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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL ALDEN EXENDINE;
PATRICIA EXENDINE, wife of Michael
Exendine,

Plaintiffs - Appellants,

v.

SAMMAMISH CITY OF; RONDA
LITZAU, in her capacity as a code
enforcement officer for the City of
Sammamish, and as an individual; MARK
SCHWARZWALTER, in his capacity as a
building code officer for the City of
Sammamish, and as an individual; SUE
SHERWOOD, in her capacity as a police
officer for the City of Sammamish, and as
an individual,

Defendants - Appellees.

No. 06-35974

D.C. No. CV-05-00436-MJP

MEMORANDUM *

Appeal from the United States District Court
for the Western District of Washington
Marsha J. Pechman, District Judge, Presiding

Argued and Submitted April 9, 2008

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Seattle, Washington

Before: THOMPSON, W. FLETCHER, and M. SMITH, Circuit Judges.

Michael Alden and Patricia Exendine brought suit against the City of Sammamish and three of its officers (“the City”) after the City barred the Exendines and their infant daughter from entering their residence for approximately one week in March of 2002. The Exendines allege violations of their rights under the Fourth and Fourteenth Amendments and several violations of state law. Specifically, they allege that the order to vacate (1) constituted an illegal seizure of the Exendines and their residence; (2) deprived the Exendines of their property without due process of law; (3) damaged their husband-wife relationship, in violation of the Due Process Clause of the Fourteenth Amendment; (4) implicated municipal liability under 42 U.S.C. § 1983; and (5) constituted “intentional, reckless and/or negligent” infliction of emotional distress. They also allege trespass to property incident to a second search. The district court declined to exercise supplemental jurisdiction over two additional state-law claims, and the Exendines do not appeal that part of the district court’s decision. They have also abandoned their First Amendment claim.

“We review de novo the district court’s grant of summary judgment and, viewing the evidence in the light most favorable to the non-moving party,

determine whether there are any genuine issues of material fact for trial.” *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008).

The Exendines have failed to raise any genuine issue of material fact with respect to their Fourth Amendment claims. The Exendines do not challenge here the validity of the search warrant authorizing the search of the residence and the seizure of evidence of code violations. The Exendines also do not dispute that the search revealed various structural code violations. *See, e.g.*, Unif. Housing Code §§ 1001.2.13, 1001.3.2, 1001.3.6, 1001.5, 1001.8.4 (1997). The Exendines concede that the City acted pursuant to state and local law. *See* Wash. Rev. Code § 35.80.030(1)(c), (6)-(7); Sammamish, Wash., Ordinance 099-30, §§ 2, 3(G), 7(B) (Sept. 8, 1999); Sammamish, Wash., Ordinance 099-15, §§ 3, 29 (Aug. 31, 1999); Unif. Bldg. Code §§ 102, 103, 104.2.1, 104.2.5 (1997); Unif. Housing Code §§ 201.1, 1001.1, 1101.2.3.2, 1101.3.2, 1103.2; *cf. Soldal v. Cook County*, 506 U.S. 56, 58-59 (1992); *Armendariz v. Penman*, 75 F.3d 1311, 1320 (9th Cir. 1996), *recognized as abrogated on other grounds by Action Apartment Ass’n, Inc. v. Santa Monica Rent Control Bd.*, 509 F.3d 1020, 1025 (9th Cir. 2007). They do not challenge the constitutionality of those laws. No reasonable juror could conclude that the City executed the order to vacate in an unreasonable manner. *See United*

States v. Place, 462 U.S. 696, 703 (1983); *United States v. Alvarez-Tejeda*, 491 F.3d 1013, 1016 (9th Cir. 2007).

The Exendines have failed to raise any genuine issue of material fact with respect to their procedural due process claim. The City's actions were supported by a court order. The Exendines were not entitled to a pre-deprivation hearing. *See Hodel v. Va. Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 299-300 (1981); *see also* Wash. Rev. Code § 35.80.030. The indemnification agreement suggests nothing to the contrary. *Cf. Hodel*, 452 U.S. at 302 n.46. The post-deprivation procedures were adequate; the Exendines received a full hearing with respect to the code violations and the validity of the search warrant. *See Exendine v. City of Sammamish*, 113 P.3d 494 (Wash. Ct. App. 2005). There was no reason for those hearings to address separately whether the week-long "eviction" had been valid.

The Exendines have failed to raise any genuine issue of material fact with respect to their substantive due process claim. Although this claim is no longer subject to a "blanket prohibition," *see Action Apartment Ass'n, Inc.*, 509 F.3d at 1025, we affirm the district court on the ground that the Exendines had no cognizable liberty interest that was infringed by the City. *See Reno v. Flores*, 507 U.S. 292, 302 (1993); *Curnow v. Ridgecrest Police*, 952 F.2d 321, 323, 325 (9th

Cir. 1991); *Ovando v. City of Los Angeles*, 92 F. Supp. 2d 1011, 1020-21 (C.D. Cal. 2000); *see also Salmeron v. United States*, 724 F.2d 1357, 1364 (9th Cir. 1983).

Because there was no genuine issue of material fact with respect to any alleged constitutional violation, the district court properly dismissed the municipal liability claim.

The Exendines have failed to raise any genuine issue of material fact supporting their claim for “intentional, reckless and/or negligent” infliction of emotional distress. They have failed to present any evidence indicating that the City’s behavior was “extreme and outrageous” or went “beyond all possible bounds of decency.” *See Dicomes v. State*, 782 P.2d 1002, 1012 (Wash. 1989) (en banc) (internal quotation marks omitted); *Grimsby v. Sampson*, 530 P.2d 291, 295 (Wash. 1975) (en banc) (internal quotation marks omitted; emphasis removed). Because the City and its officers acted both lawfully and reasonably, there is no genuine issue of material fact regarding whether the City or its officers exercised ordinary care. *See Colbert v. Moomba Sports, Inc.*, 135 P.3d 485, 490 (Wash. Ct. App. 2006); *Mathis v. Ammons*, 928 P.2d 431, 433-34 (Wash. Ct. App. 1997).

The Exendines have failed to present any evidence that any of the named defendants participated in the second search, and they have also failed to present

any evidence that the City directed or approved that search. Therefore, the district court properly dismissed the trespass claim.

For the foregoing reasons, viewing the evidence in the light most favorable to the Exendines, there is no genuine issue of material fact that should go to trial.

We therefore **AFFIRM** the judgment of the district court.