

15-0249

IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA

SUMMER REYNOLDS,

Plaintiff,

v.

Civil Action No.: 11-C-98  
Judge Darrell Pratt

GREATER HUNTINGTON PARK  
& RECREATION DISTRICT,

Defendant.

FILED  
CIRCUIT CLERK'S OFFICE  
15 FEB 25 AM 9:18  
WAYNE COUNTY WV  
BY [Signature]

**ORDER DENYING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

On 26 January 2015, the motion for summary judgment of defendant Greater Huntington Park & Recreation District (the Park District), came before the Court for hearing. Present were the plaintiff, by counsel R. Matthew Vital and Daniel Allen; and defendant, by counsel Cheryl L. Connelly and Nicholas Reynolds. Having considered the pleadings, arguments of counsel, appropriate legal authority, and for the reasons more fully set forth below, the Court DENIES defendant's motion for summary judgment.

**Findings of Facts**

1. The construction and design of Westmoreland Park began in 1982 under what appear to be the auspices of the Department of Community Development, City of Huntington. The Park District began maintaining the park by 1984; in 1995 the Park District received title to Westmoreland Park. The park was intended for recreational use and includes a playground.

2. The railroad tracks that run along the southern border of Westmoreland Park predate the development of Westmoreland Park and have been in place since sometime in the late 1800's.

3. The slope that runs along the southern border of Westmoreland Park between the flat portion of the park and the railroad right of way was heavily vegetated on 19 September 2009, the date of the events that gave rise to the pending action. Some ballast from the railroad bed appears to have slid into a path through the vegetation on the slope. The development of the railroad tracks defeats the slope from being a natural condition of unimproved property.

4. The landscape architects who proposed the design for Westmoreland Park left in place the natural tree and brush line on the slope as a natural barrier and sound suppressor. Plans drawn in 1980 called for some trees to be planted on the flat portion of Westmoreland Park; none were proposed to be planted on the slope. While it is possible that during the last 30 years the Park District removed a dead or dying tree from somewhere in the natural border, it has no institutional memory of doing so. The Park District has neither added nor removed trees or brush in the area where Summer Reynolds is said to have walked through the natural border.

5. The facts of this case are distinguishable from sites like a cave, a river sand bar, an unimproved bluff or overlook, or sand dunes.

#### **Conclusions of Law**

1. The Park District is a political subdivision as defined by the Governmental Tort Claims and Insurance Reform Act, W. Va. Code § 29-12A-1, *et seq.*

2. The TCA absolutely immunizes political subdivisions from certain claims, including:

(a) A political subdivision is immune from liability if a loss or claim results from: ...

(7) Natural conditions of unimproved property of the political subdivision;

...

W. Va. Code § 29-12A-5 (a)(7).

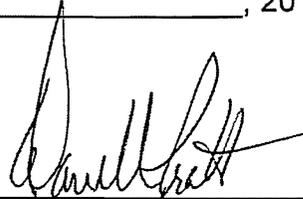
3. In light of the facts stated above, the Court concludes as a matter of law that the property known as Westmoreland Park is not a natural condition of unimproved property of the political subdivision.

4. The question of whether the barrier was negligently designed, installed, or maintained by the Park District is a question of fact for the jury.

Defendant's objections and exceptions are preserved.

The Clerk is directed to mail certified copies of this Order to counsel of record as follows: R. Matthew Vital and Matthew R. Oliver, Vital & Vital, LC, 536 Fifth Avenue, Huntington, WV 25701; Robert L. Langdon and Adam W. Graves, Langdon & Emison, 911 Main Street, P.O. Box 220, Lexington, MO 64067; Jose Bautista and Daniel Allen, Bautista Allen, LLC, 104 West Ninth Street, Suite 404, Kansas City, MO 64105; and Cheryl L. Connelly and Nicholas Reynolds, Campbell Woods, PLLC, P.O. Box 1835, Huntington, WV 25719-1835.

ENTER this 24 day of Feb., 2015.



Honorable Darrell Pratt, Judge



Prepared by:

A handwritten signature in black ink, appearing to read 'Cheryl L. Connolly', written over a horizontal line.

Cheryl L. Connolly

WV State Bar No. 800

Nicholas Reynolds

WV State Bar No. 3068

CAMPBELL WOODS, PLLC

1002 Third Ave.

Post Office Box 1835

Huntington, West Virginia 25719-1835

Telephone: (304) 529-2391

Facsimile: (304) 529-1832

Email: [cconnelly@campbellwoods.com](mailto:cconnelly@campbellwoods.com)  
[nreynolds@campbellwoods.com](mailto:nreynolds@campbellwoods.com)

IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA

ALLISON CHAPMAN, As Parent  
and Next Friend of AUDREY CHAPMAN,  
A Minor,

Plaintiff,

v.

Civil Action No.: 11-C-098  
Judge: Danell Pratt

CSX TRANSPORTATION, INC.,

and

GREATER HUNTINGTON PARKS  
& RECREATIONS DISTRICT,

Defendants.

COMPLAINT

FILED  
CLERK OFFICE  
11 MAY 20 PM 3:03  
WAYNE COUNTY WV  
BY *[Signature]*

Now Comes the Plaintiff, Allison Chapman, as Parent and Next Friend of Audrey Chapman, a Minor, by counsel, and hereby sues the Defendants, CSX Transportation, Inc., and Greater Huntington Parks and Recreations District, and states as follows:

1. This is an action in excess of the basic jurisdictional limits of this Court, pursuant to W. Va. Code 51-2-2.
2. At all times hereinafter mentioned and at the time of the incident complained of, the Plaintiff, Allison Chapman, as Parent and Next Friend of Audrey Chapman, a Minor, was a resident of the County of Wayne, in the City of Huntington, in the State of West Virginia.
3. At all times hereinafter mentioned and at the time of the incident complained of, the Defendant, CSX Transportation, Inc., was a Florida corporation registered to do business in the State of West Virginia.

4. At all times mentioned and at the time of the time of the incident complained of, the Defendant, Greater Huntington Parks and Recreations District, was the entity created by the West Virginia Legislature, as an independent park district, charged with the duty of managing the property of City of Huntington Parks, in the County of Wayne, in the State of West Virginia.

5. On or about September 19, 2009, the Plaintiff Minor, Audrey Chapman, was playing with friends on at Westmoreland Community Park, a park located in the City of Huntington, County of Wayne, State of West Virginia.

6. There were railroad tracks owned and operated by Defendant CSX Transportation, Inc. adjacent to southern border of Westmoreland Community Park.

7. There was no fence between Westmoreland Community Park and the railroad tracks.

8. There was a worn path from Westmoreland Community Park, at or near the southern border of the park, leading up to and across the railroad tracks.

9. There were no signs posted at Westmoreland Community Park to warn of the railroad tracks located upon the southern border of the park property.

10. During the children's play, a ball went flying in the air in the direction of the railroad tracks which run at or near the southern border of the Westmoreland Community Park property.

11. The Plaintiff Minor, Audrey Chapman, walked through the worn path to the railroad tracks to retrieve the ball.

12. The Plaintiff Minor, Audrey Chapman, was struck by a train owned and operated by the Defendant, CSX Transportation, Inc.

COUNT I: NEGLIGENCE BY THE DEFENDANT, CSX TRANSPORTATION, INC.

13. The Plaintiff, Allison Chapman, as Parent and Next Friend of Audrey Chapman, a Minor, realleges paragraphs 1 through 12 as if incorporated herein.

14. The Defendant, CSX Transportation, Inc., had a duty to operate its train with the highest degree of care.

15. The Defendant, CSX Transportation, Inc., knew, or should have known, the railroad tracks were in close proximity to Westmoreland Community Park.

16. The Defendant, CSX Transportation, Inc., knew or should have known, that children frequented Westmoreland Community Park.

17. The Defendant, CSX Transportation, Inc., knew or should have known, that children frequented the railroad tracks from Westmoreland Community Park.

18. The Defendant, CSX Transportation, Inc., breached its duty to the Plaintiff in one or more of the following particulars:

- a. failing to keep a careful lookout; and
- b. failing to slow or stop before striking the Plaintiff Minor, Audrey Chapman; and
- c. failing to sound the horn in accordance with state law; and
- d. failing to provide adequate warnings, including, but not limited to, a fence, warning signs, cross-bucks, and warning lights; and
- e. failing to operate the premises in a manner to eliminate the danger to children posed by the railroad tracks; and

f. failing to erect and/or maintain a sufficient barrier between the park property of Westmoreland Community Park and the railroad tracks which run at or near the southern border of said park.

g. failing to properly eliminate foliage that obstructed the view of the railroad tracks.

19. As a direct and proximate result of the negligence of the Defendant, CSX Transportation, Inc., the Plaintiff Minor, Audrey Chapman, was rendered sick, sore, lame, and otherwise disabled; or, in the alternative, the injuries aforesaid thereby caused or contributed to cause an aggravation of a previously existing defect or infirmity, and, as a result thereof, the Plaintiff Minor, Audrey Chapman, has in the past, and will in the future, suffer great pain and anguish of body and mind, and the injuries so complained of her are permanent in nature.

20. As a further direct and proximate result of the negligence of the Defendant, CSX Transportation, Inc., as aforesaid, the Plaintiff Minor, Audrey Chapman, has in the past, and will in the future, undergo painful and extensive medical care and treatment, and has in the past incurred, and will in the future incur, medical bills and expenses attendant to her injuries, as aforesaid.

21. As a further direct and proximate result of the negligence of the Defendant, CSX Transportation, Inc., as aforesaid, the Plaintiff Minor, Audrey Chapman, has in the past sustained, and will in the future sustain, loss of earnings and earning capacity.

**COUNT 2: NEGLIGENCE BY THE GREATER**  
**HUNTINGTON PARKS AND RECREATIONS DISTRICT**

22. The Plaintiff, Allison Chapman, as Parent and Next Friend of Audrey Chapman, a Minor, realleges Paragraphs 1 through 21 as if incorporated herein.

23. The Defendant, Greater Huntington Parks and Recreations District, had a duty to operate and maintain Westmoreland Community Park with the highest degree of care.

24. The Defendant, Greater Huntington Parks and Recreations District, knew, or should have known, that the railroad tracks were close in proximity to the border of Westmoreland Community Park.

25. The Defendant, Greater Huntington Parks and Recreations District, knew or should have known, that children frequented Westmoreland Community Park.

26. The Defendant, Greater Huntington Parks and Recreations District, knew, or should have known, that children frequented the railroad tracks from Westmoreland Community Park.

27. The Defendant, Greater Huntington Parks and Recreations District, breached its duty to the Plaintiff Minor, Audrey Chapman, in one or more of the following particulars:

a. failing to provide adequate warnings, including, but not limited to, a fence, warning signs, cross-bucks, and warning lights; and

b. failing to operate the premises in a manner to eliminate the danger to children posed by the railroad tracks; and

c. misrepresenting Westmoreland Community Park as a safe place for children, such as the Plaintiff Minor, Audrey Chapman, to play; and

d. failing to erect and/or maintain a sufficient barrier between the park property of Westmoreland Community Park and the railroad tracks which run at or near the southern border of said park.

28. As a direct and proximate result of the negligence of the Defendant, Greater Huntington Parks and Recreations District, the Plaintiff Minor, Audrey Chapman, was rendered

sick, sore, lame, and otherwise disabled; or, in the alternative, the injuries aforesaid thereby caused or contributed to cause an aggravation of a previously existing defect or infirmity, and, as a result thereof, the Plaintiff Minor, Audrey Chapman, has in the past, and will in the future, suffer great pain and anguish of body and mind, and the injuries so complained of by her are permanent in nature.

29. As a further direct and proximate result of the negligence of the Defendant, Greater Huntington Parks and Recreations District, as aforesaid, the Plaintiff Minor, Audrey Chapman, has in the past, and will in the future, undergo painful and extensive medical care and treatment, and has in the past incurred, and will in the future incur, medical bills and expenses attendant to her injuries, as aforesaid.

30. As a further direct and proximate result of the negligence of the Defendant, Greater Huntington Parks and Recreations District, as aforesaid, the Plaintiff Minor, Audrey Chapman, has in the past sustained, and will in the future sustain, loss of earnings and earning capacity.

WHEREFORE, the Plaintiff, Allison Chapman, as Parent and Next Friend of Audrey Chapman, a Minor, demands judgment against the Defendants, CSX Transportation, Inc., and Greater Huntington Parks and Recreations District, jointly and severally, in an amount in excess of the basic jurisdictional limits, together with interest and costs, which she prays for in addition thereto.

**DEMAND FOR JURY TRIAL**

The Plaintiff, Allison Chapman, as Parent and Next Friend of Audrey Chapman, a Minor, respectfully requests a trial by jury of all issues involved in this matter.

ALLISON CHAPMAN, as  
Parent and Next Friend of  
AUDREY CHAPMAN, a Minor,  
By Counsel,



---

R. Matthew Vital, Esq. (WV# 7246)  
Matthew R. Oliver, Esq. (WV # 10683)  
Vital & Vital, L.C.  
536 Fifth Avenue  
Huntington, WV 25701  
(304) 525-0320  
*Co-counsel for Plaintiff*

**IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA**

**ALLISON CHAPMAN, As Parent  
and Next Friend of AUDREY CHAPMAN,  
A Minor,**

**Plaintiff,**

**v.**

**Civil Action No.: 11-C-98  
Judge Darrell Pratt**

**CSX TRANSPORTATION, INC.,**

**and**

**GREATER HUNTINGTON PARK  
& RECREATION DISTRICT,**

**Defendants.**

**ANSWER**

Comes now defendant Greater Huntington Park and Recreation District, ("GHPRD"), improperly named in the Complaint as Greater Huntington Parks and Recreations District, by counsel, and responds to the Complaint of the plaintiff as follows:

1. Answering paragraph 1 of the Complaint, this defendant admits that plaintiff is seeking damages in excess of the basic jurisdictional limits of this Court, pursuant to West Virginia Code 51-2-2, but denies any liability for plaintiff's damages claims.
2. Answering paragraph 2 of the Complaint, this defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein.

3. Answering paragraph 3 of the Complaint, this defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein.

4. Answering paragraph 4 of the Complaint, this defendant admits that it was and is an entity created by the West Virginia Legislature as an independent park district. The defendant denies the remaining allegations in paragraph 4 and states that the law speaks for itself as to the purpose of the creation of the GHPRD.

5. Answering paragraph 5 of the Complaint, this defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein.

6. Answering paragraph 6 of the Complaint, this defendant denies there were railroad tracks adjacent to the southern border of Westmoreland Community Park and states that the tracks were near, but not immediately adjacent to, the Park. Answering the remaining allegations in paragraph 6 of the Complaint, this defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein.

7. Answering paragraph 7 of the Complaint, this defendant admits the allegations contained therein.

8. Answering paragraph 8 of the Complaint, this defendant denies the allegations contained therein.

9. Answering paragraph 9 of the Complaint, this defendant admits there were no signs posted at Westmoreland Community Park stating railroad tracks were near the park. Further answering paragraph 9 of the Complaint, this defendant denies that the railroad tracks

were located upon the southern border of the park property and denies any allegation that GHPRD should have warned of the tracks.

10. Answering paragraph 10 of the Complaint, this defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein.

11. Answering paragraph 11 of the Complaint, this defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein.

12. Answering paragraph 12 of the Complaint, this defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein.

13. Answering paragraph 13, Count 1 of the Complaint, this defendant restates its answers to paragraphs 1 through 12 of the Complaint as if incorporated herein.

14. Answering paragraph 14, Count 1 of the Complaint, this defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein.

15. Answering paragraph 15, Count 1 of the Complaint, this defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein.

16. Answering paragraph 16, Count 1 of the Complaint, this defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein.

17. Answering paragraph 17, Count 1 of the Complaint, this defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein.

18. Answering paragraph 18, Count 1 of the Complaint, this defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein.

19. Answering paragraph 19, Count 1 of the Complaint, this defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein.

20. Answering paragraph 20, Count 1 of the Complaint, this defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein.

21. Answering paragraph 21, Count 1 of the Complaint, this defendant is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained therein.

22. Answering paragraph 22, Count 2 of the Complaint, this defendant restates its answers to paragraph 1 through 21 of the Complaint, as if incorporated herein.

23. Answering paragraph 23, Count 2 of the Complaint, this defendant denies the allegations contained therein.

24. Answering paragraph 24, Count 2 of the Complaint, this defendant admits the allegations contained therein.

25. Answering paragraph 25, Count 2 of the Complaint, this defendant admits the allegations contained therein.

26. Answering paragraph 26, Count 2 of the Complaint, this defendant denies the allegations contained therein.

27. Answering paragraph 27, Count 2 of the Complaint, this defendant denies the allegations contained therein.

28. Answering paragraph 28, Count 2 of the Complaint, this defendant denies the allegations contained therein.

29. Answering paragraph 29, Count 2 of the Complaint, this defendant denies the allegations contained therein.

30. Answering paragraph 30, Count 2 of the Complaint, this defendant denies the allegations contained therein.

31. Answering the prayer for relief of the Complaint, this defendant denies it is liable to the plaintiff in any amount or for any reason.

This defendant denies all allegations in plaintiff's Complaint not specifically admitted herein.

## DEFENSES

1. This defendant states that the plaintiff's Complaint fails to state a claim against this defendant upon which relief may be granted and, therefore, the plaintiff's Complaint against it must be dismissed, with prejudice.

2. This defendant states if the plaintiff sustained the injuries and damages alleged in the Complaint, all of which this defendant specifically denies, then such injuries and damages were caused or contributed to by the negligence or other acts or omissions on the part of Audrey Chapman, a minor, or by reason of negligence on the part of some third person or persons, not by reason of any negligence of this defendant.

3. This defendant states the Complaint against this defendant should be dismissed, with prejudice, to it when, as the Complaint alleges, the minor was struck by a train operated by CSX Transportation, Inc. on property owned by CSX Transportation, Inc. and, therefore, this defendant is free from any actionable negligence.

4. This defendant pleads the limitation on non-economic loss and the limitation of joint and several liability contained within West Virginia Code § 29-12A-7 and to the extent the Complaint of plaintiff is in violation of West Virginia Code § 29-12A-7, it must be dismissed, with prejudice.

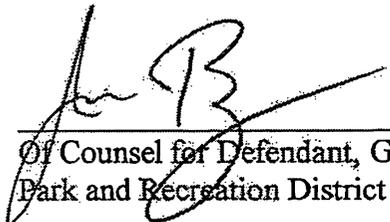
5. This defendant is a political subdivision pursuant to the definitions of West Virginia § 29-12A-3(c) and is immune from liability.

6. This defendant asserts the affirmative defenses of assumption of the risk, comparative negligence, supervening cause and intervening cause.

7. This defendant reserves the right to assert additional defenses as facts developed during the course of discovery.

WHEREFORE, defendant Greater Huntington Park and Recreation District, prays that the Complaint of the plaintiff be dismissed, with prejudice, and that it be awarded its costs of action, including attorney fees.

Defendant Greater Huntington Park and Recreation District demands a trial by jury upon all issues raised in this matter.



Of Counsel for Defendant, Greater Huntington  
Park and Recreation District

W. Joseph Bronosky  
WV State Bar No. 6051

CAMPBELL WOODS, PLLC  
1002 Third Ave.  
Post Office Box 1835  
Huntington, West Virginia 25719-1835  
(304) 529-2391 (Phone)  
(304) 529-1832 (Fax)

IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA

ALLISON CHAPMAN, As Parent  
and Next Friend of AUDREY CHAPMAN,  
A Minor,

Plaintiff,

v.

Civil Action No.: 11-C-98  
Judge Darrell Pratt

CSX TRANSPORTATION, INC.,

and

GREATER HUNTINGTON PARK  
& RECREATION DISTRICT,

Defendants.

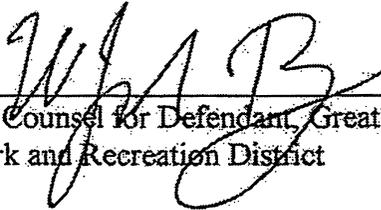
CERTIFICATE OF SERVICE

I, W. Joseph Bronosky, of counsel for defendant, Greater Huntington Park & Recreation District, do hereby certify that service has been made of it's Answer upon counsel of record by mailing a true copy thereof to them, via United States Mail, postage prepaid, addressed as follows:

R. Matthew Vital, Esquire  
Matthew R. Oliver, Esquire  
Vital & Vital  
536 Fifth Avenue  
Huntington, WV 25701  
*Counsel for plaintiffs*

Robert L. Massie, Esquire  
Nelson Mullins Riley & Scarborough LLP  
949 Third Ave.  
Huntington, WV 25701  
*Counsel for defendant CSX Transportation, Inc.*

DONE this 30<sup>th</sup> day of June, 2011.

  
\_\_\_\_\_  
Of Counsel for Defendant, Greater Huntington  
Park and Recreation District

W. Joseph Bronosky  
WV State Bar No. 6051

CAMPBELL WOODS, PLLC  
1002 Third Ave.  
Post Office Box 1835  
Huntington, West Virginia 25719-1835  
(304) 529-2391 (Phone)  
(304) 529-1832 (Fax)

**IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA**

JEAN REYNOLDS and RAYMOND REYNOLDS,  
As Parents and Next Friends of  
SUMMER REYNOLDS,  
f/k/a AUDREY CHAPMAN, A Minor,

Plaintiffs,

v.

Civil Action No.: 11-C-98  
Judge Darrell Pratt

GREATER HUNTINGTON PARK  
& RECREATION DISTRICT,

Defendant.

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to W. Va. R. Civ. P. 56, defendant Greater Huntington Park & Recreation District, by counsel, moves the Court to enter summary judgment against plaintiffs Jean Reynolds, Raymond Reynolds, and Summer Reynolds, on all claims asserted in their amended complaint. As grounds for its motion, defendant states that there is no genuine issue as to any material fact and it is entitled to judgment as a matter of law. Specifically, defendant is immune from the claim plaintiffs assert as it arises out of the "[n]atural conditions of unimproved property of the political subdivision; ..." W. Va. Code § 29-12A-5 (a)(7).

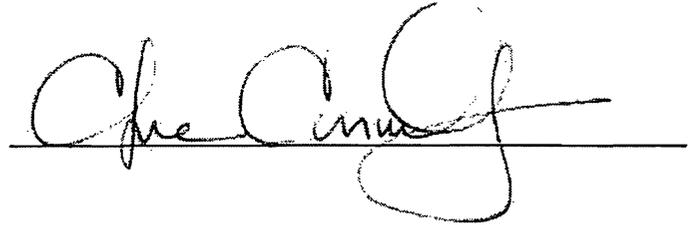
This motion is supported by a simultaneously submitted memorandum of law and the following attached Exhibits:

- Affidavit of David McKinney;
- Excerpts from the deposition transcripts of the following individuals:
  - David McKinney;
  - James McClelland;

- Sherry Maynard;
- Donna Stewart; and
- Summer Reynolds (formerly Audrey Chapman).

Respectfully submitted,

GREATER HUNTINGTON PARK &  
RECREATION DISTRICT, by counsel,

A handwritten signature in cursive script, appearing to read "Cheryl Connelly", is written over a horizontal line.

Cheryl Lynne Connelly  
WV State Bar No. 800  
Nicholas Reynolds  
WV State Bar No. 3068

CAMPBELL WOODS, PLLC  
1002 Third Avenue  
P.O. Box 1835  
Huntington, WV 25719-1835  
Telephone: (304) 529-2391  
Facsimile: (304) 529-1832  
Email: [cconnelly@campbellwoods.com](mailto:cconnelly@campbellwoods.com)  
[nreynolds@campbellwoods.com](mailto:nreynolds@campbellwoods.com)

**IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA**

JEAN REYNOLDS and RAYMOND REYNOLDS,  
As Parents and Next Friends of  
SUMMER REYNOLDS,  
f/k/a AUDREY CHAPMAN, A Minor,

Plaintiffs,

v.

Civil Action No.: 11-C-98  
Judge Darrell Pratt

GREATER HUNTINGTON PARK  
& RECREATION DISTRICT,

Defendant.

**AFFIDAVIT OF DAVID MCKINNEY**

David McKinney, being first duly sworn, deposes and says that:

1. I am the Operations Manager of the Greater Huntington Park & Recreation District and authorized to make this affidavit on its behalf.
2. Westmoreland Park is located in Huntington, Wayne County, West Virginia. Near the south side of Westmoreland Park and running east and west along a CSX railroad track, the land rises about 6 to 8 feet in a fairly steep slope from what is a more or less level park field to the train tracks.
3. The Park District understands that the landscape architects who designed Westmoreland Park left in place the natural tree and brush line on the slope as a natural barrier and sound suppressor.
4. During the time the Park District has maintained Westmoreland Park, the tree and brush border has always been permeable – that is a pedestrian or trail bike rider

who wanted to do so was able to walk or bike through the border from the park to the railroad right-of-way.

5. It is possible that during the last 30 years the Park District removed a dead or dying tree from somewhere in the natural border, though it has no institutional memory of doing so. The Park District has neither added nor removed trees or brush in the area where Summer Reynolds is said to have walked through the natural border.

6. From time-to-time, the Park District removes trash from the natural border and trims back brush that would otherwise creep northward into the park field. It does not thin the trees or brush in the natural border.

And further, this affiant sayeth naught.

I verify under penalty of perjury that the foregoing is true and correct pursuant to the provisions of W. Va. Code § 39-1-10a.

Dated this 24<sup>th</sup> day of November, 2014.

GREATER HUNTINGTON PARK &  
RECREATION DISTRICT

By: David McKinney  
David McKinney

Its: Operations Manager