

JURISDICTION AND VENUE

2. This Court has jurisdiction over the causes of action asserted herein and over the parties to this action. Plaintiffs assert claims under Missouri common law. This Court has jurisdiction because Defendant Young Men's Christian Association of Greater St. Louis (hereinafter "YMCA") owned and operated the Mid-County branch of the YMCA in Brentwood, Missouri. The YMCA is licensed to do business or transact business in Missouri and has obtained the benefits of the laws of the State of Missouri and the benefits of the Missouri location for the YMCA Mid-County branch. Finally, the sexual molestation described herein occurred at the Mid-County Branch of the YMCA which is located in Brentwood, within St. Louis County, within the State of Missouri.

3. Venue is proper in this Court under R.S.Mo. § 508.010 (4), because Plaintiffs John Doe A and John Doe B were first injured at the Mid-County YMCA which is located in Brentwood, within St. Louis County, within the State of Missouri.

PARTIES

4. Plaintiff John Doe A is an adult male. Plaintiff John Doe A was sexually, physically and emotionally abused by a swimming instructor at the Mid-County YMCA in Brentwood, Missouri, when he was a minor. He is identified by the pseudonym John Doe A because he was a minor at the time of the sexual abuse alleged in this petition. Plaintiff fears further psychological and emotional injury if his real name were publicly disclosed.

5. Plaintiff John Doe B is an adult male. Plaintiff John Doe B was sexually, physically and emotionally abused by a swimming instructor at the Mid-County YMCA in Brentwood, Missouri, when he was a minor. He is identified by the pseudonym John Doe B

because he was a minor at the time of the sexual abuse alleged in this petition. Plaintiff fears further psychological and emotional injury if his real name were publicly disclosed.

6. Defendant YMCA of Greater St. Louis which runs the Mid-County branch of the YMCA, was founded in 1853. The corporation currently runs seventeen branches of the YMCA in the greater St. Louis area. The YMCA of Greater St. Louis is incorporated in Missouri as a benevolent corporation. Defendant YMCA of Greater St. Louis has obtained the benefits of the laws of the State of Missouri and the benefits of the Missouri locations.

7. The perpetrator swimming instructor was employed by or was otherwise an agent of the YMCA of Greater St. Louis to work at the Mid-County branch during all times material here. The swimming instructor abused Plaintiffs while he was functioning in his role as a swimming instructor, coach and authority figure.

8. Defendant YMCA of Greater St. Louis at all times relevant to the allegations contained herein operated and administered the Mid-County branch of the YMCA located in Brentwood, Missouri. Additionally, the perpetrator swimming instructor was under the direct supervision, control and authority of Defendant YMCA during the period of abuse alleged herein.

9. All acts of abuse alleged in this petition occurred while the perpetrator swimming instructor had custody and/or control of Plaintiffs and in the scope and course of the perpetrator's employment as a swimming instructor and coach at the YMCA.

10. Defendant provided training to the perpetrator swimming instructor on how to perform the specific responsibilities of a swimming instructor and coach at the YMCA.

11. Defendant YMCA hired, supervised, and paid the perpetrator.

12. At all times relevant to the issues in this lawsuit, the perpetrator swimming instructor acted upon the authority of and at the request or permission of Defendant YMCA.

13. The perpetrator swimming instructor performed all or substantially all of his work as an instructor and coach at the YMCA on the premises controlled by Defendant YMCA.

14. Defendant YMCA furnished tools, materials, and other material support to aid and abet the perpetrator swimming instructor's misconduct as alleged in this petition.

15. The perpetrator swimming instructor's conduct as alleged herein was undertaken while in the course and scope of his employment with Defendant YMCA as a swimming instructor and coach at the Mid-County branch of the YMCA.

BACKGROUND FACTS APPLICABLE TO ALL COUNTS

16. Plaintiffs first became acquainted with the perpetrator swimming instructor when they took semi-private swimming classes at the Mid-County branch of the YMCA in approximately 1986 or 1987, when Plaintiffs were under the age of 17. Both Plaintiffs planned to attend camp the following summer and were required to have a swimming certification before being able to participate in certain activities at the camp.

17. Defendant YMCA assumed responsibility for supervising and caring for Plaintiffs while they attended swimming lessons at the Mid-County branch.

18. Supervising and directing minors within the YMCA, including Plaintiffs, were tasks within the course and scope of Defendant's responsibilities.

19. During all times relevant to this matter, Defendant was responsible for the care and well-being of Plaintiffs while they attended swimming lessons at the YMCA.

20. The perpetrator swimming coach groomed Plaintiffs for sexual abuse during and after their weekly swimming lessons. Plaintiffs were the only two students in the semi-private

swimming class. The perpetrator swimming instructor brought pornography to the lessons for Plaintiffs to look at. He spoke to them about girls and sex. He acted like a big brother to Plaintiffs. Eventually, he used these ploys to sexually abuse both Plaintiffs.

21. The perpetrator swimming instructor molested and sexually abused Plaintiffs following their swimming lessons on the premises of Defendant. The molestation and sexual abuse happened almost every time Plaintiffs had lessons with the perpetrator swimming instructor. The lessons occurred weekly for approximately one year.

22. Upon information and belief, the perpetrator swimming instructor had sexually assaulted other boys.

23. Upon information and belief, Defendant knew or should have known that the swimming instructor was sexually dangerous prior to Plaintiffs being abused.

24. Defendant failed to stop the swimming instructor from molesting students or to notify children attending the YMCA and/or their parents of the swimming instructor's propensity to sexually assault juvenile boys. As a result, the swimming instructor was allowed unlimited access to juvenile boys, with the aid of Defendant YMCA.

25. The actions of the perpetrator swimming instructor were outrageous and utterly repugnant to a civilized society.

25. Upon information and belief, Defendant YMCA knew, or should have known, that allowing the swimming instructor access to and supervision over juvenile boys as part of his duties as a swimming instructor and coach at the YMCA, would result in the swimming instructor assaulting students at the YMCA including Plaintiffs.

27. Defendant's actions in allowing the swimming instructor to continue to hold himself out as a swimming teacher and coach and as an authority figure to juvenile boys with whom he came into contact was outrageous and utterly repugnant to a civilized society.

28. Defendant acted with depraved indifference with respect to the harm it knew would occur to the students at the YMCA, including the damage to Plaintiffs described herein.

29. The sexual abuse of Plaintiffs, and the circumstances under which the abuse occurred, caused Plaintiffs to develop various psychological coping mechanisms, including repressed memory, as symptoms of psychological distress. These psychological coping mechanisms, including repressed memory, objectively rendered Plaintiffs incapable of ascertaining the resulting damage from the abuse.

30. As a direct and proximate result of Defendant's wrongful conduct, Plaintiffs have suffered, and continue to suffer, great pain in mind and body.

**COUNT I
SEXUAL ABUSE AND/OR BATTERY**

31. Plaintiffs incorporate all paragraphs of this Petition as if fully set forth herein.

32. In or between approximately 1986 and 1988, the perpetrator swimming instructor engaged in unpermitted, harmful and offensive sexual conduct and contact upon the person of the plaintiffs, who were both minors.

33. The swimming instructor's actions were willful, wanton or reckless for which punitive damages and/or an award for aggravating circumstances are appropriate.

34. Defendant YMCA is equally liable for the sexual contact perpetrated upon Plaintiffs as an aider and abettor of the swimming instructor's actions pursuant to Mo. Rev. Stat. §562.041.1.

35. Specifically, Defendant aided and abetted the swimming instructor's crime by:
- a. Failing to disclose his prior crimes of sexual abuse against juvenile boys;
 - b. Placing the swimming instructor as an instructor and coach at the YMCA with knowledge that he had sexually assaulted juvenile boys in the past and giving him access and opportunity to commit the crime described herein.

36. Therefore Defendant is liable for the sexual abuse perpetrated against Plaintiffs and is liable for the injuries resulting therefrom.

37. As a direct and proximate result of the above-described acts, Plaintiffs have suffered, and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; were prevented and will continue to be prevented from performing their daily activities and obtaining the full enjoyment of life; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

COUNT II NEGLIGENT SUPERVISION

38. Plaintiffs incorporate all paragraphs of this Petition as if fully set forth herein.

39. Defendant, by and through its agents, servants and employees, knew or reasonably should have known of the swimming instructor's dangerous and exploitive propensities and/or that he was an unfit agent, and despite such knowledge, Defendant negligently failed to supervise the swimming instructor's interactions with children, where he was able to commit the wrongful acts against the plaintiffs.

40. Defendant's actions and/or inactions were willful, wanton and reckless for which

punitive damages and/or damages for aggravating circumstances are appropriate.

41. As a result of the above-described acts, Plaintiffs have suffered, and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; were prevented and will continue to be prevented from performing their daily activities and obtaining the full enjoyment of life; and/or have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

**COUNT III
INTENTIONAL FAILURE TO SUPERVISE**

42. Plaintiffs incorporate all paragraphs of this Petition as if fully set forth herein.

43. At all times material, Defendant was the supervisor and employer of the perpetrator swimming instructor. Defendants had direct supervision and control over the swimming instructor, and the swimming instructor was on the premises of the YMCA under the authority of the defendant.

44. Upon information and belief, Defendant was aware of previous sexual misconduct by instructors and coaches within organizations that work with children, including the perpetrator swimming instructor, and that future harm was certain or substantially certain to result without proper supervision.

45. Defendant disregarded the known risk of sexual abuse.

46. Defendant's inaction caused injury to the plaintiffs.

47. Plaintiffs were sexually abused on the property owned and operated by Defendant.

48. Defendant knew or should have known that inappropriate touching of individuals

by its employees and/or designated agents would cause or was substantially certain to cause those individuals harm.

49. Despite the risk posed by the swimming instructor, Defendant continued to place him in positions in which he would have contact with minors.

50. By engaging in these actions, Defendant disregarded the risk posed by the swimming instructor to individuals who came to it for lessons and coaching.

51. Defendant's actions and/or inactions were willful, wanton and reckless for which punitive damages and/or damages for aggravating circumstances are appropriate.

52. As a result of the above-described acts, Plaintiffs have suffered, and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; were prevented and will continue to be prevented from performing their daily activities and obtaining the full enjoyment of life; and/or have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

**COUNT IV
NEGLIGENT FAILURE TO SUPERVISE CHILDREN**

53. Plaintiffs incorporate all paragraphs of this Petition as if fully set forth herein.

54. Defendant had a duty to use ordinary care to protect minors against unreasonable risks of harm while in its building.

55. It is a well-known and foreseeable risk when working with minors that some adults may attempt to have abusive contact, sexual or otherwise, with minors.

56. Also, as explained above, upon information and belief, prior to his contact with Plaintiffs, Defendant knew or should have known that the swimming instructor was dangerous to

children. Despite such knowledge, Defendant did not take appropriate steps to protect Plaintiffs from the sexual abuse described herein.

57. As a well-known risk involved with working with minors and the perpetrator swimming instructor, Defendant had the duty to protect its minor members from damaging sexually abusive contact by implementing sufficient policies, procedures and training to prevent such contact.

58. In addition, Defendant had the duty to supervise and monitor the minor students, including Plaintiffs, and their interaction with the swimming instructor to avoid situations where the swimming instructor could isolate Plaintiffs, making them vulnerable to sexual advances and manipulation.

59. Defendant breached its duty to Plaintiffs, and was negligent, by:

- (a) Failing to have in effect and /or failing to enforce effective policies, procedures and training prohibiting sexual contact.
- (b) Failing to have in effect and /or failing to enforce effective policies, procedures and training instructing staff on the signs of sexual abuse of a minor.
- (C) Failing to have in effect and /or failing to enforce effective policies, procedures and training instructing staff about the steps to be followed if staff suspects that a minor is having sexual contact with employees, instructors or coaches.
- (d) Failing to have in effect and /or failing to enforce effective policies, procedures and training instructing staff about the steps to be followed if

an instructor, employee or coach is behaving in a sexually inappropriate manner.

- (e) Failing to properly care for and protect Plaintiffs whereby the swimming instructor was able to isolate them and have sexual contact with them.
- (f) Failing to use reasonable care in supervising minors, and /or failing to provide adequate warning to Plaintiffs and their families of the dangerous propensities of the swimming instructor and their failure to adequately supervise him.

60. As a result of the above-described acts, Plaintiffs have suffered, and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; were prevented and will continue to be prevented from performing their daily activities and obtaining the full enjoyment of life; and/or have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

**COUNT V
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

61. Plaintiffs incorporate all paragraphs of this Petition as if fully set forth herein.

62. Upon information and belief, Defendant intentionally failed to supervise, remove, or otherwise sanction the perpetrator swimming instructor after it had notice of his dangerous propensity toward children, and continued to place him in a position of authority over juveniles, including Plaintiffs. Defendant knew or was substantially certain that the swimming instructor was unsuitable for the position he held. Defendant failed to adequately review and monitor the swimming instructor's conduct.

63. Defendant intentionally failed to confront, remove, or sanction the swimming instructor about known irregularities in his activities within the scope and course of his employment, including spending unusual amounts of time alone with children, and discussing inappropriate sexual activity with minors.

64. Defendant engaged in unconscionable and outrageous conduct beyond all possible bounds of decency and utterly intolerable in a civilized society. Defendant's conduct caused Plaintiffs severe emotional distress of such a nature that no reasonable person in a civilized society could be expected to endure.

65. Defendant's actions and omissions were willful, wanton and reckless for which punitive damages and/or damages for aggravating circumstances are appropriate. Plaintiffs suffered a medically significant distress as a result of Defendant's actions as set forth in this petition.

66. As a result of the above described conduct, Plaintiffs have suffered, and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life; were prevented and will continue to be prevented from performing their daily activities in obtaining a full enjoyment of life; have sustained loss of earnings and earning capacity; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

**COUNT VI
BREACH OF FIDUCIARY DUTY**

67. Plaintiffs incorporate all paragraphs of this Petition as if fully set forth herein.

68. By committing the acts and omissions described herein, Defendant breached its fiduciary duty to Plaintiffs.

69. Defendant maintained a fiduciary relationship with Plaintiffs as a matter of law in that they had a student to instructor/coaching relationship. At all times, Plaintiffs were in a subservient position to the swimming instructor and Defendant and the swimming instructor had a special relationship with Plaintiffs by virtue of his role at the YMCA. This relationship is of confidence, trust and care as a matter of law.

70. The swimming instructor and Defendant breached their fiduciary duty to Plaintiffs in that they failed to protect against child sexual abuse.

71. As a result of the above described conduct, Plaintiffs have suffered, and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life; were prevented and will continue to be prevented from performing their daily activities in obtaining a full enjoyment of life; have sustained loss of earnings and earning capacity; and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

JURY TRIAL DEMANDED

72. The plaintiffs demand a trial by jury on all issues triable in this case.

WHEREFORE, the plaintiffs ask that this Court award judgment against Defendant as follows:

1. Award compensatory and punitive damages in favor of the plaintiffs against Defendant for damages sustained as a result of the wrongdoing of Defendant, together with interest thereon;

2. Award the plaintiffs their costs and expenses incurred in this action;

3. Grant such other and further relief as the Court deems appropriate and just.

Dated: 2/4/13

Respectfully submitted,



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