



IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

Dana Burdette, et al.,

Plaintiffs,

v.

Town of Harpersville, et al.,

Defendants.

CIVIL ACTION NO.:
CV 2010-900183

ORDER

This cause had previously come before the court for hearing on Plaintiff's Motion for Preliminary Injunction which the court simply held in abeyance pursuant to its Order entered on June 26, 2012. At the time of the hearing the court had not had an opportunity to review the Plaintiff's supporting deposition submissions which had not been furnished to the court until e-filed the evening of June 25, 2012. Hence, the court's non-ruling the next day.

The court was not able to review the deposition testimony and the exhibits attached thereto until the 4th of July holiday. At a time when the entire country was celebrating an individuals' "unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness," which were ultimately enshrined in the Bill of Rights, this court was appalled to discover that these unalienable rights have for some time been routinely denied by the City of Harpersville.

When viewed in a light most favorable to Defendants, their testimony concerning the City's court system could reasonably be characterized as the operation of a debtors prison. The court notes that these generally fell into disfavor by the early 1800's, though the practice appears to have remained common place in Harpersville. From a fair reading of the defendants' testimony one might ascertain that a more apt description of the Harpersville Municipal Court practices is that of a judicially sanctioned extortion racket. Most distressing is that these abuses have been perpetrated by what is supposed to be a court of law. Disgraceful.

Defendants' depositions present virtually undisputed evidence that criminal defendants appearing before the Harpersville Municipal Court have been subjected to repeated and ongoing violations of almost every safeguard afforded by the United States Constitution, the laws of the State of Alabama, and the Rules of Criminal Procedure. The admitted violations are so numerous as to defy a detailed chronicling in this short space. The court will, therefore, attempt to enumerate only the most egregious abuses committed by the Harpersville Municipal Court and its agent for probation services, JCS:

1. Defendants placed on "probation" without an adjudication or sentencing order and/or without receiving a suspended sentence;
2. Defendants placed on "probation" with JCS only when unable to pay the entire amount of assessed fines and court costs on the day of trial;
3. Defendants incarcerated for a probation violation (failure to pay, failure to appear, contempt of court...) without an adjudication or sentencing Order;
4. Defendants incarcerated for failure to appear in court, though only "ordered" to do so by JCS;
5. A defendant's failure to appear or failure to pay often results in a new criminal charge with incarceration and additional fines and fees for contempt of court with no valid court order or adjudication;
6. Defendants not afforded a hearing as required by Rule 26.11 of the Alabama Rules of Criminal Procedure;
7. Defendants placed on "extended" probation for many years beyond the two year maximum;
8. Defendants interminably held in the county work release program until all fines and fees are paid in full;
9. Defendants charged unconscionable fines and fees.
10. Defendants placed on "probation" are charged an initial "set up fee" of \$10.00 and a monthly "probation fee" of \$35.00 (arbitrarily raised to \$45.00 per month at some point in time, though the Harpersville/JCS contract allows for only \$35.00 per month) which is charged as long as the defendant is on probation. For example, under the Harpersville/JCS contract a defendant who is unable to pay a fine of \$200.00 on the day of trial is placed on probation. If that defendant paid \$50.00 per month to the

JCS probation office, the defendant will not have satisfied his probation for 14 months at a total cost of \$700.00. (JCS probation fees would be one month at \$10.00 + \$35.00 and 13 months at \$35.00-unless the defendant was charged \$45.00 per month in which case the first two monthly payments would only cover JCS charges, requiring an additional 40 months of payments totaling \$2,100.00.)

11. Multiple incarcerations were imposed upon the plaintiffs in the case at bar with no adjudication or imposition of sentence and for probation violations over which the court had absolutely no jurisdiction.

12. Fines and fees charged to the plaintiffs in the case at bar reached into the thousands upon thousands of dollars.

For some time Defendants' counsel have acknowledged to the court that some "mistakes" have been made. Many months ago the City represented to the court that an immediate review would be undertaken to correct these "mistakes." The City was to provide for the court's approval a proposed policies and procedures manual; the purpose of which was to establish and implement municipal court procedures for the City of Harpersville which simply complied with existing state laws, the Rules of Criminal Procedure, and Constitutional mandates. The court has repeatedly inquired as to the status of the City's submission of its proposed procedures. None have been forthcoming.

Through the recently filed depositions the court has now learned of the scope of the City's "mistakes." The process of establishing the policies and procedures for the Harpersville Municipal Court shall henceforth rest within the sole province of this court. Because of the Harpersville court's institutional, egregious and undisputed pattern and practice of Constitutional and statutory violations, the gravity of past abuses, and the exigent circumstances faced by criminal defendants who have been placed on "probation" by that court or who may come before that court in the near future, it is hereby ORDERED that:

1. Plaintiffs' motion to set this case for Preliminary Injunction hearing is GRANTED. This case is set for such hearing at 9:00 a.m. on August 20, 2012, at which time Plaintiffs shall be permitted to proffer additional evidence as they see fit, and Defendants shall have the opportunity to provide the court with any evidence by way of explanation or in mitigation of their deposition testimony.

2. The mayor and every member of the Harpersville City Council shall be present in person for the hearing of August 20, 2012, and shall appear at any and all subsequent hearings in this case until final resolution, or until further Order of the court. These individuals, who are the officials ultimately responsible for the operation of the City, may wish to consult with Mr. Ward regarding the consequences of one's failure to appear, especially when actually ordered by a court to do so.

Prior to the hearing, the mayor and every member of the city council shall have certified to this court in writing and under oath that he/she has read this Order and the depositions of Ward, Hall and Egan.

3. Effective immediately, and until further Order of this court, the City of Harpersville is temporarily enjoined from incarcerating any individual in either the Shelby County jail or the Shelby County Community Corrections facility without having first obtained written authorization from this court. This requirement applies only to individuals who are either subject to post-conviction proceedings, have received a suspended sentence, or have been placed on "probation."

4. Effectively immediately, no individual shall be incarcerated, nor shall an arrest warrant issue, until said individual is afforded a hearing in accordance with Rule 26.11 of the Alabama Rules of Criminal Procedure. The municipal court shall make written findings of fact from that hearing. Should the municipal court then seek authorization from this court to incarcerate the defendant, the written findings of fact shall be submitted with such request.

5. Effective immediately, an individual convicted in Harpersville Municipal Court shall have a minimum 30 days from the date of adjudication within which to remit assessed fines and court costs without incurring additional fees, penalties or other charges.

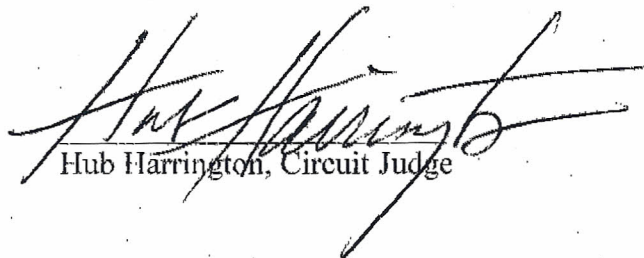
6. Should an individual be convicted in Harpersville Municipal Court and sentenced to serve any type of incarceration, the City shall so notify this court contemporaneously with the entry of such adjudication by forwarding a copy of the adjudication and sentencing Order via fax to (205) 669-8553.

7. Within 48 hours of the entry of this Order the City of Harpersville shall provide this court with a complete listing of all individuals who are currently being held by the City in any facility, providing a copy of the related incarceration Order(s). For post-conviction incarcerations as a result of alleged probation violations, failure to appear, contempt of court, and the like, the City shall also provide copies of the adjudication and sentencing Order(s) for the original underlying case(s).

8. The Clerk of Court is directed to forward a copy of this Order to the Sheriff of Shelby County, and to the Chairperson of the Board and the Executive Director of the Shelby County Community Corrections Corporation.

9. This Order shall remain in full force and effect pending further Order of this court.

DONE and ORDERED this 11th day of July, 2012.



Hub Harrington, Circuit Judge