

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

CHRISTOPHER DUFF, STARLENE GILBERT,)
BOYD ALAN KEARLEY, JACKIE LAESCH,)
JOHN LEWIS, DOMENICA PALMER, WELDON)
BRUCE PALMER II, WANDA RUPE, BRANDY)
NICOLE STORY AND SHARON WILLIAMS,)

on behalf of themselves and those similarly)
situated,)

Plaintiffs,)

v.)

No. 2:23-cv-00037

CITY OF CROSSVILLE, TENNESSEE, KOBY)
WILSON, ZACH YOUNG, JESSIE BROOKS,)
JOHN DOE 1-10 who are officers with the City of)
Crossville, Tennessee Police Department, DANNY)
THURMAN, CASEY WORSHAM, CHRIS SOUTH,)
THOMAS SMITH, TERRY L. POTTER, JEREMY)
MANGAS, CASEY WORSHAM,¹)

Defendants.)

ANSWER

Comes now the Defendants, the City of Crossville, Tennessee; Koby Wilson; Zach Young; Jessie Brooks; Danny Thurman; Casey Worsham; Chris South; Thomas Smith; Terry L. Potter; and Jeremy Mangas; and for their answer in response to the Complaint filed against them which state and show unto the Court as follows:

¹ Casey Worsham is listed in the caption of the Complaint twice.

I. That the Complaint against these Defendants, and each of them, fails to state a cause of action for which relief may be granted.

II. With respect to any allegations of negligence against these Defendants, Koby Wilson, Zach Young, Jessie Brooks, Danny Thurman, Casey Worsham, Chris Couth, Thomas Smith, Terry L. Potter, Jeremy Mangas and Casey Worsham, both individually and as officers, firefighters, codes enforcers, and individually they are entitled to personal immunity pursuant to the provisions of the Tennessee Governmental Tort Liability Act codified in TCA §29-20-101, et seq, including TCA §29-20-310.

III. With respect to any state law claims under the Governmental Tort Liability Act against these Defendants, the exclusive and original jurisdiction for the venue for said action is in the Circuit Court for Cumberland County, Tennessee. Accordingly, it is denied that this court is the proper jurisdiction or venue to resolve these claims.

IV. With respect to any constitutional violations against any of the individual defendants, whether officers, codes enforcers, or firefighters, individually or otherwise, it is asserted that they did not violate any clearly established constitutional right and are entitled to qualified immunity.

V. The named Plaintiffs lack Article III standing to bring suit either on their own behalf or on behalf of any other person against any defendant that did not personally cause that individual plaintiff an injury.

VI. Individual issues, including but not limited to the very existence of damages as to any Plaintiff or any individual; the status of individuals as a “tenant,” guest, transient, squatter, or other status; the hazards created by the individuals themselves rendering the premises dangerous and uninhabitable for themselves and others present at the premises; the conflict of interest between and among the individuals themselves; each predominate over any claims purportedly applicable to any class, and the named Plaintiffs may not pursue a class in accordance with Fed. R. Civ. P. 23.

VII. The purported class is insufficiently numerous.

VIII. The purported class representatives are inadequate.

IX. It is denied that the City of Crossville has an unconstitutional custom, practice or policy of any kind.

X. Now, responding to the numerically to the allegations in the Complaint these Defendants would state and show unto the court as follows:

1. The allegations set forth in the preliminary statement are denied. It is specifically denied that any of the officers violated clearly established rights protected by the Fourth or Fourteenth Amendments to the United States Constitution, or any other federal or Tennessee law.

2. Jurisdiction as it relates to 28 U.S.C. § 1983 cases are admitted in this Honorable Court.

3. The existence of the concept of supplemental jurisdiction is admitted, pursuant to 28 U.S.C. § 1367, but it is denied that the Court should exercise

supplemental jurisdiction over any state law claim. The Complaint purports to contain three counts, two of which are allegedly based on the U.S. Constitution. The third count purports to be predicated on the Tennessee Constitution, for which there is no private right of action, and no matter over which the Court may exercise supplemental jurisdiction. To the extent the Complaint now or ever purports to make a claim against the City or the individuals which is covered in any manner by the Tennessee Governmental Tort Liability Act, exclusive jurisdiction over such claim is in the Circuit Court for Cumberland County, Tennessee, pursuant to Tenn. Code Ann. § 29-20-307, and the Court should decline to exercise supplemental jurisdiction over any such claim.

4. Venue is admitted to the extent the Court has jurisdiction over the claims.

5. The Defendants lack sufficient knowledge or information to ascertain the truth of the allegations set forth in this paragraph, and therefore demands strict proof of the same. Any claim of wrongful eviction is denied.

6. The Defendants lack sufficient knowledge or information to ascertain the truth of the allegations set forth in this paragraph, and therefore demands strict proof of the same. Any claim of wrongful eviction is denied.

7. The Defendants lack sufficient knowledge or information to ascertain the truth of the allegations set forth in this paragraph, and therefore demands strict proof of the same. Any claim of wrongful eviction is denied.

8. The Defendants lack sufficient knowledge or information to ascertain the truth of the allegations set forth in this paragraph, and therefore demands strict proof of the same. Any claim of wrongful eviction is denied.

9. The Defendants lack sufficient knowledge or information to ascertain the truth of the allegations set forth in this paragraph, and therefore demands strict proof of the same. Any claim of wrongful eviction is denied.

10. The Defendants lack sufficient knowledge or information to ascertain the truth of the allegations set forth in this paragraph, and therefore demands strict proof of the same. Any claim of wrongful eviction is denied.

11. The Defendants lack sufficient knowledge or information to ascertain the truth of the allegations set forth in this paragraph, and therefore demands strict proof of the same. Any claim of wrongful eviction is denied.

12. The Defendants lack sufficient knowledge or information to ascertain the truth of the allegations set forth in this paragraph, and therefore demands strict proof of the same. Any claim of wrongful eviction is denied.

13. The Defendants lack sufficient knowledge or information to ascertain the truth of the allegations set forth in this paragraph, and therefore demands strict proof of the same. Any claim of wrongful eviction is denied.

14. The Defendants lack sufficient knowledge or information to ascertain the truth of the allegations set forth in this paragraph, and therefore demands strict proof of the same. Any claim of wrongful eviction is denied.

15. Admitted.

16. The allegations set forth in paragraph sixteen (16) are admitted to the extent that Defendant Wilson is a detective with the City of Crossville, Tennessee.

17. The allegations set forth in paragraph seventeen (17) are admitted to the extent that Defendant Young is a Codes Enforcement Officer with the City of Crossville, Tennessee.

18. The allegations set forth in paragraph eighteen (18) are admitted to the extent that Defendant Brooks is the Chief of Police for the City of Crossville, Tennessee.

19. Denied. It is denied that Plaintiff may sue “John Doe” alleged officers, or that inclusion of same constitutes a valid suit or allegation

20. The allegations set forth in paragraph twenty (20) are admitted to the extent Defendant Thurman is a Codes Enforcement Officer with the City of Crossville, Tennessee.

21. The allegations set forth in paragraph twenty-one (21) are admitted to the extent Defendant Worsham is a fireman with the City of Crossville.

22. The allegations set forth in paragraph twenty-two (22) are admitted to the extent Defendant South is a fireman with the City of Crossville.

23. The allegations set forth in paragraph twenty-three (23) are admitted to the extent Defendant Smith is a fireman with the City of Crossville.

24. The allegations set forth in paragraph twenty-four (24) are admitted to the extent Defendant Potter is a fireman with the City of Crossville.

25. The allegations set forth in paragraph twenty-five (25) are denied to the extent Defendant Mangas is a fireman with the City of Crossville. It is admitted that the Defendant Mangas is an employee of the City of Crossville Police Department.

26. The allegations set forth in paragraph twenty-six (26) are admitted to the extent Defendant Worsham is a fireman with the City of Crossville. It is averred that Defendant Worsham appears in the caption of the Complaint twice, and now this allegation of paragraph twenty-six (26) appears to restate the allegations of paragraph twenty-one (21).

27. It is admitted that the Defendants were firefighters, codes enforcers, and police officers working for the City of Crossville at the time of the alleged incident.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. It is admitted that on or about June 20, 2022, the Defendant Detective Wilson attended a basic narcotic investigation school.

34. Denied.

35. It is admitted that on or about July 25, 2022, Detective Wilson obtained a proper and valid search warrant for room number 195 at the Village Inn. Any allegation inconsistent with the foregoing is denied.

36. Admitted.

37. Admitted.

38. It is admitted that a briefing occurred, but the remaining allegations are denied.

39. Admitted.

40. It is admitted that the proper and valid search warrant was properly executed in a lawful manner on unit number 195. Any allegation inconsistent with or in addition to the foregoing is denied.

41. Admitted.

42. Denied as stated. It is averred that it became apparent that numerous, serious life safety problems were present.

43. Admitted.

44. Admitted.

45. Admitted.

46. Admitted.

47. Denied as stated. It is averred that Plaintiff's counsel appears aver that he is a material witness to the allegations of this paragraph. Tenn. R. Sup. Ct. 8; RPC 3.7.

48. It is admitted that power to the building was terminated, and that due to numerous serious life safety problems the building was unsafe for occupancy.

Any other allegations are denied.

49. Denied.

50. Admitted.

51. The existence of the statement is admitted.

52. It is admitted that Defendant Young wrote a letter which speaks for itself. The remaining allegations are denied as stated.

53. Denied. It is admitted that Chief South wrote a detailed report including his findings under the authority of Tenn. Code Ann. § 68-102-117 and the 2018 International Fire Code §111 and 113.1.

54. The existence of the narrative is admitted, which speaks for itself. Plaintiffs' characterization is denied.

55. Upon information and belief, it is admitted that the District Attorney General's office for the 13th Judicial District was working toward a nuisance action against the Village Inn, and is among the officials with the authority to do so. The remaining allegations are denied as stated.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. It is denied that this action should be certified under the Federal Rule of Civil Procedure as a class action or that any of the requisites are met.

63. The existence of Fed. R. Civ. P. 23 is admitted, but it is denied that this paragraph constitutes an adequate statement of the law, or that this rule may be properly invoked by Plaintiffs in this case.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

68. Denied, and all subparts are denied.

69. Denied, and all subparts are denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. The Defendants are without sufficient knowledge or information to admit or deny the allegations of this paragraph, and therefore demands strict proof of the same. Upon information and belief, at least one of the named Plaintiffs is deceased and was deceased at the time of the filing of this suit, and therefore could not be represented by Attorney Nisbet.

75. Denied.

76. Denied.

77. The allegations set forth in paragraph seventy-seven (77) of the Complaint are denied as there is no Memorandum in Support that is required under Rule 23 that has been filed or accompanies this Complaint. It is specifically denied that this case is appropriate for class certification in any respect.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

AFFIRMATIVE DEFENSES

1. The statements at the outset of this Answer in sections I – IX are incorporated by reference as if fully and completely restated.

2. The Complaint is fatally defective as to each of the individual Defendants because it fails to specifically allege the violation of a constitutional right by any of these individuals, or how any such alleged violation caused any damage to any individual Plaintiff. The Sixth Circuit “has consistently held that damage claims against government officials arising from alleged violations of constitutional rights must allege, with particularity, facts that demonstrate what *each* defendant did to violate the asserted constitutional right.” *Lanman v. Hinson*, 529 F.3d 673 (6th Cir. 2008) (italics in original). Plaintiff’s complaint fails to identify

facts as to each individual, and what each allegedly did to violate an asserted constitutional right. There is no vicarious liability available under § 1983, and the Complaint against each Defendant must identify conduct by each such Defendant.

3. The Complaint is fatally defective as to the City of Crossville, because it fails to allege or even attempt to identify any unconstitutional custom, practice, or policy. There is no *respondeat superior* or other vicarious liability, and the Complaint is utterly devoid of any allegation against the City.

4. To the extent the Complaint intends to assert a claim against any individual or the City, it is also fatally defective and fails to state a claim, because it lacks any statement of facts showing that the pleader, or any of them, are entitled to relief sufficient to comply with *Twombly* and *Iqbal*.

5. These Defendants assert that Plaintiffs' Complaint fails to assert any seizure of any person, by any person, or that Plaintiff's Complaint asserts a Fourth Amendment violation.

6. These Defendants assert that Plaintiffs, and each of them, lacked any property interest or liberty interest upon which a due process claim could lie. To the extent that the Plaintiffs had such interest, these Defendants aver that there was no deprivation by any of the Defendants. To the extent of an interest and deprivation, these Defendants assert that Plaintiffs received all the process that was due, that any deprivation was brief and de minimus, and that there is an adequate state law remedy.

7. To the extent of a property or liberty interest and deprivation, these Defendants assert that same was random and unauthorized, and a due process claim may not lie.

8. These Defendants aver that failure to comply with state law procedures, as applicable, cannot form a basis for a due process claim.

9. Upon information and belief, at least one of the named Plaintiffs is deceased, and was deceased at the time of the filing of the Complaint. The Complaint is thus a legal nullity as to such person, which cannot be cured by amendment.

10. These Defendants, and each of them, deny violating any clearly established constitutional right, and specifically aver that to the extent any one or more of them they engaged with any of the Plaintiffs at any time, they each engaged in proper and lawful conduct with respect to each Plaintiff at all times.

11. The individual Defendants each assert the doctrine of qualified immunity, including immunity from the suit process itself. It is averred that at no time was any clearly established constitutional right of any of the Plaintiffs violated by anyone, and each and every claim against any of the individual Defendants should be dismissed.

12. The City, and its employees, each assert the doctrine of sovereign immunity with respect to all claims against them to the maximum extent allowed. To the extent applicable, these Defendants each further asserts all privileges and immunities in accordance with the Tennessee Governmental Tort Liability Act,

T.C.A. § 29-20-101, et seq., including the limitation on damages, the limitation to a non-jury trial, and exclusive jurisdiction in the Circuit Court for Cumberland County, Tennessee. It is averred that each individual is entitled to complete personal immunity as to any claim against them governed by the Tennessee Governmental Tort Liability Act.

13. It is averred that the suit against the individual Defendants, including particularly those individuals named in the Complaint for whom no specific fact is alleged, is frivolous, unreasonable, and without foundation. It is further averred that any continuation of the suit by Plaintiffs, or any of them, is unreasonable. This Defendant is entitled to his attorney's fees pursuant to 42 U.S.C. § 1988(b) whether or not the Plaintiffs' claims were initially brought in bad faith. *Christianburg Garment Co. v. Equal Employment Opportunity Commission*, 434 U.S. 412, 421 (1978); *Fox v. Vice*, 563 U.S. 826, 835 (2011).

14. These Defendants demand a jury of twelve (12) persons to try all issues joined in this cause, (except for any issues in the original Complaint or any amendment that may be governed by the Tennessee Governmental Tort Liability Act, in which the Defendants demand a bench trial by the Circuit Court for Cumberland County, Tennessee in accordance with the Tennessee Governmental Tort Liability Act). To the extent a twelve (12) person jury is not available in Federal Court, these Defendants assert that they should receive a jury of the maximum number of permissible jurors, and without limiting the foregoing, a jury of no fewer than eight (8).

15. These Defendants, and each of them, further affirmatively assert common law good faith immunity and/or qualified immunity. These Defendants, and each of them, aver that their respective actions were all reasonable under the circumstances at all times, and they are entitled to a dismissal of all claims against them, by virtue of any theory of law whatsoever.

16. To the extent any claim exists in the original Complaint or any amendment, which would be governed by the Tennessee Governmental Tort Liability Act, the claims against any such individual Defendant are barred in accordance with the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-310(b).

17. This Defendant avers that each Plaintiff lacks standing as to claims against any Defendant that did not personally interact with such Plaintiff or cause such Plaintiff any injury. It is averred that the juridical link doctrine has been repudiated, and that each Plaintiff must satisfy Article III standing as to each Defendant. The Complaint fails to assert any particular right of any particular Plaintiff, violated by any particular Defendant, and thus fails to sufficiently assert standing.

18. To the extent that any named Plaintiff has any Article III standing against any particular Defendant, that is insufficient to sustain a claim of standing as to any purported class member.

19. The allegations of Plaintiffs' prayer for relief seeking punitive damages should be stricken and fail to state a claim for which relief can be granted.

To the extent Plaintiffs seek punitive damages, these Defendants demand a bifurcated trial. This Defendant further asserts the limitations on punitive damages pursuant to the Tennessee Civil Justice Act, T.C.A. § 29-39-104.

20. These Defendants, and each of them, assert that there is no private right of action under the Tennessee Constitution, and any such claim fails to state a claim for which relief can be granted.

21. These Defendants assert that Plaintiffs have failed to meet any element of any purported class under Fed. R. Civ. P. 23. It is specifically averred that the named plaintiffs are not representative of any other person; that any other person is sufficiently similarly situated; that there is commonality, typicality, or numerosity of claims; or that a class action may be maintained as to any aspect of this suit. It is averred that this suit may not be certified as a class action by virtue of any theory of law whatsoever. It is further averred that the named plaintiffs lack standing as to any other claims besides their own personal claims, and that they lack standing generally to assert any claim beyond their own individualized inquiry.

22. These Defendants reserve the right to supplement and amend this Answer based on further investigation and discovery.

Now, having fully answered the complaint against them, these Defendants ask that same be dismissed with prejudice, that they be awarded their attorney's fees pursuant to 42 U.S.C. § 1988 and/or as applicable to any of the individual defendants T.C.A. § 29-20-113.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was filed electronically on July 12, 2023. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

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