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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ANTONINA PARISIO, Individually and as Successor in Interest, etc. et al., Plaintiffs and Appellants, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents.	B262108 (Los Angeles County Super. Ct. No. MC024274)

APPEAL from a judgment of the Superior Court of Los Angeles County, Brian C. Yep, Judge. Affirmed in part and reversed in part.

Law Offices of Huntsman Noland, Roy Edward Huntsman and John W. Noland for Plaintiffs and Appellants.

Collins Collins Muir + Stewart, Tomas A. Guterres, Christie Bodnar Swiss and Christian E. Foy Nagy for Defendants and Respondents.

INTRODUCTION

Michael Parisio, Jr., known as Mikey, a severely disabled 36-year-old man, lived with his parents and co-conservators, Antonina and Michael Parisio, Sr.[1] On July 2, 2012 social worker Monique West, Detective John Amis, and Deputy Krist Mason (the individual defendants), on behalf of the County of Los Angeles Adult Protective Services and the Los Angeles County Sheriff's Department, removed Mikey from his home and transported him to the hospital after investigating reports Antonina and Michael were abusing and neglecting him. West told Antonina she was taking Mikey to the hospital but planned to send him to a group home. A few days later, West told Antonina she could not reveal Mikey's location because of the ongoing investigation of abuse. On July 12, 2012 a hospital social worker told the Parisios they could take Mikey home from the hospital.

Shortly after he returned home, Mikey died due to medical conditions unrelated to this lawsuit. Michael, Antonina, and Mikey's estate, through Antonina as his successor in interest, brought this action alleging the defendants removed Mikey from their home without their consent and on threat of arrest and kept Mikey hidden for 10 days in violation of state and federal law. The Parisios asserted causes of action for (1) false imprisonment, (2) violation of Civil Code section 52.1, (3) liability under 42 United States Code section 1983 for violations of the Fourth and Fourteenth Amendments, and (4) liability under 42 United States Code section 1983 and *Monell v. Department of Social Services of*

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[1] Because they share the same last name, we refer to Michael, Antonina, and Mikey by their first names.

City of New York (1978) 436 U.S. 658 (the *Monell* claim, against the County only). On appeal from the judgment following the trial court's order granting the defendants' motion for summary judgment, we affirm the trial court's ruling on the first and second causes of action because the Parisios forfeited any argument the defendants are not statutorily immune under Welfare and Institutions Code section 15634.[2] We affirm the trial court's ruling on the third cause of action because the individual defendants have qualified immunity. We reverse the trial court's ruling on the fourth cause of action because the County failed to meet its burden of showing it is entitled to summary judgment on the *Monell* claim.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The County Receives Reports of Abuse*

On July 2, 2012 the Los Angeles County Sheriff's Department received a copy of a July 1, 2012 article entitled, "*Who Will Help Mickey?*"[3] The article alleged severe and ongoing mistreatment of Mikey by his parents and described Mikey as bruised, malnourished, deprived of food and water, and left in his own waste for days. The article included photographs of Mikey lying on his stomach, in his underwear, with his ankles shackled and his hands handcuffed behind his back. The article also reported that Mikey's younger brother, Joseph, and Joseph's wife previously had reported the abuse to the police, but the police

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[2] Undesignated statutory references are to the Welfare and Institutions Code.

[3] Although the article referred to "Mickey," his parents called him "Mikey."

had failed to investigate effectively because, when they visited Mikey's home, Mikey's parents told them "everything was fine."

Adult Protective Services also received a dependent abuse report concerning Mikey. The agency assigned West to investigate. She learned there had been prior reports of abuse of Mikey but investigators had been unable to substantiate them.

B. *The County Investigates the Abuse Allegations and Transports Mikey to the Hospital*

West, Detective Amis, and Deputy Mason performed a welfare check at the Parisio residence the day they received the report. They explained to Antonina they were there to check on Mikey and asked to see him. Antonina let them into the home and escorted them to Mikey's bedroom. They found the bedroom was extremely hot. Mikey was face down on the floor in a fetal position wearing only boxer shorts. He was dirty and looked as if he needed a shower. He had bruises on his body, an open wound on his head, and looked sick and emaciated. He said the words "help" and "hungry," and made gestures indicating he wanted food in his mouth. In response to questioning, Antonina admitted she and her husband sometimes used police-grade handcuffs to restrain Mikey when he became violent.

Based on Mikey's condition, West recommended she and the deputies transport Mikey to the hospital for treatment of potential dehydration and malnutrition. Antonina objected. Antonina testified at her deposition that she told West and the deputies she "had conservatorship over him and [they had] no warrant to take him." She also testified "the policeman said [she] would be arrested if [she] did not let him go." Detective Amis showed Antonina the "*Who Will Help Mickey?*" article with

photographs of Mikey handcuffed and in his underwear, and he explained there had been a report of neglect and abuse. When emergency medical technicians arrived at the Parisio residence, they observed cuts and bruises on Mikey's body.

Michael arrived home and parked in the driveway behind the ambulance. Michael testified at his deposition that one of the detectives explained to him they were there to investigate suspected abuse of his son. Michael asked if they had a warrant. When the detective replied they did not need a warrant, Michael said they could not take his son. Michael testified the detective then told him, "If you try to stop me, I'm going to arrest you and we're going to still take your son." Michael did not respond: "I just didn't say nothing. If I let them lock me up then I can't help my son. . . . I believed that he could do that. I didn't know he couldn't." Detectives then showed Michael the article and photographs that were the basis for the investigation. West, Detective Amis, and Deputy Mason all submitted declarations in support of the motion for summary judgment stating that Antonina and Michael ultimately consented to allow the emergency medical technicians to transport Mikey to the hospital.

When Mikey arrived at the hospital, West and the emergency medical technicians informed hospital personnel they suspected Mikey's parents were abusing and neglecting him. Mikey's parents arrived at the hospital later that day and were able to see Mikey West asked them to go home and return with clothes for Mikey. When Antonina returned with the clothing, West told her Mikey would be going to a group home. Mikey's parents were not allowed to see Mikey again until his release from the hospital 10 days later, on July 12, 2012.

C. *The Hospital Classifies Mikey As a "Do Not Announce"*

While Mikey was in the hospital, Detective Dave Johnson investigated the allegations of abuse and neglect. Detective Johnson interviewed Mikey's brother, Joseph, who said his parents physically abused and handcuffed Mikey. Joseph admitted he took the photographs that appeared in the "*Who Will Help Mickey?*" article in order to get help for Mikey. Detective Johnson attempted to speak to Antonina, but she refused. Michael testified at his deposition that he thought Joseph's motive in reporting the alleged abuse was retaliatory because Joseph believed Antonina and Michael had something to do with the removal of Joseph's son from his custody.

Detective Johnson also spoke to a hospital social worker, Sara Morgan. She reported Mikey was severely dehydrated and malnourished, had bruises over most of his body, and was very aggressive. Morgan testified at her deposition that, in cases of suspected abuse, if hospital personnel determine visitors would be a threat to the patient, the hospital classifies the patient as a "Do Not Announce" (DNA). When the hospital classifies a patient as a DNA, the hospital responds to inquiries about that patient by not acknowledging the patient's presence in the hospital.

Morgan testified that emergency personnel classified Mikey as a DNA upon his admission to the hospital, and she completed the paperwork several days later. When Mikey was first admitted to the hospital, Morgan believed Adult Protective Services could and did order Mikey classified as a DNA, but she later understood that Adult Protective Services did not have that authority. West confirmed in a declaration the hospital had classified Mikey as a DNA and Adult Protective Services "does

not restrict visitation because such restrictions are determined by the hospital."

Two or three days after Mikey's hospitalization, Michael and Antonina called West and asked to see their son. West informed them she "could not release information pertaining to his location because they were suspected abusers and the investigation was ongoing." While Mikey was in the hospital, both Detective Johnson and West attempted to find a placement for Mikey away from his parents. They were unable to find an appropriate placement, however, because of Mikey's high level of aggression and extensive needs. Detective Johnson informed Morgan that neither Adult Protective Services nor the Sheriff's Department could enforce the "hold" at the hospital absent an arrest of Mikey's mother.

On July 12, 2012 Morgan called Antonina and explained why the hospital had classified Mikey as a DNA. Antonina told Morgan she did not know Mikey had been in the hospital for so long because West told her Mikey was going to a group home in Sylmar. Morgan testified at her deposition: "I felt that he was there for quite a long time without them locating placement. And after, you know, 10 days, I felt that perhaps the ball had been dropped, which is why I proceeded with a discharge plan home with the parents . . . ." On July 12, 2012 the hospital released Mikey to the custody of his parents.

West testified at her deposition that neither she nor her supervisor filed any petition with the court to find a placement for Mikey outside of his parents' home. With their summary judgment reply papers, the defendants submitted a report from a Probate Volunteer Panel attorney indicating a probate investigator had filed a report dated July 9, 2012, recommending

the court appoint a volunteer probate attorney for Mikey and suspend the powers of Antonina and Michael as co-conservators pending a hearing to determine whether they were acting in Mikey's best interests. According to the allegations of the Parisios' complaint, the court held a conservatorship hearing on August 9, 2012. Investigators could not substantiate the allegations of abuse, and the court retained Antonina and Michael as Mikey's co-conservators.

D. *The Motion for Summary Judgment*

Defendants filed a motion for summary judgment, making multiple arguments as to each cause of action. As to the first cause of action for false imprisonment, the defendants argued (1) there were no facts to support a claim for false imprisonment, (2) the individual defendants were immune under section 15634, (3) the individual defendants were immune under Government Code section 820.2 because they committed the acts alleged in the exercise of their discretion, and (4) the County could not be vicariously liable for the conduct of the individual defendants because the County was immune under Government Code section 815.2. Defendants argued they were entitled to judgment on the second cause of action for violation of Civil Code section 52.1 because (1) there were no facts to support a violation of that statute, (2) the individual defendants were immune under section 15634, (3) the individual defendants were immune under Government Code section 820.2, and (4) the County was immune under Government Code section 815.2.

With respect to the third cause of action for liability under 42 United States Code section 1983 based on violation of the Fourteenth Amendment right to familial association, the

defendants argued (1) there were no facts to support such a violation, (2) West was absolutely immune from liability because she was performing a quasi-prosecutorial function, (3) the individual defendants were entitled to qualified immunity because they acted reasonably, and (4) the County could not be liable under 42 United States Code section 1983 under a theory of respondeat superior. With respect to the third cause of action for liability under 42 United States Code section 1983 based on a violation of the Fourth Amendment, the defendants argued (1) the Parisios lacked standing to assert the claim on behalf of Mikey, (2) there were no facts to support the claim, and (3) the County could not be liable under 42 United States Code section 1983 under a respondeat superior theory. Finally, on the fourth cause of action, the *Monell* claim, the County argued (1) it was not liable under 42 United States Code section 1983 because no County policy, practice, or custom caused a violation of the Parisios' constitutional rights and (2) the County could not be liable under 42 United States Code section 1983 under a theory of respondeat superior.

The trial court granted the motion for summary judgment, stating there were "no triable issues of material fact with regard to the four (4) Causes of Action alleged in the operative Complaint." Although the court did not identify which arguments or theories it was relying on, the court stated in its ruling it was basing its decision on "County Defendants' Response to Plaintiffs' Objections to County Defendants' Separate Statement and County Defendants' Objections to Plaintiffs' Statement of Undisputed Facts In Support of County Defendants' Reply to Opposition to Motion for Summary Judgment." In a document titled "Response to Plaintiffs' Objections," the

defendants made several evidentiary objections to the Parisios' additional "undisputed facts," claimed the Parisios' additional facts were "disputed," and offered additional evidence. The trial court did not state in its order how it ruled on any of these objections. We presume the court overruled all of the objections. (See *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 534.) The court entered judgment on January 20, 2015, and the Parisios timely appealed.

DISCUSSION

The Parisios argue the trial court erred in granting summary judgment because there are triable issues of material fact regarding whether the Parisios consented to the removal of Mikey from their home, whether the County employees threatened the Parisios with arrest if they prevented the County employees from taking Mikey to the hospital, whether the County was required to initiate court proceedings while Mikey was in the hospital for 10 days, and whether the County adequately trained its employees on procedures for removing endangered dependent adults from their homes. In their respondents' brief, the defendants reassert each argument they made in their motion for summary judgment.

A. *Standard of Review*

"'A "party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he . . . is entitled to judgment as a matter of law." [Citation.] A defendant satisfies this burden by showing "'one or more elements of' the 'cause of action' in question 'cannot be

established,' or that "there is a complete defense"' to that cause of action. [Citation.] "'Once the defendant . . . has met that burden, the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto.'" [Citation.] . . . In determining whether these burdens have been met, we review the record de novo. [Citation.]' [Citation.] [¶] As 'a corollary of the de novo review standard, the appellate court may affirm a summary judgment on any correct legal theory, as long as the parties had an adequate opportunity to address the theory in the trial court.'" (*Lujano v. County of Santa Barbara* (2010) 190 Cal.App.4th 801, 806.)

"Because a summary judgment denies the adversary party a trial, it should be granted with caution. [Citation.] Declarations of the moving party are strictly construed, those of the opposing party are liberally construed, and doubts as to whether a summary judgment should be granted must be resolved in favor of the opposing party. The court focuses on issue finding; it does not resolve issues of fact. The court seeks to find contradictions in the evidence, or inferences reasonably deducible from the evidence, which raise a triable issue of material fact. [Citation.] If, in deciding this appeal, we find there is no issue of material fact, we affirm the summary judgment if it is correct on any legal ground applicable to this case, whether that ground was the legal theory adopted by the trial court or not . . . . [Citation.] If, on the other hand, we find that one or more triable issues of material fact exist, we must reverse the summary judgment." (*J.H. v. Los Angeles Unified School Dist.* (2010) 183 Cal.App.4th 123, 139.)

B. *The Trial Court's Failure To Comply with Code of Civil Procedure Section 437c, Subdivision (g), Does Not Prevent Meaningful Appellate Review*

When the trial court grants a motion for summary judgment on the ground that there is no triable issue of material fact, Code of Civil Procedure section 437c, subdivision (g), requires the court to specify the reasons for its determination. (See Code Civ. Proc., § 437c, subd. (g).)[4] "The trial court's failure to perform this statutory duty, however, does not automatically require a reversal. [Citation.] The de novo standard for appellate review of an order granting summary judgment frequently means the lack of a proper order constitutes harmless error." (*Main Street Plaza v. Cartwright & Main, LLC* (2011) 194 Cal.App.4th 1044, 1057; cf. *Santa Barbara Pistachio Ranch v. Chowchilla Water Dist.* (2001) 88 Cal.App.4th 439, 449 [judgment reversed for noncompliance with Code of Civil Procedure section 437c, subdivision (g), because the issues were complex, the evidence was conflicting, and the trial court disregarded contradictions in the evidence].)

The trial court did not comply with Code of Civil Procedure section 437c, subdivision (g). Defendants made three or four separate arguments why they were entitled to summary

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[4] "Upon the grant of a motion for summary judgment on the ground that there is no triable issue of material fact, the court shall, by written or oral order, specify the reasons for its determination. The order shall specifically refer to the evidence proffered in support of and, if applicable, in opposition to the motion that indicates no triable issue exists. The court shall also state its reasons for any other determination. The court shall record its determination by court reporter or written order." (Code Civ. Proc., § 437c, subd. (g).)

adjudication on each of the four causes of action. The Parisios argued many of the purportedly undisputed facts were in fact disputed. They asserted various objections and cited evidence, including their deposition testimony, to support their contentions. In response, the defendants objected to the Parisios' evidence, primarily on the grounds that it was "misleading" and in "violation of the rule of completeness (Cal. Evid. Code § 356)." The defendants also (oddly, on summary judgment) offered additional evidence to dispute the Parisios' facts. The trial court did not specify the ground(s) on which it was granting summary adjudication on the Parisios' causes of action, nor did the court rule on either side's objections. Instead, the court simply stated it found "no triable issues of material fact with regard to the four (4) causes of action." The trial court's order refers to various facts, some of which were disputed and refers to some of which were not.

The trial court's failures to state which facts it found undisputed, to rule on the parties' evidentiary objections, and to state the reasons for its ruling makes the job of the appellate court unnecessarily difficult. (See *W. F. Hayward Co. v. Transamerica Ins. Co.* (1993) 16 Cal.App.4th 1101, 1111 ["key objective" of section 437c, subdivision (g) is to provide "meaningful appellate review"].) But these errors did not (quite) preclude meaningful appellate review because our review is de novo and we may analyze the many grounds on which the defendants moved for summary adjudication and summary judgment. (*Lujano v. County of Santa Barbara, supra,* 190 Cal.App.4th at p. 806; see *City of Oakland v. Hassey* (2008) 163 Cal.App.4th 1477, 1495; *Byars v. SCME Mortgage Bankers, Inc.* (2003) 109 Cal.App.4th 1134, 1146 ["[i]f independent review

establishes the validity of the judgment, then the error" in failing to state reasons for granting summary judgment is harmless].) Therefore, we proceed to the merits of the Parisios' appeal.

C. *The Elder Abuse and Dependent Adult Civil Protection Act*

"The Elder Abuse and Dependent Adult Civil Protection Act (hereafter Act) codified at section 15600 et seq. represents the Legislature's response to the problem of unreported elder abuse which came to its attention in the early 1980's." (*Easton v. Sutter Coast Hosp.* (2000) 80 Cal.App.4th 485, 490 (*Easton*); see *Benun v. Superior Court* (2004) 123 Cal.App.4th 113, 123 [purpose of the Act "'is essentially to protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and custodial neglect'"].)[5] Modeled on the statutory scheme addressing child abuse, the focus of the Act is to encourage reporting and investigation of alleged abuse or neglect. (*Easton*, at p. 491; see *Santos v. Kisco Senior Living, LLC* (2016) 1 Cal.App.5th 862, 870.)

The Act provides immunity from civil liability for mandatory reporters of abuse and neglect (§ 15634, subd. (a)), as well as for certain designated individuals who "provide access" to the victims of suspected abuse. Section 15634, subdivision (b),

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[5] A "dependent adult" is "any person between the ages of 18 and 64 years . . . who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age." (§ 15610.23.)

provides: "No . . . employee of an adult protective services agency or a local law enforcement agency who, pursuant to a request from an adult protective services agency or a local law enforcement agency investigating a report of known or suspected abuse of an elder or dependent adult, provides the requesting agency with access to the victim of a known or suspected instance of abuse of an elder or dependent adult, shall incur civil or criminal liability as a result of providing that access."

Chapter 12 of the Act describes certain procedural safeguards that apply "only if the county board of supervisors . . . adopt[s] a resolution to make [Chapter 12] operative in that county." (§ 15705.37.) Pursuant to our request for supplemental letter briefs, the County and the Parisios agree Los Angeles County has never adopted such a resolution.[6] Nevertheless, both sides cite and rely on various sections of Chapter 12, including section 15701.25 (defining "endangered adult"), section 15703 (governing temporary emergency protective custody), section 15703.05 (authorizing physicians treating endangered adults to delay release), and section 15705, subdivision (a) (providing the county must file a petition for an emergency protective services order within 24 hours after taking

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[6] The Legislature's purpose in enacting Chapter 12 was to provide a mechanism for taking endangered adults into protective custody, while providing procedural mechanisms to ensure due process in such an event. (See Assem. Bill No. 2881 (1995-1996 Reg. Sess.) (Sen. Com. On Judiciary, Analysis of Assem. Bill 2881 "Elder Abuse and Neglect Temporary Emergency Protective Custody Due Process").) According to the County, no California county has adopted a resolution that would make the procedural safeguards described in the Act operative.

the endangered adult into temporary emergency protective custody).

D. *The Parisios Forfeited the Argument the County and the Individual Defendants Are Not Immune From Liability Under the Elder Abuse and Dependent Adult Civil Protection Act for False Imprisonment and Violation of Civil Code Section 52.1*

The Parisios allege the defendants falsely imprisoned Mikey and violated their civil rights under Civil Code section 52.1[7] when the deputies threatened to arrest them if they did not allow them to take Mikey to the hospital. The defendants moved for summary judgment on the ground that the individual defendants are absolutely immune from state law claims under section 15634, subdivision (b), and, as noted, the trial court granted the motion.[8]

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[7] "[Civil Code] [s]ection 52.1, subdivision (a), provides for injunctive or other equitable relief against 'a person or persons, whether or not acting under color of law, [who] interferes by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state.' Subdivision (b) of the statute states '[a]ny individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States [or of this state] has been interfered with, or attempted to be interfered with, as described in subdivision (a), may institute or prosecute . . . a civil action for damages[.]'" (*Venegas v. County of Los Angeles* (2007) 153 Cal.App.4th 1230, 1239, fn. omitted.)

[8] West, a county social worker, and Deputy Mason and Detective Amis, sheriff's department employees, are individuals

On appeal, the Parisios make no argument regarding why we should reverse the court's order granting summary adjudication on their cause of action for false imprisonment, thus forfeiting the issue. With respect to the cause of action for violation of Civil Code section 52.1, the Parisios make no argument in their opening brief regarding why the defendants are not immune under section 15634, subdivision (b). In fact, the Parisios do not even refer to section 15634 in their opening brief, thus again forfeiting the argument the defendants are not immune under section 15634. (See *Foxen v. Carpenter* (2016) 6 Cal.App.5th 284, 295 [failure to raise any argument concerning a claim of error on appeal in the opening brief forfeits the argument]; *Roos v. Honeywell International, Inc.* (2015) 241 Cal.App.4th 1472, 1487 ["[p]oints not raised in a party's opening brief are considered abandoned unless good reason is shown for failing to raise them"].)

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covered by section 15634, subdivision (b). If they are not liable for false imprisonment or violation of Civil Code section 52.1, then neither is the County. (See Gov. Code, § 815.2, subd. (b) ["[e]xcept as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability"]; *County of Los Angeles v. Superior Court* (2009) 181 Cal.App.4th 218, 232 [because law enforcement officers and the district attorney are immune from Civil Code section 52.1 claims under Government Code sections 821.6, 820.2, and 820.8, the county is also immune under Government Code section 815.2]; *Becerra v. County of Santa Cruz* (1998) 68 Cal.App.4th 1450, 1466 [because a county social worker is immune from tort claims arising from her failure to intervene in a foster child's placement, the county is also immune from liability under Government Code section 815.2].)

Without citing any authority, the Parisios argue for the first time in their reply brief that section 15634 does not apply to the individual defendants because the statute only applies to social workers and law enforcement officers performing their "mandatory duties." We do not consider this argument because the Parisios raised it for the first time on reply. (See *Argentieri v. Zuckerberg* (Feb. 15, 2017, A147932) ___ Cal.App.5th ___, ___ [2017 WL 605313, at p. 12, fn. 10] ["contentions raised for the first time in a reply brief will not be considered without a showing of good cause"]; *Mansur v. Ford Motor Co.* (2011) 197 Cal.App.4th 1365, 1387-1388 [in general, "[w]e will not consider arguments raised for the first time in a reply brief, because it deprives [respondents] of the opportunity to respond to the argument"]; *Authority for California Cities Excess Liability v. City of Los Altos* (2006) 136 Cal.App.4th 1207, 1216, fn. 2 ["[f]or sound policy reasons, we disregard claims raised for the first time in an appellate reply brief where the appellant makes no attempt to show good cause for failing to raise the issue in the opening brief"].)

E. *The Individual Defendants Are Entitled to Qualified Immunity on the Cause of Action For Violation of 42 United States Code Section 1983 Based on Alleged Violations of the Fourth and Fourteenth Amendments*

The Parisios argue the defendants violated Mikey's Fourth Amendment right to be free from unreasonable search and seizure by taking him from his home and from the care of his parents without first obtaining a warrant. The Parisios also contend the defendants violated their and Mikey's Fourteenth Amendment rights to familial association and due process by

removing Mikey from his home and detaining him in the hospital without seeking judicial review or providing the Parisios any opportunity to be heard. The Parisios' third cause of action, for violation of 42 United States Code section 1983, is based on both alleged constitutional violations.

1. *Summary of the Law Under Title 42 United States Code Section 1983*

"Title 42 United States Code section 1983 provides in relevant part: 'Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.'" (*Arce v. County of Los Angeles* (2012) 211 Cal.App.4th 1455, 1472.) "'To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.' [Citation.] "'State courts look to federal law to determine what conduct will support an action under section 1983. [Citation.]'" 'The threshold inquiry [in analyzing a section 1983 claim] is whether the evidence establishes that appellants have been deprived of a constitutional right.'" (*Id.* at pp. 1472-1473.)

2. *Antonina, as Mikey's Successor in Interest, Has Standing To Assert a United States Code Section 1983 Claim Based on Fourth and Fourteenth Amendment Violations*

The court must resolve the threshold issue of a litigant's standing to sue before reaching the merits. (*Boorstein v. CBS Interactive, Inc.* (2013) 222 Cal.App.4th 456, 465.) When a plaintiff with a United States Code section 1983 claim dies, federal law is silent on the issue whether the action survives the plaintiff's death. "In areas such as this on which federal law is silent, 42 United States Code section 1988 directs federal courts to borrow the law of the forum state unless it is inconsistent with the purposes of the federal law." (*County of Los Angeles v. Superior Court* (1999) 21 Cal.4th 292, 303; see 42 U.S.C. § 1988 ["where [the laws of the United States] are not adapted . . . or are deficient in the provisions necessary to furnish suitable remedies . . . the common law . . . of the State wherein the court having jurisdiction . . . is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended"].) California law allows for the survival of a cause of action belonging to the decedent. (Code Civ. Proc., § 377.30; see, e.g., *Thompson v. County of Los Angeles* (2006) 142 Cal.App.4th 154, 157 & p. 157, fn. 1 [section 1983 plaintiff alleging Fourth Amendment violation died before trial, and the Special Administrator of his estate continued to prosecute the action as the plaintiff and appellant].)

Defendants contend the Parisios lack standing to assert a United States Code section 1983 claim based on a violation of Mikey's Fourth Amendment rights because a third party cannot vindicate someone else's Fourth Amendment rights. But the

United States Code section 1983 claim based on the alleged Fourth Amendment violation is "the Estate's claim." The Parisios assert it on behalf of the estate, not "vicariously." (See, e.g., *Plumhoff v. Rickard* (2014) __ U.S. __, __, 134 S.Ct. 2012, 2022 [daughter who brought a section 1983 action after her father was killed in a car chase properly alleged a violation of her father's Fourth Amendment rights].) Thus, Antonina has standing to pursue, on behalf of Mikey's estate, a United States Code section 1983 claim based on a violation of Mikey's Fourth Amendment rights.

3. *Quasi-prosecutorial Immunity Does Not Shield West from Liability from the Parisios' United States Code Section 1983 Claims*

The scope of a prosecutor's absolute immunity is limited to those acts encompassed by "'initiating a prosecution and in presenting the State's case.'" (*Miller v. Gammie* (9th Cir. 2003) 335 F.3d 889, 896.) In *Miller*, the Ninth Circuit recognized that social workers perform some functions similar to those of prosecutors, but they also perform other functions. (*Miller,* at p. 896.) The court in *Miller* explained that in *Meyers v. Contra Costa County Department of Social Services* (9th Cir. 1987) 812 F.2d 1154, 1157 the court took a "narrow view" of absolute immunity for social workers: "In *Meyers,* we held that the initiation and pursuit of child-dependency proceedings were prosecutorial in nature and warranted absolute immunity on that basis. We were careful there, however, to distinguish between a social worker's activities performed as an advocate within the judicial decision-making process, a function for which there is common-law absolute immunity, and other actions taken by a

social worker. . . . We found that unless the social worker's activity has the requisite connection to the judicial process, only qualified immunity is available." (*Miller,* at p. 896.) "*Meyers* recognized absolute immunity for social workers only for the discretionary, quasi-prosecutorial decisions to institute court dependency proceedings to take custody away from parents." (*Miller, supra,* 335 F.3d at p. 898, citing *Meyers,* 812 F.2d at 1157; see *Beltran v. Santa Clara County* (9th Cir. 2008) 514 F.3d 906, 908-909 ["as prosecutors and others investigating criminal matters have no absolute immunity for their investigatory conduct, a fortiori, social workers conducting investigations have no such immunity"]; see also *Newton v. County of Napa* (1990) 217 Cal.App.3d 1551, 1563 ["[i]n visiting appellants' home in response to a report of child abuse, . . . a social worker . . . performed a function 'more like that of a policeman than a prosecutor,'" and the "'common law has never granted police officers an absolute and unqualified immunity'"].)

Defendants argue that "West is entitled to absolute immunity from 42 U.S.C. § 1983 claims for her discretionary, quasi-prosecutorial decisions to institute court proceedings to challenge conservatorship and custody." Defendants, however, produced no evidence West decided to initiate any court proceedings. In fact, the evidence shows just the opposite. West testified neither she nor her supervisor filed any petition with the court seeking placement for Mikey outside of his home. If West engaged in any other action related to the initiation of or participation in a court proceeding related to Mikey, the defendants did not submit any evidence of it in support of their motion for summary judgment. Therefore, on this record West is not entitled to prosecutorial immunity.

4. *The Individual Defendants Are Entitled to Qualified Immunity*

a. *The Qualified Immunity Defense*

"The qualified immunity rule shields public officers from section 1983 actions unless the officer has violated a clearly established constitutional right." (*Mendoza v. City of West Covina* (2012) 206 Cal.App.4th 702, 711.) "A right is clearly established only if its contours are sufficiently clear that 'a reasonable official would understand that what he is doing violates that right.' [Citation.] In other words, 'existing precedent must have placed the statutory or constitutional question beyond debate.' [Citation.] This doctrine 'gives government officials breathing room to make reasonable but mistaken judgments.'" (*Carroll v. Carman* (2014) __ U.S. __, __, 135 S.Ct. 348, 350.) "When properly applied [qualified immunity] protects 'all but the plainly incompetent or those who knowingly violate the law.'" (*Ashcroft v. al-Kidd* (2011) 563 U.S. 731, 743.)

"In resolving questions of qualified immunity at summary judgment, courts engage in a two-pronged inquiry." (*Tolan v. Cotton* (2014) 134 S.Ct. 1861, 1865.) "First, '[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right.' [Citation.] 'If no constitutional right would have been violated were the allegations established,' then the qualified immunity inquiry ends. [Citation.] However, 'if a violation could be made out on a favorable view of the parties' submissions, the next, sequential step is to ask whether the right was clearly established. This inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad, general

proposition.'" (*Mendoza*, *supra*, 206 Cal.App.4th at p. 711, fn. omitted; see *Tolan v. Cotton*, *supra*, __ U.S. at p. __, 134 S.Ct. at pp. 1865-1866; *Saucier v. Katz* (2001) 533 U.S. 194, overruled on other grounds by *Pearson v. Callahan* (2009) 555 U.S. 223, 236.) The "first step analyzes whether a constitutional right was violated, which is a question of fact. The second examines whether the right was clearly established, which is a question of law. Step two serves the aim of refining the legal standard and is solely a question of law for the judge." (*Tortu v. Las Vegas Metropolitan Police Dept.* (9th Cir. 2009) 556 F.3d 1075, 1085; see *Dunn v. Castro* (9th Cir. 2010) 621 F.3d 1196, 1199.)

"[C]ourts have discretion to decide which of the two prongs of the qualified-immunity analysis to tackle first." (*Ashcroft*, *supra*, 563 U.S. at p. 735; see *Mendoza v. City of West Covina*, *supra*, 206 Cal.App.4th at p. 711, fn. 9.) And "[c]ourts should think carefully before expending 'scarce judicial resources' to resolve difficult and novel questions of constitutional or statutory interpretation that will 'have no effect on the outcome of the case'" (*Ashcroft*, at p. 735), especially in "cases in which the briefing of constitutional questions is woefully inadequate" (*Pearson*, *supra*, 555 U.S. at p. 239). We address the second prong first.

Although the United States Supreme Court has left "open the issue of the burden of persuasion . . . with respect to a defense of qualified immunity" (*Gomez v. Toledo* (1980) 446 U.S. 635, 642 (conc. opn. of Rehnquist, J.)), the Courts of Appeals generally agree that, on a defendant's motion for summary judgment, the plaintiff "bears the burden of showing that the right at issue was clearly established." (*Alston v. Read* (9th Cir. 2011) 663 F.3d 1094, 1098; see *Keith v. Koerner* (10th Cir. 2016) 843 F.3d 833,

837 ["'[w]hen a defendant asserts qualified immunity at summary judgment, the burden shifts to the plaintiff to show that: (1) the defendant violated a constitutional right and (2) the constitutional right was clearly established'"]; *Mendez v. Poitevent* (5th Cir. 2016) 823 F.3d 326, 331 ["'[a]t summary judgment, it is the plaintiff's burden to rebut a claim of qualified immunity once the defendant has properly raised it in good faith'"]; *Rivera-Corraliza v. Morales* (1st Cir. 2015) 794 F.3d 208, 214 ["to overcome [a qualified immunity] defense plaintiffs must make a two-step showing—that (a) defendants violated a statutory or constitutional right and that (b) the right was clearly established at the time"]; *Hess v. Ables* (8th Cir. 2013) 714 F.3d 1048, 1051 [on the defendants' motion for summary judgment, "[t]he plaintiff bears the burden of proving that the law was clearly established"]; *Morton v. Kirkwood* (11th Cir. 2013) 707 F.3d 1276, 1280-1281 ["an official must first establish that he acted within his discretionary authority" and then the burden shifts to the plaintiff to show the defendant "does not merit qualified immunity"]; *Galen v. County of Los Angeles* (9th Cir. 2007) 477 F.3d 652, 665 [the plaintiff "bears the burden of proving that his allegedly violated rights were clearly established"]; *Donahue v. Gavin* (3d Cir. 2002) 280 F.3d 371, 378 ["[w]here a defendant asserts a qualified immunity defense in a motion for summary judgment, the plaintiff bears the *initial* burden of showing that the defendant's conduct violated some clearly established statutory or constitutional right"]; *Sledd v. Lindsay* (7th Cir. 1996) 102 F.3d 282, 287 ["the plaintiff bears the burden of showing that the officer violated a clearly established right"].) Thus, as counsel for the Parisios conceded at oral argument, the Parisios had the burden in opposing the individual

defendants' motion for summary judgment to show the rights they claim the defendants violated were clearly established.

b. *The Parisios Forfeited the Argument the Defendants Violated Clearly Established Law*

An appellate brief must "support each point by argument and, if possible, by citation of authority." (Cal. Rules of Court, rule 8.204(a)(1)(B).) The Parisios' brief does neither. The entire argument in their opening brief on the issue whether the defendants violated clearly established law is the following sentence: "No reasonable official would believe that governmental action to remove a disabled man from his home and family may be done without court approval." In their reply brief, the Parisios add the following: "The law concerning the need for due process hearings is clearly established. It is statutory. It is a fundamental right. No reasonable social worker or law enforcement officer could reasonably believe it is lawful to seize an individual and hold him for ten days with the expressed intent to permanently place him elsewhere, without court approval."

The Parisios do not cite a single case, statute, or other authority holding or stating the rights they claim the defendants violated were clearly established, or that a reasonable social worker or law enforcement officer would have known that actions like the ones the defendants took in this case were unlawful. The Parisios provide no analysis of why the rights they allege defendants violated were clearly established. Therefore, the Parisios have forfeited the argument that the trial court erred on granting summary judgment because the defendants violated

clearly established law. (See *City of Palo Alto v. Public Employment Relations Board* (2016) 5 Cal.App.5th 1271, 1302 ["[w]hen points are perfunctorily raised without adequate analysis and authority, we may treat them as abandoned or forfeited"]; *Gilkyson v. Disney Enterprises, Inc.* (2016) 244 Cal.App.4th 1336, 1347 ["'[w]hen an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived'"]; *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 ["'[i]ssues do not have a life of their own: If they are not raised or supported by argument or citation to authority, [they are] . . . waived'"].)

F. *The County Did Not Meet Its Burden of Showing It Is Entitled to Summary Adjudication on the* Monell *Claim*

In their fourth cause of action for "*Monell*-related claims" under United States Code section 1983, the Parisios alleged the County had a "policy of detaining . . . dependent adults from their family and homes without court order and/or review . . . and continuing to detain them for an unreasonable period after any alleged basis for detention is negated." The Parisios also alleged the County provided inadequate training regarding "the constitutional protections guaranteed to individuals, including those under the Fourth and Fourteenth Amendments, when performing actions related to dependent adult abuse and dependency type proceedings." They alleged the County's policies "were the moving force behind the violations of [their] constitutional rights . . . ."

"Section 1983 does not assign liability to a local government under a respondeat superior theory, but the entity may be liable if the constitutional violation was caused by its official policy, practice, or custom." (*Kerkeles v. City of San Jose* (2011) 199 Cal.App.4th 1001, 1015-1016, citing *Monell*, *supra*, 436 U.S. at pp. 690-694; see *Los Angeles County, Cal. v. Humphries* (2010) 562 U.S. 29, 36 [a local government is liable under United States Code section 1983 "'when execution of a government's *policy or custom* . . . inflicts the injury"']; *Arce v. County of Los Angeles, supra,* 211 Cal.App.4th at p. 1483 ["a local government may not be held liable for its employees' violations of section 1983 unless 'the constitutional violation was caused by its official policy, practice, or custom"'].) To prevail on a *Monell* claim, the plaintiff must prove a constitutional violation occurred and the violation came directly from a plan or policy of the municipality. (*Monell*, *supra*, 436 U.S. at pp. 690-692.) "In order to establish liability for governmental entities under *Monell*, a plaintiff must prove '(1) that [the plaintiff] possessed a constitutional right of which [s]he was deprived; (2) that the municipality had a policy; (3) that this policy amounts to deliberate indifference to the plaintiff's constitutional right; and, (4) that the policy is the moving force behind the constitutional violation.'" (*Dougherty v. City of Covina* (9th Cir. 2011) 654 F.3d 892, 900.)

In moving for summary adjudication, the County argued it could not "be held liable for a *Monell* cause of action under 42 U.S.C. section 1983 because [the Parisios'] alleged injuries were not caused by a County policy, practice, or custom resulting in a constitutional violation." The County argued the individual defendants "were trained according to the County's policies regarding responses to elder abuse reports," and the Parisios

"have not established any causal connection between the County's policies, practices or customs that have led to their alleged injuries."

In support of its motion, the County submitted a three-page excerpt from the County's Social Services Manual entitled "Adult Protective Services: Policy," which discussed the background, goals, and scope of the Adult Services Program. The manual states that a goal of the Adult Protective Services program is "[t]o prevent and remedy the abuse, neglect, or exploitation of elders and dependent adults who have been harmed or are at risk of harm." The manual's list of services includes responding to reports of known or suspected abuse or neglect, conducting investigations, and maintaining an emergency shelter. The County also submitted West's deposition testimony that she received this policy manual, as well as a procedures manual, as part of her training program at Adult Protective Services. The County, however, did not submit any other evidence regarding the nature or details of the training West received.

The County also submitted two pages of a Sheriff's Department's Field Operations Directive, entitled "Tracking Family Abuse Crimes." The directive states its purpose is to "define policy regarding the Department's collection of family abuse data and the availability of such data to patrol personnel when responding to family abuse calls for service," and provides that "[d]eputies responding to the scene of an actual, suspected, or alleged family abuse incident shall ensure that a complete investigation is made." The policy also explains how to collect information relating to alleged family abuse crimes. It does not,

however, discuss the procedures to follow when taking a dependent adult into emergency temporary protective custody.

Finally, the County submitted the declaration of Detective Amis, who described his employment history as a detective and his previous employment as an emergency medical technician, medic, and licensed vocational nurse, and the deposition testimony of Deputy Mason, who described her participation in a patrol readiness training course where she received some training in the removal of children and conserved adults in circumstances of abuse. Neither deputy's testimony, however, provided any details about the training.

This evidence did not satisfy the County's burden on summary judgment. (See *Kerkeles v. City of San Jose, supra*, 199 Cal.App.4th at p. 1017 [defendants moving for summary judgment on a *Monell* claim have the "threshold burden to present undisputed facts justifying adjudication of [the] cause of action in their favor"].) The County did not present evidence of what its policy was for taking allegedly abused dependent adults into protective custody or for training County employees on the procedures for doing so, let alone that its policy was not a moving force behind the alleged constitutional violation. Nor did the County submit evidence of any policy regarding the rights of dependent adults and their family members when the County investigates, responds to, and detains an individual in connection with suspected dependent adult abuse. The County did not even acknowledge it had an obligation to provide the family of an allegedly abused dependent adult with notice of the location and duration of a detention; it certainly submitted no evidence it had a policy that addressed these issues. Given the deficiencies in its evidentiary showing, the County failed to meet its initial burden

on summary judgment to show the Parisios could not establish a County policy caused the alleged violations of the Parisios' rights. (See *Ogborn v. City of Lancaster* (2002) 101 Cal.App.4th 448, 464 ["[i]n its motion for summary judgment, the City failed to establish [the plaintiffs] could not "'demonstrate a direct causal link between the municipal action and the deprivation of federal rights,"'" and therefore "it was error to grant summary judgment in favor of the City"].)

DISPOSITION

The judgment in favor of the individual defendants is affirmed. The judgment in favor of the County is reversed. The order granting the County's motion for summary judgment is vacated, and the trial court is directed to enter a new order granting the County's motion for summary adjudication on the Parisios' first, second, and third causes of action and denying the County's motion for summary adjudication on the Parisios' fourth cause of action. The parties are to bear their costs on appeal.

SEGAL, J.

We concur:

ZELON, Acting P. J.

SMALL, J.*

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