

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

THE ESTATE OF PEYTON J. POTTEBAUM,
by its ADMINISTRATORS, COURTNEY C.
POTTEBAUM & JEREMIAH J. POTTEBAUM;
COURTNEY C. POTTEBAUM, Individually;
JEREMIAH J. POTTEBAUM, Individually; and
COURTNEY C. POTTEBAUM & JEREMIAH J.
POTTEBAUM as parents and next friends of T.P.,

Case No.: LACV153846

PETITION

Plaintiffs,

vs.

RINA SANCHEZ,

Defendant.

COME NOW Plaintiffs, The Estate of Peyton J. Pottebaum, by and through its administrators, Courtney C. Pottebaum and Jeremiah J. Pottebaum; Courtney C. Pottebaum and Jeremiah J. Pottebaum, Individually, and Courtney C. Pottebaum and Jeremiah J. Pottebaum as parents and next friend of T.P. , and for their claims against Defendant state as follows:

PARTIES

1. The Plaintiff, The Estate of Peyton J. Pottebaum, was opened in Woodbury County, Iowa, on March 26, 2013, and the duly appointed administrators of the estate are Courtney C. Pottebaum and Jeremiah J. Pottebaum, the decedent's parents.
2. Peyton Pottebaum was approximately six months old at the time of his death.
3. The Plaintiffs, Courtney C. Pottebaum and Jeremiah J. Pottebaum, are the parents of the decedent and administrators of the estate and reside in Bronson, Woodbury County, Iowa.
4. The Plaintiff, T.P., is a 4 year old minor child, and is the sister of the decedent and is a resident of Bronson, Woodbury County, Iowa, and this cause of action is brought on her behalf by her parents and next friends, Courtney C. Pottebaum and Jeremiah J. Pottebaum.

5. The Defendant, Rina Sanchez, is a resident of Sioux City, Woodbury County, Iowa and was, at all times material herein, in the business of operating an in-home daycare at 4561 Meadow Lane, Sioux City, Woodbury County, Iowa.

JURISDICTION

6. This Court has subject matter jurisdiction over this matter under Iowa Code § 602.6101. The amount in controversy exceeds \$10,000.00.
7. Venue in this county exists under Iowa Code §§ 616.17 and 616.18.
8. This Court has personal jurisdiction over the parties, as they reside in Woodbury County, Iowa.

FACTUAL BACKGROUND

9. On or about January 19, 2012, at approximately 7:00 a.m., Plaintiff Jeremiah J. Pottebaum dropped off his son, Peyton Pottebaum, and daughter, T.P., at Defendant's in-home daycare.

10. At that time, Peyton Pottebaum was in good health.
11. At approximately 8:30 a.m., about ninety minutes later, Defendant called her husband, Oscar Sanchez, to report that Peyton Pottebaum was not breathing. Defendant's husband then subsequently called 911 and came home to provide aid.
12. First responders arrived and provided mouth-to-mouth resuscitation and transported Peyton Pottebaum to St. Luke's Hospital in an ambulance.
13. A CT scan revealed that Peyton Pottebaum had sustained a significant skull fracture, at which point he was rushed to the emergency room for a craniotomy.
14. After the craniotomy, Peyton Pottebaum was life-flighted to Children's Hospital in Omaha, Nebraska for further treatment and care.

15. On January 21, 2012, Peyton Pottebaum died as a result of his injuries.

COUNT I: NEGLIGENCE
(The Estate)

16. Plaintiff repleads paragraphs 1-15, as if set forth fully herein.

17. Defendant's negligence was the proximate cause of the damages sustained by the Estate of Peyton Pottebaum. Said negligence included one or more of the following particulars:

- a. In failing to properly care for and supervise Peyton Pottebaum;
- b. In failing to protect Peyton Pottebaum from unreasonable risk of injury;
- c. In failing to timely respond to Peyton Pottebaum's injuries;
- d. In failing to provide first aid after she knew or had reason to know that he was injured, and care for him until he could be cared for by others;
- e. In failing to reasonably account for his injuries to emergency personnel upon arrival so that they could provide proper treatment;
- f. In failing to exercise reasonable care for that of a daycare provider under similar circumstances.

18. As a result of that negligence, the Estate of Peyton Pottebaum sustained the following damages:

- a. Pre-death medical expenses;
- b. Loss of time, income and future earning capacity;
- c. Pre-death loss of function and full mind and body;
- d. Pre-death mental and physical pain and suffering;
- e. Funeral expenses and interest relating to Peyton Pottebaum;
- f. The present value of the additional amount Peyton Pottebaum would

reasonably be expected to have accumulated as a result of his effort if he'd been allowed to live out the full term of natural life; and

g. For all interest and for all other damages available to Plaintiff's Estate under Iowa law and may be just and equitable under the circumstances

WHEREFORE, the Plaintiff, the Estate of Peyton Pottebaum, respectfully requests this Court enter judgment against the Defendant, Rina Sanchez, for an amount that will fully and fairly compensate Plaintiff, as determined by a jury, together with court costs and interest and any and all other relief that this Court deems just and proper.

COUNT II: BYSTANDER LIABILITY -
NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS
(T.P.)

19. Plaintiffs replead paragraphs 1-19 as if set forth fully herein.
20. At the time of Defendant's negligence and Peyton Pottebaum's injuries, Plaintiff T.P. was in the care and custody of Defendant as part of her in-home daycare business.
21. Plaintiff T.P. is Peyton Pottebaum's sister and was approximately 3.5 years old at the time.
22. Plaintiff T.P. was near Peyton Pottebaum when he sustained his fatal injuries.
23. Plaintiff T.P. suffered emotional distress resulting from a direct emotional impact from seeing or hearing her brother's incident.
24. At the time of her brother's incident, a reasonable person in Plaintiff T.P.'s position would, and did believe, that Peyton Pottebaum would be seriously injured or killed.
25. As a result of Defendant's negligence, as outlined above, Plaintiff T.P. suffered serious emotional distress. She has also incurred and continues to incur medical expenses for care and treatment.

WHEREFORE, the Plaintiff, T.P., respectfully requests this Court enter judgment against the Defendant, Rina Sanchez, for an amount that will fully and fairly compensate her, as determined by a jury, together with court costs and interest and any and all other relief that this Court deems just and proper.

COUNT III: LOSS OF CONSORTIUM
(Jeremiah Pottebaum, Courtney Pottebaum and T.P.)

26. Plaintiffs replead paragraphs 1-25, as if set forth fully herein.
27. Plaintiffs, Jeremiah Pottebaum and Courtney Pottebaum, as parents of the minor child Peyton Pottebaum, have suffered loss of services, consortium and society due to the death of their child Peyton Pottebaum.
28. Plaintiff T.P., as sister of Peyton Pottebaum, has suffered loss of services, consortium and society due to the death of her brother Peyton Pottebaum.

WHEREFORE, the Plaintiffs, Jeremiah Pottebaum, Courtney Pottebaum and T.P., respectfully requests this Court enter judgment against the Defendant, Rina Sanchez, for an amount that will fully and fairly compensate them for loss of services, consortium and society, and any other damage recoverable under Iowa law, as determined by a jury, together with court costs and interest and any and all other relief that this Court deems just and proper

COUNT IV: BATTERY
(The Estate)

29. Plaintiffs replead paragraphs 1-28, as if set forth fully herein.
30. The Defendant made bodily contact with Peyton Pottebaum that resulted in the fracturing of his skull.
31. The act, commonly referred to as Shaken-Baby Syndrome, was done with the intent to cause offensive bodily contact or physical pain or injury.

32. The Defendant's act resulted in physical pain and injury to Peyton Pottebaum and ultimately his death.

33. The Defendant's act caused the following damages to the Estate of Peyton Pottebaum:

- a. Pre-death medical expenses;
- b. Loss of time, income and future earning capacity;
- c. Pre-death loss of function and full mind and body;
- d. Pre-death mental and physical pain and suffering;
- e. Funeral expenses and interest relating to Peyton Pottebaum;
- f. The present value of the additional amount Peyton Pottebaum would reasonably be expected to have accumulated as a result of his effort if he'd been allowed to live out the full term of natural life; and
- g. For all interest and for all other damages available to Plaintiff's Estate under Iowa law and may be just and equitable under the circumstances

WHEREFORE, the Plaintiff, the Estate of Peyton Pottebaum, respectfully requests this Court enter judgment against the Defendant, Rina Sanchez, for an amount that will fully and fairly compensate Plaintiff, as determined by a jury, together with court costs and interest and any and all other relief that this Court deems just and proper.

**COUNT V: INTENTIONAL INFILCTION
OF EMOTIONAL DISTRESS**
(All)

34. Plaintiffs replead paragraphs 1-33, as if set forth fully herein.

35. Defendant's conduct towards Plaintiff Peyton Pottebaum was outrageous.

36. The Defendant intentionally caused emotional distress or acted with reckless disregard of the probability of causing emotional distress to Plaintiffs.
37. Plaintiffs suffered severe or extreme emotional distress.
38. The Defendant's outrageous conduct was a cause of the emotional distress.
39. The Plaintiffs have sustained all damages outlined above in Counts I-IV.

WHEREFORE, the Plaintiffs respectfully requests this Court enter judgment against the Defendant, Rina Sanchez, for an amount that will fully and fairly compensate them, as determined by a jury, together with court costs and interest and any and all other relief that this Court deems just and proper.

**COUNT VI: CONTROLLING CONDUCT
OF THIRD PARTIES**
(All)

40. Plaintiffs replead paragraphs 1-39, as if set forth fully herein.
41. Upon information and belief, Defendant may attempt to place fault for Peyton Pottebaum's injuries on third parties.
42. The defendant was in possession of the premises in which she was operating her in-home daycare.
43. The defendant permitted children whom she was supervising to use the premises.
44. The defendant was present on the premises at the time the wrongful actions occurred.
45. The defendant knew or should have known that she had the ability to control all other children or persons on her premises.
46. The defendant knew or should have known of the necessity and opportunity for exercising such control.

47. The defendant was negligent in one or more of the following ways:
 - a. In failing to properly care for and supervise Peyton Pottebaum;
 - b. In failing to protect Peyton Pottebaum from unreasonable risk of injury;
 - c. In failing to timely respond to Peyton Pottebaum's injuries;
 - d. In failing to provide first aid after she knew or had reason to know that he was injured, and care for him until he could be cared for by others;
 - e. In failing to reasonably account for his injuries to emergency personnel upon arrival so that they could provide proper treatment;
 - f. In failing to exercise reasonable care for that of a daycare provider under similar circumstances.
48. The defendant's negligence was a cause of the plaintiffs' damage as outlined in Counts I-V.

WHEREFORE, the Plaintiffs respectfully requests this Court enter judgment against the Defendant, Rina Sanchez, for an amount that will fully and fairly compensate them, as determined by a jury, together with court costs and interest and any and all other relief that this Court deems just and proper.

COUNT VII: PUNITIVE DAMAGES
(All)

49. Plaintiffs replead paragraphs 1-49 as if set forth fully herein.
50. The conduct of the Defendant was sufficiently grossly negligent and legally malicious to entitle all Plaintiffs to punitive damages.
51. Defendant's conduct constituted a willful and wanton disregard for the rights or safety of another and caused actual damage to the Plaintiffs.

WHEREFORE, Plaintiffs respectfully requests this Court enter judgment against the Defendant in an amount that will fairly and reasonably compensate Plaintiffs for their injuries and damages, and for punitive damages in an amount sufficient to punish the Defendant and deter like conduct, plus interest as allowed by law and the costs of this action and for such other relief as may be equitable under the circumstances.

Dated: March 27, 2013.

Respectfully submitted by:

CROSS LAW FIRM, P.L.C.

/s/ Jeremy J. Cross
JEREMY J. CROSS, AT0001854
600 4th Street, Suite 315
Sioux City, IA 51101
Telephone: (712) 234-3055
Facsimile: (712) 277-7386
Email: jeremycross@crosslawplc.com

ATTORNEYS FOR DEFENDANTS

Copies to:

John C. Gray
Heidman Law Firm, LLP
1128 Historic Fourth Street
Sioux City, Iowa 51101

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties of record, by and through their respective counsel, via E-mail on March 27, 2013.

By: /s/ Jeremy J. Cross
Jeremy J. Cross