

CAUSE NO. 048-351072-24

BROOKE NAPIER AND JEFFREY NAPIER,	§	IN THE DISTRICT COURT OF
INDIVIDUALLY AND AS PARENTS AND NEXT	§	
FRIENDS OF N.N., A MINOR CHILD,	§	
	§	
	§	
PLAINTIFFS,	§	
	§	
VS.	§	TARRANT COUNTY, TEXAS
	§	
ARKA KELLER INVESTMENTS, LLC d/b/a PARK	§	
VISTA CHILDREN'S	§	
ACADEMY; AND ARKA PARK VISTA	§	
EDUCATORS, LLC,	§	
	§	
DEFENDANTS.	§	_____ JUDICIAL DISTRICT

ORIGINAL PETITION AND JURY DEMAND

1. Brooke Napier and Jeffrey Napier, like many parents across this country and the state of Texas, are working parents that relied on a daycare to provide a safe, caring, nurturing environment for their daughter, N.N., while they were working. Brooke Napier and Jeffrey Napier trusted that their daughter would be safe at Park Vista Children's Academy.¹

2. A safe learning environment and peace of mind are what parents like Brooke Napier and Jeffrey Napier pay for and expect. Instead, Brooke Napier and Jeffrey Napier's worst nightmare became a reality when their daughter N.N. suffered serious physical, emotional, and mental injuries because of the failures of Park Vista Children's Academy. Brooke Napier and Jeffrey

¹ Defendants Arka Keller Investments, LLC d/b/a Park Vista Children's Academy and Arka Park Vista Educators, LLC, collectively are referred to as "Park Vista Children's Academy" in this Petition.

Napier bring this lawsuit on their family's behalf asking for answers and asking that Park Vista Children's Academy accept responsibility.

STATEMENT OF FACTS

3. According to Park Vista Children's Academy, "We are a state of the art childcare/preschool center with an engaging updated curriculum backed by qualified, experienced, and passionate teachers!"² Park Vista Children's Academy publicizes and sells working parents on the idea that this daycare is dedicated to creating a safe learning environment for the children, "... as an early learning institution we grow the whole child from all developmental domains in a safe and healthy environment."³ However, a trail of records from the state of Texas paints a very different picture.

4. Park Vista Children's Academy is responsible for qualifying, hiring, training, and supervising its employee caregivers on: providing safe and proper care conducive to the welfare of the children; appropriate discipline methods; 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 Tuesday, August 8, 2023, Brooke Napier and Jeffrey Napier placed their 23-month-old daughter N.N. in the care of Park Vista Children's Academy for daycare. While under the care of Park Vista Children's Academy, N.N. was aggressively handled and inappropriately disciplined causing N.N. physical, emotional, and psychological harm and damages (hereinafter, the "Incident"). A video recording of the day of the Incident obtained by Texas Health and Human

² *Park Vista Children's Academy's Website*, <https://parkvistachildcare.com/> (last visited March 4, 2024).

³ *Id.*

Services Child-Care Licensing Division, shows N.N. being yanked up by the caregiver-employee by one arm and lifted over a shelf and dangled to the bathroom door where she is roughly put down and pushed into the door for timeout. N.N. is seen visibly upset and crying and attempts to move away from the spot she was placed in but is then dragged back to the spot by the bathroom and is roughly set up against the wall and shoved on the head.

6. The caregiver-employee then goes into the bathroom and when she comes out of the bathroom, she first grabs N.N. by one arm then pulls her by both arms and is seen forcing N.N. to pick up the toys on the ground and move them to another spot of the classroom. N.N. is roughly moved back and forth in the classroom several times while being forced to move the toys.

7. The caregiver employee then turns her attention to another child before returning back to N.N., at which point the caregiver employee bends down and reaches toward N.N. Scared and upset, N.N. quickly leans herself away from the caregiver employee but she is pulled up and off the ground to her feet, first by one arm then by both arms. N.N. is then grabbed by one arm and yanked forcibly to the ground where she lands on her stomach and is then roughly picked up by her right forearm and carried across the classroom and placed against the wall by the bathroom. N.N. then stands up in the same location she is placed and is crying. When the caregiver employee notices her standing, she comes over aggressively toward N.N. and N.N. quickly drops to the ground out of fear. In an attempt to get away, N.N. is seen crawling to the classroom door but she is quickly grabbed by the caregiver employee who picks her up by one arm and swings her around and roughly into the same spot by the bathroom. N.N. continues to cry and places her face to the ground and the caregiver-employee lifts her off the ground again

and pushes her backwards into the wall and appears to spank her on the leg and push her face. N.N. is left in this “timeout” location for 8 minutes before N.N. makes an attempt at re-joining the group but she is quickly grabbed by the arm and swung back to the timeout spot where N.N. falls to the ground crying. This video obtained by Texas Health and Human Services shows this entire ordeal goes on for **over 20 minutes**.

8. The video footage shows that this was a common occurrence at Park Vista Children’s Academy as other children can be seen suffering from the same or similar inappropriate forms of discipline as N.N., which included yelling, grabbing children, expressing negative behaviors toward children, placing children in timeout for an unreasonable amount of time, and more.

9. Following the Incident, Park Vista Children’s Academy chose not to immediately contact N.N.’s parents, emergency services, or the state of Texas to report the injuries and incident. Brooke Napier was notified the following day about the incident involving N.N. but Park Vista Children’s Academy failed to notify her the severity of the situation. Law enforcement was not notified until almost a month later.

10. An independent investigation into the Incident by the Texas Health and Human Services Commission Child-Care Licensing Division and the Texas Department of Family and Protective Services was performed, concluding that the allegations involving N.N. against Park Vista Children’s Academy were *substantiated*, citing Park Vista Children’s Academy for violating the following childcare licensing rules of Texas:

- **746.1201(4):** Responsibilities of Employees and Caregivers – Ensure No Child is Abused, Neglected, or Exploited.
- **746.2805(1):** Prohibited Punishments – Corporal Punishment

- **746.2805:** Prohibited Punishments – No Harsh, Cruel or Unusual Punishment
- **746.1203(6):** Responsibilities of caregivers – Set appropriate behavior expectations
- **746.2805(3):** Prohibited Punishments – Grabbing and pulling

11. Park Vista Children’s Academy 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 N.N. Park Vista Children’s 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.

12. The following is an overview of some of the citations issued by the Texas Health and Human Services Commission from September 2019 through March 2023:

- September 2019
 - o Cited for failing to have the required personnel records in file.
- February 2020
 - o Cited for failing to demonstrate competency, good judgment, and self-control.
 - o Cited for failing to provide adequate supervision of children when a child was left alone and unsupervised in a classroom for an extended amount of time.
- March 2020
 - o Cited for failing to provide adequate supervision of children when a child was left alone and unsupervised outdoors for an extended amount of time.
 - o Cited for failing to demonstrate competency, good judgment, and self-control when caring for a child when a caregiver failed to conduct a name to face check as required.
- August 2021:

- Cited for failing to interact positively with children when a caregiver yelled at the children on a consistent basis.
 - Cited for failing to demonstrate competency, good judgment and self-control when a caregiver was observed grabbing a child in a rough manner.
 - Cited for using prohibited and inappropriate forms of discipline toward children.
 - Cited for having children sit and wait long periods without any activity plan.
- March 2023
- Cited for failing to properly arrange the children's napping equipment.
 - Cited for failing to demonstrate competency, good judgment and self-control when a caregiver failed to supervise the children at naptime.
 - Cited for failing to ensure no child was abused, neglected, or exploited.
13. What happened to N.N. was preventable. As a direct and proximate result of the actions and omissions of Park Vista Children's Academy, Plaintiffs 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. Plaintiffs Brooke Napier and Jeffrey Napier are the biological parents of Plaintiff N.N., a minor, and are citizens and residents of Tarrant County, Texas.
17. Defendant Arka Keller Investments, LLC d/b/a Park Vista Children's Academy 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, Manidhar Gudavalli, at 1019 Thorncliff Trail, Irving, Texas 75063, or wherever they may be found.

18. Defendant Arka Park Vista Educators, 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, Ravindra Kumar Maddi, located at 8619 Lohr Valley Road, Irving, Texas 75063, or wherever they 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 Tarrant 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

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 N.N.;
 - g. Failing to ensure that expectations for a child's behavior is appropriate or the developmental level of that child;
 - h. Failing to use only constructive, age-appropriate methods of discipline;
 - i. Failing to use safe lifting and moving methods of children;
 - j. Failing to properly hire, qualify, train, and supervise its employee-caregivers trusted with the care of minor Plaintiff N.N.;
 - k. Failing to appropriately respond in an emergency situation;
 - l. Failing to use positive methods of discipline and guidance with the children in its care;
 - m. Failing to ensure caregiver employees demonstrate competency, good judgment, and self-control;
 - n. Failing to provide only brief supervised separation or timeout from the group that is appropriate for a child's age, which is limited to no more than one minute per year of the child's age;
 - o. Failing to record and report serious injuries sustained by a child in its care; and
 - p. 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 N.N. 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 N.N., 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, so as to prevent injury to N.N., 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 appropriately discipline the children; failing to properly train, hire, and supervise its employees; failing to maintain a safe environment for children; failing to call for medical attention after a minor child in their care sustained injuries; failing to create an 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 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. Defendants are the owners, operators, and/or possessors of the daycare premises located at 13033 Park Vista Blvd, Fort Worth, Texas 76244, operation license number 1693680.

39. At the time of the Incident, N.N. 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 N.N.'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 recorded and reported. Defendants breached these duties by permitting one of its employee-caregivers to

inappropriately discipline children, by allowing that caregiver to remain on staff after the Incident, and by failing to create a corresponding incident report and inform the appropriate state entity of the injuries N.N. sustained.

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 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.

DAMAGES

45. Plaintiff incorporates 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 Brooke Napier and Jeffrey Napier, Individually, and as Parents and Next Friends of Plaintiff N.N., 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 Defendant 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: March 13, 2024.

Respectfully submitted,

THE BUTTON LAW FIRM

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Associated Case Party: BROOKE NAPIER AND JEFFREY NAPIER, INDIVIDUALLY AND AS PARENTS AND NEXT FRIENDS OF N.N., A MINOR CHILD

Name	BarNumber	Email	TimestampSubmitted	Status
Russell Button		service@buttonlawfirm.com	3/13/2024 4:49:49 PM	SENT