

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

**BILLY FITZGERALD, AS WRONGFUL
DEATH BENEFICIARY OF KENNETH
FITZGERALD, DECEASED, AND ON
BEHALF OF OTHER WRONGFUL
DEATH BENEFICIARIES**

PLAINTIFF

V.

CAUSE NO. 2:20-cv-3-KS-MTP

**JONES COUNTY VOLUNTEER FIRE
DEPARTMENT COUNCIL, ANTHONY
PITTS AND JOHN DOES 1-10**

DEFENDANTS

NOW COMES Plaintiff, Billy Fitzgerald, as statutory wrongful death beneficiary of Kenneth Fitzgerald, Deceased, through counsel, and files this action against Defendants Jones County Volunteer Fire Department Council, Anthony Pitts and John Does 1-10. In support thereof, Plaintiff shows the following:

PARTIES

1.

Billy Fitzgerald is an adult resident citizen of the state of Louisiana. He is the natural brother and statutory wrongful death beneficiary of Kenneth Fitzgerald, Deceased.

2.

Jones County Volunteer Fire Department Council (“JCVFD”) is non-profit corporation formed under the laws of the State of Mississippi and a political subdivision of the State of Mississippi with its principal place of business located at 415 North Fifth Avenue, Laurel, Mississippi. JCVFD may be served with process by any means permitted at law.

3.

Defendant Anthony Pitts, on information and belief, is an adult resident citizen of the State

of Mississippi. Defendant Pitts (“Pitts”) may be served with process at 659 Service Road, Laurel, Mississippi, or in any other method permitted at law.

4.

Defendant John Does 1-10 are fictitious Defendants, the true identity of each is unknown to Plaintiff, and who are parties herein pursuant to Rule 9(h) of the Mississippi Rules of Civil Procedure. More specifically, John Doe Defendants constitute the class of organizations, companies, or individuals unknown to Plaintiff at this time that through their negligence, conspiracy, concealment, or otherwise caused Plaintiff’s damage or delayed Plaintiff’s access to judicial relief. Plaintiff reserves the right to amend the Complaint upon discovery of the true identity of each fictitious Defendant.

5.

At all times relevant to this action, Defendant JCVFD’S agent or employee, Anthony Pitts, was acting in the scope of his agency and employment with JCVFD. Accordingly, Defendant JCVFD is vicariously responsible for the alleged acts and omissions of its employee/agent, as well as any other employees, agents, individuals, or managers that were negligent while acting on behalf and for JCVFD.

JURISDICTION AND VENUE

6.

Pursuant to the provisions of 28 U.S.C.A. § 1332 and Miss. Code Ann. § 11-46-13(1) this Court has jurisdiction over the parties and subject matter of this suit. Venue is proper pursuant to Miss. Code Ann. § 11-46-13(2), as the incident that is the basis of the suit occurred in Jones County, Mississippi.

FACTS

7.

On or about January 14, 2019, at approximately 5:50 p.m., near Laurel, Jones County, Mississippi, a Ford F-350 (the “fire truck”) owned by the Jones County Volunteer Fire Department Council struck a Chevrolet Silverado owned by Deepwell Energy Services, LLC (“Deepwell”). Occupying the fire truck was its driver, Anthony Pitts and two passengers, Matthew Blake Todd and Alexandria “Andrea” Sherman. The Deepwell vehicle was being operated by Gary Thornton and was occupied with front-right seat passenger, Kenneth Fitzgerald.

8.

The accident occurred as the fire truck traveled south on Hwy 28, ran a red light and entered the intersection of Hwy 28 and Hwy 84, where the Deepwell vehicle was eastbound under green light on Hwy 84 in the outside lane.

9.

Defendant Pitts was in the course and scope of his employment and was operating the fire truck for, with the authorization and at the direction of JCVFD at the time this incident occurred.

10.

At all relevant times hereto, Kenneth Fitzgerald did not cause or contribute to the subject collision.

11.

Kenneth Fitzgerald sustained serious injury and mortal wounds as a result of the fire truck’s operation. These injuries eventually claimed his life after several days of pain and suffering in intensive care.

12.

At all relevant times, Defendant Pitts was operating the fire truck with reckless disregard, without due care and at a speed that was unsafe for the conditions and/or for the roadway in question when he willfully and wantonly entered the intersection on a red-light with a conscious indifference to other motorists. Defendant Pitts' actions were with such conscious indifference to the consequences that they were tantamount to willingly committing harm. As a result of said negligence, Defendant Pitts wrongfully entered Kenneth Fitzgerald's lane of travel, struck his vehicle and ultimately took his life.

CAUSES OF ACTION

I. Negligence of Defendant Pitts

13.

Plaintiff adopts and incorporates herein by reference the allegations in paragraphs 1 through 12 of this Complaint.

14.

Defendant Pitts owed the following duties, *inter alia*, to Kenneth Fitzgerald:

- (i) To exercise reasonable, ordinary care in the operation of his vehicle;
- (ii) To exercise the same care that a reasonably prudent person would under like circumstances;
- (iii) To exercise reasonable, ordinary care to keep a proper lookout for other vehicles;
- (iv) To exercise proper caution upon entering an intersection on a red traffic signal;
- (v) To exercise and maintain proper control of his vehicle; and,

(vi) Other breached duties to be shown at trial.

15.

Defendant Pitts had a duty to act as a reasonably prudent person under like circumstances; he owed this duty to Kenneth Fitzgerald. Defendant Pitt breached every duty as listed above, and by doing so caused the death of Kenneth Fitzgerald.

16.

The direct and proximate causes of Kenneth Fitzgerald's injuries was the Defendant's negligent acts. But for this reckless disregard and conscious indifference, the harm suffered by Kenneth Fitzgerald could have been avoided.

II. Negligence *Per Se* of Defendant Pitts

17.

Plaintiff adopts and incorporates herein by reference the allegations in paragraphs 1 through 17 of this Complaint.

18.

Defendant Pitts' operation of the fire truck constituted negligence *per se*, including, *inter alia*, the following:

- (i) Violating Miss. Code Ann. §§ 63-3-1201, 1203;
- (i) Violating Miss Code Ann. § 63-3-801;
- (ii) Violating Miss. Code Ann. §§ 63-3-313, 315; and,
- (iii) Other acts of negligence *per se* to be shown at trial.

19.

Defendant Pitts' failure to comply with the aforementioned statutes constitutes negligence *per se* because it resulted in the type of harm the statutes were designed to prevent, and Kenneth Fitzgerald was within the class of persons the statutes were intended to protect.

20.

The direct and proximate causes of Kenneth Fitzgerald's injuries was the Defendant's violation of the aforementioned statutes. But for this reckless disregard and conscious indifference, the harm suffered by Kenneth Fitzgerald could have been avoided.

II. Negligent Hiring or Rentention by Jones County Volunteer Fire Department Council

21.

Plaintiff adopts and incorporates herein by reference the allegations in paragraphs 1 through 20 of this Complaint.

22.

JCVFD hired Defendant Pitts as a fireman and/or emergency vehicle operator.

23.

Before employing Defendant Pitts, JCVFD had a non-delegable duty to use reasonable care in selecting a competent and careful individual to serve as a fireman and/or emergency vehicle operator.

24.

Defendant Pitts was unfit to serve as a fireman and/or emergency vehicle operator because, on information and belief, he was without adequate training on protocols and procedures of operating emergency vehicles and on responding to emergent situations because he improperly utilized his emergency vehicle and entered the intersection on a red-light with reckless disregard for other motorists.

25.

JCVFD knew or should have known of Defendant Pitts unfitness to serve as a fireman and/or emergency vehicle operator.

26.

JCVFD breached its non-delegable duty when it employed Pitts without establishing that Pitts was a competent and careful fireman and/or operator of emergency vehicles. JCVFD further breached its duty by negligently retaining Defendant Pitts despite his unfitness to serve as a fireman and/or emergency vehicle operator

27.

The direct and proximate causes or a proximate contributing cause of Kenneth Fitzgerald's injuries was JCVFD's negligent hiring and retention practices. But for this reckless disregard and conscious indifference, the harm suffered by Kenneth Fitzgerald could have been avoided.

IV. Negligent Training and Supervision by Jones County Volunteer Fire Department Council

28.

Plaintiff adopts and incorporates herein by reference the allegations in paragraphs 1 through 27 of this Complaint.

29.

JCVFD had a non-delegable duty to take reasonable precautions to protect motorists such as Kenneth Fitzgerald from the improper operation of emergency vehicles by its employees and agents.

30.

On information and belief, Defendant Pitts was without adequate training and/or supervision on protocols and procedures of operating emergency vehicles and on responding to emergent situations because he improperly utilized his emergency vehicle and entered the intersection on a red-light with reckless disregard for other motorists.

31.

Defendant Pitts' misconduct and improper operation of the emergency vehicle was the result of JCVFD's negligent training and supervision of Defendant Pitts.

32.

The direct and proximate causes or a proximate contributing cause of Kenneth Fitzgerald's injuries was JCVFD's negligent hiring practices. But for this reckless disregard and conscious indifference, the harm suffered by Kenneth Fitzgerald could have been avoided.

V. Negligent Entrustment by Jones County Volunteer Fire Department Council

33.

Plaintiff adopts and incorporates herein by reference the allegations in paragraphs 1 through 32 of this Complaint.

34.

JCVFD supplied Defendant Pitts with the fire truck for use and operation by Defendant Pitts.

35.

JCVFD knew or should have known that Defendant Pitts would use the fire truck in a manner involving an unreasonable risk of harm because, on information and belief, he was without adequate training and/or supervision on protocols and procedures of operating emergency vehicles and on responding to emergent situations because he improperly utilized his emergency vehicle and entered the intersection on a red-light with reckless disregard for other motorists.

36.

The direct and proximate causes or a proximate contributing cause of Kenneth Fitzgerald's injuries was JCVFD's negligent entrustment of the fire truck to Defendant Pitts. But for this reckless disregard and conscious indifference, the harm suffered by Kenneth Fitzgerald could have

been avoided.

VI. Respondeat Superior

37.

Plaintiff adopts and incorporates herein by reference the allegations in paragraphs 1 through 36 of this Complaint.

38.

Defendant JCVFD is liable for the negligent acts and/or omission of its employees, agents, servants and assigns, including by not limited to the acts of Defendant Pitts, performed within the course and scope of their employment pursuant to the doctrine of respondeat superior.

DAMAGES

39.

Plaintiff adopts and incorporates herein by reference the allegations in paragraphs 1 through 38 of this Complaint.

40.

The actions or inactions of Defendants were grossly negligent, evidenced reckless disregard and were willful and wanton as to the consequences and resulting harms; therefore, Plaintiff is entitled to punitive damages under authoritative law, including Miss. Code Ann. § 11-1-65, in an amount sufficient to punish Defendants and deter similar future conduct.

41.

As a direct and proximate result of the aforementioned incident and the negligence of Defendants, Billy Fitzgerald, individually and on behalf of other wrongful death beneficiaries of Kenneth Fitzgerald, Deceased, are entitled to the following damages, *inter alia*, pursuant to Miss. Code Ann. § 11-7-13:

- a. The net present cash value of Kenneth Fitzgerald's life expectancy at the time of his

- death;
- b. The loss of society, companionship, love and affection;
 - c. The physical, mental and emotional pain and suffering experienced by Kenneth Fitzgerald prior to his death;
 - d. The medical and funeral expenses incurred as a result of Kenneth Fitzgerald's death;
 - e. Any medical expenses incurred as a result of Kenneth Fitzgerald's injuries and death;
 - f. The present value of Kenneth Fitzgerald's right to live out his normal life expectancy;
 - g. The loss of all future earnings and services;
 - h. The present value of Kenneth Fitzgerald's loss of future enjoyment of life;
 - i. Punitive Damages, attorneys' fees, and costs to bring this action;
 - j. All other economic or non-economic damages that the Plaintiff may be entitled; and
 - k. Any other relief which the Court or jury deems just and appropriate in the premises.

AD DAMNUM

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands judgment from Defendants for compensatory and exemplary damages for a reasonable and fair amount to be determined by a jury, plus pre-judgment interest, post-judgment interest, all costs and expenses associated with this action, costs of court, attorney's fees, and any other and further relief as provided under Miss. Code Ann. § 11-7-13 and that this Honorable Court may deem just and necessary under the premises.

THIS, the 10th day of January, 2020.

Respectfully Submitted,

**Billy Fitzgerald, individually and on behalf of all
other wrongful death beneficiaries, Plaintiff**

By: /s/ G. Weathers Virden, Jr
James R. Moore, Jr. (MSB #3445)
G. Weathers Virden, Jr. (MSB #105200)
Attorneys for Plaintiff

OF COUNSEL:

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CIVIL COVER SHEET Civil No.: 2:20-cv-3-KS-MTP

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

BILLY FITZGERALD, AS WRONGFUL DEATH BENEFICIARY OF KENNETH FITZGERALD, DECEASED, AND ON

(b) County of Residence of First Listed Plaintiff State of Louisiana (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

James R. Moore, Jr.; G. Weathers Virden, Jr. Copeland, Cook, Taylor & Bush, P.A. P.O. Box 6020, Ridgeland, MS 39158; (601) 856-7200

DEFENDANTS

JONES COUNTY VOLUNTEER FIRE DEPARTMENT COUNCIL, ANTHONY PITTS AND JOHN DOES 1-10

County of Residence of First Listed Defendant Jones County, Mississippi (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332

Brief description of cause: Wrongful death

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 01/10/2020 SIGNATURE OF ATTORNEY OF RECORD G. Weathers Virden, Jr.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT \$400.00 APPLYING IFP JUDGE Starrett MAG. JUDGE Parker