

STATE OF VERMONT

SUPERIOR COURT
RUTLAND UNIT

CIVIL DIVISION
DOCKET NO. 21-CV - _____

ESTATE OF HARPER ROSE BRIAR)
by MARISSA BRIAR as Administrator &)
MARISSA BRIAR & BLAKE BRIAR, individually)
<i>Plaintiffs</i>)
)
v.)
)
STATE OF VERMONT,)
HEATHER PURINTON)
BRIDGET SHELDRICK and)
OTHER UNKNOWN MEMBERS of the)
VERMONT DEPT. FOR)
CHILDREN & FAMILIES (DCF))
<i>Defendants</i>)

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Estate of Harper Rose Briar, Marissa Briar, and Blake Briar complain against the defendants as follows.

1. The Estate of Harper Rose Briar is an estate filed in the Rutland Superior Court, Probate Division, Docket No. 161-2-20 Rdpr. Marissa Briar is Harper’s mother and is the duly appointed administrator of the Estate of Harper Rose Briar, late of Pittsford, Vermont.
2. Plaintiffs Marissa Briar and Blake Briar, individually, are husband and wife and the parents of Harper Rose Briar, late of Pittsford, Vermont. The Briars are currently residents of North Carolina. At the times relevant to this complaint, however, they were residents of Pittsford, Vermont.

3. Harper Rose Briar was born on July 24, 2018 at 1:46 P.M. She weighed six pounds and was 18 inches long.
4. Harper was a happy, smiling baby. Her family called her “Perfect Princess.” She was her parents’ first child. When Harper was about three months old, her parents decided to find a daycare for her so Marissa could go back to school for a social work degree through Castleton College.
5. Marissa Briar spent nearly three months vetting daycare providers.
6. The Briars finally settled on a state-certified, in-home daycare run by Stacey Vaillancourt at 77 North Street, Rutland, Vermont.
7. There were no warnings or other public information made available through the State of Vermont’s “Bright Futures Child Care Information System” other than the program was licensed as a “Registered Family Child Care Home” and that as of the most-recent site visit, the program was in compliance with all applicable regulations.
8. On January 23, 2019, Harper was on her second day of care at Ms. Vaillancourt’s home. When her parents picked her up that day, Harper was uncharacteristically tired and had a flat affect, but her parents reasonably believed the tiredness was from being around other children during the day and playing.
9. On January 24, 2019, Marissa Briar dropped Harper off at the Vaillancourt home around 9:00 A.M.

10. In the late afternoon, around 3:30 P.M., on January 24, 2019, Marissa Briar received a text from Stacey Vaillancourt that stated: “Baby sick. Ambulance here. Go to hospital.”
11. Marissa Briar rushed to the hospital, but it was too late: Harper was pronounced dead at 4:04 P.M. on January 24, 2019.¹
12. Stacey Vaillancourt never went to the hospital or reached out to Harper’s parents to check on Harper’s condition.
13. The Vermont State Medical Examiner performed an autopsy of Harper Rose Briar on January 25, 2019.
14. During Harper’s autopsy, Diphenhydramine (commonly known as Benadryl) was found in Harper’s urine, blood, and stomach contents; no other substances were found.
15. Diphenhydramine (or Benadryl) is an over-the-counter antihistamine with a sedative effect that is not to be used with infants without a physician’s order.
16. The Office of the Chief Medical Examiner determined that Harper’s manner of death was homicide and the cause of her death was Diphenhydramine intoxication.

¹ Though the statute of limitations for wrongful death is normally two years, 14 V.S.A. § 1492, the Legislature suspended all civil statutes of limitation to 60 days after the end of the COVID-19 state of emergency. *See* Act 95 (S.114) § 6 (“Notwithstanding any provision of law to the contrary, all statutes of limitations or statutes of repose for commencing a civil action in Vermont that would otherwise expire during the duration of any state of emergency declared by the Governor arising from the spread of COVID-19 are tolled until 60 days after the Governor terminates the state of emergency by declaration.”). The current state of emergency extends to March 15, 2021, and if the Governor ends the state of emergency by declaration on March 15, 2021, then this complaint will need to be filed by May 15, 2021.

17. At the time of Harper's death, Harper had more than a therapeutic dose of Diphenhydramine in her system.
18. Harper was not prescribed Diphenhydramine.
19. Neither Marissa nor Blake Briar had given Stacey Vaillancourt permission to administer Diphenhydramine to Harper.
20. Stacey Vaillancourt was charged with manslaughter and cruelty to a child as a result of Harper's death. Those charges remain pending in the Rutland County Superior Court, Criminal Division, Docket No. 295-3-19 Rdcr.
21. The Department for Children and Families ("DCF") is a duly organized administrative department in the executive branch of the State of Vermont. The defendant Department acts through its agents, servants, or employees, including but not limited to defendants Bridget Sheldrick, Heather Purinton and other current and former employees of the Department stationed at the DCF offices located in Rutland, Vermont and elsewhere.
22. Defendant Purinton was, at all material times, employed by the Department for Children and Families and was located in the Child Care Services Division. Upon information and belief, Ms. Purinton worked out of—and still works out of—the Rutland office.
23. Defendant Sheldrick was, at material times, employed by the Department for Children and Families and was a case manager in the Child Care Services Division. Upon information and belief, Ms. Sheldrick worked out of the Rutland office.

24. The acts and neglects of Defendants Purinton and Sheldrick were undertaken pursuant to their authority as social workers and childcare licensing specialists and were ministerial duties performed—or not performed—in the course of and within the scope of their employment with DCF.
25. As far back as May 2003, the Department of Children and Families (then Agency of Human Services, Child Care Services, Department of Social and Rehabilitation Services), had received complaints of Ms. Vaillancourt administering medication without parental permission.
26. The report in May 2003 came from a 4-year old child, who told her mother that Ms. Vaillancourt had given her “pink” cough medicine. The DCF licensing specialist noted the word “pink” in quotes in her notes twice.
27. In her notes, the DCF licensing specialist writes that the allegation is that Ms. Vaillancourt “gave medication to a child without parental permission causing that child to wet his/her self.”
28. In the narrative written by the DCF licensing specialist and signed by Ms. Vaillancourt relating to the May 2003 allegations, Ms. Vaillancourt admits to giving the child Tylenol for a fever, but claims not to have been able to get in touch with mom or dad.
29. Ms. Vaillancourt also offers that the child did wet herself, but offers the excuse that this happened during naptime while the child was asleep.
30. Despite Ms. Vaillancourt’s representations, the DCF licensing specialist determined there was “No evidence to support this concern today. Unsubstantiated.”

31. Tylenol is not known to cause incontinence.
32. Sleep aids and sedatives, such as Benadryl, are known to offer a risk of incontinence while the person who has been administered the medication is sleeping.
33. Throughout the time period of June 2003 through Spring of 2017, SRS (later DCF), on information and belief, received multiple calls from concerned parents and relatives about Stacey Vaillancourt administering sedative-type medication without parental permission to children.
34. SRS (later DCF) employees failed to document or investigate these concerns.
35. In the Spring of 2017, on information and belief, two separate sets of parents transferred care of their children to a new daycare run by Jessica deLancey Smith based on the parents' suspicions—expressed to Ms. Smith—that Ms. Vaillancourt was administering medications without parental permission.
36. Both sets of parents described behavior consistent with unauthorized administration of medication. Their children were lethargic, sleepy, and reported feeling sick. After sleeping off the medication, the children returned to their “usual” selves.
37. Ms. Smith contacted her licensing specialist—defendant Purinton—to report the parents' suspicions of unauthorized drug administration.
38. The first time Ms. Smith contacted defendant Purinton, she left a message on defendant Purinton's voicemail.
39. Defendant Purinton never returned Ms. Smith's call.

40. The second time Ms. Smith contacted defendant Purinton, Ms. Smith spoke directly with defendant Purinton.

41. Ms. Smith told defendant Purinton about both sets of parents' concerns. In one instance, the parent had picked up their child for a doctor's appointment earlier than Ms. Vaillancourt expected and the child—who had just turned one-year old—seemed sedated. The parent cancelled the doctor's appointment and brought the child home. The child slept for an extended period, then woke up, and was the child's normal one-year-old self. The parent again picked up the child earlier than Ms. Vaillancourt expected the next day, and the child again appeared sedated. The child never returned to Ms. Vaillancourt's daycare.

42. On information and belief, Ms. Vaillancourt was sedating younger children during the day to manage their behavior.

43. Ms. Smith told defendant Purinton that the daycare was "Stacey on North Street in Rutland City."

44. Defendant Purinton promised Ms. Smith that defendant Purinton would speak with her supervisor and follow up on the concerns of unauthorized medication administration.

45. Despite the indication that Ms. Vaillancourt was sedating children during the day to manage their behavior, defendant Purinton apparently never followed up on these concerns.

46. Defendant Purinton failed to obtain a written report from Ms. Smith as required by DCF law and policy and further apparently failed to report the concerns to Ms. Vaillancourt's longtime case manager, Bridget Sheldrick.
47. Assuming *arguendo* that Ms. Purinton did, in fact, report to Ms. Sheldrick, then Ms. Sheldrick was also negligent in failing to obtain a written report and in failing to follow up.
48. The 2017 allegations coupled with Ms. Vaillancourt's 2003 admission to giving a child medication without parental permission, written or otherwise, and other complaints would cause a reasonable person to believe that Stacey Vaillancourt was administering medication to children without parental permission to control their behavior. The grave risk of harm to children and DCF policy mandated an investigation.
49. Pursuant to DCF policy, and Family Child Care Home (FCCH) Rule 5.6.3, administering medication without written permission is a serious violation.
50. Had DCF acted with due care and investigated, DCF would more likely than not have substantiated Ms. Vaillancourt for risk of harm and violation of FCCH Rule 5.6.3.
51. Serious violations require posting at the home and in the Bright Futures Child Care Information System and can result in losing licensure.
52. Even after this incident—and though the case notes provide that Ms. Vaillancourt was “eligible for a no notice [inspection] for week of 1/7/2018-1/13/2018”—DCF chose not to perform a compliance site visit at Ms. Vaillancourt's Registered Home at any time after these allegations.

53. As the 2017 reports indicated, Ms. Vaillancourt was sedating multiple children in her care. After Harper's death, another child who was in Ms. Vaillancourt's care tested positive for Diphenhydramine through hair analysis conducted by a private lab.
54. Defendants Purinton and Sheldrick and other workers assigned to Stacey Vaillancourt chose not to make any reports pursuant to 33 V.S.A. § 4913 and 33 V.S.A. § 4914, nor did they start any assessments or investigations based on any of the reports made to them between June 2003 through January 2019.
55. As a result of the acts and omissions of the defendants, Harper Rose Briar suffered on January 24, 2019, physical pain, anguish and suffering; emotional distress, anguish and suffering; fear of death; and, ultimately death.
56. As a result of the acts and omissions of the defendants, plaintiffs Marissa Briar and Blake Briar suffered the loss of love and companionship of their child; the loss of the parent-child relationship that they could have expected to the present and in the future if Harper Rose Briar had not been killed as a result of the acts and omissions of the defendants; the Briars have also suffered grief and mental anguish in the past and future as a result of Harper Rose Briar's death.

COUNT I - NEGLIGENCE

57. Plaintiff incorporates the allegations of paragraphs 1 through 56 as though fully set forth herein.

58. Defendants had a duty to use reasonable care in performing the ministerial duties required by their positions.

59. Defendants breached that duty.

60. As a result, plaintiffs suffered the injuries and damages set forth in paragraphs 55 and 56.

COUNT II – NEGLIGENT UNDERTAKING

61. Plaintiff incorporates the allegations of paragraphs 1 through 60 as though fully set forth herein.

62. Defendants undertook to protect children in Registered Family Care Homes and to ensure that children and youth are not administered medication without written parental permission in DCF-licensed childcare facilities.

63. Under the circumstances of this case, DCF and its employees undertook a duty usually owed by Harper Rose Briar's parents to follow medical advice and not allow administration of unauthorized medications.

64. This representation to parents that Family Care Homes would be required to comply with the applicable DCF regulations, and the facts and circumstances set forth in the foregoing allegations establish that for all times relevant to this action the defendants undertook to ensure that unauthorized

medications are not administered to children, like Harper Rose Briar, without written parental authorization.

65. Defendants were negligent in their undertaking.

66. Defendants' failure to exercise reasonable care increased the risk of serious injury and death to Harper Rose Briar.

67. Plaintiffs relied on the undertaking of defendants.

68. As a result, plaintiffs suffered the injuries and damages set forth in paragraphs 55 and 56.

COUNT III – NEGLIGENT PERFORMANCE OF MINISTERIAL STATUTORY DUTIES

69. Plaintiffs incorporate the allegations of paragraphs 1 through 68 as though fully set forth herein.

70. Defendants Purinton and Sheldrick, and other assigned DCF caseworkers had a duty pursuant to 33 V.S.A. §4913 and 33 V.S.A. §4914 to report and investigate based on the descriptions of abuse made to them by parents of children and mandated reporters like Ms. Smith.

71. Defendants Purinton and Sheldrick, and other assigned DCF caseworkers were negligent in failing to advise DCF or the central reporting agency of the State of Vermont of the reports of abuse and in failing to require written reports, assessments, or investigations by DCF of such reports, in accordance with the provisions of 33 V.S.A. § 4913 and 33 V.S.A. §4914.

72. Defendants' acts and neglects constitute a failure on their part to perform their ministerial statutory duty.

73. As a direct and proximate cause of defendants' failure to perform their statutory duty, Harper Rose Briar, Marissa Briar, and Blake Briar suffered the injuries and damages as set forth in paragraphs 55 and 56 above.

COUNT IV – GROSS NEGLIGENCE

74. Plaintiffs incorporate the allegations of paragraphs 1 through 73 as though fully set forth herein.

75. The defendants' choices amount to gross negligence or willful misconduct, including the failure to investigate the circumstances surrounding the reports of abuse to children in Stacey Vaillancourt's care at various times including on or about May 2003 and spring 2017, and including defendant Sheldrick's failure to revoke Stacey Vaillancourt's license despite having reports in 2017 of unauthorized medication administration and a previous admission from Stacey Vaillancourt that she had administered medication to a child without written authorization or even permission from a parent, and further including but not limited to Defendant Purinton's failure to follow up on the complaints made in spring 2017 of unauthorized drug administration to children at the daycare.

76. The defendants' conduct evidences a wholesale absence of care and total indifference to the duty owed to Harper Rose Briar, and constitutes more than a mere error in judgment.

77. As a result of the gross negligence by the defendants, the plaintiffs suffered the injuries and damages set forth in paragraphs 55 and 56 above.

WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly and severally, and this following relief:

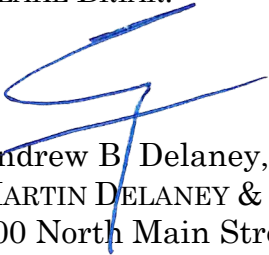
- a. compensatory damages for each plaintiff for the injuries suffered by each plaintiff;
- b. exemplary damages in an amount sufficient to reduce the likelihood of the recurrence of the conduct of the defendants as set forth herein and the resulting injury to other citizens;
- c. interest, costs, and attorney's fees; and
- d. all other relief as is appropriate under the circumstances of the case.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury on all claims.

Respectfully submitted,

ESTATE OF HARPER ROSE BRIAR,
MARISSA BRIAR, and
BLAKE BRIAR.


By: Andrew B. Delaney, Atty No. 4754
MARTIN DELANEY & RICCI LAW GROUP
100 North Main Street
Barre, Vermont 05641
(802) 479-0568 ext. 3 (voice)
(802) 479-5414 (fax)
andrew@mdrvt.com