

S280322

In the Supreme Court of California

Jayde Downey,

Plaintiff and Appellant

v.

City of Riverside, et. al.,

Defendants and Respondents.

After a Decision by the Court of Appeal Fourth Appellate District, Division One, Case No. D080377 Appealing from a Judgment Entered in Favor of Defendants Riverside, Ara Sevacherian and Vahram Sevacherian, County Superior Court Case No. RIC 1905830 Honorable Harold W. Hopp, Judge.

**JAYDE DOWNEY'S ANSWERING BRIEF TO THE
AMICI CURIAE BRIEF OF THE CALIFORNIA
MEDICAL ASSOCIATION ET AL.**

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INTRODUCTION

Amici Curiae (Amici) echo the same positions asserted by respondents. And as did Respondents, Amici parse and misquote the evidence and authorities cited by the parties (including Downey); they rely on principals established in the context of medical malpractice cases (and expanded to include defective product cases in *Fortman v. Forvaltningsbolaget Insualan* (2013) 212 Cal. App. 4th 3d 1415; they claim that Downey’s goal is to overturn (as opposed to return to) *Thing v. La Chusa*, (1989) 48 Cal. 3d 644 and its progeny (before *Fortman*); they claim, falsely, Downey invites this Court to reverse *Bird v. Saenz* (2002) 28 Cal. 4th 910, and breathe new life into *Mobaldi v. Regents of University of California* (1976) 55 Cal. App. 3d 573; and they conveniently omit the “or” in the *Thing*’s statement of elements which justify and simultaneously limit an award of damages for emotional distress caused by awareness of the negligent infliction of injury to a close relative, which are the traumatic emotional effect on the plaintiff who contemporaneously observes both the event *or* conduct that causes serious injury to a close relative and the injury itself, *Thing*, *Id.*, 48 Cal. 3d at 667.

Downey made her case in her Opening Brief and her Reply Brief. We will address only the fallacy of the premise that underpins Amici’s position:

**DOWNEY DID NOT DEFINE THE INJURIOUS
EVENT AS THE DEFICIENTLY MAINTAINED
PUBLIC AND PRIVATE PROPERTY**

Amici claim at page 9 of their brief (ACB) that Downey defined the injury producing event in terms of the dangerous conditions of the intersection. But that's not how she defined it. At page 3 of her operative (third amended) complaint (CT, Vol. 2 at 296), she pleaded as follows:

“At all relevant times, plaintiff DOWNEY was present, or virtually present, at the scene of the collision, at the time of the collision and, then and there, had *contemporaneous, sensory awareness of the connection between the injury-causing traffic collision and the grievous injury suffered by her daughter as a result of the collision, thereby causing Plaintiff DOWNEY (to suffer) serious emotional injuries and damages as a result of these events and conditions at the scene...*” (Emphasis added).

By itself, the negligent maintenance of Respondents' properties was of no moment without the injurious traffic collision that caused the injuries to Vance that Downey perceived contemporaneously with the collision. That Respondents negligent maintenance and control of their properties were two of the three causes of the collision that caused Vance to suffer emotional distress as she contemporaneously perceived the collision that occurred as a result of the conditions on the property should be recognized as actionable by a bystander NIED claimant.

DATED: 2/9/2024

RIZIO LIPINSKY LAW FIRM PC

A handwritten signature in black ink, appearing to read "E. Ryanen". The signature is stylized with a large initial "E" and a series of connected loops for the last name.

By: _____

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CERTIFICATION OF WORD COUNT

Pursuant to CRC 8.204(c) and 8.486(a)(6), the text of this brief, including footnotes and excluding the cover information, table of contents, table of authorities, signature blocks and this certificate, consists of 456 words in 13-point Times New Roman type as counted by the word processing program used to generate the text.

DATED: 2/9/2024

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A handwritten signature in black ink, appearing to read "E. Ryanen", written over a horizontal line.

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STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2677 N. Main Street, Suite 225, Santa Ana, California, 92705.

On February 9, 2024, I served the foregoing document described as: on the parties in this action by serving: JAYDE DOWNEY'S ANSWERING BRIEF TO THE AMICI CURIAE BRIEF OF THE CALIFORNIA MEDICAL ASSOCIATION ET AL.

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Supreme Court of California

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Lower Court Case Number: **D080377**

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Date

/s/Michele Markus

Signature

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Last Name, First Name (PNum)

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