

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 28 2022

FOR THE NINTH CIRCUIT

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

NAIXIANG LIAN, individually and as
Guardian ad Litem for L.L., a minor,

Plaintiff-Appellant,

L. L., a minor,

Plaintiff-Appellant,

and

SUSAN CHEN, individually and as
Guardian ad Litem for J.L., a minor,

Plaintiff,

J. L., a minor,

Plaintiff,

v.

NATALIE D'AMICO, in her individual
capacity and official capacity as a Redmond
Police Department Officer; et al.,

Defendants-Appellees,

and

No. 20-35118

D.C. No. 2:16-cv-01877-JLR

MEMORANDUM*

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

REDMOND POLICE DEPARTMENT; et
al.,

Defendants.

SUSAN CHEN, individually and as
Guardian ad Litem for J.L., a minor; J.L., a
minor,

Plaintiffs-Appellants,

and

NAIXIANG LIAN, individually and as
Guardian ad Litem for L.L., a minor; L.L., a
minor,

Plaintiffs,

v.

NATALIE D'AMICO, in her individual
capacity and official capacity as a Redmond
Police Department Officer; et al.,

Defendants-Appellees,

and

REDMOND POLICE DEPARTMENT; et
al.,

Defendants.

No. 20-35119
20-35241

D.C. No. 2:16-cv-01877-JLR

Appeal from the United States District Court
for the Western District of Washington
James L. Robart, District Judge, Presiding

Argued and Submitted August 30, 2022
Seattle, Washington

Before: McKEOWN and TALLMAN, Circuit Judges, and RAKOFF,** District Judge.

Susan Chen and Naixiang Lian, along with their minor children, J.L. and L.L., sued governmental entities and employees for alleged constitutional deprivations and state law torts stemming from the removal of J.L. and L.L. from the family and the subsequent criminal prosecution of Chen for neglect. The district court granted summary judgment in favor of the Washington State Department of Social and Health Services (DSHS), DSHS social workers Kimberly Danner and Jill Kegel, the City of Redmond, and Detective Natalie D'Amico. Plaintiffs appeal nine of the district court's rulings. We have jurisdiction pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 1331 and 1367. For the reasons that follow, we remand Chen and J.L.'s negligent investigation and negligent infliction of emotional distress (NIED) claims and affirm in all other respects.

While this appeal was pending, the Washington Supreme Court decided *Desmet v. State ex rel. State Department of Social & Health Services*, 514 P.3d 1217, 1226 (Wash. 2022). *Desmet* held that negligence by DSHS that prolongs dependency proceedings may be actionable under a negligent investigation theory.

** The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

Id. (“Should the Department’s negligence have caused an unnecessary and prolonged disruption of the family unit in this case, RCW 4.24.595(2) will not shield it from suit simply because the Department convinced the court to continue [the child’s] shelter care placement.”). Therefore, although we affirm the district court’s partial grant of summary judgment as to the negligent investigation claims prior to the first court hearing, we remand Chen and J.L.’s claims of post-hearing negligent investigation for reconsideration under the Washington Supreme Court’s newly issued guidance.¹

The district court granted summary judgment on Plaintiffs’ NIED claims because they did not identify a specific horrendous event and did not provide expert testimony on causation. Washington law requires NIED plaintiffs to prove a horrendous event only when alleging a “bystander [NIED] cause of action.” *See Hegel v. McMahon*, 960 P.2d 424, 426 (Wash. 1998); *cf. Bylsma v. Burger King Corp.*, 293 P.3d 1168, 1175 (Wash. 2013) (Johnson, J., dissenting). Because Plaintiffs allege direct NIED, they were not required to prove an especially horrendous event occurred. *See Bylsma*, 293 P.3d at 1170 (permitting claims for direct NIED where the emotional distress was foreseeable, a reasonable reaction, and manifest by objective symptomatology); *see also Est. of Lee ex rel. Lee v. City*

¹ Lian did not appeal this claim, and the grant of summary judgment as to L.L.’s claim was appropriate.

of Spokane, 2 P.3d 979, 990 (Wash. Ct. App. 2000) (explaining claims that differ from the “typical bystander[]” NIED case are governed by “general tort principles”).

Washington law also governs whether expert testimony is required for NIED claims to survive summary judgment. *See Goldberg v. Pac. Indem. Co.*, 627 F.3d 752, 755 (9th Cir. 2010). Expert testimony on causation is not required by Washington courts where the causal connection is “observable by laypersons.” *Berger v. Sonneland*, 26 P.3d 257, 267 (Wash. 2001). Chen and J.L. submitted declarations by treating providers that raise a genuine issue of material fact as to causation. We therefore vacate the grant of summary judgment as to Chen and J.L.² and remand for the district court to apply the correct standards in analyzing their NIED claims.

We have reviewed the remaining claims and find no merit to them for the reasons articulated by the district court. Therefore, we **AFFIRM** in part as to dismissal of all other claims and defendants; and **VACATE** and **REMAND** only Chen and J.L.’s claims of negligent investigation which postdate the shelter care hearing and their NIED claims during that same period. We **AFFIRM** the grant of summary judgment in all other respects. Each party shall bear its own costs.

² Because L.L. did not offer similarly sufficient evidence of causation and Lian did not appeal his claims, we affirm dismissal as to them.