

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Mar 02, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ROY D. CHEESMAN,

Plaintiff,

v.

DETECTIVE JENNIFER MARGHEIM,

CORPORAL JASON BRUNK, and

OFFICER LUCAS ANDERSON,

Defendants.

No. 1:18-CV-03017-SAB

RUTH ANNE CONDE CHEESMAN,

Plaintiff,

v.

DETECTIVE JENNIFER MARGHEIM,

JIM WEED,

Defendants.

**ORDER GRANTING  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

Before the Court are Defendants' Motion for Summary Judgment, ECF No. 47; Plaintiffs' Motion Demand Right to a Jury Trial, ECF No. 57; Plaintiffs' Motion to Strike, ECF No. 59; and Plaintiffs' Pleading for Court Permission to Respond Defendants' Reply in Support of Summary Judgment, ECF No. 61. A hearing on the motions was held on February 19, 2020. Plaintiffs represented themselves at the hearing and Defendants were represented by Kirk A. Ehliis.

Plaintiffs are suing police officers of the Ellensburg Police Department who had various interactions with them. Most of their claims are directed at

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT ~ 1**

1 Detective Jennifer Margheim with respect to her investigation into allegations  
2 surrounding Plaintiff Roy Cheesman’s alleged abuse of his children.

### 3 **Motion Standard**

4 Summary judgment is appropriate “if the movant shows that there is no  
5 genuine dispute as to any material fact and the movant is entitled to judgment as  
6 a matter of law.” Fed. R. Civ. P. 56(a). There is no genuine issue for trial unless  
7 there is sufficient evidence favoring the non-moving party for a jury to return a  
8 verdict in that party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250  
9 (1986). The moving party has the initial burden of showing the absence of a  
10 genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).  
11 If the moving party meets its initial burden, the non-moving party must go  
12 beyond the pleadings and “set forth specific facts showing that there is a genuine  
13 issue for trial.” *Anderson*, 477 U.S. at 248.

14 In addition to showing there are no questions of material fact, the moving  
15 party must also show it is entitled to judgment as a matter of law. *Smith v. Univ.*  
16 *of Wash. Law Sch.*, 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party is  
17 entitled to judgment as a matter of law when the non-moving party fails to make  
18 a sufficient showing on an essential element of a claim on which the non-moving  
19 party has the burden of proof. *Celotex*, 477 U.S. at 323. The non-moving party  
20 cannot rely on conclusory allegations alone to create an issue of material fact.  
21 *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993).

22 When considering a motion for summary judgment, a court may neither  
23 weigh the evidence nor assess credibility; instead, “the evidence of the non-  
24 movant is to be believed, and all justifiable inferences are to be drawn in his  
25 favor.” *Anderson*, 477 U.S. at 255.

### 26 **Qualified Immunity**

27 Qualified immunity protects government officials “from liability for civil  
28 damages insofar as their conduct does not violate clearly established statutory or

1 constitutional rights of which a reasonable person would have known.” *Pearson*  
2 *v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S.  
3 800, 818 (1982)). “Qualified immunity balances two important interests—the  
4 need to hold public officials accountable when they exercise power irresponsibly  
5 and the need to shield officials from harassment, distraction, and liability when  
6 they perform their duties reasonably. The protection of qualified immunity  
7 applies regardless of whether the government official’s error is a mistake of law,  
8 a mistake of fact, or a mistake based on mixed questions of law and fact.” *Id.*  
9 (citation omitted).

10 Where the defense of qualified immunity is at issue, the Court applies a  
11 two-part inquiry to 42 U.S.C. § 1983 claims. *Burke v. Cnty. of Alameda*, 586 F.3d  
12 725, 731 (2009). The Court asks whether the defendants’ actions violated the  
13 Constitution, and whether the right violated was clearly established. *Id.* Courts  
14 may exercise their discretion in deciding which of the two prongs of the qualified  
15 immunity analysis should be addressed first in light of the circumstances of the  
16 particular case at hand. *Pearson*, 555 U.S. at 236.

17 Under the qualified immunity analysis, a “clearly established right” is one  
18 that is sufficiently clear that every reasonable officer would have understood that  
19 what she is doing violates the right. *Mullenix v. Luna*, \_\_ U.S. \_\_, 136 S.Ct. 305,  
20 307 (2015). “To determine whether a right was clearly established, a court turns  
21 to Supreme Court and Ninth Circuit law existing at the time of the alleged act.”  
22 *See Cmty. House, Inc. v. City of Boise, Idaho*, 623 F.3d 945, 967 (9th Cir. 2010).  
23 It is not necessarily that a case is directly on point, but “existing precedent must  
24 have placed the statutory or constitutional question beyond debate.” *Id.* (citing  
25 *Ashcroft v. Al-Kidd*, 563 U.S. 731, 741 (2011)). Simply put, “qualified immunity  
26 protects ‘all but the plainly incompetent or those who knowingly violate the  
27 law.’” *Id.* (quotation omitted).

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1 **State Law Immunity**

2 State employees enjoy qualified statutory immunity for reporting child  
3 abuse:

4 (1)(a) Except as provided in (b) of this subsection, any person  
5 participating in good faith in the making of a report pursuant to this  
6 chapter or testifying as to alleged child abuse or neglect in a judicial  
7 proceeding shall in so doing be immune from any liability arising  
8 out of such reporting or testifying under any law of this state or its  
9 political subdivisions.

10 Wash. Rev. Code § 26.44.060(1)(a).

11 The burden is on the employee to prove that she acted in good faith under  
12 RCW 26.44.060 in reporting the abuse. *Dunning v. Pacerelli*, 63 Wash.App. 232,  
13 240 (1991). An officer enjoys qualified common law immunity for investigating  
14 child abuse. *Babcock v State*, 116 Wash.2d 596, 618 (1991) To receive this  
15 qualified immunity, the officer must (1) carry out a statutory duty, (2) according  
16 to procedures dictated by statute or superiors, and (3) act reasonably. *Id.*

17 **Facts**

18 On September 25, 2015, Defendant Jason Brunk was dispatched to The  
19 Green Shelf in Ellensburg, Washington. The owner of the store spoke with  
20 Officer Brunk. She explained that Mr. Cheesman had come into the store,  
21 became upset that her products were so expensive and began yelling at  
22 employees and customers. He also threw products from the shelf. The owner  
23 asked Officer Brunk to trespass Mr. Cheesman from the store. Officer Self, who  
24 is not a defendant in this action, went to the Cheesman residence and told Mr.  
25 Cheesman that he was trespassed from the Green Shelf and if he returned to the  
26 store, he could be arrested.

27 On November 19, 2016, Defendant Lucas Anderson was dispatched to the  
28 Cheesman residence in response to a report from Mr. Cheesman’s neighbor,  
29 Keven Burke, that Mr. Cheesman was taking down his fence. Officer Anderson  
30 spoke to the neighbor and Mr. Cheesman. Because the ownership of the fence

1 was unclear, he concluded this was a civil matter and Officer Anderson left the  
2 premise.

3         On December 7, 2016, Officer Anderson was against dispatched to the  
4 Cheesman residence. This time, Mr. Cheesman called to complain that his  
5 neighbor, Michael Perisho, who was shooting birds. He had come out of his front  
6 door holding an air rifle, although Mr. Cheesman said that Mr. Perisho never  
7 pointed the air rifle at him or his house. Mr. Cheesman showed Mr. Anderson  
8 several locations on his outer wall where he stated Mr. Perisho had shot the  
9 Cheesman house with his air rifle. Officer Anderson looked at the damage but did  
10 not think it was caused by an air rifle. Rather, it looked like damage from a larger  
11 blunt style object.

12         In speaking with Mr. Perisho, Officer Anderson learned that Mr. Perisho  
13 was sneaking into his backyard so he could shoot a woodpecker that had been  
14 damaging his house. Mr. Perisho explained that he does not shoot random birds;  
15 rather he just scares birds that are damaging his house. Officer Anderson  
16 concluded that Mr. Perisho's conduct was not criminal activity and he closed the  
17 case.

18         On the same day, Plaintiffs' daughter, L.C., who was five at the time, went  
19 to school. She had been absent the day before. At some point in the morning, her  
20 teacher, Tia Ross, noticed some puffiness around her eye and some slight  
21 bruising on the outer edge. She asked L.C. what happened, and L.C. explained  
22 that she fell asleep in the chair and somehow hit the chair. Ms. Ross let it pass.  
23 Later that afternoon, Ms. Ross asked her again what happened. At that point, L.C.  
24 said, "my Dad hit me and hit my sister...two times and then he felt bad, so he put  
25 medicine on my eye." Ms. Ross reported this conversation to the school  
26 counselor.

27         The school counsel then told the principal, John Graf, who told the  
28 counselor to call Child Protective Services (CPS). CPS indicated the school

1 needed to decide whether to call law enforcement, given the previous interactions  
2 with Plaintiff Roy Cheesman.<sup>1</sup> Mr. Graf eventually called the school resource  
3 officer. Mr. Graf also took three pictures of L.C.’s face. In the process he asked  
4 L.C., “Oh, Sweetie, what happened to your eye?” She immediately replied, “My  
5 dad got angry and hit me.” She also mentioned that her big sister had gotten into  
6 trouble because she had gotten L.C. some ice. She indicated her dad smacked her  
7 big sister for getting the ice. School officials let L.C.’s father, Plaintiff Roy  
8 Cheesman, take her daughter home after school.

9       The next day, on December 8, 2018, Detective Margheim received an  
10 intake from Child Protective Services (CPS) regarding Plaintiffs’ daughter, L.C.  
11 The intake form relayed that Nancy Wilbanks was concerned about L.C. because  
12 L.C. had been absent from school the prior day and when she returned, she had a  
13 bruised right eye that was swollen and purple in color. Ms. Wilbanks said that  
14 L.C. had stated that her dad, Plaintiff Roy Cheesman, hit her.

15       Detective Margheim went to Lincoln Elementary School and met with  
16 L.C. She immediately noticed bruising in and around her eye. She took four  
17 photographs of L.C.’s right eye. CPS Investigator Tabitha Snyder was also  
18 present. During the interview, L.C. gave conflicting statements about what  
19 happened. At first, she stated she was watching TV, flipped the chair, fell asleep  
20 and “bumped herself.” In response to a follow-up question, she responded that  
21 her dad hit her and her sister, V.C.

22       Officer Ryan Shull assisted Detective Margheim with the CPS referral. On  
23 the same day, he interviewed L.C.’s siblings, V.C. and I.C., at Ellensburg High  
24 School. He first spoke with V.C., who did not want the conversation recorded.  
25 She stated that she did not witness the incident regarding L.C.’s eye, but she  
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27 <sup>1</sup> Defendants indicate they knew that Plaintiff Roy Cheesman had a history of  
28 yelling at staff and was quick to escalate conflict.

1 heard her parents talking about L.C. hitting her eye on the dining room table. She  
2 did tell Officer Shull that she was fearful of her father because he “gets upset a  
3 lot.” She stated that when he gets angry, he hits her, her siblings and her mother.  
4 She said that he had hit her in the past, including the previous evening. She  
5 explained that she gets hit multiple times per week. She said she was scared to  
6 tell Officer Shull more because she might get hit by her dad for doing so.

7         Officer Shull then spoke with I.C. He also said that he did not witness the  
8 incident regarding L.C.’s eye but heard that she hit her head on the dining room  
9 table. He told Officer Shull that he and his father get into frequent fights and his  
10 dad has a history of hitting him. Because of this, his older brother moved out of  
11 the family home. He shared that his dad had hit him two or three weeks prior. He  
12 said that he saw his dad hit V.C. four to six years ago, and he never seen him hit  
13 L.C., although he stated that his dad is often angry at them. He shared that he  
14 does not feel safe around his father.

15         Detective Margheim called Defendant Jim Weed and asked him about  
16 placing Plaintiffs’ minor children in protective custody. She relayed what she had  
17 learned from interviewing the children. Mr. Weed agreed that the children should  
18 be placed in protective custody. Subsequently, he called the Cheesman residence  
19 and spoke with Mr. Cheesman. He informed him that he would be arrested if he  
20 presented himself at Lincoln Elementary School to pick up L.C.

21         Detective Margheim took all three of Plaintiffs’ children into protective  
22 custody and signed them over to CPS Investigator Snyder.

23         John Graf, Lincoln Elementary School principal, asked the Ellensburg  
24 Police Department to trespass Mr. Cheesman from school grounds. Officer  
25 Anderson was dispatched to the school and Mr. Graf explained that Mr.  
26 Cheesman had called him about Mr. Graf’s taking L.C.’s photograph and accused  
27 him of doing so for sexual purposes. He stated he feared Mr. Cheesman would  
28 attempt to enter school premises in response to Mr. Cheesman’s kids going into

1 protective custody. Officer Anderson called Mr. Cheesman and explained the  
2 nature of the trespass notice. Mr. Cheesman said that he understood.

3 Detective Margheim also referred the matter to the Kittitas County  
4 Prosecutor. Kittitas County Superior Court found that probable cause existed  
5 and issued a summons to Mr. Cheesman. The criminal case filed against Mr.  
6 Cheesman was dismissed on December 11, 2017. The dependency petition was  
7 also ultimately dismissed.

## 8 Analysis

### 9 1. Claims against Defendant Jason Brunk

10 Summary judgment is appropriate on any claims asserted against  
11 Defendant Brunk. Plaintiffs have not presented any facts that Officer Brunk  
12 violated their constitutional rights.

### 13 2. Claims against Defendant Lucas Anderson

14 Summary judgment is appropriate on any claims asserted against  
15 Defendant Lucas Anderson. Plaintiffs have not presented any facts that Officer  
16 Anderson violated their constitutional rights.

### 17 3. Claims against Defendant Jim Weed

18 In her Complaint, Plaintiff Ruth Ann Conde Cheesman asserts that  
19 Defendant Jim Weed violated Plaintiff's constitutional rights to bring and get a  
20 second opinion of medical examination of L.C. She also complained that  
21 Defendant Weed allowed CPS to bring L.C. to the emergency doctor. Finally, she  
22 alleges that Defendant Weed made a verbal threat that informed Mr. Cheesman  
23 that if the child will be picked up from Lincoln Elementary School, he would be  
24 arrested.

25 According to Mr. Weed's declarations, the only thing he did was confer  
26 with Defendant Margheim and call Mr. Cheesman to trespass him from the  
27 School.

28 //



1 Plaintiffs have not alleged facts that establish that Defendant Jim Weed  
2 violated their constitutional rights. Moreover, even if he violated their  
3 constitutional rights, those rights are not clearly established. It is not clearly  
4 established that a parent has a constitutional right to obtain a second medical  
5 examination, nor is it clearly established that Defendant Week should have  
6 prevented CPS from taking their children for a medical examination. Finally, it is  
7 not clearly established that calling a parent to inform them that they would be  
8 arrested if they came to the school would violate the parents' constitutional  
9 rights. As such, Defendant Jim Weed is entitled to qualified immunity on the  
10 claims asserted against him by Plaintiffs.

#### 11 **4. Claims against Defendant Jennifer Margheim**

12 Plaintiffs are alleging that Defendant Margheim violated their  
13 constitutional rights and are asserting various state law claims against Defendant  
14 Margheim.

##### 15 **a. Fourth Amendment Unreasonable Seizure**

16 Plaintiffs alleged Defendant Margheim violated their Fourth Amendment  
17 rights against unreasonable seizure.

18 It is undisputed that Defendant Margheim interviewed L.C. outside the  
19 present of her parents. While an argument could be made that L.C. has Fourth  
20 Amendment rights to be free from interrogations at school by police officers, her  
21 parents do not. Moreover, even if Plaintiffs were able to convince the Court that  
22 they have a Fourth Amendment right with respect to their child's interrogation at  
23 school, that right is not clearly established under Supreme Court and Ninth  
24 Circuit law existing at the time of the alleged act. *See Rabinovitz v. City of Los*  
25 *Angeles*, 287 F.Supp.3d 933, 947 (9th Cir. 2018) (reviewing caselaw and  
26 determining that "law enforcement's authority to detain and interview—in a  
27 private area on a school campus—a minor who is a suspected victim of child  
28 abuse, without a warrant or court order or presence of exigent circumstances, is

1 undecided.”). As such, Defendant Margheim is entitled to qualified immunity on  
2 this claim.

3 **b. Substantive Due Process – Decision to Take Children into**  
4 **Protective Custody**

5 Plaintiffs allege that Defendant Margheim violated their substantive due  
6 process rights by taking the children into protective custody

7 Parents and children have a well-elaborated constitutional right to live  
8 together without governmental interference. *Wallis v. Spencer*, 202 F.3d 1126,  
9 1136 (9th Cir. 2000). “That right is an essential liberty interest protected by the  
10 Fourteenth Amendment’s guarantee that parents and children will not be  
11 separated by the state without due process of law except in an emergency.” *Id.*

12 “Officials may remove a child from the custody of its parent without prior  
13 judicial authorization only if the information they possess at the time of the  
14 seizure is such as provides reasonable cause to believe that the child is in  
15 imminent danger of serious bodily injury and that the scope of the intrusion is  
16 reasonably necessary to avert that specific injury.” *Id.* “Serious allegations of  
17 abuse that have been investigated and corroborated usually give rise to a  
18 ‘reasonable inference of imminent danger sufficient to justify taking children into  
19 temporary custody’ if they might again be beaten or molested during the time it  
20 would take to get a warrant.” *Rogers v. Cnty of San Joaquin*, 487 F.3d 1288,  
21 1294–95 (9th Cir. 2007).

22 A reasonable jury would not find that Defendant Margheim violated  
23 Plaintiffs’ due process rights. On the one hand, the school officials permitted L.C.  
24 to return to the home on December 7, 2016, and when she returned to school the  
25 next day, there was no reports of additional bruising that would evidence further  
26 abuse, suggesting that L.C. may not have been in imminent danger of serious  
27 bodily injury. On the other hand, on December 8, 2016, Office Shull learned  
28 from V.C. that her father had hit her the previous night. ECF No. 53. This is

1 direct evidence that if the children were returned to the home, they were in  
2 imminent danger of serious bodily injury at the hands of Plaintiff Roy Cheesman.  
3 A reasonable jury could only come to one conclusion, namely, that there was  
4 imminent danger of serious bodily injury and removing the children from the  
5 home was reasonably necessary. As such, summary judgment on this claim is  
6 appropriate.

7 **c. First Amendment**

8 Plaintiffs have not delineated the basis for their First Amendment claim,  
9 except to cite to *Doe v. Heck*, 327 F.3d 492 (7th Cir. 2003). Plaintiffs' reliance on  
10 this case is misplaced. That case held that parents who send their children to  
11 private schools manifest a subjective expectation of privacy in the premises of the  
12 school. *Id.* at 512. Case law has not identified a subjective expectation of privacy  
13 in the premises of a public school. Moreover, to the extent that parents have  
14 reasonable expectation of privacy that their children's picture will not be taken at  
15 school without their consent, such a right was not clearly established at the time  
16 Defendant Margheim took L.C.'s picture. As such, Defendant Margheim is  
17 entitled to qualified immunity on Plaintiffs' First Amendment claims.

18 **d. False Accusations**

19 Plaintiffs argue Defendant Margheim made false accusations against  
20 Plaintiff Roy Cheesman. At best, Plaintiffs have provided self-serving denials of  
21 what L.C. told Defendant Margheim. It is undisputed that Plaintiffs were not  
22 present during the interview. The transcript reveals that L.C. gave conflicting  
23 accounts of how she received the black eye. Also, it is undisputed that L.C. had a  
24 black eye and the only question was how she got it. It was reasonable for  
25 Defendant Margheim to rely on the statements made by L.C., V.C. and I.C. to  
26 conclude that it was probable that Plaintiff Roy Cheesman had hit L.C. hard  
27 enough to give her a black eye.

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1                   **e. Negligent Investigation**

2           Plaintiffs allege that Defendant Margheim conducted a negligent  
3 investigation into how L.C. obtained her black eye. Washington law imposes a  
4 duty to investigate child abuse in limited circumstances. *Rodriguez v. Perez*, 99  
5 Wash. App. 439, 443 (2000); *see also* Wash. Rev. Code § 26.44.050. “By  
6 specifically including parents, custodians, and guardians of children ‘within the  
7 class of persons who are foreseeably harmed by a negligent investigation into  
8 allegations of child abuse[,]’ the Legislature has recognized a duty to the parent  
9 as well as the child in conducting child abuse investigations.” *Id.* (citation  
10 omitted). The *Rodriguez* court concluded that parents could bring a negligent  
11 investigation claim against law enforcement. *Id.* at 449 (“Holding law  
12 enforcement agencies to a standard of negligence in child abuse investigations  
13 should not have the effect of chilling those investigations. Rather, such a standard  
14 will encourage careful, thorough investigations, which support the public policy  
15 of protecting children from child abuse while at the same time preventing  
16 unwarranted interference in the parent-child relationship.”).

17           Here, a reasonable jury would not find that Defendant Margheim acted  
18 negligently in investigating whether Plaintiffs’ children were being abused by  
19 Mr. Cheesman. She took statements from three school officials, interviewed the  
20 victim herself and recorded the interview, observed the injury and asked for  
21 assistance from Officer Shull, who interviewed the older high school age  
22 children. She then sought out a second opinion from Defendant Jim Weed. To the  
23 extent she was negligent in interviewing L.C. without her mother present, she is  
24 entitled to immunity. She has established that she was carrying out her statutory  
25 duties, following the procedures dictated to her by her superiors, was acting in  
26 good faith and acted reasonably.

27           As such, summary judgment on this claim is appropriate.

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1                   **f. Intentional Infliction of Emotional Distress**

2           Plaintiff alleges that Defendant Margheim committed the tort of Intentional  
3 Intentional Infliction of Emotional Distress. To state a claim under Washington law for  
4 Intentional Infliction of Emotional Distress, the plaintiff must show that the  
5 emotional distress was inflicted intentionally or recklessly; mere negligence is  
6 insufficient. *Waller v. State*, 64 Wash. App. 318, 336 (1992). Second, the  
7 defendant’s conduct must be “outrageous and extreme.” *Id.* Tortious or criminal  
8 intent, or malice will not suffice. Liability arises only when the conduct is:

9           “so outrageous in character, and so extreme in degree, as to go beyond  
10 all possible bounds of decency, and to be regarded as atrocious, and  
11 utterly intolerable in a civilized community.”

11 *Id.*

12           Notably, in *Waller*, the Washington court held that even if it is shown that  
13 caseworkers may have been grossly negligent in choosing to believe allegations  
14 of child abuse and in not choosing to thoroughly investigate the alleged abuser’s  
15 claims, their conduct cannot be characterized as going “beyond all possible  
16 bounds of decency. *Id.* In that case, although substantial evidence eventually  
17 showed that the allegations were not credible, the caseworkers’ opinions were  
18 supported in part by expert opinions of therapists. *Id.* The court concluded that  
19 their conduct could not be said to have been outrageous. *Id.*

20           Here, a reasonable jury would not find that Defendant Margheim acted  
21 beyond all possible bounds of decency in investigating and concluding that Mr.  
22 Cheesman hit L.C. and gave her a black eye. As such, summary judgment on this  
23 claim is appropriate.

24                   **g. Libel/Slander**

25           Plaintiffs’ claims for libel and slander against Defendant Margheim fail as  
26 a matter of law. Defendant Margheim is afforded immunity with respect to her  
27 statements in the police report. *See Bender v. City of Seattle*, 99 Wash.2d 582,  
28

1 601 (1983); *see also Spurrell v. Bloch*, 40 Wash. App. 854 (1985) (written  
2 reports defendants made regarding plaintiffs' children and condition of their  
3 home did not give rise to cause of action for defamation, as the persons rendering  
4 such reports, including school nurse, and police officer, were protected by  
5 §26.44.060.)

6       There is no evidence in the record that Officer Margheim knew any  
7 information that she wrote in her police report was false, or recklessly  
8 disregarded the falsity of any alleged statement. There was no reason to suspect  
9 that the teachers or the Cheesman children were not telling the truth. A  
10 reasonable jury would not find for Plaintiffs' on this claim. As such, summary  
11 judgment is appropriate.

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1 Accordingly, **IT IS HEREBY ORDERED:**

- 2 1. Defendants' Motion for Summary Judgment, ECF No. 47, is  
3 **GRANTED.**
- 4 2. Plaintiffs' Motion to Strike, ECF No. 59, is **DENIED.**
- 5 3. Plaintiffs' Motion Demand Right to a Jury Trial, ECF No. 57, is  
6 **DENIED**, as moot.
- 7 4. Plaintiffs' Pleading for Court Permission to Respond Defendants'  
8 Reply in Support of Summary Judgment, ECF No. 61, is **DENIED**,  
9 as moot.
- 10 5. The District Court Executive is directed to enter judgment in favor  
11 of Defendants and against Plaintiffs.

12 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,  
13 forward copies to Plaintiffs and counsel, and **close** the file.

14 **DATED** this 2nd day of March 2020.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

20 Stanley A. Bastian  
21 United States District Judge

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