

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

BOBBI KILBURN-WINNIE, on	:	
behalf of herself and all similarly	:	
situated persons	:	Case No. <u>1:15cv1784</u>
	:	
Plaintiff	:	
	:	
vs.	:	Judge <u>Young</u>
	:	
TOWN OF FORTVILLE	:	Magistrate Judge <u>LaRue</u>
c/o Joe Renner, Town Manager	:	
714 E. Broadway	:	CLASS ACTION COMPLAINT
Fortville, IN. 46040	:	AND JURY DEMAND
	:	
FORTVILLE WATERWORKS	:	
714 E. Broadway	:	
Fortville, IN. 46040	:	
	:	
FORTVILLE UTILITIES	:	
714 E. Broadway	:	
Fortville, IN. 46040	:	
	:	
Defendants	:	

INTRODUCTION

This action seeks damages for Defendants’ violations of the rights of Plaintiff, and of the class of persons she seeks to represent, under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, based upon Defendants’ termination of Plaintiff’s residential water service without a constitutionally sufficient hearing.

JURISDICTION AND VENUE

1. The Court has jurisdiction of this federal claim under 28 U.S.C. §§ 1331 and 1343, as the claim is based upon the Constitution of the United States and upon a

federal statute, 42 U.S.C. § 1983. Venue is proper under 28 U.S.C. § 1391(b) since the incidents giving rise to the cause of action took place in this district and Defendants may be found in this District.

PARTIES

2. Plaintiff is a resident of the Town of Fortville, Indiana, and a citizen of the United States.

3. Defendant Town of Fortville is a government unit organized pursuant to the laws of the State of Indiana and is the owner of the town's water utility, which provides water and wastewater services to its residents. Defendant Fortville Water Works and Defendant Fortville Utilities are entities associated with the providing of such services to the residents of Fortville. All three of these entities will be referred to herein as "Defendants."

FACTS SPECIFIC TO PLAINTIFF

4. At all relevant times Plaintiff resided at 207 N. McCarty in Fortville, Indiana, and received water service from Defendants as their customer.

5. Defendants' bill for water service by mailing bills to customers at the end of each month for water service already provided.

6. Each bill contains the following notice to customers: "If you dispute the service fee or disconnection of service, you MUST file a written notice no later than the disconnection date listed on this bill, requesting a hearing before the Fortville Town Council. The hearing will be scheduled on the next regular scheduled council meeting following submission of your written notice. You may be represented in person, by counsel, or by any other person of your choosing. At this hearing, you may present your

complaint and contentions. If you, or someone on your behalf, fail to appear at this hearing, your request for appeal will be denied. Written notice of appeal shall be submitted to Fortville Water Works, c/o Town Manager, at 714 East Broadway, Fortville, Indiana 46040-1550. **DISCONNECT NOTICE:** If the town does not receive one of the following before the disconnect date written on this bill, your water will be disconnected (1) Full payment of the amount due, or (2) Written notice of your request to dispute the listed charges before the Town Council.”

7. In both March and April 2015, Plaintiff failed to pay her water bill on time. As a result, Defendants disconnected her water service and she was required to pay a \$50 reconnect fee each time in order to have her service resumed.

GENERAL ALLEGATIONS

8. At all relevant times, Defendants acted under color of state law.

9. At all relevant times, Defendants followed official town policy and/or custom regarding the termination of water service.

10. At all relevant times, Plaintiff had a protectable property interest in continued water service, based upon ordinances passed by the Town of Fortville, based upon the express contract between Plaintiff and Defendants, and based upon the contract implied by Defendants’ acceptance of Plaintiff’s payments and Defendants’ supplying of water service to Plaintiff in return.

11. Plaintiff has no adequate remedy under state law since a post-deprivation remedy would be inadequate in these circumstances.

CLASS ALLEGATIONS

12. Plaintiff seeks to represent a class consisting of all persons whose water service was terminated by Defendants without a constitutionally sufficient hearing on or after a date which is two years before the filing of this lawsuit.

13. Based upon past litigation involving Defendants, the class is sufficiently large, numbering in the hundreds, so that joinder of all members is impractical.

14. There are questions of law and fact common to the class because Defendants' conduct violated a federal right of the class representative and of all class members in a similar manner.

15. Common questions of fact include whether Defendants provided a constitutionally sufficient hearing to class members before terminating their water service.

16. Common questions of law include whether the hearing provided violated the due-process rights of class members under the Fourteenth Amendment.

17. Plaintiff will fairly and adequately represent the class since her claims are typical of the claims of the class.

18. Plaintiff has retained competent counsel who will vigorously pursue this action.

19. The prosecution of separate actions by individual members of the class would create risk of inconsistent or varying adjudications, which in turn would establish conflicting standards of conduct for Defendants.

20. Questions of law and fact common to the members of each class predominate over questions which apply only to individual members, since the conduct of

Defendants is evidenced by uniform documentation, including uniform policy statements, which leave no room for individual determinations of fact or law.

**SOLE CAUSE OF ACTION
(Fourteenth Amendment Procedural Due Process)**

21. Plaintiff reasserts and realleges each and every allegation set forth above as if fully rewritten herein.

22. Defendants caused the above-described terminations of water service without a constitutionally sufficient hearing while acting under color of state law.

23. Defendants' hearing procedure is constitutionally defective because it is so complicated and burdensome as to preclude the customer from receiving a fair hearing:

a. There appear to be four required written submissions, some of them possibly in the alternative: (i) a request for a hearing before the Town Council if a customer disputes either the service fee or the disconnection of service; (ii) a general notice of appeal; (iii) a notice of a request to dispute listed charges; and (iv) a notice of appeal of the service or disconnection fee.

b. The customer can only determine the date of his or her hearing by discovering for himself or herself the "next regular scheduled council meeting following submission of your written notice," since Defendants do not inform the customer of the hearing date.

c. Defendants' procedure requires the disputing customer to submit a "written notice of appeal" without telling the customer what he or she should be appealing.

d. Defendants' procedure threatens disconnection unless there is full payment or "written notice of your request to dispute the listed charges before the Town Council," leaving unstated what will happen if the customer disputes the "disconnection of service," as in the first required written notice, but does not dispute "the listed charges" – for example, if the customer has already paid them.

e. On information and belief, Defendants' current written regulations impose additional burdens and ambiguities on its water customers that are not set forth in the disseminated notice.

24. Defendants' above-described conduct deprived Plaintiff and the class of their due-process rights guaranteed by the Fourteenth Amendment, in violation of 42 U.S.C. § 1983.

25. As a direct and proximate result of Defendants' conduct, Plaintiff and the class suffered actual damage.

PRAYER FOR RELIEF

WHEREFORE Plaintiff requests the following relief:

- a) A determination that a class should be certified pursuant to Rule 23, Fed. R. Civ. P.
- b) Compensatory damages for Plaintiff and the class in an amount to be determined at trial;
- c) The costs of this action, including a reasonable attorney fee pursuant to 42 U.S.C. § 1988 and any other applicable statute or decision;

d) An injunction requiring Defendants to cease terminating water service to customers without providing a constitutionally sufficient hearing and notice thereof;

e) Such further relief at law or in equity as this Court deems proper.

Respectfully submitted,

/s/Steven C. Shane
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Trial Attorneys for Plaintiff

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial on all issues so triable.

/s/ Steven C. Shane (0041124)
Stephen R. Felson (0038432)