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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

CHRISTINE GEARY et al., Plaintiffs and Appellants, v. COUNTY OF LOS ANGELES, Defendant and Respondent.	B254493 (Los Angeles County Super. Ct. No. MC023253)

APPEAL from a judgment of the Superior Court of Los Angeles County. Rudolph A. Rodgers, Judge. Affirmed.

Ellis Law Corporation, Andrew L. Ellis, Justina G. Ramon for Plaintiffs and Appellants.

Mark J. Saladino, County Counsel, Jennifer A.D. Lehman, Acting Assistant County Counsel, Karen Joynt, Deputy County Counsel, for Defendant and Respondent.

David Geary (David) died after hanging himself in a jail cell. David's wife Christine and son Benjamin,[1] brought a lawsuit against the County of Los Angeles (the County), claiming it was liable for David's death under Government Code section 845.6.[2] According to plaintiffs' complaint, sheriff's deputies knew that David was suicidal and in need of immediate medical care, but unreasonably failed to summon such care.

The trial court granted summary judgment in favor of the County, finding that plaintiffs did not establish a claim under section 845.6. We agree and affirm the summary judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Undisputed Material Facts

Initiating Events

In March 2011, David was suffering from depression and extreme anxiety due to a decade-long employment dispute. On March 16, 2011, he learned that his employer had rejected a requested assignment transfer and he became extremely upset. When Christine got home that night, she became concerned about how much prescription medication David had taken. The next morning, March 17, 2011, Christine called David's psychiatrist to discuss her concerns. He told her to call "the rescue squad." After observing David become increasingly agitated, Christine asked her neighbor to call 911.

First Response by Sheriff's Deputies

At approximately 12:30 p.m. on March 17, 2011, paramedics and Los Angeles County Sheriff's Department deputies arrived. Christine informed one deputy, Philip Anderson, that David had taken an unknown amount of sedatives and anti-anxiety medication, had ransacked the house trying to finding more pills, and had told her he wanted to kill himself. Deputy Anderson detained David pursuant to Welfare and

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[1] To avoid confusion, we refer to the Gearys by their first names.

[2] All further statutory references are to the Government Code unless otherwise indicated.

Institutions Code section 5150, determining there was probable cause that David was a danger to himself.

First Hospital Visit

At 1:33 p.m. on March 17, 2011, Deputy Anderson released David to the care and custody of Antelope Valley Hospital. An emergency room physician medically cleared David and referred him for a psychiatric consultation. A mental health assessment specialist interviewed David and Christine. David appeared to be cooperative and calm, with a normal mood and appropriate affect. He denied suicidal ideation and being a danger to himself. The specialist completed a suicide risk assessment tool; David scored 16 out of 42 possible points, indicating that no risk of suicide was identified. The specialist reviewed the matter with a psychiatric nurse, and they contacted the on-call psychiatrist, Dr. John Beck. Dr. Beck determined that David was not a danger to himself and rescinded the Welfare and Institutions Code section 5150 hold. At approximately 9:15 p.m., David was discharged by Antelope Valley Hospital.

Second Response by Sheriff's Deputies

As Christine drove David home from the hospital, he became increasingly angry and threatened to "find a way" to have both Christine and their neighbor thrown into jail. He punched Christine several times on the arm while she was driving, leaving visible bruises. Christine eventually coaxed David out of the car, and called his sister, Barbara Marshall, who called 911.

Deputy Jacob Montez received the call, which reported domestic violence and a possible suicide attempt. Deputy Montez and others responded to the Geary house at approximately 10:30 p.m. David answered the door. He appeared agitated and used profanity. Deputy Montez requested to be let in, but David tried to close the door. Sergeant Daniel Oppenheim, who also responded to the call, threatened to spray David with pepper spray, and David punched him in the arm. The sergeant sprayed David, who resisted being handcuffed. David was eventually handcuffed and placed in the backseat of a patrol car. When the officers went inside the house, they observed that it had been

ransacked; a banister and railings were torn from the stairs, computer monitors had been smashed, and there was broken furniture and glass.

David was placed under arrest for corporal injury to a spouse, vandalism, and resisting arrest. At approximately 11:00 p.m., on March 17, 2011, Deputy Montez completed a medical screening form, asking David, among other things, whether he was currently suicidal. David responded that he was not. In a subsequent videotaped interview shortly thereafter, David was asked if he had "any other kind of injuries or any other medical problems at all" and responded "No." He also stated that he did not need to go to the hospital.

Second Hospital Visit

At about 11:40 p.m., on March 17, 2011, Deputy Steven Sgrignoli transported David to Palmdale Regional Medical Center for medical treatment for physical injuries sustained when resisting arrest. Deputy Sgrignoli was not aware of David's recent suicidal ideation, suicide attempt or his Welfare and Institutions Code section 5150 hold. The triage nurse who admitted David noted that he reported his pain level as "[zero] out of 10," that he was alert and in no acute distress, and that he denied any pain or other complaints. At the hospital, Deputy Sgrignoli observed David to be calm, respectful, talkative and alert. David did not appear sad, withdrawn or lethargic, and interacted appropriately with medical staff.

Dr. John Gambol examined David, and noted that David was alert, had a normal mood and affect, was in no acute distress, and that his condition was "stable." Dr. Gambol diagnosed David with an abrasion to his forehead and a contusion to his calf. Dr. Gambol wrote that David was "ok to book." The Palmdale Regional Medical Center records make no mention of David's recent suicide attempt, his Welfare and Institutions Code section 5150 hold, or any mental health evaluation. David was discharged at approximately 12:45 a.m. on March 18, 2011, and transported to Palmdale Station Jail.

Palmdale Station Jail

At approximately 1:15 a.m. on March 18, 2011, Lieutenant Steven Gross conducted a videotaped interview of David upon his arrival at the jail. Lieutenant Gross

specifically asked and David denied wanting to hurt himself. During the interview, David appeared to be calm and alert and spoke effectively. Lieutenant Gross was aware that David had been taken to two hospitals and the reasons for the visits, and that he had an "ok to book."

David was booked into custody at approximately 1:16 a.m. on March 18, 2011. A custody assistant, Marilynn Lopez (Lopez), completed a medical screening form in connection with the booking, answering "Yes" to the question "Is the arrestee suicidal or does his/her behavior suggest a risk of suicide?" She noted that David had a history of a previous suicide attempt and that he took medication for a psychological condition. She obtained this information from Sergeant Oppenheim.

After booking, David was placed in a cell with a telephone and provided with a "suicide blanket"—a stiff, tear-resistant blanket that is designed so it cannot be used as a noose. While in the cell over the next six hours, David made 56 telephone calls, including many uncompleted calls. He talked to Christine twice, angrily blaming her for his situation and demanded that she bail him out and lie to get him out of jail. He also asked a friend to post bail.

County personnel made contact with David several times throughout the night; each time he communicated clearly and did not express any needs. For example, sometime between 1:25 a.m. and 2:25 a.m., Sergeant Greg Kelly went to David's cell to photograph his injuries and observed him to be cooperative, alert and calm. David responded appropriately to requests and did not appear morose or lethargic. At approximately 6:00 a.m., on March 18, 2011, Deputy Schnereger went to David's cell to serve him with a protective order. David was awake and communicated clearly. He was not upset, crying, lethargic or withdrawn and did not express any desire to harm himself or express any needs.

At approximately 6:21 a.m., on March 18, 2011, David called his friend requesting bail; the call lasted more than five minutes. From 6:29 a.m. until 7:16 a.m., David made 20 uncompleted telephone calls to various numbers. At approximately 7:00 a.m., a custody assistant went to David's cell and gave him instructions on how to use the

telephone; David was conscious and alert. At approximately 7:25 a.m. on March 18, 2011, David complained to the same custody assistant that the telephone was not working and asked about bail bond numbers.

About 14 minutes later, at approximately 7:39 a.m. on March 18, 2011, Deputy Russell Stover opened the door to David's cell and saw that David had hanged himself.[3] Deputy Stover tried to resuscitate him. His efforts, and those of paramedics, were unsuccessful. At 8:30 a.m., David was pronounced dead.

Procedural Background

Plaintiffs brought suit against the County for wrongful death, filing the operative first amended complaint in June 2012. The County filed its motion for summary judgment in May 2013. The trial court granted the motion in October 2013, stating at the hearing that it did not find David to be in need of immediate medical care. Judgment was entered in December 2013. Plaintiffs timely appealed.

DISCUSSION

I. Standard of Review

We review a grant of summary judgment de novo, applying the same three-step analysis used by the trial court. "We identify the issues framed by the pleadings, determine whether the moving party has negated the opponent's claims, and determine whether the opposition has demonstrated the existence of a triable, material factual issue." (*Silva v. Lucky Stores, Inc*. (1998) 65 Cal.App.4th 256, 261.) If there is no triable 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, and whether it was raised by defendant in the trial court or first addressed on appeal." (*Jordan v. Allstate Ins. Co.* (2007) 148 Cal.App.4th 1062, 1071.)

The general rule is that summary judgment is appropriate where "all the papers submitted show that there is no triable issue as to any material fact and that the moving

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3 The record on appeal does not disclose what David used to hang himself.

party is entitled to a judgment as a matter of law. . . ." (Code Civ. Proc., § 437c, subd. (c).) A defendant "moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) The moving defendant may meet this burden either by showing that one or more elements of a cause of action cannot be established or by showing that there is a complete defense thereto. (Code Civ. Proc., § 437c, subd. (o)(2); *Aguilar v. Atlantic Richfield Co., supra,* at p. 850.) "'[A]ll that the defendant need do is to show that the plaintiff cannot establish at least one element of the cause of action . . . [;] the defendant need not himself conclusively negate any such element . . . .' [Citation.]" (*Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 894.) Once the moving party's burden is met, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of material fact. (*Silva v. Lucky Stores, Inc., supra,* 65 Cal.App.4th at p. 261.) The plaintiff must produce "'*substantial*" responsive evidence sufficient to establish a triable issue of fact. (*Leek v. Cooper* (2011) 194 Cal.App.4th 399, 417.) "[R]esponsive evidence that gives rise to no more than mere speculation cannot be regarded as substantial, and is insufficient to establish a triable issue of material fact." (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 163.)

II. Section 845.6 and Relevant Law

Public entities in California are immune from liability for tortious injury, except when liability is imposed by statute. (§ 815.) Section 845.6 provides a limited basis of liability; it states, in pertinent part: "Neither a public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody; but, except as otherwise provided by Sections 855.8 and 856, a public employee, and the public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care."

The second clause of section 845.6 is at issue here. "'In the second clause [of the statute], . . . liability is narrowly limited to the particular instances: (1) where the

employee knows or has reason to know of the need (2) of *immediate* medical care and (3) fails to *summon* such care.'" (*Watson v. State of California* (1993) 21 Cal.App.4th 836, 841–842 (*Watson*).) Section 845.6 is to be narrowly construed, since "the duty to summon is presented as the exception to the broad, general immunity for failing to furnish or provide medical care." (*Castaneda v. Department of Corrections & Rehabilitation* (2013) 212 Cal.App.4th 1051, 1072 (*Castaneda*).) "Liability under section 845.6 is limited to serious and obvious medical conditions requiring immediate care." (*Watson, supra*, at p. 841.)

The issues of public employees' actual or constructive knowledge of the need for immediate care, and whether they took reasonable action to summon medical care, are generally questions of fact properly determined at trial. (*Johnson v. County of Los Angeles* (1983) 143 Cal.App.3d 298, 317; *Zeilman v. County of Kern* (1985) 168 Cal.App.3d 1174, 1186 (*Zeilman*).) In *Zeilman*, the plaintiff sued after sustaining injuries from falling while being booked in the county jail. The appellate court reversed an order granting summary judgment, finding that material issues of disputed fact existed as to whether the plaintiff's use of crutches and her agitated and weakened condition gave rise to jail employees' knowledge, or constructive knowledge, of the plaintiff's need for immediate medical care. (*Id.* at p. 1187.)

But the matters of knowledge and reasonable action to summon immediate medical care do not always hinge on disputed issues of fact. In *Kinney v. County of Contra Costa* (1970) 8 Cal.App.3d 761, the appellate court barred liability for an inmate who complained of a "very bad headache" and who was "ready to collapse" prior to her release. (*Id*. at p. 769.) The court held that requesting attention about a headache "cannot reasonably be deemed notice 'that the prisoner is in need of immediate medical care.'" (*Id*. at p. 770.) In *Lucas v. City of Long Beach* (1976) 60 Cal.App.3d 341, the appellate court held that section 845.6 barred liability for the failure of jail employees to summon immediate medical care for a juvenile inmate who appeared to be intoxicated. (*Id*. at p. 350.) The court concluded that although the inmate "evidenced emotional upset by crying and expressing concern as to the effect that his arrest would have on his mother,

there is not a scintilla of evidence in the record indicating that his conduct was any different than one might expect of a person intoxicated on either drugs or alcohol." (*Id.* at pp. 349–350.) In *Watson, supra,* 21 Cal.App.4th 836, a prisoner received prompt medical care for an ankle injury, but doctors failed to discover a ruptured Achilles tendon. In affirming a trial court order granting summary judgment, the appellate court found that prison employees properly summoned medical care and had no duty to monitor the quality of care provided. (*Id.* at pp. 842–843.) The court found "no merit to the argument that the misdiagnosis triggered section 845.6 liability based on the alleged failure to summon reasonable medical care." (*Id.* at p. 843.) Similarly in *Castaneda, supra,* 212 Cal.App.4th 1051, a prisoner was treated for a growth on his penis, but a cancer on the penis was not diagnosed, and he was not promptly referred to a physician who could have made the diagnosis. The appellate court found that the State was immune from liability under section 845.6 as a matter of law, because potential medical malpractice did not constitute a failure to summon. (*Castaneda , supra,* at pp. 1072–1073.)

III. Analysis

The last 36 hours of David's life are well documented. Indeed, of the parties' 99 proposed material facts in their separate statements, nearly all are undisputed. Plaintiffs primarily focus on the actions of sheriff's deputies after David's booking, claiming that only while he was in jail was he a "prisoner" as required in section 845.6.

In its moving papers, the County presented evidence showing that during the time David was in jail, County employees had no actual or constructive notice that David was in need of immediate medical or psychiatric care. Upon his arrival at jail, David was interviewed by Lieutenant Gross and when specifically asked, David denied wanting to hurt himself. David appeared calm and alert and spoke effectively during the interview. When Sergeant Greg Kelly went to David's cell to photograph his injuries, David was cooperative, alert and calm, he responded appropriately to requests and did not appear morose or lethargic. When Deputy Schnereger went to David's cell to serve him with a protective order, David was awake and communicated clearly, and was not upset, crying

lethargic or withdrawn, and did not express any desire to harm himself or express any needs.

While in his cell, David made 56 telephone calls, including many uncompleted calls. He talked to Christine twice, angrily blaming her for his situation and demanded that she bail him out and lie to get him out of jail. He also asked a friend to post bail. At approximately 7:00 a.m., a custody assistant went to David's cell and gave him instructions on how to use the telephone; David was conscious and alert. At approximately 7:25 a.m., only 14 minutes before he was found hanging in his cell, David complained to the same custody assistant that the telephone was not working and asked about bail bond numbers.

The evidence shows that as the night progressed, there were no dramatic changes or deterioration in David's demeanor. David was never observed to be crying, lethargic, upset, or withdrawn, he always communicated clearly, he never expressed a desire to harm himself, and he never asked for help, except with respect to using the telephone and obtaining bail bond numbers.

While certain County employees at the jail may have known that David had previously attempted suicide and been taken to two hospitals, there was no reason—based on their own observations of David—to dispute the conclusions of the medical practitioners that David was not a danger to himself and was okay to book. "Section 845.6 does not require that a prison guard be a better medical diagnostician" than medical practitioners who examined the prisoner. (*Watson, supra*, 21 Cal.App.4th at p. 843.)

We are satisfied that the County met its burden of showing there was no evidence to satisfy the statutory element that employees knew or should have known that David was in need of immediate medical care. The burden therefore shifted to plaintiffs to create a triable issue of material fact on this element by producing substantial responsive evidence.

In this regard, plaintiffs relied on all of the undisputed events that took place before David's booking, and presented the additional evidence that a medical screening form in connection with his booking stated he was a suicide risk and took medication for

a psychological condition, that he was provided a suicide blanket in his cell, and that the County apparently had a policy of transporting suicidal or potentially suicidal inmates to the Inmate Reception Center in downtown Los Angeles for a mental health evaluation when booked overnight. But none of this evidence speaks to the issue of whether County employees knew that David was in need of *immediate* psychiatric care during the six or so hours he was in jail. Indeed, the policy plaintiffs rely on also states: "What the inmate says and how he or she behaves while being transported to the jail and/or booked, and during the medical screening process at the Inmate Reception Center, are vital for detecting suicidal behavior. The signs and symptoms exhibited by the inmate often foretell a possible suicide or suicide attempts," and further discusses an inmate "who expresses suicidal ideation by word or action, or exhibits unusual behavior." As discussed above, there was nothing about David's words or demeanor in the jail that would put any County employees on notice that David was at active risk for suicide.

Plaintiffs argue that in the event David could be considered a prisoner prior to his booking when he was taken to Palmdale Regional Medical Center, they created a triable issue of fact as to whether the County made reasonable efforts to summon medical care. They point to evidence that Deputy Sgrignoli, who transported David to the hospital, was unaware of David's recent suicidal ideation, suicide attempt or his Welfare and Institutions Code section 5150 hold, and therefore did not communicate this information to medical staff. But the fact that Deputy Sgrignoli was unaware of this information is immaterial to the medical treatment David actually received. The County's evidence showed that the triage nurse who admitted David noted he reported his pain level as "[zero] out of 10," he was alert and in no acute distress, and he denied any pain or having any other complaints. Dr. Gambol, who examined David and declared him okay to book, also noted that David was alert, in no acute distress, and, most importantly, had a normal mood and affect. Further, Deputy Sgrignoli observed David to be calm, respectful, talkative and alert while at the hospital. David did not appear sad, withdrawn or lethargic, and interacted appropriately with medical staff. There is no indication that David expressed suicidal ideation or exhibited any symptoms showing he was potentially

suicidal. Indeed, 40 minutes before David was taken to the hospital, he told the arresting officer, Deputy Montez, that he was not suicidal. The County cannot be held liable for the medical treatment actually rendered by a third party. (*Watson*, *supra*, 21 Cal.App.4th at p. 843.)

We find that plaintiffs did not satisfy their burden of creating a disputed issue of material fact on their claim of liability under section 845.6. Accordingly, the trial court properly granted summary judgment in favor of the County.[4]

DISPOSITION

The summary judgment in favor of the County is affirmed. The County is entitled to recover its costs on appeal.

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_____, J.
ASHMANN-GERST

I concur:

_____, J.
CHAVEZ

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[4] In light of our conclusion, we need not address the County's additional arguments that it is immune from liability under sections 855.6, 855.8, and 856.

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BOREN, P.J.—Dissenting

I respectfully dissent.

In deciding whether summary judgment was properly granted, the focus in this case should be on the two sets of facts that I believe are material. The first is, following David's fight in the car with his wife Christine, his sister Barbara called the Palmdale sheriff station and told the deputy who answered that, upon his release from Antelope Valley Hospital, David had become violent toward his wife and was walking home with the intent to kill himself. When the deputy inquired whether David said he wanted to kill himself, Barbara answered, "Yes." The second set of facts involves Christine's interview by sheriff's deputies later that night. Christine stated that after David's release from the first hospital, David referred to his earlier suicide attempt and said, "Next time I'm going to do it right." She told the deputies that David was not behaving in his typical manner and she feared he would carry out his threat to kill himself.

Thus, the County was informed that, after David's release from the first hospital, he still clearly indicated an intent to commit suicide. It appears, however, that none of the sheriff's deputies informed the medical staff of this stated intent, and that David, after his release from the first hospital, was not given any medical treatment relating to his intention to commit suicide.

I agree with the majority that David's demeanor and statements to County employees strongly weigh in favor of a finding of no liability. However, a prisoner's "failure to ask for medical care may be a factor in what the governmental entity or its agents knew or should have known, but it is not the sole fact to be considered." (*Zeilman v.County of Kern* (1985) 168 Cal.App.3d 1174, 1186.) Given that other facts indicate that the County likely had reason to know that David was suicidal and in need of immediate medical care, I believe that summary judgment was inappropriate, and that a trier of fact should determine the issue of liability.

_____, P.J.

BOREN