

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-942

James Ronald Gillette, as Personal Representative of
the Estate of Kylie Erin Gillette, deceased,

Cole Alexander Gaither, Anita Gaither and James
Bryton Munn,

FILED
2016 MAY 20 PM 3:56
JULIE J. APOSTOLAKIS
CLERK OF COURT

PLAINTIFF

DEFENDANTS

Submitted by: Stephen E. Darling

Attorney for: Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other

RECEIVED

JUN 21 2016

SC Court of Appeals

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order Statement of Judgment by the Court. Order Ruling Upon Plaintiff's Motion for Default Judgment and Damages Hearing awarding Plaintiff \$6,000,000 actual damages and \$4,000,000 punitive damages.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A ESTATE OF KYLIE ERIN GILLETTE	COLE ALEXANDER GAITHER ANITA GAITHER	\$ 10,000,000.00
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

JC Nichols

2117

5/18/16

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Stephen E. Darling
Haynsworth Sinkler Boyd, P.A.
P.O. Box 340, Charleston, SC 29402-0340
ATTORNEYS FOR THE PLAINTIFF

Cole Alexander Gaither and Anita Gaither
759 Sunny Boy Lane
Johns Island, SC 29455
PRO-SE DEFENDANTS

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

James Ronald Gillette, as Personal Representative of the Estate of Kylie Erin Gillette, Deceased,)

CASE NO. 2015-CP-10-942

Plaintiff)

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

v.)

Cole Alexander Gaither, Anita Gaither and James Bryson Munn,)

Defendants.)

Stephen E. Darling, Esquire John H. Tiller, Esquire Haynsworth Sinkler Boyd, P.A. 134 Meeting Street, 3 rd Floor Charleston, SC 29401 (843) 722-3366; fax: 843-722-2266 Email: sdarling@hsblawfirm.com ; jtiller@hsblawfirm.com Attorneys for Plaintiff	Mr. Cole Alexander Gaither and Mrs. Anita Gaither 759 Sunny Boy Lane Johns Island, SC 29455 cagaither@comcast.net Pro Se Defendants
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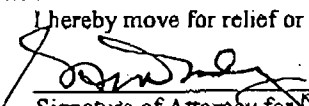
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

May 18, 2016
 Date submitted

SECTION III: Motion Fee

PAID - AMOUNT:
 EXEMPT:

(check reason)

Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

Other: Paid \$25 with Motion

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other: _____

 JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed: _____

Collected by: _____
 MOTION FEE COLLECTED: _____
 CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

JAMES RONALD GILLETTE, AS
PERSONAL REPRESENTATIVE OF THE
ESTATE OF KYLIE ERIN GILLETTE,
deceased,

Case No. 2015-CP-10-0942

Plaintiff,

ORDER

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2016 MAY 20 PM 3:56

FILED

v.

COLE ALEXANDER GAITHER; ANITA
GAITHER; and JAMES BRYSON MUNN,

Defendants.

JCM
This case came before me upon the Plaintiff's Motion for Default Judgment and Damages Hearing. I conducted a hearing on the motion in open court in Charleston County on May 16, 2016. My earlier order dated January 21, 2016 held the Defendants Cole Alexander Gaither and Anita Gaither in default. Notice of the Motion for Default Judgment and Damages Hearing was properly served upon Cole Alexander Gaither and Anita Gaither on April 21, 2016. At the hearing the Plaintiff was represented by Stephen E. Darling of Haynsworth Sinkler Boyd, P.A. The Defendants Cole Alexander Gaither and Anita Gaither (hereinafter "the Gaithers") did not appear at or participate in the hearing.

The Plaintiff submitted into evidence 27 exhibits, including the deposition testimony of James Ronald Gillette, Lisa S. Gillette, James Bryson Munn, Sergeant Christopher A. Wells, Colby Shea Dupree, and Samy N. Elgradawy and numerous photographs, documents, statements, reports, a funeral bill and the South Carolina life expectancy tables. Ronald Gillette and Lisa Gillette also testified at the hearing.

This action is for wrongful death pursuant to the provisions of the South Carolina Wrongful Death Act, §15-51-10, *et. seq.*, *S.C. Code* (1962, as amended). The action was brought by James Ronald Gillette, Personal Representative of the Estate of Kyle Erin Gillette and the father of Kylie Gillette. The beneficiaries of the action are Kylie Erin Gillette's parents James Ronald Gillette and Lisa S. Gillette. §15-51-20, *S.C. Code* (1962, as amended). The action arises out of a motor vehicle accident which caused the death of Kylie Erin Gillette on August 16, 2014 in Charleston County. Ms. Gillette, through no fault of her own, was killed when a vehicle operated by James Bryson Munn collided with her vehicle. The Defendant Munn, a minor under the age of 21 years at the time, had consumed alcoholic beverages at the home of the Gaithers at 2205 Shoreline Drive, Johns Island, South Carolina on the evening and early morning of August 15 and 16, 2014. His blood alcohol reading at the time of the accident was .217. He pleaded guilty to felony driving under the influence as a result of this accident and is serving a prison sentence of 14 years as a result.

The Plaintiff sued the Defendants Gaithers on theories of negligence, negligence *per se* and social host liability. A defendant in default admits liability but not the damages as set forth in the prayer for relief. *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 566, 274 S.E.2d 290, 292 (1981). The amount of damages in a default action must be proved by the preponderance of the evidence. *Jackson v. Midlands Human Res. Ctr.*, 296 S.C. 526, 529, 374 S.E.2d 505, 506 (S. C. Ct. App. 1988).

In connection with such issues, I make the following findings of fact and conclusions of law:

Kylie Erin Gillette, age 17, of Johns Island, South Carolina passed away in the motor vehicle accident of August 16, 2014. She was born June 20, 1997, the daughter of James Ronald

Gillette and Lisa S. Gillette. The deceased was a student at James Island Charter High School, was ranked number three in her class, and was about to enter her senior year. By all accounts and evidence, she was in excellent health, energetic, passionate and full of life. She loved animals and was a wonderful daughter to her parents and sister to her sibling Cassidy. She enjoyed horseback riding, soccer, going to the beach with her friends, piñatá, cheerleading and shopping. Kylie Gillette planned to attend college upon graduation from high school and was interested in pursuing a career perhaps as a corporate lawyer or other such profession. Her parents loved her, and she loved them. Kylie Gillette's parents think about her and miss her every day.

James Ronald Gillette was born October 28, 1964, is 51 years old and was 49 years old at the time of his daughter's death. Lisa Gillette was born February 22, 1963, making her 53 years old and was 51 years old at the time of her daughter's death.

James Ronald Gillette paid a bill for Kylie Gillette's funeral goods and services in the amount of \$9,904.83.

The accident giving rise to this case was investigated by the Charleston County Sheriff's Department. A blood alcohol sample taken from James Bryson Munn demonstrated an ethanol reading of .217 indicating he was under the influence of alcohol at the time of this accident. The testimony and exhibits confirm that James Bryson Munn, a minor under the age of 21, consumed large quantities and beer and some liquor at the home of the Gaithers on August 15 and 16, 2014. The Gaithers were fully aware that minors consumed alcohol at their property on that evening where a gathering was being held for the unfortunate death of the Gaithers' son which occurred a day or two prior. The Gaithers had allowed underage minors to drink alcohol about every other weekend at their property on Johns Island, their house at Folly Beach and their country property

known as The Vineyard from the time the group of James Island High School students who were friends of their son Matt Gaither had entered the tenth grade. There is evidence in the record that drinking was encouraged at the gathering on August 15 and 16. In South Carolina an adult social host who knowingly and intentionally serves, or causes to be served, an alcoholic beverage to a person he knows or reasonably should know is between the ages of 18 and 20 is liable to the person served and any other person for damages proximately resulting from the host's service of alcohol. *Marcum v. Bowden*, 372 S.C. 452, 643 S.E.2d 85 (2007).

The Plaintiff claims damages under the wrongful death statute for mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship and deprivation of the use and comfort of the deceased's society, including the loss of decedent's experience, knowledge and judgment in managing the affairs of herself and her beneficiaries. §15-51-40, *S.C. Code* (1962, as amended); *Adams v. Hunter*, 343 F. Supp. 1284 (D.S.C. 1972), *aff'd*, 471 F.2d 648 (4th Cir. 1973); *Clark v. S.C. Dept. of Public Safety*, 362 S.C. 377, 608 S.E.2d 573 (2005). Future damages are allowed and must be reduced to their present day value. *Hall v. Palmetto Enters. II, Inc.*, 282 S.C. 87, 317 S.E.2d 140 (S.C. Ct. App. 1984). Additionally, damages recoverable under §15-51-10 may include reasonable funeral expenses. §15-5-100, *S.C. Code* (1962, as amended).

The Plaintiff also seeks punitive damages. Punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future. Moreover, they serve to vindicate a private right by requiring the wrongdoer to pay money to the injured or damaged party. Punitive damages serve at least three important purposes: punishment of the defendant's reckless, willful, wanton or malicious conduct; deterrence of similar future conduct by the defendant or others;

and compensation for the reckless or willful invasion of the plaintiff's private rights. *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000). In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence. §15-33-135, *S.C. Code* (1988). The clear and convincing evidence in this case is uncontradicted that the Gaithers allowed consumption of alcohol on their premises for a number of years by minors under the age of 21 and that such activity occurred on August 15 and 16, 2014. As a result of the minor James Bryson Munn's consumption of alcohol at the Gaithers' property with their knowledge, he became intoxicated and negligently and recklessly drove his vehicle while under the influence of intoxicating beverages at a speed of approximately 90 miles per hour into the lane of Kylie Erin Gillette causing her death through no fault of her own.

gan
The Plaintiff has presented overwhelming evidence of the intangible elements of damage to the two beneficiaries of the wrongful death action James Ronald Gillette and Lisa S. Gillette. They eloquently described the horrible loss of their daughter through a tragic accident brought about by negligent, reckless, willful and wanton behavior. They mourn the loss of their daughter every day. At the time of his daughter's death, James Ronald Gillette was 49 years old. His life expectancy was 30.07 years on the day of his loss. Lisa S. Gillette was 51 years old at the time of her daughter's death. Her life expectancy at that time was 31.79 years. Kylie Gillette had a life expectancy of 64.17 years. The South Carolina wrongful death statute encompasses loss by the parents of intangible damages, including companionship and affection of the child. *Todd v. Sandridge Construction Co.*, 341 F.2d 75 (4th Cir. 1964). Under South Carolina law, parents' wrongful death damages for loss of teenage sons at sea due to the Coast Guard's reckless and wanton rescue efforts included \$6,000,000 in non-pecuniary losses per child. *Hurd v. U.S.*, 134 F. Supp. 2d 745 (D.S.C. 2001), *aff'd*, 34 Fed. Appx. 77 (4th Cir. 2002).

The testimony and evidence establish James Ronald Gillette and Lisa S. Gillette both suffer and, will continue to suffer in the future for the remainder of their lives, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship and the deprivation of the use and comfort of the decedent's society as a result of the death of their daughter Kyle Erin Gillette.

I conclude that the Plaintiff, for the benefit of James Ronald Gillette and Lisa S. Gillette, is entitled to recover \$200 per day per element of intangible damages allowed. The life expectancies of the Gillettes are approximately 30 years. \$200 a day over a 30 year life expectancy yields damages of \$2,190,000 ($\$200 \times 365 \text{ days} \times 30 \text{ years}$). That figure must be reduced to a present day value. I find and take judicial notice that a reasonable real discount rate is two (2%) percent (based upon a five (5%) percent rate of discount less a three (3%) percent inflation factor). Reducing \$2,190,000 over 30 years at two (2%) percent produces a present value of future losses at \$1,209,035.25 or approximately \$1,200,000.

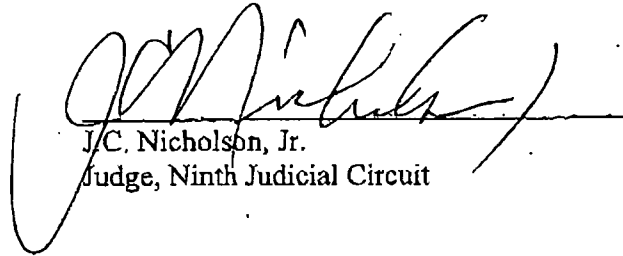
Based upon the above calculations, I find that the Plaintiff is entitled to recover against the Gaithers actual damages of \$1,200,000 for each of the five intangible elements of proven damages. Thus, the Plaintiff is awarded actual damages of \$6,000,000. The Plaintiff is also entitled to recover the funeral expenses, which I have chosen to include within the \$6,000,000 actual damage award.

Furthermore, the Plaintiff has established the Gaither Defendants' repeated and knowing conduct of allowing minors to drink alcohol to the point of intoxication at their premises was reckless, willful and wanton and, thus, is entitled to punitive damages in addition to actual damages. *Martin v. Martin*, 262 S.C. 168, 203 S.E.2d 385 (1974). Punitive damages will have the effect of deterring these Defendants and others from allowing minors to consume alcohol at

their premises and preventing future needless accidents caused by minors who become intoxicated and drive resulting in horrific and deadly collisions. A trial court has considerable discretion regarding the amount of damages both actual or punitive. *Solley v. Navy Federal Credit Union*, 397 S.C. 192, 723 S.E.2d 597 (S.C. Ct. App. 2012). Recognizing that punitive damages should be proportionate to the actual damages, I conclude that an appropriate award of punitive damages in this case is \$4,000,000.

Accordingly, and based upon the foregoing, it is therefore

ORDERED, ADJUDGED AND DECREED that the Plaintiff recover judgment against the Defendants Cole Alexander Gaither and Anita Gaither under the South Carolina Wrongful Death Statute in the total amounts of \$6,000,000 actual damages and \$4,000,000 punitive damages.



J.C. Nicholson, Jr.
Judge, Ninth Judicial Circuit

May 19, 2016
Charleston, South Carolina

DM: 4527976 v.3