

NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08 CVS 10430

CLINT M. LOVENDAHL, Administrator)
of the Estate of NANCY LOVENDAHL)
WICKER,)
)
Plaintiff,)
)
v.)
)
HOWARD BRADLEY WICKER,)
)
Defendant.)

COMPLAINT
JURY TRIAL DEMANDED

FILED
JUL 11 2008
CLERK OF SUPERIOR COURT
GUILFORD COUNTY, NC

PLAINTIFF CLINT M. LOVENDAHL, Administrator of the Estate of Nancy Lovendahl Wicker, complaining of Defendant HOWARD BRADLEY WICKER, does hereby allege and aver:

1. Plaintiff CLINT M. LOVENDAHL is a citizen and resident of Iredell County, North Carolina.
2. On July 7, 2008, plaintiff CLINT M. LOVENDAHL made proper application for, and received letters from the Clerk of Superior Court to be the Executor of the Estate of NANCY LOVENDAHL WICKER, Deceased, Guilford County Estate No. 08 E 1419.
3. Upon information and belief, defendant HOWARD BRADLEY WICKER is a citizen and resident of Guilford County, North Carolina.
4. Upon information and belief, on April 27, 2008, decedent Nancy Lovendahl Wicker was riding as a passenger in an automobile driven by defendant Howard Bradley Wicker on and over roads located in Randolph County, North Carolina.
5. Plaintiff is informed and believes that on the morning of April 27, 2008, defendant was driving the vehicle in a reckless, wanton and grossly negligent manner without due regard for the safety of others, in particular, his passenger, the Deceased.
6. Plaintiff is further informed and believes that defendant was operating the motor vehicle in a grossly, intentionally and wantonly reckless manner in that, among other things, he was
 - a. exceeding the speed limit;
 - b. operating the vehicle at a speed grossly in excess of a safe speed;

- c. operating the vehicle in a reckless manner without regard for the safety of others including his passenger;
- d. failing to maintain full and safe control of the vehicle; and
- e. failing to reduce speed so as to avoid an accident and collision.

7. Plaintiff is informed and believes that as a proximate and direct result of defendant's intentional, gross and wanton conduct and negligence, defendant lost control of the vehicle causing the automobile to leave the paved portion of the road, hit an embankment, run over a sign, cross the road, crash violently, and land upside down off the shoulder of the opposite-travelling lane.

8. Plaintiff is informed and believes that the collision directly and proximately caused the Deceased passenger to suffer severe bodily injuries resulting in pain, suffering and ultimately her death.

CLAIM FOR RELIEF
WRONGFUL DEATH

9. The foregoing allegations are incorporated herein as if fully restated.

10. All known intestate heirs at law of Nancy Lovendahl Wicker are plaintiffs Clint Lovendahl and Cliff Lovendahl, and defendant Howard Bradley Wicker.

11. The death of Nancy Lovendahl Wicker was caused by the intentional, wrongful wanton, willful and grossly negligent acts or defaults of defendant Howard Bradley Wicker.

12. Had Nancy Lovendahl Wicker survived, she would have been entitled to an action for damages therefor.

13. Plaintiff, Administrator of the Estate of Nancy Lovendahl Wicker, brings this action pursuant to the provisions of N.C. Gen. Stat. § 28A-18-2.

14. Decedent incurred expenses for care, treatment and hospitalization incident to the injuries she sustained in the automobile crash which resulted in her death.

15. Decedent suffered extreme pain and suffering following the automobile crash and prior to her death.

16. Funeral expenses were incurred in attending to the burial of Decedent.

17. Decedent was gainfully employed by the Guilford County Schools, and could have expected to continue to enjoy many years of employment with Guilford County Schools.

18. Clint Lovendahl and Cliff Lovendahl have been deprived of the services, protection, care and assistance of the decedent.

19. Clint Lovendahl and Cliff Lovendahl have been deprived of the society, companionship, comfort, guidance, kindly offices and advice of the decedent.

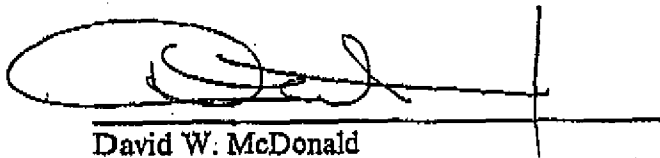
20. Decedent could have recovered punitive damages pursuant to Chapter 1D of the North Carolina General Statutes had she survived, and/or punitive damages for wrongfully causing her death through willful or wanton conduct, as defined in Gen. Stat § 1D-5.

21. Plaintiff seeks to recover the aforescribed damages in an amount which exceeds \$10,000.00 according to proof at trial.

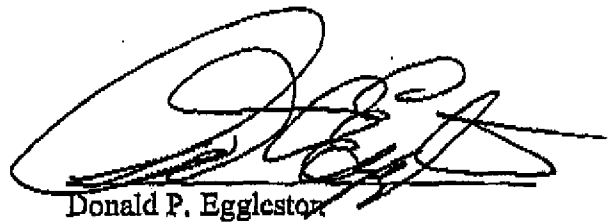
WHEREFORE, plaintiffs respectfully pray for the following relief:

1. That the Court enter money judgment in favor of plaintiff and against defendant in an amount exceeding \$10,000.00 according to proof at trial; and
2. That all questions so triable be determined by jury; and
3. That the proceeds be distributed according to applicable law; and
4. That the costs of this action be taxed to defendant; and
5. For such other and further relief as may be just and proper.

This, the 17th day of August, 2008.



David W. McDonald
N.C. State Bar No. 12814
Attorney for Plaintiffs



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N.C. State Bar No. 6133
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OCT 17 10:18

CLINT M. LOVENDAHL, Administrator
of the Estate of NANCY LOVENDAHL
WICKER,

Plaintiff,

v.

HOWARD BRADLEY WICKER,
Defendant.

ANSWER AND REQUEST FOR
WRITTEN STATEMENT OF THE
AMOUNT OF MONETARY
RELIEF SOUGHT

COMES NOW the Defendant, and answers the Complaint of the Plaintiff, and avers:

I.

The allegations contained in paragraph one of the Complaint are admitted.

II.

The allegations contained in paragraph two of the Complaint are admitted.

III.

The allegations contained in paragraph three of the Complaint are admitted.

IV.

The allegations contained in paragraph four of the Complaint are admitted.

V.

The allegations contained in paragraph five of the Complaint are denied.

VI.

The allegations contained in paragraph six of the Complaint are denied.

VII.

The allegations contained in paragraph seven of the Complaint are denied.

VIII.

The allegations contained in paragraph eight of the Complaint are denied.

CLAIM FOR RELIEF
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IX.

This answering Defendant hereby adopts, repeats and realleges herein by reference each and all of the allegations contained in paragraphs one through eight of this Answer and hereby incorporates said allegations herein by reference with like effect as if herein fully set forth.

X.

Upon information and belief, the allegations in paragraph ten of the Complaint are admitted.

XI.

The allegations contained in paragraph eleven of the Complaint are denied.

XII.

The allegations contained in paragraph twelve of the Complaint are denied.

XIII.

The allegations contained in paragraph thirteen of the Complaint are admitted.

XIV.

The allegations contained in paragraph fourteen of the Complaint are denied for lack of knowledge or information sufficient to form a belief as to the truth of the matters contained therein and therefore, said allegations are denied.

XV.

The allegations contained in paragraph fifteen of the Complaint are denied for lack of knowledge or information sufficient to form a belief as to the truth of the matters contained therein and therefore, said allegations are denied.

XVI.

The allegations contained in paragraph sixteen of the Complaint are admitted.

XVII.

The allegations contained in paragraph seventeen of the Complaint are admitted.

XVIII.

The allegations contained in paragraph eighteen of the Complaint are denied.

XIX.

The allegations contained in paragraph nineteen of the Complaint are denied.

XX.

The allegations contained in paragraph twenty of the Complaint are denied.

XXI.

The allegations contained in paragraph twenty-one of the Complaint are denied for lack of knowledge or information sufficient to form a belief as to the truth of the matters contained therein and therefore, said allegations are denied.

FURTHER ANSWERING THE COMPLAINT OF THE PLAINTIFF AND AS A FIRST FURTHER DEFENSE, THIS DEFENDANT AVERS:

I.

The Plaintiff has failed to state a claim upon which relief can be granted and the Defendant moves, pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure that said action against her be dismissed with prejudice.

FURTHER ANSWERING THE COMPLAINT OF THE PLAINTIFF AND AS A SECOND FURTHER DEFENSE AND MOTION TO SEVER PUNITVE DAMAGES FROM COMPENSATORY DAMAGES, THIS DEFENDANT AVERS:

I.

The Plaintiff instituted this lawsuit in the General Court of Justice of Guilford County, Superior Court Division. In the Complaint, both compensatory and punitive damages are prayed for by the Plaintiff.

II.

North Carolina General Statute Chapter 1D provides that, when both compensatory and punitive damages are prayed for by the Plaintiff that the Court shall sever the punitive damage claim from the compensatory damage claim for trial and all further proceedings.

III.

This answering Defendant hereby moves, pursuant to the provisions of Chapter 1D of the North Carolina General Statutes, that the Court enter an Order severing the punitive damage claim from the compensatory damage claim for trial and all further proceedings in this action.

FURTHER ANSWERING THE COMPLAINT OF THE PLAINTIFF AND AS A THIRD FURTHER DEFENSE AND MOTION FOR ATTORNEY'S FEES PUNITIVE DAMAGES, THIS DEFENDANT AVERS:

I.

Plaintiff has brought a claim for punitive damages, which said claim for punitive damages, upon information, is frivolous or malicious. In the event that Plaintiff is adjudged not to be entitled to recover punitive damages from the Defendants, then, in that event, the Defendants move, pursuant to North Carolina General Statute 1D-45, that the Court award reasonable attorney's fees resulting from the defense of this punitive damages claim, on the grounds that the Plaintiff knows, or in the exercise of reasonable care, should have known, that the claim for punitive damages is frivolous or malicious.

FURTHER ANSWERING THE COMPLAINT OF THE PLAINTIFF AND AS A FOURTH FURTHER DEFENSE AND PLEA OF CONTRIBUTORY NEGLIGENCE AND GROSS CONTRIBUTORY NEGLIGENCE, THIS DEFENDANT AVERS:

I.

On April 27, 2008, at approximately 11:38 p.m., Howard Bradley Wicker was operating his 2005 Volvo in a generally southerly direction along N.C. Hwy 22 near Randleman, in Randolph County, North Carolina.

II.

At all times and herein relevant, the decedent, Nancy Lovendahl Wicker, was riding as a front-seat passenger in the 2005 Volvo.

III.

Prior to April 27, 2008, at 11:38 p.m., and specifically within the ten hours preceding that time and date, Howard Bradley Wicker, together with Nancy Lovendahl Wicker, had been together, in each others presence, and had been in a position to observe each other's behavior, including the participation in consuming alcoholic beverages and at the time of the accident, April 27, 2008, at 11:38 p.m., and for the thirty minutes to one hour before that time, Nancy Lovendahl Wicker, decedent, knew the condition of Defendant Howard Bradley Wicker, including but not limited to his level of intoxication or impairment and ability to drive an automobile.

IV.

On this occasion and all times herein relevant, Nancy Lovendahl Wicker elected to ride as a passenger in the 2005 Volvo automobile owned and operated by Howard Bradley Wicker after she had been in his presence for the past eight or ten hours and knew, by exercising reasonable care, should have known, of his intoxication or impairment level, the amount of alcohol or other impairing substance which he had consumed and knew, and exercised a reasonable care should have known, that was unsafe to ride as a passenger in the motor vehicle with Defendant Howard Bradley Wicker at that time.

V.

On this occasion and all times herein relevant, Nancy Lovendahl Wicker was careless and negligent in that she:

- a) Rode as a passenger in a motor vehicle with the Defendant when she knew, exercising reasonable care, should have known that he had consumed some sort of impairing substance to the point that he had impaired both of his mental and physical facilities and it was unsafe to drive;
- b) Rode as a passenger in a motor vehicle with Defendant Howard Bradley Wicker after she knew, exercising reasonable care, should have known that he was impaired by an impairing substance;

- c) Rode as a passenger in a motor vehicle with Defendant Howard Bradley Wicker after she had been in presence for such a sufficient period time to have observed his behavior and have been aware of his condition and ability to drive or not be able to drive an automobile;
- d) Rode as a passenger in a motor vehicle with Defendant Howard Bradley Wicker and failed to remonstrate;
- e) Failed to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances; and
- f) Was careless and negligent in other respects to be proven at trial

VI.

And the aforementioned careless and negligent acts on the part of the Plaintiff were careless and negligent and grossly careless and negligent and were at least one of the proximate causes of the injuries and damages, if any, of which Plaintiff complains.

VII.

Even if the Defendant was careless and negligent in any of the respects alleged in the Complaint, which alleged actionable negligence is again expressly denied, then, in that event the aforementioned careless negligent acts and grossly careless negligent acts on behalf of the decedent join, concur and cooperate with the negligent acts, as if any, on behalf of the Defendant in proximately causing and producing the automobile collision and resulting injuries and damages, if any, of which Plaintiff complains; and the Defendant hereby specifically pleads contributory negligence and gross contributory negligence on behalf of Plaintiff and bar the right of Plaintiff to recover gross contributory negligence on behalf of the decedent and bar the right of Plaintiff to recover from the Defendant in this action.

FURTHER ANSWERING THE COMPLAINT OF THE PLAINTIFF AND AS A REQUEST FOR WRITTEN STATEMENT OF THE AMOUNT OF MONETARY RELIEF SOUGHT, THIS DEFENDANT AVERS:

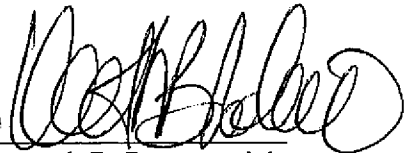
I.

Pursuant to Rule 8(a)(2) of the North Carolina Rules of Civil Procedure, the Defendant hereby requests that within thirty days after the service of this pleading, that the Plaintiff provides a written statement of the amount of monetary relief sought against the Defendant in this action.

WHEREFORE having answered the Complaint of the Plaintiff, the Defendant prays for the following relief:

1. That this action be dismissed;
2. That the claims for punitive damages be severed from the claims of compensatory damages;
3. That the Plaintiff have and recover nothing from the Defendant in this action;
4. That the costs of this action be taxed against the Plaintiff, and
5. That the Court grant all other and further relief as the Court may deem just and proper.

This the 16 day of October, 2008.

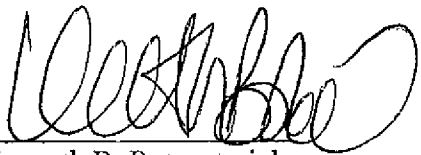

Kenneth B. Rotenstreich
Attorney for Defendant

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DEMAND FOR JURY TRIAL

The Defendant hereby demands a trial by jury on all issues raised by the pleadings in this case.


Kenneth B. Rotenstreich
Attorney for Defendant