



MEMORANDUM

Office of the City Attorney

070406
Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commissioners

DATE: September 10, 2007

FROM: City Attorney


CONSENT

SUBJECT: Martin Cleveland Vinson and Mary Vinson, his wife vs. City of Gainesville and Karen Ruff Kilpatrick; Eighth Judicial Circuit, Court Case No. 2007-CA-1743

Recommendation: The City Commission authorize the City Attorney and/or Special Counsel if insurance coverage is available, to represent the City of Gainesville and former City employee Karen Ruff Kilpatrick in the case Martin Cleveland Vinson and Mary Vinson, his wife vs. City of Gainesville and Karen Ruff Kilpatrick; Eighth Judicial Circuit, Court Case No. 2007-CA-1743

On August 24, 2007, the City was served with a Summons and Complaint filed by Attorney Ronald D. Surrency on behalf of Martin and Mary Vinson in the Circuit Court. The Vinson's allege that, On April 29, 2003, he was a driver of a vehicle involved in an automobile accident with a City vehicle driven by then City employee Karen Ruff Kilpatrick. They claim that Mr. Vinson sustained bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expenses for hospitalization, medical and nursing care, loss of earnings and ability to earn money and aggravation of a previously existing condition. Mrs. Vinson claims that due to the alleged injuries of her husband, she has been deprived of society, companionship, and consortium, assistance and services in and about their home and will continue to be deprived thereof in the future and has incurred and will continue to incur medical expenses for future treatment of Mr. Vinson. The Vinson's seek money damages and attorney's fees.

Prepared by:


Daniel M. Nee,
Assistant Litigation Attorney

Submitted by:


Marion J. Radson,
City Attorney

IN THE EIGHTH JUDICIAL CIRCUIT COURT IN AND FOR
ALACHUA COUNTY, FLORIDA

MARTIN CLEVELAND VINSON
AND MARY VINSON, HIS WIFE
Plaintiffs,

CASE NO: 01-07-CA-1743

K

vs

CITY OF GAINESVILLE
and KAREN RUFF KILPATRICK
Defendants.

JK "BUDDY" IRBY
CLERK OF COURTS
ALACHUA COUNTY, FL.

2007 APR 27 PM 2:35

FILED
OK 57

COMPLAINT

Plaintiffs Martin Cleveland Vinson and Mary Vinson, by and through undersigned counsel, sue
Defendants City of Gainesville and Karen Ruff Kilpatrick and allege:

COUNT I

PLAINTIFFS' CLAIM AGAINST CITY OF GAINESVILLE

1. This is an action for damages that exceed \$15,000.
2. Plaintiffs Martin Cleveland Vinson and Mary Vinson are residents of Alachua County, Florida.
3. At all times material the Defendant City of Gainesville was and is a municipal corporation of the State of Florida and engaged in activity more particularly described below. The activity of the Defendant is an "operational" level of decision making within the Defendant, involving the ownership and operation of a motor vehicle. Since this activity does not fall into the category which involves broad policy making or planning and does not involve discretionary governmental functions, the Defendant is not immune from tort liability and, in accordance with Article X, Section 13 of the Florida Constitution, the Defendant has waived sovereign immunity



from liability for torts.

4. At all times material to this action, Defendant Karen Ruff Kilpatrick was an employee and agent of Defendant City of Gainesville and was working and operating a City of Gainesville vehicle within the course and scope of her duties of employment for the City of Gainesville.

5. Notice has been given to the Defendant City of Gainesville pursuant to Fla. Stat. 768.28. A copy of the notice letter with Return Receipt Card showing the date of receipt is attached and marked Composite Exhibit A.

6. The Plaintiffs are entitled to relief against the Defendant City of Gainesville upon the following facts:

(A) On April 29, 2003, the City of Gainesville owned a motor vehicle that was operated with that Defendant's consent by its employee and agent, Defendant Karen Ruff Kilpatrick at the intersection of State Road 26 (University Avenue) and NE 25th St., Gainesville, Alachua County, Florida.

(B). At that time and place, Defendant City of Gainesville negligently operated or maintained the motor vehicle so that it collided with Plaintiff Martin Cleveland Vinson's motor vehicle.

(C). As a result, Plaintiff Martin Cleveland Vinson suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiffs demand judgment for damages against Defendant City of

Gainesville, together with costs, and respectfully demand a trial by jury.

COUNT II

CONSORTIUM CLAIM OF MARY VINSON AGAINST CITY OF GAINESVILLE

7. Plaintiff Mary Vinson realleges 1, 2, 3, 4, 5, and 6.

8. That at the aforementioned time and place, Plaintiff Mary Vinson was the lawful Wife of Plaintiff Martin Cleveland Vinson, and that by reason of the negligence of the Defendants, as aforesaid, the Plaintiff Mary Vinson has been deprived of society, companionship and consortium, assistance and services in and about their home and will continue to be deprived thereof in the future: and has been required to expend and obligate herself to expend various sums of money for the treatment of her Husband's injuries and will be required to continue to incur medical expenses for the future treatment of said Husband's injuries.

WHEREFORE, the Plaintiff, Mary Vinson, demands judgment for damages against the Defendant City of Gainesville, together with costs, and respectfully demands a trial by jury.

COUNT III

ALTERNATIVE CLAIM AGAINST KAREN RUFF KILPATRICK

9. In the alternative, Plaintiffs re-allege 1 and 2.

10. Plaintiffs are entitled to relief from Defendant Karen Ruff Kilpatrick upon the following facts:

(A) On April 29, 2003, Defendant Karen Ruff Kilpatrick operated a City of

Gainesville motor vehicle at the intersection of State Road 26 (University Avenue) and NE 25th St., Gainesville, Alachua County, Florida.

(B). At that time and place, Defendant Karen Ruff Kilpatrick negligently operated or maintained the motor vehicle so that it collided with Plaintiff Martin Cleveland Vinson's motor vehicle.

(C). As a result, Plaintiff Martin Cleveland Vinson suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiffs demand judgment for damages, together with costs, against Defendant Karen Ruff Kilpatrick and respectfully demand a trial by jury.

COUNT IV

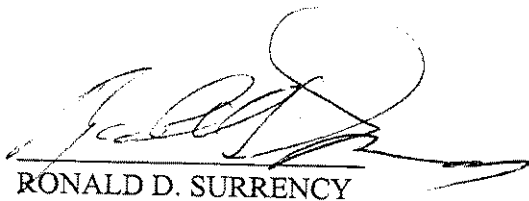
ALTERNATIVE CONSORTIUM CLAIM AGAINST KAREN RUFF KILPATRICK

11. In the alternative, Plaintiff Mary Vinson re-alleges 1, 2 and 10.

12. That at the aforementioned time and place, Plaintiff Mary Vinson was the lawful Wife of Plaintiff Martin Cleveland Vinson, and that by reason of the negligence of the Defendants, as aforesaid, the Plaintiff Mary Vinson has been deprived of society, companionship and consortium, assistance and services in and about their home and will continue to be deprived thereof in the future: and has been required to expend and obligate herself to expend various sums of money for the treatment of her Husband's injuries and will be

required to continue to incur medical expenses for the future treatment of said Husband's injuries.

WHEREFORE, the Plaintiff, Mary Vinson, demands judgment for damages against the Defendant Karen Ruff Kilpatrick , together with costs, and respectfully demands a trial by jury.

A handwritten signature in black ink, appearing to read 'R. D. Surrency', is written over a horizontal line.

RONALD D. SURRENCY
Attorney for Plaintiffs
Florida Bar # 634107
200 NE First Street
Gainesville, FL 32601
352-376-4671

Compos: to Exh. b. 1 F

RONALD D. SURRENCY

ATTORNEY AT LAW

200 NE 1st Street
Gainesville, Florida 32601
Telephone: (352) 376-4671
Facsimile: (352) 376-6017

GENERAL PRACTICE
PERSONAL INJURY

FAMILY LAW, REAL ESTATE
PROBATE & WILLS

27 April 2006

Hon. Pegeen Hanrahan
Mayor-Commissioner
City of Gainesville
P. O. Box 490, Station 19
Gainesville, FL 32602

Certified Mail

Re: Notice of Claim Against City of Gainesville, Florida, a municipality
Pursuant to 768.28
Personal Injury Claim of Martin Cleveland Vinson and Mary Vinson, his wife
Date of collision: April 29, 2003

Dear Mayor Hanrahan:

Pursuant to FS 768.28, please consider this letter formal notice of a claim of Martin Cleveland Vinson and Mary Vinson, his wife, arising out of a personal injury to Mr. Vinson occurring in Gainesville on April 29, 2003 at the intersection of State Road 26 (University Avenue) and NE 25th St. The motor vehicle collision was solely and proximately caused by the negligent operation of a City of Gainesville truck operated by city employee/ agent Karen Ruff Kilpatrick.

The collision occurred at approximately 11 a.m. Mr. Vinson was operating his 1981 Chevrolet pickup truck in a safe and legal manner as he approached the intersection. In anticipation of the traffic signal changing to red, Mr. Vinson began to slow his vehicle. However, the light remained green, and Mr. Vinson continue to drive through the intersection. He shifted the gears of his standard transmission for the purpose of resuming speed. At that moment, the City of Gainesville truck, trailing in his lane of traffic, crashed into the rear of the Vinson truck.

The force of the rear end impact was sufficient to cause approximately \$2,000 damage to the front of the city vehicle. Mr. Vinson sustained immediate cervical soft tissue injury which has now been determined to be of a severe and permanent nature.

In Florida, the driver of the rear-most vehicle in a rear-end collision, the City of Gainesville in this case, is presumed to be negligent with rebuttal permitted only in cases of sudden lane change, mechanical defect or improper parking. None of the narrow rebuttal exceptions apply to the circumstances of this case. Further, Mr. Vinson had no opportunity to avert the collision and had no warning of the City of Gainesville truck bearing

down upon him. As between the drivers at the accident scene, the City of Gainesville driver's negligent actions were the sole cause of the collision and Mr. Vinson's injuries.

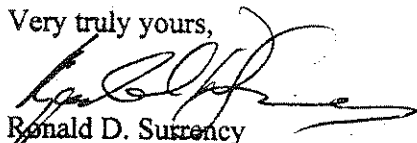
At the time of the collision, Mr. Vinson was a 59-year-old self-employed plasterer. He owned and operated Martin Plaster and Stucco and physically performed plastering on construction and repair sites. Mr. Vinson has performed full-time plastering work for his entire adult life. He attempted to resume full-time work after the collision but was unable to do so because the cervical injury makes it virtually impossible to perform the day-long arm work associated with use of a plastering trowel tool. Both overhead (ceiling and high wall) and lower plastering work were so painful that Mr. Vinson has found it necessary to end his life long employment. Mr. Vinson's Social Security Disability Claim for injury arising out of the collision is pending.

Mr. Vinson has sustained severe, continuing and permanent injury as a result of the City of Gainesville's negligent ownership and operation of its truck. He has sustained damages of past and future wage loss, earning capacity, medical expense, pain and suffering, and loss of capacity for enjoyment of life. Ms. Vinson has sustained a loss of consortium.

Please consider this a claim for the City of Gainesville's liability limits as compensation for Mr. and Ms. Vinson's damages.

Mr. Vinson's date of birth is July 16, 1943 at Gainesville, Florida. His Social Security No. is 266-68-5212. Mrs. Vinson's date of birth is February 6, 1950 at Williston, Florida. Her Social Security No. is 267-86-7914. Neither party is aware of any amounts in excess of \$200 owed to the state of Florida or its subsidiaries, except that there is now due and owing ad valorem tax of \$2,416.18 to the Alachua County Tax Collector for parcel 07177-001-001, and Mr. Vinson owes approximately \$26 in tangible personal property taxes to the same agency.

Very truly yours,


Ronald D. Surrency
Attorney for Claimants.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hon. PEGGY HARRAHAN
Mayor - Commissioner
City of GAINESVILLE
P.O. Box 490, Station 19
GAINESVILLE, FL 32602

2. Article Number

(Transfer from service label)

7004 2890 0001 5421 9789

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

BEN WALKER

☐ Agent☐ Addressee

B. Received by (Printed Name)

BEN WALKER

C. Date of Delivery

8 APR

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

UNITED STATES POSTAL SERVICE

GAINESVILLE/FL 32602

29 APR 2006 1PM

First-Class Mail
Postage & Fees Paid
USPS
Permit No. 610

• Sender: Please print your name, address, and ZIP+4 in this box •

RONALD D. Surrency
ATTORNEY
200 NE 1st St.
GAINESVILLE, FL 32601

IN THE EIGHTH JUDICIAL CIRCUIT COURT IN AND FOR
ALACHUA COUNTY, FLORIDA

MARTIN CLEVELAND VINSON
AND MARY VINSON, HIS WIFE
Plaintiffs,

CASE NO: 01-07-CA-1743

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vs

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and KAREN RUFF KILPATRICK
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J.K. "BUDDY" IRBY
CLERK OF COURTS
ALACHUA COUNTY, FL

TYPE OF CASE:

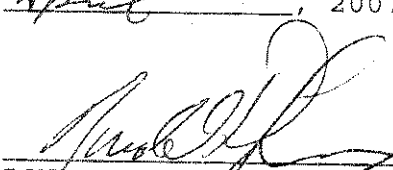
<u>Domestic Relations</u>	<u>Torts</u>	<u>Other Civil</u>
<input type="checkbox"/> Simplified dissolution	<input type="checkbox"/> Professional Malpractice	<input type="checkbox"/> Contracts
<input type="checkbox"/> Dissolution	<input type="checkbox"/> Products liability	<input type="checkbox"/> Condominium
<input type="checkbox"/> Support - IV-D	<input checked="" type="checkbox"/> Auto	<input type="checkbox"/> Real Property/ Mortgage
<input type="checkbox"/> Support - Non-IV-D		<input type="checkbox"/> Foreclosure
<input type="checkbox"/> URESA - IV - D	<input type="checkbox"/> Other negligence	<input type="checkbox"/> Eminent domain
<input type="checkbox"/> URESA - Non -IV-D		<input type="checkbox"/> Other
<input type="checkbox"/> Domestic violence		
<input type="checkbox"/> Other domestic relations		

IS JURY TRIAL DEMANDED IN COMPLAINT:

☒ YES

☐ NO

DATED this 27th day of April, 2007.


RONALD D. SURRENCY, ESQUIRE
200 NE FIRST STREET
GAINESVILLE, FL 32601
352/376-4671
FLA. BAR NO.: 634107
ATTORNEY FOR

Case: 2007 CA 001743



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Crt: CC01-R

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