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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

MICHAEL PACKARD,

Plaintiff and Appellant,

v.

DOLORES MACIAS et al.,

Defendants and Respondents.

2d Civ. No. B270079
(Super. Ct. No. 1466743)
(Santa Barbara County)

Plaintiff Michael Packard appeals: 1) a judgment in favor of defendant Dolores Macias in his personal injury action, and 2) the order denying his motion for a new trial. We conclude, among other things, that substantial evidence supports the jury finding that Macias's negligence was not a "substantial factor in causing harm to [Packard]." We affirm.

FACTS

On February 16, 2013, Macias was in her car and stopped for a red light at an intersection. She was in the bike lane and intended to make a right turn. As the light turned green, she heard a "loud buzz sound," like "a motorcycle," and it caused

her to hesitate. As she started to turn right, Packard, riding his motorized scooter known as a “go-ped,” collided with her SUV. Macias believed that Packard was driving on the sidewalk because she was “completely in the bike lane.” Packard told her he was shaken, but he was “okay,” and he did not need an ambulance.

Packard testified his scooter “goes around 24 miles per hour.” He was in the “bike lane” as he approached the intersection. He saw an SUV two feet from the bike lane “to the left.” When the light turned green, he accelerated because “nothing [was] in front of [him]” and he wanted to “cross over the intersection.” He was four feet behind the SUV. The SUV made a right turn and crossed “into [his] path.” He “[h]it the brakes” and was not able to avoid a collision with the SUV. His “body hit the car.” He said a “dent” in the SUV shows where he “hit” that vehicle. Twelve days after the collision, he went to a hospital emergency room.

Packard testified that this accident caused “numbness and tingling in [his] left fingers and [his] left arm.”

Dr. David Frecker testified Packard had problems with his left ulnar nerve. He said, “I believe most likely what happened is that he had an injury to his elbow as he fell off a scooter.” On cross-examination, he said an emergency room report 12 days after the accident showed “no bruising or deformity to his left arm.”

Dr. Hamid Redjal testified that Packard sustained injuries to his left elbow as a result of “the February 16th, 2013 collision.” The “ulnar nerve was where he was having problems.” On cross-examination, he admitted he did not review all of Packard’s medical records.

Eugene Vanderpol, an “accident reconstructionist,” testified about the cause of the accident. He said Packard was driving in the bike lane and was “cut off” by Macias’s SUV as it made a turn from outside the bike lane. Packard had insufficient time to avoid the collision.

In the defense case, Bob Jarrett testified that in September 2014 he hired Packard to work in his “automobile repair shop” for four months. During that time, he did not recall or notice any “limitations” on Packard’s ability to perform any of his job functions.

Dr. Michael Wienir testified, “I don’t believe there’s any substantial or credible or compelling evidence that this ulnar nerve problem is causally related to the accident in question. “[T]he only time [Packard] starts having paresthesias is . . . 19 months after the accident in question when . . . he’s still doing some work as a mechanic.” Wienir said there is no evidence of “joint disruption,” and “multiple orthopedic surgeons that have examined him . . . said he has full range of motion.” The symptoms Packard complained of occurred “19 months after the accident.” Wienir said, “I just don’t think there’s a cause and effect relationship here.” “I think [Packard has] a problem, but *it’s not related to this particular accident.*” (Italics added.)

Kenneth Solomon, Ph.D., a “forensic scientist” who “investigates accidents,” testified that Packard’s evidence about the short distance he had to stop was not accurate. Packard had enough time to brake, stop and avoid the collision. He was 150 feet or “ten car lengths” behind Macias. He was travelling at the speed of 15 to 18 miles an hour. The dent to the SUV could not have been caused by Packard’s body hitting that vehicle. It was caused by a “metallic object” hitting it. Solomon disagreed with

Vanderpol on causation and said Packard had both ample distance and time to prevent the accident.

In the special verdict, the jury found Macias was negligent, but her negligence was not “a substantial factor in causing harm to [Packard].” The trial court denied Packard’s motion for a new trial.

DISCUSSION

Substantial Evidence

Packard contends there is insufficient evidence to support the jury’s finding that Macias was not a substantial factor in causing harm to him. We disagree.

Packard points to evidence in the record and claims it supports his position. But the issue is not whether some evidence supports appellant, it is only whether substantial evidence supports the judgment.

In deciding the sufficiency of the evidence, “we view the evidence in the light most favorable to the judgment, drawing every reasonable inference and resolving every conflict to support the judgment.” (*Toste v. CalPortland Construction* (2016) 245 Cal.App.4th 362, 366.) We do not weigh the evidence or decide the credibility of the witnesses. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630, 633.)

For a substantial evidence appeal, the appellant must set forth *all* the material evidence presented on the challenged issue in the opening brief. (*In re S.C.* (2006) 138 Cal.App.4th 396, 414-415.) Failure to do so forfeits the issue. (*Id.* at p. 415.) Packard’s opening brief omits major portions of material defense evidence.

The jury found Macias was negligent. But Packard had to show more than negligence. “There is no liability without

causation.” (*Toste v. CalPortland Construction, supra*, 245 Cal.App.4th at p. 369; *Johnson v. Pratt & Whitney Canada, Inc.* (1994) 28 Cal.App.4th 613, 626, fn. 17.) The “causation element of negligence is satisfied when the plaintiff establishes . . . that the defendant’s breach of duty . . . was a substantial factor in bringing about the plaintiff’s harm” (*Mayes v. Bryan* (2006) 139 Cal.App.4th 1075, 1093.) But “[i]f the accident would have happened anyway, whether the defendant was negligent or not, then his or her negligence was not a cause in fact, and of course cannot be the legal or responsible cause.” (*Toste*, at p. 370.) Where the accident is solely caused by the plaintiff, a defense judgment is required. (*Ibid.*) Here there was evidence showing Packard’s lack of attention was the cause of the accident.

Solomon testified, “Packard clearly had enough time to brake and stop and avoid the subject collision” He said Packard’s evidence about the short time he had to stop was refuted by scientific calculations. The jury resolved the conflict between Vanderpol’s and Solomon’s testimony in favor of Macias. It could reasonably infer from Solomon’s testimony that Packard’s inattention caused the accident.

Packard contends the medical experts testified that he “suffered harm from the motor vehicle collision.” (Boldface omitted.) He suggests the jury had to accept those expert opinions and find causation.

But the triers of fact *alone* decide “the credibility of experts.” (*Biren v. Equality Emergency Medical Group, Inc.* (2002) 102 Cal.App.4th 125, 139.) “[A] jury may entirely reject the testimony of a plaintiff’s expert, even where the defendant does not call any opposing expert and the expert testimony is not

contradicted.” (*Howard v. Owens Corning, supra*, 72 Cal.App.4th at p. 633.)

Some of Packard’s experts relied on Packard’s statements about his condition. Frecker considered information from Packard about “what happened to his arm.” Jurors could reject opinions based on those statements if they found Packard was not credible. (*Garrett v. Howmedica Osteonics Corp.* (2013) 214 Cal.App.4th 173, 186 [““An expert opinion has no value if its basis is unsound””].)

During his deposition, Packard was asked whether he suffered any injury to his knees prior to the accident. He answered “no.” But that was not true. He had suffered such a prior injury. The jury could reasonably question Packard’s credibility. (*Beck Development, Inc. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1204.)

The jury also could find Packard’s experts made admissions that impeached their credibility. Frecker admitted that the emergency room exam showed no bruising or deformity of Packard’s left arm. Redjal admitted he did not review all of Packard’s medical records. He said another doctor’s medical examination showed “no swelling, deformity, or effusion of [Packard’s] left elbow” and “no bone or joint malalignment.” He conceded that the emergency room examination findings showed that “neurologically, *he was fine . . .*” (Italics added.)

The jury also could find Wienir’s testimony showed Packard’s experts incorrectly claimed the collision caused an ulnar nerve problem. Wienir said, “We . . . don’t have any evidence of a fractured elbow, a dislocated elbow, [or] ligamentous damage.”

Packard notes Wienir was asked, “[Y]ou don’t see a motor scooter versus car collision as the cause for his injuries,

correct?” Wienir: “I do not.” Wienir later said, “[T]he elbow pain, if you will, I think was related to the accident.” But the triers of fact alone resolve evidentiary conflicts. (*Howard v. Owens Corning, supra*, 72 Cal.App.4th at pp. 630, 633.) They decide which portions of the testimony they will accept or reject. (*Showalter v. Western Pacific R.R. Co.* (1940) 16 Cal.2d 460, 479.) Here the jury could consider the other portions of Wienir’s testimony, Solomon’s testimony, and other defense evidence to find causation was not established.

There is additional evidence from which jurors could find the collision did not cause Packard’s injuries. Macias testified that after the accident Packard told her that he was “shook[] up,” but he was “okay” and did not need an ambulance. Packard did not go to the “emergency room” until “12 days after the collision.”

Packard’s claims about injuries he sustained from the Macias accident were clouded by another factor. He had been in another automobile accident in October 2013 and he claimed he suffered injuries from that accident.

In 2014, Packard made an employment application for a “job at [the] Firestone” automobile repair shop. In that application, he said he did not have “[d]ecreased function” or “problems with” his “shoulders, arm, elbows or wrists.” He said that he had no problems with his “hands, fingers, grip strength” or “use of all fingers” and did not have “numbness, tingling or pain in the hands and/or wrists.”

Packard had a medical examination by Dr. Aswari Batra in 2014 who concluded that Packard “is able to perform essential functions . . . without restrictions, limitations, or accommodations,” and that his shoulders, elbows, arms and wrists “were all normal.” Jarrett’s testimony shows Packard had no

physical limitations on his ability to work at the automobile repair shop. Solomon refuted Packard's claim that his body hit Macias's SUV. Packard's employment application, Jarrett's, Wienir's and Solomon's testimony, Batra's findings, and other defense evidence supported the defense verdict.

Packard contends the trial court erred by denying his motion for a new trial. Macias notes that his motion was based, in part, on inadmissible declarations about alleged jury misconduct that she successfully challenged. The record does not contain a reporter's transcript of the hearing on the motion. (*Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1532.) There is no settled statement. The trial court was in the best position to determine whether the jury followed its instructions and to make credibility determinations. (*Toste v. CalPortland Construction, supra*, 245 Cal.App.4th at pp. 372-373.) In denying the motion, the court made several findings and ruled the verdict was supported by the evidence. Packard has failed to show that those findings are incorrect. Nor has he shown an abuse of discretion.

We have reviewed Packard's remaining contentions and we conclude he has not shown grounds for reversal.

DISPOSITION

The judgment and order are affirmed. Costs on appeal are awarded in favor of respondents.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Thomas P. Anderle, Judge
Superior Court County of Santa Barbara

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