

FILED
LUCAS COUNTY

ORIGINAL

2017 OCT 25 AM 10:37

COMMON PLEAS COURT
BERNIE QUILTER
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IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

Rebecca Best, Individually and as
Executrix of the Estate of Shirley Wright
636 Ogden
Toledo, Ohio 43609

Plaintiff,

v.

Susanne Barwiler
626 Ogden Ave
Toledo, Ohio 43609

and

Anthony Foust
626 Ogden Ave.
Toledo, OH 43609

and

Holly Foust
626 Ogden Ave.
Toledo, OH 43609

Defendants.

* * * * *

Case No. _____

Judge: _____

G-4801-CI-0201704576-000

Judge
LINDA J. JENNINGS

COMPLAINT WITH JURY DEMAND
ENDORSED HEREON

Daryl K. Rubin (0005522)
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Attorney for Plaintiff

Now comes the Plaintiff, Rebecca Best, Individually and as Executrix of the Estate of Shirley Wright, by and through counsel, Daryl Rubin, and for her cause of action against Defendants, states and avers as follows:

PARTIES

1. Plaintiff, Rebecca Best, is and at all times relevant herein was a resident of Toledo, Lucas County, Ohio. Furthermore, Plaintiff is the Executrix of the Estate of Shirley Wright filed with the Lucas County Court of Common Pleas, Probate Division, Case No.: 2017 EST 1402.

2. Defendants, Anthony Foust, Holly Foust and Susanne Barwiler, are and at all times relevant herein were residents of Toledo, Lucas County, Ohio.

3. Defendant, Susanne Barwiler, is, upon information and belief, the owner of the home in which Defendants, Anthony and Holly Foust reside in, located at 626 Ogden Ave., Toledo, OH 43609; and that she herself resides in the home for at least part of the year.

4. Defendants, Susanne Barwiler, Anthony Foust and Holly Foust, are, upon information and belief, were owners/keepers/harborers of a vicious dog(s).

5. On or about May 6, 2017 at approximately 5:00pm, Shirley Wright was doing yard work on her property which was located adjacent to the defendant's property at 626 Ogden Ave., Toledo, OH 43609. Defendant, Anthony Foust, was sitting on his front porch with his two pit-bull dogs. As Ms. Wright was walking towards the driveway, one of the defendant's dogs charged at her, jumping up on her left side, biting her, mauling her and causing her to fall to the concrete.

6. As a direct consequence of the attack, Shirley Wright, suffered severe and painful injuries, the complications of which directly resulted in her death. Her injuries included but are not limited to right hand swelling with fractured middle finger; a fracture of the right shoulder; and a fracture of the right hip.

COUNT ONE- NEGLIGENCE

7. Plaintiff incorporates the allegations and averments as recited in Paragraphs One (1) through Six (6) as if fully reproduced herein.

8. Defendants, Susanne Barwiler, Anthony Foust and Holly Foust, either individually, and/or jointly and severally, were negligent by failing to keep and maintain reasonable control of their dog(s) while unconfined and/or untethered, thereby allowing them to roam free with the potential to cause physical bodily harm to another person.

COUNT TWO: STRICT LIABILITY

9. Plaintiff incorporates the allegations and averments as recited in Paragraphs One (1) through Eight (8) as if fully reproduced herein.

10. Defendants, Susanne Barwiler, Anthony Foust and Holly Foust, either individually and/or jointly and severally, are strictly liable for the personal injuries and resultant death of Shirley Wright.

COUNT THREE: NEGLIGENCE PER SE

11. Plaintiff incorporates the allegations and averments as recited in Paragraphs One (1) through Ten (10) as if fully reproduced herein.

12. Defendants, Susanne Barwiler, Anthony Foust and Holly Foust, either individually and/or jointly and severally, were negligent per se by their violation of ORC §955.22(C)(2) and Local Ordinance §1706.02(C)(2), by failing to keep and or maintain reasonable control of their dog(s) while unconfined and/or untethered, thereby allowing them to roam free with the potential to cause physical bodily harm to another person.

COUNT FOUR- SURVIVAL ACTION

13. Plaintiff incorporates the allegations and averments as recited in Paragraphs One (1) through Twelve (12) as if fully reproduced herein.

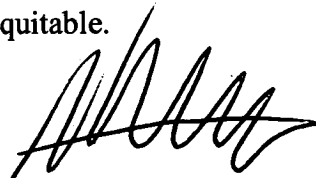
14. Defendants, Suzanne Barwiler, Anthony Foust and Holly Foust, individually and/or jointly and severally, caused decedent, Shirley Wright, to suffer serious and permanent injuries which caused her prolonged periods of pain and suffering.

COUNT FIVE- DEATH CLAIM

15. Plaintiff incorporates the allegations and averments as recited in Paragraphs One (1) through Fourteen (14) as if fully reproduced herein.

16. Defendants, Suzanne Barwiler, Anthony Foust and Holly Foust, whether individually and/or jointly and severally, have caused damages to the decedent, Shirley Wright's wrongful death heirs, in an amount which has not yet been ascertained.


WHEREFORE, Plaintiff, Rebecca Best, prays for judgment of monetary damages against the Defendants, jointly and severally, in an amount greatly in excess of Twenty-Five Thousand Dollars (\$25,000.00) per Defendant, as well as for all costs of this action, any and all applicable interests, Plaintiff's reasonable attorney fees, as well as any and all other such relief as this Honorable Court deems appropriate, just, and equitable.



Daryl K. Rubin (0005522)
Rubin & Zyndorf Associates, P.C.
2127 Monroe Street
Toledo, Ohio 43604

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all triable issues.

A handwritten signature in black ink, appearing to read 'D. K. Rubin', written over a horizontal line.

Daryl K. Rubin (0005522)
Rubin & Zyndorf Associates, P.C.
2127 Monroe Street
Toledo, Ohio 43604