

When Design Immunity Is Not Enough: Court of Appeal Rules That Public Entity May Still Be Liable for a Failure to Warn In Public Throughfare Lawsuit - Even Where It Has Design Immunity

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In a matter that could have substantial impacts on public entities in California, a California Court of Appeal recently ruled in the case of Tansavatdi v. City of Rancho Palos Verdes (2021) Westlaw 302858 ("Tansavatdi case") that, even if the public entity enjoys design immunity involving a public roadway (or bicycle path) per Government Code section 830.6, that does not necessarily preclude a failure to warn claim.

The Tansavatdi case involved a fatal bicycling accident in Rancho Palos Verdes which occurred in March 2016. The plaintiff, Betty Tansavatdi, asserted that her son, Jonathan Tansavatdi, was riding his bicycle in the City of Rancho Palos Verdes when he collided with a turning truck, suffering fatal injuries. Ms. Tansavatdi then filed a lawsuit against the City, alleging a dangerous condition of public property under Government Code section 835.2. According to the plaintiff, the City had created a dangerous condition by removing a bicycle lane from the area of the accident, and had failed to warn of that dangerous condition, leading to the accident and her son's death. The City asserted it was entitled to design immunity under Government Code § 830.6. Under this provision, a public entity is immune from liability for creating a dangerous condition if it shows that: (1) a plan or design caused the injury; (2) the plan or design had received discretionary approval before construction; and (3) substantial evidence supported the reasonableness of the plan or design. The City relied on plans for a street resurfacing project which it claimed did not include a bicycle lane at the site of the accident. The Trial Court granted the City's motion, concluding that the City had proved entitlement to design immunity as a matter of law. However, the Trial Court did not address the plaintiff's theory that the City was liable for failing to warn of a dangerous condition.

The Court of Appeal held that the Trial Court properly ruled that the City had established its design immunity defense and affirmed that portion of the judgment in favor of the City. However, citing to the California Supreme Court's opinion in Cameron v. State of California (1972) 7 Cal.3d 318, 327, the Court of Appeal ruled that the City, as a public entity, could be held liable for failure to warn of a concealed dangerous condition even if that dangerous condition was covered by design immunity. The Court of Appeal then reversed the judgment in part and remanded to the Trial Court to consider the plaintiff's failure to warn theory.

The Tansavatdi case is important in that it holds that a solid design immunity defense may not shield a public entity from a serious injury claim where a failure to warn theory is also asserted. Since a failure to warn theory is likely to accompany a public thoroughfare injury claim, a failure to warn theory should be addressed in any summary judgment motion.

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