

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>STEVEN O. PETERSEN, on behalf of L.P., a minor and beneficiary and as Personal Representative of the estate of Steven V. Petersen,</p> <p style="text-align: center;">Plaintiff-Appellant,</p> <p style="text-align: center;">v.</p> <p>LEWIS COUNTY, a political subdivision of the State of Washington; MATTHEW MCKNIGHT,</p> <p style="text-align: center;">Defendants-Appellees.</p>

No. 14-35201

D.C. No. 3:12-cv-05908-RBL

MEMORANDUM*

On Remand from the United States Supreme Court

Before: HAWKINS, McKEOWN, and DAVIS,** Circuit Judges.

Steven Petersen appeals the district court’s grant of Lewis County’s (“the County”) and Matthew McKnight’s motion for summary judgment on qualified-immunity grounds in Petersen’s 42 U.S.C. § 1983 lawsuit arising from the shooting

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Andre M. Davis, Senior Circuit Judge for the U.S. Court of Appeals for the Fourth Circuit, sitting by designation.

of his son. We have jurisdiction under 28 U.S.C. § 1291, and we review de novo the grant of summary judgment. *See Fair Hous. Council of Riverside Cty., Inc. v. Riverside Two*, 249 F.3d 1132, 1135 (9th Cir. 2001). We consider this case on remand from the Supreme Court and affirm in part, reverse in part, and remand.

The district court correctly found that there were material factual disputes regarding the reasonableness of McKnight's actions as to Petersen's excessive force claim. However, even if McKnight's actions were unreasonable, Petersen has failed to identify any clearly established law putting McKnight on notice that, under these facts, his conduct was unlawful. *See White v. Pauly*, 137 S. Ct. 548, 552 (2017) (per curiam) (reiterating "the longstanding principle that 'clearly established law' should not be defined 'at a high level of generality'" (citations omitted)). The district court therefore correctly granted qualified immunity to McKnight on the excessive force claim.

The district court appropriately granted summary judgment to the County on Petersen's municipal liability claim. Petersen failed to present evidence that any of the County's policies were a "moving force" behind the shooting. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). Additionally, Petersen failed to identify deficiencies in McKnight's training that establish a showing of deliberate indifference. *See Connick v. Thompson*, 563 U.S. 51, 61 (2011) ("[A]

municipality's failure to train its employees in a relevant respect must amount to 'deliberate indifference to the rights of persons with whom the [untrained employees] come into contact.'" (quoting *City of Canton v. Harris*, 489 U.S. 378, 388 (1989) (alteration in original))).

Likewise, the district court appropriately granted summary judgment to the County and McKnight on Petersen's substantive due process claim because he failed to show that McKnight's actions "shock[] the conscience." See *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 846–47 (1998) (outlining the standard for executive action that violates substantive due process).

However, summary judgment should not have been granted for McKnight on the state-law negligence claim because the reasonableness of McKnight's actions raises factual issues that should be left to a jury. *Gallegos v. Freeman*, 291 P.3d 265, 277 (Wash. Ct. App. 2013) ("An officer is entitled to state law qualified immunity where the officer (1) carries out a statutory duty, (2) according to procedures dictated to him by statute and superiors, and (3) *acts reasonably*." (emphasis added) (internal quotation marks and citations omitted)). The public duty doctrine does not bar Petersen's claim because "[t]he [public duty] doctrine provides only that an individual has no cause of action against law enforcement officials for failure to act. Certainly if the officers do act, they have a duty to act

with reasonable care.” *Coffel v. Clallam Cty.*, 735 P.2d 686, 690 (Wash. Ct. App. 1987). Therefore, summary judgment was also improperly granted for the County on Petersen’s vicarious liability claim. *See LaPlant v. Snohomish Cty.*, 271 P.3d 254, 256 (Wash. Ct. App. 2011) (holding that a county may be vicariously liable for officers’ negligent actions taken within the scope of their employment).

Finally, the district court appropriately granted summary judgment for the County on Petersen’s state-law claims for failure to train and negligent supervision because there is no indication that McKnight acted outside the scope of his employment. *Id.* at 257 (“Under Washington Law, . . . a claim for negligent hiring, training, and supervision is generally improper when the employer concedes the employee’s actions occurred within the course and scope of the employment.”).

Each party shall bear its own costs on appeal.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.