



MEMORANDUM

Office of the City Attorney

000345

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

TO: Mayor and City Commissioners

DATE: August 28, 2000

FROM: City Attorney


CONSENT

SUBJECT: William A. Melanson, as personal representative of the estate of Gladys A. Birt, deceased v. City of Gainesville;
Case No.: 01-00-CA-2777


Recommendation: The City Commission authorize the City Attorney to represent the City in the case styled William A. Melanson, as personal representative of the estate of Gladys A. Birt, deceased v. City of Gainesville.

On or about August 15, 2000, the City was served with a complaint by William A. Melanson, the personal representative of the estate of Gladys A. Birt. Ms. Birt was involved in a fatal automobile accident on July 19, 1999 at the intersection of N.E. 39th Avenue and N.E. 11th Terrace, Gainesville. Mr. Melanson alleges, on Ms. Birt's behalf, that the City negligently maintained the intersection and/or roadways at that location, resulting in Ms. Birt's death.

Prepared by:


Elizabeth A. Waratuke,
Litigation Attorney

Approved and
submitted by:


Marion J. Radson,
City Attorney



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

WILLIAM A. MELANSON,
as Personal Representative
of the Estate of Gladys A. Birt,
deceased,

CASE NO.: 01-00 CA 2777

DIVISION: J

Plaintiff,

vs.

CITY OF GAINESVILLE,

Defendants.

_____ /

COPY
STEPHEN M. GELBORN, SHERIFF
ALACHUA COUNTY, FLORIDA
Served of 300 on the 15 day
of Aug, 2007
By P. Brown
As Deputy Sheriff

SUMMONS

THE STATE OF FLORIDA:

TO ALL AND SINGULAR THE SHERIFFS OF SAID STATE:

GREETINGS:

YOU ARE HEREBY COMMANDED to serve this summons and a copy of the complaint or petition in the above-styled cause upon the defendant(s)

CITY OF GAINESVILLE

By serving:
Mayor Paula Delaney
200 E. University Avenue
Gainesville, Florida

Each defendant is hereby required to serve written defenses to said complaint or petition on plaintiff's attorney, whose name and address is

James G. Feiber, Jr.
SALTER, FEIBER, YENSER, MURPHY & HUTSON, P.A.
Post Office Drawer 1589
Gainesville, Florida 32602

within 20 days after service of this summons upon that defendant, exclusive of the day of service, and to file the original of said written defenses with the Clerk of said Court (Post Office Box 600, Gainesville, FL 32602) either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

WITNESS my hand and the seal of said Court on 14, August
2000.

J.K. "BUDDY" IRBY,
Clerk of the Court
201 E. University Avenue
Gainesville, FL 32601



(Court Seal)

By: Samuel Keaton
As Deputy Clerk

IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT COURT ADMINISTRATION, 201 E. UNIVERSITY AVENUE, GAINESVILLE, FL 32601, (352) 374-3648, WITHIN TWO (2) WORKING DAYS OF YOUR RECEIPT OF THIS SUMMONS AND COMPLAINT; IF YOU ARE HEARING OR VOICE IMPAIRED, CALL 1-800-955-8771.

COPY

SKPR

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

WILLIAM A. MELANSON,
as Personal Representative
of the Estate of Gladys A. Birt,
deceased,

CASE NO.: 01-00-CA 2777

DIVISION: J

Plaintiff,

vs.

CITY OF GAINESVILLE,

Defendants.

COMPLAINT

COMES NOW the Plaintiff, WILLIAM A. MELANSON, as Personal Representative of the Estate of Gladys A. Birt, deceased, by and through her undersigned attorney, and sues the Defendant, CITY OF GAINESVILLE, and as grounds therefor would state:

1. This is an action for damages that exceed Fifteen Thousand Dollars (\$15,000.00), exclusive of interests, costs and attorney's fees.
2. Plaintiff, WILLIAM A. MELANSON, is the duly appointed, qualified, and acting Personal Representative of the Estate of Gladys A. Birt, deceased, who did reside in Gainesville, Alachua County, Florida at the time of her death on 19 July 1999.
3. The potential beneficiaries of the recovery in this action and the relationship of each to the decedent are: Thomas W. Birt, son; William M. Birt, son; and Tammy L. Birt, daughter.
4. The Plaintiff, WILLIAM A. MELANSON, is an individual residing in Polk

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MELANSON v CITY OF GAINESVILLE
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County, Florida.

5. The Defendant, CITY OF GAINESVILLE, is a municipality in the county of Alachua, state of Florida.

6. Notice of the claim for the wrongful death of Gladys Birt was provided to the City of Gainesville, Risk Management Department on 4 February 2000 pursuant to Fla. Stat. §768.28(6)(a) and a copy of such notice was sent to the Department of Insurance. Both notices were sent via certified mail, return receipt requested, as evidenced by the copies of the receipts attached hereto as Exhibit "A".

7. On or about 19 July 1999, Geneva Johnson, owned a motor vehicle, more specifically described as a 1997 Ford Explorer, that was operated with her consent by Authenia Johnson, at the intersection of N.E. 39 Avenue and N.E. 11 Terrace in Gainesville, Alachua County, Florida.

8. At the time and place described in paragraph 7 above, Authenia Johnson, operated Geneva Johnson's motor vehicle so that it collided with a motor vehicle then being operated by the deceased, Gladys A. Birt.

9. The Defendant, CITY OF GAINESVILLE, had undertaken to maintain and keep safe for motor vehicles the roadways owned by the Defendant. In addition, the Defendant, CITY OF GAINESVILLE, had specifically undertaken to maintain and keep safe for motor vehicle operation the intersection of N.E. 39 Avenue and N.E. 11 Terrace in Gainesville, Alachua County, Florida.

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10. The Defendant, CITY OF GAINESVILLE, negligently maintained the intersection of N.E. 39 Avenue and N.E. 11 Terrace in Gainesville, Alachua County, Florida, and thereby created a hazardous condition that existed on 19 July 1999.

11. As a direct and proximate cause of Defendant's, CITY OF GAINESVILLE, negligence, Gladys A. Birt's view was obstructed as she operated her motor vehicle heading north on N.E. 11 Terrace and was struck by the motor vehicle operated by the motor vehicle then being operated by Authenia Johnson, who was heading east on N.E. 39 Avenue on 19 July 1999.

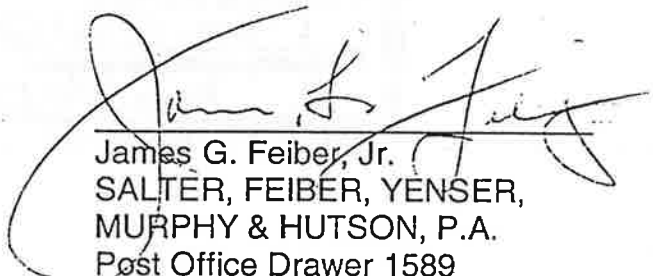
12. As a result of Defendant's, CITY OF GAINESVILLE, negligence, Gladys A. Birt suffered bodily injury and resulting pain and suffering that caused her death on 19 July 1999.

13. As a result of Defendant's, CITY OF GAINESVILLE, negligence, Gladys A. Birt's three surviving children lost the support and services of the decedent, future loss of support and services, the amount of decedent's probable net income and the replacement value of decedent's services, loss of decedent's companionship, and mental pain and suffering. The decedent's estate lost funeral expenses due to the decedent's death. WHEREFORE Plaintiff, WILLIAM A. MELANSON, as the Personal Representative of the Estate of Gladys A. Birt, demands judgment against the Defendant, CITY OF

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GAINESVILLE, for damages, together with costs incurred, and further requests a trial by
by jury.

Dated this 9th day of August 2000.



James G. Feiber, Jr.
SALTER, FEIBER, YENSER,
MURPHY & HUTSON, P.A.
Post Office Drawer 1589
Gainesville, FL 32602
Phone: 352/376-8201
Fax: 352/376-7996
Attorney for Plaintiff

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1. Addressee's Address
- 2. Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Risk Management
 City of Gainesville
 222 E University Avenue
 Gainesville FL 32601

4a. Article Number

Z 279 196 210

4b. Service Type

- Registered Certified
- Express Mail Insured
- Return Receipt for Merchandise COD

7. Date of Delivery

2-7-00

Re: Birt

5. Received By: (Print Name)

Marie Brock

6. Signature: (Addressee or Agent)

X Marie Brock

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

102595-98-B-0229

Domestic Return Receipt

Thank you for using Return Receipt Service.

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I also wish to receive the following services (for an extra fee):

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- 2. Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Department of Insurance
 The Capitol
 Tallahassee, FL 32301

4a. Article Number

Z 279 196 211

4b. Service Type

- Registered Certified
- Express Mail Insured
- Return Receipt for Merchandise COD

7. Date of Delivery

FEB 07 2000

Re: BIRT, TREASURER

5. Received By: (Print Name)

SHAL

8. Addressee's Address (Only if requested and fee is paid)

receipt

Thank you for using Return Receipt Service.

RECEIVED A