



CS-2020-972
Timmons
FILED IN DISTRICT COURT
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FEB 19 2020

RICK WARREN
COURT CLERK
50_____

(1) Eric C. Ewald,)
individually;)
)
(2) Kathy A. Roth, as the)
Personal Representative of the Estate)
of Tonya R. Horn, Deceased;)
)
(3) Kathy A. Roth, at the)
Personal Representative of the Estate)
of Rylee K. Ewald, Deceased,)
)
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)
)
)
)
Plaintiff,)

vs.

Case No. CJ 2020-972

(1) CITY OF OKLAHOMA CITY,)
a municipal corporation;)
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)
Defendants.)

PETITION

Plaintiffs Eric C. Ewald, individually, Kathy A. Roth, as the Personal Representative of the Estate of Tonya R. Horn, Deceased, and Kathy A. Roth, as the Personal Representative of the Estate of Rylee K. Ewald, Deceased (collectively referred to herein as "Plaintiffs") for their causes of action against Defendant City of Oklahoma City ("City"), a municipal corporation, alleges and states:

The Parties

1. Eric C. Ewald (“Eric”) was born on July 19, 1971.
2. At the time of the facts forming the basis of these allegations, Eric was 47 years old.
3. Eric is a resident of Canadian County, State of Oklahoma.
4. Tonya Renee’ Horn (“Tonya”) was born on March 22, 1976.
5. At the time of her death on April 19, 2019, Tonya was 43 years old.
6. Before her death, Tonya was a resident of Canadian County, State of Oklahoma.
7. Kathy A. Roth is the duly appointed Administrator of the Estate of Tonya R. Horn, deceased, as reflected in the Letters of Administration filed in the District Court of Canadian County, *Case No. PB-2019-107*.
8. Plaintiff Kathy A. Roth is a resident of the Canadian County, State of Oklahoma.
9. Rylee Ewald (“Rylee”) was born on October 15, 2010.
10. At the time of her death on April 19, 2019, Rylee was 8 years old.
11. Before her death, Rylee was a resident of Canadian County, State of Oklahoma.
12. Kathy A. Roth is the biological grandmother of Rylee and the duly appointed Administrator of the Estate of Rylee K. Ewald, deceased, as reflected in the Letters of Administration filed in the District Court of Canadian County, *Case No. PB-2019-108*.

13. Defendant City of Oklahoma City (“City”) is a municipal corporation organized under the laws of the State of Oklahoma. City’s principal place of business and operation is located within Oklahoma County.

Jurisdiction and Venue

14. This Court has both subject matter jurisdiction and personal jurisdiction over the parties to this lawsuit.

15. Venue is properly laid in the District Court of Oklahoma County because all or a substantial part of the acts and/or omissions giving rise to this lawsuit occurred in Oklahoma County.

16. A Notice of Tort Claim was filed with the City on June 18, 2019.

17. An Amended Notice of Tort Claim was filed with the City on August 23, 2019.

18. The Amended Tort Claim was deemed denied on November 21, 2019.

19. This Petition is timely filed within the 180 days.

Fact Allegations

20. On April 19, 2019, Officer Matthew Patten (“Patten”) and Officer Nathan Cross (“Cross”) were full time police officers for the Oklahoma City Police Department.

21. On the evening of April 19, 2019, Patten and Cross were on patrol within the City of Oklahoma City.

22. While on patrol and upon information and belief, Patten and Cross shared responsibilities with Cross driving the patrol vehicle and Patten manning the onboard computer and radio.

23. At or around 5:40 PM, (at a time commonly referred to as “rush hour”,) Patten and Cross were patrolling near the intersection of S. Villa Avenue and SW 44th Street in Oklahoma City, Oklahoma.

24. The area where Patten and Cross were patrolling was a highly populated residential neighborhood.

25. A highly populated residential neighborhood creates unique safety hazards for patrolling police officers who interact with vehicles and initiate traffic stops.

26. Patten and Cross patrolled near the intersection of S. Villa Avenue and SW 44th Street and witnessed the driver of a blue F-150 commit a misdemeanor traffic violation.

27. Patten and Cross made the conscious and thoughtful decision to initiate a traffic stop for the misdemeanor traffic violation.

28. Cross turned on the patrol vehicle’s lights and sirens.

29. Initially, the vehicle slowed but increased its speed while maneuvering through the residential neighborhood.

30. Cross continued to follow the vehicle and increased the speed of his patrol unit as he followed the vehicle through the highly populated neighborhood north down S. Villa Avenue.

31. As Cross continued to follow the vehicle for a misdemeanor traffic violation Patten, who was operating the patrol unit's radio, told dispatch that they were initiating a pursuit.

32. As the patrol unit continued to follow the vehicle through the highly populated residential neighborhood, the vehicle they were following increased its speed to a dangerous and reckless speed in excess of 80 MPH through the residential neighborhood streets.

33. The vehicle being followed by Patten and Cross created an even greater danger to others as it continued to maneuver through the residential neighborhood by failing to stop at a stop sign at the intersection of S. Villa and SW 44th Street.

34. Despite seeing the dangerous situation they had created by continuing to pursue the vehicle at a high rate of speed and running stop signs in a heavily populated residential neighborhood, they continued to follow the vehicle at a high rate of speed and without making a conscious and safe decision to slow down and abandon their pursuit.

35. Patten and Cross had sufficient time to thoughtfully consider the dangers posed to third-party motorists if they continued the high-speed pursuit through the residential neighborhood.

36. Further, Patten and Cross had enough time to thoughtfully consider the increasing reckless propensities of the driver, as the vehicle increased its speed and began running stop signs, and the danger the vehicle's reckless propensities posed to the health and safety of third-party motorists.

37. At or around 5:40 PM, Eric Ewald (“Eric”) was driving westbound in the inside lane of SW 44th Street, approaching the intersection of S. Villa Avenue.

38. Eric’s wife Tonya Horn (“Tonya”), his daughter Rylee Ewald (“Rylee”), and their dog Lucy were riding as passengers in Eric’s vehicle.

39. Eric, Tonya, and Rylee were returning to their home in Yukon, Oklahoma after picking up their dog Lucy from the veterinarian’s office in Oklahoma City.

40. As Eric’s vehicle entered the intersection of S. Villa Avenue and SW 44th Street, the vehicle Patten and Cross were pursuing ran another stop sign and crashed into Ewald’s vehicle.

41. The vehicle being pursued by Patten and Cross collided with the passenger side doors, where Tonya and Rylee were sitting.

42. The impact of the collision was so violent that Eric’s car was propelled off the road and into the front yard of a home located at 2500 SW 44th Street.

43. The violent nature of the impact killed Tonya, Rylee, and the family’s dog and they were pronounced dead at the scene as a direct and proximate result of Patten and Cross making a deliberate, calculated, and well thought out decision to initiate and continue a high speed pursuit through a highly populated residential neighborhood at high rates of speed.

44. Eric suffered physical injuries which included fractures of his spine, pelvis, ribs, clavicle, and sustained abdominal injuries as a direct and proximate result of Patten

and Cross making a deliberate, calculated, and well thought out decision to initiate and continue a high-speed pursuit through a residential neighborhood.

45. Upon information and belief, Patten and Cross violated the policies and procedures of the Oklahoma City police department by initiating and continuing a high-speed pursuit in a residential neighborhood.

46. Upon further information and belief, Patten and Cross violated the policies and procedures of the Oklahoma City Police Department by pursuing a motor vehicle for a misdemeanor traffic violation without considering the value of immediate apprehension was outweighed by the risk of harm to the public.

47. Patten's and Cross's willful and deliberate violations of the Oklahoma City Police Department's policies and procedures represents reckless disregard towards the health and safety of Eric, Rylee, and Tonya.

FIRST CAUSE OF ACTION
WRONGFUL DEATH OF TONYA R. HORN

48. Plaintiff incorporates by reference paragraphs 1-47 as though set forth in full herein.

49. Officer Patten's and Officer Cross's actions on April 19, 2019 were, at all times material hereto, within the course and scope of their employment with the Oklahoma City Police Department.

50. Officer Patten and Officer Cross owed Tonya A. Horn a duty to operate their patrol vehicle with due regard for the safety of third-party motorists.

51. Officer Patten's and Officer Cross's actions on April 19, 2019 as described herein were reckless and negligent and breached the duty owed to Tonya A. Horn.

52. As a direct and proximate result of Officer Patten's and Officer Cross's actions as described herein, Tonya R. Horn suffered life threatening injuries, which ultimately caused her death on April 19, 2019.

WHEREFORE, Plaintiff Kathy A. Roth, as the Personal Representative of the Estate of Tonya R. Horn prays for judgment against Defendant City of Oklahoma City as follows and in an amount in excess of \$75,000.00:

- (1) For the loss of financial support to her husband, Eric Ewald;
- (2) For the grief of her spouse, Eric Ewald;
- (3) For the loss of the society, services, companionship, and marriage relationship;
- (4) For the loss of companionship of Tonya by her parents;
- (5) For Tonya's mental pain and suffering;
- (6) For Tonya's physical pain and suffering;
- (7) For Tonya's medical expenses;
- (8) For Tonya's burial expense;
- (9) For interest thereon as provided by law, both pre-judgment and post-judgment;
- (10) For her costs; and
- (11) For such other and further relief as the Court deems just, equitable, and proper.

SECOND CAUSE OF ACTION
WRONGFUL DEATH OF RYLEE K. EWALD

53. Plaintiff incorporates by reference paragraphs 1-52 as though set forth in full herein.

54. Officer Patten's and Officer Cross's actions on April 19, 2019 were, at all times material hereto, within the course and scope of their employment with the Oklahoma City Police Department.

55. Officer Patten and Officer Cross owed Rylee K. Ewald a duty to operate their patrol vehicle with due regard for the safety of third-party motorists.

56. Officer Patten's and Officer Cross's actions on April 19, 2019 as described herein were reckless and negligent and breached the duty owed by Rylee K. Ewald.

57. As a direct and proximate result of Officer Patten's and Officer Cross's actions as described herein, Rylee K. Ewald suffered life threatening injuries, which ultimately caused her death on April 19, 2019.

WHEREFORE, Plaintiff Kathy A. Roth, as the Personal Representative of the Estate of Rylee K. Ewald prays for judgment against Defendant City of Oklahoma City as follows and in an amount in excess of \$75,000.00:

- (1) For the loss of the society, services, and companionship;
- (2) For the loss of companionship of Rylee by her father, Eric Ewald;
- (3) For Rylee's mental pain and suffering;
- (4) For Rylee's physical pain and suffering;

- (5) For Rylee's medical expenses;
- (6) For Rylee's burial expense;
- (7) For interest thereon as provided by law, both pre-judgment and post-judgment;
- (8) For her costs; and
- (9) For such other and further relief as the Court deems just, equitable, and proper.

THIRD CAUSE OF ACTION
NEGLIGENCE AGAINST DEFENDANT THE CITY OF OKLAHOMA CITY

58. Plaintiffs incorporates paragraphs 1–57 as if specifically alleged herein.

59. Officer Patten's and Officer Cross's actions on April 19, 2019 were, at all times material hereto, within the course and scope of their employment with the Oklahoma City Police Department.

60. Officer Patten and Officer Cross owed Eric Ewald a duty to operate their patrol vehicle with due regard for the safety of third-party motorists.

61. Patten's and Cross's actions on April 19, 2019 as described herein were reckless and negligent and breached the duty owed to Eric Ewald.

62. As a direct and proximate result of Patten's and Cross's actions as described herein, Eric Ewald sustained physical injuries to his spine, pelvis, clavicle, and abdomen.

WHEREFORE, Eric prays for judgment against Defendant the City of Oklahoma City as follows:

(1) For actual damages in sum in excess of \$75,000 and in accordance with the proof at the time of trial;

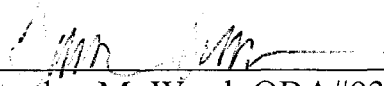
(2) For all those damages afforded to Eric Ewald for his injuries sustained on April 19, 2019 in an amount in excess of \$75,000 and in accordance with the proof at the time of trial:

(3) For his costs;

(4) For interest thereon as provided by law;

(5) For any other such and further relief as the Court deems just and proper, whether that is specifically requested herein or requested at a later date.

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JURY TRIAL DEMANDED
ATTORNEYS' LIEN CLAIMED