

**COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON**

**TERRY POPE, a single man, and KATE  
HANSON, a single woman,**

**Appellants,**

**v.**

**DOUGLAS COUNTY PUBLIC UTILITY  
DISTRICT No. 1,**

**Defendant,**

**DOUGLAS COUNTY FIRE DISTRICT  
NO. 3, and BRIDGEPORT FIRE  
PROTECTION DISTRICT NO. 7n/k/a  
DOUGLAS-OKANOGAN FIRE  
DISTRICT NO. 15,**

**Respondents.**

**No. 28379-8-III**

**ORDER GRANTING  
MOTION TO PUBLISH**

THE COURT has considered the respondents' motion to publish the court's opinion of August 31, 2010, and the record and file herein, and is of the opinion the motion to publish should be granted. Therefore,

IT IS ORDERED, the motion to publish is granted. The opinion filed by the court on

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August 31, 2010, shall be modified on page 1 to designate it is a published opinion and on page 6  
by deletion of the following language:

A majority of the panel has determined that this opinion will not be printed  
in the Washington Appellate Reports but it will be filed for public record pursuant  
to RCW 2.06.040.

DATED:

BY A MAJORITY:

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KEVIN M. KORSMO  
Acting Chief Judge

No. 28379-8-III  
Pope v. Douglas County Pub. Util. Dist. No. 1

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**TERRY POPE, a single man, and  
KATE HANSON, a single woman,** )  
)  
)  
**Appellants,** )  
)  
**v.** )  
)  
**DOUGLAS COUNTY PUBLIC** )  
**UTILITY DISTRICT NO. 1,** )  
)  
**Defendant,** )  
)  
**DOUGLAS COUNTY FIRE DISTRICT** )  
**NO. 3, and BRIDGPORT FIRE** )  
**PROTECTION DISTRICT NO. 7 n/k/a** )  
**DOUGLAS-OKANOGAN FIRE** )  
**DISTRICT NO. 15,** )  
**Respondents.** )

**No. 28379-8-III**

**Division Three**

**PUBLISHED OPINION**

Sweeney, J. — The public duty doctrine insulates a governmental entity from liability for acts or omissions when the duty is one owed to the public at large, as

opposed to a specific individual. Here, a fire fighter working for a public fire district started a “backfire” that destroyed the plaintiffs’ property. There is no showing that the district had any individualized duty to these landowners. We, therefore, affirm the summary dismissal of their claim based on the public duty doctrine.

### FACTS

Terry Pope and Kate Hanson (Landowners) own property in Bridgeport, Washington. On September 30, 2006, they lost a partially constructed home and personal property to a fire. They claim the fire was started negligently by a fire fighter of the Bridgeport and Douglas County fire districts (Fire Districts).

The Douglas County Public Utility District No. 1 (PUD) had been restoring power to power lines that had been downed by a fallen tree when the fire started south of the Landowners’ property. Strong winds blew the fire toward the Landowners’ property, but an irrigated orchard separated it from the fire. Apparently, a fire fighter started a backfire, a fire started to check an advancing fire by clearing an area, on the north side of the orchard. The backfire spread to and destroyed the Landowners’ property.

The Landowners filed a claim for damages against the Fire Districts. They then sued the Fire Districts and the PUD for negligence. The PUD was dismissed from the suit. The Fire Districts denied liability and then moved for summary judgment based on the public duty doctrine. The district court granted the Fire Districts’ motion. And the

superior court affirmed the district court.

The Landowners appealed.

## DISCUSSION

This case was resolved by summary judgment so we view the facts in a light most favorable to the nonmoving party—the Landowners. *Vergeson v. Kitsap County*, 145 Wn. App. 526, 534, 186 P.3d 1140 (2008). That approach is important here because the Landowners argue that there were a number of unresolved factual issues that should have precluded summary dismissal of their claim; specifically, did the fire fighter who started the fire that consumed their property misinterpret instructions from a commander? Did the fire fighter ignore the fire fighting strategy? Did the Fire Districts ignore the protocols and professional responsibilities associated with their work? Ultimately, the Landowners argue that the public duty doctrine does not apply here and that the Fire Districts should be liable for their negligence and the negligence of their employees.

The question, then, is whether the Landowners have adequately shown that the Fire Districts owed an individualized duty to them as opposed to a duty to the public in general. That is a question of law, so our review is *de novo*. *Osborn v. Mason County*, 157 Wn.2d 18, 22-23, 134 P.3d 197 (2006).

The Fire Districts are governmental entities. And a governmental entity is not liable in negligence unless a plaintiff can show that the entity breached a duty that was

owed to the plaintiff individually rather than the public in general. *Vergeson*, 145 Wn. App. at 535. There are exceptions: (1) legislative intent, (2) failure to enforce, (3) the rescue doctrine, and (4) a special relationship. *Id.* at 537. But there is no argument that any of these exceptions apply here. The Landowners' essential argument is that the public duty doctrine does not apply because the Fire Districts' acts or omissions were operational rather than policy.

The public duty doctrine rests on the notion that a duty to the public in general is a duty to no one in particular, here, the Landowners. *J & B Dev. Co. v. King County*, 100 Wn.2d 299, 304, 669 P.2d 468 (1983), *overruled on other grounds by Taylor v. Stevens County*, 111 Wn.2d 159, 759 P.2d 447 (1988). And, while the doctrine may have evolved away from its original doctrinal purpose,<sup>1</sup> its current application is not complicated.

The Landowners must show a duty that the Fire Districts owed to them specifically and not to the public at large. Without that individualized duty, we need go no further in analyzing what errors the Fire Districts or its employees might have made. Duty is the first and essential step in any negligence analysis. *Rasmussen v. Bendotti*, 107 Wn. App. 947, 955, 29 P.3d 56 (2001). Whether or not a duty exists is, again, a question of law. *Osborn*, 157 Wn.2d at 22-23. The Landowners showed that a single

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<sup>1</sup> *Cummins v. Lewis County*, 156 Wn.2d 844, 861, 133 P.3d 458 (2006) (Chambers, J., concurring).

fire fighter started a backfire, unnecessarily and improperly, that destroyed their property. We assume the truth of those assertions, but they do not address the threshold question of whether these Fire Districts had a duty to these Landowners, as opposed to the public at large. And, on that crucial question, the Landowners offer nothing.

A “backfire” is “a fire started to counter an advancing forest or prairie fire to check the latter by clearing an area.” Webster’s Third New International Dictionary 158 (1993). Lighting backfires, then, would certainly fall within the ambit of a fire fighter’s duties. And, again, “the ‘public duty doctrine’ . . . provides immunity to fire fighters in the performance of their duties” unless a plaintiff can show that an exception to the doctrine applies. *Babcock v. Mason County Fire Dist. No. 6*, 144 Wn.2d 774, 777, 30 P.3d 1261 (2001). Because the Landowners have not shown an exception applies here, the Fire Districts are not liable for the Fire Districts’ or the fire fighter’s negligence, if any.

The Landowners urge that application of the public duty doctrine here effectively ignores legislative abolition of sovereign immunity. *Chambers-Castanes v. King County*, 100 Wn.2d 275, 281, 669 P.2d 451 (1983). Not exactly. Sovereign immunity “admits the existence of a duty and a tort for its breach, but denies liability because of immunity.” *Oberg v. Dep’t of Natural Res.*, 114 Wn.2d 278, 289, 787 P.2d 918 (1990). No duty has been admitted here. The Landowners have failed to show an individualized duty, which

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they had to do to survive summary judgment and to ultimately prevail on their claim. *Babcock*, 144 Wn.2d at 785 (government entity is not liable for its public official's negligence unless plaintiff proves existence of an individualized duty). Summary judgment is proper when a plaintiff fails to produce sufficient evidence of an essential element of his or her case; that failure renders all other facts immaterial. *Young v. Key Pharms.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989).

The trial court properly dismissed the Landowners' complaint. We affirm the

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Sweeney, J.

WE CONCUR:

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Korsmo, A.C.J.

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Brown, J.