Court of Appeal, Fourth Appellate District, Division Two
Kevin J. Lane, Clerk/Executive Officer
Electronically FILED on 7/8/2019 by R. Hudy, Deputy Clerk

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

SCOTT TRAVIS DANIELS, Plaintiff and Appellant, v. SOUTHERN CALIFORNIA EDISON COMPANY, Defendant and Respondent.	E069183 (Super.Ct.No. CIVDS1503628) OPINION

APPEAL from the Superior Court of San Bernardino County. Thomas S. Garza, Judge. Affirmed.

Scott T. Daniels, in pro. per.; The Arkin Law Firm and Sharon J. Arkin for Plaintiff and Appellant.

Casolari & Zell, Don H. Zell, Carissa Casolari; Greines, Martin, Stein & Richland, Robin Meadow, Eleanor S. Ruth; Southern California Edison Company, Leon Bass, Jr., and Richard D. Arko for Defendant and Respondent.

In a second amended complaint (SAC), plaintiff and appellant Scott Travis Daniels (Daniels) sued defendant and respondent Southern California Edison (Edison) for negligence. The trial court granted Edison's motion for summary judgment. (Code Civ. Proc., § 437c.) Daniels contends the trial court erred. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

A. SAC

The allegations in this subsection are taken from the SAC. Daniels was employed by the City of Loma Linda Fire Department (the Department). On May 24, 2014, Daniels participated in a firefighter training exercise at a property in Colton (the property), which was owned by the City of Colton. The training included a "training burn" on the property. Daniels left the property after the training exercise.

On May 25, the Department, including Daniels, responded to a structure fire at the property because the training fire had rekindled. A fire chief from the City of Colton instructed Daniels to park the Department's fire truck in a particular location while fighting the fire. The Department, including Daniels, extinguished the fire. While "mopping up" after the fire, a ladder used during the firefight came in contact with high voltage overhead powerlines. Daniels was electrocuted. Daniels was injured and "endure[d] great pain and suffering."

Within the "General Allegations" section of the SAC, Daniels alleged that Edison "negligently, carelessly, recklessly, and unlawfully, installed, set up, maintained, repaired, leased, inspected, and/or operated the aforementioned power lines so that they were dangerous. [Daniels] is informed and believes that the setbacks or assessments

were not in compliance with existing codes, rules, or regulations. [Daniels] is further informed and believes that the electrical lines spanned in an unconventional manner across the property, and such unusual or unexpected layout of the lines posed an unreasonable risk of harm to [Daniels] and to those similarly situated."

In Daniels's negligence cause of action against Edison, Daniels alleged, "[Edison]'s negligence arises out of its failure to properly mark the high voltage power lines, which were in the zone of danger. As such, [Edison] owed [Daniels] a duty, breached it, and such breach was a proximate cause of [Daniels's] damages."

B. SUMMARY JUDGMENT

Edison moved for summary judgment. Edison provided the following version of the facts: Daniels was employed by the Department as a fire captain. On May 24, 2014, the Department, including Daniels, responded to a structure fire at the property. Daniels was the Captain of an aerial ladder truck. The aerial ladder could extend 75 feet.

Upon arriving at the property, City of Colton Fire Department Battalion Chief Kevin Valentin instructed Daniels to park the aerial ladder truck on an access road, which placed the truck between the fire and the powerlines. The fire was to the west of the truck, and the powerlines were to the east of truck. Daniels raised the ladder 50 to 60 degrees, rotated it 90 degrees toward the fire, then extended the ladder into the air approximately 60 feet.

After the fire was extinguished, firefighter Mike Sepulveda (Sepulveda) rotated the ladder while the ladder remained extended in the air. The ladder came in contact

with a high voltage tap line. As a result of the contact, the firetruck became energized. Daniels was in the process of replacing firehoses on the rear of the firetruck when the firetruck became energized. Daniels sustained electrical injuries due to being in contact with the firetruck.

The overhead electrical lines were supported by wooden cross-arms on two wooden poles. One pole was to the north, pole No. 1248108E. One pole was to the southwest, pole No. 344399E. The poles were constructed in 1991 and have been maintained since that time. The powerlines were visible; there were no obstructions obscuring the lines. The cross-arms on the two poles bore signs warning of high voltage. The northern pole (No. 1248108E) "had clearly visible High Voltage signs mounted on both sides of the cross-arms." The southern pole (No. 344399E) "had a High Voltage sign on the pole immediately below the transformer within 40 inches of the lowest conductor." Edison included photographs of the high voltage warning signs.

Prior to the accident, Edison last inspected the two poles in February 2014. After Daniels's injury, Edison measured the above-ground clearance of its equipment. Edison found the powerline contacted by the ladder exceeded the minimum required clearance. The minimum clearance is 25 feet above the pedestrian area, and that minimum is set by the California Public Utilities Commission (PUC). Edison asserted its equipment was properly constructed and maintained per the relevant regulations, and therefore it did not breach a duty of care.

Edison asserted Sepulveda violated the Department's policies by operating the ladder while Daniels was in contact with the firetruck, and that Daniels violated the

Department's policies by being in contact with the firetruck while Sepulveda was operating the ladder. Edison asserted Sepulveda violated California Code of Regulations section 2946 by bringing the ladder in contact with the powerline. Edison contended it was the negligence of Sepulveda and Daniels that caused Daniels to be injured.

C. OPPOSITION

Daniels opposed Edison's motion for summary judgment. Daniels wrote, "At issue in this opposition . . . is whether Edison's cross arms and poles supporting the conductors had the proper high voltage signage required by [PUC] General Order 95 (GO 95) Rule 51.6-A at the time of the accident." Daniels asserted that Edison failed to provide evidence reflecting there were high voltage signs on the poles at the time of the accident. Daniels asserted that, after the accident, new "bright yellow and shiny high voltage markings" were placed on the poles.

Daniels argued that if there were signs on the poles at the time of the accident, then the signs were not posted on both sides of both poles and the signs were not legible. Daniels contended Edison's signs were "tattered, indecipherable and illegible." Daniels asserted the presence and legibility of the signs were triable issues of material fact. Daniels contended that if the signs were legible and posted on both sides of both poles then "different actions, measures or precautions could have been taken to prevent the very circumstances of the accident that occurred which is the subject of this suit."

D. REPLY

Edison asserted that it provided evidence reflecting "pole # 1248108E to the north had clearly visible, marked High Voltage signs mounted on both sides of the cross-arms. Julie Olin, an Edison employee, conducted an investigation of the incident the day it occurred and took photographs of the pole, cross-arms, and conductors involved in the incident. She states in her declaration that the cross-arm, which supported the single-phase tap line on pole #1248108E, had clearly visible yellow High Voltage signs on both sides of the cross-arm."

Edison asserted that Daniels testified that he did not look at the pole or cross-arm to check for a high voltage sign. Edison asserted that Sepulveda also testified that he did not see a high voltage sign. Edison contended that if nobody saw the high voltage sign, then Daniels cannot argue the condition of the sign rendered it illegible. Edison argued that the fire occurred at night, and no one shined a light on the poles to look for high voltage signs. Therefore, Edison asserted the issue of the adequacy of the "signage is moot as [Daniels] did not even look for such a thing."

E. HEARING

The trial court held a hearing on Edison's motion for summary judgment. The trial court said, "I would agree with [Edison] that there is undisputed evidence with respect to a number of the negligence issues, specifically that there was proper maintenance, the height of the power lines even exceeded what was required by the California Public Utilities Commission[] and all codes and regulations, that there was sufficient maintenance."

The trial court then turned to whether Edison's signs were a substantial factor in Daniels's injuries. Daniels argued that if the signs were legible, then he might have seen the signs, and then the accident would not have occurred. The trial court said Daniels's argument was based upon speculation and conjecture. Daniels asserted he offered deposition testimony reflecting the signs were not legible. The trial court responded, "But does it all beg the question if Mr. Daniels never looked in that direction?"

Daniels asserted that the law requires legible signs. The trial court responded, "[T]his goes back to the substantial factor aspect . . . that is had there been deposition testimony or interrogatory responses indicating Mr. Daniels said, I looked up there and I saw something, but I really couldn't make out what it said, totally different story." Daniels asserted he could not have testified that he saw something that was illegible.

The trial court explained that if Daniels testified that he looked up at a sign on the pole but was unable to read the sign, and testified "I didn't know it was a warning, I didn't know it said 'High Voltage,' [then t]hat would change everything to exactly what you're arguing, but that never happened. So I don't know that that lack of signage was a substantial factor in causing his injuries." Daniels responded, "That wasn't submitted in the declaration. I don't know that it didn't happen." Daniels continued, "[I]t's hard for me to wrap my head around something that didn't exist. So we're making that argument on something that didn't exist that there was no clearly legible sign, so it didn't exist. It's vague and ambiguous. It didn't exist."

Edison asserted the signs did exist, as supported by photographs of the signs. Edison argued that Daniels's testimony reflected Daniels did not look toward the signs on the crossarms. Edison asserted Daniels could not argue that the legibility of the signs was an issue because Daniels did not see the signs. Further, Edison asserted its signs met the regulatory requirements. Edison contended, "I think that it's a red herring, just for the fact that he never looked over there. But even if he had, our signs and our photos show that they were completely there and there was nothing missing on 'High' or 'Voltage' from either side." The trial court granted Edison's motion for summary judgment.

DISCUSSION

A. STANDARD OF REVIEW AND NEGLIGENCE LAW

" 'A trial court properly grants a motion for summary judgment only if no issues of triable fact appear and the moving party is entitled to judgment as a matter of law. [Citations.] The moving party bears the burden of showing the court that the plaintiff "has not established, and cannot reasonably expect to establish, a prima facie case . . . ." [Citation.]' [Citation.] '[O]nce a moving defendant has "shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established," the burden shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff "may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action . . . ." '

“ ‘On appeal from the granting of a motion for summary judgment, we examine the record de novo, liberally construing the evidence in support of the party opposing summary judgment and resolving doubts concerning the evidence in favor of that party.’ ” (*Lyle v. Warner Bros. Television Productions* (2006) 38 Cal.4th 264, 274.)

“An action in negligence requires a showing that the defendant owed the plaintiff a legal duty, the defendant breached the duty, and the breach was a proximate cause of the injuries suffered by the plaintiff.” (*Benedek v. PLC Santa Monica, LLC* (2002) 104 Cal.App.4th 1351, 1356.)

B. CAUSATION

1. *DUE PROCESS*

Daniels contends the trial court violated his right of due process by deciding the motion on the issue of causation because Edison did not argue causation in its motion for summary judgment.

“The general rule of motion practice . . . is that new evidence is not permitted with reply papers. This principle is most prominent in the context of summary judgment motions, which is not surprising, given that it is a common evidentiary motion. ‘[T]he inclusion of additional evidentiary matter with the reply should only be allowed in the exceptional case . . .’ and if permitted, the other party should be given the opportunity to respond.” (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538.)

Daniels asserts the evidence the trial court relied upon in deciding the issue of causation was only cited in Edison’s reply to Daniels’s opposition. In the SAC, Daniels alleged, “Edison Company’s negligence arises out of its failure to properly mark the

high voltage power lines, which were in the zone of danger." Daniels did not explain what he meant by "failure to properly mark." Daniels's allegation can be reasonably understood as asserting there were no warning signs on the two poles because the "failure to properly mark" allegation reads as though there was a complete failure, i.e., no signs whatsoever.

In Edison's motion for summary judgment, it responded to this issue by explaining that its signage complied with all relevant rules and regulations. For example, Edison asserted, "The cross-arms and poles supporting the conductors had the required High Voltage signage required by [PUC General Order] 95 Rule 51.6(a)."

In Daniels's opposition, he argued that if there were signs on the poles, then they were "tattered, indecipherable and illegible." Thus, for the first time in Daniels's opposition, he explicitly raised the issue of the signs' legibility. (See *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1257 ["new factual issues presented in opposition to a motion for summary judgment should be considered if the controlling pleading, construed broadly, encompasses them"].)

In Edison's reply, it explained that Daniels could not reasonably argue that the signs were illegible because the evidence reflected that Daniels and Sepulveda did not look at the signs. Thus, in Edison's reply, it responded to the legibility issue, which was delineated for the first time in Daniels's opposition. Because Daniels did not delineate the legibility issue until his opposition, there was good cause for Edison not addressing the issue until its reply. (See *People v. ConAgra Grocery Products Co.* (2017) 17

Cal.App.5th 51, 91, fn. 30 [good cause is needed for a court to address an issue that was not raised in the first instance].)

Daniels contends he was deprived of the opportunity to oppose Edison's reply. Daniels's opposition to Edison's motion for summary judgment was due on Wednesday, June 14, 2017. Daniels filed his opposition on June 16.[1] In Edison's reply, filed on June 23, it asserted that Daniels's opposition was untimely. The trial court's first hearing on Edison's motion for summary judgment took place on June 28.

At the June 28 hearing, the trial court said Daniels had not filed an opposition. Daniels said he had filed an opposition. Edison explained that Daniels filed an untimely opposition and failed to properly serve Edison, which resulted in Edison having only two days to prepare its reply. Daniels said, "Well, I was prepared to speak to the opposition. I don't know anything about those things. . . . I don't want to prejudice anybody for any reason whatsoever in terms of notice of time or anything like that. [¶] The issue in the understanding [*sic*] in our opposition is pretty tiny, I don't think it is that complicated. To me it is either one way or the other, but again I don't know anything about the service stuff, I just walked in prepared to talk about the MSJ."

The trial court offered to (1) continue the hearing to a later date, or (2) take the matter under submission and issue a ruling after reading Daniels's opposition. Daniels said, "I would ask . . . that the court take a look at the opposition under submission and

---

[1] We take judicial notice of the trial court's register of actions in this case. (*Daniels v. So California Edison et al.* (Super. Ct. San Bernardino County, No. CIVDS1503628)). (Evid. Code, § 452, subd. (d).)

if defense counsel wants to argue further, that is fine. I don't need to do that, I would be relying on the opposition any way." Edison requested another hearing date. The trial court continued the matter to July 12.

At no point in the trial court did Daniels request to file a supplemental opposition based upon new evidence having been cited in Edison's reply. Daniels told the trial court he did not need a continued hearing and would rely solely on his opposition. On appeal, Daniels is now asserting that the trial court erred by not providing him the opportunity to oppose Edison's reply.

We have two conclusions on Daniels's due process contention. First, because Daniels addressed the legibility issue in his opposition, he had an opportunity to discuss the issue and was not denied due process. Second, because Daniels did not raise the due process issue in the trial court, he has forfeited the issue. If Daniels felt the need to file a supplemental opposition, then he needed to bring that to the attention of the trial court. (*Robbins v. Regents of University of California* (2005) 127 Cal.App.4th 653, 659-660 ["Because they 'did not take advantage of opportunities to avoid in the trial court the problem about which they now complain on appeal, they have [forfeited] any claim of a due process violation' "].)

2. *MERITS*

Daniels contends the trial court erred in finding there was not a triable issue of material fact on the element of causation.

"[T]o demonstrate actual or legal causation, the plaintiff must show that the defendant's act or omission was a 'substantial factor' in bringing about the injury." (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 774.)

Daniels asserts there was a triable issue of material fact because in one portion of Daniels's deposition he testified that he did not check the area for powerlines, while in another portion of the deposition, Daniels testified that he did look for powerlines but was inside the firetruck and "had very limited visibility to look up" and therefore was unable to see the powerlines.

Daniels asserts the foregoing contradictory evidence creates a triable issue of material fact. We disagree for two reasons. First, the California Supreme Court has long held that a party may not create a triable issue of fact to defeat summary judgment by contradicting himself. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21-22; *Shin v. Ahn* (2007) 42 Cal.4th 482, 500, fn. 12.) At a deposition, Daniels was asked, "And as a result, you really did not turn around and conduct any type of a survey in order to see what, if any, obstructions or electrical lines were located to the east of the truck, correct?" Daniels replied, "Correct." Daniels's contradiction of that testimony does not create a triable issue of material fact.

Second, the issue, as defined by the SAC, is whether there were proper warning signs on the poles, and Daniels's failure to see powerlines (between the poles) does not create a triable issue of fact regarding the existence and legibility of warning signs on the poles. Moreover, it was Sepulveda who is alleged to have struck the powerlines with the ladder. Therefore, the more pertinent inquiry is whether Sepulveda looked for

and saw the warning signs on the poles—not whether Daniels saw the powerlines (between the poles). In sum, because Daniels is relying on evidence that does not create a triable issue of fact concerning the existence or legibility of the warning signs, we conclude the trial court did not err in finding there is not a triable issue of material fact on the element of causation.

C. STANDARD OF CARE AND BREACH

Daniels contends the trial court erred by granting summary judgment because Edison failed to demonstrate there was not a triable issue of material fact regarding "whether [Edison] breached a common law duty of care." Daniels contends Edison should have posted "reflective signage at eye level warning of the presence of high voltage lines." Daniels asserts that his point within this issue is that Edison failed to meet its burden, in the trial court, of demonstrating that there was not a triable issue of fact concerning the standard of care and breach, and thus the burden on those issues did not shift to Daniels. In the trial court, the motion was decided on the element of causation because Daniels asserted the signs were illegible. Nevertheless, for the sake of addressing Daniels's assertion, we will treat the issue as though it were decided against Daniels.

"As a general rule, each person has a duty to use ordinary care and 'is liable for injuries caused by his failure to exercise reasonable care in the circumstances . . . .' [Citations.] This applies to public utilities, which have 'a general duty to exercise reasonable care in the management of [their] personal and real property.' " (*Laabs v. Southern California Edison Co.* (2009) 175 Cal.App.4th 1260,1271.)

"In most cases, courts have no fixed standard of care for tort liability more precise than that of a reasonably prudent person under like circumstances." (*Ramirez v. Plough, Inc.* (1993) 6 Cal.4th 539, 546-547.) This is because "[e]ach case presents different conditions and situations. What would be ordinary care in one case might be negligence in another." (*Eddy v. Stowe* (1919) 43 Cal.App. 789, 797.)

For example, in car accident cases, in some circumstances, the reasonably prudent thing is to stop the car; while in another case, under different circumstances, the reasonably prudent thing is to slow the car; yet, in a third case, under other circumstances, the reasonably prudent thing is to proceed at a higher rate of speed; and in a fourth case, in different circumstances, the reasonably prudent thing is to continue at the current speed and change nothing. (*Eddy v. Stowe*, *supra*, 43 Cal.App. at p. 797.)

Thus, it is the jury that "has the burden of deciding not only what the facts are but what the unformulated standard is of reasonable conduct." (*Ramirez v. Plough, Inc.*, *supra*, 6 Cal.4th at p. 547.)

Daniels asserts a reasonable jury could conclude that the standard of care in this case required placing reflective high voltage warning signs at pedestrian level. Daniels does not direct this court to evidence, such as expert testimony, supporting his assertion that it would be reasonable to place warning signs 25 feet below the powerlines. To that point, Daniels writes, "There is no expert declaration discussing warnings that could have been given, nor is there any expert declaration asserting that it would be impracticable, impossible or prohibitively expensive to provide reflective signage at eye level warning of the presence of high voltage lines." Thus, there is no evidence

supporting Daniels's assertion that the standard of care included placing signs at pedestrian level.

We place the burden of demonstrating error on Daniels for two reasons. First, Daniels bears the burden because he is the appellant and must demonstrate that the trial court erred. (*Bains v. Moores* (2009) 172 Cal.App.4th 445, 455 ["appellant has the burden of showing error, even if he did not bear the burden in the trial court"].) Second, Daniels bears the burden of demonstrating error because he is raising a new argument on appeal. In the trial court, Daniels argued the issue of the signs' legibility. Daniels said to the trial court, "I'm not arguing that there should be big massive signs hung at ground level . . . The standard is . . . shall be clearly legible." Thus, Daniels told the trial court he was *not* asserting there should be signs at pedestrian level, but at this court Daniels is asserting there should have been signs at pedestrian level. In sum, because Daniels is the appellant and because he is raising a new argument, we place the burden on Daniels to direct this court to evidence demonstrating that the standard of care included posting warning signs at pedestrian level. (See Code Civ. Proc., § 437c, subd. (b)(2) [opposition to summary judgment may "consist of affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken"].) We conclude Daniels has not met his burden of demonstrating error.

Moreover, the evidence we have reviewed in the record reflects the powerlines are not located at pedestrian level. The powerlines are at least 25 feet above the ground. Based upon that evidence, the reasonable location for the warning signs is where the

powerlines are located. (See *Kingery v. Southern Cal. Edison Co.* (1961) 190 Cal.App.2d 625, 633 [a possessor of land must "give a warning adequate to enable [a visitor] to avoid the harm"].) The reasonable course of action for anyone who is 25 feet or more above ground level, or who is moving an object 25 feet or more above ground-level, would be to look for poles and wires that are in the area and to look for warning signs attached to such poles or wires—not at pedestrian level, but at the level where the wires are located.

Accordingly, we are not persuaded that, given the evidence, a reasonable jury could find that the standard of care included placing reflective high voltage warning signs at pedestrian level when the powerlines are at least 25 feet above ground-level. (See generally *Krongos v. Pacific Gas & Electric Co.* (1992) 7 Cal.App.4th 387, 396 ["P.G. & E. was required only to take measures to protect against 'reasonably foreseeable' accidents, not all possible accidents"].)

D. REGULATIONS AND BREACH

Daniels contends the trial court erred by granting summary judgment because there is a triable issue of material fact concerning whether the high voltage warning signs were legible as required by PUC rules.[2]

---

[2] Edison requests this court take judicial notice of two PUC rules. Edison explains, in its request, where the PUC rules are published. We deny Edison's request for judicial notice because the PUC rules, and the prior versions of the rules, are published. (*Quelimane Co v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 45, fn. 9 ["A request for judicial notice of published material is unnecessary. Citation to the material is sufficient"].)

As explained by the trial court, the problem with the foregoing argument is causation. The record reflects the following from Sepulveda's deposition:

"[Attorney Glasser]: Let's see. Did you see any yellow high-voltage warnings on either of the lines or the power poles that afternoon?

"[Sepulveda]: No.

"Mr. Zell: Objection. No foundation.

"[Attorney Glasser]: As far as the training you got from anyone from Loma Linda, did anyone from Loma Linda point out to you the existence of electrical lines?

"[Sepulveda]: Not to my knowledge.

"[Attorney Glasser]: Did anyone point out to you that there were high-voltage lines in the proximity of where the incident occurred?

"[Sepulveda]: Not to my knowledge.

"[Attorney Glasser]: In the past, have you seen yellow warnings on power poles, warning of high voltage?

"[Sepulveda]: Not to my knowledge.

"[Attorney Glasser]: You've never seen like yellow high-voltage or KV yellow bands with black writing on them?

"[Sepulveda]: No."

Sepulveda's testimony reflects he was unaware of high voltage warning signs, in that he had never seen one in the past. Sepulveda testified that he did not see any warning signs on the power poles on May 24. Accordingly, the legibility of the signs did not contribute to the accident at issue in this case because Sepulveda did not see a

warning sign. In other words, as explained by the trial court, this is not a situation wherein Sepulveda saw a warning sign and had difficulty reading it; rather, this is a case wherein Sepulveda saw nothing in regard to a warning sign. Therefore, the alleged lack of legibility is not a cause of Daniels's injury.

E. CONCLUSION

Daniels's theory of liability has been changing throughout the case. In the SAC, Daniels asserted Edison "fail[ed] to properly mark the high voltage power lines," which can be understood as a complete failure to post warning signs. In Daniels's opposition, he clarified that he was asserting the signs were illegible. At the hearing on the motion, Daniels asserted he was not advocating for signs to be posted at pedestrian level; rather, Edison should be liable for the signs not being legible. At this court, Daniels is asserting Edison should have posted signs at pedestrian level.

Daniels faults the trial court and respondent for trampling his due process rights. Daniels asserts respondent provided late evidence, and the trial court decided the matter on an issue Daniels did not have an opportunity to address. At this court, Daniels does not address the role he played in the alleged due process issues by changing theories of liability. Further, we are not persuaded that there is a triable issue of material fact on the element of causation under Daniels's legibility theory of the case. In sum, the trial court did not err.

DISPOSITION

The judgment is affirmed. Respondent Southern California Edison Company is awarded its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

McKINSTER
Acting P. J.

RAPHAEL
J.