

STATE OF INDIANA) IN THE TIPPECANOE SUPERIOR COURT #5
) SS:
 COUNTY OF TIPPECANOE) CAUSE NO.: 79D05-1907-CT-_____

TRAVIS ABSTON, SR., as Surviving Parent of)
 TRAVIS ABSTON, JR, deceased,)
)
 Plaintiff,)
)
 v.)
)
 KOKOMO POLICE DEPARTMENT,)
 TOWN OF BATTLEGROUND POLICE)
 DEPARTMENT, JERRY BURK, and AMBER)
 COOPER, Surviving Parent of TRAVIS ABSTON, JR.,)
)
 Defendants.)

COMPLAINT FOR DAMAGES

Comes now the Plaintiff, Travis Abston, Sr., as surviving parent of Travis Abston, Jr., deceased, by counsel, Tabor Law Firm, LLP, and for his Complaint for Damages against Defendants, Kokomo Police Department, Town of Battleground Police Department, Jerry Burk, Unidentified Officers of the Kokomo Police Department, and Amber Cooper, respectfully pleads as follows:

STATEMENT OF FACTS

1. At all times relevant, Plaintiff Travis Abston, Sr. ("Senior") was a resident of Battleground, Tippecanoe County, Indiana, and he is the surviving natural father of decedent, Travis Abston, Jr. ("Junior").
2. The decedent, Junior, was at all times relevant living with Senior in the town of Battleground, Tippecanoe County, Indiana.
3. Defendant Amber Cooper was at all times relevant the natural mother of Junior and was divorced from Senior.

4. At all times relevant, Defendant Kokomo Police Department was a police department located and operating within the city limits of Kokomo, Howard County, Indiana.

5. At all times relevant, Defendant Town of Battleground Police Department was a police department located and operating within the town limits of Battleground, Tippecanoe County, Indiana.

6. At all times relevant, Defendant Jerry Burk was the Marshall of the Town of Battleground Police Department and operating in the course and scope of that position.

7. On September 18, 2018 at around 5:30-5:45a.m., Senior telephoned the Tippecanoe County Sheriff to report fraudulent credit card use at a gas station in Battleground, Indiana following telephone notifications from his credit card company of said fraudulent use.

8. The Tippecanoe County Sheriff upon information and belief contacted Defendant Battleground Police Department and advised defendant to report to Senior's home.

9. On September 18, 2018, Jerry Burk ("Burk"), Marshall of the Battleground Police Department arrived at Senior's home.

10. Burk and Senior drove separately to the gas station and reviewed video, which showed Junior had attempted to use the credit card in question.

11. An employee from the gas station also described the vehicle operated by Junior while at the gas station and Senior was able to reasonably conclude that said car was owned by Senior and had been taken by Junior, without Senior's permission.

12. At this time, Burk and Senior parted ways with Burk going to file a report for the missing vehicle.

13. At approximately 6:42 a.m., Senior contacted Defendant Kokomo Police Department and told them Junior had taken his car and credit card and would likely be going to

Kokomo, Indiana because Junior's mother, Amber Cooper, resided there. The dispatcher from Kokomo Police Department refused to take the call, claiming the matter was outside their jurisdiction.

14. Senior also contacted the Kokomo Juvenile Detention Center and the local Juvenile Court to apprise them of the situation in order to find Junior.

15. At approximately 8:20 a.m., Defendant Kokomo Police Department contacted Senior, who repeated the information already provided and that Junior would likely be travelling to his mother's residence.

16. Thereafter, Burk returned to Senior's home and Senior showed to Burk Junior's confiscated cell phone, which contained an image from the previous year depicting Travis holding a firearm. Senior then emphasized that neither Junior nor Senior possessed or carried any firearms and there were no firearms in the house.

17. Moreover, nothing in Junior's phone indicated he intended to cause harm to anyone that morning or that he intended to carry out an assault at a school.

18. At that time and place, Burk, without Senior's knowledge or input, knowingly falsely reported to Defendant Kokomo Police Department that Junior was or could be in possession of a gun and was driving to Kokomo, Indiana with potential plans to do harm in the form of a school shooting.

19. Subsequent to Burk's knowing and intentional dissemination of this false information, the Kokomo Police Department spotted the vehicle that was being driven by Junior with him alone in the car and driving.

20. At no later than 11:56a.m., Defendant Kokomo Police Department began a high speed chase of Junior that later resulted in a collision of the vehicle driven by Junior and another uninvolved vehicle. The collision caused Junior's death.

21. The fatal pursuit lasted anywhere from twenty-one (21) minutes up to one hour based on reports of the incident.

22. At the time of his death, Junior was fifteen (15) years old.

23. Subsequent to the collision and after being notified of Junior's death, Senior contacted Burk to discuss what Burk reported to the Kokomo Police Department.

24. Burk terminated the call then called Senior back on a recorded line, upon information and belief, whereupon Burk denied informing Kokomo Police Department that Junior had been armed and intended to assail a student at a school in Kokomo, Indiana.

25. Defendant Kokomo Police Department then engaged in a pattern of misinformation to the public in order to justify its actions, including disclosing Junior's name to the public and advising that Junior had intended to carry out a school shooting, despite knowing there was no evidence, much less probable cause, of this or any other felonious activity prior to the fatal pursuit.

26. At no point was Junior found to have possessed a firearm on September 18, 2018 and the fatal pursuit commenced near Junior's mother's residence.

27. At no point did any Defendant or law enforcement agency contact Senior to verify or discuss whether Junior may have been armed on the morning of September 18, 2018 despite having ample time and multiple opportunities to do so in their conversations with him and in the nearly four hours after Kokomo Police Department spoke with him that morning.

28. To date, Kokomo Police Department has neither identified the individual officers involved in the fatal police chase nor has it disclosed any information from its investigation except that which would denigrate Junior and his reputation.

29. A notice of tort claim was served to the relevant Defendants on or about November 18, 2018.

COUNT I

NEGLIGENCE AGAINST KOKOMO POLICE DEPARTMENT

30. Plaintiff adopts and incorporates by reference paragraphs 1-28 and restates and alleges them collectively herein.

31. Defendant Kokomo Police Department and its agents and officers had at all times a duty of reasonable care to Junior.

32. Defendant Kokomo Police Department breached its duty case by its acts and omissions, including, but limited to, failing to properly train department officers and employees on proper pursuit techniques to reduce significant injuries and fatalities to suspects and third parties, failing to implement and/or enforce policies on proper and safe pursuit techniques, failing to verify or properly investigate information and claims that Junior was in possession of a firearm with intent to use prior to engaging in a dangerous pursuit of him, failing to de-escalate the pursuit of Junior once the pursuit became dangerous and protracted, failing to engage in a proper police pursuit of Junior, disclosing to the public Junior's identity and other information about him ostensibly in order to deflect from any inquiry into the conduct of the department, and otherwise failing to exercise reasonable care under the circumstances.

33. The careless and negligent acts of Defendant Kokomo Police Department and the careless and negligent acts of its agents and employees proximately caused Junior to sustain massive injuries and die as a result of the traumatic injuries suffered in the collision.

34. As a direct and proximate result of the negligence of Defendant Kokomo Police Department, Senior incurred medical, funeral, burial and other incidental expenses as a result of the death of Junior.

35. As a further direct and proximate result of the negligence of Defendant Kokomo Police Department, Senior has lost and he will continue to lose the love, affection, companionship and services of Junior.

COUNT II

NEGLIGENCE AGAINST TOWN OF BATTLEGROUND POLICE DEPARTMENT AND JERRY BURK

36. Plaintiff adopts and incorporates by reference paragraphs 1-34 and restates and alleges them collectively herein.

37. Defendant Town of Battleground Police Department and its agents and officers, including Marshall Jerry Burk, had at all times a duty of reasonable care to Junior.

38. Defendant Town of Battleground Police Department breached its duty case by its acts and omissions, including, but limited to, improperly advising law enforcement authorities in the Kokomo area that Junior was armed with an intent to carry out a school shooting when no such evidence existed, failing to properly investigate, evaluate, and communicate existing evidence to other law enforcement agencies, failing to verify information with Senior prior to making such communications, and otherwise failing to exercise reasonable care under the circumstances.

39. Defendant Jerry Burk breach his duty of care by his willful, wanton, and reckless conduct, including but not limited to, providing and disseminating false and misleading information

about Junior to the Kokomo Police Department, placing him in substantial risk of danger and bodily harm.

40. The careless and negligent acts of Defendant Town of Battleground Police Department and the careless and negligent acts of its agents and employees proximately caused Junior to sustain massive injuries and die as a result of the traumatic injuries suffered in the collision.

41. The willful, wanton, and reckless acts of Defendant Jerry Burk proximately caused Junior to sustain massive injuries and die as a result of the traumatic injuries suffered in the collision.

42. As a direct and proximate result of the negligence of Defendant Kokomo Police Department and the willful, wanton and reckless acts of Defendant Jerry Burk, Senior incurred medical, funeral, burial and other incidental expenses as a result of the death of Junior.

43. As a further direct and proximate result of the negligence of Defendant Kokomo Police Department and the willful, wanton and reckless acts of Defendant Jerry Burk, Senior has lost and he will continue to lose the love, affection, companionship and services of Junior.

COUNT III

CHILD WRONGFUL DEATH ACT – AMBER COOPER AS DEFENDANT WITH INTEREST

44. Plaintiff adopts and incorporates by reference paragraphs 1-43 and restates them collectively herein.

45. Senior was the legal and physical custodian of Junior as of September 18, 2018.

46. Pursuant to Ind. Code § 34-23-2-1(c)(1), Amber Cooper has been added as a codefendant to answer for her interest.

WHEREFORE, Plaintiff Travis Abston, Sr. as surviving natural father of Travis Abston,

Jr., deceased, respectfully requests judgment against the Defendants, each of them, in an amount that will fully and fairly compensate him for damages arising from the wrongful death of Travis Abston, Jr., for the costs of this action and administration, for interest as allowed by law, attorneys' fees, and all other relief just and proper in the premises.

Respectfully submitted,

TABOR LAW FIRM, LLP

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