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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

L.S., a Minor, etc., et al.,

Plaintiffs and Appellants,

v.

CITY OF GLENDALE,

Defendant and Respondent.

B319602

(Los Angeles County
Super. Ct. No. 20STCV10204)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daniel M. Crowley, Judge. Affirmed.

The Yarnall Firm and Delores A. Yarnall for Plaintiffs and Appellants.

Glendale City Attorney's Office, Michael J. Garcia, City Attorney, Ann M. Maurer; Carpenter, Rothans & Dumont, Steve Rothans, Mark Rutter; Greines, Martin, Stein & Richland, Edward L. Xanders and Tina Kuang for Defendant and Respondent.

INTRODUCTION

In the summer of 2019, a drunk driver struck and injured then 13-year-old L.S. as L.S. was in a marked crosswalk spanning North Verdugo Road in the City of Glendale (Glendale). L.S.'s 16-year-old brother, A.S., was also in the crosswalk and witnessed the accident, although he was not physically injured. The brothers, through their guardian ad litem, sued the drunk driver Christopher Carone and Glendale. Plaintiffs settled with Carone, and their claims against him are not at issue in this appeal.

Plaintiffs sought to hold Glendale liable under the theory that the crosswalk constituted a dangerous condition of public property under Government Code¹ sections 830 and 835. They claimed that the crosswalk was dangerous for various reasons, including limited visibility for approaching drivers, one of the advance warning signs that a crosswalk was ahead was obscured, and the lack of specific safety signals and devices. The trial court granted Glendale's motion for summary judgment, finding that Glendale had so-called sign immunity and no reasonable trier of fact could conclude the crosswalk constituted a dangerous condition.

Plaintiffs now appeal. We find no reversible error. The undisputed evidence shows that the crosswalk was sufficiently visible to drivers, such as Carone, approaching from the north. The crosswalk was marked and had flashing yellow lights that pedestrians could activate to alert drivers that someone was in the crosswalk (and which were in fact active and flashing when

¹ Undesignated statutory references will be to the Government Code.

the brothers used the crosswalk). One of the separate, advance warning signs as drivers approached the crosswalk was obscured by a tree branch, but there is no evidence Glendale was on notice of this issue before the accident occurred or that it caused the accident given Carone's familiarity with the area and the crosswalk's existence. The fact that Glendale had not upgraded the crosswalk with specific safety features the brothers claim would have made it safer does not mean that the crosswalk constituted a dangerous condition. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Crosswalk

The following facts are taken from the evidence submitted by the parties in connection with the motion for summary judgment. Unless otherwise noted, the facts are undisputed.

L.S. was struck in a crosswalk spanning North Verdugo Road, which runs north-south in the vicinity of the crosswalk. The crosswalk connects a public park, Glorietta Park, on the west, and a residential neighborhood on the east. On the east side, the crosswalk ends at the southeast corner of the intersection of North Verdugo Road and Oakwood Avenue. Oakwood Avenue only extends from North Verdugo Road to the east. Traffic approaching the intersection on Oakwood Avenue is controlled by a stop sign; other than the crosswalk, traffic on North Verdugo Road is not controlled at the intersection.

At the crosswalk location, North Verdugo Road has two lanes of travel in each direction, plus a parking lane on each side; the speed limit is 35 miles per hour. At the time of the accident, the crosswalk was 56 feet in length. The area around the crosswalk is flat.

North Verdugo Road is straight from approximately 200 feet north of the crosswalk to approximately 300 feet south of the crosswalk. Beyond 200 feet north of the crosswalk, the road curves gradually to the east.² A driver approaching the crosswalk from the north (as Carone did in this case) can see the crosswalk from approximately 500 feet away.³

At the time of the accident, the crosswalk was marked with a “ladder” style design that, in addition to the parallel markings that bordered the crosswalk, included cross-markings that look like rungs of a ladder, which made it more visible than traditional crosswalks with only parallel line markings. On each end of the crosswalk there was a yellow diagonal pedestrian crossing sign (depicting a person walking) with an arrow pointing down to the crosswalk. Above each sign was a solar powered yellow flashing light that was activated by a push button located on the sign pole; each light was 14 feet off the ground and faced

² North Verdugo Road also curves approximately 300 feet south of the crosswalk and plaintiffs characterize the crosswalk as being “between” curves on or a straight portion in the middle of an “S-curve.” We focus on the alignment and features of the road to the north of the crosswalk because Carone approached the crosswalk heading south.

³ Glendale’s traffic safety engineer expert provided this measurement. As explained further below, plaintiffs’ expert stated in conclusory terms that the curves on North Verdugo Road “impaired the visibility of the [c]rosswalk, pedestrians, and motorists,” but did not provide any measurement of a driver’s sightline to the crosswalk from the north, contest the measurement provided by Glendale’s expert, or dispute that a driver could see the crosswalk while in the curved portion of the roadway to the north of the crosswalk.

traffic coming in the direction closest to the light (so the light on the west side faced southbound traffic, on the driver's right).

Also, at the time of the accident, there were two yellow diagonal warning signs north of the crosswalk. About 279 feet north of the crosswalk was an "advance" pedestrian crossing sign (again, depicting a person walking), and further north was a playground sign (depicting children on a seesaw).⁴ On the day of the accident, the advance pedestrian crossing sign was at least partially obscured by foliage.

B. The Accident

On August 23, 2019, in the dusk at about 7:45 p.m., L.S. and A.S. used the crosswalk on their way home from Glorietta Park. A.S. pushed the crosswalk's button to activate the flashing yellow lights. Two cars traveling northbound failed to stop, but the brothers then saw a southbound car driven by Nicole Pilarski slowing in the lane closest to them, and they began to cross. Pilarski observed A.S. and L.S. in the crosswalk. She told a police officer immediately after the accident that she saw the yellow flashing light; at her deposition in June 2021, she did not recall seeing the light but testified that her statement to the officer was accurate. Witness Darwin Baghdasarian was parked in a parking lot on the corner of North Verdugo Road and Oakwood Avenue, with an unobstructed view of the crosswalk. He observed plaintiffs in the crosswalk and saw the flashing yellow lights.

A.S. recalls that he was slightly ahead of L.S. as they walked in the crosswalk. As A.S. reached the far side of the

⁴ The same signs were also placed to the south of the crosswalk.

number one southbound lane, he became aware of a southbound car approaching that did not appear to be stopping. Pilarski also realized that the car was not slowing, and she honked to get the driver's attention.

Carone was driving the approaching car. Carone had been drinking alcohol for several hours and was more than three times over the legal limit at the time of the accident.⁵ Carone lived in the neighborhood and was familiar with the intersection, having driven through it hundreds of times. As he approached the crosswalk, Pilarski's car was stopped at the crosswalk in the right lane. Carone estimated he was driving 35 miles per hour (the speed limit) but looked down to adjust the volume on his car radio when his car was within 100 feet of the crosswalk. Carone failed to see L.S. and A.S. in the crosswalk until his car was about 10 feet away from them; he slammed on his brakes and swerved but he could not avoid hitting L.S. Carone was convicted for his conduct and sentenced to eight years imprisonment.

C. History of the Crosswalk and Prior Incidents

Glendale created the crosswalk around 2001, and in 2002 made minor improvements including installing white road pavement markers along the edges of the crosswalk and replacing the yellow pedestrian crossing signs with newer signs.

⁵ After the accident, a police officer administered field sobriety tests and Carone gave two breath samples which showed blood alcohol concentration levels of 0.305 and 0.307 percent. Later, at the jail, Carone gave two additional breath samples which showed blood alcohol concentration levels of 0.29 and 0.28 percent. The legal limit for blood alcohol level is 0.08 percent. (Veh. Code, § 23152.)

According to minutes from the July 5, 2011 Glendale City Council meeting, “Councilmember Weaver asked Public Works staff to . . . look at the stretch of road on Verdugo Road across from Glorietta Park, where a local business owner had noticed a lot of people crossing with near misses with oncoming traffic.”

In about December 2011, Glendale installed the flashing yellow light system at the crosswalk.

On October 21, 2012, at about 6:00 p.m., there was a rear end collision between two vehicles traveling northbound on North Verdugo Road; the collision occurred when the vehicle in front stopped for a pedestrian stepping into the crosswalk on the western end (at Glorietta Park) and was then struck by a vehicle traveling behind. On February 16, 2015, at about 10:00 a.m., a similar collision occurred when a vehicle traveling northbound on North Verdugo Road stopped for a pedestrian entering the crosswalk on the west side, and was struck from behind by another vehicle; the driver of the other vehicle indicated that he had looked down briefly and when he looked up he did not have enough time to stop.

In September 2016, a citizen whose child was taking soccer classes at Glorietta Park wrote to a Glendale councilmember (who forwarded the communication to city staff) stating, “The street is unbelievably dangerous because of the speed of the traffic and lack of pedestrian safety and close proximity to so many kids. We saw several families nearly get hit by cars despite being in the flashing cross walk.” The citizen recommended installing a perimeter fence around the park, installing a traffic light, having a crossing guard present “during busy times,” switching the speed limit signage to 25 miles per hour, and having the police department “do a special traffic operation.”

On December 3, 2016, Glendale had a traffic study conducted at the crosswalk to determine whether a traffic signal was warranted. The study determined that a traffic signal was not warranted under the governmental standards applicable to traffic control devices.

In January 2017, a citizen submitted a request for a traffic light at the intersection of North Verdugo Road and Oakwood Avenue; the “Customer Service Report” prepared by city staff regarding the request stated, “According to [the citizen,] there are two terrible accidents that happens [sic] on this roadway for [sic] the past [five] or [six] months.”

In March 2017, a citizen wrote an email to city staff regarding the crosswalk, stating, “there was another multi-car accident near this intersection. There have been [three] major accidents and many more minor and near misses in this area since the beginning of the year.” The citizen requested that Glendale install “in-pavement LED lighting and/or a flashing [red] light when the crosswalk button is pushed.” The citizen further stated, “There is currently a button to press that activates a flashing yellow light. On either side of the crosswalk there are continuously flashing 25[miles per hour] caution lights. The flashing light when activated is barely noticeable.” The citizen wrote to city staff again in July 2018, stating, “I was just almost plowed down **again** in the crosswalk at Verdugo and Oakwood by Glorietta Park.”

At some point in May or June 2018, a resident called city staff to notify them that the lights at the crosswalk were not working.

Glendale adduced evidence that, during the period 2004 through the time of the accident in 2019, there were no reported

vehicle-pedestrian collisions at the North Verdugo Road-Oakwood Avenue intersection. Glendale also adduced evidence that five vehicle-on-vehicle collisions were reported at the intersection in the five years preceding the accident. These included the October 21, 2012 accident described above. There is no evidence that any of the other four collisions involved the crosswalk or pedestrians.⁶

D. Plaintiffs' Suit Against Glendale

Plaintiffs filed their operative first amended complaint on March 26, 2020. Plaintiffs asserted a cause of action against Glendale under section 835 for maintaining a dangerous condition of public property, alleging that the crosswalk and surrounding area were dangerous for various reasons, including “[a]n incomplete, unreasonable, unsafe and unapproved design plan,” the use of yellow flashing lights instead of red flashing lights, “confusing and conflicting traffic control devices,” “[i]noperable crosswalk warning lights,” the lack of “traffic control devices or other measures, including traffic calming measures and a road diet,” “[i]nsufficient signage, highway markings, and/or other traffic control devices,” “insufficient visibility,” and “[i]nsufficient warnings of the dangerous conditions.” Plaintiffs alleged that Glendale had notice of the

⁶ The evidence, in the form of a report prepared by Glendale, also indicates there was a rear-end collision in the intersection on July 3, 2008. According to the report, a vehicle traveling southbound struck a vehicle that was stopped in the road. There is no evidence regarding why the vehicle that was struck was stopped in the road.

dangerous condition based on past accidents, “near miss collisions,” and citizen complaints.

E. Glendale’s Motion for Summary Judgment

Glendale moved for summary judgment on the grounds the crosswalk did not constitute a dangerous condition of public property, it had no actual or constructive notice of any dangerous condition, and any dangerous condition was not the proximate cause of the accident.

Glendale submitted a photograph of the crosswalk, authenticated by a police officer who responded to the accident as accurately depicting the area at the time, which showed the configuration of the crosswalk and that the pedestrian crossing sign at the crosswalk was not obscured in any way. Glendale also adduced evidence about how the accident took place: A.S. activated the yellow flashing lights; Pilarski saw the lights and the brothers and stopped at the crosswalk. Carone, who was driving under the influence and had looked down to adjust the volume on his radio as he approached the crosswalk, failed to see the flashing light or Pilarski’s stopped car and saw the brothers too late to avoid hitting L.S. In addition, Glendale relied on the evidence that there were no reported vehicle-pedestrian collisions at the intersection from 2004 through 2019, and only five reported vehicle-on-vehicle collisions in the intersection in the five years before the accident. To put these accident figures in context, Glendale submitted evidence that, based on 24-hour traffic counts it had conducted in December 2016 and September 2019 (after the accident), approximately 14 million vehicles used the intersection during that same five-year period.

Glendale also submitted a declaration from its expert, traffic safety engineer Rock Miller, P.E. Miller explained that

“The California Manual on Uniform Traffic Control Devices (CA MUTCD) sets forth standards, guidelines, and options for use of traffic control devices.” He averred that “[t]he traffic controls, roadway markings and signage on Verdugo Road at or near Oakwood Avenue exceeded the CA MUTCD standards and guidelines on the date of the incident,” and “[t]here is no requirement in the CA MUTCD that would call for provision of additional controls or warnings beyond traditional marked crosswalk lines.” He noted that, despite not being required, the crosswalk here had additional controls and warnings, including the “ladder style crosswalk markings that have greater visibility than traditional twin line transverse markings,” the pedestrian crossing warning signs at each end of the crosswalk, the yellow flashing lights that can be activated by a pedestrian, and advance pedestrian crossing signs. Miller measured the distance at which a driver approaching from the north could see the crosswalk at approximately 500 feet. Miller averred that the California Department of Transportation Highway Design Manual, at table 201.1, recommends a sight distance of at least 250 feet for cars traveling 35 miles per hour, and 500 feet for cars traveling 50 miles per hour. Thus, Miller opined, “The sight distance provided is clearly more than adequate to allow motorists to stop if necessary as they approach the location.”

According to Miller, the five collisions at the intersection which occurred in the five years before the accident equated to a collision rate of 0.45 collisions per million vehicles, which “is lower than the rate of 1 per million that is often used to initiate collision studies, and . . . lower than the expected rate for an intersection with similar conditions controlled by a traffic signal.”

In its motion, Glendale set forth plaintiffs' claims as to how the crosswalk was dangerous (from plaintiffs' response to a contention interrogatory served on them, which repeated the allegations in plaintiffs' complaint), and argued that the features plaintiffs identified were so minor, trivial or insignificant that no reasonable person could conclude they created a "substantial risk of injury," as required for liability. (See § 830, subd. (a) [defining a "[d]angerous condition" in part as one that creates a "substantial (as distinguished from a minor, trivial or insignificant) risk of injury"].)

In support of this argument, Glendale first relied on the lack of reported vehicle-pedestrian collisions at the intersection from 2004 through 2019.

It then contended that plaintiffs' theories that the crosswalk was dangerous based on the lack of, or insufficient, traffic signals or warning signs were foreclosed by sections 830.4 and 830.8, which generally provide that a condition is not dangerous within the meaning of section 830 because of the failure to provide various traffic control or warning signals, signs, markings, or devices. (See §§ 830.4, 830.8.)

It further contended, based on Miller's declaration, that the traffic controls, roadway markings and signage on North Verdugo Road in the area of the crosswalk exceeded the standards set forth in the CA MUTCD, and that all the CA MUTCD required for a crosswalk at that location were the markings.

Glendale also contended, based on the absence of any prior vehicle-pedestrian accidents in the crosswalk, that it did not have actual or constructive notice of any dangerous condition at the crosswalk.

Lastly, Glendale argued that the undisputed evidence showed plaintiffs' injuries were not proximately caused by any dangerous condition and were instead caused solely by Carone's negligent and criminal conduct. It relied on evidence that the yellow flashing lights at the crosswalk had been activated and plaintiffs were visible in the crosswalk, that Pilarski stopped at the crosswalk, that Carone was aware of the crosswalk because he had driven through it hundreds of times, and that Carone looked down to adjust the volume on his radio within 100 feet of the crosswalk.

F. Plaintiffs' Summary Judgment Opposition

In their summary judgment opposition, plaintiffs first contended that Glendale had actual and constructive notice that the crosswalk constituted a dangerous condition based on citizen complaints. Plaintiffs also relied on the evidence of the two accidents, in October 2012 and February 2015, where cars that stopped for pedestrians in the crosswalk were rear-ended.

Plaintiffs also adduced evidence that, in August 2018, Glendale applied to the California Department of Transportation for a grant under the Highway Safety Improvement Program (HSIP) to, among other things, install a pedestrian hybrid beacon (PHB)⁷ and make other improvements to the crosswalk. In the

⁷ As explained in a declaration from plaintiffs' traffic safety expert, a PHB (also known as a high intensity activated crosswalk or "HAWK") "displays a sequence of flashing and solid lights that indicate a pedestrian walk interval and when it is safe for drivers to proceed," displays a red light to indicate that drivers must stop, and displays a "Walk/Don't walk" signal for pedestrians.

application, Glendale acknowledged safety concerns about the crosswalk.

Plaintiffs next contended that several features rendered the crosswalk a dangerous condition. They relied principally on the declaration of their traffic safety expert, Edward Ruzak, who opined that the crosswalk was dangerous for the following reasons: it is situated between two curves which limited drivers' ability to see pedestrians in the crosswalk; children were likely to use the crosswalk, and they are harder to see than adults; the flashing yellow light was hard for drivers to see because it was located on the side of the road instead of being suspended over the middle of the crosswalk on a "mast arm"; the yellow flashing light only instructed motorists to yield and Glendale should have installed a red light to instruct motorists to stop; the curb at the location of the crosswalk was not extended into the roadway ("bulbed out"), so that pedestrians were not in the "direct field of vision" of a driver; and there was no "painted 'safety island' or striping mid-way in the crosswalk" that would offer a pedestrian a place to safely stop while crossing. Ruzak further opined that Glendale "should have installed either a [higher intensity rapid flashing light known as a rectangular rapid flashing beacon] or a PHB (including a 'Walk/Don't Walk' signal) mounted on a mast arm, and curb extensions" before the accident.

Plaintiffs also relied on a declaration from a human factors expert, Joellen Gill. Gill opined that the yellow flashing light at the crosswalk was "less reliably detected" by drivers because it was located on the side of the road, on the periphery of a driver's field of view. Gill averred that red lights suspended above the lanes of travel are more effective at getting a driver to stop because they are in the center of the driver's field of vision, and

the color red communicates to a driver that they need to stop. Gill opined that, had Glendale installed such a light, the collision between Carone and L.S. probably would not have occurred.

In addition to the foregoing alleged defects in the design or configuration of the crosswalk, plaintiffs submitted video from a responding police officer's "dashcam," as well as an image extracted from the video, which appeared to show that the advance "pedestrian crossing" sign 279 feet north of the intersection was obscured by foliage at the time of the accident.

Plaintiffs responded to Glendale's causation argument, contending that a dangerous condition of public property can be a concurrent cause of an injury along with a third party's negligent act. Plaintiffs also contended that the evidence showed Carone "had control of his senses [and] felt that he could safely operate his vehicle" and had been able to negotiate other stop signs and signals on his drive up until the crosswalk.

Lastly, plaintiffs relied on evidence that, after the accident, Glendale installed a PHB and a curb extension on the west end of the crosswalk. Plaintiffs argued that this confirmed the dangerousness of the crosswalk.

G. Glendale's Reply Brief

Glendale's reply brief argued that evidence regarding its application for a HSIP grant (including Glendale's statements of concern about the crosswalk's safety) was inadmissible under 23 U.S.C. former⁸ section 409, which expressly states that any such evidence shall not be admissible or considered for any purpose in a state court proceeding. (*Ibid.*) Glendale also argued that

⁸ The statute has since been renumbered as 23 U.S.C. section 407 with no substantive changes.

improvements it made to the crosswalk after the accident were subsequent remedial measures inadmissible under Evidence Code section 1151.

Glendale responded to plaintiffs' evidence of citizen complaints by presenting evidence regarding a vehicle-on-vehicle collision that was likely referenced by one of the citizens (which did not involve any pedestrians), and deposition testimony from the citizen who complained in 2018 about the crosswalk lights not working (in which he stated that he only called city staff because the crosswalk lights were not working). As noted above, the crosswalk lights were functioning in 2019 at the time of the accident.

H. The Trial Court Grants Glendale's Motion for Summary Judgment

On December 3, 2021, the trial court granted Glendale's motion. The court concluded Glendale had established that it was immune from plaintiffs' allegations of a dangerous condition under sections 830.4 and 830.8, which provide that public property cannot be deemed dangerous under section 835 based solely on the lack of various types of traffic or warning signals, signs and markings described in the Vehicle Code. The court also concluded that the other features of the crosswalk plaintiffs relied upon did not render the crosswalk dangerous.

The court excluded, pursuant to 23 U.S.C. former section 409, any reference to or reliance on Glendale's 2018 HSIP grant application; it also sustained Glendale's objection to evidence of improvements it made to the crosswalk after the accident pursuant to Evidence Code section 1151. Plaintiffs filed a motion for reconsideration regarding the court's exclusion of the HSIP evidence, which the court denied. In this appeal, plaintiffs do not

challenge the exclusion of any evidence, nor do they challenge the trial court's denial of their motion for reconsideration.

The trial court entered judgment in favor of Glendale on January 13, 2022. Plaintiffs timely appealed.

DISCUSSION

A. Summary Judgment Principles and Standard of Review

Our review of the trial court's summary judgment ruling is governed by familiar principles. "We review the trial court's decision de novo, considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports." (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.) "We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party. [Citation.] [Citation.]" (*Lonicki v. Sutter Health Central* (2008) 43 Cal.4th 201, 206.)

"A defendant . . . has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant . . . has met that burden, the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff . . . shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." (Code Civ. Proc.,

§ 437c, subd. (p)(2).) A triable issue of material fact exists “ “if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” [Citation.]’ [Citations.]” (*Janney v. CSAA Ins. Exchange* (2021) 70 Cal.App.5th 374, 389-390.)

B. The Applicable Legal Principles Governing a Claim for Dangerous Condition of Public Property

“Section 835 is the sole statutory basis for a claim imposing liability on a public entity based on the condition of public property.” (*Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 438.) Under section 835, “a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes [(1)] that the property was in a dangerous condition at the time of the injury, [(2)] that the injury was proximately caused by the dangerous condition, [(3)] that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and [(4)] that either: [¶] (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or [¶] (b) The public entity had actual or constructive notice of the dangerous condition . . . a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.” (*Ibid.*)

A “[d]angerous condition’ ” is “a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.” (§ 830, subd. (a).) “[A]ny property can be dangerous if used in a sufficiently

improper manner. For this reason, a public entity is only required to provide roads that are safe for reasonably foreseeable careful use. [Citation.] ‘If . . . it can be shown that the property is safe when used with due care and that a risk of harm is created only when foreseeable users fail to exercise due care, then such property is not “dangerous” within the meaning of section 830, subdivision (a).’ [Citation.]” (*Chowdhury v. City of Los Angeles* (1995) 38 Cal.App.4th 1187, 1196.)

“The existence of a dangerous condition is ordinarily a question of fact . . . but it can be decided as a matter of law if reasonable minds can come to only one conclusion.” (*Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 148.) Notably, the Legislature has expressly authorized trial and appellate courts to make such a finding in appropriate circumstances, providing in section 830.2: “A condition is not a dangerous condition . . . if the trial or appellate court, viewing the evidence most favorably to the plaintiff, determines as a matter of law that the risk created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used.” (*Ibid.*)

By statute, “the happening of the accident which results in the injury is not in and of itself evidence that public property was in a dangerous condition.” (§ 830.5, subd. (a).)

“Most obviously, a dangerous condition exists when public property is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself.

[Citations.] But public property has also been considered to be in a dangerous condition ‘because of the design or location of the improvement, the interrelationship of its structural or natural features, or the presence of latent hazards associated with its normal use.’ [Citation.]” (*Bonanno v. Central Contra Costa Transit Authority, supra*, 30 Cal.4th at pp. 148-149, italics omitted.)

Lastly, “A public entity is not, without more, liable under section 835 for the harmful conduct of third parties on its property. [Citation.] But if a condition of public property ‘creates a substantial risk of injury even when the property is used with due care’ [citation], a public entity ‘gains no immunity from liability simply because, in a particular case, the dangerous condition of its property combines with a third party’s negligent conduct to inflict injury.’ [Citation.]” (*Cordova v. City of Los Angeles* (2015) 61 Cal.4th 1099, 1105.)

C. The Trial Court Properly Granted Summary Judgment

Plaintiffs’ contentions that the crosswalk constituted a dangerous condition fall into two categories: (1) the layout of the crosswalk near a curvature of the road, and (2) alleged failures to provide adequate warnings of the crosswalk, including failing to install an HPB with a red blinking light, the advance pedestrian crossing sign for southbound traffic being obscured by foliage on the date of the accident, and the lack of a center island (to offer pedestrians shelter while crossing) and curb extensions (to increase pedestrian visibility). Plaintiffs also argue that the crosswalk is dangerous because it did not result from an approved plan. We address each argument in turn.

1. *Undisputed Evidence Showed the Crosswalk Did Not Pose a Substantial Risk of Injury Due to the Curvature of North Verdugo Road*

Plaintiffs contend that the crosswalk was dangerous because the curve in North Verdugo Road to the north of the crosswalk impaired southbound drivers' ability to see the crosswalk. They further contend that Glendale failed to carry its burden in moving for summary judgment because, although Glendale's expert Miller addressed the curve-related visibility issue in his declaration, his statement on the subject (including his measurement) was not included in Glendale's separate statement. Pursuant to Code of Civil Procedure section 437c, subdivision (b)(1), where a party fails to include "all material facts that the moving party contends are undisputed" in its separate statement, the court has discretion to deny summary judgment on that basis. The trial court concluded that Glendale's summary judgment motion did not improperly assert facts from Miller's declaration when moving for summary judgment. We agree.

When Glendale moved for summary judgment, it addressed plaintiffs' claims as set forth in the operative complaint and in plaintiffs' response to an interrogatory asking them to detail their contentions. Contrary to plaintiffs' claim, their operative complaint did not assert that the curvature of the roadway limited drivers' ability to see the crosswalk. Nor did plaintiffs disclose this theory in responding to an interrogatory regarding

their contentions.⁹ Instead, plaintiffs first raised it in their summary judgment opposition. We cannot fault Glendale for failing to include facts rebutting this theory in its separate statement when plaintiffs sprung it for the first time in their opposition. Nor were plaintiffs prejudiced in opposing summary judgment, as Miller’s declaration was included in the initial motion. Plaintiffs thus had notice and ample opportunity to dispute Miller’s contentions.

Turning to the question of whether plaintiffs raised a triable issue regarding the impact of the road’s curvature on the ability of drivers to see the crosswalk, we conclude they did not. The undisputed evidence from Glendale’s traffic safety expert Miller was that North Verdugo Road curved to the north of the crosswalk, with the curve ending about 200 feet from the crosswalk. Southbound drivers can see the crosswalk while in the curve; the sidewalk is visible from beginning approximately 500 feet away. The speed limit on the relevant section was 35 miles per hour. California Department of Transportation Highway Design Manual, table 201.1, sets forth a suggested sight distance of 250 feet for a vehicle traveling 35 miles per hour, and provides that a sight distance of 500 feet is acceptable for a vehicle traveling 50 miles per hour. This established the

⁹ Plaintiffs’ operative complaint alleged “insufficient visibility” and “sightline obscurements” without any specification of what had caused these conditions, and plaintiffs’ interrogatory response repeated these claims without providing any further detail. Glendale’s separate statement addressed these allegations by asserting that nothing obscured the visibility of the warning signs, the flashing light, or the presence of pedestrians in the crosswalk.

curvature of North Verdugo Road did not pose visibility issues to drivers using due care (§ 830.2), and that the crosswalk was not a concealed trap. (See § 830.8, discussed further below.)

Plaintiffs assert they raised a factual dispute on this point because their traffic safety expert Ruzak averred, “At the time of the accident (August 23, 2019), the [c]rosswalk was located between two curves in the roadway that impaired the visibility of the [c]rosswalk, pedestrians, and motorists.” This statement is entirely conclusory and does not contain any evidentiary facts. Ruzak did not measure the sightline of drivers approaching the crosswalk from the north, nor did he refute Miller’s measurement. Plaintiffs contend that Miller’s measurement is contradicted by a map of the area and an image from the police officer’s dashcam video, but neither of these two pieces of evidence in fact disputes Miller’s measurement. The map contains no scale or other information suggesting Miller’s measurement is off; the dashcam footage shows police driving southbound and that the crosswalk is visible some considerable but unknown distance before the pedestrian warning sign that is 279 feet in advance of the crosswalk.¹⁰

Plaintiffs improperly attempt to shorten the distance by claiming “[w]hen the road straightens, the motorist has only about 200 feet before hitting the [c]rosswalk” and that “[t]he [CA] MUTCD (safety manual) standards are 250 feet minimum.” But

¹⁰ Plaintiffs also rely on the declaration of their human factors expert, Joellen Gill, whom they contend “supported [their] visual impairment theories.” However, Gill’s declaration and opinions only addressed visual impairment issues related to the color and placement of the flashing light utilized at the crosswalk and not the distance from which it was visible.

the undisputed evidence was that the crosswalk is visible *before* the road completely straightens, so the distance between where the road becomes totally straight and the crosswalk is irrelevant. In short, the undisputed evidence shows the curvature in the road did not pose a dangerous condition.

2. *The Alleged Lack of Warning Signs and Devices*

Plaintiffs' second category of alleged dangerous conditions involves the lack of various warning signs and devices. These include Glendale's receipt of accident reports and citizen complaints requesting additional warning and safety signs for the crosswalk, failing to install an HPB with a red blinking light, the advance pedestrian crossing sign for southbound traffic being obscured by foliage on the date of the accident, and the lack of a center island to offer pedestrians shelter within the crosswalk and curb extensions to increase pedestrian visibility. Glendale argues the principles of so-called "sign immunity" defeat these claims, so we first discuss the principles governing such immunity.

a. *Sign Immunity Law*

Section 830.4 provides that, "A condition is not a dangerous condition within the meaning of this chapter merely because of the failure to provide regulatory traffic control signals, stop signs, yield right-of-way signs, or speed restriction signs, as described by the Vehicle Code, or distinctive roadway markings as described in [s]ection 21460 of the Vehicle Code." (*Ibid.*)

Section 830.8 provides more generally that a public entity is not liable "for an injury caused by the failure to provide traffic or warning signals, signs, markings or devices described in the Vehicle Code." (*Ibid.*) Section 830.8 contains a carve out, however, called the "concealed trap" exception. That exception

provides that a public entity is not exonerated “from liability for injury proximately caused by such failure if a signal, sign, marking or device (other than one described in [s]ection 830.4) was necessary to warn of a dangerous condition which endangered the safe movement of traffic and which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care.” (*Ibid.*)

b. *Prior Notice*

Plaintiffs adduced evidence of some prior vehicle collisions involving the crosswalk, as well as concerns raised by citizens over the years about the safety of the crosswalk. Beginning with the prior accidents, “It is well settled that before evidence of previous accidents may be admitted to prove the existence of a dangerous condition, it must first be shown that the conditions under which the alleged previous accidents occurred were the same or substantially similar to the one in question.” (*Salas v. Department of Transportation* (2011) 198 Cal.App.4th 1058, 1072.) In *Salas*, the court concluded the evidence of prior collisions at the crosswalk where the plaintiff was injured was not relevant because “none of the [prior collisions] involved a pedestrian, much less a pedestrian who stopped while crossing the street and then changed direction,” as had the plaintiff in that case. (*Id.* at p. 1073.) In *Mixon v. Pacific Gas & Electric Co.* (2012) 207 Cal.App.4th 124, the court concluded that a prior accident at the crosswalk “provide[d] no evidence of a dangerous condition” because the driver had approached the intersection from a different direction and the collision occurred in a different part of the crosswalk. (*Id.* at p. 138.)

Here there was evidence regarding two specific prior collisions at the crosswalk: one on October 21, 2012, and one on

February 16, 2015. However, neither collision is similar to the accident in this case. First, both collisions involved vehicles traveling northbound (while in this case Carone approached the intersection from the opposite direction, traveling southbound). Second, there is no information whether the crosswalk's flashing lights had been activated, and no suggestion that the pedestrians were at risk of being struck. Under these circumstances, these prior accidents cannot raise a triable issue on any of the theories plaintiffs advance as to how the crosswalk was dangerous.

Plaintiffs also rely on citizen complaints about the crosswalk. “[W]hile the citizens’ letters are relevant to the issue of whether [Glendale] had notice of a potentially dangerous intersection, they are not competent evidence that the intersection was, in fact, a ‘dangerous condition’ within the meaning of section 835.” (*Sun v. City of Oakland* (2008) 166 Cal.App.4th 1177, 1188.) In other words, the complaints are relevant only insofar as they identify a particular alleged physical condition of property that endangered the public.

The first complaint was raised in July 2011 by a local business owner who “noticed a lot of people crossing with near misses with oncoming traffic.” This came before Glendale installed the flashing yellow light system later in 2011, and thus does not aid plaintiffs because it arose when the crosswalk was differently configured. Construing the later complaints (made by three individuals between 2016 and 2018) favorably to the plaintiffs, those complaints focus on the alleged lack of sufficient warnings to drivers making the crosswalk unsafe. But section 830.4 clarifies that “the failure to provide [such] regulatory traffic control signals, stop signs, yield right-of-way signs, or speed restriction signs” cannot constitute a dangerous condition for

purposes of governmental liability. (§ 830.4; see also § 830.8 [public entity not liable “for an injury caused by the failure to provide traffic or warning signals, signs, markings or devices described in the Vehicle Code”].) Thus, Glendale’s failure to provide such additional warnings to drivers despite citizen requests that it do so cannot as a matter of law demonstrate that the crosswalk was in a dangerous condition.

c. *The Obscured Sign*

Plaintiffs adduced evidence that foliage obscured the advance crosswalk warning sign for southbound drivers like Carone that was 279 feet before the crosswalk. They argue this created a triable issue with regard to a dangerous condition. “[A]lthough a public entity is not liable for failure to install traffic signs or signals [citations], when it undertakes to do so and invites public reliance upon them, it may be held liable for creating a dangerous condition in so doing,” under certain circumstances. (*De La Rosa v. City of San Bernardino* (1971) 16 Cal.App.3d 739, 746.)

It is not enough, however, that the sign was obscured. Glendale must have had actual or constructive knowledge of the sign being obscured before the accident. There is no claim (or evidence) that any city employee caused the sign to be obscured, and thus Glendale cannot be held liable for this alleged defect under section 835, subdivision (a). Instead, plaintiffs sought to establish Glendale’s liability under subdivision (b) of section 835, which applies only when “The public entity had actual or constructive notice of the dangerous condition under [s]ection 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.” (§ 835, subd. (b).) There is no record evidence that Glendale had actual or

constructive notice the sign was obscured before the accident, or how long the condition was present before the accident.¹¹ This lack of evidence is dispositive of plaintiffs' claim based on the obscured sign.

Further, even if we were to assume Glendale had notice of the obscured sign or it otherwise was a dangerous condition of public property, the undisputed evidence showed the obscured sign was not a proximate cause of the accident. Here, the proximate cause of the accident was Carone's drunk driving and his failure to exercise due care. Carone was aware of the crosswalk's location and had driven that stretch of road hundreds of times. There is no evidence that Carone forgot about the crosswalk or failed to realize he was coming up on it because of the obscured sign; indeed, he testified there was no question in his mind that there was a crosswalk there. Multiple other warning signs were operational and visible—the crosswalk markings themselves, the pedestrian sign at the crosswalk and its flashing lights, the car stopped at the crosswalk, and a car horn specifically blown to alert Carone. Carone was intoxicated and not paying attention to any of these warning signs. Given Carone's familiarity with the crosswalk and these other visible and audible warning signs, one advance sign being obscured could not have been a proximate cause of the accident.

¹¹ Plaintiffs' evidence instead showed that on August 27, 2019 (four days *after* the accident), a "trimming request" was made because a "Pedestrian sign is covered by tree branches from Verdugo [R]oad north to south."

d. *The PHB Device*

Plaintiffs contend that the crosswalk constituted a dangerous condition because it did not utilize a PHB device suspended above the roadway on a mast arm. As noted above, when activated by a pedestrian, a PHB device emits a sequence of lights that eventually turns red, instructing a driver to stop; the device uses a “Walk/Don’t walk” sign to inform pedestrians when it is safe to cross, i.e., when drivers are presented with the red light.

Pursuant to section 830.4, the crosswalk cannot be deemed to be dangerous due to the lack of a traffic control device such as a PHB. (*Mixon v. Pacific Gas & Electric Co.*, *supra*, 207 Cal.App.4th at p. 135 [holding under § 830.4 that a crosswalk was not a dangerous condition due to the lack of a traffic control signal]; *Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1351 [“The lack of a traffic signal at the intersection does not constitute proof of a dangerous condition”; applying § 830.4].)

e. *Curb Extensions and Pedestrian Island*

Plaintiffs’ traffic safety expert opined that the crosswalk was dangerous because of the lack of a curb extension and “safety island.” The failure to extend the curb lines at the crosswalk meant a pedestrian waiting to cross was farther into the periphery of a driver’s field of vision. A painted safety island or striping mid-way in the crosswalk would have potentially offered a pedestrian a protective area while crossing.

Plaintiffs’ reliance on the curb extension and “safety island” fails because they fall within the sign immunity of section 830.8. Both features are “traffic or warning signals, signs, markings or devices described in the Vehicle Code” to which section 830.8 applies. (*Ibid.*) Thus, Glendale cannot be held liable for failing to

provide either feature. (See Veh. Code, §§ 540 [defining a “ ‘safety zone’ ” as “the area or space lawfully set apart within a roadway for the exclusive use of pedestrians and which is protected, or which is marked or indicated by vertical signs, raised markers or raised buttons”]; 555 [defining a “ ‘[s]idewalk’ ” as “that portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel”].)¹²

Plaintiffs’ claims based on the lack of a curb extension or “safety island” also fail because any such dangerous condition was indisputably not a proximate cause of the accident. As noted above, the proximate cause was Carone’s drunk driving. L.S. was already in the crosswalk as Carone approached—extending the curb would have done nothing to prevent him from being hit because he had already left the curb and was in the street. Nor

¹² As noted above, there is a “concealed trap” exception to section 830.8, which excludes immunity where “a signal, sign, marking or device (other than one described in [s]ection 830.4) was necessary to warn of a dangerous condition which endangered the safe movement of traffic and which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care.” (§ 830.8.) As noted elsewhere, this exception does not apply to this case because there is no evidence of any hidden danger. Uncontradicted evidence shows that the crosswalk was marked, there was an unobscured pedestrian crossing sign at the crosswalk with a flashing light, and drivers approaching from the north, such as Carone, could see the crosswalk, the sign, and the flashing light from 500 feet away. There is no evidentiary basis to conclude that, without a safety island or curb extension, the crosswalk posed a danger which was hidden from a driver or pedestrian exercising due care.

would a pedestrian island have helped L.S. avoid Carone. North Verdugo Road had two lanes each running southbound and northbound. L.S. had walked across the westmost southbound lane from the park side and was hit in or around the number one southbound lane, meaning any center island would have afforded him no protection from a car traveling 35 miles per hour that did not begin braking until 10 feet before the crosswalk.

As for Carone, a curb extension would not have made L.S. more visible because L.S. had already left the curb and was in the crosswalk. Carone knew the crosswalk's location and was familiar with it. He failed to heed the stopped car in the lane to the right of him (which would have obscured any curb extension), the blinking pedestrian light, A.S. as he crossed in front of L.S., and other warning signs and sounds—the lack of a street level curb extension or a pedestrian island was indisputably not a proximate cause of him striking L.S.

3. *The Lack of an Approved Design Did Not Render the Crosswalk Dangerous*

Plaintiffs lastly contend the crosswalk had an “unreasonable” and “unapproved” design, and point out that there is no evidence the design of the crosswalk was approved or based on a traffic study. This argument fails because a public entity's liability for conditions on its property is solely statutory and is governed by section 835. (*Brenner v. City of El Cajon, supra*, 113 Cal.App.4th at p. 438.) A public entity thus cannot be held liable for constructing an improvement without a formally approved design or plan because that is not an available basis for liability under section 835.

The sole basis for public entity liability under section 835 is when its property constitutes a “dangerous condition” (as that

term is defined in section 830, subdivision (a)). To the extent an “unreasonable” or “unapproved” design creates such a dangerous condition, a public entity can be held liable assuming the other elements set forth in section 835 are satisfied and no immunity applies. However, a public entity cannot be held liable based on claims of an “unreasonable” or “unapproved” design not connected with a dangerous condition under the statutory scheme.¹³ Considering their claims both separately and holistically, plaintiffs failed to show a triable issue of material fact that a dangerous condition of public property existed, and to the extent any dangerous condition did exist that it was a proximate cause of the accident here.

¹³ Plaintiffs’ reply brief also contends that our Supreme Court’s recent decision in *Tansavatdi v. City of Rancho Palos Verdes* (2023) 14 Cal.5th 639 requires reversal. *Tansavatdi* primarily concerns design immunity (e.g., *id.* at p. 647), which is not at issue here. *Tansavatdi* further noted that where design immunity does not insulate a public entity defendant, “a plaintiff alleging failure to warn of a dangerous traffic condition must nonetheless overcome signage immunity by establishing the accident-causing condition was a concealed trap.” (*Id.* at p. 661.) In other words, *Tansavatdi* did not alter the sign immunity statutes or case law interpreting them discussed elsewhere in our opinion.

DISPOSITION

We affirm the trial court's judgment. Glendale is awarded its costs on appeal.

NOT TO BE PUBLISHED



WEINGART, J.

We concur:



ROTHSCHILD, P. J.



BENDIX, J.