

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Chad Julius Zimmerman,

Plaintiff,

v.

Dave Bellows, in his individual and
official capacities, *et al.*,

Defendants.

Case No. 12-cv-2811 (RHK/SER)

ANSWER OF DEFENDANT
DAKOTA COUNTY SHERIFF
DAVE BELLOWES

Defendant Dakota County Sheriff Dave Bellows (hereinafter Defendant) states
and alleges as follows:

1. Defendant denies each and every allegation of Plaintiff's Complaint except as hereinafter stated, qualified or admitted.
2. With regard to Paragraph 1, Defendant denies that Plaintiff has stated a cognizable claim for relief under U.S.C. § 1983, and further denies Plaintiff sustained any deprivation of rights or constitutional injuries as alleged in Plaintiff's Complaint.
3. With regard to Paragraph 2, Defendant denies that this Court has jurisdiction over Plaintiff's claims under 11 U.S.C. § 362. Defendant admits the remainder of Paragraph 2.
4. With regard to Paragraph 3, Defendant denies venue is proper with regard to Plaintiff's claim under 11 U.S.C. § 362.
5. Defendant does not have information sufficient to admit or deny the allegation contained in Paragraphs 4, 7, and 11 of the Complaint and therefore they are denied.
6. Defendant admits that he is Sheriff of Dakota County. The remainder of Paragraph 5 does not contain an allegation that can be admitted or denied and therefore it is denied.

7. With regard to Paragraph 6, Defendant states the allegations are addressed solely to the John Doe and Jane Doe Defendants, and Defendant will neither admit nor deny allegations contained therein, except that Defendant specifically denies that Plaintiff was kept in the Jail unlawfully.
8. With regard to Paragraph 8, Defendant admits that Plaintiff was arrested and booked into the Dakota County Jail on November 10, 2011. Defendant is without sufficient information to admit or deny the remainder of Plaintiff's allegations in Paragraph 8, and they are therefore denied.
9. Defendant denies that Plaintiff was released from the Dakota County Jail on November 16, 2011, and affirmatively asserts that he was released from the Jail on November 15, 2011. Defendant denies that Plaintiff would have sat in Jail indefinitely and denies that Plaintiff did not have access to a telephone. Defendant is without sufficient information to admit or deny the remainder of Plaintiff's allegations contained in Paragraph 9, and it is therefore denied and puts Plaintiff to his strict proof thereof.
10. Paragraphs 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 30, 31, 34, 35, 38, 39, 40, 44, 45, 47, 49, and 51 of the Complaint are denied.
12. With respect to Paragraph 24, responses to Paragraphs 1-23 are incorporated as if fully set forth herein.
13. With respect to Paragraph 29, responses to Paragraphs 1-28 are incorporated as if fully set forth herein.
14. With respect to Paragraph 32, responses to Paragraphs 1-31 are incorporated as if fully set forth herein.
15. Defendant denies the allegations set forth in Paragraph 33, and affirmatively states that Plaintiff was brought before a judge as soon as possible.
16. With respect to Paragraph 36, responses to Paragraphs 1-35 are incorporated as if fully set forth herein.
17. With regard to Paragraph 37, Defendant denies that he breached the duty of care owed to Plaintiff.
18. With respect to Paragraph 41, responses to Paragraphs 1-40 are incorporated as if fully set forth herein.

19. Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations set forth in paragraph 42, and they are therefore denied, and Defendant puts Plaintiff to his strict proof thereof.
20. Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of Paragraph 43 and it is therefore denied, and Defendant puts Plaintiff to his strict proof thereof.
21. Defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of Paragraph 46, and it is therefore denied, and Defendant puts Plaintiff to his strict proof thereof.
22. With respect to Paragraph 48, responses to Paragraphs 1-47 are incorporated as if fully set forth herein.
23. With respect to Paragraph 50, responses to Paragraphs 1-49 are incorporated as if fully set forth herein.

AFFIRMATIVE DEFENSES

24. The Complaint fails to state a claim against Defendant upon which relief can be granted.
25. The Complaint fails to name an indispensable Party required for just adjudication of the Complaint.
26. Plaintiff has failed to exhaust his administrative remedies.
27. Defendant affirmatively alleges that Plaintiff's claims are barred by the legal doctrines of Official, Absolute, Qualified, Discretionary, and statutory immunity, and the immunities set forth at Minn. Stat. §§ 466.03 and 466.04. Additionally, the other statutory protections of Minnesota Statute § 466 are applicable to this case.
28. Defendant alleges affirmatively that he is immune from liability in this action under the provisions of Minn. Stat. § 466.03, subd. 5, in that Plaintiff's claims are claims based upon an act or omission of an officer or employee to exercise due care in the execution of a valid or privileged statute, charter, ordinance, resolution or rule.

29. Defendant alleges affirmatively that he is immune from liability in this action under the provisions of Minn. Stat. § 466.03, subd. 6, in that Plaintiff's claims are based upon the performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.
30. Defendant alleges affirmatively that he is a government official such that he has qualified immunity from any liability in this action.
31. Defendant alleges affirmatively that he has immunity in this action under the common laws doctrine of official immunity.
32. Defendant alleges affirmatively that liability is limited by Minn. Stat. § 466.04.
33. Defendant specifically denies any and all negligence or wrongful conduct on his part and further states that even if he were negligent, which he expressly denied, such negligence was not the direct or proximate cause of Plaintiff's alleged damages.
34. Defendant affirmatively alleges he did not violate Plaintiff's constitutional rights.
35. Defendant affirmatively alleges that Plaintiff has not stated a cognizable injury sufficient to state a claim under 42 U.S.C. § 1983 and 1988 or otherwise.
36. Defendant, at all times relevant hereto, acted in good faith, without malice and with reasonableness.
37. Defendant is without sufficient information to form a belief as to the truth of Plaintiff's alleged damage claims and, therefore, deny the same and demand strict proof thereof.
38. Defendant alleges any damages sustained by Plaintiff were caused by, due to and the result of the careless, negligent and unlawful conduct on the part of Plaintiff, or others, and Plaintiff's fault was greater than the fault of any other person.
39. Plaintiff's claims are barred by the doctrine of waiver.
40. Plaintiff's claims are barred by the applicable statute of limitations.

41. Plaintiff's claim for punitive damages is not properly pled, and even if it were, the claim cannot survive as Defendant did not engage in any misconduct of any kind.
42. Pending further discovery, these answering Defendants specifically reserve any other affirmative defenses, objections, or other defenses available to them under the applicable laws and Rules of Civil Procedure.
43. Any injury, loss, or damages that may have been sustained was directly and proximately caused by the superseding, intervening acts and omissions of a third party or parties.

WHEREFORE, Defendant prays that Plaintiff take nothing by his pretended claim for relief herein; that Defendant be given judgment against Plaintiff, dismissing Plaintiff's cause of action with prejudice; that Defendant be given judgment for costs, disbursements and attorney's fees herein and such other relief as the court may deem just and equitable.

JAMES C. BACKSTROM
DAKOTA COUNTY ATTORNEY

Dated: November 28, 2012.

By: /s/ Andrea G. White
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