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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

DESIREE HEDBERG, et.al.,

Plaintiffs and Appellants,

v.

BETH WARD,

Defendant and Respondent.

H036406

(Santa Clara County

Super. Ct. No. 1-09-CV132087)

In this appeal plaintiffs Desiree Hedberg and Ian Young challenge a summary judgment entered in favor of defendant Beth Ward in their action for damages arising from the impoundment and euthanasia of their dog by the Humane Society of Silicon Valley. Plaintiffs contend that there were triable issues of fact in their claims of negligence and intentional infliction of emotional distress, and that they were entitled to punitive damages arising from Ward's conduct. We find no error in the superior court's ruling and accordingly must affirm the judgment.

*Background*¹

The subject of this litigation was plaintiffs' dog, a "pit bull" named Lucy. On July 30, 2007, an animal control officer from the City of Sunnyvale (City) took Lucy from her home to a shelter at the Humane Society Silicon Valley (Humane Society) and placed her in a 10-day "bite quarantine" as directed by the City's Animal Control Unit. Because the purpose of the quarantine period is to observe the animal for signs of rabies, a quarantined animal is required to stay in its kennel and no visitors are allowed during those 10 days.

Defendant Beth Ward, a vice-president at the Humane Society, was responsible for all aspects of animal and customer care. According to her declaration, Lucy was fed, given water, and cleaned every day by animal care technicians during the quarantine period. After that, she was given an "enrichment plan" consisting of "toys, bedding, interaction with people, and a comfortable environment . . . in addition to the basic necessities, such as food, water, exercise, and veterinary care." The Humane Society staff also provided socialization by interacting with her daily or near daily, and they arranged for twice weekly visits from plaintiffs. Ward knew of no incident in which Lucy was injured during her confinement at the Humane Society.

On September 12, 2007, after a hearing, the superior court determined that Lucy was a "vicious" animal as defined in Sunnyvale Ordinance No. 6.04.160² "in that,

¹ In relating the history of this dispute we disregard in its entirety the one-page statement of facts in plaintiffs' opening brief, which contains not a single citation to the record. (See Cal. Rules of Court, rules 8.204(a)(1)(C).)

² This municipal law defines "vicious animal" to include an animal that demonstrates "any or all of the following behavior: [¶] (1) Without provocation inflicts bites on a human or a domestic animal while on public or private property; [¶] (2) Without provocation chases or approaches humans or domestic animals on the streets, sidewalks, or any public grounds in a threatening manner or apparent attitude of attack; [¶] (3) Has a known propensity, tendency or disposition for unprovoked attack, causing injury or

without provocation, she inflicted bites both on a human and on domestic animals while on public property and, without provocation, chased and approached a human and domestic animals on a sidewalk in a threatening manner with [an] apparent attitude of attack and, in fact, killed one of those animals, a dog named 'Bobbi.' " The court rejected plaintiffs' attempts to characterize the killing of Bobbi as "merely 'discipline' or 'corrective behavior,' " and it noted that "this neither defeats a finding of 'vicious animal' nor provides reassurance as to Lucy's potential future behavior." The court therefore ordered Lucy destroyed.

Plaintiffs petitioned this court for a stay and a writ of supersedeas, asserting a violation of their due process rights. This court denied the petition without prejudice to its refiling in the appellate division of the superior court. The appellate division denied plaintiffs' ensuing petition, however, and on December 20, 2007, this court denied plaintiffs' final petition for a writ of mandate and request for stay.

While these proceedings were pending, Ward received more than 200 e-mail messages from all over the country and even outside the United States, all protesting the court's order. On December 18, 2007, plaintiffs themselves told Ward that the Humane Society should not follow the order; they said that they were angry and that there would be large protests at the Humane Society if it followed the court's order. Ward had assured plaintiffs that two of Lucy's caretakers, with whom she had become friendly, would attend the euthanasia. Plaintiffs were not permitted to be present during the procedure, however, because their attorney had threatened "ramifications, including lawsuits, if the Humane Society followed the Court's order."

threatening the safety of humans or domestic animals; [¶] (4) Has been specially trained to guard persons and/or property."

"Any animal which demonstrates any or all of the foregoing shall be rebuttably presumed vicious."

On December 19, 2007, a representative of the city's Animal Control Unit delivered a letter to Ward requesting that the superior court's order be carried out by euthanizing Lucy. One of the plaintiffs had told Ward, however, that the appellate court had granted a stay. Accordingly, the Humane Society did not carry out the euthanasia request that day. On December 20, however, the Animal Control Unit made another euthanasia request, this time informing the Humane Society that a stay had been denied on December 18, 2007.

On December 20, 2007, plaintiffs were notified that the euthanasia was to take place and that they would be allowed one more visit with Lucy. Based on both plaintiffs' statements that a protest had been planned, Ward arranged for the police to conduct a civil standby during the euthanasia.

At the time of their one-hour private visit, plaintiff Hedberg repeatedly requested that the Humane Society disregard the court order, but if it had to occur, then she and Young wanted to be present during the euthanasia. Ward told plaintiffs that the Humane Society had no choice but to comply with the court order and that they would not be allowed to be present during the procedure. Lucy was euthanized that day, after plaintiffs' last visit. Shortly thereafter their attorney was notified that this court had denied plaintiffs' petition for a writ of mandate and request for a stay.

Plaintiffs initiated this action in January 2009, naming the County of Santa Clara, the City's Animal Control Unit; Michelle Morgan, the Animal Control officer who had seized Lucy; and Ward. The superior court sustained the City's and Morgan's demurrer to each cause of action as barred by immunity. The court also sustained Ward's demurrer without leave to amend as to five of the nine causes of action. Plaintiffs then filed an amended complaint repleading all of the same causes of action, this time naming only the County of Santa Clara and Ward. The court struck the duplicated causes of action, again without leave to amend, leaving only four claims: (1) negligence in the care of Lucy during the impoundment; (2) negligence in Lucy's care and in "not allowing [Lucy] to see

the Plaintiffs and then killing her alone on a cold table"; (3) intentional infliction of emotional distress; and (4) conduct entitling plaintiffs to punitive damages under Civil Code section 3294.

On August 26, 2010, Ward moved for summary judgment, or alternatively, summary adjudication of these four causes of action. Ward generally asserted that none of plaintiffs' claims had merit because the dog had not been mistreated; she did not personally make the decision to euthanize Lucy or exclude plaintiffs from the procedure; and she neither acted outrageously nor intended to cause plaintiffs emotional distress. As to the claim for punitive damages, Ward stated that no such cause of action existed and that there was no factual basis for such an award in any event.

In their opposition plaintiffs asserted that Ward had a "custom and policy" of discriminating against "pit bull" dogs and their owners. They further attempted to show triable issues of fact regarding the adequacy of Lucy's care, Ward's exclusion of them from the euthanasia procedure, the decision to euthanize Lucy while a court stay was pending, and Ward's "horrific" conduct toward them. The superior court, however, rejected plaintiffs' arguments and granted summary judgment on November 19, 2010. The order was based on the court's conclusions that (1) any challenge to the lawfulness of the seizure and euthanasia was barred by collateral estoppel, (2) Ward had no duty to allow plaintiffs to attend the euthanasia; (3) it was not Ward's decision to exclude plaintiffs from the procedure, (4) there was no evidence of inadequate care of Lucy, and (5) plaintiffs would not be able to prove extreme and outrageous conduct. The court also noted the "well settled" law that a claim for punitive damages is a remedy, not a cause of action.

Plaintiffs filed their notice of appeal on December 20, 2010. Because judgment was not entered until December 27, 2010, the notice was clearly premature. Nevertheless, because a judgment was subsequently filed, we will exercise our discretion

to construe the premature notice of appeal as pertaining to the December 27, 2010 judgment. (Cal. Rules of Court, rule 8.104(d)(2).)

Discussion

1. Standard of Review

Plaintiffs manifest a lack of understanding of the scope and standard of appellate review. Under the heading "Statement of Appealability" they insert the following hedged suggestion: "Review is either de novo or abuse of discretion and either way the issue is one of law." They repeat this statement under the heading "Standard of Review" and then immediately borrow an argument from some other case, proclaiming that "[t]he ruling barring the presentation of the veterinarian bills is reviewed for an abuse of discretion," followed by a discussion of this standard in light of "the trial court's in limine ruling." That ruling was apparently made by a female trial judge, in a "tort action over the intentional or negligent shooting of a pet." In the event that plaintiffs' brief reflects attorney ignorance rather than carelessness or laziness, we recite the long-established principles governing review of this frequently used procedural device, the summary judgment.

"The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*).) Summary judgment is appropriate "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." (Code Civ. Proc., § 437c, subd. (c).) A defendant who moves for summary judgment bears the initial burden to show that the action has no merit--that is, for each cause of action one or more elements "cannot be established, or that there is a complete defense to that cause of action." (Code Civ. Proc., § 437c, subds. (o), (p)(2); *Aguilar, supra*, 25 Cal.4th at p. 850; *Truong v. Glasser* (2009) 181 Cal.App.4th 102, 109.) When the burden of proof at trial

will be on the plaintiff by a preponderance of the evidence, the moving defendant "must present evidence that would preclude a reasonable trier of fact from finding that it was more likely than not that the material fact was true [citation], or the defendant must establish that an element of the claim cannot be established, by presenting evidence that the plaintiff 'does not possess and cannot reasonably obtain, needed evidence' " to support a necessary element of the cause of action. (*Kahn v. East Side Union High School Dist.* (2003) 31 Cal.4th 990, 1003, quoting *Aguilar, supra*, 25 Cal.4th at p. 854; *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.)

If the moving defendant makes a prima facie showing that justifies a judgment in that defendant's favor, the burden then shifts to the plaintiff to make a prima facie showing that there exists a triable issue of material fact. (*Aguilar, supra*, 25 Cal.4th at p. 850.) "The plaintiff . . . may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists, but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action" (Code Civ. Proc., § 437c, subd. (p)(2).)

On appeal, we conduct a de novo review of the record to "determine with respect to each cause of action whether the defendant seeking summary judgment has conclusively negated a necessary element of the plaintiff's case, or has demonstrated that under no hypothesis is there a material issue of fact that requires the process of trial, such that the defendant is entitled to judgment as a matter of law." (*Guz v. Bechtel National, Inc., supra*, 24 Cal.4th at p. 334; *Daly v. Yessne* (2005) 131 Cal.App.4th 52, 58.) We apply the same procedure used by the trial court: We examine the pleadings to ascertain the elements of the plaintiff's claim; the moving papers to determine whether the defendant has established facts justifying judgment in its favor; and, if the defendant did meet this burden, plaintiff's opposition to decide whether he or she has demonstrated the existence of a triable issue of material fact. (*Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 84-85; *Varni Bros. Corp. v. Wine World, Inc.* (1995) 35 Cal.App.4th 880, 887.) "We

need not defer to the trial court and are not bound by the reasons for the summary judgment ruling; we review the ruling of the trial court, not its rationale." (*Knapp v. Doherty, supra*, 123 Cal.App.4th at p. 85.)

2. Plaintiffs' Complaint

Because it is the pleadings that define the issues to be resolved in a summary judgment proceeding, we first look to the allegations of plaintiffs' first amended complaint. The superior court having previously sustained Ward's demurrer without leave to amend, only four causes of action remain in this proceeding: the fifth, sixth, seventh, and ninth causes of action.

The fifth cause of action was for negligence. To prevail on this theory plaintiffs would have had to prove "each of the well-known elements of any negligence cause of action, viz., duty, breach of duty, proximate cause and damages." (*Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604, 614; *Conroy v. Regents of University of Cal.* (2009) 45 Cal.4th 1244, 1250.) The parties focused solely on the first and second elements, the nature of the duty and whether any breach occurred.

Citing Civil Code section 1834 and Food and Agricultural Code section 31107,³ plaintiffs alleged that defendants had failed to act in accordance with the standard of care in hiring and supervising employees in the care and protection of impounded animals. They further asserted that defendants had "b[r]eached their duty to 'LUCY' and her owners by seizing her without consent or legal authority, preventing her family from seeing her while impounded, and then killing her without legal cause or authority and

³ Civil Code section 1834 states: "A depositary of living animals shall provide the animals with necessary and prompt veterinary care, nutrition, and shelter, and treat them kindly. Any depositary that fails to perform these duties may be liable for civil damages as provided by law." Food and Agricultural Code section 31107 states: "No dog which is impounded pursuant to this division shall be killed or otherwise disposed of without notice to the owner, if he is known."

violated Cal.Government Code §815.2(a).⁴ Additionally, the Court ruling allegedly 'legalizing' the death of Lucy was erroneous and based on falsehoods and a mistake of law and fact."

The sixth cause of action was also for negligence: defendants had a duty to "treat 'LUCY' kindly, to provide proper and necessary medical treatment, love and affection, and not to kill her." They also "knew or should have known that not allowing 'LUCY' to see the Plaintiffs and then killing her alone on a cold table would create emotional and psychological injuries to Plaintiffs." Plaintiffs also repeated their allegation that "the Court ruling allegedly 'legalizing' the death of Lucy was erroneous and based on falsehoods and a mistake of law and fact."

In the seventh cause of action plaintiffs alleged intentional infliction of emotional distress. To recover for this tort a plaintiff must prove three elements: "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff suffered severe or extreme emotional distress; and (3) the plaintiff's injuries were actually and proximately caused by the defendant's outrageous conduct." (*Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 494.)

Plaintiffs' claim was based on defendants' having seized Lucy without consent, and by "willfully, intentionally, and with malice" preventing plaintiffs "from visiting her and being with her when she [w]as killed without consent or legal authority." Defendants "refused to allow Plaintiffs to be with her [*sic*] beloved 'LUCY' while she was being killed, [and] defendants made fun of Plaintiffs and taunted them in front of a room full of other people, including several police officers, so as to cause severe emotional distress to

⁴ This provision states: "A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative."

plaintiffs." Defendants "knew or should have known that willfully seizing, without legal justification or evidence, and then killing a family pet would panic [*sic*] and terrify persons present," and that this "outrageous" conduct "would cause the Plaintiffs severe emotional distress and mental anguish."

The ninth cause of action contained only allegations that they were entitled to punitive damages under Civil Code sections 3294 and 3340, because defendants had acted willfully and maliciously, "or by no less than by gross negligence," "or by no less than a reckless disregard" for Lucy's life, plaintiffs' property, or their "emotional tranquility." Plaintiffs once again claimed that the court's ruling authorizing Lucy's euthanasia was "erroneous and based on falsehoods and a mistake of law and fact."

3. Ward's Showing and Plaintiffs' Response

Ward's summary judgment motion was aimed at establishing that (1) Lucy had not been mistreated during her impoundment, (2) it was not Ward's decision to exclude plaintiffs from Lucy's euthanasia, and (3) Ward neither engaged in outrageous conduct nor intended to cause plaintiffs distress. Ward further contended that the claim of punitive damages lacked merit because there was no such cause of action, and there was no conduct justifying such an award in any event.

In support of the motion Ward offered the following as undisputed facts. First, she described the fifth cause of action as one based on "negligence in the treatment of Lucy, in the hiring and supervision of employees who cared for Lucy, and in euthanizing Lucy." Plaintiffs did not dispute this statement. Ward then stated, citing her declaration, that she had never injured Lucy, nor was she aware of any injury by a Humane Society employee. She noted the enrichment plan that had provided Lucy with "not only the necessities, such as food, water, exercise, and veterinary care, but toys and comfortable bedding." Plaintiffs did dispute this statement, citing only Hedberg's deposition, and asserted "no knowledge" of any enrichment plan. This response was manifestly inadequate to show a triable issue: In her deposition Hedberg only vaguely referred to

Lucy's initial confinement without exercise and could not remember who had told her about this. The court properly sustained Ward's hearsay objection to Hedberg's statement that some "unidentified" person told her about the lack of exercise.⁵ Ward also named two employees who were primarily responsible for Lucy's care under the enrichment plan and with whom Lucy had developed a friendly relationship. Plaintiffs conceded the competency of these two employees. In short, plaintiffs' unawareness of the enrichment plan fell far short of rebutting Ward's statement of fact that such a plan was developed and implemented for Lucy.

Ward's assertion that Lucy received veterinary care was supported by not only her own declaration but a declaration from the veterinarian who had treated Lucy, and who expressed the opinion that the Humane Society and Ward were not negligent in providing the dog's care. Plaintiffs' opposition to the adequacy of Lucy's veterinary care was based on no expert evidence, but only Hedberg's own observation of what she believed to be an eye infection.⁶

In response to Ward's statement that she had never injured Lucy, plaintiffs further asserted that Ward "made the decision to kill Lucy while there was a pending stay, treated her unkindly, and prevented her human parents from visiting her more than twice a week." But the evidence they cited did not supply a triable issue of material fact. First, there is no record of a stay, either in superior court or in this court. Indeed, this court twice denied plaintiffs' petition— first, without prejudice to refile it in superior court,

⁵ On appeal plaintiffs do not contest the superior court's rulings.

⁶ According to the veterinarian's records, an ocular abnormality was actually observed in September, and medication was thereafter administered.

and then, on December 20, 2007, by denying both the mandate petition and the request for a stay. Plaintiffs acknowledged the second order in their opposition.⁷

Plaintiffs did not dwell on the allegation of their pleading that the seizure by Animal Control was "without legal cause or authority," and hence this allegation will be treated as abandoned. As for visitation, plaintiffs did not deny that they received twice-weekly visits after the bite quarantine passed; they only complained that they had had to wait over a month and that they, as Lucy's "human parents," were prevented from visiting her more often. No evidence was supplied to support the inference that their visiting allowance was inadequate or even that they asked for more frequent visits.

As in the fifth cause of action, Ward's challenge to the sixth focused on the Humane Society's care of Lucy during the impoundment. She again described Lucy's enrichment plan and veterinary care. Plaintiffs' response was identical; thus, they again failed to show a triable issue of fact on the question of whether either Ward or other Humane Society employees breached the standard of care while Lucy was in their custody.

In connection with the euthanasia procedure itself, Ward offered the undisputed facts that plaintiffs did have a last visit with Lucy and that she did not personally perform the euthanasia procedure. In her declaration Ward explained that it was not her decision to exclude plaintiffs from the procedure; she was instructed to do so by the chief operating officer, in reliance on the advice of the Humane Society's legal counsel. Plaintiffs did dispute this statement, insisting that Ward had the "discretion" to allow them to be present. But the letter they cited as supporting evidence did not contradict

⁷ The court excluded from evidence the proffered declaration of plaintiffs' attorney, Christine Garcia. Garcia described a conversation on December 20, 2007 with this court's deputy clerk, who informed Garcia that the writ petition had been denied. The account of the clerk's notification and the description of Garcia's reaction were likewise excluded.

Ward's declaration; it was only a December 20, 2007 request from the Animal Control officer, Michelle Morgan, that the Humane Society immediately proceed with the euthanasia pursuant to the superior court's September 12 order.⁸ The only reference to plaintiffs in the December 20 letter was an additional request that plaintiffs be permitted "a last visit with the dog subject to conditions as set by the Humane Society Silicon Valley." Those conditions *were* set—but by the chief operating officer and in-house counsel, not by Ward. Plaintiffs have convinced neither the superior court nor this court that Ward had a *duty* to allow them to be present during the procedure, particularly in light of the threats facing the Humane Society at the time. Plaintiffs' further dispute on the ground that "Lucy was killed while a stay was pending" was unavailing; as noted earlier, there was no such stay in place.

Thus, both of the negligence claims necessarily failed, as plaintiffs were unable to present a triable issue of material fact as to any breach of duty by Ward. Accordingly, the fifth and sixth causes of action were properly disposed of by summary adjudication.

Ward addressed the claim of intentional infliction of emotional distress by restating the facts already presented, with an additional mention of plaintiffs' allegation that Ward "made fun of Plaintiffs and taunted them in front of a room full of other people." Ward noted that during discovery the only acts plaintiffs identified as taunting by her occurred on December 20, 2007. In support, she directed the court's attention to plaintiffs' answers to interrogatories, where plaintiffs stated that date as the time the taunting occurred. Ward disregarded Hedberg's reference to a prior statement by Ward

⁸ Officer Morgan had made the same request on December 19, but Ward did not authorize the euthanasia on that day, because Hedberg or someone else representing plaintiffs had told her (inaccurately) that the Court of Appeal had granted a stay. In the letter the next day requesting immediate compliance with the court's order, Officer Morgan noted "multiple motions and appeals in this matter, and subsequent orders," including the superior court's denial of a stay on December 18.

that "none of the other dogs put in [the Humane Society] by Sunnysvale made it out alive, so we should just put Lucy down ourselves." But plaintiffs did not use these statements to counter Ward's assertion that the only taunting occurred on the day of the euthanasia. Instead they referred the court to their declarations. According to Hedberg's declaration, Ward said "as she shook her head, 'None of them get out alive, not in ten years have they let one go.' " Both plaintiffs attributed similar statements to others, but only Hedberg mentioned the single statement by Ward. Plaintiffs make no effort to show the materiality of these statements.

In their answers to interrogatories, plaintiffs had characterized as taunting Ward's statement, "You knew the consequences of your actions." In her separate statement of undisputed facts Ward attributed the quoted statement as a response to Hedberg's repeated request to disregard the court order. In her declaration Ward explained what she meant by this comment: "that Lucy's impending euthanization followed from the seizure and plaintiffs' own conduct in controlling (or not controlling) Lucy which led to the seizure." Ward also stated that in neither her comments regarding plaintiffs' knowing "the consequences of their actions" nor in the exclusion of them from the euthanasia did she ever intend to cause plaintiffs emotional distress.

Plaintiffs did not dispute the assertion that Ward "responded to Hedberg's repeated request by telling her that she and Young knew the consequences of their actions." They did dispute the next statement, that "Ward repeated her response to Hedberg because Hedberg repeated her request to not proceed with the euthanasia." Their declarations, however, which they cited as evidence, did not support their opposition, as they contained no mention of the "consequences" statement. No evidence contradicted the point in Ward's declaration that what she meant by the "consequences" statement was that the euthanasia followed from the seizure because of "plaintiffs' own conduct in controlling (or not controlling) Lucy." Also uncontradicted by any admissible evidence was her explanation that she repeated the "consequences" statement "only because plaintiff

Desiree Hedberg kept repeating her requests that the Humane Society not comply with the Court's order and the City's directive to proceed, and to be present at the euthanasia if it were to occur." Plaintiffs' suggestion that Ward's "consequences" statement was "in reference to her earlier threats to Christine Garcia and to Plaintiffs"⁹ failed, as it constituted only speculation about Ward's intended meaning or motivation in repeating that plaintiffs knew the consequences of their actions.

Ward thus succeeded in showing that plaintiffs would be unable to prove intentional infliction of emotional distress. While plaintiffs were unquestionably distressed that their family dog was to be euthanized, their opposition to Ward's separate statement of undisputed facts did not create a triable issue as to the outrageousness of Ward's conduct or suggest an actionable causal link between Ward's conduct and their distress. Indeed, they were unable to cite anything suggesting a triable issue on this claim beyond speculation regarding Ward's motives, assertion of immaterial facts, and repetition of allegations in their complaint. Plaintiffs do not attempt to support their allegation that the seizure and killing of Lucy were grounds for finding intentional infliction of emotional distress. The court therefore correctly granted summary adjudication of the seventh cause of action.

In the court below as well as on appeal, plaintiffs have implicitly conceded that no independent cause of action exists for punitive damages. Instead, they urge that the claim remain in the prayer for relief. As the superior court explained in its order, however, punitive damages may be awarded only as a remedy for conduct alleged in a particular cause of action. (*McLaughlin v. National Union Fire Ins. Co.* (1994) 23 Cal.App.4th

⁹ In a declaration Garcia described an encounter in which she informed Ward that the Humane Society was breaking the law by killing Lucy while "there was a Writ still outstanding preventing execution of Lucy and that killing her would be unlawful." Garcia described Ward's reaction as angry, with "words to the effect of, 'Nobody threatens me, I don't respond well to threats, there will be consequences!'"

1132, 1163; *Hilliard v. A.H. Robins Co.* (1983) 148 Cal.App.3d 374, 391; see also *Coleman v. Gulf Ins. Group* (1986) 41 Cal.3d 782, 789, fn. 2.) Because Ward has established that plaintiffs cannot recover on any of the causes of action in their first amended complaint, punitive damages are unavailable to them, and thus the purported ninth cause of action cannot stand.

Plaintiffs renew the additional argument that "[t]here is good reason to believe that [Ward] has a custom and policy of discriminating against [pit bulls] and their owners." This argument goes nowhere: not only does the evidence they cite *not* support the assertion,¹⁰ but they fail to identify the *material* issue to which this belief is relevant.

Plaintiffs were understandably upset that they were unable to save their pet from destruction. But language referring to themselves as Lucy's "human parents" and to the dog's "brutal treatment" and "execution" cannot substitute for a reasoned legal analysis of issues raised in the litigation. To prevail in their action against Ward, they would have had to state some *viable* cause of action on which to recover damages. Ward succeeded in setting forth undisputed facts establishing plaintiffs' inability to prove either negligence or intentional infliction of emotional distress. Summary judgment was therefore properly granted.

¹⁰ In their declarations, both plaintiffs quoted Ward as saying (without attributing the statement to its specific subject, presumably pit bulls), "None of them get out alive, not in ten years have they let one go." Plaintiffs also cited Young's declaration, but that document contains no reference to any statement by Ward.

Disposition

The judgment is affirmed.

ELIA, J.

WE CONCUR:

PREMO, Acting P. J.

BAMATTRE-MANOUKIAN, J.