

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

(1)	JEANNE BENNETT, Administrator of the Estate of Michael Manos, Deceased,)	
)	
	<i>Plaintiff,</i>)	
)	
	v.)	Case No.: 17-CV-289-SPS
)	
(1)	CARTER COUNTY BOARD OF COUNTY COMMISSIONERS,)	ATTORNEY LIEN CLAIMED JURY TRIAL DEMANDED
(2)	HARVEY BURKHART,)	
(3)	SHERIFF OF CARTER COUNTY, <i>in his official capacity,</i>)	
(4)	MILTON ANTHONY, <i>in his individual capacity,</i>)	
(5)	DEPUTY CORBIN WHITENER,)	
(6)	DEPUTY JOSH ADAMS,)	
(7)	DEPUTY BRANTLEY MAXSON,)	
(8)	DEPUTY RICHARD AYERS,)	
(9)	SGT. RYAN COLLIER,)	
(10)	DEPUTY BARBARA GARRISON,)	
(11)	DEPUTY JEREMY HAM,)	
(12)	DEPUTY CHESTER CARTER, <i>and</i>)	
(13)	DEPUTY JESSE MCDANIELS,)	
)	
	<i>Defendants.</i>)	

COMPLAINT

COMES NOW, the Plaintiff, Jeanne Bennett (“Plaintiff”), as the Administrator of the Estate of Michael Manos (“Mr. Manos”), deceased, by and through her attorneys of record, in the above styled case, and for her causes of action against the Defendants, alleges and states as follows:

INTRODUCTORY STATEMENT

1. This lawsuit is brought against Defendants for violations of Mr. Manos’ constitutional rights that caused his prolonged pain, suffering and untimely death while in the custody of the Carter County Sheriff’s Office (“CCSO”).

JURISDICTION AND VENUE

2. The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1343 to secure protection of and to redress deprivations of rights secured by the Eighth Amendment and/or Fourteenth Amendment to the United States Constitution as enforced by 42 U.S.C.

3. § 1983, which provides for the protection of all persons in their civil rights and the redress of deprivation of rights under color of law.

4. The jurisdiction of this Court is also invoked under 28 U.S.C. § 1331 to resolve a controversy arising under the Constitution and the laws of the United States, particularly the Eighth Amendment and/or Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

5. This Court has supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. § 1367, since the claims form part of the same case and controversy arising under the United States Constitution and federal law.

6. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

PARTIES

7. Plaintiff Jeanne Bennett ("Plaintiff Bennett") is the duly-appointed Administrator of the Estate of Michael Manos, deceased. Plaintiff is also the mother of Mr. Manos.

8. Defendant Milton Anthony ("Former Sheriff Milton Anthony" or "Defendant Milton Anthony") was at times relevant hereto, the Sheriff of Carter County, Oklahoma, residing in Carter County, Oklahoma. Defendant Milton Anthony, as Sheriff and head of CCSO at times relevant hereto, was responsible for ensuring the safety and well-being of all inmates detained and housed at the Carter County Jail ("Jail"), including the provision

of appropriate medical care and treatment to inmates in need of such care, pursuant to 57 Okla. Stat. § 47. In addition, Defendant Milton Anthony was, at times pertinent hereto, responsible for creating, adopting, approving, ratifying, and enforcing the rules, regulations, policies, practices, procedures, and/or customs of CCSO and the Jail, including the policies, practices, procedures, and/or customs that violated Mr. Manos' rights as set forth in this Complaint. Milton Anthony is no longer the Sheriff as he resigned in the process of, and as a condition to, him pleading guilty to bribery charges. Defendant Milton Anthony is sued in his individual capacity.

9. Defendant Harvey Burkhart ("Sheriff Harvey Burkhart" or "Defendant Harvey Burkhart") is the current Sheriff of Carter County, Oklahoma, residing in Carter County, Oklahoma. Sheriff Harvey Burkhart is sued purely in his official capacity. A claim against a state actor in his official capacity, such as Sheriff Harvey Burkhart, "is essentially another way of pleading an action against the county or municipality" he represents and is considered under the standard applicable to § 1983 claims against municipalities or counties. *Porro v. Barnes*, 624 F.3d 1322, 1328 (10th Cir. 2010). *See also Kentucky v. Graham*, 473 U.S. 159, 166 (1985) ("[A]n official-capacity suit is, in all respects other than name, to be treated as a suit against the entity."). As the elected Sheriff, Sheriff Harvey Burkhart is, in essence a governmental entity. Sheriff Harvey Burkhart is being sued purely in his official capacity.

10. Defendant Board of County Commissioners of Carter County ("BOCC") is a statutorily created governmental entity. In Oklahoma, any tort action against the state or its political subdivisions must name that entity as defendant. *See* 51 O.S. § 163(C). Under Oklahoma's Governmental Tort Claims Act ("GTCA"), the governmental entity

“assumes liability for loss resulting from the torts of its employees acting within the scope of their employment and such liability is exclusive and in place of all other liability of an employee at common law or otherwise.” *Shephard v. CompSource, Oklahoma*, 209 F.3d. 288, 294 (Okla. 2009). BOCC is a proper governmental Defendant in this action and is vicariously liable for the torts of CCSO personnel acting within the scope of employment.

11. Defendant Corbin Whitener (“Defendant [OFFICER 1]” or “Deputy Whitener”) was, at all times relevant hereto, employed by the CCSO and stationed in the Jail. Defendant Whitener is sued in his individual capacity.

12. Defendant Josh Adams (“Defendant Adams” or “Deputy Adams”) was, at all times relevant hereto, employed by the CCSO and stationed in the Jail. Defendant Adams is sued in his individual capacity.

13. Defendant Brantley Maxson (“Defendant Maxson” or “Deputy Maxson”) was, at all times relevant hereto, employed by the CCSO and stationed in the Jail. Defendant Maxson is sued in his individual capacity.

14. Defendant Richard Ayers (“Defendant Ayers” or “Deputy Ayers”) was, at all times relevant hereto, employed by the CCSO and stationed in the Jail. Defendant Ayers is sued in his individual capacity.

15. Defendant Ryan Collier (“Defendant Collier” or “Sgt. Collier”) was, at all times relevant hereto, employed by the CCSO and stationed in the Jail. Defendant Collier is sued in his individual capacity.

16. Defendant Barbara Garrison (“Defendant Garrison” or “Deputy Garrison”) was, at all times relevant hereto, employed by the CCSO and stationed in the Jail. Defendant Garrison is sued in his individual capacity.

17. Defendant Jeremy Ham (“Defendant Ham” or “Deputy Ham”) was, at all times relevant hereto, employed by the CCSO and stationed in the Jail. Defendant Ham is sued in his individual capacity.

18. Defendant Chester Carter (“Defendant Carter” or “Deputy Carter”) was, at all times relevant hereto, employed by the CCSO and stationed in the Jail. Defendant Carter is sued in his individual capacity.

19. Defendant Jesse McDaniels (“Defendant McDaniels” or “Deputy McDaniels”) was, at all times relevant hereto, employed by the CCSO and stationed in the Jail. Defendant McDaniels is sued in his individual capacity.

FACTUAL ALLEGATIONS

20. Mr. Manos was booked in to the Carter County Detention Center (“Jail”) on or about October 23, 2015.

21. On November 7, 2015, Deputy Maxson found Mr. Manos unresponsive in his cell. After nudging Mr. Manos with his foot a few times without getting a response, Deputy Maxson continued passing out medications to other inmates.

22. After Deputy Maxson finished medication pass, he went to the tower to tell Deputy Whitener about Mr. Manos’ condition. Deputy Maxson then went and grabbed Deputy Adams and, a couple of minutes later, the two of them returned to the tower. The two Deputies then went to check on Mr. Manos and found that he was not breathing and had no pulse. Upon this discovery, the Deputies returned again to the tower.

23. Deputy Whitener notified Southern Oklahoma Ambulance Service before heading to Mr. Manos' cell to check on the situation. Deputy Maxson remained in the tower. Deputy Adams went to the front to tell Deputy Hinkle to go to Manos' cell to assist. Sgt. Collier was also notified.

24. Upon Deputy Whitener's arrival at Mr. Manos' cell, he found Mr. Manos lying halfway underneath his bunk, clear evidence that no one had attempted and life-saving or resuscitation measure before this time.

25. SOAS arrives at the Jail at 10:20pm and is met by Deputy Adams, who leads the EMTs to Mr. Manos' cell.

26. When the EMTs arrived at Manos' cell, Deputy Hinkle was rushing out of the cell gagging in an attempt to prevent her from vomiting. Her physical reaction was a result of the horrific conditions in the cell, which included large amounts of feces covering everything. Deputy Whitener and Sgt. Collier were standing over Mr. Manos' unresponsive body. The EMTs note that no CPR or chest compressions were being done at this time.

27. The EMTs further note that the both Mr. Manos and his cell are completely covered in feces.

28. The SOAS EMTs move Mr. Manos out of his cell so that they could attempt resuscitation.

29. SOAS leaves the Jail with Mr. Manos at 10:41pm, almost five (5) hours after he was first discovered in a highly un-responsive and rapidly declining state and almost one (1) hour after Mr. Manos was reportedly first found completely unresponsive.

30. At 22:48 on 11/7/2015, Mr. Manos arrived at Mercy Hospital in Ardmore, OK. He was pronounced dead on arrival.

31. EMS personnel report Mr. Manos was suffering from cardiac arrest when they first encountered him, that he had been down for at least 20 minutes, and that CPR was not being performed.

32. Further, EMS was not able to intubate Mr. Manos due to the large amount of feces in his airway.

33. The Medical Examiner's report shows that Mr. Manos died as a result of a pulmonary embolism. On information and belief, this resulted from Mr. Manos not receiving his proper medication and spending weeks immobile on the jail floor.

34. Mr. Manos suffered from numerous physical and mental health problems for which he was prescribed a precise regiment of medication.

35. Mr. Manos was receiving counseling and medication for to treat his bipolar disorder right up until the time he was taken in to custody by the CCSO on October 22, 2015.

36. Mr. Manos had previously been diagnosed as suffering from Post-Traumatic Stress Disorder as a result of incidents that occurred in the Carter County Jail at the beginning of 2015. Mr. Manos arrived at the emergency room on February 22, 2015, and complained that he had been in the custody of the CCSO, that he had not been given his medication, and that he was physically abused by the Deputies. Mr. Manos presented with numerous bruises, lacerations and fractures; and in a fragile psychological state.

37. Since restarting his medications and therapy in February of 2015, Mr. Manos has been stable and out of psychosis.

38. On information and belief, Mr. Manos was not on his medication weeks prior to the time of his death.

39. Mr. Manos spent his final weeks laying on the floor of an isolated cell moaning and grumbling to himself.

40. At least a week before his death, Mr. Manos stopped eating food.

41. EMTs report they were informed that Mr. Manos had been screaming out in pain for twenty minutes before becoming entirely un-responsive. This important detail is left out of CCSO Incident Reports.

42. Deputy Maxson had made contact with Mr. Manos earlier in the afternoon on November 7, 2015, during a sight check that took place at 4:30pm. Deputy Maxson reported that “Manos appeared to be acting the same as he had been the last couple of weeks. He was laying in the floor, growling and mumbling to his self.”

43. On information and belief, Mr. Manos entered a manic psychosis early in his stay in the Jail. While Mr. Manos was in a manic, psychotic state he lacked the insight and judgment to fully understand his physical and mental health conditions.

44. Deputies Garrison, Ayers, Whitener, Maxson, Adams, McDaniels, Bright, and Ham; and Sgt. Collier (collectively “Jailer Defendants”) all had personal knowledge that Mr. Manos was not receiving his medication, was not eating, was immobile, and was in a psychotic state during his time at the Jail.

45. Had Mr. Manos been on his necessary medications he would not have died in the Jail.

46. Had Mr. Manos received proper supervision, he would not have died in the Jail.

47. Had Mr. Manos received adequate medical care, he would not have died in the Jail.

48. Had Jail personnel not been deliberately indifferent to the obvious, known, and serious risks that Mr. Manos, in his condition at the time, faced while in their custody, Mr. Manos would not have died in the Jail.

49. Deputy Maxson first encountered Mr. Manos in a highly un-responsive state at 4:30pm, almost six (6) hours before an ambulance was called. Had Deputy Maxson notified SOAS at this time, Mr. Manos would likely still be alive.

50. Deputy Maxson noticed at 6:30pm that Mr. Manos' state had not improved. . Had Deputy Maxson notified SOAS at this time, Mr. Manos would likely still be alive.

51. Deputy Maxson found Mr. Manos completely un-responsive around 10:00pm. Had Deputy Maxson immediately contacted SOAS to send an ambulance, Mr. Manos may still be alive today. Instead, Deputy Maxson finished passing out medications to the rest of the inmates on his list, went to the tower to discuss the situation with Deputy Whitener, then went and retrieved Deputy Adams, before revisiting Mr. Manos' cell and finding him not only un-responsive but also not breathing and with no pulse. Only at this time do Deputy Adams and Maxson instruct Deputy Whitener to call SOAS for medical assistance.

52. Records provided by Carter County reveal gross inadequacies in the keeping of inmate medication records.

53. Records made by the SOAS EMTs reveal many details regarding the circumstances of Mr. Manos' death that, tellingly, the CCSO Jail Incident Reports fail to mention. Examples of these details are the facts that Manos' body and his entire cell

were covered in feces; and that Deputies informed EMS personnel that Mr. Manos had screamed out in pain for 20 minutes before becoming entirely unresponsive.

54. There is a pattern and practice within the CCSO of falsifying, or omitting material facts from, jail records, reports and other documents to cover up CCSO employee's overall disregard for inmates' health and safety.

55. Jeanne Bennett, Mr. Manos' mother and the representative of his Estate, was informed that the Jail would not be providing Mr. Manos' medication. She then attempted, on October 22, 2015 to deliver Mr. Manos' medications to the Jail. She was turned away and they told her that un-opened medications must be sent to the Jail directly from Mr. Manos' doctor.

56. CCSO knew of Mr. Manos' physical and mental health conditions not only as a result of their being notified by Plaintiff, but also because of CCSO's past experiences with Mr. Manos.

57. CCSO failed to properly screen Mr. Manos during his intake at the Jail. Had proper mental and physical health screening been performed, and proper treatment and supervision recommended and implemented, Mr. Manos would not have endured the unnecessary, prolonged pain and suffering; and grotesque death that he did.

58. Mr. Manos had a documented history of eating his own feces as a symptom of his psychosis, a history that CCSO employees knew, or should have knew, about. CCSO employees should have been on high alert of the substantial risks Mr. Manos faced when not on his mental health medication.

59. Mr. Manos' final weeks were spent almost entirely immobile. Deputy Maxson reported on November 7, 2015, upon finding Mr. Manos highly un-responsive, that

“Manos appeared to be acting the same as he had been the last couple of weeks. He was laying in the floor, growling and mumbling to his self.”

60. The Medical Examiners Report also supports the fact that Mr. Manos was immobile in his final weeks. The report notes discoloration of the left ankle and foot consistent with stasis dermatitis, a condition that often arises from lack of blood flow to extremities due to immobility.

61. The Medical Examiners reports that no pill residue was found in Mr. Manos’ gastrointestinal system, more evidence that Mr. Manos was not receiving his medication in the Jail.

62. The medical examiners also report extensive thrombosis in his lower legs, which can also result from extended immobility.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Cruel and Unusual Punishment in Violation of the Eighth and Fourteenth Amendments to the Constitution of the United States (42 U.S.C. § 1983)

A. Allegations Applicable to Defendants Milton Anthony, Sheriff Harvey Burkhart and Jailer Defendants

63. Plaintiff re-alleges and incorporates by reference each paragraph of this Complaint, as though fully set forth herein.

64. Mr. Manos had obvious, severe and emergent medical needs made known to the Defendants prior to his death.

65. Nonetheless, Defendants disregarded the known and obvious risks to Mr. Manos’ health and safety.

66. Defendants failed to provide, *inter alia*, timely or adequate medical treatment and proper monitoring and supervision for Mr. Manos while he was placed under their care, in deliberate indifference to Mr. Manos' serious medical needs, health and safety.

67. As a direct and proximate result of Defendants' conduct, Mr. Manos experienced physical pain, severe emotional distress, mental anguish, loss of consortium, loss of life, and the damages alleged herein.

68. As a direct and proximate result of Defendants' conduct, Mr. Manos' heirs have suffered damages, including, but not limited to, pecuniary loss (including lost wages), funeral expenses, loss of consortium, grief, loss of companionship, pain and suffering.

B. Supervisor Liability (Applicable to Former Sheriff Milton Anthony, in his individual capacity)

69. Plaintiff re-alleges and incorporates by reference each paragraph of this Complaint, as though fully set forth herein.

70. There is an affirmative link between the aforementioned acts and/or omissions of Defendants in being deliberately indifferent to Mr. Manos' serious medical needs and policies, practices and/or customs that Sheriff Milton Anthony promulgated, created, implemented and/or possessed responsibility for.

Such policies, practices and/or customs include, but are not limited to:

- a. Severe limitation of the use of off-site medical and diagnostic service providers, even in emergent situations;
- b. Untimely medical examinations and treatment;
- c. Understaffing (i.e., no access to an on-site physician);

- d. Inadequate training (i.e., training and encouraging medical personnel and detention staff to assume that inmates are faking illness/injury or malingering);
- e. Fostering an atmosphere and a system of indifference to the serious health needs of inmates like Mr. Manos; and
- f. Utterly inadequate medical supervision of staff and inmates;
- g. Failing to ensure inmates receive necessary medications;
- h. Failing to ensure that inmates are receiving adequate nourishment.

71. Sheriff Milton Anthony knew and/or it was obvious that the maintenance of the aforementioned policies, practices and/or customs posed an excessive risk to the health and safety of inmates like Mr. Manos.

72. Sheriff Milton Anthony disregarded the known and/or obvious risks to the health and safety of inmates like Mr. Manos.

73. Sheriff Milton Anthony, through his continued encouragement, ratification and approval of the aforementioned policies, practices and/or customs, in spite of their known and/or obvious inadequacies and dangers, has been deliberately indifferent to inmates', including Mr. Manos', serious medical needs.

74. There is an affirmative link between the unconstitutional acts of his subordinates and Milton Anthony's adoption and/or maintenance of the aforementioned policies, practices and/or customs.

75. As a direct and proximate result of the aforementioned policies, practices and/or customs, Mr. Manos and Mr. Manos' heirs suffered injuries and damages alleged herein.

C. Official Capacity Liability (Applicable to Sheriff Harvey Burkhart, in his official capacity)

76. Plaintiff re-alleges and incorporates by reference each paragraph of this Complaint, as though fully set forth herein.

77. Sheriff Harvey Burkhart is the current Sheriff of Carter County, Oklahoma, and is sued *purely* in his official capacity. As the elected Sheriff, Harvey Burkhart is, in essence a governmental entity. A claim against a state actor in his official capacity, such as Harvey Burkhart, “is essentially another way of pleading an action against the county or municipality” he represents and is considered under the standard applicable to § 1983 claims against municipalities or counties. *Porro v. Barnes*, 624 F.3d 1322, 1328 (10th Cir. 2010). *See also see Kentucky v. Graham*, 473 U.S. 159, 166 (1985) (“[A]n official-capacity suit is, in all respects other than name, to be treated as a suit against the entity.”).

78. No allegations are made against Sheriff Harvey Burkhart in his individual capacity. Sheriff Harvey Burkhart, as a representative of CCSO and Carter County, is liable for Mr. Manos and Mr. Manos’ heirs injuries that resulted from unconstitutional acts by CCSO personnel that are affirmatively linked to CCSO’s adoption and/or maintenance of unconstitutional policies, practices and/or omissions, including the unconstitutional policies, practices and/or omissions detailed *supra*.

SECOND CLAIM FOR RELIEF

**Violation of Article II § 9 of the Constitution of the State of Oklahoma
Cruel and Unusual Punishment and Deliberate Indifference
(Against Defendant BOCC)**

79. Plaintiff re-alleges and incorporates by reference each paragraph of this Complaint, as though fully set forth herein.

80. Article II § 9 of the Oklahoma Constitution prohibits the infliction of cruel and unusual punishment. Under the Oklahoma Constitution's Due Process Clause, Article II § 7, the right to be free from cruel and unusual punishment extends to pre-trial detainees who have yet to be convicted of a crime (in addition to convicted prisoners who are clearly protected under Article II § 9).

81. The Constitution of the State of Oklahoma, under Article II § 9 and Article II § 7, provides a private right of action for Mr. Manos to be free from cruel and unusual punishment, which includes protection from the denial of needed medical care while in custody.

82. As described herein, Mr. Manos, while in the custody of CCSO in the Carter County Jail – under the care of Sheriff Milton Anthony – was denied necessary medical treatment. Defendants violated Mr. Manos' rights by failing to provide him with prompt and adequate medical assessment, evaluation, treatment and supervision despite the obvious need.

83. At all times relevant, the Jail personnel described in this Complaint were acting within the scope of their employment and under the supervision of Defendant Milton Anthony, the former Sheriff of Carter County.

84. Defendants' denial of medical care and treatment to Mr. Manos violated Article II §§ 7 and 9 of the Constitution of the State of Oklahoma and was a direct and proximate cause of Mr. Manos' prolonged pain, suffering and untimely death, as well as all other damages alleged herein.

85. The Carter County Board of County Commissioners is vicariously liable for the violations of the Oklahoma Constitution by employees and agents acting within the scope of their employment.

PUNITIVE DAMAGES

86. Plaintiff re-alleges and incorporates by reference each paragraph of this Complaint, as though fully set forth herein.

87. Plaintiff Bennett is entitled to punitive damages on her claims brought pursuant to 42 U.S.C. § 1983 as Defendants' conduct, acts and/or omissions alleged herein constitute reckless or callous indifference to Mr. Manos' federally protected rights.

WHEREFORE, based on the foregoing, Plaintiff Bennett prays that this Court grant her the relief sought, including, but not limited to, actual damages and compensatory damages in excess of Seventy-Five Thousand Dollars (\$75,000.00), with interest accruing from the date of filing of suit, punitive damages in excess of Seventy-Five Thousand Dollars (\$75,000.00), reasonable attorney fees, and all other relief deemed appropriate by this Court

Respectfully submitted,

SMOLEN, SMOLEN & ROYTMAN, PLLC

/s/Daniel E. Smolen

Daniel E. Smolen, OBA #19943

danielsmolen@ssrok.com

Robert M. Blakemore, OBA #18656

bobblakemore@ssrok.com

701 South Cincinnati Avenue

Tulsa, OK 74119

Phone: (918) 585-2667

Fax: (918) 585-2669

Attorneys for Plaintiffs