NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CHRISTINA M. BERMUDEZ,

Plaintiff and Appellant,

v.

CRUNCH HOLDINGS, LLC,

Defendant and Respondent.

B316099
(Los Angeles County Super. Ct. No. 19STCV35283)

APPEAL from a judgment of the Superior Court of Los Angeles County, Edward B. Moreton & William A. Crowfoot, Judges. Affirmed.

Greenslade Cronk, Michael Greenslade, Anna Cronk and Seri Kattan-Wright, for Plaintiff and Appellant.

Horvitz & Levy, Lisa Perrochet and Eric S. Boorstin; Manning & Kass, Ellrod, Ramirez, Trester and Jeffrey M. Lenkov, for Defendant and Respondent.

INTRODUCTION

Appellant Christina M. Bermudez fell and injured her wrist during an exercise class at a gym owned by respondent Crunch Holdings, LLC. She then sued respondent for premises liability, claiming it caused her injuries through gross negligence. The trial court granted respondent's motion for summary judgment, and later denied appellant's motion for reconsideration.

Appellant now challenges both rulings and additionally contends that the court erred in denying her various continuance requests. As explained below, no evidence linked any asserted negligence by respondent to appellant's fall and injury. Nor would the evidence that might have been obtained following a continuance have established this element. Accordingly, the trial court correctly granted summary judgment, and appellant can show no reversible error in the denial of reconsideration or a continuance.

BACKGROUND

A. The Incident and Appellant's Complaint

In 2016, appellant joined respondent's gym and signed a membership agreement. The agreement apparently contained two provisions releasing respondent from liability for ordinary negligence.[1] In October 2017, appellant signed

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[1] Appellant contests the authenticity and validity of the release. As explained below, we need not decide these issues
(*Fn. is continued on the next page*.)

up for a "bootcamp" training class at the gym. These classes took place in the gym's Personal Training Room, and were overseen by trainers Emilyn Albano and Marvin Warner.

On October 7, 2017, appellant attended her second bootcamp class, alongside several other participants. During the class, Albano and Warner divided the participants into two teams for a relay race: one person at a time from each team was to run forward to the endpoint, backward to the starting point, side-shuffle to the endpoint, and side-shuffle back to the starting point. Appellant, who was the second person to race on her team, completed the first three legs without incident, but during the final side-shuffle leg, fell and injured her wrist.

Appellant then sued respondent, asserting a single claim for premises liability. She alleged that respondent was grossly negligent by "instructing [her] to run at competitive speeds in a relay race inside the Personal Training Room."

B. Respondent's Summary Judgment Motion

In February 2021, respondent moved for summary judgment. It argued, inter alia, that the release in appellant's membership agreement barred any claim against it for ordinary negligence, and that there was no evidence that any of its conduct caused appellant's fall.

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because we conclude that summary judgment was appropriate regardless of the release.

In support of its motion, respondent submitted the transcript of appellant's deposition, at which she described the circumstances surrounding the incident. At the deposition, respondent's counsel asked appellant what caused her to fall. She replied, "I have no idea." She then proceeded to describe the competitive atmosphere at the class and her effort to complete the race as fast as she could. She noted that the participant from the other team (who raced parallel to her) had not followed the rules, suggesting he had gained an unfair advantage. When asked about her distance from the other participant just before her fall, appellant stated, "I have long arms, but I believe I could have touched him with my arm." Responding to additional questioning by respondent's counsel, appellant agreed the other participant was about 2 or 3 feet away from her.

C. Appellant's Opposition and Continuance Requests

Shortly before appellant's opposition was due, she applied ex parte to continue the summary judgment hearing in order to gather additional evidence. Appellant had deposed Albano, but wanted more time to depose Warner, as well as Jared Gaines, Albano and Warner's supervisor. The trial court denied the continuance, concluding that appellant had failed to establish that the additional evidence was necessary to oppose respondent's motion.

In her opposition to summary judgment, appellant argued, inter alia, that she had not released any claims against respondent, and that respondent had been grossly

negligent. Among other things, appellant claimed the Personal Training Room was unsuitable for the bootcamp class due to the room's size and design, which created a "funneling effect" that caused the other participant to veer toward her. She additionally claimed that the race was overly competitive, and that the other participant had an unfair advantage over her. Appellant also renewed her request for a continuance.

In support of her opposition, appellant submitted, inter alia, her own declaration. In it, she asserted various deficiencies in the conditions surrounding the bootcamp class and the race, largely tracking the argument in her opposition. Among other things, she claimed that "as the incident occurred, the other participant remained mere inches away from [her]."

Appellant also submitted excerpts from the transcript of Albano's deposition. Albano's testimony did not reveal what had caused appellant to fall during the bootcamp class, and its substance is not otherwise pertinent to this appeal.

Finally, appellant submitted the declaration of Michael Vredenburgh, an expert on safety and "human factors." Vredenburgh opined that due to the size and shape of the Personal Training Room, it was inappropriate for the exercises conducted as part of the relay race. He assumed the group was conducting an "L.E.F.T. test exercise," citing certain pages of Albano's deposition transcript that

appellant had not submitted to the court.[2] Vredenburgh asserted that because of the room's features, because of the number of people in it, and because participants raced in close proximity, appellant "needed to perform collision avoidance maneuvers to keep from colliding with the other participant." He additionally opined that the environment at the class was too competitive.[3]

D. Respondent's Reply and Appellant's Deposition of Warner and Further Continuance Request

In its reply in support of summary judgment, respondent argued, inter alia, that appellant's assertion in her declaration regarding the distance between her and the other participant contradicted her deposition testimony and should therefore be disregarded. Respondent added that Vredenburgh's opinions were irrelevant and based on speculation. It contended that absent evidence of the cause of appellant's fall, she could show no more than "abstract negligence," which could not support liability.

Following respondent's reply, appellant submitted a declaration from Neal Pire, a fitness expert. Like

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[2] A "L.E.F.T. test" is a fitness test designed to assess an individual's balance and movement efficiency.

[3] Shortly after appellant filed her opposition, the trial court continued the scheduled summary judgment hearing sua sponte due to staffing issues.

Vredenburgh, Pire opined that the room and the competitive environment were not appropriate for an L.E.F.T. test.

One day before the summary judgment hearing, appellant deposed Warner. At the hearing, the court allowed appellant's counsel to describe Warner's testimony. According to counsel, Warner stated that he would have preferred to use a bigger room for the bootcamp class and confirmed that at the time of the incident, the participants were performing the L.E.F.T test. Appellant's counsel urged the court to continue the hearing so appellant could file the previously omitted pages from Albano's deposition transcript, but the court proceeded to take the matter under submission.

E. The Trial Court's Ruling on Summary Judgment

Following the hearing, the trial court granted respondent's motion for summary judgment. The court concluded that there was no reasonable dispute that appellant (1) had released respondent from claims for ordinary negligence, and (2) offered no evidence of gross negligence. Among other things, it noted that both Vredenburgh and Pire assumed that bootcamp participants were performing the L.E.F.T test at the time of the incident, but that appellant provided no evidence that this was the case.

F. Appellant's Motion for Reconsideration

Appellant moved for reconsideration, offering the previously omitted pages from Albano's deposition transcript, excerpts from Warner's deposition transcript, and room measurements omitted from Vredenburgh's initial declaration. The trial court denied the motion, concluding that appellant had offered no satisfactory excuse for failing to present the evidence in her initial submissions.[4] The court further concluded that, in any case, the newly submitted evidence did not raise a triable issue of fact as to respondent's gross negligence. The court explained, among other things, that the evidence on reconsideration was irrelevant, and that appellant's expert evidence remained speculative because appellant did not know what caused her to fall. Appellant timely appealed.

DISCUSSION

Appellant challenges the trial court's grant of summary judgment, arguing it erred in concluding (1) she was bound by the release in respondent's membership agreement, and (2) she had failed to create a triable issue as to respondent's gross negligence. She additionally claims the court erred in

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[4] Because Judge Edward B. Moreton, who ruled on respondent's motion for summary judgment, was unavailable, Judge William A. Crowfoot considered and ruled on appellant's motion for reconsideration.

denying her continuance requests and her motion for reconsideration.

As explained below, none of the evidence appellant presented on summary judgment or offered on reconsideration supported a causal link between her injury and any negligence by respondent. Nor would Gaines's deposition, which appellant sought to obtain through a continuance, have supported this element of her claim. Accordingly, the trial court correctly granted summary judgment for respondent, and appellant can show no reversible error in the denial of reconsideration or a continuance.[5]

A. The Trial Court Correctly Granted Summary Judgment

1. Governing Principles

a. Summary Judgment and the Standard of Review

"A party is entitled to summary judgment only if there is no triable issue of material fact and the party is entitled to judgment as a matter of law. [Citation.] A defendant moving for summary judgment must show that one or more

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[5] Although Judge Moreton relied on different grounds in granting summary judgment, we may affirm the judgment "'on any [correct] basis presented by the record[,] whether or not relied upon by the trial court.'" (*ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1268.)

elements of the plaintiff's cause of action cannot be established or that there is a complete defense. [Citation.] If the defendant meets this burden, the burden shifts to the plaintiff to present evidence creating a triable issue of material fact. [Citation.] A triable issue of fact exists if the evidence would allow a reasonable trier of fact to find the fact in favor of the party opposing summary judgment. [Citation.] [¶] We review the trial court's ruling on a summary judgment motion de novo, liberally construe the evidence in favor of the party opposing the motion, and resolve all doubts concerning the evidence in favor of the opponent." (*Grebing v. 24 Hour Fitness USA, Inc.* (2015) 234 Cal.App.4th 631, 636-637.)

b. Premises Liability

"A premises liability claim is founded on a theory of negligence." (*Joshi v. Fitness International, LLC* (2022) 80 Cal.App.5th 814, 832, fn. 13.) A plaintiff asserting this claim must therefore establish the same elements applicable to a negligence claim: (1) duty, (2) breach, (3) causation, and (4) damages. (*Castellon v. U.S. Bancorp* (2013) 220 Cal.App.4th 994, 998.) Although the owner of a business "is not an insurer of the safety of its patrons, the owner does owe them a duty to exercise reasonable care in keeping the premises reasonably safe." (*Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205.)

A plaintiff who establishes breach of this duty must then satisfy the causation element by showing that the

defendant's breach "was a substantial factor in bringing about plaintiff's harm." (*Ortega v. Kmart*, *supra*, 26 Cal.4th at 1205.) The plaintiff "must prove more than abstract negligence unconnected to the injury." (*Noble v. Los Angeles Dodgers, Inc.* (1985) 168 Cal.App.3d 912, 916 (*Noble*); accord, *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 773 (*Saelzler*) ["the courts 'have rejected claims of abstract negligence . . . where no connection to the alleged injuries was shown'" (italics omitted)].) While causation is generally a question of fact to be decided by a jury, where no reasonable dispute exists, summary judgment is appropriate. (See *Constance B. v. State of California* (1986) 178 Cal.App.3d 200, 207 (*Constance B.*) [where reasonable minds "'will not dispute the absence of causality, the court may take the decision from the jury and treat the question as one of law"']; *Saelzler, supra,* at 775-776 [affirming summary judgment for defendants where plaintiff's evidence failed to show that any breach by defendants contributed to plaintiff's injuries].)

2. Analysis

Respondent was entitled to summary judgment because appellant failed to present evidence that any alleged negligent conduct by respondent caused her injury. Appellant presented no evidence regarding the cause of her fall at the bootcamp class. She testified at her deposition that she had "no idea" what caused her to fall. The only hint regarding possible causation appeared in the declaration of

Vredenburgh, appellant's safety and human factors expert. Without expressly claiming that this is what caused appellant's fall, Vredenburgh asserted that appellant "needed to perform collision avoidance maneuvers to keep from colliding with the other participant." But neither appellant's deposition, nor her declaration, nor any other evidence supported this assertion.[6]

In her complaint, appellant alleged that respondent was grossly negligent by "instructing her to run at competitive speeds in a relay race inside the Personal Training Room." In her appellate briefs, appellant claims that respondent was negligent in failing to comply with relevant standards in performing L.E.F.T exercises, choosing the Personal Training Room to conduct the class, allowing too many people in the class, and placing participants too close together. But absent evidence that any of these

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[6] In her declaration, appellant stated that "as the incident occurred, the other participant remained mere inches away from [her]." Yet when asked at her deposition about her distance from the other participant just before her fall, appellant stated that he was within her reach and agreed in response to additional questioning that he was about 2 or 3 feet away from her. Appellant's subsequent, conflicting statement in her declaration cannot create a triable issue on this point. (See *Benavidez v. San Jose Police Dept.* (1999) 71 Cal.App.4th 853, 860 ["'[a] party cannot create an issue of fact by a declaration which contradicts [the party's] prior [discovery responses]'"]; *Scalf v. D. B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1522 [party opposing summary judgment is barred from filing declaration that purports to impeach his or her own prior sworn testimony].)

asserted shortcomings caused appellant's fall and injury, appellant can show no more than abstract negligence. That is insufficient to support her claim.[7] (See *Noble*, *supra*, 168 Cal.App.3d at 916; *Saelzler*, *supra*, 25 Cal.4th at 773.) Thus, the trial court properly granted summary judgment for respondent. (See *Buehler v. Alpha Beta Co.* (1990) 224 Cal.App.3d 729, 734, 735 [affirming summary judgment for business where plaintiff claimed improperly waxed floor caused her to fall, but her deposition testimony reflected she had "no idea" what caused her fall]; *Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 483-484 [affirming summary judgment for landlords where plaintiff claimed their negligent failure to fix broken security gate allowed rapist to enter and attack her, but presented no evidence rapist entered through broken gate or could not have entered had gate been fixed]; *Constance B.*, *supra*, 178 Cal.App.3d at 211-212 [affirming summary judgment for defendant where plaintiff failed to show inadequate lighting at highway rest area enabled her assault].)

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[7] Given our conclusion, we need not address the validity and effect of the release in appellant's membership agreement. Nor do we consider whether appellant made a sufficient showing of gross negligence by respondent. Finally, we need not consider respondent's alternative argument that the primary assumption of risk doctrine bars appellant's claim.

B. Denial of Continuances and Reconsideration

The same analysis resolves appellant's challenges to the denial of her continuance requests and motion for reconsideration. Absent a showing of prejudice, appellant can establish no grounds for reversal, even assuming error. (See *Combs v. Skyriver Communications, Inc.* (2008) 159 Cal.App.4th 1242, 1270-1271 (*Combs*) [any error in denying plaintiff's request for continuance was harmless in light of appellate court's conclusion that there was no triable issue]; *Shaolian v. Safeco Ins.* Co. (1999) 71 Cal.App.4th 268, 276-277 (*Shaolian*) [any error in denying plaintiffs' motion for reconsideration was harmless because their causes of action were precluded].)

Through her continuance requests and reconsideration motion, appellant sought to obtain or present the deposition testimony of Warner and Gaines, inadvertently omitted pages from the transcript of Albano's deposition, and Vredenburgh's measurements of the Personal Training Room. Yet none of this evidence tended to establish the cause of appellant's fall.[8] Because neither a continuance nor reconsideration would have cured appellant's critical failure to establish the causation element of her claim, she presents

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[8] Appellant never deposed Gaines, but he was not in the Personal Training Room at the time of the incident and could not have seen what caused appellant's fall.

no basis for reversal.[9] (See *Combs*, *supra*, 159 Cal.App.4th at 1270-1271; *Shaolian*, *supra*, 71 Cal.App.4th at 276-277.)

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[9] We need not address appellant's contention that the trial court exercised its discretion to consider her newly presented evidence, while ultimately denying relief. Reviewing the evidence offered on reconsideration independently, we conclude it could not defeat respondent's motion for summary judgment.

DISPOSITION

The judgment is affirmed. Respondent is awarded its costs on appeal.

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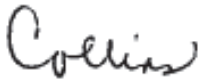
MANELLA, P. J.

We concur:



COLLINS, J.

CURREY, J.