

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

SALAH A. IBRAHIM,)	
)	
Plaintiff,)	
)	
v.)	Case No. <u>10-CV-4151-EFM/GLR</u>
)	
BOARD OF COUNTY COMMISSIONERS)	
OF OSAGE COUNTY, KANSAS, and)	
JACOB HENRY, individually and as an)	
agent of Osage County, Kansas, and)	
LAURIE DUNN, individually and as an)	
agent of Osage County, Kansas,)	
)	
Defendants.)	

Case No. 10-CV-4151-EFM/GLR

DESIGNATION OF PLACE OF TRIAL

The designated place of trial is Topeka, Kansas.

COMPLAINT

COMES NOW plaintiff, Salah A. Ibrahim, and for his causes of action against defendants, Osage County, Kansas, Jacob Henry, and Laurie Dunn, states and alleges as follows:

A. PARTIES

1. Plaintiff is a citizen of the United States and of the State of Kansas, and is a resident of the city of Eudora, Kansas.
2. Defendant Board of County Commissioners of Osage County, which is empowered to sue and be sued, as such.
3. Defendant Jacob Henry is a citizen of the State of Kansas, residing in Shawnee County, Kansas. At all times relevant herein Defendant Jacob Henry has been and is Deputy Sherriff of Defendant Osage County, Kansas.

4. Defendant Laurie Dunn is a citizen of the State of Kansas, residing in Osage County, Kansas. At all time relevant herein Defendant Laurie Dunn has been and is the Sheriff of Defendant Osage County, Kansas.

B. JURISDICTION

5. The Court has jurisdiction over this lawsuit under 28 U.S.C. §1343 and 42 U.S.C. §1983, and under the Court's pendent jurisdiction. The rights, privileges and immunities sought to be declared and redressed are those secured to plaintiff by the Fourteenth Amendment to the United States Constitution.

C. FACTS

6. Plaintiff was by birth a citizen of Iraq who came to the United States to escape political persecution and has since become a naturalized citizen of the United States.
7. Plaintiff owns several tracts of land in Osage County, Kansas, and in other places in Kansas, on which he has placed horses and cattle to graze.
8. Plaintiff is the owner of 123 acres of pasture land at 325th and Jordan Road, in Osage County, Kansas (the "Property").
9. Upon his Property, for a number of years, Plaintiff has kept horses which have been allowed to run free and graze in the ample pasture, and to drink from a free flowing spring, and stock pond. Plaintiff has provided his horses with shelter in an open barn, and beneath the many trees located upon the Property.
10. Plaintiff has thus, and at all times, provided his horses with range, shelter, food, and water.
11. During the winter seasons, and during times of drought Plaintiff has provided his horses with supplemental food and nourishment.
12. The winter of 2009-2010 was one of the harshest in memory, during which many farm animals died across the state of Kansas.

13. Plaintiff's pasture has at all pertinent times been fenced with steel chains and padlocks to protect his horses, and signed with warnings against unauthorized hunting and trespassing upon the land.
14. In February of 2010, Derrick Feliciano, a Deputy with the Osage County, Kansas Sheriff's Department, called Cheri Hayes, an independent contractor who assists in managing properties owned by Plaintiff's company, to inform her that he received a complaint about the condition of horses on the Property. Deputy Feliciano requested Ms. Hayes inform Plaintiff about the horses.
15. On or about the April 13, 2010, Ms. Hayes received another call from Deputy Feliciano. At the time, Plaintiff was in Chicago to see his family. Ms. Hayes reported to Plaintiff that Deputy Feliciano was seeking to speak with Plaintiff in response to a recent complaint he received about the condition of the horses upon the Property. Deputy Feliciano stated that he had been to the Property in response to the complaint, observed that the horses had plenty of grass, a pond from which to drink, and creek running from the pond for additional water. Nonetheless, Deputy Feliciano requested, from Ms. Hayes, that she contact Plaintiff and ask him to check on his horses.
16. Plaintiff expressed concern to Ms. Hayes about Deputy Feliciano's statements because Plaintiff had been to the Property to drop off hay just days earlier and did not notice any problems with the horses.
17. The following day, April 14, 2010, Plaintiff received a call from Defendant Henry, who informed Plaintiff that he received a complaint about the condition of the horses upon the Property. Plaintiff informed Defendant Henry that he was aware of Deputy Feliciano's investigation of the complaint. In response, Defendant Henry stated that he owned horses and based upon this, his knowledge about horses was extremely superior to that of Deputy

Feliciano. It was based upon this knowledge that Defendant Henry expressed concerns about the well-being of the horses.

18. In addition to communicating these concerns, Defendant Henry requested to take possession of two of Plaintiff's horses. To be sure, Plaintiff asked Defendant Henry of his intentions in taking these horses. Defendant Henry again stated that he himself owned horses and that he would be happy to take two of the Plaintiff's horses into his own possession if Plaintiff would agree to their surrender. Defendant Henry stated he would call Plaintiff the next day to discuss logistics of a proposed transfer.
19. Plaintiff received a call from Defendant Henry the following day, demanding that Plaintiff surrender his rights to all of the horses on the Property. Just the day before, Defendant Henry only wanted to take two of Plaintiff's horses, but now sought possession of all horses. Plaintiff asked Defendant Henry to contact his attorney about this matter.
20. On April 16, 2010, Plaintiff received a call from Defendant Henry, again inquiring of the surrender of the horses. Plaintiff denied Defendant Henry's request for surrender.
21. That same day, Plaintiff directed Steve Miller, an associate who works with Plaintiff's company, to go to the Property and ensure the horses have been cared for.
22. Upon Mr. Miller's arrival at the Property, Mr. Miller noted that representatives from the Sheriff's Department were present on the Property. Mr. Miller viewed various all terrain vehicles upon the Property, attempting to corral the horses. Mr. Miller identified himself as Plaintiff's representative and requested to speak with an unidentified uniformed law enforcement official to determine the status of the horses. That official – later determined to be Defendant Dunn – told Mr. Miller that he needed to remove himself from the Property at once. Mr. Miller asked Defendant Dunn if there was a warrant or other court

order that precluded him from being on the Property. Defendant Dunn again reiterated that Mr. Miller leave the Property at once.

23. Mr. Miller reported to Plaintiff the conversation he had with the officers, as well as his observations.
24. In response to Mr. Miller's report, Plaintiff called Defendant Henry to inquire of the status of the situation. Defendant Henry informed Plaintiff that Defendant Dunn had authorized the Department to take immediate possession of the horses. Plaintiff then asked to speak with Defendant Dunn, who informed him that she was barring Mr. Miller from the Property while the horses were rounded up. Defendant Dunn's stated basis for denying Mr. Miller entry was that his Bobcat loader – used to bring in horses and bury a horse that had not survived the winter – would alarm the horses. This statement contradicts the fact that Defendants were chasing horses around the Property on several all-terrain four wheel vehicles.
25. On April 16, 2010, the Osage County, Kansas Sheriff's Department seized 13 of Plaintiff's horses from the Property without a warrant or other court order and pursuant to custom and policy of the Osage County, Kansas Sheriff's Department and approved by Defendant Osage County.
26. Plaintiff returned to his home in Eudora the following day to discover his horses had been taken by individuals cloaked with state authority without notice or an opportunity to be heard, all in violation of his Fourteenth Amendment due process rights under the United States Constitution.
27. Plaintiff thereafter engaged services of an attorney to determine whether he could get his horses back and further, whether he was going to be charged with a crime.

28. This investigation revealed that the warrantless seizure of Plaintiff's horses was based on the opinion of a veterinarian who was asked to inspect the horses on behalf of the Osage County, Kansas Sheriff's Department. The veterinarian was identified as Teresa Tucker, DVM, of the Carbondale Pet Clinic in Carbondale, Kansas. Dr. Tucker's regular practice focuses on small animal care, not equine care.
29. Plaintiff thereafter retained the services of Dr. Michael Thorp, DVM, a licensed veterinarian located in Burlington, Kansas, to conduct an inspection of the Plaintiff's horses now being held in Emporia, Kansas. Dr. Thorp came highly recommended as a veterinarian with significant equine care experience and knowledge.
30. As Plaintiff explained the situation to Dr. Thorp, Dr. Thorp stated that he had already been contacted regarding this matter. Dr. Thorp elucidated that on the morning of April 16, 2010, he received a phone call from a woman identified as Susan Henry, requesting that he make a farm call to inspect a group of horses in Osage County, Kansas. It would later be determined that Susan Henry is the mother of Defendant Henry and that the horses to be inspected were and are Plaintiff's horses seized from his Property. Dr. Thorp asked Ms. Henry if the horses had food, water, shelter and were properly fenced in. Ms. Henry responded in the affirmative to each question and as a result, Dr. Thorp told her that the horses would be fine where they were.
31. Later on in the afternoon of April 16, 2010, Dr. Thorp received another call from Ms. Henry, requesting that he contact Defendant Henry regarding the condition of the horses on the Property. Dr. Thorp then contacted Defendant Henry, who informed him that Dr. Tucker recommended the horses be transported from the Property for veterinary care.
32. Dr. Thorp contacted Dr. Tucker to discuss Dr. Tucker's examination of the horses and proposed treatment. Dr. Tucker stated that fecal samples from the horses revealed the

presence of internal parasites. Dr. Thorp stated parasites are not uncommon coming out of the winter and can be treated onsite. As such, parasites are not a sufficient basis to support seizure of the horses.

33. Dr. Tucker relayed her opinion that there was one horse that was not healthy enough to be transported. She was unsure of the condition of the other horses because when she attempted to approach them, they would run off. Dr. Tucker also informed Dr. Thorp that a stud horse was agitating the other horses.
34. Dr. Thorp then called Defendant Henry and advised him as follows: (1) the horse that was not healthy enough to survive transport should be euthanized; (2) the stud should be separated from the other horses to permit them the opportunity graze; and (3) the horses should remain on the Property for deworming. Dr. Thorp also offered his services and those of his office to care for the horses.
35. Contrary to Dr. Thorp's recommendation, Defendant Henry seized the horses and had them transported to a facility Emporia. In doing so, the horses passed by Dr. Thorp's veterinary office despite his offer of assistance.
36. Defendant Henry prepared a Narrative Report for both his unauthorized entry on the Property on April 14, 15 and 16, 2010. None of the reports disclose his conversations with Dr. Thorp, or Dr. Thorp's recommendation. However, on April 28, 2010, well after Dr. Thorp became involved in the matter at the request of Plaintiff, Defendant Henry prepared a Narrative Report that discloses for the first time his conversations with Dr. Thorp.
37. None of the reports prepared by Defendant Henry disclose his intent to take Plaintiff's horses into his own personal possession or his solicitation of Plaintiff to gift the horses to him.

38. On or about April 2, 2010, another deputy within the Osage County, Kansas Sheriff's Department, John Knapp, was dispatched to the Property in response to a complaint about the condition of the horses.
39. Deputy Knapp also accompanied Defendant Henry during the intrusion upon the Property on April 14, 15 and 16.
40. Deputy Knapp prepared a report of his investigation of the condition of animals on the Property. Deputy Knapp first notes that upon arrival at the Property on April 2, 2010, he was unable to locate the horses and returned to his normal patrol.
41. Deputy Knapp also noted that Defendant Henry explained that the horses were in imminent need of care. Because of his lack of knowledge regarding horses and disease they may contract, he relied upon Defendant Henry's statements to support removal of the horses from the Property.
42. Defendant Henry's plan was to use his authority as a Deputy Sheriff of Osage County, Kansas to threaten and intimidate Plaintiff.
43. On April 14, 2010, while purporting to act as an investigating law enforcement officer, Defendant Henry solicited Plaintiff to gift to him several of Plaintiff's horses.
44. On the next day, April 15, 2010, Defendant Henry demanded that Plaintiff relinquish to him Plaintiff's entire herd of 13 horses, telling Plaintiff that by surrendering his horses he could avoid "further trouble" and "criminal charges." Plaintiff requested that Deputy Henry speak to Plaintiff's lawyer.
45. On the next day, working in concert and at the request of his immediate supervisor Defendant Dunn, and Susan Henry, Defendant Henry conspired to deprive Plaintiff of his property, his herd of 13 horses; of the privacy and security of his land; and of his civil right to be free from threats against his liberty.

46. In furtherance of the scheme Defendant Henry, by coercion or agreement, obtained a false opinion from Dr. Tucker that Plaintiff's horses were in danger of starvation and in need of immediate rescue.
47. Defendant Henry knew that Dr. Tucker's opinion was false, and was unsupported by competent evidence.
48. Defendant Dunn possesses the ability to carry out stated policies and procedures of the Osage County, Kansas Sheriff's Department; implement new policies and procedures; and the responsibility for all law enforcement officials and their actions in her department. Defendant Dunn ratified all of Defendant Henry's actions.
49. For the purpose of further pressuring Plaintiff, and to poison public opinion against him, Defendants, or those acting on their behalf, contacted local news media, including television station WIBW, and gave the news media false reports of dead and starving animals, and of animal abandonment and animal cruelty. In fact, during the WIBW broadcast a horse that was later seized and died under direction from Defendants can be seen eating grass.
50. At no time had Plaintiff deprived or abandoned his animals, nor had he been cruel to them.
51. Without justification, and acting in a fashion that was harmful to Plaintiff, and his property, including his horses, Defendants, acting in concert with others whose identities are presently unknown, forced their way onto Plaintiff's land, and using all terrain vehicles herded Plaintiff's horses into trailers for transport to a ranch over 40 miles distant, located near Emporia, Kansas.
52. At the time the animals were taken by Defendants they were not in need of veterinary care, they had ample range, shelter, food, and water.
53. The process of taking the horses from Plaintiff's land stresses and harmed the horses, and directly caused the death of one of the horses.

54. For the purpose of furthering their scheme, covering up the efforts of Defendant Jacob Henry to coerce Plaintiff to surrender his property, and to further cover up and conceal the illegal taking of Plaintiff's 13 horses, and the death of one, Defendants caused criminal charges to be filed against Plaintiff which they know to be unfounded and false.
55. Plaintiff has repeatedly demanded the return of his horses, which were wrongfully taken, and are wrongfully held since April 16, 2010.
56. Defendant Osage County has attempted to further coerce Plaintiff and force him to abandon his civil rights by offering to return Plaintiff's horses to him in exchange for his agreement to release the County and its officers from civil liability for their conduct.
57. Criminal charges of Cruelty to Animals and Unlawful Disposal of Dead Animals were filed against Plaintiff on April 28, 2010, in the District Court of Osage County, Kansas.
58. The criminal charges were filed in an effort to insulate Defendant Henry from his acts that violated Plaintiff's constitutional rights.
59. Defendant Osage County well knows it had no legal justification for taking Plaintiff's property, no legal justification for continuing to withhold that property from Plaintiff and no legal justification for criminal charges to be filed against Plaintiff.
60. The unlawful scheme by Defendants, its officers and agents have damaged Plaintiff's person, his business, and his property, and continues to cause him harm.
61. The Defendants, and each of them, have infringed plaintiff's constitutional rights in violation of 42 U.S.C. §1983.
62. The unconstitutional actions of Defendant Henry, Dunn, and others were representative of an official policy or custom of Defendant Osage County.
63. Defendant Henry possesses final policy making authority with respect to the illegal seizure of Plaintiff's horses.

COUNT I: Violation of 42 U.S.C. §1983

64. The allegations set forth in paragraphs 1 through 58 of this Complaint are restated as if fully set forth herein.
65. Defendant Henry alleges a higher degree of knowledge and experience of horses to act in a manner differently than other law enforcement officials, all as part of a plan to seize Plaintiff's property in violation of Plaintiff's Fourth Amendment rights.
66. Defendant Henry ignored the advice of Dr. Thorp and instead, sought a contrary opinion from Dr. Tucker, a veterinarian with much less experience and training in equine care as compared to Dr. Thorp, all in an effort to further his plan to seize Plaintiff's property in violation of Plaintiff's Fourth Amendment rights.
67. Plaintiff's refusal to surrender his horses to Defendant Henry was the motivating factor in the filing of criminal charges against plaintiff and Defendants' efforts to secure prosecution of those charges.
68. Defendants and each of them acted as herein alleged under color of state laws and regulations of the State of Kansas and Osage County by employing the criminal process to punish Plaintiff for protecting his property, to intimidate Plaintiff and to chill his protection of his property, to discredit Plaintiff by damaging his reputation, and to cause plaintiff other damages.
69. Defendants' actions against Plaintiff violated clearly established constitutional rights of which a reasonable person would have known. Defendants' actions against Plaintiff resulted in a violation of plaintiff's rights under the Fourth and Fourteenth Amendments to the United States Constitution.
70. Defendants' conduct demonstrates conscious indifference towards the rights of Plaintiff. The intentional, malicious and willful nature of such conduct by Defendants, and each of

them, and the conscious disregard of Plaintiff's rights and welfare supports the imposition of punitive damages.

71. Upon judgment, plaintiff is entitled to an award of attorney's fees and costs under 42 U.S.C. §1988.

WHEREFORE, Plaintiff prays for a judgment in his favor and against Defendants, and each of them, as follows:

(a) For an award of Plaintiff's actual damages which exceeds \$75,000, sustained as a result of defendants' actions;

(b) An award of punitive damages;

(c) For Plaintiff's costs, including reasonable attorney's fees and expenses, herein incurred and expended; and

(d) For such further and additional relief as justice may permit.

COUNT II: Trespass

72. The allegations set forth in paragraphs 1 through 68 of this Complaint are restated as if fully set forth herein.

73. Plaintiff owns the real property located at 325th and Jordan Road, in Osage County, Kansas.

74. Defendant Henry entered upon Plaintiff's property without consent or legal justification.

75. As a direct and proximate cause of Defendant Henry's unauthorized entry upon Plaintiff's property, Plaintiff has been damaged.

WHEREFORE, Plaintiff prays for judgment in his favor and against Defendant Jacob Henry as to Count II of this Complaint as follows:

(a) An award of damaged in the amount of \$75,000.00;

(b) For Plaintiff's costs incurred herein; and

(c) For such further and additional relief as justice may permit.

COUNT III: Tortious Deprivation of Property

76. The allegations set forth in paragraphs 1 through 72 of this Complaint are restated as if fully set forth herein.
77. Plaintiff possesses a proprietary interest in 13 horses located upon the real property at 325th and Jordan Road, in Osage County, Kansas.
78. Without consent or legal justification, Defendants took possession of Plaintiff's property, and continue to deprive Plaintiff of possession of his property.
79. As a direct and proximate cause of Defendant's unlawful possession of Plaintiff's property, Plaintiff has been damaged.

WHEREFORE, Plaintiff prays for judgment in his favor and against Defendant Jacob Henry as to Count III of this Complaint as follows:

- (d) An award of damaged in the amount of \$75,000.00;
- (e) For Plaintiff's costs incurred herein; and
- (f) For such further and additional relief as justice may permit.

Respectfully Submitted,

FAGAN EMERT & DAVIS, L.L.C.

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DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff Salah A. Ibrahim, and hereby demands a trial by jury of all issues herein so triable.

Respectfully Submitted,

FAGAN EMERT & DAVIS, L.L.C.

 /s/ Mark T. Emert

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