

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) CIVIL ACTION 2020-CP-10-_____

BRAULIA BENITEZ MONDRAGON,)
Individually and as Personal)
Representative of the Estate of ROSAEL)
GUTIERREZ-TOLEDO, Deceased,)
)
Plaintiff,)

v.)

SUMMONS

CITY OF HANAHAN POLICE)
DEPARTMENT and CITY OF NORTH)
CHARLESTON,)
)
Defendants.)

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint in the subscribed to Scott C. Evans, EVANS MOORE, LLC, 121 SCREVEN STREET, GEORGETOWN, SOUTH CAROLINA, 29440 within THIRTY (30) DAYS after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/Scott C. Evans
Scott C. Evans, SC Bar 77684
James B. Moore III, SC Bar 74268
Evans Moore, LLC
121 Screven Street
Georgetown, SC 29440
Office: (843) 995-5000
Fax: (843) 527-4128
scott@evansmoorelaw.com
james@evansmoorelaw.com

Attorneys for the Plaintiff

January 22, 2020
Georgetown, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) CIVIL ACTION 2020-CP-10-_____

BRAULIA BENITEZ MONDRAGON,)
Individually and as Personal)
Representative of the Estate of ROSAEL)
GUTIERREZ-TOLEDO, Deceased,)
)
Plaintiff,)

v.)

CITY OF HANAHAN POLICE)
DEPARTMENT and CITY OF NORTH)
CHARLESTON,)
)
Defendants.)

COMPLAINT

The Plaintiff, Braulia Benitez Mondragon, brings this Complaint as Personal Representative of the Estate of Rosael Gutierrez-Toledo against City of Hanahan Police Department and City of North Charleston and would respectfully show unto this Honorable Court:

JURISDICTION AND VENUE

1. The Plaintiff, Braulia Benitez Mondragon (hereinafter "Plaintiff") is the widow and Personal Representative of the Estate of Rosael Gutierrez-Toledo (hereinafter "Plaintiff Decedent"). At the time of his death, Rosael Gutierrez-Toledo was domiciled in Charleston County, South Carolina.
2. Defendant City of Hanahan Police Department is a governmental entity which operates a law enforcement agency licensed by the State of South Carolina.
3. Defendant City of North Charleston is a governmental agency which operates law enforcement agency (the North Charleston Police Department) licensed by the State of South Carolina.

4. Venue is proper in this Court because the alleged acts and omissions giving rise to this cause of action occurred in Charleston County, South Carolina.

FACTS

5. On February 11, 2018, Sgt. Daniel J. Breen of the City of Hanahan Police Department attempted to make a traffic stop of a motorist suspected of a routine traffic violation. As he approached the vehicle, the driver accelerated and began to flee.

6. Sgt. Breen began to pursue this vehicle, and this resulted in a prolonged and extensive high-speed chase through a series of residential areas in speeds greatly in excess of the posted speed limits and while disregarding multiple traffic control devices.

7. This chase continued as the vehicle approached the City of North Charleston, at which time the City of North Charleston police department was notified of and joined in the pursuit.

8. At all times relevant herein, it was the duty of both defendants to refrain from engaging in a course of conduct which exhibited a serious disregard for the safety of other motorists and pedestrians in the path of the high-speed chase.

9. During this high-speed chase, the driver struck the Plaintiff Decedent, Rosael Gutierrez-Toledo, while he was legally crossing the road at the intersection of Read Street and Remount Road in North Charleston, SC. This resulted in the death of the Plaintiff Decedent, Rosael Gutierrez-Toledo.

10. As a direct and proximate result of these acts and omissions, Plaintiff Decedent suffered the following injuries and damages:

- a. Loss of his life; and
- b. Physical pain and suffering and emotional trauma and suffering.

11. The heirs of Plaintiff Decedent further suffered the untimely end of their relationship with their beloved husband and father and the corresponding loss of his services, protection, care, assistance, society, companionship, comfort, guidance, counsel and advice, and were forced to incur funeral and burial expenses.

FOR A FIRST CAUSE OF ACTION AGAINST BOTH DEFENDENTS
(Gross Negligence-Survival-Pursuant to the S.C. Tort Claims Act)

12. The Plaintiff reiterates each and every allegation stated above as if repeated verbatim herein.

13. The above incident and Plaintiff Decedent's resulting injuries and death were proximately caused by the negligent, grossly negligent, and reckless acts of the Defendants, in the following particulars:

- a. Failing to exercise reasonable or slight care to follow known law enforcement protocols regarding the initiation, continuation, and termination of high speed pursuit;
- b. Failing to exercise reasonable or slight care to refrain from initiating a prolonged pursuit of a motorist at an unreasonably high rate of speed;
- c. Failing to exercise reasonable or slight care to continue a prolonged pursuit of a motorist once it was determined that the motorist was driving at an excessive rate speed, disregarding traffic control devices, disregarding other motorists, disregarding pedestrians, and driving on the opposite side of the road; and,
- d. In failing to exercise reasonable or slight care to terminate pursuit once it was determined that the motorist being pursued was placing other motorists and pedestrians and an unreasonable risk.

14. As a direct and proximate cause of Defendants' negligent and gross negligent conduct (by and through the employees, agents, and/or servants of the Defendants) the Decedent was severely injured, suffered needlessly, and died. As such, Plaintiff is entitled to an award of **ACTUAL and CONSEQUENTIAL DAMAGES** from the Defendants.

FOR A SECOND CAUSE OF ACTION AGAINST BOTH DEFENDANTS
(Gross Negligence-Wrongful Death-Pursuant to the S.C. Tort Claims Act and Wrongful Death Act)

15. The Plaintiff reiterates each and every relevant allegation stated above as if repeated verbatim herein.

16. This action is brought for the wrongful death of Rosael Gutierrez-Toledo, pursuant to the South Carolina Tort Claims Act and provisions of § 15-78-10 *et seq.*, Code of Laws of South Carolina and the provisions of § 15-51-10 *et seq.*, Code of Laws of South Carolina (1976, as amended), and is brought for the statutory heirs of Rosael Gutierrez-Toledo, who died on the February 11, 2018.

17. The death of the Decedent was caused and occasioned by the negligent and grossly negligent acts of the Defendants as set forth above.

18. As a further result and because of the Defendants' reckless, willful and grossly negligent conduct which ultimately caused the wrongful death of Rosael Gutierrez-Toledo, Plaintiff is entitled to **ACTUAL and CONSEQUENTIAL DAMAGES** in an amount to be determined by a jury in accordance with the law and evidence in this case.

FOR A THIRD CAUSE OF ACTION AGAINST BOTH DEFENDANTS
(Loss of Consortium by Plaintiff Spouse)

19. The Plaintiff reiterates each and every allegation stated above as if repeated verbatim herein.

20. The Plaintiff and Rosael Gutierrez-Toledo were husband and wife and were married at the time of the events alleged herein.

21. As a result of the Defendants' actions which resulted in the death of Rosael Gutierrez-Toledo, Plaintiff has been injured and has suffered damages as the result of the loss of consortium caused by her husband's death.

22. As a direct and proximate result of the aforementioned actions, Plaintiff has been injured and damaged, and is entitled to an award of ACTUAL and CONSEQUENTIAL DAMAGES.

DEMAND FOR JURY TRIAL

WHEREFORE, the Plaintiff hereby requests a trial by jury on all of the issues that have been or may hereafter be raised in any of the pleadings. Plaintiff further seeks judgment against Defendants for:

- a. Actual and consequential damages as to each occurrence of each independent cause of action;
- b. The costs and disbursements of this action;
- c. Such other and further relief as this Court deems just and proper.

Respectfully Submitted,

s/Scott C. Evans
Scott C. Evans, SC Bar 77684
James B. Moore III, SC Bar 74268
Evans Moore, LLC
121 Screven Street
Georgetown, SC 29440
Office: (843) 995-5000
Fax: (843) 527-4128
scott@evansmoorelaw.com
james@evansmoorelaw.com

Attorneys for the Plaintiff

January 22, 2020
Georgetown, South Carolina