

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

[Filed Electronically]

Christopher Bagshaw, Barry)	
Chesser, William Farris, Tony)	
Huff, Troy Ingram, Kenneth Kipp,)	
Mark Lefler, Norris Martin,)	
Richard Metzger, Stafford)	
Mitchell, Gary Mumphrey, Elvin)	
Noble, Alfred Perry, Debra)	
Probus, Beata Ray, Dennis Rogers,)	C. A. NO. 3:06-CV-070-KKC
David Settles, and ANTHONY)	
MANNING, JEFFERY PERRY,)	
PAULINIA REECE, and)	
JAMES ROSE,)	
)	
PLAINTIFFS)	
v.)	
)	
SHELBY COUNTY, KENTUCKY, et al.,)	
)	
DEFENDANTS.)	

SECOND AMENDED COMPLAINT

I. Introduction

1. Plaintiffs, while incarcerated at the Shelby County Detention Center (“the Jail”), all 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. Plaintiffs anticipate subsequent amendments to this complaint to add additional plaintiffs having similar claims against Defendants.

II. Jurisdiction and Venue

3. Plaintiffs 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. Plaintiffs 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. Parties

4. Plaintiffs were all formerly inmates of the Shelby County Detention Center.

5. 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 (c) for the employment, training, supervision and conduct of, the officers and employees of the Shelby County Detention Center.

6. 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 (c) 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 Plaintiffs described below individually and/or in his official capacity.

7. 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 Plaintiffs, (ii) the conditions of the Jail, and (iii) the policies, customs and practices pertaining thereto, and (b) who participated in the mistreatment of Plaintiffs described below individually and/or in their official capacities.

IV. Nature of Defendants' Conduct

8. 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 Plaintiffs, justifying an award of punitive damages in addition to the actual damages which Plaintiffs are entitled to recover.

V. Facts

9. 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 Shelby County was paid a per diem of \$30.51 per day per inmate by the Commonwealth of Kentucky.

10. The Shelby County Detention Center, during Plaintiffs incarceration, was therefore habitually overcrowded. The consequent and entirely too predictable result was the policy, custom and practice of Defendants of ignoring adverse jail conditions that fostered the growth and spread of infectious disease.

11. In the course and as a result of their incarceration in the Jail, and Defendants' failure to protect them and deliberate indifference to their health and medical needs, Plaintiffs 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 Plaintiffs 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.

12. Plaintiffs all acquired MRSA as a consequence of Defendants' failure 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, such as overcrowding, that foster and propagate infectious diseases; and

(b) to diagnose MRSA or other infectious diseases, to deal with or isolate infected inmates from healthy ones, or to prevent other inmates from contracting such diseases by educating them concerning such diseases and methods for avoiding infection and transmission.

13. Defendants, as a consequence of their deliberate indifference to the health and welfare of Plaintiffs, not to mention their Eighth and Fourteenth Amendment rights, failed to protect Plaintiffs 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, among other things, to incarcerate Plaintiffs in conditions and with inmates infected with MRSA, and to not provide Plaintiffs with any warning or training in steps necessary to avoid acquiring or transmitting MRSA.

VI. Causes of Action

A. Count I

14. Paragraphs 1-13 above are incorporated herein by reference and made this Paragraph 14.

15. Plaintiffs' 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

evinced 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 Plaintiffs, and the wholesale violations of those rights likely to result from the systematic pursuit of such policies, customs and practices.

16. As a result of the foregoing, Plaintiffs, 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.

17. Moreover, given the pre-existing law that clearly prohibited Defendants' conduct, Defendants' treatment of Plaintiffs was intentional, wanton and malicious, and was indicative of Defendants' total and reckless disregard of and deliberate indifference to the rights of, and rise of harm to, Plaintiffs.

B. Count II

18. Paragraphs 1-17 above are incorporated herein by reference and made this Paragraph 18.

19. The injuries to Plaintiffs 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

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

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

D. Count IV

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

23. 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 Plaintiffs.

VII. Damages

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

25. As a consequence of Defendants' wrongful conduct, Plaintiffs have been infected with diseases that have had and will have a substantial and deleterious impact on their health, their employment, their insurability, and their relations with their loved ones.

26. As a result of the foregoing, Plaintiffs 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 Plaintiffs were knowing, intentional, cruel, malicious and evinced a total and reckless disregard for the rights of Plaintiffs entitling them to recover punitive damages from Defendants in order to deter such conduct in the future.

VIII. Declaratory Judgment and Permanent Injunction

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

28. In addition to the foregoing, Plaintiffs 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 Plaintiffs.

WHEREFORE, Plaintiffs request (a) a trial by jury, and further request that they (b) be awarded actual and punitive damages, (c) be granted the declaratory and injunctive relief requested herein, and (d) 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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was on this 27th day of May, 2009, filed through the ECF system, which will send a notice of electronic filing to:

Scott Karem
Sitlinger, McGlincy, Theiler & Karem
455 S. 4th Street
Louisville, Ky 40202

Stacey A. Blankenship
DENTON & KEULER
P. O. Box 929
Paducah, KY 42002-0929

/s/ Gregory A. Belzley
Counsel for Plaintiff