

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

NELDER LESTER, as Personal Representative  
of the Estate of HAILE LESTER BROCKINGTON,  
deceased minor; and on behalf of  
NELDER LESTER, Surviving Mother,  
and MANDUS BROCKINGTON, Surviving  
Father,

CASE NO.:

AO

50 2010 CA 02 056 1 XXXX MB

Plaintiff,

v.

KATIE'S KIDS LEARNING CENTER, INC.;  
and AMANDA (DRIVER, LAST NAME  
UNKNOWN),

Defendants.

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CIRCUIT CIVIL DIVISION

**COMPLAINT FOR WRONGFUL DEATH**

The Plaintiff, Nelder Lester, as Personal Representative of the Estate of Haile Lester Brockington, deceased minor, and on behalf of Nelder Lester, surviving mother, and Mandus Brockington, surviving father, sues the Defendants Katie's Kids Learning Center, Inc. (Katie's Kids) and Amanda (driver, last name unknown) and alleges:

**JURISDICTIONAL STATEMENT AND IDENTIFICATION OF PARTIES**

1. This is an action for wrongful death and money damages in excess of the jurisdictional limits of this Court.
2. Venue is proper in Palm Beach County, Florida, because the incident which is the subject of this Complaint occurred in Palm Beach County.

3. The Plaintiff is or will be the duly appointed Personal Representative of the Estate of her deceased daughter, Haile Lester Brockington. Mandus Brockington is the decedent's surviving father.

4. The Defendant Katie's Kids is a Florida corporation authorized to and doing business in Delray Beach, Palm Beach County, Florida. Defendant Katie's Kids owned, operated and maintained a daycare center. Its services included transportation for the children participating at the daycare center. Ford Econoline vans were supplied for transportation to and from the homes of the children whose parents were participating in the use of this transportation service.

5. Defendant Amanda was the employee, agent, and servant of Defendant Katie's Kids and was the driver and operator of the vehicle used for transportation in the incident more specifically described below.

#### **FACTS GIVING RISE TO CAUSE OF ACTION**

6. Haile Lester Brockington, age 2, date of birth November 20, 2007, was enrolled in Katie's Kids daycare center. The Lester Brockington family had five children. All of them were initially enrolled beginning March 2010. During that spring break, all five children attended.

7. Subsequently, the three youngest children, including Haile, attended continuously.

8. Haile, along with the other two children, were not only attending the facility, but were transported by the facility to and from home. The first driver they had was Patricia. The usual routine was that the children would be picked up at approximately 10:00 o'clock in the morning and returned around 4:00 o'clock in the afternoon.

9. On or about August 5, 2010, the driver was Defendant Amanda. Prior to August 5, 2010, she had been picking up the children earlier - - approximately 8:30 a.m., and returning them at approximately 4:00 p.m. Defendant Amanda started driving the children in the second week of July. Defendant Katie's Kids did not provide any assistant, helper, or other employee on the van.

10. There was a transportation log that was supposed to be maintained. Prior to the day of the incident, the drivers had a history of either forging or signing Ms. Lester's name on the log. There were also prior incidents when children both on the bus as well as at the school in the past had been forgotten.

11. In addition, Katie's Kids, at the Delray location, and/or another location in Broward County, had left or forgotten children on the bus.

12. On the day of the incident, older children, for example, children ages 7 or 8, were seated towards the front of the van to help the driver. All of the little ones, including two year old Haile, who were in car seats, were placed in the back. All three of the Lester Brockington children were in car seats in the back. Haile, a shy and quiet two year old, was in the very last row.

13. The usual process was that when the van arrived at Katie's Kids, the older children got off. The younger ones in car seats were either removed, or unbuckled themselves. Haile was not able to unbuckle herself.

14. On August 5, 2010, Haile had been picked up at home by Defendant Amanda, along with her two siblings. Defendant Amanda drove the van to Katie's Kids. Haile was not removed from the van. Haile remained the entire time in the van by herself for the whole day. The temperature outside the van was 91 degrees at 2:00 o'clock p.m.

15. At the end of the day, at the time when Defendant Amanda was to return with the children on the van to go home, another young child, age 5, got on the van. She went to the back and found Haile. She tried to wake Haile because she wanted to play with her. Haile would not wake up. This child then told Defendant Amanda that Haile would not wake up. It was then determined that Haile had been forgotten.

16. When Haile was found, driver Patricia was asked to perform CPR on the baby.

17. CPR was of no use because Haile had already expired from hypothermia on account of the extreme heat within the van, after being left alone all day.

18. Haile's mother was not called by anyone from Defendant Katie's Kids. She had to learn the terrible news from the police that her daughter had died inside the daycare center's van.

19. As a direct and proximate result of the negligence of the Defendants, as set forth more particularly below, Haile Lester Brockington expired on August 5, 2010. The Plaintiff makes the below listed claims for damages on behalf of her estate and surviving parents.

#### **COUNT I**

#### **CLAIM AGAINST DEFENDANT KATIE'S KIDS LEARNING CENTER, INC.**

#### **ACTIVE NEGLIGENCE**

20. The Plaintiff adopts and realleges paragraphs 1 through 19 and further alleges:

21. Haile Lester Brockington was a lawful participant of Katie's Kids daycare center, and lawfully on the Ford Econoline which was used in transporting her to and from her home.

22. Accordingly, Defendant Katie's Kids owed a nondelegable legal duty, as well as an express common law nondelegable duty of reasonable care to the decedent to provide reasonably safe transportation to and from the daycare center. It also owed the duty to use reasonable care to comply with any and all state, county, and Palm Beach County rules and

regulations governing child care facilities. Defendant Katie's Kids knew or should have known that children left alone in a van for the entire day in 91 degree heat would be exposed to extreme danger, and likely death, and that a dangerous condition existed for them as a consequence of leaving them alone in the van.

23. Defendant Katie's Kids breached its duties in one or more of the following ways:

- a. Negligently leaving Haile alone for the entire day in the van while she was strapped in a car seat at the back, without any ability to get out of her car seat, in severely hot weather;
- b. Negligently failed to maintain an accurate driver's log for all children, each day, being transported in the van;
- c. Negligently failing to include in the log Haile's name, date, time of departure, time of arrival, a signature of the driver, and a signature of a second staff member to verify the driver's log, and that all children had left the vehicle;
- d. Negligently failing, upon arrival in the morning at the child care center, through its driver, and/or other employees, to do the following:
  - (1) Mark each child off the log as the child departs the vehicle;
  - (2) Conduct a physical inspection and visual sweep of the vehicle to ensure that no child was left in the vehicle;
  - (3) Sign, date and record the driver's log immediately, verifying that all children were accounted for, and that the visual sweep was conducted.
- e. Negligently failed to have a second staff member should have, but did not, conduct a physical inspection and visual sweep of the vehicle to ensure that no child was left in the vehicle;
- f. Negligently failed to have a second staff member sign, date, and record the driver's log immediately, verify that all children were accounted for and that the log was complete;
- g. Negligently failed to properly train its employees, including the Defendant driver, and other employees who were to act as the second staff member, to perform the required duties and tasks as set forth in items (a) through (f);

- h. Negligently failing to have a responsible adult trained to recognize and respond appropriately to the circumstances where young children were strapped in a car seat at the back of a vehicle in a very hot environment;
- i. Negligently failing to provide a qualified designated person to be in charge of the overall supervision of staff and routine facility operations;
- j. Negligently failing to assure that Defendant drivers were properly qualified to operate the van with complete safety for the protection of children, and in particular two year old Haile, seated at the back of the van strapped in a car seat;
- k. Negligently failing to assure that its child care personnel, including drivers, were fully versed in state and local rules and regulations governing child care, health, and safety;
- l. Negligently failing to assure that their personnel, including drivers, were fully versed in all state and local rules and regulations governing observation of children in their care;
- m. Negligently failing to provide the proper staff-to-child ratio at all times with additional staff and supervision requirements with respect to van transportation;
- n. Negligently failed to closely supervise children under the care of staff;
- o. Negligently failing to be in compliance by counting children under the supervision of the facility;
- p. Negligently failing to communicate to Haile's parents that Haile had expired after being left alone in the van;
- q. Negligently failing to comply with Palm Beach County rules and regulations governing childcare facilities;
- r. Negligently failing to comply with the Florida Department of Health's requirements for child care facilities;
- s. Negligently failing to comply with Fla. Stat. 316.615(3) by failing to assure that the Defendant driver met the physical examination requirements established by law and by rule of the State Board of Education, passing an annual physical examination, and posting in the van a certificate to drive the vehicle;
- t. Negligently failing to comply with the Florida Administrative Code, 65c-22.

24. Defendant Katie's Kids knew or should have known that leaving minor children unattended in the van was hazardous. There had been other prior incidents. Defendant Katie's Kids had actual or constructive knowledge of the hazard.

25. As a direct and proximate result of the negligence of Defendant Katie's Kids, Haile Lester Brockington expired. The Plaintiff makes the below listed claims for damages.

## **COUNT II**

### **CLAIM AGAINST DEFENDANT KATIE'S KIDS LEARNING CENTER**

#### **VICARIOUS LIABILITY**

26. The Plaintiff adopts and realleges paragraphs 1 through 19 and further alleges:

27. Defendant Amanda was the agent, servant, or employee of Defendant Katie's Kids and acted within the course and scope of her employment at the time of the incident. Consequently, Defendant Katie's Kids is vicariously liable for the negligence of Defendant Amanda as set forth below in Count III.

## **COUNT III**

### **CLAIM AGAINST DEFENDANT AMANDA**

#### **NEGLIGENCE**

28. The Plaintiff adopts and realleges paragraphs 1 through 19 and further alleges:

29. Defendant Amanda had and undertook the duty of reasonable care with respect to the transportation of minor children, including two year old Haile, from their homes to Katie's Kids, during the day, and on the return trip back. That duty included the duty to comply with all state, Palm Beach County, and Florida regulations pertaining to the operation of motor vehicles transporting children to and from daycare centers.

30. Defendant Amanda breached her duty in any, some, or all of the following ways:

- a. Failing to properly maintain an accurate log for all children, including Haile, being transported in the van;

- b. Negligently failing to include Amanda's name, date, time of departure, time of arrival, and signing her name, and obtaining the signature of a second staff member to verify the log and that all children had left the vehicle;
- c. Negligently, upon arrival at Katie's Kids, failing to log each child, and specifically Haile, as the children departed the vehicle;
- d. Negligently failed to conduct a physical inspection and visual sweep of the vehicle to ensure that no child, and in particular Haile, was left behind in the van;
- e. Negligently failed to recognize that Haile had been left behind in the van, strapped in a child care seat, and unable to get out of the seat by herself;
- f. Negligently failing to remove Haile from the child care seat and take her off the vehicle;
- g. Negligently left Haile on the vehicle in 91 degree weather for the entire daycare day;
- h. Negligently failing, upon arrival at Katie's Kids, to have a second staff member conduct a physical inspection and visual sweep of the van to ensure that Haile had not been left behind;
- i. Negligently failed to have a second staff member sign, date and record the log immediately, verifying that all children, and in particular Haile, were accounted for, and that the log was complete.

31. As a direct and proximate result of the negligence of Defendant Amanda, the Plaintiff makes the below listed claims for damages.

**CLAIMS FOR DAMAGES COMMON TO ALL COUNTS**

**CLAIMS OF PERSONAL REPRESENTATIVE ON BEHALF OF ESTATE  
AND SURVIVING PARENTS**

32. As a direct and proximate result of the negligence of the Defendants which caused the death of Haile Lester Brockington, Nelder Lester, as Personal Representative of the Estate of Haile Lester Brockington, sets forth the below listed claims for the decedent's Estate and surviving parents pursuant to §768.21, Fla. Stat., the Wrongful Death Act.



**CLAIM OF PERSONAL REPRESENTATIVE ON BEHALF OF THE ESTATE  
OF HAILE LESTER BROCKINGTON**

33. The Estate of Haile Lester Brockington has in the past suffered, and will in the future continue to suffer the following damages:

- a. Medical and funeral expenses, or both, which have been incurred due to the decedent's death that have become a charge against her Estate or that were paid by or on behalf of the decedent, excluding the amounts recoverable by the decedent's parents.

**CLAIM OF PERSONAL REPRESENTATIVE ON BEHALF OF  
NELDER LESTER, SURVIVING MOTHER**

34. Nelder Lester, as surviving mother of Haile Lester Brockington, has in the past suffered and will in the future continue to suffer the following damages:

- a. Mental pain and suffering from the date of the injury;
- b. Medical expenses;
- c. Funeral Expenses.

**CLAIM OF PERSONAL REPRESENTATIVE ON BEHALF OF  
MANDUS BROCKINGTON, SURVIVING FATHER**

35. Mandus Brockington, as surviving father of Haile Lester Brockington, has in the past suffered, and will in the future continue to suffer the following damages:

- a. Mental pain and suffering from the date of the injury;
- b. Medical expenses;
- c. Funeral expenses.

Wherefore, the Plaintiff demands judgment against the Defendants for all damages recoverable under the laws of the State of Florida.

**DEMAND FOR JURY TRIAL**

The Plaintiff demands trial by jury of all issues triable as of right by a jury.

Dated this 12<sup>th</sup> day of August, 2010.

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