

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Naomi Grad Wallace, Individually, and as)
 Personal Representative of the Estate)
 of Phillip Andrew Wallace)
 Plaintiff,)
)
 vs.)
)
 Robert L. Abel and The City of)
 Isle of Palms)
 Defendants.)
)
)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No. 17-CP-10-1149

COMPLAINT
(Jury Trial Demanded)

FILED
 2017 MAR -6 PM 1:33
 JUDICIAL CIRCUIT
 CLERK OF COURT

Comes now the Plaintiff, Naomi Grad Wallace, (hereinafter "Plaintiff" or "Mrs. Wallace"), Individually, and as Personal Representative of the Estate of Phillip Andrew Wallace by and through the undersigned Counsel of Record, and pursuant to the South Carolina Rules of Civil Procedure, and files this Complaint for Damages against Robert L. Abel ("herein after "Defendant" or "Mr. Abel") and the City of Isle of Palms (hereinafter "Defendant" or "City of Isle of Palms"), alleging as follows:

NATURE OF THE ACTION

1. This wrongful death and survival action seeks compensatory and punitive damages for the wrongful death of Phillip Andrew Wallace proximately caused by the Defendants' breach of duty, negligent acts and omissions. In the pre-dawn hours of October 13, 2016, Phillip Andrew Wallace (herein after "Phillip Wallace" or "Mr. Wallace"), rode his moped to work on the Isle of Palms. Phillip was injured and thrown into the roadway when his moped (the "Subject Vehicle") struck an Isle of Palms police cruiser that was parked, without any lights, on the Isle of Palms Connector (the "First Accident"). Mr. Abel then struck and killed Mr. Wallace. Mr. Wallace leaves behind a

loving wife and family. Plaintiff seeks actual and consequential damages as well as punitive damages to halt and deter such conduct from taking place in the future.

THE PARTIES, JURISDICTION, AND VENUE

2. At all times relevant herein, the Decedent, Phillip Wallace was a citizen and resident of Charleston County, in the State of South Carolina.

3. At all times relevant herein, Mrs. Wallace was and is a citizen and resident of Charleston County, in the State of South Carolina.

4. As the duly appointed Personal Representative of the Estate of Phillip Andrew Wallace, Mrs. Wallace has authority to bring this wrongful death action on behalf of Mr. Wallace's beneficiaries under the South Carolina Wrongful Death Act, S.C. Code §15-51-10 *et seq.*, and to bring this survival action on behalf of the Estate of Phillip Andrew Wallace pursuant to S.C. Code §15-5-90.

5. Defendant City of Isle of Palms is a political subdivision of the State of South Carolina.

6. Officer Amanda Postell was acting as an agent of Defendant City of Isle of Palms in the course and scope of her employment with the City of Isle of Palms. As a police officer with the City of Isle of Palms, Officer Amanda Postell had a heightened duty of care in her capacity as a police and law enforcement officer to not create an unsafe road condition and to safeguard an accident scene. Both of these duties were breached resulting in the personal injury and wrongful death of Phillip Wallace.

7. Defendant Robert Abel is and was a citizen and resident of Charleston County, in the State of South Carolina, and the owner and operator of the 1998 Mazda sedan (VIN# JM1BC141XW0208162) that struck and killed Phillip Wallace in violation of his duty and reasonable care in operating a motor vehicle.

8. Pursuant to Article V, § 11 and Article X, §10 of the South Carolina Constitution and South Carolina Code Ann. § 15-78-100 this Court has jurisdiction over this case.

9. Venue is proper in this Court under South Carolina Code Ann. § 15-7-30 (C)(1) & (2) because Mr. Abel is a citizen and resident of this County and under South Carolina Code Ann. §15-78-10 *et seq.* because the City of Isle of Palms (or “IOP”) is a political subdivision of the State of South Carolina, and because the most substantial part of the acts and omissions giving rise to the cause of action occurred in this County.

FACTUAL ALLEGATIONS

10. More than two hours before sunrise on the morning of October 13, 2016, Phillip Wallace drove his moped from his home in Mt. Pleasant, South Carolina and crossed SC-517 (“the Isle of Palms Connector” or “Bridge”) on his way to work. Phillip Wallace was a chef reporting for a 5:30 a.m. breakfast shift. He reach the Isle of Palms at approximately 5:00 a.m.

11. Upon information and belief, shortly thereafter, Mr. Wallace checked the schedule at his place of employment and realized he was not scheduled for the opening shift. He then visited an Isle of Palms convenience store and began the drive home.

12. It was pitch black and no moon was visible in the sky.

13. The Isle of Palms Connector does not have any overhead lights illuminating the lanes of travel.

14. Mr. Wallace turned onto the Isle of Palms Connector heading northbound towards Mt. Pleasant shortly after 5:10 a.m.

15. A northbound box truck followed Mr. Wallace onto the Isle of Palms Connector. To avoiding creating a dangerous situation and while exercising due care, Mr. Wallace rode his moped along the outer white line on the right of the roadway. Shortly after reaching the peak of the

Bridge, the large box truck overtook and passed Mr. Wallace.

16. Unbeknownst to Mr. Wallace, IOP Police Officer Amanda Marie Postell (“Officer Postell”) and IOP Police Officer Dylan C. Reynolds (“Officer Reynolds”) were both parked in Isle of Palms police cruisers on the northbound shoulder of the Isle of Palms Connector.

17. Officer Postell and Officer Reynolds’s vehicles were parked with their all of their lights out, in the dark, on the Bridge, in violation of the law.

18. Officer Postell and Officer Reynolds’s vehicles were parked illegally and improperly in the dark without any illuminated lights on the northbound shoulder of the Bridge. Officer Postell’s vehicle was parked behind Officer Reynold’s vehicle.

19. On or about 5:12 a.m., unable to see Officer Postell’s unlit police cruiser, Mr. Wallace struck the rear left corner panel of that vehicle.

20. As a result of this First Accident, Mr. Wallace was thrown from his moped across the northbound lane of travel, sustained bodily injuries, but was still alive. He came to a rest in the median emergency lane with his head and shoulders laying on the double yellow line.

21. As a result of this First Accident, Mr. Wallace’s moped spilled onto its left side, suffered extensive damages, and slid across the northbound lane of travel and came to a rest in the median emergency lane.

22. Upon witnessing this accident, Officers Postell and Reynolds turned on their blue lights.

23. Officers Postell and Reynolds had a duty of care as they undertook to protect Mr. Wallace from further harm on the roadway.

24. Officers Reynolds left his vehicle and checked on Mr. Wallace after this First Accident.

25. In furtherance of the undertaking and duty of care to safeguard the accident scene, Officer Reynolds instructed Officer Postell to pull her vehicle into the road to block the scene of the

accident and protect Mr. Wallace from further harm.

26. Upon information and belief, this instruction was given to Officer Postell in order to provide maximum protection to the collision scene and to protect persons and property at the scene.

27. Officer Postell failed in her duty to protect the accident scene, and she failed in her undertaking of her responsibility as a police officer to protect the public.

28. Officer Postell saw another vehicle topping the Bridge in the same northbound lane of travel where Phillip Wallace lay. Instead of pulling her car out to protect Mr. Wallace and completing her undertaking and responsibility as reasonable person or police officer, Officer Postell failed to act.

29. Officer Postell negligently, unreasonably, recklessly, improperly, and in contravention of her duties failed to block the accident scene from further motor vehicle travel and prevent further harm to Phillip Wallace.

30. While Officer Postell was supposed to be moving her car, Officer Reynolds was standing in the northbound lane of travel, waving a flashlight, attempting to get the attention of and divert the oncoming vehicle.

31. This vehicle was being driven by Robert Abel at high rate of speed towards the scene of the accident.

32. Mr. Abel saw the blue lights, but did not slow down.

33. Mr. Abel then recklessly and negligently drove through the scene of the First Accident and ran over and killed Phillip Andrew Wallace.

34. No other vehicle traffic was on the Bridge in the early hours. Nothing prevented Abel from moving onto the left lane of the Bridge as required by his duty of reasonable care in operating a motor vehicle.

35. Mr. Abel negligently, unreasonably, recklessly and improperly failed to stop, slow, or yield to blue lights.

36. Mr. Abel negligently, unreasonably, recklessly and improperly drove through the scene of the First Accident without determining if the lane of travel was clear in front of him.

37. Mr. Abel recklessly ran over both the moped and Mr. Wallace resulting in and causing Mr. Wallace severe bodily injuries and killing him.

DAMAGES

38. Plaintiff adopts and re-alleges each prior paragraph as if set forth fully herein.

39. As a direct and proximate result of the Defendants' negligent and/or grossly negligent misconduct or omissions, Phillip Wallace suffered:

- a. Conscious pain and suffering;
- b. Unnecessary medical expenses
- c. Loss of Life;
- d. Funeral expenses; and
- e. Such other and further particulars as the evidence may show.

40. As a direct and proximate result of the Defendants' negligent and/or grossly negligent misconduct or omissions, Phillip Wallace's beneficiaries suffered:

- a. Pecuniary loss;
- b. Mental shock and suffering;
- c. Wounded feelings;
- d. Grief and sorrow;
- e. Loss of companionship and consortium;
- f. Deprivation of the use and comfort of Phillip Wallace's society including the loss

of his experience, knowledge, and judgment in managing the affairs of himself and his beneficiaries;

g. Funeral expenses; and

h. Such other and further particulars as the evidence may show.

41. Additionally, as Phillip Wallace's spouse, Mrs. Wallace suffered the loss of her right to the companionship, aid, society and services of her spouse as a result of the Defendants' negligent and/or grossly negligent misconduct or omissions.

42. The wrongful acts of the Defendants showed willful misconduct and lack of due care to raise the presumption of conscious indifference to consequences and rights of others. Punitive damages should be imposed in an amount sufficient to keep such wrongful conduct from being repeated.

FIRST CLAIM FOR RELIEF

(First Claim of Negligence and Gross Negligence, as to Defendant City of Isle of Palms)

43. Plaintiff adopts and re-alleges each prior paragraph as if set forth fully herein.

44. At all times relevant herein, Officer Postell was an employee of the City of Isle of Palms.

45. Upon current information and belief, at all times relevant herein, Officer Postell was acting within the scope of her employment with the City of Isle of Palms and as an Agent for the City of Isle of Palms.

46. Prior to the accident, Officer Postell was parked on the shoulder of the Isle of Palms Connector.

47. At all times relevant herein, Officer Postell was acting negligently, unreasonably, improperly, in contravention of her duty and with gross negligence by being parked on the shoulder of the Isle of Palms Connector at night without visible lamps.

48. Parking on a bridge in the dark creates an unreasonable and unnecessary risk to public

safety.

49. Defendant City of Isle of Palms owed a duty of care to Mr. Wallace to conduct itself in a reasonable, proper, and safe manner.

50. Defendant City of Isle of Palms breached the duty of care owed to Mr. Wallace by and through the negligent, unreasonable, and improper action of Officer Postell parking in the dark with no lights on the Bridge.

51. Defendant City of Isle of Palms breached the duty of care owed to Mr. Wallace by and through the negligent, unreasonable, and improper action of Officer Reynolds parking in the dark with no lights on the Bridge.

52. Defendant City of Isle of Palms negligently created a risk to Mr. Wallace. As a direct and proximate result of Defendant City of Isle of Palms' negligence, gross negligence, and the breaches complained of herein, Mr. Wallace collided with the police car of Officer Postell and suffered serious and permanent injuries.

53. Plaintiff demands judgment against Defendant City of Isle of Palms for all actual and compensatory damages suffered, together with interest, for all costs of this action, including but not limited to:

- a. Past medical expenses and charges;
- b. Past physical pain and mental anguish;
- c. Past physical impairment;
- d. Past disfigurement;
- e. Loss of use of the Subject Vehicle;
- f. Past lost wages and future lost wage-earning capacity;
- g. Reasonable and proper compensation for any and all property damages incurred;

- h. Actual damages; and
- i. For any other further relief as this Honorable Court and/or jury may deem just and proper.

54. WHEREFORE, the Plaintiff seeks actual and compensatory damages to be awarded by the jury in an amount in excess of the minimal jurisdictional limits of this Court.

SECOND CLAIM FOR RELIEF
(Second Claim of Negligence, Gross Negligence, and Negligent Undertaking as to Defendant City of Isle of Palms)

55. Plaintiff adopts and re-alleges each prior paragraph as if set forth fully herein.

56. At all times relevant herein, Officer Postell was an employee of the City of Isle of Palms.

57. Upon current information and belief, at all times relevant herein, Officer Postell was acting within the scope of her employment with the City of Isle of Palms and as an Agent for the City of Isle of Palms.

58. At all times relevant herein, Officer Reynolds was an employee of the City of Isle of Palms.

59. Upon current information and belief, at all times relevant herein, Officer Reynolds was acting within the scope of his employment with the City of Isle of Palms and as an Agent for the City of Isle of Palms.

60. A Police Officer with the City of Isle of Palms assumes duties at the scene of an accident and the City of Isle of Palms provides procedures to follow at the scene of an accident.

61. Shortly after the First Accident between Mr. Wallace and Officer Postell's illegally parked vehicle, Officers Postell and Reynolds had a duty to immediately initiate proper procedures as outlined by the Isle of Palms and take control and protect the scene, life, and property.

62. Mr. Wallace was helpless to adequately aid or protect himself from further harm.

63. The City of Isle of Palms through its Agents, Officers Postell and Reynolds, had a duty to

protect Mr. Wallace from harm.

64. At this time Officers Postell and Reynolds undertook certain acts to protect Mr. Wallace from further harm.

65. Officer Reynolds spoke to and checked Phillip Wallace for injuries.

66. Officer Reynolds instructed Officer Postell to protect the scene of the accident by moving her car.

67. Despite her duty of care, her training, and being instructed to safeguard the scene by Officer Reynolds, Officer Postell negligently, unreasonably, recklessly, and with gross negligence improperly failed to follow the basic procedures and requirements as outlined by the Isle of Palms.

68. Officer Postell negligently, unreasonably, recklessly, improperly, in contravention of her duty and with gross negligence failed to provide protection to the collision scene and Phillip Wallace.

69. In undertaking to protect Mr. Wallace and failing to do so, Officer Postell left Mr. Wallace in a position which was worse than when she assumed the duty of his protection.

70. As a direct and proximate result of Officer Postell's negligent undertaking and subsequent abandonment of such undertaking, Phillip Wallace was struck and killed by a vehicle in the northbound lane of the Isle of Palms Connector.

71. As a direct and proximate result of Defendant City of Isle of Palms' negligence, gross negligence, and the breaches complained of herein, Mr. Wallace was struck and killed in a second accident by a vehicle in the northbound lane of the Isle of Palms Connector..

72. Plaintiff demands judgment against Defendant City of Isle of Palms for all actual and compensatory damages suffered, together with interest, for all costs of this action, including but not limited to:

- a. Past and future medical expenses and charges;
- b. Past and future physical pain and mental anguish;
- c. Past and future physical impairment;
- d. Past and future disfigurement;
- e. Loss of use of the Subject Vehicle;
- f. Past lost wages and future lost wage-earning capacity;
- g. Reasonable and proper compensation for any and all property damages incurred;
- h. Actual damages; and
- i. For any other further relief as this Honorable Court and/or jury may deem just and proper.

73. WHEREFORE, the Plaintiff seeks actual and compensatory damages to be awarded by the jury in an amount in excess of the minimal jurisdictional limits of this Court.

THIRD CLAIM FOR RELIEF
(Negligence, Gross Negligence, Willful and/or Wanton Conduct of as to Defendant Robert Abel)

74. Plaintiff adopts and re-alleges each prior paragraph as if set forth fully herein.

75. On the morning of October 13, 2016, Defendant Abel was driving and operating his motor vehicle, a 1998 Mazda sedan VIN# JM1BC141XW0208162.

76. At approximately 5:12 am, Defendant Abel turned from Palm Boulevard onto the Isle of Palms Connector and headed towards Mount Pleasant using the northbound or right lane.

77. On or before the moment when Defendant Abel crested the top of the hill on the Isle of Palms Connector he saw the activated blue lights on Officer Postell and Officer Reynolds's cruisers, which had been activated after the First Accident.

78. Despite seeing two police cruisers with active blue emergency lights, Defendant Abel

failed to slow or stop.

79. Defendant Abel negligently, unreasonably, and improperly failed to stop or to slow to an appropriate speed upon approaching the scene of the accident, an emergency scene.

80. Defendant Abel negligently, unreasonably, and improperly failed to slow, stop, or yield the right-of-way by making an appropriate lane change upon approaching the scene of the First Accident, an emergency scene.

81. Defendant Abel negligently, unreasonably, and improperly drove through the emergency scene without due care or caution.

82. As a direct and proximate result of Defendant Abel's negligence, gross negligence, recklessness, willful and wanton conduct and the conduct complained of herein, Defendant Abel struck and killed Phillip Wallace.

83. Plaintiff demands judgment against Defendant Abel for all actual and compensatory damages suffered, together with interest, for all costs of this action, including but not limited to:

- a. Past and future medical expenses and charges;
- b. Past and future physical pain and mental anguish;
- c. Past and future physical impairment;
- d. Past and future disfigurement;
- e. Loss of use of the Subject Vehicle;
- f. Past lost wages and future lost wage-earning capacity;
- g. Reasonable and proper compensation for any and all property damages incurred;
- h. Loss of consortium as to Mrs. Wallace;
- i. Actual and punitive damages; and
- j. For any other further relief as this Honorable Court and/or jury may deem just and

proper.

84. WHEREFORE, the Plaintiff seeks actual and punitive damages to be awarded by the jury in an amount in excess of the minimal jurisdictional limits of this Court.

FOURTH CLAIM FOR RELIEF
(Loss of Consortium as to All Defendants)

85. Plaintiff adopts and re-alleges each prior paragraph as if set forth fully herein.

86. Each of the Defendants' combined and respective actions and inactions were a direct and proximate cause of Phillip Wallace's death and a tortious violation of Mrs. Wallace's right to the companionship, aid, society, and services of Phillip Wallace.

87. As a direct and proximate result of the conduct and misconduct of the Defendants, Mrs. Wallace has suffered and continues to suffer the loss of consortium, household services, aid, society, support, and companionship.

88. Wherefore, the Plaintiff demands judgment against all Defendants for the loss of consortium, household services, aid, society, support, and companionship to which she is entitled with her spouse.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

- a. For a trial by jury and judgment against Defendants City of Isle of Palms and Robert L. Abel for such sums as actual and other compensatory damages, including but not limited to pain and suffering, past medical expenses, past loss of function, past and future loss of earnings and enjoyment of life, funeral expenses, loss of life, and loss of consortium costs in an amount as a jury may determine and in excess of the minimum jurisdictional limit of this Honorable Court;
- b. For exemplary and punitive damages against Defendant Robert L. Abel in an amount as a jury may determine to halt such conduct;

- c. For the costs of this suit, including attorney's fees; and
- d. For such other and further relief to which they may be entitled and as this Honorable Court may deem just and proper.

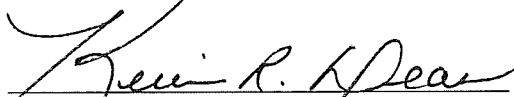
REQUEST FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the South Carolina Rules of Civil Procedure, Plaintiff demands a trial by jury as to all issues triable by jury, as enumerated and set forth in more detail in this Complaint.

Respectfully submitted,

MOTLEY RICE, LLC

By:



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Dated: March 6th, 2017