

PARK WATCH

A LEGAL DEVELOPMENTS NEWSLETTER

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A COURTESY FOR OUR FRIENDS AND CLIENTS

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THIS NEWSLETTER CONVEYS GENERAL INFORMATION, NOT LEGAL ADVICE: CONSULT AN ATTORNEY BEFORE RELYING HEREON

Pools and Summer: Parental Accountability in Light of U.S. v Plaza Estates

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● **UPSHOT:** *Summer is here again! And the kids have started their seasonal pilgrimage to the coolest place in the park. Each year, there is loss of life in private residential pools due to inattentive parents. Residing in a mobilehome park does not make parents any more careful. But it is the parents' responsibility, not management's, to decide proficiency and access privileges for their kids. Access, hours and supervision restrictions are illegal under the FHA (United States v. Plaza Mobile Estates). But parents must still adhere to the legal requirements for responsible parenting.*

● Ripped Right From the Headlines

Let's face it. Some parents are *not* responsible. And some of them live in mobilehome parks. Here are some recent examples:

▲ On May 10, 2010, the news read: "Fort Pierce Man Faces Neglect Charges after Young Girl Found Wandering Alone in Mobile Home Park" ¶ "FORT PIERCE - A 26-year-old man was arrested Thursday after his apparent daughter was found wandering the streets of the Windsong Mobile Home Park unattended, according to an arrest affidavit released Friday. Leonel Lemus Cruz, . . . faces a felony child neglect without great harm charge following the 6:38 a.m. Thursday incident. A woman . . . saw a 2- to 3-year-old child wandering around as she drove through the mobile home park. The child's father, Cruz, reportedly was supposed to be watching her. Cruz said he didn't know the girl wandered outside. He said he fell back asleep after the child mother's dropped her off. The child wasn't hurt."

▲ On June 4, 2010, the news read: "Toddler Found Wandering in Mobile Home Park, Parents Charged With Neglect" ¶ "ROGERSVILLE, Tenn.

(AP) - A Rogersville couple are charged with child neglect after a utility employee found their 2-year-old daughter wandering in a mobile home park. . . . a responding sheriff's deputy found the trailer door open, the couple's 11-month-old son face-down in his crib and the couple asleep on a mattress Thursday afternoon... In his report, Deputy Michael Lipe stated he spent about three minutes announcing his presence and kicking the mattress before 18-year-old Joy Faye Morgan woke up. Lipe arrested her and 22-year-old Logan Kyle Carter on two counts of neglect."



18-year-old Joy Faye Morgan



22-year-old Logan Kyle Carter

Another striking illustration is the tragedy a few years ago at a Laguna Hills housing complex which prohibited anyone under 6 from entering the spa. A toddler was supervised by a 16 year old family member distracted by a conversation. The infant drowned in the spa when the floating wings fell off in just a matter of minutes.

According to the Centers for Disease Control and Prevention, of all children 1 to 4 years old who died from an unintentional injury, almost 30% died from drowning. Fatal drowning remains the second-leading cause of unintentional injury-related death for children ages 1 to 14 years.¹ The same report reveals that "[T]he fatal drowning rate of African American children ages 5 to 14 is 3.1 times that of white children in the same age range."

"Most young children who drowned in pools were last seen in the home, had been out of sight less than five minutes, and were in the care of one or both parents at the time. Barriers,

¹<http://www.cdc.gov/HomeandRecreationalSafety/Water-Safety/water-injuries-factsheet.html>

such as pool fencing, can help prevent children from gaining access to the pool area without caregivers' awareness."

Park swimming pools are deemed 'public' and require fencing, postings and related equipment. In years long past, it was believed that park owners could require adult supervision in the swimming pool area. The common rule would provide that anyone 14 years and under required adult supervision. Indeed, the sign still required by the State (at least 4 inches high), is as follows: "CHILDREN UNDER THE AGE OF 14 SHOULD NOT USE POOL WITHOUT AN ADULT IN ATTENDANCE."

But *requiring* adult supervision is NOT allowed. Certainly an adult supervision requirement should be reasonable,² but is outlawed by *United States v. Plaza Mobile Estates*³: 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.

● *The FHA*

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

² According to the United States Consumer Product Safety Commission, "... The main hazard from hot tubs and spas is the same as that from pools -- drowning. Since 1980, CPSC has reports of more than 700 deaths in spas and hot tubs. About one-third of those were drownings to children under age five. Consumers should keep a locked safety cover on the spa whenever it is not in use and keep children away unless there is constant adult supervision. ¶ Hot Tub Temperatures -- CPSC knows of several deaths from extremely hot water (approximately 110 degrees Fahrenheit) in a spa. High temperatures can cause drowsiness which may lead to unconsciousness, resulting in drowning. In addition, raised body temperature can lead to heat stroke and death. In 1987, CPSC helped develop requirements for temperature controls to make sure that spa water temperatures never exceed 104 degrees Fahrenheit. Pregnant women and young children should not use a spa before consulting with a physician..." CPSC Document #5112 "Spas, Hot Tubs, and Whirlpools Safety Alert"

³ A copy of the published court opinion in *United States v. Plaza Mobile Estates* can be found at www.dowdalllaw.net; click 'resources', then 'cases': the opinion is 14th down the list.

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?***

Here is some practical advice to consider this summer in dealing with the inattentive or neglectful parent:

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. OPTIONAL PARENTAL WRITTEN CONSENT FOR EJECTION. Some managers may wish to volunteer to keep little children out of the pool. A parent may be occasionally inattentive and unaware that one of her four kids is missing. In these instances, the parent can, if they desire to do so, provide willing management with written authority to exclude certain children from the pool.

For example, “Mrs. Wildman” may not want her three-year-old in the pool alone. She can give consent to willing management to exclude the child from the pool area. **Caveat:** volunteering to provide safety services has the potential for generating liability. If we volunteer to keep a child out of the pool and happen to be absent when the child is later injured, a claim may result. So, such authorizations need to be *narrowly drawn*, *limited* in time, and reflect appropriate *releases* to limit liability and avoid alleviation of parental duties.

4. 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.

* * *

Reminder: HCD tells us that you should “*submit their [Emergency Preparedness] information immediately, and not wait to submit with the PTO application or September 10, 2010: if there is any problem(s) with the emergency submittal, the PTO may lapse, meaning rent cannot be demanded or collected until the problem is remedied and the PTO issued. . . the requirement is to have a plan by September 10, 2010, with “proof” submitted with the PTO application, . . . get it done immediately to avoid litigation claims.*”

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Please feel free to contact Terry R. Dowdall, Esq. for further information and questions.