

SUPREME COURT OF CALIFORNIA

Metcalf v. County of San Joaquin

42 Cal. 4th 1121, 176 P.3d 382, 72 Cal. Rptr. 3d 382 (Cal. 2008) · No. S144831 · Decided February 21, 2008

SUMMARY

The California Supreme Court held that liability under Government Code section 835 for injuries caused by a dangerous condition of public property requires proof that a public entity's employee negligently or wrongfully created the condition, or that the entity had actual or constructive notice of it for sufficient time to act. The court affirmed judgment for San Joaquin County because the jury found the intersection dangerous but found neither negligent creation nor adequate notice.

CASE DETAILS

COURT	Supreme Court of California
WRITING FOR THE COURT	Chin, J.; George, C.J.; Kennard, J.; Baxter, J.; Moreno, J.; Corrigan, J.; Werdegar, J.
JURISDICTION	California
DECIDED	February 21, 2008
DOCKET	S144831
DISPOSITION	affirmed
PROCEDURAL POSTURE	After a jury found that the County's intersection was in a dangerous condition but found neither negligent creation of the condition nor timely actual or constructive notice, the trial court entered judgment for the County. The Court of Appeal affirmed, and the Supreme Court of California granted review to interpret Government Code section 835.
STANDARD OF REVIEW	De novo review of the legal interpretation of the Government Claims Act; the court accepted the Court of Appeal's fact-specific conclusion that the evidence supported the jury's findings because that issue did not warrant review.
PRECEDENTIAL VALUE	Published California Supreme Court opinion; precedential statewide authority.
PARTIES	Thomas Metcalf, a minor v. County of San Joaquin

TOPICS

municipal liability

premises liability

negligence

statutory interpretation

standard of care

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Government Code section 835 requires a plaintiff claiming injury from a dangerous condition of public property to prove either that a negligent or wrongful act or omission of a public-entity employee created the condition or that the public entity had sufficient actual or constructive notice of it.
2. Whether merely creating or deliberately creating a dangerous condition establishes public-entity liability under section 835, subdivision (a), without a separate finding of negligence or wrongful conduct.
3. Whether Government Code section 835.4 provides an affirmative defense after the plaintiff establishes liability under section 835.

HOLDINGS

1. Under Government Code section 835, a plaintiff must establish either that a negligent or wrongful act or omission of a public-entity employee acting within the scope of employment created the dangerous condition or that the public entity had actual or constructive notice of the condition for a sufficient time to have taken protective measures.
2. A public entity's creation, including deliberate creation, of a dangerous condition does not automatically establish liability under section 835, subdivision (a); the plaintiff must still establish that the creation resulted from negligent or wrongful conduct, although creation of the condition may itself constitute evidence supporting a finding of negligence.
3. Negligence under section 835, subdivision (a), is established under ordinary tort principles concerning the reasonableness of the public entity's conduct in light of the foreseeable risk of harm.
4. Government Code section 835.4 creates an affirmative defense available to a public entity after the plaintiff otherwise establishes liability under section 835; the public entity bears the burden of establishing that its conduct or inaction was reasonable in light of practicability, cost, time, opportunity, and the probability and gravity of harm.
5. A civil litigant who requested the challenged jury instructions and failed to request additional or qualifying instructions forfeits the right to argue on appeal that the instructions were incomplete or should have been different.

KEY QUOTATIONS

“The plaintiff bears the burden of establishing either that the public entity negligently or wrongly created the dangerous condition or that the entity had notice of the dangerous condition for a long enough time to protect against the danger.” (42 Cal. 4th at 1126)

“But the operative question the jury must answer under section 835, subdivision (a), is not whether the public entity created the dangerous condition, or even whether it did so deliberately, but whether it did so

negligently.” (42 Cal. 4th at 1136)

“In sum, we conclude that negligence under section 835, subdivision (a), is established under ordinary tort principles concerning the reasonableness of a defendant’s conduct in light of the foreseeable risk of harm.”
(42 Cal. 4th at 1139)

FACTUAL BACKGROUND

On October 6, 2001, Thomas Metcalf was seriously injured when the Toyota Corolla he was driving collided with a truck while he attempted to turn from Sperry Road onto McKinley Avenue at a County-controlled T-intersection. Railroad tracks, stop signs, pavement markings, and directional signage were located near the intersection. The jury found that the intersection was in a dangerous condition and created a foreseeable risk of the accident, but found that no negligent or wrongful County employee conduct created the condition and that the County lacked sufficient notice to take protective measures.

PROCEDURAL HISTORY

Metcalf sued San Joaquin County under the Government Claims Act for injuries suffered in an automobile collision at a County-controlled intersection. The jury found a dangerous condition and foreseeable risk but rejected both statutory bases for public-entity liability: negligent or wrongful creation and sufficient notice. The trial court entered judgment for the County, the Court of Appeal affirmed, and the California Supreme Court affirmed the Court of Appeal.

DISPOSITION

affirmed

CASES CITED

- *People v. Weiss*, 20 Cal. 4th 1073, 1076-1077, 86 Cal. Rptr. 2d 337, 978 P.2d 1257 (1999)
- *Williams v. Horvath*, 16 Cal. 3d 834, 838, 129 Cal. Rptr. 453, 548 P.2d 1125 (1976)
- *Brown v. Poway Unified School Dist.*, 4 Cal. 4th 820, 824, 829, 833-835, 15 Cal. Rptr. 2d 679, 843 P.2d 624 (1993)
- *Agarwal v. Johnson*, 25 Cal. 3d 932, 950-951, 160 Cal. Rptr. 141, 603 P.2d 58 (1979)
- *Finn v. G.D. Searle & Co.*, 35 Cal. 3d 691, 701-702, 200 Cal. Rptr. 870, 677 P.2d 1147 (1984)
- *Conservatorship of Gregory*, 80 Cal. App. 4th 514, 520-521, 95 Cal. Rptr. 2d 336 (2000)
- *Coalition of Concerned Communities, Inc. v. City of Los Angeles*, 34 Cal. 4th 733, 737, 21 Cal. Rptr. 3d 676, 101 P.3d 563 (2004)
- *Bonanno v. Central Contra Costa Transit Authority*, 30 Cal. 4th 139, 148, 155-156, 132 Cal. Rptr. 2d 341, 65 P.3d 807 (2003)
- *Ducey v. Argo Sales Co.*, 25 Cal. 3d 707, 713-714, 716-717, 720, 159 Cal. Rptr. 835, 602 P.2d 755 (1979)
- *Hill v. People ex rel. Department of Transportation*, 91 Cal. App. 3d 426, 430-431 & n.4, 154 Cal. Rptr. 142 (1979)
- *Pritchard v. Sully-Miller Contracting Co.*, 178 Cal. App. 2d 246, 249, 254, 256, 2 Cal. Rptr. 830 (1960)

- *Lugtu v. California Highway Patrol*, 26 Cal. 4th 703, 716, 110 Cal. Rptr. 2d 528, 28 P.3d 249 (2001)
- *Zelig v. County of Los Angeles*, 27 Cal. 4th 1112, 1128, 119 Cal. Rptr. 2d 709, 45 P.3d 1171 (2002)
- *Alcaraz v. Vece*, 14 Cal. 4th 1149, 1156, 60 Cal. Rptr. 2d 448, 929 P.2d 1239 (1997)
- *Richardson v. Kier*, 34 Cal. 63, 75 (1867)
- *Hibbs v. Los Angeles County Flood Control Dist.*, 252 Cal. App. 2d 166, 172, 60 Cal. Rptr. 364 (1967)
- *City of Stockton v. Superior Court*, 42 Cal. 4th 730, 741-742 & nn.6-7, 68 Cal. Rptr. 3d 295, 171 P.3d 20 (2007)