

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

RHONDA STARK, individually and  
as Administratrix of the ESTATE OF  
ROBERT E. STARK,

Plaintiffs,

v.

Civil Action No.: 20 C-267-3

Judge: Matish

CHAD EDWARDS and  
MATTHEW MAXWELL,

Defendants.

COMPLAINT

For her Complaint against the defendants, the Plaintiff, Rhonda Stark, individually and as the Administratrix of the Estate of Robert E. Stark ("Plaintiff") herein alleges and avers as follows:

**PARTIES**

1. Plaintiff is a resident and citizen of Harrison County, West Virginia. On July 1, 2019, Plaintiff was duly appointed the Administratrix of the Estate of her late husband, Robert E. Stark, by the Harrison County Commission. See **Exhibit A**.

2. Upon information and belief, Defendant Chad Edwards is a resident of Harrison County, West Virginia.

3. At all relevant times hereto, Defendant Edwards was the City Manager for the City of Shinnston, Harrison County, West Virginia. As such, Defendant Edwards is

and was subject to and responsible for the day to day operations of all aspects of the City, which included, but were not limited to, operation of the Public Works and Utilities Division of the City of Shinnston.

4. Upon information and belief and at all times relevant hereto, Defendant Matthew Maxwell was a resident of Harrison County, West Virginia.

5. At all relevant times hereto, Defendant Maxwell was the Public Works Supervisor for the City of Shinnston, Harrison County, West Virginia.

6. The Public Works and Utilities Division of the City of Shinnston operates and maintains the city's storm water conveyance system, drinking water supply and distribution system, wastewater collections system, and wastewater treatment.

7. As part of operating and maintaining the city's storm water and conveyance system, drinking water supply and distribution system, wastewater collections system, and wastewater treatment, the Public Works and Utilities Division engages in work involving excavation and trenching.

8. As the City Manager, Defendant Edwards was subject to and responsible for compliance with all applicable regulations, statutes, and safety standards for workplace safety and training, applicable to the work done by his employees which included excavation and trenching.

9. As the Public Works Supervisor, Defendant Maxwell was subject to and responsible for compliance with all applicable regulations, statutes, and safety standards for workplace safety and training, applicable to the work done by his employees in the Public Works and Utilities Division which included excavation and trenching.

10. At all times relevant hereto, Robert E. Stark was employed by the City of Shinnston, Harrison County, West Virginia in the Public Works and Utilities Division.

11. As such, at all times relevant herein, Robert Stark's boss was Defendant Edwards and his immediate supervisor was Defendant Maxwell.

12. As such, at all times relevant herein, Defendant Edwards and Defendant Maxwell, as employers of Robert Stark, were responsible for compliance with all applicable regulations, statutes, and safety standards for workplace safety and training, applicable to the work done by Robert Stark, which included excavation and trenching.

13. At all times relevant hereto, Defendants Edwards and Maxwell provided oversight, control, safety, training and support services to employees of the Public Works and Utilities Division, including Robert Stark.

14. At all times relevant hereto, Defendants Edwards and Maxwell maintained, operated and controlled the city's storm water conveyance system, drinking water supply and distribution system, wastewater collections system, and wastewater treatment.

#### **JURISDICTION and VENUE**

15. The Court has jurisdiction over this matter pursuant to W. Va. Code § 51-2-2 as the amount in controversy exceeds the current jurisdictional minimum (\$7,500.00).

16. Venue is appropriate in the Circuit Court of Harrison County pursuant to W. Va. Code §56-1-1(a), §29-12A-13 and §23-4-2, insofar as the incident described herein which caused the death of Robert Stark occurred in the City of Shinnston, Harrison County, West Virginia.

## FACTS

17. In or about 2016, Robert Stark was hired by the City of Shinnston as a light mechanic. His work history prior to being hired was in the field of mechanics.

18. Robert Stark remained an employee of the City of Shinnston from the time of his hire through June 14, 2019.

19. Defendant Edwards, as the City Manager since January 2019, was the boss of Robert Stark at all times relevant hereto.

20. Defendant Maxwell was the immediate supervisor of Robert Stark at all times relevant hereto.

21. As early as 2018, if not earlier, the City of Shinnston decided to undertake a project to correct ongoing issues with a storm drain that was causing ground subsidence along Van Rufus Drive in the City of Shinnston, Harrison County, West Virginia.

22. In 2018, some employees of the Public Works and Utilities Division who had been working on the project complained to their supervisor that the job was not able to be safely done.

23. The complaints included, but were not limited to, that the job was not able to be safely done because the ground being excavated was unstable.

24. The complaints included, but were not limited to, that the job was not able to be safely done because the excavation was too deep.

25. The complaints included, but were not limited to, that the job was not able to be safely done because the equipment provided to perform the job was insufficient to do so safely.

26. The complaints included, but were not limited to, that the job was not able to be safely done because the employees did not have any training in how to excavate and dig trenches safely.

27. The drainpipe involved was buried fifteen (15) feet below the surface in some areas.

28. At all times relevant hereto, the employees of the Public Works and Utilities Division who were working on the project were provided no training in how to safely excavate and/or dig trenches.

29. At all times relevant hereto, the employees of the Public Works and Utilities Division who were working on the project were not provided necessary equipment to safely excavate and/or dig trenches.

30. In the fall of 2018, officials for the City of Shinnston began obtaining quotes from contractors to complete the project.

31. The effort to seek quotes from contractors was because the Public Works and Utilities Division lacked the equipment necessary to safely correct the issue at that depth.

32. The quotes received by the City of Shinnston to perform the necessary project came back at a higher cost to the City than what was anticipated.

33. Given the expense of the quotes provided, the idea of having a private contractor complete the project was abandoned.

34. Despite the lack of necessary equipment, the lack of training and experience in performing such work, and the safety concerns expressed by employees of the Public

Works and Utilities Division, no contractor was ever hired to perform the work necessary to complete the project.

35. After the decision to not hire a private contractor, there was no further work on the project for the remainder of 2018.

36. For the first months of 2019, there was no work on the project while waiting for the weather to allow the project to resume.

37. During the time in late 2018 and early 2019 when there was no work being done on the project, no training was provided to the employees of the Public Works and Utilities Division to address the safety concerns which were raised.

38. During the time in late 2018 and early 2019 when there was no work being done on the project, no equipment was obtained to be used by the employees of the Public Works and Utilities Division to address the safety concerns which were raised.

39. Despite that concerns were raised by employees of the Public Works and Utilities Division about the lack of necessary experience and training to perform the job safely, and despite nothing being done to address the concerns, Defendants Edwards and Defendant Maxwell decided to resume work on the project in the spring of 2019 utilizing employees of the Public Works and Utilities Division.

40. Despite that concerns were raised by employees of the Public Works and Utilities Division about the lack of necessary equipment to perform the job safely, and despite nothing being done to address the concerns, Defendants Edwards and Defendant Maxwell decided to resume work on the project in the spring of 2019 utilizing employees of the Public Works and Utilities Division.

41. During all times relevant to resuming the project, through and including June 14, 2019, Defendant Edwards and Defendant Maxwell were responsible for ensuring the safety of the employees of the Public Works and Utilities Division underneath their supervision.

42. During all times relevant to resuming the project, through and including June 14, 2019, Defendant Edwards and Defendant Maxwell were responsible for ensuring the employees underneath their supervision had the appropriate training necessary to safely complete the projects to be undertaken as part of their employment.

43. During all times relevant to resuming the project, through and including June 14, 2019, Defendant Edwards and Defendant Maxwell were responsible for ensuring the employees underneath their supervision had the appropriate equipment necessary to safely complete the projects to be undertaken as part of their employment.

44. During all times relevant to resuming the project, through and including June 14, 2019, Defendant Edwards and Defendant Maxwell were responsible for overseeing, monitoring, and controlling the projects to be undertaken by the employees underneath their supervision.

45. When the spring of 2019 arrived and the weather permitted, Defendant Edwards and Defendant Maxwell made the decision to resume the project using the equipment and employees of the Public Works and Utilities Division, including Robert Stark.

46. Neither Defendant Edwards nor Defendant Maxwell had implemented adequate training, work practices and procedures for their employees to safely replace and repair storm sewer drainpipes.

47. Neither Defendant Edwards nor Defendant Maxwell had implemented adequate training, work practices and procedures for their employees to safely work in trenches which were necessary in performing the replacement and repair of storm sewer drainpipes.

48. At no time during his employment did Robert Stark receive any safety training in excavation and trenching work.

49. At no time during his employment and prior to the spring of 2019 had Robert Stark worked on the project involving the storm drain that was causing ground subsidence along Van Rufus Drive in the City of Shinnston.

50. When work resumed in the spring of 2019, Robert Stark was directed and assigned to work on the project.

51. This type of excavation/trenching work involved in the project was new to Robert Stark.

52. Prior to June 14, 2019, work had resumed on the project for several weeks.

53. On June 14, 2019, Robert Stark was working on the project at Van Rufus Drive.

54. The work on June 14, 2019 included replacing a section of storm drainpipe in front of 5 Van Rufus Drive. To do so, a trench was dug which was approximately eight (8) feet deep, approximately twenty (20) feet long, and approximately two (2) feet wide.



55. No testing or monitoring was conducted by either Defendant Edwards or Defendant Maxwell to determine the stability of the soil in and around the area where the trench was dug.

56. No testing or monitoring was requested or acquired by either Defendant Edwards or Defendant Maxwell to determine the stability of the soil in and around the area where the trench was dug.

57. Neither Defendant Edwards nor Defendant Maxwell acquired training for the employees under their supervision to test or monitor the stability of the soil in and around the area where the trench was dug.

58. Neither Defendant Edwards nor Defendant Maxwell acquired training for the employees under their supervision to identify when testing and/or monitoring for stability of the soil would be prudent and safe.

59. Defendant Edwards and Defendant Maxwell failed to implement safe work practices and procedures for employees under their supervision and control.

60. None of the employees of Defendant Edwards and Defendant Maxwell who were working on the project on June 14, 2019, including Robert Stark, were properly equipped and properly trained to safely work in and around trenches.

61. It is a well-known consensus safety standard in work involving excavation and trenching that a trench such as the one dug on June 14, 2019 (as described herein) be appropriately and safely benched, shored, or sloped.

62. On June 14, 2019, the trench dug at the project was not benched, shored, or sloped.

63. It is a well-known consensus safety standard in work involving excavation and trenching that a trench such as the one dug on June 14, 2019 (as described herein) have adequate means of egress maintained at all times.

64. On June 14, 2019, the trench dug at the project did not have adequate means of egress.

65. It is a well-known consensus safety standard in work involving excavation and trenching that a trench such as the one dug on June 14, 2019 (as described herein) be inspected for hazardous conditions daily, or when changing conditions warrant (such as rain).

66. On June 14, 2019, the trench dug at the project was never inspected for hazardous conditions.

67. It is a well-known consensus safety standard in work involving excavation and trenching that when hazardous conditions are found upon inspection, employees must be removed from the excavation at once.

68. On June 14, 2019, the trench dug at the project had hazardous conditions yet employees, including Robert Stark, were not removed.

69. It is a well-known consensus safety standard in work involving excavation and trenching that visual and manual soil testing is to be performed by a competent person to determine soil type before employees are permitted to enter a trench.

70. On June 14, 2019, no soil testing of any kind was performed regarding the trench dug at the project.

71. On June 14, 2019, Robert Stark entered the trench to work on replacing and repairing the storm sewer drainpipes.

72. Robert Stark entered the trench without having the appropriate safety equipment and/or knowing how to safely work in and around trenches.

73. The walls of the trench were not shored in any way.

74. There were no trench shields or trench boxes in place.

75. There was no sloping or benching of the trench walls.

76. After entering the trench, Robert Stark tried to help with connecting a pipe.

77. While doing this, a large section of one of the walls of the trench collapsed and covered Robert Stark.

78. As a result of the trench collapse, Robert Stark suffered serious, catastrophic, and life-threatening physical and psychological injuries, including but not limited to, being buried alive and ultimately succumbing to suffocation due to the inability to breathe.

79. There was so much dirt that collapsed on Robert Stark that it took approximately twenty-nine (29) minutes for multiple individuals and skilled first responders to extricate him from the collapsed trench.

80. Robert Stark died on June 14, 2019, as a direct and proximate result of the horrific injuries sustained in the trench collapse.

81. The conduct of Defendant Edwards and Defendant Maxwell contributed to and/or caused the trench collapse to occur by allowing and directing work to take place despite not having the appropriate and safe equipment to do so.

82. The conduct of Defendant Edwards and Defendant Maxwell contributed to and/or caused the trench collapse to occur by supervising and directing employees to perform work knowing they did not have the proper training to do so safely.

83. The conduct of Defendant Edwards and Defendant Maxwell contributed to and/or caused the trench collapse to occur by failing to train their employees in the appropriate methods with which to perform the work necessary to complete the project they were made to work on.

84. The actions and conduct of Defendant Edwards and Defendant Maxwell directly violated commonly accepted and well-known consensus industry safety standards.

85. As a direct and proximate result of the acts and/or omissions of Defendant Edwards and Defendant Maxwell, Robert Stark suffered serious and needless injuries, experiencing severe pain, suffering, terror, and mental anguish before his untimely and wrongful death.

86. In turn, Defendant Edwards and Defendant Maxwell are liable to Plaintiff for all damages recoverable under West Virginia's Wrongful Death Act, including but not limited to:

- a. damages for Robert Stark's pain and suffering from the time of the injury to death pursuant to W. Va. Code § 55-7-8;
- b. sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of Robert Stark;
- c. compensation for reasonably expected loss of income and earning capacity of Robert Stark;

- d. compensation for reasonably expected services, protection, care and assistance provided by Robert Stark;
- e. reasonable funeral expenses; and,
- f. other expenses incurred because of his wrongful death.

## COUNT I

### DELIBERATE INTENT DEFENDANT EDWARDS AND DEFENDANT MAXWELL

87. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 86 of this Complaint as if set forth herein verbatim.

88. On and prior to June 14, 2019, Defendant Edwards and Defendant Maxwell violated W. Va. Code § 23-4-2(d)(2)(B), in that:

- i. A specific unsafe working condition existed in the workplace which presented a high degree of risk and a strong probability of serious injury or death;
- ii. Defendants, prior to the injury, had actual knowledge of the existence of the specific unsafe working condition(s) and of the high and the strong probability of serious injury or death presented by the specific unsafe working condition(s);
- iii. That the specific unsafe working condition was a violation of a commonly accepted and well-known safety standard within the industry or business of Defendants;
- iv. That notwithstanding the existence of the facts set forth in subparagraphs (i) through (iii), inclusive, of this paragraph, Defendants, through their management and supervision of Robert Stark, nevertheless intentionally thereafter exposed Robert Stark to the specific unsafe working condition(s); and,
- v. That Robert Stark suffered serious compensable injury and death as defined in section one, article four, chapter twenty-three as a direct

and proximate result of the specific unsafe working condition(s).

89. As a direct and proximate result of the actions and omissions of Defendant Edwards and Defendant Maxwell, on and prior to June 14, 2019, Robert Stark, experienced pre-death pain, suffering, impairment and mental anguish, and the Estate of Robert E. Stark and its beneficiaries suffered losses as set forth in West Virginia's Wrongful Death Act, West Virginia Code § 55-7-6(c)(1) and (2).

90. In support of the Plaintiff's allegations as to the existence of specific unsafe working conditions, violations of relevant industry safety standards as a contributing cause of Robert Stark's injuries and subsequent death, Plaintiff attaches as **Exhibit B**, the verified statement of workplace safety expert, Diane Matthew Brown, pursuant to W. Va. Code 23-4-2(d)(2)(C)(i).

## COUNT II

### **RECKLESSNESS OF DEFENDANT EDWARDS AND DEFENDANT MAXWELL**

91. Plaintiff repeats and incorporates by reference, the allegations contained in paragraphs 1 through 87 of this Complaint as if set forth herein verbatim.

92. Defendant Edwards was the City Manager for the City of Shinnston and as such, was responsible for the day to day operations of the City, which duties included, but were not limited to, compliance with all commonly accepted and well-known safety standards within the industry for all work being performed by employees of the City of Shinnston.

93. Defendant Maxwell was the Public Works Supervisor for the City of Shinnston and as such, was responsible for compliance with all commonly accepted and well-known safety standards within the industry for all work being performed under his supervision.

94. Defendant Edwards and Defendant Maxwell provided safety, oversight, supervision, training, and support to the employees of the Public Works and Utilities Division, including Robert Stark.

95. As such, through their own actions and conduct, Defendant Edwards and Defendant Maxwell had a duty of reasonable and ordinary care to provide a safe workplace, safe work environment, safe equipment, to adopt and implement safe work practices and procedures, and to ensure that employees of the Public Works and Utilities Division were adequately trained to perform their assigned work tasks.

96. Defendant Edwards and Defendant Maxwell recklessly breached their duty to Robert Stark by allowing and directing him to perform work despite not having the appropriate and safe equipment to do so.

97. Defendant Edwards and Defendant Maxwell recklessly breached their duty to Robert Stark by supervising and directing him (as well as other employees) to perform work knowing he did not have the proper training to do so safely.

98. Defendant Edwards and Defendant Maxwell recklessly breached their duty to Robert Stark by failing to train him (as well as other employees) in the appropriate methods with which to perform the work necessary to complete the project he was made to work on.

99. Defendant Edwards and Defendant Maxwell recklessly breached their duty to Robert Stark by failing to ensure a safe workplace and safe work environment.

100. Defendant Edwards and Defendant Maxwell recklessly breached their duty to Robert Stark by allowing and directing work to occur which directly violated commonly accepted and well-known consensus industry safety standards.

101. As a direct and proximate result of the reckless conduct of Defendant Edwards and Defendant Maxwell, Robert Stark experienced pre-death pain, suffering, impairment and mental anguish, and the Estate of Robert Stark and its beneficiaries suffered losses as set forth in West Virginia's Wrongful Death Act, West Virginia Code § 55-7-6(c)(1) and (2).

WHEREFORE, the Plaintiff, Rhonda Stark, individually, and as the Administratrix of the Estate of Robert E. Stark, demands judgment against the Defendants for:

- a.) an amount of compensatory damages determined by a jury according to the laws of the State of West Virginia;
- b.) costs and attorney fees expended in prosecution of this matter;
- c.) pre-judgment and post-judgment interest as provided under the law; and
- d.) all other relief to which the Court deems Plaintiff, individually and as the

Administratrix of the Estate of Robert E. Stark, is entitled.

**PLAINTIFF DEMANDS A JURY TRIAL.**



RHONDA STARK, individually and  
as Administratrix of the ESTATE OF  
ROBERT E. STARK,  
By Counsel



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