

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

| | | |
|---|---|------------------------|
| ANDERSON PURNELL THURSTON, |) | |
| |) | |
| Plaintiff(s), |) | No. C 08-1115 CRB (PR) |
| |) | |
| v. |) | ORDER OF SERVICE |
| |) | |
| SANTA ROSA POLICE DEP'T, et al., |) | |
| |) | |
| Defendant(s). |) | |
| <hr style="width: 40%; margin-left: 0;"/> | | |

Plaintiff, a prisoner currently incarcerated at Mule Creek State Prison in Ione, California, has filed a pro se First Amended Complaint (FAC) under 42 U.S.C. § 1983 seeking damages for the allegedly unlawful killing of his son by four City of Santa Rosa police officers – Sergeant Richard Celli, Sergeant Stephen Schwartz, Officer John Barr and Officer Brian Boettger. He also names the Santa Rosa Police Department as a defendant.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable

1 claims or dismiss the complaint, or any portion of the complaint, if the complaint
2 "is frivolous, malicious, or fails to state a claim upon which relief may be
3 granted," or "seeks monetary relief from a defendant who is immune from such
4 relief." Id. § 1915A(b). Pro se pleadings must be liberally construed, however.
5 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
7 elements: (1) that a right secured by the Constitution or laws of the United States
8 was violated, and (2) that the alleged violation was committed by a person acting
9 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

10 B. Legal Claims

11 The Fourteenth Amendment protects familial relationships from
12 unwarranted state interference. See Smith v. City of Fontana, 818 F.2d 1411,
13 1418 (9th Cir. 1987). Where state action resulting in the unlawful death of a
14 family member is alleged, surviving family members may bring a claim under §
15 1983 for violation of their due process rights in the companionship and society of
16 the decedent. See Moreland v. Las Vegas Metro. Police, 159 F.3d 365, 371 (9th
17 Cir. 1998) (substantive due process claim may be asserted by both the parents
18 and children of a person killed by law enforcement officers).¹ But allegations of
19 any sort of post-death cover up are insufficient to state an additional claim under
20 § 1983. See Guyton v. Phillips, 606 F.2d 248, 250-51 (9th Cir. 1979) (claim of
21 post-death conspiracy to cover up cause of death not cognizable); Cartwright v.
22 City of Concord, 618 F. Supp. 722, 730 (N.D. Cal. 1985) (alleged inadequacy of
23 investigation following decedent's suicide not cognizable).

24 _____
25 ¹The standard of culpability applicable to substantive due process claims
26 arising from the unintentional killing of an individual by law enforcement
27 officers is arbitrary conduct which shocks the conscience. See County of
28 Sacramento v. Lewis, 523 U.S. 833, 845-47 (1998).

1 include as exhibits all records and incident reports stemming from the events at
2 issue. If defendants are of the opinion that this case cannot be resolved by
3 summary judgment or other dispositive motion, they shall so inform the court
4 prior to the date their motion is due. All papers filed with the court shall be
5 served promptly on plaintiff.

6 b. Plaintiff's opposition to the dispositive motion shall be filed
7 with the court and served upon defendants no later than 30 days after defendants
8 serve plaintiff with the motion.

9 c. Plaintiff is advised that a motion for summary judgment
10 under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your
11 case. Rule 56 tells you what you must do in order to oppose a motion for
12 summary judgment. Generally, summary judgment must be granted when there
13 is no genuine issue of material fact--that is, if there is no real dispute about any
14 fact that would affect the result of your case, the party who asked for summary
15 judgment is entitled to judgment as a matter of law, which will end your case.
16 When a party you are suing makes a motion for summary judgment that is
17 properly supported by declarations (or other sworn testimony), you cannot simply
18 rely on what your complaint says. Instead, you must set out specific facts in
19 declarations, depositions, answers to interrogatories, or authenticated documents,
20 as provided in Rule 56(e), that contradicts the facts shown in the defendant's
21 declarations and documents and show that there is a genuine issue of material
22 fact for trial. If you do not submit your own evidence in opposition, summary
23 judgment, if appropriate, may be entered against you. If summary judgment is
24 granted, your case will be dismissed and there will be no trial. Rand v. Rowland,
25 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc) (App A).

26 /

1 Plaintiff is also advised that a motion to dismiss for failure to exhaust
2 administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your
3 case, albeit without prejudice. You must “develop a record” and present it in
4 your opposition in order to dispute any “factual record” presented by the
5 defendants in their motion to dismiss. Wyatt v. Terhune, 315 F.3d 1108, 1120
6 n.14 (9th Cir. 2003).

7 d. Defendants shall file a reply brief within 15 days of the date
8 on which plaintiff serves them with the opposition.

9 e. The motion shall be deemed submitted as of the date the
10 reply brief is due. No hearing will be held on the motion unless the court so
11 orders at a later date.

12 3. Discovery may be taken in accordance with the Federal Rules of
13 Civil Procedure. No further court order is required before the parties may
14 conduct discovery.

15 4. All communications by plaintiff with the court must be served on
16 defendants, or defendants' counsel once counsel has been designated, by mailing
17 a true copy of the document to defendants or defendants' counsel.

18 5. It is plaintiff's responsibility to prosecute this case. Plaintiff must
19 keep the court and all parties informed of any change of address and must comply
20 with the court's orders in a timely fashion. Failure to do so may result in the
21 dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).

22 SO ORDERED.

23 DATED: April 10, 2009

24 
25 _____
26 CHARLES R. BREYER
27 United States District Judge