

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 31 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JOHN A. SOLDANO, an individual; et al.,

Plaintiffs - Appellants,

v.

UNITED STATES OF AMERICA; et al.,

Defendants - Appellees.

No. 07-17000

D.C. No. CV-01-05462-LJO/SMS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Argued and Submitted March 25, 2009
San Francisco, California

Before: GOODWIN, B. FLETCHER and FISHER, Circuit Judges.

Plaintiffs-appellants John and Denise Soldano appeal the district court's judgment in favor of the United States, following a bench trial, on the Soldanos' negligence claim under the Federal Torts Claims Act, 28 U.S.C. § 1346(b). We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

“To recover damages for negligence a plaintiff must prove that the defendant's conduct was a proximate or legal cause of his injuries.” *USAir Inc. v. U.S. Dep’t of Navy*, 14 F.3d 1410, 1412-13 (9th Cir. 1994); *see also Spinks v. Equity Residential Briarwood Apts.*, — Cal. Rptr. 3d —, 2009 WL 531206, at * 24 (Cal. Ct. App. March 4, 2009). The district court found that the speed limit at the accident site did not constitute a proximate or legal cause of Mr. Soldano’s injuries. The district court’s finding, based on the expert testimony it found most credible and persuasive, that Mr. Soldano could have avoided the accident at the speed he was driving if he had been attentive was not clearly erroneous. *See USAir Inc.*, 14 F.3d at 1412.

AFFIRMED.