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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ANA ROSA SANCHEZ, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES, Defendant and Respondent.	B289877 (Los Angeles County Super. Ct. No. BC612949)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gregory Keosian, Judge. Affirmed.

Cwiklo Law Firm and David Peter Cwiklo for Plaintiff and Appellant.

Collins Collins Muir + Stewart, Brian K. Stewart, Christian E. Foy Nagy and Adam A. Ainslie for Defendant and Respondent.

INTRODUCTION

A speeding car killed plaintiff Ana Rosa Sanchez's son when the child crossed Hooper Avenue near East 77th Place in South Los Angeles. Plaintiff sued defendant County of Los Angeles (County) for her son's death, alleging that a dangerous condition of the road contributed to the collision. County obtained summary judgment and plaintiff now appeals. She argues there are disputed issues of material fact about whether County was liable for a dangerous condition of the road. We conclude plaintiff failed to show that a dangerous condition caused the collision, and affirm summary judgment.

FACTS AND PROCEDURAL BACKGROUND

1. *The Roadway*

The accident occurred on Hooper Avenue near its intersection with East 77th Place. Hooper Avenue was a four-lane road running north-south, with two lanes of traffic traveling in each direction. East 77th Place crossed Hooper Avenue perpendicularly. Hooper Avenue at this location was a flat and straight roadway with no visual obstructions. There was no crosswalk, stop light, or stop sign located on Hooper Avenue at its intersection with East 77th Place. The speed limit on this portion of the roadway was 30 miles per hour.

Parmelee Elementary, which had approximately 1,100 students, was on the east side of Hooper Avenue, between East 77th Place and 76th Place. The boundary line for the school was on East 77th Place. At the intersection of East 77th Place and Hooper Avenue, there was a convenience store called Carniceria Market on the southwest corner.

To the south of the collision location, East 78th Street ran parallel to 77th Place. And to the south of East 78th Street was

Nadeau Street. The intersection of Nadeau Street and Hooper Avenue was a four-way signal controlled intersection with marked crosswalks. Even farther south was the four-way signal controlled intersection at Firestone Boulevard and Hooper Avenue. To the north of the collision was the intersection of Hooper and Florence Avenue, which also had a traffic signal.

We have attached as Appendix A, two pages from County's May 2014 traffic survey of Hooper Avenue, which County attached to its motion for summary judgment as exhibit C. The images show the roadway and traffic signal placement on Hooper Avenue as it existed at the time of the collision.

2. *Fatal Collision*

After dark at 9:50 p.m. on May 6, 2015, plaintiff's son, 13-year-old Jarek Trejo, walked eastward from a taco truck towards his home. Trejo crossed Hooper Avenue from west to east mid-block between 77th Place and 78th Street. He crossed at about 143 feet south of 77th Place.

Driver Alex Lopez-Garcia started his northbound trip from the curb in front of his house on Hooper Avenue south of the Nadeau Street traffic-signal controlled intersection. Lopez-Garcia was speeding in the northbound number one lane (the lane closest to the center of the road) on Hooper Avenue in his Ford Mustang when he struck and killed Trejo.[1] Lopez-Garcia testified he saw Trejo standing on the double-yellow lines on Hooper Avenue. At a half second before impact, Lopez-Garcia braked and attempted to swerve to the left to avoid colliding with Trejo. Lopez-Garcia struck Trejo with the front right of his

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[1] Garcia initiated his northbound drive on Hooper Avenue at 84th Street, north of Firestone Boulevard.

vehicle. Lopez-Garcia testified his estimated speed at the time of impact was 40 to 50 miles per hour. Equipment retrieved from the Mustang suggested Lopez-Garcia's estimated speed at the time of impact was 80 miles per hour. Trejo was either carrying or riding a skateboard when he began to cross Hooper Avenue, mid-block, near an alleyway.

Due to the high-speed impact, Trejo was thrown 103 feet forward through the air before making first contact with the ground. Trejo ultimately landed within the intersection of Hooper Avenue and 77th Place.

Several people witnessed the collision and described it to police. One witness stated that after Trejo began crossing the street, he stopped in the middle of the roadway as a white Honda approached in the northbound lanes on Hooper Avenue at a high rate of speed. That Honda passed Trejo without incident and Trejo looked to his right before continuing east across Hooper.[2] Trejo was then struck by Lopez-Garcia. A second witness confirmed that a vehicle was traveling northbound in front of Lopez-Garcia. Lopez-Garcia testified that there was a Honda traveling in front of him just prior to the collision.

3. *Lawsuit*

On October 23, 2015, plaintiff (victim Trejo's mother) served her Government Code section 910 claim against County.[3] On March 8, 2016, Sanchez brought a lawsuit for wrongful death

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[2] This witness told the person standing next to them that Trejo had almost been struck by the Honda.

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

against County for dangerous condition of public property, Southern California Edison for negligence, Lopez-Garcia (the driver) for negligence, and Lopez-Garcia's parents for negligent entrustment. Only the claim against County is at issue on appeal and we do not discuss the claims against the other parties any further.

4. *County's Motion for Summary Judgment*

On October 23, 2017, County moved for summary judgment on several grounds: (1) there was no dangerous condition as a matter of law; (2) the condition of the roadway was not the proximate cause of Trejo's injuries; (3) County did not have actual or constructive notice of the condition; and (4) the roadway was constructed in accordance with design plans reasonably approved by a County employee having discretionary approval for same.

On December 28, 2017, Sanchez served her opposition to the motion for summary judgment. She relied heavily a declaration from her expert witness, Edward Ruzak, who attested to the existence of a dangerous condition. He stated that County knew of the dangerous condition for five years before the accident, explained how pedestrians had insufficient time to cross Hooper Avenue based on the maintenance of existing traffic controls, opined County should have studied the traffic gaps to inform its road maintenance, and observed County had previously removed a crosswalk from the relevant intersection. Ruzak also identified other alleged defects in the road related to the lack of a crosswalk, traffic controls, and lighting. The relevant details of his declaration are described in detail below.

On January 5, 2018, County served its reply brief. County objected to Ruzak's opinions and requested $4,950.00 in sanctions

for Sanchez's allegedly "bad faith" submission of Ruzak's opposition declaration.

5. *The Court Granted Summary Judgment*

On March 12, 2018, the trial court sustained several of County's evidentiary objections to Ruzak's opinion, and granted summary judgment in favor of County. The court denied the request for $4,950.00 attorney's fees.

The court sustained those objections that primarily related to Ruzak's conclusion that Trejo's death was in part caused by County's maintenance of traffic signals on Hooper. It was Ruzak's opinion that the traffic patterns that did not allow pedestrians sufficient time to cross the road. We go into further detail about these rulings below.

The court concluded that Sanchez failed to produce substantial responsive evidence to rebut County's showing that no dangerous condition existed. The court stated, "[m]uch of this evidence goes only to show that Hooper [Avenue] was highly trafficked by vehicles moving at high speeds, which alone is not a dangerous condition for which a public entity may be liable. . . . Likewise, reports of collisions in the general vicinity of the intersection, but not at the intersection at issue, do not establish that the intersection in question was dangerous. Even reports of collisions at the same intersection would require a showing that they 'occurred under substantially the same circumstances' to be probative of the intersection's dangerousness." The court also concluded that the lack of a traffic gap study by County did not show that inadequate gaps exist.

The court summarized, "Sanchez has responded to the County's motion with evidence that the subject intersection was

dark, highly trafficked, and unmarked." The court likened plaintiff's case to *Mixon v. Pacific Gas & Electric Co.* (2012) 207 Cal.App.4th 124 (*Mixon*), and held that none of the factors identified by plaintiff individually or collectively created a dangerous condition.

On April 6, 2018, judgment was entered. On April 13, 2018, County served Notice of Entry of Judgment.

6. *County's Motion for Defense Costs*

On April 2, 2018, County filed a motion for defense fees and costs, seeking $297,938.57 against Sanchez pursuant to Code of Civil Procedure section 1038 and arguing that Sanchez's lawsuit was "brought without reasonable cause and without a good faith belief there was a controversy under the facts and law." On April 8, 2018, Sanchez opposed County's motion asserting that her suit was brought in good faith. Sanchez resubmitted Ruzak's expert witness declaration from her opposition to the motion for summary judgment, Ruzak's similar December 13, 2012 declaration filed in a dangerous condition of the road case called *Killings-Rodriguez et al. v. City of Los Angeles* (Feb. 17, 2015, B248707 [nonpub. opn.]), and excerpts from the unpublished appellate decision in *Killings-Rodriguez* where the Court of Appeal reversed summary judgment that had been awarded in favor of a public entity based in part on Ruzak's declaration analyzing the dangerous condition of road involved in that collision.

On May 1, 2018, the trial court granted Sanchez's Evidence Code section 452 request to take judicial notice of Ruzak's September 13, 2012 declaration from *Killings-Rodriguez*, but sustained County's objection to the request to take judicial notice of the unpublished Killings'-Rodriguez opinion. County's Motion

for defense fees was denied, except for statutory costs of $6,909.17.

On May 2, 2018, Sanchez timely filed her notice of appeal.

DISCUSSION

On appeal, Sanchez seeks reversal of the March 12, 2018 order granting County's motion for summary judgment and associated evidentiary rulings that excluded portions of expert Ruzak's opinions, and the court's denial of plaintiff's request for judicial notice associated with the County's motion for defense fees.

1. *Standards of Review*

"[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. That is because of the general principle that a party who seeks a court's action in his favor bears the burden of persuasion thereon. [Citation.] There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof. . . . [¶] [T]he party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact. . . . A prima facie showing is one that is sufficient to support the position of the party in question." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850–851, fns. omitted.)

"We review an order granting summary judgment de novo. [Citation.] The trial court's stated reasons for granting summary judgment are not binding because we review its ruling not its rationale. [Citation.] In addition, a summary judgment motion is directed to the issues framed by the pleadings. [Citation.] These are the only issues a motion for summary judgment must address." (*Canales v. Wells Fargo Bank, N.A.* (2018) 23 Cal.App.5th 1262, 1268–1269.)

"We review the trial court's evidentiary rulings made in connection with a summary judgment motion for abuse of discretion." (*Mitchell v. United National Ins. Co.* (2005) 127 Cal.App.4th 457, 467.)[4]

2. *Court Abused its Discretion in Excluding Portions of Ruzak's Expert*

We first address the trial court's order sustaining defense objections to portions of the declaration submitted by plaintiff's expert, Ruzak, in opposition to summary judgment.

a. Objections and Ruling

County submitted 33 objections to Ruzak's declaration. The court sustained five of those objections, all relating to Ruzak's conclusion that County's maintenance of traffic signals

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[4] In *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 535, the Supreme Court expressly left unresolved whether evidentiary objections on a motion for summary judgment are reviewed for abuse of discretion or de novo. It is often stated that the "weight of authority" is that "appellate courts 'review the trial court's evidentiary rulings on summary judgment for abuse of discretion.' " (*Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 852.) Our analysis of the evidentiary rulings depends on the standard of review.

created a traffic pattern that did not provide pedestrians sufficient time to cross the street. County argued that Ruzak's statements were improper expert opinion because they were speculative, not based on a reasoned explanation, lacking foundation, and not relevant.

The statements the court sustained objections to were as follows:

- "Essentially an intersection like Hooper Avenue and East 77th Place requires pedestrians to 'weave and slalom' across the intersection in between moving cars, because the traffic signal timing patterns at adjacent intersections that are controlled by the County of Los Angeles with traffic signals do not create sufficient gaps in the flow of traffic to allow pedestrians to cross safely Hooper Avenue."
- "Pedestrians crossing Hooper Avenue essentially get trapped in the intersection due to the length of time it takes to cross, the inadequate gaps in traffic and the difficulty appreciating the danger of the oncoming speeding motor vehicles."
- "An average speed of 50 miles per hour is approximately 73 feet per second. In order to stop an average vehicle, the guidelines utilized by County of Los Angeles required 2.5 seconds of perception and reaction time added to the braking distance of a vehicle traveling 50 miles per hour. The calculation comes out that a motorist northbound on Hooper Avenue would need 305 feet in order to perceive, react and stop for a pedestrian in the Hooper Avenue and East 77th Place crosswalk."
- "It was the lack of gaps in traffic created by the traffic signal timing on Hooper Avenue signalized intersections to

the north and south that created the trap at the subject accident location. The traffic timing at the adjacent intersections prevents reasonable gaps in traffic flow, forcing the pedestrians to stand on the corner for extended periods of time waiting for cars to voluntarily stop to allow them the opportunity to cross the street."

- "At the same time the traffic patterns do not allow sufficient gaps for pedestrians, particularly school aged children to cross. It is the convergence of all of these factors which are not known to the motorist, not appreciated by the pedestrian crossing Hooper Avenue that lead to a trap in the intersection, resulting in a number of pedestrians hit by cars; all of which could have and should have been avoided prior to the accident on May 6, 2015."

In explaining why these excerpts were inadmissible, the court stated: "Ruzak bases his traffic-gap conclusion on the County's evident failure to conduct a traffic-gap study before it installed a pedestrian walkway at another nearby intersection. . . . Ruzak then proceeds to declare that 'the traffic signal timing patterns at adjacent intersections that are controlled by the County of Los Angeles with traffic signals do not create sufficient gaps in the flow of traffic to allow pedestrians to safely cross Hooper Ave[nue].' . . . It is entirely unclear how Ruzak arrives at this conclusion. The absence of a traffic-gap study is not sufficient evidence for this conclusion, as such a study might well have found that the traffic gaps on Hooper Avenue were adequate for pedestrian safety. And although Ruzak states that he inspected the relevant intersection on October 18, 2016 . . . , he does not state that he himself performed any similar study or tests to measure the adequacy of

traffic gaps at or near that location. His testimony regarding the adequacy of traffic gaps on Hooper Avenue is therefore unsupported and inadmissible."

b. Applicable Law

Evidence Code sections 801 and 802 provide the framework for the trial court to admit or exclude expert opinion. In *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747 (*Sargon*), the Supreme Court explained: " 'An expert opinion has no value if its basis is unsound. [Citations.] Matter that provides a reasonable basis for one opinion does not necessarily provide a reasonable basis for another opinion. Evidence Code section 801, subdivision (b), states that a court must determine whether the matter that the expert relies on is of a type that an expert reasonably can rely on "in forming an opinion *upon the subject to which his testimony relates*." (Italics added.) We construe this to mean that the matter relied on must provide a reasonable basis for the particular opinion offered, and that an expert opinion based on speculation or conjecture is inadmissible.' " (*Id.* at p. 770.) Under "Evidence Code section 801, the trial court acts as a gatekeeper to exclude speculative or irrelevant expert opinion." (*Ibid.*)

Evidence Code section 802 provides: "A witness testifying in the form of an opinion may state . . . the reasons for his opinion and the matter . . . upon which it is based, unless he is precluded by law from using such reasons or matter as a basis for his opinion. The court in its discretion may require that a witness before testifying in the form of an opinion be first examined concerning the matter upon which his opinion is based." In reviewing the exclusion of expert testimony from a trial, the Supreme Court in *Sargon* stated that this section "indicates the

court may inquire into the expert's reasons for an opinion. It expressly permits the court to examine experts concerning the matter on which they base their opinion before admitting their testimony. The *reasons* for the experts' opinions are part of the matter on which they are based just as is the *type* of matter." (*Sargon, supra*, 55 Cal.4th at p. 771.) Under Evidence Code section 802, "a court may inquire into, not only the type of material on which an expert relies, but also whether that material actually supports the expert's reasoning. 'A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered.' " (*Ibid.*)

In *Garrett v. Howmedica Osteonics Corp.* (2013) 214 Cal.App.4th 173, 189 (*Garrett*), the Court of Appeal explained how Evidence Code section 802 operates in the context of an opposition to a motion for summary judgment. The appellate court stated: "The trial court here did not conduct an evidentiary hearing, and there was no examination of an expert witness pursuant to Evidence Code section 802. Absent more specific information on the testing methods used and the results obtained, the trial court here could not scrutinize the reasons for [the expert]'s opinion to the same extent as did the trial court in *Sargon*." (*Ibid.*) The Court of Appeal concluded that the absence of such detailed information, which was typically elicited during a court's inquiry at trial under Evidence Code section 802, did not justify the exclusion of the expert's testimony in opposition to summary judgment. (*Ibid.*)

"The rule that a trial court must liberally construe the evidence submitted in opposition to a summary judgment motion applies in ruling on both the admissibility of expert testimony and its sufficiency to create a triable issue of fact. [Citations.] In

light of the rule of liberal construction, a reasoned explanation required in an expert declaration filed in opposition to a summary judgment motion need not be as detailed or extensive as that required in expert testimony presented in support of a summary judgment motion or at trial." (*Garrett, supra*, 214 Cal.App.4th at p. 189.)

c. Abuse of Discretion

Applying the more deferential abuse of discretion standard, we conclude that the trial court erred when it excluded the statements made by Ruzak in his declaration. The trial court honed in on Ruzak's testing methods and excluded his testimony because it lacked detail about how he came to his conclusions regarding traffic gaps, noting that Ruzak did not perform a traffic-gap study at the intersection in question. Yet, as *Garrett* explains, this level of scrutiny is improper when evaluating the expert's testimony in an opposition to summary judgment. Considering the rule of liberal construction, the fact Ruzak did not perform a traffic-gap study goes to the weight, not the admissibility of his opinions.

Ruzak's conclusions were neither speculative nor unsupported. As the trial court observed, Ruzak visited the roadway and examined the location of the collision in person. He calculated the time it would take a pedestrian to cross the intersection, and, based on his observations, concluded the traffic flow did not provide pedestrians sufficient time to cross. To require more from plaintiff's expert in an opposition to summary judgment is at odds with the rule of liberal construction of summary judgment opposition.

We conclude that these expert statements were improperly excluded by the trial court.

3. *Although There Was a Factual Dispute About the Existence of a Dangerous Condition, Summary Judgment Was Proper Because Plaintiff Could Not Prove Proximate Cause*

Plaintiff's sole cause of action against County was for a dangerous condition of public property. "Section 835, subdivision (b) provides that a public entity is liable for injury proximately caused by a dangerous condition of its property if the dangerous condition created a reasonably foreseeable risk of the kind of injury sustained, and the public entity had actual or constructive notice of the condition a sufficient time before the injury to have taken preventive measures." (*Cornette v. Department of Transportation* (2001) 26 Cal.4th 63, 68 (*Cornette*).)

The elements of a dangerous condition cause of action are: "(1) a dangerous condition existed on the public property at the time of the injury; (2) the condition proximately caused the injury; (3) the condition created a reasonably foreseeable risk of the kind of injury sustained; and (4) the public entity had actual or constructive notice of the dangerous condition of the property in sufficient time to have taken measures to protect against it." (*Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 439.)

In moving for summary judgment, County argued that there was no dangerous condition, there was no causal relationship between the condition of the road and Trejo's death, and even if a dangerous condition existed, County did not have notice or sufficient time to remedy it. We first explain why a single identifiable dangerous condition existed and then how it was not a cause of the collision.

a. A Dangerous Condition Existed

Plaintiff's opposition raised a triable issue of fact that Hooper Avenue was a dangerous condition in the vicinity of the collision. Plaintiff claims several factors contributed to the danger. We find only one under California law.

i. Failure to Install Traffic Controls and Mark the Crosswalk

Plaintiff produced evidence that County failed to install traffic control devices south of Parmelee Elementary School (as it had placed north of the school). Plaintiff argued that its evidence showed that, unlike southbound Hooper Avenue, the northbound traffic – the direction Lopez-Garcia was driving – had "no overhead pedestrian sign, no double flashing beacons, no highly visible yellow painted marked crosswalk, no second pedestrian median island pedestrian sign, no third pedestrian warning sign located on the sidewalk to slow what the County knew was the high speed traffic northbound on Hooper Avenue, to allow safe pedestrian crossing of Hooper Avenue south of Parmelee Elementary School."

In its summary judgment motion, the County argued it was not liable for defective traffic control devices or markings under section 830.4. That statute provides: "A condition is not a dangerous condition within the meaning of this chapter merely because of the failure to provide regulatory traffic control signals, stop signs, yield right-of-way signs, or speed restriction signs, as described by the Vehicle Code, or distinctive roadway markings as described in [s]ection 21460 of the Vehicle Code."

A public entity may only be liable where a dangerous condition "exists for reasons *other than or in addition to* the 'mere[]' failure to provide such controls or markings."

(*Washington v. City and County of San Francisco* (1990) 219 Cal.App.3d 1531, 1536 (*Washington*).)

The County also relied on section 830.8 which states: "Neither a public entity nor a public employee is liable under this chapter for an injury caused by the failure to provide traffic or warning signals, signs, markings or devices described in the Vehicle Code."

Section 830.8 does have a caveat: "Nothing in this section exonerates a public entity or public employee from liability for injury proximately caused by such failure if a signal, sign, marking or device (other than one described in [s]ection 830.4) was necessary to warn of a dangerous condition which endangered the safe movement of traffic and which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care." To fall within this exception there must be a failure of a traffic control device that was designed to warn of an otherwise dangerous condition. (See *Pfeifer v. County of San Joaquin* (1967) 67 Cal.2d 177, 184 [exceptions to section 830.8 "do not come into play until existence of a 'dangerous condition' within the statutory definition is first shown"]; *Mixon, supra*, 207 Cal.App.4th at p. 136 [dangerous condition "may require the posting of a warning sign but the absence of a warning sign itself is not a dangerous condition"].)

In considering whether there was a triable issue of fact that the roadway was dangerous, we put aside for now the evidence that Hooper Avenue had insufficient traffic gaps which we discuss in Part IV. Hooper Avenue was straight, and had no visual obstructions or unobvious conditions. The only contrary evidence dealt with the darkness of the street at night. Pursuant to sections 830.4 and 830.8, County was not liable for failing to

install traffic regulatory devices or paint a crosswalk at or near the location of the collision. (Cf. *Washington, supra*, 219 Cal.App.3d at p. 1535 [the intersection was dangerous not only because of the absence of regulatory traffic devices but also because of the vision limitations created by metal pillars and a freeway overpass].)

We also conclude that the removal of the crosswalk years before this accident also did not constitute a dangerous condition. First, as explained above, the County is not obligated to install a crosswalk. Second, there is no evidence that Trejo relied on the removed crosswalk in crossing the street. In fact, the evidence showed that Trejo crossed mid-block, over a hundred feet from the intersection.

ii. Dysfunctional Street Lights

Plaintiff argues that poor lighting created a dangerous condition because there were seven street lights in the vicinity of the collision and only three were working. His argument to the trial court was: "The County was responsible for the installation and maintenance of these [four] non-functioning streetlights, installed for the benefit of the general public, pedestrian Jarek and motorist [Lopez]-Garcia, which could have illuminated Jarek, made him more visible to [Lopez]-Garcia to eliminate any pedestrian-vehicle conflict, a proximate cause of Jarek's death. A lit Hooper Avenue was safer for pedestrian crossing than an unlit Hooper Avenue." (Fn. omitted.)

Plaintiff ignores the rule that a "public entity is under no duty to light its streets. [Citation.] (*Mixon, supra*, 207 Cal.App.4th at p. 139.) ' "In the absence of a statutory or charter provision to the contrary, it is generally held that a municipality is under no duty to light its streets even though it is

given the power to do so, and hence, that its failure to light them is not actionable negligence, and will not render it liable in damages to a traveler who is injured solely by reason thereof." ' [Citation.] A duty to light, 'and the consequent liability for failure to do so,' may arise only if there is 'some peculiar condition rendering lighting necessary in order to make the streets safe for travel.' [Citation.] In other words, a prior dangerous condition may require street lighting or other means to lessen the danger but the absence of street lighting is itself not a dangerous condition." (*Id.* at p. 133.)

iii. High volume, high speed

In opposing summary judgment, plaintiff argued that Hooper was a "high-speed, high-volume, . . . dangerous condition . . . ." Volume and speed alone do not constitute a dangerous condition. As the Court of Appeal explained in *Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, "the volume and speed of vehicular traffic" on the roadway "would not permit a finding of a dangerous condition, at least in the absence of some additional allegation that the physical characteristics of [the street] created a substantial risk that a driver using due care while traveling along [the street] would be unable to stop for pedestrians who were using due care while crossing [the street]." (*Id.* at p. 440; see *Mittenhuber v. City of Redondo Beach* (1983) 142 Cal.App.3d 1, 7 [heavy use of road did not create dangerous condition; downward slope of road that encouraged speeding was not a dangerous condition].)

In *Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, the Supreme Court explained that a dangerous condition is a physical characteristic of the road or improvement's affect on the roadway. "Most obviously, a

dangerous condition exists when public property is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself. [Citations.] But public property has also been considered to be in a dangerous condition 'because of the design or location of the improvement, the interrelationship of its structural or natural features, or the presence of latent hazards associated with its normal use.' " (*Bonanno v. Central Contra Costa Transit Authority, supra*, at pp. 148–149, italics omitted.)

Plaintiff failed to identify a particular physical condition or improvement that made the road dangerous such that the volume and speed of motorists could be a factor. The roadway was straight, without visual obstructions or unobvious conditions.

iv. Traffic Signals Creating Insufficient Traffic Gaps for Pedestrians

Relying on statements by traffic engineer expert Ruzak, plaintiff argued that there were insufficient traffic gaps for pedestrians to cross and that the manner in which traffic signals (one of County's improvements to the roadway) were operated created a dangerous condition. A traffic gap is "the time that elapses from when the rear of a vehicle passes a point on the roadway until the form of the next arriving vehicle passed, from either direction, at that same point." "The minimum adequate gap was defined as the time . . . for a pedestrian to perceive and react to the traffic situation and cross the roadway from a point of safety on one side to a point of safety on the other side." Ruzak explained that "[t]he County can change or alter the gap timing on Hooper Avenue by altering existing traffic control devices or by installing new traffic control devices."

Ruzak attested that that County's maintenance of traffic signals north and south of the collision created insufficient traffic gaps for pedestrians to cross four lanes of traffic on Hooper Avenue. Ruzak opined the County should have conducted traffic gap study "to ensure pedestrians traveling at [four feet] per second had sufficient time to cross the 57'3" wide Hooper Avenue between the stream of cars because of the traffic signal devices to the north (Florence Avenue) and to the south (Firestone Boulevard), which [*sic*] created a 'pedestrian trap' for the unwary."

Ruzak also stated, "It was the lack of gaps in traffic created by the traffic signal timing on Hooper Avenue signalized intersections to the north and south that created the trap at the subject accident location. The traffic timing at the adjacent intersections prevents reasonable gaps in traffic flow, forcing the pedestrians to stand on the corner for extended periods of time waiting for cars to voluntarily stop to allow them the opportunity to cross the street."

Ruzak continued: "Essentially an intersection like Hooper Avenue and East 77th Place requires pedestrians to 'weave and slalom' across the intersection in between moving cars, because the traffic signal timing patterns at adjacent intersections that are controlled by the County of Los Angeles with traffic signals do not create sufficient gaps in the flow of traffic to allow pedestrians to cross safely Hooper Avenue." Ruzak opined: "Pedestrians crossing Hooper Avenue essentially get trapped in the intersection due to the length of time it takes to cross, the inadequate gaps in traffic and the difficulty appreciating the danger of the oncoming speeding motor vehicles."

It was Ruzak's ultimate opinion that the improper timing of the signals, particularly at Florence Avenue on the north and Firestone Boulevard on the south created a dangerous condition to pedestrians crossing Hooper Avenue.

We conclude plaintiff created a disputed material fact regarding dangerous condition of the roadway through Ruzak's expert opinion on traffic gaps.[5]

b. The Dangerous Conditions Did Not Cause the Collision

Our conclusion that there is a triable issue of fact that improper traffic gaps constituted a dangerous condition does not end our inquiry. On appeal and at summary judgment, County argued that traffic signal timing sequences did not cause the accident. The County bases its argument on the undisputed evidence that Lopez-Garcia did not proceed through the intersection of Hooper Avenue and Firestone Boulevard, where improperly timed signals would have created the insufficient traffic gap.

Section 835 requires a plaintiff to show that the public entity's property was "in a dangerous condition at the time of the injury" and that "the injury was proximately caused by the dangerous condition." (*Cordova v. City of Los Angeles* (2015) 61 Cal.4th 1099, 1106.) The California Supreme Court has

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[5] We observe that the trial court likened plaintiff's case to *Mixon, supra*, 207 Cal.App.4th at pages 129–130, which involved a child being struck by a vehicle while the child was crossing the street in a crosswalk. *Mixon* focused on the lack of traffic controls, lighting, and the design of the crosswalk. (*Id.* at pp. 132–136.) That case does not discuss traffic gaps created by upstream traffic signals.

recognized that "proximate cause has two aspects. ' "One is cause *in fact*. An act is a cause in fact if it is a necessary antecedent of an event." ' [Citation.] This is sometimes referred to as 'but for' causation." (*State Dept. of State Hospitals v. Superior Court* (2015) 61 Cal.4th 339, 352.)[6]

Here, the traffic signal timing was simply not a cause in fact of Trejo's death. Lopez-Garcia started his northbound trip from the curb significantly north of the Firestone Boulevard intersection. Lopez-Garcia drove through two signal-controlled intersections at 83rd and Nadeau Streets before he struck Trejo. Plaintiff's counsel confirmed at oral argument that the street lights at 83rd and Nadeau Streets, which were not specifically commented on by Ruzak, were inconsequential to the causation analysis. Rather, it was the alleged deficiency of the traffic signals at Firestone Boulevard (south) and Florence Avenue (north) which Ruzak testified was the dangerous condition. Witnesses stated that there was one white Honda driving in front of Lopez-Garcia and Lopez-Garcia testified that there were no other cars on the roadway. To the extent appellant contends that the presence of the additional car tends to support his position, there is no evidence that the white Honda drove through the intersection of Firestone and Hooper or that his mode of travel was affected by any traffic gap. There is no evidence that Trejo's crossing of the street was affected by traffic patterns created by

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[6] The second part of proximate cause addresses public policy considerations, which may limit but for causation. (*State Dept. of State Hospitals v. Superior Court, supra*, 61 Cal.4th at p. 352.) Because we find no but for causation we need not address public policy.

the lights identified by Ruzak. Accordingly, we see no triable issue of fact that insufficient traffic gaps between Firestone and Florence were a proximate cause either of Lopez-Garcia's vehicle striking Trejo or any danger created by the white Honda.[7] We therefore affirm summary judgment.

4. *The Trial Court Did Not Err in Awarding County Its Costs*

Plaintiff argues the trial court committed reversible error by denying her request for judicial notice of the unpublished appellate opinion in *Killings-Rodriguez v. City of Los Angeles*. We observe that her request for judicial notice of this opinion was filed in conjunction with her opposition to County's motion for $297,938.57 in defense costs and attorney's fees sought pursuant to Code of Civil Procedure section 1038. It appears plaintiff wanted to cite the *Killings-Rodriguez v. City of Los Angeles* opinion to bolster Ruzak's credentials and show her lawsuit was not frivolous under Code of Civil Procedure section 1038. The trial court ultimately denied County's motion for defense fees, finding plaintiff's lawsuit not frivolous. The court awarded statutory costs of $6,909.17 pursuant to Code of Civil Procedure section 1032. Plaintiff did not contest those charges.

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[7] If the evidence had been that, at the time of the collision, other vehicles had recently proceeded through the Firestone/Hooper intersection and contributed to the dangerous condition, our analysis might be different. We conclude only that, because neither the white Honda nor Lopez-Garcia's vehicle drove through that intersection and no other vehicles were present, insufficient traffic gaps were not the cause of the collision.

As the trial court ruled in plaintiff's favor on the defense costs and fees motion even if the denial of judicial notice was error, and we do not so find, we do not see how the ruling caused her any prejudice. We address this issue no further. To the extent plaintiff cites this unpublished case on appeal for principles of law, we disregard it. (See California Rules of Court, rule 8.1115(a) ["an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action"].)

DISPOSITION

The judgment is affirmed. Defendant County of Los Angeles is awarded costs on appeal.

RUBIN, P. J.

WE CONCUR:

MOOR, J.

KIM, J.

APPENDIX A

COLA1078

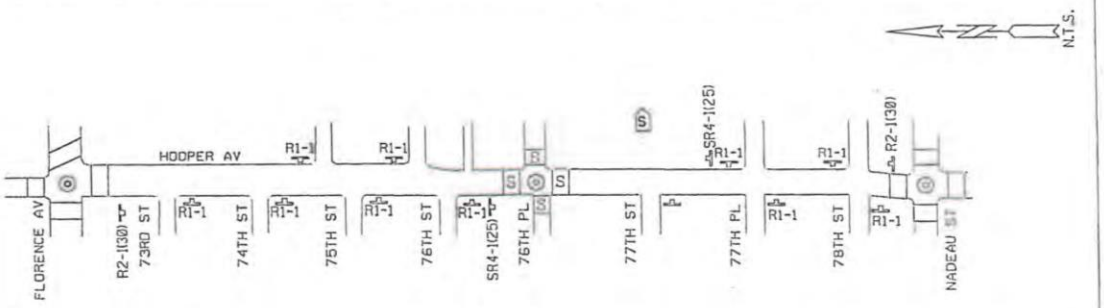
ENGINEERING AND TRAFFIC SURVEY

STREET HOOPER AVENUE FROM FLORENCE AVENUE TO BLUE CLOUD RD

FRONTING DEVELOPMENT	D4	D1	D6	D1
IMPROVED (SW, C & G)	FULLY IMPROVED			
PARKING RESTRICTIONS	P45	P24, P33	P24, P32	P24, P33

MAP SYMBOLS

- S — SCHOOL
- SIGNAL
- R1-1 — R1-1 STOP
- R2-1(SPEED) — R2-1 SPEED LIMIT
- SR4-1(SPEED) — SR4-1 SPEED LIMIT
- CROSSING GUARD & SIGNAL
- G — CROSSING GUARD
- S — SCHOOL CROSSWALK
- CROSSWALK



PARKING RESTRICTIONS	P53		P1	
IMPROVED(SW, C & G)	FULLY IMPROVED			
FRONTING DEVELOPMENT	D4	D1		
NO. LANES & MEDIAN	L3	L10	L8	
VERTICAL ALIGNMENT	OVERALL MOSTLY FLAT			
ROADWAY WIDTH	CURB TO CURB 35' (NB AND SB), MEDIAN 14'		CURB TO CURB 60'	
DISTANCE	0.51 MI (AS A PART OF 2.53 MI IN THE ENTIRE ROUTE)			
AVERAGE DAILY TRAFFIC	12,410			
SPEED CHECK DATA (DATE & LOC.)	12/2013, S/O 77TH ST			
85TH PERCENTILE SPEED	34			
AVERAGE SPEED	28.7			
10 MILE PACE SPEED	25-34			
COLLISION DATA(2 YRS TO 04/30/13)				
TOTAL MIDBLOCK COLLISIONS	35			
NO. WITH SPEED VIOLATIONS	2			
PREDOMINATE TYPE	MIDBLOCK PARKED VEHICLE			
HBD	8			
COLLISION RATE (C/MVM)	1.63			
COUNTY AVERAGE (C/MVM)	1.32 +/- 0.74			

This is a true copy and presentation of the original speed zone survey.

I hereby attest to this

Engineer: Lam Tied

Date: 6-9-14

REMARKS:

D1: RESIDENTIAL
D4: COMMERCIAL
D6: EDUCATIONAL
L3: TWO LANES IN EACH DIRECTION SEPARATED BY TWO-WAY LEFT TURN LANE
L8: TWO LANES IN EACH DIRECTION SEPARATED BY SOLID DOUBLE YELLOW CENTERLINE
L10: TWO LANES IN EACH DIRECTION SEPARATED BY RAISED MEDIAN
P1: NO STOPPING ANYTIME
P24: NO PARKING MOTOR HOMES, TRAILERS OR VEHICLES FOR SALE
P32: NO PARKING 7AM-11AM TUESDAYS ONLY
P33: NO PARKING 7AM-11AM WEDNESDAYS ONLY
P53: NO PARKING 7AM-11AM THURSDAYS ONLY

EXISTING SPEED LIMIT	30
PROPOSED SPEED LIMIT	30

ENGINEER: BC DATE: 5/1/14
DRAWN BY: ALBERT

COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS
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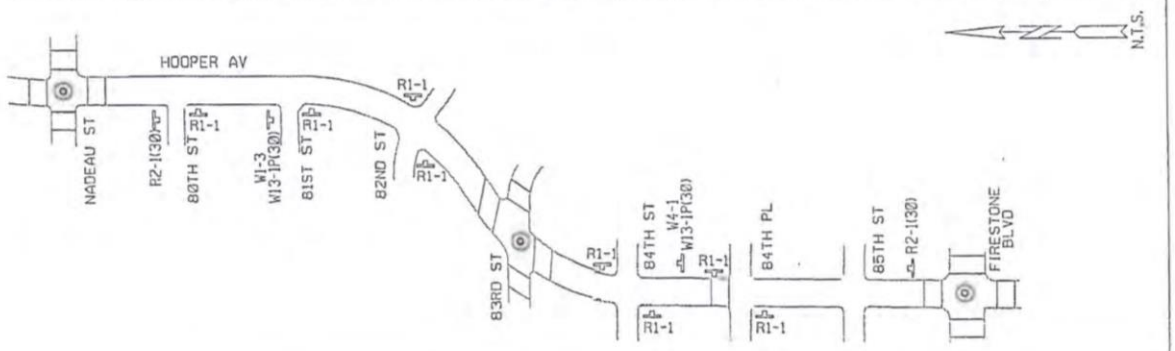
ENGINEERING AND TRAFFIC SURVEY

STREET HOOPER AVENUE FROM NADEAU STREET TO FIRESTONE BOULEVARD

FRONTING DEVELOPMENT	D1				D4
IMPROVED (SW, C & G)	FULLY IMPROVED				
PARKING RESTRICTIONS	P24, P33		P1	P24, P33	P24

MAP SYMBOLS

- (S) SCHOOL
- SIGNAL
- R1-1 R1-1 STOP
- R2-1(SPEED) R2-1 SPEED LIMIT
- SR4-1(SPEED) SR4-1 SPEED LIMIT
- CROSSING GUARD & SIGNAL
- G CROSSING GUARD
- S SCHOOL CROSSWALK
- CROSSWALK



PARKING RESTRICTIONS	P1	P24, P53		P1
IMPROVED(SW, C & G)	FULLY IMPROVED			
FRONTING DEVELOPMENT	D1			D4
NO. LANES & MEDIAN	L8			
VERTICAL ALIGNMENT	OVERALL MOSTLY FLAT			
ROADWAY WIDTH	CURB TO CURB 64'			
DISTANCE	0.54 MI (AS A PART OF 2.53 MI IN THE ENTIRE ROUTE)			
AVERAGE DAILY TRAFFIC	11,190			
SPEED CHECK DATA (DATE & LOC.)	12/2013, N/O 84TH PL			
85TH PERCENTILE SPEED	35			
AVERAGE SPEED	32.0			
10 MILE PACE SPEED	26-35			
COLLISION DATA(2 YRS TO 04/30/13)				
TOTAL MIDBLOCK COLLISIONS	35			
NO. WITH SPEED VIOLATIONS	2			
PREDOMINATE TYPE	MIDBLOCK PARKED VEHICLE			
HBD	8			
COLLISION RATE (C/MVM)	1.63			
COUNTY AVERAGE (C/MVM)	1.32 +/- 0.74			

~~I certify that this is a true copy~~ and presentation of the original on file in my office.

I hereby attest to this:

Engineer: Lee Ford

Date: 6.9.14

REMARKS:

D1: RESIDENTIAL
D4: COMMERCIAL
L8: TWO LANES IN EACH DIRECTION SEPARTED BY SOLID DOUBLE YELLOW CENTERLINE
P1: NO STOPPING ANYTIME
P24: NO PARKING MOTOR HOMES, TRAILERS OR VEHICLES FOR SALE
P33: NO PARKING 7AM-11AM WEDNESDAYS ONLY
P53: NO PARKING 7AM-11AM THURSDAYS ONLY

EXISTING SPEED LIMIT	30
PROPOSED SPEED LIMIT	30

ENGINEER: BC DATE: 5/1/14
DRAWN BY: ALBERT

COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS
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PAGE 4 OF 5

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