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## Mother Sues Rockingham DSS Over Child's Death

WENTWORTH A mother who was imprisoned when her son died while in the care of others has sued Rockingham County and its Department of Social Services.

Jamie Escobedo, mother of 4-year-old Zachary Lyons, alleges in the lawsuit that social workers were negligent in monitoring the boy's care. Ultimately, their negligence caused his death on Oct. 8, 1996, the lawsuit says.

"It should have never happened," said John McCabe, a lawyer for Escobedo.

Zachary died after he was transferred from Morehead Memorial Hospital in Eden to Wake Forest University Baptist Medical Center in Winston-Salem. He had bruises all over his body, and according to an autopsy report, died from a severe blow to his head.

At the time, Escobedo was in prison, serving a 10-month sentence for shoplifting and violating her probation for previous convictions. Zachary and his twin sister, Heather, and two of their other sisters were living with their aunt, Nannie Gail Brown, and her boyfriend, Brian Anthony Cain.

Investigators testified in court proceedings that Zachary's death came after a days-long punishment in which he was placed in a cold shower and was forced to stand in a corner. In statements in court, Cain admitted to pushing Zachary to the floor, where the boy struck his head and suffered the fatal blow.

In February, Brown and Cain were sentenced to prison for the boy's death. Brown, 34, who is Escobedo's sister, pleaded guilty to voluntary manslaughter and two counts of felony child abuse. She served an 18-month sentence, and left the state's supervision in October, according to the Department of Correction.

Cain, 29, pleaded guilty to second-degree murder. Felony child abuse charges were dropped against him, and he will serve another 13 years and three months in prison.

According to the lawsuit, Rockingham County DSS was negligent by failing to respond to reports of abuse, failing to conduct a prompt and thorough investigation, and failing to follow standard procedures. The agency failed to "remove Zachary Lyons from a harmful, unsafe and abusive environment," according to the lawsuit.

Escobedo is seeking damages in excess of \$10,000. Those damages include recovering expenses for the care and treatment of her son, compensation for his fear and suffering, funeral expenses, and compensation for the his lifetime income and the loss of his companionship.

After the boy's death, the state Department of Social Services reviewed the way Rockingham County DSS handled the complaints of abuse, said Eugene Russell, Rockingham County's attorney.

In an internal review, state officials concluded that no "critical protection" areas were identified as needing improvement. According to a cover letter that

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### Most Important Opinions

#### 1. Criminal Practice – Abusive Boyfriend Convicted of Murder One

: The 4th Circuit affirms defendant's first-degree murder in the fatal shooting of his ex-girlfriend after a day of fishing and a fish fry on the reservation of the Eastern Band of Cherokee Indians; the trial court properly admitted evidence of defendant's prior violent acts and death threats against the victim, and

accompanied the review of the Rockingham County DSS procedures, "the agency took all of the required and appropriate measures."



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defendant "invited error" by refusing to allow a jury instruction on a lesser-included offense.

2. Administrative – Black Lung – Evidence – Disability – Rebuttal

*Mingo Logan Coal Co. v. Owens* An administrative law judge did not improperly limit a coal mining company's ability to rebut a presumption of black lung benefits for a claimant who had spent at least 15 years in an underground mine and had become totally disabled from breathing difficulties, and the 4th Circuit affirms the award of benefits.

3. Administrative – 'Market Rate' Debate in Black Lung Fee Award

*Eastern Associated Coal Corp. v. Director, OWCP* In this black lung benefits case, claimant's lawyers had sufficient market-based evidence to support their hourly rates of \$175 to \$300 and their quarter-hour billing did not lead to billing excessive hours, but the 4th Circuit said the record did not support some fees for legal assistants; the court affirms the award of over \$32,000.

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