



WEEKLY LAW RESUME™

Issue By: DIRK D. LARSEN

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Dangerous Condition of Public Property—Physical Characteristics of Property Combined with Third-Party Criminal Conduct

Sara Cole, et al. v. Town of Los Gatos, et al.

California Court of Appeal, Sixth Appellate District (April 27, 2012)

In many lawsuits alleging a dangerous condition of public property, the conduct of at least one of the actors in the underlying accident was negligent, reckless or even criminal. In this case, the Court of Appeal reversed summary judgment for the Town of Los Gatos where the plaintiff was struck by an intoxicated motorist in a location the plaintiff alleged to constitute a dangerous condition.

On the afternoon of September 9, 2007, plaintiff Sara Cole was loading a bicycle into the back of her SUV when, in the presence of her three children, she was struck by a vehicle driven by Lucio Rodriguez, who was intoxicated at the time. Cole's SUV was parked diagonally in a gravel strip between eastbound Blossom Hill Road and Blossom Hill Park in the Town of Los Gatos. Just west of the accident site, the two lanes of eastbound Blossom Hill Road merged to become one lane, and there was no median or turning lane separating eastbound and westbound traffic. A witness, Carrie Cummings, was stopped in the single eastbound lane waiting to make a left turn into her driveway, which was located across the road from where Cole was parked. Cummings submitted a declaration stating that she observed a few cars waiting behind her on eastbound Blossom Hill Road. Cole's theory of the case was thus that Rodriguez left the road and entered the gravel area to his right in an attempt to pass the waiting cars.

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The Town moved for summary judgment in the trial court. In opposition, Cole presented evidence—including the testimony of Town officials—showing that visitors to Blossom Hill Park frequently used the gravel strip as a parking area, and that they usually parked diagonally as she did. She also presented evidence showing that eastbound vehicles often used the gravel area to bypass vehicles waiting to make a left turn across westbound Blossom Hill Road. The trial court granted summary judgment in the Town’s favor, finding no evidence that any dangerous condition of the Town’s property was a proximate cause of Cole’s injuries. Cole appealed.

The Court of Appeal reversed. It first addressed the issue of whether a dangerous condition existed under Government Code §§ 835 and 830(a), i.e., whether the property created a substantial risk of injury when “used with due care in a manner in which it is reasonably foreseeable that it will be used.” The court found that the Town did not present any cogent arguments supporting its position that the condition was not dangerous. It rejected the Town’s argument that the condition was not dangerous because the intoxicated Rodriguez was not exercising “due care.” Instead, the court stated, the status of a condition as “dangerous” does not depend on whether individuals were actually exercising due care, but whether the condition posed a risk to persons who were exercising due care. Presumably, the court was referring to the other, sober motorists who used the gravel area as a passing lane.

The Cole court then turned to the question of causation. It first rejected the Town’s contention that Rodriguez’s conduct was not a foreseeable cause due to his intoxication. The court noted that prior cases had found the presence of intoxicated motorists to be foreseeable to the extent that a jury must decide the issue. Moreover, it stated, even if an intoxicated motorist was not foreseeable, the type of injury that occurred was foreseeable given the similar use of the gravel area by sober drivers.

The court also rejected the Town’s argument that, for the element of causation to be satisfied, the allegedly dangerous condition must itself cause the third party’s wrongful conduct. It declined to follow a prior decision setting forth that rule, and instead followed a California Supreme Court decision stating that public liability exists only when a feature of the property

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“increased or intensified” the danger to users from third-party conduct. Under that rule, the court stated, a jury could conclude that the condition of the site caused Cole’s injuries.

The Town further contended that Rodriguez’s intoxication, and not his desire to pass waiting vehicles, was the cause of the accident. The court rejected this contention as well, finding that evidence existed for a jury to infer that Rodriguez was attempting to bypass stalled traffic when he drove into the gravel area.

The court finally addressed the question of whether the Town had notice of the condition and its dangerous character, an essential element of Cole’s claim under Government Code § 835. In addition to the Town’s knowledge of vehicles parked in the gravel area, Cole presented evidence that one resident had complained to the Town in 2004 of motorists bypassing eastbound traffic on Blossom Hill Road, “spinning tires.” The court found that this evidence was sufficient to give the Town notice of a condition that “often induced two groups of users to make disparate uses” of the gravel area, and that the Town “knew or should have known” of the danger posed by these simultaneous uses. In addition, although there were no prior accidents similar to Cole’s, the court noted that her husband had once witnessed an accident in which a vehicle parked in the gravel area backed out into traffic and struck an eastbound motorist, and Town police had arrived at the scene. However, the court found that point to be unnecessary to its decision.

COMMENT

The Cole decision is likely to have far-reaching and troubling implications for public entities, especially those owning or controlling roadways. One is that any time an entity knows of multiple “disparate” groups using a site simultaneously, it may be charged with notice of a dangerous condition. Another is the court’s nearly complete disregard of Rodriguez’s intoxicated state: while the Town may have known of the simultaneous, disparate users of the gravel area, it was not until one of those users was intoxicated that an accident occurred.

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For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/H035444.PDF](http://www.courtinfo.ca.gov/opinions/documents/H035444.pdf)

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