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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MITCHELL AMADOR et al.,

Plaintiffs and Appellants,

v.

COUNTY OF RIVERSIDE et al.,

Defendants and Respondents.

E059663

(Super.Ct.No. RIC1108961)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni and Gloria Trask, Judges. Affirmed.

Law Office of Richard P. Herman and Richard P. Herman for Plaintiffs and Appellants.

Disenhouse & Ivcevic, Bruce E. Disenhouse and Janine L. Highiet-Ivcevic, for Defendants and Respondents.

This case arises out of the death of Natalie A. Mandich Amador (decedent), who committed suicide while incarcerated. Plaintiffs and appellants (plaintiffs) include her

family and estate.¹ Defendants and respondents are the County of Riverside (County); the Riverside County Sheriff, Stanley Sniff; and seven deputies of the Riverside County Sheriff’s Department² (collectively, defendants). Plaintiffs’ complaint is organized into two “causes of action,” the first for violations of decedent’s civil rights, and the second for wrongful death. The trial court granted summary judgment in favor of Sheriff Sniff and the deputy sheriffs who remained in the case.³ Separately, it granted judgment on the pleadings in favor of the County. Plaintiffs ask that we reverse these rulings with respect to the County and several of the deputy sheriffs—specifically, Deputies Burciaga, Nguyen, and Baker—as to all claims, and as to Sheriff Sniff on the wrongful death claim. We affirm.

¹ Specifically, plaintiffs are Mitchell Amador, decedent’s husband, who brings suit in his individual capacity, as the representative of the Estate of Natalie A. Mandich Amador, and as guardian ad litem for Alexandra Amador, a minor child of decedent; Christian Amador, another surviving child of decedent; and decedent’s parents, John P. Mandich and Heather Davies.

² Specifically, plaintiffs brought suit against Sheriff Stanley Sniff, and Deputies Bridgette Rechsiek, Joshua Hephner, Jessica Pycior, Danny Balodimas, Monica Burciaga, Tuyen Nguyen, and Ivonn Baker. Deputy Nguyen has apparently changed her last name to Contreras. The parties have, however, continued to refer to her as Deputy Nguyen, and since that is the name by which she is named as a party to this case, we will do the same.

³ Plaintiffs had voluntarily dismissed Deputy Balodimas from the case while the motion for summary judgment was pending.

I. FACTS AND PROCEDURAL BACKGROUND⁴

Decedent was arrested on February 12, 2009, for possession of methamphetamines with intent to sell, among other drug charges. She was booked at the County's Robert Presley Detention Center in the wee hours of the next morning. During the booking process, she denied being under the influence of drugs, and stated that she would not be experiencing withdrawal symptoms. She responded in the negative to questions as to whether she had ever attempted to commit suicide, or was currently thinking about suicide, and denied any medical or psychological issues. A classification note from a previous arrest in 2005 indicated that she had self-reported depression, and that mental health services had been notified, but also indicated that she was not suicidal. She was assigned a cell in the jail's general population.⁵

At 11:30 a.m. on February 14, 2009, a deputy conducting a safety check of inmates on the portion of the jail where decedent was housed observed nothing out of the ordinary; she was sitting on the upper bunk in her cell, not in any apparent distress.⁶ Shortly thereafter, decedent's cellmate was allowed out of the cell to assist with serving

⁴ We do not attempt an exhaustive history, only including in this summary that which is necessary for context or directly relevant to plaintiffs' claims of error.

⁵ Neither the officer who conducted a suicide assessment of decedent, nor the officer who conducted a classification interview and assigned her to a cell in general population, is a party to this case.

⁶ The deputy who conducted this safety check is not a party here.

lunch. Decedent did not come out of the cell for lunch—inmates are not required to do so, if they do not want a meal.

At approximately 12:05 p.m., another inmate discovered decedent had attempted suicide by first cutting herself with a razor blade, and then hanging herself with a noose created from a bed sheet and looped around the top portion of the bunk's ladder. An inmate informed Deputy Baker, who alerted the jail's Central Control immediately, at 12:07 p.m. Deputies Nguyen and Burciaga, among other officers, as well as medical personnel, responded to Baker's broadcast. Officers cut decedent out of the noose and, together with responding jail medical staff, attempted to revive her with CPR—CPR was initiated by “around” 12:08 p.m., according to one of the responding nurses.⁷ Decedent was declared dead by a responding paramedic at 12:20 p.m.

After first filing and then voluntarily dismissing a suit in federal court, plaintiffs filed their complaint in the present action on May 20, 2011. On October 5, 2012, defendants filed their motion for summary judgment. On April 23, 2013, the trial court, the Honorable Matthew C. Perantoni presiding, granted summary judgment in favor of all defendants remaining in the case except for the County. On May 17, 2013, the County filed a petition for writ of mandate in this court, seeking reversal of the trial court's denial of the motion for summary judgment. On June 5, 2013, we issued an order denying the petition.

⁷ None of the deputies named as defendants participated in performing CPR on the decedent. Deputy Nguyen assisted in removing decedent from the bed sheet noose and lowering her to the ground.

After its petition for writ of mandate was denied, the County filed in the trial court two motions for judgment on the pleadings, one for each of plaintiffs' two causes of action; only the motion regarding plaintiff's first cause of action appears in our record on appeal. The motions were served on plaintiffs on May 28, 2013, to be heard at the commencement of trial; they are listed as filed on June 10, 2013, on the trial court's docket. After hearing oral argument on June 11, 2013, the trial court, the Honorable Gloria Connor Trask presiding, granted both motions. Plaintiffs orally requested leave to file an amended complaint, which the court denied. On July 10, 2013, judgment was entered in favor of defendants.

On August 8, 2013, plaintiffs filed a motion styled as a motion for new trial, even though no trial had been conducted. The motion asked that the judgment be vacated and a "new trial" be granted on "all of the issues." Specifically, the motion contested the propriety of the denial of leave to file an amended complaint (a proposed amended complaint is attached to the motion), and also included some argument regarding the propriety of the grants of summary judgment and judgment on the pleadings to defendants. The trial court held a hearing on the motion on September 6, 2013, and denied the motion.⁸

⁸ Additional factual and procedural details will be discussed below, as necessary to address plaintiffs' claims of error.

II. DISCUSSION

Before turning to the merits of plaintiffs' appeal, we must first identify exactly what arguments plaintiffs assert, and determine whether the record before us is adequate for us to conduct a review.

“The most fundamental rule of appellate review is that a judgment is presumed correct, all intendments and presumptions are indulged in its favor, and ambiguities are resolved in favor of affirmance.” (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 286 (*City of Santa Maria*)). “The appellant has the burden of furnishing an appellate court with a record sufficient to consider the issues on appeal. [Citation.] An appellate court’s review is limited to consideration of matters contained in the appellate record.” (*People v. Neilson* (2007) 154 Cal.App.4th 1529, 1534.)

One manifestation of these principles is articulated in California Rules of Court, rule 8.830, which provides that “[i]f an appellant wants to raise any issue that requires consideration of the oral proceedings in the trial court, the record on appeal must include a record of these oral proceedings” (California Rules of Court, rule 8.830(a)(2).) Another manifestation is that, when requesting review of a written motion, the moving papers, any opposition thereto, and the court’s ruling must all appear in the record. (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502 (*Hernandez*) [appellant challenged the trial court’s order granting a motion to strike but failed to include copies of the motion and opposition]; California Rules of Court, Rule 8.124(b)(1)(B) [appellant’s appendix must include “any item that the appellant should reasonably assume the respondent will rely on”] .) In the absence of an adequate record

to support the appellant’s claim of error, “we presume the judgment is correct.” (*Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039.)

In addition to providing an adequate record, appellant’s briefing on appeal must state each claim of error under a separate heading summarizing the point, and support each claim with argument, citation to the record, and, if possible, citation to authority. (Cal. Rules of Court, Rule 8.204(a)(1)(B); *City of Santa Maria, supra*, 211 Cal.App.4th at pp. 286-287 [appellant must supply reviewing court “with some cogent argument supported by legal analysis and citation to the record”].) Furthermore, an appellant’s failure to raise an argument in the opening brief waives the issue on appeal. (*Tisher v. California Horse Racing Bd.* (1991) 231 Cal.App.3d 349, 361.)

Plaintiffs failed to organize their briefing under headings summarizing the specific claims of error asserted, instead utilizing subheadings merely identifying the motions at issue: for example, “Judgment on Pleadings”; “Summary Judgment”; and “New Trial.” Moreover, plaintiffs’ headings are sometimes deceptive. Plaintiffs’ section on the standard of review for motions for judgment on the pleadings, for example, contains much argument on the merits, but no discussion at all regarding what standard of review we should apply in considering the merits—that is to be found elsewhere in the brief, under the heading “ARGUMENT.” Citations to the record are sparse, and often general, sometimes citing ranges of pages in the record dozens of pages long, apparently in support of a preceding paragraph or several paragraphs that are otherwise entirely devoid

of citations.⁹ And the relation between legal authority cited and any specific argument regarding application of that law to this case is, not uncommonly, difficult to discern.

Furthermore, the record prepared by plaintiffs, who elected to proceed by appendix under California Rules of Court, rules 8.121 and 8.124, is inadequate in several respects. Plaintiffs contend that the denial of their motion for new trial was improper, and that the trial court should have granted it and allowed the requested filing of an amended complaint. But the oral proceedings regarding that motion are not included in the record, and the only indication in the record that the court ruled on the motion is a docket entry showing the motion as denied. Plaintiffs further contend that we should reverse the grant of judgment on the pleadings in favor of the County with respect to “all claims.” The County’s moving papers seeking judgment on the pleadings with respect to plaintiffs’ second cause of action, however, do not appear in the record.

Nevertheless, to the extent we are able to discern what they are, and are able to do so given the state of the record, we will address plaintiffs’ claims of error on their merits. The claims of error plaintiffs raise in their opening brief, and support by at least a minimum of cogent argument supported by legal analysis and citation to the record, are the following: (1) summary judgment in favor of Deputies Baker, Burciaga, and Nguyen on plaintiffs’ cause of action for violation of civil rights was inappropriate, because triable issues of material fact remained regarding whether those defendants acted with deliberate indifference as to whether decedent was in immediate need of medical

⁹ We note that the respondents’ brief is hardly better, in some respects, and in particular its method of citing to the record.

treatment prior to her suicide attempt; (2) summary judgment in favor of Sheriff Sniff and Deputies Baker, Burciaga, and Nguyen on plaintiffs' wrongful death claim was inappropriate, because triable issues of material fact remained as to whether the deputies acted negligently, and whether Sheriff Sniff is vicariously liable for that negligence; (3) judgment on the pleadings in favor of the County should not have been granted, because the complaint adequately alleges "systemic" issues, including matters relating to intake procedures, assignment policies for correctional officers, staffing levels, and monitoring of prisoners while they are in their cells; and 4) leave to file an amended complaint should have been granted. For the reasons we discuss below, we reject each of these arguments.

A. Plaintiffs Failed to Show Any Triable Issue of Material Fact as to Their Civil Rights Claim Against Sheriff Sniff and Deputies Baker, Nguyen, and Burciaga.

Plaintiffs have conceded that summary adjudication was properly granted to Sheriff Sniff with respect to their first cause of action for violation of the decedent's civil rights. Regarding the named defendant deputy sheriffs, plaintiffs suggest that summary judgment was inappropriate because there is at least a triable issue of material fact as to whether the deputies acted with deliberate indifference to decedent's need for immediate medical treatment, in violation of her civil rights.¹⁰ We find no error.

¹⁰ We use the word "suggest" here, and not "argue," because fully articulated arguments are difficult to discern in plaintiffs' briefing on appeal. Nevertheless, deliberate indifference appears to have been the theory of liability on which plaintiffs relied below, and hints of an argument in that direction appear in plaintiffs' opening brief.

The well-known principles generally governing appellate review of an order granting a motion for summary judgment are as follows: “A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. [Citation.] We review the trial court’s decision de novo, considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports. [Citation.] In the trial court, once a moving defendant has ‘shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established,’ the burden shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff ‘may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action’” (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476–477; Code Civ. Proc., § 437c, subd. (p)(2).) “In reviewing whether these burdens have been met, we strictly scrutinize the moving party’s papers and construe all facts and resolve all doubts in favor of the party opposing the motion.” (*Innovative Business Partnerships, Inc. v. Inland Counties Regional Center, Inc.* (2011) 194 Cal.App.4th 623, 628 [Fourth Dist., Div. Two].)

Jail inmates have an established, substantive due process right under the Fifth and Fourteenth Amendments “to not have officials remain deliberately indifferent to their serious medical needs.” (*Gibson v. County of Washoe* (9th Cir. 2002) 290 F.3d 1175, 1187 (*Gibson*)). “Persons” who violate this right are civilly liable to the injured party under 42 United States Code section 1983. (*Gibson, supra*, at p. 1187.) “Persons” who

may be held liable under 42 United States Code section 1983 include individual public employees and local governmental bodies (e.g., counties and cities), but do not include states or state officials acting in their official capacities.¹¹ (*Pitts v. County of Kern* (1998) 17 Cal.4th 340, 348-349.) Under the deliberate indifference standard, a public employee is liable for denying needed medical care to a detainee only if the employee is *subjectively* aware that his or her failure to provide such medical care is likely to cause the detainee serious harm, and the employee nevertheless disregards that risk by failing to take reasonable measures to prevent or abate that risk. (*Farmer v. Brennan* (1994) 511 U.S. 825, 837.) In other words, the public employee must be subjectively aware of a substantial risk of serious harm to the detainee, and consciously disregard that risk.

There is not a shred of evidence in the record to support the conclusion that Deputies Nguyen, Burciaga, or Baker were subjectively aware that the decedent was at substantial risk of serious harm—specifically, that she was suicidal, or demonstrating behaviors suggesting a substantial risk of imminently becoming suicidal—prior to discovery of her suicide attempt. Each of these officers averred that they never had any interaction at all with decedent, and had never met her or even seen her prior to the suicide attempt. Plaintiffs presented no evidence to the contrary. Neither is there any evidence these officers previously had information from any other source that decedent was in need of immediate medical or psychiatric treatment.

¹¹ Thus, Sheriff Sniff was properly determined not to be liable with respect to plaintiffs' civil rights claim.

The record is also devoid of evidence sufficient to support a civil rights claim based on the deputies' responses following decedent's suicide attempt. Plaintiffs assert that, once deputies learned of decedent's suicide attempt, "instead of immediately rendering aid, they delayed both in cutting decedent down from the noose and implementing life-saving measures." No evidence in the record, however, supports this assertion. Decedent's suicide attempt was reported to Deputy Baker by an inmate, and she immediately called for assistance from other deputies and medical staff; that broadcast went out at 12:07 p.m. By "around" 12:08 p.m., decedent had been cut down and CPR had been initiated. One of plaintiffs' experts asserts the deputies' response time for getting decedent cut down from the noose was too slow. This expert's report, however, makes no attempt to grapple with the timetable described here, and instead seems to conflate a purported "couple of minutes" delay by certain nonparty nurses, discussed by several of plaintiffs' experts, with the response time of the deputies and the first medical staff to arrive at decedent's cell. In any case, whatever the basis of the assertion that the deputies' response time was too slow, we have not discovered any evidence in the record to support it. Plaintiffs' experts' opinions therefore do not create or demonstrate any triable issue of material fact regarding the behavior of the defendant deputies.¹²

¹² We acknowledge defendants' objections to admission of the experts' opinions, and also argument that the higher "purpose to harm" standard, rather than a "deliberate indifference" standard, applies with respect to the deputies' response during the emergency circumstances following discovery of decedent's suicide attempt. We need not discuss these issues, however, because the evidence—even assuming the experts'

[footnote continued on next page]

Additionally, in light of our conclusion that none of the defendant deputies were deliberately indifferent to decedent’s serious medical needs as a matter of law, they are entitled to qualified immunity from suit. (*Saucier v. Katz* (2001) 533 U.S. 194, 201-202 [official entitled to qualified immunity from suit for civil rights violation when facts alleged show official did not violate plaintiff’s constitutional rights].)

In short, plaintiffs have demonstrated no error with respect to the trial court’s summary disposition of plaintiffs’ civil rights cause of action.

B. Plaintiffs Failed to Raise Any Triable Issue of Material Fact as to Their Wrongful Death Claim Against Sheriff Sniff and Deputies Baker, Nguyen, and Burciaga.

Plaintiffs’ wrongful death claim is essentially a claim for negligence, alleging that defendants “negligently failed to observe, treat, protect, and provide immediately necessary medical care” to decedent, and that they “failed to exercise reasonable and ordinary care” in a variety of respects, which boil down to failing to recognize decedent was in distress and intervene before she committed suicide, and failing to discover her suicide attempt in time to save her life. Plaintiffs contend that summary judgment should not have been granted to Deputies Baker, Nguyen, or Burciaga, or to Sheriff Sniff, because triable issues of material fact remained regarding their liability on this claim. We disagree.

[footnote continued from previous page]

reports are properly admitted, and under either a purpose to harm or deliberate indifference standard—is insufficient to demonstrate a triable issue of material fact regarding any violation of decedent’s civil rights by the defendant deputies.

“The general rule is that a jailer is not liable to a prisoner in his keeping for injuries resulting from the prisoner’s own intentional conduct. [Citations.] Absent some possible special circumstances a jailer is under no duty to prevent the latter from taking his own life.” (*Lucas v. City of Long Beach* (1976) 60 Cal.App.3d 341, 349 (*Lucas*).

Additionally, Government Code¹³ section 845.6 “confers a broad general immunity,” with limited exceptions, on public entities and public employees for the employee’s failure to furnish or obtain reasonable medical care for a prisoner in the employee’s custody. (*Watson v. State of California* (1993) 21 Cal.App.4th 836, 841.) “Liability under section 845.6 is limited to serious and obvious medical conditions requiring immediate care.” (*Ibid.*) Section 855.6 immunizes public employees other than medical personnel for failure to make adequate physical or mental examination, providing “absolute” immunity “except for the situation of a failure to provide medical care for a prisoner in obvious need of such care.” (*Lucas, supra*, 60 Cal.App.3d at p. 349.) And section 855.8 immunizes nonmedical personnel from liability for “injury resulting from diagnosing or failing to diagnose that a person is afflicted with mental illness or addiction” (§ 855.8.)

There is no evidence in the record here demonstrating any special circumstances that could justify departure from the general rule that a jailer is not liable for a prisoner’s intentional injury to herself, or supporting the notion that the various statutory immunities cited above might not apply. Among other things, none of the defendants are medical

¹³ Further undesignated statutory references are to the Government Code.

personnel; there is no evidence that decedent was exhibiting obvious signs of a medical or psychological condition requiring immediate care; and there is no evidence that the defendant deputies' responses to decedent's suicide attempt were unduly delayed or otherwise inadequate. As such, summary adjudication in favor of the defendant deputies and Sheriff Sniff on plaintiffs' wrongful termination claim was appropriate.

Plaintiffs contend—based on decedent's drug-related charges, and the circumstance that a toxicology report revealed her to have been under the influence of methamphetamine—that the defendant deputies were negligent for failing to recognize that decedent was potentially suicidal because of methamphetamine withdrawal, and for failing to take action to prevent her suicide attempt, or at least intervene in time to save her life.¹⁴ We disagree. *Lucas, supra*, 60 Cal.App.3d 341 is instructive. In that case, a 17-year-old boy was booked on drunk driving charges, arriving at the juvenile detention facility exhibiting “the symptoms of a moderately intoxicated person.” (*Id.* at pp. 471-472.) Several hours after being placed in a cell, the boy was discovered hanging from a noose fashioned from cloth torn from a mattress cover in an apparent suicide. (*Id.* at p. 472.) The Court of Appeal noted the boy had “evidenced emotional upset by crying and expressing concern as to the effect that his arrest would have on his mother,” but found “not a scintilla of evidence in the record indicating that his conduct was any different

¹⁴ The coroner's report identifying “acute methamphetamine toxicity” as an “other significant condition,” though not a cause of death, was excluded from evidence by the trial court—erroneously so, according to plaintiffs, though they only explicitly discuss that issue in their reply brief. The dispute between the parties on that evidentiary question, however, is not dispositive of any issue in this appeal, so we need not resolve it.

than one might expect of a person intoxicated on either drugs or alcohol.” (*Id.* at pp. 349-350.) Nevertheless, the Court of Appeal found that because the boy had “manifested only the symptoms of intoxication,” and no obvious signs of being suicidal, the Government Code immunities for failure to provide medical care to prisoners applied. (*Lucas, supra*, at p. 350.) There was also evidence that a defendant police officer had not made the hourly observations required by state regulations, failing to check on the boy for a period of 2 hours and 55 minutes prior to the discovery of his suicide attempt. (*Id.* at p. 345.) The Court of Appeal found, however, that this was not a special circumstance justifying departure from the general rule that a jailer is not liable for a prisoner’s suicide, describing the jury’s finding that such an hourly inspection would have prevented the suicide to be “pure speculation.” (*Id.* at p. 351.) The court concluded that the boy’s own intentional act was “highly unusual and not foreseeable,” and therefore the superseding cause of harm and the legal cause of his death. (*Id.* at p. 351.) On that basis, the Court of Appeal reversed the jury’s verdict against the defendant city and police officer. (*Ibid.*)

As discussed above, there is no evidence in the record here that decedent exhibited any obvious signs of intoxication at the time of her booking—no matter what blood tests might have later revealed—and she explicitly denied that she expected to be experiencing withdrawal. Under *Lucas*, however, even if she did show signs of intoxication, that would be insufficient to establish liability on the part of defendants for failing to prevent her suicide. (*Lucas, supra*, 60 Cal.App.3d at pp. 349-350.) Here, as in *Lucas*, there is no evidence in the record that *any* peace officer—let alone the defendant deputy sheriffs or Sherriff Sniff, who never interacted with her at all prior to her suicide attempt—observed

or should have observed any obvious signs decedent was suicidal, or in imminent danger of becoming suicidal. As such, plaintiffs failed to show any triable issue of material fact regarding liability for negligence, either directly as to the defendant officers or vicariously as to Sheriff Sniff.

Zeilman v. County of Kern (1985) 168 Cal.App.3d 1174 (*Zeilman*) does not require a different result, plaintiffs' suggestion to the contrary notwithstanding. In that case, an inmate who was already on crutches as the result of a ski accident fell while in the booking area of a jail. (*Id.* at p. 1177.) The Court of Appeal reversed the trial court's grant of summary judgment to the defendants, reasoning that "[t]he trier of fact should be permitted to determine, as a question of fact, whether plaintiff's use of crutches and her apparently agitated, emotional, and weakened condition should have given rise to knowledge of her need for immediate medical care." (*Id.* at pp. 1186-1187.) Thus, there was evidence in *Zeilman* at least arguably demonstrating that the plaintiff had exhibited to jail personnel signs of a serious and obvious medical condition requiring immediate care, the jail personnel failed to summon that care, and she was (further) injured as a result. Here, defendants produced evidence showing that decedent exhibited no signs of a serious and obvious medical condition requiring immediate care to the defendant deputies, or any other jail personnel, and plaintiffs failed to produce any evidence tending to show otherwise. As such, the situation of this case is closer to that of *Lucas* than that of *Zeilman*, even though *Lucas* was based on a failure of proof at trial, rather than at the summary judgment stage. (*Lucas, supra*, 60 Cal.App.3d at p. 351; *Zeilman, supra*, 168 Cal.App.3d at p. 1186 [distinguishing *Lucas*].)

In short, plaintiffs have demonstrated no error with respect to the trial court's ruling regarding their wrongful death claim.

C. Judgment on the Pleadings Was Properly Granted to the County on All Claims.

Plaintiffs argue that the trial court erred by granting summary judgment on the pleadings to the County on both of their causes of action. We find no error.

“The standard of review for a motion for judgment on the pleadings is the same as that for a general demurrer: We treat the pleadings as admitting all of the material facts properly pleaded, but not any contentions, deductions or conclusions of fact or law contained therein. We may also consider matters subject to judicial notice. We review the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any theory.” (*Dunn v. County of Santa Barbara* (2006) 135 Cal.App.4th 1281, 1298.)

Plaintiffs' first cause of action alleges that the County is liable for the purported violations of defendant's civil rights at the hands of the defendant deputies and the Riverside County Sheriff's Department, because those violations flow from certain “customs, practices, policies and decisions of [the County] and the Riverside County Sheriffs [*sic*] Department”—a type of claim commonly referred to as a *Monell* claim. (See *Monell v. Department of Social Services of the City of New York* (1978) 436 U.S. 658, 695 (*Monell*) [“. . . it is when execution of a government's policy or custom . . . inflicts the injury that the government as an entity is responsible under [42 U.S.C.] § 1983”].) However, in performing law enforcement duties, including the operation of county jails, a county sheriff “acts as a state officer performing state law enforcement

duties, and not as a policymaker on behalf of [a county]” (*County of Los Angeles v. Superior Court* (1998) 68 Cal.App.4th 1166, 1178; see also *id.* at p. 1177 [“. . . the sheriff operates the jail pursuant to the sheriff’s constitutional and statutory law enforcement powers, and not as a policymaker for the board of supervisors, which has no direct control over the sheriff in this regard.”]) It follows that even if decedent suffered violations of her constitutional rights as a result of a governmental entity’s policies or customs, the County would not be liable for those violations, and the County’s motion for judgment on the pleadings was properly granted.

As noted, plaintiffs failed to include in the record on appeal defendants’ moving papers with respect to the motion for judgment on the pleadings on plaintiffs’ second cause of action, for wrongful death and sounding in negligence. The trial court’s ruling would properly be affirmed on the basis of the inadequate record. (*Hernandez, supra*, 78 Cal.App.4th at p. 502.)

In any case, however, it is apparent from the record as is that the trial court committed no error by granting the motion. The notion that the County is vicariously liable for negligence, as plaintiffs have asserted, depends on the premise that one or more of its employees has in fact been negligent in a manner that does not fall within the Government Code immunities described above. (See § 845.6 [“a public employee, and the public entity where the employee is acting within the scope of his employment,” are liable for failure to provide medical care for a prisoner in obvious need of such care]; § 844.6, subd. (a)(2) [with limited exceptions, including as provided in § 845.6, a public entity is not liable for an injury to any prisoner].) At the time the County’s motions for

judgment on the pleadings were heard, however, all individual defendants had been granted summary judgment in their favor (and as discussed above, that ruling was correct). In the absence of any evidence an employee of the County was negligent, there is no basis for holding the County vicariously liable for negligence.

Plaintiffs emphasize that a finding of liability on the part of a public employee is not necessarily a prerequisite to a finding of liability on the part of the County, pointing to *Perez v. City of Huntington Park* (1992) 7 Cal.App.4th 817 (*Perez*). *Perez*, however, involved a situation where a prisoner who had been battered by two city police officers failed to prove which of four defendant officers on the scene had struck him, and therefore failed to carry his burden of proof as to any individual officer. (*Id.* at pp. 818-819.) The Court of Appeal in *Perez* ruled that this failure of proof did not preclude a finding of liability as to the defendant city that employed the officers: although the plaintiff had not been able to demonstrate *which* officers had struck him, he had proven that *some* officers had struck him, and under those “unusual circumstances,” the city was properly held liable. (*Id.* at p. 820.)

In contrast, plaintiffs here not only failed to prove that any individual defendant could be held liable, but also failed even to plead facts (as distinguished from legal conclusions) showing that *any* employee of the County, whether named as a defendant or not, acted in a manner that could give rise to liability. There are no facts pleaded, for example, showing that decedent had exhibited any obvious signs of a serious medical condition to any County employee, or showing that defendants’ response to decedent’s

suicide attempt was inadequate in any way. Under these circumstances, judgment on the pleadings in favor of the County was appropriate.

D. The Trial Court Did Not Abuse Its Discretion by Denying Plaintiffs Leave to Amend.

After granting the County’s motion for judgment on the pleadings, the trial court denied plaintiffs’ oral motion for leave to amend. On appeal, plaintiffs contend that the denial of leave to amend was an abuse of discretion. We disagree.

Courts must “apply a policy of great liberality in permitting amendments to the complaint at any stage of the proceedings, up to and including trial” (*Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 487 (*Magpali*)). Nevertheless, “““even if a good amendment is proposed in proper form, unwarranted delay in presenting it may—of itself—be a valid reason for denial.”” [Citations.] Thus, appellate courts are less likely to find an abuse of discretion [in denying leave] where, for example, the proposed amendment is ““offered after long unexplained delay . . . or where there is a lack of diligence”” [Citation.]” (*Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, 175.) In addition, the plaintiff must show that the complaint can be amended to cure the defects. (*Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 711.)

The County’s motions for judgment on the pleadings were heard by the trial court at the commencement of trial, after more than two years of litigation, and after the case had been resolved, either by voluntary dismissals or on motion for summary judgment, with respect to all other named defendants. Plaintiffs represented to the trial court that

they could “name [additional defendants] that satisfy the pleading requirements.” But they have made no attempt, either in the trial court or on appeal, to explain why these additional defendants could not have been joined earlier. Allowing plaintiffs to amend their complaint and add new defendants would have required delaying the trial, reopening discovery, and likely a new round of dispositive motions. It was well within the trial court’s discretion to deny leave to amend on this basis alone.¹⁵ (See *Magpali, supra*, 48 Cal.App.4th at p. 488 [“Where the trial date is set, the jury is about to be impaneled, counsel, the parties, the trial court, and the witnesses have blocked the time, and the only way to avoid prejudice to the opposing party is to continue the trial date to allow further discovery, refusal of leave to amend cannot be an abuse of discretion.”].) Plaintiffs have demonstrated no error with respect to the denial of leave to file an amended complaint.

E. Plaintiffs’ Motion for New Trial Was Properly Denied.

Plaintiffs contend that the trial court erred by denying their motion for new trial. In substance, however, the motion was not for a new trial—no trial had been conducted. Rather, the motion asks the court to reconsider and vacate its previous rulings on defendants’ motions for summary judgment and judgment on the pleadings, as well as the decision to deny plaintiffs leave to file an amended complaint. For the reasons discussed

¹⁵ Moreover, though we need not discuss the matter in any detail, it appears that most, if not all, of the above discussion regarding the trial court’s grant of summary judgment or judgment on the pleadings to the current defendants would apply equally well to plaintiffs’ proposed amended complaint, and the proposed new defendants.

above, the trial court’s initial rulings on each of those issues were correct. There was no error in denying plaintiffs’ request to revisit the issues and reach different conclusions.¹⁶

III. DISPOSITION

The judgment appealed from is affirmed. Defendants are awarded their costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST

J.

We concur:

RAMIREZ

P.J.

KING

J.

¹⁶ At oral argument, plaintiffs’ counsel requested leave to submit additional briefing and to augment the record. We denied the request. Counsel also drew our attention to a case not cited in briefing, *Cruz v. City of Anaheim* (2014) 765 F.3d 1076. We have reviewed that case. It does not change our analysis.