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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

WAYNE ANDRESSON, Plaintiff and Appellant, v. PARAMOUNT UNIFIED SCHOOL DISTRICT, Defendant and Respondent.	B231227 (Los Angeles County Super. Ct. No. TC022226)

APPEAL from a judgment of the Superior Court of Los Angeles County. Rose Hom, Judge. Judgment affirmed.

Fields & Israel, Albert S. Israel, Gary D. Fields; Esner, Chang & Boyer, Stuart B. Esner and Holly N. Boyer for Plaintiff and Appellant.

Kohrs & Fiske, Conrad Kohrs, J. Peter Fiske and Kenneth P. Scholtz for Defendant and Respondent.

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Appellant Wayne Andresson brought this personal injury action against Paramount Unified School District (the District). Andresson alleges that his injuries arose from a dangerous condition of public property at Paramount High School, where he worked as a security guard. The trial court sustained the District's demurrer to his second amended complaint (SAC) without leave to amend. We affirm.

FACTS[1] AND PROCEDURAL HISTORY

On October 22, 2007, Andresson worked for Vernon Security. Vernon Security contracted with the District to provide limited security services at Paramount High School. During the early morning hours of October 22, Andresson was working as an unarmed security guard at the high school. His duties included walking the perimeter of the campus and reporting suspicious activity.

Andresson alleges that a dangerous condition of public property existed on the campus of the high school by reason of improperly chosen and improperly placed fencing -- specifically, chain-link fencing along the south perimeter of the campus that abutted a railroad track not visible to the public. This gave the public easy access to approximately 12 Pepsi vending machines that were outdoors on the high school campus and that contained cash. The vending machines were in a poorly lit area of campus, and it was a known crime-ridden neighborhood. For aesthetic reasons, the District had chosen not to cage the vending machines with metal security caging, even though the vending machines were previously caged. The District was aware that vending machines at neighboring schools were caged. The District chose to install tubular steel fencing along the northern, eastern, and western perimeters of the campus.

Vandals cut the chain-link fence along the south perimeter of the campus in the early morning hours of October 22, 2007, and entered the campus. The vandals attacked Andresson, who was patrolling the campus, and beat him severely. Afterwards they hid his body in the bushes. Andresson suffered injuries leaving him brain damaged and disabled.

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1 In an appeal from a judgment sustaining a demurrer without leave to amend, we state the facts as alleged in appellant's complaint without passing on their veracity. (*R.S. v. PacifiCare Life & Health Ins. Co.* (2011) 194 Cal.App.4th 192, 195.)

The District had notice of the vulnerability in the chain-link fence because it had previously repaired the fencing on a number of occasions. It was widely known in the community at the time of the attack that there were numerous prior attacks on Paramount High School, that the vending machines were located outdoors in a dimly lit area, that they contained cash, and that they were not protected by security cages.

The trial court sustained the District's demurrer to Andresson's SAC without leave to amend. The court held that the allegations were insufficient to support the conclusions that a chain-link fence and uncaged soda machines were a defect of public property, that the District had any actual or constructive knowledge of any defect, or that the defect had caused Andresson's injuries.

standard of review

When the trial court sustains a demurrer, we must determine de novo whether the complaint alleges facts sufficient to state a cause of action under any legal theory. (*Martorana v. Marlin & Saltzman* (2009) 175 Cal.App.4th 685, 692-693.) "In reviewing the sufficiency of a complaint against a demurrer, we 'treat[] the demurrer as admitting all material facts properly pleaded,' but we do not 'assume the truth of contentions, deductions or conclusions of law.' [Citation.] We liberally construe the pleading to achieve substantial justice between the parties, giving the complaint a reasonable interpretation and reading the allegations in context." (*Id*. at p. 692.)

When the trial court has sustained the demurrer without leave to amend, we must determine whether there is a reasonable possibility that the pleading's defects can be cured by amendment. (*Martorana v. Marlin & Saltzman, supra,* 175 Cal.App.4th at p. 693.) If they can be cured, the trial court has abused its discretion. (*Ibid*.) The burden of proving a reasonable possibility that an amended complaint will cure any pleading defects rests on the plaintiff. (*Ibid.*)

DISCUSSION

Andresson argues that the allegations of his SAC are sufficient to support a claim for dangerous condition of public property under Government Code section 835.[2] The District contends that the SAC fails to establish all elements of the cause of action. Moreover, the District contends, the action is barred by the doctrine of primary assumption of risk, and the SAC fails for lack of specificity.

Section 835 is part of the Government Claims Act, which governs all liability against public entities in California. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 742; *Clark v. Optical Coating Laboratory, Inc.* (2008) 165 Cal.App.4th 150, 182.) To hold a public entity liable for injury caused by a dangerous condition of its property, the plaintiff must establish four elements: (1) the property was in a dangerous condition at the time of the injury; (2) the injury was proximately caused by the dangerous condition; (3) the dangerous condition created a reasonably foreseeable risk of the kind of injury the plaintiff incurred; and (4) either (a) a negligent or wrongful act or omission of an employee of the public entity created the dangerous condition, or (b) the public entity had actual or constructive notice of the dangerous condition under section 835.2 and had sufficient time prior to the injury to have taken measures to protect against the dangerous condition. (§ 835.)

1. Andresson Has Failed to State a Cause of Action for Dangerous Condition of Public Property

The code defines a dangerous condition 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.) Ordinarily whether something constitutes a dangerous condition is a question of fact, but the issue may be resolved as a matter of law if reasonable minds can come to only one conclusion. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1133 (*Zelig*).)

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

A dangerous condition most obviously exists when public property is physically damaged or deteriorated. Public property may also be in a dangerous condition, however, due to its design, location, or the interrelationship of its structural or natural features. (*Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 148 (*Bonanno*).)

Andresson's allegations involve the criminal conduct of third parties on public property. "'[T]hird party conduct by itself, unrelated to the condition of the property, does not constitute a "dangerous condition" for which a public entity may be held liable.'" (*Zelig, supra*, 27 Cal.4th at p. 1134.) His allegations also involve public property that is not obviously damaged or deteriorated, but is alleged to have more of a defect in design -- the placement of a chain-link fence around the south perimeter of the high school. In such a situation, we must carefully scrutinize the causal relationship between the alleged condition of the property and the third party conduct that actually injured the plaintiff. (See *id.* at p. 1136.) "[P]ublic liability lies under section 835 only when a feature of the public property has '*increased or intensified*' the danger to users from third party conduct." (*Bonanno, supra*, 30 Cal.4th at p. 155, italics added; see also *Zelig*, at p. 1137 ["'If the risk of injury from third parties is in no way *increased or intensified* by any condition of the public property . . . courts ordinarily decline to ascribe the resulting injury to a dangerous condition of the property'" (italics added)].) "Thus, the mere fact that users of a government facility bear some risk of being . . . criminally assaulted . . . does not lead to government liability under section 835." (*Bonanno*, at p. 155.)

Zelig is instructive in this instance. In that case, a woman's ex-husband shot and killed her at a courthouse where she was awaiting a hearing in their dissolution proceedings. (*Zelig, supra*, 27 Cal.4th at p. 1118.) Her minor children asserted that the county maintained the courthouse in a dangerous condition by failing to install barriers or use other safety measures such as metal detectors, posted warnings, and searches. (*Id.* at p. 1120.) The Supreme Court held that the plaintiffs had not stated a claim for dangerous condition of public property because the addition of physical barriers, by themselves, would not have affected the risk of harm faced by the decedent. Some points of entry would still be needed

in the courthouse, and a person in possession of a firearm could still pass through these entrances. (*Id.* at p. 1139.) In other words, the lack of barriers did not increase or intensify the risk of injury.[3] The trial court thus had not erred in sustaining the defendants' demurrer.

Avedon v. State of California (2010) 186 Cal.App.4th 1336 (*Avedon*) is likewise instructive. In *Avedon*, a wildfire that started as a bonfire inside a cave at Malibu Creek State Park destroyed more than 50 homes and damaged many others. (*Id.* at p. 1339.) The homeowners sued the state for dangerous condition of public property because the state allegedly allowed unrestricted and easy access to the cave and a nearby parking lot. (*Id.* at p. 1340.) The cave was allegedly known to attract "late-night partiers" who then lit bonfires inside. The plaintiffs alleged that the state could have blocked access to the cave and built a gate on the road leading to the cave, thereby eliminating the area's use by late-night partiers. (*Ibid.*) The court began by noting that the complaint did not allege an inherent defect in the property itself. The cave, the road, and the parking lot were not alleged to be unsafe. (*Id.* at p. 1342.) Instead, the alleged dangerous condition was the lack of barriers to prevent access to the road or cave. The court held this condition did not "increase or intensify the risk of injury." (*Ibid.*) Barring entrance to the cave might have prevented third parties from building a bonfire in there, but it would not have prevented them from building one outside the cave, which presented the same (or an even greater) risk of a brush fire. (*Ibid.*) Similarly, barring vehicular access nearby with a gate might have prevented entry at that particular location, but it would not have prevented individuals from entering the park elsewhere or bringing firewood or alcohol into the park. (*Ibid.*) Thus, the plaintiffs did not allege facts to establish a defect in the public property and a causal connection between a defect and their injuries. (*Id.* at p. 1344.)

The allegations in the case at bar, like those in *Zelig* and *Avedon*, suggest no inherent damage in the public property itself, but instead a lack of preventative measures coupled

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3 The other safety measures alleged to have been lacking required personnel to essentially provide police services. The court found these were not a physical condition of the property; police services were an allocation of resources for which public entities are immune from liability for any failure to provide them. (*Zelig*, *supra*, 27 Cal.4th at pp. 1139-1140.)

with third party conduct. And as in those cases, we hold that Andresson fails to allege a condition that increased or intensified the risk of injury beyond that which existed otherwise. Andresson suggests that more secure fencing would have prevented his injuries because his assailants likely would have been deterred by it. This is pure conjecture. Such fencing might have proved more difficult for his assailants to overcome, but tubular steel fencing as was placed along the other campus perimeters is not impregnable. Most any manner of fencing may be climbed, and stronger fencing would not have altogether prevented criminals from entering the high school campus. According to the SAC, the crime took place on a deserted campus in a crime-ridden neighborhood during the early morning hours. These conditions themselves may be said to create a risk of injury, but they are not *conditions of property* for which the District may be held liable.[4] Andresson's allegations cannot establish that the lack of stronger fencing increased the risk that was already inherent in the situation of a security guard hired to patrol a crime-ridden area late at night. To put it another way, his allegations fail to establish the necessary causal connection between the lack of stronger fencing and his injury. He has thus failed to state a cause of action for dangerous condition of public property.

Andresson relies heavily on *Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799 (*Peterson*) and *Jennifer C. v. Los Angeles Unified School Dist.* (2008) 168 Cal.App.4th 1320 (*Jennifer C.*). These cases are distinguishable. In *Peterson*, a student was assaulted while ascending a stairway in a parking lot at the City College of San Francisco. (*Peterson,* at p. 805.) She alleged "that the property was in a dangerous condition because the thick and untrimmed foliage and trees around the parking lot and stairway permitted the assailant to perpetrate his crime," and "that defendants were aware of the condition and failed to take reasonable protective measures, including trimming the foliage or warning her of the danger." (*Id.* at p. 812.) The court held "*[i]n light of the relationship between plaintiff and defendants* as well as the facts known to the defendants,

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[4] To the extent Andresson claims the dangerous condition was the lack of steel caging around the vending machines, we are not persuaded. There are no allegations the District owned the vending machines or that they were otherwise "public property."

we conclude that plaintiff has stated a cause of action . . . ." (*Id.* at pp. 812-813, italics added.) It noted the special relationship between students and their college, which was a "closed environment of a school campus where students pay tuition and other fees in exchange for using the facilities, where they spend a significant portion of their time and may in fact live . . . ." (*Id.* at p. 813.) In this context, students "can reasonably expect that the premises will be free from physical defects and that school authorities will also exercise reasonable care to keep the campus free from conditions which increase the risk of crime." (*Ibid.*)

The plaintiff in *Jennifer C.* was a 14-year-old disabled student at Virgil Middle School. (*Jennifer C.*, *supra*, 168 Cal.App.4th at p. 1324.) She suffered from a hearing disability, aphasia, behavior problems, emotional difficulties, and cognitive difficulties. She could function at a public school on a "borderline" basis, and during the lunch break, she was permitted to interact with the general education student body. (*Ibid.*) Another special needs student approached her at lunch and asked her to follow him to secluded area of the campus. He led her to an alcove under a stairway where he sexually assaulted her. (*Ibid.*) The student alleged the alcove constituted a dangerous condition because it lacked proper lighting and visibility, was a hidden area, and lacked a barrier preventing access to it. (*Id.* at p. 1333.) We note that as a special education student, the plaintiff in *Jennifer C.* had a "'unique vulnerability'" and school officials had "'unique responsibilities'" to adequately supervise her. (*Id.* at pp. 1327-1328.) The school district had a "'well-settled statutory duty . . . to take all reasonable steps to protect'" her. (*Id.* at p. 1327.) Given this context, it is perhaps unsurprising that the court found a triable issue "as to whether there was a dangerous condition of public property because of respondent's failure to erect a fence or other barrier to prevent students from gaining access to the alcove." (*Id.* at p. 1334.)

In contrast to *Peterson* and *Jennifer C.*, Andresson has not alleged a special relationship between himself and the District, nor do we think a security guard stands in the

same place as a young special needs student or a paying college student who spends a significant portion of her time on the school campus and may even live there.[5]

2. The Trial Court Did Not Abuse Its Discretion in Sustaining the Demurrer Without Leave to Amend

Andresson has not carried his burden of proving how the SAC can be amended to cure any defects. (*Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 711.) He has argued that his allegations are sufficient but has not said how he would change his allegations if they were not. We note that this is the third iteration of the complaint; the court had previously sustained the District's demurrer with leave to amend and allowed discovery to see whether further information could be garnered. The trial court did not abuse its discretion in denying leave to amend.

DISPOSITION

The judgment is affirmed. Respondent to recover costs on appeal.

FLIER, J.

WE CONCUR:

BIGELOW, P. J. SORTINO, J.*

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[5] We need not reach the District's alternative arguments that the SAC is barred by the primary assumption of risk doctrine and lack of specificity, in light of our conclusion in this part.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.