

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**MARGARET MITCHELL, AS)
ADMINISTRATRIX OF THE)
PENDING ESTATE OF ANTHONY)
DON MITCHELL,)**

Plaintiff,)

v.)

**CIVIL ACTION NUMBER:
2:23-cv-00182-SGC**

**SHERIFF NICK SMITH, IN HIS)
INDIVIDUAL AND OFFICIAL)
CAPACITY, CORRECTIONS)
OFFICERS T.J. ARMSTRONG,)
DENZEL MITCHELL, BRAXTON KEE,)
BAILEY GAINEY, KATHERINE)
CLIGAN, JACOB SMITH, JEREMY)
FARLEY, RICHARD HOLZMAN,)
BENJAMIN SHOEMAKER, DAYTON)
WAKEFIELD, NURSE)
PRACTITIONER ALICIA HERRON,)
NURSE BRAD ALLRED, AND)
INVESTIGATOR CARL CARPENTER,)**

Defendants.)

DEFENDANTS' MOTION TO STRIKE

COME NOW Defendants Sheriff Nick Smith and correctional officers T. J. Armstrong, Denzel Mitchell, Braxton Kee, Bailey Gainey, Katherine Cligan, Jacob Smith, Jeremy Farley, Richard Holzman, Benjamin Shoemaker, and Dayton Wakefield, and Investigator Carl Carpenter and move this Court for an Order striking portions of Plaintiff's Complaint to include: Introduction, Heading H, I, and

M, Paragraphs 4, 5, 48, 66, 67, 68, 69, 70, 72, 74, 76, 77, 78, 87, 99, 111, 112, 113, 119, and 121 pursuant to Rule 12(f) of the Federal Rules of Civil Procedure. Rule 12(f) states, “The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” These allegations are the definition of scandalous. Based on nothing but speculation, Plaintiff accuses the Defendants of murdering Plaintiff’s decedent, Tony Mitchell (Mitchell) by placing him in a freezer until he suffered and died from hypothermia and then accuse the Defendants of covering up the murder. These allegations intentionally created a firestorm of derision that swept not only these Defendants but law enforcement in general and caused criminal investigations to be opened against the Defendants. These speculative allegations are false. Mitchell’s incarceration is captured on video. He was not held in a freezer. In fact, the only times that he left the booking area was to attend his 72-hour hearing and to be transported to the hospital. The allegations are pure fiction that were included to create negative publicity; they should be struck from the Complaint.¹ In support thereof, Defendants set forth and state as follows:

1. On February 13, 2023, Plaintiff filed a two-count complaint alleging that the Defendants tortured the decedent, Anthony Mitchell by “likely” placing him

¹ On February 28, 2023, Defendants served Plaintiff’s counsel a letter and a draft Motion for Sanctions as required by Rule 11 Federal Rules of Civil Procedure. In the letter, Defendants offered Plaintiff counsels the opportunity to review the video obtained in the case. As of the filing of this Motion to Strike, Plaintiff’s counsels have not contacted Defendants to view the video and have not withdrawn the baseless and scandalous allegations.

in a freezer and causing his death on January 27, 2023. The Complaint further asserts that Defendants covered up their conduct by lying to the family and public as to Mitchell's physical condition when he was taken to the hospital. Plaintiff deliberately filed this action before the estate was established and the cause of death determined. The Complaint asserts a 14th Amendment deliberate indifference claim against the Defendants to include supervisory claims as well as a state law wrongful death claim against the Defendants.

2. Even before the filing of this suit, counsels for the Plaintiff orchestrated a media blitz to bolster their case. The night before the suit was filed, an article appeared in Al.com setting forth the allegations as facts and named each of the Defendants, albeit lumping their conduct together. The center of Plaintiff's case is that Mitchell died from hypothermia "likely by being placed in a restraint chair in the jail kitchen's walk-in freezer or similar frigid environment and left there for hours."² (Doc. 1 p. 2) These allegations created a firestorm of derision and threats to the Defendants. This firestorm also caused the State Bureau of Investigation and the

² The specific allegation that Mitchell was placed in the jail's freezer as punishment appears eight times in the Complaint. In a heading, Plaintiff (through counsel) goes so far to assert, "No Explanation Other than Spending Hours in a Freezer or Similar Frigid Environment Explains Tony's Body Temperature Dropping to 72 Degrees Fahrenheit." (Doc. 1 p.20) Plaintiff makes this bold statement without the benefit of an autopsy report and assumes that Mitchell's temperature was properly taken at the hospital and assumes that no other medical condition caused Mitchell's purported hypothermia.

Federal Bureau of Investigation to open criminal investigations into Mitchell's death.

3. This case embodies the adage, "A lie is halfway around the world before the truth can put on its boots." Mitchell was never placed in a freezer. The only time that Mitchell left the booking area where he was housed was to attend his 72-hour hearing and to go to the hospital. Unlike Plaintiff's rank and scandalous speculation, there is proof of Defendants' conduct because Mitchell's incarceration is captured on video. These videos have been reviewed, and Plaintiff's allegations did not happen. Indeed, Plaintiff's counsels in their media blitz appeared on CNN and admitted that they do not have proof that Mitchell was placed in a freezer, yet they deliberately included these patently false and explosive allegations.³

4. In her Complaint, Plaintiff asserts the following erroneous allegations and sections that either directly or indirectly allege that Mitchell was placed in a freezer and/or died of hypothermia due to Defendants' conduct: Introduction, Heading H, I and M, Paragraphs 4, 5, 48, 66, 67, 68, 69, 70, 72, 74, 76, 77, 78, 87, 99, 111, 112, 113, 119, and 121. Besides being false, these allegations violate Rule 8, Federal Rules of Civil Procedure.

5. Rule 8(a) of the Federal Rules of Civil Procedure states,

³ In the interview, even after admitting that they did not have proof that Mitchell was placed in the freezer, one of Plaintiff's counsels stated when pressed by the interviewer that Defendants' motivation to place Mitchell in the freezer, he responded with one word, "Sadism."

(a) CLAIM FOR RELIEF. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

6. There is nothing “short and plain” regarding these allegations and Plaintiff’s Complaint. They are editorials and more of a press release than a Complaint. When the entire Complaint is built upon a false premise that Mitchell was placed in a freezer, it is difficult to list the more egregious examples of editorializing, but some of the more egregious examples are:

The case provides contrasting examples of both the worst of humanity, and also its best. Without the malice, deliberate indifference, and failure to intervene of nearly a dozen correction officers at the jail, and the cooperation of these officers and their superiors in a scheme to deprive Tony of his civil rights and ultimately of his life, Tony could never have been killed, likely by being placed in a restraint chair in the jail kitchen’s walk-in freezer or similar frigid environment and left there for hours. Nor would he have been denied the prompt emergency medical treatment that would have saved him after his removal from that frigid place. But also, without the heroism of a corrections officer who dared to preserve security camera footage on her phone and get the recordings to the Estate, it would have been impossible for the Estate to dismantle the scheme of silence and lies within the Sheriff’s Department and reconstruct what happened to Tony on the morning of January 26, 2023. (Doc. 1 p. 2)

4. Tony passed away on January 26, 2023, at Walker Baptist Medical Center while in the custody of the Walker County Sheriff's Department. He died after spending fourteen days incarcerated under hellish conditions as a pretrial detainee at the Walker County Jail, from January 12 to January 26, 2023. (Doc. 1 ¶ 4)

34. One of the first video clips that the Estate's lawyers have of Tony, thanks to the heroism of the corrections officer who wanted his family and the public to know what happened to him, shows Tony, naked, being dragged out of holding cell number five, likely on or around January 15, 2023, and tazed by Braxton Kee. (Kee is still inside the cell and not yet visible in the screenshot below). (Doc. 1 ¶ 34)

70. Based on these circumstances, it appears that Tony was strapped into a restraint chair during the night of January 25 to January 26 and placed in the jail kitchen's walk-in freezer or similar frigid environment for an extended time, possibly as punishment for deputies who had "had a time with Tony," or as punishment for allegedly shooting at deputies. (Doc. 1 ¶ 70)

77. Hour by hour, Tony's chances of survival dwindled, as captured in a series of chilling surveillance videos preserved by a heroic corrections officer so that Tony's family would know what happened to him. (Doc. 1 ¶ 77)

7. A reasonable sanction is an order dismissing this case with prejudice and directing Plaintiff to pay the Defendants' attorney fees and costs expended in defense of this case. Rule 11(4), Federal Rules of Civil Procedure. Plaintiff and the conduct of her counsels exceeded the bounds of proper litigation. Harsh sanctions are warranted to dissuade Plaintiff counsels and others from engaging in such intentional and dangerous behavior.

WHEREFORE, in light of the foregoing, Defendants request that this Court enter an order sanctioning Plaintiff and direct Plaintiff to pay Defendants' attorney

fees and costs. Defendants further request the sanction that this case be dismissed with prejudice.

Respectfully submitted this 3rd day of March 2023.

/s/J. Randall McNeill

J. RANDALL McNEILL (ASB-4841-E29J)
Attorneys for Defendants Sheriff Nick Smith and
correctional officers T. J. Armstrong, Denzel
Mitchell, Braxton Kee, Bailey Gainey, Katherine
Cligan, Jacob Smith, Jeremy Farley, Richard
Holzman, Benjamin Shoemaker, and Dayton
Wakefield and Investigator Carl Carpenter
WEBB MCNEILL WALKER PC
One Commerce Street, Suite 700 (36104)
Post Office Box 238
Montgomery, Alabama 36101-0238
(334) 262-1850 T
(334) 262-1889 F
rmcneill@wmwfirm.com

CERTIFICATE OF SERVICE

I hereby certify that on this the 3rd day of March 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jon C. Goldfarb
L. William Smith
Christina M. Malmat
Wiggins, Childs, Pantazis, Fisher & Goldfarb, LLC
301 19th Street North
Birmingham, AL 35203
jcg@wigginschilds.com
wsmith@wigginschilds.com
cmalmat@wigginschilds.com

/s/J. Randall McNeill

OF COUNSEL