

1

E-FILED
02-14-2023, 14:58
Scott G. Weber, Clerk
Clark County

1

2

3

4

5

6

**SUPERIOR COURT OF WASHINGTON
FOR CLARK COUNTY**

7

8

N.M., E.M., and I.M, infants, by BRUCE A.
WOLF, their guardian ad litem,

No. 23-2-00377-060

9

Plaintiffs,

COMPLAINT FOR PERSONAL
PHYSICAL INJURIES

10

v.

11

STATE OF WASHINGTON,

12

Defendant.

13

14

Plaintiffs N.M., E.M., and I.M. allege:

15

I. PARTIES

16

1.1 Plaintiff N.M. is a minor girl currently residing in Kitsap County, Washington.

17

1.2 Plaintiff E.M. is a minor girl currently residing in Clark County, Washington.

18

1.3 Plaintiff I.M. is a minor boy currently residing in Clark County, Washington.

19

1.4 Guardian ad litem Bruce A. Wolf is an attorney licensed to practice law in the state

20

of Washington. His principal place of business and residence are in King County. He was

21

appointed by the King County Superior Court to act as the guardian ad litem for N.M., E.M., and

22

I.M. on August 2, 2021, under cause number 21-4-05292-8.

23

1 1.5 Defendant State of Washington (State) is a political entity with its capital in
2 Thurston County, Washington. At all times relevant to this lawsuit, the State acted through
3 employees of its Department of Social and Health Services and Department of Children, Youth,
4 and Families.¹

5 **II. NOTICE OF CLAIM, JURISDICTION, AND VENUE**

6 2.1 N.M., E.M., and I.M. served Washington State Tort Claim Forms on the State's
7 Department of Enterprise Services, Office of Risk Management, on October 25, 2021. More than
8 60 calendar days have elapsed since the Form was served. The claim presentment and filing
9 requirement of Chapter 4.92 RCW has been satisfied by Plaintiffs.

10 2.2 The Superior Court of Washington has original jurisdiction over this action,
11 pursuant to RCW 2.08.010 and 4.92.010.

12 2.3 This action may be brought in Clark County, Washington, pursuant to RCW
13 4.92.010(1).

14 **III. FACTS**

15 3.1 N.M., E.M., and I.M. were found to be dependent by the Superior Court of
16 Washington on multiple occasions, including in 2013, 2015, and 2017. They spent much of their
17 early years in abusive and neglectful homes.

18 3.2 DSHS became involved with the family in 2008 when the oldest child, N.M., was
19 less than one year old. Dozens of reports to DSHS throughout the following years include
20 significant drug abuse by caregivers, physical abuse against N.M., E.M., and I.M. by caregivers,
21

22 ¹On July 1, 2018, Children's Administration, which includes Child Protective Services (CPS), transitioned
23 from DSHS to the new Department of Children, Youth, and Families. As a significant portion of the
relevant acts and omissions alleged by Plaintiffs occurred before that date, the DSHS acronym is used
herein.

1 sexual abuse against N.M. and E.M. by caregivers as well as non-household members and half-
2 siblings, and a significant history of negligent treatment.

3 3.3 Although DSHS was aware that N.M., E.M., and I.M. were being abused and
4 neglected in the care of various adults throughout their dependencies, the agency failed to timely
5 remove them from harmful homes or provide adequate services to the family.

6 3.4 On September 13, 2011, DSHS received a report that four-year-old N.M. had been
7 sexually abused by N.M.'s father's ex-wife.

8 3.5 On March 15, 2013, N.M., E.M., and I.M. were placed in protective custody after
9 I.M. was discovered to have a broken clavicle and bruises. At the time, DSHS noted over 20 prior
10 referrals regarding the children, indicating a long history of physical and sexual abuse.

11 3.6 On August 7, 2014, DSHS received a report that five-year-old E.M. had also been
12 sexually abused by N.M.'s father's ex-wife.

13 3.7 DSHS received numerous reports that N.M. and E.M. were being sexually abused
14 by multiple individuals, including the biological sons of E.M. and I.M.'s father. At least one of
15 these individuals was subsequently investigated and sentenced for child molestation involving
16 N.M. and E.M.

17 3.8 Over the years, N.M., E.M., and I.M. were abused by numerous persons both while
18 in the custody of the State of Washington and while in the custody of others. Ultimately, DSHS
19 failed to protect them from further abuse despite receiving dozens of referrals alleging repeat
20 sexual abuse, physical abuse, and neglect.

21 **IV. CAUSES OF ACTION**

22 **A. NEGLIGENCE**

23 4.1 When doing an affirmative act, the State owed N.M., E.M., and I.M. a duty to

1 exercise reasonable care to protect them against an unreasonable risk of harm arising out of the
2 act.

3 4.2 The State also owed N.M., E.M., and I.M. a duty to exercise reasonable care to
4 protect them from foreseeable harms.

5 4.3 The State breached these duties.

6 4.4 The State’s breaches were a proximate cause of injuries to N.M., E.M., and I.M.

7 B. NEGLIGENT INVESTIGATION – RCW 26.44.050

8 4.5 The State gathered incomplete or biased information in investigating reports that
9 N.M., E.M., and I.M. had been abused or neglected.

10 4.6 The State’s gathering of incomplete or biased information was a proximate cause
11 of a placement decision or decisions that harmed N.M., E.M., and I.M.

12 **V. DEMAND FOR JUDGMENT**

13 N.M., E.M., and I.M. request that the Court enter a judgment against the State that
14 includes:

15 5.1 General damages for their pain and suffering, disability, loss of enjoyment of life,
16 and all other general damages suffered by them, in an amount to be determined at trial;

17 5.2 Special damages for their past and future medical expenses, lost earning capacity,
18 incidental expenses, and all other special damages suffered by them, in an amount to be
19 established at trial; and

20
21 //// ////

22
23 //// ////

1 5.3 Any further relief the court deems appropriate.
2

3 Dated: February 13, 2023.

4 s/Timothy R. Tesh
5 State Bar Number 28249
6 Ressler & Tesh PLLC
7 710 Fifth Avenue NW, Suite 200
8 Issaquah, WA 98027
9 Telephone: (206) 388-0333
10 Fax: (206) 388-0197
11 E-mail: tim@resslertesh.com
12
13
14
15
16
17
18
19
20
21
22
23