

ELLA FRANCES GARDNER, in her own behalf and as mother and next friend of Larry David Gardner, Barbara Ann Gardner, Patricia Diane Gardner, Linda Gail Gardner, Donna Faye Gardner, Jimmie Curtis Gardner and Marvin Kay Gardner, her minor children, all under the age of ten years,

Plaintiff,

vs.

E. D. MIDDLETON,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

3556

Comes the Defendant in the above styled cause and demurs to the complaint filed in said cause and each and every paragraph thereof, separately and severally, and assigns the following separate and several grounds, viz:

1. The said complaint does not state a cause of action.
2. That said complaint does not allege that the Defendant, either voluntarily or by the laws of the State of Alabama, had come within the provisions of the Workmen's Compensation Laws of Alabama.
3. That the allegation in paragraph "4" that Marvin Curtis Gardner was an employee of the Defendant does not of itself sufficiently set out that the Plaintiff is entitled to Workmen's Compensation benefits.
4. That the place where the accident occurred is not sufficiently set out.
5. That the manner in which the accident occurred is not sufficiently set out.
6. That said complaint fails to allege sufficient facts to show that the Defendant is liable to Plaintiff for compensation or for burial expenses.

CHASON & STONE

By: *John Chason*

Attorneys for Defendant

Filed
June 12, 1958

ELLA FRANCES GARDNER, in her
own behalf and as mother and
next friend of Larry David
Gardner, Barbara Ann Gardner,
Patricia Diane Gardner, Linda
Gail Gardner, Donna Faye Gard-
ner, Jimmie Curtis Gardner and
Marvina Kay Gardner, her minor
children, all under the age of
ten years,

Plaintiff,

VS.

E. D. MIDDLETON,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

Comes now your Plaintiff by and through her
attorney, David R. Coley, III, and shows unto this Honorable
Court as follows:

That the above styled cause was filed in this
Honorable Court, on, to-wit, the 24th day of January,
1958; that heretofore on, to-wit, the 19th day of May,
1959 this Honorable Court entered herein an order dismissing
the complaint herein for want of prosecution upon the
failure of Plaintiff's attorney to appear and prosecute
said cause.

Plaintiff avers that the said attorney is a
practicing attorney in the City and County of Mobile,
Alabama, and was unfamiliar with the rules of procedure
of this Honorable Court whereby such a case is called
on the third Tuesday of each month without notice; that
her said attorney had assumed that he would receive
notice of the setting of the said cause and for that reason
did fail to appear before this Honorable Court on the 19th
day of May, 1959. Plaintiff further shows unto the Court
that said cause is a meritorious cause of action and
that the ends of justice will best be served by the
withdrawal of the order of dismissal entered as aforesaid
and reinstatement of said cause for a hearing on the merits.

WHEREFORE, the premises considered Petitioner
prays that an order be entered rescinding the said order

of dismissal entered as aforesaid and reinstating the
said cause upon the docket of this Honorable Court for
a trial upon the merits.



ATTORNEY FOR Plaintiff

FILED

MAY 29 1954

ALICE J. DUCK, CLERK
REGISTER

ELLA FRANCES GARDNER, in her own behalf
and as mother and next friend of Larry
David Gardner, Barbara Ann Gardner,
Patricia Diane Gardner, Linda Gail Gard-
ner, Donna Faye Gardner, Jimmie Curtis
Gardner and Marvinna Kay Gardner, her
minor children, all under the age of
ten years,

Plaintiff,

VS.

E. D. MIDDLETON,

Defendant.

IN THE
CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.

3556 -

D E C R E E:

This matter coming on to be heard, and the Plaintiff being represented by D. R. Coley, J r. and Messrs Hertz & Shelley, the Attorneys approved by this Court, and the Defendant and Hartford Accident & Indemnity Company, a Corporation, the insurer of Defendant employer being represented by John Chason, esq. and it appearing that the parties hereto are subject to the Workman's Compensation Act of Alabama as amended; that Marvin Curtis Gardner was employed by the Defendant on, to-wit, the 27th day of May, 1957; that on said date said Marvin Curtis Gardner suffered an injury while so employed by said employer and he did die on the same date as a result thereof; that said deceased employee was receiving wages at the time of his injury in an amount in excess of SEVENTY-FIVE (\$75.00) DOLLARS a week; that said deceased employee was survived by his widow, Ella Frances Gardner, the Plaintiff herein, and seven minor children, viz: Larry David Gardner, Barbara Ann Gardner, Patricia Diane Gardner, Linda Gail Gardner, Donna Faye Gardner, Jimmie Curtis Gardner and Marvinna Kay Gardner. There being a serious dispute between the parties as to whether the Plaintiff and the aforesaid minor children are entitled to recover compensation under the Laws of the

State of
Alabama due to the fact that there is some question as to the validity of the relationship stated herein; that the parties hereto have agreed upon a compromise lump sum settlement in the amount of FORTY-FOUR HUNDRED (\$4400.00) DOLLARS, WHICH said settlement includes burial expenses in the amount of TWO HUNDRED (\$200.00) DOLLARS in addition to compensation in the amount of ONE HUNDRED FORTY (\$140.00) DOLLARS heretofore paid in weekly benefits to the Plaintiff. It appears to the Court that said settlement is substantial and in accordance with the provisions of the Workman's Compensation Laws of Alabama, and in view of the circumstances of the case as stated herein, the said lump sum compromise settlement would be to the benefit of the Plaintiff herein, and should be approved.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that an award judgment be made and entered in this case in favor of the Plaintiff, Ella Frances Gardner, for the benefit of herself and the minor children of deceased: Larry David Gardner, Barbara Ann Gardner, Patricia Diane Gardner, Linda Gail Gardner, Donna Faye Gardner, Jimmie Curtis Gardner and Marvin Kay Gardner, and against the Defendant, E. D. Middleton and Hartford Accident & Indemnity Company, a Corporation, in the amount of FORTY FOUR HUNDRED (\$4400.00) DOLLARS, and that this amount shall be paid to the Clerk of the Circuit Court of Baldwin County, Alabama, for the benefit of the Plaintiff, Ella Frances Gardner, and said minor children, Larry David Gardner, Barbara Ann Gardner, Patricia Diane Gardner, Linda Gail Gardner, Donna Faye Gardner, Jimmie Curtis Gardner, and Marvin Kay Gardner.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon payment of said lump sum the defendant herein, E. D. Middleton, and his insurer, Hartford Accident & Indemnity Company, a Corporation, shall be discharged from any further liability or responsibility arising out of, or in any way connected with the injury and death of the said Marvin Curtis Gardner.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that D. R. Coley, Jr., Esq., and Messrs. Hertz & Shelley, are allowed the sum of SIX HUNDRED SIXTY (\$660.00) DOLLARS as and for their Attorneys' fees.

Done this 12th day of August, 1959.

FILED
AUG 12 1959
ALICE J. DUCK, CLERK
REGISTER

Hubert M. Steele
Judge, 28th Judicial Circuit of
Alabama.

ELLA FRANCES GARDNER, in her own)
behalf and as mother and next)
friend of Larry David Gardner,)
Barbara Ann Gardner, Patricia)
Diane Gardner, Linda Gail Gardner,)
Donna Faye Gardner, Jimmie Curtis)
Gardner and Marvinna Kay Gardner,)
her minor children, all under the)
age of ten years,)

Plaintiff,)

VS.)

E. D. MIDDLETON,)

Defendant.)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

Comes now your Petitioner, ELLA FRANCES GARDNER, in her own behalf and as mother and next friend of Larry David Gardner, Barbara Ann Gardner, Patricia Diane Gardner, Linda Gail Gardner, Donna Faye Gardner, Jimmie Curtis Gardner and Marvinna Kay Gardner, and amends the petition heretofore filed in the above cause by inserting therein and adding thereto the following paragraph numbered eight:

"8. That on, to-wit, the 27th day of May, 1957, the said MARVIN CURTIS GARDNER was an employee of the defendant, E. D. Middleton, and that the said employment was subject to and within the provisions of the Workman's Compensation Laws of Alabama."

Ella Frances Gardner
ELLA FRANCES GARDNER

STATE OF FLORIDA)
COUNTY OF ESCAMBIA)

Before me, the undersigned authority, personally appeared this day ELLA FRANCES GARDNER, whose name is signed to the foregoing amendment to the petition, and who is known to me, and who, being by me first duly sworn, deposes and says that she has read the foregoing amendment to the petition and that the statements contained therein are true to the best of her knowledge, information and belief.

Ella Frances Gardner
ELLA FRANCES GARDNER

Subscribed and sworn to before me
on this the 12th day of November, 1958.

Gloria L. Mayne
NOTARY PUBLIC, STATE OF FLORIDA AT LARGE.
MY COMMISSION EXPIRES: July 22, 1961.

Filed
Nov. 13, 1958
Alice J. Duck, Clerk

ELLA FRANCES GARDNER, in her own
behalf and as mother and next fri-
end of Larry David Gardner, Barbara
Ann Gardner, Patricia Diane Gardner,
Linda Gail Gardner, Donna Fay Gard-
ner, Jimmie Curtis Gardner and Mar-
vina Kay Gardner, her minor children,
all under the age of ten years,

Plaintiff,

vs.

E. D. MIDDLETON,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

Comes the Defendant in the above styled cause and for
answer to the Petition filed by the Plaintiff in said cause, says:

1. That he admits the allegation of paragraph "1" of
the Petition.

2. That he denies the allegation of paragraph "2" of
the Petition and demands strict proof thereof.

3. That he admits the allegation of paragraph "3" of
the Petition.

4. That he denies the allegation of paragraph "4" of
the Petition and demands strict proof thereof.

5. That he denies the allegation of paragraph "5" of
the Petition and demands strict proof thereof.

6. That he denies the allegation of paragraph "6" of
the Petition and demands strict proof thereof.

7. That he admits the allegation of paragraph "7" of
the Petition.

8. That he denies the allegation of paragraph "8" of
the Petition and demands strict proof thereof.

9. For further answer to the original Petition and the
Petition, as amended, the Defendants says that the Plaintiff who is
known in this Petition as Ella Frances Gardner is one and the same
person as Ella Francis Faircloth who married Alfred Ellis Saucier,
Jr., in Escambia County, Alabama on July 23, 1946 and that she is
the same person as Miss Frances Faircloth who went through a marri-
age ceremony with Marvin Gardner on October 6, 1951 in Harrison
County, Mississippi. That at the time she attempted to marry Marvin

Gardner, she was not divorced from Alfred Ellis Saucier, Jr., and he was still living. That the Plaintiff, Ella Frances Gardner admitted in a complaint for annulment or divorce which she filed in the Court of Record of Escambia County, Florida, on June 30, 1958, in which complaint her name appears Ella Frances Saucier, Plaintiff, vs. Alfred Ellis Saucier, Defendant, that such Defendant was, on the 30th day of June, 1958, to the best of Plaintiff's knowledge and belief, a resident of the State of California. She further admitted in such proceeding that she was legally married to the said Alfred Ellis Saucier on July 23, 1946 at Brewton, Alabama and that they lived together as husband and wife until on or about December 27, 1947 when she abandoned him in Pensacola, Florida. In such proceeding the Plaintiff attempted to have her marriage with Alfred Ellis Saucier annulled because of a statement by the said Alfred Ellis Saucier to her in December, 1947, that he was incapable of being a parent and that he had known that he was sterile when he married her. The Petition filed by Ella Frances Saucier contains her affidavits that such Petition is true to the best of her knowledge, information and belief. She caused notice of the filing of such proceeding to be sent to her husband, Alfred Ellis Saucier at his last known Post Office address in Los Angeles, California. On her sworn Petition and on notice by publication, the Court entered a final decree declaring such marriage null and void, ab initio, and of no force and effect. The proceeding filed by such Plaintiff was not instituted by her until approximately eleven years after she had abandoned her husband and was not instituted until after the death of Marvin Gardner. Such proceeding can not be recognized under the laws of the State of Alabama as sterility is not grounds for divorce or annulment in this State. By the filing of such sworn Petition the Plaintiff has admitted that she was not the legal wife of Marvin Gardner at the time of his death and that the children born to this marriage were not the legitimate children of the said Marvin Gardner. Defendant alleges that he is not liable to the Plaintiff under the Workmen's Compensation laws of the State of Alabama for any amount for the reasons set forth in this paragraph.

Filed
Nov. 19, 1958
Alice J. Duck, Clerk

Raymond Stone
Attorneys for Defendant.

ANSWER

3556

ELLA FRANCES GARDNER, ET AL.,
Plaintiff,

vs.

E. D. MIDDLETON,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

FILED

NOV 19 1958

ALICE J. DUCK, CLERK
REGISTRAR

LAW OFFICES
CHASON & STONE
BAY MINETTE, ALABAMA

ELLA FRANCES GARDNER, in her own behalf
and as mother and next friend of Larry
David Gardner, Barbara Ann Gardner,
Patricia Diane Gardner, Linda Gail Gard-
ner, Donna Faye Gardner, Jimmie Curtis
Gardner and Marvin Kay Gardner, her
minor children, all under the age of
ten years,

Plaintiff,

vs.

E. D. MIDDLETON,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

COMES now your Petitioner, ELLA FRANCES GARDNER,
in her own behalf and as mother and next friend of Larry David
Gardner, Barbara Ann Gardner, Patricia Diane Gardner, Linda Gail
Gardner, Donna Faye Gardner, Jimmie Curtis Gardner and Marvin Kay
Gardner, her minor children all under the age of ten years, and
represents unto the Court as follows:

1: That she is a resident of Escambia County,
Florida, and is over the age of twenty-one years.

2: That she is the surviving widow of Marvin
Curtis Gardner, deceased, and the mother of the minor children
named herein; that Marvin Curtis Gardner was the father of her
said children and that she and her said children were wholly
dependent upon the said Marvin Curtis Gardner.

3: That the said E. D. Middleton is a resident
of Baldwin County, Alabama.

4: That on, to-wit, the 27th day of May, 1957,
the said Marvin Curtis Gardner was an employee of the Defendant,
employed in Baldwin County, Alabama, and while engaged in the
line and scope of his employment and in the performance of his
duty thereunder, suffered an accident arising out of and in the
course of his employment in that, to-wit, while operating a truck,
the property of the Defendant, and in the line and scope of
his duty as an employee of the Defendant, as aforesaid, at a
point on U. S. Highway 51 at or near Eden in LaSalle County,
Illinois, said truck went out of control, left said highway and
ran into or against a post; that in said accident the said Marvin
Curtis Gardner was so bruised, crushed and hurt that he died

on said date.

5: Petitioner avers that the Defendant had immediate actual notice of said accident and that the Defendant subsequently paid to her compensation at the rate of \$28.00 per week for a period of three weeks for the benefit of herself and her minor children, but that thereafter the said Defendant has failed and refused to pay her any compensation and has refused to pay any part of the burial expenses of the said Marvin Curtis Gardner.

6: Petitioner further avers that at the time of the injuries sustained by the said Marvin Curtis Gardner and of his death, his average weekly earnings were, to-wit, in excess of \$75.00 per week, and that at said time he was married to your Petitioner, the father of her children as hereinabove set forth; that she and the said Marvin Curtis Gardner were living together as husband and wife and that she and said children were wholly dependent upon him for support.

7: That a dispute has arisen between the Defendant and your Petitioner as to whether she is entitled to compensation under the Workmen's Compensation Laws of the State of Alabama, and the amount thereof.

WHEREFORE, THE PREMISES CONSIDERED, Your Petitioner prays that the Court will take jurisdiction of this cause and will proceed to hear and determine the same, and upon the hearing, the Court will determine and decree what compensation she is entitled to receive for the benefit of herself and her minor children for the death of the said Marvin Curtis Gardner as aforesaid.

ELLA FRANCES GARDNER
PETITIONER.

STATE OF FLORIDA:

COUNTY OF ESCAMBIA:

Before me, the undersigned authority, personally appeared this day ELLA FRANCES GARDNER, whose name is signed to the foregoing petition, and who is known to me, and who, being by me first duly sworn, deposes and says that she has read the foregoing petition and that the statements contained therein are true to the best of her knowledge, information and belief.

Subscribed and sworn to before
me on this the 23rd day of May, 1958.

Glenn F. Mayne - my Commission Expires July 22, 1961
NOTARY PUBLIC, ESCAMBIA COUNTY, FLORIDA.

on said date.

5: Petitioner avers that the Defendant had immediate actual notice of said accident and that the Defendant subsequently paid to her compensation at the rate of \$28.00 per week for a period of three weeks for the benefit of herself and her minor children, but that thereafter the said Defendant has failed and refused to pay her any compensation and has refused to pay any part of the burial expenses of the said Marvin Curtis Gardner.

6: Petitioner further avers that at the time of the injuries sustained by the said Marvin Curtis Gardner and of his death, his average weekly earnings were, to-wit, in excess of \$75.00 per week, and that at said time he was married to your Petitioner, the father of her children as hereinabove set forth; that she and the said Marvin Curtis Gardner were living together as husband and wife and that she and said children were wholly dependent upon him for support.

7: That a dispute has arisen between the Defendant and your Petitioner as to whether she is entitled to compensation under the Workmen's Compensation Laws of the State of Alabama, and the amount thereof.

WHEREFORE, THE PREMISES CONSIDERED, Your Petitioner prays that the Court will take jurisdiction of this cause and will proceed to hear and determine the same, and upon the hearing, the Court will determine and decree what compensation she is entitled to receive for the benefit of herself and her minor children for the death of the said Marvin Curtis Gardner as aforesaid.

ELLA FRANCES GARDNER
PETITIONER.

STATE OF FLORIDA:

COUNTY OF ESCAMBIA:

Before me, the undersigned authority, personally appeared this day ELLA FRANCES GARDNER, whose name is signed to the foregoing petition, and who is known to me, and who, being by me first duly sworn, deposes and says that she has read the foregoing petition and that the statements contained therein are true to the best of her knowledge, information and belief.

Subscribed and sworn to before
me on this the 23rd day of May, 1958.

Glenn F. Mayne
NOTARY PUBLIC, ESCAMBIA COUNTY, FLORIDA.

ELLA FRANCES GARDNER, in her own behalf
and as mother and next friend of Larry
David Gardner, Barbara Ann Gardner,
Patricia Diane Gardner, Linda Gail Gard-
ner, Donna Faye Gardner, Jimmie Curtis
Gardner and Marvin Kay Gardner, her
minor children, all under the age of
ten years,

Plaintiff,

vs.

E. D. MIDDLETON,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

COMES now the Plaintiff, in her own behalf and as
mother and next friend of Larry David Gardner, Barbara Ann Gardner,
Patricia Diane Gardner, Linda Gail Gardner, Donna Faye Gardner,
Jimmie Curtis Gardner and Marvin Kay Gardner, her minor children,
all under the age of ten years, and represents unto the Court
that on, to-wit, the 27th day of May, 1957, Marvin Curtis Gardner,
an employee of the Defendant, and who was at that time her husband
and the father of her said children, while acting within the
line and scope of his employment for the said Defendant, sustained
personal injuries as a result of an accident suffered while in
the course of his employment in the Defendant's service, as a
consequence of which he died on said date.

That she desires to prosecute her claim against the
Defendant for compensation under the Workmen's Compensation Law
of the State of Alabama, and in connection therewith desires to
be presented herein by counsel.

WHEREFORE, THE PREMISES CONSIDERED, she prays that an
order be made appointing D. R. Coley, Jr. of Mobile, Alabama, and
Messrs. Hertz & Shelley of Pensacola, Florida, Attorneys at Law,
to represent her in all matters and things in and about the prose-
cution, settlement or adjustment of her claim for compensation.

Ella Frances Gardner

Subscribed and sworn to before me
on this the 23rd day of May, 1958.

Blair J. Wayne - My Commission Expires July 22, 1961
NOTARY PUBLIC, ESCAMBIA COUNTY, FLORIDA.

The above petition having been duly presented to
the Court, and the Court having been advised in the premises,

and it appearing to the Court that reason exists therefor, IT
IS HEREBY ORDERED, ADJUDGED and DECREED that the foregoing petition
be and the same is hereby granted, and that D. R. COLEY, JR. and
MESSRS. HERTZ & SHELLEY are hereby appointed as Attorneys for
Ella Frances Gardner, in her own behalf and as mother and next
friend of Larry David Gardner, Barbara Ann Gardner, Patricia
Diane Gardner, Linda Gail Gardner, Donna Faye Gardner, Jimmie Curtis
Gardner and Marvin^{Kay}ina/Gardner, minors under the age of ten years,
in all matters and things in and about the prosecution, settlement
or adjustment of her said claim for compensation.

DONE at Bay Minette, Alabama, this the 24 day
of May, 1958.



Judge of the Circuit Court of Baldwin
County, Alabama.

SUMMONS AND COMPLAINT

Moore Ptg. Co.

The State of Alabama, }

Baldwin County.

Circuit Court, Baldwin County

No. 3556

TERM, 19

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon E.D. Middleton

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

E.D. Middleton

, Defendant

by ~~XX~~ Ella Frances Gardner et als

, Plaintiff

Witness my hand this 24 day of May 1958

Oliver J. Luck, Clerk

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