

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON) IN THE HAMILTON SUPERIOR COURT 1
 CAUSE NO.: 29D01-1811-CT-011126

E.W., a minor, by and through her parents)
and natural guardians, CORY WHISTLER)
and JULIA WHISTLER; and)
CORY WHISTLER and JULIA)
WHISTLER, individually,)

Plaintiffs,)

v.)

KEVIN MOORE and SARAH MOORE)

Defendants.)

**DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT FOR DAMAGES,
AFFIRMATIVE DEFENSES, AND REQUEST FOR JURY TRIAL**

Come now the Defendants, Kevin and Sarah Moore, by counsel, and for their answer to Plaintiffs' Complaint for Damages, now state as follows:

PARTIES

1. Defendants admit the material allegations contained within rhetorical paragraph 1 of Plaintiffs' Complaint for Damages.
2. Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 2 of Plaintiffs' Complaint for Damages.
3. Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 3 of Plaintiffs' Complaint for Damages.
4. Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 4 of Plaintiffs' Complaint for Damages.
5. Defendants admit the material allegations contained in rhetorical paragraph 5 of Plaintiffs' Complaint for Damages.

6. Defendants deny that Sarah Moore is D.M's natural father. They admit that she was his guardian.

PREFERRED VENUE & JURISDICTION

7. Defendants admit the allegations contained in rhetorical paragraph 7 of Plaintiffs' Complaint for Damages.

8. Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 8 of Plaintiffs' Complaint for Damages.

9. Defendants admit the material allegations contained in rhetorical paragraph 9 of Plaintiffs' Complaint for Damages.

10. Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 10 of Plaintiffs' Complaint for Damages.

11. Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 11 of Plaintiffs' Complaint for Damages.

UNDERLYING FACTS

May 25, 2018

12. Defendants were not personally present at the time of the alleged events, and are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 12 of Plaintiffs' Complaint for Damages.

13. Defendants were not personally present at the time of the alleged events, and are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 13 of Plaintiffs' Complaint for Damages.

14. Defendants admit the material allegations contained in rhetorical paragraph 14 of Plaintiffs' Complaint for Damages.

15. Defendants were not personally present at the time of the alleged events, and are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 15 of Plaintiffs' Complaint for Damages.

16. Defendants were not personally present at the time of the alleged events, and are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 16 of Plaintiffs' Complaint for Damages.

17. Defendants were not personally present at the time of the alleged events, and are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 17 of Plaintiffs' Complaint for Damages.

18. Defendants were not personally present at the time of the alleged events, and are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 18 of Plaintiffs' Complaint for Damages.

19. Defendants were not personally present at the time of the alleged events, and are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 19 of Plaintiffs' Complaint for Damages.

20. Defendants were not personally present at the time of the alleged events, and are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 20 of Plaintiffs' Complaint for Damages.

21. Defendants were not personally present at the time of the alleged events, and are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 21 of Plaintiffs' Complaint for Damages.

22. Defendants were not personally present at the time of the alleged events, and are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 22 of Plaintiffs' Complaint for Damages.

23. Defendants were not personally present at the time of the alleged events, and are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 23 of Plaintiffs' Complaint for Damages.

24. Defendants were not personally present at the time of the alleged events, and are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 24 of Plaintiffs' Complaint for Damages.

25. Defendants were not personally present at the time of the alleged events, and are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 25 of Plaintiffs' Complaint for Damages.

26. Defendants were not personally present at the time of the alleged events, and are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 26 of Plaintiffs' Complaint for Damages.

27. Defendants were not personally present at the time of the alleged events, and are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 27 of Plaintiffs' Complaint for Damages.

28. Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 28 of Plaintiffs' Complaint for Damages.

29. Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 29 of Plaintiffs' Complaint for Damages.

30. Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 30 of Plaintiffs' Complaint for Damages.

Events Leading Up to May 25, 2018

31. Defendants admit that D.M. lived with his parents, Keven and Sarah Moore, in their Noblesville, Indiana home prior to May 25, 2018. The Defendants were not personally present at the time of the alleged events, and are otherwise without knowledge or information sufficient to admit or deny the remaining allegations contained in rhetorical paragraph 31 of Plaintiffs' Complaint for Damages.

32. As worded, the items and materials referenced in Plaintiffs' rhetorical paragraph 32 are not described with sufficient specificity. Accordingly, Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 32 of Plaintiffs' Complaint for Damages.

33. The items and materials referenced in Plaintiffs' rhetorical paragraph 33 are not described with sufficient specificity. Accordingly, Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 33 of Plaintiffs' Complaint for Damages.

34. Defendants admit the material allegations contained in rhetorical paragraph 34 of Plaintiffs' Complaint for Damages.

35. Defendants admit the material allegations contained in rhetorical paragraph 35 of Plaintiffs' Complaint for Damages.

36. Defendants deny the material allegations contained in rhetorical paragraph 36 of Plaintiffs' Complaint for Damages.

37. Defendants deny the material allegations contained in rhetorical paragraph 37 of Plaintiffs' Complaint for Damages.

38. Defendants deny the material allegations contained in rhetorical paragraph 38 of Plaintiffs' Complaint for Damages.

39. Defendants deny the material allegations contained in rhetorical paragraph 39 of Plaintiffs' Complaint for Damages.

40. Defendants deny the material allegations contained in rhetorical paragraph 40 of Plaintiffs' Complaint for Damages.

41. Defendants deny the material allegations contained in rhetorical paragraph 41 of Plaintiffs' Complaint for Damages.

42. Defendants deny the material allegations contained in rhetorical paragraph 42 of Plaintiffs' Complaint for Damages.

43. Defendants deny the material allegations contained in rhetorical paragraph 43 of Plaintiffs' Complaint for Damages.

44. Defendants deny the material allegations contained in rhetorical paragraph 44 of Plaintiffs' Complaint for Damages.

45. Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 45 of Plaintiffs' Complaint for Damages.

46. Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 46 of Plaintiffs' Complaint for Damages.

47. Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 47 of Plaintiffs' Complaint for Damages.

48. Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 48 of Plaintiffs' Complaint for Damages.

49. Defendants deny the material allegations contained in rhetorical paragraph 49 of Plaintiffs' Complaint for Damages.

50. Defendants deny any and all allegations that the Defendants did not act reasonably with regarding to D.M. The Defendants deny all remaining allegations contained in rhetorical paragraph 50 of Plaintiffs' Complaint for Damages.

Further Factual Allegations

51. Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 51 of Plaintiffs' Complaint for Damages.

52. Defendants deny that the Indiana Department of Corrections has wardship over D.M. until he reaches eighteen (18) years of age. The Defendants admit the remaining allegations contained in rhetorical paragraph 52 of Plaintiffs' Complaint for Damages.

53. Defendants admit the material allegations contained in rhetorical paragraph 53 of Plaintiffs' Complaint for Damages.

54. The alleged conduct of D.M. as referenced in the Plaintiffs' Complaint for Damages was not at the direction or with the consent of either Kevin Moore or Sarah Moore. Defendants admit the material allegations contained in rhetorical paragraph 54 of Plaintiffs' Complaint for Damages.

55. Defendants admit the material allegations contained in rhetorical paragraph 55 of Plaintiffs' Complaint for Damages.

56. Defendants admit that E.W. was injured. Defendants are without knowledge or information sufficient to admit or deny the remaining allegations contained in rhetorical paragraph 56 of the Plaintiffs' Complaint for Damages.

57. Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 57 of Plaintiffs' Complaint for Damages.

58. Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 58 of Plaintiffs' Complaint for Damages.

Count I: Negligence

59. Defendants are without knowledge or information sufficient to admit or deny the material allegations contained in rhetorical paragraph 59 of Plaintiffs' Complaint for Damages.

60. Defendants deny the material allegations contained in rhetorical paragraph 60 of Plaintiffs' Complaint for Damages.

61. Defendants deny the material allegations contained in rhetorical paragraph 61 of Plaintiffs' Complaint for Damages.

62. Defendants deny the material allegations contained in rhetorical paragraph 62 of Plaintiffs' Complaint for Damages.

63. Defendants deny the material allegations contained in rhetorical paragraph 63 of Plaintiffs' Complaint for Damages.

64. Defendants deny the material allegations contained in rhetorical paragraph 64 of Plaintiffs' Complaint for Damages.

65. Defendants deny the material allegations contained in rhetorical paragraph 65 of Plaintiffs' Complaint for Damages.

66. Defendants deny the material allegations contained in rhetorical paragraph 66 of Plaintiffs' Complaint for Damages.

Count II: Strict Liability for Actions of D.M.

67. Indiana Code § 34-31-4-1 speaks for itself. Defendants are without knowledge or information sufficient to admit or deny as to the rest.

68. Indiana Code § 34-31-4-1 speaks for itself. Defendants are without knowledge or information sufficient to admit or deny as to the rest.

69. Defendants admit the material allegations contained in rhetorical paragraph 69 of Plaintiffs' Complaint for Damages.

70. Defendants admit the material allegations contained in rhetorical paragraph 70 of Plaintiffs' Complaint for Damages.

71. Defendants admit the material allegations contained in rhetorical paragraph 71 of Plaintiffs' Complaint for Damages.

WHEREFORE, Defendants Kevin Moore and Sarah Moore, by counsel, pray that Plaintiffs take nothing by way of their Complaint for Damages and that judgment be rendered in favor of the Defendants, for costs of this action, and for all other just and proper relief in the premises. In the event that the trier of fact determines that the Plaintiffs are entitled to recover compensatory damages, Defendants pray that those damages be reduced to the fault of others as provided by Indiana Law.

Respectfully submitted,

/s/Christopher D. Cody

Christopher D. Cody, Atty. No.: 24127-32
Theodore J. Blanford, Atty. No.: 4177-39
Hume Smith Geddes Green & Simmons, LLP
54 Monument Circle, 4th Floor
Indianapolis, Indiana 46204
PH: 317/632-4402 FAX: 317/632-5595
ccody@humesmith.com
tblanford@humesmith.com
*Attorney for Defendants Kevin Moore
and Sarah Moore*

JURY DEMAND

Defendants Kevin Moore and Sarah Moore, by counsel, respectfully request a trial by jury.

Respectfully submitted,

/s/Christopher D. Cody

Christopher D. Cody, Atty. No.: 24127-32
Theodore J. Blanford, Atty. No.: 4177-39
Hume Smith Geddes Green & Simmons, LLP
54 Monument Circle, 4th Floor
Indianapolis, Indiana 46204
PH: 317/632-4402 FAX: 317/632-5595
ccody@humesmith.com
tblanford@humesmith.com
*Attorney for Defendants Kevin Moore
and Sarah Moore*

AFFIRMATIVE DEFENSES

Defendants Kevin Moore and Sarah Moore, by counsel, now offer their affirmative defenses and hereby state as follows:

1. Plaintiffs' damages were caused in whole or in part by the unforeseeable superseding intervening actions of the non-party D.M.

2. Plaintiffs' damages may have been caused in whole or in part by the non-party Noblesville School Cooperation.

3. Plaintiffs have failed to state a claim upon which relief can be granted.

4. Plaintiffs' recovery should be limited in part, or in whole, to the reasonable and necessary and recovery of their medical expenses. .

5. Defendants owed no duty to the Plaintiffs.

6 Defendants are entitled to a set off for any benefits and/or collateral source payments received by the Plaintiffs.

7. Any allegations contained in the Plaintiffs' Complaint for Damages which are not specifically admitted, responded to, controverted, or denied in this Answer are hereby denied.

8. The Defendants reserve the right to amend and supplement answers, including the right to raise additional defenses, affirmative or otherwise, that may develop during the course of this litigation.

9. Plaintiffs have received compensation for Plaintiffs' alleged injuries and damages from non-parties or Defendants other than these Defendants for which these Defendants are entitled to a pro tanto credit. If this credit is not allowed, the Plaintiffs will receive a double recovery for any injuries and damages.

PRAYER

These Defendants pray for the following:

1. Plaintiffs take nothing by their Complaint;
2. That the percentage of fault attributable to each party and non-party be determined;
3. In the event the Plaintiffs prove themselves entitled to any damages, those damages be apportioned among all parties and non-parties which each party or non-party assessed only that amount of damages attributable to its fault in accordance with the Comparative Fault Act;
4. That these Defendants be granted the full amount of any offset or credit to which these Defendants shows it is entitled; and
5. All other just and proper relief.

Respectfully submitted,

/s/Christopher D. Cody

Christopher D. Cody, Atty. No.: 24127-32
Theodore J. Blanford, Atty. No.: 4177-39
Hume Smith Geddes Green & Simmons, LLP
54 Monument Circle, 4th Floor
Indianapolis, Indiana 46204
PH: 317/632-4402 FAX: 317/632-5595
ccody@humesmith.com
tblanford@humesmith.com
*Attorney for Defendants Kevin Moore
and Sarah Moore*

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2019, I electronically filed the foregoing with the Clerk of the Court using the Efiling system which sent notification of such filing to the following:

Eric S. Pavlack
Colin E. Flora
PAVLACK LAW, LLC
50 E. 91st St., Ste. 317
Indianapolis, IN 46240
Eric@PavlackLawFirm.com
Colin@PavlackLawFirm.com

Raeanna C. Spahn
ESKEW LAW, LLC
1 North Meridian Street, Suite 600
Indianapolis, IN 46204
Raeanna@eskewlaw.com

/s/Christopher D. Cody

Christopher D. Cody