

Small Claims issue regarding a Day Care seeking months worth of late fees when child is not in care

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kmartin

<kmartin@emmetcounty.org>

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Jul 21, 2020, 12:01:08 PM



to madcm@googlegroups.com

Hello all- wondering if you have had a Small Claims case centered around non-payment of child care, plus months of late fees when the child was not going to the day care center.

Here is the situation: Parents sign the day care center's handbook, agreeing to follow all of the policies. The handbook is not signed by the child care center. In fact, there is no place for the center to sign it.

Regarding payment, it is the policy for the center to charge a weekly, late fee for a parent that fails to carry a zero sum balance.

It is policy that services will be suspended if the account is delinquent. It is policy that Children are not permitted to attend until the account is brought current. It is policy that if the parents fail to make payments, the day care will pursue legal remedies.

There is no mention as to when the day care center will pursue legal remedies.

So, in essence, late fees could accumulate for quite some time, which is what happened here. The child has NOT been in day care for 7 months, and the late fees accrued those 7 months. Late fees are almost as much as the debt for the child's actual time in day care.

Question- have you had this type of situation and/or anything similar? Did you award the late fees? Would you award the late fees in this scenario? Just curious as to any thoughts you may have on this matter.

Thanks again for your time.

Katrina D. Martin

Attorney Magistrate

90th District Court

Emmet and Charlevoix Counties



Skorich, Dan

<SkorichD@clinton-county.org>

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Jul 21, 2020, 12:05:07 PM



to madcm@googlegroups.com

Sounds like the late fee is simply a Penalty. I would not allow the late fee after the relationship was ended. You raise a good point about Latches on the part of the daycare.

Dan Skorich

Magistrate/Court Administrator (P26689)

65A District Court

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J Patrick Brennan
<jbrennan@ferndalecourt.com>
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Jul 21, 2020, 12:17:59 PM



to madcm@googlegroups.com

In the Tri-County area, day cares were closed due to the pandemic by Governor's order. Since the Governor's Orders bear the weight of law, I would have ruled that it rendered the contract impossible of performance. It, further, appears there's no condition for impossibility of performance in the contract, I would set it aside. Just my quick response. Hope it helps.
Brennan

Sent from my iPad

On Jul 21, 2020, at 12:05 PM, Skorich, Dan <Skor...@clinton-county.org> wrote:



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Millmore, Laura
<Laura.Millmore@lansingmi.gov>
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Jul 21, 2020, 12:18:14 PM

to madcm@googlegroups.com

I've seen this before. I agree with Dan. I explained to the plaintiff that the law will not allow for punitive measures. Once the child was no longer in daycare, the late fees stopped. The purpose of the late fee was to keep the account current. The delay in seeking legal remedy is no fault of the defendant.

Laura Millmore
54-A District Court
Lansing

Sent from my iPad

On Jul 21, 2020, at 12:05 PM, Skorich, Dan <Skor...@clinton-county.org> wrote:

Sounds like the late fee is simply a Penalty. I would not allow the late fee after the relationship was ended. You raise a good point about Latches on the part of the daycare.

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sheldonlarky
<sheldonlarky@aol.com>
unread,
Jul 21, 2020, 12:26:12 PM

to madcm@googlegroups.com

The defense to the late fees is the day care center's impossibility of performance. If it could not perform their services, they should not be entitled to any fees. Laches is not the proper defense.

Shel Larky
Magistrate

52-4 District Court



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kmartin
<kmartin@emmetcounty.org>
unread,
Jul 21, 2020, 2:54:48 PM



to madcm@googlegroups.com
Thanks so much for your responses!

Katrina

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From: ma...@googlegroups.com on behalf of J Patrick Brennan <jbre...@ferndalecourt.com>
Sent: Tuesday, July 21, 2020 12:17 PM
To: ma...@googlegroups.com
Subject: Re: Small Claims issue regarding a Day Care seeking months worth of late fees when child is not in care



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jbpahl0824
<jbpahl0824@gmail.com>
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Jul 21, 2020, 7:39:12 PM



to MADCM

I would also not allow the late fee at all.

Jim
55th

Virus-free. www.avast.com



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