

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

LESTER NAPIER, Individually)
and on behalf of all others similarly)
situated,)
PLAINTIFF)

v.)

CIVIL ACTION NO. _____

LAUREL COUNTY, KENTUCKY)
SERVE: County Judge/)
Executive)
Lawrence Kuhl)
204 Courthouse)
101 S. Main Street)
London, KY 40741)

-AND-)

JACK SIZEMORE, Individually and)
in his official capacity as the)
Laurel County Jailer)
206 West 4th Street)
London, KY 40741)

-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 Lester Napier files this action in his individual capacity and on behalf of all persons who, while incarcerated at the Laurel County Detention Center (“the Jail”), (a) have acquired infectious diseases, and (b) have been denied appropriate and necessary medication and

medical attention for their serious medical needs, all as a consequence of Defendants' neglect and deliberate indifference.

2. On information and belief, numerous inmates of the Jail (a) have been infected with methicillin-resistant *staphylococcus aureus* ("MRSA") as a consequence of Defendants' failure to protect such inmates from such infections, and (b) have been denied appropriate and necessary medication and medical attention as a consequence of Defendants' neglect of and deliberate indifference to such inmates' medical needs. There are questions of law and fact in this case that are common to all affected present and former inmates at the Jail. Plaintiff's claims are typical of those of the respective classes, and he will fairly and adequately protect the interests of the classes.

II. Jurisdiction and Venue

3. Plaintiff, and all others similarly situated, seek recovery of 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 classes 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 Laurel 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 classes consist of all persons who, while incarcerated at the Jail (a) have acquired infectious diseases as a consequence of Defendants' failure to protect such

inmates from such infections, and (b) have been denied appropriate and necessary medical attention and medication as a consequence of Defendants' neglect of and deliberate indifference to their medical needs.

5. Plaintiff will fairly and adequately protect the interests of all class members. He is a member of the classes and his claims are typical of the claims of all class members. Plaintiff will aggressively pursue the interests of the entirety of the classes. 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 classes.

6. Given the circumstances of his incarceration, as detailed below, Plaintiff alleges that Defendants have a policy, custom and/or practice of:

(a) failing to prevent and protect inmates from conditions that foster and persons that have infectious diseases such as MRSA, incarcerating inmates with infected persons without such inmates' knowledge, 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; and

(b) denying inmates appropriate and necessary medication and medical attention as a consequence of Defendants' deliberate indifference to such inmates' medical needs.

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 classes 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 Whitley County, Kentucky.

10. Defendant, Laurel County, at all times mentioned herein, was responsible (a) for the conditions in the Laurel 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 Laurel County Detention Center.

11. Defendant, Jack Sizemore, Jailer of Laurel County, was responsible (a) for the conditions in the Laurel 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 Laurel 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 medical 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 Laurel 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 to provide conditions and medical care that meet constitutional standards, 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 classes, justifying an award of punitive damages in addition to the actual damages which Plaintiff and the classes are entitled to recover.

VI. Facts

14. Originally built to house 264 inmates, the Laurel County Detention Center in the fiscal year ending June 30, 2005 imprisoned, on a daily average, 414 people, 157% of its designed capacity. The excess was composed primarily 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. In addition, in the same fiscal year, the Laurel County Detention Center ranked near the bottom among Kentucky jails in its inmate cost per day (excluding debt service). While inmate cost per day among Kentucky jails generally averaged \$31.47, the inmate cost per day at the Laurel County Detention Center was only \$18.34 -- well below the per diem Laurel County was paid for state inmates.

16. Medical costs per inmate day in the Laurel County Detention Center were just \$1.25, just a little more than one-half the state average of \$2.33. Its payroll costs were comparable to -- and in some instances less than -- jails having significantly *smaller* inmate populations.

17. Based on the information above and belief, the Laurel County Detention Center is habitually overcrowded, understaffed, and underfunded. The consequent and entirely too predictable result is the policy, custom and practice of Defendants of ignoring adverse jail conditions and the serious medical needs of the Jail's inmate population. Plaintiff Lester Napier, a citizen of this Commonwealth, entered this environment on August 22, 2005.

18. Plaintiff is in poor health and was uniquely susceptible to all the ills present in the Jail. His intake sheet shows that he suffers from, among other things, heart and lung problems and high blood pressure, and is prescribed a variety of medications by his treating physicians to address his various maladies.

19. After entering the Jail, Plaintiff was totally deprived for days of heart medication lawfully prescribed by his treating physician. Others incarcerated with Plaintiff were deprived of prescription medications, as well. At present, no reasonable estimation can be made of the number of persons incarcerated at the Jail who have been denied lawful medications prescribed by treating physicians to address serious mental and physical illnesses as a result of Defendants' conduct.

20. In addition, as a consequence of his incarceration in the Jail, Plaintiff acquired MRSA, a flesh-eating, penicillin-resistant bacteria. MRSA is contagious and can be painful and disfiguring. Once acquired, it can become chronic, and 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.

21. After Plaintiff was infected with MRSA, his condition was ignored by Defendants for so long that when he was finally taken to the hospital, the infected area of his body was gangrenous and had to be excised.

22. 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;

(b) to acquire and properly dispense to inmates medications lawfully prescribed by treating physicians to address serious mental and physical illnesses;

(c) to diagnose MRSA or other infectious diseases, to deal with infected inmates, or to protect other inmates from contracting such diseases; and

(d) to attend to the medical needs of inmates at the Jail.

23. Defendants, as a consequence of their deliberate indifference to the health and welfare of Plaintiff and the classes, not to mention their Eighth and Fourteenth Amendment rights, failed to protect Plaintiff and the classes from infectious diseases, deprived Plaintiff and the classes of lawfully prescribed and necessary medications, exposed them to MRSA and other infectious diseases, and were deliberately indifferent to their serious medical needs, all in violation of clearly-established constitutional rights. It was unconscionable and outrageous for Defendants to, among other things, deprive Plaintiff of his lawfully prescribed and necessary heart medication, to fail to protect Plaintiff from infectious diseases in the Jail, to incarcerate Plaintiff in conditions and with

inmates infected with MRSA, to not provide Plaintiff with any warning or training in steps necessary to avoid acquiring MRSA, and to deny Plaintiff obviously needed medical treatment until a MRSA-infected area of his body had become gangrenous.

VII. Causes of Action

A. Count I

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

25. Plaintiff's and the classes' 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 Laurel County, either written or unwritten, that are systematically applied to the Laurel County Detention Center and whenever an individual is incarcerated at the Jail, including but not limited to the persistent practice of overcrowding, underfunding, undertraining, undermaintaining, and understaffing 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.

26. As a result of the foregoing, Plaintiff and his classes, 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.

27. 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 harm to, Plaintiff and the other members of the classes.

B. Count II

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

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

C. Count III

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

31. 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 classes.

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 classes:

(a) 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; and

(b) have been denied necessary and appropriate medication and medical care for serious medical needs.

34. 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

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

36. In addition to the foregoing, Plaintiff and the classes 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 or their medical needs could be ignored, and further request that this Court permanently order Defendants to refrain from following or enforcing such ordinances, regulations, policies, procedures, customs or usages, and to alleviate all jail conditions that contributed to the damages sustained by Plaintiff and the classes.

WHEREFORE, Plaintiff and the classes 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 classes (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

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