

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KELLY RATZLOFF, as daughter and
on behalf of the heirs at law of ANITA
BENZ, deceased,

Plaintiff,

v.

KANSAS HIGHWAY PATROL,
JUSTIN DOBLER, JEREMY CLINE
and LEONARD PELTON,

Defendants.

Case No:

COMPLAINT

Plaintiff Kelly Ratzloff, as daughter and on behalf of the other heirs at law of Anita Benz, deceased, for her Complaint against Defendants Kansas Highway Patrol, Justin Dobler, Jeremy Cline and Leonard Pelton, states:

1. In this civil action, Plaintiff brings claims for the wrongful death of her mother, Anita Benz, who died in a police chase as a result of Defendants' negligence and recklessness.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. §§ 1343 and 1331. Plaintiff's state law claims arise under the laws of Kansas over which this Court has supplemental jurisdiction.

3. Venue is proper in this district under 28 U.S.C. § 1391 because the Defendants are located within this District, and the acts complained of took place within this District.

4. On March 2, 2023 Plaintiff mailed proper and sufficient notice pursuant to K.S.A 12-105(b) of the Kansas Tort Claims Act to the Kansas Highway Patrol. This Court will have jurisdiction over the Kansas Highway Patrol when it denies Plaintiff's notice of claim, which will happen by default if it fails to respond within 120 days.

PARTIES

5. Plaintiff Kelly Ratzloff is a resident of Topeka, Shawnee County, Kansas, and is the daughter of decedent Anita Benz.

6. Defendant Kansas Highway Patrol ("KHP") is a governmental agency of the State of Kansas, which may be served, pursuant to K.S.A. 60-304(d)(5), by serving (a) the Attorney General of the State of Kansas or (b) the assistant attorney general.

7. Defendant Justin Dobler ("Trooper Dobler") was at all relevant times a Trooper with the KHP, and is a resident of the State of Kansas who can be served at his residence address. At all relevant times, Trooper Dobler was a duly appointed agent authorized to enforce the laws of the State of Kansas. Trooper Dobler acted under color of law and in the course and scope of his employment at all times relevant in this action.

8. Defendant Jeremy Cline (“Cline”) is a resident of the State of Missouri who can be served at his residence address at 4253 State Highway T, Puxico, Missouri 63960.

9. Defendant Leonard Pelton (“Pelton”) is a resident of the State of Kansas who may be served with process at his residence at 17410 West Road, Mayetta, Kansas 66509.

FACTS

10. Anita Benz was 45 years old when she was killed.

11. Benz is survived by her daughter, Plaintiff Kelly Ratzloff, two other children, as well as her grandchildren.

12. At approximately 6:00 p.m. on March 6, 2021, Benz was a passenger in a white Mercury Grand Marquis being driven by Defendant Cline in North Topeka, Kansas.

13. At the same time and place, Trooper Dobler was patrolling North Topeka in connection with an interagency task force known as Operation Frontier Justice.

14. While stationary at the intersection of NW Taylor and Lower Silverlake Rd., Trooper Dobler saw a white vehicle approach and turn westbound onto Lower Silverlake Rd.

15. Trooper Dobler claimed the windshield of the vehicle was obscured by sizable cracks. He further noted that a similar vehicle, a white Ford Crown Victoria, had been on the “hot sheet” of stolen vehicles.

16. Trooper Dobler performed a U-Turn and activated his emergency equipment in an attempt to stop the vehicle.

17. The white vehicle did not stop.

18. A pursuit ensued that ultimately lasted approximately 3 minutes and 35 seconds (the “Pursuit”).

19. Trooper Dobler’s dash camera captured the entire incident.

20. The Pursuit occurred in a residential area during daylight hours.

21. The roadways in the area of the Pursuit are mostly unmarked.

22. The roadways in the area of the Pursuit are poorly maintained and contain numerous potholes.

23. The speed limit in the area of the Pursuit is 35 miles per hour.

24. Forty-five seconds into the Pursuit, Trooper Dobler provided dispatch with identifying information for the vehicle he was pursuing, including the license plate number.

25. The vehicle he was pursuing was not a Ford Crown Victoria, it was Mercury Grand Marquis.

26. Trooper Dobler claims the vehicle was speeding. At various points, he estimated the speed at 40-55 miles per hour.

27. There was light traffic in the area of the Pursuit.

28. For the most part, there were no pedestrians on the roadway in the area of the Pursuit.

29. The Grand Marquis mostly maintained its lane of travel during the Pursuit and utilized its turn signals.

30. Approximately two minutes into the Pursuit, as the vehicle approached Starlight Trailer Court, Trooper Dobler first attempted a Tactical Vehicle Intervention (“TVI”) in an effort to disable the vehicle.

31. At the time of the first TVI, there was no immediate threat beyond the Pursuit itself.

32. As the Pursuit moved through the trailer park, dispatch told Trooper Dobler the vehicle was not stolen. To that point in the pursuit, the Grand Marquis had not been observed to leave the roadway nor were any children in the roadway.

33. The Pursuit continued out of the trailer park. At NW Waddel Street, Trooper Dobler attempted a TVI for the second time.

34. The vehicles then turned southbound onto Tyler Street, with Trooper Dobler in very close pursuit.

35. The Grand Marquis took a wide turn into the opposite lane. On the dash cam, another vehicle can be seen in the distance.

36. When the Grand Marquis attempted to regain its lane, it was partially blocked by Trooper Dobler’s vehicle.

37. For the third time, Trooper Dobler attempted a TVI.

38. The maneuver was successful. The Grand Marquis spun out of control and into a utility pole.

39. Anita Benz, who was riding in the front passenger seat, died in the hospital as a result of the collision.

40. At no time did Trooper Dobler consider discontinuing the Pursuit.

41. Trooper Dobler's conduct in the Pursuit was negligent and willfully endangered the lives and property of others.

42. Trooper Dobler's actions during the Pursuit violated both KHP policy and Kansas law.

43. Trooper Dobler was recruited by KHP in 2017. He completed basic training in December of that year. Basic training includes education in KHP Policies and Procedures.

44. On August 7, 2017, Trooper Dobler signed an Acknowledgement wherein agreed he was responsible for "knowing, understanding, and following all KHP policies and procedures."

45. Prior to Operation Frontier Justice, Trooper Dobler had received direction and guidance from KHP regarding vehicle pursuits.

46. Trooper Dobler had been instructed on OPS-16, § V.E.1., the KHP policy governing pursuits.

47. KHP OPS-16, § V.E.1. states: “The primary pursuing officer shall continually re-evaluate and assess the pursuit situation including all of the initiating factors and terminate the pursuit whenever he or she reasonably believes the risks associated with continued pursuit are greater than the public safety benefit of making an immediate apprehension.”

48. The Pursuit began when Trooper Dobler attempted to stop Cline for a cracked windshield. The windshield was ultimately destroyed in the deadly crash, but even if it was obscured when the Pursuit began, driving with an obscured windshield is, at best, a traffic infraction. See K.S.A. 8-1741(b).

49. Although Trooper Dobler claims he initially believed the vehicle may have been stolen, by 45 seconds into the Pursuit he was able to identify the vehicle was a different make and model than the vehicle on the “hot sheet.”

50. Trooper Dobler knew the vehicle was not stolen well before he received confirmation of that fact from dispatch.

51. Even if the vehicle had been stolen, the Trooper had a license plate number and driver description. The area was saturated by police. Pursuit was not necessary or warranted to investigate vehicle theft, a nonperson crime. Under the circumstances, even an actual theft presented no exigency.

52. Under OPS-16 § V.E.3, “[a] pursuit may be terminated if the suspect’s identity has been determined, immediate apprehension is not necessary to protect the public or officers, and apprehension at a later time is feasible.”

53. Trooper Dobler violated OPS-16 by failing to terminate the Pursuit because the benefit of apprehension outweighed the risk of continuing the dispute.

54. Defendant KHP itself determined Trooper Dobler violated OPS-16. In a letter to Trooper Dobler, the Superintendent of the KHP wrote: “. . . officers are required to self-terminate a pursuit when the risk to the public created by the pursuit is greater than the need to capture the suspect. Despite this directive, you chose to continue this pursuit for what amounted to a traffic infraction.”

55. Trooper Dobler also violated the Operation Plan for Operation Frontier Justice which stated, in part: “Vehicle pursuits should be avoided and pursuits that occur as a result of enforcement stops will be evaluated individually as to articulable information at the initiation of the pursuit. Paramount consideration and prioritizing will be given to the safety of the public and the risk of pursuing individuals. Any pursuit will be continually evaluated and may be discontinued at any time. . . .”

56. Excessive force violates the Fourth Amendment of the United States Constitution.

57. Trooper Dobler, a government actor, used deadly force to apprehend a suspect fleeing a traffic infraction. Trooper Dobler had numerous opportunities to terminate the Pursuit and protect the public and Ms. Benz.

58. Trooper Dobler’s decisions in the Pursuit were not those of a reasonable officer under the totality of the circumstances. Trooper Dobler never had any

suspicion of dangerous or violent crime by the occupants of the vehicle, so the reasonable course of action would have been to decline Pursuit, as were his orders.

59. Trooper Dobler's use of excessive force violated Ms. Benz's rights under the Fourth Amendment.

60. Trooper Dobler had been reprimanded on at least two prior occasions for violating OPS-16.

61. On March 7, 2020, in Topeka, Kansas, Trooper Dobler initiated a vehicle pursuit which ended in a collision near 22nd Street and Indiana Avenue.

62. On April 15, 2020, Trooper Dobler received a Letter of Reprimand from Captain Justin Bramlett that stated, in part: "This crash and damage could have been avoided. As policy OPS-16 states, all emergency vehicle operations shall be conducted with due regard for the safety of the officer(s) and the public."

63. On November 20, 2020, Trooper Dobler was again disciplined for violating OPS-16. This time, for misuse of emergency equipment during a vehicle pursuit. Specifically, for shutting off his lights and sirens while continuing to pursue a vehicle at high speed.

64. Trooper Dobler received additional warnings and instructions regarding vehicle pursuits.

65. On August 26, 2020, the Troop B Commander sent an email cautioning against vehicle pursuits for any less reason than a person felony. Even then, he wrote:

“I would think very hard about pursuing within city limits . . .” unless “someone’s life is in immediate danger.”

66. On October 15, 2020, a meeting was held in which the members of Troop B were advised not to pursue vehicles on city streets without exigent circumstances.

67. After the meeting, Trooper Dobler met with his commander one-on-one. The Troop Commander ordered Trooper Dobler not to pursue within the City of Topeka.

COUNT I – 1983 - FOURTH AMENDMENT – EXCESSIVE USE OF FORCE
Against Defendant Justin Dobler

68. Plaintiff incorporates her allegations in the foregoing paragraphs as though fully set forth herein.

69. Trooper Dobler acted “under color of law.”

70. Trooper Dobler’s unreasonable use of excessive and deadly force in the Pursuit amounts to deliberate indifference to Ms. Benz’ Fourth and Fourteenth Amendment constitutional rights.

71. As a direct and proximate result of Trooper Dobler’s conduct, Ms. Benz died and Plaintiff has suffered the loss of her mother. Plaintiff has suffered past and future pecuniary and nonpecuniary losses including the loss of her mother’s services, care and guidance.

72. Because Trooper Dobler was within the course and scope of his employment with KHP at the time of the Pursuit, KHP has a statutory duty to indemnify Trooper Dobler for the damages allowed in this case.

WHEREFORE, Plaintiff prays for judgment in her favor and against Defendant Dobler in an amount in excess of \$75,000 to be determined at trial, for her attorney's fees incurred herein, for her costs and expenses, and for such other relief the Court deems just and proper.

COUNT II – NEGLIGENCE
Against Defendants KHP and Dobler

73. Plaintiff incorporates her allegations in the foregoing paragraphs as though fully set forth herein.

74. Trooper Dobler owed Ms. Benz a duty of reasonable care.

75. Trooper Dobler owed Ms. Benz a duty not to use unreasonable and/or excessive force.

76. Trooper Dobler breached his duty when he engaged in the conduct set forth herein.

77. As a direct and proximate result of Trooper Dobler's conduct, Ms. Benz died and Plaintiff has suffered the loss of her mother. Plaintiff has suffered past and future pecuniary and nonpecuniary losses including the loss of her mother's services, care and guidance.

78. Because Trooper Dobler was in the course and scope of his employment at the time of the Pursuit, KHP is vicariously liable for his conduct.

WHEREFORE, Plaintiff prays for judgment in her favor and against Defendants KHP and Dobler in an amount in excess of \$75,000 to be determined at

trial for her costs and expenses, and for such other relief the Court deems just and proper.

COUNT III – NEGLIGENT HIRING, TRAINING AND RETENTION
Against Defendant KHP

79. Plaintiff incorporates her allegations in the foregoing paragraphs as though fully set forth herein.

80. KHP had a duty to properly screen, train and monitor Trooper Dobler.

81. Upon information and belief, a proper background check would have revealed that Trooper Dobler's temperament was not suitable for service as a trooper in the KHP and that he potentially posed a danger to members of the public, like Ms. Benz, deceased.

82. KHP knows its Troopers will routinely encounter situations where a person has potentially committed a minor crime or traffic infraction, such as the alleged broken windshield described herein.

83. Although it attempted to do so, KHP failed to properly train Trooper Dobler.

84. KHP was on notice that it had failed to properly train Trooper Dobler because he was disciplined at least twice for pursuit violations before the Pursuit at issue in the case.

85. KHP failed to take proper remedial action by providing sufficient additional training to Trooper Dobler. KHP's failure to provide sufficient additional training to Trooper Dobler is especially alarming in light of the gravity of his prior

pursuit violations: chasing a vehicle in the dark without headlights, and on another occasion, causing a collision in a reckless pursuit.

86. KHP was negligent in retaining Trooper Dobler after his prior disciplinary violations involving unlawful pursuits. By that time, KHP was on notice that Trooper Dobler posed a danger to members of the public, like Ms. Benz, deceased.

87. KHP knew or should have known that its failure to properly hire, train and supervise troopers like Trooper Dobler would result in citizens like Ms. Benz being deprived of their constitutional rights.

88. As a direct and proximate result of KHP's conduct, Ms. Benz died and Plaintiff has suffered the loss of her mother. Plaintiff has suffered past and future pecuniary and nonpecuniary losses including the loss of her mother's services, care and guidance.

WHEREFORE, Plaintiff prays for judgment in her favor and against Defendant KHP in an amount in excess of \$75,000 to be determined at trial, for her costs and expenses, and for such other relief the Court deems just and proper.

COUNT IV – NEGLIGENCE
Against Defendant Cline

89. Plaintiff incorporates her allegations in the foregoing paragraphs as though fully set forth herein.

90. Cline owed a duty of reasonable care to Ms. Benz.

91. Cline breached that duty and was negligent in one or more of the following respects:

- a. Failing to bring the vehicle he was operating to a stop during the Pursuit;
- b. Failing to keep a proper lookout;
- c. Failing to yield;
- d. Failing to keep his vehicle under control; and
- e. Driving at excessive speed.

92. As a direct and proximate result of Cline's conduct, Ms. Benz died and Plaintiff has suffered the loss of her mother. Plaintiff has suffered past and future pecuniary and nonpecuniary losses including the loss of her mother's services, care and guidance.

WHEREFORE, Plaintiff prays for judgment in her favor and against Defendant Cline in an amount in excess of \$75,000 to be determined at trial, for her costs and expenses, and for such other relief the Court deems just and proper.

COUNT V – NEGLIGENT ENTRUSTMENT
Against Defendant Pelton

93. Plaintiff incorporates her allegations in the foregoing paragraphs as though fully set forth herein.

94. Defendant Pelton was the owner of the white Mercury Grand Marquis operated by Cline at the time of Ms. Benz' death.

95. Pelton owed a duty not to supply his car to a person he knew or should have known was an incompetent driver or was likely to misuse the car in a manner that created unreasonable risk to the public.

96. Cline was an incompetent driver based on his lack of experience, physical or mental condition, and / or known habits of recklessness. He was incapable of operating a vehicle with ordinary care and created an unreasonable risk to the public.

97. Pelton knowingly entrusted or supplied his car to Defendant Cline who he knew or should have known to be an incompetent or habitually careless driver.

98. As a direct and proximate result of Pelton's conduct, Ms. Benz died and Plaintiff has suffered the loss of her mother. Plaintiff has suffered past and future pecuniary and nonpecuniary losses including the loss of her mother's services, care and guidance.

WHEREFORE, Plaintiff prays for judgment in her favor and against Defendant Pelton in an amount in excess of \$75,000 to be determined at trial, for her costs and expenses, and for such other relief the Court deems just and proper.

Respectfully submitted,

JOSEPH, HOLLANDER & CRAFT LLC

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DEMAND FOR JURY TRIAL

Plaintiff hereby requests a jury trial on all issues so triable herein.

 /s/ Andrew J. Goodwin
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