

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 19 2015

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LETICIA ROMERO, as the natural mother
and legal guardian of MMR, a minor,

Plaintiff - Appellee,

v.

COUNTY OF WASHOE, a political
subdivision of the State of Nevada,

Defendant,

DOES, 1-10,

Defendant,

And

DIANA MANN, individually and in her
capacity as social worker for Washoe
County and JULIE BRANDT, individually
and in her capacity as social worker for
Washoe County,

Defendants - Appellants.

No. 13-17202

D.C. No. 3:11-cv-00582-LRH-
WGC

MEMORANDUM*

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

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Submitted May 14, 2015**
San Francisco, California

Before: O'SCANNLAIN and IKUTA, Circuit Judges and BURNS,*** District Judge.

Appellants Diana Mann and Julie Brandt appeal the denial of their motion to dismiss Leticia Romero's claim for relief under 42 U.S.C. § 1983 on the basis of qualified immunity. Because the parties are familiar with the factual and procedural history of this case, we do not recount it. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Where a defendant presents a qualified immunity defense in a Rule 12(b)(6) motion, "dismissal is not appropriate unless we can determine, based on the complaint itself, that qualified immunity applies." *Groten v. California*, 251 F.3d 844, 851 (9th Cir. 2001). An allegation that sexual abuse occurred in the home, without additional facts regarding exigency, is insufficient to show the imminent danger of serious bodily injury necessary to intrude on a parent's custody of her

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Larry A. Burns, District Judge for the U.S. District Court for the Southern District of California, sitting by designation.

child without prior judicial authorization. *Mabe v. San Bernardino Cnty., Dep't of Pub. Soc. Servs.*, 237 F.3d 1101, 1107–08 (9th Cir. 2001). Romero's complaint does not address whether Mann and Brandt had reasonable cause to believe that MMR was in imminent danger of serious bodily injury or whether the failure to obtain a warrant was reasonably necessary to avert that specific injury. *See id.* at 1108-09 (holding that qualified immunity is inappropriate if “a material question of fact exists regarding whether . . . there was reasonable cause to believe” that the “child[] faced an immediate threat of serious physical injury or death” (internal quotation marks omitted)). The district court properly denied their motion to dismiss with leave to pursue their qualified immunity defense at summary judgment.¹

AFFIRMED.

¹ In light of this disposition, Romero's request for judicial notice is denied as moot.