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JUL 23 2015

Emil Carver
CLERK, STATE COURT
CLAYTON COUNTY

IN THE STATE COURT OF CLAYTON COUNTY
STATE OF GEORGIA

JOHN WALKER,)

Plaintiff,)

v.)

EMIL WILLIAMS, DARRYLE SAMS)
d/b/a CUTTING THE GREEN, and)
CUTTING THE GREEN, L.L.C.,)

Defendants.)

CIVIL ACTION FILE

NO.: 2013-CV-01225-FF

ORDER GRANTING DEFENDANTS' SECOND MOTION IN LIMINE;

ORDER GRANTING DEFENDANTS' FIRST MOTION IN LIMINE #13

THE ABOVE STYLED MATTER came before the Court on June 9, 2015, for a hearing on Defendants' Second Motions in Limine and First Motion in Limine #13. Both sides presented evidence and argument of counsel. Having reviewed the facts as alleged, and for good cause shown, the Court now makes the following findings of fact and conclusions of law:

I. FINDINGS OF FACT:

Plaintiff's suit arises from injuries sustained in an automobile collision. On May 25, 2011, Plaintiff was traveling eastbound on Camp Creek Parkway. Plaintiff was driving with his wife, Virginia Baker, in the front passenger seat when he struck a vehicle from behind driven by Defendant Emil Williams. The vehicle driven by Defendant Williams is owned by Mr. Williams' employer, Cutting the Green, L.L.C., and Cutting the Green's owner, Defendant Darryle Sams. Defendants acknowledge that Mr. Williams was acting within the scope of his employment with Mr. Sams and Cutting the Green at the time of the accident. As a result of the crash, Plaintiff's wife was killed and Plaintiff allegedly sustained injuries to his person and

property. It is disputed among the parties whether Mr. Williams' negligence and/or violation of the law in operating his automobile was a cause of the accident and Plaintiff's injuries.

Following the accident, Plaintiff acted as the personal representative of his deceased wife's estate to settle claims arising from the death of his wife via two limited liability releases (the "Releases"). (Defendants' Second Motion in Limine, Exhibits A & B). The first release (the "Infinity Release") relieved Defendants' insurance carrier – Infinity Casualty Insurance Company – from "...any and all claims, demands, rights, and causes of action of whatsoever kind and nature... which resulted in Virginia Baker sustaining significant personal injuries and damages, including death..." and acquitted, released and forever discharged Darryle Sams, doing business as Cutting the Green LLC, Lisa Somner Sams, and Emil Williams in exchange for \$50,000.00. (Defendants' Second Motion in Limine, Exhibit A, p. 2). In a handwritten note added to that document the only claims directly preserved by the release were for "...the Undersigned's own personal injury and property damage claims arising from his personal bodily injury during the subject incident."¹ Id. The Second release (the "Liberty Release") relieved Plaintiff's uninsured motorist carrier – Liberty Mutual Insurance Company – from "...all claims, actions, causes of action, demands, rights, damages, costs, expenses and compensation whatsoever arising from the injuries and death to Virginia Baker." (Defendants' Second Motion in Limine, Exhibit B).

On June 9, 2015, this Court held an oral argument hearing on the merits of Defendants Second Motion in Limine and First Motion in Limine #13. In their First Motion in Limine, Defendants seek to suppress any photographs, images, or other visual depictions of the injuries sustained by Virginia Baker in the subject accident. Plaintiff filed no response to Defendants First Motion for over four months. In Defendants' Second Motion in Limine, Defendants seek to

¹ The "Undersigned" in the Infinity Release is Plaintiff John Walker.

bar Plaintiff's claims for loss of consortium damages and suppress any evidence relating to the death of Virginia Baker. Plaintiff responded timely to Defendant's Second Motion opposing it, as well as opposing Defendants' First Motion in Limine #13. Plaintiff asserts that the releases did not cover Plaintiff's claims for loss of consortium and, in any event, Plaintiff's claims for mental anguish and emotional distress survive any adjudication of his loss of consortium claim. Finally, Plaintiff argues that evidence of Virginia Baker's death is relevant because Plaintiff is asserting loss of consortium and mental anguish claims.

Having heard the argument of counsel for all parties, and having read and considered all briefs, motions and evidence filed in regard to this proceeding, this Court now finds as follows:

II. CONCLUSIONS OF LAW:

A. Plaintiff's Loss of Consortium Claim is Barred.

Plaintiff's claim for loss of consortium is barred by the subject releases because it does not arise from his "own personal injury," but rather from the death of his wife. The plain language of the Infinity Release clearly states that it "...shall operate as a full and final release of the Insurance Carrier and Defendants from all claims regarding injuries and damages to the Undersigned and Undersigned's Decedent" arising out of the "...significant personal injuries and damages, including death..." of Virginia Baker. (Defendant's Second Motion in Limine, Exhibit A, p. 2). Plaintiff similarly released his claim under the Liberty Release as well. (Defendant's Second Motion in Limine, Exhibit B).

Plaintiff is also foreclosed from arguing that his claim for loss of consortium was preserved under a property right expressly excluded under the Infinity Release. Thompson v. Allstate Ins., 285 Ga. 24, 26 (2009); See Also Bartlett v. Am. Alliance Ins. Co., 206 Ga. App. 252, 255 (1992) (holding that a reasonable person would not understand that property damage

coverage in a policy includes claims for loss of consortium). In any event, when viewed in context with the subject Releases, any such property right would not arise out of Plaintiff's own "personal bodily injury during the subject incident." As a result, this Court finds Plaintiff's claim for loss of consortium **IS BARRED** by the subject Releases.

B. Plaintiff's Mental Anguish and Emotional Distress Claims are Barred to the Extent They do not Arise From His Own Personal Bodily Injury.

Plaintiff's claims for mental anguish and emotional distress, to the extent they do not arise from his own personal bodily injury, are likewise barred by the subject Releases. Plaintiff's claims for mental anguish and emotional distress would, again, not arise out of "his personal bodily injury." Moreover, Plaintiff's attempt to assert claims for mental anguish and emotional distress that do not arise out of his own personal bodily injury are only raised for the first time in Plaintiff's response brief opposing Defendants' Second Motion in Limine, over two years after this case was filed, and after entry of the Consolidated Pre-Trial Order in which Plaintiff only seeks "medical expenses." (Consolidated Pre-Trial Order, p. 6, ¶ 11). Thus, this Court finds Plaintiff's claims for mental anguish and emotional distress **ARE BARRED** to the extent they do not arise from his own personal bodily injury.

C. All Evidence Relating to the Injuries and/or Death of Virginia Baker is Irrelevant, Unduly Prejudicial to Defendant, and is Hereby Suppressed.

In the absence of claims for loss of consortium or mental anguish arising from Plaintiff's wife's injuries, this Court finds evidence of Plaintiff's injuries and death is irrelevant. This Court further finds risk of prejudice to the Defendants outweighs the benefit of Plaintiff in regard to the presentation of evidence of Plaintiff's wife's injuries and death. Thus, all evidence relating to the injuries and/or death of Virginia Baker **IS HEREBY SUPPRESSED**.

This Court reserves ruling on all remaining and outstanding Motions in Limine until the date of trial.

SO ORDERED this 23 day of July, 2015.

A handwritten signature in black ink, appearing to read "Aaron B. Mason", written over a horizontal line.

AARON B. MASON,
Judge, State Court of Clayton County