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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

LIZA ESQUIVEL et al., Plaintiffs and Appellants, v. ARJUN REYES, Defendant and Respondent.	B230767 (Los Angeles County Super. Ct. No. PC 046346)

APPEAL from a judgment of the Superior Court of Los Angeles County. Barbara M. Scheper, Judge. Affirmed.

Girardi Keese and John A. Girardi for Plaintiffs and Appellants.

Cole Pedroza, Kenneth R. Pedroza and Cassidy E. Cole; Bertling & Clausen, Brian H. Clausen and Eydith J. Kaufman for Defendant and Respondent

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INTRODUCTION

Luis Esquivel was admitted to a hospital and placed on a 72-hour involuntary hold pursuant to Welfare and Institutions Code section 5150. Respondent Arjun Reyes provided Esquivel with psychiatric treatment and released him five hours before the 72-hour hold period was set to expire. Esquivel committed suicide the day after he was released.

Esquivel's wife and children filed a wrongful death complaint asserting that Reyes's medical treatment fell below the relevant standard of care and proximately caused Esquivel's suicide. Reyes filed a motion for summary judgment arguing that: (1) he was immune from liability under Welfare and Institutions Code section 5154, and (2) regardless of whether he was immune from suit, the undisputed evidence demonstrated that he satisfied the relevant standard of care. The trial court agreed with both arguments and granted summary judgment. Plaintiffs filed a timely appeal.

Plaintiffs have presented no argument regarding the court's finding that Reyes was immune from liability under section 5154. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Summary[1]

On September 17, 2008, Liza Esquivel brought her husband, Luis Esquivel, to the emergency room at Mayo Newhall Memorial Hospital. Luis was experiencing suicidal thoughts and was placed on a 72-hour involuntary hold pursuant to Welfare and Institutions Code section 5150.[2] The hold period was scheduled to end at 9:30 p.m. on September 20, 2008.

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[1] This factual summary is based on statements in "Plaintiff's Response to Defendants' Separate Statement [of Undisputed Material Facts] and Plaintiff's Separate Statement in Support of Opposition to Defendant Arjun Reyes' Motion for Summary Judgment," which plaintiffs filed in the trial court on October 21, 2009.

[2] For the purposes of clarity, we refer to Liza and Luis Esquivel by their first names. We intend no disrespect.

Arjun Reyes was the psychiatrist directly responsible for Luis's treatment and evaluation. During the hold period, Luis complained that he was unable to sleep and Reyes prescribed him medication for insomnia and anxiety. On September 19, Luis was pleasant and cooperative with the hospital staff. Luis informed nurses that "insomnia was his issue" and that he had slept well in the hospital. He also stated that he felt "much better." Throughout his hospital stay, Luis was "able to sleep soundly, denied suicidal ideations and exhibited minimal anxiety and/or agitation."

On September 20, Reyes determined that Luis did not require any further inpatient evaluation or treatment and discharged him approximately five and a half hours before the hold period was set to expire. At the time of the discharge, Luis denied having any suicidal thoughts. Luis committed suicide the day after his release.

B. Procedural Summary

On September 9, 2010, Liza and her children filed a "Complaint for Wrongful Death" against Arjun Reyes.[3] Their first amended complaint alleged that Reyes "failed to exercise a reasonable care" when treating Luis and "failed to provide informed consent . . . for his early release."

On July 30, 2010, Reyes filed a motion for summary judgment arguing that he was immune from liability under Welfare and Institutions Code section 5154,[4] which provides a treating psychiatrist immunity for acts committed by an individual who is released prior to the expiration of a 72-hour hold period. Alternatively, Reyes argued that a declaration filed by his medical expert demonstrated that Reyes had complied with the relevant standard of care.

Plaintiffs' opposition argued that section 5154 only applied to claims involving a physician's "decision [to] . . . release" a patient prior to the expiration of the 72-hour hold

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[3] The plaintiffs initially asserted claims against Reyes and the Henry Mayo Newhall Memorial Hospital. However, on September 14, 2009, plaintiffs dismissed their claims against the hospital.

[4] All further statutory citations are to the Welfare and Institutions Code.

period and did "not immunize negligent actions that occur during the treatment of the patient." Plaintiffs also argued that there was a triable issue of material fact as to whether Reyes complied with the standard of care. In support, plaintiffs submitted the declaration of Dr. James Merikangas, who concluded that Reyes's treatment failed to meet the standard of care and had proximately caused Luis's suicide.

After holding a hearing on the matter, the trial court granted Reyes's motion for summary judgment. The court's written order provided two alternative reasons for its ruling. First, the court found "that defendant is entitled to the immunity set forth in Welfare and Institutions Code Section 5154. Defendant has established all of the elements required for the immunity. Plaintiffs' argument in opposition . . . is not sufficient to invalidate that immunity." In support, the court cited *Coburn vs. Sievert* (2005) 133 Cal.App.4th 1483 (*Coburn*), which ruled that section 5154 applied to a claim alleging that a psychiatrist's negligent treatment during a section 5150 hold had caused the plaintiff to have a violent outburst on an airplane.

Second, the court ruled that "[i]n the alternative, the . . . defendant is entitled to summary judgment because plaintiffs have failed to dispute defendant's expert opinion [regarding the standard of care] with admissible evidence." The court concluded that "the declaration of plaintiffs' expert, Dr. Merikangas" was "defective" because: (1) it was "not executed in accordance with the requirement of Code of Civil Procedure Section 2015.5"; and (2) Merikangas's opinions were based on facts that were "belied by . . . undisputed facts" in the record. Plaintiffs filed a timely appeal.

DISCUSSION

Plaintiffs' appellate brief asserts that the "issues of law and fact before this Court are as follows: [¶] 1. Did the trial court err . . . by holding that Defendant was entitled to the immunity set forth in the California Welfare and Institutions Code section 5154? [¶] 2. Did the trial court err . . . by holding there to be no triable issues of material fact regarding the standard of care or causation?"

Plaintiffs' argument on the first issue – whether the trial court erred in concluding that Reyes was immune from liability under section 5154 – fails to reference section 5154. Instead, plaintiffs argue that their claims are not barred by section 5278, which 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." Plaintiffs contend that two cases have concluded that section 5278 only "provides immunity for the decision to detain . . . [and] does not extend to other negligent acts . . . committed during the course of the detention, evaluation, or treatment." (*Jacobs v. Grossmont Hospital* (2003) 108 Cal.App.4th 69, 78-79; see also *Gonzalez v. Paradise Valley Hospital* (2003) 111 Cal.App.4th 735, 741 ["in enacting section 5278, the Legislature did not intend to immunize health care providers from liability for breaches of the applicable standards of care during the period of confinement"].) Thus, according to plaintiffs, section 5278 has no application where a claim seeks to impose liability for injuries caused by negligent medical treatment that occurred during the course of a section 5150 hold.

However, as Reyes's briefing correctly points out, the trial court did not conclude that Reyes was immune under section 5278. Rather, it ruled that he was immune under section 5154, which states that "the psychiatrist directly responsible for the person's treatment . . . shall not be held . . . liable for any action by a person released before the end of [a section 5150 hold]" if, at the time of release, the psychiatrist had a subjective belief that no further evaluation or treatment was needed. (See *Coburn, supra,* 133 Cal.App.4th at pp. 1504-1505.) In *Coburn,* which the trial court cited in its order, the appellate court concluded that cases interpreting section 5278 (including the two cases that plaintiffs discuss in their opening appellate brief) have no relevance to the interpretation and application of section 5154. (*Id*. at p. 1502)

Plaintiffs have not responded to Reyes's assertion that their opening brief, which only discusses section 5278, fails to address the trial court's ruling that Reyes was immune under section 5154. Although plaintiffs could have responded to this contention in their reply brief, they chose not to file one.

California Rule of Court, rule 8.204, subdivision (a)(1)(B) requires that an appellate brief state each point under a separate heading "and support each point by argument and, if possible, by citation of authority." Pursuant to this rule, we generally will not consider an assertion of error that is unaccompanied by argument or legal citation. (See *108 Holdings, Ltd. v. City of Rohnert Park* (2006) 136 Cal.App.4th 186, 193, fn. 3 [pursuant to predecessor of Rule 8.204, appellant had "abandoned" argument referenced in "statement of issues" because "brief contain[ed] no argument on or discussion of this point"]; *Tilbury Constructors, Inc. v. State Compensation Ins. Fund* (2006) 137 Cal.App.4th 466, 482 [pursuant to Rule 8.102, court would not consider argument raised in "single sentence in . . . opening brief"]; see also *Harabedian v. Parnell* (1950) 96 Cal.App.2d 358, 360 [court would "disregard" assertion that "trial court committed prejudicial error in refusing to permit defendant to amend its answer" because defendant "neither cites authority nor provides . . . argument in support of its contention"].) Although plaintiffs' brief includes a section heading alleging the trial court erred in applying section 5154, the brief contains no argument in support of that assertion. They have therefore failed to comply with rule 8.204.

Plaintiffs have also failed to carry their "burden of affirmatively demonstrating [the trial court committed] error." (*Fundamental Investment etc. Realty Fund v. Gradow* (1994) 28 Cal.App.4th 966, 971.) "It is a fundamental principle of appellate review that we presume that a judgment or order is correct. [Citations.]" (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1271.) This presumption "produces the corollar[y] . . . that . . . an appellant must affirmatively demonstrate an error occurred." (*Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 66.) Plaintiffs have failed to carry that burden here because they provided no argument or authority explaining why the trial court erred in ruling that Reyes was immune from liability pursuant to section 5154.[5]

[5] Because plaintiffs have not presented any argument regarding the trial court's application of section 5154, we need not resolve whether the court correctly concluded that the statute applies to the types of claims asserted here. (See *Coburn, supra,* 133

In light of this failure, we need not consider plaintiffs' contention that the trial court erred in concluding that James Merikangas's expert declaration was inadmissible and therefore did not create a triable issue of fact regarding the sufficiency of Reyes's medical treatment. The trial court's order indicates that the procedural and substantive defects in Merikangas's declaration provided an alternative and independent ground for granting Reyes's motion for summary judgment. Thus, even if plaintiffs are correct that the court erred in refusing to credit Merikangas's opinions, any such error was harmless because they have offered no argument as to why the court erred in finding Reyes immune under section 5154. (See *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 801-802 [harmless error standard of *People v. Watson* (1956) 46 Cal.2d 818 applies to civil cases].)

DISPOSITION

We affirm the trial court's judgment. Respondent shall recover his costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.

Cal.App.4th at p. 1505 ["We leave for another day the question whether the immunity of section 5154 also extends to liability for injuries that result from actions caused by negligent treatment provided during the period of detention"].)