

1-30-13

NORFOLK, SS

TRIAL COURT DEPARTMENT
SUPERIOR COURT
CIVIL ACTION NO.

13 00150

NILANTHI MOTSENIGOS, individually,
on behalf of the Estate of Alexander
Motsenigos and as next friend of minor Nikolas
Motsenigos,

Plaintiff,

v.

DANA E.A. MCCOOMB,
C.J. MABARDY, INC., and
TRUCK FAMILY LIMITED PARTNERSHIP,

Defendants

COMPLAINT

Introduction

1. Nilanthi Motsenigos, as the widow and personal representative of the Estate of Alexander Motsenigos, brings wrongful death claims against the Defendants for the death of her husband. On August 24, 2012, a tractor trailer truck driven by Dana E.A. McCoomb struck Mr. Motsenigos when he was riding his bicycle on Weston Road in Wellesley forcing him under the truck. Mr. McCoomb left the scene without stopping. Mr. Motsenigos died shortly afterwards at Newton-Wellesley Hospital.

Parties

2. Nilanthi Motsenigos resides in Wellesley, MA. She is the widow of Alexander Motsenigos and the mother of six-year-old Nikolas Motsenigos. Mrs. Motsenigos has been appointed as the personal representative of the Estate of Alexander Motsenigos.

3. Defendant Dana E.A. McCoomb (“McCoomb”) is an individual who resides in East Wareham, MA, and who, at all relevant times, was employed by C.J. Mabardy, Inc., as a truck driver.

4. Defendant C.J. Mabardy, Inc. (“Mabardy”), is a Massachusetts corporation with a principle place of business of 51 Mooney Street, Cambridge, MA 02138.

5. Defendant Truck Leasing Family Limited Partnership (“Truck Leasing”) is a Massachusetts limited partnership with a principle place of business of 50 Mooney Street, Cambridge, MA 02138. Truck Leasing is the registered owner of the truck that struck Mr. Motsenigos.

Jurisdiction

6. The Court has subject matter jurisdiction over the wrongful death claims at issue as they meet the Superior Court amount in controversy. Personal jurisdiction and venue are proper as the accident occurred in this county. The Defendant McCoomb has a pending bankruptcy case for which the Plaintiff has obtained relief from stay to pursue wrongful death claims.

Facts

The Accident

7. On August 24, 2012, Alexander Motsenigos was riding his bicycle on Weston Road in Wellesley in the early afternoon. It was a bright, clear day.

8. McCoomb was employed by Mabardy driving an 18-wheel dump trailer registered to Truck Leasing. McCoomb’s trips for that day took him down 135 East onto Weston Road in Wellesley.

9. Heading North on Weston Road, Mr. Motsenigos rode through the traffic light at the intersection of Route 135. As he headed through this intersection, the dump trailer driven by

McCoomb was approaching the intersection from the West. McCoomb had driven the route on previous occasions and was familiar with the road.

10. Just after Mr. Motsenigos rode through the intersection, the light changed and McCoomb turned left, also heading North on Weston Road.

11. Based on the conditions, McCoomb could see Mr. Motsenigos as Mr. Motsenigos rode his bike just ahead of the truck and through the intersection. While on Weston Road, there were no obstructions to McCoomb's vision, and he could see Mr. Motsenigos in front of him.

12. The cab of McCoomb's truck caught up to Mr. Motsenigos bicycle. McCoomb decided to pass Motsenigos as his truck headed for the intersection of Weston Road and Linden Street.

13. The roadway at the intersection of Weston and Linden narrows considerably, and there is oncoming traffic from the South.

14. Despite being familiar with this route and the narrowing of the intersection, McCoomb still attempted to pass Mr. Motsenigos near or at the point where the intersection narrowed and where oncoming traffic restricted his truck from crossing the yellow center line into the other lane.

15. At or near the point the intersection narrowed, the side of McCoomb's trailer impacted with Mr. Motsenigos' left side forcing him under the truck.

16. McCoomb did not stop his truck after hitting Mr. Motsenigos. He left the scene of the accident.

17. Mr. Motsenigos was transported to Newton-Wellesley Hospital where he passed away shortly thereafter.

McCoomb's Driving Record and the Failure of the Truck to Have a Working Horn

18. At the time of the accident, McCoomb held a Commercial Driver's License. However, his driving record demonstrated numerous driving violations which should have put Mabardy and Truck Leasing on notice that McCoomb was an extremely dangerous driver who should not have been behind the wheel of a truck.

19. On the day of the accident, McCoomb's license was suspended for 7 surcharge events in 60 days. On August 23, 2012, the day before the accident, McCoomb's driving record indicates he was assessed a surcharge for an accident that had occurred previously in Brockton. His driving record from 1982 through the date of the accident demonstrates a long string of driving violations and accidents with numerous license suspensions.

20. Mabardy and Truck Leasing had an ongoing duty to investigate McCoomb's driving record to ensure that they put safe truck drivers on the road.

21. Moreover, based on the assessment of the Wellesley Police Department, the truck driven by McCoomb on the day of the accident failed to have a working horn.

Count 1 – Wrongful Death (Negligence)

(All Defendants)

22. McCoomb had a duty to operate his truck in a reasonable and prudent manner on the day of the accident. At the time of the incident, McCoomb was the employee, agent and/or authorized user of the truck working for or on behalf of Mabardy and Truck Leasing. Mabardy and Truck Leasing are vicariously liable for the actions of McCoomb.

23. McCoomb breached his duty of care by failing to drive defensively commensurate with the circumstances, by failing to stop or slow his vehicle to allow Mr. Motsenigos to safely proceed through the intersection, by attempting to pass or overtake Mr. Motsenigos when it was

not safe to do so, and by otherwise failing to operate his truck with reasonable care given the circumstances.

24. McCoomb's actions constituted reckless acts and/or gross negligence entitling the Plaintiff to punitive damages. At all times, Mr. Motsenigos was in full view of McCoomb, and McCoomb knew that the roadway narrowed at the point where he attempted to pass Mr. Motsenigos. Despite this knowledge, McCoomb attempted to beat Mr. Motsenigos through the intersection, thereby eliminating any means for Mr. Motsenigos to proceed safely through the intersection.

25. McCoomb's failure of due care proximately caused the death of Mr. Motsenigos. The Defendants' wrongful actions resulted in hospital, medical, funeral and burial costs and deprived the statutory wrongful death beneficiaries of Alexander Motsenigos of his services, protection, care, assistance, society, companionship, comfort, guidance, counsel and advice.

Wherefore, the Plaintiff requests damages pursuant to the Wrongful Death Statute, including punitive damages, pre- and post judgment interest, and attorney's fees and costs as provided by law.

Count 2 – Wrongful Death (Negligent Entrustment)

(Truck Leasing)

26. Truck Leasing, as the owner of the truck, had a duty of reasonable care to prevent the entrustment of its vehicle to an unsafe driver.

27. Truck Leasing, as a company closely affiliated with Mabardy, breached its duty of care by entrusting its vehicle to McCoomb when it had actual knowledge of McCoomb's driving record and the fact that he was a dangerous driver.

28. Truck Leasing's failure to exercise due care in the entrustment of its vehicle to McCoomb resulted in the death of Mr. Motsenigos. The Defendants' wrongful actions resulted in hospital, medical, funeral and burial costs and deprived the statutory wrongful death beneficiaries of Alexander Motsenigos of his services, protection, care, assistance, society, companionship, comfort, guidance, counsel and advice.

Wherefore, the Plaintiff requests damages pursuant to the Wrongful Death Statute, pre- and post judgment interest, and attorney's fees and costs as provided by law.

Count 3 – Wrongful Death (Negligent Hiring, Training and Retention)

(Mabardy)

29. Mabardy had a duty of reasonable care to hire safe and qualified drivers, to adequately train its drivers, to periodically review the qualifications of its drivers, and to terminate drivers who were not qualified or otherwise safe to operate its vehicles.

30. Mabardy breached its duty of care by hiring McCoomb despite his unsafe driving record, by failing to adequately train McCoomb on how to safely operate and maintain a truck, by failing to periodically review McCoomb's driving qualifications and record, and by failing to terminate McCoomb due to his unsafe driving record.

31. Mabardy's actions with respect to hiring McCoomb, failing to train him and failing to check his driving record and qualifications also constituted reckless acts and/or gross negligence entitling the Plaintiff to punitive damages. Mabardy is obligated by law to periodically review and assess McCoomb's driving record. McCoomb's driving record is replete with all manner of driving violations, including numerous driving suspensions. Moreover, McCoomb was assessed a surchargeable accident the day prior to the incident that killed Mr. Motsenigos.

32. Mabardy's failure to remove McCoomb from driving its truck given McCoomb's driving record amounts to reckless conduct and gross negligence.

33. Mabardy's breach of its duties of care proximately caused the death of Mr. Motsenigos. The Defendants' wrongful actions resulted in hospital, medical, funeral and burial costs and deprived the statutory wrongful death beneficiaries of Alexander Motsenigos of his services, protection, care, assistance, society, companionship, comfort, guidance, counsel and advice.

Wherefore, the Plaintiff requests damages pursuant to the Wrongful Death Statute, including punitive damages, pre- and post judgment interest, and attorney's fees and costs as provided by law.

Count 4 – Conscious Pain and Suffering

(All Defendants)

34. The defendants' actions as described above caused Mr. Motsenigos conscious pain and suffering prior to his death for which the Estate is entitled to be compensated.

Wherefore, the Plaintiff requests damages pursuant to the Wrongful Death Statute, pre- and post judgment interest, and attorney's fees and costs as provided by law.

JURY DEMAND

The Plaintiff demands a trial by jury.

On behalf of the Plaintiff,

A handwritten signature in black ink that reads "Carlin J. Phillips". The signature is written in a cursive style and is positioned above a horizontal line.

Carlin J. Phillips

BBO# 561916

Andrew J. Garcia

BBO#

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