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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

MAURICE ADDISON,

Plaintiff and Appellant,

v.

COUNTY OF SAN DIEGO,

Defendant and Respondent.

D069540

(Super. Ct. No. 37-2014-00025733-
CU-NP-CTL)

APPEAL from the judgment of the Superior Court of San Diego County, Eddie C. Sturgeon, Judge. Affirmed.

The Gomez Law Group and Alvin M. Gomez for Plaintiff and Appellant.

Thomas E. Montgomery, County Counsel, and Erica B. Gardner, Deputy County Counsel for Defendant and Respondent.

Maurice Addison appeals the judgment entered against him after the trial court sustained the County of San Diego's (the County) demurrer to his complaint without leave to amend. Addison asserts the actions and inactions of the County fall within an exception to governmental immunity; thus, there is no bar to his causes of action for

negligence and premises liability. In addition, he maintains that he has pled sufficient facts to maintain a civil rights action for violation of title 42 United States Code section 1983 (section 1983). We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Addison alleges that while in the custody of the San Diego County Sheriff's Department he was injured by negligently maintained jail facilities and did not receive adequate medical care. Specifically, an object fell off the ceiling of the San Diego Central Jail and struck Addison's head and right eye. A large bubble formed on his eye. He waited 15 minutes before he was taken to the medical unit and examined by a doctor via TeleMed. The doctor ordered jail staff to take Addison to the emergency room. He was transported to the hospital and treated for a corneal abrasion to his right eye and swelling.

In the months following his injury, Addison experienced excruciating eye, neck, and back pain. He was referred to an eye specialist and continued to receive treatment, although his requests to be examined by a doctor were not always honored. In response to some of his requests for medical treatment, Addison was advised an appointment was scheduled for several days or weeks later. He avers his vision has yet to be restored to the state it was in before the object fell.

After filing an appropriate administrative claim with the County, Addison filed a complaint in state court. His complaint asserted three separate causes of action:

(1) negligence, (2) premises liability, and (3) a claim for relief under section 1983. The County filed a demurrer and it was sustained with leave to amend as to each cause of

action. Six months later, Addison filed an amended complaint alleging the same three causes of action.

In response to Addison's first amended complaint, the County demurred contending Addison's complaint failed to allege facts sufficient to overcome governmental immunity or to support a violation of Addison's civil rights under federal law.

The trial court sustained the County's demurrer to Addison's first amended complaint without leave to amend. The court found the complaint did not state facts sufficient to show an exception to governmental immunity for Addison's negligence and premises liability claims. The trial court also found Addison had not, and could not, state a claim under federal law. It held the complaint failed to allege facts to show the County was deliberate and indifferent to Addison's serious medical needs tantamount to cruel and unusual punishment. The court found no allegations in the pleadings that the jail staff denied, delayed, or intentionally interfered with Addison's medical treatment.

DISCUSSION

I

"A demurrer tests the sufficiency of the allegations in a complaint as a matter of law." (*Cundiff v. GTE California Inc.* (2002) 101 Cal.App.4th 1395, 1404.) We review the complaint de novo to determine whether it alleges sufficient facts to state a cause of action under any legal theory. (*Walker v. Allstate Indemnity Co.* (2000) 77 Cal.App.4th 750, 754.) " 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law.' " (*Blank v. Kirwan* (1985) 39

Cal.3d 311, 318.) When a demurrer is sustained without leave to amend, we determine whether there is a reasonable possibility the defect can be cured by amendment. (*Ibid.*) If so, it is an abuse of discretion to sustain the demurrer without leave to amend. (*Ibid.*)

II

Addison first contends he pled sufficient facts to establish the County was liable for the negligent acts or omissions of its employees.

A. Addison's Premises Liability Claim is Barred by Government Code Section 844.6, Subdivision (c)

Government Code section 815, subdivision (a) 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." Further, Government Code section 844.6, subdivision (a) states that with certain statutory exceptions "a public entity is not liable for: [¶] . . . [¶] (2) An injury to any prisoner." This immunity applies to injuries to prisoners from dangerous conditions of public property. (Gov. Code, § 844.6, subd. (c); see *Sahley v. County of San Diego* (1977) 69 Cal.App.3d 347, 348-349 [an inmate could not recover for injuries from a slip and fall in the shower at a county jail because she was barred by Government Code section 844.6].)

Addison's second cause of action was for premises liability. In his complaint, Addison claims the County caused, was aware, and failed to protect him from the dangerous condition that caused his injuries. Addison argues Government Code section

815 provides an exception to governmental immunity for dangerous conditions on public property.

In general, a public entity is not liable unless a statute imposes liability. (*Wright v. State of California* (2004) 122 Cal.App.4th 659, 671-672.) Contrary to Addison's assertion, Government Code section 844.6 does not reference Government Code section 815 as an exception to the rule of immunity in a claim brought by a prisoner. In fact, the statute specifically notes "except for an injury to a prisoner, nothing in this section prevents recovery from the public entity for an injury resulting from the dangerous condition of public property." (Gov. Code § 844.6, subd. (c).) Addison failed to support his contention with any additional facts, authority, or arguments. Therefore, the trial court properly found Addison's first amended complaint failed to plead any exception to governmental immunity as to his second cause of action for premises liability.

B. Addison's Complaint Failed to Allege Facts Sufficient to Support a Negligence Claim for Failure to Provide Medical Care

Government Code section 845.6 focuses on the extent of immunity applicable to a prisoner's claim for failure to provide medical care. The statute limits the liability of public employees for failing to provide medical care, and also creates one exception to the State's blanket immunity for injuries to prisoners. (*Lawson v. Superior Court* (2010) 180 Cal.App.4th 1372, 1383.)

Under Government Code section 845.6, both a public entity and its employees are immune from claims based on injuries to prisoners caused by a failure to provide medical care, except when an employee, acting within the scope of his employment, fails to

provide medical care to a prisoner and has reason to know that need for medical care is immediate. (*Watson v. State of California* (1993) 21 Cal.App.4th 836, 842.)

Addison alleged he waited "at least fifteen minutes" before he was examined by a County jail medical doctor, and then transported to the emergency room at the hospital. A 15-minute waiting period does not constitute a failure to provide medical care. Even outside a jail, it is not unreasonable to wait 15 minutes to receive medical care. Nothing in the pleadings alleges the County jail employees failed to provide anything but reasonably timely medical care.

Addison has failed to show in what manner the pleadings may be amended, or how any amendments would change the legal effect of those pleadings. In his opposition to the demurrer, Addison notes on one occasion he was taken to a medical facility, and later "led away as doctors were treating him." Even accepting this allegation as pled, a doctor's visit cut short does not amount to a failure to provide medical care as required to overcome the statutory exception to governmental immunity for injuries to prisoners. Here, Addison asserts he "can explain additional facts such as dates and time that requests for medical care were made and ignored by [the County]," however, Addison failed to do so. The plaintiff has the burden to show in what manner the pleadings may be amended and how such amendments will change their legal effect. (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1388.) Addison has not carried this burden.

Addison's first amended complaint failed to state facts sufficient to state a cause of action for negligence exempted from governmental immunity. On appeal Addison has

failed to allege additional facts to cure this shortcoming. Because Addison has not shown any reasonable possibility the defect in his pleadings can be cured, the trial court did not abuse its discretion in sustaining the County's demurrer without leave to amend.

III

On appeal, Addison also contends the trial court erred in finding his complaint failed to allege facts to show the County was deliberately indifferent to his serious medical needs as required to support a cause of action under section 1983 for a violation of his Eighth Amendment rights.¹

A. Addison Failed to Plead Facts Sufficient to Support a Section 1983 Claim

To state a cognizable section 1983 claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. (*Estelle v. Gamble* (1976) 429 U.S. 97, 104 (*Estelle*) [court found deliberate indifference to serious medical needs of prisoners constitutes the " 'unnecessary and wanton infliction of pain' " proscribed by the Eighth Amendment].)

In the Ninth Circuit,² a plaintiff must demonstrate that a failure to treat a prisoner's condition could result in further significant injury or the unnecessary and wanton infliction of pain. (*McGuckin v. Smith* (9th Cir. 1992) 974 F.2d 1050, 1059,

¹ State courts may exercise jurisdiction over claims brought under section 1983 because the statute creates a remedy for violations of federal rights committed by persons acting under color of state law. (*Haywood v. Drown* (2009) 556 U.S. 729, 731.)

² Because an action under section 1983 is based on federal statutory law, federal law governs substantive issues in section 1983 cases. (*Bach v. County of Butte* (1983) 147 Cal.App.3d 554, 560; *Garcia v. Superior Court* (1996) 42 Cal.App.4th 177, 181.)

citing *Estelle, supra*, 429 U.S. at p. 104.) A plaintiff must also show a purposeful act or failure to respond to a prisoner's pain or possible medical need and harm caused by the indifference. (*Jett v. Penner* (9th Cir. 2006) 439 F.3d 1091, 1096.) Such deliberate indifference to serious medical needs of prisoners constitutes unnecessary and wanton infliction of pain proscribed by the Eighth Amendment. (*Ibid.*) Ordinary lack of due care does not. (*Whitley v. Albers* (1986) 475 U.S. 312, 319.)

When a prisoner's allegations are based on a refusal to provide treatment, the prisoner must show the refusal "exposed [him] to undue suffering or the threat of tangible residual injury." (*Westlake v. Lucas* (6th Cir. 1976) 537 F.2d 857, 860.) Similarly, a section 1983 claim based on delayed treatment requires a showing that the delay caused harm. (*McGuckin v. Smith, supra*, 974 F.2d at p. 1060; *Page v. Norvell* (D.Or. 2000) 186 F.Supp.2d 1134, 1139.)

Here, Addison complained the County was "made aware through Plaintiff's Inmate Requests that [he] was in need of immediate medical care but failed to take reasonable action by denying or delaying such medical care on several occasions." However, Addison's complaint also states that upon such requests he was "advised that an appointment was scheduled for several days or weeks later." Addison has not shown that the County or jail employees acted purposefully or with deliberate indifference towards his medical needs. His argument is also deficient in that he has not shown the County or jail employees failed to respond to his medical needs. The ongoing scheduling of appointments following his initial injury and treatment demonstrates the jail employees acted with reasonable care. Because Addison has failed to establish a further significant

injury caused by any deliberate indifferent acts or omissions of the County, the trial court did not err in finding Addison failed to plead sufficient facts to support an Eighth Amendment claim under section 1983.

DISPOSITION

The judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

IRION, J.