

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at LEXINGTON

[Filed Electronically]

DAVID JONES, individually and on behalf)
of all persons similarly situated,)
)
PLAINTIFF)
)
v.)
)
CLARK COUNTY, KENTUCKY)
Serve: Henry Branham)
County Judge-Executive)
County Courthouse)
34 South Main)
Winchester, KY 40391)
)
-and-)
)
FRANK DOYLE, individually)
Serve: Office of Clark County Jailer)
30 Wall Street)
Winchester, KY 40391)
)
DEFENDANTS.)

CLASS ACTION COMPLAINT

I. Introduction

1. Plaintiff David Jones files this class action complaint in his individual capacity and on behalf of all persons who, while incarcerated or detained at the Clark County Detention Center (“the Jail”), have been wrongfully deprived of their property without due process of law, and in violation of their clearly-established constitutional, statutory, and common law protections, by the policy, custom and/or practice at the Jail of charging persons admitted to the Jail – *even those like Plaintiff who were subsequently proven innocent* – for the costs of their incarceration. Such costs are routinely levied by the Jail despite the absence of a requirement by a sentencing court for

reimbursement of the county for expenses incurred by reason of such person's confinement, in violation of KRS § 441.265, and Plaintiff and the class' constitutional and common law rights.

2. On information and belief, numerous persons admitted to the Jail have been subjected to deprivation of their cash and other property by operation of such policies, customs and/or practices and the wrongful conduct described below. On information and belief, such policies, customs and/or practices have caused consequential and special damages to some or all such persons in addition to the actual damages represented by the funds retained.

II. Jurisdiction and Venue

3. Plaintiff, and all others similarly situated, seek recovery of actual and punitive damages from Defendants under federal, state, and common law. As Clark County, Kentucky is the location of all acts pertinent to Plaintiff's claims, venue is proper in this Court.

III. Parties

4. Plaintiff is a resident of Clark County.

5. Defendant Clark County, Kentucky, at all times mentioned herein, employed, was responsible for the establishment of policies either formally or by custom for, and was responsible for the employment, training, supervision and conduct of, Jailer Frank Doyle, and the officers and employees of the Jail.

6. Defendant Doyle, at all times mentioned herein, was the Clark County Jailer, and was responsible for the establishment of policies, customs and practices governing the employment, training, supervision and conduct of, officers and employees staffing the Jail, and the establishment of policies, customs and practices governing conduct and practices of the Jail's officers and employees regarding, *inter alia*, property of persons like Plaintiff, and, on information and belief, individually participated in the wrongful conduct made the basis of this complaint.

IV. Nature of Defendants' Conduct

7. Defendants engaged in the conduct described below under color of state law, and in accordance with the policies, customs and practice of the County and the Jail. The offenses described below resulted from the failure of Defendants to employ qualified persons for positions of authority, and/or to properly or conscientiously train and supervise the conduct of such persons after their employment, and/or to promulgate appropriate operating policies and procedures either formally or by custom and practice to protect the constitutional, statutory, and common law rights of inmates in the Jail's care and custody. Defendants created, approved or knowingly acquiesced in a policy, custom and/or practice under which constitutional, statutory and common law violations occurred, and/or promulgated operating policies and procedures either formally or by custom and practice which violate the constitutional, statutory, and common law rights of inmates in the Jail's care and custody and after their release. Defendants' conduct was intentional or grossly negligent, and was indicative not only of deliberate indifference to, but active malice and a total and reckless disregard for the constitutional, statutory, and common law rights of Plaintiff and the class, justifying an award of punitive damages in addition to the actual damages which Plaintiff and the class are entitled to recover.

V. Class Action

8. Plaintiff brings this action as a class action pursuant to Rule 23.01, *et seq.* of the Kentucky Rules of Civil Procedure. The class consists of all persons admitted to, incarcerated in, or released from the Jail who have been charged the costs of their confinement without an order of a sentencing court requiring that they reimburse the county for expenses incurred by reason of such person's confinement.

9. Plaintiff will fairly and adequately protect the interests of all class members. He is a member of the class and his claims are typical of the claims of all class members. Plaintiff will aggressively pursue the interests of the entirety of the class. Plaintiff's interest in obtaining injunctive relief and actual, special, consequential and punitive damages for the violations of his statutory and common law rights and privileges are consistent with and not antagonistic of those of any other person within his class.

10. Given the events which transpired upon his admission to, incarceration at, and release from the Jail, Plaintiff alleges that Defendants have a policy, custom and/or practice of charging all persons admitted to the Jail the costs of their confinement without an order of a sentencing court requiring that they reimburse the county for expenses incurred by reason of such person's confinement, and irrespective of such person's innocence of the charges for which they were confined.

11. Such conduct violates the rights of persons as to whom there exists no order of a sentencing court requiring that they reimburse the county for expenses incurred by reason of such person's confinement. The only question that remains to be resolved is whether Plaintiff and the members of the class are entitled to declaratory and injunctive relief, and to an award of compensatory and punitive damages and, if so, the extent of such an award.

12. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because:

- a. A multiplicity of suits with consequent burden on the Court and Defendants should be avoided;
- b. It may be virtually impossible for all class members to intervene as parties-plaintiff in this action; and
- c. Upon adjudication of Defendants' liability, claims of the class members can be determined by this Court.

VI. Facts

13. KRS 441.265 provides in relevant part that:

a. A prisoner in a county jail shall be required by the sentencing court to reimburse the county for expenses incurred by reason of the prisoner's confinement as set out in this section, except for good cause shown.

b. The jailer may adopt, with the approval of the county's governing body, a prisoner fee and expense reimbursement policy, which may include, but not be limited to, the following:

- i. An administrative processing or booking fee;
- ii. A per diem for room and board of not more than fifty dollars (\$50) per day or the actual per diem cost, whichever is less, for the entire period of time the prisoner is confined to the jail;
- iii. Actual charges for medical and dental treatment; and
- iv. Reimbursement for county property damaged or any injury caused by the prisoner while confined to the jail.

c. Rates charged may be adjusted in accordance with the fee and expense reimbursement policy based upon the ability of the prisoner confined to the jail to pay, giving consideration to any legal obligation of the prisoner to support a spouse, minor children, or other dependents. The prisoner's interest in any jointly owned property and the income, assets, earnings, or other property owned by the prisoner's spouse or family shall not be used to determine a prisoner's ability to pay.

d. Payment of any required fees may be automatically deducted from the prisoner's property or canteen account.

14. Nothing in KRS 441.265 permits a jail to charge anyone the costs of their confinement absent a court order, or without such person's consent, or without consideration of such person's support obligations or need for such funds to pay for more pressing obligations (such as rent, electricity, water, medicine, etc.), or without regard to such person's guilt of the offense for which they were arrested or are detained pending trial, or without an accounting of funds collected, retained and returned, or without regard to the consequences of such action. The legislative history of KRS 441.265 shows that the statute was enacted only after it was amended to deny counties the right to withhold such monies, and to *require* an order of a *sentencing* court.

15. Plaintiff was arrested and admitted to the Jail on October 26, 2013. He remained there until his release on December 15, 2014. On April 2, 2015, all the charges for which Plaintiff was incarcerated were dismissed because Plaintiff had proved he was entirely innocent of such offenses.

16. After Plaintiff's release from the Jail, he received a written demand from the Jail that he pay *more than \$4000.00 for the costs of his confinement*. Plaintiff has paid \$20.00 toward the asserted debt, but on advice of counsel will pay no more.

VII. Causes of Action

A. Count I

17. Paragraphs 1-16 above are incorporated herein by reference and made this Paragraph 17.

18. Plaintiff's and the class' treatment by Defendants is the result of a continuing pattern of misconduct and is the result of policies, procedures, customs and practices of Defendants, either written or unwritten, that are systematically applied to all persons admitted to, incarcerated in, and/or released from the Jail, pursuant to which persons like Plaintiff are deprived of their property without due process of law, in violation of the due process guarantees of the Fourteenth Amendment, and are subjected to unreasonable searches and seizures in violation of the Fourth Amendment, all in violation of the Civil Rights Act of 1871, 42 U.S.C. §1983. Such practices constitute an arbitrary use of government power, and evince a total, intentional and unreasonable disregard for and deliberate indifference to the constitutional, state and common law rights of persons in the Jail's care and custody, or who have been released from the Jail, including Plaintiff and the members of the class, and the wholesale violations of those rights likely to result from the systematic pursuit of such policies, customs and practices.

19. As a result of the foregoing, Plaintiff and the class, through Defendants' intentional or grossly negligent conduct, bad faith and deliberate indifference to their rights, were deprived of their property without due process of law in violation of the Fourteenth Amendment, and were subjected to an unreasonable seizure in violation of the Fourth Amendment to the United States Constitution, all in violation of the Civil Rights Act of 1871, 42 U.S.C. §1983.

B. Count II

20. Paragraphs 1-19 above are incorporated herein by reference and made this Paragraph
20.

21. By virtue of the foregoing, Defendants were negligent and grossly negligent, all to the damage of the Plaintiffs and the class.

C. Count III

22. Paragraphs 1-21 above are incorporated herein by reference and made this Paragraph
22.

23. By virtue of the foregoing, Defendants engaged in a conspiracy to wrongfully deprive Plaintiff and the class of their property, all to the damage of Plaintiff and the class.

D. Count IV

24. Paragraphs 1-23 above are incorporated herein by reference and made this Paragraph
24.

25. By virtue of the foregoing, Defendants converted the property of the Plaintiffs and the class.

E. Count V

26. Paragraphs 1-25 above are incorporated herein by reference and made this Paragraph
26.

27. By virtue of the foregoing, Defendants fraudulently deprived the Plaintiffs and the class of their property.

F. Count VI

28. Paragraphs 1-27 above are incorporated herein by reference and made this Paragraph 28.

29. By virtue of the foregoing, Plaintiff and the class seek restitution in equity of all cash and checks seized and retained by Defendants without any order of a sentencing court.

G. Count VII

30. Paragraphs 1-29 above are incorporated herein by reference and made this Paragraph 30.

31. If KRS 441.265 can properly be interpreted to permit all or any part of Defendants' practice of confiscating and keeping cash and checks in the possession of persons admitted to the Jail without any requirement of a sentencing court, and/or any adjudication of whether such persons are even guilty or innocent of the charges leading to their arrest, and/or any adequate and meaningful opportunity to object to or challenge such practice, among other things, such statute violates due process, constitutes an unreasonable seizure and excessive fine, is unconstitutional, violates the Fourth and Fourteenth Amendments to the United States Constitution and Sections 1, 2, 10 and 17 of the Kentucky Constitution, and Plaintiffs request that the Court declare it so and permanently enjoin its operation and implementation.

VIII. Damages

32. Paragraphs 1-31 above are incorporated herein by reference and made this Paragraph 32.

33. As a consequence of Defendants' wrongful conduct, Plaintiff and the members of the class have been wrongfully deprived of their property, in violation of the Plaintiff's and the class' constitutional, statutory, and common law rights.

34. As a result, Plaintiff and the members of the class are entitled to recover all actual, consequential and special damages arising from the conduct of Defendants. Furthermore, Defendants' violations of the constitutional, statutory, and common law rights of the Plaintiff and the class were knowing, intentional, malicious and evinced a total and reckless disregard for the rights of Plaintiff and the class, entitling them to recover punitive damages from Defendants in order to deter such conduct in the future.

IX. Declaratory Judgment and Permanent Injunction

35. Paragraphs 1-34 above are incorporated herein by reference and made this Paragraph 35.

36. In addition to the foregoing, Plaintiff and the class request that this Court issue a declaratory judgment and injunction enjoining Defendants from any further pursuit of policies, procedures, customs or practices which resulted in persons being charged for the costs of their confinement absent an order of a sentencing court requiring that they reimburse the county for expenses incurred by reason of such person's confinement..

WHEREFORE, Plaintiff and the class he represents request (a) that this action proceed as a class action under Rules 23.01, *et seq.*, of the Kentucky Rules of Civil Procedure; and (b) that they and all members of the class (i) be granted the declaratory and injunctive relief requested herein, (ii) be awarded actual, consequential, special and punitive damages, and (iii) be awarded all costs, attorney fees, pre- and post-judgment interest and all other relief to which they are entitled.

Respectfully submitted,

/s/ Gregory A. Belzley

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