

NATHANIEL WALKER, as Administrator : IN THE CIRCUIT COURT OF
of the Estate of BERNICE WALKER,
deceased, : BALDWIN COUNTY, ALABAMA

PLAINTIFF : AT LAW

VS :

JOE MAYER :

DEFENDANT : CASE NO. 955-8

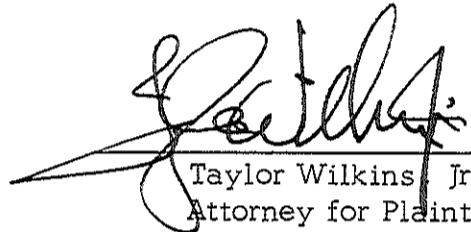
COUNT I

The Plaintiff, NATHANIEL WALKER, as Administrator of the Estate of BERNICE WALKER, deceased, claims of the Defendant the sum of TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS as damages for that heretofore, on, to-wit, the 18th day of September, 1970, the Defendant while operating an automobile truck upon Alabama State Highway No. 59, a public road in the County of Baldwin, State of Alabama, at a point approximately, to-wit, three and one-half (3 1/2) miles South of the intersection of said Alabama State Highway No. 59 and Baldwin County Road No. 104, a public road in the County of Baldwin, State of Alabama, did then and there, at the time and place aforesaid, so negligently run or caused to be run said automobile truck into, upon or against the said BERNICE WALKER, Plaintiff's intestate, who was then and there walking north along the west side of said Alabama State Highway No. 59, and that as a proximate result and consequence of the negligence of the Defendant as aforesaid, BERNICE WALKER, Plaintiff's intestate was killed, hence this suit.

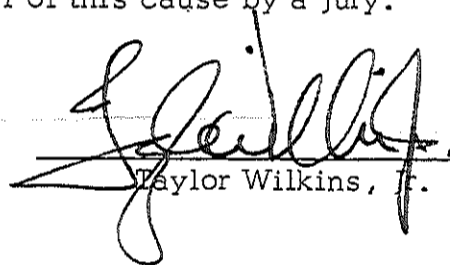
COUNT II

The Plaintiff, NATHANIEL WALKER, as administrator of the Estate of BERNICE WALKER, deceased, claims of the Defendant TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS as damages for that on, to-wit, the 18th day of September, 1970, the Defendant while operating an automobile truck upon Alabama State Highway No. 59, a public road in the County of Baldwin, State of Alabama, at a point approximately, to-wit, three and one-half (3 1/2) miles south of the

intersection of said Alabama State Highway No. 59 and Baldwin County Road No. 104, a public road in the County of Baldwin, State of Alabama, did then and there at the time and place aforesaid, wantonly run or caused to be run said automobile truck into, upon or against the said BERNICE WALKER, Plaintiff's intestate, who was then and there walking north along the west side of said Alabama State Highway No. 59, and as a proximate result and consequence of the wanton conduct of the Defendant as aforesaid, BERNICE WALKER, Plaintiff's intestate was wantonly killed, hence this suit.


Taylor Wilkins Jr.
Attorney for Plaintiff

Plaintiff respectfully demands a trial of this cause by a jury.


Taylor Wilkins, Jr.

FILED

NOV 18 1970

ALICE J. DUCK CLERK
REGISTER

SUMMONS AND COMPLAINT

THE STATE OF ALABAMA
BALDWIN COUNTY

Circuit Court, Baldwin County

No.

.....TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon JOE MAYER

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint
filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette against.....

JOE MAYER

... Defendant.....

by NATHANIEL WALKER, as Administrator of the Estate of BERNICE WALKER,
deceased

....., Plaintiff.....

Witness my hand this 18 day of Nov - 1970..

.....
Clerk

24 11-28-70

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

NATHANIEL WALKER, as administrator
of the Estate of BERNICE WALKER,
deceased

Plaintiffs

vs.

JOE MAYER.....
Defendants

SUMMONS AND COMPLAINT

Filed 19.....

NOV 18 1970

Clerk

ALICE J. DUCK

CLERK
REGISTER

Taylor Wilkins, Jr.
Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Silverhill, Alabama

Received In Office

Mar. 18..... 19.70.

Taylor Wilkins Sheriff

I have executed this summons

this Nov 28..... 19.70

by leaving a copy with

BN

Joe Mayer

Sheriff claims 600 miles at

Ten Cents per mile Total \$ 6.00

TAYLOR WILKINS, Sheriff

BY Brown
DEPUTY SHERIFF

Taylor Wilkins Sheriff

HJBrown Deputy Sheriff

60 mi
\$-1.00

4

NATHANIEL WALKER, as Administrator of the Estate of BERNICE WALKER, DECEASED,	X	IN THE CIRCUIT COURT OF
	X	BALDWIN COUNTY, ALABAMA
PLAINTIFF	X	AT LAW
VS	X	
JOE MAYER	X	
		CASE NO: 9558
DEFENDANT	X	

AMENDMENT

Comes now the Plaintiff in the above styled cause and amends his original bill of complaint as follows:

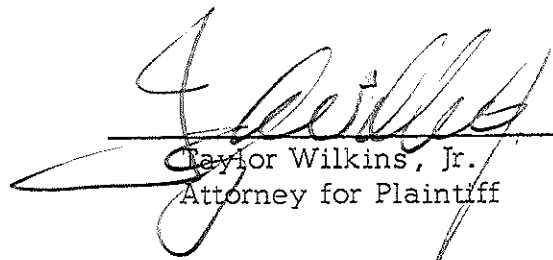
COUNT I.

The Plaintiff, Nathaniel Walker, as Administrator of the Estate of Bernice Walker, deceased, claims of the Defendant the sum of TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS as damages for that heretofore, on, to-wit, the 18th day of September, 1970, the Defendant, while operating an automobile truck upon Alabama State Highway #59, a public road in the County of Baldwin, State of Alabama, at a point approximately, to-wit, 3 1/2 miles South of the intersection of said Alabama State Highway #59 and Baldwin County Road #104, a public road in the County of Baldwin, State of Alabama, did then and there, at the time and place aforesaid, negligently operate said automobile truck by negligently running said automobile truck into, upon or against the said Bernice Walker, Plaintiff's intestate, who was then and there walking North along the West side of said Alabama State Highway #59 and that as a proximate result and consequence of the negligence of the Defendant as aforesaid, Bernice Walker, Plaintiff's intestate received injuries from which she died, hence this suit.

COUNT II.

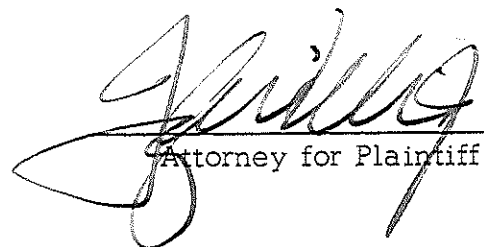
The Plaintiff, Nathaniel Walker, as Administrator of the Estate of Bernice Walker, deceased, claims of the Defendant the sum of TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS as damages for that heretofore, on, to-wit,

the 18th day of September, 1970, the Defendant, while operating an automobile truck upon Alabama State Highway #59, a public road in the County of Baldwin, State of Alabama, at a point approximately, to-wit, 3 1/2 miles South of the intersection of said Alabama State Highway #59 and Baldwin County Road #104, a public road in the County of Baldwin, State of Alabama, did then and there, at the time and place aforesaid, wantonly kill the Plaintiff's intestate by wantonly running said automobile truck into, upon or against the said Bernice Walker, Plaintiff's intestate, who was then and there walking North along the West side of said Alabama State Highway No. 59, and as a proximate result and consequence of the wanton conduct of the Defendant as aforesaid, Bernice Walker, Plaintiff's intestate, was wantonly killed, hence this suit.


Taylor Wilkins, Jr.
Attorney for Plaintiff

I, the undersigned, Taylor Wilkins, Jr., do hereby certify that I have on this the 3rd day of September, 1971, forwarded a true and exact copy of the foregoing amendment to Mr. John Chason, Chason, Stone & Chason, Attorneys of record for the Defendant, by mailing the same in the United States Post Office, properly addressed, with the postage paid thereon.

DONE this the 3rd day of September, 1971.


Attorney for Plaintiff

FILED

SEP 14 1971

EUNICE B. BLACKMON CIRCUIT
CLERK

1. De Gant, Elizabeth M., Housewife, 167 White Av. Fairhope, Ala.
2. Roberts, Willie Mae, Housewife, 202 Boulder Av., Bay Minette
3. Vorel, Frank, Fairhope Photo Shop, Rt. Silverhill, Fairhope D9
4. Vick, Rigell, Farm. Rm. 600 W. 7th St. Bay Minette, Robertsdale P4
5. Hall, Carol R., Mr., Asst Analyst PNAS, 203 Gaston Av. Fairhop, Pensacola, Fla. D10
6. Hall, David E., Elect Scott Paper Co., 12 Fels Av. Fairhope, Mobile P2
7. Hall, Rita M., Housewife, 12 Fels Av. Fairhope P3
8. Housewman, Katherine C., Housewife, 301 Cedar St., Bay Minette
9. Jeffery, Wm., A., Asst Cashier Merch. Natl Bk. 607 Spanish Main Sy. Spanish Fort, Mobile PL
10. Joyner, Bunk, Ala. Dry Dock, 306 George St., Fairhope, Mobile
11. Joyner, J. E., Retired, 306 Equity St. Fairhope
12. Strickland, D. Marvin, Supv. St. Hwy Dept. 1864 Collier Av. Bay Minette D7
13. Long, Robert Supvr. City Utilities, 483 Dogwood Av. Fairhope
14. Lowell, Quina O., Housewife, 166 Pier St. Fairhope
15. Maradik, Paul Rudolph, Custdn VFW., 102 N. Bancroft St. Fairhope D11
16. McGallagher, Joseph H., ofc. Worker, Sea Cliff Dr., Fairhope, Mobile P11
17. Moore, Otto W., Farmer, Marlow Rd. RFD., Fairhope P7
18. Neal, K. L., Retired, 848 N. Greeno Rd. Fairhope
19. Brasley, Faye C., Bkpr Bald Co. Bank, 100 W. 8th St. Bay Minette P10
20. Petty, John, Eng. Shell Chem., 512 Spanish Main, Spanish Fort
21. Coleman, John D., City Employee, 108 N. Section St., Fairhope P12
22. Corley, Alex B., Ofc. NAS, 601 Elaine Av., Bay Minette, Pensacola, Fla. D3
23. Corley, Casteva, Ofc. NAS., 1601 Elaine Av., Bay Minette, Pensacola D5
24. Del Homme, Selwyn A., Expditer Int. Paper Co. 161 Fig St. Fairhope P4
25. De Miller, Walter E., Chem, Eng. Scott Paper Co. 931 Sea Cliff Dr. Fairhope, Mobile P1
26. Martina M. Earle, Blacksher
27. Flowers, W. D., Logger, 1907 McMillan Av. Bay Minette
28. Cane, Elias, Jr., Mech. Monsanto, 301 Vine St. Bay Minette, Pensacola, Fla. D12
29. Adkins, Ira C., Linesman City of Fairhope 4 Laraway Ln. Fairhope P8
30. Allen, Harrington, Grand Hotel (Waiter), P.O. Box 387, Battles Wharf, Point Clear D6
31. Antinarella, Mike, Mtr. Co. 509 Fairhope, Av. Fairhope D4
32. Barr, Ruth, Housewife, Stuart St., Daphne, Ala.
33. Biggs, Harold S., Agt. Farm Bureau Ins., 252 N. Ingleside Av. Fairhope D1
34. Brill, Jimmy Electrician Town of R'dale, Robertsdale, Robertsdale D8
35. Brown, Cordell W., Purch. Agt. Standard Furn. Rt. 1 Box 261 Daphne, Bay Minette P5
36. Richerson, La Velle J., Controller Int. Paper Co. 125 Fairway Dr. Daphne, Mobile,
37. Wrenn, Winona, Housewife, Bay Minette
38. McGill, Harold B., Merchant, Perdido, Perdido D2
39. Lowell Clyde, Painter - Fairhope

36
12
4 12
12

P XXXXX XXXXX XX

D XXXXX XXXXX XX

9558

Handwritten text, possibly a signature or date, located below the number 9558.

No. 9558

BALDWIN County, Circuit Court.
NATHANIEL WALKER as Administrator of Estate of BERNICE WALKER, deceased
Plaintiff.
vs.

JOE MEYER
Defendant.

I, Eunice B. Blackmon Clerk of Circuit Court,
of Baldwin County, Alabama, hereby certify that in the
cause of Nathaniel Walker as Administrator of Estate of Bernice Walker, deceased plaintiff
vs.

Joe Meyer defendant,
which was tried and determined in this Court on the 19th day of
January 1972, in which there was a judgment for
_____ Dollars, in favor of the plaintiff, (or judgment
for defendant,) the 19th on the January day of
_____ 1972, took an appeal to the Supreme Court
of Alabama to be holden of and for said State.

I further certify that Taylor D. Wilkins, Jr.
filed security for cost of appeal, to the Supreme Court, on
the 13th day of July 1972, and that _____,
_____,
are sureties on the appeal bond.

I further certify that notice of the said appeal was on the 12th
day of July 1972, served on Hon. John Chason
as attorney of record for said appellee, and that the amount sued for
was Twenty-five Thousand & no/100-----(\$25,000.00) Dollars. (Or certain lands)
(Or personal property.)

Witness my hand and the seal of this Court, this the 13th
day of July 1972.

Eunice B. Blackmon
Clerk of the Circuit Court of
Baldwin County, Alabama.

NATHANIEL WALKER, as
Administrator of the
Estate of BERNICE
WALKER, DECEASED,

Plaintiff,

vs.

JOE MAYER,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 9558

Comes the Defendant in the above styled cause and for
plea to Count One of the Complaint as amended, separately and
severally, says:

1. Not guilty.

2. That at the time and place alleged in Count One of
said amended complaint, the Plaintiff's intestate was guilty
of negligence which was the proximate cause of her death in that
in the nighttime, she negligently walked upon the travelled portion
of the highway referred to in such Count while cars were travel-
ling on and along such highway and such negligence was the proxi-
mate cause of her death, hence she should not recover.

As to Count Two of such amended complaint, the De-
fendant says:

3. Not guilty.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing
pleading has been served upon counsel
for all parties to this proceeding, by
mailing the same to each by First Class
United States Mail, properly addressed
and postage prepaid on this 13 day
of Sept., 1971.

[Signature]

[Signature]
Attorneys for Defendant

FILED

SEP 13 1971

EUNICE B. BLACKMON CIRCUIT
CLERK

VOL

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We the jury find for the Defendant.

*Chyle Lowell
Foreman*

*We find the verdict
not guilty
Chas Lowell
Foreman*

NATHANIEL WALKER, as Administra-
tor of the Estate of BERNICE
WALKER, DECEASED,

Plaintiff,

vs.

JOE MAYER,

Defendant.

* * * * *

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 9558

* * * * *

PLEAS

* * * * *

DEMURRER

NATHANIEL WALKER, as
Administrator of the Estate
of BERNICE WALKER, Deceased,

Plaintiff,

vs.

JOE MAYER,

Defendant.

* * * * *

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 9558

* * * * *

6

NATHANIEL WALKER, as Administrator of the Estate of BERNICE WALKER, DECEASED,	X	IN THE CIRCUIT COURT OF
	X	BALDWIN COUNTY, ALABAMA
PLAINTIFF	X	AT LAW
VS	X	
JOE MAYER	X	
DEFENDANT	X	CASE NO. 9558

NOTICE OF TAKING DEPOSITION UPON ORAL
EXAMINATION

TO: HON. TAYLOR D. WILKINS, JR., ATTORNEY AT LAW, BAY MINETTE,
ALABAMA AS ATTORNEY FOR NATHANIEL WALKER, AS ADMINISTRATOR OF
THE ESTATE OF BERNICE WALKER, DECEASED, PLAINTIFF.

Please take notice that the deposition of Nathaniel Walker,
as Administrator of the Estate of BERNICE WALKER, DECEASED,
Plaintiff in the above styled cause, whose address is Summerdale,
Alabama, will be taken upon oral examination on Friday, December
17, 1971 at 9:00 A.M., before Louise Dusenbury, a Notary Public
in and for the State of Alabama At Large, who is hereby designat-
ed as the officer before whom such deposition shall be taken, at
her office in the Court House in Bay Minette, Baldwin County,
Alabama.

Dated this 6th day of November 19 71.

CHASON, STONE & CHASON

By 
Attorney for Plaintiff

I, John Chason, one of the attorneys of record for the
Complainants in the above styled cause do hereby certify that I
have this day mailed a copy of the foregoing Notice of Taking
Deposition Upon Oral Examination to Hon. Taylor D. Wilkins, the
attorney of record for the Plaintiff, postage prepaid and proper-
ly addressed to him at his office in Bay Minette, Alabama

Done this 10th day of Nov, 19 71.


FILED

DEC 6 1971

EUNICE B. BLACKMON CIRCUIT
CLERK

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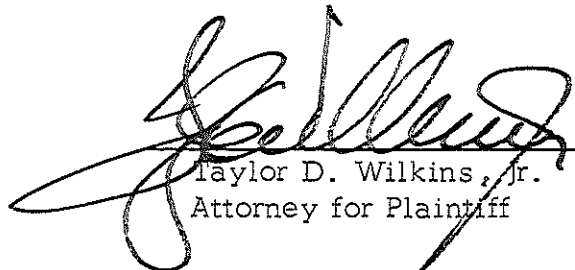

John Chason

10

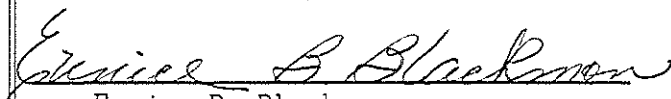
NATHANIEL WALKER, as Administrator of the Estate of Bernice Walker, deceased,	X	IN THE CIRCUIT COURT OF
	X	BALDWIN COUNTY, ALABAMA
PLAINTIFF	X	AT LAW
VS	X	
JOE MEYER	X	
DEFENDANT	X	CASE NO: 9558

SECURITY FOR APPEAL

Comes now Taylor D. Wilkins, Jr., attorney for the Plaintiff in the above styled cause, and hereby acknowledged himself as security for all costs of appeal to the Supreme Court of Alabama from the judgment of the Circuit Court of Baldwin County, Alabama, rendered on, to-wit, January 19, 1972, and hereby waives any right of exemption to personal property under the constitution and laws of the State of Alabama.


 Taylor D. Wilkins, Jr.
 Attorney for Plaintiff

Taken and approved this 13 day
of July, 1972.


 Eunice B. Blackmon
 Circuit Clerk

FILED

JUL 13 1972

EUNICE B. BLACKMON CIRCUIT CLERK

NATHANIEL WALKER, as Administrator
of the Estate of Bernice Walker, deceased

PLAINTIFF

VS

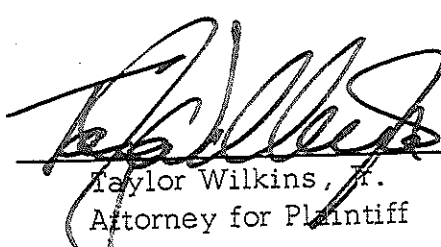
JOE MEYER

DEFENDANT

X IN THE CIRCUIT COURT OF
X BALDWIN COUNTY, ALABAMA
X AT LAW
X
X
X CASE NO: 9558
X

NOTICE OF APPEAL

Comes now the Plaintiff in the above styled cause and hereby gives notice of appeal to the Supreme Court of Alabama from the judgment of the Circuit Court of Baldwin County, Alabama, rendered on, to-wit, January 19, 1972.


Taylor Wilkins, Jr.
Attorney for Plaintiff

I, the undersigned, Taylor Wilkins, Jr., do hereby certify that I have on this the 12th day of July, 1972, forwarded a true and exact copy of the foregoing Notice of Appeal to Honorable John Chason, attorney at law, Bay Minette, Alabama, attorney of record for the Defendant, by mailing the same in the United States Post Office, properly addressed, with the postage paid thereon.

DONE this the 12th day of July, 1972.

FILED

JUL 13 1972

EUNICE B. BLACKMON CIRCUIT
CLERK


Attorney for Plaintiff

THE STATE OF ALABAMA }
Baldwin County - Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 19th
January Monday, 1972, in a cer-
tain cause in said Court wherein Nathaniel Walker, as Administrator of the Estate of
Bernice Walker, deceased Plaintiff, and Joe Meyer
Defendant, a judgement was rendered against said
Plaintiff
to reverse which Judgment, the said Plaintiff
applied for and obtained from this office an APPEAL, returnable to the next
Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the
day of 1972 next, and the necessary bond
having been given by the said Taylor Wilkins, Jr.

~~with~~ as sureties,

Now, You Are Hereby Commanded, without delay, to cite the said Joe Meyer
or Chason, Stone & Chason
attorney, to appear at the next Term of our
said Supreme Court, to defend against the said Appeal, if they think proper.

EUNICE B. BLACKMON
Witness, ~~and Joe Duck~~ Clerk of the Circuit Court of said County, this 13th
day of July, A. D., 1972

Attest:

Eunice B. Blackmon, Clerk.

VOL

60 318
69

84 7-24-72

Sheriff claims _____ miles at
Ten Cents per mile Total \$ _____
TAYLOR WILKINS, Sheriff
BY _____ DEPUTY SHERIFF

Received 24 day of July 1972
and on 24 day of July 1972
I served a copy of the within Letter in Appeal
on John Chason Attorney for
Joe Mayer & He Mayer
By service on Joe Mayer

TAYLOR WILKINS, Sheriff
By W. J. Walker d.s.

Joe Mayer
RECEIVED
JUL 24 1972
TAYLOR WILKINS
SHERIFF
Issued _____ day of _____, 19____
serve: John Chason

CIRCUIT COURT
Baldwin County, Alabama

Nathaniel Walker as
Adm. of Estate of
Bernice Walker, deceased

Vs. { Citation in Appeal

9558
59685-

NOV 23 1972

PHONE 285.

PLEASE NOTE: The Enclosed opinion was attached and mailed to me along with CERTIFICATE OF AFFIRMANCE IN THE CASE OF NATHANIAL WALKER, as Adm'r vs: JOE MAYER your No. SC 85---- Could you possibly have mailed the Opinion in our case to Madison County Circuit Court.

Eunice B. Blackmon, Circuit Clerk.

Sorry for any inconvenience we may have caused you. Enclosed is the opinion in SC 85.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 1972-73

SC 85 Div. No. 111111

To the Clerk ~~Register~~ of the _____ Circuit _____ Court,
_____ Baldwin _____ County—Greeting:

Whereas, the Record and Proceedings of the _____ Circuit _____ Court _____
of said county, in a certain cause lately pending in said Court between
Nathaniel Walker, as Administrator of Estate of _____, Appellant,
Bernice Walker, Deceased _____
_____ and _____
Joe Mayer _____, Appellee,
wherein by said Court it was considered adversely to said appellant _____, were brought before the
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant _____:

NOW, IT IS HEREBY CERTIFIED, That upon consideration thereof the Supreme Court, on the
_____ 5th _____ day of _____ April _____, 1973, affirmed said cause, in all respects, and
ordered that appellant _____ Nathaniel Walker, as Administrator of Estate of _____
Bernice Walker, Deceased _____

_____ and _____ Taylor D. Wilkins, Jr. _____

_____ sureties for the costs of appeal, pay the costs of appeal in this Court and in the Court below _____

It is further certified that, it appearing that said parties have waived their rights of exemption
under the laws of Alabama, it was ordered that execution issue accordingly.

Witness, J. O. Sentell, Clerk of the Supreme
Court of Alabama, this the 5th day
of April, 19 73

Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 19 72-73

SC 85 Adm'r. No. 111111

Nathaniel Walker, as Adm'r.
of Estate of Bernice Walker,
Deceased

Appellant,

vs.

Joe Mayer

Appellee.

From Baldwin Circuit *Court.*

**CERTIFICATE OF
AFFIRMANCE**

The State of Alabama,

County.

} *Filed*

this FILED 1973

APR 6 1973

EUNICE B. BLACKMON CIRCUIT
CLERK

BROWN PRINTING CO., MONTGOMERY 1969

FILED

APR - 5 1973

Supreme Court of Alabama
J. O. SENTELL
(Clerk)

THE STATE OF ALABAMA - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1972-73

Nathaniel Walker, as Adm'r of the Estate
of Bernice Walker, deceased

S.C. 85

v.

Joe Mayer

Appeal from Baldwin Circuit Court

COLEMAN, JUSTICE.

From adverse judgment in action for wrongful death,
which allegedly occurred when defendant's motor vehicle
struck plaintiff's intestate on a public road at night, ap-
pellant appeals and assigns as errors two rulings of the

trial court sustaining objections to admitting into evidence some pictures or photographs offered by appellant.

The offer and rulings were made during the direct examination of a police officer who investigated the accident shortly after it occurred. The transcript of the testimony of the officer pertinent to the question presented recites as follows:

"Q. What did your investigation of the accident reveal there?

"A. Well he was travelling 59 going down and she was walking north facing traffic and when I arrived on the scene there had been a lot of cars there and I could not pick up no marking.

"Q. You didn't see any skid marks?

"A. No sir.

"Q. You made an accident report?

"A. I did.

"Q. You have one with you now, don't you?

"A. Yes sir.

"Q. I would like for you to look at these pictures and see if you can recognize that area there - Those photographs --

"A. Yes sir.

"Q. Look through them all. Where are the scenes in those pictures located?

"A. Here is where she was in the ditch.

"Q. Is that the area where the accident took place?

"A. Yes sir, right on the side of the road.

"Q. Do you have an opinion of those - if those pictures depict the scene of the accident as it occurred that night?

"MR. CHASON: Object; the proper predicate has not been laid.

"THE COURT: Overrule the objection.

"MR. CHASON: We except.

"Q. Tell me if you have an opinion?

"A. That is it.

"Q. You do?

"A. Yes sir.

"Q. Is this the area where the accident took place?

"A. Yes sir.

"MR. WILKINS: I would like to introduce these in evidence.

"MR. CHASON: I object on the ground the proper predicate has not been laid; it is not shown when they were taken; who took them; the - - - whether the conditions as shown by these pictures are the same as those that existed immediately after the accident.

"THE COURT: As I understood it, he was offering those merely to show the scene.

"MR. CHASON: If you put them in for one purpose, they are in.

"MR. WILKINS: I asked him if they correctly depicted the scene here that night.

"MR. CHASON: He didn't say at the time. The pictures might have been taken a month or six months later.

"THE COURT: Sustain the objection.

"Q. Do the scenes in these pictures correctly depict the scene of the accident at the time the accident occurred?

- - This is the same scene as far as it not being night or day?

"A. That is the same place it happened; that is the same scene where it happened.

"Q. Do these pictures correctly depict the surrounding area and what is there, etc. as at the time the accident occurred that night?

"A. Yes sir.

"Q. Other than it being night time?

"A. Yes sir.

"MR. WILKINS: I re-offer them.

"MR. CHASON: According to the testimony he has given, when he got there there were numerous cars there - One of the pictures pretends to protray tracks and according to the evidence there were other cars on the shoulder, and, therefore, no picture could protray it.

"THE COURT: Sustain the objection.

"MR. WILKINS: Except."

The record does not show that the photographs were ever marked for identification. The photographs are not included in the record before us and are not identified or described otherwise than in the testimony quoted above. It appears that more than one photograph was offered, but the number offered does not appear.

In reviewing an action for damages resulting from an automobile collision, this court said:

"Appellant next urges error in that the trial court refused to allow in evidence photographs of the plaintiff's automobile admittedly taken some time after the accident, after the automobile had been taken to Monroeville. The witness testified that the pictures were taken some week and a half after the accident, and after the automobile had been carried

to the Ford place in Monroeville. The pictures are before us and we agree with the trial court that they do not depict the condition of the automobile immediately following the accident. There are several pieces of twisted metal lying about, completely dismantled from the body of the automobile.

"In any event, the rule of this state is to the effect that the determination of the sufficiency of preliminary proofs offered to identify pictures and to show that such pictures accurately represent what they purport is a matter within the sound discretion of the trial court and his decision on sufficiency of the predicate so laid will not be reviewed by an appellate court except for abuse. It is a matter for the trial court in the exercise of his sound discretion to determine whether a photograph offered in evidence will aid the jury or tend to confuse or prejudice the jury. *International Union, Etc. v. Russell*, 264 Ala. 456, 88 So. 2d 175; *McKee v. State*, 35 Ala. App. 174, 44 So. 2d 777.

"There is no error to reverse on this assignment." Godwin v. Jerkins, 282 Ala. 11, 12, 208 So. 2d 210.

In another automobile accident case, the court said:

". . . In fact the determination of the sufficiency of preliminary proofs offered to identify pictures and to show that such pictures accurately represent what they purport to portray is a matter within the sound discretion of the trial court and his decision on the sufficiency of the predicate so laid will not be reviewed here except for abuse. . . ."

Cash v. Usrey, 278 Ala. 313, 315, 178 So. 2d 91.

In International Union, supra, this court said:

"The determination of the sufficiency of the preliminary proofs offered to identify the photograph or to show that it is an accurate representation of the objects which it purports to portray is a matter within the sound discretion of the trial court and will not be reviewable except for gross abuse. McKee v. State, 253 Ala. 235, 44 So. 2d 781.

"It is likewise a matter for the trial court in the exercise of his sound discretion to determine whether the motion picture will

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aid the jury or tend to confuse or prejudice the jury. (Citations Omitted)."

(264 Ala. at 470)

See also: Williams v. Wicker, 235 Ala. 348, 179 So. 250.

The reason for another principle also seems to control here. This court has said:

"The rule is that, when documentary evidence is offered, considered by the court below, and not before us on appeal, we cannot review the decision of the court below on questions involving a consideration of such evidence. . . ." Cooke v. Fenner & Beane, 214 Ala. 558, 561, 108 So. 370.

The objection here made appears to suggest that one of the photographs showed tire tracks made by some motor vehicle. The witness had testified that he did not see any skid marks. It may be that the photograph showed material differences from the conditions that actually existed at the time of the accident. On the record before us, a determination by this court as to what the photograph showed would necessarily rest on speculation.

We are not persuaded that we would be justified in holding on this record that the trial court abused its discretion in sustaining objection to admission of the photographs offered by appellant.

Consideration of appellee's motion is pretermitted.

AFFIRMED.

McCall, J., concurs.

Heflin, C. J., and Merrill, Harwood, Bloodworth,
Maddox, Faulkner, and Jones, JJ., concur specially.

BLOODWORTH, JUSTICE (concurring specially)

I concur in Mr. Justice Coleman's opinion, insofar as it holds that we will not reverse the trial court in this case for sustaining an objection to the photographs because the photographs are not before us.

The opinion seems to me to suggest that the trial judge might have also acted within his discretion in sustaining the objection because of some conflict between the witness' testimony that he did not see any skid marks and the actual photographs which may have shown tire tracks. I cannot agree that this is a ground upon which to affirm the trial judge.

Heflin, C.J., Merrill, Harwood, Maddox, Faulkner
and Jones, JJ., concur.