

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

RACHEL DEGENHARD, individually, and as administratrix of the estate of SANTINO DEGENHARD, and JASON DEGENHARD)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	
UNITED STATES OF AMERICA)	
)	
Defendant.)	
)	
)	
)	

COMPLAINT

Plaintiffs, Rachel Degenhard, individually, and as Administratrix of the Estate of Santino Degenhard, and Jason Degenhard, by and through their undersigned counsel, for their claims against Defendant United States of America (hereinafter “United States”), pursuant to, and in compliance with, the Federal Tort Claims Act (hereinafter “FTCA”), 28 U.S.C. § 1346(b), 28 U.S.C. §§ 2671-2680, allege and state as follows:

I. Parties, Jurisdiction and Venue

1. Plaintiff Rachel Degenhard is the duly qualified and acting Administratrix of the Estate of Santino Degenhard, deceased, who died March 15, 2012, at Cape Fear Valley Medical Center, in Cumberland County, North Carolina. The events alleged herein, leading up to, and causing the death of, Santino Degenhard took place in Cumberland County, North Carolina.

2. Plaintiff Rachel Degenhard is a citizen and resident of Harnett County, North Carolina and was the natural mother of Santino Degenhard.
3. Plaintiff Jason Degenhard is a citizen and resident of Harnett County, North Carolina and was the natural father of decedent, Santino Degenhard.
4. The United States of America is a sovereign state. Liability for the acts described herein is based on actions of agents, servants, and/or employees of the United States Department of Defense (hereinafter "DoD"), Department of the Army (hereinafter "DoA"), the United States of America, or some other agency thereof, and were at all times material to this action acting within the course and scope of their employment or agency, for which sovereign immunity is waived under the FTCA, 28 U.S.C. §2671.
5. This Court may properly exercise original jurisdiction over the parties and subject matter of this action pursuant to 28 U.S.C. §1346(b)(1), 28 U.S.C. § 1331, and 28 U.S.C. §2674.
6. Venue is properly laid in the Eastern District of North Carolina, Western Division, pursuant to 28 U.S.C. §1402(b). The events and acts complained of and giving rise to this action occurred within Cumberland County in this District.
7. North Carolina substantive law applies to this action pursuant to 28 U.S.C. § 1346.
8. The Plaintiffs have exhausted the administrative requirements set forth in 28 U.S.C. § 2675 having submitted a Standard Form 95, Claim for Damage, Injury, or Death to the United States Department of Defense with acknowledgment of receipt by the Department of the Army, Office of the Staff Judge Advocate, AFZA-JA-B: 2175 Reilly Road, Stop A, Fort Bragg, North Carolina 28310 on December 17, 2012. As

six months have elapsed with no final disposition of this claim it may be deemed denied allowing Plaintiffs to seek resolution of their claims in this Court.

II. Factual Background

9. Decedent, Santino Degenhard was a minor child born October 25, 2011 and was 4 months and 18 days old on March 9, 2012. Upon information and belief, Santino was a healthy, well-developed baby.
10. Plaintiffs Rachel and Jason Degenhard were Santino's natural parents and both are employed as active service members in the United States Army.
11. When Santino was approximately six weeks old he was enrolled in Child Youth Services (hereinafter "CYS") at Pope Child Development Center (hereinafter "Pope CDC").
12. Upon information and belief, Pope CDC is a daycare program owned and operated by the US Army Garrison Fort Bragg and serving military families. It is physically located at 25 Armistead Street on Fort Bragg's military base.
13. Upon information and belief, subsequent to all incidents described herein and material to this action, Pope CDC underwent a change of name and is now known as Eagle Child Development Center. For convenience and clarity it will be referred to as Pope CDC throughout this complaint.
14. Upon information and belief, employees at Pope CDC are non-appropriated fund employees under the control and/or direction of the United States DoD, DoA, United States of America or some other agency thereof.

15. On March 9, 2012, at approximately 5:30 A.M., the Plaintiff, Rachel Degenhard dropped Santino off at Pope CDC for child care and, upon information and belief, the following series of events transpired and were captured on video surveillance:

- i. On March 09, 2012 Rachel Degenhard dropped her then four-month old son, Santino Degenhard, off at Pope CDC at approximately 5:30 A.M. Santino was placed in a bouncy seat at that time. Pope CDC's operating procedures state that no child shall be left in a bouncy seat for longer than 15 minutes at any one time. Santino was left in the seat for nearly 1.5 hours which is a violation of North Carolina Annotated Code (hereinafter "NCAC") 10A NCAC 09.2805(a). At approximately 7:00 A.M., Santino was carried into his assigned classroom by a staff member, Vera Grant, and placed on the floor by one arm, which is a violation of North Carolina General Statute §110-91(10). Ms. Grant then placed Santino face down on a vinyl mat at 7:13 A.M. At 7:16 A.M. Ms. Grant put a loose, soft blanket on the vinyl mat and left Santino face down, in direct violation of Pope CDC's own safe sleep policy requiring him to be placed on his back. Ms. Grant then left Santino alone while she performed non-caregiving functions which included leaving the room on more than one occasion. During this time Ms. Grant failed to provide appropriate supervision for all the children in her care including, and particularly, Santino, which is a violation of 10A NCAC 09.0714(f). During the time that Ms. Grant was not properly supervising four-month old Santino, he remained face down on the blanket and was noted on video surveillance to be fussing and

trying to lift his head. Ms. Grant did not respond to Santino's fussing, which is a violation of 10A NCAC 09.051 (c)(1). Santino remained face down on the blanket, on the floor. He struggled to lift his face out of the blanket a few more times until he stopped moving completely at 7:24 A.M. At 7:26 A.M., another staff member, Carolyn Hinton, came in and commented to Ms. Grant that she thought Santino was "a stuffed animal" based on his position, face down, on the blanket. Both staff members looked at Santino during this discussion but neither staff member approached or touched him. At 7:30 A.M. yet another staff member, Linda Faircloth, entered the room and also looked at Santino because she too thought his face down position was highly unusual. However, she also failed to approach him or touch him and walked out of the room without checking on him. At 7:32 A.M. Ms. Grant picked Santino up for the first time since putting him on the floor at 7:13 A.M. and carried him to a crib. Upon picking him up and turning his face to the camera he is visibly blue. Ms. Grant carried him across the room and did not notice that he was blue and unmoving until she placed him down in the crib. At this point, Ms. Grant attempted to administer CPR and emergency services were called.

16. EMS arrived to find Santino in cardiac arrest. EMS noted blood coming from Santino's nose and mouth prior to their resuscitation efforts, he was intubated and transferred to Womack Army Medical Center (hereinafter "WAMC").
17. Resuscitation efforts continued upon admission to WAMC.

18. Rachel Degenhard was contacted by Pope CDC employees and told to rush to WAMC. When she arrived at approximately 7:45 A.M., resuscitation efforts were still ongoing.
19. Santino was successfully resuscitated after approximately 20 – 25 minutes of CPR. At WAMC initial arterial blood gas revealed a pH of 6.7 which is indicative of a lack of oxygen for an extended period.
20. After treating Santino for approximately one hour, WAMC transferred him to the Pediatric Intensive Care Unit (hereinafter “PICU”) at Cape Fear Valley Medical Center (hereinafter “CFVMC”) where he was admitted March 9, 2012 at 9:24 A.M.
21. Upon admission to CFVMC PICU, Santino was tachycardic and hypertensive, he was breathing spontaneously over the intubation in an agonal kussmaul pattern that is indicative of brain injury and he was comatose. His admitting diagnoses included cardiopulmonary arrest and hypoxic ischemic encephalopathy. His initial exam and unremarkable medical history led the attending physician to suspect either an inflicted injury or accidental suffocation.
22. A central venous catheter was placed in the right subclavian vein and a peripheral arterial line was placed in Santino’s right foot dorsal artery. A lumbar puncture was performed.
23. An MRI of Santino’s brain showed anoxic injury to deep grey nuclei. A neurological exam was significant for absence of brain cranial nerve function.
24. A head CT showed significant swelling of the brain and an EEG revealed encephalopathic pattern.

25. Santino's treating physicians induced hypothermia for the first 48 hours of his admission in an attempt to protect his brain from further damage.
26. On March 10, 2012, Santino was still in intensive care. Dr. Sharon Cooper informed Rachel and Jason Degenhard that if Santino survived it would be highly unlikely that he would have a normal neurologic outcome, at best he would have significant neurological impairment.
27. By March 12, 2012, chest x-rays revealed that Santino had developed pneumonia since his admission to CFVMC.
28. On March 14, 2012, after five days of continuous monitoring and full neurological testing, Santino's treating physicians determined that he would not recover neurological function and would either be in a persistent vegetative state or unable to survive without artificial support.
29. Organ donation was discussed with Rachel and Jason.
30. After determining that Santino's condition was irreversible, at the recommendation of the treating physicians, Rachel and Jason consented to withdrawing artificial support.
31. Santino was extubated at 11:44 P.M. on March 14, 2013.
32. Santino was pronounced dead at 12:20 A.M. on March 15, 2013.
33. Santino's viable organs were donated by Rachel and Jason.
34. The Chief Medical Examiner determined Santino's cause of death to be positional asphyxiation.

35. The North Carolina Division of Child Development for the Department of Health and Human Services completed an investigation into this incident and cited Pope CDC with six separate North Carolina statute violations.
36. The Criminal Investigation Division for the Department of the Army completed an investigation into this incident and found additional violations of Army Regulations 608-10, para. 5-17(c) and 5-17(c)(4).
37. Ms. Grant was placed on the North Carolina Responsible Individuals list in accordance with North Carolina Gen. Stat. §7B-311 requiring the Department of Health and Human Services to establish a list of individuals who are responsible for the serious neglect of a minor.
38. The North Carolina Division of Child Development for the Department of Health and Human Services notified US Army Garrison Fort Bragg of its intent to revoke their license to operate Pope CDC based on the negligence substantiated in their investigation of this incident.
39. Prior to Santino's birth, Plaintiffs Rachel and Jason Degenhard had spent several years trying to conceive a child together. To that end, Rachel underwent a reversal of a tubal ligation before being able to conceive Santino.
40. Rachel and Jason Degenhard still visit their son's gravesite regularly, Rachel reads to him. On October 25, 2012, they spent the entire day at his grave on what would have been Santino's first birthday.

III. Count One – Wrongful Death

41. Paragraphs 1 through 40 are incorporated by reference as if fully set forth herein.

42. North Carolina Gen. Stat. § 28A-18-2 allows that when the death of an individual is caused by the wrongful act, neglect, or default of another, the personal representative of the decedent may pursue an action to recover damages to include:

- i. Expenses for care, treatment and hospitalization incident to the injury causing death;
- ii. Compensation for pain and suffering of the decedent;
- iii. The reasonable funeral expenses of the decedent;
- iv. The present monetary value of the decedent to the persons entitled to receive the damages recovered, including *but not limited to* compensation for the loss of the reasonably expected;
 1. Services, protection, care and assistance of the decedent to the persons entitled to the damages recovered;
 2. Society, companionship, comfort, guidance, and kindly offices of the decedent to the persons entitled to the damages recovered.

43. The United States of America, by and through its employees, agents and/or servants, owed a duty of care to decedent, Santino Degenhard. They undertook his care and safekeeping and held themselves out to be trained in child care and safety. The actions, and inactions, taken by employee Vera Grant, among others, and the lack of attention, training, and supervision provided by management on every level breached the duty of care owed to Santino Degenhard and this breach led directly to his death.

44. The United States of America, by and through its employees, was negligent in the following ways including but not limited to:

- i. Violated the following North Carolina statutes;

1. 10A NCAC 09.051(c)(1)
2. 10A NCAC 09.0714(f)
3. 10A NCAC 09.2805(a)
4. 10A NCAC 09.0601(a)
5. NC Gen. Stat. §110-91 (10)
6. NC Gen. Stat. §110-105.2(a)

- ii. Failed to properly supervise the children in their care;
- iii. Failed to properly train staff in their employ;
- iv. Failed to follow established child safe sleeping guidelines;
- v. Failed to follow established child safety guidelines;
- vi. Failed to properly supervise child care staff;
- vii. Violated AR 608-10 para. 5-17(a) and 5-17(c)(4);
- viii. In such further ways as may be established through additional inquiry.

45. As a direct and proximate cause of the negligence of the United States, Santino Degendard received serious, painful, and permanent injuries that ultimately resulted in his death causing the Claimants, Rachel and Jason Degenhard, to incur medical expenses, funeral and burial expenses, as well as the loss of Santino's society, companionship, comfort, and kindly offices.

IV. Count Two – Negligent Infliction of Emotional Distress

46. Paragraphs 1 through 45 are incorporated by reference as if fully set forth herein.

47. The negligent conduct of the United States of America as described hereinabove directly and proximately caused the death of Plaintiffs Rachel and Jason Degenhard's infant son.
48. It is reasonably foreseeable that a negligent failure to properly supervise a four-month-old infant in one's care, and a failure to properly supervise and train staff in age appropriate care for infants, could result in injury and/or death to the child; and that the unexpected and sudden loss of a healthy child due to this negligent and careless behavior would result in extreme emotional distress to that child's parents.
49. Rachel and Jason Degenhard have experienced extreme emotional distress due to the death of their son.
50. It is reasonably foreseeable that Rachel and Jason Degenhard would be unable to conceive another child and that this would compound the distress they feel over the loss of their first son. The Degenhard's to date have been unable to conceive another child together despite medical intervention.
51. As a direct and proximate cause of the negligence of the United States in causing the death of their son, Plaintiffs Rachel Degenhard and Jason Degenhard have suffered extreme emotional distress and mental anguish.

WHEREFORE, Plaintiffs pray the Court for the following relief:

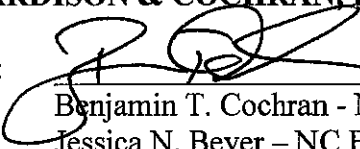
1. Judgment against Defendant for damages in the amount of \$10,000,000.00;
2. Any other relief that the Court deems just and proper.

This the 30th day of September, 2013.

Respectfully Submitted,

HARDISON & COCHRAN, PLLC

By:



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