

**OKLAHOMA COMMISSION ON CHILDREN AND YOUTH
OFFICE OF JUVENILE SYSTEM OVERSIGHT**

Report Release Date: December 6, 2010

**Review of the Death of Kyra Zubah
of Oklahoma and Okmulgee Counties, Oklahoma**

Dates and Outcome of Investigations and Actions Taken by the Oklahoma Department of Human Services (OKDHS); Actions Taken by the District Attorney; and Dates and Summary of Judicial Proceedings and Rulings of the Court

General Information

On July 30, 2010, the Office of Juvenile System Oversight (OJSO) received a request for a public report regarding the death of three-year-old Kyra Zubah. Kyra was unresponsive when she was taken to the hospital by her tribal foster mother. The child had suffered severe head trauma. A Criminal Felony First Degree Manslaughter charge was filed in Okmulgee County District Court on July 28, 2010, against the tribal foster mother, Sharon Lee Whitecloud.

Authorization

Title 10A, Section 1-6-105, B, D and E, of the Oklahoma Statutes, states:

B. When a person responsible for a child has been charged by information or indictment with committing a crime resulting in the death or near death of the child, there shall be a presumption that the best interest of the public is served by public disclosure of certain information concerning:

1. The circumstances of the investigation of the death or near death of the child; and
2. Any other investigations concerning that child, or other children while living in the same household, within:
 - a. three (3) years of the death or near-death, and
 - b. one (1) year after the death or near-death.

D. 1. At any time subsequent to seven (7) days after the date the person responsible for the child has been criminally charged, the Oklahoma Commission on Children and Youth shall, upon request, release certain information to the public within sixty (60) days of the request as follows:

a. a confirmation shall be provided by the Commission as to whether a report of suspected child abuse or neglect has been made concerning the alleged victim or other children while living in the same household and whether an investigation has begun,

b. confirmation shall be provided by the Commission as to whether previous reports of suspected child abuse or neglect have been made and the dates thereof, a summary of those previous reports, the dates and outcome of any investigations or actions taken by the Department [OKDHS] and the Commission in response to any previous report of child abuse or neglect, and the specific recommendation made to the district attorney and any subsequent action taken by the district attorney,

c. the dates of any judicial proceedings prior to the death or near death of the child,

d. recommendations submitted by the Department [OKDHS] and the Commission shall be provided in writing including recommendations made at the hearing as they relate to custody or placement of a child, and

e. the rulings of the court.

2. Specific recommendations made by the Commission described in any progress reports of a pending case submitted to the court may be disclosed by the Commission.

E. Any disclosure of information pursuant to this section shall not identify or provide an identifying description of any complainant or reporter of child abuse or neglect, and shall not identify the name of the child victim's siblings or other children living in the same household, the parent or other person responsible for the child, or any other member of the household, other than the person criminally charged.

Identifiers:

Child's Name: Kyra Zubah
Date of Birth: July 9, 2006
Date of Death: November 10, 2009

Alleged Perpetrator: Sharon Lee Whitecloud, tribal foster mother

The Oklahoma Commission on Children and Youth (OCCY) did not become aware of this case until after the death of Kyra Zubah.

The OCCY reviewed the OKDHS and the deprived court actions regarding Kyra Zubah that occurred prior to her death. The OKDHS documented six referrals alleging abuse/neglect of Kyra within the past three years.

Case History

Kyra Zubah had been placed in a non-tribal OKDHS foster home.

Court Hearing (January 18, 2007), Oklahoma County

The Oklahoma County court approved for Kyra to remain in OKDHS custody. The court made a finding that the Indian Child Welfare Act (ICWA) did apply to the case regarding Kyra.

Adjudication Hearing (February 15, 2007), Oklahoma County

The court continued OKDHS custody of Kyra and followed the recommendation of OKDHS to leave her in current placement. A dispositional hearing was set for March 29, 2007, and another pre-trial hearing was set for April 19, 2007.

Dispositional Hearing (April 19, 2007), Oklahoma County

A dispositional hearing was held where OKDHS recommended the child remain in OKDHS custody and her current placement.

Appointment of Court Appointed Special Advocate (April 25, 2007), Oklahoma County

The Oklahoma County judge appointed a Court Appointed Special Advocate (CASA) on April 25, 2007, for Kyra.

Notice of Child's Removal from the Current Non-Tribal Placement (June 15, 2007)

The OKDHS gave notice to the OKDHS foster mother that Kyra would be removed within five days.

Dispositional Hearing (July 26, 2007), Oklahoma County

On July 26, 2007, a dispositional hearing regarding the biological father was held and a permanency review hearing was held regarding the biological mother. The court found reasonable efforts had been made to finalize the permanency plan and to place the child in a timely manner. The Muscogee (Creek) Nation respectfully requested that Kyra be moved to a tribal home. The court ordered that Kyra remain in the OKDHS foster home.

Permanency Court Review Hearing (August 23, 2007), Oklahoma County

On August 23, 2007, the Muscogee (Creek) Nation requested a continuance of the court hearing over the objection of Kyra's attorney and the district attorney's office. The court ordered Kyra to remain in the OKDHS foster home.

Permanency Court Review Hearing (October 22, 2007), Oklahoma County

On October 22, 2007, a permanency review hearing was held. The court ordered that Kyra was to remain in the OKDHS foster home. Based on progress made on the treatment plan, reunification of Kyra with her biological parents remained the goal.

Permanency Court Review Hearing (January 14, 2008), Oklahoma County

On January 14, 2008, a permanency review hearing was held. The court determined it was in the best interest of Kyra that she remain in the current OKDHS foster home.

Permanency Court Review Hearing (January 24, 2008), Oklahoma County

On January 24, 2008, a permanency review hearing was held. The court determined it was in the best interest of Kyra that she remain in the current OKDHS foster home.

Court Hearing (January 12, 2009), Oklahoma County

The court ordered a service counselor to be present at the next court hearing scheduled for February 19, 2009. The court found that the best interest of Kyra would be to remain in her current OKDHS foster home.

Change in Kyra's Legal Custody and Court Jurisdiction (February 19, 2009), Oklahoma County

Kyra was removed from the custody of the OKDHS due to the Muscogee (Creek) Nation taking court jurisdiction and legal custody of Kyra on this date.

Permanency Review (April 7, 2009), Muscogee (Creek) Nation Tribal Court

The Muscogee (Creek) Nation Tribal Court determined the out-of-home placement continued to be safe and appropriate and in the best interest of Kyra.

Birth of Sibling 1 (April 13, 2009)

Kyra's sibling (Sibling 1) was born on April 13, 2009. Oklahoma County DHS placed the newborn in the foster home with Kyra on April 15, 2009.

Placement of Sibling 1 (July 7, 2009)

Sibling 1 was placed by OKDHS into the Sharon Whitecloud tribal foster home in Okmulgee County on July 7, 2009.

Placement of Kyra (July 14, 2009)

Kyra was placed by the Muscogee (Creek) Nation into the Sharon Whitecloud tribal foster home in Okmulgee County on July 14, 2009.

Report to the OKDHS Alleging Abuse/Neglect (July 23, 2009)

On July 23, 2009, the OKDHS received a report alleging abuse/neglect of Kyra. Reportedly, tribal foster mother Sharon Whitecloud had taken Kyra to a local emergency room due to the child complaining that her leg hurt. The child had sustained a spiral fracture to her left tibia.

According to Ms. Whitecloud, Kyra received the spiral fracture during a visit with her biological parent. The OKDHS worker contacted the Muscogee (Creek) Nation case worker who verified that Kyra received the injury during a visit with her biological parent. The Muscogee (Creek) Nation worker stated that the tribal child welfare unit was investigating the incident.

The OKDHS screened out the report documenting, "Child is and has been in tribal custody for some time. Tribal court has jurisdiction over the child."

Report to the OKDHS Alleging Abuse/Neglect (November 7, 2009)

On November 7, 2009, the OKDHS received a report alleging possible physical abuse of three-year-old Kyra. Reportedly, Ms. Whitecloud took the child to a hospital after finding the child unresponsive that morning. Ms. Whitecloud and Kyra were transported to the hospital by a relative of Ms. Whitecloud's, who left the hospital shortly after transporting them. Kyra had a brain bleed and was put on a ventilator. Reportedly, there was an hour and one-half delay before the child was taken to the emergency room.

She was observed to have multiple bruises in various stages of healing. Reportedly, there were other young children living in the Whitecloud foster home.

The OKDHS accepted the report as a Priority I Investigation on November 7, 2009. The OKDHS initiated its investigation and made its investigative contacts on November 7, 2009. At the time of the incident, Ms. Whitecloud had four foster children living in her home. A nine-year-old relative of Ms. Whitecloud's also lived in the home.

The OKDHS made a finding of Substantiated-Court Intervention Requested.

A safety assessment was conducted by the OKDHS of the remaining children of Whitecloud foster home. The OKDHS recommended protective custody and removed the remaining children from the Whitecloud foster home.

Placement of Sibling 1 (November 7, 2009)

The OKDHS documented that Sibling 1 was placed in another tribal approved foster home.

Report to the OKDHS Alleging Abuse/Neglect (November 7, 2009)

On November 7, 2009, the OKDHS received a second report alleging abuse/neglect of Kyra. Reportedly, three-year-old Kyra was found unresponsive by Sharon Whitecloud. The child was flown from a local hospital to a metropolitan hospital. It was reported that a five-year-old child and a seven-year-old child lived in the home and that possibly more children lived there. Reportedly, an hour had lapsed before Kyra was taken to the hospital. Reportedly, the case appeared suspicious for abuse.

The OKDHS accepted the report as a Priority I investigation on November 7, 2009. The OKDHS documented that at the time of the incident, four foster children were living in the Whitecloud home. The ages of these four foster children were five years, three years, two years, and seven months. A nine-year-old relative of Ms. Whitecloud's also lived in the home. Reportedly, this relative was under Ms. Whitecloud's guardianship through the tribal court.

The OKDHS documented that the children were left unattended for several hours. The OKDHS made a confirmed finding of Lack of Supervision and Threat of Harm.

Report to the OKDHS Alleging Abuse/Neglect (November 10, 2009)

On November 10, 2009, the OKDHS received a report alleging abuse/neglect of Kyra. Reportedly, there was a concern for three-year-old Kyra and Sibling 1. The children were currently in tribal custody through Muscogee (Creek) Nation. The children were removed from a home and placed into a tribal home in July or August 2009, where Kyra suffered life-threatening injuries and later died. The reporter also questioned Kyra's previous broken leg as accidental.

The OKDHS screened out the report, documenting that it was a duplicate referral.

Child Death (November 10, 2009)

Kyra Zubah died on November 10, 2009, due to the injuries she sustained from alleged child abuse by Sharon Whitecloud.

Tribal Foster Home Closure (November 12, 2009)

The OKDHS documented that the Whitecloud tribal foster home closed on November 12, 2009, due to confirmed abuse allegations.

Report of Autopsy (March 24, 2010)

On March 24, 2010, the State Medical Examiner's office made a finding of Probable Cause of Death as Blunt Head Trauma. The manner of death was classified as a homicide. The report by the Medical Examiner's office stated:

This 3 year old female (DOB: 07/09/2006) was reportedly found unresponsive by a caretaker and later died at [a metropolitan hospital] on 11/10/2009. Circumstances explaining the death are unclear, however according to reports on the evening prior to admission to the hospital, the decedent was “rough housing” with siblings but was acting appropriately. Reportedly, later that evening a caretaker witnessed the decedent accidentally fall backwards striking her head on a table. In the morning, the caretaker found the child minimally responsive and medical attention was sought.

Medical Examiner Opinion

With the information currently available, the death of this child was due to blunt head trauma. There was evidence of impact to the back of the head producing multiple abrasions and contusions of the scalp. This was associated with subdural and subarachnoid hemorrhage and massive cerebral edema. Scattered abrasions and contusions were noted of the face, chest, back, arms and right leg. The findings are not consistent with the reported accidental circumstances explaining the severe head injuries that resulted in the death; the manner of death is classified as a homicide.

Muscogee (Creek) Nation Tribal Court Finding/Order (May 11, 2010), Muscogee (Creek) Nation Tribal

The OKDHS caseworker testified that the biological parents had completed their treatment plans and that unsupervised visits with sibling 1 had gone well. The OKDHS recommended weekend visitation to prepare the parents for reunification with Sibling 1.

Criminal Felony Manslaughter Charge (July 28, 2010)

On July 28, 2010, a First Degree Felony Manslaughter charge was filed against Sharon Lee Whitecloud in Okmulgee County District Court.