

Tentative Rulings

September 5, 2012

August 30, 2012, 4:00p.m.

Department Two

To request a hearing on any matter on this calendar, you must call the Court at 530/283-6305 by 12:00 noon, August 31st, 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 becomes the order of the court.

Case No. CV 11-00314 - Mia F., et al. v. Jack Ingstad, et al.

Tentative Ruling: **Sustained.** The demurrers to all causes of action of the First Amended Complaint ("FAC") are sustained, without leave to amend.

To state a cause of action under *Government Code* ("Gov. Code") section 815.6, one must allege the existence of an enactment which imposes a mandatory duty upon the defendant, which duty is designed to avoid the risk of injury actually sustained by the plaintiff. *Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 498-499. Whether such duty exists is a question of law. *Ibid.*

In their first cause of action, plaintiffs allege that portions of *Welfare and Institutions Code* ("W&I") sections 16501(a) and (a)(1) and 16501.1(a)(2), (b)(1) and (b)(3) [*sic*, presumably (b)(4)], impose mandatory duties on the defendants. FAC, paras. 26-31. These statutory provisions set forth general policies and goals, with the only discernable "duty" being the filing of a case plan under W&I section 16501.1(b). *See, e.g., County of Los Angeles v. Superior Court* (2002) 102 Cal.App.4th 627, 639 (no mandatory duty where enactment "merely recites legislative goals and policies").

Plaintiffs also allege, however, that the County filed a case plan with the court in compliance with these statutes. FAC, para. 32. Hence, the actionable conduct upon which the first cause of action is based appears to be the alleged failure of the County to include, under the case plan, alcohol and drug services that could have been made available, if Ingstad had accepted, on behalf of the County, \$500,000 in State funds to implement such programs. *Id.*, para. 34. Plaintiffs identify no enactment imposing a mandatory duty upon the defendants either to accept such funding or to apply funds to additional programs, which budgetary decisions are necessarily discretionary. *Taylor v. Buff* (1985) 172 Cal.App.3d 384, 391. To the extent the second, third and fourth causes of action, founded upon *Gov. Code* section 815.6, rely upon the same statutory enactments (*see*, FAC, paras. 48-53, 64-69, and 81-86), they suffer from the same legal frailty as the first cause of action.

The second cause of action also relies upon W&I section 319(b), which imposes a duty to report to the court on services available to facilitate the return of a child to its parents. FAC, para. 46. The third cause of action relies upon W&I section 306(b), which requires consideration of the availability of services that would eliminate the need to remove a child from a parent's custody.

FAC, para. 62. Plaintiffs do not allege, however, that the County's social workers failed to report, or to consider, services actually available; instead, they allege that the defendants failed to report, or to consider, drug and alcohol programs that could have been made available, if the County had accepted funds from the State. *Id.*, paras. 13-14, 47, 63. The statutes impose no such a duty upon the defendants.

Further, no liability can arise from an alleged breach of any duties imposed by *W&I sections 319(b)* or *306(b)* as a matter of law, because conduct during proceedings brought under *W&I sections 300 - 396* is afforded immunity under *Gov. Code section 821.6*. *Scott v. County of Los Angeles* (1994) 27 Cal.App.4th 125, 143 (prosecutorial immunity cloaks conduct under *W&I sections 300, et seq.*). Governmental immunity raises a jurisdictional question, properly considered by a court on its own motion. *See, Kemmerer v. County of Fresno* (1988) 200 Cal.App.3d 1426, 1435 (prosecutorial immunity raised by appellate panel); *see, also, Richardson-Tunnell v. School Insurance Program for Employees* (2007) 157 Cal.App.4th 1056, 1061 (prosecutorial immunity raises jurisdictional issue); *Buford v. State of California* (1980) 104 Cal.App.3d 811, 826 (issue of governmental immunity raised by appellate court on own motion); *Willen v. Boggs* (1971) 21 Cal.App.3d 520, fn.1 (trial court considered jurisdictional issue *sua sponte*).

The fourth cause of action alleges that *California Rules of Court, Rule 5.678* imposes mandatory duties upon the defendants which they failed to carry out. FAC, para. 78. This Rule imposes no duty on the defendants; instead, it sets forth findings to be made by the court in child dependency proceedings.

The fifth cause of action, for wrongful death, similarly fails to identify any duty owed by the defendants which, when breached, resulted in injury to the plaintiffs. *See, Susman v. City of Los Angeles* (1969) 269 Cal.App.2d 803, 809 (all elements of a cause of action against public entity must be alleged with specificity).

Absent a showing by the plaintiffs that the FAC can be amended to establish a valid statutory basis for their asserted claims, the demurrers shall be sustained without leave to amend.