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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

ISABEL RAMOS et al., Plaintiffs and Appellants, v. LANKWAN PONG, Defendant and Respondent.	B268267 (Los Angeles County Super. Ct. No. BC529504)

APPEAL from a judgment of the Superior Court of Los Angeles County, Elaine W. Mandel, Judge. Affirmed.

Rene L. Campbell for Plaintiffs and Appellants.

Slack & Associates and Chad M. Slack for Defendant and Respondent.

Following a collision between a vehicle and a pedestrian in a marked crosswalk, the injured pedestrian, plaintiff Isabel Ramos (Mrs. Ramos), sued the driver of the vehicle, defendant Lankwan Pong (Mrs. Pong), for negligence. Due to a pretrial stipulation that Mrs. Pong was negligent, the only issue for the jury to decide was damages. The jury returned a negligence verdict of $16,800, which fell short of the statutory offer to compromise made by Mrs. Pong under Code of Civil Procedure section 998. After awarding Mrs. Pong her costs and expert witness fees, the trial court entered a net judgment for Mrs. Ramos in the amount of $876.85.

In this appeal from the judgment, Mrs. Ramos challenges an in limine ruling that excluded certain evidence, but she has not provided us with a reporter's transcript of the evidence presented at trial. Nevertheless, Mrs. Ramos seeks a reversal of the exclusionary ruling and a retrial on the issue of emotional harm and damages. For the reasons discussed below, the judgment is affirmed.

FACTS AND PROCEDURAL BACKGROUND

Mrs. Ramos and her husband, plaintiff Carlos Ramos, filed a complaint against Mrs. Pong for negligence and loss of consortium. They also alleged a claim for negligent entrustment against Mrs. Pong's husband, defendant Richard Lanouette, who co-owned the vehicle involved in the accident.

Before trial, the parties submitted the following joint statement: "This matter involves a pedestrian versus vehicle collision that occurred on December 8, 2011, on North Figueroa Avenue, in Los Angeles, CA. Plaintiff Isabel Ramos was crossing a street when Defendant Lankwan Pong's vehicle struck Plaintiff.

Defendant Richard Lanouette was an owner of the vehicle Mrs. Pong was driving. Plaintiffs Isabel Ramos and Carlos Ramos contend they sustained injuries and damages as a result of Defendants' negligence. Defendants admit that Lankwan Pong was negligent but dispute the extent of Plaintiffs' claimed injuries and damages." The parties also stipulated before trial that Mrs. Pong was negligent, her negligence was the sole cause of the accident, and the past medical expenses of Mrs. Ramos had been fully paid in the amount of $4,000.

Because the record does not include a reporter's transcript of the trial, we do not know how this information was conveyed to the jury. Based on a transcript of a pretrial hearing, we know the parties expressed an intention to stipulate that Mr. Lanouette's liability as an owner of the vehicle was limited to $15,000. We also know from the verdict form, which is contained in the clerk's transcript, that the jury was not presented with any questions regarding the negligent entrustment claim. No further reference to the negligent entrustment claim appears in the record, and Mr. Lanouette is not mentioned in the judgment. We therefore assume he has been dismissed from the action.

According to the jury's answers on the verdict form, it found that Mrs. Pong's negligence was a substantial factor in the harm suffered by Mrs. Ramos, and awarded her $4,000 for past economic loss, $10,800 for past noneconomic loss (including physical pain and mental suffering), and $2,000 for future noneconomic loss (including physical pain and mental suffering). As to the claim for loss of consortium, the jury found Mrs. Pong's negligence was not a substantial factor in causing harm to Mr. Ramos, and awarded him no damages.

Based on the jury's answers on the verdict form, the trial court entered judgment for Mrs. Ramos on the negligence claim, and for Mrs. Pong on the loss of consortium claim. Because the jury verdict did not exceed her $20,001 statutory offer to compromise, Mrs. Pong was entitled to recover her costs and expert witness fees. She submitted a memorandum for costs and fees in the amount of $17,751.64. Mrs. Ramos moved to tax costs and fees, arguing Mrs. Pong was entitled to no more than $8,984.67 in costs and fees. The trial court awarded Mrs. Pong $15,923.15 in costs and fees, which resulted in a net judgment for Mrs. Ramos of $876.85. Mrs. Ramos filed a timely notice of appeal from the judgment.

DISCUSSION

Mrs. Ramos argues the trial court erred by excluding evidence of Mrs. Pong's failure to stop, render aid, and identify herself in violation of sections 20001 and 20003 of the Vehicle Code.

Under subdivision (a) of section 20001, "[t]he driver of a vehicle involved in an accident resulting in injury to a person, other than himself or herself . . . shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004."

Subdivision (a) of section 20003 states that "[t]he driver of any vehicle involved in an accident resulting in injury to or death of any person shall also give his or her name, current residence address, the names and current residence addresses of any occupant of the driver's vehicle injured in the accident, the registration number of the vehicle he or she is driving, and the name and current residence address of the owner to the person

struck or the driver or occupants of any vehicle collided with, and shall give the information to any traffic or police officer at the scene of the accident. The driver also shall render to any person injured in the accident reasonable assistance, including transporting, or making arrangements for transporting, any injured person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if that transportation is requested by any injured person."

I

The statutory requirement that drivers of vehicles involved in accidents resulting in injury or death must stop and render aid "was enacted for the protection of persons injured in an accident, and was designed to prohibit drivers, under pain of punishment, from leaving such persons in distress and danger for want of proper medical or surgical treatment. Reasonable and prompt assistance may prevent aggravation of or further injuries, or may save a life. These are but humanitarian acts required to be performed by all drivers of vehicles involved in accidents causing injuries, whether or not they are responsible for the accident. [Citations.]" (*Bailey v. Superior Court* (1970) 4 Cal.App.3d 513, 520–521.)

The requirement is based on common law. In *Brooks v. E. J. Willig Truck Transp. Co.* (1953) 40 Cal.2d 669, 678–679 (*Brooks*), the California Supreme Court discussed the common law rule that "[o]ne who negligently injures another and renders him helpless is bound to use reasonable care to prevent any further harm which the actor realizes or should realize threatens the injured person. This duty existed at common law although the accident was caused in part by the contributory negligence of

the person who was injured. [Citation.]" By incorporating this common law duty, the Vehicle Code requires drivers to stop and render aid regardless whether they are at fault, and a violation of this statutory duty will give "rise to civil liability if it is a proximate cause of further injury or death. [Citations.]" (*Brooks,* at p. 679.)

Brooks involved an appeal by the defendants, a truck driver (Farnsworth) and his employer, from a judgment for wrongful death. The complaint alleged that Farnsworth was negligent in the operation of his truck, and after he struck a pedestrian (Brooks), he drove away without stopping to render aid. (*Brooks*, *supra*, 40 Cal.2d at p. 681.) The trial court sustained a demurrer to the causes of action containing the only allegations regarding the failure to stop and render aid. The case proceeded to trial on the sole remaining count for general negligence in the operation of the vehicle. (*Ibid.*) At trial, plaintiffs introduced evidence of Farnsworth's failure to stop and render aid, and moved to amend the complaint to conform to proof by adding allegations substantially the same as those to which the demurrer had been sustained. The motion to amend was denied. (*Ibid.*)

The evidence in *Brooks* was sufficient to support a reasonable inference that because Farnsworth had driven away without stopping to render aid, the victim, Brooks, was left helpless on the pavement and, because the body was seen in two different locations, might have been hit by a second vehicle. (*Brooks*, *supra*, 40 Cal.2d at pp. 673–674.) Under the circumstances, Farnsworth's failure to stop and render aid was relevant to show a consciousness of fault, and the weight of that evidence was for the jury to decide. (*Id.* at p. 676.) On appeal, the defendants argued they had been misled to believe the issue

of liability for failure to stop and render aid had been excluded from the case by the ruling on the demurrer and the denial of the motion to amend to conform to proof. (*Id.* at p. 680.) The Supreme Court rejected this contention, stating that the motion to amend to conform to proof was properly denied on the ground that the issue of liability for failure to stop and render aid was sufficiently raised by the general allegation of negligence. (*Id.* at p. 681.) In addition, the defendants were not prejudiced because it was undisputed "that Farnsworth drove on without stopping, and there is no claim that there was any legal justification for his conduct. [Citation.]" (*Id.* at p. 682.)

Based on *Brooks*, we conclude the allegation of general negligence was sufficient to give rise to civil liability if Mrs. Pong's failure to stop and render aid was a proximate cause of further injury. (*Brooks*, *supra*, 40 Cal.2d at p. 679.) In *Brooks*, the further injury which resulted from being left grievously injured on the pavement was the death of the victim. In this case, the further injury which resulted from the driver leaving the scene of the accident was the mental distress Mrs. Ramos suffered upon observing Mrs. Pong leaving the scene.

II

In moving to exclude evidence of her failure to stop and render aid, Mrs. Pong argued that by admitting her liability for negligence, the only theory of liability alleged in the complaint, her liability was not at issue, and because Mrs. Ramos was able to continue walking across the intersection, she was not left helpless on the pavement, and thus did not suffer any aggravated injury as a result of the alleged statutory violation. Under these circumstances, Mrs. Pong argued, evidence of the failure to stop

without rendering aid was irrelevant and unduly prejudicial. (Evid. Code, § 352.)

In support of her position that Mrs. Ramos did not suffer an aggravated injury as a result of her failure to stop and render aid, Mrs. Pong submitted the declaration of her attorney, Chad M. Slack, who made the following offer of proof:

- *Deposition of Mrs. Pong*: Mrs. Pong testified at her deposition that after Mrs. Ramos was struck by her vehicle, Mrs. Ramos yelled at Mrs. Pong and continued walking across the intersection past three to four lanes of traffic. Mrs. Pong explained during her deposition that because Mrs. Ramos appeared uninjured and had left the scene of the accident, Mrs. Pong drove away after waiting approximately one minute.
- *Depositions of Virginia Rubio and Priscilla Rubio*: Both Virginia Rubio and Priscilla Rubio witnessed the accident. At their depositions, they each testified that Mrs. Pong stayed at the scene for approximately one minute. As Mrs. Ramos was walking away, Mrs. Pong yelled something to the effect of "Are you okay?" Mrs. Ramos did not respond. Both witnesses obtained Mrs. Pong's license plate number.
- *Personal Knowledge of Mr. Slack*: Mr. Slack stated that according to his personal knowledge, Mrs. Pong was not cited in the accident. Mrs. Pong testified at her deposition that she was not under the influence of drugs or alcohol at the time of the accident.

Mrs. Ramos argued that by leaving the scene without stopping to render aid, Mrs. Pong had caused Mrs. Ramos to

suffer the aggravated injury of being "callously left . . . like a dog in the street," thus resulting in emotional pain and distress. Mrs. Ramos disagreed with the assertion that her ability to walk away had relieved Mrs. Pong of the legal obligation to render aid. Mrs. Ramos argued that when she was struck by Mrs. Pong's vehicle, she fell to the ground and was "disoriented," but "somehow made her way to the closest sidewalk she could reach, a point of safety, without being struck by other vehicles." Mrs. Ramos argued the probative value of Mrs. Pong's "act of leaving the scene of the accident outweighs any prejudicial effect," and was relevant to show she "suffered and continues to suffer extreme emotional distress including, night terrors, nightmares, fear, worry, anxiety, nervousness, excessive crying, feelings of worthlessness, victimization, mortification and fear of crossing the street or going to the market, and of leaving the house. Being abandoned in the street after being struck by a vehicle had caused Plaintiff anger and worry about the incident. [Plaintiff] can't get over the lack of humanity by Defendant Pong."

Mrs. Ramos argued that if a defendant's vehicle hits a pedestrian and the defendant leaves without rendering assistance, and thus aggravates the pedestrian's injuries or causes her to suffer emotional distress because she was left unaided, the pedestrian is entitled to have the jury decide whether the abandonment without rendering assistance caused emotional harm.

The trial court did not adopt Mrs. Ramos's legal theory, and found the evidence that Mrs. Pong had left the scene without rendering aid to be "potentially inflammatory and more prejudicial than probative pursuant to Evidence Code 352." The court indicated that evidence of the statutory violation would

only be admissible if Mrs. Pong opened the door by testifying at trial that Mrs. Ramos had walked away from the scene of the accident. In response to Mrs. Ramos's request for clarification whether she would be able to argue to the jury that she "suffered emotional distress as a result of knowing that the defendant struck her and abandoned her without coming to provide assistance," the trial court reiterated that Mrs. Ramos would not be allowed to present this theory to the jury unless the defense opened the door. The trial court explained that if, for example, Mrs. Pong testified that she reasonably believed Mrs. Ramos was uninjured because she was able to walk away, this would open the door to cross-examination on the location and length of time of Mrs. Pong's observations, and the manner in which Mrs. Ramos was walking. After Mrs. Ramos argued that Mrs. Pong's failure to stop and render aid was relevant to explain how Mrs. Pong was identified through the license plate number provided by Ms. Rubio, the court stated it would take the matter under submission, but it was inclined to exclude the evidence because it did not appear relevant to the nature and extent of Mrs. Ramos's injuries and damages.

We find no error in the trial court's ruling. Under California law, Mrs. Ramos may only recover damages based upon a statutory violation if she is one of the class of persons for whose benefit the statute was enacted. The general rule is that "the statute need not provide specifically for civil damages or liability. Violation of a statute embodying a public policy is generally actionable even though no specific civil remedy is provided in the statute itself. Any injured member of the public for whose benefit the statute was enacted may bring the action.

[Citation.]" (*Michael R. v. Jeffrey B.* (1984) 158 Cal.App.3d 1059, 1067.)

There was no evidence that because Mrs. Pong left the scene, Mrs. Ramos's physical injuries were exacerbated by the lack of prompt medical care. Mrs. Ramos seeks damages for the emotional pain she suffered as a result of seeing Mrs. Pong drive away without identifying herself or offering assistance, but provides no legal authority that this was the type of injury that sections 20001 and 20003 were intended to address. As the appellant, Mrs. Ramos has the burden to prove that the emotional distress she suffered as a result of the statutory violations constitutes a harm that the statutes were intended to remedy. The briefing, however, contains no discussion on this issue.

Although we have found no case exactly on point, *People v. Corners* (1985) 176 Cal.App.3d 139 is helpful to our analysis. In that case, the court affirmed the denial of the People's request to impose restitution as a condition of probation for a defendant who was convicted of fleeing the scene of an accident in violation of section 20001 of the Vehicle Code. The purpose of a criminal trial is not to establish a defendant's civil liability for damages (*id.* at p. 144), and the record did not show that the injured person's injuries were aggravated by the defendant's failure to stop and render aid (*id.* at p. 142). Under the circumstances, the denial of restitution as a condition of probation was not an abuse of discretion: "Although a violation of section 20001 is popularly denominated 'hit-and-run,' the act made criminal thereunder is not the 'hitting' but the 'running.' The legislative purpose of sections 20001 and 20003 is to prevent the driver of a vehicle involved in an injury-causing accident from leaving injured

persons in distress and danger for want of medical care and from attempting to avoid possible civil or criminal liability for the accident by failing to identify oneself. This duty is imposed upon drivers whether or not they are responsible for the accident itself. (*Bailey v. Superior Court* [*supra*,] 4 Cal.App.3d [at p.] 521; *People v. Bammes* (1968) 265 Cal.App.2d 626, 632.) Commission of the crime gives rise to civil liability for damages only if the act of leaving the scene proximately causes *further* injury or death. (*Brooks* [at p.] 679; *Karl v. C. A. Reed Lumber. Co.* (1969) 275 Cal.App.2d 358, 361.)" (*Corners*, at p. 148.)

To our knowledge, no California appellate court has imposed negligence liability for emotional distress based solely on a failure to stop after hitting a pedestrian who was assisted by a passerby to a place of safety and whose physical injuries were not exacerbated by the driver's failure to stop. Although it arose in a different context, the Supreme Court stated in *Avila v. Citrus Community College Dist.* (2006) 38 Cal.4th 148, 167, that "*Brooks* and the common law duty it recognizes are confined to situations where the injured party . . . was sufficiently helpless so as to warrant imposing a *Brooks*/Restatement Second of Torts, section 322-type duty on the [defendant]."

The sole rationale provided by Mrs. Ramos to support the admission of evidence of Mrs. Pong's failure to stop was the emotional distress or moral outrage she experienced upon observing Mrs. Pong drive away. Although Mrs. Pong's failure to stop after hitting Mrs. Ramos might be relevant to show consciousness of fault for the accident (*Brooks*, *supra*, 40 Cal.2d at p. 676), Mrs. Pong conceded her negligence liability, thus rendering consciousness of fault a nonissue.

We perceive no error or abuse of discretion in the trial court's conditional exclusion of evidence of Mrs. Pong's failure to stop under section 352 of the Evidence Code.[1] The court made it clear that the evidence would be admissible on cross-examination if Mrs. Pong opened the door by testifying that Mrs. Ramos had walked away from the scene of the accident. Regardless of the moral repugnance of a driver's failure to stop and render aid, there was no offer of proof that this was the proximate cause of any further physical injury to Mrs. Ramos. (See *Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308, 1340 [purpose of statute is to prevent drivers involved in injury accidents from leaving injured persons in distress and in need of medical care

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[1] Evidence Code section 352 provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

On appeal, "[a] verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous exclusion of evidence unless the court which passes upon the effect of the error or errors is of the opinion that the error or errors complained of resulted in a miscarriage of justice and it appears of record that:

"(a) The substance, purpose, and relevance of the excluded evidence was made known to the court by the questions asked, an offer of proof, or by any other means;

"(b) The rulings of the court made compliance with subdivision (a) futile; or

"(c) The evidence was sought by questions asked during cross-examination or recross-examination." (Evid. Code, § 354.)

and from attempting to avoid potential criminal and civil liability].) The contention that Mrs. Ramos was left helpless on the ground is not supported by the record. Both eyewitnesses testified at their depositions that Mrs. Ramos was able to walk across the intersection, and Mrs. Ramos admitted she was able to reach a place of safety. Accordingly, there is no basis to conclude Mrs. Ramos was prejudiced by the exclusion of evidence that the driver left the scene without rendering aid.

III

Mrs. Ramos argues the in limine ruling served as a "de facto, improper, and unofficial Motion for Summary Adjudication/Summary Judgment/Nonsuit on the issue of the Violation of the Statute and the cause of action for Violation of Statute enumerated in the Complaint. It also served as a Motion for Summary Adjudication/Nonsuit on the issues of the emotional harm, psychological distress and mental anguish suffered by Plaintiff Ramos connected to the Statutory Violation and her Negligence cause of action. By granting the motion in limine, the trial court excluded the essence of the statutory claim and the emotional damages suffered by Mrs. Ramos which resulted therefrom."

Contrary to Mrs. Ramos's allegation, the complaint did not contain a separate cause of action for statutory violation. Although the words "STATUTORY VIOLATION" appear on the caption of the complaint, the body of the complaint does not contain a separate cause of action by that name. In any event, as previously discussed, the allegation of general negligence was sufficient to give rise to civil liability for any further injury proximately caused by Mrs. Pong's failure to stop and render aid.

(*Brooks*, *supra*, 40 Cal.2d at p. 679.) Accordingly, the in limine ruling, contrary to Mrs. Ramos's assertion, did not dispose of an *entire* cause of action, and the rule cited by Mrs. Ramos (see, e.g., *Dillinham-Ray Wilson v. City of Los Angeles* (2010) 182 Cal.App.4th 1396, 1402 [when all evidence on a particular claim is excluded by in limine motion, ruling is subject to independent review]; *Amtower v. Photon Dynamics*, *Inc.* (2008) 158 Cal.App.4th 1582, 1595 [same]) is inapplicable.

Even if we were to apply a de novo standard of review and evaluate the evidence in the light most favorable to the opposing party, Mrs. Ramos, we are hampered by her failure to provide a reporter's transcript of the trial. Based on the offers of proof that were made *before* trial (a transcript of the pretrial hearing is included in the appellate record), we find no error. Although Mrs. Ramos was free to make an offer of proof that she suffered a further physical injury as a result of a lack of prompt medical care, which could have been avoided if Mrs. Pong had stopped to render aid, there was no showing to that effect.

DISPOSITION

The judgment is affirmed. Mrs. Pong is entitled to recover costs on appeal.

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EPSTEIN, P. J.

We concur:

WILLHITE, J. COLLINS, J.