

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

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| |) | |
| Tarithia M. Wright, as natural mother |) | |
| and putative administratrix of the |) | |
| estate of Johnny Tolbert, III, a |) | |
| deceased minor, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| |) | |
| v. |) | Civil Action File No. _____ |
| |) | COMPLAINT FOR DAMAGES |
| |) | |
| Welcome All Park Athletic |) | |
| Association, Inc., American Youth | | |
| Football, Inc., and John Doe | | |
| Defendants 1-7, | | |
| Defendants | | |

COMES NOW Plaintiff Tarithia M. Wright, as natural mother and putative administratrix of the Estate of Johnny Tolbert, III, a deceased minor, and brings this action against the Defendants named above, for the death of her minor son, Johnny Tolbert, III and shows as follows:

INTRODUCTION

1. This is an action to hold the Defendants accountable for the wrongful death of Johnny Tolbert, III, age 12, who died on July 28, 2016 after suffering a fatal heatstroke injury on July 14, 2016 during an outdoor football-related activity administered and negligently mismanaged by the Defendants in 113 degree heat index temperature conditions that resulted in Johnny Tolbert experiencing a coma for two weeks before being taken off life support on July 28, 2016, after which time he subsequently died.

THE PARTIES, JURISDICTION, AND VENUE

2. Plaintiff Tarithia M. Wright, a resident of the State of Georgia, is the natural mother of Johnny Tolbert, III (“Johnny Tolbert”) and is the proper person to bring the claim for her son’s wrongful death.

3. Plaintiff Tarithia M. Wright is, or will be appointed administratrix of the Estate of Johnny Tolbert, III, which will be administered in Fulton County, Georgia, and in that capacity is entitled to bring claims on behalf of the Estate of Johnny Tolbert, III.

DEFENDANTS

DEFENDANT WELCOME ALL PARK ATHLETIC ASSOCIATION, INC.

4. Defendant Welcome All Park Athletic Association, Inc. (sometimes referred to as “Defendant WAP”) is a Georgia domestic corporation with its principal office located at P.O. Box 429, Red Oak, Fulton County, Georgia 30272. Defendant WAP has an office and transacts business in Fulton County, Georgia.

5. Defendant Welcome All Park Athletic Association, Inc., is subject to the jurisdiction and venue of this Court pursuant to O.C.G.A. § 14-2-510 and Article VI, §II, ¶IV of the Georgia Constitution. Service of process may be perfected upon Defendant WAP’s registered agent for service of process, by delivering an original Summons and Complaint to Liz Gallaspy, 495 Bluffs Circle, Union City, Fulton County, Georgia 30272. When served in the manner prescribed by law, Defendant Welcome All Park Athletic Association, Inc., shall be subject to the jurisdiction of and venue in this Court.

6. At all relevant times herein, Defendant WAP was a member association of the American Youth Football, Inc.

7. At all relevant times herein, Defendant WAP was involved in structured sports activities for youth, including the sport of football and with respect to such activities had responsibility for: a) providing for such activities; b) supervising such activities; c) adhering to the applicable rules of Defendant American Youth Football, Inc.; d) enforcing the applicable rules of Defendant American Youth Football, Inc.; e) devising its own rules, including safety rules; f) enforcing its own rules, including safety rules; and g) safeguarding the activity-related physical welfare of its youth participants, including football participants.

DEFENDANT AMERICAN YOUTH FOOTBALL, INC.

8. Defendant American Youth Football, Inc., (“Defendant AYF”) is a foreign corporation incorporated under the laws of the State of Ohio. Defendant American Youth Football, Inc., does not maintain a registered agent for service of process in the State of Georgia. Defendant American Youth Football, Inc., maintains a registered agent in the State of Ohio. Service of process may be perfected upon Defendant American Youth Football, Inc.’s registered agent for service of process, by delivering a second original Summons and Complaint to Registered Agents, Inc., 6545 Market Avenue N., Suite 100, North Canton, Stark County, Ohio 44721. When served in the manner prescribed by law, Defendant AYF shall be subject to the jurisdiction of and venue in this Court as a joint tortfeasor with Defendant Welcome All Park Athletic Association.

9. At all relevant times herein, Defendant AYF had constituent athletic associations that were members of AYF, including the Welcome All Park Athletic Association, Inc.

10. At all relevant times herein, Defendant AYF was involved in structured sports activities for youth, including the sport of football and with respect to such activities had responsibility for: a) providing for such activities; b) supervising such activities; c) devising rules, including

safety rules, for its constituent athletic associations (including Defendant WAP); c) enforcing rules, including safety rules, for its constituent athletic associations (including Defendant WAP); and d) safeguarding the activity-related physical welfare of its youth participants, including football participants.

JOHN DOE DEFENDANTS

11. Defendants John does Nos. 1-7 are additional administrators, employees, coaches, trainers, and/or others. These Defendants will be named and served with Summons and Complaint once their identities are known.

12. All Defendants, and all other parties or persons alleged by any Defendant to be “at fault,” are joint obligors or joint tortfeasors who are jointly and severally liable for all damages alleged herein. Pursuant to Article VI, Section II, ¶4 of the Georgia Constitution, jurisdiction and venue are proper as to all Defendants in Fulton County, Georgia.

THE OPERATIVE FACTS

13. On July 14, 2016, Defendant WAP sponsored a football program that was a part of American Youth Football, Inc (AYF).

14. In the late afternoon and early evening hours of July 14, 2016 Defendant WAP was conducting an outdoor football-related conditioning activity at Welcome All Park in Atlanta, Georgia area that involved a number of youth participants.

15. On July 14, 2016 at approximately 7:30 p.m. the air temperature in the Atlanta, Georgia area was approximately ninety three (93) degrees.

16. On July 14, 2016 at approximately 7:30 p.m. the relative humidity in the Atlanta, Georgia area was approximately thirty eight percent (38%).

17. For the thirteen day period of July 1st through 13th, eight (8) of those days saw high temperatures in the nineties.
18. On July 13, 2016 the high temperature in the Atlanta, Georgia area reached ninety-nine (99) degrees.
19. On July 14, 2016 at approximately 7:30 p.m., the heat index in the Atlanta, Georgia area was at or near one hundred fourteen (114) degrees.
20. By 7:30 p.m. on July 14, 2016 the outdoor football-related conditioning activities conducted by Defendant WAP at Welcome All Park had been ongoing for approximately two (2) hours.
21. The two hours of conditioning activities alternately involved jogging, sprinting on flat surfaces, sprinting up hills, and other physically exerting conditioning activities.
22. During this two hour workout period the coaches supervising the outdoor football-related activities had not allowed for periodic rest breaks for the youth participants.
23. The coaches and others supervising the youth participants determined what conditioning activities the youth participants were engaged in, the duration of such activities, the intensity of such activities, as well as whether and when the youth participants would be allowed to take breaks from such activities.
24. At or around 7:30 p.m., on July 14, 2016 one of the youth participants began demonstrating signs of physical distress.
25. The particular youth participant began to experience the effects of heat stroke.
26. The particular youth participant, whose parents were present during all or part of the conditioning activities, lost consciousness.
27. Emergency medical assistance was summoned.

28. It took approximately twenty (20) minutes before emergency medical assistance arrived at Welcome All Park.
29. During the twenty minute wait for emergency medical assistance, coaches and others fanned the unconscious youth participant with wet towels.
30. When emergency medical assistance personnel arrived at the scene they transported the youth participant to a local hospital.
31. By the time the youth participant reached the hospital his rectal temperature reading was 106.7 degrees.
32. For the next two weeks the youth participant remained hospitalized, in a coma and on life support.
33. On July 28, 2014 the youth participant's parents, following medical advice, made the difficult decision to terminate life support.
34. Along with their consent to terminate life support the youth participant's parents consented to donate several of their son's organs.
35. The youth football participant died on July 28, 2016.
36. His name was Johnny Tolbert, III.

COUNT I

NEGLIGENCE – FAILURE TO PROPERLY ASSESS AND RESPOND TO ATMOSPHERIC CONDITIONS

37. Plaintiff incorporates Paragraphs 1-36 above, as if fully set forth herein.
38. At all relevant times the Defendants owed a duty of care to youth football participants such as Johnny Tolbert, III to safeguard their physical and physiological welfare while participating in football-related activities by properly monitoring atmospheric conditions and

responsibly assessing whether such conditions were suitable for the contemplated physical activities to which the youth participants would be subjected.

39. The heat, humidity, heat index, and ongoing heat conditions in Atlanta, Georgia should have prompted the Defendants to cancel outdoor football-related activities on July 14, 2016.

40. Instead, the Defendants pushed the youth participants to engage in strenuous football conditioning activities despite the prevailing and well-known adverse and unhealthy atmospheric conditions.

41. As a direct and proximate result of these actions and/or inactions Johnny Tolbert, III, suffered heat stroke, was comatose for two weeks, was placed on life support, and ultimately expired of his heatstroke related injuries.

42. As a direct and proximate result of these actions and/or inactions Johnny Tolbert died, for which the Plaintiff files this action against the Defendants for the wrongful death of Johnny Tolbert and claims the full value of the decedent Johnny Tolbert, III's life pursuant to O.C.G.A. § 51-4-1, et seq.

43. As a direct result of the Defendants' action and/or inactions, decedent Johnny Tolbert III suffered mental and physical pain and suffering, for which the Plaintiff, as administratrix of the Estate of Johnny Tolbert III sues Defendants.

44. As a direct result of the Defendants' action and/or inactions, the Plaintiff, as administratrix of the Estate of Johnny Tolbert III, has incurred medical expenses, for which the Plaintiff, as administratrix of the Estate of Johnny Tolbert III sues the Defendants.

COUNT II

NEGLIGENCE – FAILURE TO PROVIDE FOR ADEQUATE REST BREAKS

45. Plaintiff incorporates Paragraphs 1 - 44 above, as if fully set forth herein.

46. At all relevant times the Defendants owed a duty of care to youth football participants such as Johnny Tolbert, III to safeguard their physical and physiological welfare while participating in football-related activities by providing for adequate rest breaks from the conditioning-related physical activity to which the youth participants were subjected on July 14, 2016..

47. The Defendants failed to provide the youth football participants, including Johnny Tolbert, III, with adequate rest breaks, particularly in view of the atmospheric conditions then prevailing in violation of their duty to the youth football participants, including Johnny Tolbert, III.

48. Instead, the Defendants pushed the youth participants to engage in strenuous football conditioning activities without adequate rest breaks despite the well-known and well-documented need for such adequate and proper hydration.

49. As a direct and proximate result of these actions and/or inactions Johnny Tolbert, III, suffered heat stroke, was comatose for two weeks, was placed on life support, and ultimately expired of his heatstroke related injuries.

50. As a direct and proximate result of these actions and/or inactions Johnny Tolbert died, for which the Plaintiff files this action against the Defendants for the wrongful death of Johnny Tolbert and claims the full value of the decedent Johnny Tolbert, III's life pursuant to O.C.G.A. § 51-4-1, et seq.”

51. As a direct result of the Defendants' action and/or inactions, decedent Johnny Tolbert III suffered mental and physical pain and suffering, for which the Plaintiff, as administratrix of the Estate of Johnny Tolbert III sues Defendants.

52. As a direct result of the Defendants' action and/or inactions, the Plaintiff, as administratrix of the Estate of Johnny Tolbert III, has incurred medical expenses, for which the Plaintiff, as administratrix of the Estate of Johnny Tolbert III sues the Defendants.

53. As a direct result of the Defendants' action and/or inactions, the Plaintiff, as administratrix of the Estate of Johnny Tolbert III, has incurred funeral and burial expenses, for which the Plaintiff, as administratrix of the Estate of Johnny Tolbert III sues the Defendants.

COUNT III

NEGLIGENCE – FAILURE TO PROVIDE FOR PROPER HYDRATION

54. Plaintiff incorporates Paragraphs 1-53 above, as if fully set forth herein.

55. At all relevant times the Defendants owed a duty of care to youth football participants such as Johnny Tolbert, III to safeguard their physical and physiological welfare while participating in football-related activities by providing for adequate and proper hydration during the conditioning-related physical activity to which the youth participants were subjected on July 14, 2016.

56. The Defendants failed to provide the youth football participants, including Johnny Tolbert, III, with adequate and proper hydration, particularly in view of the atmospheric conditions then prevailing in violation of their duty to the youth football participants, including Johnny Tolbert, III.

57. Instead, the Defendants pushed the youth participants to engage in strenuous football conditioning activities without adequate rest breaks despite the well-known and well-documented need for such rest breaks.

58. As a direct and proximate result of these actions and/or inactions Johnny Tolbert, III, suffered heat stroke, was comatose for two weeks, was placed on life support, and ultimately expired of his heatstroke related injuries.

59. As a direct and proximate result of these actions and/or inactions Johnny Tolbert died, for which the Plaintiff files this action against the Defendants for the wrongful death of Johnny Tolbert and claims the full value of the decedent Johnny Tolbert, III's life pursuant to O.C.G.A. § 51-4-1, et seq.

60. As a direct result of the Defendants' action and/or inactions, decedent Johnny Tolbert III suffered mental and physical pain and suffering, for which the Plaintiff, as administratrix of the Estate of Johnny Tolbert III sues Defendants.

61. As a direct result of the Defendants' action and/or inactions, the Plaintiff, as administratrix of the Estate of Johnny Tolbert III, has incurred medical expenses, for which the Plaintiff, as administratrix of the Estate of Johnny Tolbert III sues the Defendants.

62. As a direct result of the Defendants' action and/or inactions, the Plaintiff, as administratrix of the Estate of Johnny Tolbert III, has incurred funeral and burial expenses, for which the Plaintiff, as administratrix of the Estate of Johnny Tolbert III sues the Defendants.

COUNT IV

NEGLIGENCE – FAILURE TO HAVE AN ADEQUATE EMERGENCY ACTION PLAN

IN PLACE

63. Plaintiff incorporates Paragraphs 1-62 above, as if fully set forth herein.

64. At all relevant times the Defendants owed a duty of care to youth football participants such as Johnny Tolbert, III to safeguard their physical and physiological welfare while participating in football-related activities by having in place an adequate emergency action plan in the event of a medical or other emergency, such as occurred on July 14, 2016.

65. The Defendants failed to have in place an adequate emergency action plan in the event of a medical or other emergency, such as occurred on July 14, 2016.

66. The Defendants' lack of an adequate emergency plan included, but is not limited to their: failure to have medically trained personnel on the scene; failure to have ice available to cool down the body temperature of a youth participant experiencing heat-related complications; failure to have on-site a tub to use to immerse all or part of the body of a youth participant experiencing heat-related complications; failure to adequately monitor the youth participants for heat-related complications; and the failure to have adequately trained personnel on-site to monitor the youth participants for heat-related complications.

67. Instead, the Defendants pushed the youth participants to engage in strenuous football conditioning activities under adverse atmospheric conditions without having in place an adequate emergency action plan in the event one of the youth participants experienced heat-related complications.

68. As a direct and proximate result of these actions and/or inactions Johnny Tolbert, III, suffered heat stroke, was comatose for two weeks, was placed on life support, and ultimately expired of his heatstroke related injuries.

69. As a direct and proximate result of these actions and/or inactions Johnny Tolbert died, for which the Plaintiff files this action against the Defendants for the wrongful death of Johnny

Tolbert and claims the full value of the decedent Johnny Tolbert, III's life pursuant to O.C.G.A. § 51-4-1, et seq.

70. As a direct result of the Defendants' action and/or inactions, decedent Johnny Tolbert III suffered mental and physical pain and suffering, for which the Plaintiff, as administratrix of the Estate of Johnny Tolbert III sues Defendants.

71. As a direct result of the Defendants' action and/or inactions, the Plaintiff, as administratrix of the Estate of Johnny Tolbert III, has incurred medical expenses, for which the Plaintiff, as administratrix of the Estate of Johnny Tolbert III sues the Defendants.

72. As a direct result of the Defendants' action and/or inactions, the Plaintiff, as administratrix of the Estate of Johnny Tolbert III, has incurred funeral and burial expenses, for which the Plaintiff, as administratrix of the Estate of Johnny Tolbert III sues the Defendants.

COUNT V

NEGLIGENCE-FAILURE TO PROPERLY AND INDIVIDUALLY ASSESS THE PARTICIPANTS' FITNESS FOR STRENUOUS OUTDOOR SUMMERTIME FOOTBALL-RELATED CONDITIONING ACTIVITIES

73. Plaintiff incorporates Paragraphs 1-72 above, as if fully set forth herein.

74. At all relevant times the Defendants owed a duty of care to youth football participants such as Johnny Tolbert, III to safeguard their physical and physiological welfare while participating in football-related activities, particularly strenuous outdoor summer time conditioning activities.

75. On July 14, 2016 Johnny Tolbert, III, was 5'11" in height and weighed 243 pounds.

76. Prior to the commencement of summer time conditioning activities the Defendants made no individualized assessment of the physical conditioning of the individual youth football participants.

77. The Defendants conducted the summer time conditioning activities as a one size fits all activity without taking into account and making any reasonable accommodations for the fitness and/or conditioning status or medical issues of individual youth participants.

78. The Defendants had a duty to refrain from engaging in strenuous summer time football-related conditioning activities, particularly under the adverse atmospheric conditions then prevailing in the Atlanta, Georgia area without making an individualized assessment of the individual youth participants and making reasonable accommodations based on such individualized assessment.

79. The Defendants failed to have in place an individualized physical assessment plan for each of the individual youth football participants.

80. The Defendants' lack of an individualized assessment plan also resulted in the youth participants not being required to submit to a physical examination prior to the commencement of the summer time outdoor conditioning activities.

81. Instead, the Defendants pushed the youth participants to engage in strenuous football conditioning activities under adverse atmospheric conditions without having in place any plan for an individualized physical assessment of the youth participants.

82. As a direct and proximate result of these actions and/or inactions Johnny Tolbert, III, suffered heat stroke, was comatose for two weeks, was placed on life support, and ultimately expired of his heatstroke related injuries.

83. As a direct and proximate result of these actions and/or inactions Johnny Tolbert died, for which the Plaintiff files this action against the Defendants for the wrongful death of Johnny Tolbert and claims the full value of the decedent Johnny Tolbert, III's life pursuant to O.C.G.A. § 51-4-1, et seq.

84. As a direct result of the Defendants' action and/or inactions, decedent Johnny Tolbert III suffered mental and physical pain and suffering, for which the Plaintiff, as administratrix of the Estate of Johnny Tolbert III sues Defendants.

85. As a direct result of the Defendants' action and/or inactions, the Plaintiff, as administratrix of the Estate of Johnny Tolbert III, has incurred medical expenses, for which the Plaintiff, as administratrix of the Estate of Johnny Tolbert III sues the Defendants.

86. As a direct result of the Defendants' action and/or inactions, the Plaintiff, as administratrix of the Estate of Johnny Tolbert III, has incurred funeral and burial expenses, for which the Plaintiff, as administratrix of the Estate of Johnny Tolbert III sues the Defendants.

COUNT VI

PUNITIVE DAMAGES

87. Plaintiff realleges and incorporates Paragraphs 1-86 as if fully set forth herein.

88. Defendants' actions, as described above, showed willful misconduct, malice, wantonness, oppression, or that entire want of care that would raise the presumption of conscious indifference to consequences as contemplated under O.C.G.A. § 51-12-5.1

COUNT VII

O.C.G.A. § 13-6-11 ATTORNEY'S FEES

89. Plaintiff realleges and incorporates Paragraphs 1-86 as if fully set forth herein.

90. By their acts and omissions specified above, as well as other conduct, Defendants have acted in bad faith, have been stubbornly litigious, and/or have caused the Plaintiff unnecessary trouble and expense so as to authorize and warrant the recovery of attorney's fees and expenses of litigation.

WHEREFORE, Plaintiff prays, in her respective and appropriate capacity for:

- (A) Compensatory damages for the full value of the life of Johnny Tolbert III, as established by the evidence;
- (B) Compensatory damages for Johnny Tolbert III's pain and suffering, as established by the evidence;
- (C) Compensatory damages for Johnny Tolbert III's medical expenses, as established by the evidence and to be set forth more specifically by timely amendment to this Complaint;
- (D) Compensatory damages for Johnny Tolbert III's funeral and burial expenses, as established by the evidence and to be set forth more specifically by timely amendment to this Complaint;
- (E) A trial by jury;
- (F) Punitive damages, as established by the evidence;
- (G) Attorney's fees and expenses of litigation, as established by the evidence; and
- (H) Such other and further relief as the Court may deem just and proper in light of the evidence.

SIGNATURE ON NEXT PAGE

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY.

Respectfully submitted this 23rd day of December, 2016.

/s/ Harold W. Spence

HAROLD W. SPENCE

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