

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

TONY THANH NGUYEN, a Minor, etc.,

Plaintiff and Appellant,

v.

GARDEN GROVE UNIFIED SCHOOL
DISTRICT et al.,

Defendants and Respondents.

G046751

(Super. Ct. No. 30-2009-00331605)

O P I N I O N

Appeal from judgments of the Superior Court of Orange County, Ronald L. Bauer, Judge. Affirmed.

Gilbert & Nguyen, Jonathan T. Nguyen and Christie Asselin for Plaintiff and Appellant.

Walsh & Associates, Dennis J. Walsh and George E. Ordonez for Defendant and Respondent Garden Grove Unified School District.

Woodruff, Spradlin & Smart, Caroline A. Byrne and Roberta A. Kraus for Defendant and Respondent City of Garden Grove.

Jones & Mayer and Harold W. Potter for Defendant and Respondent City of Westminster.

* * *

In this personal injury action, plaintiff and appellant Tony Thanh Nguyen, a minor, through his guardian ad litem, Louis Guynen, sued respondents and defendants Garden Grove Unified School District (District), City of Garden Grove (Garden Grove), and City of Westminster (Westminster) for maintaining a dangerous condition of public property. Shortly after sunset on November 3, 2009, Nguyen suffered serious injuries when he was struck by a van as he crossed the straight and level street that ran between the intermediate school he attended and the elementary school he previously attended. Contrary to the instructions he received from both schools, Nguyen did not use a crosswalk, or even an intersection, when attempting to cross the street. Instead, he crossed in a midblock location near a pedestrian gate he regularly used to access the elementary school. Nguyen alleged the location of the pedestrian gate constituted a dangerous condition because it encouraged pedestrians entering or exiting the elementary school to cross the street midblock and exposed them to the danger of heavy traffic.

We affirm the trial court's decision granting the District, Garden Grove, and Westminster summary judgment because the gate's location was not a dangerous condition of public property as defined by Government Code section 830.¹ We conclude any danger in crossing the street was obvious to users exercising due care and therefore the gate's location did not satisfy the statutory definition of a dangerous condition. Moreover, we conclude the street was not in a dangerous condition because Nguyen failed to identify a specific, physical deficiency in the street that made it dangerous when used with due care. Nor was a dangerous condition created by the mere existence of

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

heavy pedestrian and vehicular traffic. We therefore affirm the trial court's summary judgments because Nguyen failed to establish the existence of a dangerous condition, an essential element of all his claims.

I

FACTS AND PROCEDURAL HISTORY

Ward Street (Ward) has three lanes that run north-south between two schools the District operates. There is one lane of traffic in each direction and a middle turn lane that runs the length of the street between the schools. Parking is permitted on both sides of Ward parallel to the curb and there is a sidewalk and bike lane on each side of the street. In this location, Ward is a major arterial roadway with approximately 14,350 vehicles using it each day. As it runs between the schools Ward is flat and straight with the western half falling within Westminster and the eastern half falling within Garden Grove. The posted speed limit is 35 miles per hour.

Irvine Intermediate School (Irvine Intermediate) is located on the eastern side of Ward. It is bordered on the north by Hazard Avenue (Hazard), on the east by a residential community, and on the south by a single row of houses that face Mast Avenue (Mast). The front of the school is on Hazard and there is a parking lot and pedestrian access gate near the middle of the school grounds on Ward.

Post Elementary School (Post Elementary) is located on the western side of Ward and is roughly half the physical size of Irvine Intermediate. Post Elementary is bordered on the north by Parkview Avenue (Parkview) and a residential community that lies between Parkview and Hazard. Another residential community borders the school on its western side and a single row of houses that fronts on Mast lies immediately to the south. The front of the school is on Parkview along with the school parking lot. The only access to the school from Ward is a pedestrian gate located roughly 200 feet south of

the Ward-Parkview intersection. The primary access to Post Elementary is through the front of the school on Parkview.

Parkview forms a “T” intersection with Ward at roughly the middle of Irvine Intermediate. There is no marked crosswalk at the Ward-Parkview intersection and the nearest marked crosswalks on Ward are located at the Ward-Hazard intersection to the north and the Ward-Mast intersection to the south.² The Ward-Hazard intersection is controlled by a traffic signal and the Ward-Mast intersection has a two-way stop sign for traffic travelling east and west on Mast. At the beginning of each school year both Post Elementary and Irvine Intermediate conduct assemblies where they review the school rules with all students and specifically instruct them not to cross Ward midblock or even at the Ward-Parkview intersection, but rather to cross Ward only at the marked crosswalks located at the Ward-Hazard and Ward-Mast intersections. The schools also instructed parents to drop their children off on the same side of the street where their school was located.

The Boys and Girls Club is an independent organization that uses classroom and playground facilities at both Irvine Intermediate and Post Elementary. The Club offers an afterschool program where students may do their homework and participate in activities. Both schools require all students who do not participate in the Boys and Girls Club program or a school-sponsored, afterschool activity to leave campus each day when school ends at approximately 2:30 p.m. In the fall of 2009, Nguyen was a seventh grader at Irvine Intermediate and participated in the Boys and Girls Club program. He previously attended Post Elementary where he also participated in the Boys and Girls Club program.

² Some time after the accident at issue in this case, the crosswalk at Ward and Mast was removed and replaced by a midblock crosswalk between Parkview and Mast with a pedestrian activated signal. The new crosswalk is south of where the accident occurred in this case.

On November 3, 2009, Nguyen and two of his friends, Bryan Wong and Daniel Nguyen, signed themselves out of the Boys and Girls Club program at Irvine Intermediate at approximately 4:45 p.m.³ Nguyen and Daniel accepted Wong's invitation to walk with him to Post Elementary where he would meet his younger brother and his mother. Nguyen often walked to Post Elementary in the late afternoon or early evening to visit some of his former teachers and he viewed Wong's invitation as another opportunity to call on them.

The three boys left Irvine Intermediate through the pedestrian gate located on Ward just south of the Ward-Parkview intersection and walked south on the sidewalk toward Mast. Daniel testified he intended to walk to Mast and use the crosswalk there to cross Ward. Wong testified he always used a crosswalk to cross Ward. As the boys walked south, Nguyen began to cross Ward midblock across from the pedestrian gate that provided access to Post Elementary and Wong followed him. Daniel stopped Wong from crossing the street by grabbing his backpack and pulling him back. Daniel also tried to grab Nguyen to stop him, but could not reach him. Both Daniel and Wong told Nguyen not to "jaywalk," but he continued to cross the street midblock without using a crosswalk. Nguyen safely made it to the sidewalk on the Post Elementary side of Ward. He testified this was how he usually crossed Ward to get to Post Elementary.

Once he was on the Post Elementary side of Ward, Nguyen took a few steps south toward Mast as Daniel and Wong continued to walk south on the Irvine Intermediate side of the street. Nguyen then suddenly began jogging back across Ward to the Irvine Intermediate side of the street. Wong testified he saw Nguyen look both ways before he began to cross the street for the second time, but neither Wong nor Daniel understood why Nguyen was crossing Ward a second time. As Nguyen crossed the

³ We will refer to Daniel Nguyen as Daniel to avoid any confusion with Nguyen. No disrespect is intended. (*Martin v. PacifiCare of California* (2011) 198 Cal.App.4th 1390, 1393, fn. 1.)

southbound lane on Ward a van driven by James Jeffries struck and severely injured him. Jeffries testified he had his headlights on and was driving approximately 20 miles per hour because he knew there was a school or playing fields in the area, but he never saw Nguyen. The accident occurred at 5:04 p.m., just a few minutes after sunset. Nguyen testified he did not remember anything about the accident.

In December 2009, Nguyen filed this action to recover for the substantial injuries he sustained. Nguyen's operative second amended complaint alleged two causes of action for dangerous condition of public property against the District, Garden Grove, and Westminster.⁴ Nguyen alleged the District (1) created a dangerous condition by negligently placing a pedestrian access gate midblock on Ward, which funneled Post Elementary's pedestrian traffic to Ward despite dangerous and congested traffic conditions and the lack of a crosswalk in the vicinity; and (2) failed to remedy the dangerous condition created by the gate's location despite notice of the danger. As against Garden Grove and Westminster, Nguyen alleged the two cities created and failed to warn of a dangerous condition by (1) not posting signs notifying motorists Ward was a school zone; (2) not posting appropriate speed limit signs; and (3) not installing a crosswalk at the Ward-Parkview intersection.

The District, Garden Grove, and Westminster each filed a summary judgment motion. The District argued Nguyen's dangerous condition of public property claims lacked merit because (1) the location of the pedestrian access gate on Ward was not a dangerous condition; (2) the District was statutorily immune from liability because the accident occurred after school hours and off campus; (3) the pedestrian gate's location did not proximately cause Nguyen's injuries; and (4) the District had no notice of the dangerous condition purportedly created by the pedestrian gate's location.

⁴ Nguyen's pleading also named Jeffries as a defendant, but he is not a party to this appeal.

Garden Grove argued Nguyen's claims against it failed because (1) the pedestrian gate's location at Post Elementary was not a dangerous condition; and (2) there is no liability for dangerous condition of public property for failing to install traffic or warning signs. Westminster argued Nguyen's claims failed because (1) he did not timely file a proper governmental claim with the city; and (2) Ward was not in a dangerous condition.

The trial court heard the summary judgment motions in February 2012 and granted all three motions. The court then entered three judgments against Nguyen and he timely appealed.

II

DISCUSSION

A. *Summary Judgment Standard of Review*

Summary judgment is properly granted if there is no triable issue on any material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c); *Eriksson v. Nunnink* (2011) 191 Cal.App.4th 826, 847 (*Eriksson*)). A defendant moving for summary judgment bears the initial burden of presenting facts to negate an essential element of the plaintiff's cause of action or to show there is a complete defense to the cause of action. (Code Civ. Proc., § 437c, subd. (p)(2); *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 168-169 (*Teselle*)). Although the plaintiff would have the burden of proof at trial by a preponderance of the evidence, the defendant seeking summary judgment must present evidence that would preclude a reasonable trier of fact from finding it was more likely the material fact was true. (*Johnson v. Superior Court* (2006) 143 Cal.App.4th 297, 304.)

If the defendant meets that burden, the burden shifts to the plaintiff to present evidence establishing triable issues exist on one or more material facts. (Code Civ. Proc., § 437c, subd. (p)(2); *Teselle, supra*, 173 Cal.App.4th at pp. 168-169.) A

triable issue of material fact exists “‘if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.’ [Citation.] Thus, a party ‘cannot avoid summary judgment by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact. [Citation.]’ [Citation.]” (*Dollinger DeAnza Associates v. Chicago Title Ins. Co.* (2011) 199 Cal.App.4th 1132, 1144-1145 (*Dollinger*).

We review de novo a trial court’s ruling on a summary judgment motion. (*Eriksson, supra*, 191 Cal.App.4th at p. 848.) “‘[I]n practical effect, we assume the role of a trial court and apply the same rules and standards that govern a trial court’s determination of a motion for summary judgment.’ [Citation.] ‘Regardless of how the trial court reached its decision, it falls to us to examine the record de novo and independently determine whether that decision is correct.’ [Citation.] . . . The sole question properly before us on review of the summary judgment is whether the judge reached the right *result* . . . whatever path he might have taken to get there, and we decide that question independently of the trial court. [Citation.]” (*Carnes v. Superior Court* (2005) 126 Cal.App.4th 688, 694, original italics, fn. omitted; *Dollinger, supra*, 199 Cal.App.4th at p. 1144 [“the reviewing court ‘. . . reviews the trial court’s ruling, not its rationale’”].)

B. *Governing Legal Principles Regarding Liability for Dangerous Condition of Public Property*

A public entity is not liable for an injury arising from its acts or omissions except as provided by statute. (§ 815, subd. (a).) Section 835 is the sole statutory basis for imposing liability on a public entity for the condition of its property. (*Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340, 1346-1347 (*Cerna*)). That section provides, “a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that [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 which was incurred, and [4] 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 . . . a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.” (§ 835.) The element at issue here is whether the property was in a dangerous condition.

A “dangerous condition” is statutorily 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 intent of these statutes ‘is to impose liability *only* when there is a substantial danger which is not apparent to those using the property in a reasonably foreseeable manner with due care. [Citations.]’ [Citation.]” (*Biscotti v. Yuba City Unified School Dist.* (2007) 158 Cal.App.4th 554, 558, italics added, original italics omitted (*Biscotti*)). ““[E]ven though it is foreseeable that persons may use public property without due care, a public entity may not be held liable for failing to take precautions to protect such persons.” [Citations.] Any property can be dangerous if used in a sufficiently abnormal manner; a public entity is required only to make its property safe for reasonably foreseeable careful use. [Citation.]” (*Sambrano v. City of San Diego* (2001) 94 Cal.App.4th 225, 239.)

“Reasonably foreseeable use with due care, as an element in defining whether property is in a dangerous condition, refers to use by the public generally, not the contributory negligence of the particular plaintiff who comes before the court; the particular plaintiff’s contributory negligence is a matter of defense. Nevertheless, *the plaintiff has the burden to establish that the condition is one which creates a hazard to persons who foreseeably would use the property with due care.*” (*Mathews v. City of*

Cerritos (1992) 2 Cal.App.4th 1380, 1384, italics added (*Mathews*); see also *Fredette v. City of Long Beach* (1986) 187 Cal.App.3d 122, 130-131 (*Fredette*.) Whether a reasonably foreseeable user exercises due care is measured by an objective standard, but takes into consideration the lower standard of care expected of children. (*Huffman v. City of Poway* (2000) 84 Cal.App.4th 975, 992; *Mathews*, at p. 1385; *Schonfeldt v. State of California* (1998) 61 Cal.App.4th 1462, 1466 (*Schonfeldt*.)

A plaintiff pursuing a dangerous condition of public property claim must plead and prove the specific condition of the public property that makes it dangerous; generalized claims of dangerousness are insufficient. (*Mixon v. Pacific Gas & Electric Co.* (2012) 207 Cal.App.4th 124, 131 (*Mixon*.) A dangerous condition “can come in several forms and may be based on an ‘amalgam’ of factors,” but “requires ‘a *physical* deficiency in the property itself.’” (*Salas v. Department of Transportation* (2011) 198 Cal.App.4th 1058, 1069-1070, original italics (*Salas*.) “A dangerous condition exists when public property [1] ‘is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself,’ or [2] possesses physical characteristics in its design, location, features or relationship to its surroundings that endanger users.” (*Cerna, supra*, 161 Cal.App.4th at pp. 1347-1348, quoting *Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 148-149 (*Bonanno*); see also *Mixon*, at p. 131.)

“‘Adjacent property’ as used in the definition of ‘dangerous condition’ refers to the area that is exposed to the risk created by a dangerous condition of the public property. For example, the hazard created by a condition of public property may not be a hazard to persons using the public property itself, but may be a hazard to other property or to those using other property. . . . [¶] [A] public entity cannot be held liable for dangerous conditions of ‘adjacent property.’ A public entity may be liable only for dangerous conditions of its own property. But its own property may be considered dangerous if it creates a substantial risk of injury to adjacent property or to persons on

adjacent property; and its own property may be considered dangerous if a condition on the adjacent property exposes those using the public property to a substantial risk of injury.” (Cal. Law Revision Com. com., 32 pt. 2 West’s Ann. Gov. Code (2012 ed.) foll. § 830, p. 7; *Bonanno, supra*, 30 Cal.4th at pp. 147-148.)

“A public entity may be liable for a dangerous condition of public property even where the immediate cause of a plaintiff’s injury is a third party’s negligence if some physical characteristic of the property exposes its users to increased danger from third party negligence. [Citation.] ‘But it is insufficient to show only harmful third party conduct, like the conduct of a motorist. “[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.’” [Citation.] There must be a defect in the physical condition of the property and that defect must have some causal relationship to the third party conduct that injures the plaintiff. [Citation.]’ [Citation.]” (*Salas, supra*, 198 Cal.App.4th at pp. 1069-1070.)

Whether public property is in a dangerous condition is ordinarily a question of fact, but “may be decided as a matter of law if no reasonable person could conclude the property’s condition is dangerous as that term is statutorily defined.” (*Biscotti, supra*, 158 Cal.App.4th at pp. 558-559.) Section 830.2 also instructs that “[a] condition is not a dangerous condition . . . 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.” Accordingly, “[i]t is for the court to determine whether, as a matter of law, a given defect is not dangerous. This is to guarantee that [public entities] do not become insurers against the

injuries arising from trivial defects.’ [Citation.]” (*Salas, supra*, 198 Cal.App.4th at p. 1070.)

C. *The Trial Court Properly Granted the District’s Summary Judgment Motion*

Nguyen contends the trial court erred in granting the District summary judgment because triable issues exist on whether the location of Post Elementary’s pedestrian gate constituted a dangerous condition of public property. According to Nguyen, the gate’s location created a focal point for pedestrian access to and from Post Elementary on Ward that was roughly 200 feet from the nearest intersection at Ward and Parkview, and 500 feet from the nearest marked crosswalk at the Ward-Mast intersection. Nguyen contends the gate’s relationship to these surroundings presented a dangerous condition because it encouraged pedestrians entering and exiting Post Elementary to cross Ward midblock in the vicinity of the gate where there was no crosswalk or other traffic control. In Nguyen’s view, this exposed pedestrians to the significant risk of injury from the heavy traffic on Ward. We conclude the gate’s location on Ward does not satisfy the statutory definition of a dangerous condition and therefore the trial court properly granted the District’s summary judgment motion.

A dangerous condition may exist when public property possesses physical characteristics in its location or relationship to its surroundings that endanger users who exercise due care. (*Bonanno, supra*, 30 Cal.4th at pp. 148-149; *Cerna, supra*, 161 Cal.App.4th at pp. 1347-1348; *Joyce v. Simi Valley Unified School Dist.* (2003) 110 Cal.App.4th 292, 298-300 (*Joyce*)). For example, the plaintiff in *Bonanno* sued a transit district for the dangerous condition of its bus stop after she was struck by a car while using an uncontrolled crosswalk to access the stop. (*Bonanno*, at pp. 144-146.) The Supreme Court concluded the bus stop’s location was a dangerous condition because its surroundings exposed its users to significant dangers when they tried to access the stop. (*Id.* at p. 151.) The fact the plaintiff was injured on adjacent property did not defeat

her claim because her efforts to access the transit district's bus stop made her a user of the district's property even if she had not yet reached the stop. (*Ibid.*)

Many passengers had to cross a large and busy highway to reach the bus stop. The uncontrolled crosswalk where the accident occurred was the crossing nearest to the bus stop, but a large volume of traffic sped by and rarely stopped for pedestrians. There was another crosswalk at a nearby, signalized intersection, but it too presented a dangerous route for accessing the bus stop because after using that signalized crosswalk pedestrians had to walk along a narrow shoulder and drainage ditch to reach the bus stop. (*Bonanno, supra*, 30 Cal.4th at pp. 144-145.) Because the only two possible routes for users to access the bus stop were needlessly unsafe, the Supreme Court concluded the bus stop's location was a dangerous condition of public property. (*Id.* at p. 151 & fn. 4.) The *Bonanno* court did not address whether the uncontrolled crosswalk itself was dangerous, but rather assumed it was and limited the question on which it granted review to whether a bus stop's location constituted a dangerous condition when users were forced to use a dangerous crosswalk. (*Id.* at pp. 146-147.)

Here, the location of Post Elementary's pedestrian gate does *not* expose the gate's users to danger when they exercise due care. The gate is located midblock on Ward between its intersections with Parkview and Mast and it opens on to a sidewalk that runs the length of Ward from Hazard to Mast. There is no crosswalk or intersection identifying the location as an appropriate spot to cross Ward. Pedestrians must pass between parked cars on both sides of Ward to cross at this midblock location. Post Elementary and Irvine Intermediate instructed their students *not* to cross Ward midblock or even at the Ward-Parkview intersection. Instead, the schools directed students to use the marked crosswalks at the Ward-Hazard and Ward-Mast intersections to cross Ward.

These features and warnings combined with the often heavy traffic along this stretch of Ward make any danger presented by the gate's midblock location obvious to anyone contemplating crossing Ward with due care. The gate's location therefore does

not constitute a dangerous condition as construed under section 830. (See *Schonfeldt, supra*, 61 Cal.App.4th at pp. 1467-1468 [danger freeway presented to pedestrians seeking to cross it was obvious to anyone exercising due care and therefore the freeway was not in a dangerous condition when plaintiff attempted to cross it]; *Mathews, supra*, 2 Cal.App.4th at p. 1385 [“danger of riding a bicycle down a very steep, wet, grassy hill is obvious from the appearance of the property itself, even to children exercising a lower standard of care,” and therefore the hill was not a dangerous condition]; *Fredette, supra*, 187 Cal.App.3d at pp. 132-133 [shallow water in lagoon made the danger of diving from a recreational pier obvious and therefore no dangerous condition existed].) Moreover, unlike in *Bonanno*, nothing about the gate’s location compelled or even encouraged users exercising due care to cross Ward at a dangerous location; users had, and were instructed about, other safe options. (*Bonanno, supra*, 30 Cal.4th at pp. 147, 151 & fn.4.)

If the midblock location of Post Elementary’s pedestrian gate constitutes a dangerous condition, then an entrance to any public building or property that opens onto a busy street midblock would be a dangerous condition. In essence, this would preclude public entities from providing access to any public property at a point other than a controlled intersection with a crosswalk. Nguyen cites no authority establishing such expansive liability for public entities and we decline to announce such a rule.

Nguyen relies heavily on *Joyce* because it also involved the question whether a school’s pedestrian gate presented a dangerous condition, but the factual distinctions between this case and *Joyce* buttress our conclusion the location of Post Elementary’s pedestrian gate is not a dangerous condition. In *Joyce*, a student sued a school district for dangerous condition of public property after a car struck her while using an uncontrolled crosswalk at a busy intersection to access her school through a pedestrian gate. The student alleged the district failed to warn about the dangerous intersection or direct students to use the signaled crosswalk near the front of the school. (*Joyce, supra*, 110 Cal.App.4th at pp. 295-296.)

The evidence showed the school installed or placed a pedestrian gate in its fence adjacent to the crosswalk at the uncontrolled intersection to encourage students to cross at that location. The crosswalk was difficult for drivers to see because it was located near the crest of a hill, the crosswalk crossed a busy four-lane street where most drivers drove nearly 50 miles per hour, and the principal rejected repeated requests to close the gate and have students use a nearby signalized crosswalk. (*Joyce, supra*, 110 Cal.App.4th at pp. 296-297.) The *Joyce* court upheld the jury’s finding the gate presented a dangerous condition: “The open gate was built next to the crosswalk to encourage students to cross at an uncontrolled intersection. It diverted children from a safer, signal-controlled intersection less than 500 feet away. We conclude[] that a reasonable trier of fact could find that the open gate was a dangerous condition that could have been remedied by simply closing the fence opening and directing students to cross at the signal.” (*Id.* at p. 299.)

Here, there is no evidence that the District installed the gate to encourage students to cross Ward at that location or that the gate diverted students from using a safer route to cross Ward. Unlike *Joyce*, the gate was not located at an intersection or adjacent to a crosswalk and its location did not encourage students to cross Ward in a particular spot. Moreover, Post Elementary and Irvine Intermediate told students *not* to cross Ward midblock or even at the Ward-Parkview intersection. Rather, the schools instructed students to travel the additional 500 feet from the gate to the Ward-Mast intersection and use the crosswalk located there. *Joyce* faulted the school district for failing to do precisely what the District did here. Accordingly, *Joyce* supports the trial court’s decision to grant the District summary judgment.

Nguyen also argues the gate was a dangerous condition because it was heavily used by students and others to enter and exit Post Elementary. According to Nguyen, the “frequency of use” is a factor we must consider in determining whether a dangerous condition exists, and “[t]he more frequently the condition is used, the more

dangerous it is.” That is not the law. California courts have repeatedly held the mere heavy use of public property does not make it dangerous; instead, there must be some physical characteristic or deficiency in the property that makes it dangerous other than just its heavy use. (See, e.g., *Sun v. City of Oakland* (2008) 166 Cal.App.4th 1177, 1189-1190 (*Sun*); *Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 440-441 (*Brenner*).)

Moreover, the case authorities Nguyen cites do not support his frequency-of-use argument. *Raymond v. Paradise Unified School Dist.* (1963) 218 Cal.App.2d 1, involved a student who was injured at a school bus stop when he ran up to and touched a bus as it entered the stop area. (*Id.* at p. 5.) The issue in *Raymond* was whether the school district had a duty to supervise the children at the bus stop and the court’s comments about frequency of use were made in that context. (*Id.* at pp. 5-6, 9-10.) The opinion did not address whether the bus stop was a dangerous condition because the jury specifically found it was not and that finding was not challenged on appeal. (*Id.* at p. 5.)

Similarly, *Satariano v. Sleight* (1942) 54 Cal.App.2d 278, involved a high school student struck by a car as he attempted to cross a public street to get from the school’s gym to its sports field for physical education class. (*Id.* at p. 279.) The opinion observed the school knew their male students frequently ran across the public street midblock instead of using a nearby crosswalk to get to the sports field, but that discussion was in the context of deciding whether that knowledge imposed a duty on the school to protect the boys as they crossed the street. (*Id.* at pp. 282-283.) *Satariano* did not address whether the street constituted a dangerous condition, let alone whether the frequency of the boys crossing the street midblock made the street dangerous within the statutory definition.

Finally, Nguyen seeks to create a triable issue on whether the Post Elementary gate was always open or whether the school only opened it for a short period

before and after school. Those questions, however, are irrelevant to whether the gate's location constituted a dangerous condition. As discussed above, the frequency of the gate's use is irrelevant in deciding whether its location constitutes a dangerous condition. Rather, the issue is whether the location exposed users to a substantial risk of injury when they used it and adjacent property with due care. For the reasons discussed above, we conclude no reasonable person could find the gate's location created a substantial risk of injury when using the gate and the adjacent property with due care. Consequently, we affirm the trial court's decision granting the District summary judgment. (See § 830.2; *Biscotti, supra*, 158 Cal.App.4th at p. 559 [summary judgment appropriate on dangerous condition of public property claim when no reasonable person could conclude the property was dangerous].)

Our conclusion the location of Post Elementary's pedestrian gate was not a dangerous condition of public property defeats Nguyen's claims against the District as a matter of law. Accordingly, we do not address the parties' other arguments regarding those claims, including whether the gate's location caused Nguyen's injuries and whether the District was statutorily immune from liability under Education Code section 44808.

D. *The Trial Court Properly Granted Garden Grove's and Westminster's Summary Judgment Motions*

Nguyen contends the trial court erred in granting Garden Grove and Westminster summary judgment because triable issues exist on whether Ward was in a dangerous condition when the accident occurred. We disagree because Nguyen fails to properly apply the statutory definition of dangerous condition and the record shows Ward did not satisfy that definition.

As explained above, a claim based on a dangerous condition of public property requires the plaintiff to identify a specific physical deficiency in the property that makes it dangerous. (*Mixon, supra*, 207 Cal.App.4th at p. 131; *Cerna, supra*, 161 Cal.App.4th at p. 1347; see also *Salas, supra*, 198 Cal.App.4th at pp. 1069-1070.)

That deficiency must create a substantial risk of injury when the property is carefully used in a reasonably foreseeable manner. (§ 830, subd. (a).)

Here, Garden Grove and Westminster presented evidence showing there was no physical deficiency in Ward that rendered it dangerous when used with due care. Specifically, they established the accident occurred when Nguyen attempted to cross Ward midblock roughly 200 feet south of its intersection with Parkview shortly after sunset. At that location, Ward runs north-south with one lane in each direction and a middle turn lane. There is a bike lane and sidewalk in each direction and cars may park parallel to the curb on both sides of the street. Ward is flat and straight at this point with no visual obstructions, such as a blind curve or a change in elevation. The posted speed limit is 35 miles per hour and other signs warn of a school crossing and instruct drivers to reduce their speed when children are present. There is no crosswalk in the area where Nguyen attempted to cross or at the Ward-Parkview intersection, but there are marked crosswalks at the Ward-Hazard and Ward-Mast intersections.

Garden Grove and Westminster also presented accident data evidence showing no other collisions involving pedestrians had occurred on this stretch of Ward in the nearly 10 years preceding the accident, despite more than 14,000 vehicles using this portion of Ward each day. Although this evidence regarding the lack of other similar accidents is not dispositive of the question whether Ward was in a dangerous condition, it is a relevant consideration. (*Salas, supra*, 198 Cal.App.4th at p. 1071.)

In *Salas*, the Court of Appeal found comparable evidence satisfied the public entity's initial burden on summary judgment to show that the public property was not in a dangerous condition and we reach the same conclusion here. (*Salas, supra*, 198 Cal.App.4th at pp. 1070-1071 [public entity met initial summary judgment burden by showing the crosswalk where the accident occurred was clearly marked, the highway at that location was level and straight with no sight obstructions, signs warned of the

crosswalk well in advance, and accident data showed no collisions involving pedestrians near the crosswalk in the 10 years preceding the accident].)

Moreover, as explained above in connection with the District's motion, any danger presented to a pedestrian seeking to cross Ward midblock was obvious if he or she exercised due care. (See *Schonfeldt, supra*, 61 Cal.App.4th at pp. 1467-1468; *Mathews, supra*, 2 Cal.App.4th at p. 1385; *Fredette, supra*, 187 Cal.App.3d at pp. 132-133.)

Liability for a dangerous condition of public property is imposed “only when there is a substantial danger which is not apparent to those using the property *in a reasonably foreseeable manner with due care*. [Citations.]’ [Citation.]” (*Biscotti, supra*, 158 Cal.App.4th at p. 558, original italics.)

Nguyen argues Ward was in a dangerous condition when he was struck by Jeffries's van, but he fails to identify a single, specific, physical deficiency in Ward that made it hazardous. (See *Mixon, supra*, 207 Cal.App.4th at p. 131; *Cerna, supra*, 161 Cal.App.4th at p. 1347.) Instead, Nguyen contends a variety of vague factors combined to make Ward dangerous. We are not persuaded. Even when considered in combination, the factors Nguyen lists do not relate to a physical deficiency in Ward or otherwise establishes a dangerous condition within the statutory definition.

First, Nguyen argues the location of Post Elementary's pedestrian gate rendered Ward dangerous. As explained above, however, we conclude the gate's location did not present a dangerous condition. Moreover, the gate's location is not a condition of either Garden Grove's or Westminster's property that could render Ward dangerous under the statutory definition. The location of a public improvement or its relationship to its surroundings may make public property dangerous if those physical characteristics expose users of the property to danger. (*Bonanno, supra*, 30 Cal.4th at pp. 148-149; *Joyce, supra*, 110 Cal.App.4th at pp. 298-300.) The location of Post Elementary's gate, however, is a condition of the District's property, not Garden Grove's or Westminster's property. “A public entity may be liable only for dangerous conditions

of its own property.” (Cal. Law Revision Com. com., 32 pt. 2 West’s Ann. Gov. Code (2012 ed.) foll. § 830, p. 7; *Bonanno, supra*, 30 Cal.4th at pp. 147-148.) Under Nguyen’s theory, the public entities that owned the roads adjacent to the bus stop in *Bonanno* and the school in *Joyce* would be liable for the transit district’s and school’s decisions regarding where to put the bus stop and pedestrian gate. *Bonanno* and *Joyce* impose no such liability and Nguyen cites no authority holding one public entity liable for a purported dangerous condition on another public entity’s property. Unlike *Bonanno* and *Joyce*, nothing about Ward forced or encouraged pedestrians to use Post Elementary’s gate.

Second, although not clearly articulated, Nguyen appears to argue Ward was in a dangerous condition based on the large volume of pedestrians and vehicles that used it each day and the speed of those vehicles. According to Nguyen, students and parents routinely crossed Ward midblock to get to Post Elementary and those crossings, combined with the high volume and speed of vehicular traffic, created a dangerous condition. But courts have repeatedly rejected the theory that the volume and speed of vehicular traffic combined with heavy pedestrian use creates a dangerous condition. (*Sun, supra*, 166 Cal.App.4th at pp. 1189-1190; *Brenner, supra*, 113 Cal.App.4th at pp. 440-441; *Mittenhuber v. City of Redondo Beach* (1983) 142 Cal.App.3d 1, 7 [“Many of the streets and highways of this state are heavily used by motorists and bicyclists alike[, but] the heavy use of any given paved road alone does not invoke the application of . . . section 835”].) Nguyen must point to some physical deficiency in Ward that combined with the heavy traffic and high rate of speed to create a dangerous condition. (*Sun, at pp.* 1189-1190; *Brenner, at pp.* 440-441.) He failed to do so.

Third, Nguyen contends Ward was dangerous because he used due care in attempting to cross it, but Jeffries nonetheless struck Nguyen with his van. Nguyen concludes he exercised due care because he looked both ways before attempting to cross and it was not illegal for him to cross in this location. This argument misconstrues the

governing legal standard. Ward is not rendered dangerous merely because Nguyen claims he exercised due care and an accident nonetheless occurred. The governing standard is whether some physical condition of Ward rendered it dangerous when a reasonably foreseeable user exercising due care sought to cross Ward. (*Mixon, supra*, 207 Cal.App.4th at p. 131; *Cerna, supra*, 161 Cal.App.4th at p. 1347; *Mathews, supra*, 2 Cal.App.4th at p. 1384.) The accident alone is not evidence Ward was in a dangerous condition. (§ 830.5, subd. (a).) Nguyen must identify some specific physical deficiency that made Ward dangerous, but he failed to do so.⁵

Fourth, Nguyen contends the history of accidents, “near-miss accidents,” and citizen complaints on Ward establish that Ward was hazardous. Although evidence of actual prior accidents may be used to prove the existence of a dangerous condition (*Mixon, supra*, 207 Cal.App.4th at p. 138; *Salas, supra*, 198 Cal.App.4th at p. 1072), Nguyen cites no authority allowing evidence of “near-miss accidents” or citizen complaints to prove the existence of a dangerous condition, as opposed to proving the public entity had notice of a dangerous condition. When evidence of prior accidents is offered to prove the existence of a dangerous condition, the conditions under which the prior accidents occurred must be the same or substantially similar to the accident at issue and courts narrowly construe what constitutes substantial similarity. (*Ibid.*)

All prior accidents Nguyen identifies involve vehicle collisions. He does not identify a single accident involving a pedestrian and therefore these accidents do not

⁵ We also question Nguyen’s assertion he did not violate the Vehicle Code by attempting to cross as he did. The Vehicle Code apparently allowed Nguyen to cross Ward midblock between Parkview and Mast because those are adjacent intersections that were not controlled by traffic control signal devices or police officers. (Veh. Code, § 21955.) But the Vehicle Code also required Nguyen to yield the right of way to Jeffries’s van because Nguyen was not crossing in a crosswalk. (Veh. Code, § 21954, subd. (a).) Based on the undisputed evidence that Jeffries was driving approximately 20 miles per hour when the accident occurred, no reasonable person could conclude Nguyen yielded the right of way.

establish a dangerous condition on Ward. (*Salas, supra*, 198 Cal.App.4th at p. 1073 [prior accidents that did not involve pedestrians are not substantially similar to an accident involving a car and a pedestrian and therefore do not establish a dangerous condition].) Assuming we could consider the “near-miss accidents” and citizen complaints involving pedestrians, none of them meets the substantial similarity requirement. The complaints regarding the alleged “near-miss accidents” either do not identify precisely when and where the near miss occurred, or show they did not occur in the same location and under the same or similar conditions as Nguyen’s accident midblock on Ward after sunset. Moreover, the specific instances of “near-miss accidents” Nguyen cites predate his accident by 10 years or more and therefore are too remote in time. Generalized citizen or even parent complaints about the speed or volume of traffic do not establish a dangerous condition.

Finally, Nguyen contends that Garden Grove and Westminster admitted Ward was dangerous when they applied for a grant seeking funds to install a signalized, pedestrian-controlled crosswalk on Ward between the location of Nguyen’s accident and the Ward-Mast intersection. Nguyen quotes a number of statements regarding obstructed sight distances, a high rate of speed for vehicles, heavy pedestrian and vehicle traffic volume, the vulnerability and poor judgment of children when crossing streets, and an overall lack of safety. But Nguyen takes these statements out of context and cites no authority to show how they constitute an admission that Ward satisfied the statutory definition of a dangerous condition.

The statements on which Nguyen relies were made in an application Garden Grove submitted (and Westminster supported) to the State of California to obtain available grant money for improving the safety of routes children traveled to school. The application sought funding for projects relating to four separate schools and the statements Nguyen quotes are generic statements relating to all four schools. Nguyen cites no statement in which Garden Grove concedes Ward is in a dangerous condition and

subjects the city or others to liability for dangerous condition of public property. Nor does he cite any statement identifying a specific physical feature of Ward that made it dangerous within the statutory definition of a dangerous condition. Efforts to increase the safety of public property do not prove its current condition constitutes a dangerous condition. (*Fredette, supra*, 187 Cal.App.3d at p. 132.)

Our conclusion Ward was not in a dangerous condition defeats Nguyen's claims against Garden Grove and Westminster as a matter of law. Accordingly, we do not address the parties' other arguments regarding those claims, including whether the gate's location caused Nguyen's injuries, whether the cities were statutorily immune from liability under sections 830.4 and 830.8, whether Nguyen timely filed a proper governmental claim with Westminster, and whether the trial court properly sustained Garden Grove's evidentiary objections.

III

DISPOSITION

The judgments are affirmed. Defendants shall recover their costs on appeal.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.