



Vasila Georgieva v. Los Angeles County Metropolitan Transportation Authority

2011 | Cited 0 times | California Court of Appeal | November 15, 2011

Georgieva v. Los Angeles County MTA

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Affirmed.

Plaintiff and appellant Vasila Georgieva (Georgieva), in propria persona, appeals a judgment of non-suit in her personal injury action against defendant and respondent Los Angeles County Metropolitan Transportation Authority (MTA).

Georgieva sued the MTA for negligence, claiming her knee was injured when the bus she was riding came to an abrupt stop. Based on our review of the record, we conclude the trial court properly granted non-suit due to Georgieva's failure to present any evidence the MTA driver was negligent in braking abruptly. The judgment is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

On January 18, 2011, this personal injury action came on for a jury trial. Georgieva was in propria persona.

In opening statement, Georgieva stated: On September 11, 2008, while she was riding an MTA bus, "the driver abruptly stopped." She slid from her seat, she landed on her knees and injured her right knee.

The defense's opening statement indicated the MTA had no knowledge of the incident, but even assuming the incident occurred as described by Georgieva, she offered no showing that her injury "was as a result of a negligent act by the bus driver."

Georgieva then was sworn and briefly testified in narrative form. Georgieva's testimony was that she



Vasila Georgieva v. Los Angeles County Metropolitan Transportation Authority

2011 | Cited 0 times | California Court of Appeal | November 15, 2011

was injured in a bus accident, in which her knee hit the aisle.

The defense waived cross-examination.

The trial court inquired of Georgieva whether she had any other evidence or witnesses that she wanted to present to the jury. Georgieva stated she had nothing further.

The trial court then asked Georgieva whether she had "any evidence of how the accident happened or why the bus abruptly came to a stop." Georgieva replied "When he stopped. And at that time I slide."

The trial court again asked, "Do you have any reason why the bus came to a stop?" Georgieva responded: "Oh, I don't know. I was behind. Here is the driver. I was behind him. And I cannot see why he stopped. I don't know why to this time."

Georgieva again indicated she had no additional evidence or witnesses.

The MTA then moved for non-suit outside the presence of the jury.

The trial court advised Georgieva: "You can't just say you slid off and hurt your knee on a rail on the bus. You have to establish that there's something that the bus driver or bus company did that was negligent" The trial court explained that merely because the bus stopped abruptly "doesn't mean that the bus driver was negligent in the operation of the bus. What if the bus driver hit the brakes abruptly because he had to avoid someone who ran in front of the bus or ran across the light or another car who ran the light and the bus driver had to hit the [brakes] abruptly. . . . You'll have to prove that the bus driver was negligent."

The trial court again asked Georgieva whether she knew why the bus driver stopped.

Georgieva answered as follows: "I don't know. He didn't tell me. He didn't tell me. If he tell me why he stop, I cannot come here. I cannot fell down. He didn't tell me."

The trial court explained, "Here's the problem, you are the plaintiff. You brought this lawsuit. You have to affirmatively prove what happened. You can't just say, 'I slipped on the bus because the bus abruptly stopped and I hurt my knee and that's the end of the case.' You can't prevail on that theory." Georgieva again admitted she did not know why the bus driver stopped.

The trial court then granted the MTA's motion for non-suit. Georgieva filed a timely notice of appeal from the judgment.¹

CONTENTIONS



Vasila Georgieva v. Los Angeles County Metropolitan Transportation Authority

2011 | Cited 0 times | California Court of Appeal | November 15, 2011

Georgieva contends the trial court erred in granting non-suit because she showed her damages were the result of the accident and the MTA's facts were insufficient to permit a jury to find in the MTA's favor.

DISCUSSION

1. General principles.

a. Standard of appellate review.

"Because a successful non-suit motion precludes submission of plaintiff's case to the jury, courts grant motions for non-suit only under very limited circumstances. [Citation.] A court may not grant a motion for non-suit if the evidence presented by the plaintiff would support a jury verdict in the plaintiff's favor. [Citations.]" (Claxton v. Atlantic Richfield Co. (2003) 108 Cal.App.4th 327, 334 (Claxton).)

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 . . . ' " [Citations.]' [Citations.]" (Claxton, supra, 108 Cal.App.4th at p. 334.)

On appeal from a judgment of non-suit, " 'the reviewing court is guided by the same rule requiring evaluation of the evidence in the light most favorable to the plaintiff. "The judgment of the trial court cannot be sustained 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." [Citations.]' [Citations.]" (Claxton, supra, 108 Cal.App.4th at p. 335.)

Although " 'a judgment of non-suit must not be reversed if plaintiff's proof raises nothing more than speculation, suspicion, or conjecture, reversal is warranted if there is "some substance to plaintiff's evidence upon which reasonable minds could differ" [Citations.] Only the grounds specified by the moving party in support of its motion should be considered by the appellate court in reviewing a judgment of non-suit. [Citations.]' [Citations.]" (Claxton, supra, 108 Cal.App.4th at p. 335, italics omitted.)

b. Elements of negligence.

" 'The elements of a cause of action for negligence are (1) a legal duty to use reasonable care, (2) breach of that duty, and (3) proximate [or legal] cause between the breach and (4) the plaintiff's injury.



Vasila Georgieva v. Los Angeles County Metropolitan Transportation Authority

2011 | Cited 0 times | California Court of Appeal | November 15, 2011

[Citation.]" [Citation.]" (Phillips v. TLC Plumbing, Inc. (2009) 172 Cal.App.4th 1133, 1139.)

2. Trial court properly granted non-suit in light of Georgieva's failure to present any evidence the MTA driver was negligent in braking abruptly.

The grant of non-suit was proper because Georgieva admitted she lacked any evidence as to why the bus came to an abrupt stop.

To reiterate the trial court's admonition to Georgieva: "You can't just say you slid off and hurt your knee on a rail on the bus. You have to establish that there's something that the bus driver or bus company did that was negligent" Merely because the bus stopped abruptly "doesn't mean that the bus driver was negligent in the operation of the bus. What if the bus driver hit the brakes abruptly because he had to avoid someone who ran in front of the bus or ran across the light or another car who ran the light and the bus driver had to hit the [brakes] abruptly. . . . You'll have to prove that the bus driver was negligent."

Georgieva did not offer any evidence the bus driver was negligent in his operation of the bus. The mere fact Georgieva sustained a knee injury when the bus stopped abruptly, even if believed by the trier of fact, is insufficient to support a verdict in her favor. Therefore, the grant of non-suit was proper.

DISPOSITION

The judgment is affirmed. No costs are awarded.

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We concur: KITCHING, J. ALDRICH, J.

1. In a letter filed October 27, 2011, respondent's counsel advised this court that Georgieva has passed away. An internet search reveals the date of death was August 20, 2011. (<http://www.tributes.com/show/92330308>.) Upon an appellant's death during the pendency of the appeal, the representative would be substituted in as the appellant. (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 49, p. 109.) A substitution of parties during the pendency of an appeal is made by serving and filing a motion in the reviewing court in accordance with California Rules of Court, rule 8.36(a). (9 Witkin, supra, § 25, p. 88.) Here, no such motion has been made.

