

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

DENNIS MURPHY, as Personal Representative
for the Wrongful Death Estate of
WAYLON PADILLA, and SHASTA INMAN,
as Guardian Ad Litem for W.P., a minor child,

Plaintiffs,

Case assigned to Ellenwood, Kathleen McGarry

vs.

No.: D-101-CV-2023-02686

THE NEW MEXICO CHILDREN, YOUTH
& FAMILIES DEPARTMENT,
BEHAVIORAL HEALTH SERVICES OF
NEW MEXICO, LLC d/b/a CENTRAL DESERT
BEHAVIORAL HEALTH HOSPITAL,
BEHAVIORAL HEALTH SERVICES, LLC,
FUNDAMENTAL CLINICAL AND OPERATIONAL
SERVICES, LLC, FUNDAMENTAL ADMINISTRATIVE
SERVICES, LLC, HUNT VALLEY HOLDINGS, LLC, and
KELLEY WHITAKER, as Administrator/CEO.

Defendants.

COMPLAINT FOR WRONGFUL DEATH AND PERSONAL INJURIES

Plaintiffs Dennis Murphy, as Personal Representative for the Wrongful Death Estate of Waylon Padilla and Shasta Inman, as Guardian Ad Litem for W.P., a minor child, through their attorneys, MARTINEZ, HART, SANCHEZ & ROMERO, P.C. (F. Michael Hart, Kelly Stout Sanchez & Julio C. Romero) and THE LAW OFFICES OF DAVID HOULISTON (David Houliston), state the following Complaint against Defendants:

THE PARTIES

1. Waylon Padilla was a one-month-old child who was killed as a result of the failures of Defendants when they knew that he was at particular risk of physical harm as a result of his mother's severe postpartum depression and complicating mental health disorders.

2. Plaintiff Dennis Murphy is the court appointed Personal Representative of the Wrongful Death Estate of Waylon Padilla and is a proper party to this case. Mr. Murphy resides in Santa Fe County, New Mexico.

3. Plaintiff Shasta Inman, Esq. is an attorney experienced in the representation of children as a Guardian Ad Litem. There is currently a pending motion to have Ms. Inman appointed as the Guardian Ad Litem for W.P., a minor child pursuant to Rule 1-017(D) NMRA.

4. Defendant New Mexico Children, Youth & Families Department (CYFD) is a department of New Mexico state government which has exclusive authority under New Mexico law both to investigate allegations of abuse and neglect of children by their parents and/or legal guardians and makes decisions regarding the proper placements for children.

5. Defendant Behavioral Health Services of New Mexico, LLC d/b/a Central Desert Behavioral Health Hospital, is a Delaware company engaged in the business of operating, managing, and/or maintaining hospitals and related healthcare facilities, including Central Desert Behavioral Health Hospital. This lawsuit arises out of Defendant Behavioral Health Services of New Mexico, LLC's operation, management, and/or control of Central Desert Behavioral Health Hospital. Defendant Behavioral Health Services of New Mexico, LLC has a registered agent for service of process, Corporation Service Company, 110 E. Broadway Street, Hobbs, New Mexico 88240.

6. Defendant Behavioral Health Services, LLC is a Delaware company engaged in the business of operating, managing and/or maintaining hospitals and related healthcare facilities, including Central Desert Behavioral Health Hospital. This lawsuit arises out of such business conducted by Defendant Behavioral Health Services, LLC in the operation, management and/or control of Central Desert Behavioral Health Hospital. Defendant Behavioral Health Services, LLC

has a registered agent for service of process, Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware, 19808.

7. Defendant Fundamental Clinical and Operational Services, LLC is a Delaware company engaged in the business of operating, managing and/or maintaining hospitals and related healthcare facilities, including Central Desert Behavioral Health Hospital. This lawsuit arises out of such business conducted by Defendant Fundamental Clinical and Operational Services, LLC in the operation, management and/or control of Central Desert Behavioral Health Hospital. Defendant Fundamental Clinical and Operational Services, LLC has a registered agent for service of process, Corporation Service Company, 123 East Marcy Street, Suite 101, Santa Fe, NM 87501.

8. Fundamental Administrative Services, LLC is a Delaware company engaged in the business of operating, managing, and/or maintaining hospitals and related healthcare facilities, including Central Desert Behavioral Health Hospital. This lawsuit arises out of such business conducted by Defendant Fundamental Administrative Services, LLC in the operation, management, and/or control of Central Desert Behavioral Health Hospital. Defendant Fundamental Administrative Services, LLC has a registered agent for service of process, Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware, 19808.

9. Hunt Valley Holdings, LLC is a Delaware company engaged in the business of operating, managing, and/or maintaining hospitals and related healthcare facilities, including Central Desert Behavioral Health Hospital. This lawsuit arises out of such business conducted by Defendant Hunt Valley Holdings, LLC in the operation, management, and/or control of Central Desert Behavioral Health Hospital. Defendant Hunt Valley Holdings, LLC has a registered agent for service of process, Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware, 19808.

10. Defendant Kelley Whitaker is a resident of New Mexico. At all times material to the allegations set forth herein, Defendant Kelley Whitaker was the CEO/Administrator/Director/Operator of Central Desert Behavioral Health Hospital. M

JURISDICTION AND VENUE

11. Proper Notice of this claim was provided to Defendant CYFD pursuant to NMSA 1978, § 41-4-16.

12. The First Judicial District Court of the State of New Mexico has specific and general personal jurisdiction over all Defendants.

13. Venue is proper with this Court pursuant to NMSA 1978, § 41-4-18(B) and NMSA 1978, § 38-3-1(A).

GENERAL ALLEGATIONS

14. CYFD is a governmental agency with statutory and regulatory responsibility to investigate reports of suspected abuse and neglect of children by their biological parents, adoptive parents, guardians, custodians, and for children in the custody of CYFD's Protective Services Department.

15. Through this statutory and regulatory role, CYFD was obligated to investigate the safety of the home where children who are the subjects of reports of suspected abuse and neglect reside.

16. Through this statutory and regulatory role, CYFD was obligated to identify whether the children were safe in the home as a part of an investigation into reports of suspected abuse and neglect.

17. At all times material to the allegations set forth in this lawsuit, CYFD had the authority to remove children from a home where it concluded they were unsafe.

18. At all times material to the allegations set forth in this lawsuit, CYFD had the authority to implement safety plans, safety monitors, and conditions upon the parents to ensure the safety of the children while giving the parents an opportunity to not have their custody taken away.

19. Defendant Behavioral Health Services of New Mexico, LLC d/b/a Central Desert Behavioral Health Hospital, Defendant Behavioral Health Services, LLC, Defendant Fundamental Clinical and Operational Services, LLC, Defendant Fundamental Administrative Services, LLC, Defendant Hunt Valley Holdings, LLC, and Defendant Kelley Whitaker (collectively referred as “the Central Desert Defendants”) operate a private, for-profit behavioral health hospital in Albuquerque, New Mexico called Central Desert Behavioral Health Hospital or “Central Desert”.

20. Central Desert is a facility that provides inpatient psychiatric care for a variety of behavioral health issues, including acute care services relating to anxiety, depression, and bipolar disorder.

21. Waylon Padilla was born on October 12, 2021 to Kiria Milton and Saint Padilla.

22. As a result of an early delivery and not being fully developed yet, Waylon had to be hospitalized in the newborn intensive care unit (NICU) for a period of time following his birth.

23. Waylon’s older brother, W.P., was four (4) years old at the time Waylon was born.

24. On November 8, 2021 Kiria Milton called 911 because she was having persistent thoughts about hurting her children, especially her newborn son, Waylon.

25. Law enforcement arrived in response to the 911 call and Kiria was transported by ambulance to the hospital for psychiatric assessment as a result of the homicidal thoughts she reported.

26. Saint Padilla was not at home and was at work at the time Kiria Milton made the 911 call.

27. At that time, law enforcement made a report to CYFD for the suspected abuse and neglect of Waylon and W.P.

28. Law enforcement was requesting a 48-hour hold for Waylon and W.P.

29. CYFD was able to contact Saint Padilla who returned from his work out of town to pick up Waylon and W.P.

30. CYFD chose not to support law enforcement in placing a 48 hour hold and instead allowed the children to stay with their father while Kiria Milton was assessed at the hospital.

31. With Kiria Milton at the hospital and out of the home, CYFD assessed Waylon and W.P. to be conditionally safe.

32. Even though CYFD knew that Kiria Milton posed a high risk of harm and posed safety threats to the children, CYFD failed to follow its policies, procedures and the standard of care in order to ensure Waylon and W.P.'s safety following Kiria Milton's hospitalization.

33. In addition to the information that CYFD had about Kiria Milton's acute condition and current homicidal expressions, CYFD also had significant information about her from its own files. CYFD knew:

- a. Kiria Milton had six (6) prior CYFD reports and investigations for suspected abuse and neglect.
- b. Kiria Milton had bipolar disorder.
- c. Kiria Milton had previously been alleged to physically abuse one of her other children.
- d. Kiria Milton had previously been alleged to have cursed at one of her other children for not sleeping at night.
- e. There were concerns of Kiria Milton going into rages.

34. Kiria Milton was taken to Presbyterian Hospital where she reported experiencing postpartum depression, having a history of bipolar disorder, anxiety, and depression, and that she had been picturing herself punching her newborn as he continues to cry and her 4 year old nags her.

35. Presbyterian providers identified that she was agitated, uncooperative, and slamming her fist into her palm.

36. At Presbyterian, she underwent a behavioral health assessment. The assessment identified:

- a. Kiria Milton had an “imminent” risk level for homicide;
- b. Kiria Milton was at a high risk for harm to self or others;
- c. Kiria Milton presented as a clear or imminent danger to self or others;
- d. Kiria Milton should be involuntarily admitted for inpatient psychiatric treatment.

37. Presbyterian placed Kiria Milton on a seven (7) day hold for involuntary admission for psychiatric concerns.

38. On November 9, 2021 Kiria Milton was transferred from Presbyterian Hospital to Central Desert for her inpatient psychiatric care.

39. At Central Desert Behavioral Health Hospital, Kiria Milton was projected to stay for a time period of five (5) to seven (7) days as a result of the serious concerns with her psychiatric condition.

40. Also on November 9, 2021, CYFD received another report of suspected abuse and neglect of Waylon and W.P. In that report, CYFD learned much more detailed and specific

information about Kiria Milton's threat of harm to her children as well as the reporter's concern that Saint Padilla was unable to appreciate the gravity of the situation.

41. On November 10, 2021, the Central Desert Defendants again confirmed that Kiria Milton was estimated to stay at Central Desert for five (5) to seven (7) days.

42. On November 11, 2021, the Central Desert Defendants, through their agents and employees, ignored the serious concerns posed by Kiria Milton's mental health condition and released her back home to her young children who she had just days earlier expressed her intent and plan to hurt and kill.

43. The Central Desert Defendants discharged Kiria Milton on November 11, 2021 and sent her home with medications and instructions to schedule an appointment with a therapist.

44. At the time that the Central Desert Defendants discharged Kiria Milton, it knew that she had minimal support systems in place.

45. At the time that the Central Desert Defendants discharged Kiria Milton, it knew that she was a substantial threat to her young children.

46. Saint Padilla continued to stay home from work for the next several days to help Kiria Milton care for the children.

47. On November 15, 2021 Saint Padilla had to return to work as he was the sole financial provider for their family.

48. The same day that Saint Padilla left the home to return to work, Kiria Milton was overcome by her fragile psychiatric condition and killed her newborn child, Waylon Padilla.

COUNT I
Violations of the New Mexico Tort Claims Act – CYFD

49. All previous allegations are incorporated by reference as if fully set forth herein.

50. At all times material to the allegations set forth in this lawsuit, CYFD acted through its employees and agents.

51. At all times material to the allegations set forth in this lawsuit, CYFD's employees and agents were acting in the course and scope of their duties such that CYFD is vicariously liable for their conduct.

52. At all times material to the allegations set forth in this lawsuit, Waylon Padilla and W.P. were children who were the subjects of abuse and neglect investigations and children for whom CYFD had responsibility pursuant to the New Mexico Children's Code and state regulations.

53. Pursuant to the New Mexico Children's Code and state regulations, CYFD had exclusive authority to investigate and determine the safety of the home for Waylon and W.P. upon the reports of suspicions of abuse and neglect.

54. At all times throughout the investigations of reported suspicions of abuse and neglect, CYFD was obligated to ensure that the overriding concern throughout the investigation was the safety of Waylon and W.P.

55. Pursuant to CYFD's statutory and regulatory obligations, CYFD had a responsibility to evaluate, assess, and examine the safety of Waylon and W.P. in their home before making decisions to leave them in the home.

56. At all times, CYFD had a duty and responsibility to enter the home of Waylon and W.P. as a part of the safety assessment and to evaluate the premises.

57. CYFD further had a duty to ensure that not only the physical premises of the home was safe and appropriate, but also that the adults in the home were safe and would protect and care for Waylon and W.P.

58. On November 8, 2021, CYFD had significant information regarding the danger that Kiria Milton posed to her children, Waylon and W.P.

59. CYFD breached its duties when it:

(a) violated its policies and procedures in conducting the investigation for suspected abuse and neglect of Waylon and W.P.;

(b) knew Waylon and W.P. were not safe with Kiria Milton given her statements of homicidal ideation and plan, but improperly implemented a safety plan that did not comply with policies, procedures, or the standard of care; and

(c) did nothing to investigate the allegations of suspected abuse and neglect and did nothing to protect the children from the specific and known harm for seven (7) days.

60. As a direct result of CYFD's failures and breaches of duty, Waylon suffered a horrifying and untimely death at one month old.

61. As a direct result of CYFD's failures and breaches of duty, W.P. witnessed the death of his younger brother and lost his mother.

COUNT II
Violations of the New Mexico Civil Rights Act

62. All previous allegations are incorporated by reference as if fully set forth herein.

63. The New Mexico Bill of Rights guarantees that "No person shall be deprived of life, liberty or property without due process of law." N.M. Const. art. II, § 18.

64. Defendant CYFD is a state governmental agency with exclusive authority for investigating allegations of suspected child abuse and neglect and assessing the safety of children in homes with known and suspected danger.

65. At all times material to the allegations set forth in this lawsuit, Defendant CYFD was a public body whose agents were acting under color of or within the scope of the authority of CYFD.

66. The New Mexico Legislature enacted the Children's Code to set forth the public policy of the State of New Mexico with regard to specific issues that face children in the State, in particular regarding the investigation and assessment of children who are suspected to be or are abused and neglected.

67. The primary purpose of the Children's Code is to provide for the care and protection of children with the health and safety of the child as the paramount concern.

68. On November 8, 2021 Defendant CYFD had an open report of suspected abuse and neglect of Waylon and W.P. and was initiating an investigation.

69. As a result of the November 8, 2021 report, Defendant CYFD identified Waylon and W.P. were unsafe because Kiria Milton posed a threat to their safety and wellbeing.

70. Defendant CYFD identified that Kiria Milton's expressed desires to kill Waylon and otherwise harm both Waylon and W.P. made it unsafe for the children to be in the care of their mother.

71. Defendant CYFD, through its obligations and responsibilities set forth in New Mexico statute, state regulations, and its procedures, was obligated to provide for the safety of Waylon, a one-month-old infant, and W.P., a four-year-old toddler, and to not subject them to a known or obvious danger.

72. Defendant CYFD knew of the high vulnerability of Waylon and W.P. based on their age, developmental level, high level of need, and past history of abuse and neglect with CYFD.

73. Defendant CYFD knew or it was obvious that if Waylon and W.P. were in the care of their mother, Kiria Milton, they were at high risk of harm and death.

74. Waylon and W.P. relied upon Defendant CYFD to ensure that their safety was, at all times, CYFD's overriding concern in November, 2021.

75. Defendant CYFD, through its employees and agents, caused Waylon and W.P. to be deprived of their rights to due process under the New Mexico Constitution.

76. Defendant CYFD's actions and omissions violated Waylon and W.P.'s New Mexico constitutional rights when it acknowledged the children were unsafe with Kiria Milton but put in place a "safety plan" that did not meet its own policies and procedures.

77. Defendant CYFD's actions and omissions further violated Waylon and W.P.'s New Mexico constitutional rights when it did nothing to protect Waylon and W.P. from the known safety threat of their mother's mental health problems.

78. Defendant CYFD violated Waylon and W.P.'s New Mexico constitutional rights when it knew of the specific harm and danger to these children, knew of their extreme vulnerability and reliance upon CYFD, and failed to protect them from the known danger.

79. As a direct result of Defendant CYFD's violation of Waylon and W.P.'s New Mexico constitutional rights, Waylon suffered a brutal and horrific death and W.P. endured extreme harm and trauma.

80. Waylon and W.P.'s claims in this matter constitute more than one (1) occurrence pursuant to NMSA 1978, § 41-4A-6(A).

COUNT III
Professional Negligence – The Central Desert Defendants

81. All previous allegations are incorporated by reference as if fully set forth herein.

82. At all times material to the allegations set forth in this lawsuit, the Central Desert Defendants acted through its agents and employees.

83. At all times material to the allegations set forth in this lawsuit, the Central Desert Defendants' employees and agents were acting in the course and scope of their duties such that the Central Desert Defendants are vicariously liable for their conduct.

84. At all times material to the allegations set forth in this lawsuit, Central Desert Behavioral Health Hospital was a licensed behavioral health hospital which was required to provide inpatient services to patients like Kiria Milton.

85. At all times material to the allegations set forth in this lawsuit, the Central Desert Defendants' agents and employees were under a duty to possess and apply the knowledge and use the skill and care ordinarily used by reasonably well-qualified licensed mental health professionals practicing under similar circumstances, giving due consideration to the locality involved.

86. The Central Desert Defendants breached the applicable standard of care in the treatment of Kiria Milton when it failed to provide her with appropriate treatment for her significant psychiatric condition.

87. The Central Desert Defendants further breached the applicable standard of care when it discharged Kiria Milton after less than three (3) days at its inpatient hospital, when it knew she was going back into the home where she had just recently expressed an intent and plan to kill her children, and when it knew that she lacked supports and assistance.

88. As a direct result of the Central Desert Defendants' breaches of the applicable standard of care, Kiria Milton returned home with her untreated psychiatric condition and killed her newborn son, Waylon.

89. As a direct result of the Central Desert Defendants' breaches of the applicable standard of care, W.P. witnessed the death of his younger brother and lost her mother.

90. The Central Desert Defendants are vicariously liable for the negligence of their agents and employees.

91. In addition to the Central Desert Defendants' liability for compensatory damages, the Central Desert Defendants are also liable for punitive damages to Plaintiffs as a result of their reckless and wanton misconduct.

COUNT IV
Joint Venture or Alter Ego

92. All previous allegations are incorporated by reference as if fully set forth herein.

93. Defendants Behavioral Health Services of New Mexico, LLC, Behavioral Health Services, LLC, Fundamental Clinical and Operational Services, LLC, Fundamental Administrative Services, LLC, and Hunt Valley Holdings (hereafter "Corporate Central Desert Defendants") were engaged in a joint venture in their operation of Central Desert Behavioral Health Hospital.

94. The Corporate Central Desert Defendants shared an interest in the ownership and operation of Central Desert Behavioral Health Hospital in that they operated as a single and unified enterprise.

95. The Corporate Central Desert Defendants each had the ability to control the operation of Central Desert Behavioral Health Hospital, including the agents and employees of Central Desert Behavioral Health Hospital.

96. As The Corporate Central Desert Defendants were engaged in a joint venture during and throughout the residency of Kiria Milton, the acts and omissions of each participant of the joint venture are imputed to all other participants. Therefore, each of the Corporate Central Desert Defendants are jointly and severally liable for the acts and omissions of the other.

97. In the alternative, Plaintiffs allege that Central Desert Behavioral Health Hospital was the alter ego of one or more of the Corporate Central Desert Defendants.

98. One or more of the Corporate Central Desert Defendants exercised significant control over Central Desert Behavioral Health Hospital that it operated as a mere instrumentality of the other Corporate Central Desert Defendants.

99. There was a lack of corporate separateness between Central Desert Behavioral Health Hospital and one or more of the other Corporate Central Desert Defendants.

100. Central Desert Behavioral Health Hospital functioned under the dominion and control of one or more of the other Corporate Central Desert Defendants.

101. The Administrator for Central Desert Behavioral Health Hospital lacked autonomy, was unable to act independently, and was required to take direction from one or more of the other Corporate Central Desert Defendants.

102. Central Desert Behavioral Health Hospital's finances were controlled by one or more of the other Corporate Central Desert Defendants.

103. Central Desert Behavioral Health Hospital operated as a mere business conduit for one or more of the other Corporate Central Desert Defendants.

104. As Central Desert Behavioral Health Hospital is the alter ego for one or more of the other Corporate Central Desert Defendants, such Corporate Central Desert Defendants are liable for the death of Waylon Padilla and the harm and injuries to W.P.

COUNT V
Joint and Several Liability – All Defendants

105. All previous allegations are incorporated by reference as if fully set forth herein.

106. At all times material to the allegations set forth in this lawsuit, CYFD was the sole entity responsible for the investigation and assessment of the safety of Waylon and W.P. with respect to reports of suspected abuse and neglect.

107. At all times material to the allegations set forth in this lawsuit, CYFD was the entity entrusted with ensuring the safety of Waylon and W.P. during the November 8, 2021 investigation for suspected abuse and neglect.

108. CYFD knew of the specific harm and risk to Waylon and W.P. if it did not comply with its duties and obligations as a part of its investigation of suspected abuse and neglect.

109. CYFD knew that Waylon and W.P. were at risk of serious harm and death based upon Kiria Milton's reports of homicidal ideation and plan towards her children.

110. Despite that CYFD knew of the specific risk and harm posed to these children by Kiria Milton and despite that CYFD was the entity tasked with assessing the safety of these children with respect to the known risks, CYFD failed to follow its policies, procedures, and the standard of care in ignoring the concerns and allowing Kiria Milton to return home to care for these children.

111. As a direct result of CYFD's failures to protect Waylon and W.P. from the known specific risk posed by Kiria Milton, Waylon was killed and W.P. suffered serious trauma and injury from witnessing his brother's death.

112. Like CYFD, the Central Desert Defendants undertook the psychiatric care for Kiria Milton when she was involuntarily committed to inpatient hospitalization as a result of her reporting her desire to kill her children.

113. The Central Desert Defendants knew of the specific and particular risk to Waylon and W.P. and yet breached the standard of care in both treating and untimely and inappropriately discharging Kiria Milton.

114. As a result of the Central Desert Defendants' failures to protect Waylon and W.P. from the specific and known risks of harm posed by their mother, Kiria Milton, Waylon was killed and W.P. suffered serious trauma and injury from witnessing his brother's death.

115. The public policy of the State of New Mexico demands that CYFD and the Central Desert Defendants be jointly and severally liable for all misconduct by Kiria Milton and Saint Padilla any other individual or entity in this matter pursuant to NMSA 1978, § 41-3A-1(C)(4).

WHEREFORE, Plaintiffs requests this Court enter judgment in their favor and against Defendants in an amount sufficient to compensate them for all injuries and damages, costs of this action, pre-judgment and post-judgment interest as provided by law, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

**MARTINEZ, HART,
SANCHEZ & ROMERO, P.C.**

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