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**COURT OF APPEALS, DIVISION II,
STATE OF WASHINGTON**

BRENT RYAN, individually, and as guardian for ADDIE RYAN, a
minor, and BAILEY DECKER, a minor, and as Personal Representative
of the ESTATE OF TERESA RYAN, Respondents

v.

PIERCE COUNTY, Petitioner

BRIEF OF RESPONDENTS

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I. ISSUES

Whether the trial court erred in denying Pierce County's summary judgment motion to dismiss plaintiff's claims for negligence against the County for the death of Teresa Ryan.

II. STATEMENT OF THE CASE

Plaintiff essentially agrees with the basic facts set forth in the defendant's brief. However, the petitioner has only selected the facts most favorable to their position and have ignored other facts. With that said, respondent asserts the following facts based upon the pleadings, declaration, and deposition of Brent Ryan.

On January 18, 2016, Teresa Ryan was brutally murdered in front of her five year old daughter. *See* CP 271-76; CP 279-281. She was approached by the assailant, Austin Nelson, while she was driving into her neighborhood, returning home with her daughter, Addie, after dropping off one of the family dogs at the veterinarian. Nelson stopped his vehicle and Teresa got out of her car to tell him to leave the neighborhood. At that time, Nelson shot Teresa at least three times at point blank range. She was able to tell Addie to run to a neighbor's house before she passed away. Nelson, continued on to the family home where he shot up the

walls and killed their other family dog. He was caught and was subsequently charged with Murder in the First Degree. *See* CP 279.

The events started back in September 2015, when Nelson began dating Teresa's daughter, Bailey Decker. *See* CP 280. At that time, Bailey was only 15 years old. *Id.* Nelson was 19 years old. Teresa found out about the relationship and age difference and told Nelson to stay away from Bailey. *See* CP 280. Unfortunately, the two started seeing each other again. Bailey again broke off the relationship in December, but they got back together. *Id.*

On December 6, 2015, Nelson's car was seen in neighborhood near the time when the Ryans' house was broken into and robbed. *See* CP 280. Several guns were among the items stolen. *Id.* Soon thereafter, Brent Ryan reported this break-in to the Pierce County Sheriff's Department. *Id.* He specifically told the officers that the robber was Austin Nelson. *Id.* He believed that the officers at the department would investigate the matter and protect the family. *Id.* Over the course of the next month, he waited for more information from the department. *Id.*

On January 8, 2016 Bailey broke up with Nelson for the final time. She informed him "she did not want to continue lying to her mother". *See* CP 280. Over the next several days, Nelson kept calling Bailey's cell phone. Bailey would have friends answer and tell him to stop calling her.

Id. Nelson texted Bailey and threatened to vandalize her car. *Id.* In addition, he threatened to post naked pictures and videos of her he had obtained without her consent. *Id.* Mr. Ryan informed the police department of these actions and identified Nelson again. *Id.* He again felt as if the department was there to protect his family and relied on those assurances. *Id.*

On Friday, January 15, 2016, Nelson went to Bailey's school, slashed all the tires and smashed out the windows. *See* CP 280. The vandalism and other text threats, including threatening to post child pornography on the internet, was reported to the Pierce County Sheriff's Department. *Id.* The sheriff came to the scene of the vandalism at the school. The identity of Nelson was again specifically disclosed and discussed. *See* CP 280. The Sheriff specifically informed the Ryans that he wanted to, and would go get, Nelson. Mr. Ryan continued to rely on the fact that he specifically identified the threats, and person making the threats, to the department that the Sheriffs would take action to protect his family. *Id.*

On Saturday, January 16, 2016, Nelson posted naked videos and/or photos of under-aged Bailey on the internet. *See* CP 280. This was reported to the Sheriff's Department. *Id.* Nelson was specifically identified as the culprit and the Ryans continued to rely on the police for

protection. *Id.* They felt confident that they would take some action in light of the continuing escalation of the situation. *See* CP 280-281. Nothing was done by the Sheriff's Department despite assurances otherwise. *See* CP 281.

The Sheriff was again summoned to the Ryan home on Sunday, January 17, 2016 for additional threats and escalating troublesome conduct of Nelson. *See* CP 281. The officer came to the home to take the report. Again, Nelson was specifically identified as the offender. *Id.* Still, the Ryans continued to rely on the department's express assurances to protect the family. The following morning, Teresa Ryan was murdered. *Id.*

Throughout the time frame the Ryan family was given assurances that the police would take action against Nelson for his conduct in order to protect the family. *See* CP 281. The family relied upon those assurances for the safety of the family. *Id.* The department was well aware of the fear and concern the family was feeling. *Id.* This made them all feel as if the police were protecting them, only to find out later, they did nothing to protect. *Id.*

Michael D. Lyman, Ph.D. offers a declaration that opines on the actions and inactions of the Pierce County Sheriff's Department. *See* CP 282-284. Dr. Lyman opines the Sheriff's Department had more than enough information and probable cause to contact and/or arrest Mr.

Nelson. *See* CP 283. He opines that the failure to do so, despite the reliance of such on behalf of the Ryan family, fell below the standard of care and created a substantial, and ultimately fatal, risk. *See* CP 283-284.

At deposition, Mr. Ryan testified that he believed the police would be investigating the matter. *See* CP 110-112. He was frustrated that the police were not acting very fast. *Id.*

III. ARGUMENT

A. STANDARD OF REVIEW - CR 56

The appellate Court reviews appeals regarding summary judgment *De Novo*. Summary judgment on all or any part of a claim is appropriate only where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(c). A material fact is one upon which the outcome of litigation depends. *Kinney v. Cook*, 150 Wn.App. 187, 192, 208 P.3d 1 (2009).

When considering a summary judgment motion, the court must construe all facts and reasonable inferences in the light most favorable to the nonmoving party. *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). Further, “[q]uestions of fact may only be determined on summary judgment as a matter of law where reasonable minds could reach but one

conclusion.” *Swinehart v. City of Spokane*, 145 Wn.App. 836, 844, 187 P.3d 345 (2008). In ruling on such a motion, the non-moving party's evidence, together with all reasonable inferences that may be drawn from it, must be accepted as true. *Industrial Indem. Co. of the N.W., Inc. v. Kallevig*, 114 Wn.2d 907, 915-16, 792 P.2d 520 (1990). The court may grant the motion only if, as a matter of law, there is neither substantial evidence nor reasonable inference from the evidence to sustain the verdict. *Hizey v. Carpenter*, 119 Wn.2d 251, 271-72, 830 P.2d 646 (1992). If the evidence allowed reasonable minds to reach conclusions that sustain the verdict, the question is one for the jury. *Levy v. North Am. Co. for Life and Health Ins.*, 90 Wn.2d 846, 851, 586 P.2d 845 (1978).

B. PUBLIC DUTY DOCTRINE DOES NOT APPLY

The “public duty doctrine” stands for the principle that a duty does not arise between a public entity and a plaintiff unless the duty is owed to the plaintiff individually rather than to the public in general. *Donohoe v. State*, 135 Wn.App. 824, 833, 142 P.3d 654 (2006) citing (*Babcock v. Mason County Fire Dist. No. 6*, 144 Wn.2d 774, 784-85, 30 P. 3d 1261 (2001)). The “public duty doctrine” is not a form of sovereign immunity, rather it simply requires that the entity owe a duty to the **specific plaintiff**. *J & B Dev. Co. v. King County*, 100 Wn.2d 299, 303, 669 P.2d 468

(1983), (overruled on other grounds by *Taylor v. Stevens County*, 111 Wn.2d 159, 168, 759 P.2d 447 (1988)).

J & B Dev. Co. also states, “The Legislature, by adopting RCW 4.96.010, declared that municipal corporations ‘shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their officers . . . to the same extent as if they were a private person or corporation.’” *Id.* “The public duty doctrine does not serve to a bar in suit in negligence against a government entity.” *Cummins v. Lewis County*, 156 Wn.2d 844, 853, 133 P.3d 458 (2006). “As a result of the enactment in 1967 of RCW 4.96.010, which did away with Washington’s shield of absolute sovereign immunity, local governments such as a county may be liable for damages arising out of their tortious conduct, or the tortious conduct of its employees ‘to the same extent as if they were private person or corporation.’” *Id.* (*quoting RCW 4.96.010(1)*).

In this light, it is more of a “focusing tool” used to determine whether the state owed a specific duty to a particular individual. *Pierce v. Yakima County*, 161 Wn. App. 791, 251 P.3d 270 (2011) (citing *Osborn v. Mason County*, 157 Wn.2d 18, 27, 134 P.3d 197 (2006)). The exceptions to the public duty doctrine indicate when a statutory or common law duty exists: “The question whether an exception to the public duty doctrine

applies is thus another way of asking whether the State had a duty to the plaintiff.” *Taggart v. State*, 118 Wn.2d 195, 218, 822 P.2d 243 (1992). *See also Bishop v. Miche*, 137 Wn.2d 518, 530 (1999) (“Exceptions to the doctrine generally embody traditional negligence principles and may be used as focusing tools to determine whether a duty is owed.”). In other words, the public duty doctrine helps us distinguish proper legal duties from mere hortatory “duties.”

Recently, the Washington State Supreme Court addressed a similar case in *Robb v. City of Seattle*, 176 Wn.2d 427, 295 P.3d 212 (2013). The Court clarified that there are two distinct categories of “special relationships” to protect a party from the criminal conduct of a third party: (1) where there is a special relationship with the victim, and (2) where there is a special relationship with the criminal. *Id.*, 295 P.3d at 216. (citing *Tae Kim v. Budget Rent A Car Sys., Inc.* 143 Wn.2d 190, 196-7, 15 P.3d 1283 (2001)). In the case at hand, we are dealing with a special relationship with the victims, Teresa Ryan and her family. This case is similar to cases involving a duty owed by a municipality to respond to 911 calls. The pleadings and the underlying facts establish a factual scenario in which this first prong of the duty is met. *Complaint; Ryan Decl.*

Further, the courts have addressed what is necessary to create a special relationship between police officer and citizen, Washington law requires direct contact setting the citizen apart from the general public, and “express assurances” of assistance that give rise to a justifiable reliance on the part of the citizen. *Torres v. City of Anacortes*, 97 Wn.App 64, 73-74, 981 P.2d 891 (1999); *Beal v. City of Seattle*, 134 Wn.2d 769, 785, 954 P.2d 237 (1998). An actionable duty to provide police services can arise if all these requirements are met. *Beal*, 134 Wn.2d at 785.

In *Beal*, the victim called 911 and was told that the police would be on their way. However, police did not timely respond. The Court held: “Liability may exist, however, where a relationship exists or has developed between the plaintiff and the municipality’s agents giving rise to a duty to perform a mandated act for the benefit of a particular person or class of persons.” *Id* at 784-85. The court held “**whether a party justifiably relies on information is a fact question generally not amenable to summary judgment.**” *Id.* at 786-87, citing *Magula v. Benton Franklin Title Co.*, 131 Wn.2d 171, 930 P.2d 307 (1977); *Swanson v. Liquid Air Corp.*, 118 Wn.2d 512, 826 P.2d 664 (1992). “[T]he duty is defined at least in part by the nature of the assurances given.” *Beal*, 134 Wn.2d at 786.

Further, in *Munich v. Skagit Emergency*, 175 Wn.2d 871, 288 P.3d 328 (2012), the Court dealt with the narrow issue of whether the express assurances need to be false or inaccurate as a matter of law to satisfy the “special relationship” exception to the public duty doctrine. The Court definitively held : “We hold that here, where the alleged express assurance involves a promise of action, the plaintiff is not required to show the assurance was false or inaccurate in order to satisfy the special relationship exception.” *Id.* at 884. The court went on to hold:

“The County's argument ignores the fact that negligence can take forms other than the mere transmittal of incorrect factual information. In cases like this, where the express assurance involves a promise of action,...truth or falsity is not determinative because the government actor may be negligent in following through on the assurance.

Id. at 883.

Here, the Ryans were informed that the claim would be investigated. *See* CP 271-76; CP 279-281. They were informed that the officer “wanted to get him”. *See* CP 280. This is an express assurance that the Ryans relied on to keep their family safe. The family justifiably relied on these assurances and felt that they would be safe. Whether the ‘express assurance’ was made, and whether they police acted properly on the issue is a question of fact for the jury to determine. This is a question of fact for a jury. Summary judgment was correctly denied.

C. PROXIMATE CAUSE IS A QUESTION OF FACT

While existence of a duty is generally a question of law, breach and proximate cause are generally fact questions for the trier of fact."

Hertog v. City of Seattle, 138 Wn.2d 265, 275, 979 P.2d 400

(1999). Deciding the issue of proximate cause on a motion based on CR 56 would be reversible error.

In *Beal v. City of Seattle*, *supra*, the Court distinctly stated that causation is a question of fact for the jury. Again, the issue in *Beal* was whether the City had a duty to reasonably respond to a 911 call and what the standards were when doing so. In *Beal*, and in the present case, the defendant claims that proximate cause is lacking as a matter of law for two reasons. The defendant claims that it cannot be said that "but for" its failure to act and investigate the claims against Nelson, Teresa would not have murdered. As addressed in *Beal*, 134 Wn.2d at 787,

In light of *Chambers-Castanes* this question has already been decided against the City. That is, the court has already recognized that liability may be premised upon assurances of police protection, and causation found when a municipality breaches its duty to provide that protection and as a result plaintiff is injured by a third party's criminal acts. . . . We hold that the trial court properly denied the City's motion for summary judgment on the issue of liability.

The Court found that causation was a question of fact and held such. "Existence of a duty is a question of law. Breach and proximate cause are generally fact questions for the trier of fact." *Hertog*, 138 Wn.2d at 275. Such is the case here. Defendant's motion for summary judgment was properly denied.

VI. CONCLUSION

In conclusion, the trial court was correct in denying defendant Pierce County's Motion for Summary Judgment as genuine issues of material fact exist that raise questions for the jury to decide, not the Court as a matter of law.

DATED this 24th day of April 2018.

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CERTIFICATE OF SERVICE

On April 25, 2018, I hereby certify that I electronically filed the foregoing Opening Brief of Petitioner with the Clerk of the Court and I delivered a true and accurate copy via electronic mail pursuant to the agreement of the parties to the following:

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