

IN THE EIGHTEENTH JUDICIAL DISTRICT
SEDGWICK COUNTY DISTRICT COURT
CIVIL DEPARTMENT

SALENA BROOKS, SPECIAL)
ADMINISTRATOR OF THE ESTATE)
OF AUSTIN STEWART)

and)

SALENA BROOKS, NEXT OF KIN AND)
SURVIVOR OF AUSTIN STEWART,)

vs.)

Case No.
Pursuant to K.S.A. Chapter 60

THE COUNTY COMMISSIONERS)
OF SEDGWICK COUNTY, KANSAS;)
SHERIFF JEFFREY T. EASTER;)
DEPUTY KEITH A. RAY;)
DEPUTY JAY BAUMANN;)
SGT. MALCOLM LINK; and)
SGT. STEVEN D. TERRY)
as individuals and employees of)
SEDGWICK COUNTY, KANSAS)

PETITION

COMES NOW, the Plaintiff, by and through her counsel, David L. Miller of The Law Office of David L. Miller, LLC, and for her cause of action against the Defendants, states as follows:

1. Salena Brooks is the surviving parent and Special Administrator of the Estate of Austin Stewart, which Estate is being administered in the Probate Department of the Sedgwick County District Court Case Number 2020PR000900.

2. Defendants Sedgwick County Commissioners may be served with summons at the Sedgwick County Courthouse, 525 North Main, Suite 320, Wichita, KS 67203.
3. Jeffrey T. Easter is a resident of Sedgwick County, Kansas, and is employed as Sheriff of Sedgwick County, Kansas, and can be served at the Sedgwick County Sheriff's Office, 141 N. Elm, Wichita, Kansas 67203, and can be served at that address.
4. Deputy Keith A. Ray is a resident of Sedgwick County, Kansas, and is employed at the Sedgwick County Detention Facility, 141 N. Elm, Wichita, Kansas 67203 and can be served at that address.
5. Deputy Jay Baumann is a resident of Sedgwick County, Kansas, and is employed at the Sedgwick County Detention Facility, 141 N. Elm, Wichita, Kansas 67203 and can be served at that address.
6. Sgt. Malcolm Link is a resident of Sedgwick County, Kansas, and is employed at the Sedgwick County Detention Facility, 141 N. Elm, Wichita, Kansas 67203 and can be served at that address.
7. Sgt. Steven D. Terry is a resident of Sedgwick County, Kansas, and is employed at the Sedgwick County Detention Facility, 141 N. Elm, Wichita, Kansas 67203 and can be served at that address.

I. FACTUAL STATEMENT

8. That Austin Stewart, Deceased, was born May 11, 1982.
9. That Austin Stewart, Deceased, was incarcerated in the Sedgwick County Detention Facility (hereinafter “the Facility”) on November 30, 2018.
10. On January 5, 2019, Austin Stewart, Deceased, attempted to commit suicide by tying a sheet around his neck and jumping from the mezzanine railing in POD 5, Section C of the Facility where he was housed at that time.
11. This suicide attempt was documented under Sedgwick County Sheriff Case Number 19 S000148.
12. Mr. Stewart survived the suicide attempt on January 5, 2019, and was transported to St. Francis as a Code Yellow.
13. Suicide notes were found in Mr. Stewart’s cell at that time of the attempted suicide.
14. Due to the attempted suicide, Mr. Stewart was required to have an inmate observation form (“IOF”) completed on him.
15. Mr. Stewart was last seen by medical staff on April 25, 2019, and a 14-day extension was given for his modified suicide watch.
16. That Austin Stewart, Deceased, remained on a modified suicide watch until the time of his death by suicide in the Facility on May 4, 2019.
17. On May 4, 2019, Austin Stewart, Deceased, was a POD worker housed in POD 2 of the Facility. Inmates housed in this POD have known mental health

issues. Mr. Stewart was diagnosed with PTSD, Paranoid Schizophrenia, and bi-polar disorder.

18. That on May 4, 2019, Deputy Keith A. Ray and Deputy Jay Baumann, who was a rookie and in training, were initially assigned to POD 5 for their shift.

19. Deputy Ray's assignment was changed to POD 2 during a squad meeting.

20. Deputy Ray inquired of Sergeant Link the reason for the change. Sergeant Link stated the deputy initially assigned to POD 2 was a training deputy with a recruit.

21. Jail policy states that a training deputy and a recruit could not man POD 2, as POD 2 is required to be manned by two Crisis Intervention Trained (CIT) deputies.

22. Deputy Ray informed Sgt. Link that Deputy Baumann was also a rookie and in training. Nevertheless, Deputy Ray and Deputy Baumann were assigned to man POD 2.

23. Later, Deputy Ray was informed by Sgt. Terry that he could "rack the POD" if he felt uncomfortable with his assignment, meaning that Deputies Ray and Baumann could make all of the inmates stay in their cells during the shift.

24. Deputy Ray chose not to "rack the POD" as suggested by Sgt. Terry on May 4, 2019.

25. At approximately 5:30 p.m. on May 4, 2019, a Facility wide rack down was instituted by Master Control over the loudspeaker.

26. Despite the mandate, Deputy Ray allowed the POD workers, including Mr. Stewart, to remain outside their cells.
27. Deputy Ray knew Mr. Stewart had attempted suicide on January 5, 2019.
28. Pursuant to General Order Number 108.01, Section II.C.a., Austin Stewart should have been housed in one of the following cells: 217, 224, 301, 329, 401, 419, 701, 729, 801, 829, 1103, 1130, 1703, 1730, 2103 or 2130, which cells are video monitored. If those cells were being utilized, Mr. Stewart should have been housed in a cell where heightened observation could have been maintained.
29. The daily activity log for May 4, 2019 from 2:45 p.m. through 11:15 p.m. shows that Austin Stewart, Deceased, was not located in one of the cells pursuant to General Order Number 108.01. Not only was Austin Stewart not housed in one of the above-referenced cells, but he was not listed under the “special watches” portion of the activity log. Instead, he was housed in cell 211.
30. The Facility General Order Number 108.01, Section D, states: “An inspection of the inmate’s welfare is made as close to every 15 minutes as possible and recorded on the daily activity log.” Deputy Ray saw Austin Stewart at 3:30 p.m., 4:40 p.m., 5:02 p.m., and approximately 8:52 p.m. when handing out meds during the Med Pass.
31. The video from POD 2 shows that Deputy Baumann remained in the deputies’ booth. At various times he watched Ray on the “Med Pass.” Baumann is seen

eating snacks while sitting in front of a computer with video surveillance over the entire POD.

32. At 9:08:12 p.m., POD video shows Mr. Stewart remove a sheet from the front of his garments and tie it to the mezzanine rail.

33. At 9:09:02, Mr. Stewart drops down between the guard rail and the wall. Mr. Stewart struggled for approximately one minute, but his struggling ceased around 9:10 p.m.

34. This particular section of POD 2 is the only section that has no chain link fencing between the handrail and the upper portion of the steps.

35. Mr. Stewart's body was hanging literally feet from the door of the deputies' booth, and well within the deputies' line of sight.

36. Deputy Ray completed Med Pass at approximately 9:16 p.m. and returned to the deputies' booth, approximately six minutes after Mr. Stewart stopped struggling. At 10:18 p.m., the POD video shows Deputy Ray standing at the door of the booth and appears to be looking directly at Section D of the POD, the vicinity where Mr. Stewart is hanging.

37. At 10:24 p.m., jail trustees entered POD 2 to clean.

38. At 10:25 p.m., the POD video shows Deputy Ray going to the door of the deputies' booth, and speak with the jail trustees for approximately two minutes, with Mr. Stewart hanging just feet from where Deputy Ray is standing.

39. At 10:32 p.m., the POD video shows Deputy Ray looking at something to the right of the booth. He then brought Deputy Baumann's attention to it as well. At 10:34 p.m., Deputy Ray exited the booth and about 10 seconds later, Deputy Baumann made a frantic CODE 5 call.
40. Mr. Stewart, Deceased, hung in POD 2 for nearly 1.5 hours, just feet from the door of the deputy's booth, before the deputies discovered his body
41. The nurse who responded to the CODE 5 said the pads for her Automated External Defibrillator (AED) were not in her bag, and she asked the additional medical staff to supply her with other pads. She repeatedly told the medical staff present that the pads supplied to her did not fit her AED and were "completely worthless." Also, she did not have oxygen with her, and had to ask someone to return to the station for oxygen. She also stated that the electrodes did not connect to the AED and were "completely worthless." Further, she stated that "they ordered the wrong pads."
42. Mr. Stewart was pronounced dead at 11:01 p.m.
43. During the subsequent law enforcement investigation, the following was found written in pencil above the door to Mr. Stewart's cell: "A. Stewart Died here P022 2011," and "if you come as a ghost then leave as a ghost without a trace – Joshua Schnobel." Also, suicide notes were found in Mr. Stewart's cell.

44. Mr. Stewart used his regular blanket to hang himself, and, upon information and belief, was not equipped with a suicide blanket, in violation of General Order 108.01.

II. CAUSES OF ACTION

COUNT I

Negligence (Deputy Keith Ray)

COMES NOW the Plaintiff, Salena Brooks, Special Administrator of the Estate of Austin Stewart, Deceased, and as and for her cause of action against these Defendants based on negligence, does state, allege and aver as follows:

45. All other paragraphs contained within this Petition are incorporated herein by reference as if fully set forth herein.

46. The Sedgwick County Sheriff, the Facility, and the Facility's employees stood in a special relationship with Mr. Stewart because, having taken legal custody of Mr. Stewart, the aforementioned are under a legal duty to "take reasonable action to protect" Mr. Stewart "against unreasonable risk of physical harm." This includes harm from Mr. Stewart's own conduct. The "duty includes protecting self-destructive inmates from acting on those impulses." Estate of Belden v. Brown Cty., 46 Kan. App.2ds 247, 272, 261 P.3d 943, 962 (2011).

47. That Defendant RAY failed to take reasonable action to protect Austin Stewart, Deceased, who was suffering from significant mental health issues and had attempted suicide just four months prior to Stewart's suicide on May

4, 2019, including failing to observe Mr. Stewart every 15 minutes, in violation of General Order Number 108.01, Section D; allowing an inmate on suicide watch to be a POD worker; failing to call a rack down of POD 2, as suggested by Sgt. Terry, which allowed Mr. Stewart to freely roam within the POD; failing to make Mr. Stewart go to his cell when a facility wide rack down was called, which continued to allow Mr. Stewart to freely roam within POD 2; failing to insure that Mr. Stewart was housed in an appropriate cell in violation of General Order Number 108.01, Section II.C.a. where he could be closely monitored; failing to insure that Mr. Stewart was dressed in a suicide smock, and equipped with a suicide blanket instead of a regular bed sheet in violation of General Order Number 108.01; failing to inspect Mr. Stewart's cell where indications of Mr. Stewart's contemplation of suicide were clearly written in pencil in the cell and suicide notes; failing to closely monitor or have Defendant BAUMANN closely monitor the video surveillance in POD 2, which showed Mr. Stewart sitting on the top step of the stairway, pulling his bed sheet from the front of his pants, tying the bed sheet to the top vertical rail support, taking off his sandals, and hanging himself; and failing to ensure there was chain link fencing between the handrail and the upper portion of the steps where Mr. Stewart hung himself.

48. Defendant RAY'S failure to take reasonable action to protect Austin Stewart, was the proximate cause of Mr. Stewart's death by suicide on May 4, 2019, resulting in damages to the Plaintiff.

WHEREFORE, the Plaintiff, Salena Brooks, Special Administrator of the Estate of Austin Stewart, prays for judgment in an amount in excess of \$1,000,000.00 for the negligence of Defendant RAY, and for reasonable attorney's fees, costs and such other and further relief as is appropriate in these matters.

COUNT 2

Negligence (Deputy Jay Baumann)

COMES NOW the Plaintiff, Salena Brooks, Special Administrator of the Estate of Austin Stewart, Deceased, and as and for her cause of action against these Defendants based on negligence, does state, allege and aver as follows:

49. All other paragraphs contained within this Petition are incorporated herein by reference as if fully set forth herein.

50. That Defendant BAUMANN failed to take reasonable action to protect Austin Stewart, Deceased, including failing to observe Mr. Stewart every 15 minutes, in violation of General Order Number 108.01, Section D; allowing an inmate on suicide watch to be a POD worker; failing to call a rack down of POD 2, as suggested by Sgt. Terry, which allowed Mr. Stewart to freely roam within the POD; failing to make Mr. Stewart go to his cell when a facility wide rack down

was called, which continued to allow Mr. Stewart to freely roam within POD 2; failing to insure that Mr. Stewart was housed in an appropriate cell in violation of General Order Number 108.01, Section II.C.a. where he could be closely monitored; failing to insure that Mr. Stewart was dressed in a suicide smock, and equipped with a suicide blanket instead of a regular bed sheet in violation of General Order Number 108.01; failing to inspect Mr. Stewart's cell where indications of Mr. Stewart's contemplation of suicide were clearly written in pencil in the cell and suicide notes; failing to ensure there was chain link fencing between the handrail and the upper portion of the steps where Mr. Stewart hung himself; and failing to closely monitor the video surveillance in POD 2, which showed Mr. Stewart sitting on the top step of the stairway, pulling his bed sheet from the front of his pants, tying the bed sheet to the top vertical rail support, taking off his sandals, and hanging himself.

51. Defendant BAUMANN'S failure to take reasonable action to protect Austin Stewart, was the proximate cause of Mr. Stewart's death by suicide on May 4, 2019, resulting in damages to the Plaintiff.

WHEREFORE, the Plaintiff, Salena Brooks, Special Administrator of the Estate of Austin Stewart, prays for judgment in an amount in excess of \$1,000,000.00 for the negligence of Defendant BAUMANN, and for reasonable attorney's fees, costs and such other and further relief as is appropriate in these matters.

COUNT 3

Negligence (Sgt. Malcom Link)

COMES NOW the Plaintiff, Salena Brooks, Special Administrator of the Estate of Austin Stewart, Deceased, and as and for her cause of action against these Defendants based on negligence, does state, allege and aver as follows:

52. All other paragraphs contained within this Petition are incorporated herein by reference as if fully set forth herein.

53. That Defendant LINK failed to take reasonable action to protect Austin Stewart, Deceased, when, as shift supervisor, he assigned Defendant BAUMANN to POD 2 on May 4, 2019, knowing Defendant BAUMANN was not a CIT deputy, and instead a trainee, in violation of jail protocol that POD 2 had to be manned by two CIT deputies.

54. Upon information and belief, Defendant LINK was aware of Mr. Stewart's failed suicide attempt on January 5, 2019.

55. Defendant LINK'S failure to take reasonable action to protect Austin Stewart, was the proximate cause of Mr. Stewart's death by suicide on May 4, 2019, resulting in damages to the Plaintiff.

WHEREFORE, the Plaintiff, Salena Brooks, Special Administrator of the Estate of Austin Stewart, prays for judgment in an amount in excess of \$1,000,000.00 for the negligence of Defendants LINK and for reasonable

attorney's fees, costs and such other and further relief as is appropriate in these matters.

COUNT 4

Negligence (Sgt. Steven Terry)

COMES NOW the Plaintiff, Salena Brooks, Special Administrator of the Estate of Austin Stewart, Deceased, and as and for her cause of action against these Defendants based on negligence, does state, allege and aver as follows:

56. All other paragraphs contained within this Petition are incorporated herein by reference as if fully set forth herein.

57. That Defendant TERRY failed to take reasonable action to protect Austin Stewart, Deceased, when he assigned Defendant BAUMANN to POD 2 on May 4, 2019, knowing Defendant BAUMANN was not a CIT deputy, but instead a trainee, in violation of jail protocol that POD 2 had to be manned by two CIT deputies.

58. That Defendant TERRY was aware of Mr. Stewart's failed suicide attempt on January 5, 2019.

59. Defendant TERRY'S failure to take reasonable action to protect Austin Stewart, was the proximate cause of Mr. Stewart's death by suicide on May 4, 2019, resulting in damages to the Plaintiff.

WHEREFORE, the Plaintiff, Salena Brooks, Special Administrator of the Estate of Austin Stewart, prays for judgment in an amount in excess of

\$1,000,000.00 for the negligence of Defendant TERRY and for reasonable attorney's fees, costs and such other and further relief as is appropriate in these matters.

COUNT 5

Negligence (Sheriff Jeff Easter)

COMES NOW the Plaintiff, Salena Brooks, Special Administrator of the Estate of Austin Stewart, Deceased, and as and for her cause of action against these Defendants based on negligence, does state, allege and aver as follows:

60. All other paragraphs contained within this Petition are incorporated herein by reference as if fully set forth herein.

61. That Defendant EASTER failed to take reasonable action to protect Austin Stewart, Deceased, by failing to provide adequate and safe facilities, i.e. by failing to ensure that the section of POD 2 where Mr. Stewart committed suicide was the only section of POD 2 that had no chain link fencing between the handrail and the upper portion of the steps, which allowed Mr. Stewart to hang himself on May 4, 2019.

62. Defendant EASTER'S failure to take reasonable action to protect Austin Stewart, was the proximate cause of Mr. Stewart's death by suicide on May 4, 2019, resulting in damages to the Plaintiff.

WHEREFORE, the Plaintiff, Salena Brooks, Special Administrator of the Estate of Austin Stewart, prays for judgment in an amount in excess of

\$1,000,000.00 for the negligence of Defendant EASTER and for reasonable attorney's fees, costs and such other and further relief as is appropriate in these matters.

COUNT SIX

(Vicarious Liability of Sheriff Jeff Easter)

COMES NOW the Plaintiff, Salena Brooks, Special Administrator of the Estate of Austin Stewart, Deceased, and as and for her cause of action against the Sheriff Jeff Easter, does state, allege and aver as follows:

63. All other paragraphs contained within this Petition are incorporated herein by reference as if fully set forth herein.

64. That on May 4, 2019, Defendant EASTER was Sheriff of Sedgwick County, Kansas, and director of the Sedgwick County Jail and its employees.

65. That Defendants RAY, BAUMANN, LINK and TERRY, were employed at the Sedgwick County Jail, and acting within the scope of their employment on May 4, 2019.

66. That as a result of the negligence of Defendants RAY, BAUMANN, LINK and TERRY, Austin Stewart, Deceased, committed suicide on May 4, 2019.

67. In Defendant EASTER'S capacity as Sedgwick County Sheriff and director of the Sedgwick County Jail, he is legally responsible, under the theory of vicarious liability, for the negligence of Defendants RAY, BAUMANN, LINK,

and TERRY on May 4, 2019, which negligence resulted in the death of Austin Stewart, Deceased.

68. That as a result of the negligence of Defendant EASTER, under a vicarious liability theory, the Plaintiff has been damaged in an amount in excess of \$1,000,000.00.

WHEREFORE, Salena Brooks, Special Administrator of the Estate of Austin Stewart, hereby prays for judgment in an amount in excess of \$1,000,000.00 against Defendant EASTER, for the negligence of employees of the Sedgwick County Jail, and for reasonable attorney's fees, costs, and for such further and other relief as is appropriate in these premises.

COUNT SEVEN

(Vicarious Liability of the Commissioners of Sedgwick County, Kansas)

COMES NOW the Plaintiff, Salena Brooks, Special Administrator of the Estate of Austin Stewart, Deceased, and as and for her cause of action against the County Commissioners of Sedgwick County, Kansas, and Sedgwick County, Kansas, does state, allege and aver as follows:

69. All other paragraphs contained within this Petition are incorporated herein by reference as if fully set forth herein.

70. That on May 4, 2019, and all relevant times hereto, Defendants EASTER, RAY, BAUMANN, LINK, and TERRY were employees of Sedgwick County, Kansas, and acting within the scope of their employment.

71. That as a result of the negligence of Defendants EASTER, RAY, BAUMANN, LINK and TERRY, Austin Stewart, Deceased, committed suicide on May 4, 2019.

72. That the DEFENDANTS Sedgwick County Commissioners and Sedgwick County, Kansas, are vicariously liable for the negligence of Defendants EASTER, RAY BAUMANN, LINK and TERRY, acting within the scope of their employment, which negligence resulted in the death of Austin Stewart on May 4, 2019.

73. That as a result of the negligence of Defendants SEDGWICK COUNTY COMMISSIONERS, under a vicarious liability theory, the Plaintiff has been damaged in an amount in excess of \$1,000,000.00.

WHEREFORE, Salena Brooks, Special Administrator of the Estate of Austin Stewart, hereby prays for judgment in an amount in excess of \$1,000,000.00 against Defendants Commissioners of Sedgwick County, Kansas and Sedgwick County, Kansas, for the negligence of Sedgwick County employees, acting within the scope of their employment on May 4, 2019; and for reasonable attorney's fees, costs, and for such further and other relief as is appropriate in these premises.

III. REQUEST FOR JURY TRIAL

Plaintiff hereby requests that this matter be tried to a twelve (12) member jury.

DATED: February 18, 2022

A handwritten signature in black ink, appearing to read "David L. Miller", written over a horizontal line.

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