

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
FRANKFORT DIVISION  
[FILED ELECTRONICALLY]

GARY MUMPHREY, Individually )  
and on behalf of all others similarly )  
situated, )  
PLAINTIFF )

v. )

CIVIL ACTION NO. \_\_\_\_\_

SHELBY COUNTY, KENTUCKY )  
SERVE: County Judge/ )  
Executive )  
Rob Rothenburger )  
501 Main Street )  
Shelbyville, KY 40065 )

-AND- )

BOBBY WAITS, Individually and )  
in his official capacity as the )  
Shelby County Jailer )  
1000 Detention Road )  
Shelbyville, KY 40065 )

-AND- )

JOHN and JANE DOES, Nos. 1, 2 and 3, )  
Individually and in their official capacity )  
as medical professionals, officers and )  
employees of the Laurel County )  
Detention Center, )

DEFENDANTS. )

CLASS ACTION COMPLAINT

I. Introduction

1. Plaintiff Gary Mumphy files this action in his individual capacity and on behalf of all persons who, while incarcerated at the Shelby County Detention Center (“the Jail”) have acquired infectious diseases, such as methicillin-resistant *staphylococcus aureus* (“MRSA”).

2. On information and belief, numerous inmates of the Jail have been infected with infectious diseases such as MRSA as a consequence of Defendants' abject failure to protect such inmates, and their neglect and deliberate indifference. There are questions of law and fact in this case that are common to all of such inmates. Plaintiff's claims are typical of those of the class, and he will fairly and adequately protect the interests of the class.

## **II. Jurisdiction and Venue**

3. Plaintiff, and all others similarly situated, seek actual and punitive damages from Defendants under the Civil Rights Act of 1871, 42 U.S.C. §1983, for gross and unconscionable violations of the rights, privileges and immunities guaranteed them by the Eighth and Fourteenth Amendments to the Constitution of the United States. Accordingly, this Court has jurisdiction of this case pursuant to the provisions of 28 U.S.C. §1331 and §1343. Plaintiff and the other members of his class also seek declaratory and injunctive relief, as well as damages under the pendent jurisdiction of this Court, for negligence, gross negligence and intentional infliction of emotional distress. As Shelby County, Kentucky is the residence of all Defendants to this action and the location of all acts pertinent to this suit, venue is proper in this Court.

## **III. Class Action**

4. Plaintiff brings this action as a class action pursuant to Rules 23(b)(1), (2) and (3) of the Federal Rules of Civil Procedure. The class consists of all persons who, while incarcerated at the Jail, have acquired infectious diseases such as MRSA as a consequence of Defendants' failure to protect such inmates and their neglect and deliberate indifference.

5. 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 and punitive damages for the violations of his constitutional rights and privileges are consistent with and not antagonistic of those of any other person within his class.

6. Given the circumstances of his incarceration, as detailed below, Plaintiff alleges that Defendants have a policy, custom and/or practice of failing to protect inmates from conditions that foster and persons that have infectious diseases such as MRSA, incarcerating inmates with infected persons without such inmates' knowledge, and failing to train Jail employees or inmates or establish or require adherence to policies, customs and practices to prevent conditions that foster the growth and spread of the disease and to prevent inmates from contracting the disease.

7. Such conduct violates such inmates' rights under the Eighth and Fourteenth Amendments to the Constitution of the United States, and 42 U.S.C. §1983. The only question that remains to be resolved is whether Plaintiff and the members of the class are entitled to declaratory and injunctive relief, or to an award of compensatory and punitive damages and, if so, the extent of such an award.

8. 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 courts and Defendants should be avoided.
- b. It may be virtually impossible for all class members to intervene as parties-plaintiff in this action.
- c. Upon adjudication of Defendants' liability, claims of the class members can be determined by this Court.

#### **IV. Parties**

9. Plaintiff is a resident of Shelby County, Kentucky.

10. Defendant, Shelby County, at all times mentioned herein, was responsible (a) for the conditions in the Shelby County Detention Center, (b) for the establishment of policies either

formally or by custom and practice for, and for the employment, training, supervision and conduct of, the officers and employees of the Shelby County Detention Center.

11. Defendant, Bobby Waits, Jailer of Shelby County, was responsible (a) for the conditions in the Shelby County Detention Center, (b) for the establishment of policies either formally or by custom and practice for, and for the employment, training, supervision and conduct of, the officers and employees of the Shelby County Detention Center. In addition, Defendant Sizemore may also have participated in the mistreatment of Plaintiff described below individually and/or in his official capacity.

12. Defendants John and Jane Does Nos. 1, 2 and 3, identities presently unknown, were at all times mentioned herein medical professionals, officers and/or employees of the Jail (a) directly responsible for (i) the care and custody of Plaintiff, (ii) the conditions of the Jail, and (iii) the policies, customs and practices pertaining thereto, and (b) who participated in the mistreatment of Plaintiff described below individually and/or in their official capacities.

#### **V. Nature of Defendants' Conduct**

13. Defendants, individually and in conspiracy with one another, engaged in the conduct described below under color of the law of the Commonwealth of Kentucky and Shelby County. 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 properly fund ongoing Jail operations, and/or to promulgate appropriate operating policies and procedures either formally or by custom and practice to protect the constitutional rights of the citizens of the Commonwealth of Kentucky. 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 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.

#### **VI. Facts**

14. Originally built to house 118 inmates, the Shelby County Detention Center in the fiscal year ending June 30, 2005 imprisoned, on a daily average, 146 people, 124% of its designed capacity. The excess was composed entirely of state inmates, for which Laurel County was paid a per diem of \$30.51 per day per inmate by the Commonwealth of Kentucky.

15. The Shelby County Detention Center is habitually overcrowded. The consequent and entirely too predictable result is the policy, custom and practice of Defendants of ignoring adverse jail conditions that foster the growth and spread of infectious disease. Plaintiff Gary Mumphrey, a citizen of this Commonwealth, entered this environment on June 2, 2005, to serve a sentence for expired license tags and for having no car insurance.

16. In the course and as a result of his incarceration in the Jail, Plaintiff acquired MRSA, a flesh-eating, penicillin-resistant bacteria. MRSA is contagious and can be chronic, painful and disfiguring. Once acquired, it can be transmitted to loved ones, fellow employees, customers and other persons with whom an infected individual is in close contact unless serious precautions are taken. MRSA can have an extremely damaging impact upon an individual's health, employability, insurability and relations with loved ones. Other inmates who were incarcerated with Plaintiff acquired MRSA, as well. At present, no reasonable estimation can be made of the number of persons incarcerated at the Jail who have become infected with MRSA as a result of Defendants' conduct.

17. Defendants have failed to institute policies, customs or practices, or to employ qualified persons, or to properly train Jail employees:

(a) to prevent or alleviate conditions in the Jail that foster and propagate infectious diseases; and

(b) to diagnose MRSA or other infectious diseases, to deal with infected inmates, or to prevent other inmates from contracting such diseases.

18. Defendants, as a consequence of their deliberate indifference to the health and welfare of Plaintiff and the class, not to mention their Eighth and Fourteenth Amendment rights, failed to protect Plaintiff and the class from infectious diseases, and exposed them to MRSA and other infectious diseases, all in violation of clearly-established constitutional rights. It was unconscionable and outrageous for Defendants to, among other things, to incarcerate Plaintiff in conditions and with inmates infected with MRSA, and to not provide Plaintiff with any warning or training in steps necessary to avoid acquiring MRSA.

## **VII. Causes of Action**

### **A. Count I**

19. Paragraphs 1-18 above are incorporated herein by reference and made this Paragraph 19.

20. Plaintiff's and the class' treatment at the Jail, and the Jail's conditions, described above, were the result of a continuing pattern of misconduct and is the result of policies, procedures, customs and practices of Shelby County, either written or unwritten, that are systematically applied to the Shelby County Detention Center and whenever an individual is incarcerated at the Jail, including but not limited to the persistent practice of overcrowding the Jail. Such practices constitute an arbitrary use of government power, and evince a total, intentional and unreasonable disregard for and deliberate indifference to the health, well-being and constitutional and common law rights of persons incarcerated at 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.

21. As a result of the foregoing, Plaintiff and his class, through Defendants' failure to protect, and their deliberate indifference and intentional or grossly negligent conduct, were deprived without due process of law of their right not to be subjected to cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution in violation of the Civil Rights Act of 1871, 42 U.S.C. §1983.

22. Moreover, given the pre-existing law that clearly prohibited Defendants' conduct, Defendants' treatment of Plaintiff and the members of his classes were intentional, wanton and malicious, and were indicative of Defendants' total and reckless disregard of and deliberate indifference to the rights of, and rise of harm to, Plaintiff and the other members of the classes.

**B. Count II**

23. Paragraphs 1-22 above are incorporated herein by reference and made this Paragraph 23.

24. The injuries to Plaintiff and the classes were the result of Defendants' conscious, knowing and wilful violation of applicable provisions of Kentucky's Constitution, laws and regulations, including but not limited to Title 501 KAR Chapter 3.

**C. Count III**

25. Paragraphs 1-24 above are incorporated herein by reference and made this Paragraph 25.

26. By virtue of the foregoing, Defendants, without justification, negligently or intentionally inflicted upon Plaintiff and the class severe mental and emotional distress.

**D. Count IV**

27. Paragraphs 1-26 above are incorporated herein by reference and made this Paragraph 27.

28. By virtue of the foregoing, Defendants were negligent and grossly negligent, and violated the standards applicable to their professions, all to the damage of the Plaintiff and the class.

**VIII. Damages**

29. Paragraphs 1-28 above are incorporated herein by reference and made this Paragraph 29.

30. As a consequence of Defendants' wrongful conduct, Plaintiff and the members of the class have been infected with diseases that will have a substantial and deleterious impact on their health, their employment, their insurability, and their relations with their loved ones.

31. As a result of the foregoing, Plaintiff and the members of the classes have sustained medical expenses and lost wages, past and future, experienced unnecessary pain, suffering and disfigurement and severe and unjustified mental and emotional distress, and are entitled to recover actual damages. Furthermore, Defendants' violations of the constitutional and common law rights of the Plaintiff and the class were knowing, intentional, cruel, malicious and evinced a total and reckless disregard for the rights of Plaintiff and the classes entitling them to recover punitive damages from Defendants in order to deter such conduct in the future.

**IX. Declaratory Judgment and Permanent Injunction**

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

33. In addition to the foregoing, Plaintiff and the class request that this Court issue a declaratory judgment deeming unconstitutional any and all ordinances, regulations, policies,



procedures, customs or practices which resulted in their incarceration under conditions in which they could acquire infectious diseases, and further request that this Court permanently order Defendants to refrain from following or enforcing such ordinances, regulations, policies, procedures, customs or usages, to conform their conduct to the requisites of the Constitutions of the United States and Kentucky, and to applicable Kentucky laws and regulations, and to alleviate all jail conditions that contributed to the damages sustained by Plaintiff and the classes.

**WHEREFORE**, Plaintiff and the class he represents request (a) that this action proceed as a class action under Fed. R. Civ. P. 23 and (b) a trial by jury, and further request that he and all members of the class (c) be awarded actual and punitive damages, (d) be granted the declaratory and injunctive relief requested herein, and (e) be awarded all costs, attorney fees, pre- and post-judgment interest and all other relief to which they are entitled.

Respectfully submitted,

**DINSMORE & SHOHL LLP**

/s/ Gregory A. Belzley  
Gregory A. Belzley  
1400 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202  
(502) 540-2300 Telephone  
(502) 585-2207 Facsimile

*Counsel for Plaintiff*