

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

CASE NO.:
DIVISION:

SCOTT O'CONNELL,

Plaintiff,

v.

RUSTY RAY RODGERS, an individual,
and the FLORIDA DEPARTMENT OF LAW
ENFORCEMENT,

Defendants.

COMPLAINT

Plaintiff, SCOTT O'CONNELL, by and through his undersigned counsel, hereby sues Defendants, RUSTY RAY RODGERS, individually, and the FLORIDA DEPARTMENT OF LAW ENFORCEMENT, and alleges as follows:

JURISDICTION, VENUE AND PARTIES

1. This is an action for damages in excess of the \$15,000.00 jurisdictional limits of this Court.
2. Plaintiff, SCOTT O'CONNELL is, and was at all times material to this action, a resident of St. Johns County, Florida.
3. Defendant, the FLORIDA DEPARTMENT OF LAW ENFORCEMENT ("FDLE") is an agency of the State of Florida, with a field office located in St. Johns County, Florida.

4. Defendant, RUSTY RAY RODGERS ("Rodgers") is, upon information and belief, a resident of Duval County, Florida. At all times material hereto, Rodgers was employed by the FDLE.

5. The events giving rise to this action occurred in St. Johns County, Florida. Venue is proper in St. Johns County, Florida. The tortious conduct occurred in St. Johns County, Florida.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

6. These claims arose from an FDLE investigation into the September 2, 2010 suicide of Michelle O'Connell in St. Augustine, Florida. Michelle O'Connell was Scott O'Connell's youngest sister.

7. Scott O'Connell was employed as a Deputy Sheriff with the St. Johns County Sheriff's Office ("SJSO") from July 16, 2007 until April 27, 2012.

8. On September 2, 2010, at approximately 11:20 p.m., officers of the SJSO responded to a 911 call placed by Jeremy Banks (also a SJSO Deputy Sheriff), that his girlfriend, Michelle O'Connell, had just shot herself with his duty weapon. Ms. O'Connell was declared deceased at 11:48 p.m., and an investigation of the incident was immediately commenced by the SJSO.

9. The SJSO's investigation determined Michelle O'Connell's death to be a suicide. Two days after her death, Dr. Frederick Hobin, Office of Medical Examiner of the Seventh Judicial Circuit of Florida, made an official determination the death was the result of a self-inflicted gunshot wound and the manner of death was suicide.

10. In February 2011, at the request of Sheriff David Shoar, the FDLE began an independent review of the case under the supervision of FDLE Special-Agent-in-Charge, Dominic Pape ("SAC Pape"), and in conjunction with staff from the State Attorney's Office of

the 7th Judicial Circuit, (the "SAO 7th"). SAC Pape assigned the case to his subordinate, Agent Rusty Rodgers. Rodgers' investigation took place primarily out of the St. Augustine, St. Johns County FDLE field office.

11. From the outset of his investigation, Rodgers operated under his predetermined theory and conclusion Jeremy Banks was criminally culpable in the death of Michelle O'Connell. No less than nine days after beginning his review of the case, Rodgers began addressing this case verbally and in documents as a "homicide", and began referring to the scene of the death as the "crime scene" notwithstanding conclusive facts demonstrating suicide. Rodgers repeatedly made these references to investigative witnesses, including Michelle's family members, prior to and during what were suppose to be objective, investigative interviews.

12. Throughout his review and investigation of the case, Rodgers engaged in patently wrongful conduct which evidenced a biased intent to advance his predetermined theory Michelle O'Connell was the victim of a brutal homicide committed by Jeremy Banks. Among his many unlawful and egregious actions, Rodgers purposefully withheld vital, exculpatory evidence and provided false and purposefully misleading information to the Court, medical examiners, the SJSO and others associated with the case, in a calculated attempt to have Jeremy Banks charged with murder.

13. From the beginning of his involvement, Rodgers initiated and maintained an inappropriately close relationship with Scott O'Connell, with the express purpose of manipulating Scott into believing his sister had been brutally shot by Banks in an execution-style murder as she was trying to leave his home after breaking off their relationship.

14. Rodgers knew Scott O'Connell was completely devastated by Michelle's tragic and sudden death. Rodgers learned Scott had been especially close to and protective of his youngest sister, and that he had personally introduced her to Jeremy Banks. As such, Rodgers

knew or should have known Scott O'Connell was particularly impressionable and susceptible to his opinions and innuendo regarding the cause of his sister's death, as well as extremely vulnerable to emotional and mental distress.

15. Rodgers used his apparent position of authority as the official investigator on the case to further his own interests in having Banks indicted, by convincing Scott O'Connell (and thus, the O'Connell family) that Jeremy Banks was guilty of a brutal murder of Michelle.

16. Rodgers' efforts to manipulate and effectively "brainwash" Scott O'Connell into believing his homicide theory included the following:

a. Rodgers repeatedly made false and derogatory statements to O'Connell regarding Sheriff David Shoar, Chief Medical Examiner Bulic, and other law enforcement officials involved in the case, in order to convince O'Connell to distrust their motives in finding and ruling Michelle's death a suicide, (including, by example, accusations Dr. Bulic and Sheriff Shoar were in "cahoots," that Dr. Bulic was getting "kickbacks," and implications the SJSO was attempting to cover up a homicide by one of their own deputies);

b. Rodgers repeatedly encouraged Scott O'Connell to trust and remain loyal to him only, rather than the other law enforcement officials, and began acting more like a friend and advocate for the O'Connell family than an unbiased investigator;

c. Rodgers constantly called O'Connell on his cell phone, (often dominating Scott's personal time with his fiancé during long calls), to talk about his perspective of the case and his version of the facts (cell phone records reveal over 14 hours of calls from Rodgers to O'Connell, including an 86 minute call giving Scott his own account of what "happened" the night of Michelle's death, including statements that Michelle had been "kneeling while begging for her life," that Banks had fired a "terror shot" and then murdered her by shoving a gun in her mouth ... all of which was totally unsupported by evidence and fabricated for effect);

d. Rodgers repeatedly and purposefully provided O'Connell with fabricated evidence and misleading information to lend support to his theory Michelle had been murdered by Jeremy Banks (for instance, telling O'Connell an expert had found "high velocity blood splatter" inside Jeremy Banks shirt, and that witnesses "heard your baby sister screaming" for her life);

e. Rodgers purposefully omitted and failed to disclose to O'Connell exculpatory evidence known to him;

f. Rodgers repeatedly referred to Jeremy Banks using derogatory and inflammatory language, such as "Shithead," and expressly told O'Connell he needed to carry an off-duty weapon to protect himself and his pregnant fiancé from violence by Banks;

g. Rodgers told O'Connell he had evidence Jeremy Banks had physically and emotionally abused Michelle and caused harm to her young daughter, O'Connell's niece;

h. Rodgers fabricated information about Jeremy Banks' prior relationships, including that Banks "preyed on vulnerable girls" and had a "track record" of violence with women;

i. Rodgers repeatedly made inappropriate statements to Scott such as, "I shouldn't be telling you this," and "if you ever burn me, I will call you a f_____g liar."

j. Rodgers specifically told O'Connell the SJSO and the State Attorney for the 7th Judicial Circuit had mishandled the case, and convinced him the family should hire an attorney to file a civil action against SJSO.

17. Given Scott O'Connell's vulnerable and highly emotional state of mind (of which Rodgers was well aware), Rodgers' actions ultimately provoked O'Connell toward behavior which resulted in him being fired from his job with the SJSO in April 2012.

18. On December 6, 2011, the Governor of the State of Florida appointed Special Prosecutor Brad King of the State Attorney's Office of the 5th Judicial Circuit (the "SAO 5th") to an independent investigation of this case.

19. In early March, 2012, Rodgers specifically told Scott O'Connell the SAO 5th would be filing a grand jury indictment on Banks, and that it should be "a done deal" in a week. No such information had even been communicated to Rodgers and no such implication had been made.

20. On March 12, 2013, the SAO 5th and Special Prosecutor King published the findings of their investigation, which supported and affirmed the SJSO's and the Medical Examiner's findings of suicide.

21. Prior to their learning of the SAO 5th's findings, State Attorney Brad King called the O'Connell family to his offices to advise them of the outcome of his investigation. Relying on Rodgers' previous representations, Scott O'Connell and his family expected Mr. King to inform them Jeremy Banks would be referred to grand jury indictment for the murder of Michelle. Upon ultimately being told the SAO 5th had also determined the cause of Michelle's death to be suicide rather than homicide, and the evidence did not support any criminal charge against Banks, Scott O'Connell had an extreme emotional reaction, which included lashing out in anger at State Attorney King.

22. Upon walking out of the meeting, Scott O'Connell called Rodgers and vented his anger toward the SAO 5th and the SJSO. Immediately after that phone call, Rodgers called SJSO to report Scott O'Connell was "a possible active shooter" notwithstanding no such indication had been made by O'Connell. Based upon this incident, Scott O'Connell was terminated from his employment with the SJSO.

23. All conditions precedent to be complied with prior to filing this action have occurred. Pursuant to §768.28, Fla.Stat., Scott O'Connell notified the FDLE and the Florida Department of Financial Services of these claims more than six months prior to filing this action, and these claims were not resolved.

**COUNT I – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Against Agent Rodgers)**

24. Plaintiff realleges and incorporates paragraphs 1-23 as if fully set forth in this count.

25. Rodgers' wrongful, unethical and inappropriate conduct toward Scott O'Connell, as described above, was intentional and reckless.

26. Rodgers knew Scott O'Connell was particularly vulnerable to distress while grieving the sudden and tragic death of his youngest sister, and he knew or should have known extreme emotional distress would likely result and that harm to Scott O'Connell was reasonably foreseeable from his actions.

27. Rodgers' actions were malicious, taken in bad faith or with reckless disregard for Scott O'Connell's state of mind and the risk of extreme emotional harm.

28. Rodgers abused his position of apparent authority as the investigative agent in charge of the case, and took advantage of Scott O'Connell's vulnerable position. Rodger's actions were outrageous, beyond the bounds of decency, and ultimately caused severe damage to Scott O'Connell's life.

29. Rodgers' actions, including providing O'Connell false and misleading information about his sister's death to further his self-interested purpose and biased homicide theory, was beyond the scope of his duties as an independent and supposedly objective FDLE investigator.

30. As a direct and proximate result of the intentional acts of Rodgers, Scott O'Connell lost his career as a regular duty law enforcement officer, lost the income he needed to support his fiancé and new baby, lost his home, his relationship with his fiancé became exceedingly strained, and his relationships with immediate family members were irreparably damaged. Due to Rodgers' actions, Scott O'Connell suffered and continues to suffer severe emotional pain and distress, mental anguish, and professional and personal embarrassment, loss of professional and law enforcement status and humiliation, loss of income and loss of enjoyment of life.

WHEREFORE, Plaintiff, SCOTT O'CONNELL demands judgment against Defendant, RUSTY RAY RODGERS for damages, and for such further relief as this Court deems just and proper.

COUNT II – NEGLIGENT RETENTION OR SUPERVISION
(Against FDLE)

31. Plaintiff realleges and incorporates the allegations in paragraphs 1-23 as if fully set forth herein.

32. Defendant, FDLE, through SAC Pape acting in the course and scope of his employment as FDLE Special-Agent-in-Charge, negligently retained and supervised FDLE employee and SAC Pape's subordinate, Rusty Rodgers. Such negligent retention and supervision directly and proximately resulted in the unlawful conduct engaged in by Rodgers against Scott O'Connell.

33. FDLE and SAC Pape had a duty to effectively and reasonably retain, train and supervise their employees such as Rodgers so as to prevent the potential of wrongful conduct by such employees.

34. Having such duty, FDLE and SAC Pape breached that duty by failing and refusing to adequately or reasonably supervise, train or advise Rodgers, which proximately resulted in the unlawful conduct engaged by Rodgers against Scott O'Connell.

35. FDLE, through SAC Pape, knew or should have known of Rodgers' propensity to engage in and actual engagement in unlawful conduct in furtherance of his own motives and perceptions, and took no reasonable steps to deter or prohibit such conduct. Moreover, FDLE and PAPE were expressly advised of the conduct and concerns of and about Rodgers by those with specific knowledge during the investigation and did nothing to check or remedy the problem.

36. FDLE did not have in effect sufficient policies or guidelines to regulate or deter the type of conduct engaged in by Rodgers, or if any such guidelines existed, did not reasonably enforce such guidelines.

37. On several occasions during Rodgers' investigation, SAC Pape was specifically advised by SJSO and staff of the SAO 7th of serious concerns about Rodgers' inappropriate conduct and apparent motives. Despite notice of these concerns and of the pervasive risk this conduct would cause injury to Scott O'Connell, SAC Pape failed to take any action or remedial measures to deter or prevent Rodgers from continuing his unlawful and offensive practices. SAC Pape's response, or lack thereof, demonstrated deliberate indifference to, if not actual authorization of Rodgers unlawful and offensive practices.

38. Despite having express knowledge of his unlawful and unethical conduct, FDLE and SAC Pape continued to maintain Rodgers' employment and assignment to this case, such that he was permitted to continue engaging in such conduct, foreseeably causing the harm suffered by Scott O'Connell.

39. As a direct and proximate result of FDLE's and SAC Pape's negligence and breach of duty, Scott O'Connell lost his career as a regular duty law enforcement officer, lost the income he needed to support his fiancé and new baby, lost his home, his relationship with his fiancé became exceedingly strained, and his relationships with immediate family members were irreparably damaged. Due to Rodgers' actions, Scott O'Connell suffered and continues to suffer severe emotional pain and distress, mental anguish, and professional and personal embarrassment, loss of professional and law enforcement status and humiliation, loss of income and loss of enjoyment of life.

WHEREFORE, Plaintiff, SCOTT O'CONNELL demands judgment against Defendant, FLORIDA DEPARTMENT OF LAW ENFORCEMENT for damages and such further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all issues so triable.

the mcleod firm



ROBERT L. McLEOD II
Fla. Bar No. 369632
LESLIE H. MORTON
Fla. Bar No. 380709
1200 Plantation Island Drive South, Ste. 140
St. Augustine, FL 32080
Telephone: (904) 471-5007
Facsimile: (904) 461-5059
service@themcleodfirm.com (primary)
lmorton@themcleodfirm.com (secondary)
Attorneys for Plaintiff