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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

DONALD MARKLEY, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES, Defendant and Respondent; LINDA GUNTERMAN et al., Defendants and Appellants.	B246460 (Los Angeles County Super. Ct. No. MC022275)

APPEAL from the judgment of the Superior Court of Los Angeles County. Randolph A. Rogers, Judge. Reversed and remanded.

R. Rex Parris Law Firm, R. Rex Parris, Jason P. Fowler, Ryan K. Kahl and John M. Bickford for Plaintiff and Appellant.

Yoka & Smith, Walter M. Yoka and Jeffrey Gordon for Defendants and Appellants.

Collins, Collins, Muir & Stewart, Eric Brown, Tomas A. Guterres and Niall A. Fordyce for Defendant and Respondent.

* * * * * * * * * *

This action arises from a fatal, two-car accident that took place at the intersection of two highways in the desert, near the City of Lancaster. Laura Groman, the wife of plaintiff and appellant Donald Markley, died in the accident, when her truck rolled multiple times after being hit by a minivan driven by defendant and appellant Linda Gunterman. Plaintiff brought this action against Mrs. Gunterman, her husband (defendant and appellant Cecil Gunterman), and defendant and respondent County of Los Angeles, among others.[1] Plaintiff alleged, as the basis for the County's liability, that the intersection was in a dangerous condition and contributed to the accident which caused Ms. Groman's death.

The County successfully moved for summary judgment on plaintiff's cause of action for a dangerous condition of public property. The trial court found plaintiff had not raised a triable issue as to the existence of a dangerous condition. Plaintiff argues there are multiple triable issues of material fact. We agree, and therefore reverse and remand for further proceedings consistent with this opinion.

PROCEDURAL BACKGROUND

Plaintiff brought this action, individually and as successor in interest to his wife's estate. Plaintiff stated a cause of action for negligence against the Guntermans, Edison and R&M, and a cause of action for dangerous condition of public property against the County pursuant to Government Code section 835.[2] Plaintiff alleged the subject intersection was in a dangerous condition because there was "insufficient line of sight" and "insufficient signing, striping and traffic control." It was further alleged the line of sight defects at the intersection were exacerbated by obstructions such as utility poles, a fence and vegetation along the roadway.

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[1] Plaintiff also sued Southern California Edison Company (Edison), the alleged owner of a utility pole near the subject intersection, and R&M Ranch, Inc. (R&M), the alleged owner of adjacent land. Neither Edison nor R&M are parties to this appeal.

[2] All further undesignated section references are to the Government Code.

The County moved for summary judgment on the grounds there was no dangerous condition at the subject intersection, no causation, no evidence the County had actual or constructive notice of any dangerous condition, and that it was immune from liability pursuant to sections 815.2, 815.4, 830.2, 830.4 and 830.8. The County's moving evidence included: the declarations of two County employees with the Department of Public Works, William Winter and Mark Caddick; the declaration of expert Marc Hammarstrom, an accident reconstructionist; the declaration of expert Robert Seltzer, a civil and traffic engineer; a copy of the California Highway Patrol traffic collision report for the accident; a copy of the Statewide Integrated Traffic Records System (SWITRS) showing accidents in the vicinity of the subject intersection for nine years preceding the accident; a copy of the County guidelines for roadway inspections; and a copy of the DVD of the reconstruction of the accident prepared by Mr. Hammarstrom.

Plaintiff and the Guntermans both opposed the motion. Plaintiff presented the declaration of expert Harry J. Krueper, a civil and traffic engineer. Mr. Krueper's declaration was supported by numerous exhibits regarding his investigation of the scene, including photographs taken of the subject intersection. Plaintiff also presented excerpts of deposition testimony from various individuals, including Douglas Westphal who observed the accident, the Guntermans, and the defense expert, Mr. Seltzer. The Guntermans presented the declarations of civil and traffic engineer, Edward Ruzak, and accident reconstructionist, Timothy Long, as well as excerpts of deposition testimony from various individuals.

After briefing and oral argument, the trial court granted the County's motion, concluding plaintiff failed to raise a triable issue of material fact as to the existence of a dangerous condition at the intersection. Judgment was entered in the County's favor on November 16, 2012.

Plaintiff and the Guntermans filed timely appeals.[3] On November 18, 2013, this court granted the County's request to augment the record on appeal with a copy of the accident reconstruction video prepared by Mr. Hammarstrom.

FACTUAL SUMMARY

For purposes of our review, we accept as true the facts undisputed by the parties, as well as the facts and reasonable inferences supported by the opposition evidence. (*Raghavan v. Boeing Co.* (2005) 133 Cal.App.4th 1120, 1125.) These are the undisputed facts:

Avenue J and 110th Street East are two-lane highways that intersect near Lancaster, in an unincorporated area of Los Angeles County. Avenue J runs east west and 110th Street East runs north south. Both county highways are paved and have yellow painted center lines. 110th Street East is controlled by stop signs. Avenue J at the intersection with 110th Street East has no traffic controls. In other words, the subject intersection is a two-way stop with traffic traveling on Avenue J having the right of way. The posted speed limit for both highways is 55 miles per hour.

At approximately 8:00 a.m. on Sunday, February 21, 2010, Ms. Groman was driving her Ford F-150 pickup truck westbound on Avenue J at or just below the posted speed limit. The weather was cool, dry and windy. Douglas Westphal, a longtime area resident, was driving behind Ms. Groman. At the same time, Mrs. Gunterman was driving her Nissan minivan southbound on 110th Street East, approaching the intersection with Avenue J.

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3 The Guntermans, sued as joint tortfeasors with the County, provide no argument as to the basis for their aggrieved party status to justify their standing to appeal the judgment in favor of the County. (See *Holt v. Booth* (1991) 1 Cal.App.4th 1074, 1080 ["It is well settled in California . . . the exoneration of a joint tortfeasor from liability does not 'aggrieve' the other individually liable tortfeasor(s) insofar as that word is understood to apply to a party's standing to appeal."].) Given our conclusion that reversal of the judgment is appropriate based on resolution of plaintiff's appeal, we do not discuss the Guntermans' contentions.

Southbound 110 Street East has painted "Stop Ahead" markings on the pavement several hundred feet back from the intersection with Avenue J; a Stop sign at approximately 42 to 44 feet back from the edge of the intersection; and a solid white "limit line" or "stop bar"[4] at 17 to 18 feet from the edge of the intersection.

Mrs. Gunterman stopped her minivan at the limit line. She looked for cross-traffic but did not see Ms. Groman approaching. Mrs. Gunterman therefore proceeded forward into the intersection. Mr. Westphal saw Ms. Groman swerve her truck to the left over the center line of the highway in an attempt to avoid hitting Mrs. Gunterman as she started to cross Avenue J. But the front of Mrs. Gunterman's minivan struck the passenger side of Ms. Groman's truck. The impact caused the truck to roll over several times. Shortly thereafter, Ms. Groman was pronounced dead at the hospital due to injuries sustained in the accident.

The County's expert engineer, Mr. Seltzer, opined the intersection was not in a dangerous condition because the limit line was placed in compliance with the California Manual on Uniform Traffic Control Devices (CAMUTCD).[5] The CAMUTCD specifies that limit lines should be placed between 4 and 30 feet back from the "cross-traffic travelway." Mr. Seltzer opined that a motorist would have unobstructed visibility down Avenue J if he or she moved up past the limit line so that the driver's eyes were at, or ahead of, the limit line, as opposed to the front bumper of the vehicle being aligned with the limit line. He further stated that a driver is "required to stop at the limit line and then, if necessary, creep forward until adequate visibility is obtained." Mr. Hammarstrom testified that, based on his accident reconstruction materials, a motorist who moved

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[4] "A 'limit line' is a solid white line not less than 12 nor more than 24 inches wide, extending across a roadway or any portion thereof to indicate the point at which traffic is required to stop in compliance with legal requirements." (Veh. Code, § 377.)

[5] Also referred to as the Caltrans or California Department of Transportation (Cal-DOT) traffic manual, as distinguished from the Cal-DOT highway design manual.

forward past the limit line should have had sufficient visibility to timely see Ms. Groman approaching.

Plaintiff's expert engineer, Mr. Krueper, agreed the limit line was placed within the range set forth in the CAMUTCD, but opined that other factors contributed to the creation of a dangerous condition at the intersection. Mr. Krueper explained that where "one roadway is stop controlled and the other roadway is a through routing of traffic," traffic engineering principles and Cal-DOT's highway design manual call for certain minimum "corner sight distance[s]" based on the rate of speed for the roadway. A corner sight distance refers to the ability of drivers to see oncoming traffic. In a 55 miles-per-hour zone, the established corner sight distance is 605 feet. The actual corner sight distance for a vehicle stopped at the limit line on southbound 110th Street East and viewing the oncoming westbound traffic on Avenue J is only 457 feet due to the placement of the limit line, the topography and visual obstructions along the edge of Avenue J.

Mr. Krueper explained the 457-foot corner sight distance at the subject intersection does not meet the Cal-DOT criteria for either the posted speed limit or for the higher average rate of speed for drivers on Avenue J, which he determined through "spot speed studies" to be 67.2 miles per hour.[6] Mr. Krueper stated there was "ample room" to move the limit line closer to the edge of the intersection with Avenue J so that the corner sight distance was not hampered by the visual obstructions along the edge of the highway, and still be well within the 4- to 30-foot range set forth in the CAMUTCD for the placement of limit lines. Mr. Krueper explained that moving the limit line just six feet closer to the intersection would provide drivers, who lawfully stopped at the limit line, to have more than 715 feet of sight distance, allowing them to see cars approaching

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6 The Guntermans' expert engineer, Mr. Ruzak, also opined the intersection was dangerous due to the insufficient sight distance from visual obstructions which was not in compliance with Cal-DOT criteria.

on Avenue J to make an informed decision about crossing through or merging onto the highway.

Mr. Krueper further opined that ordinarily a stop sign and limit line should, where possible, be placed close together (not separated by 25 feet like the subject intersection) as it makes the requirement to stop and where to do so better understood by drivers. Quoting the CAMUTCD, Mr. Krueper stated that limit lines " 'should be placed to allow sufficient sight distance to all other approaches to an intersection.' " He also stated an exacerbating factor was the "inconsistent pavement delineation" for the two highways. Mr. Krueper explained that 110th Street East had white-painted shoulder stripes, but Avenue J did not. Painted shoulder stripes on Avenue J, the more heavily traveled highway, would "give drivers on 110th Street East positive guidance" as to how far they could move forward past the limit line, without dangerously encroaching into the Avenue J travelway, to attempt to see around the obstructions along the edge of the highway.

During his deposition, Mr. Seltzer conceded that if the limit line had been painted closer to the Avenue J travelway, a driver's view would be essentially unobstructed as to approaching traffic on Avenue J without necessitating "creep[ing]" forward to get a better view. He also conceded that a driver stopped with their front bumper at the present limit line would have an obstructed view because of the topography of the area, the utility pole and the fence line. However, he stated that a limit line is just a place designated for stopping, but not the location from which adequate visibility should be judged. Mr. Seltzer explained that if a motorist drove past the limit line, and inched toward Avenue J, he or she would have more than 600 feet of visibility, in compliance with the CAMUTCD corner sight distance requirements. When asked about shoulder stripes being added to Avenue J, Mr. Seltzer stated that shoulder stripes or "fog lines" are not mandatory. But, he also explained that one of the benefits of a shoulder stripe is that it "defines the travelway" for motorists, and he would consider adding shoulder stripes to Avenue J.

Mr. Westphal, who has lived in the area for years, testified he travels on Avenue J past the intersection with 110th Street East several times a week, and comes through the

intersection from 110th Street East once every couple of months. He said the visibility from 110th Street East is "not good" as it is obstructed by poles, a fence, and the neighboring alfalfa field. Mr. Westphal testified you have to drive past the limit line to attempt to see, which is "a little tricky." On prior occasions, he has attempted to merge onto Avenue J and has had to stop again quickly because of being "surprised" by an approaching vehicle he did not see at first glance. He called the intersection "dangerous."

Mrs. Gunterman testified that, on the day of the accident, she had been travelling at 55 miles per hour along 110th Street East and came to a complete stop at the limit line of the intersection with Avenue J. She looked "left and right" and never saw Ms. Groman's vehicle until "our cars met." Mrs. Gunterman explained the road is lower than the neighboring field and the view is partially obstructed by poles and a fence. "It's a bad corner."

Mr. Gunterman testified he has driven through the intersection almost on a daily basis for at least three years. He said it has always had bad visibility because of the elevation difference between 110th Street East and the adjoining land, multiple telephone poles, a utility pole, and a fence.

According to the SWITRS report, there were eight accidents in the vicinity, but only two directly at the intersection, in the nine years preceding the accident. Neither of those accidents resulted in injuries. The County has a policy governing the regular inspection of its roadways, and the subject intersection was inspected on February 16, 2010, just five days before the accident, and again on March 16, 2010. No "deficiencies" were reported. Mr. Caddick, an engineer employed by the County Department of Public Works in the Road Maintenance Division, stated that inspections at all intersections should include verifying the adequacy of corner sight distances and noting any "hindrances" or obstructions.

DISCUSSION

Plaintiff contends triable issues of material fact exist as to the County's liability for a dangerous condition of public property. More specifically, plaintiff argues the trial court, in assessing the existence of a dangerous condition, improperly focused on whether

Mrs. Gunterman had used due care, and improperly weighed the evidence, finding the County's accident reconstruction video dispositive. We agree.

"We independently review an order granting summary judgment. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 860.) We determine whether the court's ruling was correct, not its reasons or rationale. [Citation.] 'In practical effect, we assume the role of a trial court and apply the same rules and standards which govern a trial court's determination of a motion for summary judgment.' [Citation.]" (*Shugart v. Regents of University of California* (2011) 199 Cal.App.4th 499, 504-505.) In performing our de novo review, we view the evidence in the light most favorable to the losing party, liberally construing the opposition evidence while strictly scrutinizing the moving party's showing, and resolving any evidentiary doubts or ambiguities in the losing party's favor. (*United Parcel Service Wage & Hour Cases* (2010) 190 Cal.App.4th 1001, 1009; accord, *Aguilar*, *supra*, at p. 843.) "We review for abuse of discretion any evidentiary ruling made in connection with the motion." (*Shugart*, *supra*, at p. 505.)

1. Public Entity Liability for Dangerous Conditions on Public Property

The County's liability for a dangerous condition of its property is governed by statute. (§ 815 et seq.; *Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1129; *Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 757-758 (*Cole*).) In order to impose liability on a public entity pursuant to section 835, a plaintiff must establish "the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either: [¶] (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."

A dangerous condition within the meaning of the statutory scheme is defined as "a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used." (§ 830, subd. (a).) The due care analysis does not hinge on the conduct of the plaintiff or any third party at the time of the accident. "The status of a condition as 'dangerous' for purposes of the statutory definition does *not* depend on whether the plaintiff or other persons were actually exercising due care but on whether the condition of the property posed a substantial risk of injury to persons who *were* exercising due care." (*Cole*, *supra*, 205 Cal.App.4th at p. 768; see also CACI No. 1102 [whether "the property is in a dangerous condition is to be *determined without regard to whether* [*the plaintiff or third party tortfeasor*] *exercised or failed to exercise reasonable care* in [his/her] use of the property"], italics added.)

To establish a "dangerous condition," a plaintiff must allege and prove at least one physical characteristic of the property that is defective and foreseeably endangers users of the property. (*Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 148-151; accord, *Cole*, *supra*, 205 Cal.App.4th at p. 759.) The physical characteristic need not be an obvious physical feature that is damaged or deteriorated. The physical characteristic may be the location of the property, " 'the interrelationship of its structural or natural features, or the presence of latent hazards associated with its normal use.' [Citation.]" (*Bonanno*, at p. 149; *Cole*, at p. 759.) And, conditions existing on property adjacent to public property may contribute to the public property being deemed dangerous if those conditions expose " 'those using the public property to a substantial risk of injury.' " (*Bakity v. County of Riverside* (1970) 12 Cal.App.3d 24, 31 (*Bakity*), quoting the Cal. Law Revision Com. com. to 32 West's Ann. Gov. Code (1995 ed.) foll. § 830, p. 299; accord, *Bonanno*, at p. 148.)

2. Triable Issues Exist on the Issue of a Dangerous Condition

"Whether a given set of facts and circumstances creates a dangerous condition is usually a question of fact and may only be resolved as a question of law if reasonable

minds can come to but one conclusion." (*Bakity*, *supra*, 12 Cal.App.3d at p. 30.) The record here establishes that triable issues of material fact exist on the question of whether the subject intersection constituted a dangerous condition within the meaning of sections 830 and 835.

Mr. Seltzer's expert testimony on behalf of the County focused almost exclusively on the conduct of Mrs. Gunterman, and on his opinions that the intersection was not dangerous because the limit line was placed in accordance with the CAMUTCD, and that the accident occurred solely because of Mrs. Gunterman's failure to "creep forward" past the limit line and reassess her view of oncoming traffic before entering the intersection. But, whether or not Mrs. Gunterman used due care is not dispositive of the question of whether a dangerous condition exists in the first instance. If the condition of public property "creates a substantial risk of injury even when the property is used with due care, *the* [*public entity*] *gains no immunity from liability simply because, in a particular case, the dangerous condition of its property combines with a third party's negligent conduct to inflict injury*." (*Ducey v. Argo Sales Co*. (1979) 25 Cal.3d 707, 718-719, italics added; accord, *Bakity*, *supra*, 12 Cal.App.3d at p. 32 ["Negligence of a third person does not, as a matter of law, exonerate the public entity"].) Whether public property is dangerous is judged from the perspective of whether it presents a substantial risk to foreseeable users acting with due care, not whether a given plaintiff or third parties were acting with due care at a particular time. (*Cole*, *supra*, 205 Cal.App.4th at p. 768.)

The testimony of plaintiff's expert, Mr. Krueper, focused on the confluence of factors which, in his opinion, rendered the subject intersection a dangerous condition for foreseeable motorists attempting to negotiate the intersection with due care. His testimony was bolstered by the testimony of Mr. Westphal and the Guntermans, based on their personal experiences, about the difficulties posed by the intersection. From such evidence, a reasonable jury could find the subject intersection presented a dangerous condition within the meaning of the statute because of the placement of the limit line and stop sign in a manner that does not afford motorists the required corner sight distance, the lack of shoulder stripes on Avenue J exacerbating the lack of positive guidance to

motorists confronted by the poor visibility at the intersection, and the visual obstructions caused by the topography of the intersection, as well as the fencing and poles located on adjacent land. The opposition evidence was more than adequate to create a triable issue as to the existence of a dangerous condition within the meaning of sections 830 and 835. (*Bakity*, *supra*, 12 Cal.App.3d at pp. 30-31 [evidence that stop sign was located 36 feet from edge of intersection, no "Stop Ahead" warnings preceded the intersection, and visibility was obstructed by fruit trees growing on adjacent land substantially supported finding that intersection constituted a dangerous condition].) Because there was ample disputed evidence upon which reasonable minds could differ as to the existence of a dangerous condition, there was no basis for resolving the question as a matter of law. (*Id.* at p. 30.)

3. Causation and Notice

Equally unavailing are the County's arguments on the elements of causation and notice, both of which, like the element of a dangerous condition, are ordinarily questions of fact. (See *Bakity*, *supra*, 12 Cal.App.3d at p. 32 & *Erfurt v. State of California* (1983) 141 Cal.App.3d 837, 844-845 (*Erfurt*).)

We discussed above the disputed facts concerning whether the condition of the subject intersection contributed to the occurrence of the accident. In addition, the evidence regarding the conduct of Mrs. Gunterman, a concurrent tortfeasor, was also disputed. Pursuant to Vehicle Code section 22450, a motorist is required to stop at a painted limit line or stop bar. (*Id.*, subd. (a) ["The driver of any vehicle approaching a stop sign at the entrance to, or within, an intersection shall stop at a limit line, if marked . . . ."].) And, while the Vehicle Code does not contain any provision mandating a motorist to "creep" forward in the manner specified by Mr. Seltzer, a motorist merging onto, or crossing, a road where drivers have the right of way does have a general duty to yield the right of way.[7] Mrs. Gunterman testified she stopped at the limit line and

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[7] Vehicle Code section 21802, subdivision (a) provides: "The driver of any vehicle approaching a stop sign at the entrance to, or within, an intersection shall stop as required

checked for cross-traffic before proceeding, but never saw Ms. Groman's vehicle. The accident reconstruction materials prepared by Mr. Hammarstrom demonstrated that a motorist who moved forward past the limit line should have had sufficient visibility to timely see Ms. Groman approaching. The question of whether Mrs. Gunterman exercised due care at the intersection, and whether her conduct amounted to a superseding cause cutting off the County's liability, are manifestly questions for the jury to resolve.

Likewise, on the issue of notice, there was substantial disputed evidence. Mr. Westphal and Mr. Gunterman testified to having personally driven through the intersection many times over a period of years and that the obstructions and difficulties navigating the intersection have always been present, or have been present for at least three years. The County presented evidence that it maintains a regular monthly inspection program and that no deficiencies were reported for the subject intersection, either in the inspection just days before the accident, or in the month that followed. But plaintiff presented the deposition testimony of Mr. Caddick, a County employee, who conceded that inspections should include the verification of adequate corner sight distances, as well as the notation of any visual obstructions. Such testimony presented a disputed fact whether the County failed to verify and note that the corner sight distance limitations at the limit line did not meet the requirements set forth in the CAMUTCD. " 'It is well settled that constructive notice can be shown by the long continued existence of the dangerous or defective condition, and it is a question of fact for the jury to determine whether the condition complained of has existed for a sufficient time to give the public agency constructive notice. [Citations.]' [Citations.]" (*Erfurt*, *supra*, 141 Cal.App.3d at pp. 844-845; see also *Cole*, *supra*, 205 Cal.App.4th at pp. 779-780.)

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by Section 22450. The driver shall then yield the right-of-way to any vehicles which have approached from another highway, or which are approaching so closely as to constitute an immediate hazard, and shall continue to yield the right-of-way to those vehicles until he or she can proceed with reasonable safety."

The County's evidence that only two somewhat similar accidents occurred at the intersection in the nine years preceding the accident, neither of which caused injuries, does not mandate a finding, as a matter of law, that the County did not have the requisite notice. (*Lane v. City of Sacramento* (2010) 183 Cal.App.4th 1337, 1346 [absence of prior similar accidents is relevant to, but not dispositive of, element of notice for purposes of liability under section 835].) The evidence, viewed most favorably to plaintiff, is sufficient to support a finding the County had constructive notice of the existence of a dangerous condition at the intersection in time to give appropriate warnings or make appropriate corrections or repairs.

4. Statutory Immunities

Finally, the County argued, as alternative bases for summary judgment, that it was immune from liability pursuant to sections 830.2, 830.4 and 830.8.[8] Given the disputed factual record set forth above, none of these statutory defenses provides a basis for upholding the trial court's ruling.

Pursuant to section 830.2, "[a] condition is not a dangerous condition within the meaning of this chapter if the trial or appellate court, viewing the evidence most favorably to the plaintiff, determines as a matter of law that the risk created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used."

There is no basis for finding as a matter of law the potential defect at the subject intersection was trivial. There were many disputed facts concerning whether the conditions at the intersection contributed to the risk of high-speed broadside accidents of the type that occurred between Ms. Groman and Mrs. Gunterman.

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[8] The County also cited sections 815.2, 815.4, and 815.6 in its summary judgment papers, but no proper argument has been made to this court as to any purported basis for judgment under these statutes. Therefore, we do not consider them.

Further, neither of the immunities set forth at sections 830.4[9] and 830.8[10] provides a basis for upholding the judgment in favor of the County. The immunity embodied in section 830.4 confers a *limited* immunity for those situations where the alleged dangerous condition exists *solely* as the result of a failure to provide a traffic device or street marking. (*Washington v. City and County of San Francisco* (1990) 219 Cal.App.3d 1531, 1534 (*Washington*).) "Where, however, the dangerous condition of public property exists for reasons *other than or in addition to* the 'mere[]' failure to provide such controls or markings, the public entity is liable for injury therefrom if the conditions of its liability under section 835 are otherwise met." (*Id*. at p. 1536.) Plaintiff presented expert evidence of multiple factors affecting the dangerousness of the intersection and is not proceeding on the theory that the intersection was dangerous "merely" because of a failure to provide a specific traffic control device.

Section 830.8 confers immunity to a public entity for the failure to provide traffic controls or warning signals, *except* where the failure to provide such signs or warnings "*constitutes a concealed trap* for those exercising due care, assuming the conditions of its liability under section 835 are otherwise met." (*Washington, supra,* 219 Cal.App.3d at pp. 1536-1537, italics added; accord, *Bakity*, *supra*, 12 Cal.App.3d at p. 31 [finding that public entity's placement of a stop sign in an unanticipated location could "constitute a

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9 Government Code section 830.4 provides: "A condition is not a dangerous condition within the meaning of this chapter *merely* because of the failure to provide regulatory traffic control signals, stop signs, yield right-of-way signs, or speed restriction signs, as described by the Vehicle Code, or distinctive roadway markings as described in Section 21460 of the Vehicle Code." (Italics added.)

10 Section 830.8 provides: "Neither a public entity nor a public employee is liable under this chapter for an injury caused by the failure to provide traffic or warning signals, signs, markings or devices described in the Vehicle Code. Nothing in this section exonerates a public entity or public employee from liability for injury proximately caused by such failure if a signal, sign, marking or device (other than one described in Section 830.4) was necessary to warn of a dangerous condition which endangered the safe movement of traffic and which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care."

trap for an unwary motorist" and neither section 830.4 or section 830.8 would provide immunity for so doing].)

The law is well settled that "where the public entity undertakes to install signs and such signs themselves create a dangerous condition, liability may be predicated on this basis." (*Hilts v. County of Solano* (1968) 265 Cal.App.2d 161, 174; accord, *Chowdhury v. City of Los Angeles* (1995) 38 Cal.App.4th 1187, 1195 [where a public entity "installs traffic signals and invites the public to justifiably rely on them, liability will attach if the signals malfunction, confusing or misleading motorists, and causing an accident to occur"]; *De La Rosa v. City of San Bernardino* (1971) 16 Cal.App.3d 739, 746 ["although a public entity is not liable for failure to install traffic signs or signals [(§§ 830.4, 830.8)], when it undertakes to do so and invites public reliance upon them, it may be held liable for creating a dangerous condition in so doing"]; *Briggs v. State of California* (1971) 14 Cal.App.3d 489, 497 [a public entity "having undertaken to sign the area was obligated to sign it properly and should have to answer for any inadequate or deceptive warning proximately contributing" to resulting accidents].)

The evidence is disputed whether the County installed a limit line and stop sign at a distance less than what was required for safe decision-making in light of the topography and visual obstructions adjacent to the subject intersection. An unwary motorist could very well not anticipate or appreciate the danger posed by relying on the view from the limit line that it was safe to proceed. The County may be held to have invited the public to rely upon the adequacy of the traffic control device and markings, despite the potential danger posed by the intersection and its relationship to the surrounding area. " 'The broad discretion allowed a public entity in the placement of road control signs is limited, however, by the requirement that there be adequate warning of dangerous conditions not reasonably apparent to motorists.' [Citations.]" (*Kessler v. State of California* (1988) 206 Cal.App.3d 317, 321.) The County failed to establish, as a matter of law, the applicability of either immunity.

DISPOSITION

The judgment entered November 16, 2012, in favor of the County of Los Angeles is reversed. The case is remanded for further proceedings consistent with this opinion. Plaintiff and appellant Donald Markley shall recover his costs on appeal.

GRIMES, J.

We concur:

BIGELOW, P. J.

RUBIN, J.