

ELI BAKER,

Plaintiff,

vs.

KATHERINE WILLIAMS,

Defendant.

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 4128

Comes now the Defendant in the above styled cause, by her attorneys, and demurs to the complaint heretofore filed against her and to each count thereof, separately and severally, and assigns the following separate and several grounds in support thereof:

1. The Complaint fails to state a cause of action.
2. "COUNT ONE" of the Complaint fails to state a cause of action.
3. "COUNT TWO" of the Complaint fails to state a cause of action.
4. "COUNT THREE" of the Complaint fails to state a cause of action.
5. The allegations of "COUNT ONE" of the Complaint are vague, indefinite and uncertain.
6. The allegations of "COUNT ONE" of the Complaint fail to allege that the death of the Plaintiff's minor child was the proximate consequence or result of any negligence on the part of the Defendant.
7. It affirmatively appears from the allegations of "COUNT ONE" that the death of the Plaintiff's child was the proximate consequence of said child attempting to cross a public highway and was not the result of any negligence on the part of this Defendant.
8. "COUNT ONE" of the complaint fails to allege any facts showing any negligence on the part of this Defendant.
9. "COUNT TWO" of the Complaint fails to allege that the Plaintiff is suing as the father of Cynthia Baker.
10. "COUNT TWO" of the Complaint seeks to recover damages for the wrongful death of a minor child but said count does not declare upon any cause of action recognizable in this State.
11. The allegations of "COUNT TWO" of the Complaint fail to

allege any duty owing from the Defendant to the said Cynthia Baker, or a breach of that duty proximately resulting in her death.

12. "COUNT TWO" fails to allege any facts which would constitute negligence on the part of this Defendant.

13. For aught that appears from the allegations of "COUNT TWO" of the Complaint that the Plaintiff's minor child was not in or on the highway on which this Defendant was allegedly traveling at the time and place complained of.

14. The allegations of "COUNT THREE" of the Complaint are vague and indefinite and uncertain.

15. The allegations of "COUNT THREE" of the Complaint are repugnant.

16. The allegations of "COUNT THREE" of the Complaint are inconsistent.

17. The allegations of "COUNT THREE" of the Complaint fail to allege a duty owing from the Defendant to the minor child of the Plaintiff and a breach of that duty proximately resulting in the injuries complained of.

18. The allegations of "COUNT THREE" of the Complaint fail to show any causal connection between the several acts complained of and the death of the Plaintiff's minor child.

19. There is a misjoinder of causes of action in "COUNT THREE" of the Complaint.

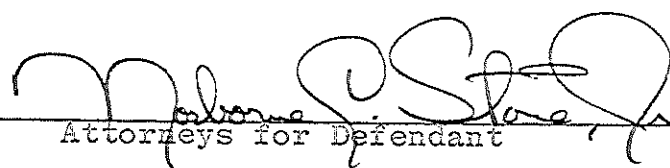
CHASON & STONE

FILED

Feb 12, 1960

ALICE J. DICK, CLERK  
REGISTER

By:

  
Attorneys for Defendant

ELI BAKER,

Plaintiff,

vs.

KATHERINE WILLIAMS,

Defendant

\* \* \* \* \*

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 4128

\* \* \* \* \*

DEMURRER

\* \* \* \* \*

LAW OFFICES

**CHASON & STONE**

BAY MINETTE, ALABAMA

AMENDMENT TO ORIGINAL BILL

ELI BAKER, ( ) IN THE CIRCUIT COURT OF  
PLAINTIFF, ( ) BALDWIN COUNTY, ALABAMA  
VS. ( ) AT LAW  
KATHERINE WILLIAMS, ( )  
DEFENDANT. ( ) NO: 4128

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT OF BALDWIN COUNTY,  
ALABAMA, AT LAW:

Now comes the plaintiff and by his attorney and by leave of the Court first had and obtained amends the complaint hereto fore filed in the above stated cause and adds thereto the following count, to-wit:

The plaintiff as father of Cynthia Baker, who was 5 years of age at the time of her death and a minor, claims of the defendant the sum of Twenty-five Thousand (\$25,000.00) Dollars, for that on, to-wit, the 24th day of September, 1959, the said minor child, while a pedestrian on the Belforest Highway near Main Street, in the City of Daphne, County of Baldwin, State of Alabama, the defendant did then and there so negligently operated her automobile on said highway, a public highway in the City of Daphne, County of Baldwin, State of Alabama, so as to cause the said automobile to collide with, and kill, Cynthia, as aforesaid, who was then and there a pedestrian on said highway. That the deceased injury and death were directly and proximately caused by the negligence of the defendant in the following respects, to-wit:

1. That defendant drove her automobile at the above stated time and place without due caution and circumspection and at a speed so as to endanger , or was likely to endanger the person or property of another, and in fact did cause injury and the death of the said Cynthia Baker.

2. that the defendant exceeded the 15 mile per hour speed restriction while passing a school where Cynthia Baker and other children were going to school during the opening hours

thereby causing and death of the said Cynthia Baker.

3. That the defendant failed to exercise due care to avoid colliding with the said Cynthia Baker who was a pedestrain upon the above roadway by failing to warn the said Cynthia Baker by sounding her horn, which was necessary in the exercise of proper precaution upon her observing the said child upon the roadway.

4. That the defendant failed to exercise her duty to render the the said Cynthia Baker, who was injured in said accident, reasonable assistance, including carrying said injured child to a physicial or surgeon for medical or surgical care and treatment when it was apparent that such treatment was necessary at the time of the accident.

All of which were the proximate consequences of the death and injury of plaintiff's minor child, hence this suit.

FILED

Aug 15 1960

ALICE J. DUCK, CLERK  
REGISTER

Clarence E. Moore

Attorney for Plaintiff

SUMMONS AND COMPLAINT

Moore Ptg. Co.

The State of Alabama, }

Baldwin County.

Circuit Court, Baldwin County

No.-----

-----TERM, 19----

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Katherine Williams

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-----

Katherine Williams

-----, Defendant-----

by Eli Baker

-----, Plaintiff-----

Witness my hand this 11-th day of January 19 60

W. J. Smith, Clerk

No. \_\_\_\_\_ Page \_\_\_\_\_

The State of Alabama

Baldwin County

CIRCUIT COURT

Plaintiffs

vs.

Defendants

Summons and Complaint

Filed \_\_\_\_\_ 19\_\_\_\_

Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Received In Office

19\_\_\_\_

\_\_\_\_\_, Sheriff

I have executed this summons

this \_\_\_\_\_ 19\_\_\_\_

by leaving a copy with

\_\_\_\_\_, Sheriff

\_\_\_\_\_, Deputy Sheriff

ORIGINAL BILL

ELI BAKER,	()	IN THE CIRCUIT COURT OF
PLANTIFF,	()	BALDWIN COUNTY, ALABAMA
VS.	()	AT LAW
KATHERINE WILLIAMS,	()	
DEFENDANT.	()	NO. _____

TO THE HONORABLE JUDGES IN THE CIRCUIT COURT OF BALDWIN  
COUNTY, ALABAMA, AT LAW

ONE

The plaintiff as father of Cynthia Baker, who was 5 years of age at the time of her death and a minor, claims of the defendant the sum of Twenty-five Thousand (\$25,000.00) Dollars, for that on, to-wit, the 24th day of September 1959, the said minor child, while attempting to cross the Belforest highway near Main Street in the City of Daphne, County of Baldwin, State of Alabama, the defendant so negligently operated her automobile on said highway, a public highway in the City of Daphne, County of Baldwin, State of Alabama, so as to cause the said automobile to collide with and strike the said Cynthia Baker who was then and there a pedestrian on said highway, and as a proximate consequence thereof plaintiff's minor child was so severely injured that she died, all as the proximate consequence of the negligence of the defendant, hence this suit.

TWO

The plaintiff, the father of Cynthia Baker, who was 5 years of age at the time of her death and a minor, claims of the defendant, Katherine Williams, the sum of Twenty-five Thousand (\$25,000.00) Dollars for that on to-wit, the 24th day of September 1959, the defendant so negligently operated her automobile, on Belforest highway near Main Street, in City of Daphne, County of Baldwin, State of



Alabama, a public highway in the City of Daphne, County of Baldwin, State of Alabama, in that the said defendant failed to keep proper look out and exercise due care to avoid colliding with or running against the plaintiff's said minor child, on said highway, and as a result of the defendant's failure to keep a proper look out, and exercise due care to avoid colliding with or running against plaintiff's minor child, the defendant did collide and run against said minor causing her death, hence this suit.

### THREE

And the further negligence, carelessness and recklessness of said defendant consisted in:

1. Failing to discover the minor of the plaintiff upon said highway in time to have avoided colliding with her, and which defendant ought and could have discovered in the exercise of reasonable care and precaution while driving said automobile;
2. In failing, upon discovering the peril of said minor, to exercise reasonable care and precaution to avoid running into and colliding with her and inflicting upon her the injuries causing her death hereinafter alleged.
3. That the said death caused by the defendant, as aforesaid, was proximately caused by the negligence of the defendant in that she did not have her motor vehicle under proper control at and immediately prior to the time of said accident and collision above described. That she was negligent in failing to reduce the speed of her automobile, after observing the peril of plaintiff, to a speed which would enable her to stop before coming into contact with the minor of said plaintiff. That she was negligent in failing to swerve to the left a sufficient distance to give the minor of the plaintiff ample room to escape the automobile of the defendant; and that the said negligence of said defendant was a proximate cause of the death of the minor of the plaintiff hereinabove particularly described and which resulted in the damages, claimed by plaintiff in this action.
4. That the defendant discovered, or in the exercise of due care would have discovered the minor child of the plaintiff in a position of peril in time to avoid causing her death in the

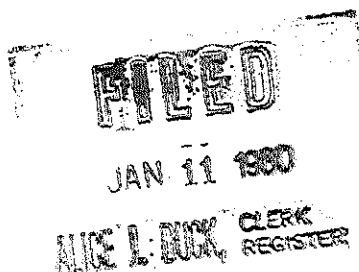
exercise of ordinary care, but failed to use care to avoid death or injury to the said minor.

5. That defendant failed to drive said automobile at a careful and prudent speed, not greater than was reasonable and proper, having due regard for pedestrians upon said highway.

6. That defendant failed to drive said automobile upon said highway at a speed not greater than that which would permit her to bring it to a stop within the assured clear distance ahead;

7. That after it became apparent that medical or surgical treatment was necessary for the injured minor, the defendant was negligent in that she failed in her duty to render aid and reasonable assistance to the injured, including transportation, or an offer thereof, of said injured to a physician or hospital for surgical treatment, which aid and assistance probably would have saved the life of the deceased minor child; all of which plaintiff claims damages in the amount of Twenty-five Thousand (\$25,000.00) Dollars as aforesaid. All of the above acts of the defendant were on a public highway in Baldwin County, Alabama.

Clarence E. Moses  
Attorney for the Plaintiff



Attorney's Address:

Clarence E. Moses  
101 North Cedar Street  
Mobile, Alabama

Defendant's Address:

Katherine Williams  
1218 Elmira Street  
Mobile, Alabama

Plaintiff demands a trial by jury in this cause.

Clarence E. Moses  
Attorney for the Plaintiff

NO. 11-7-6

CIRCUIT COURT  
OF BALDWIN COUNTY  
BAY-MINETTE, ALABAMA  
AT LAW

Eli Baker  
vs.

Katherine Williams

198  
ad ORIGINAL BILL

FILED  
JAN 11 1960  
CLERK OF COURT

CLARENCE E. MOSES  
ATTORNEY AT LAW  
101 NORTH CEDAR STREET  
MOBILE, ALABAMA

EXECUTED

This 14 day of Jan, 1960

by serving a copy of the within on  
Katherine Williams

RAY D. BRIDGES, Sheriff

By J. W. Lloyd D.S.

AMENDMENT TO ORIGINAL BILL

ELI BAKER,	( )	IN THE CIRCUIT COURT OF
PLAINTIFF,	( )	BALDWIN COUNTY,
VS.	( )	ALABAMA
KATHERINE WILLIAMS,	( )	AT LAW.
DEFENDANT.	( )	NO. 4128

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT OF BALDWIN COUNTY,  
ALABAMA, AT LAW:

Now comes the plaintiff and by his attorney and by leave of the Court first had and obtained amends the complaint here-to-fore filed in the above stated cause and further show unto Your Honor the following, to-wit:

The plaintiff, suing as the father of Cynthia Baker, a minor of the age of five years (5), deceased, claims of the defendant, Katherine Williams, the sum of Twenty-five thousand dollars (\$25,000.00) damages for that here-to-fore on to-wit, the 24th day of September 1959, the said minor child while a pedestrian on the Belforest Highway near Main Street, in the City of Daphne, County of Baldwin, State of Alabama, was struck, hit, run over or against by an automobile which was being operated negligently by the defendant, on said highway near Main Street as aforesaid, a public highway in said City, County and State, so as to cause the injury and death of said minor child; that the injury and death were directly and proximately caused by the <sup>said</sup> negligence of the defendant.

FILED

FEB 7 1961

ALICE J. DUCK, CLERK  
REGISTER

Clarence E. Moore  
ATTORNEY FOR PLAINTIFF.

BK —

P-202A

RECORDED 4128

*no file*

FILED

FEB 7 1961

ALICE J. DUCK, CLERK  
REGISTER