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Roots and routes: Untangling tree-fall cases from trail immunity

Public entities often invoke trail immunity in tree-fall cases, but *Toeppe v. City of San Diego* draws a clear line–if the hazardous tree exists independent of the trail, § 831.4 does not apply.

By Robert Glassman and Joe O'Hanlon

Picture this: your client was walking along a pathway in a public park when a branch from a public tree fell and injured her. The case is progressing smoothly–you have gathered strong evidence in support of your client's dangerous condition claim. But then, the inevitable motion for summary judgment comes. In addition to the typical "lack of notice" defense, what other argument does the public entity raise? A little-known statute named Government Code § 831.4.

Commonly referred to as the "trail immunity" statute, § 831.4 immunizes public entities from liability for injuries caused by the condition of publicly-owned recreational trails. The statute advances the legislature's desire to protect public entities from litigation over the condition of public recreational pathways, preserving the incentive to operate such pathways in the first place.

In tree-fall cases involving plaintiffs injured on public trails, public entities often invoke trail immunity at summary judgment, arguing that the injury was caused by a condition of the recreational trail because the trail's proximity to the tree was an "integral feature" of the trail. However, case law elucidates a clear limit on public entities' license to claim trail immunity in such scenarios.

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Amberger-Warren v. City of Piedmont suggests an expansive application of trail immunity

In *Amberger-Warren*, the plaintiff was on a dog park pathway next to a steep hill when she fell and injured her hand while reaching out for an exposed cement edge to avoid tumbling down the hill. *Amberger-Warren v. City of Piedmont*, (2006) 143 Cal. App.4th, 1074. Defendants moved for summary judgment under trail immunity. *Id.*

In her opposition, the plaintiff argued that the hill next to the trail constituted a dangerous condition, not the trail itself, and as such, trail immunity did not apply. *Id.* at 1085. The Court rejected the plaintiff's argument, declaring that "location, no less than design, is an integral feature of a trail..." *Id.*

The *Amberger-Warren* court separately emphasized language from *Farnham v. City of Los Angeles*:

"Rocks, tree branches and other debris often find their way onto a trail.... In today's litigious society, it does not take a very large crystal ball to foresee the plethora of litigation cities or counties might face over bicycle paths.... The actual cost of such litigation, or even the specter of it, might well cause cities or counties to reconsider allowing the operation of a bicycle path...." *Farnham v. City of Los Angeles*, (1998) 68 Cal.App.4th, 1103.

Amberger-Warren thus appears to articulate a broad view of § 831.4's application. Public entities cite it to argue that a trail's location next to the tree at issue is an integral feature of the trail, shutting off liability for injuries caused by the tree's dangerous condition.

Toeppe v. City of San Diego limits trail immunity's ambit

However, *Toeppe v. City of San Diego* substantially limits the *Amberger-Warren*'s application to tree-fall cases. In *Toeppe*, the plaintiff visited a city-owned park and was struck by a falling branch from a eucalyptus tree while standing on a trail. *Toeppe v. City of San Diego* (2017) 13 Cal.App. 5th, 921. She brought a dangerous condition claim against the City, arguing that it negligently maintained the tree. *Id* at 923.

In its motion for summary judgment, the City claimed that trail immunity insulated it from liability because the plaintiff was struck by the branch while she was on a trail. *Id.*

After the trial court granted summary judgment, the court of appeals reversed the decision. *Id.* The Court reasoned that the dangerous condition alleged was not related to the trail's condition. *Id.* Rather, the plaintiff's claim asserted that the eucalyptus tree itself constituted a dangerous condition. *Id* at 931. The Court further reasoned that the tree constituted a dangerous condition regardless of the location of the trail because park visitors could access the eucalyptus tree through means besides traveling along the trail. *Id* at 928-30. Visitors could, for example, walk along the park's grass to access the tree or find a picnic table away from the trail, but under the tree. *Id* at 928. The Court held that because the trail did not

Photos or video can clearly show that your client didn't need the trail to reach the hazard

provide the only access to the dangerous condition, the dangerous condition was independent of the trail that the plaintiff was standing on when a tree branch struck her. *Id* at 928. The Court summarized its rationale succinctly: "[i]n short, this is not a case about trails. It is about trees." *Id* at 931.

Therefore, while defendant public entities consistently vie for an expanded scope of § 831.4, the *Toeppe* case sets a clear limitation on trail immunity's ambit in tree-fall cases. If a plaintiff could have accessed the tree without using the trail, trail immunity does not apply.

Practice tips

If a falling tree or branch injures your client while on a public trail, explicitly and unambiguously plead that the tree itself constituted the dangerous condition to emphasize that the hazard existed independently of the trail that your client happened to be on.

In opposition briefing, use photo graphs or video to show that your client could have accessed the tree without using the trail. For sample pleadings or briefing, contact Robert Glassman (rglassman@panish.law) or Joe O'Hanlon (johanlon@panish.law).

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