

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 3 2019

FOR THE NINTH CIRCUIT

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

LORI SHAVLIK, individually and as a
marital community; KENNETH SHALVIK,
individually and as a marital community,

Plaintiffs-Appellants,

v.

CITY OF SNOHOMISH, a Municipal
Corporation; et al.,

Defendants-Appellees.

No. 18-35455

D.C. No. 2:17-cv-00144-JCC

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
John C. Coughenour, District Judge, Presiding

Submitted August 29, 2019**
Seattle, Washington

Before: McKEOWN and BYBEE, Circuit Judges, and GAITAN,*** District Judge.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Fernando J. Gaitan, Jr., United States District Judge for the Western District of Missouri, sitting by designation.

Lori Shavlik and Kenneth Shavlik appeal the district court’s entry of summary judgment in favor of the City of Snohomish, the Snohomish County Fire Protection District No. 4, and Snohomish County. Because the parties are familiar with the facts, we do not recite them here. We have jurisdiction under 28 U.S.C. § 1291, and we review de novo the district court’s grant of summary judgment and for abuse of discretion its sua sponte entry of summary judgment. *See Bravo v. City of Santa Maria*, 665 F.3d 1076, 1083 (9th Cir. 2011); *Arce v. Douglas*, 793 F.3d 968, 976 (9th Cir. 2015). We affirm.

None of Kenneth’s claims are at issue on appeal. He stipulated to dismissal of his state-law tort claims and does not appeal the district court’s ruling that he cannot base his claim under 42 U.S.C. § 1983 on Lori’s rights.

Summary judgment was appropriate as to Lori’s claims. She concedes that her defamation claims fall outside the statute of limitations. The malicious prosecution claim fails because the limited non-speculative evidence does not suggest that “hostility or ill will” motivated the prosecution. *Peasley v. Puget Sound Tug & Barge Co.*, 125 P.2d 681, 689 (Wash. 1942). As to her related claim for outrage, Lori presented inadequate evidence to show that the conduct was “outrageous and extreme.” *Reid v. Pierce County*, 961 P.2d 333, 337 (Wash. 1998) (conduct must be “beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community” (citation,

emphasis, and internal quotation marks omitted)). Finally, Lori did not identify or present evidence of an official custom or policy that could support her § 1983 claim. *See King v. County of Los Angeles*, 885 F.3d 548, 558 (9th Cir. 2018).

The district court permissibly entered summary judgment sua sponte in favor of the County. The Shavliks did not receive notice and time to respond, but the relevant issues were fully and fairly ventilated. *See Arce*, 793 F.3d at 976.

We deny as moot the appellees' request to strike the opening brief and dismiss the appeal for failure to comply with the Circuit Rules. We grant the Skavliks' motion to excuse their late-filed reply brief (Dkt. 35).

AFFIRMED.