

Neff vs. Landmark Education
September 18, 1997

CAUSE NO.97-00933-I

IN THE DISTRICT COURT DALLAS
COUNTY, TEXAS 162nd JUDICIAL
DISTRICT

F I L E D 97 SEP 18 PM 4:22 BILL
LONG DISTRICT CLERK DALLAS CO.
TEXAS

TRACY NEFF,
Plaintiff

vs.

LANDMARK EDUCATION
CORPORATION AND DAVID GRILL,
AN INDIVIDUAL,
Defendants

PLAINTIFF'S FIRST AMENDED PETITION

COMES NOW, Tracy Neff ("Plaintiff") in the above-styled and numbered cause and makes and files this, her Plaintiff's First Amended Petition complaining of Defendants, Landmark Education Corporation and David Alan Grill, an Individual, and for causes of action would respectfully show unto this Court and Jury the following:

I.

PARTIES AND VENUE

Plaintiff Tracy Neff, is a natural person residing within the County of Dallas, State of Texas.

Defendant Landmark Education Corporation ("Landmark"), is a California corporation duly authorized to conduct and do business within the State of Texas, which has been previously served and has answered in this matter, and no service is requested at this time.

Defendant David Alan Grill ("Grill") is a natural person who has been served with citation and a copy of Plaintiff's Original Petition, but who has not made appearance or answer herein. Grill may be served with process at his address of 1116 South Akard Street, Dallas, Texas.

In accordance with 15.002(a)(1) of the Texas Civil Practice and Remedies Code, venue is proper for this action in Dallas County, as all or part of the cause of actions arose in Dallas County, Texas. The amount in controversy for the causes of action stated herein exceed the minimum jurisdictional limits of the Court There is incomplete diversity of citizenship because the Plaintiff and at least one of the defendants named herein, are residents and citizens of the State of Texas, and no federal subject-matter jurisdiction is present.

At all material times herein mentioned, all of the agents, servants, and employees of Defendants Landmark and David Grill who were in any way connected with the incident made the basis of this suit, were acting within the course and scope of their employment, authority or official duties and in furtherance of the duties of their office or employment.

II.

FACTUAL BACKGROUND

Plaintiff enrolled in a seminar provided by Landmark. At that time, Grill was an executive director of Landmark's Dallas facility. At such time, numerous complaints

against Grill both from students and Landmark officials had- been previously filed relating to sexual and/or behavioral -misconduct by Grill.

On or about February 3, 1995, Plaintiff was approached by David Grill, who invited Plaintiff to his home.

Once inside Grill's home, Grill intentionally and/or negligently sexually assaulted Plaintiff, both with a foreign object and anally. Such assault was non-consensual in nature, and Plaintiff gave Grill adequate warning that she was unwilling to engage in the sexual acts in question.

III

CAUSES OF ACTION

Plaintiff repeats and realleges each of the allegations contained in paragraphs I through III, incorporates them herein by reference with respect to each and every claim as set form in each cause of action below.

A.

NEGLIGENCE

Grill failed to exercise his duty of ordinary care owed to Plaintiff, in that he failed to perceive that the sexual conduct described above was non-consensual by nature, and failed to cease and desist from such conduct at such time as Plaintiff requested Grill to do so. Grill was engaged in such negligent conduct while in the course and scope of his duties, and under the guise of his actual and/or apparent authority as an employee, agent and/or servant of Landmark. Such negligence was the proximate and/or producing cause of Plaintiff's damages as more fully set forth below.

B.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Landmark by and through their agent, Grill, acted intentionally and/or recklessly toward Plaintiff, with disregard for the emotional distress that would result to Plaintiff, by Grill's negligent and/or intentional acts. The conduct of Landmark by and through their agent Grill, was extreme and outrageous. Defendant Grill's acts of sexual assault with Plaintiff were so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

Grill acted intentionally or recklessly toward Plaintiff, with disregard for the emotional distress that his intentional assault would cause Plaintiff. Defendant Grill's conduct toward Plaintiff was both extreme and outrageous. The actions of Defendant in his capacity as an executive official and agent of Landmark, as described above, were extreme and outrageous in character. As a direct and proximate result of the extreme and/or outrageous actions described herein, Plaintiff has suffered in the form of several mental distress, anguish, pain and suffering in an amount within the jurisdictional limits of this Court, for which she hereby sues.

C.

NEGLIGENT EMPLOYMENT AND RETENTION

Landmark should have been aware, of Grill's propensity to commit criminal sexual assaults with students from a time preceding his assignment as executive director of the Dallas Landmark facility. Landmark, despite this knowledge, gave Grill the assignment to operate the Dallas Landmark Facility. At all times pertinent hereto, had a duty to use ordinary care in selecting and supervising employees, including Grill, to run and/or

engage in particular activities with their students. Landmark also had a duty to use ordinary care in the termination and/or non-retention of employees whom they knew or in the exercise of ordinary care should have known had a propensity to commit intentional and/or negligent behavior relating to their students, including Plaintiff. Landmark failed to exercise ordinary care and was negligent by their acts and/or omissions in connection with the employment, placement, and retention of Grill.

D.

ASSAULT AND BATTERY

The actions of Grill within his actual and/or apparent authority as an agent, employee or servant of Landmark, constitute an assault and battery upon Plaintiff.

As a direct and proximate result of such assault and battery, Plaintiff has suffered harm, and is Titled to compensatory damages as set forth below, in the form of within the jurisdictional limits of this Court, all for which she hereby sues.

The assault and battery of Plaintiff as described herein was done maliciously and with evil motive, and in wanton disregard of Plaintiff s right to be free from assault and battery. Accordingly, Plaintiff is entitled to an award of exemplary damages against Defendants, for which she hereby sues.

E.

GROSS NEGLIGENCE

For additional cause of action, Plaintiff repleads as fully as though set forth in this paragraph all allegations under paragraphs I through III(A-D) and, in addition, allege that all the acts, conduct, and omissions on the part of Defendant taken singularly or in combination, constitutes **GROSS NEGLIGENCE** and was the proximate cause of the damages and injuries to Plaintiff as alleged herein. Such gross negligence entitles Plaintiff to exemplary damages. Specifically, Plaintiff allege that the Defendant acted with conscious disregard with respect to the above-outlined acts, conduct and omissions of negligence.

IV.

DAMAGES

As a direct and proximate result of the conduct described herein on the part of Defendants, Plaintiff has suffered overall bodily contusions to her person, including but not limited to injury to her thighs, cervical lacerations, vaginal lacerations, internal bleeding and rectal fissures, requiring surgery. The specific injuries and their ill effects have, in turn, caused Plaintiff's physical and mental condition to deteriorate generally so that the specific injuries and their ill effects alleged have caused and will, in all reasonable probability, cause Plaintiff to suffer the consequences and ill effects of this deterioration throughout her body for a long time into the future, if not for the balance of her natural life.

As a further direct and proximate result of Defendant's negligence, Plaintiff has suffered great physical pain and mental anguish in the past, and in all reasonable probability, will continue to suffer physical pain and mental anguish into the future, if not for the balance of her natural life.

As a further proximate result of the above, Plaintiff has incurred and continues to incur expenses for medical care and attention. These expenses were incurred for necessary care and treatment of the injuries and damages described above. The charges are reasonable

and were the usual and customary charges made for such services in Dallas County, Texas for which Plaintiff sues.

Respectfully submitted,

KIMBERLY A. STOVALL & ASSOCIATES, P.C.

BY _____

KIMBERLY A. STOVALL, ESQUIRE

State Bar No.19337000

JAY C. ENGLISH, ESQUIRE

State Bar No.06625290

North Central Plaza Three, Suite S50

12801 North Central Expressway

Dallas, Texas 75243

(972) 7741276, phone

(972) 774-0733, fax

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been forwarded to the following via certified mail, return receipt requested, on this the 17 day of Sept, 1997:

Robert Roby, Esquire
GWINN & ROBY
4100 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

VIA CM/RRR NO. Z 334 096 451

David Alan Grill
1116 South Ackard Street
Dallas, Texas 75201

VIA CM/RRR NO. Z 334 096 452

Jay C. English, Esq.