

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHRISTOPHER KELSON, §
DAKOTA KELSON, RYLIE KIMBRELL, §
AND ESTATE OF §
HIRSCHELL FLETCHER, JR §

Plaintiffs §

VS. §

CIVIL ACTION NO. 3:18-cv-3308-L

CITY OF DALLAS, a Municipal §
Corporation, FIREFIGHTER KYLE §
FOSTER CLARK, §
FIREFIGHTER BRAD ALAN COX, §
OFFICER GEORGE MORALES, §
OFFICER CHRISTOPHER TODD, §
OFFICER NICHOLAS MORRIS, §
OFFICER JAMES HERNANDEZ, §
OFFICER HARRY BRADFIELD, §
OFFICER DSO WARREN, and §
OFFICER ERICA RUSSELL §

Defendants. §

JURY TRIAL DEMANDED

PLAINTIFFS’ RESPONSE TO DEFENDANTS KYLE FOSTER CLARK’S AND BRAD ALAN COX’S MOTION TO DISMISS PURSUANT TO RULE 12(B)(6)

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs Christopher Kelson, Dakota Kelson, Rylie Kimbrell, and the Estate of Hirschell Fletcher, Jr. (“Plaintiffs”) file this Response to the Motion to Dismiss filed by Defendants Kyle Foster Clark and Brad Alan Cox. A brief that sets for the arguments and authorities upon which Plaintiffs rely in support of this Response is filed separately pursuant to Local Rule 7.1(d).

1. This case arises from the unlawful detention/arrest of Hirschell Wayne Fletcher on December 30, 2016, wherein, Mr. Fletcher was arrested without probable cause, denied medical care, held in a detention facility, and where he was again denied necessary medical care. These

constitutional violations ultimately led to the death of Mr. Fletcher. Plaintiffs present failure to treat claims under the Fourteenth Amendment against Defendants Kyle Foster Clark and Brad Alan Cox.

2. Plaintiffs' Complaint sufficiently pleads causes of action against Defendants Kyle Foster Clark and Brad Alan Cox for the reasons set forth in the Brief in Support of this Response, and Defendants' motion to dismiss should be denied for this reason. Further, to the extent the Court finds any deficiency in Plaintiffs' Complaint, it is requested that Plaintiffs be granted leave to amend to cure any deficiency. Additionally, should the Court have questions regarding the Qualified Immunity defense raised by Defendants Clark and Cox, it is requested that Plaintiffs be granted leave to conduct limited discovery.

PRAYER

WHEREFORE, Plaintiffs respectfully request that this Court deny Defendants Kyle Foster Clark's and Brad Alan Cox's Rule 12(b)(6) Motion to Dismiss, or in the alternative, allow Plaintiffs the opportunity to replead, and grant Plaintiffs all such other and further relief to which they may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 24, 2019, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the CM/ECF electronic case filing system of the court. The electronic case filing system will send a "Notice of Electronic Filing" notification to all case participants registered for electronic notice, including all *pro se* parties and/or attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means. I further certify that I have served to the extent applicable all case participants not registered for electronic notice by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Eric Kolder
Eric Kolder, Attorney for Plaintiffs

the complaint in the light most favorable to the plaintiff. *Gines v. D.R. Horton, Inc.*, 699 F.3d 812, 816 (5th Cir. 2012).

Defendants argue that Plaintiffs' complaint fails to plead facts sufficient to state a plausible claim under 42 U.S.C. § 1983. The Court disagrees. To the contrary, the Court finds that Plaintiffs have alleged sufficient factual content to support their section 1983 claim against Defendants. The Court accordingly denies the motion to dismiss.

Signed _____.
