

***Nealy v. County of Orange*, 54 Cal.App.5th 594**

Even if plaintiff was able to allege that the fence that caused his injuries was a known, dangerous condition, the trail immunity provision of the Government Claims Act barred suit because the fence was a condition inherent to the trail.

**FACTS/PROCEDURE**

Plaintiff, an experienced biker, was cycling along a familiar hiking trail owned and operated by the County of Orange. Previously, a wooden lodgepole fence ran perpendicular to the trail and prevented bikers from cutting directly into different areas of the trail. Instead, bikers, including plaintiff, had to wait for an opening along the fence to cross. On the day in question, plaintiff noticed the wooden cross beams on the fence had been removed, but he failed to realize they had been replaced with gray wire cables. Believing that the way was unimpeded, plaintiff biked directly into the fence with the intention of cutting into the southern portion of the trail. Plaintiff was subsequently thrown over the handlebars of his bicycle and sustained serious injuries. Plaintiff brought suit against the County for premises liability and a dangerous condition of public property. The County successfully demurred, asserting that plaintiff's claims were barred under section 831.4 of the Government Claims Act, and successfully demurred plaintiff's first amended complaint on the same grounds as well. With the second demurrer, the court dismissed the action with prejudice, and plaintiff appealed.

**HOLDING/DISCUSSION**

The Court of Appeals for the Fourth District affirmed. Under the Government Claims Act, public entities are not liable in common law tort actions unless a statute provides otherwise. One such exception to this general bar is that public entities are "liable for injuries resulting from substantial, known dangerous conditions of its property." Here, Plaintiff argued the County was liable for his injuries because the new wire fence was a known dangerous condition. Thus, the pertinent question for review was whether the fence constituted a dangerous condition. The court rejected plaintiff's argument, holding that the issue on appeal was whether a different statutory provision under the act, namely the trail immunity provision, could still establish the County's immunity. Section 831.4(a) and (b) establishes broad immunity for injuries caused by a condition of unpaved roads or trails that provide access to or are used for recreational purposes. Here, plaintiff was using a public trail for recreational purposes and was injured while engaged in that activity, so plaintiff's conduct fell plainly under section 831.4. As such, the court found it was immaterial whether the fence was a known dangerous activity. Rather, the court needed to determine whether the fence constituted a "condition" of the trail. Previous courts have held that even temporary conditions of a trail are protected if the danger of the condition is "inherently connected to and exists only because of its connection with the trail."<sup>1</sup> Here, the fence was a permanent fixture of the trail and did not exist for any other purpose. Therefore, the court found the wire fence was a condition of the trail under the trail immunity provision and affirmed the lower court's judgment.

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<sup>1</sup> *Reed v. City of Los Angeles* (2020) 45 Cal.App.5th 979, 984 (finding a badminton net that was accidentally left stretched across a path was a condition of the trail under the trail immunity provision).