

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

FILED

2019 JUL 18 PM 3:33

RICHARD R. ROOKER, CLERK

D.C.

BERENIZE SANZON, individually, and as)
next-of-kin to the deceased,)
JOAQUIN BASTIDAS,)

Plaintiff,)

v.)

NO. _____

HOWARD MCLEMORE,)

JURY DEMANDED

Defendant.)

COMPLAINT

The Plaintiff, for her Complaint against the Defendant, states as follows:

I. INTRODUCTION

This action arises out of the wrongful death of Joaquin Bastidas, who was killed by the Defendant, Howard McLemore, on February 3, 2019 in Davidson County, Tennessee. The Defendant has since been criminally charged with vehicular homicide regarding Mr. Bastidas' death. See **Exhibit A**. The warrant for the Defendant's arrest in Case No. GS880601 states as follows:

Mr. McLemore was involved in a motor vehicle collision on Nolensville Pike near Paragon Mills. Mr. McLemore crossed over into oncoming traffic and struck another vehicle head-on. Two other parties involved in this collision were killed, and another party was seriously injured. Mr. McLemore admitted to paramedics while he was in the ambulance that he had been drinking earlier in the evening, Officer Breeding overheard him admit to drinking. Once at the hospital Mr. McLemore admitted to Officer Berens to using cocaine prior to the collision. Mr. McLemore agreed to perform HGN where he showed multiple indicators of impairment. A pipe consistent with drug use was also located in the driver side of Mr. McLemore's vehicle.

Id.

II. PARTIES

1. Plaintiff Berenize Sanzon is decedent Joaquin Bastidas’s mother and next-of-kin. She is an adult citizen and resident of Davidson County, Tennessee.

2. Defendant Howard McLemore is the criminal defendant in Case No. GS880601 (Complaint No. 2019-0090226), who wrongfully caused Mr. Bastidas’s death.

3. Mr. McLemore is a citizen and resident of Davidson County, Tennessee. He may be served at Lois M. DeBerry Special Needs Facility, 7575 Cockrill Bend Blvd., Nashville, TN 37209, or wherever he may be found.

II. JURISDICTION, AUTHORITY, AND VENUE

4. This Court has jurisdiction over this lawsuit pursuant to Tenn. Code Ann. § 16-10-101.

5. The Plaintiff has the authority to bring this wrongful death action pursuant to Tenn. Code Ann. § 20-5-107(a).

6. As the county where the cause of action arose and where the parties reside, venue in this matter is proper pursuant to Tenn. Code Ann. § 20-4-101(a).

III. FACTUAL ALLEGATIONS

7. On February 3, 2019, Mr. McLemore was involved in a motor vehicle collision on Nolensville Pike near Paragon Mills.

8. Mr. McLemore crossed over into oncoming traffic and struck another vehicle head-on.

9. After the crash, while he was in the ambulance, Mr. McLemore admitted to paramedics that he had been drinking earlier in the evening.

10. MNPD Officer Breeding overheard the Defendant admit to drinking.

11. Once at the hospital, the Defendant admitted to MNPDP Officer Berens that he had used cocaine prior to the collision.

12. The Defendant agreed to perform an HGN field sobriety test where he showed multiple indicators of impairment.

13. A pipe consistent with drug use was located in the driver's side of the Defendant's vehicle after the crash.

14. At all times relevant to this Complaint, the Defendant failed to act reasonably, to maintain control of his vehicle, and to maintain a safe rate of speed within his lane.

15. At all times relevant to this Complaint, the Defendant failed to exercise due care by operating his vehicle at a safe speed, by maintaining a safe lookout, by keeping the vehicle under proper control, and by devoting full time and attention to operating the vehicle under the existing circumstances as necessary in order to be able to see and to avoid endangering others.

16. At all times relevant to this Complaint, the Defendant was unlawfully impaired by drugs, including cocaine, and unlawfully operating his vehicle.

17. At all times relevant to this Complaint, the Defendant was unlawfully impaired by alcohol and unlawfully operating his vehicle.

18. As a direct and proximate cause of the Defendant's negligent actions, the Defendant wrongfully caused Joaquin Bastidas's death.

19. At all times relevant to this Complaint, the Defendant acted in reckless disregard of Mr. Bastidas's safety.

20. Accordingly, the Defendant is liable to Mr. Bastidas's heirs and next-of-kin for his wrongful death.

IV. Causes of Action

COUNT I: NEGLIGENCE PER SE

21. The Plaintiff incorporates and realleges the foregoing allegations as if fully set forth herein.

22. The Defendant violated multiple statutes that impose a duty and prohibit acts for the benefit of the public. With respect to each statute violated by the Defendant, Joaquin Bastidas was within the class of persons whom the state intended to benefit and protect by enacting the respective law.

23. Tenn. Code Ann. § 55-8-136(b) requires that:

Notwithstanding any speed limit or zone in effect at the time, or right-of-way rules that may be applicable, every driver of a vehicle shall exercise due care by operating the vehicle at a safe speed, by maintaining a safe lookout, by keeping the vehicle under proper control and by devoting full time and attention to operating the vehicle, under the existing circumstances as necessary in order to be able to see and to avoid endangering life, limb or property and to see and avoid colliding with any other vehicle or person, or any road sign, guard rail or any fixed object either legally using or legally parked or legally placed, upon any roadway, within or beside the roadway right-of-way including, but not limited to, any adjacent sidewalk, bicycle lane, shoulder or berm.

Id.

24. The Defendant violated Tenn. Code Ann. § 55-8-136(b) when he struck Joaquin Bastidas's vehicle, killing him.

25. The Defendant was negligent *per se* by failing to maintain a safe lookout that prevented him from striking Joaquin Bastidas's vehicle.

26. The Defendant was negligent *per se* by failing to keep his vehicle under proper control such that it did not strike Joaquin Bastidas's vehicle.

27. The Defendant was negligent *per se* by failing to devote the requisite time and attention to operating his vehicle such that it did not strike Joaquin Bastidas's vehicle.

28. The Defendant was negligent *per se* by failing to see and avoid a collision with Joaquin Bastidas's vehicle.

29. Tenn. Code Ann. § 55-10-401 provides that:

It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, or on any streets or alleys, or while on the premises of any shopping center, trailer park, or apartment house complex, or any other premises that is generally frequented by the public at large, while:

(1) Under the influence of any intoxicant, marijuana, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system, or combination thereof that impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of oneself that the driver would otherwise possess;

(2) The alcohol concentration in the person's blood or breath is eight-hundredths of one percent (0.08%) or more[.]

Id.

30. The Defendant violated Tenn. Code Ann. § 55-10-401 and was negligent *per se* when he struck Joaquin Bastidas's vehicle, killing him.

31. At all times relevant to this Complaint, the Defendant was unlawfully under the influence of a controlled substance.

32. At all times relevant to this Complaint, the Defendant was unlawfully under the influence of alcohol.

33. Tenn. Code Ann. § 55-10-205(a) provides that: "Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property commits reckless driving."

34. The Defendant violated Tenn. Code Ann. § 55-10-205(a) and was negligent *per se* when he struck Joaquin Bastidas's vehicle, killing him.

35. At all times relevant to this Complaint, the Defendant drove in willful and wanton disregard for the safety of other persons.

36. As a direct and proximate result of the Defendant's *per se* negligent conduct, Joaquin Bastidas and the Plaintiff, as next-of-kin, suffered pain, physical injuries, including death, and economic injuries.

COUNT II: NEGLIGENCE

37. The Plaintiff incorporates and realleges the foregoing allegations as if fully set forth herein.

38. At all times relevant to this Complaint, the Defendant had a duty to other individuals on the road, including Joaquin Bastidas, to follow the traffic laws and to exercise due care to avoid causing injuries to others.

39. Defendant breached his duty to Joaquin Bastidas by, among other things: driving in an unsafe manner; failing to exercise due care by operating his vehicle at a safe speed; failing to maintain a safe lookout; failing to keep his vehicle under proper control; failing to devote full time and attention to operating his vehicle; failing to exercise due care under the existing circumstances as necessary in order to be able to see and to avoid endangering others; and operating his vehicle while actually impaired by drugs and alcohol.

40. As a direct and proximate result of the Defendant's negligent conduct, Joaquin Bastidas and the Plaintiff, as next-of-kin, suffered pain, physical injuries, including death, and economic injuries.

COUNT III: RECKLESSNESS AND PUNITIVE DAMAGES

41. The Plaintiff incorporates and realleges the foregoing allegations as if fully set forth herein.

42. The Defendant's conduct constituted a known, substantial, and

unjustifiable risk of such a nature that its disregard constituted a gross deviation from the standard of care.

43. The Plaintiff is thus entitled to an award of punitive damages for the reckless conduct of the Defendant.

RELIEF REQUESTED

WHEREFORE, the Plaintiff demands the following:

1. That proper process be issued and served upon the Defendant and the Defendant be required to appear and answer this Complaint within the time required by law.
2. That the Plaintiff be awarded not less than \$2,500,000.00 in compensatory damages for pain, injuries, death, loss of enjoyment of life, lost income, property damage, loss of consortium, and medical expenses.
3. That the Plaintiff be awarded additional punitive damages for their injuries caused by the Defendant's reckless conduct in an amount necessary to deter such future conduct.
4. That the Plaintiff be awarded pre-judgment and post-judgment interest.
5. That the Plaintiff be awarded all such further and other general relief to which they may be entitled.
6. That a jury be impaneled to try this cause.

Respectfully submitted,

By: 

Daniel A. Horwitz, BPR #032176
1803 Broadway, Suite #531
Nashville, TN 37203
daniel.a.horwitz@gmail.com
(615) 739-2888

Doak Patton, BPR #019849
4235 Hillsboro Pike Suite 300
Nashville, TN 37215
(615) 521-2623