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IN THE STATE COURT OF CHEROKEE COUNTY

STATE OF GEORGIA

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CHEROKEE COUNTY, GA

2014 AUG 20 PM 2:13

PATTY BAKER, CLERK

KENDALL DALE XXXX, Individually
as Surviving Child of KENNETH RAY
XXXX, Deceased; and KENDALL
DALE XXXX, as Administrator of the
ESTATE OF KENNETH XXXX,
Deceased,

CIVIL ACTION

FILE NO.: 14SC0729-AJ

Plaintiffs

RICHARD LEE BOYLE,

Defendant

COMPLAINT FOR DAMAGES

COME NOW Kendall Dale XXXX, as Surviving Child of Kenneth Ray XXXX, Deceased,
and Kendall Dale XXXX, as Administrator of the Estate of Kenneth Ray XXXX, Deceased,
(hereinafter Kenneth XXXX), Plaintiffs in the above-captioned action, and file this Complaint against
the Defendant named herein and shows as follows:

PARTIES, JURISDICTION AND VENUE

1.

Kendall Dale XXXX is a resident of Clarkesville, Georgia. Kendall Dale XXXX brings
these claims individually, as Surviving Child of Kenneth Ray XXXX, Deceased; and as Administrator
of the Estate of Kenneth Ray XXXX, Deceased.

2.

At the time of his death, Kenneth XXXX was survived by his wife, Janice N. XXXX. Janice N.
XXXX died on September 22, 2012, leaving Kendall Dale XXXX as Kenneth Mann's only surviving
heir. As such, Kendall Dale XXXX is entitled to bring a claim for the wrongful death of Kenneth XXXX.

3.

Defendant, Richard Lee Boyle, is a resident of Cherokee County, Georgia, and can be served at his residence located at 818 Pinehurst Drive, Woodstock, Cherokee County, Georgia 30188. Defendant is subject to the jurisdiction and venue of this Court.

OPERATIVE FACTS

4.

On August 25, 2012, shortly prior to 2:30 p.m., Kenneth XXXX, put his small fishing boat into the waters of Lake Seed in Rabun County, Georgia. Kenneth Mann's granddaughter, Lydia XXXX, was with him, and the two planned to go fishing.

5.

At approximately 2:30 p.m. Kenneth XXXX headed his boat north toward the headwaters of Lake Seed and was traveling at a slow rate of speed, a short distance from a no wake zone.

6.

At said time, Kenneth XXXX was operating his small fishing boat to the right of the center portion of Lake Seed, when a boat operated by Defendant Boyle advanced toward Mr. Mann's boat.

7.

The boat operated by Kenneth XXXX and the boat operated by Defendant Boyle were traveling in opposite directions.

8.

The boat operated by Kenneth XXXX was traveling in a northerly direction, toward the headwaters of Lake Seed.

9.

The boat operated by Defendant Boyle was traveling in a southerly direction, toward the dam of Lake Seed.

10.

While boating on Lake Seed, a boat operator is required to follow the navigational waterway rules as set forth pursuant to Georgia law.

11.

At all times relevant, Kenneth XXXX was operating his small fishing boat to the starboard (right) side of the center of the lake.

12.

At all times relevant, Kenneth XXXX was operating his small fishing boat on the proper side of lake. the

13.

At all times relevant, Kenneth XXXX was lawfully operating his boat on Lake Seed.

14.

When operating a boat on a lake in Georgia, boaters are to move to the starboard (right) side of the lake for the direction in which they are moving, just as cars would do when meeting on a two lane road.

15.

On August 25, 2012, at approximately 2:30 p.m., Defendant Boyle was operating a large Wellcraft motorboat left of the center of the lake, as Defendant Boyle's boat advanced toward the small fishing boat operated by Kenneth XXXX.

16.

As Defendant Boyle's boat advanced toward the boat operated by Kenneth XXXX, Defendant Boyle was required to move his boat to his right (starboard) side, so that when the Defendant Boyle passed Mr. Mann's boat, Mr. Mann's boat would be on the left (port) side of Defendant Boyle's boat.

17.

As Defendant Boyle's boat advanced on Kenneth Mann's boat, and well in advance of any collision, Kenneth XXXX stood and made frantic efforts to waive and warn Defendant Boyle that Defendant Boyle was operating Defendant Boyle's boat on Mr. Mann's portion/side of the lake.

18.

Despite Kenneth Mann's frantic efforts to wave and warn Defendant Boyle to move Defendant Boyle's boat to the right, so that the two boats could pass safely, Defendant Boyle continued on a course left of the center of the lake as Defendant Boyle's boat continued to advance toward Kenneth Mann's small fishing boat.

19.

Despite Kenneth Mann's frantic efforts to wave and warn Defendant Boyle, Defendant Boyle took no evasive measures to steer his boat to the right or to maneuver his boat to the proper side of the lake.

20.

Instead, Defendant Boyle continued to advance toward Kenneth Mann's boat, and failed to give way to Kenneth Mann's boat, which ultimately resulted in a collision.

21.

When it became obvious that Defendant Boyle was continuing to operate his boat on a collision course with Kenneth Mann's boat, Kenneth XXXX made a sharp turn to his starboard (right) side toward the embankment, in an effort to avoid a collision with Defendant Boyle's boat.

22.

At said time and place, Defendant Boyle made a sharp turn to his port (left) side with his boat, instead of making a turn to his starboard (right) side.

23.

At said time and place, the navigational rules applicable to Defendant Boyle required Defendant Boyle to turn or maneuver his boat to his starboard (right) side, so that the Defendant Boyle's boat could allow Mr. Mann's boat to pass on the Defendant Boyle's port (left) side.

24.

Instead, Defendant Boyle made a sharp turn to his port (left) side, directly into the path of the boat operated by Kenneth XXXX, causing a violent collision between the large Wellcraft motorboat operated by Defendant Boyle and the small fishing boat operated by Kenneth XXXX.

25.

Following the collision of the boats operated by Kenneth XXXX and Defendant Boyle, Kenneth Mann's boat struck the embankment to the starboard (right) side of Mr. Mann's boat.

26.

At all times pertinent hereto, Defendant Boyle was operating his boat in violation of the navigational rules applicable to Kenneth XXXX and Defendant Boyle.

27.

The aforementioned violent collision resulted in severe and traumatic injuries to Kenneth XXXX, who ultimately died as a result of said injuries.

LIABILITY OF THE DEFENDANT

28.

The aforementioned violent collision resulted in severe and traumatic injuries to Kenneth XXXX, who ultimately died as a result of said injuries. Said severe and traumatic injuries, which ultimately led to the death of Kenneth XXXX, were directly and proximately caused by the Defendant Boyle.

29.

At all times relevant, Defendant Boyle operated his motorboat in an unsafe and unreasonable manner.

30.

At all times relevant, Defendant Boyle violated the navigational rules applicable to Defendant Boyle, as Defendant Boyle's boat advanced toward the boat operated by Kenneth XXXX.

31.

At all times relevant, Defendant Boyle failed to exercise ordinary care to prevent injury to Kenneth XXXX.

32.

At all times relevant, Defendant Boyle operated his motorboat in reckless disregard for the safety of the persons and/or property of others.

33.

At all times relevant, Defendant Boyle failed to steer or maneuver his boat to the starboard (right) side after a time when he saw or should have seen Kenneth Mann's boat.

34.

At all times relevant, Defendant Boyle continued to advance toward Kenneth Mann's boat, despite Kenneth Mann's efforts to wave and warn Defendant Boyle to move to Defendant Boyle's starboard (right) side of the lake.

35.

At all times relevant, Defendant Boyle failed to maintain a proper lookout for other boats.

36.

At all times relevant, Defendant Boyle failed to maintain proper control of his boat.

37.

At all times relevant, Defendant Boyle failed to exercise ordinary care and due diligence in the operation of his boat.

38.

Despite Kenneth Mann's frantic efforts to wave and warn Defendant Boyle, Defendant took no evasive measures to steer or maneuver his boat to the starboard (right) side.

39.

At the time of the collision, Defendant Boyle approached Kenneth Mann's boat from a head-on course, when he should have allowed enough distance or space to pass or give way to Kenneth Mann's boat on the Defendant Boyle's port (left) side.

40.

Defendant Boyle failed to maintain a proper lookout for Kenneth Mann's boat, despite Kenneth Mann's efforts to wave and warn Defendant Boyle of an impending collision.

41.

Kenneth XXXX is not at fault in the subject collision.

42.

Kenneth XXXX did nothing to cause or contribute to the subject collision.

43.

There is no other person, other than Defendant Boyle, who caused or contributed to the subject collision.

44.

Defendant Boyle committed other negligent acts and omissions as may be proved by the evidence.

DAMAGES CLAIMED

45.

The conduct of the Defendant Boyle proximately caused the collision and resulting damages, including the death of Kenneth XXXX.

46.

Just before and during the collision of the boats, Kenneth XXXX experienced shock, fright, and terror.

47.

Kenneth XXXX suffered severe and painful injuries to his body and mind in the collision, before he died from his injuries on August 25, 2012.

48.

Plaintiff Kendall Dale XXXX, as Administrator of the Estate of Kenneth XXXX, Deceased, claims the following damages suffered by Kenneth XXXX., which his Estate is entitled to

- (a) shock, fright, and terror Kenneth XXXX experienced prior to his death; recover:
- (b) all components of the mental and physical pain and suffering endured by Kenneth XXXX during the subject collision and up until he died;
- (c) the full value of the fishing boat which Kenneth XXXX was operating at the time of the subject collision; and
- (d) funeral and burial expenses.

49.

Plaintiff Kendall Dale XXXX, Individually as Surviving Child of Kenneth XXXX, Deceased, claims compensatory damages for the wrongful death of Kenneth XXXX, the
measure

There is no bona fide dispute as to Defendant Boyle's responsibility for the collision and resulting injuries suffered by Kenneth XXXX, which ultimately led to his death, and in the event Defendant Boyle denies responsibility for same, Plaintiffs are entitled to recover expenses of litigation, including reasonable attorney's fees, pursuant to provisions of O.C.G.A. §

13-6-11.WHEREFORE, Plaintiffs respectfully pray and demand as follows:

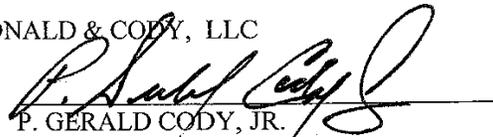
- (A) that process and summons issue, as required by law requiring Defendant Boyle to appear and answer Plaintiffs' Complaint for Damages;
- (B) that service be had upon Defendant Boyle as provided by law;
- (C) that Plaintiffs have a trial by jury;
- (D) that a judgment be entered against Defendant Boyle to compensate Plaintiffs fully and completely for all losses compensable under Georgia law, including compensatory damages;
- (E) that Plaintiffs recover attorneys' fees and expenses of litigation from Defendant Boyle;
- (F) that all costs be cast against Defendant Boyle; and
- (G) that Plaintiffs have such other and further relief as this Court deems appropriate.

This 20th day of August, 2014.

P. O. Box 396
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(706) 778-7178

McDONALD & CODY, LLC

BY:



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