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FILED
Superior Court Of California,
Sacramento
06/20/2012
mmmeraz
By _____, Deputy
Case Number:
34-2012-00126284

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO

10 LINDA SHEPHERD, an individual,)
11)

12 Plaintiffs,)
vs.)

13 HAWES MOTORSPORTS, LLC;)
14 PAUL HAWES dba HAWES MOTOR)
SPORTS; CATHY HAWES dba)
15 HAWES MOTORSPORTS; RICHARD)
SINNOT dba MARYSVILLE)
16 RACEWAY PARK; JOESPH)
DYMON; BONNIE PETERSON, an)
17 individual; MERLE SHEPHERD, III, an)
individual; TABITHA SHEPHERD, an)
18 individual; MICHAEL SHEPHERD, an)
individual; and DOES 1 through 80,)
19 inclusive)

20 Defendants.)
21)

CASE NO:

COMPLAINT FOR WRONGFUL DEATH

DEPARTMENT
ASSIGNMENTS

Case Management 35
Law and Motion 54
Minors Compromise 40

22 GENERAL ALLEGATIONS

23 Plaintiff complains and alleges:

24 1. Plaintiff, LINDA SHEPHERD, (hereinafter "LINDA") is an individual as well as the
25 successor in interest to decedent, Merle Shepherd, Jr., as Merle Shepherds's surviving spouse, and is over
26 the age of eighteen (18) years and resides in the State of California, County of Sacramento.

27 2. Defendant, HAWES MOTORSPORTS, LLC, (hereinafter "HAWES MOTOR
28 SPORTS") is a corporation, limited liability corporation, partnership, and/or business entity of some other

1 form licensed to do business, and actually doing business, in the State of California.

2 3. Defendant, PAUL HAWES dba HAWES MOTORSPORTS, LLC (hereinafter "PAUL
3 HAWES"), upon information and belief resides in the State of California, and is an individual and all
4 times was employed by and an officers director, or a managing agent of HAWES MOTORSPORTS,
5 LLC.

6 4. Defendant, CATHY HAWES dba HAWES MOTORSPORTS, LLC (hereinafter
7 "CATHY HAWES"), upon information and belief resides in the State of California, and is an individual
8 and all times was employed by and an officer, director, or a managing agent of HAWES
9 MOTORSPORTS, LLC.

10 5. Defendant, BONNIE PETERSON (hereinafter "PETERSON"), upon information and
11 belief is an individual over the age of eighteen (18) years and a resident of the County of Sacramento,
12 State of California, and all times was employed by and/or acting as agent for HAWES MOTORSPORTS,
13 LLC.

14 6. Defendant, RICHARD SINNOT dba MARYSVILLE RACEWAY PARK (hereinafter
15 "SINNOT"), upon information and belief is a resident of the State of California and is an individual and
16 all times was doing business as MARYSVILLE RACEWAY PARK.

17 7. Defendant, JOSEPH DYMON, (hereinafter "DYMON"), is an individual and a resident
18 of the State of California,

19 8. Defendants, PAUL HAWES, CATHY HAWES, and SINNOT, at all times owned,
20 operated, managed, marketed, and controlled the track identified as MARYSVILLE RACEWAY PARK,
21 in Marysville, California. Defendants, PAUL HAWES, CATHY HAWES, and SINNOT, at all relevant
22 times employed PETERSON on or about August 14, 2010 to act as the race director to perform the end-
23 to-end responsibilities for seeing that all required tasks got done for the exhibition event and that the
24 exhibit event was conducted in a safe manner.

25 9. Defendant, MERLE SHEPHERD, III, (hereinafter "MERLE III") is the natural child
26 of decedent, Merle Shepherd, Jr., and resides in the State of Oregon.

27 10. Defendant, TABITHA SHEPHERD, (hereinafter "TABITHA"), is the natural child of
28 decedent, Merle shepherd, Jr., and resides in the State of Oregon.

1 killed decedent, MERLE.

2 17. Defendants, and DOES 1 through 20, actions leading up to the death of MERLE,
3 constituted conduct that would be considered negligent in the promotion, running, management, and
4 overall conduct of the exhibition event that resulted in MERLE's death.

5 18. At no time before the exhibition event did the decedent sign a release of liability as a
6 exhibition event participant that contractually relieved any Defendant of their duty of care in organizing,
7 running, and/or managing the exhibition event.

8 19. At all times, it was foreseeable to Defendants, and each of them, that the decedent was
9 at risk for serious bodily harm and/or death as the result of a crash during the exhibition event. At all
10 relevant times preceding the exhibition event Defendants were aware of the dangers associated with
11 vehicle crashes occurring on the Marysville Raceway Park track.

12 20. Prior to the commencement of the exhibition event that resulted in MERLE's death,
13 the Defendants, and each of them, acted negligently and that said negligence amounted to gross
14 negligence. In promoting, running, managing, and conducting the exhibition event the Defendants, and
15 each of them, permitted the following to occur:

- 16 a) Defendants, and DOES 1 through 20, knowingly allowed a known violent felon to
17 participate in the exhibition event;
- 18 b) Defendants, and DOES 1 though 20, knowingly supplied an unsafe vehicle to be used
19 by decedent, Merle Shepherd, Jr.;
- 20 c) Defendants, and DOES 1 through 20, knowingly used an inadequate race track for the
21 vehicles involved;
- 22 d) Defendants, and Does 1 through 20, knowingly failed to have safety vehicles of
23 sufficient size and/or capacity on site to lift, roll, or move a participating vehicle in the
24 event of a crash;
- 25 e) Defendants, and DOES 1 through 20, failed to groom the track in order to remove a
26 known hazard (i.e., burm/trench);
- 27 f) Defendants, and DOES 1 through 20, knowingly failed to adhere to safety precautions
28 commonly required in similar events; and,

1 g) Defendants, and DOES 1 through 20, knowingly failed to stop the exhibit event when
2 it was apparent that one of the exhibition participants was driving in an aggressive
3 manner.

4 21. The facts and circumstances of this accident demonstrate that the Defendants took an
5 extreme departure from what a reasonably careful person would do in the same situation to prevent harm
6 to oneself or to others when they allowed this exhibition event to go forward in the manner in which it
7 did.

8 22. The negligence of Defendants caused the death of MERLE. Had the decedent been
9 properly informed of the risk associated with the exhibition event he would not have participated. Had
10 proper precautions been taken by supplying a truck with a roll cage, properly groomed track, adequate
11 sized safety vehicles, suspension of the event, etc., the decedent would not have been crushed in the cab
12 of the truck supplied by the Defendants.

13 23. Defendants, and Does 1 through 20, otherwise negligently caused or were a substantial
14 factor in causing the death of Merle Shepherd, Jr.

15 24. As a direct result of Defendants' negligence and the death of MERLE Plaintiff has
16 sustained economic damages consisting of (1) the value of lost financial and other support from the
17 decedent, (2) the value of gifts or benefits that the decedent would have provided, (3) the value of funeral
18 and burial expenses, and (4) the reasonable value of household services that the decedent would have
19 provided.

20 25. As a direct result of the Defendants' negligence, and the death of MERLE, Plaintiff has
21 also sustained non-economic damages consisting of loss of the decedents' love, companionship, comfort,
22 care, assistance, protection, affection, society, and moral support.

23 Plaintiff prays for judgment against Defendants, and each of them, for:

- 24 a. Non-economic damages in excess of the minimum jurisdictional
25 requirements of this Court;
- 26 b. All funeral, burial, and otehr expenses according to proof;
- 27 c. Interest to the extent allowed by law;
- 28 d. All loss of the decedent's care and support, according to proof;

1 e. All costs of suit; and,

2 f. For such other and further relief as this Court deems just and proper.

3 As a separate second cause of action, Plaintiff complains against Defendants and alleges:

4 **SECOND CAUSE OF ACTION**

5 **(WRONGFUL DEATH: GROSS NEGLIGENCE as against all named**

6 **Defendants and DOES 21 through 40)**

7 26. Plaintiff incorporates herein by reference all allegations of the first cause of action as
8 though fully set forth.

9 27. Alternatively, if it is determined that Defendants had no legal duty of care to the
10 decedent due to the existence of a valid waiver of liability for negligent actions, it is Plaintiff's allegation
11 that the Defendants, and DOES 21 through 40, acted with gross negligence in causing the death of
12 MERLE, based on the facts alleged herein above.

13 28. Defendants, and DOES 21 through 40, actions leading up to the death of MERLE,
14 constituted conduct that would be considered gross negligence in the promotion, running, management,
15 and overall conduct of the exhibition event that resulted in MERLE's death.

16 29. At no time before the exhibition event did the decedent sign a release of liability as a
17 exhibition event participant that contractually relieved any Defendant of their duty of care in organizing,
18 running, and/or managing the exhibition event.

19 30. At all times, it was foreseeable to Defendants, and each of them, that the decedent was
20 at risk for serious bodily harm and/or death as the result of a crash during the exhibition event. At all
21 relevant times preceding the exhibition event Defendants were aware of the dangers associated with
22 vehicle crashes occurring on the Marysville Raceway Park track.

23 31. Prior to the commencement of the exhibition event that resulted in MERLE's death,
24 the Defendants, and each of them, acted negligently and that said negligence amounted to gross
25 negligence. In promoting, running, managing, and conducting the exhibition event the Defendants, and
26 each of them, permitted the following to occur:

27 a) Defendants, and DOES 21 through 40, knowingly allowed a known violent felon to
28 participate in the exhibition event;

- 1 b) Defendants, and DOES 21 though 40, knowingly supplied an unsafe vehicle to be used
2 by decedent, Merle Shepherd, Jr.;
- 3 c) Defendants, and DOES 21 through 40, knowingly used an inadequate race track for the
4 vehicles involved;
- 5 d) Defendants, and Does 21 through 40, knowingly failed to have safety vehicles of
6 sufficient size and/or capacity on site to lift, roll, or move a participating vehicle in the
7 event of a crash;
- 8 e) Defendants, and DOES 21 through 40, failed to groom the track in order to remove a
9 known hazard (i.e., burm/trench);
- 10 f) Defendants, and DOES 21 through 40, knowingly failed to adhere to safety precautions
11 commonly required in similar events; and,
- 12 g) Defendants, and DOES 21 through 40, knowingly failed to stop the exhibit event when
13 it was apparent that one of the exhibition participants was driving in an aggressive
14 manner.

15 32. The facts and circumstances of this accident demonstrate that the Defendants took an
16 extreme departure from what a reasonably careful person would do in the same situation to prevent harm
17 to oneself or to others when they allowed this exhibition event to go forward in the manner in which it
18 did.

19 33. The gross negligence of Defendants caused the death of MERLE. Had the decedent
20 been properly informed of the risk associated with the exhibition event he would not have participated.
21 Had proper precautions been taken by supplying a truck with a roll cage, properly groomed track,
22 adequate sized safety vehicles, enforcing restrictions on who could participate, suspension of the event,
23 etc., the decedent would not have been crushed in the cab of the truck supplied by the Defendants.

24 34. Defendants, and Does 21 through 40, otherwise and with gross negligence caused or
25 were a substantial factor in causing the death of MERLE.

26 35. As a direct result of Defendants' gross negligence and the death of MERLE Plaintiff
27 has sustained economic damages consisting of (1) the value of lost financial and other support from the
28 decedent, (2) the value of gifts or benefits that the decedent would have provided, (3) the value of funeral

1 and burial expenses, and (4) the reasonable value of household services that the decedent would have
2 provided.

3 36. As a direct result of the Defendants' gross negligence, and the death of MERLE,
4 Plaintiff has also sustained non-economic damages consisting of loss of the decedents' love,
5 companionship, comfort, care, assistance, protection, affection, society, and moral support.

6 Plaintiff prays for judgment agaisnt Defendants for:

- 7 a. Non-economic damages in excess of the minimum jurisdictional
8 requirements of this Court;
9 b. All funeral, burial, and otehr expenses according to proof;
10 c. Interest to the extent allowed by law;
11 d. All loss of the decedent's care and support, according to proof;
12 e. All costs of suit; and,
13 f. For such other and further relief as this Court deems just and proper.

14 As a separate third cause of action, Plaintiff complains against Defendants and alleges:

15 **THIRD CAUSE OF ACTION**

16 **(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS, as against**
17 **all named Defendants, and Does 41 through 60)**

18 37. Plaintiff incorporates herein by reference all allegations of the first and second causes
19 of action as though fully set forth.

20 38 As a direct and proximate result of the defendants, and each of them, negligence as
21 described above, plaintiff was present and witnessed her husband, MERLE, sustain serious injuries as
22 a result of the defendants, and each of them, negligence.

23 39. As a further direct and proximate result of the defendants, and each of them, negligence
24 the plaintiff sustained general damages in the form of distress, mental suffering, grief, anxiety and great
25 emotional distress.

26 Plaintiff prays for judgment against Defendants for:

- 27 a. Non-economic damages in excess of the minimum jurisdictional
28 requirements of this Court;

- b. Interest to the extent allowed by law;
- c. All costs of suit; and,
- d. For such other and further relief as this Court deems just and proper.

As a separate fourth cause of action, Plaintiff complains against Defendants and alleges:

FOURTH CAUSE OF ACTION
(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS: GROSS NEGLIGENCE
against all named Defendants, and DOES 61 through 80)

40. Plaintiff incorporates herein by reference all allegations of the first, second, and third causes of action as though fully set forth.

41 As a direct and proximate result of the defendants, and each of them, gross negligence as described above, plaintiff was present and witnessed her husband, MERLE, sustain serious injuries as a result of the defendants, and each of them, gross negligence.


42. As a further direct and proximate result of the defendants, and each of them, gross negligence the plaintiff sustained general damages in the form of distress, mental suffering, grief, anxiety and great emotional distress.

Plaintiff prays for judgment against Defendants for:

- a. Non-economic damages in excess of the minimum jurisdictional requirements of this Court;
- b. Interest to the extent allowed by law;
- c. All costs of suit; and,
- d. For such other and further relief as this Court deems just and proper.

DATED: 6/1/18

ASHTON & PRICE, LLP


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Linda Shepherd