Filed 9/11/18 Morgan v. Glendale Police Dept. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

DONALD W. MORGAN, Plaintiff and Appellant, v. GLENDALE POLICE DEPARTMENT et al., Defendants and Respondents.	B275951 (Los Angeles County Super. Ct. No. EC062364)

APPEAL from judgments of the Superior Court of Los Angeles County, William B. Stewart, Judge. Affirmed.

Donald W. Morgan, in pro. per., for Plaintiff and Appellant.

Michael J. Garcia, City Attorney, Ann M. Maurer, Chief Assistant City Attorney, and David Ligtenberg, Deputy City Attorney, for Defendants and Respondents Glendale Police Department and Officer Daniel Kiang.

Pleiss Casey Sitar McGrath Hunter & Hallack, Larry T. Pleiss and Candice P. Hallack for Defendant and Respondent College Hospital Cerritos.

In 2013, City of Glendale police officers received reports that a man was behaving oddly and was trying to open doors in an apartment complex. When officers arrived at the complex, they found plaintiff and appellant Donald W. Morgan, who appeared to be homeless and incoherent. Based on the reports and Morgan's behavior, officers found probable cause to place him on a 72-hour hold under Welfare and Institutions Code section 5150 (a 5150 hold).[1] Morgan spent seven days at College Hospital Cerritos (CHC). Claiming that probable cause did not exist for the hold, Morgan sued CHC, the police department, and the officer who detained him. The trial court granted defendants' motions for summary judgment. Morgan appeals. We affirm the judgments.

BACKGROUND

I. Morgan's medical history

Six months after suffering head and other injuries in an accident in 1988, Morgan was treated for atypical depression with marked anxiety, a mixed personality disorder, and schizophreniform reaction. Claiming that his accident resulted in memory loss, fainting spells, dizziness and headaches, Morgan applied for and received disability insurance benefits in 1989.

A 1991 psychiatric evaluation concluded that Morgan demonstrated severe post-traumatic organic brain syndrome and marked functional deficits. He also suffered personality changes marked by a lack of drive and interest; impairment of memory, concentration and retention; a considerably restricted ability to

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[1] All further undesignated statutory references are to the Welfare and Institutions Code.

relate to peers, friends and family; and significant rejection and/or withdrawal. Morgan had major difficulty interacting with the public, including getting along effectively with coworkers and peers. He also had moderately severe impairment of his ability to reason and to make personal, occupational or social adjustments and a moderately severe limitation on his capacity to understand, to remember, to concentrate and to attend.

In November 2012 and January 2013, Morgan complained of anxiety, depression and low back pain. Morgan was taking Xanax, Wellbutrin, Meloxicam and Vicodin. In March, April and May 2013, he was diagnosed with major depression, insomnia and backache.

II. June 4, 2013: Morgan is placed on a 72-hour hold

On June 4, 2013, a 911 caller reported to the Glendale Police Department that a male transient named Morgan was approaching doors in an apartment complex. Officers Daniel Kiang and Artin Melik-Kasumyan responded to the location, 1212 E. Glenoaks, where a woman told them that Morgan was wandering the courtyard and trying to open apartment doors with his keys. Morgan said he was checking out a rumor that somebody had been raped. Another woman saw Morgan talking to himself incoherently. Although she told him to leave, he wandered to other apartments "and was just standing there looking in her apartment."

The officers spoke to Morgan, who was dirty, shoeless and had sunburned feet. The officers recorded their conversations. Officer Melik asked Morgan if he wanted help, and Morgan said, "No, she does." When asked why he wasn't wearing shoes, Morgan said he did not "feel like it." And when asked what was going on, Morgan ambiguously replied, "She went to help with the daughter – my daughter, two daughters."

Officer Kiang also questioned Morgan, who correctly answered a question about the President of the United States. But, when asked how Morgan got to the location, he answered, "Okay. That was a good question. What happened was she asked that same question of me and I said, why I was traping somebody help and – it was a person that lived in Beverly Hills and it was financial gardens." Morgan denied wanting to hurt himself, but, when asked if he wanted to hurt anybody else, Morgan said, "If they do that to me, the reason I would apologize and ask for forgiveness."

Based on the reports that Morgan had tried to open apartment doors and on Morgan's "fragmented, totally unrelated and rambling answers" to questions, Officer Kiang believed that Morgan was suffering from a mental health disorder and posed a danger to others, and, as such, there was probable cause to detain Morgan and to transport him to Olive View Medical Center. Officer Kiang prepared an application for a 72-hour hold in which he stated there was probable cause to believe Morgan was a danger to others because he was a transient who did not live at the location, he attempted to open four-to-five doors in the complex with his keys, and he had given irrational responses to questions and "ramble[d] on tangents."

III. Morgan's hospitalization

Morgan was admitted to Olive View Medical Center, where he was advised he had a right to an attorney and to a hearing if he was held longer than 72 hours. His 5150 hold commenced at 1415 on June 4, 2013.[2] Dr. Amarjeet Randhawa, a psychiatrist, evaluated Morgan, who would not say where he lived and whether he had social support or employment. When asked if he worked, he nonsensically responded, "Yeah. 10 hours ago I sprayed water on my tongue." Morgan was seeing things, hearing voices and getting in other people's space. At one point he sat on someone's feet and at another he said he was going to turn off the oven. He tested positive for benzodiazepines.

The next day, June 5, 2013, Olive View staff reevaluated Morgan. Although more lucid, he was still disorganized in thought and confused. He could not articulate a plan for self care and refused to sign documents.

Due to a lack of beds, Olive View transferred Morgan to CHC, which admitted him at 1830 on June 5, 2013. Morgan refused to sign admission documents, including the involuntary patient advisement form stating he could be held for 72 hours and, if he was held longer, then he had a right to a lawyer and a hearing before a judge. CHC assigned Morgan to the central unit where a poster informed mental health patients of their rights and provided contact information for a patients' rights advocate. Pay phones and a phone at the nurses' station were available for patient use. A social worker assessed that Morgan knew his rights.

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[2] The 72-hour hold would therefore expire at 1415 on June 7, 2013.

Dr. Sanjai Thankachen's admitting psychiatric and mental health examination noted that Morgan denied any prior psychiatric diagnosis but "uses the voices" and did not like the way psychotropic medications made him feel. He admitted having a mental breakdown in 1988 and to taking Wellbutrin when he remembered to do so. The doctor believed that Morgan was trying to minimize his symptomology and noted that Morgan was "quite bizarre with his overall explanation of what" had happened. Dr. Thankachen prescribed medication for Morgan's disorganized thought processes and depressive stigmata.

On June 6, 2013, Dr. Thankachen certified that Morgan required " 'continued inpatient psychiatric hospitalization as evidenced in the medical record and that inpatient psychiatric hospital services furnished since the previous certification or recertification were, and continue to be, medically necessary for either (a) treatment which could reasonably be expected to improve the patient's condition, or (b) diagnostic study, or equivalent services.' "

In part because Morgan was having visions of himself with Meg Ryan, Dr. Thankachen ordered a 14-day hold under section 5250 on Friday, June 7, 2013. Morgan continued to be bizarre, confused, disorganized and unable to give coherent thought or reasons why he had used keys to try to get in to other people's houses. He constantly said he needed water for his bike and thought it was a gas station. The doctor diagnosed him with psychosis not otherwise specified. The treatment plan was to continue reality testing, provide supportive therapy and titrate his medication. In his notice of certification, Dr. Thankachen diagnosed Morgan as " 'gravely disabled' " and noted that Morgan " 'cannot formulate a plan of self-care, disorganized and bizarre.

He is confused and [a] poor historian.' " Morgan was notified that " 'unless judicial review is requested, a certification review hearing will be held within four days of the date on which the person is certified for a period of intensive treatment and that an attorney or advocate will visit him . . . to provide assistance in preparing for the hearing or to answer questions regarding his . . . commitment or to provide other assistance. The court has been notified of this certification on this day.' " CHC staff delivered the certification to the mental health counselor hearing coordinator to arrange for a review hearing.

On June 8, 2013, Morgan's progress was the same. But, on June 9, he was doing "a little bit better" and was continued on the same assessment and care plan. He still did not know why he had knocked on doors, but thought he would do it again and ask for an apology, as people should visit friends who will be met in heaven.

On June 10, 2013 Morgan signed a release for voluntary admission and authorization for treatment. He was free to leave the hospital, even against medical advice.

The next day, June 11 Morgan was discharged. In follow-up visits, doctors continued to find he had major depression.

IV. Morgan sues Glendale and CHC

Morgan sued the Glendale Police Department[3] and Officer Kiang (collectively, Glendale) and CHC. His operative second amended complaint (SAC) alleged causes of action for

[3] He sued the City of Glendale erroneously as the Glendale Police Department.

(1) negligence,[4] (2) negligent infliction of emotional distress, (3) intentional infliction of emotional distress and (4) a violation of his procedural due process rights. He alleged the first cause of action against Officer Kiang and the remaining ones against all defendants.

Morgan based his causes of action on allegations that he injured his ankle while riding his motorcycle on June 4, 2013. He alleged he stopped at 6100 San Fernando Road in Glendale, where "firemen" ordered him to sit until they finished testing his blood pressure and questioning him. The firemen then had Morgan committed under section 5150. That same day, Officer Kiang submitted allegedly false reports to doctors, which listed an incorrect address of 1212 E. Glenoaks. But this "address doesn't have anything to do with plaintiff being involuntar[ily] confined," because he was not at the Glenoaks address. "The cops" appeared to be glaring at Morgan, and he thought the officers might be using a 5150 hold as a "disciplinarian form of action." He was detained under section 5150 without probable cause and in excess of 72 hours without a hearing and an attorney.

The only specific allegation against CHC was it detained him illegally for five days (from June 5 to June 11, 2013) and denied his request for a hearing and an attorney.

V. The motions for summary judgment

Glendale and CHC separately moved for summary judgment or, alternatively, summary adjudication of issues.

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[4] Although Morgan pled general negligence in his SAC, he said in discovery that he was alleging professional negligence against CHC.

A. *Glendale's motion*

In moving for summary judgment, Glendale submitted Officer Kiang's declaration and supporting exhibits, including transcripts of the officers' recorded conversations with Morgan and women at the apartment complex, to establish that probable cause existed to detain Morgan under section 5150. Glendale's papers also established that the incident occurred on June 4, 2013 at 1212 E. Glenoaks.

In opposition, Morgan argued that probable cause did not exist for his detention because the incident occurred on June 3 (not on June 4), 2013: "The officer on June 3, 2013 did not have plaintiff detained pursuant to § 5150 on those events but Officer Kiang choose [*sic*] to use those events to justify probable cause events occurring approximately 14-hour[s] prior to" the officer's 72-hour application. Morgan also appeared to agree there was an incident on June 4, but asserted it occurred at 6100 San Fernando Road with Glendale Fire and Rescue. Although Morgan did not allege excessive force in his SAC, he contended in his opposing papers that Officer Kiang used excessive force by handcuffing him and driving him around for five-to-six hours. Morgan supported his opposition with his declaration and that of his daughter, who said that she spoke by phone to Morgan on June 3 and June 4, 2013 and that during the early morning call on June 4 she could hear law enforcement talking to Morgan.

In reply, Glendale submitted plaintiff's discovery admissions that he was taken into custody on June 4, 2013.

B. *CHC's motion for summary judgment*

In support of its argument that the 5150 and 5250 holds were in accordance with the law, CHC submitted the declaration of an expert, Dr. Thomas Garrick, who described Morgan's medical history and opined that CHC had met the standard of care in treating Morgan and in detaining him under sections 5150 and 5250. The hospital also submitted the declaration of April Martin, a registered nurse who was working at CHC when Morgan was a patient. Martin declared that Morgan had access to two pay telephones and to the telephone at the nurse's station and that a poster informed patients of their rights. She hand-delivered the June 7, 2013 notice of certification to Morgan. Had he asked to speak to an attorney at that time, she would have told him, per custom and practice, that telephones were available for his use and that the patients' rights advocate's phone number was next to the pay phones.

In his declaration opposing summary judgment, Morgan denied that nursing staff told him about his right to judicial review, but he also said he asked for a hearing. He refused to sign documents because hospital staff denied his request for a hearing and an attorney. Also, his medications kept him from having "a clear pattern of thoughts." He admitted that telephones were available, but he could not use them in his state.

VI. The trial court's ruling

The trial court granted Glendale's and CHC's motions. As to Glendale, the court found that probable cause existed to detain Morgan; accordingly, Glendale was immune under section 5278 (discussed below), and therefore the first, second and third causes of action were barred. The fourth cause of action was also barred

because Officer Kiang had a qualified immunity to detain Morgan. As to CHC, the trial court found that there was no triable issue of fact as to the justification for the 5150 hold, and due process did not require a hearing for such a hold. Finally, to the extent Morgan argued that his claims arise from torts committed during his detention and not from the decision to detain him, he did not plead such claims.[5]

This timely appeal followed.

DISCUSSION

I. Summary judgment standard of review

Summary judgment is properly granted if all the papers submitted show no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849; *Sanchez v. Kern Emergency Medical Transportation Corp.* (2017) 8 Cal.App.5th 146, 152.)
A defendant meets its burden by showing that one or more essential elements of the plaintiff's cause of action cannot be established, or that there is a complete defense. (Code Civ. Proc., § 437c, subds. (o), (p)(2)); *Aguilar*, at p. 849; *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.) If the defendant makes this showing, the burden shifts to the plaintiff to demonstrate a triable issue of fact exists. (*Aguilar*, at p. 849.)

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[5] The trial court overruled defendants' evidentiary objections, and those rulings are not at issue.

" 'We review the trial court's ruling on a summary judgment motion de novo, liberally construe the evidence in favor of the party opposing the motion, and resolve all doubts concerning the evidence in favor of the opponent.' " (*Veera v. Banana Republic, LLC* (2016) 6 Cal.App.5th 907, 914.) We consider the facts in the record that were before the trial court when it ruled on that motion, except the evidence to which the trial court sustained objections. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.) " 'We apply the same three-step analysis required of the trial court. We begin by identifying the issues framed by the pleadings since it is these allegations to which the motion must respond. We then determine whether the moving party's showing has established facts which justify a judgment in movant's favor. When a summary judgment motion prima facie justifies a judgment, the final step is to determine whether the opposition demonstrates the existence of a triable, material factual issue.' " (*Gutierrez v. Girardi* (2011) 194 Cal.App.4th 925, 931–932.)

II. The Lanterman-Petris Act

Morgan was detained under the Lanterman-Petris-Short Act, which governs the involuntary commitment of mentally disordered persons. (§ 5000 et seq.) "When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled," law enforcement officers and medical professionals may "upon probable cause" take that person to an appropriate facility for assessment, evaluation, and crisis intervention for up to 72 hours. (§ 5150, subd. (a).) When a peace officer takes a person into custody under section 5150, the officer must prepare a written application "stating the circumstances under which the person's condition was called to"

the officer's attention and that the officer had "probable cause to believe that the person is, as a result of a mental health disorder, a danger to others, or to himself or herself, or gravely disabled." (§ 5150, subd. (e).)

The probable cause necessary to initiate a 5150 hold is similar to that needed for a warrantless arrest. (*People v. Triplett* (1983) 144 Cal.App.3d 283, 287 (*Triplett*).) A state of facts must be known to the peace officer that would "lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion, that the person detained is mentally disordered and is a danger to himself or herself or is gravely disabled. In justifying the particular intrusion, the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant his or her belief or suspicion." (*Id.* at p. 288.) However, an officer is "not required to make a medical diagnosis of mental disorder. It is sufficient if the officer, as a lay person, can articulate behavioral symptoms of mental disorder, either temporary or prolonged." (*Ibid.*) Mental disorder may be exhibited if a person's thought processes, as evidenced by words or actions or emotional affect, are bizarre or inappropriate. (*Ibid.*)

Before a person may be admitted to a facility under section 5150, the professional person in charge of the facility shall "assess the individual in person to determine the appropriateness of the involuntary detention." (§ 5151.) Once admitted, the person shall be evaluated as soon possible and receive the required treatment. (§ 5152, subd. (a).) Also, certain advisements must be given orally and in writing, including that if the person is held longer than 72 hours, the person has the right to a lawyer and to a hearing before a judge. (§ 5150, subd. (i)(1).)

A person placed on a 72-hour hold may be certified for 14 days of intensive treatment under section 5250. (*Julian v. Mission Community Hospital* (2017) 11 Cal.App.5th 360, 376; *Coburn v. Sievert* (2005) 133 Cal.App.4th 1483, 1493.) If a 14-day hold is instituted under section 5250, then the person is entitled to a hearing within four days of when the person is certified for the hold. (§ 5256.)

III. Glendale's motion for summary

Morgan's causes of action against Glendale are premised on the alleged absence of probable cause to support the 5150 hold.[6] As we now discuss, the undisputed facts show that A. probable cause existed for that hold and B. Glendale is therefore immune from Morgan's state law claims.

A. *Probable cause existed for the 5150 hold*

As we have said, a 5150 hold may be initiated on a showing of probable cause. (*Triplett*, *supra*, 144 Cal.App.3d at p. 287.) Glendale met its burden of establishing facts showing that probable cause existed for Morgan's 5150 hold. Those facts

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[6] This includes Morgan's fourth cause of action for a "violation of plaintiff's procedure due process rights 42 U.S. [section] 1983." A plaintiff seeking to recover from a government official under that section must show that the official violated a "clearly established" constitutional right. (*Carroll v. Carman* (2014) 135 S.Ct. 348, 350; *Venegas v. County of Los Angeles* (2004) 32 Cal.4th 820, 840.) "Although confinement of the mentally ill by state action generally is analyzed under the due process clause of the fourteenth amendment," the distinct right to be free from an unreasonable governmental seizure of the person derives from the Fourth Amendment. (*Maag v. Wessler* (9th Cir. 1992) 960 F.2d 773, 775.) Here, Morgan has not identified a specific constitutional right that was violated but it presumably was the Fourth Amendment.

included the police department's receipt of reports that, on June 4, 2013, Morgan was trying to open doors with his keys at 1212 E. Glenoaks. When Officer Kiang arrived at that location, he found Morgan, who looked homeless and was unable to answer questions coherently. These facts established probable cause to detain Morgan under section 5150. (See, e.g., *id.* at p. 285 [probable cause existed to detain appellant who appeared to be intoxicated, was crying, and had cuts to her wrists].)

Morgan raises no material dispute as to these facts. Instead, the only "disputes" he raises are about, first, his appearance and, second, where and when the incident occurred. First, Morgan suggests there was no reason for Officer Kiang's belief Morgan was homeless because, except for dirt associated with motor biking, Morgan says he was clean, calm and did not make bizarre outbursts.[7] However, this fails to raise a triable issue as to *what Officer Kiang observed*. Notwithstanding Morgan's perception of how he looked, Officer Kiang observed that Morgan was dirty, shoeless and disoriented. The transcript of the conversation between Morgan and the officers supports that observation. Officer Melik asked Morgan why he wasn't wearing shoes, and Morgan replied, "I didn't feel like it." A women at the apartment complex confirmed that Morgan initially had shoes but she did not know "what happened to his shoes." The evidence thus indisputably establishes that Morgan wore no shoes and was otherwise unkempt.

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[7] Morgan admitted in his opposition to the summary judgment motion that "he may [have] appeared disheveled" because he had been riding in dirt terrain all day, but he was otherwise clean and clean-shaven and calm.

In addition to Morgan's troubling appearance, his verbal incoherence provided additional probable cause for his detention. Morgan answered questions nonsensically, saying, for example, he "was traping somebody help and – it was a person that lived in Beverly Hills and it was financial gardens." He admitted being "overwhelmed" by his Las Vegas dirt bike trip, which affected his vision "which is why [I] was resting."

Second, Morgan disputes that the incident occurred at 1212 E. Glenoaks on June 4, 2013. He instead asserts that the incident occurred at 6100 San Fernando Road in Glendale on June 3, 2013. The computer aided dispatch system log from Glendale Police Department, however, shows that the officers were dispatched on June 4, 2013 to 1212 E. Glenoaks. Officer Kiang's application for a 72-hour hold is dated June 4, 2013 and states that the location of the incident was 1212 E. Glenoaks. Glendale's custodian of records authenticated the dispatch logs. Morgan's response to this documentary evidence is to claim that the "911 calls and digital audio recordings" were altered. Such an unsupported, conclusory and bare assertion that the moving party fabricated key evidence is insufficient to avoid summary judgment. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 166.) Speculation, conjecture and conclusory assertions cannot create a disputed issue of fact. (*Yuzon v. Collins* (2004) 116 Cal.App.4th 149, 166.)

Morgan also cannot create a triable issue of material fact by directly contradicting his admissions in discovery (*Shin v. Ahn* (2007) 42 Cal.4th 482, 500, fn. 12; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 22) or in prior pleadings (*Preach v. Monter Rainbow* (1993) 12 Cal.App.4th 1441, 1451). " 'In determining whether any triable issue of material fact exists, the

trial court may, in its discretion, give great weight to admissions made in deposition and disregard contradictory and self-serving affidavits of the party.' " (*Benavidez v. San Jose Police Dept.* (1999) 71 Cal.App.4th 853, 860.) Morgan admitted in discovery and in his pleadings that the incident occurred on June 4, 2013 at 1212 E. Glenoaks. At his deposition, Morgan was asked if he remembered the date Glendale police officers took him into custody: he answered June 4, 2013. Further, although in his declaration opposing summary judgment Morgan appears to say there was an incident on June 3, 3013, he also admitted that Glendale police officers questioned him on June 4, 2013. Morgan also stated in his opposition to Glendale's motion for summary judgment that he encountered Officer Kiang on June 4, 2013. And, although the allegations in his SAC are vague, Morgan admitted an incident occurred on June 4, 2013 wherein the "fire department" had him committed.

As to where he was detained, Morgan admitted at his deposition that he did not see the address because it was dark. He believed it was 6100 San Fernando Road because someone at the police department told Morgan's daughter that he was picked up at that location.

In sum, Morgan has failed to raise a triable issue of material fact as to the existence of probable cause to place him on a 5150 hold.

B. *Glendale is immune from the state law claims*

Section 5278 provides that individuals authorized to detain a person for 72-hour treatment and evaluation pursuant to section 5150 "shall not be held either criminally or civilly liable for exercising this authority in accordance with the law." Thus, where, as here, probable cause existed for the detention, the

statute provides immunity for the decision to detain and for the detention and "its inherent attributes, including the fact that the patient must necessarily be evaluated and treated without consent." (*Jacobs v. Grossmont Hospital* (2003) 108 Cal.App.4th 69, 78; see also *Cruze v. National Psychiatric Services, Inc.* (2003) 105 Cal.App.4th 48, 56 [section 5278 applies to individuals and entities].) Because Glendale acted in accordance with the law, Morgan's causes of action for negligence and for negligent and intentional infliction of emotional distress fail for the additional reason that they are barred under section 5278.

C. *Excessive force*

In his reply brief on appeal, Morgan alludes to excessive force, but he did not allege such a claim in his SAC. In any event, Morgan admitted at his deposition that other than placing handcuffs on him, the police did not use physical force. Also, Morgan's claim that officers drove him around for five-to-six hours is belied by the police department's call history log, which shows that officers contacted Morgan at 1212 E. Glenoaks just before 1:00 p.m. and, it appears, transported him to Olive View approximately one hour later. He was admitted to Olive View at 1415. Morgan has therefore neither properly raised excessive force as a basis for his causes of action nor has he, in any event, raised a material dispute as to what occurred when he was transported to Olive View.

IV. CHC's motion for summary judgment

The only specific allegations Morgan makes against CHC are, first, it illegally detained him from June 5 to June 11, 2013 and, second, the hospital denied his request for a hearing and an

attorney. As we now discuss, there is no triable issue of material fact as to those claims.

A. *Probable cause existed to hold Morgan under sections 5150 and 5250*

The undisputed evidence establishes that probable cause existed to detain Morgan. Dr. Garrick detailed the history of Morgan's hospitalization and opined that CHC acted in accordance with the standard of care and had probable cause to detain Morgan. CHC's evidence included Dr. Thankachen's June 5, 2013 admission note that Morgan was "us[ing] the voices," was unable to remember the incident that brought him to the hospital, and was "quite bizarre with his overall explanation of what was happening." On June 7, when the doctor signed the certification for the 5250 hold, Morgan was incoherent and thought he was with Meg Ryan.

Morgan attempts to dispute this evidence by offering unsupported assertions. He asserts that Dr. Thankachen's "statement of probable cause is inconsistent with those in plaintiff daily participation and cooperation in his plan daily group activities." But Morgan's participation in group activities does not raise a material dispute about his mental state as otherwise documented, especially in the absence of expert testimony that connects such participation to an absence of probable cause for the holds. Indeed, Morgan acknowledges that his "thought pattern and speech" were "confused," but suggests it resulted from his motor bike trip and medication rather than from mental illness.

Morgan further suggests that CHC did not consider the effects anti-psychotropic medications had on his ability to exercise his rights. It may be that the medications affected his

cognitive abilities. But, it is unclear how that is relevant to his claim CHC violated his due process rights.

Moreover, to the extent Morgan argues that CHC fell below the standard of care, he did not submit an expert declaration to counter Dr. Garrick's declaration. Professional negligence cases require expert testimony to prove or disprove that the defendant acted in accordance with the prevailing standard of care, unless the negligence is obvious to a layperson. (*Garibay v. Hemmat* (2008) 161 Cal.App.4th 735, 741.) Negligence not being obvious on this record, it was incumbent on Morgan to present a counter expert declaration.

B. *Request for an attorney and a hearing*

Morgan's second allegation is CHC denied his request for a hearing and an attorney. In his reply brief, he suggests he was entitled to a hearing, first, before being involuntarily detained under section 5150 and, second, when his hold was extended under section 5250.

First, due process does not require a hearing before a detention under section 5150. A person may be placed on a 72-hour hold without a prior hearing where, as here, there is probable cause to believe a person detained is gravely disabled. (*Doe v. Gallinot* (C.D. Cal. 1979) 486 F.Supp. 983, 993–994.)

Second, Morgan suggests that CHC denied his request for a hearing when he was placed on the section 5250 hold. A person who has been on a 72-hour hold and is then certified for not more than 14 days of intensive treatment is entitled to a hearing within four days of the date on which the person was certified for a period of intensive treatment. (§§ 5250, 5254, 5256; *Sorenson v. Superior Court* (2013) 219 Cal.App.4th 409, 442.) Commitments longer than 72 hours "require a certification hearing before an

appointed hearing officer to determine whether there is probable cause for confinement, unless the detainee has filed a petition for writ of habeas corpus." (*Julian v. Mission Community Hospital*, *supra*, 11 Cal.App.5th at p. 375.)

Dr. Thankachen signed the section 5250 hold certification on Friday, June 7, 2013.[8] Therefore, a certification hearing had to be held within four days of June 7, which was June 11. On Friday, June 7, CHC notified the proper Los Angeles Superior Court department that a certification hearing had to be scheduled. The next two days, June 8 and 9, were a Saturday and Sunday, respectively. Then, on Monday, June 10, Morgan signed a release for voluntary admission and authorization for treatment, the effect of which was that Morgan was free to leave, even against medical advice. The next day, June 11, Morgan was discharged. On these undisputed facts, CHC did not deny any request for a hearing but instead had initiated the hearing process, which was rendered moot by Morgan's agreement to voluntary treatment and discharge. Summary judgment was therefore properly granted in CHC's favor.

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[8] At that time, Morgan was notified that " 'unless judicial review is requested, a certification review hearing will be held within four days of the date on which the person is certified for a period of intensive treatment and that an attorney or advocate will visit him . . . to provide assistance in preparing for the hearing or to answer questions regarding his . . . commitment or to provide other assistance. The court has been notified of this certification on this day.' " Morgan also concedes in his opening brief on appeal that the hospital had posters about a patient's rights under section 5150 but he was unable to take any of the steps described because he was medicated.

DISPOSITION

The judgments are affirmed. In the interest of justice, all parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KALRA, J.*

We concur:

EDMON, P. J.

LAVIN, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.