MELISSA ALICE KNOWLES, a minor, by her father and next friend, ALBERT H. KNOWLES, Plaintiff, VS. MARION ERNIE FLEMING and CITY OF BAY MINETTE, a Municipal Corporation, Defendants.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW NO. 3230

SUPERSEDEAS BOND

STATE OF ALABAMA)
*
BALDWIN COUNTY)

KNOW ALL MEN BY THESE PRESENTS: That we, Marion Ernie Fleming and the City of Bay Minette, Alabama, a municipal corporation, as Principals, and The Western Casualty and Surety Company, a corporation, as Surety, are held and firmly bound unto Melissa Alice Knowles, a minor, by her father and next friend, Albert H. Knowles, in the sum of Sixteen Thousand Two Hundred Dollars ($16,200.00), for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 11th day of July, 1958.

WHEREAS, at the March Term, 1958, of the Circuit Court of Baldwin County, Alabama, and on, to-wit, the 11th day of March, 1958, the plaintiff, Melissa Alice Knowles, recovered a judgment in said court against the defendants, Marion Ernie Fleming and the City of Bay Minette, a municipal corporation, for the sum of Eight Thousand Dollars ($8,000.00) damages; after which the said defendants filed a motion for a new trial, which was overruled on, to-wit, June 27, 1958; and,

WHEREAS, the said defendants have made application for appeal from said judgment to the next term of the Supreme Court of Alabama to reverse the said judgment and also for a supersedeas of the execution of the said judgment, which has been granted on entering into this bond:

MELISSA ALICE KNOWLES, a minor, by her father and next friend, ALBERT H. KNOWLES,

Plaintiff,

VS.

MARVIN ERNIE FLEMING and CITY OF BAY MINETTE, a Municipal Corporation,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 3230

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

MELISSA ALICE KNOWLES, a minor, by her father and next friend, ALBERT H. KNOWLES, Plaintiff, VS. MARION ERNIE FLEMING and CITY OF BAY MINETTE, a Municipal Corporation, Defendants.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW NO. 3230

CERTIFICATE OF APPEAL

I, Alice J. Duck, as Clerk of the Circuit Court of Baldwin County, Alabama, do hereby certify that the defendants, Marion Ernie Fleming and City of Bay Minette, a Municipal Corporation, did, on the 11th day of July, 1958, take an appeal to the Supreme Court of the State of Alabama from the judgment rendered in and by this court for the plaintiff, Melissa Alice Knowles, a minor, by her father and next friend, Albert H. Knowles, on, to-wit, March 11, 1958, in which cause the defendants' motion for a new trial was overruled on June 27, 1958.

I further certify that on this date the defendants filed in this court a supersedeas bond with The Western Casualty and Surety Company as surety thereon, which said bond has been approved by me, and that J. B. Blackburn is the surety for the costs of said appeal.

The defendants (appellants) have requested oral argument of this case on appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Circuit Court of Baldwin County, Alabama, on this the 11th day of July, 1958.

Alice J. Duck

Clerk of the Circuit Court of Baldwin County, Alabama

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 60-61

To the Clerk *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*

Marion Ernie Fleming, et al., *Appellants,*

and

Melissa Alice Knowles, Pro Ami, etc. *Appellee,*

wherein by said Court it was considered adversely to said appellants, were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellants:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by our Supreme Court, on the 25 *day of* May, *19* 61, *that said* Judgment *of said* Circuit *Court be in all things affirmed, and that it was further considered, ordered, and adjudged that the appellants* ~~, and~~

Marion Ernie Fleming and The City of Bay Minette, Alabama, a Municipal Corporation, and The Western Casualty and Surety Company, a Corporation, surety on the Supersedeas Bond, pay the amount of Judgment of the C ircuit Court and ten per centum (10%) damages thereon, and interest and the

~~the~~ *costs accruing on said appeal in this Court and in the Court below, for which costs let execution issue.*

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, at the Judicial Department Building, this the 25 *day of* May, *19* 61.

J. Render Thomas

Clerk of the Supreme Court of Alabama.

MAY 25 1961

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1960-61

1 Div. 785

Marion Ernie Fleming, et al.

v.

Melissa Alice Knowles,
Pro ami, etc.

Appeal from Baldwin Circuit Court

COLEMAN, JUSTICE.

This is an appeal by defendants from a judgment rendered for the plaintiff in an action to recover damages for personal injury suffered by plaintiff in a motor vehicle collision. The complaint is in one count for simple negligence.

Plaintiff, an infant, was injured while riding in an automobile with her mother, in a westerly direction on Seventh Street in Bay Minette. Plaintiff contends that the collision was caused by the negligence of defendant Fleming in failing to stop at the intersection of Seventh Street and Moog Avenue, where there was a stop sign, when Fleming drove a truck going south into the intersection where the automobile and truck collided.

It appears that at the time of the collision, Fleming was an employee of the defendant City of Bay Minette so as to render the City liable under the doctrine of respondeat superior.

The defendants contend that Fleming did not enter Seventh Street at the Moog Avenue intersection. Defendants contend that Fleming entered Seventh Street one block east of Moog Avenue and was driving west along Seventh Street, without negligence, when plaintiff's mother drove the automobile into the rear of the truck. The errors insisted on are as follows:

1. Defendants assert that the court erred in overruling defendants' motion to strike from the complaint the following allegation:

> "'she will continue to be put to expenses for Doctors, hospitals and medicines in and about the treatment of her permanent injuries,'"

Defendants argue that the expense of medical treatment incurred by plaintiff after commencement of the action is an

improper element of damages, citing Alabama Lime & Stone Company v. Adams, 218 Ala. 647, 119 So. 853, where this court held demurrer was not the proper mode of objecting to a claim for salary earned after the action was commenced.

Assuming arguendo that defendants pursued the correct method of raising objection to the inclusion of medical expenses occurring after action was commenced as an element of damages, we are nevertheless of opinion that the motion to strike was correctly overruled because the expense of future medical treatment required for the injury sustained by plaintiff is a proper element of damages in an action for injury to the person. This court has said:

> ". . . . when the injury is to the person, and the wrong which causes it is not continuous in its nature, then there can be but one action for its redress, no matter how permanent or lasting the disability, pain or suffering may be. Hence, in such action, the party injured may recover in one and the same suit compensation for the disabling effects of the injury, whether past or prospective. In estimating the damages, the jury may consider the expenses of the cure; and if the injury is permanent or irremediable, or will require future treatment or nursing, the proper costs of this may be added. . .

. ." South and North Alabama Railroad Co. v. McLendon, 63 Ala. 266, 272, 273.

See also: Alabama Great Southern R. Co. v. Flinn, 199 Ala. 177, 74 So. 246; Armour & Co. v. Cartledge, 234 Ala. 644, 176 So. 334.

2. Defendants assert that the court erred in permitting the plaintiff's father to testify that the child was "more nervous" after the accident, and in permitting the plaintiff's mother and grandmother to testify that the child was "extremely nervous" after the accident and was not "nervous" prior to the accident. Defendants argue that admission of this testimony, over objection, was error because the question objected to called for a conclusion of the witness, and was invasive of the province of the jury.

In Bradley v. Lewis, 211 Ala. 264, 100 So. 324, this court refused to reverse for failure to exclude testimony that plaintiff had been "very nervous" since the injury and might be called "a nervous wreck." In Gadsden General Hospital v. Hamilton, 212 Ala. 531, 103 So. 553, it was held not error to admit testimony that plaintiff was "nervous" after the occasion complained of. In another case it was said:

> ". . . . We think, however, that the trial court did not err in permitting Mrs. Hayes to state, as a collective fact, that plaintiff was 'awfully nervous' shortly after the alleged search of her home and for a week afterwards. (Citations Omitted.)

> Such statements, subject as they are to cross-examination, can do little harm in any case, and the trend of modern decisions is opposed to making their admission a ground for the reversal of judgments unless they are clearly improper and manifestly prejudicial." Disheroon v. Brock, 213 Ala. 637, 639, 105 So. 899.

Defendants argue further that the testimony to effect that child was more nervous was erroneously admitted because ". . . . There was no evidence by any of the three witnesses as to the condition of the appellee before the accident or after the accident, or their opportunity to observe her before the accident or after the accident."

The specific ground of objection made in the trial court was that the question called for "the conclusion and opinion of the witness." The ground now urged, to wit, failure to show that the witness had been afforded opportunity to observe the plaintiff, was not presented to the trial court and was waived. When specific objection is made, all other objections are waived. Circuit Court Rule 33; Smith v. Bacus, 195 Ala. 8, 12, 70 So. 261; Fuller v. State, 269 Ala. 312, 113 So. 2d 153.

We are of opinion that the trial court did not err in admitting this testimony.

3. Defendants assign as error the giving, at plaintiff's request, of the following written charges:

"1. I charge you, Gentlemen of the Jury, that, if you are reasonably satisfied from the evidence, the defendant, Marion Ernie Fleming, did not stop for a stop sign, at the time and place complained of in the complaint, then, as a matter of law, he was guilty of negligence, and if you are further satisfied from the evidence that this was the proximate cause of the accident, then it would be your duty to find for the plaintiff in this cause.

"2. I charge you, Gentlemen of the Jury, that the failure to stop for a 'STOP' sign constitutes negligence as a matter of law, and, if you are reasonably satisfied from the evidence in this cause, that the defendant, Marion Ernie Fleming, at the time and place complained of, failed to stop for a stop sign, and, if you are further reasonably satisfied from the evidence that his failure to stop was the proximate cause of the accident, then it would be your duty to find for the plaintiff in this cause."

It is to be noted that the plaintiff was an infant, less than two years old at the time of injury, and no question of contributory negligence is here involved.

Defendants argue that Charges 1 and 2 are bad because they invade the province of the jury, overemphasize testimony of plaintiff's witnesses which was disputed by defendants'

witnesses, are misleading for failure to describe the stop sign or its location, and are silent as to whether verdict should be against one or both defendants.

It is true that the testimony was in dispute and it was the jury's province to decide which testimony was true, but the charges are hypothesized on the jury's being reasonably satisfied from the evidence. The charges leave to the jury the decision as to whether the defendant, Fleming, did or did not stop, and also whether the failure to stop was the proximate cause of the injury.

The charges do present plaintiff's theory of her right to recover. Plaintiff contended that defendant, Fleming, did not stop the truck at the stop sign before entering the street on which plaintiff was riding, that in failing to stop Fleming failed to do what the law required, and that the failure to stop proximately caused the collision and injury to plaintiff. We do not think these charges are to be condemned as unduly emphasizing the testimony of one witness or one phase of the evidence. In Harris v. Blythe, 222 Ala. 48, 130 So. 548, this court held that it was not erroneous to charge:

> "'Now, gentlemen, the law requires a person entering these main highways, trunk highways of the State, when going into them, it is their duty under the law to stop at that sign, and failure to stop would be negligence per se, that he was negligent.'

"'Failure to do that would be violation of the law, and would be negligence per se.'"

In Mobile City Lines v. Orr, 253 Ala. 528, 45 So. 2d 766, this court held it was not error to charge that one entering a public street at which a stop sign has been erected, shall bring the vehicle to a complete stop before entering into such intersection ". . . . '. . . . and it is, as a matter of law negligence for the driver of a vehicle to merely slow up but not come to a complete stop before entering the same.'" The instant charges are to the same effect.

Under the evidence in this case, there is nothing misleading in the failure to further describe the sign or its location. Charge 1 refers to "a stop sign, at the time and place complained of in the complaint," and Charge 2 says if the defendant, Fleming, "at the time and place complained of, failed to stop for a stop sign." The complaint, in a single count, alleges that "at the intersection of Seventh Street and Moog Avenue, Public Highways, in the City of Bay Minette . . . ." the defendant negligently operated an automobile truck. From the testimony there is no doubt as to what the stop sign looked like or where it was located. Photographs of the intersection where the collision occurred were introduced in evidence. The stop sign at the intersection is plainly visible in the pictures. There is no uncertainty as to the sign referred to in the charges.

Defendants complain that the charges do not state whether the verdict should be against one or both defendants.

Defendants state in brief, "It was not disputed by the City of Bay Minette . . . . that Mr. Fleming . . . . was its agent . . . . acting within the line and scope of his authority at the time of the accident . . . ." If this be conceded, clearly the verdict, if for plaintiff, should have been against both defendants, as it was. Both defendants, or none, were liable. There was no reason to instruct the jury otherwise. We are of opinion that Charges 1 and 2 were given without error.

4. Defendants assign as error the giving of plaintiff's requested Charge 3 as follows:

> "3. I charge you, Gentlemen of the Jury, that if you are reasonably satisfied from the evidence that the defendant, Marion Ernie Fleming, was guilty of the slightest negligence that proximately caused the injuries to the plaintiff, then you must find for the plaintiff."

We note again that plaintiff was an infant and that contributory negligence of plaintiff is not here involved. Aside from the matter of contributory negligence, Charge 3 is substantially the same as the charge given for plaintiff and made the basis of the fourth assignment in St. Louis-San Francisco R. Co. v. Norwood, 222 Ala. 464, 133 So. 27. See also Smith v. Crenshaw, 220 Ala. 510, 126 So. 127; Nelson v. Lee, 249 Ala. 549, 560, 32 So. 2d 22; Waters v. Anthony, 252 Ala. 244, 247, 40 So. 2d 316. Giving Charge 3 was not error.

5. We are of opinion that if plaintiff's Charges 5 and A be subject to the objections urged by defendants, the giving of the charges was error without injury under Supreme Court Rule 45.

6. Defendants argue that the verdict was contrary to the law of the case in that the court gave defendants' requested Charge 2, which is the affirmative charge with hypothesis for defendants, but the jury returned a verdict for the plaintiff. This proposition was presented as grounds of defendants' motion for new trial which was overruled, and overruling the motion is assigned as error.

The oral charge of the court cannot be reconciled with defendants' Charge 2. The oral charge, in pertinent part, recites: "If, after considering all of the testimony in the case, and the law as I have given it to you, you are reasonably satisfied that the Plaintiff should recover, you should return a verdict for Plaintiff . . . . Likewise, after considering all of the evidence, you are not satisfied that the Plaintiff should recover, then your verdict would be for the defendant . . . ." The written charges given for plaintiff, which we have already considered, are clearly opposed to the proposition that the evidence, if believed, required the jury to find for defendants. The evidence was in conflict as to the negligence of defendant Fleming, and defendant was not entitled to have Charge 2 given. Ground 14 of the motion for new trial asserts that the court gave Charge 2 and then "erred in failing to deliver the said written charge to the

jury to be considered by it with the other written charges . . . ." In opposing the motion for new trial, plaintiff offered an affidavit by plaintiff's attorney which states that affiant was present in the courtroom during the entire trial of said cause, including the time during which the court charged the jury, and that "The Court did not read to the jury defendants' written charge Number 2 . . . . that, despite the fact that said charge is marked 'Given' by the Trial Judge, it was not actually given by the said trial judge . . . ."

We do not understand defendants to insist that Charge 2 was, in fact, read to the jury or that the jury received the paper on which Charge 2 was written. The record does show that Charge 2 was endorsed "Given," and signed by the trial judge. The proposition now insisted on by defendants was presented to the trial court by the motion for new trial, and was rejected by the trial court in overruling the motion.

The circumstances shown by this record lead us to conclude that Charge 2 was inadvertently endorsed given, but was neither read to the jury by the court nor physically delivered to the jury with other given charges. In short, although marked given, the charge was not given. Since the charge was not given, the verdict was not contrary to the charge, and this assignment of error is not sustained.

7. On the hearing of the motion for new trial, defendants offered in evidence a list of twelve figures on the back of one of the given charges. It appears conclusively

that these figures were written by one of the jurors during the jury's deliberation. The figures were added and the total was divided by 12. The quotient appears as 7666. The verdict was for $8,000.00. Defendants say the verdict was a quotient verdict and should be set aside and a new trial granted.

A number of cases have been considered by this court on the matter of quotient verdicts. One of the older cases cited frequently is Southern Ry. Co. v. Williams, 113 Ala. 620, 21 So. 328. This court there stated the following rule:

> ". . . . If a jury should agree in advance that their verdict should be the result or quotient of a division by twelve of the sum total of all the jurors' separate assessment, a verdict brought about by such an agreement, ought to be set aside. . . . ." (113 Ala. 620, 625)

Verdicts were set aside as quotient verdicts in International Agri. Corp. v. Abercrombie, 184 Ala. 244, 63 So. 549; New Morgan County Building & Loan Ass'n v. Plemmons, 210 Ala. 286, 98 So. 12; George's Restaurant v. Dukes, 216 Ala. 239, 113 So. 53. Cases holding that a quotient verdict had not been shown are: Birmingham Ry., Light & Power Co. v. Clemons, 142 Ala. 160, 37 So. 925; Birmingham Ry., Light & Power Co. v. Moore, 148 Ala. 115, 42 So. 1024; Alabama City, G. & A. Ry. Co. v. Lee, 200 Ala. 550, 76 So. 908; City of Dothan v. Hardy, 237 Ala. 603, 188 So. 264; Harris v. State, 241 Ala.

240, 2 So. 2d 431; Sanders v. State, 243 Ala. 691, 11 So. 2d 740; Montgomery City Lines v. Davis, 261 Ala. 491, 74 So. 2d 923.

The pertinent principles are stated in the cited cases. The vitiating fact seems to be the agreement in advance to abide by the result of the calculation. Data of this kind here shown have been held prima facie sufficient to impeach the verdict as a quotient verdict. While jurors are not permitted to impeach their own verdict, they may by affidavit disclose facts to sustain their verdict. It was competent for plaintiff to prove by the jurors themselves that the figures were written and the calculations were made without previous agreement that the result should be the verdict, but tentatively only, and to afford a basis for subsequent consideration and discussion by the jury.

The affidavits of jurors Golden and Fuqua are positive that no agreement was made in advance to be bound by the result of the calculation and that it was made to get a figure as a basis for discussion in determining the amount of the verdict. On the facts stated in the affidavits, the verdict was not a quotient verdict and was not due to be set aside on that ground. Birmingham Ry., Light & Power Co. v. Clemons, supra.

8. We are of opinion that the court did not err in overruling the ground of motion for new trial taking the point that the verdict is excessive. Medical expenses of $316.00 were shown. Dr. Gaston testified that plaintiff had

received scars which he thought were permanent. We understand that these scars disfigured plaintiff's face. The scars were shown to the jury. We do not have this advantage which the court and jury had, and are not persuaded that the verdict was so excessive as to indicate such bias, passion, or prejudice as would justify us in setting the verdict aside after the trial court has refused to do so. Brandwein v. Ellistom, 268 Ala. 598, 109 So. 2d 687.

Error to reverse not being shown, the judgment of the circuit court is due to be and is affirmed.

AFFIRMED.

Livingston, C. J., and Simpson and Goodwyn, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 785,

Marion Ernie Fleming and City of Bay Minette, etc., *Appellant*

vs.

Melissa Alice Knowles, etc., *Appellee,*

From Baldwin *Circuit Court.*

The State of Alabama,
City and County of Montgomery,

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to fourteen *inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.*

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama,

this MAY 25 1961

J. Render Thomas

Clerk of the Supreme Court of Alabama

MELISSA ALICE KNOWLES, a minor, by her father and next friend, ALBERT H. KNOWLES,

Plaintiff,

VS.

MARION ERNIE FLEMING and CITY OF BAY MINETTE, a Municipal Corporation,

Defendants.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW NO. 3230

APPEAL BY DEFENDANTS

Now come the defendants and appeal to the Supreme Court of the State of Alabama from the final judgment rendered in this cause in and by the Circuit Court of Baldwin County, Alabama, Law Side, on, to-wit, March 11, 1958, and in which cause defendants' motion for a new trial was overruled by the trial court on, to-wit, June 27, 1958.

J. T. Blackburn

Attorney for defendants

* * * * * * * * *

SECURITY FOR COSTS

I, the undersigned, do hereby acknowledge myself as security for the costs of the appeal taken by the defendants in this cause.

J. T. Blackburn

Attorney for defendants

Taken and approved on this the 11th day of July, 1958.

Alice J. Buck

Clerk of the Circuit Court

REQUEST FOR ORAL ARGUMENT

The defendants (appellants) desire to argue this case orally on appeal.

J. T. Blackburn

Attorney for defendants

FILED

JUL 11 1958

ALICE J. BUCK, CLERK ~~REGISTER~~

MELISSA ALICE KNOWLES, a minor, by her father and next friend, ALBERT H. KNOWLES,

Plaintiff,

VS.

MARION ERNIE FLEMING and CITY OF BAY MINETTE, a Municipal Corporation,

Defendants.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW NO. 3230

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J. T. Blackburn

Attorney for defendants

* * * * * * * * *

SECURITY FOR COSTS

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J. T. Blackburn

Attorney for defendants

Taken and approved on this the 11th day of July, 1958.

Clerk of the Circuit Court

REQUEST FOR ORAL ARGUMENT

The defendants (appellants) desire to argue this case orally on appeal.

J. T. Blackburn

Attorney for defendants

FILED

JUL 11 1958

ALICE L. BUCK, CLERK

MELISSA ALICE KNOWLES, a minor, by next friend, Plaintiff, VS. MARION ERNIE FLEMING and CITY OF BAY MINETTE, a Municipal Corporation, Defendants.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW NO. 3230

CERTIFICATE

I, Alice J. Duck, as Clerk of the Circuit Court of Baldwin County, Alabama, do hereby certify as follows:

1. On June 9, 1961, The Western Casualty and Surety Company, a corporation, paid to me as Clerk of the Circuit Court of Baldwin County, Alabama, the sum of TEN THOUSAND FOUR HUNDRED TEN AND 90/100 DOLLARS ($10,410.90), which was the full amount of the judgment and court costs in this action.

2. I further certify that the defendants appealed to the Supreme Court of the State of Alabama, which affirmed the judgment of the trial court on May 25, 1961, and that no application for rehearing was filed in the said Supreme Court.

3. All liability on the appeal bond signed by the said defendants, as Principals, and by The Western Casualty and Surety Company, a corporation, as Surety, dated July 11, 1958, is now fully and finally terminated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the court on this the 14th day of June, 1961.

Alice J. Duck (SEAL)

Clerk of the Circuit Court of Baldwin County, Alabama

MELISSA ALICE KNOWLES, a minor, by her father and next friend, ALBERT H. KNOWLES, Plaintiff, vs. MARION ERNIE FLEMING and CITY OF BAY MINETTE, a Municipal Corporation, Defendants.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW. NO. 3230.

PLEA

Now come the Defendants, each separately and severally, and for plea to the complaint say:

1. Not guilty.

J. B. Blackburn
Attorney for Defendants.

Filed 3/11/58

MELISSA ALICE KNOWLES, A Minor, by her Father and next friend, ALBERT H. KNOWLES, Plaintiff,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.
VS.	)	AT LAW. NO. 3230
MARION ERNIE FLEMING and CITY OF BAY MINETTE, a Municipal Corporation, Defendants.	)	

AFFIDAVIT FOR PLAINTIFF IN CONNECTION WITH DEFENDANT'S MOTION FOR A NEW TRIAL.

Comes now the plaintiff in the above styled cause and submits the following affidavit for the plaintiff in connection with defendants' Motion for a New Trial, to-wit:

STATE OF ALABAMA,)
)
COUNTY OF BALDWIN.)

Before me, the undersigned authority in and for said State, personally appeared Telfair J. Mashburn, who is known to me, and who, being by me first duly sworn, deposes and says on oath, as follows: "My name is Telfair J. Mashburn. I am a practising attorney in Bay Minette, Alabama, and I represented the Plaintiff in the above cause during the trial of said cause. I was present in the courtroom during the entire trial of said cause, including the time during which the Court gave its oral charge to the jury and the various requested charges to the jury. The Court did not read to the jury defendants' written charge Number 2, which reads as follows:

> "2. The Court charges the jury that if you believe the evidence in this case, your verdict should be for the defendants.
>
> "Given
> "H. M. Hall, Judge"

that, despite the fact that said charge is marked "Given" by the Trial Judge, it was not actually given by said trial judge; that, under the evidence in said cause, defendants were not entitled to have said charge Number 2 given to the Jury; that a perusal of the oral charge of the Court to the Jury in said cause and the written charges given at the request of the plaintiff and defendants will show conclusively that the Trial Judge did not consider the defen-

dants to be entitled to the General Charge; that, had the Trial Judge actually given said Charge Number 2 to the Jury, it would have constituted reversible error; and that, had the Trial Judge actually permitted the jury to carry said Charge Number 2 to the Jury Room with them, it would have constituted reversible error." Further Deponent says not.

Delphin J. Maddox

Sworn to and subscribed before me on this the 8th day of May, 1958.

NOTARY PUBLIC, BALDWIN COUNTY, ALA.

And Plaintiff avers that, because of the matters and things contained in the above and foregoing Affidavit, Grounds Number 13, 14 and 15, contained in Defendants' Motion for a New Trial, separately and severally, are without merit and have no validity, and either should not be considered by this Court, or should be denied.

Delphin J. Maddox
ATTORNEY FOR PLAINTIFFS.

Filed May 8, 1958

MELISSA ALICE KNOWLES, a minor, by her father and next friend, ALBERT H. KNOWLES,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
MARION ERNIE FLEMING and CITY OF BAY MINETTE, a Municipal Corporation,	)	AT LAW NO. 3230
Defendants.	)	

DEMURRER

Now come the defendants, each separately and severally, and for demurrer to the complaint assign, separately and severally, the following:

1. It does not state a cause of action.

2. No facts are alleged on which the relief sought can be granted.

3. The allegations of the complaint are conclusions of the pleader.

4. The allegations of the complaint are conclusions of the pleader and no facts are alleged to show how or in what way the plaintiff was permanently injured.

J. B. Blackburn

Attorney for defendants.

Filed Aug. 20, 1954

MELISSA ALICE KNOWLES, a minor, by her father and next friend, ALBERT H. KNOWLES,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
MARION ERNIE FLEMING and CITY OF BAY MINETTE, a Municipal Corporation,	)	AT LAW NO. 3230
Defendants.	)	

MOTION TO STRIKE

Now come the defendants, each separately and severally, and move to strike that part of the plaintiff's complaint which reads as follows: "she will continue to be put to expenses for Doctors, hospitals and medicines in and about the treatment of her permanent injuries," and as grounds therefor assign, separately and severally, the following:

1. It is unnecessarily prolix.
2. It is frivolous.
3. It is irrelevant.
4. It is unnecessarily repeated.

J. B. Blackburn

Attorney for defendants.

Filed Aug. 20, 1957

SUMMONS AND COMPLAINT

Baldwin Times

THE STATE OF ALABAMA,

BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY

No. 3230

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

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Marion Ernie Flemming and City of Bay Minette, a Municipal Corporation

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 Marion Ernie Flemming and City of Bay Minette, a Municipal Corporation, Defendant .....

by Melissa Alice Knowles, a Minor, by her Father and next friend, Albert H. Knowles, Plaintiff.....

Witness my hand this 1st day of May 19 57

Executed May 2-1957

Alice J. Hawke, Clerk

MELISSA ALICE KNOWLES, A MINOR, by her Father and next friend, ALBERT H. KNOWLES,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.
VS.	)	AT LAW. NO. _____
MARION ERNIE FLEMING and CITY OF BAY MINETTE, A MUNICIPAL CORPORATION,	)	
Defendants.	)	

C O U N T O N E

The plaintiff, MELISSA ALICE KNOWLES, a minor, suing by her father and next friend, ALBERT H. KNOWLES, claims of the defendants TWENTY FIVE THOUSAND ($25,000.00) DOLLARS as damages for that, heretofore, on, to-wit: the 2nd day of January, 1957, at about 9:00 o'clock, A. M., at the intersection of Seventh Street and Moog Avenue, Public Highways, in the City of Bay Minette, Baldwin County, Alabama, the defendant, MARION ERNIE FLEMING, who was then and there an agent, servant, or employee of the defendant, CITY OF BAY MINETTE, A MUNICIPAL CORPORATION, acting within the line and scope of his employment as such, so negligently operated an automobile truck, belonging to the defendant, CITY OF BAY MINETTE, which he was then and there driving, as to cause an automobile in which plaintiff was a passenger and which was being operated by plaintiff's mother, BETTY RUTH KNOWLES, to run into, upon, or against said automobile truck, and as a direct and proximate consequence of the negligence of the said MARION ERNIE FLEMING, as aforesaid, the plaintiff received severe personal injuries in this, to-wit: she received a concussion of the brain, she suffered cuts and bruises in and about her head, forehead, eyes, cheek, lips, chin and neck, she was permanently scarred and disfigured; she was injured internally; she was permanently injured; she was made sick, sore and lame; she suffered and continues to suffer great mental anguish and physical pain; she was put to great expense for Doctors', hospital, nursing and medical expenses in and about the treatment of her injuries; she will continue to be put to expenses for Doctors, hospitals and medicines in and about the treatment of her permanent injuries, for all of which she claims damages as aforesaid; hence this suit.

 And plaintiff alleges that a statement of said claim was filed

with the defendant, CITY OF BAY MINETTE, A MUNICIPAL CORPORATION, WITHIN six (6) months after January 2nd, 1957, and that said City of Bay Minette has failed or refused to pay the same.

Blair A. Marlbury, Jr.
ATTORNEY FOR PLAINTIFF.

Plaintiff demands that this cause be tried by a jury.

Blair A. Marlbury, Jr.
ATTORNEY FOR PLAINTIFF.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW. NO. 3231

****

MELISSA ALICE KNOWLES, A MINOR, by her Father and next friend, ALBERT H. KNOWLES,

Plaintiff,

VS.

MARION ERNIE FLEMING and CITY OF BAY MINETTE, A MUNICIPAL CORPORATION,

Defendants.

FILED

MAY 1 1957

ALICE BUCK, Clerk

****

COMPLAINT

TELFAIR J. MASHBURN, JR.
ATTORNEY-AT-LAW
BAY MINETTE, ALABAMA

Received 1 day of May 1957
and on 2 day of May 1957
served a copy of the within S/C
on Marion Ernie Fleming,
City of Bay Minette
By service on ~~Marion Ernie Fleming~~
Rudolph Cromartie, City Clerk
TAYLOR WILKINS, Sheriff
By W. A. Tillett D. S.
Omi

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY LAWFUL OFFICER OF SAID COUNTY:

Summon BETTY RUTH KNOWLES to be and appear before Louise J. Dusenbury, Court Reporter, at the Courthouse in Bay Minette, Alabama, at 2:00 P. M. on the 5th day of September, 1957, in the case of Melissa Alice Knowles, a minor, by her father and next friend, Albert H. Knowles, Plaintiff, vs. Marion Ernie Fleming and City of Bay Minette, a Municipal Corporation, Defendants, as a witness for the Defendants, and there make return of this writ.

WITNESS my hand on this the 3rd day of September, 1957.

Alice L. Leverette
Clerk of the Circuit Court of Baldwin County, Alabama.

Executed Sep. 3, 1957

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MELISSA ALICE KNOWLES, a minor, by her father and next friend, ALBERT H. KNOWLES,	))	IN THE CIRCUIT COURT OF
Plaintiff,	))	BALDWIN COUNTY, ALABAMA
vs.	))	AT LAW. NO. 3230.
MARION ERNIE FLEMING and CITY OF BAY MINETTE, a Municipal Corporation,	))	
Defendants.	))	

NOTICE:

Pursuant to the provisions of Act No. 375 enacted by the Legislature of Alabama and approved September 8, 1955, (General Acts of Alabama, 1955 Session, Volume 2, pages 901-7), notice is hereby given that the Defendants desire to take the testimony of Betty Ruth Knowles by deposition upon oral examination for the purpose of discovery or for the use as evidence in the action or for both purposes.

Notice is further given that the said testimony will be taken in the office of Louise J. Dusenbury, Courthouse, Bay Minette, Baldwin County, Alabama, at 2:00 P. M. on September 5, 1957.

R.
Attorney for Defendants.

I hereby certify that I delivered a copy of the foregoing notice to Hon. Telfair J. Mashburn, Jr., the Attorney for the Plaintiff on this the 3rd day of September, 1957.

Filed 9-3-57
Alice J. Huck
Clerk

R.
Attorney for Defendants.

CITATION OF APPEAL — Baldwin Times - 100-5-47

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 March 11, 1958 Monday in ....., 195....., in a certain cause in said Court wherein MELISSA ALICE KNOWLES, a minor, by her father and next friend ALBERT H. KNOWLES Plaintiff, and MARION ERNIE FLEMING and CITY OF BAY MINETTE, a Municipal Corporation Defendant, a judgement was rendered against said MARION ERNIE FLEMING and CITY OF BAY MINETTE, a Municipal Corporation to reverse which judgment, the said defendants (MARION ERNIE FLEMING and CITY OF BAY MINETTE, a MUNICIPAL CORPORATIONN

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 ....., 195.....next, and the necessary bond having been given by the said Marion Ernie Fleming, CITY OF BAY MINETTE, a Municipal Corp. ~~xxxxx~~ By Sam C. Pruitt, as its Mayor, with THE WESTERN CASUALTY AND , ~~XXXXXX~~ ~~Sureties~~ SURETY COMPANY, A Corporation. by W.L. Gench, as its Secretary and J.B. Blackburn as sureties.

Now, You Are Hereby Commanded, without delay, to cite the said MELISSA ALICE KNOWLES, a minor by her father and next friend, Albert H. Knowles or Hon. Telfair J. Mashburn, Jr. ....., attorney, to appear at the next Term of our said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 12 day of July, A. D., 195 8.

Attest:

Alice J. Duck, Clerk.