

CAUSE NO. 236-283741-16

[REDACTED], a Minor,

Plaintiffs,

v.

GATEWAY CHURCH, JA'COLE
CLARK, CALEB JEWELL, TIFFANY
YOUNG, JOHN DOE #1, JOHN DOE #2,
JOHN DOE #3, and JOHN DOE #4,

Defendants.

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IN THE DISTRICT COURT

TARRANT COUNTY, TEXAS

___ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW [REDACTED], Individually and as Next Friends of [REDACTED] [REDACTED] ("Plaintiffs"), and file this Plaintiffs' Original Petition and Request for Disclosure (the "Petition") complaining of Gateway Church ("Gateway"), Ja'Cole Clark ("Clark"), Caleb Jewell ("Jewell"), Tiffany Young ("Young"), John Doe #1 ("Doe # 1"), John Doe #2 ("Doe # 2"), John Doe #3 ("Doe #3"), and John Doe #4 ("Doe #4," collectively with Gateway, Clark, Jewell, Young, Doe #1, Doe #2, and Doe #3, "Defendants") and in support thereof, would respectfully show unto this Court as follows:

I.
DISCOVERY LEVEL

1. Pursuant to Rule 190.4 of the *Texas Rules of Civil Procedure*, Plaintiffs intend to conduct discovery in accordance with Discovery Control Plan Level 3.

II.
STATEMENT OF RELIEF

2. The damages sought are within the jurisdictional limits of the court. Plaintiffs seek monetary relief over \$200,000.00 but not more than \$1,000,000.00 dollars. TEX. R. CIV. P. 47(c)(4).

III.
PARTIES

3. Plaintiffs [REDACTED] are natural persons residing and/or working in Collin County, Texas. [REDACTED] are the natural parents of [REDACTED], a minor.

4. Defendant Gateway Church is a Texas non-profit corporation registered and authorized to conduct business in the State of Texas. Plaintiffs' counsel emailed Defendants' counsel, Mr. Anthony, on December 1, 2015, regarding whether Mr. Anthony would agree to accept service of this Petition and waive service of citation on behalf of Gateway Church. Mr. Anthony agreed.

5. Defendant Ja'Cole Clark is an individual resident of the State of Texas. Plaintiffs' counsel emailed Mr. Anthony on January 18, 2016, regarding whether Mr. Anthony would agree to accept service of this Petition and waive service of citation on behalf of Ja'Cole Clark. Mr. Anthony agreed.

6. Defendant Caleb Jewell is an individual resident of the State of Texas. Plaintiffs' counsel emailed Mr. Anthony on January 18, 2016 regarding whether Mr. Anthony would agree to accept service of this Petition and waive service of citation on behalf of Caleb Jewell. Mr. Anthony agreed.

7. Defendant Tiffany Young is an individual resident of the State of Texas. Plaintiffs' counsel emailed Mr. Anthony on January 18, 2016 regarding whether Mr. Anthony would agree to accept service of this Petition and waive service of citation on behalf of Tiffany Young. Mr. Anthony agreed.

8. Defendants John Does #1-4 are unknown to the Plaintiffs at this time, who therefore, sue Does #1-4 by such fictitious names at this time. When the true names of Does #1-4 are discovered, the Plaintiffs will amend this pleading to include the true identities of Does #1-4 to identify him/her.

IV.
JURISDICTION AND VENUE

9. Jurisdiction and venue are proper in Tarrant County, Texas for the reasons set forth in this Petition, which are incorporated in this section as if set forth word for word herein. Venue is proper in Tarrant County, Texas because (i) all or a substantial part of the events and omissions giving rise to the claims asserted herein occurred in Tarrant County, Texas, (ii) one or more of Defendants' principal offices in the State of Texas is located in Tarrant County, Texas, (iii) some or all of Defendants' wrongful actions or conduct took place in Tarrant County, Texas. Plaintiffs seek relief that is within the minimum jurisdictional limits of this Court.

V.
FACTUAL BACKGROUND

A. [REDACTED] Injury

10. Gateway owns and operates a church, the Gateway Church Southlake Campus (the "Southlake Campus") providing services to the general public in the Dallas/Fort Worth

metroplex. Among the facilities owned and operated by Gateway on the Southlake Campus is the auditorium (the “Auditorium”) and a building that hosts a day care for children (the “Program”).

11. Plaintiffs sought a church that offered a day care for their disabled son, [REDACTED], while Plaintiffs attended church services.

12. On or about December 2012, Gateway represented to Plaintiffs that Gateway’s daycare could provide care for [REDACTED]. Gateway further assured that the Program provided one-on-one attention and care for the attending children and also assured the safety and welfare of [REDACTED].

13. On or about December 14, 2014, Plaintiffs brought [REDACTED] to the Program before attending church service in Gateway’s Auditorium. The Program was staffed with, Clark, Jewell, Young, John Doe #1, John Doe #2, John Doe #3, and John Doe #4 (the “Supervisors”).

14. While attending the Program, a boy (the “Boy”) was allowed by the Supervisors to commence an assault upon [REDACTED] causing him injury.

15. Plaintiffs first discovered [REDACTED] injuries after church services concluded. Plaintiffs immediately rushed [REDACTED] to the hospital to receive medical treatment.

16. Also on or about December 14, 2014, Plaintiffs called Ken Jackson (“Jackson”), the executive pastor of the Program, in search of an explanation as to the events that resulted in [REDACTED] injury. Plaintiffs were baffled as to how [REDACTED] sustained an injury if in fact the Program actually was providing one-on-one supervision.

17. On or about January 15, 2015, Plaintiffs contacted another representative of Gateway (the “Employee”). The Employee stated that [REDACTED] injury was the result of the Boy’s second assault while in the Program.

B. Gateway's Spoliation of Evidence

18. On or about April 17, 2015, an agent (the "Agent") from Church Mutual Insurance Company ("Church Mutual"), Gateway's insurance company, called Plaintiffs regarding [REDACTED] injury. The Agent asked Plaintiffs if they had seen the video of [REDACTED] injury (the "Video"). No representative of Gateway previously disclosed the existence of the Video to Plaintiffs.

19. On or about April 20, 2015, Jackson stated that [REDACTED] injury was captured on the Video and that the Video had been destroyed.

20. On or about April 21, 2015, another agent of Church Mutual ("Agent Two") notified Plaintiffs that she would be taking care of the investigation, but that she needed time to see the Video. Agent Two informed Plaintiffs that Gateway had the Video in its possession, but refused to provide it to Plaintiffs.

21. Plaintiffs were forced to hire counsel to try and obtain the Video. On June 5, 2015, Defendants' counsel informed Plaintiffs' counsel that the entire original Video could not be produced because most of the video footage had been destroyed.

22. Gateway had a duty to reasonably preserve the original Video. Gateway knew or reasonably should have known that there was a substantial chance that a claim would be filed and that the Video was material to this lawsuit. Accordingly, the Court should sanction Gateway for spoliation of the Video.

VI.

CAUSES OF ACTION AGAINST ALL DEFENDANTS

Count One: Negligence

23. Plaintiffs reallege and incorporate the facts and allegations set forth above as if they were fully set forth herein.

24. Plaintiffs allege that one or more of the foregoing acts and/or omissions set forth in this Petition constitute(s) negligence, as defined by Texas law.

25. Defendants owed the following legal duties to Plaintiffs, including, but not limited to:

- a. The duty to keep [REDACTED] safe from harm;
- b. The duty to exercise due care to protect children from any dangerous classroom conditions;
- c. The duty to keep children with a history of violence out of the Program; and
- d. The duty to disclose to Plaintiffs that they were not equipped to provide adequate supervision of a disabled child.

26. Defendants failed to exercise ordinary care in performing the above described duties, and other duties as set forth in this Petition. Each of Defendants' acts and/or omissions described above, singularly and/or in any combination, by which Defendants breached such duty, were the proximate cause of 1) [REDACTED] past and future mental anguish and pain and suffering and 2) [REDACTED] medical expenses and mental anguish.

Count Two: Negligent Hiring and Negligent Supervision

27. Plaintiffs reallege and incorporate the facts and allegations set forth above as if they were fully set forth herein.

28. Plaintiffs allege that one or more of the foregoing acts and/or omissions set forth in this Petition constitute(s) negligence, as defined by Texas law.

29. Defendants owed the following legal duties to Plaintiffs, including, but not limited to:

- a. The duty to inquire as to the competence and qualifications of Clark, Jewell, Young, and Does #1-4 before hire;
- b. The duty to supervise the Boy;
- c. The duty to employ supervisors that have proper training; and
- d. The duty to provide one-on-one supervision.

30. Defendants failed to exercise ordinary care in performing the above described duties, and other duties as set forth in this Petition. Each of Defendants' acts and/or omissions described above, singularly and/or in any combination, by which Defendants breached such duty, were the proximate cause of 1) [REDACTED] past and future mental anguish and pain and suffering and 2) [REDACTED]' medical expenses and mental anguish

Count Three: Gross Negligence

31. Plaintiffs reallege and incorporate the facts and allegations set forth above as if they were fully set forth herein.

32. Plaintiffs allege that one or more of the foregoing acts of negligence set forth in this Petition constitutes gross negligence, as defined by Texas law.

33. Defendants' acts and/or omissions, when viewed objectively from Defendants' standpoint at the time of occurrence, involved an extreme degree of risk considering the probability and magnitude of the potential harm to others.

34. Defendants had actual, subjective awareness of the risk, but still proceeded with conscious indifference to the rights, safety, and welfare of Plaintiffs.

35. Each of Defendants' acts and/or omissions described above, singularly and/or in any combination, by which Defendants breached such duty, were the proximate cause of 1) [REDACTED] past and future mental anguish and pain and suffering and 2) [REDACTED]' medical expenses and mental anguish.

Count Four: Exemplary Damages

36. Plaintiffs reallege and incorporate the facts and allegations set forth above as if they were fully set forth herein.

37. Defendants' acts or omissions, which when viewed objectively from the standpoint of Defendants at the time of [REDACTED] injury, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Further, Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiffs.

Count Five: Respondeat Superior

38. Plaintiffs reallege and incorporate the facts and allegations set forth above as if they were fully set forth herein.

39. Plaintiffs believe and hereby allege that at all times mentioned herein, Clark, Jewell, Young, and Does #1-4 were 1) acting with the course and scope of their employment with Gateway or 2) in furtherance of a mission for the benefit of Gateway and subject to control of Gateway as to the details of the missions.

Count Six: Bystander Liability

40. Plaintiffs reallege and incorporate the facts and allegations set forth above as if they were fully set forth herein.

41. [REDACTED] suffered serious injuries when he hit his head on the corner of the classroom table.

42. Gateway Church owed a duty to [REDACTED] as set forth in Paragraph 25. The injury to [REDACTED] was foreseeable to Defendants. At the time of [REDACTED] injury, [REDACTED] were located in another building next door to the building where [REDACTED] was injured. [REDACTED] were not informed of [REDACTED] injury before their arrival at the Program to pick up their son. The shock experienced by [REDACTED] was a result of a direct emotional impact on them from a sensory and contemporaneous observance of the incident. As a result of [REDACTED] injuries, [REDACTED] suffered mental anguish damages.

VII.

CONDITIONS PRECEDENT

43. All conditions precedent have been performed or have occurred.

VIII.

JURY DEMAND

44. Plaintiffs demand a jury trial and tender the appropriate fee with this Petition.

IX.

REQUEST FOR DISCLOSURE

45. Pursuant to Rule 194, Plaintiffs request that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2 (a) through (g).

X.
PRAYER

WHEREFORE, Plaintiffs request that Defendants Gateway Church, Ja’Cole Clark, Caleb Jewell, Tiffany, Young, John Doe #1, John Doe #2, John Doe #3, and John Doe #4 be cited to appear and answer and that on final hearing the Plaintiffs have judgment against the Defendants for an amount within the jurisdictional limits of the court, together with prejudgment and post-judgment interest as provided by law, costs of court, and for such other and further relief, at law or in equity, to which Plaintiffs are justly entitled.

RESPECTFULLY SUBMITTED BY:

/s/ Matthew T. Valeriane

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