Filed 3/27/13 Gaestel v. County of Stanislaus CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

ROBERT GAESTEL, Plaintiff and Appellant, v. COUNTY OF STANISLAUS, Defendant and Respondent.	F063824 (Super. Ct. No. 648873) **OPINION**

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Roger M. Beauchesne, Judge.

Canelo, Wilson, Wallace & Padron and Kenneth R. Mackie for Plaintiff and Appellant.

Dan Farrar for Defendant and Respondent.

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* Before Gomes, Acting P.J., Poochigian, J., and Detjen, J.

Appellant Robert Gaestel (appellant) appeals a judgment finding that the County of Stanislaus is immune from liability for appellant's injuries suffered at an off-road vehicle park maintained by the County of Stanislaus. We affirm the judgment.

STATEMENT OF THE CASE

Appellant and his friend Teresa Parker were riding off-road motorcycles at the La Grange Off Road Vehicle Park on January 17, 2009. The park is controlled and maintained by respondent Stanislaus County. A portion of the trail on which appellant was riding had been excavated by Stanislaus County employee John Lamela, causing the trail to drop approximately three feet. Appellant saw the drop off when he was about a foot or two away from the excavation point. He locked his brake and his front tire dropped off the edge, throwing him head first into a rock below and causing him to suffer serious injury.

Lamela had excavated the trail sometime prior to the accident as part of a project to extend a fence line. Lamela explained that the reason he removed the soil was to use the soil to fill another wash or erosion section where the fence was under construction. According to Lamela, "that path was still usable. There was a section of that path that was left pretty much negative, so that if someone did go around it, that they could get off." It was Lamela's intent to allow motorcycles or off-road vehicles to continue to use the trail until the fence project was complete. Lamela's ultimate plan was to eliminate the path so people were not riding around the fence, thereby causing the path to erode. Riders continued to use the trail after excavation was completed.

Appellant filed a complaint on December 7, 2009, alleging negligence, willful failure to warn, and dangerous condition of public property. After surviving a demurrer and a motion for summary judgment raising, inter alia, government immunity pursuant to Government Code section 831.4[1], the case went to court trial on July 13, 2011. On

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[1] All further statutory references are to the Government Code unless otherwise stated.

August 15, 2011, the court issued a Statement of Decision. The court found "the precise location where the accident occurred constituted a dangerous condition of public property at the time of the injury, that the injury was proximately caused by the dangerous condition, and that the dangerous condition created a reasonably foreseeable risk of the kind of injury which occurred." The court further found that "a negligent or wrongful act or omission of an employee of the public entity occurred within the scope of employment which created a dangerous condition and that defendant (public entity) had actual or constructive notice of the dangerous condition a sufficient time prior to the injury to have taken measures to protect against the dangerous condition." The court summarized, "In essence, if not in actuality, there was a path/trail in existence and, all of a sudden, there was no path/trail in existence. It just stopped." The court concluded, however, that section 831.4 provides immunity to Stanislaus County for appellant's injury. The instant appeal followed.[2]

DISCUSSION

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:
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> "(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
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> "(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."

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[2] Appellant requests that we take judicial notice of the materials identified as Exhibits 1-15 in the above mentioned request. Appellant's request for judicial notice is granted.

County of Stanislaus impliedly concedes that substantial evidence supports the trial court's finding that appellant was injured as a result of the dangerous condition of the path. Thus, the sole issue before this court is whether the immunity provision set forth in section 831.4 applies in the case.

Section 831.4 provides, in pertinent part:

> "A public entity, public employee, or a grantor of a public easement to a public entity for any of the following purposes, is not liable for an injury caused by a condition of:
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> "(a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of 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.
>
> "(b) Any trail used for the above purposes."

Appellant first contends the trial court found that there was no trail in existence where appellant was injured and that "[w]here the trail ends, so too must the trail immunity end."

The trial court stated in its Statement of Decision: "In essence, if not in actuality, there was a path/trail in existence and, all of a sudden, there was no path/trail in existence. It just stopped." The trial court also found, compelled by *Giannuzzi v. State of California* (1993) 17 Cal.App.4th 462 (*Giannuzzi*) and the current status of the law, that the factual scenario presented did not overcome a claim of immunity described in section 831.4 which grants immunity to trails used for the described purposes, including vehicular riding.

"Ordinarily, when the court's statement of decision is ambiguous or omits material factual findings, a reviewing court is required to infer any factual findings necessary to support the judgment. [Citations.] This rule 'is a natural and logical corollary to three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all

intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error.' [Citation.] [¶] … [¶] In order to avoid the application of this doctrine of implied findings, an appellant must take two steps. First, the appellant must request a statement of decision pursuant to Code of Civil Procedure section 632 …; second, if the trial court issues a statement of decision, 'a party claiming omissions or ambiguities in the factual findings must bring the omissions or ambiguities to the trial court's attention' pursuant to section 634. [Citation.]" (*Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 494.)

Appellant did not bring the ambiguity in the Statement of Decision to the court's attention and Mr. Lamela's testimony provides substantial evidence that the trail remained a trail even after it was excavated. Mr. Lamela testified that after excavation the "path" or "trail" was still usable and it was his intent "to allow motorcycles or off-road vehicles to continue to use the trail which [he] had excavated from." Mr. Lamela testified that riders continued to use the trail after he did the excavation and that there were trails in the park that were more difficult to negotiate than the excavated area.

Appellant next contends that the Legislature never intended to grant absolute immunity when an employee created a dangerous condition on a recreational trail.

Section 831.4 is explicit. It provides that a public entity is not liable for injury caused by the condition of any trail used for vehicular riding. The term "condition" has been interpreted to encompass any physical defect in the trail. (*State of California v. Superior Court* (*Young*) (1995) 32 Cal.App.4th 325, 328.) Interpreting the immunity as absolute serves the purpose of immunity: to keep trails open to the public. (*Ibid*.)

Appellant challenges the trial court's finding of immunity claiming that statutory construction and legislative intent reflect that the Legislature did not intend to grant immunity to a public entity when the public entity or its agent *creates* the dangerous condition and that *Giannuzzi*, *supra*, 17 Cal.App.4th 462, the case which the trial court interpreted as compelling it to find for respondent, is not controlling.

In *Giannuzzi*, Giannuzzi alleged in his first amended complaint that he was injured while riding his motorcycle in a vehicular state park on an established dirt trail leading over the top of an unimproved hill. He asserted that he was unaware that the state had moved quantities of dirt, thereby forming large, loose dirt pilings at the bottom of the hill directly in the path of the established trail. Giannuzzi claimed that the state's actions changed the natural condition of the established trail resulting in a dangerous condition. (*Giannuzzi*, *supra*, 17 Cal.App.4th at p. 464.) The First District Court of Appeal dismissed the appeal from the order sustaining the demurrer on the ground the purpose for which the trail was being used was embraced by section 831.4. (*Giannuzzi*, at p. 467.) The court concluded, "Fair inferences from the amended complaint are that plaintiff's purpose for being within the Carnegie State Vehicular Recreation Park was the recreational driving of his vehicle, and that he was injured during the course of that activity. In these circumstances the application of section 831.4 is established as a matter of law." (*Ibid*.)

The court's analysis in *Giannuzzi* is in conformance with the purpose of section 831.4—to keep recreational trails open to the public without the specter of liability. It is easy to conjure up examples of physical acts of gross negligence by employees of public agencies that own recreational trails for which immunity under section 831.4 might seem to lead to an absurd result. Nonetheless, our function is not to judge the wisdom of statutes. If the immunity of a public entity were to be modified in cases involving a purposeful or grossly negligent act or omission of an employee relating to unpaved roads used for vehicular riding, it is within the domain of the Legislature—not the judiciary—to do so if it so chooses.

DISPOSITION

The judgment is affirmed. Each party to bear their own costs.