Tentative Rulings and Resolution Review Hearings
August 13, 2018
Department 8

NOTE: This Court does not follow the procedures described in Rules of Court, Rule 3.1308(a). Tentative rulings appear on the calendar outside the court department on the date of the hearing, pursuant to California Rule of Court, Rule 3.1308(b)(1). As a courtesy to counsel, the court also posts tentative rulings no less than 12 hours in advance of the time set for hearing. The rulings are posted on the court's website (www.shasta.courts.ca.gov) and are available by clicking on the "Tentative Rulings" link. A party is not required to give notice to the Court or other parties of intent to appear to present argument.

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Law and Motion – 8:30 a.m.

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BULLOCK VS. ENTERPRISE ELEMENTARY SCHOOL
Case Number: 187494

Tentative Ruling on Motion for Summary Judgment, or in the Alternative, Summary Adjudication: Defendants, Enterprise Elementary School District and Boulder Creek Elementary School move for summary judgment or in the alternative summary adjudication pursuant to CCP § 437c as to all of Plaintiff, A.J.'s causes of action. Defendants argue that there is no triable issue of fact. The motion relies heavily on the immunity provided by Education Code § 44808 and design immunity pursuant to Gov. Code § 830.6.

Defendants' Objections to Evidence:

Objection No. 1: OVERRULED
Objection No. 2: SUSTAINED
Objection No. 3: OVERRULED
Objection No. 4: OVERRULED

Factual Background: In May of 2016, Plaintiff was a second grade student at Boulder Creek Elementary School, part of the Enterprise Elementary School District. On May 16, 2016, at 1:56 p.m., the school bell rang and Plaintiff was dismissed from school for the day. Plaintiff had his parent's permission to walk by himself after school down the street to be picked up. Plaintiff proceed to do just that. He walked out to the front of the school and onto the public sidewalk at the western corner of the school. He then turned east and walked along the public sidewalk in front of the school.

The school has three driveways for traffic to enter and leave the school. Plaintiff successfully crossed the first two driveways on his way to his step-father's car, but when he approached the third driveway, a pickup truck being driven by defendant David Zauher (non-school employee) was waiting to exit the school. Defendant Zauher waved at a passing car but Plaintiff thought Zauher was waving to Plaintiff to cross the driveway. Plaintiff was running across the sidewalk when Zauher pulled forward striking and injuring Plaintiff with his vehicle.

The sidewalk and portion of the driveway where Plaintiff was struck were not owned by the Defendants. The District maintained a policy allow first graders and older to walk off campus to be picked up. There is no evidence that Plaintiff was being supervised at the time of the accident. There is no evidence that there were any crossing guards or any other employee stationed at the subject driveway to assist with student crossing.

The parking lot that is subject to this motion was reconfigured in or about 2009. The plans were approved by an individual authorized to Board of Directors. The parking lot was reconfigured at least in part to accommodate an expected increase in enrollment.

Summary Judgment Standard: CCP § 437c states a motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue of material fact and that the moving party is entitled to judgment as a matter of law. "A defendant…has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. 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 the cause of action or a defense thereto…." CCP § 437c(p).

Negligent Hiring, Retention and Supervision: Plaintiff's second cause of action is for negligent hiring, retention and supervision. Plaintiff's complaint contains various allegations in the second cause of action that are duplicative of their negligence, negligent supervision and dangerous condition cause of action. A cause of action of this nature imposes liability on a defendant for their negligence in hiring, retaining or supervising its employees. See *Phillips v. TLC Plumbing, Inc.* (2009) 172 Cal.App.4th 1133, 1139-40. It is undisputed that Plaintiff's second cause of action for negligent retention, hiring and supervision makes no allegation of negligent retention or hiring of an employee. There is also no allegation that Defendants negligent supervised any of their employees nor has an evidence of negligent supervision been provided in Plaintiff's opposition. The Court finds there is no triable issue of fact as on this particular cause of action. Summary adjudication on this cause of action is granted.

Education Code § 44808: Plaintiff's remaining three cause of action are for negligent supervision, dangerous condition and negligence. The immunity provided by Education Code § 44808 undisputedly applies to the duplicative cause of action for negligent supervision and negligence. In *Bassett v. Lakeside Inn, Inc.* (2006) 140 Cal.App.4th 863, 872 the Third Appellate District found that Section 44808 immunity would apply to a dangerous condition. For these reasons, the Court finds that the immunity provided by Section 44808 applies to the negligent supervision, dangerous condition and negligence causes of action.

Education Code § 44808 states:

> "Notwithstanding any other provision of this code, no school district, city or county board of education, county superintendent of schools, or any officer or employee of such district or board shall be responsible or in any way liable for the conduct or safety of any pupil of the public schools at any time when such pupil is not on school property, unless such district, board, or person has undertaken to provide transportation for such pupil to and from the school premises, has undertaken a school-sponsored activity off the premises of such school, has otherwise specifically assumed such responsibility or liability or has failed to exercise reasonable care under the circumstances.
> In the event of such a specific undertaking, the district, board, or person shall be liable or responsible for the conduct or safety of any pupil only while such pupil is or should be under the immediate and direct supervision of an employee of such district or board."

This section makes it clear that Defendants would not be liable if the accident occurred off school property. They would only be liable if they "specifically assumed" some responsibility or failed to exercise reasonable care under the circumstances. It is undisputed that Plaintiff was off school property when the accident occurred. Therefore to survive summary adjudication the Defendants must have assumed some responsibility or failed to exercise reasonable care. The case of *Guerrero v. South Bay Union School Dist.* (2003) 114 Cal.App.4th 264 is directly on point both factually and legally. In *Guerrero,* a six year old first grader was injured while crossing

the road in front of her school after she had been dismissed by the school. That plaintiff initially crossed the road to get a closer look at a toy held by another student. She then crossed back and was hit by a car. *Id.* at 266-67. The *Guerrero* Court found that the immunity provided by Education Code § 44808 applied. "[A] reasonable juror could only find the school at fault if there were a duty to supervise children until safely in the arms of their parents. No such duty exists in statute or case law. Duties to supervise off campus, as we have explained, are restricted by statute and no showing has been made here that the school personnel did or failed to do an act on campus that breached any actual duty of care. No such sweeping duty as constructed by the dissent presently exists, and, in our view, the creation of such duty should be a legislative act, not a judicial discovery." *Id.* at 271.

Here, similar facts are present. Plaintiff had been dismissed from school and was not on school property. He was injured crossing a driveway not unlike the road at issue in *Guerrero.* Further, Plaintiff cannot identify any specific duty affirmatively undertaken by the Defendants or their employees. No breach of an actual duty of care has been identified by Plaintiff. He was allowed to leave the campus per the permission provided by his parents. The immunity provided by Education Section Code § 44808 applies. This immunity bars the negligent supervision, dangerous condition and negligence cause of action. Summary adjudication on these causes of action is therefore appropriate.

Dangerous Condition: In California, public entity liability for personal injury is governed by statute. *Davis v. City of Pasadena* (1996) 42 Cal.App.4th 701, 703. Government Code section 835 sets out the exclusive conditions under which a public entity may be held liable for injuries caused by a dangerous condition of public property. *Brown v. Poway Unified School District* (1993) 4 Cal.4th 820, 829. For its purposes, a "dangerous condition" of public property is defined as a condition or property that creates a substantial risk of injury when such property is used with due care in a manner in which it is reasonably foreseeable that it will be used. Govt. Code § 830(a). Ordinarily, the existence of a dangerous condition is a question of fact, but whether there is a dangerous condition may be resolved as a question of law if reasonable minds can come to but one conclusion. *Salas v. Department of Transportation* (2011) 198 Cal.App.4th 1058, 1070.

Here, Defendants have provided evidence that the condition of the parking lot, driveways and sidewalks was not a dangerous condition. For this reason alone, Defendant has met their initial burden which no shifts to Plaintiff. CCP § 437c(p). Plaintiff has provided contradictory evidence that a dangerous condition did in fact exist. While the evidence in Plaintiff's favor is weak, the evidence of the opposing party must be viewed in the light most favorable. *Ennabe,* supra (2014) 58 Cal.4th 703. Additionally, it is well established that this type of issue it typically a question of fact. *Salas,* supra 198 Cal.App.4th 1058, 1070. For these reasons, the Court finds there is a triable issue of fact related to the existence of a dangerous condition. Summary adjudication on this particular issue should be denied. This determination would not affect the findings related to immunity under Education Code § 44808 and design immunity under Government Code § 830.6.

Design Immunity: If a dangerous condition did exist, Defendants argue that the design immunity provided by Government Code § 830.6 applies. Under Section 830.6, a public entity may avoid liability for a dangerous condition of public property if it can establish that the injury was caused by an approved plan or design. *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1262. The three elements of the immunity are (1) a causal relationship between the plan and accident; (2) discretionary approval of the plan prior to construction; and (3) substantial evidence supporting the reasonableness of the plan or design. *Alvis v. County of Ventura* (2009) 178 Cal.App.4th 536, 550. The allegations of the complaint establish that Plaintiff is alleging a causal relationship between the plan and the accident. Plaintiff argues that it was only one of the causes but a causal relationship exists nonetheless.

Further, Defendant has established the 2009 parking lot reconfiguration was approved by an individual authorized by the County prior to construction. Plaintiff argues that additional public entities needed to approve

the design as well. No authority has been provided to support that argument. Plaintiff's facts do no identify any violation of any law or regulation related to the parking lot as designed. Plaintiff also argues that changed circumstances exist due to the increased use of the parking lot as the school enrollment increased. This conclusion is unsupported by any evidence. Defendants' evidence establishes that the 2009 parking lot reconfiguration was due to the expected increase in enrollment.

Finally, Defendant has provided an expert opinion that supports the reasonableness of the design. Plaintiff states this fact is disputed but the facts supporting that allegation never allege that the design was not reasonable; rather, they argue additional approvals were needed and that others did all the work on the plans. Plaintiff does no establish that the approving individual actually failed to review and approve the plans. Defendant has satisfied their initial burden. CCP § 437c(p). Plaintiff has provided various facts and arguments but none refute the basic authority and analysis. Plaintiff has therefore failed to meet his burden. The Court finds that design immunity applies to bar the cause of action of a dangerous condition on public property.

Disposition: Summary judgment is GRANTED. A proposed order was not lodged with the Court as required by Local Rule 5.17(D). Defendants shall prepare the order.

BAXTER VS. CITY OF REDDING
Case Number: 16CV782

Tentative Ruling on Order to Show Cause Re Sanctions: An Order to Show Cause Re: Dismissal ("OSC") issued on June 26, 2018 to Plaintiff for her failure to timely prosecute this matter. No reply has been filed. The Court DISMISSES this action. The clerk is instructed to prepare a separate Order of Dismissal and to close the file.

DAUGAARD VS. DAUGAARD
Case Number: 188490

This matter was dismissed on August 6, 2018 and today's hearing vacated. No appearance is necessary on today's calendar.

IN RE LUFRANO
Case Number: 189708

Tentative Ruling on Petition for Change of Name: Petitioner, Stormy Anne Lufrano aka Stormy Anne Wilson, seeks to change her name to Stormy Anne. Petitioner has satisfied the procedural requirements of CCP § 1275 et. seq. The Petition is **GRANTED**. Future dates may be **VACATED** and the file may be closed upon the processing of the decree.

IN RE SANFORD
Case Number: 189530

Tentative Ruling on Petition for Change of Name: Petitioner, Sheena Sanford, seeks to change the name of her minor son. A petition that has been brought by only one parent must also be served on the non-petitioning parent. CCP § 1277(a)(4). Personal service 30 days prior to the hearing is required. CCP § 415.10. If notice of the hearing cannot reasonably be accomplished by personal service, the court may order that notice be given in a manner that the court determines is reasonably calculated to give actual notice to the nonconsenting parent including by finding that the publication was sufficient. CCP § 1277(a)(4). Counsel has submitted a declaration showing that efforts to serve the biological father. Further, an affidavit of due diligence has been provided showing the efforts of a process server to serve the father. Given this evidence, the Court finds that personal

service cannot be reasonably accomplished and find that the already completed publication was reasonably calculated to give actual notice.

The Court finds that Petitioner has satisfied the procedural requirements of CCP § 1275 et. seq. The Petition is **GRANTED**. Future dates may be **VACATED** and the file may be closed upon the processing of the decree.

MAUGHS VS. SHASTA COUNTY SHERIFF ET AL
Case Number: 186116

Tentative Ruling on Order to Show Cause Re Sanctions: An Order to Show Cause Re: Sanctions ("OSC") issued on July 3, 2018 to Plaintiff for his failure to dismiss this action which was removed to federal court. The federal action resulted in a judgment in favor of the Defendants. As such Plaintiff had an obligation to dismiss this action. No dismissal has been filed. Plaintiff did not respond to the present OSC to explain his actions.

Sanctions are IMPOSED in the amount of $250 against Plaintiff. The clerk is instructed to prepare a separate Order of Sanctions. The Court issues an Order to Show Cause re Dismissal pursuant to Gov't Code § 68608(b). The hearing on the OSC re Dismissal is set for **Monday, October 15, 2018 at 8:30 a.m. in Department 8.** The clerk is instructed to prepare a separate Order to Show Cause re Dismissal.

PHANH VS. ANN'S BRIDAL
Case Number: 187044

Tentative Ruling on Order to Show Cause Re Monetary Sanctions: An Order to Show Cause Re: Sanctions ("OSC") issued on May 14, 2018 to Plaintiff and counsel for their failure to timely obtain a default against defendants as required by CRC Rule 3.110(g). The OSC was originally set for hearing on July 2, 2018. Counsel submitted a response to the original OSC hearing date indicating that he is currently in negotiations to settle this matter, and that he has not sought the filing of an answer or requested a default in the interests of good faith negotiations and speedy resolution of the matter. Given Plaintiff's representations the hearing on the OSC was continued to August 13, 2018 and Plaintiff ordered to either require the filing of an answer or to request entry of default. All Defendants have now been defaulted. The Court will not impose sanctions. No appearance is necessary on today's calendar.

SILVEIRA VS. CA TOWING, INC
Case Number: 17CV870

Tentative Ruling on Order to Show Cause Re Sanctions: An Order to Show Cause Re: Sanctions ("OSC") issued on July 11, 2018 to Plaintiff for his failure to prosecute this action pursuant to CRC 3.110(b), to file a settlement conference statement and to appear at the mandatory settlement conference. This matter is still not at issue. There is no proof of service on file for the complaint. This action was filed nearly a year ago but Plaintiff appears to have taken no action to prosecute this matter. Plaintiff did not respond to the OSC to explain his actions or lack thereof. It appears to the Court that Plaintiff has abandoned this action.

Sanctions are IMPOSED in the amount of $250 against Plaintiff. The clerk is instructed to prepare a separate Order of Sanctions. The Court issues an Order to Show Cause re Dismissal pursuant to Gov't Code § 68608(b). The hearing on the OSC re Dismissal is set for **Monday, October 15, 2018 at 8:30 a.m. in Department 8.** The clerk is instructed to prepare a separate Order to Show Cause re Dismissal. The trial date of September 11, 2018 is VACATED.

STATEWIDE COLLECTION VS. OBAR
Case Number: 16CV182
Tentative Ruling on Application for Judgment Debtor Examination: Judgment Creditor, Statewide Collection, Inc. seeks to conduct the debtor examination of Judgment Debtor, Tiffany Nikkole Obar. The Court issued an Order to Appear for Examination on June 11, 2018 which set the debtor examination for today, August 13, 2018. CCP § 708.110 requires personal service to be accomplished ten (10) calendar days prior to the debtor examination. No proof of personal service has been filed. On or before the date of this hearing, the Judgment Creditor is to file with the Court a proof of service indicating timely service on the Judgment Debtor. Otherwise, the debtor examination will be dropped from the calendar.

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Resolution Review – 9:00 a.m.

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BATZER CONSTRUCTION VS. WHITE OAK GLOBAL
Case Number: 181698

This matter is on calendar for review regarding status of settlement. A Notice of Settlement was filed on April 5, 2018 which indicates that the case would be dismissed within 45 days of March 13, 2018, the date of settlement. No dismissal is on file. This matter was been appealed to the Third District Court of Appeal but that appeal has been dismissed and a remittitur issued on June 6, 2018. As such this Court once against his jurisdiction over this matter. The Court intends on dismissing this case pursuant to California Rule of Court 3.1385(b) unless the parties appear at today's hearing and show good cause why the case should not be dismissed.

BLOODWORTH VS. SMITH
Case Number: 17CV836

This matter is on calendar for review regarding status of service of the Complaint. A Notice of Settlement was filed on August 8, 2018 indicating this matter would be dismissed within 45 days. The Court VACATES the trial date of August 28, 2018. This matter is set for **Monday, October 22, 2018 at 9:00 a.m. in Department 8** for status of judgment/dismissal. If a judgment or dismissal is filed at least five days prior to the review hearing no appearance will be necessary on October 22, 2018. No appearance is necessary on today's calendar.

CREEKSIDE LOGGING VS. APPLIED UNDERWRITERS
Case Number: 185312

This matter is on calendar for review regarding status of appeal. On March 13, 2017, the Court entered an order staying this matter pending an appeal. No remittitur has been issued. No documentation has been filed with the Court to provide it was a status of the appeal. The parties are ordered to appear to provide the Court with a status of appeal.

GREGORY VS. SIERRA PACIFIC, ET AL
Case Number: 186824

This matter is on calendar for review regarding status of judgment/dismissal. A Petition to Approve Compromise of Disputed Claim is pending and scheduled for hearing on August 20, 2018. In light of the foregoing, this matter is continued to **Monday, August 20, 2018 at 9:00 a.m. in Department 8.** No appearance is necessary on today's calendar.

LVNV FUNDING VS. DAVIS
Case Number: 17CV432

This matter is on calendar for review regarding status of default. Plaintiff has submitted a case management conference statement which indicates that Defendant has not yet appeared. The statement states that a default judgment package is being prepared but provides no specific information. Plaintiff is ordered to appear to provide the Court with a status of entry of default and entry of the default judgment.

OLGA CIOBAN-LEONTIY VS. SILVERTHORN RESORT
Case Number: 187382

This matter is on calendar for review regarding status of removal. On August 3, 2017, the Court received a Notice of Adverse Party of Removal to Federal Court. Based upon that notice, the Court suspended its jurisdiction pursuant to 28 U.S.C. § 1446(d) on August 7, 2017. No documentation has been filed regarding the status of the federal action or apprising the Court as to whether this case may or will be remanded. The parties are ordered to appear to apprise the Court regarding the status of the federal action, and whether the case will be remanded to this Court.

PHANH VS. ANN'S BRIDAL
Case Number: 187044

This matter was on calendar for review regarding status of entry of default and for trial setting. Defaults were recently obtained against all Defendants. Today's hearing is continued to **Monday, October 15, 2018 at 9:00 a.m. in Department 8** for review regarding status of entry of default judgment. Plaintiff is ORDERED to seek default judgments prior to the continued hearing date. No appearance is necessary on today's calendar.