

Stephen M. Latimer, Esq., 7317
Loughlin & Latimer
131 Main Street, Suite 235
Hackensack, N.J. 07601
201/487-9797
Attorney for plaintiffs

Mary Ellen Parker, as guardian ad
litem of Bryan Parker,

plaintiff,

v.

Borough of Ridgefield; Ridgefield
Police Department; John Bogovich;
Robert Katz; Joseph Castellitto; Hagop
Cigeriocioglu; Richard Besser; Robert
Williams and Julian Benitez,

defendants.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 08-3226 (PGS)

AMENDED COMPLAINT AND JURY
DEMAND PURSUANT TO ORDER
ENTERED SEPTEMBER 22, 2009

Bryan Parker, by Mary Ellen Parker, his guardian ad litem, residing at 4 Edstan

Drive, Moonachie, New Jersey for his complaint alleges:

JURISDICTION

1. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 to redress violations of his right to be free of unreasonable seizures as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution. Plaintiff also sues for damages for discrimination based on his disability, mental retardation, under the Americans With Disabilities Act, 42 U.S.C. § 12131-165 (ADA), and Section 504 of the Rehabilitation Act of 1973 (§ 504). This court has

jurisdiction of plaintiff's federal claims pursuant to 28 U.S.C. §§1331 and 1343(3).

2. This court has supplemental jurisdiction of plaintiff's state law claims pursuant to 28 U.S.C. §1367.

3. Venue is proper as the claims arose in Bergen County, New Jersey.

PARTIES

4. Mary Ellen Parker is the mother and guardian ad litem of Bryan Parker. She brings this action on his behalf in her representative capacity only.

5. Bryan Parker is a forty year old developmentally disabled man. He suffers from mild to moderate mental retardation and did so at the time of the events giving rise to this complaint.

6. The Borough Ridgefield (Ridgefield) is a municipality incorporated under the laws of the State of New Jersey. It is a recipient of federal funds.

7. The Borough of Ridgefield Police Department (Police Department) is a department of Ridgefield. The Police Department is responsible for the enforcement of the municipal ordinances of Ridgefield and of the laws of the State of New Jersey. It is a recipient of federal funds.

8. John Bogovich was the Chief of Police of the Police Department. He was responsible for, among other things, the supervision and training of police officers employed by Ridgefield. He knew at or before the initial court appearance of Bryan Parker on the afternoon of July 12, 2006 that there was no probable cause to prosecute Parker.

9. Robert Katz is a police officer employed by the Ridgefield Police Department. He arrested Bryan Parker on July 7, 2006.
10. Joseph Castellitto is a police officer employed by the Ridgefield Police Department. He participated in the investigation into the events of July 7, 2006.
11. Hagop Cigeriocioglu is a police officer employed by the Ridgefield Police Department. He participated in the investigation into the events of July 7, 2006.
12. Richard Besser is a police officer employed by the Ridgefield Police Department. He participated in the investigation into the events of July 7, 2006.
13. Robert Williams is a police officer employed by the Ridgefield Police Department. He arrested Bryan Parker on July 7, 2006. He also participated in the investigation into the events of July 7, 2006.
14. John Bogovich, Robert Katz, Joseph Castellitto, Hagop Cigeriocioglu, Richard Besser and Robert Williams are sued in their individual capacities.
15. Julian Benitez falsely accused Bryan Parker of unlawful sexual contact and caused him to be arrested and prosecuted.

FACTS

A. The Incident In Veteran's Park

16. During the afternoon of July 7, 2006 Bryan Parker was at the Veteran's Park, Little League Field (the park) in Ridgefield, New Jersey
17. Also at the park on that date were several teen age boys including Julian Benitez, Christopher Yakoubian, Christian Ganci, Vincent Cumella, Keith Lyons,

Matthew Savinovich, and Matthew Kees, among others (the boys). The boys knew Parker and called him by the nickname "Rocky."

18. The boys knew that Parker is mentally retarded.

19. The boys spotted Parker by the picnic tables in the park. They began teasing Parker, calling him "Rocky" and began making him feel sad and upset. The boys made Parker drink a two hour old milkshake that was on the table. The boys did not stop him even though they knew the shake was old and had been partially drunk by another boy.

20. The boys made Parker say the "N" word. Every time he would say the word the boys would laugh at him. They also made Parker get on top of the picnic table and yell something.

21. The boys were told by other boys that Parker would get mad or act funny if they pretended to be hurt. To further tease and taunt Parker Vincent Cumella took a metallic bat and pretended to hit Keith Lyons with it. Parker did not respond.

22. Benitez then wanted to see what Parker would do if he fell off of his bike. Benitez then fell and landed on his side and back.

23. Parker approached him and asked if he was "o.k." Benitez then got up.

24. Parker left the area. The boys continued to follow and harass Parker.

25. Parker became afraid and called the police.

26. Katz, Castellitto, Cigercioglu, Williams and Besser responded to the call and arrived at the park. The officers observed Parker and observed that he

appeared to have a disability.

27. Benitez told Katz that Parker had touched him on the butt and rubbed his leg.

28. Benitez knew the statement was false when he made it.

B. The Arrest And Prosecution

29. Parker was arrested by Katz at about 4:30 p.m. and brought to the Ridgefield police station. His mother, Mary Ellen Parker was permitted to accompany him.

30. Parker was charged with criminal sexual contact in violation of N.J.S.A. 2C:14-3(b). He was released on his own recognizance at about 7:30 p.m. and notified to appear in municipal court on July 12, 2006 at 3:30 p.m. for his first appearance.

31. On July 31, 2006, the matter was presented to the Bergen County Prosecutor for a pre indictment hearing. The charges were amended to harassment in violation of N.J.S.A. 2C:33-4(b) and the case was returned to the municipal court.

32. On January 31, 2008, the charges were dismissed by the municipal court.

C. The Investigation

33. On July 7, 2006, statements were taken from some of the boys present in the park who witnessed the incident. At least two of those statements were in conflict.

34. On July 8, 2006, Investigator Wejnart was detailed to re interview the witnesses because of the conflicting statements.

35. Wejnart reported that he and Williams re-interviewed the witnesses between July 8, and July 11, 2006.

36. Wejnert reported that Benitez was interviewed the second time on July 11, 2006. His first and second statements contained contradictions that called into doubt his credibility.

37. Wejnert reported that of the other witnesses, one or more did not see Parker touch Benitez, and one or more saw Parker check Benitez to see if he was ok after he "fell."

38. Wejnart's report was transmitted to Chief Bogovich at 9:00 a.m. on July 12, 2006, approximately five and one half hours before Parker's scheduled first appearance in municipal court.

**FIRST CLAIM
(FALSE ARREST IN VIOLATION OF THE FOURTH AMENDMENT)**

39. Plaintiff incorporates by reference the allegations of paragraphs 1 through 38.

40. There was no probable cause to arrest plaintiff.

41. At the time of plaintiff's arrest, Katz, Castellito, Cigeriocioglu, Besser, and Williams knew that the witnesses' statements about the events in the park were in conflict.

42. Because of the conflicting statements, Williams and Katz knew or should have known that there was no probable cause to arrest plaintiff.

43. The arrest of plaintiff without probable cause violated his Fourth and Fourteenth Amendment right to be free of unreasonable seizures.

**SECOND CLAIM
(MALICIOUS PROSECUTION IN VIOLATION OF THE
FOURTH AMENDMENT)**

44. Plaintiff incorporates by reference the allegations of paragraphs 1 through 38.

45. By the morning of July 12, 2006, hours before Parker's first scheduled court appearance, Bogovich and the investigating officers knew that there was no probable cause to prosecute Parker.

46. The dismissal of the charges on January 31, 2008 was a favorable termination.

47. The prosecution of plaintiff as alleged violated his rights to be free of unreasonable seizures under the Fourth and Fourteenth Amendments to the United States Constitution.

**THIRD CLAIM
(MALICIOUS PROSECUTION AGAINST BENITEZ)**

48. Plaintiff incorporates by reference the allegations of paragraphs 1 through 38.

49. Benitez falsely, maliciously and without probable cause accused plaintiff of unlawful sexual contact.

50. Benitez knew the accusation was false when he made it.

51. Benitez false accusation caused plaintiff to be arrested and charged with criminal sexual contact in violation of N.J.S.A. 2C:14-3(b).

52. The prosecution terminated favorably to plaintiff.

**FOURTH CLAIM
(AMERICANS WITH DISABILITIES ACT AND § 504)**

53. Parker's developmental disability was a disability within the meaning of the Americans with Disabilities Act (42 USC §§ 12131-12165) ("ADA"), and Section 504 of the Rehabilitation Act of 1973 ("§ 504").

54. By deploying the defendant police officers to the scene and in their actions thereafter, Ridgefield and Ridgefield Police Department were providing services and/or programs to the public.

55. Katz, Castellito, Cigeriocioglu, Besser, and Williams knew that Parker was developmentally disabled when they arrested him.

56. Katz, Castellito, Cigeriocioglu, Besser, and Williams knew that Parker's behavior was caused by his disability when they arrested him.

57. Ridgefield and the Ridgefield Police Department failed to accommodate Parker's disability in violation of Title II of the ADA and Section 504 in that at the time of plaintiff's arrest the arresting officers knew that Parker was developmentally disabled and that he was engaged in conduct caused by his disability.

58. Ridgefield and the Ridgefield Police Department discriminated against Parker based on his disability in violation of the ADA and § 504.

**FIFTH CLAIM
(LAD VIOLATION)**

59. Parker's developmental disability is a disability within the meaning of LAD, N.J.S.A. 10:5-5(q).

60. By deploying the defendant police officers to the scene and in their actions thereafter, Ridgefield and Ridgefield Police Department were providing services and/or programs to the public.

61. Ridgefield and the Ridgefield Police Department failed to accommodate Parker's disability in violation of LAD.

62. Katz, Castellito, Cigeriociglu, Besser, and Williams knew that Parker was developmentally disabled when they arrested him.

63. Katz, Castellito, Cigeriociglu, Besser, and Williams knew that Parker's behavior was caused by his disability when they arrested him.

64. Ridgefield and the Ridgefield Police Department failed to accommodate Parker's disability in violation of LAD in that at the time of plaintiff's arrest the arresting officers knew that Parker was developmentally disabled and that he was engaged in conduct caused by his disability.

65. Ridgefield and Ridgefield Police Department discriminated against Parker based on his disability in violation of the LAD.

WHEREFORE plaintiff demands judgment against defendants awarding him

1. Compensatory damages against defendants;
2. Punitive damages against defendants; and

3. The costs of the action including a reasonable attorney's fee.

Dated: October 9, 2009

/s/ Stephen M. Latimer

Stephen M. Latimer, Esq., 7317
Loughlin & Latimer
131 Main Street, Suite 235
Hackensack, N.J. 07601
201/487-9797
Attorney for plaintiff

JURY DEMAND

Plaintiff demands trial by jury of all claims so triable.

/s/ Stephen M. Latimer
Stephen M. Latimer

VERIFICATION AND CERTIFICATION PURSUANT TO L. Civ. R. 11.2

I hereby certify that, to the best of my knowledge, information and belief formed after a reasonable inquiry, this action is not being presented for any improper purpose; the claims defenses and other legal contentions are warranted by existing law; and the allegations and factual contentions have evidentiary support.

/s/ Stephen M. Latimer
Stephen M. Latimer

I hereby certify that the matter in controversy is not the subject of any other court, arbitration or administrative proceeding.

/s/ Stephen M. Latimer
Stephen M. Latimer

SETTLEMENT, WAIVER AND RELEASE AGREEMENT

This Settlement, Waiver and Release Agreement (the "Agreement") is made as of April 30, 2010, (the "Effective Date"), by and between MARY ELLEN PARKER, as Guardian Ad Litem of BRYAN PARKER ("Parker") and the BOROUGH OF RIDGEFIELD, RIDGEFIELD POLICE DEPARTMENT, JOHN BOGOVICH, ROBERT KATZ, JOSEPH CASTELLITTO, HAGOP CIGERIOCIOGLU, RICHARD BESSER AND ROBERT WILLIAMS, (collectively referred to herein as "Ridgefield"). In consideration of the covenants, promises and undertakings set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Parker hereby agrees as follows:

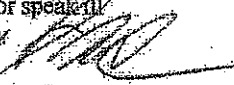
1. **Denial of Liability.** This Agreement, and the settlement it represents, is entered into by Ridgefield solely for the purpose of avoiding possible future expenses, burdens or distractions of litigation, and in no way constitutes an admission by Ridgefield of any liability of any kind to Parker or any wrongdoing in connection with or in any way related to the incident(s) alleged in the lawsuit entitled *MARY ELLEN PARKER, as Guardian Ad Litem of BRYAN PARKER vs. BOROUGH OF RIDGEFIELD, et als., filed in the United States District Court, District of New Jersey, Case No.: 08-cv-03226 (PGS)* or in connection with any other incident occurring prior to the execution of this Agreement. Ridgefield specifically denies any and all liability in connection with any claims, causes of action or demands of Parker which have been made or could have been made, or which are the subject matter of, arise from, or are connected with, directly or indirectly, or related in any way to any lawsuit or arbitration previously brought, (including but not limited to *MARY ELLEN PARKER, as Guardian Ad Litem of BRYAN PARKER vs. BOROUGH OF RIDGEFIELD, et als., filed in the United States District Court, District of New Jersey, Case No.: 08-cv-03226*) maintained or filed in any jurisdiction by Parker against Ridgefield, including but not limited to, any violation of law (whether statutory or common law), negligence, breach of contract, rule or regulation and Ridgefield denies that any violation of any such law, negligence, breach of contract, rule or regulation has ever occurred. The terms of this Agreement are limited to this Agreement and shall not be used for any other purpose.

2. **Settlement Payment.** Within thirty (30) days from the receipt of an executed copy of this Agreement from Parker, Ridgefield will pay to Parker the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) in full and final satisfaction of any claims, causes of action or demands of Parker which have been made or could have been made, or which are the subject matter of, arise from, or are in any way connected with, directly or indirectly, or related in any way to any lawsuit or arbitration (including but not limited to *MARY ELLEN PARKER, as Guardian Ad Litem of BRYAN PARKER vs. BOROUGH OF RIDGEFIELD, et als., filed in the United States District Court, District of New Jersey, Case No.: 08-cv-03226*) previously brought, maintained or filed in any jurisdiction by Parker against Ridgefield, including but not limited to, any violation of law (whether statutory or common law), negligence, breach of contract, rule or regulation

3. **Release by Parker to Ridgefield.** In consideration of the Settlement Payment made to Parker by Ridgefield hereunder, Parker, her, employees, consultants, agents, partners, affiliates, heirs, trustees, estates, administrators, representatives, executives, attorneys, beneficiaries (past, present or future), principals, members, subsidiaries, divisions, parents, predecessors, successors and assigns, (collectively the "Parker Group") knowingly, irrevocably and unconditionally releases,

renounces, remises, acquits and forever discharges Ridgefield, its respective officers, directors, shareholders, employees, consultants, agents, partners, affiliates, heirs, trustees, estates, administrators, representatives, executives, attorneys, beneficiaries (past, present or future), principals, members, subsidiaries, divisions, parents, predecessors, successors and assigns (collectively the "Ridgefield Group"), from any and all claims, demands, actions, rights, interests, costs, liabilities and expenses, including attorney's fees, and causes of action of every kind and nature whatsoever, in law or in equity, in any jurisdiction, whether now known or unknown, that Parker, or any person acting under them, may now have or claim at any future time to have, based in whole or in part upon any acts or omissions occurring prior to the Effective Date of this Agreement without regard to present actual knowledge of such acts or omissions, including specifically, but not by way of limitation, any claims, causes of action or demands of Parker which have been made or could have been made, or which are the subject matter of, arise from, or are connected with, directly or indirectly, or related in any way to any lawsuit or arbitration previously brought, (including but not limited to *MARY ELLEN PARKER, as Guardian Ad Litem of BRYAN PARKER vs. BOROUGH OF RIDGEFIELD, et als., filed in the United States District Court, District of New Jersey, Case No. 08-cv-03226*) maintained or filed in any jurisdiction by Parker against Ridgefield, including but not limited to, any violation of law (whether statutory or common law), negligence, breach of contract, rule or regulation, and including matters which may arise at common law or under any State, Federal or local law.

4. **Authority.** Parker warrants that: (i) she has full authority to execute this Agreement; (ii) her execution of this Agreement does not require the consent of any third party; (iii) all matters which are released in this Agreement have not been assigned, transferred or disposed of in fact, by operation of law or in any other manner; (iv) this Agreement constitutes the legal, binding obligation of Ridgefield, enforceable against it in accordance with its terms.

5. **Covenant of Non-disparagement.** Parker covenants never to disparage or speak ill of Ridgefield, their affiliates, subsidiaries, officers, directors, employees or shareholders. *T.K.* ~~ABOUT THIS LITIGATION OR THE EVENT) AS WELL AS TO~~ 

6. **Confidentiality.** Parker covenants not to divulge, disclose, or make available in any manner, or to any person or entity, other than her legal counsel or financial advisor, the terms of this Agreement and settlement, except to the extent necessary for the payment of Federal and State income taxes, if any, or when required by law or as necessary to enforce rights under this Agreement.

7. **General.**

(a) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Parker and the Ridgefield Group and their respective heirs, representatives, successors and assigns.

(b) **Signatures.** By his signature below, Parker represents that she has read this Agreement in full, has voluntarily entered into this Agreement upon advice of legal counsel, or with the full opportunity to consult legal counsel, agrees that it is in her best interest to enter into this Agreement, agrees that she believes that this Agreement represents a fair and reasonable settlement.

(c) **Complete Understanding.** This Agreement constitutes the complete understanding between Parker and Ridgefield. All prior and contemporaneous conversations, negotiations, promises, possible and alleged agreements, representations, covenants and warranties covering the subject matter hereof are merged herein. No separate or additional oral agreements in any way related to the subject matter hereof shall be permitted. No alteration or modification of any provision of this Agreement shall be valid unless made in writing and signed by both Parker and Ridgefield hereto.

(d) **No Other Claims.** Parker represents and warrants that, no charge, grievance or complaint in any forum, judicial, administrative, arbitral or otherwise has been filed by her or on her behalf against Ridgefield.

(e) **Notices.** All notices, requests and demands related to this Agreement to or upon the respective parties hereto shall be in writing and may be served by personal delivery or certified mail/return receipt requested and addressed as follows (or to such other address as may be designated in writing by the respective parties hereto):

To: Ridgefield Defendants c/o
Thomas Keenan, Esq.
McCarthy & Jennerich
47 Orient Way
Rutherford, NJ 07070

To: Mary Ellen Parker c/o
Stephen M. Latimer, Esq.
Loughlin & Latimer
179 Cedar Lane, Suite B
Teaneck, NJ 07666

(f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all counterparts so executed shall constitute one agreement binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the same counterpart. This Agreement may be executed either by original or facsimile, either of which will be equally binding.


(g) **Severability.** If, at any time after the Effective Date of this Agreement, any provision of this Agreement shall be held by any court or tribunal of competent jurisdiction to be illegal, void, or unenforceable, such provision shall be of no force and effect. The illegality or unenforceability of such provision, however, shall have no effect upon, and shall not impair the enforceability of, any other provision of this Agreement.

(h) **Governing Law.** This Agreement shall be governed by the laws of the State of New Jersey (without regard for the conflicts of laws principals thereof). The parties hereto

irrevocably consent to the exclusive jurisdiction of a competent court in the State of Jersey, County of ~~Sussex~~ ^{BERGEN} for all matters arising under this Agreement.

(i) Legal Fees and Expenses. In the event that either party pursues legal or administrative action or remedies against the other for breach of this Agreement, or any other claim under or arising out of this Agreement, and such party is not successful in establishing a final determination of the existence of such breach or valid claim, the unsuccessful party must pay the other party's legal fees and expenses.

IN WITNESS WHEREOF, Mary Ellen Parker hereto has hereunto set her hand as of the

 30 day of ~~February~~ ^{MARCH}, 2010.
~~APRIL~~

By: M. E. Parker
MARY ELLEN PARKER, as Guardian Ad Litem of BRYAN PARKER