

CIRCUIT COURT FOR BRADLEY COUNTY
State of Tennessee

WILLIAM DOVER,
as next of kin and administrator and
personal representative
of the estate of decedent
HERSHEL COONEY DOVER (Deceased),

Plaintiff,

No. V-17- 122

~v~

JURY DEMAND

BRADLEY COUNTY GOVERNMENT,

CAPTAIN GABE THOMAS,
In his individual capacity and his
official capacity as agent of
Bradley County Government, and

UNKNOWN NUMBERS OF
JOHN DOES,
In their individual capacities and their
official capacities as agents of
Bradley County Government,

Defendants.

COMPLAINT

PLAINTIFF, William Dover, in his capacity as next of kin, Administrator and Personal Representative of the Estate of Hershel Cooney Dover (“Deceased”), for his causes of action, will show the Court:

Introduction:

1. This is an action for money damages brought pursuant to 42 U.S.C. §§ 1983 and 1988 to redress the deprivation of rights secured to Deceased by the Eighth, and Fourteenth Amendments to the United States Constitution and for violations of the laws of the State of Tennessee by the Defendants.

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CLERK OF COURT
BRADLEY COUNTY
TENNESSEE

2. Plaintiff further brings this action against the Defendant, Bradley County Government (“County”) pursuant to TENN. CODE ANN. § 8-8-302.

3. Plaintiff avers that Defendant Captain Gabe Thomas (“Thomas”) and the Doe Defendants (“Does”), acted as corrections officers, agents, and/or law enforcement officers employed by the County and were at all times relevant to this matter acting under color of law and under color of their offices with the County.

4. Plaintiff maintains that Thomas and the Does committed these violations, further set forth herein, as a result of policies, customs, practices, and/or procedures of the County.

5. At all times during the events herein described Thomas and the Doe defendants’ acts and omissions subjected Deceased to mental anguish/emotional distress, humiliation, physical injuries, and death.

6. At all times during the events herein described Thomas and the Doe defendants failed to take action to prevent the Deceased from suffering pain and mental anguish, enduring humiliation, physical injuries, and death.

7. At all times during the events herein described Thomas and the Doe defendants were engaged in a joint venture and assisted each other in performing the various acts described and lent their physical presence and support in performing their various actions as described and lent the authority of their respective offices to each other during the said events.

Jurisdiction and Venue:

8. This is an action to redress the deprivation of rights secured to Deceased by the Eighth, and Fourteenth Amendments to the United States Constitution (enforceable through 42 U.S.C. § 1983) and for violations of Tennessee law. Thus, as to the § 1983 claims, this Court is vested with original jurisdiction pursuant to the authority stated in Haywood v. Drown, 556 U.S.

729 (2009) and Poling v. Goins, 713 S.W.2d 305, 306 (Tenn. 1986). This Court is vested with original jurisdiction over Deceased's state claims pursuant to TENN. CODE ANN. § 16-10-101, et seq.

9. Venue is proper in this Court pursuant to TENN. CODE ANN. § 20-4-102. All acts complained of occurred within Bradley County, Tennessee.
 - a. Plaintiff is a resident of Bradley County, Tennessee.
 - b. Deceased was a resident of Bradley County, Tennessee.
 - c. To the best of Plaintiff's knowledge Thomas and the Doe defendants are residents of Bradley County, Tennessee.
 - d. County is a political sub-division of the State of Tennessee.

The Parties:

10. At all times relevant to this cause of action, Deceased was a citizen of the United States and a resident and citizen of the State of Tennessee.

11. At all times relevant to this cause of action, the County was a political sub-division of the State of Tennessee organized and existing under the laws of the State of Tennessee.

- a. The County finances its law enforcement department identified and averred as the Bradley County Sheriff's Department ("sheriff's department") and provides rules and regulations for the operation of the sheriff's department.
- b. The County provides oversight of the hiring, training, supervision, discipline, and retention of all personnel in its sheriff's department.

12. At all times relevant to this cause of action, the County is responsible for the creation and maintenance of its sheriff's department, which is a law enforcement agency created under Tennessee state law and regulated by the laws of the State of Tennessee.

- a. The County is responsible for the creation, operation, and oversight of the Bradley County Jail ("jail").
- b. The County is responsible for the safe and humane treatment of all persons held in the jail and in the custody of its agents.
- c. Tennessee law prohibits the County from treating the Deceased or any person held in the jail with undue rigor.
- d. The County has a duty to prevent overcrowded conditions at the jail and has a duty to ensure there are enough of its agents on-duty at all times to properly monitor and supervise all persons held at the jail.
- e. The County is responsible for the training and certification of its agents working at the jail to include training to ensure persons held by the County receive adequate medical care and to recognize when persons held by the County are in physical distress and require immediate medical attention.
- f. The County is responsible for the safety of persons detained or otherwise within the custody of its individual employees and agents while held at the jail.
- g. The County is responsible for feeding and medicating persons detained or otherwise within the custody of its individual employees and agents while held at the jail.

13. At all times relevant to this cause of action, the County was responsible for the medical care of Deceased pursuant to TENN. CODE ANN. § 41-4-115 and the expansive interpretation of that statute in Chattanooga-Hamilton County Hosp. Auth. v. Bradley County, 249 S.W.3d 361, 366-367 (Tenn. 2008), and for the safe and humane treatment of all persons including the Deceased while held at the jail and while in the custody of its agents and employees.

14. Plaintiff sues the County in its governmental capacity.

15. At all times relevant to this cause of action, Thomas and the Does were employed by the County and acted under the color of law, statute, ordinance, regulation, custom, or usage and operated under color of his respective offices. In addition:

- a. At all times relevant to this cause of action, Thomas and the Does acted in their official capacities as agents, servants, and employees for the County as defined under TENN. CODE ANN. § 29-20-102.
- b. At all times relevant to this cause of action, Thomas was the head of the judicial and corrections division of the sheriff's department and had the overall responsibility for the proper implementation and oversight of all the duties averred in ¶ 11 through ¶ 13.
- b. Plaintiff sues Thomas and the Does in their individual and official capacities.

Factual Basis for Complaint:

16. Deceased suffered from a severe form of diabetes, was a "brittle insulin dependent diabetic" and required an injection of insulin three times per day and required to have a diet that did not spike his blood glucose or "sugar."

17. Prior to March 18, 2016, Deceased had been in the custody of the County and housed in the jail.

18. Based upon the prior incarceration in the jail as averred in ¶ 17, the County, Thomas, and the Doe defendants had prior knowledge the Deceased suffered from a severe form of diabetes and required an injection of insulin three times per day and required to have a diet that did not spike his blood glucose.

19. On March 15, 2016, Deceased experienced a diabetes-caused medical event that necessitated the assistance of EMS.

20. On March 15, 2016, EMS and officers of the Cleveland Police Department arrived at the home of the Deceased whereupon Deceased received treatment for low blood sugar at the local hospital and was released from treatment.

21. On March 16, 2016, one of the same officers present at the Deceased's home on March 15, 2016 arrived at the home of the Deceased to arrest Deceased on a probation violation warrant issued by a Bradley County Court.

22. Plaintiff and Plaintiff's wife ("Gail Dover") were present when the officer arrested Deceased, and Plaintiff and Gail Dover notified the arresting officer that Deceased suffered from severe diabetes, required insulin three times per day and needed to eat a diet that did not spike his blood glucose but needed to eat on a regular basis.

23. The arresting officer assured Plaintiff and Gail Dover the medical condition of Deceased would get passed on to the jail staff and to not worry because the jail staff would give the Deceased his insulin and make sure Deceased ate a proper diet.

24. On March 17, 2016, Deceased was taken to court by jail staff and returned to the jail shortly thereafter.

25. On March 17, 2016, upon his return to the jail, Deceased vomited blood, was seen by a nurse then placed in a cell.

26. On March 18, 2016 at about 6:05 am, EMS responded to the jail and found the Deceased in a cell on the floor, pulseless, apneic, unresponsive, and was covered in copious amounts of coffee ground emesis.

27. EMS transported Deceased to a hospital where he was pronounced dead at 7:22 am March 18, 2016.

28. An autopsy performed on Deceased found the Deceased had significantly elevated glucose in his blood, and that the Deceased's stomach contents were void of food and medications.

29. Deceased required food and medication to survive based upon his "brittle insulin dependent diabetic" condition.

30. Deceased was one of three persons who died while in the custody of the County at the jail in the year 2016.

31. On September 18, 2016, Ralph Nelms ("Nelms") died by hanging while in the custody of the County and under suicide watch.

32. In regard to Nelms:

- a. Jail staff had knowledge that Nelms was suicidal.
- b. Despite that knowledge, jail staff placed Nelms into a booking area cell that had its windows completely covered, and jail staff left Nelms with instruments that he used to hang himself. This cell was in close proximity to jail staff.

- c. Despite that knowledge, jail staff failed or refused to monitor Nelms and failed to protect Nelms by ensuring Nelms was in a suicide proof cell and by providing Nelms with instruments that he used to hang himself.
- d. Nelms hanged for a full 30 minutes while in the booking area cell without any jail staff providing any medical assistance.
- e. As a direct result of an investigation conducted by TBI, three jail staff members and employees of the County (Gabriel Black, Timothy Boyd, and Joshua Reddish) were indicted by the Bradley County Grand Jury for violations of Tenn. Code Ann. §§ 39-16-402(3) [Official Misconduct]; 503(a)(1) [Tampering with or Fabricating Evidence]; and 504(1), (2), and (3) [Destruction of and Tampering with Governmental Records].

33. On April 28, 2016, Billy Joe Rodgers (“Rodgers”) was in jail on a charge of failing to appear in court on felony charges.

34. In regard to Rodgers:

- a. Rodgers got into a fight with another inmate.
- b. Sometime after the fight, Rodgers was found unresponsive by jail personnel.
- c. Rodgers died May 1, 2016 at Erlanger hospital in Chattanooga.

35. William R. Kane (“Kane”) is an inspector with the Tennessee Corrections Institute (“TCI”).

36. TCI is a Tennessee governmental agency created under the authority of TENN. CODE ANN. § 41-1-140 and is required to establish minimum standards for adult local jails, lock-ups, workhouses and detention facilities in the state; establishes the standards to inspect and

certify local correctional facilities; and conducts inspections and re-inspections of such facilities to ensure compliance of all standards for the purpose of certification such facilities to operate pursuant to Tennessee law.

37. On or about August 15, 2016, Kane issued a report about his inspection of the jail, and cited the following issues with the jail to include, but not limited to:

- a. Overcrowding.
- b. Booking cells used to house inmates due to overcrowding when such cells are only to be used for very short-term detentions, were not certified by TCI for inmate housing, and housed an average of 40 or more inmates for several weeks at a time.
- c. Very vague security check logs, suicide watch observation reports, and restraint checks.
- d. Understaffing of jail personnel.

38. On or about August 18, 2016, Defendant Thomas notified Bradley County law enforcement agencies that the jail could no longer take any more prisoners and is reported to have made the following comments to the agencies through the Bradley County 911 Center:

- a. Freezing jail admissions is “going to tick a lot of people off.”
- b. “They can arrest them, but they’ll be sitting in their cars.”
- c. “It doesn’t matter what it is, there’s nowhere to put them.”

Count One:
Violation of Civil Rights Under
Color of Law 42 U.S.C. §1983 –
Withholding Medical Care

39. The Defendants had a duty of care to the Deceased by reason of the Deceased’s deprivation of his liberty, and thus inability to care for himself.

40. The Defendants' failure to maintain the jail and to properly operate the jail, the lack of food and medicine in the Deceased's body, the abnormal blood glucose level of the Deceased at autopsy, the physical condition of the Deceased when he was found, the indictments of the three corrections staff members, the Defendants' prior knowledge of the Deceased's medical condition and need for medicine (as inferred by Deceased's prior incarceration, and the Cleveland Officer's notification to Plaintiff that he would assure jail staff was aware of Deceased's need for medical care), the circumstances of the deaths of Nelms and Rodgers, and the actions of Thomas after the release of Kane's report, show a lack of training, supervision, or adequate policy to address medical emergencies such as described here and monitor and properly care for medically fragile persons such as the Deceased and thus constitutes deliberate indifference of the County and the individual defendants.

41. The failure of the Defendants to feed and medicate the Deceased in accordance with his medical condition and the Defendants' failure to render timely medical care to the Deceased was the direct and proximate cause of the Deceased's unnecessary pain and suffering, his humiliation, injuries, and resulted in Deceased's death.

42. No reasonable correctional officer or jail supervisor would have behaved in the manner described herein.

43. No reasonable governmental actor would have allowed the obvious problems eventually identified by Kane to persist.

44. The individual defendants acted under color of law and their negligence and intentional acts along with the deliberate indifference of the County deprived the Deceased of rights secured to him under the Eighth and Fourteenth Amendments to United States

Constitution to be free from the Infliction of Cruel and Unusual Treatment and to not be deprived of life without Due Process of Law.

45. Plaintiff sues the individual defendants in their individual and official capacities and the County in its governmental capacity.

Count Two:
Wrongful Death - TENN. CODE ANN. § 20-5-106

46. Based upon the Plaintiff's belief, the individual Defendants were appointed by the Sheriff of Bradley County, and were employed by the County to perform the duties of corrections officers and at all times relevant to this matter acted within the color of their office.

47. The individual Defendants had a duty to feed and medicate the Deceased in accordance with his medical condition, to render timely medical care to the Deceased, and the failure of the individual Defendants to render timely medical care to the Deceased and to feed and medicate the Deceased in accordance with his medical condition was the direct and proximate cause of the Deceased's unnecessary pain and suffering, humiliation, injuries, and resulted in Deceased's death.

49. The County and the individual Defendants were fully aware of the conditions eventually cited by Kane, yet allowed those conditions to persist, and this conduct was the direct and proximate cause of the Deceased's unnecessary pain and suffering, humiliation, injuries, and resulted in Deceased's death.

50. Plaintiff sues the individual Defendants in their individual and official capacities and the County pursuant to TENN. CODE ANN. § 8-8-302.

Count Three:
Negligence

51. Based upon the Plaintiff's belief, the individual Defendants were appointed by the Sheriff of Bradley County, and were employed by the County to perform the duties of corrections officers and at all times relevant to this matter acted within the color of their office.

52. The individual Defendants had a duty to feed and medicate the Deceased in accordance with his medical condition and to render timely medical care to the Deceased, and the failure of the individual Defendants to render timely medical care to the Deceased was the direct and proximate cause of the Deceased's unnecessary pain and suffering, humiliation, injuries, and resulted in Deceased's death.

53. The County and the individual Defendants were fully aware of the conditions eventually cited by Kane, yet allowed those conditions to persist, and this conduct was the direct and proximate cause of the Deceased's unnecessary pain and suffering, humiliation, injuries, and resulted in Deceased's death.

54. Plaintiff sues the individual Defendants in their individual and official capacities and the County pursuant to TENN. CODE ANN. § 8-8-302.

Count Four:
Negligent Training

55. The County had a duty to ensure the individual Defendants were properly trained to recognize when an inmate such as the Deceased required immediate medical treatment and to respond to the Deceased's medical needs in a prompt and proper manner and to seek prompt and proper medical care for the Deceased and to feed and medicate the Deceased in accordance with his medical condition.

56. The lack of training constitutes deliberate indifference of the County and a reflects a lack of proper training by the County to ensure the individual Defendants did not treat

the Deceased with undue rigor, and was the direct and proximate cause of the Deceased's unnecessary pain and suffering, humiliation, injuries, and resulted in Deceased's death.

57. Plaintiff sues the individual Defendants in their individual and official capacities and the County pursuant to TENN. CODE ANN. § 8-8-302.

Count Five:
Negligent Supervision

58. The County had a duty to ensure the individual Defendants were properly trained to recognize when an inmate such as the Deceased required immediate medical treatment and to respond to the Deceased's medical needs in a prompt and proper manner and to seek prompt and proper medical care for the Deceased and to feed and medicate the Deceased in accordance with his medical condition.

59. The lack of training constitutes deliberate indifference of the County and a reflects a lack of proper supervision by the County to ensure the individual defendants did not treat the Deceased with undue rigor, and was the direct and proximate cause of the Deceased's unnecessary pain and suffering, humiliation, injuries, and resulted in Deceased's death.

60. Plaintiff sues the individual Defendants in their individual and official capacities and the County pursuant to TENN. CODE ANN. § 8-8-302.

Count Six:
Intentional Infliction of
Emotional Distress

61. The individual Defendants' failure to feed and medicate the Deceased in accordance with his medical condition the Defendants' failure and/or refusal to render aid to the Deceased despite their full knowledge of his condition caused Deceased to needlessly suffer physical pain and mental suffering and anguish and were the direct and proximate cause of the

Deceased's unnecessary pain and suffering, humiliation, injuries, and resulted in Deceased's death.

62. Plaintiff sues the individual Defendants in their individual capacities.

Other claims:

63. The omissions of the County constituted willful and wanton indifference to and with deliberate disregard for the constitutional civil rights of the Deceased. Thus the Plaintiff is entitled to actual damages, and attorney fees pursuant to 42. U.S.C. §1988.

64. The individual Defendants committed their acts against Deceased with actual malice toward the Deceased and with willful and wanton indifference to and with deliberate disregard for the constitutional civil rights of the Deceased. Thus the Deceased is entitled to punitive damages, actual damages, and attorney fees pursuant to 42. U.S.C. §1988.

WHEREFORE, the Plaintiff demands judgment against the Defendants and requests the following relief:

A. The Court to enter judgment against all Defendants and to award Plaintiff compensatory damages in the amount of TEN MILLION DOLLARS (\$10,000,000);

B. The Court to enter judgment against all individual Defendants and to award Plaintiff punitive damages in the amount of TWENTY MILLION DOLLARS (\$20,000,000);

C. That the Court award attorney's fees;

D. That the Court award costs, and discretionary costs;

E. Any other relief the Court may deem fit and proper;

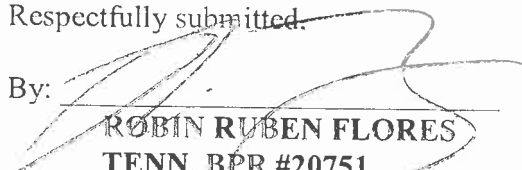
F. Any other relief the Court may deem fit and proper pursuant to 42 U.S.C. § 1988,

and

G. Allow a jury trial on all issues.

Respectfully submitted.

By:


ROBIN RUBEN FLORES
TENN. BPR #20751
GA. STATE BAR #200745

Attorney for Plaintiff
4110-A Brainerd Road
Chattanooga, TN 37411
(423) 267-1575
robinflores@epbfi.com

THE HAMILTON FIRM, LLC

By:


ANNETTE T. KELLEY
TENN. BPR #21796

Attorneys for Plaintiff
2401 Broad Street, Suite 102
Chattanooga, TN 37408
(423) 634-0871