

CLERK OF THE COURT

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Mar 06 2014 10:06 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

1 **NOAS**
2 CAL J. POTTER, III, ESQ.
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4 C. J. POTTER, IV, ESQ.
5 Nevada Bar No. 13225
6 POTTER LAW OFFICES
7 1125 Shadow Lane
8 Las Vegas, Nevada 89102
9 Ph: (702) 385-1954
10 Fax: (702) 385-9081
11 *Attorneys for Plaintiff*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

.....

9 JUDY PALMIERI,
10 Plaintiff,

CASE NO.: A-11-640631-C
DEPT. NO.: XXVI

11 v.

12 CLARK COUNTY, a political subdivision
13 of the STATE OF NEVADA; DAWN
14 STOCKMAN, CE096, individually and in
15 her official capacity as an officer employed
16 by the County of Clark; JOHN DOES I
17 through X, inclusive and ROE
18 CORPORATIONS I through X, inclusive.

16 Defendants.

17 **NOTICE OF APPEAL**

18 NOTICE IS HEREBY GIVEN that Plaintiff, JUDY PALMIERI, does hereby appeal to
19 the Supreme Court of Nevada from the Order Granting Motion for Summary Judgment filed on
20 January 28, 2014 and the Notice of Entry of Order filed on February 5, 2014, copies of which are
21 attached hereto.

22 DATED this 27th day of February, 2014.

23 POTTER LAW OFFICES

24 By 
25 CAL J. POTTER, III, ESQ.
26 Nevada Bar No. 1988
27 C. J. POTTER, IV, ESQ.
28 Nevada Bar No. 13225
1125 Shadow Lane
Las Vegas, Nevada 89102
Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that pursuant to the Amended EDCR 7.26 and to NRCP5(b) on the
3 27th day of February, 2014, I did serve at Las Vegas, Nevada a true and correct copy of **NOTICE**
4 **OF APPEAL**, on all parties to this action by:

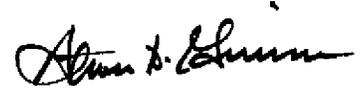
- 5 Facsimile
6 U.S. Mail
7 Hand Delivery
8 Electronic Filing Courtesy Copy

9 Addressed as follows:

10 Steven B. Wolfson, District Attorney
11 Matthew J. Christian, Deputy District Attorney
12 500 South Grand Central Parkway
13 P. O. Box 552215
14 Las Vegas, NV 89155-2215
15 Ph: (702) 455-4761
16 Fax: (702) 382-5178

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28
/s/ Jenna Enrico
An Employee of POTTER LAW OFFICES

1 MEMC
2 STEVEN B. WOLFSON
3 District Attorney
4 CIVIL DIVISION
5 State Bar No. 1565
6 By: MATTHEW J. CHRISTIAN
7 Deputy District Attorney
8 State Bar No. 8024
9 500 South Grand Central Pkwy.
10 P. O. Box 552215
11 Las Vegas, Nevada 89155-2215
12 (702) 455-4761
13 E-Mail: Matthew.Christian@ClarkCountyDA.com
14 Attorneys for Defendant
15 Clark County


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

10 JUDY PALMIERI,
11
12 Plaintiff,
13
14 vs.
15 CLARK COUNTY, a political subdivision
16 of the STATE OF NEVADA; DAWN
17 STOCKMAN, CEO96, individually and in
18 her official capacity as an officer
19 employed by the County of Clark; JOHN
20 DOES I through X, inclusive and ROE
21 CORPORATIONS I through X, inclusive,
22
23 Defendants.

Case No: A-11-640631-C
Dept No: XXVI

**NOTICE OF ENTRY OF DECISION
AND ORDER RE: DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

20 NOTICE IS HEREBY GIVEN that the attached Order Regarding Motion for
21 Summary Judgment was filed on the 28th of January, 2014, a copy of which is attached
22 hereto.

23 DATED this 5th day of February, 2014.


MATTHEW J. CHRISTIAN, ESQ.
Deputy District Attorney
State Bar No. 8024
500 South Grand Central Pkwy. 5th Flr.
P. O. Box 552215
Las Vegas, Nevada 89155-2215
Attorney for Defendant Clark County

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CERTIFICATE OF MAILING

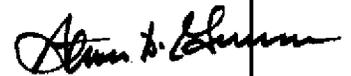
I hereby certify that on the 5th day of February, 2014, I deposited in the United States Mail, postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope, a copy of the above and foregoing **Notice of Entry of Decision and Order Re: Defendant's Motion for Summary Judgment** addressed as follows:

Cal J. Potter, III, Esq.
1125 Shadow Lane
Las Vegas, Nevada 89102
Attorneys for Plaintiff


An Employee of the Clark County District
Attorney's Office – Civil Division

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

Judy Palmieri, Plaintiff(s)
vs.
Clark County, Defendant(s)

CASE NO.: A-11-640631-C
Department 26

**Decision and Order Re:
Defendant's Motion for
Summary Judgment**

FILE WITH
MASTER CALENDAR

Defendants Clark County and Dawn Stockman filed a Motion for Summary Judgment in the above captioned matter; plaintiff Judy Palmieri filed an Opposition and Defendants filed a Reply. The matter was originally set for hearing December 21, 2012, and continued pursuant to NRCP 56(f) to allow the party's time to depose witness Kaitlyn Nichols who is in the military and serving outside the jurisdiction. The matter came back on for hearing on November 1, 2013, and although Ms. Nichols had not been deposed, a more detailed affidavit was provided in an Addendum to the Opposition filed by Plaintiff. After oral argument the matter was taken under advisement.

Based on the arguments of counsel and pleadings and papers on file the Court finds as follows:

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Facts

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2
3 Plaintiff brings the instant lawsuit claiming illegal search and
4 seizure based on insufficient probable cause to obtain a valid search
5 warrant. Defendants received information that possible violations of
6 the animal welfare statutes were occurring at Plaintiff's residence.
7 The information was received via telephonic tip from a woman who
8 identified herself as an employee of Plaintiff named Kaitlyn Nichols.
9 Defendant Stockman obtained a search warrant, and upon arriving at
10 Plaintiff's home, heard a number of dogs barking. A search of the
11 home revealed over 20 dogs; a couple of which appeared sickly. The
12 dogs were taken away, but later returned. Plaintiff was also cited for
13 having too many dogs in her home.
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17 The warrant obtained was based upon an informant's
18 statements combined with Plaintiff's alleged history of violating
19 animal codes, and the verified information of the informant when
20 Defendants knocked and entered Plaintiff's home. The informant
21 claimed to have worked for Plaintiff, had been in her house, and
22 stated that she had 20 plus dogs in her house and that some of them
23 were sickly. The informant's statement regarding the number of dogs
24 was confirmed when the officers knocked on the door and heard
25 multiple dogs. Stockman followed the standard procedures used by
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1 animal control officers when seeking a warrant. There were 29 dogs
2 on the premises, none of which had proof of vaccinations, and two of
3 which looked physically sick.

4 Summary Judgment is appropriate when the pleadings and
5 other evidence on file demonstrate no 'genuine issue as to any
6 material fact' and that the moving party is entitled to a judgment as a
7 matter of law. Wood, et al. v. Safeway, Inc., et al., 121 P.3d 1026 (Nev.
8 2005). While the pleadings and other proof must be construed in the
9 light most favorable to the nonmoving party, that party bears the
10 burden to "do more than simply show that there is some metaphysical
11 doubt" as to the operative facts. Id. A genuine issue of material fact
12 is one where the evidence is such that a reasonable jury could return a
13 verdict for the non-moving party. Valley Bank v. Marble, 105 Nev.
14 366, 367 (Nev. 1989).

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19 **I.**
20 **Plaintiff's Claim for Civil Rights Violation Against**
21 **Individual Officers**

22 Plaintiff alleges that the search warrant was invalid as Kaitlyn
23 Nichols' uncontroverted affidavit states that she was not the
24 informant. Regardless of whom the informant was, the details
25 provided and other corroborating information supported a finding of
26 probable cause. The finding of probable cause was further bolstered
27 by previous allegations about Plaintiff's dogs. The fact that the
28

1 informant apparently used someone else's name when calling in the
2 tip does not in and of itself void the finding of probable cause for
3 issuance of the warrant. Plaintiff has cited to no authority that places
4 a requirement to confirm the identity of an informant before
5 obtaining a warrant when there is independent information
6 corroborating the probable cause.¹ The party challenging a warrant
7 must prove that a search warrant is invalid by a preponderance of the
8 evidence. Pritchett v. State, 57291, 2012 WL 1662108 (Nev. May 10,
9 2012).²

12 Plaintiff alleged several causes of action including malicious
13 prosecution in this case. There is no evidence to establish the element
14 of malice by the officer against the Plaintiff. Further, under 1983
15 negligence against an individual officer cannot be maintained. There
16 must be a showing of intentional wrong doing by the officer or some
17 act amounting to clear disregard for civil and human rights. There is
18 no evidence that Stockman did anything intentionally wrong, but
19 acted in good faith.
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25 ¹ When the issuance of a search warrant is based upon information obtained from a confidential informant,
26 the proper standard for determining probable cause for the issuance of the warrant is whether, under the
27 *totality of the circumstances*, there is probable cause to believe that contraband or evidence is located in a
particular place. Keesee v. State, 110 Nev. 997, 1002, 879 P.2d 63, 67 (1994).

28 ² Pritchett is an unpublished decision, and thus may not be relied upon as authority, but the decision is
instructive as it cites to U.S. Supreme Court and Nevada Supreme Court decisions that are controlling on
the same issue presented by Plaintiff: probable cause for a search warrant.

1 There is no record or proof that the past incidents involving
2 Plaintiff or her business were unfounded, frivolous, or based on bad
3 faith. Further, the officers involved in this incident were not involved
4 in the prior cases. Plaintiff has not met her evidentiary burden of
5 proof to substantiate this claim.
6

7 Further, Defendant Stockman is entitled to qualified immunity
8 unless her conduct violates some clearly established constitutional
9 right which any reasonable officer would have known was a violation.
10 When minimal force is exerted to carry out a search warrant, the
11 claim of lack of probable cause does not take away the good faith
12 qualified immunity that police officers get in such situations.³
13 Plaintiff was allowed to return home to retrieve glasses; she was
14 allowed to stay in her house during the search, the entire process
15 taking just over an hour. There was no personal injury or hand cuffing
16 of Plaintiff. Officers did not engage in conduct that an average
17 reasonable officer would consider as a clearly established violation of
18 the Plaintiff's civil rights.
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³ An allegation of malice is not sufficient to defeat immunity if the officer acted in an objectively
28 reasonable manner. Ortega v. Reyna, 114 Nev. 55, 59, 953 P.2d 18, 21 (1998) abrogated by Martinez v.
Maruszczak, 123 Nev. 433, 168 P.3d 720 (2007)

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II.
Plaintiff's Civil Rights Claim Under 42 U.S.C. 1983⁴

To establish a claim under §1983, the plaintiff must prove that the conduct complained of: (1) was committed by a person acting under color of state law, and (2) deprived the plaintiff of rights, privileges, or immunities secured by the Constitution or laws of the United States. The United States Supreme Court has held that officials acting in their official capacities are not persons under 42 U.S.C. §1983, and therefore, may not be sued in state courts under the federal civil rights statutes. State v. Eighth Judicial Dist. Court ex rel. County of Clark, 118 Nev. 140, 153, 42 P.3d 233, 241-42 (2002).

III.
Monell Claim against Clark County

Plaintiff's Monell claim also fails as Plaintiff has not shown that a policy, practice, or custom of the entity was the moving force behind the alleged violation of Plaintiff's constitutional rights.⁵ There has been no showing of official county policy that could be interpreted as

⁴ Section 1983 does not itself create substantive rights, but merely provides 'a method for vindicating federal rights elsewhere conferred. State v. Eighth Judicial Dist. Court ex rel. County of Clark, 118 Nev. 140, 153, 42 P.3d 233, 242 (2002).

⁵ *[A]ny person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress . . ."* Monell v. Dep't of Soc. Services of City of New York, 436 U.S. 658, 691-92, 98 S. Ct. 2018, 2036, 56 L. Ed. 2d 611 (1978).

1 authorizing a violation of Plaintiff's rights, and no showing that there
2 was intentional misconduct or reckless disregard of Plaintiff's rights.
3 County policy clearly states that warrants are carefully reviewed.
4 Here, all three officers testified that this procedure was followed as
5 the warrant was reviewed by two levels of supervisors, then by the
6 deputy district attorney, and again by supervisors before going before
7 a Judge. There was probable cause for the warrant regarding the
8 number of dogs and the greater chance of finding dogs of ill health
9 that may be in need of medical attention. The warrant was valid;
10 therefore, the officer is entitled to qualified immunity.
11
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14 [A] local government may not be sued under §1983 for an injury
15 inflicted solely by its employees or agents. Instead, it is when
16 execution of a government's policy or custom, whether made by its
17 lawmakers or by those whose edicts or acts may fairly be said to
18 represent official policy, inflicts the injury that the government as an
19 entity is responsible under §1983. Monell v. Dep't of Soc. Services of
20 City of New York, 436 U.S. 658, 694, 98 S. Ct. 2018, 2037-38, 56 L.
21 Ed. 2d 611 (1978).
22
23

24 Under Monell, the facts must show that a policy of the entity is
25 the moving force behind the violation of a plaintiff's constitutional
26 rights. The evidence in this case, however, shows that a valid verified
27 warrant was issued, that the actors involved performed their duties
28

1 appropriately and that the officers acted appropriately during the
2 search and seizure. The policy as outlined above has not deprived
3 Plaintiff of her constitutional rights; Defendants procured a warrant
4 through specified channels before being signed by the judge. The
5 Nevada Supreme Court has held that where a judge reviews the
6 search warrant it will be sustained so long as there was a "substantial
7 basis" to conclude a violation of the law was "probably present." Kelly
8 v. State, 84 Nev. 332, 336, 440 P.2d 889, 891 (1968).
9

10
11 This type of exhaustion of procedure limits the intrusiveness
12 into the citizen's privacy rights. There is no evidence that any of the
13 Defendants acted in reckless or malicious disregard.⁶
14

15 **IV.**
16 **Plaintiff's State Law Tort Claims also Fail**

17 Plaintiff's complaint also alleged claims for negligence, IIED,
18 false arrest, unlawful warrant, conspiracy, and malicious prosecution,
19 but these claims are barred by the doctrine of sovereign immunity.
20 Further, Court finds there is no evidence to support any of these
21 claims. Discretionary immunity bars Plaintiff's negligence claims,
22 intentional torts of trespass, conversion and nuisance against the
23 County in this case.
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28 ⁶ NRS 41035 provides that no punitive damages are allowed against a government agency or its employees.

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A. Qualified Immunity Defendant Stockman:

The Nevada Supreme Court has defined qualified immunity as follows:

Under the qualified immunity doctrine, government officials performing discretionary functions are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. The pertinent inquiry in determining whether an officer is entitled to qualified immunity for a Fourth Amendment violation is whether a reasonable officer could have believed his conduct lawful under the clearly established principles of law governing that conduct. The right which the official is alleged to have violated must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. The issue is the objective (albeit fact-specific) question whether a reasonable officer could have believed [appellant's] warrantless [arrest] to be lawful, in light of clearly established law and the information the officer possessed. Stated another way, we look not at whether there was an arrest without probable cause, but rather whether the trooper reasonably could have believed that his conduct was lawful in light of clearly established law and the totality of the circumstances.

Ortega v. Reyna, 114 Nev. 55, 60, 953 P.2d 18, 21 (1998) abrogated by Martinez v. Maruszczak, 123 Nev. 433, 168 P.3d 720 (2007). The Court abrogated Ortega in Maruszczak in order clarify the test for discretionary act immunity.

B. Discretionary Act Immunity Defendant Stockman

The Nevada Supreme Court adopted the two part test for discretionary-act immunity defined by the U. Supreme Court in

1 Berkovitz-Gaubert: a decision must (1) involve an element of
2 individual judgment or choice and (2) be based on considerations of
3 social, economic, or political policy. The Court noted that
4 "...decisions that fail to meet the second criterion of this test remain
5 unprotected by NRS 41.032(2)'s discretionary-act immunity."
6 Martinez v. Maruszczak, 123 Nev. 433, 446-47, 168 P.3d 720, 729
7 (2007).
8

9
10 In the instant case, Defendants are entitled to immunity
11 because the issue involved judgment or choice on the part of the
12 person involved and that the choice is the type that involves some
13 social, economic or political policy. The county has a policy for
14 preventing animal abuse, and the time and effort of having to go
15 through such exhaustive measures the Plaintiff insists on is
16 unreasonably wasteful and does not compliment public policy. Since
17 criminal informants do not even need to meet such a high bar, then
18 animal control does not need to meet such an unreasonable bar. The
19 policy and custom by the county is reasonable under the
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24 ⁷ NRS 41.032. Acts or omissions of officers, employees and immune contractors

25 Except as provided in NRS 278.0233 no action may be brought under NRS 41.031 or against an
26 immune contractor or an officer or employee of the State or any of its agencies or political subdivisions
27 which is:

28 1. Based upon an act or omission of an officer, employee or immune contractor, exercising due
care, in the execution of a statute or regulation, whether or not such statute or regulation is valid, if the
statute or regulation has not been declared invalid by a court of competent jurisdiction; or

2. Based upon the exercise or performance or the failure to exercise or perform a *discretionary
function or duty* on the part of the State or any of its agencies or political subdivisions or of any officer,
employee or immune contractor of any of these, whether or not the discretion involved is abused.

1 circumstances, and this case only furthers the current policy as the
2 informant's information was substantially accurate. Therefore, the
3 immunity provided the government here withstands Plaintiff's
4 assertion under 1983.

5
6 [B]ecause the County's actions were grounded on public policy
7 concerns, as expressed in the County Code and Nevada's abatement
8 statute, they fit within the second criterion of the *Berkovitz-Gaubert*
9 test.
10

11
12 **V.**
Malicious Prosecution

13 Plaintiff has failed to establish the elements of a malicious
14 prosecution claim: (1) want of probable cause to initiate the prior
15 criminal proceeding; (2) malice; (3) termination of the prior criminal
16 proceedings; and (4) damage. The Court has found that there was
17 probable cause for the warrant, there is further no evidence of malice.
18 A malicious prosecution claim requires that the defendant initiated,
19 procured the institution of, or actively participated in the
20 continuation of a criminal proceeding against the plaintiff. LaMantia
21 v. Redisi, 118 Nev. 27, 30, 38 P.3d 877, 879-80 (2002).
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1 having suffered severe or extreme emotional distress and (3) actual
2 and proximate causation. Star v. Rabello, 97 Nev. 124, 125 (1991).

3 [E]xtreme and outrageous conduct is that which is outside all
4 possible bounds of decency and is regarded as utterly intolerable in a
5 civilized community. That persons must necessarily be expected and
6 required to be hardened to occasional acts that are definitely
7 inconsiderate and unkind. Maduiké v. Agency Rent-A-Car, 114 Nev.
8 1, 4, 953 P.2d 24, 26 (1998). Plaintiff simply states that the intrusion
9 and the prior history of complaints justify her IIED claim.
10
11

12 VII. 13 Conspiracy

14 Nevada law defines a conspiracy as an agreement between two
15 or more persons for an unlawful purpose. Evidence of a coordinated
16 series of acts furthering the underlying offense is sufficient to infer
17 the existence of an agreement and support a conspiracy conviction.
18 However, absent an agreement to cooperate in achieving the purpose
19 of a conspiracy, mere knowledge of, acquiescence in, or approval of
20 that purpose does not make one a party to conspiracy. Bolden v.
21 State, 121 Nev. 908, 912-13, 124 P.3d 191, 194 (2005).
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23
24

25 There is absolutely no issue as to conspiracy here; the County
26 cannot conspire with itself, and there is no evidence that any other
27 person was involved to support the alleged conspiracy.
28

CONCLUSION

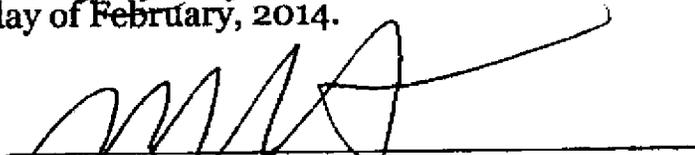
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2 Based on the foregoing, the Court concludes that as Plaintiff has
3 not met her burden to overcome the immunity afforded to the
4 government, her claims are barred. Summary judgment is
5 appropriate herein as there is no genuine issue of material fact, and
6 Defendant is entitled to judgment as a matter of law.
7

8 Therefore, Defendant's Motion is hereby GRANTED in its
9 entirety and the Jury Trial scheduled for April 28, 2014, is
10 VACATED.
11

12 Counsel for Respondent is directed to provide Notice of Entry
13 within ten (10) days of the filing of this Decision and Order.
14

15 **IT IS SO ORDERED.**

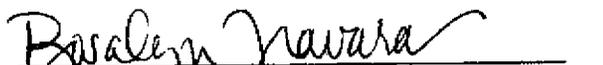
16 Dated this 28 day of January, 2014.
17

18 
19 _____
The Honorable Gloria Sturman

20 *I hereby certify that on the date signed, a copy of the foregoing was placed in the*
21 *attorney folder(s) in the Clerk's Office or mailed or faxed to the following:*

22 *Cal Johnson Potter*
23 *1125 Shadow Lane*
Las Vegas, NV 89102
24 *F: 385-9081*

25 *Steven B Wolfson*
Clark County District Attorney
26 *200 Lewis Avenue, 3rd Floor*
Las Vegas, NV 89155
27 *F: 382-5178*

28 

Rosalyn Navara, Judicial Executive Assistant

BROADCAST REPORT

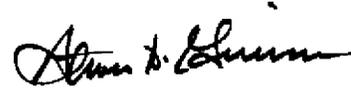
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BUSY: BUSY/NO RESPONSE
NG : POOR LINE CONDITION
CV : COVERPAGE
PC : PC-FAX



CLERK OF THE COURT

1 **ASTA**
2 CAL J. POTTER, III, ESQ.
3 Nevada Bar No. 1988
4 C. J. POTTER, IV, ESQ.
5 Nevada Bar No. 13225
6 POTTER LAW OFFICES
7 1125 Shadow Lane
8 Las Vegas, Nevada 89102
9 Ph: (702) 385-1954
10 Fax: (702) 385-9081
11 *Attorneys for Plaintiff*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**
9

9 JUDY PALMIERI,
10 Plaintiff,

CASE NO.: A-11-640631-C
DEPT. NO.: XXVI

11 v.

12 CLARK COUNTY, a political subdivision
13 of the STATE OF NEVADA; DAWN
14 STOCKMAN, CE096, individually and in
15 her official capacity as an officer employed
16 by the County of Clark; JOHN DOES I
17 through X, inclusive and ROE
18 CORPORATIONS I through X, inclusive.

16 Defendants.

17 **CASE APPEAL STATEMENT**

- 18 1. Name of appellant filing this case appeal statement:
19 Judy Palmieri
20
21 2. Identify the judge issuing the decision, judgment, or order appealed from:
22 Judge Gloria Sturman
23
24 3. Identify each appellant and the name and address of counsel for each appellant:
25 Appellant: Judy Palmieri
26 Counsel for Appellants: Cal J. Potter, III, Esq.
27 C. J. Potter, IV, Esq.
28 Potter Law Offices
1125 Shadow Lane
Las Vegas, Nevada 89102
Tel: (702) 385-1954
Fax: (702) 385-9081

1 4. Identify each respondent and the name and address of appellate counsel, if known,
2 for each respondent (if the name of a respondent's appellate counsel is unknown,
3 indicate as much and provide the name and address of that respondent's trial
4 counsel):

5 Respondent: Clark County

6 Counsel for Respondent: Steven B. Wolfson, District Attorney
7 Matthew J. Christian, Deputy District Attorney
8 500 South Grand Central Parkway
9 P. O. Box 552215
Las Vegas, NV 89155-2215
Ph: (702) 455-4761
Fax: (702) 382-5178

10 Respondent: Dawn Stockman, CE96

11 Counsel for Respondent: Steven B. Wolfson, District Attorney
12 Matthew J. Christian, Deputy District Attorney
13 500 South Grand Central Parkway
14 P. O. Box 552215
Las Vegas, NV 89155-2215
Ph: (702) 455-4761
Fax: (702) 382-5178

15 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
16 licensed to practice law in Nevada and, if so, whether the district court granted that
17 attorney permission to appear under SCR 42 (attach a copy of any district court order
18 granting such permission):

19 Not Applicable

20 6. Indicate whether appellant was represented by appointed or retained counsel in the
21 district court:

22 Appellant was represented by her retained counsel, listed above, in district
23 court.

24 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

25 Appellant is represented by her retained counsel, listed above, on appeal.

26 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the
27 date of entry of the district court order granting such leave:

28 Appellant has not been granted leave to proceed in forma pauperis.

1 9. Indicate the date the proceedings commenced in the district court (e.g., date
2 complaint, indictment, information, or petition was filed):

3 The Complaint was filed in the Eighth Judicial District on May 4, 2011.

4 10. Provide a brief description of the nature of the action and result in the district court,
5 including the type of judgment or order being appealed and the relief granted by the
6 district court:

7 This case arises out of the execution of a fraudulent search warrant
8 and subsequent malicious prosecution which was launched against Judy
9 Palmieri ("Mrs. Palmieri"), a proprietor of pet stores in Clark County and the
10 City of Las Vegas at the Meadows Mall. The search warrant was based upon
11 a false affidavit, filed by Dawn Stockman, which contained material
12 misrepresentations about the identity and information provided to the City of
13 Las Vegas and then sent to Clark County Animal Control. Mrs. Palmieri
14 filed suit for violations of her civil rights, malicious prosecution, and several
15 other torts.

16 11. Indicate whether the case has previously been the subject of an appeal to or original
17 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court
18 docket number of the prior proceeding:

19 Not Applicable.

20 12. Indicate whether this appeal involves child custody or visitation:

21 This appeal does not involve child custody or visitation.

22 ...

23 ...

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1 13. If this is a civil case, indicate whether this appeal involves the possibility of
2 settlement:

3 Appellant believes there is a possibility of settlement.

4 DATED this 27th day of February, 2014.

5 POTTER LAW OFFICES

6 By 
7 CAL J. POTTER, III, ESQ.
8 Nevada Bar No. 1988
9 C. J. POTTER, IV, ESQ.
10 Nevada Bar No. 13225
11 1125 Shadow Lane
12 Las Vegas, Nevada 89102
13 *Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that pursuant to the Amended EDCR 7.26 and to NRCP5(b) on the
3 27th day of February, 2014, I did serve at Las Vegas, Nevada a true and correct copy of **CASE**
4 **APPEAL STATEMENT**, on all parties to this action by:

- 5 Facsimile
6 U.S. Mail
7 Hand Delivery
8 Electronic Filing Courtesy Copy

9 Addressed as follows:

10 Steven B. Wolfson, District Attorney
11 Matthew J. Christian, Deputy District Attorney
12 500 South Grand Central Parkway
13 P. O. Box 552215
14 Las Vegas, NV 89155-2215
15 Ph: (702) 455-4761
16 Fax: (702) 382-5178

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/s/ Jenna Enrico
An Employee of POTTER LAW OFFICES

DEPARTMENT 26
CASE SUMMARY
CASE NO. A-11-640631-C

Judy Palmieri, Plaintiff(s)
vs.
Clark County, Defendant(s)

§
§
§
§

Location: Department 26
Judicial Officer: Sturman, Gloria
Filed on: 05/04/2011
Cross-Reference Case Number: A640631

CASE INFORMATION

Case Type: **Negligence - Other**
Case Flags: **Appealed to Supreme Court**
Jury Demand Filed
Arbitration Exemption Granted

DATE	CASE ASSIGNMENT
------	-----------------

Current Case Assignment

Case Number	A-11-640631-C
Court	Department 26
Date Assigned	05/04/2011
Judicial Officer	Sturman, Gloria

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	Palmieri, Judy	Potter, Cal Johnson <i>Retained</i> 7023851954(W)
Defendant	Clark County	Wolfson, Steven B <i>Retained</i> 702-671-2700(W)
	Nevada State of	
	Stockman, Dawn	Wolfson, Steven B <i>Retained</i> 702-671-2700(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
------	------------------------------	-------

05/04/2011	 Complaint Filed By: Plaintiff Palmieri, Judy <i>Complaint</i>	
05/04/2011	Case Opened	
05/18/2011	 Initial Appearance Fee Disclosure Filed By: Plaintiff Palmieri, Judy <i>Initial Appearance Fee Disclosure</i>	
05/25/2011	 Summons Filed by: Plaintiff Palmieri, Judy <i>Summons for Clark County</i>	
05/25/2011	 Summons Filed by: Plaintiff Palmieri, Judy <i>Summons from Dawn Stockman, CE096</i>	

DEPARTMENT 26
CASE SUMMARY
CASE NO. A-11-640631-C

07/06/2011  Answer to Complaint
Filed by: Defendant Clark County
Answer of Clark County and Dawn Stockman

08/09/2011  Commissioners Decision on Request for Exemption - Granted
Commissioner's Decision on Request for Exemption

08/24/2011  Notice of Early Case Conference
Filed By: Plaintiff Palmieri, Judy
Notice of Early Case Conference

09/06/2011  Demand for Jury Trial
Filed By: Plaintiff Palmieri, Judy
Demand for Jury Trial

09/20/2011  Joint Case Conference Report
Filed By: Plaintiff Palmieri, Judy
Joint Case Conference Report

09/27/2011  Scheduling Order
Scheduling Order

10/21/2011  Order Setting Civil Jury Trial
Order Setting Civil Jury Trial

01/31/2012  Stipulation and Order to Extend Discovery Deadlines
Filed By: Plaintiff Palmieri, Judy
Stipulation and Order to Extend Discovery Deadlines Pursuant to EDCR 2.35

02/07/2012  Notice of Entry of Stipulation and Order
Filed By: Plaintiff Palmieri, Judy
Notice of Entry of Stipulation and Order

03/21/2012  Notice of Taking Deposition
Filed By: Plaintiff Palmieri, Judy
Notice of Taking Depositions

03/24/2012  Amended Notice of Taking Deposition
Filed By: Plaintiff Palmieri, Judy
Amended Notice of Taking Depositions

05/14/2012  Stipulation to Extend Discovery
Party: Plaintiff Palmieri, Judy
Stipulation and Order to Extend Discovery Deadlines Pursuant to EDCR 2.35 (Second Request)

05/16/2012  Notice of Entry of Stipulation and Order
Filed By: Plaintiff Palmieri, Judy
Notice of Entry of Stipulation and Order

08/03/2012  Motion for Summary Judgment
Defendants' Motion for Summary Judgment

DEPARTMENT 26
CASE SUMMARY
CASE NO. A-11-640631-C

08/27/2012  Order Setting Jury Trial
Order Re-Setting Civil Jury Trial

08/28/2012  Stipulation and Order
Filed by: Plaintiff Palmieri, Judy
Stipulation and Order to Extend Opposition to and Reply to Defendant's Motion for Summary Judgment, Move the Hearing, and Continue the Trial Date

08/29/2012  Notice of Entry of Stipulation and Order
Filed By: Plaintiff Palmieri, Judy
Notice of Entry of Stipulation and Order

09/12/2012  Notice of Rescheduling
of Hearing

10/08/2012  Stipulation and Order
Filed by: Plaintiff Palmieri, Judy
Stipulation and Order to Extend Opposition and Reply to Defendant's Motion for Summary Judgment and Move the Hearing (Second Request)

10/11/2012  Notice of Entry of Stipulation and Order
Filed By: Plaintiff Palmieri, Judy
Notice of Entry of Stipulation and Order

11/01/2012 **CANCELED Pre Trial Conference (10:00 AM) (Judicial Officer: Sturman, Gloria)**
Vacated - Superseding Order

11/13/2012  Opposition to Motion For Summary Judgment
Filed By: Plaintiff Palmieri, Judy
Plaintiff's Opposition to Defendants' Motion For Summary Judgment

11/15/2012 **CANCELED Calendar Call (10:00 AM) (Judicial Officer: Sturman, Gloria)**
Vacated - Superseding Order

11/19/2012 **CANCELED Jury Trial (1:00 PM) (Judicial Officer: Sturman, Gloria)**
Vacated - Superseding Order

11/29/2012  Notice of Rescheduling
Notice of Rescheduling of Hearing

12/14/2012  Reply to Opposition
Filed by: Defendant Clark County
Defendants' Reply to Plaintiff's Opposition

12/17/2012  Supplement to Motion for Summary Judgment
Filed by: Defendant Clark County
Supplemental Record for Motion for Summary Judgment

12/19/2012  Receipt of Copy
Filed by: Defendant Clark County
Receipt of Copy

12/21/2012  **Motion for Summary Judgment (9:00 AM) (Judicial Officer: Sturman, Gloria)**
Defendants' Motion for Summary Judgment

DEPARTMENT 26
CASE SUMMARY
CASE NO. A-11-640631-C

01/10/2013  Order
Filed By: Defendant Clark County
Order Regarding Motion for Summary Judgment

01/17/2013  Order
Filed By: Defendant Clark County
Order Regarding Motion for Summary Judgment

01/18/2013  Notice of Entry of Order
Filed By: Plaintiff Palmieri, Judy
Notice of Entry of Order Regarding Motion for Summary Judgment

06/20/2013  Status Report
Filed By: Plaintiff Palmieri, Judy
Plaintiff's Status Report

06/21/2013  **Status Check** (9:00 AM) (Judicial Officer: Sturman, Gloria)
Status Check: Witness Deposition

09/26/2013  Re-Notice
Filed by: Defendant Clark County
Re-Notice of Motion for Summary Judgment

09/27/2013  Certificate of Mailing
Filed By: Defendant Clark County
Certificate of Mailing

10/23/2013  Notice of Withdrawal of Motion
Filed By: Plaintiff Palmieri, Judy
Plaintiff's Notice of Vacating Motion to Move the Hearing for Defendant's Re-Notice of Motion for Summary Judgment

10/23/2013  Motion
Filed By: Plaintiff Palmieri, Judy
Motion to Move the Hearing for Defendant's Re-Notice of Motion for Summary Judgment

10/24/2013  Addendum
Filed By: Plaintiff Palmieri, Judy
Addendum to the Opposition to Motion for Summary Judgment

11/01/2013  **Motion for Summary Judgment** (9:00 AM) (Judicial Officer: Sturman, Gloria)
Defendants' Re-Notice of Motion for Summary Judgment

11/15/2013 **CANCELED Motion** (9:00 AM) (Judicial Officer: Sturman, Gloria)
Vacated - Moot
Motion to Move the Hearing for Defendant's Re-Notice of Motion for Summary Judgment

12/09/2013  Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call
Order ReSetting Civil Jury Trial

01/28/2014  **Minute Order** (3:00 AM) (Judicial Officer: Sturman, Gloria)
Minute Order: Decision and Order Re: Defendant's Motion for Summary Judgment

01/28/2014

DEPARTMENT 26
CASE SUMMARY
CASE NO. A-11-640631-C

	Decision and Order <i>Decision and Order Re: Defendant's Motion for Summary Judgment</i>
01/28/2014	Summary Judgment (Judicial Officer: Sturman, Gloria) Debtors: Judy Palmieri (Plaintiff) Creditors: Clark County (Defendant), Nevada State of (Defendant), Dawn Stockman (Defendant) Judgment: 01/28/2014, Docketed: 02/04/2014
02/04/2014	Memorandum of Costs and Disbursements Filed By: Defendant Clark County <i>Clark County's Memorandum of Costs</i>
02/05/2014	Notice of Entry of Decision and Order Filed By: Defendant Clark County <i>Notice of Entry of Decision and Order Re: Defendant's Motion for Summary Judgment</i>
02/10/2014	Motion to Retax Filed By: Plaintiff Palmieri, Judy <i>Plaintiff's Motion to Retax Defendants' Memorandum of Costs</i>
02/14/2014	Opposition to Motion Filed By: Defendant Clark County <i>Clark County's Opposition to Plaintiff's Motion to Retax Memorandum of Costs</i>
02/27/2014	Notice of Appeal Filed By: Plaintiff Palmieri, Judy <i>Notice of Appeal</i>
02/27/2014	Case Appeal Statement Filed By: Plaintiff Palmieri, Judy <i>Case Appeal Statement</i>
03/14/2014	Motion to Retax (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Plaintiff's Motion to Retax Defendants' Memorandum of Costs</i>
04/03/2014	CANCELED Pre Trial Conference (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - Moot</i>
04/04/2014	CANCELED Calendar Call (11:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Order</i>
04/28/2014	CANCELED Jury Trial (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Order</i>

DATE	FINANCIAL INFORMATION
	Plaintiff Palmieri, Judy
	Total Charges 294.00
	Total Payments and Credits 294.00
	Balance Due as of 3/3/2014 0.00

CIVIL COVER SHEET

A- 11- 640631- C
XXVI

___ County, Nevada

Case No. ___

(Assigned by Clerk's Office)

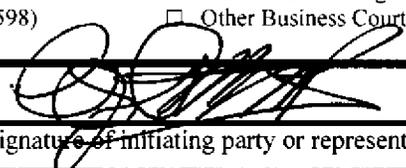
I. Party Information	
Plaintiff(s) (name/address/phone): JUDY PALMIERI, Attorney (name/address/phone): Cal J. Potter, III, Esq. and John C. Funk, Esq. of POTTER LAW OFFICES, 1125 Shadow Lane, Las Vegas, NV 89102 (702) 385-1954	Defendant(s) (name/address/phone): CLARK COUNTY, a political subdivision of the State of Nevada, et al. Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate) Arbitration Requested

Civil Cases	
<p style="text-align: center;">Real Property</p> <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<p style="text-align: center;">Torts</p> <p style="text-align: center;">Negligence</p> <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input checked="" type="checkbox"/> Negligence – Other <input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
<p style="text-align: center;">Probate</p> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<p style="text-align: center;">Other Civil Filing Types</p> <input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal <input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

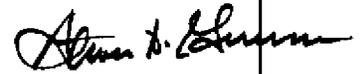
<input type="checkbox"/> NRS Chapters 78-88	<input type="checkbox"/> Investments (NRS 104 Art. 8)	<input type="checkbox"/> Enhanced Case Mgmt/Business
<input type="checkbox"/> Commodities (NRS 90)	<input type="checkbox"/> Deceptive Trade Practices (NRS 598)	<input type="checkbox"/> Other Business Court Matters
<input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Trademarks (NRS 600A)	

5/14/11 Date	 Signature of initiating party or representative
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ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

Judy Palmieri, Plaintiff(s)
vs.
Clark County, Defendant(s)

CASE NO.: A-11-640631-C
Department 26

Decision and Order Re:
Defendant's Motion for
Summary Judgment

FILE WITH
MASTER CALENDAR

Defendants Clark County and Dawn Stockman filed a Motion for Summary Judgment in the above captioned matter; plaintiff Judy Palmieri filed an Opposition and Defendants filed a Reply. The matter was originally set for hearing December 21, 2012, and continued pursuant to NRCP 56(f) to allow the party's time to depose witness Kaitlyn Nichols who is in the military and serving outside the jurisdiction. The matter came back on for hearing on November 1, 2013, and although Ms. Nichols had not been deposed, a more detailed affidavit was provided in an Addendum to the Opposition filed by Plaintiff. After oral argument the matter was taken under advisement.

Based on the arguments of counsel and pleadings and papers on file the Court finds as follows:

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Facts

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3 Plaintiff brings the instant lawsuit claiming illegal search and
4 seizure based on insufficient probable cause to obtain a valid search
5 warrant. Defendants received information that possible violations of
6 the animal welfare statutes were occurring at Plaintiff's residence.
7
8 The information was received via telephonic tip from a woman who
9 identified herself as an employee of Plaintiff named Kaitlyn Nichols.
10 Defendant Stockman obtained a search warrant, and upon arriving at
11 Plaintiff's home, heard a number of dogs barking. A search of the
12 home revealed over 20 dogs; a couple of which appeared sickly. The
13 dogs were taken away, but later returned. Plaintiff was also cited for
14 having too many dogs in her home.
15
16

17 The warrant obtained was based upon an informant's
18 statements combined with Plaintiff's alleged history of violating
19 animal codes, and the verified information of the informant when
20 Defendants knocked and entered Plaintiff's home. The informant
21 claimed to have worked for Plaintiff, had been in her house, and
22 stated that she had 20 plus dogs in her house and that some of them
23 were sickly. The informant's statement regarding the number of dogs
24 was confirmed when the officers knocked on the door and heard
25 multiple dogs. Stockman followed the standard procedures used by
26
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28

1 animal control officers when seeking a warrant. There were 29 dogs
2 on the premises, none of which had proof of vaccinations, and two of
3 which looked physically sick.

4 Summary Judgment is appropriate when the pleadings and
5 other evidence on file demonstrate no 'genuine issue as to any
6 material fact' and that the moving party is entitled to a judgment as a
7 matter of law. Wood, et al. v. Safeway, Inc., et al., 121 P.3d 1026 (Nev.
8 2005). While the pleadings and other proof must be construed in the
9 light most favorable to the nonmoving party, that party bears the
10 burden to "do more than simply show that there is some metaphysical
11 doubt" as to the operative facts. Id. A genuine issue of material fact
12 is one where the evidence is such that a reasonable jury could return a
13 verdict for the non-moving party. Valley Bank v. Marble, 105 Nev.
14 366, 367 (Nev. 1989).
15
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19 I.
20 **Plaintiff's Claim for Civil Rights Violation Against**
21 **Individual Officers**

22 Plaintiff alleges that the search warrant was invalid as Kaitlyn
23 Nichols' uncontroverted affidavit states that she was not the
24 informant. Regardless of whom the informant was, the details
25 provided and other corroborating information supported a finding of
26 probable cause. The finding of probable cause was further bolstered
27 by previous allegations about Plaintiff's dogs. The fact that the
28

1 informant apparently used someone else's name when calling in the
2 tip does not in and of itself void the finding of probable cause for
3 issuance of the warrant. Plaintiff has cited to no authority that places
4 a requirement to confirm the identity of an informant before
5 obtaining a warrant when there is independent information
6 corroborating the probable cause.¹ The party challenging a warrant
7 must prove that a search warrant is invalid by a preponderance of the
8 evidence. Pritchett v. State, 57291, 2012 WL 1662108 (Nev. May 10,
9 2012).²

12 Plaintiff alleged several causes of action including malicious
13 prosecution in this case. There is no evidence to establish the element
14 of malice by the officer against the Plaintiff. Further, under 1983
15 negligence against an individual officer cannot be maintained. There
16 must be a showing of intentional wrong doing by the officer or some
17 act amounting to clear disregard for civil and human rights. There is
18 no evidence that Stockman did anything intentionally wrong, but
19 acted in good faith.

25 ¹ When the issuance of a search warrant is based upon information obtained from a confidential informant,
26 the proper standard for determining probable cause for the issuance of the warrant is whether, under the
27 *totality of the circumstances*, there is probable cause to believe that contraband or evidence is located in a
particular place. Keese v. State, 110 Nev. 997, 1002, 879 P.2d 63, 67 (1994).

28 ² Pritchett is an unpublished decision, and thus may not be relied upon as authority, but the decision is
instructive as it cites to U.S. Supreme Court and Nevada Supreme Court decisions that are controlling on
the same issue presented by Plaintiff: probable cause for a search warrant.

1 There is no record or proof that the past incidents involving
2 Plaintiff or her business were unfounded, frivolous, or based on bad
3 faith. Further, the officers involved in this incident were not involved
4 in the prior cases. Plaintiff has not met her evidentiary burden of
5 proof to substantiate this claim.
6

7 Further, Defendant Stockman is entitled to qualified immunity
8 unless her conduct violates some clearly established constitutional
9 right which any reasonable officer would have known was a violation.
10 When minimal force is exerted to carry out a search warrant, the
11 claim of lack of probable cause does not take away the good faith
12 qualified immunity that police officers get in such situations.³
13 Plaintiff was allowed to return home to retrieve glasses; she was
14 allowed to stay in her house during the search, the entire process
15 taking just over an hour. There was no personal injury or hand cuffing
16 of Plaintiff. Officers did not engage in conduct that an average
17 reasonable officer would consider as a clearly established violation of
18 the Plaintiff's civil rights.
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27 ³ An allegation of malice is not sufficient to defeat immunity if the officer acted in an objectively
reasonable manner. Ortega v. Reyna, 114 Nev. 55, 59, 953 P.2d 18, 21 (1998) abrogated by Martinez v.
28 Maruszczak, 123 Nev. 433, 168 P.3d 720 (2007)

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II.
Plaintiff's Civil Rights Claim Under 42 U.S.C. 1983⁴

To establish a claim under §1983, the plaintiff must prove that the conduct complained of: (1) was committed by a person acting under color of state law, and (2) deprived the plaintiff of rights, privileges, or immunities secured by the Constitution or laws of the United States. The United States Supreme Court has held that officials acting in their official capacities are not persons under 42 U.S.C. §1983, and therefore, may not be sued in state courts under the federal civil rights statutes. State v. Eighth Judicial Dist. Court ex rel. County of Clark, 118 Nev. 140, 153, 42 P.3d 233, 241-42 (2002).

III.
Monell Claim against Clark County

Plaintiff's Monell claim also fails as Plaintiff has not shown that a policy, practice, or custom of the entity was the moving force behind the alleged violation of Plaintiff's constitutional rights.⁵ There has been no showing of official county policy that could be interpreted as

⁴ Section 1983 does not itself create substantive rights, but merely provides "a method for vindicating federal rights elsewhere conferred. State v. Eighth Judicial Dist. Court ex rel. County of Clark, 118 Nev. 140, 153, 42 P.3d 233, 242 (2002).

⁵ *[A]ny person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress . . ."* Monell v. Dep't of Soc. Services of City of New York, 436 U.S. 658, 691-92, 98 S. Ct. 2018, 2036, 56 L. Ed. 2d 611 (1978).

1 authorizing a violation of Plaintiff's rights, and no showing that there
2 was intentional misconduct or reckless disregard of Plaintiff's rights.
3 County policy clearly states that warrants are carefully reviewed.
4 Here, all three officers testified that this procedure was followed as
5 the warrant was reviewed by two levels of supervisors, then by the
6 deputy district attorney, and again by supervisors before going before
7 a Judge. There was probable cause for the warrant regarding the
8 number of dogs and the greater chance of finding dogs of ill health
9 that may be in need of medical attention. The warrant was valid;
10 therefore, the officer is entitled to qualified immunity.
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14 [A] local government may not be sued under §1983 for an injury
15 inflicted solely by its employees or agents. Instead, it is when
16 execution of a government's policy or custom, whether made by its
17 lawmakers or by those whose edicts or acts may fairly be said to
18 represent official policy, inflicts the injury that the government as an
19 entity is responsible under §1983. Monell v. Dep't of Soc. Services of
20 City of New York, 436 U.S. 658, 694, 98 S. Ct. 2018, 2037-38, 56 L.
21 Ed. 2d 611 (1978).
22
23

24 Under Monell, the facts must show that a policy of the entity is
25 the moving force behind the violation of a plaintiff's constitutional
26 rights. The evidence in this case, however, shows that a valid verified
27 warrant was issued, that the actors involved performed their duties
28

1 appropriately and that the officers acted appropriately during the
2 search and seizure. The policy as outlined above has not deprived
3 Plaintiff of her constitutional rights; Defendants procured a warrant
4 through specified channels before being signed by the judge. The
5 Nevada Supreme Court has held that where a judge reviews the
6 search warrant it will be sustained so long as there was a “substantial
7 basis” to conclude a violation of the law was “probably present.” Kelly
8 v. State, 84 Nev. 332, 336, 440 P.2d 889, 891 (1968).
9

10
11 This type of exhaustion of procedure limits the intrusiveness
12 into the citizen’s privacy rights. There is no evidence that any of the
13 Defendants acted in reckless or malicious disregard.⁶
14

15 **IV.**
16 **Plaintiff’s State Law Tort Claims also Fail**

17 Plaintiff’s complaint also alleged claims for negligence, IIED,
18 false arrest, unlawful warrant, conspiracy, and malicious prosecution,
19 but these claims are barred by the doctrine of sovereign immunity.
20 Further, Court finds there is no evidence to support any of these
21 claims. Discretionary immunity bars Plaintiff’s negligence claims,
22 intentional torts of trespass, conversion and nuisance against the
23 County in this case.
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⁶ NRS 41035 provides that no punitive damages are allowed against a government agency or its employees.

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A. Qualified Immunity Defendant Stockman:

The Nevada Supreme Court has defined qualified immunity as follows:

Under the qualified immunity doctrine, government officials performing discretionary functions are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. The pertinent inquiry in determining whether an officer is entitled to qualified immunity for a Fourth Amendment violation is whether a reasonable officer could have believed his conduct lawful under the clearly established principles of law governing that conduct. The right which the official is alleged to have violated must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. The issue is the objective (albeit fact-specific) question whether a reasonable officer could have believed [appellant's] warrantless [arrest] to be lawful, in light of clearly established law and the information the officer possessed. Stated another way, we look not at whether there was an arrest without probable cause, but rather whether the trooper reasonably could have believed that his conduct was lawful in light of clearly established law and the totality of the circumstances.

Ortega v. Reyna, 114 Nev. 55, 60, 953 P.2d 18, 21 (1998) abrogated by
Martinez v. Maruszczak, 123 Nev. 433, 168 P.3d 720 (2007). The Court abrogated Ortega in Maruszczak in order clarify the test for discretionary act immunity.

B. Discretionary Act Immunity Defendant Stockman

The Nevada Supreme Court adopted the two part test for discretionary-act immunity defined by the U. Supreme Court in

1 Berkovitz–Gaubert: a decision must (1) involve an element of
2 individual judgment or choice and (2) be based on considerations of
3 social, economic, or political policy. The Court noted that
4 “...decisions that fail to meet the second criterion of this test remain
5 unprotected by NRS 41.032(2)'s discretionary-act immunity⁷.”
6 Martinez v. Maruszczak, 123 Nev. 433, 446-47, 168 P.3d 720, 729
7 (2007).
8

9
10 In the instant case, Defendants are entitled to immunity
11 because the issue involved judgment or choice on the part of the
12 person involved and that the choice is the type that involves some
13 social, economic or political policy. The county has a policy for
14 preventing animal abuse, and the time and effort of having to go
15 through such exhaustive measures the Plaintiff insists on is
16 unreasonably wasteful and does not compliment public policy. Since
17 criminal informants do not even need to meet such a high bar, then
18 animal control does not need to meet such an unreasonable bar. The
19 policy and custom by the county is reasonable under the
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24 ⁷ NRS 41.032. Acts or omissions of officers, employees and immune contractors

25 Except as provided in NRS 278.0233 no action may be brought under NRS 41.031 or against an
26 immune contractor or an officer or employee of the State or any of its agencies or political subdivisions
27 which is:

28 1. Based upon an act or omission of an officer, employee or immune contractor, exercising due
care, in the execution of a statute or regulation, whether or not such statute or regulation is valid, if the
statute or regulation has not been declared invalid by a court of competent jurisdiction; or

2. Based upon the exercise or performance or the failure to exercise or perform a *discretionary
function or duty* on the part of the State or any of its agencies or political subdivisions or of any officer,
employee or immune contractor of any of these, whether or not the discretion involved is abused.

1 circumstances, and this case only furthers the current policy as the
2 informant's information was substantially accurate. Therefore, the
3 immunity provided the government here withstands Plaintiff's
4 assertion under 1983.
5

6 [B]ecause the County's actions were grounded on public policy
7 concerns, as expressed in the County Code and Nevada's abatement
8 statute, they fit within the second criterion of the *Berkovitz-Gaubert*
9 test.
10

11
12 **V.**
Malicious Prosecution

13 Plaintiff has failed to establish the elements of a malicious
14 prosecution claim: (1) want of probable cause to initiate the prior
15 criminal proceeding; (2) malice; (3) termination of the prior criminal
16 proceedings; and (4) damage. The Court has found that there was
17 probable cause for the warrant, there is further no evidence of malice.
18 A malicious prosecution claim requires that the defendant initiated,
19 procured the institution of, or actively participated in the
20 continuation of a criminal proceeding against the plaintiff. LaMantia
21 v. Redisi, 118 Nev. 27, 30, 38 P.3d 877, 879-80 (2002).
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VI.

Negligent and Intentional Infliction of Emotional Distress

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Foreseeable is the cornerstone of this court's test for negligent infliction of emotional distress. Crippens v. Sav on Drug Stores, 114 Nev. 760, 763, 961 P.2d 761, 763 (1998). The Nevada Supreme Court has held that the negligent infliction of emotional distress can be an element of the damage sustained by the negligent acts committed directly against the victim-plaintiff. Shoen v. Amerco, Inc., 111 Nev. 735, 748, 896 P.2d 469, 477 (1995). In the instant case, Defendants are immune from suit for negligence.

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There is no evidence of negligence, IIED, false arrest, unlawful warrant, or conspiracy. Plaintiff has no basis to argue negligence; as has already been pointed out, the warrant was valid and lawful, and the actions taken when the house was entered were reasonable and appropriate. The search and the incidents surrounding the search were minimal, lasting around an hour. Plaintiff was able to return home to obtain glasses, but claims she was clad in nothing but her pajamas and robe; however it is not clear how this caused Plaintiff distress.

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28
The elements of intentional infliction of emotional distress are: (1) extreme and outrageous conduct with either the intention of, or reckless disregard for, causing emotional distress; (2) the plaintiff

1 having suffered severe or extreme emotional distress and (3) actual
2 and proximate causation. Star v. Rabello, 97 Nev. 124, 125 (1991).

3 [E]xtreme and outrageous conduct is that which is outside all
4 possible bounds of decency and is regarded as utterly intolerable in a
5 civilized community. That persons must necessarily be expected and
6 required to be hardened to occasional acts that are definitely
7 inconsiderate and unkind. Maduike v. Agency Rent-A-Car, 114 Nev.
8 1, 4, 953 P.2d 24, 26 (1998). Plaintiff simply states that the intrusion
9 and the prior history of complaints justify her IIED claim.
10
11

12 **VII.** 13 **Conspiracy**

14 Nevada law defines a conspiracy as an agreement between two
15 or more persons for an unlawful purpose. Evidence of a coordinated
16 series of acts furthering the underlying offense is sufficient to infer
17 the existence of an agreement and support a conspiracy conviction.
18 However, absent an agreement to cooperate in achieving the purpose
19 of a conspiracy, mere knowledge of, acquiescence in, or approval of
20 that purpose does not make one a party to conspiracy. Bolden v.
21 State, 121 Nev. 908, 912-13, 124 P.3d 191, 194 (2005).
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25 There is absolutely no issue as to conspiracy here; the County
26 cannot conspire with itself, and there is no evidence that any other
27 person was involved to support the alleged conspiracy.
28

CONCLUSION

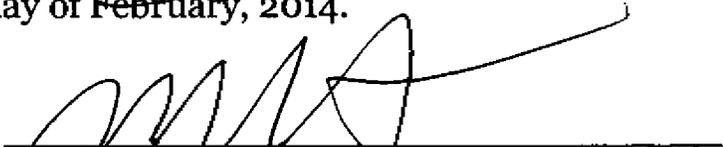
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2 Based on the foregoing, the Court concludes that as Plaintiff has
3 not met her burden to overcome the immunity afforded to the
4 government, her claims are barred. Summary judgment is
5 appropriate herein as there is no genuine issue of material fact, and
6 Defendant is entitled to judgment as a matter of law.
7

8 Therefore, Defendant's Motion is hereby GRANTED in its
9 entirety and the Jury Trial scheduled for April 28, 2014, is
10 VACATED.
11

12 Counsel for Respondent is directed to provide Notice of Entry
13 within ten (10) days of the filing of this Decision and Order.
14

15 **IT IS SO ORDERED.**

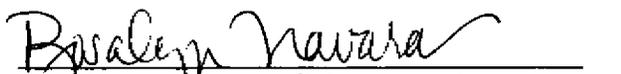
16 Dated this 28 day of January, 2014.
17

18 
19 _____
The Honorable Gloria Sturman

20 *I hereby certify that on the date signed, a copy of the foregoing was placed in the*
21 *attorney folder(s) in the Clerk's Office or mailed or faxed to the following:*

22 *Cal Johnson Potter*
23 *1125 Shadow Lane*
Las Vegas, NV 89102
24 *F: 385-9081*

25 *Steven B Wolfson*
Clark County District Attorney
26 *200 Lewis Avenue, 3rd Floor*
Las Vegas, NV 89155
27 *F: 382-5178*

28 

Rosalyn Navara, Judicial Executive Assistant

BROADCAST REPORT

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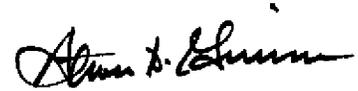
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1 MEMC
2 STEVEN B. WOLFSON
3 District Attorney
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5 State Bar No. 1565
6 By: MATTHEW J. CHRISTIAN
7 Deputy District Attorney
8 State Bar No. 8024
9 500 South Grand Central Pkwy.
10 P. O. Box 552215
11 Las Vegas, Nevada 89155-2215
12 (702) 455-4761
13 E-Mail: Matthew.Christian@ClarkCountyDA.com
14 Attorneys for Defendant
15 Clark County


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

JUDY PALMIERI,

Plaintiff,

vs.

CLARK COUNTY, a political subdivision
of the STATE OF NEVADA; DAWN
STOCKMAN, CEO96, individually and in
her official capacity as an officer
employed by the County of Clark; JOHN
DOES I through X, inclusive and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No: A-11-640631-C
Dept No: XXVI

**NOTICE OF ENTRY OF DECISION
AND ORDER RE: DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

NOTICE IS HEREBY GIVEN that the attached Order Regarding Motion for
Summary Judgment was filed on the 28th of January, 2014, a copy of which is attached
hereto.

DATED this 5th day of February, 2014.



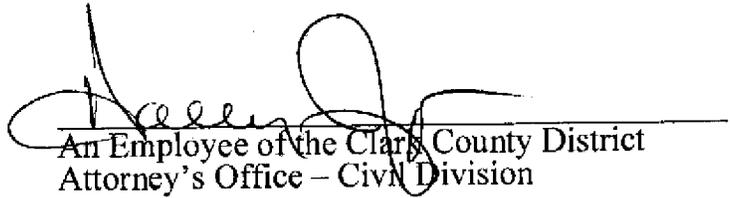
MATTHEW J. CHRISTIAN, ESQ.
Deputy District Attorney
State Bar No. 8024
500 South Grand Central Pkwy. 5th Flr.
P. O. Box 552215
Las Vegas, Nevada 89155-2215
Attorney for Defendant Clark County

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CERTIFICATE OF MAILING

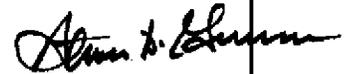
I hereby certify that on the 5th day of February, 2014, I deposited in the United States Mail, postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope, a copy of the above and foregoing **Notice of Entry of Decision and Order Re: Defendant's Motion for Summary Judgment** addressed as follows:

Cal J. Potter, III, Esq.
1125 Shadow Lane
Las Vegas, Nevada 89102
Attorneys for Plaintiff


An Employee of the Clark County District
Attorney's Office – Civil Division

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

Judy Palmieri, Plaintiff(s)
vs.
Clark County, Defendant(s)

CASE NO.: A-11-640631-C
Department 26

**Decision and Order Re:
Defendant's Motion for
Summary Judgment**

FILE WITH
MASTER CALENDAR

Defendants Clark County and Dawn Stockman filed a Motion for Summary Judgment in the above captioned matter; plaintiff Judy Palmieri filed an Opposition and Defendants filed a Reply. The matter was originally set for hearing December 21, 2012, and continued pursuant to NRCP 56(f) to allow the party's time to depose witness Kaitlyn Nichols who is in the military and serving outside the jurisdiction. The matter came back on for hearing on November 1, 2013, and although Ms. Nichols had not been deposed, a more detailed affidavit was provided in an Addendum to the Opposition filed by Plaintiff. After oral argument the matter was taken under advisement.

Based on the arguments of counsel and pleadings and papers on file the Court finds as follows:

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Facts

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3 Plaintiff brings the instant lawsuit claiming illegal search and
4 seizure based on insufficient probable cause to obtain a valid search
5 warrant. Defendants received information that possible violations of
6 the animal welfare statutes were occurring at Plaintiff's residence.
7 The information was received via telephonic tip from a woman who
8 identified herself as an employee of Plaintiff named Kaitlyn Nichols.
9 Defendant Stockman obtained a search warrant, and upon arriving at
10 Plaintiff's home, heard a number of dogs barking. A search of the
11 home revealed over 20 dogs; a couple of which appeared sickly. The
12 dogs were taken away, but later returned. Plaintiff was also cited for
13 having too many dogs in her home.
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17 The warrant obtained was based upon an informant's
18 statements combined with Plaintiff's alleged history of violating
19 animal codes, and the verified information of the informant when
20 Defendants knocked and entered Plaintiff's home. The informant
21 claimed to have worked for Plaintiff, had been in her house, and
22 stated that she had 20 plus dogs in her house and that some of them
23 were sickly. The informant's statement regarding the number of dogs
24 was confirmed when the officers knocked on the door and heard
25 multiple dogs. Stockman followed the standard procedures used by
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1 animal control officers when seeking a warrant. There were 29 dogs
2 on the premises, none of which had proof of vaccinations, and two of
3 which looked physically sick.

4 Summary Judgment is appropriate when the pleadings and
5 other evidence on file demonstrate no 'genuine issue as to any
6 material fact' and that the moving party is entitled to a judgment as a
7 matter of law. Wood, et al. v. Safeway, Inc., et al., 121 P.3d 1026 (Nev.
8 2005). While the pleadings and other proof must be construed in the
9 light most favorable to the nonmoving party, that party bears the
10 burden to "do more than simply show that there is some metaphysical
11 doubt" as to the operative facts. Id. A genuine issue of material fact
12 is one where the evidence is such that a reasonable jury could return a
13 verdict for the non-moving party. Valley Bank v. Marble, 105 Nev.
14 366, 367 (Nev. 1989).

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19 **I.**
20 **Plaintiff's Claim for Civil Rights Violation Against**
21 **Individual Officers**

22 Plaintiff alleges that the search warrant was invalid as Kaitlyn
23 Nichols' uncontroverted affidavit states that she was not the
24 informant. Regardless of whom the informant was, the details
25 provided and other corroborating information supported a finding of
26 probable cause. The finding of probable cause was further bolstered
27 by previous allegations about Plaintiff's dogs. The fact that the
28

1 informant apparently used someone else's name when calling in the
2 tip does not in and of itself void the finding of probable cause for
3 issuance of the warrant. Plaintiff has cited to no authority that places
4 a requirement to confirm the identity of an informant before
5 obtaining a warrant when there is independent information
6 corroborating the probable cause.¹ The party challenging a warrant
7 must prove that a search warrant is invalid by a preponderance of the
8 evidence. Pritchett v. State, 57291, 2012 WL 1662108 (Nev. May 10,
9 2012).²

12 Plaintiff alleged several causes of action including malicious
13 prosecution in this case. There is no evidence to establish the element
14 of malice by the officer against the Plaintiff. Further, under 1983
15 negligence against an individual officer cannot be maintained. There
16 must be a showing of intentional wrong doing by the officer or some
17 act amounting to clear disregard for civil and human rights. There is
18 no evidence that Stockman did anything intentionally wrong, but
19 acted in good faith.
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25 ¹ When the issuance of a search warrant is based upon information obtained from a confidential informant,
26 the proper standard for determining probable cause for the issuance of the warrant is whether, under the
27 *totality of the circumstances*, there is probable cause to believe that contraband or evidence is located in a
particular place. Keesee v. State, 110 Nev. 997, 1002, 879 P.2d 63, 67 (1994).

28 ² Pritchett is an unpublished decision, and thus may not be relied upon as authority, but the decision is
instructive as it cites to U.S. Supreme Court and Nevada Supreme Court decisions that are controlling on
the same issue presented by Plaintiff: probable cause for a search warrant.

1 There is no record or proof that the past incidents involving
2 Plaintiff or her business were unfounded, frivolous, or based on bad
3 faith. Further, the officers involved in this incident were not involved
4 in the prior cases. Plaintiff has not met her evidentiary burden of
5 proof to substantiate this claim.
6

7 Further, Defendant Stockman is entitled to qualified immunity
8 unless her conduct violates some clearly established constitutional
9 right which any reasonable officer would have known was a violation.
10 When minimal force is exerted to carry out a search warrant, the
11 claim of lack of probable cause does not take away the good faith
12 qualified immunity that police officers get in such situations.³
13 Plaintiff was allowed to return home to retrieve glasses; she was
14 allowed to stay in her house during the search, the entire process
15 taking just over an hour. There was no personal injury or hand cuffing
16 of Plaintiff. Officers did not engage in conduct that an average
17 reasonable officer would consider as a clearly established violation of
18 the Plaintiff's civil rights.
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27 ³ An allegation of malice is not sufficient to defeat immunity if the officer acted in an objectively
28 reasonable manner. Ortega v. Reyna, 114 Nev. 55, 59, 953 P.2d 18, 21 (1998) abrogated by Martinez v.
Maruszczak, 123 Nev. 433, 168 P.3d 720 (2007)

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II.
Plaintiff's Civil Rights Claim Under 42 U.S.C. 1983⁴

To establish a claim under §1983, the plaintiff must prove that the conduct complained of: (1) was committed by a person acting under color of state law, and (2) deprived the plaintiff of rights, privileges, or immunities secured by the Constitution or laws of the United States. The United States Supreme Court has held that officials acting in their official capacities are not persons under 42 U.S.C. §1983, and therefore, may not be sued in state courts under the federal civil rights statutes. State v. Eighth Judicial Dist. Court ex rel. County of Clark, 118 Nev. 140, 153, 42 P.3d 233, 241-42 (2002).

III.
Monell Claim against Clark County

Plaintiff's Monell claim also fails as Plaintiff has not shown that a policy, practice, or custom of the entity was the moving force behind the alleged violation of Plaintiff's constitutional rights.⁵ There has been no showing of official county policy that could be interpreted as

⁴ Section 1983 does not itself create substantive rights, but merely provides 'a method for vindicating federal rights elsewhere conferred. State v. Eighth Judicial Dist. Court ex rel. County of Clark, 118 Nev. 140, 153, 42 P.3d 233, 242 (2002).

⁵ *[A]ny person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress . . ."* Monell v. Dep't of Soc. Services of City of New York, 436 U.S. 658, 691-92, 98 S. Ct. 2018, 2036, 56 L. Ed. 2d 611 (1978).

1 authorizing a violation of Plaintiff's rights, and no showing that there
2 was intentional misconduct or reckless disregard of Plaintiff's rights.
3 County policy clearly states that warrants are carefully reviewed.
4 Here, all three officers testified that this procedure was followed as
5 the warrant was reviewed by two levels of supervisors, then by the
6 deputy district attorney, and again by supervisors before going before
7 a Judge. There was probable cause for the warrant regarding the
8 number of dogs and the greater chance of finding dogs of ill health
9 that may be in need of medical attention. The warrant was valid;
10 therefore, the officer is entitled to qualified immunity.
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14 [A] local government may not be sued under §1983 for an injury
15 inflicted solely by its employees or agents. Instead, it is when
16 execution of a government's policy or custom, whether made by its
17 lawmakers or by those whose edicts or acts may fairly be said to
18 represent official policy, inflicts the injury that the government as an
19 entity is responsible under §1983. Monell v. Dep't of Soc. Services of
20 City of New York, 436 U.S. 658, 694, 98 S. Ct. 2018, 2037-38, 56 L.
21 Ed. 2d 611 (1978).
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23

24 Under Monell, the facts must show that a policy of the entity is
25 the moving force behind the violation of a plaintiff's constitutional
26 rights. The evidence in this case, however, shows that a valid verified
27 warrant was issued, that the actors involved performed their duties
28

1 appropriately and that the officers acted appropriately during the
2 search and seizure. The policy as outlined above has not deprived
3 Plaintiff of her constitutional rights; Defendants procured a warrant
4 through specified channels before being signed by the judge. The
5 Nevada Supreme Court has held that where a judge reviews the
6 search warrant it will be sustained so long as there was a "substantial
7 basis" to conclude a violation of the law was "probably present." Kelly
8 v. State, 84 Nev. 332, 336, 440 P.2d 889, 891 (1968).
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11 This type of exhaustion of procedure limits the intrusiveness
12 into the citizen's privacy rights. There is no evidence that any of the
13 Defendants acted in reckless or malicious disregard.⁶
14

15 **IV.**
16 **Plaintiff's State Law Tort Claims also Fail**

17 Plaintiff's complaint also alleged claims for negligence, IIED,
18 false arrest, unlawful warrant, conspiracy, and malicious prosecution,
19 but these claims are barred by the doctrine of sovereign immunity.
20 Further, Court finds there is no evidence to support any of these
21 claims. Discretionary immunity bars Plaintiff's negligence claims,
22 intentional torts of trespass, conversion and nuisance against the
23 County in this case.
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28 ⁶ NRS 41035 provides that no punitive damages are allowed against a government agency or its employees.

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A. Qualified Immunity Defendant Stockman:

The Nevada Supreme Court has defined qualified immunity as follows:

Under the qualified immunity doctrine, government officials performing discretionary functions are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. The pertinent inquiry in determining whether an officer is entitled to qualified immunity for a Fourth Amendment violation is whether a reasonable officer could have believed his conduct lawful under the clearly established principles of law governing that conduct. The right which the official is alleged to have violated must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. The issue is the objective (albeit fact-specific) question whether a reasonable officer could have believed [appellant's] warrantless [arrest] to be lawful, in light of clearly established law and the information the officer possessed. Stated another way, we look not at whether there was an arrest without probable cause, but rather whether the trooper reasonably could have believed that his conduct was lawful in light of clearly established law and the totality of the circumstances.

Ortega v. Reyna, 114 Nev. 55, 60, 953 P.2d 18, 21 (1998) abrogated by
Martinez v. Maruszczak, 123 Nev. 433, 168 P.3d 720 (2007). The Court abrogated Ortega in Maruszczak in order clarify the test for discretionary act immunity.

B. Discretionary Act Immunity Defendant Stockman

The Nevada Supreme Court adopted the two part test for discretionary-act immunity defined by the U. Supreme Court in

1 Berkovitz-Gaubert: a decision must (1) involve an element of
2 individual judgment or choice and (2) be based on considerations of
3 social, economic, or political policy. The Court noted that
4 "...decisions that fail to meet the second criterion of this test remain
5 unprotected by NRS 41.032(2)'s discretionary-act immunity."
6 Martinez v. Maruszczak, 123 Nev. 433, 446-47, 168 P.3d 720, 729
7 (2007).
8

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10 In the instant case, Defendants are entitled to immunity
11 because the issue involved judgment or choice on the part of the
12 person involved and that the choice is the type that involves some
13 social, economic or political policy. The county has a policy for
14 preventing animal abuse, and the time and effort of having to go
15 through such exhaustive measures the Plaintiff insists on is
16 unreasonably wasteful and does not compliment public policy. Since
17 criminal informants do not even need to meet such a high bar, then
18 animal control does not need to meet such an unreasonable bar. The
19 policy and custom by the county is reasonable under the
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24 ⁷ NRS 41.032. Acts or omissions of officers, employees and immune contractors

25 Except as provided in NRS 278.0233 no action may be brought under NRS 41.031 or against an
26 immune contractor or an officer or employee of the State or any of its agencies or political subdivisions
27 which is:

28 1. Based upon an act or omission of an officer, employee or immune contractor, exercising due
care, in the execution of a statute or regulation, whether or not such statute or regulation is valid, if the
statute or regulation has not been declared invalid by a court of competent jurisdiction; or

2. Based upon the exercise or performance or the failure to exercise or perform a *discretionary
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2 informant's information was substantially accurate. Therefore, the
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6 [B]ecause the County's actions were grounded on public policy
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8 statute, they fit within the second criterion of the *Berkovitz-Gaubert*
9 test.
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12 **V.**
Malicious Prosecution

13 Plaintiff has failed to establish the elements of a malicious
14 prosecution claim: (1) want of probable cause to initiate the prior
15 criminal proceeding; (2) malice; (3) termination of the prior criminal
16 proceedings; and (4) damage. The Court has found that there was
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18 A malicious prosecution claim requires that the defendant initiated,
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21 v. Redisi, 118 Nev. 27, 30, 38 P.3d 877, 879-80 (2002).
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14 Nevada law defines a conspiracy as an agreement between two
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18 However, absent an agreement to cooperate in achieving the purpose
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21 State, 121 Nev. 908, 912-13, 124 P.3d 191, 194 (2005).
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CONCLUSION

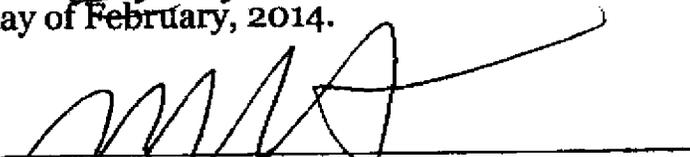
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2 Based on the foregoing, the Court concludes that as Plaintiff has
3 not met her burden to overcome the immunity afforded to the
4 government, her claims are barred. Summary judgment is
5 appropriate herein as there is no genuine issue of material fact, and
6 Defendant is entitled to judgment as a matter of law.
7

8 Therefore, Defendant's Motion is hereby GRANTED in its
9 entirety and the Jury Trial scheduled for April 28, 2014, is
10 VACATED.
11

12 Counsel for Respondent is directed to provide Notice of Entry
13 within ten (10) days of the filing of this Decision and Order.
14

15 **IT IS SO ORDERED.**

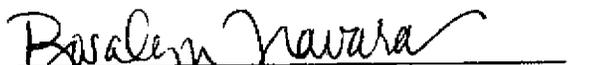
16 Dated this 28 day of January, 2014.

17
18 
19 _____
The Honorable Gloria Sturman

20 *I hereby certify that on the date signed, a copy of the foregoing was placed in the*
21 *attorney folder(s) in the Clerk's Office or mailed or faxed to the following:*

22 *Cal Johnson Potter*
23 *1125 Shadow Lane*
Las Vegas, NV 89102
24 *F: 385-9081*

25 *Steven B Wolfson*
Clark County District Attorney
26 *200 Lewis Avenue, 3rd Floor*
Las Vegas, NV 89155
27 *F: 382-5178*

28 

Rosalyn Navara, Judicial Executive Assistant

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CV : COVERPAGE
PC : PC-FAX

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other

COURT MINUTES

November 01, 2013

A-11-640631-C Judy Palmieri, Plaintiff(s)
vs.
Clark County, Defendant(s)

**November 01, 2013 9:00 AM Motion for Summary
Judgment**

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 03H

COURT CLERK: Linda Denman

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Foley, Michael L. Attorney
 Potter, Cal Johnson Attorney

JOURNAL ENTRIES

- Argument by counsel of DEFENDANT'S RE-NOTICE OF MOTION FOR SUMMARY JUDGMENT and the continuance that was granted so the deposition of a witness could be taken. Mr. Foley stressed the Enforcement Officer for the County who received a tip concerning conditions on the plaintiff's property, acted appropriately with a valid warrant and investigated the matter without using excessive force and issued two tickets. Mr. Potter argued the investigational tactics used and the personal grudges between the parties that led to an over-reaction and the filing of this complaint; the number of times the city has unsuccessfully sought to prosecute the plaintiff and have never been able to convict; and there were no exigent circumstances that called for anything more than a meet and confer.

Following argument, COURT ORDERED Motion CONTINUED FOR CHAMBERS DECISION.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other

COURT MINUTES

January 28, 2014

A-11-640631-C Judy Palmieri, Plaintiff(s)
vs.
Clark County, Defendant(s)

January 28, 2014 3:00 AM Minute Order

HEARD BY: Sturman, Gloria

COURTROOM:

COURT CLERK: Linda Denman

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- DEFENDANTS CLARK COUNTY AND DAWN STOCKMAN'S MOTION FOR SUMMARY JUDGMENT came before the Court November 1, 2013. Counsel presented their case and Court took the matter under advisement.

After carefully considering the papers submitted and hearing arguments, Court issued its Decision and Order this 28th day of January, 2014. COURT ORDERED Motion for Summary Judgment GRANTED. See Court's Decision and Order for full context.

Defendant Clark County is directed to provide prompt written Notice of Entry hereof.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

CAL J. POTTER, III, ESQ.
1125 SHADOW LN.
LAS VEGAS, NV 89102

DATE: March 3, 2014
CASE: A640631

RE CASE: JUDY PALMIERI vs. CLARK COUNTY, a political subdivision of the STATE OF NEVADA; DAWN STOCKMAN, CE096, individually and in her official capacity as an officer employed by the COUNTY OF CLARK

NOTICE OF APPEAL FILED: February 27, 2014

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:

- \$250 – Supreme Court Filing Fee**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- Order
- Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.**

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; DECISION AND ORDER RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF DECISION AND ORDER RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

JUDY PALMIERI,

Plaintiff(s),

vs.

CLARK COUNTY, a political subdivision of the STATE OF NEVADA; DAWN STOCKMAN, CE096, individually and in her official capacity as an officer employed by the COUNTY OF CLARK,

Defendant(s),

Case No: A640631

Dept No: XXVI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 3 day of March 2014.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk