

FACTS AND PROCEDURAL POSTURE

On February 10, 2011, University of California, Santa Cruz student Adrian Burgueno was fatally injured in a bicycle accident on the Great Meadow Bikeway, a paved bike trail that runs through the UCSC campus. He was commuting to his evening photography class when he was killed in an accident on a downhill portion of the trail.

Plaintiffs brought suit against the Regents alleging dangerous condition of public property and wrongful death. In essence, the plaintiffs alleged the Regents knew the bike trail was for commuting to campus, not used primarily for scenic or recreational purposes, and the trail was unsafe due to its downhill curve, sight limitations, and lack of signage and roadway markings. The Regents moved for summary judgment under Government Code section 831.4 on the grounds they had absolute immunity for injuries resulting from the use and condition of the bikeway. The trial court granted summary judgment for the Regents, and an appeal followed.

DISCUSSION

Under the Government Claims Act (Gov. Code, §§ 810 et seq.), a public entity is not liable except as otherwise provided by statute. (Gov. Code, § 815.) Without a statutory basis for it, there is no government tort liability. (*State ex rel. Dept. of California Highway Patrol v. Superior Court* (2015) 60 Cal.4th 1002, 1009.)

Government Code section 831.4 precludes governmental liability for injuries caused by the condition of any trail which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas. (*Montenegro v. City of Bradbury* (2013) 215 Cal.App.4th 924, 929.) This section is sometimes called trail immunity. (*Prokop v. City of Los Angeles* (2007) 150 Cal.App.4th 1332, 1342.)

Plaintiffs argued that the bikeway's primary use was bicycle commuting, that the bikeway produced revenue, and that the Regents take responsibility for the bikeway's safety and would keep the bikeway open without statutory immunity. Further, plaintiffs dismissed the recreational uses of the bikeway as secondary in nature. Conversely, the Regents argued that the bikeway is plainly within the scope of trail immunity, and that trail immunity must be upheld to continue to serve the public policy of encouraging public entities to keep property open for public recreational use without tort exposure.

The Court found the holdings of *Hartt v. County of Los Angeles* (2011) 197 Cal.App.4th 1391 and *Montenegro, supra*, 215 Cal.App.4th 924, both of which upheld trail immunity for dual use trails, compelling and applicable here. Neither case found a dual use exception to recreational trail immunity in the plain language of the statute. Thus, trail immunity was upheld in both cases.

Here, it was undisputed the Great Meadow Bikeway was primarily used as a route for bicycle commuters. It was also undisputed the Great Meadow Bikeway served a recreational purpose. Given this lack of dispute over the dual use character of the bike path, trail immunity applied and provided absolute immunity to the Regents. Summary judgment was affirmed.