AMADOR SUPERIOR COURT LAW AND MOTION TENTATIVE RULINGS

Friday, March 13, 2020

TO REQUEST A HEARING ON ANY MATTER ON THIS CALENDAR, YOU MUST CALL THE COURT AT (209) 257-2692 BY 4:00 P.M. ON THE DAY PRECEDING THE HEARING. NOTICE OF THE INTENTION TO APPEAR MUST ALSO BE GIVEN TO ALL OTHER PARTIES.

IF THE CLERK IS NOT NOTIFIED OF A PARTY'S INTENTION TO APPEAR, THERE WILL BE NO HEARING AND THE TENTATIVE RULING WILL BECOME THE ORDER OF THE COURT. NO FURTHER NOTICE OF THE COURT'S RULING WILL BE PROVIDED.

15-CVC-09430 PARTHEMORE, IRA VS. DOES 1 TO 10

CIVIL MISCELLANEOUS MOTION

TENTATIVE RULING:
Plaintiff is incarcerated at California Institute for Men in Chino. As per Amador Local Rules of Court, rule 4.03, subdivision F, the tentative ruling procedures do not apply in any case in which a self-represented party in the custody of the California Department of Corrections and Rehabilitation. Plaintiff may appear telephonically for hearing; orders will be made at time of hearing.
This tentative ruling is issued by Commissioner Andrea C. Sexton. Any party who objects to the Commissioner hearing this matter must notify the court at the time of the hearing. Since no judge will be available for this law and motion calendar, if any party objects, the matter will be continued to March 27, 2020 at 10:00 a.m. in Department 2.
Plaintiff's Motion to Compel Defendant's Responses to Interrogatories & Request for Admissions and Deem all Objections Waived and all Matters in Request for Admissions be Admitted and for Sanctions is DENIED.
Upon a failure to make a timely response to interrogatories or a request for production, the propounding party may move the court for an order compelling a response. (CCP §§ 2030.290, subd. (b), 2031.300, subd. (b).) The failure to serve a timely response waives any objection to the interrogatories or demand for production, including those based upon privilege and work product doctrine. (CCP §§ 2030.290, subd. (a), 2031.300, subd. (a).) The court may only grant relief from the waiver of objections upon notice motion and upon a showing that the responding party has subsequently provided appropriate responses and the party's failure to make a timely response was based upon mistake, inadvertence, or excusable neglect. (CCP §§ 2030.290, subd. (a), 2031.300, subd. (a).)
The record before the court indicates that Plaintiff propounded Form Interrogatories, Set One and Request for Admissions, Set One by mail on November 17, 2019. Defendant claims not to have received the requests mailed on that date, but provided prompt responses when made aware of the requests at a later date.
The court shall impose a monetary sanction against any party who unsuccessfully makes or opposes a motion to compel a response to discovery, unless the court finds that the party subject to the sanction acted with substantial justification or other circumstances exist to make the imposition of sanctions unjust. (CCP §§ 2030.290, subd. (c), 2031.300, subd. (c).) In addition, the court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed. (Cal. Rules of Ct., Rule 3.1030.) The request for sanctions is denied

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18-CVC-10397 MEIDINGER, STEVE VS. SAGE, WES

MOTION FOR CONTINUANCE

TENTATIVE RULING:

The following tentative ruling is issued by Judge J. S. Hermanson:

Defendant's motion to continue trial is DENIED.

The Rules of Court articulate the policy of trial delay reduction. "To ensure prompt disposition of civil cases, the dates assigned for a trial are firm. All parties and their counsel must regard the date set for trial as certain." (CRC Rule 3.1332(a).) In making this ruling, the court is governed by the course which seems most likely to accomplish substantial justice. The court finds based on the moving papers that Defendant has not made an affirmative showing of good cause requiring the trial to be continued.

The court further notes, although not raised by either party, that no information regarding the exchange of information concerning expert trial witnesses pursuant to the Civil Discovery Act is addressed in the instant motion. The Civil Discovery Act requires experts be disclosed 50 days before trial, or 20 days after service of a demand for disclosure, whichever is closer to the trial date, unless the court on motion and showing of good cause orders an earlier or later date of exchange. (CCP § 2034.230(b).) Here, the motion to continue trial is devoid of any facts in support of the contention that Defendant's expert has even been retained, let alone disclosed to opposing counsel. If disclosure has not been performed as required under the Civil Discovery Act, Defendant may have waived his right to present expert witness evidence.

The granting or denying of a continuance is ordinarily a matter resting within the sound discretion of the trial court, and the court's determination will not be interfered with, except upon a showing of abuse of discretion. (Whalen v. Superior Court (1960) 184 Cal.App.3d 598, 601.)

Unless a hearing is requested, this tentative ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

The parties are ordered to appear personally for Mandatory Settlement Conference at 10:00 a.m. on March 13, 2020 in Department 3.

18-CVC-10754	PASSARO, NATALIA	VS.	SUTTER CREEK PRIMARY AND ELEMENTARY SCHOOL

DEMURRER - DEFENDANT'S

TENTATIVE RULING:

This tentative ruling is issued by Commissioner Andrea C. Sexton. Any party who objects to the Commissioner hearing this matter must notify the other parties and then notify the Court at (209) 257-2692, by 4:00 p.m. on the court day prior to hearing. Since no judge will be available for this law and motion calendar, if any party objects, the matter will be continued to March 27, 2020, at 10:00 a.m. in Department 2.

If there is no objection to the Commissioner, but a party wishes to present oral argument at the hearing, the party must notify the Court in the same manner as indicated above. (See Local Rule 4.03.) If you do not so notify the parties or the Court, the tentative ruling shall become the final ruling. (California Rule of Court 3.1308; Local Rule 4.03.B.)

Defendant's demurrer to the Plaintiff's Second Amended Complaint (erroneously titled Third) is OVERRULED. (CCP § 430.10(e).).

Defendants are ordered to file and serve a responsive pleading within five (5) days of the date of this ruling. (CCP §1167.3.)

REQUEST FOR JUDICIAL NOTICE

The court rules on Defendants' Request for Judicial Notice in support of demurrer to SAC, filed January 2, 2020 as follows:

1. Exhibit A – Government Claim for Damages presented to the Amador County Unified School District on behalf of Plaintiff on or about February 28, 2018;

Request to take Judicial Notice of Exhibit A is granted.

2. Exhibit B – Title 8, Section 3239 of the California Building Code

The court takes Judicial Notice of the existence of the building code, but not the contents.

3. Exhibit C – Portions of the Uniform Building Code, 1979 Edition

The court takes Judicial Notice of the existence of the UBC, but not the contents.

4. Fact #1 – Amador High School and Sutter Creek primary and Elementary School are schools owned and operated by the Amador County Unified School District.

Request to take Judicial Notice of Fact #1 is granted.

5. Fact #2 Amador High School and Sutter Creek Primary and Elementary School are directly adjacent to each other.

Request to take Judicial Notice of Fact #2 is granted.

6. Exhibit D – Official map from Amador County Geographic Information System (GIS) website of locations of Amador High School and Sutter Creek Primary and Elementary School

7. Exhibit E – Google map satellite and street view images of Amador High school and Sutter Creek Primary and Elementary School locations.

Defendants seek judicial notice under the authority of Evidence Code § 452(g) and (h), asserting the facts are common knowledge and are propositions which are not reasonably subject to dispute and capable of immediate and accurate determination.

The court takes Judicial Notice of the existence of Exhibit D and Exhibit E.

Timely filing

CCP § 430.41(a)(2) provides:

(2) The parties shall meet and confer at least five days before the date the responsive pleading is due. If the parties are not able to meet and confer at least five days prior to the date the responsive pleading is due, the demurring party shall be granted an automatic 30-day extension of time within which to file a responsive pleading, by filing and serving, on or before the date on which a demurrer would be due, a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made and explaining the reasons why the parties could not meet and confer. The 30-day extension shall commence from the date the responsive pleading was previously due, and the demurring party shall not be subject to default during the period of the extension. Any further extensions shall be obtained by court order upon a showing of good cause.

Defendant filed a Declaration in support of extension of Defendant's time to respond to the SAC and to complete meet and confer pursuant to CCP 430.41(a)(2) on the date the pleading was due, December, 12, 2019. The Declaration states that Defendant needed additional time to meet and confer to discuss the basis of the demurrer and due to the press of business in other matters and the need to research new allegations contained in the SAC. (Sherman Decl. ¶¶ 4-5)

Plaintiff's Opposition to the Declaration argues that Defendant made no actual attempt to meet and confer and therefore, did not comply with CCP 430.41(a) and should not be permitted to file a belated Demurrer to Plaintiff's Complaint. (Opp. to Decl. p.2 lines7- 8)

Defendant's declaration indicates that he needed additional time to meet and confer, and in fact the parties did meet and confer in regard to the demurrer on December 18, 2019. (Sherman Decl. in support of Demurrer ¶ 3)

The court finds that the Demurrer was timely filed.

Government Tort Claims Act

Defendant argues Plaintiff failed to comply with the Government Tort Claims Act and introduced new theories in the SAC that were not reflected in the claim (Def. P&A's p.5 lines 9-14) However, "The government tort claim need not specify each particular act or omission later proven to have caused the injury; complaint's fuller exposition of the factual basis beyond that given in the claim is not fatal, so long as the complaint is not based on an entirely different set of facts." (Stockett v. Association of California Water Agencies Joint Powers Ins. Authority (2004) 34 Cal.4th 441.)

Plaintiff's argument the SAC elaborates on the same instance and alleged negligence as to the same exact defendants is persuasive. The basic facts contained in the Government Tort Claims Act are the same in the SAC, and the causes of action of negligence and premises liability have not changed.

Demurrer
A demurrer challenges the sufficiency of a complaint based on defects that appear on its face or from matters that are subject to judicial notice. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318; CCP §430.10.) To survive a demurrer, a complaint must plead specific facts to establish every element of a cause of action. (Cantu v. Resolution Trust Corp. (1992) 4 Cal.App.4th 857, 879.) A court should treat a demurrer as admitting all material facts that are properly pled, but need not accept conclusions, contentions or deductions of law or fact. (Blank, 39 Cal.3d at 318.) A court may consider judicially noticeable facts in ruling on a demurrer. (CCP §430.30(a); Stormedia Inc., v. Superior Court (1999) 20 Cal.4th 449, 457 n.9.)
Plaintiff is required to plead factual allegations addressing the elements of each cause of action. Although pleadings are to be liberally construed, they must nonetheless set forth essential facts with reasonable precision. (Semole v. Sansoucie (1972) 28 Cal.App.3d 714.) Further, a court in examining the sufficiency of a complaint should "treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of law or fact." (Blank v. Kirwan (1985) 39 Cal.3d 311, 318.)
First Cause of Action - Negligence
A negligence cause of action includes four required elements: (1) duty; (2) breach; (3) causation; and (4) damages. (Conroy v. Regents of University of Cal. (2009) 45 Cal.4th 1244, 1250; Hayes v. County of San Diego (2013) 57 Cal.4th 622, 629.) In addition, "[e]xcept as otherwise provided by statute, a public employee is not liable for an injury caused by the act or omission of another person." (Gov. Code § 820.8.) Rather, he is only liable "for injury proximately caused by his own negligent or wrongful act or omission." (Ibid; see also Weaver v. State (1998) 63 Cal.App.4th 188, 197, 202-203.
Here, Plaintiff has plead specific facts to establish a cause of action of negligence against Mindy Newton in that Ms. Newton was Plaintiff's physical education teacher on that particular day, owing Plaintiff a duty of care. (SAC ¶ 7) Ms. Newton breached her duty when she violated the Defendant's policies and removed the children from the school campus without approval from their parents; (SAC ¶ 9) told them to "walk the bleachers" without giving them instruction (SAC ¶ 10); and left the children unsupervised while they were walking the bleachers. (SAC ¶ 13) As a result of the lack of supervision and instruction, Plaintiff, became hot and dizzy, fell down, and suffered injury. (SAC ¶ 14)
Plaintiff has plead specific facts as to Principal James Hamilton holding him responsible for the negligence of Ms. Newton under GC §§ 815.4, 820(a) and 815.2(a).
Under GC § 815.2, a public entity is liable for injury proximately caused by an act or omission of an employee of the public entity with the scope of their employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee.
Here, Plaintiff alleges Mr. Hamilton owed a duty to Plaintiff while acting in the scope of his employment to train, supervise and retain Ms. Newton. Mr. Hamilton violated that duty by permitting Ms. Newton to remove Plaintiff off campus without parental approval (SAC ¶ 9); failed to properly train Ms. Newton in proper detection of heat exhaustion and exposure (SAC ¶ 11) and how to take proper procedures when leaving pupils unsupervised. (SAC ¶ 13)
Second Cause of Action - Premises Liability/Dangerous Condition of Public Property
A public entity may be liable for injury caused by a dangerous condition of property "if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, and that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred." (Gov. Code § 835.) Plaintiff must show in addition that either "(a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or ¶ (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition." (Id., subsections (a) and (b).)
Government Code section 830 defines a dangerous condition as "a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used." "Liability under Government Code section 835 for maintaining public property in a dangerous condition depends, however, upon the existence of some defect in the property itself and the existence of a causal connection between that defect and the plaintiff's injury." (Zelig v. County of Los Angeles (2002) 27 Cal.4th 1112, 1138.)
Here, Plaintiff alleges two dangerous conditions. The first is the subject bleachers on which Plaintiff was walking up and down, which had several code violations. The SAC notes the railings of the bleachers were thirty inches (30") high in violation of both Uniform Building Code Section 1003.3.3 subject to Section 1033.3.3 and California Building Code Section 3214(c). Further the largest tread run on the stairs exceeded the smallest by more than 3/8 inch, in direct violation of the Uniform Building and California Building Codes. (SAC ¶ 31)
The second dangerous condition was Defendant's lack of supervision, in that Plaintiff was not provided with any instruction on how to walk the bleachers. The children were not told when to stop, when to take breaks if they were too tired or hot, that they could take breaks if they were take breaks if they were too tired or too hot. (SAC ¶ 33)
Defendant Amador County Unified School District was on actual and constructive notice of the dangerous condition of the bleachers due to the fact they constructed the bleachers and purposely failed to conform to the building code when creating said bleachers. (SAC ¶ 35)
Plaintiff's SAC pleads sufficient facts to establish the cause of action for dangerous condition of public property.
Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.