

MAY 30 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEAN MARIE HOWELL,

Plaintiff - Appellee,

v.

CHRISTOPHER DAVID BOYLE and
CITY OF BEAVERTON,

Defendants - Appellants.

No. 09-36153

D.C. No. 3:08-cv-00727-KI

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Garr M. King, Senior District Judge, Presiding

Argued October 6, 2010
Submitted May 30, 2013
Portland, Oregon

Before: PAEZ and CLIFTON, Circuit Judges, and BURNS, District Judge.**

In this case, we certified two questions to the Oregon Supreme Court.

Howell v. Boyle, 673 F.3d 1054 (9th Cir. 2011). The Oregon Supreme Court

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Larry A. Burns, District Judge for the U.S. District Court for the Southern District of California, sitting by designation.

granted certification and filed an opinion answering the question it deemed dispositive on March 14, 2013. *Howell v. Boyle*, 353 Or. 359 (2013). The Oregon Supreme Court denied Plaintiff Howell’s Petition for Reconsideration on May 16, 2013, and the matter is now ripe for our decision.¹

As the Oregon Supreme Court did, we assume that Howell’s claim is protected by the “remedy clause” of Article 1, Section 10 of Oregon’s constitution. Applying the Supreme Court’s decision that a statutorily capped remedy of \$200,000 to Plaintiff Howell would be “constitutionally adequate” because it is “substantial” and does not leave her “wholly without remedy,” we REVERSE the district court’s denial of Defendants’ Rule 59(e) motion. We REMAND to the district court with instructions to (1) revise the amount of judgment to \$200,000, in accordance with the Oregon Tort Claims Act damages cap in former Oregon Revised Statutes § 30.270(1); and (2) remove Officer Boyle as a defendant and substitute the City of Beaverton pursuant to former Oregon Revised Statutes § 30.265(1).

REVERSED and REMANDED with instructions.

¹ This memorandum disposition resolves both parties’ requests for relief filed May 21, 2013.