

PARK WATCH™ LEGAL DEVELOPMENTS NEWSLETTER

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Parent Charged with Felony Murder: 3 year Old Drowns in Pool: Still, FHAA Prohibits Supervision Rules

By Terry R. Dowdall, Esq.

■ UPSHOT:

A mother allegedly left her 3-year-old son alone in the swimming pool. He was found unresponsive, a judge said Wednesday. Bobbie Jessica Prather, 32, was arrested Monday after her son was found unresponsive in an above-ground pool behind the family's home, according to the Bartow Sheriff's Office. Prather was charged with felony murder and four counts of first-degree cruelty to children, one charge for each child she left alone, investigators said.



Face of a Child Murderer: Bobbie Jessica Prather, Left child in pool, Child Drowns, Mother Charged with Felony Murder.

Prather was denied bond at her first court appearance Wednesday morning.

Park owners cannot require supervision of children at the pool, under the Federal Fair Housing Amendments Act of 1988 (FHAA). Since requiring child supervision is a violation of federal law, park owners have been sued for supervision rules. Read the story about Plaza Mobile Estates before ignoring this reality.

★ A Veritable Epidemic of Bad Parenting.

According to United Press International, a new national poll found more than one-third of parents would allow their children to be in residential or hotel pools unsupervised. Because the Federal Fair Housing Amendments Act of 1988 (FHAA), prohibits park owners from requiring supervision of children (persons under 18) in any common area (the

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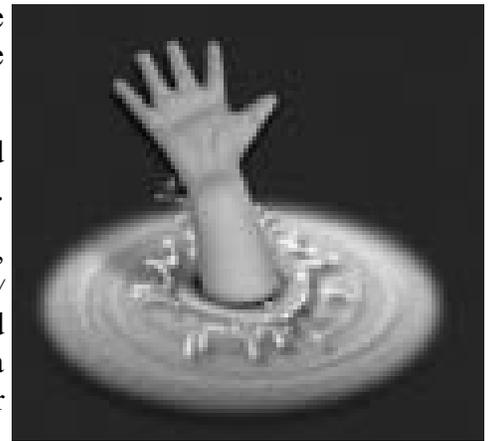
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parent's responsibility say the courts), park owners and landlords cannot do more than, at most, alert the parent or guardian. The FHAA prohibits ouster from the pool for unsupervised children.

This alarming poll, conducted by researchers at the University of Michigan, found parents underestimate the risk of drowning in pools where no lifeguard is present.

The poll, the C.S. Mott Children's Hospital National Poll on Children's Health, [https://www.upi.com/Health_News/2017/05/15/Poll-More-than-one-third-of-parents-let-children-swim-unsupervised/5301494851402/] found that only 16 percent of parents would allow their child to swim unsupervised in a lake and just 13 percent in an ocean, but 37 percent of parents would allow their child to swim unsupervised in a home, hotel or neighborhood pool.



DO NOT SWIM ALONE !!

“Almost all of the parents we polled believe it is important for children to have basic swimming skills but surprisingly, one in seven would allow a child who is unable to swim independently to be in the water unsupervised,” Dr. Gary L. Freed, pediatrician at Mott, said in a press release. “Drownings can, and do, happen in private and hotel pools as well as in lakes and the ocean -- even at shallow depths. Swimming lessons and proper supervision are critical to making sure kids are safe around the water.”

Drowning is the second-leading cause of injury-related death in kids between age 1 and 15, and about 1,000 American children die each year from unintentional drowning. According to the U.S. Centers for Disease Control and Prevention, there was an annual average of 3,536 fatal, non-boating related unintentional drownings from 2005 to 2014 in the United States -- about 10 deaths per day.

“Nearly 800 children drowned last year in the United States,” said Amy Morgan. She is manager of the Pediatric Trauma and Prevention Program at Penn State Children's Hospital in Hershey, Penn. . . . And for every two children who die, five more visit the emergency department. It's a big problem with potentially devastating consequences,” she said in a hospital news release.

★ **Why?** One reason for so many child drownings and near-drownings may be that supervising adults are distracted by things such as tablets, phones, books, magazines or other people. Or, they may step away from the water to fetch a snack or other items, she added.

“You typically have less than a minute to react once a child goes under water,” Morgan said. “Parenting is a difficult, all-consuming job -- it's completely understandable that adults need to take a break. However, the pool is a place where we must be vigilant.” [http://www.upi.com/Health_News/2016/08/09/Adults-hold-key-to-preventing-kids-drownings/2031470775383/?st_rec].

★ **Observations:** Requiring adult supervision is NOT allowed. Certainly an adult supervision requirement should be reasonable, but is outlawed by *United States v. Plaza Mobile Estates*: it is the parents, not management, who act as the “gatekeepers” of swimming pool access and usage (in “all age” communities). Requiring any form of child supervision constitutes a violation of the FHA. Despite recent California posting requirements to the contrary, federal law reigns supreme, and state law is preempted. State law thus fails to comply with the “substantially similar” requirements of federal law for purposes of federal funding due to this contradiction. However, it seems that this conflict and dissimilarity has escaped the attention of the federal administration.

For park owner purposes today, right now, state law is of no consequence to federal enforcement.

★ **The FHAA:** Rules and regulations in “all age” communities may not discriminate against children. Various rules were cited by the court as illegally restricting access or denying the use of the communities' facilities and/or areas on the basis of age, included those set forth below.

★ *Samples of Illegal Rules*

If your rules contain any of the following restrictions, or any rules similar to them, it is strongly advised that a legal advisor conversant with the FHA (and implementing regulations and judicial and administrative interpretations) be promptly consulted.

“Residents and visitors under the age of eighteen (18) years old may use the swimming pool and sun deck during the hours of 10:00 a.m. to 12:00 p.m. (noon) every day. Residents and visitors under the age of eighteen (18) years old are not permitted around the pool or sun deck after 12:00 noon;”

“Residents and visitors under the age of eighteen (18) years old are not permitted to use the saunas . . . [or] . . . jet pool at any time;”

“Residents and visitors under the age of fourteen (14) years old are not permitted to use the saunas or . . . jet pool (spa) at any time;”

“Use of the spa is prohibited to children under eighteen (18) years old;”

“Use of the pool by children fourteen (14) years old and under requires accompaniment by a resident;”

“Parent of resident child or resident host must accompany children at all times in the pool or pool area;”

“Guests and residents under the age of eighteen (18) years old are permitted to use the swimming pool and sun deck from the hours of 9.00 a.m. to 12 noon only and must be accompanied by the parent or resident child or resident host;”

“No one under the age of fourteen (14) years old is allowed to use the Jacuzzi;”

“Guests and residents under the age of eighteen (18) years old are permitted to use the swimming pool and sun deck from the hours of 10:00 a.m. to 2:00 p.m. only and must be accompanied by an adult park resident;”

“At 2:00 p.m. children are to be out of the pool area;”

“Parent or responsible adult must accompany all children under fourteen (14) years old at all times [in the swimming pool and/or pool area];”

“Children under 18 years old must be accompanied by a parent when they are in the swimming pool;”

“Minors under 16 years old are not permitted in the therapeutic pool;”

“At 2:00 p.m. children are to be out of the pool area;”

“All children must be accompanied by an adult to use the pool;”

“Children must be supervised by an adult when using park streets.”

★ *Rules Which Treat Kids Differently Constitute Illegal Discrimination*

The court held that these rules were not based on “compelling business necessity” and did not represent the “least restrictive intrusions” on familial status rights in promoting a health and safety interest.

The court stated that the age restrictive rules were “facially” discriminatory. These rules “. . . treat children, and thus, families with children, differently and less favorably than adults-only households.” In other words, no matter how administered, the rules were invalid as drafted. Even if never enforced, such rules may lead to a resident's belief about allowable restrictions in use of the facilities.

★ *Parental Responsibilities Under California Law*

In California, there are requirements for the protection of child welfare that come into play. Examples of such regulations are reflected in the neglect cases reported above.

Specifically, California law provides that parents and guardians are responsible to provide care and an environment which is reasonably safe to the children under their care. The law defines “severe” and “general” neglect.

“‘Neglect’ means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. ¶(a) ‘Severe neglect’ means . . . where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered,. . . ‘General neglect’ means the negligent failure of a person having the care or custody of a child to provide

adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.”

Further, Welfare and Institutions Code §300 states that the juvenile court has jurisdiction where:

“The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.”

Without doubt, allowing a toddler unrestricted access to the swimming pool as mandated by *U.S. v. Plaza Estates* would not be a responsible parental act. But management cannot interfere with that decision of the parent.

★ What can management do?

1. ALERT THE AUTHORITIES. For example, the three-year-old sent to the clubhouse by the parent because “there are nice people there who will watch you” is still a concern of the park managers, even if we cannot legally exclude the toddler. If we assume that some parents will allow their toddlers to slip out and wander in the park, calling the authorities is the first step: Child protective services, then the police.

The sooner reports accumulate against irresponsible parents, the sooner serious intervention will save the child from exposure to danger and injury.

If you return the child to the parent yourself, you are only enabling and reinforcing the negative behavior; and legally, lulling the parent into believing management will care for the child. This is not the manager's job.

2. EDUCATE THE PARENTS. Some parents may heed the caveats of the management's newsletters and hand-outs. Perhaps a parental reminder to all parents about the risks of inadequate supervision will make them more attentive and caring.

Such information should include the admonition that the management is legally forbidden from intervening in parental choice about access and usage of facilities by children. Educating parents with comprehensive “eye-opening” memoranda (clear it with your attorney) is not discriminatory enforcement of rules based on age, and has worked well.

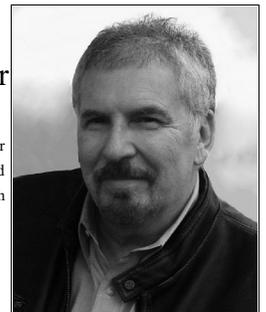
3. CHECK THE RULES AND REGULATIONS. Owners may also consider rule amendments which reference the laws and regulations pertaining to child welfare statutes; however, there has been controversy over curfew rules and such regulations must be very carefully drawn.

But even your existing rules probably provide that residents are required to comply with law; and such a rule may be used to argue that applicable laws are already incorporated by reference.

That said, do not require adult supervision of children; do not restrict pool hours; and, do not set age limits for use of the pool in an “all age” park.

Don't let your fear of meddling in someone else's business stop you from reporting your suspicions. You could be saving someone's life.

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