

Tentative Rulings

Law & Motion and Family Law Calendar for April 27, 2015

April 23, 2015, 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, April 24, 2015 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.

If you do appear and want the matter reported by a court reporter in unlimited civil, family law or probate, you must contract with and provide your own court reporter. The Court does not provide an official reporter for these calendars.

Probate – 9:00 a.m.

Case No. PR15-00013 – Conservatorship of Tate

Tentative Ruling: **Appearance required.** The court has not received the investigator's report.

Case No. PR15-00012 – Estate of Patel

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. Petitioner's Petition to Administer Estate is granted. Petitioner is to prepare the Order.

Case No. PR06-6352 – Estate of Porter

Tentative Ruling: **Appearance required.**

Civil – 9:30 a.m.

Case No. CV13-00059 – Corey vs. Brown

Tentative Ruling: **Appearance required.** The court will hear argument on petitioner’s motion to augment the record.

Case No. CV14-00168 – County of Plumas vs. BCM Construction Company

Tentative Ruling: **No appearance required.** At the request of counsel, the hearing on the demurrer is taken off calendar.

Case No. CV11-00240 – John Deere Const. & Forestry Co. vs. Broad

Tentative Ruling: **Appearance required.** The court notes there is no proof of service in the file on the defendant.

Case No. CV10-00255 – Quigley vs. Aptos/LaSelva Fire Protection

Tentative Ruling: **Denied.** The motion by plaintiff, Rebecca M. Quigley (“Plaintiff”), brought pursuant to *Code of Civil Procedure section 657* for a new trial, on the grounds that there were errors of law, insufficient evidence and irregularities in the proceedings, is denied. The request for judicial notice is granted.

Waiver of Governmental Immunity

The general allegation that the Defendants¹ were immune from liability as public entities and public employees is sufficient to assert governmental immunity under *section 850.4*.² (See, Defendants’ Answer to Complaint, filed on December 22, 2010, Fifteenth Affirmative Defense; *Brumer v. City of Los Angeles* (1994) 24 Cal.App.4th 983, 988 (“these defendants are immune from liability” sufficient); accord, *Hata v. Los Angeles County Harbor/UCLA Medical Center* (1995) 31 Cal.App.4th 1791, 1805-1806 (“*Hata*”) (pleading of specific code section not required); see, *Jessen v. Mentor Corporation* (2008) 158 Cal.App.4th 1480, fn. 3 (specific code section not required for preemption defense).) Hence, there was neither a waiver of the defense nor an error of law in allowing Defendants to raise immunity at trial.³

¹ “Defendants” refers collectively to Garden Valley Fire Protection District, Jeff Barnhart, Chester Fire Protection District, Mike Jellison and Frank DelCarlo.

² All statutory references are to the *Government Code* unless otherwise noted.

³ **Error! Main Document Only.** *McMahan’s of Santa Monica v. City of Santa Monica* (1983) 146 Cal.App.3d 683, cited by Plaintiff, is thus inapposite, as the defendant therein “failed to plead and prove [or otherwise raise] the immunity” at the trial level. (*Id.*, at 689.) *McMahan’s* also conflicts with a long line of authorities, commencing before the Tort Claims Act was

Interpretation of Section 850.4

A court's primary task in statutory interpretation " . . . is to determine the Legislature's intent." (*Gates, supra*, 32 Cal.App.4th at 494. (Citations omitted.)) "[U]nambiguous statutes are ordinarily construed according to the general and accepted definitions of the words used, . . ." (*Razeto v. City of Oakland* (1979) 88 Cal.App.3d 349, 351 (" *Razeto*")), but " . . . courts will not give statutory language a literal meaning if to do so would result in absurd consequences[.]" (*In re: J.W.* (2002) 29 Cal.4th 200, 210; *accord, Razeto, supra*, at 351.) A court may not, however, " . . . use a remotely inferable contrary legislative intention to show that a different meaning should be given[.]" (*Id.*, at 353.)

There is no published opinion on the meaning or scope of the phrase "fire protection or firefighting . . . facilities" as used in *section 850.4*. However, the courts have instructed that the statute should be interpreted broadly. (*Varshock v. California Department of Forestry and Fire Protection* (2011) 194 Cal.App.4th 635, 642.) Further, *section 850.4* has been held to " . . . immunize what may be called 'operational' negligence and mischance[]" (*State v. Superior Court* (2001) 87 Cal.App.4th 1409, 1413), and its application to the condition of fire protection equipment or facilities is not limited " . . . to activities *during* firefighting." (*Valley Title Company v. San Jose Water Company* (1997) 57 Cal.App.4th 1490, 1503-1504 (Italics in original.)) " 'Section 850.4 thus provides for absolute immunity for any injury caused by firefighting personnel acting within the scope of their employment.' [Citation] ." (*Cochran v. Herzog Engraving Company* (1984) 155 Cal.App.3d 405, 413 (" *Cochran*")).

In common parlance, the term "facilities" includes " . . . something (as a hospital) that is built, installed, or established to serve a particular purpose." (*Merriam-Webster.com/dictionary/facility*; *cf., Solvang Municipal Improvement District v. Board of Supervisors* (1980) 112 Cal.App.3d 545, 557 (discussing taxes levied for "facilities to serve the general public, such as fire stations").) The parties agree that a base camp is something established to provide firefighters, summoned to fight a fire, a place to stay when not actually on the fire line; it thus falls within the literal meaning of the word "facilities," as used in *section 850.4*. Similarly, the individual Defendants, experienced firefighters who managed and controlled those facilities, were acting within the scope of their employment. Accordingly, there was no error of law in ruling that *section 850.4* bars Plaintiff's claims herein.⁴

adopted, which holds that governmental immunity (other than design "immunity" under *section 830.6*) is jurisdictional (*People v. Superior Court* (1947) 29 Cal.2d 754, 756), and thus may be raised for the first time on appeal. (*Buford v. State* (1980) 104 Cal.App.3d 811, 826; *accord, Inland Empire Health Plan v. Superior Court* (2003) 108 Cal.App.4th 588, 592; *see, also, Gates v. Superior Court* (1995) 32 Cal.App.4th 481, 509 (" *Gates*")) (summary of authorities on jurisdictional effect of governmental immunity); *see, also, Cairns v. County of Los Angeles* (1997) 62 Cal.App.4th 330, 334 (whether plaintiff adequately plead around immunity of *section 850.4* is issue of law).)

⁴ The application of the literal meaning of the language of *section 850.4* to the facts herein does not result in absurd consequences. Indeed, the courts have applied the statute to a broad spectrum of conditions created by firefighters acting within the scope of their employment. (*See, e.g.,*

Insufficiency of Evidence/Irregularity

In ruling on Defendants' motion for nonsuit, the Court accepted as true all facts set forth in Plaintiff's opening statement. However, because statutory interpretation is a "quintessential" issue of law (*Farr v. County of Nevada* (2010) 187 Cal.App.4th 669, 679-680), the introduction and/or consideration of testimony from firefighting experts on the meaning of the phrase "fire protection or firefighting facilities" would have been improper. (*San Diego Police Officers Association v. City of San Diego* (2002) 98 Cal.App.4th 779, 786 (trial court properly declined to hold evidentiary hearing on meaning of statutory language).) Accordingly, any irregularity in Defendants' responses to contention interrogatories or in their motion for summary judgment or other conduct, did not prevent Plaintiff from having a fair hearing, and thus a fair trial, on the legal issue of whether her claims are barred by governmental immunity.

Firefighter's Rule

The firefighter's rule precludes an action between public safety officers from different agencies for injuries suffered in the course of a joint response to a public safety incident. (*Calatayud v. State* (1998) 18 Cal.4th 1057, 1068-1072 ("*Calatayud*") (public policy considerations furthered by application of firefighter's rule in joint operations); *accord*, *City of Oceanside v. Superior Court* (2000) 81 Cal.App.4th 269, 276-279 ("*City of Oceanside*").)

The rule applies, even if the negligence causing injury did not occur during a public safety emergency, or occurred after the emergency necessitating the response had ended. (*Hamilton v. Martinelli & Associates Justice Consultants, Inc.* (2003) 110 Cal.App.4th 1012 (injuries to probation officer caused during training session); *Farnam v. State* (2000) 84 Cal.App.4th 1448, 1455 ("*Farnam*") (injuries sustained after emergency over).)

Under the facts established by Plaintiff's opening statement, the base camp appears to be at the outer perimeter of the parties' joint response to the Silver Fire. However, no published opinion has discussed the criteria for, or delimited the scope of, a joint response, and the application of the firefighter's rule to bar Plaintiff's claims herein would further the public policy considerations discussed in *Calatayud*, *City of Oceanside* and *Farnam*. (*See, Terry v. Garcia* (2003) 109 Cal.App.4th 245, 253 (public policy considerations require application of firefighter's rule in joint response setting).)

The Court, however, granted nonsuit solely on the grounds of *section 850.4*, and made no final determination as to whether the firefighter's rule would apply herein.

Second Tentative Ruling: Plaintiff's **Motion to Tax Costs** is continued to May 27, 2015, at 9:30a.m., in order for the court to prepare a tentative ruling that will be posted on May 21, at 4:00p.m.

Cochran, supra, 155 Cal.App.3d at 409-410 (condition arising from failure, after inspections, to require private company to keep appropriate fire suppression materials at premises); *see, also, Bettencourt v. State* (1975) 51 Cal.App.3d 892, 894 (failure to repair fence cut during firefighting and/or to notify owners).)

Case No. CV12-00214 – Rose vs. Guereque

Tentative Ruling: **Appearance required.** The court will review the payment plan with the parties.

Case No. CV12-00268 – Warner vs. Randy Hill Construction, et al.

Tentative Ruling: **Granted.** Plaintiff's Motion to Compel Responses is granted. The court notes there is no objection filed by the defendants. Defendants and their counsel of record are to pay sanctions to plaintiff in the sum of \$1,710.00 within 15 days.

Family Law – 10:30 a.m.

Case No. FL09-00192 – Davis vs. Bruns

Tentative Ruling: **Appearance required.**

Case No. FL15-00033 – Desentz vs. Crosby

Tentative Ruling: **Appearance required.** The court will set the matter for a contested hearing.

Case No. FL14-00192 – Henderson vs. DaVeiga

Tentative Ruling: **Appearance required.** The court will review the custody and visitation orders with the parties.

Case No. FL15-00048 – McFarland vs. Haley

Tentative Ruling: **Appearance required.** The court will hear the results of mediation.

Case No. FL12-00199 – Mar. of Welch

Tentative Ruling: **Appearance required.** The court notes there is no proof of service in the file on the respondent.

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. AD14-00003 and AD14-00004 – Adoption Petition of Hopper

Tentative Ruling: **Appearance required.** The court will set the matter for trial.

Case No. CV14-00168 – County of Plumas vs. BCM Construction Company

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a trial date.

Case No. CV14-00163 – Plumas Communications vs. Harvey

Tentative Ruling: **No appearance required.** The court continues this case management conference to June 22, 2015, at 2:00p.m., at the request of counsel in order to finalize the settlement.

Case No. CV15-00007 – Quothy vs. SGI Resort Properties

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a trial date.

Case No. CV14-00156 – Sebring vs. Peterson

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a trial date.

Case No. LC14-00186 – State Farm vs. Diggs Plumbing and Heating

Tentative Ruling: **No appearance required.** The court has received a notice of settlement. This matter is continued to October 14, 2015, at 1:30p.m., for receipt of a dismissal.

Case No. FS04-24933 – County of Plumas vs. Hudson

Tentative Ruling: **Appearance required.** The court will review the custody and visitation orders with the parties.

Case No. LC14-00151 – Miles vs. Pizza Factory Restaurant

Tentative Ruling: **Appearance required.** The court will discuss ADR options with the parties.

Case No. CV13-00202 – Nichols vs. Stark

Tentative Ruling: **Appearance required.** The court will discuss the status of the case with the parties.

Case No. CV13-00168 – O’Brien vs. Albrecht

Tentative Ruling: **Appearance required.** The court will set the matter for trial before a visiting judge.

Case No. CV13-00169 – Robinson vs. Genesis Systems

Tentative Ruling: **Appearance required.** The court will reset the readiness conference and trial.