

IN THE DISTRICT COURT OF PITTSBURG COUNTY
STATE OF OKLAHOMA

BRYAN GILLIAM AND JESSICA GILLIAM,)
AS PARENTS AND NEXT FRIENDS OF)
S.G., A MINOR, and DERRICK MARSHALL)
AND JANICE MARSHALL, AS PARENTS)
AND NEXT FRIENDS OF S.M., A MINOR,)

Plaintiffs,)

VS.)

INDIANOLA PUBLIC SCHOOLS and)
GARY L. GUNCKEL,)

Defendants.)

RECEIVED AND FILED
IN DISTRICT COURT
PITTSBURG COUNTY, OKLA

MAY 29 2020

CINDY LEDFORD

BY _____
DEPUTY

Case No. CJ-2020- 115

PETITION

COME NOW the Plaintiffs, Bryan Gilliam and Jessica Gilliam, as parents and next friends of S.G., a minor, and Derrick Marshall and Janice Marshall, as parents and next friends of S.M., a minor, and for their claims against the Defendants, Indianola Public Schools and Gary L. Gunckel, allege and state:

PARTIES AND JURISDICTION

1. On September 6, 2018 S.G. was an eleven-year-old student at Indianola Public School. S.G.'s parents are Brian and Jessica Gilliam, Plaintiff's herein.
2. On September 6, 2018 S.M. was a ten-year-old student at Indianola Public School. S.M.'s parents are Derrick and Janice Marshall, Plaintiff's herein.
3. At all material times herein, Gary L. Gunckel was the Principal of Indianola Public School.
4. At all material times herein, Gary L. Gunckel was acting within the course and scope of his employment at Indianola Public Schools, except as to those claims enumerated in Plaintiffs' Fourth and Fifth Causes of Action, which are intentional torts.

5. Indianola Public School is an independent school district in Pittsburg County, Oklahoma.
6. All of the acts and omissions involved herein occurred in Pittsburg County, Oklahoma.
7. All of the claims asserted herein are based upon Oklahoma state law claims only. There are no allegations of violations of federal law and none of the claims herein are based upon federal law, the federal constitution or any federal question.

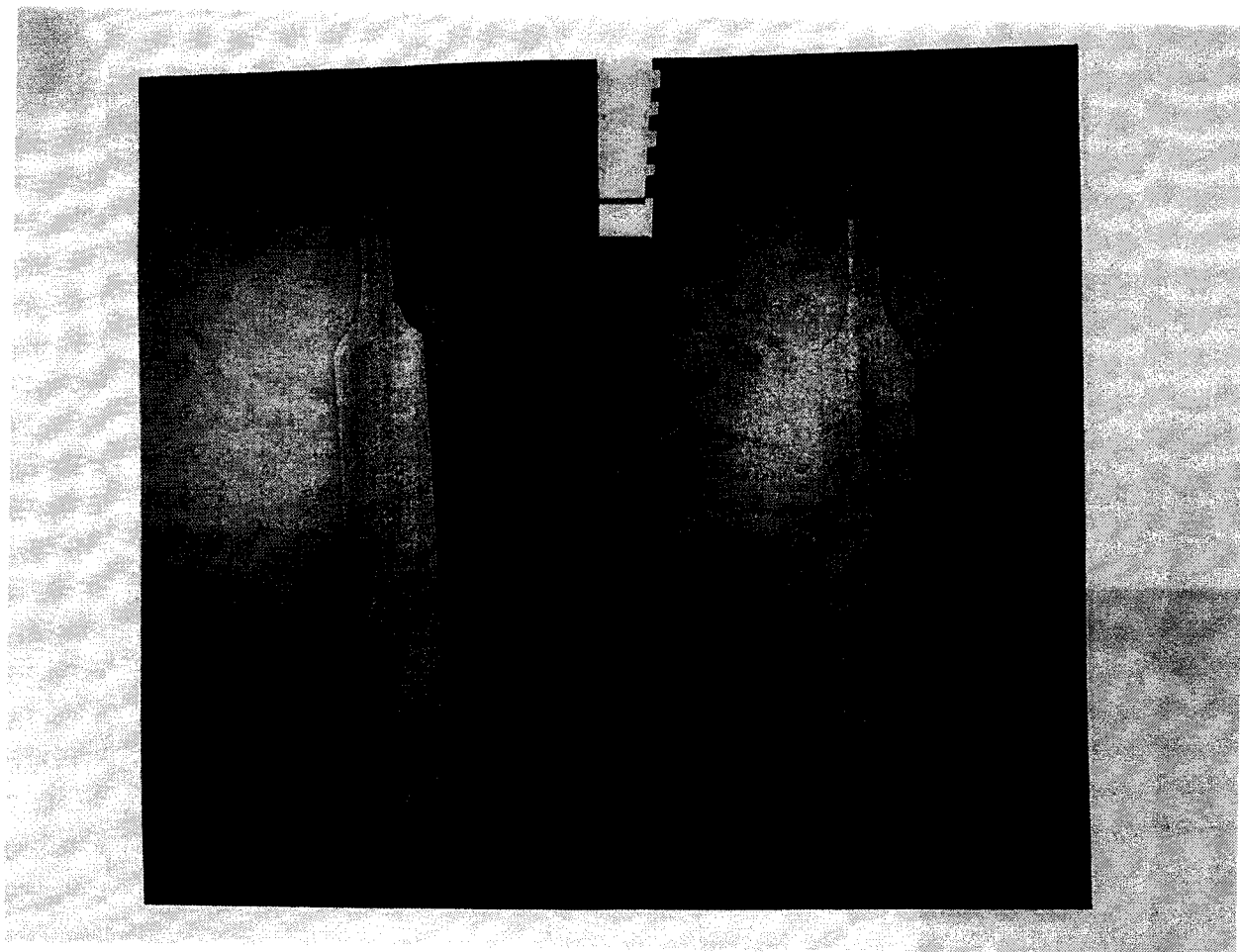
COMPLIANCE WITH O.G.T.C.A. NOTICE REQUIREMENT

8. Plaintiffs have complied with the notice provisions of the Oklahoma Governmental Tort Claims Act by providing notice of this claim to Indianola Public School within one year of the occurrence.

FACTS

9. On or about September 6, 2018, S.G. and S.M. had an argument at Indianola Public School and they used cuss words, however, there was no physical altercation.
10. As a result of the verbal argument, the school Principal gave the two boys and their parents a choice between 2-3 days of in school detention or 2-3 swats from the Principal, Gary L. Gunckel.
11. Plaintiffs opted for their sons to receive swats, S.G. was to receive two swats and S.M. was to receive three swats.
12. The two boys were taken to the waiting room outside of Principal Gary L. Gunckel's office.
13. Ten-year-old S.M. was taken first into the Principal's office to receive his three swats while S.G. sat outside the room.
14. A waiting eleven-year-old S.G. could hear what was going on in the Principal's office. Anticipating his impending spanking, he was already in great fear. Mr. Gunckel is a large man, much bigger than S.G. S.G. had never received swats from Mr. Gunckel.

15. Mr. Gunckel hit the boy S.M. the first time with such force that it knocked S.M. to the ground and made him wet his pants. After this first strike, S.M. began crying and screaming and could not even get up. He begged not to be hit again, but after several minutes, Mr. Gunckel forced S.M. to get up and receive the promised two more strikes of the bat.
16. When Mr. Gunckel hit S.M. the first time, the boy S.G. heard S.M. hit the ground screaming, crying and begging not to be hit again. S.G. listened to S.M. begging for mercy for several minutes before he S.M. was forced up and Mr. Gunckel hit him again. Once again, S.M. screamed and cried and would not get up. But, Mr. Gunckel forced S.M. up a second time and struck him a third time, causing him to once again cry out in agony and pain.
17. When it came time for S.G.'s beating, Mr. Gunckel called his mother Jessica and told her that S.G. had requested to receive "corporal punishment" as opposed to in-school detention and that he was going to receive two swats. S.G. was crying as the discussion took place. His mother asked him why he was crying and he told her because it was going to hurt. At that point S.G. wanted to tell his mother that he did not want to receive the beating and to ask her to come get him from school. However, S.G. said that Mr. Gunckel cut him off and would not allow him to speak and Mr. Gunckel himself hung up the phone before S.G. could tell his mom what was really happening.
18. Mr. Gunckel then hit S.G. twice with a large piece of wood shaped like a flattened baseball bat. A photo of the exact bat used upon the two young boys is shown below:



19. As a direct result of the beating by Gary L. Gunckel, S.G. and S.M. received severe bruising and physical injuries to the muscles in their buttocks and severe psychological trauma and emotional distress.

20. While administering "corporal punishment" to S.G. and S. M., Gary L. Gunckel also verbally insulted S.G. and S.M. Knowing that S.G. loves to play football, Mr. Gunckel mocked S.G. and told him that he would never be good enough to play college football.

FIRST CAUSE OF ACTION

NEGLIGENCE

COME NOW the Plaintiffs and hereby adopt and include the foregoing statements and allegations as if they were fully stated herein, and for their First Cause of Action against Indianola Public Schools and Gary L. Gunckel, individually, allege and state:

21. The Principal Gary L. Gunckel had a duty to act reasonably in carrying out corporal punishment upon S.G. and S.M.
22. Gary L. Gunckel struck S.G. two times and S.M. three times with the bat shown above with unreasonable and excessive force that caused severe bruising of the type and to an extent that it must be reported to both police and D.H.S. by law as child abuse.
23. Gary L. Gunckel's acts and omissions constituted negligence.
24. Gary L. Gunckel breached his duty to Plaintiffs, as parents that entrusted disciplining their children to the Principal in trust and *in loco parentis* over these little boys that were entrusted to him and that he would exercise discretion and act reasonably, and within his duty to S.G. and S.M., as minor children and students of Indianola Public Schools.
25. Indianola Public School is responsible for the negligence of the Principal Gary L. Gunckel while he was acting within the course and scope of his employment.
26. As a direct result of Gary L. Gunckel's negligence, S.G. and S.M. were injured, both physically and mentally.
27. As a direct result of Gary L. Gunckel's negligence, the Plaintiffs suffered damages in the form of medical bills and related expenses.
28. The actions of Gary L. Gunckel were reckless, in disregard for the rights of others, including, S.G., S.M., and Plaintiffs.

29. Plaintiffs are entitled to recover punitive damages against the Defendants to deter them, and others similarly situated, from similar future behavior and to punish them for their socially unacceptable behavior.

WHEREFORE, Plaintiffs pray for judgment against the Defendants, Indianola Public Schools and Gary L. Gunckel, individually, for a sum in excess of the amount required for diversity jurisdiction under 28 United States Code §1332, plus interest, attorney fees and costs and whatever further relief this court deems just and equitable. Additionally, if permitted under the facts of this case and by Oklahoma law, Plaintiffs further pray for an award of punitive damages in an amount in excess of the amount required for diversity jurisdiction pursuant to 28 United States Code §1332.

SECOND CAUSE OF ACTION

OKLAHOMA CONSTITUTIONAL RIGHTS VIOLATIONS

COME NOW the Plaintiffs and hereby adopt and include the foregoing statements and allegations as if they were fully stated herein, and for their Second Cause of Action against Indianola Public Schools and Gary L. Gunckel, allege and state:

30. At all material times herein, Gary L. Gunckel was the Principal of Indianola Public School.

31. At all times material herein, Gary L. Gunckel was acting under the color of Oklahoma state law.

32. That the actions and omissions of Gary L. Gunckel described herein were consistent with the policies and procedures of Indianola Public Schools.

33. That Gary L. Gunckel's corporal punishment of S.G. was unreasonably excessive.

34. The actions and omissions of Gary L. Gunckel constitute a violation of S.G.'s civil rights under the Oklahoma Constitution and Article 2, Bill of Rights, Section 9 that provides freedom from cruel and unusual punishment.

35. The actions and omissions of Gary L. Gunckel constitute a violation of S.G.'s and S.M.'s civil rights under the Oklahoma Constitution and Article 2, Bill of Rights, Section 7 that provides that no person shall be deprived of life, liberty, or property without due process of law.

36. As a direct result of violation of their civil rights, S.G. and S.M. suffered injuries and damages.

37. The actions of Gary L. Gunckel were intentional and/or reckless, with disregard for the rights of others, including, S.G., S.M. and Plaintiffs.

38. Plaintiffs are entitled to recover punitive damages against the Defendants to deter them, and others similarly situated, from similar future behavior and to punish them for their socially unacceptable behavior.

WHEREFORE, Plaintiffs pray for judgment against the Defendants, Indianola Public Schools and Gary L. Gunckel, individually, for a sum in excess of the amount required for diversity jurisdiction under 28 United States Code §1332, plus interest, attorney fees and costs and whatever further relief this court deems just and equitable. Additionally, if permitted under the facts of this case and by Oklahoma law, Plaintiffs further pray for an award of punitive damages in an amount in excess of the amount required for diversity jurisdiction pursuant to 28 United States Code §1332.

THIRD CAUSE OF ACTION

OKLAHOMA PARENTS' BILL OF RIGHTS VIOLATIONS

COME NOW the Plaintiffs and hereby adopt and include the foregoing statements and allegations as if they were fully stated herein, and for their Third Cause of Action against Gary L. Gunckel, individually, allege and state:

39. The actions and omissions described herein are in violation of the Oklahoma Parents' Bill of Rights, Title 25 §2002 (A),

1. The right to direct the education of the minor child;

3. The right to direct the upbringing of the child; and;

Title 25 §2002 (D), the “inalienable rights” of parents.

40. As a direct result of the violations of the Parents’ Bill of Rights, the S.G., S.M. and Plaintiffs have suffered injuries and damages.

41. The actions of Gary L. Gunckel were intentional and/or reckless, with disregard for the rights of others, including, S.G., S.M. and Plaintiffs.

42. Plaintiffs are entitled to recover punitive damages against the Defendants to deter them, and others similarly situated, from similar future behavior and to punish them for their socially unacceptable behavior.

WHEREFORE, Plaintiffs pray for judgment against the Defendants, Indianola Public Schools and Gary L. Gunckel, individually, for a sum in excess of the amount required for diversity jurisdiction under 28 United States Code §1332, plus interest, attorney fees and costs and whatever further relief this court deems just and equitable. Additionally, if permitted under the facts of this case and by Oklahoma law, Plaintiffs further pray for an award of punitive damages in an amount in excess of the amount required for diversity jurisdiction pursuant to 28 United States Code §1332.

FOURTH CAUSE OF ACTION

ASSAULT AND BATTERY

(as to Gary L. Gunckel only)

COME NOW the Plaintiffs and hereby adopt and include the foregoing statements and allegations as if they were fully stated herein, and for their Fourth Cause of Action against Gary L. Gunckel, individually, allege and state:

43. Gary L. Gunckel acted without the consent of the Plaintiffs or their sons when he beat S.G. and S.M. excessively and with excessive force against their will.
44. Gary L. Gunckel acted intentionally with the intent of making harmful contact with S.G. and S.M. and with the intent of placing them in fear of the harmful contact.
45. Gary L. Gunckel's actions resulted in harmful contact with S.G. and S.M.
46. As a direct result of the assault and battery S.G., S.M. and Plaintiffs have suffered injuries and damages.
47. The actions of Gary L. Gunckel were reckless, in disregard for the rights of others, including, S.G. and Plaintiffs.
48. Plaintiffs are entitled to recover punitive damages against the Defendant Gary L. Gunckel, individually, to deter him, and others similarly situated, from similar future behavior and to punish him for his socially unacceptable behavior.

WHEREFORE, Plaintiffs pray for judgment against the Defendant, Gary L. Gunckel, individually, for a sum in excess of the amount required for diversity jurisdiction under 28 United States Code §1332, plus interest, attorney fees and costs and whatever further relief this court deems just and equitable. Additionally, if permitted under the facts of this case and by Oklahoma law, Plaintiffs further pray for an award of punitive damages in an amount in excess of the amount required for diversity jurisdiction pursuant to 28 United States Code §1332.

FIFTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(as to Gary L. Gunckel only)

COME NOW the Plaintiffs and hereby adopt and include the foregoing statements and allegations as if they were fully stated herein, and for their Fifth Cause of Action against Gary L. Gunckel, individually, allege and state:

49. The physical and mental abuse that Gary L. Gunckel gave to S.G. and S.M. was done maliciously and sadistically.

50. Gary L. Gunckel's actions were extreme and outrageous and beyond the bounds of decency.

51. Gary L. Gunckel's actions were atrocious and utterly intolerable in a civilized society.

52. As a direct result of Gary L. Gunckel's actions, S.G. and S.M. were severely traumatized, beyond which a reasonable child could be expected to endure.

53. Gary L. Gunckel intentionally and/or recklessly caused their emotional distress.


54. The actions of Gary L. Gunckel were intentional and/or reckless, with disregard for the rights of others, including, S.G., S.M. and Plaintiffs.

55. Plaintiffs are entitled to recover punitive damages against the Defendants to deter them, and others similarly situated, from similar future behavior and to punish them for their socially unacceptable behavior.

WHEREFORE, Plaintiffs pray for judgment against the Defendant, Gary L. Gunckel, individually, for a sum in excess of the amount required for diversity jurisdiction under 28 United States Code §1332, plus interest, attorney fees and costs and whatever further relief this court deems just and equitable. Additionally, if permitted under the facts of this case and by Oklahoma

law, Plaintiffs further pray for an award of punitive damages in an amount in excess of the amount required for diversity jurisdiction pursuant to 28 United States Code §1332.

Respectfully submitted,


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