

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

NOV 21 2012

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

JAMES W. McCORMACK, CLERK
By: *[Signature]* *[Signature]*
DEP CLERK

PAM HICKS

PLAINTIFF

v.

No. 3:12-cv-00266 *DPM/HDY* **JURY DEMAND**

**JESSE MATHIS, In his
Individual and Official
Capacities**

DEFENDANT

This case assigned to District Judge MARSHALL
and to Magistrate Judge YOUNG

COMPLAINT

Comes the Plaintiff, Pam Hicks (hereinafter "Ms. Hicks") and for her cause of action against the Defendant states:

I. PARTIES AND JURISDICTION

1. Plaintiff is, and was at all times stated herein, a resident of Mississippi County, Arkansas, residing at 5993 North Highway 61, Blytheville AR 72315.

2. The Defendant is, and was at all times stated herein, a resident of Mississippi County, Arkansas. His address is currently unknown.

3. The Defendant is, and was at all times stated herein, employed as a deputy with the Mississippi County Sheriff's Department.

4. The Defendant was, at all times stated herein, acting in his capacity as a deputy of the Mississippi County Sheriff's Department.

5. The Defendant was, at all times stated herein, acting under color of state law.

6. All facts stated herein occurred in Mississippi County, Arkansas.

7. This action arises under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution; under federal statutory law, specifically, 42 U.S.C. §§1983 and 1988;

and under the Arkansas common law for intentional infliction of emotional distress, assault, battery, false imprisonment, and false arrest.

8. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331, 1343, and 1367, and venue is proper. 28 U.S.C. §1391.

II. FACTS

9. On November 15, 2012, at approximately 5:10 p.m., Ms. Hicks, who was driving her vehicle, arrived at her home in Mississippi County, Arkansas.

10. At said time and place, Ms. Hicks parked her vehicle in an enclosed area attached to her home (hereinafter "carport").

11. On the trip to her home, Ms. Hicks had been not speeding and had not violated any traffic laws.

12. Shortly after the Ms. Hicks arriving at her home, Defendant drove into the driveway of the Plaintiff.

13. At said time and place, the Defendant drove at a high rate of speed.

14. Immediately prior to arriving, the Defendant highly revved his engine as he turned down the access road approaching the driveway of Ms. Hicks.

15. At said time and place, Marie Hicks, who was visiting Ms. Hicks, asked, "who is that pulling in here like that?"

16. At said time and place, Defendant pulled the front of his vehicle's to the rear of the vehicle driven by the Plaintiff.

17. At said time and place, Ms. Hicks greeted Defendant at the carport access door.

18. At said time and place, the main door was open but screen door was closed.

19. Upon seeing the Deputy, Ms. Hicks opened the screen door and asked the Defendant: "Why are you here? I didn't call you."

20. The Defendant responded, "Pam, I have a complaint on you."

21. Ms. Hicks asked, "Can you wait a minute? I need to go to the bathroom; I just got back from the grocery store."

22. Ms. Hicks did not invite Defendant into her house.

23. Ms. Hicks expected that he would wait outside the carport while she went to the restroom.

24. Ms. Hicks expected this to be nothing more than just a frivolous complaint by the neighbor and had no sense of urgency.

25. Defendant unexpectedly charged into the house.

26. The family, including Ms. Hicks' small grandchildren, aged three and five years old, Ms. Hicks' elderly mother Marie Hicks, and Ms. Hicks' sister, JoLynn Hicks, were surprised and frightened by the charging Defendant.

27. Defendant looked at the Juvenile grandson who was holding the family dog by its flea collar and started yelling, "Get that dog! Get that dog!"

28. Defendant appeared to be threatening Ms. Hicks and her family that something would happen to the dog if they did not take it to another room.

29. Marie Hicks, who was frightened, told the Defendant "Sir that dog won't hurt you. He doesn't bite. He won't hurt you."

30. The Defendant proceeded from the living room straight to the bathroom door where Plaintiff was.

31. JoLynn Hicks stepped between the Defendant and the bathroom door, stating:
“You can’t go in there; she is a lady. She can’t go anywhere; it’s the bathroom.”

32. At said time, Defendant started yelling angrily, “Pam Hobbs! You get out of there. Get out of the bathroom now!”

33. Ms. Hicks exited the bathroom and stood with the Defendant outside the bathroom door.

34. The Defendant yelled at Ms. Hicks, “We’re going outside to talk.”

35. Ms. Hicks asked: “Why can’ we talk in here?”

36. The Defendant yelled: “I said get outside!”

37. Ms. Hicks walked through the kitchen and through the living room toward the door to the carport with the Defendant behind her.

38. At said time and place, Ms. Hicks’ small grandchildren were crying hysterically.

39. Marie Hicks asked the Defendant to please allow Pam to stay inside if he just wanted to question her.

40. The Defendant yelled at Marie Hicks to “Shut up and stay in here!”

41. The Defendant then commanded Ms. Hicks to stop in a small space between the car port wall and her car.

42. A conversation between the Defendant and Ms. Hicks ensued.

43. Said conversation lasted approximately two minutes.

44. Marie Hicks and JoLynn Hicks watched said conversation through the open living room curtains.

45. In said conversation the Defendant explained to Ms. Hicks that Ms. Hicks’

neighbors had filed a complaint against Ms. Hicks for trespass on the property of the Auction Barn across from her home.

46. Said neighbors are tenants on property that has recently changed ownership.

47. Ms. Hicks tried to explain to the Defendant she had merely attempted to ask the new property owner whether she had permission to shop at his business, and there had been no trespass onto the property in question, and that the complaint of the tenant-neighbor was unfounded.

48. At said time, the Defendant became even more belligerent and began to interrupt, raise his voice, and refuse to listen to Ms. Hicks' correct explanation of the situation.

49. At said time, while yelling and interrupting Ms. Hicks, the Defendant stepped toward her in an angry and confrontational manner causing his face to come in close proximity to Ms. Hicks' face.

50. Based upon the hostility and anger demonstrated by the Defendant, Ms. Hicks became worried for her safety and attempt to turn away from the Defendant.

51. Ms. Hicks did not run.

52. Indeed, there was insufficient space between the car and the wall to run.

53. Moreover, at no point did the Defendant state that Ms. Hicks was under arrest.

54. In fact, Ms. Hicks followed the directions of the Defendant at all times.

55. At all times described above, Ms. Hicks was unarmed and neither verbally or physically threatened the Defendant.

56. At said time and place, the Defendant grabbed Ms. Hicks, lifting her off the ground and Body-slammed her into the cement of the carport.

57. The Defendant lacked probable cause to enter the house of Ms. Hicks.

58. The Defendant lacked probable cause to batter Ms. Hicks.

59. At said time and place, the Defendant continued to push Ms. Hicks' torso and face into the concrete.

60. At no time did Ms. Hicks resist the Defendant's battery.

61. The Defendant then placed his knee with force onto Ms. Hicks' back.

62. During said batter, Ms. Hicks begged the Defendant to stop.

63. At said time, Marie Hicks ran to the door and asked, "What are you doing to her?"

64. The Defendant responded saying: "Get inside! I will explain after I get her in the car."

65. At said time, Marie Hicks returned to the living room.

66. The Defendant then handcuffed Ms. Hicks and jerked Ms. Hicks by her handcuffs with such force that Ms. Hicks' shoulders both audibly popped.

67. The Defendant never offered Ms. Hicks the opportunity to stand up on her own.

68. At said time, the Defendant patted Ms. Hicks' Bra area, her pants pockets, and her inner thighs.

69. The Defendant then removed a card and piece of paper from Ms. Hicks' back pocket.

70. The Defendant then pushed Ms. Hicks head-first into the backseat of his vehicle.

71. The Defendant then sped off, offering no explanation to Ms. Hicks' family.

72. Ms. Hicks was never told she was under arrest.

73. Ms. Hicks did not know she was being placed under arrest until the Defendant

physically attacked her.

74. The above-described events resulted in the violations of the Ms. Hicks' civil rights.

75. At the time of the above-mentioned search and seizure of Ms. Hicks, the Defendant did not have in his possession any warrant issued by a judge, court, or magistrate authorizing a search of Ms. Hicks.

76. No warrant had in fact been issued by any court, judge, or magistrate for such search and arrest.

77. At no time did Ms. Hicks resist or attempt to resist the Defendant, but was fully cooperating with the orders of the Defendant.

78. The conduct of Defendant was willful, malicious, and oppressive.

79. On Sunday, November 18, 2012, Mississippi County Deputy Debra Arnold Holifield arrived at the home of Ms. Hicks in cruiser.

80. Ms. Hicks was outside in her front yard with one of her grandchildren.

81. Ms. Hicks took the child inside.

82. Ms. Hicks and JoLynn Hicks watched through window as Deputy Holifield went to neighbor.

83. Deputy then parked horizontal to Ms. Hicks's Driveway blocking her exit.

84. Deputy Holifield remained in that position for approximately 15 minutes.

85. Deputy Holifield left without ever explaining her actions.

III. CAUSES OF ACTION

86. The Defendant's actions, described above, violate Constitutional, Statutory, and Common Law Rights of Ms. Hicks, including, but not limited to:

a. While acting under color of law in his official capacity, the Defendant deprived Ms. Hicks of her rights to freedom from illegal searches and seizure of her persons, papers, and effects and her rights to freedom from unlawful arrest, detention, and imprisonment, as secured to Plaintiff by the Fourth and Fourteenth Amendments to the Constitution of the United States and by 42 U.S.C.A. §§1983 and 1988.

b. In committing the acts complained of herein, Defendant acted under color of state law to deprive Plaintiffs of certain constitutionally protected rights under the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States including, but not limited to: 1) the right to be free from unreasonable searches and seizures; 2) the right not to be deprived of liberty without due process of law; 3) the right not to be deprived of property without due process of law; 4) the right to be free from excessive use of force by persons acting under color of state law; and, 5) the right to be free from false arrest.

c. Battery;

d. Intentional Infliction of Emotional Distress;

e. False Arrest; and,

f. False Imprisonment.

IV. DAMAGES

87. Ms. Hicks is entitled to relief.

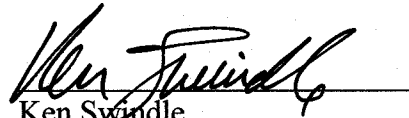
88. Said relief includes, but is not limited to, compensation for:

- a. pain and suffering;
- b. mental anguish;
- c. medical bills;
- d. costs; and,
- e. attorney fees.

89. Plaintiff is also entitled to punitive damages in a amount sufficient to deter the Defendant, or others similarly situated, for similar conduct in the future.

WHEREFORE, Ms. Hicks respectfully prays for a judgment against the Defendant, compensation for her damages, attorney fees, costs, punitive damages, for a jury trial, and for all other appropriate relief.

Respectfully Submitted,



Ken Swindle
Ark. Bar #97234
619 West Walnut Street
Rogers AR 72756
Telephone (479) 621-0120
Fax (479) 621-0838