

2005 OCT 6 AM 9 56

REX MASSENGALE

Plaintiff

v.

WINIGENE DRURY and GREGORY
LEWIS, next of kin of RYAN LEWIS,
Deceased

Defendants

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No.: 14210

STATEMENT OF COURT'S REASONS

Pursuant to Rule 9 of the Tennessee Rules of Appellant Procedure the Court sets forth its Statement of Reasons as to why the Trial Court believes Defendants' Motion for Discretionary appeal should be granted.

I

Although the Court denied Defendants' Motion for Summary Judgment the Defendants allege that Plaintiff, Rex Massengale, failed to meet the burden of proof placed upon the nonmoving party to properly counter Defendants' Motion for Summary Judgment. Specifically, Defendants allege that Plaintiff failed to support his contention(s) that Ryan Lewis was negligent in his operation of his motor vehicle, other than within the pleadings. Defendants contend that under Rule 56 of the Tennessee Rules of Civil Procedure, as enunciated in Byrd v. Hall, 847 S.W.2d 208 (Tenn. 1993) it is incumbent upon Plaintiff to allege negligence outside of the pleadings in order to overcome Defendants' Motion for Summary Judgment.

II

This Court is of the opinion that Defendants' above referenced allegations raise an issue of law appropriate for Appellate review. This Court believes that the

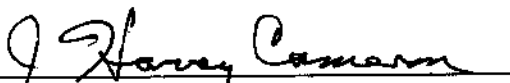
Appellate Court's consideration of this issue on appeal will be beneficial to the parties to this litigation, as well as to other litigants in other cases with similar issue(s) and may also prevent the parties in this litigation from undergoing protracted and expensive litigation.

ENTER this 5 day of ^{act.} September, 2005.


BUDDY D. PERRY, CIRCUIT JUDGE

Respectfully submitted,

CAMERON & GOUGER
An Association of Attorneys
28 Courthouse Sq., Suite 100
P. O. Box 759
Jasper, TN 37347
(423) 942-9975

By: 
J. Harvey Cameron, BPR#2465
Attorney for the Plaintiff

CERTIFICATE OF SERVICE

I, J. Harvey Cameron, do hereby certify that I have served the a copy of the foregoing pleading to:

Stuart F. James, Esquire
Goins, Carpenter, James & Lockett
736 Cherry Street
Third Floor, Heritage Center
Chattanooga, TN 37402

by hand-delivery, facsimile or by mailing a copy of same by United States mail with postage prepaid thereon this the 6th day of ~~September~~ ^{October}, 2005.

By: J. Harvey Cameron
J. Harvey Cameron

CAMERON & GOUGER

AN ASSOCIATION OF ATTORNEYS

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October 5, 2005

Prairie Arnold, Esquire
Goins, Carpenter & James
736 Cherry Street
Third Floor, Heritage Center
Chattanooga, TN 37402

Re: Massengale v. Drury

Dear Prairie:


I am enclosing a Statement of Court's Reasons which I have caused to be filed
this date.

With best personal regards, I am

Yours truly,

CAMERON & GOUGER

By: _____


J. Harvey Cameron

JHC/clt

Enclosures

cc: Mr. Rex Massengale