

CAUSE NO. 23-1102

Deputy

ASHLEY MCMULLEN INDIVIDUALLY, AND AS PARENT AND NEXT FRIEND OF T.M., MINOR CHILD,	§ § § §	IN THE DISTRICT COURT OF
PLAINTIFFS,	§	
VS.	§	HARRISON COUNTY, TEXAS
	§	
MS. ANITA'S ACADEMIC CENTER; AND ANITA LYNN TAYLOR,	§ § §	
DEFENDANTS.	§	<u>71ST</u> JUDICIAL DISTRICT

ORIGINAL PETITION AND JURY DEMAND

1. Ashley McMullen, like many parents across this country and the state of Texas, is a working parent that relied on a daycare to provide a safe, caring, nurturing environment for her daughter, T.M., while she was working. Ashley McMullen trusted that her daughter would be safe while in the care of Ms. Anita's Academic Center.

2. A safe learning environment and peace of mind are what parents like Ashley McMullen pay for and expect. Instead, Ashley McMullen's trust was violated when her daughter, T.M., suffered serious physical, emotional, and mental injuries because of the failures of Ms. Anita's Academic Center. Ashley McMullen brings this lawsuit on her family's behalf asking for answers and asking that Ms. Anita's Academic Center accept responsibility.

I. STATEMENT OF FACTS

3. "Nurturing tomorrow's leaders" predominately displayed on Ms. Anita's Academic Center exterior sign, assures families like Ashley McMullin and her child, T.M., that the children

attending their daycare will be nurtured and cared for. Ms. Anita’s Academic Center advertises itself as being “focused on kindness.”¹ The daycare boasts to families that “honesty and accountability come first” when it comes to caring for children.² When parents like Ashley McMullen enroll their children in the care of Ms. Anita’s Academic Center, they expect the childcare center to deliver on their promises—they expect their child to be nurtured and met with kindness, honesty, and accountability. What parents do not expect, is for their child to suffer from excruciating pain and 2nd degree burns while in the nurturing hands of Ms. Anita’s Academic Center.

4. On or about Thursday, August 3, 2023, Ashley McMullen placed her eleven-month-old daughter, T.M., in the care of Ms. Anita’s Academic Center for daycare. While under the care of Ms. Anita’s Academic Center, T.M. was severely injured when she was taken outside without shoes or socks on and permitted to walk barefoot in 104-degree heat.



¹ Ms. Anita’s Academic Center’s Facebook Page, <https://www.facebook.com/p/Ms-Anitas-Academic-Center-100057390252047/> (last visited October 11, 2023).

² Ms. Anita’s Academic Center’s Facebook Page (Deactivated, last visited August 11, 2023).

Due to the exposure of extreme heat from the ground, T.M. suffered severe 2nd degree burns to the entire bottom of both feet, causing T.M. physical, emotional, and psychological harm, and damages (hereinafter, "the Incident").

5. Ms. Anita's Academic Center has been cited by the state of Texas numerous times 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 incidents and the injuries sustained by T.M. Ms. Anita's Academic Center 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.

6. The following is an overview of some of the citations issued by Texas Health and Human Services Commission from May 2020 through July 2023:

- **May 2020:**
 - Cited for director failing to complete background check prior to allowing subject to be present at the operation.
- **June 2020:**
 - Cited for director failing to complete background check prior to allowing subject to be present at the operation.
 - Cited for caregivers failing to know the names and ages of children they are responsible for.
- **August 2020:**
 - Cited for failing to ensure areas are free from hazards.
 - Cited for failing to inspect active play areas daily.
- **March 2021:**
 - Cited for director failing to assign employees to children appropriately.
 - Cited for caregiver failing to remain free of other activities while supervising children.
- **May 2021:**

- Cited for failing to complete annual training on preventing, recognizing and reporting maltreatment of children.
- Cited for failing to complete annual training on required content.
- Cited for failing to complete annual training of children under 24 months of age.
- **November 2021:**
 - Cited for caregiver failing to know which children they are responsible for.
- **April 2022:**
 - Cited for director failing to assign employees to children appropriately.
- **August 2022:**
 - Cited for failing to complete annual pediatric CPR training.
 - Cited for failing to complete annual director training.
- **September 2022:**
 - Cited for failing to complete annual pediatric CPR training.
 - Cited for failing to complete annual director training.
- **October 2022:**
 - Cited for failing to complete annual pediatric CPR training.
 - Cited for failing to complete annual director training.
- **February 2023:**
 - Cited for failing to properly supervise children.
 - Cited for failing to inspect active play areas daily.
- **July 2023:**
 - Cited for caregivers failing to know which children they are responsible for.

7. What happened to T.M. was preventable. As a direct and proximate result of the actions and omissions of Ms. Anita's Academic Center, Plaintiffs Ashley McMullen, and T.M. sustained injuries and damages.

II. DISCOVERY CONTROL PLAN & CLAIM FOR RELIEF

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

9. As required by the Texas Rule of Civil Procedure 47(c), Plaintiff's 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

10. Plaintiff Ashley McMullen is the biological parent of Plaintiff T.M., a minor, and is a citizen and resident of Harrison County, Texas.

11. Defendant Ms. Anita's Academic Center is a Texas Corporation doing business in this State. Defendant may be served with process by serving its registered agent, Anita Lynn Taylor, 406 Jasper Drive, Marshall, TX 75672.

12. Defendant Anita Lynn Taylor is an individual residing in Marshall, Harrison County, Texas. Defendant may be served with process at her residence 406 Jasper Drive, Marshall, TX 75672.

IV. JURISDICTION & VENUE

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

14. Venue is proper in Harrison 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

Count One – Negligence

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

16. 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 T.M. 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;
- d. Failing to intervene to ensure a child's safety;
- e. Failing to maintain a safe environment for children;
- f. Failing to employ caregivers who demonstrate competency, good judgment, and self-control;
- g. Failing to ensure that expectations for a child's behavior is appropriate or the developmental level of that child;
- h. Failing to immediately notify parents on any situation that placed their child at risk;
- i. Failing to report all incidents involving serious harm or injuries to children to the Department of Family Protective Services;
- j. Failing to complete incident reports on all incidents involving serious harm to children and incidents that place children at risk;
- k. Failing to provide parents with a copy of a completed incident report on all incidents involving injuries to their child;

- l. Failing to contact emergency medical services in response to serious injury; and
 - m. 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.
17. Defendants had a duty to exercise ordinary care in caring for and supervising the children in its care to prevent injury to T.M. and other children similarly situated.
18. Defendants had a duty to maintain a safe environment for children in its care to prevent injury to T.M., and other children similarly situated.
19. Defendants breached the duty of care by failing to: care for the children; supervise the children; maintain a safe environment for children; intervene as to prevent injury to a child; hire, train, and supervise qualified caregivers and staff to care for children; create an incident report for an incident involving serious harm or risk to children; immediately notify parents of any situation placing their child at risk or causing harm; and contact emergency medical services in response to serious injury.
20. 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

21. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.
22. 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.
23. In the forgoing claims of negligence per se, Plaintiffs were, at all times, members of the class that the statutes were designed to protect.
24. Defendants' violation of the statutes was the proximate cause of the incident in question.

Count Three – Gross Negligence

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

26. 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).

27. 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.

28. 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

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

30. Defendants are the owners, operators, and/or possessors of the daycare premises located at 307 Pope Street, Marshall, TX 75760, operation license number 1701847.

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

32. 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.

33. Defendants owed Plaintiffs a legal duty to ensure T.M.'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; and ensuring that serious

injuries are recorded and reported. Defendants breached these duties by failing to hire, train and supervise its employee-caregivers and management; by failing to intervene in an activity that posed a risk to a child's safety; by failing to immediately notify parents of incidents; by failing to contact emergency medical services in response to serious injury; and by failing to create corresponding incident reports and immediately inform the state entity of injuries T.M. sustained.

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

VI. RESONDEAT SUPERIOR

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

36. 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

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

38. As a direct and proximate cause of Defendants' negligent acts and/or omissions, Plaintiff Ashley McMullen, individually, and as a Parent and Next Friend of Plaintiff T.M., 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.

39. 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

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

41. 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.

42. 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 Defendants pursuant to Chapter 41 of the Texas Civil Practices and Remedies Code.

VIII. JURY TRIAL

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

IX. U.S. LIFE TABLES

44. 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: November 1, 2023.

Respectfully submitted,

THE BUTTON LAW FIRM

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Associated Case Party: ASHLEY MCMULLEN, INDIVIDUALLY AND AS PARENT AND NEXT FRIEND OF T.M., A MINOR CHILD

Name	BarNumber	Email	TimestampSubmitted	Status
Russell Button		service@buttonlawfirm.com	11/1/2023 5:40:41 PM	SENT