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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

PAUL D. HASTINGS,

Plaintiff and Appellant,

v.

UNITED AUTO RENTAL, INC., et al.,

Defendants and Respondents.

G046735

(Super. Ct. No. 30-2011-00439446)

O P I N I O N

Appeal from judgments of the Superior Court of Orange County,
William M. Monroe, Judge. Affirmed.

Paul D. Hastings, in pro. per., for Plaintiff and Appellant.

Taylor Anderson, Christine A. Diaz, Jorge A. Martinez, Claire E. Munger
and John M. Roche for Defendant and Respondent United Auto Rental, Inc.

Carroll, Burdick & McDonough and Matthew R. Rogers for Defendant and
Respondent Toyota Motor Sales, U.S.A., Inc.

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INTRODUCTION

Plaintiff Paul D. Hastings was sitting in the driver's seat of the Toyota Camry he had recently rented from defendant United Auto Rental, Inc. (UAR), in a grocery store parking lot, when he was approached by two plainclothes officers. Before the officers made contact, Hastings abruptly drove out of the parking lot at a high speed; the officers gave chase in their cars. After a brief pursuit, Hastings lost control of the Toyota Camry, drove into a curb, and crashed through a fence. Hastings sued UAR and Toyota Motor Sales, U.S.A., Inc. (Toyota), seeking recovery for injuries he suffered as a result of the collision, on the ground the Toyota Camry's airbag failed to deploy. After Hastings completed his case-in-chief, the trial court granted UAR's motion for nonsuit. The jury thereafter returned a special verdict finding the Toyota Camry performed as safely as an ordinary consumer would have expected when used in a reasonably foreseeable way.

We affirm and reject Hastings's contentions of error. The trial court properly granted UAR's motion for nonsuit because there was insufficient evidence to prove UAR was liable to Hastings on either a strict products liability or negligence theory. Judgment was properly entered in favor of Toyota, as Hastings has failed to show any error with regard to evidentiary rulings, the handling of juror questions, jury instructions, or the special verdict form.

BACKGROUND

I.

HASTINGS FILES FORM COMPLAINT AGAINST UAR AND TOYOTA.

In January 2011, Hastings filed a form complaint against UAR and Toyota, asserting claims for general negligence and products liability. In the complaint, Hastings

alleged UAR “failed to properly maintain a 2009^[1] Toyota Camry thereby causing the vehicle’s airbag to fail to deploy during an accident,” and Toyota “negligently manufactured a 2009 Toyota Camry so that the vehicle’s airbag would not properly deploy during an accident.”

II.

HASTINGS’S CASE-IN-CHIEF; THE TRIAL COURT GRANTS UAR’S MOTION FOR NONSUIT.

On January 9, 2009, Hastings rented a 2007 Toyota Camry from UAR. Around 8:00 p.m., Hastings drove the Toyota Camry from UAR to a Stater Brothers store in Costa Mesa. Hastings sat in the Toyota Camry in the Stater Brothers parking lot while his friend, who had driven separately to that location, went inside the store. Approximately eight minutes later, two plainclothes officers on foot approached Hastings.² Hastings abruptly sped out of the parking lot; the officers returned to their cars and pursued him.³ A patrol supervisor joined the chase in a marked police car when he heard “unit officers advise they . . . had a subject that was failing to yield.” Hastings ultimately drove into a curb and crashed into a chain-link fence at the Santa Ana Country Club golf course. He then exited the Toyota Camry and ran across the golf course before the police apprehended him on the north side of the golf course.

At trial, the patrol supervisor testified that a “hubcap . . . came off . . . [¶] . . . [¶] . . . from the undercarriage” of the vehicle, and he “form[ed] the impression that

¹ Although Hastings referred to a “2009 Toyota Camry” in his complaint, in his opening brief, he states that the vehicle at issue is a 2007 Toyota Camry.

² During Toyota’s case-in-chief, one of the plainclothes officers testified he “had arrested numerous subjects for drug transactions . . . at that location” and had observed potentially suspicious activity between Hastings and his friend in the parking lot.

³ Hastings explained his reaction was connected to an experience he had in Africa where he and his mother were carjacked by a gunman.

the Toyota Camry had bottomed out.” He also testified the “front end of the vehicle did not appear to hit anything substantial. Obviously the wheels had hit the curb. . . . [T]he curb was somewhat substantial, but not enough to cause substantial damage to the body.” The owner of UAR testified that the Costa Mesa Police Department towed away the vehicle, and that he understood the Toyota Camry was totaled as a result of the collision.

Hastings testified, “apart from refreshing [his] memory or seeing the photographs of the accident, [he] d[id not] have an independent memory . . . of the event” after he left the Stater Brothers parking lot. He testified he suffered injuries to his head, neck, and lower back. He further testified he experienced severe pain and numbness. Hastings’s counsel argued Hastings suffered injuries because the airbag in the Toyota Camry did not deploy.

After Hastings completed his case-in-chief, UAR and Toyota each moved for nonsuit. The trial court granted UAR’s motion for nonsuit. The court stated in its written and signed order there was insufficient evidence to prove UAR “should be held strictly liable for the defect in the vehicle.”⁴ The trial court reasoned UAR “did not maintain or service the vehicle’s airbag, and there was no indication by way of the service lights on the dashboard . . . that the vehicle’s airbag was faulty.” The trial court stated that Hastings “engaged in the police chase which was a dangerous and unreasonable activity, and drove negligently,” and concluded, “under these circumstances, the plaintiff is barred from bringing the suit against U.A.R.”

⁴ “[A]n order granting nonsuit is ordinarily an appealable order if it is in writing, signed by the court, and filed in the action. In such a case, it has the legal effect of a judgment.” (*Santa Barbara Pistachio Ranch v. Chowchilla Water Dist.* (2001) 88 Cal.App.4th 439, 448, fn. 1.) Here, Hastings appeals from, inter alia, a written order granting the motion for judgment of nonsuit that was signed by the trial court and filed. The order, therefore, is appealable, and we hereafter refer to it as a judgment.

The trial court denied Toyota's motion for nonsuit on the ground Hastings "satisfied the elements as to a strict-liability case with respect to Toyota" and "the burden shift[ed] to Toyota to prove that the vehicle airbag was not defective."

III.

EXPERT TESTIMONY; THE JURY RETURNS SPECIAL VERDICT IN FAVOR OF TOYOTA; HASTINGS APPEALS.

The trial proceeded as to Hastings's claims against Toyota alone on the issue whether the Toyota Camry's airbag was defective. An expert witness for the defense, Mark William Jakstis, explained the airbag is not designed to deploy "in every single frontal collision . . . [¶] . . . [¶] . . . because . . . if a person is . . . out of position, or the accident isn't severe enough, . . . there's other systems that take over, like your seatbelt." He testified it is not the "design intent to have an airbag deployment when a car hits a curb" because an airbag does not generally "provide a benefit to the occupant if it deploys in a curb strike." Furthermore, Jakstis acknowledged the "Toyota manual specifically identifies hitting a curb, edge of pavement, or hard surface as an event that may cause a deployment of an airbag," but also explained, "the important point [being] 'may' versus 'will.' In the other sections, it talks about events that will cause it."

Jakstis also testified the fence, into which Hastings crashed, was made up of "two separate pieces . . . [a]nd it appear[ed] that . . . when the vehicle went through, . . . the upper fence and the lower fence separated and let the vehicle go through." Jakstis then opined that the airbag "shouldn't have deployed in this particular case."

In addition, Jakstis noted multiple indications on the vehicle showing the absence of an impact. He testified the "hood [was] not pushed back . . . like you'd see in a typical frontal collision. That would be one that I would expect an airbag to deploy in." He stated, "there's no windshield cracking . . . indicating an occupant went up and hit the windshield," and the rearview mirror was "designed to just break away" in a collision,

but “it’s still attached . . . [s]o there’s no impact from, like, a hand or a head; otherwise, this thing would be broken off.” Jakstis also noted the “steering wheel rim isn’t deformed. ¶ . . . ¶ . . . [I]f you have enough energy, it’s designed to bend or deform. . . . [A]nd that way absorbs energy without causing huge injury.”

The jury returned a special verdict in which it found the Toyota Camry “perform[ed] as safely as an ordinary consumer would have expected when used in a reasonably foreseeable way.” The court awarded Toyota costs in the amount of \$35,222.66. Judgment was entered in favor of Toyota accordingly. Hastings appealed from both judgments.

DISCUSSION

I.

THE TRIAL COURT DID NOT ERR BY GRANTING UAR’S MOTION FOR NONSUIT.

A.

Standard of Review

“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.” (*Piedra v. Dugan* (2004) 123 Cal.App.4th 1483, 1495.)

B.

*There Was Insufficient Evidence to Permit a Jury to Find
UAR Was Strictly Liable.*

Hastings argues the trial court erred by granting UAR’s motion for nonsuit because there was sufficient evidence which would permit a reasonable jury to find UAR liable for the airbag’s alleged failure to deploy. For the reasons we will explain, the motion was properly granted.

The California Supreme Court summarized the law of strict products liability in *Greenman v. Yuba Power Products, Inc.* (1963) 59 Cal.2d 57, 62, stating a “manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being.” Courts have expanded the doctrine such that “[b]eyond manufacturers, anyone identifiable as ‘an integral part of the overall producing and marketing enterprise’ is subject to strict liability.” (*Arriaga v. CitiCapital Commercial Corp.* (2008) 167 Cal.App.4th 1527, 1534.)

However, “[t]he fact an entity was a ‘link in the chain of getting goods’ to the market . . . is not enough to establish the defendant should be held strictly liable. Rather, where liability is premised on the marketing enterprise theory, a plaintiff must establish (1) the defendant received a direct financial benefit from its activities and from the sale of the product; (2) the defendant’s role was integral to the business enterprise

such that the defendant's conduct was a necessary factor in bringing the product to the initial consumer market; and (3) the defendant had control over, or a substantial ability to influence, the manufacturing or distribution process." (*Bay Summit Community Assn. v. Shell Oil Co.* (1996) 51 Cal.App.4th 762, 778.)

Hastings did not elicit any testimony, or otherwise introduce evidence during his case-in-chief, to support a finding of strict liability as to UAR. Hastings called the owner of UAR as an adverse witness; the questioning, however, was limited to the matter of UAR's separate insurance claim regarding the loss of the Toyota Camry and the condition and custody of the car after the collision. Hastings testified on his own behalf; his testimony did not address, much less establish, that UAR "received a direct financial benefit from its activities," had an integral role in "bringing the product to the initial consumer market," or "had control over, or a substantial ability to influence, the manufacturing or distribution process." (*Bay Summit Community Assn. v. Shell Oil Co.*, *supra*, 51 Cal.App.4th at p. 778.)⁵ Even if Hastings's rental of the Toyota Camry satisfied the first two requirements, there was no evidence UAR's conduct satisfied the third requirement. Therefore, Hastings did not present sufficient evidence which would permit a jury to find UAR strictly liable, and granting nonsuit as to that claim was proper.

C.

There Was Insufficient Evidence to Enable a Reasonable Jury to Find UAR Was Negligent.

Hastings alleged UAR was negligent by failing to properly maintain the Toyota Camry, which resulted in the alleged failure of the airbag to deploy. The

⁵ At pages 9-10 of his reply brief, Hastings analyzes an opinion that has not been certified for publication. Hastings's reference to this unpublished opinion violated rule 8.1115(a) of the California Rules of Court, which states: "[A]n opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action."

elements of a cause of action for negligence are (1) a legal duty to use due care; (2) a breach of that duty; (3) a reasonably close causal connection between the breach and the resulting injury; and (4) actual loss or damage. (*Ahern v. Dillenback* (1991) 1 Cal.App.4th 36, 42.) Hastings did not elicit testimony during his case-in-chief to support a finding of any of the elements of negligence—Hastings neither established UAR had a duty to conduct maintenance on the airbag nor presented any evidence the Toyota Camry’s airbag might have had a problem, such as an “indication by way of the service lights on the dashboard” that the airbag was faulty. Even were we to assume the existence of a legal duty, there was no evidence any such duty was breached. As insufficient evidence was produced that would have permitted a reasonable jury to find UAR was negligent, UAR’s motion for nonsuit was properly granted.⁶

II.

JUDGMENT WAS PROPERLY ENTERED IN FAVOR OF TOYOTA.

Hastings argues the judgment in favor of Toyota should be reversed because (1) the trial court erroneously excluded evidence of Hastings’s pain and suffering; (2) Toyota’s expert witness should not have been permitted to testify because he had not inspected the Toyota Camry; (3) juror questions were improperly handled by the trial court; (4) the jury was erroneously instructed; and (5) the special verdict form was defective. We address and reject each of Hastings’s contentions of error.

⁶ In a heading in his opening brief, Hastings argues, “the trial court improperly granted the oral motion for nonsuit without first asking for written opposition.” (Capitalization omitted.) Hastings does not offer any legal authority or cite to the record in support of his argument. Code of Civil Procedure section 581c, subdivision (a) authorizes motions for nonsuit and does not provide a right to submit written opposition. (Wegner et al., *Cal. Practice Guide: Civil Trials and Evidence* (The Rutter Group 2012) ¶ 12:225, p. 12-46.1 (rev. #1, 2010) [“Most motions for nonsuit are made *orally* and without prior notice to plaintiff.”].)

A.

The Trial Court Did Not Err by Excluding Evidence of Hastings's Pain and Suffering During the Liability Phase of the Bifurcated Trial.

The record does not show the trial court ever excluded evidence of Hastings's pain and suffering. Hastings, UAR, and Toyota stipulated to a bifurcated trial on liability and damages, whereby evidence of Hastings's pain and suffering could properly be excluded from the liability phase of the trial and not introduced until the damages phase. (Code Civ. Proc., § 1048, subd. (b).) Notwithstanding the parties' stipulation, during the liability phase of trial, Hastings testified about the physical injuries he suffered and the severe pain and numbness he experienced following the collision. During trial, the court commented on the evidence that had already been admitted regarding Hastings's pain and suffering, by stating, "[p]laintiff testified that he suffered permanent and severe personal injuries caused by the vehicle's [airbag's] failure to deploy. So from the court's point of view, the plaintiff has satisfied that element of damages." Hastings does not cite to any instance in the record where, he contends, the trial court made a ruling to exclude such evidence; we find no error.

B.

Toyota's Expert Witness's Testimony Was Proper.

In his reply brief, Hastings argues, "[n]o expert can give his expert testimony without having the vehicle to examine. The visible damages of an impact are not ascertainable from photos which do not depict the undercarriage and suspension of the vehicle." At trial, Hastings did not object to Toyota's expert witness's testimony on this or any ground. He has thus forfeited the issue. In any event, Hastings has not cited any legal authority, and we have found none, that requires an expert witness to have personally examined a vehicle involved in a collision before offering an expert opinion regarding that collision.

C.

The Trial Court Properly Responded to Questions from the Jury.

During Toyota's case-in-chief, the jury submitted a question to the trial court, asking whether there was evidence (in addition to Hastings's testimony) that Hastings's friend went inside the Stater Brothers store for the purpose of purchasing a money order. Outside the presence of the jury, the trial court consulted Hastings's and Toyota's counsel about the question and inquired whether counsel could agree about how to answer the question. Hastings's counsel stated the answer was in the police report which showed a MoneyGram receipt was taken from Hastings's friend; Toyota's counsel stated, "I don't feel that we have any obligation to actually answer it." The trial court decided to tell the jury the "defense could not work out an agreement with the plaintiff as to how to respond to the questions."

Hastings argues, "[t]he jury presented questions to [Hastings] but the defendants were not willing to let [him] answer. As a result the Court threw out the questions to [Hastings]'s detriment, leaving the jury to presume that [Hastings] could not answer their questions satisfactorily." Hastings fails to cite any legal authority supporting his argument that the trial court erred in its response to the jury's question. Our review of the record confirms the court properly addressed the matter. But even if it had not, any error was harmless. Not only did Hastings have the opportunity to introduce evidence responsive to that question, he took advantage of that opportunity when he was called as a rebuttal witness and testified that his friend had a MoneyGram receipt. We find no error.

D.

Hastings Fails to Show Instructional Error.

Hastings argues the trial court improperly instructed the jury because "[i]n the jury instructions th[e] court references damages that [Hastings] was not allowed to bring in on the record" and "[a]s a result the jury was confused and thought that

[Hastings] suffered no damages.” Hastings did not include any of the jury instructions given in this case in the appellant’s appendix. The reporter’s transcript does not include the court’s oral instructions to the jury. Furthermore, our record does not show Hastings objected to any jury instructions. In any event, due to the parties’ stipulation to bifurcate liability from damages, as discussed *ante*, the issue of damages was never given to the jury. The special verdict form shows the jury got no further than to determine that the Toyota Camry performed as safely as an ordinary consumer would expect in a reasonably foreseeable way.

E.

The Special Verdict Form Was Proper.

Hastings also argues the special verdict form was defective because “it addressed the vehicle performance rather than the safety feature of the air bags.” In his reply brief, Hastings contends the following three questions should have been added to the special verdict form: (1) “Is the failure of a safety airbag device to deploy, a serious cause of secondary impact injuries to the driver occupant of a vehicle in a head on coll[i]sion where the vehicle sustains major front end damage?” (2) “Was the vehicle misused in such a way that was so highly extraordinary circumstances, that it was not reasonably foreseeable that a consumer in the driver’s seat of a parked vehicle, would freak out and be involved in an accident, if approached by a[n] unidentified plain clothes stranger armed with a gun in a dark supermarket parking lot in a well known notorious criminal infested hot spot of Costa Mesa?” and (3) “Was the misuse of the vehicle the sole cause of plaintiff’s harm?”

Although Hastings had requested that the trial court include these questions in the special verdict form, he fails to provide *any* analysis supporting the propriety of including these three questions in the special verdict form, much less address how the special verdict form was defective without including them. We find no error.

DISPOSITION

The judgments are affirmed. Respondents shall recover costs on appeal.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.