

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

ELIZABETH ASHTON,
As Guardian Ad Litem for A.T.,
A Minor Child,

Plaintiff,

D-101-CV-2024-00652

Case assigned to Ellenwood, Kathleen McGarry

v.

N.G.,
K.L,
THE BAIR FOUNDATION, and
THE NEW MEXICO CHILDREN, YOUTH,
AND FAMILIES DEPARTMENT,

Defendants.

**COMPLAINT FOR DAMAGES STEMMING FROM ABUSE
IN TREATMENT FOSTER CARE HOME**

A.T. is a minor child who at age five was placed by Defendant New Mexico Youth and Families Department (“CYFD”) into a Treatment Foster Care home managed by Defendant Bair Foundation and severely abused by Defendants N.G. and/or K.L. The abuse of A.T. has since been substantiated by CYFD.

Parties, Jurisdiction, and Venue

1. Elizabeth Ashton, Esq., is a resident of Bernalillo County, New Mexico. She has petitioned for concurrent appointment as litigation guardian ad litem for minor A.T. in this matter.
2. At the time he suffered injury, A.T. was in the legal custody and control of the New Mexico Children, Youth, and Families Department (“CYFD”).

3. Defendant CYFD is a department the state government of New Mexico which administers a foster placement program pursuant to the New Mexico Children's Code and has the exclusive authority under New Mexico law to determine proper placements for foster children in the legal and physical custody of the state.
4. Defendant CYFD has exclusive authority under New Mexico law to operate, monitor, supervise, regulate, and otherwise manage the foster homes where foster children in state custody are placed and/or housed.
5. Defendant CYFD has exclusive authority under New Mexico law to license Treatment Foster Care providers in the state.
6. Through its Licensing and Certification Authority Bureau, Defendant CYFD monitors regulatory compliance of Treatment Foster Care Services in the state of New Mexico.
7. Defendant Bair Foundation is a non-profit corporation incorporated in the state of Pennsylvania with its principal place of business in Bernalillo County, New Mexico.
8. Upon information and belief, Defendant N.G. is a resident of Albuquerque, New Mexico.
9. Upon information and belief, Defendant K.L. is a resident of Albuquerque, New Mexico.
10. This court has jurisdiction over all claims and parties to this case.
11. Venue is proper in this judicial district pursuant to NMSA 1978 § 41-4-18(B).

Facts: A.T. is placed in CYFD Custody

12. A.T. was born in December 2017.
13. From the time he was born, A.T.'s parents struggled with severe drug addiction.
14. A.T. was born drug-exposed.
15. Less than a week after A.T.'s birth, his meconium test came back positive for cocaine and benzoylecgonine.

16. Allegations of physical and medical neglect of A.T. by his parents were investigated by CYFD as early January 2018.
17. Additional allegations of physical neglect of A.T. by his parents were investigated by CYFD in June 2021.
18. Additional allegations of physical neglect of A.T. by his parents were investigated by CYFD in July 2021.
19. A.T. was removed from his parents' custody on or about July 22, 2021.
20. CYFD assumed legal custody of A.T. on July 22, 2021.
21. On July 23, 2021, CYFD investigator Lisa Preston emailed Bair Foundation Intake Coordinator Charlene Pacheco and sought Ms. Pacheco's assistance in securing a placement for A.T.
22. After being taken into the legal custody of CYFD, A.T. was placed in a CYFD foster home.
23. In addition or in the alternative, after being taken into the legal custody of CYFD, A.T. was placed in a Treatment Foster Care home through the Bair Foundation.
24. A.T. was placed into this foster home despite the expressed willingness of Plaintiff Christa Romero and her husband David – A.T.'s grandparents – to serve as a placement for A.T.
25. Plaintiff and her husband David underwent an IRA home study with CYFD personnel, but A.T. was not placed with them.
26. In an assessment conducted on October 7, 2021, A.T. was assessed a "Final Risk Level" of "High."

Facts: A.T. is Placed in the Home of N.G. and K.L.

27. On February 21, 2022, District Court Judge Catherine Begaye ordered that CYFD had not carried its burden to show abuse or neglect of A.T. by his parents.

28. On February 21, 2022, Judge Catherine Begaye ordered that A.T. should be placed in the temporary care of his father but noted that A.T.'s mother and father agreed to leave A.T. in his Treatment Foster Care placement for the next thirty (30) days.
29. On March 4, 2022, A.T. was released into the physical custody of his father, who removed A.T. from Treatment Foster Care against the advice of Bair Foundation staff.
30. On March 24, 2022, A.T.'s mother entered into a voluntary placement agreement with CYFD.
31. This voluntary placement agreement placed A.T. in the legal custody of CYFD.
32. On or about March 25, 2022, A.T. was placed back into a Treatment Foster Care home through the Bair Foundation.
33. On or about March 25, 2022, A.T. was placed into a Treatment Foster Care home of by Defendants N.G. and K.L.
34. The Bair Foundation's placement of A.T. into the Treatment Foster Care home of Defendants N.G. and K.L. was conducted under the legal authority of CYFD as specified in NMSA 1978 Section 32A-3A-6 and 40-10B-3(M).
35. A.T. was placed into the Treatment Foster Care home of Defendants N.G. and K.L. despite the willingness of Plaintiff Christa Romero and her husband David – A.T.'s grandparents – to serve as a placement for A.T.
36. At the time A.T. was placed in their home, Defendants N.G. and K.L. entered into a Child Specific Placement Agreement with CYFD.
37. This Child Specific Placement Agreement noted that Defendants CYFD, N.G., and K.L. had a "shared responsibility for the care and placement stability of [A.T.]."

38. Upon information and belief, A.T. was the first full-time foster care placement assigned to N.G. and K.L. by CYFD and/or the Bair Foundation.

Facts: A.T. is Hospitalized with Potentially Life-Threatening Pancreatic Injury

39. On the morning of June 18, 2022, Defendant N.G. brought A.T. to a Presbyterian Hospital urgent care facility located at 4514 Coors Blvd NW.

40. When he arrived at the urgent care, A.T. was suffering from nausea, abdominal pain, and vomiting, and “deep purple bruising to the bilateral flanks and on along the spinal cord.”

41. Defendant N.G. claimed that A.T. “had fallen down the stairs.”

42. A.T.’s injuries were not consistent with falling down the stairs.

43. An anonymous source contacted Child Protective Services.

44. A.T. was subsequently admitted to UNM Hospital with numerous injuries and severe abdominal pain.

45. A.T. underwent an exploratory laparotomy.

46. The attending surgeon noted “old bruising” on A.T.’s back.

47. The exploratory laparotomy revealed that A.T. had suffered a pancreatic contusion with three duodenal/jejunal serosal tears and associated hematoma, and a drain was placed in A.T. to remove “a large amount of intra-abdominal blood.”

48. A.T.’s physician attested that A.T.’s pancreatic injury was a “potentially life-threatening condition.”

49. While hospitalized at UNM Hospital, A.T. was examined by Dr. Karen T. Campbell.

50. Dr. Campbell is a member of UNM Hospital’s Child Abuse Response Team (or “CART”).

51. On June 21, 2022, Dr. Campbell noted that A.T.’s injuries were “consistent with blunt force trauma to his abdomen” and “not consistent with a fall down the stairs.”

52. On June 28, 2022, Dr. Campbell noted that “[b]ased on the available information and findings, [A.T.] has sustained potentially fatal inflicted/abusive abdominal trauma.”
53. On June 28, 2022, Dr. Campbell noted that “[s]hould [A.T.] return to the home in which he was injured he is at significant risk for additional serious injury or death.”
54. Following the exploratory laparotomy and the discovery of his pancreatic contusion and tearing, A.T. developed a pancreatic pseudocyst.
55. This pseudocyst was noted to be “secondary to traumatic duct disruption.”
56. On July 22, 2022, A.T.’s mother requested termination of A.T.’s voluntary placement agreement with CYFD.
57. On July 25, 2022, A.T.’s mother reclaimed legal custody of A.T.
58. On or about August 17, 2022, Plaintiff and her husband gained temporary kinship guardianship of A.T.
59. On August 18, 2022, A.T. underwent a second surgery – a procedure called a cystogastrostomy.
60. This cystogastrostomy connected A.T.’s pancreatic pseudocyst to his stomach so that the pseudocyst could drain without the need for repeated surgical intervention.
61. On August 29, 2022, A.T. was discharged to the care and custody of his grandparents (Plaintiff and her husband David).
62. A.T. was hospitalized at UNM Hospital for over two months.
63. For the majority of this hospitalization, A.T. was restricted to a diet of clear liquids.
64. For the duration of this hospitalization, A.T. was four years old.
65. A.T. suffered severe injury and extensive damages as a result of a blunt force injury to his abdomen.

66. This blunt force injury to A.T.'s abdomen was actually and proximately caused by Defendant N.G. and/or Defendant K.L.

Facts: CYFD Substantiates Allegations of Physical Abuse of A.T.

67. Following A.T.'s hospitalization, an abuse and neglect investigation was conducted by CYFD investigator and employee Nicole Wilson.

68. In the course of her investigation, Nicole Wilson consulted with A.T.'s physicians at UNM Hospital, including but not limited to Dr. Karen T. Campbell from the Child Abuse Response Team.

69. On August 8, 2022, A.T. reported to a UNM Hospital Charge nurse named Stephanie Calavar that "Nate pulls my tongue" and "Nate hits and kicks me."

70. A.T. subsequently disclosed that Defendant N.G. had sexually abused him.

71. A Las Cumbres Community Services referral form dated October 20, 2022, notes that A.T. was abused "physically and sexually" while in the foster home of Defendants N.G. and K.L.

72. In an undated letter issued at the conclusion of Nicole Wilson's investigation, CYFD notified Defendants N.G. and K.L. that the allegations of physical neglect and physical abuse of A.T. by Gil were substantiated.

73. In an undated letter issued at the conclusion of Nicole Wilson's investigation, CYFD notified Defendant Bair Foundation that the allegations of physical neglect and physical abuse of A.T. by Defendant N.G. were substantiated.

COUNT I: Negligence – N.G. and K.L.

74. Plaintiff realleges and incorporates by reference all previous paragraphs as though set forth fully herein.

75. Defendants N.G. and K.L. each owed a duty of care to A.T, to act reasonably in supervising A.T. and caring for A.T. while he was placed in their home.

76. Defendants N.G. and K.L. each breached their duty of care to A.T.

77. As a direct and proximate result of these breaches of duty by Defendants N.G. and K.L., A.T. suffered severe harm and extensive damages.

78. The conduct of Defendants N.G. and K.L. was reckless, careless, willful, wanton, and/or indifferent to the safety and wellbeing of A.T., and subjects them to punitive damages.

COUNT II: Negligence – The Bair Foundation

79. Plaintiff realleges and incorporates by reference all previous paragraphs as though set forth fully herein.

80. Defendant Bair Foundation was responsible for licensing Defendants N.G. and K.L. as treatment foster care parents.

81. Defendant N.G. was licensed by the Bair Foundation to be a treatment foster care parent and to provide treatment foster care in his home.

82. Defendant K.L. was licensed by the Bair Foundation to be a treatment foster care parent and to provide treatment foster care in his home.

83. In addition or in the alternative, Defendant Bair Foundation was responsible for licensing the treatment foster care home of Defendants N.G. and K.L. (in which A.T. was placed).

84. Defendant Bair Foundation was responsible for supervising and managing the treatment foster care home of N.G. and K.L. (in which A.T. was placed).

85. At all times material to this Complaint, Defendant Bair Foundation acted through its agents and employees (including but not limited to Defendants N.G. and K.L.).

86. Defendant Bair Foundation acted in concert with CYFD to place A.T. into the foster home of N.G. and K.L.

87. Defendant Bair Foundation owed a duty of care to A.T., to act reasonably in supervising A.T.'s care and well-being while placed in the Bair Foundation foster home of N.G. and K.L.

88. Defendant Bair Foundation breached its duty of care to A.T.

89. As a direct and proximate result of these breaches of duty by Defendant Bair Foundation, A.T. suffered severe harm and extensive damages.

90. The conduct of the Bair Foundation was reckless, careless, and indifferent to the safety and wellbeing of A.T., and subjects the Bair Foundation to punitive damages.

COUNT III: Vicarious Liability – The Bair Foundation

91. Plaintiff realleges and incorporates by reference all previous paragraphs as though set forth fully herein.

92. At the time A.T. was placed in their home, Defendants N.G. and K.L. were agents of the Bair Foundation.

93. As a direct result of their status as agents of the Bair Foundation and Treatment Foster Care parents, Defendants N.G. and K.L. were vested with substantial power and authority over extremely vulnerable children (including but not limited to A.T.).

94. Defendants N.G. and/or K.L. abused the substantial power and authority vested in them as agents of the Bair Foundation, and A.T. suffered severe harm and extensive damages as a direct and proximate result of this abuse.

95. Whether the torts of its agents N.G. and K.L. were intentional or negligent, the Bair Foundation is vicariously liable for the torts of its agents N.G. and K.L. under New Mexico's theory of aiding in agency, as detailed in *Spurlock v. Townes*, 2016-NMCS-014.

96. If the torts of N.G. and/or K.L. were negligent (rather than intentional), then the negligence of Defendants N.G. and/or K.L. occurred within the course and scope of their employment/agency with the Bair Foundation.

97. If negligent acts or omissions by Defendants N.G. and/or K.L. were within the course and scope of their employment/agency with the Bair Foundation, the Bair Foundation is vicariously also liable for those negligent acts or omissions under the theory of *respondeat superior*.

COUNT IV: Violation of NMTCA by CYFD – NMSA 1978 § 41-4-6

98. Plaintiff realleges and incorporates by reference all previous paragraphs as though set forth fully herein.

99. Defendant CYFD is a New Mexico state agency which administers a foster placement program mandated by and detailed in the New Mexico Children's Code.

100. CYFD has the exclusive authority under New Mexico law to determine proper placements for foster children in the legal and physical custody of the State.

101. CYFD has the exclusive authority to operate, monitor, supervise, regulate, and otherwise manage the foster homes where foster children in state custody are placed.

102. Under New Mexico law, the best interest of children in CYFD custody is paramount when considering potential foster placements for those children.

103. Defendant N.G. was licensed by CYFD to be a foster parent and to provide foster care in his home.

104. Defendant K.L. was licensed by CYFD to be a foster parent and to provide foster care in his home.

105. At the time A.T. was placed in their home, Defendants N.G. and K.L. were public employees of CYFD acting within the scope of their duties.

106. CYFD operated and/or maintained the foster home of N.G. and K.L. insofar as that home was a foster home selected and licensed by CYFD to care for children in the State's legal custody and physical control.

107. CYFD had a duty to exercise reasonable and ordinary care in the operation and maintenance of the foster home of N.G. and K.L.

108. CYFD's duties included, but were not limited to, those established by statute, regulation, procedure, and policy for foster parents selected by the State of New Mexico to care for foster children in the State's legal custody and physical control.

109. CYFD's duties included, but were not limited to, those duties arising under the New Mexico Children's Code, the Abuse and Neglect Act, and the administrative regulations issued by CYFD and its Protective Services Division, and the faithful execution of these duties was integral and important for the safe operation of the foster home of N.G. and K.L.

110. The statutes and regulations discussed in the preceding paragraphs granted CYFD extensive control over the means and manner in which Defendants N.G. and K.L. were to operate the foster home.

111. These extensive and wide-ranging statutes, regulations, and procedures evidence CYFD's numerous duties to A.T., including the duty to act with reasonable and ordinary care, both in assuring the health and safety of A.T. and in preventing A.T.'s placement in a foster home that was unsafe or dangerous, or that posed an unreasonable risk of harm to its residents.

112. Defendant CYFD breached one or more of its duties to A.T.

113. As a direct and proximate result of Defendant CYFD's breaches of its duties to A.T., A.T. suffered severe harm and extensive damages.

COUNT V: Violation of New Mexico Civil Rights Act by CYFD

114. Plaintiff realleges and incorporates by reference all previous paragraphs as though set forth fully herein.

115. Defendant CYFD is a “public body” as that term is defined in the New Mexico Civil Rights Act, NMSA 1978 §§ 41-4A-1 *et seq.*

116. At the time A.T. was placed in their home, Defendants N.G. and K.L. were persons acting on behalf of, under color of or within the course and scope of the authority of CYFD as a public body.

117. The physical and/or sexual abuse and/or neglect inflicted upon A.T. by Defendants N.G. and K.L. constitutes the clear deprivation of numerous rights secured to A.T. under the constitution of New Mexico (including but not limited to those rights secured to A.T. by Article II, Sections 4 and 18).

118. A.T.’s rights under the constitution of New Mexico include a fundamental due process right to bodily integrity.

119. A.T.’s rights under Article II, Sections 4 and 18 are afforded greater protections than his equivalent rights under the United States Constitution.

120. A.T. has suffered serious harm as a direct result of the deprivation of his state constitutional rights by Defendants N.G. and/or K.L., and these deprivations of rights are the proximate cause of serious harm to Plaintiff.

WHEREFORE, Plaintiff requests judgment against the Defendants in an amount reasonable to compensate A.T. for his damages, for interest including pre-judgment interest, costs, reasonable attorneys’ fees, and such other and further relief as this Court may deem appropriate.

Respectfully submitted,

HUFFMAN WALLACE & MONAGLE, LLC

/s/ Levi A. Monagle 3/14/24

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