

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

EMILY HITZKE, as Mother and Next)	
Friend of Ava Hitzke, a minor)	
)	
Plaintiff)	
)	
vs.)	Case No.
)	
VILLAGE OF MUNDELEIN, UNKNOWN)	
VILLAGE OF MUNDELEIN POLICE)	
OFFICER NUMBER 1 and UNKNOWN)	
VILLAGE OF MUNDELEIN POLICE)	
NUMBER 2)	
)	
Defendants)	

COMPLAINT

NOW COMES Plaintiff, EMILY HITZKE, as Mother and Next Friend of AVA HITZKE, a minor by, and through her attorneys, Noonan, Perillo & Thut and complaining of Defendants, VILLAGE OF MUNDELEIN, UNKNOWN VILLAGE OF MUNDELEIN POLICE NUMBER 1 and UNKNOWN VILLAGE OF MUNDELEIN POLICE NUMBER 2 states as follows:

PARTIES

1. Plaintiff, Emily Hitzke, brings this cause of action as the Mother and Next Friend of Ava Hitzke, a minor born on August 7, 2002. She is an individual and resident of Mundelein, Illinois and is therefore a citizen of the State of Illinois.

2. Defendant, Village of Mundelein is a body politic organized under the laws of the State of Illinois and located within the boundaries of the United States District Court for the Northern District of Illinois (hereinafter referred to as “Mundelein”).

3. Defendants, Unknown Village of Mundelein Police Number 1 and Unknown Village of Mundelein Police Number 2, are police officers employed by the

Village of Mundelein whose identifies are unknown to Plaintiff as of the filing of this Complaint. Plaintiff has attempted to ascertain their identities through a document request pursuant to the Illinois Freedom of Information Act but Mundelein has refused to provide said documentation.

JURISDICTION

4. Plaintiff brings this action pursuant to Section 1983 of the United States Civil Rights Act (42 USC. Sec. 1983). As such this Court has jurisdiction to adjudicate this federal question pursuant to 28 USC Sec. 1331.

VENUE

5. Venue for this case lies in the Northern District of Illinois as the cause of action occurred in the City of Mundelein, Lake County, Illinois.

COUNT I

VIOLATION OF SECTION 1983 OF THE UNITED STATES CIVIL RIGHTS ACT

6. On or about June 11, 2019 at approximately 11:00pm the minor Plaintiff, Ava, Hitzke, was socializing with friends at a park known as Dinosaur Park within the limits of the Village of Mundelein, Illinois.

7. At the time and place aforesaid, Defendants, Unknown Village of Mundelein Police Number 1 and Unknown Village of Mundelein Police Number 2 approached the juveniles at Dinosaur Park and indicated that the minors must leave the park or they would be arrested for trespassing.

8. After searching the minor Plaintiff, Ava Hitzke, through the computerized criminal database, an outstanding warrant was discovered because the minor Plaintiff had missed a juvenile court appearance for a misdemeanor battery charge.

9. Defendants, Unknown Village of Mundelein Police Number 1 and Unknown Village of Mundelein Police Number 2, placed the minor Plaintiff, Ava Hitzke, under arrest, placed her in handcuffs and transported her to the Mundelein Police Department.

10. After a period of time at the Mundelein Police Department Defendants, Unknown Village of Mundelein Police Number 1 and Unknown Village of Mundelein Police Number 2 decided to remove the handcuffs.

11. The left handcuff jammed and could not be removed.

12. After no one could remove the left handcuff from the wrist of minor Plaintiff, Ava Hitzke, Defendants, Unknown Village of Mundelein Police Number 1 and Unknown Village of Mundelein Police Number 2 brought Ava to the garage of the nearby Mundelein Fire Department.

13. Upon arriving at the Mundelein Fire Department, members of the Mundelein Police Department and Mundelein Fire Department attempted to saw off the handcuff utilizing a power saw.

14. As the members of the Mundelein Police Department and Mundelein Fire Department attempted to saw through the handcuff on minor Plaintiff, Ava Hitzke's the handcuff became heated to an extreme temperature causing significant and severe burns to the minor Plaintiff's wrist.

15. At all times material hereto there was in full force and effect 42 USC Sec. 1983 which states:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.”

16. Defendants, Unknown Village of Mundelein Police Number 1 and Unknown Village of Mundelein Police Number 2 as aforesaid were acting under the color of State Law when they injured the minor Plaintiff while she was in their custody.

17. The minor Plaintiff's Civil Rights as guaranteed by 42 USC Sec. 1983 were violated when Defendants, Unknown Village of Mundelein Police Number 1 and Unknown Village of Mundelein Police Number 2 caused significant and permanent injury to the minor Plaintiff while she was under custodial arrest.

18. The minor Plaintiff experienced extreme and severe physical and emotional pain and suffering; as well as permanent scarring and disfigurement as a direct and proximate result of the actions of Defendants, Unknown Village of Mundelein Police Number 1 and Unknown Village of Mundelein Police Number 2

19. That at all times material hereto the Defendants, Unknown Village of Mundelein Police Number 1 and Unknown Village of Mundelein Police Number 2, who had custody of the Minor Plaintiff were acting as the duly authorized agents and employees of the Defendant Village of Mundelein.

WHEREFORE, Plaintiff, EMILY HITZKE, as Mother and Next Friend of AVA HITZKE, a minor by, respectfully requests this Honorable Court award the Minor Plaintiff compensatory and punitive damages in excess of \$100,000.00, together with a reasonable amount of attorney's fees pursuant to Section 1983 of the United States Civil Rights Act.

COUNT II

WILFUL AND WANTON MISCONDUCT

1-19. Plaintiff, EMILY HITZKE, as Mother and Next Friend of AVA HITZKE, a minor by restates and realleges Paragraphs 1-19 as aforesaid as and for Paragraphs 1-19 of Count II as though fully set forth herein.

20. At all times material hereto, Defendant Village of Mundelein by and through its duly authorized agents and employees had a duty to refrain from engaging in willful and wanton misconduct in conscious disregard for the safety of the Minor Plaintiff.

21. The aforesaid duty notwithstanding, the Village of Mundelein by and through its duly authorized agents, representatives and employees, did engage in willful and wanton misconduct in conscious disregard for the safety and wellbeing of the minor Plaintiff in one or more of the following respects:

- a. Shackled the Minor Plaintiff when it was not necessary for the safety of Minor Plaintiff or the arresting officers;
- b. Utilized faulty and defective handcuffs which could not be removed from the minor Plaintiff without excessive force;
- c. Attempted to remove the defective handcuff from the Minor Plaintiff's Left wrist utilizing a power saw when they knew or should have known that the saw would create friction which would heat the handcuff attached to the Minor Plaintiffs' left wrist to an extreme temperature; and
- d. Failed to shield or protect the Minor Plaintiffs' left wrist from the extreme heat generated by the power saw being operated by Defendant Mundelein's agents and employees.

22. As a direct and proximate result of the aforesaid willful and wanton misconduct by the Village of Mundelein by and through its duly authorized agents, representatives and employees, Plaintiff has incurred significant and permanent injuries, Plaintiff has experienced extreme pain and suffering and will continue to experience mental pain and suffering in the future, together with permanent disability and disfigurement to the damage of the minor Plaintiff in an amount in excess of \$100,000.00.

WHEREFORE, Plaintiff, EMILY HITZKE, as Mother and Next Friend of AVA HITZKE, a minor by, respectfully requests this Honorable Court enter judgment in favor of the Plaintiff and against Defendants, VILLAGE OF MUNDELEIN, UNKNOWN VILLAGE OF MUNDELEIN POLICE NUMBER 1 and UNKNOWN VILLAGE OF MUNDELEIN POLICE NUMBER 2 in an amount in excess of \$100,000.00, together with the costs of bringing this action.

Respectfully submitted,

/S/ C. Jeffrey Thut

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