

LEXSEE 885 F.2D 825

**Ricky Anthony FREEMAN, Sr. and Annette Brown, the parents of Ricky Anthony Freeman, Jr., and Xavier Brown, Plaintiffs-Appellants, v. The ELGIN SWEEPER COMPANY, et al., Defendants-Appellees. Ricky Anthony FREEMAN, Sr., and Annette Brown, the parents of Ricky Anthony Freeman, Jr., and Xavier Brown, an infant, by Annette Brown, her Natural Mother, Plaintiffs-Appellants, v. The CITY OF La GRANGE, Henry Abernathy, Edwin Gore, Byron Hurst, Charles Joseph, Glenn Robinson, William Whorton, La Grange City Councilmen, and Gardner Newnan, Mayor of the City of La Grange, Defendants-Appellees**

Nos. 88-8115, 88-8588

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

*885 F.2d 825; 1989 U.S. App. LEXIS 15300*

October 10, 1989

**SUBSEQUENT HISTORY:** [\*\*1] Rehearing En Banc Denied November 21, 1989. Reported at: *1989 U.S. App. Lexis 19828*.

**PRIOR HISTORY:** Appeals from the United States District Court for the Northern District of Georgia. No. 3:87-CV-113-GET, Tidwell, Judge.

**COUNSEL:** Sherry L. Stenson, LaGrange, Georgia, for Plaintiff-Appellants.

Virginia Jane Reed, Chambers, Mabry, McClelland & Brooks, Atlanta, Georgia.

J. Ronald Mullins, Jr., Kelly, Denney, Pease & Allison, Columbus, Georgia, Allen C. Levi, Eve A. Appelbaum, Gorby, Reeves, Moraitakis & Whitman, Atlanta, Georgia, David II. Tisinger, Tisinger, Tisinger, Vance & Greer, Paul E. Weathington, Carrollton, Georgia, G. Melton Mobley, Atlanta, Georgia, for Defendants-Appellees.

**JUDGES:** Hill and Kravitch, Circuit Judges, and Pointer, \* Chief District Judge.

\* Honorable Sam C. Pointer, Jr., Chief U.S. District Judge for the Northern District of Alabama, sitting by designation.

**OPINION BY: PER CURIAM****OPINION**

[\*825] This litigation with, in our court, two different cases (88-8115 and 88-8588), three plaintiffs and approximately 15 separate defendants, actually involves a traffic collision between a bicycle operated by the plaintiffs' child and a street sweeper [\*\*2] operated by the City of La Grange, Georgia. The child died as a result of the collision.

Nothing about this mishap is said to have included intentional deprivation by any governmental operator of the life of this young boy. Whether or not there was actionable negligence under state law, it is clear that any wrongdoing of the City of La Grange or its street sweeper driver did not rise to the level of a constitutional deprivation sufficient to support a claim under *42 U.S.C. § 1983*.

Along with the attempt to allege federal claims, plaintiffs/appellants' attorney has named a substantial number of what are said to be pendent state claims.

[\*826] The district judge gave careful consideration to voluminous filings and tenders on behalf of the plaintiffs, concluding that no federal claim was stated and that pendent state claims ought not be retained by the federal court. All claims in both cases have been dismissed.

We are not in a position to say whether or not there might be a case of liability under state law for damages or wrongful death damages arising out of this traffic accident. We do not do so and neither did the district judge. A traffic accident [\*\*3] of this sort, even though involving a vehicle operated by a state actor, does not constitute a claim under 42 U.S.C. § 1983. The plaintiffs

and the plaintiffs' counsel should address claims under state law without running the risk that diversion into the federal courts may permit the state statute of limitations to expire.

AFFIRMED.