

FILED
LUCAS COUNTY

2019 APR 24 PM 1:04

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURT

IN THE COMMON PLEAS COURT OF LUCAS COUNTY, OHIO

**CHRISTINE HART, Individually and as
Natural Parent and Legal Guardian of
ABIGAIL HART, her minor daughter,**
3935 Bowen Road
Toledo, Ohio 43613

Plaintiff,

v.

**THE YOUNG MEN'S CHRISTIAN
ASSOCIATION OF GREATER TOLEDO,**
d/b/a YMCA OF GREATER TOLEDO
c/o CT Corporation System
4400 Easton Commons Way, Suite 125
Columbus, Ohio 43219

Defendant

and

KATHLEEN A. LAFOUNTAIN
733 West State Line Road
Toledo, Ohio 43612

Case No.: **G-4801-CI-0201902216-000**

Judge: **ALFONSO J GONZALEZ**

COMPLAINT

(Jury Demand Endorsed Hereon)

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Attorneys for Plaintiff

Now comes Plaintiff Christine Hart, individually and as natural parent and legal guardian of Abigail Hart, her minor daughter, and hereby files this Complaint against Defendants The Young Men's Christian Association of Greater Toledo, d/b/a YMCA of Greater Toledo ("YMCA of Greater Toledo" or "YMCA") and Kathleen A. LaFountain for damages sustained due to a

significant head injury that occurred while Abigail was attending an after-school camp operated by the YMCA of Greater Toledo. In support of her claims, Plaintiff states as follows:

THE PARTIES

1. Plaintiff Christine Hart and her minor daughter Abigail are individuals and residents of Toledo, Lucas County, Ohio. At all relevant times, Christine has been Abigail's parent and legal guardian.
2. Upon information and belief, Defendant YMCA of Greater Toledo is a non-profit corporation organized under the laws of the State of Ohio which at all times relevant to this action operated an after-school camp at Elmhurst Elementary School in Toledo, Lucas County, Ohio.
3. Defendant Kathleen LaFountain is an individual and a resident of Toledo, Lucas County, Ohio. Upon information and belief, she was at all relevant times an employee and/or agent of Defendant YMCA of Greater Toledo, was at all relevant times in the course and scope of her employment and/or agency, and was at all relevant times responsible for supervising Abigail Hart or ensuring that supervision was provided at the after-school camp.

JURISDICTION AND VENUE

4. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully rewritten herein.
5. The Lucas County Common Pleas Court has jurisdiction over this matter pursuant to R.C. 2305.01.
6. Venue is proper in this Court pursuant to Civil Rule 3(C)(1), 3(C)(3) and 3(C)(6), as this is the county in which the Defendants reside, the county in which the Defendants conducted

activity giving rise to the claims, and the county in which all or part of Plaintiff's claim for relief arose.

7. Pursuant to Civil Rule 8(A), Plaintiff states that the amount in controversy exceeds \$25,000.00.

FACTUAL ALLEGATIONS

8. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully rewritten herein.
9. On or about May 7, 2007, Abigail Hart was six years old and a student at Elmhurst Elementary School in Toledo, Lucas County, Ohio.
10. As early as 2005, Abigail was diagnosed with developmental delays and difficulty with gross and fine motor skills.
11. Evaluations through Toledo Public Schools when Abigail was approximately five years old also noted motor skills difficulties, such as difficulty drawing and using scissors, an abnormal gait, an inability to operate pedals, an inability to use stairs without adult supervision, and an inability to balance on one foot.
12. In 2007, Defendant YMCA of Greater Toledo was operating an after-school camp on the premises of Elmhurst Elementary School.
13. Christine Hart was interested in enrolling her daughter and communicated with YMCA employees including but not limited to Defendant LaFountain regarding the physical limitations Abigail had due to her motor skills difficulties. Specifically, Ms. Hart informed the YMCA and/or Defendant Kathy LaFountain that because of Abigail's motor skills difficulties, she required constant supervision and was not to be permitted to be at heights including on the playground equipment.

14. At all relevant times, both the YMCA and Kathleen LaFountain were aware of Abigail's physical limitations due to motor skills difficulties and of Ms. Hart's instructions regarding supervision and heights.
15. The YMCA and/or Kathleen LaFountain informed Ms. Hart that they could accommodate Abigail's limitations and assured Ms. Hart that her instructions would be followed, so Abigail was enrolled in the after-school camp.
16. On or about May 7, 2007, despite Ms. Hart's express instructions, and despite knowledge of Abigail's physical limitations due to motor skills difficulties, the YMCA and/or its employees, including but not limited to Defendant Kathleen LaFountain, failed to supervise Abigail and/or permitted her to climb on playground equipment at Elmhurst Elementary, including near a fireman's pole.
17. The area beneath the fireman's pole was insufficiently mulched, with the pole's concrete base exposed.
18. While playing unsupervised and on equipment she was not permitted to be on pursuant to her mother's instructions to the Defendants, Abigail fell from on or near the fireman's pole and struck her head on the ground.
19. After her fall, Abigail was transported by ambulance to Toledo Hospital, where she was diagnosed with a brain bleed and a left parietal skull fracture. The brain bleed increased in size over the next several days of observation. Because it could not be controlled and was not reducing in size, six-year-old Abigail Hart underwent a craniotomy.
20. After the traumatic brain injury, Abigail developed seizures, which she had not experienced prior to the injury.

FIRST CAUSE OF ACTION
(Negligence – Defendant YMCA of Greater Toledo)

21. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully rewritten herein.
22. Defendant YMCA of Greater Toledo had a duty to ensure that Abigail's motor skills difficulties were appropriately accommodated, to ensure that Abigail was supervised, to ensure that Abigail was not permitted at heights on playground equipment in light of her motor skills difficulties and her mother's express instructions, and to prevent injury to her while she was in the YMCA's care.
23. Defendant YMCA of Greater Toledo had a further duty not to permit Abigail on a playground that contained unsafe conditions.
24. Defendant YMCA of Greater Toledo breached these duties by failing to accommodate Abigail's special needs related to her physical limitations and motor skills difficulties, failing to supervise Abigail, permitting Abigail to climb on playground equipment despite her motor skills difficulties and her mother's express instructions, failing to prevent injury to her while she was on the playground under the YMCA's care, and/or allowing her to play on a playground that had unsafe conditions, including but not limited to the exposed concrete base of the fireman's pole.
25. As a direct and proximate result of Defendant YMCA of Greater Toledo's negligence, six-year-old Abigail Hart sustained serious personal injuries, including but not limited to a skull fracture, traumatic brain injury, brain bleed requiring craniotomy, and subsequent seizures. She has been required to undergo medical care and incurred substantial medical care costs, and she incurred great pain, suffering, severe mental anguish, and emotional distress. Further, Plaintiff believes these injuries are permanent in nature and will require

future medical care and future medical care costs, and that Abigail will continue to endure great pain, suffering, mental anguish, and emotional distress.

SECOND CAUSE OF ACTION

(Reckless and/or Wanton Misconduct – Defendant YMCA of Greater Toledo)

26. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully rewritten herein.
27. Defendant YMCA of Greater Toledo breached duties of care as set forth in this Complaint and knew or reasonably should have known that by failing to accommodate Abigail's special needs related to physical limitations and motor skills difficulties, failing to supervise Abigail, permitting Abigail to climb on playground equipment despite her motor skills difficulties and her mother's express instructions, failing to prevent injury to her while she was on the playground under the YMCA's care, and/or allowing her to play on a playground that had unsafe conditions, including but not limited to the exposed concrete base of the fireman's pole, there was a great probability that significant harm would result to Abigail.
28. Defendant YMCA of Greater Toledo's conduct was reckless because it knew or reasonably should have known that the breaches set forth herein created an unreasonable risk of harm to Abigail and that the risk of harm created was substantially greater than that which would be necessary to make its actions or omissions negligent.
29. As a direct and proximate result of Defendant YMCA of Greater Toledo's reckless and/or wanton misconduct, six-year-old Abigail Hart sustained serious personal injuries, including but not limited to a skull fracture, traumatic brain injury, brain bleed requiring craniotomy, and subsequent seizures. She has been required to undergo medical care and incurred substantial medical care costs, and she incurred great pain, suffering, severe

mental anguish, and emotional distress. Further, Plaintiff believes these injuries are permanent in nature and will require future medical care and future medical care costs, and that Abigail will continue to endure great pain, suffering, mental anguish, and emotional distress.

THIRD CAUSE OF ACTION
(Negligence – Defendant Kathleen LaFountain)

30. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully rewritten herein.
31. Defendant Kathleen LaFountain, in the course and scope of her employment with the YMCA, had a duty to ensure that Abigail's motor skills difficulties were appropriately accommodated, to ensure that Abigail was supervised, to ensure that Abigail was not permitted on playground equipment in light of her motor skills difficulties and her mother's express instructions, and to prevent injury to her while she was in the YMCA's care.
32. Defendant Kathleen LaFountain, in the course and scope of her employment with the YMCA, had a further duty not to permit Abigail on a playground that contained unsafe conditions.
33. Defendant Kathleen LaFountain breached her duties by failing to accommodate Abigail's special needs related to physical limitations and motor skills difficulties, failing to supervise Abigail or ensure that others supervised her, permitting or allowing others to permit Abigail to climb on playground equipment despite her motor skills difficulties and her mother's express instructions, failing to prevent injury to her while she was on the playground under the YMCA's care, and/or allowing her to play on a playground that had unsafe conditions, including but not limited to the exposed concrete base of the fireman's pole.

34. As a direct and proximate result of Defendant Kathleen LaFountain's negligence, six-year-old Abigail Hart sustained serious personal injuries, including but not limited to a skull fracture, traumatic brain injury, brain bleed requiring craniotomy, and subsequent seizures. She has been required to undergo medical care and incurred substantial medical care costs, and she incurred great pain, suffering, severe mental anguish, and emotional distress. Further, Plaintiff believes these injuries are permanent in nature and will require future medical care and future medical care costs, and that Abigail will continue to endure great pain, suffering, mental anguish, and emotional distress.

FOURTH CAUSE OF ACTION
(Recklessness – Defendant Kathleen LaFountain)

35. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully rewritten herein.
36. Defendant Kathleen LaFountain breached duties of care as set forth in this Complaint and knew or reasonably should have known that by failing to accommodate Abigail's special needs related to physical limitations and motor skills difficulties, failing to supervise Abigail or ensure she was supervised, permitting or allowing others to permit Abigail to climb on playground equipment despite her motor skills difficulties and her mother's express instructions, failing to prevent injury to her while she was on the playground under the YMCA's care, and/or allowing her to play on a playground that had unsafe conditions, including but not limited to the exposed concrete base of the fireman's pole, there was a great probability that significant harm would result to Abigail.
37. Defendant Kathleen LaFountain's conduct was reckless because she knew or reasonably should have known that the breaches set forth herein created an unreasonable risk of harm

to Abigail and that the risk of harm created was substantially greater than that which would be necessary to make her actions or omissions negligent.

38. As a direct and proximate result of Defendant Kathleen LaFountain's reckless and/or wanton misconduct, six-year-old Abigail Hart sustained serious personal injuries, including but not limited to a skull fracture, traumatic brain injury, brain bleed requiring craniotomy, and subsequent seizures. She has been required to undergo medical care and incurred substantial medical care costs, and she incurred great pain, suffering, severe mental anguish, and emotional distress. Further, Plaintiff believes these injuries are permanent in nature and will require future medical care and future medical care costs, and that Abigail will continue to endure great pain, suffering, mental anguish, and emotional distress.

FIFTH CAUSE OF ACTION

(Vicarious Liability – Defendant YMCA of Greater Toledo)

39. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully rewritten herein.
40. Defendant Kathleen LaFountain was at all relevant times an employee and/or agent of Defendant YMCA of Greater Toledo.
41. Pursuant to the doctrine of vicarious liability and/or respondeat superior liability, Defendant YMCA of Greater Toledo is vicariously liable for the negligence and wrongful acts of its employees and agents, including Defendant Kathleen LaFountain's negligent and/or reckless and/or wanton acts or omissions set forth in this Complaint.
42. Because Defendant Kathleen LaFountain acted negligently, recklessly, and/or wantonly, and because she was at all relevant times acting in the course and scope of her employment and/or agency, Defendant YMCA of Greater Toledo is liable for Defendant Kathleen

LaFountain's acts or omissions, which directly and proximately caused the damages set forth in this Complaint.

SIXTH CAUSE OF ACTION

(Loss of Consortium – Defendants YMCA of Greater Toledo and Kathleen LaFountain)

43. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully rewritten herein.

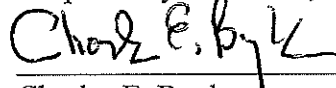
44. Plaintiff Christine Hart is the parent and natural guardian of Abigail Hart, a minor.

45. Plaintiff Christine Hart states that as a result of the negligent, reckless, and/or wanton acts or omissions of Defendants set forth herein, she has been deprived of the love, affection, services, consortium, and society of her child, Abigail.

46. Plaintiff further states that as a result of the negligent, reckless, and/or wanton acts or omissions of Defendants set forth herein, the enjoyment and quality of her life and her ability to carry on the normal activities of her life with her daughter, Abigail Hart, have been impaired.

WHEREFORE, Plaintiffs pray that judgment be entered against Defendants in an amount exceeding Twenty-Five Thousand Dollars (\$25,000.00), together with interest, costs, reasonable attorney fees associated herewith, and such other relief as the Court may deem just.

Respectfully submitted,



Charles E. Boyk

Kathleen R. Harris

Attorneys for Plaintiff

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues triable by right.

Respectfully submitted,



Charles E. Boyk
Kathleen R. Harris
Attorneys for Plaintiffs

PRAECIPE

TO THE CLERK:

Please serve summons and complaint upon Defendants YMCA of Greater Toledo and Kathleen A. LaFountain by certified mail, return receipt requested, at the address listed on the caption.



Charles E. Boyk
Kathleen R. Harris
Attorneys for Plaintiff