

CAUSE NO. DC-20-01994

MARLENE BAKER,

Plaintiff,

vs.

CITY OF RICHARDSON,

Defendant.

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IN THE DISTRICT COURT

134TH JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Marlene Baker and files this her Original Petition complaining of Defendant City of Richardson, and in support thereof would respectfully show the Court as follows:

I.
DISCOVERY

1. Plaintiff elects Discovery Control Level II pursuant to Tex. R. Civ. P. 190.3.

II.
PARTIES

2. Plaintiff Marlene Baker is an individual currently residing in Dallas County, Texas.
3. Defendant Richardson Fire Department, City of Richardson is a municipality and Texas governmental entity, situated in Dallas County, Texas with its headquarters located at 300 North Greenville, Richardson, Texas 75081. The City of Richardson may be served by serving its City Secretary, Ms. Aimee Nemer, City Secretary, City of Richardson, 411 West Arapaho Road, Richardson, Texas 75080-4551.

III.
JURISDICTION AND VENUE

4. The Court has jurisdiction over Defendant City of Richardson because it is a

municipality in the State of Texas. The Court has jurisdiction over the controversy because the damages are within the jurisdictional limits of the Court. This is a claim brought under the Texas Tort Claims Act (TTCA), Texas Civil Practice & Remedies Code chapter 101. The Court has jurisdiction over this claim because the TTCA waives a defendant's governmental immunity for claims involving personal injury, death, or property damage caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable under Texas law. Tex. Civ. Prac. & Rem. Code § 101.021(2). The Court has jurisdiction over this claim because the TTCA does not apply if the governmental function is an act or acts of conscious indifference or reckless disregard for the safety of others. Tex. Civ. Prac. & Rem. Code § 101.055. The TTCA does not apply because the actions involve violations of statutes or codes including at least Tex. Civ. Prac. & Rem. Code § 101.062; Tex. Health & Safety Code §773.001 et seq, §773.050, §773.061, §773.063; and Chapter 74 of the Tex. Civ. Prac. & Rem. Code.

5. Venue is proper in Dallas County, Texas. All or a substantial part of the events giving rise to the claims occurred in Dallas County, Texas as described below.

IV.
RULE 47 DISCLOSURE

6. Plaintiff seeks monetary relief of over \$200,000.00 but not more than \$1,000,000.00.

V.
TEXAS CIVIL PRACTICES & REMEDIES §74.051 NOTICE

7. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 6 herein as if set forth in full herein.

8. Defendant is a health care provider within the meaning of Texas Civil Practices & Remedies Code § 74.001(a)(8); Tex. Health & Safety Code 773.003(10), (11) & (12).

9. Plaintiff has fully complied with the notice provision of Chapter 74 of the Texas Civil Practice and Remedies Code. Plaintiff has given proper notice pursuant to Chapter 74 of the Texas Civil Practice to Remedies Code to Defendant. Plaintiff gave written notice of her Medical Liability Claim by Certified Mail, Return Receipt Requested to the named health care provider on October 17, 2019 or at least sixty (60) days before filing the suit based upon a health care liability claim. Tex. Civ. Prac. & Rem. Code §74.051. The notices included authorization forms for release of protected health care information. Tex. Civ. Prac. & Rem. Code §74.052.

VI.
COMPLIANCE WITH THE CITY OF RICHARDSON CHARTER ARTICLE SECTION
17.02 NOTICE OF DAMAGE OR INJURY AND TEXAS TORT CLAIMS ACT 101.101
ET SEQ.

10. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 9 herein as if set forth in full herein.

11. Plaintiff has fully complied with the City of Richardson Charter Article Section 17.02 by providing notice of damage or injury to Defendant City of Richardson. On September 17, 2019 Plaintiff gave notice to the City of Richardson via Certified Mail, Return Receipt Request with regard to Ms. Baker's injuries sustained on July 13, 2019.

12. This notice was timely in that it was served less than six (6) months since the date of the incident.

13. The notice specifically described where and how the exact injury, death or property damage occurred and the full extent thereof, together with the amount of damages claimed or asserted.

VII.
FACTS

14. On July 13, 2019, Ms. Baker fell in her home at 1106 Huntington Drive,

Richardson, Texas while walking from the garage through her laundry room in route to her living room.

15. Ms. Baker called out to her husband who was unable to assist her to get up.

16. The Richardson Fire Department EMS was dispatched to Marlene Baker's home at 1106 Huntington Drive, Richardson, Texas 75081 after she suffered the fall in her home.

17. Timothy E. Black and Ian Robert SanFilippo were the EMS paramedics who arrived at the location.

18. EMS/firemen Timothy E. Black and Ian Robert SanFilippo assessed and treated Ms. Baker and then placed her on a gurney for transport to the ambulance parked outside her home for transportation to Medical City Plano.

19. Ms. Baker was strapped to the gurney for transporting.

20. As EMS/firemen Black and Sanfilippo wheeled the gurney outside to load Ms. Baker into the ambulance, the gurney flipped over and crashed to the ground with Ms. Baker still strapped onto the gurney.

21. Ms. Baker landed flat on her face on the pavement with the gurney still strapped to her back.

22. Ms. Baker experienced immediate pain on her left side which sustained the greatest impact when the gurney crashed.

23. Ms. Baker immediately felt intense pain in her left shoulder and her face and head. Ms. Baker also had bruises, scrapes and contusions on her face, arms, and hands and a new hematoma on the left side of her forehead, and head injuries as a result of the gurney flipping over.

24. The pain from the crash was immediate and severe. Removing the gurney from Ms. Baker's back, righting the gurney and then placing Ms. Baker back on the gurney exacerbated

that pain and trauma. In route to Medical City Plano, medications were administered by the EMS/firemen but did not resolve the pain.

25. Upon arrival and Medical City Plano, Ms. Baker was diagnosed with a complex fracture of the left shoulder that required surgery and physical therapy. She also sustained a broken rib, cuts that required suture, and a concussion.

26. City of Richardson EMS/firemen Timothy E. Black and Ian Robert SanFilippo failed to immediately report the gurney crash and resulting injuries to Ms. Baker to their superiors and waited three (3) days to modify their Run Report with the facts of the crash.

27. As a result of the injuries sustained, Ms. Baker is in a great deal of pain, has lost significant motion in her left shoulder that likely will not return, and cannot perform basic household tasks.

VIII. **NEGLIGENCE**

28. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 27 herein as if set forth in full herein.

29. The City of Richardson's EMS/firemen are health care providers within the meaning of Texas Civil Practices & Remedies Code § 74.001(a)(13).

30. Defendant had a duty of care to Marlene Baker. Defendant breached its duty of care to Marlene Baker because the duty of care did not conform to and fell below the required standard of care and violated Chapter 74 of the Texas Civ. Prac. & Rem. Code.; The TTCA does not apply because the actions involve violations of statutes or codes including at least Tex. Civ. Prac. & Rem. Code §101.055, §101.062; Tex. Health & Safety Code §773.001 et seq, §773.050, §773.061, §773.063.

31. Defendant was negligent, willfully and wantonly negligent, and was consciously indifferent and recklessly disregarded the safety of Ms. Marlene Baker. Such negligence and breach of the duty of care proximately caused Marlene Baker's debilitating injuries. Defendant's duty of care, in the care and treatment of Marlene Baker, fell below the standard of care and was negligent in the following:

- a. in failing to properly transport Marlene Baker;
- b. in failing to be aware of the situational surroundings;
- c. in failing to keep a proper lookout for Plaintiff's safety that would have been maintained by a person of ordinary prudence under the same or similar circumstances;
- d. in failing to give attention to situational conditions for transportation of the gurney containing Marlene Baker;
- e. in failing to operate the gurney in a safe manner as a person using ordinary prudence would have done;
- f. in failing to follow the manufacturer of the gurney's guidelines and protocols for transporting patients;
- g. in failing to follow the City of Richardson fire department's protocol and policies for transporting patients on a gurney;
- h. in failing to follow the standard training and curriculum for EMS and paramedics and the associated protocols and policies for transporting patients on a gurney;
- i. in failing to follow the standard training required to obtain licensure in the State of Texas;
- j. in failing to maintain control of the gurney during transportation;
- k. in failing to extract Ms. Baker from the gurney, then turning the gurney upright and replacing Ms. Baker on the gurney without causing further pain and trauma; and
- l. in failing to safely transport Ms. Baker.

32. Defendant owed Ms. Baker a duty to act according to the applicable standard of care and practice for transporting a patient on a gurney to the waiting ambulance. Defendant

breached its duties to Plaintiff Marlene Baker who suffered injury and damages, and within a reasonably medical probability will continue to suffer injury and damage in the future. The Defendant's breach proximately caused her injury.

33. Defendant's negligent transportation in a consciously indifferent and reckless manner was unsafe and in reckless disregard for the safe transportation of Ms. Baker on the gurney from her home to the waiting ambulance. The resulting crash of the gurney was the cause in fact of Ms. Baker's injuries and it was foreseeable that Ms. Baker would sustain serious injury resulting from the crash and flipping over of the gurney. The above conduct constituted medical negligence and a severe deviation from the standard of medical care and the applicable laws, statutes, rules and regulations regarding safe transportation of patients and each act was a proximate cause of the injuries and damages suffered by Plaintiff.

IX.
VIOLATIONS OF THE TEXAS TORT CLAIMS ACT: RESPONDENT SUPERIOR

34. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 33 herein as if set forth in full herein.

35. Pursuant to the Texas Torts Claim Act, the City of Richardson may be held liable for damages if it is negligent in performing certain governmental functions that the municipality has the power to carry out under Texas law including police and fire protection. Tex. Civ. Prac. & Rem. Code §101.021; §101.0215(a)(1).

36. At all times herein, Timothy Black and Ian Sanfilippo were EMS/firemen employed by the City of Richardson Fire Department.

37. Defendant City of Richardson may be held to answer in a court of law for the events and occurrence just described above because the Plaintiff's claims assert that employees of the Defendant City of Richardson were negligent and fell below the reasonable standard of care and

constitute medical negligence, conscious indifference and reckless acts, and willful and wanton negligence, such that sovereign immunity is waived under the Texas Tort Claims Act. Tex. Civ. Prac. & Rem. Code §101.021(2); §101.0215(a)(1); Tex. Civ. Prac. & Rem. Code § 101.055; Tex. Civ. Prac. & Rem. Code § 101.062; Tex. Health & Safety Code §773.050, 7§74.061, §773.063; and Chapter 74 of the Tex. Civ. Prac. & Rem. Code. Defendant City of Richardson may be held liable for violations of Chapter 773 of the Texas Health & Safety Code, Chapter 157 of the Texas Administration Code, and violations of its own Ordinances to provide for the safety and welfare of its citizens.

X.
DAMAGES

38. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 37 herein as if set forth in full herein.

39. As a further result of the Defendant's negligence, Marlene Baker has suffered great physical and mental pain and anguish, and in all reasonable probability will continue to suffer in this manner for a long time into the future, if not for the balance of her natural life. At the time of the incident made the basis of this action, the Plaintiff was in relatively good health.

40. As a result of the nature and consequences of Defendant's actions, Marlene Baker suffered severe physical pain, had to undergo surgery, and was disfigured.

41. As a result of the nature and consequences of Defendant's actions, Marlene Baker suffered extreme anguish, excruciating physical and mental pain in the past and in the future; disability and impairment in the future and disfigurement.

42. As a result of nature and consequences of Defendant's actions, Marlene Baker has incurred medical expenses, and continues to incur these expenses and will likely continue to incur these expenses in the future.

43. Ms. Baker seeks damages against the City of Richardson, a “municipality,” pursuant to Texas Civil Practices and Remedies Code §101.023(c) and/or (d) for medical, physician, surgeon and hospital costs, physical therapy costs, and out-of-pocket expenses incurred to include reimbursement for services she could not and cannot perform due to her serious injury and pain and suffering both past and future, disfigurement, disability and impairment.

XI.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff asks for judgment against Defendant, the damages set forth above, including actual damages, costs of suit, pre-judgment interest and such other and further relief, whether at law or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

THE FEIN LAW FIRM, P.C.



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