

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

Stephanie Byron,

Plaintiff(s),

vs.

Michael John Wohlers, in his individual capacity as an Escambia County Sheriff's Deputy, and David Morgan, in his official capacity as Sheriff of Escambia County, Florida,

Defendant(s).

Case No. 3:16-CV-236-MCR/CJK

Amended Complaint

Plaintiff, Stephanie Byron, brings this civil action against Defendants, Michael John Wohlers, in his individual capacity as an Escambia County Sheriff's Deputy, and David Morgan, in his official capacity as Sheriff of Escambia County, and alleges that Defendants violated Plaintiff's rights and injured Plaintiff. Plaintiff alleges :

1. Common Allegations of Fact

1.1. Introduction, Jurisdiction, and Venue

1. This is an action for damages and attorney's fees arising under 42 U.S.C. § 1983 and 1988.

2. This action alleges violations of the United States Constitution, including violations of the Fourth and Fourteenth Amendments.

3. This action also alleges violations of state law.

4. This Court has original jurisdiction over this action and the parties under 42 U.S.C. §§ 1983 and 1988, the United States Constitution, and 28 U.S.C. §§ 1331, et. seq.

5. Venue is proper under 28 U.S.C. § 1391 and N.D. Fla. Loc. R. 3.1(a)(1).

6. The acts, omissions, and practices described occurred within the jurisdiction of the United States District Court in and for the Northern District of Florida.

7. Plaintiff, seeks an award of compensatory damages, costs and expenses, and reasonable attorney's fees under 42 U.S.C. § 1983, more specifically described below. Fee entitlement is as alleged under 42 U.S.C. § 1988. Plaintiff also seeks an award of punitive damages against Defendant for his reckless and/or callous indifference to the clearly established constitutional rights of Plaintiff.

8. The acts, omissions, practices and the other conduct of Defendants were committed under the color of state or local law.

9. The acts and omissions of Defendant Wohlers was committed within the course and scope of his employment as a deputy of the Escambia County Sheriff's Office.

10. The jurisdiction of this Court for all state-law claims is under 28 U.S.C. § 1367. State-law claims are brought under Florida Statute § 768.28.

11. Plaintiff has complied with all conditions precedent to bring this action.

1.2. Parties

12. Plaintiff Stephanie Byron, (“Plaintiff”) was a resident of Pensacola and a citizen of the State of Florida.

13. Defendant Mike Wohlers (“Wohlers”) was a law enforcement officer employed by the Escambia County Sheriff’s Office and was a “person” subject to suit under 42 U.S.C. § 1983.

14. Defendant, David Morgan, in his official capacity, (“Sheriff Morgan”) was the head of a law enforcement agency for purposes of the state-law claims brought under Florida Statute § 768.28 and is responsible for the tortious acts of his employees.

1.3. Background Facts

15. On or about June 12, 2015, Ms. Byron was working at her place of employment.

16. Defendant Wohlers, arrived at Ms. Byron’s place of employment in his patrol vehicle.

17. Wohlers was in his full uniform of the Escambia County Sheriff’s Office and had his duty belt equipped.

18. Wohlers entered Ms. Byron's place of employment, Wellington Arms Apartments, and used his apparent law enforcement authority to intimidate, harass, and threaten Plaintiff, who was the property manager, about her personal life.

19. Because Wohlers did not like how Plaintiff failed to respond to his show of authority, Wohlers became increasingly aggressive toward employees at the apartment complex's office, including with Ms. Byron.

20. Wohlers took Plaintiff's sweet tea from her and refused to give it back to her.

21. When Plaintiff asked for her tea back from Defendant, Defendant drew his Taser and aimed it at Plaintiff.

22. Plaintiff moved toward Defendant to get her tea and Wohlers fired his Taser at Plaintiff.

23. The Taser prods struck Ms. Byron. One hit her neck, cutting her across her throat. The other prod struck her breast and embedded itself there.

24. An electric shock was delivered to Ms. Byron by the Taser and Ms. Byron's body locked up and she was knocked to the floor by the shock.

25. Wohlers then jumped onto Ms. Byron, kneeling her in the chest.

26. Wohlers forcefully removed the Taser prods from her, while she lay there bleeding and in pain.

27. Wohlers then cut the Taser wires and attempted to collect all of the material from the Taser, however, he left some of it there.

28. Wohlers then left the scene of the incident.

29. Upon information and belief, shortly after the attack, Wohlers filed a false report with the Escambia County Sheriff's Office, his employer, regarding the "accidental discharge" of his Taser into a pillow at his home.

30. But apparently, Wohlers had a guilty conscience about his attack on Ms. Byron, so he baked her a cake. A picture of that cake is attached as Exhibit A.

31. The cake Wohlers baked provides his version of the encounter and clearly shows Wohlers firing the Taser at Ms. Byron. It also reads "Sorry I Tased You."

32. Ms. Byron was permanently scarred and injured by Wohlers' actions, and she continues to have problems to this day.

33. Defendant Wohlers was an Escambia County Sheriff's deputy at the time of this incident.

34. Plaintiff has retained the services of the undersigned attorney and has become obligated to pay a reasonable attorney's fee for such services rendered in pursuing the claims asserted.

2. Claims

2.1. Individual Capacity Claims under 42 U.S.C. § 1983

Count 1 – Violation of 42 U.S.C. § 1983 – 4th Amendment – Excessive Force by Defendant Wohlers

35. Plaintiff re-alleges and re-incorporates the Common Allegations of Fact as if fully alleged.
36. Defendant was acting under color of state or local law.
37. Defendant had a legal duty to use only the amount and degree of force as was reasonable under the circumstances, for proper and efficient arrest, supervision, and control of such persons.
38. Defendant did deliberately and intentionally use force against Plaintiff that resulted in both temporary and permanent physical and mental injuries.
39. No force at all was authorized or necessary to be used against Plaintiff.
40. Plaintiff posed no threat to the safety of Defendant and did not threaten Defendant in any manner.
41. Defendant's acts were unreasonable and constitute excessive force against Plaintiff and under these circumstances, were clearly unconstitutional.
42. By his actions, Defendant deprived Plaintiff of the clearly established right to be free from force which was excessive under the

circumstances, in violation of Plaintiff's rights under 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the U.S. Constitution.

43. As a direct and proximate result of Defendant's actions, Plaintiff has and will continue to suffer injuries and damages, including, temporary and permanent physical injuries, wage loss, past and future medical expenses, mental anguish, embarrassment, humiliation, inconvenience, loss of capacity to enjoy life, and loss of normal body function.

2.2. State-Law Claims

Count 2 – State-Law Claim – Battery by Wohlers

44. Plaintiff re-alleges and re-incorporates the Common Allegations of Fact as if fully alleged.

45. Plaintiff brings this count in the alternative to the excessive force claim alleged above.

46. In accordance with Fla. Stat. § 768.28, this claim is brought against Defendant Wohlers himself, as Fla. Stat. § 768.28 provides no shield for acts made by officials in bad faith.

47. Defendant Wohlers did intentionally and offensively make affirmative physical acts which he intended to cause and which caused an unpermitted physical contact against Plaintiff's body.

48. Defendant did physically and harmfully attack and injure Plaintiff as a result of the unpermitted physical contact with Plaintiff.

49. As a direct and proximate result of Defendant's actions, Plaintiff has and will continue to suffer injuries and damages, including, temporary and permanent physical injuries, wage loss, past and future medical expenses, mental anguish, embarrassment, humiliation, inconvenience, loss of capacity to enjoy life, and loss of normal body function.

**Count 3 – State Law Official Capacity Claim –
Negligence by Defendant David Morgan**

50. Plaintiff re-alleges and re-incorporates the Common Allegations of Fact as if fully alleged.

51. This count is brought in the alternative to the battery claim.

52. Defendants were acting within the course and scope of their employment with Defendant, Sheriff Morgan, when they committed the acts alleged against them.

53. Under Fla. Stat. § 768.28, this claim must be brought against Defendant, Sheriff Morgan, in his official capacity, for the tortious acts of his employees.

54. Defendant owed a duty to Plaintiff to not injure her when there was no legitimate reason to use force against her.

55. Defendant owed a duty to Plaintiff to not draw his Taser weapon on her without justification.

56. Defendant owed a duty to Plaintiff not to fire his Taser at Plaintiff without legal justification.

57. Defendant breached that duty owed to Plaintiff when he drew his Taser and fired it and struck Plaintiff.

58. Defendant breached that duty when he kneed her after Tasing her.

59. Because of Defendants' breach of his duty owed to Plaintiff, Plaintiff was physically and mentally injured by Defendant's use of force.

60. Defendants' actions were negligent.

61. As a direct and proximate result of Defendant's actions, Plaintiff has and will continue to suffer injuries and damages, including, temporary and permanent physical injuries, wage loss, monetary loss associated with costs of defense of criminal proceeding, loss of educational opportunities, loss of future earning capacity, past and future medical expenses, mental anguish, embarrassment, humiliation, inconvenience, loss of capacity to enjoy life, and loss of normal body function.

3. Relief

3.1. Relief for Federal Claims

Plaintiff seeks the following relief for each claim brought under 42 U.S.C. §§ 1983 and 1988:

- A. Judgment for compensatory damages against Defendant;
- B. Judgment for punitive damages against Defendant;
- C. Judgment for attorney's fees under 42 U.S.C. § 1988, together with the costs and expenses of this civil rights action;
- D. Judgment for prejudgment interest on all economic losses and prejudgment interest on attorney's fees for delay in payment;
- E. Judgment for damages for physical injuries, wage loss, monetary loss associated with costs of defense of criminal proceeding, loss of future earning capacity, past and future medical expenses, mental anguish, embarrassment, humiliation, inconvenience, loss of capacity to enjoy life, and loss of normal body function;
- F. A trial by jury on all issues so triable; and
- G. Such other and further relief as this Court may deem just, proper, and appropriate.

3.2. Relief for State Claims

Plaintiff seeks the following relief for each claim brought under Florida state law:

- H. Judgment for compensatory damages against Defendants;

- I. Judgment for prejudgment interest on all economic losses and prejudgment interest on attorney's fees for delay in payment;
- J. Judgment for damages for physical injuries, wage loss, loss of future earning capacity, past and future medical expenses, mental anguish, embarrassment, humiliation, inconvenience, loss of capacity to enjoy life, and loss of normal body function;
- K. A trial by jury on all issues so triable; and
- L. Such other and further relief as this Court may deem just, proper, and appropriate.

Submitted on July 14, 2016.

/s/J. Alistair McKenzie

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