

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DISTRICT**

GERMAINE NIXON, as Independent)
Administrator of the Estate of MYCOL)
FRENCH, and as Next Friend of T.J., A.F.,)
Z.F., Z.F., and M.F.,)

Plaintiff,)

vs.)

Case No.: 10 C 1382

LAKE COUNTY METROPOLITAN)
ENFORCEMENT GROUP AGENTS:)
CHARLES SMITH; BERNARD FAPSO,)
#9504; JEFFREY PADILLA, #4451;)
PATRICK GARA, #9516; VILLAGE OF)
ANTIOCH; CITY OF NORTH CHICAGO;)
LAKE COUNTY METROPOLITAN)
ENFORCEMENT GROUP; the SHERIFF)
OF LAKE COUNTY; and LAKE COUNTY,))

Judge Holderman

Magistrate Judge Schenkier

Defendants,)

and)

ILLINOIS STATE POLICE,)

Respondent in Discovery.)

**DEFENDANT LAKE COUNTY METROPOLITAN ENFORCEMENT GROUP'S
ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

NOW COMES, Defendant, LAKE COUNTY METROPOLITAN ENFORCEMENT GROUP (hereinafter referred to as "LCMEG"), by and through one of their attorneys, Laura L. Scarry of DeANO & SCARRY, and in response to Plaintiff's Second Amended Complaint, answers as follows:

JURISDICTION

1. This action arises under 42 U.S.C. §1983, 28 U.S.C. §1367, and the Fourth and Fourteenth Amendments to the United States Constitution. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1331, 1343(a)(3).

ANSWER: Defendant admits the allegations in Paragraph 1 but, averring further, deny that it violated Plaintiffs' rights under the United States Constitution or Illinois state law.

VENUE

2. Venue is provided under 28 U.S.C. §§1391(b)(1) and (b)(2) in "a judicial district where any defendant resides, if all defendants reside in the same State" or in "a judicial district in which a substantial part of the events of omissions giving rise to the claim occurred...."

ANSWER: Defendant admits the allegations in Paragraph 2.

3. Upon belief individual defendants reside in the State of Illinois and the Northern District of Illinois.

ANSWER: Defendant admits the allegations in Paragraph 3.

4. The events giving rise to the claim involved in this cause occurred in the Northern District of Illinois.

ANSWER: Defendant admits the allegations in Paragraph 4.

PARTIES

5. PLAINTIFF is the mother of the DECEDENT, Mycol French, is the grandmother of each the beneficiaries of the decedent's estate, and is a resident of Lake County, Illinois in the Northern District of Illinois.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and therefore, denies same.

6. Defendants AGENTS SMITH, FAPSO, GAUGHAN, PADILLA and GARA were law enforcement officers who were, at all times relevant to this action, assigned to the Lake County Metropolitan Enforcement Group. They are sued in their individual capacities.

ANSWER: Defendant admits the allegations in Paragraph 6.

7. Defendant VILLAGE OF ANTIOCH is a municipal subdivision located in the Northern District of Illinois.

ANSWER: As the allegations in Paragraph 7 are not directed toward this answering Defendant, it makes no response thereto.

8. Defendant CITY OF NORTH CHICAGO is a municipal subdivision located in the Northern District of Illinois.

ANSWER: As the allegations in Paragraph 8 are not directed toward this answering Defendant, it makes no response thereto.

9. Defendant LAKE COUNTY METROPOLITAN ENFORCEMENT GROUP is a joint task force working within Lake County, authorized by State government and funded through the federal government.

ANSWER: Defendant admits the allegations in Paragraph 9.

10. Defendant SHERIFF OF LAKE COUNTY is a governmental unit located in the Northern District of Illinois.

ANSWER: As the allegations in Paragraph 10 are not directed toward this answering Defendant, it makes no response thereto.

11. Defendant LAKE COUNTY is a governmental subdivision located in the Northern District of Illinois.

ANSWER: As the allegations in Paragraph 11 are not directed toward this answering Defendant, it makes no response thereto.

12. Respondent in discovery ILLINOIS STATE POLICE is named pursuant to 735 ILCS 5/2-402.

ANSWER: As the allegations in Paragraph 12 are not directed toward this answering Defendant, it makes no response thereto.

FACTS

13. On February 1, 2010, the individual defendants shot decedent, killed him and impeded the investigation into the shooting of decedent.

ANSWER: Defendant denies the allegations in Paragraph 13.

14. In the early afternoon, the decedent sat in his white Jimmy SUV, waiting for his friend to return from shopping.

ANSWER: Defendant denies the allegations in Paragraph 14.

15. Several of the individual defendants approached decedent with their guns drawn in order to conduct a traffic stop.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 15 and therefore, denies same.

16. Unreasonably, and without probable cause, individual defendants shot several times into the decedent's SUV, breaking the windows, and piercing decedent's chest.

ANSWER: Defendant denies the allegations in Paragraph 16.

17. The decedent drove out of the parking lot and onto Green Bay Road, and drove for about nine blocks before losing control of the SUV, continuing over the median and slamming head first into the side of a building.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 17 and therefore, denies same.

COUNT I - EXCESSIVE FORCE

18. Plaintiff realleges paragraphs 1-16 of the Complaint as though fully stated therein.

ANSWER: As the allegations in Paragraph 18 are not directed toward this answering Defendant, it makes no response thereto. To the extent Count I or said allegations are directed against this Defendant, Defendant reasserts its answers to Paragraphs 1-16 of the Complaint as though fully stated therein.

19. On or about February 1, 2010, individual defendants used excessive force against decedent.

ANSWER: As the allegations in Paragraph 19 are not directed toward this answering Defendant, it makes no response thereto. To the extent Count I or said allegations are directed

against this Defendant, it denies the allegations in Paragraph 19.

20. Individual defendants violated decedent right to be free from unreasonable search and/or seizure when they used excessive force against him.

ANSWER: As the allegations in Paragraph 20 are not directed toward this answering Defendant, it makes no response thereto. To the extent Count I or said allegations are directed against this Defendant, it denies the allegations in Paragraph 20.

21. As a result of this excessive force, decedent was killed, suffering extensive and prolonged pain while dying; those close to him, including his children, will also suffer immeasurably, he will not be able to provide for his children, who will suffer extreme emotional trauma.

ANSWER: As the allegations in Paragraph 21 are not directed toward this answering Defendant, it makes no response thereto. To the extent Count I or said allegations are directed against this Defendant, it denies the allegations in Paragraph 21.

COUNT II - WRONGFUL DEATH UNDER ILLINOIS LAW - WILFUL AND WANTON CONDUCT OF ALL INDIVIDUAL DEFENDANTS

22. Plaintiff restates and realleges all the statements made in paragraphs 1-16 and 17-20 of this Complaint as though fully stated therein.

ANSWER: As the allegations in Paragraph 22 are not directed toward this answering Defendant, it makes no response thereto. To the extent Count II or said allegations are directed against this Defendant, Defendant reasserts its answers to Paragraphs 1-16 and 17-20 of the Complaint as though fully stated therein.

23. At all times relevant to the Complaint, the individual defendants were under duties to refrain from conduct exhibiting a reckless or conscious disregard for the safety of others, including decedent.

ANSWER: As the allegations in Paragraph 23 are not directed toward this answering Defendant, it makes no response thereto. To the extent Count II or said allegations are directed against this Defendant, it denies the allegations in Paragraph 23.

24. Notwithstanding said duties, the individual defendants committed one or more of the following acts and/or omissions:

- a. Fired sidearms at the decedent, striking him and killing him within minutes, without lawful justification;

- b. Prevented paramedics from providing immediate medical care and/or emergency medical treatment;
- c. Prevented and/or attempted to prevent medical staff at the hospital from providing treatment to decedent prior to his death;
- d. Inspiring the firing of sidearms by the defendants at the decedent;
- e. Otherwise acting willfully and wantonly toward the decedent.

ANSWER: As the allegations in Paragraph 24 are not directed toward this answering Defendant, it makes no response thereto. To the extent Count II or said allegations are directed against this Defendant, it denies the allegations in Paragraph 24, including subparagraphs a-e..

25. As a proximate cause of defendants' conduct, decedent suffered fatal injuries, being physical and emotional distress, and ultimately died.

ANSWER: As the allegations in Paragraph 25 are not directed toward this answering Defendant, it makes no response thereto. To the extent Count II or said allegations are directed against this Defendant, it denies the allegations in Paragraph 25.

26. Decedent is survived by the following heirs: his five minor children T.J., A.F., Z.F., Z.F. and M.F..

ANSWER: As the allegations in Paragraph 26 are not directed toward this answering Defendant, it makes no response thereto. To the extent Count II or said allegations are directed against this Defendant, it is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 and therefore, denies same.

**COUNT III - SURVIVAL ACTION UNDER ILLINOIS LAW –
WILFULL AND WANTON CONDUCT OF ALL DEFENDANTS**

27. Plaintiff restates and realleges all the statements made in paragraphs 1-16, 18-20 and 22-25 of this Complaint as though fully set forth herein.

ANSWER: As the allegations in Paragraph 27 are not directed toward this answering Defendant, it makes no response thereto. To the extent Count III or said allegations are directed against this Defendant, Defendant reasserts its answers to Paragraphs 1-16, 18-20 and 22-25 of the Complaint as though fully stated therein.

28. As a further proximate result of defendants' conduct, decedent suffered serious injuries of a personal and pecuniary nature, including great pain and suffering prior to his death,

subjecting defendants to liability under the Illinois Survival Act.

ANSWER: As the allegations in Paragraph 28 are not directed toward this answering Defendant, it makes no response thereto. To the extent Count III or said allegations are directed against this Defendant, it denies the allegations in Paragraph 28.

**COUNT IV - CLAIM UNDER 745 ILCS 10/9-102
AGAINST DEFENDANT VILLAGE OF ANTIOCH**

29-33. Because the allegations in Count IV are clearly directed at Defendant Village of Antioch, this Defendant makes no response thereto.

**COUNT V - CLAIM UNDER 745 ILCS 10/9-102
AGAINST DEFENDANT THE CITY OF NORTH CHICAGO**

34-36. Because the allegations in Count V are clearly directed at Defendant City of North Chicago, this Defendant makes no response thereto.

**COUNT VI - REIMBURSEMENT CLAIM
AGAINST DEFENDANT LAKE COUNTY METROPOLITAN ENFORCEMENT
GROUP**

37. Plaintiff restates and realleges all the statements made in paragraphs 1-16, 18-20, 22-25, 27, 30-33 and 35-36 of this Complaint as though fully set forth herein.

ANSWER: Defendant reasserts its answers to Paragraphs 1-16, 18-20, 22-25, 27, 30-33 and 35-36 of the Complaint as though fully stated therein.

38. Defendant LAKE COUNTY METROPOLITAN ENFORCEMENT GROUP was, at all times material to this Complaint, the employer of some or all of the individual defendants.

ANSWER: Defendant denies the allegations in Paragraph 38.

39. These individual defendants committed the acts alleged above in the scope of their employment as employees of Defendant LAKE COUNTY METROPOLITAN ENFORCEMENT GROUP.

ANSWER: Defendant denies the allegations in Paragraph 39.

**COUNT VII REIMBURSEMENT CLAIM
AGAINST DEFENDANT SHERIFF OF LAKE COUNTY**

40-42. Because the allegations in Count VII are clearly directed at Defendant Sheriff of Lake County, this Defendant makes no response thereto.

**COUNT VIII - REIMBURSEMENT CLAIM
AGAINST DEFENDANT LAKE COUNTY**

43-45. Because the allegations in Count VIII are clearly directed at Defendant Lake County, this Defendant makes no response thereto.

AFFIRMATIVE DEFENSES

**FIRST AFFIRMATIVE DEFENSE
(Statute of Limitations)**

1. Plaintiff, Germaine Nixon, as Independent Administrator of the Estate of Mycol French and as Next Friend of T.F., A.F., Z.F., Z.F. and M.F., has plead in her Second Amended Complaint that Defendant, Lake County Metropolitan Enforcement Group, was the employer of the individual Defendants at the time of the alleged incident and, as such, is responsible for “reimbursement” or payment of any judgment or settlement.

2. Defendant has answered the Second Amended Complaint denying it is legally liable to the Plaintiff.

3. Plaintiff filed her Complaint on March 1, 2010 alleging various causes of action resulting from the decedent, Mycol French’s death on February 1, 2010.

4. Plaintiff filed an Amended Complaint on May 26, 2010.

5. Plaintiff filed a Second Amended Complaint on February 28, 2011. This was the first time she made any “allegation”¹ against this Defendant, Lake County Metropolitan Enforcement Group.

6. In Illinois, the statute of limitations for actions brought against a local public entity or public employee is one year. *See*, 745 ILCS 10/8-101.

7. Lake County Metropolitan Enforcement Group is a local public entity as defined in Section 1-206 of the Illinois Local Governmental and Governmental Employees' Tort Immunity Act.

8. As such, the statute of limitations for Plaintiff's claim against Lake County Metropolitan Enforcement Group expired on February 2, 2011.

9. Because Plaintiff failed to file any claim against the Lake County Metropolitan Enforcement Group prior to the expiration of the one-year statute of limitations, her claim must be dismissed pursuant to 745 ILCS 10/8-101 and 745 ILCS 10/1-206.

WHEREFORE, the Defendant, Lake County Metropolitan Enforcement Group, denies that Plaintiff is entitled to judgment in any amount whatsoever and respectfully request this Honorable Court enter Judgment in its favor, and against the Plaintiff, along with the cost of this litigation.

**SECOND AFFIRMATIVE DEFENSE
(Illinois Tort Immunity Act)**

1. Plaintiff, Germaine Nixon, as Independent Administrator of the Estate of Mycol French and as Next Friend of T.F., A.F., Z.F., Z.F. and M.F., has plead in her Second Amended Complaint that Defendant, Lake County Metropolitan Enforcement Group, was the employer of the individual Defendants at the time of the alleged incident and, as such, is responsible for "reimbursement" or payment of any judgment or settlement

2. Defendant has answered the Second Amended Complaint denying it is legally liable to the Plaintiff.

¹ The only "claim" against Lake County Metropolitan Enforcement Group is a "reimbursement" claim in Count VI of the Plaintiff's Second Amended Complaint.

3. Pleading in the alternative, there was in force and effect, in the State of Illinois, at the time of the occurrence in question, a certain statute which provides as follows:

a. Defendant, Lake County Metropolitan Enforcement Group, a local public entity serving in a position involving the exercise of discretion, is not liable for any injury to Plaintiff as a result of exercising such discretion. 745 ILCS 10/2-201.

b. Defendant, Lake County Metropolitan Enforcement Group, a local public entity, is not liable for its acts in the execution and enforcement of any law unless such acts constitutes willful and wanton conduct. 745 ILCS 10/2-202.

c. Defendant, Lake County Metropolitan Enforcement Group, a local public entity serving in a position involving the exercise of discretion, is not liable to pay punitive or exemplary damages for any injury to Plaintiff as a result of exercising such discretion. 745 ILCS 10/2-213.

d. Defendant, Lake County Metropolitan Enforcement Group, a local public entity is not liable for an injury caused by the act or omission of another person. 745 ILCS 10/2-204.

e. Defendant, Lake County Metropolitan Enforcement Group, a local public entity, is not liable for any injury caused by their failure to enforce any law. 745 ILCS 10/2-205.

f. Defendant, Lake County Metropolitan Enforcement Group, as a local public entity, is not liable to pay punitive or exemplary damages in any action brought directly or indirectly by the Plaintiff. 745 ILCS 10/2-102.

g. Defendant, Lake County Metropolitan Enforcement Group, as a local public entity, is not liable for an injury resulting from an act or omission of its employee where the employee is not liable. 745 ILCS 10/2-109.

4. The aforementioned sections of the Tort Immunity Act immunize Defendant, Lake County Metropolitan Enforcement Group, and bar Plaintiff, Germaine Nixon, as Independent Administrator of the Estate of Mycol French and as Next Friend of T.F., A.F., Z.F., Z.F. and M.F., from recovery in this cause herein.

WHEREFORE, the Defendant, Lake County Metropolitan Enforcement Group, denies that Plaintiff is entitled to judgment in any amount whatsoever and respectfully request this Honorable Court enter Judgment in its favor, and against the Plaintiff, along with the cost of this litigation.

DEFENDANTS DEMAND TRIAL BY JURY

Respectfully submitted,

DeANO & SCARRY

By: s/Laura L. Scarry
Attorney for Defendant, LAKE COUNTY
METROPOLITAN ENFORCEMENT GROUP

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