

STATE OF LOUISIANA \* PARISH OF MADISON \* SIXTH DISTRICT COURT

JAMEY KURTZ AND SHAWN KURTZ

FILED: October 4, 2019

VS. NO. 19-201, CV. SECT. A

JACK VARNER, JR., BRENT  
FORTENBERRY, ET AL

BY: Stacey Herring  
DEPUTY CLERK OF COURT

PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, come plaintiffs, JAMEY KURTZ and SHAWN KURTZ, major domiciliaries of Warren County, Mississippi, who with respect represent and show:

1.

Plaintiffs, Jamey Kurtz and Shawn Kurtz, are the mother and father, respectively, of the late Carson R. Kurtz, who departed this life on June 22, 2019 in Madison Parish, Louisiana, as a result of the events that are the subject of this Petition.

2.

Made defendants herein are:

- a. JACK M. VARNER, JR., a major domiciliary of Madison Parish, Louisiana, who may be served at 123 Varner Drive, Tallulah, Louisiana 71269.
- b. BRENT FORTENBERRY, a major domiciliary of Madison Parish, Louisiana, who may be served at 268 Old Hwy 65, Tallulah, Louisiana.
- c. JAN MARIE AVERY, a major domiciliary of Madison Parish, Louisiana, who may be served at 118 Erwin-Lusby Drive, Tallulah, Louisiana.
- d. EDWARD HERRING, a major domiciliary of the State of Mississippi.
- e. STACEY HERRING, a major domiciliary of the State of Mississippi

3.

This Honorable Court has subject matter jurisdiction over this matter.

4.

Plaintiffs and Defendants do not have diversity of citizenship within the meaning of 28 U.S.C. §1332. Plaintiffs do not assert claims giving rise to any federal question within the meaning of 28 U.S.C. §1331.

5.

Venue is proper in this court under the Louisiana Code of Civil Procedure article

74 because the wrongful conduct occurred in, and damages were sustained in, Madison Parish.

6.

On June 20-22, 2019, Carson Kurtz was a guest at the homes of JAN MARIE AVERY and BRENT FORTENBERRY, both of which are located in Madison Parish, Louisiana. Also on said dates, Carson Kurtz was a guest on real property belonging to Jack Varner located in Madison Parish, Louisiana.

7.

On information and belief, Defendants HERRING, AVERY and/or FORTENBERRY purchased and/or provided to Carson Kurtz, Jackson Fortenberry and Reece Herring on or about June 20 or 21, 2019, alcohol for consumption by said Carson Kurtz, Jackson Fortenberry and Reece Herring, each of whom was/is a minor under the legal age for consumption for alcohol in the state of Louisiana.

8.

Further, on information and belief, Defendants VARNER, AVERY and/or FORTENBERRY provided a Polaris Ranger utility motor vehicle capable of high speeds for use by Reece Herring, Jackson Fortenberry and/or Carson Kurtz. On information and belief, said motor vehicle is owned by FORTENBERRY. Alternatively, Defendants VARNER, AVERY and/or FORTENBERRY permitted said minor children to use said motor vehicle without proper instruction, training, warning or supervision.

9.

On the evening on June 21, 2019, or alternatively during the early morning hours of June 22, 2019, Carson Kurtz was, on information and belief, a passenger of the aforesaid motor vehicle when an accident occurred on property belonging to Defendant VARNER, which accident caused the death of Carson Kurtz.

10.

On information and belief, Jackson Fortenberry was operating said motor vehicle at the time of the aforementioned accident. Alternatively, and also on information and belief, Reece Herring was operating said motor vehicle at the time of the aforementioned accident.

11.

On information and belief, Jackson Fortenberry procured the alcohol that the minor children possessed and consumed prior to the aforementioned accident. Alternatively, and also on information and belief, Reece Herring procured the alcohol that the minor children possessed and consumed prior to the aforementioned accident.

12.

Defendants FORTENBERRY and AVERY, are the natural parents of the minor child, Jackson Fortenberry, who upon information and belief resides with either/both of them. Further, upon information and belief, Jackson Fortenberry has not been emancipated by marriage or by judgment. As such, said Defendants are responsible for the damages occasioned by the minor child, including the damages at issue herein. See La. Civ. Code art. 2318.

13.

Defendants EDWARD HERRING and STACEY HERRING are the natural parents of the minor child, Reece Herring, who upon information and belief resides with either/both of them. Further, upon information and belief, Reece Herring has not been emancipated by marriage or by judgment. As such, said Defendants are responsible for the damages occasioned by the minor child, including the damages at issue herein. See La. Civ. Code art. 2318.

14.

The property on which said accident occurred was under the care, custody or control of Defendant VARNER. Said property, and in particular the road on said property, presented an unreasonable risk of harm to visitors that was reasonably foreseeable. Further, Defendant VARNER had actual or constructive notice of the hazardous condition of the premises prior to the accident.

15.

The negligence and/or strict liability of the defendants, and/or the defective condition of the premises were the sole and proximate cause of Carson Kurtz's injuries and resulting death. More particularly, and without limiting the foregoing, the road on the premises was inadequately marked for nighttime travel and the condition of the road was

inadequate for travel at the speeds at which the motor vehicle was designed and capable of travelling.

16.

Further, and without limiting the foregoing, the negligence and/or strict liability of each defendant included one or more of the following non-exclusive particulars, to-wit:

- a. Purchasing or providing alcohol to one or more of the aforementioned minor children;
- b. Permitting one or more of the aforementioned minor children to possess and consume alcohol;
- c. Failing to provide reasonably adequate supervision of the aforementioned minor children;
- d. Negligently entrusting the Polaris Ranger utility motor vehicle to one or more of the aforementioned minor children;
- e. Providing to the aforementioned minor children the Polaris Ranger utility motor vehicle for use without adult supervision and without the supervision of any licensed driver;
- f. Providing to the aforementioned minor children the Polaris Ranger utility motor vehicle without proper instruction, training or warning;
- g. Providing to the aforementioned minor children the Polaris Ranger utility motor vehicle in spite of knowledge that said children possessed and/or had consumed alcohol;
- h. Failing to maintain adequate safety equipment for the Polaris Ranger utility motor vehicle;

17.

Further, after the aforesaid accident occurred, Defendant FORTENBERRY intentionally removed and/or altered evidence of the cause(s) of the accident, including without limitation the removal of all evidence of alcohol consumption by the minor children from the scene of the aforesaid fatal accident.

18.

Defendants are jointly and severally liable for the wrongful death damages sustained by Jamey Kurtz and Shawn Kurtz as a result of the death of their beloved son, Carson Kurtz.

19.

The joint fault of Defendants caused Carson Kurtz to experience pain, suffering and severe emotional distress prior to his death. Defendants are jointly and severally liable for survival damages caused by their fault.

Plaintiffs, Jamey Kurtz and Shawn Kurtz, are entitled to recover for the death of their son, Carson Kurtz, and for the injuries suffered by Carson Kurtz, including without limitation all damages permitted by law, to-wit:

- a. Pain, suffering and mental anguish suffered by Carson Kurtz prior to his death;
- b. Mental anguish and emotional distress suffered by Plaintiffs as a result of Carson Kurtz's death;
- c. Loss of the love, affection and support of Carson Kurtz;
- d. Funeral expenses; and,
- e. All other damages permitted by law.

Plaintiffs request a trial by jury on all issues.

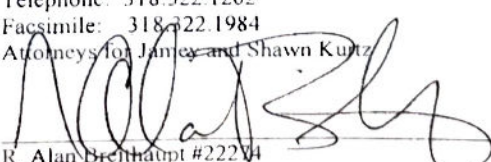
WHEREFORE PRAYS plaintiffs, JAMEY KURTZ and SHAWN KURTZ, for judgment in their favor and against the defendants, JACK M. VARNER, JR., BRENT FORTENBERRY, JAN MARIE AVERY, EDWARD HERRING and STACEY HERRING, jointly and *in solido* for all sums that are just and reasonable in the premises; for interest from the date of judicial demand, and for a trial by jury on all issues.

FURTHER PRAYS plaintiffs, JAMEY KURTZ and SHAWN KURTZ for notice of trial, notice of hearing, and notice of judgment, whether interlocutory or final.

FINALLY PRAYS plaintiffs for all other relief as to which they may be entitled under the law.

Respectfully submitted,

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PLEASE SERVE DEFENDANTS:

JACK M. VARNER, JR., by personal or domiciliary service at 123 Varner Drive, Tallulah, Louisiana 71269.

BRENT FORTENBERRY, by personal or domiciliary service at 268 Old Hwy 65, Tallulah, Louisiana.

JAN MARIE AVERY, by personal or domiciliary service at 118 Erwin-Lusby Drive, Tallulah, Louisiana

PLEASE PREPARE A LONG-ARM CITATION and provide same to plaintiff's counsel for service on EDWARD HERRING.

PLEASE PREPARE A LONG-ARM CITATION and provide same to plaintiff's counsel for service on STACEY HERRING.

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