

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

DARLA JENNINGS, as guardian of  
the estate of S.W., a minor  
c/o Gerhardstein & Branch  
432 Walnut Street, Suite 400  
Cincinnati, OH 45202,

Case No. 3:08-cv-01868

Judge Katz

And

DARLA JENNINGS, as the Co-  
Administrator of the Estate of Tarika  
Wilson,  
c/o Gerhardstein & Branch  
432 Walnut Street, Suite 400  
Cincinnati, OH 45202,

FIRST AMENDED COMPLAINT  
AND JURY DEMAND

And

MICHAEL WRIGHT, as the Co-  
Administrator of the Estate of Tarika  
Wilson,  
Wright & VanNoy  
130 W. Second St. Suite 1600  
Dayton, OH 45402

And

D.W., a minor, By and through her  
natural guardian Darla Jennings,  
c/o Gerhardstein & Branch  
432 Walnut Street, Suite 400  
Cincinnati, OH 45202,

And

Sh. W., a minor, By and through her  
natural guardian Darla Jennings,  
c/o Gerhardstein & Branch  
432 Walnut Street, Suite 400  
Cincinnati, OH 45202,

And

Se. W., a minor, By and through her  
natural guardian Darla Jennings,  
c/o Gerhardstein & Branch  
432 Walnut Street, Suite 400  
Cincinnati, OH 45202,

And

T.W., a minor, By and through her  
natural guardian Darla Jennings,  
c/o Gerhardstein & Branch  
432 Walnut Street, Suite 400  
Cincinnati, OH 45202,

And

J.H., a minor, By and through her  
natural guardian Maggie Simpson,  
c/o Gerhardstein & Branch  
432 Walnut Street, Suite 400  
Cincinnati, OH 45202,

And

DARLA JENNINGS, for herself  
individually,  
c/o Gerhardstein & Branch  
432 Walnut Street, Suite 400  
Cincinnati, OH 45202,

Plaintiffs,

v.

CITY OF LIMA, OHIO  
117 E. Market Street  
Lima, OH 45801

And

JOSEPH CHAVALIA  
c/o City of Lima, Ohio  
117 E. Market Street  
Lima, Ohio 45801

Defendants.

## **I. PRELIMINARY STATEMENT**

1. This police misconduct action challenges the shooting of a 13-month-old baby and the killing of his mother as she tried to protect the baby. The mother, Tarika Wilson, and baby were shot by Defendant Sgt. Joseph Chavaliala as they huddled with Tarika's other five children in the bedroom of their home in Lima, Ohio on January 4, 2008. Tarika was unarmed and was holding her one-year-old son, plaintiff S.W., when they were shot. Defendants were present in the home to execute a search warrant as part of an extended investigation of Anthony Terry, a person who stayed at the home from time to time. Defendants could have executed the search warrant when Tarika Wilson and her children were not present. They chose instead to put all of the children and their mother in harm's way. Through this action Plaintiffs seek compensation for S.W.'s injuries and seek to end police abuse by requiring that high risk search warrant executions be limited to situations where they are truly needed and where the least amount of force necessary to the situation is employed.

2. This first amended complaint adds as Plaintiffs the Estate of Tarika Wilson, Ms. Wilson's five additional minor children (D.W., Sh.W., Se.W., T.W., and J.H) and Darla Jennings individually. Additional claims are added for each additional Plaintiff. An additional claim for original Plaintiff S.W. is added for loss of parental consortium.

## **II. JURISDICTION**

3. Jurisdiction over the federal civil rights claims is conferred on this Court by 28 U.S.C. §§ 1331 and 1343(3) and (4). Jurisdiction over the state law claims is conferred by 28 U.S.C. § 1367(a). Venue is proper in this Division.

### III. PARTIES

4. Plaintiff Darla Jennings has at all times relevant to this action been a resident of the State of Ohio. She is the grandmother of S.W. and sues as the guardian of S.W., a minor. She has been duly appointed as guardian by the probate Court of Allen County, Ohio, Case No. 2008 GD 06.

5. Plaintiff Darla Jennings has at all times relevant to this action been a resident of the State of Ohio. She is the duly appointed Co-Administrator of the Estate of Tarika Wilson and sues on behalf of the Estate.

6. Plaintiff Michael Wright has at all times relevant to this action been a resident of the State of Ohio. He is the duly appointed Co-Administrator of the Estate of Tarika Wilson and sues on behalf of the Estate.

7. Plaintiff D.W., a minor, has at all times relevant to this action been a resident of the State of Ohio. She is the daughter of Tarika Wilson and granddaughter of Darla Jennings. Darla Jennings has been duly appointed as her guardian and sues on behalf of D.W.

8. Plaintiff Sh.W., a minor, has at all times relevant to this action been a resident of the State of Ohio. She is the daughter of Tarika Wilson and granddaughter of Darla Jennings. Darla Jennings has been duly appointed as her guardian and sues on behalf of Sh.W.

9. Plaintiff Se.W., a minor, has at all times relevant to this action been a resident of the State of Ohio. She is the daughter of Tarika Wilson and granddaughter of Darla Jennings. Darla Jennings has been duly appointed as her guardian and sues on behalf of Se.W.

10. Plaintiff T.W., a minor, has at all times relevant to this action been a resident of the State of Ohio. She is the daughter of Tarika Wilson and granddaughter of Darla Jennings. Darla Jennings has been duly appointed as her guardian and sues on behalf of T.W.

11. Plaintiff J.H., a minor, has at all times relevant to this action been a resident of the State of Ohio. He is the son of Tarika Wilson and grandson of Darla Jennings and Maggie Simpson. Maggie Simpson has been duly appointed as his guardian and sues on behalf of J.H.

12. Plaintiff Darla Jennings has at all times relevant to this action been a resident of the State of Ohio and brings claims on her behalf individually.

13. Defendant City of Lima is a unit of local government organized under the laws of the State of Ohio.

14. Defendant Joseph Chavalia is a law enforcement officer employed by the City of Lima and at all times relevant to this action acted under color of law. He is sued individually and in his official capacity.

#### **IV. FACTS**

##### **A. Search Warrants Under Federal and State Law**

15. The Fourth Amendment to the United States Constitution protects the right of persons to be “secure in their houses” and prohibits “unreasonable searches and seizures.” The Amendment allows search warrants “upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.”

16. All search warrants must be executed in a reasonable manner. All force used in the execution of a search warrant must also be reasonable.

**B. The Search Warrant and Excessive Force at the Wilson Home**

17. In January 2008, Tarika Wilson was a single mother with six children: S.W., D.W., Sh. W., Se. W., T.W., and J.H.

18. The family lived in a house at 218 E. Third Street, Lima, Ohio 45804.

19. Tarika Wilson appreciated assistance and cooperated with government and social service agencies as she raised her children. Those children who were old enough attended school.

20. In the fall of 2007 the Lima Police Department was investigating Anthony Terry for drug violations. During that time the Lima Police made several buys of controlled substances from Anthony Terry at locations other than the Wilson home.

21. While Anthony Terry stayed in the Wilson home at 218 E. Third Street from time to time, he had his own residence in Lima. He was not the parent of any of the children who lived in the home but he had a close relationship with the children.

22. On the evening of January 4, 2008 Anthony Terry was present at the Wilson home along with Tarika Wilson, her children, and two dogs.

23. Defendants secured a search warrant for a search of the premises at 218 E. Third Street.

24. At approximately 8:00 p.m. on January 4, 2008, the Defendants executed the search warrant at the Wilson home without providing a reasonable time for the occupants to answer the door.

25. If Tarika Wilson had been provided an opportunity she would have opened her home to any search requested by the Defendants.

26. Defendants executed the search warrant using force with full knowledge that the dogs, minor children, and their mother were present in the home.

27. During the execution of the warrant Anthony Terry was arrested and the two dogs were shot to death on the first floor. Anthony Terry was not armed when arrested.

28. During the execution of the search warrant Defendant Joseph Chavalia encountered Tarika Wilson and her six children who were in a bedroom upstairs. None of the family members were armed.

29. Defendant Chavalia shot S.W. causing serious injury. S.W. was a baby, 13 months old. S.W. was being held in his mother's arms at the time S.W. was shot.

30. At the time he was shot, S.W. was not armed and posed no risk to the safety of any family members, Defendant Chavalia or any of the other officers executing the search warrant.

31. Defendant Chavalia also shot Tarika Wilson causing her death.

32. At the time she was shot Tarika Wilson was not armed and posed no risk to the safety of any family members, Defendant Chavalia or any of the other officers executing the search warrant.

33. The shooting of S.W. was excessive, unreasonable and completely unnecessary.

34. The shooting of Tarika Wilson was excessive, unreasonable and completely unnecessary.

35. The shooting of Tarika Wilson in front of her six children was excessive, unreasonable, completely unnecessary, outrageous and shocks the conscience.

36. In attempting to execute the search warrant, Defendants did not provide reasonable notice to the persons at the residence that law enforcement officers were seeking entry to and / or were present in the residence.

37. The use of deadly force by Defendants in executing the search warrant at the Wilson home on January 4, 2008 was excessive, unreasonable and undertaken knowing that the plan posed an unreasonable risk to innocent children including S.W., D.W., Sh. W., Se. W., T.W., and J.H.

### **C. Policies and Practices, Abuse of Power**

38. The search conducted of Plaintiffs was unreasonable. The search was part of a pattern and practice by Defendants of executing search warrants at night without knocking and announcing the presence of law enforcement and without providing residents a reasonable opportunity to respond to the knock.

39. Defendant Chavalia has acted negligently, intentionally, recklessly, wantonly, and with deliberate indifference to the constitutional rights of the Plaintiffs.

40. The Defendants, through their customs, policies, patterns and practices have each acted negligently, intentionally, recklessly, wantonly, and with deliberate indifference to the constitutional rights of the Plaintiffs.

41. The actions of the Defendants reflect an arbitrary abuse of government power, which shocks the conscience.

42. The policies, customs, patterns and practices of Defendants were the moving force behind the constitutional violations suffered by the Plaintiffs.

43. Although the policy makers were on notice of the obvious need to train and supervise police in these areas, Defendants failed to train and supervise the individual

police officers who conducted this search in proper use of tactical teams, proper tactical decision making, proper tactical investigations, proper surveillance, proper development of an operational plan, proper search procedures, proper use of force procedures and proper procedures regarding the investigation of serious crimes. As such, Defendants were deliberately indifferent to the rights of citizens subject to investigation and searches, including the Plaintiffs.

**D. Injuries and Damage**

44. As a result of the wrongful acts of Defendants the Plaintiff S.W. has endured extensive medical care and suffered permanent physical and psychic injury, pain and trauma, severe emotional distress and mental anguish, and numerous other physical, emotional, and psychological injuries.

45. Plaintiffs D.W., Sh. W., Se. W., T.W., and J.H. have suffered psychic injury, pain and trauma, severe emotional distress and mental anguish, and numerous other emotional and psychological injuries.

46. Tarika Wilson suffered serious physical and psychic injury, pain, and trauma prior to her death.

47. Plaintiff Darla Jennings suffered psychic injury, pain and trauma, severe emotional distress and mental anguish, and numerous other emotional and psychological injuries. In addition, she has incurred medical and legal expenses.

**V. FIRST CLAIM FOR RELIEF - §1983**

48. The Defendants have, under color of law, deprived Plaintiffs of clearly established rights, privileges and immunities secured by the Fourth and Fourteenth Amendments to the United States Constitution of which a reasonable person would have known. These

rights include, but are not limited to, the right to due process of law, right to be free from excessive force, and the right to be free of unreasonable searches and seizures.

#### **VI. SECOND CLAIM – WRONGFUL DEATH**

49. Tarika Wilson was shot and died as a result of injuries inflicted by the wrongful conduct of Defendants. Her death was preceded by conscious pain and suffering. The death of Tarika Wilson resulted in damages to her next-of-kin pursuant to Ohio Revised Code Section 2125.02.

#### **VII. THIRD CLAIM – ASSAULT AND BATTERY**

50. Defendant Chavalia has intentionally and maliciously applied and threatened to apply unlawful and unnecessary force to Plaintiff S.W. Tarika Wilson, and Plaintiffs .W., Sh. W., Se. W., T.W., and J.H.

#### **VIII. FOURTH CLAIM– NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

51. Defendants have negligently inflicted serious emotional distress on Plaintiffs.

#### **IX. FIFTH CLAIM – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

52. Defendant Chavalia has intentionally inflicted serious emotional distress on Plaintiffs.

#### **X. SIXTH CLAIM –LOSS OF CONSORTIUM (PARENT)**

53. Plaintiffs S.W. D.W., Sh. W., Se. W., T.W., and J.H. have all suffered the loss of consortium of their mother, Tarika Wilson.

#### **XI. SEVENTH CLAIM –LOSS OF CONSORTIUM (CHILD)**

54. Plaintiff Darla Jennings has suffered the loss of consortium of her daughter, Tarika Wilson.

## **XI. JURY DEMAND**

55. Plaintiffs request a jury on all claims triable to a jury.

## **XII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that this Court:

- A. Award Plaintiffs compensatory damages against Defendants in an amount to be shown at trial;
- B. Award Plaintiffs punitive damages against Defendant Chavalia as appropriate, but not against any units of government, in an amount to be shown at trial;
- C. Award Plaintiffs reasonable attorney fees pursuant to 42 U.S.C. § 1988 and any other applicable law;
- D. Award Plaintiffs prejudgment interest and post judgment interest;
- E. Award Plaintiffs such other and further relief, as the Court deems appropriate.

Respectfully submitted,

/s/ Alphonse A. Gerhardstein  
Alphonse A. Gerhardstein (0032053)  
Trial Attorney for Plaintiffs  
Jennifer L. Branch (0038893)  
Attorney for Plaintiffs  
GERHARDSTEIN & BRANCH CO. LPA  
432 Walnut Street #400  
Cincinnati, Ohio 45202  
(513) 621-9100  
agerhardstein@gbfirm.com  
jbranch@gbfirm.com

Derek Sells (*pro hac vice*)  
Tracey L. Brown (*pro hac vice*)  
The Cochran Firm  
Woolworth Building

233 Broadway, 5th Floor  
New York, NY 10279  
(212) 553-9120  
DSells@cochranfirm.com  
TBrown@cochranfirm.com

**OF COUNSEL**  
**AS TO PLAINTIFFS DARLA**  
**JENNINGS, MICHAEL WRIGHT,**  
**D.W., SH. W., SE. W., AND T.W.**  
Michael Wright (0067698)  
Wright & VanNoy  
130 W. Second St. Suite 1600  
Dayton, OH 45402  
(937) 222-7477  
mwright@wrightandvannoy.com

Cheryl Washington (0038012)  
C.R. Washington Co. LPA  
130 W. Second Street Suite 1600  
Dayton, OH 45402  
(937) 222-2841  
cheryl@crwashingtoncolpa.com

**OF COUNSEL**  
**AS TO J.H. ONLY**  
Karri Mitchell  
Michigan No. P42028  
21900 Greenfield Rd.  
Oak Park, MI 48237  
(248) 968-2400