

19-CV-0222
 CAUSE NO. _____

ASHLEY GARNER, INDIVIDUALLY,	§	IN THE DISTRICT COURT
AND ON BEHALF OF THE ESTATE	§	
OF DECEASED MINOR CHILD N.G.,	§	
	§	
Plaintiff,	§	
v.	§	GALVESTON COUNTY, TEXAS
	§	
THE CHILDREN'S CENTER, INC.,	§	
	§	Galveston County - 405th District Court
Defendant.	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION & DISCOVERY REQUESTS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Ashley Garner, Individually, and on behalf of the Estate of Deceased Minor Child N. G., Plaintiff in the above numbered and entitled matter and files Plaintiff's Original Petition complaining of Defendant The Children's Center, Inc. Accompanying Plaintiff's Original Petition and incorporated herein are Plaintiff's Requests for Production, Requests for Admissions, First Set of Written Interrogatories, and Requests for Disclosure to Defendant. As further proof thereof, Plaintiff would show unto the Court the following:

I.

DISCOVERY LEVEL

Plaintiff intends to conduct discovery under Level II of the Texas Rules of Civil Procedure 169 and 190.2 because this suit involves only monetary relief over \$1,000,000.00.

II.

IDENTITY OF PARTIES

Plaintiff Ashley Garner is the biological mother of the decedent and is a legal heir.

Defendant The Children's Center, Inc., is a domestic nonprofit corporation that me be

Status conference set for 5/9/19

served with process through its registered agent, James Terrence Keel, at 4428 Avenue N, Galveston, Texas 77550, or wherever he may be found.

III.

JURISDICTION AND VENUE

Jurisdiction and venue are proper within this Court as all or a substantial portion of the events at issue occurred within Galveston County, Texas and Plaintiff is seeking a recovery within the jurisdiction limits of this Court. Plaintiff is seeking monetary relief over \$1,000,000.00.

Plaintiff brings the following causes of action of common law negligence and gross negligence under Texas Civil Practice & Remedies Code Section 71.021, et seq., as a Survival Action on behalf of the Estate of the Deceased Minor Child, N. G. Plaintiff requests that the Court recognize her, Ashley Garner, as the Representative of the Estate of Deceased Minor Child, N. G.

Plaintiff further brings a cause of action for negligence and gross negligence to recover her own personal damages sustained as a result of the wrongful death of her son pursuant to Texas Civil Practice & Remedies Code Section 71.001, et seq., as an action for Wrongful Death.

IV.

FACTUAL BACKGROUND

On or about October 14, 2018, Minor Child N. G. was under the care and supervision of Defendant The Children's Center, when N. G. and several other minor children were escorted by one of Defendant's employees to the beach near 17TH Street in Galveston, Texas, when at the time the Galveston Island Beach Patrol had issued a Red Flag warning. At the beach, at least one of the minor children were caught in a rip current, prompting Minor Child N. G. to dive into the water in an effort to save the other minor child(ren). Tragically, N. G. was also caught in the rip current and disappeared along with one other minor child.

V.

DECEDENT'S CAUSE OF ACTION FOR NEGLIGENCE

In accordance with Tex. Civ. Prac. & Rem. Code Section 71.021, Plaintiff would show that Defendant owed Minor Child N. G. a duty to:

1. Provide care and supervision to;
2. Provide a safe and secure environment;
3. Ensure its employees and agents were properly screened, trained, supervised and retained in a safe manner for the care of children; and
4. To not cause N. G., or other minor children alike any harm.

Defendant breached these duties with conscious indifference to the rights, safety and welfare of N.G. and other minor children alike. As such, Defendant is directly liable for its breach(es).

As a proximate result of said breaches Plaintiff suffered physical, emotional and economic injury.

VI.

RESPONDEAT SUPERIOR

Plaintiff will further show that the employees whose negligence caused the death of Deceased Minor Child N. G. were in the course and scope of their employment with Defendant at the time of the subject incident in question and that Defendants were the legal owner(s), manager(s), and operator(s) of the pond/golf course/community in question at the time of the subject incident. Therefore, Defendants are liable under the doctrine of respondeat superior. Plaintiff also pleads the doctrines of ostensible agency, apparent authority, and joint enterprise.

VII.

RES IPSA LOQUITUR

Plaintiff invokes the doctrine of *Res Ipsa Loquitur*. Plaintiff would show that the character of the event

made the basis of this lawsuit is such that it would not ordinarily occur in the absence of negligence of Defendant.

VIII.

WRONGFUL DEATH

Plaintiff brings this wrongful death action as a result of the wrongful death of her biological son, Deceased Minor Child N. G., that was proximately caused by the negligence and gross negligence of Defendant, as described above. Due to the severe and tragic nature of her son's death, Plaintiff Ashley Garner endured an unspeakable amount of emotional pain, torment and suffering, for which, Defendant is directly liable.

IX.

DAMAGES

The Estate of Deceased Minor Child N. G. seeks damages including, but not limited to conscious pain and suffering, mental anguish, emotional distress, past reasonable and necessary medical and funeral expenses. The Estate also seeks exemplary damages, prejudgment and postjudgment interest, and other recoverable damages in an amount in excess of \$1,000,000. Plaintiff reserves the right to amend and state further with respect to damages herein.

Plaintiff lost her son's love, affection, solace, advice, counsel and comfort. In addition, she suffered a loss of emotional support and experienced tremendous mental anguish, fear, grief, and sorrow and this is likely to continue for the remainder of her life. Plaintiff seeks recovery of past and future actual damages, including but not limited to mental anguish, loss of companionship and society, loss of inheritance, loss of earning capacity, and past reasonable and necessary medical and funeral expenses. Plaintiff also seeks exemplary damages, prejudgment and postjudgment interest, and other recoverable damages in an amount in excess of \$1,000,000. Plaintiff reserves the right to amend and state further with respect to damages herein.

X.

RULE 193.7 NOTICE

Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiff hereby gives notice that all documents produced by any Defendant in response to written discovery authenticates the document(s) for use against that party in any proceeding before the Court.

XI.

PRESERVATION OF EVIDENCE

Plaintiff hereby requests and demands that Defendants preserve and maintain all evidence pertaining to any claim or defense related to the transactions made the basis of this lawsuit, or damages resulting therefrom, including statements, photographs, videotapes, surveillance tapes, audiotapes, business records, partnership or corporate records, audits, regulatory records or communications, contracts, leases, bills, estimates, invoices, checks, correspondence, investigation reports, policies, protocols, personal information, memoranda, facsimiles, email, cellular telephone records, voice mail, text messages, and any electronic image or information related to the referenced transactions or any damages resulting therefrom. Failure to maintain such items will constitute “spoliation” of the evidence.

XII.

CONDITIONS PRECEDENT

All conditions precedent to Plaintiff's claims for relief have been performed or have occurred.

XIII.

DISCOVERY TO DEFENDANT

A.

Requests for Disclosure to Defendant

Plaintiff herein propounds the Requests for Disclosure, contained in Texas Rule of Civil Procedure 194.2 to Defendant. The responses to this request are due within fifty (50) days of service.

B.

Instructions and Definitions to Discovery Requests

i.

Instructions

1. You are required, in responding to these discovery requests, to obtain and furnish all information available to you any of your representatives, employees, agents, brokers, servants or attorneys, and to obtain and furnish all information that is in your possession or under your control, or in the possession or under the control of any of your representatives, employees, agents, servants or attorneys.
2. Each request which seeks information relating in any way to communications, to, from or within a business and/or corporate entity, is hereby designated to demand, and should be construed to include all communications by and between representatives, employees, agents, brokers and/or servants of the business and/or corporate entity.
3. If you object to part of any request, please furnish information responsive to the remainder of the request.
4. Each request refers to all documents and/or information that are either known by the defendant to exist or that can be located or discovered by reasonably diligent efforts of the defendant.
5. References to the singular include the plural.
6. The use of any tense of any verb shall be considered also to include within its meaning all other tenses of the verb so used.
7. Please note that the Defendant pursuant to the Texas Rules of Civil Procedure is under a continuing duty to seasonably supplement the responses to these interrogatories with information obtained subsequent to the preparation and filing of a response to each interrogatory.
8. All information called for by these requests or related to these requests, for which the defendant claims a privilege or statutory authority as a ground for non-production should be listed chronologically as follows:
 - a. The place, date and manner of recording or otherwise preparing the document;
 - b. The name and title of the sender;
 - c. The identity of each person or persons participating in the preparation of the document;

- d. The identity and title with the defendant, if any, or the person or persons supplying defendant's attorneys with the information requested above;
 - e. The identity of each person to whom the contents of the documents have heretofore been communicated by copy, exhibition, sketch, reading or substantial summarization, the dates of said communication, and the employer and title of said person at the time of said communication;
 - f. The type of document;
 - g. The subject matter of the document; and
 - h. The factual and legal basis for the claim of privilege or specific statutory or regulatory authority which provides the claimed ground for non-production.
9. If any information requested herein have been lost or destroyed or forgotten, the documents and/or information so lost, forgotten or destroyed should be identified by author, date and subject matter.
10. Where exact information cannot be furnished, estimated information is to be supplied to the extent possible. When estimation is used, it should be so indicated, and an explanation should be given as to the basis on which the estimate was made and the reason exact information cannot be furnished.
11. With respect to any document requested which was once in the possession, custody or control of defendant, but no longer is. Please indicate the date the document ceased to be in your possession, custody or control, the manner in which it ceased to so be, and the name and address of its present custodian.
12. Unless otherwise indicated each request is to be construed as encompassing all documents and tangible things which pertain to the stated subject matter and to events that transpired between January 1, 2018, and the present.
13. Production can be accomplished by mailing the documents within the time period of the rule to Plaintiff's counsel at the above listed address.

ii. Definitions

- 1. "You," "your" and "yourself" refer to the party to whom these requests are addressed and its agents, representatives, officers, directors, affiliates, predecessors and successors in interest, parents, divisions, subsidiaries, area and regional offices and employees, including persons or entities outside of the United States.
- 2. "Person" means natural persons, firms, proprietorships, corporations, associations, and every other type of organization or entity.
- 3. "Identify" means when used in reference to:
 - a. A *document*, to state separately (i) its description (e.g. Letter, report, memo,

- etc.), (ii) its date; (iii) its subject matter; (iv) the identity of each author or signer; and (v) its present location and the identity of its custodian.
- b. An *oral* statement, communication, conference or conversation, to state separately (i) its date and the place where it occurred; (ii) its substance; (iii) the identity of each person participating in the communication or conversation, and (iv) the identity of all notes, memoranda or other documents memorializing, referring to or relating to the subject matter of the statement;
 - c. A *natural person or persons*, to state separately (i) the full name of the person, (ii) his or her present, or last known address and telephone number; (iii) his or her position with the defendant if any;
 - d. An *organization or entity* other than a natural person, to state separately, (i) the full name and type of organization or entity, (ii) the date and state of organization or incorporation, (iii) the address of its principal place of business; and (iv) the nature of the business conducted.
- 4. "Communications" shall mean any transmission of information, the information transmitted, and any process by which information is transmitted, and shall include written communications and oral communications.
 - 5. "Document" and/or "Documents" includes without limitation any written, typed, printed, recorded or graphic matter, however preserved, produced or reproduced, of any type or description, regardless of origin or location, including without limitation any binder, cover, note, certificate, letter, correspondence, record, table, chart, analysis, graph, schedule, report, tests, study memorandum, note, list, diary, log, calendar, telex, message (including but not limited to inter-office and intra-office communications), questionnaire, bill, purchase order, invoice, receipt, contract, agreement, computer or data processing disk, photograph, electronic file, videotape, and all other data compilations from which information can be obtained.
 - 6. "Relating to" and/or "evidencing" means consisting of, referring to, describing, discussing, constituting, containing, reflecting, mentioning, concerning, pertaining to, citing, summarizing, analyzing or bearing any logical or factual connection with the matter discussed.
 - 7. "Claim" means a demand or assertion, whether oral or written, formal or informal, by any person or monetary payment, the undertaking of action or the cessation of action
 - 8. "Plaintiff" means Ashley Garner, Individually, and on behalf of the Estate of N .G.
 - 9. "Defendant" shall mean the party responding to these discovery requests.
 - 10. "Subject incident" means the October 14, 2018, drowning incident described above.

C.

Plaintiff's First Set of Written Interrogatories to Defendant

Plaintiff, pursuant to Texas Rules of Civil Procedure 197, serves these Interrogatories on

Defendant, the answers to be due within fifty (50) days of service.

Interrogatory No. 1: Please identify by name, address, telephone number and position with the defendant, if any, all persons providing information utilized in responding to these discovery requests.

Interrogatory No. 2: Please identify by name, address and telephone number all persons whom you intend to call as a witness at the trial of this matter.

Interrogatory No. 3: Identify the date N. G. came under your supervision, care, or custody.

Interrogatory No. 4: Identify the specific address where N. G. stayed while under your supervision, care, or custody.

Interrogatory No. 5: Identify the employee(s)/agent(s)/volunteer(s) who was present with Minor Child N. G. at the time of the incident, stating their full name, job title, job duties, rate of pay, and date(s) of employment with you.

Interrogatory No. 6: Identify the names of all those individuals involved in, and/or present at the time of the Subject Incident.

Interrogatory No. 7: If anyone investigated this matter for you, including medical experts, private investigators or insurance adjusters, state their name(s) and address(es), and state whether such investigation was reduced to writing, and the substance of their investigation and findings. If said investigator obtained any signed, recorded, transcribed or oral statement from any individual, identify the person who gave the statement and the present custodian of such statement.

Interrogatory No. 8: Do you know of any statement, conversation, comment, testimony or report made by any party to this lawsuit or witness, made at the time of the occurrence or following the occurrence, concerning the occurrence or facts relevant to any issue in this case? If your answer is "yes," state the content of such statement, conversation, comment or report, the place where it took place, and the custodian of such statement.

Interrogatory No. 9: If you contend that any other entity or person, a party to or not a party to, this lawsuit, was responsible for Plaintiff's injuries, identify such person, persons or entities, and give a concise statement of the facts upon which you rely.

Interrogatory No. 10: Identify the name(s), job title & description of each and every manager/supervisor of the individual identified by you in response to Interrogatory No. 5.

Interrogatory No. 11: Since October 14, 2018, have you been under investigation by any governmental and/or administrative entity/agency? If yes, identify the name of each entity/agency, the date each investigation began, and the result(s) of each investigation.

Interrogatory No. 12: Since October 14, 2018, have you been under investigation by any governmental

and/or administrative entity/agency? If yes, identify the name of each entity/agency, the date each investigation began, and the result(s) of each investigation.

Interrogatory No. 13: Since October 14, 2018, have you had to close any of your operations in Galveston, Texas? If yes, explain why.

Interrogatory No. 14: Since the time of the Subject Incident, have you assisted in the search of Minor Child N.G.? If yes, identify the names and job titles of each of your employees/agents who provided such assistance, and when such assistance was provided.

D.

Requests for Production To Defendant

Plaintiff, pursuant to Texas Rule of Civil Procedure 196, serves these Requests for Production to Defendant, the responses to be due within fifty (50) days of service.

Request for Production No. 1: Please produce transcripts of any recorded statements you have made of any Party, witness, its employees, agents, and/or attorneys.

Request for Production No. 2: Please produce the declaration page to the insurance policy that was effective the date of the subject incident, and/or the liability and/or homeowner's policy in effect on the date of the subject incident made the basis of this suit.

Request for Production No. 3: Please produce a copy of the employment file for the individual identified by you in response to Interrogatory No. 5.

Request for Production No. 4: Please produce a copy of your file for Minor Child N. G.

Request for Production No. 5: Please produce a copy of your employment/volunteer handbook.

Request for Production No. 6: Please produce all documents outlining your hiring/recruiting procedures for employees/agents/volunteers that were to be hired/recruited for position(s) involving the care of children, like Minor Child N. G.

Request for Production No. 7: Please produce all investigative documents in your possession pertaining to the Subject Incident.

Request for Production No. 8: Please produce all correspondence between you and the Texas Department of Family and Protective Services regarding the Subject Incident, as well as subsequent investigations pertaining to your operation in Galveston, Texas.

Request for Production No. 9: Please produce all correspondence between you and the Texas Department of Health and Human Services regarding the Subject Incident, as well as subsequent investigations pertaining to your operation in Galveston, Texas.

Request for Production No. 10: Please produce all correspondence from all governmental and/or administrative agencies/entities directed to you from October 14, 2018 through the Present pertaining to the Subject Incident, as well as subsequent investigations pertaining to your operation in Galveston, Texas.

Request for Production No. 11: Please produce all documents relating to your answer to Interrogatory No. 11.

Request for Production No. 12: Please produce all photographs, audio and video recordings of Minor Child N. G.

Request for Production No. 13: Please produce all photographs, audio and video recordings of the Subject Incident.

E.

Requests for Admissions to Defendant

Plaintiff herein propounds the Requests for Admissions, contained in Texas Rule of Civil Procedure 198 to Defendant. The responses to this request are due within fifty (50) days of service.

Request for Admission No. 1: On October 14, 2018 Minor Child N. G. was under your care and supervision.

Request for Admission No. 2: On October 14, 2018 you permitted Minor Child N. G. to visit the beach in Galveston, Texas.

Request for Admission No. 3: On October 14, 2018 Minor Child N. G. drowned after entering the water at the beach in Galveston, Texas.

Request for Admission No. 4: On October 14, 2018, the Galveston beach where the subject incident occurred was under a red flag warning.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Ashley Garner, Individually, and on behalf of the Estate of Deceased Minor Child N. G. respectfully prays that Defendant be cited to appear and that Plaintiff and the Estate of Deceased Minor Child N. G. receive all relief to which they may be entitled, whether at law or in equity.

Respectfully Submitted,

GIBSON HILL, P.C.

By: /s/ Brett M. Hill

Ty A. Gibson

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