

IN THE CIRCUIT COURT OF  
THE CITY OF ST. LOUIS  
STATE OF MISSOURI

ANDREW T. MARTELLO, )  
Plaintiff, )  
vs. )  
MARIA VANDERKLOK, )  
Hold for Special Process Server )  
and )  
TOUCHPOINT AUTISM SERVICES, INC, )  
f/k/a THE JUDEVINE CENTER FOR AUTISM )  
Serve at: CT Corporation System, Registered Agent )  
120 S. Central Ave. )  
Clayton, MO 63105 )  
and )  
REBECCA BLACKWELL, )  
Serve at: 112 Holly Dr. )  
Webster Groves, MO 63119 )  
and )  
MISSOURI DIVISION OF ELEMENTARY AND )  
SECONDARY EDUCATION )  
Serve: Registered Agent )  
205 Jefferson Street )  
Jefferson City, MO 65102 )  
and )  
BACB, )  
Serve at: )  
Hold for Special Process Server )  
Defendants. )

Cause No.

Division No.

**PETITION**

COMES NOW, Petition, Andrew Martello, (“Petitioner”), by and through his attorney, Tom Appelbaum, and for his Petition states as follows;

FACTS COMMON TO ALL COUNTS

1. Plaintiff currently resides in the county of St. Louis, Missouri, and at times relevant to the event of this Petition, resided in the city of St. Louis, Missouri.

2. Defendant Maria Vanderklok (“Vanderklok”) is an individual that lives in the City of St. Louis.

3. Defendant Touchpoint Autism Services, Inc., f/k/a The Judevine Center for Autism (“Judevine”) is a Missouri non-profit corporation that does business in the City of St. Louis.

4. Defendant Rebecca Blackwell (“Blackwell”) is an individual that held a supervisory position at Judevine at all times pertinent to this Petition.

5. Defendant Behavioral Analysis Certification Board (“BACB”) is a Florida non-profit corporation that does business in the City of St. Louis.

6. Defendant Missouri Division of Elementary and Secondary Education (“DESE”), is a Missouri governmental agency that conducts business in the City of St. Louis.

7. Plaintiff was married to RM (“Wife”) at the time in which the events described in the Petition began.

8. Plaintiff and his Wife had a minor child, LM (the “Child”), which was diagnosed with Autism Spectrum Disorder (“ASD”).

9. As part of his course of treatment for ASD, the Child's Individualized Education Program, which was approved by DESE, recommended Applied Behavioral Analysis therapy ("ABA Therapy").
10. Said ABA Therapy was funded with funds provided by the Individuals with Disabilities Act, part C ("IDEA-C"), through DESE.
11. Said ABA Therapy was provided through Judevine.
12. At the time of the Child's therapy, Vanderklok was employed with Judevine as an Applied Behavioral Analyst.
13. Vanderklok was certified as an applied behavioral analyst by BACB.
14. Vanderklok, as an employee of Judevine, provided ABA Therapy to the Child.
15. Said ABA Therapy was provided at Judevine, with the Wife present and participating in the ABA Therapy.
16. Said ABA Therapy lasted approximately three (3) weeks, in January 2007.
17. During the course of the Child's ABA Therapy, an inappropriate sexual relationship developed between Vanderklok and the Wife.
18. Such a relationship is against §1.08(b) and §2.01 of The Guidelines for Professional Conduct (the "Guidelines") as set forth by the BACB and published on their website. *A copy of the Guidelines' relevant sections as published on the BACB's website are attached and incorporated herein as referenced as Exhibit 1.*

19. As a result of this inappropriate relationship, there was irreparable harm done to the marriage between the Plaintiff and the Wife.

20. As a further result of this inappropriate relationship, the marriage between the Plaintiff and the Wife was dissolved by decree in the County of St. Louis on May 23<sup>rd</sup>, 2008.

21. As a result of this inappropriate relationship, the Plaintiff has suffered severe emotional and financial harm.

22. Plaintiff suffers from Multiple Sclerosis, and as a further result of the stress caused by the inappropriate relationship and the subsequent dissolution of his marriage, Plaintiff's symptoms have been aggravated, causing physical pain and reduced quality of life.

**COUNT I: NEGLIGENCE**  
**AGAINST DEFENDANT MARIE VANDERKLOK**

Plaintiff states:

23. Plaintiff realleges and incorporates into this count paragraphs 1-22.

24. In providing ABA Therapy to the Child, Vanderklok failed to properly, adequately and timely treat the transference and counter-transference phenomenon experienced with the Wife, in that;

- a. Vanderklok encouraged and permitted the Wife to become emotionally attached to her in an inappropriate and sexual way;
- b. Vanderklok became involved in a sexual relationship with the Wife.

25. Vanderklok undertook to treat the Child as a psychologist, as defined in Chapter 337 of the Revised Statutes of Missouri, although she was not licensed to practice psychology, in violation of said statute. *A copy of the relevant sections of RSMo Chapter 337 is attached as Exhibit 2 and incorporated herein as referenced.*

26. The aforementioned acts of Vanderklok were negligent.

27. Such negligence directly caused or directly contributed to cause severe emotional and financial distress to Plaintiff.

28. The conduct of Vanderklok showed complete indifference to or conscious disregard for the well being of the Plaintiff.

WHEREFORE, Plaintiff prays for compensatory and punitive damages from defendant Vanderklok in such amount as is fair and reasonable under the circumstances, and for costs.

**COUNT II: VICARIOUS LIABILITY**  
**AGAINST DEFENDANTS BLACKWELL, JUDEVINE AND THE MISSOURI**  
**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION**

Plaintiff states:

29. Plaintiff realleges and incorporates into this count paragraphs 1-28.

30. At all times relevant, Vanderklok was an actual or ostensible agent or employee of defendant Judevine and an ostensible agent of defendant DESE, acting within the course and scope of her employment or agency.

31. The ostensible agency of Vanderklok for Blackwell, Judevine and DESE was created as follows:

- a. Judevine was a vendor for services to comply with and to be paid for through IDEA-C, of which DESE controls and manages.
- b. ABA Therapy was recommended for the Child as part of a comprehensive plan through the IDEA-C program.
- c. The ABA Therapy was done in conjunction with evaluations and other treatments conducted by Judevine at their physical location.
- d. Vanderklok reported about ABA Therapy she conducted to supervisors, including Blackwell, at Judevine and was an employee with Judevine.
- e. In participating with ABA Therapy provided by Vanderklok through Judevine and the DESE program, Plaintiff relied on the representations, express and implied, of Blackwell, Judevine and DESE that the care provided by Judevine and DESE would be by a competent, qualified health care provider.

WHEREFORE, Plaintiff prays for compensatory damages from Judevine and DESE, jointly and severally, in such amount as is fair and reasonable under the circumstances, and for costs.

**COUNT III: NEGLIGENT HIRING AND SUPERVISION  
AGAINST DEFENDANT JUDEVINE AND BLACKWELL**

Plaintiff states:

32. Plaintiff realleges and incorporates into this count paragraphs 1-31.

33. Judevine employed or held out Vanderklok as its employee and retained and referred clients to Vanderklok when it knew, or should have known that Vanderklok was not licensed in violation of RSMo., Chapter 337, and that Vanderklok was likely to abuse the therapist/client relationship.

34. As a result of this conduct, Plaintiff sustained the injuries and damages alleged in Count I of this Petition.

WHEREFORE, Plaintiff prays for compensatory damages from Judevine, in such amount as is fair and reasonable under the circumstances, and for costs.

**COUNT IV: NEGLIGENCE**  
**AGAINST DEFENDANT BACB**

Plaintiff states:

35. Plaintiff realleges and incorporates into this count paragraphs 1-34.

36. Plaintiff contacted defendant BACB when he was made aware of the inappropriate relationship and, accordingly, the breach to the BACB's Guidelines.

37. Plaintiff was informed by the BACB that they do not investigate nor provide any disciplinary procedures for individuals certified by the BACB as ABA Therapists for breaches to the Guidelines.

38. The BACB acted negligent by knowingly allowing defendant Vanderklok to maintain her certification as an ABA Therapist despite her willful violation of the Guidelines for Professional Conduct that the BACB themselves published.

39. The BACB acted negligent by publishing a set of Guidelines of professional conduct which they had no intention of enforcing, thereby allowing potential clients of ABA Therapists certified through the BACB to act in reliance on the false impression that certified ABA Therapists were held to these Guidelines.

WHEREFORE, Plaintiff prays for compensatory damages from BACB, in such amount as is fair and reasonable under the circumstances, and for costs.

**COUNT V: VIOLATION OF THE MERCHANDISE PRACTICES ACT  
AGAINST DEFENDANTS JUDEVINE AND BACB**

Plaintiff states:

40. Plaintiff realleges and incorporates into this count paragraphs 1-39.

41. According to RSMo §407.020, “[t]he act, use or employment by any person of any...misrepresentation...of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce... in or from the state of Missouri, is declared to be an unlawful practice.” *A copy of the relevant sections of RSMo Chapter 407 is attached as Exhibit 3 and incorporated herein as reference.*

42. According to RSMo § 407.010(4), the definition of “merchandise” includes services.



43. Judevine offered for sale, the services of Vanderklok as a therapist in the state of Missouri.

44. Judevine misrepresented the material fact of Vanderklok's qualifications by employing her as a therapist to perform job duties requiring a license to practice psychology, despite the fact that Vanderklok held no such state license.

45. BACB sells the service of certification of behavioral analysts in the state of Missouri.

46. BACB misrepresented the material fact that behavioral analysts, such as Vanderklok, would be held to their stated Guidelines of Professional Conduct.

WHEREFORE, Plaintiff prays for compensatory and punitive damages from Judevine and BACB, jointly and severally, in such amount as is fair and reasonable under the circumstances, and attorney's fees as provided for in Chapter 407 RSMo, and for costs.

**COUNT VI: LOSS OF CONSORTIUM**  
**AGAINST ALL DEFENDANTS**

Plaintiff states:

47. Plaintiff realleges and incorporates into this count paragraphs 1-46.

48. At all times during the relevant acts in the Petition, Plaintiff was the husband of RM.

49. The negligence of defendants directly caused or directly contributed to cause injury to RM, and Plaintiff thereby sustained damage to the care, comfort, guidance, counsel, support, companionship, consortium and services of his wife.

WHEREFORE, Plaintiff prays for compensatory and punitive damages from all defendants, jointly and severally, in such amount as is fair and reasonable under the circumstances and for costs.

Respectfully submitted,

The Law Offices of Tom Appelbaum

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