

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

Steven K. Souders and Theresa M. Vaughn
Co-Personal Representatives of the Estate
of Timothy Joe Souders, (#580074), deceased,

Plaintiffs,

v

S.L. Burt, et al,

Defendants.

No. 06-cv-14353

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**DEFENDANTS' (BURT, OCWEIJA, SHROADS, CAMPBELL, POWELL, SMALL,
BROWN, BOLTJES, BLUNT and GLASPER) ANSWER TO
COMPLAINT, AFFIRMATIVE DEFENSES AND JURY DEMAND**

Defendants, (Sherry Burt, John Ocweija, Robert Shroads, Sherman Campbell, Francine Powell, Allan Small, Angela Brown, Charles Boltjes, Cleveland Blunt, and Betty Glasper), through counsel, and pursuant to FRCP 8 (b), and in answer to Plaintiff's complaint, by like-numbered paragraphs, state as follows:

1. Allegations regarding being appointed as the Personal Representative of any particular probate estate are neither admitted nor denied, for the reason that Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. Upon information and belief, it is denied as untrue that Theresa Vaughn has been a resident of

Michigan at all relevant times because she has been residing in Canada for significant periods of time and had no interaction with the decedent Timothy Souders since he was thirteen years of age. Neither Steven Souders nor Theresa Vaughn ever visited the decedent, Timothy Souders, while he was incarcerated in the Michigan prison system from November 1, 2005 through August 6, 2006 (this includes no visits on Christmas, birthdays, or any other day). Neither Steven Souders nor Theresa Vaughn ever sent Timothy Souders even one dollar on his birthday, so that he could purchase something at the prison store (but now they both want to be the Personal Representatives of his estate). Upon information and belief, if the probate court actually did make a mistake by appointing them as Personal Representatives of Timothy Souders Estate, that decision should be revisited because parents that abused the child should not be so appointed. It is noted that Plaintiff's failed to attach copies of any appointment by the probate court to their Complaint.

Further, it is denied as untrue that Timothy Souders was at the Southern Michigan Correctional Facility (JMF) the entire time. In fact, Timothy Souders was incarcerated at the following state prisons on the following dates:

11-1-05 to 11-29-05	Reception and Guidance Center (RGC)
11-29-05 to 1-11-06	Richard Handlon Correctional Facility (MTU)
1-11-06 to 3-2-06	Riverside Correctional Facility (RCF)
3-2-06 to 8-6-06	Southern Michigan Correctional Facility (JMF)
8-6-06 at approx. 1655	Pronounced dead at Foote Hospital, Jackson

2. Denied as untrue that Sherry Burt is a resident of Jackson County. She is not. Admitted that Sherry Burt is employed by the Michigan Department of Corrections (MDOC) and is an employee of the State of Michigan. Denied as untrue that she is the warden of "Jackson

Prison", as there is no such prison. There are several Michigan prisons in the County of Jackson, Michigan but none are named "Jackson Prison".

3. Denied as untrue that John Ocwieja is a resident of Jackson County. He is not. Admitted that John Ocwieja is employed by the Michigan Department of Corrections (MDOC) and is an employee of the State of Michigan. Denied as untrue that he is the deputy warden of "Jackson Prison", as there is no such prison. There are several Michigan prisons in the County of Jackson, Michigan but none are named "Jackson Prison".

4. Denied as untrue that Cleveland Blunt is a resident of Jackson County. He is not. Admitted that Cleveland Blunt is employed by the Michigan Department of Corrections (MDOC) and is an employee of the State of Michigan. Denied as untrue that he a corrections officer at "Jackson Prison" as there is no such prison. There are several Michigan prisons in the County of Jackson, Michigan but none are named "Jackson Prison". Also, denied as untrue that he is a corrections officer.

5. There is no paragraph five (5) in Plaintiff's Complaint.

6. Admitted that Robert Shroads is employed by the Michigan Department of Corrections (MDOC) and is an employee of the State of Michigan. Denied as untrue that he is a corrections officer at "Jackson Prison", as there is no such prison. There are several Michigan prisons in the County of Jackson, Michigan but none are named "Jackson Prison". Robert Shroads is a Resident Unit Officer (RUO).

7. Based on information and belief and based on Co-Defendant Joseph Duffy's separate Answer to the Complaint (USDC Dkt. Entry 26), it is admitted that he is a state employee but denied as untrue that there is a Michigan prison by the name of "Jackson Prison".

8. Admitted that Sherman Campbell is employed by the Michigan Department of Corrections (MDOC) and is an employee of the State of Michigan. Denied as untrue that he is a

corrections officer at "Jackson Prison", as there is no such prison. There are several Michigan prisons in the County of Jackson, Michigan but none are named "Jackson Prison". Further, this Defendant is not a "Corrections Officer".

9. Admitted that Francine Powell is employed by the Michigan Department of Corrections (MDOC) and is an employee of the State of Michigan. Denied as untrue that she is a corrections officer at "Jackson Prison", as there is no such prison. There are several Michigan prisons in the County of Jackson, Michigan but none are named "Jackson Prison". Further, this Defendant is not a "Corrections Officer".

10. Admitted that Allan Small is employed by the Michigan Department of Corrections (MDOC) as a psychologist and is an employee of the State of Michigan. Denied as untrue that he works at "Jackson Prison", as there is no such prison. There are several Michigan prisons in the County of Jackson, Michigan but none are named "Jackson Prison".

11. Admitted that Betty Glasper is employed by the Michigan Department of Corrections (MDOC) as a registered nurse and is an employee of the State of Michigan. Denied as untrue that she works at "Jackson Prison", as there is no such prison. There are several Michigan prisons in the County of Jackson, Michigan but none are named "Jackson Prison".

12. Admitted that Angela Brown is employed by the Michigan Department of Corrections (MDOC) as a registered nurse and is an employee of the State of Michigan. Denied as untrue that she works at "Jackson Prison", as there is no such prison. There are several Michigan prisons in the County of Jackson, Michigan but none are named "Jackson Prison".

13. Based on information and belief and Co-Defendant, Nicole Fatu's, answer to the complaint, it is admitted that she is a resident of Jackson County but the remainder of the allegations are denied as untrue.

14. Admitted that Charles Boltjes is employed by the Michigan Department of Corrections (MDOC) as a registered nurse and is an employee of the State of Michigan. Denied as untrue that he works at "Jackson Prison", as there is no such prison. There are several Michigan prisons in the County of Jackson, Michigan but none are named "Jackson Prison".

15. Neither admitted nor denied for the reason that the allegations state conclusions of law and, therefore, no answer is required. Further, Plaintiff has misstated the applicable law and has failed to cite any applicable legal standard.

16. Neither admitted nor denied, for the reason that the allegations do not apply to these Defendants, and therefore no answer is required. However, these Defendants state that upon information and belief and based on Co-Defendant's answer to the complaint that CMS is a private corporation that is contracted with the MDOC to provide certain medical services to prisoners at JMF.

17. Neither admitted nor denied for the reason that the allegations state conclusions of law and, therefore, no answer is required.

18. Denied as untrue.

19. These Defendants' answers to paragraphs 1 through 18 are incorporated herein by reference pursuant to FRCP 10 (c), as if fully set forth herein.

20. Denied as untrue. The decedent, Timothy Souders, was a state prisoner at Southern Michigan Correctional Facility (JMF) on August 2, 2006. See the answer to paragraph one above regarding which facilities he was incarcerated at on any given day.

21. Neither admitted nor denied, for the reason that these Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. None of these answering Defendants are medical doctors, psychiatrists, or physician's assistants, and they are not authorized to prescribe prescription medications or psychotropic drugs by state law.

22. Denied as untrue. However, it is admitted that a heat alert was issued for JMF on August 2, 2006.

23. Neither admitted nor denied, for the reason that Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiff to their proofs.

24. Denied as untrue.

25. Denied as untrue.

26. Denied as untrue.

27. Denied as untrue. Timothy Souders was transferred from cell 45-e-06 to cell 1-C-06 at approximately 0610 hours (6:10am) on August 6, 2006, which was early morning before sunrise and cell 1-C-06 was a cooler and better ventilated cell.

28. Denied as untrue. Timothy Souders was transported by ambulance to Foote Hospital in Jackson, Michigan at approximately 1608-1615 hours (4:08pm to 4:15pm) and he was pronounced dead at the hospital at approximately 1655 hours.

29. Denied as untrue.

30. Denied as untrue.

31. Denied as untrue.

32. Denied as untrue.

33. Neither admitted nor denied, for the reason that the allegations do not apply to these Defendants, and therefore no answer is required.

34. Denied as untrue.

35. Denied as untrue.

36. Denied as untrue.

37. Denied as untrue.

38. Denied as untrue.

39. Admitted that the decedent, Timothy Souders, was moved from cell 45-E-06 to cell 1-C-06 at approximately 6:10am. The remainder of the allegations are denied as untrue.

40. Denied as untrue.

41. Denied as untrue.

42. Denied as untrue.

43. Upon information and belief, a referral and proposed transfer to Huron Valley Center for Plaintiff's decedent, Timothy Souders, was made and was being worked on by staff within the Michigan Department of Community Health. Admitted that Timothy Souders was not transferred to Huron Valley Center (in Ypsilanti, Michigan) before he was pronounced dead at Foote Hospital on August 6, 2006.

44. All inferences and/or allegations that these Defendants ignored various signs and symptoms is denied as untrue. Each Defendant only works an eight hour shift per day, and many did not work every day, due to the weekend falling on August 5-6, 2006 and because of "regular days off" and/or sick leave. Named Defendant Betty Glasper, for instance, did not work from August 3 to August 7, 2006 because she was utilizing leave in conjunction with her regular days off. Thus, many of these Defendants had extremely limited interaction with Timothy Souders, and some had none at all, because they did not work these particular days or they were not assigned to Timothy Souders unit. For instance, a person who had no interaction with Timothy Souders could not be said to be responsible in any way for his death and/or a person who saw Timothy Souders on only one occasion and did not observe any unusual signs could not be said to be responsible. Plaintiff's lawyers have made allegations in the Complaint, in such a way as to attempt to make the reader think that each Defendant was present during the entire 4-5 day period and knew each development that occurred **BUT** this is false.

45. As it pertains to the non-answering defendants, the allegation is neither admitted nor denied for the reason that the defendant lacks knowledge or information sufficient to form a belief as to its truth and leaves Plaintiff to their proofs. These Defendants note that all other Co-Defendants have denied this allegation as untrue in their respective answers. Also, since this allegation refers to "other MDOC employees" who are not even defendants, these answering defendants must state that they cannot speak as to what every other MDOC employee thought or discussed and Plaintiff is left to his proofs. As for these answering defendants, many of whom had little or no interaction with Timothy Souders the allegation is denied as untrue.

46. Denied as untrue.

47. Neither admitted nor denied, for the reason that Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiff to their proofs.

48. Neither admitted nor denied, for the reason that Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and leaves Plaintiff to their proofs.

49. Denied as untrue.

50. The allegation is denied because it is not an accurate statement of fact.

51. The allegation is denied because it is not an accurate statement of fact.

52. Denied as untrue.

53. The allegation is denied because it is not an accurate statement of fact.

54. Denied as untrue.

55. The allegation is denied because it is not an accurate statement of fact.

COUNT I

56. These Defendants' answers to paragraphs 1 through 18 are incorporated herein by reference pursuant to FRCP 10 (c), as if fully set forth herein.

57. Denied as untrue. Different persons have different legal status/es and, therefore, their rights may be different under different circumstances. Plaintiff's general statement is too general, and thus, false as a result.

58. Denied as untrue because many of the named defendants were not working at all when various events allegedly occurred. They certainly were not working for the entire 4-5 day period and for 24 hours per day, as Plaintiff's Complaint would like the reader to believe. Plaintiff's Complaint seems to assert that someone who only worked on August 2 or August 3, 2006, for instance, and did not work again before Plaintiff passed away can somehow be responsible for what occurred when they were not present working, and such an assumption is false. What about the situation where a person's first involvement with Plaintiff's decedent is on August 6, 2006 after Plaintiff is moved to a new cell (1-C-06) and the employee comes on duty on the 2-10pm shift and had no prior interaction with Plaintiff before that. Plaintiff was not in restraints at this time and during that shift he was whisked by ambulance to Foote Hospital. Plaintiff's Complaint falsely attempts to impute knowledge to various Defendants, which they did not have.

59. Denied as untrue that there is any institution known as "Jackson Prison". As to the remaining allegations, neither admitted nor denied for the reason that the allegations state conclusions of law and, therefore, no answer is required.

60. Neither admitted nor denied for the reason that the allegations state conclusions of law and, therefore, no answer is required. Further, Plaintiff has failed to state the appropriate legal standard.

61. Denied as untrue.

62. Neither admitted nor denied, for the reason that Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. Many of these Defendants had little or no interaction with the Plaintiff during the 4-5 days at issue.

63. Defendants deny as untrue any allegation or assumption underlying this allegation that they were aware of a medical emergency at the time because many of these defendants had little or no interaction with Plaintiff's decedent. Hind sight is 20-20. Because Plaintiff passed away, it can be presumed now that there was a medical emergency but the Defendants did not know it at the time.

64. Denied as untrue that any Defendant violated the Eighth Amendment.

65. Denied as untrue.

66. Denied as untrue.

67. Denied as untrue.

68. Denied as untrue.

69. Denied as untrue.

COUNT II (NON-VIABLE AND NO JURISDICTION)

70. These Defendants' answers to paragraphs 1 through 69 are incorporated herein by reference pursuant to FRCP 10 (c), as if fully set forth herein.

71. Neither admitted nor denied, for the reason that the allegations are so vague or ambiguous that Defendants cannot reasonably be required to frame a responsive pleading, and therefore Defendants move the Court for a more definite statement pursuant to FRCP 12 (e). Plaintiff fails to provide any case name or docket number and fails to attach any alleged court order to the Complaint as an exhibit. In the very next paragraph of the Complaint, Plaintiff

refers to a case with a 1992 docket number that would not correspond to any alleged 1985 court order as plead in this paragraph.

72. This is not a class action and Plaintiff's decedent has no standing to raise any issues regarding other prisoners or to assert their rights, if any. Any issue with regards to another pending lawsuit must be raised in that other lawsuit. Enforcement of a court order must be brought to the attention of the Court and Judge and in the case that issued it. Plaintiff has no cause of action in this case to enforce an alleged order from any other case and Plaintiff's lawyers should know that. Any other allegations are denied as untrue.

73. If the Court retained jurisdiction in the case Plaintiff mentions, then Plaintiff knows it is inappropriate to try and enforce a court order from another case in this case. This is an elementary principle of law.

74. Denied as untrue that there is a prison by the name of "Jackson Prison" today. The remaining allegations are denied as untrue because Plaintiff has failed to properly state the facts or law.

75. Denied as untrue that there is a prison by the name of "Jackson Prison" today. The remaining allegations are denied as untrue because Plaintiff has failed to properly state the facts or law.

76. Denied as untrue that this is a correct statement of law, of the legal standard in this case, or that any consent decree is enforceable in any action other than in the case in which it was entered. This case is not a medical malpractice action and the legal standard is not as stated by Plaintiff.

77. Defendants deny as untrue the underlying inference and assumption that any "inhibiting, interfering, or delaying" occurred.

78. Plaintiff has failed to attach the so-called consent decree to his Complaint, has failed to properly identify the court order to which he refers, if it exists, and has failed to properly identify the case to which he refers. As a result, neither admitted nor denied, for the reason that the allegations are so vague or ambiguous that Defendants cannot reasonably be required to frame a responsive pleading, and therefore Defendants move the Court for a more definite statement pursuant to FRCP 12 (e).

79. Denied as untrue.

WHEREFORE, Defendants request that the Court enter its Order striking Plaintiff's complaint, dismissing the above action or entering its Order of no cause of action, and assessing costs and reasonable attorney fees against Plaintiff and in favor of these Defendants.

AFFIRMATIVE DEFENSES

Defendants, (Sherry Burt, John Ocweija, Robert Shroads, Sherman Campbell, Francine Powell, Allan Small, Angela Brown, Charles Boltjes, Cleveland Blunt, and Betty Glasper), by counsel, and pursuant to FRCP 8 (c), and asserts the following affirmative defenses:

1. Pursuant to US Const, Art 3, § 2 – there must be a "case or controversy", which includes the concept of "standing". Here, Plaintiff's decedent, Timothy Souders, does not have standing to assert the constitutional rights of anyone but himself and his personal representative/s who stand in his shoes may not assert the constitutional rights of anyone but Timothy Souders.¹
2. Eleventh Amendment. In their official capacities, Defendants are immune from suit for monetary damages in federal court by virtue of the Eleventh Amendment to the Constitution of the United States.² Thus, Plaintiff's Count 2 seeking monetary damages against Defendant Sherry Burt (Or any other claim against a state official in their official capacity for monetary damages) in her "official capacity" must be dismissed on Eleventh Amendment immunity grounds and lack of jurisdiction. FRCP 12 (b) (1) and FRCP 12 (h) (3) apply.

¹ *Martin v Sargent*, 780 F2d 1334 (CA 8, 1985).

² *Will v Michigan Dept of State Police*, 491 US 58 (1989); *Wells v Brown*, 891 F2d 591, 592 (CA 6 1989); *Hardin v Straub*, 954 F2d 1193, 1199-1200 (CA 6 1992).

3. Qualified Immunity. Plaintiff's federal claims against Defendants are barred in whole or in part by Qualified Immunity because their conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known.³
4. The state and state officials in their "official capacity" are not "persons" within the meaning of 42 USC 1983 and may not be sued for damages under that statute.⁴
5. There is no "joint and several" liability for any federal law claim(s) under 42 USC 1983. 42 USC 1983 requires a showing of "personal involvement" on the part of each Defendant and they can only be held liable, if at all, for actions they are personally responsible for doing.⁵
6. Plaintiff lacks legal capacity to sue, as prescribed by FRCP 17, therefore warranting dismissal pursuant to FRCP 12 (b) (6).
 - a) Plaintiff is not the real party in interest as required by FRCP 17(a);
 - b) Plaintiff lacks standing to sue for constitutional deprivations suffered or which may be suffered by other persons.⁶
7. Plaintiff's 42 USC 1983 claim fails to state a claim upon which relief may be granted, therefore warranting dismissal pursuant to FRCP 12 (b) (6).
 - a) The state and its state officials acting officially are not "persons" subject to liability under 42 USC 1983.⁷
 - b) Plaintiff fails to allege facts establishing (i) deprivation of a constitutional right; (ii) due to the conduct of a person acting under color of state law.⁸
 - c) Defendants were not personally involved in the alleged unconstitutional activity thereby precluding 42 USC 1983 liability.⁹ Defendants had limited interaction or in some cases no interaction with Plaintiff's decedent, and therefore, no personal involvement as required by 42 USC 1983 jurisprudence.

³ *Harlow v Fitzgerald*, 457 US 800, 881; 102 S Ct 2727, 2738; 73 L Ed 2d 396 (1982); *Malley v Briggs*, 475 US 335, 341; 106 S Ct 1092, 1096; 89 L Ed 2d 271 (1986).

⁴ *Will v Michigan Dept of State Police*, 491 US 58 (1989).

⁵ *Deykes v Camp*, 333 F Supp 923 (DC Mo 1971). *Anderson v Nossar*, 456 F2d 835 (CA5 1972), *cert den*, 409 US 848 (1972). *Brownson v Bogenschutz*, 966 F Supp 795 (ED Wis 1997). See too, *Estate of Charles Smith v State of Michigan, et al*, 256 F Supp 2d 704, 711-713 (ED Mich 2003).

⁶ *Martin v Sargent*, 780 F2d 1334 (CA 8 1985)

⁷ *Will v Michigan Dept of State Police*, 491 US 58; 105 L Ed 2d 45 (1989).

⁸ *Bacon v Patera*, 772 F2d 259 (CA 6 1983).

⁹ *Hayes v Jefferson County*, 668 F2d 869 (CA 6, 1982), *cert den*, 459 US 833 (1982).

- d) 42 USC 1983 liability cannot be imposed on Defendant MDOC supervisory personnel based upon vicarious liability or *respondeat superior*.¹⁰
 - e) Absent allegations of fact establishing the unnecessary and wanton infliction of pain, Plaintiff fails to establish cruel and unusual punishment.¹¹
 - f) 42 USC 1983 liability cannot be imposed absent a causal connection between Plaintiff's injury and the alleged constitutional deprivation.¹²
 - g) Negligence or lack of due care does not give rise to liability under 42 USC 1983.¹³
8. Defendants reserve the right to raise any additional affirmative defenses that Defendants may have following the completion of discovery herein and/or to amend these affirmative defenses as otherwise allowed by law.
 9. Res Judicata and/or collateral estoppel apply to Count 2 of the Complaint, as well as lack of subject matter jurisdiction and venue.
 10. Plaintiff and Steven Souders and Theresa Vaughn were guilty of contributory negligence and part or all of his damage claims must be dismissed.
 11. Plaintiff and Steven Souders and Theresa Vaughn failed to mitigate damages.
 12. Steven Souders and Theresa Vaughn have unclean hands and equity must prevent biological or adoptive parents, who abused their child and/or abandoned him, from cashing in and reaping benefits from his death.

WHEREFORE, Defendants request that the Court enter its Order striking Plaintiff's Complaint, dismissing the above action, or entering its Order of no cause for action, and assessing costs and reasonable attorney fees against Plaintiff and in favor of the Defendants.

¹⁰ *Monell v NYC Dept of Social Services*, 436 US 658; 98 S Ct 2018; 56 L Ed 2d 611 (1978).

¹¹ *Ivey v Wilson*, 832 F2d 950 (CA 6 1987).

¹² *Janan v Trammell*, 785 F2d 557 (CA 6 1986).

¹³ *McKenna v City of Memphis*, 785 F2d 560 (CA 6 1986).

DEFENDANTS' JURY DEMAND

Defendants, through counsel, and pursuant to the United States Constitution, Seventh Amendment and FRCP 38 (b), hereby demand a trial by jury in the above cause.

Respectfully submitted,

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Dated: December 5, 2006

KTCases/2006023832A/Ans, affm defenses, jury demand

CERTIFICATE OF SERVICE: I certify that on December 5, 2006, I electronically filed the foregoing papers with the Clerk of the Court using the ECF system which will serve counsel of record.

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