

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

CHERYL D. SINCLAIR, individually and)
on behalf of STEPHEN ANDREW)
SINCLAIR , a minor)

Plaintiffs,)

vs.)

CORRECTIONS CORPORATION)
OF AMERICA,)

Defendants.)

No. _____

JURY DEMAND

COMPLAINT

Plaintiffs would show unto this Honorable Court the following:

I. NATURE OF THE CASE

1. Plaintiffs' claims arise out of the beating, assault, abuse, invasion of privacy, malicious prosecution and inhumane treatment of Stephen Andrew Sinclair (hereafter "Andy Sinclair"), a fourteen year old minor at Correction Corporation of America's Shelby County Training Center in Memphis, Tennessee. This case is an action for damages under state law. As a result of the wrongful acts of Corrections Corporation of America (hereafter "CCA") and its employees acting in the course and scope of their employment, Andy Sinclair and his mother (custodial parent) suffered injuries, damages and losses. CCA's employees, in the course and scope of their employment, used excessive force against Andy Sinclair who was to have been incarcerated in a safe and secure jail facility. Plaintiffs' claims are for assault, battery, outrageous conduct, malicious prosecution, intentional infliction of mental distress, negligence, recklessness, invasion of privacy, breach of contract (third-party

beneficiary) and an implied cause of action for monetary damages for violations of the Tennessee Constitution. No federal law claims are presented or asserted.

II. VENUE

2. Venue is proper in this transitory action in that the Defendant resides in Davidson County, Tennessee and Davidson County is the corporate headquarters and principal place of business of CCA.

II. PARTIES

3. Plaintiff Cheryl Sinclair is the mother and custodial parent for her minor son, Andy Sinclair. Ms. Sinclair and her son reside in Ripley, Tennessee.

4. Andy Sinclair was incarcerated in CCA's Shelby County Training Center in Memphis in July 2004. The events in question that give rise to this suit began on October 11, 2004.

5. Corrections Corporation of America (hereinafter "CCA") is incorporated in Maryland with its headquarters and principal place of business in Davidson County at 10 Burton Hills Boulevard, Nashville. CCA may be served with process by service on its agent for service of process: C.T. Corporation Systems, 530 Gay Street, Knoxville, TN 37902

6. CCA is one of the nation's largest private providers of jail, detention and corrections services to governmental agencies.

7. CCA was at all times relevant under contract with Shelby County to manage and operate the Shelby Training Center in Memphis, Tennessee a 200 bed secure facility for juvenile offenders that houses male offenders for the Juvenile Court of Memphis and Shelby County.

8. CCA was under contract to provide correctional, training and health and medical services for juveniles who were detained or incarcerated at its privately owned Shelby Training Center in Memphis, Tennessee. CCA was performing a public function of administering correctional, detainment and training services for juveniles on behalf of the Juvenile Court of Memphis and Shelby County.

9. CCA was therefore a state-actor and acted under color of state law.

10. At all times material to this cause, CCA was the employer of CCA guards, and employees who beat, assaulted, abused, mistreated in an inhumane fashion, violated privacy rights and made false accusations designed to prosecute Andy Sinclair. The guards/employees at the facility who acted in the course and scope of their employment included, to Plaintiffs' knowledge: CCA employees Griffin, Willingham, Morning and Robinson.

III. FACTS OF THIS CASE

11. The events in question occurred over the period of October 11 - 15, 2004. Stephen ("Andy") Sinclair was 14 years old and had been diagnosed since the age of 8 with bipolar disorder. He was placed in the Shelby Training Center in Memphis, Tennessee for an assault charge in July 2004.

12. In October 2004 (specifically the 11th) he was seen by "mobile crisis" for an episode of depression and what was described as a suicide attempt. Later investigation determined that Andy had been threatened with his life by other juvenile inmates in an apparent form of gang initiation.

13. Andy was moved from "Alpha" to "Foxtrot" as a safety measure where he could not open his door and only staff could open his door.

14. On October 15, 2004 Mrs. Sinclair received a phone call from the Memphis Juvenile Court. She was told he had been in "a fight" with the guards. When she arrived she was informed that Andy "had quite a few injuries and abrasions." His foot had been cut open and he needed stitches. She was told to "raise hell" so that he could get medical attention that night. They were told a STC (Shelby Training Center) "doctor had already seen Andy."

15. Mrs. Sinclair asked to take pictures. She was told she could not but was assured that Juvenile Court had taken pictures, and that all the injuries were documented and that supervisors "all the way up to the top" have been notified.

16. On October 16th at 7:35 p.m. Andy related what had happened to his mother. Other inmates had been instructed to "beat Andy down." On October 11th he was jumped by two inmates. He felt that going on "crisis watch" would be the safest thing for him because he would have a guard there constantly. In fear and desperation, he rubbed his wrists against the cuffs to cause cuts on his wrists and was sent to the alpha unit and mobile crisis was called.

17. Andy described how he was given a paper gown, which fell apart when it became wet (on Monday) and although he asked for another paper gown this request was refused with the result that he was naked from Monday until Friday.

18. At about 11:30 p.m. on the 16th Andy was taken to The Regional Medical Center of Memphis ("the Med") emergency room by Juvenile Court officials. The ER document that Andy was "hit on top of foot with shackles at 11:00 a.m." causing a 2.5-3.0 cm "L shaped laceration" over the left foot." The diagnosis was: " *Assault by cutting piercing instrument*"(emphasis supplied). The notes indicate: "States he was hit with leg irons @ Shelby Training Center ~ 11:00 a.m. which caused cut to left foot . . . Pt.

states L great toe feels numb." He received a tetanus shot and seven stitches. Plaintiff avers CCA employee officer/guard "D.J. Robinson" hit him with the leg irons.

19. Andy's foot injury became seriously infected and he was hospitalized at the Med from October 27th until the 29th for cellulitis where he was operated on (incision & drainage of the foot abscess). He was given antibiotics and narcotic pain medication (Percocet).

20. On October 17th Andy was able to meet with his mother and complete telling her the week's events. He described being head "butted" by Captain Morning (on Oct. 14th). He was also poked in the eye. He was goaded into a fight and placed in shackles. He was put in a headlock and hit in the face several times. Apparently a Ms. Houston attempted to intercede and stop this beating.

21. On October 14th Captain Griffin choked Andy and caused abrasions on his neck. Andy passed out. He awoke and Griffin continued his assault to his throat with Griffin's forearm. He was cuffed and shackled with bruises and abrasions on his legs and wrists. He was shackled in a "hog-tied" position. Immediately prior to this incident, another inmate, Michael Walker, received a broken collarbone from Captain Griffin. Mr. Walker was taken to the Med on Thursday night.

22. On Friday, October 15th, Andy asked for medical attention because his elbow was hurting. He was refused. He began kicking the door. A Captain Willingham and D.J. Robinson came in with shackles. Andy stated they were not necessary. Robinson then struck Andy across the top of the left foot with the leg irons causing a deep cut on his foot. Andy screamed in pain. Robinson called him a "bitch." Willingham also struck him several times.

23. A Dr. Ballard at the STC saw Andy's foot and said "put a band-aid on it." A Ms. Vaughn then threw clothes at him (he was naked all this time) and said the police were on the way - he was being charged with assault.

24. When the police arrived they saw no injuries to any guard and he was transferred to juvenile court (pursuant to the attempt by CCA to charge him).

25. Juvenile Court then called Mrs. Sinclair at 7:35 p.m. to inform her of her son's injuries and condition.

26. Andy's injuries included a large abrasion on his neck from being choked, deep scratches on his chest, fingernail puncture marks in the bends of both arms, a black eye, carpet burns on his elbows and knees, skin missing from the back of both legs and a deep gash on top of one foot from being struck by leg irons (which required stitches, became infected and required surgery). He was forced to remain naked from Monday through Friday and to walk to the showers completely naked. He was hogtied. All of these acts were unlawful and tortuous.

IV. COUNTS OF ACTION

27. Plaintiffs repeat all the facts and allegations set forth in the preceding paragraphs as if fully set forth herein as to all counts and causes of action enumerated below.

28. *Assault and Battery.* The Defendant's employees committed unlawful assault and battery upon Andy Sinclair, by intentional, malicious, brutal, and unprovoked attacks upon him in violation of the common laws of the State of Tennessee all of which directly and proximately led to his injuries. The acts were committed during the course and scope of employment by the CCA employees and

constitute recklessness, malice and/or intentional misconduct supportive of punitive damages.

29. *Malicious Prosecution.* Defendant CCA is liable for its acts, and through the acts of its employees for a malicious prosecution. After recklessly abusing, beating and assaulting Andy Sinclair (causing a huge gash in his foot when leg irons were thrown at the minor child), CCA then called the police and attempted to charge the child with assault. Plaintiffs aver that that the attempted prosecution was initiated without probable cause.

30. Plaintiffs aver that Defendant, independently and through its agents and employees, caused a criminal action to be commenced against Plaintiff Andy Sinclair; that the prosecution was caused by defendant or with the aid of CCA employees; that the action terminated in the plaintiffs' favor; that the plaintiff was innocent; that the defendant acted without probable cause; that the defendant acted with malice; and that the criminal proceeding damaged the plaintiff.

31. *Outrageous Conduct, Intentional Infliction of Emotional Distress.* CCA, independently and through its employees, is liable for the torts of outrageous conduct and intentional infliction of emotional distress. CCA's conduct was intentional or reckless, (2) the defendant's conduct was so outrageous that it cannot be tolerated by civilized society, and (3) the defendant's conduct resulted in serious mental injury to the plaintiff.

32. *Negligence and Recklessness.* CCA had independent duties to act with reasonable care (and non-recklessly) towards Andy Sinclair. CCA had the duty to protect him as a minor and juvenile while in custody. CCA had further duties to enact, enforce and supervise its own policies to assure inmate safety and security. CCA also

had duties to comply with recognized standards for the treatment of juvenile offenders and special needs inmates such as Andy Sinclair, which standards of care were delineated by: the Tennessee Corrections Institute (Minimum Standards for Local Jail Facilities); the American Corrections Institute and the National Commission on Correctional Health Care. CCA breached these duties of care negligently and in reckless fashion, proximately causing injuries to Andy Sinclair.

33. *Invasion of Privacy.* CCA independently, and through the acts of its employees forced Andy Sinclair to go naked (in front of others) for days at a time (as described above). This invasion of privacy (of a minor) is actionable at common law and caused damages to Andy Sinclair, including pain, suffering and emotional distress.

34. *Breach of Contract.* CCA contracted with Shelby County to operate and manage the Shelby Training Center to house, protect and train juveniles such as Andy Sinclair. This contract imposed specific duties, the breach which are actionable as a matter of law by Andy Sinclair who was a third-party beneficiary to the contractual promises and duties applicable to CCA. CCA breached its contract in numerous respects and such breaches proximately caused injury to Plaintiffs.

35. *Implied Cause of Action for Damages under Tennessee Constitution.* THE CONSTITUTION OF THE STATE OF TENNESSEE, ART. I, DECLARATION OF RIGHTS provides at § 32 as follows: “**Treatment of prisoners.** That the erection of safe prisons, the inspection of prisons, and the humane treatment of prisoners, shall be provided for.” Plaintiffs aver that to date, Tennessee courts have not recognized an implied cause of action for damages for a violation of the Tennessee state constitution. *See Lee v. Ladd*, 834 S.W.2d 323, 325 (Tenn. Ct. App. 1992). Plaintiffs plead, in good faith for an extension of existing law and aver that, in accordance with well-reasoned and well-recognized

authorities in other states recognizing “*Bivens*” claims under state constitutions, the Tennessee Courts should recognize an implied cause of action for damages under the Tennessee Constitution to ensure the humane treatment of prisoners as guaranteed by Art. I § 32 of the Tennessee Constitution. Further, the implied cause of action should specifically apply to a private corporation (such as CCA) providing correctional services (thereby providing *greater* constitutional protection) than under the U.S. Constitution given the 5-4 ruling of the U.S. Supreme Court in *Correctional Medical Services, Inc. v. Malesko*, 534 U.S. 61, 122 S. Ct. 515 (2001).

36. The acts of individual CCA employee guards, during the course and scope of their employment, were negligent, reckless, malicious and/or intentional. These acts were also outrageous conduct and constitute malicious prosecution, outrageous conduct, invasion of privacy, constitutional torts, negligence, recklessness and the intentional infliction of emotional distress. CCA is independently and vicariously liable, under liability theories, for damages and for the injuries.

IX. DAMAGES

37. As a direct and proximate result of the deliberately indifferent and/or malicious, intentional, negligent and/or reckless actions of CCA and its employee agents, Plaintiff Andy Sinclair suffered an invasion of privacy, humiliation, embarrassment, ridicule, torture, pain, suffering, severe and painful injuries, mental distress, loss of enjoyment of life, physical impairment, physical disfigurement, serious mental injury, loss of education and training and medical and hospital expenses.

38. Plaintiff Cheryl Sinclair suffered emotional distress, serious mental injury and injury to the parent-child relationship and the loss of her son’s services.

WHEREFORE, Plaintiff prays for relief and damages in the total amount of TWENTY-ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$21,500,000.00) as follows:

- i. For compensatory damages in the amount of Three Million Dollars (\$3,000,000.00) for Plaintiff Andy Sinclair;
- ii. For compensatory damages in the amount of Five Hundred Thousand Dollars (\$500,000.00) for Plaintiff Cheryl Sinclair
- iii. For punitive damages in the amount of Eighteen Million Dollars (\$18,000,000.00);
- iv. For reasonable attorney fees and litigation expenses;
- v. For the court costs of trying this action;
- vi. For a jury to hear this cause of action;
- vii. For costs to be taxed to the Defendants;
- viii. For such other and further relief as the Court may deem proper; and
- ix. For prejudgment interest.

Respectfully Submitted,

LAW OFFICES OF DAVID RANDOLPH SMITH
& EDMUND J. SCHMIDT, III

By: _____

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