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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

KIMBER DOUGLAS and BRENT BABB, on
their own behalves and as guardians for K.B
and B.B., their minor children,

Plaintiffs,

v.

The Washington State Department of Social
and Health Services (DSHS),

Defendant.

20 200329-32

NO.

COMPLAINT FOR DAMAGES FOR
DISCRIMINATION AND VIOLATION
OF CIVIL RIGHTS AND DEMAND
FOR JURY TRIAL

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Original Filed

JAN 27 2020

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

COPY

Plaintiffs Kimber Douglas and Brent Babb, on their own behalf and on behalf of their
minor children K.B and B.B, allege that Defendant wrongfully and illegally took their minor
children from them for a period of over one year and did so in violation of the Americans with
Disabilities Act, the Rehabilitation Act, the Washington Law Against Discrimination, and
common law negligence. Plaintiffs complain and allege as follows:

I. PARTIES

1.1. Plaintiffs Kimber Douglas and Brent Babb have resided in Spokane County during
the timeframe relevant to this claim. Mr. Babb and Ms. Douglas are not married but live together

1 and have two children: K.B and B.B. Both Mr. Babb and Ms. Douglas are deaf.

2 1.2. Defendant Washington State Department of Social and Health Services (DSHS) is
3 an agency of the State of Washington.

4 1.3. Plaintiffs timely filed a notice of tort claim on November 22, 2019. Sixty days have
5 expired. Accordingly, Plaintiffs have satisfied the administrative preconditions to filing this
6 lawsuit.

8 II. JURISDICTION AND VENUE

9 2.1. Jurisdiction and venue are proper in Spokane County, Washington because the
10 illegal acts and employment practices alleged herein were committed in Spokane County.

11 III. FACTS

12 3.1 On February 2, 2017, Ms. Babb, Ms. Douglas and their two children traveled to
13 14009 E Sprague Avenue in Spokane Valley to collect scrap metal, which they do to earn money.
14 Because it was nighttime, the children slept in the car with the parents present until the scrap metal
15 buyer opened.

16 3.2 At around 4:50 AM, a Spokane County Sheriff Deputy (S. Ortiz) noticed the
17 Plaintiffs' car parked between two businesses and investigated. The deputy ordered the vehicle's
18 occupants out of the vehicle, but because Mr. Babb and Ms. Douglas are deaf, they did not respond.
19 Mr. Ortiz called for backup, approached the vehicle, and thereafter determined that Mr. Babb was
20 deaf.

21 3.3 The deputy looked into the vehicle and observed that the children, who at that time
22 were four and three years old, were sleeping in the back of the vehicle, with blankets. Mr. Ortiz
23 assessed that the children were "cold" but did so without touching the children, determining the
24 internal temperature of the car, or determining if the engine had been recently running.
25

1 Nonetheless, he called an ambulance to evaluate the children. The ambulance arrived, took the
2 children from Ms. Douglas and Mr. Babb, and then drove the children to Valley Hospital
3 Emergency Room. Mr. Babb and Ms. Douglas also traveled to the hospital.

4 3.4 At the ER a physician examined the children and found that the children were
5 “generally well cared for” with “no obvious signs of concern.”
6

7 3.5 While at the hospital a DSHS social worker/investigator arrived. Although the
8 children were cleared and the ER physician found no signs of concerns or maltreatment regarding
9 the children, the children were not returned to Mr. Babb or Ms. Douglas. Instead, DSHS
10 determined that the children had been “maltreated” by Mr. Babb and Ms. Douglas because the
11 children were sleeping in a car when it was cold outside; the DSHS claimed “maltreatment” despite
12 the fact that both parents were present in the car to ensure the temperature was adequate.

13 3.6 Although required by law, DSHS did not provide Mr. Babb or Ms. Douglas with a
14 properly trained sign language interpreter to assist Mr. Babb and Ms. Douglas in communicating
15 with law enforcement and DSHS prior to taking their children away. They were required to use an
16 uncertified interpreter (Mr. Babb’s mother, who had a conflict of interest) or resort to writing their
17 concerns on a piece of paper. If a qualified and independent interpreter had been utilized, it is
18 likely that communication with the deaf parents would have proceeded better, and the children
19 would not have been taken away in the first place.
20

21 3.7 DSHS stated that “[t]he children checked out medically as being okay but due to
22 the parents’ refusal to work with recommended services and their lack of insight the Department
23 moved forward to file for dependency.” The services in question were recommended rather than
24 required, and the alleged lack of parental insight was totally subjective and likely perceived and/or
25 caused by DSHS’s failure to provide ASL translation services that would enable full

1 communication with Mr. Babb and Ms. Douglas. DSHS thus acknowledged that although a
2 hospital found that the children were physically well, it took the children away because the
3 children's parents would not follow the government's "recommendations" and because the parents
4 lacked "insight." Put differently: if disabled parents (read: those who lack "insight") do not follow
5 the government's recommendations (read: do not comprehend recommendations which have not
6 been effectively translated) then they will have their children taken away from them. Thus, DSHS
7 took away Mr. Babb's and Ms. Douglas's children—who had been medically deemed to be "well
8 cared for" with "no obvious signs of concern"—in part due to the parents' protected disability.
9

10 3.8 DSHS gravely compounded its initial violation of Plaintiffs' rights by requiring
11 Mr. Babb and Ms. Douglas to undergo numerous assessments, evaluations, and interviews in order
12 to have their children returned, but without consistently and reliably providing proper and
13 sufficient ASL interpretative services needed to facilitate these interactions. Many appointments
14 had to be delayed for weeks or months in order to find a sign language interpreter. The
15 Department's failure to adequately accommodate Mr. Babb's and Ms. Douglas's disabilities
16 resulted in a significantly prolonged period in which their children were separated from their
17 parents—a delay that would not have befallen parents who were not deaf. DSHS thus engaged in
18 additional and ongoing illegal conduct that violated the Plaintiffs' legal rights.
19

20 3.9 On September 22, 2017, the Washington State Office of Administrative Hearings
21 (OAH) found, as a matter of law, that the DSHS's determination that Mr. Babb and Ms. Douglas
22 maltreated their children during the morning of February 2, 2017, was wrong. Thus, DSHS's initial
23 removal of Plaintiffs' children, and the prolonged separation thereafter—a separation initiated
24 without due process and largely based on disability—was an illegal violation of the Plaintiffs'
25 rights.

1 3.10 Even after OAH’s legal determination that removal of the Plaintiffs’ children had
2 been wrongful, DSHS continued to fracture and harm the family for another year: DSHS did not
3 return the children to their parents until October 10, 2018, more than a year after the OAH
4 determination and more than 20 months after the initial wrongful family separation. This, too, was
5 an illegal violation of the Plaintiffs’ rights.

6
7 3.11 All told, Defendant took Mr. Babb and Ms. Douglas’s children away from their
8 parents from February 3, 2017 to October 10, 2018. This caused immense pain, suffering,
9 emotional anguish, and long-lasting psychological harm to the young children and parents alike.

10 **IV. CLAIMS**

11 **COUNT ONE - VIOLATION OF THE WASHINGTON LAW AGAINST** 12 **DISCRIMINATION**

13 4.1 Plaintiffs re-allege and incorporate the allegations contained in the preceding
14 paragraphs as if fully restated herein.

15 4.2 In passing the Washington Law Against Discrimination (WLAD), the legislature
16 found that “practices of discrimination against any of its inhabitants because of . . . the presence
17 of any sensory, mental, or physical disability . . . are a matter of state concern, that such
18 discrimination threatens not only the rights and proper privileges of its inhabitants but menaces
19 the institutions and foundation of a free democratic state.” RCW 49.60.010.

20 4.3 Under the WLAD, all people in Washington have the right to be free from
21 discrimination because of the presence of any sensory, mental, or physical disability. RCW
22 49.60.030(1). Any person who has been deprived of this right can recover damages suffered as a
23 result of this discrimination, along with the cost of bringing suit including attorneys’ fees. RCW
24 49.60.030(2).
25

1 4.4 Under the WLAD, Defendant DSHS is also required to provide reasonable
2 accommodation to persons with disabilities. Failure to provide reasonable accommodation
3 constitutes discrimination under the Act.

4 4.5 Defendant DSHS subjected Plaintiffs to adverse treatment and discrimination based
5 on the presence of a sensory disability, both in the decision to take and retain custody of their
6 children and in failing to accommodate their disability on multiple occasions after taking custody
7 of their children by, among other things, failing to provide qualified sign language interpreters.

8 4.6 As a direct and proximate result of Defendant's unlawful conduct, Plaintiffs
9 sustained injuries and damages, to include but not limited to loss of enjoyment of life, traumatic
10 stress, anxiety, mental anguish, physical ailments, mental injury and suffering, and other non-
11 economic damages in an amount to be proven at trial. Plaintiffs are also entitled to attorney's fees
12 and costs.
13

14 **COUNT TWO - NEGLIGENCE**

15 4.7 Defendant had a duty to ensure that Plaintiffs received ASL services during the
16 above-referenced events.

17 4.8 Defendant breached its duty to Plaintiffs by not providing Plaintiffs the necessary
18 ASL services during the above-referenced events.

19 4.9 Defendant's breach of the above duty caused Plaintiffs harm because, *inter alia*,
20 Plaintiffs were unable to properly understand the actions the government was taking vis-à-vis their
21 children which, in turn, resulted in their children being illegally taken from their custody and
22 remaining outside their custody.
23

24 4.10 Defendant's actions have caused Plaintiffs damages in an amount to be proven at
25 trial.

1 **COUNT THREE - VIOLATION OF THE AMERICANS WITH DISABILITIES**
2 **ACT, 42 U.S.C. § 12101 *et seq.***

3 4.11 Plaintiffs re-allege and incorporate the allegations contained in the preceding
4 paragraphs as if fully restated herein.

5 4.12 Defendant is a “public entity” as defined in 42 U.S.C. § 12131(1).

6 4.13 Plaintiffs are “qualified individuals with a disability” within the meaning of 42
7 U.S.C. § 12131(2).

8 4.14 Defendant discriminated against Plaintiffs and denied them participation in services
9 and programs offered by Defendant, by reason of Plaintiffs’ disability, in violation of Title II of
10 the ADA, 42 U.S.C. § 12132 and its implementing regulations.

11 4.15 Defendant DSHS subjected Plaintiffs to adverse treatment and discrimination based
12 on the presence of a sensory disability, both in the decision to take and retain custody of their
13 children and in failing to accommodate their disability on multiple occasions after taking custody
14 of their children by, among other things, failing to provide qualified sign language interpreters, in
15 violation of Title II of the ADA, 42 U.S.C. § 12132 and its implementing regulations.

16 4.16 Pursuant to 42 U.S.C. § 12133, Plaintiffs are entitled to compensatory damages as
17 well as reasonable attorneys’ fees and costs incurred in bringing this action.

18 **COUNT FOUR - VIOLATION OF THE REHABILITATION ACT, 29 U.S.C. § 794**
19 ***et seq.***

20 4.17 Plaintiffs re-allege and incorporate the allegations contained in the preceding
21 paragraphs as if fully restated herein.

22 4.18 Plaintiffs are qualified individuals with disabilities under Section 504 of the
23 Rehabilitation Act, 29 U.S.C. § 794 (a). Defendant receives federal financial assistance.
24
25

1 4.19 Defendant violated Section 504 of the Rehabilitation Act and its implementing
2 regulations by discriminating against Plaintiffs based on their disabilities and by denying Plaintiffs
3 necessary and qualified sign language interpreter services.

4 4.20 Pursuant to 29 U.S.C. § 794 and 42 U.S.C. § 1983, Plaintiffs are entitled to
5 compensatory damages as well as reasonable attorneys' fees and costs incurred in bringing this
6 action.

7 8 **V. PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs requests the following relief:

- 10 (a) For a trial of this matter before a jury;
- 11 (b) For judgment against Defendant;
- 12 (c) For actual damages and pecuniary losses suffered as a result of Defendant's
13 actions;
- 14 (d) For emotional distress damages and all other compensatory and general damages
15 suffered by Plaintiffs;
- 16 (e) Statutory and punitive damages allowed by law;
- 17 (f) Costs and reasonable attorneys' fees incurred with this lawsuit as permitted under
18 the Washington Law Against Discrimination, the ADA, and the Rehabilitation
19 Act;
- 20 (g) Interest on all damages requested above; and
- 21 (h) Such other and further relief as the Court deems just or equitable.
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1 DATED this 27th day of January, 2020.

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