

CAUSE NO. 20-DCV-270378

ODIE POINDEXTER, INDIVIDUALLY §
AND AS NEXT OF FRIEND OF THE §
MINOR, G.M., JR. §

VS. §

LITTLE CHILDREN'S LEARNING §
CENTER §

IN THE DISTRICT COURT OF
FT. BEND COUNTY, TEXAS

Fort Bend County - 458th Judicial District Court
_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT;

COMES NOW, ODIE POINDEXTER, Individually and As Next Friend of [REDACTED]
[REDACTED], a Minor, Plaintiffs herein, who hereby complain of LITTLE CHILDREN'S
LEARNING CENTER, and for this cause of action would respectfully show the Court as
follows:

I.

DISCOVERY CONTROL PLAN

Plaintiff's assert that discovery is to be conducted under Level Two (2), pursuant to Rules
190.1 and 190.3 of the Texas Rules of Civil Procedure.

II.

PARTIES AND SERVICE

Plaintiff, ODIE POINDEXTER (hereinafter, "MS. POINDEXTER"), INDIVIDUALLY
AND AS NEXT OF FRIEND OF THE MINOR Plaintiff [REDACTED] (hereinafter,
[REDACTED]). Plaintiff's reside at [REDACTED] (Ft. Bend
County).

Upon information and belief, Defendant, LITTLE CHILDREN’S LEARNING CENTER (HEREAFTER “DEFENDANT CENTER”) is a business, duly organized and lawfully doing business in the State of Texas. Defendant Center is a “licensed child-care center” (as that term is defined by 40 Texas Administrative Code. 746.101 et seq.) doing business in the State of Texas. Defendant may be served with process by and through its registered agent, CHRISHAWN SANFORD.

Upon information and belief, Defendant CHRISHAWN SANFORD, (HEREAFTER, DEFENDANT “SANFORD”) is an individual, and is the listed “director” (as that term is defined by 40 Texas Administrative Code 746.1001) of the commercial facility known as the Little Children’s Learning Center, located at 1314 Turtle Creek Drive, Missouri City, Texas, 77489-6105 and may be served with process at this address.

III.

JURISDICTION AND VENUE

This Court has personal jurisdiction over Defendants because they are residents of the State of Texas and/or avail themselves of the privilege of doing business in the State of Texas. Furthermore, this Court has subject matter jurisdiction because this cause of action arises under the common law and statutes of the State of Texas and the matter in controversy is within the jurisdictional limits of this court. The Plaintiffs seek only monetary relief of \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees. Finally, the amount of damages sought is within the jurisdictional limits of this Court.

Venue is proper in this Court because all or a substantial part of the events or omissions giving rise to this cause of action occurred in FT. BEND COUNTY, pursuant to Texas Civil Practice & Remedies Code 15.002(a)(1).

IV.

FACTUAL BACKGROUND

At all times relevant to this cause of action, Plaintiffs MS. POINDEXTER, had her minor son, Plaintiff [REDACTED], enrolled in daytime childcare at Defendant CENTER. Plaintiff enrolled [REDACTED] at CENTER approximately June 2016, and MS. POINDEXTER was current on all weekly tuition and fees.

On or about January 3, 2018, MS. POINDEXTER entrusted [REDACTED], then approximately five (5) years old, to Defendant Center for daytime care, as usual, in the “Little Children” classroom. Upon information and belief, during an afternoon nap period, [REDACTED] awoke from his nap and needed to use the restroom. No employee at Defendant Little Children’s Learning Center noticed [REDACTED] trying to get their attention or noticed him waking up early from his nap because he needed to use the restroom. Upon information and belief, there were two (2) employees of Defendant Center assigned as attendants to supervise [REDACTED] classroom.

Per Classroom Rules, [REDACTED] repeatedly tried to gain the attention of his classroom attendants, to be taken to the restroom. None of the assigned attendants were monitoring the room, and no attendants were paying attention to [REDACTED] request for help. Eventually, [REDACTED] did get up to use the restroom, without supervision or an attendant’s help. While in the adjacent restroom, [REDACTED] hand was slammed in the door by an unknown party; a portion of his finger was severed, and the bone of his finger was crushed.

[REDACTED] was eventually taken by ambulance to Texas Children’s Hospital. At no time on January 03, 2018, did MS. POINDEXTER, receive a phone call from Defendant Center to inform her that a major accident had occurred. At no time on January 03, 2018, was MS. POINDEXTER informed that [REDACTED] finger had been severed from his hand. At no time on

January 03, 2018, was MS. POINDEXTER informed that [REDACTED] was taken by ambulance to Texas Children's Hospital. No explanation was provided by Defendant Center addressing why MS. POINDEXTER did not receive a phone call immediately notifying her of [REDACTED] severed finger. No explanation was provided by Defendant Center explaining why MS. POINDEXTER was not immediately notified that [REDACTED] was transported by ambulance to Texas Children's Hospital. No explanation was provided by Defendant Center explaining why [REDACTED] Emergency Contact was not notified per Defendant Center's policy.

No reasonable explanations were provided to MS. POINDEXTER by Defendant Center, explaining how [REDACTED] finger was severed. None of the explanations provided by Defendant Center were consistent.

V.

NEGLIGENCE

As the director of Defendant Center, Defendant SANFORD was charged with a duty of care toward [REDACTED] and Ms. Poindexter to ensure that Defendant Center operated according to generally accepted safety standards for a child care center operating in the normal course of business, and to ensure that employees of Defendant Center were properly supervised and trained in such standards and procedures.

By allowing [REDACTED] to be injured, and his finger severed, while completely unsupervised, Defendant breached that duty.

Defendant Center's actions or omissions also constitute negligence per se, in that they were violations of one or more of the laws of the State of Texas, including 40 Texas Administrative Code 746.1003 et al. With respect to negligence per se, in particular:

a) Ms. Poindexter and [REDACTED] are within the class of persons that 40 Texas Administrative Code 746.1003 was designed to protect, and;

b) Defendant Center, without excuse, violated the statute.

The employees of Defendant Center, including but not limited to, the teachers and attendants assigned to [REDACTED] classroom, were charged with a duty of care toward [REDACTED] and Ms. Poindexter to provide appropriate care, custody, and supervision. By allowing [REDACTED] to be injured and a portion of his finger severed while unsupervised, Defendant Center breached that duty. Their actions also constitute negligence per se, in that they were violations of one or more of the laws of the State of Texas, including 40 Texas Administrative Code 746.1205 et al. In particular:

a) [REDACTED] and Ms. Poindexter are within the class of persons that 40 Texas Administrative Code 746.1205 was designed to protect, and;

b) The employees, without excuse, violated the statute.

In addition, Plaintiffs assert negligence under the doctrine of res ipse loquitur, in that:

a) The nature of the occurrence giving rise to Plaintiffs' claim (i.e. for five-year old (5) [REDACTED] to have his finger severed from his hand while completely unsupervised) is such that it could not have happened in the absence of negligence, and;

b) The instrumentalities giving rise to the harm (the door, or monitor, or other enclosures and/or the procedures and safeguards designed to prevent such an occurrence from taking place) were within the exclusive control of Defendant Center at the time the negligence occurred.

VI.

PREMISES LIABILITY

Defendant Sanford is the listed owner of the property and premises described as the Little Children's Learning Center, 1314 Turtle Creek Drive, Missouri City, Texas, 77429. Plaintiff, Ms. Poindexter and her minor son [REDACTED] were "invitees" upon the premises, in that they entered the premises for a business purpose, for the mutual benefit of themselves and Defendant Center and with Defendant Center's knowledge and consent. As invitees, they were owed the highest duty of care by Defendant Center to be warned of or made safe from any conditions or activities on the property that posed a danger to Plaintiffs that Defendant Center either knew of, or through the exercise of reasonable diligence should have known of.

Defendant was on notice of such dangerous condition because it had been previously cited, less than one (1) year prior to this incident, by the Texas Department of Family & Protective Service's childcare licensing division, for danger created. It therefore had actual and subjective knowledge and awareness of problems with risk in Plaintiff's age group.

Defendant Childtime failed to make safe from the unreasonably dangerous condition, and it was foreseeable that Plaintiffs would have been harmed and injured as a result.

VII.

RESPONDEAT SUPERIOR

Plaintiffs additionally assert liability under the doctrine of respondeat superior, in that:

- a) Plaintiffs were injured as the result of employees' acts or omissions, including but not limited to Defendant Center, the teachers and assistants assigned to [REDACTED] classroom; and,
- b) At the time of said acts or omissions, the aforementioned employees were acting in the course and scope of their employment at Defendant Center and in furtherance of Defendant Center's business.

Accordingly, Defendant Center is liable for the aforementioned acts or omissions.

VIII.

BREACH OF CONTRACT

Ms. Poindexter and Defendant Center had entered into a valid contract for the provision of childcare services for her minor son [REDACTED]. There was a meeting of the minds, evidenced by Ms. Poindexter's signature to all enrollment forms, applications, and other paperwork generated by Defendant Center. Ms. Poindexter performed all obligations under said contract, including but not limited to payment of all weekly tuition and other fees for the childcare services, from approximately June 2016 until the time of this incident.

Defendant Center breached its duties and obligations under the contract both explicit and implicit, pertaining to providing appropriate care, custody, and supervision for [REDACTED] by allowing [REDACTED] to have his finger severed from his hand, completely unsupervised.

Defendant Center's breach was the proximate cause of damages to Plaintiffs, both direct and incidental/consequential, as set forth in more detail below.

IX.

DAMAGES

Defendants' acts and omissions, jointly and singularly, were the proximate cause of injuries and damages to [REDACTED] and Ms. Poindexter, including but not limited to:

- a) Loss of value of the weekly tuition/fees that Plaintiffs paid for childcare for [REDACTED] for the week of January 3, 2018 (as the incident occurred on Wednesday, January 3rd and no reasonable person could expect that Ms. Poindexter would continue to use Defendant Center for childcare for [REDACTED]);

- b) Loss of wages that Ms. Poindexter incurred by staying home and caring for [REDACTED] while beginning the long, slow, and careful process of finding another childcare center with whom she could entrust her son, after undergoing such a traumatic ordeal;
- c) Medical expenses for all reasonable and necessary medical examinations and doctor appointments for [REDACTED]
- d) Medical expenses for all reasonable and necessary family counseling and therapy for [REDACTED]
- e) Pain, suffering, and mental anguish for Plaintiffs, individually and collectively; and,
- f) Reasonable and necessary attorney's fees incurred by Plaintiffs for the preparation and prosecution of this lawsuit.

X.

JURY DEMAND

Plaintiffs, by and through their attorney of record, respectfully demand their right to have a trial by jury.

XI.

DISCOVERY REQUESTS

A. REQUEST FOR DISCLOSURE

Defendants are hereby requested to disclose, within fifty (50) days of service of this petition and incorporated request, the information or material described in Rule 194.2 of the Texas Rules of Civil Procedure, to the undersigned counsel for Plaintiffs.

B. INTERROGAATORIES

Defendants are hereby requested to answer, separately, in writing, and under oath, the interrogatories set forth in the attached "Exhibit A," and serve said answers, within fifty

(50) days of service of this petition and incorporated request, to the undersigned counsel for Plaintiffs, pursuant to Rule 197 of the Texas Rules of Civil Procedure.

C. REQUESTS FOR PRODUCTION

Defendants are hereby requested to produce the documents or tangible items set forth in the attached “Exhibit B,” within fifty (50) days of service of this petition and incorporated request, to the undersigned counsel for Plaintiffs, pursuant to Rule 196 of the Texas Rules of Civil Procedure.

XII.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully prays that the Defendants be cited to appear and answer herein, and that on final hearing of this case, Plaintiffs have and recover:

- a) Judgment against Defendants for an amount in excess of the minimum jurisdictional limits of this Court;
- b) Pre-judgment interest at the maximum rate allowed by law;
- c) Reasonable and necessary attorney’s fees;
- d) Costs of Court;
- e) Post-judgment interest on the above amounts at the highest legal rate, and;
- f) Such other and further relief to which Plaintiffs may be entitled to at law or in equity, whether pled or unpled.

Respectfully submitted,

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Attorney for Petitioners

“EXHIBIT A”

PLAINTIFFS’ FIRST SET OF INTERROGATORIES

1. Identify by name and title (i.e., relationship or affiliation to Defendant Center) all of the following individuals (if any of the individuals no longer have a relationship or affiliation to Defendant Center, then identify by name and provide the last known address and telephone number):
 - a. All individuals supplying information or assisting in any way with the preparation of answers to these interrogatories;
 - b. The individual whose name is subscribed to the oath/verification to the answers to these interrogatories;
 - c. All individuals who were assigned to the care and supervision of Plaintiff [REDACTED] classroom on the date of the incident, which is the basis of this lawsuit, and;
 - d. Any and all individuals who were questioned, investigated, or disciplined in any way (include written or verbal warnings, notes in their personnel file, suspension, or termination, etc.) in connection with the incident made the basis of this lawsuit.
2. Describe with specificity what your investigation revealed as the means by which Plaintiff [REDACTED] was able to get out of the designated sleeping area, in the incident made the basis of this lawsuit.
3. If you are contending that Plaintiff(s) were contributorily or comparatively negligent in any way pertaining to the incident made the basis of this lawsuit, please describe in what way(s) Plaintiff(s) were negligent.
4. Describe in detail (i.e., date, location, contents of conversation, and all participants and witnesses present) any conversations you have had with Plaintiff(s) following the

incident made the basis of this lawsuit, including but not limited to, any statement made by Plaintiff(s) that you believe constitute an admission or declaration against interest.

5. For all individuals identified in answer to parts c-d of Interrogatory No. 1, please state their employment history for the past ten (10) years, to include the name and address of their employers, their job titles, their starting and ending dates, and the reason for the ending of each employment.
6. For all individuals identified in answer to parts c-d of Interrogatory No. 1, please state whether any of them has received any type of warnings, reprimands, safety violations, “write-ups,” counseling, suspension or any other type of disciplinary action (written or verbal) prior to the incident made the basis of this lawsuit. If so, please describe such disciplinary action in detail, to include the action taken, the reason for the action, and the date of the action.
7. With regards to childcare tuition and fees for Plaintiff [REDACTED] please state the following:
 - a. What was the original starting date Plaintiff [REDACTED] had been enrolled for childcare at the Defendant Center;
 - b. What was the weekly childcare tuition amount for Plaintiff as of that starting date;
 - c. If different from part b, what was the weekly childcare tuition amount for Plaintiff [REDACTED] as of the date of the incident made the basis of this lawsuit;
 - d. What was the total amount paid by Plaintiff for childcare tuition and fees for Plaintiff [REDACTED] from the start date to the date of the incident made the basis of this lawsuit, and;
 - e. What was the amount paid by Plaintiff for the week beginning January 2018.

“EXHIBIT B”

PLAINTIFFS’ FIRST REQUESTS FOR PRODUCTION

1. Please produce the entire employment / personnel files for all individuals identified in answer to parts c-d of Interrogatory No. 1 (NOTE: this request specifically excludes any tax information or Social Security numbers. This request also specifically includes, but is not limited to, all records of disciplinary action, either prior to, or as a result of, the incident made the basis of this lawsuit).
2. Please produce copies of all documentation of internal investigation conducted by Defendant into the incident made the basis of this lawsuit, including but not limited to, any incident reports, forms, company memos, flyers to employees, or other paperwork generated or filled out (whether that information was provided by, or prepared for the benefit of, any investigative agency, investigating officer, and insurance carrier, any employee, or any non-privileged third party). NOTE: this request specifically excludes any documents prepared by or for your attorney for purposes of this lawsuit.
3. Please produce any and all video footage (e.g., in-classroom or outdoor surveillance camera, “webcam,” or any other such video recording device) pertaining to the incident made the basis of this lawsuit, e.g., video of Plaintiff [REDACTED] classroom, etc. If you contend that no such footage exists, please state on what date it was erased, disposed of, or recorded-over (if applicable), and by whom.
4. Please produce copies of all contracts, applications, enrollment forms, or other such forms submitted by Plaintiffs to Defendant Center with respect to the childcare of Plaintiff [REDACTED] from the starting date of such childcare to the ending date of his last enrollment.

5. Please produce copies of all ledgers, computer accounting printouts, or other such documentation of all payments, fees, etc., submitted by Plaintiff to Defendant Center with respect to the childcare of Plaintiff [REDACTED] from the starting date of such childcare to the date of his last enrollment.
6. If you contend that Plaintiffs were not current or were in some manner deficient on payment of any tuition fees, etc., to Defendant Center, pertaining to the childcare of Plaintiff [REDACTED] please produce copies of any correspondence, letters, flyers, reminder notes, etc., given by Defendant Center to Plaintiffs relating to same.
7. Please produce copies of any citations, penalties, violations, assessments, and any correspondence enclosing or including any of the aforementioned items, sent to Defendant Center by any investigative officer or agency, pertaining to the incident made the basis of this lawsuit.
8. Please produce copies of any documentation sent to, or received from, Plaintiff (or any agent or representative of Plaintiffs) from the date of the incident made the basis of this lawsuit to the present.
9. Please produce any and all employee handbooks, training manuals, videos, safety or certification course materials, or any other job orientation or training items that were provided to any of the individuals identified in answer to parts c-d of Interrogatory No. 1, at any time during their employment with Defendant Center.
10. Please produce copies of any depositions you intend to use in order to impeach any of Plaintiffs' experts.
11. Please produce copies of any criminal backgrounds you intend to use in order to impeach any parties or witnesses.

12. Please produce any and all other documents or tangible items, not already produced above, which you plan to submit to the jury or other trier of fact in this lawsuit, and/or which you contend to be relevant to any issues of liability, causation, or damages in this lawsuit.