

IN THE CIRCUIT COURT FOR HAMILTON COUNTY, TENNESSEE

COPY

**STEVE BRUMLOW, individually,
As parent and next of kin, and on
behalf of and as Administrator
ad litem of the Estate of STEVEN
LAMAR BRUMLOW, deceased,**

Plaintiff,


v.

BLEVINS ENTERPRISES, INC., et. al

Defendants.

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**Docket No.: 06C841
Division: I**

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PAULA T. THOMPSON, CLERK
BY 

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

COME now the Defendants, Ray Shrum and Blevins Enterprises, Inc., by and through counsel, and hereby submit this Memorandum of Law in Support of their Motion for Summary Judgment.

STATEMENT OF FACTS

In the early morning hours of June 10, 2005, the defendant, Blevins Enterprises, Inc., (hereinafter referred to as "Blevins") was engaged in its normal business operations of cleaning designated streets within the City of Chattanooga. A group of its employees was sweeping a section of East Brainerd Road. (See Deposition excerpt of Phillip Barks, pg. 10-11) Among the employees working along East Brainerd Road was the defendant, Ray Shrum (hereinafter referred to as "Shrum"). (See Deposition excerpt of Phillip Barks, pg. 11) In conjunction with other Blevins vehicles, Shrum was operating an International, single-axle dump truck with an attached attenuator. (See Deposition excerpt of Ray Shrum, pg. 35) The Blevins vehicles were equipped with lights and signs to provide motorists with notice of their presence within the area. The lights and signs of the Blevins vehicles, including the dump truck operated by Shrum, were clearly visible to motorists. (See sworn statement of Kevin Moses Page 11 and Kate Love Pages

9, 10 and 24). As the Blevins' employees were completing their duties for the day, they were sweeping along the inside wall under the I-75 overpass. (See deposition excerpt of Phillip Barks, pg. 13-14) A motorcycle ridden by Steve Brumlow came off the exit ramp from I-75 and onto East Brainerd Road at a high rate of speed. (See sworn statement of Kevin Moses Page 5 and 6 and Page 8, 9 and 21). Mr. Brumlow lost control of his motorcycle, which ultimately collided with the attenuator outside of the normal lanes of travel. (See sworn statement of Kate Love) Unfortunately, the accident resulted in Mr. Brumlow's death.

LAW AND ARGUMENT

Ray Shrum and Blevins Enterprises, Inc., have filed a Motion for Summary Judgment seeking an Order from this Honorable Court stating that they are entitled to summary judgment. It is well settled that summary judgment is appropriate in cases where there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. McCall v. Wilder, (913 S.W.2d 150, 153, (Tenn. 1993); Tenn. R. Civ. P. 56.03. Furthermore, summary judgment is proper when the non-moving party is unable to establish an essential element of its case in which it will have the burden of proof at trial. Tenn. R. Civ. P. 56.04; see also, Celotex Corp. v. Catrett, (477 U.S. 317 (1986)). The moving party seeking summary judgment bears the burden of demonstrating to the Court that there are no material facts creating a genuine issue of dispute. 847 S.W.2d at 215. "The burden [then] shifts to the non-moving party to set forth specific facts, not legal conclusions, [showing] the existence of disputed, material facts creating a genuine issue" for the Court. Id. at 215. If both the facts and conclusions to be drawn from the facts permit a reasonable person to reach only one conclusion, summary judgment should be granted. Carvell v. Bottoms, (900 S.W.2d 23, 26 (Tenn. 1995)).

In the present case, summary judgment should be granted against the Plaintiff as the undisputed facts demonstrate that there was no negligence nor negligence per se on the part of the

named Defendants. No action on the part of the named Defendants proximately caused the death of Steven Lamar Brumlow. Because the Plaintiff is incapable of presenting countervailing evidence on the aforesaid matters, summary judgment should be granted in favor of the Defendants and this case dismissed in its entirety with costs adjudged against the Plaintiff.

Here, the Plaintiff has brought a wrongful death claim alleging, in general, that various theories of negligence on the part of Blevins Enterprises and Ray Shrum resulted in the death of Steven Lamar Brumlow (hereinafter referred to as "Brumlow"). In order to maintain his claim under any theory of negligence, the Plaintiff must prove the following elements:

- (1) a duty of care owed by the defendant to the plaintiff;
- (2) conduct by the defendant falling below the standard of care amounting to a breach of that duty;
- (3) an injury or loss;
- (4) cause in fact; and
- (5) proximate or legal cause.

Coln v. City of Savannah, (966 S.W.2d 34, 39 (Tenn. 1998) overruled on other grounds by Cross v. City of Memphis, (20 S.W.3d 642 (Tenn. 2000); see also McCall v. Wilder, (913 S.W.2d 150, 153 (Tenn. 1995); McClenahan v. Cooley, (806 S.W.2d 767, 774 (Tenn. 1991). In the instant case, the evidence is clear that the negligence of Brumlow was the sole proximate cause of the accident.

Brumlow was riding a motorcycle, commonly referred to as a crotch rocket, along I-75 between 12:00 and 1:00 a.m. (See sworn statement of Kevin Moses and Kate Love). Immediately before exiting off of I-75, he passed Mr. Moses at a rate of speed in excess of sixty miles per hour. Further, he continued to maintain a rate of speed of at least sixty miles per hour while negotiating the exit ramp onto East Brainerd Road. (See sworn statement of Kevin Moses Pages 3 and 4 and Kate Love Page 6). As he left the exit ramp, there is no evidence that Brumlow attempted to reduce the speed of his motorcycle. (See sworn statement of Kate Love

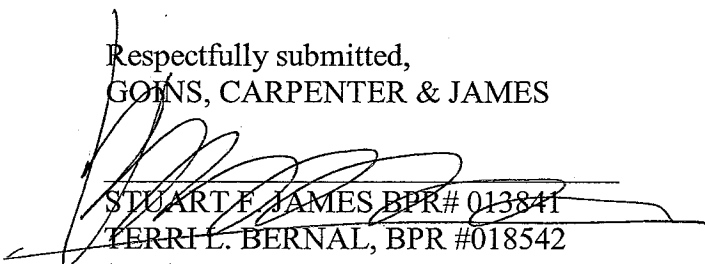
Page 9). In fact, the evidence suggests that he accelerated the motorcycle as he entered East Brainerd Road.

Brumlow proceeded onto East Brainerd Road and immediately into the far lane of travel. (See sworn statement of Kate Love Page 7). He then proceeded to collide with the attenuator attached to the dump truck. (See sworn statement of Kate Love Page 12). At that time, the Blevins vehicles were along the wall of the overpass. (See sworn statement of Kate Love Page 10, 11, and 25 and Exhibits Attached to Affidavit of Carl Bradford Hunt) At no time were they in a lane of travel. (See sworn statement of Kate Love Page 10, 11, and 25 and Exhibits Attached to Affidavit of Carl Bradford Hunt).

The Defendants would aver that the evidence is clear. Brumlow was negligent in the operation of the motorcycle, which ultimately resulted in his death. Many depositions have been taken and much discovery conducted on the part of the parties. However, no evidence has been revealed or disclosed by the Plaintiff to suggest that anything other than Brumlow's actions were the proximate cause of his death.

Based on the foregoing, the Defendants are entitled to judgment as a matter of law. Plaintiff is unable to put forth any evidence relevant to any material fact. No action by Blevins or Shrum was the proximate cause of this accident. Therefore, summary judgment should be granted.

Respectfully submitted,
GOINS, CARPENTER & JAMES




STUART F. JAMES BPR# 013841
FERRIL BERNAL, BPR #018542
S. TODD HASTEY BPR# 022835
736 Cherry Street
Third Floor, Heritage Center
Chattanooga, TN 37402
(423) 756-3646

CERTIFICATE OF SERVICE

I, the undersigned attorney, on this 8th day of November 2007 do hereby certify that the foregoing document has been served upon all counsel of record for the parties at interest in this case by placing a true and exact copy of the same in the United States Mail, postage prepaid, in a properly addressed envelope, or by hand delivering the same to such attorney as follows:

Morgan G. Adams
410 McCallie Avenue
Chattanooga TN 37402



GOINS, CARPENTER & JAMES