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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

RICHARD HADDIX, Plaintiff and Appellant, v. COUNTY OF ORANGE, Defendant and Respondent.	G048586 (Super. Ct. No. 30-2012-00536989) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Steven Siefert, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Law Office of Vincent W. Davis & Associates, Vincent W. Davis and Christopher Bordenave for Plaintiff and Appellant.

Burke, Williams & Sorensen, Susan E. Coleman and Kristina Doan Gruenberg for Defendant and Respondent.

Richard Haddix appeals from a summary judgment entered in favor of the County of Orange (hereafter the County) in his negligence action. He asserts there exists a triable issue of material fact regarding whether the County summoned medical care after he was injured while he was a prisoner at the Theo B. Lacy Branch of the Orange County Jail (hereafter the Jail). Finding his contentions lack merit, we affirm the judgment.

I

The following facts are undisputed. Haddix was an inmate at the jail from August 31 to October 13, 2010. He was injured after deputies ordered Haddix and other prisoners to move bunk beds from one part of the Jail to another. While moving one bunk bed, Haddix's right arm was caught between the bunk bed he was carrying and a metal pole of a gate.

Immediately after Haddix's arm was smashed, a sheriff deputy instructed the other prisoners to pull the bed away and for Haddix to stand against the wall. After the deputy looked at Haddix's arm, he sent Haddix to the infirmary for evaluation. At the infirmary, Nurse Warren took Haddix's vital signs and examined his right arm.[1]

The parties dispute what happened next. The medical records show Nurse Warren determined there were no signs of swelling or deformity. The nurse gave Haddix a sling, prescribed ibuprofen, and scheduled a follow up appointment in three days time (Monday, October 11, 2010). Haddix returned to his barrack and did not complain to anyone about being injured.

In his deposition, Haddix asserted his arm was swollen when the nurse examined it. Haddix explained he did not complain about the pain after leaving the infirmary because the nurse told him nothing could be done until after the weekend, and a

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[1] Our record does not contain any information regarding Nurse Warren's first name.

doctor would arrive on Monday to further examine his arm. Haddix admitted his arm remained in the same condition over the weekend and there was no additional swelling.

On October 11, 2010, Haddix received a pink slip to return to the infirmary. Nurse Practitioner Margaret Miguad examined Haddix for approximately 30 minutes. Miguad reported Haddix stated his arm was getting better. She observed Haddix's arm was warm but there was no open wound. Haddix was able to grasp his hand and wiggle his fingers. She prescribed ibuprofen and gave Haddix a new bandage.

Haddix declared he never told Miguad he was getting better. He remembered Miguad told him it was unlikely she could obtain approval for an X-ray due to the ongoing budget cuts.

Haddix was released from jail two days later. Due to continuing pain in his arm, Haddix sought further medical care and immediately went to Mission Hospital's emergency room. At the hospital, he received an IV drip and medication for pain relief. He also received an X-ray that revealed his arm was fractured. Hospital personnel put a cast on his arm. Haddix recalled the emergency room physicians told him he would have required less treatment and had a quicker recovery if his arm had been put in a cast immediately after it was injured.

On January 13, 2012, Haddix sued the County for negligence, citing Government Code sections 815.2, subdivision (a), 820, subdivision (a), 835, subdivision (a), 844.6, subdivision (d), and section 845.6.[2] In the complaint, Haddix asserted he was injured because he was ordered to perform unsafe work and the medical care he received was inadequate and aggravated his injuries. The County filed an answer.

In December 2012 the County filed a motion for summary judgment asserting the undisputed facts demonstrate it is immune from liability under sections 844.6 and 845.6. Specifically, the County had immunity under section 844.6 for injuries

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[2] All further statutory references are to the Government Code.

to prisoners and by prisoners. And because it properly summoned medical care there could be no liability on that basis under section 845.6.

Haddix opposed the motion arguing his declaration regarding the events raised a triable issue of fact regarding "whether his referral to the [Jail's] infirmary was sufficient to satisfy the language of . . . section 844.6 and 845.6." He asserted it could be inferred from the evidence that the care he received "was minimal at best" and the court should not permit the County to avoid liability for his injury.

The court granted the motion. In its minute order, it stated the following: (1) Haddix conceded he was a prisoner within the meaning of the immunity statutes; (2) the County carried its initial burden of proving it summoned medical care; (3) Haddix testified he did not complain to anyone for three days about his injury; (4) allegations of negligent medical care do not state a cause of action against the County but must be asserted against the individual employee who rendered health services; (5) Haddix does not assert a claim against any County employee who rendered health care services; (6) Haddix presented evidence to dispute facts recorded by medical providers, but this factual dispute is not material to the issue of whether the County failed to realize the need for immediate medical attention or failed to summon such care. The court entered a judgment in favor of the County on April 5, 2013.

II

Haddix raises two contentions on appeal: (1) the County failed to carry its initial burden that it summoned medical care; and (2) there were triable issues of fact regarding the County's failure to summon medical care, precluding it from claiming immunity. We conclude both contentions lack merit.

1. Standard of Review

"We review orders granting motions for summary judgment on a de novo basis. [Citation.] In doing so, we apply the same rules the trial court was required to apply in deciding the motion. [¶] When the defendant is the moving party, it has the

burden of demonstrating as a matter of law, with respect to each of the plaintiff's causes of action, that one or more elements of the cause of action cannot be established, or that there is a complete defense to the cause of action. [Citations.] If a defendant's presentation in its moving papers will support a finding in its favor on one or more elements of the cause of action or on a defense, the burden shifts to the plaintiff to present evidence showing that contrary to the defendant's presentation, a triable issue of material fact actually exists as to those elements or the defense. [Citation.] That is, the plaintiff must present evidence that has the effect of disputing the evidence proffered by the defendant on some material fact. [Citation.] Thus, section 437c, subdivision (c), states that summary judgment is properly granted "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" (*Johnson v. United Cerebral Palsy/Spastic Children's Foundation* (2009) 173 Cal.App.4th 740, 753-754.)

2. Immunity

In *Castaneda v. Department of Corrections & Rehabilitation* (2013) 212 Cal.App.4th 1051, 1069-1070 (*Castaneda*), the appellate court described the scope of the duty to summon immediate medical care provided in section 845.6. It stated, "Public entities in California are not liable for tortious injury unless liability is imposed by statute. (§ 815.) '[S]overeign immunity is the rule in California; governmental liability is limited to exceptions specifically set forth by statute.' [Citation.] Section 844.6, subdivision (a)(2), establishes the State's immunity to liability for injuries to prisoners. Section 845.6 both affirms the public entity immunity to liability for furnishing medical care, and creates a narrow exception to that immunity. [¶] Section 845.6 states in relevant part, 'Neither a public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody; but, except as otherwise provided by [s]ections 855.8 and 856 [concerning mental illness and addiction], a public employee, and the public entity where

the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care.'" (*Castaneda, supra,* 212 Cal.App.4th at pp. 1069-1070.)

The *Castaneda* court explained, "The first clause of section 845.6 establishes the immunity generally of both the public entity and its employees from liability 'for injury proximately caused by the failure of the employee to *furnish or obtain medical care* for a prisoner in his custody.' (Italics added.) The second phrase creates a limited public-entity liability when (1) the public employee 'knows or has reason to know [of the] need,' (2) of '*immediate* medical care,' and (3) 'fails to take reasonable action to *summon* such medical care.' (§ 845.6, italics added.)" (*Castaneda, supra,* 212 Cal.App.4th at p. 1070.)

"Section 845.6 is very narrowly written to authorize a cause of action against a public entity for its employees' failure to summon immediate medical care only, not for certain employees' malpractice in providing that care. The 1963 Law Revision Commission comments to section 845.6 clarify, 'This section limits the duty to provide medical care for prisoners to cases where there is actual or constructive knowledge that the prisoner is in need of immediate medical care. *The standards of medical care to be provided* to prisoners involve *basic governmental policy that should not be subject to review in tort suits for damages*.' [Citation.] Thus, section 845.6 creates out of the general immunity a limited cause of action against a public entity for its employees' failure to *summon* immediate medical care only. [Citation.] The statute does not create liability of the public entity for malpractice in furnishing or obtaining that medical care. [Citations.] Nor does the statute make the State '"'vicariously liable for the medical malpractice of its employees. [Citation.] Although the State is required to pay the judgment assessed against its employees for medical malpractice committed against a

prisoner, the State is immune from suit directly. [Citations.]" [Citation.]' [Citation.]" (*Castaneda, supra,* 212 Cal.App.4th at pp. 1070-1071.)

The *Casteneda* court determined, "A narrow reading of section 845.6 is also compelled as a matter of statutory interpretation. First, the duty to summon is presented as the exception to the broad, general immunity for failing to furnish or provide medical care. Second, section 845.6 imposes the duty to summon on 'public employees' generally, not medical care providers in particular. Many such public employees are '[p]rison authorities [who] do not have the medical training to know whether a prisoner's medical condition has been properly diagnosed and treated.' [Citation.] The Legislature could not have contemplated imposing a duty to do more than to *summon* medical care as it imposed that duty on 'public employees,' such as prison authorities, generally." (*Castaneda, supra,* 212 Cal.App.4th at p. 1071.)

In the *Casteneda* opinion, the court referred to *Nelson v. State of California* (1982) 139 Cal.App.3d 72 (*Nelson*), as aptly addressing "[t]he distinction between failure to summon medical care—for which the State can be held liable under section 845.6—on the one hand, and negligence in providing care—for which the State is immune—on the other hand . . . ." (*Castaneda, supra,* 212 Cal.App.4th at p. 1071.) The *Nelson* court considered a tort claim action brought by a prisoner who complained of various medical problems that were symptoms of diabetes. (*Nelson, supra,* 139 Cal.App.3d at p. 75.) He became diabetic and suffered a leg injury, requiring the use of a leg brace. (*Ibid.*) The prisoner alleged he told medical personnel of his illness and "they discounted his statements after taking X-rays and checking his blood pressure." (*Id.* at p. 80.) His action claimed the Department of Corrections failed "'to diagnose and treat" and refused to "allow claimant to maintain his ongoing medications.'" (*Ibid.*)

The *Nelson* court held "as a matter of statutory interpretation, that the act of a doctor or other such professional who, in the course of treatment of a prisoner, fails to

prescribe and/or provide the correct medication is [not] the legal equivalent to a failure to summon medical care as set forth in [section 845.6].” (*Nelson, supra,* 139 Cal.App.3d at pp. 80-81.) “Once a practitioner has been summoned to examine and treat a prisoner, he or she is under a duty to exercise that degree of diligence, care, and skill such as is ordinarily possessed by other members of the profession. Failure to do so is malpractice. [Citation.] Failure of a practitioner to prescribe or provide necessary medication or treatment to one he or she has been summoned to assist is a breach of such duty and as such is also medical malpractice and clearly, as a matter of the plain meaning of the statutory language, cannot be characterized as a failure to summon medical care.” (*Id.* at p. 81.)

The *Casteneda* court also referred to *Watson v. State of California* (1993) 21 Cal.App.4th 836, 843 (*Watson*). The *Watson* case also considered the scope of governmental liability under section 845.6 and concerned a prisoner who injured his ankle while playing basketball. A nurse gave him a bandage and medication. He was able to walk but complained his ankle was tender. (*Id.* at p. 839.) He later filed an action against the State and its employees asserting the public employee physicians failed to diagnose and treat a ruptured Achilles tendon, causing him permanent loss of ankle flexion. (*Id.* at p. 840.)

The *Watson* court concluded summary judgment was properly granted because the employees’ failure to properly diagnose and treat was not tantamount to a failure to summon medical care for a “serious and obvious” medical condition requiring “immediate medical care” under section 645.6. (*Watson, supra,* 21 Cal.App.4th at pp. 841-842.) It rejected the theory the statutory duty to “summon” medical care included a duty to provide reasonable medical care. (*Id.* at p. 841.)

The court added, “[T]he State had no actual or constructive notice that appellant’s Achilles tendon was ruptured and required surgery. None of the doctors who examined appellant recognized the extent of the injury. Section 845.6 does not require

that a prison guard be a better medical diagnostician. (*Watson, supra*, 21 Cal.App.4th at pp. 842-843.) The court concluded there was no evidence "the State knew or had reason to know that appellant's medical condition required surgery. No triable facts were presented that the State knew or had reason to know that the medical care provided at [the prisons] was so deficient that it was tantamount to no medical care. An orthopedic specialist diagnosed the medical problem almost a year after the injury. Notice could not be imputed to the State based on medical hindsight. There is no merit to the argument that the misdiagnosis triggered section 845.6 liability based on the alleged failure to summon reasonable medical care." (*Watson, supra*, 21 Cal.App.4th at p 843.)

Applying *Nelson* and *Watson*, the *Castaneda* court determined there was insufficient evidence in the record to support a verdict against the State for failing to summon medical care pursuant to section 845.6. The court concluded the State could not be found to have breached its duty under section 845.6 based on evidence that a nurse and a doctor working for the Department had failed to ensure Castaneda received certain diagnostic testing necessary to detect cancer. (*Castaneda, supra*, 212 Cal.App.4th at p. 1072.) The *Castaneda* court reasoned: "On this record, the State summoned medical care for Castaneda. Indeed, it did more than summon, it treated him. Both [a doctor and a nurse] assessed him; both included cancer as part of their differential diagnosis; both diagnosed his condition; and both *referred* him for further treatment, namely, medication and a biopsy. Under *Nelson* and *Watson*, the failure of these two public employees to provide further treatment, or to ensure further diagnosis or treatment, or to monitor Castaneda or follow up on his progress, are all facts which go to the reasonableness of the medical care provided, but do not constitute a failure to *summon* medical care. [Citations.]" (*Castaneda, supra*, 212 Cal.App.4th at p. 1072.)

3. Analysis

On appeal, Haddix asserts the court erred in concluding the County carried its initial burden of proving it summoned medical care under section 845.6. We disagree.

The County carried its burden of proof by presenting the undisputed evidence Haddix was sent immediately to the infirmary after his arm was smashed between a bed and a gate. The deputy determined Haddix was in need of immediate medical care. It is further undisputed that in the infirmary a nurse examined his arm. She treated Haddix by providing a sling and pain medication. She scheduled a follow up appointment for three days time. Haddix admitted he did not complain further about his condition to alert the prison guards he required additional immediate medical care. At his next appointment, a nurse practitioner examined Haddix's arm and made the same diagnosis as the first nurse. She offered the same treatment of bandages and pain medication.

Haddix argues the above facts cannot be used to prove the County summoned medical care because *he believes* there are other facts suggesting the County failed to summon medical care. He apparently misunderstands the shifting burdens of proof applicable to summary judgment motions. The undisputed facts presented by the County amply satisfied its *initial burden* of proof for summary judgment purposes. The burden then shifted to Haddix to present evidence raising a triable issue of material fact to defeat the motion. If he had submitted evidence raising material disputed facts the court would have grounds to deny the summary judgment motion. There would be no need to reconsider whether the County satisfied its initial burden of proof. In this case, the court granted the motion because it determined Haddix failed to meet his burden of proof. We agree.

On appeal, Haddix argues there is a disputed material fact about whether the County summoned medical care due to the evidence the nurse told him on October 8, 2010, nothing could be done until after the weekend. He admits the nurse examined his arm and gave him pain medication, however, he asserts the nurse's instructions "effectively prevented him from asking for medical help to be summoned." Haddix explains he did not complain because he had been instructed there was nobody to hear him until Monday, October 11, 2010. In essence, Haddix is asserting the nurse failed to

recognize and correctly diagnose his medical problem and, consequently, provided inadequate treatment by delaying matters for three days. As discussed above, "Once summoned, the quality of medical care is a matter of medical policy and practice, imposing on medical practitioners a duty to exercise that degree of diligence, care, and skill possessed by other members of the profession, but it is not a violation of the employee's obligation to summon medical care under section 845.6." (*Castaneda, supra*, 212 Cal.App.4th at p. 1074.) Here, the nurse diagnosed Haddix and returned him to the Jail's barracks. Section 845.6 does not require Haddix's prison guards to be a "better medical diagnostician." (*Watson, supra*, 21 Cal.App.4th at p. 843.)

Alternatively, Haddix asserts the care he received was so deficient it was tantamount to no medical care. Specifically, on October 11, 2010, the nurse noted his arm felt warm but she told Haddix budgetary restraints meant an X-ray was unlikely. Haddix argues her comment about the lack of X-rays should have led the court to the reasonable inference the nurse knew or had reason to know an X-ray would identify a facture. Once again, Haddix is reciting facts relevant only to the quality of medical care he received. X-rays are a diagnostic tool. The nurse's failure to properly diagnose Haddix's condition goes to the reasonableness of the medical care provided and does not constitute a failure to summon medical care. (See *Nelson, supra,* 139 Cal.App.3d at pp. 80-81 [medical misdiagnosis of diabetes following X-rays and blood pressure check is not legal equivalent to a failure to summon medical care under section 845.6].)

Haddix's second argument on appeal is the court failed to recognize there were triable issues of fact, precluding application of the immunity statutes. Specifically, Haddix stated there were triable issues about "the type of care he received" at the infirmary. For example, on October 9, 2010, Haddix recalled his arm was swollen when the nurse examined him. The nurse concluded there was no swelling. Nurse Miguad wrote in the medical records that Haddix reported "'getting better[,]" but he denied making this statement. He concludes one explanation for the differing stories is that jail

facility employees "get away with ill treatment of prisoners." Citing a law review article, Haddix asserts there is a historical pattern of jail employees failing to provide appropriate medical treatment.

This documented "deliberate indifference" towards prisoners with medical needs is very concerning, however, it does not assist Haddix on appeal. Failure to provide prisoners with appropriate medical treatment could amount to a viable medical malpractice claim. And as described in detail above, medical malpractice claims against individual health care providers are excepted from immunity. (§§ 844.6, subd. (d), 845.6.) All the same, Haddix did not allege a medical malpractice claim in this lawsuit.

Once the County's employees were summoned to examine his arm, all omissions (the only evidence highlighted by Haddix on appeal) "fall under the rubric of obtaining or providing medical care, for which actions the State is immune." (*Castaneda, supra*, 212 Cal.App.4th at p. 1073.) The court properly granted the summary judgment motion.

III

The judgment is affirmed. The County shall recover its costs on appeal.

O'LEARY, P. J.

WE CONCUR:

MOORE, J.

IKOLA, J.