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**IN THE SEVENTH JUDICIAL DISTRICT COURT
GRAND COUNTY, STATE OF UTAH**

JOSEPH PETITO and NICHOLE SCHMIDT,
individually and for and on behalf of
GABRIELLE PETITO,
Plaintiffs,

v.

MOAB CITY POLICE DEPARTMENT
Defendant.

MOTION TO DISMISS

Case No. 220700046

Judge Don M. Torgerson

Relief Requested

Pursuant to Utah Rule of Civil Procedure 12(b)(6), Moab City Police Department (“Moab”) submits its motion to dismiss. Pursuant to this motion, Moab seeks the dismissal of all claims asserted by Plaintiffs Joseph Petito and Nichole Schmidt, individually and on behalf of Gabrielle Petito (collectively, “Plaintiffs”).

Introduction

Plaintiffs have admitted their claims must be dismissed as a matter of established Utah law. Indeed, they previously recognized that their claims are barred by “Utah Supreme Court Precedent that has stood for 27 years.” [See Dkt. 39 at 4-5 (acknowledging Moab is “immune from suit”)]. Thus, each of Plaintiffs’ three complaints have been premised on the hope of ultimately overturning long-standing Utah law applying the Governmental Immunity Act of Utah (“GIAU”). [See Dkt. 1 at ¶ 8; Dkt. 5 at ¶ 8; Dkt. 76 at ¶ 8]. This Court, however, can neither rewrite the GIAU nor overturn the Utah Supreme Court. Thus, as Plaintiffs previously predicted, “[t]he Court . . . will be bound by [precedent] to grant dismissal.” [Dkt. 39 at 4].

Moreover, the GIAU is not the only basis for dismissing Plaintiffs’ claims. Even without the GIAU, Plaintiffs’ claims still fail. “In Utah, a negligence claim requires the plaintiff to establish . . . that the breach of the duty was the proximate cause of plaintiff’s injury” *Steffensen v. Smith’s Mgmt. Corp.*, 820 P.2d 482, 486 (Utah Ct. App. 1991). In this case, Brian Landrie (“Landrie”) murdered Petito 15 days after they left Moab together. During that 15-day interval, Petito had her van, keys, and contact with her family. Instead of leaving Landrie, she drove with her fiancé to Wyoming – 400 miles away from Moab.

Moab’s police department did not cause Petito’s engagement to Landrie, her decision to remain with him, her decision to continue driving to Wyoming, or Landrie’s criminal conduct weeks later. *See, e.g., M.B. v. City of San Diego*, 233 Cal. App. 3d 699, 706 (Cal Ct. App. 1991) (“Any negligence by the police in failing to send a patrol car that night did not result in the harm which occurred; the rape did not occur until two days later.”); *Rodriguez-Cirilo v. Garcia*, 115 F.3d 50 (1st Cir. 1997) (“[P]laintiffs cannot establish that the conduct of the defendants, in not enforcing the temporary detention order, was the legal cause of an attack occurring [two weeks]

later.”); *Ricketts v. City of Columbia, Mo.*, 36 F.3d 775, 779-80 (8th Cir. 1994) (“[T]o find that the injuries caused by Sonny’s violent acts of sexual assault and murder would have been avoided had Sonny been arrested for the prior harassment would be an exercise in pure speculation.”).

Petito’s murder is an undeniable sorrow. Laundrie’s crime was undisputedly depraved. But the judicial system is not a substitute for a GoFundMe campaign; heartbreak is not enough. “These facts are undoubtedly tragic, but not every tragedy will give rise to a lawsuit.” *Hand v. United States*, No. 11-6350, 2012 WL 3929212, at *7 (D.N.J. Sept. 7, 2012) (dismissing claim against parole office for murder of parolee’s girlfriend); *see also Price v. Holladay*, No. 4:19-cv-200, 2020 WL 4228696, at *12 (E.D. Ark. July 23, 2020) (“The Court understands Plaintiff’s position and is sympathetic to her tragic loss. However, . . . [i]t is not enough to say that something horrible happened . . .”). “[T]his tragedy is not a result of an unjust legal system. Instead, it simply reflects the enduring . . . legacy of [Laundrie’s] brutally senseless act.” *Briley v. DelBalso*, No. 3:16-cv-2098, 2019 WL 2246592, at *13 (M.D. Penn. April 4, 2019).

Plaintiffs’ claims should be dismissed.

Allegations Relevant to the Motion

The following allegations are taken from Plaintiffs’ Second Amended Complaint (“Complaint”). [*See* Complaint (Dkt. 76)]. They are presented solely for purposes of this Motion.

1. Petito “was brutally murdered by her abusive fiancé and travel companion, Brian Laundrie.” [*Id.* at ¶ 1].

2. “In the summer of 2021, [Petito] and [Laundrie] traveled from New York to the western United States, visiting multiple national parks, which [Petito] documented on social media, including Instagram and YouTube.” [*Id.* at ¶ 22].

3. “On or around August 12, 2021, [Laundrie] and [Petito] were visiting Moab, Utah.” [Id. at ¶ 23]. That was “[r]oughly two weeks before [Laundrie] murdered [Petito].” [Id. at ¶ 2].

4. In response to an altercation between Petito and Laundrie, a witness “called 911 to report the incident.” [Id.]. “Moab police found the couple and investigated the reported domestic violence incident.” [Id. at ¶ 4].

5. “[Petito] began to sob, . . . saying, ‘I don’t want to be separated,’ and explaining that being separated from [Laundrie] would cause serious anxiety because she and [Laundrie] were ‘a team.’” [Id. at ¶ 90].

6. “Eventually, the officers arranged through a local domestic violence organization for [Laundrie] to have a place to stay the night, allowing [Petito] and [Laundrie] to be separated for the night.” [Id. at ¶ 83].

7. “After instructing [Laundrie] and [Petito] not to contact each other for the night, [the officer] drove [Laundrie] to a motel and let [Petito] leave in her van.” [Id. at ¶ 134].

8. Plaintiffs contend Moab’s police officers failed to appropriately investigate or respond to the situation involving Petito and Laundrie. [See id. at ¶ 163].

9. Plaintiffs also contend that Moab’s police officer “intentionally acted or failed to act without just cause or excuse and was aware that his conduct would probably result in injury.” [Id. at ¶ 162; accord at ¶¶ 5, 9, 96, 126, 137, 142, 165].

10. “Roughly two weeks after [Petito’s] encounter with the Moab Police Department, [Laundrie] brutally murdered her by strangulation, hiding her body at a campsite in Wyoming.” [Id. at ¶ 136].

ARGUMENT

I. The GIAU precludes Moab from being held liable for Laundrie's brutal crime.

A Utah “governmental entity . . . retain[s] immunity from suit unless that immunity has been expressly waived” by the GIAU. Utah Code § 63G-7-101(3).

“In cases where a governmental entity asserts that it is immune from suit under the Act, we apply a three-part test.” *Mariani v. Dep’t of Pub. Safety*, 2023 UT App 79, ¶ 6, 534 P.3d 780. “The test assesses (1) whether the activity undertaken is a governmental function; (2) whether governmental immunity was waived for the particular activity; and (3) whether there is an exception to that waiver.” *Id.* A straightforward application of those factors confirms that Plaintiffs’ claims must be dismissed.

First, the operation of a police department constitutes a governmental function. Utah Code broadly defines “[g]overnmental function” to include “each activity, undertaking, or operation of a governmental entity,” including “a governmental entity’s failure to act.” Utah Code § 63G-7-102(5). Moreover, Utah courts have long recognized that the operation of a police department is a core governmental function. *See Peck v. State*, 2008 UT 39, ¶ 8, 191 P.3d 4 (explaining, “there is no dispute that the UHP troopers were undertaking a governmental function” when they arrested plaintiff); *Gillmor v. Salt Lake City*, 89 P. 714, 715 (Utah 1907) (holding “the act of searching the stream for the dead body supposed to be therein . . . for the purpose of tracing crime” was a governmental function). *See also Foley v. Connelie*, 435 U.S. 291, 297 (1978) (“A discussion of the police function is essentially a description of one of the basic functions of government”); *Swasey v. W. Valley City*, No. 2:13-cv-768, 2015 WL 476110, at *2 (D. Utah Feb. 5, 2015) (finding “the alleged actions or omission” of the “West Valley Police Officers . . . fall within the definition of governmental function”).

Second, there is no applicable waiver of immunity. The GIAU does not waive Moab's immunity for its employees' allegedly intentional conduct. *See* Utah Code § 63G-7-301; *Atiya v. Salt Lake Cnty.*, 852 P.2d 1007, 1011-12 (Utah Ct. App. 1993) (indicating “we have not found, any section of the Governmental Immunity Act that expressly waives governmental immunity under the facts of this case,” where plaintiff alleged “the County’s *intentional* acts caused her emotional distress” (emphasis in original)); *Pingree v. Univ. of Utah*, No. 2:20-cv-724, 2022 WL 1307902, at *4 (D. Utah May 2, 2022) (“The UGIA does not contain any provision waiving immunity for intentional torts.”); *Wilkerson v. Duchesne Cnty. Sch. Dist.*, 2:20-cv-99, 2020 WL 13032908, at *3 (same); *McCubbin v. Weber Cnty.*, No. 1:15-cv-132, 2017 WL 3394593, at *24 (D. Utah Aug. 7, 2017) (same). In this case, Plaintiffs expressly assert that their claims and injuries result from the intentional misconduct of a non-party. [See Complaint (Dkt. 76) ¶ 162 (alleging officer “*intentionally* acted or failed to act without just cause” (emphasis added)); *id.* at ¶ 5 (alleging officer was “*intentionally* looking . . . to get around the requirements of Utah law and his duty to protect [Petito]” (emphasis added)); *id.* ¶ 96 (alleging officer “*intentionally* manipulate[d] the investigation . . . and, as a result, [Petito] was killed” (emphasis added)). Given Plaintiffs’ allegations, there is no waiver of immunity against Moab.

Third, even if Plaintiffs could establish a general waiver of immunity that might apply, the specific facts of this case squarely reinstate Moab's immunity. “A governmental entity . . . [is] immune from suit, and immunity is not waived, for any injury proximately caused by a negligent act or omission . . . if the injury arises out of or in connection with, or results from . . . assault [or] battery” Utah Code § 63G-7-201(4)(b). *See generally id.* at § 63G-7-102(1) (broadly defining “[a]rises out of or in connection with, or results from”); *id.* at § -102(6) (defining “injury” to include “death”). Consistent with the GIAU, the Utah Supreme Court has “held in several cases

that immunity is retained under the [GIAU] if an assault or battery is involved, regardless of who the tortfeasor is, and even if the assault or battery occurs as the result of the negligence of the state or state agent.” *Sanders v. Leavitt*, 2001 UT 78, ¶ 29, 37 P.3d 1052.

In this case, Petito’s cause of death is undisputed: “Roughly two weeks after [Petito’s] encounter with the Moab Police Department, Brian brutally murdered her by strangulation, hiding her body at a campsite in Wyoming.” [Complaint (Dkt. 76) ¶ 136]. That core fact precludes Moab’s liability.

For example, *Sanders v. Leavitt*, 2001 UT 78, 37 P.3d 1052 also involved a tragic murder. In that case, the plaintiff sued after his “nine-month-old daughter . . . died tragically.” *Sanders*, 2001 UT 78, ¶ 2. The baby’s death “arose from assault or battery;” namely she “was physically abused [and] suffered multiple blunt trauma injuries inflicted over a period of time.” *Id.* at ¶¶ 30-31. “The factual record . . . establishes that” the Division of Child and Family Services “had received information that [baby] had been abused and was in danger of further abuse a short time before her death.” *Id.* at ¶ 43 (Durham, J. concurring). Yet the baby “was not seen by anyone from DCFS or removed from her home. She died less than forty-eight hours later.” *Id.* Notwithstanding DCFS’s alleged negligence, the Utah Supreme Court recognized that the plaintiff’s claim “arose out of an assault or battery.” *Id.* at ¶ 29. Accordingly, the court affirmed the dismissal of the plaintiff’s claims against DCFS. *See id.* at ¶¶ 29-32.

Likewise, in *Tiede v. State*, 915 P.2d 500 (Utah 1996), the Utah Supreme Court “sympathize[d] with the [plaintiffs] for the tragedy they [] suffered,” yet still found their claims were barred. *Tiede*, 915 P.2d at 504. In that case, two “convicted felons” “walked away from . . . [a] state-owned halfway house.” *Id.* at 501. The authorities were notified that the felons were “waiting in a cabin for the owners to arrive and that [the felons were] going to kill them and steal

their car.” *Id.* “The State failed to respond to the information.” *Id.* The inmates subsequently attacked the family that owned the cabin, killing two, wounding another, and kidnapping two children. *Id.* The family sued, “alleging that the State was negligent . . . in failing to protect their family members from the inmates.” *Id.* The trial court dismissed based on the GIAU, and the Utah Supreme Court affirmed. The court’s analysis was straightforward. “In shooting the two victims, [inmates] committed the torts of assault and battery. Because the deaths arose out of these torts, the State is immune” *Id.* at 502-03; *see also Scott v. Universal Sales, Inc.*, 2015 UT 64, ¶ 10, 356 P.3d 1172 (affirming immunity after escaped inmate “strangled [victim] with a shoe string,” “hit her repeatedly in the head with a cinder block,” and “sexually assaulted her”).

As Plaintiffs have recognized, well-established Utah law controls and requires the dismissal of this case. [See Complaint (Dkt. 76) ¶ 8 (recognizing *Tiede*); Dkt. 39 at 4-5 (acknowledging Moab is “immune from suit”).]

II. Regardless, Moab did not cause Laundrie to murder Petito.

Even without the GIAU, Plaintiffs’ claims against Moab should still be dismissed. The Complaint repeatedly invokes the Cohabitant Abuse Procedures Act (“CAPA”). [See, e.g., Complaint (Dkt. 76) ¶¶ 74-75]. That act does not create a private cause of action. *See Utah Code § 77-36-1, et seq.* Nor does it impose strict liability if a police officer fails to comply with its provisions. To the contrary, it precludes civil claims. “A peace officer may not be held liable in any civil action brought by a party to an incident of domestic violence for making or failing to make an arrest or for issuing or failing to issue a citation.” *Id.* at § 77-36-8. Despite the express language of the CAPA, Plaintiffs allege that noncompliance with the CAPA establishes a breach of a common law duty. Even if they are correct, their claims still fail under Utah law.

To prevail on any of their claims, Plaintiffs must establish that Moab’s alleged conduct was the cause of the alleged injuries. *See, e.g., Gerbich v. Numed Inc.*, 1999 UT 37, ¶ 14, 977 P.2d 1205 (“To prove negligence, a plaintiff must show . . . causation, and damages.”); *J.H. v. W. Valley City*, 840 P.2d 115, 124 (Utah 1992) (“Plaintiff’s claim for negligent hiring was properly dismissed because plaintiff failed to present sufficient evidence to show the element of proximate causation.”). “[W]here the proximate cause of the injury is left to conjecture, the plaintiff must fail as a matter of law.” *Thurston v. Workers Comp. Fund of Utah*, 2003 UT App 438, ¶ 13, 83 P.3d 391 (cleaned up); *accord Lockyer v. AXA Advisors, LLC*, No. 2:10-cv-678, 2010 WL 4612040, at *4 (D. Utah Oct. 12, 2010) (granting motion to dismiss because claims were “too speculative”).

In this case, Laundrie murdered Petito “[r]oughly two weeks after” their interaction with the Moab Police Department. [Complaint (Dkt. 76) ¶ 136]. That crime happened hundreds of miles away from Moab, “at a campsite in Wyoming.” [*Id.*]. Moreover, the crime occurred after Moab separated Petito and Laundrie. [*See, e.g., id.* at ¶ 134 (recognizing Laundrie and Petito separated for the night)]. During that time, Petito had “her van,” where she had been camping. [*Id.*]. But she did not drive away or leave Laundrie. Indeed, Petito had declared, “I don’t want to be separated” because “she and [Laundrie] were ‘a team.’” [*Id.* at ¶ 90]. Given these alleged facts, Plaintiffs cannot establish legal, or proximate, causation as a matter of law.

In domestic violence cases, “[t]he evaluation of proximate cause is to be guided by policy and common sense.” Nancy McKenna, *Domestic Violence Pract. & Proc.* § 6:38 (2023). Indeed, “[t]he so-called proximate cause issue is not about causation at all but about the appropriate scope of legal responsibility.” *See* Dan B. Dobbs, *Dobbs’ Law of Torts* § 198 (2d ed.); *accord* W. Page

Keeton, *Prosser & Keaton on Torts*, 273 (5th ed. 1984) (recognizing “proximate causation “turn[s] upon conclusions in terms of legal policy”).¹

“The further away in time and location that the injury occurs from the failure to arrest, the greater the scrutiny will apply to the proximate cause issue.” Nancy McKenna, *Domestic Violence Pract. & Proc.* § 6:38 (2023); accord Restatement (Second) Torts § 433 cmt. f (“Experience has shown that where a great length of time has elapsed between the actor’s negligence and harm to another, a great number of contributing factors may have operated, many of which may be difficult or impossible of actual proof.”). Here, as multiple cases confirm, the time and physical distance in this case are far too remote to support Plaintiffs’ claims. *Petito* continued traveling with *Laundrie* after stopping in Moab, ultimately arriving together in Wyoming 15 days after their interactions with the Moab Police Department. *Cf.* Restatement (Third) Torts: Phys. and Emot. Harm § 36 (“When an actor’s negligent conduct constitutes only a trivial contribution to a causal set that is a factual cause of harm . . . , the harm is not within the scope of the actor’s liability.”); Restatement (Second) Torts § 433 cmt. f (“[T]he effect of the actor’s conduct may thus become so attenuated as to be insignificant . . .”).

In *Alexander v. Town of Vernon*, 923 A.2d 748 (Conn. Ct. App. 2007), the victim “called the Vernon police department” because she “needed police protection.” *Alexander*, 923 A.2d at 750. The “couple had gotten into an argument” and husband “had slapped [victim] in the face, struck her with a belt and physically restrained her from calling the police.” *Id.* He also “had threatened her with a knife.” *Id.*; *see also id.* at 751 (“[H]e had threatened to kill her if she left him.”). The police, however, did not arrest husband. Three days later, husband broke into the

¹ *See generally* Restatement (Third) of Torts: Phys. & Emot. Harm 6 Spec. Note (rejecting term “proximate cause” “because it is an especially poor one to describe the idea to which it is connected”).

victim's apartment and "fatally shot the victim." *Id.* at 751. Victim's family sued, arguing "the officers were negligent . . . in not protecting the victim and in not arresting" husband. *Id.* The court dismissed for lack of legal causation. The court acknowledged that "domestic violence is potentially a precursor to murder." *Id.* at 754. However, that generalized concern was not enough to establish governmental liability for every subsequent act of violence in the relationship:

As applied to this case, it must have been foreseeable to the officers that ***failing to arrest [husband] on Saturday afternoon***, or failing to find and arrest him thereafter, ***would give rise to*** a risk that [husband] would commit a fatal or life threatening act of ***violence against the victim on Monday***.

Id. (emphasis added). Even "the victim herself, who had substantially more knowledge of [husband's] personality and capabilities," did not anticipate that risk. *Id.* at 755. Instead, both victim and husband "indicated that they did not want the other arrested." *Id.* at 750-51. Put simply, "there [were] too many variables involved to state with any degree of certainty that the victim's murder would not have occurred in the absence of the officers' alleged negligence." *Id.* at 756.

In *Nichols v. Nichols*, 556 So. 2d 876 (La. Ct. App. 1990), a couple appeared in court as part of a divorce proceeding. *Nichols*, 556 So. 2d at 877. After the hearing, wife "told the plaintiff that she would 'shoot him' and 'kill him' if he returned to their home." *Id.* The plaintiff "went directly to the . . . [p]olice [d]epartment" and asked the Chief of Police "to send an officer to his home with him." *Id.* "The chief told [plaintiff] not to worry and not to pay any attention to his wife's threats and advised him to return to his home." *Id.* Plaintiff did so, "saw his wife's car in the carport," and "began unlocking" the door. *Id.* His wife "shot him through the door with a .20 gauge shotgun." *Id.* The court dismissed the subsequent lawsuit against the police department for lack of causation. Plaintiff "knew [wife] had threatened him, yet he went to the door anyway. He had any number of other options including leaving" when he saw wife's car. *Id.* at 879. "Under these circumstances" any police negligence was not "a legal cause of the harm." *Id.*; see also

Mack v. City of Monroe, 595 So. 2d 353, 357 (La. Ct. App. 1992) (finding failure to arrest two weeks before fatal shooting “was not the legal cause of the harm” even though shooter testified the murder “would not have occurred had he been under a peace bond”).

In *Rodriguez-Cirilo v. Garcia*, 115 F.3d 50 (1st Cir. 1997), a court issued a mandatory “temporary detention order” because an individual “presented a danger to himself and others and had threatened to kill with a sharp object.” *Rodriguez-Cirilo*, 115 F.3d at 51. That order was “a non-discretionary obligation on the part of the police officer” that required “a law enforcement officer to detain the subject.” *Id.* at 51 & n.3. “Later that day, the defendant police officers . . . found [the individual] at a local establishment.” *Id.* at 51. “The officers then failed to carry out the order.” *Id.* Approximately two weeks later, the individual stabbed his brother in the chest. *Id.* at 52. “[T]he stabbing occurred at the address named in the original petition,” and the officers “had some indication that [plaintiff] would be at danger from an attack.” *Id.* Nevertheless, the plaintiff’s lawsuit was dismissed for lack of legal causation. “The remoteness in time of the harm in this case precludes a finding of proximate causation.” *Id.* “[T]he space of over two weeks that passed after the officers’ failure to detain [individual] . . . renders his later act of violence too remote to impose liability on the officers.” *Id.*

Petito’s murder is tragic. However, Moab did not cause Laundrie to murder Petito. Moab did not prevent Plaintiffs from “demand[ing] that [Petito] fly home” or call off her engagement. [Complaint (Dkt. 76) ¶ 93]. Moab separated Petito and Laundrie; it certainly did not force Petito to spend the next two weeks driving to Wyoming with Laundrie. [See *id.* at ¶¶ 134, 136]. Only speculation supports the assertion that Moab could have changed history.

CONCLUSION

Petito “was brutally murdered by her abusive fiancé and travel companion, Brian Laundrie.” [Complaint (Dkt. 76) ¶ 1]. Moab did not cause her murder. It further is immune from claims arising from that murder. Accordingly, this case should be dismissed.

Dated this 26th day of April, 2024.

JAMES DODGE RUSSELL & STEPHENS, P.C.

By: /s/ Mitchell A. Stephens

Mitchell A. Stephens

Justin L. James

Attorneys for Moab City Police Department

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of April, 2024, I caused a true and correct copy of the foregoing to be served via the Court's electronic filing system, GreenFiling, upon all counsel of record.

By: /s/ Cami Bradford
Cami Bradford