DOCKET NO. CV 15 6029810		**SUPERIOR COURT**
MICHELE BRASLEY, ADMINISTRATOR OF THE ESTATE OF KYLA RYNG	:	**JUDICIAL DISTRICT OF NEW BRITAIN**
VS.	:	**at NEW BRITAIN**
CITY OF BRISTOL AND OFFICER GEORGE FRANEK	:	**AUGUST 2, 2017**

MEMORANDUM OF DECISION
RE: DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, #166

This tragic case arises from a murder-suicide in which the plaintiff's decedent, Kyla Ryng, was shot and killed by her husband, Alexander Ryng, who then committed suicide by shooting himself.

The plaintiff, Michele Brasley Administrator of the Estate of Kyla Ring, brings this wrongful death action[1] against the defendants, Officer George Franek and the City of Bristol, and alleges that the defendants' negligence caused the decedent, Kyla Ring, to be

---

[1] The plaintiff brings this wrongful death action against the defendant, City of Bristol, pursuant to General Statutes §§ 52-555 and 52-557n, and the defendant, Officer George Franek, pursuant to General Statutes § 52-557n.

General Statutes 52-555 (a) provides: "In any action surviving to or brought by an executor or administrator for injuries resulting in death, whether instantaneous or otherwise, such executor or administrator may recover from the party legally at fault for such injuries just damages together with the cost of reasonably necessary medical, hospital and nursing services, and including funeral expenses, provided no action shall be brought to recover such damages and disbursements but within two years from the date of death, and except that no such action may be brought more than five years from the date of the act or omission complained of."

General Statutes 52-557n provides in relevant part: "(a)(1) Except as otherwise provided by law, a political subdivision of the state shall be liable for damages to person or property caused by: (A) The negligent acts or omissions of such political subdivision or any employee, officer or agent thereof acting within the scope of his employment or official duties . . . (2) Except as otherwise provided by law, a political subdivision of the state shall not be liable for damages to person or property caused by: (A) Acts or omissions of any employee, officer or agent which constitute criminal conduct, fraud, actual malice or willful misconduct; or (B) negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law."

murdered by her husband Alexander Ryng on June 4, 2014. In addition to a claim for direct negligence against the City of Bristol, the plaintiff seeks indemnification[2] from the City of Bristol for the negligence of Officer Franek in connection with Kyla's death. The plaintiff claims damages.[3]

The defendants move for summary judgment on the complaint on the grounds that 1) they owe no duty to the plaintiff decedent; 2) the police officers of the defendant, City of Bristol, were not the proximate cause of the plaintiff decedent's death; 3) the plaintiff's claims are barred by governmental immunity to which no exception applies; 4) the plaintiff's failure to disclose expert witnesses is fatal to her negligence claims; and 5) the indemnification claim against the City of Bristol fails because of the plaintiff's failure to succeed past summary judgment on its claims against Officer Franek. The plaintiff has filed a memorandum of law in opposition to the motion.

I

FACTS

The plaintiff, Michele Brasley, Administrator of the Estate of Kyla Ryng, instituted a four-count complaint dated June 25, 2015, against the defendants, City of Bristol and Officer George Franek. The complaint alleges the following relevant facts.

On May 31, 2014, Kyla made an emergency call to the City of Bristol police department to report a domestic disturbance at her home involving her brother-in-law, Skyler Ryng. She reported that she had recently filed for divorce and indicated that her

---

2 The plaintiff seeks indemnification pursuant to General Statutes § 7-465.

3 The City of Bristol and Officer George Franek filed an apportionment complaint in the present action against the apportionment defendants, Alissa Wurtzel and the Connecticut National Guard, and the court dismissed the apportionment complaint on May 18, 2016. (Swienton, J.)

brother-in-law and her estranged husband, Alexander Ryng (Ryng), had been harassing her. Office George Franek responded to the call, and identified it as a "domestic situation." At the scene, Officer Franek was informed that Kyla did not feel safe, and believed her husband was unstable. She also reported that Ryng had struck her in the face in front of her children.[4] Unknown to Kyla, on May 29, 2014, Ryng purchased a 12-Gauge shotgun from Dick's Sporting Goods. Dick's asserts that it complied with the law and notified Bristol police and Connecticut state police in accordance with state statute. The Bristol police deny receiving this notice at any time.

While Officer Franek was on the scene, Kyla received a phone call from Alissa Wurtzel, the director of psychological health for the Connecticut National Guard. Kyla gave Office Franek the phone and he spoke with Ms. Wurtzel. Ms. Wurtzel informed him that Ryng had missed appointments for mental health therapy, and if he did not show up for his appointment that day, a request would be made to the Bristol police department for a wellness check.

Later that same day, a dispatcher for the Bristol police department received a call from Ms. Wurtzel, asking to be forwarded to Officer Franek to confirm that Kyla could dial 9-1-1 concerning the "possible domestic violence" help. Ms. Wurtzel contacted dispatch again that day and informed the dispatcher that she was concerned that Ryng had missed appointments with her and was exhibiting increasing erratic behavior. She also informed the dispatcher that while on the phone with Kyla, Kyla had abruptly hung up after stating "oh my gosh, he's in the house."

---

[4] Although alleged in the complaint that Officer Franek was informed of this abuse, this fact is in dispute.

After further informing the dispatcher of her concern for Ryng's mental health and comments he made that she found concerning, a request for a wellness check was made by the dispatcher. Officer Scott McIntyre responded to the request and proceeded to the Ryng house. At the scene, Officer McIntyre met with members of the family who expressed their concerns regarding Ryng. Office McIntyre was told by the family that Alexander was not himself, that he missed his appointments with Ms. Wurtzel, and was shown a text message from Ryng to Kyla stating "till death do us part." On June 4, 2014, Ryng shot and killed Kyla, with his children present. He then turned the gun on himself and took his own life.

On January 12, 2016, the defendants filed a motion to strike all four counts of the complaint, arguing that it failed to assert legally sufficient causes of action. This motion was withdrawn on February 23, 2016.

Prior to that date, on December 19, 2015, the defendants filed an apportionment complaint against the Connecticut National Guard and the National Guard Director of Psychological Health, Alissa Wurtzel, alleging that the death of Kyla Ryng was caused by the negligence of Ms. Wurtzel because she failed to inform the Bristol police department that Ryng was dangerous and unstable, and because she failed to make known the seriousness of his mental condition. The apportionment complaint also alleged that Ms. Wurtzel, as his psychotherapist, failed to control and/or restrain Ryng as to Kyla, a specifically identifiable victim and/or member of a class of identifiable victims. The apportionment defendants filed a motion to dismiss, and the complaint was dismissed on May 18, 2016. (Swienton, J.).[5]

[5] The grounds for dismissal were that the defendants/apportionment plaintiffs failed to comply with the requirements of General Statutes § 52-190a, in that the claims against Ms. Wurtzel sounded in medical

On February 1, 2017, the defendants filed the present motion for summary judgment, accompanied by a memorandum of law and evidentiary support consisting of twenty-one (21) exhibits, labelled A - U. On March 15, 2017, the plaintiff filed a memorandum of law in opposition to the motion for summary judgment, along with evidentiary support consisting of thirty-nine (39) exhibits, labelled A - MM.[6] A hearing on this matter was conducted on April 10, 2017.[7]

II

DISCUSSION

Practice Book § 17-49 provides in relevant part: "[Summary judgment] shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." "[T]he moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law. The courts hold the movant to a strict standard." (Internal quotation marks omitted.) *Romprey* v. *Safeco Ins. Co. of America*, 310 Conn. 304, 320, 77 A.3d 726 (2013). "To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any

---

negligence and no certificate of good faith and supporting opinion letter were submitted, and the National Guard was entitled to sovereign immunity depriving the court of subject matter jurisdiction.

[6] On March 20, 2017, the defendants filed a motion to strike eleven exhibits submitted by the plaintiff in support of her memorandum of law in opposition to the motion for summary judgment. The defendants claimed that these exhibits consisted of inadmissible hearsay, were not authenticated, and were not provided to the defendants in a timely manner in the course of discovery. After review of the exhibits the court denied the motion to strike the exhibits from consideration in the court's determination of the motion for summary judgment.

[7] On June 23, 2017, the parties indicated they wised to mediate a settlement and asked the court to not rule on this motion until they had done so. On July 6, 2017, the court was notified that the mediation was unsuccessful.

real doubt as to the existence of any genuine issue of material fact. . . . As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent. . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue. . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue. . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue. Mere assertions of fact . . . are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court under Practice Book § [17-45]." (Internal quotation marks omitted.) *Ferri* v. *Powell-Ferri*, 317 Conn. 223, 228, 116 A.3d 297 (2015).

"When a court, in ruling on a motion for summary judgment, is confronted with conflicting facts, resolution and interpretation of which would require determinations of credibility, summary judgment is not appropriate." (Citation omitted; internal quotation marks omitted.) *Straw Pond Associates, LLC* v. *Fitzpatrick, Mariano & Santos, P.C.*, 167 Conn.App. 691, 710, 145 A.3d 292, cert. denied, 323 Conn. 930, 150 A.3d 231 (2016). "It is only when the witnesses are present and subject to cross-examination that their credibility and the weight to be given to their testimony can be appraised." (Citation omitted; internal quotation marks omitted.) *Barasso* v. *Rear Still Hill Road*, 81 Conn.App. 798, 806, 842 A.2d 1132 (2004).

A
Causation

The plaintiff alleges in its complaint, in substance, that the City of Bristol police department was negligent in their investigations, response, and communications related to Alexander Ryng and Kyla Ryng prior to Kyla's death. The plaintiff alleges the City of Bristol police department was negligent because it did not follow established protocols and procedures established by the police department. In addition, the plaintiff alleges that Officer George Franek was negligent in his communications and investigations, which included delayed investigations related to Ryng's wellness and Ryng's danger to and abuse of Kyla. The plaintiff alleges that Officer Franek was negligent in developing a short term safety plan for Kyla Ryng, investigating Kyla further regarding Ryng, and in failing to follow Bristol police department domestic violence policies and procedures.

"The essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury." *RK Constructors, Inc.* v. *Fusco Corp.*, 231 Conn. 381, 384, 650 A.2d 153 (1994).[8] "Issues of negligence are ordinarily not susceptible of summary adjudication but should be resolved by trial in the ordinary manner." (Internal quotation marks omitted.) *Fogarty* v. *Rashaw*, 193 Conn. 442, 446, 476 A.2d 582 (1984). "Although the issue of causation generally is a question reserved for the trier of fact . . . the issue becomes one of law when the mind of a fair and reasonable person could reach

[8] The court presumes the existence of a legal duty owed to Mrs. Ryng by the defendants, as well as a breach thereof for the purposes of addressing the issue of causation. Furthermore, because the court has found Kyla to be an identifiable victim subject to imminent harm (see Part II, B (1) of this decision below); the defendants' argument that they owed no legal duty to Kyla is rejected. See *Shore* v. *Stonington*, 187 Conn. 147, 156, 444 A.2d 1379 (1982) ("In deciding the issue of when, if ever, an official's public duty precipitates into a special one to prevent harm to an individual, the law requires, to maintain the action, a showing of imminent harm to an identifiable victim.")

only one conclusion, and summary judgment can be granted based on a failure to establish causation." (Internal quotation marks omitted.) *Abrahams* v. *Young & Rubicam, Inc.*, 240 Conn. 300, 307, 692 A.2d 709 (1997).

In their memorandum of law in support of their motion for summary judgment, the defendants argue in conjunction with their proximate cause argument that the plaintiff cannot establish that the defendants' negligence was the actual cause of Mrs. Ryng's death. Specifically, the defendants argue that without resort to conjecture, the plaintiff has not addressed whether the murder of Kyla would have occurred in the absence of Officer Franek and/or any other City representative's alleged negligent acts or omissions. They contend that there are too many variables involved to state with any degree of certainty that Kyla's murder would not have occurred in the absence of the officers' – or any other City employee's – alleged negligence. In order to find otherwise, the defendants argue a jury would have to conclude that if the dispatcher had communicated more information, this would have led to the involved officers asking additional questions, which would have resulted in the arrest or involuntary committal of Ryng. The jury would then have to further assume that Ryng would not have been released prior to June 4, 2014 and/or that he would have been truthful with officers and surrendered his unregistered weapon at the time of his arrest/involuntary committal. Because there is no evidence in the record upon which to make these critical inferences, the defendants' assert the jury would be forced to resort to sheer speculation. As such, the plaintiff cannot establish the requisite causation in fact that the defendants' negligence was the actual cause of Kyla's death.

In her memorandum of law in opposition to the motion, the plaintiff does not directly refute the substance of the defendants' argument on actual causation. The plaintiff does not present any evidence to counter the defendants' argument that the plaintiff fails to demonstrate that the defendants' negligence actually caused Kyla's death. Instead, the plaintiff argues that the court does not need to address actual causation at the present time because Kyla was an identifiable victim subject to imminent harm prior to her death. The plaintiff did submit an affidavit of her expert, Mary Ann Dutton, who opines as to the imminence of the threat of lethal partner violence. Specifically, after review of the dispatch tapes made by Ms. Wurtzel, the deposition of Steven Nadel, Bristol police department dispatcher, the deposition of Ms. Wurtzel, and the deposition of Officer Franek, Dr. Dutton indicates that there were present several risk factors which would support a finding of the imminent harm. These opinions raise an issue of material fact as to whether the defendants' alleged negligence was a cause in fact of Kyla's death.[9]

The first issue in the causation argument is whether the defendants' action and/or omissions are the actual cause of the plaintiff's injuries. "The first component of legal cause is causation in fact. Causation in fact is the purest legal application of . . . legal cause. The test for cause in fact is, simply, would the injury have occurred were it not for the actor's

[9] The defendants argue as a ground for granting of summary judgment that "the plaintiff's failure to disclose any expert witness as to liability is fatal to her negligence claims." They argue that the scheduling orders entered in this case called for disclosure of plaintiff's experts by December 1, 2016, and the plaintiff failed to disclose any experts by that date. The cases cited by the defendants hardly stand for the premise that late disclosure, or even failure to disclose, is a basis for the granting of summary judgment. See *Santopietro* v. *City of New Haven,* 279 Conn. 207, 682 A.2d 106 (1996) and *LePage* v. *Horne*, 262 Conn. 116, 809 A.2d 505 (2002), where in both cases the issue of a lack of expert witness on the issue of standard of care was raised at trial, not on summary judgment. In any event, in accordance with Practice Book § 13-4(h), a witness cannot be precluded absent an express finding that: (1) the sanction of preclusion, including any consequences thereof of the sanctioned party's ability to prosecute or to defend the case, is proportional to the noncompliance at issue, and (2) the noncompliance at issue cannot adequately be addressed by a less severe sanction or combination of sanctions. The defendants may file a motion to preclude based upon late disclosure, however, summary judgment at this point in the litigation on this ground is denied.

conduct." *Winn* v. *Posades*, 281 Conn. 50, 56-57, 913 A.2d 407 (2007). "[I]f the plaintiff's injury would not have occurred 'but for' the defendant's conduct, then the defendant's conduct is the cause in fact of the plaintiff's injury. Conversely, if the plaintiff's injury would have occurred regardless of the defendant's conduct, then the defendant's conduct was not a cause in fact of the plaintiff's injury." *Stewart* v. *Federated Dept. Stores, Inc.*, 234 Conn. 597, 605, 62 A.2d 753 (1995).

"Because actual causation, in theory, is virtually limitless, the legal construct of proximate cause serves to establish how far down the causal continuum tortfeasors will be held liable for the consequences of their actions. . . The fundamental inquiry of proximate cause is whether the harm that occurred was within the scope of foreseeable risk created by the defendant's negligent conduct. . . The determination of the nature of the legal duty owed, if any, must be rooted in the fundamental policy of the law that a tortfeasor's responsibility should not extend to the theoretically endless consequences of the wrong." *Alexander* v. *Vernon*, 101 Conn. App. 477, 484-485, 923 A.2d 748 (2007).

"[T]he test of proximate cause is whether the defendant's conduct is a substantial factor in bringing about the victim's injuries. To that end, the question of proximate causation generally belongs to the trier of fact because causation is essentially a factual issue. . . It becomes a conclusion of law only when the mind of a fair and reasonable person could reach only one conclusion; if there is room for a reasonable disagreement the question is one to be determined by the trier as a matter of fact." Id., 485.

In *Alexander* v. *Vernon*, a case analogous to the present case, the administratrix brought a wrongful death action on behalf of a decedent against the Town of Vernon police

department and alleged that their negligence in failing to arrest the husband led to the decedent, his wife, being murdered at the hands of her husband. Id., 478-481. The decedent allegedly reported to the police that her husband "slapped her in the face, struck her with a belt and physically restrained her from calling the police." Id., 479. Later, the decedent reported that her husband had "destroyed the contents of their home," and had "requested that an officer accompany her to her residence" so that she could move out of the home. Id., 480. At that time, the decedent told the police officers that "she was afraid of [her husband] and that during their argument, he had threatened to kill her if she left him. The [decedent] gave a written statement [to the police officer] confirming that she wanted [her husband] arrested for the damage he had done to their home." Id. The following day, the decedent received "harassing telephone calls from [her husband] at her mother's home . . . where she and her minor children were staying. She notified the [police department] of the calls and advised them that she was unaware of [her husband's] location." Id., 480-81. It appeared the police department could not locate the husband. Id., 480 "Early in the afternoon of the next day . . .[the husband] broke into his mother-in-law's house . . . [and] fatally shot the victim and then himself." Id.

"[T]he defendants moved for summary judgment on [the complaint on] various grounds, including governmental immunity . . . [and] a right to indemnification under §7-465." Id., 482. Thereafter, "the [trial] court issued a decision, concluding as a matter of law that the officers' failure to arrest [the husband on a certain date] was not a proximate cause of the victim's death two days later. Reasoning that the plaintiff's inability to establish

causation was fatal to every cause of action alleged in the complaint, the court rendered summary judgment on all counts in favor of the defendants." (Footnote omitted.) Id.

The Appellate Court in *Alexander* v. *Vernon*, supra, 101 Conn. App. 491, affirmed the court's entry of summary judgment against the plaintiff on the ground of causation. "[L]egal cause is a hybrid construct, the result of balancing philosophic, pragmatic and moral approaches to causation. The first component of legal cause is causation in fact. Causation in fact is the purest legal application of . . . legal cause. The test for cause in fact is, simply, would the injury have occurred were it not for the actor's conduct . . ." Id., 484.

"Although characterized as defects in proximate cause, [the defendant's] arguments actually attack the 'causation in fact' element of the plaintiff's case. Causation in fact, also referred to as actual causation or 'but for' causation, explores whether the injury would have occurred in the absence of the defendant's negligent act or omission. . . . As our Supreme Court has acknowledged, '[t]he conception of causation in fact extends not only to positive acts and active physical forces, but also to pre-existing passive conditions which have played a . . . part in bringing about the event.' (Internal quotation marks omitted.) *Doe* v. *Manheimer*, [212 Conn. 748, 760, 563 A.2d 699 (1989), overruled in part on other grounds by *Stewart* v. *Federated Dept. Stores, Inc.*, 234 Conn. 597, 608, 662 A.2d 753 (1995)." Id., 488.

In *Alexander* v. *Vernon*, supra, 101 Conn. App. 488, the Appellate Court found that "to establish causation the plaintiff must demonstrate, without resort to conjecture, that the murder would not have occurred but for the defendant's alleged negligence or recklessness." "Under [the facts of the case]," the Appellate Court held that "[o]ne [could] only speculate

as to whether an attempt on the part of the [police department] to 'try and find' [the husband] would have succeeded. Furthermore, even if [the police department] had found and arrested [the husband], it [was] quite possible that he would have been released from custody [before the murder]. [The Appellate Court found] [t]he plaintiff [had] not presented evidence suggesting that, more likely than not, [the husband] would not have been released at his arraignment . . . Without any assurance that [the husband] would have remained incarcerated [on the date of the murder], there [was] no way to know whether his arrest would actually have prevented the murder."

The present case is distinguishable from *Alexander* on several counts. First, in *Alexander*, unlike this case, there were no disputed or rebutted facts. Second, the plaintiff does not simply allege that it was the police officers failure to arrest Ryng which caused Kyla's murder. The plaintiff argues that the City of Bristol police department knew or should have known of Ryng's physical abuse against Kyla, they knew or should have known of Ryng's recent purchase of a 12-Gauge shotgun, and they knew or should have known of his deteriorating mental state. The complaint alleges that the police officers' failure to conduct a proper investigation based upon this knowledge, and more importantly their failure to follow department procedures and protocol in responding to reports of domestic violence caused the death of Kyla. Unlike in *Alexander*, a reasonable jury could conclude that if the police had followed their own protocols – i.e., taken measures to protect Kyla, taken possession of Ryng's weapon – Kyla would not have been murdered on June 4, 2014.

In *Fergus* v. *Town of New Milford*, Superior Court, judicial district of Litchfield, Docket No. CV 106002870 (October 25, 2013), the court denied the defendant's motion for

summary judgment on the issue of causation.[10] In that case, a protective order was issued by the Superior Court mandating that Neil Fergus, the estranged husband of Catherine Fergus, refrain from harassment of any kind. The same day the protective order was issued, the plaintiff contacted the New Milford Police Department because she had received several dozen unwanted communications from Neil Fergus. After hearing of the violation of the protective order, instead of detaining Mr. Fergus, they instead warned him, by telephone, of the plaintiff's complaints. Upon learning of the complaints, Mr. Fergus became enraged, went directly to the plaintiff's home, and attacked her with a knife. The attack occurred approximately twelve minutes after the police officer had telephoned Neil Fergus.

The trial court found that a fair and reasonable fact finder could conclude that the element of actual causation was present because the nonoccurrence of the police officer's negligence could have changed the outcome. Unlike the facts in *Alexander*, "no resort to conjecture [was] necessary to know that if Neil Fergus was in police custody upon learning of the plaintiff's complaint, then he could not have assaulted her within minutes of gaining that knowledge." Id.[11]

In this case, a fair and reasonable fact finder could find that the defendants' alleged actions and/or inactions were the actual cause and the proximate cause of Kyla's murder. Like the facts in *Fergus*, the record provides a logical inference that the defendants' conduct somehow contributed to the murder of Kyla by Ryng. Taken with the disputed facts in the record that Officer Franek knew that Alex had struck Kyla previous to May 31, that the

---

[10] The court also addressed the issue of governmental immunity and found a question of fact as to the imminent harm/identifiable victim exception, thereby denying summary judgment as to this issue as well.

[11] Moreover, the New Milford Police Department had been called to numerous domestic disturbances involving the plaintiff and Mr. Fergus.

Bristol police department knew or should have known that Alex had purchased a gun on May 29, that the Bristol police department knew of Ryng's deteriorating mental state could lead to a jury finding the requisite causation.

A fair and reasonable juror could conclude that had the defendants conducted the investigations, response, and communications to the satisfaction of the plaintiff in accordance with its own protocol and procedures, Ryng would have been arrested or incarcerated and his weapon seized at the time of Kyla's murder on June 4, 2014. This court is mindful that our Appellate Court has cautioned against converting "the imperfect vision of reasonable foreseeability into the perfect vision of hindsight." (Internal quotation marks omitted.) *Alexander* v. *Vernon*, supra, 101 Conn.App. at 487. "[T]he plaintiff must demonstrate, without resort to conjecture, that the murder would not have occurred but for the defendants' alleged negligence[.]" Id., 489.

There are several issues of *material* fact that are in dispute from which a fair and reasonable fact finder could conclude that the element of actual causation is present because Officer Franek's negligence in the performance of his duty, as well as that of Office McIntyre, and the dispatcher, Officer Nadel could have changed the outcome. The issues in dispute are: (1) Did the City of Bristol police department know, or should it have known that Ryng purchased a weapon? (2) Did Kyla or a family member inform the Bristol police department – either Officer Franek, Officer McIntyre, or Officer Nadel – that Ryng had been physically abusive of Kyla? (3) Did Ms. Wurtzel inform the Bristol police department, in her three communications with it, about Ryng's mental state and Kyla's fear of him?[12] [13]

[12] Ms. Wurtzel in her deposition testimony stated that she told Officer Franek that Ryng had recently made threatening comments to Kyla and that she was making a "*Tarasoff*/duty to warn" report regarding Ryng.

"Common experience suggests that domestic violence is potentially a precursor to murder. As such, it could be argued that this exact chain of unfortunate events was foreseeable in the most abstract sense. . . Satisfaction of the proximate cause element requires proof that the harm which occurred was of the same general nature as the foreseeable risk created by the defendant's negligence." Id., 486.

Based on the facts viewed in light most favorable to the plaintiff, this court concludes that the murder of Kyla Ryng was within the scope of foreseeable risk caused by Officer Franek's actions and inactions as well as the actions and inactions of the City of Bristol police department's dispatch. If the police officers did know of the past violence by Ryng, his purchase of the gun, as well as the information allegedly relayed to them by Ms. Wurtzel, their failure to properly investigate and take the appropriate measures required of them by their own protocols and procedures based upon this knowledge would give rise to the risk that Alex would commit a fatal or life threatening act of violence against Kyla, and that the act could occur within the relevant time period. "[D]omestic violence is perhaps the most frequent cause of expected death for women." *Florence* v. *Plainfield*, 48 Conn.Sup

---

Notwithstanding HIPPA, Ms. Wurtzel believed she had an obligation to speak up regarding Ryng's mental state. She therefore states that she told Officer Franek of her concern. In *Tarasoff* v. *Regents of Univ. of Cal.*, 17 Cal.3d 425, 131 Cal.Rptr. 14, 551 P.2d 334 (1976), the California Supreme Court ruled that a psychotherapist owed a duty to warn a foreseeable victim of the violent and bizarre behavior of the psychotherapist's patient based on the patient's specific threat against a specific victim. Officer Franek denies that this warning was made to him, and the defendants argue that she did not use the "proper" way to make such a warning, by telling the police officer, "in good faith. . . there's a reason to believe [the subject individual] could be [a] risk of injury to himself or others." . She acknowledges in her deposition that this disclosure was not the exact phraseology referenced in *Tarasoff*.

[13] HIPPA is an acronym that stands for the Health Insurance Portability and Accountability Act of 1996, which is designed to provide privacy standards to protect patients' medical records and other health information.

440, 453-54, 909 A.2d 587 (2004).[14] Viewing the evidence in the light most favorable to the plaintiff, a fair and reasonable finder of fact could reasonably conclude that the defendants' failures were the legal, actual or proximate cause of the assault on Kyla Ryng.[15]

Accordingly, the defendants are not entitled to summary judgment on the negligence claims and the derivative indemnification claims in the complaint.[16]

B

Governmental Immunity

The defendants contend that they are also entitled to summary judgment on the ground that governmental immunity bars the plaintiff's claim of negligence to which no exception applies. In particular, the defendants argue that the alleged acts and omissions complained of involve discretionary, governmental functions, and they cannot be held liable for the performance of those functions.

"The issue of governmental immunity is simply a question of the existence of a duty of care, and this court has approved the practice of deciding the issue of governmental immunity as a matter of law . . . General Statutes §52-557n abandons the common-law principle of municipal sovereign immunity and establishes the circumstances in which a municipality may be liable for damages. . . The first part of the statute provides for the

---

[14] The court acknowledges that the facts in *Florence* are egregious and more numerous. However, society has come a long way since 2004, and we are much more aware of the precursors and triggers for domestic violence, including lethal partner violence.

[15] The court has found in this decision – see Part II, B, (1) that the identifiable person/imminent harm exception to governmental immunity applies in this case. As stated by Judge Beach in *Swanson* v. *City of Groton*, Superior Court, judicial district of Middlesex, Docket No. CV 030104164 (October 26, 2007), n. 9, "The defendants have also argued that proximate cause is lacking, on the ground, generally, that [the killer] may have ended up committing the murder even if he had been detained. I do not reach this ground and need not decide it. It appears to the court, however, that if the 'imminent harm to identifiable person' exception were to be satisfied, then the absence of proximate cause would be correspondingly difficult to prove."

[16] Because the negligence claim stands against Officer Franek or any other employees of the City of Bristol, the claim for indemnification against the City pursuant to General Statutes § 7-465 also remains.

possibility that a municipality may be liable for negligently performed ministerial acts by stating that 'a political subdivision of the state *shall* be liable for damages to person or property caused by . . . A) [t]he negligent acts or omissions of such political subdivision or any employee, officer or agent thereof acting within the scope of his employment or official duties.' . . . The second part of the statute then distinguishes discretionary acts from those that are ministerial by stating that 'a political subdivision of the state *shall not* be liable for damages to person or property caused by . . . (B) negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law.' . . . Generally, liability may attach for a negligently performed ministerial act, but not for a negligently performed governmental or discretionary act." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Coley* v. *Hartford*, 140 Conn.App. 315, 321-22, 59 A.3d 811 (2013), aff'd, 312 Conn. 150, 95 A.3d 480 (2014).

Under most circumstances, law enforcement activity is inherently discretionary. "[I]t is firmly established that the operation of a police department is a governmental function, and that acts or omissions in connection therewith ordinarily do not give rise to liability on the part of the municipality. . . [Accordingly] [t]he failure to provide or the inadequacy of, police protection usually does not give rise to a cause of action in tort against a city." (Internal quotation marks omitted.) *Gordon* v. *Bridgeport Housing Authority*, 208 Conn. 161, 180, 544 A.2d 1185 (1988). "Police officers are protected by discretionary act immunity when they perform the typical functions of a police officer . . . The policy behind discretionary act immunity for police officers is based on the desire to encourage police

officers to use their discretion in the performance of their typical duties. Discretionary act immunity reflects a value judgment that – despite injury to a member of the public – the broader interest in having government officers and employees free to exercise judgment and discretion in their official functions, unhampered by fear of second guessing and retaliatory lawsuits, outweighs the benefits to be had from imposing liability for that injury." (Citation omitted; internal quotation marks omitted.) *Smart* v. *Corbitt*, 126 Conn.App. 788, 800, 14 A.3d 368, cert. denied, 301 Conn. 907, 19 A.3d 177 (2011).

In the present case, the plaintiff alleges that there were violations of statutory obligations, violations of guidelines as to arrests for responses to a crime of family violence, and of internal policies relating to call taking procedures and other internal policies and procedures set forth in the City of Bristol police department training and evaluation manual. Specifically, the allegations claim a violation of General Statutes § 46b-38b(a), the Bristol Police Department Police Responses to Crimes of Family Violence, Section VI. Arrest Guidelines and Section V. Recommended Response Procedures; Bristol Police Department Family Violence Prevention and Response (July 17, 2012), and Family Violence Response (January 6, 2014); Bristol Police Department Reporting Requirements; Bristol Police Department Call Taking Instructions and Procedures; and Bristol Police Department Field Training and Evaluation Program Task Book.

As to Officer Franek, the plaintiff alleges that he failed to investigate Kyla's report that Ryng had recently hit her, failed to arrest Ryng upon the information of a crime of family violence, failed to determine the presence and status of weapons, and failed to complete an incident report at any time. The plaintiff characterizes these allegations against

Office Franek's actions as ministerial in nature, and do not require the exercise of discretion. Therefore, governmental immunity would not bar the plaintiff's claims arising out of these violations.

The plaintiff argues that the alleged acts, or more accurately omissions, taken by the police dispatchers are also violations of ministerial duties in that the dispatcher failed to follow the Bristol Police Department Policies and Procedures pertaining to call-taking. The police call taking procedures requires that the call takers identify the chief complaint being made and are required to determine the presence of mental illness. The plaintiff alleges that Dispatcher Nadel failed to dispatch Ms. Wurtzel's chief complaints regarding her concern for Kyla's safety and Ryng's unstable mental condition, both of which violated his ministerial duties.

Furthermore, internal policies require that officers, when responding to a call regarding a "mental disorder," check for weapons. The Bristol police department policies and procedures mandate an officer to take statements, notify a supervisor, emergency medical services, and the fire department, as well as implementing a 72-hour committal, and filing a written report. The plaintiff alleges that these procedures were not followed.

While some of the allegations potentially point to violations of ministerial duties – e.g., violation of statutory requirements – the majority of the allegations require the police to exercise their judgment in evaluating the situation, and therefore, the court finds that these acts and/or duties are classified as discretionary.[17] Most of the acts and/or omissions involve

[17] Although the defendants argue these are all violations of discretionary duties, they dismiss the allegations of what would seem to be ministerial duties by simply stating that "there exists no genuine issue of material fact" as to whether Officer Franek was apprised of a complaint concerning any act of family violence

the exercise of judgment and discretion. Therefore the court shall analyze the governmental immunity argument by finding the duties were discretionary and will perform an analysis of the possible exception to governmental immunity, identifiable person subject to imminent harm.[18]

Discretionary act immunity is subject to three well-recognized exceptions: (1) where the circumstances make it apparent to the police officer that his failure to act would be likely to subject an identifiable person to imminent harm; (2) where a statute specifically provides for a cause of action against a municipality or municipal official for failure to enforce certain laws; and (3) where the alleged acts involve malice, wantonness or intent to injure, rather than negligence. *Evon* v. *Andrews*, 211 Conn. 501, 505, 559 A.2d 1131 (1989); *Shore* v. *Stonington*, 187 Conn. 147, 153-155, 444 A.2d 1379 (1982). The first exception is the only one relevant to the present case.

1. Identifiable Person-Imminent Harm Exception

A municipality is liable for its discretionary acts when the circumstances make it apparent to the public officer that his or her failure to act would be likely to subject an identifiable person to imminent harm. *Evon* v. *Andrews,* supra, 211 Conn. 505. See also *Doe* v. *Petersen*, 279 Conn. 607, 615–16, 903 A.2d 191 (2006). "[The] identifiable person-

---

with regard to Ryng. The plaintiff strenuously argues that Officer Franek was made aware of Ryng striking Kyla several weeks prior to his initial involvement.

[18] The complaint does not contain a specific allegation of a violation of General Statutes § 46b-38b(a), however, compliance with this statute is contained in the Bristol Police Department Police Responses to Crimes of Family Violence. The decision concerning whether to arrest is usually entrusted to the broad discretion of the police officer on the scene based upon the circumstances presented assuming there was probable cause. See, e.g., *Shore* v. *Stonington*, supra, 187 Conn. 147. Sec. 46b-38b(a) *eliminates that discretion* in the context of domestic violence. The plaintiff does allege that Office Franek failed to follow Bristol Police Department domestic violence policies and procedures, which require arrest upon speedy information that a crime of family violence has been committed. Because of this, any act or omission pursuant to § 46b-38b(a) would be classified as a ministerial.

imminent harm exception has three requirements: (1) an imminent harm; (2) an identifiable victim; and (3) a public official to whom it is apparent that his or her conduct is likely to subject that victim to that harm. . . All three must be proven in order for the exception to apply." *Haynes* v. *City of Middletown*, 314 Conn. 303, 312-13, 101 A.3d 249 (2014).

The identifiable person-imminent harm exception was first recognized in *Sesito* v. *City of Groton*, 178 Conn. 520, 423 A.2d 165 (1979). In *Sesito*, a police officer saw a fight which involved at least seven men and allegedly failed to stop it. As the officer was driving away from the scene of the fight, one of the combatants shot and killed the plaintiff's decedent. Our Supreme Court recognized a cause of action against the officer because the facts supported the conclusion that the victim was identifiable and that it was apparent to the officer that if he failed to take action, the victim was in danger of imminent harm. This exception has been used by many plaintiffs as a basis for their claims against police officers as well as other municipal employees. *Notice* v. *Plainville*, Superior Court, complex litigation docket at Hartford, Docket No. CV 11 6017990 (August 12, 2013). "There is . . . authority for the proposition that where the duty of the public official to act is not ministerial but instead involves the exercise of discretion, the negligent failure to act will not subject the public official to liability unless the duty to act is clear and unequivocal. . . We have recognized the existence of such duty in situations where it would be apparent to the public officer that his failure to act would be likely to subject an identifiable person to imminent harm." *Shore* v. *Stonington*, supra,187 Conn. 153. ("Although *Sesito* is recognized as the case that created the identifiable person, imminent harm exception as we know it, this was

not express recognized by the court until it decided *Shore* v. *Stonington.*" *Haynes v. City of Middletown*, supra, 314 Conn. 333 (Eveleigh concurring.)

Our Supreme Court has recently modified its definition of the imminent harm requirement, overruling *Burns* v. *Board of Education*, 228 Conn. 640, 638 A.2d 1 (1994), and *Purzycki* v. *Fairfield*, 244 Conn. 101, 708 A.2d 937 (1988). In *Haynes*, the court held that "the proper standard for determining whether a harm was imminent was whether it was apparent to the municipal defendant that the dangerous condition was so likely to cause harm that the defendant had a clear and unequivocal duty to act immediately to prevent the harm." "It rejected the foreseeability standard articulated in *Burns* and *Purzycki*, and overruled those cases to the extent that they had promulgated that standard." *Williams* v. *Housing Authority of City of Bridgeport,* 159 Conn.App. 679, 705, 124 A.3d 537 (2015)

In *Williams* v. *Housing Authority of City of Bridgeport*, the Appellate Court reviewed the analysis set forth in *Haynes* and determined that, pursuant to *Haynes*, "in order to qualify under the imminent harm exception, a plaintiff must satisfy a four-pronged test. First, the dangerous condition alleged by the plaintiff must be apparent to the municipal defendant . . . Second, the alleged dangerous condition must be likely to have caused the harm suffered by the plaintiff . . . Third, the likelihood of the harm must be sufficient to place upon the municipal defendant a clear and unequivocal duty to alleviate the dangerous condition . . . Finally, the probability that harm will occur must be so high as to require the defendant to act immediately to prevent the harm. All four of these prongs must be met to satisfy the Haynes test, and our Supreme Court concluded that the test presents a question of law. If no reasonable juror could find that even any one of the prongs could be met, then the

imminent harm exception is unavailing." (Emphasis in original. Internal quotation marks and citations omitted.) Id., 705–06. The court in *Williams* found that the duty to prevent the harm was tied to the likelihood that the dangerous condition would cause harm. Id., 706. A clear and unequivocal duty is "one that arises when the probability that harm will occur from the dangerous condition is high enough to necessitate that the defendant act to alleviate the defect." (Emphasis in original.) Id.

The plaintiff makes the argument that the defendants through their own admissions establish that it is an irrefutable fact that Kyla was an "identifiable victim" within the "zone of risk" created by the serious nature of Ryng's mental condition. She contends that the specific allegations contained in the apportionment complaint filed by the defendants against Ms. Wurtzel and the National Guard amount to judicial admissions. As such, these admissions prohibit the defendants in this action from disputing the factual allegation and thus the defendants have admitted that the identifiable victim-imminent harm exception applies without further analysis. The plaintiff goes on to contend that these admissions satisfy each one of the four prongs set forth in *Williams.*

"It is well settled that factual allegations contained in pleadings upon which the case is tried are considered judicial admissions and hence irrefutable as long as they remain in the case." (Internal quotation marks omitted.) *O & G Indus. Inc.* v. *All Phase Enterprises, Inc.*, 112 Conn. App. 511, 523, 963 A.2d 676 (2009). "The time has passed when allegations in a pleading will be treated as mere fictions, rather than as statement of the real issues in the [case] and hence as admissions of the parties." (Internal quotation marks omitted.) *Dreier* v. *Upjohn Co.*, 196 Conn. 242, 248, 492 A.2d 164 (1985).

The apportionment complaint against the National Guard and Ms. Wurtzel, alleged that the death of Kyla Ryng was caused by the negligence of Ms. Wurtzel because she failed to inform the Bristol Police Department that "Alexander Ryng was dangerous and unstable and posed a serious threat to himself and others;" because she failed "to make known the seriousness of Alexander Ryng's mental condition," and "she failed to control and/or restrain Alexander Ryng where she was his psychotherapist and Kyla Ryng was a *specifically identifiable victim and/or member of a class of identifiable victims.*"[19]

Therefore, by the defendants' own admissions Kyla Ryng was an identifiable victim within the zone of risk created by the serious danger of Ryng's mental condition. The defendants admit that the danger posed by Ryng was apparent to Ms. Wurtzel, and Ms. Wurtzel has testified that she relayed this information to Officer Franek and the Bristol police department. The defendants further claim that Ms. Wurtzel had a duty to act upon the information she had regarding Ryng's state of mind, and again, Ms. Wurtzel testified that she conveyed this information to the Bristol Police Department. Furthermore, the defendants stated that Ryng posed a "serious danger" and "serious threat of harm" and that Kyla was within the "zone of risk." By their own admissions, the knowledge that Ms. Wurtzel possessed imposed upon her a duty to act immediately to prevent harm. If indeed she did impart this information to the Bristol police officers, they similarly had a duty to act to protect Kyla.

The plaintiff acknowledges that the allegations were made in reference to an apportionment complaint against Ms. Wurtzel and the National Guard. The question that is now raised is whether Ms. Wurtzel conveyed all of the information to Officer Franek, the

---

[19] The apportionment complaint was dismissed by the court. See n. 3 .

dispatcher for the Bristol police department and other officers. The plaintiff argues that this information was conveyed. If the information in fact was conveyed, it would be difficult to argue that Kyla was an identifiable victim in a zone of risk as to the defendants. This is a critical fact that is in dispute.

Even without considering the defendants' apportionment complaint, all the other claims by the plaintiff, if found credible, would satisfy the elements of the identifiable victim-imminent harm exception. Although the defendants argue that the plaintiff fails to allege and the "undisputed facts" fail to support the application of this exception to Kyla, the court disagrees with this assertion. First, there are material facts in dispute. If the plaintiff is able to prove that the police knew Ryng bought a gun, that he previously hit her, and his psychotherapist, Ms. Wurtzel, had serious concerns about Ryng's mental condition which she relayed to the police officers in three separate telephone conversations, these facts could meet the test set forth in *Haynes* and *Williams*. The risk would have been apparent to the defendants, and likely to have caused the murder of Kyla. Furthermore, the likelihood of harm was sufficient to place upon the defendants a clear and unequivocal duty to alleviate the domestic situation in some manner.

In the present case, the court finds that all three elements of identifiable person – imminent harm exception apply. Whether Kyla was an identifiable victim is obvious. This element is, however, intertwined with the imminent harm element because an "allegedly identifiable person must be identifiable as a potential victim of a specific imminent harm." *Doe* v. *Petersen*, supra, 279 Conn. 620-21. A jury could reasonable conclude that she was an identifiable victim. It is well known that domestic violence is a precursor to spousal

murder. Ryng's treating therapist was so concerned about Ryng's state of mind and Kyla's safety that she breached HIPPA confidentiality. These facts, if believed by a jury, are more than sufficient for the jury to establish that Kyla was an identifiable person and the harm was imminent.

Although the defendants dispute that she was an identifiable victim, the undisputed fact is that she complained to the Bristol police department on more than one occasion regarding Ryng's conduct and her fear for her own safety. Ms. Wurtzel reiterated Kyla's fears. How could it not be apparent to the police that the risk was imminent to Kyla if the jury believes the warnings given by Ms. Wurtzel and that the police had notice of the gun purchase?

As to the second element, whether the harm was imminent, the court in *Haynes* spoke of the "magnitude of the risk," rather than focusing on the duration of the alleged dangerous condition, and the test articulated for finding the harm was imminent is highly fact specific. Ms. Wurtzel testified that she relayed the information to Officer Franek and the Bristol police department of the danger posed by Ryng both to himself and others due to his mental instability. The plaintiff's expert, Dr. Dutton, provided opinions that the actions taken by Ryng of which the Bristol police department had knowledge of were indicators of lethal partner violence, clearly a dangerous condition which caused the harm to Kyla. Further, the training given to police officers and persons in the criminal justice system regarding lethal partner violence would put the Bristol police department on notice of the likelihood of the harm.

As to the fourth prong set forth in *Williams*, whether there is a high probability that the harm will occur, the plaintiff has submitted the affidavit of her expert, Dr. Dutton. Dr. Dutton opines, based upon her review of the case, limited to (a) the dispatch tapes from calls made by Alissa Wurtzel, (b) the deposition of Steven Nadel the dispatcher, (c) the deposition of Alissa Wurtzel, and (d) the deposition of Officer Frankel, there existed the presence of several risk factors related to the use of lethal intimate partner violence by a male abuser and the probability that the harm would occur to Kyla. These indicators included: (a) Ms. Wurtzel informed the police that Ryng had been making explicit, threatening statements to his wife; (b) Ms. Wurtzel questioned Ryng's "state of mind"; (c) Ms. Wurtzel described an abrupt hang up by Kyla, which suggested an indication of a threat; (d) Ms. Wurtzel asked if Kyla should call 911; (e) Ms. Wurtzel left several call back numbers indicating her concern; (f) Kyla stopped answering her phone; (g) Ms. Wurtzel made repeated calls regarding Ryng rather than one call; and (h) Ryng had apparently avoided lawful military orders to attend counseling, which Dr. Dutton equated to defying authority. These facts together with Dr. Dutton's expert opinion indicate a high probability that the defendants needed to act immediately to protect Kyla from any harm.

The third element is whether the imminence of the harm was apparent to the City of Bristol police department. Based upon the circumstances in this case, a reasonable juror could conclude that the imminent harm was apparent to the defendants prior to Kyla's death. Although the defendants argue that the imminent harm was not apparent because neither Kyla nor anyone on her behalf ever made a complaint against Ryng, informed Office Franek or McIntyre that Ryng had threatened or assaulted Kyla, or reported that Ryng was unstable

or suicidal, these facts are directly in dispute. The plaintiff has produced evidence that the defendants knew the following information on May 31, 2014: (1) Ryng was recently served divorce papers; (2) Ryng and his brother had been harassing Kyla; (3) Ryng had missed an appointment with his psychotherapist, and his psychotherapist was so concerned that she called to schedule a wellness check; (4) Ryng had made threatening comments; (5) Ryng had recently struck Kyla; (6) Ms. Wurtzel had notified dispatch of a "possible domestic violence thing; (7) Ms. Wurtzel had informed the defendants that Kyla had abruptly ended a phone conversation when Ryng suddenly entered the house; (8) Ryng had made statements suggestive of death; (9) Kyla's mother informed police officers that she was "gravely concerned about Kyla's welfare and that of the family; and (10) Ryng had stated to his psychotherapist that his life was over. Another highly disputed and material fact is whether the police department had actual knowledge of Ryng's purchase of the 12-Gauge shotgun on May 29, 2014.[20]

"The defendants, as the parties moving for summary judgment, [have] the burden of showing that as to at least one of the three elements of the imminent harm, identifiable victim exception. . . no reasonable jury could conclude from the evidence submitted that it was met." *Brooks* v. *Powers*, 165 Conn.App. 44, 64, 138 A.3d 1012, cert. granted, 322 Conn. 907, 143 A.3d 603 (2016). "[D]id the plaintiff nonetheless put forth such additional evidence that a jury reasonably could conclude from all the evidence that the plaintiff had established all three elements of the exception?" Id., 60. The court finds that evidence was submitted from which a jury could find that such imminent harm should have been apparent

[20] The Connecticut state police date stamped copy of the DPS-3-C notification of the purchase of a gun showed that they received their copy on June 3, 2014. A reasonable fact finder could conclude that the Bristol police department had actual knowledge of the gun purchase prior to Kyla's death.

to the City of Bristol police department. Thus, in viewing the facts in a light most favorable to the plaintiff, a jury could reasonably find that the defendants, through Officers Franek, McIntyre and Nadel, were negligent in the handling of the domestic situation, and that this negligence subjected the plaintiff, an identifiable victim, to a risk of imminent harm which should have been apparent to Officers Franek, McIntyre, and Nadel.

III

CONCLUSION

Notwithstanding the defendants' assertions that there are no undisputed facts, a simple review of the plaintiff's submissions shows not only is that an incorrect statement, but that the plaintiff's assertions, if believed by the trier of fact, lay out a scenario that a jury could find compelling.

There are genuine issues of material fact as to whether the defendants' actions were the legal cause of the plaintiff's injuries, and whether the plaintiff's decedent was subject to imminent harm. Therefore, the motion for summary judgment is denied.

Swienton, J.