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**IMMUNITY - NEBRASKA**

## Williams v. City of Lincoln

**Court of Appeals of Nebraska - July 23, 2019 - N.W.2d - 27 Neb.App. 414 - 2019 WL 3294693**

Bicyclist initiated action against city, alleging injuries from her collision with low-hanging branches with city-owned tree adjacent to sidewalk.

City filed motion for summary judgment. The District Court granted city's motion. Bicyclist appealed.

The Court of Appeals held that:

- Bicyclist waived argument that judge should have been disqualified;
- Discretionary function exception precluded bicyclist's claims; and
- City did not have actual or constructive notice of dangerous condition.

Discretionary function exception of waiver of sovereign immunity under Political Subdivisions Tort Claims Act (PSTCA) precluded bicyclist's claims for injuries from her collision with low-hanging branches of city-owned tree adjacent to sidewalk; although municipal code provided that city had duty to maintain its trees, including any trimming, spraying, removing and destroying of trees, and city was statutorily required to maintain its sidewalks, city code provision and state statute allowed city to exercise its own discretion in maintaining trees and sidewalks, city had created community forestry division and established complaint-based schedule for prioritizing potentially hazardous trees, and tree maintenance was conducted as diligently as possible using available funds by completing maintenance first on trees that had been identified with defects that could result in damage to property or personal injury and then providing regular maintenance to other trees.

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