

ORIGINAL

IN THE COURT OF CLAIMS OF OHIO

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COURT OF CLAIMS
OF OHIO
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DARLENE LANE FERRARO, :
 : Case No. 2011-10371
Plaintiff, :
 : Judge Patrick M. McGrath
v. :
 :
OHIO STATE UNIVERSITY :
MEDICAL CENTER, :
 :
Defendant.

DEFENDANT'S PRETRIAL STATEMENT REGARDING DAMAGE HEARING

Pursuant to Local Rule 7(B), Defendant The Ohio State University Medical Center (OSUMC) submits the following pretrial statement. The Court issued its ruling regarding liability on December 19, 2014, in which three individuals were found equally responsible for Junior Lane's death; Dr. Rolf Barth (an employee of OSUMC), Gary Fury, and the decedent himself.

The damage hearing is set for August 11, 2015, and it is expected to last less than a full day.

I. TRIAL COUNSEL:

Jeffrey L. Maloon
Principal Assistant Attorney General
Court of Claims Defense Section
150 East Gay Street
18th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7447
Email: jeffrey.maloon@ohioattorneygeneral.gov

II. INTRODUCTION:

This litigation surrounds a fatal traffic accident that occurred on September 10, 2009, on Interstate 71 approximately 300 feet north of milepost 238, in the city of Brook Park, Ohio. Two vehicles were involved in the accident, a 1997 Dodge Ram pickup truck driven by Gary Fury and a 2004 Mercedes C240 driven by Dr. Rolf Barth. At the time of the accident, approximately 9:23 p.m., Mr. Fury's pickup truck was stopped on I-71 north, just north of Snow Road. Dr. Barth was also traveling northbound on I-71 when he struck the rear of Mr. Fury's stopped pickup truck.

In the area where the accident occurred, I-71 is an eight-lane highway consisting of four northbound lanes and four southbound lanes, which are divided by a four-foot high concrete wall. The roadway is straight and the pavement was dry at the time of the collision. The only lighting of the area was from a luminaire mounted on a dual-mast arm attached to a pole anchored to the top of the concrete dividing wall. The mast arm extended approximately 15 feet into the northbound lane, placing the light approximately eight feet into the left-most lane (lane 4). The poles are spaced about 233 feet apart.

Prior to the collision, Jesse Fury and Plaintiff's decedent, Junior Lane, had exited Mr. Fury's pickup truck and were in the roadway attempting to reconnect a tow dolly that had come loose from its connection at the back of Mr. Fury's truck. The truck, which was completely stopped, was in the third lane of traffic. When the collision occurred, Mr. Lane was located in the area where the two vehicles made contact. Mr. Lane was found underneath Dr. Barth's car after the collision. He was transported to a local hospital where he died a short time later without regaining consciousness.

III. LIABILITY DECISION:

The liability trial was held on July 28-30, 2014. Liability was strongly contested with each party introducing the testimony of an accident reconstructionist. After hearing the evidence, the Court ruled that three individuals were equally responsible for Mr. Lane's death; Dr. Barth, Gary Fury, and the decedent himself. Specifically with regard to Dr. Barth, the Court found that he failed to maintain an assured clear distance, his negligence was a proximate cause of Mr. Lane's death, and that OSUMC was responsible for one-third of Plaintiff's damages.

IV. SUMMARY OF PLAINTIFF'S DAMAGE CLAIMS:

A. Plaintiff will not submit a claim for economic damages.

Plaintiff Darlene Ferraro has testified that at the time of his death, her brother was a scrapper and that he made between five hundred to fifteen hundred dollars a week. She stated that the decedent's girlfriend, Michelle Shelly, has receipts in her possession that would support said claim. However, Plaintiff acknowledged that neither her brother nor his probate estate filed tax returns for the two calendar years that he received income as a scrapper.

Plaintiff has not produced the receipts despite Defendant's request nor has she identified an economic expert. Should she attempt to present a claim for economic damages at trial, Defendant will object and move to preclude any evidence thereof.

B. Plaintiff's noneconomic damages are limited to the claim of just one statutory beneficiary.

The decedent was survived by an adult son and three siblings. At the damage hearing, Plaintiff will assert a claim only on her own behalf since (1) the decedent's son was adopted many years ago and his current location is unknown and, (2) the decedent was estranged from his other siblings.

Junior Lane was born October 18, 1961, in Cleveland, Ohio. He was one of five children. Both of his sisters (Mary and Darlene) were older than the decedent. He also had an older brother (Jimmy Lee) and a younger brother (Robert) who died in a car fire a number of years ago.

Mr. Lane had a longstanding criminal history. He was initially arrested at the age of nine for unlawful entry and stealing, and subsequently placed on probation. Mr. Lane violated his probation soon thereafter and was committed to the Cleveland Boys School for nineteen months. He was released in December 1973. Within a month, Mr. Lane (at the age of twelve) was arrested for auto tampering. He was committed to the Pennsylvania George Junior Republic Facility for two years. He escaped from that facility and was found a year later at his father's home in Cleveland. Mr. Lane was taken back to Pennsylvania where he was re-incarcerated until his release in February 1976.

A month later, Mr. Lane (at the age of fourteen) was arrested for auto tampering and possession of burglary tools. He was committed to the Ohio Youth Commission where he was incarcerated until May 1977 only to be arrested again a few months later for auto trespassing. He was sent back to the Ohio Youth Commission and ultimately released in July 1978. Within days, Mr. Lane was arrested for grand theft. The following month, he was arrested for receiving stolen property (two cars and tools). He was sentenced to serve one to five years for the offenses.

Mr. Lane's criminal behavior continued into and throughout his adult years. He was arrested approximately twenty-four times in seventeen years between 1979 and 1996. His behavior included a number of felonious assaults (shooting an individual and striking another individual in the head with a crow bar); the most noteworthy being an assault in October 1996 of a gentleman who was confined to a wheelchair with Mr. Lane returning to the scene and setting the victim's house on fire with two people inside.

It will be difficult for Plaintiff to prove that she had much of a relationship with her brother. Mr. Lane spent almost his entire adulthood in Ohio penal facilities. Ms. Ferraro claims that she visited him in those facilities "when she could."

When asked about her brother's assets at the time of his death, Ms. Ferraro testified that "Junior had nothing but the clothes on his back and the truck." He did

not have a bank account or own real estate. His truck had been used for scrapping and it was given to Ms. Shelly upon the decedent's death.

Finally, Plaintiff is not entitled to funeral and burial costs. A fundraiser was held at a local bar and enough money was raised to pay those costs.

V. LEGAL ISSUE:

1. The amount of damages suffered by Plaintiff Darlene Ferraro, the only statutory beneficiary presenting a claim herein, as a result of the decedent's death.

VI. FACT WITNESSES:

Defendant anticipates calling the following lay witness:

1. Darlene Ferraro (on cross-examination)

Defendant respectfully reserves the right to call any witness identified and/or called by Plaintiff.

VII. EXPERT WITNESSES:

Defendant does not expect to call any expert witnesses.

Defendant respectfully reserves the right to call any witnesses identified and/or called by Plaintiff.

VIII. EXHIBITS:

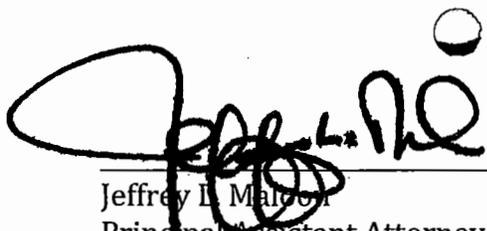
Prior to trial, Defendant will seek a stipulation from Plaintiff as to the authenticity and admissibility of the business records set forth below.

1. Records of the Ohio Department of Rehabilitation and Correction.
[Via proposed stipulation]

Defendant respectfully reserves the right to identify other exhibits including demonstrative exhibits.

Respectfully submitted,

MICHAEL DeWINE
Ohio Attorney General



Jeffrey L. Maloon (0007003)
Principal Assistant Attorney General
Court of Claims Defense Section
150 East Gay Street
18th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7447
Facsimile: (614) 644-9185
jeffrey.maloon@ohioattorneygeneral.gov

Counsel for Defendant

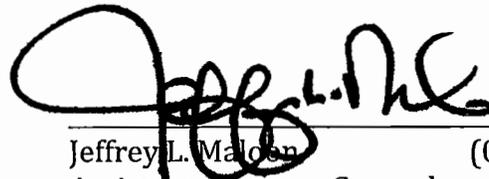
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served via electronic transmission, this 3rd day of August 2015,

upon the following counsel of record:

W. Craig Bashein, Esquire
Thomas J. Sheehan, Esquire
Bashein & Bashein Co., L.P.A.
Terminal Tower, 35th Floor
50 Public Square
Cleveland, Ohio 44113
cbashien@basheinlaw.com
tjs@bashienlaw.com

Paul W. Flowers, Esquire
801 Terminal Tower
50 Public Square
Cleveland, Ohio 44113
pwf@pwfco.com
Attorneys for Plaintiff



Jeffrey L. Maloon (0007003)
Assistant Attorney General