

NO. 93-10045

SEAN NASH and SANDRA NASH,	§	IN THE DISTRICT COURT
INDIVIDUALLY and as Next	§	
Friends of BRENDAN NASH,	§	
a Minor and as Next Friends	§	
of KATHLEEN NASH, a Minor	§	
	§	
v.	§	OF TRAVIS COUNTY, TEXAS
	§	
DANIEL BRUNO KELLER,	§	
FRANCIS ELAYNE KELLER,	§	
INDIVIDUALLY and d/b/a	§	
FRAN'S DAY CARE, JANISE WHITE,	§	
RAUL QUINTERO, DOUGLAS WAYNE	§	
PERRY, B. D. "BILLY" JOHNSON,	§	53RD JUDICIAL DISTRICT

PLAINTIFFS' FOURTH AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Plaintiffs complaining of Defendants and for causes of action would respectfully show the court the following:

I.

Citations have been issued for Defendants. No further citations need issue at this time.

II.

On or about March 25, 1991, Plaintiffs Sean and Sandra Nash's children, Plaintiffs Brendan Nash and Kathleen Nash (hereinafter referred to as the "children"), were enrolled at Fran's Day Care located at 7708 Thomas Springs Road, Austin, Texas. Fran's Day Care Center (hereinafter referred to as the "Day Care Center" was operated by Defendants Francis Elayne Keller and Daniel Bruno

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Keller. While in the care and custody of the Day Care Center, the children, along with other children attending the Day Care Center, were physically and sexually abused by Daniel Bruno Keller. Defendant Daniel Bruno Keller also allowed others to witness or participate in this abuse. These activities occurred on a regular basis throughout the children's attendance at the facility from March 25, 1991, until August 28, 1991.

III.

Defendant Janise White was a long-time friend and confidant of Defendant Francis Elayne Keller. During Francis Keller's marriage with Daniel Keller, Francis confided with Defendant Janise White with regard to Daniel Keller's abusive habits toward children. Defendants Janise White, Douglas Perry, and Raul Quintero were also present when children at the Day Care Center were abused. Specifically, on one particular occasion, in approximately August of 1991, Janise White was invited to the Day Care Center along with Defendant Douglas Wayne Perry and Defendant Raul Quintero. On this occasion, the Kellers served Defendants White, Perry, and Quintero alcoholic beverages. At this point in time, certain unidentified children were taken out of the play room of the Day Care Center and into the Kellers' living room where Defendants Daniel Keller, Francis Keller, Janise White, Douglas Perry, and Raul Quintero were

located. Daniel Keller, in the presence of these other Defendants, began to sexually abuse these unidentified children. Said Defendants witnessed this abuse but failed to notify any authorities of this abuse. As a result of the Defendants' failure to notify the proper authorities of this abuse, the Day Care Center remained open and Daniel Keller was allowed to continue his abuse of the children. This continued abuse was a proximate cause of substantial physical and mental harm to the Nash children.

IV.

Defendant Francis Elayne Keller knew or should have known of the physical and sexual abuse described above, yet took no action to report, prevent, or stop the abuse. Although Defendant Francis Elayne Keller had cause to believe that the physical or mental health or welfare of all the children at the Day Care Center, including Plaintiffs Brendan and Kathleen Nash, had been or may be adversely affected, she took no steps to report, prevent, or stop the abuse. This was negligence as that term is known and understood at law. This was also negligence, per se, under Section 34.01 of the Texas Family Code. Furthermore, Defendant Francis Elayne Keller's conduct amounts to such an entire want of care as could only have resulted from an actual conscious indifference to

the rights, safety, and welfare of Plaintiffs so as to constitute gross negligence as that term is known and understood at law.

V.

Defendant Janise White knew or should have known of the physical and sexual abuse described above, yet took no action to report the abuse. Although Defendant Janise White witnessed child abuse by Defendant Daniel Keller as specified above and, therefore, → had cause to believe that the physical or mental health or welfare of all the children at the Day Care Center, including Plaintiffs Brendan and Kathleen Nash, had been or may be adversely affected, she took no steps to report the abuse. This was negligence as that term is known and understood at law. This was also negligence, per se, under Section 34.01 of the Texas Family Code. Furthermore, Defendant Janise White's conduct amounts to such an entire want of care as could only have resulted from an actual conscious indifference to the rights, safety, and welfare of Plaintiffs so as to constitute gross negligence as that term is known and understood at law.

VI.

Defendant Raul Quintero knew or should have known of the physical and sexual abuse described above, yet took no action to report the abuse. Although Defendant Raul Quintero witnessed child

abuse by Defendant Daniel Keller as specified above and, therefore,
→ had cause to believe that the physical or mental health or welfare
of all the children at the Day Care Center, including Plaintiffs
Brendan and Kathleen Nash, had been or may be adversely affected,
he took no steps to report the abuse. This was negligence as that
term is known and understood at law. This was also negligence, per
se, under Section 34.01 of the Texas Family Code. Furthermore,
Defendant Raul Quintero's conduct amounts to such an entire want of
care as could only have resulted from an actual conscious
indifference to the rights, safety, and welfare of Plaintiffs so as
to constitute gross negligence as that term is known and understood
at law.

VII.

Defendant Douglas Wayne Perry knew or should have known of the
physical and sexual abuse described above, yet took no action to
report the abuse. Although Defendant Douglas Wayne Perry witnessed
child abuse by Defendant Daniel Keller as specified above and,
→ therefore, had cause to believe that the physical or mental health
or welfare of all the children at the Day Care Center, including
Plaintiffs Brendan and Kathleen Nash, had been or may be adversely
affected, he took no steps to report the abuse. This was
negligence as that term is known and understood at law. This was

also negligence, per se, under Section 34.01 of the Texas Family Code. Furthermore, Defendant Douglas Wayne Perry's conduct amounts to such an entire want of care as could only have resulted from an actual conscious indifference to the rights, safety, and welfare of Plaintiffs so as to constitute gross negligence as that term is known and understood at law.

VIII.

Defendant B. D. "Billy" Johnson knew or should have known of the physical and sexual abuse described above, yet took no action to report, prevent, or stop the abuse. Although Defendant Billy Johnson had cause to believe that the physical or mental health or welfare of all the children at the Day Care Center, including Plaintiffs Brendan and Kathleen Nash, had been or may be adversely affected, he took no steps to report, prevent, or stop the abuse. This was negligence as that term is known and understood at law. This was also negligence, per se, under Section 34.01 of the Texas Family Code. Furthermore, Defendant Billy Johnson's conduct amounts to such an entire want of care as could only have resulted from an actual conscious indifference to the rights, safety, and welfare of Plaintiffs so as to constitute gross negligence as that term is known and understood at law.

IX.

As a direct and proximate result of Defendants' conduct described above, Plaintiffs Brendan Nash and Kathleen Nash suffered injuries to diverse parts of their bodies and were subjected to significant force, violence, and mental torture. Many of the injuries suffered by these Plaintiffs are permanent in nature.

X.

Plaintiffs have incurred, and continue to incur, reasonable medical expenses, and will continue to require medical treatment in the future.

XI.

Further, Plaintiffs allege they have suffered mental pain, anguish, humiliation, embarrassment, physical pain, and sleeplessness, and that they will continue to suffer mental anguish and physical pain in the future.

XII.

At the time of the incident complained of, Plaintiffs Sean Nash and Sandra Nash, were gainfully employed. As a proximate result of the negligence of the Defendants, Plaintiffs were unable to attend to their occupations and were thereby damaged for which they hereby sue.

XIII.

Although it is Plaintiffs' desire to have the Court and Jury determine the amount of their fair compensation, the Defendants have requested Plaintiffs to state a maximum dollar amount they seek. In deference to this requirement by the Defendants, Plaintiffs would state they seek a fair amount of damages not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00).

Because of the extreme and outrageous conduct of the Defendants, Plaintiffs ask the Court and the Jury to award exemplary damages in an amount sufficient to punish each Defendant and to deter others from engaging in similar conduct in the future. Plaintiffs request that the Court and Jury determine a reasonable amount not to exceed Ten Million Dollars (\$10,000,000.00).

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray for judgment against Defendants in an amount over the jurisdictional amount, for exemplary damages, for their costs and disbursements, pre-judgment and post-judgment interest, and for such other relief as this Honorable Court may deem proper.

Respectfully submitted,

BEMIS, ROACH & REED, L.L.P.
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Austin, Texas 78757
(512) 454-4000
(512) 453-6335 (fax)

By: 

LONNIE ROACH
State Bar No. 16967600
GREG REED
State Bar No. 16677750

CERTIFICATE OF SERVICE

By my signature above, I hereby certify that a true and correct copy of the foregoing has been forwarded via certified mail, return receipt requested, on this the 29th day of September, 1995, to:

Jeffrey R. Jury
Wilson, Grosenheider & Burns
P. O. Box 1584
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