

LILLIE BELL PRICE MALONE, I IN THE CIRCUIT COURT
 Plaintiff I OF
-VS- I BALDWIN COUNTY,
JACK MANN PONDER, JR., I ALABAMA
 a Minor, AT LAW NO. 2082
 Defendant I

COUNT ONE

Plaintiff, the mother of BARBARA FAYE PRICE, a minor under the age of twenty-one (21) years (and whose father is a minor over the age of 18 years dead), claims of the defendant the sum of FIFTEEN THOUSAND & No/100 (\$15,000.00) DOLLARS, as damages, for that heretofore, and on, to-wit, the 12th day of September, 1952, the said defendant was in control of, and operating, an automobile in a Southerly direction on and along U. S. Highway 89 in the County of Baldwin, State of Alabama, said highway being a public highway in the County and State aforesaid, at a point, to-wit, 1.6 miles South of the Grand Hotel at Point Clear, Alabama, and plaintiff's said minor daughter was riding in said automobile as a guest of the defendant and at his express invitation and request; and plaintiff further avers that said defendant, at the time and place aforesaid, wantonly or wilfully injured plaintiff's said minor daughter by overturning said automobile, thereby violently projecting and throwing said plaintiff's minor daughter from said car to the ground, said car thereupon striking the body of her said daughter, critically and severely injuring her, and as a direct and proximate consequence whereof, plaintiff suffered the following damages, to-wit: A depravation of the comfort, attention and services of her said minor daughter; she was compelled to expend great and substantial amounts of money in and about the medical and therapeutic treatments to her said injured daughter, including hospital expenses, doctor's fees, nurses compensation, special medical appliances, including the use of a wheelchair, sundry braces and casts, and many and sundry medicines and pharmaceuticals which said medical treatments and medicines and medical equipment have been continually from the

date hereinabove set out required and demanded in and about the treatment and cure of her said daughter, and plaintiff will be required to continue such expenses and costs for a long time hereafter; all to the plaintiff's damages as aforesaid, hence this suit.

COUNT TWO

Plaintiff, the mother of BARBARA FAYE PRICE, a minor under the age of twenty-one (21) years (whose father is dead), claims a minor over the age of 18 years of the defendant/the further and additional sum of FIFTEEN THOUSAND & No/100 (\$15,000.00) DOLLARS, for that, heretofore, and on, to-wit, the 12th day of September, 1952, plaintiff's said minor daughter was an invited guest riding in an automobile operated by this defendant and being driven by him on and along U. S. Highway 89 at a point thereon about, to-wit, 1.6 miles South of the Grand Hotel at Point Clear, Baldwin County, Alabama, said highway being a public highway in the County and State aforesaid; and plaintiff avers that defendant wantonly injured plaintiff's said minor daughter by causing said automobile, which he was then and there driving, to overturn, thereby injuring plaintiff's said minor daughter sorely and critically, in the treatment, convalescence and cure whereof, plaintiff was, and continues to be, required to expend vast and substantial sums of money in and about the payment of doctors' fees, nurses compensation, special medicines, surgery and treatments, and also certain medical devices incident to and required by the treatment of her aforesaid minor daughter, such as crutches, braces, casts, wheel-chairs and the like; and plaintiff will be required in the future to expend additional great and substantial sums of money in and about the continuation of the treatment of her said daughter's injuries sustained as above described; and plaintiff avers that she suffered all of the above-described damages as a proximate result of the wanton act herein complained of, hence this suit.

COUNT THREE

Plaintiff, the mother of BARBARA FAYE PRICE, a minor under the age of twenty-one (21) years (whose father is dead), claims

a minor over the age of 18 years
of the defendant/ the further and additional sum of FIFTEEN
THOUSAND & No/100 (\$15,000.00) DOLLARS, as damages, for that,
she avers that, heretofore, and on, to-wit, the 12th day of
September, 1952, the defendant was in charge and control, and was
driving and operating an automobile in a Southerly direction on
U. S. Highway 89 at a point approximately 1.6 miles South of the
Grand Hotel at Point Clear, Baldwin County, Alabama, said high-
way being a public highway in the County and State aforesaid;
and plaintiff's said minor daughter was riding in said car as an
invited guest of said defendant; and plaintiff avers that at
time and place complained of this defendant wilfully or wantonly
overturned, or permitted, or caused to overturn, the said auto-
mobile, thereby projecting and throwing the said plaintiff's
minor daughter from said automobile to the ground and overturn-
ing the said automobile, upon the person of the said plaintiff's
minor daughter, whereby and as a proximate result and consequence
thereof, plaintiff's said minor daughter sustained substantial
and critical physical injuries in and about the treatment whereof
plaintiff sustained the following damages, to-wit: plaintiff
was deprived of the comfort, companionship and services of her
said minor daughter, was required to expend vast and substantial
amounts of money in and about the medical treatment of her said
daughter's injuries, was compelled to expend substantial sums of
money for hospital expenses, doctors' and surgeons' fees, nurses
compensation, as well as medical appliances such as wheelchairs,
crutches, braces and casts, and in addition thereto sundry
medicines and pharmaceuticals all, in and about the aforesaid
injuries to her said minor daughter; plaintiff further avers that
the aforesaid expenses, surgeons' attention and medicines will
continue hereafter; all to the plaintiff's damages as aforesaid,
hence this suit.

Plaintiff respectfully demands a trial by jury.

HOLBERG, TULLY & ALDRIDGE
Attorneys for Plaintiff

BY 

Member Appearing

Service of Process may be
had on the defendant
Jack Mann Ponder, Jr., at one
of the following addresses:

White Avenue (2nd West of
Summit), Fairhope, Alabama;
or Ponder Plumbing Company,
35 North Section St.,
Fairhope, Alabama.

Pursuant to the terms of Title 7, Section 194 of the 1940
Code of Alabama, one copy of the foregoing summons and complaint
must be served on the defendant, Jack Mann Ponder, Jr., and one
copy of the summons and complaint on his father, Jack M. Ponder,
Sr., at one of the above addresses.

The State of Alabama }
BALDWIN MOBILE COUNTY

CIRCUIT COURT

SUMMONS.

To any Sheriff of the State of Alabama:

You are hereby commanded to summon

JACK MANN PONDER, JR., a Minor over the age of 18 years,

to appear within thirty days from service of this process, in the Circuit Court of Baldwin
Alabama, at the place of holding the same, then and there to answer the complaint of

LILLIE BELL PRICE MALONE

Alice J. Duck

Witness: ~~John E. Mendenhall~~, Clerk of said Court, this 8th day of Sept, 1953

Attest: Alice J. Duck
Clerk

* * * * *

SHERIFF'S RETURN

Received _____ Day of _____, 19____, and on _____ Day
of _____, 19____, I served a copy of
the within _____ on _____

by service on _____

~~XXXXXXXXXXXX~~ SHERIFF

By _____ D. S.

Received to
Sept 18 1953
TAYLOR WILKINS, Sheriff

RECORDED 202052.

No. 2052

JUDGE HALL'S DOCKET

Repts E & F 3

colored 18 day of Sept 1953

on 9 day of Sept 1953

erved a copy of the within

Jack Mann Ponder Jr. 9-9-53

Jack Mann Ponder Sr. 9-12-53

service on

CIRCUIT COURT
BALDWIN ~~NORTH~~ COUNTY

TAYLOR WILKINS, Sheriff
By W. F. Hall D.

LILLIE BELL PRICE MALONE

VS. { Complaint and Summons

JACK MANN PONDER, Jr., a minor

Issued _____ day of _____, 19____

FILED
SEP 8 1953

ALICE J. DUCK, Clerk

HOLBERG TULLY & ALDRIDGE
Plaintiff's Attorney

IN THE CIRCUIT COURT FOR THE TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

LILLIE BELL PRICE MALONE,

Plaintiff,

vs.

JACK MANN PONDER, JR., a
minor,

Defendant.

AT LAW NO. 2082

MOTION TO QUASH PROCESS

Comes now ^{Jabey} JACK MANN PONDER, III, a minor over the age of eighteen (18) years, ^{appearing specially for the sole purpose of making this Motion only} and shows unto the Court that heretofore, on, to-wit, the 9th day of September, 1953, there was served on him a summons and complaint in the above styled cause by the Sheriff of Baldwin County, Alabama and that said Sheriff made his return stating that said process had been executed by serving a copy on JACK MANN PONDER, JR., when in truth and in fact, said process had not been served on ^{Jabey} ~~JACK~~ MANN PONDER, JR. but had been served on ^{Jabey} ~~JACK~~ MANN PONDER, III; that ^{Jabey} ~~JACK~~ MANN PONDER, III, is the minor son of ^{Jabey} ~~JACK~~ MANN PONDER, JR.; that ^{Jabey} ~~JACK~~ MANN PONDER, JR. is not a minor; and that said process was not served on the defendant in this cause but on ^{Jabey} ~~JACK~~ MANN PONDER, III who is not the defendant in this cause.

WHEREFORE, PREMISES CONSIDERED, ^{Jabey} ~~JACK~~ MANN PONDER, III, prays this Honorable Court:

1. That said process issued out of said Court and served on ^{Jabey} ~~JACK~~ MANN PONDER, III, be quashed.
2. That the return made by the Sheriff to said process be amended to speak the truth.
3. For such other, further or different relief to which he may be entitled in the premises.

^{Jabey}
JACK MANN PONDER III
^{Jabey}

Vickers and Thornton
VICKERS AND THORNTON
Attorneys

STATE OF ALABAMA,
COUNTY OF BALDWIN.

Personally appeared before me, the undersigned *Gaby*
Notary Public in and for said County in said State, JACK
MANN PONDER, III, who being by me first duly sworn, deposes
and says:

That he has read the foregoing motion and that the
facts stated therein are true.

Gaby
Jack Mann Ponder III
JACK MANN PONDER, III
Gaby

Subscribed and sworn to before me
this the 6 day of October, 1953.

Geo. S. Logan
Notary Public, Baldwin County, Alabama

AT LAW NO. 2082

RECORDED

LILLIE BELL PRICE MALONE,

Plaintiff,

vs.

JACK MANN PONDER, JR., a minor,

Defendant.

MOTION TO QUASH PROCESS

FILED

OCT 6 1953

ALICE L. DUCK, Clerk

VICKERS AND THORNTON

ATTORNEYS AT LAW

MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

IN THE CIRCUIT COURT FOR THE TWENTY-EIGHTH JUDICIAL
CIRCUIT OF ALABAMA

LILLIE BELL PRICE MALONE,

Plaintiff,

vs.

JACK MANN PONDER, JR., a
minor,

Defendant.

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AT LAW NO. 2082

MOTION TO STRIKE

Now comes the plaintiff in the above-entitled cause and respectfully moves this Honorable Court to strike the Motion to Quash filed in the above-entitled cause on, to-wit, October 6, 1953 and as grounds therefor respectfully represents and shows unto Your Honor as follows:

1. Said motion is contrary to Title 7, Section 102 of the 1940 Code of Alabama.

2. It affirmatively appears that said motion is executed and filed by a minor in propria persona contrary to the provisions of Title 7, Section 102 of the 1940 Code of Alabama.


3. It affirmatively appears that said motion is not filed by a guardian ad litem of the appointment of this Honorable Court.

4. Under the law said motion can only be filed on behalf of said minor movant and said cause must be defended by a guardian ad litem of the appointment of the Court.

5. For that this Honorable Court is without jurisdiction or authority to entertain the aforesaid Motion to Quash except that the same be filed in accordance with the provisions of Title 7, Section 102 of the 1940 Code of Alabama.

HOLBERG, TULLY & ALDRIDGE
Attorneys for Plaintiff

By


Member Appearing

RECORDED

W. 2082

Motion to Strike

FILED

OCT 19 1953

MAICE J. DUCK, Clerk

IN THE CIRCUIT COURT FOR THE TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

LILLIE BELL PRICE MALONE,

Plaintiff,


vs.

AT LAW NO. 2082

JACK MANN PONDER, JR.,
a minor,

Defendant.

Comes now TAYLOR WILKINS, the duly elected, qualified and acting Sheriff of Baldwin County, Alabama, and an officer of this court and says that if the return made by him as such officer on the summons and complaint heretofore issued herein, does not speak the truth, then he, as such officer of this court, asks leave of the court to amend said return to make the return speak the truth.


TAYLOR WILKINS
Sheriff of Baldwin County, Alabama

RECORDED

FILED

NOV 17 1958

AIDE L. BUCK, CLERK

LILLIE BELL PRICE
MALONE,

Plaintiff

-VS-

JACK MANN PONDER, JR.,
a minor,

Defendant

IN THE CIRCUIT COURT

OF BALDWIN COUNTY, ALABAMA

AT LAW NO. 2082

ANSWER TO DEFENDANT'S
MOTION TO QUASH PROCESS
AND MOTION FOR LEAVE TO
AMEND ORIGINAL COMPLAINT

Now comes Plaintiff in the above-entitled cause and for answer to the Motion to Quash Process in said cause, and further, as grounds for hereinafter described Motion for Leave to Amend, represents and shows unto this Honorable Court as follows:

1. Having insufficient personal knowledge either to admit or controvert the allegations of said Motion to Quash to the effect that the full, true and legal name of the minor defendant, surnamed Ponder, charged with injuring plaintiff's minor daughter at the time, place and in the manner more fully described in the aforesaid complaint, is "Jabez Mann Ponder, III" instead of Jack Mann Ponder, Jr.," as denominated in the original complaint, plaintiff respectfully denies the allegations of the said Motion to Quash and demands strict proof thereof.

2. Further answering Plaintiff saith that, the fact, if it be a fact, that the said minor defendant in this cause is misnamed in the original complaint or the summons issued thereon, has not altered, and does not alter, the fact that the said complaint and summons were correctly, properly and lawfully, personally served upon the individual to whom they were directed, and the individual to whom they were intended to be served, said individual (the alleged signatory of the motion to quash) being the same person who is charged with wilfully or wantonly injuring this plaintiff's minor daughter to the injury of this plaintiff, all as more fully appears in the original complaint on file and served by copy on said minor defendant, now alleged to be named "Jabez Mann Ponder, III".

3. Further answering, plaintiff saith that if said individual minor defendant, charged in the instant cause with wilfully or

THE UNITED STATES OF AMERICA

-3-

IN SENATE
JANUARY 17, 1953

REPORT OF THE COMMISSION ON THE ORGANIZATION OF THE EXECUTIVE BRANCH

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FILED
NOV 17 1953
ALICE A. BUCK, CLERK

wantonly injuring this plaintiff's minor daughter to the damage of this plaintiff, and served with legal process thereon, all as more fully appears in the file in this said cause, is, in truth and in fact, correctly and legally named "Jabez Mann Ponder, III" as set forth in said motion to quash, he is also known, and has for many years been commonly known, in the Couty of Baldwin, Alabama, and elsewhere, by the several other names of "Jack Ponder", "Jackie Ponder", and "Jack Mann Ponder, Jr."

4. Further answering, plaintiff saith that the operator of the automobile who is charged in the original complaint in this said cause with wilfully or wantonly injuring plaintiff's minor daughter to the damage of plaintiff, in the County of Baldwin, Alabama, on, to-wit, the 12th day of September, 1952, all as more fully appears in the original complaint on file in this cause is, himself, a minor and is surnamed "Ponder", and is the only minor surnamed "Ponder" who was operating an automobile in which this plaintiff's minor daughter was injured as described in said original complaint, that he, the said defendant, is the minor son of an individual also surnamed "Ponder" who was not operating said automobile at the time and place described in said original complaint, and that the paternal grandfather of the said minor "Ponder" is dead, so that, notwithstanding said minor's defendant's election to describe himself as "III" and further notwithstanding said minor defendant's election to describe his father as "Jr.", in truth and in fact, there exists no individual surnamed "Ponder, Sr.", and therefore said minor defendant is correctly surnamed and described in the original complaint and the summons issued thereon, as "Ponder, Jr."

5. Further answering, plaintiff saith that the minor defendant, surnamed "Ponder", upon whom service of process was had in this cause on, to-wit, the 9th day of September, 1953, is, in truth and in fact, the same individual against whom this suit is filed, and none other, and the same person who was operating the automobile at the time and place described in the original complaint, and the same person by whom plaintiff charges that her minor daughter was wilfully or wantonly injured, so that the summons and complaint were properly and lawfully served on the proper

defendant, irrespective of any error or misnomer, if any there be, in describing him, the said minor defendant, in said complaint and summons as "Jack Mann Ponder, Jr.", instead of "Jabez Mann Ponder, III", which is now alleged to be his full, complete and legal name in the aforesaid motion to quash.

6. Further answering plaintiff saith that there is, and was, only one defendant who was operating an automobile wherein plaintiff's minor daughter was riding, and who allegedly wilfully or wantonly injured plaintiff's said minor daughter at the time and place and under the circumstances described in the original complaint in this cause, and that such defendant is, and was, the same person against whom this complaint was filed, and the same person upon whom was served the summons and original complaint herein, on, to-wit, the 9th day of September, 1953, in the Town of Fairhope, County of Baldwin, State of Alabama, and further, that these facts obtained, in truth and in fact, irrespective of whether said minor defendant's full, true and legal name is "Jack Mann Ponder, Jr.", as set forth in the original complaint, or "Jabez Mann Ponder, III" as alleged in said motion to quash.

WHEREFORE, plaintiff having fully answered the said motion to quash process, and it fully appearing from said answer that service of process has been properly and lawfully had upon the correct individual minor defendant, notwithstanding the alleged misnomer, if any there be, in the original complaint and summons, plaintiff respectfully moves this Honorable Court as follows:

(1) To grant plaintiff leave to amend her original complaint and summons, both as to caption and content, to correctly reflect and incorporate the alleged full, true and correct name of the said minor defendant, all as more fully appears in the amended complaint which is filed contemporaneously with this answer and motion;

(2) Plaintiff further prays that the sheriff's return on the process and all other pertinent court records in this cause be corrected to reflect the aforesaid amendment including the alleged true and lawful name of said defendant; and

(3) That the motion to quash process heretofore filed in this cause on the 6th day of October, 1953, be denied.

HOLBERG, TULLY & ALDRIDGE
Attorneys for LILLIE BELL
PRICE MALONE, Plaintiff

John C. Aldridge
By Member Appearing

Lillie Bell Price Malone
LILLIE BELL PRICE MALONE

STATE OF ALABAMA)

COUNTY OF BALDWIN)

Before me, the undersigned authority in and for the state and county aforesaid, personally appeared LILLIE BELL PRICE MALONE who is known to me, and whose name is signed to the above and foregoing answer and motion and who, having been by me first duly sworn, on oath deposes and says that she is the plaintiff in the above-entitled cause, that she has read the above and foregoing answer and motion, understands the contents thereof, and that the same are true and correct.

Lillie Bell Price Malone
LILLIE BELL PRICE MALONE

Subscribed and Sworn to
before me this 16TH day
of October, 1953.

Louise O. Maurer
NOTARY PUBLIC, BALDWIN COUNTY, ALABAMA

RECORDED

FILED
NOV 17 1953
ALICE J. BUCK, CLERK

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LILLIE BELL PRICE MALONE,

Plaintiff

-VS-

JACK MANN PONDER, JR.,
a minor,

Defendant

IN THE CIRCUIT COURT

OF BALDWIN COUNTY, ALABAMA

AT LAW NO. 2082

AMENDED COMPLAINT

Now comes the Plaintiff in the above-entitled cause and,
with leave of the Court, first had and obtained, amends her
Complaint in said cause, in manner and form, as follows:

a. By amending said caption to read as follows:

"LILLIE BELL PRICE MALONE,

Plaintiff

-VS-

JABEZ MANN PONDER, III,
sometimes called Jack
Ponder and Jackie Ponder,
and Jack Mann Ponder, Jr.,
a minor,

Defendant"

"IN THE CIRCUIT COURT

OF BALDWIN COUNTY,

ALABAMA

AT LAW NO. 2082"

HOLBERG, TULLY & ALDRIDGE
Attorneys for Plaintiff

BY

J. W. Clewley
Member Appearing

RECORDED

FILED
NOV 21 1955
FBI - NEW YORK

IN THE CIRCUIT COURT FOR THE TWENTY-EIGHTH JUDICIAL
CIRCUIT OF ALABAMA

LILLIE BELL PRICE MALONE,		
Plaintiff,		AT LAW NO. 2082
-VS-		<u>MOTION TO STRIKE</u>
JACK MANN PONDER, JR.,		
a minor,		
Defendant.		

Now comes Plaintiff in the above-entitled cause and moves to strike the Plea in Abatement therein filed and as grounds for said motion separately and severally assigns the following:

1. Said plea was not timely filed.
2. Said plea was not filed within the time allowed for pleading.
3. Said plea was not filed within thirty (30) days from the service of process together with the original complaint in said cause.
4. It affirmatively appears that the complaint and summons in the above-entitled cause was served, on, to-wit, September 9, 1953 and that the Plea in Abatement herein was filed on December 14, 1953 contrary to Rule 12 of the Circuit and Inferior Courts of the 1940 Code of Alabama.
5. It affirmatively appears from the Record in said cause that the complaint and summons herein was served on defendant on, to-wit, September 9, 1953, that subsequent thereto and on, to-wit, October 6, 1953, defendant herein filed in said cause a Motion to Quash Process which was subsequently denied; and that, thereafter, on, to-wit, December 14, 1953, the instant Plea in Abatement was filed which is beyond the time allowed for pleading as set forth in Rule 12 of the Circuit and Inferior Court Rules in the 1940 Code of Alabama.
6. For that said plea sets forth no matter in abatement to the cause and process in the instant case.

7. It affirmatively appears that the instant suit was served on the proper party defendant irrespective of his name or designation.

8. It affirmatively appears that the complaint and summons were properly served on the proper minor defendant irrespective of his name or designation.

9. It affirmatively appears that the only distinction allegedly set forth in the Plea of Abatement in the designation of the party defendant is mere decriptio personae and that the proper defendant has been served in the instant cause.

10. It affirmatively appears from the Record in said cause that said plea raises no matter not heretofore raised on Motion to Quash filed October 6, 1953 and denied by this Honorable Court on, to-wit, November 17, 1953 and therefore said plea is irrelevant and unnecessarily repetitious.

11. It affirmatively appears that said plea is unnecessarily irrelevant, prolix, frivolous, or repetitious contrary to the provisions of Title 7, Section 213 of the 1940 Code of Alabama.

12. It affirmatively appears that the complaint in the instant cause was amended on November 17, 1953 to properly include and ~~reflect the alleged correct name of this defendant as set forth~~ in said plea in abatement.

13. It affirmatively appears that the Plea in Abatement herein was filed in this cause to the Complaint as last amended which, by amendment on November 17, 1953, correctly denominates this defendant under the name and designation as set forth in said plea.

14. It affirmatively appears from the Record in this cause that said complaint was amended on November 17, 1953 to set forth a cause of action against: "Jabez Mann Ponder, III, sometimes called Jack Ponder, and Jackie Ponder, and Jack Mann Ponder, Jr., a minor."

HOLBERG, TULLY & ALDRIDGE
Attorneys for Plaintiff

By 

Member Appearing

Fuller
Of Counsel to Plaintiff

2082

RECORDED

FILED

JAN 14 1957

ALICE J. DUCK, Clerk

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11/14/00 BY 60322/UC/BAW/STP/KST
EXEMPTED FROM AUTOMATIC
DOWNGRADING AND
DECLASSIFICATION

LILLIE BELL PRICE MALONE, :
 :
 Plaintiff :
 :
 vs. : AT LAW NO. 2082
 :
 JACK MANN PONDER, JR., :
 :
 Defendant :

Vickless & Thornton
Attorneys for Guardian ad Litem

Holmes, Gully & Aldridge
Attorney for Plaintiff

RECORDED
IN THE CIRCUIT COURT FOR THE
TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

LILLIE BELL PRICE MALONE,

Plaintiff

vs,

JACK MANN PONDER, JR.,

Defendant

AT LAW NO. 2082

MOTION TO STRIKE

FILED

FEB 10 1954

ALICE J. DUCK, Clerk

VICKERS AND THORNTON

ATTORNEYS AT LAW

MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

IN THE CIRCUIT COURT FOR THE TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

LILLIE BELL PRICE MALONE, :
Plaintiff :
vs. : AT LAW NO. 2082
JACK MANN PONDER, JR., :
Defendant :

DEMURRER

Comes now J. EDWARD THORNTON, Guardian ad litem
for JABEZ MANN PONDER III, a minor over the age of eighteen
years, and demurs to the complaint and each count thereof,
separately and severally, and as grounds for such demurrer
assigns, separately and severally, the following:

1. Sufficient facts are not alleged therein to
state a cause of action.

2. Sufficient facts are not alleged therein to
entitle plaintiff to the relief sought.

3. Sufficient facts are not alleged therein to
show that the alleged conduct of the defendant constituted
wantonness.

4. It affirmatively appears therefrom that the
defendant was not guilty of wantonness.

5. The wanton or willful misconduct alleged therein
is unsupported by a sufficient statement of facts to warrant
the conclusion sought to be drawn.

6. The allegations as to wanton or willful misconduct
are a mere conclusion of the pleader.

7. It does not appear that the defendant wantonly injured plaintiff.

8. Sufficient facts are not set up to show that the defendant wantonly injured the plaintiff.

9. It affirmatively appears therefrom that the defendant, if guilty of anything, committed a wanton act as distinguished from inflicting wanton injury.

10. Sufficient facts are not alleged therein to show that the defendant had knowledge of the likelihood of injury to the plaintiff.

11. It affirmatively appears therefrom that the defendant did not know, and was not chargeable with knowledge, that the plaintiff might be injured.

12. For aught appearing to the contrary therefrom, plaintiff's injury, if any, was consequential.


Attorneys for Guardian ad Litem.

RECORDED

IN THE CIRCUIT COURT FOR
THE TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

LILLIE BELL PRICE MALONE,

Plaintiff

vs.

JACK MANN PONDER, JR.,

Defendant

AT LAW NO. 2082

DEMURRER

FILED

FEB 17 1954

ALICE J. DUCK, Clerk

VICKERS AND THORNTON

ATTORNEYS AT LAW

MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

IN THE CIRCUIT COURT FOR THE TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

LILLIE BELL PRICE MALONE, :
 Plaintiff :
 vs. :
 AT LAW NO. 2082
JACK MANN PONDER, JR., :
 Defendant :

ANSWER

Comes now J. EDWARD THORNTON, guardian ad litem
for Jabez Mann Ponder III, a minor over the age of 18 years,
and for pleas and answer to the complaint and each count
thereof, separately and severally, avers:

1. The defendant for answer to the complaint
saith that he is not guilty of the matters alleged therein.

2. The defendant for answer to the complaint
saith that the allegations of the complaint are untrue.

3. At the time and place complained of in the
complaint, the plaintiff, who is the mother of Barbara Faye
Price (whose father is dead), proximately contributed to the
injuries and damages complained of by her own negligence in
this: Plaintiff was in charge of and had supervision over
said Barbara Faye Price, well knowing that plaintiff's said
minor daughter might ride as a guest in an automobile which
would be negligently operated and thereby negligently injure
plaintiff's said minor daughter, and plaintiff would suffer
the injuries and damages complained of in said complaint, and
plaintiff appreciating the danger in her said minor daughter's
riding as a guest in an automobile operated as aforesaid, yet
notwithstanding such knowledge on the part of the plaintiff

and plaintiff's appreciation of said danger and risk, (A) plaintiff negligently permitted or allowed her said minor daughter to ride as a guest in the automobile described in the complaint, which said negligence of the plaintiff proximately contributed to the injuries and damages complained of in the complaint; WHEREFORE plaintiff should not recover.

4. Defendant adopts and incorporates by reference as and for this plea the allegations in plea number 3 down to (A), and in addition thereto the following: plaintiff negligently failed to prohibit her said minor daughter from riding as a guest in the automobile described in the complaint, which said negligence of the plaintiff proximately contributed to the injuries and damages complained of in the complaint; WHEREFORE plaintiff should not recover.

5. Defendant adopts and incorporates by reference as and for this plea the allegations in plea number 3 down to (A), and in addition thereto the following: plaintiff negligently failed to exercise proper parental authority over her said minor daughter to warn or otherwise caution plaintiff's said minor daughter against riding as a guest in the automobile described in the complaint, which said negligence of the plaintiff proximately contributed to the injuries and damages complained of in the complaint; WHEREFORE plaintiff should not recover.

6. At the time and place complained of in complaint, the plaintiff, who is the mother of Barbara Faye Price (whose father is dead), proximately contributed to the injuries and damages complained of by her own negligence in this: Plaintiff was in charge of and had supervision over said Barbara Faye Price, well knowing that plaintiff's said minor daughter might ride as a guest in an automobile which would be willfully or wantonly operated and thereby willfully or wantonly injure plaintiff's said minor daughter, and plaintiff would suffer

the injuries and damages complained of in said complaint, and plaintiff appreciating the danger in her said minor daughter's riding as a guest in an automobile operated as aforesaid, yet notwithstanding such knowledge on the part of the plaintiff and plaintiff's appreciation of said danger and risk, (A) plaintiff negligently permitted or allowed her said minor daughter to ride as a guest in the automobile described in the complaint, which said negligence of the plaintiff proximately contributed to the injuries and damages complained of in the complaint; WHEREFORE plaintiff should not recover.

7. Defendant adopts and incorporates by reference as and for this plea the allegations in plea number 6 down to (A), and in addition thereto the following:
plaintiff negligently failed to prohibit her said minor daughter from riding as a guest in the automobile described in the complaint, which said negligence of the plaintiff proximately contributed to the injuries and damages complained of in the complaint; WHEREFORE plaintiff should not recover.

8. Defendant adopts and incorporates by reference as and for this plea the allegations in plea number 6 down to (A), and in addition thereto the following:
plaintiff negligently failed to exercise proper parental authority over her said minor daughter to warn or otherwise caution plaintiff's said minor daughter against riding as a guest in the automobile described in the complaint, which said negligence of the plaintiff proximately contributed to the injuries and damages complained of in the complaint; WHEREFORE plaintiff should not recover.


Attorneys for Guardian ad Litem.

I hereby accept service of a copy of the foregoing answer on this the 23 day of March, 1954.


Attorney for Plaintiff.

RECORDED

AT LAW NO. 2082

* * * * *

IN THE CIRCUIT COURT FOR THE
TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

* * * * *

LILLIE BELL PRICE MALONE

vs.

JACK MANN PONDER, JR.

* * * * *

ANSWER

FILED

MAR 24 1954

AUG 4 1954

VICKERS AND THORNTON

ATTORNEYS AT LAW

MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

IN THE CIRCUIT COURT FOR THE TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

LILLIE BELL PRICE MALONE, I
 Plaintiff, I
vs. I AT LAW NO. 2082
JACK MANN PONDER, JR., a I
minor, I
 Defendant.

PLEA IN ABATEMENT

Comes J. EDWARD THORNTON, Guardian Ad Litem for JABEZ MANN PONDER, III, a minor over the age of eighteen (18) years, and appearing solely and specially for the purpose of filing this Plea in Abatement and for no other purpose, and pleading in abatement to the Complaint, and each count thereof, separately and severally, says:

1. On, to-wit, the 9th day of September, 1953, there was served on Jabez Mann Ponder, III, a summons and complaint in the above styled cause by the Sheriff of Baldwin County, Alabama, and that said Sheriff made his return stating that said process had been executed by serving a copy on Jack Mann Ponder, Jr., when in truth and in fact, said process had not been served on Jack or Jabez Mann Ponder, Jr. but had been served on Jabez Mann Ponder, III; that Jabez Mann Ponder, III, is the minor son of Jack Mann Ponder, Jr.; that Jack Mann Ponder, Jr. is not a minor; and that said process was not served on the defendant in this cause but on Jabez Mann Ponder, III, who is not the defendant in this cause; that Jabez Mann Ponder, III, the party on whom process was served in this case, is not now known or called nor has he ever been known or called by the name of Jack Mann Ponder, Jr.; that the true and correct name of the party on whom the process was served in this case is Jabez Mann Ponder, III. It is further alleged that there has been a misdescription of the party defendant in this cause, and a misnomer, in that the true and correct name of the party sought to be sued herein and

against whom a cause of action has been sought to be stated is Jabez Mann Ponder, III.

WHEREFORE, J. EDWARD THORNTON, Guardian Ad Litem for Jabez Mann Ponder, III, a minor over the age of eighteen (18) years, says that this suit should be abated and should not be allowed to proceed.


Attorneys for Guardian Ad Litem

FILED

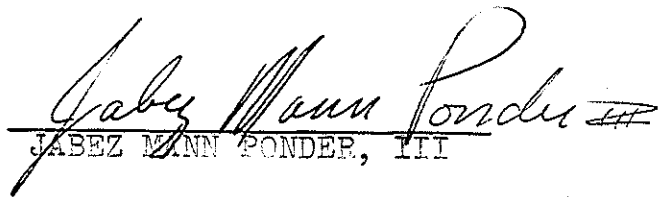
DEC 14 1933

ALICE J. DUCK, Clerk

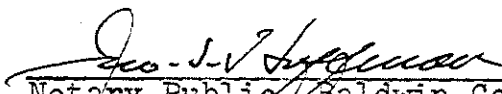
STATE OF ALABAMA,
COUNTY OF BALDWIN.

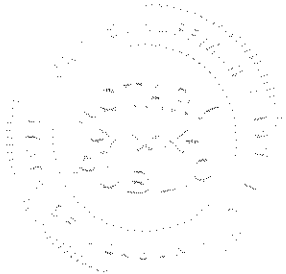
Personally appeared before me, the undersigned Notary Public in and for said County in said State, JABEZ MANN PONDER, III, a minor over the age of eighteen (18) years, who being by me first duly sworn, deposes and says:

That he has read the foregoing Plea in Abatement and that the facts stated therein are true.


JABEZ MANN PONDER, III

Subscribed and sworn to before me
this the 10 day of December, 1953


Notary Public, Baldwin County, Alabama



AT LAW NO. 2082 RECORDED

LILLIE BELL PRICE MALONE,

Plaintiff,

vs.

JACK MANN PONDER, JR., a
minor,

Defendant.

PLEA IN ABATEMENT

VICKERS AND THORNTON
ATTORNEYS AT LAW
MERCHANTS NATIONAL BANK BUILDING
MOBILE, ALABAMA

FILED
DEC 14 1933
CURET, JUDGE, CIVIL

LAW OFFICES
HOLBERG, TULLY AND ALDRIDGE
SUITE 631-636 - FIRST NATIONAL BANK BLDG.
P. O. BOX 47
MOBILE 1, ALABAMA

RALPH G. HOLBERG, JR.
ALBERT J. TULLY
HENRI M. ALDRIDGE
MITCHELL G. LATTOF

January 13, 1954

Mrs. Alice J. Duck
Clerk, Circuit Court of Baldwin County
Bay Minette, Alabama

Re: Malone vs. Ponder, No. 2082
Malone vs. Ponder, No. 2083
Price vs. Ponder, No. 2084
Price vs. Ponder, No. 2085

Dear Mrs. Duck:

I am pleased to enclose herewith separate Motions to Strike in each of the above-entitled "companion" cases.

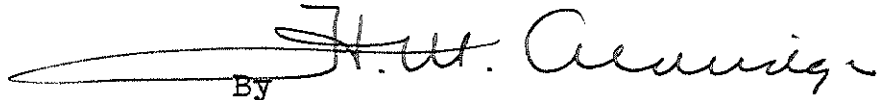
As noted on the bottom a copy of each has been delivered to the Hon. J. Edward Thornton, the opposing counsel.

Mr. Thornton and I presume that these motions will be heard on Tuesday, January 19, which we understand is the next pleading day. If we are in error in this assumption kindly notify me by telephone collect.

With kindest regards,

Very truly yours,

HOLBERG, TULLY & ALDRIDGE


By

H. M. Aldridge

HMA/lg

Encls.

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