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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

DUSTY SORENSEN et al.,

Plaintiffs and Appellants,

v.

VERNOLA FAMILY MARITAL TRUST
et al.,

Defendants and Respondents.

E053238

(Super.Ct.No. RCV087648)

OPINION

APPEAL from the Superior Court of San Bernardino County. David A. Williams,
Judge. Affirmed.

Law Offices of Christopher B. Mears and Christopher B. Mears for Plaintiffs and
Appellants.

Lewis Brisbois Bisgaard & Smith, Raul L. Martinez and Esther P. Holm for
Defendants and Respondents.

This action is an appeal from a judgment notwithstanding the verdict (JNOV) after
a trial. Plaintiff and Appellant Dusty Sorensen (who sues along with his wife, Diane
Sorensen), a mechanic employed by Lord Tire Company (Lord Tire), was found

unconscious in a puddle of water in an alignment pit. Respondents Vernola Family Marital Trust and Vernola Family Survivors Trust (Vernola) owned the property and had been notified that the alignment pit would flood any time it rained. The Sorensens filed a complaint against Vernola for the causes of action of premises liability, negligence and loss of consortium based on the allegation that Dusty had either slipped and fallen or was electrocuted. A jury found that Vernola was negligent, and that negligence was a substantial factor in causing the accident. It found Vernola 20 percent responsible for Dusty's injuries. The trial court granted Vernola's JNOV finding there was a lack of substantial evidence of causation to support the jury's verdict.

In this appeal, the Sorensens essentially claim that the trial court erred by entering the JNOV because all the elements of negligence were established by substantial evidence, and therefore the jury verdict should be restored.

I

PROCEDURAL BACKGROUND

The Sorensens filed an original complaint on May 5, 2005. On September 16, 2005, they filed their first amended complaint against various defendants. They alleged nine causes of action, including premises liability, negligence, breach of covenant of quiet enjoyment, nuisance, intentional infliction of emotional distress, negligent infliction of emotional distress, dangerous condition of public property, and loss of consortium. They alleged that Dusty had suffered severe electric shock as a result of water leaking in through the drain in the bottom of an alignment pit. Prior to trial, the trial court

dismissed the causes of action for breach of quiet enjoyment, nuisance, intentional infliction of emotional distress, and negligent infliction of emotional distress and the prayer of punitive damages. Vernola filed an answer to the complaint as the owner of the property.

Following a trial, the jury found by special verdict that Vernola was negligent and that its negligence was a substantial factor in causing harm to Dusty. For Dusty, they found the total past and future economic and noneconomic damages to be \$1,955,506.82. For Diane, they found the past and future noneconomic damages to be \$175,000. The jury found that Vernola was 20 percent responsible for the harm to Dusty.¹

Vernola filed a motion for JNOV. A summary of its argument provided that there was no evidence to support that there was electrified water in the alignment pit. All of the electrical-injury evidence was speculative and lacking in foundation. Additionally, as to the alternative theory that Dusty fell, there was no evidence that the puddle of water caused him to fall. Attached to the motion for JNOV were excerpts from the trial testimony.

The Sorensens filed opposition and also relied on excerpts from the trial to support their argument. Vernola filed a reply.

On December 15, 2010, the motion for JNOV was heard, as will be discussed in more detail, *post*. The trial court found that there was no evidence that Dusty slipped and

¹ The jury found Dusty was 25 percent responsible for his harm, Lord Tire 50 percent responsible, and others (presumably the City of Chino, who settled prior to trial) 5 percent responsible.

struck his head or that he was electrocuted. Judgment was entered in favor of Vernola against the Sorensens.

The Sorensens filed a timely notice of appeal.

II

FACTUAL BACKGROUND²

A. *Witnesses Presented by the Sorensens*

1. *June 21, 2004 – the day of the incident*

Primo Hernandez was employed by Lord Tire from 2002 to 2008. Among other things, Lord Tire provided wheel alignments. The alignment pit contained metal ramps for the vehicle to sit on above the pit, projectors to assist in the alignment process in the pit, and a work light. Once a car was pulled onto the ramps, or rails, of the pit, there was a small space next to the wall that a person in the pit would have to use to get by the car.

Between 2002 and 2008, on approximately three or four occasions, Hernandez noticed that, when it rained, rainwater came into the alignment pit, causing a puddle approximately two inches deep to form. The water could be removed from the pit, but it would take about 10 minutes to vacuum it out.³

² We draw the statement of facts from the trial testimony.

³ Hernandez estimated in his deposition taken prior to trial that it took one to two hours to vacuum out the pit.

On the day of the incident, June 21, 2004, there was water in the pit. Dusty did not vacuum out the pit (the vacuum was broken); he had previously told Hernandez not to worry about working in the pit when there was water in it.

Dusty had been in the pit to do an alignment, but the car was not yet on the rails above the pit. Hernandez went into the pit and found Dusty unconscious. Dusty's upper back was on the wall behind the alignment rack, and his right leg was on top of an electrical work light. Neither his right leg nor the light was in the water.

Hernandez did not think that the bulb on the electrical light was broken, but the casing on the outside was. Dusty's eyes were closed, and he was nonresponsive. His left hand was touching the water. His body was in the deepest part of the water. Hernandez touched Dusty and did not get an electric shock. He then ran to tell his bosses what had happened.

Hernandez noticed that while the paramedics were working on Dusty, he began to shake like "crazy." Hernandez did not observe any burns on Dusty and did not see him fall down. There was no light on in the pit when he went in. An electrical cord that was fully insulated was dipped in the puddle of water, as it had been on other occasions without incident.

Lee Anderson was the manager of Lord Tire. Anderson provided a description of the alignment pit. The pit was three feet deep. There was a small drain in the pit. There were two electrical sources, i.e., outlets, that supplied power to the alignment heads and

for a light source. There was an electrical work light that was used to light up the cars. No tools in the pit used electricity.

Anderson reported that rain would come into the pit two or three times a year, and it was usually only about one or two inches. Anderson had reported the problem to Vernola since it was the owner of the building and responsible for its upkeep. He recalled at trial calling about the problem three or four times prior to Dusty being injured. Anderson had observed two to three different contractors come to the building to look at the problem. Attempts were made to fix it, but none of them worked.

Cherrier Burke worked for Vernola during this time period and handled complaints from tenants. She received calls regarding the roof leaking at Lord Tire. She recalled three calls from Lord Tire reporting water in the alignment pit. Repair work was completed in 2001, which she believed had fixed the problem; however, she then received more complaints.

Vernon Morrison had been asked by Vernola to investigate the water in the alignment pit between March and June 2004. He observed water in the pit that was about one inch deep. He recommended sealing the pit with an epoxy. Vernola had approved the repair, but Morrison could not remember whether he was advised to proceed prior to the injury to Dusty.

On June 21, Anderson was advised by Hernandez that Dusty was in the pit. When he went to the pit, he saw Dusty “twisted” and lying with his head facing the back of the pit. Dusty had one leg between the steps and the alignment machine and the other

between the alignment head up on a rail. There was water in the pit. Anderson shut off all the breakers; he did not recall if they had been tripped. He thought it was the “right thing to do” since Dusty was in water. He called paramedics.

Dusty had told Anderson that he did not like to work in the pit when it was wet because he did not want to get his boots wet. He had complained about the water in the pit and had worked to get the vacuum to get the water out.

2. *Medical treatment immediately following the incident*

Dr. Dorian Snyder assessed Dusty in the emergency room. He had no opinion as to whether Dusty had received an electrical shock and stated it would be speculation to testify that Dusty had received such injury. Dusty had a rapid heart rate. Dr. Snyder reported an abrasion to his abdomen. Dusty was unconscious, so no medical history or history of what had occurred in the accident was obtainable. Dusty likely had a concussion.

Dr. Snyder explained that the Glasgow Coma (GC) score was a measure with three components: eye opening, verbal response, and motor response. The highest score was 15. Dusty had a score of nine at the hospital. His low GC score could be attributable to a stroke, electric shock, or falling down. Dr. Snyder did not believe that Dusty had had a heart attack but could not rule out a stroke. At the time, Dr. Snyder did not think that Dusty had had an electrical shock.

Heidi Whitten was a nurse and was on duty in the intensive care unit (ICU) when Dusty was brought up to the unit after receiving care in the emergency room. Nurse

Whitten had worked in a burn unit prior to working in the ICU. Dusty had been intubated, which she explained was putting a breathing tube down the patient's throat to help the patient breathe. Nurse Whitten noted on her record, after examining Dusty, what she considered to be a first degree burn above his left eyebrow and singed hair near his right ear. She did not document any blisters or burns on his feet, although other witnesses did. She explained that a first degree burn, which was minor, appeared just as redness.

3. *The Sorensens' medical experts*

Dr. Jonathan Green first saw Dusty three months after the incident. Dr. Green diagnosed Dusty with “[e]lectrocution with coma status post brain injury.” He based his opinion on information from Dusty and his sister that he had been electrocuted and also that Dusty had a burn on his left eyebrow and singed hair “suggesting” that the electrical current may have gone directly through the brain. He saw no trauma to the brain. Dr. Green had no expertise in the transmission of electricity.

Dr. Lechuga was a neuropsychologist retained by the Sorensens. He specialized in identifying and treating people with brain injuries. He had treated people who had suffered brain injury due to electrical injuries and falls. Dr. Lechuga explained that there was an overlap of symptoms for people who suffered electrical injuries and those who suffered falls. He had reviewed records prepared by Dr. Green and from the rehabilitation facility where Dusty was treated after the incident.

Dr. Lechuga did not treat Dusty until May 2009 (five years after the incident) and administered hours of memory and cognitive tests. Dusty complained of pain in his back and other areas. His eyes were sensitive to light. He would get headaches if he tried to exert himself mentally. He had an atypical loss of memory. He could no longer read at the level he had before the accident.

The “most plausible” explanation for Dusty’s condition was electrical injury. Dr. Lechuga explained that the result of electrical injuries included cognitive, psychological, and physical injuries. This included being anxious and depressed.

The reasons for his opinion that Dusty suffered an electrical injury included that Dusty was unconscious when he was found, his body was shaking in a “crazy” manner, he had a low GC score, he had a facial burn and singed hair, he had blisters on his feet, and he was unable to remember what had occurred. Dusty suffered from major depression. His prolonged recovery was indicative of electrical injury rather than a concussion. He had a lower level of severity in his disability. He had made some recovery and could do some menial labor work.

Dr. Lechuga was a psychologist and not a medical doctor. He doubted that Dusty was exhibiting his symptoms only because he “thought” he had had an electrical injury. There was a preponderance of the evidence that this was an electrical injury.

Dr. Lechuga did not believe that Dusty was faking his injuries. If he had been faking, he would not have received rehabilitation treatment. In Dr. Lechuga’s opinion, based on medical records, electrocution was the reason for the injuries rather than brain

injury. However, Dr. Lechuga had seen numerous patients with symptoms of brain injury without obvious evidence of trauma and with normal CT scans.

Dr. Kenneth Nudleman was Dusty's currently treating neurologist and first saw Dusty five years after the incident. Dr. Nudleman had seen over 100 patients who suffered from neurological injuries because of electric shock. He relied upon Dusty's medical records and reports from the family in reaching his conclusions.

Dr. Nudleman explained that the symptoms of an electric shock injury were nerve damage, problems with photosensitivity, headaches, and problems with memory. He indicated that not all electric shock victims exhibited entry and exit wounds. A person can suffer from seizure-like activity if exposed to electric shock. The electrical shock can affect the rhythm of the heart, and the normal rhythm may never come back.

In Dr. Nudleman's opinion, Dusty suffered from "post traumatic encephalopathy," which was an alteration of brain function. This was shown by his symptoms of vision problems, memory problems, migraine headaches, and photosensitivity to light. Dr. Nudleman did not think that Dusty suffered a stroke or heart attack. Dusty's symptoms were consistent with a closed head injury and were also consistent with an electrical injury.

The injury to Dusty's head, his singed hair, and the blisters on his feet could have been the result of an electrical injury. The redness on his head could have also been from hitting his head or scraping himself in a fall. Another possible cause of his injury was not receiving adequate blood supply to his brain due to a cardiac arrhythmia or drop in blood

pressure. He also could have suffered a “hypoxic” brain injury (which he described as poor breathing, poor pumping of the blood, or the heart not working correctly) in connection with hitting his head or by the electrical injury.

Dr. Nudleman, testified, over objection, that the most likely explanation was that Dusty sustained some form of an electric shock that resulted in transient change in his biological functions. He then fell and hit his head.

Dr. Nudleman admitted that many of the symptoms of electrical injury were reported by the patient and could not be objectively measured, such as complaints that he had a constant burning sensation in his body. Dr. Nudleman had to assume what the patient told him was true.

4. *The Sorensens*

Diane Sorensen arrived at the emergency room on June 21 and saw that Dusty’s hair was singed. Dusty was unconscious; when he regained consciousness, he did not recognize Diane or their son. Dusty thought he was 19 years old. Diane did not recall how large the redness above his eyebrow was and did not immediately notice it. In the three days following the incident, she noticed blisters on Dusty’s feet. Dusty had to go to rehabilitation and complained of constant pain since the incident. He could no longer engage in the hobbies he had prior to the incident. He also had continuing memory loss. Dusty could not recall that his mother had died during the week prior to the accident.

Craig Sorensen, the Sorensens’ son, testified that he visited Dusty at the hospital and indicated that the hair on the side of his head appeared to be burned. He did not

recall any burn on his face. He also saw blisters on the bottom of Dusty's feet. Dusty had been in constant pain, was depressed, had no stamina, and had memory loss. He constantly wore sunglasses and a hat due to sun sensitivity; he would get a migraine immediately after exposure. Dusty could not recall anything from the time he was 19 years old until he was 50 years old.

Dusty wore a hat and sunglasses while testifying, complaining that exposure to light caused him to have migraine headaches. He suffered from daily pain over his entire body, including pain that radiated down the back of his leg. He had a burning sensation in his body. He had significant memory loss. He had no recollection of the incident at Lord Tire.

5. *Damages*

The Sorensens presented evidence regarding the ongoing care that Dusty would need and the cost of that care.

B. *Defense Case Presented by Vernola*

1. *Electrical expert*

T.C. Cheng was a professor of electrical engineering at University of Southern California (USC). He had qualified numerous times and in many states as an expert in matters relating to electricity. Cheng had been to Lord Tire and had reviewed numerous records in the case. He observed photographs that were taken within days of the incident.

Cheng indicated that there was no viable source of electricity in the pit, and since there was no electrical source, Dusty could not have suffered an electrical injury. Since

the water level was only two to three inches above floor level, and the outlets were eight to ten inches off the floor, they could not have been the source of the electricity in the water. The electrical cord in the pit, even if it touched the water, could not have been the source of the electricity because it was fully insulated. It was Cheng's understanding that there were no breaks in the cord.

The broken work light could not have been the source of electricity, since the light bulb was not broken and it was above the water level. Cheng was unequivocal that the water in the pit did not cause Dusty's injuries.

The description of redness reported by Nurse Whitten was not consistent with an electrical burn. Further, there was no entry or exit point for the electrical path through Dusty's body. There must be both an entry and an exit wound because electricity had to move out of the body. Singed hair was not consistent with electric shock, because hair was not a conductor of electricity. Also significant was the fact that Hernandez was not shocked when he entered the pit; if there had been electricity in the pit, Hernandez would have been shocked. Cheng admitted that if the breakers had been tripped prior to Hernandez entering the pit, there would be no shock. There was no evidence that the breakers had been tripped. Cheng had done some research and found that blisters were not commonly found as injuries from electric shock.

2. *Paramedics responding to the scene*

Harry Friedman was a paramedic who responded to the scene. Friedman's notes from the time of the accident stated that the patient had fallen four feet following a

possible electrocution resulting in unconsciousness. He did not recall how he received the information that Dusty had been electrocuted or had fallen. Oxygen had to be provided because Dusty's breathing deteriorated while they were treating him. Friedman could not recall if duct tape was applied to Dusty's head, but if it was, it would have gone across his forehead to keep his head still. The paramedic would try to fold the tape to avoid having it stick directly to the skin.

David Drott was a paramedic and received a call to respond to Lord Tire for a "possible electrocution." When Drott arrived, Dusty was in the alignment pit. He was conscious but appeared confused. Although the call came in as a possible electrocution, he "kind of pieced together that he had some kind of a fall." Dusty had been found with one of his legs tangled around the rails in the pit. There were three inches of water on the floor. There were no burns, bruises, or lacerations on Dusty's head. Dusty reported a burning sensation in his head. Drott explained that foam blocks had been put around Dusty's head, and duct tape had been used to secure the blocks. The duct tape would have gone on his forehead.

Drott read to the jury his narrative of the events at the scene. According to the narrative, Dusty was lying in water when he was found. There was an "unknown mechanism of injury." Dusty was unconscious for about eight minutes and had to be intubated while being transported in the helicopter. He was given drugs at that time. His GC score was down to six before being intubated. Drott did not witness any seizures.

3. *Defense medical experts*

Dr. Barry Ludwig was a neurologist who examined Dusty two years after the incident and reviewed the medical records. He determined that Dusty suffered an encephalopathy from an unknown source. He found no evidence that Dusty sustained trauma to his head, and there was no conclusive evidence of electrical injury. Dr. Ludwig believed that Dusty's problems were mostly psychologically based. His cognitive difficulties were likely due to his depression and his medications. In his 20 years of taking care of patients, he had not seen a patient lose memory of 30 years of their life unless it was a very severe case where the patient's brains were essentially scrambled. Such injury would show on a CT scan. There was clear evidence of "exaggeration" of his symptoms.

One treating physician had diagnosed Dusty as being histrionic, or actor-like. There was no neurological explanation for his sensitivity to light.

Dr. Ludwig opined that Dusty may have suffered a ventricular arrhythmia, or abnormal rhythm of the heart, resulting in changes in his blood pressure and reduced oxygen to his brain. The ventricular arrhythmia could have caused him to fall and would have resulted in a lower GC score. The arrhythmia could have been caused by stress or broken-heart syndrome (his mother dying the day before), or possibly electrocution. From Dr. Ludwig's experience with electrical injuries, he did not think it was the cause of Dusty's problems.

Dr. David Barcay was a physician specializing in emergency medicine and was employed by Cedars-Sinai Medical Center in Los Angeles. He had been hired by the defense to investigate how Dusty was injured. He indicated that the most common cause for loss of consciousness was cardiac arrhythmia or ventricular tachycardia. A cardiac arrhythmia was described as a change in heart rhythm such that the heart does not pump adequately, causing a drop in blood pressure. The fact that Dusty was unconscious in the alignment pit, regained consciousness, and then reverted back to unconsciousness supported this theory. Dr. Barcay concluded that cardiac arrhythmia caused Dusty to be unconscious, not electric shock or blunt trauma to the head. Dusty's singed hair was not indicative of an electrical injury. The "redness" reported as a burn could have been caused by many other things. This type of cardiac arrhythmia is rare and can be caused by stress or broken heart syndrome.

4. *Clair Pelland*

Clair Pelland, who died prior to trial, had stated in a prior proceeding that Dusty told him that he had got hit in the head with the light receptacle in the pit. Dusty told him that he was either going up or down the stairs when he slipped and fell. When he fell, he hit his head on the electric receptacle or light.⁴

⁴ Vernola also presented the deposition testimony of Roy Chase, but it was not reported.

III

GRANT OF JUDGMENT NOTWITHSTANDING THE VERDICT

Although the Sorensens claim to raise three issues in their opening brief, essentially they have one argument: the trial court erred by granting the JNOV because the elements of negligence were established by substantial evidence. The Sorensens contend that, as the owner of the premises, Vernola had a duty of care to Dusty and breached that duty. Further, the standing water in the alignment pit created the dangerous condition that caused Dusty's injuries. They conclude that substantial evidence supported that Dusty suffered an electric shock in the pit, which was caused by the standing water, or that he fell due to the water in the pit.

Vernola argues that the Sorensens failed to present any scientific evidence that electrified water in the pit caused an electric shock to Dusty. The only evidence was from Vernola's own expert, T.C. Cheng, who testified that there was no source of electricity in the pit. In addition, Vernola argues that there no substantial medical evidence presented that Dusty suffered an electric shock injury. Finally, Vernola argues that there was no evidence presented that Dusty slipped and fell due to the presence of water in the pit. Vernola also contends that the JNOV could be upheld on the alternative theory that the water in the pit did not create a dangerous condition, that there was no duty to warn or remedy the condition, and that the Sorensens never demonstrated that Vernola was responsible for the water in the pit.

A. *Additional Factual Background*

After the jury entered its verdict in favor of the Sorensens, Vernola informed the trial court that it was filing a motion for JNOV. The trial court asked the Sorensens' counsel if they had thought "long and hard about" the motion for JNOV, but they stated they had not seen the motion. The trial court noted that the only evidence of liability was through several doctors, and normally fault would be excluded from their testimony. The trial court warned that it was concerned about liability and that the Sorensens had better file a "bang-up opposition."

Counsel for Dusty argued that the trial court was prejudging the motion for JNOV. Further, Dusty contended that there was evidence other than the two doctors to show there was electric shock. The trial court responded, "There was no electrical water there at the time. It was a very difficult case, and, really, what you relied upon was very iffy." Counsel for Dusty brought up the alternative theory that he suffered from head trauma. The trial court felt that Dusty's own doctors found no head trauma. "All of your evidence was extremely thin on causation."

After being accused again of prejudging the motion for JNOV, the trial court responded, "I haven't prejudged anything. I'll look at everything. Research will look at everything. We'll review everything. But I'm telling you I was looking at the case, and I came to the conclusion that there would be no nonsuit because the standard is very low on the nonsuit. But after the case was done -- we're just going to have look and see. I'm just giving you a heads up for purposes of possible settlement on this thing. Think ahead."

[¶] This was really thin, and you know it. You have been around long enough to know it. Your two witnesses were those main doctors. Everybody else was just, well, they told me that there was this and they told me there was that. [¶] The evidence of electrical shock -- the only real evidence came from those two doctors.”

At the hearing on the motion for JNOV on December 15, 2010, the trial court stated that it had read the trial transcripts for the relevant testimony of the witnesses. It noted the standard of review on a JNOV: that the Sorensens were entitled to the benefit of every favorable inference from the evidence.

The court referred to the fact that Hernandez entered the pit and was not electrocuted. Further, it relied on Cheng’s testimony. Dr. Snyder, the treating emergency physician, offered no testimony that the injuries were caused by electrocution. Dr. Green could not establish electrocution. The only evidence came from Drs. Lechuga and Nudleman, neither of whom examined Dusty until five years after the incident. The paramedics found no evidence of electric shock.

The trial court considered this a “case of causation.” It stated, “[The Sorensens] have to prove that the water in some way caused the injury, and the best explanation has been electrocution. That explanation, I believe, was not even close to being substantial enough evidence.” The tentative decision was to grant the JNOV.

The Sorensens were concerned that the trial court was reweighing the evidence. Further, Drs. Lechuga and Nudleman did not rule out that Dusty fell. It was a reasonable inference that the water in the pit was the cause of Dusty’s injuries. The trial court

responded that there had never been previous problems working in the water. Further, it was not a reasonable inference that the water got in the electrical outlets.

The trial court ruled, “I have reviewed all the evidence in the best light for the plaintiffs in this case. I haven’t reviewed anything that I thought was contradictory. I have evaluated the evidence. It has to reach at least a substantial level where a verdict can be based on that, and I don’t see any evidence that’s even close to that . . . he was actually electrocuted or that he slipped and fell and struck his head. There’s simply no evidence to support any of that; so I’ll grant the motion.”

B. *JNOV*

“‘The trial court’s discretion in granting a motion for judgment notwithstanding the verdict is severely limited.’ [Citation.]” (*Hansen v. Sunnyside Products, Inc.* (1997) 55 Cal.App.4th 1497, 1510.)

“The trial court may grant judgment notwithstanding the verdict only if the verdict is not supported by substantial evidence. The court may not weigh evidence, draw inferences contrary to the verdict, or assess the credibility of witnesses. The court must deny the motion if there is any substantial evidence to support the verdict. [Citations.]” (*Begnal v. Canfield & Associates, Inc.* (2000) 78 Cal.App.4th 66, 72; see also *Hansen v. Sunnyside Products, Inc.*, *supra*, 55 Cal.App.4th at p. 1510.)

In reviewing an order granting a JNOV, an appellate court must independently determine whether the record, viewed in the light most favorable to the verdict, contains any substantial evidence to support the verdict or partial verdict. (*Mason v. Lake Dolores*

Group (2004) 117 Cal.App.4th 822, 829-830 [Fourth Dist., Div. Two].) A JNOV will be reversed if there is substantial evidence that supports the jury's verdict. (See *Hauter v. Zogarts* (1975) 14 Cal.3d 104, 110.) All inferences will be drawn in favor of the jury's verdict, and this court does not weigh the evidence or evaluate the credibility of witnesses. (*Wright v. City of Los Angeles* (1990) 219 Cal.App.3d 318, 343; accord, *Hansen v. Sunnyside Products, Inc.*, *supra*, 55 Cal.App.4th at p. 1510.)

C. Causation

“Under general negligence principles, . . . a person ordinarily is obligated to exercise due care in his or her own actions so as not to create an unreasonable risk of injury to others, and this legal duty generally is owed to the class of persons who it is reasonably foreseeable may be injured as the result of the actor's conduct. [Citations.]” (*Lugtu v. California Highway Patrol* (2001) 26 Cal.4th 703, 716.) Premises liability is a form of negligence, in which an owner has a duty to exercise ordinary care in managing his or her property to avoid exposing persons to unreasonable risk of harm. “A failure to fulfill this duty is negligence.” (*Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, 1619.)

In order to establish liability on a negligence theory, a plaintiff must prove: (1) a legal duty to use due care; (2) a breach of such legal duty; (3) the breach as the proximate or legal cause of the resulting injury; and (4) damages. (*Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205; *Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917.)

To establish the element of causation, it must be shown that the “defendant’s act or omission was a ‘substantial factor’ in bringing about the injury.” (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 778.) A “. . . “mere possibility of . . . causation is not enough. . . .”” (*Raven H. v. Gamette* (2007) 157 Cal.App.4th 1017, 1030.) If the evidence supports only a speculation or conjecture with respect to the causal connection between the negligence and the harm, the plaintiff did not meet his burden. (*Ibid*; see also *Ortega v. Kmart Corp., supra*, 26 Cal.4th at pp. 1205-1206.)

In granting the JNOV, the trial court had to conclude that there was no substantial evidence that Dusty’s injuries were caused by him falling or electrical shock caused by the puddle of water in the alignment pit. Vernola was only responsible if the water caused the injury.

Here, not only was there no *substantial* evidence, there was *no* evidence *at all* presented by the Sorensens that established that the water in the pit caused Dusty’s fall or electrical injury. In fact, the jury could not even make a reasonable inference that the water in the pit was electrified or that the water caused Dusty to slip and fall.

Certainly, the jury could infer that Dusty fell. But the missing “substantial evidence” was that the fall was caused by the water. There was no testimony that the water was on the stairs near where he was found. Further, the Sorensens presented no evidence that the water caused the pit to be slippery. The testimony established that Dusty had worked in the pit when water had been present numerous times without incident. Also missing is evidence that there was water in the area where Dusty fell that

caused the floor to be slippery. The Sorensens failed to present any evidence as to where Dusty was located when he fell and if the water in the pit was at that location. Although part of Dusty's body landed in the water, there was no evidence that there was water where he initially fell. This was not a matter of evaluating conflicting evidence or the credibility of witnesses. There simply was no evidence that the water caused Dusty to fall.

Moreover, there was no evidence that the water in the pit was electrified. It is not a reasonable inference that the electrical outlets caused the water to be electrified. The only testimony was that the water had been coming into the pit for years but had not caused an electric shock. Cheng, the only expert who was testified on electricity, stated that there was no source of electricity in the pit to cause the water to be electrified.

Additionally, the paramedics and physicians who treated Dusty immediately after the incident did not conclude that Dusty had suffered from an electrical injury. It was uncontradicted that the treating emergency room doctor could not conclude that Dusty suffered from an electrical injury. A treating paramedic could not determine what had happened to Dusty. Most important, despite the fact that the doctors whom the Sorensens hired to evaluate Dusty five years after the incident testified that the most "plausible" explanation for his injuries was electrocution or closed head injury, these medical experts could not establish what caused the electrical injury or fall. It was not a reasonable inference that since Dusty had injuries consistent with electrical shock or falling, when there was no source of electricity in the pit or evidence that the water caused the floor to

be slippery, the cause of injuries was the water in the pit. This was mere speculation or conjecture that cannot support the jury verdict. (*Ortega v. Kmart Corp.*, *supra*, 26 Cal.4th at pp. 1205-1206.)

The Sorensens rely upon *Robinson v. Western States Gas etc. Co.* (1920) 184 Cal. 401 to support their argument that there was substantial evidence that Dusty suffered an electrical shock while in the alignment pit. In *Robinson*, the deceased was found under a windmill near a metal chain used to turn the metal blades of the windmill. The deceased's lips were swollen, his face and neck were discolored, and his neck was swollen and enlarged. Evidence was presented that this discoloration of the skin was common after electrical shock. (*Id.* at pp. 404-405.) The defendant was a power company that ran power lines near the windmill that carried 11,000 volts of electricity. Although the wires had been built to be 12 inches from the windmill, the weight of electrical poles and wind could cause the power lines to come in contact with the windmill. (*Id.* at p. 404.) The deceased's family claimed that the deceased received an electrical shock from the power lines hitting the windmill. Evidence was also presented that three months after his death, a young man operating the windmill received an electrical shock causing his lip to swell and become discolored. (*Id.* at p. 404-405.)

On appeal, the court concluded that there was sufficient evidence presented that the deceased was killed by electrical shock due to the power lines coming in contact with the windmill. Despite there being only circumstantial evidence, "it [was] sufficient to

raise a reasonable inference that such electricity was the cause of his death.” (*Robinson v. Western States Gas etc Co.*, *supra*, 184 Cal. at p. 405.)

This case differs from *Robinson*. Here, the Sorensens provided no viable source for the electricity, unlike the 11,000 volts of electricity in the power lines in *Robinson*. The only evidence was from Cheng, the only electricity expert who testified. Cheng stated that there was no electrical source that would have electrified the water. He unequivocally stated that Dusty did not suffer from an electrical injury. Additionally, in *Robinson*, a similar injury occurred just months after the deceased was found. Here, Dusty and Hernandez had worked for years in the pit without incident, including while a electrical cord was in the water. The Sorensens provided no evidence on how the water in this case was electrified. One cannot even make a reasonable inference from the evidence presented that the water was electrified.

D. *Dangerous Condition*

Although not addressed by the trial court in its grant of the JNOV, we briefly address the claim by Vernola that there was no substantial evidence that the puddle of water in the pit was a dangerous condition, a requirement for finding liability under a premises liability action, or that Vernola had knowledge that it was a dangerous condition.

The law requires a landlord to use ordinary care to eliminate a dangerous condition on its property over which it has control. (*Salinas v. Martin* (2008) 166 Cal.App.4th 404, 412.) “A ‘dangerous condition’ is defined as ‘a condition of property

that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property . . . is used with due care in a manner in which it is reasonably foreseeable that it will be used.’ [Citation.] The existence of a dangerous condition is ordinarily a question of fact but ‘can be decided as a matter of law if reasonable minds can come to only one conclusion.’ [Citation.]” (*Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1347.) “A dangerous condition exists when public property ‘is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself,’ or possesses physical characteristics in its design, location, features or relationship to its surroundings that endanger users. [Citation.]” (*Id.* at pp. 1347-1348.)

Here, the Sorensens presumed that the presence of the water in the alignment pit was a dangerous condition. However, there was no evidence that the water in the pit caused the floor to be slippery. Moreover, there was no evidence that any electrical source was impacted by the water. Dusty and Hernandez had worked in the location for years with water in the pit without injury. There was no evidence that the pit was slippery, and Cheng testified there was no electrical source. As such, there no substantial evidence that the water in the pit presented a dangerous condition.

This case is similar to *Buehler v. Alpha Beta Co.* (1990) 224 Cal.App.3d 729, where the court affirmed summary judgment where plaintiff’s theory was that defendant’s floor was improperly waxed or there was liquid on the floor, but plaintiff presented no evidence in opposition to defendant’s summary judgment motion showing

the floor was slippery or otherwise caused her fall. Plaintiff had no idea what caused her fall, and there was testimony by a witness that the floor was not slippery. The court concluded that summary judgment was proper because plaintiff had lost her balance for some unknown reason, she did not see anything on the floor which caused her to slip and fall, and she did not know what caused her to slip. This was not enough to show negligence. (*Id.* at p. 734.)

Based on the foregoing, the jury verdict was not supported by substantial evidence. The trial court properly granted the JNOV.

IV

DISPOSITION

The judgment notwithstanding the verdict is affirmed. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.