

CC-23-03067-E
CAUSE NO. _____

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| APRIL WALLACE, INDIVIDUALLY AND AS NEXT | § | IN THE COUNTY COURT |
| FRIEND OF B.S.H., A MINOR CHILD, | § | |
| | § | |
| | § | |
| PLAINTIFFS, | § | |
| VS. | § | AT LAW NO. _____ |
| | § | |
| VR PARAMOUNT LEARNING, LLC D/B/A EAST | § | |
| RIDGE ACADEMY, | § | |
| | § | |
| DEFENDANT. | § | DALLAS COUNTY, TEXAS |

ORIGINAL PETITION AND JURY DEMAND

April Wallace, like many parents across this country and the state of Texas, is a working mother that relied on a daycare to provide a safe, caring, nurturing environment for her daughter, B.S.H., while she was working. April Wallace trusted that her daughter would be safe at East Ridge Academy.¹

A safe learning environment and peace of mind are what parents like April Wallace pay for and expect. Instead, April Wallace’s worst nightmare became a reality when her daughter B.S.H. suffered serious physical, emotional, and mental injuries because of the failures of East Ridge Academy. April Wallace brings this lawsuit on her family’s behalf asking for answers and asking that East Ridge Academy accept responsibility.

¹ Defendant VR Paramount Learning, LLC d/b/a East Ridge Academy is referred to as “East Ridge Academy” in this Petition.

STATEMENT OF FACTS

According to East Ridge Academy, "From our training practices to our state-of-the-art building, we are committed to the safety and security of our children and team members."² East Ridge Academy publicizes and sells parents on the idea that this daycare is dedicated to creating a nurturing and safe learning environment for their children. According to their website, East Ridge Academy provides the following: "Our teachers undergo extensive on-going educational training in order to educate, nurture, and help your child grow. A strong focus on expertise, passion, hiring, training, cleanliness, and specialization. Ongoing education through annual in-service training, professional development, and online training."³ However, a trail of records from the state of Texas paints a very different picture.

East Ridge Academy is responsible for qualifying, hiring, training, and supervising its employee caregivers on providing safe and proper care conducive to the welfare of the children, appropriate discipline methods, the prohibition of certain punishment methods, compliance with Texas' minimum standards for childcare, the use of good judgment, competency, and control, proper response, and documentation of incidents of injury, and appropriate action in the event of a medical emergency.

Monday, August 8, 2022, April Wallace placed her daughter B.S.H. in the care of East Ridge Academy for daycare. While under the care of East Ridge Academy, B.S.H. was inappropriately disciplined when she, along with her class, were made to do push-ups as a form

² *East Ridge Academy's Website*, <https://EastRidgeacademytx.com/about-us> (last visited April 28, 2023).

³ *East Ridge Academy's Website*, <https://EastRidgeacademytx.com/about-us> (last visited April 28, 2023).

of punishment. Then later that same day, B.S.H. was subjected to other inappropriate forms of punishment as discipline when while B.S.H. was engaging in a painting activity, she was pushed out of the chair she was sitting on and fell to the ground where she hit her head, causing bodily injuries and damages to B.S.H. (hereinafter, "the Incident"). Following the incident, East Ridge Academy chose not to immediately contact B.S.H.'s mother, emergency services, or the state of Texas to report the injuries and incident. B.S.H. was left in pain for the remainder of the day, until her mother April Wallace arrived to pick her up from daycare.

An independent investigation into the Incident by the Texas Health and Human Services Commission Child-Care Licensing Division and the Texas Department of Family and Protective Services concluded that the allegations involving B.S.H. against East Ridge Academy were substantiated, and cited East Ridge Academy for violating the following childcare licensing rules of Texas:

- **746.2805(6):** Humiliating, ridiculing, rejecting, or yelling at a child.
- **746.2805(7):** Subjecting a child to harsh, abusive, or profane language.
- **746.2805(1):** Corporal punishment or threats of corporal punishment.
- **746.2805(4):** Hitting a child with a hand or instrument.

East Ridge 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 B.S.H. East Ridge 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.

The following is an overview of some of the citations issued by the Texas Health and Human Services Commission from April 2019 through September 2022:

- April 2019
 - o Cited for not having the required annual training hours for transportation.
- September 2019:
 - o Cited for using inappropriate discipline and guidance toward children.
- October 2019
 - o Cited twice for failing to use positive methods of discipline and guidance toward children.
 - o Cited for employees failure to demonstrate competency, good judgment, and self-control
- January 2020:
 - o Cited for failing to report to the state when a child was injured and required medical treatment.
- February 2020:
 - o Cited for an employee's failure to have documented training.
- December 2021:
 - o Cited for failing to have the required personnel records to review
- May 2022:
 - o Cited for failing to ensure employees comply and are current in their training in pediatric first aid
- August 2022:
 - o Cited for leaving a child unattended on the playground.
 - o Cited for violating child/caregiver ratio
 - o Cited for failing to notify parent when a child was placed at risk.
- September 2022:
 - o Cited for failing to have the required personnel records to review

What happened to B.S.H. was preventable. As a direct and proximate result of the actions and omissions of East Ridge Academy, Plaintiffs April Wallace and B.S.H. sustained injuries and damages.

DISCOVERY CONTROL PLAN & CLAIM FOR RELIEF

1. Discovery in this matter is intended to be conducted under Level 3 of the Texas Rules of Civil Procedure.

2. 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

3. Plaintiff April Wallace is the biological mother of Plaintiff B.S.H., a minor, and are citizens and residents of Dallas County, Texas.

4. Defendant VR Paramount Learning, LLC d/b/a East Ridge Academy (hereinafter referred to as "Defendant" or "East Ridge 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, Rakesh K. Jindal, located at 1900 Arlington Court, Colleyville, Texas 76034, or wherever they may be found.

JURISDICTION & VENUE

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

6. 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.

CAUSES OF ACTION

Count One – Negligence

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

8. 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. Choosing to inappropriately discipline minor Plaintiff B.S.H.;
- g. Failing to ensure that expectations for a child's behavior is appropriate or the developmental level of that child;
- h. Failing to use only constructive, age-appropriate methods of discipline;
- i. Failing to properly hire, qualify, train, and supervise it's employee-caregivers trusted with the care of minor Plaintiff B.S.H.;
- j. Failing to appropriately respond in an emergency situation;
- k. Failing to use positive methods of discipline and guidance with the children in its care;
- l. Choosing to use prohibited discipline technique that is humiliating, threatening, or frightening to children such as shaming, ridiculing, speaking harshly, abusively, and with profanity;

- m. Failing to ensure caregiver employees demonstrate competency, good judgment, and self-control;
 - n. Failing to record and report serious injuries sustained by a child in its care; and
 - o. Failing to adhere to the Texas Minimum Standards for Childcare.
9. Defendant had a duty to exercise ordinary care in caring for, supervising, and disciplining the children in its care so as to prevent injury to Plaintiff B.S.H. and other children similarly situated.
10. Defendant had a duty to maintain a safe environment for children in its care so as to prevent injury to B.S.H., and other children similarly situated.
11. Defendant had a duty to hire, train, and supervise caregiver employees to ensure that children were not subjected to inappropriate discipline, so as to prevent injury to B.S.H., and other children similarly situated.
12. Defendant breached the duty of care by failing to care for the children, failing to supervise the children, failing to appropriately discipline the children, failing to properly train, hire, and supervise its employees, failing to maintain a safe environment for children, failing to immediately terminate an employee who excessively disciplined and harmed a child, failing to call for medical attention after a minor child in their care sustained injuries, failing to create an incident report for an incident involving serious injury to a child, and failing to report to the relevant state agency an incident involving serious injury to a child.
13. 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

14. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.
15. 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.
16. 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.
17. Defendant's violation of the statutes was the proximate cause of the Incident in question.
18. As a result of the Defendant's acts and/or omissions in violating the statutes, Plaintiffs sustained damages.

Count Three – Gross Negligence

19. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.
20. 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).
21. 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.
22. 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

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

24. Defendant is the owner, operator, and/or possessor of the daycare premises located at 6310 East Ridge Drive, Dallas, Texas 75231, operation license number 1679944.

25. At the time of the Incident, B.S.H. 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.

26. 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.

27. Defendant owed Plaintiffs a legal duty to ensure B.S.H.'s safety in maintaining proper care over the children, ensuring discipline over the children is appropriate, ensuring that employees are necessarily hired, trained, supervised, and terminated in order to maintain a safe environment for children, and ensuring that serious injuries are recorded and reported. Defendant breached these duties by permitting one of its employee-caregivers to inappropriately discipline children, by allowing that caregiver to remain on staff after the incident, and by failing to create a corresponding incident report and inform the appropriate state entity of the injuries B.S.H. sustained.

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

RESPONDEAT SUPERIOR

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

30. 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

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

32. As a direct and proximate cause of Defendant's negligent acts and/or omissions, Plaintiff April Wallace, individually, and as Parent and Next Friend of Plaintiff B.S.H., 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 the normal enjoyment of the pleasure of life in the past;

- n. Loss of the 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.
33. 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

34. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.
35. 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.
36. 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

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

U.S. LIFE TABLES

38. 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: May 18, 2023

Respectfully submitted,

THE BUTTON LAW FIRM

By: /s/Russell T. Button

Russell T. Button

Texas Bar No. 24077428

russell@buttonlawfirm.com

Ashley D. Washington

Texas Bar No. 24102030

Ashley@buttonawfirm.com

Donal McRoberts

Texas Bar No. 24073308

donal@buttonlawfirm.com

4315 W. Lovers Lane, Suite A

Dallas, Texas 75209

T: 214-888-2216

F: 214-481-8667

Email for Service:

service@buttonlawfirm.com

ATTORNEYS FOR PLAINTIFFS