Filed 11/15/18 Lopez 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

RENE LOPEZ et al., Plaintiffs and Appellants, v. STATE OF CALIFORNIA, Defendant and Respondent.	B283312 (Los Angeles County Super. Ct. No. BC514958)

APPEAL from a judgment of the Superior Court of Los Angeles County, Bobbi Tillmon, Judge. Affirmed.

Willard Bakeman for Plaintiffs and Appellants.

Xavier Becerra, Attorney General, Danielle F. O'Bannon, Assistant Attorney General, Elizabeth S. Angres and Paul F. Arentz, Deputy Attorneys General, for Defendant and Respondent.

Plaintiffs Rene and Porfiria Lopez (plaintiffs) appeal from the judgment after the trial court granted a motion for nonsuit in favor of defendant and respondent State of California (defendant). Plaintiffs alleged that their son, Luis,[1] a state prisoner, died as a result of prison employees' delay in summoning medical aid when Luis suffered a seizure. The trial court ruled that plaintiffs required expert testimony to prove causation and entered a judgment of nonsuit after plaintiffs made clear they did not intend to call an expert witness. On appeal, plaintiffs contend they could prove causation without expert testimony. We concur with the trial court's reasoning and affirm.

BACKGROUND

The operative complaint in this action alleged that Luis, while incarcerated in state prison, died after "suffer[ing] a life-threatening seizure as a complication of [a] serious medical condition."[2] The complaint alleged that prison employees were aware of the medical emergency but negligently delayed in summoning aid. The complaint alleged that the delay "caused and contributed to" Luis's death.

The complaint alleged various causes of action. At the start of trial, however, only the third cause of action remained,

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[1] Because Luis Lopez shares a last name with plaintiffs, we refer to him by his first name for the sake of clarity. We mean no disrespect in doing so.

[2] The complaint alleged that Luis suffered from an umbilical hernia. Based on the parties' statements during the hearing on the motion for nonsuit, however, it appears during plaintiffs' opening statement they contended that Luis died of an overdose of the drug Effexor™. Our holding applies under either scenario, and we need not address this discrepancy.

asserting wrongful death based on Government Code section 845.6. Following plaintiffs' opening statement, defendant moved for nonsuit on the basis that plaintiffs had not indicated that they would call an expert to establish causation, an issue defendant had raised in a trial brief filed the day before. The trial court heard argument and invited plaintiffs to prepare a brief in response. Plaintiffs filed a brief the next day contending that the coroner's report would establish the cause of death and that jurors did not require expert testimony to evaluate whether defendant's employees' delay in summoning aid contributed to Luis's death.

Following further argument, the trial court granted the motion for nonsuit with prejudice, finding that even accepting plaintiffs' assertions in the opening statement as true, "the asserted facts are not sufficient to support plaintiffs' only remaining cause of action."

The trial court entered judgment in favor of defendant. Plaintiffs timely appealed.

STANDARD OF REVIEW

A defendant may move for a judgment of nonsuit after a plaintiff "has completed his or her opening statement, or after the presentation of his or her evidence in a trial by jury." (Code Civ. Proc., § 581c, subd. (a).) "Such a motion has the effect of a demurrer to the evidence: It concedes the truth of the facts proved and contends that those facts are not sufficient as a matter of law to sustain the plaintiff's case." (*Alpert v. Villa Romano Homeowners Assn.* (2000) 81 Cal.App.4th 1320, 1328.) In ruling on the sufficiency of the evidence, the trial court " 'must resolve all presumptions, inferences, conflicts, and doubts in favor of the plaintiff. If the plaintiff's claim is not supported by

substantial evidence, then the defendant is entitled to a judgment as a matter of law, justifying the nonsuit.' " (*Hernandezcueva v. E.F. Brady Co., Inc.* (2015) 243 Cal.App.4th 249, 257.) "We review rulings on motions for nonsuit de novo, applying the same standard that governs the trial court." (*Ibid.*)

DISCUSSION

Plaintiffs contend they could prove causation without expert testimony. We disagree.

Plaintiffs based their wrongful death action on Government Code section 845.6. This statutory section as a general matter immunizes public entities and public employees from liability "for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody." (Gov. Code, § 845.6.) There is an exception: "[A] public employee, and the public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care." (*Ibid.*) Plaintiffs in their complaint alleged liability under this exception, claiming that defendants failed to summon medical aid despite knowing plaintiffs' son was in need of immediate care.

Plaintiffs concede that to prevail on their claim they had to prove a "causal link" between defendants' failure to summon aid and their son's death. (See *May v. County of Monterey* (1983) 139 Cal.App.3d 717, 722 [proximate causation is necessary element of wrongful death claim under Gov. Code, § 845.6].) Under California law, to prove that a defendant's negligence caused a wrongful death, a plaintiff must "establish a 'reasonable medical probability' that the negligence was sufficient of itself

to bring about the death, i.e., the death was 'more likely than not' the result of the negligence." (*Bromme v. Pavitt* (1992) 5 Cal.App.4th 1487, 1498-1499 (*Bromme*), quoting *Jones v. Ortho Pharmaceutical Corp.* (1985) 163 Cal.App.3d 396, 402-403 (*Jones*).) In *Bromme*, the Court of Appeal held that a doctor could not be liable for negligently failing to diagnose a patient's fatal cancer when the patient more likely than not would have died even if the doctor had properly diagnosed her. (*Bromme*, *supra*, 5 Cal.App.4th at p. 1499.) Here, similarly, defendant would not be liable unless plaintiffs could prove that Luis more likely than not would have survived had the prison employees summoned medical aid sooner.

Plaintiffs could not prove this without expert testimony. "As a general matter, juries may decide issues of causation without hearing expert testimony. [Citation.] But '[w]here the complexity of the causation issue is beyond common experience, expert testimony is required to establish causation.' " (*Webster v. Claremont Yoga* (2018) 26 Cal.App.5th 284, 290.) Whether Luis's medical condition was such that timely medical intervention more likely than not would have saved him was a question " 'beyond common experience.' " (*Ibid.*) The jurors would need to hear expert medical testimony describing, among other things, Luis's medical condition, potential treatments for that condition, and the likelihood that those treatments would have prevented death assuming they were provided in a timeframe within which the prison employees reasonably might have summoned aid. (See *Lucas v. County of Los Angeles* (1996) 47 Cal.App.4th 277, 289-290 [in wrongful death case arising from fatal drug overdose of person in police custody, parties' experts opined as to whether timely medical intervention would have

saved decedent].) Absent such information, the question of causation " ' "remains one of pure speculation or conjecture," ' " which would be insufficient to support a judgment in favor of plaintiffs. (*Raven H. v. Gamette* (2007) 157 Cal.App.4th 1017, 1030.)

Plaintiffs argue that *Bromme* "was a medical malpractice case for a failure to diagnose cancer and its decision is specifically based on that characterization." Plaintiffs do not explain how *Bromme*'s posture as a medical malpractice case limits a broader application of its causation analysis. Indeed, *Bromme*'s analysis relied on *Jones*, which was a pharmaceutical products liability case, not a medical malpractice case. (*Jones*, *supra*, 163 Cal.App.3d at p. 399.)

Elsewhere in their brief plaintiffs state that, unlike in a medical malpractice case, they were not required to prove that the prison employees did not provide an appropriate standard of care. This argument is irrelevant because the trial court's ruling was based on causation, not standard of care. Similarly irrelevant is plaintiffs' argument that defendant "had a mandatory affirmative statutory duty to provide care under Government Code section 815.6."[3] Even assuming that statute applied, the trial court granted the motion for nonsuit based on plaintiffs' inability to prove causation, not duty.

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[3] Government Code section 815.6 provides: "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty."

DISPOSITION

The judgment is affirmed. Defendant is awarded its costs on appeal.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

JOHNSON, Acting P. J.

CURREY, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.