County Commissioners everywhere in North Carolina will be paying more attention into oversight of those rogue DSS agencies and the rogues that work there. Including the Cleveland County DSS.

[*A federal case: Violated rights versus 'best interests' of child*](#)

Federal civil trial to put DSS practices on hot seat

State courts previously held child visitation agreements parents in Cherokee County were forced to sign unlawful. County and former officials face trial in lawsuit over practice.

By Kate Martin May 3, 2021

A federal jury in Asheville will decide later this month whether Cherokee County and its Department of Social Services leaders should pay damages to a father for taking his daughter from him without a judge's oversight.

Over the course of about a decade, social workers in Cherokee County used a document called a "custody and visitation

agreement” to sever parental rights and place children with other guardians.

Three years ago, District Court Judge Tessa Sellers in Murphy ruled the documents, also called CVAs, did not carry the force of law and were the “product of both actual and constructive fraud on behalf of the Cherokee County Department of Social Services, its agents and employees, and attorney Scott Lindsay and DSS Director Cindy Palmer.” During the hearing, she voided all instances of the document, some of which a former worker has testified are missing.

Even though dozens of families, involving possibly more than 100 children, were separated by these acts by DSS and its workers, this federal lawsuit revolves around the circumstances of one family: Brian Hogan and his daughter. Social workers took the girl from him and placed her in the custody of his father in late 2016, after his wife was hospitalized with a massive heart attack and he’d spent several days in Asheville with her.

Hogan told The Associated Press in 2018 that social workers threatened to throw him in jail, put his daughter in foster care or allow another family to adopt his daughter if he didn’t sign the paperwork they presented him with – the CVA forms.

Without a judge or an attorney representing him, and under pressure from social workers, Hogan signed the papers.

“They gave me no choice,” Hogan told the AP in 2018.

Other parents have said they felt similarly pressured or threatened by social workers into signing these documents, while having no legal representation of their own.

Attorneys for neither party spoke with CPP for this article, either by not responding to inquiries or saying they could not speak before the trial. A jury will ultimately decide whether to award damages and if so, how much, after a trial lasting

several days in the Western District of North Carolina's federal court.

In early 2018, attorneys representing Hogan and his daughter sued Cherokee County and two officials who have since resigned their positions – the then-DSS Director Cindy Palmer and Scott Lindsay, who served both as the county and the DSS attorney.

Though Palmer was suspended and resigned as director in mid-2018, she then immediately took a post as the DSS business officer, despite the ongoing State Bureau of Investigations criminal probe into her role with the CVAs. She remains employed there today.

Both Palmer and Lindsay were also indicted by the state for their years of involvement with CVAs, along with former DSS supervisor David Hughes. Altogether they face more than three dozen felony and misdemeanor charges related to CVAs dating to 2016. Palmer also faces a charge of perjury for her testimony in 2018 when she said she did not know the department used CVAs until December 2017 – when the state Department of Health and Human Services asked about them.

Defense brief says CVAs were harmless

In the upcoming federal civil trial, three different attorneys represent Cherokee County, the county's DSS office and the two social services workers. Palmer and Lindsay are being sued both as individuals and as county officials and individually have their own defense counsel.

According to a brief filed by defense attorneys, the plaintiff's lawyers won't be able to demonstrate harm to Hogan or his daughter. The brief says county social workers used CVAs in "stuck" DSS cases.

"Former DSS social worker Courtney Meyers described cases where children were 'not safe to go home because nothing that was of concern has been corrected and we're running out of

time,'" the brief filed April 29 said. "The ultimate goal of having parents signing a CVA was to keep children safe."

The defense filings say neither Palmer nor Lindsay was present when Hogan signed the CVA, which relinquished his daughter to his father – her grandfather Warren Hogan. The defense says the Hogan family had previously been involved with the Department of Social Services between five and 10 times.

Plaintiff questions lack of oversight

Hogan's legal filings say the county failed to properly oversee the DSS office.

"Where a local government is faced with a pattern of misconduct and does nothing," one brief says, "the local government has acquiesced in or tacitly authorized its subordinates' unlawful actions."

In other words, the government knew there was a pattern of breaking law and policy. Because nobody did anything, the use of CVAs became an accepted local practice.

Attorneys say because the DSS board "did nothing to oversee DSS or prevent the unconstitutional use of the CVA process," it hired Palmer as director despite her not being qualified to hold the post. (Cindy Palmer is the wife of the elected Cherokee County sheriff, Derrick Palmer.)

Though his family had been involved several times with DSS, Hogan was granted permanent custody of his daughter in January 2016 by District Court Judge Sellers after a hearing in which Palmer, Lindsay and Darryl Brown participated, the plaintiff's attorneys state. At the time, Brown was the guardian ad litem, or attorney for the child. Now, in addition to those duties, Brown serves as Cherokee County's attorney and the Sheriff's Office attorney.

By this time, a plaintiff's brief says, the use of CVAs "was so commonplace by 2016 that it had been used to remove 39 children from their parents' custody in 2016 and 2017

(excluding Hogan's daughter) without due process."

That spring, though, the Hogan family again came to the attention of DSS. This time, county workers presented him with a CVA in November 2016, which he said he signed under duress.

More than a year later, in December 2017, Hogan again fought for custody of his daughter, this time before District Court Judge Monica Leslie, where Lindsay represented Cherokee County DSS and Brown as the attorney for the child in his role as guardian ad litem.

The plaintiff's trial brief says Lindsay told Leslie in the judge's chambers that he knew of "at least 20 CVAs like the one signed by Hogan. When Judge Leslie asked Lindsay what statutory or legal authority he relied upon in drafting the CVAs, he admitted that there was 'none.'"

That day, Leslie found the CVA removing Hogan's daughter was "not a valid legal document and is not enforceable or binding and is hereby null and void," granting legal custody to Hogan.

Two months later, in February 2018, Judge Sellers voided all remaining CVAs, saying the process used to obtain signatures violated the constitutional rights of parents and was the "product of both actual and constructive fraud on behalf of the Cherokee County Department of Social Services, its agents and employees and Attorney Scott Lindsay and Director Cindy Palmer."

The plaintiff's briefs say both Palmer and Lindsay, throughout recent questioning during a pretrial deposition, frequently exercised their Fifth Amendment right against self-incrimination.

While in criminal trials pleading the Fifth cannot be held against a defendant, civil trials are another matter. Juries in federal civil trials can "make adverse inferences" of improper conduct based on her refusal to answer questions

under the Fifth Amendment,” the plaintiff’s brief states. “In particular, those adverse inferences establish that Lindsay acted with deliberate indifference to the rights of juveniles.”

If Lindsay and Palmer decline to testify next week, Hogan’s lawyers appear poised to use testimony Palmer and Lindsay gave from a 2018 trial involving custody of another child removed with a CVA.

What was the motive?

North Carolina is one of the few states where county social services offices, and not the state, are in charge of child welfare decisions. Inconsistencies in screening abuse cases from county to county led a legislative nonpartisan research group to recommend changes to the state’s child welfare system. State DHHS leaders indirectly oversee these local DSS offices in all 100 counties.

The report by the Program Evaluation Division said nearly 1-in-4 counties used outside guidance in addition to state policy to decide a family’s fate in the system.

In response to the report, legislators have not enacted new legislation. However, not long afterward, lawmakers disbanded the Program Evaluation Division, and its nonpartisan researchers are to be eventually replaced by partisan staffers.

Once the state realized Cherokee County used CVAs, the state DHHS took over management of the county child welfare office for several months. In a first-of-its-kind temporary takeover, state workers trained Cherokee County’s staff with the purpose of ensuring workers were getting the training they needed to handle these complex and sensitive child welfare cases.

The state has also recently asked all county DSS agencies to sign a lengthy memorandum of understanding, which requires the

county to provide training, submit data to the state, respond to communication from the state and comply with state and federal rules.

Cherokee County commissioners, who now serve as the DSS board, have refused to sign the memorandum and instead have written a scathing letter back to DHHS blaming the “clogged and lethargic” District Court system.

Commissioners write that they cannot meet state requirements for family reunification or case adjudication until the District Court system, which sees child welfare cases, is expanded to handle the swelling caseload in the seven westernmost counties of the state of the 30th Judicial District.

Judicial District 1, which also has seven counties but is located in the eastern part of North Carolina, “is managing approximately half the caseload as District 30.”

Of District 1’s cases in 2017-18, 28% of its 556 child welfare hearings were continued. By comparison, District 30 had 3,263 hearings, of which 1,475 were continued, representing 45% of cases involving 595 children, the commissioners’ letter states. Cherokee County had a higher continuance rate of 56%.

“With every continuance a child remains out of home care longer than necessary,” the commissioners wrote in January. “... Additionally, the actual costs to the county for unnecessary long-term foster care are exorbitant. Without attempting to demonstrate a complicated reimbursement system, the county share for children in foster care (at the state level of reimbursement) is approximately 50%.

“Thus, when foster care is extended unnecessarily because of court continuances, both the state and Cherokee County suffer those costs too.”

When Hogan’s attorneys asked Lindsay whether he used the CVA

process to avoid filing cases in court, he refused to answer the question, pleading his Fifth Amendment right against self-incrimination, a brief states.

A federal case: Violated rights versus 'best interests' of child

Federal civil trial underway Monday puts Cherokee County seizures of children without judicial authority under a magnifying glass.

By Kate Martin May 11, 2021

ASHEVILLE – Lawyers for Brian Hogan said in opening arguments in a federal civil trial Monday that Cherokee County, its former director and former attorney broke state policies and violated Hogan's constitutional rights when they took his daughter away using a document they told him granted permanent custody to her grandfather.

Defense attorney Sean Perrin said in his own opening arguments that child welfare workers in Cherokee County and their supervisors oversaw 30 such agreements, called Custody and Visitation Agreements, or CVAs, separating children from their parents. Perrin represents Cherokee County in the civil trial that is expected to include three or four days of testimony.

Perrin and the defense attorneys for former Cherokee County Attorney Scott Lindsay and former Department of Social Services Director Cindy Palmer argued that even though the CVAs were against state policy, the children were better off in other homes.

"Everything done in this case was done in the child's best interest," Perrin told the jury during his opening statement. "The child was unsafe, there's no doubt about that here."

The trial's outcome may hinge on whether the jury thinks the plaintiff's violated constitutional rights argument or the

defense's "best interest" argument will meet the standard that Chief Judge Martin Reidinger set in his instructions to the eight jurors.

If there is a preponderance of evidence, or it is more likely than not, that Hogan's constitutional rights were violated, the jurors ought to decide in favor of the plaintiff, Reidinger said. If it is more likely his rights were not violated, they ought to rule for the defendants.

First-day testimony

At issue in the trial are the circumstances of Hogan and his daughter after Hogan traveled to Asheville to tend to his wife, who had just had a massive heart attack, leaving his daughter in the care of neighbors. Carolina Public Press is not naming the girl because she is a minor.

According to statements in court Monday, before Hogan signed the CVA, Amanda Edmondson, the girl's mother, had been previously involved with DSS. Hogan often worked long hours and lived away from Murphy to provide for his daughter. He and Edmondson were separated at the time.

Former Cherokee County DSS worker Diana Garrett testified in court on behalf of the plaintiffs Monday that Edmondson was addicted to drugs and at one point had fallen behind on utility and rent payments. She would use drugs while the children stayed elsewhere in the trailer park they called home, according to Garrett's testimony.

While Hogan was out of town working, Garrett said, Edmondson tested positive for methadone, methamphetamine, marijuana and cocaine, sometimes multiple days in a row.

"All of this was taking place while he was out of town working," Garrett said.

The environment was unsafe, so DSS petitioned a court for what

amounts to emergency custody for Hogan's daughter. When Hogan returned, he cooperated with child welfare officials and granted temporary custody to his father, Warren Hogan.

District Court Judge Tessa Sellers later oversaw a hearing where all parties, including DSS, agreed to give custody of the girl back to Hogan, Sellers testified Monday.

A few months later, Edmondson had a heart attack, and Hogan went to be with her in Asheville while she recovered.

In November 2016, Hogan signed the CVA granting permanent custody of his daughter to his father, Warren, until she turned 18 years old.

Typical child welfare cases involve attorneys and judges at every step of the process, a fact that multiple former child protective services workers testified was a standard process in Cherokee County. All of the workers said they had been trained prior to working cases for Cherokee County and took state training. None of those trainings included anything related to CVAs.

"We were always told (that) to have a case closed, we had to have a permanent solution to a case," Garrett said.

"You understand it was not legal and it was not valid?" asked Melissa Jackson, one of Hogan's four attorneys.

"Yes ma'am," Garrets said.

Defense attorneys pointed out Edmondson's prior involvement with DSS, but when Jackson asked if Hogan had previous DSS complaints other than being out of town, Garrett said, "No."

Hogan regained custody of his daughter after presenting the CVA to District Court Judge Monica Leslie in December 2017.

A 'stuck case'

All CVAs were invalidated by Sellers in February 2018 as a “product of actual and constructive fraud” by the DSS, former DSS and county attorney Lindsay, and Palmer.

Former DSS worker Kate Brown testified on behalf of the plaintiff Monday that Child Protective Services workers used CVAs when they had a “stuck case.”

“When a case is hard and they don’t have enough evidence to go to court,” she said.

Workers told parents that “it was up to them if they sign it,” Brown said. But they were led to believe that “it was legally binding” and “they had to go to court to undo it.”

Typically, if a child is placed in a home that is not licensed for foster care, DSS is required to assess the health of that environment. Parents are also entitled to legal representation, as is the child through the guardian ad litem program. In CVA cases, the health assessments were not done, and legal representation was not provided, Brown testified. All social workers said Lindsay had at some point told them to use a form letter to orchestrate the CVAs.

Even though the legal process was not followed, all who worked for Cherokee County who testified Monday said they believed the child was better off in the new home than their previous circumstances.

Former DSS worker Courtney Myers testified for the plaintiffs that Brown, then named Johnson, had questioned the legality of the forms during a staff meeting. Myers said she distinctly remembers Palmer being there by the distinctive sound of her spoon tapping against the side of her yogurt container during the meeting.

Myers said she was involved in about five such CVAs. Policy in Cherokee County, and in many places around the country, leans in favor of returning the child to the biological parents, she

said. Barring that, social service workers aim to find a permanent home so the child is not bouncing from foster home to foster home. At some point, CVAs became common practice around the office.

"I had parents tell me they weren't willing to stop drugs – not able to, didn't want to or wanted to give their child to grandma or grandpa," Myers said. "After my first (CVA), it became another option for getting stuck cases closed. If (parents) weren't willing to work on their case plan, we had to find the kids some permanency."

At one point, Myers said she asked Lindsay about the legality of the document because a father of one child could not be located initially.

"When we located him, he was arrested in Georgia," Myers testified. She then asked Lindsay if she should fax the CVA to that county jail. "Scott said whoever was the custodial parent (should sign). It was OK, that we didn't need to get that father's signature."

"Was there a custody order?" Jackson asked.

"No." Myers said.

"The CVA stripped him of any rights to his child?" Jackson said.

"Yes," Myers said.

What to expect next

For the remainder of the week, witnesses are expected to include social workers, a school principal and expert witnesses. Lawyers for Hogan began presenting witness testimony on Monday and are expected to continue at least through Tuesday. Once they are done, the defense lawyers will have an opportunity to present their witnesses. After both sides present their evidence and make closing arguments,

jurors will decide the outcome.

The trial has broader implications.

Additional families affected by the CVAs may pursue similar lawsuits. The outcome could also point to problems with child custody policies in Cherokee County and other counties, as well as with the state's ability to hold them accountable.

In addition, several of those named in the lawsuit in the federal civil case already face state criminal charges over the same issues.

Palmer, Lindsay and a former social worker supervisor, David Hughes, were indicted by a Cherokee County grand jury last year on more than three dozen felony and misdemeanor charges related to the CVAs, involving more than two dozen children.

That matter has not yet been scheduled for trial, but an attorney from the law firm that represents Palmer in the criminal matter was also present in the courtroom Monday.

Family separated by DSS offers emotional testimony in 2nd day of federal civil trial

State judge testifies in federal trial that the unlawful agreements Cherokee County used to take children away from families were 'shocking.'

By Kate Martin May 12, 2021

ASHEVILLE – Tuesday saw an emotional second day of testimony from witnesses for the plaintiff during a federal civil trial in Asheville, where a father is suing the Cherokee County Department of Social Services for taking his daughter away without judicial oversight.

At issue is Cherokee County's use of a document called a Custody and Visitation Agreement, or CVA. Social workers testified that they told parents the CVAs had the force of law

that only a judge could undo. However, a judge later tossed the agreement, returning Hogan's daughter to him. Another judge voided all other CVAs three months later, returning children to their families because CVAs are not lawful in North Carolina.

Nearly every Cherokee County DSS worker who has so far testified said they used CVAs to close "stuck cases" – child welfare cases that had stalled, or that the department otherwise would not win outright in an official court hearing. When asked by defense attorneys whether they did it in the best interests of the child, all said yes.

The number of CVA cases escalated in 2016, a former social work supervisor testified.

Daughter and father testify

One of the children named in a 2016 CVA took the stand on Tuesday. She was 10 when separated from her father, Brian Hogan. Now 14 years old, the girl said she loved her parents and would have preferred to remain with them. Hogan described himself as a hard worker who loved his daughter. Carolina Public Press is not naming her because she is a minor.

A social worker presented Hogan with a CVA document in November 2016, and he signed it. Social workers told Hogan – who is unable to write, cannot read complex words or cursive writing, and took special-education classes through ninth grade before dropping out – that his father, Warren Hogan, had permanent custody of his daughter until she turned 18.

Brian Hogan talked of his upbringing with his father, whom he described as an abusive alcoholic. Hogan said he helped his father grow fields of marijuana from the time he was 7 years old. Hogan said he moved out when he was 16 years old and found jobs to support himself.

He married Amanda Edmondson in 2005, and his daughter was born

the next year. Hogan described the girl's birth as "the happiest day of my life."

He said he played with her, took her to the park and enjoyed spending time with her. In 2015, when his daughter was 9, his wife had a massive heart attack. Hogan said he could choose to send his wife to the local hospital in Murphy or to Mission Hospital in Asheville. He said he chose Asheville because he heard it was the better hospital, he testified Tuesday. There the doctor said, "She's dying. We can't save her."

Hogan said he decided to temporarily leave his daughter in the care of neighbors and went to Asheville to spend time with Edmondson. At first, Hogan said the prognosis was dire.

"The doctor said she wasn't going to make it through the night," Hogan said. Three children came – two of Edmondson's children from a previous relationship as well as their daughter – to see their mother on what Hogan thought was her deathbed.

Hogan described a night of prayer and a vigil in her hospital room during which he could not sleep.

"I prayed and prayed," Hogan said. "And God saved her. God gave her back to me."

During his weekslong stay in Asheville with his wife, his daughter stayed with neighbors. Earlier in the day, the girl testified that she enjoyed the stay because she was also in the home of her best friend.

"It was fun, because we did kid things," the girl testified Tuesday. She said they went to the park but mostly played video games.

During Monday's testimony, social workers said school officials had complained that she smelled like cat urine when she arrived at school, giving Cherokee County DSS the basis

for its investigation into Hogan's household.

She was at that point taken from school to the DSS office in Murphy, where her grandfather, Warren Hogan, took her in. At the time the arrangement was supposed to be temporary, and it was with Brian Hogan's consent.

When asked why he left her with his father, Brian Hogan said he had no one else to ask for help.

A document he didn't understand

After a few months passed, a Cherokee County DSS worker asked Brian Hogan to sign the CVA.

Two social workers testified earlier in the trial that the document was intentionally formatted like a legal custody agreement. Hogan, who could not read well, did not have legal representation when he signed the document in November 2016. Neither did his daughter.

All children in DSS court actions are represented by a lawyer with the guardian ad litem program. Parents who cannot afford an attorney are also appointed one.

When asked whether DSS workers had ever checked on her when she lived with her grandfather, she said, "They didn't."

Although she "liked living there in the beginning," she said her grandfather "was short-tempered about everything. If I did anything wrong, I'd go to school crying basically every day."

The girl, then 10, said she had to wear long-sleeved shirts and jeans every day to school because he did not allow her to shave, not even her underarms.

Her mother had not yet discussed periods with her, and when she menstruated for the first time while living with her grandfather, "I thought I was dying."

"Did you talk to anyone about it?" Hogan's attorney Melissa Jackson asked.

"No," the girl said. "I was too scared."

She testified that her father and mother dropped off presents for her on birthdays and holidays. She said Brian Hogan called her every day after school was out and asked to talk to her.

"Did you get to talk to your dad?" Jackson asked.

"No, because (my grandfather) didn't like my parents," the girl said. "He would say they were terrible people. He said if they wanted you, they would try harder."

On the occasions when she did get to see her parents, "they would cry a lot," she said.

State judge on witness stand

The girl's living situation changed on Dec. 7, 2017, when District Court Judge Monica Leslie saw a CVA for the first time.

"It was shocking," she testified Tuesday.

Leslie testified Tuesday that she brought multiple lawyers into a jury room to talk about the document. Among them were Hogan's lawyer Jackson, the guardian ad litem Darryl Brown (who is also the Cherokee County attorney), then-DSS attorney for Cherokee County Scott Lindsay, and an attorney for DSS agencies in another county, David Moore.

"I asked (Lindsay) what are you going to do about this," Leslie testified. He said he did not know about this CVA until Ms. Jackson brought it to his attention.

Leslie testified that Lindsay told her he would instruct social workers to no longer use the document.

"I asked how many more he knew about," Leslie testified. "He

said he had received at least 20 via email. I said, 'Where are these being kept at DSS? Are they in the files?' He hemmed and hawed, and never answered that question."

"I asked what statutory or legal authority did you have to write something called a CVA?" Leslie testified. "He said, 'None.'"

After that hearing in 2017, Leslie told the court Tuesday, she immediately called Wayne Black, then the state Department of Health and Human Services Division of Social Services director. Later the same day, a DHHS worker emailed then-Cherokee County DSS Director Cindy Palmer to inquire about the department's use of the document – an event that snowballed into a temporary state takeover of the county's Child Protective Services division, the first in state history.

The hearing with Leslie affirmed the CVA was not enforceable, and Hogan had legal custody of his daughter all along. Despite being deprived of physical custody, DSS did not follow any legal procedure to grant permanent custody to Warren Hogan, she told the court Tuesday.

Trauma of being moved around

The girl testified that she was nervous to move back in with her parents, "but I was happy." She said she loved her parents and, if given the choice, would want to live with them.

When Jackson asked the girl whether she ever saw her parents doing drugs, as DSS workers have alleged, the girl said no.

When the girl returned to Brian Hogan's custody, she said she struggled, both mentally and at school. She started cutting herself.

"That's because I thought they wouldn't pay attention to me like they didn't at my grandpa's house," said the girl.

Hogan described moving from one low-paying job to another to

support his wife and daughter. His tax returns show \$17,000 to \$18,000 per year for the last two years, his attorneys said. Hogan said he is good with mechanical things. He never had formal training. He called it "common sense."

Jesse Raley, called as an expert witness in forensic psychiatry, said he interviewed the girl for around 2 1/2 hours last year. She arrived at that interview dressed all in black, stone-faced and "very guarded," Raley testified.

Even though she was initially guarded, as he interviewed her, he saw that she warmed up. He talked with her about a favorite hobby, and she talked with him about what it was like moving to live with her grandfather and then back with her parents.

"She had a very difficult time with that move," Raley testified Tuesday. "Not because she didn't want to live with her grandpa or mom and dad. She perceived it was her fault and hurting the adults in her life."

The girl told him she felt unstable, Raley testified.

"'Why care about anyone because I was going to get moved again?'" he testified that she told him. "'Why get connected emotionally because it could all go away?'"

His testimony described a girl who was now deeply anxious, and he said she could benefit from therapy and other services.

Did DHHS know?

Two former social workers also gave conflicting accounts on whether DHHS – which oversees all DSS organizations statewide – knew or should have known about CVAs far sooner.

DHHS was supposed to perform annual audits, said former DSS social worker Courtney Myers. During the audits, DHHS is supposed to review a random selection of case files.

"You were aware that some of the files contained CVAs?" asked

Sean Perrin, an attorney representing Cherokee County and its insurance company.

"Yes," Myers said.

"DHHS never complained to the Cherokee County Department of Social Services about the use of the CVAs?" Perin asked.

"Right," Myers testified.

Former social work supervisor David Hughes took the stand as well. If DHHS ever pulled a file with a CVA within it, he wasn't told, Hughes testified.

Saving time and money

Hughes started working at Cherokee County DSS in 2011 as a social worker and became a supervisor in 2016. By then, cases were taking too long to get through the system, he testified Tuesday.

"They were telling us we needed to get our cases turned over more quickly," Hughes testified.

Often Cherokee DSS did not have enough child welfare social workers. In an 18-month period, eight social workers left. The pay was low, neighboring counties paid more for the same work, and the work was emotionally draining, he said.

The county was also concerned about the cost of the cases, he said.

"It was expensive to provide services," Moore testified. "If you don't provide services and go to the CVA, right, it's more expensive."

He testified these discussions happened after Cherokee County DSS lost three cases in one day. "Two were basically thrown out."

Social workers were told how to record their time under

specific billing codes, which referenced whether Cherokee County, the state or the federal government would pay. Payments to those entities were determined by a three-digit number.

“We were told what numbers we should be using, either by the (Cherokee County DSS) director or business officer,” Hughes testified. “‘We are out of this pot of money. You need to switch this code.’”

Palmer was suspended as director in early 2018 and resigned from her position six months after the CVAs were discovered, but she accepted being rehired as the DSS business officer the same day. She continues to work for Cherokee County DSS in that role.

A previous CPP investigation showed that Cherokee County DSS overbilled the federal government by nearly \$250,000 over four years.

Brian Hogan’s testimony began Tuesday and will continue Wednesday morning when court reconvenes. Lawyers for both sides said they may complete their cases by end of day Wednesday or the start of Thursday. An eight-member jury will decide the outcome of the lawsuit.

Palmer, Lindsay and Hughes are under state indictment for their roles in using the CVAs. Dates for their trials have not yet been set.

Trial testimony focuses on whether father understood document DSS told him to sign

Judge says former Cherokee County DSS Director Cindy Palmer has partial ‘qualified immunity’ from lawsuit.

By Kate Martin May 13, 2021

ASHEVILLE – As the federal civil trial over the Cherokee County Department of Social Services’ removal of Brian Hogan’s

daughter from her family continued Wednesday, the plaintiff's attorneys finished presenting its case, and the defense began calling witnesses, including a social worker who followed the case.

Former Cherokee County DSS social worker Laurel Smith testified that she went over a document called a Custody and Visitation Agreement, or CVA, with Hogan to explain what it meant. However, Hogan, who can't read, said she did not explain anything to him.

Wednesday marked a second day of testimony from Hogan, whose daughter was removed from his custody after social workers in Cherokee County used a CVA that two state judges later invalidated. Hogan is suing Cherokee County, former DSS Director Cindy Palmer and former DSS attorney Scott Lindsay.

Qualified immunity for Palmer

Palmer cannot be sued personally for negligence in her role during a time that her social workers executed dozens of the agreements that illegally removed children from their parents, Chief Judge Martin Reidinger ruled in North Carolina's Western District Court on Wednesday.

The judge ruled that because Palmer's actions were in the course of her job as a DSS official, she has "qualified immunity." The concept protects government workers from personal lawsuits while on duty. The other defendant being sued personally, Lindsay, will not receive qualified immunity, Reidinger said.

This ruling does not protect Palmer from potential personal liability on three other areas covered by the lawsuit, gross negligence, constitutional violations and obstruction of justice.

Cindy Palmer's husband, Derrick Palmer, who is also the elected Cherokee County sheriff, has sat in the back of the

courtroom each day of the trial. He said he was relieved that his wife has qualified immunity.

"This is why I won't run for sheriff again," said the sheriff, who is being sued by at least one person for over the questionable death of an inmate under his care. "After this, I'm very concerned about a lawsuit. The outcome of this trial is going to be detrimental to anyone in leadership positions."

Hogan's testimony

After Hogan's wife, Amanda Edmondson, had a heart attack and nearly died in April 2016, he went to Asheville to be with her at the hospital, he testified Tuesday. He left his then-9-year-old daughter in the custody of neighbors, whose child was also her best friend, the girl testified Tuesday. Carolina Public Press is not naming her because she is still a minor.

DSS workers called Hogan and told him his daughter had come to school in dirty clothes and smelling of cat urine, but he said he didn't believe it.

"I know my daughter better than that," Hogan testified Wednesday. "She took a shower every day. I know for a fact they had running water and hot water."

He said DSS workers called him three times, saying he had to do something. Eventually, Hogan decided to call his father, Warren Hogan. Brian Hogan did not want to place his daughter with his father, but the younger Hogan testified that he felt he had no other choice.

"He said, 'What is it?' I said, 'Amanda is in the hospital,'" Hogan testified. He said his father knew and called her a "druggie."

"I asked him to keep my daughter," Hogan testified. "He told me I was a worthless father, and I shouldn't have had kids."

In May 2016, Hogan signed a document placing the girl in

kinship care, a temporary placement with a relative, and she went with her grandfather.

'I didn't have no choice'

"I didn't have no choice," Brian Hogan testified Wednesday. "They kept telling me if I didn't, they would give her to the state."

During cross-examination, Sean Perrin, the attorney for Cherokee County, asked Hogan whether he signed the kinship care form voluntarily.

"For my father?" Hogan asked, to which Perrin said yes.

"Yes, I did," Hogan testified. "I didn't have no choice. They kept telling me if I didn't, they would give her to the state."

Perrin tried to ask another question, and Hogan sobbed. "Can I have just a minute?"

After Hogan took a few deep breaths and composed himself, Perrin's questions continued.

"You signed a safety assessment the same day as the kinship (agreement)," Perrin said.

"I didn't know what those papers was," Hogan said.

"You were never threatened," Perrin said.

"They were going to give her to the state," Hogan replied.

"You know that can't happen," Perrin said.

"It can happen," Hogan testified.

By July 1, 2016, Hogan returned to Cherokee County but had already lost his house and everything in it, he testified. He next lived in an apartment that he rented, but it wasn't yet a

good home for his daughter. Hogan said he tried to find a job and tried to get enough money to pay utility bills and get furniture.

Did Hogan know what he was signing?

Former social worker Smith testified for the defense Wednesday that she followed the Hogan case that eventually resulted in him signing a CVA. She objected to his daughter being alone with her mother because of a court order granting custody to Hogan. Smith said she believed the order required drug screening of the mother as a condition of unsupervised visits – an incorrect belief, later testimony showed.

Perrin asked Smith why reunification was not possible for Hogan and his daughter. Smith said Hogan was unwilling to do what DSS asked of him.

“He did not want to stop seeing Amanda or worry about Amanda not being able to test negative for drugs,” Smith said. “He thought he could go and see her (his daughter) and still live with Amanda.”

Throughout the early fall of 2016, Smith contacted Hogan several times to convince him to sign the CVA, she said. She testified that he was interested when she talked to him about a CVA and that she explained the document to him on more than one occasion. (Editor’s Note: Remember that these CVA’s were later ruled to be illegal and unenforceable by two state judges.)

“I read it with him, I explained everything on it,” Smith testified when Perrin asked her about her process.

“Did Brian have any questions?” Perrin asked.

“Not that I recall,” Smith testified.

However, during his testimony earlier, Hogan said he resisted. In previous DSS interactions, Hogan signed paperwork but

didn't know what the documents said – he is illiterate.

"Did they read them to you?" plaintiff's attorney Ronald Moore asked.

"No, they said I had to sign them," Hogan said. "They said it was in the best interest of (my daughter). They told me if you don't sign it, we are going to give her to the state and you're not going to get her back."

"What does 'give her to the state' mean?" Moore asked.

"They were going to get her to somebody else, and I would never be able to see her again," Hogan said. He then reached for a tissue and covered his face on the witness stand as he tried to compose himself.

In fall 2016, Hogan eventually relented and agreed to come in to sign the CVA. He testified that he got a ride to the DSS office from his father. When they arrived, the pair went upstairs, and Brian Hogan said DSS workers told him to sign the CVA.

"They never explained it to me," Hogan testified. "Never read it to me. I thought it was going to be temporary."

The document says Warren Hogan had custody of the girl until she turned 18 years old. Hogan said he never would have signed if he knew that was what it said.

Plaintiff attorney Melissa Jackson cross-examined Smith, the social worker, asking whether she read the CVA to Hogan before he signed it.

Smith said she did. Then she said, "I can't recall. I'm trying to remember."

Jackson asked Smith to read testimony she gave in 2018 to refresh her memory.

"Are you 100% sure that you read that CVA to Brian Hogan?" Jackson asked.

"We read over the CVAs if they say they don't understand it," Smith said. She later said she was unaware Hogan had a learning disability.

Jackson asked whether a criminal history was ever run on Warren Hogan, a typical step social workers take before placing a child in a home that is not registered for foster care. Smith said, "I was never told that was a concern. No."

"When Mr. Hogan signed the CVA, did you tell him he had a right to an attorney?" Jackson said.

"I did not know I was supposed to," Smith said.

"Throughout this process, did you offer services?" Jackson asked.

"We couldn't," Smith testified. "The cases were always closed. No services were ever provided to a child after a case was closed."

"Do you feel you were properly trained?" Jackson asked.

"Honestly, no," Smith said. When asked, she added that both Palmer and Lindsay were present at staff meetings during which CVAs were discussed.

"Did you understand the CVA?" Jackson asked.

"I understand what we were told," Smith testified.

Jackson then directed Smith to read District Court Judge Tessa Sellers' order from early 2016, prior to the CVA, granting custody of Hogan's daughter to him.

"Amanda Edmondson (the girl's mother) must provide satisfactory proof that she is not on substances; it also says the visitations have to be supervised," Smith said.

"Nowhere does it say she has to provide a drug screen," Jackson said, adding that what Smith did was in direct violation of a judge's order.

"I didn't know it was in direct violation of anything," Smith testified.

Defense attorneys for Cherokee County, former director Palmer and former DSS attorney Lindsay have asserted throughout the trial that Hogan and other parents voluntarily signed the forms.

"What was in the best interest of (the girl) right then?" Moore asked Hogan. "What choices did you have? What was the other option?"

"Give her up to the state," Hogan said as he tried to hold back sobs. "I wanted my baby back."

While Hogan said he was overjoyed to be reunited with his daughter, in the months that followed he said he feels guilty for what happened. Hogan also spoke with a forensic psychiatrist, Dr. Matthew Gaskins.

Gaskins said he evaluated records from when Hogan was in school, including two IQ tests. These assessments measure the ability of someone to learn or figure things out, not what they have memorized or already know, Gaskins said Wednesday.

Hogan's IQ test showed a score of 83 – a level Gaskins said is considered below-average intelligence.

"He blamed himself," Gaskins said. "If he was smarter, he would've been able to stop it."

Ultimately, Gaskins testified, "He did not fully understand the document he was asked to sign."

Taking the Fifth in a civil trial

Rather than call Palmer and Lindsay to the stand, the court

(the Judge) elected to allow lawyers to read questions from sections of earlier court testimony and depositions into the record while June Ray, a former Haywood County clerk of court who served as witness coordinator for the defense, read the responses.

During depositions recorded last year, both Lindsay and Palmer repeatedly refused to answer questions, exercising their Fifth Amendment right to avoid incriminating themselves.

Judge Reidinger explained to the jury that when people who elect to exercise their Fifth Amendment right in a criminal trial, it cannot be held against them, but that is not so for civil trials like this one.

The jurors can, if they choose to, draw a negative conclusion against those who plead the Fifth, Reidinger said.

Witness describes change in girl

When Hogan's daughter was finally returned to him, her manner and dress changed, said Amelia Brickey, her Girls in Action leader at Peachtree Memorial Baptist Church, who testified for the defense.

"She was a sweet child," Brickey testified. "I always enjoyed her. And when the girl moved in with Warren Hogan, she changed for the better. "She really dressed up. She started participating more. You'd see a joy. It's like a light went on."

After the girl moved back in with her parents, she stopped wearing the pretty dresses, Brickey said.

"She came in with all colors of different hair, and her dress changed," Brickey said. "It's like the light went out of her eyes. The hope, the light that was there when she was with Warren, it just went out."

Instead of pretty dresses, the girl wore shorts or sweatpants

instead.

Moore, one of Hogan's attorneys, told Brickey that Warren Hogan made the girl wear dresses.

"All I know is she was beautiful and appeared happy," Brickey said.

The defense is expected to complete presentation of its case Thursday morning, after which the two sides will present closing arguments and the case will go to the eight-member jury.

Clarification: Former Cherokee County Department of Social Services Director Cindy Palmer has qualified immunity from personal liability related to allegations of negligence in the performance of her work, but not from other allegations in the lawsuit. Earlier versions of the article did not specify the limitations of this qualified immunity accurately.

Verdict: Federal jury awards millions to daughter, father separated by Cherokee County DSS

Jurors respond as closing arguments ask them to stand up for liberty of families against government elites who violate their rights.

By Kate Martin May 13, 2021

ASHEVILLE – After less than four hours of deliberation, jurors issued a unanimous verdict on 18 claims against Cherokee County, its former Department of Social Services (DSS) Director Cindy Palmer and former DSS Attorney Scott Lindsay in a federal civil trial that could send shockwaves around the state.

The jury issued a combined monetary award of \$4.6 million – \$1.5 million for Brian Hogan, and another \$3.1 million for his daughter.

At issue were illegal documents Cherokee County DSS used to separate Hogan from his then 10-year-old daughter. Hogan signed the document, called a Custody and Visitation Agreement, thinking that if he did not, the state would take his daughter away and he would never see her again.

Hogan, who is illiterate, testified Wednesday that he did not understand what he was signing, nobody explained it to him, and he would not have signed if he had understood that he was giving up custody of his daughter until she turned 18 years old.

Time and time again in 2016, DSS workers contacted him and tried to get him to sign the document, he testified. While the CVA is formatted like a custody agreement, it has no legal weight, state judges have previously ruled.

Jury charge sheet

Dozens of parents and children were separated using CVAs in recent years in Cherokee County. Many of those cases are also pending in federal court. The county used CVAs to separate families as far back as 2006.

The charge sheet sent to the eight-member jury asked whether the county had an official policy, practice or custom that caused violations of the rights of Hogan and his daughter, and whether the county failed to adequately train its employees regarding the rights of parents and children.

It also asked whether Palmer and Lindsay violated Hogan and his daughter's due-process rights, whether Palmer and Lindsay "acted in a grossly negligent manner" causing injury to Hogan and his daughter, and whether Palmer and Lindsay obstructed justice.

On only one claim, whether Palmer obstructed justice with respect to Brian Hogan, the jury voted no.

Attorneys for Hogan argued the county failed to train its employees properly, and that Lindsay had obstructed justice by creating a document that illegally circumvented the court process, which violated constitutional rights to due process by giving Hogan and his daughter no opportunity for legal representation.

"This case came about because of a tragedy, a tragedy of mismanagement, incompetence, and a – well, just honestly a desire to do things on the cheap," said plaintiff attorney Brandon Christian after the verdict. "And what I hope the legacy of this case is that people's constitutional rights are worth more than that."

Closing arguments

The U.S. Constitution was front and center during closing arguments. Christian said Hogan worked hard over long hours at hard low-paying jobs for most of his life, at times more than one, to provide for his family.

"The question is, was Brian Hogan and (his daughter's) constitutional rights under the Constitution – that protects each and every one of us – were they violated?" Christian said as some members from the jury nodded subtly.

He said the 14th Amendment to the Constitution guarantees parents a "fundamental liberty interest in the care, custody, management and companionship" of their children, and that right cannot be infringed without due process.

"Brian Hogan had a right to be (his daughter's) father," Christian said. "Brian Hogan had a right to be a parent to her. Both parents and children have a fundamental liberty interest in remaining a family without the interference of the state."

He then jabbed his index finger toward the defense lawyers sitting in a row in front of Lindsay and Palmer.

"That's the state, over there – that's the government," Christian said.

"The government that should be the government of 'by the people, for the people.' Instead they became the government of the elite. The government of 'I know better.' "

Social workers testified throughout the week that they used CVAs on advice from Lindsay, who initially distributed copies to DSS workers. At times there would be staff meetings to discuss cases, where Lindsay and at times Palmer were present as CVAs were discussed.

The social workers testified they used CVAs on "stuck cases," including instances when social workers could not convince a judge to issue an order to separate children from parents in circumstances where the social workers thought the child was unsafe.

Attorneys for the county, Lindsay and Palmer assured the jury throughout the trial that social workers had the best interests of the children in mind.

Lindsay's attorney Patrick Flanagan said Lindsay had obtained a copy of a CVA from a continuing education class lawyers take to maintain their credentials sometime before 2006.

Flanagan said Hogan signed the CVA voluntarily, a fact Hogan stridently denied Wednesday. Flanagan also tried to counter the plaintiff's narrative that the county was deliberately indifferent to the plight of parents whose rights were being violated.

"We know that's not true," Flanagan said during his closing argument, adding that social workers testified that they had the best interest of children in mind.

"Should we have used the CVAs?" the county's defense attorney Sean Perrin asked. "No. They were ineffective legal documents."

Perrin argued the CVAs were not in widespread use, as only 30 have so far been found out of the hundreds of DSS cases Cherokee County has every year. He added that DSS workers were trained by the state Department of Health and Human Services and disregarded some of that training when they elected to use CVAs.

"We solved the problem in a legally defective way," Perrin said in his closing remarks. "There was a big problem. We tried our best and did it wrong, but we tried our best to help (Hogan's daughter)."

Hogan attorney Melissa Jackson stood before the jury, a scowl on her face. It was Jackson who Hogan first told about the CVA when approached her in the grocery store more than three years ago and asked her to help return his daughter to his custody. She represented him for free in a 2017 hearing that exposed Cherokee County's scheme and reunited Hogan's family.

"The fun thing about the Constitution is it doesn't just apply to you or me or all these fancy people in suits," she said as she swept an arm toward the defense table. "It applies to everyone. It applies to the people suffering from addiction. Their arguments are almost insulting."

She said the arguments from the defense were "flashing lights" trying to distract the jury from the real issue at hand.

"Cherokee County was not doing what was in the best interest of the children," Jackson said, now shouting in the courtroom. "They were doing what was in the best interest for them. An easy, cheap, quicker way."

"They aren't dealing with people who are doing wonderful," Jackson said. "They are not dealing with people who have money and cars. These people are at the worst point in their lives."

Jackson, quoting one of the defense attorneys, said they had to use CVAs because there were no other options.

“There were plenty of other options, they just chose not to use them,” Jackson said.

She paused and then turned to the jury. The entire week nobody had addressed the elephant in the room, that at the end of this trial the jury would have to consider a dollar amount if the county, Lindsay or Palmer were found liable.

But Jackson had done some math. She said if the defense’s expert witness’ time was worth \$300 per hour, so was Hogan’s pain and suffering. So was his daughter’s pain and suffering. So should the defense pay for their wrongs. She suggested an award of nearly \$3.4 million.

Jury decides

The jury asked only a few questions during deliberations. They wanted to see the job description for a DSS director. They also inquired about whether the lawyers or expert witnesses would receive part of any verdict.

They asked how much would be given each to Hogan and his daughter, and whether they could reserve money for the girl’s college education.

Counsel for both sides looked at each other. As the jury remained out of the courtroom, Christian told the court that typically funds awarded to a minor are put in trust until she comes of age.

Chief Judge Martin Reidinger called the jury in, and told them they had to follow his instructions, if they were to award an amount, it should be sufficient to compensate each of the plaintiffs for the damages that had been caused. The jury returned to deliberate some more, and a half hour later they were ready to deliver their justice.

The jury filed into the courtroom for the last time, wearing the clothes of working people – cargo shorts, jeans, T-shirts,

flowery flowing dresses – a stark contrast to the pressed suits of the lawyers. The courtroom fell silent with anticipation.

Members of the jury sat stone-faced as Reidinger read the verdict and the award in the civil trial.

Reaction to verdict

A sigh came from Palmer's husband, Sheriff Derrick Palmer. He and his wife declined to speak after the verdict, as did Lindsay and the rest of the attorneys for the defense.

As lawyers packed up, Hogan stood off to the side by himself.

"I don't know what to say, I'm speechless," Hogan said in a hoarse voice. After he took a moment to collect his thoughts, he added, "I hope no other family goes through what my family went through, me and my daughter."

Outside the courthouse on Otis Street, Hogan joined his legal team for a celebratory photo.

"If there's any positive to come out of this, it's that maybe we will see... systemic reform that says, when social services are taking action involving people's lives, that we actually support that mission and do the job as it's meant to be and consistent with the U.S. Constitution," Christian said.

KATE MARTIN

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Editor's Note IV:

Defense Attorney Sean Perrin worked for the Cleveland County Department of Social Services in their losing battle in Rev. Dante Murphy's first Federal lawsuit against CCDSS.

Defense Attorney Patrick Flanagan is presently representing the City of Shelby in a Federal Lawsuit for job-place discrimination brought by Shelby Gas Department employee Nivilla Campbell.

You have to wonder why the Commissioners, the School Board, the City of Shelby and the Cleveland Community College Board of Trustees don't just abide by the laws Of North Carolina and the US Constitution in order to avoid Federal and State lawsuits. That is what you and I have to do.