

Defendant County could not assert design immunity when it failed to show its drainage system was approved by anyone with discretionary authority.

FACTS AND PROCEDURAL POSTURE

Plaintiffs Humberto Martinez and his wife Liliana Ramirez sued the County of Ventura for paraplegic injuries Humberto sustained when his motorcycle struck an asphalt berm abutting a raised drain on the shoulder of a County-owned road. They claimed the drain and berm constituted a dangerous condition of public property. The County asserted a defense of design immunity pursuant to *Government Code* § 830.6. At trial, the County did not offer evidence of any engineering design plans for the drain system. The County's road maintenance engineer (who was not a licensed engineer) testified that he was in charge of approving the 1990 modification of the drain and that he "probably" approved the design. He also testified that the drain system was not designed by a licensed engineer. The County's other witnesses testified that they were not aware of any scientific or engineering analysis performed on the drain, and that the installation of the drain was a maintenance project for which formal plans were not prepared. The jury found that the drain system was a dangerous condition of public property that caused plaintiff's injuries. However it returned a verdict for the County based on design immunity. Plaintiffs appealed and the court of appeal reversed, finding as a matter of law there was no design immunity, and remanded for retrial. The jury's finding of a dangerous condition of public property was binding on retrial.

DISCUSSION

In determining whether design immunity applied, the court of appeal focused on the "discretionary approval" element of the defense. This element requires a public entity to show that the design was approved, prior to construction, by the legislative body of the entity or by some other body or employee exercising discretionary authority to give such approval, or where such plan or design is prepared in conformity with standards previously so approved. This requirement applies regardless of whether the drain system was a maintenance project for which formal plans are not customarily prepared.

While the County presented numerous witnesses that described the drain system and identified it as a standard system used in the county, there was no evidence of a design or plan. Although there is no requirement that the design be expressed in any particular form, the plan must be sufficiently explicit to assure that it is understandable to the employee. The County could not even meet that low standard when they failed to introduce any evidence of design or plan at all that could be approved. Even if there was sufficient evidence of a design, there was no evidence that it was approved prior to construction by someone exercising discretionary authority to give such approval on behalf of the County. In public entity affairs, the locus of discretionary authority is fixed by law. The County acknowledged that the Streets and Highways Code is the legal source of the County's discretionary authority to approve the drain system. Accordingly, the County Road Commissioner was the public agent who had discretionary authority to approve the drain. However the road commissioner did not testify at trial, nor was there evidence that he had approved the drain prior to its construction. Furthermore, there was no evidence of the County's internal distribution of powers to demonstrate that the road commissioner was empowered to delegate the discretionary authority to some other person or that he in fact did so. Lastly, there was

also no evidence that County's road maintenance engineer witness was delegated any discretionary authority to approve the design of the drain.

Finally, the court rejected the County's theory of implied discretionary approval. In the absence of design immunity, a public entity is liable for reasonably foreseeable injuries proximately caused by a dangerous condition of its property. The court reasoned that if it recognized implied discretionary approval, it would vitiate the requirement entirely and provide public entities with a blanket release from liability. Therefore without any evidence that discretionary approval was given prior to construction of the drain system, the County's defense of design immunity failed.