

Barnyard Gate. Emily Markley brings this lawsuit on her family's behalf asking for answers and asking that By the Barnyard Gate accept responsibility.

I. STATEMENT OF FACTS

3. By the Barnyard Gate advertises itself as a Christian based childcare facility, where they "aim to create a warm and engaging atmosphere"² for children in their care. It is through their "Professional and Qualified Teachers"³ that they vow to create a safe and nurturing environment for the children in their care, "The classrooms are self-contained so the children feel safe and secure."⁴ However, a trail of records from the state of Texas paints a very different picture.

4. By the Barnyard Gate is responsible for qualifying, hiring, training, and supervising its employee caregivers on providing safe and proper care conducive to the welfare of the children; properly supervising children at all times; ensuring no child is abused, neglected, or exploited; reporting all incidents concerning abuse, neglect, or exploitation of a child; compliance with Texas' minimum standards for childcare; the use of good judgment, competency, and control; and the proper response and documentation of incidents of injury or abuse and situations placing children at risk of harm.

5. On or about Friday, January 6, 2023, Emily Markley placed her four-year-old son, P.M., in the care of By the Barnyard Gate for daycare. While under the care of By the Barnyard Gate, they allowed P.M. to be physically, emotionally, and psychologically injured when 19-year-old Efrain Jesus Bonilla – the By the Barnyard Gate employee that was responsible for P.M.'s well-being and safety – inappropriately touched P.M. in a sexual manner (hereinafter, "the Incident").

² By the Barnyard Gate website, <https://thebarnyardgate.com/about/> (last visited April 30, 2024).

³ By the Barnyard Gate homepage website, <https://whistlestopschool.com/> (last visited April 30, 2024).

⁴ *Id.*

6. Surveillance video footage revealed that Efrain Jesus Bonilla, the By the Barnyard Gate's employee, was left alone in a room of napping children when he inappropriately touched P.M. during naptime. The video shows P.M. laying down in a nap mat covered with a blanket during naptime. Efrain Jesus Bonilla is seen sitting with his legs crossed between P.M. and another child while he is rubbing the children on their heads and patting them on their backs. Efrain Jesus Bonilla can be seen rubbing his hands together in a warming up motion as he moves closer to P.M. and proceeds to raise P.M.'s blanket and with his own body blocks P.M.'s body from the camera view to obscure what he does to P.M. next. It is at this point that Efrain Jesus Bonilla puts his hands down the front of P.M.'s pants and underwear and touched and squeezed P.M.'s genitals. P.M. can be seen on video turning over onto his stomach to move away from Efrain Jesus Bonilla. It wasn't until another By the Barnyard Gate staff member entered the classroom that Efrain Jesus Bonilla quickly stopped touching P.M. and pulled P.M.'s blanket back over his body.

7. A couple days after the incident, P.M. made an outcry to his mother, Emily, about being touched inappropriately by the By the Barnyard Gate employee during naptime. After consoling P.M., Emily immediately contacted By the Barnyard Gate to report what P.M. had just told her. Emily made plans to meet with By the Barnyard Gate the following day to view the video footage. Upon meeting with management the following day and viewing the video footage, Emily was assured by the daycare that a report would be made to the state, and that the incident would be investigated.

8. Shockingly, By the Barnyard Gate did *not* report the incident to the state of Texas or law enforcement, despite the gravity of the situation. Instead, Emily herself reported it to both the

state and law enforcement. Even more alarming, By the Barnyard Gate did not immediately terminate the Efrain Jesus Bonilla after what happened to P.M., instead allowing him to continue to work at By the Barnyard Gate and have direct contact with other children, putting the children under their care and supervision at direct risk of becoming another victim. It was not until the Department of Family and Protective Services informed By the Barnyard Gate that Efrain Jesus Bonilla could not be present at the facility while the investigation was ongoing, that By the Barnyard Gate finally terminated him.

9. Subsequently, upon involvement of law enforcement, Efrain Jesus Bonilla was arrested, charged with a second-degree felony of indecency with a child, and is awaiting trial. As the wheels of the criminal justice system turn in the prosecution of Efrain Jesus Bonilla, Emily Markley brings this civil suit looking for answers, justice, and accountability from By the Barnyard Gate.

10. By the Barnyard Gate 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. 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 P.M. and concluded that the allegations involving P.M. against By the Barnyard Gate were *substantiated*, citing By the Barnyard Gate for violating the following childcare licensing rules of Texas:

- **746.1201(4):** AP Responsibilities of Employees and Caregivers – Ensure No Child is Abused, Neglected, or Exploited.

- **746.201(5):** Reporting Suspected Abuse, Neglect, Exploitation – May not delegate responsibility to report.

11. By the Barnyard Gate 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 incidents and the injuries sustained by P.M. By The Barnyard Gate 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 Texas Health and Human Services Commission Child-Care Licensing Division, from August 2019 through January 2023:

- **July 2019:**

- Cited for a caregiver failing to properly supervise children in their care after a child was able to ride their bicycle alone and unsupervised into a busy street.
- Cited for failing to ensure no child is abused, neglected, or exploited.
- Cited for failing to demonstrate competency, good judgment, and self-control.

- **August 2019:**

- Cited for failing to post a field trip information in a prominent place for parents.
- Cited for swaddling an infant with a swaddling device.
- Cited for failing to have a food allergy plan signed by a health care professional for a child with a documented food allergy.
- Cited for the operation being over the licensed capacity by 8 children.
- Cited for failing to post the list of children with documented food allergies where the food is prepared.
- Cited for failing to have the updated feeding instructions signed and dated by parent and health care professional for a child in care.

- **October 2019:**

- Cited for failing to have proper supervision of children in care.

- **November 2019:**

- Cited for failing to properly supervise children in care when a child was left unsupervised on the playground.
- **June 2020:**
 - Cited for failing to properly supervise children in care when a child was left unsupervised.
- **January 2021:**
 - Cited for failing to notify the health department and licensing of an outbreak of a communicable illness.
- **June 2021:**
 - Cited for failing to properly supervise children in care when a child was left unattended and unsupervised.
 - Cited for hiring a caregiver employee whose medical examination report was older than 12 mo. before individual's start date.
- **August 2021:**
 - Cited for failing to properly supervise children in care when a child was left unattended and unsupervised in a classroom.
- **March 2022:**
 - Cited for failing to properly supervise children in care when a child was left unattended and unsupervised on the playground.
- **November 2022:**
 - Cited for failing to complete the required annual fire inspection.
 - Cited for failing to have the required child safety alarms in the daycare's transportation vehicles.
- **December 2023:**
 - Cited for failing to properly supervise children in care when a child was left unattended and unsupervised on the playground.

13. What happened to P.M. was preventable. As a direct and proximate result of the actions and omissions of By the Barnyard Gate, Plaintiffs Emily Markley and P.M. sustained injuries and damages.

II. 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.

III. PARTIES

16. Plaintiff Emily Markley is the biological mother of Plaintiff P.M., a minor, and are citizens and residents of Dallas County, Texas.

17. Defendant Simpson-Foster, LLC, d/b/a By the Barnyard Gate 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, Richard Simpson, located at 4416 Merritt Road, Sachse, Texas 75048, or wherever they may be found.

18. Defendant Whistle Stop Station, LP d/b/a By the Barnyard Gate is a limited partnership doing business in the State of Texas, its state of formation. Defendant may be served with process by serving its registered agent, Richard Simpson, located at 4416 Merritt Road, Sachse, Texas 75048, or wherever they may be found.

IV. JURISDICTION & VENUE

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

20. Venue is proper in Dallas 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.

V. CAUSES OF ACTION

Count One - Negligence

21. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.
22. 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 Defendants. Defendants were 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 to 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 employ caregivers who demonstrate competency, good judgment, and self-control;
 - g. Failing to ensure no child is abused, neglected, or exploited;
 - h. Failing to properly hire, qualify, train, and supervise its employee-caregivers and staff trusted with the care of minor Plaintiff P.M.;
 - i. Choosing to continue to employ an unqualified, untrained, and unsupervised caregiver;
 - j. Failing to immediately notify parents on any situation that placed their child at risk;

- k. Failing to complete accurate incident report on all incidents involving serious harm to children and incidents that place children at risk;
 - l. Failing to adhere to the Texas Minimum Standards for Childcare.
23. Defendants had a duty to exercise ordinary care in caring for and supervising the children in its care to prevent injury to Plaintiff P.M. and other children similarly situated.
24. Defendants had a duty to maintain a safe environment for children in its care to prevent injury to P.M. and other children similarly situated.
25. Defendants had a duty to hire, train, and supervise caregiver-employees and staff to ensure that children were not subjected to abuse, neglect, or exploitation, to prevent injury to P.M., and other children similarly situated.
26. Defendants breached the duty of care by failing to care for the children; failing to supervise the children; failing to properly hire, train, and supervise qualified caregivers and staff to care for children; failing to maintain a safe environment for children; failing to create an incident report for an incident involving serious harm or risk to children; and failing to immediately notify parents of any situation placing their child at risk or causing harm.
27. Defendants' 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

28. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.
29. Defendants failed to exercise the mandatory standard of care in violation of the Texas Department of Family and Protective Services, Minimum Standards for Child-Care.

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

31. Defendants' violation of the statutes was the proximate cause of the incident in question.

32. As a result of the Defendants' acts and/or omissions in violating the statutes, Plaintiffs sustained damages.

Count Three- Gross Negligence

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

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

35. Defendants' conduct involved an extreme degree of risk, considering the probability and magnitude of potential harm to the Plaintiffs. Defendants had actual, subjective awareness of the risk involved in, but, nevertheless, proceeded in conscious indifference to the rights, safety, or welfare of Plaintiffs or of others similarly situated.

36. 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

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

38. Defendants were the owners, operators, and/or possessors of the daycare premises located at 4701 Bunker Hill Road, Sachse, Texas 75048, operation license number 1547033, during the time of this incident.

39. At the time of the incident, P.M. was a minor child placed in the care of Defendants and was thus and “invitee” to whom Defendants owed a duty to exercise ordinary care.

40. Plaintiffs’ injuries were the direct and contemporaneous result of Defendants’ ongoing negligent activity on the premises at the time of the injuries and damages sustained.

41. Defendants owed Plaintiffs a legal duty to ensure P.M.’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 no child in their care is abused, neglected, or exploited. Defendants breached these duties by failing to maintain a safe environment for P.M. and failing to train and supervise its caregiver employees on how to supervise children.

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

RESPONDEAT SUPERIOR

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

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

DAMAGES

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

46. As a direct and proximate cause of Defendants' negligent acts and/or omissions, Plaintiff Emily Markley, individually, and as Next Friend of Plaintiff P.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. 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 normal enjoyment of the pleasure of life in the past;
- n. Loss of 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.

47. 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

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

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

50. The grossly negligent conduct of Defendants, as described herein, constitutes conduct for which the law allows the imposition of exemplary damages. Accordingly, Plaintiffs seek the award of exemplary damages against Defendants pursuant to Chapter 41 of the Texas Civil Practices and Remedies Code.

JURY TRIAL

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

U.S. LIFE TABLES

52. 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 Defendants be cited to appear and answer herein and upon final hearing hereof, they take, have and recover, of and

from said Defendants, 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: June 10, 2024.

Respectfully submitted,

THE BUTTON LAW FIRM

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Russell Button on behalf of Russell Button

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Filing Code Description: Ody - Original Petition (OCA - New Case Filed)

Filing Description:

Status as of 6/12/2024 4:04 PM CST

Associated Case Party: EMILY MARKLEY, INDIVIDUALLY AND AS NEXT FRIEND OF P.M., A MINOR CHILD

Name	BarNumber	Email	TimestampSubmitted	Status
Russell Button		service@buttonlawfirm.com	6/10/2024 9:22:45 AM	SENT