

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

REUBEN BERRY, individually and as Personal
Representative for the Estate of RODNEY J.
BERRY,

Case No.: 2017 CA 000762

Plaintiff,

vs.

ESCAMBIA COUNTY, d/b/a Escambia County
Jail, MICHAEL TIDWELL, Escambia County
Corrections Director, in his official capacity, and
ASHLEY PALMER, CMA and DEBBIE
SMILEY, LPN, in their individual capacities and
their official capacities as employees of
Escambia County,

Defendant.

FIRST AMENDED COMPLAINT

Plaintiff, REUBEN BERRY, files this amended complaint against
defendants ESCAMBIA COUNTY, d/b/a Escambia County Jail, MICHAEL
TIDWELL, Escambia County Corrections Director, in his official capacity, and
ASHLEY PALMER, CMA and DEBBIE SMILEY, LPN, in their individual
capacities and their official capacities as employees of Escambia County states:

PRELIMINARY STATEMENT

1. This is an action brought pursuant to the provisions of the Florida
Wrongful Death Act, Ch. 768.16, et. Seq., Florida Statutes.

2. This is a civil action for damages. Plaintiff contends that while in custody at the Escambia County Jail, the defendants, ESCAMBIA COUNTY and MICHAEL TIDWELL, failed to formulate policy or institute training that would prevent the provision of inadequate medical and mental health treatment to inmates at the Escambia County Jail and defendants ASHLEY PALMER and DEBBIE SMILEY, in both their individual and official capacities, demonstrated a deliberate indifference to RODNEY BERRY's serious medical needs. The defendants' deliberate actions and/or omissions resulted in RODNEY BERRY being subjected to cruel and unusual punishment in violation of the protections guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution, which resulted in his death.

3. Plaintiff maintains that the deprivations and violations of RODNEY BERRY's constitutional rights were carried out pursuant to the rules, regulations, customs, policies, and practices of the defendants in their official capacities, and that the named defendants, acting under color of state law, knowingly caused RODNEY BERRY to be deprived of his federal constitutional rights.

4. Plaintiff requests this Court to declare that the acts and/or omissions by the defendants were unconstitutional under the United States Constitution, and by an award of compensatory damages, compensate RODNEY BERRY's estate

for the violations of his constitutional rights and deter the defendants from further participation in such unconstitutional acts and/or omissions.

5. The medical treatment provided to RODNEY BERRY by ESCAMBIA COUNTY, ASHLEY PALMER and DEBBIE SMILEY also breached the required standard of medical care causing Plaintiff damages.

JURISDICTION AND VENUE

6. This action arises under and is brought pursuant to 42 U.S.C. Section 1983 to remedy the deprivation, under color of state law, of rights guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution, and under Chapter 766, Florida Statutes.

7. Plaintiff has complied with all conditions precedent to the filing of this lawsuit, including, but not limited to, the requirements contained in Sections 766.104 and 766.106, Florida Statutes and the notice required under Ch. 768 Florida Statutes, a copy of which is attached as Exhibit A.

8. This court has jurisdiction of this action because the amount in controversy exceeds the minimum jurisdictional limit of this court.

9. Venue is proper in this court because the incidents which gave rise to this action occurred in Escambia County, Florida.

THE PARTIES

10. REUBEN BERRY is the Personal Representative of the Estate of RODNEY BERRY, Deceased, and in such capacity, brings this action for the benefit of the Estate of RODNEY BERRY.

11. At the time of his death, RODNEY BERRY left no surviving spouse. Survivors, as defined under the Florida Wrongful Death Statute, include the following:

a. JAYLEN HELTON, minor son of RODNEY BERRY;

12. At all times relevant to the incidents which gave rise to this action, RODNEY BERRY was an adult resident of Escambia County, Florida.

13. ESCAMBIA COUNTY is a body politic and corporate, duly organized, and existing under the laws of the State of Florida, and pursuant to law is capable of being sued in this Court. ESCAMBIA COUNTY is responsible for the policies, practices, and customs of the county corrections system, including the Escambia County Jail, as well as the hiring, training, control, supervision, and discipline of its corrections officers and other personnel.

14. At all times pertinent, MICHAEL TIDWELL was Director of Corrections for the Escambia County Jail and a resident of the State of Florida. MICHAEL TIDWELL had the responsibility to promulgate and publish policies

and procedures to the medical personnel at the Escambia County Jail and control their conduct within the boundaries and restrictions of the Constitution of the United States. MICHAEL TIDWELL is sued in his official capacity.

15. ASHLEY PALMER is sued in her individual capacity and also in her official capacity as medical personnel for the Escambia County Jail. ASHLEY PALMER is, and was at all relevant times mentioned herein, an adult citizen of the United States and a resident of the State of Florida. On information and belief, ASHLEY PALMER was endowed with responsibility regarding the provision of health and medical services to persons in custody of the Escambia County Jail and was charged with responsibility to ensure that all inmates under her jurisdiction received timely and adequate medical treatment.

16. DEBBIE SMILEY is sued in her individual capacity and also in her official capacity as medical personnel for the Escambia County Jail. DEBBIE SMILEY is, and was at all relevant times mentioned herein, an adult citizen of the United States and a resident of the State of Florida. On information and belief, DEBBIE SMILEY was endowed with responsibility regarding the provision of health and medical services to persons in custody of the Escambia County Jail and was charged with responsibility to ensure that all inmates under her jurisdiction received timely and adequate medical treatment.

STATEMENT OF FACTS

Notice of Constitutional Violations

17. In May 2013, the Escambia County Jail (“the Jail”) was under the direction and control of David Morgan, Escambia County Sheriff but was in the process of being transferred to the direction and control of ESCAMBIA COUNTY (“the County.”)

18. On May 22, 2013, the U.S. Department of Justice Civil Rights Division (“DOJ”) released an investigative report letter (“the DOJ Letter”) concluding conditions at the Jail “routinely violate[d] the constitutional rights of prisoners.” (See Attached Exhibit “A”, DOJ Letter). Specifically, the investigation found that “obvious and known systemic deficiencies at the Facility continue[d] to subject prisoners to . . . inadequate mental health care.” The letter was addressed to both Sheriff Morgan and to the County Administrator for Escambia County because of the transition of the Jail from the Sheriff to the County.

19. On October 1, 2013, the County d/b/a the Escambia County Commission, took direct control of the Jail from Sheriff David Morgan.

20. Upon taking control of the Jail, the County became in charge of the Jail, its budget, and its employees and became directly responsible for responding

to the May 22, 2013, DOJ Letter concerning inadequate mental health care.

21. The DOJ Letter placed the County on notice of the systemic deficiencies regarding mental health care at the Jail.

22. The County remained in control of the Jail at all times relevant to the events that are the subject of this action.

Events Surrounding Rodney Berry's Death

23. On February 14, 2015, RODNEY BERRY ("Mr. Berry") was arrested for three counts of Burglary of an Unoccupied Conveyance Unarmed, two counts of Petit Theft (Less than \$100), and one count of Criminal Mischief-200 Dollars and Under. He was incarcerated at the Escambia County Jail as a pretrial detainee.

24. On May 14, 2015, Mr. Berry was evaluated at the Escambia County Jail by Dr. Lawrence Mobley for a specific complaint of increased anxiety and feelings that "others were out to get him." Dr. Mobley increased Mr. Berry's dose of the psychiatric prescription for Benztropine Mesylate (a/k/a Cogentin) from 2 mg each night and 1 mg each morning to 3 mg twice a day for the next 120 days. Fever, vomiting and difficulty breathing are known side effects of Cogentin. If left untreated, complications from Benztropine Mesylate can result in elevated blood pressure, heat stroke, delirium, coma, convulsions, and/or respiratory arrest.

25. At approximately 11:50 PM on May 26, 2015, an inmate alerted

Officer Lonnie Pugh that Mr. Berry was vomiting. Officer Pugh provided the inmate with a mop and bucket, and another employee escorted Mr. Berry to triage to be checked by ASHLEY PALMER (“Nurse Palmer”).

26. At approximately 2:11 AM on May 27, 2015, Mr. Berry was brought to the Triage of the Urgent Care Center. He reported feeling “very hot.” Nurse Palmer documented that Mr. Berry’s skin was “warm” and “wet to the touch” but she did not take Mr. Berry’s temperature. She noted an impression of “dehydration” but did not order any basic lab work.

27. At approximately 2:30 AM Mr. Berry was cleared by Nurse Palmer. She told him to drink a pitcher of Gatorade and he was escorted back to his cell.

28. At approximately 3:58 AM Officer Pugh informed Nurse Palmer that Mr. Berry was throwing up again. Nurse Palmer refused to examine Mr. Berry and advised Officer Pugh that Mr. Berry would be placed on the “sick call list.”

29. At approximately 4:12 AM Officer Pugh advised Nurse Palmer that Mr. Berry was vomiting and defecating himself. Nurse Palmer refused to examine Mr. Berry and transferred the call to Infirmary nurse DEBBIE SMILEY (“Nurse Smiley”). Nurse Smiley refused to examine Mr. Berry, advising that Nurse Palmer had already seen Berry.

30. At approximately 4:35 AM Officer Pugh called Nurse Palmer and

asked her to check on Mr. Berry again. Nurse Palmer refused to promptly examine Mr. Berry. Nurse Palmer advised she had to pass out medications to inmates and then she would see him.

31. At approximately 4:40 AM Officer Pugh notified Sergeant Martin Wolff of Mr. Berry's condition. Sgt. Wolff visited Mr. Berry from 4:56 AM to 5:17 AM.

32. At approximately 5:01 AM Nurse Palmer spoke with Mr. Berry but did not do an examination, did not provide any medical treatment, and did not arrange for Mr. Berry to be transported to a hospital. She departed without speaking to any staff or medical personnel regarding his medical condition or need for medical treatment.

33. At approximately 5:07 AM Sergeant Wolff pleaded to Nurse Smiley that Mr. Berry be given medical attention. He told her that Mr. Berry had defecated on himself, his stomach was bloated, and he was shaking. Nurse Smiley refused to provide Mr. Berry medical treatment. Nurse Smiley told Sergeant Wolff that Mr. Berry would be given diapers and placed on nurse's sick call but there was nothing more she would do for him.

34. At approximately 6:25 AM an inmate found Mr. Berry unresponsive in his bed.

35. At 6:47 AM EMS pronounced Mr. Berry dead.

COUNT I
(Civil Rights Claim- Failure to Provide Adequate Medical Treatment)
(Official and Individual Capacities)
(Ashley Palmer and Debbie Smiley)

36. The Plaintiff incorporates and re-alleges the allegations contained in paragraphs 1 through 35 as if fully restated here.

37. Nurse Palmer and Nurse Smiley demonstrated deliberate indifference to Mr. Berry's serious medical needs.

38. The actions of Nurse Palmer and Nurse Smiley set forth above violated Mr. Berry's rights secured by the Eighth and Fourteenth Amendments to the United States Constitution not to be subjected to cruel and unusual punishment.

39. As a result of the actions of Nurse Palmer and Nurse Smiley, Mr. Berry suffered pain, suffering, discomfort, disfigurement, and death.

40. As a direct and proximate cause of the aforementioned negligence of Nurse Palmer and Nurse Smiley, the Plaintiff's decedent, survivors, and Estate have suffered damages in the form of lost support and services of Mr. Berry from the date of his death to the future, the replacement value of Mr. Berry's services, mental pain and suffering, and expenses due to his death paid by them or a portion thereof.

WHEREFORE, Plaintiff prays for the entry of judgment against defendants

jointly and severally for compensatory damages in an amount as proved at trial; for costs, expenses, and attorney's fees for this action; and such other and further relief as the court deems just and proper.

COUNT II
(Civil Rights Claim – Failure to Implement and/or Enforce Policy)
(Official Capacity)
(Michael Tidwell and Escambia County)

41. The Plaintiff incorporates and re-alleges the allegations contained in paragraphs 1 through 35 as if fully restated here.

42. At all relevant times, the County and Tidwell, acting as corrections director for Escambia County, developed, implemented, enforced, encouraged and sanctioned de facto policies, practices, and/or customs concerning the provision of medical treatment at the Escambia County Jail.

43. Prior to the incident involving Mr. Berry, the County and Tidwell were made aware of problems involving the provision of inadequate medical treatment by corrections officers and employees at the Escambia County Jail to inmates at the Escambia County Jail.

44. Neither the County nor Tidwell took any remedial actions to formulate policy or institute training that would prevent the provision of inadequate medical treatment to inmates at the Escambia County Jail, to include Mr. Berry.

45. The County and Tidwell failed to institute a policy of documentation and supervision concerning the provision of medical treatment that would have identified problems with the provision of medical treatment and prevented inadequate medical treatment from being provided to inmates at the Escambia County Jail.

46. Acting under color of law and pursuant to official policy, practice or custom, the County and Tidwell intentionally, knowingly, and recklessly failed to supervise and control on a continuing basis Nurse Palmer, thus allowing the provision of inadequate medical treatment to Mr. Berry.

47. Acting under color of law and pursuant to official policy, practice or custom, the County and Tidwell intentionally, knowingly, and recklessly failed to supervise and control on a continuing basis Nurse Smiley, thus allowing the provision of inadequate medical treatment to Mr. Berry.

48. The County and Tidwell knew or should have known that, had they exercised their duties to supervise and control the medical personnel at the Escambia County Jail, including Nurse Palmer and Nurse Smiley, Mr. Berry would not have been provided adequate medical treatment.

49. The County and Tidwell could have, by the exercise of reasonable diligence, prevented the provision of inadequate medical care to Mr. Berry but

intentionally, knowingly, or recklessly failed to do so.

50. As a result of the County's and Tidwell's actions, Mr. Berry suffered physical injuries resulting in his death, caused by the inadequate medical treatment provided by Nurse Palmer and Nurse Smiley.

51. As a direct and proximate cause of the aforementioned negligence of the County and Tidwell, the Plaintiff decedent, survivors, and Estate have suffered damages in the form of lost support and services of Mr. Berry from the date of his death to the future, the replacement value of Mr. Berry's services, mental pain and suffering, and expenses due to his death paid by them or a portion thereof.

WHEREFORE, Plaintiff demands judgment against the County and Tidwell, in his official capacity, for compensatory damages together with interest plus attorney's fees and costs, and such other relief as the court deems just and equitable.

COUNT III
(Violation of Due Process)
(Official Capacity)
(Michael Tidwell and Escambia County)

52. The Plaintiff incorporates and re-alleges the allegations contained in paragraphs 1 through 35 as if fully restated here.

53. The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits the County and Tidwell from depriving any person of

life, liberty, or process without due process of law.

54. Under federal law, constitutional due process protections apply to pretrial detainees.

55. Mr. Berry was a pretrial detainee at all times relevant to the allegations contained in this complaint.

56. The County and Tidwell violated Mr. Berry's due process rights by engaging in a pattern or practice of denying him access to adequate medical treatment.

57. Through the policies, procedures, and practices set forth above, the County and Tidwell engaged in a pattern or practice of denying Mr. Berry and other pretrial detainees at the Escambia County Jail constitutionally-required due process protections, including access to adequate medical treatment.

58. The actions and/or omissions of the County and Tidwell constitute a pattern or practice of violations of the Fourteenth Amendment to the United States Constitution.

59. The County's and Tidwell's actions and/or omissions cause serious, irreparable, and lasting harm to pretrial detainees at the Escambia County Jail, and the pretrial detainees will continue to suffer irreparable harm in the absence of relief.

WHEREFORE, Plaintiff requests this Court enter judgment declaring the County's and Tidwell's policies, procedures, practices, and patterns of conduct violated the Fourteenth Amendment to the United States Constitution, enter judgment against defendants jointly and severally for compensatory damages in an amount as proved at trial; for attorney's fees, costs and expenses; and such other and further relief as the court deems just and proper

COUNT IV
(Medical Negligence)
(Ashley Palmer, Debbie Smiley, and Escambia County)

60. The Plaintiff incorporates and re-alleges the allegations contained in paragraphs 1 through 35 as if fully restated here.

61. At all times material, Ashley Palmer and Debbie Smiley were employees of Escambia County and were acting within the scope and course of their employment with Escambia County.

62. At all times material, Escambia County was legally responsible for the negligence of its employees including the negligence of Ashley Palmer and Debbie Smiley which resulted in Mr. Berry's death.

63. At all times material, Escambia County, Ashley Palmer, and Debbie Smiley owed Mr. Berry a duty to provide Mr. Berry with medical care that met the prevailing professional standard of care for reasonably prudent similar health care

providers.

64. Ashley Palmer and Debbie Smiley failed to act and notify appropriate medical professionals despite the obvious nature of Mr. Berry's serious medical condition.

65. By failing to provide any treatment or to notify appropriate superior medical professionals, Ashley Palmer and Debbie Smiley breached the required standard of medical care.

66. Specifically, Ashley Palmer and Debbie Smiley were negligent and deviated from the standard of care by:

- a. Refusing to examine Mr. Berry on the morning of May 27, 2015;
- b. Failing to notify appropriate medical professionals of Mr. Berry's condition on the morning of May 27, 2015; and
- c. Failing to provide Mr. Berry appropriate treatment for his condition on the morning of May 27, 2015.

67. The negligent acts of Ashley Palmer and Debbie Smiley were the direct and proximate cause of Mr. Berry's death and Plaintiff's damages.

68. As a direct and proximate cause of the aforementioned negligence of Nurse Palmer, Nurse Smiley, the County, and Tidwell, the Plaintiff decedent, survivors, and Estate have suffered damages in the form of lost support and

services of Mr. Berry from the date of his death to the future, the replacement value of Mr. Berry's services, mental pain and suffering, and expenses due to his death paid by them or a portion thereof.

WHEREFORE, Plaintiff prays for the entry of judgment against defendants jointly and severally for compensatory damages in an amount as proved at trial; for costs and expenses; and such other and further relief as the court deems just and proper.

Plaintiff hereby demands a jury trial.

DATED on August 2, 2017.

/s/ Eric D. Stevenson

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