

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

BRENT ZITELLO, individually, as
guardian of his wife **LISA ZITELLO**, and
on behalf of their minor son, **DOMINIC
ZITELLO**,

and

CHARLES M. MARTIN,
c/o PEIFFER WOLF CARR KANE
CONWAY & WISE, LLP
1422 Euclid Avenue, Suite 1610
Cleveland, Ohio 44115

Plaintiffs,

v.

CITY OF WARREN, OHIO,
c/o Mazanec Raskin & Ryder Co., L.P.A.
34305 Solon Road, 100 Franklin's Row
Solon, Ohio 44139

Defendant.

COMPLAINT WITH JURY DEMAND

NATURE OF ACTION

1. On May 3, 2020, Lisa Zitello – a wife, mother of two, and small-business owner – nearly drowned while kayaking in the Mahoning River and has been in a coma ever since. Defendant City of Warren failed warn her of the deadly hazard posed by the Warren Water Works dam, which the City's fire chief has publicly called a "drowning machine." Mrs. Zitello's husband and sons seek to recover for the City's negligence that deprived them of their beloved wife and mother.

PARTIES

2. Plaintiff Brent Zitello is the husband of Lisa Zitello. On December 15, 2020, he was duly appointed by the Mahoning County Probate Court as guardian of his wife's person and estate due to her incapacity caused by the events at issue in this complaint. He is a resident of Mahoning County, Ohio.

3. Plaintiff Lisa Zitello is a resident of Mahoning County, Ohio. Before the events at issue in this complaint, she was the proprietor of Fresh Prints, a custom silk-screening and printing business in Youngstown.

4. Plaintiff Dominic Zitello is Brent and Lisa Zitello's biological child. He is a minor and resides with his father in Mahoning County, Ohio.

5. Plaintiff Charles M. Martin is Mrs. Zitello's biological child from her previous marriage. He is an adult and resides in Mahoning County, Ohio.

6. Defendant City of Warren ("City") is a municipal corporation and political subdivision in the state of Ohio and oversees, operates, owns, controls, services, maintains, or is otherwise responsible for manmade structures in the Mahoning River including the low-head dam north of the Summit Street bridge near the intersections of Mahoning Avenue NW and Summit Street ("dam" or "Water Works dam") (Parcel 39-568695).

JURISDICTION & VENUE

7. The court has jurisdiction under R.C. 2305.01.

8. Venue is proper here under Civ.R. 3(B) because the activity that gave rise to the claims for relief occurred in Trumbull County.

FACTUAL ALLEGATIONS

The City operated and maintained the dam as part of its municipal water supply.

9. The Water Works dam was built for purposes it no longer serves and has not served for quite some time. It was constructed as part of the Warren Water Works, which the City operated and maintained as part of its municipal water supply.

10. The Warren Water Works included a powerhouse and filtration plant that were located respectively on the west and east banks of the river on either side of the dam.

11. At all relevant times, the City had supervision and control over the dam and was responsible for maintaining and operating the dam in such a way as to not constitute a hazard to life, health, or property.

12. The City failed to take reasonable precautionary measures to make the dam safe or warn of its dangers, causing risk of foreseeable harm to boaters like Mrs. Zitello.

The Water Works dam is a dangerous “drowning machine” that the City does not keep open for public use.

13. A low-head dam such as the Water Works dam presents an extreme risk to anyone who enters or navigates upon the river. Such dams appear harmless to an approaching boater, but they are very dangerous because of the turbulence at the base of the dam.

14. The dam’s intended design creates a backwash and recirculation of water. When items go over the dam, they can become stuck at the dam’s base and churned around repeatedly. This is because of the dam’s hydraulic current, which traps objects underwater in a circulating pattern.

15. On information and belief, at least three individuals have drowned at the Water Works dam before Mrs. Zitello was injured there.
16. City firefighters, including its fire chief, refer to the dam as a “drowning machine.”
17. The Water Works dam changes the river from its natural state.
18. The Water Works dam was not constructed to encourage recreational use of the river but rather to operate a public utility.
19. The presence of the dam makes that section of the river inherently dangerous and not suitable for recreational use.
20. The dam is situated on land that is not part of a public park.
21. The location of the dam, in an area with limited visibility and in between locations where people frequently engage in activity on the river, is an inappropriate feature in that location, and the location greatly increases the hazard to persons in the vicinity.
22. For years, the river has been used as a repository for waste from steel mills and other industrial entities. As a result, there is contaminated sediment at the base of the dam as well as copious debris (chunks of concrete studded with rebar, discarded bicycles, and other refuse) in the river just south of the dam. The waste and debris change the nature of the river from its natural state, are not intended to encourage recreational use of the river, and make the river inherently dangerous and unsuitable for recreational use. The waste and debris also present dangers to Good Samaritans who might foreseeably attempt to aid a person trapped in the dam’s current and in need of rescue.
23. Because of its dangers of which the City has long been aware, the City does not keep open the river at the dam site for public use.

24. There are high retaining walls and fences constructed along both sides of the river near the Water Works dam intended to prevent the public from entering the water at the dam site. Before these features were constructed many years ago, members of the public could walk directly into the river without any barrier to entry.

25. In a statement to media published on March 23, 2021 about plans to remove the dam, City Councilman Mark Forte said, “We’re going to open up the pathway to downtown, by opening up that dam, we’ll be open to kayakers and canoers.”

26. On March 24, 2021, City Councilman John Brown, referring to the similar dam removed in Lowellville, said, “It is changing from an old steel town to a vibrant community where people go for kayaking and rafting. I think the same thing can happen in Warren if the Summit Street dam is removed.”

27. The statements of City Councilmembers in the preceding paragraphs are acknowledgements that the river is not currently open to kayakers and canoers, and will remain unopen until the Water Works dam is removed and the river is restored to its natural, free-flowing state.

28. Consistent with the City’s recognition that the Water Works dam is not safe for kayakers and canoers, the City has not granted anyone—including Mrs. Zitello—permission to boat on the river at or near the dam.

29. The Mahoning River Water Trail ends at Packard Park, which is north of the Water Works dam and the last site on the river where a boater can safely portage before the deadly dam downstream.

**The City had a duty to warn the public of the dangers of the
Water Works dam but failed to do so (despite having adequate
resources for signage through state grants).**

30. It was the City's responsibility to place appropriate signage to warn the public of the dangers of the dam.

31. Beginning in approximately 2012, grants and/or other financial resources were allocated by the state of Ohio for the City to erect appropriate signage and buoys to adequately warn of the dangers posed by the Water Works dam at little or no cost to City taxpayers.

32. On July 30, 2017, a teenage girl entered the water at Packard Park and had to be rescued after going over the dam. Consistent with its duty to warn, the City then placed four "DANGER DAM" buoys: two upstream at Packard Park and two before the train trestle just before the dam. Had those buoys been in place at Packard Park on May 3, 2020, Mrs. Zitello would have known there was a dam and would have exited the water at Packard Park. Had those buoys been in place before the train trestle upstream of the dam, Mrs. Zitello would have known there was a dam and would have exited the water before the dam.

33. The City's previous placement of buoys and/or signage warning of the dangers of the Water Works dam was an acknowledgement of its duty to warn of this hidden danger.

34. On information and belief, the City failed to inspect and maintain the warning buoys after installing them in 2017 to ensure it continued to fulfill its duty to warn.

35. Despite the availability of signage and buoys, and/or funds to purchase signage and buoys, and the knowledge that the dam was—according the City’s fire chief—a dangerous “drowning machine,” the City failed to maintain the requisite signage and buoys to warn the public, including Mrs. Zitello, of the dangers of proceeding past Packard Park on the river.

36. On information and belief, on or about May 23, 2020, a group of local boating enthusiasts—Mahoning River Paddling Restoration Group—erected signage to warn of the dam’s presence in the river. There is no reason that Defendant could not have erected and maintained such warnings before May 3, 2020.

**Mrs. Zitello was permanently injured at the Water Works dam
due to the City’s failure to warn her of its dangers or make it safe
for kayakers.**

37. Lisa Zitello was an experienced and responsible kayaker. She typically kayaked in Mahoning County.

38. On May 3, 2020, Mrs. Zitello entered the river at Burbank Park intending to travel to Packard Park. She had never previously traveled this section of the Mahoning River and was unfamiliar with its features, including the Water Works dam.

39. The City did not give Mrs. Zitello or any other member of the public permission to boat on the Mahoning River south of Packard Park where the Mahoning River Water Trail ends.

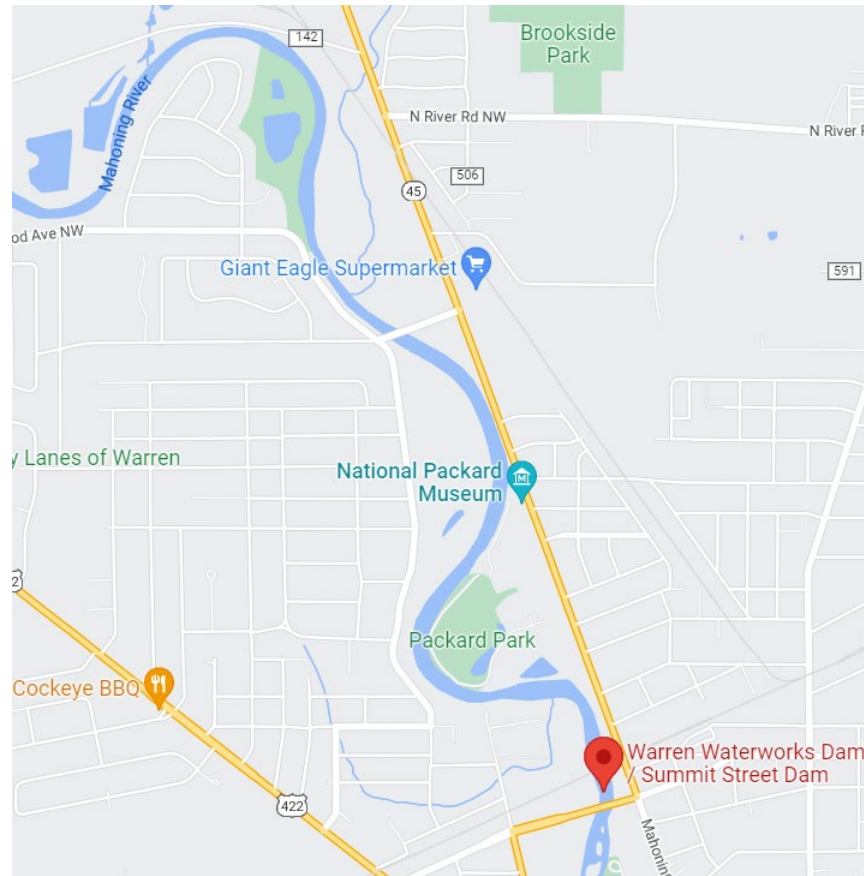
40. Mrs. Zitello was completely unaware of the dam’s existence or the danger it posed. Had the hazards of the dam been disclosed to Mrs. Zitello, she would have exited the river before encountering the dam. Had the City adequately marked Packard Park, Mrs.

Zitello would have seen the signs and exited the river safely. Mrs. Zitello would never have intentionally taken her kayak over a dam.

41. There were no visible warning signs, lights, barriers, buoys, or any other indication that the Mahoning River Water Trail ended at Packard Park and Mrs. Zitello should exit the river there to avoid the deadly hidden danger downstream. Had she been warned, she would have exited the river at Packard Park.

42. The location of Packard Park – and the location of the low-head dam downstream from it – was not adequately marked from the perspective of a kayaker on May 3, 2020. The limited signage was overgrown with greenery and not visible from the river. Mrs. Zitello had no way of knowing that she had even passed Packard Park, let alone that there was a dangerous “drowning machine” ahead.

43. The map below shows the locations of Burbank Park (where Mrs. Zitello entered the river, the green area on the map north of the supermarket), Packard Park (the last place to safely portage before the dam), and the Water Works dam. As the map shows, the river makes a sharp turn to the right after Packard Park. The Water Works dam is more than a quarter mile downstream from Packard Park and is not visible from Packard Park.



44. After Mrs. Zitello passed Packard Park and approached the dam, there were no warning signs, lights, barriers, buoys, or any other indication that a dangerous dam was just ahead. Had she been warned in time, she would have exited the river to avoid going over the deadly dam.

45. From the perspective of a kayaker seated at water level, by the time the dam comes into view there is no way to avoid going over it. Mrs. Zitello did not realize the dam was there until it was too late. The current of the river pulled her over the dam and her body became trapped in the hydraulic current at the dam's base. The turbulence swirled her around at the base of the dam for over a minute. Eventually, Mrs. Zitello's body was tossed out and floated facedown toward the Summit Street bridge.

46. As bystanders called 911 to summon emergency responders, Jacob Fowler entered the water to attempt to rescue Mrs. Zitello. He climbed over the fence and descended the retaining wall to reach the river. The current was strong. He intercepted her in the middle of the river as her body floated downstream. He swam with her to police waiting downstream on the east bank, injuring his leg on the debris in the river as he assisted Mrs. Zitello.

47. Since her accident, Mrs. Zitello has remained in a coma. Her prognosis is poor.

CLAIM 1: PREMISES LIABILITY

48. Plaintiffs incorporate the preceding allegations.

49. On May 3, 2020, Mrs. Zitello was on premises owned and controlled by Defendant.

50. The relevant premises contained a hidden danger that was not open and obvious. Mrs. Zitello could not reasonably have been expected to discover the dam and protect herself against it.

51. Defendant owed a duty of care to Mrs. Zitello to exercise ordinary care and avoid willful, wanton, or reckless conduct.

52. Defendant breached its duty of care to Mrs. Zitello.

53. Defendant's breach proximately caused Mrs. Zitello to be injured, resulting in injuries to the other Plaintiffs.

54. In continuing to operate and maintain the dam, Defendant failed to exercise ordinary care and engaged in willful, wanton, or reckless conduct likely to injure boaters like Mrs. Zitello, including through failing to warn the public of the dam's presence and dangers and failing to implement any preventative measure to eliminate or reduce the

danger posed by the dam (e.g., by using the money allocated by the Ohio Department of Natural Resources for the very purpose of erecting and maintaining navigational signage that would have alerted Mrs. Zitello to the hidden danger of the Water Works dam).

55. Defendants were negligent in failing, over the course of many years and with full knowledge of the hazards posed by low-head dams, to remove the Water Works dam and/or to warn unwitting users of the river of its presence and the extreme danger it posed.

56. As a direct and proximate result of Defendant's acts and/or omissions, Mrs. Zitello suffered severe physical pain, emotional distress, mental anguish, and loss of enjoyment of life. As a direct and proximate result of Defendant's acts and/or omissions, Mrs. Zitello's next of kin have suffered and will continue to suffer severe mental anguish, extreme emotional distress, and loss of consortium, support, services, and society.

CLAIM 2: NEGLIGENCE PERFORMANCE OF PROPRIETARY FUNCTION

57. Plaintiffs incorporate the preceding allegations.

58. Defendant is a political subdivision subject to liability for negligent acts or omissions of its employees in the performance of proprietary functions, including operating or maintaining a low-head dam as part of a municipal water supply under R.C. 2744.01(G)(1).

59. Defendant and/or its employees were negligent in failing, over the course of many years and with full knowledge of the hazards caused by low-head dams generally and the Water Works dam specifically, to remove the dam. Alternatively, Defendant and/or

its employees were negligent in failing to warn users of the river of the dam's presence and the extreme danger it posed.

60. Given the allocation of grant resources by the state of Ohio to purchase signage to warn of the dam's dangers, Defendant's failure to erect the signage (at no or limited cost to the City) was willful, wanton, and reckless.

61. As a direct and proximate result of Defendant's acts and/or omissions, Mrs. Zitello suffered severe physical pain, emotional distress, mental anguish, and loss of enjoyment of life. As a direct and proximate result of Defendant's acts and/or omissions, Mrs. Zitello's next of kin have suffered and will continue to suffer severe mental anguish, extreme emotional distress, and loss of consortium, support, services, and society.

**CLAIM 3: WILLFUL, WANTON, AND OR RECKLESS PERFORMANCE OF A
GOVERNMENTAL FUNCTION (ALTERNATIVE CLAIM)**

62. Plaintiffs incorporate the preceding allegations.

63. Defendant is a political subdivision subject to liability for willful, wanton, or reckless acts or omissions of its employees in the performance of governmental functions.

64. Even if Defendant had not operated the Water Works dam as part of its municipal water supply, the City's failure to remove the dam or warn users of the dam's extreme dangers amounted to willful, wanton, or reckless conduct.

65. Defendant maintained a hazardous condition that had a high probability of injuring or killing persons who came into contact with it.

66. Defendant knew or had reason to know of facts that would lead a reasonable person to realize the dam created an unreasonable risk of harm.

67. Defendant failed to use any care for Mrs. Zitello or the public with to remedy or warn of the “drowning machine” the City owned and operated.

68. Despite grants from the state of Ohio to purchase signage to protect boaters who might unwittingly navigate near the dam without knowledge of its dangers, the City failed to erect the signage during a period when the public was likely to enter the dangerous part of the river unsuitable for recreational use.

69. As a direct and proximate result of Defendant’s acts and/or omissions, Mrs. Zitello suffered severe physical pain, emotional distress, mental anguish, and loss of enjoyment of life. As a direct and proximate result of Defendant’s acts and/or omissions, Mrs. Zitello’s next of kin have suffered and will continue to suffer severe mental anguish, extreme emotional distress, and loss of consortium, support, services, and society.

CLAIM 4: NUISANCE

70. Plaintiffs incorporate the preceding allegations.

71. By failing to remove the dam or warn of its hidden and extreme dangers, Defendant maintained an absolute nuisance for which it is liable to Plaintiffs.

72. The dam was abnormally dangerous in that it created a high degree of risk of harm to those encountering it, with great likelihood of causing injury.

73. The dam is an unnatural, manmade condition on the Mahoning River and not something a reasonable person would expect to encounter on a river.

74. The Water Works dam has no value to the community and the risk of injury and death it poses is not outweighed by any utility or function.

75. The nuisance created by the dam proximately caused Mrs. Zitello's injuries on May 3, 2020.

76. As a direct and proximate result of Defendant's acts and/or omissions, Mrs. Zitello suffered severe physical pain, emotional distress, mental anguish, and loss of enjoyment of life. As a direct and proximate result of Defendant's acts and/or omissions, Mrs. Zitello's next of kin have suffered and will continue to suffer severe mental anguish, extreme emotional distress, and loss of consortium, support, services, and society.

CLAIM 5: GROSS NEGLIGENCE

77. Plaintiffs incorporate the preceding allegations.

78. Failing to remove the dam and/or warn of its hidden and extreme dangers amounts to gross negligence by Defendant.

79. Defendant knew the dam constituted an extreme danger due to prior deaths and injuries there. Defendant's fire chief called the dam a "drowning machine."

80. Defendant had a duty to exercise some care to prevent harm to those who might be harmed by the dam.

81. Defendant failed to exercise even slight care by not providing any visible signs, lights, barriers, portage trails, or any other warning near the dam that would have allowed Mrs. Zitello to avoid the dam.

82. Defendant's failure to use any care whatsoever caused Plaintiffs' injuries.

83. Defendant took no actions after prior drownings or near-drownings to remedy the lack of care and/or failed to maintain warning signage previously placed.

84. The dam is still present in the river presenting an unreasonable risk of harm to the public.

85. There is no reason that Defendant could not have erected and maintained adequate warnings before May 3, 2020.

86. As a direct and proximate result of Defendant's acts and/or omissions, Mrs. Zitello suffered severe physical pain, emotional distress, mental anguish, and loss of enjoyment of life. As a direct and proximate result of Defendant's acts and/or omissions, Mrs. Zitello's next of kin have suffered and will continue to suffer severe mental anguish, extreme emotional distress, and loss of consortium, support, services, and society.

PRAYER FOR RELIEF

Plaintiffs respectfully pray for the following:

- Declare Defendant liable for the claims asserted above;
- Compensatory damages in an amount to be determined at trial;
- Pre- and post-judgment interest at the highest lawful rate;
- Costs of suit incurred;
- Such other relief as the law and evidence may justify, and that this Court deems just and proper.

JURY DEMAND

Plaintiffs demand a jury trial on all issues so triable.

Dated: April 28, 2022

Respectfully submitted,

/s/ Ashlie Case Sletvold

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