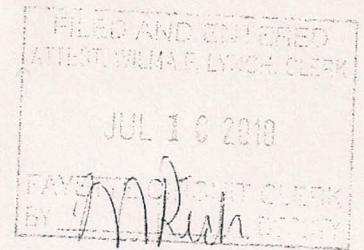


COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
CASE NO. 10-CI-4031
DIVISION 8



ANTONIO TAYLOR, JR, a minor, and
by his next friend and mother, JERRISHA COOMER

PLAINTIFF

v.

COMPLAINT

COPY

KOOL SMILES, PSC.

DEFENDANT

Serve: C. T. CORPORATION SYSTEM
Registered Agent for Kool Smiles, PSC
306 W Main Street, Suite 512
Frankfort, Ky 40601

AND

UNKNOWN DENTIST

DEFENDANT

Serve: via Warning Order Attorney

C. T. CORPORATION SYSTEM
Registered Agent for Kool Smiles, PSC
306 W Main Street, Suite 512
Frankfort, Ky 40601

AND

UNKNOWN DENTAL ASSISTANT

DEFENDANT

Serve: via Warning Order Attorney

C. T. CORPORATION SYSTEM
Registered Agent for Kool Smiles, PSC
306 W Main Street, Suite 512
Frankfort, Ky 40601

Comes the Plaintiff, Antonio Taylor, Jr., a minor, by his next friend and natural mother,
Jerrisha Coomer, by counsel, and for his Complaint against the Defendant, Kool Smiles, PSC,
states as follows:

A True Copy
ATTEST: WILMA F. LYNCH, CLERK
FAYETTE CIRCUIT COURT

-1-

W. Lynch Deputy

SH

JURISDICTION

1. This court has jurisdiction for this matter pursuant to KRS 23A.010 and KRS 24A.120 since the amount in controversy towards the defendant are in excess of the jurisdictional limits of this Court and the diversity jurisdictional limits of the U.S. District Court, exclusive of costs and interest.

VENUE

2. The claim alleged in this Complaint against the Defendant arose in Lexington, Fayette County, KY. The alleged incident occurred at Kool Smiles, PSC, 1301 Winchester Road, Suite 225, Lexington, KY 40505. Pursuant to KRS 452.460, venue in this matter is properly placed in the in the Circuit Court of Fayette County.

PARTIES

3. At all times relevant herein, the Defendant Kool Smiles, PSC, mentioned herein, is a Kentucky corporation organized and existing by virtue of the laws of the Commonwealth of Kentucky, doing business at Kool Smiles, PSC, 1301 Winchester Road, Suite 225, Lexington, KY 40505. Kool Smiles, by operating as a dental office, holds itself out to the public to be an institution for dental care and treatment. Kool Smiles, 400 Galleria Parkway, Suite 800, Atlanta, Ga 30339;
4. That through its agents, ostensible agents, servants and employees the Defendant, Kool Smiles, PSC, provided diagnostic services, dental care and treatment to the Plaintiff, Antonio Taylor, Jr., a minor, on July 10, 2009;
5. That pursuant to Kentucky Rule of Civil Procedure 4.15, the identity of the dentist and staff providing services to the Plaintiff are currently unknown but are identifiable through

their employer, Kool Smiles, PSC, located at 1301 Winchester Road, Suite 225, Lexington, KY 40505. Pursuant to CR 4.15, said defendants are known as Unknown Defendant Dentist and Unknown Dental Assistant. Pursuant to CR 4.05, 4.06, and 4.07, the unknown defendant dentist and assistant's identities are unknown. Accordingly, Plaintiff's attorney requests service by warning order attorney pursuant to Civil Rule 4.05(b). An attorney affidavit is attached.

6. At all times relevant herein, the Plaintiff Antonio Taylor, Jr. was a resident of Lexington, Fayette County, Kentucky;
7. Jerisha Coomer, is the natural mother of the minor Plaintiff.

FACTS

8. On July 10, 2009, Jerisha Coomer took her son, the Plaintiff Antonio Taylor, Jr. (hereinafter "Antonio"), age 7, to Kool Smiles, PSC, located in Lexington, Kentucky;
9. Kool Smiles, PSC, provided dental services to the Plaintiff in Lexington;
10. The dental services consisted of the filling of a cavity in the Plaintiff Antonio Taylor, Jr.;
11. The staff at Kool Smiles refused to allow Jerisha Coomer to accompany her son Antonio while they provided dental services to the Plaintiff Antonio Taylor, Jr., a minor;
12. That during the act of providing dental services to the Plaintiff, the dentist and dental assistant were acting as agents/employees of Kool Smiles, PSC and provided said dental services to the Plaintiff within the scope of that agency/employment;
13. That during the procedure of filling Plaintiff's cavity, the dentist and / or dental assistant caused what appeared to be a burn mark to the outside of the Antonio's face causing severe physical injury and conscious pain and suffering to the Plaintiff Antonio Taylor;

14. Antonio came out of the treatment room crying, and stated "they hurt me" to his mother;
15. That during the filing of Plaintiff Antonio Taylor, Jr.'s cavity the dentist and staff at Kool Smiles, PSC owed a duty to the Plaintiff to perform dental services within an acceptable standard of medical care within the dental community and that the agents of Kool Smiles, the dentist and support staff, breached this standard of care by causing a "burn mark" on the Plaintiff's face causing the Plaintiff physical injury;
16. Jerisha Coomer thereafter took Antonio to the UK Chandler Medical Center Emergency Room (hereinafter UKCMC) for medical treatment;
17. The staff at UKCMC referred Antonio to a plastic surgeon;
18. The medical providers who treated Antonio believed the mark to be a burn and that it would leave a permanent scar on his face;
19. Jerisha Coomer does not currently know the identity of the dentist and dental assistant who performed said services on Antonio Taylor, Jr., and these unknown individuals are readily identifiable by Kool Smiles, PSC, and are therefore identified herein as the unknown dentist and unknown dental assistant at Kool Smiles, PSC.;

COUNT 1 - DENTAL NEGLIGENCE - AGENCY - UNKNOWN DENTIST & STAFF

20. Plaintiff, Antonio Taylor, Jr., a minor, by his next friend and natural mother, Jerrisha Coomer, by counsel, adopt and reiterate each and every fact and allegation as set out herein and incorporates the same by reference;
21. That during the filing of Plaintiff's cavity the dentist and staff at Kool Smiles, PSC owed a duty to the Plaintiff to perform dental care and treatment within an acceptable standard of medical care within the dental community;

22. That at the time of the dental procedure performed on the Plaintiff on July 10, 2010, the dentist and dental assistant were acting within the scope of their employment and agency with Defendant Kool Smiles, PSC;
23. That the dentist and dental assistant deviated from the acceptable standard of medical care during the filing of Antonio's cavity and that this deviation was the direct and proximate cause of the burn mark on the Plaintiff's face and the direct and proximate cause of all of the Plaintiff's injuries and damages;
24. That said dentist and dental assistant breached this standard of care by causing a "burn mark" on the Plaintiff's face causing the Plaintiff physical injury;
25. That as a direct and proximate result of the breach of the applicable standard of dental care by the dentist and dental assistant which resulted in the burn mark and scar on the Plaintiff's face, the Plaintiff: 1) suffered conscious pain and suffering in the past and will suffer conscious pain and suffering into the future, 2) incurred medical expenses in the past and may incur future medical expenses, 3) suffered mental anguish, 4) suffered permanent physical injuries and disfigurement, and 5) may need to undergo additional medical procedures;
26. That all of the injuries and damages sustained by the Plaintiff were the direct and proximate result of the negligent actions of the dentist and dental assistant at Kool Smiles, PSC. without any act or omission on the part of the Plaintiff directly thereto contributing;
27. That the Plaintiff did not assume the risk of his injuries;

28. That as a direct result of the negligence of Defendant Kool Smiles, Plaintiff Antonio Taylor Jr suffered a permanent scar;

COUNT II NEGLIGENCE – DENTAL MALPRACTICE

29. Plaintiff, Antonio Taylor, Jr., a minor, by his next friend and natural mother, Jerrisha Coomer, by counsel, adopt and reiterate each and every fact and allegation as set out herein and incorporates the same by reference;
30. That during the filing of Plaintiff's cavity the dentist and dental assistant at Kool Smiles, PSC owed a duty to the Plaintiff to perform dental care and treatment within an acceptable standard of medical care within the dental / medical community;
31. That Kool Smiles, PSC, through its employees, agents, and servants, breached this standard of care by causing a "burn mark" on the Plaintiff's face causing the Plaintiff physical injury;
32. That as a direct and proximate result of the breach of the applicable standard of dental care by the unknown dentist and unknown dental assistant which resulted in the burn mark and scar on the Plaintiff's face, the Plaintiff Antonio Taylor, Jr.: 1) suffered conscious pain and suffering in the past and will suffer conscious pain and suffering into the future, 2) incurred medical expenses in the past and may incur future medical expenses, 3) suffered mental anguish, 4) suffered permanent physical injuries and disfigurement, and 5) may need to undergo additional medical procedures;

33. That all of the injuries and damages sustained by the Plaintiff were the direct and proximate result of the negligent actions of the employees, dental assistant, and agents of Kool Smiles, PSC. without any act or omission on the part of the Plaintiff directly thereunto contributing;
34. That the Plaintiff did not assume the risk of his injuries;
35. That as a direct result of the negligence of Defendant Kool Smiles, Plaintiff Antonio Taylor Jr suffered a permanent scar;

WHEREFORE, the Plaintiff, Antonio Taylor, Jr., a minor, by his next friend and natural mother, Jerrisha Coomer, by counsel, respectfully demand the following;

1. That the clerk of this Court issue Summons for the Defendant Kool Smiles, PSC and direct a copy thereof, along with a copy of this Complaint;
2. That the clerk of this Court appoint a guardian ad litem for service of the Summons onto the Unknown Dentist and Unknown Dental Assistant ;
3. Judgment against the Defendant Kool Smiles, PSC, in favor of Plaintiff Antonio Taylor, Jr., a minor, in an amount in excess of the jurisdictional limits of this Court and the diversity jurisdictional limits of the U.S. District Court, said amount to be that which is determined as being fair and reasonable by all the evidence to the extent of the liability insurance of the Defendant, for the following elements of damages;
 - a. past mental and physical pain, suffering and inconvenience;
 - b. future mental and physical pain, suffering and inconvenience;

- c. future medical expenses and past medical expenses to the extent that these elements of damages are not paid or payable to the Plaintiff Antonio Taylor, a minor;
 - e. miscellaneous expenses incurred by the Plaintiff Antonio Taylor, Jr., a minor, including but not limited to travel expenses, necessitated by the negligent acts of the Defendant;
 - f. pre-judgment and post-judgment interest;
 - g. Plaintiff Antonio Taylor, Jr.'s cost expended herein, and
 - h. Any and all other relief to which Plaintiff Antonio Taylor, Jr. may be justly entitled;
4. Judgment against the Defendant Unknown Dentist, in favor of Plaintiff Antonio Taylor, Jr., a minor, in an amount in excess of the jurisdictional limits of this Court and the diversity jurisdictional limits of the U.S. District Court, said amount to be that which is determined as being fair and reasonable by all the evidence to the extent of the liability insurance of the Defendant, for the following elements of damages;
- a. past mental and physical pain, suffering and inconvenience;
 - b. future mental and physical pain, suffering and inconvenience;
 - c. future medical expenses and past medical expenses to the extent that these elements of damages are not paid or payable to the Plaintiff Antonio Taylor, Jr. a minor;
 - e. miscellaneous expenses incurred by the Plaintiff Antonio Taylor, Jr., a

minor, including but not limited to travel expenses, necessitated by the negligent acts of the Defendant;

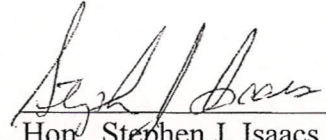
- f. pre-judgment and post-judgment interest;
- g. Plaintiff Antonio Taylor, Jr.'s cost expended herein, and
- h. Any and all other relief to which Plaintiff Antonio Taylor, Jr. may be justly entitled.

5. Judgment against the Defendant Unknown Dental Assistant, in favor of Plaintiff Antonio Taylor, Jr., a minor, in an amount in excess of the jurisdictional limits of this Court and the diversity jurisdictional limits of the U.S. District Court, said amount to be that which is determined as being fair and reasonable by all the evidence to the extent of the liability insurance of the Defendant, for the following elements of damages;

- a. past mental and physical pain, suffering and inconvenience;
- b. future mental and physical pain, suffering and inconvenience;
- c. future medical expenses and past medical expenses to the extent that these elements of damages are not paid or payable to the Plaintiff Antonio Taylor, Jr. a minor;
- e. miscellaneous expenses incurred by the Plaintiff Antonio Taylor, Jr., a minor, including but not limited to travel expenses, necessitated by the negligent acts of the Defendant;
- f. pre-judgment and post-judgment interest;
- g. Plaintiff Antonio Taylor, Jr.'s cost expended herein, and

- h. Any and all other relief to which Plaintiff Antonio Taylor, Jr. may be justly entitled.

Respectfully Submitted,



Hon. Stephen J. Isaacs
Attorney for the Plaintiff

ISAACS LAW OFFICE
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Nicholasville, KY 40356
(859) 881-0003 (Tel)
(859) 252-0707 (Fax)