

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS

ASHLEY OBER

v.

No. CV 2015- 792-5

BENTON COUNTY, ARKANSAS, and
KELLEY CRADDUCK, Individually and in His Official Capacity, and
CERTAIN DEPUTIES OF THE BENTON COUNTY SHERRIFF'S
OFFICE Whose Identities Have Not Yet Been Determined

FILED
PLAINTIFF
2015 MAY 29 PM 3 43
BRENDA DESHIELDS
CLERK AND RECORDER
BENTON COUNTY, AR
DEFENDANTS

DUNCAN

COMPLAINT

COMES NOW the plaintiff, Ashley Ober, by and through her attorney, George B. Morton, and for her cause of action against the defendants, Benton County, Arkansas; Sherriff Kelley Cradduck; and Certain Deputies of the Benton County Sherriff's Department, states that:

JURISDICTION

1. The plaintiff is, and at all times relevant to this action was, a resident of Washington County, Arkansas.

2. Separate defendant, the Benton County, is a local public entity. All other defendants, at all times relevant to this action, were employees of the County, worked at the Benton County Sheriff's Office, and were acting under color of law as employees of the County and the Sheriff's Office, and acting together, committed the unlawful acts complained of herein.

3. All acts or omissions giving rise to this action occurred in Bentonville, Benton County, Arkansas.

4. At all relevant times, defendant Cradduck was the Sheriff of Benton County, and was employed by the County, and the unnamed defendants were officers and employees of County, working at the Sheriff's Office. The Benton County Sherriff's Office is a subsidiary of

County. The County is responsible for plaintiff's injuries under 42 U.S.C. §1983 because its official policies, practices, and/or customs caused plaintiff's injuries.

5. At all times relevant, the unnamed defendants were duly authorized county employees and agents, acting under color of law within the course and scope of their respective duties as officers and employees of the County and the Sheriff's Department, and with the complete authority and ratification of the County. Each of the unnamed defendants is responsible for some part of the conduct alleged herein.

6. At all times relevant, defendant Craddock was Sheriff of Benton County. In that capacity, he was responsible for setting and enforcing the policies, customs, and practices of the Sheriff's Office.

FACTS

7. On May 24, 2012, this Court ordered the plaintiff to serve 30 days in the Benton County Detention Center as punishment for failure to turn in certain papers as directed.

8. The plaintiff was booked in the jail at approximately 3:45 p.m. on Thursday, May 24, 2015. She did not report any medical problems at the time. However, over the next few hours, mild tooth discomfort had turned into intense pain with swelling.

9. Saturday morning, May 25, 2012, the plaintiff submitted a medical request for treatment of a suspected abscessed tooth. That request was made on an official form provided by jail personnel, and was submitted in accordance with established procedures. Jail personnel noted that the request was received at 10:57 a.m. However, jail personnel took no action upon receiving the request for medical treatment. Plaintiff was not visited by a dentist, a physician, or a nurse, and she was not given any medication for either pain or the underlying condition that caused it.

10. Subsequent to the May 25th medical request, the plaintiff's condition worsened. She repeatedly begged jail personnel for help, reporting inability to eat and swelling of her jaw in addition to pain. In addition to verbal requests for help, the plaintiff had obvious, visible swelling of her jaw, and red streaks developed from her jaw down her neck. Jail personnel took no action to treat the plaintiff.

11. On Tuesday, May 29, 2012, the plaintiff submitted a second medical request for treatment, noting that her "mouth is very swollen and hurts very bad, and is stopping me from eating."

12. At approximately 8:00 a.m. on Wednesday, May 30, 2012, the plaintiff was seen by the jail physician, who ordered an intramuscular injection of the antibiotic Rocephin, to be followed by penicillin tablets four times a day for seven days, and Vicodin (hydrocodone) every four to six hours for five days, as needed for pain.

13. On Wednesday, May 30, 2012, at approximately 1:35 p.m., Collier Drug Store's driver delivered a one gram Rocephin shot to the jail. That same day, Jail personnel ordered the additional Penicillin and Vicodin from a pharmacy in Alabama.

14. On Thursday, May 31, 2012 at approximately 11:00 a.m., the plaintiff's penicillin and pain medication from Alabama were delivered to the jail. Around noon, jail personnel told the plaintiff that she would be moved from H Pod to E Pod, which housed felons, where she would be better supervised because she would be given Vicodin, a narcotic. The plaintiff was moved to E Pod where she was given her first dose of Vicodin, but not the penicillin.

15. During the mid-afternoon medication call on Thursday, May 31, 2012, the plaintiff appeared for her medications, but despite multiple attempts was unable to get her prescribed doses of either the Vicodin or the penicillin. Following a pointed and unpleasant

verbal exchange between counsel and jail Sgt. Martinez late Thursday afternoon, the jail nurse gave the plaintiff her second dose of pain medication, at least seven and a half hours after the first dose, as well as her first dose of penicillin.

16. On June June 4, 2012, because the plaintiff was not receiving necessary medical treatment, the plaintiff filed a Motion for Immediate Release. On June 5, 2012, Judge Mark Fryauf granted that Motion and ordered Cradduck to release the plaintiff from custody.

17. Throughout this ordeal, the plaintiff did not cause any disciplinary problems. Plaintiff followed jail protocol to gain treatment for a serious and excruciating medical condition. By sharp contrast, the defendants displayed a uniformly callous and indifferent attitude, not only toward the plight of the plaintiff, but also toward their duties under the constitutions and statutes of the United States and the State of Arkansas.

COUNT I
VIOLATION OF 8TH AMENDMENT TO U.S. CONSTITUTION:
CRUEL AND USUAL PUNISHMENT
(42 U.S.C. §1983)

18. The plaintiff repeats and re-alleges each and every allegation set forth in this Complaint, with the same force and effect as if fully set forth herein.

19. Sheriff's deputies, including the aforementioned defendants, failed to provide the plaintiff medical care despite clear and unequivocal requests both verbally and in writing.

20. The defendants' denial of medical care exacerbated the plaintiff's already perilous condition, and caused the plaintiff increased trauma, mental, and emotional distress, and increased pain and suffering.

21. The plaintiff's claims against defendants County and Sheriff Kelly Cradduck are based on their maintaining and permitting the practices, policies, and customs described herein. In particular, Sheriff Kelly Cradduck, as the official policy maker for defendant county's

Sheriff's Department, was aware of the inadequate medical care provided to inmates and detainees in Benton County Jail. On information and belief, instead of taking proper steps to provide proper medical care to inmates and detainees, Sheriff Kelly Craddock condoned, encouraged, fostered, and ratified the denial of proper medical care to inmates and detainees in the Benton County Jail, and did so in the case of the plaintiff.

22. As a result of their conduct, the defendants are liable for the plaintiff's suffering, either because they were integral participants in the misconduct, or because they failed to intervene when they had the opportunity and duty to do so to prevent the violations alleged herein.

23. The acts of the individual defendants were willful, malicious, intentional, oppressive, reckless, and/or were done in willful and conscious disregard of the plaintiff's rights, welfare, and safety, thereby justifying the awarding of punitive damages in amounts to be determined at trial.

24. As a direct and legal result of the defendants' acts and omissions, the plaintiff has suffered damages including, but not limited to, pain and suffering, extreme mental and emotional distress, attorney's fees, costs of suit, and any other pecuniary losses not yet quantified.

COUNT II
TORT OF OUTRAGE

25. The plaintiff repeats and re-alleges each and every allegation set forth in this Complaint, with the same force and effect as if fully set forth herein.

26. The defendants, acting individually or in concert, willfully and wantonly engaged in extreme and outrageous conduct by knowingly denying the plaintiff even minimal over the counter treatment for excruciating pain, swelling, infection, and the inability to eat, depriving her of his right to see a doctor or other medical professional, and failing to provide adequate medical

attention, with the purpose and intent to cause the plaintiff extreme physical and emotional distress.

27. Because the defendant was incarcerated, she had no one to rely on for assistance other than the defendants. The defendants' callous and indifferent attitude clearly and consistently displayed to the defendant left her with the abiding belief that she faced weeks of further suffering and deteriorating health.

28. The defendants' conduct proximately caused damage to the plaintiff in the form of extreme emotional distress.

29. The emotional distress was so severe that no reasonable person could be expected to endure it.

COUNT III
VIOLATIONS OF THE ARKANSAS CIVIL RIGHTS ACT (ACRA)
(A.C.A. § 16-123-101 et seq.)

30. The plaintiff repeats and re-alleges each and every allegation set forth in this Complaint, with the same force and effect as if fully set forth herein.

31. The defendants, acting under color of law, caused the plaintiff to be subjected to a deprivation of her rights, privileges, and immunities as secured by the Arkansas Constitution, and thus violated the ACRA §105.

32. The defendants acted willfully and with malice.

33. As a direct and proximate result of the violations of the plaintiff's constitutional and statutory rights by the defendants, the plaintiff suffered general and special damages, alleged herein, and is entitled to relief under the ACRA.

LIABILITY AND DAMAGES

34. As a direct and proximate result of the actions and inactions of the defendants, the plaintiff suffered days and nights of excruciating pain and indignity from a serious medical condition that she not only reported to jail staff, but was obvious to the casual observer. In doing so, the defendants and other jail personnel acted unreasonably in persisting in denying the plaintiff necessary medical treatment and/or subjected Plaintiff to cruel and unusual punishment.

35. Each defendant is, and at all times mentioned herein was, the agent, employee, representative, successor, or assignee of each other defendant. Each defendant, in doing the acts or in omitting to act as alleged in this Complaint, was acting within the scope of his or her actual and apparent authority, and/or the alleged acts and omissions of each defendant, as agent, were subsequently ratified and adopted by each other defendant as principal. Each of the individual defendants was responsible for the constitutional violations and torts alleged in this Complaint.

36. In committing the acts or omissions alleged herein, the defendants acted knowingly, maliciously, and with reckless or callous disregard for the constitutional rights of plaintiff, justifying an award of punitive damages under federal and Arkansas law against each individual defendant.

37. Sheriff Kelly Craddock has condoned an ongoing pattern of brutality committed by deputies and other employees assigned to the jail. Benton County and its officials, including Defendant Craddock and other defendants here, maintained or permitted:

- a. Systemic failure to provide adequate training and supervision to Sheriff's deputies with respect to constitutional limits on punishment, detention, and provision of medical care;
- b. Failure to adequately discipline or train officers involved in misconduct;

c. Selection, retention, and assignation of officers with demonstrable propensities for excessive force, violence, dishonesty, and other misconduct;

d. Condoning and encouraging officers in the belief that they can violate the rights of persons such as plaintiff with impunity, and that such conduct will not adversely affect their opportunities for promotion and other employment benefits;

e. Failure to provide proper and adequate medical care to inmates and detainees;

f. Retaining, assigning and selecting officers and deputies with known propensities for excessive force, violence, dishonest and other misconduct and failing to take adequate steps to discipline such persons.

g. Failure to practice and enforce proper reporting and investigation of use of force by Benton County Sheriff's Department employees within the jail;

h. Ratification by the highest levels of authority of the specific unconstitutional acts alleged in this Complaint.

38. As a direct and proximate result of the defendants' actions and inactions, acting individually and/or in concert, the plaintiff suffered injuries that would not have otherwise occurred. The plaintiff pleads for all special and general damages available under federal and state law and equity in an amount to be determined at trial.

JURY DEMAND

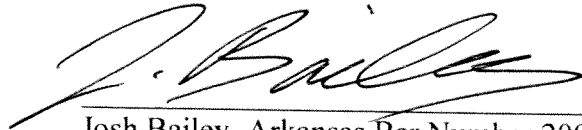
39. Plaintiff demands trial by jury.

WHEREFORE, the plaintiff, Ashley Ober, prays that this Court award her judgment against the defendants for equitable relief and compensatory and punitive damages in an amount to be determined at trial, as well as attorney's fees, reasonable costs, pre-judgment interest, and

such other and further relief as to which he may be entitled at law or equity, both general and special, and to which she is entitled.

Respectfully submitted,

ASHLEY OBER, Plaintiff, by her Attorney,

A handwritten signature in black ink, appearing to read "J. Bailey", is written over a horizontal line.

Josh Bailey, Arkansas Bar Number 2009184
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