

THOMAS K. HALL by TOMMY	*	IN THE CIRCUIT COURT OF
E HALL, his Father and	*	BALDWIN COUNTY, ALABAMA
next friend,	*	
PLAINTIFF	*	AT LAW
vs	*	CASE NO. 9704
L. L. MALONE	*	
Defendant	*	

AMENDED COMPLAINT

Comes now the Plaintiff in the above styled cause and amends his Complaint heretofore filed so as to read as follows:

THOMAS K. HALL, by	*	IN THE CIRCUIT COURT OF
TOMMY E. HALL, his	*	BALDWIN COUNTY, ALABAMA
Father and next friend,	*	
Plaintiff	*	AT LAW
vs	*	CASE NO. 9704
L. L. MALONE	*	
Defendant	*	

COUNT ONE

The Plaintiff, a minor child, seven years of age, who sues by Tommy E. Hall, as his Father and next friend, claims of the Defendant Fifty Thousand (\$50,000.00) Dollars as damages for that, heretofore, on, to-wit: August 21, 1970, the Defendant negligently permitted an artificial condition to exist on a lot or parcel of land owned by him in Bay Minette, Baldwin County, Alabama; viz: An unfenced and unguarded partially demolished, decayed brick chimney that was left standing for, to-wit: six (6) months after the house to which it had been attached was torn down and removed; that the Defendant, at the time this artificial condition existed on his land, knew or had reason to know, because of the length of time the said chimney was left standing by the defendant, that children were likely to play on the above said lot or parcel of land; and that the artificial condition was one which the Defendant knew or had reason to know and which he realized or that he should have realized would involve an unreasonable risk of death or serious bodily harm to such children.

The Plaintiff further avers that because of his youth, he did not realize the danger involved in playing near said chimney or in coming within the area made dangerous by it; that the utility to the Defendant of maintaining said chimney in said condition and the burden of eliminating the danger were slight as compared with the risk to the Plaintiff and other children of the neighborhood; and that the Defendant failed to exercise reasonable care to eliminate the danger or otherwise protect the Plaintiff and other children.

The Plaintiff further avers that on August 21, 1970, the said chimney which was unfenced and unguarded fell and struck the Plaintiff while he was playing on the premises made dangerous by said chimney; that as a proximate result of the negligence aforesaid of the Defendant, the Plaintiff was injured as follows: he suffered multiple injuries, to-wit: a compound fracture of the left tibia and fibia, multiple fractures of the pelvis, multiple fracture of the ribs, fractures of the facial bones; abdominal injuries; injuries to his chest, Plaintiff was hospitalized and permanently injured and caused to suffer great physical pain and mental anguish; Wherefore Plaintiff brings this suit and asks judgment in the above amount. Said Plaintiff suffered great pain and anguish and was permanently injured.

COUNT TWO:

The Plaintiff, a minor child of seven years of age, who sues by Tommy E. Hall, as his Father and next friend, claims of the Defendant Fifty Thousand (\$50,000.00) Dollars as damages for that, heretofore, on, to-wit: August 21, 1970, the Defendant did willfully or wantonly injure the Plaintiff by willfully or wantonly allowing or maintaining an unfenced and unguarded, partially demolished, decayed brick chimney to remain on a lot or parcel of land owned by the Defendant in Bay Minette, Baldwin County, Alabama, being conscious at the time that his conduct in so doing would probably result in injury to the Plaintiff who often played on said lot or parcel of land.

Plaintiff further avers that the unfenced and unguarded

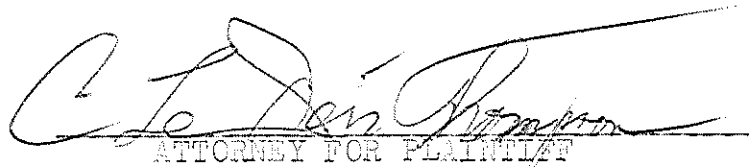
partially demolished, decayed brick chimney was maintained for, to-wit: six (6) months by the Defendant on said premises after the house to which the chimney had been attached was torn down and removed; that said chimney was known to the Defendant to be exceedingly dangerous and the Defendant knew or should have known that children were accustomed to playing on said premises: that on, to-wit: August 21, 1970 the chimney fell on the Plaintiff, and he was injured as follows: Plaintiff suffered multiple fractures of the pelvis, multiple fractures of the ribs and fractures of the facial bones; also intra-abdominal injuries as well as injuries to his chest and was permanently affected by having the chimney fall on him and he suffered great pain and mental anguish and still suffers.

The Plaintiff avers that all of said injuries and damages herein set out are the proximate result and consequence of the willful or wanton conduct of the Defendant at the time, place and in the manner herein set out; thereby proximately causing the injuries and damages complained of and hence this suit.


C. LENOIR THOMPSON


CHARLES C. PARTIN

I hereby certify that I have this the 17 day of January, 1973, served a copy of the foregoing amended complaint on Honorable Wilson Hayes, Attorney at Law, Bay Minette, Alabama, Attorney for Defendant, by depositing a copy of same in the United States Mail postage prepaid.


ATTORNEY FOR PLAINTIFF

FILED

JAN 17 1973

EUNICE B. BLACKMON CIRCUIT
CLERK

THOMAS K. HALL, by TOMMY E.
HALL, his Father and next
friend,

Plaintiff,

Vs.

L. L. MALONE,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA


AT LAW

NUMBER: 9704

DEMURRER

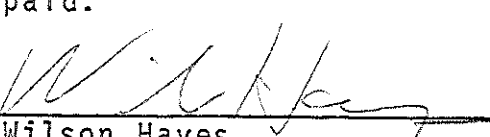
Comes now Defendant in the above styled cause and demurrs to Plaintiff's complaint as last amended and assigns separately and severally the following grounds to each count thereof separately and severally:

1. The complaint does not state a cause of action.
2. The complaint states no grounds on which the may be founded.
3. The complaint states conclusions of the pleader.
4. The complaint contains conclusions of the pleader.
5. For aught that appears in the complaint the alleged negligence did not exist for sufficient time to constitute a danger to Plaintiff.
6. The allegations of the complaint do not give rise to a cause of action.
7. The complaint alleges no willful or wanton misconduct on the part of Defendant.
8. No facts are alleged describing willful or wanton misconduct by Defendant.
9. For aught that appears the alleged fall of the chimney on Plaintiff was caused by someone or thing other than Defendant.


Wilson Hayes
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I have this the 31st day of October, 1972, served a copy of the foregoing demurrer on Mr. C. Le Noir Thompson, Attorney at Law, Bay Minette, Alabama, Attorney for Plaintiff, by depositing a copy of same in the United States Mail postage prepaid.


Wilson Hayes

THOMAS K. HALL by TOMMY
E. HALL, his Father and
next friend,

Plaintiff,

vs.

L. L. MALONE,

Defendant.

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 9704

AMENDED COMPLAINT

Comes now the Plaintiff in the above styled cause and
amends his Complaint heretofore filed so as to read as follows:

THOMAS K. HALL, by
TOMMY E. HALL, his
Father and next friend,

Plaintiff,

vs.

L. L. MALONE,

Defendant.

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 9704

COUNT ONE

The Plaintiff, a minor child, seven years of age, who
sues by Tommy E. Hall, as his Father and next friend, claims of
the Defendant Fifty Thousand Dollars (\$50,000.00) as damages for
that, heretofore, on, to-wit: August 21, 1970, the Defendant
negligently permitted an artificial condition to exist on a lot
or parcel of land owned by him in Bay Minette, Baldwin County,
Alabama, viz: An unfenced and unguarded partially demolished, de-
cayed brick chimney that was left standing after the house to
which it had been attached was torn down and removed; that the
Defendant, at the time this artificial condition existed on his
land, knew or had reason to know that children were likely to

play on the above said lot or parcel of land; and that the artificial condition was one which the Defendant knew or had reason to know and which he realized or that he should have realized would involve an unreasonable risk of death or serious bodily harm to such children.

The Plaintiff further avers that because of his youth, he did not realize the danger involved in playing near said chimney or in coming within the area made dangerous by it; that the utility to the Defendant of maintaining said chimney in said condition and the burden of eliminating the danger were slight as compared with the risk to the Plaintiff and other children of the neighborhood; and that the Defendant failed to exercise reasonable care to eliminate the danger or otherwise protect the Plaintiff and other children.

The Plaintiff further avers that on August 21, 1970, the said chimney which was unfenced and unguarded fell and struck the Plaintiff while he was playing on the premises made dangerous by said chimney; that as a proximate result of the negligence aforesaid of the Defendant, the Plaintiff was injured as follows: he suffered multiple injuries, to-wit: a compound fracture of the left tibia and fibia, multiple fractures of the pelvis, multiple fractures of the pelvis, multiple fracture of the ribs, fractures of the facial bones; abdominal injuries, injuries to his chest, Plaintiff was hospitalized and permanently injured and caused to suffer great physical pain and mental anguish; Wherefore Plaintiff brings this suit and asks judgment in the above amount said Plaintiff suffered great pain and anguish and was permanently injured.

COUNT TWO:

The Plaintiff, a minor child of seven years of age,

who sues by Tommy E. Hall, as his Father and next friend, claims of the Defendant Fifty Thousand Dollars (\$50,000.00) as damages for that, heretofore on, to-wit: August 21, 1970, the Defendant did willfully or wantonly injure the Plaintiff by willfully or wantonly allowing or maintaining an unfenced and unguarded, partially demolished, decayed brick chimney to remain on a lot or parcel of land owned by the Defendant in Bay Minette, Baldwin County, Alabama, being conscious at the time that his conduct in so doing would probably result in injury to the Plaintiff who often played on said lot or parcel of land.


Plaintiff further avers that the unfenced and unguarded partially demolished, decayed brick chimney was maintained by the Defendant on said premises after the house to which the chimney had been attached was torn down and removed; that said chimney was known to the Defendant to be exceedingly dangerous and the Defendant knew or should have known that children were accustomed to playing on said premises: that on, to-wit: August 21, 1970 the chimney fell on the Plaintiff, and he was injured as follows: Plaintiff suffered multiple fractures of the pelvis, multiple fractures of the ribs and fractures of the facial bones; also intra-abdominal injuries as well as injuries to his chest and was permanently affected by having the chimney fall on him and he suffered great pain and mental anguish and still suffers.

The Plaintiff avers that all of said injuries and damages herein set out are the proximate result and consequence of the willful or wanton conduct of the Defendant at the time, place and in the manner herein set out; thereby proximately causing the injuries and damages complained of and hence this suit.


C. LENOIR THOMPSON


CHARLES C. PARTIN

I hereby certify that I have this the 24th day of October, 1972, served a copy of the foregoing amended complaint on Honorable Wilson Hayes, Attorney at Law, Bay Minette, Alabama, Attorney for Defendant, by depositing a copy of same in the United States Mail postage prepaid.


ATTORNEY FOR DEFENDANT

FILED

OCT 24 1972

EUNICE B. BLACKMON CIRCUIT
CLERK

THOMAS K. HALL by THOMMY E.
HALL, his father and next
Friend,

Plaintiff,

Vs.

L. L. MALONE,

Defendant.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

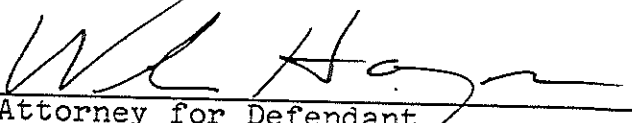
NUMBER: 9704

DEMURRER

Comes now Defendant in the above styled cause by his Attorney and demurs to the Complaint heretofore filed against him and to each count thereof, separately and severally, and assigns the following separate and several grounds separate and severally:

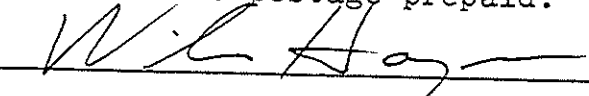
1. The complaint is vague and indefinite.
2. The complaint does not state a cause of action.
3. It does not appear where the alleged damage to Plaintiff occurred.
4. The complaint contains conclusions of the pleader.
5. The complaint does not describe any negligence on the part of Defendant.
6. The complaint does not describe any duty owed Plaintiff by Defendant.
7. The Plaintiff does not allege any negligence on the part of the Defendant.
8. The allegations of the complaint insofar as they relate to a "partially demolished brick chimney" are vague, indefinite and unclear.
9. The allegation that "the partially demolished brick chimney was of such a character as was liable to attract a child" is vague and indefinite.
10. For aught that appeared Plaintiff's alleged injuries were the fault of some agency other than Defendant.
11. For aught that appears Defendant did not cause any injury to Plaintiff.

12. For aught that appears Defendant was not negligent.
13. For aught that appears there was no negligence on the part of the Defendant.


Attorney for Defendant
Wilson Hayes

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 19th day of March, 1971, served a copy of the foregoing pleading on counsel for all Parties to this proceeding by mailing the same by United States Mail, properly addressed, with first class postage prepaid.



FILED

MAR 22 1971

EUNICE B. BLACKMON CIRCUIT
CLERK

THOMAS K. HALL by THOMMY E.
HALL, his father and next
Friend,

Plaintiff,

Vs.

L. L. MALONE,

Defendant.

Ø IN THE CIRCUIT COURT OF
Ø BALDWIN COUNTY, ALABAMA

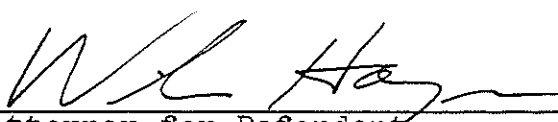
Ø AT LAW

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Ø NUMBER: 9704

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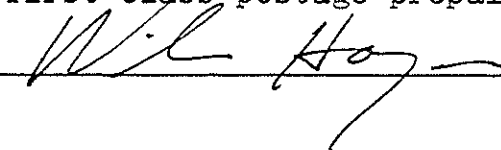
Comes now Defendant in the above styled cause by his
Attorney and demands trial by jury.



Attorney for Defendant
Wilson Hayes

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 19th day of March,
1971, served a copy of the foregoing pleading on counsel for all
Parties to this proceeding by mailing the same by United States
Mail, properly addressed, with first class postage prepaid.



FILED

MAR 22 1971

EUNICE B. BLACKMON CIRCUIT
CLERK

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon L. L. MALONE to appear and plead, answer or demur within thirty days from the service hereof to the Bill of Complaint filed in the Circuit Court of Baldwin County, Alabama, ~~in Ex parte~~, At Law, by THOMAS K. HALL, by TOMMY E. HALL, his father and next friend, against L. L. MALONE.

WITNESS my hand and seal this 19 day of February, 1971.

Janice B. Blackmon
CIRCUIT CLERK.

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THOMAS K. HALL by TOMMY E.
HALL, his father and next
friend,

Plaintiff,

-vs-

L. L. MALONE,

Defendant.

) IN THE CIRCUIT COURT OF

) BALDWIN COUNTY, ALABAMA

) AT LAW

CASE # 9204

BILL OF COMPLAINT

The Plaintiff, who is a minor of seven(7) years and who
sues by his next friend and father, Tommy E. Hall, claims of
the Defendant Twenty-Five Thousand (\$25,000.00) Dollars as damages
for that heretofore on to-wit, August 21, 1970, the Plaintiff
was injured through the negligence of the Defendant in the
following manner:

The Defendant had, at and before the time just stated, a
lot or parcel of land adjoining a subdivision known as Green
Acres on Highway #31, it is now in the City Limits of Bay Minette,
Alabama, that was attractive to children of Plaintiff's age,
and was exceedingly dangerous being left unguarded by any fence
or in any way, an attractive nuisance to-wit: a partially
demolished brick chimney left standing after the home had been
torn down and removed, all of which premises was open, unguarded,
or unprotected by any enclosure although the Defendant knew that
Plaintiff, who was then and there below the age of discretion and
was then and there residing near said premises and was constantly
playing about said premises in close proximity to said brick
chimney; that the said partially demolished brick chimney was of
such a character as was liable to attract a child of Plaintiff's
age and that children were liable to receive serious injuries
at some time; and Plaintiff avers that as the proximate result
of the said negligence of Defendant, Plaintiff, while playing
on said premises at or near the said chimney and while seated on
a wooden block near the said chimney which was unfence and unguarded

and Plaintiff avers that on August 21, 1970, said chimney fell, striking your said Plaintiff and seriously injuring him, causing multiple injuries to-wit, a compound fracture of the left tibia and fibula, multiple fractures of the pelvis, multiple fractures of the ribs, and possible fractures of the facial bones; also intra-abdominal injuries as well as injuries to his chest, so that he is still limping. All of which said injuries and damages were the proximate result of the negligence of the said Defendant. And, as a proximate result of said injuries, your said Plaintiff was hospitalized from August 21, 1970, through September 5, 1970, and was permanently injured. And said Plaintiff suffered great pain and anguish and was permanently injured.


ATTORNEY FOR PLAINTIFF

FILED

FEB 19 1971

EUNICE B. BLACKMON CIRCUIT
CLERK

71 313

Ex 3-4-71

9704

Thomas K. Hall &
Tommy E. Hall

vs.

L. L. Malone
364 Neighbors St.
Montevallo, Ala.

30 Days

5/8/1

FILED

FEB 19 1971

EUNICE B. BLACKMON CIRCUIT
CLERK

C. L. Thompson

FEB 22 1971

TAYLOR WILKINS
SHERIFF

Served
Mar 4 - 71

Executed this the 4

day of Mar 1971
by leaving a copy of the within with

L. L. Malone

L. P. Walker

Sheriff, Shelby Co., Alabama

J. H. Charles

The sheriff claims 10c per mile
for a total of 2.6 miles, \$3.60