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VERDICTS & SETTLEMENTS

Special needs child, age 6, drowned at pool party

\$1,250,000 Settlement

This case involving the drowning death of a 6-year old special needs child.

The plaintiffs' son was a 6-year-old autistic child, suffering from Asperger's Syndrome. He had significant learning disabilities and required round-the-clock supervision. In the summer of 2014, the plaintiffs' son was a guest at a pool party thrown by the special needs childcare provider engaged by his parents at the childcare provider's home.

Plaintiffs' complaint alleged the following: that the daycare provider was negligent and grossly negligent in the supervision and care of the decedent. Plaintiffs alleged that the childcare provider breached its duty of care by failing to maintain a suitable ratio of adults to children; failing to appropriately monitor the decedent's movements; failing to ensure that at least one staff person who had successfully completed training in pediatric first aid including CPR was present at the property; failing to properly perform CPR; failing to ensure that a defibrillator was present on the property; failing to ensure that a pool used by it for activities was surrounded by a barrier, or other safety devices; failing to ensure that exits from the home were locked; failing to monitor the pool; and were otherwise negligent.

The employees of the childcare provider allegedly failed to adequately supervise the decedent, who required intensive supervision. Because the decedent was not properly supervised, he was allowed to get away from the group that was in the house, wander out of to the unguarded pool patio, and gain access to the pool, which he entered. The young child was then found unresponsive in the pool. Nobody had realized he was missing for quite some time.



HALPERIN

Swimming pools present a special and unique hazard to autistic children. More than 50 percent of autistic children, studies show, attempt to escape from a safe environment--a rate nearly four times higher than for non-autistic children. According to the National Autism Association more than 90% of the deaths of autistic children in the last 3 years have been caused by drowning. This heightened risk alone required extreme vigilance.

Plaintiffs retained an aquatics expert who would have testified concerning the specialized risks that swimming pools present to autistic children, as well as the 48-inch-tall fence enclosure requirement. Plaintiff also retained a special needs childcare expert who would have testified concerning the need for adequate and proper supervision for children with special needs. This need for supervision is especially acute for autistic children when anywhere near bodies of water or pools.

Plaintiffs argued that the owners of the home where the party was held were also negligent. They were negligent per se in not having a proper, code-compliant safety fence around their in ground pool. With respect to the homeowners, plaintiffs' complaint alleged the following: that they had a duty to be in compliance with Va. Code § 36-98; 13 VAC 5-63-10, but were in violation of same by failing to be in compliance with the Virginia Uniform Statewide Building Code and specifically Appendix G of the International Residential Code, which requires 48-

Type of action: Wrongful death

Injuries alleged: Drowning death of 6-year-old boy

Name of judge: Hon. Stanley P. Klein (ret.)

Date resolved: Nov. 19, 2015

Demand: \$1,500,000.00

Verdict or settlement: Settlement

Amount: \$1,250,000.00

Attorneys for plaintiff: Jonathan E. Halperin, Glen Allen

inch high barriers with self-closing and self-latching gates. These statutes and regulations were enacted for public safety. The decedent was a member of the class for whose benefit the statute and regulations were enacted. The harm that occurred (the drowning) was of the type against which the statute and regulations were designed to protect. The homeowners owed the decedent, a minor and an invitee, duties to use ordinary care to have the premises in a reasonably safe condition; and other duties of reasonable care. Defendants breached their duties of ordinary care by failing to have a proper barrier with access control around the pool, or other safety equipment; failing to ensure that a defibrillator was present on the property; failing to ensure that a child did not have access to the pool and were otherwise negligent.

Plaintiffs filed suit in May 2015 and mediated the case in December 2015 at the request of defense counsel. A successful settlement of \$1,250,000.00 was reached. No depositions were taken and limited paper discovery was performed. [16-T-018]