

C2024-0911D
CAUSE NO. _____

KARINA LEBATO, INDIVIDUALLY AND
AS NEXT FRIEND OF T.L., A MINOR
CHILD,

PLAINTIFFS,

VS.

THE CHILDREN’S COURTYARD, INC.,

DEFENDANT.

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IN THE DISTRICT COURT

COMAL COUNTY, TEXAS

433rd
____ JUDICIAL DISTRICT

ORIGINAL PETITION AND JURY DEMAND

1. Karina Lebato, 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 son, T.L., while she was working. Karina Lebato trusted that her son would be safe at Children’s Courtyard¹ for daycare.

2. A safe learning environment and peace of mind are what parents like Karina pay for and expect. Instead, Karina’s worst nightmare became a reality when her son T.L. suffered serious physical, emotional, and mental injuries because of the repeated failures of Children’s Courtyard. Karina brings this lawsuit on her family’s behalf asking for answers and asking that Children’s Courtyard accept responsibility.

¹ This petition refers to Defendant The Children’s Courtyard, Inc. as “Children’s Courtyard.”

STATEMENT OF FACTS

3. According to Children’s Courtyard, “Your child’s wellness is our top priority.”² They vow to create a nurturing and safe environment for the children in their care, “At The Children’s Courtyard, we pride ourselves on providing children with a school environment that is welcoming, nurturing, and safe. From equipment checks and head counts to cameras and alarms, we work hard to protect every child, every day.”³ They further assert their commitment to parents to ensure their child’s well-being, “We monitor children for signs of illness and notify parents immediately if their child is not well.”⁴ However, investigation records from the state of Texas paints a very different picture.

4. Children’s Courtyard 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 to ensure their safety and wellbeing; performance of proper name-to-face checks to ensure all children are accounted for; ensuring no child is neglected; having appropriate visual and/or auditory awareness of each child; maintaining a safe environment for children in their care; maintaining compliance with Texas’ minimum standards for childcare; the use of good judgment, competency, and control; proper response and documentation of incidents that place a child at risk; and appropriate action in the event of a medical emergency.

² Children’s Courtyard Website, https://www.childrencourtyard.com/child-care-centers/safety/?utm_campaign=www.google.com&utm_source=www.google.com&utm_medium=referral (last visited April 24, 2024).

³ *Id.*

⁴ *Id.*

Incident Number One – June 17, 2020

5. On or about Wednesday, June 17, 2020, Karina placed her son T.L. in the care of Children's Courtyard for daycare. While under the care of Children's Courtyard, T.L. was negligently supervised, endangering his health, safety, and life. Children's Courtyard failed to properly supervise the children in its care when they left T.L. alone and unsupervised in the outdoor playground for an extended period of time. As other parents were arriving to pick up their children, they noticed T.L. standing alone and crying by the playground gate.

6. Upon seeing T.L. visibly upset, the parents approached T.L. to talk to him to figure out why he was alone outside. One of the parents went inside to notify the staff that T.L. was outside alone while another stayed with T.L. outside to watch over him and comfort him. It was the parents alerting Children's Courtyard that T.L. was outside alone and unsupervised that finally made them take notice that they had a child missing from their care. Children's Courtyard had no explanation for T.L.'s parents or Texas Health and Human Services, on how T.L. ended up outside in the playground alone or how long he was left unsupervised – adding that they could not explain if he walked out of the building on his own or if he had been forgotten on the playground.

7. Children's Courtyard negligently operated its facility and placed T.L. at direct risk of serious life-threatening injury or death. Children's Courtyard failed to properly supervise the children in its care; failed to conduct proper name to face checks to account for children in their care; failed to recognize a child was missing from their care; failed to provide a safe environment for a child in their care; failed to ensure no child was neglected in their care; negligently hired unqualified and untrained employees; failed to supervise its employees; and left T.L. and

numerous other children in the hands of incompetent and irresponsible caregivers. Supervision is an essential component of the prevention of harm. Supervision requires knowing ongoing activity of each child, having appropriate physical proximity, visual and/or auditory awareness, and properly accounting for every child in their care. During an independent investigation into the incident conducted by Texas Health and Human Services Child-Care Licensing, it was concluded that the allegations involving T.L. against Children’s Courtyard were substantiated, and Children’s Courtyard was cited for violating the following childcare licensing rules of Texas:

- **§746.1203(4) – Responsibilities of Caregivers – Supervision of Children:** Standards not compliant with minimum standards regarding supervision. Child found unsupervised on playground for undetermined amount of time.

8. In addition to citing Children’s Courtyard for violating the above childcare licensing rules, Texas Health and Human Services Child-Care Licensing also providing Technical Assistance to Children’s Courtyard in efforts to prevent another incident that would violate the childcare minimum standards regarding supervision. Karina trusted that Children’s Courtyard would apply the technical assistance provided by the state and would implement the necessary safety measures to ensure T.L. and other children would not be neglected while in their care. Sadly, it **did not end here** - Children’s Courtyard again, failed T.L. and once again endangered his health, safety, and life.

Incident Number Two – April 5, 2022

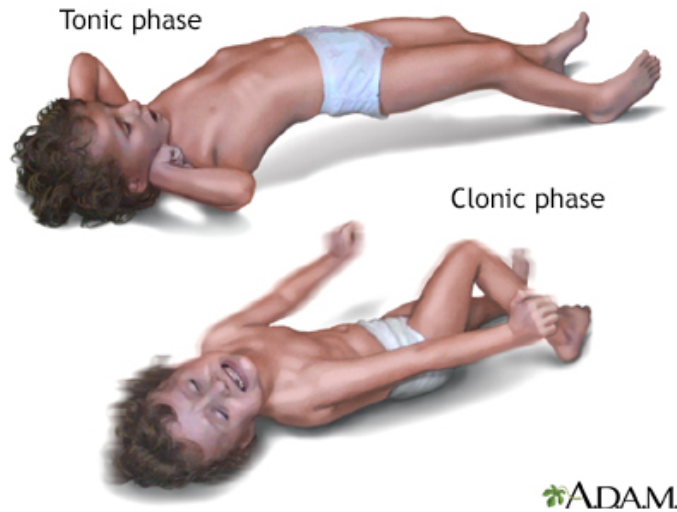
9. On April 5, 2022, Children’s Courtyard failed to use good judgment and failed to properly supervise T.L. when they ignored T.L.’s signs of a developing fever and did not take any steps to prevent the fever from reaching a severe level. As a result T.L. suffered a febrile seizure which resulted in further long-lasting effects to his psychological and behavioral development.

Children's Courtyard caregiver employees noted that T.L. wasn't himself this day as he had been cranky, very emotional, had red eyes, a runny nose and had been sneezing all day. The caregiver employees admitted that they could tell T.L. wasn't feeling well but despite this, the caregiver employees failed to properly check T.L.'s temperature with a thermometer and instead using only their arm to check T.L.'s temperature and through checking his temperature with their arm, they came to the conclusion that he did not have a fever and therefore did not find it necessary to check his temperature with a thermometer. Additionally, because the staff did not use a thermometer, nothing was documented and recorded on paper to keep record of T.L.'s temperature.

10. To make matters worse, Children's Courtyard failed to notify T.L.'s parents that he was experiencing symptoms throughout the entire day. It wasn't until 5:33 p.m. that Karina was informed of T.L.'s condition but assured multiple times by Children's Courtyard that he was not warm to the touch and did not have a fever but failing to let Karina know that they did not properly check his temperature with a thermometer.

11. When Karina arrived to pick up T.L. from Children's Courtyard, she immediately noticed that something wasn't right with T.L. as soon as she saw him. Karina could see T.L.'s eyes and skin were red in color and could tell he had been crying. When she approached him and touched him, his body temperature was hot to the touch. Karina left the daycare with T.L. and immediately started heading toward the nearest urgent care. On the drive to the urgent care, T.L. started having an active seizure and lost consciousness. Upon arrival to the urgent care, Thomas presented with *tonic-clonic phase convulsions and a soaring temperature of 103.5°F*. When T.L. finally regained consciousness, he vomited and became disoriented by his

surroundings as he looked around the room while crying. It was determined that Thomas suffered a *febrile seizure as a result of the undetected high temperature*.



Tonic-Clonic Phase T.L. Experienced

12. Children’s Courtyard negligently operated its facility and placed T.L. at direct risk of serious life-threatening injury or death. Children’s Courtyard failed to train and supervise caregiver-employees on ensuring the well-being and health of the children in their care; failed to provide a safe environment for a child in their care; failed to demonstrate competency, good judgment and self-control; failed to ensure no child was neglected in their care; failed to respond in medical emergencies, failed to properly check a child’s temperature using a thermometer; failed to supervise its employees; and left T.L. and numerous other children in the hands of incompetent and irresponsible caregivers. The state of Texas concluded that the allegations involving T.L. against Children’s Courtyard for this second incident were substantiated, and cited Children’s Courtyard for violating the following childcare licensing rules of Texas:

- **§746.1201(1) – Responsibilities of Employees and Caregivers – Demonstrate Competency, Good Judgment, Self-Control:** Did not use good judgment when they failed to notify a parent until the end of day (around 5:30pm) that their child was cranky,

sneezing, crying, and had red eyes all day long. Caregiver used their arm instead of a thermometer to check if 3-year-old had a fever.

13. Children’s Courtyard 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 T.L. Children’s Courtyard has a clear recent history of failing to qualify, train, and supervise employees, failing to follow minimum standards, and failing to properly care for children.

14. The following is an overview of some of the citations issued by the Texas Health and Human Services Commission from December 2020 through December 2023.

- **December 2020:**
 - Cited for the director failing to complete the required training.
 - Cited for 8 caregivers failing to complete the required annual training, which included training on Building/Premises Safety.
 - Cited for failing to keep hazardous items inaccessible to children
 - Cited for a caregiver failing to provide proof that they attended and completed abuse/neglect training.
 - Failing to have the required first aid kit in the daycare’s transportation vehicles.

- **May 2021:**
 - Cited for failing to clean and sanitize the play mats.

- **June 2021:**
 - Cited for failing to comply with the responsibilities of a caregiver when a caregiver did not know the full group of children responsible for.
 - Cited when a caregiver was observed covering a child’s head during naptime.

- **December 2021:**
 - Cited for four caregivers missing the annual required training.
 - Cited for failing to keep play materials and equipment safe and in good repair for children.
 - Cited for failing to properly document a medication administered to a child.
 - Cited for placing an infant child in a restrictive device while sleeping.

- Cited for the director failing to complete the required training.
- **April 2022:**
 - Cited for using prohibited punishments on children that include humiliating, rejecting and yelling.
- **August 2022:**
 - Cited for failing to keep hazardous items inaccessible to children.
- **March 2023:**
 - Cited for caregivers failing to complete the required CPR/First aid training.
- **August 2023:**
 - Cited for failing to properly supervise the children and ensure their safety and well-being when a hazardous item was accessible to a child, resulting in the child placing it in their mouth and choking.
- **September 2023:**
 - Cited for failing to comply with the caregiver/child ratio.
 - Cited for failing to comply with the responsibilities of a caregiver when they failed to intervene to ensure a child's safety when a child was able to run out of the front door of the building unsupervised
- **December 2023:**
 - Cited for failing to inactivate a caregiver who is no longer associated with the daycare within 7 days of leaving.
 - Cited for failing to keep hazardous items inaccessible to children.

15. What happened to T.L. was preventable. As a direct and proximate result of the actions and/or omissions of Children's Courtyard, Plaintiffs sustained injuries and damages.

DISCOVERY CONTROL PLAN & CLAIM FOR RELIEF

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

17. 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

18. Plaintiff Karina Lebato is the biological mother of Plaintiff T.L., a minor, and are citizens and residents of Comal County, Texas.

19. Defendant The Children's Courtyard, Inc. (hereinafter referred to as "Defendant") 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, 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.

JURISDICTION & VENUE

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

21. Venue is proper in Comal 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

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

23. 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 Defendant. Defendant was 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 maintain a safe environment for children;
- e. Failing to properly hire, qualify, train, and supervise its employee-caregivers trusted with the care of minor Plaintiff T.L.;
- f. Failing to have appropriate visual and/or auditory awareness of each child;
- g. Failing to account for all children under their care and supervision;
- h. Choosing to continue to employ an unqualified, untrained, and unsupervised caregiver;
- i. Failing to ensure caregiver employees demonstrate competency, good judgment, and self-control;
- j. Failing to ensure no child is abused, neglected, or exploited;
- k. Failing to perform name-to-face counts of children;
- l. Failing to ensure a child's health and well-being;
- m. Failing to properly check a child's temperature using a thermometer;
- n. Failing to appropriately respond in an emergency situation;
- o. Failing to adhere to the Texas Minimum Standards for Childcare.

24. Defendant had a duty to exercise ordinary care in caring for and supervising the children in its care so as to prevent injury to Plaintiff T.L. and other children similarly situated.

25. Defendant had a duty to maintain a safe environment for children in its care so as to prevent injury to T.L., and other children similarly situated.

26. Defendant had a duty to hire, train, and supervise caregiver employees to ensure that children in their care were safe to prevent injury to T.L., and other children similarly situated.

27. Defendant breached the duty of care by failing to care for the children; failing to supervise the children; failing to have appropriate visual and/or auditory awareness of each child; failing to properly train, hire, and supervise its employees; failing to maintain a safe environment for children; and failing to properly account for every child under their care and supervision.

28. Defendant's 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

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

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

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

32. Defendant's violation of the statutes was the proximate cause of the Incident in question.

33. As a result of the Defendant's acts and/or omissions in violating the statutes, Plaintiffs sustained damages.

Count Three – Gross Negligence

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

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

36. Defendant's conduct involved an extreme degree of risk, considering the probability and magnitude of potential harm to the Plaintiffs. Defendant 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.

37. 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

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

39. Defendant was the owner, operator, and/or possessor of the daycare premises located at 241 Hunters Village, New Braunfels, Texas 78132, operation license number 1692438, during the time of this incident.

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

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

42. Defendant owed Plaintiffs a legal duty to ensure T.L.'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 every child is properly accounted for. Defendant breached these duties by failing to maintain a safe environment for T.L. and failing to train and supervise its caregiver employees on how to supervise children.

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

RESPONDEAT SUPERIOR

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

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

DAMAGES

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

47. As a direct and proximate cause of Defendant's negligent acts and/or omissions, Plaintiff Karina Lebato, Individually, and as Next Friend of Plaintiff T.L., 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.

48. 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

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

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

51. The grossly negligent conduct of Defendant, 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

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

U.S. LIFE TABLES

53. 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 Defendant be cited to appear and answer herein and upon final hearing hereof, they take, have and recover, of and from said Defendant, 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: May 15, 2024.

Respectfully submitted,

THE BUTTON LAW FIRM

By: /s/Russell T. Button

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Associated Case Party: KARINA LEBATO, INDIVIDUALLY AND AS NEXT FRIEND OF T.L., A MINOR CHILD

Name	BarNumber	Email	TimestampSubmitted	Status
Russell Button		service@buttonlawfirm.com	5/16/2024 2:10:32 PM	SENT