

CAUSE NO. 366-04349-2023

FERNANDO COSSICH AND CRISTINA COSSICH,
INDIVIDUALLY AND AS PARENTS AND NEXT
FRIEND OF M.C., A MINOR CHILD,

§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

PLAINTIFFS,

VS.

COLLIN COUNTY, TEXAS

SERAKON FOR KIDS, LTD D/B/A PRIMROSE
SCHOOL OF ELDORADO; AND KODALA FOR
KIDS, LP D/B/A THE PRIMROSE SCHOOL OF
ELDORADO

DEFENDANTS.

_____ JUDICIAL DISTRICT

ORIGINAL PETITION AND JURY DEMAND

1. Fernando and Cristina Cossich, like many parents across this country and the state of Texas, are working parents who rely on a daycare to provide a safe, caring, nurturing environment for their daughter, M.C., while they are working. Fernando and Cristina Cossich trusted that their daughter would be safe while in the care of Primrose.¹
2. A safe learning environment and peace of mind are what parents like Fernando and Cristina Cossich pay for and expect. Instead, Fernando and Cristina Cossich's worst nightmares became a reality when their daughter M.C. suffered serious physical, emotional, and mental injuries because of the failures of Primrose. Fernando and Cristina Cossich bring this lawsuit on their family's behalf asking for answers and asking that Primrose accept responsibility.

¹ This petition refers to Defendant Serakon for Kids, LTD of McKinney, Texas d/b/a Primrose School of Eldorado and Defendant Kodala for Kids, LP d/b/a The Primrose School of Eldorado, collectively as "Primrose."

I. STATEMENT OF FACTS

3. “Health & Safety First” is what Primrose promises families when enrolling in one of their 10 locations throughout the DFW metroplex.² The promise of delivering “the best and most trusted early education and care for children and families across America” is what parents rely on when they entrust their children to the care of Primrose.³ Primrose prides itself as being a place that values and instills in children from an early age that they belong and are important, respected and valued.⁴ The assurance that Primrose has a “clear appreciation of the trust [parents] place in them” and the promise of making the care for the children their “top priority” is what parents expect.⁵ However, a trail of records from the state of Texas shows that these promises are false promises.

4. Primrose is responsible for qualifying, hiring, training, and supervising its employee caregivers on providing safe and proper care conducive to the welfare of the children; supervising children in their care at all times; compliance with Texas’s minimum standards for childcare; the use of good judgment, competency, and control; and the proper reporting and documentation of incidents involving injury or risk of harm to children in their care.

5. On Thursday, October 20, 2022, Fernando and Cristina Cossich placed their three-year-old daughter, M.C., in the care of Primrose for daycare. While under the care of Primrose, M.C. was abandoned in a dark classroom alone for an undetermined amount of time causing her

² *Primrose School of Eldorado’s website*, <https://www.primroseschools.com/schools/eldorado/>, (last visited July 26, 2023).

³ *Id.*, <https://www.primroseschools.com/about-us/our-mission-vision/>, (last visited July, 26, 2023).

⁴ *Id.*

⁵ *Id.*, <https://www.primroseschools.com/schools/eldorado/>, (last visited July 26, 2023).

physical, emotional, and psychological harm and damages (hereinafter, “the Incidents”). M.C.’s caregiver did not notice a child was missing from their care and had no knowledge to the whereabouts of M.C. Instead, M.C. was discovered by another caregiver when they entered the dark and “empty” classroom to find her there alone and terrified.

6. Following the incident, Primrose notified the parents and explained that M.C. was briefly left behind during transition for only a “few minutes” and it was immediately discovered—downplaying the entire situation and reassuring parents that they had everything handled. Fernando and Cristina trusted that Primrose cared about their family and had nothing but the best intentions in caring for M.C. They trusted that Primrose was being honest. However, in the weeks that followed M.C.’s incident, Fernando and Cristina realized Primrose’s promises and assurances were false.

7. During an independent investigation into the incidents involving M.C. by the state of Texas childcare licensing division, it was discovered that not only did the daycare fail to maintain appropriate supervision of M.C., but they also subsequently *forged the signatures* of the parents on the incident report detailing what had occurred. Neither Fernando nor Cristina knew anything about an incident report being created until questioned about it by the investigator.

8. The state of Texas concluded that Primrose violated the following childcare licensing laws:

- **746.1203(4) – Responsibilities of Caregivers – Supervision of Children:** This standard was evaluated during the investigation and was found to be deficient. *A caregiver left a child alone in the classroom. The child was found later by another staff member.*
- **746.707 – Incident/Illness Report Form Shared with Parent:** Based on a review of the parent signature in the child file and interviews conducted, it was determined the signature on the incident report *was not the parent's original signature.*

9. The state of Texas investigator immediately put corrective measures in place to ensure Primrose took the necessary steps to adhere to the licensing standards for the safety of children in their care. During a follow-up investigation, Primrose presented to the state of Texas that they had re-trained their staff and implemented a new procedure that included classroom checks by management for each classroom transition. However, Primrose again delivered a false promise when they were cited in March of 2023 for leaving another child alone in a classroom who was later discovered by a parent arriving to pick up their child. The violations do not stop there.

10. The following is an overview of some of the other citations issued by Texas Health and Human Services Commission from September 2018 through October 2022:

- **September 2018:**
 - o Cited when a caregiver failed to demonstrate competency, good judgment, and self-control.
- **April 2019:**
 - o Cited for failing to complete/document required CPR training for each caregiver and director.
 - o Cited for failing to complete/document first aid training for each caregiver and director.
- **September 2019:**
 - o Cited for failing to maintain supervision of children in their care when a child was left behind in a room.
- **October 2020:**
 - o Cited for failing obtain cleared background checks before allowing staff to be present with children at the daycare.
- **August 2021:**
 - Cited for failing to complete the required annual transportation safety training for each employee responsible for transporting children.
 - o Cited for failing to obtain the appropriate medical records and emergency plan for a child with a known allergy.
- **June 2022:**

- Cited for prohibitive punishment when a caregiver admitted to hitting a child in their care.
- **July 2022:**
 - Cited for placing an infant in a restrictive sleeping device.
 - Cited for failing to maintain immunization records for children in care.
 - Cited for failure to conduct/maintain documentation of routine safety drills.
 - Cited for failing to complete the required annual transportation safety training for any of the employees responsible for transporting children.
- **September 2022:**
 - Cited for prohibitive punishment when a caregiver hit a child in their care.
 - Cited for failure to demonstrate competency, good judgment, and self-control.
 - Cited for failing obtain cleared background checks before allowing staff to be present with children at the daycare.
- **October 2022:**
 - Cited for failing to submit a background check when hiring a new employee.

11. As noted by the state of Texas in the minimum standard of care requirements for childcare licensing, “[s]upervision is basic to the prevention of harm. Parents have an understanding that caregivers will supervise their children in their absence.” Simply put, what happened to M.C. was preventable. As a direct and proximate result of the actions and omissions of Primrose, Plaintiffs Fernando Cossich, Cristina Cossich and W.C. sustained 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 the 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 awarded will ultimately be determined by a jury.

III. PARTIES

11. Plaintiffs Fernando and Cristina Cossich are the biological parents of Plaintiff M.C., a minor, and are citizens and residents of Collin County, Texas.

12. Defendant Serakon for Kids, LTD d/b/a Primrose School of Eldorado is a Texas limited partnership doing business in this State. The Defendant operates a daycare under operation license number 834314, located at 3999 Eldorado Parkway, McKinney, Texas 75070, and may be served with process by serving its registered agent, Michael Konrad, 5053 Brandywine Lane, Frisco, Texas 75034.

13. Defendant Kodala for Kids, LP d/b/a The Primrose School of Eldorado is a Texas limited partnership doing business in this State. The Defendant operates a daycare under operation license number 834314, located at 3999 Eldorado Parkway, McKinney, Texas 75070, and may be served with process by serving its registered agent, Michael Konrad, 5053 Brandywine Lane, Frisco, Texas 75034.

IV. JURISDICTION & VENUE

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

15. Venue is proper in Collin County, Texas, under Texas Civil Practices and Remedies Code Section 15.002(a) because this is the county where all or part of the events or omissions giving rise to the claim occurred.

V. CAUSES OF ACTION AGAINST DEFENDANTS

Count One – Negligence

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

17. 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 had a duty to maintain a safe environment for children in its care so as to prevent harm and injury to M.C. and other children similarly situated. 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 to properly supervise the children in their care at all times;
- d. Failing to know maintain awareness the children they are responsible for;
- e. Failing to account for the number of children a caregiver is responsible for;
- f. Failing to maintain a safe environment for children;
- g. Failing to employ caregivers who demonstrate competency, good judgment, and self-control;
- h. Failing to ensure no child is abused, neglected, or exploited;
- i. Failing to properly hire, qualify, train, and supervise its employee-caregivers and staff on appropriate discipline, handling, and care for children;
- j. Failure to provide parents with a copy of a completed incident report on all incidents involving injuries to their child; and
- k. Choosing to employ staff who do not know or adhere to the Texas Department of Family Protective Services, Texas Minimum Standards for Child-care Centers.

18. Defendants had a duty to exercise ordinary care in caring for, and supervising the children in its care to prevent injury to M.C. and other children similarly situated.

19. Defendants had a duty to maintain a safe environment for children in its care to prevent injury to M.C., and other children similarly situated.

20. Defendants had a duty to hire, train, and supervise caregiver-employees and staff to ensure that children were properly cared and accounted for, so as to prevent injury to M.C., and other children similarly situated.

21. Defendants breached the duty of care by failing to care for the children; failing to supervise the children; failing to maintain awareness of the children in their care; failing to maintain a safe environment for children; failing to hire, train, and supervise qualified caregivers and staff to care for children; failing to provide an incident report for an incident involving serious harm or risk to children; and failing to immediately *and honestly* notify parents of any situation placing their child at risk or causing harm.

22. 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

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

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

25. In the foregoing claims of negligence per se, Plaintiffs were, at all times, members of the class that the statutes were designed to protect.

26. Defendants' violation of the statutes was the proximate cause of the incident in question.

Count Three – Gross Negligence

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

28. 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 the term is defined in Texas Civil Practices and Remedies Code §41.001(11).

29. 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.

30. 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

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

32. Defendants are the owners, operators, and/or possessors of the daycare premises located at 3999 Eldorado Parkway, McKinney, Texas 75070, operation license number 834314.

33. At the time of the incident, M.C. was a minor placed in the care of Defendants and was thus an "invitee" to whom Defendants owed a duty to exercise ordinary care.

34. 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.

35. Defendants owed Plaintiffs a legal duty to ensure M.C.'s safety in maintaining proper care over the children, ensuring the employees are necessarily hired, trained, supervised, and terminated in order to maintain a safe environment for children where children are supervised

at all times, and ensuring that serious injuries are recorded and reported accurately. Defendants breached these duties by failing to hire, train and supervise its employee-caregivers and management, by failing to account for and maintain awareness of the children in their care, by failing to immediately and accurately notify parents of the incident, by failing to create and provide a corresponding incident report to the parents, and by forging the parents signature to a corresponding incident report to provide to the state.

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

VI. RESONDEAT SUPERIOR

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

38. 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 their 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

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

40. As a direct and proximate cause of Defendants' negligent acts and/or omissions, Plaintiff Fernando and Cristina Cossich, individually, and as Parents and Next Friend of Plaintiff M.C., 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, sustain in the future;

- c. Mental anguish in the past;
- d. Mental anguish, in reasonable probability, sustained in the future;
- e. Fear and anxiety in the past;
- f. Fear and anxiety, in reasonable probability, sustained in the future;
- g. Inconvenience in the past;
- h. Inconvenience, in reasonable probability, sustained in the future;
- i. Reasonable and necessary medical expenses in the past;
- j. Reasonable and necessary medical expenses, in reasonable probability, sustained in the future;
- k. Loss of wages in the past;
- l. Loss of wages, in reasonable probability, sustained in the future;
- m. Loss of wage-earning capacity in the past;
- n. Loss of wage-earning capacity, in reasonable probability, sustained in the future;
- o. Physical impairment in the past;
- p. Physical impairment, in reasonable probability, sustained in the future;
- q. Loss of normal enjoyment of the pleasure of life in the past;
- r. Loss of the normal enjoyment of the pleasure of life, in reasonable probability, sustained in the future;
- s. Costs of suit; and
- t. All other relief, in law and equity, to which Plaintiffs may be entitled.

41. Plaintiffs' damages clearly exceed the minimum 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.

EXEMPLARY DAMAGES

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

43. 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.

44. 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.

VIII. JURY TRIAL

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

IX. U.S. LIFE TABLES

46. 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 hearing 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: August 8, 2023.

Respectfully submitted,

THE BUTTON LAW FIRM

/s/ Russell T. Button

Russell T. Button

Texas Bar No. 24077428

russell@buttonlawfirm.com

Ashley D. Washington

Texas Bar No. 24102030

ashley@buttonlawfirm.com

4315 W. Lovers Lane, Suite A

Dallas, Texas 75209

T: 214-88-2216

F: 214-481-8667

Email for Service:

service@buttonlawfirm.com

ATTORNEYS FOR PLAINTIFFS

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Russell Button on behalf of Russell Button
Bar No. 24077428
service@buttonlawfirm.com
Envelope ID: 78319450
Filing Code Description: Plaintiff's Original Petition (OCA)
Filing Description: Original Petition And Jury Demand
Status as of 8/8/2023 3:13 PM CST

Associated Case Party: Fernando Cossich

Name	BarNumber	Email	TimestampSubmitted	Status
Russell Button		service@buttonlawfirm.com	8/8/2023 2:53:34 PM	SENT