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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CITY OF RANCHO CUCAMONGA,

Petitioner,

v.

THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY,

Respondent;

JOANNE BRESLIN et al.,

Real Parties in Interest.

E055299

(Super.Ct.No. CIVRS1008119)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Barry L. Plotkin,
Judge. Petition granted.

Rippetoe Miles, Gregory L. Rippetoe, Laura A. Miles, and Kelly A. Fortin for
Petitioner.

No appearance for Respondent.

Law Offices of Blomberg, Benson and Garrett, David K. Garrett, and Juliet F. Wochholz for Real Parties in Interest.

In this matter, we have reviewed the record, the petition, and the opposition thereto. We conclude the parties have adequately addressed the issues. We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

Petitioner City of Rancho Cucamonga (City) seeks a writ of mandate directing the trial court to vacate its order denying City's motion for summary judgment. City established that it was immune from liability and, therefore, the trial court erred in denying its motion. Accordingly, we grant the petition.

FACTS

Plaintiff Joanne Breslin and her daughter Jessica were riding horses on an equestrian trail that encircles Heritage Community Park in the City of Rancho Cucamonga. They had to traverse a driveway into the park to get to the other side of the unpaved section of the trail. There is a sign that reads: "no horses on road use trail." Joanne's horse lost its footing when it got onto the asphalt driveway and fell. Joanne fell.

Joanne does not remember the incident, and her daughter did not notice the asphalt being slippery.

Joanne sues for injuries based on a dangerous condition of public property, and her daughter sues for emotional distress.¹

City moved for summary judgment on the following grounds: the absolute immunity of Government Code section 831.4;² the immunity of section 831.7; and the premise that the defect, if any, was trivial and it had no notice of it.

With regard to the section 831.4 immunity, plaintiffs argued that the driveway was not part of the equestrian trail. They contended that there was an exception to section 831.7 because the driveway was in a dangerous condition. They relied on declarations from four people who ride their horses in the area who all opine that the driveway is slippery and dangerous for horses. Three of them indicate that their horses have slipped on the driveway. The fourth witnessed one of the slipping incidents and indicates that there seemed to be an area that had been recently sealed. This latter said he worked for Cox Communication and is familiar with construction. He opined the asphalt should have been replaced with concrete. Plaintiffs assert that horses do not have any trouble maintaining their footing on asphalt unless it is slippery.

The trial court denied summary judgment, with the following findings:

Issue No. 1: Court found that there was a triable issue of fact whether the paved driveway providing ingress/egress to the park was part of the trail. It commented that it

¹ Together, they will be referred to as plaintiffs.

² Further statutory references are to the Government Code unless otherwise stated.

did not find that the roadway is part of the trail merely because a rider must cross it to get to the opposite side and resume passage on the trail.

Issue No. 2: With regard to the immunity of section 831.7, there was a triable issue of fact whether the driveway where plaintiffs were injured was properly constructed or maintained based on evidence of other instances of horses slipping on roadway.

While plaintiffs had presented no actual or constructive knowledge of any dangerous condition, the court found that this was irrelevant because City did not establish it did not construct or maintain the roadway. On the contrary, it said that there was a reasonable inference that it did so.

Issue No. 3: City argued that plaintiffs could not establish the existence of a dangerous condition of public property that posed a substantial risk of injury to foreseeable users. The trial court concluded that City had not shown that the claimed defect, if any, was trivial because of plaintiffs' evidence of other instances of horses slipping.

Issue No. 4: City again asserts that plaintiffs had not shown City's knowledge of the "dangerous" condition. Again, the trial court found this irrelevant because it is reasonably inferable that it created the condition. Plaintiffs' supporting declarations indicated that the roadway appeared to have been "recently paved" and to have a "new asphalt sealer."

DISCUSSION

Section 831.4 Immunity.

Section 831.4 provides that public entities are not liable for injuries caused by a condition of any unpaved road that provides access to, among other activities, “riding, including animal and all types of vehicular riding,” and of “[a]ny trail used for” those purposes. (§ 831.4, subds. (a) & (b).)

The cases have uniformly interpreted this section to apply to trails providing access to recreational activities, and to trails on which those activities take place—whether paved or unpaved. (*Prokop v. City of Los Angeles* (2007) 150 Cal.App.4th 1332, 1335 (*Prokop*); *Amberger-Warren v. City of Piedmont* (2006) 143 Cal.App.4th 1074, 1078; *Treweek v. City of Napa* (2000) 85 Cal.App.4th 221, 224-229 (*Treweek*); *Carroll v. County of Los Angeles* (1997) 60 Cal.App.4th 606, 609.)

“ ‘Whether a particular road or trail comes under [trail] immunity is ordinarily a question of fact. [Citations.]’ [Citation.]” (*Treweek, supra*, 85 Cal.App.4th at p. 229.) It becomes an issue of law if “only one conclusion is possible.” (*Giannuzzi v. State of California* (1993) 17 Cal.App.4th 462, 467.)

What are the facts here? A horse and rider have to traverse the paved driveway to continue on the unpaved trail. It is part of the pathway and provides direct access to it. There are no disputed facts and the determination could and should have been made that this section of the driveway was part of the trail.

This case is distinguishable from *Treweek*, where the plaintiff was injured while using a boat ramp leading to public restrooms. The court refused to expand the definition

of “trail” to include “ramp” where there was a factual question whether the ramp connected the dock to a boat or instead connected a parking lot to a dock. Even *Treweek* agreed with *Armenio, Carroll, and Farnham*³ that the language of section 831.4, subdivision (b), covering “any trail” extends immunity to trails used for the described recreational purposes—including access to those recreational activities regardless of the trail’s surface.

The analysis in *Prokop* is instructive here. In that case, a bicyclist suffered injuries when he collided with a chain link fence immediately after exiting the bikeway. He sued the city. The court rejected arguments that the paved bikeway was not subject to the 831.4 immunity and that the injury was caused by the design of the gate rather than the condition of the bikeway. “No authority concludes that the ‘condition’ of a trail excludes conditions relating to its design.” (*Prokop v. City of Los Angeles, supra*, 150 Cal.App.4th at p. 1341.) Furthermore, Prokop claimed that trail immunity did not apply because his accident occurred outside the bikeway, but the court concluded a gateway to or from a bike path is patently an integral part of the bike path. Here, the portion of the driveway that must be crossed to continue on the horse trail has to be considered part of the trail as a matter of law.

Plaintiffs point out that horses were not to be ridden down the driveway and there were no painted crosswalks. However, the only way to get from one side of the unpaved

³ *Armenio v. County of San Mateo* (1994) 28 Cal.App.4th 413; *Carroll v. County of Los Angeles* (1997) 60 Cal.App.4th 606; *Farnham v. City of Los Angeles* (1998) 68 Cal.App.4th 1097.

bridle path to the other side is to cross the driveway. It has to be considered an integral part of the trail.

A trail does not cease to become a trail because there is a section that is a different surface (e.g., a wooden bridge across the Santa Ana River bike trail), or because there is cross traffic. To find otherwise would seriously undercut the purposes of section 831.4 to hold public entities immune so that they won't close recreational trails. (*Hartt v. County of Los Angeles* (2011) 197 Cal.App.4th 1391, 1399) The fact that at the location of the mishap the trail had a dual purpose does not detract from the fact that it is a trail. (*Id.* at p. 1400.)

Immunity of Sections 831.7 and 835

Although we need not address this issue because of our holding that section 831.4 applies, we believe it will provide future guidance to the trial court to discuss the applicability of section 831.7. This statute provides immunity for certain hazardous recreational activities, including animal riding. The trial court found an exception based on section 831.7, subdivision (c)(1)(C), for an injury proximately caused by the negligent failure of the public entity or public employee to properly construct or maintain in good repair any structure, recreational equipment or machinery, or substantial work of improvement utilized in the hazardous recreational activity out of which the damage or injury arose. It reasoned that there must be a triable issue based on the anecdotal

information about horses slipping in this area and a lay opinion that the area must have been recently sealed.⁴ Plaintiffs never identified the nature of the dangerous condition.

The trial court found that there must be some dangerous condition because horses do not ordinarily slip on asphalt; but this is not a fact that the court could judicially notice, and there was no expert evidence to support this conclusion. (Evid. Code, §§ 451, 452.) Indeed, there may be other explanations for some horses slipping. There was no evidence that at the time of this incident this area was unusually slippery or that its surface differed in any way from that of ordinary asphalt pavement. Therefore, plaintiffs failed to raise a triable issue that the injury was proximately caused by the negligent failure of the public entity or public employee to maintain in good repair the area where the mishap occurred. By the same token, there was no showing that a dangerous condition existed under Government Code section 835.

DISPOSITION

Let a peremptory writ of mandate issue directing the Superior Court of San Bernardino County to set aside its order denying City's motion for summary judgment and to issue a new and different order granting the motion.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

⁴ However, City showed that there had been no maintenance requests or work orders for this location for two years preceding this incident.

City to recover its costs, if any.

The previously ordered stay is lifted.

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McKINSTER
J.

We concur:

RAMIREZ
P. J.

MILLER
J.