

**MARIA OLIVARES, Plaintiff-Appellant,**  
**v.**  
**KEVIN OLIVARES, Defendant, and**  
**MIDDLESEX BUILDERS and LONDON TERRACE APARTMENTS, Defendants-**  
**Respondents, and**  
**DURHAM WOODS, Defendant.**

[No. A-1388-12T2.](#)

**Superior Court of New Jersey, Appellate Division.**

Argued September 18, 2013.

Decided October 25, 2013.

Randi S. Greenberg argued the cause for appellant.

Lori Brown Sternback argued the cause for respondents (**Methfessel & Werbel**, attorneys; Ms. Sternback and Kyle Vellutato, on the brief).

Before Judges Waugh and Nugent.

**NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE  
APPELLATE DIVISION**

PER CURIAM.

Plaintiff Maria Olivares appeals the Law Division's October 17, 2012 order dismissing her claims against defendant London Terrace Apartments (LTA),<sup>[1]</sup> based on claimed error in the judge's decision granting a partial involuntary dismissal and the denial of her pre-trial motion to exclude certain evidence. We affirm.

**I.**

We discern the following facts and procedural history from the record on appeal.

On June 9, 2009, at approximately 10:30 p.m., Olivares was a passenger in her Ford Explorer, which was being driven by her son, defendant Kevin Olivares.<sup>[2]</sup> They were leaving the grounds of the apartment complex at London Terrace, in the Parlin section of Old Bridge, where Olivares and Kevin resided. Kevin drove along Gorniak Drive, a roadway within the grounds of London Terrace, heading toward the exit at Westminster Boulevard.

According to Olivares and Kevin,<sup>[3]</sup> they saw another vehicle coming toward them on Gorniak Drive. Because Kevin had been driving on the left-hand side of the road to avoid a bumpy area on the right, he moved quickly to the right to avoid the oncoming vehicle. He hit a bump and lost control of the Explorer, which eventually turned over onto the passenger side. Olivares was seriously injured as a result.

In July 2009, Olivares filed her initial complaint against Kevin and LTA, as well as a series of fictitious defendants. She eventually settled with Kevin. Following further pleading, discovery, and an unsuccessful motion for summary judgment by LTA, the case was called for trial on September 24, 2012.

Shortly before the scheduled trial date, Olivares moved to bar testimonial and photographic evidence concerning the posted fifteen-mile-per-hour speed limit on Gorniak Drive, arguing that there was no witness who could testify that signs reflecting such a fifteen-mile-per-hour speed limit had been posted prior to the accident. The motion was argued on September 24. Defense counsel represented to the trial judge that a witness would testify that the signs, including the one photographed after the accident, were in place prior to the accident. The judge denied the motion on that basis, and also because Olivares sought to remove references to the speed limit and the picture from her expert's de bene esse deposition after the time limit within which such an application must be brought. R. 4:14-9.

The trial continued for five additional days. In her opening, Olivares presented three theories of liability against LTA: (1) that there should have been speed limit signs on Gorniak Drive to reduce the speed of vehicles coming into the complex from Westminster Boulevard;<sup>41</sup> (2) that Gorniak Drive was dangerous because of bumps on the roadway; and (3) that Gorniak Drive was dangerous because a section of the roadway adjacent to where the accident occurred was too narrow for vehicles coming in opposite directions to pass each other. LTA disputed those claims and argued that the accident was solely the result of Kevin's negligence, including the speed at which he was traveling.

After Olivares' counsel finished presenting her case, LTA moved for an involuntary dismissal, R. 4:37-2(b), on the issues of whether the alleged narrowness of the roadway or the bumps resulting from the grading of the roadway were proximate causes of the accident. Over Olivares' objection, the trial judge granted the motion. The trial continued with respect to the remaining theory of liability. On October 3, the jury returned a verdict finding that LTA was not negligent. This appeal followed.

## II.

Olivares raises two issues on appeal. First, she argues that the trial judge erred by granting the motion for an involuntary dismissal, but only as to the issue of whether the alleged narrowness of Gorniak Drive was a proximate cause of the accident. She argues that a reasonable jury could have found in her favor on that issue without expert testimony. Second, she contends that the trial judge erred in denying the pre-trial motion in limine.

### A.

We start our discussion with the involuntary dismissal. Motions for involuntary dismissal in accordance with Rule 4:37-2(b), as well as motions for judgment occurring at the close of evidence, Rule 4:40-1, or after the verdict, Rule 4:40-2(b), are governed by a similar standard: "[I]f, accepting as true all the evidence which supports the position of the party defending against the motion and according him the benefit of all inferences which can reasonably and legitimately be deduced therefrom, reasonable minds could differ, the motion must be denied." [Verdicchio v. Ricca, 179 N.J. 1, 30 \(2004\)](#) (alterations in original) (quoting [Estate of Roach v. TRW, Inc., 164 N.J. 598, 612 \(2000\)](#)). Reviewing courts apply the same standard. [Barber v. ShopRite of Englewood & Assocs., Inc., 406 N.J. Super. 32, 52 \(App. Div.\), cert. denied, 200 N.J. 210 \(2009\)](#). It is well-established that our review of a judge's conclusions of law is plenary. [Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 \(1995\)](#) ("A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.").

Olivares argues that the trial judge should not have granted the involuntary dismissal because, giving her the required benefit of all favorable inferences, reasonable minds could differ as to whether the narrowness of the roadway was a proximate cause of the accident. In opposition, LTA contends that the judge acted appropriately because Olivares' expert on the issue relied on facts concerning the location of the accident inconsistent with those to which Kevin had testified and the expert had not presented testimony that the alleged narrowness precluded Kevin from regaining control of his vehicle.

Olivares testified that, when traveling along Gorniak Drive in the direction of Westminster Boulevard, there were garages on the right side and cars parked in front of the apartment buildings on the left. There were also what Olivares described as "bumps" on the right side of the roadway in front of the garages. According to John D'Onofrio, LTA's expert, the bumps were related to changes in the elevation of the garages resulting from the rising contour of the land. Kevin testified that he was driving on the left-hand side of the roadway, closer to the cars, so he could avoid those bumps, which he claimed "would have messed up the car."

When Kevin and his mother saw the other car, it was traveling at approximately thirty to thirty-five miles-per-hour. Kevin was driving between eighteen and twenty-five miles-per-hour. Once he saw the other vehicle, Kevin quickly steered the Explorer to the right side of the roadway. He described the area where the two cars passed one another as "really, really tight." Kevin estimated that, when he passed the other vehicle, he was between ten and twelve parking spaces<sup>[5]</sup> away from the last parked car on the left-hand side of the roadway in front of him. That is significant because the area where that last car was parked is the area at which William Poznak, Olivares' expert, testified the roadway was too narrow. He believed that the cars had passed each other shortly before that area.

After Kevin moved the Explorer to the right, out of the path of the oncoming vehicle, he sped up and drove over a bump on the right-hand side of the roadway, causing him to lose control. The Explorer continued to move forward, picking up speed, and then hit another bump.

At that point, the Explorer was heading straight toward the park on the right side of Gorniak Drive and was traveling between thirty and forty miles-per-hour. Kevin turned the Explorer to the left to avoid the curb and fence next to the park. The Explorer crossed Gorniak Drive and struck "the curb, a sign, a fire hydrant, a utility pole guide cable, and then [a] utility pole" on the lawn next to the left-hand side of the roadway. It then flipped over.

In support of its motion for involuntary dismissal, LTA argued that Poznak's opinion regarding the improperly-configured narrow section of the roadway being a proximate cause of the accident was premised on the vehicles having passed each other at the wrong location, that is, just before Kevin reached a point where the roadway was too narrow. However, Kevin had testified that they passed each other significantly before that point. In opposing the motion, Olivares argued that the narrowness of the roadway at that point made it more difficult for Kevin to regain control of the car, which itself was a proximate cause of the accident. In granting the motion, the judge concluded that Poznak's testimony did not support that alternative theory of liability.

We find no error in the judge's decision. Poznak's testimony addressed the narrowness of the point between the park on the right and the parked cars on the left in terms of the ability of two cars to pass at that point. He did not address whether a specific width and length of roadway was required to allow a driver to regain control of a vehicle, whether the roadway was improperly designed to allow such recovery of control, or whether such a flawed design was a proximate cause of the accident.

In our view, expert testimony concerning a defect in configuration of the roadway would be required for a jury to consider whether the configuration was a proximate cause of an accident. See [Vargo v. Nat'l Exch. Carriers Ass'n, Inc.](#), 376 N.J. Super. 364, 380-81 (App. Div. 2005). We are satisfied that a rational jury could not find in favor of Olivares on the issue because there was no expert testimony that the roadway was improperly configured with respect to a driver's ability to regain control of a vehicle. See *Perez v. Professionally Green, LLC*, \_\_\_ N.J. \_\_\_, \_\_\_ (2013) (slip. op. at 35-36).

## **B.**

We now turn to the issue of whether the judge erred in denying Olivares' motion in limine.

Our scope of review of a trial judge's evidential rulings requires that we grant substantial deference to the judge's exercise of discretion. [DeVito v. Sheeran, 165 N.J. 167, 198 \(2000\)](#). Rulings on evidence will not provide a basis for reversal unless they reflect an abuse of that discretion. [Benevenga v. Digregorio, 325 N.J. Super. 27, 32 \(App. Div. 1999\)](#), certif. denied, [163 N.J. 79 \(2000\)](#). Reversal is not warranted unless the trial judge's ruling was "so wide of the mark that a manifest denial of justice resulted." [State v. Carter, 91 N.J. 86, 106 \(1982\)](#).

The trial judge did not abuse his discretion when he denied the motion in limine. Although the two LTA employees who had been deposed had testified that they did not remember whether the photographed speed-limit sign was in place prior to the accident, defense counsel represented that he would present a witness to testify that the signs, including the one at issue, were in place at the time of the accident. However, he did not actually do so. In fact, the two LTA employees who testified at trial conceded that the sign shown in the photograph was not in place prior to the accident. They nevertheless maintained that similar signs were located elsewhere in London Terrace and, specifically, on Gorniak Drive at that time.

Based on the testimony actually given, Olivares could have moved to have the photograph and related testimony stricken. She did not do so. Even if she had, it is not clear that the judge would have been required to grant such a motion. Olivares' theory was that LTA was negligent because it did not post a fifteen-mile-per-hour speed-limit sign visible to drivers entering London Terrace from Westminster Boulevard. The defense theory was that Kevin was speeding and that his speeding caused the accident. Based on the testimony that there were fifteen-mile-per-hour speed-limit signs elsewhere on Gorniak Drive and the fact that Kevin lived there, the judge could have determined that there was sufficient testimony for the jury to find that Kevin knew or should have known that he was speeding at the time of the accident and that his speeding contributed to the accident.

In any event, our review of the record satisfies us that any error on the part of the trial judge was harmless. R. 2:10-2 ("Any error or omission shall be disregarded by the appellate court unless it is of such a nature as to have been clearly capable of producing an unjust result....").

Affirmed.

[1] There were several, apparently-interrelated corporate defendants named in the complaint and amended complaints filed in this action. At trial, the judge and counsel referred only to LTA as the defendant. We follow that approach and refer to the related defendants collectively as LTA.

[2] Because mother and son share the same last name, we refer to Kevin Olivares by his first name for the sake of convenience.

[3] Following the taking of his deposition in this case, Kevin was severely injured in a pedestrian accident and was unable to testify at trial. Excerpts from his deposition were read to the jury. se

[4] During summation, counsel for Olivares argued that LTA should have taken other precautions such as yield signs and speed bumps. After defense counsel objected, the judge instructed the jury to disregard those arguments.

[5] The vehicles were parked head-in rather than parallel to the curb.