

***Agustin v. Golden Empire Transit Dist. (2025) 116 Cal.App.5th 426, as modified (Nov. 26, 2025)***

Where the evidence shows that the plaintiff's negligence was the sole proximate cause of an injury, comparative negligence need not be submitted to the jury.

**FACTS/PROCEDURE**

On October 21, 2020, Plaintiff Janice Agustin was injured while riding as a passenger on a public bus operated by Golden Empire Transit District ("Transit District") and driven by employee Errol Cunningham. Plaintiff, a frequent passenger who rode Transit District buses as her sole source of transportation for 10 years, stood up from her seat to get off the bus before it reached her stop. Plaintiff was holding a bag in her left hand and a phone to her ear with her right hand, as she made her way to the rear door. As the bus made a turn, Plaintiff lost her balance and fell into the aisle, hitting adjoining seats.

The driver did not warn Plaintiff that she needed to hold on before she fell. Passengers were allowed to stand on the bus, and the driver had not been instructed to tell standing passengers to hold on. During his deposition, the driver testified that he saw Plaintiff fall in the bus's mirror. Immediately before she fell, Plaintiff was standing at the bus's rear door and not hanging on to anything while the bus was moving. In her deposition, Plaintiff testified that she stood up as the bus was traveling slowly around a roundabout but then fell on the bus's steps as the driver accelerated to pull into traffic. Plaintiff alleged the driver took off too fast after exiting the roundabout and did not yield to traffic.

The Transit District's buses are equipped with video surveillance equipment that uses multiple cameras to record various angles of the bus's interior and exterior, while in service. The cameras captured the events leading up to the fall and the fall itself.

The operative FAC was filed in March 2022, and raised claims against the Transit District and driver, alleging the driver's negligent, reckless, and unsafe operation of the vehicle caused Plaintiff's injuries. The FAC further alleged that Defendants negligently, wantonly, carelessly, and/or recklessly entrusted, owned, and operated the bus in an unreasonable and unsafe manner, thereby causing Plaintiff's injuries.

Defendants moved for summary judgment on the grounds that Plaintiff's motor vehicle cause of action was barred as a matter of law because (1) there was no evidence of Defendants' negligence; and, (2) Plaintiff assumed the risks of the ordinary movements of the bus from which her injury resulted. In support of their motion, Defendants submitted the video footage from the on-bus surveillance cameras that captured the events leading up to the fall and the fall itself. **Defendants claimed the bus's video was irrefutable evidence they were not negligent because the video shows Plaintiff was not holding on to anything as the bus made an "ordinary movement" by turning onto the street while on its normal route.** Defendants maintained that they did not owe a duty of care to Plaintiff, **as to the bus's ordinary movement. Defendants' motion urged the trial court to rely on the video evidence to determine there is no triable issue of fact.** Plaintiff opposed Defendants' motion, arguing summary judgment was improper because any issue of comparative negligence should be left for a jury to determine.

The trial court granted Defendants' motion for summary judgment, concluding that the video provided undisputed evidence that Plaintiff lost her balance after standing up prior to arriving at her bus stop. At the time the incident occurred, the bus did not jerk or otherwise move in an unexpected manner. The bus was moving in an ordinary manner at the time Plaintiff lost her balance and fell. Thus, the trial court concluded that Plaintiff's sole cause of action for motor vehicle negligence failed as a matter of law because there was no evidence of Defendants' negligence. The trial court entered judgment in favor of Defendants and dismissed the case with prejudice. Plaintiff timely appealed.

**HOLDING/DISCUSSION**

**The California Court of Appeal affirmed summary judgment for Defendants.** A trial court's order granting summary judgment is reviewed *de novo*. "Summary judgment is granted when there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law." (*Hersant v. Department of Social Services* (1997) 57 Cal.App.4th 997, 1001.) In reviewing the summary judgment, the Court applies the same three-step analysis used by the trial court: (1) identify

the issues as framed by the pleadings; (2) determine whether the moving party has negated the opponent's claims; and (3) determine whether the opposition has demonstrated the existence of a triable, material factual issue.” (*Agustin v. Golden Empire Transit Dist.* (2025) 116 Cal.App.5th 426, 438, as modified (Nov. 26, 2025) (*Agustin*).)

In considering whether Defendants negated the allegations as encompassed in the FAC, the Court noted that Defendants did not dispute that as a common carrier, they owed a heightened duty of care to bus passengers. Rather, **Defendants maintained that a common carrier is not liable for the ordinary movement of a bus.** The Court noted that while Defendants framed the issue as the scope of their duty of care, “**the issue is more appropriately examined as whether defendants breached the applicable duty.**” (*Agustin, supra*, 116 Cal.App.5th at p. 447.)

While a common carrier owes its passengers a “duty of utmost care and the vigilance of a very cautious person,” the Court of Appeal acknowledged that “even a bus driver exercising the vigilance of a very cautious person cannot eliminate the bus's ordinary movement caused by driving on the street.” (*Agustin, supra*, 116 Cal.App.5th at p. 448.) Plaintiff argued the video evidence alone could not support the conclusion that the Defendants exhibited “the utmost care.” Relying on *Swigert v. Bruno* (2017) 13 Cal.App.5th 529 (*Swigert*), Defendants argued the trial court *could* rely on the bus’s video to conclude there was no triable issue of fact as to whether Plaintiff fell from the bus’s ordinary movement.

In *Swigert*, a plaintiff was injured while participating in an endurance horseback riding event when she was struck by a co-participant’s horse. Plaintiff submitted 40 minutes of video of the incident that was recorded on a co-participant's helmet. The Court of Appeal noted that to the extent witness testimony was inconsistent with the video, the Court did not consider such inconsistency a “disputed fact” and instead relied on the evidence in the video. (*Swigert*, at p. 534, fn. 4.) Further, the Court then relied on the video evidence to conclude that Plaintiff failed to show there was conflicting evidence as to what is inherent in endurance riding and the Plaintiff’s claim was therefore barred by the primary assumption of risk doctrine. (*Id.* at p. 539.)

Plaintiff attempted to narrow *Swigert* as limited to what risks were inherent in the activity at issue. Plaintiff further contended the bus footage was “subject to multiple conflicting factual inferences” and “[could] not be relied upon to determine the facts as a matter of law.” (*Agustin*, at p. 449.)

The Court was wholly unpersuaded:

**If a picture is worth a thousand words, a video is worth considerably more. A video objectively captures the sequence of events. Unlike a witness, a video does not suffer from bias or the fading of memory with time.** (*Taylor v. County of Los Angeles* (2020) 50 Cal.App.5th 205, 213 [a “camera's video can be unbiased, unblinking, unchanging, and clear” and is “far superior” to a witness's testimony].) Additionally, “[f]act finders can give different weights to different kinds of evidence.”

Rejecting Plaintiff’s arguments in their entirety, the Court of Appeal concluded that here, as was the same in *Swigert*, **the trial court reasonably concluded the bus's video offered the most reliable account of events and to the extent witness testimony was in conflict about what happened, the video evidence resolved those conflicts. Thus, Defendants successfully met their burden of making a prima facie showing that Plaintiff could not establish a necessary element of her claim.**

Finally, the Court rejected the argument raised in Plaintiff’s opposition, that Defendants’ motion for summary judgment was improper on the grounds a trier of fact could still assign a portion of fault to Defendants, even if factual issues were introduced to indicate comparative negligence on Plaintiff’s behalf. While California’s comparative negligence system no longer bars a negligent plaintiff from recovery, a California plaintiff must still establish a prima facie case by proving the defendant was negligent, and that said negligence was a proximate cause of his injuries. (*Elder v. Pacific Tel. & Tel. Co.* (1977) 66 Cal.App.3d 650, 657.) **Here, the evidence demonstrated that Plaintiff’s negligence was the sole and proximate cause of her injury.** Therefore, comparative negligence principles simply did not come into play. Thus, the trial court’s judgment was **affirmed**.