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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

HENRY EATON et al.,
Plaintiffs and Appellants,

v.

CITY OF VACAVILLE,
Defendant and Respondent.

A131518

(Solano County
Super. Ct. No. FCS033815)

Plaintiff and appellant Henry Eaton was injured in a motor vehicle accident on Peabody Road in Vacaville. Eaton was riding northbound on a motorcycle when he collided with Alfatoon Edalat, who had been driving southbound in an automobile and was making an unlawful left turn across a set of double-double yellow lines denoted by Bott's dots. The two double lines extend south from a concrete median and also form the left boundary of a left turn lane that extends approximately 75 feet further south, at which point the double lines open for left turns and there is a prominent left turn arrow painted on the roadway. In other words, instead of entering the left turn lane and turning left across the northbound lanes at the point indicated by the large arrow painted on the roadway, Edalat attempted to cut across Peabody just past the concrete median where the space between the two double lines is the greatest. Edalat has never disputed that he was making an illegal left turn, never expressed any confusion about the roadway markings, and never claimed there was any obstruction of his view down Peabody. Rather, he claimed Eaton must have been speeding because he seemed to come out of nowhere.

Eaton sustained significant injuries, and he and his wife, plaintiff and appellant Anna Eaton, sued the city, alleging the accident was caused, at least in part, by a dangerous condition of public property. The city moved for summary judgment on several grounds, including that there was no dangerous condition of public property at the accident site as a matter of law and the city was protected from liability, in any event, by design immunity. The trial court granted the motion on the ground there was no dangerous condition as a matter of law and therefore did not reach any other issue. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

At about 10:00 a.m. on November 9, 2008, Eaton and Edalat were driving in opposite directions on Peabody. Eaton was driving northbound on a motorcycle. Edalat had been driving southbound in an automobile and was attempting to turn left across oncoming, northbound traffic, into a driveway for a “mall” parking lot (referred to by the parties as the “99-cent” mall). Eaton struck the passenger side of Edalat’s car and sustained serious injuries.

The collision occurred approximately 233 feet south of the intersection of Peabody and Marshall Road. At this location, Peabody is a four-lane thoroughfare, with two traffic lanes heading north and two lanes heading south. For the first 220 feet or so south of the intersection, a raised concrete median separates the southbound and northbound lanes. When the raised median was first installed by the city in 2001, it was about 170 feet long. In 2006, the city required a developer to lengthen the median by approximately 50 feet as a condition of approving a gas station on the east side of Peabody, to physically prevent users from making unlawful turns across the northbound lanes.

Double yellow lines denoted by Bott’s dots take up where the raised concrete median leaves off. The space between the two double lines is greatest at the point where they start to extend south from the raised median. Within a relatively short distance, the space between the two double lines narrows and they run parallel to one another. A

double-double yellow line, regardless of how rendered—with paint or Bott’s dots—denotes a divided highway, and it is unlawful to turn left across oncoming traffic. (See Veh. Code, § 21651.)

The double-double line extending south of the concrete median also marks the left side of a left turn lane for southbound traffic. This left turn lane (making southbound Peabody three lanes wide for the length of the turn lane) commences at the end of the concrete barrier, where there is an opening for southbound traffic to enter the turn lane. The turn lane, bounded on the left by the double-double line of Bott’s dots and on the right by a single line of dots, extends south for about 75 feet, where there is an opening in the double-double line of Bott’s dots for left hand turns and which is also marked, at that point, by a large left hand turn arrow painted on the roadway. This left turn lane allows access to another driveway for the same “mall” parking lot as the driveway Edalat attempted to enter when he cut across the double-double line.

Police Officer Andrew Talton investigated the collision. From the accident site, he could look southward down Peabody and see the roadway without obstruction for three-quarters of a mile, up to a bend. He spoke to Edalat, who admitted he could also see to the bend. Edalat stated he thought the northbound lanes were clear, and Eaton must have been speeding because he seemed to come out of nowhere. Officer Talton told Edalat he had illegally crossed a double-double yellow line and cited him for the violation. Edalat “never claimed he did not know the area was a divided highway, and he made no denials at all that he had crossed over it.” Edalat also never said he had not seen the double-double line. Nor did he complain of missing Bott’s dots or blame his illegal left turn on the road markings or lack thereof.¹

¹ Throughout the summary judgment proceedings, the parties disputed whether Edalat’s statements to Officer Talton were admissible and whether Talton could testify as to what Edalat did not say. The trial court, without explanation, issued a split ruling, allowing Talton to report on Edalat’s claimed reasons for making the turn, where Edalat stated he made the turn, and Edalat’s ability to see down Peabody Road, but preventing

On June 29, 2009, Eaton and his wife filed a complaint against the city. They alleged the collision was caused by roadway conditions and claimed Peabody, at the crash site, was “in a dangerous, defective and unsafe condition” because of “inadequate striping, no delineators, no traffic island, . . . and no left turn signs.”

The city answered and, on August 24, 2010, moved for summary judgment or, in the alternative, summary adjudication of issues. The city mainly argued the Eatons lacked evidence supporting a claim of dangerous condition of public property under Government Code section 835² and, even if there was a triable issue as to the existence of a dangerous condition, as an affirmative defense, the city was entitled to design immunity under section 830.6.³

The city submitted deposition testimony from its deputy director of public works, who, viewing the crash site several months after the accident,⁴ thought “the delineation is

Talton from reporting what Edalat never said. We conclude Talton’s statements, to the extent we recount them here, were admissible. Evidence Code section 1224 allows testimony about statements a declarant makes if a party’s civil liability “is based in whole or in part upon the liability, obligation, or duty of the declarant, or when the claim or right asserted by a party to a civil action is barred or diminished by a breach of duty by the declarant.” (Evid. Code, § 1224; see *Dincau v. Tamayose* (1982) 131 Cal.App.3d 780, 788 [nurse could testify about father’s statement to her in malpractice action against doctor when father’s testimony bore on the cause of his child’s injury].) Testimony about what was *not* said does not implicate the hearsay rule. (*Browne v. Turner Construction Co.* (2005) 127 Cal.App.4th 1334, 1348-1349 [challenged testimony did not recount “a statement”]; see also *People v. Snow* (1987) 44 Cal.3d 216, 227 [silence is not hearsay].) On appeal from a summary judgment ruling, “we must disregard any evidence to which a sound objection was made in the trial court, but must consider any evidence to which no objection, or an unsound objection, was made.” (*McCaskey v. California State Automobile Assn.* (2010) 189 Cal.App.4th 947, 957.)

² All further statutory references are to the Government Code unless otherwise noted.

³ As we will discuss, we do not reach the immunity defense, and therefore we do not recite the facts related to it.

⁴ Much of the evidence of the condition of Peabody Road comes from observations made well after the accident. According to Eaton, in whose favor we must

clear” despite “some missing dots,” and decided a project to replace missing dots was unnecessary.

Eaton, in turn, submitted the declaration of a traffic engineer who reviewed photographs of the crash site. The engineer opined the fact the raised concrete median ends just short of where the “mall” driveway across the northbound lanes begins makes “it appear[] to a driver that the city is inviting motorists to” use that driveway. He believed the city should have extended the median another 10 to 12 feet to physically prevent the sort of left turn Edalat made. The engineer also declared the photos showed too many missing Bott’s dots. “Because the Botts’ Dots are so poorly maintained, a motorist could easily conclude that it was okay to turn” into the driveway toward which Edalat was headed. The engineer asserted the “lack of double-double yellow lines was a substantial factor in the accident.”

Both the city and Eaton submitted photographs of the collision site. They show several individual Bott’s dots are missing from the yellow double-double line. However, most of the dots are in place, and they clearly depict the two double lines extending south from the concrete median, as well as the left turn lane bounded by the double-double line on the left and by a single row of dots on the right and marked with a prominent left hand arrow painted on the roadway where dots are not present to allow a left turn into another driveway for the “mall” parking lot.⁵

On November 23, 2010, the trial court granted the city’s motion. Referencing the photographs of the crash site, it ruled “[t]hough some ‘bot dots’ [*sic*] may have been missing, the intended double yellow lines are evident.” Further citing the lack of visual

draw all reasonable inferences in reviewing a grant of summary judgment, the road’s condition did not materially change during the interval.

⁵ An appellate court “reache[s its] own independent conclusions” about the content of photographs. (*Kasparian v. AvalonBay Communities* (2007) 156 Cal.App.4th 11, 25; *City of South Lake Tahoe v. Superior Court (Markham)* (1998) 62 Cal.App.4th 971, 979.)

obstructions at the crash site, the court, concluded, as a matter of law, Eaton could not establish a dangerous condition of public property, even viewing the evidence in a light most favorable to him. The court entered final judgment in favor of the city and against the Eatons on January 12, 2011. The Eatons filed a timely notice of appeal on March 11, 2011.

DISCUSSION

Standard of Review

Summary judgment or summary adjudication of issues is proper only if there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subs. (c), (f).) “On appeal after a motion for summary judgment has been granted, we review the record de novo” (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.) “[W]e determine with respect to each cause of action whether the defendant seeking summary judgment has conclusively negated a necessary element of the plaintiff’s case, or has demonstrated that under no hypothesis is there a material issue of fact that requires the process of trial, such that the defendant is entitled to judgment as a matter of law.” (*Ibid.*) We draw all reasonable inferences from the evidence in the light most favorable to the opposing party. (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 470.)

Dangerous Condition of Public Property

As we have recited, Eaton pleaded only one substantive cause of action—for a dangerous condition of public property under section 835.⁶

“A public entity is generally liable for injuries caused by a dangerous condition of its property if ‘the property was in a dangerous condition at the time of the injury, . . . the injury was proximately caused by the dangerous condition, . . . the dangerous condition

⁶ His wife’s cause of action for loss of consortium is also based on this substantive claim.

created a reasonably foreseeable risk of the kind of injury which was incurred, and . . . either: [¶] . . . [a] negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or [¶] . . . [t]he public entity had actual or constructive notice of the dangerous condition [in time to prevent the injury].’ (Gov. Code, § 835.)” (*Sun v. City of Oakland* (2008) 166 Cal.App.4th 1177, 1183 (*Sun*).

A “ ‘ “dangerous condition,” as defined in section 830, is “a condition of property that creates a substantial . . . risk of injury when such property or adjacent property is used with due care” in a “reasonably foreseeable” manner. (§ 830, subd. (a).)’ [Citation.] ‘The existence of a dangerous condition is ordinarily a question of fact; however, it can be decided as a matter of law if reasonable minds can come to only one conclusion concerning the issue.’ [Citations.]” (*Sun, supra*, 166 Cal.App.4th at p. 1183, fn. omitted.) “ ‘This is to guarantee that cities do not become insurers against the injuries arising from trivial defects.’ ” (*Davis v. City of Pasadena* (1996) 42 Cal.App.4th 701, 704.)

“A condition is not a dangerous condition . . . if the trial or appellate court, viewing the evidence most favorably to the plaintiff, determines as a matter of law that the risk created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used.” (§ 830.2.)

Further, “a condition is not a dangerous condition . . . 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 Section 21460 of the Vehicle Code.” (§ 830.4.) The referenced Vehicle Code section describes markings for, among other things, “double parallel solid

yellow lines” and “[r]aised pavement markers” simulating those lines. (Veh. Code, § 21460, subds. (a), (e).)

The photographs of the crash site compel us, as they did the trial court, to conclude there was no dangerous condition of public property at the site of the collision. The few missing Bott’s dots just south of the concrete median were an insignificant defect that did not create a substantial risk of injury. (§ 830.2.) As the trial court concluded, even with the missing dots, the double-double yellow line is “evident,” as is the left turn lane provided for entry into the “mall” parking lot and which Edalat should have used. Further, sight along Peabody is wholly unobstructed until the road bends considerably south of the collision site. (*Markham, supra*, 62 Cal.App.4th at p. 979 [“Having viewed the photographs of the intersection, we have no hesitancy in concluding as a matter of law that the crossing of Third and Eloise is obvious, that there is nothing which would prevent the observant motorist from becoming aware of it at a safe distance before the intersection is entered, and that no reasonable person could find that it constituted a dangerous condition.”].)

Although Eaton’s traffic engineer opined the missing Botts’ dots could have confused a driver and caused Edalat to make the unlawful and ill-fated left turn, “expert opinions on whether a given condition constitutes a dangerous condition of public property are not determinative.” (*Sun, supra*, 166 Cal.App.4th at p. 1189.) Even on summary judgment, “ ‘that a witness can be found to opine that . . . a condition constitutes a significant risk and a dangerous condition does not eliminate this court’s statutory task, pursuant to section 830.2, of independently evaluating the circumstances.’ ” (*Sun*, at p. 1189.) As the photographs show, most of the Bott’s dots are in place, and the few missing dots do not alter the fact the double-double line is readily apparent, as is the left turn lane Edalat failed to use.

The Eatons claim a “combination” of factors beyond the missing Bott’s dots rendered Peabody Road dangerous. There is no evidence, however, of any visual

obstructions or other hazards often implicated in dangerous condition cases. (See *Sun*, *supra*, 166 Cal.App.4th at p. 1190 [“For example, appellants did not allege or produce any specific facts describing any particular trees, shrubbery, shadows or insufficient lighting”].) Rather, the “combination” of factors they primarily focus on is the fact the concrete median ends and Bott’s dots begin, and that this change in the roadway barrier (from raised concrete median to Bott’s dots) is across from one of the driveways to the “mall” parking lot. They contend this change in the barrier, plus several missing Bott’s dots, plus the driveway situated across the two northbound lanes, essentially “invited” or “beckoned” motorists to make a left turn. The photographs simply do not support this assertion. On the contrary, they clearly show a set of double-double lines, plus a well-marked left turn lane allowing left turns a short distance to the south into another driveway to the “mall” parking lot.

While the Eatons’ expert opined the city should have extended the concrete median further in 2006, past not only the entrances to the gasoline station but also past the driveway to the “mall” parking lot that Edalat had aimed for, and suggested the fact the raised median ends invites left turns, he stopped short of saying the transition from raised median to a double-double yellow line is unsafe. Nor did he say that configuration contributed to the accident.

The Eatons contend they have adequately raised a triable issue under what they call a *Ducey/Bonanno/Cole*⁷ theory, referencing the cases on which they place particular emphasis. To begin with, these cases do not establish any kind of alternative theory of liability. The Eatons pleaded a single substantive cause of action—for dangerous condition of public property under section 835. These cases are also dangerous condition cases, but involve distinctly different circumstances.

⁷ *Ducey v. Argo Sales Co.* (1979) 25 Cal.3d 707 (*Ducey*); *Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139 (*Bonanno*); and *Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749 (*Cole*).

In *Ducey, supra*, 25 Cal.3d 707, the Supreme Court upheld a jury's finding that the absence of a median barrier on the heavily-trafficked Nimitz Freeway created a dangerous condition and contributed to injuries suffered in a cross-median, head-on accident. In that case, during the preceding four years there had been a 40 percent increase in the number of accidents along the stretch of the freeway where the accident occurred, and during a three-year period spanning part of that time period there had been 18 head-on accidents. (*Id.* at p. 713.) In addition, the Department of Transportation had knowingly violated its own guidelines calling for the construction of a median barrier at the crash site. (*Ibid.*) In contrast, even taking into account that Peabody has two northbound and southbound lanes, the city street is not remotely similar to the high-speed, traffic-jammed Nimitz Freeway. There is no evidence of prior accidents at the site of the collision.⁸ And there is no evidence of any regulation or guideline prohibiting the city's combined use of a raised median and double-double line to create a legal barrier on Peabody.

In *Bonanno, supra*, 30 Cal.4th at pages 146-147, 156, the Supreme Court upheld a jury verdict that a transit authority had created a dangerous condition by maintaining a bus stop near a city's concededly dangerous crosswalk. The court explained, the "location of public property, by virtue of which users are subjected to hazards on adjacent property [the city's property], may constitute a 'dangerous condition.'" (*Id.* at p. 154 [noting "the necessity of proving the *public* entity's ownership or control of the dangerous property"], first italics omitted, second italics added.) In other words, it was the transit authority's maintenance of a bus stop next to and accessed by a concededly dangerous crosswalk that caused the bus stop to also become a dangerous condition. Here, in contrast, not only is the driveway and parking lot for the "mall" private property,

⁸ While Eaton testified he had seen other drivers "on at least a dozen occasions" make the same illegal left turn Edalat attempted, there was no evidence of any previous accidents at the location.

but the few missing Botts' dots in the double-double lines were of no significant consequence and did not create a condition remotely comparable to the admittedly dangerous crosswalk in *Bonanno*. While the dangerous crosswalk and bus stop accessed thereby combined to create a dangerous condition in *Bonanno*, no such combination arose here. (Cf. *id.* at p. 147 [court “assume[d] the existence of a dangerous crosswalk”].)

Cole, supra, 205 Cal.App.4th 749, involved a two-lane street bounded by a gravel area that was used as a parking area for an adjacent city park and also used by eastbound drivers to pass on the right cars stopped to make left turns against oncoming traffic. (*Id.* at pp. 754-755.) The town “encouraged” parking in the gravel area, and, in particular, tacitly approved of the common practice of parking cars at an angle. Given the danger to park users, particularly when placing items into the rear of a vehicle because of the angled parking, from eastbound drivers passing to the right, the court held there was a triable issue that the dual uses of the city’s property gave rise to a dangerous condition and reversed a summary judgment. (*Id.* at pp. 759-761, 774.) As in *Bonanno*, and unlike here, all of the property at issue in *Cole* was public. (*Cole*, at p. 759-761, 774 [“all of the property involved here belonged to Town”].) Further, there was evidence of at least one similar accident at the site (*id.* at p. 780), as well as evidence that the graveled area for parking area “failed in numerous respects to conform to governing laws and standards,” including state law requiring “parallel parking . . . in the absence of a resolution or ordinance expressly providing otherwise, but Town had neither adopted such an ordinance nor taken steps to prevent or discourage angle parking” (*id.* at p. 762-763, 780). In contrast, no such issues exist here in connection with the private driveway and parking lot Edalat was attempting to access.

The Eatons also urge that because the trial court failed to rule on design immunity, reversal and remand is necessary, at the very least, on that issue. This assertion misperceives the claim of design immunity raised in this case. As noted, the Eatons

pleaded a single substantive claim, for dangerous condition of public property under section 835. In its answer, the city raised design immunity under section 830.6 as its sixteenth affirmative defense. The city likewise raised design immunity under section 830.6 as an alternative ground for summary judgment. Thus, argued the city, even if there was a triable issue that there was a dangerous condition on Peabody at the scene of the accident, the city nevertheless was still entitled to summary judgment by virtue of the protection afforded by section 830.6. In other words, the issue of design immunity was not a claim made by the Eatons, but an alternative affirmative defense raised by the city. As the trial court recognized, there was no need to reach that defense if it concluded there was no triable issue that there was a dangerous condition on Peabody. (See *McKray v. State of California* (1977) 74 Cal.App.3d 59, 63 [no dangerous condition, so “we need not discuss the state’s exemption under design immunity”].) Accordingly, the trial court did not err by not ruling on design immunity. Because we also conclude, like the trial court, that section 830.2 applies here and there is no triable issue of a dangerous condition, we also need not, and do not, address the city’s design immunity defense.

Causation

Even if we were to conclude there is a triable issue as to whether a dangerous condition existed on Peabody Road, we would still conclude summary judgment for the city is proper because the Eatons produced no evidence their injuries were “proximately caused by the dangerous condition.” (§ 835.)

“To establish causation, a plaintiff must prove that the defendant’s conduct was a ‘substantial factor’ in bringing about his or her harm. [Citations.] Stated differently, evidence of causation ‘must rise to the level of *a reasonable probability based upon competent testimony*. [Citations.] “A possible cause only becomes ‘probable’ when, in the absence of other reasonable causal explanations, it becomes more likely than not that the injury was a result of its action.” [Citation.] [A party’s] conduct is not the cause in

fact of harm “ ‘where the evidence indicates that there is less than a probability, i.e., a 50-50 possibility or a mere chance,’ ” that the harm would have ensued.’ ” (*Bowman v. Wyatt* (2010) 186 Cal.App.4th 286, 312 (*Bowman*).)

“In reviewing evidence of causation, ‘we consider both direct and circumstantial evidence, and all reasonable inferences to be drawn from both kinds of evidence, giving full consideration to the negative and affirmative inferences to be drawn from all of the evidence, including that which has been produced by the defendant.’ [Citation.] We cannot, however, draw inferences ‘from thin air.’ [Citation.] As one court has explained, ‘Where . . . the plaintiff seeks to prove an essential element of [his] case by circumstantial evidence, [he] cannot recover merely by showing that the inferences [he] draws from those circumstances are consistent with [his] theory. Instead, [he] must show that the inferences favorable to [him] are more reasonable or probable than those against [him].’ [Citation.]” (*Bowman, supra*, 186 Cal.App.4th at p. 312; see also *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 774 [“California cases support the rule that the plaintiff must establish, by nonspeculative evidence, some actual causal link between the plaintiff’s injury and the defendant’s failure”]; *Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 133 [“[e]vidence of causation must rise to the level of a reasonable probability based upon competent testimony”].)

In *Bowman*, the Court of Appeal reversed a dangerous condition jury verdict on the ground there was no substantial evidence the allegedly dangerous condition of public property—defective brakes on a dump truck—caused the collision between the truck and a motorcyclist. (*Bowman, supra*, 186 Cal.App.4th at pp. 310-314.) The plaintiff offered no “direct evidence that faulty brakes caused the collision” but rather “asked the jury to infer from the brake defects discovered after the accident that defects existed before the accident and were the accident’s cause.” (*Id.* at p. 312.) While there was substantial evidence the brakes were defective (*id.* at p. 310-311), there was no substantial evidence linking the brakes with the accident (*id.* at pp. 313-314). Rather, witnesses testified the

driver looked to the right, saw the vehicle behind the motorcycle but did not see the motorcyclist, and rolled slowly through the intersection without stopping. There was no testimony the driver ever made any effort to apply his brakes. (*Id.* at pp. 311-312.) “[T]here simply was not evidence from which a reasonable jury could have concluded that defective brakes, rather than [the truck driver’s] failure to see [the motorcyclist] approaching the intersection, was the probable cause of the accident.” (*Id.* at p. 314.)

Similarly in *City of San Diego v. Superior Court* (2006) 137 Cal.App.4th 21—an allegedly dangerous condition case involving defective street lighting and an illegal street race gone wrong—the Court of Appeal granted a petition for writ of mandate and directed that the city’s motion for summary judgment be granted. “[E]ven if we were to conclude a defective physical condition exists for failure to install lighting, there is no evidence the racers were influenced by the absence of street lights.” (*Id.* at p. 31.) A concurring justice noted, “[s]ince the driver was killed” and therefore could not testify, “[t]o implicate street lighting as a proximate cause of the collision is to speculate.” (*Id.* at pp. 32-33 (conc. opn. of McIntyre, J).)

As in *Bowman* and *City of San Diego*, there is no substantial evidence the alleged dangerous condition of Peabody—the concrete median and double-double yellow line of Bott’s dots and/or that several of the individual dots were missing—was a proximate cause of the collision. The fact the Eatons’ traffic engineer opined “[i]t is my belief that the lack of double-double yellow lines was a substantial factor in the accident” does not raise a triable issue. First, as we have discussed, the characterization that there is a “lack” of a double-double yellow line is simply not borne out by the photographs of the roadway; rather, it is apparent from the photographs that there is a readily discernable double-double yellow line of Bott’s dots, the vast majority of which are intact. Second, the assertion that the individual missing Bott’s dots were a substantial factor in the accident is pure speculation. “[E]xpert opinion” on causation “resting solely on speculation and surmise is inadequate to survive summary judgment because it fails to

establish a ‘ “reasonably probable causal connection” ’ between the [alleged] negligence and the plaintiff’s injury.” (*Saelzler v. Advanced Group 400, supra*, 25 Cal.4th at p. 775, quoting *Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 487.)

Although, as in the *City of San Diego*, we have no testimony from the driver making the illegal left turn, there was, as in *Bowman*, third party testimony touching on causation from Officer Talton, who arrived on the scene shortly after the accident, spoke with Edalat and inspected the scene himself. When he was cited, Edalat never disputed that he was making an illegal left turn. He never pointed out any missing Bott’s dots, claimed confusion, or contended he thought a left turn was permissible. Rather, he consistently reiterated he thought the opposite traffic lanes were clear, and Eaton must have been speeding because he seemed to come out of nowhere. In short, there is no evidence in the record from which a reasonable jury could conclude that the few missing Bott’s dots, “rather than [Edalat’s] failure to see [Eaton] approaching the intersection, was the probable cause of the accident.” (*Bowman, supra*, 186 Cal.App.4th at p. 314.)

We understand, as the Supreme Court explained in *Bonanno*, that “the fact plaintiff’s injury was immediately caused by a third party’s negligent or illegal act” does not “render the present case novel,” as “[n]o shortage exists of cases recognizing a dangerous condition of public property in some characteristic of the property that exposed its users to increased danger from third party negligence or criminality.” (*Bonanno, supra*, 30 Cal.4th at p. 152.) However, the court went to great lengths to make clear it was not addressing the causation element of a premises liability claim, but rather the existence of a dangerous condition. (*Id.* at p. 154 [“we have addressed in this case only one element of liability under section 835, the existence of a ‘dangerous condition’ of public property”].) As we have already discussed, the circumstances that existed in *Bonanno* are distinctly different than those here, and the case does not support the dangerous condition claim advanced by the Eatons.

DISPOSITION

The judgment is affirmed. Respondent to recover its costs on appeal.

Banke, J.

We concur:

Marchiano, P. J.

Margulies, J.