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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

SEDIGHEH ANSARI et al.,

Plaintiffs and Appellants,

v.

EL PROYECTO DEL BARRIO FOUNDATION, INC., et al.,

Defendants and Respondents.

B271569

(Los Angeles County Super. Ct. No. BC522707)

APPEAL from a judgment of the Superior Court of Los Angeles County. Huey P. Cotton, Jr., Judge. Affirmed.

Kitsinian Law Firm, Nareg S. Kitsinian; Hagopian Law Firm and Shant H. Hagopian for Plaintiffs and Appellants.

Murchison & Cumming and Edmund G. Farrell III for Defendants and Respondents.

In this trip and fall case, Sedigheh Ansari (Ansari) and Abbas Taheri (collectively appellants) appeal from a judgment in favor of El Proyecto Del Barrio, Inc. and El Proyecto Del Barrio Foundation (collectively respondents).[1] Appellants contend the trial court erred when it failed to instruct the jury it could consider the failure of respondents to follow their own policies and procedures as evidence that they were negligent. We find no error and affirm.

FACTS

On June 12, 2013, appellants and their son drove to respondents' medical facility and parked. While walking in the parking lot through parking stalls for the disabled, Ansari tripped over an unpainted wheel stop and sustained a severe shoulder injury. Appellants sued respondents.

In discovery, respondents were asked to produce any policies or procedures pertaining to the parking lot. Mayder Chacon (Chacon) verified respondents' discovery responses and produced a document labeled "Training Materials: Identification and Prevention Strategies for Trip and Fall Hazards." In a

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[1] The complaint is not in the record. The judgment is against appellants and in favor of two specific entities, El Proyecto Del Barrio Foundation, Inc. and El Proyecto Del Barrio Foundation. The parties agree, however, that the corporate defendant implicated by the judgment was El Proyecto Del Barrio, Inc. We asked the parties for clarification. A representative of the law firm that wrote respondents' brief replied to our request as follows: "Please note that the correct name of the respondent/defendant on appeal is El Proyecto Del Barrio, Inc. We apologize for this discrepancy. [¶] The entity, El Proyecto Del Barrio Foundation, was in fact dismissed during trial on a motion for directed verdict[.]" We accept this representation.

section called "Outdoor Walking Surface Irregularities," it listed "Prevention Strategies," one of which stated, "Concrete wheel stops in parking lots can be a tripping hazard and should not be used." At her deposition, Chacon testified that this document represented respondents' policies and procedures. Later, Chacon amended respondents' verified discovery responses to indicate they did not have any policies and procedures pertaining to the parking lot.

Prior to trial, appellants proposed two special jury instructions. Proposed special jury instruction No. 1 stated: "You may consider [respondents'] failure to follow its own safety rules to be evidence of negligence." The trial court sustained respondents' objection to proposed special jury instruction No. 1.

Trial began on December 15, 2015.

Brad Avrit (Avrit) testified as appellants' expert. He opined that the parking lot was in an unsafe condition, the unsafe condition caused the accident, respondents knew about or should have known about the unsafe condition, and the cost to repair the unsafe condition was minimal when weighed against the risk of the hazard. Later in his testimony, Avrit stated: "In their own policies they specifically identified that wheel stops are a trip hazard, they're dangerous, and they either should be removed or they should be painted. And in this case, they did not paint the wheel stops, obviously, and they obviously also did not remove them."

Chacon testified and explained that the training materials produced in discovery had been produced in error, and why that happened.

Appellants' counsel elicited from Chacon that when she signed the original discovery responses, she verified the truth

and accuracy of those responses. Also, he read from Chacon's deposition transcript in which she identified the originally produced policies and procedures as respondents' policies and procedures.

Respondents called Corinne Sanchez (Sanchez) as a witness. She was respondents' chief executive officer, and also a member of their board of directors. She testified that policies and procedures must be adopted by the board of directors, signed by her, and signed by respondents' medical director for them to have effect. As to the original documents produced in discovery, Sanchez testified that they were not respondents' policies and procedures.

In addition, Sanchez testified that she had no knowledge of policies and procedures pertaining to the parking lot, and also that she had no knowledge of a slip and fall in the parking lot prior to Ansari's fall.

Respondents called Ned Wolfe (Wolfe) as an expert. He examined the layout of the parking stalls for the disabled. He explained that they are strictly regulated, and that "the code specifies the width of the stalls, the length of the stalls, and . . . the access pathway from the stalls to the entrance of" respondents' building. In particular, he noted that there has to be a five-foot-wide "unobstructed route of travel for the disabled." The code required either a wheel stop or a curb to prevent encroachment of cars over the required width of the walkway. According to Wolfe, "So these wheel stops were provided at a distance of 28 inches from the curb. If these wheel stops were not there, it means that cars can park with the tires touching the curb, which is allowed in the code, you can use either a curb or a wheel stop. There's only one problem, that this walkway is six

feet wide. If the cars park up against the curb, you get an overhang of at least—a vehicle overhang for maybe two feet. That would cut the width of the walkway down to four feet. That would be too narrow for the access pedestrian way for wheelchairs to access this. [¶] That's why the wheel stops are used here to move the cars back to they don't encroach into the walkway."

Continuing on, Wolfe testified, "So the code permits either your wheel stops or your curbs. [¶] Now, you'll see curb stops and no wheel stops when there's a planter area in front of the cars. . . . That's fairly common. But where you have a walkway in front of the cars, you always have the wheel stops to move the cars back to eliminate the encroachment issue." Respondent's counsel asked if there was no choice but to have wheel stops based on the design of the sidewalk. Wolfe replied, "There is no choice." Asked if the parking stalls for the disabled would be compliant with the "California Building Code" if the wheel stops were removed, Wolfe said, "No." Next, he was asked if a corporation could make a new policy to remove all of the concrete wheel stops in their parking lot. In response, Wolfe stated, "They can do it for nondisabled parking." As for the parking stalls for the disabled, he said, "[T]hey must have wheel stops."

Victor Fabinor (Fabinor), an architect who designed the parking lot, testified that parking stalls for the disabled must comply with City of Los Angeles requirements, which incorporate portions of the American with Disabilities Act. Asked if a parking lot was reasonably safe if it was deemed up to code, he replied, "Yes." The parking lot went through all the plan checks and inspections.

The trial court granted a directed verdict for El Proyecto Del Barrio Foundation. The action proceeded as to El Proyecto Barrio, Inc.

The trial court instructed the jury on general negligence principles pursuant to CACI Nos. 400 (negligence—essential factual elements), 401 (basic standard of care), 413 (custom or practice establishing what is reasonable), 1000 (premises liability—essential factual elements), 1001 (basic duty of care for, inter alia, a land owner), 1003 (what constitutes an unsafe condition), and 1011 (constructive notice regarding dangerous conditions on property).[2]

The case was submitted to the jury. Pursuant to a special verdict, the jury found that El Proyecto Del Barrio, Inc. was not negligent. The trial court entered judgment in favor of respondents.

This appeal followed.

DISCUSSION

Appellants contend the trial court erred when it failed to give proposed special jury instruction No. 1, and that this caused appellants prejudice. We independently review a claim of instructional error. (*Uriell v. Regents of University of California* (2015) 234 Cal.App.4th 735, 742–743.)

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[2] The giving of jury instructions was not recorded. We granted appellants' motion to augment the record to include proposed joint jury instructions submitted to the trial court. We presume the trial court gave all relevant CACI negligence instructions. Though respondents opposed the motion to augment, they did not suggest that the trial court failed to give the CACI instructions on negligence.

A proposed special jury instruction must contain a correct statement of the law. Otherwise, it should be rejected. (*Century Surety Co. v. Polisso* (2006) 139 Cal.App.4th 922, 961 ["Because the instructions were incorrect statements of the law, the trial court properly refused to give them"].) "'Instructions should state rules of law in general terms and should not be calculated to amount to an argument to the jury in the guise of a statement of law. [Citations.] Moreover, it is error to give, and proper to refuse, instructions that unduly overemphasize issues, theories or defenses either by repetition or singling them out or making them unduly prominent although the instruction may be a legal proposition. [Citation.]'" (*Major v. Western Home Ins. Co.* (2009) 169 Cal.App.4th 1197, 1217.)

To establish the propriety of proposed special jury instruction No. 1, appellants rely on case law establishing that the "safety rules of an employer are . . . admissible as evidence that due care requires the course of conduct prescribed in the rule." (*Dillenbeck v. Los Angeles* (1968) 69 Cal.2d 472, 477–478 (*Dillenbeck*) [police department's safety rules were evidence of the duty of care owed by a police officer while driving a car to the scene of a crime]; *Grudt v. City of Los Angeles* (1970) 2 Cal.3d 575 (*Grudt*) [police tactical manual was admissible regarding the standard of care while apprehending a suspect].)

Appellants' position fails for two reasons.

First, appellants have not analyzed why a rule pertaining to the conduct of an entity's employees should apply in the premises liability context. (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862 ["'When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as

waived"']; *Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1206, fn. 11 ["It is not our responsibility to develop an appellant's argument"].)

Second, it has been observed that "language taken from an opinion may not always safely be given as an instruction to a jury. [Citation.] Even if a statement in an opinion is made as a general rule, such rule is drafted with the special case in mind and may in a different case prove to be inapplicable." (*Tait v. San Francisco* (1956) 143 Cal.App.2d 787, 792.) This observation has force in the case at bar. The rule in *Dillenbeck* and *Grudt* applies to the course of employee conduct, not to a land owner's duty of care to invitees on land.

We conclude that the trial court properly refused to give special jury instruction No. 1.

All other issues are moot.

DISPOSITION

The judgment is affirmed. Respondents are entitled to their costs on appeal.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
HOFFSTADT

_____, J.*
GOODMAN

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* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.