

CC-23-00703-A
CAUSE NO. _____

SELECIOUS KETTER, INDIVIDUALLY AND AS NEXT § IN THE COUNTY COURT
FRIEND OF L.K., A MINOR CHILD, §
§
PLAINTIFFS, §
§
VS. § AT LAW NO. _____
§
DUNKIN ACADEMY, INC.; DUNKIN ACADEMY OF §
FORNEY, INC.; DUNKIN ACADEMY §
MANAGEMENT, LLC; AND DUNKIN ACADEMY §
OF FORNEY, LLC, § DALLAS COUNTY, TEXAS

DEFENDANTS.

ORIGINAL PETITION FOR DAMAGES AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

1. Selecious Ketter (Plaintiff, Individually and as Next Friend of L.K., a minor child), like many parents across this country and the state of Texas, is a working mother that relied on a daycare to provide a safe, caring, and nurturing environment for her son, L.K., while she was working. Ms. Ketter trusted that her son would be safe at Dunkin Academy for daycare.¹
2. Ms. Ketter trusted that she selected the right daycare that would provide a safe learning environment for L.K. when she enrolled L.K. at Dunkin Academy. A safe learning environment and peace of mind are what parents like Ms. Ketter pay for and expect. Instead, Ms. Ketter’s worst nightmare became a reality when her son, L.K. suffered serious physical, emotional, and

¹ This Petition refers to Defendants Dunkin Academy, Inc., Dunkin Academy of Forney, Inc., Dunkin Academy Management, LLC, and Dunkin Academy of Forney, LLC, collectively as “Dunkin Academy.”

mental injuries because of the failures of Dunkin Academy. Ms. Ketter brings this lawsuit on her family's behalf asking for answers and asking that Dunkin Academy accept responsibility.

I. STATEMENT OF FACTS COMMON TO THE ALLEGATIONS

3. According to Dunkin Academy, "Adults provide protection, security, stimulation, support, limits, and affection. Children are respected as individuals within a child-oriented rather than teacher-directed program."² Dunkin Academy publicizes and sells parents on the idea that this daycare is dedicated to creating a nurturing and safe learning environment for their children. However, a trail of records from the state of Texas paints a very different picture.

4. Dunkin Academy is responsible for qualifying, hiring, training, and supervising its caregiver employees on providing safe and proper care conducive to the welfare of the children, appropriate discipline methods, proper and safe naptime activities, the prohibition of certain punishment methods, compliance with Texas' minimum standards for childcare, the use of good judgment, competency, and control, and the proper response and documentation of incidents of injury.

5. On or about Thursday, March 10, 2022, Ms. Ketter placed her two-and-half-year-old son L.K. in the care of Dunkin Academy for daycare. While under the care of Dunkin Academy, L.K. was seriously injured when a mat he was standing on was abruptly ripped from underneath his feet by a caregiver employee, causing him to fall headfirst on to the hard tile floor, hitting his head on the hard tile floor. The event caused bodily injuries and damages to L.K., leaving him with a large painful bump to the right side of his forehead that is still visible to this day (hereinafter, "the Incident"). Rather than adhering to the Texas minimum standards for

² *Dunkin Academy's website*, <https://www.dunkinacademy.com/curriculum> (last visited January 3, 2023).

childcare, providing immediate medical attention, and properly reporting and documenting the Incident and injuries, Dunkin Academy called Ms. Ketter and provided her false and inaccurate information about how the Incident occurred, and subsequently provided an incident report falsely recounting the manner in which the Incident occurred in order to cover up what really happened.

6. Dunkin Academy maintains surveillance video of the childcare center. Rather than checking the cameras to review what happened to L.K., Dunkin Academy told Ms. Ketter that L.K. hurt his head while playing and jumping with kids on nap mats. Dunkin Academy provided an incident report that falsely declared same. It was not until Ms. Ketter demanded to see the surveillance footage herself that Dunkin Academy admitted to Ms. Ketter that the footage revealed that a caregiver-employee aggressively ripped a mat from under L.K.'s feet, while looking directly at L.K., causing him to fall and immediately start to cry in pain. Despite this acknowledgment from Dunkin Academy, they chose not to terminate the employment of this caregiver-employee and failed to properly report the Incident and injury to the state of Texas. Ms. Ketter reported the Incident to law enforcement and the state of Texas.

7. Childcare facilities are required to follow strict minimum care guidelines set forth by the State of Texas through the Department of Family and Protective Services. These minimum standard guidelines carry the force of the law. Texas Health and Human Services Commission Child-Care Licensing Division and the Texas Department of Family and Protective Services conducted an independent investigation into the Incident involving L.K. and concluded that the allegations involving L.K. against Dunkin Academy were substantiated and cited Dunkin Academy for violating the following childcare licensing rules of Texas:

- **746.1201(4) – All child-care center employees, must ensure that no child is abused, neglected, or exploited while in the care of the center.**
Dunkin Academy was found deficient when a caregiver employee's actions caused L.K. to be injured.
- **746.2805 – There must be no harsh, cruel, or unusual treatment of any child.**
Dunkin Academy was found deficient when a caregiver pulled a mat while L.K. was standing on it, causing significant injury to him.
- **746.1201(1) – All child-care center employees, must demonstrate competency, good judgment, and self-control in the presence of children and when performing assigned responsibilities.**
Dunkin Academy was found deficient when a caregiver employee failed to demonstrate good judgment when staff pulled a mat from under children, that were standing on them, causing an injury. Good judgment was also not demonstrated when an Incident report was completed and signed, prior to having accurate information.

8. Dunkin Academy has previously been cited by the state of Texas for failing to ensure that the operation and its caregivers meet the minimum standards, laws, and regulations in place to keep kids safe. A history of citations, inspections, investigations, and deficiencies from the state show the same conduct and failure to act that led to the Incident and the injuries sustained by L.K. Dunkin Academy has a clear recent history of failing to qualify, train, and supervise employees, failing to follow the minimum standards, and failing to properly care for children.

9. The following is an overview of some of the citations issued by Texas Health and Human Services Commission for Dunkin Academy's failures prior to the Incident involving L.K.:

- a. **December 2021, Supervision of Children:** Cited for inadequate supervision when a caregiver-employee left unsupervised older children alone in a room with younger toddlers.
- b. **December 2021, Prohibited Punishments – No Harsh, Cruel, or Unusual:** Cited for the use of prohibited punishments when a caregiver-employee injured a child after roughly picking them up and placing them down on a sleeping mat when the child became disruptive during nap time.
- c. **December 2021, Children Not Required to Sleep – May Not Force Child to Sleep:** Cited for inappropriate naptime conduct when a caregiver-employee forcefully

placed a child on a mat, covered their head, attempting to force the child to go to sleep.

- d. **December 2021, Failing to Report Injury to Child:** Cited for failing to report an injury to a child within the required 48-hour reporting window when the daycare waited six days to report an injury to a child that resulted in medical care treatment.

10. Dunkin Academy, Inc., Dunkin Academy of Forney, Inc., Dunkin Academy Management, Inc., and Dunkin Academy of Forney, LLC, all own, manage, and operate the daycare facility wherein L.K. was injured in the Incident, Dunkin Academy located at 518 Pinson Road, Forney, Texas 75126.

11. What happened to L.K. was preventable. As a direct and proximate result of the actions and omissions of Dunkin Academy, Plaintiffs sustained serious injuries and damages.

II. DISCOVERY CONTROL PLAN & CLAIM FOR RELIEF

12. Discovery in this matter is intended to be conducted under Level 3 of the Texas Rules of Civil Procedure.

13. As required by Texas Rule of Civil Procedure 47(c), Plaintiffs' counsel states that Plaintiffs seek monetary relief over \$1,000,000.00; however, the amount of monetary relief actually awarded will ultimately be determined by a jury.

III. PARTIES

14. Plaintiff Ms. Ketter is the biological mother of Plaintiff L.K., a minor, are citizens and residents of Kaufman County, Texas.

15. Defendant Dunkin Academy, Inc. is a corporation doing business in the State of Texas, its state of formation. Defendant may be served with process by serving its registered agent, Connie Dunkin, located at 1320 Mariposa, Mesquite, Texas 75150, or wherever they may be found.

16. Defendant Dunkin Academy of Forney, Inc. is a corporation doing business in the State of Texas, its state of formation. Defendant may be served with process by serving its registered agent, James Dunkin, located at 518 Pinson, Forney, Texas 75126, or wherever they may be found.

17. Defendant Dunkin Academy Management, Inc. is a corporate doing business in the State of Texas, its state of formation. Defendant may be served with process by serving its registered agent, John B. Dunkin, located at 12900 Preston Road, Suite 804, Dallas, Texas 75230, or wherever they may be found.

18. Defendant Dunkin Academy of Forney, LLC is a limited liability company doing business in the State of Texas, its state of formation. Defendant may be served with process by serving its registered agent, Small Business Capital Solutions, LLC, located at 3737 Royal Cove Drive, Dallas, Texas 75229, or wherever they may be found.

IV. JURISDICTION & VENUE

19. The Court has subject matter jurisdiction over this lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

20. Venue is proper in Dallas County, Texas, under Texas Civil Practices and Remedies Code Section 15.002(a) because this is the county where Defendants' principal office in this state is located.

V. CAUSES OF ACTION AGAINST ALL DEFENDANTS

Count One – Negligence

21. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

22. The occurrence made the basis of this suit, reflected in the above paragraphs, and the resulting injuries and damages of Plaintiffs were proximately caused by the negligent conduct of the Defendants. Defendants were negligent by breaching the duty that was owed to Plaintiffs, to exercise ordinary care in one or more of the following acts or omissions, constituting negligence:

- a. Failing to exercise the care that was necessary under the circumstances;
- b. Failing to do what a reasonable daycare would have done under the circumstances;
- c. Failing properly supervise the children in their care;
- d. Failing to intervene to ensure a child's safety;
- e. Failing to maintain a safe environment for children;
- f. Choosing to inappropriately discipline minor Plaintiff L.K.;
- g. Choosing to use prohibited forms of harsh, cruel, and unusual punishments;
- h. Failing to use alternative activities for restless children during naptime;
- i. Failing to ensure that expectations for a child's behavior is appropriate or the developmental level of that child;
- j. Failing to use only constructive, age-appropriate methods of discipline;
- k. Failing to properly hire, qualify, train, and supervise its caregiver employees trusted with the care of minor Plaintiff L.K.;
- l. Failing to appropriately respond in an emergency situation;
- m. Failing to use positive methods of discipline and guidance with the children in its care;
- n. Failing to ensure caregiver employees demonstrate competency, good judgment, and self-control;

- o. Failing to ensure no child is neglected;
 - p. Failing to record and report serious injuries sustained by a child in its care; and
 - q. Failing to adhere to the Texas Minimum Standards for Childcare.
23. Defendants had a duty to exercise ordinary care in caring for, supervising, and disciplining the children in its care so as to prevent injury to Plaintiff L.K. and other children similarly situated.
24. Defendants had a duty to maintain a safe environment for children in its care so as to prevent injury to L.K. and other children similarly situated.
25. Defendants had a duty to hire, train, and supervise caregiver employees to ensure that children were not subjected to inappropriate discipline and prohibited forms of punishment, so as to prevent injury to L.K. and other children similarly situated.
26. Defendants breached the duty of care by failing to care for the children, failing to properly supervise the children, failing to appropriately discipline the children, failing to properly train, hire, and supervise its employees, failing to maintain a safe environment for children, failing to immediately terminate an employee who excessively disciplined and harmed a child, failing to call for medical attention after a minor child in their care sustained injuries, failing to create an accurate Incident report for an Incident involving serious injury to a child, and failing to report to the relevant state agency an Incident involving serious injury to a child.
27. Defendants' negligent acts and/or omissions, and breach of duties, directly and proximately caused injury to Plaintiffs, which resulted in significant damages.

Count Two – Negligence Per Se

28. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

29. Defendants failed to exercise the mandatory standard of care in violation of the Texas Department of Family and Protective Services, Minimum Standards for Child-Care.

30. In the foregoing claims of negligence per se, Plaintiffs were, at all times, members of the class that the statutes the Defendants violated were designated to protect.

31. Defendants' violations of the statutes were the proximate cause of the Incident in question.

32. As a result of the Defendants' acts and/or omissions in violating the statutes, Plaintiffs sustained damages.

Count Three – Gross Negligence

33. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

34. Defendants' conduct was more than momentary thoughtlessness or inadvertence. Rather, the acts and/or omissions by Defendants in the preceding paragraphs constitute gross negligence as that term is defined in Texas Civil Practices and Remedies Code §41.001(11).

35. Defendants' conduct involved an extreme degree of risk, considering the probability and magnitude of potential harm to the Plaintiffs. Defendants had actual, subjective awareness of the risk involved, but, nevertheless, proceeded in conscious indifference to the rights, safety, or welfare of Plaintiffs or of others similarly situated.

36. The above acts and/or omissions were singularly and cumulatively the proximate cause of the occurrence in question and the resulting injuries and damage sustained by Plaintiffs.

Count Four – Negligent Activity

37. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

38. Defendants are the owners, operators, and/or possessors of the daycare premises located at 518 Pinson Road, Forney, Texas 75126, operation license number 1728792.

39. At the time of the Incident, L.K. was a minor child placed in the care of Defendants and was thus an "invitee" to whom Defendants owed a duty to exercise ordinary care.

40. Plaintiffs' injuries were the direct and contemporaneous result of Defendants' ongoing negligent activity on the premises at the time of the injuries and damages sustained.

41. Defendants owed Plaintiffs a legal duty to ensure L.K.'s safety in maintaining proper care over the children, ensuring discipline over the children is appropriate, ensuring that employees are necessarily hired, trained, supervised, and terminated in order to maintain a safe environment for children, and ensuring that serious injuries are accurately recorded and reported. Defendants breached these duties by permitting one of its caregiver employees to inappropriately discipline children using prohibited forms of punishment, by allowing that caregiver to remain on staff after the Incident, by providing inaccurate information about the manner in which the Incident occurred to the state of Texas and to L.K.'s parent, and by recording an inaccurate Incident report.

42. Such negligent activity on the part of the Defendants proximately caused the injuries and other damages suffered by Plaintiffs.

VI. RESPONDEAT SUPERIOR

43. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

44. The negligence, carelessness, and callousness of Defendants' employees proximately caused the damage and losses suffered by Plaintiffs as a result of the injury. At all times material to this action, Defendants' employees were acting in the course and scope of their employment.

Accordingly, Defendants may be held responsible for its employees' negligence under the doctrine of respondeat superior.

VII. DAMAGES

45. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

46. As a direct and proximate cause of Defendants' negligent acts and/or omissions, Plaintiff Ms. Ketter, Individually, and as Next Friend of Plaintiff L.K., a minor child, suffered damages and injuries that include, but are not limited to:

- a) Physical pain and suffering in the past;
- b) Physical pain and suffering, in reasonable probability, sustained in the future;
- c) Mental anguish in the past;
- d) Mental anguish, in reasonable probability, sustained in the future;
- e) Reasonable and necessary medical expenses in the past;
- f) Reasonable and necessary medical expenses, in reasonable probability sustained in the future;
- g) Disfigurement sustained in the past;
- h) Disfigurement, in reasonable probability, sustained in the future;
- i) Loss of wages in the past;
- j) Loss of wages, in reasonable probability, sustained in the future;
- k) Loss of wage-earning capacity in the past;
- l) Loss of wage-earning capacity, in reasonable probability, sustained in the future;
- m) Physical impairment in the past;
- n) Physical impairment, in reasonable probability, sustained in the future;

- o) Loss of the normal enjoyment of the pleasure of life in the past;
- p) Loss of the normal enjoyment of the pleasure of life, in reasonable probability, sustained in the future;
- q) Costs of suit; and
- r) All other relief, in law and equity, to which Plaintiffs may be entitled.

47. Plaintiffs' damages clearly exceed the minimal jurisdictional requirements for this Court. Plaintiffs, therefore, seek compensation by the Court and jury for their damages, in an amount to be determined by the jury.

VIII. EXEMPLARY DAMAGES

48. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

49. Plaintiffs would further show that the acts and/or omissions of the Defendants complained of herein were committed knowingly, willfully, intentionally, with actual awareness, and with the specific and predetermined intention of enriching said Defendants at the expense of Plaintiffs.

50. The grossly negligent conduct of Defendants, as described herein, constitutes conduct for which the law allows the imposition of exemplary damages. Accordingly, Plaintiffs seek the award of exemplary damages against Defendant pursuant to Chapter 41 of the Texas Civil Practices and Remedies Code.

IX. JURY TRIAL

47. Plaintiffs demand a jury trial and have tendered the appropriate fee with the filing of this Original Petition.

X. U.S. LIFE TABLES

48. Notice is hereby given that Plaintiffs intend to use the U.S. Life Tables as prepared by the Department of Health and Human Services.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein and upon final trial hereof, they take, have, and recover, of and from said Defendants, the above damages, exemplary damages, costs of court, pre-judgment interest, post-judgment interest, and for such other and further relief to which they may show themselves justly entitled.

Dated: February 4, 2023.

Respectfully submitted,

THE BUTTON LAW FIRM

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