

IN THE CIRCUIT COURT OF McDONALD COUNTY, MISSOURI

JESSICA R. DULANY

Petitioner,

v.

CITY OF PINEVILLE, MISSOURI,
GREGG SWEETEN, MAYOR,
JEFFREY SCOTT DENNIS, ALDERMAN,
ROY MILLESON, ALDERMAN,
CONNOR UNDERWOOD, ALDERMAN,
CITY OF PINEVILLE MARSHAL'S OFFICE
CHRISTOPER OWENS, CITY MARSHAL
CHRISTINA POITRAS, DEPUTRY CITY MARSHAL

Case No. _____

Respondents.

Serve at: City of Pineville, Missouri
503 Main St.
Pineville, MO 64856

Gregg Sweeten
814 Highway W
Pineville, MO 64856

Jeffrey Scott Dennis
408 E. 8th St.
Pineville, MO 64856

Roy Milleson
2351 Schlessman Rd.
Pineville, MO 64856

Connor Underwood
111 Rhine St.
Pineville, MO 64856

City of Pineville Marshal's Office
207 Jesse James Rd.
Pineville, MO 64856

Christopher Owens
511 Raining Rd.

Pineville, MO 64856)
)
Christina Poitras)
18048 Kodiak Rd.)
Neosho, MO 64850)

PETITION

COMES NOW Jessica R. Dulany, by and through her attorney of record, Steven A. Hays,
and for her Petition states:

ALLEGATIONS COMMON TO ALL COUNTS

Jurisdiction and Venue

1. That this Court has subject matter jurisdiction pursuant to Mo. Const. Art. V. §14 and RSMo. §590.502.9.
2. That the Court has personal jurisdiction over all parties pursuant to RSMo. §506.500.1(1), (2), (3) and (4); §508.010.1(2); §508.010.2(1).
3. That the Court is an appropriate venue pursuant to RSMo. §508.010.1(2); §508.010.2(1) and §590.502.9.

Parties

4. That the City of Pineville ("Pineville") is a Missouri municipal corporation with its principal place of business located at 503 Main St., Pineville, County of McDonald, Missouri.
5. That Gregg Sweeten ("Sweeten") is a resident of the State of Missouri with his principal place of residence located at 814 Highway W, Pineville, County of McDonald, Missouri.

6. That Jeffrey Scott Dennis ("Dennis") is a resident of the State of Missouri with his principal place of residence located at 408 8th St., Pineville, County of McDonald, Missouri.
7. That Roy Milleson ("Milleson") is a resident of the State of Missouri with his principal place of residence located at 2351 Schlessman Rd., Pineville, County of McDonald, Missouri.
8. That Connor Underwood ("Underwood") is a resident of the State of Missouri with his principal place of residence located at 111 Rhine St., Pineville, County of McDonald, Missouri.
9. That City of Pineville Marshal's Office ("Marshal's Office") is a department of the City of Pineville, a Missouri municipal corporation, and law enforcement entity with its principal place of business located at 207 Jesse James Rd., Pineville, County of McDonald, Missouri.
10. That Christopher Owens ("Owens") is a resident of the State of Missouri with his principal place of residence located at 511 Raining Rd., Pineville, County of McDonald, Missouri.
11. That Christina Poitras ("Poitras") is a resident of the State of Missouri with her principal place of residence located at 18048 Kodiak Rd., Neosho, County of Newton, Missouri.
12. That Jessica R. Dulany ("Plaintiff") is a resident of the State of Missouri with her principal place of residence located at 324 St. John St., Neosho, County of Newton, Missouri.

Factual Allegations

13. That Plaintiff is and was at all times germane to this action a law enforcement officer as defined by RSMo. 590.502.1(5).
14. That Plaintiff was employed as a Deputy City Marshal for Pineville.
15. That Plaintiff was supervised by Owens receiving guidance, orders and job-related information from Owens.
16. That Plaintiff was provided with work related gear and job-related equipment by the Marshal's Office.
17. That at all times relevant to this Petition, Sweeten; Dennis; Underwood and Milleson were members of and in attendance at the Pineville City Council meeting dated December 20, 2022.
18. Upon information and belief, at some point in time prior to December 13, 2022 an administrative investigation was instituted by the Marshal's office and Pineville of which Plaintiff was the subject of said investigation.
19. That during said investigation as identified in paragraph 16 above, Plaintiff was never informed of the investigation in writing, the existence and nature of the alleged violation nor of the individuals who were conducting the investigation.
20. That Plaintiff was not informed within five (5) days of the conclusion of the administrative investigation of the investigative findings and/or any recommendation for further action, including discipline.
21. That a complete record of the administrative investigation, to include an entire copy of the entire record was not provided to Plaintiff upon her request, up to and including that date of filing of this petition.

22. That on or about December 13, 2022, Plaintiff was suspended from her employment by Owens, said suspension being without pay.
23. That the reason for Plaintiff's suspension failed to be in writing and failed to expound on the details of said suspension.
24. That said suspension resulted in economic loss.
25. That Plaintiff was never afforded a full due process hearing.
26. That on or about, December 13, 2022, Plaintiff was notified she "should probably", but did not have to appear before the Pineville Board of Alderman on December 20, 2022.
27. That at the Pineville Board of Alderman meeting of December 27, 2022 Plaintiff was notified she was terminated from her position as Deputy City Marshal effective immediately.
28. That during the Pineville Board of Alderman meeting of December 20, 2022 the Board of Alderman closed the hearing and mandated Plaintiff and her attorney representative wait outside of the hearing room during its deliberations on Plaintiff's continued employment.
29. That during the Pineville Board of Alderman meeting of December 27, 2022 the City Attorney was present and advising the Board of Alderman of its legal rights in reference to Plaintiff's continued employment.
30. That after the termination of Plaintiff at the Pineville Board of Alderman meeting of December 27, 2022 the Board of Alderman were requested to provide a full record of its hearing to Plaintiff and her counsel.

31. That subsequent to the request for a full record of the hearing from the Pineville Board of Alderman meeting of December 27, 2022, Sweeten advised a copy of the Board minutes were be provided to Plaintiff's counsel through the office of the Pineville City Attorney and Pineville City Clerk.
32. That a full record of the Pineville Board of Alderman meeting of December 27, 2022 has never been provided to Plaintiff or her attorney of record.
33. That Plaintiff was not allowed to rebut any allegations or take part in the Pineville Board of Alderman meeting of December 27, 2022.
34. That Plaintiff was never provided any conclusions along with written action and right of appeal notice from Pineville.

Count I
Violation of Due Process
(Pineville, Sweeten, Dennis, Milleson, Underwood)

35. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 34 as if fully set forth herein.
36. The Pineville City Council found that Plaintiff's employment was terminated on December 20, 2022, prior to a fact-finding hearing.
37. Consequently, the Pineville City Council terminated Plaintiff's employment before all facts to bas the termination were discovered and before said facts could have weighed in on the decision made.
38. In terminating Plaintiff's employment, therefore, the Pineville City Council prejudged the employment matter.

39. Under the City of Pineville, MO Employee Handbook employee disciplinary actions are determined by the employee's supervisor and monitored by management to prevent abuse.
40. Under the City of Pineville, MO Employee Handbook discipline is based on severity of violation and Pineville may use a progressive discipline policy, although is the infraction/misconduct is deemed "severe" one incident of misconduct can result in dismissal.
41. The Pineville City Council's failure to provide for a fact finding hearing prevented the Pineville City Council's ability to make an informed decision on the severity of the alleged conduct.
42. That per the City of Pineville, MO Employee Handbook disciplinary matters are determined by the employee's supervisor, not the Pineville City Council.
43. That the Pineville City Council decision to terminate Plaintiff and its failure to provide for a fact-finding hearing violated the Pineville Employee Handbook.
44. That the Pineville City Council decision to terminate Plaintiff and its failure to provide for a fact-finding hearing violated the due process clause of the U.S. Const. amend. XIV.
45. That the Pineville City Council decision to terminate Plaintiff and its failure to provide for a fact-finding hearing violated the due process clause of Mo. Const. art. I, §10.
46. The above-mentioned wrongful conduct of defendants, Pineville, Sweeten, Dennis, Milleson and Underwood, is a violation of Plaintiff's rights of due process in connection with her property interest in continued employment protected under the

due process clause of U.S. Const. amend. XIV and Mo. Const. art. I, §10 and as such, Plaintiff is entitled to the relief from said defendants prayed for hereafter.

Count II

**Violation of Law Enforcement Officer Bill of Rights RSMo. 590.502
(Pineville, Sweeten, Dennis, Milleson, Underwood, Marshal's Office, Owen)**

47. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 46 as if fully set forth herein.
48. That the Pineville City Council failed to provide Plaintiff with a full due process hearing.
49. That the Pineville City Council failed to provide Plaintiff with seven (7) days' notice of a hearing date and time.
50. That Pineville City Council failed to allow Plaintiff an opportunity to access and review documents, at least seven (7) days in advance of any hearing.
51. That Pineville City Council failed to maintain a complete record of any hearing.
52. That Pineville City Council failed to provide Plaintiff or her counsel the record of any hearing.
53. That Pineville City Council failed to make its decision to terminate Plaintiff in writing and accompanied with a finding of fact.
54. The above-mentioned wrongful conduct of defendants, Pineville, Sweeten, Dennis, Milleson, Underwood, Marshal's Office and Owens, in a violation of RSMo. 590.502 and as such, Plaintiff is entitled to the relief from said defendants prayed for hereafter.

Count III

**Civil Conspiracy to Violate RSMo. 590.502
(Sweeten, Owens, Poitras)**

55. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 54 as if fully set forth herein.
56. Outside of the scope of their duties as officials of the City of Pineville, defendants Sweeten, Owens and Poitras conspired together to end the employment of Plaintiff with Pineville, including but not limited to taking administrative employment actions upon information which they knew or should have known to be false and making police reports disparaging Plaintiff's name as well as that of her husband's.
57. Sweeten, Owens and Poitras agreed and/or understood that unlawful and/or wrongful means would be used in furtherance of said conspiracy, including, but not limited to, Poitras making false reports with the Newton County, Missouri Sheriff's Office in attempts to disparage Plaintiff's character, place into question her honesty and end her employment and/or career.
58. That as a direct and proximate result of the above said civil conspiracy and the wrongful and intentional acts taken in furtherance thereof, Plaintiff has been damaged and will continue to sustain damages, including but not limited to, her personal reputation, humiliation, lost income, mental anguish, pain and suffering, and loss of enjoyment of life.

Count IV
Claim for Judicial Review Under RSMo. §536.150
or in the Alternative Order to Remand
(Pineville, Sweeten, Dennis, Milleson, Underwood)

59. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 59 as if fully set forth herein.
60. That after the December 20, 2022 hearing, no Findings of Fact or Conclusions of Law were provided to Plaintiff as required by RSMo. §536.090.

61. That as a result, Plaintiff was deprived her due process and is entitled to a De Novo review of defendant's decision to terminate her employment; that said Court hear said evidence on the merits, make a record, determine the facts and determine whether the termination decision was unconstitutional, unlawful, arbitrary, capricious or otherwise involves an abuse of discretion based upon its independent review.
62. Plaintiff would state that defendants' actions were arbitrary and impulsive without rational basis for said decision.
63. In the alternative, Plaintiff is entitled for the Court to enter an Order remanding the cause to defendants for an entry of proper Findings of Fact and Conclusion of Law.

PRAYER

WHEREFORE, Plaintiff respectfully prays that this Court advance this case on its docket and grant her the following relief:

- A. A declaratory judgment, declaring defendants' acts herein complained to be in violation of U.S. Const. amend. XIV;
- B. A declaratory judgment, declaring defendants' acts herein complained to be in violation of Mo. Const. art. I, §10;
- C. A permanent injunction prohibiting the defendants from violating U.S. Const. amend. XIV;
- D. A permanent injunction prohibiting the defendants from violating Mo. Const. art. I, §10;
- E. An Order reinstating Plaintiff to her position as Deputy City Marshal; or in the alternative, an Order remanding this matter to the defendants for purposes of making appropriate Findings of Fact and Conclusions of Law;

- F. Lost wages, back pay, front pay, priority placement, retroactive seniority, lost benefits and any other form of relief that will make Plaintiff whole;
- G. Compensatory damages for the violation of Plaintiff's constitutional rights, and for her pain, suffering, emotional distress, damage to reputation and humiliation, in an appropriate amount to be determined;
- H. Attorney fees, court costs, pre and post judgment interest as provided by law and such other and further general relief to which Plaintiff may be entitled.

Law Office of Steven A. Hays, P.C.

By: /s/ Steven A. Hays
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