

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

TERRY WASHINGTON, SR.,

Plaintiff,

v.

No.: 2:12-cv-02633-JTF-dkv
JURY DEMANDED

SHELBY COUNTY, TENNESEE;
CORRECT CARE SOLUTIONS, LLC;
JAMES COLEMAN, and
RAMIKA JONES,

Defendants.

AMENDED COMPLAINT

COMES NOW the plaintiff, Terry Washington, Sr., and files this amended complaint against the defendants, Shelby County, Tennessee, Correct Care Solutions, LLC, James Coleman and Ramika Jones (hereinafter referred to collectively as "Defendants"), both jointly and severally, and respectfully states as follows:

I. PRELIMINARY STATEMENT

1. Plaintiff's claims under 42 U.S.C. § 1983 and state law arise out of the Defendants' failure to provide proper medical treatment and medications to Plaintiff which resulted in serious physical and emotional injuries to the Plaintiff, and deprived Plaintiff of his clearly established rights guaranteed under the Constitutions and laws of the United States and State of Tennessee. The Defendants violated the rights of the Plaintiff under the Eighth and Fourteenth Amendments of the United States Constitution and the laws of Tennessee when they knowingly and with deliberate indifference to his constitutional rights denied the Plaintiff reasonable medical treatment for serious medical conditions, thereby causing him extensive physical and emotional pain and suffering. All Defendants acted under color of state law and proximately caused the deprivation of Plaintiff's federally protected and state law rights.

Parties, Jurisdiction and Venue

2. Plaintiff Terry Washington, Sr. is a citizen and resident of Memphis, Shelby County, Tennessee, and was, at the time of the actions and omissions which form the basis of this complaint, serving a sentence imposed by Shelby County, Tennessee and was in the custody of Defendants Shelby County, Tennessee at the Shelby County Corrections Center ("SCCC"), located at 1045 Mullins Station Road, Memphis, Tennessee 38134. At the time of the filing of this Complaint, Plaintiff Terry Washington, Sr. is not currently incarcerated at SCCC or any other correctional facility.

3. Defendant Correct Care Solutions, LLC ("CCS"), is a for-profit Kansas corporation whose principal office is located at 3343 Perimeter Hill Dr., Ste. 300, Nashville, Tennessee 37211, and whose registered agent for service of process is Business Filings Incorporated, 800 S. Gay St., Ste. 2021, Knoxville, Tennessee 37929. As part of CCS's business, CCS provides medical screening exams and care to inmates. At all times relevant to this action, CCS conducted business within Shelby County, Tennessee at Shelby County Corrections Center. CCS operates a clinic at the Shelby County Correction Center with the full authority of the government of the State of Tennessee pursuant to Tenn. Code Ann. §41-24-101, *et seq.* and/or Tenn. Code Ann. §41-8-101, *et seq.*, and therefore acts under color of state law. CCS is the entity charged by the laws of the State of Tennessee with authority to maintain the clinic at Shelby County Correction Center and has a non-delegable duty to ensure that the conditions of confinement and health and safety of persons incarcerated at the Shelby County Correction Center, including the Plaintiff, are protected and in compliance with the Constitutions and laws of the United States and the State of Tennessee. Defendant CCS is responsible for the implementation of policies, procedures, practices and customs, as well as the acts and omissions, challenged by this suit. Defendant CCS is also responsible for ensuring that all of its facilities, including its clinic at the Shelby County Correction Center, are in compliance with the Constitutions and laws of the United States and the State of Tennessee.

4. At all pertinent times mentioned herein, CCS was a state actor in the state of Tennessee and had a non-delegable duty to ensure the proper and safe operation of the clinic at the Shelby County Correction Center. In its operation of the medical clinic at the Shelby County Correction Center, Defendant CCS utilizes employees, agents or contractors who perform services, including professional medical services, under color of state law and within the course and scope of their employment, agency, apparent authority or contract with CCS. CCS is liable for its own conduct and the acts and omissions of its servants, employees, agents and contractors by virtue of the fact that they acted in conformity with the policies, practices and customs of CCS and pursuant to the doctrines of agency, apparent agency, implied agency, employer/employee relations, joint and several liability, respondeat superior, vicarious liability, contract and as a result of CCS's non-delegable duty to ensure the health and safety of the persons held in custody at the Shelby County Correction Center.

5. The Plaintiff complied with T.C.A. § 29-26-121(a) by having mailed by certified mail notice of the claim to CCS to its registered agent for service of process and current business address, all of which is evidenced by the Affidavit of Liane K. Williams, attached hereto as "Exhibit A," which states that such action occurred and shows that notice was sent by certified mail to CCS on June 5, 2012. Copies of the notice of mailing and the Certificate of Mailing from the U.S. Postal Service, stamped with the date of mailing, which establishes that the specified notice was timely mailed by certified mail, return receipt requested, as well as all other information required by T.C.A. § 29-26-121(a) are attached to the aforementioned Affidavit of Liane K. Williams. The requirements of T.C.A. § 29-26-121(a) have been satisfied with respect to Defendant CCS.

6. The Plaintiff timely complied with the notice requirements of T.C.A. § 29-26-121(a) by giving notice and the documents required by T.C.A. § 29-26-121(a) to CCS more than 60 days before the filing of this Amended Complaint.

7. Defendant Shelby County, Tennessee is the governmental entity ultimately responsible for the care, custody, health and well-being of the Plaintiff while he was a prisoner at all times relevant to this Complaint. Shelby County is liable for its own conduct and the acts and omissions of its servants, employees, agents and contractors by virtue of the fact that they acted in conformity with the policies, practices and customs of Shelby County and pursuant to the doctrines of agency, apparent agency, implied agency, employer/employee relations, joint and several liability, respondeat superior and vicarious liability. Further, Shelby County, Tennessee, which contracts with CCS to provide medical care to inmates at the Shelby County Corrections Center, had non-delegable constitutional duties to ensure that the Plaintiff received adequate medical care and that its designated contractor, Defendant CCS and its agents, employees and subcontractors, provided constitutionally adequate medical care to Plaintiff.

8. The Plaintiff complied with T.C.A. § 29-26-121(a) by having mailed by certified mail notice of the claim to Shelby County, Tennessee to its registered agent for service of process and current business address, all of which is evidenced by the Affidavit of Liane K. Williams, attached hereto as "Exhibit A," which states that such action occurred and shows that notice was sent by certified mail to Shelby County, Tennessee on June 5, 2012. Copies of the notice of mailing and the Certificate of Mailing from the U.S. Postal Service, stamped with the date of mailing, which establishes that the specified notice was timely mailed by certified mail, return receipt requested, as well as all other information required by T.C.A. § 29-26-121(a) are attached to the aforementioned Affidavit of Liane K. Williams. The requirements of T.C.A. § 29-26-121(a) have been satisfied with respect to Defendant Shelby County, Tennessee.

9. The Plaintiff timely complied with the notice requirements of T.C.A. § 29-26-121(a) by giving notice and the documents required by T.C.A. § 29-26-121(a) to Shelby County, Tennessee more than 60 days before the filing of this Amended Complaint.

10. Defendant James Coleman was at all times relevant to this complaint employed by Shelby County as the Director of the Shelby County Correction Center, and at all times

relevant hereto was personally responsible for Plaintiff's care, health and well-being. At all times material hereto, James Coleman acted under color of state law and in the course and scope of her employment with the Shelby County Correction Center.

11. Defendant Ramika Jones was at all times relevant to this complaint employed by CCS as a nurse practitioner at the Shelby County Correction Center, and at all times relevant hereto was personally responsible for Plaintiff's care, health and well-being. At all times material hereto, Ramika Jones acted under color of state law and in the course and scope of her employment with CCS.

12. The Plaintiff complied with T.C.A. § 29-26-121(a) by having mailed by certified mail notice of the claim to Defendant Ramika Jones to the address listed for the provider on the Tennessee Department of Health Website and her current business address, which are the same, all of which is evidenced by the Affidavit of Liane K. Williams, attached hereto as "Exhibit A," which states that such action occurred and shows that notice was sent by certified mail to Defendant Ramika Jones on June 5, 2012. Copies of the notice of mailing and the Certificate of Mailing from the U.S. Postal Service, stamped with the date of mailing, which establishes that the specified notice was timely mailed by certified mail, return receipt requested, as well as all other information required by T.C.A. § 29-26-121(a) are attached to the aforementioned Affidavit of Liane K. Williams. The requirements of T.C.A. § 29-26-121(a) have been satisfied with respect to Defendant Ramika Jones.

13. The Plaintiff timely complied with the notice requirements of T.C.A. § 29-26-121(a) by giving notice and the documents required by T.C.A. § 29-26-121(a) to Defendant Ramika Jones more than 60 days before the filing of this Amended Complaint.

14. The notice of claim letter and accompanying documents referenced in paragraph 12 were returned undelivered on or about June 9, 2012. (See Exhibit B, envelope showing letter not delivered). Therefore, the Plaintiff complied with T.C.A. § 29-26-121(a) by having mailed by certified mail notice of the claim to Defendant Ramika Jones within five (5) business

days after the receipt of the undelivered letter to Defendant Ramika Jones' office or business address, all of which is evidenced by the Affidavit of Liane K. Williams, attached hereto as "Exhibit C," which states that such action occurred and shows that notice was sent by certified mail to Defendant Ramika Jones on June 12, 2012. Copies of the notice of mailing and the Certificate of Mailing from the U.S. Postal Service, stamped with the date of mailing, which establishes that the specified notice was timely mailed by certified mail, return receipt requested, as well as all other information required by T.C.A. § 29-26-121(a) are attached to the aforementioned Affidavit of Liane K. Williams. The requirements of T.C.A. § 29-26-121(a) have been satisfied with respect to Defendant Ramika Jones.

15. The Plaintiff timely complied with the notice requirements of T.C.A. § 29-26-121(a) by giving notice and the documents required by T.C.A. § 29-26-121(a) to Defendant Ramika Jones more than 60 days before the filing of this Amended Complaint.

16. In accordance with the requirements of T.C.A. § 29-26-122, Plaintiff's counsel filed his Certificate of Good Faith as "Exhibit D" to this Amended Complaint.

17. Plaintiff Terry Washington was an inmate in the jurisdiction of Shelby County at all times relevant to the events giving rise to this cause of action.

18. The incident which gives rise to this cause of action occurred within this jurisdiction and within one year of the filing of this Complaint and this Court accordingly has jurisdiction.

19. Venue is proper, as all Defendants conduct business in Shelby County, Tennessee and/or all the acts or omissions which give rise to this cause of action occurred within Shelby County, Tennessee.

Facts

20. This is an action to recover damages against Defendants for intentional, reckless and negligent acts resulting in substantial harm to Plaintiff, for violations of Plaintiff's state and

federal constitutional rights while in the care and custody of Defendants, who were all acting under color of state law at all times relevant hereto, and for medical malpractice.

21. Upon his incarceration at Shelby County Correction Center, Mr. Washington notified the Defendants that he suffered from hypertension.

22. A Receiving Screening Examination was performed at the Shelby County Correction Center on May 31, 2011, which revealed that the Plaintiff's blood pressure was 220/130 and that he was suffering from malignant hypertension. The Plaintiff's malignant hypertension was a medical emergency and required prompt and immediate medical attention to prevent permanent and irreversible organ damage and disabilities.

23. Despite knowing that the Plaintiff was suffering from a hypertensive emergency, Defendant Ramika Jones failed and/or refused to transport the Plaintiff to a medical facility where he could receive an adequate medical examination and treatment. Instead, the Defendants chose to treat the Plaintiff at the Shelby County Correction Center. The Plaintiff's hypertension was not properly evaluated by a physician, nor was it adequately treated by the Defendants. Instead, the Defendants chose to have a nurse practitioner (Ramika Jones) treat the Plaintiff's hypertension without the necessary or proper supervision of a physician.

24. The Plaintiff was given prescriptions for hydralazine, isosorb and labetalol for a period of 90 days to treat the Plaintiff's hypertension. The labetalol was noted to be a "non-formary," but the pharmacy was "instructed" to "get [the] meds."

25. Over the next several days, the Plaintiff told prison officials that he continued to suffer from symptoms associated with hypertension including, but not limited to, shortness of breath and chest tightness. Despite being told about the Plaintiff's ongoing symptoms, the Defendants failed and/or refused to provide the Plaintiff with access to necessary medical care and/or to dispense medications ordered to treat the Plaintiff hypertension.

26. On June 8, 2011, Mr. Washington fell off his bunk while reading. Prison officials “[a]rrived in [Mr. Washington’s] Dorm [and found him] on floor unable to move left arm or leg.” His blood pressure was checked and noted to be 210/140.

27. Mr. Washington was transported to Baptist Memorial Hospital where his blood pressure was noted to be 281/161. He was admitted to the hospital for further treatment and diagnosed with “malignant hypertension, hypertensive right thalamic hemorrhage, intraventricular hemorrhage [and] left hemiplegia.”

28. On June 17, 2011, the Plaintiff was transferred to the Regional Medical Center at Memphis for further treatment and rehabilitative services.

29. The Plaintiff continues to suffered severe physical and mental disabilities as a direct result of the hypertensive stroke on June 8, 2011, including, without limitation, left-sided paralysis, motor deficits, memory loss and impaired speech.

30. The failure of the Defendants to ensure that Mr. Washington received timely and adequate medical care evidenced deliberate indifference to Mr. Washington’s serious medical needs. Further, the seriousness of Mr. Washington’s medical condition – malignant hypertension – would be obvious to a layman with no medical training.

31. As a result of the aforementioned acts and omissions of Defendants, including but not limited to Shelby County, CCS and its agents, employees and contractors, Plaintiff sustained serious physical and emotional injuries from the failure to provide him with proper medical treatment and suffered avoidable disabilities from a hypertensive stroke.

32. Based on the foregoing, the treatment provided (and failed or refused to be provided) to Mr. Washington by CCS and the other Defendants fell well below the recognized standards of professional practice and constituted deliberate indifference to the serious medical needs of Mr. Washington. Defendants had sufficient information to allow them to understand that Ms. Washington was at risk for a hypertensive stroke and there were signs of an ongoing hypertensive crisis that were not properly addressed and treated. On June 1, 2011, and each

following day until June 8, 2011, Mr. Washington told Defendants that he was experiencing shortness of breath and chest tightness, but Defendants failed to provide him with any examination, delayed in providing him necessary medical care and delayed in transporting him to the emergency room. Further, Defendants failed to have Mr. Washington evaluated by a physician, failed to have him immediately admitted to a hospital, failed to perform routine checks of his blood pressure, failed to provide him with meals that met his dietary restrictions and completely failed to offer any care for his ongoing symptoms of an underlying hypertensive crisis. Under these circumstances, there was deliberate indifference to the serious medical needs of Mr. Washington and a breach of the medical standard of care for the same or similar community.

33. As a result of the aforementioned acts and omissions, Mr. Washington's civil rights were violated and he suffered severe and significant physical and emotional injuries for which the Defendants are jointly and severally liable.

Count I
Federal Constitutional Claims

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.

34. At all times relevant herein, CCS and its employees, agents and contractors were performing a traditional governmental function in providing medical care and attention to inmates at the Shelby County Correction Center and were state actors. All the actions and omissions of CCS and its employees, agents and contractors, as alleged herein, were performed under color of state law.

35. At all times relevant to the events giving rise to this cause of action, the Plaintiff was an inmate in the custody of Shelby County at the Shelby County Correction Center and under the direct supervision of CCS and Defendant Jones. Defendant Shelby County was responsible for Plaintiff's well-being as the contracting government agency responsible for

overseeing and operation of the medical clinic at the Shelby County Correction Center. As the Plaintiff was in the custody and control of Shelby County and CCS and its agents and employees, Plaintiff did not have the ability to obtain medical treatment on his own to provide for his own well-being. Therefore, Defendants were under a constitutional duty to provide the Plaintiff with the basic necessities of life which include, but are not limited to, food, shelter and proper medical care.

36. Defendants' acts and omissions as alleged more specifically herein breached this constitutional duty and violated the Plaintiff's clearly established rights under the Eighth and/or Fourteenth Amendment to the United States Constitution, as the Defendants were deliberately, consciously and intentionally indifferent to the Plaintiff's obvious, serious medical needs.

37. The Defendants' actions and omissions alleged herein were consciously, deliberately and intentionally indifferent to the serious medical needs of the Plaintiff. As a direct and proximate cause of this indifference, the Plaintiff suffered tremendous emotional and physical injury.

38. Upon incarceration, Defendants were aware that Mr. Washington had a hypertensive emergency and required proper nutrition, medical assessment and treatment. Despite Defendants' knowledge of the Plaintiff's condition, Defendants deliberately and intentionally failed to provide Mr. Washington with these basic necessities.

39. Defendants, with knowledge of Plaintiff's serious and obvious medical needs and with deliberate indifference to such medical needs, have acted or failed to act in such a way as to deprive the Plaintiff of necessary and adequate medical care, thereby endangering Plaintiff's well-being. Such acts and omissions of Defendants violated the rights secured to the Plaintiff by the Eighth and/or Fourteenth Amendment to the United States Constitution.

40. Defendants, including CCS, its agents and employees, with knowledge of Plaintiff's serious medical needs and with deliberate indifference to such medical needs, have acted or failed to act in such a manner as to prevent Plaintiff from obtaining timely and adequate medical treatment and to prevent needed medical treatment and care from reaching the Plaintiff,

thereby endangering the Plaintiff's health and well-being. Such acts and omissions by Defendants violate rights secured to the Plaintiff by the Eighth and/or Fourteenth Amendment to the United States Constitution.

41. Defendants, including CCS, its agents and employees, with knowledge of Plaintiff's serious medical needs, had a constitutional duty under the Eighth and/or Fourteenth Amendment to the United States Constitution to provide needed medical care to inmates at the Shelby County Correction Center, including Plaintiff, in conformity with the standards for delivery of such medical care in the State of Tennessee.

42. Defendants, knowing of the Plaintiff's serious medical needs and knowing also of the inadequacies and deficiencies in CCS's medical facilities, staffing and procedures at the Shelby County Correction Center, had a constitutional duty to establish and implement policies, practices and procedures designed to assure that the Plaintiff received medical care and treatment in conformity with the standards of delivery of such medical care and treatment in the State of Tennessee.

43. Defendants, knowing of the serious medical needs of the Plaintiff, and with deliberate indifference to the inadequacies and deficiencies in CCS's medical facilities, staffing and procedures at the Shelby County Correction Center, failed and neglected to establish and implement policies, practices and procedures designed to assure that the Plaintiff received proper medical care and treatment.

44. Defendants, knowing of the serious medical needs of the Plaintiff, had a constitutional duty to instruct, supervise and train their employees and agents to assure the delivery of medical care to the Plaintiff consistent with the standards of medical care in the State of Tennessee, and have failed and neglected to establish and implement proper training, supervision and monitoring programs designed to assure that the Plaintiff received proper medical care and treatment.

45. Defendant CCS is under a constitutional duty to ensure that its medical clinics, including the Shelby County Correction Center Clinic, are operated in a lawful manner, preserving to prisoners the rights, privileges and immunities guaranteed to them by the Constitutions and laws of the United States of America and the State of Tennessee.

46. Defendants permitted, encouraged, tolerated and/or knowingly acquiesced to an official pattern, policy or practice of the Defendants' employees, agents and contractors violating the constitutional rights of inmates, including Mr. Washington. The actions of the Individual Defendants and other agents, employees and contractors of CCS complained of herein were unjustified, unreasonable and unconstitutional, and constituted a violation of the Plaintiff's clearly established rights, privileges and immunities guaranteed to her by the Eighth and/or Fourteenth Amendment to the United States Constitution which include but are not limited to the following:

- a. Freedom from cruel and unusual punishment;
- b. Freedom from deprivation of life and liberty without due process of law;
- c. Freedom from confinement without the provision for adequate medical care and treatment;
- d. Freedom from arbitrary government action which is so outrageous as to shock the conscience of a civilized society; and
- e. Freedom from intentional discrimination on the basis of physical and mental impairment.

47. Defendants are directly liable for the violation of Mr. Washington's civil rights due to the following policies, practices or customs of Defendants which were in effect at the time of this incident and which were the underlying cause of Plaintiff's injuries and damages:

- a. Defendants Shelby County and CCS failed to adequately and properly train and educate their employees, agents and contractors with respect to the proper care and treatment of inmates, responding to medical complaints of inmates, evaluating medical complaints of inmates, and seeking emergency medical treatment for inmates, with deliberate indifference and reckless disregard to the welfare of inmates, including Mr. Washington;
- b. Defendants Shelby County and CCS failed to adequately monitor and evaluate the performance of their agents, employees and contractors with respect to the proper care and treatment of inmates, responding to medical complaints of inmates, evaluating medical complaints of inmates, and seeking emergency

medical treatment for inmates, with deliberate indifference and reckless disregard to the welfare of inmates, including Mr. Washington;

- c. Defendants Shelby County and CCS failed to properly fund and staff the Shelby County Correction Center Clinic, to ensure an appropriate amount of licensed, trained and qualified medical professionals are present to provide proper medical treatment to high-risk patients, with deliberate indifference and reckless disregard to the welfare of inmates, including Mr. Washington;
- d. Defendants Shelby County, CCS and Jones have a policy, practice or custom of exonerating their employees, agents and/or contractors of wrongdoing and/or misconduct in order to escape liability, and thereby create an atmosphere where illegal and unconstitutional behavior is condoned, tolerated or approved, with deliberate indifference and reckless disregard to the rights of inmates, including Mr. Washington; and
- e. Defendant CCS has established official policies and procedures that result in a delay of timely and needed medical care for inmates with serious medical needs, including Mr. Washington, with deliberate indifference and reckless disregard to inmates, including Mr. Washington.

48. Alternatively, Defendants Shelby County and CCS are liable for the actions of their employees, agents and contractors under the doctrines of agency, vicarious liability, employer-employee relations, master-servant, respondeat superior, joint venture, contract and as a result of their non-delegable duty to comply with the constitution and laws of the United States and the State of Tennessee.

49. Defendants CCS, Shelby County and Jones have maintained and exhibited a pattern, practice, custom and policy of deliberate indifference to the serious medical needs of Plaintiff which was the motivating force behind the Plaintiff's deprivation of constitutional rights under the Eighth and Fourteenth Amendment rights and, accordingly, he is entitled to recovery from these Defendants.

Count II
Violation of Tennessee Constitution, Article I, §16 and §32

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.

50. In Article I, §16, the Constitution of the State of Tennessee provides that no cruel or unusual punishment shall be inflicted.

51. Article I, §32 the Constitution of the State of Tennessee, requires the "humane treatment of prisoners."

52. While the Plaintiff has alleged in Count I that the conduct of Defendants violated the Plaintiff's federal constitutional rights, Plaintiff further alleges that the same conduct violated Plaintiff's rights under §§ 16 and 32 of the Tennessee Constitution.

Count III
Violation of Tennessee Code Annotated §§ 41-21-201 and 204

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.

53. Tennessee Code Annotated §41-21-201 states that "the warden is charged with the duty of treating the prisoners with humanity and kindness, and protecting them from harsh and cruel treatment and overwork." (emphasis added). Clearly, Plaintiff was not treated with humanity and kindness, nor even a degree of human decency, amounting to harsh and cruel treatment in direct violation of this statute. Plaintiff submits that he was in the class of persons that this statute was designed to protect.

54. CCS's employees committed unlawful acts and violations as set forth in the body of this Complaint, all of which directly and proximately contributed to the injuries of Plaintiff.

55. Tennessee Code Annotated §41-21-204 states in part that "[a]ny inmate who is ill shall receive proper medical treatment." (emphasis added). Defendants denied the Plaintiff proper medical treatment in direct violation of this statute. Plaintiff submits that he was in the class of persons that this statute was designed to protect.

56. Tennessee Code Annotated §41-21-201 and 204 creates a duty, the breach of which by the Defendants constitutes negligence *per se*. The negligence, reckless and wanton acts of the Defendants, in direct violation of these statutes, proximately caused injuries to the Plaintiff and he is entitled to recover for her injuries therefrom.

57. The actions and omissions of the Individual Defendants and other agents, employees and contractors of the Defendants set forth herein were committed in the course and scope of their employment by Defendants and constitute negligence, recklessness, malice and intentional misconduct, supporting an award of punitive damages.

Count IV
Intentional Infliction of Emotional Distress

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.

58. "One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm." Restatement (Second) of Torts, §46(1). "Intentional infliction of emotional distress and outrageous conduct are not two separate torts, but are simply different names for the same cause of action." *Moorhead v. J.C. Penney Co. Inc.*, 555 S.W.2d. 713, 717 (Tenn. 1977).

59. "[In Tennessee] there are three essential elements to [such a] cause of action: (1) the conduct complained of must be intentional or reckless; (2) the conduct must be so outrageous that it is not tolerated by civilized society; and (3) the conduct complained of must result in mental injury." *Id.* and *Johnson v. Woman's Hospital*, 527 S.W.2d. 133, 144 (Tenn. App. 1975). Plaintiff submits that Defendants' conduct as alleged herein is so egregious as to constitute intentional infliction of emotional distress.

60. Plaintiff suffered severe emotional trauma as a result of Defendants' reckless, intentional and outrageous conduct which was the proximate cause of his hemorrhagic stroke.

61. Further, "the tort of outrageous conduct is one in which punitive damages may be allowed." *Johnson* at 142. Plaintiff is entitled to punitive damages for Defendants' reckless, intentional and outrageous conduct.

Count V
Ordinary Negligence

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.

62. While the Plaintiff has alleged that the acts and omissions set forth herein violated his constitutional rights, Plaintiff alternatively pleads that the conduct alleged herein constitutes at least ordinary negligence under the laws of the State of Tennessee. This claim for ordinary negligence and does not involve a decision, act or omission based on medical science or specialized training or skill. The acts or omissions complained of herein may be assessed by the trier of fact based on common, everyday experiences. The acts or omissions complained of herein involve mere custodial neglect and not medical malpractice.

63. Defendants owed a duty to prisoners in their custody to provide custodial care, treatment, and services within accepted custodial standards of jails, prisons and other correctional facilities, including the Shelby County Correction Center. Defendants Shelby County, CCS and Jones owed a duty to the prisoners in their custody to hire, train, supervise and provide a sufficient number of employees to deliver custodial care and services to prisoners in a safe and adequate manner at the Shelby County Correction Center.

64. Defendants breached the duties owed to prisoners in their custody and were negligent in their non-medical, ordinary care and treatment of Mr. Washington by and through their acts or omissions, which were within the understanding of an ordinary lay person and did not require medical training, assessment or diagnosis, including but not limited to the following:

- (a) Failure to provide sufficient numbers of certified nursing assistants or other persons to meet the custodial needs of Plaintiff;
- (b) Failure to administrate the facility in such a manner so as to provide the facility with adequate resources to ensure sufficient non-medical (CNA) staffing and supplies to care for all prisoners;
- (c) Failure to provide a sufficient number of non-licensed staff to prevent Plaintiff's needs from being ignored and to ensure that Plaintiff's health

care plans and/or medical orders could be complied with by such non-licensed staff;

- (d) Failure to provide adequate supervision and oversight to non-licensed personnel to ensure that Plaintiff received adequate and proper care;
- (e) Failure to provide adequate training and supervision of non-medical staffing to comply with their duties and the health care plans and/or medical orders of prisoners;
- (f) Failure by the members of the governing body of CCS to comply with and/or discharge their legal and lawful obligation by:
 - (1) ensuring that the rules and regulations designed to protect the health and safety of prisoners as promulgated by the Tennessee Legislature were consistently complied with on an ongoing basis;
 - (2) ensuring that the prisoner medical care policies for the facility were consistently in compliance on an ongoing basis; and
 - (3) responsibly ensuring that appropriate corrective measures were implemented to correct problems concerning inadequate prisoner care (non-medical).
- (g) Failure to provide basic and necessary non-medical care and supervision during Plaintiff's incarceration; and
- (h) Failure to protect Plaintiff from abuse and neglect during his incarceration.

65. The injuries and damages described in this Complaint were a direct and proximate result of the acts or omissions set forth above, singularly or in combination.

66. Plaintiff's injuries also were the result of the administrative decisions of Defendants Shelby County and CCS, including a failure to adequately train, supervise and staff the Shelby County Correction Center, which affected all prisoners housed there.

67. As a direct and proximate result of the aforementioned negligence, Plaintiff suffered mental anguish, pain and suffering, and physical injuries and injuries to his dignity.

Count VI
Negligent Infliction of Emotional Distress

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.

68. In Tennessee, a claim for negligent infliction of emotional distress is analyzed under general principles of negligence and must result in a "serious or severe" emotional injury

"where a reasonable person, normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the case." (*Camper v. Minor*, 915 S.W.2d 437 at 446, (Tenn. 1996) quoting *Rodrigues v. State, et al*, citations omitted).

69. Further, "recovery for emotional injuries suffered as a result of injury to a third party must establish that the injury to the third party was, or reasonably was perceived to be, serious or fatal," and "the very nature of the relationship between the plaintiff and the victim ... makes the emotional reaction experienced by the plaintiff so poignant." (*Ramsey v. Beavers*, 931 S.W.2d 527, at 531, 532 (Tenn. 1996)).

70. "When emotional damages are a 'parasitic' consequence of negligent conduct that results in multiple types of damages, there is no need to impose special pleading or proof requirements that apply to 'stand-alone' emotional distress claims." *Estate of Amos v. Vanderbilt University*, 62 S.W.3d 133 at 137 (Tenn. 2001).

71. Here, Plaintiff's emotional injuries result from the incredible physical and mental anguish he suffered as a result of Defendants' actions, proximately caused by Defendants' gross and wantonly reckless negligence.

72. Plaintiff's desperate and repeated pleas for help and assistance went unheeded. As a result, Plaintiff suffered severe emotional distress which required medication and counseling as a result of his treatment by Defendants. Plaintiff suffered substantial emotional trauma as a result of Defendants' intolerably cruel deliberate indifference and negligence, in addition to his physical harm.

Count VII Medical Malpractice

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.

73. As healthcare providers licensed to practice in and by the State of Tennessee, Defendants Shelby County, Tennessee, CCS, and Ramika Jones, individually and by and

through their employees and agents, had a duty to act with ordinary and reasonable care in their treatment of Plaintiff.

74. The conduct of these Defendants fell below the standard of care expected of and practiced by healthcare providers practicing in Memphis, Shelby County, Tennessee or similar communities, including, but not limited to, the following ways, each and every deviation constituting a direct and proximate cause of the injuries and damages alleged herein:

- a. Failing to perform proper and adequate tests, examinations, and evaluations of Plaintiff;
- b. Failing to transport Plaintiff to the emergency room;
- c. Failing to have Plaintiff evaluated by a physician or least consult with a physician upon discovering his serious medical condition;
- d. Failing to provide necessary medical care;
- e. Failing to perform routine checks of Plaintiff's blood pressure;
- f. Failing to provide appropriate medication for his illness and transfer the patient to a facility where appropriate medication could be provided; and
- g. Failing to use the degree of skill and care required under the circumstances then and there existing.

75. As a direct and proximate result of the aforementioned acts and omissions of aforementioned Defendants, which fell below the standard of care, Plaintiff sustained severe and permanent injuries which would not have otherwise occurred.

Count VII
Punitive Damages

Plaintiff hereby incorporates, in their entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.

76. The actions and omissions of Defendants, including but not limited to CCS and its employees, agents and contractors complained of herein, were unlawful, shocking to the conscience and unconstitutional, and performed maliciously, recklessly, fraudulently,

sadistically, intentionally, willfully, wantonly and in such a manner as to entitle Plaintiff to a substantial award of punitive damages.

DAMAGES

Plaintiff hereby incorporates, in its entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.

77. As a direct and proximate result of the acts and omissions of Defendants, Plaintiff's constitutional rights were violated and he was injured and damaged. The injuries and damages for which Plaintiff seeks compensation from Defendants, both jointly and severally, under both state and federal law, include, but are not limited to, the following:

- a. Physical pain and suffering;
- b. Emotional pain and suffering;
- c. Loss of enjoyment of life;
- d. Fright, shock, anxiety and humiliation;
- e. Permanent injuries;
- f. Loss of earning capacity;
- g. Punitive damages;
- h. Statutory and discretionary costs;
- i. Attorney's fees and costs pursuant to 42 U.S.C. Section 1988;
- j. A declaratory judgment that the acts and conduct herein was unconstitutional;
- k. Injunctive relief precluding Shelby County, Tennessee and CCS from engaging in the conduct complained of herein in the future and requiring Shelby County, Tennessee and CCS to provide proper policy, training and supervision of its employees and holding them accountable for their misconduct; and
- l. All such further relief, both general and specific, to which she may be entitled under the premises.

PRAYERS FOR RELIEF

Plaintiff hereby incorporates, in its entirety, each and every paragraph contained in this Complaint and by reference makes said Paragraphs a part hereof as if fully set forth herein.

78. WHEREFORE, PREMISES CONSIDERED, Plaintiff Terry Washington, Sr. prays that this Honorable Court enter a judgment against Defendants for compensatory damages for the injuries and damages sustained by her in an amount to be determined by a jury as reasonable. While the Plaintiff objects to requesting a specific dollar amount in the Complaint as the amount of compensatory damages sustained by Plaintiff is left to the sound discretion of

the jury, to the extent a specific dollar amount is required by law to be set forth in the Complaint, the amount of compensatory damages should not exceed Twenty-Five Million (\$25,000,000.00) Dollars and for all such further relief, both general and specific, to which he may be entitled under the premises, including all reasonable costs, interest and attorney fees.

79. WHEREFORE, PREMISES CONSIDERED, Plaintiff Terry Washington prays that this Honorable Court enter a judgment against Defendants for punitive damages in an amount to be determined by the jury as fair and reasonable to punish Defendants and to deter others from engaging in similar misconduct. While the Plaintiff objects to requesting a specific dollar amount in the Complaint as the amount of punitive damages necessary to punish and deter future misconduct is left to the sound discretion of the jury, to the extent a specific dollar amount is required by law to be set forth in the Complaint, the amount of punitive damages should not exceed One Hundred Million (\$100,000,000.00) Dollars and for all such further relief, both general and specific, to which she may be entitled under the premises, including all reasonable costs, interest and attorney fees.

THE PLAINTIFF RESPECTFULLY DEMANDS A JURY TO TRY THE ISSUES ONCE JOINED.

Respectfully submitted,

BAILEY & GREER, PLLC

/s/ Thomas R. Greer
Thomas R. Greer (#24452)
Bailey & Greer, PLLC
6256 Poplar Avenue
Memphis, TN 38119
(901) 680-9777
tgreer@baileygreer.com

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of January, 2013, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

/s/ Thomas R. Greer