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2:01cv21 Gamble, et al v. Cookeville City of

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U.S. District Court
MIDDLE DISTRICT OF TENNESSEE (Northeastern)

CIVIL DOCKET FOR CASE #: 01-CV-21

Gamble, et al v. Cookeville City of

Filed: 04/05/01

Assigned to: Magistrate Judge E. Clifton Kury demand: Both

Demand: \$0,000

Nature of Suit: 440

Lead Docket: None

Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 42:1983 Civil Rights Act

LINDA GAMBLE, on behalf of Jerry Lee Burgess
herself and all others [COR LD NTC]
similarly situated Law Offices of the Upper
pltf Cumberland

One South Jefferson Avenue
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RUBY COPELAND, on behalf of Jerry Lee Burgess
herself and all others (See above)
similarly situated [COR LD NTC]
pltf

Samuel J. Harris
(See above)
[COR LD NTC]

John W. Allen
(See above)
[COR LD NTC]

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ROGER COPELAND, on behalf of Jerry Lee Burgess
himself and all others (See above)
similarly situated [COR LD NTC]
pltf

Samuel J. Harris
(See above)
[COR LD NTC]

John W. Allen
(See above)
[COR LD NTC]

v.

CITY OF COOKEVILLE, TENNESSEE Daniel Hurley Rader, III
deft [COR LD NTC]

Lane Moore
[COR]
Moore, Rader, Clift &
Fitzpatrick, P.C.
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4/5/01 1 COMPLAINT (Summons(es) issued) Filing fee paid in the
amount of : \$150.00 Receipt # 79132 (w/att'd exhibits A-C)
(vm) [Entry date 04/06/01] [Edit date 04/06/01]

4/5/01 2 NOTICE of Initial Case Management Conference; Case
Management Conference set for 10:00 a.m. on 6/14/01; Case
referred to Magistrate Judge E. C. Knowles (vm)
[Entry date 04/06/01]

- 4/5/01 3 MOTION by pltfs for temporary restraining order and for preliminary injunction (vm) [Entry date 04/06/01]
- 4/5/01 4 MEMORANDUM of Law by pltfs in support of motion for temporary restraining order [3-1], motion for preliminary injunction [3-2] (w/attachments) (vm) [Entry date 04/06/01]
- 4/5/01 5 AFFIDAVIT of Linda Gamble re [3-1], re [3-2] (vm) [Entry date 04/06/01]
- 4/5/01 6 AFFIDAVIT of Ruby Copeland re [3-1], re [3-2] (vm) [Entry date 04/06/01]
- 4/5/01 7 CLERK'S RESUME; TRO held on 4/5/01; hrg set for 4/16/01 at 10:00 a.m.; the Court made preliminary findings of TRO; the Court finds that pltfs' have presented a verified complaint and were not given adequate notice; the Court finds that the case is brought on behalf of a class and the City of Cookeville does not have procedures in place to give notice to pltfs whose rates may have been affected; orange tag notice is insufficient to give adequate notice; TRO bond is set at \$1,000.00 to be paid by 4/6/01 C/R : Peggy Turner (vm) [Entry date 04/06/01]
- 4/5/01 8 TEMPORARY RESTRAINING ORDER by Judge William J. Haynes Jr.: the deft, its officers, agents, employees, and all those persons in active concert or participation with it, are hereby temporarily restrained (see order for complete details) during the pendency of this action or until further order of the Court; a hearing on this matter on the question of whether the Temporary Restraining Order [3-1] shall be converted to a preliminary hearing is set for 10:00 a.m. on 4/16/01; the requirement to post bond as security is herewith required and that the pltfs are to be required to post bond of \$1,000.00 by close of business on 4/6/01 (cc: all counsel, financial) 4/6/01 (vm) [Entry date 04/06/01] [Edit date 04/06/01]
- 4/5/01 9 RETURN OF SERVICE upon deft Jim Shipley, City Manager on 4/5/01 by personal service (vm) [Entry date 04/06/01]
- 4/6/01 -- BOND on Temporary Restraining Order (Proposed) (vm)
- 4/11/01 10 RETURN OF SERVICE by pltfs of subpoena, issued to Donna Dennis, on 4/9/01 by personal service (vm)

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[Entry date 04/12/01]

- 4/12/01 11 RESPONSE by deft Cookeville City of to motion for temporary restraining order [3-1] and to motion for preliminary

injunction [3-2] (vm)

- 4/13/01 -- PROPOSED Bond on Temporary Restraining Order (w/attachment) (vm) [Entry date 04/16/01]
- 4/13/01 12 MEMORANDUM OF LAW by pltfs in support of motion for preliminary injunction [3-2] (w/att'd exhibit A) (vm) [Entry date 04/16/01]
- 4/16/01 13 BRIEF in opposition by deft Cookeville City of to [3-1] (w/attachments) (vm)
- 4/16/01 14 RESPONSE (supplemental) by deft Cookeville City of to motion for preliminary injunction [3-2] (vm)
- 4/16/01 15 MOTION by deft Cookeville City of for judicially-conducted settlement conference (vm)
- 4/16/01 16 CLERK'S RESUME; preliminary hearing held 4/16/01; parties are ordered to meet and confer on the City of Cookeville's new policy as to terminating individuals' electricity; parties order to submit Agreed Order stating that the deft City of Cookeville is enjoined from terminating services except in conformity w/the new policies & procedures that have been agreed upon by all parties; witness/exhibit list attached C/R : Peggy Turner (vm) [Entry date 04/17/01] [Edit date 04/17/01]
- 4/18/01 -- PROPOSED Order re: temporary restraining order previously issued be dissolved and a preliminary injunction be issued. (dlt)
- 4/18/01 17 ORDER by Judge William J. Haynes Jr.: TRO previously issued is dissolved and a preliminary injunction [3-2] is issued prohibiting the City of Cookeville from terminating electric service of any utility customer except in compliance w/ the policy attached hereto. EOD 4/19/01 (cc: all counsel) (dlt) [Entry date 04/19/01]
- 4/19/01 18 MOTION by pltfs for extension of time until 8/27/01 w/in which to file mtn for class certification. (dlt) [Entry date 04/20/01]
- 4/23/01 19 ORDER by Judge William J. Haynes Jr. granting motion for extension of time until 8/27/01 w/in which to file mtn for class certification [18-1]. EOD 4/24/01 (cc: all counsel) (gi) [Entry date 04/24/01]
- 4/25/01 20 RESPONSE by deft Cookeville City of to [18-1] (dlt) [Entry date 04/26/01]

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- 4/26/01 21 TRANSCRIPT filed of proceedings on 4/5/01 at 2:00 before Judge Haynes. C/R: Peggy Turner (dlt) [Entry date 04/27/01] [Edit date 04/27/01]
- 4/30/01 22 MAIL Returned [19-1] addressed to Jerry Lee Burgess attorney for pltfs; envelope marked not deliverable as addressed return to sender. (dlt) [Entry date 05/01/01]
- 5/2/01 23 ORDER by Magistrate Judge E. C. Knowles: Case Management Conference reset for 11:00 a.m. on 7/2/01. EOD 5/2/01 (cc: all counsel) (dlt)
- 5/11/01 24 ORDER by Judge William J. Haynes Jr. granting motion for judicially-conducted settlement conference [15-1]; the settlement conference will before Magistrate Judge E.C. Knowles at a time and date set by him (cc: all counsel) EOD 5/14/01 (vm) [Entry date 05/14/01]
- 6/1/01 25 MOTION by deft Cookeville City of to stay discovery until the judicially-conducted settlement conference is held (w/attachment) (vm) [Entry date 06/04/01] [Edit date 06/04/01]
- 6/4/01 26 ORDER by Judge William J. Haynes Jr. granting motion to stay discovery until the judicially-conducted settlement conference is held [25-1] (cc: all counsel) EOD 6/5/01 (vm) [Entry date 06/05/01]
- 6/6/01 27 TRANSCRIPT filed of proceedings held on 4/16/01 before Judge William J. Haynes, Jr. CR: Peggy Turner (vm) [Entry date 06/07/01]
- 6/11/01 28 ANSWER by deft Cookeville City of to [1-1]; jury demand (w/attachment) (vm)
- 7/2/01 29 CLERK'S RESUME: Initial Case Management Conference held 7/2/01; Proposed Case Management Order submitted by pltf. CMO will not be entered at this time. Settlement Conference will be held on 8/21/01 at 9:30 a.m. C/R : Taped 2001-52 MK (vm) [Entry date 07/03/01]
- 7/10/01 30 ORDER by Magistrate Judge E. C. Knowles: Settlement Conference set for 9:30 a.m. on 8/21/01; by 12:00 p.m. on 8/17/01, pltf and deft shall deliver under seal, directly to Ms. Marcia Knoch, Courtroom Deputy to Magistrate Judge Knowles, ex parte, separate settlement conference statements which shall specify their respective settlement positions. (cc: all counsel) EOD 7/10/01 (vm)
- 7/16/01 31 MAIL Returned [30-1], [30-2] addressed to pltfs' attorney, Jerry Lee Burgess; envelope marked "not deliverable as addressed unable to forward"; resending to One South Jefferson Ave, Ste 1, Cookeville, TN 38501 (vm)

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[Entry date 07/17/01] [Edit date 07/17/01]

- 7/18/01 32 MAIL Returned [30-1], [30-2] addressed to pltf's attorney, John W. Allen; envelope marked "not deliverable as addressed"; resending to 325 E. 7th Street, Apt. 9, Cookeville, TN 38501 (new address given to af for update) (vm) [Entry date 07/19/01]
- 7/25/01 33 MAIL Returned [30-1], [30-2] addressed to plts' atty, John W. Allen; envelope marked "not deliverable as addressed, unable to forward"; resending to One S. Jefferson Avenue, Cookeville, TN 38501 (vm) [Edit date 07/25/01]
- 8/6/01 -- PROPOSED Agreed Order to suspend time for determination of class certification pending the settlement conference set for 8/21/01 (vm)
- 8/6/01 34 AGREED ORDER by Judge William J. Haynes Jr.: the time limits for filing a class certification motion is suspended pending the outcome of the settlement conference. The Court shall set a new time limit at a later date should the settlement conference not resolve the issue of this case. (cc: all counsel) EOD 8/7/01 (vm) [Entry date 08/07/01]
- 8/21/01 35 CLERK'S RESUME: Settlement conference held 8/21/01. The parties are close to a settlement agreement. Telephone conference set for 8/24/01 at 1:30 p.m. (vm) [Entry date 08/22/01]
- 1/10/02 36 ORDER by Magistrate Judge E. C. Knowles: Settlement conference set for 9:30 a.m. on 2/12/02. By noon on 2/8/02, pltf and deft shall deliver under seal, ex parte, separate status reports which set forth the unresolved issues and the parties respective positions on these issues. EOD 1/11/02 (cc: all counsel) (dlt) [Entry date 01/11/02]
- 2/12/02 37 CLERK'S RESUME: Second settlement conference held 2/12/02; the parties were unable to reach a settlement in this action; CMC will be set. (vm) [Entry date 02/13/02]
- 2/12/02 38 ORDER by Magistrate Judge E. C. Knowles: Case Management Conference is set for 11:00 a.m. on 3/4/02, to establish ddls for the progression of this case. Prior to the hearing, counsel for the parties are directed to confer on a proposed case management order, which shall be submitted prior to the case management conference. (cc: all counsel) EOD 2/13/02 (vm) [Entry date 02/13/02]
- 2/19/02 39 MOTION by deft City of Cookeville to dissolve preliminary injunction in this case (mk) [Entry date 02/20/02]

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- 2/19/02 40 MEMORANDUM by deft City of Cookeville in support of mtn to dissolve preliminary injunction [39-1] with attached Exhs A-B (mk) [Entry date 02/20/02]
- 2/19/02 41 AFFIDAVIT of Jim Shipley re [39-1] w/ attached Exhs A-B (mk) [Entry date 02/20/02]
- 3/1/02 42 CLERK'S RESUME: Case Management Conference held 3/1/02; Proposed Case Management Order submitted; hearing continued and reset for 4/3/02 at 3:00 p.m.; parties to attempt to resolve certain issues discussed at the hearing and submit proposed agreed order(s); if the parties can agree upon issues discussed, and can agree upon a proposed case management order, they will not be required to attend a hearing on 4/3/02; parties are still attempting to settle. C/R : Tape No.: 2002-11 MK (vm)
- 3/4/02 43 ORDER by Magistrate Judge E. C. Knowles: the parties appeared for a Case Management Conference on 3/1/02. After discussion at the hearing, the Court and the parties agreed that the hearing should be continued for 30 days to allow the parties to discuss and attempt to resolve certain issues related to class certification. Case Management Conference is reset for 3:00 p.m. on 4/3/02. (cc: all counsel) EOD 3/5/02 (vm) [Entry date 03/05/02]
- 3/6/02 -- PROPOSED Agreed Order to extend time until 3/18/02 for pltfs' response to deft's mtn to dissolve preliminary injunction (vm)
- 3/7/02 44 AGREED ORDER by Judge William J. Haynes Jr. pltfs shall have until 3/18/02 to respond to deft's motion to dissolve preliminary injunction in this case [39-1]. (cc: all counsel) EOD 3/7/02 (vm)
- 3/15/02 -- PROPOSED Second Agreed Order to extend time for pltfs' response to deft's motion to dissolve preliminary injunction (vm)
- 3/18/02 45 SECOND AGREED ORDER by Judge William J. Haynes Jr.: pltfs time to respond to deft's motion to dissolve preliminary injunction in this case [39-1] is extended to 4/8/02. (cc: all counsel) EOD 3/18/02 (vm)
- 4/3/02 46 CLERK'S RESUME: Case Management Conference held 4/3/02. The parties have executed a consent to proceed before the Magistrate Judge in this action. Proposed agreed order of settlement submitted for Judge Knowles approval. Court will consider order. C/R : Tape No.: 2002-26 MK (vm) [Entry date 04/04/02]

4/3/02 47 CONSENT OF THE PARTIES to proceed before the Magistrate Judge (vm) [Entry date 04/04/02]

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4/8/02 48 NOTICE by pltfs of filing memorandum of law on the agreed order proposing class certification and settlement (proposed order submitted during CMC) (vm) [Entry date 04/09/02] [Edit date 04/09/02]

4/19/02 49 ORDER by Judge William J. Haynes Jr.: upon consent of parties, this case transferred to Magistrate Judge E. C. Knowles for final disposition. (cc: all counsel) EOD 4/22/02 (vm) [Entry date 04/22/02]

9/19/02 50 AGREED ORDER by Magistrate Judge E. C. Knowles: This case is certified as a class action for the purposes of declaratory and injunctive relief only by agreement between the parties. Claims for damages by all class members, with the exception of Linda Gamble, Roger Copeland and Ruby Copeland, individually, and any class members who give the Court ntc that they are opting out of the pltf class as provided in the attached ntc of proposed settlement, are dismissed with full prejudice, unless a prospective class member petitions the Court for damages pursuant to the ntc to be given. Pltfs Linda Gamble, Roger Copeland and Ruby Copeland accept the offer of judgment proffered in this case. Pltfs' attys fees will be set by the Court. The preliminary injunction is dissolved effective upon the entry of this order, and the City of Cookeville will eliminate the hang tag ntc and the \$10.00 fee associated therewith immediately. EOD 9/20/02 (cc: all counsel) (gi) [Entry date 09/20/02]

9/19/02 51 ORDER by Magistrate Judge E. C. Knowles: Mtn to dissolve preliminary injunction in this case [39-1] is dismissed as moot in view of order [50-1]. EOD 9/20/02 (cc: all counsel) (gi) [Entry date 09/20/02]

10/10/02 -- PROPOSED Agreed Order setting fairness hearing for 12/18/02 at 10:00 a.m. (w/attachments) (vm) [Entry date 10/11/02]

10/17/02 52 AGREED ORDER by Magistrate Judge E. C. Knowles: The fairness hearing is set for 10:00 a.m. on 12/18/02. Attached to this order is the agreed notice form which will be mailed to City of Cookeville customers re the class actions settlement. (cc: all counsel) EOD 10/18/02 (vm) [Entry date 10/18/02]

12/18/02 53 CLERK'S RESUME: Fairness hearing/settlement held 12/18/02. Court finds the settlement is fair and will accept the proposed class action settlement. Order to enter. C/R :

Tape No.: 2002-86 MK (vm) [Entry date 12/20/02]

1/17/03 54 MOTION by pltfs to approve class counsel attorney fees pursuant to agreement (w/att'd exhibits A-C) (vm) [Entry date 01/21/03]

1/17/03 55 AFFIDAVIT of Samuel J. Harris re [54-1] (w/attachments) (vm)

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[Entry date 01/21/03]

1/17/03 56 AFFIDAVIT of John W. Allen re [54-1] (w/attachments) (vm) [Entry date 01/21/03]

1/17/03 57 AFFIDAVIT of Jerry Burgess re [54-1] (w/attachments) (vm) [Entry date 01/21/03]

1/30/03 -- PROPOSED Agreed Order allowing deft an additional 10 days from the date the Court enters its order and memorandum within which to respond to the petition for attorney's fees filed by pltfs (vm)

2/13/03 58 RESPONSE by deft Cookeville City of to motion to approve class counsel attorney fees pursuant to agreement [54-1] (vm)

2/14/03 59 AGREED ORDER by Magistrate Judge E. C. Knowles: The deft should have an additional 10 days from the date the Court enters its order and memorandum opinion in this matter within which to respond to the petition for attorney's fees filed by the pltfs [54-1]. (cc: all counsel) EOD 2/18/03 (vm) [Entry date 02/18/03]

2/25/03 60 REPLY by pltfs to response to petition for attorney fees [54-1] (vm) [Entry date 02/26/03] [Edit date 02/26/03]

2/25/03 61 EXHIBITS to pltfs' reply to response to petition for attorney fees [60-1] (vm) [Entry date 02/26/03] [Edit date 02/26/03]

2/25/03 62 MOTION by pltfs for oral argument on reply to petition for attorney fees (vm) [Entry date 02/26/03]

3/10/03 63 REPLY by pltfs in support of motion to approve class counsel attorney fees pursuant to agreement [54-1] (w/att'd exhibits 1-5) (vm) [Entry date 03/11/03]

3/18/03 64 AMENDED RESPONSE by deft Cookeville City of to petition for attorney fees [54-1] (vm) [Entry date 03/19/03]

4/11/03 65 MOTION by pltfs for Rule 11 sanctions and Memorandum in support thereof (vm) [Entry date 04/14/03]

4/30/03 66 REPLY by deft Cookeville City of to motion for Rule 11 sanctions [65-1] (km)

5/13/03 67 ORDER by Magistrate Judge E. C. Knowles: For the reasons set forth on the record at the fairness hearing, the Court concludes that the settlement is fair, adequate and reasonable and the Court approves the settlement reached by the parties in this case. A separate order will be entered concerning the motion of class counsel for an award of attorneys' fees and expenses. (cc: all counsel) EOD 5/13/03 (vm)

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5/14/03 68 ORDER by Magistrate Judge E. C. Knowles: A hearing on pltfs' motion to approve class counsel attorney fees pursuant to agreement [54-1] is set for 10:00 a.m. on 5/28/03. (cc: all counsel) EOD 5/14/03 (vm)

5/28/03 69 CLERK'S RESUME: Oral agrument held 5/28/03 on pltfs' motion to approve class counsel attorney fees pursuant to agreement [54-1]. Under advisement-order will enter. C/R : Tape No: 2003-30 MK; 2003-31 MK (vm)

9/30/03 70 MEMORANDUM OF THE COURT (cc: all counsel) EOD 9/30/03 (gi)

9/30/03 71 ORDER by Magistrate Judge E. C. Knowles granting motion to approve class counsel attorney fees pursuant to agreement [54-1] in accordance with the accompanying memorandum. Pltfs are awarded attys' fees and expenses in the amount of \$69,467.50. EOD 9/30/03 (cc: all counsel) (gi)

[END OF DOCKET: 2:01cv21]
