

282 West 18th Street
Idaho Falls, ID 83402

Friday, February 27th, 2004

Re: Case No. 00-42215
US Courts - District of Idaho
801 E Sherman St
Rm 119
Pocatello, ID 83201

U.S. COURT
CLERK
CLERK, IDAHO

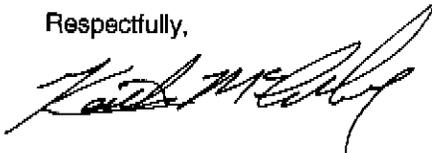
Dear Sirs,

I am sending this letter for file a complaint objecting to discharge of debtor. Barbara J. Nichols assaulted my daughter while my daughter was at work. The result of that assault was a broken nose. The court ordered Barbara, case no. CV-00-1619, to pay the medical costs resulting from the assault and lawyers fees from having to take the issue to court. The amount that Barbara was ordered to pay totaled \$11,157.49. It was shortly after this judgment from the court that Barbara declared bankruptcy; we have never been paid any restitution from Barbara.

There were not any instructions for filing this complaint with the notice that we got, if this letter is not sufficient in filing a complaint could you please let us know what we need to do to file a complaint. I have been to your website at <http://www.id.uscourts.gov/> and could not find instructions for filing a complaint and have sent an email to jd_webadmin@id.uscourts.gov asking for instruction for filing a complaint but have not heard back from them yet so I am hoping this letter will suffice in filing this complaint.

I have enclosed the court documents from the case.

Respectfully,



Keith McCabe

Enc: court documents

UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

In Re) Chapter 13
)
JOHN E NICHOLS,)
BARBARA J NICHOLS) Case No. 00-42215
)
) **NOTICE OF LAST DAY FOR**
) **FILING COMPLAINTS**
) **OBJECTING TO THE DISCHARGE**
)
)
)
)
Debtor(s).)
_____)

TO ALL CREDITORS AND PARTIES IN INTEREST:

YOU ARE HEREBY NOTIFIED that the above named debtor (s) has completed the Chapter 13 Plan.

NOW THEREFORE, IT IS ORDERED AND NOTICE IS HEREBY GIVEN that MARCH 15, 2004, is the last day for filing with the Bankruptcy Court **COMPLAINTS** objecting to the discharge of the debtor pursuant to Section 523.

NOTICE IS ALSO GIVEN that on MARCH 16, 2004, an Order of Discharge of this debtor from all debts covered by the Plan will be entered unless objections are allowed. Said Order of Discharge will declare any judgment on said debts null and void as a determination of personal liability of the debtor. In addition, said Order will enjoin all creditors whose debts are discharged in whole or in part from instituting or continuing any action or commencement of any process to collect such debts as the personal liability of the above named debtor.

If said Order of Discharge is not entered, notice will be given to all creditors.

DATED: February 6, 2004

CAMERON S. BURKE, CLERK
U.S. BANKRUPTCY COURT

By: Cathy Somsen

Cathy Somsen, Deputy Clerk
Rv 12/97 (#17) Pocatello

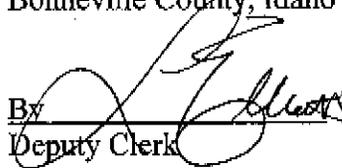
CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September 2000, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

David A. Johnson, Esq.
WRIGHT & JOHNSON, PLLC
P.O. Box 50578
477 Shoup Ave., Suite 109
Idaho Falls, Idaho 83405-0578

Barbara Jo Nichols
1493 Mountain View #4
Idaho Falls, Idaho 83401

RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho

By 
Deputy Clerk

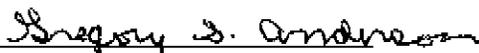
child, Silvia is not entitled to her lost income. No testimony was given regarding what reasonably competent nursing and attendance by others would have cost Tatiana. Without any evidence of home-care nursing costs or other similar expenses, Silvia and Tatiana have not met their burden of establishing those costs. Therefore, Silvia should not recover for the care she gave Tatiana during the first week after the beating.³

C. Net Damages

Tatiana suffered a net loss of \$11,157.49 due to injuries she sustained because of Barbara's attack on her, as summarized in the following table.

	<u>Dollar Amount</u>
Medical Expenses	\$2,730.49
Tatiana's Lost Wages	927.00
Pain and Suffering	<u>7,500.00</u>
Total Net Damages	\$11,157.49

DATED this 26~~th~~ day of September 2000.


GREGORY S. ANDERSON
District Judge

³ Although requested in the complaint, Tatiana should not recover on her disfigurement claim because it was withdrawn during the trial.

humiliation, and mortification to which he was subjected by the defendant's conduct.

In an action for an assault or battery, damages for mental suffering are usually allowed as compensatory damages, though only where a compensable assault or battery is also supported by the evidence.

6 Am. Jur. 2d *Assault and Battery* § 149 (1999).

Based on the circumstances of this case, Tatiana should be awarded \$7,500 for her pain and suffering.

B. Damages Not Awarded

1. Silvia's Lost Wages²

The general rule is that one who has been injured by tortious conduct is entitled to recover the reasonable value of medical and nursing services reasonably required by the injury, even if those services were furnished gratuitously, and this rule applies when the services are furnished by a family member. The amount of the defendant's liability is the amount for which reasonably competent nursing and attendance by others could have been obtained. A corollary of this rule is that what the person rendering the services has earned in the past or could earn in a different employment cannot be considered, it being immaterial to the reasonable value of the services, even if the relative leaves his or her regular employment to render such services.

22 Am. Jur. 2d *Damages* § 209 (1999). *See also Mancino v. Webb*, 274 A.2d 711, 713 (Del. Super. Ct. 1971) (“[T]he measure of recovery for care furnished an injured child by the parent after the child departs the hospital is not the wages lost by the parent, but rather the reasonable value of the care or attendance rendered.”)

Silvia missed work for five days following the incident in order to care for Tatiana.

Because a parent's lost income is not the proper measure of recovery for caring for an injured

² This claim was not included in the complaint. At trial, the plaintiffs moved to amend the complaint to include all recoverable damages, including Silvia's claim for lost income.

total amount for these bills is \$2,730.49.¹

2. Tatiana's Lost Wages

Tatiana was unable to return to work at Albertson's for 6 weeks following the beating. On October 10, 1998, Tatiana was earning \$5.15 an hour. Tatiana testified that she worked an average of 30 hours per week. Therefore, Tatiana earned about \$154.50 each week. Because Tatiana did not return to work for about six weeks, she lost \$927 in wages.

3. Pain and Suffering

"Damages in personal injury cases generally consist of loss of earnings, medical expenses and *mental and physical pain and suffering*...." 22 Am. Jur. 2d *Damages* § 133 (1999) (emphasis added).

The rule is well settled that in a civil action for assault and battery, where it is shown that physical injury was inflicted upon the plaintiff, he may recover damages for his mental suffering caused by the tortuous act.

...

Mental suffering reasonably certain to be endured in the future may be taken into account in estimating the amount of damages to be awarded. Other elements that may be taken into consideration in determining such damages include the affront to the plaintiff's personality, and the indignity, disgrace,

¹ Although insurance payments were mentioned at trial, they should not be deducted from any compensation awarded to Tatiana pursuant to the collateral source doctrine, which has been applied in Idaho. *Brinkman v. AID Insurance Company*, 115 Idaho 346, 352, 766 P.2d 1227, 1233 (1988). The Idaho Supreme Court has stated:

Generally, the collateral source doctrine is as follows:

Where a plaintiff is compensated for his injuries by some source independent of the *tortfeasor*—insurance, for example—the general rule is that the plaintiff is still permitted to make a full recovery against the tortfeasor himself, even though this gives the plaintiff a double recovery or even a recovery for losses he never had at all.

D. Dobbs, *Law of Remedies*, § 8.10, pp. 581-82 (1973). Idaho adheres to the collateral source rule. (Citations omitted.)

Id. (emphasis in original).

II. Damages

A. Damages Awarded

The plaintiff in a civil action for assault or battery should be awarded such damages as will fully compensate him for the injuries directly flowing from the alleged tort, and for all detriment proximately caused by the defendant's wrongful act. The compensable harm occurs at the time of the battery, regardless of whether the victim is aware of the wrongfulness of the act constituting a battery or of the full extent of his or her harm. This includes compensation for the prospective damage that is reasonably certain to follow from the nature of the injury. It is of no matter whether the particular injuries were foreseen by the defendant, because the law presumes that anyone who intentionally assaults another intends the direct and immediate consequences of the act....

Other elements that may properly be taken into consideration in determining the amount of compensatory damages to be awarded to the plaintiff in an action for assault and battery include -

...

- the loss of wages.

...

- expenses incurred for medical and surgical attention made necessary by the assault.

- physical pain and suffering.

- compensation for ... disfigurement.

6 Am. Jur. 2d *Assault and Battery* § 147 (1999).

1. Medical Expenses

Tatiana incurred medical expenses with various clinics and doctors relating to her injuries. These expenses include bills incurred at the emergency room the night of her beating, expenses relating to the blood in her urine and expenses to have her broken nose fixed.

These medical bills were proximately caused by the battery committed on Tatiana. The

harmful or offensive to the victim. *Neal*, 125 Idaho at 622, 873 P.2d at 876.

As a result of the beating, Tatiana's nose was broken and bleeding, her body was bruised, and blood was in her urine.

There is no doubt Barbara's contact with Tatiana was harmful and offensive. Tatiana has met her burden of establishing the physical contact was harmful and offensive.

D. Unpermitted Contact

"The general rule that a person cannot recover damages for a wrong occasioned by an act to which he has consented applies in civil actions for assault and/or battery." 6 Am. Jur. 2d *Assault and Battery* § 124 (1999). "Liability for battery emphasizes the plaintiff's lack of consent to a touching." *Id.*

To bar a recovery of damages the consent must have been given to the particular act committed, must have been given either by the victim or by a person who had authority from the victim to give the consent, and must have been given with knowledge of the consequences of the act consented to....

6 Am. Jur. 2d *Assault and Battery* § 125 (1999).

"[L]ack of consent is also an essential element of battery." *Neal*, 125 Idaho at 622, 873 P.2d at 876.

Tatiana did not consent to the beating by Barbara. Tatiana never gave Barbara permission to hit her, kick her or pull her hair and throw her to the ground. Again, Barbara does not contest the issue of whether Tatiana consented to the beating. Tatiana met her burden of proving lack of consent.

Tatiana has presented a prima facie claim of battery by establishing all the elements of battery. Barbara did not offer any defenses to the claim of battery.

A. Physical Contact

“A battery is a ... physical contact with another through ... contact by the tortfeasor...” 6 Am. Jur. 2d *Assault and Battery* § 3 (1999). “Civil battery consists of [a] ... contact upon the person of another....” *Neal*, 125 Idaho at 622, 873 P.2d at 876.

Both Barbara and Tatiana testified that Barbara hit Tatiana in the face with her fist, threw her to the ground and kicked her. The fact that bodily contact was made is undisputed. Therefore, Tatiana has met her burden of proving physical contact occurred.

B. Intent

“The intent necessary for battery is the intent to commit the act, not the intent to cause harm.” *Neal*, 125 Idaho at 622, 873 P.2d at 876. “The intent element of the tort of battery does not require a desire or purpose to bring about a specific result or injury; it is satisfied if the actor’s affirmative act causes an intended contact.” *White*, 115 Idaho at 565, 768 P.2d at 828.

Barbara admitted to hitting Tatiana in the face two times, throwing Tatiana to the ground and kicking her in the arm. Regardless of any result Barbara may have intended, the intentional nature of Barbara’s actions is not disputed. Tatiana has met her burden of proving Barbara intended to make physical contact with her.

C. Unlawful, Harmful or Offensive Contact

“In order for a contact to constitute battery, it must be one which offends the ordinary person, not unduly sensitive as to his or her personal dignity; it must, therefore, be contact which is unwarranted by social usages prevalent at the time and place in which it is inflicted.” 6 Am. Jur. 2d *Assault and Battery* § 4 (1999).

In Idaho, an essential element of battery is that the bodily contact must be unlawful,

Barbara, and Tatiana has completely recovered physically.

CONCLUSIONS OF LAW

Tatiana has asserted an assault and battery claim against Barbara.

I. Elements of Battery

A battery is a wrongful or offensive physical contact with another through the intentional contact by the tortfeasor and without the consent of the victim, the unpermitted application of trauma by one person upon the body of another.

Put another way, battery is the willful and harmful or offensive touching of another person which results from an act intended to cause such contact....

6 Am. Jur. 2d *Assault and Battery* § 3 (1999).

Civil battery consists of an intentional, unpermitted contact upon the person of another which is either unlawful, harmful or offensive. *White v. University of Idaho*, 118 Idaho 400, 797 P.2d 108 (1990). The intent necessary for battery is the intent to commit the act, not the intent to cause harm. *Id.* Further, lack of consent is also an essential element of battery. W. Prosser & W. Keeton, *The Law of Torts* § 9 at 41 and § 18 at 112 (5th ed. 1984).

Neal v. Neal, 125 Idaho 617, 622, 873 P.2d 871, 876 (1994); *see also White v. University of Idaho*, 115 Idaho 564, 565, 768 P.2d 827, 828 (1989), *aff'd*, 118 Idaho 400, 797 P.2d 108 (1990)

("The tort of battery requires intentional bodily contact which is either harmful or offensive.").

In a civil action to recover damages for assault and battery, the plaintiff has the burden of proving, by a preponderance of the evidence, the material averments in the complaint.... But the plaintiff need not prove that the act alleged was unlawful. Nor does he have the burden of negating any affirmative defense, since the burden of proving such defense is on the defendant. But where lack of consent is an essential element of the act complained of, the burden is on the plaintiff to prove such lack of consent.

6 Am. Jur. 2d *Assault and Battery* § 164 (1999).

Tatiana has the burden of proving each of the elements of her battery claim against Barbara.

A summary of medical costs related to Barbara's attack on Tatiana is as follows:

Purpose	Amount
Emergency Room	\$754.49
Dr. Roger Tall	187.00
Idaho Falls Surgical Center	789.00
Dr. Marc Englis	577.00
Teton Anesthesia	<u>423.00</u>
Total Medical Bills	\$2,730.49

Prior to the beating, Tatiana had been working an average of 30 hours per week at Albertson's. Tatiana earned \$5.15 per hour. Because of her injuries, Tatiana missed six weeks of work. Tatiana's lost wages are as follows: \$5.15 per hour x 30 hours per week x 6 weeks = \$927.00

At the time of the beating, Silvia was working 40 hours per week at Melaleuca in Idaho Falls. Silvia earned \$8.10 per hour. Silvia missed work from the October 12, 1998, through October 16, 1998, to care for Tatiana, who spent most of that week in bed.⁷ Silvia cared for Tatiana by helping her to the bathroom, driving her to doctor's offices and helping her in other ways. Silvia's lost wages are as follows: \$8.10 x 40 hours per week x 1 week = \$324.00

Tatiana missed school for one month following the beating.

Tatiana suffered pain and discomfort from her injuries until approximately February 1999.

Tatiana no longer suffers physical pain or discomfort from the injuries inflicted by

Barbara hit Tatiana in the face with her fist more than once. Barbara grabbed Tatiana's hair and threw her to the ground. Barbara kicked Tatiana at least one time and possibly several times while Tatiana was lying on the ground.

At no point did Tatiana attempt to fight back.

As Barbara walked away, she turned back and saw Tatiana getting up off the ground. Barbara saw that Tatiana's face was bloody.

Tatiana covered her bloody face with her sweater and entered Albertson's. Tatiana's supervisor called the police. Silvia was also called.

Tatiana was taken to the emergency room at the hospital and evaluated by Dr. Jeffrey B. Stieglitz. The following are noted on Dr. Stieglitz' emergency room report:

1. X-rays taken of Tatiana's nose showed it was fractured.
2. The right side of Tatiana's back was tender.
3. Tatiana's lower left leg was bruised and scratched.
4. Blood was observed in Tatiana's urine.

Dr. Stieglitz referred Tatiana to Dr. Marc Englis to repair her nose and to Dr. Roger Tall for an examination related to the blood in her urine.

Dr. Stieglitz also gave Tatiana pain medication.

On October 15, 1998, Tatiana visited Dr. Tall, who concluded that the blood in Tatiana's urine had cleared.

Tatiana visited Dr. Englis several times. On October 23, 1998, Dr. Englis performed reconstructive surgery on Tatiana's nose.

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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

DISTRICT COURT
7TH JUDICIAL DISTRICT
BONNEVILLE COUNTY, ID

KEITH AND SILVIA MCCABE,)
Individually and as guardians of)
INGRID TATIANA ALMANZA,)
)
Plaintiffs,)
)
vs.)
)
BARBARA JO ANN DANIELS,)
)
Defendant.)
_____)

Case No. CV-00-1619

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

FINDINGS OF FACT

Keith McCabe, Silvia McCabe (Silvia) and Ingrid Tatiana Almanza (Tatiana) are individuals residing in Bonneville County.

Silvia is Tatiana's mother.

Barbara Jo Ann Daniels (Barbara) is an individual residing in Bonneville County.

Tatiana and Barbara were acquainted prior to October 10, 1998.

On October 10, 1998, Tatiana was employed at Albertson's, a grocery store, located on 17th Street in Idaho Falls, Idaho, as a courtesy clerk with responsibilities that included bagging groceries and gathering grocery carts from the parking lot.

At approximately 10:00 P.M., on October 10, 1998, Tatiana was gathering grocery carts in Albertson's parking lot when Barbara approached her.

Barbara began asking Tatiana questions about Barbara's friend's boyfriend and what Tatiana had been doing the previous night. The questioning escalated into an argument.

NOTICE OF ENTRY

I CERTIFY that I am a clerk in the above-entitled Court and that I mailed a true copy of the foregoing documents on December 7, 2000, to the following attorneys of record and/or parties;

Barbara Jo Ann Daniels Nichols
1493 Mountain View #4
Idaho Falls, ID 83401

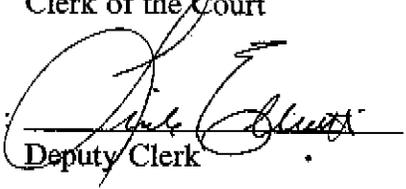
Mail

David A. Johnson, Esq.
Wright & Johnson, PLLC
PO Box 50578
Idaho Falls, ID 83405-0578

Courthouse Box

Ronald Longmore
Clerk of the Court

By:


Deputy Clerk

DAVID A. JOHNSON, Esq.
WRIGHT & JOHNSON, PLLC
P.O. Box 50578
477 Shoup Ave., Suite 109
Idaho Falls, Idaho 83405-0578
Telephone: (208)535-1000
Fax: (208)523-4400
Idaho State Bar No. 3319

2000 DEC -7 PM 3:42

DISTRICT COURT
7TH JUDICIAL DISTRICT
BONNEVILLE COUNTY ID

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO IN AND FOR THE COUNTY OF BONNEVILLE

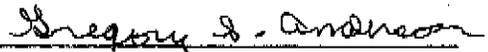
KEITH AND SILVIA MC CABE)
individually and as guardians of)
INGRID TATIANA ALMANZA)
)
Plaintiff,)
vs.)
)
BARBARA JO ANN DANIELS)
)
Defendant.)
_____)

Case No. CV-00-1619

JUDGMENT

Based upon the finding of fact and conclusions of law previously entered by the this Court on September 26, 2000, in this action, the Court hereby enters its judgment in favor of Plaintiffs Keith and Silvia McCabe, individually and as guardians of Ingrid Tatiana Almanza, in the sum of \$13,754.49, which comprises the principal amount of \$11,157.49, costs in the amount of \$97.00, and attorney fees in the amount of \$2,500.

DATED: December 7, 2000


Gregory S. Anderson, District Judge