

110869
CAUSE NO. _____

MARK MATTOX, INDIVIDUALLY AND AS NEXT	§	IN THE DISTRICT COURT
FRIEND OF M.M, A MINOR CHILD,	§	
	§	
	§	
PLAINTIFFS,	§	
	§	
VS.	§	ELLIS COUNTY, TEXAS
	§	
DISCOVERY CHILDREN'S ACADEMY, LLC	§	
	§	
DEFENDANT.	§	40TH _____ JUDICIAL DISTRICT

ORIGINAL PETITION AND JURY DEMAND

1. Mark Mattox, like many parents across this country and the state of Texas, is a working father that relied on a daycare to provide a safe, caring, nurturing environment for his son, M.M., while he was working. Mr. Mattox trusted that his son would be safe at Discovery Children's Academy, LLC for daycare.¹
2. A safe learning environment and peace of mind are what parents like Mr. Mattox pay for and expect. Instead, Mr. Mattox's worst nightmare became a reality when his son M.M. suffered serious physical, emotional, and mental injuries because of the failures of Discovery Children's Academy. Mr. Mattox brings this lawsuit on his family's behalf asking for answers and asking that Discovery Children's Academy accept responsibility.

¹ This Petition refers to Defendant Discovery Children's Academy, LLC as "Discovery Children's Academy."

STATEMENT OF FACTS

3. According to Discovery Children’s Academy, “While you (sic) going about the responsibilities of your daily lives, to provide for your children, rest assured that we are doing everything we can to provide a safe environment for your children.”² Discovery Children’s Academy publicizes and sells parents on the idea that this daycare is dedicated to creating a nurturing and safe learning environment for their children. “Toddlers grow and learn at an exciting pace. At Discovery Children’s Academy, we provide a safe and nurturing environment to help them explore the world around them.”³ However, a trail of records from the state of Texas paints a very different picture.

4. Discovery Children’s Academy is responsible for qualifying, hiring, training, and supervising its caregiver employees on providing safe and proper care conducive to the welfare of children, keeping a safe and open floor space for children for floor time play, safeguarding all dangerous items, ensuring no child is neglected, supervising children at all times, having appropriate visual and/or auditory awareness of each child, maintaining compliance with Texas’ minimum standards for childcare, the use of good judgment, competency, and control, the proper response and documentation of incidents of injury, and appropriate action in the event of a medical emergency.

² *Discovery Children’s Academy, LLC’s Website*, <http://www.discoverychildrensacademy.com/about/> (last visited December 27, 2022).

³ *Discovery Children’s Academy, LLC’s Website*, <http://www.discoverychildrensacademy.com/programs/tiny-tykes/> (last visited December 27, 2022).

5. On Monday, May 23, 2022, Mr. Mattox placed his one-and-half year-old son M.M. in the care of Discovery Children’s Academy for daycare. While under the care of Discovery Children’s Academy, M.M. was negligently supervised endangering his health and life. Discovery Children’s Academy failed to secure dangerous items in the daycare and left a hot bottle warmer unguarded and within proximity of the unsupervised M.M. M.M. was negligently left to play near and on changing table shelf, knocking a nearby trashcan, and causing a bottle warmer with scalding hot water to fall on his legs and body and as a result, M.M. suffered serious bodily injuries and damages (hereinafter, “the Incident”). The two daycare employees responsible for supervising M.M. were occupied with other tasks and failed to supervise M.M. to keep him safe.



⁴ Photo of M.M.’s burn injuries on date of incident.

Following the Incident, Discovery Children's Academy chose not to contact 911 and emergency medical services. As M.M. was in pain and his skin began to peel off his legs, Discovery Children's Academy still failed to contact emergency medical services. Discovery Children's Academy negligently responded to a clear and obvious medical emergency and provided false information to M.M.'s parent to downplay the severity of the incident. When M.M.'s parent arrived at the daycare, the severity of his injuries was obvious, and he was immediately rushed by his parent to the emergency room to be treated for severe burns to his legs and body.

6. Discovery Children's Academy failed to train and supervise employee-caregivers on how to respond to medical emergencies. Given that M.M. clearly required immediate medical treatment by a healthcare professional or hospitalization, Discovery Children's Academy was required to call for emergency medical services in order to comply with this State's minimum standards for childcare.

7. Discovery Children's Academy is required to provide a safe and open floor space for children. Caregivers are required to demonstrate good judgment and competency. A child should never be permitted to play on a changing table. Discovery Children's Academy knew or should have known that a child playing from a raised changing table is in danger of falling.

8. Discovery Children's Academy is required to safeguard dangerous items and ensure that things like bottle warmers are not in proximity to children. Every safe daycare knows that bottle warmers contain scalding hot liquid and children must be guarded from access all times. Discovery Children's Academy knew or should have known that the bottle warmer placement posed a danger to M.M.

9. Discovery Children’s Academy failed to supervise M.M. while he was in direct proximity of dangerous items. Supervision is an essential component of the prevention of harm. Supervision requires knowing the ongoing activity of each child, having appropriate visual and/or auditory awareness, physical proximity, and knowledge of activity requirements and each child’s needs.

10. Discovery Children’s Academy 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. The 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 M.M. and concluded that the allegations involving M.M. against Discovery Children’s Academy were substantiated, citing Discovery Children’s Academy for violating the following childcare licensing rules of Texas:

- **746.1201(1)** – All child-care center employees must demonstrate competency, good judgment, and self-control in the presence of children and when performing assigned responsibilities. *(1) Caregiver supervising did not use good judgment when a child was allowed to play on the shelf of the changing table which resulted in the child knocking a trashcan and bottle warmer on himself, and (2) Operation did not use good judgment in contacting a parent from a personal phone instead of the operation’s phone.*
- **746.701(1)** – You must record the following information on the Licensing Incident/Illness Report Form 7239 or another form that contains at least the same information when an injury to a child in care that required medical treatment by health-care professional or hospitalization: *Incident report used by the daycare did not contain at least the same information as form 7239.*

11. Discovery 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 M.M. Discovery 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 April 2018 through November 2021:

- April 2018:
 - o Cited for unsafely storing cleaning supplies in a 2-year-old classroom.
 - o Cited for not allowing children to have daily outdoor play.
 - o Cited for not having proper medical health statements for children enrolled with Discovery Children’s Academy for more than 12 months.
- May 2018:
 - o Cited for failing to give a child first-aid after an injury.
 - o Cited for failing to notify a parent when their child was injured.
 - o Cited for failing to complete an incident report that meets the state’s requirements.
- August 2018:
 - o Cited for failing to properly supervise children.
 - o Cited for having equipment that is prohibited for licensing childcare centers.
 - o Cited for placing an infant to sleep on their stomach.
 - o Cited for having two infants in restrictive equipment.
- September 2018:
 - o Cited for failing to complete a background check.
 - o Cited for failing to properly feed an infant a bottle.
- October 2018:
 - o Cited for having children in unsecured areas.
- June 2019:
 - o Cited for failing to drain and sanitize a pool in the playground.
- July 2019:
 - o Cited for failing to maintain a safe and proper child/caregiver ratio.
 - o Cited for failing to complete a gas leak test.
- January 2020:

- Cited for failing to have a carbon monoxide detector.
 - Cited for failing to have children wash their hands before eating.
 - December 2020:
 - Cited for placing infants in restrictive equipment without being buckled.
 - Cited for failing to sanitize and clean the seats at the infant table.
 - October 2021:
 - Cited for unsafely swaddling an infant.
 - Cited for failing to properly and safely store cleaning supplies.
 - Cited for failing to maintain a safe and proper child/caregiver ratio.
 - Cited for failing to properly maintain equipment.
 - Cited for failing to properly install equipment.
 - November 2021:
 - Cited for failing to supervise children and staff when a caregiver in charge of children was sleeping.
 - Cited for having infants sleeping in restrictive equipment.
13. What happened to M.M. was preventable. As a direct and proximate result of the actions and omissions of Discovery Children’s Academy, Plaintiffs Mark Mattox and M.M. 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 Mark Mattox is the biological father of Plaintiff M.M., a minor, and are citizens and residents of Ellis County, Texas.

17. Defendant Discovery Children’s Academy, LLC (herein referred to as “Defendant” or “Discovery 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, J. Kyle McAfee, located at 111 Roundabout Drive, Midlothian, TX 76065, or wherever they may be found.

JURISDICTION & VENUE

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

19. Venue is proper in Ellis 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

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

21. 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 intervene to ensure a child's safety;
- e. Failing to maintain a safe environment for children;
- f. Failing to safeguard all dangerous items;
- g. Failing to keep bottle warmers out of reach of children;
- h. Failing to have appropriate visual and/or auditory awareness of each child;
- i. Failing to properly hire, qualify, train, and supervise its employee-caregivers trusted with the care of minor Plaintiff M.M.;
- 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 record and report serious injuries sustained by a child in its care; and
- m. Failing to adhere to the Texas Minimum Standards for Childcare.

22. 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 M.M. and other children similarly situated.

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

24. Defendant had a duty to hire, train, and supervise caregiver employees to ensure that children in their care were safe, so as to prevent injury to M.M., and other children similarly situated.

25. Defendant breached the duty of care by failing to care for the children, failing to supervise the children, failing to safeguard dangerous items, failing to supervise children while they were in direct proximity to dangerous items, failing to properly train, hire, and supervise it's

employees, failing to maintain a safe environment for children, and failing to call for medical attention after a minor child in their care sustained serious injuries.

26. 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

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

28. 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.

29. 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.

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

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

Count Three – Gross Negligence

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

33. 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).

34. 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.

35. 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

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

37. Defendant is the owner, operator, and/or possessor of the daycare premises located at 111 Roundabout Drive, Midlothian, Texas 76065, operation license number 868229.

38. At the time of the incident, M.M. 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.

39. 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.

40. Defendant owed Plaintiffs a legal duty to ensure M.M.’s safety in maintaining proper care over the children, ensuring dangerous items are safeguarded, ensuring that bottle warmers are not in proximity to children, ensuring that employees are necessarily hired, trained, supervised, and terminated in order to maintain a safe environment for children, ensuring that serious injuries are recorded and reported, and on responding to medical emergencies. Defendant breached these duties by failing to maintain a safe environment for M.M., failing to train and supervise its caregiver employees on how to supervise children, and by failing to respond to a medical emergency.

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

RESPONDEAT SUPERIOR

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

43. 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 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

44. Plaintiff incorporates by reference the preceding paragraphs as if stated fully herein.

45. As a direct and proximate cause of Defendant's negligent acts and/or omissions, Plaintiff Mark Mattox, individually, and as Parent and Next Friend of Plaintiff M.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, sustained in the future;
- c. Mental anguish in the past;
- d. Mental anguish, in reasonable probability, sustained in the future;
- e. Disfigurement, in reasonable probability, sustained in the past;
- f. Disfigurement, in reasonable probability, sustained in the future;
- g. Reasonable and necessary medical expenses in the past;
- h. Reasonable and necessary medical expenses, in reasonable probability, sustained in the future;
- i. Loss of wages in the past;
- j. Loss of wages, in reasonable probability, sustained in the future;
- k. Loss of wage-earning capacity in the past;

- l. Loss of wage-earning capacity, in reasonable probability, sustained in the future;
 - m. Physical impairment in the past;
 - n. Physical impairment, in reasonable probability, sustained in the future;
 - o. Loss of the normal enjoyment of the pleasure of life in the past;
 - p. Loss of the normal enjoyment of the pleasure of life, in reasonable probability, sustained in the future;
 - q. Costs of suit; and
 - r. All other relief, in law and equity, to which Plaintiffs may be entitled.
46. 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

47. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.
48. 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.
49. 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

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

U.S. LIFE TABLES

51. 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: April 6, 2023.

Respectfully submitted,

THE BUTTON LAW FIRM

By: /s/Russell T. Button

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Associated Case Party: MARK MATTOX, INDIVIDUALLY AND AS NEXT FRIEND OF M.M, A MINOR CHILD

Name	BarNumber	Email	TimestampSubmitted	Status
Russell Button		service@buttonlawfirm.com	4/6/2023 5:26:12 PM	SENT