Filed 9/21/18 Keyes v. County of Los Angeles 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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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

| | |
|---|---|
| VIVICA KEYES,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>COUNTY OF LOS ANGELES et al.,<br><br>Defendants and Respondents. | B281583<br><br>Los Angeles County<br>Super. Ct. No. BC572324 |

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard Fruin, Judge. Affirmed.

Vivica Keyes in pro. per. for Plaintiff and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, Jennifer A.D. Lehman, Assistant County Counsel, and Alexandra B. Zuiderweg, Deputy County Counsel, for Defendants and Respondents.

Plaintiff Vivica Keyes sued the County of Los Angeles and Los Angeles County Sheriff's Department (collectively, the County) alleging the County violated her civil rights by inadequately investigating and prosecuting a home invasion at Plaintiff's residence. The trial court sustained the County's demurrer to Plaintiff's operative third amended complaint, concluding the County was immune from liability for the alleged conduct. We affirm.

The most fundamental rule of appellate review is that an appealed judgment or order is presumed to be correct and "[a]ll intendments and presumptions are indulged to support it on matters as to which the record is silent." (*Denham v. Superior Court of Los Angeles County* (1970) 2 Cal.3d 557, 564 (*Denham*); Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 1997) ¶ 8:15.) The appellant bears the burden of overcoming the presumption of correctness and, for this purpose, must provide an adequate appellate record demonstrating the alleged error. "[E]rror must be affirmatively shown." (*Denham,* at p. 564.) Failure to provide an adequate record on an issue requires the appellate court to resolve the issue against the appellant. (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs, *supra*, ¶ 8:17; *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; see *Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362 [judgment must be affirmed where appellant failed to present adequate record for review].)

In her opening brief, Plaintiff offers a recitation of facts that she maintains "essentially" mirrors the allegations of the operative third amended complaint. She did not, however, designate the complaint for inclusion in the record presented for appeal. While we are sympathetic to the challenges facing Plaintiff as a pro. per., the fact that she is representing herself does not diminish her burden to establish error on appeal. The

law permits a party to act as her own attorney, however, " '[s]uch a party is to be treated like any other party and is entitled to the same, but no greater[,] consideration than other litigants and attorneys. [Citation.]' [Citation.] Thus, as is the case with attorneys, pro. per. litigants must follow correct rules of procedure." (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) We agree with the County, without the third amended complaint it is impossible for this court to find the alleged conduct falls outside the scope of the governmental immunities the trial court cited in sustaining the demurrer.

Judging from the record presented, the trial court did not err. According to the court's order, the complaint asserted six causes of action, all based upon the County's investigation and prosecution of the home invasion incident: (1) violation of equal protection (Cal. Const., art. I, § 7); (2) discrimination based on race and gender; (3) intentional infliction of emotional distress; (4) violation of the Bane Act (Civ. Code, § 52.1); (5) invasion of privacy; and (6) violation of Marsy's Law.[1] In support of the claims, Plaintiff alleged the County "(a) repeatedly failed to file a police report; (b) filed a false and misleading police report; (c) subjected Plaintiff to arbitrary restrictions; (d) failed to execute the normal job duties of Los Angeles Sheriff's Department personnel; (e) subjected Plaintiff to rude and disrespectful behavior; (f) brought the suspect's family members

---

[1] The court dismissed the invasion of privacy and Marsy's Law counts due to Plaintiff's failure to obtain leave before adding them to her third amended complaint. (See *Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1022-1023 [demurrer to unfair business practices claim properly sustained where plaintiff failed to obtain trial court's permission to add new cause of action].)

to Plaintiff's home without prior notice or permission; (g) failed to conduct proper investigations of Plaintiff's complaints; [and (h)] failed to protect Plaintiff from discrimination based on her race and gender."[2] In her opposition to the County's demurrer, Plaintiff affirmed her claims were based on the County's " 'response to her crime complaint.' "

The trial court concluded the County was immune from liability for the alleged conduct under Government Code sections 815.2, 818.2, 820.2, 821.6, and 845.[3] The immunities established by sections 815.2 and 821.6 are sufficient to affirm the judgment.[4]

Section 815.2, subdivision (b) states: "Except as otherwise provided by statute, a public entity is not liable for an injury

---

[2] The trial court's summary is largely consistent with the recitation of facts presented in Plaintiff's opening brief.

[3] Statutory references are to the Government Code unless otherwise stated.

[4] Section 818.2 provides: "A public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law." Section 820.2 states: "[A] public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." And, section 845 provides: "Neither a public entity nor a public employee is liable for failure to establish a police department or otherwise to provide police protection service or, if police protection service is provided, for failure to provide sufficient police protection service." To the extent Plaintiff claims the County is liable for its decision not to charge the suspect with the correct crime, or that it performed an inadequate investigation, or that it failed to provide adequate police protection services, these statutes, in addition to sections 815.2 and 821.6, immunize the County from liability.

resulting from an act or omission of an employee of the public entity where the employee is immune from liability." Section 821.6 provides: "A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause." Although the statute refers to prosecution, it is settled that "section 821.6 extends to actions taken in preparation for formal proceedings, including investigation, which is an 'essential step' toward the institution of formal proceedings." (*Paterson v. City of Los Angeles* (2009) 174 Cal.App.4th 1393, 1405; *Amylou R. v. County of Riverside* (1994) 28 Cal.App.4th 1205, 1209-1210 [county immune from liability under sections 815.2 and 821.6 for officer's conduct when questioning victims and witnesses during investigation].)

"[S]ection 821.6 shields investigative officers from liability for injuries suffered by witnesses or victims during an investigation. [Citation.] Officers are also immune from claims made by those who are not the actual targets of the investigation or the prosecution, but who happen to be injured by decisions an officer makes during the course of such investigation." (*Baughman v. State of California* (1995) 38 Cal.App.4th 182, 192.) This immunity extends to claims that, in the course of an investigation, the public employee "act[ed] out of discriminatory and retaliatory motives." (*Ross v. San Francisco Bay Area Rapid Transit Dist.* (2007) 146 Cal.App.4th 1507, 1516.) And the immunity applies to bar claims brought under the Bane Act arising out of an investigative or prosecutorial decision. (*County of Los Angeles v. Superior Court* (2009) 181 Cal.App.4th 218, 230-231 ["we reject plaintiffs' contention that Civil Code section 52.1 prevails over the Government Code section 821.6 immunity"]; *O'Toole v. Superior Court* (2006) 140 Cal.App.4th 488, 504 ["Civil Code section 52.1 contains no indicia reflecting an intent

that public employees may be sued despite a statutory immunity that would otherwise apply."].)

Here, it appears that all the alleged wrongful conduct relates to the County's investigation and prosecution of the home invasion incident. As the County explained in its demurrer, "Plaintiff claims that, in the course of the investigation and prosecution, employees of the Sheriff's Department violated her rights under State law by initially failing to file a police report and later filing a false police report, 'subjecting Plaintiff to rude and disrespectful behavior,' bringing [the suspect's] parents to her home, and failing to conduct a proper investigation. . . . Although Plaintiff also alleges she was subject to discrimination, she claims that this discrimination manifested itself in the manner in which the Sheriff's Department investigated the [home invasion] incident." The trial court concluded the alleged conduct fell squarely within the immunity established by section 821.6 and the other governmental immunity statutes cited in its written ruling. Plaintiff has not satisfied her burden to affirmatively show the ruling was erroneous.[5] (*Denham, supra,* 2 Cal.3d at p. 564.) Accordingly, we must affirm.

---

[5] The cases Plaintiff cites in her appellate briefs are either consistent with the trial court's ruling or inapposite to the claims she asserts. (See *Hartzler v. City of San Jose* (1975) 46 Cal.App.3d 6, 9-10 [police department enjoys "absolute" immunity under section 845; allegation that police had "responded 20 times to [decedent's] calls and had arrested her husband once" did not establish police had "induced decedent's reliance on a promise, express or implied, that they would provide her with protection"]; *Hodorowski v. Ray* (5th Cir. 1988) 844 F.2d 1210, 1217-1218 [social workers' conduct was objectively reasonable and did not violate any clearly established constitutional right; qualified immunity therefore protected them from liability in civil rights suit arising from removal of children];

## DISPOSITION

The judgment is affirmed. The County of Los Angeles and Los Angeles County Sheriff's Department are entitled to their costs, if any.

---

cf. *Whitton v. State of California* (1979) 98 Cal.App.3d 235, 242 [highway patrol officers were not negligent as a matter of law for stopping plaintiff on shoulder where her car was then hit by a drunk driver; not addressing governmental immunity]; *White v. County of Orange* (1985) 166 Cal.App.3d 566, 571 [county could be held vicariously liable for deputy sheriff's intentional misconduct in threatening and falsely imprisoning motorist]; *So v. Shin* (2013) 212 Cal.App.4th 652, 656-657 [anesthesiologist could be sued for intentional infliction of emotional distress]; *Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 883 [plaintiff's hiking companions could be held liable for negligence for bringing him to the edge of a cliff when he was highly intoxicated]; *Garmon v. County of Los Angeles* (9th Cir. 2016) 828 F.3d 837, 847 [acknowledging California Courts of Appeal have interpreted section 821.6 to extend beyond claims for malicious prosecution, but holding immunity should be confined to such claims under California Supreme Court precedent].)

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

EGERTON, J.

We concur:

EDMON, P. J.

LAVIN, J