

CERTIFIED FOR PUBLICATION
COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

ERNEST CASTANEDA,

Plaintiff and Appellant,

v.

GEORGE OLSHER et al.,

Defendants and Respondents.

D043383

(Super. Ct. No. 94275)

ORDER DENYING REHEARING
MODIFICATION OF OPINION

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on September 7, 2005, be modified as follows:

1. On page 10, in the second full paragraph, the third sentence beginning "The California Supreme Court has held" is deleted and replaced with the following:

In the area of the liability of a property owner for the criminal acts of third parties, the California Supreme Court has held that courts are to determine not only the existence of a duty, but also the scope of that duty. (*Ann M., supra*, 6 Cal.4th at p. 674.) The court has further held that "the scope of the duty is determined in part by balancing the foreseeability of the harm against the burden of the duty to be imposed. [Citation.]" (*Ibid.*)

2. On page 17, footnote 4 is deleted, which will require renumbering of all subsequent footnotes.

3. On page 18, in the first full paragraph, the word "assaults" in the third sentence is deleted and the words "at least one sexual assault" are added, so that the sentence reads as follows:

The multiple incidents of gang activity in the Park, including gang members congregating in the Park and intimidating other residents, drug sales, at least one sexual assault, and shootings just off of Park property all constitute "other indications of a reasonably foreseeable risk" that a violent, gang-related criminal assault would occur in the Park.

4. On page 20 under the Conclusion heading, the last portion of the paragraph is deleted, beginning with the sentence "Olsher thus had a duty" and continuing through the remainder of the paragraph. The following is added as a second paragraph:

Pursuant to the holding of the California Supreme Court in *Ann M.*, as noted above, this court must determine the existence of a duty, and also the scope of that duty. (*Ann M.*, *supra*, 6 Cal.4th at p. 674.) We conclude that under the circumstances of this case, Olsher had a duty to undertake additional security measures in the Park to protect residents from potential violence occurring on the property. Castaneda presented sufficient evidence that Olsher's breach of this duty was a substantial factor in bringing about his injuries for this case to be decided by the jury.

The petition for rehearing is denied.

There is no change in the judgment.

McINTYRE, Acting P. J.