

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LARRY DuBOSE,)
Plaintiff,)
v.) Case No. 19-C-8255
JOHN HALLINAN, DR. DAVID KLENER,)
and COOK COUNTY, ILLINOIS,)
Defendants.)
Judge Valderrama

DEFENDANTS' ANSWER TO PLAINTIFF'S THIRD AMENDED COMPLAINT

Now come Defendants, John Hallinan, Dr. David Kelner, and Cook County (“Defendants”), by their attorney KIMBERLY M. FOXX, State’s Attorney of Cook County, through her Assistant State’s Attorneys, Cory J. Cassis and Rachael D. Wilson, and answers Plaintiff’s Third Amended Complaint as follows:

1. This is a civil action arising under 42 U.S.C. § 1983. The jurisdiction of this Court is conferred by 28 U.S.C. §§ 1343 and 1367.

ANSWER: Defendants admit only that this Court has jurisdiction over Plaintiff's claims.

2. Plaintiff Larry Dubose is a resident of the Northern District of Illinois.

ANSWER: Defendants lack sufficient knowledge to admit or deny the allegations of paragraph 2.

3. Plaintiff is not currently confined in any jail, prison, or other correctional facility and was not so confined on the date the original complaint was filed.

ANSWER: Defendants lack sufficient knowledge to admit or deny the allegations of paragraph 3.

4. John Hallinan was at all relevant times a Mental Health Specialist employed by defendant Cook County at the Cook County Jail. Hallinan is sued in his individual capacity.

ANSWER: Defendants admit the allegations of paragraph 4.

5. Dr. David Kelner was at all relevant times a physician employed by defendant Cook County as the Chief of Psychiatry at Cermak Health Services. Dr. Kelner is sued in his individual capacity.

ANSWER: Defendants admit the allegations of paragraph 5.

6. Defendant Cook County is an Illinois municipal corporation. Plaintiff seeks to impose liability on the County under 42 U.S.C. § 1983 for injuries he incurred because of a widespread practice described below and under the doctrine of *respondeat superior* for a state law tort committed by employees of the County.

ANSWER: Defendants admit only that Cook County is a municipal corporation and deny the remaining allegations pursuant to § 1983 in paragraph 6. In regard to Plaintiff's state law claims, Defendants assert that they have filed a motion to dismiss the state law claims in Plaintiff's Third Amended Complaint which is currently pending before this Court. (Dkt 43).

7. Plaintiff entered the Cook County Jail as a pretrial detainee on January 11, 2018.

ANSWER: Defendants admit the allegations of paragraph 7.

8. At the time he entered the Jail, plaintiff was suffering from serious medical condition for which he was taking prescription medications.

ANSWER: Defendants deny the allegations of paragraph 8.

9. On January 11, 2018, an official policy at the Jail required that within 24 hours of a detainee's booking at the Jail, a Qualified Medical Professional or Qualified Mental Health

Professional, with appropriate prescribing authority, shall decide whether to continue the same or comparable medication that the detainee reports having been prescribed for a serious medical and mental health need

ANSWER: Defendants deny the allegations of paragraph 9.

10. The Jail adopted the official policy described in Paragraph 9 to discharge its constitutional duty to provide medical care to persons held at the Cook County Jail.

ANSWER: Defendants deny the allegations in Paragraph 10 and further assert that they are compliant with all constitutional duties.

11. As explained below with greater specificity, at a date on or after August 31, 2013, the Jail stopped implementing the official policy described in Paragraph 9 and thereby deprived plaintiff and others similarly situated of their constitutional right to health care while held in custody as a pretrial detainee.

ANSWER: Defendants deny the allegations in Paragraph 11.

12. Defendant Hallinan interviewed plaintiff at about 5:50 p.m. on January 11, 2018 during the intake process.

ANSWER: Defendants admit the allegations of paragraph 12.

13. Defendant Hallinan learned the following:

- a. Plaintiff had been detained at the Cook County Jail in July of 2015 and had been prescribed medication for a serious health need;
- b. Plaintiff had continued to receive prescription medication for the same serious health need following his release from the Cook County Jail in 2015;
- c. Plaintiff was being treated by a physician, whose name and organization affiliation plaintiff related to Hallinan, for the same serious health need;

- d. Plaintiff had been admitted to a hospital two weeks before his admission to the Cook County Jail for treatment of the same serious health need; and
- e. Plaintiff had been treated in a hospital emergency room the day before his admission to the Cook County Jail to obtain medication for his serious health need.

ANSWER: Defendants deny the allegations of paragraph 13.

14. Defendant Hallinan had the power to refer plaintiff to a Qualified Medical Professional or a Qualified Mental Health Professional, with appropriate prescribing authority, who would decide whether to continue plaintiff's medications.

ANSWER: Defendants admit the allegations of paragraph 14. Defendants deny liability.

15. Defendant Hallinan acted unreasonably when he ignored the information he had obtained about plaintiff, listed above in Paragraphs 13(a)-(e), and failed to take any action that would have caused plaintiff to receive his previously prescribed medication.

ANSWER: Defendants deny the allegations of paragraph 15.

16. Defendant Hallinan acted pursuant to a widespread practice at the Cook County Jail of disregarding the official policy described in Paragraph 9 and thereby failed to provide plaintiff with medication that had previously been prescribed for a serious health need.

ANSWER: Defendants deny the allegations of paragraph 16.

17. At all relevant times, defendant Kelner was the person to whom defendant Cook County had delegated the duty of implementing the official policy described in Paragraph 9.

ANSWER: Defendants deny the allegations of paragraph 17.

18. At all relevant times, defendant Kelner knew that the Jail could not implement the official policy described in Paragraph 9 unless a psychiatrist was assigned to work in the intake process.

ANSWER: Defendants deny the allegations of paragraph 18.

19. A psychiatrist was not assigned to work in the intake process when plaintiff entered the Jail on January 11, 2018.

ANSWER: Defendants deny the allegations of paragraph 19.

20. Had a psychiatrist been assigned to the intake process on January 11, 2018, the psychiatrist would have examined plaintiff and provided him with the previously prescribed medication.

ANSWER: Defendants deny the allegations of paragraph 20.

21. Defendant Kelner knew that a psychiatrist was not assigned to the intake procedure on January 11, 2018 and other days, and defendant Kelner knew that the Jail was not implementing the official policy described in Paragraph 9.

ANSWER: Defendants deny the allegations of paragraph 21.

22. Defendant Kelner had the power in his capacity as Chief of Psychiatry to require a psychiatrist to be assigned to the intake procedure on January 11, 2018 and other days.

ANSWER: Defendants admit the allegations of paragraph 22. Defendants deny liability.

23. Defendant Kelner turned a blind eye to the widespread practice of disregarding the official policy described in Paragraph 9.

ANSWER: Defendants deny the allegations of paragraph 23.

24. Defendant Kelner sought to hide the widespread practice of disregarding the official policy described in Paragraph 9 by permitting defendant Hallinan and other non-physicians to enter, in the electronic medical records, orders purportedly issued by Dr. Kelner that made it falsely appear that plaintiff and other similarly situated incoming detainees had been examined by a psychiatrist.

ANSWER: Defendants deny the allegations of paragraph 24.

25. Plaintiff submitted grievances on January 12, 2018 and January 15, 2018, complaining about the pain and suffering he was experiencing because of the discontinuation of his previously prescribed medication.

ANSWER: Defendants lack sufficient knowledge to admit or deny the allegations of paragraph 25.

26. As a result of the above described unreasonable conduct of defendants Hallinan and Dr. Kelner and the above described widespread practice, plaintiff continued to experience the pain and suffering caused by discontinuation of the previously prescribed medication until January 18, 2018, when he was seen by a physician who prescribed plaintiff the medication he required.

ANSWER: Defendants deny the allegations of paragraph 26.

27. As a result of the foregoing, plaintiff was deprived by all defendants of rights secured by the Constitution of the United States.

ANSWER: Defendants deny the allegations of paragraph 27.

28. In January of 2018, the standard of care applicable to plaintiff, as a person entering a custodial facility who had been prescribed and was taking medication for a serious health need, was to continue that medication or replace it with an appropriate substitute.

ANSWER: Defendants deny the allegations of paragraph 28.

29. Defendant Cook County, through its employees, breached this standard of care when its employees did not provide plaintiff with his previously prescribed medications or any substitute for seven days.

ANSWER: Paragraphs 29 through 32 are subject of Defendants Motion to Dismiss Plaintiff's State Law Claims of the Third Amended Complaint (Dkt. 43) and, therefore, Defendants offer no response at this time.

30. Plaintiff was injured as a result of the aforesaid breach of the standard of care.

ANSWER: Paragraphs 29 through 32 are subject of Defendants Motion to Dismiss Plaintiff's State Law Claims of the Third Amended Complaint (Dkt. 43) and, therefore, Defendants offer no response at this time.

31. Plaintiff will submit the documents specified in Section 2-622 of the Illinois Code of Civil Procedure as may be required by *Young v. United States*, 942 F.3d 349 (7th Cir. 2019).

ANSWER: Paragraphs 29 through 32 are subject of Defendants Motion to Dismiss Plaintiff's State Law Claims of the Third Amended Complaint (Dkt. 43) and, therefore, Defendants offer no response at this time.

32. As a supplemental state law claim against defendant Cook County only: as a result of the foregoing, plaintiff was subjected to healing arts malpractice under Illinois law.

ANSWER: Paragraphs 29 through 32 are subject of Defendants Motion to Dismiss Plaintiff's State Law Claims of the Third Amended Complaint (Dkt. 43) and, therefore, Defendants offer no response at this time.

33. Plaintiff hereby demands trial by jury.

ANSWER: Paragraph 33 does not call for a response. Defendants demand trial by jury.

AFFIRMATIVE DEFENSES

NOW COMES Defendants Dr. David Kelner, John Hallinan, and Cook County, by their attorney, Kimberly M. Foxx, State's Attorney of Cook County, through her Assistant State's Attorneys, Cory J. Cassis and Rachael D. Wilson, and hereby set forth the following affirmative defenses:

I. No *Monell* liability: Isolated Occurrence/Single Incident

1. Without waiving Defendants' denials to Plaintiff's allegations, Plaintiff complains of conduct that is of an isolated occurrence. *Monell* liability requires proof of a pattern of similar constitutional violations. No pattern of constitutional violations occurred. Furthermore, Defendants' policies did not cause or put in motion a constitutional violation alleged or implied. *Monell* liability requires more than inaction. Accordingly, Plaintiff's claims regarding *Monell* liability fail.

II. *De Minimis* Doctrine/No Justiciable Injury

2. Claims brought under Section 1983 require an injury. *Cannon v. Burkybile*, 2002 U.S. Dist. LEXIS 4808, *19, 2002 WL 448988 (N.D. Ill. March 22, 2002) ("Section 1983 is a tort statute. A tort to be actionable requires injury.") (*citing Bart v. Telford*, 677 F.2d 622, 625 (7th Cir. 1982)). Medical data shows that one week without medication is not an injury. The law requires an injury greater than a trifle to recover damages. Plaintiff's damages do not rise to compensable.

III. Qualified Immunity

3. Defendants' conduct was at all times objectively reasonable and did not violate any of Plaintiff's clearly established Constitutional rights. Accordingly, the Defendants are entitled to the defense of Qualified Immunity.

IV. Failure to Mitigate

4. Without waiving its denials to Plaintiff's allegations and to the extent Plaintiff claims any damages against Defendant, Plaintiff had a duty to mitigate those damages. *Wells v. City of Chicago*, 2009 U.S. Dist. LEXIS 15792, *23–24, 2009 WL 528307 (N.D. Ill. Feb. 25, 2009). To the extent Plaintiff has failed to mitigate his damages, any award of damages may be reduced for his failure to mitigate.

V. Contributory Negligence

5. To the extent any injuries or damages claimed by Plaintiff were proximately caused, in whole or in part, by negligent, willful, wanton, and/or other wrongful conduct on the part of Plaintiff, any verdict or judgment obtained by Plaintiff must be reduced or barred by application of the principles of Contributory Negligence.

6. Defendants reserve the right to assert additional affirmative defenses as they become known through the course of discovery.

JURY DEMAND

Defendants respectfully request a trial by jury.

WHEREFORE, based on the foregoing, Defendants, Dr. David Kelner, John Hallinan, and Cook County, deny that Plaintiff is entitled to any relief, including but not limited to damages, costs, or attorneys' fees. Defendants pray that this Honorable Court grant judgment in their favor and against Plaintiff on all aspects of his Third Amended Complaint and further requests that this

Honorable Court grant judgment of the Defendants' fees, costs, and such other relief this Court deems just an appropriate.

Respectfully submitted,

KIMBERLY M. FOXX
State's Attorney of Cook County

By: /s/ Rachael D. Wilson
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CERTIFICATE OF SERVICE

I hereby certify that I have caused true and correct copies of the above and foregoing to be served on Plaintiff pursuant to ECF, in accordance with the rules of electronic filing of documents on this 9th day of April, 2021.

/s/ Rachael D. Wilson
Rachael D. Wilson