

**IN THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF ILLINOIS, URBANA DIVISION**

SARAH MILLER, as guardian and next)
friend of O.J., a minor,)

Plaintiff,)

v.)

Case No.

PATRICK HARTSHORN, KEVIN)
MASKEL, NICOLE ROUSE, LAURIE)
BERNARDI, UNKNOWN VERMILION)
COUNTY SHERIFF'S DEPARTMENT)
EMPLOYEES, and the COUNTY OF)
VERMILION,)

Defendants.)

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Sarah Miller, as guardian and next friend of O.J., a minor, through her attorneys, Loevy & Loevy, complains of defendants Patrick Hartshorn, Kevin Maskel, Nicole Rouse, Laurie Bernardi, Unknown Vermilion County Sheriff's Department Employees, and the County of Vermilion, and states as follows:

Introduction

1. O.J.'s first moments alive were spent in a dirty toilet in a jail cell in Vermilion County Jail. Thanks to Defendants' refusals to provide O.J.'s mother medical care in the days, hours, and minutes before she gave birth to O.J., the only person to help with O.J.'s birth was his mother's cellmate, who had no medical training whatsoever.

2. Even after O.J. was born, Defendants failed to provide him with adequate medical care, instead unreasonably delaying a call for emergency medical care. Defendants' misconduct caused O.J. serious injuries, which he suffers to this day.

Jurisdiction and Venue

3. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1367.

4. Venue is proper under 28 U.S.C. § 1391(b). On information and belief, one or more Defendants reside in this judicial district. Further, a substantial part of the events or omissions giving rise to these claims occurred in this district.

Parties

5. Plaintiff Sarah Miller is a resident of Danville, Illinois.

6. O.J., the legal minor on whose behalf Plaintiff brings this action, is also a resident of Danville, Illinois. O.J. lives with Plaintiff Sarah Miller, his biological grandmother. He is currently three years old.

7. Defendant Patrick Hartshorn is the Sheriff of Vermilion County. He is sued here in his official capacity as Sheriff of Vermilion County. At all times relevant to the events at issue in this case, Defendant Hartshorn was acting under color of law. As Sheriff, Defendant Hartshorn is in charge of the Vermilion County Jail and has policymaking authority over the jail for the actions at issue in this case. At all times relevant to the events at issue in this case, Defendant Hartshorn was responsible for promulgating rules, regulations, policies, and procedures as

Sheriff of Vermilion County for the provision of medical care by medical personnel and correctional staff.

8. At all times relevant to the events at issue in the case, Defendant Kevin Maskel was a sergeant at the Vermilion County Jail and an employee of the Vermilion County Sheriff's Department. Defendant Maskel is sued here in his individual capacity. At all times relevant to the events at issue in the case, Defendant Maskel was acting under color of law and within the scope of his employment.

9. At all times relevant to the events at issue in this case, Defendant Nicole Rouse was a correctional officer at Vermilion County Jail and an employee of the Vermilion County Sheriff's Department. Defendant Rouse is sued here in her individual capacity. At all times relevant to the events at issue in this case, Defendant Rouse was acting under color of law and within the scope of her employment.

10. At all times relevant to the events at issue in this case, Defendant Laurie Bernardi was a correctional officer at Vermilion County Jail and an employee of the Vermilion County Sheriff's Department. Defendant Bernardi is sued here in her individual capacity. At all times relevant to the events at issue in this case, Defendant Bernardi was acting under color of law and within the scope of her employment.

Facts

11. On April 2, 2014, Farrah Johnson, O.J.'s biological mother, was brought to the Vermilion County Jail following her arrest in Danville, Illinois. She was approximately 40 weeks pregnant. At the time that she was booked into the jail, Ms. Johnson's due date, March 29, 2014, had already passed.

12. Ms. Johnson told jail staff about her pregnancy and imminent labor during her booking and again in a grievance submitted to jail staff that same day. Ms. Johnson had previously been detained at the jail in December 2013 and January through February 2014, during which time she requested a pregnancy checkup and was prescribed daily prenatal vitamins.

13. After being booked into custody at the jail on April 2, 2014, Ms. Johnson was assigned to a jail cell in the women's dorm. The cell was dirty, including a filthy toilet and floor.

14. On April 3, 2014, Ms. Johnson was prescribed a pregnancy diet, milk to be drunk with meals, and a bedtime snack. No other medical attention, including a prenatal exam, was provided.

15. Ms. Johnson told correctional staff that she had an obstetrician-gynecologist who was treating her, and asked to be seen by the doctor. Staff told Ms. Johnson that she would be taken to be seen after the jail verified that provider.

16. In the late evening hours of April 5, 2014, Ms. Johnson began to feel contractions. She told correctional officers, including Defendant Bernardi, that she was in labor, was suffering vaginal bleeding, and was in severe pain. Ms. Johnson

asked to see the nurse, but was told that the nurse was no longer at the jail. In response to Ms. Johnson's complaints, Defendants made no efforts to provide Ms. Johnson with medical attention.

17. As the pain increased, Ms. Johnson became very concerned and again reported to Defendants that she was in labor and that it was getting worse. Defendant Maskel told Defendant Bernardi that Ms. Johnson "was not going anywhere at that time" and said that Ms. Johnson would not receive any medical attention until her water broke or the baby began to crown. Defendant Bernardi informed Defendant Maskel that she "had no idea how to tell if [Ms.] Johnson was crowning[.]" Defendant Maskel told Defendant Bernardi that Ms. Johnson would know. At no point during these exchanges did any Defendant arrange for Ms. Johnson to receive medical attention.

18. When Ms. Johnson reported that she was "leaking" fluid from her vagina, or words to that effect, Defendant Maskel told Defendant Bernardi to give Ms. Johnson a feminine pad so she could "prove" that she was "leaking."

19. As Ms. Johnson's contractions started to worsen, her cellmate, Shavala Howard, called out to Defendants for help. At the time, Ms. Johnson was lying on the filthy floor in her cell, crying out in pain. Defendants still made no efforts to provide Ms. Johnson with medical attention.

20. On information and belief, Defendant Bernardi asked Defendant Rouse to come to Ms. Johnson's dorm, which she did. Defendant Rouse, like the other Defendants, made no efforts to provide Ms. Johnson with medical attention.

21. Ms. Johnson eventually began to feel significant pressure in her lower abdomen and sat down on the toilet, the only place where she could find some respite from the pain and pressure.

22. Defendant Bernardi saw Ms. Johnson sitting on the toilet and observed that she was in distress. Despite that fact, Defendants still made no efforts to provide Ms. Johnson with medical attention.

23. A few minutes after that, O.J. emerged from Ms. Johnson's birth canal and dropped into the toilet. He landed with his head facing down, but as the rest of his body dropped into the toilet, his head slid up the inside of the toilet bowl. At the time of O.J.'s birth, the toilet was filthy and partially filled with water.

24. At the time that O.J. was born, Defendants still had made no efforts to provide Ms. Johnson with medical attention.

25. At some point, Defendant Maskel at last called for an ambulance to take Ms. Johnson and O.J. to the hospital for medical attention. Incapacitated from the physical trauma of childbirth, Ms. Johnson stayed on the toilet, still attached to O.J. by the umbilical cord, until the paramedics arrived. O.J. remained in a ball in the toilet water for several minutes.

26. Paramedics eventually arrived and entered Ms. Johnson's cell. They removed O.J. from the toilet, wrapped him in paper towels, and placed him on a table. He was alone on the table and cold, but was not crying because his mouth was full of mucus.

27. O.J. did not get any of the medical care newborns should receive, including cutting the umbilical cord, suctioning the fluid from his mouth and lungs, cleaning his eyes, getting warmth, or having physical contact with his mother until he was transported to the hospital well after he was born.

28. O.J. and his mother were eventually taken to the hospital in an ambulance, still connected by the umbilical cord. While in the ambulance, Ms. Johnson was handcuffed to the stretcher and could not hold O.J. Defendant Rouse rode with them in the ambulance.

29. O.J. was immediately taken from Ms. Johnson when they arrived at the hospital. He was given medical attention and required the use of a respirator. O.J. was sent home on the respirator, which he uses periodically to this day.

30. O.J. suffered developmental delays and was slow to hit his early childhood developmental milestones, including talking and walking.

Count I – 42 U.S.C. § 1983
Denial of Medical Care (Fourth Amendment)
(Against Defendants Hartshorn, Maskel, Rouse, Bernardi)

31. Plaintiff incorporates each paragraph of this Complaint as if fully restated here.

32. As described more fully above, Ms. Johnson and O.J. both had serious medical needs. Defendants were aware of Ms. Johnson's and O.J.'s medical needs and the seriousness of those needs.

33. Despite that knowledge, Defendants failed to provide O.J. adequate medical attention.

34. The misconduct described in this Count was objectively unreasonable. Alternatively, the misconduct was undertaken intentionally, with malice, and/or with reckless indifference to O.J.'s safety and health.

35. As a result of Defendants' unjustified and unconstitutional conduct, O.J.'s constitutional rights were violated and he suffered physical, emotional, and psychological injuries, which continue to this day.

36. O.J.'s injuries were caused by the policies, practices, and customs of Defendant Hartshorn.

37. At all times relevant to the events at issue in this case, Defendant Hartshorn was responsible for ensuring that individuals housed at the Vermilion County Jail received constitutionally adequate medical care, and was equally responsible for the creation, implementation, oversight, and supervision of policies, practices, and customs regarding the provision of medical care to persons in the custody of the Vermilion County Sheriff's Department.

38. At all times relevant to the events described in this Complaint and for a period of time beforehand, one or more policymakers at the Vermilion County Sheriff's Department had notice of a widespread practice and custom by correctional and medical staff at the Vermilion County Jail to deny appropriate medical care to individuals with serious medical needs. For example, one or more policymakers were made aware of the misconduct which led to the following lawsuits:

- a. *Jones v. Hartshorn*, No. 15-CV-2032, 2017 WL 3140360, at *4 (C.D. Ill. July 24, 2017) (summary judgment is denied to Defendant Vermilion

County jail guard on Plaintiff's claims arising from Plaintiff's dermatitis, tooth decay, and alleged rectal bleeding during his 2013 detention in the Vermilion County Jail).

- b. *Jones v. Vermilion Cty. Jail*, No. 15-CV-2032, 2015 WL 9217110, at *1 (C.D. Ill. Dec. 17, 2015) (allowing detainee's claims of inadequate medical care to proceed when detainee was not given treatment for serious medical conditions like diabetes, heart disease, dermatitis, rectal bleeding, and tooth decay).
- c. *Cox v. Hartshorn*, 503 F. Supp. 2d 1078 (C.D. Ill. 2007) (alleging that jail officials refused to provide him adequate medical care).
- d. *Catron v. Vermilion County Jail*, No. 2:13-cv-02271-HAB (filed Dec. 10, 2013) (alleging jail officials refused to fill his prescription for pain killers to address his chronic pain based on Hartshorn's policy).
- e. *Hayes v. Hartshorn*, No. 05-2282, 2009 WL 722579 (C.D. Ill. Mar. 17, 2009) (alleging that that Nurse Galloway and Defendant Hartshorn failed to provide adequate medical care).
- f. *Smith v. Hartshorn*, No. 09-2142, 2009 WL 2195909 (C.D. Ill. July 14, 2009) (alleging that jail medical staff and Defendant Hartshorn failed to provide prompt treatment after plaintiff cut his elbow).
- g. *Williams v. Lewellyn*, No. 15-CV-2254, 2015 WL 6689643 (C.D. Ill. Nov. 2, 2015) (alleging that jail personnel failed to provide medical treatment after jail guards injured his arm).

- h. *Dorris v. Hartshorn*, No. 08-CV-2041, 2009 WL 2431310 (C.D. Ill. Aug. 6, 2009) (alleging that jail staff unconstitutionally denied him medical care).

39. The above widespread practices and customs, so well settled as to constitute *de facto* policies of the County of Vermilion, were able to exist and thrive, individually and/or together, because one or more policymakers at the Vermilion County Sheriff's Department, with authority over those policies, practices, and customs, exhibited deliberate indifference to the problem, thereby effectively ratifying it.

40. Additionally, at all times relevant to the events described in this Complaint and for a period of time before and after, Defendant Hartshorn, in his official capacity, failed to promulgate proper or adequate policies, practices, customs, or procedures to ensure that adequate medical care was provided to individuals at the Vermilion County Jail.

41. The misconduct described in this County was undertaken pursuant to the policies and practices of the County of Vermilion in that the constitutional violations committed against O.J. were committed with the knowledge and approval of persons with final policymaking authority for Vermilion County, or were actually committed by persons with such final policymaking authority.

42. O.J.'s injuries were caused by officers, agents, and employees of the Vermilion County Sheriff's Department, including but not limited to the individually named Defendants, who acted pursuant to one or more of the policies,

practices, and customs set forth above in engaging in the misconduct described in this Court.

Count II – 42 U.S.C. § 1983
Due Process (Fourteenth Amendment)
(Defendants Hartshorn, Maskel, Rouse, and Bernardi)

43. Plaintiff incorporates each paragraph of this Complaint as if fully restated here.

44. In the manner described more fully above, Defendants violated O.J.’s constitutional rights.

45. By refusing to release Ms. Johnson, transfer her to a hospital for medical evaluation and treatment, or otherwise arrange for Ms. Johnson to receive medical treatment during her childbirth, Defendants caused and/or increased the danger to O.J.’s health and safety. In addition, Defendants failed to promptly and properly protect O.J. after they became aware of his birth.

46. Defendants’ actions were undertaken willfully, wantonly, and with reckless indifference or conscious disregard for the safety of others.

47. Defendants’ failure to protect O.J. “shocks the conscience” in that Defendants knew of the serious threat that O.J. faced a result of the Defendants’ misconduct.

48. As a result of Defendants’ unjustified and unconstitutional conduct, O.J.’s constitutional rights were violated and he suffered physical, emotional, and psychological injuries, which continue to this day.

Count III – 42 U.S.C. § 1983
Failure to Intervene (Fourth & Fourteenth Amendments)
(Defendants Maskel, Rouse, and Bernardi)

49. Plaintiff incorporates each paragraph of this Complaint as if fully restated here.

50. As described more fully above, Defendants had a reasonable opportunity to prevent the violation of O.J.'s constitutional rights as set forth above had they been so inclined, but failed to do so.

51. In fact, written policies at the Vermilion County Jail required Defendants to notify a supervisor and call an ambulance in the event of a medical emergency.

52. Defendants' failures to act were objectively unreasonable. Alternatively and/or additionally, Defendants' failures to act were intentional, done with malice, and/or done with reckless indifference to O.J.'s rights.

53. As a result of Defendants' unjustified and unconstitutional conduct, O.J.'s constitutional rights were violated and he suffered physical, emotional, and psychological injuries, which continue to this day.

Count IV – 42 U.S.C. § 1983
Conspiracy (Fourth & Fourteenth Amendments)
(Defendants Maskel, Rouse, and Bernardi)

54. Plaintiff incorporates each paragraph of this Complaint as if fully restated here.

55. Defendants reached an agreement among themselves to deprive O.J. of his constitutional rights and to protect one another from liability for depriving O.J. of his rights, all as described in the various paragraphs of this Complaint.

56. In furtherance of the conspiracy, each of the co-conspirators committed overt acts and was an otherwise willful participant in joint activity.

57. The misconduct described in this Count was undertaken intentionally, with malice, and/or with reckless indifference to O.J.'s rights.

58. As a result of Defendants' unjustified and unconstitutional conduct, O.J.'s constitutional rights were violated and he suffered physical, emotional, and psychological injuries, which continue to this day.

**Count V – State Law Claim
Negligent or Willful and Wanton Conduct
(Defendants Maskel, Rouse, and Bernardi)**

59. Plaintiff incorporates each paragraph of this Complaint as if fully restated here.

60. Defendants knew Ms. Johnson was pregnant and knew that O.J.'s birth was imminent. In the manner described more fully above, the Defendants' actions breached the duty of care that they owed to Ms. Johnson (as O.J.'s mother) and O.J. himself.

61. Alternatively, the actions of Defendants were willful and wanton in that they demonstrated an utter indifference to the safety of others. Defendants were aware that a serious risk to O.J.'s health and safety would likely result from

the above-described course of action and reckless disregarded the consequences of those actions.

62. As a direct and proximate result of Defendants' actions, O.J. suffered severe pain, anguish, suffering, and emotional distress, and continues to suffer other grievous and continuing injuries and damages as set forth above.

**Count VI – State Law Claim
Respondeat Superior
(Defendant Hartshorn)**

63. Plaintiff incorporates each paragraph of this Complaint as if fully restated here.

64. In committing the acts alleged in the preceding paragraphs, Defendants Maskel, Bernardi, and Rouse were employees, members, and agents of the Vermilion County Sheriff's Department, acting at all relevant times within the scope of their employment.

65. Consequently, Defendant Hartshorn, in his official capacity as Sheriff of Vermilion County, is liable for the actions of its employees acting within the scope of their employment under state law.

**Count VI – State Law Claim
Indemnification
(Defendant Vermilion County)**

66. Plaintiff incorporates each paragraph of this Complaint as if fully restated here.

67. Illinois law provides that public entities are directed to pay any tort judgment for compensatory damages for which employees are liable within the scope of their employment activities.

68. At all times relevant to the events at issue in this case, each of the other Defendants were employees of the Vermilion County Sheriff's Department and were acting within the scope of their employment in committing the misconduct described above.

Wherefore, Plaintiff Sarah Miller, as guardian and next friend of O.J., a minor, respectfully requests that this Court enter a judgment in her favor and against Defendants Patrick Hartshorn, Kevin Maskel, Nicole Rouse, Laurie Bernardi, Unknown Vermilion County Sheriff's Department Employees, and the County of Vermilion, awarding compensatory damages, punitive damages, attorneys' fees and costs, and any other relief this Court deems just and appropriate.

JURY DEMAND

Plaintiff hereby demands a trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure on all issues so triable.

Dated: February 8, 2018

RESPECTFULLY SUBMITTED,
SARAH MILLER

/s/ Rachel Brady
Attorney for Plaintiff

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