

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON
CIVIL ACTION NO. 08-_____

MICHAEL MARTIN

PLAINTIFF

v.

COMPLAINT

JOSEPH SCHUTZMAN,
In His Official and Individual Capacities;

DEFENDANT

DAN GOODENOUGH,
In His Official and Individual Capacities

DEFENDANT

** ** *

Plaintiff Michael Martin for his complaint against Joseph Schutzman and Dan Goodenough, in their official and individual capacities, states as follows:

I

Nature of the Case

1. This is a case where a conscientious city councilman raised appropriate and well-founded questions concerning the ability of a city police officer to fulfill his duties to the city while also serving simultaneously other employers. As a result of these appropriate and well-founded inquiries, plaintiff was subjected to a wrongful and malicious criminal prosecution unsupported by probable cause. Plaintiff seeks compensatory and punitive damages, costs, litigation expenses and attorney's fees.

II

Jurisdiction and Venue

2. This Court has jurisdiction over the claims asserted in this case pursuant to 28 U.S.C. § 1331, because they raise questions of federal law, and

other the state law claims pursuant to 28 U.S.C. § 1367, because the federal and state law claims arise from a common nucleus of operative fact. Venue is proper in the Eastern District of Kentucky because the claims arose as a result of actions taken and injuries suffered therein.

III

Parties

3. Plaintiff Michael Martin is a resident of Kenton County, Kentucky.

4. Defendant Joseph Schutzman, upon information and belief, is a resident of Kenton County, Kentucky. Schutzman is employed as a police officer for the City of Villa Hills, Kentucky. He is sued in his official and individual capacities.

5. Defendant Dan Goodenough, upon information and belief, is a resident of Kenton County. Goodenough is the Chief of the City of Villa Hills, Kentucky police department. He is sued in his official and individual capacities.

IV

Facts Giving Rise to the Lawsuit

6. Martin was elected to the City Council for the City of Villa Hills, Kentucky in November 2004. He took office and began serving in that capacity in January 2005.

7. Defendant Dan Goodenough is employed and, at all times pertinent hereto, has been employed as the Chief of the City of Villa Hills, Kentucky police department.

8. Defendant Joseph Schutzman is employed and, at all times pertinent hereto, has been employed as a police officer for the City of Villa Hills, Kentucky

police department.

9. Schutzman, in addition to his duties as a police officer for the City of Villa Hills, has performed, at all times pertinent hereto, building inspector services through the auspices of Schutzman Inspection Services, LLC for the cities of Villa Hills, Kentucky, Bromley, Kentucky and Ludlow, Kentucky.

10. In early 2005, Martin received information causing him to become concerned that Schutzman was performing and being compensated for performing building inspector tasks while simultaneously being on the clock and being paid by the City of Villa Hills to perform work as a police officer.

11. Martin resolved that he should investigate further Schutzman's possible double-dipping, i.e., being paid as a police office while also being paid in his moonlighting job as a building inspector.

12. Martin discussed with Villa Hills City Attorney Michael Duncan his desire to investigate the possibility of Schutzman double-dipping.

13. Martin was advised by Duncan that such an inquiry would be well within Martin's duties and responsibilities as a city councilman, especially since Martin was chair of the council's administration committee.

14. Martin as a City Councilman for the City of Villa Hills had a duty to the city and to its constituents to undertake an inquiry to obtain further information regarding Schutzman's double-dipping.

15. In an effort to keep the matter quiet and avoid creating any implication that Schutzman had done anything wrong prior to having information proving same, Martin had his sister, Cindy Koebbe of Reading, Ohio, sign and send an open records request regarding Schutzman's work as a building

inspector for the cities of Ludlow, Kentucky and Bromley, Kentucky. These open records requests were sent to those cities in and about July 2005.

16. Schutzman learned of the open records requests and contacted Koebbe on a number of occasions asking why she had made the open records requests and asking her to call him at the Villa Hills Police Department.

17. In and about September 2005, Martin met with Villa Hills Mayor, the Hon. Mike Sadouskas, and City Attorney Duncan to discuss the information obtained from Bromley and Ludlow as well as documentation of the hours Schutzman had been paid to work as a police officer or building inspector by the City of Villa Hills.

18. Sadouskas advised Martin at this meeting that he had no problem with Schutzman performing building inspector work while he was being paid as a police officer by Villa Hills.

19. Schutzman sent a letter dated December 28, 2006, to Koebbe informing and threatening her, among other things, with legal action, including "civil litigation for compensatory and punitive damages." A true and accurate copy of Schutzman's letter to Koebbe is attached to this Complaint and marked Ex. A.

20. Prior to sending the letter, Schutzman was aware that Koebbe was Martin's sister.

21. Martin is the son of Marilyn L. Kuhl, who passed away in 2003.

22. Following the death of his mother, and because of the relative small size of her estate, Martin was appointed the commissioner of the estate by the Hamilton County Probate Court on or about November 14, 2003.

23. The Estate of Marilyn L. Kuhl was, as a practical and functional matter, bankrupt and its liabilities far exceeded its assets and its potential assets.

24. Nonetheless and although he was not and could not have been legally obligated to satisfy, in full or part, the estate's outstanding liabilities for which it possessed insufficient assets to cover, Martin personally paid off the estate's debts that exceeded its available assets.

25. One of the estate's assets was payments toward satisfying a judgment based on a long-existing and substantial child support arrearage made by Charles Donald Martin pursuant to a decision by the Hamilton County, Ohio Court of Common Pleas, Division of Domestic Relations entered February 19, 1999, in its case styled *Marilyn Kuhl v. Charles Donald Martin*, Case No. A 181425. A true copy of the court's decision (with redactions of social security numbers and dates of birth) is attached hereto and marked Ex. B to this complaint.

26. In accordance with the decision of the Hamilton County Court of Common Pleas, the judgment remained payable and payments toward its satisfaction continued to be made after Kuhl's death.

27. Notwithstanding the death of Martin's mother, the monies due from the judgment were an asset of the estate and remained payable to the estate.

28. Upon his payment of the estate's debts, Martin became the estate's sole and de facto creditor.

29. As the sole and de facto creditor of the estate, Martin deposited the monthly payments toward satisfaction of the judgment in his personal checking account.

30. Martin was at all times entitled to every penny of the payments

toward satisfying the judgment, because the judgment was an asset of the estate and because he was a de facto creditor of the estate. The Probate Court of Hamilton County, Ohio recognized Martin's entitlement to these monies by a *Supplemental Entry Relieving Estate from Administration* entered December 28, 2007, a true copy of which is attached hereto and marked Ex. C.

31. On or about October 16, 2007, Schutzman contacted Martin and requested an interview in regards Schutzman said to a criminal case in Hamilton County, Ohio.

32. On or about November 17, 2007, Martin was interviewed by Schutzman. Schutzman questioned Martin regarding his mother's estate and the payments made toward satisfying the judgment. Schutzman informed Martin that he was only conducting a field interview at the request of Hamilton County authorities.

33. On or about December 7, 2007, Goodenough, in his capacity as Chief of the Villa Hills, Kentucky police department informed Martin that provided that the Ohio authorities did not file charges related to the child support checks there would be no further action.

34. Goodenough exercised oversight and review of the purported investigation that Schutzman was conducting with regard to Martin and the child support checks.

35. On December 17, 2007, Schutzman filed a criminal complaint against Martin charging Martin with second degree forgery.

36. Goodenough ratified and sanctioned the filing by Schutzman of the criminal complaint against Martin.

37. Prior to filing the criminal complaint against Martin, Schutzman failed to make reasonable and appropriate inquiries regarding the status of the estate of Martin's mother and its receipt of the child support checks. As a result of Schutzman's failure and refusal to obtain appropriate and easily obtainable information, a criminal prosecution against Martin was initiated without probable cause.

38. Schutzman initiated the criminal complaint and secured a warrant for Martin's arrest.

39. On or about December 18, 2007, Martin was arrested pursuant to an arrest warrant that Schutzman had wrongfully obtained without probable cause.

40. Goodenough, in order to magnify the harm to Martin, made himself available to and did comment extensively on the charges against Martin to news media.

41. Goodenough, by commenting to the news media regarding the criminal complaint filed against Martin, departed from usual custom and practice of the Villa Hills police department of refraining from comment on pending cases or charges.

42. The arrest of Martin based on the wrongfully obtained arrest warrant was without probable cause and constituted a violation of Martin's rights to be free of unreasonable seizures pursuant to the Fourth Amendment of the United States Constitution.

43. The initiation of the criminal prosecution against Martin was unsupported by probable cause and done in violation of Martin's rights secured to him by the Fourth Amendment to the United States Constitution.

44. Goodenough and Schutzman caused the criminal prosecution to be initiated against Martin in retaliation for Martin's activities protected by the First Amendment, specifically the inquiries he undertook regarding Schutzman's possible double dipping.

45. In initiating the criminal prosecution against Martin and causing his arrest, both Goodenough and Schutzman acted as a person under color of law within the meaning of 42 U.S.C § 1983 and their actions represented the policy or custom of the City of Villa Hills, Kentucky, within the meaning of 42 U.S.C. § 1983.

46. As a direct and proximate result of defendants' wrongful actions and their violations of Martin's constitutional rights, Martin suffered public embarrassment and humiliation, emotional distress and mental anguish, along with economic injuries, including attorney's fees incurred to defend himself against the baseless criminal charge.

47. On or about February 27, 2008, the Kenton District Court dismissed the charges brought against Martin finding them to be unsupported by probable cause.

48. Defendants, at all times pertinent to this action, acted in reckless and gross indifference to Martin's constitutional rights.

V

Causes of Action

Count I – Malicious Prosecution Pursuant to § 1983

49. Martin incorporates paragraphs 1 through 48 hereof as if fully set forth herein.

50. Defendants maliciously and without probable cause initiated a criminal prosecution against Martin in violation of his constitutional rights.

Count II - Retaliatory Prosecution

51. Martin incorporates paragraphs 1 through 50 hereof as if fully incorporated herein.

52. Defendants initiated the criminal prosecution against Martin in retaliation for Martin's First Amendment activities, specifically the inquiries he undertook regarding Schutzman's double dipping and defrauding of the City of Villa Hills' taxpayers.

Count III – Malicious Prosecution Under Kentucky State Law

53. Martin incorporates herein paragraphs 1 through 52 hereof as if set forth herein.

54. Defendants initiated a criminal prosecution of Martin unsupported by probable cause and with malice to specifically injure and harm Martin.

Count IV – Arrest Without Probable Cause

55. Martin incorporates paragraphs 1 through 54 hereof as if fully incorporated herein.

56. Defendants caused and initiated the arrest of Martin without probable cause in violation of his constitutional rights.

VI

Demand For Relief

WHEREFORE, plaintiff Michael Martin demands judgment herein as follows:

- (1) That a judgment be entered awarding him compensatory damages

in such amount as found fair and reasonable by a jury at trial;

(2) That a judgment be entered awarding him punitive damages against defendants to punish them for his gross and reckless indifference to Martin's constitutional rights and to deter repetition of similar misconduct;

(3) That a judgment be entered awarding Martin his monetary damages sustained as a result of the wrongful actions herein by defendants;

(4) That a judgment be entered awarding Martin his attorney's fees, costs, and litigation expenses pursuant to 42 U.S.C § 1988 and Fed. R. Civ. Pro. 54; and,

(5) That Martin be granted such other further relief as he is entitled.

DEMAND FOR A JURY TRIAL

Pursuant to Fed. R. Civ. Pro. 38, Martin demands trial by jury of all issues herein so triable.

Respectfully submitted,

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