

STATE OF WISCONSIN

CIRCUIT COURT

FILED
06-09-2016
KENOSHA COUNTY
Clerk of Circuit Court
Kenosha County

P.M., individually and on behalf of
A.L.M. and A.R.M., his minor children,

Plaintiffs,

and

Case No. 14-CV-001571

WISCONSIN DEPARTMENT OF
HEALTH SERVICES,

Case Code: 30107

Involuntary Plaintiff,

v.

SHOREHAVEN BEHAVIORAL HEALTH, INC.,
P.C. and C.O.,

Defendants.

**AMENDED PETITION FOR JUVENILE COURT REVIEW
AND APPROVAL OF RECORDS DISCLOSURE**

NOW COME the defendants, Shorehaven Behavioral Health, Inc., Pamela Cass and Cynthia Oeffling, in the above-captioned matter, and pursuant to the January 19, 2016 Order signed by The Honorable David M. Bastianelli and the May 12, 2016 letter issued by The Honorable Judge Jason Rossell, submit an Amended Petition for a review of documents in the possession of Kenosha County Department of Children and Family Services ("DCFS") and a determination as to the confidentiality of said documents. In support of the instant Petition, the defendants state as follows:

1. On October 24, 2014, plaintiffs in the above-captioned matter filed a Summons and Complaint commencing the instant action against Shorehaven Behavioral Health, Inc., Pamela Cass and Cynthia Oeffling.

2. On August 6, 2015, plaintiffs filed an Amended Complaint. (Johnson Aff. at Ex. 1, Am. Comp.).

3. Plaintiff, P.M., generally alleges that his twin children, Al.M. (D.O.B.: March 2, 2004) and Ar.M. (D.O.B.: March 2, 2004) were sexually abused by Michael Jensen and that Pamela Cass, a licensed clinical social worker, and Cynthia Oeffling, a family and behavioral therapist, failed to report reasonable suspicion of child abuse “around November 14, 2011.” (See Am. Comp. at ¶¶ 24-25).

4. Plaintiffs contend that as a result of Mr. Jensen’s continued abuse, they suffered severe mental and psychological trauma. (See Am. Comp. at ¶¶ 41-43).

5. On October 27, 2015, The Honorable David M. Bastianelli issued an Order that DCFS shall provide copies of all documentation in its possession relative to the plaintiffs, P.M., Ar.M. and Al.M., to Michael L. Johnson at the law firm of Otjen, Gendelman, Zitzer, Johnson & Weir, S.C. (Johnson Aff. at Ex. 2).

6. On November 25, 2015, Attorney John F. Moyer, Senior Assistant Corporation Counsel for Kenosha County, wrote to Judge Bastianelli and indicated DCFS possessed over 2,000 pages of records covering twelve years of time that were responsive to Judge Bastianelli’s October 27, 2015 Order. (Johnson Aff. at Ex. 3). Attorney Moyer requested a hearing to address the intent of Judge Bastianelli’s Order.

7. On January 4, 2016, Judge Bastianelli conducted a hearing and vacated his October 27, 2015 Order compelling DCFS to provide copies of documents to Attorney Johnson. (Johnson Aff. at Ex. 4). Judge Bastianelli granted the parties in the above matter leave to file a Petition with Kenosha County Juvenile Court for the production of the requested documents from DCFS. (*Id.*)

8. On July 25, 2011, before the alleged negligence of the defendants in the instant case, Dr. Rakesh Shah, the treating psychiatrist for Ar.M., authored a Behavioral Health Note. Dr. Shah noted that the patient “reported that when dad was with the ex-girlfriend, her daughter has probably touched her inappropriately.” He further noted that J.O. “was concerned about the possibility of the sexual abuse.” Dr. Shah notes that he contacted P.M. and “shared [his] impression and discussed with him about what [he] learned from mom about the possibility of inappropriate touch by [P.M.’s] ex-girlfriend’s daughter. Also, this has been reported to the Child Protective Services last Thursday.” (Johnson Aff. at Ex. 5).

9. Dr. Shah also authored a July 25, 2011 Behavioral Health Note for Al.M. Al.M. reported that one night he woke up and his father’s ex-girlfriend’s daughter was sitting on top of him naked. J.O. reported to Dr. Shah that she called Child Protective Services and indicated they were investigating. Dr. Shah informed J.O. “that otherwise [he would] need to talk to Child Protective Services, but this has already been called and reported. (Johnson Aff. at Ex. 6).

10. On March 2, 2016, plaintiffs’ expert Mark L. Goldstein, Ph.D. testified that in order for him to formulate an opinion as to whether Ar.M. sustained injuries as a result of the alleged inappropriate touching referenced on July 25, 2011, he would want to review any “Protective Services report that was made at that time.” (Johnson Aff. at Ex. 7, Goldstein dep at pp 21-22).

11. Plaintiffs’ expert Dr. Goldstein further testified that there are “long term ramifications” for kids who have been abused even a single time. (Johnson Aff. at Ex. 7, Goldstein dep at pp 50-51).

12. On September 23, 2015, the minor plaintiffs' mother, J.O., testified that following her daughter's statement to her that plaintiffs contend give rise to a reasonable suspicion of child abuse, she made multiple attempts to contact DCFS by telephone and she does not recall if she left messages. (Johnson Aff. at Ex. 8, J.O. dep at pp 52-53).

13. There are multiple references in the minor plaintiffs' medical records indicating contact between the family and DCFS. There are multiple reports by the minor plaintiffs in the medical records alleging abuse by individuals other than Michael Jensen. Because the plaintiffs in the instant lawsuit are alleging severe mental and psychological trauma stemming from the isolated incident of alleged negligence by the defendants, the plaintiffs, including the minor plaintiffs through their Guardian ad Litem, have voluntarily placed their respective histories at issue in the instant lawsuit. To the extent that documentation exists relative to complaints of neglect and/or abuse, defendants respectfully submit that such documentation is relevant and discoverable in the instant case on the issue of claimed damages.

14. A central allegation in the instant lawsuit is that the alleged failure by the defendants to contact DCFS in the fall of 2011 was a proximate cause of the plaintiffs' alleged injuries. To the extent that documentation exists relative to prior and subsequent calls to DCFS, defendants respectfully submit that such evidence is relevant and admissible in the instant lawsuit on the issue of causation. Defendants should be permitted to discover what investigations, if any, were opened by DCFS in response to information received from by any entity relative to the plaintiffs.

15. As noted in *Courtney F. v. Ramiro M.C.*, 2004 WI App 36, under Wis. Stat. §804.01(2)(a), "the test for permissible discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence." *Ramiro*

M.C., 2004 WI App 36 at ¶ 23. The Court in *Ramiro M.C.* saw no reason why that should not be the same test for purposes of discovery under Wis. Stat. §48.293(2).

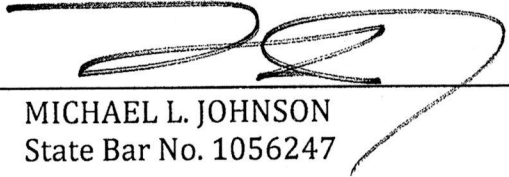
16. Defendants agree to enter into a Protective Order designating materials produced by DCFS as confidential and to be utilized solely for the purposes of litigation of the claims advanced in the instant matter.

In light of the foregoing, the defendants in the above-captioned matter respectfully request a hearing in Kenosha County Juvenile Court to address the issues raised in the request for documents from Kenosha County Department of Children and Family Services and the concerns expressed by Senior Assistant Corporation Counsel for Kenosha County.

Dated at Waukesha, Wisconsin, this 9th day of June, 2016.

**OTJEN, GENDELMAN, ZITZER, JOHNSON &
WEIR, S.C.**, Attorneys for Defendants,
Shorehaven Behavioral Health, Inc.,
Pamela Cass and Cynthia Oeffling

By: _____


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