

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

[Filed Electronically]

BILLY JOSEPH FRENCH, Individually and)
on behalf of all others similarly situated,)

PLAINTIFF)

v.)

DAVIESS COUNTY, KENTUCKY,)
DAVID OSBORNE, JOHN and JANE)
DOES NOS. 1, 2 and 3,)

and)

CAROL BYRD, ARNP)

Serve:)

Carol Byrd, ARNP)

543 Willow Oak Drive)

Bowling Green, KY 42103)

and)

WILLIAM SCOTT CHAPMAN, MD)

Serve:)

William Scott Chapman, MD)

1000 Breckenridge Street)

Suite 303)

Owensboro, KY 42303)

DEFENDANTS.)

C. A. NO. 4:07-CV-00105 (M)

**SECOND AMENDED CLASS ACTION COMPLAINT
FOR DAMAGES AND INJUNCTIVE RELIEF**

I. Introduction

1. Plaintiff Billy Joseph French files this action in his individual capacity and on behalf of all persons who, while incarcerated at the Daviess County Detention Center (“the

Jail”), have been denied medical attention for their serious medical needs and appropriate and necessary medication prescribed by recognized medical authorities, all as a consequence of Defendants' neglect and deliberate indifference.

2. On information and belief, numerous inmates of the Jail have been denied medical attention for their serious medical needs and appropriate and necessary medication prescribed by recognized medical authorities 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 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 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 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 Daviess County, Kentucky is 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 been denied medical attention for their serious medical needs and appropriate and necessary medication prescribed by recognized medical authorities as a consequence of Defendants' 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 denying inmates medical attention for their serious medical needs and appropriate and necessary medication prescribed by recognized medical authorities 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, 42 U.S.C. §1983, and 501 KAR 3:090 (20). The only question that remains to be resolved is whether Plaintiff and the members of the classes are entitled to declaratory and injunctive relief, and 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

3. Plaintiff is a resident of Daviess County, Kentucky.

4. Defendant Daviess County, at all times mentioned herein, employed, and was responsible for the establishment of policies, customs and practices governing the employment, training, supervision and conduct of, the officers and employees of the Jail.

5. Defendant David Osborne was at all times mentioned herein acting individually and/or in his official capacity as Jailer of Daviess County, and as such established policies either formally or by custom and practice for, and was responsible for the employment, training, supervision and conduct of, the officers and employees of the Jail.

6. Defendants John and Jane Does Nos. 1, 2 and 3, identities presently unknown, were at all times mentioned herein officers and employees of the Jail, and participated in the mistreatment of Plaintiff and the class, described below, individually and/or in their official capacities.

7. Defendant Carol Byrd, ARNP, was, at the time of the events described below, the medical professional responsible for attending to the medical needs of inmates of the

Daviess County Detention Center, and as such established policies either formally or by custom and practice for, and was responsible for the employment, training, supervision and conduct of, persons responsible for medical care of inmates at the Jail, and participated in the mistreatment of Plaintiff as described below.

8. William Scott Chapman, MD, was, at the time of the events described below, the medical professional responsible for attending to the psychiatric needs of inmates of the Daviess County Detention Center, and as such established policies either formally or by custom and practice for, and was responsible for the employment, training, supervision and conduct of, persons responsible for psychiatric care of inmates at the Jail, and participated in the mistreatment of Plaintiff as described below.

V. Nature of Defendants' Conduct

9. 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 Daviess 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 class,

justifying an award of punitive damages in addition to the actual damages which Plaintiff and the class are entitled to recover.

VI. Facts

10. Plaintiff Billy Joseph French was an inmate at the Daviess County Detention Center. He has been lawfully prescribed by recognized medical authorities (a) Lorcet, a narcotic pain medication, for chronic, excruciating back pain, and (b) Xanax, for anxiety.

11. On admission to the Jail last May, Plaintiff was denied his Lorcet because Defendant Byrd, to whom Daviess County and Jailer Osborne had delegated their responsibility for attending to inmates' medical needs, had a policy, custom and practice of blanketly denying all inmates any type of narcotic medication regardless of their needs and whether such medication had been lawfully prescribed by recognized medical authorities. As a consequence, after his admission to the Jail, Plaintiff was in constant, excruciating pain.

12. Plaintiff, after his admission to the Jail, was also denied his Xanax because Defendants Byrd and/or Chapman, to whom Daviess County and Jailer Osborne had delegated their responsibility for attending to inmates' psychiatric and medical needs, had a policy, custom and practice of blanketly denying all inmates psychotropics such as Xanax regardless of their needs and whether such medication had been lawfully prescribed by recognized medical authorities. As a consequence, Plaintiff experienced numerous seizures, some of which required emergency runs to the local hospital, despite the fact that such seizures are a recognized risk of depriving an individual of Xanax "cold turkey." In addition, Plaintiff suffered terribly from the anxiety the Xanax had been prescribed to

alleviate, a condition only exacerbated by his incarceration under the conditions and circumstances described herein.

13. In addition to the above, Plaintiff suffered the effects of withdrawal after being deprived of his medication.

14. As a consequence of the above, Plaintiff became suicidal, and spent considerable time on suicide watch dressed in nothing other than a padded suicide smock held together by strips of Velcro.

VII. Causes of Action

A. Count I

15. Paragraphs 1-14 above are incorporated herein by reference and made this Paragraph 15.

16. Plaintiff's and the class' treatment at the Jail were the result of a continuing pattern of misconduct and is the result of policies, procedures, customs and practices of Daviess County, either written or unwritten, that are systematically applied at the Daviess County Detention Center whenever an individual is incarcerated at the Jail, including but not limited to the persistent practice of denying inmates medical attention for their serious medical needs and appropriate and necessary medication prescribed by recognized medical authorities. 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.

17. As a result of the foregoing, Plaintiff and his class, through Defendants' 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.

18. Moreover, given the pre-existing law that clearly prohibited Defendants' conduct, Defendants' treatment of Plaintiff and the members of his class 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 class.

B. Count II

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

20. By virtue of the foregoing, Defendants have knowingly and intentionally violated 501 KAR 3:090 (20).

C. Count III

21. Paragraphs 1-20 above are incorporated herein by reference and made this Paragraph 21.

22. 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

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

24. 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

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

26. As a consequence of Defendants' wrongful conduct, Plaintiff and the members of the class have been denied medical attention for their serious medical needs and appropriate and necessary medication prescribed by recognized medical authorities.

27. As a result of the foregoing, Plaintiff and the members of the class have experienced unnecessary pain and suffering 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 class entitling them to recover punitive damages from Defendants in order to deter such conduct in the future.

IX. Declaratory Judgment and Permanent Injunction

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

29. 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 were denied medical attention for their serious medical needs and

appropriate and necessary medication prescribed by recognized medical authorities, 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 class.

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,

/s/ Gregory A. Belzley

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 24th day of April, 2008 via CM/ECF, to:

Marvin P. Nunley, Esq.
111 East Third Street
P.O. Box 925
Owensboro, KY 42302-0925

s/ Gregory A. Belzley _____
Gregory A. Belzley
Counsel for Plaintiff