

STATE OF MICHIGAN

IN THE 17th CIRCUIT COURT FOR THE COUNTY OF KENT

ROBERT W. BURT, JR. and
REBECCA L. BURT,

Case No. 16-04981 -NO

Plaintiffs,

Hon. GEORGE JAY QUIST
(P-43884)

vs.

KENNETH C. HOWLAND, GRANDVILLE
POLICE DEPARTMENT, AND CITY OF
GRANDVILLE,

**COMPLAINT AND DEMAND
FOR TRIAL BY JURY**

Defendants.

Keary W. Sawyer (P29416)
Attorney for Plaintiffs
SAWYER LAW OFFICES.COM, PC
418 College Avenue NE
Grand Rapids, MI 49503
(616) 451-8478

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a Judge.

NOW COME Plaintiffs, Robert William W. Burt, Jr. and Rebecca L. Burt, by and through their attorneys, Sawyer Law Offices.com, P.C., and for their Complaint against the above-named Defendants, states as follows:

GENERAL ALLEGATIONS

1. That Plaintiff, Robert W. Burt, Jr., [hereinafter "Defendant Burt"] is a resident of the City of Grandville, County of Kent, and State of Michigan.
2. That Plaintiff, Rebecca L. Burt, is a resident of the City of Grandville, County of Kent, and State of Michigan.
3. That Plaintiffs are husband and wife, with a date of marriage of May 5, 1973.
4. That Defendant Sergeant Kenneth C. Howland [hereinafter "Defendant Howland"] is a resident of the City of Grand Rapids, County of Kent, State of Michigan and at all times

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relevant to this complaint was employed as a Sergeant of the Grandville Police Department and employed by the City of Grandville.

5. That Defendant City of Grandville is a chartered municipal corporation in Kent County, State of Michigan.
6. That Defendant Grandville Police Department operates under the authority of Defendant City of Grandville and at all times relevant to the occurrences herein complained of employed Defendant Howland.
7. That all occurrences herein complained of occurred in the County of Kent, State of Michigan.
8. That the amount in controversy in this cause of action is in excess of twenty-five thousand dollars (\$25,000.00), exclusive of interest and costs.
9. That at all times relevant to the matters herein complained of, Defendant Grandville Police Department and Defendant City of Grandville were responsible for their employee, Defendant Howland's supervision, professional education, training, and activities undertaken in the course of his employment.

FACTS

10. That on or about June 2, 2014 at approximately 2057 hours, Plaintiff Burt was working in the garden at his residence located at 3727 Yellowstone Drive, Grandville, Michigan when Plaintiff noticed smoke coming from the roof of his residence and immediately ran inside the residence to alert his wife and daughter.
11. That Plaintiff Rebecca L. Burt immediately called 911 and Grandville Fire Department was dispatched to the scene.
12. That at the time of this incident, Plaintiffs were conducting a pet rescue/foster operation, in which Plaintiffs provided temporary housing for a limited amount of dogs and cats who were awaiting adoption. On the date and time of this incident, Plaintiffs were

providing temporary housing to approximately four (4) dogs and twelve (12) cats, all of which were located inside Plaintiff's residence when the fire started.

13. At approximately 21:01 hours Grandville Fire Department arrived on scene and found Plaintiff's residence was ablaze in the upper attic area with flames coming through the roof. An interior flat roof kept Grandville Fire Department from being able to control or extinguish this residential fire for over four (4) hours after eventually receiving assistance from the Wyoming Fire Department.

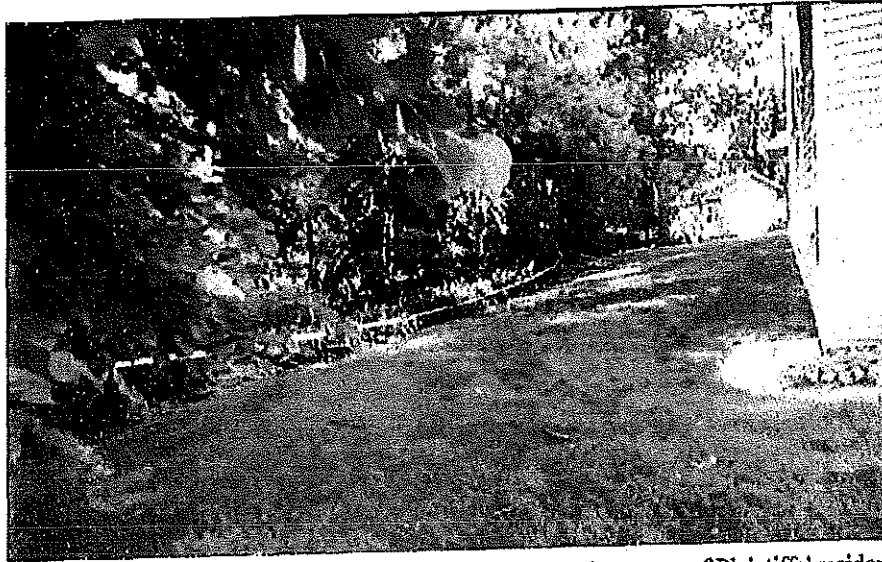


[Photo of Plaintiffs' residence on fire]

14. That just after 0200 hours on June 3, 2014, Plaintiff Burt was looking for missing cats in the wood-line on the west side of Plaintiffs' yard. While Plaintiff was in the wooded area, Defendant Howland strung up yellow police tape along the west side of Plaintiffs' yard boarding the wood-line in effect blocking Plaintiff's re-entry to his yard.
15. That as Plaintiff Burt re-entered the improved lawn area of his yard, he had to lift and go under the yellow plastic tape. At that time, Plaintiff Burt was confronted by Defendant Howland who ordered Plaintiff Burt to "stay behind the tape."
16. That Plaintiff Burt advised Defendant Howland that he (Plaintiff) was the owner of this property and that he had every right to be in his yard and that Defendant Howland had no authority to keep him (Plaintiff) off his property.

17. That Plaintiff Burt then turned and walked away from Defendant Howland, walking along the west edge of his lot.

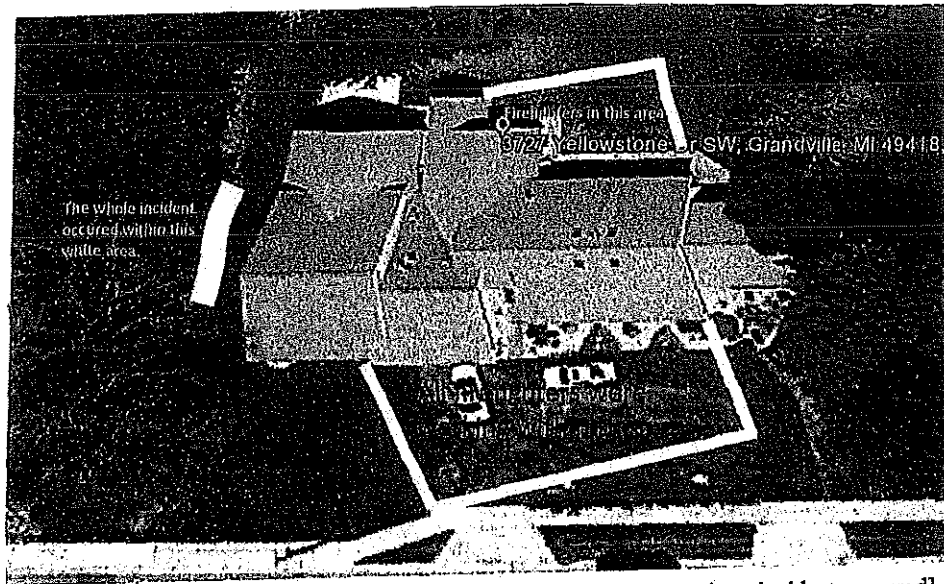
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[Photo of west lawn area of Plaintiffs' residence]

18. That when confronted by Defendant Howland, Plaintiff Burt was not attempting to enter the burning residence nor interfering with firefighters (who were not present on the west side of the residence).

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[Aerial view of Plaintiffs' residence and scene where incident occurred]

19. That Defendant Howland had been in sufficient close, personal proximity of Plaintiff Burt to know that there was no reason to suspect that Plaintiff was armed.

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20. That Defendant Howland told Plaintiff Burt he was under arrest, and as Plaintiff continued to walk away from Defendant, Defendant Howland said, "Stop or I'll tase you." Defendant Howland later reported "...[he] pulled the taser from its holster aimed at the center of Burt's back and discharged it. Burt was hit by the unit and dropped to the ground...Burt tried to get up by pushing himself up. A second shock was sent...Burt went back to the ground."¹

21. That at all times, Plaintiff Burt was non-threatening and posed no physical threat to Defendant Howland or any other officers or individuals.

22. That Plaintiff Burt had a legal right to "resist" an illegal arrest. *People v Moreno*; 491 Mich 38 (2012).

23. That Defendant Howland along with Grandville Firefighter Kevin Newman and Grandville Police Officer Farrant ultimately handcuffed and placed Plaintiff Burt under arrest.

24. That Plaintiff Burt made several attempts to advise Defendant Howland and other officers on scene that he (Plaintiff) had a pacemaker and that he (Plaintiff) was struggling to breathe and had chest pains from the taser. Regardless, Defendant Howland and others under Defendant Howland's direction pulled Plaintiff Burt's arms back with a knee in Plaintiff's back, muscling Plaintiff into handcuffs.

25. Plaintiff Burt was then transported to Kent County Correctional Facility and jailed for 12 hours.

26. That Plaintiff Burt was not initially advised of the charges but was later charged with 1) Disobey Police Officer and 2) Obstructing a Police Officer in 59th District Court in Grandville, Michigan.

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¹ Sgt. Howland's Police Report (page 3)

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27. That Plaintiff Burt hired counsel to fight the criminal charges pending against him. The charges were ultimately dismissed by way of an Order of Nolle Prosequi, which was entered by District Court Judge Peter P. Versluis on October 8, 2014 and April 21, 2015.

COUNT I

VIOLATION OF RIGHTS SECURED BY THE FOURTH AMENDMENT

OF THE CONSTITUTION

EXCESSIVE FORCE

(42 U.S.C. § 1983 – Defendant Sgt. Kenneth C. Howland)

28. That Plaintiff hereby re-alleges and restates Paragraphs 1 through 27 and every allegation previously stated is incorporated herein by reference.

29. That all of the actions taken by Defendant Howland and referred to in the preceding allegations were done while acting under color of Michigan Law as a law enforcement officer and caused the deprivation of Plaintiff Robert W. Burt's clearly-established constitutional rights under the Fourth Amendment of the United States Constitution, including:

- a) Freedom from unreasonable seizure;
- b) Freedom from unreasonable searches;
- c) Freedom from the use of excessive force; and
- d) Freedom from malicious prosecution.

30. That Defendant Howland's actions lacked objective reasonableness and were intentional, knowing, malicious, undertaken in bad faith, and/or in gross and reckless disregard for Plaintiff Burt's constitutional rights and safety.

31. That as a direct and proximate result of the violation of Plaintiff Burt's constitutional rights by Defendant Howland as heretofore alleged, Plaintiff Burt suffered significant damages and Plaintiff Burt is entitled to relief under 42 U.S.C. § 1983.

32. That as a direct and proximate result of the violation of Plaintiff Burt's constitutional rights by Defendant Howland as heretofore alleged, Plaintiff Burt suffered the

following damages, including but not limited to mental anguish, fright, shock and denial of social pleasures and enjoyments, mortification, humiliation and embarrassment, as well as pain and suffering, emotional and mental harms, post traumatic stress disorder (PTSD), legal expenses, diminished future earning potential, and medical and psychological expenses and that said losses appear to be permanent and will continue into the future.

33. That Plaintiff Robert Burt seeks all relief allowed by law, including compensatory damages, exemplary damages, punitive damages, and reasonable attorney's fees.

COUNT II

GROSS NEGLIGENCE

(Defendant Sgt. Kenneth Howland)

34. That Plaintiff hereby re-alleges and restates Paragraphs 1 through 33 and every allegation previously stated is incorporated herein by reference.
35. That Defendant Howland had a duty to exercise ordinary care and diligence to avert injury to another.
36. That Defendant Howland had the means available to avoid harming Plaintiff by exercising commonly used law enforcement techniques but failed to do so by acting willfully, wantonly, and in reckless disregard for Plaintiff Burt's safety.
37. That Defendant Howland used excessive force by firing multiple taser strikes into Plaintiff Burt's back.
38. That the taser used by Defendant Howland against Plaintiff Burt is a dangerous and potentially lethal weapon.
39. That as a direct and proximate result of Defendant Howland's gross negligence, willful and wanton misconduct, Plaintiff Burt has suffered damages as alleged in Paragraphs 32 and 33 of this Complaint and requests relief as hereinafter prayed for.

COUNT III
ASSAULT & BATTERY

(Defendant Sgt. Kenneth Howland); plead in the alternative

40. That Plaintiffs hereby re-allege and restate Paragraphs 1 through 39 and every allegation previously stated is incorporated herein by reference.
41. That Defendant Howland's aggressive and excessive use of force upon Plaintiff Burt by shooting him in the back with multiple taser strikes was an unjustifiable assault and battery upon Plaintiff Burt.
42. That Defendant Howland's assault and battery upon Plaintiff Burt was not in self-defense or in response to a threat of violence or harm and was totally unnecessary and objectively unreasonable.
43. That as a direct and proximate result of Defendant Howland's assault upon Plaintiff, Plaintiff Burt has suffered damages as previously stated in Paragraphs 32 and 33 of this Complaint.
44. That Plaintiff Burt requests a Judgment against Defendant Howland as hereinafter prayed for.

COUNT IV
RESPONDEAT SUPERIOR
FAILURE TO EDUCATE, TRAIN, AND SUPERVISE
(42 U.S.C. § 1983 - Defendant Grandville Police Department)

45. That Plaintiff hereby re-alleges and restates Paragraphs 1 through 44 and every allegation previously stated is incorporated herein by reference.
46. That Defendant Grandville Police Department [hereinafter "GVPD"], through its acts or omissions, have engaged in and continue to engage in a pattern or practice of conduct by GVPD officers that deprives persons of rights, privileges, or immunities secured or protected by the Constitution (including the Fourth and Fourteenth Amendments) and the laws of the United States.

47. That Defendant GVPD, through its acts or omissions, have engaged in and continue to engage in a pattern or practice by GVPD officers of violating clearly-established constitutional rights under the Fourth Amendment of the United States Constitution including but not limited to using excessive force, falsely arresting persons, and improperly seizing persons in the City of Grandville.

48. That Defendant GVPD was made aware of prior complaints and occurrences regarding Defendant Howland and other GVPD officers, including misuse of taser weapons, but failed to take corrective action(s).

49. That Defendant GVPD is, through its acts or omissions, engaging in a pattern or practice of systemic deficiencies that has resulted in the pattern or practice by officers that deprives persons of rights, privileges, and immunities secured or protected by the Constitution or laws of the United States described in the above paragraphs. These systemic deficiencies include, but are not limited to:

- a) Failing to implement policies, procedures, and practices regarding use of force that appropriately guide and monitor the actions of individual GVPD officers;
- b) Failing to train GVPD officers adequately to prevent the occurrence of misconduct;
- c) Failing to supervise GVPD officers adequately to prevent the occurrence of use of dangerous weapons; and specifically the use of tasers against citizens in non-threatening situations;
- d) Failing to monitor adequately GVPD officers who engage in or may be likely to engage in misconduct;
- e) Failing to implement policies and procedures whereby complaints and other allegations of GVPD officer misconduct are adequately received and investigated;
- f) Failing to investigate adequately incidents in which a GVPD officer uses force;
- g) Failing to fairly and adequately adjudicate or review citizen complaints, and incidents in which a GVPD officer uses force;
- h) Failing to discipline adequately the GVPD officers who engage in misconduct;

- i) Failing to review adequately the basis for arrests and seizures by GVPD officers;
- j) Failing to develop a mechanism to ensure timely judicial review of warrantless arrests;

50. That as a direct and proximate result of the Grandville Police Department's acts and omissions as previously alleged in Paragraphs 14 to 43, Plaintiff Burt has suffered damages as previously stated in Paragraphs 32 and 33 of this Complaint.

51. That Plaintiff Burt requests a Judgment against Defendant Grandville Police Department as hereinafter prayed for.

COUNT V

RESPONDEAT SUPERIOR

FAILURE TO EDUCATE, TRAIN, AND SUPERVISE

(42 U.S.C. § 1983 - Defendant City of Grandville)

52. That Plaintiff hereby re-alleges and restates Paragraphs 1 through 51 and every allegation previously stated is incorporated herein by reference.

53. That Defendant City of Grandville, through its acts or omissions, has engaged in and continue to engage in a pattern or practice of conduct by GVPD officers that deprives persons of rights, privileges, or immunities secured or protected by the Constitution (including the Fourth and Fourteenth Amendments) and the laws of the United States

54. That there is a direct causal link between the above-complained of conduct and omission of Defendant City of Grandville and the injuries and damages complained of by Plaintiff Burt.

55. That Defendant City of Grandville's inadequacy of training and policies has directly resulted in deliberate indifference to the constitutional rights of citizens, including the constitutional rights of Plaintiff Burt.

56. That as a direct and proximate result of the City of Grandville's acts and omissions as previously alleged in Paragraph 49 (a)-(j), Plaintiff Burt has suffered damages as previously stated in Paragraphs 32 and 33 of this Complaint.

57. That Plaintiff Burt requests a Judgment against Defendant City of Grandville as hereinafter prayed for.

COUNT VI
LOSS OF CONSORTIUM

58. That Plaintiff hereby re-alleges and restates Paragraphs 1 through 57 and every allegation previously stated is incorporated herein by reference.

59. That on and before the date of June 3, 2014, Plaintiff Rebecca L. Burt was the wife through lawful marriage to Plaintiff Robert W. Burt, Jr.

60. That Plaintiffs are husband and wife through lawful marriage which occurred on May 5, 1973.

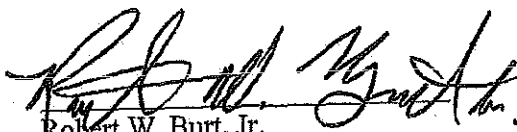
61. That as a direct and proximate result of the taser attack upon Plaintiff Burt of June 3, 2014 and the gross negligence and other misconduct and constitutional violations of Defendants as alleged in this Complaint, and as a result of the injuries also complained of in this Complaint, Plaintiff Rebecca L. Burt has suffered a loss of consortium, including the loss and companionship of her husband, Robert W. Burt, Jr., and has further sustained a consequential loss of time and energy and services in caring for her husband, as well as the mental anguish and distress in dealing with his psychological and physical injuries and their impact on their activities as a couple as herein stated and that said losses are permanent and will continue into the future.

WHEREFORE, Plaintiffs Robert W. Burt, Jr. and Rebecca L. Burt seek a Judgment in favor of Plaintiffs and against Defendants Kenneth C. Howland, Grandville Police Department, and City of Grandville, jointly and severally, in an amount to be determined by the trier of fact to fairly and adequately compensate Plaintiffs for the aforementioned damages, together with all relief allowed by law, including compensatory damages, exemplary damages, punitive damages, costs, and reasonable attorney's fees.

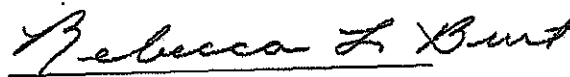
VERIFICATION:

I declare that the statements above are true to the best of my information, knowledge, and belief.

Dated: 6-2-16


Robert W. Burt, Jr.

Dated: 6-2-16


Rebecca L. Burt

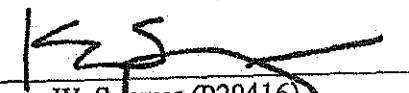
JURY DEMAND

NOW COME Plaintiffs, Robert W. Burt, Jr. and Rebecca L. Burt, by and through their attorneys, Sawyer Law Offices.com, P.C., and hereby demand a trial by jury in the above matter.

Respectfully submitted,

SAWYER LAW OFFICES.COM, P.C.

Dated: June 2, 2016

By: 
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