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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ROGER NAVAS-BALLADARES,

Plaintiff and Appellant,

v.

CHRISTOPHER MONTELLA,

Defendant and Respondent.

B268747

(Los Angeles County
Super. Ct. No. BC508911)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Mary Ann Murphy, Judge. Affirmed.

Mansell & Mansell, Robert Mansell; Berra Law and Paul S. Berra for
Plaintiff and Appellant.

Law Offices of Gregory J. Lucett, Nai Alamo-Hecht; Pollak, Vida &
Fisher, Michael M. Pollak and Hamed Amiri Ghaemmaghami for Defendant
and Respondent.

After they collided on a bicycle path, inline skater Roger Navas-Balladares sued bicyclist Christopher Montella for negligence. The jury concluded that Montella was not negligent, and the court denied Navas-Balladares's motion for judgment notwithstanding the verdict (JNOV) and a new trial. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

After the jury returned its verdict, Navas-Balladares filed a motion seeking a new trial and the entry of a partial JNOV on the ground that the evidence established that Montella had been negligent when he attempted to pass Navas-Balladares. The court denied the motion, and Navas-Balladares appeals. As the scope of this appeal requires us to consider only the evidence pertaining to the element of negligence, we limit our recitation of the evidence to that which is relevant to this issue. At trial, the evidence pertaining to the circumstances of the collision came from the parties involved.

Montella testified that he was an occasional cyclist riding on the Santa Monica bicycle path over Labor Day weekend in 2012. The path was busy with bicyclists and pedestrians, but in the area where Montella was riding traffic was "pretty light." As Montella rode, he noticed a small group of pedestrians and an inline skater, Navas-Balladares, traveling slowly. Montella loudly called out, "On your left," several times and approached the group. Navas-Balladares was traveling on the left edge of the lane, along the center dividing line. Keeping his speed constant, Montella moved into the oncoming lane of traffic on the bicycle path to pass. Montella believed that he had allowed an ample amount of space in order to pass the group.

As Montella passed Navas-Balladares, he "felt him [Navas-Balladares] get closer," saw that he was wearing an earphone in his left ear, and sensed that Navas-Balladares had crossed over the lane line to the left. Montella did not actually see any part of Navas-Balladares's body go over the center line into the other lane. He had nearly cleared the group of people—his handlebars and pedal had passed them—when he felt an impact on the back tire of the bicycle. "It felt like something caught the back tire of the bike. The back tire went out from under—under me; . . . causing the . . . bike to

sort of spin out. And as it spun out, I put my right leg down, stabilized myself, and that's when I saw Mr. Navas fall," Montella testified. Navas-Balladares's foot had made contact with Montella's bicycle.

Navas-Balladares testified that he regularly used the bicycle path for inline skating. On the day of the collision, the path was busy. Navas-Balladares was not wearing wrist guards and did not consider wearing them on the bicycle path because he was an experienced inline skater. He was skating in the vicinity of a pedestrian walkway across the bicycle path, and he slowed down for pedestrians who had merged onto the path. There were three pedestrians in front of Navas-Balladares and two to the right. Navas-Balladares judged that he did not have sufficient space to maneuver around the pedestrians and the oncoming traffic, so he slowed down to match the pedestrians' speed. Navas-Balladares was skating "a couple of feet" to the right of the center line of the path. Approximately five people were approaching in the opposite direction on the other side of the path.

Navas-Balladares had earphones with him that day, but they were not in use because the battery for his music player had run out; he was wearing the earphones hanging over his ears as he skated. Navas-Balladares heard someone say "On your left," two or three times; he looked ahead and to his right but had no place to move, so he continued straight ahead. Seconds after the person called out, Navas-Balladares felt an impact. Navas-Balladares testified, "I remember my leg getting—making contact with his bicycle, and my arm must have made contact with his—with the—his handle[bars]." He explained that he was confident that his arm hit the handlebars because of how it was injured, and then testified that he had a specific memory of his arm being hit by the handlebars of Montella's bicycle.

At trial, Navas-Balladares denied remembering if his left foot became caught on the bicycle wheel, although he had testified at deposition that it had. On cross-examination, he acknowledged that shortly after the accident he told the police that Montella struck his left foot as he passed, and that he had not mentioned his arm hitting the bicycle handlebars.

Navas-Balladares testified that immediately before the collision, two pedestrians had moved in from his right side into the bicycle path, but he denied that their movement caused him to move toward the center of the

bicycle path. He denied at trial having formed the intent to pass the pedestrians, but at deposition he had testified that he had intended to pass them.

Navas-Balladares had testified at his deposition that inline skaters move their feet outward from their cores to propel themselves forward; that at the time of the collision he had been approximately three feet away from the center line of the bicycle path; and that as he skated he swung his left foot approximately one and one-half feet outwards. At trial, however, Navas-Balladares testified that when the collision occurred, his legs were parallel and he was not moving them out to the side for propulsion because he was walking next to the pedestrians. Navas-Balladares testified both that he was traveling at the pedestrians' speed and that he was standing still at the time of the collision.

When asked at trial if the fact that none of the nearby pedestrians was involved in the collision suggested to him that the collision was caused by him moving his left foot out to the side, Navas-Balladares testified that he did not move his foot. He denied that it was possible that his leg passed over the bicycle path center line, and he testified that it was not possible that he had moved to the left, toward the center line, when the pedestrians moved in on his right.

DISCUSSION

I. JNOV: Sufficiency of the Evidence

Navas-Balladares argues that the trial court should have entered a partial JNOV on the issues of negligence and causation. “[W]here the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant’s evidence was (1) “uncontradicted and unimpeached” and (2) “of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.” [Citation.] [Citation.] The appellate court cannot substitute its factual determinations for those of the trial court; it must view all factual matters most favorably to the prevailing party and in support of the judgment. [Citation.] “All

conflicts, therefore, must be resolved in favor of the respondent.” [Citation.]’ [Citation.]” (*Dreyer’s Grand Ice Cream, Inc., v. County of Kern* (2013) 218 Cal.App.4th 828, 838.)

We have reviewed the record provided on appeal and conclude that the evidence did not compel a finding in Navas-Balladares’s favor as a matter of law. While a jury could have found negligence from the evidence presented, a reasonable jury also could have concluded that Montella had exercised due care in passing Navas-Balladares and the pedestrians but that as Montella passed, Navas-Balladares moved to the left a sufficient distance that when he extended his left foot to propel himself, he made contact with the rear wheel of Montella’s bicycle. As the evidence of negligence was neither “uncontradicted and unimpeached” nor “of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding,” (*ibid.*) Navas-Balladares has not demonstrated that the court erred in denying his motion for a partial JNOV.

Navas-Balladares, however, contends that the doctrine of *res ipsa loquitur* applies and that Montella’s negligence, as well as causation, were established as a matter of law. The *res ipsa loquitur* doctrine, a presumption affecting the burden of producing evidence (Evid. Code, § 646, subd. (b)), applies only when three conditions have been satisfied: “(1) the accident must be of a kind which ordinarily does not occur in the absence of someone’s negligence; (2) it must be caused by an agency or instrumentality within the exclusive control of the defendant; (3) it must not have been due to any voluntary action or contribution on the part of the plaintiff.” [Citation.]” (*Newing v. Cheatham* (1975) 15 Cal.3d 351, 359.) The existence of these conditions is ordinarily a question of fact for the jury, but “[w]here no issue of fact has been raised” as to the conditions, they may exist as a matter of law. (*Id.* at pp. 360-361.) How the accident occurred and who caused it were vigorously contested at trial, and the evidence did not establish the three conditions for the application of *res ipsa loquitur* as a matter of law. As the trial court said, “This was in no way, shape, or form a *res ipsa loquitur* case. This was in no way, shape, or form a case that could only have happened the way the plaintiff said it happened. This was a definite ‘he said, she said,’ and

the jury believed the defendant.” Navas-Balladares has not demonstrated any error.

II. Motion for a New Trial

In the alternative, Navas-Balladares contends that the trial court abused its discretion when it denied his motion for a new trial because “the full weight of the evidence was squarely against the jury’s finding that Montella was not negligent.” Code of Civil Procedure section 657 provides, “A new trial shall not be granted upon the ground of insufficiency of the evidence to justify the verdict or other decision, nor upon the ground of excessive or inadequate damages, unless after weighing the evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision.” “A trial court has broad discretion in ruling on a new trial motion, and the court’s exercise of discretion is accorded great deference on appeal. [Citation.] An abuse of discretion occurs if, in light of the applicable law and considering all of the relevant circumstances, the court’s decision exceeds the bounds of reason and results in a miscarriage of justice. [Citations.] Accordingly, we can reverse the denial of a new trial motion based on insufficiency of the evidence . . . only if there is no substantial conflict in the evidence and the evidence compels the conclusion that the motion should have been granted.” (*Fassberg Construction Co. v. Housing Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720, 752.)

Here, the trial court ruled, “In weighing and evaluating the evidence, the court is a trier of fact, not bound by the resolution of the jury. And I cannot say that I am convinced from the entire record, including reasonable inferences, that the jury clearly should have reached a different verdict or decision. [¶] And this is not even a close call” As we have already discussed, the evidence did not establish that Montella was negligent as a matter of law. Given the substantial conflict in the evidence, the evidence does not compel the conclusion that the motion for a new trial should have been granted. The trial court did not abuse its discretion in denying the motion for a new trial.

DISPOSITION

The judgment is affirmed. Respondent shall recover his costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.