

Marshall Circuit Court

STATE OF INDIANA) IN THE MARSHALL _____ COURT
) SS:
COUNTY OF MARSHALL) CAUSE NO. **50C01-1812-CT-000054**

Britni Fritz, Mother and Custodial Parent)
Of Owen Abbott, a minor, deceased,)
)
Plaintiff,)
)
v.)
)
Tylor Perry, and)
National Construction Rentals, Inc., d/b/a)
National Rent-a-Fence Co.)
)
Defendant.)

COMPLAINT

Comes now the Plaintiff, Britni Fritz, Mother and Custodial Parent of Owen Abbott, a minor, deceased, by counsel, and for her Complaint against Defendants, Tylor Perry and National Construction Rentals, Inc., d/b/a National Rent-a-Fence Co., alleges and states as follows:

PARTIES

1. At all relevant times, Plaintiff, Britni Fritz, has been a resident of the State of Indiana, residing in the Town of Winamac in Pulaski County, Indiana
2. At all relevant times, upon information and belief, Defendant, Tylor Perry (“Perry”) has been a resident of the State of Indiana, residing in the Town of Camby, in Marion County, Indiana.
3. At all relevant times, upon information and belief, Defendant National Construction Rentals, Inc., d/b/a National Rent-a-Fence (“NCR”), was a foreign corporation authorized

to do business in the State of Indiana with its principal offices located in Mission Hills, California, and it's local operations center located in Marion County, Indiana.

4. At all relevant times, Plaintiff Britni Fritz was the mother and custodial parent of Owen Abbott, deceased.

FACTS

5. On December 5, 2018, at approximately 9:00 a.m., Owen Abbott was a passenger in a school bus being driven by Cheryl Warner that was travelling northbound on U.S. Highway 31 just north of the town of Argos in Marshall County, Indiana, when the bus stopped at a railroad crossing in accordance with Indiana law.
6. At or about that same time and place, Defendant Perry was operating a 2016 Freightliner straight truck, owned by Defendant NCR, northbound on U.S. Highway 31 directly behind the school bus.
7. After stopping and confirming there was no train approaching, the driver of the school bus began to move forward when the bus was suddenly and without warning struck from behind by the truck being driven by Defendant Tylor Perry.
8. Upon information and belief, at the time of the crash, Defendant Perry was operating the truck in the course and scope of his employment with Defendant NCR.

COUNT I - WRONGFUL DEATH

9. At all relevant times, the school bus on which the deceased, Owen Abbott, was riding, had the right-of-way and was legally travelling in the proper lane.
10. Perry operated his vehicle in a careless and negligent manner, driving his vehicle directly into the back of the school bus on which Owen Abbott was riding.
11. As a result of the crash, Owen Abbott was killed.

12. Perry was careless and negligent in the operation of his vehicle in at least one or more of the following ways:

- a) He failed to obey the traffic stop-arm on the bus;
- b) He failed to yield the right of way to the school bus;
- c) He failed to keep a proper lookout for other vehicles on the roadway;
- d) He failed to notice the school bus stopped at the railroad crossing directly in front of him;
- e) He failed to keep a safe and proper distance between his vehicle and the school bus;
- f) He failed to maintain control of his vehicle so as to avoid a collision with the school bus directly in front of him.

13. Perry, as a driver on the public roadways, had a duty to his fellow drivers on U.S.

Highway 31 to take reasonable care while driving on the highway.

14. Perry breached the duty to take reasonable care, causing the collision with the school bus.

15. Perry's careless and negligent operation of his vehicle was the direct and proximate cause of the collision.

16. As a direct and proximate result of the carelessness and negligence of Perry, Owen Abbott sustained personal injuries resulting in his death.

17. On December 5, 2019, Defendant Perry negligently caused the death of Owen Abbott.

18. Pursuant to the Indiana Child Wrongful Death Act, as a direct and proximate result of the negligence of the Defendants, Plaintiff Britni Fritz, as the surviving custodial parent of the decedent, is entitled to recover as damages the following:

- a. The reasonable pecuniary value of the loss of services of the decedent, Owen Abbott; and,

b. The reasonable pecuniary value of the loss of decedent's love and companionship.

WHEREFORE, Plaintiff, Britni Fritz, by counsel, prays for judgment against the Defendant Tylor Perry in an amount which will fully and fairly compensate her for her damages, for attorneys' fees, for the cost of this action, and for all other relief just and proper in the premises.

COUNT II – VICARIOUS LIABILITY

19. Plaintiff incorporates by reference as if fully set forth herein the material allegations contained in rhetorical paragraphs 1 through 18 of this Complaint.

20. Defendant National Construction Rentals, Inc. d/b/a National Rent-a-Fence, Co. is vicariously liable for the negligence of Defendant Tylor Perry.

WHEREFORE, Plaintiff, Britni Fritz, by counsel, prays for judgment against the Defendant, National Construction Rentals, Inc., d/b/a National Rent-a-Fence Co. in an amount which will fully and fairly compensate her for her damages, for attorneys' fees, for the costs of this action, and for all other relief just and proper in the premises.

JURY TRIAL DEMAND

Comes now the Plaintiff, Britni Fritz, by counsel, and hereby demands that this matter be tried to a jury.

Respectfully submitted,

THE NICE LAW FIRM, LLP

/s/ Robert J. Nice

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Counsel for Plaintiff

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