



Weekly Law Resume

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Edited by David Blinn and Mark Hazelwood



WEEKLY LAW RESUME™

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Dangerous Condition of Public Property Requires that Physical Condition of the Property Contribute to the Injury

Jose Salas, et al. v. California Department of Transportation

Court of Appeal, Third District (August 29, 2011)

This case examines what a plaintiff must prove when alleging that an intersection or roadway constitutes a dangerous condition.

At approximately 7:00 a.m. on October 21, 2006, pedestrian Paula Salas was hit by a car while crossing State Route 12 at an intersection. At the moment she was hit, Salas was slightly outside the crosswalk. She later died from her injuries.

Salas' family and Estate subsequently filed a wrongful-death and survivor action against the California Department of Transportation (Caltrans), alleging "dangerous condition of public property" pursuant to Government Code Section 835. Plaintiffs premised their dangerous condition argument on improper signage, improper crosswalk placement, lack of traffic signals or safety devices, and lack of traffic enforcement. Caltrans moved for summary judgment on the basis that: (1) no physical aspect of the crosswalk caused the incident; and (2) there were no prior pedestrian/vehicle incidents at the crosswalk. Each side submitted declarations and the trial court sustained most of Caltrans' objections to one of the declarations supporting Plaintiffs' opposition. Ultimately, the trial court granted the motion filed by Caltrans, finding the intersection did not constitute a dangerous condition. Plaintiffs appealed. The Third District affirmed.

On appeal, the Third District addressed two questions: (1) whether Caltrans met its prima facie burden to demonstrate no dangerous condition existed; and (2) whether Plaintiffs created a triable issue of material fact. In deciding the latter issue, the Court examined the trial court's exclusion of Plaintiffs' evidence. Referring to and relying upon *Cerna v. City of Oakland* (2008) 161 Cal. App. 4th 1340 (Weekly Law Resume APRIL 24, 2008), the *Salas* Court reaffirmed that third

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party conduct (like that of a motorist) is not, in and of itself, a dangerous condition. To qualify as a "dangerous condition" as defined by Government Code Section 830, such third party conduct must relate to a physical condition of the property and this physical condition must have some causal relationship to the third-party conduct that injured plaintiff. Because Caltrans demonstrated the intersection: (1) was located on a straight and level road with no obstructions for either motorist or pedestrians; and that (2) the road contained appropriate markings and signage, the Court found that Caltrans established that the intersection was a non-dangerous physical condition. Coupled with the fact that Caltrans showed no pedestrian-related accidents at the intersection in the past 10 years, the Court held Caltrans met its prima facie burden to show the intersection was not a Section 830 "dangerous condition." In finding the intersection contained sufficient markings, the Court noted the white parallel lines marking the crosswalk, the three signs notifying cars of the approaching intersection and crosswalk, and the marking on the roadway itself, in large letters.

Turning to the next question--whether or not Plaintiffs created a triable issue of material fact--the Court upheld the trial court's exclusion of Plaintiff's evidence and, after reviewing the remaining evidence, found they did not create any triable issue material fact. Accordingly, the Court affirmed the summary judgment.

COMMENT

Salas affirms a bedrock principle of California public entity law: that public property constitutes a dangerous condition when it creates a substantial 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. Because the *Salas* plaintiffs failed to make that showing, the crosswalk and intersection here did not constitute a dangerous condition of public property.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/C063434.PDF](http://www.courtinfo.ca.gov/opinions/documents/C063434.pdf)

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