

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Linda Green, as Personal Representative)	C/A No.4:19-CV-03467-MGL-KDW
Of the Estate of)	
Nicolette Tanyja Eugenua French,)	
)	
Plaintiff,)	
)	
vs.)	ANSWER OF HORRY COUNTY
)	AND HORRY COUNTY
Horry County, Horry County Sheriff's Office,)	SHERIFF'S OFFICE
Sheriff Phillip Thompson in his individual)	
capacity, Elizabeth Orlando in her individual)	
capacity, Stephen W. Flood in his individual)	(Jury Trial Demanded)
capacity, and Joshua D. Bishop in his)	
individual capacity,)	
)	
Defendants.)	
_____)	

Defendants, Horry County and Horry County Sheriff's Office, herein respond to the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted is denied.
2. These Defendants would show that the allegations contained Paragraph 1 of the Complaint set out the legal basis for the various causes of action, and, as such, do not require a response.
3. With regard to Paragraph 2 of the Complaint, these Defendants admit that Ms. French was being transported as a mental health patient and that she died while being transported; based upon information and belief, these Defendants deny the remaining allegations.

4. With regard to Paragraph 3 of the Complaint, these Defendants admit that the vehicle was owned by Horry County and was provided for use to the Horry County Sheriff's Office; however, the remaining allegations are denied.
5. With regard to Paragraph 4 of the Complaint, these Defendants admit that Horry County Sheriff Thompson and HCSO Transportation Division Supervisor Orlando acted in a supervisory position with regard to Deputies; however, the remaining allegations are denied.
6. With regard to Paragraph 5 of the Complaint, these Defendants admit that Defendants Flood and Bishop were Deputies assigned to transport Ms. French and that Ms. French died while in transport when the vehicle became submerged; however, these Defendants have insufficient information in which to admit or deny the remaining allegations, and, therefore, demand strict proof thereof.
7. These Defendants deny the allegations as contained in Paragraphs 6, 7, 8 and 9 of the Complaint.
8. With regard to Paragraphs 10, 11 and 12 of the Complaint, these Defendants admit that the Court has jurisdiction and that venue is proper.
9. With regard to Paragraph 14 of the Complaint, these Defendants would show that Horry County is a county existing pursuant to the laws of the state of South Carolina.
10. With regard to Paragraph 15 of the Complaint, these Defendants admit that the Horry County Sheriff's Office is a law enforcement department within Horry County organized and existing pursuant to the laws of the state of South Carolina.
11. These Defendants, upon information and belief, admit the allegations as contained in Paragraphs 16, 17, 18 and 19 of the Complaint.

12. These Defendants have insufficient information in which to admit or deny the allegations as contained in Paragraphs 20, 21, 22 and 23 of the Complaint, and, therefore, demand strict proof thereof.
13. With regard to Paragraph 24 of the Complaint, these Defendants admit that the Horry County Sheriff's Office periodically provided transportation of mental health patients who were subject to commitment orders; however, they have insufficient information in which to admit or deny the remaining allegations, and, therefore, demand strict proof thereof.
14. The Defendants deny the allegations as contained in Paragraph 25 of the Complaint.
15. These Defendants have insufficient information in which to admit or deny the allegations as contained in Paragraph 26 of the Complaint, and, therefore, demand strict proof thereof.
16. With regard to Paragraph 27 of the Complaint, these Defendants admit the existence of Horry County Fleet Policy and would show that the document speaks for itself; furthermore, these Defendants would show that Horry County owned the vehicle and its employees performed modifications, maintenance and repairs.
17. These Defendants admit the allegations as contained in Paragraph 28 of the Complaint.
18. With regard to Paragraph 29 of the Complaint, these Defendants admit that they performed modifications to the vehicle which included the installation of the "cage module"; however, they currently have insufficient information in which to admit or deny the remaining allegations, and, therefore, demand strict proof thereof.
19. These Defendants, upon information and belief, deny the allegations as contained in Paragraph 30 of the Complaint.
20. These Defendants admit the allegations as contained in Paragraph 31 of the Complaint.

21. These Defendants deny the allegations as contained in Paragraphs 32, 33, 34 and 35 of the Complaint.
22. With regard to Paragraph 36 of the Complaint, these Defendants admit that Defendants Thompson and Orlando acted within their supervisory capacities and deny that they breached any duties with regard to these duties.
23. These Defendants, upon information and belief, deny the allegations as contained in Paragraphs 37, 38 and 39 of the Complaint.
24. These Defendants admit the allegations as contained in Paragraph 40 of the Complaint.
25. With regard to Paragraph 41 of the Complaint, the Defendants admit that there was not a mandatory medical evaluation; however, they have insufficient information in which to admit or deny the remaining allegations, and, therefore, demand strict proof thereof.
26. With regard to Paragraphs 42 and 43 of the Complaint, these Defendants admit that Deputies with the Horry County Sheriff's Office undertook to transport Ms. French and Wendy Newton; however, they have insufficient information in which to admit or deny the remaining allegations.
27. These Defendants have insufficient information in which to admit or deny the allegations as contained in Paragraphs 44, 45, 46, 47, 48, 49 and 50 of the Complaint, and, therefore, demand strict proof thereof, and, therefore, demand strict proof thereof.
28. With regard to Paragraph 51 of the Complaint, these Defendants, upon information and belief, admit that the van became stuck due to flood waters; however, they have insufficient information in which to admit or deny the remaining allegations, and, therefore, demand strict proof thereof.

29. These Defendants, upon information and belief, admit the allegations as contained Paragraph 52 of the Complaint.
30. These Defendants have insufficient information in which to admit or deny the allegations as contained in Paragraph 53 of the Complaint, and, therefore, demand strict proof thereof.
31. These Defendants would show that Paragraph 54 of the Complaint does not require a response.

FOR A FIRST DEFENSE AS TO THE FIRST CAUSE OF ACTION

42 U.S.C. §1983 – duty to Protect Persons in State Custody)

(Wrongful Death and Survival)

Against Defendants Steven Flood and Joshua Bishop in their individual capacities

32. These Defendants would show that that the allegations contained in Paragraphs 56, 57, 58, 59, 60, 61, 62, 63, 64 and 65 of the Complaint do not pertain to them; however, to the extent these paragraphs contain any allegations of wrongdoing on the part of these Defendants, then same are denied.

FOR A FIRST DEFENSE AS TO THE SECOND CAUSE OF ACTION

(42 U.S.C. §1983 – State Created Danger)

(Wrongful Death and Survival)

Against Defendant Horry County

33. With regard to Paragraph 67 of the Complaint, these Defendants specifically deny that they violated Ms. French's constitutional rights under the Fourteenth Amendment of the United States Constitution.
34. These Defendants would show that the allegations contained in Paragraph 68 of the Complaint contain legal conclusions, and, therefore, do not require a response by these Defendants.
35. These Defendants deny the allegations as contained in Paragraphs 69, 70, 71, 72, 73 and 74 of the Complaint.

FOR A FIRST DEFENSE AS TO THE THIRD CAUSE OF ACTION
(42 U.S.C. §1983 – *Monell* Claim)
(Wrongful Death and Survival)
Against Defendant Horry County

36. With regard to Paragraph 76 of the Complaint, these Defendants specifically deny that they violated Ms. French’s constitutional rights under the Fourteenth Amended to the United States Constitution.

37. The allegations contained in Paragraph 77 of the Complaint contain legal conclusions, and, therefore, do not require a response.

38. These Defendants deny the allegations as contained in Paragraphs 78, 79, 80, 81, 82, 83, 84 and 85 of the Complaint.

FOR A FIRST DEFENSE AS TO THE FOURTH CAUSE OF ACTION
(42 U.S.C. §1983 – Supervisory Liability)
(Wrongful Death and Survival)

Against Defendants Phillip Thompson and Elizabeth Orlando in their individual capacities

39. These Defendants would should that the allegations contained in Paragraphs 87, 88, 89, 90, 91, 92 and 93 of the Complaint do not pertain to them; however, to the extent these paragraphs contain any allegations of wrongdoing on the part of these Defendants, then same are denied.

FOR A FIRST DEFENSE AS TO THE FIFTH CAUSE OF ACTION
Negligence and Gross Negligence as to all Defendants
(South Carolina Tort Claims Act)
(Survival and Wrongful Death)
Against Defendants Horry County and Horry County Sheriff’s Office

40. These Defendants admit the allegations as contained in Paragraph 95 of the Complaint.

41. These Defendants deny the allegations as contained in Paragraphs 96, 97, 98 and 99 of the Complaint.

FOR A SECOND DEFENSE

42. These Defendants reiterate the allegations as contained all other defenses as if repeated verbatim within this defense.
43. The Complaint fails to set out sufficient allegations to constitute a cause of action as against these Defendants pursuant to 42 U.S. C. 1983, and the action should be dismissed pursuant to Rule 12(b)(6) of the *Federal Rules of Civil Procedure* as against these Defendants.

FOR A THIRD DEFENSE

44. These Defendants reiterate the allegations as contained in all other defenses as if repeated verbatim within this defense.
45. Any claims pursuant to 42 U.S.C 1983 against these Defendants are barred by the Eleventh Amendment of the United States Constitution.

FOR A FOURTH DEFENSE

46. These Defendants reiterate the allegations as contained in all other defenses as if repeated verbatim within this defense.
47. This action is governed by the South Carolina Tort Claims Act (§15-78-10 *et. seq.* of the Code of Laws of South Carolina, as amended) and these Defendants assert the applicable provisions, immunities and limitations on recovery, including the statutory cap and prohibition of punitive damages as defenses to this claim.

FOR A FIFTH DEFENSE

48. These Defendants reiterate the allegations as contained in all other defenses as if repeated verbatim within this defense.

49. These Defendants assert the applicable provisions of §15-78-60 of the Code of Laws of South Carolina, as amended, including, but not limited to, subsections 5, 6, 17 and 25 as an affirmative defense.

FOR A SIXTH DEFENSE

50. These Defendants reiterate the allegations as contained in all other defenses as if repeated verbatim within this defense.

51. These Defendants would show that the alleged damages were cause by an intervening action of a third party or parties.

FOR A SEVENTH DEFENSE

52. These Defendants reiterate the allegations as contained in all other defenses as if repeated verbatim within this defense.

53. These Defendants assert the Public Duty Doctrine as an affirmative defense.

Wherefore, having fully responded to the Complaint of the Plaintiff, Defendants, Horry County and Horry County Sheriff's Office, request that same be dismissed with prejudice, together with the costs and disbursements in the defense of this matter, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

RICHARDSON, PLOWDEN & ROBINSON, P.A.

s/ Douglas C. Baxter

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January 17, 2020