

CLARENCE M. UNDERWOOD,
Plaintiff,

vs.

GERARD VERN LIPSCOMB, also
known as GERARD V. LIPSCOMB,
and GEORGE LIPSCOMB,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW No. 3994

DECREE OVERRULING DEMURRERS

This cause coming on to be heard was submitted to the Court on the demurrers of each of the Defendants to the Bill of Complaint; and the Court having considered the same is of the opinion that said demurrers of the Defendant GERARD V. LIPSCOMB, to Counts 1 and 2 should be overruled and that the demurrers of GERARD V. LIPSCOMB to Count 3 should be sustained and that the demurrers of GEORGE LIPSCOMB to Counts 1, 2, and 3 should be sustained.

It is therefore ORDERED, ADJUDGED and DECREED by the Circuit Court of Baldwin County, Alabama at Law that the demurrers of GERARD V. LIPSCOMB to Counts 1 and 2 are overruled and the demurrers of GERARD V. LIPSCOMB to Count 3 and the demurrers of GEORGE LIPSCOMB to Counts 1, 2, and 3 are sustained, leaving the Complaint with Counts 1 and 2 held good as to GERARD V. LIPSCOMB.

It is further ORDERED, ADJUDGED and DECREED by the Circuit Court of Baldwin County, Alabama at Law that the Defendant shall have 20 days to file answers to said Counts 1 and 2 for GERARD V. LIPSCOMB and that the Plaintiff has 30 days to amend the Complaint as against GEORGE LIPSCOMB.

Done this the 16 Day of February, 1960.


CIRCUIT JUDGE

CLARENCE M. UNDERWOOD,	I	
Plaintiff,	I	IN THE CIRCUIT COURT OF
- VS -	I	BALDWIN COUNTY, ALABAMA,
GERARD VERN LIPSCOMB, also	I	AT LAW. NO. _____
known as GERARD V. LIPSCOMB,	I	
and GEORGE LIPSCOMB,	I	
Defendants.	I	

DEMURRERS OF DEFENDANT, GEORGE LIPSCOMB

Comes the Defendant, GEORGE LIPSCOMB, and for answer to the Plaintiff's Complaint, offers the following separate and several demurrers:

ONE. To Counts One, Two and Three:

(a). Because said counts do not charge the Defendant, GEORGE LIPSCOMB, with any wrongful acts;

(b) Because said counts fail to show that the wrongs complained of were the proximate result of any acts of this defendant.

TWO. As to Count Three, the Defendant, GEORGE LIPSCOMB, offers the following demurrers:

(a) Said Count does not show that the Defendant, GEORGE LIPSCOMB knew that the defendant, GERARD V. LIPSCOMB, wantonly or wrongfully operated an automobile;

(b) Said Count does not show that the defendant, GERARD V. LIPSCOMB, was a servant or agent of this Defendant, or that he was known to drive the automobile in the manner it is alleged that this accident took place;

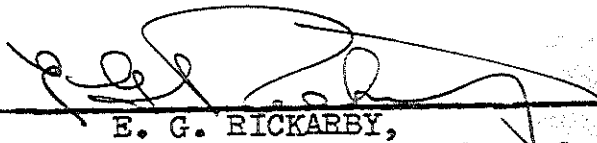
(c) Because said Count alleges that the accident was the proximate result of the wantonness of the driver and seeks to hold the owner who is not alleged to have knowledge of such wantonness;

(d) Because said Complaint seeks to join in one and the same count an action for simple negligence against this Defendant and an action for wanton negligence against the defendant, GERARD V. LIPSCOMB;

(e) For aught it appears in said Count the Plaintiff's son was a guest, being then and there transported without payment therefor, in or upon a vehicle owned by this Defendant;

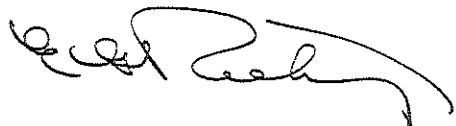
(f) Because said Count contains no allegation that the allowing of GERARD V. LIPSCOMB to drive said automobile was negligent, wanton or wilful;

(g) Because it is not shown that the careless, indifferent, heedless, reckless and incompetent driving caused the accident or death complained of.


E. G. RICKABY,
Attorney for said Defendants.

*I certify that a copy of this
demurrer is being this day mailed
to Mr J B Blackburn Attorney
for the Plaintiff in this cause*

*Filed
11-3-59*



CLARENCE M. UNDERWOOD,	)	IN THE CIRCUIT COURT OF
Plaintiff,)	
vs.	)	BALDWIN COUNTY, ALABAMA
GERALD VERN LIPSCOMB, also	)	AT LAW. NO. <u>3994</u> .
known as GERALD V. LIPSCOMB,)	
Defendant.)	

ORDER APPOINTING GUARDIAN AD LITEM:

In this cause it has been made to appear to the Court that the Defendant is a minor over fourteen years of age; that he has not nominated any person to represent him as guardian ad litem in this cause and it being necessary that the Defendant be represented in this cause by a guardian ad litem, it is, therefore, ORDERED that E. G. Rickarby, an Attorney at Law, practicing in Baldwin County, Alabama, and who has up to this time appeared as Attorney for the Defendant in this cause, be and he is hereby appointed as guardian ad litem to represent the said Defendant in this cause and to protect his interest herein.

DONE on this the 17th day of March, 1960.

Hubert M. Hill

Judge.

3-17-60.

*I accept service and appointment
and agree to act
E. G. Rickarby
Attorney*

172
ORDER APPOINTING GUARDIAN AD
LITEM

CLARENCE M. UNDERWOOD,

Plaintiff,

vs.

GERALD VERN LIPSCOMB, also
known as GERALD V. LIPSCOMB,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW.

NO. 3994

CLARENCE M. UNDERWOOD,

Plaintiff,

-VS-

GERARD VERN LIPSCOMB, also
known as GERARD V. LIPSCOMB,
and GEORGE LIPSCOMB,

Defendants.

I

I

I

I

I

I

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

DEMURRERS OF GERARD V. LIPSCOMB

ONE

Comes the Defendant, GERARD V. LIPSCOMB, and offers the following separate and several demurrers to the Plaintiff's Complaint, and Counts One, Two and Three:

(a) Because said counts fail to show wherein this Defendant is liable to the Plaintiff.

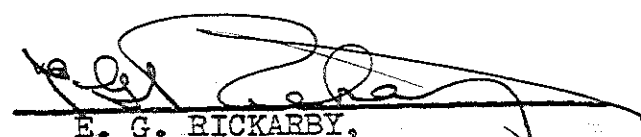
TWO

The Defendant offers the following demurrers to Count Three, namely:

(a) Said Plaintiff seeks to join in one and the same count an action for simple negligence against the Defendant, George Lipscomb and an action for wanton negligence against this Defendant;

(b) Because the measure of damages against the Defendant is not the same but is measured by culpability of the two wrongful acts, one, attributed to one defendant, and the second, to the other defendant.

(c) For aught that appears the Plaintiff's son was a guest being then and there transported without payment therefor in an automobile driven by this Defendant.


E. G. RICKABY,
Attorney for said Defendants.

FILED

NOV 31 1939

CLERK OF COURT

I certify that a copy of this demurrer is this day being mailed to Mr. J. B. Blackburn Attorney for Plaintiff in this cause 1 November 1939 E. G. Rickaby

E. G. RICKARBY

392 FAIRHOPE AVENUE
FAIRHOPE, ALABAMA

March 8, 1960

Mrs. Alice J. Duck
Clerk of Circuit Court
Bay Minette, Alabama

Dear Mrs. Duck:

Re: Underwood
Vs: Lipscomb
File: 4921

Enclosed find Pleas in case of Underwood
vs. Lipscomb. Please process and oblige.

Yours very truly,



EGR/bs
cc: J. B. Blackburn

BALDWIN COUNTY)

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon GERARD VERN LIPSCOMB, also known as GERARD V. LIPSCOMB, and GEORGE LIPSCOMB to appear within thirty days from the service of this writ in the Circuit Court to be held for said county at the place of holding same, then and there to answer the complaint of CLARENCE M. UNDERWOOD.

WITNESS my hand this 2 day of October, 1959.

Clerk of the Circuit Court

The defendants live near
Foley, Alabama.

CLARENCE M. UNDERWOOD,)	
	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
VS.)	
	)	AT LAW NO. _____
GERARD VERN LIPSCOMB, also)	
known as GERARD V. LIPSCOMB,)	
and GEORGE LIPSCOMB,)	
Defendants.)	

COMPLAINT

COUNT ONE

The plaintiff claims of the defendant, Gerard Vern Lipscomb, also known as Gerard V. Lipscomb, the sum of Twenty-five Thousand Dollars (\$25,000.00) as damages for that on, to-wit, October 5, 1958, the said defendant wantonly killed Leon Underwood, the minor child of the plaintiff, by so wantonly operating an automobile along and upon Baldwin County Highway No. 8 at a point approximately one quarter of a mile southwest of Taylor's Store at Bon Secour in Baldwin County, Alabama, as to cause the said automobile to leave the traveled portion of the said highway, run into a ditch and turn over several times, as a proximate result of which wantonness the plaintiff's said minor child, who was then and there riding in the said automobile being driven by the said defendant, was killed; wherefore, plaintiff brings this action and asks judgment in the above sum.

COUNT TWO

The plaintiff claims of the defendant, Gerard Vern Lipscomb, also known as Gerard V. Lipscomb, Twenty-five Thousand Dollars (\$25,000.00) as damages for that heretofore on, to-wit, the 5th day of October, 1958, the said defendant wantonly killed Leon Underwood, who was at said time the minor son of the plaintiff and a member of the plaintiff's family, by so wantonly operating an automobile along and upon Baldwin County Highway No. 8 at a point approximately one quarter of a mile southwest of Taylor's Store at Bon Secour in Baldwin County, Alabama, as to cause the said automobile to leave the traveled portion of the said highway,

run into a ditch and turn over several times, as a proximate result of which wantonness the plaintiff's said minor child, who was then and there riding in the said automobile being driven by the said defendant, was killed; wherefore, plaintiff brings this action and asks judgment in the above sum.

COUNT THREE

The plaintiff claims of the defendants, George Lipscomb and Gerard Vern Lipscomb, also known as Gerard V. Lipscomb, Twenty-five Thousand Dollars (\$25,000.00) as damages for that on, to-wit, October 5, 1958, the defendant, Gerard Vern Lipscomb, also known as Gerard V. Lipscomb, was operating an automobile which belonged to the defendant, George Lipscomb. The said Gerard Vern Lipscomb, also known as Gerard V. Lipscomb, was on, to-wit, the 5th day of October, 1958, and long prior thereto, a careless, indifferent, heedless, reckless and incompetent driver, which facts were known to the defendant, George Lipscomb; yet, with information of such facts, he allowed the said Gerard Vern Lipscomb, also known as Gerard V. Lipscomb, to drive the said automobile along and over the public highways of Baldwin County, Alabama, at will and entrusted its management and operation to him. On the day and date aforesaid the defendant, Gerard Vern Lipscomb, also known as Gerard V. Lipscomb, wrongfully and wantonly killed Leon Underwood, who was at said time the minor son of plaintiff and a member of plaintiff's family, by so wantonly operating the said automobile along and upon Baldwin County Highway No. 8 at a point approximately one quarter of a mile southwest of Taylor's Store at Bon Secour in Baldwin County, Alabama, as to cause the said automobile to leave the traveled portion of the said highway, run into a ditch and turn over several times, as a proximate result of which wantonness the plaintiff's said minor child, who was then and there riding in the said automobile being driven by the said defendant, was killed; wherefore, plaintiff brings this action and asks judgment

in the above sum.

J. B. Blackburn
Attorney for plaintiff

Plaintiff demands a trial of said
cause by jury.

J. B. Blackburn
Attorney for plaintiff

STATE OF ALABAMA)
 *
BALDWIN COUNTY)

TO GERARD VERN LIPSCOMB, ALSO KNOWN AS GERARD V. LIPSCOMB, AND
GEORGE LIPSCOMB, DEFENDANTS:

*ad
d
d*

You are hereby notified that the plaintiff, pursuant to
the provisions of Act 375, enacted by the 1955 Legislature of
Alabama (Title 7, Section 474(1), 474(18), 1940 Code of Alabama,
as amended), desires to and will take the testimony of each of
you at the courthouse at Bay Minette, Alabama, at 9:30 o'clock
A. M. on the 4th day of November, 1959, before Louise Dusenbury,
a Notary Public and Court Reporter of the Twenty-eighth Judicial
Circuit of Alabama.

You are hereby notified to be present at the time and
place aforesaid.

Dated this 2nd day of October, 1959.

*Y
Z*

*REC-3
OCT 3 1959
VIRGIL MCKINNEY
CLERK*

J. B. Blackburn
Attorney for plaintiff

RECORDED FOR DISTRICT
113-13
FILED
OCT 2 1939
ALICE J. DUCK, CLERK
REGISTER

Dated this 2nd day of October, 1939.
Place shored.

You are hereby notified to be present at
Court of Wapawa
a Notary Public and Court Reporter of the Twenty-ninth Judicial
N. W. on the 4th day of November, 1939, before Justice Dunsenbury,
you at the courthouse at Bay Winnetto, Wapawa, at 9:30 o'clock
as amended, a desire to and will take the testimony of each of
Wapawa (Title 3, Section 114(1), 114(18), 1940 Code of Wapawa,
the provisions of not 312, enacted by the 1932 Legislature of

You are hereby notified that the Plaintiff, Dunsenbury, to
George Tibbonds, Defendant;
to George Allen Tibbonds, also known as George A. Tibbonds, and
Bridgeth Corns)
State of Wapawa) *

2994

CLARENCE M. UNDERWOOD,

Plaintiff,

- vs -

GERARD VERN LIPSCOMB, also
known as GERARD V. LIPSCOMB,
and GEORGE LIPSCOMB,

Defendants.

§

§

§

§

§

§

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
AT LAW.

Case Number: 2994

P L E A S

Comes the defendant in the above styled cause and offers the following pleas to the plaintiff's complaint and to Counts One and Two thereof, separately and severally:

ONE

To Count One, the defendant says he is not guilty.

TWO.

The defendant for answer to said complaint saith that he is not guilty of the matters alleged therein.

THREE.

The plaintiff aught not to recover for that the plaintiff's son, Leon Underwood, the deceased, assumed the risk of the injuries which he received in that:

The deceased met the defendant, GERARD V. LIPSCOMB, in the Town of Foley, Alabama, on the night in which he was killed, and took what is commonly called a joy-ride, driving at a high rate of speed for the pleasure and thrill derived from said travel, well-knowing that in pursuance of said joy-ride, the defendant would drive said car at a high rate of speed, that is, over the legal speed of fifty miles an hour for driving at night, and might lose control of said vehicle as is alleged to have happened in the plaintiff's complaint;


The defendant avers that the deceased with knowledge that he was about to go joy-riding as here and above set forth, and that for this reason the driving of the car was dangerous, did willfully and voluntarily ride in said car under such conditions with this knowledge thereby assumed the risk of the injuries which he received.

Re: Underwood vs. Lipscomb

FOUR

The plaintiff should not recover, for the deceased, his son, of his own will joined the defendant on the night of the accident in Foley, Alabama, and entered the automobile driven by the defendant for the purpose of going joy-riding, a joint venture, and stayed in said car without protesting while it was driven in the manner in which the plaintiff alleges was wanton, said joy-ride being a joint enterprise.

Filed
3-9-60



E. G. RICKARBY,
Attorney for the Defendant.

CLARENCE M. UNDERWOOD,)	
	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
VS.)	
	)	AT LAW
GERARD VERN LIPSCOMB,	)	NO. 2994
also known as GERARD V.)	
LIPSCOMB,)	
)	
Defendant.)	

DEMURRER TO PLEAS

Now comes the plaintiff and demurs to the defendant's Pleas 3 and 4, each separately and severally, and as grounds of such demurrer assigns, separately and severally, the following:

1. The facts alleged in the plea do not constitute a defense to the plaintiff's complaint.
2. The facts alleged in the plea do not constitute a defense to the complaint and raise an immaterial issue.
3. The plea is an effort on the part of the defendant to plead contributory negligence as a defense to a willful and wanton count.

Filed
2-16-60

J. T. B. Blackburn
Attorney for plaintiff

DEMURRER TO PLEAS

CLARENCE M. UNDERWOOD,

Plaintiff,

VS.

GERARD VERN LIPSCOMB, also known
as GERARD V. LIPSCOMB,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 2994

*Filed 3-16-60
Alice French
Clerk*

STATE OF ALABAMA)
*
BALDWIN COUNTY)

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon GERARD VERN LIPSCOMB, also known as GERARD V. LIPSCOMB, and GEORGE LIPSCOMB to appear within thirty days from the service of this writ in the Circuit Court to be held for said county at the place of holding same, then and there to answer the complaint of CLARENCE M. UNDERWOOD.

WITNESS my hand this 2 day of October, 1959.

Alice J. Duck

Clerk of the Circuit Court

The defendants live near
Foley, Alabama.

FILED

OCT 2 1959

ALICE J. DUCK, CLERK
REGISTER

CLARENCE M. UNDERWOOD,)		
	)	Plaintiff,)
VS.))
))
GERARD VERN LIPSCOMB, also	)	AT LAW	NO. <u>3994</u>
known as GERARD V. LIPSCOMB,)		
and GEORGE LIPSCOMB,)		
)		
Defendants.)		

COMPLAINT

COUNT ONE

The plaintiff claims of the defendant, Gerard Vern Lipscomb, also known as Gerard V. Lipscomb, the sum of Twenty-five Thousand Dollars (\$25,000.00) as damages for that on, to-wit, October 5, 1958, the said defendant wantonly killed Leon Underwood, the minor child of the plaintiff, by so wantonly operating an automobile along and upon Baldwin County Highway No. 8 at a point approximately one quarter of a mile southwest of Taylor's Store at Bon Secour in Baldwin County, Alabama, as to cause the said automobile to leave the traveled portion of the said highway, run into a ditch and turn over several times, as a proximate result of which wantonness the plaintiff's said minor child, who was then and there riding in the said automobile being driven by the said defendant, was killed; wherefore, plaintiff brings this action and asks judgment in the above sum.

COUNT TWO

The plaintiff claims of the defendant, Gerard Vern Lipscomb, also known as Gerard V. Lipscomb, Twenty-five Thousand Dollars (\$25,000.00) as damages for that heretofore on, to-wit, the 5th day of October, 1958, the said defendant wantonly killed Leon Underwood, who was at said time the minor son of the plaintiff and a member of the plaintiff's family, by so wantonly operating an automobile along and upon Baldwin County Highway No. 8 at a point approximately one quarter of a mile southwest of Taylor's Store at Bon Secour in Baldwin County, Alabama, as to cause the said automobile to leave the traveled portion of the said highway,

run into a ditch and turn over several times, as a proximate result of which wantonness the plaintiff's said minor child, who was then and there riding in the said automobile being driven by the said defendant, was killed; wherefore, plaintiff brings this action and asks judgment in the above sum.

COUNT THREE

The plaintiff claims of the defendants, George Lipscomb and Gerard Vern Lipscomb, also known as Gerard V. Lipscomb, Twenty-five Thousand Dollars (\$25,000.00) as damages for that on, to-wit, October 5, 1958, the defendant, Gerard Vern Lipscomb, also known as Gerard V. Lipscomb, was operating an automobile which belonged to the defendant, George Lipscomb. The said Gerard Vern Lipscomb, also known as Gerard V. Lipscomb, was on, to-wit, the 5th day of October, 1958, and long prior thereto, a careless, indifferent, heedless, reckless and incompetent driver, which facts were known to the defendant, George Lipscomb; yet, with information of such facts, he allowed the said Gerard Vern Lipscomb, also known as Gerard V. Lipscomb, to drive the said automobile along and over the public highways of Baldwin County, Alabama, at will and entrusted its management and operation to him. On the day and date aforesaid the defendant, Gerard Vern Lipscomb, also known as Gerard V. Lipscomb, wrongfully and wantonly killed Leon Underwood, who was at said time the minor son of plaintiff and a member of plaintiff's family, by so wantonly operating the said automobile along and upon Baldwin County Highway No. 8 at a point approximately one quarter of a mile southwest of Taylor's Store at Bon Secour in Baldwin County, Alabama, as to cause the said automobile to leave the traveled portion of the said highway, run into a ditch and turn over several times, as a proximate result of which wantonness the plaintiff's said minor child, who was then and there riding in the said automobile being driven by the said defendant, was killed; wherefore, plaintiff brings this action and asks judgment

in the above sum.

J. B. Blackburn
Attorney for plaintiff

Plaintiff demands a trial of said
cause by jury.

J. B. Blackburn
Attorney for plaintiff

STATE OF ALABAMA)
 *
BALDWIN COUNTY)

TO GERARD VERN LIPSCOMB, ALSO KNOWN AS GERARD V. LIPSCOMB, AND
GEORGE LIPSCOMB, DEFENDANTS:

You are hereby notified that the plaintiff, pursuant to
the provisions of Act 375, enacted by the 1955 Legislature of
Alabama (Title 7, Section 474(1), 474(18), 1940 Code of Alabama,
as amended), desires to and will take the testimony of each of
you at the courthouse at Bay Minette, Alabama, at 9:30 o'clock
A. M. on the 4th day of November, 1959, before Louise Dusenbury,
a Notary Public and Court Reporter of the Twenty-eighth Judicial
Circuit of Alabama.

You are hereby notified to be present at the time and
place aforesaid.

Dated this 2nd day of October, 1959.

J. B. Blackburn
Attorney for plaintiff

July

SUMMONS AND COMPLAINT

Received 2 day of Oct 1959
and 6 day of Oct 1959
I solemnly swear that the within is true
for Gerard V. Lipscomb, N.F. George Lipscomb, and
George Lipscomb, Jr. as George Lipscomb, Jr.
By service on

CLARENCE M. UNDERWOOD,

Plaintiff,

VS.

GERARD VERN LIPSCOMB, also known
as GERARD V. LIPSCOMB, and
GEORGE LIPSCOMB,

Defendants.

TAYLOR WILKINS, Sheriff
By Orville R. Underwood, S.
Magnolia Springs

Sheriff claims 84 miles of
Ten Cents per mile TOL C
TAYLOR WILKINS, Sheriff
BY [Signature] DEPUTY SHERIFF

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 3994

FILED

OCT 2 1959

ALICE J. DUCK, CLERK
REGISTER

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