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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ELAINE CHRISTIAN,

Plaintiff and Appellant,

v.

COUNTY OF ORANGE et al.,

Defendants and Respondents.

G045514

(Super. Ct. No. 30-2009-00297758)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,  
John C. Gastelum, Judge. Reversed.

Shernoff Bidart Echeverria, Shernoff Bidart Echeverria Bentley, Michael J.  
Bidart, Gregory L. Bentley and Steven Schuetze for Plaintiff and Appellant.

Beam, Brobeck, West, Borges & Rosa, David J. Brobeck, Jr., Louise M.  
Douville and Stephen J. Martino for Defendants and Respondents.

\* \* \*

## INTRODUCTION

While she was walking along a city street in Laguna Hills, Elaine Christian was brutally attacked by three dogs. Christian sued the City of Laguna Hills, the County of Orange, and Orange County Animal Care Services for negligence. (The County of Orange and Orange County Animal Care Services will be referred to herein as the County.) Christian claimed the County was negligent in conducting an investigation of an earlier incident involving the dogs that attacked her, and that if the investigation had been properly conducted, precautions would have been taken that would have prevented the attack on her.

Immediately before the start of a jury trial, the trial court decided as a matter of law, without the benefit of a written or oral motion, that discretionary immunity barred Christian's lawsuit, and entered judgment in favor of the County. We conclude the trial court could not make such a determination as a matter of law, and therefore reverse the judgment.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

On December 18, 2008, Christian was attacked by three mastiffs that had escaped from the yard of their owners, Leslie Rodriguez and Tyler Paulson (the Rodriguez/Paulson dogs). A neighbor of Rodriguez and Paulson's was bitten by one of the Rodriguez/Paulson dogs just before they attacked Christian. Christian was treated over a lengthy period of time due to her extensive injuries. The Rodriguez/Paulson dogs were euthanized.

During an investigation after the attack on Christian, the County learned of another incident involving two of the Rodriguez/Paulson dogs, which occurred in March 2008 (the Horton incident). In the Horton incident, the victim was Guy Horton, who suffered two puncture wounds to his right ring finger when he tried to break up a fight between his dog and one of the Rodriguez/Paulson dogs. Horton's dog was not on a

leash at the time. Horton claimed two of the Rodriguez/Paulson dogs ran up and attacked his dog, unprovoked. Paulson claimed Horton's dog ran at the Rodriguez/Paulson dogs, and one of the Rodriguez/Paulson dogs broke its leash and began fighting with Horton's dog. Horton hit both dogs to break up the fight; it was not clear which dog actually bit Horton. The animal control officer who interviewed Rodriguez and Paulson regarding the Horton incident decided the Rodriguez/Paulson dogs were not vicious or potentially dangerous, and did not provide his findings to the administrative lieutenant of the Orange County Animal Care Services unit.

The County also learned, during its investigation after the attack on Christian, that the Rodriguez/Paulson dogs had escaped their yard on several occasions during the previous months. A neighbor reported one of the Rodriguez/Paulson dogs had entered her garage, and she had climbed on the hood of her car because she was scared. On another occasion, one of the Rodriguez/Paulson dogs jumped over the fence of a neighbor's yard, frightening the neighbor's children.

Christian sued the City of Laguna Hills and the County for negligence and negligence per se.<sup>1</sup> A demurrer to the negligence per se cause of action was sustained. The County's motion for summary judgment, which was based, in part, on the defense of discretionary immunity under Government Code section 820.2, was denied because triable issues of material fact were found to exist.<sup>2</sup>

Immediately before trial, the parties filed briefs on the issue of discretionary immunity. After argument, the trial court treated the County's brief as a motion to dismiss, and granted it as a matter of law: "[L]ooking at all of this as a matter

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<sup>1</sup> Christian settled her claims against Rodriguez and Paulson; that case is not a part of this appeal. The City of Laguna Hills is not named in the judgment, and is not a party on appeal.

<sup>2</sup> The trial court's minute order denying the motion for summary judgment referenced and confirmed the trial court's tentative ruling on the motion. Pursuant to this court's order, Christian's appellate counsel filed a declaration attaching a copy of the tentative ruling, which was not included as part of the appellate record.

of law, the court finds the discretionary immunity does apply here and the public entity cannot be held vicariously liable because that public employee had discretionary immunity. The court is going to grant the motion to dismiss.” Judgment was entered in favor of the County, and Christian timely appealed.

## DISCUSSION

### I.

#### *WAS THE PROCEDURE PROPER?*

Christian initially argues she was denied due process when the trial court made a dispositive ruling on her remaining claim for negligence without the benefit of a noticed motion. We agree. The County did not file a written motion, or make an oral motion, to bring this issue before the court. The trial court decided the issue based on bench briefs filed by the parties immediately before trial. Indeed, the court’s judgment is titled, “Judgment on Supplemental Brief on Immunity Issue and Response to Plaintiff’s Bench Brief Establishing That Plaintiff’s Action Is Barred as a Matter of Law.” At oral argument on appeal, the County’s counsel argued that the County had made a motion to dismiss when, in the last sentence of its supplemental trial brief, it noted: “Plaintiff has failed to establish a cause of action pursuant to the Tort Claims Act (*Gov. Code* § 810 et. seq.), and plaintiff’s action should be barred as a matter of law, *and trial should not go forward.*” (Second italics added.) We reject the notion that virtually the entirety of the Code of Civil Procedure and the California Rules of Court applicable to trial courts can be avoided by such a clause at the end of a 23-page supplemental trial brief.

The County also claimed at oral argument on appeal that Christian’s trial counsel agreed this was an issue of law that could be decided by the court in this fashion. The County grossly misstates Christian’s position in the trial court. Christian, through her counsel, stridently objected to the trial court’s consideration, without a noticed motion, of the discretionary immunity issue before trial. Christian filed a written

objection to the court's attempt to do so. It is true that within that objection, Christian appears to acknowledge the court could bifurcate the discretionary immunity issue and conduct a bench trial on it; it bears noting, however, that Christian did so as a proposal to avoid the court deciding the dispositive issue before trial, without the benefit of any evidence.

We acknowledge that some reported cases grudgingly accept that the trial court's inherent authority to control litigation permits it, in appropriate cases, to grant motions in limine that resolve the case. (See *Amtower v. Photon Dynamics, Inc.* (2008) 158 Cal.App.4th 1582, 1593-1595; *Lucas v. County of Los Angeles* (1996) 47 Cal.App.4th 277, 284.) In the present case, as noted *ante*, not even a motion in limine was filed with the court. The trial court's inherent authority did not permit it to ignore all rules of procedure and evidence.

In *Amtower v. Photon Dynamics, Inc.*, *supra*, 158 Cal.App.4th at page 1595, the appellate court concluded that despite the procedural irregularities in the trial court's use of a motion in limine as a dispositive motion, any error was harmless because "the record show[ed] that plaintiff could not have prevailed under any circumstances." Therefore, we continue to the merits of the issue.

## II.

### *DISCRETIONARY IMMUNITY*

The remaining question is whether the trial court could determine, as a matter of law, that discretionary immunity barred Christian's negligence claim against the County.

#### A.

##### *Standard of Review*

The procedure employed by the trial court does not fit into an easy-to-define category. No matter what we call the procedure, we believe that the proper standard of review is *de novo*.

In *Amtower v. Photon Dynamics, Inc.*, *supra*, 158 Cal.App.4th at page 1595, the appellate court applied a de novo standard in reviewing a dispositive ruling arising from a procedure similar to the one employed by the trial court here. “[W]hen the trial court utilizes the in limine process to dispose of a case or cause of action for evidentiary reasons, we review the result as we would the grant of a motion for nonsuit after opening statement, keeping in mind that the grant of such a motion is not favored, that a key consideration is that the nonmoving party has had a full and fair opportunity to state all the facts in its favor, and that all inferences and conflicts in the evidence must be viewed most favorably to the nonmoving party.” (*Ibid.*)

An order on a motion for nonsuit is also reviewed de novo. (*M&F Fishing, Inc. v. Sea-Pac Ins. Managers, Inc.* (2012) 202 Cal.App.4th 1509, 1532.) “A defendant is entitled to a nonsuit if the trial court determines that, as a matter of law, the evidence presented by plaintiff is insufficient to permit a jury to find in his favor. [Citation.] ‘In determining whether plaintiff’s evidence is sufficient, the court may not weigh the evidence or consider the credibility of witnesses. Instead, the evidence most favorable to plaintiff must be accepted as true and conflicting evidence must be disregarded. The court must give “to the plaintiff[’s] evidence all the value to which it is legally entitled, . . . indulging every legitimate inference which may be drawn from the evidence in plaintiff[’s] favor.’” [Citation.] A mere ‘scintilla of evidence’ does not create a conflict for the jury’s resolution; ‘there must be *substantial evidence* to create the necessary conflict.’ [Citation.] [¶] In reviewing a grant of nonsuit, we are ‘guided by the same rule requiring evaluation of the evidence in the light most favorable to the plaintiff.’ [Citation.] We will not sustain the judgment “‘unless interpreting the evidence most favorably to plaintiff’s case and most strongly against the defendant and resolving all presumptions, inferences and doubts in favor of the plaintiff a judgment for the defendant is required as a matter of law.’” [Citation.]” (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 291.) We may not, however, consider the supporting evidence in

isolation, and disregard any contradictory evidence; rather, we must review the entire record. (*Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1581.)

The standard for a trial court granting a motion for a directed verdict is the same as the standard for granting a motion for nonsuit. (*Adams v. City of Fremont* (1998) 68 Cal.App.4th 243, 262-263.) Our standard of review on appeal is also the same as for a nonsuit motion: We review the evidence in the light most favorable to the nonmoving party, resolve all conflicts and inferences in his or her favor, and determine de novo whether substantial evidence tends to support each element of the plaintiff's case. (*Id.* at p. 263; *Heller v. Pillsbury Madison & Sutro* (1996) 50 Cal.App.4th 1367, 1392-1393; see also *Nally v. Grace Community Church, supra*, 47 Cal.3d at p. 291.)

The standard of review would also be de novo if the trial court's order were treated as a ruling on a motion for reconsideration of the order denying the motion for summary judgment. "A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. [Citation.] We review the trial court's decision de novo, considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports. [Citation.]" (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.)

When a trial court grants a motion in limine, which excludes all evidence on a claim, the order is reviewed de novo, as the motion in limine is operating as a nonsuit motion. (*City of Livermore v. Baca* (2012) 205 Cal.App.4th 1460, 1465.)

## B.

### *Does Discretionary Immunity Apply Here?*

The key to our determination whether discretionary immunity bars Christian's lawsuit is section VII. of the Orange County Animal Care Services' policy on vicious dog investigations, which reads in relevant part as follows:

“A. Initiation:

“1. When a report of a dog suspected of being vicious or potentially dangerous is received, all pertinent information shall be forwarded to the Operations Desk Officer. [¶] . . . [¶]

“2. The Operations Desk Officer shall initiate the vicious or potentially dangerous dog investigation by:

“a. Investigating incidents involving the dog which have been reported to OCACS [(Orange County Animal Care Services)] during the preceding 36 month period, including, but not limited to, conducting a research [*sic*] of prior bites and dog vs. dog incidents involving the dog.

“b. Placing all applicable information in a manila file folder which shall contain a running anecdotal file and be maintained by the Operations Desk Officer.

“3. The Operations Desk Officer shall submit the file folder to the Administrative Lieutenant, who will then determine whether the folder shall be placed in the problem dog file or assigned for further investigation.

“a. If the Administrative Lieutenant has determined that further investigation is warranted, an Activity Window will be created by the Operations Desk Officer and assigned to a Senior Animal Control Officer (Sergeant).

“b. The Operations Desk Officer shall maintain a log to ensure that all vicious or potentially dangerous dog investigations are accounted for and completed in a timely manner.

“4. The Vicious/Potentially Dangerous Dog program shall be continuously monitored and overseen by the Administrative Lieutenant, who will direct the activities of the Operations Desk Officer and any other subordinates involved.

“B. Investigation Unit:

“1. The Sergeant assigned to conduct the investigation shall be solely responsible for the completion of the report. If contact cannot be made during the shift,

arrangements may be made for an additional Sergeant's involvement. It shall remain the assigned Sergeant's responsibility to ensure the completion of the investigation in a timely manner. The Sergeant conducting the investigation shall:

“a. Contact the reporting party, victims, neighbors, etc. to ascertain any additional evidence, which may be obtained to sustain proof of aggressive or vicious propensities of the dog.

“b. Obtain written declarations from witnesses of incidents.

“c. Obtain Statement Forms . . . from those offering evidence to support or oppose the declaration of the dog as vicious or potentially dangerous. Attempts shall be made to obtain declarations and statements in person while conducting the investigation. If no contact is made with the neighbors, the Sergeant will leave the Notice of Vicious/Potentially Dangerous Dog Investigation Letter . . . at their residences.

“d. Contact the dog owner and/or custodian to advise them of the investigation and to check for a current license and vaccination (if applicable). The Sergeant shall leave the owner and/or custodian a Dog Owner Notice of Vicious/Dangerous Investigation Letter . . . . If contact cannot be made with the dog owner, the Sergeant shall leave the letter at the residence.

“e. Evaluate the temperament of the dog at the owner's and/or custodian's residence or at the shelter if the dog was impounded.

“f. Draw a Property Diagram . . . of the owner's and/or custodian's property including details of the dog's maintenance area.

“g. Complete and detailed [*sic*] Supplemental Investigation Report . . . , indicating whether the dog fits the legal definition of vicious/potentially dangerous dog per OCCO [(Orange County Codified Ordinances)] section 4-1-23 . . . . If a vicious or potentially dangerous dog declaration is warranted, the recommended conditions of confinement and maintenance shall also be included.

“h. Submit the completed investigation file and report to the Administrative Lieutenant for evaluation. A determination will be made whether to close the case or to forward the investigation file to the Chief of Field Operations for declaration of the dog as vicious/potentially dangerous.

“i. If the determination is made that the dog will not be declared vicious or potentially dangerous, the file will be placed in pending, the Administrative Lieutenant will send the dog owner a Dog Owner Vicious/Potentially Dangerous Pending Letter . . . .”

Based on the Horton incident, one of the Rodriguez/Paulson dogs might have been classified as a potentially dangerous dog based on section VI. of the Orange County Animal Care Services’ policy, which provides, in relevant part: “Potentially dangerous dog means any of the following: [¶] . . . [¶] (2) Any dog which, when unprovoked, bites a person causing any injury less severe than a ‘severe injury’. Severe injury means any physical injury to a human being that results in muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery. [¶] (3) Any dog which, when unprovoked, has . . . inflicted injury, or otherwise caused injury attacking a domestic animal . . . .”<sup>3</sup>

The County argues that there are three levels of discretionary decision making regarding dangerous or vicious dogs: (1) by the animal control officer, who initiates a potentially dangerous dog investigation if he or she suspects a dog is potentially dangerous; (2) by the administrative lieutenant, who, after a full investigation, determines whether the dog will actually be declared vicious or potentially dangerous; and (3) by the animal care services director, if the owner of a dog declared to be vicious or potentially dangerous appeals that decision. Christian counters that the Orange County

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<sup>3</sup> These definitions are taken directly from the Orange County Codified Ordinances section 4-1-23.

Animal Care Services' policy on vicious dog investigations gives discretionary authority only to the administrative lieutenant.

Looking solely at the language of the vicious dog policy, we would conclude that the animal control officer did not have discretion to determine the Rodriguez/Paulson dogs were neither vicious nor potentially dangerous, and, therefore, his actions are not protected by discretionary immunity. The language of the policy, until the investigation reaches the administrative lieutenant, is mandatory language. The animal control officer *shall* forward all relevant information to the operations desk officer, who *shall* initiate the investigation, and then *shall* forward the file folder containing the investigation materials to the administrative lieutenant, who determines whether further investigation is necessary. Whether the administrative lieutenant delegated his discretionary authority to the animal control officer, either generally or in this specific case, cannot be determined as a matter of law.

The County argues that the animal control officer in the field is given initial discretion to determine whether a dog is suspected of being vicious or potentially dangerous by section VII.A.1. of the policy. We do not agree that the language of the policy gives the animal control officer such discretion. The relevant language reads: "When a report of a dog suspected of being vicious or potentially dangerous is received, all pertinent information shall be forwarded to the Operations Desk Officer." A report of the Horton incident was received, which described circumstances placing at least one of the Rodriguez/Paulson dogs in the category of a potentially dangerous dog. The suspicion that a dog is potentially dangerous is determined by what is in the report, not what the animal control officer in the field might decide.

C.

*Discretionary Versus Ministerial Acts*

The County may be liable for injury caused by the act or omission of an employee within the scope of his or her employment. (Gov. Code, § 815.2, subd. (a).) If

the employee is immune from liability, the County, too, is immune. (*Id.*, § 815.2, subd. (b).)

Christian’s first amended complaint alleged the County’s failure to properly conduct an investigation of the Horton incident, in violation of its duties to protect the public from the Rodriguez/Paulson dogs, caused her injuries. The County argued it was not liable to Christian because the animal control officer involved in investigating the Horton incident was protected from liability by discretionary immunity: “Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.” (Gov. Code, § 820.2.)

The California Supreme Court has concluded that Government Code section 820.2 immunizes planning and policy decisions, but not operational functions performed by government employees, even when the performance of those operational functions involves an exercise of discretion. “[A]lmost all acts involve some choice among alternatives, and the statutory immunity [under section 820.2] thus cannot depend upon a literal or semantic parsing of the word ‘discretion.’ [Citation.] . . . [¶] Under these circumstances, *Johnson [v. State of California]* (1968) 69 Cal.2d 782] concluded, a ‘workable definition’ of immune discretionary acts draws the line between ‘planning’ and ‘operational’ functions of government. [Citation.] Immunity is reserved for those ‘*basic policy decisions* [which have] . . . been [expressly] committed to coordinate branches of government,’ and as to which judicial interference would thus be ‘unseemly.’ [Citation.] Such ‘areas of quasi-legislative policy-making . . . are sufficiently sensitive’ [citation] to call for judicial abstention from interference that ‘might even in the first instance affect the coordinate body’s decision-making process’ [citation]. [¶] On the other hand, . . . there is no basis for immunizing lower-level, or ‘ministerial,’ decisions that merely implement a basic policy already formulated. [Citation.] Moreover, we cautioned,

immunity applies only to *deliberate and considered* policy decisions, in which a ‘[conscious] balancing [of] risks and advantages . . . took place. The fact that an employee normally engages in “discretionary activity” is irrelevant if, in a given case, the employee did not render a considered decision. [Citations].’ [Citation.] [¶] Recognizing that ‘it is not a tort for government to govern’ [citation], our subsequent cases have carefully preserved the distinction between policy and operational judgments. Thus, we have rejected claims of immunity for a bus driver’s decision not to intervene in one passenger’s violent assault against another [citation], a college district’s failure to warn of known crime dangers in a student parking lot [citation], a county clerk’s libelous statements during a newspaper interview about official matters [citation], university therapists’ failure to warn a patient’s homicide victim of the patient’s prior threats to kill her [citation], and a police officer’s negligent conduct of a traffic investigation once undertaken [citation]. [¶] On the other hand, we have concluded that the discretionary act statute does immunize officials and agencies against claims that they unreasonably delayed regulations under which a murdered security guard might have qualified himself to carry a defensive firearm [citation], or negligently released a violent juvenile offender into his mother’s custody [citation].” (*Caldwell v. Montoya* (1995) 10 Cal.4th 972, 981-982.)

The County relies on *Ortega v. Sacramento County Dept. of Health & Human Services* (2008) 161 Cal.App.4th 713 (*Ortega*) and *Ronald S. v. County of San Diego* (1993) 16 Cal.App.4th 887 (*Ronald S.*), in support of its argument that the trial court properly determined, as a matter of law, that discretionary immunity barred Christian’s lawsuit. In *Ortega*, the appellate court affirmed summary judgment granted on the basis of discretionary immunity. A minor had sued the local child protective services agency for returning her to her father’s custody without performing a reasonable investigation after initially taking her into protective custody; the father attempted to kill the minor by stabbing her four days after she was returned to him. (*Ortega, supra*, at

pp. 715-716.) “We recognize plaintiff says she is not complaining about an exercise of discretion or how the social worker analyzed the pertinent factors. Rather, plaintiff is complaining the social worker failed to gather the pertinent facts. Plaintiff argues this case involves breach of a ministerial duty to gather specific sources of facts. However, the exercise of discretion invariably entails the collection and evaluation of information. Thus, the collection and evaluation of information is an integral part of ‘the exercise of the discretion’ immunized by [Government Code] section 820.2. The distinction urged by plaintiff would eviscerate section 820.2 immunity, because in every case there would have to be a trial on the step-by-step actions which comprised the investigation forming the basis for an exercise of discretion.” (*Id.* at p. 733.)

*Ortega* cited *Ronald S.* with approval (*Ortega, supra*, 161 Cal.App.4th at p. 730); in *Ronald S.*, the court found discretionary immunity barred a claim of negligence in investigating and selecting adoptive parents who later abused the minor child. The *Ronald S.* court concluded: “The nature of the investigation to be conducted and the ultimate determination of suitability of adoptive parents bear the hallmarks of uniquely discretionary activity. The decisions made in the adoption process are by nature highly subjective. . . There is no way that the following of forms or rules or agency procedures could transmute this most subjective decisionmaking process into a ministerial act.” (*Ronald S., supra*, 16 Cal.App.4th at p. 897.)

The present case is distinguishable from *Ortega* and *Ronald S.* because the investigation into a dog bite does not involve the same quintessentially subjective decision making as does the investigation into returning a child to the custody of an allegedly abusive parent, or into placing a child with an adoptive family.

On the discretionary versus ministerial acts continuum, we conclude the acts of the animal control officer who investigated the Horton incident were far more like operational acts, rather than planning or policy decisions. A more apt case for our analysis is *Barner v. Leeds* (2000) 24 Cal.4th 676, 679-680, in which the California

Supreme Court concluded Government Code section 820.2 does not immunize a deputy public defender from claims of legal malpractice. The Supreme Court emphasized that the acts undertaken by the deputy public defender in her professional judgment were not “sensitive decision[s] implicating fundamental policy concerns warranting judicial abstention.” (*Barner v. Leeds, supra*, at p. 689.)

Similarly, in *Sanborn v. Chronicle Pub. Co.* (1976) 18 Cal.3d 406, 415, the Supreme Court concluded a city clerk’s decision to discuss a matter with the press was within the clerk’s discretion, but was not protected by discretionary immunity because it was a “routine, ministerial dut[y] incident to the normal operations of [the] office,” rather than “a ‘basic policy decision’ made at the ‘planning’ stage of [the] City’s operations.” The plaintiff’s defamation suit against the clerk and the city was therefore not barred by discretionary immunity.

Here, the evidence before the trial court could not have permitted a determination, *as a matter of law*, that the animal control officer’s investigation of the Horton incident was discretionary, rather than ministerial.<sup>4</sup> The stated purpose of the Orange County Animal Care Services’ policy on vicious dog investigations is “[t]o establish a uniform procedure for the initiation, completion and control of vicious and potentially dangerous dog investigations and compliance checks.” The Orange County Animal Care Services’ description of the duties and responsibilities of animal control officers does not give those officers the authority to decide whether a dog is vicious or potentially dangerous. Although the job duties include “[p]erform[ing] other duties or tasks as required or as directed by the Senior Animal Control Officer, Supervising Animal Control Officer and/or Chief of Field Services,” there is nothing in the appellate

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<sup>4</sup> The trial court repeatedly stated at the hearing on the “motion to dismiss” that it was weighing the evidence offered by the parties. If the court was addressing the issue of discretionary immunity on a motion to dismiss or a motion for nonsuit, and was deciding it as a matter of law, such a weighing of evidence was improper. (*Lopez v. City of Los Angeles* (2011) 196 Cal.App.4th 675, 684.)

record showing the animal control officer who investigated the Horton incident was required or directed to make a determination as to whether one of the Rodriguez/Paulson dogs was vicious or potentially dangerous. Additionally, nothing in the record shows the animal control officers were generally given such responsibility by their supervising officers.

The declaration of the animal control officer who investigated the Horton incident, which was submitted by the County, stated he was “trained to use my judgment and discretion when investigating dog bite incidents, and specifically trained based upon the departmental policy directive for Vicious Dog Investigations under what circumstances to recommend that my department conduct a ‘potentially dangerous/vicious dog investigation.’” The animal control officer also declared, “[i]n accordance with my training I decided, as I had on numerous occasions prior to March 18, 2008 to use my judgment and discretion and not recommend that Orange County Animal Care conduct or consider conducting a ‘potential dangerous/vicious dog investigation.’ I therefore filed the report in the routine manner with the Rabies’ desk at the Orange County Animal Care offices in Orange.” In his deposition, the animal control officer had admitted that the administrative lieutenant was the individual authorized to decide whether a potentially dangerous dog investigation should take place, and that the animal control officer had never provided his report of the Horton incident to the administrative lieutenant. The parties stipulated that the administrative lieutenant did not review the report regarding the Horton incident, did not discuss the Horton incident with any animal control officers, and made no decisions regarding the Horton incident, until after Christian was attacked by the Rodriguez/Paulson dogs.

Given the procedure adopted by the trial court to resolve the discretionary immunity issue, we must resolve all inferences and conflicts in the evidence in favor of Christian, and against the judgment. (*Panico v. Truck Ins. Exchange* (2001) 90 Cal.App.4th 1294, 1296.) In doing so, we reverse the judgment in favor of the County.

This case again causes us to remind the trial court that attempts to save the time and expense of a trial by resolving cases using expeditious but nonstatutory procedures often ends up producing an opposite result. As we cautioned more than 10 years ago: “Over the past several years, this court has seen a number of cases where trial judges have attempted to streamline trial proceedings by adjudicating a case from the bench based on offers of proof. [Citations.] The appeal before us illustrates how such an ‘unusual and unorthodox procedure’ [citation] may result—unless certain precautions are taken—in an unnecessary reversal of the trial court’s judgment, because the Court of Appeal must treat the case as if it were the product of a motion for nonsuit after an opening statement. [Citation.] That means that all the inferences and conflicts in the evidence must be resolved, on appeal, in favor of the losing party, i.e., against the judgment. [Citation.] Had the court simply taken the time to hold a real trial on any disputed issues of fact, or had the parties agreed to have a court trial by submitting evidence (including conflicting evidence) to the judge, the ensuing judgment would be entitled to the usual presumptions, and all factual inferences would be resolved in favor of the winning party, i.e., the judgment of the trial court. The moral to the story is that haste makes for a lower affirmance rate.” (*Panico v. Truck Ins. Exchange, supra*, 90 Cal.App.4th at p. 1296.)

The County makes a throwaway argument, in its respondent’s brief, that Government Code section 821 provides an alternative basis for dismissing the case because it was barred by the defense of immunity. Section 821 provides: “A public employee is not liable for an injury caused by his adoption of or failure to adopt an enactment or by his failure to enforce an enactment.” Cases interpreting section 821 have applied it to peace officers failing to make arrests (*Rubinow v. County of San Bernardino* (1959) 169 Cal.App.2d 67), and city council members enacting legislative acts (*Martelli v. Pollock* (1958) 162 Cal.App.2d 655). No case has extended the immunity under section 821 to a case with facts similar to this one and we see no reason to do so.

DISPOSITION

The judgment is reversed. Appellant to recover costs on appeal.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.