

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JAMES L. RADTKE, JR.,)
)
 Plaintiff,)
)
 v.)
)
 REBECCA WINZEN,)
)
 ARTURO CALVO TACA, JR., M.D.,)
)
 MERCY HEALTH,)
)
 AMANDA WILHELM,)
)
 ST. Louis COUNTY,)
)
 ALLEN FRANCES, M.D., and)
)
 AMERICAN PSYCHIATRIC)
 ASSOCIATION,)
)
 Defendants.)

Case No. 4:13-00213-ERW

**SEPARATE ANSWER OF AMANDA WILHELM AND ST. LOUIS COUNTY
TO PLAINTIFF'S AMENDED COMPLAINT**

COME NOW Defendants Amanda Wilhelm and St. Louis County and for their answer to Plaintiff's Amended Complaint deny everything not specifically admitted and in particular state as follows:

Jurisdiction and Venue

1. Defendants admit that this Court has jurisdiction over the claims presented.
2. Defendants admit that venue is proper.
3. Defendants have no reason to dispute paragraph 3 and therefore admit same at this time.

4. Paragraph 4 is not directed to these defendants and therefore no answer is made to paragraph 4 at this time.

5. Paragraph 5 is not directed to these defendants and therefore no answer is made to paragraph 5 at this time.

6. Defendants believe paragraph 6 to be true and therefore admit same at this time.

7. In answer to paragraph 7 defendants admit that at all times mentioned in plaintiff's Amended Complaint that Amanda Wilhelm was a St. Louis County police officer employed by St. Louis County and admit that whatever actions that Officer Wilhelm took during the times mentioned in plaintiff's Amended Complaint were done in her official capacity as a police officer, but deny that plaintiff has stated a claim in Amanda Wilhelm's "individual" capacity and so defendants deny anything in paragraph 7 not specifically admitted.

8. In answer to paragraph 8 defendants deny that St. Louis County is a "municipal corporation" rather it is a County within the State of Missouri created and existing by virtue of the laws of the State of Missouri and the Charter of St. Louis County. Defendants admit that St. Louis County operates the St. Louis County police department.

9. Paragraph 9 is not directed to these defendants and therefore no answer is made to paragraph 9 at this time.

10. Paragraph 10 is not directed to these defendants and therefore no answer is made to paragraph 10 at this time.

Narrative of Allegations of Amended Complaint

11. Paragraph 11 is not directed to these defendants and therefore no answer is made to paragraph 11 at this time.

12. Paragraph 12 is not directed to these defendants and therefore no answer is made to paragraph 12 at this time.

13. Paragraph 13 is not directed to these defendants and therefore no answer is made to paragraph 13 at this time.

14. Paragraph 14 is not directed to these defendants and therefore no answer is made to paragraph 14 at this time.

15. Defendants deny paragraph 15.

16. In answer to paragraph 16 defendants admit only that on the morning of February 16, 2011 that 911 was called, and defendants do not dispute that plaintiff's parents were the one who made the call to 911 and defendants do not dispute that the parents "felt compelled" by fears that plaintiff "might suffer from mental illness caused by brain disease" or that plaintiff "might be genetically predisposed to suicide" as alleged in paragraph 16. Defendants have no personal knowledge whether or not the fears of the parents were in retrospect "unfounded" and therefore deny that portion of paragraph 16 at this time, but further state that as far as probable cause is concerned only the objective events at the time are what are relevant.

17. Defendants deny paragraph 17 because it states the legal and ambiguous conclusion that plaintiff "was taken in the custody" of the police. Defendants only admit the factual statement in paragraph 17 that plaintiff was taken "directly to a hospital emergency room," and state affirmatively that the transportation of plaintiff directly to the hospital emergency room was performed by paramedics not employed by St. Louis County, who had also arrived on the scene, in response to the 911 call made by plaintiff's parents, and that Officer Wilhelm followed the ambulance to the hospital emergency room.

18. Defendants deny paragraph 18.

19. Defendants do not have personal knowledge of the allegations of paragraph 19 and so deny same at this time.

20. Defendants do not have personal knowledge of the allegations of paragraph 20 and so deny same at this time.

21. Defendants deny paragraph 21 insofar as the allegations pertain to these defendants. Defendants do not have personal knowledge of the allegations that pertain to a professional employee of Mercy Hospital and so deny those allegations at this time.

22. Paragraph 22 does not pertain to these defendants and therefore do not require a response. To whatever extent that paragraph 22 may be deemed to pertain to these defendants, said paragraph is denied.

23. Paragraph 23 does not pertain to these defendants and therefore do not require a response. To whatever extent that paragraph 23 may be deemed to pertain to these defendants, said paragraph is denied.

24. Defendants deny paragraph 24.

25. These defendants have no knowledge of a so called "massively financed and continuous political advocacy" which seems to be the primary basis of paragraph 25, and defendants deny that they deprived plaintiff of plaintiff's rights and therefore paragraph 25 is denied.

26. In answer to paragraph 26, defendants deny that plaintiff was "arrested" as that term is generally use, or that he underwent "imprisonment" as that term is generally used, and deny the further allegation that plaintiff was falsely arrested or imprisoned. These defendants do not have personal knowledge of whether plaintiff "suffered specific financial losses" and "losses of future business opportunity and reputation" and so deny all of paragraph 26.

27. Defendants deny paragraph 27.

28. Defendants deny paragraph 28.

Count I against Officer Wilhelm

29. Defendants admit that Officer Wilhelm acted under color of state law at the times mentioned in plaintiff's Amended Complaint. Defendants deny any implication or assertion that may be contained in paragraph 29 that Officer Wilhelm was not acting under color of law or was acting as an individual outside of her official capacity as a police officer.

30. Defendants deny that plaintiff was arrested or forcibly removed from his house of Amanda Wilhelm and so defendants deny paragraph 30.

31. Defendants deny paragraph 31, and specifically deny that plaintiff was at any time arrested as that term is normally used, and deny that there was probable cause, and state affirmatively that plaintiff's own factual pleadings that plaintiff's parents called an emergency number because of concerns that their son may be suffering from mental illness caused by brain disease and may be predisposed to suicide state objective facts for probable cause and deny that any actions of a police officer responding to the parents' concerns would be shocking to the conscience.

Count II against St. Louis County

32. Paragraph 32 states a legal conclusion regarding "duty" which is not only conclusory but is ambiguous and to that extent does not require a response other than to deny the conclusion. However, factually St. Louis County would admit paragraph 32 if it is to be construed that it has trained police officers and continues to offer training after persons become police officers and that this training includes rights of others.

33. In answer to paragraph 33, defendant St. Louis County denies that it failed to train police officers including Officer Wilhelm and denies that it had policies or customs that police officers should be deliberately indifferent to the rights of persons, and states affirmatively that plaintiff has no basis to make a statement that St. Louis County did not train police officers and has no basis to claim that St. Louis County executed policies or allowed customs that officers should be deliberately indifferent to rights of persons.

34. Defendant St. Louis County denies paragraph 34.

Count III filed against Ms. Winzen, Dr. Taca and Mercy Hospital

35. These defendants have no knowledge of the allegations of paragraph 35 and therefore paragraph 35 is denied.

36. These defendants have no knowledge of the allegations of paragraph 36 and therefore paragraph 36 is denied.

Count IV filed against Dr. Taca and Mercy Hospital

37. These defendants have no knowledge of the allegations of paragraph 37 and therefore paragraph 37 is denied.

38. These defendants have no knowledge of the allegations of paragraph 38 and therefore paragraph 38 is denied.

Count V filed against all defendants

39. There are no specific factual allegations in paragraph 39 specifically describing actions of Officer Amanda Wilhelm or St. Louis County with some other specific defendant or other person and therefore these defendants do not know what the allegation of conspiracy could be, and therefore deny paragraph 39. These defendants further state that paragraph 39 consists only of conclusions which do not state a claim.

40. There are no specific factual allegations in paragraph 40 specifically describing actions of Officer Amanda Wilhelm or St. Louis County with other specific defendants or other persons and therefore these defendants do not know what the allegation of conspiracy could be, and therefore deny paragraph 40. These defendants further state that paragraph 40 consists only of conclusions which do not state a claim.

41. There are no specific factual allegations specifically describing actions of Officer Amanda Wilhelm or St. Louis County with other specific defendants or other persons and therefore these defendants do not know what the allegation of conspiracy could be, and therefore deny paragraph 41. These defendants further state that paragraph 41 consists only of conclusions which do not state a claim.

Count VI against the American Psychiatric Association and Dr. Frances

42. Paragraph 42 is in the form of an argument as well as a conclusion of the pleader, and does not appear to be directed towards these defendants and therefore would not require a response by these defendants. To whatever extent paragraph 42 may somehow be deemed to be directed to these defendants, said paragraph is denied at this time.

43. Paragraph 43 is in the form of an argument as well as a conclusion of the pleader, and does not appear to be directed towards these defendants and therefore would not require a response by these defendants. To whatever extent paragraph 43 may somehow be deemed to be directed to these defendants, said paragraph is denied at this time.

44. Paragraph 44 is not directed to these defendants and therefore requires no response. To whatever extent said paragraph may be deemed to be directed to these defendants, said paragraph is denied.

45. Paragraph 45 is in the form of an argument as well as a conclusion of the pleader, and does not appear to be directed towards these defendants and therefore would not require a response by these defendants. To whatever extent paragraph 45 may somehow be deemed to be directed to these defendants, said paragraph is denied at this time.

46. Paragraph 46 is in the form of an argument as well as a conclusion of the pleader, and does not appear to be directed towards these defendants and therefore would not require a response by these defendants. To whatever extent paragraph 46 may somehow be deemed to be directed to these defendants, said paragraph is denied at this time.

47. Paragraph 47 is not directed to these defendants and therefore requires no response. To whatever extent said paragraph may be deemed to be directed to these defendants, said paragraph is denied.

Count VII against Ms. Winzen, Dr. Taca and Mercy Hospital

48. These defendants do not at this time have personal knowledge regarding the medical records created by professionally trained and professionally licensed individuals after plaintiff was admitted to Mercy Hospital. In addition the allegations of paragraph 48 which state that after plaintiff was admitted that there were medical records that indicated that he was hallucinating, suicidal, behaving irrationally and mentally ill are not directed to these defendants, and therefore are not within the personal knowledge of these defendants, and so these defendants do not need to answer these allegations at this time.

49. Paragraph 49 is not directed to these defendants and in addition paragraph 49 does not state the names of the third parties who, according to plaintiff's "information and belief," received communications from Ms. Winzen, Dr. Taca and Mercy but defendants deny that they

received any such communications and if any of the allegations of paragraph 49 are somehow deemed to be alleged against these defendants then they are denied.

50. Paragraph 50 does not appear to pertain to these defendants and therefore does not require a response by these defendants. To whatever extent paragraph 50 may be deemed to pertain to these defendants it is denied.

51. These defendants have no knowledge of the allegations contained in paragraph 51 and therefore deny same at this time.

VIII against American Psychiatric Association

52. Paragraph 52 clearly is not directed against these two defendants and so no answer is required.

53. Paragraph 53 clearly is not directed against these two defendants and so no answer is required.

54. Paragraph 54 clearly is not directed against these two defendants and so no answer is required.

55. Paragraph 55 clearly is not directed against these two defendants and so no answer is required.

Affirmative Defenses of Amanda Wilhelm and St. Louis County

1. For further answer and defense defendant Amanda Wilhelm states that plaintiff has failed to state a claim for false arrest against her under 42 U. S. C. 1983 upon which relief can be granted.

2. For further answer and defense defendant Amanda Wilhelm state that among the reasons that plaintiff failed to state a claim under 42 U. S. C. 1983 upon which relief can be granted are: 1) plaintiff did not state what he was arrested for, because in fact plaintiff was not

arrested but rather plaintiff was followed to a hospital emergency room with probable cause in that plaintiff's parents called 911 because of concern that the parents had for plaintiff's safety, which call prompted the arrival of paramedics and the police; and 2) in order to state a claim for false arrest there must be a factual allegation that an arrest had been made without probable cause, but in plaintiff's amended complaint, paragraphs 15 through 17 it is stated that plaintiff's parents had called police because the parents "felt compelled" by fears that plaintiff might be suffering "from a mental illness caused by brain disease," and might be "predisposed to attempt suicide," and according to plaintiff's allegations, there was reasonable caution or reasonable suspicion to have plaintiff examined at an emergency room by health care professionals; and 3) the actions of Officer Wilhelm by being a first responder to a domestic call for help and then following plaintiff's ambulance go to a hospital emergency room in an ambulance do not rise to the level of a constitutional violation and are not shocking to the conscience.

3. For further answer and defense Amanda Wilhelm states that she is protected from liability by the doctrine of Qualified Immunity because the actions that she took at the times mentioned in plaintiff's complaint did not violate a clearly established constitutional or statutory right of which a reasonable police officer would have known. Although Officer Wilhelm denies that her actions were in error in any respect, Qualified Immunity allows officers to make reasonable errors and protects all but the plainly incompetent or those who knowingly violate the law, which has not been alleged.

4. For further answer and defense defendant St. Louis County states that plaintiff has failed to state a claim in Count II upon which relief can be granted.

5. For further answer and defense defendant St. Louis County states that among the reasons that plaintiff has failed to state a claim against St. Louis County is because: 1) there was

no underlying constitutional violation committed by Officer Amanda Wilhelm; and 2) simple negligence in training is insufficient to state a claim or to impose liability under 42 U.S. C. 1983; and 3) inadequacy of training can only rise to the level of a constitutional violation where it amounts to deliberate indifference such that it would be obvious to result in a constitutional violation; and 4) one alleged occasion of a police officer's violation of constitutional rights does not state a claim for inadequate training; and 5) the doctrine of respondeat superior does not apply under 42 U.S.C. 1983; 6) plaintiff has not listed an official policy or specific custom that that is being challenged as a violation of constitutional rights; and 7) plaintiff has not stated the existence of a continuing, widespread, persistent pattern of unconstitutional conduct as well as tacit authorization that would constitute a custom of the St. Louis County police department to falsely arrest individuals without probable cause.

6. For further answer and defense defendants Amanda Wilhelm and St. Louis County state that plaintiff has failed to state a claim against them in Count V upon which relief can be granted.

7. For further answer and defense defendants Amanda Wilhelm and St. Louis County state that among the reasons that plaintiff has failed to state a claim against them for civil conspiracy that would rise to the constitutional level necessary under 42 U. S. C. 1983 are: 1) plaintiff has failed to state that Amanda Wilhelm acted in concert with a specific individual to commit an unlawful act or to commit a lawful act by unlawful means; and 2) plaintiff has failed to name the specific individual involved and failed to specify a violation of a specific law; 3) plaintiff has only stated conclusions in Count V; 4) the conclusions that are stated do not specify that defendant Amanda Wilhelm directly or indirectly acted with other individuals and then did not describe the act or acts with particularity that amounted to an agreement between Wilhelm

and others to violate the rights of plaintiff; and 4) the actions of St. Louis County or training or not training do not state a claim for a conspiracy; and 5) the only facts described by plaintiff specifically regarding Amanda Wilhelm do not state a

8. For further answer and defense, defendants state that an award of punitive damages would be in violation of the due process rights of the defendants under the 14th Amendment to the United States Constitution and Article 1 Section 10 of the Missouri Constitution.

9. For further answer and defense these defendants state that plaintiff has failed to state a claim against them for punitive damages upon which relief can be granted.

10. For further answer and defense defendants state that among the reasons that plaintiff has failed to state a claim for punitive damages upon which relief can be granted against Amanda Wilhelm and St. Louis County are because plaintiff has failed to allege facts showing malice or evil motive or intent of Amanda Wilhelm; and has failed to allege facts showing reckless indifference of Amanda Wilhelm to federally protected rights of plaintiff. Instead plaintiff has pled conclusions and arguments. Actual facts alleged by plaintiff in paragraph 16 of the Amended Complaint include that on February 5, 2011 Officer Amanda Wilhelm responded to a call to the police that came from plaintiff's parents "who felt compelled" to make the call because of fears that plaintiff might be suffering from mental illness caused by brain disease, and may attempt suicide, and then, as stated in paragraph 17, plaintiff was taken to a hospital emergency room.

11. For further answer and defense defendant. Louis County states that governmental agencies are immune from punitive damages under 42 U.S. C. 1983 and therefore punitive damages cannot be claimed or awarded against this defendant.

12. For further answer and defense these defendants state that plaintiff's Complaint appears to be attempting to state federal causes of action as opposed to state tort claims. If however the claims of plaintiff are in any way construed to be state claims, then St. Louis County is completely protected by the doctrine of sovereign immunity, which has only two statutory exceptions, neither of which has been alleged, and Amanda Wilhelm is protected from liability by the doctrine of official immunity. Further these defendants would have the other protections of state law including but not limited to those set out in Section 537.600, 490.715 R. S.MO.

WHEREFORE, having fully answered defendants Amanda Wilhelm and St. Louis County move this honorable Court to enter judgment in their favor and to assess costs against plaintiff and to make a determination whether or not attorneys' fees should be awarded against plaintiff under Rule 11 and for such other relief that the Court deems just under the circumstances.

**PATRICIA REDINGTON
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was mailed on this 26th day of April, 2013, by U.S. Mail, First Class postage pre-paid, to S. Randolph Kretchmar, Attorney for Plaintiff, 1170 Michigan Avenue, Wilmette, IL 60091 and by Electronic filing to all counsel of record.

/s/ Michael E. Hughes