

IN THE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

CASE NO.: 17-3415

FILED
2017 APR 10 P 4:21

DIVISION:

CIVIL DISTRICT COURT

CARDELL HAYES

SECTION 7

VERSUS

RACQUEL SMITH, SUCCESSION REPRESENTATIVE OF WILLIAM SMITH, FIREMAN'S FUND INSURANCE COMPANY
RICHARD HERNANDEZ, ABC INSURANCE COMPANY

FILED:

DEPUTY CLERK

JURY

PETITION FOR DAMAGES

DALE N. ATKINS

The petition of CARDELL HAYES (hereinafter "Hayes"), a person of the full age of majority and a resident of the Parish of Orleans, State of Louisiana, respectfully represents:

1.

Made defendants herein are:

- a) RACQUEL SMITH, AS SUCCESSION REPRESENTATIVE OF WILLIAMS SMITH, a person of the full age of majority and a resident of the Parish of Jefferson, State of Louisiana; and
- b) FIREMAN'S FUND INSURANCE COMPANY (hereinafter "FIREMAN'S"), a foreign corporation authorized to do and doing business in the Parish of Orleans, State of Louisiana; and
- c) RICHARD HERNANDEZ, a person of the full age of majority and a resident of the Parish of Jefferson, State of Louisiana; and
- d) ABC INSURANCE COMPANY (hereinafter "ABC"), who, upon information and belief, maintained a policy of homeowner's insurance covering RICHARD HERNANDEZ for the damages complained of herein. Neither the name of the insurer nor the exact provisions of said policy are currently known to Plaintiff and are best known to Defendant Hernandez and are specifically pled herein as if copied *in extenso*.

2.

The defendant, RACQUEL SMITH, as succession representative of WILLIAM SMITH, is liable to the petitioner, CARDELL HAYES, for any and all intentional or negligent acts attributable to WILLIAM SMITH.

3.

The defendants are indebted to petitioner for damages in a reasonable amount together with costs of these proceedings and legal interest from the date of judicial demand.

4.

On April 9, 2016, WILLIAM SMITH and his wife, RACQUEL SMITH (hereinafter collectively referred to as "The Smiths"), spent the day celebrating the French Quarter Festival, where WILLIAM SMITH consumed alcoholic beverages.

5.

After leaving French Quarter Festival, the Smiths went to dinner at Ruth's Chris Steakhouse, where WILLIAM SMITH consumed additional alcoholic beverages.

6.

The Smiths then headed over to Barcadia, a nightclub in the warehouse district of New Orleans, where WILLIAM SMITH consumed additional alcoholic beverages.

7.

After Barcadia, the Smiths met up with friends at Sake Café, where WILLIAM SMITH consumed additional alcoholic beverages.

8.

After drinking all day at the French Quarter Festival, and consuming additional alcoholic beverages at dinner and at Barcadia and Sake Café, WILLIAM SMITH got behind the wheel of his Mercedes SUV and operated the automobile, which carried three passengers, to wit: (a) RACQUEL SMITH, Mr. Smith's wife, who was seated in the back seat on the driver's side of the vehicle; (b) RICHARD HERNANDEZ, a friend of the Smiths, who was seated in the front passenger seat; and (c) REBECCA DOOLEY, wife of Richard Hernandez, who was seated in the back seat on the passenger side of the Mercedes SUV.

9.

As WILLIAM SMITH was operating a vehicle eastbound on Magazine Street in New Orleans, Louisiana when he driving down Magazine Street, he collided into the rear of CARDELE HAYES' vehicle. At the time Hayes was hit from behind, he was stopped at a red light at the intersection of Magazine Street and Sophie Wright Place.

10.

After colliding into Hayes' stopped vehicle, WILLIAM SMITH fled the scene of the accident without exchanging names and insurance information, contrary to the law of the State of

Louisiana. WILLIAM SMITH accelerated quickly around Hayes' vehicle and continued eastbound on Magazine Street and onto Sophie Wright Place.

11.

Hayes followed behind Smith's vehicle in an attempt to obtain the license plate number of the Mercedes SUV.

12.

After driving only a short distance on Sophie Wright Place, WILLIAM SMITH *slammed* on his brakes without warning and for no apparent reason, causing his Mercedes SUV to come to a complete and sudden stop and leaving Hayes with insufficient time to stop his vehicle without running into the rear of Mr. Smith's vehicle, albeit Hayes' attempt to pump his brakes before impact.

13.

Immediately after the second collision, RICHARD HERNANDEZ, one of WILLIAMS SMITH'S three passengers, exited the Mercedes SUV and charged at Hayes while taking his shirt off and screaming profanities at Hayes. Once Hernandez reached the area where Hayes was standing, Hernandez wrapped up a shiny object in the t-shirt that he had just removed and attempted to hit Hayes. Hayes managed to dodge Hernandez's assault and attempted battery. Hernandez swung the t-shirt at Hayes a second time. Hayes was able to also dodge the second attack.

14.

As Hayes was dodging Hernandez's repeated assaults and battery attempts, WILLIAM SMITH threw his entire alcoholic beverage in Hayes face and threw the empty cup at Hayes, hitting him in the face with the cup. Then, WILLIAM SMITH punched Hayes in the face.

15.

WILLIAM SMITH and Hayes exchanged words. Thereafter, WILLIAM SMITH walked back to his Mercedes SUV, retrieved a gun and fired multiple shots at Hayes.

16.

At the time of the automobile accidents, WILLIAM SMITH's blood alcohol level was approximately 0.235mg, which is nearly two times the legal limit for operating a motor vehicle in the State of Louisiana.

17.

Upon information and belief, WILLIAM SMITH failed to stop after colliding into Hayes vehicle and departed from the scene because he realized that he was involved in a motor vehicle accident while intoxicated and wanted to avoid potentially being arrested and prosecuted for his criminal acts.

18.

WILLIAM SMITH'S decision to ignore the law and leave the scene of the first accident ultimately resulted in the second accident.

19.

As a result of the actions of WILLIAM SMITH in driving with a blood alcohol level twice the legal limit, Hayes was rear-ended in Mr. Smith's attempted hit and run and then was unable to stop his vehicle when Mr. Smith slammed on his brakes. Due to the sudden and erratic driving of intoxicated SMITH, Hayes did not have enough time to stop before running into the rear of WILLIAM SMITH'S Mercedes SUV.

20.

The petitioner, HAYES, has incurred damages as a result of WILLIAM SMITH's acts of drinking and driving, as well as the several assaults and/or batteries committed or attempted to be committed by WILLIAM SMITH and RICHARD HERNANDEZ upon Hayes. Petitioner's damages include: property damage, medical expenses, lost wages, mental anguish, severe emotional distress, loss of enjoyment of life and any and all other damages to be proven at trial.

21.

WILLIAM SMITH's intoxication while operating his motor vehicle was a cause of both accidents and the resulting injuries to HAYES. WILLIAM SMITH acted in reckless disregard for the safety of others including HAYES, and therefore, HAYES is entitled to exemplary damages from RACQUEL SMITH, as succession representative of WILLIAM SMITH, due to his extreme intoxication.

22.

The two accidents involving HAYES and resulting damages, were caused by the negligence and/or intentional acts of the defendant, WILLIAM SMITH, in the following non-exclusive particulars:

- a. Failure to maintain control;

- b. Speeding;
- c. Failing to brake;
- d. Failing to see the obvious;
- e. Being inattentive;
- f. Rear ending a stopped vehicle;
- g. Driving while intoxicated (2X legal limit)
- h. Fleeing the scene of an accident;
- i. Assaulting Hayes;
- j. Committing upon HAYES one or more batteries;
- k. Any and all other acts of negligence and/or intentional acts to be proven at the trial of this matter.

23.

At all times mentioned herein the vehicle being driven by WILLIAM SMITH was owned by WILLIAM SMITH and insured by the defendant, FIREMAN'S.

24.

RICHARD HERNANDEZ is liable to Hayes for the intentional torts he committed upon Hayes, as described above, including assault and intentional infliction of emotional distress.

25.

Upon information and belief, an insurance company maintained a policy of homeowner's insurance covering RICHARD HERNANDEZ for the damages complained of herein. Neither the name of the insurer nor the exact provisions of said policy are currently known to Plaintiff and best known to Defendant Hernandez and are specifically pled herein as if copied *in extenso*.

WHEREFORE, petitioner, CARDELL HAYES, prays that the defendants be duly cited and served with a copy of this Petition for Damages, to appear and answer same and, after all legal delays and due proceedings are had, that there be judgment herein in favor of the petitioner, CARDELL HAYES, and against defendants, RACQUEL SMITH AS SUCCESSION REPRESENTATIVE OF WILLIAM SMITH, FIREMAN'S FUND INSURANCE COMPANY, RICHARD HERNANDEZ AND ABC INSURANCE COMPANY, jointly, severally and in solido in a full and true sum calculated to compensate petitioner for the damages complained of herein, along with legal interest thereon from the date of judicial demand until paid, for all costs of these proceedings, and for all general and equitable relief and trial by jury.

RESPECTFULLY SUBMITTED,

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PLEASE SERVE:

- (1) FIREMAN'S FUND INSURANCE COMPANY
Through its Agent for Service of Process
Louisiana Secretary of State
8585 Archives Avenue
Baton Rouge, Louisiana 70809
- (2) ABC INSURANCE COMPANY
Through its Agent for Service of Process
Louisiana Secretary of State
8585 Archives Avenue
Baton Rouge, Louisiana 70809
- (3) RACQUEL SMITH, SUCCESSION REPRESENTATIVE OF WILLIAM SMITH
6 Oakland Road
Kenner, Louisiana 70065
- (4) RICHARD HERNANDEZ
4022 W. Loyola Drive
Kenner, LA 70065