

551

EUGENE LINDSEY,

Plaintiff,

VS.

W. N. DYER and JOHN
HEILMEIR,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW.

INTERROGATORIES PROPOUNDED BY THE PLAINTIFF TO THE DEFENDANT,
W. N. DYER, IN ACCORDANCE WITH SECTION 7764 ET SEQ. OF THE
1923 CODE OF THE STATE OF ALABAMA:

1. Please state your name, age and address.
2. Please state whether or not an automobile belonging to you was involved in an accident at the Blue Heaven Filling Station, in the Town of Foley, Baldwin County, Alabama, on to-wit, July 24th, 1939, when the Plaintiff, Eugene Lindsey, was injured.
3. Please state the make and model of said automobile.
4. Please state whether or not the brakes were in good mechanical working condition on the date of the accident. If you state that they were not, then please tell when and where you first learned that the brakes were not working on said automobile.
5. Please state when you first, after learning that the brakes were not in proper working condition, carried the automobile to the Defendant, John Heilmair, to have it repaired. Did you take the car away from the place or did you leave it there on that date. If you state that you took it away, then when did you carry it back to have it repaired.
6. Did you, at the time you carried the automobile to the place to have it repaired, advise the Defendant, John Heilmair, that the brakes were not in working condition?
7. Did you permit or allow, with knowledge that the brakes were not working on your automobile, the Defendant, John Heilmair, to operate or drive the said car?
8. Please state whether or not the Defendant, John Heilmair, was employed by you from time to time to do work for you on your automobile and other machinery or equipment.
9. Please state whether or not on July 24th, 1939, at the time your automobile was driven into or against the Plaintiff, the said Defendant, John Heilmair, was employed by you to do work on your automobile. Was he, at the time of the accident, an employee or agent of yours, working in accordance with your directions or instructions.
10. Please state whether or not the Defendant, John Heilmair, was your agent, servant or employee and acting within the scope of his employment, and in accordance with your instructions and directions at the time of the accident in which the Plaintiff was injured.
11. Please state whether or not you knew it was dangerous to permit the Defendant, John Heilmair, or anyone else, to operate or drive your automobile in the condition in which it was in on the date of the accident in which the Plaintiff was injured.

B. B. B. B. B.
Attorneys for Plaintiff.

STATE OF ALABAMA,)
)
BALDWIN COUNTY.)

Before me, the undersigned authority, in and for said County, in said State, personally appeared HUBERT M. HALL, who is known to me and who having been by me first duly sworn, deposes and says, that he is one of the attorneys of record for the Plaintiff; that the answers to the foregoing interrogatories to the Defendant, W. N. Dyer, if answered truthfully, will be material testimony for the Plaintiff in the above styled cause.

Hubert M. Hall

Sworn to and subscribed before me
this 12th day of January, 1940.

W. B. Jones
Notary Public, Baldwin County, Ala.

Received in Sheriff office
1-16-40. W.A. Stuart Sheriff

INTERROGATORIES TO DEFENDANT,
W. N. DYER;

EUGENE LINDSEY,

Plaintiff,

VS.

W. N. DYER and JOHN HEILMEIR,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW.

Filed January 13, 1940
R.S. Ducky, Clerk

1-27-40

Executed 1-29-40
by handing a copy to
this writ to W.N. Dyer
defendant -
W.R. Stuart Sheriff
By John C. Davis D.S.

STATE OF ALABAMA,)
)
BALDWIN COUNTY.)

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon W. N. DYER and JOHN HEILMEIR to appear within thirty days from the service of this writ, in the Circuit Court to be held for said County at the place of holding the same, then and there to answer the complaint of EUGENE LINDSEY.

WITNESS my hand this 10th day of January, 1940.

R. S. Dush
Clerk.

EUGENE LINDSEY,	)	IN THE CIRCUIT COURT OF
)	
Plaintiff,)	
	)	BALDWIN COUNTY, ALABAMA,
VS.)	
)	
W. N. DYER and JOHN	)	AT LAW.
HEILMEIR,)	
)	
Defendants.)	

1. The Plaintiff claims of the Defendants Twenty-five Hundred (\$2500.00) Dollars damages, for that heretofore, on to-wit, July 24th, 1939, at the "Blue Heaven Filling Station", in the Town of Foley, Baldwin County, Alabama, the Defendant, W. N. Dyer, acting by and through his agent, servant or employee, John Heilmeir, who was then and there acting within the line and scope of his employment, negligently ran or drove an automobile, the property of the Defendant, W. N. Dyer, into or against the Plaintiff, and as a proximate result, the Plaintiff's right leg was broken, his left leg and body bruised; he was caused to suffer great physical pain and mental anguish; he was permanently injured; he was caused to incur doctor, medical and hospital bills, all to his damage, hence this suit.

The Plaintiff alleges that his injuries and the damages suffered were the proximate result of the negligence of the Defendant, W. N. Dyer, acting by and through his agent, servant or employee, John Heilmeir, who was then and there acting within the line and scope of his employment.

2. The Plaintiff claims of the Defendants the further sum of Twenty-five Hundred (\$2500.00) Dollars, damages, for that heretofore, onto-wit, July 24th, 1939, at the "Blue Heaven Filling Station", in the Town of Foley, Baldwin

County, Alabama, a place where the Plaintiff had a right to be, the Defendant, acting by and through his agent, servant or employee, John Heilmair, who was then and there acting within the line and scope of his employment, negligently ran or drove an automobile, the property of the Defendant, W. N. Dyer, into or against the Plaintiff, and as a proximate result, the Plaintiff's right leg was broken, his left leg and body bruised; he was caused to suffer great physical pain and mental anguish; he was permanently injured; he was caused to incur doctor, medical and hospital bills, all to his damage, hence this suit.

The Plaintiff alleges that his injuries and the damages suffered were the proximate result of the negligence of the Defendant, W. N. Dyer, acting by and through his agent, servant or employee, John Heilmair, who was then and there acting within the line and scope of his employment.

3. The Plaintiff claims of the Defendants the further sum of Twenty-five Hundred (\$2500.00) Dollars, for that heretofore, on to-wit, July 24th, 1939, the Plaintiff was an employee at the "Blue Heaven Filling Station", in the Town of Foley, Baldwin County, Alabama; that on said date and at said place the Defendant, W. N. Dyer, acting by and through his agent, servant or employee, John Heilmair, who was then and there acting within the line and scope of his employment, negligently ran or drove an automobile, the property of the Defendant, W. N. Dyer, into or against the Plaintiff, and as a proximate result, the Plaintiff's right leg was broken, his left leg and body bruised; he was caused to suffer great physical pain and mental anguish; he was permanently injured; he was caused to incur doctor, medical and hospital bills, all to his damage, hence this suit.

The Plaintiff alleges that his injuries and the damages suffered were the proximate result of the negligence of the Defendant, W. N. Dyer, acting by and through his agent, servant or employee, John Heilmair, who was then and there acting within the line and scope of his employment.


Attorneys for Plaintiff.

RECORDED

8-442

SUMMON AND COMPLAINT

EUGENE LINDSEY,

Plaintiff,

VS.

W. N. DYER and JOHN
HEIMEIR,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
AT LAW.

Filed January 10, 1940
R. S. Duck, Clerk

Received in Sheriff Office

January 11 1940

W. R. Stewart & Son

*Specified Jan 13th 1940
by handing a copy of
this writ to Wm. Dyer
and a copy to
John Steadman
Jan 16th 1940
W. R. Stewart & Son
By John R. Davis, D.S.*

THE STATE OF ALABAMA

BALDWIN COUNTY

S.D. Page No.

Case No. 551

CIRCUIT COURT

August Term, 1940

To any Sheriff of the State of Alabama, GREETING:

You are hereby commanded to summon

Dr. Plante

Archie Stedham, John Stedham

if to be found in your County, at the instance of the

plaintiffs

to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House thereof,

by 8:30 o'clock of the forenoon, on the 21st day of August 1940

and from day to day and term to term of said Court until discharged by law, then and there to testify, and the truth to

say, in a certain cause pending, wherein Eugene Lindsey Plaintiff

and W. H. Dyer et al. Defendant.

Herein fail not and have you then and there this Writ.

Given under my hand and seal, this 20 day of August 1940

R. S. Dush

Clerk.

Received in office this 20 day of

Aug 1940

W. R. Stuart
Sheriff.

I have executed this writ

by serving
Aubrey Steadham
John Steadham
D. Plunk.

8/20/1940

W. R. Stuart
Sheriff.

By M. B. Hamilton

ORIGINAL

No. 551

Page

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

Eugene Lindsey

Plaintiff

VS.

W. N. Dyer, et al.

Defendant

CIVIL SUBPOENA

Issued this.....day of

193.....

Clerk.

EUGENE LINDSEY,

Plaintiff,

VS.

W. N. DYER, ET AL.,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW.

Now comes the Plaintiff, and with leave of the Court first had and obtained, amends his complaint by adding counts 4, 5, 6, and 7:

4: The Plaintiff claims of the Defendants Twenty-five Hundred (\$2500.00) Dollars damages, for that, heretofore, on to-wit July 24th, 1939, the Defendant, with full knowledge that the brakes on his car were not in working order, and not sufficient to control his car, carried his car to the Defendant, John Helmeir, to have his oil changed; that the Defendant, John Helmeir, without knowing that the brakes were not in working order and not sufficient to control the car, drove it upon the grease rack, and not being able to stop it, the car ran over the grease rack and against the Plaintiff, and as a proximate result thereof injured him as follows: His right leg was broken, his left leg and body bruised; he was caused to suffer great physical pain and mental anguish; he was permanently injured; he was caused to incur doctor, medical and hospital bills, all to his damage, hence this suit.

5. The Plaintiff claims of the Defendants Twenty-five Hundred (\$2500.00) Dollars damages, for that, heretofore, on to-wit, July 24th, the Defendant, W. N. Dyer, carried his car to the Defendant, John Helmeir, at the Blue Heaven Filling Station, in the Town of Foley, Baldwin County, Alabama, to have his oil changed; that said car was equipped with hydraulic brakes, and at the time the said brakes were not in working order and not sufficient to control the said car; that the Defendant, W. N. Dyer, with full knowledge that the said brakes were not in working order and that the said car, in its condition, was a dangerous instrumentality if driven, delivered the said car over to John Helmeir, and that the said John Helmeir, in attempting to place the said car on the grease rack, drove it into or against the Plaintiff and as a proximate result thereof injured him as follows: His right leg was broken, his left leg and body bruised; he was caused to suffer great physical pain and mental anguish; he was permanently injured; he was caused to incur doctor, medical and hospital bills, all to his damage, hence this suit.

6: The Plaintiff claims of the Defendants Twenty-five Hundred (\$2500.00)

Dollars, damages, for that, heretofore, on to-wit, July 24th, 1939, and prior thereto, the Defendant, W. N. Dyer, had employed the Defendant, Helmeir, to do his work on his automobiles and machinery and paid him only once each month; that on said date, to-wit, July 24th, 1939, the said Dyer, with full knowledge that the brakes (hydraulic) on his car were not working, and that without them his car could not be controlled when driven, took his car up to the Blue Heaven Filling Station, in the Town of Foley, Baldwin County, Alabama, to have his oil changed; that he left his said automobile out on the street near the said filling station, knowing that the said Helmeir, in order to change the oil, would drive it from the street on to the grease rack; that the Defendant, knowing these things, and that the said automobile in its then condition was a dangerous instrumentality if driven, permitted or directed the said Helmeir to drive the said automobile from the street on to the grease rack, and that the said Helmeir, in driving the said car on the grease rack, permitted or caused it to run into or against the Plaintiff and injure him as follows: His right leg was broken, his left leg and body bruised; he was caused to suffer great physical pain and mental anguish; he was permanently injured; he was caused to incur doctor, medical and hospital bills, all to his damage, hence this suit.

7: The Plaintiff claims of the Defendants Twenty-five Hundred (\$2500.00) Dollars damages, for that, heretofore, on to-wit, July 24th, 1939, the Defendant, W. N. Dyer, knowing that the brakes on his car were not in working order and sufficient to control its movements when driven, took the said car to the Blue Heaven Filling Station, in the Town of Foley, Baldwin County, Alabama, operated by the Defendant, Helmeir, to have his oil checked and changed; that he left the said car on the street near the said filling station, knowing that the said Helmeir, in order to check and change the oil, would drive it from the place where it was on to the grease rack, located in the said station; that he did not advise the said Helmeir that the brakes were bad and not in working order and not sufficient to control the said car; that the said Helmeir, not knowing that the brakes on said car were bad and not sufficient to control its movements when driven, drove or attempted to drive the said car from the street where the Defendant, Dyer, had left it on to the grease rack; and that in driving said car on to the grease rack, not being able to control its movements by reason of the fact that the brakes were not working, drove or caused the said car to run into or against the Plaintiff and injure him as follows: His right leg was broken, his left leg and body bruised; he was caused to suffer great physical pain and mental

anguish; he was permanently injured; he was caused to incur doctor, medical and
hospital bills, all to his damage, hence ^{this} suit.

BEEBE & HALL,

By: *[Signature]*
Attorneys for Plaintiff.

551

AMENDED COMPLAINT

EUGENE LINDSEY,

Plaintiff,

VS.

W. N. DYER, ET AL.,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

AT LAW.

Filed Aug 21 1940
Per Order of
Clerk

EUGENE LINDSEY,

Plaintiff,

VS.

W. N. DYER and JOHN
HEILMEIR,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

Comes the defendant W. N. Dyer, and for himself alone moves to strike from the complaint Count One thereof, and for grounds for said motion sets out and assigns the following:

(1) The said count is ambiguous, in that it is not made clear whether the defendant Dyer is alleged to have driven the automobile into the plaintiff, or whether the defendant Heilmair is alleged to have been driving the automobile at the time of the alleged injury.

The defendant W. N. Dyer for himself alone moves to strike from the complaint Count Two thereof, and for grounds ~~for said motion sets out and assigns the same ground hereinabove~~ set out as ground for motion to strike Count One of said complaint, and, in addition thereto, the following separate and several grounds:

(1) Said Count Two is but a repetition, in effect, of Count One of said complaint.

(2) The material averments of said Count Two constitute a mere repetition of the material averments of Count One of said complaint.

(3) The averment of negligence in said Count Two is that at the "Blue Heaven Filling Station" defendant W. N. Dyer, ~~acting by and through his agent, servant and employee, negligently~~ ran or drove an automobile, the property of the defendant W. N. Dyer, into or against the plaintiff, which is a mere repetition of the averment of negligence in Count One of said complaint.

The defendant W. N. Dyer for himself alone moves to strike from the complaint Count Three thereof, and for grounds for said

motion sets out and assigns, separately and severally, the same grounds hereinabove set out as grounds for motion to strike Count Two of said complaint.

M. Tracy M. Lard James Rogers
Attorneys for Defendant W. N. Dyer.

Noted **RECORDED**

Filed February 10, 1940
R.S. Dush, Clerk

MCORVEY, MCLEOD, TURNER & ROGERS
ATTORNEYS AT LAW

1 NINTH FLOOR, MERCHANTS NATIONAL BANK BUILDING
MOBILE, ALABAMA

The State of Alabama, {
BALDWIN COUNTY

CIRCUIT COURT. (LAW)

September Term, 1942

Eugene Lindsey, Plaintiff
No. 551 vs. W. R. Dyer, + Jesse Kellum
Defendants

BILL OF COSTS

CLERK'S FEES:	AMOUNT	SUMMARY OF FEES, COSTS, AND JUDGMENT	AMOUNT
Fees in Circuit Court—		Fees and Costs in Circuit Court:	
Docketing Cause, One Fee only of.....	25	Clerk's Fees	8 55
Issuing Summ. and Complt., each.....	1 25	Ex-Clerk's Fees	6 45
Issuing Alias or Branch Summons & Complaint, each 1.25	60	Sheriff's Fees	
Making Copies Thereof, Minimum, each	2 30	Ex-Sheriff's Fees	11 00
Making Copies Thereof, over 200 Words, per 100 words .15	20	Witness Fees	
Entering Sheriff's Returns, each	20	Commissioner's Fees	
Entering Appearances, each	20	.....
Certifying Affidavits, each	25	Garnishee's Fees	
Issuing Attachments with Bond, each	1.00	Publisher's Fees	
Orders of Publication, each .....	.50	.....
Copy of Same, each .....	.50	Court Reporter's Fees, Per Day or fraction thereof .5.00	
Issuing Summ. to Garnishee, each .....	.50	Trial Tax	3 00
Copy of Same, Per 100 Words .....	.15	.....
Swearing Garnishee, Etc., Per 100 words, .15, Minimum .....	.50	.....
Release of Garnishee, each .....	.25	.....
Issuing Scire Facias or Similar Notice, each .....	.75	.....
Copies of Same, Per 100 Words.....	.15	.....
Making Copy of Interrogatories, Per 100 Words, .15; Minimum .....	.50	.....
Commission to Take Depositions, each .....	.75	Fees and Costs in Inferior Court:	
Filing Depositions, Each Pkg., .....	.10	Clerk of Inferior Court Fees	
Endorsing Each Package of Depositions Opened .....	.10	Sheriff's Fees	
Issuing Subpoenas, Each	3 30	Justice of Peace Fees	
Issuing Witness Certificates, each.....	2 25	Constable's Fees	
Entering Continuances, each .....	.10	.....
Filing Papers, each .....	.10	Fees and Costs in Inferior Court	
Other Orders of Court, each	Dismissal 30	Total Fees and Costs	
Trial and Incidents .....	.75	Judgment	
Entering Judgment, each .....	.30	10 Per Cent Damages	
Complete Record, Per 100 Words .....	.15	Interest	
Taking Bonds, each .....	.75	Total Judgment	
Certificate of Appeal .....	.25	Total Fees, Costs and Judgment	
Transcript to Supreme Court, Per 100 Words .....	.15	Local Sep	
Additional Copies of Same, Per 100 Words .....	.05	Total	29 00
Issuing Executions or Copy Thereof, each .....	.50		
Entering Sheriff's Return, Per 100 Words, .15; Minimum .....	.20		
.....			
.....			
Total Clerk's Fees	8 55		
SHERIFF'S FEES:			
Serving and Returning Summons or Writ, each	2 1.50		
Levying Attachment, each	3.00		
Entering and Returning Same, each .....	.25		
Seizing Personal Property Under Writ of Detinue	2.00		
Taking and Approving Bonds, each.....	1.00		
Summoning Garnishee and Return, each	1.50		
Serving and Returning Subpoena or Notice, each	1.50		
Serving and Returning Subpoenas, each	3 .65		
Serving Contempt Attachment, each	1.50		
Impanelling Jury.....	.75		
Collecting Execution for Costs Only, each.....	1.50		
Coms. for Collecting Money on Executions			
Executing Writs of Possession, each.....	5.00		
Making Deed to Real Estate Sold, each.	2.50		
.....			
.....			
Total Sheriff's Fees	6 45		

I certify that the within is a true and correct Bill of Costs in the within styled cause.

ATTEST: R. S. Dyer
Clerk Circuit Court, Baldwin County, Ala.

Received payment this _____ day of _____ 194 _____

ATTEST: _____
Clerk Circuit Court, Baldwin County, Ala.

No. 551 Page _____

The State of Alabama,
BALDWIN COUNTY

CIRCUIT COURT

Eugene Leuberg

vs. Plaintiff

Wm. R. Dyer

Kilmer

Defendant

CIVIL COST BILL

Sept. Term, 19 44

Fee Book _____, Page _____

Bude & Hare

Plaintiff's Attorney

W. R. Dyer
Defendant's Attorney