

FILED

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

DEBORAH KENEMORE,)
SOUTHERN COUNTY, C.S.C.

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COMPLAINT
(Jury Trial Demanded)

Defendant.

PARTIES, JURISDICTIONAL FACTS AND VENUE

3. Nathan Kenemore was Plaintiff Deborah Kenemore's only son.

4. Plaintiffs are informed and believe and therefore allege that Defendant, Energy United EMC (“Defendant”), is a municipal corporation and body politic incorporated under the laws of the State of North Carolina and has its principal office in Statesville in Iredell County, North Carolina.

5. At all relevant times, Defendant owned and operated an electrical distribution system and was engaged in the generation, distribution and sale of electricity for residential and commercial use to members of the public, including residential and commercial customers in Rowan and Iredell Counties.

6. Defendant’s activities as a supplier of electricity are an exercise of a proprietary function.

7. Defendant is not entitled to sovereign immunity for torts committed in connection with its exercise of the proprietary function of selling and supplying electricity, and further, has waived sovereign immunity pursuant to N.C.G.S. § 58-23 and § 160A-485 by the purchase of liability insurance, its participation in a local government risk pool, or the creation of a funded reserve it deemed to be the same as the purchase of liability insurance.

8. At all times relevant, Defendant located, installed, owned, possessed, controlled and operated uninsulated high voltage overhead power lines, support poles and electrical equipment, at or near the premises where Nathan Kenemore died in Rowan County.

9. Venue in this action is proper pursuant to N.C. Gen. Stat § 1-79 and § 1-82, and the Court has jurisdiction over the parties and the subject matter of this action.

10. Jurisdiction lies in the Superior Court Division because Plaintiffs seek to recover in excess of Ten Thousand Dollars (\$10,000.00) for compensatory damages.

FACTUAL BASIS FOR ALL CLAIMS

11. The preceding paragraphs are incorporated herein by reference and realleged.

12. Nathan Kenemore was born on June 28, 2001 and was a healthy, energetic, athletic, outgoing and curious child who loved to play outside.

13. On March 27, 2008, at approximately 7:00 p.m., Nathan Kenemore was climbing a tree on the property of a neighboring family located at 2575 Phiffer Road in Cleveland, North Carolina, Rowan County (hereinafter, "the Property"), when he was electrocuted by an uninsulated power line owned, installed, and maintained by or on behalf of Defendant.

14. At the above time and place, as Nathan climbed the tree, his body came in contact with, or in close proximity to, an uninsulated high voltage power line that was running through the tree.

15. Electricity is odorless, invisible, and extremely dangerous to those who are unaware of its presence and come into contact with it.

16. The tree Nathan was climbing was a white pine with low hanging branches and had grown to a height of approximately 41 feet.

17. The high voltage power line carrying 7,200 volts of electricity was approximately 25 feet above ground, and was within reach of Nathan as he climbed up the tree.

18. Plaintiffs are informed and believe that an agent, employee, or representative of Defendant came to the Property on a monthly basis to read the electric meter. Plaintiffs are informed and believe that on such site visits any employee or agent of Defendant would have observed toys and other items reflecting that children lived or visited the property on a regular basis. The electric meter was located on the Property outside a garage adjacent to the house, and from the meter there was a clear view of the high voltage line as well as the white pine tree that

Nathan climbed when he was electrocuted. It was reasonably foreseeable to Defendant that residents or visitors on the Property, including children, would climb the aforesaid tree and come into contact with Defendant's high voltage power line.

19. On the date of Nathan's death, Deborah Kenemore had taken Nathan to the Property, which was located in a rural area of Rowan County, to play with a six-year-old girl who lived there. At no time during the visit did Nathan Kenemore leave the Property.

20. Deborah Kenemore was on the Property at all times after she and Nathan arrived, until Nathan was removed from the tree, and remained in close proximity to the tree where Nathan was electrocuted.

21. While Nathan and his friend were playing in the yard, Deborah Kenemore and the girl's mother were exercising in the garage next to the home. The exercise area was adjacent to the yard and approximately 100 feet from the white pine tree, which Nathan eventually climbed.

22. The six-year-old girl told her mother and Deborah Kenemore that she and Nathan were going to pick flowers. The mothers approved so long as the children promised to stay in the yard.

23. A few minutes later, the little girl came into the exercise area and told her mother and Deborah Kenemore that Nathan would not speak to her and she thought he was pretending to be asleep in the tree.

24. Deborah Kenemore immediately went into the yard and saw Nathan up in the pine tree. She called his name several times and became distraught when he did not respond. She then ran to the tree while screaming Nathan's name. Another member of the family who lived at the Property was also on the scene and ran to help Deborah Kenemore climb the tree.

25. Although Deborah Kenemore had not climbed a tree since she was a child, she climbed the white pine tree in less than 60 seconds and found her son lying in the branches several feet above the ground. She believed that he had fallen down from higher branches.

26. Deborah was at that time unaware that uninsulated high voltage power lines were above her and Nathan in the tree. She fortunately did not come into contact with the uninsulated power lines herself, or with any portion of the tree that conducted electricity.

27. Deborah thought Nathan had sustained a neck injury and wanted to stabilize his head. She cradled his head in her hands.

28. As she held her son, Deborah found him unresponsive, and found his eyes bulging and red. Deborah attempted without success to revive him and bring him back into consciousness by mouth-to-mouth resuscitation.

29. Deborah was unaware that Nathan had sustained an electrical injury wherein power had surged through his body, or that he was dying from contact with electricity from Defendant's power line. She did know that he was gravely injured and cried out repeatedly begging him not to die.

30. Deborah remained with Nathan in the tree for approximately ten minutes, until emergency personnel arrived and helped bring Nathan down to the ground.

31. Once they were on the ground, Deborah noticed for the first time that Nathan's pants were wet. From her prior experience as a nursing assistant, she recognized that as a sign of impending death. Deborah Kenemore became further distraught as emergency workers began to care for Nathan and carried him away.

32. Within minutes of being lowered to the ground, Nathan was placed in an ambulance and rushed to a nearby hospital. Deborah was not allowed to accompany her son in the

ambulance but followed in a car driven by her neighbor and owner of the Property. Rowan County emergency medical technicians attempted to revive Nathan in route to the hospital. Emergency personnel at Davis Regional Medical Center also tried to save Nathan's life, but their efforts were unsuccessful. It was at the hospital that Deborah Kenemore first learned that Nathan had been electrocuted.

33. Nathan was pronounced dead at 8:03 p.m. Although Deborah Kenemore had feared the worst when she first found her son lying in the tree, she did not abandon hope for his survival until the code was called at the hospital. The pronouncement of his death transformed what had been an hour-long trauma into permanent and shocking loss.

34. The death certificate lists Nathan's cause of death as electrocution.

PLAINTIFFS' FIRST CLAIM FOR RELIEF: WRONGFUL DEATH

35. The preceding paragraphs are incorporated herein by reference and re-alleged.

36. Defendant knew or should have known that children and their parents were engaged in activities on the Property.

37. Defendant knew or should have known that children, boys in particular, are likely to climb trees, with their parents nearby.

38. Defendant knew or should have known that a young boy could climb the aforementioned white pine tree and come into contact with Defendant's uninsulated high voltage power line, and that such contact would likely cause serious injury or death.

39. Defendant knew or should have known that overhead, uninsulated electric lines in residential areas containing climbable structures such as trees are life threatening to people, including children, who may climb without seeing a power line above or without realizing that a line is energized and uninsulated.

40. Under North Carolina law, Defendant, as a provider of electrical power, had a duty to Nathan Kenemore and others, to protect them from injury by exercising the highest skill, the most consummate care and caution, and the utmost diligence and foresight in constructing, locating, maintaining, operating and inspecting its power distribution system, including its power lines and poles, consistent with the system's safe and practical operation.

41. At all relevant times, Defendant had the ability, power and control to relocate the high voltage power line away from the tree, or otherwise eliminate the hazard and risk associated with accidental human contact with the high voltage power line, as required by North Carolina law and the National Electric Safety Code.

42. Defendant, by and through its agents, employees, officers, directors, managers and representatives, was negligent in the construction, ownership, operation, maintenance and control of this uninsulated high voltage overhead power line in its activities in connection with its sale of electricity in that it did not:

- a. Comply with the National Electric Safety Code by installing and maintaining power lines with an adequate horizontal clearance and vertical clearance;
- b. Comply with industry safety customs and practice by installing and maintaining power lines with an adequate horizontal clearance and vertical clearance;
- c. Comply with the National Electric Safety Code by designing and constructing its high voltage power lines and support poles with due regard for the conditions under which they were to be operated, in a reasonably practical manner that reduced hazard to life and limb;

- d. Comply with sound engineering practice by designing and constructing its high voltage power lines and support poles with due regard for the conditions under which they were to be operated, in a reasonably practical manner that reduced hazard to life and limb;
- e. Construct, install and maintain its high voltage power lines in a manner that safeguarded Nathan Kenemore and other members of the public from hazards arising from them;
- f. Properly and adequately design, plan, insulate, guard, protect, maintain, remove or otherwise isolate its power lines on this aforesaid property;
- g. Inspect its electrical energized power lines to ascertain that they were in reasonably safe condition under all the facts and circumstances then and there present;
- h. Move and relocate its electrically energized power lines to a location and position away from the aforesaid pine tree to reduce or eliminate the hazards of electrical shock;
- i. Cut the tree down to eliminate the electrical hazard;
- j. Trim the tree to eliminate the electrical hazard;
- k. Trim the tree or remove the tree in at least six years, when Defendant knew or should have known that a dangerous and ultra-hazardous condition existed and that a child or children or other members of the public could be seriously injured or killed by coming in contact with Defendant's uninsulated power line.
- l. Follow its own schedule for cutting trees, including trees on the Property, that posed hazards, or potential hazards, and uphold its duty to protect children, and

other members of the public, that might be exposed to its highly dangerous, uninsulated power lines.

- m. Exercise reasonable care to analyze, appreciate, and warn residents of the Property and others of the dangerous and unsafe conditions then and there existing;
- n. Exercise the high degree of care required of a supplier of electricity;
- o. Adopt and employ proper and adequate safety precautions, procedures, measures, programs and plans;
- p. Comply with federal and state statutes, local ordinances and all other rules, industry customs and practices, enactments or regulations applicable or in effect, be they administrative, industry wide or otherwise pertaining to electrically energized power lines and the duties and obligations of electrical suppliers.
- q. Properly oversee and monitor a company it hired to cut trees that might create a hazardous condition.

43. As a direct and proximate result of Defendant's negligence as alleged herein, Nathan Kenemore was electrocuted. His death was unnecessary and avoidable, if only Defendant had complied with industry safety standards and its own safety policies.

44. As a direct and proximate result of Defendant's negligence, Plaintiff Deborah Kenemore is entitled to recover on behalf of the Estate of Nathan Kenemore damages in an amount in excess of Ten Thousand Dollars (\$10,000.00) for all damages recoverable under N.C.G.S. §28A-18-2 because of this wrongful death.

PLAINTIFFS' SECOND CLAIM FOR RELIEF:
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

45. The preceding paragraphs are incorporated herein by reference and re-alleged.

46. Deborah Kenemore was within approximately 100 feet of her son Nathan when he was electrocuted by Defendant's uninsulated power line. She was one of the first people to reach him and try to revive him, and she was exposed directly to her son's physical injuries and symptoms of physical distress from the moment she reached him.

47. As a direct and proximate result of the traumatic events which Deborah Kenemore witnessed and participated in at the time her son was electrocuted and ultimately pronounced dead, she has suffered anxiety, depression, and other severe and disabling distress which may be generally recognized and diagnosed by mental health professionals.

48. It was reasonably foreseeable by Defendant that its conduct, as previously alleged, would cause severe emotional distress to Nathan's mother, Deborah Kenemore. Parents of young boys climbing trees in residential areas are typically nearby, and a parent of ordinary susceptibility would experience severe emotional distress if his or her child were seriously injured or killed while in the parent's custody and care.

49. The conduct of Defendant by and through its agents, employees, officers, directors, managers and representatives did, in fact, cause Deborah Kenemore severe emotional distress, and she will continue to suffer for the rest of her life as a direct and proximate result of rushing to her son's aid immediately after he suffered the electrical injury, trying without success to revive her son, and observing her son's gruesome physical injuries inflicted by the electrocution.

50. As a direct and proximate result of Defendant's negligence, Plaintiff Deborah Kenemore has sustained and is entitled to recover all damages allowed under North Carolina law in excess of \$10,000.00.

PLAINTIFFS' THIRD CLAIM FOR RELIEF:
PUNITIVE DAMAGES

51. The preceding paragraphs are incorporated herein by reference and re-alleged.

52. The following acts and omissions by Defendant constitute a conscious and intentional disregard of, and indifference to, the rights and safety of the six-year-old child, Nathan Kenemore, and other members of the public, which Defendant knew or should have known was reasonably likely to result in serious injury or death, and therefore constitute willful or wanton conduct:

- a. Plaintiffs are informed and believe that Defendant was, at the time of Nathan's death, well aware of prior deaths caused by electrocution from high voltage power lines running through trees in residential areas, and yet had taken virtually no action over a period of six years or more to protect residents or visitors to the Property from serious injury or death;
- b. Plaintiffs are informed and believe that employees, agents, or representatives of Defendant came to the Property on a monthly basis, and that such employees, agents, or representatives of Defendant knew the nature of the power lines and the amount of voltage carried through the white pine tree in the yard, and knew that if the tree were not trimmed or cut, or some barrier placed to prevent climbing to the height of the power line, a person climbing the tree would likely suffer serious injury or death;
- c. Plaintiffs are informed and believe that Defendant, through its employees, agents, and/or representatives, knew that children played in the yard, near the uninsulated power line; and

- d. Despite the fact that its employees, agents, or representatives were at the Property on more than 50 occasions over a six-year period and upon information and belief could see the white pine tree growing up through the uninsulated power line, Defendant chose not take necessary and appropriate action to protect against the risk of electrocution and chose not to warn the family living at the Property or others.
- e. The conduct of the Defendant, through its officers, managers, employees, agents, and representatives, was in conscious disregard of, and indifferent to, the rights and safety of the decedent Nathan Kenemore and others, including Plaintiff Deborah Kenemore.

53. Plaintiffs are informed and believe that at all times relevant, Defendant's officers, directors, or managers participated in or condoned the conduct alleged in the foregoing paragraph in that they:

- a. Made a budgeting or other financial decision not to assign, train, or otherwise direct Defendant's employees, agents, or representatives to monitor the growth of trees below Defendant's power lines in the yard and other residential areas;
- b. Made a budgeting or other financial decision not to monitor Defendant's employees, agents, or representatives to insure that trees, including the one Nathan Kenemore climbed, did not grow within close proximity of Defendant's power lines; and

- c. Made a budgeting or financial decision not to appropriately trim or cut down trees growing in close proximity to its power lines, including the tree that Nathan Kenemore climbed;

54. The conduct of Defendant EnergyUnited, as alleged herein, was willful, wanton and reprehensible, was highly likely to cause serious harm, and occurred over a period of several years. Defendant was well aware that the possible consequence of ignoring the growth of a tree with dense and low branches beneath an uninsulated power line was serious injury or death. This conduct was causally related to Nathan Kenemore's death and to Deborah Kenemore's severe emotional distress, and therefore supports a claim for punitive damages as defined in N.C.G.S. § 1D-15.

55. As a direct and proximate result of Defendant's negligence, conscious disregard of and indifference to the rights and safety of others as alleged herein, Nathan Kenemore was electrocuted and died in the presence of his mother. His death was unnecessary and avoidable, and her traumatic loss of her only son also was unnecessary and avoidable.

56. As a direct and proximate result of Defendant's willful and/or wanton conduct, Plaintiffs are entitled to recover punitive damages as provided in N.C.G.S. §28A-18-2 and in N.C.G.S. § 1D-15.

PRAYER FOR RELIEF

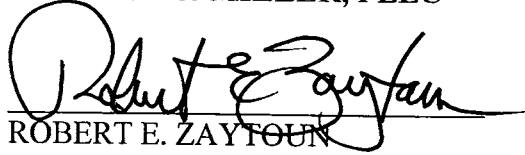
WHEREFORE, the Plaintiffs pray:

1. That the Estate of Nathan Kenemore have and recover of Defendant compensatory damages in excess of \$10,000.00;

2. That the Plaintiff, Deborah Kenemore, individually, have and recover of Defendant, compensatory damages in excess of \$10,000.00.
3. That the Plaintiffs recover punitive damages in an amount to be determined by a jury and as allowed by North Carolina law.
4. That the Plaintiffs be granted a trial by jury on all issues.
5. That the Plaintiffs recover the costs of this action and that these costs be taxed against Defendant, including pre-judgment interest as of the date of the filing of this complaint.
6. For such other and further relief as the Court deems just and proper.

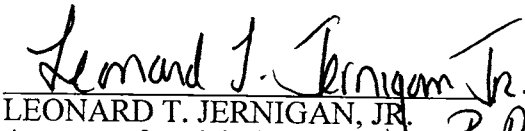
This the 16th day of September, 2008.

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