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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

GLORIA WEISCHADLE, Plaintiff and Appellant, v. LOS ANGELES WORLD AIRPORTS, Defendant and Respondent.	B294949 (Los Angeles County Super. Ct. No. BC634298)

APPEAL from a judgment of the Superior Court of Los Angeles County, William G. Willett, Judge. Affirmed.

Gloria Weischadle, in pro. per., for Plaintiff and Appellant.

Vanderford & Ruiz, Rodolfo F. Ruiz, Christopher A. Carr; Law Offices of Robert B. Charboneau and Robert B. Charboneau for Defendant and Respondent.

INTRODUCTION

Gloria Weischadle, in propria persona, filed a lawsuit against Los Angeles World Airports (LAWA) arising out of injuries she sustained from falling down an escalator at the Los Angeles International Airport (LAX). Following her opening statement at trial, the court granted a nonsuit in favor of LAWA, finding that Weischadle had no admissible evidence that LAWA had notice of a dangerous condition that caused her injuries. Weischadle contends that nonsuit was improper, as the evidence she needed was either improperly excluded from trial by the court or withheld from discovery by LAWA. We find no error and therefore affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

Weischadle filed a personal injury complaint against LAWA[1] in September 2016. She alleged claims for general negligence and premises liability. According to the complaint, on September 2, 2015, Weischadle was on an escalator at LAX heading toward the boarding area for a flight. The escalator "was going too fast and bumpy, on one of the bumps the wheel of [her] carry-on luggage slid and fell, pulling [her] down backwards." As she fell, Weischadle hit her thigh, hip, arm, neck and head on the metal escalator stairs. She alleged that she "sustained painful injuries, requiring medical treatment." She further alleged that LAWA was negligent in maintaining the escalator and, as a public entity, had "constructive notice of the existence of the dangerous condition in sufficient time prior to the injury to have corrected it."

The case proceeded to jury trial. On the first day of trial, October 30, 2018, the court informed that jury that the case involved plaintiff's claim for "dangerous condition on public property" and then read the elements of that claim. Weischadle did not object.

In her opening statement, Weischadle described the accident and her injuries. She told the jury that on the day of the incident, she and her friend Guadalupe Jorge were at LAX to board a flight to Miami, where they would begin a ten-day cruise. As they were riding the escalator up toward the

[1] LAWA is a department of the City of Los Angeles that owns and operates LAX, including the escalator at issue.

boarding area of the terminal, she noticed that the escalator was "very fast, and bumpy." As Weischadle reached the mid-point of the escalator, it gave a "pretty strong jerk," causing her luggage to roll off the escalator step. As she and her luggage fell backward down the moving escalator, she hit her back, neck, and head, and then lost consciousness. Weischadle stated that two LAWA personnel who were stationed at the bottom of the escalator helped her up and took her information. She was dizzy and "half-conscious," but continued to the gate to catch her flight. She also told the jury that she had ongoing injuries as a result of her fall and that she had been "wronged" by LAWA's denial of her claims. Weischadle did not refer to any evidence suggesting that LAWA had notice of any dangerous condition.

After Weischadle concluded her opening statement, defense counsel moved for a nonsuit under Code of Civil Procedure section 581c. Outside the presence of the jury, LAWA's counsel argued that Weischadle had no witnesses to establish liability against LAWA. The court summarized an evidentiary conference from the day before, in which the parties discussed the condition of the escalator at the time of the incident.[2] According to the court, Weischadle "did not have or at least represented to me she had no live witnesses that would testify" as to that issue, "although she did have a number of exhibits that she was hoping to have admitted." The court further noted that Weischadle stated the following morning (the first day of trial), that she planned to call herself and Jorge as her only witnesses. The court recalled that it asked Weischadle "how she was going to prove up that the escalator was in a dangerous condition and, if so, that the defendant had notice in time to fix it, to which I got no adequate response."

Turning to the motion for nonsuit, the court indicated to Weischadle that "now is your opportunity to tell me what evidence you have to establish" the issues of dangerous condition and LAWA's notice of that condition. In response, Weischadle cited several exhibits she sought to introduce, which she claimed "will prove that the escalator at LAX, terminal 4 – there are problems with [that escalator.]" She also said that she planned to question a defense witness, James Andrade, about the documents and that he could authenticate them as LAWA documents. The court cautioned Weischadle

[2] It does not appear from the record that this conference was reported.

that she had no witness in her case in chief to lay the foundation for her exhibits, and noted that "yesterday I indicated to you that [the exhibits at issue] would not be admitted unless you had some witness to come in and lay a proper foundation because they're clearly hearsay."

The court also stated that Weischadle had indicated she planned to call Ron Galperin, the city controller, to testify as to another exhibit, but "this morning you informed me that Ron Galperin . . . was not going to be here to testify. And, therefore, I'm trying to find out what evidence you have that's competent admissible evidence . . . and so far you haven't given me any." Weischadle responded that LAWA had refused to produce all of the discovery she requested and needed for trial, thus any lack of proof was due to LAWA "suppress[ing] evidence."[3] She also stated that she thought her testimony as "the injured person . . . would be sufficient to prove the injury and premises liability." The court explained that because she was suing a public entity, she needed to prove that LAWA was "aware that there was a dangerous condition. . . . And you don't have any evidence to show that that was the case." Weischadle again pointed to her proposed exhibits and argued that the court "took away" her evidence by failing to admit the exhibits. The court responded that she was required "to present competent, admissible evidence. . . . I told you what you needed to do to lay the proper foundation, and you have not been able to do that."

The court concluded that Weischadle's "exhibits that you are relying upon to establish that the escalator was in a dangerous condition are rejected and are not admissible because you have not been able to present any evidence that you can lay a proper foundation for these exhibits to come in and be presented to the jury." Thus, the court found it had "no option but to grant the motion for a nonsuit."

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[3] When given a chance to respond to this accusation later in the hearing, counsel for LAWA stated that it had objected to the discovery and the parties "went through at least three or four ex partes in which the judges specifically gave her the opportunity to file motions to compel documents. She rejected that and said she . . . wanted to proceed to trial without testing whether or not those objections were valid."

The court entered judgment of nonsuit in favor of LAWA on November 5, 2018. Weischadle filed a motion for new trial. She objected that the court limited her case to a claim for dangerous condition, thereby excluding her claims for negligence and premises liability as pled in her complaint. She argued that this prejudiced her because LAWA failed "to submit technical reports about the escalator during discovery" and a dangerous condition claim therefore would "be impossible to prove without LAWA records." She also stated that she had planned to question defense witnesses Andrade and Galperin in order to lay a foundation for her documentary evidence, and argued that the court erred in excluding those documents. She acknowledged that she had not subpoenaed Andrade and requested that the court allow her to do so. She also argued that LAWA "willfully suppressed material evidence" by failing to respond to various discovery requests, and suggested that the jury could be allowed to make an adverse inference as a result. The court denied the motion for new trial on December 20, 2018.

Weischadle timely appealed.

DISCUSSION

Weischadle argues on appeal that the court improperly granted nonsuit in favor of LAWA. We find no error and affirm the judgment.

"'The standard of review for a nonsuit after [the] conclusion of the opening statement is well settled. Both the trial court in its initial decision and the appellate court on review of that decision must accept all facts asserted in the opening statement as true and must indulge every legitimate inference which may be drawn from those facts. [Citations.] A nonsuit at this early stage of the proceedings is disfavored. [Citation.] It can only be upheld on appeal if, after accepting all the asserted facts as true and indulging every legitimate inference in favor of plaintiff, it can be said those facts and inferences lead inexorably to the conclusion plaintiff cannot establish an essential element of its cause of action or has inadvertently established uncontrovertible proof of an affirmative defense. [Citation.]'" (*Galanek v. Wismar* (1999) 68 Cal.App.4th 1417, 1424, quoting *Abeyta v. Superior Court* (1993) 17 Cal.App.4th 1037, 1041.)

As an initial matter, we reject Weischadle's argument that she should have been allowed to proceed with common law claims for negligence and

premises liability against LAWA, a public entity. Government Code section 815 expressly limits government tort claims to those based on a statute: "Except 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 a public entity or a public employee or any other person." (Gov. Code § 815, subd. (a).) As such, it was not error for the court to treat Weischadle's claim as one for the dangerous condition of public property under Government Code section 835. Weischadle provides no authority suggesting otherwise.

Under Government Code section 835, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes, among other things, that: (1) the defendant owned or controlled the property; (2) the property was in a dangerous condition at the time of the incident; (3) the dangerous condition created a reasonably foreseeable risk of the kind of injury that occurred; and (4) that either: (a) negligent or wrongful conduct of the defendant's employee acting within the scope of his or her employment created the dangerous condition; or (b) the defendant had actual or constructive notice of the dangerous condition for a sufficient time to have taken measures to protect against it. (Gov. Code, § 835.)

At issue here is whether Weischadle could establish the second and fourth elements that there was a dangerous condition at the time of her fall and LAWA had sufficient notice of that condition.[4] Weischadle's opening statement did not mention any evidence that could prove these elements. Further, once LAWA moved for nonsuit, the court explained the state of the evidence and gave Weischadle another opportunity to demonstrate that she had admissible evidence available for trial. Weischadle could not. She confirmed that she planned to call only herself and her travelling companion, Jorge, as witnesses in her case in chief. While they could testify as to the incident itself and the resulting injuries, Weischadle does not suggest that either witness would have any evidence related to LAWA's notice of the condition of the escalator. Weischadle also acknowledged that she had not

[4] Weischadle does not appear to contend that she meets the alternative prong of element four – that the dangerous condition was created by wrongful or negligent conduct of a LAWA employee. Regardless, she did not produce any evidence at trial to establish it.

subpoenaed the two defense witnesses she planned to use to authenticate key exhibits, thinking defense counsel would produce them at trial.[5] As such, she had no witnesses to testify that the escalator was in a dangerous condition, or that LAWA had notice of such a condition, and no other admissible evidence on that issue.

Weischadle implicitly acknowledges that at the time of trial she did not have evidence to establish that LAWA had notice that the escalator was dangerous. However, she argues that this lack of evidence was caused by external factors, including: (1) the court's exclusion of her proffered exhibits as hearsay; (2) LAWA's failure to produce at trial several promised defense witnesses who could have authenticated those documents; and (3) LAWA's failure to produce sufficient responses to her discovery requests. She has not met her burden to establish error as to these claims.

First, Weischadle contends the court erred in excluding her exhibits (several documents purportedly produced by LAWA) as hearsay. But she has made no showing as to the admissibility of the documents, nor has she demonstrated how the court erred in excluding them as inadmissible hearsay. (See Evidence Code, § 1200 [general rule excluding as hearsay evidence of an out-of-court statement offered to prove the truth of the matter stated].) Her unsupported assertion of error cannot satisfy her burden on appeal. (See, e.g., *Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655 [appellant must meet burden by "presenting legal authority on each point made and factual analysis, supported by appropriate citations to the material facts in the record; otherwise, the argument may be deemed forfeited"].)

Second, Weischadle argues that the court erred in preventing her from cross-examining defense witnesses who could have provided the necessary evidence to support her claim. However, she admits that she did not attempt to secure these witnesses as part of her case in chief; instead, she assumed that she could cross-examine them once LAWA called them as part of the defense case. Therefore, she has not shown that the court erred in concluding

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[5] Weischadle has suggested that she did subpoena Galperin; at other points, she stated that she did not do so, because counsel for LAWA had agreed to produce him. In any event, there is no evidence in the record of any subpoena served upon any witness.

she could not establish the essential elements of her claim. She also made no attempt to compel the attendance of these witnesses once the court excluded her exhibits the day before trial, nor did she do so on the day of trial when it became apparent that defense counsel did not intend to produce them voluntarily. As such, to the extent she now contends the court failed to give her another opportunity to secure key witnesses, she has forfeited any such claim of error. (See, e.g., *Newton v. Clemons* (2003) 110 Cal.App.4th 1, 11.)

Third, Weischadle contends that LAWA did not meet its discovery obligations and therefore that the jury should have been permitted to reach an adverse inference as to LAWA's willful suppression of evidence, citing Evidence Code section 413. Weischadle has failed to provide an adequate record on appeal to establish error. It is unclear from this record whether her claim of discovery misconduct was fully litigated below, nor has she demonstrated how any of LAWA's asserted objections were deficient. Indeed, the partial set of discovery requests and responses in the record before us demonstrates that LAWA did in fact substantively respond to some of Weischadle's requests, contrary to her claim. "Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant]." (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502; *Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003, fn. 2 [reviewing court is limited to matters contained in the record and without the proper record, the evidence is conclusively presumed to support the judgment].) Moreover, any asserted errors regarding jury instructions are moot, given the court's granting of nonsuit in LAWA's favor.

Finally, we reject Weischadle's contention that the trial court improperly favored LAWA because Weischadle was representing herself and "did not have the same level and knowledge of the law as the counsel and the judge." We have reviewed the record provided and find no support for this claim, nor does Weischadle cite to any particular evidence, apart from the errors claimed in this appeal. Further, we note that Weischadle's status as a self-represented litigant does not excuse her failure to provide sufficient evidence or authority. A party proceeding in propria persona must "'be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.' . . . Indeed, "'the in propria

persona litigant is held to the same restrictive rules of procedure as an attorney.'" [Citation.]" (*First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1.) "A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985.)

The nonsuit in favor of LAWA was properly granted. For the same reasons, we also find no error in the court's denial of Weischadle's motion for a new trial.

DISPOSITION

The judgment of nonsuit is affirmed. The parties are to bear their own costs on appeal.

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COLLINS, J.

We concur:

MANELLA, P. J.

WILLHITE, J.