

FILED  
ATHENS COUNTY, OHIO  
SEP 18 2015  
*Arthur*, CLERK  
OF COMMON PLEAS COURT

IN THE COURT OF COMMON PLEAS  
ATHENS COUNTY, OHIO

Cynthia Madej  
13512 Dutch Creek Rd.  
Athens, Ohio 45701

: Judge Lang

: Case No. 15CV0179

and

Robert Madej  
13512 Dutch Creek Rd.  
Athens, Ohio 45701

Plaintiff,

vs.

Athens County Engineer Jeff Maiden  
16000 Canaanville Rd.  
Athens, OH 45701



15CV0179  
00030405668  
MISC

Defendant.

**PLAINTIFF'S FIRST AMENDED COMPLAINT**

**- COUNT ONE -  
(INJUNCTIVE RELIEF)**

1. Plaintiff Cynthia Madej (hereinafter "Cindi" or "Mrs. Madej") is a resident of Athens County, Ohio.
2. Defendant is an Athens County resident sued in his official capacity as Athens County Engineer.
3. This case involves a dispute over a paving project that has begun and is scheduled to continue on Dutch Creek Rd. in Athens County, Ohio.

4. For many years Defendant and his predecessor in office had been on notice that Cindi suffers from multiple chemical sensitivity which renders many substances used in road paving highly toxic to her, including but not limited to petrochemicals used in "chip and seal" road surfacing.
5. Despite the County Engineer's knowledge of Mrs. Madej's medical condition, the Defendant went forward with a plan to apply a chip and seal road surface to Dutch Creek Rd. Plaintiffs learned only about two weeks and four days ago that such a project would apparently be moving forward.
6. After Plaintiffs learned of the proposed road surfacing plans, Plaintiffs provided Defendant with copies of two physician's letters confirming that road paving projects which use petrochemicals within one mile of Cindi's residence could cause serious physical harm or be life threatening to Mrs. Madej (e.g. could cause respiratory or heart failure, or paralysis). One of the letters also informed Defendant that Mrs. Madej suffers from a life-threatening anemic condition that has placed her health in a precarious position and that in light of her weakened condition even small exposures to chemical stressors create a serious hazard for her. The letters further informed Defendant that Cindi is unable to relocate from her home due to the severity of her sensitivities and the specialized living environment she requires. An affidavit from Cindi's doctor confirming these facts and indicating that any such road work on Cindi's road (Dutch Creek Road) would be injurious and could cause death is attached hereto as Exhibit 1.
7. Though Defendant had notice that serious injury or death would likely result from the use of chip and seal surfacing within one mile of Cindi's residence, he nevertheless moved forward with the plan to use chip and seal within one mile of her residence.
8. Defendant refused to consider options for treating or surfacing the road that would be safe for Cindi, and refused to delay the project to give sufficient time to investigate options to treat or surface the road that would not pose a risk of serious physical harm or death to Cindi, though NUMEROUS other options do exist. See Exhibit 2 (list of dust control and surfacing options not involving the use of tars and petrochemicals).
9. Defendant mailed a letter dated Friday September 11<sup>th</sup>, 2015 to Dutch Creek Road residents including Plaintiffs (which Plaintiffs received on Monday September 14<sup>th</sup>, 2015) indicating that the Dutch Creek Road chip and seal project would begin on Monday September 14<sup>th</sup>, 2015. See Exhibit 3.
10. Defendant in fact commenced grading and road preparation on Dutch Creek Road on Monday September 14<sup>th</sup>, 2015.

11. Defendant is proceeding with the project with full knowledge that applying the chip and seal surface will cause death or serious physical harm to Cindi.
12. Absent a temporary restraining order prohibiting Defendant from proceeding with applying a chip and seal surface (or other surfacing harmful to Cindi) to Dutch Creek Road, Mrs. Madej will suffer immediate and irreparable injury, including serious physical injury and possibly death.
13. Should Defendant proceed with the chip and seal project Defendant would negligently, recklessly, knowingly and intentionally cause physical harm and/or death to Cindi and cause severe emotional distress to Cindi and her husband, Plaintiff Robert Madej.
14. In such instance, the Defendant's aforesaid negligent, reckless, knowing, and intentional acts would be the proximate cause of Plaintiffs' injuries.
15. Plaintiff seeks only injunctive relief at this time, and does not seek damages. Thus political subdivision immunity contained in O.R.C. §2744.01, et seq. (which explicitly applies only to actions for damages) is on no way implicated.
16. Plaintiff has an excellent chance of prevailing on the merits of its claims given that political subdivision immunity does not apply and there is ample evidentiary support from her physician.
17. No third parties will be harmed given the numerous dust control and road surfacing options that the county has which do not involve substances that would cause injury or death to Mrs. Madej.
18. The public interest will be served given that public officials should be strongly discouraged from intentionally and unnecessarily causing serious physical harm or death to citizens when numerous non-injurious and non-fatal alternatives exist.
19. Plaintiffs' attorney Sky Petney has hand delivered a copy of this Plaintiffs' Verified Complaint for Injunctive Relief Including a Temporary Restraining Order by hand to the Athens County Prosecutor's Office today September 15<sup>th</sup>, 2015.
20. Plaintiff's attorney Sky Petney asserts that there is insufficient time to hold a hearing given that chip and seal work is already underway today on the end of Dutch Creek Road further from Plaintiffs' residence and that a temporary restraining order thus needs to be granted immediately.

-COUNT TWO-



VELLE AND ASSOCIATES  
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**(CIVIL ASSAULT AND BATTERY AND/OR WRONGFUL DEATH)**

21. Plaintiffs incorporate all of the foregoing allegations as if fully rewritten herein.
22. Though Defendant knew, has long known, and knew with substantial certainty that Plaintiff Mrs. Madej would suffer serious physical harm or death if the project proceeded, Defendant assured the Plaintiffs both in the spring of 2015 and throughout the summer of 2015 that they would not proceed with applying chip and seal to Dutch Creek Road.
23. Defendant further knew, has known, and knows with substantial certainty that Mrs. Madej cannot easily or quickly be relocated given that she requires a specialized living environment. Defendant has been informed of this very explicitly by both the Plaintiffs and their physicians.
24. Despite its knowing with substantial certainty that Mrs. Madej could not be quickly or easily relocated Defendant recklessly, wantonly and/or in bad faith gave Plaintiffs grossly insufficient notice that they were reversing their earlier statements and in fact proceeding with the chip and seal project on Dutch Creek Road.
25. Defendant recklessly, wantonly and/or on bad faith gave so little notice of the reversal of the decision not to chip and seal Dutch Creek Road that there was and is insufficient time to find a new location and build a new sealed residence for Ms. Madej so as to protect her from serious physical harm or death.
26. Defendant recklessly wanton and/or in bad faith refused to discuss alternatives and provide sufficient time to identify alternatives to applying chip and seal to Dutch Creek Road with the Plaintiffs.
26. Pursuant to O.R.C. § 2744.03(5) a political subdivision is liable in damages if its "judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources" is exercised in a wanton or reckless manner, or in bad faith. See *id.*
27. As a result of the wanton, reckless, and/or bad faith exercise of discretion of the defendant the plaintiff will suffer serious physical harm or death proximately caused by the defendant's actions.
28. The aforementioned actions of the Defendant were all taken with malice.
29. Defendant knows with substantial certainty that its actions will bring serious physical harm or death to Mrs. Madej.



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**-COUNT THREE-**  
**(DECLARATORY JUDGMENT - CIVIL ASSAULT AND BATTERY AND/OR  
WRONGFUL DEATH)**

30. Plaintiffs incorporates all of the foregoing allegations as if fully rewritten herein.
31. Plaintiffs seek a declaratory judgment to the effect that should the defendant proceed with the threatened chip and seal project on the section of Dutch Creek Road extending from S.R. 550 to Stanley Road Mrs. Madej will suffer serious physical harm and that the Defendant will be liable for civil assault and battery and/or wrongful death.

**WHEREFORE** Plaintiff prays for the following relief:

1. For a temporary restraining order, preliminary injunction and permanent injunction enjoining Defendants and/or their agents, servants, assigns, licensees or employees, from causing serious physical harm or death to Plaintiff Madej, and from causing serious emotional distress to both Plaintiffs by applying any road surfacing or dust-control treatments to Dutch Creek Road that would harm Ms. Madej including but not limited to chip and seal, asphalt, or any other petrochemical-based road surfacing or dust-control products.
2. For damages in excess of \$25,000.00 on Count 2, along with a preliminary injunction preventing the application of chip and seal to Dutch Creek Road, punitive damages, and attorney fees.
3. For any other relief that the Court determines to be warranted in the premises.

Respectfully submitted,



Sky Petty - 0072041  
Attorney for Plaintiff

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**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a copy of the foregoing Plaintiffs' First Amended Complaint was served this 18<sup>th</sup> day of September by hand delivery upon:

Mr. Zach Saunders  
Athens County Prosecutor's Office  
Athens County Courthouse, First Floor  
Athens, Ohio 45701

  
\_\_\_\_\_  
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