

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

KENT P. RICHLAND,

Plaintiff,

v.

CIVIL ACTION NO.
Jury Trial Requested

R.L. GARDNER,
in his individual and official
capacity as a Deputy Sheriff of the Berkeley County Sheriff's Department;
W. RANDY SMITH, in his official capacity as the Berkeley County Sheriff,
THE COUNTY COMMISSION OF BERKELEY COUNTY;
a public corporation;
STEVEN D. CANTERBURY, in his official capacity
as the Executive Director of the West Virginia Regional Jail and
Correctional Facility Authority, a West Virginia State agency;
SANDRA L. MILLER, in her official capacity as a
Magistrate of Berkeley County, West Virginia;
MAGISTRATE COURT OF BERKELEY COUNTY,
WEST VIRGINIA; and
THE STATE OF WEST VIRGINIA,

Defendants.

COMPLAINT

JURISDICTION

1. Plaintiff alleges violation of his rights under Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. Sections 12131-12134; Section 504 of the Rehabilitation Act of 1973; his First and Fourteenth Amendment rights pursuant to the Civil Rights Act of 1871, 42 U.S.C. Section 1983, his rights under The West Virginia Human Rights Act, ("HRA"), W.VA. Code Sections 5-11-1 et seq. and various state common law causes of action. Jurisdiction is conferred upon the Court pursuant to 28 U.S.C. 1343, et seq.

2. There exists a common nucleus of operative fact as to plaintiff's state and federal claims. As a consequence, the Court has jurisdiction over the state pendent claims.

PARTIES

3. Kent P. Richland resides in South Burlington, Vermont.
4. R.L. Gardner is a deputy sheriff employed by the Sheriff and the County Commission of Berkeley County, West Virginia. At all relevant times, R.L. Gardner was acting under color of law and within the scope of his employment as a deputy sheriff.
5. W. Randy Smith is the Sheriff of Berkeley County, West Virginia and, at all relevant times, was an employer of defendant R.L. Gardner.
6. The Berkley County Commission is a public corporation, and, at all relevant times, was an employer of defendant R.L. Gardner.
7. Steven D. Canterbury is the Executive Director of the West Virginia Regional Jail and Correctional Facility Authority, a West Virginia State agency which owns and operates the Eastern Regional Jail in Berkeley County, West Virginia.
8. Sandra L. Miller, at all relevant times, was a Magistrate of Berkeley County, West Virginia acting under color of law and within the scope of her employment as Magistrate.
9. The Magistrate Court of Berkley County is a court of limited jurisdiction established pursuant to Art. III, Section 10 of the Constitution of West Virginia.
10. The State of West Virginia is one of the United States of America.

STATEMENT OF FACTS

11. Plaintiff hereby realleges the contents of the allegations contained in the paragraphs numbered 1 through 10 of the Complaint as if fully set forth hereat.
12. Plaintiff suffers from a genetic condition known as “Bartter’s syndrome”.
13. The Plaintiff has a severe form of Bartter’s syndrome, which results in total

sensory neural hearing loss.

14. The Plaintiff also suffers from chronic hypokalemia and hypomagnesemia as a result of this condition.

15. The Plaintiff also suffers from myofascial pain syndrome, hyperlipidemia and coronary artery disease.

16. On June 20, 2001 the Plaintiff was driving from South Burlington, Vermont to Lexington, North Carolina in order to deliver his youngest son, Shane Adam Richland, age twelve, to Shane's mother for the summer. The Plaintiff's youngest son, Shane Adam Richland, was a passenger in the vehicle and was sitting in the front passenger seat.

17. At approximately 12:58 p.m. on June 20, 2001, the Plaintiff was driving south on Interstate 81 through Berkeley County, West Virginia.

18. The Plaintiff was traveling 70 mph, the posted speed limit, when he entered work zone posted as 55 mph.

19. R.L. Gardner initiated a traffic stop of the Plaintiff's vehicle.

20. R.L. Gardner approached the Plaintiff's vehicle on the passenger's side.

21. R.L. Gardner asked to see the Plaintiff's driver's license and registration.

22. The Plaintiff requested that R.L. Gardner communicate with him by means of written notes, which Gardner refused to do so.

23. R.L. Gardner instructed the Plaintiff to communicate with him by using the Plaintiff's youngest son as a sign language interpreter.

24. Shane Adam Richland possessed rudimentary sign language skills but was not certified nor qualified to act as a sign language interpreter.

25. The Plaintiff signed a traffic citation for speeding.

26. The Plaintiff attempted to hand the traffic citation and metal clipboard back to the defendant through the front passenger's window.

27. As the Plaintiff reached out of the front passenger window with the clipboard in his hand it slipped from his hand and fell to the ground.

28. R.L. Gardner instructed a second officer who had arrived at the scene to arrest the Plaintiff.

29. The Plaintiff was handcuffed and taken to the Berkley County Sheriff's office for processing his arrest.

30. The Plaintiff was taken to the Eastern Regional Jail where he was incarcerated.

31. On June 21, 2001, the Plaintiff was arraigned by means of a videoconference before Magistrate Sandra L. Miller who set his bail at \$2000.00.

32. Following his arraignment the Plaintiff returned to his cell where he was able to read the criminal complaint and learn for the first time that he had been arrested for allegedly committing a battery on the person of R.L. Gardner.

33. The Plaintiff was released from jail on June 21, 2001 after his sons were able to locate a bail bondsman.

34. The Plaintiff and his youngest son returned to West Virginia from Vermont in December 2001 to attend the Plaintiff's criminal trial.

35. The criminal charges against the Plaintiff were dismissed with prejudice on December 5, 2002 when R.L. Gardner's failed to appear at the criminal trial.

36. The defendants failed to ensure adequate and appropriate communication with the plaintiff during the traffic stop.

37. The defendants failed to ensure adequate and appropriate communication with the plaintiff at the time of his arrest.

38. The defendants failed to ensure adequate and appropriate communication with the plaintiff during his processing at the Sheriff's Department.

39. The defendants failed to ensure adequate and appropriate communication with the plaintiff during his incarceration at the Eastern Regional Jail.

40. The defendants failed to ensure adequate and appropriate communication with the plaintiff during his arraignment before the Magistrate Court of Berkeley County.

41. As a direct and proximate result of the defendants' failure to ensure adequate and appropriate communication with the plaintiff as aforesaid, the plaintiff suffered great physical and mental distress, including fear for his physical well being as a result of the defendants' failure to appropriately assess his health condition, and fear for the safety and well being for his children.

42. The defendants falsely arrested and maliciously prosecuted the plaintiff.

43. As a direct and proximate result of the plaintiff's false arrest and malicious prosecution, he suffered great physical and mental distress, including fear for his physical well being as a result of the defendants' failure to appropriately assess his health condition, and fear for the safety and well being for his children.

CLAIMS

44. Plaintiff hereby realleges the contents of the allegations contained in the paragraphs numbered 1 through 43 of the Complaint as if fully set forth hereat.

45. The above stated facts give rise to a false arrest and malicious prosecution claim against defendants R.L. Gardner and the Berkeley County Sheriff's office.

46. The above stated facts give rise to a disability discrimination claim against the defendants under the West Virginia Human Rights Act.

47. The above stated facts give rise to a disability discrimination claim against the defendants under the Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

48. The above stated facts give rise to due process and equal protection claims pursuant to the Civil Rights Act of 1871, 42 U.S.C. Section 1983.

PRAYER FOR RELIEF

49. Plaintiff hereby realleges the contents of the allegations contained in the paragraphs numbered 1 through 48 of the Complaint as if fully set forth hereat.

50. As a proximate cause of the violation of the common law torts, state constitutional violations and federal constitutional violations, the plaintiff has suffered humiliation, degradation, mental and emotional distress and monetary loss.

WHEREFORE Plaintiff prays for damages as follows:

1. General damages in an amount to be proven at trial;
2. Punitive damages in an amount to be proven at trial;
3. Reasonable costs and attorney's fees;

In addition to the damages claimed above, the plaintiff seeks the following injunctive relief:

1. That the defendants be ordered to provide auxiliary aids and services without charge, including sign language interpreters, following notice and request, when necessary to ensure effective communications with persons who are deaf in the criminal justice system.
2. That the defendants be ordered to post notices that auxiliary aids and services are available in readily visible locations near public entrances and processing areas in the Eastern Regional Jail, Berkeley County Magistrate Court, and the Berkeley County Sheriff's Department

3. That the defendants be ordered to post notices of an ADA grievance procedure in readily visible locations in the Eastern Regional Jail, Berkeley County Magistrate Court, and the Berkeley County Sheriff's Department.
4. That when the defendants acquire information that a person is deaf, they inquire whether auxiliary aids and services are necessary to ensure effective communication and equivalent access to programs, services and activities and inform the individual that auxiliary aids and services are available without charge.
5. That when auxiliary aids and services are necessary to ensure effective communication, the defendants provide the auxiliary aid or service within a reasonable period of time following request and that the defendants be ordered to use their best efforts to provide auxiliary aids and services to a detainee who is deaf within one hour of such request.
6. That if a person who is deaf requests a sign language interpreter, the initial processing of the detainee who is deaf will proceed with a sign language interpreter, unless exceptional circumstances preclude providing a sign language interpreter.
7. That if the removal of the handcuffs does not result in a direct threat to the health or safety of any person, or cause an undue burden or fundamental alteration of the custodial activity, the defendants will remove the handcuffs of a booked and classified detainee who is deaf to allow communication.
8. That when necessary to ensure effective communication and equivalent access to existing programs, activities and services, the defendants will provide the auxiliary aids and services without charge when requested by detainees who are deaf.
9. That once an inmate indicates that he/she is deaf, the defendants will ask an inmate charged with internal disciplinary violations, or who requests medical care, whether

auxiliary aids and services are needed to ensure effective communication for disciplinary proceedings/medical treatment.

10. That the defendants will provide a videotaped, sign language version of any handbook or orientation materials to incarcerated inmates who are deaf within a reasonable period of time and use their best efforts to play the videotape for the inmates within 5 hours after the inmates' initial processing.
11. That in situations where there is an expectation of privacy under the law, the defendants will require all sign language interpreters used by the defendants to maintain confidentiality.
12. That the ranking officer on any Eastern Regional jail pod on which an inmate who is deaf is housed shall be notified of the presence of the inmate who is deaf, and shall have responsibility for the inmate's safe evacuation during an emergency.
13. That the Eastern Regional Jail establish uniform procedures to screen and admit sign language interpreters accompanying attorneys on inmate visits.
14. That inmates who are deaf shall have equivalent access to all programs, services and activities in the jail for which they are eligible unless their participation poses a direct threat to the health or safety of any person at the jail or is otherwise excused by law.
15. That if the defendants become aware that an inmate is deaf, and uses American Sign Language or English Sign Language, the defendants will record and transmit that information in a manner accessible to the courts to facilitate the court's provision of sign language interpreter services.
16. That the defendants shall provide auxiliary aids and services and reasonable accommodations/modifications without charge following notice and request, when

necessary for effective communication, to permit an inmate who is deaf to participate in jail programs, services, or activities without charge. Fees for programs, services and activities assessed against other inmates will be assessed against inmates who are deaf.

17. That notice be provided to the defendants' employees of their obligations to accommodate and provide auxiliary aids and services to persons with disabilities.
18. That appropriate training as to the defendants' obligation to accommodate and provide auxiliary aids and services to the disabled will be made available annually to the defendants' employees.

KENT P. RICHLAND
By Counsel

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