

IN THE CIRCUIT COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

FILED
FEB 25 2013
CIRCUIT COURT CLERK
BY _____ D.C.

LARLETHA EVANS,
Administratrix of the Estate of
MACKAYLA ROSS, Deceased, And as
Conservator of the Estate and Person of
MICHAEL A. ROSS,

Plaintiff,

Docket No.: CT-000800-13
Div. 3

JURY DEMANDED

v.

CITY OF MEMPHIS, TENNESSEE

Defendant.

COMPLAINT

COMES NOW the Plaintiff Larletha Evans, as Administratrix of the Estate of MacKayla Ross, Deceased, and as the Conservator of the Estate and Person of Michael A. Ross, Plaintiff, by and through the undersigned attorneys, and for cause of action against the Defendant would hereby show and state as follows:

JURISDICTION AND VENUE

1. Plaintiff Larletha Evans is an adult resident citizen of Tate County, Mississippi, residing therein at 954 O.B. McClinton Road, Senatobia, Mississippi 38668. By Order dated September 19, 2012 in the Chancery Court of Tate County, Mississippi, Larletha Evans was appointed Administratrix of the Estate of MacKayla Ross, Deceased, a minor child in 7th grade who died on August 26, 2012 in the automobile crash which is the subject of this lawsuit.

Larletha Evans is therefore a proper person to bring this wrongful death action pursuant to

Tennessee law, including but not limited to Tennessee Code Annotated § 29-5-106 and/or § 29-5-107.

2. Plaintiff Larletha Evans is also, by Order dated September 19, 2012 in the Chancery Court of Tate County, Mississippi, the daughter of Michael A. Ross, and Conservator of the Estate and Person of Michael A. Ross, who was very severely injured in the automobile crash of August 26, 2012 which is the subject of this lawsuit. As such, Plaintiff Larletha Evans is a proper party to bring this action to assert the interests of Michael A. Ross in this lawsuit.

3. Defendant City of Memphis, Tennessee is a municipality chartered by or otherwise organized under the laws of the State of Tennessee and as such is a political subdivision of the State of Tennessee, and among its other functions operates and maintains a law enforcement agency known as the Memphis Police Department (hereinafter "MPD"). Defendant City of Memphis is under a duty to run the policing activities conducted by the MPD in a lawful manner so as to preserve not only the peace of the City of Memphis, but also to preserve to its citizens safety and well-being and the rights, privileges and immunities guaranteed and secured to them by the constitutions and the laws of the United States and/or the State of Tennessee. On information and belief, pursuant to Tenn. R. Civ. P. 4.04(8), the City of Memphis may be served with process through its City Attorney, Herman Morris, 125 North Main Street, Room 314, Memphis, Tennessee 38103.

4. On information and belief, Alex Beard is an adult resident citizen of Shelby County, Tennessee and was, at all times material hereto, acting within the course and scope of his employment with the City of Memphis as a police officer for the MPD.

5. All of the wrongs complained of herein occurred in Shelby County, Tennessee and within one year preceding the filing of this action, and this Court has jurisdiction pursuant to Tennessee Code Annotated § 29-30-305 and/or § 29-20-202.

6. Pursuant to Tennessee Code Annotated § 29-20-202, Defendant City of Memphis is not immune from suit for injuries resulting from the negligent operation by any employee of a motor vehicle while in the scope of the employee's employment; consequently, Defendant City of Memphis is not immune from suit for the automobile crash and injuries described herein.

FACTUAL ALLEGATIONS

Plaintiff incorporates by reference as if fully set forth each and every allegation in the Complaint.

7. This action arises out of a severe, multiple fatality motor vehicle crash which occurred the afternoon of August 26, 2012 at approximately 2:45-3:00 p.m. at or near the intersection of Walnut Street and East E H Crump Boulevard in Memphis, Shelby County, Tennessee.

8. At that time and place, MacKayla Ross and her father Michael Ross were in a 1996 Mercury Mystique vehicle, and proceeding lawfully and rightfully westbound on East E H Crump Boulevard and attempting to turn south on Walnut Street. Michael Ross was driving the vehicle. MacKayla Ross, a minor child who was a seventh grader in Senatobia, Mississippi at the time, was in the front passenger seat. Other passengers were also in the vehicle. Michael Ross, his daughter MacKayla and the other passengers were on their way back to Mississippi after a family event in Memphis on Sunday afternoon.

9. At that time, Michael Ross began, or attempted to begin, to turn south on Walnut Street in his Mercury Mystique in lawful obedience to the traffic signal controlling his movement.

10. However, at or about that same time, Officer Beard, who was driving a City of Memphis police vehicle near the intersection of Walnut Street and East E H Crump Boulevard, was responding to a non-emergency call, yet driving at a very high rate of speed, and proceeded to travel eastbound near or into the intersection of East E H Crump Boulevard and Walnut Street.

11. As Officer Beard drove toward the intersection of East E H Crump Boulevard and Walnut Street at a very high speed, he did not activate his police vehicle's lights, and did not activate its siren, in violation of Tennessee Code Annotated § 55-8-108 and MPD policies. On information and belief, Officer Beard also disregarded a red traffic light which controlled movement in his direction of travel and should have caused him to stop rather than continue to travel at high speed, also in violation of Tennessee Code Annotated § 55-8-108 and MPD policies.

12. As Officer Beard continued to travel eastbound into or near the intersection of East E H Crump Boulevard and Walnut Street at high speed, in disregard of a red traffic light, and without his police lights or police siren activated, he negligently and recklessly struck the Mercury Mystique vehicle driven by Michael Ross on the passenger side as Michael Ross was lawfully making or attempting to make his southbound turn.

13. The impact described in the preceding paragraph was extremely severe and directly and proximately caused physical injuries to Michael A. Ross which required and have continued to require medical attention and resulting significant medical expenses. On information and

belief at this time, the injuries to Michael Ross are permanent, potentially life threatening and are expected to continue to require medical attention and medical expenses. The impact described in the preceding paragraph also directly and proximately caused the death of Michael Ross' daughter MacKayla Ross. The impact also caused severe property damage to the vehicle being driven by Michael Ross.

14. At all times material hereto, Michael Ross was acting in a prudent, lawful, and cautious manner in obedience to traffic signals controlling his direction of travel and was in no way negligent. Additionally, at all times material hereto, as Michael Ross' minor daughter and passenger, MacKayla Ross was acting in a prudent, lawful, and cautious manner, and was in no way negligent.

15. Officer Beard was acting in the course and scope of his employment with the City of Memphis as an MPD officer at all times material hereto, and his actions or inactions are therefore legally attributable to the City of Memphis.

LIABILITY

Plaintiff incorporates by reference as if fully set forth each and every allegation in the Complaint.

16. Officer Beard and the City of Memphis were legally guilty of the following acts of common law negligence, each and every one of which was a direct and proximate cause of the accident and injuries described herein:

- a. Operating an MPD vehicle at a very high rate of speed on a non-emergency call and without activating police lights or siren, in violation of Tennessee law and MPD policies, as noted above;
- b. Failure by Officer Beard to operate the vehicle he was driving with the degree of care and caution required of a reasonable and prudent person under the

circumstances;

- c. Failure by Officer Beard to maintain the vehicle he was operating under due and reasonable and proper control so as to avoid colliding with the vehicle Michael Ross was driving when there should have been sufficient time and opportunity to do so under the circumstances had Beard been operating the vehicle under due, reasonable and proper control and at a reasonable, lawful and safe speed;
- d. Failure by Officer Beard to devote full time and attention to the operation of the vehicle he was driving;
- e. Failure by Officer Beard to maintain a due and proper lookout in the direction he was driving;
- f. Failure by Officer Beard to yield the right of way to other traffic under the circumstances; and
- g. Failure to exercise due and reasonable care for the safety of other persons operating vehicles on the road.

17. Officer Beard was also guilty of violating the following statutes of the State of Tennessee, which were in full force and effect at the time of the accident, each violation constituting negligence per se, and each and every one of which was a direct and proximate cause of the accident and injuries described herein:

- a. Tenn. Code Ann. § 55-8-108 Authorized Emergency Vehicles
- b. Tenn. Code Ann. § 55-8-109 Obedience to any Required Traffic-Control Device
- c. Tenn. Code Ann. § 55-8-110 Traffic-Control Signals
- d. Tenn. Code Ann. § 55-8-128 Vehicle Approaching or Entering Intersection
- e. Tenn. Code Ann. § 55-8-136 Drivers to Exercise Due Care
- f. Tenn. Code Ann. § 55-8-197 Failure to Yield Right of Way
- g. Tenn. Code Ann. § 55-10-205 Reckless Driving

18. Officer Beard was also guilty of violating the following ordinances of the City of Memphis, which were in full force and effect at the time of the accident, each violation constituting negligence per se, and each and every one of which was a direct and proximate cause of the accident and injuries described herein:

- a. Sec. 11-16-2 Duty to devote full time and attention to operating vehicle.
- b. Sec. 11-16-3 Duty to drive at safe speed, maintain lookout and keep vehicle under control.
- c. Sec. 11-16-44 Reckless driving.

DAMAGES

Plaintiff incorporates by reference as if fully set forth verbatim each and every allegation in the Complaint.

19. As a direct and proximate result of the acts and/or omissions of the Defendant, MacKayla Ross was killed and Michael Ross sustained injuries which required and continue to require medical attention and are anticipated to continue to require medical attention in the future. Therefore, the injuries for which Larletha Evans, as Administratrix of the Estate of MacKayla Ross, and as Conservator of the Estate and Person of Michael Ross, seeks compensation from the Defendant include, but are not limited to, damages for the wrongful death of MacKayla Ross and the personal injuries of Michael Ross, including, but not limited to:

MacKayla Ross:

- a. Damages for the wrongful death of MacKayla Ross, including her conscious pain and suffering from the time of her injuries until the time of her death;
- b. Infliction of emotional distress upon MacKayla Ross from the time of her injuries until the time of her death;
- c. The pecuniary value of the life of MacKayla Ross, including the loss of her consortium and companionship by surviving immediate family members and relatives;

- d. The loss of earning capacity of MacKayla Ross;
- e. Funeral and/or burial expenses for MacKayla Ross;
- f. Such interest as may be permitted (prejudgment and/or post-judgment) by Tennessee law; and
- g. All such further relief, both general and specific, to which Larletha Evans may be entitled under the premises pursuant to applicable law.

Michael Ross:

- a. Physical pain and suffering of a past, present and future nature of Michael Ross;
- b. Scarring/disfigurement of Michael Ross;
- c. Emotional pain and suffering of a past, present and future nature of Michael Ross;
- d. Medical bills and expenses of Michael Ross of a past, present and future nature;
- e. Loss of enjoyment of life of Michael Ross;
- f. Lost wages and/or loss of earning capacity of Michael Ross;
- g. Property damage to the vehicle Michael Ross was driving;
- h. Such interest as may be permitted (prejudgment and/or post-judgment) by Tennessee law; and
- i. All such further relief, both general and specific, to which Larletha Evans may be entitled under the premises.

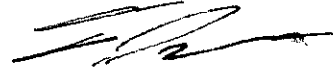
PRAYER FOR RELIEF

20. **WHEREFORE, PREMISES CONSIDERED**, Plaintiff Larletha Evans sues the Defendant for the injuries and damages described herein and prays for judgment and an award of compensatory damages against the Defendant in such amount as may appear fair and reasonable to the trier of fact and to the maximum extent permissible under applicable law for the wrongful death of MacKayla Ross and the severe personal injuries and property damage sustained by Michael Ross, including but not limited to Tennessee Code Annotated § 29-20-403(3). If Defendant has purchased insurance or made other arrangements to pay damage awards for liability incurred in excess of such limits, the Plaintiff further prays for such additional relief, both general and specific, to which she may be entitled under the premises.

21. **A JURY IS RESPECTFULLY DEMANDED.**

Respectfully submitted,

BAILEY & GREER, PLLC



R. Sadler Bailey (#11230)

Tyler B. Parks (#31386)

Bailey & Greer, PLLC

6256 Poplar Avenue

Memphis, TN 38119

Phone: (901) 680-9777

Fax: (901) 680-0580