IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOSHUA J. KRAWIEC, a single person,	)	**No. 27727-5-III**
	)	
Appellant,	)	
	)	
v.	)	**Division Three**
	)	
CITY OF NEWPORT, located in Washington State,	)	
	)	
	)	
Respondent.	)	**UNPUBLISHED OPINION**

Korsmo, J. — The trial court denied Joshua Krawiec's request for more time to respond to the City of Newport's (City) motion for summary judgment and subsequently granted that motion. We find no abuse of discretion in denying the continuance motion and we agree that summary judgment was properly granted. The judgment is affirmed.

FACTS

Mr. Krawiec filed suit on September 26, 2007, against the City alleging three causes of action arising out of a January 14, 2005, encounter he had with Officer Michael Sargent: (1) assault and battery; (2) false arrest; (3) negligent supervision. The 2005

incident arose during a basketball game at Newport High School. Three people were stabbed in the parking lot during the game. Mr. Krawiec was one of the spectators who left the game to see what was happening.

Mr. Krawiec, Kaleena Berry, and Adam Kells went to the school office where they met with Officer Sargent. Kells yelled at the officer over the stabbing incident. The officer told Kells to be quiet or go to jail, and Kells responded by holding out his hands and saying "go ahead." Officer Sargent took hold of Kells. Ms. Berry, Mr. Krawiec's girl friend, tried to prevent the arrest by pushing the officer and shielding Kells. Officer Sargent grabbed Berry and Mr. Krawiec went to her aid by trying to separate her from the officer. Officer Sargent rushed Mr. Krawiec, pushing him into a file cabinet and then onto a chair. The officer then allegedly kneed Mr. Krawiec three times in the head before arresting him for assault of a police officer.

This was not the first time Officer Sargent and Mr. Krawiec had met. The officer arrested Mr. Krawiec in 2001 and allegedly had challenged him to a fight in 2002 during another basketball game.

On July 21, 2008, ten months after the civil action was filed, the City moved for summary judgment of dismissal. It argued that the assault and arrest claims were barred by the two-year statute of limitations and that the supervision allegation lacked evidence

that the City knew or should have known that Officer Sargent was a risk of danger to others.

Counsel for Mr. Krawiec sought to continue the hearing on the motion, arguing that more time was needed to depose four witnesses to the 2005 incident at the school. The court heard both motions together on August 21, 2008.

The trial court denied the motion for additional time. The court agreed that the assault and arrest claims were barred by the statute of limitations and also concluded that the two prior incidents between Officer Sargent and Mr. Krawiec did not constitute sufficient evidence to support the negative supervision theory. The court granted the motion for summary judgment.

Mr. Krawiec moved for reconsideration and submitted additional evidence of five citizen complaints about Officer Sargent's conduct during a June 2003 arrest of a different individual. The City opposed reconsideration and filed a Use of Force Review and Analysis report written by a Spokane Police Department sergeant that concluded the officer's conduct was reasonable.

The court denied reconsideration on December 11, 2008. Mr. Krawiec then appealed to this court.

ANALYSIS

This appeal challenges both the denial of the motion for a continuance and the order granting summary judgment. We will consider the issues in the order presented by the appeal.

Motion for Continuance

A trial court has broad discretion to grant or deny a continuance; the court's decision will only be overturned for manifest abuse of discretion. *Coggle v. Snow*, 56 Wn. App. 499, 504, 784 P.2d 554 (1990). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). CR 56(f) authorizes the trial judge to grant a continuance in order to obtain evidence to oppose a motion for summary judgment. A trial court may deny a CR 56(f) motion for a continuance when "(1) the requesting party does not have a good reason for the delay in obtaining the evidence, (2) the requesting party does not indicate what evidence would be established by further discovery, or (3) the new evidence would not raise a genuine issue of fact." *Butler v. Joy*, 116 Wn. App. 291, 299, 65 P.3d 671, *review denied*, 150 Wn.2d 1017 (2003).

Appellant argues that his attorney was leaving town when the motion for summary judgment was served and was entitled to additional time to engage in discovery. CR 56(f). In support of the motion he supplied statements from some of the witnesses to the

2005 incident whom he wished to depose. Their information concerned the assault and arrest claims.

This information did not satisfy the *Butler* standard. Appellant did not explain why he could not have obtained this information in the ten months prior to the filing of the summary judgment motion. While the motion did suggest what additional evidence was being sought, that evidence did not raise a genuine issue of material fact with respect to the negligent supervision claim. Additional information about the 2005 incident would not establish what the City knew about Officer Sargent prior to that time.

The trial court had tenable grounds for denying the continuance. While it certainly could have granted the continuance, it was under no obligation to do so. We conclude the trial court did not abuse its discretion when it denied the motion for additional time.

Summary Judgment

Appellant challenges the summary judgment ruling only as to the dismissal of the negligent supervision claim. We agree that the evidence did not support the allegation.

The standards for review of summary judgment rulings are well settled. We review a summary judgment *de novo*; our inquiry is the same as the trial court. *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). We view the facts, and all reasonable inferences to be drawn from them, in the light most favorable to the

nonmoving party. *Id*. If there is no genuine issue of material fact, summary judgment will be granted if the moving party is entitled to judgment as a matter of law. *Id*.; *Trimble v. Wash. State Univ.*, 140 Wn.2d 88, 93, 993 P.2d 259 (2000).

An employer may be liable for harm caused by an unfit employee if (1) the employer knew, or should have known, of the employee's unfitness and risk of danger to others before the incident; and (2) retaining the employee was a proximate cause of the plaintiff's injuries. *Niece v. Elmview Group Home*, 131 Wn.2d 39, 48-49, 929 P.2d 420 (1997); *Betty Y. v. Al-Hellou*, 98 Wn. App. 146, 148-149, 988 P.2d 1031 (1999), *review denied*, 140 Wn.2d 1022 (2000). The employer's duty is limited to foreseeable victims and then only "to prevent the tasks, premises, or instrumentalities entrusted to an employee from endangering others." *Niece*, 131 Wn.2d at 48.

There is no question that the second element existed here. The injuries occurred in the course of Officer Sargent's official duties. The question is whether the City should have known that the officer was dangerous. Mr. Krawiec argues that his two prior incidents with Officer Sargent should have put the City on notice concerning the officer. He also argues that the evidence submitted on reconsideration concerning the 2003 incident indicates the City should have been aware of the officer's alleged dangerous tendencies.

We do not agree. The fact that Officer Sargent arrested Mr. Krawiec in 2001, even if the charges were later dismissed, does not provide evidence that the officer was an "unfit employee" for purposes of liability for negligent supervision. The fact that the officer allegedly challenged Mr. Krawiec to a fight in 2002 is probative on the issue, but the record reflects that the City found the complaint unfounded. The 2003 incident likewise suggests the possibility that the officer was "unfit," but the evidence again showed that the City investigated and the officer was found to have acted properly. Thus, these two incidents show that the City was aware of the allegations, but also knew they were baseless. This evidence did not show that the City ignored evidence that the officer might be dangerous. Instead, it showed that the City knew he was not dangerous or "unfit."

The record does not reflect that there are any disputed material facts concerning whether the City should have believed the officer posed a danger to others. The opinions of Mr. Krawiec and his father do not create a dispute of fact. The trial court properly granted summary judgment.

Affirmed.

A majority of the panel has determined 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.

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Korsmo, J.

WE CONCUR:

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Schultheis, C.J.

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Brown, J.