

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

**JOHN TOPPINGS and STEPHANIE
TOPPINGS,**

PLAINTIFFS,

vs.

**THE CITY OF RENO, TEXAS, and
RENO OFFICER MATTHEW P. BIRCH**

DEFENDANTS.

§
§
§
§
§
§
§
§
§
§
§

Civil Action No:

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COME NOW, Plaintiffs, and brings this action under the United States Constitution and pursuant to 42 U.S.C. § 1983 to vindicate John and Stephanie Toppings' rights, privileges and immunities secured to them by the Fourth and/or Fourteenth Amendments of the United States Constitution, and files this, their Original Complaint. Plaintiffs further invoke the pendent jurisdiction of this Court to entertain claims arising under state law.

JURISDICTION, VENUE, AND PARTIES

1. Jurisdiction is conferred upon by this Court under and by 28 U.S.C. Sections 1331 and 1343.
2. Venue is proper in the Eastern District of Texas upon 28 U.S.C. Section 1391 as all actions of which Plaintiffs complain occurred in Lamar County, Texas.

3. Plaintiffs, JOHN TOPPINGS and STEPHANIE TOPPINGS, are married and with their minor children, resided within the city limits of the City of Reno, Lamar County, Texas at all times relevant.

4. Defendant CITY OF RENO, TEXAS (hereafter “City” or “Police Department”) is an incorporated municipality of the State of Texas and within Lamar County. The Reno Police Department is a division of the City of Reno. At all times relevant, the City of Reno maintained, managed, and/or operated the Reno Police Department. Defendant may be served with summons by serving its Mayor, Bart Jetton, 160 Blackburn St., Reno, Texas, 75462; telephone 903.517.6575.

5. Defendant MATTHEW P. BIRCH (hereafter “Birch”) was an employee, agent or servant of the Reno Police Department at all times relevant. Birch served in a supervisory capacity as the Chief of Police, and was acting under the color of state law. Defendant Birch is sued in his individual capacity for his actions undertaken while in the course and scope of his employment as such. Defendant may be served with summons at his place of business, the Reno Police Department, 160 Blackburn St., Reno, Texas, 75462; telephone 903.785.1744

FACTUAL ALLEGATIONS

6. At all times relevant, John and Stephanie Toppings were married and living with three of their minor children in the City of Reno, Texas. They were the owners and occupiers of the residential property upon which their home sat. On the afternoon of March 7, 2014, the Toppings suffered a catastrophic fire to their home.

7. The existence of the fire and need for immediate assistance was called into the 911 operator. As the fire was developing and prior to engulfing portions of the house, Reno Police

Chief Birch refused to permit the Toppings from securing items from the residential property, to include irreplaceable family heirlooms, sports memorabilia, family photographs, jewelry, etc. Defendant Birch initially prohibited the Toppings from removing their vehicle from adjacent to the home until he was able to conduct a search of the vehicle. The reason given the Toppings was to prevent them from removing possible evidence; not for any safety considerations. Prior to the Toppings leaving the smoldering remains of their home, Defendant Birch had police barrier tape placed around the property.

8. Upon information and belief, Defendant Birch has no formal training into arson investigation. Further, at no time did Defendant Birch make any inquiry of the Toppings as to the possible cause of the fire; despite Mrs. Toppings being at home with her children.

9. The following day, the Toppings arrived at their home to find that police barrier tape was still in place along their property line. As they attempted to discern what to do and what possibly could be salvaged, Reno police officers drove by the property at various times and the officers ordered the Toppings not to enter their property or they would be arrested. These orders were given in the absence of any warrant or other judicial order. Upon information and belief, Defendant Birch personally issued the order that the Toppings were not to enter onto their property and to arrest them if they attempted to do so.

10. Defendant Birch requested an investigation into the fire at the Toppings property and a State Fire Marshall's Office Investigator ("Investigator") was assigned. The Investigator interviewed Defendant Birch, who was the complainant, and was informed that the Toppings were about to be indicted, but without further elaboration. Defendant Birch made other inflammatory statements to the Investigator, none of which had anything to do with the fire. Upon a full investigation, the Investigator determined that the cause of the fire was accidental.

11. The losses suffered by the Toppings are believed to exceed \$100,000.00; exclusive of those items of a purely sentimental value.

12. By reason of the above-described acts and omissions of Defendant Birch, Plaintiffs were required to retain an attorney to institute, prosecute and render legal assistance in the instant action so that Plaintiffs might vindicate the losses and impairment of their rights. By reason thereof, Plaintiffs request payment by Defendants of reasonable attorney fees and costs pursuant to 42 U.S.C. Section 1988, the Equal Access to Justice Act or any other provision set by law.

COUNT I
PLAINTIFFS AGAINST BIRCH
For UNLAWFUL SEIZURE and DENIAL OF DUE PROCESS

13. Plaintiffs hereby incorporate and re-allege paragraphs (1) through (11) as though fully set forth at length herein.

14. During and after the fire at the Toppings residence, Reno Police Chief Birch, with the power of the State as his sole justification, ordered -- upon threat of arrest -- the Toppings from entering their private property to secure those possessions not yet damaged by the fire or fire-fighting materials/efforts. Further, Defendant Birch ordered other law enforcement officers subject to his supervision to likewise prevent the Toppings from entering upon their property and home.

15. There was no legal cause for Defendant Birch to search, detain, seize and/or deny the Toppings access to their home.

16. By reason of Birch's actions, John and Stephanie Toppings and their family were deprived of rights, privileges, immunities secured to them by the Fourth and/or Fourteenth Amendment to the Constitution of the United States and laws enacted thereunder. The denial of

access and restraint constitutes a deprivation of property without legal process. Further, the constraints imposed upon Stephanie and John Toppings were unnecessary, unreasonable, and excessive, and were therefore in violation of their Fourth and/or Fourteenth Amendment Rights. Therefore, Defendant is liable to Plaintiffs pursuant to 42 U.S.C. § 1983.

COUNT II
PLAINTIFFS AGAINST the CITY OF RENO
For MONELL LIABILITY

17. Plaintiffs hereby incorporate and re-allege paragraphs (1) through (28) as though fully set forth at length herein.

18. The misconduct of Reno Police Chief Birch described above was undertaken pursuant to the policies and practices of the City of Reno Police Department in that as a matter of both policy and practice, the City of Reno directly encourages the very type of misconduct at issue here by failing to adequately supervise and control its Police Chief and the oversee the activities and affairs of its police department, such that its failure to do so manifests deliberate indifference.

19. Municipal policy-makers are aware of, and condone and facilitate by their inaction, the failure of their Reno Police Department to properly enforce the laws of the United States and the State of Texas to investigate and discipline officers who have violated the civil rights of citizens.

20. The City of Reno has failed to adequately train its chief law enforcement officer as to his duties and responsibilities, to include the procedural requirements for obtaining a warrant in the event legal cause exists to seize, detain, and/or deny a citizen the right of access to his or her home.

21. Plaintiffs allege that these customs, policies and training deficiencies, described above, were contributing factors behind the violation of John and Stephanie Toppings' rights. Based

upon the principles set forth in *Monell v. New York City Department of Social Services*, the City of Reno is liable for the harm done to John and Stephanie Toppings as set forth above.

COUNT III
PLAINTIFFS AGAINST BIRCH
For INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

22. Plaintiffs hereby incorporate and re-allege paragraphs (1) through (28) as though fully set forth at length herein.

23. In the manner described above, Defendant Birch engaged in extreme and outrageous conduct by physically prohibiting the Toppings from entering their property without legal basis upon threat of arrest. The consequence is the loss of numerous items which cannot be replaced.

24. The actions of Defendant Birch was rooted in an abuse of power or authority, and undertaken with intent or knowledge that there was a high probability that the conduct would inflict severe emotional distress and with reckless disregard of that probability.

25. The actions set forth above were undertaken with malice, willfulness, and reckless indifference to the rights of others.

26. As a direct and proximate result of the willful and wanton conduct of Birch, the Toppings suffered severe emotional distress and physical, conscious pain and suffering as they watched helplessly as their property was destroyed not once, but twice. The first time the night of the fire, and the second, as they were continued to be denied entrance to their home; as personal property that had been damaged was now a complete loss as they were prevented from mitigating the damages.

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs, by and through their attorney, requests judgment as follows against the Defendants, and each of them:

1. That the Defendants be required to pay Plaintiffs' general damages, including emotional distress, medical and funeral expenses in a sum to be ascertained;
2. That the Defendants be required to pay Plaintiffs' special damages;
3. That the Defendants be required to pay Plaintiffs' attorney fees and expenses pursuant to Section 1988 of Title 42 of the United State Code, the Equal Access to Justice Act or any other applicable provision;
4. That Defendant Birch be required to pay punitive and exemplary damages in a sum to be ascertained;
5. That the Defendants be required to pay Plaintiffs' costs of the suit herein incurred; and
6. That the Plaintiffs have such other and further relief as this Court may deem just and proper.

PLAINTIFFS HEREBY REQUEST A TRIAL BY JURY.

Dated: This 3rd day of March, 2016.

Respectfully submitted,

/s/ David D. Davis

David D. Davis

State Bar No. 00790568

LAW OFFICE OF DAVID D. DAVIS, PLLC
P.O. Box 542915
Grand Prairie, Texas 75054-2915
972.639.3440 Telephone
972.639.3640 Facsimile
ddd@dddavislaw.net