

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON
CASE NO._____

JESSICA BARBERICK, INDIVIDUALLY)
AS ADMINISTRATRIX OF THE)
ESTATE OF FRANK BARBERICK, AND) JUDGE
AS MOTHER AND NEXT FRIEND OF)
LACY BARBERICK, A MINOR)
)
Plaintiffs,) **COMPLAINT WITH JURY DEMAND**
vs.)
)
FLORENCE FIRE DEPARTMENT EMT)
PAUL HILMER, Individually,)
Station #1- Florence Fire Dept.)
1152 Weaver Road)
Florence, KY 41042)
and)
)
FLORENCE FIRE DEPARTMENT EMT)
JOSHUA ELLISON, Individually,)
Station #1- Florence Fire Dept.)
1152 Weaver Road)
Florence, KY 41042)
)
and)
)
BOONE COUNTY SHERIFF'S OFFICE)
DEPUTY BRETT DOVER, Individually,)
Boone County Sheriff)
3000 Conrad Lane)
Burlington, KY 41005)
)
and)
)
FLORENCE POLICE DEPARTMENT)
LIEUTENANT ROGER ALLEN,)
Individually,)
Florence City Police Administration)
8100 Ewing Blvd.)
Florence, KY 41042)
)
and)

FLORENCE POLICE DEPARTMENT)
OFFICER MIKE STEWART,)
Individually,)
Florence Government Center)
8100 Ewing Blvd)
Florence, KY 41042)

Defendants.

Plaintiff Jessica Barberick, Individually, as the Administratrix of the Estate of Frank Barberick, and as Mother and Next Friend of Minor Child Lacy Barberick, by and through counsel, and for her Complaint against the above-named Defendants, states as follows:

JURISDICTION AND VENUE

1. This action arises under the United States Constitution, particularly under the provisions of the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution and under the laws of the United States, particularly under the Civil Rights Act, Title 42 of the United States Code, Sections 1983 and 1988.

2. This Court has jurisdiction of this action under the provisions of Title 28 of the United States Code, Sections 1331 and 1343, and also has pendent jurisdiction under United States Code, Section 1363 over all state claims that arise out of the nucleus of operative facts common to Plaintiffs' federal claims.

3. Venue is proper in this Court under 28 U.S.C. § 1391(a), since the events giving rise to this claims occurred in this Judicial District and Defendants are subject to personal jurisdiction here.

4. Plaintiff brings this suit against each and every Defendant in their individual capacities.

5. Each and every act of Defendants was done under the color and pretense of the laws of the Commonwealth of Kentucky and the laws of the United States.

PARTIES

6. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully rewritten herein.

7. Plaintiff, Jessica Barberick was married to Frank Barberick, deceased, at the time of his death.

8. Plaintiff Jessica Barberick is the mother and Next Friend of Lacy Barberick, the natural-born minor daughter of the Decedent Frank Barberick.

9. Plaintiff Jessica Barberick is the duly appointed Administratrix of the Estate of Frank Barberick, having been so named by the Boone County District Court, Case No. 16-P-432 on October 14, 2016.

10. At all relevant times, Defendant Florence EMT Paul Hilmer was an emergency medical technician employed by the Florence Fire Department. Defendant Hilmer is being sued in his individual capacity.

11. At all relevant times, Defendant Florence EMT Joshua Ellison was an emergency medical technician employed by the Florence Fire Department. Defendant Hilmer is being sued in his individual capacity.

12. At all relevant times, Defendant Boone County Sheriff's Deputy Brett Dover was a sheriff's deputy employed by the Boone County Sheriff's Department. Defendant Deputy Dover is being sued in his individual capacity.

13. At all relevant times, Defendant Florence Police Department Lieutenant Roger Allen was a police lieutenant employed by the Florence Police Department. Defendant Officer Roger Allen is being sued in his individual capacity.

14. At all relevant times, Defendant Florence Police Officer Mike Stewart was a police officer employed by the Florence Police Department. Defendant Officer Mike Stewart is being sued in his individual capacity.

FACTUAL ALLEGATIONS

15. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully rewritten herein.

16. On or about November 16, 2015 Defendants were called out to Frank Barberick's residence for a 911 hang-up call.

17. Dispatch notified responders that a suicide attempt had occurred at Mr. Barberick's address just two weeks prior to November 16, 2015.

18. Upon Defendant Deputy Dover's arrival, Mr. Barberick's mother informed him that Frank had swallowed two handfuls of medication.

19. When Defendant Deputy Dover asked Mr. Barberick if he had taken "some pills" Frank responded that he took what his doctor "gives him," Elavil.

20. When Defendant Dover asked Mr. Barberick what the Elavil was prescribed for, Mr. Barberick said that it was to shut his mind down, to help him sleep.

21. Mr. Barberick's mother then brought out two pills that she found on the ground and asked Frank if one of them is "his Diazepam."

22. Mr. Barberick identified the first one as a muscle relaxer for his back and the other as Amitriptyline (generic name for Elavil).

23. Defendant Deputy Dover asked Mr. Barberick what and how much of the prescriptions he mixed with alcohol.

24. Mr. Barberick denied that he mixed the two and stated, "I'm all right sir."

25. Defendant Deputy Dover informed Mr. Barberick that he was concerned about him due to his slurred speech and intoxicated appearance and continued questioning him.

26. Mr. Barberick's mother informed Defendant Deputy Dover that Mr. Barberick had taken a handful of the pills about half an hour to forty-five minutes before Defendant Deputy Dover arrived.

27. Defendant Deputy Dover then called Mr. Barberick's identification information over the radio to dispatch.

28. Mr. Barberick denied taking more of his prescriptions than he was supposed to, but refused to tell Defendant Deputy Dover how many he took.

29. Mr. Barberick's mother telephoned Mr. Barberick's ex-wife, Tammy, and asked her what Mr. Barberick had told her earlier, saying "it was goodbye, wasn't it?"

30. When Mr. Barberick heard Tammy on the phone, he stated out loud, "stop it Tammy."

31. At this point, Defendant Deputy Dover ordered Mr. Barberick to sit down on the couch while Mr. Barberick's mother continued the conversation with Tammy.

32. While on the couch, Mr. Barberick stated over and over that he needed to speak to Sierra, his adult daughter, before he was taken to jail.

33. Defendant Deputy Dover picked up on the fact that Frank had been lying to him and confronted him.

34. Defendant Deputy Dover asked why the others said something different from what Mr. Barberick told him.

35. Mr. Barberick was unable to give a reason and instead changed the subject to the fact that his wife would not answer the phone.

36. Eventually, Mr. Barberick told Defendant Deputy Dover that he took "maybe two or three" amitriptyline.

37. During this time, Mr. Barberick continued to insist to talk to his daughter, Sierra.

38. While Mr. Barberick was on the phone with Sierra, Defendant Deputy Dover asked Mr. Barberick's mother about the medication that Frank took and she told him about the previous attempted overdose that occurred a couple of weeks prior.

39. She told Defendant Deputy Dover, that Mr. Barberick took "I think the same thing."

40. Defendant Deputy Dover then radioed to dispatch to inform them that Mr. Barberick's mother told him that Frank may have taken a bunch of pills again.

41. Defendant Deputy Dover indicated during the call that Mr. Barberick appeared "extremely intoxicated."

42. Defendant Deputy Dover again asked Frank how much he had to drink to which Mr. Barberick responded that he had two or three beers.

43. When Defendant Deputy Dover asked Mr. Barberick how many pills he took, he stated that the medicine was renewed on the twenty-sixth.

44. Defendant Deputy Dover then asked Mr. Barberick to come downstairs to have an EMT check him out.

45. Mr. Barberick refused to go with Defendant Deputy Dover, so Defendant Deputy Dover placed Mr. Barberick under arrest for an outstanding warrant.

46. As Defendant Deputy Dover attempted to move Mr. Barberick out of the apartment, Mr. Barberick attempted multiple times to sit back down on the couch “to wait for the paramedics.”

47. By this point Mr. Barberick’s speech was noticeably more slurred and labored.

48. While on the couch, the Defendants Paul Hilmer and Joshua Ellison, EMT’s, arrived and one asked for Defendant Dover’s flashlight.

49. The EMT examined Mr. Barberick for a total of seven seconds then stood up and said, “His pupils, I mean he’s nothing, no narcotics.”

50. At one point the EMT told Mr. Barberick, “hey hey, stop. You’re mumbling, you ain’t making sense, just stop you’re not helping yourself.”

51. After deciding not to treat Frank, it took Defendant Deputy Dover and one of the EMT’s to get Mr. Barberick down the stairs in order to put him in the cruiser.

52. While in the parking lot, Defendant Deputy Dover conferred with Defendant Stewart as to the likelihood that the jail would accept Mr. Barberick in his condition. Defendant Deputy Dover’s body camera was then turned off.

53. Defendant Lieutenant Roger Allen assisted Defendant Deputy Dover place Mr. Barberick in Defendant Officer Mike Stewart’s patrol car.

54. Defendants Lieutenant Roger Allen, Deputy Dover, and Officer Mike Stewart all failed to restrain Mr. Barberick with a safety belt, in violation of department policy.

55. Defendant Officer Mike Stewart transported Mr. Barberick to the Boone County Detention Center.

56. On the way to the Detention Center, Defendant Mike Stewart noticed that Mr. Barberick was snoozing or snoring in the back seat.

57. When he arrived at the Detention Center, Mr. Barberick was unresponsive and was not breathing.

58. The Detention Center staff started CPR and requested paramedics assistance. The responding paramedics continued CPR and acknowledged that the original call was placed because Mr. Barberick "was drunk and had taken a handful of pills."

59. A Burlington paramedic squad arrived to transport Mr. Barberick to the hospital. The paramedics' attempt to resuscitate Mr. Barberick failed.

60. Mr. Barberick died on November 16, 2015 while in custody.

COUNT I- DELIBERATE INDIFFERENCE
(Each and Every Defendant)

61. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully rewritten herein.

62. Defendants were aware that suicide by overdose is a subjectively aware of a serious risk of harm to a restrained person's health to necessitate medical care.

63. Mr. Barberick's need for medical treatment was so obvious that even a layperson could have easily recognized the necessity for a doctor's intervention, treatment and attention.

64. Defendants were objectively and subjectively aware of the risk to Mr. Barberick's health and drew the inference that a substantial risk of harm to Mr. Barberick existed.

65. Defendants' evaluations of Mr. Barberick were so lacking that it was akin to no treatment at all.

66. Defendants consciously disregarded the risk of overdose and failed to seek and/or provide medical treatment.

67. Upon information and belief, medical treatment by the EMTs during transport to an emergency room would have been able to prevent Mr. Barberick's death.

68. Alternatively, transporting Mr. Barberick to a hospital in a police cruiser would not have been sufficient to save Mr. Barberick's Life.

69. Mr. Barberick was restrained in custody before any attempts to provide medical care were undertaken.

70. Defendants actions were a deliberate indifference and created a substantial risk of serious harm to Mr. Barberick's future health, violating his Eighth Amendment rights.

71. Due to the Defendants deliberate indifference to the decedent's serious medical needs, Mr. Barberick died while in custody.

72. As a direct and proximate cause and a substantial factor of Defendants deliberate indifference Mr. Barberick suffered pain and suffering prior to his death, the Estate of Mr. Barberick has incurred medical bills and funeral expenses, loss of household services, and his family has endured a loss of love, affection and consortium as well as emotional anguish due to the circumstances surrounding the death of Mr. Barberick.

COUNT II- LOSS OF CONSORTIUM
(Each and Every Defendant)

73. Plaintiff incorporates by reference each and every paragraph in this Complaint as if fully rewritten herein.

74. Pursuant to KRS § 411.145, Plaintiff Jessica Barberick, as the wife of Mr. Barberick, is entitled to recover damages for the loss of services, assistance, aid, society, companionship and conjugal relationship

75. Pursuant to KRS § 411.135, the Plaintiff's minor daughter, Lacy Barberick, as represented by next friend and mother, Jessica Barberick, is entitled to recover for the loss of

affection and companionship that would have been derived from her father during her minority, which loss has occurred as a direct result of the reckless or negligent actions of the Defendants, jointly and/or severally.

COUNT III- PUNITIVE DAMAGES

76. Plaintiff incorporates by reference each and every paragraph in this Complaint as if fully rewritten herein.

77. As a consequence of Defendants' wrongful conduct, Frank Barberick lost his life and Plaintiff suffered and continues to suffer due to the loss.

78. Defendants' actions were knowing, intentional, cruel and malicious, entitling the Plaintiff to recover punitive damages from Defendants in order to deter such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request judgment on all counts in addition to cost and interest associated with the disbursement of this action. Plaintiffs also request a trial by jury; actual and punitive damages; and costs, attorney fees, pre- and post-judgment interest and all other relief to which they are entitled.

Respectfully submitted,

/s/ Jennifer L. Lawrence

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all counts and issues complained of herein.

/s/ Jennifer L. Lawrence

Jennifer L. Lawrence