

THOMAS A. THORNHILL, as Father and next friend of LaJUANA SUE THORNHILL, a Minor, Deceased,)))	IN THE CIRCUIT COURT OF
PLAINTIFF)	BALDWIN COUNTY, ALABAMA
vs.)	AT LAW 10,627
PHYLLIS S. NESBIT, as Administratrix of the Estate of THOMAS KINCAID MOODY, Deceased,)))	
DEFENDANT.)	

COUNT ONE

The Plaintiff, suing as Father and next friend of LaJUANA SUE THORNHILL, a Minor, under the age of twenty-one years, Deceased, claims of the Defendant, PHYLLIS S. NESBIT, as Administratrix of the Estate of THOMAS KINCAID MOODY, Deceased, the sum of TWO HUNDRED FIFTY THOUSAND (\$250,000.00) DOLLARS as damages for that heretofore, to-wit: the 2nd day of April, 1972, the Plaintiff's minor daughter was riding in an automobile on a farm road known as Forts Lake Road which was then and there a Public Highway in Jackson County, Mississippi and that the Plaintiff's intestate was riding as a passenger in the Defendant's automobile, and that the Defendant's intestate so negligently operated a motor vehicle as to allow it to run into, upon or against a tree, causing the Plaintiff's minor daughter to sustain injuries from which she afterwards died, wherefore Plaintiff sues.

COUNT TWO

The Plaintiff, suing as Father and next friend of LaJUANA SUE THORNHILL, a Minor, under the age of twenty-one years, Deceased, claims of the Defendant, PHYLLIS S. NESBIT, as Administratrix of the Estate of THOMAS KINCAID MOODY, Deceased, the sum of TWO HUNDRED FIFTY THOUSAND (\$250,000.00) DOLLARS damages for that heretofore and on, to-wit: the 2nd day of April 1972, the Plaintiff's Minor daughter was riding as a passenger in the automobile driven by the Defendant's intestate on a Public Highway known as Forts Lake Road, in Jackson County, Mississippi, which was then and there a Public Highway in Jackson County Mississippi, and that the Defendant's intestate so negligently operated a motor vehicle as to allow it to run into, upon or against a tree, causing her to sustain injuries from which she afterwards died, and Plaintiff further avers that the death of his said Minor daughter was approximately caused by the willful, wanton or intentional conduct of the Defendant's intestate, hence this

FILED ^{suit.}

SEP 28 1972

EUNICE B. BLACKMON CIRCUIT CLERK

*I do hereby accept service
this day 9-28-1972*

*Phyllis S. Nesbit
Admin. Estate Thomas Kincaid Moody*

[Signature]
ATTORNEY FOR PLAINTIFF

THE DEFENDANT'S CONDUCT OF THE DEFENDANT'S

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SUMMONS AND COMPLAINT

THE STATE OF ALABAMA
BALDWIN COUNTY

Circuit Court, Baldwin County

No. 10,627

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

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to SummonMrs. Phyllis Nesbit.....

as Administratrix of the estate of

THOMAS KINCAID MOODY.

in Robertsdale, Alabama at law offices of WILTERS, BRANTLEY & NESBIT

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.....

Phyllis Nesbit

Defendant.....

by

THOMAS THORNHILL, Father and next friend Plaintiff.....

of LAJUANA SUE THORNHILL, deceased

Witness my hand this.....28th.....day of.....Sept.....1972.....

Eunice B. Blackmon, Clerk

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

Thomas Thornhill, Father and
next friend of
LAJUANA SUE THORNHILL, deceased

Plaintiffs

vs.

PHYLLIS NESBIT, Administratrix
Estate of THOMAS KIRKAL, Deceased
Defendants

SUMMONS AND COMPLAINT

Filed Sept 28 1972
Eunice B. Blackburn Clerk

.....JOHN W. DUCK.....
Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

WILTERS, BRANTLEY & NESBIT
Law Offices, Robertsedale, Alabama

Received In Office

..... 19.....

..... Sheriff

I have executed this summons

this 19.....
by leaving a copy with

[illegible]

..... Sheriff

..... Deputy Sheriff

THOMAS A. THORNHILL, as
Father and next friend
of LAJUANA SUE THORNHILL,
a Minor, Deceased,

Plaintiff,

vs.

PHYLLIS S. NESBIT, as
Administratrix of the
Estate of THOMAS KINCAID
MOODY, Deceased,

Defendant.

X

X

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 10,627

MOTION FOR JUDGMENT ON PLEADINGS

The Defendant moves the Court to enter Judgment on the pleadings with respect to Count One of the Complaint in favor of Defendant herein on the ground that the Defendant is entitled to judgment as a matter of law on the undisputed facts appearing in the pleadings.

Charles C. Partin
Charles C. Partin
Attorney for Defendant
P. O. Box 120
Bay Minette, Alabama 36507

CERTIFICATE OF SERVICE

I, Charles C. Partin, attorney for the Defendant in the above styled cause, hereby certify that on the 5th day of October, 1973, I served the attached Motion for Judgment on Pleadings upon John V. Duck, Esquire, and Peter V. Sintz, Esquire, by depositing a copy of the same in the United States Mail, post-paid, addressed to them at Fairhope, Alabama, and 800 Downtowner Boulevard, Mobile, Alabama, 36609, respectively, their last known address.

OCT 5 1973

EUNICE B. BLACKMON

CIRCUIT
CLERK

VOL

71 PAGE 106

Charles C. Partin
Charles C. Partin
Attorney for Defendant
P. O. Box 120
Bay Minette, Alabama 36507

Thomas Thornhill
PLAINTIFF

VS:

CASE # 10,627

Phyllis S. Nesbit
DEFENDANT

We the Jury find for the Plaintiff and against the Defendant and assess his/her
damages at TEN THOUSAND Dollars.

William G. Sanders
Foreman

THOMAS A. THORNHILL, as	X	
Father and next friend		
of LAJUANA SUE THORNHILL,	X	IN THE CIRCUIT COURT OF
a Minor, Deceased,		
	X	
Plaintiff,		
	X	BALDWIN COUNTY, ALABAMA
VS.	X	
	X	AT LAW NO: 10,627
PHYLLIS S. NESBIT, As		
Administratrix of the	X	
Estate of THOMAS KINCAID		
MOODY, Deceased,	X	
Defendant.	X	

.....
ANSWER

Comes now the Defendant and for answer to the Complaint
says as follows:

.....
FIRST DEFENSE

With respect to Count One:

1. The Defendant denies that at the time and place
complained of in the Complaint, the Defendant's intestate was
guilty of any negligent act or omission which negligently injured
the Plaintiff's intestate.

.....
SECOND DEFENSE

With respect to Count One:

1. The Plaintiff's intestate was guilty of contri-
butory negligence in that she, at the time and place complained of
or immediately prior thereto, consented to riding as a guest in
the automobile being operated by the Defendant's intestate when she
knew, or should have known, that he was under the influence of
alcoholic beverages and could not properly operate the motor
vehicle in which she consented to ride.

THIRD DEFENSE

With respect to Count One:

1. The Plaintiff was guilty of contributory negligence in that he provided alcoholic beverages to the Plaintiff's intestate and the Defendant's intestate shortly before the accident alleged in the Complaint, and that the Plaintiff allowed his minor daughter to be a passenger in the Defendant's intestate's automobile when the Plaintiff knew or should have known that the Defendant's intestate was under the influence of alcoholic beverages.

FOURTH DEFENSE

With respect to Count One:

1. The Defendant alleges that the Plaintiff's intestate, at the time and place complained of, assumed the risk of the injuries from which she died.

FIFTH DEFENSE

With respect to Count One:

1. The Plaintiff's intestate was a guest in the automobile being operated by the Defendant's intestate at the time and place complained of in the Complaint.

SIXTH DEFENSE

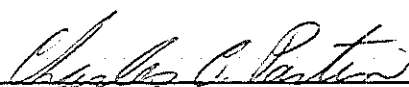
With respect to Count Two:

1. The Defendant denies that, at the time and place complained of in the Complaint, the Defendant's intestate was guilty of any negligent, willful, wanton or intentional act or omission which negligently, willfully, wantonly or intentionally injured the Plaintiff's intestate.

FILED

OCT 5 1973

EUNICE B. BLACKMON CIRCUIT VCL
CLERK



Charles C. Partin
Attorney for Defendant

P. O. Box 120

Prichard, Alabama 36507

71-104

CERTIFICATE OF SERVICE

I, Charles C. Partin, attorney for the Defendant in the above styled cause, hereby certify that on the 5th day of October, 1973, I served the attached Answer upon John V. Duck, Esquire, and Peter V. Sintz, Esquire, by depositing a copy of the same in the United States mails, postpaid, addressed to them at Fairhope, Alabama, and 800 Downtowner Boulevard, Mobile, Alabama, 36609, respectively, their last known address.

Charles C. Partin

Charles C. Partin
Attorney for Defendant
P. O. Box 120
Bay Minette, Alabama 36507

FILED

OCT 5 1973

CLERK R. BLACKMON REC'D
RK

THOMAS A. THORNHILL, as Father and	*	IN THE CIRCUIT COURT OF
next friend of LAJUANA SUE THORNHILL,	*	BALDWIN COUNTY, ALABAMA
a Minor, Deceased,	*	
Plaintiff,	*	AT LAW
-vs-	*	
PHYLLIS S. NESBIT, as Administratrix	*	
of the Estate of THOMAS KINCAID MOODY,	*	
Deceased,	*	
Defendant.	*	CASE NO. 10,627

NOTICE OF TAKING OF DEPOSITION

TO: Mr. Norborne Stone	Mr. Geary A. Gaston
Chason, Stone and Chason	Attorney at Law
Attorneys at Law	Post Office Box 2245
Bay Minette, Alabama	Mobile, Alabama

Please take notice that at 9:30 A.M. on Thursday, June 21, 1973

the Plaintiff will take the deposition

of Vicky Brossette in the offices of John V.

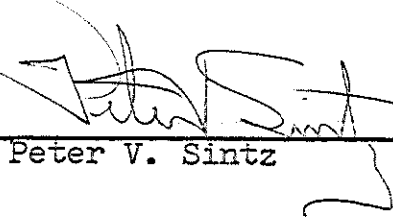
Duck, Fairhope, Alabama

~~Mobile, Alabama~~, pursuant to Act

No. 375 of the Legislature of the State of Alabama, September 8,
Federal
1955, before Stenographic Reporters or some other officer
authorized to administer oaths in the County of Mobile, State
of Alabama, and duly authorized to take depositions and swear
witnesses in said County in said State. The oral examination
will continue from day to day until completed and you are invited
to attend and participate in the taking of said deposition.

Dated this 11th day of June, 1973.

BROWN, HUDGENS, FULFORD
SINTZ AND RICHARDSON
Attorneys for Plaintiff

By 
Peter V. Sintz

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 21ST
day of June 19 73 served a copy of the
foregoing pleading on counsel for all parties
to this proceeding by mailing same by United
States mail, properly addressed, and first
class postage prepaid.

FILED

JUN 18 1973

EUNICE B. BLACKMON CIRCUIT
CLERK

THOMAS A. THORNHILL, as Father	*	IN THE CIRCUIT COURT OF
and next friend of LAJUANA SUE	*	BALDWIN COUNTY, ALABAMA
THORNHILL, a Minor, Deceased,	*	
Plaintiff,	*	AT LAW
-vs-	*	
PHYLLIS S. NESBIT, as Administra-	*	
trix of the Estate of THOMAS	*	
KINCAID MOODY, Deceased,	*	
Defendant.	*	CASE NO. 10,627

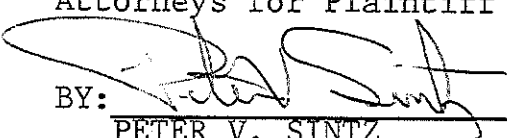
NOTICE OF TAKING OF DEPOSITION

TO: Mr. Norborne Stone	Mr. Geary A. Gaston
Chason, Stone and Chason	Attorney at Law
Attorneys at Law	Post Office Box 2245
Bay Minette, Alabama	Mobile, Alabama

Please take notice that at 9:30 A.M. on Saturday, August 4, 1973, the Plaintiff will take the deposition of Vickie Brossette in the offices of John V. Duck, Fairhope, Alabama, pursuant to Act No. 375 of the Legislature of the State of Alabama, September 8, 1955, before Bruce A. Howard or some other officer authorized to administer oaths in the County of Baldwin, State of Alabama, and duly authorized to take depositions and swear witnesses in said County in said State. The oral examination will continue from day to day until completed and you are invited to attend and participate in the taking of said deposition.

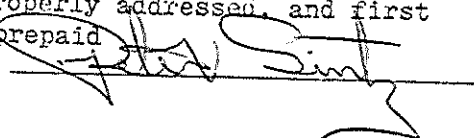
Dated this 31st day of July, 1973.

SINTZ & PIKE
Attorneys for Plaintiff

BY: 
PETER V. SINTZ
800 Downtowner Blvd.
Mobile, Alabama 36609

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 31st day of July, 1973 served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing same by United States mail, properly addressed, and first class postage prepaid.



FILED

AUG 1 1973

EUNICE B. BLACKMON
CIRCUIT CLERK

THOMAS A. THORNHILL, as Father)	IN THE CIRCUIT COURT OF
and next friend of LAJUANA SUE)	BALDWIN COUNTY, ALABAMA
THORNHILL, a Minor, Deceased.)	
Plaintiff,)	AT LAW
VS.)	
PHYLLIS S. NESBIT, as Administra-)	
trix of the Estate of THOMAS)	
KINCAID MOODY, Deceased,)	
Defendant.)	CASE NO. 10,627

Comes now the defendant, Phyllis S. Nesbit, as Administratrix of the Estate of Thomas Kincaid Moody, Deceased, and demurs to the plaintiff's complaint filed herein and each count thereof, jointly and separately, and for joint and separate grounds of demurrer, sets down and assigns, jointly and separately, the following:

1. For that insufficient facts are alleged to state a cause of action against this defendant.
2. The allegations of negligence are merely a conclusion of the pleader.
3. The said count is vague, indefinite and uncertain and does not apprise this defendant with sufficient certainty what act or acts of negligence the defendant is called on to defend.
4. For that it does not appear with sufficient certainty what duty, if any, this defendant may have owed to the plaintiff.
5. For that it does not appear with sufficient certainty wherein this defendant violated any duty owed by defendant to the plaintiff.
6. For that it does not sufficiently appear that this defendant owed any duty to the plaintiff which defendant negligently failed to perform.

7. For that the allegations of the said count are insufficient as a matter of law to state a cause of action against this defendant.

8. For that the pleader sets out in what said negligence consisted, and the facts so set out do not show negligence.

9. For that there does not appear sufficient causal connection between this defendant's alleged breach of duty and plaintiff's injuries and damages.

10. No facts are alleged to show that plaintiff sustained any injury or damages as the proximate result of any negligence or breach of duty on the part of this defendant.

11. It is not alleged with sufficient certainty where said accident occurred.

12. For aught that appears, plaintiff had no right to be where plaintiff was at the time and place of said accident.

13. It is not alleged that the negligence complained of proximately caused the accident and the injuries and damages complained of.

14. For that said count is duplicitous.

15. For that each injury complained of in the alternative could not result from each alternative act allegedly causing such injury.

16. For that each alternative averment does not state facts sufficient to constitute a cause of action against this defendant.

17. It is not alleged that the wanton conduct complained of proximately caused the accident and the injuries and damages complained of.

18. There is no allegation of either a willful or wanton act committed by this defendant.

19. There is no allegation of either a willful or wanton injury committed by this defendant.

20. For that there is a misjoinder of causes of action.

21. For that there is a misjoinder of parties plaintiff.

22. For that there is a misjoinder of parties defendant.

23. For that insufficient facts are alleged to show wantonness on the part of the defendant.

24. For that no wanton injury is sufficiently alleged in said count.

25. For that the facts alleged do not constitute wantonness as a matter of law.

26. For that Count One of said complaint fails to state a cause of action against this defendant in that no cause of action lies under Alabama law for the wrongful death of a person as a result of the negligence of an alleged tort-feasor.

27. From all that appears the negligent operation of a motor vehicle by the defendant's intestate was not the proximate cause of any injury sustained to the plaintiff's minor daughter.

28. From all that appears the negligent operation of a motor vehicle by the defendant's intestate was not the proximate cause of the death of the plaintiff's minor daughter.

29. From all that appears the plaintiff's minor daughter was in an automobile other than the automobile alleged to have been operated by the defendant's intestate.

30. From all that appears the plaintiff's intestate was riding as a passenger in the defendant's automobile but the defendant's intestate is alleged to have negligently operated a second or separate automobile and no proximate cause is shown from the alleged negligent operation of such second or other automobile and the injuries alleged to have been sustained by the plaintiff's minor daughter.

31. From all that appears there is no causal connection between the alleged negligent operation of a motor vehicle by the defendant's intestate and the alleged injuries sustained by the plaintiff's minor daughter.

32. From all that appears the plaintiff's "minor daughter" was riding in one automobile on a farm road known as Forts Lake Road and the plaintiff's "intestate" was riding as a passenger in another automobile.

33. From all that appears the plaintiff's "minor daughter" was riding in one automobile on a farm road known as Forts Lake Road and the plaintiff's "intestate" was riding as a passenger in another automobile and further from all that appears the defendant's intestate was alleged to have negligently operated a third motor vehicle.

34. From all that appears the plaintiff's intestate was riding as a passenger in the defendant's automobile at some time other than the date alleged in the complaint (April 2, 1972), and at a place other than a public highway in Jackson County, Mississippi.

35. For that said complaint does not show with sufficient certainty as to where and when the plaintiff's intestate was alleged to have been riding as a passenger in the defendant's automobile.

36. From all that appears the "defendant's intestate" so negligently operating a motor vehicle so as to cause or allow it to run into or against a tree has no causal connection with the plaintiff's intestate riding as a passenger in the "defendant's" automobile.

37. From all that appears the "plaintiff's intestate" and the "plaintiff's minor daughter" was not one and the same person but are two entirely different individuals.

38. From all that appears there is no causal connection between the plaintiff's minor daughter riding in an automobile on a public road in Jackson County, Mississippi and the defendant's intestate negligently operating "a motor vehicle" and allowing it to run into a tree.

39. From all that appears the alleged injuries from which the plaintiff's intestate died were not proximately caused by the alleged negligent operation of a motor vehicle being driven by the defendant's intestate.

40. From all that appears from Count Two of the plaintiff's complaint there is no causal connection between the defendant's intestate negligently operating a motor vehicle and the alleged willful, wanton or intentional conduct of the defendant's intestate.

41. From all that appears from Count Two of the complaint all injuries and damages suffered by the plaintiff's intestate

were the result of the alleged negligence of the defendant's intestate and not any willful, wanton or intentional conduct of the defendant's intestate.

42. For that said complaint does not sufficiently state what conduct of the defendant's intestate is alleged to have been willful, wanton or intentional.

43. For that although said complaint alleges that the death of the plaintiff's minor daughter was "proximately caused by the willful, wanton or intentional conduct of the defendant's intestate" there is no allegation showing what conduct of the defendant's intestate is alleged to have been willful, wanton or intentional.

44. From all that appears from the complaint the defendant's intestate is alleged to have negligently operated a motor vehicle so as to cause the defendant's intestate to sustain injuries and afterwards die.

PILLANS, REAMS, TAPPAN, WOOD,
ROBERTS & VOLLMER

and

CHASON, STONE & CHASON

BY:

John Earle Chason
Attorneys for Defendant

*I certify that I have mailed
copies of this pleading to Counsel
for Plaintiff this 3/9/73.*

John E. Chason

FILED

MAR 9 1973

EUNICE B. BLACKMON CIRCUIT
CLERK

PILLANS, REAMS, TAPPAN, WOOD, ROBERTS & VOLLMER
LAWYERS AND PROCTORS
VAN ANTWERP BUILDING
MOBILE, ALABAMA

PALMER PILLANS (OF COUNSEL)

W. DEWITT REAMS
JOHN H. TAPPAN
GEORGE F. WOOD
BONNERRAE H. ROBERTS
RICHARD W. VOLLMER, JR.
ABRAM L. PHILIPS, JR.
FRED W. KILLION, JR.
DAVID W. GREEN
JAMES D. BROOKS
SIDNEY H. SCHELL
GEARY A. GASTON
VICTOR T. HUDSON
WILLIAM W. STODENMIRE

October 11, 1973

CABLE ADDRESS PTAH
TELEPHONE (205) 432-3644
MAIL: P. O. BOX 2245 OR 2327
(36601)

Mrs. Eunice Blackmon
Clerk of the Circuit Court
Baldwin County Courthouse
Post Office Box 239
Bay Minette, Alabama

Re: Thomas A. Thornhill, et al
-versus-
Phyllis S. Nesbit, as
Administratrix of the Estate
of Thomas Kincaid Moody, Deceased
Circuit Court Case No. 10,627
Our File: 20,161

Dear Mrs. Blackmon:

Enclosed is Safeco Insurance Company's draft No. 3382987 which is dated October 11, 1973 and made payable to your order as Clerk of the Baldwin County Circuit Court in the amount of \$10,000.00. This check is, of course, tendered as full satisfaction of the judgment rendered against the defendant in the above referenced case on Wednesday, October 10, 1973.

I shall be happy to pay the court costs in this case as soon as you have had an opportunity to compute those costs and forward your cost bill to me. I would like to be able to go ahead and close my file and would therefore appreciate your forwarding my your statement for the court costs at your earliest convenience.

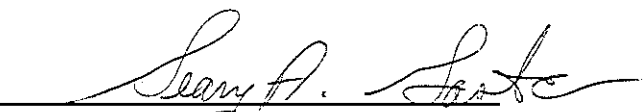
Mrs. Eunice Blackmon
October 11, 1973
Page Two

I wish to thank you in advance for your kind assistance in this matter.

Yours very truly,

PILLANS, REAMS, TAPPAN,
WOOD, ROBERTS & VOLLMER

By:


Geary A. Gaston

GAG/cr

Enclosure

cc: Mr. Peter V. Sintz
800 Downtowner Boulevard
Ranni Building
Mobile, Alabama 36606

Mr. John V. Duck
319 Magnolia Avenue
Fairhope, Alabama