

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

LISA VERONICA VARNADORE,)
individually and as Administratrix of)
the Estate of Decedent JOSHUA)
MARSHALL FOSKEY or as next)
friend of JENNA GRAYCE)
FOSKEY,)

CIVIL ACTION FILE NO.

2:17-cv-13

Plaintiff,)

v.)

JURY DEMAND TRIAL

BRANDON MERRITT individually,)
Defendant.)

COMPLAINT

1.

This is a renewal action for damages brought pursuant to 42 U.S.C. §1983 and the Fourth Amendment to the United States Constitution. Jurisdiction of this action is based upon 28 U.S.C. §1331, 1343, and 1367 and on the pendent and supplemental jurisdiction of this Court to entertain claims arising under state law. At the direction of the clerk of court, plaintiff has concurrent with the filing of this complaint, filed a motion and brief requesting defendant to itemize and provide a determination of costs. Plaintiff will comply with the remaining portion of the Court's order within 10 days.

2.

Defendant Merritt is a resident of Jeff Davis County and is subject to the jurisdiction of the Court.

3.

This action arises from the May 22, 2014 unjustified fatal shooting of Joshua Marshall Foskey by defendant Brandon Merritt, after his pursuit of the deceased had ended.

4.

Before the time of the shooting, Mr. Foskey was not a fugitive and there was no warrant for his arrest. Mr. Foskey was driving while impaired. He had driven his truck down the highway until he pulled over at the command of defendant Merritt. He had not been driving at high speeds and he had submitted to defendant Merritt's authority.

5.

Defendant Merritt was aware that Mr. Foskey was impaired. He had been told that Mr. Foskey seemed to be under the influence of drugs.

6.

At the time of the shooting, defendant Merritt was the canine officer and had a German Shepherd with him. At no time did the defendant Merritt ever command his dog to attack the deceased, although he was in range to do so.

7.

Prior to the shooting, plaintiff had called 911 and reported to the dispatcher that the deceased was under the influence. At no time did plaintiff inform the dispatcher or anyone else that the deceased was in possession of a firearm or any other weapon. At no time did the deceased claim to have a firearm or any other weapon. At no time did the deceased threaten Brandon Merritt or any other officer.

8.

At no time did defendant have any information to the contrary.

9.

Prior to the shooting, defendant Merritt stated that he had begun retreating to the rear of his vehicle in order to gain cover.

10.

Prior to the shooting, defendant Merritt gained cover.

11.

After stopping his vehicle, the deceased reached in his car to obtain his registration.

12.

The video shows that at the time the deceased was shot, his hand contained what appeared to be cards or his registration.

13.

Although the day was sunny, there was nothing that reflected off whatever was in the deceased's hands.

14.

At the time that defendant Merritt shot the deceased, the deceased had not pointed any weapon. The reason he did not was because he had no weapon.

15.

Defendant Merritt shot the deceased to death. At no time did Defendant give the deceased warning that he would use deadly force. At no time was defendant Merritt or any officer or other person in danger prior to and at the time the deceased was killed.

16.

The unjustified shooting by defendant Merritt was, and would be known by any reasonable officer to be, blatantly contrary to Mr. Foskey's clearly established Fourth Amendment rights to be free of unreasonable seizure by the government in the form of subjection to excessive force.

17.

The shooting was an act undertaken with a clear intention to do actual harm to Mr. Foskey, or at the very least, with a reckless and complete indifference to its effects.

18.

Defendant Merritt was acting under color of state law at the time of the shooting.

19.

Mr. Foskey did not expire immediately following the shooting. He was conscious and endured mental and physical pain caused by defendant for at least some minutes, if not an hour.

20.

As a direct and proximate result of the acts of defendant, Mr. Foskey suffered damages in amount to be determined in the enlightened conscious of the jury.

COUNT ONE

21.

Paragraphs 1-20 are realleged as though fully set out.

22.

Plaintiff claims damages for the wrongful death of her son and seeks damages for the full value of the life of Joshua Foskey in the amount of \$2,000,000 pursuant to 42 U.S.C. § 1983. Alternatively, she brings this case as next of friend of Jenna Grayce Foskey a/k/a/ Jenna Grayce Hattaway, who may or may not be the daughter of the deceased.

23.

The fatal shooting of the deceased was wrongful, intentional and contrary to the law of the State of Georgia. Defendant Merritt shot the deceased with intent to do him harm.

24.

On the date of his death caused by the unlawful shooting by defendant Merritt, decedent Foskey was 34 years of age, in good health, and had a life expectancy of not less than 79 years of age.

25.

Plaintiff asserts this claim to recover the full value of the life of her Decedent son Joshua Foskey under the applicable laws of the State of Georgia and without deduction for necessary or other personal expenses of the Decedent had he survived the tortious acts of defendant Merritt. Alternatively, she brings the claim as next friend of Jenna Grayce Foskey a/k/a/ Jenna Grayce Hattaway.

26.

She seeks attorney fees under 42 U.S.C. § 1988.

COUNT TWO

27.

Paragraphs 1-20 are realleged as though fully set out.

28.

Plaintiff is administratrix of the Estate of Decedent Joshua Foskey.

29.

As set forth herein, Joshua Foskey was forced to endure great conscious mental and physical pain before his death.

30.

In that the decedent suffered conscious pain and suffering prior to his death, under the laws of the State of Georgia and 42 U.S.C. § 1983, such claims may be brought by the administratrix of his Estate against the defendant named herein.

31.

Pursuant to 42 U.S.C. § 1983, in her representative capacity, plaintiff claims damages for the conscious pain and suffering of the deceased and for necessary medical and funeral expenses incurred as a result of the unlawful and unauthorized actions in an amount not less than \$2,500,000.

32.

Plaintiff is entitled to punitive damages in the amount of \$1,500,000 for the federal claim because of defendant's reckless or callous indifference to the deceased's constitutional rights.

33.

Plaintiff is entitled to reasonable attorney fees under 42 U.S.C. § 1988.

COUNT THREE

34.

Paragraphs 1-20 and 22-25 are realleged as though fully set out.

35.

This Court has jurisdiction of this claim pursuant to 28 U.S.C. § 1367.

36.

As the deceased's surviving mother, plaintiff is entitled to the full value of his life because of the wrongful death caused by defendants in the amount of \$2,000,000.

37.

Plaintiff has had no choice but to file suit against defendant because defendant has refused to compensate plaintiff for her injuries or otherwise cooperate with plaintiff in solving this matter.

38.

Defendant has acted in bad faith and has been stubbornly and maliciously litigious, thereby causing plaintiff unnecessary trouble and expense. Defendant is therefore liable to plaintiff for all of plaintiff's costs and expenses of litigation,

including attorney's fees incurred in the prosecution of state law claims, pursuant to O.C.G.A. §13-6-11.

COUNT FOUR

39.

Paragraphs 1-20, 28-30, and 35 are realleged as though fully set out.

40.

The conduct of defendant Merritt was undertaken intentionally, and would naturally tend to embarrass, humiliate and frighten Mr. Foskey.

41.

The conduct of defendant Merritt was extreme and outrageous, and did in fact cause severe emotional distress, pain and suffering to Mr. Foskey within the meaning of Georgia Law.

42.

As a direct and proximate result of the actions of defendants, plaintiff has suffered damages in an amount to be determined in the enlightened conscience of the jury.

43.

Defendant acted with willful misconduct, malice, wantonness, oppression, and/or with entire want of care such as rises to the level of conscious indifference

to the consequences, for which plaintiff is entitled to recover punitive damages in the amount of \$1,500,000.

44.

Plaintiff is entitled to reasonable attorney fees for reasons set out at paragraphs 37 and 38.

COUNT FIVE

45.

Paragraphs 39 and 43-44 are realleged as though fully set out.

46.

The actions of defendant amounted to an unlawful assault and battery upon the deceased.

47.

The actions were taken by defendant with the intent to injure the deceased.

48.

Plaintiff is entitled to recover damages in the amount of \$1,000,000.

WHEREFORE Plaintiff prays:

- 1) For damages as set out above;
- 2) For jury trial;

- 3) For reasonable attorney fees and costs under 42 U.S.C. §1988, 42 U.S.C. and state law;
- 4) For such other and further relief as is just and proper.

Respectfully submitted,

/s/ Ralph Goldberg
Ralph Goldberg
Georgia Bar No. 299475

/s/ Laurene Cuvillier
Laurene Cuvillier
Georgia Bar No. 202922

Attorneys for Plaintiff

Goldberg & Cuvillier, P.C.
1400 Montreal Rd., Suite 100
Tucker, Georgia 30084
(770) 670-7343
(770) 670-7344 - FAX