

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF BUNCOMBE

FILED

SUPERIOR COURT DIVISION

CVS

8CV 04271

2008 AUG -7 PM 3:08

APRIL NICOLE WELCH, Administratrix of)
the Estate of Marvis Gail Scott Davidson,)
BUNCOMBE COUNTY, C.S.C.)

Plaintiff,)

BY)

v.)

COMPLAINT

(Jury Trial Demanded)

SHERIFF VAN DUNCAN, in his official)
capacity, and WESTERN SURETY COMPANY,)
named solely in its capacity as the Sheriff's)
Bond Company,)

Defendants.)

NOW COMES PLAINTIFF, by and through her undersigned attorney, complaining and alleging as follows:

INTRODUCTION

Proceeding *pro se*, Plaintiff filed an initial Complaint against Defendant's predecessor for Wrongful Death on July 7, 2006. Plaintiff thereafter retained the undersigned who first appeared in that action on December 18, 2006. The parties conducted limited discovery. With the Court's consent, Plaintiff filed her First Amended Complaint on August 7, 2007 for the purpose of adding a cause of action under N.C. Gen. Stat. § 162-55 (Injury to Prisoner by Jailer). Plaintiff thereafter filed a Notice of Voluntary Dismissal without Prejudice on August 24, 2007, pursuant to the provisions of Rule 41 of the North Carolina Rules of Civil Procedure. Plaintiff hereby re-files her Complaint within one year of taking the Voluntary Dismissal.

PARTIES AND JURISDICTION

1. Plaintiff, a resident of Buncombe County, is bringing this action in her capacity as duly-appointed Administratrix of the Estate of Marvis Gail Scott Davidson. Marvis Gail Scott

Davidson, a longtime resident of Buncombe County, died intestate on July 8, 2004, while in the custody at the Buncombe County Detention Facility.

2. Defendant Van Duncan is Sheriff of Buncombe County. Upon information and belief, the Sheriff's office operates the Buncombe County Detention Facility (BCDF). Under the laws of North Carolina and policies and practices of Buncombe County, he is the chief law enforcement officer for Buncombe County and is responsible for the operation of the BCDF, including the supervision, training and conduct of his officers and agents employed in the jail. He has legal a duty to safeguard persons in his custody. He is sued *only* in his official capacity under N.C. Gen Stat. §§ 58-76-5, 153A-435 and 162-55.¹ He and his office are also sued as *respondeat superior* for the actions and omissions of his jailers. For convenience, this Complaint will refer only to "Defendant."

3. Defendant Western Surety Company is a South Dakota company. Upon information and belief, Western Surety Company acts as surety on behalf of Defendant Sheriff and had issued a policy in effect at the time of the events giving rise to this action. Western Surety is sued *only* in its capacity as surety for Defendant Sheriff of Buncombe County.

4. Upon information and belief, Defendant Sheriff has waived, or expressly consented by statute to waive, sovereign immunity in the following ways:

- a. Statutory consent under N.C. Gen. Stat. § 162-55;
- b. Statutory consent under N.C. Gen. Stat. § 58-76-5; and

¹This suit was originally brought against Sheriff Bobby Medford who was the sheriff when the events underlying this Complaint arose. Van Duncan has since succeeded Mr. Medford and is thus substituted for Mr. Medford in his official capacity.

- c. By Defendant's or Buncombe County's procurement of one or more bonds and liability insurance policies pursuant to N.C. Gen. Stat. §§ 58-76-5 and 153A-435.

5. The Superior Court has jurisdiction over this matter pursuant to N.C. Gen. Stat.

§ 7A-240 *et seq.* The plaintiff seeks damages in excess of \$10,000.

GENERAL ALLEGATIONS

6. Under relevant North Carolina law -- including but not limited to N.C. Gen. Stat. §§ 153A-224, 153A-225 and 153A-225.1 -- and BCDF's own policies and procedures, Defendant is required to protect the health and welfare of the inmates by providing both medical care and emergency medical care.

7. Indeed, detention officers at BCDF have an independent obligation to ensure the health and welfare of inmates in their custody. This duty includes arranging for emergency medical care for the inmates.

8. Upon information and belief, Ms. Davidson was incarcerated in the BCDF on or about June 30, 2004. She was thereafter in the exclusive control and custody of Defendant at all times relevant.

9. Upon information and belief, Ms. Davidson was an insulin-dependant diabetic whose illness was known to Defendant from prior occasions in which Ms. Davidson was incarcerated. For example, in the Fall of 2003, due to low blood sugar, Ms. Davidson fainted and cut open her head, requiring Defendant to transport her to a local hospital for treatment. Upon further information and belief, in April 2004, Defendant again transported Ms. Davidson to the hospital in response to diabetes-related symptoms Ms. Davidson was manifesting. Accordingly,

Defendant had actual notice of the nature of Ms. Davidson's illness.

10. Upon information and belief, upon being re-incarcerated at BCDF at the end of June 2004, Ms. Davidson started to complain of abdominal pain. Upon information and belief, the cause of her pain – a diseased bowel – was the same as, or related to, the medical condition of which Defendant was already aware. As her condition deteriorated and the associated pain grew to intolerable levels – particularly in the days immediately preceding her death – Ms. Davidson and fellow inmates on her cell block repeatedly beseeched detention officers monitoring Ms. Davidson's cellblock either to obtain adequate medical care for Ms. Davidson within the facility, or have her transported to a hospital for emergency treatment.

11. However, despite manifesting excruciating pain and suffering and mental anguish – and literally begging the detention officers to help her – Ms. Davidson was neither seen by a physician at BCDF, nor transported by EMS to a local hospital prior to her death. Upon information and belief, detention officers ignored Ms. Davidson's continuous cries for help even as she lay writhing and screaming on the floor in pain. In addition, the officers verbally threatened Ms. Davidson with discipline if she continued to “create a disturbance” on her cell block and “upset the other inmates.” She was in fact moved from her normal cell to a holding cell. Through such conduct, Defendant manifested a heedless indifference to, or reckless disregard of, Ms. Davidson's safety and well-being.

12. Upon information and belief, on or about the morning of July 8, 2004, Ms. Davidson died alone in the holding cell while in the sole and exclusive custody of Defendant.

13. Upon further information and belief, the cause of Ms. Davidson's pain and eventual death was related to complications associated with diabetes.

14. Upon information and belief, but for Defendant's breach of the duty of care he owed to Ms. Davidson, Ms. Davidson would not have experienced the degree of pain and suffering that she did prior to her death, and her life would have been spared.

**FIRST CAUSE OF ACTION
WRONGFUL DEATH**

(N.C. Gen. Stat. § 28A-18-1 *et seq.*)

15. Plaintiff hereby incorporates paragraphs 1-14 as if fully set out herein.

16. As described above, Defendant owed a legal duty to provide medical care, including emergency medical care, to Ms. Davidson while she was an inmate in his exclusive custody and control.

17. Defendant breached this duty by failing to:

- a. promulgate proper policies and procedures for monitoring profoundly-sick inmates;
- b. provide proper training of detention officers;
- c. monitor Ms. Davidson's condition appropriately as her health condition deteriorated;
- d. exercise due care for Ms. Davidson's health and safety; and
- e. provide emergency medical care for Ms. Davidson, call Emergency Medical Services to the site, and/or transport Ms. Davidson to a local hospital for appropriate medical treatment.

18. Defendant's negligence was the legal and proximate cause of Ms. Davidson's pain and suffering.

19. Defendant's negligence was the legal and proximate cause of Ms. Davidson's wrongful death. But for said negligence, Ms. Davidson would neither have suffered such severe and needless pain while she remained alive, nor have died on account of her affliction.

20. A person of ordinary intelligence and prudence could have foreseen that death would be the probable result of a known diabetic's failure to receive proper medical care.

21. In consequence of said negligence, Plaintiff has suffered damages in excess of \$10,000.

**SECOND CAUSE OF ACTION
NEGLIGENCE (SURVIVORSHIP)**
(N.C. Gen. Stat. § 28A-18-1 *et seq.*)

22. Plaintiff hereby incorporates paragraphs 1-21 as if fully set out herein.

23. As described above, Defendant owed a legal duty to provide medical care, including emergency medical care, to Ms. Davidson while she was an inmate in his exclusive custody and control.

24. Defendant breached this duty by failing to:

- a. promulgate proper policies and procedures for monitoring profoundly-sick inmates;
- b. provide proper training of detention officers;
- c. monitor Ms. Davidson's condition appropriately as her health condition deteriorated;
- d. exercise due care for Ms. Davidson's health and safety; and
- e. provide emergency medical care for Ms. Davidson, call Emergency Medical Services to the site, and/or transport Ms. Davidson to a local hospital for appropriate medical treatment.

25. Defendant's negligence was the legal and proximate cause of Ms. Davidson's pain and suffering. But for said negligence, Ms. Davidson would neither have suffered such severe and needless pain while she remained alive.

26. In consequence of said negligence, Ms. Davidson suffered loss of dignity, injury, pain and suffering, permanent injury, mental anguish, inconvenience, loss of capacity for enjoyment of life, discomfort, and other damages in excess of \$ 10,000.00."

**THIRD CAUSE OF ACTION
INJURY TO PRISONER BY JAILER
(N.C. Gen. Stat. § 162-55)**

27. Plaintiff hereby incorporates paragraphs 1-26 as if fully set out herein.

28. As described in the foregoing paragraphs, Ms. Davidson's condition constituted a serious medical condition requiring emergency medical care at the facility itself and/or transport to a hospital where she could have been treated by emergency room physicians and other medical practitioners.

29. Upon further information and belief, rather than providing such care or transporting Ms. Davidson to the hospital, Defendant removed Ms. Davidson from her assigned cell and placed her in disciplinary isolation in a holding cell in the Booking area of BCDF.

30. N.C. Gen. Stat. § 162-55 provides: "If the keeper of a jail shall do, or cause to be done, any wrong or injury to the prisoners committed to his custody, contrary to law, he shall not only pay treble damages to the person injured, but shall be guilty of a Class 1 misdemeanor."

31. Defendant has, among other things, violated § 162-55, proximately and legally causing Ms. Davidson's injuries through his medical indifference to Ms. Davidson's condition, and by failing specifically to:

- a. promulgate proper policies and procedures for monitoring profoundly-sick inmates;
- b. provide proper training of detention officers;
- c. monitor Ms. Davidson's condition appropriately as her health crisis worsened;
- d. exercise due care for her health and safety; and
- e. provide emergency medical care for Ms. Davidson, call Emergency Medical Services to the site, and/or transport Ms. Davidson to a local hospital for appropriate medical treatment.

32. Defendant was medically indifferent to, and criminally negligent in, providing for the safety and well-being of Ms. Davidson inasmuch as he demonstrated a reckless and heedless indifference in the face of Ms. Davidson's obvious pain and suffering and dire health condition, and such criminal negligence proximately caused her pain and suffering and death shortly thereafter.

33. Accordingly, Defendant has violated N.C. Gen. Stat. § 162-55 beyond a reasonable doubt and is therefore liable to Plaintiff in an amount in excess of \$10,000.

34. Under N.C. Gen. Stat. § 162-55, Plaintiff is entitled to recover treble damages.

FOURTH CAUSE OF ACTION
VIOLATION OF DUTIES UNDER OFFICIAL BOND
(N.C. Gen. Stat. § 58-76-5)

35. Plaintiff hereby incorporates paragraphs 1-34 as if fully set out herein.

36. N.C. Gen. Stat. § 58-76-5 provides that

every person injured by the *neglect, misconduct or misbehavior* in office of any . . . sheriff . . . may institute a suit . . . against said officer . . . and their sureties upon their respective bonds . . . and every such officer and the sureties . . . shall be liable to the person injured for all acts done by said officer by virtue or under color of his office. (Emphasis added.)

37. Defendant Sheriff and its Surety are liable to Plaintiff under N.C. Gen. Stat. § 58-76-5 upon the following independent basis:

- a. Defendant *neglected* Ms. Davidson's health and well-being by failing to:
 - i. promulgate proper policies and procedures for monitoring profoundly-sick inmates;
 - ii. provide proper training of detention officers;
 - iii. monitor Ms. Davidson's condition appropriately as her health crisis worsened;
 - iv. exercise due care for her health and safety; and
 - v. obtain emergency medical care for Ms. Davidson, contact EMS on Ms. Davidson's behalf, and/or transport Ms. Davidson to a local hospital where emergency care would be provided;
- b. Defendant engaged in *misconduct* by failing to follow the proper and express policies and procedures to which Defendant and his subordinates are subject in their official duties at BCDF; and
- c. Defendant engaged in *misbehavior* inasmuch as he not only ignored the cries for help of Ms. Davidson, but berated and threatened her with disciplinary isolation while she was writhing in pain on the floor.

38. Defendant's negligence was the legal and proximate cause of Ms. Davidson's pain and suffering.

39. Defendant's conduct was the legal and proximate cause of Ms. Davidson's wrongful death. Without said conduct, Ms. Davidson would not have died.

40. A person of ordinary intelligence and prudence could have foreseen that death would be the probable result of a known diabetic's failure to receive proper medical care.

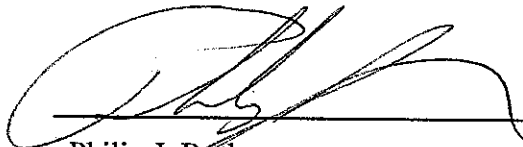
41. In consequence of said conduct, Plaintiff has suffered damages in excess of \$10,000.

WHEREFORE, Plaintiff prays for the following relief:

1. That the Plaintiff have and recover judgment from the Defendant as to her compensatory damages in an amount in excess of \$10,000, plus interest thereon at 8% per annum from the date of institution of this suit until paid;
2. That, pursuant to N.C. Gen. Stat. § 162-55, the Plaintiff have and recovery treble damages from the Defendant in an amount in excess of \$10,000, plus interest thereon at 8% per annum from the date of institution of this suit until paid;
3. That the Plaintiff have a trial by jury;
4. That the costs of this action be taxed to the Defendant;
5. That the Plaintiff be awarded attorney's fees as may be provided by statute; and
6. That the Plaintiff have such other and further relief as this Court may deem just and proper.

This, the 4th day of August 2008.

MILLER MARSHALL ROTH, PC



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