Downey v. City of Riverside

2024 | Cited 0 times | California Supreme Court | July 22, 2024

IN THE SUPREME COURT OF CALIFORNIA

JAYDE DOWNEY, Plaintiff and Appellant, v. CITY OF RIVERSIDE et al., Defendants and Appellants.

S280322

Fourth Appellate District, Division One D080377

Riverside County Superior Court RIC1905830

July 22, 2024

Justice Kruger authored the opinion of the Court, in which Chief Justice Guerrero and Justices Corrigan, Liu, Groban, Jenkins, and Evans concurred. DOWNEY v. CITY OF RIVERSIDE S280322

Opinion of the Court by Kruger, J.

Since Dillon v. Legg (1968) 68 Cal.2d 728 (Dillon), California courts have recognized a right to recover in negligence for serious emotional distress suffered as a result of witnessing injuries inflicted on a close relative. Recovery for negligent infliction of emotional distress is available, however, only if present at the scene of the injury- producing event at the time it occurs and is then aware that it is causing injury to the victim. (Thing v. La Chusa (1989) 48 Cal.3d 644, 668 (Thing).)

In the prototypical case, exemplified by the facts of Dillon, a parent watches as a negligent driver collides with her child. The parent, who is contemporaneously aware of both the negligent conduct and , is permitted

to sue the driver for her emotional trauma. The facts of this case require us to consider a new question about emotional distress recovery: What if the plaintiff is aware that injury has been inflicted on the victim, but not of causing the injury?

Plaintiff Jayde Downey was giving driving directions to her daughter over cell phone when her daughter was severely injured in a car crash. Downey heard the collision and its immediate aftermath, but she could not see what had caused it. She claims that the fault lies partially with

individuals and entities responsible for the condition of the roadway where the crash occurred and has sued them for negligent infliction of emotional distress. The Court of Appeal concluded, however, that Downey was not entitled to recover emotional distress damages against these defendants unless at the time of the crash she was aware of a causal connection between her alleged negligence in maintaining the intersection.

We conclude this was error. For purposes of clearing the awareness threshold for emotional distress recovery, it is awareness of an event that is injuring the victim not awareness of the role in causing the injury that matters. In some cases, as in Dillon, these two things may be effectively the same. In many medical malpractice cases, for instance, a bystander ordinarily will not be aware that injury is being inflicted on the victim without also being aware that medical practitioners are, through their deficient care, causing harm. But when a bystander witnesses what any layperson would understand to be an injury-producing event such as a car accident, explosion, or fire the bystander may bring a claim for negligent infliction of emotional distress based on the emotional trauma of witnessing injuries inflicted on a close relative. This is true even if the bystander was not aware at the time of the role the defendant played in causing injury.

I.

Malyah Jane Vance, was driving near the intersection of Canyon Crest Drive and Via Zapata in the City of Riverside when her vehicle was struck by another car. 1 Vance was seriously injured as a result of the collision.

At the time of the collision, Downey was talking to Vance by cell phone to give her driving directions to an office close to the intersection. On her end of the line, Downey heard Vance suddenly A split second later, Downey heard the sounds of an explosive metal-on-metal vehicular crash, shattering glass, and rubber tires skidding or dragging across asphalt. Downey knew from the sounds she heard that Vance had been involved in a car crash. As the sound of tires dragging across asphalt faded, Downey having heard no sounds or vocalizations from Vance understood that Vance was injured so seriously that she could not speak. This was confirmed by a stranger who rushed to the scene to help and told

After the crash, Downey and Vance sued the driver of the other car involved in the collision. They also sued the City of Riverside and Ara and Vahram Sevacherian, the owners of private property adjacent to the intersection where the crash occurred. Among other things, their complaint sought recovery for negligent infliction of emotional distress on Downey, who suffered emotional trauma as a result of hearing accident occur in real time. Downey alleged the City was at least

in part responsible 1

We take the facts from the opinion of the Court of Appeal. (Downey v. City of Riverside (2023) 90

Cal.App.5th 1033, 1040 1043 (Downey).) Like the Court of Appeal, we accept as true the

well-pleaded facts in the operative third amended complaint. (Id. at p. 1040, citing Zolly v. City of Oakland (2022) 13 Cal.5th 780, 786.) emotional distress, because [t]he traffic markings, signals, warnings, medians, and fixtures thereon (or lack thereof), were so located constructed, placed, designed, repaired, maintained, used, and otherwise defective in design, manufacture and warning that they constituted a dangerous condition of public that Downey alleged the Sevacherians, too, contributed to the

accident by failing to trim vegetation on their property, which had obstructed the view of traffic turning from Via Zapata onto Canyon Crest Drive.

The City and the Sevacherians demurred to the complaint. They argued that Downey could not allege a negligent infliction of emotional distress claim against them because at the time of the collision she was not aware of how their alleged negligence had caused the collision. Agreeing with the defendants, the trial court sustained the demurrers without leave to amend. It explained that show that Downey had a contemporaneous awareness of the

injury-producing event not just the harm Vance suffered, but also the causal connection

On appeal, Downey argued that it was unnecessary for her to show contemporaneous awareness of the defendant conduct to state a claim for negligent infliction of emotional distress. In a divided decision, the Court of Appeal rejected the argument. (Downey, supra, 90 Cal.App.5th at pp. 1054 1055, 1057.)

The majority relied in large part Bird v. Saenz (2002) 28 Cal.4th 910 (Bird). In Bird, the been injured when her artery was transected during surgery and her doctors did not diagnose or treat the damaged artery right away. (Id. at pp. 912 914, 916 917.) Because the plaintiffs had not witnessed the injury-causing events the transection of their diagnose and treat the damaged artery but claimed only to

have perceived its consequences her suffering from the internal bleeding we declined to impose liability for negligent malpractice. Such liability will not lie the results (Id.

at p. 921, quoting Mobaldi v. Regents of University of California (1976) 55 Cal.App.3d 573, 583.)

Likening this case to Bird, the Court of Appeal majority concluded that Downey failed to allege facts sufficient to make out a claim for negligent infliction of emotional distress because she had not alleged that she was contemporaneously aware that acts or omissions with respect to the traffic markings at the intersection or landscaping of (Downey, supra, 90 Cal.App.5th at p. 1055.) Like the Bird

result or consequence of the -causing conduct, not the conduct itself. (Ibid.) That was not enough to state a negligent Id. at p. 1056.) the majority concluded that she should be granted leave to

allege additional facts establishing that she had familiarity with, and knowledge and awareness of, the intersection and t the defendants. (Id. at p. 1057.) The majority otherwise affirmed the demurrers. 2

In a concurring and dissenting opinion, Justice Dato disagreed that Downey was required to plead or prove that she

(Downey, supra, 90 Cal.App.5th at p. 1058 (conc. & dis. opn. of Dato, J.); see id. at p. 1057 (conc. & dis. opn. of Dato, J.).) I a plaintiff seeking bystander distress recovery needs to show

contemporaneous awareness of the injury-causing event and that it is causing injury to the victim, but does not necessarily need to un conduct is causing the injury. (Id. at pp. 1059 1063 (conc. & dis. opn. of Dato, J.).)

We granted review to address this question of statewide importance that divided the Court of Appeal.

II. A.

Negligent is not an independent tort, but the tort of negligence, traditional elements of duty, breach of duty, causation, and

damages apply. Burgess v. Superior Court (1992) 2 Cal.4th

2 The majority also held that Downey adequately alleged that she was present at the scene and that she had contemporaneous awareness of both the accident and the fact that Vance was injured because she heard the accident and its immediate aftermath over the phone. (Downey, supra, 90 Cal.App.5th at p. 1052; see id. at p. 1053.) These conclusions have not been challenged here and we express no view on them. 1064, 1072, quoting Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc. (1989) 48 Cal.3d 583, 588.)

Although negligent infliction of emotional distress is a species of the long-established tort of negligence, its origins are considerably more recent. As we have previously explained, the recognition of a claim for the negligent infliction of emotional distress was the outgrowth of two significant developments in California tort law. (See generally Thing, supra, 48 Cal.3d at pp. 648 655.) The first development was the recognition of the infliction of emotional distress as a discrete tort cause of action in State Rubbish etc. Assn. v. Siliznoff (1952) 38 Cal.2d 330, a case concerning a claim for recovery for intentional threats causing emotional distress but producing no physical harm. Although the law had previously recognized damages for various established torts such as assault

and false

imprisonment, the court in Siliznoff for the first time accepted both freedom from emotional distress as an interest worthy of protection in its own right, and the proposition that it is possible to quantify and compensate for the invasion of that interest, even when unaccompanied by physical harm. (Thing, at p. 650.)

The second development concerned the treatment of emotional distress claims in cases involving negligence particularly in cases involving emotional harms resulting from negligently inflicted physical injury to another. For many years, even after Siliznoff was decided, the general rule in no recovery is permitted for a mental or emotional disturbance, or for a bodily injury or illness resulting therefrom, in the absence of a contemporaneous bodily contact or independent cause of action, or an element of wilfulness, wantonness, or maliciousness, in cases in which there is no injury other than one to a third person, even though recovery would have been permitted had the wrong been directed against the plaintiff. Thing, supra, 48 Cal.3d at p. 651, quoting Amaya v. Home Ice, Fuel & Supply Co. (1963) 59 Cal.2d 295, 302 303 (Amaya); see also Reed v. Moore (1957) 156 Cal.App.2d 43, 45 46 [same].) Unless the plaintiff personally suffered bodily injury or was in zone of danger and suffered physical injury as a result of emotional trauma, damages for emotional distress were not recoverable in negligence actions. (Thing, at p. 651.)

This general rule significantly limited the recovery available for mental or emotional disturbances caused by when that suffering was negligently inflicted. (Thing, supra, 48 Cal.3d at p. 651.) Plaintiffs traumatized by having witnessed a loved one being injured or killed in an accident could recover for the trauma only if the plaintiffs were also physically injured, or else were so close to the accident that they feared for their own safety. (See Amaya, supra, 59 Cal.2d at p. 302.) Although we acknowledged the interest in protection from severe mental disturbances, we declined to recognize a claim for emotional distress damages in negligence actions, fearing that the consequence would be to create a Id. at p. 315; see id. at pp. 310 315.)

We reconsidered this approach in our seminal decision in Dillon. Overturning Amaya, Dillon broke new ground by permitting a plaintiff to recover for negligent infliction of emotional distress caused by witnessing an accident that fatally injured her child, even though the plaintiff herself was not zone of (Dillon, supra, 68 Cal.2d at p. 732; see id. at pp. 746 748.) We held that regardless of whether the mother was so close to the accident as to fear for her own safety, she should still be able to recover damages the witnessed death of her child (Id. at p. 747.) As a result of Dillon, the law in California and now elsewhere 3 recognizes that bystanders who witness a close relative being negligently injured have a cause of action for negligence and may recover damages for their trauma. 4

But even though Dillon broadened emotional distress liability to permit safely located bystanders to an accident to recover based on their fear and shock when their close relatives suffer injury, it also recognized (Dillon, supra, 68 Cal.2d at pp. 741, 739.) Pointing to one such

line, Dillon instructed courts to consider, among other things, upon plaintiff from the sensory and contemporaneous

observance of the accident, as contrasted with learning of the accident from others after its occurrence. (Id. at pp. 740 741.)

3 The Restatement Third of Torts credits Dillon as the first case in the United States to allow close relative bystanders zone of danger damages, and reports that Dillon rule. (Rest.3d Torts,

Liability for Physical and Emotional Harm, § 48, com. a, p. 200.) 4 At first, we deemed only mental distress that ripened into physical injury or symptoms compensable, but we later dispensed with this requirement as an illogical anachronism. (Molien v. Kaiser Foundation Hospitals (1980) 27 Cal.3d 916, 919.) In several cases after Dillon, we further explored this limit on the duty owed by tortfeasors to bystanders who suffer serious emotional distress after witnessing a close relative being injured.

We first considered Dillon Justus v. Atchison

(1977) 19 Cal.3d 564, a medical malpractice case. The plaintiffs in Justus were two husbands who alleged, in separate actions, that they saw their wives deliver stillborn fetuses and suffered emotional distress from witnessing the stillbirths. (Id. at pp. 567 569, 585.) We concluded that the husbands had failed to state a cause of action under Dillon because they had not understood what they had seen until a doctor told them. Because emotional distress derived not from what he witnessed we held that the plaintiffs had failed to allege

. . the accident. (Justus, at pp. 585, 584, quoting Dillon, supra,

68 Cal.2d at p. 740.)

We again considered this factor in Ochoa v. Superior Court (1985) 39 Cal.3d 159 (Ochoa). There, the plaintiff was a mother whose teenage son had died of bilateral pneumonia while detained in juvenile hall. (Id. at pp. 162 163.) She had visited convulsions and . . Id. at

p. 163.) The mother repeatedly pleaded with the attending physician at the juvenile hall infirmary to allow her son to be seen by the family doctor, but her requests were denied. (Id. at pp. 163 164.) When she visited him a second time and tried to of excruc Id. at p. 164.) During

condition and because it appeared that her child s medical needs

; no doctor tended to her son while she was at the infirmary. (Ibid.) Disapproving cases limiting recovery sudden and brief - causing event, we held that the mother had stated a claim for negligent infliction of emotional distress. (Id. at p. 167; see id. at p. 168, disapproving Center (1973) 31

Cal.App.3d 22, 24.) We explained injury and contemporan or lack thereof is causing harm to the child, recovery is

permitted, regardless of whether the injury was inflicted suddenly or across several days. (Ochoa, at p. 170.)

We returned once more to the subject of bystander distress liability in Thing, supra, 48 Cal.3d 644. In Thing, a mother sought emotional distress damages caused by witnessing her injured son lying in a roadway after a car accident, although she had not seen or heard the accident itself. We granted review to consider the discrete question whether, as some courts had understood Ochoa to hold, not a prerequisite to recovery under Dillon Thing, at p. 648.)

But we also took the opportunity to take stock of the general state of the law two decades after Dillon. We observed that the Dillon that the parameters of the tort would be further defined in future cases and subsequent appellate cases had only created more

Id. at p. 656.) Decisions following Dillon had, expanded the bystander distress claim and created (Id. at p. 653; see id. at p. 656 [discussing post-Dillon decisions].) Clearly articulated

limits were necessary, we explained n order to avoid limitless liability out of all proportion to the degree of a insure without imposing unacceptable costs on those among

whom the risk is spread (Id. at p. 664.)

To fill this gap, Thing articulated three essential limits on recovery for negligently caused emotional distress. These limits refined the guidelines that we had set out in Dillon, contemporaneous observance of the injury-producing event.

for emotional distress caused by observing the negligently inflicted injury of a third person if, but only if, said plaintiff: (1) is closely related to the injury victim; (2) is present at the scene of the injury-producing event at the time it occurs and is then aware that it is causing injury to the victim; and (3) as a result suffers serious emotional distress a reaction beyond that which would be anticipated in a disinterested witness and which is not an Thing, supra, 48 Cal.3d at pp. 667 668, fns. omitted.) Applying these limits, we held that the mother who had not witnessed her son being struck by a car could not recover emotional distress damages because she could not satisfy the second requirement. (Id. at pp. 647 648; see id. at p. 669.) B.

This case likewise turns on the second Thing requirement, injury-producing event at the time it occurs and [be] then aware

that it is causing injury to the victim. Thing, supra, 48 Cal.3d at p. 668.) The question is whether, to

satisfy this requirement, the plaintiff must understand not only that a close relative is or omissions have caused the injury. 5

The focal point of the dispute is Bird, supra, 28 Cal.4th 910, so we will begin there. As noted earlier, Bird was a medical malpractice case brought by the children of a cancer patient who had sustained damage to her artery during surgery. The plaintiffs sought damages for the emotional trauma they distress, whi negligent transection of her artery during surgery and the

failure to immediately diagnose and treat the

5 In answering the question presented, we emphasize that Thing negligence claim, which is the scope of the duty that an alleged

tortfeasor owes to relatives of a victim who suffer emotional distress upon observing an event that injures the victim. A plaintiff who can satisfy Thing unless the plaintiff proves not only that the defendant owed the

Whether Downey can prove all

the elements of her negligence claims against the City and the Sevacherians is beyond the scope of our opinion, which addresses only to satisfy Thing contemporaneous awareness at the pleading stage. (Thing, supra, 48 Cal.3d at p. 661, quoting Ochoa, supra, 39 Cal.3d at p. 170.) damaged artery thereafter. (Id. at p. 917.) We concluded that the plaintiffs could not recover for emotional distress caused by the transection of the artery because they were not in the operating room to witness it. (Id. at pp. 916 917, 921 922.) Nor could they recover for emotional distress caused by the immediately diagnose and treat Id. at p. 917.)

We observed that both before and after Thing, courts alleged medical negligence . . observation of medical procedures to satisfy the requirement of

contemporary awareness of the injury- Bird, supra, 28 Cal.4th at pp. 917 918; see id. at pp. 917 921.) 6 We drew on Golstein v. Superior Court (1990) 223 Cal.App.3d 1415 (Golstein Bird, at p. 918.) In Golstein, the plaintiffs were parents who had watched their son, who was being treated for a curable cancer, receive what turned out to be a lethal dose of radiation during radiation therapy. Although they had observed the procedure, they did not then realize that it was inflicting what would prove to be fatal harm. The Court of Appeal in Golstein denied recovery, reasoning that -causing event is an essential component of Dillon recovery. In the case of an event (Golstein, at p. 1427; accord, Bird, at p. 918.) We also cited with

6 We identified and disapproved the lone exception, the pre- Thing decision in Mobaldi v. Regents of University of California, supra, 55 Cal.App.3d 573. (See Bird, supra, 28 Cal.4th at pp. 920 921.)

approval Wright v. City of Los Angeles (1990) 219 Cal.App.3d 318, cursory medical examination that failed to detect signs of sickle

cell shock was permitted to sue for wrongful death but not for Bird, at p. 919.) injury- then aware [that the decedent] was being injured by [the

Ibid., quoting Wright, at p. 350.)

We explained that, as Golstein and other medical malpractice cases illustrated, recovery for negligent infliction of emotional distress in such cases will be available only rarely because even a plaintiff present during the medical treatment of a close relative generally will not be able to show a negligent conduct is causing harm cases, a misdiagnosis is beyond the awareness of lay

bystanders. (Bird, supra, 28 Cal.4th at p. 917.) Unlike -

ecause it ordinarily ordinarily component of her Id. at p. 921, quoting

Golstein, supra, 223 Cal.App.3d at p. 1423.) Allowing recovery for treatment cannot be reconciled with Thing requirement that the plaintiff be aware of the connection

between the injury- Bird, at p. 921.) Bird clearly settled this much: There can be no recovery for emotional distress caused by the negligent infliction of injury on a third party unless the plaintiff contemporaneously understands that the injury-causing event is in fact causing injury to the victim. As the Court of Appeal majority noted, however, at various places Bird suggests that the focal point of this inquiry is, more specifically, on the tortious act causing the injury. (Downey, supra, 90 Cal.App.5th at p. 1053.) For instance, in Bird we quoted a passage from Golstein that refers the injury-causing event interchangeably. (Bird, supra, 28 Cal.4th at p. 921, quoting Golstein, supra, 223 Cal.App.3d at p. 1423.) We also approvingly quoted a passage stating that Thing required of the causal connection between the negligent conduct and the

Bird, at p. 918, quoting Golstein, at p. 1427.) 7 And we restated our conclusion in Ochoa injury or lack thereof is causing harm to the child, recovery is

pe Bird, at p. 919, quoting Ochoa, supra, 39 Cal.3d at p. 170, italics added by Bird.) Bird 7

As the Court of Appeal majority here observed, we did clearly recognize in Bird awareness of negligence, a legal conclusion, with contemporaneous, understanding awareness of the event as causing harm to the victim (Downey, supra, 90 Cal.App.5th at p. 1048, quoting Bird, supra, 28 Cal.4th at p. 920.) The Court of Appeal understood Bird conduct that is negligent as a legal matter, but it did not understand Bird to require awareness that negligent as a legal matter. (Downey, at p. 1048.) borrowed from Mobaldi v. Regents of University of California, supra, 55 Cal.App.3d 573, involving a

parent who witnesses a [her] child, even though she may not know the driver was

perception of the tortious conduct. (Bird, at pp. 920 921.)

Understood in context, however, these statements do not stand for the broad proposition that bystander plaintiffs cannot recover for their emotional distress unless they contemporaneously both perceive the injury-causing event and To take this broad lesson from Bird would suggest a departure from Thing, which had not set out any such limitation. In Thing, we focused on contemporaneously observes both the event or conduct that

(Thing, supra, 48 Cal.3d at p. 667, italics added.) As Justice Dato observed in his partial dissent in the Court of Appeal, this disjunctive phrasing strongly suggests that it is enough if a bystander plaintiff perceives an accident and contemporaneously understands that it has injured a close relative be aware of the underlying Downey, supra, 90 Cal.App.5th at p. 1061 (conc. & dis. opn. of Dato, J.).) In Thing, the plaintiff was not allowed to recover because she had perceived neither the event nor .

Bird did not purport to reexamine or call into question Thing that an understanding perception of either the injury-producing event or the conduct that caused the is enough to satisfy its second requirement, nor did it otherwise squarely address the question that is now before us. This is no surprise, for the issue was not squarely presented. Bird like Golstein before it was a medical malpractice case. Those cases the injury-causing event t]he actual negligen because there was no question that the injury-causing events were of medical negligence. (Bird, supra, 28 Cal.4th at p. 921,

quoting Golstein, supra, 223 Cal.App.3d at p. 1423.) In Bird, the injury- artery and their failure to immediately diagnose and treat it; in

Golstein, the injury-causing event wa delivery of a lethal dose of radiation. Neither case raised any

question about awareness of injury without awareness of the role the defendant played in causing the injury. The critical issue in both cases, rather, concerned lack of contemporaneous awareness of either injury or

Bird placed particular emphasis on how difficult often impossible it generally is for laypersons to recognize in the moment that a course of medical treatment is causing injury. Even when plaintiffs are present at the scene of the injury- causing event and observe conduct that they later realize caused injury to a close relative, their lack of medical knowledge will ordinarily keep them Thing, supra, 48 Cal.3d [at

p.] Bird, supra, 28 Cal.4th at p. 922; but cf. id. at p. 918 [suggesting that some extreme cases of medical malpractice, such as a mistaken amputation, might be easily recognized as malpractice].) In such cases, the injury-causing events or conduct are not traumatizing because they are perceived as

injury-causing only in retrospect, when the observer is affected (See id. at p. 921.) Bird itself made clear that the injury caused by medical negligence is different in this regard from many other types of injury-producing events. We explained that the invisibility of injury-causing events resulting from deficient medical care makes a typical medical negligence case distinguishable from, , Bird, supra, 28 Cal.4th at p. 921, quoting Golstein, supra, 223 Cal.App.3d at p. 1423.) Fairly read, Bird does not hold that plaintiffs who witness a serious traffic accident also may not recover for their emotional trauma unless they experience a contemporaneous sensory awareness of the causal connection between the negligent conduct and the resulting injury. Bird, at p. 918.) To

the extent the Court of Appeal majority in this case read Bird otherwise, we hold that it was in error.

The Court of Appeal majority also relied on the decision in Fortman v. Förvaltningsbolaget Insulan AB (2013) 212 Cal.App.4th 830 (Fortman), a products liability case. (See Downey, supra, 90 Cal.App.5th at pp. 1049 1050, 1053.) In Fortman, the plaintiff brought a bystander claim for the distress she suffered when she saw her brother die while they were scuba diving. (Fortman, at p. 832.) At the time, the plaintiff thought that her brother was having a heart attack. But months later she learned that the true cause of the accident was a catastrophic equipment failure: -restriction dry suit second-stage regulator [and] prevented him from getting enough

Ibid.; see id. at p. 845.)

The Court of Appeal concluded that the plaintiff had no viable claim for negligent infliction of emotional distress against the manufacturer of the defective flow-restriction insert because contemporaneously perceive his injuries were being caused by

Fortman, supra, 212 Cal.App.4th at p. 834.) The Court of Appeal reasoned that the the case more analogous to medical malpractice scenarios than to injury, but like the parents in Golstein who were unaware of the

radiation overdose, Fortman had no contemporaneous Id. at p. 845.)

The scenario in Fortman is an unusual one, and whether the court analyzed it correctly is beyond the scope of the issues presented in this case. For our purposes it suffices to observe that Fortman offers no clear answer to the question now before us. Much as in Bird and Golstein, the court in Fortman did not probe the conceptual relationship -causing the defendant because, as the court saw it, the two things were inextricably intertwined. The plaintiff understood that her brother had been injured only after she was informed, months after the event, that he had experienced an injury-producing equipment failure. At the time that she saw her brother die, she thought that he was dying of a natural cause not attributable to an outside force acting on him, so she did not understand that her brother was being injured that what she was witnessing was an injury-producing event. Ultimately, the dispositive issue was Thing that the plaintiff have an understanding perception of the event as

causing harm to the victim. Fortman, supra, 212 Cal.App.4th at p. 841, fn. 4, quoting Bird, supra, 28 Cal.4th at p. 920.) 8 As Fortman itself recognized, it is a different issue whether the bystander must also contemporaneously be aware that the injury-producing event was caused by the conduct of some third party. (Fortman, at p. 841, fn. 4.)

Fortman had no occasion to decide that issue. But in the course of analyzing the question before the court, Fortman did discuss and distinguish several cases that suggest the answer to that question is no. (See Fortman, supra, 212 Cal.App.4th at pp. 839 843; see id. at p. 841, fn. 4 [citing Thing does not require that the plaintiff have an awareness of what caused the injury- For example, in Ortiz v. HPM Corp. (1991) 234 Cal.App.3d 178 (Ortiz), the Court of Appeal addressed whether a plaintiff could recover for emotional distress suffered when she had found her husband unconscious

8 The Fortman court distinguished other scenarios involving product-related injuries where a bystander would immediately perceive the event as injury-causing . . do not purport to hold that a plaintiff could never recover emotional distress damages under the bystander theory of recovery after perceiving a product-related injury. . . . [W]e can envision a number of scenarios in which a bystander plaintiff might recover against a product manufacturer for [negligent infliction of emotional distress]. A plaintiff would satisfy the second Thing requirement if he or she were present at a backyard ank connected to the barbecue explode and injure a close relative, or if the plaintiff observed a ladder collapse and injure a close relative. contemporaneous, understanding awareness of the event (i.e.,

product failure) inflicting harm to the victim. The plaintiff need not know the cause of the propane tank explosion or why the Fortman, supra, 212 Cal.App.4th at p. 844.) and trapped in a plastic injection molding machine. The trial r on the ground that, because the plaintiff had not witnessed her the injury-causing event contemporaneously. (Id. at p. 182.)

The Court of Appeal reversed on the ground that the injury- producing event did not end with the initial fall, but continued while the plaintiff observed her husband unconscious, pale, and bleeding from his left arm, as the machine was still running and agains Id. at p. 184.) 9

In other words, what mattered was that the plaintiff had witnessed at least part of an injury-producing event her husband being crushed by a machine. The court did not insist that the plaintiff also be contemporaneously aware that the accident was attributable to a defect in the manufacture of the machine.

Another case decided a few months later, Wilks v. Hom (1992) 2 Cal.App.4th 1264 (Wilks), is perhaps even more instructive. In Wilks, the Court of Appeal held that a mother who had seen, heard, and felt a residential explosion and fire

9 The Court of Appeal also rejected the argument that the plaintiff had not perceived the injury-causing event because she suffered: oxygen deprivation. (Ortiz, supra, 234 Cal.App.3d at

p. 186.) The plaintiff satisfied Thing percepti Even if she

could not perceive the full extent of the damage resulting from oxygen deprivation, she was clearly aware that his body was limp, that blood was running down his arm, and that he did not respond when she spoke to him. Ibid.) that killed one of her daughters and injured her other daughter could recover for negligent infliction of emotional distress. The plaintiff satisfied Thing personally and contemporaneously perceived the injury-

Id. at p. er surviving daughter; it

the accident, was personally impressed by the explosion at the

same instant damage was done to her child, and instantly knew of the likely severe damage to the child. Id. at p. 1271.)

There was no question that the mother lacked contemporaneous awareness of what had caused the explosion a defective propane system in their rental home or that it was attributable to the negligence of the defendants, the owners of the property who had installed the faulty propane system. But that did not appear to trouble the Court of Appeal. and was sensorially aware, in some important way, of the

accident and the (Wilks, supra, 2 Cal.App.4th at p. 1271.)

The Ninth Circuit took a similar approach in In re Air Crash Disaster Near Cerritos, Cal. (9th Cir. 1992) 967 F.2d 1421. There, a plaintiff who was returning from the grocery store to her home, where she had left her husband and three children, when she saw it was being consumed by fire. (Id. at pp. 1424 1425.) When she arrived, she there saw an airliner also covered in flames. She later sued the federal government under the Federal Tort Claims Act (28 U.S.C. § 2671 et seq.), and the trial court found that the United States was partly private plane. (Air Crash, at p. 1423.) Relying on Wilks, the Ninth Circuit held that the plaintiff was entitled under California law to recover against the defendants for her emotional distress. The Ninth Circuit agreed with the trial -producing event included the initial crash and the consequent fire, and because the plaintiff scene of the injury- Id. at p. 1425.) It did not

matter that, while she watched her house burning with her family inside, the plaintiff did not know that the fire had resulted from an airliner crash, nor did it matter that she could not have known the role air traffic controllers played in causing the fire. Thing satisfied becau distress as a result of watching helplessly as flames engulfed her

Ibid.)

Fortman also distinguished a third case involving a catastrophic fire, Zuniga v. Housing Authority (1995) 41 Cal.App.4th 82. There, one of the plaintiffs had found his residence in a housing project engulfed in flames after emergency personnel were already present and responding to the fire. The Court of Appeal concluded that his allegations that h

to satisfy Thing (Zuniga, at p. 103; see id. at p. 102.) The fire, as it turned out, had been caused by an act of arson that none of the plaintiffs had witnessed, but the Court of Appeal was nonetheless satisfied that the plaintiff had observed the injury-producing event as it unfolded because he alleged that he had seen the fire while it was still raging and likely injuring his relatives. (Id. at p. 103.) Notwithstanding that the fire was caused by an intentional act of arson, the plaintiff was allowed to bring a claim for negligent infliction of emotional distress against the Housing Authority of Los Angeles based on the Housing ach of its duty to provide safe public housing. (Id. at pp. 90 91, 103.) As in Ortiz, Wilks, and Air Crash, what mattered was that the father had perceived the injury-causing event and immediately understood that his daughter and other family members were suffering injury; that he may not have known right away what role the Housing Authority played in the fire did not bar his recovery.

In sum, neither Bird nor subsequent cases have required contemporaneous awareness of the causal connection between On the contrary, several post-Thing cases have at least implicitly rejected such a requirement by allowing recovery for plaintiffs who have witnessed injurious explosions, fires, and other similar accidents, even if they could not have been aware at the time that the defendant had contributed to these disastrous events. The Court of Appeal in this case erred in reading the cases otherwise.

C.

Recognizing that we have not previously required the injury, as distinct from awareness of the injury-causing event, the question becomes whether we should impose such a requirement now. We see no persuasive reason to do so.

It is not difficult to see why the courts in Ortiz, Wilks, Air Crash, and Zuniga allowed recovery for negligent infliction of emotional distress even though none of the plaintiffs in those cases claimed to have understood the causal connection between when they perceived those relatives being injured. Much as in

Dillon, the plaintiffs witnessed shocking and traumatic events in which their close relatives were severely injured or killed, and they foreseeably suffered emotional distress as a result. That distress was no less because they may not have, and perhaps could not have, understood all the forces that contributed to the events they were witnessing.

It is, of course, true that not all forms of emotional trauma associated with harm to a loved one are

compensable. The Court of Appeal correctly noted that the plaintiff must have suffered -producing event consequences (Downey, supra,

90 Cal.App.5th at p. 1046, quoting Bird, supra, 28 Cal.4th at p. 916.) But as cases like Thing make clear, this means only that the emotional trauma must be the result of directly witnessing and understanding that harm is being done not the result of learning of the harm after the fact. This is why Dillon resulted from a direct emotional impact upon plaintiff from the

sensory and contemporaneous observance of the accident, as contrasted with learning of the accident from others after its Dillon, supra, 68 Cal.2d at pp. 740 741, italics added.) A plaintiff injury-causing event when that plaintiff witnesses an accident or other event that has resulted in severe injury to a loved one. The emotional trauma that comes from witnessing such an accident exists regardless of whether the plaintiff is aware at the time of the accident of all the individuals or entities that have contributed to the accident through their conduct.

The City and the Sevacherians suggest that we should accident in order to cabin the potential scope of negligence

liability, particularly in an age when technology makes it possible to perceive more events unfolding in more places than ever before. In support of this requirement, they note that justify restrictions on recovery for emotional distress notwithstanding the sometimes Thing, supra, 48 Cal.3d at p. 664; see also Rest.3d Torts, Liability for Physical and Emotional Harm, supra, § 48, com. e, p. 202 arbitrariness to the line- .)

Our task in identifying appropriate restrictions, however, to some victims whose injury is very real against that of

imposing liability out of proportion to culpability for negligent acts of justice of clear guidelines under which litigants and trial

Thing, supra, 48 Cal.3d at p. 664.) We see no reason why this balance ought to tip in favor of circumscribing recovery based not on whether the plaintiff has suffered emotional harm from witnessing a loved one being injured, but whether the plaintiff is also contemporaneously aware of all those responsible for those injury. We can assume along with the City and the Sevacherians that current telecommunications technology has created more scenarios where potential plaintiffs might witness a loved one being injured. But they have not explained how requiring contemporaneous understanding of how each tortfeasor has contributed to the injury is a necessary, fair, or administrable limitation on liability. 10 Neither the City nor the Sevacherians have shown that applying the threshold awareness requirement for negligent infliction of emotional distress, in the manner it was articulated in Thing, is in Thing, at p. 653.) We thus decline

to superimpose an additional limitation that would require awareness not only of the injury-producing event (id. at

10 As we have already noted (see fn. 2, ante), the Court of Appeal here concluded that Downey was present at the scene of the car crash she contemporaneously sensed auditorily the accident and the fact Vance was injured. (Downey, supra, 90 Cal.App.5th at p. 1052; see id. at pp. 1052 1053, citing Bird, supra, 28 Cal.4th at p. Thing requirement that the plaintiff be contemporaneously aware of

the injury-producing event has not been interpreted as requiring visual perception of an impact on the victim. A plaintiff may recover based on an event perceived by other senses so long as the event is contemporaneously understood as .) Neither the City nor the Sevacherians challenge that conclusion here. Rather, the City and the Sevacherians accept the premise that, at least in certain cases, plaintiffs can be present at the injury- producing event. This case does not ask us to examine the soundness of this undisputed premise and we therefore offer no opinion on it. p. 666), but also of the role the defendants may have played in causing it. 11

In sum, we hold the following: Neither our precedent nor considerations of tort policy support requiring plaintiffs asserting bystander emotional distress claims to show contemporaneous perception of the causal link between the Here, Downey has alleged that when she was on the phone with her daughter she heard metal crashing against metal, glass shattering, and tires dragging on asphalt from which she knew immediately that her daughter had been in a car accident. Downey has also alleged that she understood that her daughter was seriously injured because she could no longer hear her after the crash and a stranger who rushed to the scene told her to quiet down so that he could find a pulse. Thing does not require Downey to allege that she was aware of how the defendants may have contributed to that injury. The Court of Appeal erred in concluding otherwise.

11 Amici curiae California Medical Association, California Dental Association, and California Hospital Association suggest that not requiring a plaintiff bringing a bystander distress claim to understand contemporaneously the causal connection between the def limitless liability Thing sought to

avert. (Quoting Thing, supra, 48 Cal.3d at p. 664.) We disagree; Thing and follow-on cases have never so required and no limitless expansion of liability for emotional distress has ensued. Moreover, nothing we say today should be interpreted as calling into question our analysis in Bird, which remains the controlling precedent for negligent infliction of emotional distress claims arising from the provision of deficient medical care to a close relative. III.

We reverse the judgment of the Court of Appeal and remand for further proceedings.

KRUGER, J. We Concur: GUERRERO, C. J. CORRIGAN, J. LIU, J. GROBAN, J. JENKINS, J. EVANS, J. See next page for addresses and telephone numbers for counsel who argued in Supreme

Court.

Name of Opinion Downey v. City of Riverside

Procedural Posture (see XX below) Original Appeal Original Proceeding Review Granted (published) XX 90 Cal.App.5th 1033 Review Granted (unpublished) Rehearing Granted

---

Opinion No. S280322 Date Filed: July 22, 2024

Court: Superior County: Riverside Judge: Harold W. Hopp

Counsel:

Rizio Lipinsky Law Firm, Greg Rizio and Eric I. Ryanen for Plaintiff and Appellant.

Phaedra Norton, City Attorney, Michel A. Verska, Cecila Rojas and Edward J. Reid, Deputy City Attorneys, for Defendant and Respondent City of Riverside.

CP Law Group, Gary H. Klein, Shelby Kennick; Freeman Mathis & Gary and Christian E. Foy Nagy for Defendants and Respondents Ara and Vahram Sevacherian.

Cole Pedroza, Curtis A. Cole and Cassidy C. Davenport for the California Medical Association, the California Dental Association and the California Hospital Association as Amici Curiae on behalf of Defendants and Respondents. Counsel who argued in Supreme Court (not intended for publication with opinion):

Greg Rizio Rizio Lipinsky Law Firm PC 2677 North Main Street, Suite 225 Santa Ana, CA 92705 (714) 547-1234

Edward J. Reid Deputy City Attorney 3750 University Avenue, Suite 250 Riverside, CA 92501 (951) 826-5567

Shelby Kennick CP Law Group 655 North Central Avenue, Suite 1125 Glendale, CA 91203 (818) 853-5131