

CAUSE NO. 296-00789-2024

DANIELLE LEVY, INDIVIDUALLY AND AS NEXT	§	IN THE DISTRICT COURT OF
FRIEND OF Z.H., A MINOR	§	
CHILD,	§	
	§	
PLAINTIFFS,	§	
	§	
VS.	§	COLLIN COUNTY, TEXAS
	§	
KINDER CARE LEARNING CENTERS, LLC D/B/A	§	
ALLEN KNOWLEDGE BEGINNINGS and ALYSSA	§	
CRISOSTOMO,	§	
	§	
DEFENDANTS.	§	
	§	_____ JUDICIAL DISTRICT

ORIGINAL PETITION AND JURY DEMAND

1. Danielle Levy, Individually and As Next Friend of Z.H., 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, nurturing environment for her daughter, Z.H., while she was working. Danielle trusted that her daughter would be safe at Allen Knowledge Beginnings for daycare.¹

2. A safe learning environment and peace of mind are what parents like Danielle pay for and expect. Instead, her worst nightmare became a reality when her daughter Z.H. suffered serious physical, emotional, and mental injuries because of the failures of Allen Knowledge

¹ This Petition refers to Defendant KinderCare Learning Centers, LLC as "Allen Knowledge Beginnings," Defendant's assumed name it uses to do business in the state of Texas.

Beginnings. Danielle brings this lawsuit on her family's behalf asking for answers and asking that Allen Knowledge Beginnings accept responsibility.

STATEMENT OF FACTS

3. According to Allen Knowledge Beginnings website, they recognize that a daycare should make the health and safety of the children a top priority, "Classrooms should be squeaky-clean, meals should be allergy-safe, and teachers should be dedicated to nurturing healthy bodies, happy hearts, and growing minds!"² They further commit to ensuring that they will take all the precautions to ensure that children are fed according to their allergy and dietary restrictions "Even if your child has allergies or dietary restrictions, we'll serve up safe and delicious menu options created by nutrition education experts."³ However, a trail of records from the state of Texas paints a very different picture.

4. Allen Knowledge Beginnings is responsible for qualifying, hiring, training, and supervising its employee caregivers on safe and proper care conducive to the welfare of children, supervising children at all times, ensuring no child is neglected, ensuring a child is not served a food identified on the child's food allergy emergency plan, maintaining compliance with Texas' minimum standards for childcare, the use of good judgment, competency, and control, proper response and documentation of incidents of injury, and appropriate action in the event of a medical emergency.

² Allen Knowledge Beginnings' website, <https://www.kindercare.com/our-centers/selecting-the-right-center> (last visited August 28, 2023).

³ Allen Knowledge Beginnings' website, <https://www.kindercare.com/our-centers/inside-kindercare-centers/food-and-nutrition> (last visited August 28, 2023).

5. On or about Tuesday, July 5, 2022, Danielle placed her daughter Z.H. in the care of Allen Knowledge Beginnings for daycare. While under the care of Allen Knowledge Beginnings and Alyssa Crisostomo, Z.H. was negligently supervised, endangering her health and life. Allen Knowledge Beginnings negligently operated its facility when they fed Z.H. fish sticks for lunch, a food that Z.H. is severely allergic to (hereinafter, "the Incident"). Danielle gave notice to Allen Knowledge Beginnings about Z.H.'s allergies upon Z.H.'s enrollment, just four months prior to the incident, and the admission forms documented Z.H.'s allergens including an emergency allergy plan. Additionally, Allen Knowledge Beginnings failed to post required warnings in the classroom and food serving trays stating Z.H. was not to be given fish. Allen Knowledge Beginnings and Alyssa Crisostomo disregarded Z.H.'s food allergens and fed Z.H. fish.

6. Immediately after Z.H. ate the fish sticks, she had a reaction, and it caused her body to go into anaphylaxis. Z.H. was found in the bathroom, without her clothes on, crying and barely breathing with her tongue, lips and face swelled up. Allen Knowledge Beginnings and Alyssa Crisostomo chose not to contact emergency medical services nor did they follow the emergency allergy plan as required to do so by the minimum standards for childcare in Texas, creating an even greater risk of potential death of Z.H. Emergency medical services administered two EpiPens as well as oral medication to combat the anaphylaxis. While enroute to the hospital with Z.H., Danielle learned just how close she was to losing her daughter, as first responders told Danielle that had Danielle drove Z.H. to the hospital herself or waited 5 more minutes to call 911, her daughter most likely would have gone into anaphylactic shock, creating a significant risk of death.

7. This, unfortunately, was not the first time Allen Knowledge Beginnings and Alyssa Crisostomo had recklessly given Z.H. foods that are on her allergy list. On two other occasions, just one month prior to this incident, Z.H. was given fish by Allen Knowledge Beginnings, luckily Danielle was able to step in and take the fish away from Z.H. before ingesting it. Alyssa Crisostomo and all other caregiver employees and staff at Allen Knowledge Beginnings knew or should have known of Z.H.'s allergy to fish and Danielle took all the necessary precautions to ensure the safety of her daughter while at Allen Knowledge Beginnings but despite this, Allen Knowledge Beginnings and Alyssa Crisostomo continued to ignore Z.H.'s allergies, creating a high risk of serious harm or death of Z.H.

8. Allen Knowledge Beginnings negligently operated its facility by repeatedly failing to ensure food allergy safety and protocol; failing to hire trained and qualified caregivers; and failing to train and supervise employee-caregivers on food allergy safety, following the food allergy emergency plan, responding to medical emergencies and proper administration of medication which could have cost Z.H. her life. Given that Z.H. required immediate medical treatment by a healthcare professional or hospitalization, Allen Knowledge Beginnings was required to call for emergency medical services immediately to comply with this State's minimum standards for childcare but instead chose not to call for emergency medical services, while Z.H. was clearly in distress.

9. Allen Knowledge Beginnings is required to follow strict minimum 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 Z.H. and concluded that the allegations involving Z.H. against Allen Knowledge Beginnings were substantiated, citing Allen Knowledge Beginnings for violating the following childcare licensing rules of Texas:

- **746.3301(i) – Nutrition and Food Service – Must not serve identified foods to allergic child.** *Based on the investigation it was found that the operation served a child food identified on a child's food allergy emergency plan.*

10. In addition to issuing the citation, the state licensing investigation revealed that Alyssa Crisostomo did not have a completed background check done prior to being permitted to work with children, Alyssa Crisostomo did not have training on preventing and responding to emergencies due to food allergies, another employee had a conditional background check with restrictions placed by that state that were not being abided by, and that Allen Knowledge Beginnings failed to report the incident to the state.

11. Allen Knowledge Beginnings 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 incident and the injuries sustained by Z.H. Allen Knowledge Beginnings 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.

12. The following is an overview of some of the citations issued by the Texas Health and Human Services Commission from November 2018 to August 2023:

- November 2018:
 - Cited for failing to keep proper record of a child's health statement.

- December 2018:
 - o Cited for caregivers failing to supervise children.
- March 2019:
 - o Cited for caregivers failing to supervise children.
- March 2020:
 - o Cited for failure to comply with child/caregiver ratio.
- September 2022:
 - o Cited failing to remove or repair hazardous playground equipment.
- August 2023:
 - o Cited for failing to have the required children health records on file.

13. What happened to Z.H. was preventable. As a direct and proximate result of the actions and/or omissions of Allen Knowledge Beginnings and Alyssa Crisostomo, Plaintiffs Danielle Levy, and Z.H. sustained injuries and damages.

DISCOVERY CONTROL PLAN & CLAIM FOR RELIEF

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

15. 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.

PARTIES

16. Plaintiff Danielle Levy is the biological mother of Plaintiff Z.H., a minor, and are citizens and residents of Dallas County, Texas.

17. Defendant KinderCare Learning Centers, LLC d/b/a Allen Knowledge Beginnings (hereinafter referred to as "Defendant Allen Knowledge Beginnings") is a foreign limited liability

company doing business in the State of Texas. Defendant may be served with process by serving its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, located at 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever they may be found.

18. Defendant Alyssa Crisostomo (hereinafter referred to as "Defendant Crisostomo") is an individual citizen of Collin County, Texas that may be served with process at 1003 Sandy Trail Drive, Allen, Texas 75002, or wherever she may be found.

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 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.

CAUSES OF ACTION AGAINST 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. Failing to properly hire, qualify, train, and supervise its employee-caregivers trusted with the care of minor Plaintiff Z.H.;
 - g. Failing to follow the food allergy emergency plan for children;
 - h. Failing to ensure a child is not given a food for which the child has a documented allergen;
 - i. Choosing to continue to employ an unqualified, untrained, and unsupervised caregiver;
 - j. Failing to appropriately respond in an emergency situation;
 - k. Failing to ensure caregiver employees demonstrate competency, good judgment, and self-control;
 - l. Failing to immediately notify parents of a situation that placed their child at risk;
 - m. Failing to record and report serious injuries sustained by a child in its care; and
 - n. Failing to adhere to the Texas Minimum Standards for Childcare.
23. Defendants had a duty to exercise ordinary care in caring for and supervising the children in their care so as to prevent injury to Plaintiff Z.H. and other children similarly situated.
24. Defendants had a duty to maintain a safe environment for children in their care so as to prevent injury to Z.H., and other children similarly situated.

25. Defendants had a duty to hire, training, and supervise caregiver employees to ensure that children in their care were safe, so as to prevent injury to Z.H., and other children similarly situated.

26. Defendants breached the duty of care by failing to care for the children, failing to supervise the children, failing to communicate allergy information to all caregivers in charge of children's care, failing to ensure food allergy safety and protocol, failing to ensure a child is not given a food for which they have a documented allergen, failing to properly train, hire, and supervise it's employees, failing to maintain a safe environment for children, failing to immediately call for medical attention after a minor child in their care sustained serious injuries.

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 designed to protect.

31. Defendants' violation of the statutes was 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. Defendant Allen Knowledge Beginnings is the owner, operator, and/or possessor of the daycare premises located at 1216 E. Bethany Drive, Allen, Texas 75002, operation license number 955827. Defendant Crisostomo was an employee of Allen Knowledge Beginnings.

39. At the time of the Incident, Z.H. 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 Z.H.'s safety in maintaining proper care over the children, 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 recorded and reported and on responding to medical emergencies. Defendants

breached these duties by failing to maintain a safe environment for Z.H., failing to train and supervise its caregiver employees on how to supervise children, and by failing to respond to a medical emergency.

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

RESPONDEAT SUPERIOR

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

44. The negligence, carelessness, and callousness of Defendant Allen Knowledge Beginnings' employees proximately caused the damage and losses suffered by Plaintiffs as a result of the injury. At all times material to this action, Defendant Allen Knowledge Beginnings' employees were acting in the course and scope of their employment. Accordingly, Defendant Allen Knowledge Beginnings may be held responsible for its employees' negligence under the doctrine of respondeat superior.

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 Danielle Levy, individually, and as Next Friend of Plaintiff Z.H., 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. Loss of wages in the past;
 - h. Loss of wages, in reasonable probability, sustained in the future;
 - i. Loss of wage-earning capacity in the past;
 - j. Loss of wage-earning capacity, in reasonable probability, sustained in the future;
 - k. Physical impairment in the past;
 - l. Physical impairment, in reasonable probability, sustained in the future;
 - m. Loss of the normal enjoyment of the pleasure of life in the past;
 - n. Loss of the normal enjoyment of the pleasure of life, in reasonable probability, sustained in the future;
 - o. Costs of suit; and
 - p. All other relief, in law and equity, to which Plaintiffs may be entitled.
47. 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

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

JURY TRIAL

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

U.S. LIFE TABLES

52. 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: February 8, 2024.

Respectfully submitted,

THE BUTTON LAW FIRM

By: /s/Russell T. Button

Russell T. Button

Texas Bar No. 24077428

russell@buttonlawfirm.com

Ashley D. Washington

Texas Bar No. 24102030

Ashley@buttonawfirm.com

4315 W. Lovers Lane, Suite A

Dallas, Texas 75209

T: 214-888-2216

F: 214-481-8667

Email for Service:

service@buttonlawfirm.com

ATTORNEYS FOR PLAINTIFFS

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service@buttonlawfirm.com
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Associated Case Party: Danielle Levy

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Russell Button		service@buttonlawfirm.com	2/8/2024 8:37:41 AM	SENT