

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>HEIDI MCFARLAND and RACHEL MCFARLAND, Plaintiffs, v. JASON RIEPER and RIEPER LAW FIRM, Defendants.</p>	<p>CASE No. PETITION AND JURY DEMAND</p>
---	--

COMES NOW, the Plaintiff, by and through counsel, on information and belief formed after an inquiry reasonable under the circumstances, and alleges against the Defendants as follows:

PARTIES

1. At all times material hereto, Plaintiffs Heidi McFarland and Rachel McFarland have been residents of Ankeny, Polk County, Iowa.
2. At all times material hereto, Defendant Jason Rieper was a citizen and resident of West Des Moines, Polk County, Iowa.
3. At all times material hereto, Defendant Rieper was licensed to practice law in the state of Iowa and has an office at the Rieper Law Firm in Polk County, Iowa.
4. At all times material hereto, Defendant Rieper was a partner and agent of the Defendant Rieper Law Firm and in doing the things herein alleged was acting within the scope of such employment and agency.

FACTUAL BACKGROUND

5. Plaintiff Rachel was approached by Felicia West in September 2013 about adopting her daughter, Markeya Atkin's unborn child. Rachel worked with Felicia at University Park

Nursing and Rehabilitation where Rachel was a Registered Nurse and Felicia was a Certified Nurse's Aide.

6. On September 21, 2013, Plaintiffs met with Felicia West and Markeya Atkins at a local Olive Garden in Ankeny, Iowa to discuss the possibility of adopting the unborn child.
7. All parties agreed to the adoption.
8. In October 2013, Plaintiffs retained Defendant Rieper to represent them with regard to the private adoption action.
9. Defendant Rieper led the Plaintiffs to believe that the adoption proceedings began as soon as they hired him and that he would timely take care of their adoption proceeding.
10. Defendant Rieper contacted William Pearce of Adoption Associates of Iowa to notify him that Plaintiffs were the prospective parents of an unborn child due the first week of January 2014. Defendant Rieper also communicated to Mr. Pearce that he had notified the McFarlands that he would be in contact with them to begin a home study and that Plaintiffs would share the details of the birth mother and her family situation.
11. On October 23, 2013, Mr. William Pearce mailed Plaintiffs a letter indicating that his affiliate Lu Ann Barnes of the Adoption Connection in Ankeny would be helping the Plaintiffs with their adoption.
12. Lu Ann Barnes visited the Plaintiffs home and conducted the first home study in November 2013. Lu Ann was provided with the Plaintiffs' family history. Subsequently, Mr. Pearce took over the home studies. He conducted one home study on December 16, 2013. During this home study, Plaintiffs provided Mr. Pearce with their fingerprints, a reference letter from their physician, their marriage license, their birth certificates, letters

from their employers indicating that they were gainfully employed, and three (3) reference letters.

13. The baby was born on December 28, 2013. Plaintiffs were present during the birth of the child and coached Markeya through her labor. Plaintiff Rachel McFarland was allowed to cut the umbilical cord. Plaintiffs were asked by Markeya to fill out the birth certificate and name the child. Plaintiffs named the child Gabriel King McFarland.
14. Plaintiffs called Defendant Rieper to notify him of the baby's birth.
15. Plaintiff Rachel McFarland called Defendant Rieper on the December 30, 2013 regarding the baby's discharge from the hospital. Defendant Rieper spoke with the social worker on the maternity ward at Mercy Medical Center. She provided Defendant Rieper with paperwork that needed to be filled out and signed. Defendant Rieper did not inform Plaintiffs of the contents of said paperwork nor did he meet with Markeya. Defendant Rieper left after signing said paperwork even though he was required to walk the baby out of the hospital.
16. Defendant Rieper led Plaintiffs to believe that he had obtained Markeya's signature and that the formal release of custody had been signed by Markeya prior to the baby's release to the Plaintiffs.
17. Baby Gabriel was placed with the Plaintiffs on December 30, 2013 and remained in the Plaintiffs physical custody until March 13, 2014.
18. During the time Baby Gabriel lived with Plaintiffs, Plaintiffs discovered that Baby Gabriel was deaf in his left ear. Plaintiffs purchased a hearing aid for baby Gabriel and ensured that he was fed, loved, and sheltered.

19. Plaintiffs developed a strong emotional bond with the child. Plaintiff Heidi took care of baby Gabriel during the day while she was on maternity leave with him. Plaintiffs also purchased \$2000 worth of pasteurized human breast milk for baby Gabriel. Plaintiffs saw Dr. Bilgi when it was time for baby Gabriel to get vaccinated. Dr. Bilgi directed Plaintiffs to bathe baby Gabriel on a daily basis – the couple did so every night after Plaintiff Rachel came home from work.
20. Defendant Rieper failed to draft, execute and communicate to Plaintiffs that he had failed to obtain the signed release of custody from Markeya prior to placing the child with the Plaintiffs.
21. On March 3, 2014, Plaintiffs learned that Markeya wanted her child back when Markeya's guardian ad litem, Penny Reimer, notified Defendant Rieper of said desire. Defendant Rieper notified Plaintiffs via telephone, that if Markeya came knocking at their door, they were required to release the baby to Markeya.
22. On March 4, 2014, Plaintiff Heidi McFarland and her sister met with Defendant Rieper at his office. Defendant Rieper, notified her again that she had to give baby Gabriel back to Markeya. Defendant Rieper also told her that if she wanted to proceed with the adoption, Plaintiffs would have to pay him an additional \$10,000 - \$15,000 for his services. Defendant Rieper did not explain why such an amount would be necessary to proceed.
23. Plaintiffs directed Defendant Rieper to proceed with the Termination of Parental Rights Hearing scheduled for March 24, 2014, and the adoption. Plaintiffs further directed Defendant Rieper to notify Penny Reimer of their concerns regarding Markeya's ability to provide for baby Gabriel and act in his best interests.

24. In a letter drafted by Defendant Rieper at the direction of Plaintiffs to Penny Reimer, Plaintiffs outline their concerns regarding the return of baby Gabriel to his biological mother. Specifically that Markeya has had a troubled youth. Markeya had run away from her mother's home; dropped out of school; lost the support of her mother, the only person able and willing to support her; and did not have the financial means to properly support the child. Markeya had also admitted that she had used illegal drugs during her pregnancy. Markeya was also unwilling to feed or assist with the baby in any way during her visits to Plaintiffs home.
25. On March 12, 2014, Defendant Rieper's receptionist called Plaintiffs to schedule a time to meet with them. When asked what the meeting would be about, the receptionist refused to provide Plaintiffs with any information.
26. On March 13, 2014, Plaintiffs met with Defendant Rieper and discussed the upcoming Termination of Parental Rights hearing. Defendant Rieper advised Plaintiffs that since the baby would be returned to its biological mother, the hearing would be null and void. He also advised them that if a new hearing was not scheduled, the judge would be upset since this hearing would now be a contested hearing. Finally, he advised plaintiffs that their chances of adopting baby Gabriel were slim because the birth mother is always given preference over potential adoptive parents.
27. Defendant Rieper picked up the baby later that same day. Plaintiffs had no other choice than to hand baby Gabriel over to Defendant Rieper. Plaintiffs were devastated as they were the sole providers and caretakers for Baby Gabriel the first three months of his life.
28. After giving baby Gabriel back to Markeya Atkins, Plaintiffs stayed awake countless nights worrying if baby Gabriel was being properly fed, housed, and cared for.

29. On April 22, 2014, baby Gabriel was found by Markeya at her residence. Baby Gabriel was alone, pale, wet, and foaming from his nose and mouth. Markeya had left baby Gabriel in the care of his father, Drew James Weehler-Smith, while she was gone.
30. Baby Gabriel was pronounced dead on April 22, 2014. Drew James Weehler-Smith was charged with neglect and murder in the first degree for the death of baby Gabriel.

COUNT I
PROFESSIONAL NEGLIGENCE – LEGAL MALPRACTICE

31. Defendant Rieper entered into an attorney-client relationship with Plaintiffs in October 2013 when Plaintiffs retained Defendant Rieper to represent them in their private adoption action.
32. In return for such representation, Defendant Rieper was to be compensated.
33. Defendant was negligent in one or more of the following respects:
 - a. Defendant Rieper failed to render the appropriate legal advice and services commensurate with the standard of care required in the legal profession;
 - b. In failing to assume the custody of the minor child, Gabriel King McFarland, by the appropriate means of acceptance of a release of custody, signed by the living parent in possession of the minor child, Markeya Atkins, pursuant to Iowa Code § 600A.4;
 - c. In failing to assume the custody of the minor child, which resulted in Defendant Rieper's lack of standing to petition the Juvenile Court for Polk County for the termination of parental rights of Markeya Atkins and Drew James Weehler-Smith;
 - d. In failing to contact the Department of Human Services concerning the welfare of baby Gabriel if returned to his natural parents;
 - e. In failing to represent Plaintiffs zealously within the bounds of the law;
 - f. In giving advice to Plaintiffs without advising Plaintiffs of the relevant considerations necessary to make an informed decision; and

g. In failing to act in the best interests of the Plaintiffs.

34. This professional negligence is the proximate cause of significant damages including severe emotional distress and mental pain and suffering to the Plaintiffs.

WHEREFORE, Plaintiffs Heidi and Rachel McFarland pray for the following relief against Defendants Jason Rieper and Rieper Law Firm:

- (a) That Plaintiffs be awarded compensatory damages;
- (b) That Plaintiffs be made whole by providing them with appropriate lost earnings and benefits with pre-judgment interest, and other affirmative relief;
- (c) That Plaintiffs be awarded costs incurred with prosecuting this action; and
- (d) That Plaintiffs be awarded such additional and further relief as is just and equitable.

JURY DEMAND

The Plaintiff hereby demands a trial by jury as to all counts pled herein.


ROXANNE BARTON CONLIN (AT0001642)
ROXANNE CONLIN & ASSOCIATES, P.C.
319 Seventh Street, Suite 600
Des Moines, IA 50309
Phone: (515) 283-1111; Fax: (515) 282-0477
Email: roxlaw@aol.com,
cc: ldg@roxanneconlinlaw.com
ATTORNEYS FOR PLAINTIFF

Original filed.