

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RON and SHIRLEY GIPSON, a married couple,

Plaintiffs,

v.

MARCELLA FLEMING REED, *et al.*,

Defendants.

CASE NO. C18-0951-JCC

ORDER

This matter comes before the Court on Defendant Marcella Fleming Reed’s motion for summary judgment (Dkt. No. 13) and Plaintiffs’ motion to continue (Dkt. No. 19). Having thoroughly considered the parties’ briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS Defendant’s motion (Dkt. No. 13) and DENIES Plaintiffs’ motion (Dkt. No. 19) for the reasons explained herein.

I. BACKGROUND

Plaintiffs’ claims arise out of a workplace investigation that Ms. Reed and her law firm, MFR Law Group PLLC (“MFR”) conducted regarding Equal Employment Opportunity (“EEO”) complaints filed by Ms. Reed’s co-defendants. (Dkt. No. 13 at 1.) Snohomish County hired Ms. Reed to perform an independent investigation into complaints of racial discrimination, sexual harassment, and retaliation at the Denny Juvenile Justice Center. (*Id.*) Plaintiff Ron Gipson, a

1 Juvenile Correction Officer at the Center, was a subject of the investigation. (*Id.*) Mr. Gipson
2 brings suit against Ms. Reed based on certain information included in MFR’s final report to the
3 County. Specifically, he objects to the inclusion of statements a County employee made to
4 investigators regarding a supervisor’s failure to address allegations of inappropriate past sexual
5 conduct by Mr. Gipson. (Dkt. Nos. 13 at 6, 14 at 11, 18 at 6.) The report includes claims by the
6 employee that some 13 or 14 years earlier, another co-worker had told the supervisor that she
7 “slept” with Mr. Gipson, and that in 2004 or 2005, she told the supervisor that Mr. Gipson had
8 been “forceful” in his sexual contact with her. (Dkt. No. 17 at 4–5, 18 at 6.) The report also
9 stated that the investigation did not determine if the allegations were true and that the alleged
10 incident took place more than ten years ago, occurred off-site, was not related to a work event,
11 involved no police report or charge, and was not reported during or at work. (Dkt. Nos 14 at 11,
12 18 at 6.)

13 Plaintiffs assert the following claims against Ms. Reed based on her decision to include
14 this information in her report to the County: (1) Invasion of Privacy or False Light Disclosure,
15 (2) Negligent Infliction of Emotional Distress (“NIED”), (3) Defamation, (4) Loss of
16 Consortium, (5) Fourth and Fifth Amendment violations pursuant to 42 U.S.C. section 1983, and
17 (6) Conspiracy to Violate Civil Rights pursuant to 42 U.S.C. section 1985(3). (Dkt. No. 13 at 1.)
18 Plaintiffs initially filed this action *pro se* in King County Superior Court on December 8, 2017.
19 (Dkt. No. 17 at 1.) On June 14, 2018, the state court partially dismissed Plaintiffs’ claims on a
20 motion for summary judgment. (*Id.* at 2.) Snohomish County was subsequently joined as a party
21 to the action and removed the case to federal court. (*Id.*) Ms. Reed now moves for summary
22 judgment on all claims against her. (*Id.* at 1.)

23 **II. DISCUSSION**

24 **A. Legal Standard**

25 “The court shall grant summary judgment if the movant shows that there is no genuine
26 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.

1 Civ. P. 56(a). In making such a determination, the Court must view the facts and justifiable
2 inferences to be drawn therefrom in the light most favorable to the nonmoving party. *Anderson v.*
3 *Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Once a motion for summary judgment is properly
4 made and supported, the opposing party “must come forward with ‘specific facts showing that
5 there is a *genuine issue for trial.*’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S.
6 574, 587 (1986) (emphasis in original) (quoting Fed. R. Civ. P. 56(e)). Summary judgment is
7 appropriate “unless there is sufficient evidence favoring the non-moving party for a jury to return
8 a verdict for that party.” *Anderson*, 477 U.S. at 249.

9 **B. Analysis**

10 1. Invasion of Privacy/False Light

11 Plaintiffs concede that summary judgment on this cause of action is appropriate because
12 they failed to file suit before the applicable statute of limitations expired. (Dkt. No. 17 at 2.) This
13 cause of action is DISMISSED with prejudice.

14 2. Defamation

15 Plaintiffs also concede that summary judgment on this cause of action is appropriate
16 because they failed to file suit before the applicable statute of limitations expired. (*Id.*) This
17 cause of action is DISMISSED with prejudice.

18 3. Section 1983

19 In response to Ms. Reed’s argument against section 1983 liability, Plaintiffs claim she is
20 not listed as a defendant for this cause of action. (Dkt. No. 17 at 2.) If this is the case, Plaintiffs’
21 complaint is misleading, as it asserts this cause of action against “Defendants” generally. (Dkt.
22 No. 1-2 at 14.) However, because Plaintiffs indicate they did not intend to bring a section 1983
23 claim against Ms. Reed, this claim is DISMISSED as to this Defendant.

24 4. Negligent Infliction of Emotional Distress

25 Plaintiffs’ NIED claim arises out of Ms. Reed’s inclusion of information in her
26 investigative report that Mr. Gipson feels was private and outside of the scope of the sexual

1 harassment and workplace discrimination investigation. (Dkt. No. 13 at 6.) Specifically, the
2 report included information about a co-worker's statements regarding Mr. Gipson's past sexual
3 activity with another co-worker. *See supra* section I. Plaintiffs allege that the inclusion of this
4 information in the report caused them emotional harm. (Dkt. No. 1-2 at 11.)

5 To prevail on a NIED claim, a plaintiff must establish the traditional elements of a tort
6 claim: duty, breach, proximate cause, and injury. *Snyder v. Med. Serv. Corp. of E. Wash.*, 988
7 P.2d 1023, 1028 (Wash. Ct. App. 1999). These elements place limits on a defendant's liability
8 for emotional distress, which is "a fact of life." *Id.* A general duty to others arises "only with
9 respect to those risks or hazards whose likelihood made the conduct unreasonably dangerous."
10 *Bishop v. State*, 889 P.2d 959, 962 (Wash. Ct. App. 1995). Conduct is unreasonably dangerous
11 when its risks outweigh its utility. *Id.*

12 In *Bishop v. State*, a Washington court of appeals weighed these considerations in the
13 context of a workplace misconduct investigation. *Id.* The court found that "the utility of
14 permitting employers to handle workplace disputes outweighs the risk of harm to employees."
15 *Id.* On this basis, the court ruled that "absent a statutory or public policy mandate, employers do
16 not owe employees a duty to use reasonable care to avoid inadvertent infliction of emotional
17 distress when responding to workplace disputes." *Id.* at 963.

18 The same principles apply here to a contractor hired to perform an investigation into a
19 workplace dispute.¹ The utility of allowing an independent investigator to provide an employer
20 any potentially relevant information to assist them in handling a workplace dispute outweighs
21 any risk of emotional distress to the employee. Thus, Ms. Reed did not owe Mr. Gipson a duty of
22 reasonable care when including potentially relevant information in her report.

23
24 ¹ The parties dispute whether Ms. Gipson was an independent contractor or a "functional
25 employee" of the County. (*See* Dkt. No. 17 at 12.) The Court notes that for purposes of anti-
26 SLAPP immunity, Plaintiffs argue Ms. Reed is an employee, which would bring the *Bishop* case
directly on point here. (*Id.* at 5.) However, the Court finds it need not determine the exact nature
of Ms. Reed's employment to apply the principles the state court set forth in *Bishop*.

1 Plaintiffs argue that *Bishop* does not apply here because there is a public policy mandate
2 that imposes a duty of care on Ms. Reed: the Washington State Constitution’s prohibition on
3 invasion of privacy. (Dkt. No. 17 at 13) (citing Wash. Const Art. 1, § 7). Plaintiffs support this
4 position with reference to the legal standard for common-law invasion of privacy, a claim which
5 they have conceded should be dismissed. (*Id.* at 2, 13.) This argument is inapposite and
6 unavailing. Plaintiffs cannot bootstrap their NIED claim with a dismissed cause of action.

7 The fact that invasion of privacy is generally prohibited under Washington law does not
8 establish a duty for Ms. Reed to avoid inflicting emotional distress on Mr. Gipson by disclosing
9 information to the County that could be considered private. The information was relevant to the
10 workplace misconduct being investigated. The allegations involved a co-worker and were shared
11 with investigators to support a claim that supervisors failed to address Mr. Gipson’s
12 inappropriate sexual behavior. (*See* Dkt. No. 14 at 11.) Moreover, the potential disclosure of
13 personal information is one aspect of harm the Court has weighed in determining that the utility
14 of a complete investigation into workplace misconduct outweighs any potential harm to
15 employees.²

16 The Court finds that Ms. Reed had no duty to Mr. Gipson avoid inadvertently inflicting
17 emotional harm by disclosing to the County potentially private information relevant to her
18 investigation. Therefore, the Court GRANTS Ms. Reed summary judgment on Plaintiffs’ NIED
19 claim.

20 5. Loss of Consortium

21 Plaintiffs’ loss of consortium claim depends on the existence of an underlying tort.
22 *Francom v. Costco Wholesale Corp.*, 991 P.2d 1182, 1195 (Wash. Ct. App. 2000) (“there can be
23 no claim for loss of consortium if no legal wrong has been committed against the impaired
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25 ² The Court also considered the fact that Ms. Reed was not involved in the decision to
26 publish the report. The County decided what information was publicly released and published a
version of the report with Mr. Gipson’s name redacted. (Dkt. Nos. 20 at 4, 18 at 7.)

1 spouse”). Having dismissed all substantive tort claims against this Defendant, the Court finds it
2 appropriate to DISMISS Plaintiff’s loss of consortium claim as to Ms. Reed.

3 6. Conspiracy to Violate Civil Rights

4 Similarly, Plaintiffs’ conspiracy claim is also dependent on the existence of an underlying
5 cause of action. *Oregon Laborers-Employers Health & Welfare Tr. Fund v. Philip Morris Inc.*,
6 185 F.3d 957, 969 (9th Cir. 1999) (where “underlying claims fail, plaintiffs’ civil conspiracy
7 claim must also fail). Having dismissed all underlying tort claims against this Defendant, the
8 Court finds it appropriate to DISMISS Plaintiff’s conspiracy claim as to Ms. Reed.

9 **C. Plaintiff’s Motion to Continue**

10 Plaintiffs move to continue Ms. Reed’s motion for summary judgment under Federal
11 Rule of Civil Procedure 56(d) (Dkt. No. 19). They request additional time to depose Ms. Reed
12 and County employees regarding Ms. Reed’s employment relationship with the County. (*Id.* at
13 2.) This information is relevant only to Ms. Reed’s assertion of anti-SLAPP immunity. Because
14 the Court finds that Plaintiffs’ claims fail on other grounds, this information is not essential to
15 Plaintiffs’ opposition to summary judgment. *See State of Cal., on Behalf of Cal. Dep’t of Toxic*
16 *Substances Control v. Campbell*, 138 F.3d 772, 779 (9th Cir. 1998). Therefore, Plaintiffs’ motion
17 to continue (Dkt. No. 19) is DENIED.

18 **III. CONCLUSION**

19 For the foregoing reasons, Defendant Marcella Flemming Reed’s motion for summary
20 judgment (Dkt. No. 13) is GRANTED. All claims against Ms. Reed are hereby DISMISSED.

21 DATED this 23rd day of August 2018.

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25 John C. Coughenour
26 UNITED STATES DISTRICT JUDGE