

**STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE**

DAVID W. ABSTON,

Plaintiff,

v.

MARSHALL KRZOS,
163 Reeves Road
Angola, NY 14006,

Defendant.

SUMMONS

Child Victims Act Proceeding
22 NYCRR 202.72

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney(s) within twenty (20) days after the service of this summons, exclusive of the day of service [or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York]; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Erie County is designated as the place of trial on the basis that the Defendant resides in this County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred here.

Dated: October 7, 2019
Hamburg, New York


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**STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE**

DAVID W. ABSTON,

Plaintiff,

COMPLAINT

v.

MARSHALL KRZOS,

Defendant.

Plaintiff, DAVID W. ABSTON, by his attorneys Chiacchia & Fleming, LLP, brings this action against MARSHALL KRZOS, and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

1. This Court has personal jurisdiction over the Defendant pursuant to CPLR 301 and 302, in that the Defendant either resides in New York or conducts or, at relevant times conducted, activities in New York that give rise to the claims asserted herein.

2. Venue for this action is proper in the County of Erie pursuant to CPLR 503 in that the Defendant resides in this County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred here.

3. This action is brought pursuant to CPLR § 214-G, as added by the New York State Child Victims Act, which has revived claims of child sexual abuse for a period of one year beginning on August 14, 2019, six months after the effective date of the section (February 14, 2019). This action is timely.

4. Plaintiff DAVID W. ABSTON (Plaintiff'), is an individual residing in Erie County, New York.

5. Defendant MARSHALL KRZOS (“KRZOS”) is an individual residing in Erie County and was a nurse and/or agent for Western New York Children’s Psychiatric Center (“WNYCPC”) at all times relevant.

FACTS COMMON TO ALL CLAIMS

6. In March 1984, when Plaintiff was 12 years old, Plaintiff was admitted into WNYCPC.

7. Through Defendant KRZOS’s position at, within, or for the WNYCPC, Defendant KRZOS was put in direct contact with Plaintiff, a resident at WNYCPC. Defendant KRZOS was assigned to his case. It was under these circumstances that Plaintiff came to be under the direction and control of Defendant KRZOS, who used his position of authority and trust over Plaintiff to sexually abuse and harass him.

8. On numerous occasions, from approximately March through September 1984, while Plaintiff was a minor, Defendant KRZOS, while acting as a nurse, employee, agent, servant and/or volunteer of the WNYCPC, sexually assaulted, sexually abused and/or had unpermitted sexual contact with Plaintiff in violation of the laws of the State of New York.

9. At all times material hereto, Defendant KRZOS, was under the direct supervision, employ and/or control of WNYCPC.

10. Plaintiff suffered personal physical and psychological injuries and damages as a result of Defendant KRZOS’s actions, as well as other damages related thereto, as a result of his childhood sexual abuse.

11. As a direct result of Defendant KRZOS’s conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, problems sleeping,

concentrating, low self-confidence, low self-respect, low self-esteem, feeling of worthlessness, feeling shameful, and embarrassed, feeling alone and isolated, alcohol use problems, battling eating disorder, feeling helpless and hopeless, problems with sexual intimacy, relationship problems, trust issues, feeling confused and angry, the feeling that the good things have been ruined, feeling sad and depressed, feeling anxiety, crying, feeling dirty, used, and damaged, feeling suicidal, having flashbacks, feeling that his innocence was stolen, and feeling that his life was ruined. Plaintiff was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and, on information and belief, has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Defendant KRZOS's sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm he suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Assault

12. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

13. Defendant's actions from approximately March through September 1984, placed Plaintiff in constant apprehension of imminent harmful and offensive bodily contact.

14. That the aforesaid sexual assaults were unwarranted, unjustified, and unprovoked by Plaintiff and without his consent, as Plaintiff did not and could not give consent as a minor.

15. By reason of the foregoing, Plaintiff sustained injuries and damages, with accompanying pain and suffering and was greatly injured emotionally and mentally, and was

subject to humiliation and embarrassment, all to his damage in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

SECOND CAUSE OF ACTION
Battery

16. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

17. Defendant's actions in sexually abusing, sexually assaulting and having unpermitted sexual contact with Plaintiff constitutes Defendant intentionally making offensive bodily contact with Plaintiff.

18. That the aforesaid offensive bodily contact was unwarranted, unjustified, and unprovoked by Plaintiff and without his consent, as Plaintiff did not and could not give consent as a minor.

19. By reason of the foregoing, Plaintiff sustained injuries and damages, with accompanying pain and suffering and was greatly injured emotionally and mentally, and was subject to humiliation and embarrassment, all to his damage in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

THIRD CAUSE OF ACTION
Intentional Infliction of Emotional Distress

20. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

21. Defendant intentionally and recklessly touched Plaintiff on the aforementioned occasions.

22. Defendant's conduct in repeatedly sexually abusing Plaintiff was extreme, outrageous, shocking, and exceeding all reasonable bounds of decency.

23. That the aforesaid conduct was done with the intention of causing Plaintiff severe emotional distress.

24. By reason of the foregoing, Plaintiff sustained injuries and damages, with accompanying pain and suffering and was greatly injured emotionally and mentally, and was subject to humiliation and embarrassment, all to his damage in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

FOURTH CAUSE OF ACTION
Negligent Infliction of Emotional Distress

25. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

26. Defendant owed a duty to Plaintiff, as a nurse, and employee, of a children's psychiatric center to reasonably protect him from harm and not sexually abuse him.

27. Defendant intentionally and recklessly breached that duty by abusing Plaintiff on the aforementioned occasions over a period of one year.

28. Defendant's conduct in repeatedly sexually abusing Plaintiff, unreasonably endangered Plaintiff's physical safety and caused Plaintiff to fear for his own safety over the period of abuse.

29. Plaintiff suffered severe emotional and mental suffering and distress due to Defendant's actions, as well as fear for his own physical safety.

30. By reason of the foregoing, Plaintiff sustained injuries and damages, with accompanying pain and suffering and was greatly injured emotionally and mentally, and was subject to humiliation and embarrassment, all to his damage in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction

FIFTH CAUSE OF ACTION
Punitive Damages

31. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

32. Defendant's actions in being violent, sexually harassing, and/or committing other misconduct against Plaintiff is tantamount to a wanton and conscious disregard for the safety of Plaintiff and warrants the imposition of punitive damages.

33. By reason of the malicious, intentional, willful, and/or negligent conduct of Defendant herein, and by such other acts that were morally reprehensible, Defendant's conduct evidenced a callous disregard for the safety of Plaintiff, and said acts constituted a wanton, reckless and/or malicious disregard for the rights of others and, as a result thereof, Plaintiff demands punitive damages.

34. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction.

SIXTH CAUSE OF ACTION
Debts for Willful and Malicious Injury Nondischargeable

47. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

48. Pursuant to Section 523(a)(6) of the Bankruptcy Code, any debt “for willful and malicious injury by the debtor to another entity or to the property of another entity” is nondischargeable.

49. Defendant KRZOS allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint to occur.

50. Defendant KRZOS’s intentional act of nondisclosure allowed him to continue sexually abusing children, an injury that he was substantially certain would occur.

51. This intentional act necessarily produced the harm that resulted.

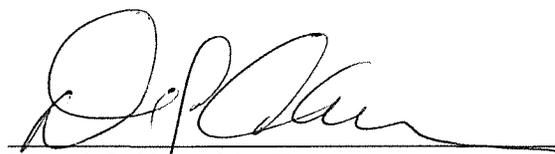
52. Defendant KRZOS’s actions endangered Plaintiff’s safety and caused him to fear for his own safety.

53. As a direct and proximate result of Defendant KRZOS’s actions, which included but were not limited to, negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

54. By reason of the foregoing, Defendant KRZOS is liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

WHEREFORE, Plaintiff respectfully requests judgment against Defendant KRZOS herein in sums which exceed the jurisdictional limit of all lower courts which would otherwise have jurisdiction in this action, including compensatory damages, punitive damages, prejudgment interest to the extent permitted by law; costs, disbursements and fees of this action, including attorneys’ fees, to the extent permitted by law; and any other relief as the Court deems just and proper.

Dated: October 7, 2019
Hamburg, New York



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