

STATE OF SOUTH CAROLINA  
COUNTY OF GREENWOOD

IN THE COURT OF COMMON PLEAS  
EIGHTH JUDICIAL CIRCUIT

BARRY MAYFIELD, as Personal  
Representative of the Estate of  
MYLES S. MAYFIELD, deceased minor,

Plaintiff,

vs.

THE LEARNING VINE, LLC,  
a South Carolina corporation,

Defendant.

Civil Action No.:  
**2015-CP-24**  
**COMPLAINT**  
**(Jury Trial Demanded)**

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FILED COMMON PLEAS  
8TH JUDICIAL CIRCUIT  
GREENWOOD, S.C.

COMES NOW the Plaintiff, BARRY MAYFIELD, by and through his attorneys of record, and alleges as follows:

**I.**

**PARTIES**

1. Plaintiff BARRY MAYFIELD is the duly appointed, qualified and acting Personal Representative of the Estate of M.M., deceased minor. The Estate of M.M. is being administered by the Probate Court of Greenwood County, South Carolina.

2. Plaintiff brings this action pursuant to the South Carolina Wrongful Death Act, S.C. Code §§ 15-51-10, *et seq.*, of the 1976 Code of Laws of South Carolina, on behalf of the statutory beneficiaries of M.M., and for the benefit of the Estate of M.M., under the provisions of Section 15-5-90 *et seq.*

3. Plaintiff and M.M. were both citizens and residents of Greenwood County, South Carolina at all relevant times herein.

4. Defendant The Learning Vine, LLC (hereinafter "The Learning Vine") is a for-profit corporation organized and existing pursuant to the laws of the State of South Carolina,

operating as a daycare facility in Greenwood County, South Carolina for children ages 6 weeks to 11 years old.

### **JURISDICTION AND VENUE**

5. Two-year old M.M. died on May 31, 2015 from hemolytic-uremic syndrome (HUS), a severe complication of a Shiga toxin-producing *Escherichia coli* (*E. coli*) infection that was contracted as a result of Defendant's numerous acts of negligence.

6. At the time of his death on May 31, 2015, M.M. attended Defendant's licensed daycare facility, located at 101 Overland Drive, Greenwood, South Carolina.

7. All of the acts and omissions complained of herein occurred in Greenwood County, South Carolina. As such, jurisdiction and venue are proper in this Honorable Court.

## **II.**

### **FACTUAL ALLEGATIONS**

#### **Shiga toxin producing *E. coli***

8. *E. coli O157:H7* is a bacteria contained in the feces of ruminants. When feces contaminated with *E. coli O157:H7* comes into contact with food or surface and is then ingested by humans, it can cause serious injury and death.

9. Young children, the elderly, and people with compromised immune systems are most likely to develop serious complications, or die as a result of an *E. coli O157:H7* infection.

10. Humans infected with *E. coli O157:H7* shed bacteria in their feces. *E. coli O157:H7* bacteria can be transmitted from person-to-person when proper hygiene practices are not followed.

11. As Defendant knew or should have known, in a daycare setting, children can get sick with *E. coli O157:H7* from consuming food or water contaminated with the bacteria or from

eating contaminated fecal matter, which can happen when hands are not washed well after a diaper change.

12. An estimated 73,480 illnesses due to *E. coli O157:H7* infections occur each year in the United States, leading to an estimated 2,168 hospitalizations and 61 deaths.

13. Outbreaks of *E. coli O157:H7* in daycare settings are well-documented.

- a) Clark County, Oregon (2010): 4 children hospitalized in *E. coli* outbreak related to daycare.
- b) San Bernardino, California (2007): at least one child ill with *E. coli O157:H7* at KinderCare facility.
- c) Eagle County, Colorado (2007)
- d) Folsom, California (2000): KinderCare facility traced as the source of an *E. coli O157:H7* outbreak.
- e) Sidney, Nebraska (2006): *E. coli O157:H7* outbreak traced to daycare center, in which four children under 18 months became ill with *E. coli* infections.
- f) Macon County, Tennessee (2006): Outbreak involving nine children sickened at day care facility, with two children developing hemolytic uremic syndrome (HUS).
- g) Jasper County, Missouri (2004): Two 2-year-olds hospitalized with HUS.

14. Because of the high risk of outbreaks in daycare settings, all daycare facilities in South Carolina are required to follow certain rules and regulations to prevent the spread of *E. coli O157:H7*.

15. One of the extreme consequences of an *E. coli O157:H7* infection is hemolytic-uremic syndrome (HUS). HUS is a severe complication of an *E. coli* illness, with characteristic features including anemia, microscopic clots in the small blood vessels and renal failure.

16. HUS develops when shiga-toxin producing *E. coli*, such as *E. coli O157:H7* bacterium, amass in the digestive tract and produce toxins that enter the bloodstream. These

toxins destroy red blood cells. Once this process of cellular destruction begins, the damaged red blood cells start to clog the filtering system in the kidneys, causing life-threatening kidney and other system failures.

### **The Learning Vine *E. coli* Outbreak**

17. Upon information and belief, the index case (i.e., the first case) of *E. coli O157:H7* illness in connection with The Learning Vine was a teacher at the daycare facility.

18. Upon information and belief, the teacher from The Learning Vine initially exhibited symptoms of *E. coli O157:H7* during the May 3-11, 2015 time period.

19. Upon information and belief, despite knowing of the teacher's sickness, The Learning Vine took no additional precautionary measures to prevent the spread of illness, allowing the teacher to return to work, where she was in close contact with children, including M.M.

20. Upon information and belief, Defendant required no testing of the infected employee and took no action to improve the sanitation of the daycare facility after learning of the employee's illness.

21. Upon information and belief, multiple children being cared for by The Learning Vine had loose diapers/loose stools during the week of May 10, 2015, including M.M..

22. Upon information and belief, it was not until May 18, 2015 that the South Carolina Department of Health and Environmental Control (DHEC) was notified that a teacher at The Learning Vine daycare center was sickened with an *E. coli* infection.

23. Although The Learning Vine was by this time aware of the nature and extent of the teacher's *E. coli* infection, Defendant failed to notify parents of children in its daycare that one of its employees was infected with *E. coli O157:H7*.

### **M.M.'s *E. coli* Infection and Medical Treatment**

28. Starting on or about May 10, 2015, M.M. started having loose stools on and off, for about two weeks.

29. On May 26, 2015, M.M. was crying with stomach pains, cramping and severe diarrhea, including streaks of blood in his stool.

30. Because of his worsening condition, M.M.'s parents took him to his primary care physician, but after M.M. was sent home without further treatment, they took him to the Emergency Room at Self Regional Healthcare in Greenwood, South Carolina.

31. Medical providers in the Emergency Department noted hemorrhagic diarrhea and performed diagnostic tests before admitting M.M. to the general pediatrics floor .

32. On May 27, 2015, M.M. was transferred to Greenville Children's Hospital.

33. However, M.M.'s condition continued to decline and, as his kidneys were shutting down, he was diagnosed with HUS and admitted to the Pediatric Intensive Care Unit, where he was set up on dialysis and a ventilator.

34. Unfortunately, however, all attempts to save him were unsuccessful, and M.M. died on May 31, 2015 as a result of *E. coli*-induced HUS.

### **South Carolina DHEC Findings**

35. On June 7, 2015, DHEC and The Learning Vine entered into a public health consent agreement to temporarily close the daycare facility to limit the possibility of further spread of Shiga toxin-producing *E. coli* infection.

36. On June 26, 2015, DHEC reported that there were fourteen (14) confirmed cases of Shiga toxin producing *E. coli* (STEC) in Greenwood County, all of which involved individuals connected to The Learning Vine childcare facility.

### **M.M.'s *E. coli* Infection and Medical Treatment**

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36. On June 26, 2015, DHEC reported that there were fourteen (14) confirmed cases of Shiga toxin producing *E. coli* (STEC) in Greenwood County, all of which involved individuals connected to The Learning Vine childcare facility.

37. Upon information and belief, twelve (12) of the samples from the fourteen confirmed cases underwent complete strain identification and had a matching pattern, including M.M.'s case. This genetic link indicated all of the twelve (12) cases had the same original source.

38. DHEC concluded that The Learning Vine daycare facility was the source of the illnesses and that the "staggered onsets of illness suggest[s] person-to-person transmission rather than exposure to a single source, such as food."

### **III.**

#### **FIRST CAUSE OF ACTION – NEGLIGENCE/NEGLIGENCE PER SE**

39. Plaintiff realleges all previous paragraphs as though fully incorporated herein.

40. The Learning Vine owed certain duties to the families of the children whose care it was entrusted with, including M.M. and his family.

41. The State of South Carolina imposes health and sanitization standards on private daycare facilities, including The Learning Vine, in order to protect the health, safety and well-being of children in such facilities. See S.C. Code Regs. 114-500.

42. Defendant owed Plaintiff and M.M. duties (a) to exercise reasonable care in operating The Learning Vine daycare facility, and (b) to abide by all Department of Social Services regulations regarding the operating and maintaining of a daycare facility.

43. Despite these duties, Defendant The Learning Vine, acting through its agents, servants and/or employees, failed to ensure facility compliance with the South Carolina Department of Social Services Regulations for the Licensing of Child Care Centers, specifically Regulations 114-500, 114-503, 114-505.

44. These regulations were adopted to protect the class of individuals in daycare settings such as M.M., and define the standard of conduct required of Defendant.

45. Pursuant to these regulations, daycare facilities are required to ensure that staff members who fall ill follow appropriate protocol to ensure good health and that they are not putting the children in their care at risk before returning to work.

46. The pertinent South Carolina daycare facility licensing regulations (found at S.C. Code Regs. 114-505) require as follows:

- (2) **No person who is known to be afflicted with any disease in a communicable form, or who is a known carrier of such a disease ... shall work in any capacity in a child care center in which there is likelihood of such person transmitting disease or infection to other individuals.**
- (3) **Any staff member . . . who, upon examination or as a result of tests, shows a condition that could be detrimental to the children or staff, or which would prevent satisfactory performance of duties, shall not continue work at the child care center until the healthcare provider indicates that the condition no longer presents a threat to children or staff.**
- (4) Staff persons shall wash their hands with soap and warm running water upon arrival at the center, before preparing or serving food, before assisting a child with eating, after assisting a child with toileting or diapering, before and after toileting, after administering medication, after cleaning, after assisting with wiping noses, after contact with body fluids, after contact with animals and after using cleaning materials. Hands shall be washed even if gloves are worn to perform these tasks.
- (5) **Staff shall be excluded when they exhibit the conditions listed in the SC Department of Health and Environmental Control Exclusion Policy, pursuant to Section 44-1-110, 44-1-140, and 44-29-10 of the South Carolina Code Ann (2002).**

S.C. Code Regs. 114-505 (emphasis added).

47. Additionally, under S.C. Code Regs. 114-503 of the applicable regulations, The Learning Vine had a duty to immediately report to the parents of all of the children at its daycare facility that a staff member was ill with E. coli.



48. Pursuant to S.C. Code Regs. 114-505 and 114-503, whenever a student or staff member at a daycare facility has *E. coli*, the student or staff member is required to stay out of the facility until the diarrhea stops and lab tests taken over 24 hours apart test negative for *E. coli* 0157:H7.

49. While M.M. was under the care of The Learning Vine, Defendant violated the duties owed to M.M. and his family. The result of this negligence was that M.M. contracted an *E. coli* infection which led to his death.

50. Defendant's conduct constitutes a negligent breach of the duties owed to M.M. and his family in one or more of the following ways:

- a. failing to properly follow DSS regulations and guidelines;
- b. failing to maintain a sanitary environment at The Learning Vine daycare facility, including avoidance of *E. coli* bacteria;
- c. failing to immediately notify parents and families of all of the children who were under the care and supervision of The Learning Vine of a staff member's *E. coli* infection and illness symptoms;
- d. failing to react promptly to an obvious emergency;
- e. failing to prevent a staff member with *E. coli* from returning to work in the daycare facility before proper testing, notification, and training procedures were put in place;
- f. failing to disclose its knowledge of the *E.coli* outbreak at The Learning Vine;  
and
- g. in such other ways as will become evident through discovery.

51. Each of these acts and/or omissions singularly or in combination with others constitutes a breach of Defendant's duty of care, which proximately caused M.M.'s sickness and eventual death.

52. The harm that befell M.M. while under the care of Defendant was the type of harm which the above-referenced statutes, rules and regulations are designed to prevent.

53. Consequently, the acts and/or omissions of Defendant violated the above-references regulations and statutes enacted for the protection of children, specifically M.M., which constitutes negligence and negligence per se.

54. All of the above-referenced acts and/or omissions are in violation of the common laws, regulations and statutes of the State of South Carolina and Defendant's duty of care to Plaintiff's decedent.

55. As a direct and proximate result of the negligence and departure from the professional standards of care by agents and employees of the Defendant, which directly and proximately caused the death of M.M., the decedent's surviving next-of-kin have suffered and will in the future suffer the loss of decedent's love, society, companionship, affection, services, and support.

#### IV.

#### **SECOND CAUSE OF ACTION - SURVIVAL**

56. Plaintiff realleges all previous paragraphs as though fully incorporated herein.

57. This cause of action arises under Section 15-5-90 of the 1976 Code of Laws of South Carolina, as amended, for the recovery of damages sustained by M.M. prior to his death.

58. All of the above-referenced negligent acts and/or omissions are in violation of the common laws, regulations and statutes of the State of South Carolina and Defendant's duty of care to Plaintiff's decedent.

59. As a result of the above-referenced negligent acts, the decedent experienced conscious pain and suffering, personal injuries, trauma and medical expenses for treatment of same.

60. As a direct and proximate result of the above-referenced negligent conduct of Defendant, Decedent suffered serious bodily injury, pain and mental anguish prior to his death; further, as a direct and proximate result thereof, he died shortly after on May 31, 2015.

V.

**THIRD CAUSE OF ACTION – WRONGFUL DEATH**

61. Plaintiff realleges all previous paragraphs as though fully incorporated herein.

62. This cause of action arises under Section 15-51-10 et seq. of the 1976 Code of Laws of South Carolina, for the designated wrongful death beneficiaries, Plaintiff, the beneficiaries of the Estate of M.M., deceased minor, as provided by the rules of intestacy and the Laws of South Carolina.

63. At the time of his death, M.M. was survived by his parents and his siblings.

64. As a result of the above-referenced negligent acts of Defendant, M.M. experienced conscious pain and suffering, trauma and wrongful death.

65. As a result of the negligence of Defendant The Learning Vine, which directly and proximately caused the death of M.M., the decedent's surviving next-of-kin have suffered and will in the future suffer the loss of decedent's love, society, companionship, affection, services, and support.

**VI.**

**JURY DEMAND**

66. Plaintiff demands a jury trial in this matter.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays:

67. That the court award Plaintiff judgment against Defendants in such sums as shall be determined to fully and fairly compensate Plaintiff for all general, special, incidental and consequential damages incurred, or to be incurred, by Plaintiff as the direct and proximate result of the acts and omissions of Defendants, including:

- a. Medical expenses incurred, including hospital, doctors, nurses, drugs and related bills;
- b. Conscious pain and suffering for the period preceding death;
- c. Fright, grief, mental distress and mental anguish preceding death;
- d. Funeral expenses and related costs following death; and

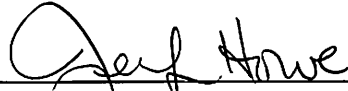
68. That the court award Plaintiff costs, disbursements, and reasonable attorneys' fees incurred herein;

69. That the court allow Plaintiff the opportunity to amend or modify the provisions of this Complaint, as necessary or appropriate after additional or further discovery is completed in this matter, and after all appropriate parties have been served;

70. That the Court award such other and further equitable relief as it deems necessary and proper in the circumstances.

SIGNED AND DATED this 10 day of August, 2015.

DEMINT HOWE, P.A.



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