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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Estate of MARK ANTHONY SCOTT,
deceased, by and through MARY
SCOTT, TINA SCOTT, REGINA
ALLEN, and KIM NZIBO as
Successors in Interest; MARY
SCOTT, Individually; TINA
SCOTT, Individually; REGINA
ALLEN, Individually; and KIM
NZIBO, Individually,

Plaintiffs,

v.

COUNTY OF SACRAMENTO;
Sacramento County Sheriff's
Department Sheriff SCOTT
JONES; Sacramento County Main
Jail Commander Captain
ROSEANNE RICHAEAL; Sacramento
County Sheriff's Department
Chief of Correctional and
Court Services JAMIE LEWIS;
Sacramento County Main Jail
Chief of Correctional Health
Services AARON BREWER;
Sacramento County Jail
Systems Medical Director
ROBERT PADILLA, MD;
Sacramento County Main Jail
Director of Nursing with
Correctional Health Services
PAM HARRIS; Sacramento County
Main Jail Watch Commander,
Lieutenant GEORGE McKEEL
(#11); Sacramento County
Sheriff's Department JAMES
TIDWELL (#897); Sacramento
County Sheriff's Department
Deputy DAVID PANTOJA (#2615);
Sacramento County Sheriff's

No. 2-13-cv-00024-GEB-KJN

**ORDER GRANTING DEFENDANT
SKERRITT'S PARTIAL MOTION FOR
SUMMARY JUDGMENT**

1 Department Deputy KEN BECKER
2 (#931); Sacramento County
3 Sheriff's Department Deputy
4 MICHAEL MATRANGA (#572);
5 Sacramento County Sheriff's
6 Department Sergeant MICHAEL
7 XIONG (#71); Sacramento
8 County Sheriff's Department
9 Sergeant SCOTT HUFFORD (#41);
10 CARYL SKERRITT, RN, and DOES
11 1 through 40, inclusive,

12 Defendants.

13 Defendant Caryl Skerritt ("Skerritt") moves for
14 partial summary judgment on two of the three claims alleged
15 against her in Plaintiffs First Amended Complaint ("FAC");
16 specifically, federal claim one in which Plaintiff alleges
17 Skerritt was deliberately indifferent to decedent Mark Scott's
18 serious medical need, and the portion of claim five in which
19 Plaintiffs allege that Skerritt is liable under California
20 Government Code Section 845.6 for her failure to take reasonable
21 action to summon medical care for Mark Scott.

22 Plaintiffs allege in the FAC that "[t]his action stems
23 Mark Scott's death at the Sacramental County Main Jail on January
24 6, 2012." (FAC ¶ 3, ECF No. 6.)

25 I. LEGAL STANDARD

26 A party seeking summary judgment bears the initial
27 burden of demonstrating the absence of a genuine issue of
28 material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323
(1986). "A fact is 'material' when, under the governing
substantive law, it could affect the outcome of the case."
Thrifty Oil Co. v. Bank of Am. Nat'l Trust & Sav. Ass'n, 322 F.3d
1039, 1046 (9th Cir. 2003) (quoting Anderson v. Liberty Lobby,

1 Inc., 477 U.S. 242, 248 (1986)).

2 If a movant satisfies its "initial burden," "the
3 nonmoving party must set forth . . . 'specific facts showing that
4 there is a genuine issue for trial.'" T.W. Elec. Serv., Inc. v.
5 Pac. Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987)
6 (quoting former Rule 56(e)). "A party asserting that a fact
7 cannot be or is genuinely disputed must support the assertion by
8 citing to particular . . . material in the record . . . or
9 showing that the materials cited do not establish the absence or
10 presence of a genuine dispute, or that an adverse party cannot
11 produce admissible evidence to support the fact." Rule 56(c)(1).
12 Summary judgment "evidence must be viewed in the light most
13 favorable to the nonmoving party, and all reasonable inferences
14 must be drawn in favor of that party." Sec. & Exch. Comm'n v.
15 Todd, 642 F.3d 1207, 1215 (9th Cir. 2011) (citing Johnson v.
16 Paradise Valley Unified Sch. Dist., 251 F.3d 1222, 1227 (9th Cir.
17 2001)).

18 Further, Local Rule 260(b) prescribes:

19 Any party opposing a motion for summary
20 judgment or summary adjudication [must]
21 reproduce the itemized facts in the [moving
22 party's] Statement of Undisputed Facts and
23 admit those facts that are undisputed and
24 deny those that are disputed, including with
25 each denial a citation to the particular...
26 document relied upon in support of that
27 denial.

28 If the nonmovant does not "specifically . . .
[controvert duly supported] facts identified in the [movant's]
statement of undisputed facts," the nonmovant "is deemed to have
admitted the validity of the facts contained in the [movant's]
statement." Beard v. Banks, 548 U.S. 521, 527 (2006). A district

1 court has "no independent duty 'to scour the record in search of
2 a genuine issue of triable fact.'" Simmons v. Navajo Cnty.,
3 Ariz., 609 F.3d 1011, 1017 (9th Cir. 2010) (quoting Keenan v.
4 Allan, 91 F.3d 1275, 1279 (9th Cir. 1996)).

5 **II. UNCONTROVERTED FACTS**

6 The following facts are either uncontroverted in the
7 summary judgment record under Local Rule 260(b), or considered
8 uncontroverted since they are undisputed.

9 Skerritt was working as a registered nurse at the
10 Sacramento County Main Jail on January 6, 2012, the date on which
11 Mark Scott died. (Pls.' Resp. & Opp'n Skerritt's SUF ("SUF") ¶ 13,
12 ECF No. 51.) While on duty that day, she received a call from a
13 Sacramento County Sheriff's Department Deputy who "told Skerritt
14 that Scott complained that he was sick and vomiting." (SUF ¶ 31.)
15 After accessing Scott's electronic medical records, Skerritt told
16 the deputy that Scott "probably should fill out a kite so he
17 could see a nurse at some point." (Id. ¶¶ 21, 23.) "Skerritt
18 understood that the kite would be picked up in ordinary course
19 that day and would be reviewed by a registered nurse for
20 placement on nurse's sick call." (Id. ¶ 24.) "Since. . .Skerritt
21 did not see anything in the chart that indicated to her that an
22 episode of vomiting was a sign of an emergent or urgent issue,
23 she advised the deputy to also tell the inmate to drink water to
24 replenish his fluids lost." (Id. ¶ 25.)

25 "Scott was sick and vomiting blood . . ." Pls.'
26 Separate Stat. Disputed Facts) ¶ 20, ECF No. 53.) The deputy did
27 not tell Skerritt that Scott's vomitus contained blood. (SUF ¶
28 37.)

1 No one at the jail contacted Skerritt again about
2 Scott's condition during her work shift. (Id. ¶ 31.) After
3 Skerritt's shift ended, a co-worker contacted her at Skerritt's
4 home to inform Skerritt that Scott had passed away. (Id. ¶ 30.)

5 III. DISCUSSION

6 A. Deliberate Indifference to Serious Medical Needs in 7 Violation of 42 U.S.C. § 1983

8 Skerritt seeks summary judgment on Plaintiffs'
9 deliberate indifference claim, arguing that no reasonable jury
10 could find she had knowledge Scott was suffering from a "serious
11 medical need," since "an episode of vomiting, standing alone,
12 does not call for nor require emergent care or urgent
13 assessment." (Mot. & Mem. P&A ISO Def.'s Mot. Partial Summ. J.
14 ("Mot.") 5:7-10, ECF No. 46-1.)

15 Plaintiffs counter it is disputed whether Skerritt was
16 "deliberately indifferent [to Scott's medical needs, since she
17 did] not . . . obtain information from . . . Scott [before]
18 choosing not to see him," notwithstanding that "[b]lood [was] in
19 [Scott's] vomit" and the blood was "an indicator of a serious
20 emergent medical need" (Pls.' Mem. P&A Opp'n Def. Mot.
21 Partial Summ. J. ("Opp'n") 7:2-7, ECF No. 49.)

22 The elements of the deliberate indifference claim at
23 issue require Plaintiffs to prove that Scott had a (1) serious
24 medical need and (2) that Skerritt's response to that need was
25 deliberately indifferent. Jett v. Penner, 439 F.3d 1091, 1096
26 (9th Cir. 2006). A medical need is "serious" when "failure to
27 treat it will result in 'significant injury or the unnecessary
28 and wanton infliction of pain.'" Peralta v. Dillard, 744 F.3d

1 1076, 1081 (9th Cir. 2014.)

2 To act with deliberate indifference, “the [medical
3 provider] must both be aware of facts from which the inference
4 could be drawn that a substantial risk of serious harm exists,
5 and... draw the inference.” Farmer v. Brennan, 511 U.S. 825, 835
6 (1994). Deliberate indifference “requires more than ordinary lack
7 of due care for [a] prisoner’s interest[] and safety.” Id. “A
8 prison [medical provider] is deliberately indifferent . . . [to
9 an inmate’s serious medical condition] only if the [provider]
10 knows of and disregards an excessive risk to inmate health and
11 safety.’” Colwell v. Bannister, 763 F.3d 1060, 1066 (quoting
12 Toguchi v. Chang, 391 F.3d 1051, 1057 (9th Cir. 2004)).

13 Here, the uncontroverted facts do not show that
14 Skerritt was aware of the serious medical condition Scott had,
15 and therefore, she “did not provide constitutionally deficient
16 treatment by failing to address a [condition] of which she was
17 not aware.” Rouster v. Cnty. of Saginaw, 749 F.3d 437, 449 (6th
18 Cir. 2014) (stating even if the “best medical practices” were not
19 followed, this “is not necessarily evidence of deliberate
20 indifference if [the medical provider] did not know that [the
21 inmate’s] stomach [problem] was caused by a serious ailment.”).

22 Therefore, Skerritt’s summary judgment motion on
23 Plaintiffs’ deliberate indifference claim is granted.

24 **B. Failure to Summon Medical Care**

25 Skerritt also seeks summary judgment on Plaintiffs’
26 claim that she is liable for her failure to summon medical care
27 for Scott, arguing the record is devoid of evidence from which a
28 reasonable inference could be drawn that she knew or had reason

1 to know Scott suffered from an "obvious and serious" medical
2 condition. (Mot. 6:20-26.)

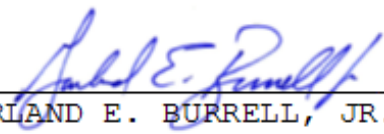
3 Under California Government Code Section 845.6, "a
4 public employee is liable for injury proximately caused by the
5 failure of the employee to furnish or obtain medical care for a
6 prisoner in h[er] custody . . . if the employee knows or has
7 reason to know that the prisoner is in need of immediate medical
8 care and [s]he fails to take reasonable action to summon such
9 medical care." "Liability under section 845.6 is limited to
10 serious and obvious medical conditions requiring immediate care."
11 Watson v. State, 21 Cal. App. 4th 836, 841 (1993).

12 Plaintiffs counter the summary judgment motion arguing
13 that Skerritt "knew that blood in vomit . . . is frequently an
14 indicator of a serious emergent medical need." (Opp'n 15:11-18.)
15 Whether or not Skerritt knows that blood in vomit could be an
16 indicator of a serious and obvious medical condition is not the
17 issue. The uncontroverted facts demonstrate Skerritt had no
18 knowledge Scott was vomiting blood. (SUF ¶ 37.) Therefore,
19 Skerritt is entitled to summary judgment.

20 **IV. CONCLUSION**

21 For the reasons stated above, Skerritt's motion for
22 partial summary judgment in GRANTED.

23 Dated: November 13, 2014

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26 _____
27 GARIAND E. BURRELL, JR.
28 Senior United States District Judge