

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
FIFTH DIVISION

CARL BRANDON EUSEPPI,
on behalf of himself and all others similarly situated

Plaintiffs

v.

No. CV10-572-5

CYCLE BREAKERS, INC.,
WILLARD PROCTOR, JR.,
PULASKI COUNTY, ARKANSAS,
a municipal corporation of the State of Arkansas, and
CHRISTOPHER PORTER dba
COURT OUTREACH REFERRAL & PLACEMENT PROGRAM

Defendants

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Pat O'Brien Pulaski Circuit Clerk
CR1 By _____

AMENDED COMPLAINT

For his amended complaint against the defendants, the plaintiffs allege as follows:

I. Introduction and Jurisdiction

1. This is an illegal exaction suit under Ark. Const., Art. 16, § 13 ("Any citizen of any county, city or town may institute suit, in behalf of himself and all others interested, to protect the inhabitants thereof against the enforcement of any illegal exactions whatever.") for illegal probation and other fees charged and collected by the defendants without authority of law. Pulaski Circuit Court is the proper venue and the court with jurisdiction over this controversy.

2. This action is also proper under the Arkansas Civil Rights Act, Ark. Code Ann. § 16-123-105(a) *et seq.* because, at all times herein, the defendants were acting under "under color of any statute, ordinance, regulation, custom, or usage of this state or any of its political subdivisions" and under the imprimatur of justice in the name of the State of Arkansas and Pulaski County, Arkansas.

3. This action is also brought under 42 U.S.C. § 1983 because the defendants were

acting under color of law of the State of Arkansas in violation of the United States Constitution.

4. Plaintiffs also seek some declaratory relief under the Arkansas Declaratory Judgment Act, Ark. Code Ann. § 16-111-101 *et seq.*

II. Parties

A. Plaintiffs

5. Plaintiffs Carl Brandon Euseppi, Justin Clark, and Lloyd Allen Coburn are citizens and residents of Pulaski County and current or recent probationers from Pulaski County Circuit Court, Fifth Division. They paid illegal probation, drug testing, and other fees to Cycle Breakers, Inc. of more than \$1,000. Some paid over \$7,000. They are proper plaintiffs for an illegal exaction lawsuit and for the constitutional and statutory claims stated here.

6. They are suing on their own behalf and on behalf all persons who were probationers who were assessed these illegal probation fees during the entire period where they were imposed. Potentially over 1,000 persons could be class members. An accounting by defendants of all funds paid would be required to determine all the class members. Class members also report that Cycle Breakers collected restitution, and plaintiffs seek an accounting of all restitution funds to see whether the victims were paid back.

7. *Class action allegations:*

a. Illegal exaction lawsuits are class actions as a matter of law. *McGhee v. Arkansas State Bd. of Collection Agencies*, 360 Ark. 363, 201 S.W.3d 375 (2005).

b. As to the claims in this case that are constitutional and civil conspiracy tort claims, the plaintiffs are proper as class representatives under A.R.C.P. 23(a) because:

(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the

representative parties and their counsel will fairly and adequately protect the interests of the class.

c. Even the constitutional tort claims are manageable as a class claim because many people suffered the identical constitutional violations, the questions of law or fact and claims and defenses are typical, and the representative parties and their counsel¹ will fairly protect the interests of the class, and their individual damages claims are not believed to be so unique that they cannot be heard as one for judicial economy.

8. The statute of limitations has not run because of the continuing nature of the assessments against class members for years. Plaintiff's and the class members' claims go back to 2002 when Cycle Breakers Inc. was incorporated (August 16, 2002; Ark. Sec. State filing 100217073).

B. Defendants

9. Cycle Breakers, Inc., is a 503(c)(3) not-for-profit that operated as a part of the probation program of Fifth Division of Pulaski County Circuit Court. It is, to sum up the findings of the Legislative Audit report, *infra*, which is incorporated by reference as a factual basis for part of this case, the alter ego of Proctor. The agent for service is Tina Ward at 2424 Gaines Street, Little Rock, Arkansas 72206.

10. Willard Proctor was a principal in Cycle Breakers, Inc., and it and he both profited from the probation fees ordered by Proctor. Proctor's involvement in Cycle Breakers, Inc. is in substantial part responsible for Proctor being removed from his judicial office on January 25, 2010. *Arkansas Judicial Discipline and Disability Comm. v. Proctor*, 2010 Ark. 38, 2010 WL

¹ As for counsel's experience, he handled two class claims the Arkansas State Police in the 1980s for a classwide Fourth Amendment violation. One is *McElrath v. Goodwin*, 713 F. Supp. 299 (E.D.Ark. 1988), which also led to cameras in State Police cars.

271343 (Jan. 25, 2010).²

11. Pulaski County is a municipal corporation of the State of Arkansas, and, according to the Investigative Report of the Arkansas Legislative Joint Auditing Committee of August 1, 2007, Pulaski County was complicit in and a party to many of the activities of Cycle Breakers because it appropriated money from the County General Fund for the benefit of Cycle Breakers in violation of Ark. Const., Art. 12, § 5, and it derived some income from the fees assessed for Cycle Breakers by Proctor.³

12. Christopher Porter operates CORPP, Court Outreach Referral & Placement Program, an alleged drug rehabilitation program operated in conjunction with Proctor's civil probation program and Cycle Breakers. It operates at 1510 Charles Bussey, Little Rock, Arkansas, in an old Cycle Breakers building formerly owned and occupied by Proctor.

III. The Illegal Exactions

13. The Investigative Report of the Arkansas Legislative Joint Auditing Committee of August 1, 2007 (Report ID IR0933806), is Appendix A and incorporated by reference because it shows part of the legal and factual basis for this case. It is admissible in evidence under A.R.E. 803(8) & 902(5), and it appears on the website of the Division of Legislative Audit of the State

² Moreover, the propriety of this removal and the relationship with Cycle Breakers, Inc. is subject to collateral estoppel and cannot be relitigated between Proctor and Cycle Breakers and plaintiffs. 2010 Ark. 38, at pages 50-51.

³ As found by the Division of Legislative Audit, *id.* at 14 col. 2:

Other than the fact Cycle Breakers, Inc. is incorporated as a non-profit organization, this review indicated there is little division and no arms-length transactions between Cycle Breakers, Inc. and the County, Court, Program, and Judge.

of Arkansas.⁴

14. Moreover, *Arkansas Judicial Discipline and Disability Comm. v. Proctor*, 2010 Ark. 38, 2010 WL 271343 (Jan. 25, 2010), settles some of the questions in this case between Cycle Breakers, Proctor, and the plaintiff class members by collateral estoppel such that they cannot be relitigated here as to Proctor and Cycle Breakers.⁵

15. The actions of Proctor and those acting in concert with him were extortion under color of Arkansas law because Proctor and those acting in concert with him used the threat of summary imprisonment in the County Jail to make class members pay the fees in this case.

16. The class action for illegal exaction is all encompassing. The first part of relief against the defendants would be an accounting of all funds received from class members for restitution of what cannot be justified at law.

A. Illegal Probation Fees; “Civil Probation”

17. Proctor created Cycle Breakers as a Fifth Division probation program, and it was funded with illegally imposed probation fees and costs on the class members in Fifth Division.

18. In Fifth Division there was a “civil probation” program operated by Proctor and Cycle Breakers which does not exist in Arkansas law. Thus, all the fees imposed for “civil probation” were without legal authority. This included drug testing and other fees assessed against class members who were not otherwise subject to those fees.

19. The actions of Proctor do not have the protection of judicial immunity because imposing probation fees under this civil probation under the threat of summary imprisonment

⁴

<http://www.legaudit.state.ar.us/AuditReports/Investigative%20Reports/2007/CycleBreakers2007.pdf>.

⁵ The County was not a party to the judicial removal action, so it is not bound.

without any authority of law is ultra vires and completely outside his jurisdiction.⁶

**B. Revocation of "Civil Probation" Without
the Benefit of Hearing or Counsel**

20. Defendant Proctor revoked the "civil probation" of innumerable members of the class, including Clark, without giving them the benefit of a hearing, generally in violation of Ark. Code Ann. § 5-4-310, without any semblance of due process of law, or without a right to counsel in violation of this statute and the Sixth Amendment to the U.S. Constitution and Ark. Const., Art. 2, § 8. *Alabama v. Shelton*, 535 U.S. 654 (2002).

21. Some of the class members went to the Arkansas Department of Correction for many months or even years without a hearing, due process, or counsel.

22. If Proctor is immune for this action, and we do not concede it because "civil probation" was wholly without authority, plaintiffs are at least entitled to a declaratory judgment that Proctor's actions in revocations violated their constitutional and statutory rights to a hearing and counsel. Ark. Code Ann. § 16-111-101 *et seq.*

B. Bogus Rehab with CORPP

23. Proctor ordered plaintiff Clark and other class members into drug rehabilitation with defendant Porter at Court Outreach Referral & Placement Program at 1510 Charles Bussey, Little Rock, Arkansas. Clark was drug tested minutes after being put on probation and tested positive. He tested positive and was summarily revoked and ordered to rehab with Porter and ordered to pay for it or go to jail. He did not have a lawyer.

24. Defendant Porter collected from Clark at \$125 a week "in patient" (shown on

⁶ See *Stump v. Sparkman*, 435 U.S. 349, 356 (1978).

receipt as "rent + utility⁷"), \$65 "out patient," and \$750 "court consult." He collected similar fees from class members.

25. These fees were arbitrarily imposed by these defendants and bore no relationship to any services rendered. "Court consult" was nothing of any consequence.

26. Indeed, no services were rendered. CORPP provided no drug rehab services, although Clark and some of the class members were ordered to attend under threat of jail. All they did was house people at night and collect money for it weekly.

C. The Conflict of Interest from Their Income Unnecessarily Kept Plaintiffs on Probation

27. Plaintiff and class members were unnecessarily kept on probation and paying fees as a revenue source for Cycle Breakers, Proctor, and Porter in violation of their due process rights in violation of the Fourteenth Amendment to the U.S. Constitution and Ark. Const., Art. 2, §§ 8, 13 & 21 or both, and their right not to be imprisoned for debt in violation of Ark. Const., Art. 2, § 16. There was an inherent conflict of interest motivating them to be kept on probation past any reasonable time just to keep them paying.⁸

28. In Euseppi's and many class members' situations, they were ordered to undergo drug screens when they were neither a drug offender nor had a drug history. They were charged varying rates when those not on Fifth Division probation were usually paying less. On information and belief, Pulaski County and Proctor were attempting to make a profit off of drug testing, and this created a conflict of interest.

⁷ Which is an 801(d)(2) admission of a party opponent that the money was not for rehab, including an admission of a co-conspirator (801(d)(2)(v)).

⁸ Compare *Ward v. City of Monroeville*, 409 U.S. 57 (1972) (due process violated where factfinder had direct financial interest in the outcome).

29. In Clark's and many class members' situations, they were ordered to "drug rehab" with defendant Porter at Court Outreach Referral & Placement Program at extortionate rates backed up by Proctor's threat of jail if they did not pay the fees.

30. Proctor, Cycle Breakers, Proctor's probation officers, and Porter would use the threat of summary imprisonment to keep plaintiffs and the class members paying the illegal fees, and this was a gross violation of due process and a perversion of justice.

**D. Financial Benefits for Employees in
Violation of Conflict of Interest Laws and
Ultra Vires Expenditures; Constructive Trust**

31. Proctor and the Fifth Division employees and probation officers received financial benefits from Cycle Breakers in violation of Arkansas conflict of interest laws. Ark. Code Ann. §§ 19-11-701 *et seq.*, 21-8-304, 14-14-1202. (See Appendix A)

32. A building at 800 Apperson, Little Rock, Arkansas 72202 was purchased with plaintiff's and class member's money. Plaintiff requests that the building should be placed in constructive trust for the benefit of the class members, and sold if need be.

E. County's Support of a Corporation

33. Pulaski County also violated Ark. Const., Art. 12, § 5 in giving money to Cycle Breakers from taxpayer funds.

**F. Unjust Enrichment, Constructive Trust,
and Restitution; Accounting**

34. The defendants are also liable to the class members under the tort of unjust enrichment because of their collection of illegal and unnecessary fees, and an accounting and restitution should be ordered. Any assets that can be traced to illegal probation fees should be held in constructive trust pending liquidation to pay the judgment in this case.

IV. Constitutional Torts

A. First Amendment violation

35. At the Cycle Breakers "probation" meetings, under color of law and threat of imprisonment for not attending, plaintiff Coburn and class members were forced to participate in defendant Proctor and others leading prayer services and Bible readings. Expressing religion is not the business of any branch of government.

36. This violates the separation of church and state under the First Amendment to the U.S. Constitution. A probation meeting that is a prayer meeting is unconstitutional because it imposes Proctor's religious beliefs on others that they are powerless to avoid as a captive audience under threat of jail (essentially: "Listen to the Bible readings or go to jail").

37. If Proctor is immune for this action, and we do not concede it because "civil probation" was wholly without authority, plaintiffs are at least entitled to a declaratory judgment that Proctors actions in forcing religion on probationers violated their constitutional right to freedom of religion. Ark. Code Ann. § 16-111-101 *et seq.*

B. Forced Medical Procedures

38. At Cycle Breakers "civil probation" meetings, Coburn and others (the whole group present that day, potentially hundreds), under the direction of Proctor, were subjected to "health fairs" where they were forced to submit to prostate exams and blood tests (including additional DNA tests) as a condition of Proctors "civil probation" or risk going to jail. Some class members objected to these tests and were told to submit or summarily go to jail. They all complied under duress.⁹

⁹ Those who had already gotten a prostate examination were able to be exempt if they could produce medical reports that they already did, which itself violates medical privacy and HIPAA.

39. Forced medical procedures such as these violated the plaintiffs' and class members rights to be free from unreasonable searches and seizures in violation of the Fourth Amendment to the U.S. Constitution, Ark. Const., Art. 2, § 15, or both.

40. There is no remotely rational governmental purpose in a forced prostate examination or a blood test, particularly when the person from whom it is taken is not told the results of the tests. In addition, some of the class members were forced to pay for additional DNA tests beyond the one required of all convicted felons.

41. If Proctor is immune for these actions, and we do not concede it because "civil probation" was wholly without authority, plaintiffs are at least entitled to a declaratory judgment that Proctor's actions in forcing them to endure prostate examinations and blood testing without any valid governmental objective violated their constitutional rights to be free from unreasonable searches and seizures. Ark. Code Ann. § 16-111-101 *et seq.*

C. Denial of Counsel and Due Process in Revocation of "Civil Probation"

42. For Clark and the class members whose "civil probation" was revoked by Proctor without a hearing, due process, or right to counsel, they should recover compensatory damages for that statutory and constitutional violation.

43. This conduct was willful and wanton and in excess of legal authority, taking advantage of a position of power over the plaintiffs and class members, and should, therefore, justify an award of punitive damages.

44. For those who went to jail or prison, they should recover separate compensatory and punitive damages for any losses proximately caused by Proctor's and Cycle Breakers actions.

45. If Proctor is immune for these actions, and we do not concede it because "civil

V. Intentional Tort of Civil Conspiracy under Color of Law

50. All the illegal actions alleged in this complaint constitute the intentional tort of civil conspiracy with Proctor as the organizer and Cycle Breakers, his alter ego, and Porter as beneficiaries. See, e.g., *Dodson v. Allstate Ins. Co.*, 345 Ark. 430, 445, 47 S.W.3d 866, 876 (2001):

In order to prove a civil conspiracy, [one] must show a combination of two or more persons to accomplish a purpose that is unlawful or oppressive or to accomplish some purpose, not in itself unlawful, oppressive or immoral, by unlawful, oppressive or immoral means, to the injury of another. *Mason v. Funderburk*, 247 Ark. 521, 446 S.W.2d 543 (1969). Such a conspiracy is not actionable in and of itself, but recovery may be had for damages caused by acts committed pursuant to the conspiracy. *Id.* Civil conspiracy is an intentional tort requiring a specific intent to accomplish the contemplated wrong. 16 AM. JUR. 2d *Conspiracy* § 51 (1998).

52. If Proctor is immune for these actions, and we do not concede it because “civil probation” was wholly without authority, plaintiffs are at least entitled to a declaratory judgment that Proctor’s actions constituted a civil conspiracy. Ark. Code Ann. § 16-111-101 *et seq.*

VI. Tort of Outrage

53. The conduct of the defendants as to the prostate exams, the revocation of probations without due process or a right to counsel, or the forced Bible readings under threat of jail also constituted the tort of outrage under Arkansas law. See, e.g., *Kiersey v. Jeffrey*, 369 Ark. 220, 222, 253 S.W.3d 438, 441 (2007):

To establish a claim for outrage, a plaintiff must demonstrate the (1) the actor intended to inflict emotional distress or knew or should have known that emotional distress was the likely result of his conduct; (2) the conduct was “extreme and outrageous,” was “beyond all possible bounds of decency,” and was “utterly intolerable in a civilized community”; (3) the actions of the defendant were the cause of the plaintiff’s distress; and (4) the emotional distress sustained by the plaintiff was so severe that no reasonable person could be expected to endure it.

54. If Proctor is immune for these actions, and we do not concede it because “civil

probation" was wholly without authority, plaintiffs are at least entitled to a declaratory judgment that Proctor's actions constituted the tort of outrage. Ark. Code Ann. § 16-111-101 *et seq.*

VII. Prayer for Relief

55. *Illegal exactions:* For the illegal exactions alleged in Part III:

a. Under Ark. Const., Art. 16, § 13, all class members are entitled to recover any illegally exacted probation, drug testing, and any other fees imposed or collected without authority of law by the defendants.

b. Under Ark. Code Ann. § 16-123-105(a), the Arkansas Civil Rights Act, class members also entitled to the following relief:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of this state or any of its political subdivisions subjects, or causes to be subjected, any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Arkansas Constitution shall be liable to the party injured in an action in circuit court for legal and equitable relief or other proper redress.

c. While the County is not a "person"; *see* § 16-125-105(c); it is still liable under Art. 16, § 13, so it is a proper party for legal and equitable relief and otherwise.

d. Plaintiffs should have recovery against the defendants all the funds paid as illegal fees in Fifth Division or related to Cycle Breakers or CORPP.

e. Plaintiffs should also have any legal, declaratory, or equitable relief necessary to put the judgment into effect, including and accounting of all funds received and imposing a constructive trust and selling Cycle Breakers, Inc.'s building and other property to satisfy the judgment.

56. *Constitutional torts:* For the intentional constitutional torts alleged in Part IV:

a. Plaintiffs and class members forced to submit to forced prayer sessions

should recover damages for each session.

b. Plaintiffs and class members subjected to the forced prostate examinations should recover damages for each time they were required to submit. Coburn was required to do so multiple times, and so were other class members.

c. Plaintiffs and class members whose probation was revoked without a hearing or due process or a right to counsel should recover damages.

d. Plaintiffs should recover punitive damages from any defendant legally liable for them (*i.e.*, the County is not).

e. Plaintiffs should also have any legal, declaratory, or equitable relief necessary to put the judgment into effect, including imposing a constructive trust and selling Cycle Breakers, Inc.'s building and other property to satisfy the judgment.

57. *Other torts:* For the other torts of civil conspiracy, false imprisonment, and tort of outrage plaintiffs and the class members should recover compensatory and punitive damages.

58. *Declaratory judgment:* Plaintiffs and the class members should receive a declaratory judgment as alleged here as alternative relief.

59. *Other recovery:* Plaintiffs should recover their costs, reasonable litigation expenses, and attorney's fees under both a common fund theory, or the attorney's fees provision of the Arkansas Civil Rights Act, Ark. Code Ann. § 16-123-105(b), or 42 U.S.C. § 1988, or all for bringing this action for restitution and damages through the illegal exaction and the constitutional and conspiracy torts.

60. Plaintiffs and the class members demand a jury trial on any issue triable to a jury.

Respectfully submitted,


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