

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS D'ANGELO,

Plaintiff,

vs.

PAUL PARENT, CLINTON TOWNSHIP,
a municipal entity, NICHOLAS DYKAS,
JASON FIGURSKI and KEITH WATSON,
in their official and individual capacities,
jointly and severally,

Defendants.

Case No. 2:10-c-12195

Hon. Lawrence P. Zatkoff

Magistrate Judge Mona Majzoub

Removed from Macomb County Circuit
Case No. 10-944-NO

AMOS E. WILLIAMS (P39118)
THOMAS E. KUHN (P37924)
Amos E. Williams, P.C.
Attorney for Plaintiff
615 Griswold, Suite 1115
Detroit, MI 48226
(313) 963-5222

PETER W. PEACOCK (P37201)
Plunkett Cooney
Attorneys for Defendants Clinton Township,
Dykas, Figurski and Watson
10 S. Main Street, Ste. 400
Mt. Clemens, MI 48043
(586) 466-7605

**DEFENDANTS CLINTON TOWNSHIP, NICHOLAS DYKAS,
JASON FIGURSKI and KEITH WATSON'S ANSWER TO COMPLAINT**

NOW COME Defendants, CLINTON TOWNSHIP, NICHOLAS DYKAS,
JASON FIGURSKI and KEITH WATSON (hereinafter referred to as "Defendant"), by and
through their attorneys, Plunkett Cooney, and for their Answer to Complaint state as follows:

1. In response to paragraph 1 of Plaintiff's Complaint, Defendants neither
admit nor deny the allegations contained therein for the reason that Defendants are without
sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves
Plaintiff to his proofs.

2. In response to paragraph 2 of Plaintiff's Complaint, Defendants admit same.

3. In response to paragraph 3 of Plaintiff's Complaint, Defendants admit same.

4. In response to paragraph 4 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

5. In response to paragraph 5 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

6. In response to paragraph 6 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

Common Allegations of Fact

7. Defendants incorporate by reference their answers to paragraphs one (1) through six (6) as if fully set forth herein.

8. In response to paragraph 8 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

9. In response to paragraph 9 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

10. In response to paragraph 10 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

11. In response to paragraph 11 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

12. In response to paragraph 12 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

13. In response to paragraph 13 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

14. In response to paragraph 14 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without

sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

15. In response to paragraph 15 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

16. In response to paragraph 16 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

17. In response to paragraph 17 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

18. In response to paragraph 18 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

19. In response to paragraph 19 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

20. In response to paragraph 20 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

21. In response to paragraph 21 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

22. In response to paragraph 22 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

23. In response to paragraph 23 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

24. In response to paragraph 24 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

25. In response to paragraph 25 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

26. In response to paragraph 26 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

27. In response to paragraph 27 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

28. In response to paragraph 28 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without

sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

29. In response to paragraph 29 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

30. In response to paragraph 30 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

Count I
False Arrest and False Imprisonment

31. Defendants incorporate by reference their answers to paragraphs one (1) through thirty (30) as if fully set forth herein.

32. In response to paragraph 32 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

33. In response to paragraph 33 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

34. In response to paragraph 34 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

35. In response to paragraph 35 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

36. In response to paragraph 36 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

Count II
Malicious Prosecution

37. Defendants incorporate by reference their answers to paragraphs one (1) through thirty-six (36) as if fully set forth herein.

38. In response to paragraph 38 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

39. In response to paragraph 39 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

40. In response to paragraph 40 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

41. In response to paragraph 41 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

42. In response to paragraph 42 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

43. In response to paragraph 43 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

Count III
Intentional Infliction of Emotional Distress

44. Defendants incorporate by reference their answers to paragraphs one (1) through forty-two (42) as if fully set forth herein.

45. In response to paragraph 45 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

46. In response to paragraph 46 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

47. In response to paragraph 47 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

48. In response to paragraph 48 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

Count IV
Violation of 42 USC § 1983

49. Defendants incorporate by reference their answers to paragraphs one (1) through forty-eight (48) as if fully set forth herein.

50. In response to paragraph 50 of Plaintiff's Complaint, Defendants neither admit nor deny the allegations contained therein for the reason that Defendants are without sufficient knowledge or information to form a belief as to the truth thereof and therefore leaves Plaintiff to his proofs.

51. In response to paragraph 51 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

52. In response to paragraph 52 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

53. In response to paragraph 53 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

54. In response to paragraph 54 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

55. In response to paragraph 55 of Plaintiff's Complaint, Defendants deny the allegations contained therein for the reason that said allegations are untrue.

WHEREFORE, Defendants respectfully requests this Honorable Court enter a Judgment of No Cause for Action together with costs and attorneys fees so wrongfully sustained.

PLUNKETT COONEY

BY: S/Peter W. Peacock
PETER W. PEACOCK (P37201)
Attorney for Clinton Township Defendants
10 S. Main, Suite 400
Mt. Clemens, MI 48043
Primary Email: ppeacock@plunkettcooney.com
(586) 466-7605

Dated: June 3, 2010

AFFIRMATIVE DEFENSES

NOW COME Defendants, by and through their attorneys, Plunkett Cooney, and for their Affirmative Defenses state as follows:

1. The individual Defendants are entitled to dismissal on the basis of qualified immunity and immunity. Reasonable municipal officers and employees could have thought his actions to be lawful in light of established law under the circumstances of this case.
2. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.
3. Plaintiff's claims are barred by applicable statute of limitations.

4. That the proximate cause of any and all injuries suffered by the Plaintiff is as the result of the Plaintiff's own contributory and/or comparative negligence.

5. That the proximate cause of any and all injuries suffered by the Plaintiff are the result of the negligence of persons and/or entities other than the Defendants herein.

6. The voluntary misconduct of the Plaintiff was the proximate cause of the injuries sustained, if any.

7. Plaintiff's claims are time barred and the applicable statute of limitations has been exhausted.

8. That the Plaintiff has failed to mitigate his damages.

9. The defense of governmental immunity as to municipalities is affirmative asserted.

10. As to the individual Defendant, Plaintiff's claim is barred by the doctrine of individual immunity granted by individual Defendant pursuant to MCLA 691.1407 (2), MSA 3.996 (107) (2).

11. Plaintiff's claim is barred for the reason that the individually named Defendant municipal employees are entitled to qualified immunity based on good faith efforts in carrying out his task.

12. The Defendant municipal Officer used such force as was reasonably necessary under the circumstances.

13. The individual municipal employees were not engaged in conduct which would meet the statutory definition of gross negligence.

14. That the damages claimed by the Plaintiff are excessive and exaggerated.

15. That the sole and proximate cause of the injuries to the plaintiff was the plaintiff's own actions, plaintiff being one hundred percent (100%) negligent and the Defendants being zero percent (0%) negligent.

16. That at all times relevant hereto, these Defendants complied with all duties applicable under Michigan and Federal law, and Defendants deny that it or its employees engage in conduct which caused damage to said plaintiff.

17. Plaintiff's claim is barred for the reason that Defendants are entitled to absolute immunity.

18. Plaintiff's claim is barred for the reason that Defendants are entitled to qualified immunity based upon their good faith efforts in carrying out their function in their official capacity.

19. Plaintiff's claim is barred for the reason that Plaintiff has failed to establish personal involvement on the part of each individual Defendant.

20. Plaintiff's claim is barred for the reason that Plaintiff has failed to identify an official policy custom or practice which has been adopted by Defendant.

21. Plaintiff's claim is barred for the reason that Plaintiff has failed to allege any deprivation of a specific constitutional right. Parratt v Taylor, 451 US 527 (1981).

22. Plaintiff's claim is barred for the reason that Defendants actions do not constitute deliberate indifference or conduct which is shocking to the conscience.

23. These Defendants reserve the right to file additional Affirmative Defenses, as the same may become known through the process of discovery and/or investigation.

PLUNKETT COONEY

BY: S/Peter W. Peacock
PETER W. PEACOCK (P37201)
Attorney for Clinton Township Defendants
10 S. Main, Suite 400
Mt. Clemens, MI 48043
Primary Email: ppeacock@plunkettcooney.com
(586) 466-7605

Dated: June 3, 2010

RELIANCE UPON DEMAND FOR JURY TRIAL

NOW COME the above-named Defendants, and hereby makes demand for trial by jury through reliance on the jury demand previously filed by the plaintiff.

PLUNKETT COONEY

BY: S/Peter W. Peacock
PETER W. PEACOCK (P37201)
Attorney for Clinton Township Defendants
10 S. Main, Suite 400
Mt. Clemens, MI 48043
Primary Email: ppeacock@plunkettcooney.com
(586) 466-7605

Dated: June 3, 2010

