

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ESTATE OF JOSEPH BIEGERT,
By Special Administrator TONI BIEGERT,

Plaintiff,

Case No. 18-CV-401

vs.

CITY OF GREEN BAY,
GREEN BAY POLICE CHIEF TOM MOLITOR,
POLICE OFFICER MATTHEW DUNN,
POLICE OFFICER BRIAN KRUEGER and
JOHN DOE POLICE OFFICERS # 1-10,

Defendants.

**DEFENDANTS CITY OF GREEN BAY, TOM MOLITOR, MATTHEW DUNN AND
BRIAN KRUEGER'S ANSWER AND AFFIRMATIVE DEFENSES**

Defendants, City of Green Bay, Tom Molitor, Matthew Dunn and Brian Krueger, by their attorneys, Gunta Law Offices, S.C., answers Plaintiff's Complaint as follows:

FEDERAL COMPLAINT WITH JURY DEMAND

1. Deny the Defendants unlawfully subjected Joseph Biegert ("Biegert") to excessive force. Deny the Defendants violated any of Biegert's Constitutional Rights. Deny the Green Bay Police Department Policies are unconstitutional. Lack knowledge and information sufficient to form a belief as to the truth or falsity of the remainder of Paragraph 1, and therefore deny the same.

JURISDICTION AND VENUE

JURISDICTION

2. Admit.

VENUE

3. Admit.

PARTIES

4. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 4, and therefore deny the same.

5. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 5, and therefore deny the same.

6. Admit.

7. Deny Defendants former Green Bay Police Chief Tom Molitor (“Molitor”), Police Officer Matthew Dunn (“Dunn”), or Police Officer Brian Krueger (“Krueger”) are residents of the City of Green Bay, Wisconsin. Lack knowledge and information sufficient to form a belief as to the truth or falsity regarding John Doe Police Officers # 1-10, and therefore deny the same. Admit that Molitor, Krueger and Dunn were employees of the Green Bay Police Department on February 24, 2015 and were acting under color of law and were acting within the scope of employment. Lack knowledge and information sufficient to form a belief as to the truth or falsity regarding John Doe Police Officers # 1-10, and therefore deny the same.

FACTS

8. Admit.

9. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 9, and therefore deny the same.

10. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 10, and therefore deny the same.

11. Admit that after the completion of the call Krueger and Dunn learned that Biegert had called 911 to report knocking at his door. Admit remainder of Paragraph 11.

12. Deny.

13. Deny Dunn conducted a search of the bedroom, bathroom and rear closet. Admit a protective sweep was conducted for additional subjects and found none.

14. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 14, and therefore deny the same.

15. Deny.

16. Admit there was not a warrant. Lack knowledge and information sufficient to form a belief as to the truth or falsity of the remainder of Paragraph 16, and therefore deny the same.

17. Admit Dunn and Krueger did not have formal training in assessing mental health disorders. Deny the remainder of Paragraph 17.

18. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 18, and therefore deny the same.

19. Deny.

20. Admit.

21. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 21, and therefore deny the same.

22. Deny.

23. Deny the Green Bay Police Department presented under trained and unqualified Officers to the Green Bay community. Lack knowledge and information sufficient to form a belief as to the truth or falsity of the remainder of Paragraph 23, and therefore deny the same.

24. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 24, and therefore deny the same.

25. Deny.

26. Deny.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Title 41, United States Code, Section 1983 Unlawful Arrest & Detention against Defendants

27. Defendants City of Green Bay, Tom Molitor, Matthew Dunn and Brian Krueger reallege and incorporate paragraphs 1 through 26 of this Answer.

28. Deny the Defendants unlawfully detained, arrested, shot and killed Biegert. Admit the remainder of Paragraph 28.

29. Deny.

30. Admit.

31. Deny.

SECOND CAUSE OF ACTION

Title 42, United States Code, Section 1983 Unreasonable Search against the Defendants

32. Defendants City of Green Bay, Tom Molitor, Matthew Dunn and Brian Krueger reallege and incorporate paragraphs 1 through 31 of this Answer.

33. Admit.

34. Deny.

35. Deny.

THIRD CAUSE OF ACTION

Title 42, United States Code, Section 1983 - Denial of Due Process

36. Defendants City of Green Bay, Tom Molitor, Matthew Dunn and Brian Krueger reallege and incorporate paragraphs 1 through 35 of this Answer.

37. Deny.

FOURTH CAUSE OF ACTION

Title 42, United States Code, Section 1983

Deficient Hiring and Continued Employment Policy against GREEN BAY

38. Defendants City of Green Bay, Tom Molitor, Matthew Dunn and Brian Krueger reallege and incorporate paragraphs 1 through 37 of this Answer.

39. Admit.

40. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 40, and therefore deny the same.

41. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 41, and therefore deny the same.

42. Deny.

43. Deny.

44. Deny.

45. Deny.

46. Deny.

FIFTH CAUSE OF ACTION

Title 42, United States Code, Section 1983 Failure to Train Policy against GREEN BAY

47. Defendants City of Green Bay, Tom Molitor, Matthew Dunn and Brian Krueger reallege and incorporate paragraphs 1 through 46 of this Answer.

48. Admit.

49. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 49, and therefore deny the same.

50. Deny.

51. Deny.

52. Deny.

53. Deny.

SIXTH CAUSE OF ACTION

Title 42, United States Code, Section 1983 Failure to Discipline Policy against GREEN BAY

54. Defendants City of Green Bay, Tom Molitor, Matthew Dunn and Brian Krueger reallege and incorporate paragraphs 1 through 53 of this Answer.

55. Admit.

56. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 56, and therefore deny the same.

57. Deny.

58. Deny.

59. Deny.

60. Deny.

SEVENTH CAUSE OF ACTION

Title 42, United States Code, Section 1983

Custom of Condoning Constitutional Rights Violations against GREEN BAY

61. Defendants City of Green Bay, Tom Molitor, Matthew Dunn and Brian Krueger reallege and incorporate paragraphs 1 through 60 of this Answer.

62. Admit.

63. Deny.

64. Deny.

65. Deny.

66. Deny.

67. Deny.

68. Deny.

DEMAND FOR JUDGMENT

a. Deny that the Plaintiff is entitled to judgment or damages.

b. Deny that the Plaintiff is entitled to judgment or damages.

c. Deny the City of Green Bay is liable for any damages pursuant to Wis. Stats. 895.46.

d. Deny that the Plaintiff is entitled to injunctive or equitable relief.

e. Deny that the Plaintiff is entitled to any relief.

f. Deny that the Plaintiff is entitled to punitive damages.

g. Deny that the Plaintiff is entitled to any costs or attorney's fees.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
2. Plaintiff's state law claims, if any, are subject to the procedural prerequisites for bringing or maintaining a cause of action under § 893.80(1)(a) and (1)(b), Wis. Stats. and the exclusions, immunities and limitations on liability set forth in § 893.80, Wis. Stats.
3. Any injuries or damages suffered by the Plaintiff was caused by the conduct of Joseph Biegert and not by any conduct of the Defendants.
4. The Plaintiff may have failed to mitigate the damages.
5. Defendants, Tom Molitor, Matthew Dunn and Brian Krueger, are entitled to qualified immunity.
6. Defendants, Tom Molitor, Matthew Dunn and Brian Krueger, are entitled to discretionary act immunity.
7. The Defendants' conduct was privileged.
8. Plaintiffs' Complaint fails to state a cause of action against the City of Green Bay pursuant to Monell v. Department of Social Services of the City of New York, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) since there can be no recovery for a federal civil rights violation where there is no constitutional deprivation occurring pursuant to government policy, custom, or practice.

WHEREFORE, these Defendants request judgment dismissing Plaintiff's complaint and awarding costs and attorneys fees as allowed by law.

Dated at Wauwatosa, Wisconsin, this 22nd day of May, 2018.

GUNTA LAW OFFICES, S.C.
Attorneys for Defendants City of Green Bay,
Tom Molitor, Matthew Dunn and Brian
Krueger

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