

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT FRANKFORT
NO. _____

CANDICE N. DEMPSEY, Individually and
as Administratrix of the Estate of
Cole L. Frazier

Plaintiff

v.

CITY OF LAWRENCEBURG, KENTUCKY
Serve: Mayor Edwinna Baker
100 North Main Street
Lawrenceburg, Kentucky 40342

and

CHRIS ATKINS, INDIVIDUALLY AND
IN HIS OFFICIAL CAPACITY
Serve: Chris Atkins
201 E. Court Street
Lawrenceburg, Kentucky 40342

and

NATHAN DOTY, INDIVIDUALLY AND
IN HIS OFFICIAL CAPACITY
Serve: Nathan Doty
201 E. Court Street
Lawrenceburg, Kentucky 40342

Defendants

COMPLAINT
"Electronically Filed"

Comes the Plaintiff, Candice N. Dempsey, individually and as the Administratrix of the Estate of Cole L. Frazier, by and through counsel, and for her Complaint against the Defendants, City of Lawrenceburg, Kentucky, Chris Atkins, individually and in his official capacity, and Nathan Doty, individually and in his official capacity, states as follows:

JURISDICTION

1. That this action arises under the United States Constitution, particularly under the provisions of the First, Fourth, Fifth, Ninth, and Fourteenth Amendments, and under federal law, particularly the Civil Rights Act, Title 42 of the United States Code §1983.
2. That this Court possesses jurisdiction for this case under the provisions of Title 28 of the United States Code, §1331 and §1343.
3. That the amount in controversy exceeds \$75,000.00, exclusive of interest, costs and attorney's fees.
4. That this Court possesses pendent and supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. §1367.

PARTIES

5. That the Plaintiff, Candice N. Dempsey, is, and at all times relevant hereto has been, a resident of Lawrenceburg, Anderson County, Kentucky and was the mother of Cole Frazier at the time of his death. She was appointed Administratrix of Cole Frazier's Estate pursuant to an Order of the Anderson County District Court dated June 24, 2009 which is attached hereto as Exhibit A.
6. That the Defendant, City of Lawrenceburg, Kentucky (hereinafter "Lawrenceburg") is a municipal government existing within the Commonwealth of Kentucky, located in Anderson County, Kentucky; Lawrenceburg has the capacity to sue and be sued; and,

at all times pertinent hereto, Lawrenceburg has operated the Lawrenceburg Police Department and employed Chris Atkins and Nathan Doty.

7. That the Defendant, Chris Atkins, upon information and belief, is, and at all times relevant hereto have been, a resident of Anderson County, Kentucky. That, at all times relevant hereto, Atkins has been employed by Lawrenceburg Police Department as a Lieutenant. That at all times pertinent hereto Atkins was acting in such capacity under the color of state law, within the course and scope of his employment, and as agent, servant, and/or employee of City of Lawrenceburg. Atkins is sued herein in his individual and official capacity.

8. That the Defendant, Nathan Doty, upon information and belief, is, and at all times relevant hereto have been, a resident of Anderson County, Kentucky. That, at all times relevant hereto, Doty has been employed by Lawrenceburg Police Department as an Officer. That at all times pertinent hereto Doty was acting in such capacity under the color of state law, within the course and scope of his employment, and as agent, servant, and/or employee of City of Lawrenceburg. Doty is sued herein in his individual and official capacity.

FACTS

9. That on or about May 14, 2009, in Lawrenceburg, Anderson County, Kentucky, Lieutenant Atkins and Officer Doty, acting in the course and scope of their employment with Lawrenceburg Police Department, seized and took custody of Cole L. Frazier, a minor, from his mother, Candice Dempsey, and transferred said custody to his father, Timothy Frazier, without judicial or legal authority. That on or about May 26, 2009, Timothy Frazier, while maintaining the custody of Cole Frazier illegally imparted to him by Lieutenant Atkins and Officer Doty, shot and killed the 19-month-old child.

10. That there was no Order from any judicial authority, or any legal reason, to permit or require the Lawrenceburg Police Department to deprive the mother of her parental right to the custody of her child, much less to permit or allow the Lawrenceburg Police Department to seize the child and impart custody on the father. In fact, as part of an ongoing temporary custody proceeding in Bardstown, Kentucky, Timothy Frazier had submitted, via agreement of counsel and with the understanding of his parents, to being allowed only supervised visitation with the child in the presence of his parents, pending an upcoming temporary custody hearing to be held on June 5, 2009.

11. That Timothy Frazier had a long, sordid and violent criminal history before he killed the child. In this instance he had manufactured facts in a Domestic Violence Petition against the custodial mother to obtain an Emergency Protective Order dated May 13, 2009 which is attached hereto as Exhibit B. The Domestic Violence Petition is attached hereto as Exhibit C.

12. That the Emergency Protective Order was wholly and absolutely silent as to any child custody matters whatsoever. Nevertheless, when the aforementioned agents of the City of Lawrenceburg were presented with the Emergency Protective Order for service on the mother they illegally used that Emergency Protective Order as their purported legal basis to seize the child from the mother, deprive her of her parental rights, and impart custody on the dangerous and derelict father. The aforementioned agents of the City of Lawrenceburg were fully aware of the dangerous propensities of the ultimately murderous father because they were specifically told during the illegal seizure that they should not impart custody on the father because, among other things, he was violent, a drug user, a multiple DUI offender, and that because of his problems the father had agreed in ongoing child custody proceedings to visitation with the child only in the presence of his parents.

13. That the City of Lawrenceburg, Kentucky knew of, or reasonably should have known of or expected, such conduct from Lieutenant Atkins and Officer Doty, because the City of Lawrenceburg failed to adequately train and/or supervise Lieutenant Atkins and Officer Doty in their behavior and conduct directed towards Plaintiff and Cole Frazier such that the failure to train and/or supervise amounted to deliberate indifference to the rights of Plaintiff and shocks the conscience.

14. That the City of Lawrenceburg failed to have, in force and effect, proper hiring, training, and supervision policies and procedures with regard to the service of warrants and Emergency Protective Orders by its police officers, such as Lieutenant Atkins and Officer Doty.

15. That as a direct and proximate result of the aforementioned negligent and/or intentional actions of the Defendants, Plaintiff has individually sustained pain and suffering and the loss of love and affection of her minor son and the Estate has sustained loss of the ability to labor and earn money, loss of parental consortium, and pain and suffering.

COUNT ONE

16. That the Plaintiff incorporates by reference, as if set forth fully herein, each and every averment, allegation, or statement contained in the previous paragraphs of this Complaint.

17. That the aforementioned conduct of Lieutenant Atkins and Officer Doty in removing Cole Frazier from the custody of his mother without legal authority or justification amounts to the denial of parental rights and illegal seizure within the meaning of the First, Fourth, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution, and the Civil Right Act, Title 42 of the United States Code §1983. The actions of Atkins and Doty were without just and legal cause and were direct violations of Candice Dempsey and Cole Frazier's "clearly established" rights under the Constitution and Laws of the United States, as enumerated

above, as well as their rights under the Constitution of the Commonwealth of Kentucky, of which a reasonable officer should have known. The acts of Lieutenant Atkins and Officer Doty were not objectively reasonable under the circumstances and their actions "shock the conscience."

18. That the aforementioned affirmative conduct of Lieutenant Atkins and Officer Doty in removing Cole Frazier from the custody of his mother without legal authority or justification created and increased the risk that Cole would be exposed to injury and violence, placing him specifically at risk of special danger (as distinguished from risk that affects the public at large), and Lieutenant Atkins and Officer Doty knew that their actions specifically endangered Cole.

19. That the as direct and proximate result of the aforementioned actions of the Defendants, Plaintiff has individually sustained pain and suffering and the loss of love and affection of her minor son and the Estate has sustained loss of the ability to labor and earn money, loss of parental consortium, and pain and suffering.

COUNT TWO

20. That the Plaintiff incorporates by reference, as if set forth fully herein, each and every averment, allegation, or statement contained in the previous paragraphs of this Complaint.

21. That, in violation of the United States Constitution and U.S.C. §1983, Lawrenceburg has failed to adequately hire, train and supervise its police officers, including Lieutenant Atkins and Officer Doty, as to the proper methods of service of Emergency Protection Orders on citizens of the Commonwealth of Kentucky and Lawrenceburg.

22. That Lawrenceburg is responsible for the actions of Lieutenant Atkins and Officer Doty because the aforementioned constitutionally offensive and negligent hiring, supervision

and training of its officers amounts to an execution and/or implementation of a policy statement, ordinance, regulation, or decision officially adopted and promulgated by the police officers of Lawrenceburg. That the constitutionally offensive and negligent hiring, training and supervision by the City of its officers, is inadequate to the task that the officers must perform and Lawrenceburg's deliberate indifference and inadequacy in the present scenario was "closely related to" and/or "actually caused" Plaintiff's injuries.

23. That the as direct and proximate result of the aforementioned actions of the Defendants, Plaintiff has individually sustained pain and suffering and the loss of love and affection of her minor son and the Estate has sustained loss of the ability to labor and earn money, loss of parental consortium, and pain and suffering.

COUNT THREE

24. That the Plaintiff incorporates by reference, as if set forth fully herein, each and every averment, allegation, or statement contained in the previous paragraphs of this Complaint.

25. That the aforementioned conduct of Lawrenceburg constitutes negligent hiring practices due to its failure to exercise ordinary care in the hiring, supervision and/or retaining of Lieutenant Atkins and Officer Doty which created a foreseeable risk of harm to third persons, such as Plaintiff and Cole Frazier.

26. That the as direct and proximate result of the aforementioned negligent and/or intentional actions of the Defendants, Plaintiff has individually sustained pain and suffering and the loss of love and affection of her minor son and the Estate has sustained loss of the ability to labor and earn money, loss of parental consortium, and pain and suffering.

COUNT FOUR

27. That the Plaintiff incorporates by reference, as if set forth fully herein, each and every averment, allegation, or statement contained in the previous paragraphs of this Complaint.

28. That the aforementioned conduct of Lieutenant Atkins and Officer Doty in the performance of ministerial acts was a breach of their duties owed to Plaintiff and Cole Frazier.

29. That the aforementioned conduct of the City of Lawrenceburg constitutes negligent training and supervision with regard to the service of Emergency Protective Orders, and/or any other judicial order, relative to the transfer of the custody of children.

30. That the as direct and proximate result of the aforementioned negligent and/or intentional actions of the Defendants, Plaintiff has individually sustained pain and suffering and the loss of love and affection of her minor son and the Estate has sustained loss of the ability to labor and earn money, loss of parental consortium, and pain and suffering.

COUNT FIVE

31. That the Plaintiff incorporates by reference, as if set forth fully herein, each and every averment, allegation, or statement contained in the previous paragraphs of this Complaint.

32. That the aforementioned conduct of the Defendants was negligent, grossly negligent, malicious, oppressive, and/or fraudulent, and that Plaintiff is entitled to punitive damages from these Defendants.

WHEREFORE, the Plaintiff prays for judgment from the Defendants, jointly and severally, as follows:

1. Compensatory damages in excess of \$10,000,000.00;
2. Punitive damages in excess of \$10,000,000.00;
3. Trial by jury on any and all issues so triable;
4. For her costs herein expended, including a reasonable attorney's fees; and
5. For any and all other relief to which she may otherwise be properly entitled.

Respectfully Submitted,

By: /s/ James M. Bolus, Jr.

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