

MOLLIE V. PAYTON as mother of
Leola Payton, a minor, deceased,
Plaintiff,
vs.
HUBERT SIMMS,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 4263

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

1. That said count does not state a cause of action.
2. That the party Plaintiff is styled as "MOLLIE V. PAYTON as mother of Leola Payton, a minor, deceased" and it would affirmatively appear from such style that the Plaintiff is deceased.
3. That such suit is brought under the provisions of Title 7, Section 119 of the 1940 Code of Alabama without showing the right of the Plaintiff to bring such suit.
4. For aught that appears from said complaint the father of such deceased child is not dead, has not deserted his family, has not been in prison for a term of two years or more under a conviction of crime, has not been confined in an insane hospital or has not been declared of unsound mind as provided in Title 7, Section 118 of the 1940 Code of Alabama.
5. That said count does not sufficiently allege where the accident occurred.
6. That said count does not allege that the Defendant negligently injured such minor.
7. That the allegation that the minor was on the left side of the street in front of Young Street Cafe is not sufficiently definite and does not show where the minor was when she was injured.
8. That the allegation that such minor was where she had a right to be is but a conclusion of the pleader and does not sufficiently set out facts to show that such minor had a right to be on the street in the night time.
9. That the allegation in count "1" of the complaint that the minor suffered injuries as a direct proximate consequence of the

Defendant's wrongful act and result thereof is but a conclusion of the pleader and does not state that she suffered injuries as a proximate result of the Defendant's negligence.

10. That count "2" of the complaint does not allege that the Defendant willfully or wantonly injured such minor.

11. From the allegations in each count that such automobile ran into the body of such minor is vague and indefinite and from such allegations it would not be known whether such minor was living or dead at the time she was struck by such automobile.

12. Count "2" of the complaint does not allege that such minor was injured as a proximate result of the Defendant's willful or wanton negligence.

13. That Count "2" of the complaint does not allege that such minor died as a proximate result of the injury caused by the Defendant.


Attorneys for Defendant.

Defendant respectfully demands a trial
of this cause by a jury.


Attorneys for Defendant

MOLLIE V. PAYTON as mother of
Leola Payton, a minor, deceased,

Plaintiff,

vs.

HUBERT SIMMS,

Defendant.

* * * * *

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

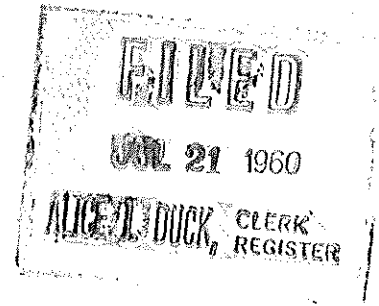
AT LAW

NO. 4263

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DEMURRER

* * * * *



LAW OFFICES

CHASON & STONE

BAY MINETTE, ALABAMA

MOLLIE V. PAYTON as mother of
Leola Payton, a minor, deceased

PLAINTIFF

VS

HUBERT SIMMS

DEFENDANT

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§)

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 4263

AMENDED COMPLAINT

Comes now the Plaintiff in the above styled cause and amends her
complaint to read as follows:

MOLLIE V. PAYTON as mother of
her deceased, minor daughter,
Leola Payton

PLAINTIFF

VS

HUBERT SIMMS

DEFENDANT

1.

The Plaintiff, Mollie V. Payton, claims of the Defendant the sum of
TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) as damages for the death of her
minor daughter, Leola Payton, for that heretofore on, to-wit: April 23,
1960, the Defendant, Hubert Simms, who was driving an automobile in a
Northernly direction on Young Street, in the City of Fairhope, Baldwin
County, Alabama, so negligently operated his automobile as to cause or
allow said automobile to run into the Plaintiff's daughter, Leola Payton,
who was on the left side of the street in front of the Young Street Cafe,
where she has a right to be and as a direct proximate consequence and
result of the Defendant's said Negligence, the Plaintiff's daughter, Leola
Payton suffered injuries from which she died, wherefore Plaintiff sues
and asks judgment in the above amount.

The Plaintiff, Mollie V. Payton, further avers that her minor daughter,
Leola Payton was born out of wedlock and is illegitimate, hence this suit
is brought in the Plaintiff's name

The Plaintiff, Mollie V. Payton, claims of the Defendant the sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) as damages for the death of her minor daughter, Leola Payton, for that heretofore, on to-wit: April 23, 1960, the Defendant, Hubert Simms, who was driving an automobile in a Northernly direction on Young Street, in the City of Fairhope, Baldwin County, Alabama, so willfully or wantonly operated his automobile as to cause or allow said automobile to run into and against the Plaintiff's daughter, Leola Payton, who was on the left side of the street in front of Young Street Cafe, where she had a right to be and as a direct proximate consequence and result of the Defendant's willful and wanton act, the Plaintiff's daughter, Leola Payton, was wantonly injured and died, wherefore the Plaintiff sues and asks judgment in the above amount.

The Plaintiff, Mollie V. Payton, further avers that her minor daughter, Leola Payton was born out of wedlock and is illegitimate, hence this suit is brought in the Plaintiff's name.

FILED
JUL 28 1960
ALICE J. DUCK, Clerk

WILTERS, BRANTLEY AND NESBIT

BY: Phillip S. Nesbit

THE STATE OF ALABAMA
BALDWIN COUNTY

IN THE CIRCUIT COURT

AT LAW

MOLLIE V. PAYTON as mother of
Leola Payton, a minor, deceased

PLAINTIFF

VS

HUBERT SIMMS

DEFENDANT

AMENDED COMPLAINT

FILED

JUL 28 1960

ALICE J. DICKINSON, Clerk

WILTERS, BRANTLEY AND NESBITT
ATTORNEYS FOR COMPLAINANT

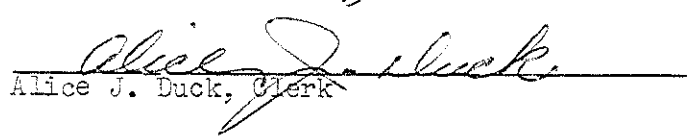
STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summons Hubert Simms, to appear and plead, answer or demur within thirty days from the service hereto to the Bill of ~~Complaint filed in the Circuit Court of Baldwin County, Alabama at Law,~~ by Mollie V. Payton as mother of Leola Payton, a minor, deceased, as Plaintiff and against Hubert Simms, as Defendant.

Witness my hand this the 23 day of May, 1960.


Alice J. Duck, Clerk

MOLLIE V. PAYTON as mother of
Leola Payton, a minor, deceased

PLAINTIFF

VS

HUBERT SIMMS

DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 4263

1.

The Plaintiff, Mollie V. Payton, claims of the Defendant the sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) as damages for the death of her minor daughter, Leola Payton, for that heretofore on, to-wit: April 23, 1960, the Defendant, Hubert Simms, who was driving an automobile in a Northernly direction on Young Street, in the City of Fairhope, Baldwin County, Alabama, so negligently operated his automobile as to cause or ~~allow said automobile to run into and against the body of the Plaintiff's~~ daughter, Leola Payton, who was on the left side of the street in front of the Young Street Cafe, where she had a right to be and as a direct proximate consequence of the Defendant's wrongful act and result thereof, the Plaintiff's daughter, Leola Payton suffered injuries from which she died, wherefore Plaintiff sues and asks judgment in the above amount.

2.

The Plaintiff, Mollie V. Payton, claims of the Defendant the sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) as damages for the death of her minor daughter, Leola Payton, for that heretofore on, to-wit: April 23, 1960, the Defendant, Hubert Simms, who was driving an automobile in a ~~Northerly direction on Young Street, in the City of Fairhope, Baldwin~~ County, Alabama, so willfully or wantonly operated his automobile as to cause or allow said automobile to run into and against the body of the Plaintiff's daughter, Leola Payton, who was on the left side of the street in front of Young Street Cafe, where she had a right to be and as a direct proximate consequence of the Defendant's willful and wanton act, and result thereof, the Plaintiff's daughter, Leola Payton, was wantonly injured and died, wherefore Plaintiff sues and asks judgment in the above amount.

WILKINS, BRANTLEY AND NESBIT

BY: Robert M. Brantley

Defendant may be served at his home
102 South Ingleside Avenue
Fairhope, Alabama

FILED

MAY 23 1960

ALICE J. ... K, Clerk

Received 23 day of May 1960
and on 13 day of July 1960
served a copy of the within B & C
on Hubert Stims

y service on _____

TAYLOR WILKINS, Sheriff

By W. A. Garner D. S.

F hope

Sheriff claims 70 miles at 200

Ten Cents per mile Total \$ 14.00
TAYLOR WILKINS, Sheriff

BY Garner
DEPUTY SHERIFF

NO. 4262

STATE OF ALABAMA

BALEWIN COUNTY

CIRCUIT COURT

MOLLIE V. PAYTON as mother of
Leola Payton, a minor, deceased

PLAINTIFF

VS

HUBERT STIMS

DEFENDANT

FILED
MAY 23 1960

ALICE J. DUCK, Clerk

WILTERS, BRANTLEY AND NESBIT
Attorneys for Plaintiff

100 \$ English side