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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

ALEXANDRA LAKE,

Plaintiff and Appellant,

v.

FORREST R. MORPHEW et al.,

Defendants and Respondents.

A145121

(Marin County  
Super. Ct. No. CIV1300295)

Alexandra Lake tried to prove to a jury that she and her daughter were injured in separate incidents involving a fall from a staircase and a shock from a defective electrical outlet, and that her landlords Forrest and Ephimia Morpew were liable under theories of negligence, premises liability, breach of the implied warranty of habitability and concealment. The jury found the Morpews breached their duties owed to the Lakes, but that their breach did not cause the alleged injuries. Accordingly, judgment was entered for the Morpews.

On appeal, Lake contends the jury's findings on causation were unsupported by the record and that the court admitted unduly prejudicial evidence about her earnings and finances. Neither contention has merit, so we affirm.

**BACKGROUND**

Our following summary of the evidence is provided in accord with the substantial evidence standard, i.e., we view the record in the light most favorable to the prevailing party, resolving all conflicts and drawing all reasonable inferences in favor of the judgment. (*Zagami, Inc. v. James A. Crone, Inc.* (2008) 160 Cal.App.4th 1083, 1096.)

In 2008 Lake and her six-year-old daughter Jazea rented an apartment on Greenwood Beach Road in Tiburon from the Morphews. Since they bought the property in 1965, the Morphews lived in the building's upper stories and rented out four other units, including Lake's.

*Jazea's Fall*

An exterior staircase led from the street level down to the entrance to Lake's unit. The stairs and handrail were not compliant with the building code. In December 2010 Jazea fell from the second to last step and struck her forehead on a metal gate at the bottom landing. She sustained shallow abrasions on her forehead and some swelling in her cheek. Lake took her to the hospital, where she was given a tetanus shot.

Jazea testified she lost her balance and slipped while walking downstairs with her mother, and that there was nothing she could grab onto as she fell. She and Lake testified the gate was rusted, it was raining that day, and the stairs were wet.

Craig Brennan, the Morphews' handyman, often saw Jazea running up and down the stairs. The day of Jazea's accident was dry. Just before she fell, Brennan saw Jazea chasing her dog down the stairs, followed by Lake. He did not see the impact, but immediately after he heard Lake tell Jazea to come with her so they could tell the Morphews what had happened. Brennan saw them run up the stairs. Jazea had a small red mark on her cheek, but no blood or obvious swelling.

Brennan had installed the prefabricated painted metal gate from Home Depot. He testified it was brand new, "right out of the box," and not rusted. Lake took photographs of the gate, the stairs and Jazea's face immediately after she fell. The photographs showed the steps were dry. On cross-examination, Lake said the photos, which she provided to her attorney, had been photoshopped or "just printed out wrong."

In August 2010, approximately four months before Jazea's fall, Lake drafted an email to the Morphews in which she said that for the past two years, "[r]ain or shine," "neither Jazea nor I have had any problems whatsoever navigating the steps . . . We did fine/excellent in navigating those steps for two years." Lake testified in her deposition

that she wrote this while she was trying to persuade the Morphews to remove the gate. She considered it to be dangerous, and it blocked her view.

### *Lake's Electric Shock*

Lake complained to the Morphews several times about sparks coming out of her apartment's electrical outlets. Forrest Morphew was also aware of a problem with an outlet in the unit below Lake's. On January 24, 2011, Lake received an electrical shock when she plugged in a space heater. As she described the incident at trial, sparks flew out, "the coil of the heater burst into an orangey-blue flame, burnt out the coil" and the entire dining room and kitchen area filled with smoke. Lake thought she was going to die. She felt an intense and sharp pain move through her hand and arm into her neck and was unable to let go of the plug for what "[s]eemed like an eternity, but I'm sure it was a matter of seconds." Lake fell over writhing in pain and could not get up for three to five minutes.

Lake drove Jazea to school and then went to the hospital, where she was diagnosed with an electric shock injury to her left hand. The treating physician noted that Lake reported pain extending from her neck down her left arm and hand. There were no burns or other skin abnormality. An EKG was normal and blood tests ruled out muscle damage. Lake was referred to a neurologist and physical therapist.

The next day an electrician discovered improperly spliced, charred wires behind the receptacle where Lake said she was shocked, and faulty wiring in other outlets. The electrician had never seen sparks and flame shoot from a space heater when it was plugged in, as Lake had described the event.

Lake's monthly rent was \$2,495, due on the first of the month with a one-week grace period. With the exception of one or two months when she paid on time, Lake paid her rent late and in installments of various amounts spread out over the month. On January 6, 2011 she paid the Morphews \$1,000 toward her January rent. On January 26 she gave them another \$1,530, but the next day she stopped payment on the check. After that, Lake stopped paying rent. She was evicted in April. When Lake was moving out,

Craig Brennan heard her tell Mr. Morpew, “ ‘I’m going to take you for everything you have, old man.’ ”

### ***The Lawsuit***

Lake sued the Morphews, claiming the shock caused permanent chronic pain, swelling, temperature change and discoloration in her left arm consistent with a condition called Chronic Regional Pain Syndrome (CRPS), or, formerly, sympathetically mediated pain. At trial she sought a million dollars for pain and suffering. She also contended her injuries prevented her from developing a series of inspirational videos, a project called The Miracle Files, into which she had invested time she valued at \$28,000. Jazea, through a guardian ad litem, sought damages for injuries allegedly sustained in her fall on the staircase.

### ***The Medical Testimony***

*Lisa Elvin*

Nurse practitioner Lisa Elvin treated Lake nine times between July 2012 and December 2013. Lake told Elvin her arm pain started after the January 2011 electric shock incident. Elvin agreed with previous treatment recommendations of physical therapy, pain relievers, transcutaneous electrical nerve stimulation, acupuncture and biofeedback. On some visits Lake’s left hand was slightly purplish and cold to the touch. On other visits Lake reported weakness in her fingers. Elvin believed that Lake might have CRPS. Lake’s symptoms would wax and wane, but her condition was permanent.

Lake also suffered from arthritis and stenosis in her cervical vertebrae, which could cause the arm weakness, pain and sensory loss she reported, although not the color and temperature changes in her hand. In addition, Lake had a long history of scoliosis resulting in low back pain. The degenerative changes in her spine predated the electrical shock incident. Tests for nerve damage were negative. Elvin conceded that CRPS is a controversial and misunderstood diagnosis.

*Dr. Lee*

Dr. David Lee is an anesthesiologist and pain medicine specialist at the UCSF Pain Management Center. He treated Lake from April 2012, about 15 months after the

alleged shock, until February 2013. On Lake's first visit Dr. Lee noted differences in skin color and temperature between Lake's hands, left upper extremity weakness, and neck pain. Her history and physical examination suggested "a component of" CRPS, whose symptoms are unexplained pain not otherwise diagnosable, blood vessel constriction or dilation, swelling or sweating in an extremity, and motor restrictions or atrophic changes in one extremity relative to the other. Dr. Lee had not seen any patients who sustained CRPS from a shock from a household appliance, and he did not attribute Lake's CRPS to an electric shock. Lake also had fairly advanced degenerative changes in her neck with narrowing of the neural foramen, where nerves exit the vertebrae.

*Caryl Sircus*

Lake also called physical therapist Caryl Sircus. Sircus provided Lake several courses of treatment between 2011 and 2013. Lake's symptoms included spasm in her left upper trapezius, decreased range of motion on the left side, pain, swelling and redness of her left arm, and compromised vascularization in her left hand.

*Dr. Rutchik*

Dr. Jonathan Rutchik testified for Lake as an expert witness in neurology and occupational medicine. He opined it was reasonably certain that Lake had CRPS caused by an electrical injury. He did not think her symptoms were consistent with the abnormalities in her cervical spine. Dr. Rutchik had not seen Lake's primary care medical history that predated the alleged shock, including an August 2004 record from Marin General Hospital documenting that Lake reported pain and numbness in her left arm and hand and swelling and discoloration in her left hand. He believed Lake's prognosis was at best fair, and that she would continue to experience symptoms and require treatment for a significant time. Dr. Rutchik agreed that CRPS is a misunderstood and controversial condition whose diagnosis depends heavily on the patient's credibility.

*Dr. Duncan*

The defense called Lake's treating physician, neurologist Max Duncan. Dr. Duncan saw Lake between February 2, 2011, and March 14, 2012. Aside from Lake's

subjective complaints, nothing in her examinations or diagnostic tests corroborated her report of sustaining an injury from a shock, or indicated a medical condition that was aggravated by a shock. An MRI showed calcification and thickening of the spinal ligaments in the cervical spine and two prominent disc bulges that long predated the alleged shock. Those degenerative changes would explain Lake's arm, hand and neck pain and were consistent with her reports of symptoms that came and went over time.

Dr. Duncan never observed color or temperature changes in Lake's left hand and did not believe such changes, if they occurred, could be caused by an electric shock a year earlier. When Dr. Duncan last saw Lake in March 2012 everything was normal aside from some very vague and subjectively reported sensory losses in her forearm. He "definitively" did not think Lake's problems were caused by the electric shock and none of his findings suggested Lake suffered from CRPS.

*Dr. Starkey*

Neurologist Randall Starkey testified as an expert for the Morphews. He opined that Lake may have experienced some initial discomfort, but no significant lasting injuries, as a consequence of the shock. He had seen neurological dysfunction caused by major high-voltage shock injuries, but in 30 years of practice he had not seen lasting consequences from the type of incident Lake described "unless there was some potential for . . . possible gain in some way," such as workers' compensation benefits or legal claims. The records from Lake's initial hospital visit after the alleged event, including blood work, an EKG, and a cardiac evaluation, showed no evidence of a burn or significant shock. Dr. Duncan's records from Lake's February 2, 2010 examination suggested "some type of embellishment or exacerbating the symptoms for effect." If Lake sustained a serious shock that caused neurological damage, an examination would have shown some objective sign of abnormality. But there was none. Lake's records contained several mentions of swelling, temperature change and discoloration in her left arm and hand prior to January 24, 2011, which could all be caused entirely or partially by her cervical radiculopathy.

Dr. Starkey testified that nothing in the medical literature supported Dr. Rutchik's opinion that Lake would experience CRPS from the shock she described. CRPS is a "very, very, very vague disorder that's hard to prove or disprove." Rather, Lake's medical records suggested her issues could be primarily psychiatric.

### *The Verdict*

The jury found that the Morphews were negligent, failed to disclose facts to Lake and breached the implied warranty of habitability, but that their conduct was not a substantial factor in causing Lake's or Jazea's injuries. A defense judgment was entered in conformity with the verdict. Lake filed this timely appeal after the court denied motions for a new trial and judgment notwithstanding the verdict.

## **DISCUSSION**

### **I. Substantial Evidence Supports the Judgment**

"When a party contends insufficient evidence supports a jury verdict, we apply the substantial evidence standard of review. [Citations.]" (*Wilson v. County of Orange* (2009) 169 Cal.App.4th 1185, 1188.) Under this standard, "[a]ll conflicts in the evidence are resolved in favor of the prevailing party, and all reasonable inferences are drawn in a manner that upholds the verdict." (*Holmes v. Lerner* (1999) 74 Cal.App.4th 442, 445.) "[W]e do not evaluate the credibility of the witnesses or otherwise reweigh the evidence. [Citation.] Rather, 'we defer to the trier of fact on issues of credibility. [Citation.]' [Citation.]" (*Escamilla v. Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514–515.) "In short, even if the judgment of the trial court is against the weight of the evidence, we are bound to uphold it so long as the record is free from prejudicial error and the judgment is supported by evidence which is 'substantial,' that is, of 'ponderable legal significance,' 'reasonable in nature, credible, and of solid value . . .'" [Citations.]" (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.)

Here, Lake had the burden of proving the Morphews' conduct was a substantial cause of the alleged injuries. While Lake produced medical testimony, most specifically Dr. Rutchik's, that attributed her ailments to the alleged electric shock, the jury heard testimony from other medical professionals that discredited her theory of causation. It

was within the jury's prerogative to disbelieve Lake's witnesses in favor of the views espoused by Drs. Starkey and Duncan and conclude that Lake failed to sustain her burden of proving causation by a preponderance of the evidence. (See, e.g., *Barouh v. Haberman* (1994) 26 Cal.App.4th 40, 44.) It apparently did so, and we have no power or reason to second guess its determinations. (*Ibid*; see also *Howard v. Owens Corning, supra*, 72 Cal.App.4th at p. 631.) Alternatively, and with the same result, the jury could have found that Lake and Jazea were not credible and therefore been unconvinced by their testimony that Lake in fact experienced a significant shock that produced such an injury.

Lake also contends evidence that the Morphews failed to properly maintain the exterior staircase and installed a dangerous rusty gate compels a finding that their conduct caused Jazea to fall and cut her face.<sup>1</sup> Again, she is wrong. Particularly in light of Brennan's testimony that Jazea was chasing her dog down the staircase when she fell, the jury could have reasonably disbelieved Lake's and Jazea's testimony and been unpersuaded that the condition of the stairs or handrail played any part in her fall. Again, it is beyond our purview to reweigh the evidence or disturb the jurors' assessment of witness credibility.

## II. The Court Properly Permitted Questioning about Lake's Income and Disability

A significant part of Lake's cross-examination focused on substantial discrepancies between her earnings and income history, what she told the Morphews about her income when she applied to rent the apartment, and amounts she claimed in sworn discovery responses as income lost due to her alleged injuries. The questioning elicited concessions that Lake reported income of "\$100,000 plus" per year on her rental application, represented in discovery responses that she was earning \$3,500 per month at the time of the electrical shock incident, and, until some point before trial, claimed \$100,000 per year in lost income as a result. In fact, as the Morphews' counsel brought

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<sup>1</sup> The notice of appeal identifies only Lake as an appellant, but we will construe it broadly as an appeal by both parties. (See *Toal v. Tardif* (2009) 178 Cal.App.4th 1208, 1216–1217.)

out in Lake's cross-examination, between 2007 and 2014 Lake's annual income ranged from \$12,066 to a high of \$17,580.

Lake asserts the court should have excluded the evidence about her actual and claimed income as unduly prejudicial because, as we understand her arguments, she always paid her rent; it had been years since she lied on her rental application; and, by the time of trial, she was no longer claiming lost wages as damages. Her arguments are meritless.

“The prejudice that section 352 ‘is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence.’ [Citations.] ‘Rather, the statute uses the word in its etymological sense of ‘prejudging’ a person or cause on the basis of extraneous factors. [Citation.]’ [Citation.s]’ In other words, evidence should be excluded as unduly prejudicial when it is of such nature as to inflame the emotions of the jury, motivating them to use the information, not to logically evaluate the point upon which it is relevant, but to reward or punish one side because of the jurors’ emotional reaction. In such a circumstance, the evidence is unduly prejudicial because of the substantial likelihood the jury will use it for an illegitimate purpose.” (*Vorse v. Sarasy* (1997) 53 Cal.App.4th 998, 1009.) “[T]he trial court enjoys broad discretion in assessing whether the probative value of particular evidence is outweighed by concerns of undue prejudice, confusion or consumption of time.” (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124.)

Here, leaving aside significant questions about whether Lake properly preserved these issues with a relevant objection, the questioning she complains about was directly relevant to her credibility, perhaps the most critical issue at trial. It also directly undermined her claim that her alleged injuries prevented her from carrying on her professional activities as a videographer. “Evidence is not prejudicial, as that term is used in a section 352 context, merely because it undermines the opponent’s position or shores up that of the proponent. The ability to do so is what makes evidence relevant.” (*Vorse v. Sarasy, supra*, 53 Cal.App.4th at p. 1008.) It was manifestly within the court’s

discretion to find that evidence bearing directly on Lake's truthfulness and the validity of her claimed damages was more probative than prejudicial.

**DISPOSITION**

The judgment is affirmed. The Morphews are entitled to their costs on appeal.  
(Cal. Rules of Court, rule 8.278.)

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Siggins, J.

We concur:

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McGuinness, P.J.

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Pollak, J.