

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

JAMAR BOLING, b/n/f KIMBERLY )  
BOLING and KIMBERLY BOLING, )  
Individually, )  
V. )  
DURHAM SCHOOL SERVICES, L.P )  
and JOHNTHONY WALKER, )  
individually and as an employee )  
and/or agent of Durham School )  
Services, L.P. )

DOCKET NO.: 16C1367  
DIVISION:  
JURY DEMAND

2016 NOV 23 PM 1:55  
LARRY L. JONES - CLERK  
BY: HBN

COMPLAINT

COMES NOW the Plaintiffs, by and through counsel, hereby files their cause of action and sues the Defendants, Durham School Services, L.P. and Johnthony Walker individually and as an employee and/or agent of Durham School Services, L.P and states as follows:

I.

The Circuit Court of Tennessee, Eleventh Judicial District, at Hamilton County (the "Circuit Court"), has jurisdiction as the accident hereinafter complained of occurred in Chattanooga, Hamilton County, Tennessee.

II.

The weather conditions at the time of the motor vehicle accident were dry with no precipitation or rainfall on the road. The light conditions were midday light.

III

Plaintiff Jamar Boling is the 8 year old minor son of Kimberly Boling.

IV

Defendant Durham School Services, L.P. ("Durham") is a Delaware Corporation with its principle address and place of business at 1431 Opus Place, Suite 200, Downers Grove,

Illinois, 60515. Defendant is licensed to do business in Tennessee. Its registered agent for service of process is C T Corporation System, 800 S. Gay Street, Suite 2021, Knoxville, TN 37929-9710. Defendant Durham operates a full-service student transportation company through use of employees, agents, servants and/or contactors who perform student transportation services within the scope of their employment, apparent authority, agency or contract to act for the Corporation. Defendant Durham is liable for its own negligence and the acts and omissions of its employees, agents, servants and contractors, including Defendant Johnthony Walker (Walker), by virtue of the doctrines of agency, apparent agency, implied agency, employer/employee relations, master-servant relations, joint-venture, joint and several liability, respondeat superior, vicarious liability, contact and as a result of its non-delegable duty to comply with both state and federal regulatory schemes. Upon information and belief, Defendant Durham owns and operates a number of school buses in the greater Chattanooga area.

#### V

Defendant, Walker is an adult resident of Hamilton County, Tennessee. Upon information and belief, Defendant Walker was employed by and driving a vehicle owned by and in furtherance of the business of Defendant Durham at all times pertinent hereto.

#### VI

On or about November 21, 2016, Defendant Walker was operating a school bus transporting children from school. At approximately 3:15 p.m. Defendant Walker was driving too fast, lost control of the bus, which caused the bus to flip onto its side, strike a tree and strike an occupied house.

## VII

Plaintiff, Jamar Boling, was a passenger on the bus being driven by Defendant Walker.

## VIII

At all times material to this suit, Defendant Walker acted as an agent of Defendant Durham thereby making Defendant Durham vicariously liable for the conduct of Defendant Walker. Defendant Durham was the owner of the vehicle driven by Defendant Walker at the time of the incident described herein. Accordingly and pursuant to Tenn. Code Ann. § 50-11-311, the vehicle was being operated by Defendant, Walker with the authority, consent and knowledge of the owners and for the use and benefit of the owner. Therefore, the negligence of the Defendant Walker is imputed to Defendant Durham and Defendant Durham is liable for all Plaintiffs' injuries and damages caused by Defendant Walker. Upon information and belief the vehicle that was operated by Defendant Walker at the time of the incident described herein was registered to Defendant Durham. Accordingly and pursuant to Tenn. Code Ann. § 55-10-312, the vehicle was being operated for the use benefit of Defendant Durham. Therefore, the negligence of Defendant Walker is imputed to Defendant Durham and Defendant Durham is liable for all of the Plaintiffs' injuries and damages.

## IX

The Defendant Walker was operating his vehicle in a negligent and careless fashion and caused the collision which resulted in injuries to the Plaintiffs. The Defendant is guilty of Common Law Acts of Negligence, to-wit:

- (a) The Defendant was not driving his vehicle as an ordinary and prudent person would have done under the conditions and circumstances;
- (b) The Defendant was not keeping a proper lookout ahead in the direction in which the Defendant was traveling;
- (c) The Defendant was not exercising caution;
- (d) The Defendant failed to keep his vehicle under due and reasonable control;
- (e) The Defendant failed to devote full time and attention to the operation of a vehicle;
- (f) The Defendant failed to pay attention to the road.

X

In addition to the Common Law Acts of Negligence described above, the Plaintiffs aver that the Defendant was at said time and place operating a motor vehicle in violation of certain traffic statutes of the State of Tennessee, then and there in full force and effect, to-wit:

Tenn. Code Ann. § 55-10-205 – Reckless driving;

Tenn. Code Ann. § 55-8-136 – Drivers to exercise due care;

Tenn. Code Ann. § 55-10-1014-Accidents involving death or personal injury;

Tenn. Code Ann. § 55-10-102-Accidents involving damage to vehicle; and

Tenn. Code Ann. § 55-10-103-Duty to give information and render aid.

XI

In addition to the acts and omission of Defendant Durham's servants, employees, agents, and contractors, Defendant Durham directly breached its duties to the Plaintiffs

including, but not limited to, the following ways, each and every one constitutes a direct and proximate cause of the crash and injuries which resulted in the injuries to the Plaintiffs.

a. Failure to have policies and procedures in place to ensure that all school bus drivers were properly hired, trained, supervised, investigated and disciplined;

b. Failure to properly hire, train, supervise, investigate and discipline school bus drivers; and

c. Failure to use that degree of skill and care required of a student transportation company under the circumstances then and there existing.

## XII

As a result of the automobile accident caused by the Defendant Walker, Jamar Boling sustained personal injuries, pain and suffering, has suffered in body and mind, has incurred and will incur considerable medical and other expenses as a result of this accident, and has been deprived of the enjoyment of life. Jamar Boling may have a permanent injury as a result of the injuries from this accident. Jamar Boling has suffered psychological injury as a result of this accident.

## XIII

Plaintiff, Kimberly Boling, has incurred and will incur considerable medical and other expenses on behalf of her son Jamar Boling as a result of this accident and has been deprived of the good and valuable services of her son.

## XIV


Plaintiff, Kimberly Boling, has incurred and will incur considerable medical and other expenses on behalf of herself due to the traumatic events surrounding this accident.

WHEREFORE, the Plaintiffs demand judgments against the Defendants, Durham School Services, L.P. and Johnthony Walker, as follows:

- (a) that process be issued and served upon the Defendants;
- (b) that the Court enter a judgment against the Defendants in favor of Jamar Boling in an amount in the sound discretion of the jury;
- (c) that the Court enter a judgment against the Defendants in favor of Kimberly Boling an amount in the sound discretion of the jury;
- (d) Further, the Plaintiffs requests that the court award the Plaintiffs' their costs, including all court costs and discretionary costs, against the Defendants, and that the Plaintiffs be awarded any and other further relief to which they may be entitled.

RESPECTUFLY SUBMITTED

HERBERT A. THORNBURY

By:   
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IN THE CIRCUIT COURT OF TENNESSEE  
ELEVENTH JUDICIAL DISTRICT  
AT HAMILTON COUNTY

JAMAR BOLING, b/n/f KIMBERLY )  
BOLING and KIMBERLY BOLING, )  
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COST BOND

The undersigned hereby acknowledges and binds the undersigned for the payment of all non-discretionary costs that may be adjudged herein against the Plaintiffs, Jamar Boling, b/n/f Kimberly Boling and Kimberly Boling Individually, in the event that the Plaintiffs shall not pay such costs.

WITNESS my hand this 23 day of Nov, 2016.

HERBERT A. THORNBURY

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***Surety on a bond for costs shall not be released from the obligation as surety***