

NO. 97,107-2

DENITA WARREN, Individually and  
As Next Friend of MATTHEW  
HIGGINS, a Minor,  
Plaintiff,

V.

NORTHWEST TEXAS  
HEALTHCARE SYSTEM, INC.  
Defendant.

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IN THE COUNTY COURT  
AT LAW NO. 2

IN AND FOR

POTTER COUNTY, TEXAS

FILED  
CAROLINE WOODBURN  
DISTRICT CLERK

2008 NOV 20 A 10:19

POTTER COUNTY, TEXAS

BY *[Signature]* DEPUTY

**PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Denita Warren, Individually and as Next Friend of Matthew Higgins, a Minor, hereinafter called Plaintiff, complaining of and about Northwest Texas Healthcare System, Inc., hereinafter called Defendant, and for cause of action shows unto the Court the following:

**DISCOVERY CONTROL PLAN LEVEL**

1. Plaintiff intends that discovery be conducted under Discovery Level 2.

**PARTIES AND SERVICE**

2. Plaintiff, Denita Warren, is an individual whose address is 7711 Stuyvestant, Amarillo, Texas 79121.
3. The last three digits of the driver's license number of Denita Warren are 973. The last three digits of the social security number for Denita Warren are 234.
4. Defendant Northwest Texas Healthcare System, Inc., a Corporation licensed to do business in Texas. No service is necessary at this time.

**JURISDICTION AND VENUE**

5. The subject matter in controversy is within the jurisdictional limits of this court.

6. This court has personal jurisdiction herein because Defendant is a Texas resident.

7. Venue in Potter County is proper in this cause pursuant to Section 17.56 of the Texas Business and Commerce Code and under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

### FACTS

8. On or about July 23, 2007, while under the supervision of the Pavilion in Amarillo, Texas, Matthew Higgins, a 16 year old minor, committed to confinement, was allowed access to keys to the facility by an employee of Defendant, permitting an escape attempt. In said attempt, Matthew Higgins jumped over a ledge dropping some 40 feet to the ground, sustaining bilateral ankle fractures and a left distal radius fracture, requiring surgical intervention.

### NEGLIGENCE

9. At all times material hereto, Defendant was the owner and/or possessor of the healthcare facility in question.

10. Matthew Higgins' bodily injuries were proximately caused by the dangerous condition described above, which Defendant knew or, in the exercise of ordinary care, should have known existed.

11. Defendant's agents, servants, and employees negligently permitted Matthew Higgins access to keys to the facility, negligently or willfully allowed such condition to continue.

12. At all times pertinent herein, Defendant and any of Defendant's agents, who were acting in the scope of their employment, were guilty of negligent conduct toward the Plaintiff in:

- a. Failing to properly secure keys to the facility; and
- b. Failing to discover and remove access to the keys to the facility.

13. Plaintiff would show the court that the above described acts and omissions of negligent conduct constituted the proximate cause of the injuries and damages as detailed below.

**GROSS NEGLIGENCE**

14. Plaintiff's damages and Matthew Higgins injuries were proximately caused by the grossly negligent, willful and wanton disregard of duty by Defendant, and/or its agents, servants, and employees.

15. Matthew Higgins was injured as a consequence of Defendant's gross negligence.

**PROXIMATE CAUSE**

16. Each and every, all and singular of the foregoing acts and omissions, on the part of Defendant, taken separately and/or collectively, constitute a direct and proximate cause of the injuries and damages set forth below.

**EXEMPLARY DAMAGES**

17. Defendant's acts or omissions described above, when viewed from the standpoint of Defendant at the time of the act or omission, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Matthew Higgins and others. Defendant had actual, subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Matthew Higgins and others.

18. Based on the facts stated herein, Plaintiff requests exemplary damages be awarded to Plaintiff from Defendant.

**DAMAGES FOR PLAINTIFF**

19. As a direct and proximate result of the occurrence made the basis of this lawsuit, and Defendant's acts as described herein, Plaintiff was caused to suffer permanent and severe bodily injuries, and to endure anxiety, pain, and illness resulting in damages more fully set forth below.

20. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff has incurred the following damages:

- a. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff for the necessary care and treatment of the injuries resulting from the accident complained of herein and such charges are reasonable and were usual and customary charges for such services in Potter and/or Randall County, Texas;
- b. Reasonable and necessary medical care and expenses which will, in all reasonable probability, be incurred in the future;
- c. Physical pain and suffering in the past;
- d. Mental anguish in the past;
- e. Physical pain and suffering in the future;
- f. Mental anguish in the future;
- g. Physical impairment in the past; and
- h. Physical impairment which, in all reasonable probability, will be suffered in the future.

21. By reason of the above, Plaintiff has suffered losses and damages in a sum within the jurisdictional limits of the Court and for which this lawsuit is brought.

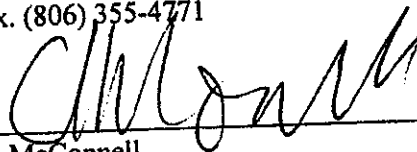
**PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff, Denita Warren, respectfully prays that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for the actual damages requested hereinabove

in an amount in excess of the minimum jurisdictional limits of the Court, together with prejudgment and postjudgment interest at the maximum rate allowed by law, costs of court, and such other and further relief to which the Plaintiff may be entitled at law or in equity, whether pled or unpled.

Respectfully submitted,

**McCONNELL & TORMEY**  
P.O. Box 629  
Amarillo, Texas 79105  
Tel. (806) 355-2700  
Fax. (806) 355-4771



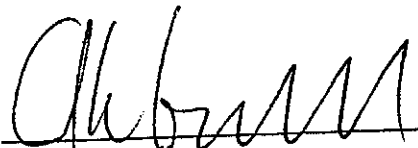
Ed McConnell  
Texas Bar No. 13442500

Attorney for Plaintiff Denita Warren

**CERTIFICATE OF SERVICE**


This is to certify that a copy of the above and foregoing instrument was on this 17<sup>th</sup> day of November, 2008, forwarded to counsel of record via fax and first class mail, properly stamped and addressed as follows:

Thomas C. Riney  
RINEY & MAYFIELD  
600 Maxor Bldg., 320 S. Polk  
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*Attorney for Defendant*

  
Ed McConnell

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POTTER COUNTY, TEXAS

BY  DEPUTY