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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

KAREN WEBER, individually and on behalf of any statutory beneficiaries
of MICHAEL WEBER, deceased, *Plaintiff/Appellant*,

v.

CITY OF KINGMAN, a municipality in the State of Arizona,
Defendant/Appellee.

No. 1 CA-CV 21-0063
FILED 5-10-2022

Appeal from the Superior Court in Mohave County
No. S8015CV201900131
The Honorable Charles W. Gurtler Jr., Judge, *Retired*

AFFIRMED

COUNSEL

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By J. Scott Halverson
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By James M. Jellison
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MEMORANDUM DECISION

Judge Brian Y. Furuya delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Michael J. Brown joined.

F U R U Y A, Judge:

¶1 Karen Weber, individually and on behalf of any statutory beneficiaries of her deceased husband, Michael Weber (“Mr. Weber”), challenges the superior court’s grant of summary judgment in favor of the City of Kingman (“the City”). For the following reasons, we affirm the judgment.

FACTS AND PROCEDURAL HISTORY

¶2 On February 10, 2018, around 8:18 p.m., the Kingman Police Department received a call reporting a possible domestic disturbance at an RV park in Kingman, Arizona. Officer Jace Reif of the Kingman police responded to the scene without waiting for a backup officer to arrive, allegedly in violation of Department policy.

¶3 Review of Officer Reif’s body camera footage provided in the record reveals the following events. *See State v. Sweeney*, 224 Ariz. 107, 111, ¶ 12 (App. 2010) (noting this court independently reviews video evidence). Officer Reif approached Mr. Weber’s trailer and yelled twice, “Police, come out with your hands up.” Officer Reif allegedly shined “very bright lights” at the trailer door. Inside the trailer, Mr. Weber yelled back, “Get out of here.” Officer Reif again commanded Mr. Weber to, “Come out with your hands up. Do it now.” Mr. Weber opened the trailer door, holding a firearm that he is alleged to have legally owned and was licensed to carry, and again yelled back, “Get out of here.” Officer Reif then commanded, “Hands up, bud.” About two seconds later and without further warning, Officer Reif fired several shots at Mr. Weber, which ultimately killed him. During the approximately 26-second interaction, from the time of Officer’s Reif approach and firing of the shots, Mr. Weber kept his firearm at his side and pointed downward.

¶4 Karen Weber (“Weber”) filed a complaint against the City under various theories, including negligence, gross negligence, and negligence per se (citing Ariz. Rev. Stat. (“A.R.S.”) § 13-410(C)(1)), negligent

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hiring/training/supervision/retention,¹ and wrongful death (based on the same negligence). Weber maintained that Officer Reif's pre-shooting conduct, separate and apart from the intentional act of shooting, gave rise to distinct negligence claims that contributed to the wrongful death of Mr. Weber. Weber contends this pre-shooting conduct created a dangerous situation and escalated the risk of harm to Mr. Weber. Such conduct purportedly included Officer Reif's: (1) failing to wait for a backup officer in response to a domestic disturbance call, violating Department policy; (2) yelling at Mr. Weber without attempting to speak calmly, establish rapport, and slow/elongate the interaction; (3) failing to announce he was a police officer; (4) shining of bright lights at the trailer door and standing in a position where Mr. Weber could not see Officer Reif; (5) failing to warn Mr. Weber of Officer Reif's intent to fire his gun; and (6) failing to take cover upon learning Mr. Weber might be carrying a firearm when he opened the trailer door. Weber did not assert any claims for intentional tort against Officer Reif or the City.

¶5 The City moved for summary judgment pursuant to Arizona Rule of Civil Procedure 56, arguing *Ryan v. Napier* ("*Ryan II*"), 245 Ariz. 54 (2018), foreclosed Weber's negligence and derivative wrongful death claims, which should have been pled solely as battery pursuant to *Ryan II*. This motion was granted. Weber unsuccessfully moved for a new trial and relief from judgment, relying on principles of concurrent causation. Weber timely appealed, and we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and -2101(A)(1), (5)(a).

DISCUSSION

¶6 We review de novo the grant of summary judgment. *Cohen v. Maricopa Cnty.*, 228 Ariz. 52, 55, ¶ 12 (App. 2011). Summary judgment is appropriate "if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a). We view the evidence in the light most favorable to the party opposing summary judgment, construing all reasonable inferences in their favor. *Cohen*, 228 Ariz. at 55, ¶ 12.

¶7 Weber argues that under principles of concurrent causation, the negligent acts and omissions by Officer Reif preceding his intentional

¹ Unable to obtain sufficient evidence to support her negligent hiring/training/supervision/retention claims against the City, Weber agreed that the superior court should grant summary judgment in the City's favor as to these claims; the court implicitly did so.

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shooting of Mr. Weber give rise to separate, actionable negligence claims for his wrongful death. *See State v. Marty*, 166 Ariz. 233, 236, n.1 (App. 1990) (explaining concurrent causation, in that “multiple possible causes,” taken together, may contribute to the ultimate, singular harm of a person). Though not squarely addressed therein, our supreme court’s decision in *Ryan II* intimates otherwise.

¶8 In *Ryan II*, a suspect (through an administrator of his estate) brought a negligence action for dog-bite injuries he suffered when a deputy intentionally released a police dog on him during a chase. 245 Ariz. at 57–58, ¶¶ 1–9. The suspect argued the deputy “negligently released” the K-9 and that use of the dog “constituted a negligent, unjustified, and excessive use of force.” *Id.* at 58, ¶ 7. However, the supreme court found that the defendant deputy and county sheriff could not be liable in negligence, where the only claim supported by the facts was “an intentional battery.” *Id.* at 62, ¶ 32. The *Ryan II* court observed that the deputy’s intentional release of the police dog on the suspect – a battery – was the “sole cause” of the suspect’s severe injuries. *Id.* at 57–62, ¶¶ 3–6, 16–22, 32. As such, plaintiff should have, but failed to, plead a claim strictly for battery, requiring judgment in the defendants’ favor on plaintiff’s negligence claim – since the “negligent use of *intentionally* inflicted force is [not] a cognizable claim.” *Id.* at 60, ¶ 21 (emphasis added) (citations omitted).

¶9 Here, the facts Weber alleged reflect a battery as contemplated under *Ryan II*. It is undisputed that Officer Reif intentionally shot Mr. Weber, leading to his death. “No semantic recasting of events can alter the fact that the shooting was the immediate cause of [Mr. Weber’s] death and, consequently, the basis of [Weber’s] claim.” *See Britton v. City of Crawford*, 282 Neb. 374, 386 (Neb. 2011).

¶10 The crux of Weber’s position is that Officer Reif “had a duty to act with due and reasonable care” (i.e., non-negligently) in his interaction with Mr. Weber and his failure to do so – separate and apart from his intentional decision to shoot Mr. Weber – constitutes negligence. But the negligent acts and omissions Weber relies on in her complaint collectively amount to questioning the “pre-shooting tactical decisions” of Officer Reif, which the supreme court in *Ryan II* seemingly rejected as a basis for negligence. *See Ryan II*, 245 Ariz. at 62, ¶ 30; *Brown v. Ransweiler*, 89 Cal. Rptr. 3d. 801, 817–821 (Cal. Ct. App. 2009). Rather, such acts and omissions give rise exclusively to a claim for battery, given that the ultimate cause of Mr. Weber’s death and the basis for damages arose from Officer Reif’s intentional decision to shoot. *See Ryan II*, 245 Ariz. at 60–62, ¶¶ 21–22, 30, 32 (disagreeing with *Brown*, 89 Cal. Rptr. 3d. at 817–821 to the extent “that

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an officer's lack of due care in deciding to use deadly force can give rise to negligence liability for the intentional shooting death of a suspect") (internal quotation marks omitted).

¶11 Further support is found in the *Britton* matter cited by our supreme court. *Ryan II*, 245 Ariz. at 61, ¶ 26. In *Britton*, the plaintiff (a representative of the deceased's estate) sued the city on common-law negligence claims. 282 Neb. at 376–79. Similar to the negligent acts and omissions alleged in the instant matter, the plaintiff in *Britton* alleged that officers failed to use appropriate “negotiation, nonviolent de-escalation [], and conflict resolution techniques” to apprehend the suspect, proximately causing the suspect's death. *Id.* at 378. The plaintiff's state-law negligence claims ultimately failed because “[w]hile other factors may have contributed to the situation which resulted in [the suspect's] death, but for the battery, there would have been no claim.” *Id.* at 386; *see also Ryan II*, 245 Ariz. at 59–60, ¶ 19 (“[I]ntentional tortious conduct will ordinarily also involve one aspect of negligent conduct, namely, that it falls below the objective standard established by law for the protection of others against unreasonable risk of harm . . . [but] [t]hat does not mean . . . that the same conduct can reasonably be determined to have been both intentionally and negligently tortious.”).

¶12 This is not to suggest that a law enforcement officer's use of force can never give rise to a negligence claim. As our supreme court makes clear, plaintiffs may certainly “base a negligence claim on conduct by [an] officer that is independent of the intentional use of physical force.” *Ryan II*, 245 Ariz. at 57, 62, ¶¶ 1, 31. For example, the *Ryan II* defendants could have been sued for negligence if the deputy had “unintentionally” dropped the police dog's leash, resulting in the injurious attack of the suspect, or if the deputy failed to “properly train the dog on when to release [its] bite [of a suspect].” *Id.* at 62–64, ¶¶ 31, 37. But viewing the evidence in the light most favorable to Weber, no facts alleged here give rise to independent, actionable negligence claims. Instead, Weber argues, as did the *Ryan* plaintiff initially in this court, that the events and decisions leading up to the intentional use of force were separable and distinct from the act employing that force, and thus, capable of constituting a separate tort. *See Ryan v. Napier* (“*Ryan I*”), 243 Ariz. 277, 282, ¶ 17 (App. 2017), vacated by *Ryan II*, 245 Ariz. 54. But our supreme court rejected the notion that “two competing versions of events” were at play in *Ryan I*. *See id.* at ¶ 18; *Ryan II*, 245 Ariz. at 62, ¶ 32. Thus, upon this record, *Ryan II*'s analysis compels our conclusion that Weber's complaint sounds in battery, where Mr. Weber's injuries stemmed from Officer Reif's intentional decision to shoot, just as the deputy's decision to release the K-9 on the suspect in *Ryan II* was part

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of a battery and not separate negligence. *Ryan II*, 245 Ariz. at 57-62, ¶¶ 3-9, 16, 21-22, 32.

¶13 Weber could still present evidence that Officer Reif’s decision to use deadly force was unjustified given the circumstances, *see* A.R.S. §§ 13-409, -410(C)-(D) (contemplating, for example, whether a peace officer made known the purpose of an arrest or detention). But such evidence, as explained in *Ryan II*, needed to be strictly presented within a battery claim. Weber’s failure to do so mandated summary judgment in favor of the City.²

CONCLUSION

¶14 For the foregoing reasons, we affirm the superior court’s grant of summary judgment in the City’s favor. We deny the City’s request for attorneys’ fees, as none of the factors listed in A.R.S. § 12-349(A) are remotely applicable here.



AMY M. WOOD • Clerk of the Court
FILED: AA

² Given the unviability of Weber’s negligence claims, her wrongful death claim based on the same conduct necessarily fails. *See McKee v. State*, 241 Ariz. 377, 380-81, ¶ 7 (App. 2016) (“Generally, a plaintiff may bring a wrongful death claim as an independent claim for damages sustained by the decedent’s survivors. However, the right to bring a wrongful death action exists only if the decedent would have been able to maintain an action for damages if death had not ensued.”) (citations and internal quotation marks omitted).