

DOCKET NO. 174

NUMBER	TERM	YEAR
899	May	1961

Wayne Wise

VERSUS

Clyde Prave

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA


WAYNE WISE :
:
VS : No. 899 May Term, 1961
:
CLYDE PRAVE : Trespass

PRAECIPE FOR DISCONTINUANCE

TO: CARL E. WALKER, PROTHONOTARY

SIR:

Please mark the above case settled and discontinued upon
payment of costs by the defendant.



Attorney for Plaintiff

Dated: May 12, 1962

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

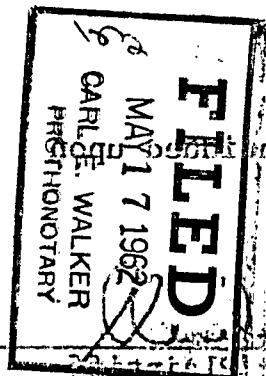
WAYNE WISE :
VS :
No. 899 May Term, 1961 :
CLYDE BRAVE :
Trespass :

PRECEIPT FOR DISCONTINUANCE

TO: CARL E. WALKER, PROTHONOTARY

SIR:

Please mark the above case settled and discontinued
payment of costs by the defendant.



Dated: May 17, 1962

FILED
APR - 2 1962
CARL E. WALKER
PROTHONOTARY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WAYNE WISE :

VS :

No. 899 May Term, 1961

CLYDE PRAVE :

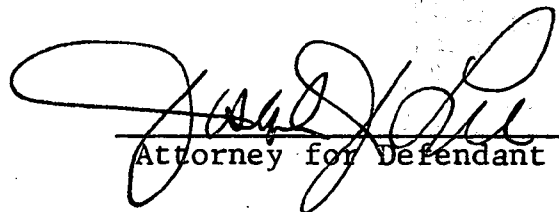
Trespass

PRAECIPE FOR APPEARANCE

TO WILLIAM T. HAGERTY, PROTHONOTARY

Sir:

Please enter my appearance on behalf of the defendant in
the above entitled case.


Attorney for Defendant

Dated: September 18, 1961

RECORDED
INDEXED
SEP 20 1961
CLEARFIELD COUNTY, PENN.
CLERK OF COURT

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 899 May Term, 1961
Trespass

WAYNE WISE

VS

CLYDE PRAVE

Trespass

WAYNE WISE

VS

CLYDE PRAVE

PROTHONOTARY
CLERK OF COURT
CLEARFIELD COUNTY, PENNA.

PRECISE FOR APPEARANCE

Please enter appearance on behalf of the
the above entitled case.

Decd: September 18, 1961

RETURNED TO DEPT. OF REVENUE

FILED
SEP 18 1961
WM. T. HAGERITY
PROTHONOTARY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

✓ Now Sept. 2, 1961
It hereby accepts service of this within Complaint & answers & has received a copy thereof & answers by the Sheriff.
Horton & have received a copy thereof & answers by the Sheriff.
It hereby answers

Chas. Dean
Defendant.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNA No. 899 <i>May</i> September Term 1961	
WAYNE WISE, Plaintiff VS CLYDE PRAVE, Defendant	
<u>COMPLAINT</u>	
To the With in Named Defendant	
You are hereby notified to plead to the enclosed Complaint in Trespas within twenty (20) days from service hereof.	
URBY & MIKESELL By <i>[Signature]</i> Attorneys for Plaintiff	FILED SEP-2 1961 WM. T. HAGERTY URBY & MIKESELL CLEARFIELD TRUST COMPANY BUILDING CLEARFIELD, PA. 16801 <i>by atty</i>

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WAYNE WISE,
Plaintiff,

-vs-

CLYDE PRAVE,
Defendant.

No. 899 ^{May} ~~September~~ Term 1961

IN TRESPASS

COMPLAINT

The Plaintiff, Wayne Wise, claims to be entitled to recover from the Defendant, Clyde Prave, damages justly due and payable to the Plaintiff upon a cause of action whereof the following is a statement:

(1). The Plaintiff, Wayne Wise, resides in Pike Township, Clearfield County, Pennsylvania.

(2). The Defendant, Clyde Prave, resides in the Borough of Lumber City, Clearfield County, Pennsylvania.

(3). On September 27, 1960, at or about 12:15 A.M., the Plaintiff at the invitation and request of the Defendant was a passenger in a pick-up truck driven by the Defendant. The Plaintiff and several other boys were riding standing up in the open bed of said truck. The truck was traveling in a southerly direction on Legislative Route number 17115 in Pike Township, Clearfield County, Pennsylvania.

(4). The Defendant, Clyde Prave, on said date and at said time was the operator of a 1955 International Pick-Up Truck, license number R25461 (which was owned by Robert Miller of Ansonville , Pennsylvania) and was operating said truck in a southerly direction on Legislative Route 17115 in Pike Township, Clearfield County, Pennsylvania.

(5). On said date and on or about 11:00 P.M., the Defendant requested the Plaintiff and the other boys to go with him for a ride in the aforesaid truck; and with the Defendant's knowledge the Plaintiff and several boys were riding standing up in the

open bed of said truck. The Defendant, driver, was returning from the "Greenwood Fields" and operating said vehicle in a westerly direction on Route 17115 in Pike Township, Clearfield County, Pennsylvania, and drove said truck with such a reckless disregard of the Plaintiff's rights as to result in the Plaintiff being thrown from the bed of the truck and in wanton injury to him.

(6). On said date and at said time, the road, Route 17115, upon which the Defendant was traveling was a dirt road made up of many curves, it was full of stones and chuck holes; it was night and dark and visibility was limited and poor. The Defendant was traveling at a high rate of speed, and to avoid holes and stones in the road was zig-zagging down the road, and to avoid leaving the road cut the steering wheel sharp to the left throwing the Plaintiff and other passengers off the right side of the truck, and violently upon the road.

(7). That the negligence of the Defendant, Clyde Prave, at the time and place aforesaid, which resulted in the accident and injury hereinbefore set forth consisted of the following:

- (a). The Defendant was negligent and careless in requesting the Plaintiff and others to ride in the open bed of a pick-up truck, and in operating said vehicle upon the highway knowing that the Plaintiff and others were standing up in the bed of said truck.
- (b). The Defendant drove the vehicle in a careless, reckless, and wanton manner, disregarding the rights, safety, and position of the passengers in said truck.
- (c). The Defendant drove with such a reckless disregard of the Plaintiff's rights as to result in wanton injury to him.
- (d). The Defendant operated the vehicle in a careless and negligent manner and totally disregarded the limited visibility, and conditions of the road then and there existing; and wholly failed to drive said vehicle in a careful and prudent manner.

(8). By reason of the above described occurrence, Plaintiff sustained serious injuries consisting of severe lacerations of the face, with multiple deep brush burns of the left side of his face, neck and knees; a cerebral concussion; and minimal fracture of the ninth vertebral body; that the lacerations of his face have caused permanent scars and disfigure to his face; together with a severe shock to his nerves and nervous system; by reason of which he was rendered sick, sore, lame, prostrate and disordered, and was made to undergo great mental anguish and physical pain, as a result of which he has suffered, yet suffers, and will continue to suffer for an indefinite time in the future.

(9). Plaintiff has been compelled, in order to effect a treatment and cure of the aforesaid injuries, to expend the following sums for doctor and medical attention:


(a). Dr. Thomas A. Aughinbaugh	\$270.00
(b). Clearfield Hospital	\$224.85

(10.) That by reason of the above described occurrence, the Plaintiff was unable to follow his usual occupation at the Dodge Sunoco Service Station in Clearfield, Pennsylvania, for a period of nine (9) weeks with a loss of wages at \$35.00 per week or \$315.00.

WHEREFORE, the Plaintiff claims damages from the Defendant as follows:

- (a) Liquidated damages for doctors bill \$270.00;
Hospital Bill \$224.85; and loss of wages \$315.00;
Loss of clothing and shoes \$22.00 or a total of \$831.85
- (b) A reasonable sum for pain and suffering already incurred.
- (c) Reasonable sum for permanent scars and disfigurement of his face and body.
- (d) Interest on the liquidated damages in the nature of damages for the delay in payment from 9-27-60.

UREX & MIKESELL


Attorney for Plaintiff

STATE OF PENNSYLVANIA :
: SS:
COUNTY OF CLEARFIELD :

Wayne Wise, Plaintiff above named, being duly sworn according to law, deposes and says that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

Wayne Wise
Wayne Wise

Sworn and subscribed before
me this 2nd day of
September, 1961.

Wm T. Hagerty
PROTHONOTARY
My Commission Expires
1st Monday Jan. 1962

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 899 May Term, 1961
Trespass

WAYNE WISE
VS
CLYDE PRAVE

PETITION FOR APPOINTMENT OF
GUARDIAN AD LITEM

FILED
NOV 16 1961
WM. T. HAGERTY
PROTHONOTARY

JOSEPH J. LEE
ATTORNEY-AT-LAW
CLEARFIELD, PA.

Lap-over Margin

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WAYNE WISE :
:
VS. : No. 899 May Term, 1961
:
CLYDE PRAVE : Trespass

PETITION FOR APPOINTMENT OF
GUARDIAN AD LITEM

TO THE HONORABLE JOHN J. PENTZ, PRESIDENT JUDGE OF SAID COURT:

The Petition of Clyde Prave respectfully represents:


(1). That he is a minor 19 years of age.

(2). That to the above term and number a Complaint in
trespass was served on him wherein Wayne Wise is the plaintiff
and your Petitioner is named the defendant.

(3). Your petitioner has no Guardian Ad Litem.

(4). Attached hereto and made a part hereof is the consent
of Domenick Prave to act as Guardian Ad Litem in these proceedings.

WHEREFORE, your Petitioner prays that Domenick Prave,
Petitioner's father, be named Guardian Ad Litem, and that the
caption of the case be changed to read: - Wayne Wise vs. Clyde
Prave, a minor, by Domenick Prave, his Guardian Ad Litem.


Petitioner

DISTRICT OF COLUMBIA: SS

CLYDE PRAVE, being duly sworn according to law, deposes and says that the facts set forth in the within Petition are true and correct to the best of his knowledge, information and belief.

Walter Clyde Prave
(Clyde Prave)

Subscribed and sworn to before
me this 13 day of ~~October~~, 1961.
November

Miss Marlene Herhart

I hereby consent to act as Guardian Ad Litem for Clyde Prave
in the above proceedings.

Domenick Prave
(Domenick Prave)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WAYNE WISE :
:
VS : No. 899 May Term, 1961
:
CLYDE PRAVE : Trespass

O R D E R

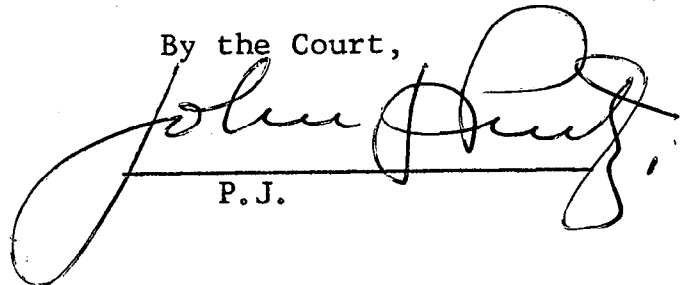
NOW, to wit, this ^{Nov} 16th day of ~~October~~, 1961, on consideration of the foregoing Petition of Clyde Prave, a minor, for the appointment of a Guardian Ad Litem, Domenick Prave is appointed Guardian Ad Litem for Clyde Prave and the caption of these proceedings is ordered changed to read as follows:

WAYNE WISE

VS

CLYDE PRAVE, a minor, by
DOMENICK PRAVE, his Guardian
Ad Litem

By the Court,


P.J.

NO. TERM, 19

NO. TERM, 19

NO. TERM, 19

NO. TERM, 19

NO. _____ TERM, 19 _____

NO. _____ TERM, 19 _____

NO. _____ TERM, 19 _____

NO. _____ TERM, 19 _____

NO. ~~3570~~ ~~How~~ TERM, 19 ~~59~~
~~John K. Kelly Jr.~~

NO. _____ TERM, 19 _____

NO. ~~299 M. W.~~ TERM, 19 ~~61~~
~~Sam M. W.~~

NO. ~~433~~ TERM, 19 ~~61~~
~~John K. Kelly Jr.~~

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 899 May Term, 1961
Trespass

WAYNE WISE, Plaintiff

VS

CLYDE PRAVE, Defendant

TRIAL BRIEF

JOSEPH J. LEE
ATTORNEY-AT-LAW
CLEARFIELD, PA.

Lap-over Margin

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WAYNE WISE, Plaintiff :
:
VS : No. 899 May Term, 1961
:
CLYDE PRAVE, Defendant : Trespass

T R I A L B R I E F

H I S T O R Y

Defendant was driving a pickup truck on Legislative Route 17115 at about 12:15 A.M. when the accident occurred. As alleged in paragraph (6) of the Complaint, this Route at the area where the accident occurred was a dirt road with many curves and full of stones and chuck holes. The defendant had five or six young passengers - the plaintiff and several of them being in the back of the pickup truck standing up. The defendant and his passengers were out spotting deer in the Greenwood area. At about 12:15 A.M. on September 27, 1960 as the defendant was proceeding along this road a skunk suddenly appeared on the road and the defendant swerved to miss striking the skunk, and with a sudden motion the plaintiff and one other of the standing passengers were catapulted from the truck onto the highway.

D I S C U S S I O N

Under the facts as pleaded and as limited by the proofs on said pleadings, the defendant at the conclusion of the plaintiff's case on negligence will move the Court for a compulsory nonsuit on the ground that the plaintiff is prima facie guilty of contributory negligence.

Where a person chooses a place of danger in preference to one of comparative safety and by reason of his position is injured, his act in placing himself in such dangerous position is an "assumption of risk", and he cannot recover even though

another contributes to his injury through negligence. See Earll vs. Wichser, 346 Pa. 357, 30 A. 2d 803. In that case the plaintiff was sitting in a pickup truck on the tailboard facing backward with his legs dangling, and when the truck which was going 40 to 50 miles an hour hit a manhole the plaintiff was bounced off the tailboard and seriously injured. In discussing the case Justice Drew cited the above rule in pointing out that a passenger who rides on the runningboard of an automobile and is injured through the fault of the driver is, in a suit against the driver, guilty of contributory negligence, citing a number of cases among them Schomaker vs. Havey, 291 Pa. 30, and also citing Zavodnick vs. Rose & Son, 297 Pa. 86. In the Zavodnick case the same principle was applied to one who elected to ride on the open platform of a truck in preference to sitting in the cab.

It is negligence as a matter of law for the plaintiff, as in this case, to be standing in the bed of the pickup truck while the same is travelling over a highway which the plaintiff knew was in poor condition and contained chuck holes and sharp turns out in the country where common experience dictates that wild animals may very well appear out of nowhere in the path of the oncoming vehicle.

The action of the defendant in swerving to avoid a skunk was not a wanton disregard of the rights and safety of the passengers in the truck.

Respectfully submitted,

Attorney for Defendant