

IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT, IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.

KEIARA WHORLEY and DEVONTE
TOMLIN, as the proposed Personal
Representatives of the Estate of TAYVON
TOMLIN, deceased

Plaintiffs,

v.

LINCOLN-MARTI COMMUNITY
AGENCY, INC.

Defendants.

COMPLAINT

Plaintiffs KEIARA WHORLEY and DEVONTE TOMLIN, as the proposed Personal Representatives of the Estate of TAYVON TOMLIN, deceased, sues the Defendant, LINCOLN-MARTI COMMUNITY AGENCY, INC. (“LINCOLN-MARTI”) and allege as follows:

1. This is a negligence case in which the damages at issue are more than Thirty Thousand (\$30,000.00) Dollars exclusive of costs, interest and attorney’s fees.
2. KEIARA WHORLEY and DEVONTE TOMLIN are the surviving parents of TAYVON TOMLIN and are or will soon be the duly appointed Personal Representatives of his Estate.
3. At the time of his death, KEIARA WHORLEY, DEVONTE TOMLIN, and TAYVON TOMLIN were residents and citizens of Miami-Dade County, Florida.
4. At all times material hereto, Defendant LINCOLN-MARTI COMMUNITY AGENCY INC., was and is a Florida corporation which owned and operated a daycare facility

located at 506-510 North Krome Avenue in Homestead, Florida.

FACTS

5. On the morning of July 18, 2022, KEIRA WHORLEY and DEVONTE TOMLIN dropped off their nine-month-old son, TAYVON at the LINCOLN-MARTI daycare facility.

6. At that time, LINCOLN-MARTI placed TAYVON in an infant room with seven other infants.

7. The infant room in which TAYVON was placed had a surveillance camera present, but the camera was not operational as it had been broken for several months.

8. While in the infant room, TAYVON was under the supervision of Rosario Soto Perez.

9. Rosario Soto Perez was the only LINCOLN-MARTI employee assigned to supervise and care for the eight infants, including TAYVON, only periodically receiving assistance from another staff member who was described as coming “in and out to help with feeding.”

10. LINCOLN-MARTI was inadequately staffed and did not provide sufficient supervision of TAYVON TOMLIN in clear violation of Florida law.

11. With respect to supervision at a daycare such as LINCOLN-MARTI, section 402.305(4), Florida Statutes provides: “For children from birth through 1 year of age, there must be one child care personnel for every four children.”

12. With respect to its supervision of TAYVON TOMLIN, LINCOLN-MARTI violated section 402.305(4), Florida Statutes.

13. Florida Administration Code Rule 65C-22 sets forth the requirements for operating a child care facility in Florida.

14. This rule requires that all child care programs in the state of Florida comply with

the standards found in the “Child Care Facility Handbook.”

15. The Child Care Facility Handbook states that it “is intended to be used in conjunction with Section 402.26-402.319, Florida Statutes, incorporated by reference in rule 65C-22.001, Florida Administrative Code.”

16. The Child Care Facility Handbook, citing section 402.305(4), states: “In groups of mixed age ranges, where children under one year of age are included, one child care personnel must be responsible for no more than four children of any age group, at all times.”

17. With respect to its supervision of TAYVON TOMLIN, LINCOLN-MARTI violated this provision of the Child Care Facility Handbook.

18. The Child Care Facility Handbook further provides: “Child care personnel must be assigned to provide direct supervision to a specific group of children and be with that group of children at all times. Children must never be left without child care personnel supervision inside or outside the facility, in a vehicle, or at a field trip location.”

19. With respect to its supervision of TAYVON TOMLIN, LINCOLN-MARTI failed to provide sufficient direct supervision, and therefore acted in violation of this provision of the Child Care Facility Handbook.

20. The Child Care Facility Handbook’s further states that children up to 24 months of age “must have direct supervision at all times” including during nap time.

21. With respect to its supervision of TAYVON TOMLIN, LINCOLN-MARTI violated this provision of the Child Care Facility Handbook.

22. LINCOLN-MARTI placed TAYVON in a crib in the infant room for nap time.

23. At approximately 12:50pm on July 18, 2022, Ms. Perez was “doing her rounds” when she observed TAYVON to be unresponsive with his eyes open.

24. Approximately, nine minutes later, EMS was dispatched to LINCOLN-MARTI at

which time TAYVON was airlifted to a local hospital.

25. Around 2:00pm, TAYVON was pronounced dead.

26. TAYVON TOMLIN is survived by his parents, KEIARA WHORLEY and DEVONTE TOMLIN, who have suffered the damages more fully outlined in paragraph (35) below.

COUNT I
NEGLIGENCE OF LINCOLN MARTI

Plaintiffs reallege the facts contained in paragraphs (1) through (26) and further allege as follows:

27. Defendant LINCOLN-MARTI had a duty to act with reasonable care towards TAYVON TOMLIN.

28. Defendant LINCOLN-MARTI breached that duty and was negligent for at least the following reasons:

- a) Failing to comply with Florida law with respect to its operation of a daycare facility;
- b) Failing to adequately supervise TAYVON TOMLIN while he was under its care and supervision;
- c) Failing to adequately staff its daycare center;
- d) Failing to ensure that its daycare was operating in compliance with Florida law;
- e) Failing to ensure that adequately trained caregivers were staffed in the infant room at all times and in compliance with the required ratio;
- f) Failing to ensure its surveillance camera in the infant room was timely repaired, operational, and being monitored;
- g) Failing to timely respond to a medical emergency;
- h) Failing to timely and appropriately perform CPR; and
- i) Failing to timely call 911.

29. As a direct and proximate result of the negligence of Defendant LINCOLN-MARTI, TAYVON TOMLIN died and the Plaintiffs suffered the harms and damages described in paragraph (35) below.

COUNT II
NEGLIGENCE PER SE AGAINST LINCOLN-MARTI

Plaintiff realleges the facts contained in paragraphs (1) through (26) and further alleges as follows:

30. TAYVON TOMLIN was a member of the class of persons that Section 402.305(4), Florida Statutes and Rule 65C-22.001, Florida Administrative Code were intended to protect.

31. At all times material hereto, TAYVON TOMLIN was under the care and supervision of LINCOLN-MARTI.

32. Section 402.305(4), Florida Statutes and Rule 65C-22.001, Florida Administrative Code were designed in part to keep children, including TAYVON TOMLIN, safe while at a child care facility and to protect children, including TAYVON TOMLIN from the perils of inadequate supervision while at a child care facility such as LINCOLN-MARTI.

33. The actions and inactions of LINCOLN-MARTI described above were in violation of the above referenced statute and rule.

34. As a direct and proximate result of said violation, TAYVON TOMLIN died and the Plaintiffs were caused to suffer the damages described in paragraph (35) below.

DAMAGES

Plaintiff incorporates by reference paragraphs (1) through (34) above as if fully set forth herein, and further alleges as follows:

35. Plaintiffs are entitled to and seek recovery of the following damages:

- a) On behalf of TAYVON's mother KEIARA WHORLEY, her mental pain and suffering as a result of TAYVON's death;

- b) On behalf of TAYVON's father, DEVONTE TOMLIN, his mental pain and suffering as a result of TAYVON's death; and
- c) Medical and funeral expenses resulting from TAYVON TOMLIN's death.

WHEREFORE, the Plaintiffs, KEIARA WHORLEY and DEVONTE TOMLIN, as proposed Personal Representatives of the Estate of TAYVON TOMLIN, demand judgment against the Defendant and all other relief deemed just and proper under the circumstances, and requests trial by jury of all issues triable as of right by jury.

Dated this 1st day of August, 2022.

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