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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DEBORAH COONEY,

Plaintiff and Appellant,

v.

CITY OF SAN DIEGO et al.,

Defendants and Respondents.

D058418

(Super. Ct. No. 37-2009-00094880-
CU-CR-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Yuri Hofmann, Lisa A. Foster, Judges. Affirmed.

Deborah Cooney was involuntarily detained overnight in the San Diego County Psychiatric Hospital after police officers brought her to the hospital based on reports she had created a disturbance while swimming in the ocean and after a hospital psychiatrist found she should be committed for evaluation under Welfare and Institutions Code

section 5150.¹ Under section 5150, a person may be involuntarily committed to a county-designated facility for 72 hours if there is probable cause to believe the individual, "as a result of a mental disorder, is a danger to others, or to himself or herself, or is gravely disabled."

Claiming her detention and confinement were without probable cause, Cooney brought a civil action against the County of San Diego (County), the City of San Diego (City), and City lifeguard John Kerr. Cooney alleged several causes of action, including false arrest, false imprisonment, assault and battery, negligent infliction of emotional distress, negligence, and libel/slander. Defendants successfully moved for summary judgment. Cooney appeals. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

The nature of Cooney's legal claims requires that we focus on the facts known to defendants at the time of their challenged actions. We thus summarize the background facts from this perspective. We view these facts in the light most favorable to Cooney, the party opposing the summary judgment.

A. Background

In the summer of 2008, Cooney was a regular ocean swimmer at the La Jolla Cove. During this time, she frequently complained to the City lifeguards that they were not enforcing the rules, including keeping boats away from swimmers in the Cove area.

¹ All statutory references are to the Welfare and Institutions Code unless otherwise specified.

Supervising lifeguard Kerr was "surly and argumentative" in responding to these complaints.

On the date of the incident, August 31, 2008 (Sunday of Labor Day weekend), the beach and ocean were very crowded. Lifeguards were required to watch and protect the safety of more than 100 individuals. When she first arrived at the Cove about noon, Cooney was "irate" and "upset" that a boat was in a lane designated for ocean swimmers. Cooney asked lifeguard Kerr to "remove[]" all boats from the area because she is allergic to motorboat emissions and was concerned for her safety. Cooney said her health condition required that no motorboats come near her while she swam in the ocean for the next hour. The two engaged in an argument, and Kerr became very angry with Cooney.

After Kerr ended the argument by waving his hand and walking away, Cooney went in the water and began her swim. However, when she was about one-quarter mile from the shore, she spotted a private motorboat in the swim lane. She began shouting and had trouble breathing while in "very deep" ocean water. She was waiving her arms and began to panic, and felt that she was having an asthma attack. The lifeguards received reports that Cooney was "'screaming for help,'" "'spitting,'" and acting like a "'crazy woman.'"

When two lifeguards on rescue surfboards came towards her in an effort to provide assistance, she continued yelling and screaming, but told them she was fine and

to go back to shore.² When the lifeguards would not leave her alone, Cooney swam "for her life" away from them and towards a rocky south shore, from which she could not exit the water. Cooney then yelled to people in several nearby kayaks, asking them to help her. Cooney "grabbed" onto two kayaks, screaming and yelling that she was being harassed by the lifeguards and they were trying to hurt her. In response to her cries for help, several kayakers told her to "hang on" to their boats.

Meanwhile, the lifeguards on the shore continued to receive reports from swimmers and other bystanders about a " 'crazy lady' screaming in the water." One man told a lifeguard that when he asked what was wrong, Cooney said "something about boats chasing her." When an individual attempted to help, Cooney began cursing profanities at him and about the lifeguards.

A lifeguard rescue motorboat was directed to respond to the incident described as a "mentally disturbed" woman acting "hysterical" in the water. As the lifeguard motorboat came close to Cooney, she began to yell and scream and cry for help "in a hysterical manner." A lifeguard on a rescue surfboard told Cooney that if she came onto the surfboard, the rescue motorboat would leave the area. Based on this statement, Cooney pulled herself up on the surfboard.

However, once the rescue motorboat began to leave the area, Cooney jumped off the surfboard, and yelled at the lifeguards, "Get away from me," "Stop harassing me,"

² In a letter written after the incident, Cooney suggested a lifeguard boat came towards her before the lifeguards on the surfboards came to assist her. However, we disregard this version of events because it differs from Cooney's deposition testimony. In any event, the difference is not material to our legal analysis.

and "Stop hurting me." She kept yelling until the rescue boat was about one-quarter of a mile away. A lifeguard on the rescue surfboard said that he "attempted for over an hour to convince [Cooney] to return to the shore . . . During that time she screamed profanities at [the lifeguards] continuously and grabbed onto two kayaks that were in the water, endangering the people on board." The lifeguard saw that Cooney "nearly" tipped over one of the kayaks, and he heard the kayakers "plead[ing] with [Cooney] to let go because they were scared of being overturned."

Cooney then decided to swim back to the beach area. While she was swimming back to shore, the lifeguards on the rescue surfboard stayed close to Cooney. Cooney believed the lifeguards were staying near her because they wanted to "harass" her.

While this incident was occurring, another lifeguard (not Kerr) called the police to report that a woman needed to be evaluated under section 5150 because she was harassing others in the ocean, yelling at people, and grabbing onto kayaks. Once Cooney reached the beach area, lifeguard Kerr met her on the beach and told her the police officers wanted to talk with her. When she started to walk away and "head for the shower," Kerr "grabbed" her "left arm," her "left breast," and the "left side of [her] body," and, with another lifeguard holding her right arm, the lifeguards escorted her up the stairs to the area where the police officers were standing.

In response to questions by two of the responding police officers (Officer David Bautista and Officer Alan Alvarez), Cooney said "boats were chasing her for sport" and that the lifeguards were trying to hurt her and were "harassing her by not keeping the boats out of her swim area." She admitted she grabbed onto the kayaks, but said she was

not trying to harm the kayakers and was instead merely seeking their help. Cooney denied that she wanted to harm herself or others, and denied that she was under the influence of drugs or alcohol. After hearing her explanations and observing her agitated manner, the officers decided to take Cooney to the County psychiatric hospital for evaluation. The officers placed Cooney in handcuffs and drove her to the hospital at about 1:40 p.m. During the ride, Cooney was very angry, complained about the toxic fumes, and sang a song for the officers.

When they arrived at the psychiatric hospital, Officer Bautista prepared a written report requesting a section 5150 evaluation of Cooney. In the report, Officer Bautista stated that the officers had responded to a "radio call of [Cooney] swimming in the ocean harassing others and grabbing onto kayaks and yelling at the people inside the kayaks." Officer Bautista said he believed Cooney was creating a danger to others in the water. The officer additionally said Cooney's conduct was dangerous because the lifeguards were required to devote their time and resources to assisting Cooney, making them unavailable to help others at the beach area.

Cooney refused to sign the admittance form or a written waiver permitting the hospital personnel to discuss her case with her family or friends. Shortly after, Cooney was asked to give a urine sample, which required her to undress with the door open. The laboratory results showed Cooney had no drugs or alcohol in her system.

Cooney was then evaluated by nurse Martha Loaiza. During this evaluation, Cooney told Loaiza that she had been "harassed by police" and that she is a professional musician, and she was intending to work later that day and will have to call and cancel

her appointments. Cooney also said she has no medical problems, takes no medications, and has no psychiatric history. Cooney denied that she wanted to hurt herself or others. The nurse indicated on her report that Cooney was oriented to person, place, month, year, and situation; she was alert, clean, and well-nourished; her speech was normal; her thought process was coherent; her behavior was cooperative; and her affect was normal.

Cooney then saw psychiatrist Dr. Ivan Baroya. Cooney claims that during this visit, Dr. Baroya asked her only two questions concerning whether she wanted to hurt herself or others, and that she answered no to both questions. However, immediately after speaking with Cooney, Dr. Baroya dictated an assessment report that included information about Cooney that he (or a staff member) would not have known without obtaining the information directly from Cooney (including her background, the telephone number of her housemate, her occupation, and the claimed reasons for her conduct (" '[the lifeguards'] male ego[s] got in the way and [they] wouldn't help me' ").

Dr. Baroya concluded that Cooney should be involuntarily admitted to the hospital under section 5150 and kept for observation. Dr. Baroya's report states that although Cooney was at a "low risk for self-harm," the section 5150 hold "will be upheld at this time due to danger [to] others."³ Dr. Baroya did not reach a definitive diagnosis, but stated that he wanted to "[r]ule [o]ut Bipolar Disorder, Hypomanic."

When Cooney was admitted to the hospital, she was given written notice of Dr. Baroya's decision and the reason for the decision, and was advised that she could not be

³ Although the report stated "danger of others," the word "of" was an obvious typographical error.

held any longer than 72 hours without specific procedural protections, including the right to a judicial hearing.

Later that day, the second police officer (Officer Alvarez) who had detained Cooney at the beach area prepared a report stating Cooney was brought to the hospital because she appeared to be a "danger to self" based on reports that she was "yelling at people while in the ocean," acting "strange" in the water, and "attempting to capsize people's kayaks by climbing on to them." Officer Alvarez also indicated that Cooney had made "rambling statements" to the officers.

The next morning, another County psychiatrist, Dr. Mary Ann Renzi, spoke with Cooney for about 30 minutes and released Cooney from the section 5150 hold without any advised follow-up. Dr. Renzi concluded the "patient appears to be at no risk for harming herself or others. [¶] . . . She does not meet criteria for a 5150 [hold] at this time" Dr. Renzi found no evidence of a mental disorder, and stated that Cooney views the incident "as a misunderstanding."

The next day, the police department sent Cooney a "Certificate of Release," stating that she is released from custody based on a conclusion there were insufficient grounds for making a criminal complaint.

B. Complaint and Summary Judgment Motions

About 11 months later, Cooney filed a civil complaint against the County, the City, and lifeguard Kerr, alleging defendants did not have a reasonable basis or probable cause to arrest or detain her, or to commit her to the County psychiatric hospital. She alleged that "at all times" she was "of sound mind, a law abiding citizen, and never a

threat to herself or others" She claimed her actions reflected solely her attempts to "get [the] lifeguards and other employees to properly enforce the law that motor boats were not to enter the designated swim area at La Jolla Cove" She alleged the lifeguards "intentionally assaulted and harassed" her "for over an hour" while she was in the ocean and that when she exited the water, lifeguard Kerr "unlawfully grabbed her." She also claimed the County "negligently assessed that there was probable cause and a reasonable basis to believe [she] was at risk for harming herself and others" and "negligently held [her] overnight" when "she should have been released immediately upon" arriving at the hospital.

Cooney's complaint alleged six causes of action: (1) wrongful arrest/detention/false imprisonment; (2) negligent infliction of emotional distress; (3) assault and battery; (4) libel and slander; and (5) negligence. All claims were asserted against the City and Kerr, but only the first, second, and fifth causes of action asserted facts against the County. Cooney sought compensatory and punitive damages against each defendant.

Each of the defendants moved for summary judgment. The City and Kerr argued they were immune from liability under various governmental immunity statutes because the lifeguards and police officers had a reasonable basis and probable cause to detain Cooney based on Cooney's conduct in the ocean. In support, they relied primarily on the written reports of the two police officers who transported Cooney to the psychiatric hospital and the written reports of the seven lifeguards (including Kerr) who personally witnessed Cooney's actions in the ocean.

The County argued it was entitled to a judgment as a matter of law because each of Cooney's claims against it was based on Dr. Baroya's reasonable decision to place Cooney on a 72-hour hold under section 5150 and the County is immune from liability for a section 5150 determination under section 5278 if the evaluating psychiatrist had probable cause to place the individual on a section 5150 hold.

In support of this argument, the County submitted a copy of Officer Bautista's section 5150 report and Dr. Baroya's psychiatric assessment report. The County also submitted the declaration of Dr. Baroya, who stated in part: "From a review of [Cooney's] file, I am able to determine that I evaluated Ms. Cooney on August 31, 2008 for 30 minutes, from approximately 2:30 to 3:00 p.m., and prepared a report. . . . [¶] . . . As reflected in my report, probable cause existed to place Ms. Cooney on an involuntary . . . section 5150 72-hour hold for further evaluation, as she posed a risk of harm to others. My opinion was based upon several sources of information, including my interview with Ms. Cooney, her statements made to the [County psychiatric hospital] staff and the San Diego Police Department officers, and her general demeanor and agitated state."

In opposition, Cooney argued defendants were not entitled to statutory immunity because they engaged in wrongful acts, including by detaining her without probable or reasonable cause to believe that she was a "danger to self or others due to a mental disorder." She also argued that Dr. Baroya did not properly evaluate her at the psychiatric hospital and that his evaluation fell below the standard of care.

In support, she incorporated into her declaration a lengthy letter in which she explained her version of the events at the La Jolla Cove and her interactions with the lifeguards, police officers and hospital staff. This description is essentially consistent with the facts summarized above, except that Cooney discussed the events primarily from her own subjective viewpoint and asserted facts that were not necessarily known to the lifeguards and police officers at the time of the incident. For example, Cooney stated in the letter that she is an Ivy League college graduate, experienced swimmer who previously trained with Olympic swimmers, and a former lifeguard. She also discussed her belief that her actions were justified because the lifeguards were angry with her and were seeking to "hurt" and "harass" her in response to her complaining about the boats in the Cove area.

Cooney also proffered a transcript from a hearing in a small claims case in which lifeguard Kerr sued Cooney for allegedly harassing him after the August 31, 2008 incident. Both Kerr and Cooney testified at this hearing, primarily about events occurring after the August 31 incident. The record does not disclose the results of the small claims case.

Cooney also submitted a declaration from Dr. Lawrence Woodburn, a clinical psychologist. Dr. Woodburn stated he conducted a personal interview with Cooney, administered psychological tests, and reviewed the County psychiatric hospital medical records and other records relating to the litigation. Based on this evaluation, Dr. Woodburn opined that "it was totally unwarranted" that Cooney was involuntarily held at the psychiatric hospital, "especially since the precipitating incident involved her asking

for help in enforcing a safe swim zone" Dr. Woodburn further opined that Cooney is "psychologically healthy" and that "it is highly improbable that an individual could be free of any psychopathology for 47 years, except for a 20-hour window where the pathology is so severe as to require confinement, and then instantly healthy again." Dr. Woodburn also attached his curriculum vitae, which indicated that he has been a licensed clinical psychologist in private practice since 1978.

In reply, defendants objected to Dr. Woodburn's declaration on several grounds, including that Cooney did not present any foundation showing he has the requisite qualifications to provide expert testimony regarding the "'standard of care' for involuntary admissions under . . . section 5150."

The County also submitted the declaration of Dr. Dominick Addario, who is board certified in psychiatry and neurology and has previously qualified as an expert on the standard of care for involuntary patient admissions under section 5150. Dr. Addario opined that: "From a review of Ms. Cooney's file, it is my opinion that probable cause existed to hold Ms. Cooney for evaluation and treatment under Section 5150. . . . Dr. Ivan Baroya . . . exercised appropriate medical judgment by finding that Ms. Cooney did, within reasonable medical certainty, present with the diagnostic features of Bipolar Disorder, Hypomanic based upon the information provided to him by the San Diego Police Department, the hospital nursing staff and through his personal observation and assessment of Ms. Cooney. . . . [¶] . . . It was within the standard of care under . . . Section 5150 involuntary holds for Dr. Baroya to keep Ms. Cooney at the [hospital] for overnight observation and evaluation, given her unruly behavior and questionable

judgment when dealing with authority figures, and her agitated state upon arrival It was also appropriate to keep her overnight given the potential risk she posed to others and herself"

The court then gave Cooney additional time to respond to Dr. Addario's declaration. In her supplemental response, Cooney asserted several evidentiary objections to Dr. Addario's declaration and argued that Dr. Woodburn's experience and education qualified him to offer expert opinions in the case. Additionally, in an effort to refute Dr. Baroya's claims that he examined her for a 30-minute period, Cooney directed the court to her letter in which she asserted that Dr. Baroya asked her only two questions during his visit. She also produced records showing that she telephoned her housemate John Tallent at 2:53 p.m. on August 31, and they spoke for 12 minutes. Cooney additionally presented information showing that she operates a successful piano/vocal instruction business and has received numerous awards and honors.

C. Court's Ruling

After considering the parties' submissions and conducting a hearing, the court (Judge Yuri Hofmann) granted summary judgment in favor of defendants.

The court found defendants City and Kerr were immune from liability for Cooney's claims under section 5278 because the undisputed evidence showed the lifeguards and police officers had probable cause to believe Cooney posed a danger to others as a result of a mental disorder and thus were justified to detain and transport her to the psychiatric hospital for evaluation.

The court similarly found Cooney's claims against the County were barred because each claim "stems from [Dr. Baroya's] decision . . . to keep plaintiff at the [hospital] under a 72-hour hold pursuant to [section] 5150" and the undisputed evidence, including the declaration of psychiatrist Dr. Addario, established probable cause for this decision. In this regard, the court overruled Cooney's objections to Dr. Addario's declaration, but sustained defendants' objections to Dr. Woodburn's declaration, reasoning that the evidence did not show Dr. Woodburn was qualified to offer an opinion on section 5150 involuntary holds.

The court additionally declined to rule on objections to evidence "that the Court did not rely upon." The court also stated that all evidence cited by the court was "deemed admissible" and it "disregards" all evidence "found to be incompetent or inadmissible." The court did not specifically rule on Cooney's request for judicial notice of various documents.

Cooney then filed a verified statement seeking to disqualify Judge Hofmann, claiming that Judge Hofmann was biased and "prejudice[d]." Another judge (Judge Robert Trentacosta) issued an order striking the motion, finding the facts presented did not support a reasonable conclusion that Judge Hofmann was biased. Thereafter, for administrative reasons, the matter was transferred to a different judge, Judge Lisa Foster. Judge Foster entered a final judgment in favor of defendants.

DISCUSSION

I. *Summary Judgment Principles*

A defendant moving for summary judgment "bears the burden of persuasion that there is no triable issue of material fact and that [the defendant] is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*)). To meet this burden, the defendant must show one or more elements of the cause of action cannot be established, or that there is a complete defense to the cause of action. (*Ibid.*) Once the defendant satisfies its burden, " 'the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto.' " (*Id.* at p. 849.) The plaintiff may not rely upon the allegations of her pleadings to show a triable issue of material fact exists. (*Ibid.*)

We review a summary judgment de novo. (*Buss v. Superior Court* (1997) 16 Cal.4th 35, 60.) We assume the role of the trial court and redetermine the merits of the motion. In doing so, we strictly scrutinize the moving party's papers so that all doubts as to the existence of any material triable issues of fact are resolved in favor of the opposing party. (*Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562.) Because summary judgment is a drastic procedure which denies the adversary party a trial, "[the motion] should be granted with caution." (*Colores v. Board of Trustees* (2003) 105 Cal.App.4th 1293, 1305.)

II. *Overview and Summary of Conclusions*

Under the Lanterman-Petris-Short Act (LPS Act), " 'a person who is dangerous or gravely disabled due to a mental disorder may be detained for involuntary treatment.

However, in accordance with the legislative purpose of preventing inappropriate, indefinite commitments of mentally disordered persons, such detentions are implemented incrementally.' " (*Bragg v. Valdez* (2003) 111 Cal.App.4th 421, 429.) "The first step in the process is an initial 72-hour commitment pursuant to . . . section 5150." (*Ibid.*) Under this code section, certain officials, including a peace officer, are authorized to bring an individual to a designated mental health facility for an evaluation if there is "probable cause to believe that the person is, as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled." (§ 5150.) Before committing an individual, the mental health facility must receive "an application in writing stating the circumstances under which the person's condition was called to the attention of the [officer who brought the individual to the facility], and stating that the officer . . . has probable cause to believe that the person is, as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled." (§ 5150.) Additionally, "[p]rior to admitting a person to the facility for 72-hour treatment and evaluation . . . , the professional person in charge of the facility or his or her designee shall assess the individual in person to determine the appropriateness of the involuntary detention." (§ 5151.)

Although a person who is detained under section 5150 may bring a civil action arising from actions taken in connection with the detention, there are numerous statutory immunities available to defendants. These immunities reflect a legislative intent to eliminate concerns about future liability when a designated professional is required to undertake the "delicate and difficult" task of deciding whether to detain, or recommend

detention for, a person under section 5150. (*Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, 448 (*Tarasoff*); see *Bragg v. Valdez, supra*, 111 Cal.App.4th at p. 430; *Jacobs v. Grossmont Hospital* (2003) 108 Cal.App.4th 69, 75-76 (*Jacobs*)). Because the decision "requires the careful exercise of judgment in evaluating whether, as a result of mental disorder, a person poses a danger to others or to himself or herself," the "prospect of liability for initiating a 72-hour hold would frustrate and impede the Legislature's intent to provide prompt evaluation and treatment for the mentally ill and to ensure public safety." (*Jacobs, supra*, 108 Cal.App.4th at p. 76.) Additionally, public entities are accorded broad tort immunities, including with respect to decisions to confine or not confine individuals in mental health facilities under the LPS Act. (See *Johnson v. County of Ventura* (1994) 29 Cal.App.4th 1400, 1407-1410; *Guess v. State of California* (1979) 96 Cal.App.3d 111, 117-118; *Hernandez v. State of California* (1970) 11 Cal.App.3d 895, 897-899.) " 'Immunity is extended . . . because reasonable decisions as to how to control particular patients should not be chilled, at the time they are made, by the prospect of liability.' " (*Johnson, supra*, 29 Cal.App.4th at p. 1410.)

As explained in more detail below, we conclude the court properly granted summary judgment as to each of the three defendants based on an applicable statutory immunity.

First, the court properly granted summary judgment in favor of lifeguard Kerr because each of Cooney's claims against Kerr was based on Kerr's actions in reporting Cooney's conduct to the police officers and detaining Cooney under section 5150, and the undisputed evidence shows Kerr had probable cause for his actions and there was no

showing he acted negligently or wrongfully in carrying out his duties. (See § 5278; Pen. Code, § 836.5, subd. (b).)

Second, the court properly granted summary judgment in favor of the City because each of the claims against the City was based on the lifeguard or police officer actions in detaining Cooney under section 5150, and the undisputed evidence shows these individuals had probable cause for their actions and there was no showing they acted negligently or wrongfully in carrying out these duties. (See § 5278; Pen. Code, § 836.5, subd. (b); see also Gov. Code, §§ 815.2, subd. (b), 856.)

Third, the court properly granted summary judgment in the County's favor because the County, as a public entity, is absolutely immune from liability for the decision to confine Cooney in the psychiatric facility for evaluation under section 5150. (See Gov. Code, § 856, subd. (a)(1).) Moreover, the County was also immune under section 5278 because the undisputed facts show it had probable cause for the decision to confine Cooney for evaluation during the 20-hour period.

We reject each of Cooney's additional contentions raised in her appellate brief.

III. *Cooney's Claims Against Lifeguard Kerr*

Cooney brought several claims against lifeguard Kerr: false arrest, false imprisonment, assault and battery, libel/slander, and negligence. Each of these claims arose out of Kerr's handling of the August 31 incident, including reporting Cooney's actions to the police, physically detaining Cooney and escorting her to the police officers for a section 5150 evaluation, and then writing a report of the incident. Kerr moved for

summary judgment on each claim based on various statutory immunities. The trial court found that the claims were barred by the section 5278 immunity.

Section 5278 provides: "Individuals authorized . . . to detain a person for 72-hour treatment and evaluation [including pursuant to section 5150] . . . shall not be held either criminally or civilly liable for exercising this authority *in accordance with the law*."

(Italics added.) A section 5150 hold is *in accordance with the law* if there is probable cause to find the person "as a result of a mental disorder, is a danger to others or to himself or herself, or gravely disabled." (§ 5150; see *Gonzalez v. Paradise Valley Hospital* (2003) 111 Cal.App.4th 735, 741.) Similarly, Penal Code section 836.5, subdivision (b) precludes civil liability against a public officer for detaining or arresting an individual if the officer had reasonable cause to believe the arrest/detention was lawful.

"To constitute probable cause to detain a person pursuant to section 5150, a state of facts must be known to the peace officer (or other authorized person) that would lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion, that the person detained is mentally disordered and is a danger to himself or herself or is gravely disabled. In justifying the particular intrusion, the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant his or her belief or suspicion. [Citations.]" (*Heater v. Southwood Psychiatric Center* (1996) 42 Cal.App.4th 1068, 1080; *People v. Triplett* (1983) 144 Cal.App.3d 283, 287-288.) A "mental disorder might be exhibited if a person's thought processes, as evidenced by words or action or emotional affect, are

bizarre or inappropriate for the circumstances." (*Triplett, supra*, at p. 288.) The existence of probable cause depends upon facts known by the officer at the time of the arrest or detention. (*Ibid.*) Generally, the issue of probable cause is one of law unless the material facts are disputed. (See *Levin v. United Air Lines, Inc.* (2008) 158 Cal.App.4th 1002, 1018-1019; *Hamilton v. City of San Diego* (1990) 217 Cal.App.3d 838, 844.)

It was undisputed that Kerr, as a City lifeguard, was an individual authorized to enforce provisions of the Municipal Code and state misdemeanor laws, and to detain individuals and make arrests for violations of these provisions. (See San Diego Mun. Code, § 63.20.8; Pen. Code, § 836.5, subd. (a).) It is further undisputed that Kerr had the authority to report that a person was in need of 72-hour evaluation under section 5150. Moreover, Kerr's alleged wrongful actions (detaining Cooney for section 5150 evaluation by police officers) were taken in the exercise of his official authority to enforce the laws in the beach area.

Additionally, the undisputed facts established that lifeguard Kerr had information that would lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion, that Cooney suffered from a mental disorder and was a danger to herself or others. Cooney was acting in an irrational manner in deep ocean water for a lengthy period and had trouble breathing, but would not accept help and repeatedly expressed her belief that the lifeguards were trying to harm her. She was spitting and shouted profanities at people in the water and grabbed onto kayaks, creating a substantial danger the kayaks would overturn. The lifeguards were required to devote numerous resources and personnel to ensure her safety and the safety of the people around her on a very busy

holiday weekend. Based on Cooney's conduct that was highly inappropriate under the circumstances, the lifeguards acted in a prudent and reasonable manner in reporting to the police department that an individual needed possible section 5150 evaluation. Further, lifeguard Kerr had a reasonable basis to physically restrain Cooney when she attempted to walk away by holding on to her arms and escorting her to the officers once she exited the water.

Arguing that probable cause did not support Kerr's actions, Cooney offers various explanations for her conduct. She claims, for example, she was merely reacting to harassment and threats by the lifeguards. She says the lifeguards called the police only because she challenged their " 'male ego[s]' " by complaining that they were not performing their job to protect the swimming lane in the ocean.

These assertions do not undermine the existence of probable cause under the circumstances of the case. Kerr was permitted to rely on the objective display of Cooney's behavior — her words and her actions — and the numerous citizen complaints to conclude that Cooney had a possible mental disorder and was creating a danger to others in the ocean. Even if Cooney subjectively believed that her conduct in the water was justified, the undisputed facts show Kerr had a reasonable basis to be concerned that the hysterical person in the water — who would not accept help or rescue and who was spitting, shouting obscenities, and grabbing onto kayaks — was mentally disturbed and was endangering her own safety and the safety of others.

Cooney argues that a swimmer in danger who had no mental problems might engage in similar behaviors, including screaming for help, spitting, climbing onto kayaks,

and acting hysterical. She thus argues that a reasonable officer should have "deduce[d] that [she] was trying to save . . . herself" from drowning, and not that she was mentally disordered. However, the record shows that the primary reason for the lifeguards' concern was that when the lifeguards attempted to assist her, Cooney continued her screaming and hysterical conduct, and continued to threaten the safety of the kayakers. A reasonable lifeguard viewing this conduct could objectively conclude that Cooney was not merely having trouble staying afloat in the water, but that she was also suffering from mental problems because she would not accept help, was endangering others in the ocean, and was claiming that those attempting to help her were actually trying to harm her. The fact that no kayakers filed a written complaint about Cooney's conduct does not affect this conclusion. Numerous lifeguards observed Cooney's conduct, and the lifeguards received complaints about Cooney's "irrational" behavior. Cooney's version of the incident does not refute the objective facts about what the lifeguards saw and heard while Cooney was in the ocean. These facts were sufficient for Kerr to have a reasonable basis for believing Cooney needed section 5150 evaluation and to call (or direct another lifeguard to call) police officers and to escort Cooney to the officers.

Our conclusion that the section 5278 immunity applies to Kerr's alleged wrongful conduct extends to each of Cooney's claims against Kerr. (See *Jacobs, supra*, 108 Cal.App.4th at p. 78; *Bias v. Moynihan* (9th Cir. 2007) 508 F.3d 1212, 1221-1222; see also *Gonzalez v. Paradise Valley Hospital, supra*, 111 Cal.App.4th at p. 740-743.) A plaintiff who is properly detained in accordance with section 5150 "may not assert any

civil claim based solely on the fact that he was detained, evaluated, or treated without his consent." (*Jacobs, supra*, 108 Cal.App.4th at p. 78.)

Relying on our decisions in several recent cases, Cooney contends that the scope of the section 5278 immunity statute does not extend to the circumstances here because the statute is inapplicable to negligence apart from the section 5150 detention determination. (See *Gonzalez v. Paradise Valley Hospital, supra*, 111 Cal.App.4th at p. 741; *Jacobs, supra*, 108 Cal.App.4th at p. 76.) However, Cooney presented no facts that lifeguard Kerr was negligent or engaged in wrongful conduct in reporting Cooney's conduct or in effectuating the detention.

In her appellate brief, Cooney argues that Kerr committed an unjustified assault and battery when he grabbed her arm and touched her breast as he was attempting to detain her and escort her to the waiting police officers. In support she cites her letter attached to her declaration in which she states that after she returned to the beach and was attempting to walk up the stairs to go home, "Kerr chased after me and grabbed my arm. I told him to let go of me, not to touch me. He touched my breast. I firmly told him this was non-consensual and not to touch me. Another bellicose lifeguard also grabbed me. [¶] I tried to head for the shower and then home, but John Kerr would not stop touching me, even though I made it clear that this was sexual harassment." She also states this detention was unnecessary because the police officers were waiting above the stairs.

These facts do not show Cooney had a viable claim against Kerr. Based on probable cause, Kerr was authorized to take actions to physically detain Cooney when she reached the beach area and escort her to the police officers. Because the undisputed

facts show that Cooney was in the sand area resisting Kerr's directions to walk up the stairs towards the police officers, Kerr acted reasonably in physically holding her arm and taking her to the officers, who were waiting above the beach stairs. There is no evidence that this temporary restraint constituted an excessive detention or that the momentary touching of Cooney's breast was intentional or occurred outside the scope of a reasonable detention.

IV. *Cooney's Claims Against the City*

Cooney sued the City for wrongful arrest, false imprisonment, negligent infliction of emotional distress, assault and battery, libel/slander, and negligence. The City's alleged liability with respect to these causes of action is based on the actions of the City lifeguards and the police officers. The court properly granted summary judgment in favor of the City on these claims.

First, to the extent that Cooney's claims against the City were based on the conduct of lifeguard Kerr or any other lifeguard, the City cannot be held liable because the lifeguards are immune from the conduct, as explained in Section III above. (Gov. Code, § 815.2, subd. (b).)

Second, to the extent that Cooney's claims against the City are based on the conduct of the police officers (Officers Alvarez and Bautista) who detained Cooney at the beach and transported her to the County psychiatric hospital, we similarly conclude the City cannot be held liable because the officers were immune from liability under section 5278.

It was undisputed that the officers were peace officers authorized to detain and transport a person to a county psychiatric facility for a 72-hour evaluation under section 5150. Moreover, the undisputed facts show the officers' alleged wrongful actions were taken in the exercise of this authority.

Further, the undisputed facts established that the police officers were aware of information that would lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion, that Cooney suffered from a mental disorder and was a danger to herself or others. The evidence shows that the officers were called to the La Jolla Cove based on lifeguard reports that Cooney had been "acting strange in the water," "yelling at people," "attempting to capsize people's kayaks," "harassing others," and "grabbing kayaks and yelling at kayakers." The police reports state that when the officers spoke with her, Cooney made "irrational statements" that the "boats were chasing her for sport" and the lifeguards were "harassing her by not keeping the boats out of her swim area." After listening to her explanations and observing her agitated manner, the officers transported Cooney to the County psychiatric hospital for evaluation.

These facts were sufficient to establish probable cause for the police officers to believe that Cooney met the requirements for a section 5150 hold.

In seeking to show a triable issue of fact, Cooney directs us to her letter in which she states that she attempted to explain her version of the events to the police officers, but they would not listen. She says that she told the officers that she had no intention of hurting herself or others and was not a drug or alcohol user. She also says that she told the officers that the kayakers had agreed to help her and instructed her to "hang on" to

their boats, and that the lifeguards were harassing her and that her actions were a reasonable response to this conduct.

This evidence does not create a triable issue of fact on the probable cause issue. The officers were entitled to rely on the reports of the lifeguards (who are public officers required to enforce municipal code provisions and state law misdemeanors occurring in the San Diego beach areas) that she had created a disturbance and was endangering the safety of others in the ocean. The officers were not required to credit Cooney's explanations, particularly because her statements did not necessarily show Cooney had acted in a reasonable manner in response to the lifeguards' actions. Although Cooney may have subjectively believed her actions in screaming and acting hysterical in deep ocean water for a lengthy period were appropriate responses to the lifeguards' conduct, the relevant legal inquiry is whether the police officers had probable cause to believe that a mental health professional should evaluate these claims. We have concluded that they did have probable cause for this belief.

Cooney's reliance on *Collins v. Jones* (1933) 131 Cal.App. 747, decided before the enactment of the LPS Act, is unhelpful. In *Collins*, the police authorities brought a young boy to a woman and told her they believed the boy was her son who had been missing for several years. (*Id.* at p. 749.) The woman insisted that the boy was not her son, and this claim was based on reasonable facts and later turned out to be true. (*Id.* at pp. 749-750.) A police officer, however, did not personally believe the woman was correct about the identity of the boy, and ordered her sent to a psychopathic ward for detention and examination. (*Id.* at p. 750.) After the woman sued the police officer, the trial court

found as a matter of law that probable cause did not exist for the defendant police officer to question the woman's sanity, and the reviewing court affirmed. (*Id.* at pp. 750-752.)

These facts are materially distinguishable from here where the facts show the lifeguards and the police officers had a reasonable basis to believe Cooney had a mental disorder that was causing her to be a danger to others.

We also reject Cooney's reliance on subsequent events to negate the probable cause finding. For example, Cooney cites to the police department's later determination that "there are insufficient grounds for making a criminal complaint." She also focuses on Dr. Renzi's conclusion that she did not meet the criteria for a section 5150 hold, and that she appeared to be at no risk of harming herself or others. Cooney also discusses Dr. Woodburn's opinion that she is a "psychologically healthy" individual.

We review the probable cause determination at the time it is made. (*People v. Triplett, supra*, 144 Cal.App.3d at p. 288.) The fact that after spending the night in the hospital Cooney was able to calm down and her behavior showed that she did not have a mental disorder and/or that she did not present a danger to others does not negate the existence of probable cause at the time the police officers transported her to the psychiatric hospital for evaluation. Likewise, the fact that a psychologist opined that she does not suffer from a mental disorder does not support an inference that the police officers did not have a reasonable basis for their conclusions at the time they were made.

Cooney also argues there was no probable cause for the officers to detain her for a section 5150 hold because she has no history of psychiatric problems or of drug or alcohol use or abuse. However, there is no statutory requirement that a person meets the

section 5150 criteria only if he or she has a history of prior problems or drug or alcohol abuse.

Cooney also contends that her statements to the lifeguards, police officers, and hospital staff that she intended to go home and work after the incident in the ocean showed that she was no longer a danger to others. In this regard, Cooney argues that the "legal criterion for danger to self or others" is that the danger must be "'imminent.'" However, the facts show that the police officers had probable cause to believe that Cooney could continue to act aggressively and irrationally towards others, and therefore there was a need to take immediate protective action. In this regard, Cooney's reliance on *People v. Superior Court (Dodson)* (1983) 148 Cal.App.3d 990 is misplaced. *Dodson* was interpreting a different statute, section 5300, which governs the circumstances under which a person may be confined for a 180-day period *after* the statutory 72-hour and 14-day commitments. (*Dodson, supra*, at pp. 992-999.)

Cooney's reliance on section 5300, subdivision (a) is similarly misplaced. Section 5300, subdivision (a) pertains to the grounds (primarily violence or threats of violence) for continuing to confine a person after the 14-day period of intensive treatment. We likewise find unhelpful Cooney's citation to section 5008, subdivision (m), which defines the term "Emergency" to mean a situation in which an action is "immediately necessary for the preservation of life or the prevention of serious bodily harm." This code section is inapplicable to the police officers' decision to detain and transport Cooney for an evaluation. Under the LPS Act, an "emergency" situation as defined in section 5008,

subdivision (m), is required before a person may be treated with antipsychotic medication over his or her objection, a situation that is not applicable here. (§ 5332, subd. (e).)

Our conclusion that the section 5278 immunity applies to the alleged wrongful conduct of the police officers bars each of Cooney's claims against the City based on the police officers' conduct. (See *Jacobs, supra*, 108 Cal.App.4th at p. 78.) Cooney did not allege, or present any evidence, that the officers committed negligence or an intentional tort, apart from their conduct in detaining her and transporting her to the County psychiatric hospital.

Further, to the extent that Cooney alleges the City can be held liable for the officers and/or lifeguards making false statements in their reports, the City is also immune from these claims under the litigation privilege. The Legislature has provided an absolute privilege for communications made in a judicial proceeding, or in the initiation or course of any other proceeding authorized by law. (Civ. Code, § 47, subd. (b)(2), (4).) Because the challenged statements were made in the course of reporting Cooney's conduct to initiate the section 5150 proceedings and/or to record the lifeguards' observations with respect to the section 5150 proceedings, they are absolutely privileged.

V. *Cooney's Claims Against the County*

Cooney sued the County for false arrest/detention, false imprisonment, negligence, and negligent infliction of emotional distress. As made clear in Cooney's summary judgment opposition papers, each of these claims was based on Dr. Baroya's determination that Cooney should be admitted to the psychiatric hospital for evaluation because she had a possible mental health disorder that caused her to be dangerous to

others. Cooney claimed that Dr. Baroya did not have a reasonable basis to reach this conclusion and acted below the standard of care in determining she met the section 5150 criteria for involuntary commitment.

The County is absolutely immune from liability based on Dr. Baroya's decision to confine Cooney in the psychiatric hospital under section 5150. Government Code section 856, subdivision (a)(1) states: "Neither a public entity nor a public employee acting within the scope of his employment is liable for any injury resulting from determining in accordance with any applicable enactment . . . [¶] . . . [w]hether to confine a person for mental illness or addiction." The term "confine" is defined as "admit, commit, place, detain, or hold in custody." (Gov. Code, § 854.5.)

California courts have long recognized that under Government Code section 856, subdivision (a), a public entity is absolutely immune from all claims based on a determination to confine or not confine a person under section 5150. (See *Tarasoff, supra*, 17 Cal.3d at pp. 448-449; *McDowell v. County of Alameda* (1979) 88 Cal.App.3d 321, 327 ["[w]hether or not we agree with [the county's] decision is immaterial, for section 856 provides absolute immunity to [defendants'] determination to confine or not to confine"]; *Hernandez v. State of California* (1970) 11 Cal.App.3d 895, 898-901 [the governmental immunity for the determination to detain or release under Government Code section 856 is absolute and unaffected by negligence]; see also *Ley v. State of California* (2004) 114 Cal.App.4th 1297, 1305 [noting "the longstanding policy of immunizing public agencies and employees for decisionmaking about whether and how to confine mentally ill patients"].)

Cooney argues that under Government Code section 856, subdivision (c), the County can be held liable for negligently determining that she met the section 5150 hold criteria. Government Code section 856, subdivision (c) provides that "Nothing in this section exonerates *a public employee* from liability for injury proximately caused by his negligent or wrongful act or omission *in carrying out or failing to carry out*: [¶] (1) A determination to confine or not to confine a person for mental illness or addiction. [¶] (2) The terms or conditions of confinement of a person for mental illness or addiction" (Italics added.)

Government Code section 856, subdivision (c) is inapplicable here because it applies only "to public employees, [and] not public entities." (*Johnson v. County of Ventura, supra*, 29 Cal.App.4th at p. 1409.) Cooney did not name any County employees in her complaint; instead she named only the County as the party responsible for her alleged improper confinement.

Further, Government Code section 856, subdivision (c) does not apply to negligence in the decision to confine, and instead creates an exception for "careless or wrongful behavior *subsequent to* a decision respecting confinement" (*Tarasoff, supra*, 17 Cal.3d at p. 449 & fn. 23, italics added; accord *Johnson v. County of Los Angeles* (1983) 143 Cal.App.3d 298, 314.) Under Government Code section 856, subdivision (c), a public employee can be held liable for *negligently implementing or carrying out* the decision to confine an individual to a psychiatric facility under section 5150, but he or she cannot be held liable for negligence in the decision to admit or not to admit the individual to the facility. (See *Tarasoff, supra*, 17 Cal.3d at p. 449; *Johnson*,

supra, 143 Cal.App.3d at p. 314; *Guess v. State of California*, *supra*, 96 Cal.App.3d at pp. 117-118; see also *County of Los Angeles v. Superior Court* (1965) 62 Cal.2d 839, 843-844.) In this case, Cooney did not present any facts showing that once Dr. Baroya made the confinement decision, Dr. Baroya or another County employee carried out that decision without using due care.⁴ Thus, Government Code section 856, subdivision (c) is inapplicable.

In this regard, Cooney's reliance on *Jacobs*, *supra*, 108 Cal.App.4th 69 is misplaced. In *Jacobs*, the plaintiff brought a professional negligence and premises liability action against a private hospital after the plaintiff tripped and fell at the hospital during a 72-hour section 5150 hold. (*Jacobs*, *supra*, at p. 72.) The plaintiff did not challenge the hospital's decision to detain her, but argued only that the section 5278 immunity did not apply to acts "that occur after the person is detained," such as " 'carelessly fail[ing] to supervise and monitor Plaintiff while she was making a doctor ordered walk down the hospital corridor.' " (*Id.* at pp. 72, 74.) This court agreed with the plaintiff's contention, holding that "the Legislature did not intend to exonerate health care providers from all liability, including liability for injuries proximately caused by their negligent or criminal acts or omissions in implementing the terms and conditions of a 72-hour hold." (*Id.* at p. 79; see also *Gonzalez v. Paradise Valley Hospital*, *supra*, 111 Cal.App.4th at pp. 741-742 [clarifying that section 5278 " 'does not provide immunity for injuries proximately caused by negligence' "].)

⁴ In this regard, Cooney's claim in her appellate brief that she was "forcibly drugg[ed]" and exposed to "toxic" materials in the hospital is unsupported by the record.

In reaching this conclusion, the *Jacobs* court noted, in dicta, that its interpretation of section 5278's scope of immunity "is consistent with its statutory counterpart — Government Code section 856 — which provides immunity to public entities and their employees who diagnose and confine persons with mental illness or addiction." (*Jacobs, supra*, 108 Cal.App.4th at p. 79.) The *Jacobs* court explained: "Government Code section 856, subdivision (a), exempts from liability public entities and their employees for injuries resulting from determining whether to confine a person for mental illness or addiction, determining the terms and conditions of that confinement, or determining whether to release the person, but only if these determinations are carried out with due care. (Gov. Code, § 856, subd. (b).) Public employees are specifically *not* exonerated from liability for injuries proximately caused by their negligent or wrongful acts or omissions in carrying out or failing to carry out the specified determinations. (Gov. Code, § 856, subd. (c).) These statutory provisions reflect a policy that " 'provides immunity for diagnosing, treating, confining, and releasing the mentally ill, but makes clear "that public entities and employees are liable for injuries caused by negligent or wrongful acts or omissions in administering or failing to administer prescribed treatment or confinement." [Citations.]' [Citation.]" (*Id.* at pp. 79-80.)

These observations by the *Jacobs* court are fully consistent with our conclusions in this case. Government Code section 856, subdivisions (b) and (c) limit the immunity for the acts of a public employee in implementing the decision to detain an individual under section 5150. However, there was no evidence that the County hospital staff committed any negligent or wrongful acts in implementing the decision to detain Cooney under

section 5150. Thus, *Jacobs* and Government Code section 856, subdivisions (b) and (c) are inapplicable here.

Likewise, to the extent Cooney argues that she alleged a valid medical malpractice claim against Dr. Baroya, this claim falls within the Government Code section 856, subdivision (a) immunity because the claim is solely a challenge to Dr. Baroya's decision to confine her in the hospital. There are no facts in the record showing that Dr. Baroya or any other County employee provided medical treatment to Cooney during her stay, or that they were negligent for providing, or failing to provide, such treatment. Further, Government Code section 855.8 specifically provides that "Neither a public entity nor a public employee acting within the scope of his employment is liable for injury resulting from diagnosing . . . that a person is afflicted with mental illness"

Although the County did not specifically raise the Government Code section 856, subdivision (a) immunity in moving for summary judgment, the County did raise the issue as an affirmative defense in its answer. Further, governmental immunity is a jurisdictional matter that can be raised for the first time on appellate review. (See *Inland Empire Health Plan v. Superior Court* (2003) 108 Cal.App.4th 588, 592.) Under Code of Civil Procedure section 437c, subdivision (m)(2), we provided the parties the opportunity to present supplemental briefing on the Government Code section 856 immunity issue. Because the issue is jurisdictional and Cooney has not identified any disputed factual issues relevant to the determination whether the Government Code section 856 immunity bars the action against the County, it is appropriate that we decide the issue here.

Based on our conclusion that Cooney's claims against the County are absolutely barred by Government Code section 856, subdivision (a), it is unnecessary for us to decide the issue whether the County had probable cause for the confinement decision. However, even if we were to reach the issue, we conclude the undisputed evidence shows Dr. Baroya had probable cause as a matter of law for his determination to place Cooney on a section 5150 hold, and thus the County was also immune from liability under section 5278.

Dr. Baroya, a staff psychiatrist at the County hospital, concluded that Cooney presented a "danger [to] others" and that he needed time to rule out a bipolar disorder. Dr. Baroya stated in his declaration that he based his opinion on several sources of information, including his personal evaluation of Cooney, her statements to hospital staff and the police officers, and her "general demeanor and agitated state." Additionally, Dr. Addario, a board certified psychiatrist who was experienced in evaluating section 5150 holds, reviewed all the relevant records and opined that this decision was sound and met the standard of care under the circumstances of the case.

We reject Cooney's argument that Dr. Baroya's declaration is unreliable because he did not personally remember examining Cooney. A psychiatrist who examines hundreds of patients at a public psychiatric hospital would not be expected to recall the details of each patient. Dr. Baroya was entitled to rely on his written report dictated shortly after he spoke with Cooney in explaining the basis for his medical conclusions.

We also reject Cooney's argument that Dr. Woodburn's declaration creates a triable issue of fact on the probable cause issue. There are no facts in Dr. Woodburn's

declaration, resume, or psychological evaluation report showing he had any training or experience with respect to section 5150 involuntary hold decisions or was sufficiently familiar with the applicable standards. Although his resume states he had been on the medical staff of the San Luis Rey hospital, Dr. Woodburn did not explain the scope of his duties at this hospital or that his duties included section 5150 evaluations. Without a record showing Dr. Woodburn had the requisite training and experience, the court properly sustained defendants' objections to Dr. Woodburn's opinions regarding the propriety of the section 5150 hold. (See Evid. Code, § 720.)

Finally, we reject Cooney's argument that Dr. Baroya violated section 5151 because he did not spend sufficient time with her to properly evaluate her mental condition and the likelihood that she was a danger to others.

Section 5151 provides: "Prior to admitting a person to the facility for 72-hour treatment and evaluation pursuant to Section 5150, the professional person in charge of the facility or his or her designee shall assess the individual in person to determine the appropriateness of the involuntary detention." This code section does not specify a required time for the "in person" assessment. Further, under this code section, the professional may supplement an in-person assessment with the observations and statements of other hospital personnel.

Dr. Baroya stated he evaluated Cooney for 30 minutes, "approximately 2:30 to 3:00 p.m." Dr. Baroya dictated a report immediately after his visit with her in which he described information about Cooney which he would not have known unless he personally observed her and had access to specific facts about her case from Cooney or

other hospital staff members. Cooney argues that Dr. Baroya did not spend the entire 30 minutes with her and that his examination could not have occurred precisely from 2:30 to 3:00 p.m. However, even assuming this argument was supported by admissible evidence, the evidence did not raise a *material* issue of fact with respect to the County's compliance with the code section. Regardless of the precise time and length of the visit, the record shows Dr. Baroya did conduct an "in-person" assessment of Cooney and immediately after prepared a detailed written report. This evaluation satisfied statutory standards.

VI. *Constitutional Challenges*

Cooney next contends the judgment must be reversed because the LPS Act is "unconstitutional." The argument is waived because Cooney did not challenge the constitutionality of the LPS Act in her complaint, nor did she assert the argument in response to the summary judgment motion. (See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 52.)

Moreover, even if we were to consider Cooney's challenge on its merits, Cooney's arguments do not show the LPS Act is unconstitutional.

"A stated purpose of the LPS Act is to provide 'prompt evaluation and treatment of persons . . . with serious mental disorders.' (§ 5001, subd. (b).) Such a purpose reflects the unfortunate reality that mental illness in its most acute form can pose a danger to the individuals themselves or others that requires immediate attention. To achieve this purpose, [the] LPS Act . . . allow[s] a person to be removed from the general population in order to be civilly committed based on a probable cause determination made by a mental health or law enforcement professional" (*Cooley v. Superior Court* (2002)

29 Cal.4th 228, 253-254.) These provisions, which include numerous procedural safeguards favoring persons involuntarily detained, meet federal and state constitutional standards. (See *In re Qawi* (2004) 32 Cal.4th 1, 16-17; see also *Jensen v. Lane County* (9th Cir. 2002) 312 F.3d 1145, 1147; *Rodriguez v. City of New York* (2nd Cir. 1995) 72 F.3d 1051, 1061-1062.)

Cooney claims the LPS Act is unconstitutional because it "imposes a state-sponsored religion, namely a belief in . . . Western medicine" involving the use of "harmful, toxic drugs, and body-altering surgeries." In support, she cites *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal* (2006) 546 U.S. 418, which she states stands for the proposition that "the conscientious use of any form of natural healing is . . . protected, and the state-enforced use of chemical, electrical or surgical treatments, prohibited by certain religious doctrines, would also be unconstitutional." However, to the extent Cooney is challenging the involuntary administration of drugs she has no standing to assert this challenge because she was not given any drugs during her detention. The undisputed facts make clear that no drugs were prescribed or administered to Cooney during the section 5150 hold, nor did Cooney receive any other form of unconsented-to medical treatment during her 20-hour stay at the facility. Moreover, the LPS Act provides numerous rights for patients to refuse antipsychotic medications except in narrow specified circumstances. (See *In re Qawi, supra*, 32 Cal.4th at pp. 20-21.)

Cooney also contends the LPS Act is unconstitutional "because it infringes on the Fourth Amendment right to be secure against unreasonable search and seizure." In support, Cooney cites *Safford Unified School District v. Redding* (2009) 557 U.S. 364

[129 S.Ct. 2633] which held a strip-search of a 13-year-old girl by school officials was unreasonable. Applying the reasonable suspicion standard applicable to searches of students, the *Safford Unified* court found the reason for the search (determining whether the girl was concealing over-the-counter painkillers) did not justify the excessively intrusive search.

This case has no applicability to the issues before us. The LPS Act requires a mental health professional to find a person is presently dangerous to herself or others and that this condition is a result of a mental disorder, before the person may be admitted for evaluation and treatment. The statute is essentially a codification of particular circumstances falling into well-established exceptions to the Fourth Amendment. (See *Mincey v. Arizona* (1978) 437 U.S. 385, 392.) We similarly reject Cooney's argument that the LPS Act is unconstitutional because it violates a person's due process of law. The courts have recognized that a 72-hour hold under section 5150 satisfies constitutional requirements under the due process clause despite the lack of a hearing because the temporary detention is equivalent to an emergency commitment. (See *Doe v. Gallinot* (C.D.Cal. 1979) 486 F.Supp. 983, 993-994, affd. (9th Cir. 1982) 657 F.2d 1017; see also *Barrier v. County of Marin* (N.D. Cal 1997) No. C 97-1337 FMS, 1997 U.S. Dist. LEXIS 11311, *3.)

There was no showing Cooney's due process rights were violated in this case. Cooney was admitted to the County psychiatric facility based on a psychiatrist's diagnosis that she had a possible mental disorder resulting in her being dangerous to others. Before her admission, she was given written notice of the specific reason for her

detention, and she was notified that she could be held up to 72 hours and that if she was held any longer than the 72 hours, she would have a right to an attorney and a hearing before a judge. Cooney was then discharged less than 24 hours later when further observation and a second psychological evaluation disclosed that she no longer presented a danger to others.

We also reject Cooney's additional arguments that the LPS Act is unconstitutional because it infringes on the right to privacy, abridges the right against self-incrimination, violates the right to counsel, and constitutes cruel and unusual punishment. Cooney cites no relevant legal authority to support her arguments, and on our independent review of each of these assertions, we find the constitutional challenges are without merit.

VII. *Evidentiary Arguments*

Cooney challenges the court's statements in its written order that it "declines to rule further on specific objections as to evidence that the Court did not rely upon in rendering its decision" and that it "disregards all evidence which is found to be incompetent or inadmissible." Cooney interprets these statements to mean that the court "threw out" all of her evidence.

The court's statements cannot reasonably be interpreted to mean that it refused to consider all of Cooney's evidence or that it did not consider Cooney's evidence unless the evidence was specifically mentioned in the court's order. Additionally, although the court should have expressly ruled on each evidentiary objection (see *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532 & fn. 8), the court's failure to do so does not constitute reversible error. On appeal, we have independently examined the entire record, including

all of Cooney's submitted relevant and admissible evidence, and find the evidence does not show a triable issue of fact on any of the causes of action. When viewing Cooney's evidence in the light most favorable to her contentions, the relevant facts do not support Cooney's entitlement to recover on any of her legal claims.

Cooney additionally contends the court erred in denying her request for judicial notice of various documents and three court decisions. The record does not show the court specifically ruled on the judicial notice request. However, to the extent the court erred by failing to rule on the request, there was no prejudicial error.

First, with respect to the three submitted judicial decisions (*O'Connor v. Donaldson* (1975) 422 U.S. 563; *Addington v. Texas* (1979) 441 U.S. 418; *Collins v. Jones, supra*, 131 Cal.App. 747), a request for judicial notice was unnecessary because a reviewing court is entitled to examine any judicial opinion without taking judicial notice of the opinion. We have read and considered each of these decisions.

Second, with respect to the other proffered documents (including copied excerpts from the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders, copies of documents containing mental health related information found on the Internet, and an email from Cooney to an employee of the San Diego Police Department), these submissions do not come within the definition of *documents* that must be judicially noticed. (See Evid. Code, § 451.) Moreover, the information contained in these documents is not admissible to prove the facts contained therein because the information is hearsay. (See Evid. Code, §§ 1200 et seq., 1400.) "Taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular

interpretation of its meaning.' " (*Herrera v. Deutsche Bank Nat. Trust Co.* (2011) 196 Cal.App.4th 1366, 1375; *Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374; *Love v. Wolf* (1964) 226 Cal.App.2d 378, 403.)

Cooney also argues the court erred by refusing to take judicial notice of a transcript of the small claims hearing that took place about one year after the August 31 incident. However, Cooney never requested the court to take judicial notice of the transcript. In any event, we have reviewed the transcript, and find there is nothing in the transcript showing the existence of a triable issue of material fact with respect to Cooney's legal claims against defendants.

VIII. *Additional Arguments*

Cooney contends she is entitled to judgment as a matter of law. This contention fails because Cooney never moved for summary judgment on her own behalf. Moreover, we have concluded that the undisputed facts establish Cooney cannot prevail on her legal claims. Thus, Cooney is not entitled to judgment in her favor.

Cooney raises numerous additional assertions of error. We have reviewed each of these assertions and find they are without merit. For example, Cooney argues the court misapplied the summary judgment statutory provisions and misrepresented facts. This argument is without merit. Moreover, we have reviewed the record de novo and have concluded the summary judgment was properly granted based on the applicable statutory immunities. Cooney also broadly asserts that all of the attorneys and judges involved in this matter (including her own attorneys) have committed "criminal acts of fraud, perjury, and subornation." These allegations are wholly unsupported.

DISPOSITION

Judgment affirmed. Appellant to pay respondents' costs on appeal.

HALLER, J.

WE CONCUR:

BENKE, Acting P. J.

IRION, J.