Filed 3/27/13 Andrews v. State of California CA2/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

TELMA ANDREWS, Plaintiff and Appellant, v. STATE OF CALIFORNIA, Defendant and Respondent.	B234327 (Los Angeles County Super. Ct. No. KC059010)

APPEAL from a judgment of the Superior Court of Los Angeles County, Peter J. Meeka, Judge. Affirmed.

Telma Andrews, in pro. per.; Oddenino & Gaule and John V. Gaule for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Jon Wolff, Acting Chief Assistant Attorney General, Steven M. Gevercer, Senior Assistant Attorney General, Pamala J. Holmes, Supervising Deputy Attorney General, and Elizabeth G. O'Donnell, Deputy Attorney General, for Defendant and Respondent.

Plaintiff Telma Andrews, who is disabled and uses a walker, filed suit against the State of California, alleging she suffered injuries inside a Department of Motor Vehicles (DMV) office after a "dangerous condition" caused her to fall. The alleged dangerous condition was the placement of the chairs for use by the public. Plaintiff fell when one of the legs on her walker became "entangled" with a chair.

The trial court dismissed the suit on demurrer, concluding that plaintiff had failed to allege a dangerous condition. We agree and affirm.

I

BACKGROUND

On June 22, 2010, plaintiff filed a form complaint alleging: "While walking on property owned, maintained, managed and operated by the State of California, the Department of Motor Vehicles and Does 1 to 30, located at or near 800 S. Glendora Avenue, West Covina, California, plaintiff fell and sustained injury due to the negligence and carelessness of each defendant and as a result of a dangerous condition of the property."

Defendant, the State of California (State), demurred, asserting that all government tort liability is dependent on the existence of an authorizing statute or enactment. (See *Foster v. County of San Luis Obispo* (1993) 14 Cal.App.4th 668, 671–672.) As stated by Government Code section 815, subdivision (a), "[e]xcept as otherwise *provided by statute*: [¶] . . . A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (Italics added.) Section 815 "'abolishes all common law or judicially declared forms of liability for public entities, except for such liability as may be required by the state or federal constitution.'" (*In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 688.) "[T]here is no common law tort liability for public entities in California; such liability is wholly statutory." (*Ibid.*) Here, no applicable statute permits a negligence claim. (See *Van Kempen v. Hayward Area Park etc. Dist.* (1972) 23 Cal.App.3d 822, 825; *Hilts v. Solano County* (1968) 265 Cal.App.2d 161, 169–171.)

By order dated January 25, 2011, the trial court sustained the State's demurrer without leave to amend as to the negligence claim and with leave to amend as to the "dangerous condition" claim. The order advised plaintiff that her dangerous condition claim had to be based on Government Code section 835, which states: "[A] public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either: [¶] (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or [¶] (b) The public entity had actual or constructive notice of the dangerous condition . . . a sufficient time prior to the injury to have taken measures to protect against the dangerous condition."

On February 9, 2011, plaintiff filed a first amended form complaint. An attachment described the allegations as follows: "While attempting to get up from one of the designated chairs for handicap persons located at the [DMV] location . . . , Plaintiff fell and sustained injury due to unequal accessibility to these chairs caused by Defendants' dangerous condition on the property in the form of a row of chairs placed directly behind the designated handicap chairs. This row of chairs prevented Plaintiff from being able to get up from the handicap chairs and access her walker which she had placed at the side of the counter."

Part of the attachment to the amended form complaint contained a section entitled, "Argument." In that portion of the attachment, plaintiff contended that she had sufficiently alleged a violation of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12101–12213) and a violation of the California Disabled Persons Act (DPA) (Civ. Code, §§ 54–55.2). More specifically, the ADA prohibits discrimination by "fail[ing] to remove architectural barriers[] and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable." (42 U.S.C. § 12182(b)(2)(A)(iv).) The DPA ensures that "[i]ndividuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks,

walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places." (Civ. Code, § 54, subd. (a).)

The State filed a demurrer to the amended complaint, contending that plaintiff had failed to allege sufficient facts to support her dangerous condition claim and that the trial court's prior order, granting plaintiff leave to amend the dangerous condition claim, did not permit her to add any new causes of action, like those under the ADA and the DPA. (See *Community Water Coalition v. Santa Cruz County Local Agency Formation Com.* (2011) 200 Cal.App.4th 1317, 1329; *Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023.)

Plaintiff filed an opposition to the demurrer, describing the allegations of her pleading: "Plaintiff . . . suffered a fall at the [DMV office] in West Covina, California. Plaintiff is disabled and requires a walker to assist her to walk. On August 5, 2009, Plaintiff was sitting in a chair. Her number was called. While her husband went to the window, Plaintiff made the attempt to get up and walk to the window. Plaintiff got up and reached for her walker. She grabbed her walker and attempted to turn to head to the window. As she was turning[,] the walker became entangled with a chair. As a result Plaintiff lost her balance and fell. Plaintiff ended up falling flat on her back. She suffered injuries as a result." In addition, plaintiff argued she had adequately pleaded a dangerous condition under Government Code section 835. Finally, plaintiff claimed she had properly alleged a violation of the DPA, which states in part: "Any person or persons, firm or corporation who denies or *interferes with* admittance to or *enjoyment* of the public facilities . . . is liable for each offense . . . ." (Civ. Code, § 54.3, subd. (a), italics added.) Plaintiff emphasized that her DPA claim was based on discriminatory *interference* with her *enjoyment* of the DMV facility, not on a denial of admittance to the facility.

On April 27, 2011, the trial court sustained the demurrer without leave to amend. The court's order explained: "Plaintiff alleges a single cause of action for premises liability based on dangerous condition of public property. Government Code Section 835 provides that a public entity is liable for injury caused by dangerous condition of its property if the Plaintiff establishes: (1) that the property was in a dangerous condition at the time of

injury, (2) that the injury was proximately caused by the dangerous condition, (3) that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred; and (4) either a negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the condition or the public entity had actual or constructive notice of the dangerous condition in time to have taken measures to protect against it.

"Plaintiff alleges that the dangerous condition was the row of chairs placed directly behind the designated handicap chairs, and that this dangerous condition caused her injury. However, Plaintiff fails to allege facts as to how this is a dangerous condition. Plaintiff also wholly fails to allege facts as to the reasonable foreseeability of her injury and that either an employee of Defendant created the condition or Defendant had actual or constructive notice of the dangerous condition in time to have taken measures to protect against it. Therefore, Plaintiff has not sufficiently stated a cause of action for premises liability based on a dangerous condition of property.

"Additionally, Plaintiff appears to allege a violation of Civil Code Section 54 et seq. Plaintiff alleges that the placement of the handicap chairs directly in front of another row of chairs created a barrier preventing equal access to the premises. However, Plaintiff's allegations show that she was not denied equal access to the premises because Plaintiff was able to access the handicapped chairs that she was sitting in. Nonetheless, Plaintiff alleges that if the chairs behind the handicapped seating were placed in a different position, she would not have suffered her injuries. As such, this is not an allegation directed towards unequal access to the premises. Therefore, Plaintiff has not sufficiently stated a cause of action under Civil Code Section 54 either."

The trial court ordered the State's counsel to prepare, serve, and submit a proposed order of dismissal. Such an order was lodged.

Before the trial court signed and filed the order, plaintiff filed an "Ex Parte Application Requesting Leave to File Second Amended Complaint and Set Aside Order Sustaining Demurrer Without Leave to Amend." Attached to the application was a proposed second amended complaint. The proposed pleading added some new allegations,

such as: (1) plaintiff sat "near a counter that was designated for disabled persons"; (2) plaintiff chose to sit there because she thought that "a DMV employee would assist her at that specific counter and window in front of the designated disabled persons seating"; (3) instead, plaintiff was called to another window that was located at the far end of the crowded DMV location; (4) when she stood up and attempted to turn to her right so she could walk toward the window where she had been called, "[h]er walker then became entangled with a chair or chairs in the row of chairs behind the chairs specifically designated for handicapped persons"; (5) "[s]he attempted to push the chair or chairs back in order . . . to navigate her walker between the specifically designated handicapped-accessible chairs and the crowd of people who filled the DMV location"; (6) "due to another row of chairs that was . . . placed directly behind the handicap seating area, Plaintiff was unable to move the handicapped-accessible chairs"; (7) "the row of chairs behind the specifically designated handicapped-accessible chairs presented a dangerous condition on the property which caused Plaintiff to fall"; and (8) "the row of chairs created a foreseeable risk of injury of this type to those people, like Plaintiff, who require the use of a walker."

The State filed an opposition to plaintiff's ex parte application, objecting to the manner of its filing—ex parte—and asserting that the allegations in the proposed second amended complaint failed to state a claim based on a dangerous condition.

On May 11, 2011, the trial court issued a minute order stating it had read and considered the ex parte application and the opposition. The court denied plaintiff's application for lack of good cause. On the same day, the trial court signed and filed the judgment of dismissal.

On May 12, 2011, the State served plaintiff by mail with a notice of entry of judgment. Plaintiff appealed.

II

DISCUSSION

In reviewing the ruling on a demurrer, "we are guided by long-settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. . . . We also consider matters which may be

judicially noticed.' . . . When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. . . . And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. . . . The burden of proving such reasonable possibility is squarely on the plaintiff." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318, citations omitted; accord, Code Civ. Proc., § 452.)

We have carefully read the allegations of plaintiff's complaints, including the proposed second amended complaint, and agree with the trial court that plaintiff has not alleged facts that support liability under a dangerous condition theory (Gov. Code, § 835). Nor are the allegations sufficient to state a claim under the ADA or the DPA. We fail to see how the arrangement of the chairs at the DMV office created a dangerous condition or supported a claim of disability discrimination. Plaintiff does not allege she had any problems using her walker when entering the DMV office or when making her way to the chairs designated for the disabled. We realize that, as plaintiff attempted to get from her chair to the service window, she suffered an unfortunate accident, but we cannot say her injuries were the fault of the State. There is nothing dangerous about placing one row of chairs behind another. Chairs or seats are often arranged row after row to accommodate a large group of individuals, whether the location be a classroom, an auditorium, a sports arena, a movie theater, or a government office that serves the public. Thus, given that plaintiff had no problem entering the DMV office, walking to a chair designated for the disabled, and sitting down, it is incomprehensible how plaintiff could stand up, turn to her right, begin walking toward the service window, and *entangle* her walker on a chair *in the row behind her.*

Accordingly, we conclude that the trial court properly sustained the demurrer without leave to amend and entered a judgment of dismissal.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANEY, J.