

“DANGEROUS CONDITION” SECURITY LIABILITY FOR PARK SHOOTING?

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In the case of *Summerfield v. City of Inglewood*, 2023 Cal. App. LEXIS 830 (Cal.App. 2nd 10/25/2023), Plaintiffs Dwight and Patricia Summerfield, the parents of Andrew Summerfield, filed a wrongful death action against the Defendant City of Inglewood alleging the City’s negligence had caused the death of their son. In so doing, Plaintiffs claimed the City had negligently “created a ‘dangerous condition’ in a public park by failing to install security cameras in an area with ongoing criminal activity, which caused an unknown third party to fatally shoot their son.”

FACTS OF THE CASE

On January 5, 2021, decedent Andrew Summerfield drove to Darby Park in the City of Inglewood to play basketball. Decedent was shot and killed while he was in his vehicle in the Darby Park parking lot. Darby Park and its facilities are “owned, maintained, supervised, and controlled by the City.” Darby Park was supposed to be closed to the public due to Covid-19.

Plaintiffs were informed and believed a Parks and Recreation employee of the City opened the Darby Park gym to the public in violation of the City's Covid-19 protocol, which was a substantial factor in drawing people to Darby Park including decedent and the perpetrator.

Plaintiffs alleged “there were no policies, procedures and/or guidelines in place in order for the City of Inglewood Parks and Recreation employees to comply with COVID-19 protocol,” specifically the City “failed to ensure controlling and/or security measures for the Darby Park gym to be closed to the public.”

Plaintiffs claimed such security measures “would have precluded Parks and Recreation employees from opening the Darby Park gym to the public” by “limiting employees' access to means or facilities necessary to open the Darby Park gym” and/or “specific instructions to refrain from opening the Darby Park gym.” In addition, Plaintiffs contended “a lack of adequate precautions such as control measures and/or security” constituted a “dangerous condition” that the City “failed to remedy or prevent, despite actual or constructive knowledge of the condition.”

Plaintiffs further asserted “there have been multiple shootings at Darby Park prior to January 5, 2021.” According to Plaintiffs, a 7-year-old boy was shot and killed on December 8, 1997 in Darby Park” as a result of apparent “gang retaliation.” In addition, a 22-year-old man was fatally shot in his car in the parking lot of Darby Park on October 15, 2012.

On the day of the shooting on January 5, 2021, Plaintiffs contended “there were no cameras in the Darby Park parking lot, and a lack of adequate precautions, including but not limited to, attendants, control measures, and/or security.” Given “multiple shootings at Darby Park prior to January 5, 2021,” Plaintiffs claimed the lack of cameras in Darby Park presented “attractive

opportunities to the criminal element of society” which rendered “the Darby Park parking lot attractive to criminal activities and inherently dangerous.” As a result, Plaintiffs maintained the adjacent parking lot in Darby Park constituted a “dangerous condition” because “the City failed to remedy or prevent, “despite actual or constructive knowledge of the condition.”

Accordingly, Plaintiffs argued the City had “breached its duty of care to decedent” by “failing to provide security cameras in the area, failing to provide adequate precautions, and failing to provide adequate warning about the dangerous condition.” In so doing, Plaintiffs asserted the legal “proximate cause” of decedent Andrew being shot was a direct result of a dangerous condition created by “the City's negligence and unsafe condition of the premises.”

In response, the City filed a “demurrer” (i.e., a motion to dismiss) arguing Plaintiffs’ “complaint failed to state causes of action for dangerous condition of public property and for negligence” under state law.

TRIAL COURT

The issue before the trial court was whether the City could be held liable under state law for failing to provide “adequate precautions,” such as “control measures and/or security” in this particular instance.

As noted by the trial court: “Public entities generally are not liable for failing to protect against third party crime.” Accordingly, the trial court held the City “is immune from liability arising from its failure to provide security or supervision at Darby Park parking lot.”

In addition, the trial court found “the City's alleged failure to warn of criminal activity in the Darby Park parking lot could not form a basis for liability.” The trial court further found Plaintiffs’ complaint failed to allege “why the lack of cameras in this instance created a substantial risk of decedent's shooting such that it constituted a dangerous condition” under state liability law (Government Code section 835).

The trial court also ruled the complaint did not “set forth allegations that show that the lack of surveillance cameras created a substantial risk of decedent's shooting.” In so doing, the trial court found the allegations in Plaintiffs’ complaint did not demonstrate “the absence of surveillance cameras within Darby Park created a substantial risk of injury to decedent, thereby rendering Darby Park a dangerous condition.”

Having found no legal basis for any liability, the trial court entered a judgment for the City dismissing the lawsuit. Plaintiffs appealed.

ON APPEAL

In reviewing the trial court’s judgment of dismissal after a demurrer is sustained, the appeals court would examine the trial court’s ruling to determine whether the complaint “alleges facts sufficient to state a cause of action under any legal theory.”

On appeal, Plaintiffs claimed the complaint had indeed alleged sufficient facts to state a cause of action for “dangerous condition” liability under Government Code section 835. Accordingly, Plaintiffs argued their lawsuit “should be allowed to go forward and present evidence” of a “dangerous condition” under state law. According to Plaintiffs, further proceedings in a full trial would demonstrate “the City's failure to install cameras or to post warnings, given the City's alleged actual or implied notice of ongoing violent criminal activity, constituted a dangerous condition.”

SECTION 835 GOVERNMENTAL LIABILITY

As cited by the appeals court, Section 835 in the Government Code provided a public entity is “liable for injury caused by a dangerous condition of its property” under the following circumstances:

the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:

(a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or (b) The public entity had actual or constructive notice of the dangerous condition ... a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

As described by the appeals court, Section 835 defined a “dangerous condition” as “a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used”:

A dangerous condition exists when public property is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself, or possesses physical characteristics in its design, location, features or relationship to its surroundings that endanger users.

On the other hand, the appeals court acknowledged the state legislature had specified under Section 835 “a condition is not dangerous” if the plaintiff’s evidence demonstrated the following:

the risk created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property was used with due care in a manner in which it was reasonably foreseeable that it would be used.

In addition, the appeals court noted “a claim alleging a dangerous condition may not rely on generalized allegations but must specify in what manner the condition constituted a dangerous condition.”

SECTION 835 THIRD PARTY LIABILITY

In this particular instance, the decedent was shot and killed by a third party, an unknown assailant. As described by the appeals court, third party liability under Section 835 would exist for a governmental entity under the following circumstances:

a public entity may be liable for a dangerous condition of public property even where the immediate cause of plaintiff's injury is a third party's negligent or illegal act if some physical characteristic of the property exposes its users to increased danger from third party negligence or criminality.

That being said, the appeals court acknowledged: “Third party conduct, by itself, unrelated to the condition of the property, does not constitute a ‘dangerous condition’ for which a public entity may be held liable” under Section 835. Instead, the appeals court noted: “There must be some defect in the physical condition of the property and that defect must have some causal relationship to the third party conduct that injures the plaintiff.” As a result, the appeals court found “Public liability lies under Section 835 only when a feature of the public property has ‘increased or intensified’ the danger to users from third party conduct.”

Accordingly, the appeals court would review Plaintiffs’ complaint “to ascertain whether it states facts sufficient to constitute a dangerous condition on public property pursuant to Section 835.”

DANGEROUS CONDITION ALLEGATIONS

As described by the appeals court, Plaintiffs’ complaint had identified the following three features that allegedly made the City's Darby Park parking lot dangerous:

1) the City's alleged failure to provide “any adequate precautions” such as “control measures, and/or security”; 2) the City's failure to provide security cameras in the Darby Park parking lot; and 3) the City's failure to provide “any adequate warning about the dangerous condition.”

FAILURE TO PROVIDE SECURITY

According to the appeals court, “the presence or absence of security guards is not a physical characteristic of public property and thus not actionable as a dangerous condition”:

A lack of human supervision and protection is not a deficiency in the physical characteristics of public property. Public entities, like the City, are immune from liability for asserted failures to provide security services and/or police presence.

As a result, the appeals court held Plaintiffs “cannot support their claim that a dangerous condition exists based on the City's alleged failure to provide security at Darby Park's parking lot.

In addition, the appeals court found Plaintiffs’ complaint did not “sufficiently allege how a gymnasium open to the public, by itself, is a dangerous condition or is defective in such a way as to foreseeably endanger those using the property itself.”

Moreover, the appeals court found Plaintiffs’ complaint did not “otherwise specify what other type of ‘adequate precautions’ in the context of control measures and security the City failed to provide”:

Claims against public entities must be specifically pleaded; generalized allegations about the dangerous condition will not suffice and, rather, must specify in what manner the condition constituted a dangerous condition.

As a result, the appeals court concluded the complaint in Plaintiffs’ lawsuit “does not allege sufficient facts that the City's failure to provide ‘adequate precautions’ can form the basis of a dangerous condition of public property claim.”

FAILURE TO PROVIDE SURVEILLANCE CAMERAS

On appeal, Plaintiffs further contended this “is a matter of people being shot or otherwise injured on public property.” In so doing, Plaintiffs claimed the complaint alleged a “viable and substantial dangerous condition claim based upon the City's actual or constructive notice of alleged ongoing shootings in Darby Park and the City's failure to install security cameras as a crime deterrent.”

The appeals court, however, found Plaintiffs had not alleged sufficient facts in the complaint to “establish a sufficiently pleaded claim for dangerous condition of public property based upon a third party's shooting coupled with the absence of security cameras.”

While Plaintiffs had alleged “ongoing dangerous criminal activity” in the park, the appeals court noted the complaint had only referred “to two shootings prior to January 5, 2021, one over 23 years ago (on December 8, 1997) and one nearly nine years ago (on October 15, 2012).”

In the opinion of the appeals court, “the reference to two crimes throughout a 23-year span does not constitute ongoing criminal activity.” Moreover, the appeals court found “the December 8, 1997 shooting was not in the parking lot, but was actually in Darby Park” and the complaint “does not reference any other crimes or shootings.”

In “deciding when a dangerous condition exists in cases involving third party conduct” to impose governmental liability under Section 835, the appeals court acknowledged it was “necessary to address two elements”:

The first is whether it can be said the defect complained of describes a dangerous physical condition and second, whether the dangerous condition has a causal relationship to the third party conduct that actually injured the plaintiff... [T]he necessary coupling of third party conduct and defective condition occurs where the property itself exists in a dangerous condition, and that condition increases or intensifies the risk of injury to the public.

Within the context of Section 835 governmental liability, the appeals court recognized the required dangerous condition “most obviously exists when public property is physically damaged, deteriorated, or defective in such a way as to foreseeably endanger those using the property itself.”

In this particular instance, the appeals court determined the complaint “does not establish a sufficiently pleaded claim for dangerous condition of public property based upon a third party's shooting coupled with the absence of security cameras.”

Further, in the opinion of the appeals court, “Darby Park's parking lot is not dangerous because it lacks surveillance cameras.” As cited by the appeals court, within the context of Section 835 governmental liability, a “condition is not dangerous” under the following circumstances:

the risk created by the condition was of such a minor, trivial, or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used.

Moreover, the appeals court found the complaint had not sufficiently alleged “the requisite particularity that the absence of surveillance cameras in Darby Park's parking lot facilitated a third party's shooting of decedent while in his vehicle in the parking lot.”

As a result, the appeals court held the complaint did not “plead sufficient facts to establish “necessary causal connection between the condition of the property and the crime,” i.e., “the absence of security cameras created a substantial risk of risk of being shot.”

FAILURE TO WARN ABOUT CRIME

On appeal, Plaintiffs had also claimed the complaint “properly alleged that the City maintained a dangerous condition by failing to “provide adequate warning about the dangerous condition.”

Having found that the complaint “did not adequately plead the existence of a dangerous condition,” the appeals court held the City was not required to provide a warning in this particular instance. In so doing, the appeals court also cited case law that had held “a public entity has no duty to warn against criminal conduct” on a public beach:

the failure to post a warning that the beach was frequented by undesirable persons did not fall within Section 835, since the problem of crime is well known to the public and the warning would be inconsistent with the administrative-legislative determination that the beach should be used by the public...both public awareness of the prevalence of crime and policy factors militate against imposing a governmental duty to warn in circumstances such as these

In this particular instance, the appeals court further found the complaint “did not sufficiently plead the existence of ‘ongoing criminal activity’ such that the City had adequate prior notice, actual or constructive, of the condition.”

CONCLUSION

As a result, the appeals court affirmed the trial court’s “judgment of dismissal and the underlying order sustaining the demurrer to the causes of action for dangerous condition on public property and negligence.”

CONCURRING OPINION

While noting the “gravity of this case is sobering,” in a concurring opinion, one of the judges on the appeals court found no legal basis for imposing liability in this case:

The Summerfields' son Andrew was murdered when he went to play in the park. The family's loss is overwhelming. Despite their anguish, the Summerfields cannot hold the City of Inglewood liable for the act of an unknown killer,

As characterized by the concurring judge: “The Summerfields seek to impose a tort duty that is unprecedented: they cite no law requiring a city to post cameras in parks.” Moreover, the judge questioned “whether the Summerfields give us a reliable basis for thinking the expected benefits of their proposed safety measures would outweigh the expected burdens”:

To start, they urge us to mandate a duty for every municipality (and, logically, every public entity) in California to install, maintain, and monitor security cameras at every park (and, logically, every public facility) where there has been criminal violence. The duty would seem to include hiring trained personnel to respond rapidly and visibly to brewing violence for the streetwise would be unimpressed by mere Potemkin cameras [i.e., giving a false or deceptive appearance of security]

SEE ALSO:

LIMITED LIABILITY FOR CRIMINAL ASSAULTS IN PARK FACILITIES
<http://mason.gmu.edu/~jkozlows/lawarts/05MAY96.pdf>

JANUARY 2024 LAW REVIEW

SWEET 16 PARTY AT REC. CENTER ENDS IN FATAL PARKING LOT SHOOT OUT
<http://mason.gmu.edu/~jkozlows/lawarts/04APR03.pdf>

PARKING LOT SECURITY QUESTIONED IN ROCK FESTIVAL MISHAP
<http://mason.gmu.edu/~jkozlows/lawarts/07JUL02.pdf>

Kozlowski GMU-TV Video Lecture: “Landowner Liability For Criminal Activity”
<https://vimeo.com/67232791>

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