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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

CITY OF LOS ANGELES,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LINDA ALVAREZ et al.,

Real Parties in Interest.

B280429

Los Angeles County
Super. Ct. No. BC537145
[Lead Case] c/w Nos.
BC553109; BC552746;
BC552850; BC548561; and
BC589780

ORIGINAL PROCEEDINGS in mandate. Gerald
Rosenberg, Judge. Petition denied.

Michael N. Feuer, City Attorney, James P. Clark, Chief
Deputy City Attorney, Thomas H. Peters, Chief Assistant City
Attorney, Blithe S. Bock, Managing Assistant City Attorney,
Wendy Shapero and Michael M. Walsh, Deputy City Attorneys,
for Petitioner.

No appearance for Respondent.

Bentley & More, Gregory L. Bentley, Matthew W. Clark, Evan W. Grant, and Clare H. Lucich, for Real Parties in Interest Valerio Gruppioni, Barbara Michelini, and Christian Casadei.

McNicholas & McNicholas, Matthew S. McNicholas; Perez & Caballero, Frank Perez and Miguel G. Caballero; Esner, Chang & Boyer, Andrew N. Chang and Holly N. Boyer, for Real Party in Interest Joanna Botton.

INTRODUCTION

The underlying consolidated action against the City of Los Angeles (City) for personal injury and wrongful death damages arises out of an incident during which an individual drove his car onto Ocean Front Walk, popularly known as the Venice Beach Boardwalk (Boardwalk), and intentionally ran into 17 pedestrians. The City sought summary judgment in two of the lawsuits, claiming, among other things, that it was immune from liability for the plaintiffs' injuries because the Boardwalk is a recreational trail under Government Code¹ section 831.4, the so-called "trail immunity" statute. The trial court denied the City's motion, finding a triable issue of fact exists as to whether the Boardwalk is a recreational trail because there are commercial businesses along that pathway.²

In this writ proceeding, the City challenges the court's summary judgment ruling. The City argues the existence of

¹ All undesignated statutory references are to the Government Code.

² The trial court also found there is a triable issue of fact whether the street entrance to the Boardwalk was a dangerous condition.

commercial activity along the Boardwalk is immaterial for purposes of applying trail immunity under section 831.4 because people also use the Boardwalk for recreational purposes as well as to access the beach and an adjacent bicycle path. As we explain below, the trial court properly found a triable issue exists as to whether the Boardwalk qualifies as a recreational trail. Accordingly, we deny the City's petition.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Boardwalk

The Boardwalk is a paved promenade in Los Angeles that runs north to south along the Pacific Ocean from the southern edge of the City of Santa Monica to the northern edge of the City of El Segundo. The Boardwalk is bordered by the beach to the west and private property and public streets to the east.

The Boardwalk historically has served as a tourist destination and a public forum for "performance and visual artists, as well as other free speech activity." The Boardwalk is the second most visited destination in Southern California, hosting between ten and sixteen million visitors each year, and, during its busiest periods, more than 100,000 visitors per day.

Due to the large crowds, many vendors come to the Boardwalk to sell goods and merchandise. The City regulates the conduct of vendors on the Boardwalk through section 42.15 of the Los Angeles Municipal Code (Municipal Code), which restricts vendor activity to 205 spaces designated along the west side of the Boardwalk, limits the types of merchandise that can be sold

on the Boardwalk,³ and requires vendors to comply with applicable licensing and tax requirements. There are also several hundred private businesses and residences, including restaurants, bars, retail stores, bicycle and beach-gear rental shops, attorneys' offices, and apartments, whose street and mailing addresses are on the Boardwalk. These private businesses and residences abut the eastern edge of the Boardwalk.

The Boardwalk is also a popular location for people to rollerblade, roller skate, skateboard, jog, run, and walk dogs, as well as to access the Pacific Ocean and the adjacent South Bay Bike Path. Although bicycles are prohibited on the Boardwalk, people ride their bicycles on it. The City has designated an area of the Boardwalk located several blocks south of where the underlying incident in this case originated as the "Recreation Area," which includes, "grassy areas . . . , Muscle Beach [the famous outdoor gym], paddle tennis courts, [a] skate park, [a] skate plaza and other recreational facilities."

The City describes the Boardwalk in various ways throughout its Municipal Code and Land Use Plan. For example, the City refers to the Boardwalk as a "promenade" in section 42.15 of the Municipal Code. In a different part of the Municipal Code defining the City's parking meter zones, the City describes the Boardwalk as a "street segment." (See Mun. Code, § 88.00.41,

³ Specifically, subdivision D(2) provides: "Persons can Vend the following items, which have been created, written or composed by the Vendor or Performer: books, audio, video or other recordings of their performances, paintings, photographs, prints, sculptures or any other item that is inherently communicative and is of nominal value or utility apart from its communication."

subd. (I)(A)(1).) And finally, in the “Commercial Land Use and Development Standards” section of its Land Use Plan, the City defines the area of Venice that includes the private businesses that border the eastern edge of the Boardwalk as the “North Venice Community Commercial” area. The Land Use Plan states that the permitted uses in this area are: “Visitor-serving and personal services emphasizing retail and restaurants. Mixed-use with retail and/or personal services on the ground floor with either residential or personal services on upper floors.”

2. The Incident on the Boardwalk

Around 6:00 p.m. on August 3, 2013, Nathan Campbell drove his car from Dudley Avenue⁴ onto the Boardwalk, where he intentionally ran into 17 people, killing one person, an Italian tourist on a honeymoon with her husband, and injuring 16 others. Although there were four concrete posts at the end of Dudley Avenue that were designed to block vehicular traffic from entering the Boardwalk, Campbell was able to maneuver through a gap between the last post and a building on the corner of the street to access the Boardwalk in his car.

3. The Lawsuits Against the City

Between February 2014 and July 2015, at least six groups of plaintiffs filed separate lawsuits against the City for claims arising out of the August 3, 2013 incident on the Boardwalk. Two of those lawsuits are at issue in the City’s writ petition currently before us: one filed by Valerio Gruppioni, Barbara Michelini, and Christian Casadei, family members of the woman killed during

⁴ Dudley Avenue runs perpendicular to, and terminates at the eastern edge of, the Boardwalk.

the incident, Alice Gruppioni (Gruppioni action, BC553109); and one filed by Joanna Botton, who was injured during the incident (Botton action, BC552746).⁵

The complaints in the Gruppioni and Botton actions asserted claims for dangerous condition of public property and vicarious liability against the City.⁶ Specifically, they claimed that a dangerous condition existed at the point where Dudley Avenue terminates at the eastern edge of the Boardwalk and on the Boardwalk itself, in the form of inadequate barriers to prevent unauthorized vehicles from entering and driving along the Boardwalk. The complaints alleged that the City had become aware of the dangerous condition several years before the August 3, 2013 incident but failed to take adequate steps to eliminate the danger.

Both complaints also expressly alleged that the Boardwalk is not a recreational trail as that term is used for purposes of trail immunity under section 831.4. Specifically, the complaints alleged, “The Boardwalk is not a trail . . . and is not used to

⁵ In October 2015 and March 2016, the trial court consolidated the six lawsuits and designated the lawsuit filed by Linda Alvarez, John Alvarez, Yesim Balci, Mustafa Balci, Carlos Cardoso, and Floriselda Vasquez (Alvarez action, BC537145) as the lead case. Only the complaints filed in the Gruppioni, Botton, and Alvarez actions are included in the record before us.

⁶ The claims for vicarious liability alleged that the City was liable for the conduct of its employees and independent contractors that contributed to the creation of the dangerous condition on the Boardwalk.

The complaints also alleged claims against Campbell for intentional infliction of emotional distress, battery, and negligence, none of which are at issue in this proceeding.

provide ‘access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas . . .’ ([§] 831.4[, subdivisions] (a) and (b)). It also is not a bike path, and, there are signs prohibiting the riding of bikes on the Boardwalk. By the City’s own definition, the Boardwalk is a place of commerce, specifically zoned as such with strict guidelines and regulations put in place and is not a ‘trail’ as that term is used.”

In October 2016, the City filed a single motion in which it sought summary judgment in the Gruppioni and Botton actions. Among other things, the City asserted it was immune from liability under section 831.4. The City argued the Boardwalk was a recreational trail within the meaning of that statute because it “is part of a park that includes the Recreation Area immediately west of the Boardwalk. It was designed and is used for recreational purposes. . . . People walk, jog, run, roller skate, roller blade, skate board, walk their dogs, and although mostly prohibited, ride their bikes on the Boardwalk. . . . The Venice Beach Recreation Area is located immediately west of and adjacent to the Boardwalk. . . . Paddle tennis, calisthenics, basketball, beach volleyball, skate boarding and weight lifting at the world-renowned Muscle Beach take place in the Recreation Area. . . . The Boardwalk provides access to these recreational activities”

The City also asserted that “[t]he Boardwalk was . . . designed to, and is used as, ingress and egress to the beach and the South Bay Bike Path – a path that was judicially declared a trail under [section] 831.4 in *Carroll v. County of Los Angeles* (1997) 60 Cal.App.4th 606. . . . In fact, the Boardwalk is a bike path from its entrance at Washington Boulevard until it merges

with the South Bay Bike Path, a few hundred feet north of Washington. . . . Users of the Boardwalk have a view of the Pacific Ocean.” Finally, the City claimed the plaintiffs in the Gruppioni and Botton actions were engaging in a recreational activity at the time of the incident: “they were walking along the Boardwalk.”

The plaintiffs in the Gruppioni and Botton actions filed separate oppositions. They argued that the Boardwalk does not qualify as a recreational trail for purposes of immunity under section 831.4. Specifically, they claimed that because the primary purpose of the Boardwalk is to serve as a commercial destination for tourists and other visitors, it does not fall within the scope of the trail immunity statute.

The trial court heard the City’s motion on January 3, 2017. After hearing argument from counsel, the court adopted its written tentative ruling and denied the City’s motion. The court’s ruling states, “As to the immunity issue, there is a disputed fact as to what the Venice Boardwalk was designed for and what i[t] is used for. . . . [¶] There are commercial businesses on the Boardwalk. A reasonable trier of fact might conclude that the Venice Boardwalk is not a trail subject to Government Code Section 831.4. [¶] There is a triable issue whether the Dudley entrance to the Boardwalk was a dangerous condition. [¶] The bollards are clearly there for the purpose of restricting general vehicle access to the Boardwalk. Was the danger of a rogue vehicle entering the Boardwalk foreseeable?”

The City filed a timely petition for writ of mandate challenging the trial court’s summary judgment ruling. After we summarily denied the petition, the California Supreme Court

granted the City's petition for review, vacated our order denying mandate, and directed us to issue an order to show cause.

DISCUSSION

1. Standard of Review

We independently review a trial court's ruling on a motion for summary judgment. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860.) Summary judgment is appropriate where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476 (*Merrill*).) A defendant moving for summary judgment must demonstrate that one or more elements of the plaintiff's claim cannot be established or that there exists a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2).) If the defendant meets this burden, the plaintiff must present evidence establishing a triable issue of material fact. (*Ibid.*) A triable issue of fact exists if the evidence would allow a reasonable trier of fact to find the fact in favor of the party opposing summary judgment. (*Aguilar, supra*, 25 Cal.4th at p. 850.)

In reviewing a court's ruling on a summary judgment motion, we consider all of the evidence presented by the parties in connection with the motion, except that which was properly excluded, and all uncontradicted inferences that the evidence reasonably supports. (*Merrill, supra*, 26 Cal.4th at p. 476.) However, "[w]e do not resolve conflicts in the evidence as if we were sitting as the trier of fact. [Citation.] Instead, we draw all reasonable inferences from the evidence in the light most favorable to the party opposing summary judgment." (*Nadaf-Rahrov v. Neiman Marcus Group, Inc.* (2008) 166 Cal.App.4th 952, 961.) "[W]e liberally construe plaintiffs' evidentiary submissions and strictly scrutinize defendants' own evidence, in

order to resolve any evidentiary doubts or ambiguities in plaintiffs' favor." (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142.)

2. Dangerous Condition of Public Property and Trail Immunity

As a general matter, a public entity is liable for an injury caused by a dangerous condition of its property if the plaintiff can prove that the property was in a dangerous condition at the time of the injury and the public entity had actual or constructive notice of the dangerous condition. (§ 835⁷; *Montenegro v. City of Bradbury* (2013) 215 Cal.App.4th 924, 929 (*Montenegro*).) Under section 831.4, however, a public entity is absolutely immune from liability for injuries caused by a dangerous condition of a recreational trail that the entity owns. (*Montenegro, supra*, 215 Cal.App.4th at p. 929.)

Section 831.4 provides in relevant part: "A public entity . . . is not liable for an injury caused by a condition of: [¶] (a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of

⁷ Section 835 provides: "Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that 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."

vehicular riding, water sports, recreational or scenic areas and which is not a (1) city street or highway or (2) county, state or federal highway or (3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways . . . [¶] [or] (b) Any trail used for the above purposes.”⁸

Under subdivision (b) of section 831.4, a public entity is immune from liability for injuries caused by conditions of its trails that are used for the recreational purposes described in subdivision (a) of the statute, as well as for injuries caused by conditions of trails “providing access to those recreational activities.” (*Montenegro, supra*, 215 Cal.App.4th at p. 929.) Immunity under subdivision (b) applies whether the trail is paved or not. (*Amberger-Warren v. City of Piedmont* (2006) 143 Cal.App.4th 1074, 1078 (*Amberger-Warren*).)

To determine whether immunity under section 831.4 applies to government property, courts typically apply a three-part test that looks at: (1) “accepted definitions of the property,” (2) “the purpose for which the property is designed and used,” and (3) “the purpose of the immunity statute.” (*Amberger-Warren, supra*, 143 Cal.App.4th at pp. 1078–1079.) Whether government property is a trail for purposes of section 831.4, subdivision (b), is a factual issue. (*Armenio v. County of San Mateo* (1994) 28 Cal.App.4th 413, 418.)

⁸ The parties do not dispute that subdivision (b) of section 831.4 is the only provision that applies in this case because the Boardwalk is paved and therefore cannot qualify as an “unpaved road” under subdivision (a).

3. There is a triable issue of fact as to whether the Boardwalk is a “recreational trail” for purposes of section 831.4, subdivision (b).

The City contends the trial court erred in denying its motion for summary judgment because the Boardwalk constitutes a “recreational trail” as a matter of law under section 831.4, subdivision (b). The City claims trail immunity applies in this case because it is undisputed that people engage in recreational activity on the Boardwalk and use the Boardwalk to access the beach and the adjacent South Bay Bike Path. According to the City, it is immaterial whether commercial activity occurs on the Boardwalk for purposes of applying trail immunity. We disagree.

Cases that apply trail immunity typically involve paths or trails that are primarily designed and used for the recreational activities enumerated in section 831.4, subdivision (a), or for gaining access to those activities, even though some of those paths or trails are also used for non-recreational (but also non-commercial) purposes, such as bicycle commuter travel or access routes for maintenance or service vehicles. (See e.g., *Burgueno v. Regents of the University of California* (2015) 243 Cal.App.4th 1052, 1055–1062 [bicycle path on university’s campus used for recreational and commuter purposes]; *Hartt v. County of Los Angeles* (2011) 197 Cal.App.4th 1391, 1393, 1399–1400 [trail through park used by bicyclists and service vehicles].) Examples of locations that have been found to qualify as “recreational trails” immunizing the government entity from liability under section 831.4, subdivision (b), include: paved bicycle and equestrian paths (see *Prokop v. City of Los Angeles* (2007) 150 Cal.App.4th 1332, 1335–1343, and cases collected therein); a

paved path within an enclosed dog park (*Amberger-Warren, supra*, 143 Cal.App.4th at pp. 1077–1086); unpaved trails in state-owned parks intended for use by off-road vehicles (see *Giannuzzi v. State of California* (1993) 17 Cal.App.4th 462, 464–467; *Astenius v. State of California* (2005) 126 Cal.App.4th 472, 474–477); and unpaved hiking trails (*Leyva v. Crockett & Co., Inc.* (2017) 7 Cal.App.5th 1105, 1107–1112). We have found no case where trail immunity was applied in situations involving paths, walkways, promenades, or other surface areas where significant commercial activity takes place (such as paths or walkways lined with private businesses), even if recreational activities (such as bicycle riding, jogging, rollerblading, etc.) also occur on or near those areas.

The purpose of section 831.4 suggests that trail immunity does not apply to paths, walkways, promenades, or other surface areas containing significant commercial activity. The trail immunity statute is intended to “encourage public entities to open their property for public recreational use, because ‘the burden and expense of putting such property in a safe condition and the expense of defending claims for injuries would probably cause many public entities to close such areas to public use.’ (Legis. committee com. 32 West’s Ann. Gov. Code [(1980 ed.)] § 831.2, p. 293.)”⁹ (*Armenio, supra*, 28 Cal.App.4th at p. 417.)

⁹ The Legislative Committee comments to section 831.2, a related immunity provision, also provide: “[U]nder this section and Section 831.4, [a public entity] has an absolute immunity from liability for injuries resulting from natural conditions of a [public] park area where the only improvements are recreational access roads (as defined in Section 831.4) and hiking, riding, fishing and hunting trails. [¶] . . . It is desirable to permit the members of the public to use public property in its natural condition and to provide trails for hikers and riders and

Put another way, the purpose of the statute is to incentivize a government entity to keep open to the public for recreational use public property that generates little or no revenue and, therefore, would be too expensive to maintain if the entity were forced to litigate claims arising out of injuries caused by conditions of that property. (See *Farnham v. City of Los Angeles* (1998) 68 Cal.App.4th 1097, 1103 [“The actual cost of such litigation, or even the specter of it, might well cause cities or counties to reconsider allowing the operation of a bicycle path, which, after all, produces no revenue.”].)

Where the public property attracts a significant number of commercial users, however, the purpose of section 831.4 no longer applies, since it is not likely that the threat of litigation will cause the responsible government entity to close the property. Instead, the commercial activity would likely incentivize the government entity to keep the property open to the public and to make the property safer, even if the entity could face liability for an injury caused by a condition of the property. (See *Treweek v. City of Napa* (2000) 85 Cal.App.4th 221, 234; *Garcia v. American Golf Corp.* (2017) 11 Cal.App.5th 532, 545.) For example, in both *Treweek* and *Garcia*, the reviewing courts relied in part on the commercial nature of the alleged recreational trail (a boat ramp in *Treweek*), or an allegedly integral component of a recreational trail (safety barriers on a golf course adjacent to a trail in *Garcia*), to find immunity under section 831.4 did not apply. (*Treweek, supra*, 85 Cal.App.4th at p. 234 [“Commercial as well

roads for campers into the primitive regions of the State.’ (See legis. committee com., 32 West’s Ann. Gov. Code (1980 ed.) § 831.2, p. 293.)” (*Armenio, supra*, 28 Cal.App.4th at pp. 416–417.)

as recreational users pass over the ramp and as it is used for both purposes, there may well be a financial incentive to keep the ramp open”]; see also *Garcia, supra*, 11 Cal.App.5th at p. 545 [“Though the trail and [the golf course] have close proximity, it is not likely that liability will cause City to close the trail given that the golf course generates revenues that can pay for maintenance and judgments”].) Here, similar reasoning dictates that trail immunity under section 831.4, subdivision (b), should not apply if significant commercial activity occurs along the Boardwalk, since the revenue generated by the public’s use of the Boardwalk could incentivize the City to keep the Boardwalk open and the threat of liability could encourage the City to improve the Boardwalk’s safety features. (See *Garcia, supra*, 11 Cal.App.5th at p. 545.)

We also note that the parties presented conflicting evidence concerning the purpose for which the Boardwalk was designed and is used. On the one hand, the City presented evidence that the Boardwalk is used by many persons for recreational purposes. For example, people use the Boardwalk every day to ride bicycles (even though such activity is prohibited on many parts of the Boardwalk), jog, run, roller skate, and rollerblade, and to access the South Bay Bike Path and the Pacific Ocean. On the other hand, the parties presented evidence that would support a finding that the Boardwalk is not a recreational “trail,” but rather a commercial destination that generates revenue for the City. As noted above, the City has designated over 200 spaces on the western side of the Boardwalk where vendors are allowed to sell merchandise. The City regulates the conduct of vendors using the Boardwalk and requires them to comply with applicable licensing and tax laws. There are also numerous private retail stores, restaurants, bars, and other businesses that

front the Boardwalk, and the City's Land Use plan identifies the area of Venice that includes those businesses (and which borders the eastern edge of the Boardwalk) as part of a commercial zone that emphasizes "retail and restaurants." With over 10 million visitors each year, the Boardwalk provides those businesses with a large base of potential customers. In sum, a reasonable trier of fact could conclude that the Boardwalk is not a recreational trail that falls within the scope of section 831.4. The trial court therefore properly denied the City's motion for summary judgment.¹⁰

¹⁰ In light of our holding, and because the City did not also move for summary adjudication, we do not address the Court's ruling concerning whether the Dudley Avenue entrance to the Boardwalk was a dangerous condition.

DISPOSITION

The City's petition for writ of mandate is denied. Real parties in interest shall recover their costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P.J.

STONE, J. *

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