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KING COUNTY, WASHINGTON

JUL 24 2018

SUPERIOR COURT CLERK
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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

Lacy

Plaintiff,

Vs.

Snohomish County

Defendant.

NO. 16-2-21526-2 SEA

ORDER ON MOTION FOR SUMMARY is attached.
judgment

**Superior Court for the State of Washington
in and for the County of King**

JUDGE KAREN DONOHUE

Department 22

King County Courthouse
Seattle, Washington 98104-2312

July 24, 2018

Ms. Bridget Casey
Deputy Prosecuting Attorney
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RE: Lacy v. Snohomish County
King County Superior Court Case No. 16-2-21526-2

Dear Counsel,

Defendant Snohomish County requests dismissal of Plaintiff's lawsuit pursuant to Civil Rule 56. Summary judgment should be granted only if, after considering all the pleadings, affidavits, depositions and all reasonable inferences in the light most favorable to the nonmoving party, the court determines that there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law. CR 56(c); *Keck v. Collins*, 184 Wn.2d 358, 357 P.3d 1080 (2015); *Moore v. Pay'N Save Corp.*, 20 Wn. App. 482, 581 P.2d 159 (1978).

Plaintiff voluntarily dismissed her negligent training and supervision claim prior to argument held on July 20, 2018. Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment.

After argument, the Court granted Defendant's motion for summary judgment as to the tort of outrage claim. To prevail on a claim of outrage, a plaintiff must prove 1) extreme and outrageous conduct, 2) intentional or reckless infliction of emotional distress, and 3) actual result of severe emotional distress. *Grimby v. Samson*, 85 Wn.2d 52, 530 P.2d 291 (1975); *Sutton v. Tacoma School Dist. No. 10*, 180 Wn. App. 859, 324 P.3d 763 (2014). The Court finds that Plaintiff presented no evidence that Mr. Lacy suffered the actual result of severe emotional distress and would be unable to do so at trial.

The Court finds that the public duty doctrine does not apply to this tragic case. Plaintiff is not asserting any claim of obligation by statute, ordinance or regulation. Rather, Plaintiff is asserting that Deputy Pendergrass had a duty to act with reasonable care under common law.

As Justice Chambers said in his concurring opinion in *Munich v. Skagit Emergency Communication Center*, 175 Wn.2d 871, 886, 288, 328 (2012):

[s]ome view [the public duty doctrine] as providing some sort of broad limit on all governmental duties so that governments are never liable unless one of the four exceptions to the public duty applies, thus largely eliminating duties based on the foreseeability of avoidable harm to a victim. In fact, the public duty doctrine is simply a tool we use to ensure that governments are not saddled with greater liability than private actors as they conduct the people's business.

In this case, the officers had a specific duty to act because they had Mr. Lacy in their care. More important, however, "the only governmental duties [the Washington State Supreme Court has] limited by application of the public duty doctrine are duties imposed by a statute, ordinance, or regulation." *Id.*

While Plaintiff is not claiming any violation of a statutory duty, the Court finds that Deputy Pendergrass did not have a duty to call for a medical health team. No finding is being entered with regard to any claim of negligence or common law duty to act. RCW 71.05.153 provides law enforcement officers with the discretion to take an individual into custody and deliver him or her to a triage facility, crisis stabilization unit, evaluation and treatment facility, treatment program or an emergency department of a hospital if the officer has reasonable cause to believe that the individual is suffering from a mental disorder or substance use disorder and the individual presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled. The decision to take Mr. Lacy home or to a hospital was completely appropriate under this statutory scheme.

The Court finds that genuine disputes regarding material facts exist as to the claims of battery and false imprisonment. Defendant's motion for summary judgment on those two claims is denied. The Court also denies the motion for summary judgment on the negligence claim. While it may be appropriate to instruct the jury as to either the intentional tort or the negligence claim, that will only become apparent through evidence presented at trial, or perhaps through motions in limine. The Court is not making a specific finding at this time as to a "totality of the circumstances standard" but finds that it is appropriate for Plaintiff to plead alternative theories. CR 8(e)(2).

In summary, the Court GRANTS partial summary judgment as to the claim of outrage. As to the claims of negligence, false imprisonment and battery the Court DENIES the Defendant's Motion for Summary Judgment.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Donohue", with a long horizontal flourish extending to the right.

Judge Karen Donohue