

## **Metcalf v County of San Joaquin**

2/21/08

### **Public entity liability; Proof of negligence or notice**

Thomas Metcalf, a minor, was seriously injured in an automobile accident at a T-intersection controlled by the defendant. Metcalf sued the County under the [Government Claims Act](#), alleging the intersection constituted a dangerous condition in design, construction and maintenance. At trial, the dispute was whether the intersection was in a dangerous condition, whether the County employee placed signs improperly or made a wrong decision, and whether the County had notice of the dangerous condition.

The jury returned a verdict on a special form, first finding the property was in a dangerous condition, and also that there was a reasonably foreseeable risk that this kind of incident would occur. The jury also found that the act of the employee did not create a dangerous condition and that the County did not have notice of the condition. The verdict was returned for the defendant. The plaintiff appealed and the Third District Court of Appeal affirmed. The Supreme Court granted plaintiff's petition for review, **focusing on the proper legal interpretation of the Government Claims Act.**

In California, a public entity is not liable for injuries except as provided by statute at section 815, et seq. Section 835 sets out the exclusive conditions under which a public entity is liable for injuries caused by a dangerous condition of public property. The intent of the Act is to confine potential governmental liability to delineated circumstances: immunity is waived only if the various requirements of the act are satisfied. (*Brown v Poway Unified School Dist.* (1993) 4 Cal. 4<sup>th</sup> 820).

The statute requires a plaintiff to prove, among other things, that either of two conditions is true:

(A) A [negligent or wrongful act or omission of an employee](#) of the public entity within the scope of his employment created the dangerous condition; or

(B) The public entity had [actual or constructive notice](#) of the

dangerous condition under section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

The Legislature did not intend that any act by a public entity's employee that creates a dangerous condition is negligent or wrongful automatically. For injury caused by a dangerous condition, a plaintiff must prove the entity acted negligently or wrongfully even when the public entity created the dangerous condition. (Section 835)

**A dangerous condition of property is one which creates a substantial risk of injury when such property is used with due care in a manner in which it is reasonably foreseeable that it will be used.** A public entity may be held liable for a dangerous condition of public property only if it has acted unreasonably in creating or failing to remedy or warn against the condition under the circumstances described in subsequent sections. (Section 830)

Merely creating a dangerous condition cannot make a public entity liable without the additional finding that it did so negligently (or had notice of the condition). Relying on *Pritchard v Sully-Miller Contracting Co.* (1960) 178 Cal. App. 2d 246, plaintiff argued that a public entity is always liable whenever it creates (or at least deliberately creates) a dangerous condition without requiring an additional finding that the public entity did so negligently. The Court made clear the opinion in *Pritchard* required a finding of negligence.

Section 835 requires the plaintiff to establish that a negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition. **The operative question is not whether the public entity created the dangerous condition, or even whether it did so deliberately, but whether it did so negligently.**

The element of the public entity's negligence is separate and not included within the element of the existence of a dangerous condition. The creation of the dangerous condition must have been unreasonable, reflecting an ordinary negligence standard. Under **general negligence principles**, a person is ordinarily obligated to exercise due care in his or her own actions so as not to create an unreasonable risk of injury to others, and

this legal duty generally is owed to the class of persons who it is reasonably foreseeable may be injured as the result of the actor's conduct. (*Zelig v County of Los Angeles* (2002) 27 Cal. 4th 1112)

Plaintiff also argued section 835.4 places the burden on the public entity to establish it acted reasonably. This statute allows the entity to escape liability for the condition of its property if it establishes the act or omission creating the condition was reasonable. But *a public entity may avoid liability if it shows that it acted reasonably in the light of the practicability and cost of pursuing an alternative course of action*. Under section 835.4, a public entity may absolve itself from liability for creating or failing to remedy a dangerous condition by showing that it would have been too costly and impractical for the public entity to have done anything else. (*Bonanno v Central Contra Costa Transit Authority* (2003) 30 Cal. 4th 139)

**The reasonableness standard referred to in section 835.4 differs from the reasonableness standard in sections 830 and 835 and ordinary tort principles.** *Negligence under section 835(a) is established under ordinary tort principles concerning the reasonableness of a defendant's conduct in light of the foreseeable risk of harm*. The plaintiff has the burden to demonstrate that the defendant's conduct was unreasonable under this standard, or that it had notice under section 835 (b).

If plaintiff carries this burden, the public entity may defend under the provisions of section 835.4, *a defense unique to public entities*. *The entity may choose to show because of financial or political constraints, the entity is unable to accomplish what reasonably would be expected of a private entity*.

In this case, because the jury found the County acted neither negligently nor had notice of the dangerous condition, the County is not liable for the plaintiff's injuries. The judgment of the Court of Appeal is affirmed.