

SUPPORTING MEMORANDUM

Plaintiff's Counsel is of the opinion that Magistrate Shaver has already decided that the Office of the Attorney General, and therefore the State of Ohio, should prevail in this case and that the trial is merely a formality to accomplish that predetermined goal.

The Court of Claims is the only forum available to the citizens of Ohio in which they can receive compensation for injuries suffered by them through the action of the State and/or its agencies, agents and employees. The people of Ohio are supposed to get the same kind and type of trial that they would get in any other Court under the same rules and laws.

In this case, with this Magistrate, that has not occurred and will not occur.

As Counsel herein understands the law with respect to Magistrates, under Ohio Civil Rule 53, Magistrates who conduct a trial on the merits as supposed to do in the same manner and form as trial before a Judge sitting without a Jury. In such circumstances the Trier of Fact, the Magistrate, makes findings of fact and decides all issues of credibility. When Objections to the Magistrate's Orders are filed, the reviewing Judge and subsequently the Court of Appeals, do not re-try the case but give deference and credence to the findings of fact made by the Magistrate and give deference and credence to the Magistrates's findings on all issues of credibility. The the reviewing Judge, and subsequently the Court of Appeals, only determine whether the findings of the Magistrate support the Decision under law, and whether there is

the existence of some facts to support the Decision and the findings of fact made by the Magistrate from the testimony and other evidence at trial.

All this Magistrate needs to do in this case to fulfill her goal is to make a finding that she believes the Officer, and does not believe the Plaintiff, and the case is over. No member of the Judiciary will revisit whether the Magistrate should have believed the Officer and not believed the Plaintiff, but will merely decide whether believing the Officer and disbelieving the Plaintiff justifies the verdict.

In this case the Plaintiff has claimed and testified at her deposition:

1. That the arresting Officer handcuffed her behind her back and she could not see what he was doing;
2. That as soon as the Officer started to handcuff her she felt something snap and felt pain;
3. That she complained of the pain and was ignored;
4. That when she was taken to the hospital from the police station, and was treated, the X-Rays showed that her thumb was broken.

Conversely, LT Hoskinson, the arresting Officer, has testified at his deposition which has been filed, and is therefore before the Court:

1. That he did not break the Plaintiff's thumb;
2. That he handcuffed the Plaintiff in accordance with the procedures taught to him in his training;
3. That there is no reason for a person to be injured in any way if the procedures taught to him are followed.

4. LT Hoskinson has admitted in his deposition that the Plaintiff denied any injuries when asked if she had any prior to the arrest and handcuffing.

None-the-less, Plaintiff has medical records showing that her thumb was in fact broken, and, she was taken to the hospital where the X-Rays were taken directly from the police station by the Athens County EMS people.

Obviously Plaintiff has no medical records showing that her thumb was not broken prior to the time she was stopped by LT Hoskinson and arrested.

In discovery responses, which had no relevance to the questions asked, Defendant has claimed that Plaintiff was so drunk that she would have been unable to know if her thumb was broken prior to the arrest. However, Plaintiff was not convicted of being impaired in Municipal Court, nor was she convicted of any offense of any kind in the Student Court proceedings held by the University, and she complained of pain to the EMS Squad.

Without attempting to litigate the case in this pleading, these facts are presented to show that despite the existence of such evidence all the Magistrate needs to do is to make a finding that she believes LT Hoskinson when he denies injuring the Plaintiff and that he followed procedure, and Plaintiff loses her claim in the only Court available to her.

Plaintiff's Counsel is taking the position proposed in this case based upon the following factors:

1. The Magistrate has engaged in a pattern of ruling in favor of the Attorney General irrespective of the facts and circumstances involved:
 - a. The Magistrate refused to strike frivolous and unfounded defenses such as: the claim of a failure to file within the Statute of Limitations on a Complaint filed 11 months from the date of incident; the claim of intervening causes over which Defendant had no control under facts where only two people were involved, Plaintiff and LT Hoskinson; a claim of assumption of risk under facts where Plaintiff peacefully submitted to being arrested; a claim of contributory negligence under facts where Plaintiff peacefully submitted to being arrested.
 - b. The Magistrate Overruled, without explanation, a Motion to Compel Discovery where Defendant refused to provide the factual basis for the frivolous Affirmative Defenses.
 - c. The Magistrate Overruled,, without explanation, a Motion to Compel Discovery where Defendant refused to comply with the Civil Rule on Requests for Admissions where the Attorney General argues Defendant's legal position rather than properly respond to the Admission requested.
 - d. The Magistrate allowed the Attorney General to take months past Civil Rules deadlines in making responses without so much as ordering compliance.

2. Basically, this Magistrate has given the Attorney General whatever he has wanted, without qualification, irrespective of the reasonableness or the validity of his reasons.

Counsel incorporates herein the various responses he has previously filed to the pleadings of the Attorney General; Plaintiffs Motion to Compel Discovery and the Exhibit thereto (which comprise more than 150 pages of documents and pleadings) which are part of the Record in this case but are not attached hereto in the interests of Judicial Economy,

Counsel would have filed an Affidavit of Prejudice in this matter but there appears to be no procedure for doing so under the Statutes or any of the Rules of Court with respect to Court of Claims personnel or matters. Also, the procedure outlined in Court of Claims Rule 5 does not apply as this case is not unique, novel, or overly complicated.



VINCENT DePASCALE
ATTORNEY FOR LYNDSEY HOWELL

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing upon Christopher Conomy, Assistant Attorney General as attorney for Defendant, this 6th day of March, 2014, by regular U.S. Mail.



VINCENT DePASCALE
ATTORNEY FOR LYNDSEY HOWELL

Vincent DePascale
Attorney and Counselor at Law

DePascale Law Offices
786 Northwest Boulevard
Grandview Heights, Ohio 43212

6 MARCH 2014

Office (614)298-8200
Fights (614) 481-0555
No Fax & No E-Mail

CLERK
COURT OF CLAIMS OF OHIO
THE OHIO JUDICIAL CENTER
65 SOUTH FRONT STREET, THIRD FLOOR
COLUMBUS OH 43215

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Re: Howell v Ohio University Police
Department
2013-00001

Dear Clerk:

Enclosed are the originals of the pleading that I am filing, along with a copy to be returned to me.

Please file the originals.

Please return a time stamped copy of the Motion to me in the enclosed SASE.

I have served a courtesy copy on Magistrate Shaver and Judge McGrath by direct mail.

Thanx.


Vincent DePascale