

18-CV-1575

No. _____

DARCELL GREER,
as Next Friend of Z.G., a minor
Plaintiff,

vs.

THE DEVEREUX FOUNDATION
d/b/a DEVEREUX TEXAS
TREATMENT NETWORK, and
SHAILEN JAMAL SIMMONS
Defendants.

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IN THE DISTRICT COURT OF

GALVESTON COUNTY, TEXAS

Galveston County - 56th District Court

_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Darcell Greer, as legal guardian and Next Friend of Z.G., a minor, complaining of Defendants The Devereux Foundation, doing business in Galveston County as Devereux Texas Treatment Network ("Devereux") and Shailen Jamal Simmons ("Simmons") and for causes of action would show onto the Court the following:

I.

DISCOVERY

Discovery is intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190. Plaintiff affirmatively pleads that she seeks monetary relief aggregating more than \$50,000.

II.

PARTIES

Plaintiff Z.G. is a minor who currently resides in Riverside County, California. Next Friend Darcell Greer is the legal guardian of Z.G. Devereux has been provided with the true identity of Z.G.

Status Conference set 2-07-19

Defendant The Devereux Foundation is a Pennsylvania business entity doing business in Texas under various names. In Galveston County it is doing business under the assumed name Devereux Texas Treatment Network. Defendant may be served with process through its registered agent, Gail Atkinson, at 1150 Devereux Drive, League City, Texas 77573.

Defendant Shailen Jamal Simmons is an individual who currently resides in Galveston County, Texas. Simmons may be served with process at his residence, located at 7901 Jonquil Dr., Texas City, Texas 77591 or wherever in the State he may be found.

III.

JURISDICTION

Plaintiff brings suit for all damages to which she is entitled by law. Plaintiff's damages exceed the minimum jurisdictional limits of this Court.

IV.

VENUE

Venue is proper in Galveston County, Texas pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to the claim occurred in Galveston County.

V.

VICARIOUS LIABILITY/RESPONDEAT SUPERIOR

Whenever in this petition it is alleged that Devereux did any act or thing, it means, given the context, that Devereux's agents, officers, servants, borrowed servants, employees or representatives did such act or thing and that at the time such act or thing was done, it was done with the full authorization or ratification of Devereux or was done in the normal and routine course and scope of employment of Devereux's officers, agents, servants, borrowed servants,

employees or representatives who had managerial capacity. The principal is vicariously liable for the acts of the agent because of an employer employee status, agency by estoppel, ostensible agency or borrowed servant doctrine.

VI.

STATEMENT OF FACTS

The Devereux Foundation is a national company doing business in League City under the assumed name Devereux Texas Treatment Network. Devereux's League City campus is a residential center for adolescents 13 to 18 years of age who suffer from emotional, psychological, and developmental disorders. It offers therapy, education, and transitional living services to these minors. Devereux-League City describes its residents as young individuals who exhibit a range of emotional, intellectual, and psychological impairments, including past sexual abuse, sexually inappropriate behavior, neuropsychological deficits, PTSD, and bi-polar disorder.

Devereux markets itself as providing a "structured, safe and therapeutic milieu utilizing intensive staff support" for these children. It touts an "age-appropriate behavior management level system, which promotes stability, structure, self-control and consistent, positive behavior." And it claims that it "focuses on positive praise and rewards, combined with logical and non-punitive consequences" when caring for the children under its watch.

Z.G. exemplifies the children Devereux claims to support and protect. From a young age Z.G. has struggled with significant mental health disorders. She has been diagnosed with early-onset conduct disorder, which hampers her judgment and impairs her ability to avoid dangerous situations.¹ She also has been diagnosed with juvenile bipolar disorder² and depression. These

¹Early-onset conduct disorder is a neurodevelopmental condition characterized by impairments in fear conditioning, affective decision making, and facial expression recognition. It often manifests in females through instances of theft,

disorders leave her vulnerable to sexual abuse and exploitation. Indeed, before residing at Devereux, Z.G. was molested by a teacher's aide and by a family friend.

On January 17, 2017, Z.G. was sent to Devereux-League City in order to remove her from the sexually abusive environment mentioned above. Her history as a victim of sexual abuse and her neuropsychological impairments were known to Devereux at the time of her placement. *They were the reason for her placement.* In Z.G.'s initial admission assessment paperwork, Devereux documented that she had a history of sexual abuse/trauma, and was at risk for being victimized again.

However, despite this knowledge, Devereux failed to exercise reasonable care as a residential facility whose obligation it is to supervise and provide for the well-being of impaired children in its care *in loco parentis*. Beginning in December of 2017, and possibly earlier, Z.G. began being sexually abused at Devereux. In February of 2018, the abuse was reported. Devereux informed Z.G.'s legal guardian of the allegations, and promised a complete investigation. Shortly thereafter, however, the investigation was closed under the pretense that there was insufficient evidence.

On March 15, 2018, Z.G. was granted leave to stay off-campus with her guardian. Around 1:00 a.m. on March 16, 2018, Devereux employee Simmons traveled to the hotel where Z.G. was staying and picked her up while her guardian slept. Defendant Simmons then drove Z.G. to a motel in neighboring Harris County and sexually abused her for several hours.

running away, early pregnancy, increased aggression, and generalized participation in risky behaviors. Neurologically, early-onset conduct disorder stems from dysfunction in the child's neural circuits involved in emotion processing. Gray matter volume is reduced in these children in the areas of the brain that process socioemotional stimuli.

² Juvenile bipolar disorder is known to have a hypersexuality component in certain individuals which manifests during the manic phase of the disorder. Hypersexuality is also found in children who have been sexually abused, or who suffer from post-traumatic stress disorder.

Humiliated and afraid, Z.G. told her guardian that she was next door at a bowling alley. It was not until several days later that Z.G. found the courage to report the abuse to a counselor at Devereux. This report would have been the second time in roughly one month that Devereux—the institution charged with protecting Z.G.—was informed that Z.G. was being molested.

Z.G. was interviewed by child abuse specialists at the Galveston Children’s House, where the outcry of sexual assault was made again. Galveston Children’s House contacted law enforcement who took over the matter. The Harris County District Attorney’s Office has filed felony charges against Simmons for sexual assault of a child. That case is currently pending.³

Devereux has made it a habit to commit serious violations of the Texas Department of Family and Protective Services’ (the “Department”) minimum standards and requirements. Since 2015 alone, the Department has cited Devereux’s League City campus for 32 “high risk” or “medium-high risk” violations, which include the following:

- staff twisting a child’s arm causing a spiral fracture, and then failing to obtain timely medical treatment for the injured child;
- staff breaking another child’s arm during a restraint and not timely reporting the incident to the Department as required;
- staff failing to supervise children, thus allowing them to injure themselves on several different occasions;
- staff member slapping a child across the face;
- staff member yelling at children;
- too few caregivers supervising children/failure to follow Texas law on caregiver ratio;
- children observed roaming the grounds of the facility without supervision;
- staff inappropriately restraining children;

³ It appears that Harris County took the case because the last sexual assault happened after Simmons transported Z.G. from Galveston County to Harris County, thus providing the Harris County district attorney with jurisdiction to prosecute for that incident.

- children accessing prohibited areas due to staff inattention;
- numerous background check renewals on employees done late, if at all;
- staff failing to prevent children from seriously harming each other;
- failing to follow policy, resulting in a child sustaining bodily injuries; and
- dangerous items left out where children could access them.

And Devereux's repeated failure to ensure the well-being of its residents is not confined to the League City campus. While Z.G. was a resident, Devereux settled a wrongful death suit in Pennsylvania after a child died from a ruptured bowel while under its care. Around that same time, a Devereux employee in Florida was arrested for sexually assaulting a 15 year-old resident. The Sheriff's office responsible for the arrest noted that in 2017 alone, it responded to 14 sexual offense calls at that Devereux facility. And in August of 2017, Devereux was sued in Connecticut after one of its employees was convicted of molesting a resident, both on and off of the Devereux campus.

VII.

CAUSES OF ACTION

Based on the above allegations, which are adopted and incorporated into every cause of action below as if fully recounted therein, Darcell Greer, as Next Friend of Z.G., a minor, files this action against Defendants Devereux and Simmons.

COUNT 1

NEGLIGENCE-DEVEREUX

Devereux was negligent to Z.G. in one or more respects by failing to do that which a reasonable residential center for impaired adolescents would have done under the same or similar circumstances or doing that which a reasonable residential center for impaired adolescents would

not have done under the same or similar circumstances. Specifically, Devereux committed negligence by:

1. Failing to formulate, implement, or enforce policies and procedures to prevent sexual abuse of residents, like Z.G.
2. Failing to reasonably consider, research, or investigate the particular vulnerabilities of residents, like Z.G., when assigning staff to supervise them;
3. Failing to formulate, implement, or enforce policies and procedures related to proper monitoring and supervision of residents, like Z.G.;
4. Failing to formulate, implement, or enforce policies and procedures related to proper monitoring and supervision of Devereux employees, like Simmons;
5. Failing to have adequate and/or properly working surveillance equipment on premises for the protection of residents, like Z.G.;
6. Failing to formulate, implement, or enforce policies and procedures related to monitoring existing surveillance equipment on premises for the protection of residents, like Z.G.;
7. Failing to formulate, implement, or enforce policies and procedures that protect vulnerable residents, like Z.G., from the predatory behavior of Devereux employees, like Simmons;
8. Failing to properly and thoroughly investigate allegations of sexual assault on Z.G.; and
9. Failing to provide adequate protection for Z.G. after the first allegation of sexual abuse.

Such negligence on the part of Devereux has proximately caused Z.G. injuries and resulting damages.

COUNT 2

GROSS NEGLIGENCE-DEVEREUX

Devereux's acts and omissions listed under Count 1 of this Petition, which Plaintiff wholly adopts and incorporates by reference into this Count 2 as if fully set forth herein, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Z.G., and constituted a reckless disregard for Z.G.'s safety. Devereux had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety or welfare of Z.G. Devereux's acts and omissions constituted gross negligence, and proximately caused Z.G.'s injuries and resulting damages.

COUNT 3

NEGLIGENCE PER SE-DEVEREUX

Devereux was negligent per se by:

1. Failing to make a reasonable effort to prevent sexual conduct harmful to Z.G. ("abuse" under Texas Family Code);
2. Placing Z.G. in or failing to remove Z.G. from a situation in which she would be exposed to a substantial risk of sexual conduct harmful to her ("neglect" under Texas Family Code); and
3. Placing Z.G. in or failing to remove Z.G. from a situation that a reasonable person would realize required judgment or actions beyond a child's level of maturity, physical condition, or mental abilities and that resulted in a substantial risk of immediate harm to her ("neglect" under Texas Family Code").

As a "child" defined by the Texas Family Code, Z.G. constitutes a member of the class the prohibition on abuse and neglect of a child is intended to protect. Devereux's abuse and neglect proximately caused Z.G.'s injuries and resulting damages.

COUNT 4

ASSAULT AND BATTERY-SIMMONS

Defendant Simmons intentionally and/or knowingly touched Plaintiff Z.G., a minor unable to legally consent, in an offensive manner.

Defendant Simmons intentionally and/or knowingly caused the penetration of the sexual organ of Plaintiff who was a child (as defined in Texas Penal Code § 22.011(c)(1)).

Simmons' conduct proximately caused Plaintiff's injuries and resulting damages.

VIII.

DAMAGES

Based on the above allegations and causes of action, which are all adopted and incorporated into each element of damages below as if fully recounted therein, Plaintiff Z.G. seeks the following damages from Devereux and Simmons jointly and severally:

1. Past and future pain and suffering;
2. Past and future mental anguish;
3. Past and future physical impairment;
4. Future loss of earning capacity;
5. Medical, psychiatric, psychological, and therapeutic expenses that are reasonably likely to be incurred after age 18;
6. Pre-judgment and post-judgment interest;
7. Exemplary damages (including but not limited to damages allowed under section 41.008(c) of the Texas Civil Practice and Remedies Code); and
8. Any other damages allowed under the law and proved in the trial of this case.

IX.

CONDITIONS PRECEDENT

All conditions precedent to Defendants' liability and Plaintiff's right to recover have occurred or have been waived.

X.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Darcell Greer, as legal guardian and Next Friend of Z.G., a minor, request that The Devereux Foundation, doing business in Galveston County as Devereux Texas Treatment Network, and Shailen Jamal Simmons be cited to appear and answer, and that on final trial, Plaintiff be awarded:

1. Judgment against Devereux and Simmons for actual damages in an amount in excess of the minimum jurisdictional limits of the Court, with prejudgment and post judgment interest at the maximum lawful rate beginning as soon as the current law permits;
2. Court costs;
3. Exemplary damages (including but not limited to damages allowed under section 41.008(c) of the Texas Civil Practice and Remedies Code); and
4. Further relief, special and general, at law and in equity, to which Plaintiff may show herself justly entitled.

PLAINTIFF DEMANDS A JURY TRIAL

Respectfully submitted,

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