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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Nevada)

CALVIN WARD,

Plaintiff and Appellant,

v.

THE SUPERIOR COURT OF SACRAMENTO
COUNTY,

Defendant and Respondent.

C070633

(Super. Ct. No.
201000072617)

Calvin Ward was arrested on a warrant intended for another person after the Sacramento County Superior Court (Court) mistakenly merged Ward's personal information with an individual who has the same first name. Ward sued the Court (among others), alleging he was wrongfully arrested because the Court negligently failed to maintain accurate records.

Ward now appeals from the judgment entered after the trial court sustained the Court's demurrer to his second amended complaint without leave to amend. He asserts,

among other things, that the trial court erred in transferring the matter to the Nevada County Superior Court, and erred in concluding Ward alleged that an error in *county*, rather than *court*, records was responsible for his wrongful arrest. Moreover, Ward contends, because “the complaint could easily be amended to fix this deficiency[,] . . . it was error for the court to sustain the demurrer without leave to amend”

We shall affirm the judgment, as Ward’s contentions lack merit, and he has not shown he can amend to state a viable cause of action.

BACKGROUND

“Because this matter comes to us on demurrer, we take the facts from plaintiff’s complaint, the allegations of which are deemed true for the limited purpose of determining whether plaintiff has stated a viable cause of action. [Citation.]” (*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 885.)

In or before July 2009, Ward was arrested on suspicion of bicycling under the influence of alcohol. When Ward went to the Court on July 27 to fulfill his promise to appear on that charge, he learned no charges arising from the bicycling arrest had been filed. An unrelated arrest warrant *had* previously issued for a person named Calvin Phillips and, because the Court had erroneously linked Ward’s “personal identifying information in the Jail Information Management System (‘JIMS’) with a person named Calvin Phillips who had a warrant out for his arrest,” Ward was wrongfully arrested and held in custody for three days. Ward, a self-employed upholsterer, lost business and business opportunities as a result of his arrest.

After Ward’s government tort claim was rejected, he brought this action in the Court. The original complaint alleged Ward’s civil rights were violated, and stated a negligence cause of action against three individual officers, the City of Sacramento (City), the County of Sacramento (County), and the Court.

Defendants demurred to the original complaint. Ward responded by filing a first amended complaint; it contained essentially the same substantive allegations as the

original complaint and named as defendants the City, the Court, and the officer who arrested defendant on the bicycling charge.

Defendants demurred to the first amended complaint. Ward dismissed the City and the arresting officer, and opposed the Court's demurrer.

While the Court's demurrer was pending, the Court's judicial bench recused itself and the case was ordered transferred to the Nevada County Superior Court. Judge Dowling of the Nevada County Superior Court was assigned to the case.

Following a hearing, Judge Dowling sustained the Court's demurrer with leave to amend, on the grounds (among others) Ward had abandoned his civil rights claims; and the negligence claim is uncertain as to its allegations against the Court.

Ward then filed the second amended (operative) complaint, in which the Court is the only named defendant. He alleges the Court "conflated his personal identifying information in the Jail Information Management System ('JIMS') with a person named Calvin Phillips" and "erroneously linked the name 'Calvin Philips' to [Ward's] personal identification information in JIMS, causing Ward's wrongful arrest." The complaint purports to state two causes of action. The first alleges the Court breached its duties under Government Code sections 69844 and 815.6¹ "to keep the records of the Court" by "mixing up [Ward's] personal identifiers with those of another person." The second cause of action alleges the Court breached its common law "duty to keep accurate records, including not conflating personal identifiers including names and x-reference numbers of people whose records are kept in [JIMS]."

The Court demurred to the second amended complaint. It argued Ward's statutory claim must fail because (1) section 69844 does not create a mandatory duty giving rise to a private claim for damages; and (2) section 69844 creates no duty on the Court's part to

¹ Undesignated statutory references are to the Government Code.

maintain the County's JIMS system. The Court also argued Ward's general negligence claim fails because the Court cannot be vicariously liable for the negligent acts of unnamed employees, and the Court has no duty to detect, investigate, assess, or correct errors of identity. Finally, the Court argued, Ward has not alleged why the action is not precluded by general principles of judicial immunity for damages for wrongful arrests.

Following a hearing, at which the parties appeared through counsel and argued, the trial court (by Judge Dowling) sustained the Court's demurrer without leave to amend. It ruled that section 69844 "does not create a mandatory duty" and, even if it did, that duty would not extend to "to maintain the County system," i.e., the County's JIMS system, and the Court also has no common law duty to maintain the County's JIMS system.

DISCUSSION

I. The Case Was Properly Transferred to Nevada County Superior Court

Notwithstanding that Ward did not object to the transfer of the matter to the Nevada County Superior Court, to the assignment of Judge Dowling, or to the hearing of the demurrers in Nevada County Superior Court, he contends on appeal the case was "improperly transferred to Nevada County." Ward is mistaken.

The entire Sacramento County Superior Court bench recused itself from hearing these proceedings while the Court's demurrer to the first amended complaint was pending. The California Judicial Council assigned the case to Nevada County Superior Court Judge Dowling for all purposes. This is consistent with the terms of Code of Civil Procedure section 170.8, which states that "[w]hen there is no judge of a court qualified to hear an action or proceeding, . . . [t]he judge assigned by the Chairman of the Judicial Council shall hear the action or proceeding"

Thereafter, the master calendar manager of the Sacramento County Superior Court sent the parties a "Notice of Transfer and Judicial Assignment Pursuant to Government Code section 69740," which informed them of Judge Dowling's assignment to the case

and alerted them to the fact that documents should be filed in the Nevada County Superior Court, and hearings would be held there. This was not error. Section 69740, subdivision (b), states that, “[i]n appropriate circumstances, upon agreement of the presiding judges of the courts, and in the discretion of the court, the location of a session may be outside the county”

Thus, Ward has shown no error in the assignment of the case to Judge Dowling, or of “the transfer” of proceedings in the matter to Nevada County.

II. The Trial Court Did Not Err in Sustaining the Demurrer

On appeal from an order of dismissal after an order sustaining a demurrer, our standard of review is de novo, i.e., we exercise our independent judgment about whether the complaint states a cause of action as a matter of law. (*Los Altos El Granada Investors v. City of Capitola* (2006) 139 Cal.App.4th 629, 650.) In reviewing the complaint, we must assume the truth of all facts properly pleaded by the plaintiff and matters properly judicially noticed. (*Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 814.) However, we “do not assume the truth of contentions, deductions, or conclusions of fact or law and may disregard allegations that are contrary to the law or to a fact which may be judicially noticed.” (*Dutra v. Eagleson* (2006) 146 Cal.App.4th 216, 221.) And when the demurrer has been sustained without leave to amend, we decide whether there is a reasonable possibility the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

The trial court did not err in sustaining the demurrer, because the complaint does not state facts sufficient to constitute a cause of action against the Court. Ward alleges he was wrongfully arrested as the result of the Court’s having mixed-up Ward’s personal identifying information in the County’s JIMS system with that of a person named Calvin Phillips. The court sustained the demurrer on the grounds Ward could allege neither a mandatory duty on the court’s part “to maintain the County system” of identity records,

nor a common law duty to do so. We concur with the trial court: the Court can have no legal liability for failing to ensure the accuracy of records maintained by another public entity.

Ward argues on appeal (as he did in the trial court) that the operative complaint adequately alleged he was injured by inaccurate court records, as well as county jail records, inasmuch as the complaint alleged that the Court and its unnamed employees (Does 1-10) failed “to keep accurate records” and “ensure that Ward’s court records” were not merged with those of another person. At best, these few allegations highlight that the complaint is uncertain, as it is unclear whether Ward attributes his wrongful arrest to erroneous records maintained by the County or the Court. That uncertainty justifies sustaining the demurrer. (See Code Civ. Proc., § 430.10, subdivision (f).)

III. Ward Cannot Amend the Complaint to State a Cause of Action

Ward argues the demurrer should not have been sustained without leave to amend, because the complaint “could easily be amended to fix” any mistaken reference to county records that arose from his “understanding that court clerks directly enter data and create records in JIMS.” To demonstrate that his identifying information has been erroneously merged with Phillips’s in records maintained by the Court, Ward attaches as exhibits to his appellate brief two exhibits that purport to represent the results of records searches made on the online website of the Court records. The records search for “Calvin Ward” erroneously lists “Calvin Phillips” as an alias of Ward’s; the search for “Calvin Phillips” likewise erroneously lists “Calvin Ward” as an alias of Phillips’s.

When a complaint is defective, “ ‘ “great liberality should be exercised in permitting a plaintiff to amend his complaint, and it ordinarily constitutes an abuse of discretion to sustain a demurrer without leave to amend if there is a reasonable possibility that the defect can be cured by amendment. [Citations.]” ’ ” (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 970-971.) Such an abuse of discretion is reviewable on appeal even absent a request for leave to amend, and even if the plaintiff does not claim

on appeal that the trial court abused its discretion in sustaining a demurrer without leave to amend. (*Id.* at p. 971.)

Because Ward’s complaint involves a claim against a public entity and/or its employees, it is subject to the Government Claims Act. (§ 810 et seq.) A general rule of immunity for public entities in California is contained in section 815, which states that “[e]xcept as otherwise provided by statute: [¶] (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.” (§ 815, italics added.) Conversely, “[e]xcept as otherwise provided by statute . . . , a public employee *is* liable for injury caused by his act or omission *to the same extent as a private person.*” (§ 820, subd. (a), italics added.) Thus, the Government Claims Act “establishes the basic rules that public entities are immune from liability except as provided by statute (§ 815, subd. (a)) [and] that public employees are liable for their torts except as otherwise provided by statute” (*Caldwell v. Montoya* (1995) 10 Cal.4th 972, 980; *Lawson v. Superior Court* (2010) 180 Cal.App.4th 1372, 1382-1383.)

As relevant here, the Government Claims Act sets forth two main statutory exceptions to the immunity from liability that it confers on public entities. First, section 815.2 provides that “[a] public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative” (§ 815.2, subd. (a), [except “where the employee is immune from liability” (§ 815.2, subd. (b))]). This “[v]icarious liability is a primary basis for liability on the part of a public entity, and flows from the responsibility of such an entity for the acts of its employees under the principle of respondeat superior.” [Citation.]” (*Lawson v. Superior Court, supra*, 180 Cal.App.4th at p. 1382.)

Second, section 815.6 provides that “[w]here a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular

kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.” (§ 815.6.) This provision “imposes liability on a public entity if it breaches a mandatory statutory duty that is intended to protect against the kind of injury the party seeking relief has suffered, and the breach proximately caused that injury.” (*Creason v. Department of Health Services* (1998) 18 Cal.4th 623, 629; *Lawson v. Superior Court, supra*, 180 Cal.App.4th at pp. 1382-1383.

A. Ward Cannot State a Cause of Action for Negligence on a Vicarious Liability Theory.

Ward seeks to amend his complaint to allege, more unambiguously, that the failure of Court employees to maintain accurate court records of his identity caused his false arrest. We conclude that Ward cannot establish that the Court may be vicariously liable in negligence.

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.” This section immunizes activities relating to criminal investigations and the accusation of possible suspects so that law enforcement personnel may perform their duties efficiently and effectively without harassment and fear of personal liability. (See *Cappuccio, Inc. v. Harmon* (1989) 208 Cal.App.3d 1496, 1501 [holding that incorrect post-prosecution statements by investigator are not actionable].) Courts construe section 821.6 immunity broadly, giving it an “ ‘expansive interpretation’ ” in the service of its purpose. (*Miller v. Filter* (2007) 150 Cal.App.4th 652, 668; *Ingram v. Flippo* (1999) 74 Cal.App.4th 1280, 1292.) Accordingly, it extends beyond the actual target of the proceedings to the claims of others, like plaintiff, who are injured as a result of the institution or prosecution of a

judicial proceeding. (See *Amylou R. v. County of Riverside* (1994) 28 Cal.App.4th 1205, 1211-1214 (*Amylou R.*.)

Prosecutorial immunity encompasses the filing of a criminal complaint and extends to activity taken in preparation of any “ ‘essential step’ ” toward the institution of formal proceedings. (*Amylou R.*, *supra*, 28 Cal.App.4th at pp. 1210; *Blackburn v. County of Los Angeles* (1974) 42 Cal.App.3d 175, 177-178.) The identification of a suspect, during the booking stage and in later proceedings against him, is an integral part of bringing charges against him. Identification of a suspect encompasses the documentation of personal information and the investigation necessary to confirm or refute the suspect’s identity. Court employees are thus immune from liability for all alleged acts and omissions in connection with and incidental to this activity. (*Amylou R.*, *supra*, 28 Cal.App.4th at p. 1210, 1214 [officers’ investigations and incidental acts are protected by section 821.6 immunity; crime victim cannot recover for emotional distress]; *Javor v. Taggart* (2002) 98 Cal.App.4th 795, 799-800 [section 821.6 immunity applies to state enforcement action against the wrong person due to identity theft]; see also *Lopez v. City of Oxnard* (1989) 207 Cal.App.3d 1, 12 [the County had no “duty to correct” its records to reflect that “[Lopez] was not the criminal sought by the warrant” to “assist the court and the police in identifying the correct suspect”].) Although we sympathize with Ward’s plight, we conclude that the alleged conduct falls within an area of activity to which the Legislature, for significant policy reasons, has afforded protection from liability. (See *Cappuccio, Inc. v. Harmon*, *supra*, 208 Cal.App.3d at p. 1501.)

We conclude, accordingly, that Court employees are immune from negligence liability for mistakenly identifying Ward as an alias of Calvin Phillips and Ward’s second cause of action must fail. In so holding, we also conclude that amending the complaint as Ward proposes -- to specify that errors in the Court’s records, not the County’s records led to his wrongful arrest -- would not allow him to state a cause of action against the Court for vicarious liability.

B. Ward Cannot State a Cause of Action Based on Breach of a Mandatory State Duty.

Ward contends the Court breached a mandatory state duty created by section 69844, which states “[t]he clerk of the superior court shall keep the minutes and other records of the court, entering at length within the time specified by law, or forthwith if no time is specified, any order, judgment, and decree of the court which is required to be entered and showing the date when each entry is made.” In Ward’s view, section 69844 creates a mandatory duty to keep accurate court records, which duty the Court breached by merging his identity records with Phillips’s.

To state a cause of action for failure to discharge “a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury” (§ 815.6), a plaintiff must allege an enactment that (1) imposes a mandatory rather than a discretionary duty, and (2) was enacted to protect against the kind of injury he suffered. (See *Thompson v. City of Lake Elsinore* (1993) 18 Cal.App.4th 49, 54.)

For the sake of argument, we assume the first prong of the test may be met because section 69844 creates a mandatory, not discretionary duty, as it obliges the court clerk to prepare a record of the events of the court’s sessions. (E.g., *Copley Press, Inc. v. Superior Court* (1992) 6 Cal.App.4th 106, 112, 115; see also *Peoples Ditch Co. v. Foothill Irrigation Dist.* (1932) 123 Cal.App. 257, 261 [“The clerk of the court is an assistant whose principal duty it is to make a correct memorial of the court’s orders and directions”].)

But Ward has made no attempt to meet the second prong of the “mandatory duty” test by showing section 69844 was designed to protect against the particular kind of injury Ward suffered. The second prong of the test asks “whether the enactment . . . was intended to impose an obligatory duty to take specified official action to prevent particular foreseeable injuries’ ” (*Clausing v. San Francisco Unified School Dist.* (1990) 221 Cal.App.3d 1224, 1239) and a plaintiff must show his injury was “ ‘one of the

consequences . . . the [enacting body] sought to prevent through imposing the alleged mandatory duty.’ ” (*Hoff v. Vacaville Unified School Dist.* (1998) 19 Cal.4th 925, 939, fn. omitted.) Ward contends “[t]he purpose of requiring the clerk to maintain correct records is to protect against the kind of injury that [he] suffered”, but he cites no authority for that proposition. Consequently, the argument is forfeited. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; see *Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99 [“Issues do not have a life of their own: If they are not raised or supported by argument or citation to authority, [they are] waived”].)

Moreover, our own review of the law does not support a conclusion section 69844 was designed to protect against wrongful arrests, but only to capture the judge’s rulings for future reference. (See, e.g., *Lauren H. v. Kannappan* (2002) 96 Cal.App.4th 834, 839, fn. 4 [whether “ ‘the minutes of the court’ ” support motion for new trial involves review of “records of the proceedings entered by the judge or courtroom clerk, showing what action was taken and the date it was taken” pursuant to Gov. Code, § 69844]; *Fortenberry v. Weber* (1971) 18 Cal.App.3d 213, 219 [“Government Code section 69844 requires the clerk of the superior court to keep minutes of the court”; rough longhand minutes are not the official records or permanent minutes of the court]; *Deshrow v. Rhodes* (1969) 1 Cal.App.3d 733, 738-739 [section 69844 “gives us some guidance” as to what may be included in the “permanent minutes” of the court].)

DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278 (a)(5).)

BLEASE, Acting P. J.

We concur:

HULL, J.

MAURO, J.