

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

JASMINE BATES, as Personal
Representative of the Estate of AMARI HARLEY,
deceased,

Plaintiff,

v.

ERS, CORP., a Florida corporation, and
A1 SEPTIC SERVICE, INC., a Florida corporation

Defendants.

CASE NO.:
DIVISION:

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff, JASMINE BATES, as Personal Representative of the Estate of AMARI HARLEY, deceased, by and through the undersigned counsel, and hereby sues Defendants ERS, CORP. and A1 SEPTIC SERVICE, INC. for damages and alleges:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, JASMINE BATES, has been appointed Personal Representative of the Estate of AMARI HARLEY, deceased. (*Letters of Administration attached hereto as Exhibit "A"*).
2. Decedent, AMARI HARLEY, was born on February 20, 2014, and died on October 22, 2017.
3. Plaintiff, JASMINE BATES, as Personal Representative of the Estate of AMARI HARLEY, is over the age of eighteen (18) and is a resident of Jacksonville, Duval County, Florida and is *sui juris*. Plaintiff brings this action on behalf of all beneficiaries of Estate of AMARI HARLEY.
4. The following individuals (with relationship to the decedent in parentheses) are beneficiaries of the Estate of AMARI HARLEY in this wrongful death action, according to Florida Statutes, §768.18:
 - a. Jasmine Bates (natural mother); and
 - b. Willie Harley (natural father).

5. At all times material hereto, Defendant ERS, CORP. (hereinafter referred to as “ERS”) was a Florida corporation and doing business under the laws promulgated by the Florida Department of State with a principal address of 760 Talleyrand Avenue, Jacksonville, Duval County, Florida 32202. Defendant’s registered agent for service of process is Dennis L. Blackburn of Blackburn & Company, 5150 Belfort Road South Bldg. 500, Jacksonville, Duval County, Florida 32256.
6. At all times material hereto, Defendant A1 SEPTIC SERVICE, INC. (hereinafter referred to as “A1 SEPTIC”) was a Florida corporation and doing business under the laws promulgated by the Florida Department of State with a principal address of 7300 Imeson Road, Jacksonville, Duval County, Florida 32219. Defendant’s registered agent for service of process is Dyanne J. Thomas, 7300 Imeson Road, Jacksonville, Duval County, Florida 32219.
7. This is an action for damages that exceed Fifteen Thousand Dollars (\$15,000.00), the jurisdictional threshold, exclusive of interests and costs.
8. All conditions precedent to bringing this action have occurred or have been performed.
9. At the time of his death, AMARI HARLEY was a resident of Jacksonville, Duval County, Florida.
10. At the time of his death, AMARI HARLEY was lawfully at Bruce Park, located at 6549 Arlington Road, Jacksonville, Duval County, Florida 32211.
11. AMARI HARLEY died on October 22, 2017 at Bruce Park located at 6549 Arlington Road, Jacksonville, Duval County, Florida 32211 (hereinafter referred to as “subject premises”).
12. This cause of action accrued in Duval County, Florida, and accordingly, venue is proper pursuant to § 47.011, Florida Statutes, et. seq.
13. This Court has subject matter jurisdiction pursuant to Florida Constitution, Art. V, §5(b).

FACTUAL BACKGROUND

14. Plaintiff, JASMINE BATES as Personal Representative of the Estate of AMARI HARLEY, deceased, adopts and re-alleges all material allegations contained in paragraphs one through thirteen (1 – 13) as though fully rewritten herein.
15. At all times material hereto, the City of Jacksonville, Florida owned, managed, operated, maintained, and/or controlled the subject premises, a public park.

16. At all times material hereto, Defendant ERS was acting with the express or implied authority of the City of Jacksonville.
17. At all times material hereto, Defendant ERS maintained, inspected, serviced, and/or controlled the septic tank(s) located within the subject premises.
18. At all times material hereto, Defendant, ERS, was responsible for inspections, maintenance, service, operation, and/or repairs of water treatment systems and wastewater lift stations including septic and sewer systems for all of the City of Jacksonville's public areas, including the septic tanks and lift stations located at the subject premises.
19. At all times material hereto, Defendant, ERS, did not possess a valid business authorization, as required by the Florida Department of Health, to engage in the business of septic tank contracting, pursuant to Florida Statutes, § 489.555, and Chapter 64E-6.023, Florida Administrative Code.
20. At all times material hereto, Defendant ERS, was not authorized to practice or offer to practice septic tank contracting services pursuant to Florida Statutes, §489.551-489.558, and Part III of Chapter 64E-6, Florida Administrative Code, and the Florida Department of Health standards.
21. At all times material hereto, Defendant ERS, was not permitted by law to advertise, bid, contract, practice or offer to practice, or perform any work on OSTDS, including septic tanks such as those located at the subject premises.
22. At all times material hereto, Defendant A1 SEPTIC was acting with the express or implied authority of the City of Jacksonville.
23. At all times material hereto, Defendant A1 SEPTIC maintained, serviced, and/or controlled the septic tank(s) located within the subject premises.
24. At all times material hereto, Defendant, A1 SEPTIC was a Florida corporation, specializing in septic services and onsite sewage treatment systems for residential homes, businesses, and municipal parks.
25. At all times material hereto, Defendant, A1 SEPTIC was responsible for maintenance, service, septic tank and lift station pump-outs, and/or repairs for various locations owned or leased by the City of Jacksonville, including septic tanks and lift stations at the subject premises.

26. At all times material hereto, Defendant, A1 SEPTIC was authorized by the Florida Department of Health to practice or offer to practice septic tank contracting services pursuant to Florida Statutes, §489.555.
27. Defendant, A1 SEPTIC had access to, control, and/or possession of the water treatment systems and wastewater lift stations, including the septic tanks and lift stations located at the subject premises.
28. At all times material hereto, the septic tank lid(s) located at the subject premises was(were) unsecured, unlocked, defective, improper, broken, and/or the risers did not conform to the septic tank and lid.
29. On or about October 22, 2017, decedent, AMARI HARLEY and his family were attending an event at the subject premises and were lawfully at the subject premises.
30. On or about October 22, 2017, decedent, AMARI HARLEY fell into an unsecured septic tank located at the subject premises, causing him to consciously suffer and drown.

COUNT I: NEGLIGENCE AGAINST ERS, CORP.

31. Plaintiff, JASMINE BATES as Personal Representative of the Estate of AMARI HARLEY, deceased, adopts and re-alleges all material allegations contained in paragraphs one through thirty (1 – 30) as though fully rewritten herein.
32. Defendant, ERS, owed a legal duty of care to reasonably inspect, maintain, repair, and service water treatment systems and wastewater lift stations including the septic tank(s) located at the subject premises.
33. Defendant, ERS, had a legal duty of care to reasonably provide for the safety of individuals lawfully on the subject premises, including AMARI HARLEY.
34. Defendant, ERS, had a legal duty of care to warn individuals, including AMARI HARLEY, lawfully on the subject premises, of any dangerous conditions located on said premises.
35. Defendant ERS, breached its duty of care by the following negligent acts or omissions:
 - a. Failing to have a registered septic tank contractor or state licensed plumber inspect, maintain, operate, service, and/or repair the water treatment systems and wastewater lift stations, including the septic tank(s) located at the subject premises;

- b. Negligently inspecting, maintaining, and/or repairing the septic tank(s), lid(s) and riser(s) located at the subject premises;
 - c. Performing and practicing OSTDS services in the State of Florida;
 - d. Failing to identify, detect, discover, and/or disclose the dangerous and defective nature, propensities, characteristics, operation, and use of the subject septic system, when Defendant ERS, knew or in the exercise of due care should have known that persons, such as the AMARI HARLEY were unaware of such dangerous or defective characteristics;
 - e. Failing to report the dangerous and defective conditions of the septic tank lids and risers that existed at the subject premises;
 - f. Failing to warn of dangerous and defective conditions that existed related to the septic tank(s) and lid(s) at the subject premises;
 - g. Failing to maintain safety precautions and safeguards for individuals lawfully at the subject premises, including AMARI HARLEY;
 - h. Failing to properly secure, repair, and/or replace the septic tank lid and/or risers;
 - i. Failing to properly hire and/or train its employees and agents;
 - j. Failing to supervise its employees and agents;
 - k. Other negligent acts and/or omissions that shall be learned of through discovery.
36. The dangerous and defective condition of the septic tank lid(s) and riser(s) at the subject premises was known to Defendant ERS, or had existed for a sufficient length of time so that Defendant ERS should have known of it.
37. Defendant, ERS, had actual or constructive knowledge of the dangerous and defective septic tank lid(s) and riser(s) at the subject premises.
38. Defendant, ERS, violated Florida Statutes, § 381.0065, Chapter 64E-6, Florida Administrative Code, and City of Jacksonville Code of Ordinances, § 342.104.
39. The acts or omissions of Defendant, ERS, created a foreseeable zone of risk to AMARI HARLEY, and individuals lawfully permitted on the subject premises.
40. The acts or omissions of Defendant, ERS, created an unreasonable risk of harm to individuals lawfully permitted on the subject premises, including AMARI HARLEY.
41. The death of AMARI HARLEY was a foreseeable result of the negligence of Defendant, ERS.

42. As a direct and proximate result of the negligence of the Defendant, ERS, AMARI HARLEY fell into the septic tank and drowned on October 22, 2017.
43. As a direct and proximate result of Defendant ERS's above-stated actions and omissions, decedent, AMARI HARLEY, suffered fatal injuries, subjecting Defendant ERS, to liability pursuant to the Florida Wrongful Death Act, § 768.16-768.26, Florida Statutes and/or any other law that may be applicable to this cause of action.
44. The risks and dangers posed to AMARI HARLEY by the negligence of Defendant, ERS, were greater than the burden imposed on the Defendant to use reasonable care to provide for the safety of those lawfully at the subject premises, including AMARI HARLEY.
45. As a direct and proximate result of the negligence of Defendant, ERS, the Estate of AMARI HARLEY is entitled to recover net lost earnings from the date of death, medical and funeral expenses, and net accumulations.
46. As a direct and proximate result of the negligence of the Defendant, ERS, Plaintiff, JASMINE BATES, as the natural mother of the decedent, has suffered pain and suffering, loss of society, companionship, care, solace, and services, mental pain and suffering from the date of decedent's death and will continue to suffer the same into the future, and any other damages to which the Estate, Plaintiff, survivors and/or beneficiaries may be entitled to under applicable law.
47. As a direct and proximate result of the negligence of the Defendant, ERS, WILLIE HARLEY, as the natural father of the decedent, has suffered pain and suffering, loss of society, companionship, care, solace, and services, mental pain and suffering from the date of decedent's death and will continue to suffer the same into the future, and any other damages to which the Estate, Plaintiff, survivors and/or beneficiaries may be entitled to under applicable law.
48. Furthermore, Defendant, ERS, is legally, jointly and severally, and/or vicariously liable for negligence of its co-Defendant A1 SEPTIC.

WHEREFORE, Plaintiff, JASMINE BATES, as Personal Representative of the Estate of AMARI HARLEY, respectfully prays for judgment against Defendant, ERS, CORP., with costs incurred herein, a jury trial on all issues triable as of right, and such other relief as this Court deems just and proper.

COUNT II: NEGLIGENCE PER SE AGAINST ERS, CORP.

49. Plaintiff, JASMINE BATES as Personal Representative of the Estate of AMARI HARLEY, deceased, adopts and re-alleges all material allegations contained in paragraphs one through thirty (1 – 30) as though fully rewritten herein.
50. Defendant, ERS, violated Florida Statutes, § 489.552-489.555, which constitutes negligence per se.
51. The acts or omissions of Defendant, ERS, created a foreseeable zone of risk to AMARI HARLEY, and individuals lawfully permitted on the subject premises.
52. The acts or omissions of Defendant, ERS, created an unreasonable risk of harm to individuals lawfully permitted on the subject premises, including AMARI HARLEY.
53. The death of AMARI HARLEY was a foreseeable result of the negligence of Defendant, ERS.
54. As a direct and proximate result of the negligence of the Defendant, ERS, AMARI HARLEY fell into the septic tank and drowned on October 22, 2017.
55. As a direct and proximate result of Defendant ERS's above-stated actions and omissions, decedent, AMARI HARLEY, suffered fatal injuries, subjecting Defendant ERS, to liability pursuant to the Florida Wrongful Death Act, § 768.16-768.26, Florida Statutes and/or any other law that may be applicable to this cause of action.
56. The risks and dangers posed to AMARI HARLEY by the negligence of Defendant, ERS, were greater than the burden imposed on the Defendant to use reasonable care to provide for the safety of those lawfully at the subject premises, including AMARI HARLEY.
57. As a direct and proximate result of the negligence of Defendant, ERS, the Estate of AMARI HARLEY is entitled to recover net lost earnings from the date of death, medical and funeral expenses, and net accumulations.
58. As a direct and proximate result of the negligence of the Defendant, ERS, Plaintiff, JASMINE BATES, as the natural mother of the decedent, has suffered pain and suffering, loss of society, companionship, care, solace, and services, mental pain and suffering from the date of decedent's death and will continue to suffer the same into the future, and any other damages to which the Estate, Plaintiff, survivors and/or beneficiaries may be entitled to under applicable law.

59. As a direct and proximate result of the negligence of the Defendant, ERS, WILLIE HARLEY, as the natural father of the decedent, has suffered pain and suffering, loss of society, companionship, care, solace, and services, mental pain and suffering from the date of decedent's death and will continue to suffer the same into the future, and any other damages to which the Estate, Plaintiff, survivors and/or beneficiaries may be entitled to under applicable law.

60. Furthermore, Defendant, ERS, is legally, jointly and severally, and/or vicariously liable for negligence of its co-Defendant A1 SEPTIC.

WHEREFORE, Plaintiff, JASMINE BATES, as Personal Representative of the Estate of AMARI HARLEY, respectfully prays for judgment against Defendant, ERS, CORP., with costs incurred herein, a jury trial on all issues triable as of right, and such other relief as this Court deems just and proper.

COUNT III: NEGLIGENCE AGAINST A1 SEPTIC SERVICE, INC.

61. Plaintiff, JASMINE BATES as Personal Representative of the Estate of AMARI HARLEY, deceased, adopts and re-alleges all material allegations contained in paragraphs one through thirty (1 – 30) as though fully rewritten herein.

62. At all times material, Defendant, A1 SEPTIC maintained, operated, serviced, and/or repaired the septic tank located at the subject premises.

63. Defendant, A1 SEPTIC had a legal duty to exercise reasonable care in the maintenance, service, repair, and pumping of the septic tank(s) located on the subject premises.

64. Defendant, A1 SEPTIC, had a legal duty of care to warn individuals, including AMARI HARLEY, lawfully on the subject premises, of any dangerous conditions located on said premises.

65. Defendant, A1 SEPTIC breached its duty of care by the following negligent acts or omissions:

- a. Negligently pumping and maintaining the septic tank(s) located at the subject premises;
- b. Failing to identify, detect, discover, and/or disclose the dangerous and defective nature, propensities, characteristics, operation, and use of the subject septic system, when Defendant A1 SEPTIC, knew or in the exercise of due care should

have known that persons, such as the AMARI HARLEY were unaware of such dangerous or defective characteristics or conditions;

- c. Failing to report the dangerous and defective conditions of the septic tank lids and risers that existed at the subject premises;
 - d. Failing to warn of dangerous and defective conditions that existed related to the septic tank(s) and lid(s) at the subject premises;
 - e. Failing to maintain safety precautions and safeguards for individuals lawfully at the subject premises, including AMARI HARLEY;
 - f. Failing to properly secure, repair, and/or replace the septic tank lid and/or risers;
 - g. Failing to properly hire and/or train its employees and agents;
 - h. Failing to supervise its employees and agents;
 - i. Other negligent acts and/or omissions that shall be learned of through discovery.
66. The acts or omissions of Defendant, A1 SEPTIC, created a foreseeable zone of risk to AMARI HARLEY, and individuals lawfully permitted on the subject premises.
67. The acts or omissions of Defendant, A1 SEPTIC, created an unreasonable risk of harm to individuals lawfully permitted on the subject premises, including AMARI HARLEY.
68. The death of AMARI HARLEY was a foreseeable result of the negligence of Defendant, A1 SEPTIC.
69. As a direct and proximate result of the negligence of the Defendant, A1 SEPTIC, AMARI HARLEY fell into the septic tank and drowned on October 22, 2017.
70. As a direct and proximate result of Defendant A1 SEPTIC's above-stated actions and omissions, decedent, AMARI HARLEY, suffered fatal injuries, subjecting Defendant ERS, to liability pursuant to the Florida Wrongful Death Act, § 768.16-768.26, Florida Statutes and/or any other law that may be applicable to this cause of action.
71. The risks and dangers posed to AMARI HARLEY by the negligence of Defendant, A1 SEPTIC, were greater than the burden imposed on the Defendant to use reasonable care to provide for the safety of those lawfully at the subject premises, including AMARI HARLEY.
72. As a direct and proximate result of the negligence of Defendant, A1 SEPTIC, the Estate of AMARI HARLEY is entitled to recover net lost earnings from the date of death, medical and funeral expenses, and net accumulations.

73. As a direct and proximate result of the negligence of the Defendant, A1 SEPTIC, Plaintiff, JASMINE BATES, as the natural mother of the decedent, has suffered pain and suffering, loss of society, companionship, care, solace, and services, mental pain and suffering from the date of decedent's death and will continue to suffer the same into the future, and any other damages to which the Estate, Plaintiff, survivors and/or beneficiaries may be entitled to under applicable law.
74. As a direct and proximate result of the negligence of the Defendant, A1 SEPTIC, WILLIE HARLEY, as the natural father of the decedent, has suffered pain and suffering, loss of society, companionship, care, solace, and services, mental pain and suffering from the date of decedent's death and will continue to suffer the same into the future, and any other damages to which the Estate, Plaintiff, survivors and/or beneficiaries may be entitled to under applicable law.
75. Furthermore, Defendant, ERS, is legally, jointly and severally, and/or vicariously liable for negligence of its co-Defendant ERS, CORP.

WHEREFORE, Plaintiff, JASMINE BATES, as Personal Representative of the Estate of AMARI HARLEY, respectfully prays for judgment against Defendant, A1 SEPTIC SERVICE, INC., with costs incurred herein, a jury trial on all issues triable as of right, and such other relief as this Court deems just and proper.

Respectfully submitted this 22nd day of December, 2017.

/s/ Kamaria H. Williams
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