

CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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Lane v City of Saramento (4/16/2010)

Summary Judgment; Dangerous Condition of Public Property; Evidentiary Showing

On October 31, 2006, Montgomery picked up Lane at CSU Sacramento, and proceeded westbound on J Street, toward downtown Sacramento. He approached the intersection of 48th Street, where more than 6,000 cars pass westbound each day. On the west side of the intersection there is a concrete divider that separates the two westbound lanes of J Street from the two eastbound lanes. The divider is six to seven inches high, ten inches wide and 120-125 feet long.

Entering the intersection in the number one lane, passenger Lane told Montgomery to “watch out” for a car traveling in the number two or outside lane. Glancing to his right, Montgomery saw the car which appeared to be too close. He moved his car to the left and struck the end of the divider, popping his left front tire. The car came down in the number one lane, having its speed reduced from 35 miles an hour to just a few miles per hour, before Montgomery pulled over and stopped.

Both Lane and Montgomery sued the City and their cases were consolidated. In May 2008, the City brought a summary judgment motion on the grounds that (1) the center divider was not dangerous, (2) that Montgomery failed to use due care, and (3) that the divider did not cause the collision. The City offered evidence its Claims Administrator maintained a computerized database of claims submitted to the City regarding injuries that might involve City property. In the previous five years there was no record of a claim from the subject intersection, other than plaintiffs’ claims.

The City alledged in support of its motion that it was not liable because the center divider did not create a substantial risk of injury, and because this was the only reported collision in the last seven years. The City also contended that Montgomery did not use due care, nor did the divider “cause” Montgomery to

move his car to the left. Plaintiffs presented declarations from their traffic engineering experts. William Neuman asserted that the width of the number 1 lane violated minimum standards for traffic lanes of travel. He also noted that standards required a raised curb to be “offset” one to two feet from the edge of the traveled roadway, and here there was no offset from an already too narrow travel way. Neuman added that AASHTO standards also provide for a sloped end or “ramp” on the front of the curb.

Neuman concluded that, “more likely than not,” Montgomery’s car could not have collided with the raised concrete berm had the lane met the minimum standards for lane widths and offsets. Plaintiffs also offered photographic evidence taken a couple of days after the accident showing the divider was scuffed and pitted with much of the yellow paint worn off or scraped off. Based on the lack of prior claims, the trial court granted the City’s motion. It stated the City’s evidence met the initial burden of showing the median was not in a dangerous condition. Although the plaintiffs’ experts showed the lane was narrow, they failed to raise a triable issue of fact that the median presented a dangerous condition. Mere evidence of purported hazards, “does not support the inference of a dangerous condition of public property...” This appeal followed. The Third DCA stated that it is required to make its own independent determination regarding the construction and effect of the supporting and opposing papers. It applied the three-step analysis required of the trial court, (1) identifying the issues,(2) determining whether the moving party has established facts to justify a judgment, and (3) if so, whether the opposition demonstrates a triable, material factual issue. (*Hernandez v Modesto Portuguese Pentecost Assn.* (1995) 40 Cal.App.4th 1274)

Government Code section 835 makes a public entity liable for injury caused by a dangerous condition of its property if the plaintiff shows (1) the property was dangerous at the time of the injury, (2) the injury was proximately caused by the condition, (3) the injury incurred was the type that was a reasonably foreseeable risk of the condition, and either (4a) the negligent act of an employee created the condition, or (4b) the entity had actual or constructive knowledge of the dangerous condition and sufficient time to protect against the condition. The question of whether property constitutes a dangerous condition is often a question of fact, unless the court determines that no reasonable person could conclude the condition created a substantial risk of injury when the property is

used with due care in a manner that is reasonably foreseeable. (*Mathews v City of Cerritos* (1992) 2 CA 4th 1380)

The City first argued the divider did not create a substantial risk of injury and was therefore not a dangerous condition. The Justices pointed out, however, that the City's evidence did not establish the complete absence of any similar accidents, merely that the claims administrator could not find any claims in the database. The City offered no evidence on how the database was created. Additionally, the absence of claims does not establish the absence of accidents. Further, the absence of accidents is not dispositive of the issue of whether a dangerous condition is present.

The City is required to present evidence that would preclude a reasonable trier of fact from finding it was more likely than not that the divider posed a substantial risk of injury. (*Kahn v East Side Union High School Dist.* (2003) 31 Cal.4th 990) The City's evidence of a search of its database was not sufficient to preclude such a finding. Accordingly the burden never shifted to the plaintiffs to demonstrate a triable issue.

The defendant also argued plaintiffs failed to use the property with due care. The Tort Claims Act does not require that plaintiff prove the property was actually being used with due care at the time of the injury, either by himself or a third party. (*Alexander v State of California ex rel. Dept. of Transportation* (1984) 159 Cal.App.3d 890) Thus the City's summary judgment cannot be sustained based on its second argument.

Finally, the City argued plaintiffs could not establish a causal connection because the center divider did not cause Montgomery to swerve right or left. The Appellate Court pointed out that under the governing statute, the pertinent question is not whether the divider caused Montgomery to swerve or move to the left; rather, the pertinent question is whether plaintiff's injury was proximately caused by the dangerous condition. (section 835)

Based on the evidence the City offered, a reasonable trier of fact could have found that but for the presence of the divider, Montgomery might have been able to evade the car encroaching from the slow lane and continue westbound without a collision or injury. On these facts, the City failed to show that the plaintiffs could not establish a proximate causal connection between the divider and their injuries from the collision with the divider. As such, the summary judgment cannot be sustained based on this argument.

Because the City failed to produce sufficient evidence to demonstrate it was entitled to judgment as a matter of law on plaintiff's claims for injury from a dangerous condition of public property, the trial court erred in granting the City's summary judgment motion. The judgment is reversed and plaintiffs shall recover their costs on appeal.

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