215 Va. 323
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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 730909

CARLTON W. VAUGHAN

V.

KENNETH MARK JOHNSON

and

FRANKLIN DARRELL MILLER

APPENDIX

JOHN W. PARSONS
Independence, Virginia
Counsel for Appellant

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VIRGINIA: IN THE CIRCUIT COURT OF GRAYSON COUNTY

CARLTON W. VAUGHAN

VS: MOTION FOR JUDGMENT

KENNETH MACK JOHNSON, an infant
Route 3, Box 36 B
Independence, Virginia

DARRELL FRANKLIN MILLER
Route 2
Fries, Virginia

Carlton W. Vaughan, herein called Plaintiff, moves the Circuit Court of Grayson County, Virginia, for Judgment against Kenneth Mack Johnson and Darrell Franklin Miller, jointly and severally, in the sum of Twenty-Five Thousand Dollars, ($25,000.00), for damages, wrongs and injuries herein set forth:

I

That on the 4th day of June, 1972, Plaintiff was operating a motorcycle in a Westerly direction on Highway #58 in Grayson County, Virginia.

II

At said time and place the defendant, Darrell Franklin Miller was also operating a motorcycle in a Westerly direction on Highway #58, and negligently and carelessly attempted to pass a motor vehicle operated by the defendant, Kenneth Mack Johnson, which was also

traveling in a Westerly direction.

III

At said time and place Plaintiff was operating his motorcycle at a safe and proper distance behind the vehicle operated by the defendant, Kenneth Mack Johnson, who suddenly and without giving a signal, stopped his vehicle in the westbound lane of said highway completely blocking Plaintiff's lane of travel and causing Plaintiff to strike said vehicle, thereby seriously, severely and grievously wounding and injuring Plaintiff and damaging his motorcycle.

IV

Each of the defendants failed to perform the duties that were imposed upon them and then and there negligently, carelessly and recklessly operated their vehicles with disregard to the safety, life and limb of Plaintiff, and as a direct and proximate result of the concurring negligence of the defendants, Plaintiff has suffered great physical pain and mental anguish, has sustained serious and severe injuries to his face, head, jaw, leg, back, spine and various other parts of his body; has spent large sums of money endeavoring to be relieved and cured of his injuries; has lost considerable time from his employment, and will continue to incur additional medical expenses by reason of his future necessary medical treatment and attention; and will continue to suffer great physical pain and mental anguish and is permenently disabled.

Wherefore, Plaintiff, moves the Circuit Court of

Grayson County, Virginia, for Judgement against the defendants, jointly and severally, in the sum of Twenty-Five Thousand Dollars, ($25,000.00), with interest thereon until paid.

CARLTON W. VAUGHAN

By Counsel

_____
John W. Parsons, p.q.
Independence, Virginia

Filed March 19, 1973

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF GRAYSON, ON WEDNESDAY, THE 20th DAY OF JUNE, AND IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND SEVENTY-THREE

PRESENT: THE HONORABLE JACK M. MATTHEWS, JUDGE

V I R G I N I A:

CIRCUIT COURT OF GRAYSON COUNTY

CARLTON W. VAUGHAN	:	
V.	:	ORDER
KENNETH MARK JOHNSON and FRANKLIN DARRELL MILLER	:	

This cause, having been duly matured and set for trial, came on this 20th day of June, 1973 to be heard. Both sides having announced to the Court that they were ready for trial, the jury, consisting of the following: Jeff Jefferson, Louis K. McGrady, Ann Poe, E. R. Slayton, J. K. Liddle, Jr., Wanda Sue Funk and T. O. Cox, Jr., was impanelled and duly sworn to try the case.

The plaintiff by counsel made an opening statement and each of the defendants by counsel made an opening statement. The plaintiff then put on his evidence and announced to the Court that he rested as to the question of liability as to each of the defendants, but announced to the Court that Dr. Marinus was supposed to be present as a medical witness and had been delayed.

Whereupon, the plaintiff having rested his case on the question of liability, the defendant Johnson by counsel moved the Court to strike the evidence of the plaintiff as to him on the ground that plaintiff's evidence showed no negligence on the part of Johnson as a matter of law and that the plaintiff's evidence convicted him of contributory negligence as a matter of law. The defendant Miller by counsel also moved the Court to strike the evidence as to him on the ground that his negligence, if any, was not the proximate cause of the collision between the Vaughan motor vehicle and the Johnson station wagon and that the plaintiff's evidence convicted him of contributory negligence as a matter of law.

The judge, having maturely considered the motion, doth deem it well taken and doth sustain the motion as to each of the defendants.

Summary judgment is hereby rendered in favor of the defendants, Kenneth Mark Johnson and Franklin Darrell Miller, against the plaintiff, Carlton W. Vaughan.

Whereupon, the plaintiff by counsel excepted to the ruling and judgment of the Court.

It appearing to the Court that the plaintiff intends to apply to the Supreme Court of Virginia for a writ of error, it is ordered that the transcript of the proceedings as taken down by Mrs. Ruth Jones Greiner be made a part of the record in this case.

Enter this 20th day of June, 1973.

JACK M. MATTHEWS
Judge

We ask this.

PHILIP M. SADLER
Counsel for Kenneth Mark Johnson

STUART B. CAMPBELL, JR.
Counsel for Franklin Darrell Miller

Seen and excepted to.

JOHN W. PARSONS
Counsel for Carlton W. Vaughan

A COPY TESTE,

J. Phil Bennington CLERK,
By Ann H. Ruby Deputy Clerk
GRAYSON COUNTY CIRCUIT COURT.

VIRGINIA: IN THE CIRCUIT COURT OF GRAYSON COUNTY

CARLTON W. VAUGHAN

VS: NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

KENNETH MARK JOHNSON

FRANKLIN DARRELL MILLER

To: J. Phil Bennington, Clerk of the Circuit Court of Grayson County

The undersigned, Carlton W. Vaughan, plaintiff in the above-styled action, hereby gives notice of appeal from the order entered in this proceeding on the 20th day of June, and sets forth the following assignments of error:

(1) The Court erred in striking Plaintiff's evidence as to the defendant, Kenneth Mark Johnson and holding that plaintiff's evidence showed no negligence on his part and that plaintiff was contributorily negligent as a matter of law.

(2) The Court erred in striking plaintiff's evidence as to the defendant, Franklin Darrell Miller and holding that his negligence, if any, was not a proximate cause of the collision between plaintiff's motor vehicle and defendant Johnson's motor vehicle, and that plaintiff was contributorily negligent as a matter of law.

Respectfully,

CARLTON W. VAUGHAN

By Counsel

John W. Parsons
Counsel for plaintiff
Independence, Virginia

Certificate of Counsel

I, John W. Parsons, Counsel for Carlton W. Vaughan, do certify that I have mailed, with postage prepaid, a copy of the foregoing Notice of Appeal and Assignments of Error to Mr. Stuart B. Campbell, Jr., Campbell & Campbell, Wytheville, Virginia; and Mr. Philip M. Sadler, Attorney at Law, Pulaski, Virginia, counsel for Kenneth Mark Johnson and Franklin Darrell Miller, this 19th day of July, 1973.

_____

Received and Filed July 19, 1973.

_____
Clerk of the Circuit Court of Grayson County, Virginia