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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

YOLANDA JORDAN, Plaintiff and Appellant, v. CITY OF LOS ANGELES, Defendant and Respondent.	B268260 (Los Angeles County Super. Ct. No. BC537727)

APPEAL from an order of the Superior Court of Los Angeles County. Roy L. Paul, Judge. Affirmed.

Michael C. Bock for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Blithe S. Bock, Assistant City Attorney and Lisa S. Berger, Deputy City Attorney for Defendant and Respondent.

Yolanda Jordan appeals from a jury verdict for the City of Los Angeles (the City) in her action for personal injuries she sustained while walking on a public sidewalk. The jury found that the City lacked notice of the dangerous condition that caused Jordan's injury. On appeal, Jordan complains that the court erred when it prevented her from presenting certain evidence to prove notice, and she asserts that sufficient evidence did not support the jury's verdict. We disagree. As we shall explain, the court properly excluded the evidence at issue because Jordan failed to show its relevance to prove notice. In addition, because Jordan did not provide an adequate record for appellate review, she failed to carry her burden to show that the evidence was insufficient to support the verdict. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On February 20, 2013, Jordan injured her foot while walking on the sidewalk on West 89th Street in Los Angeles. She claimed that the roots of a tree growing next to the sidewalk caused a section of the sidewalk to crack and uplift several inches above the other sections. Jordan struck her foot on the "uplift." In 2014, Jordan filed a tort action against the City alleging a dangerous condition of the sidewalk caused her injury.

Before trial, Jordan sought permission to present excerpts of the deposition testimony of Facundo Escobar, who lived in a house adjacent to the sidewalk where Jordan was injured. Escobar testified that approximately a year before Jordan's accident, he approached a City trash collection truck as the truck was collecting refuse on West 89th Street. Although Escobar did not point out or refer to the uplift in the sidewalk, he made a comment to the driver about the tree next to the sidewalk, and asked the truck driver "where [he] can call." The driver told him to call the City of Los Angeles. The City filed an objection to the admission of Escobar's deposition testimony on the grounds of relevance, and cited *Hoel v. City of Los Angeles* (1955) 136 Cal.App.2d 295.

The trial court questioned how Mr. Escobar's speaking to a trash truck driver "could be remotely connected in any way to giving notice to anybody." The court noted that the proffered evidence did not show any City employee saw the condition. Concluding that a public entity cannot be

deemed to have noticed based on a resident asking a trash truck driver where to call to report a problem, the court excluded the evidence.

During the trial, Jordan presented pictures of the uplift in the sidewalk and testimony from a construction expert, Mark Rieser, and a retired city street services supervisor, Gary Gsell. Mr. Rieser described the uplift and estimated that the sidewalk had been in that state for "ten years or more." He also believed a sidewalk displacement would be visible from a car five to 10 feet away unless cars were parked along the curb blocking the view. He also described City's 311 system, which provided a means for residents and City employees to call and report sidewalk, curb or driveway issues.

Mr. Gsell explained that given that Los Angeles had more than 10,000 miles of sidewalks, the City had no policy of routinely inspecting sidewalks, and instead relied on reports from residents. He could not determine the exact age of the uplift but estimated it could have been there a few years or many years. Mr. Gsell believed that if a City crew had seen the uplift, they would have repaired it. He also stated that "lots of City employees . . . might find themselves" in the area. A records search, however, had shown no complaints about the sidewalk where Jordan fell.

The jury returned a verdict for the City, finding that at the time of the accident, the sidewalk had been a dangerous condition that created a foreseeable risk of the kind of injury that occurred. Nonetheless, the jury found the City was not liable because it did not have notice of the condition for a long enough time to have protected against it. The court entered judgment for the City and Jordan filed a timely notice of appeal.[1]

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[1] The record before this court consists of a partial Reporter's Transcript of the trial, specifically only Jordan's experts' trial testimony and the transcript of a hearing concerning the admissibility of Mr. Escobar's deposition testimony. The clerk's transcript does not include Jordan's complaint.

DISCUSSION

Jordan seeks reversal the judgment, contending that the trial court erred when it prohibited her from presenting evidence and argument to demonstrate that the City had notice of the dangerous condition of the sidewalk and that sufficient evidence did not support the jury's verdict. We disagree.

I. *The Court Properly Excluded The Deposition Testimony Of Mr. Escobar*

Jordan complains that the court prevented her from proving that the City had notice of the uplift. Jordan sought to proceed on a notice theory that the condition was so obviously dangerous that any City employee in the area of West 89th Street should have and would have noticed and reported the uplift to the City. And she complains that the trial court's erroneous reliance on *Hoel* to exclude Mr. Escobar's testimony prevented her from asserting and proving her theory of notice.

Preliminarily with respect to the court's reference to *Hoel*, the appellate court in *Hoel* concluded, based on a now repealed Government Code[2] statute—Public Liability Act, section 53051,[3]—that actual notice is not conveyed unless the government actor who received the notice had the power to remedy the condition. (*Hoel v. City of Los Angeles*, *supra*, 136 Cal.App.2d at p. 304.) Jordan claims that because section 53051 no longer exists, *Hoel* is no longer valid law, and thus the trial court erred in excluding Mr. Escobar's evidence based on *Hoel*.

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[2] All statutory references are to the Government Code unless otherwise indicated.

[3] The former section 53051 provided: "A local agency is liable for injuries to persons and property resulting from the dangerous or defective condition of public property if the legislative body, board, or person authorized to remedy the condition:

(a) Had knowledge or notice of the defective or dangerous condition.

(b) For a reasonable time after acquiring knowledge or receiving notice, failed to remedy the condition or to take action reasonably necessary to protect the public against the condition." (Stats. 1949, ch. 81, § 1, p. 285.)

Although the court referred to *Hoel*, we need not determine whether *Hoel* remains viable law because an appellate court reviews results not reasons. (*Green v. Superior Court* (1985) 40 Cal.3d 126, 138 [It is a "settled principle of appellate review that a correct decision of the trial court must be affirmed on appeal even if it is based on erroneous reasoning."]; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 19.) In our view, the court did not abuse its discretion in excluding this evidence. (*Osborne v. Todd Farm Service* (2016) 247 Cal.App.4th 43, 50 [appellate court reviews trial court's evidentiary rulings for abuse of discretion].)

Under Government Code section 835, a public entity is liable for injury caused by a dangerous condition of its property if, the plaintiff establishes the public entity had actual or constructive notice of the dangerous condition under section 835.2 for a sufficient time before the injury to have taken measures to protect against the dangerous condition. (See Gov. Code, § 835; see *Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1129-1130.) A public entity has *actual* notice of a dangerous condition under section 835.2, subdivision (a) if it had "actual knowledge of the existence of the condition and knew or should have known of its dangerous character." (§ 835.2, subd. (a).) Actual notice requires evidence that the government was aware of the particular condition in question. (*State of California v. Superior Court* (1968) 263 Cal.App.2d 396, 399.) Under section 835.2, subdivision (b), a public entity has *constructive* notice of a dangerous condition "only if the plaintiff establishes that the condition had existed for such a period of time and was of such an *obvious* nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character." In other words, "constructive notice may be imputed if it can be shown that an obvious danger existed for an adequate period of time before the accident to have permitted the state employees, in the exercise of due care, to discover and remedy the situation had they been operating under a reasonable plan of inspection." (*State of California v. Superior Court*, *supra*, 263 Cal.App.2d at p. 400.)

Jordan failed to demonstrate Mr. Escobar's deposition testimony was relevant to prove the City had notice under section 835.2. Mr. Escobar testified that he asked the trash collector where he could call and mentioned

the tree. He did not, however, testify that he reported the uplift, pointed out the tree or the condition of the sidewalk to the driver. Thus, this evidence does not prove that the City was made aware of the existence of the condition, and consequently, his testimony is immaterial to the issue of actual notice. Likewise, Mr. Escobar's testimony does not relate to constructive notice. His comments to the trash collector do not show the length of time the condition existed or demonstrate the dangerousness of the condition. The testimony of Mr. Escobar was, therefore, irrelevant to prove constructive notice.

In addition, Jordan's theory of notice—that the condition was so obviously dangerous that any City employee in the area should have and would have noticed and reported it using the City's 311 reporting system—does not assist her. Jordan cites no legal authority, nor did our research reveal any support for the idea that notice is shown by having any City employee in the area of a dangerous condition. " ' "The intent of the [Government Claims Act] is not to expand the rights of plaintiffs in suits against governmental entities, but to confine potential governmental liability to rigidly delineated circumstances: immunity is waived only if the various requirements of the act are satisfied." ' " (*Metcalf v. County of San Joaquin*, *supra*, 42 Cal.4th at p. 1129; internal citations omitted.] An interpretation of the notice requirement to impose liability whenever it is shown any City employee had been in the vicinity of the property—regardless of why the employee was there or the employee's training or knowledge—would undermine the intent of the Government Claims Act. And given the number of City employees present throughout the City of Los Angeles on a daily basis, it would effectively negate the notice requirement of section 835 as there would be few circumstances where the City would not be held to have notice of all conditions on public property.

Nonetheless, even assuming for the sake of argument that any City employee in the area—regardless of duties and authority to act—has a duty to report a condition on City property, there has to be some evidence that the employee actually observed or was made aware of the condition at issue. If the employee has no knowledge of the condition, nothing can be imputed to the employer. (See *Brown v. Poway Unified School Dist.* (1993) 4 Cal.4th

820, 835 [knowledge of a public employee of a dangerous condition is imputed to the public entity employer if under all of the circumstances it would have been unreasonable for the employee not to have informed the public entity].) Thus, Mr. Escobar's evidence would not have established notice even under Jordan's notice theory; there is no indication that the trash collection truck driver's attention was drawn to the sidewalk. Accordingly, the court did not abuse its discretion in excluding Mr. Escobar's deposition testimony on the grounds it was irrelevant to the issue of notice.

In any event, Jordan has not shown how the court's ruling resulted in prejudice. The court allowed Jordan to present evidence that the City had notice of the condition. It did not foreclose Jordan from showing how long the condition had existed, that the condition was obviously dangerous or that the City employees were often in the area. In fact, using photographs and expert testimony, Jordan presented evidence of the condition—the size of the uplift, and length of time it existed, as well as evidence that the City employees were in the area. And from this evidence Jordan could have made her case that City had constructive notice of the condition. Thus, even without Mr. Escobar's testimony, Jordan had evidence to support her notice theory. Any error in excluding this evidence is harmless.

II. Jordan Failed To Demonstrate That Sufficient Evidence Did Not Support The Verdict

Jordan argues that the jury's finding that the City lacked notice is not supported by the evidence because she presented sufficient evidence to show constructive notice. Jordan's challenge to the sufficiency of the evidence fails.

Jordan misapprehends the standard of review for sufficient evidence. In an appeal challenging the sufficiency of the evidence supporting a verdict, this court reviews whether substantial evidence supports the judgment reached not whether the evidence presented might have supported a different outcome. (See *Moran v. Foster Wheeler Energy Corp.* (2016) 246 Cal.App.4th 500, 517; *Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1301 [When there is substantial evidence to support the jury's actual conclusion, " 'it is of no consequence that the [jury] believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.' "].)

In addition, Jordan has the burden to provide an adequate appellate record to review whether sufficient evidence supported the trial court's judgment. (*Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362.) Here, however, Jordan did not provide a sufficient record of the trial court proceedings for this court to conduct a meaningful review of her challenge to the sufficiency of the evidence. She failed to designate the complaint for inclusion in the clerk's transcript and Jordan designated only her experts' trial testimony and the proceedings concerning the admissibility of Mr. Escobar's deposition testimony for inclusion in the reporter's transcript. On this record, we cannot determine whether sufficient evidence supported the jury's verdict. (*Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435 [" '[A] record is inadequate . . . if the appellant predicates error only on the part of the record he provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed.' "].) Where, as here, the appellant fails to set forth all of the material evidence, a claim of insufficiency of the evidence fails. (*Grassilli v. Barr* (2006) 142 Cal.App.4th 1260, 1279.)

DISPOSITION

The judgment is affirmed. Respondent is entitled to its costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

LUI, J.