

***Williams v. County of Sonoma* (2020) 55 Cal.App.5th 125**

The primary assumption of risk (“PAR”) doctrine does not bar a plaintiff’s recovery if the imposition of a duty to the plaintiff is similar to a defendant’s existing duty and the extension of that duty would not materially alter the fundamental nature of the activity.

FACTS/PROCEDURE

On July 10, 2016, Plaintiff Catherine Williams and a friend went on a 30-mile bicycle ride to train for an upcoming long-distance bicycle ride. During the ride, plaintiff and her friend began descending down a hill on a road maintained by the County of Sonoma. Plaintiff was traveling at approximately 25 miles per hour when she encountered a pothole measuring four feet long, three feet four inches wide, and four inches deep. By the time plaintiff saw the pothole, she was unable to avoid it and struck the pothole on her bicycle, sustaining serious injuries as a result. Over six weeks prior, someone had reported the pothole to Sonoma County. Plaintiff sued the County for a dangerous condition of public property. The jury found for plaintiff, allocating 70% of the fault to the County and the remaining 30% to plaintiff. Plaintiff ultimately recovered more than \$1.3 million in damages. The County appealed the judgment for plaintiff, alleging that plaintiff’s claim was barred by the primary assumption of risk doctrine.

HOLDING/DISCUSSION

The Court of Appeal for the Sixth District affirmed. The primary assumption of risk doctrine, in the context of sports or recreational activities, precludes liability for injuries resulting from risks inherent to the sport. As a matter of law and policy, a defendant does not owe a duty to plaintiffs to protect against these inherent risks but does owe a “duty not to unreasonably increase the risks of injury beyond those inherent in the activity.” Notably, the PAR doctrine does not impose a duty based on the reasonableness of the conduct but rather based on broader policy considerations. ““The overriding consideration...is to avoid imposing a duty which might chill vigorous participation in the implicated activity and thereby alter its fundamental nature.”” (quoting *Childs v. County of Santa Barbara* (2004) 115 Cal.App.4th 64, 70.)

To illustrate this point, the court considered the holding in *Childs v. County of Santa Barbara* (2004) 115 Cal.App.4th 64. In *Childs*, a child was injured while riding a scooter on a public sidewalk after the child fell on a portion of the sidewalk that was raised more than three inches above the adjoining sections. To determine whether the PAR doctrine barred the child’s recovery, the court asked whether the county already owed a duty to pedestrians and whether the imposition of the same duty to other users would chill vigorous participation by forcing the county to take steps that would materially alter the fundamental nature of the activity. In *Childs*, the court found the county already had a duty to maintain level sidewalks for pedestrians, and the method and cost of maintaining level sidewalks for scooter users was not materially different to this existing duty. Therefore, as a matter of policy, the PAR doctrine did not apply. The court applied the same reasoning in the present case. Here, the county already had a duty to maintain safe roads for drivers, motorcyclists, and bicyclists who are using the road as a means of transportation, and the imposition of a similar duty for recreational bicyclists would not require the county to take steps that might materially increase the county’s existing burdens. Therefore, “because the County already owed a duty to other foreseeable users of the road to repair the pothole, the policy reasons underlying the primary assumption of risk doctrine support the conclusion that the County owed a duty not to increase the inherent risks of long-distance, recreational cycling” as well.