

# **Bond Case Briefs**

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## **IMMUNITY - ILLINOIS**

### **Foust v. Forest Preserve Dist. of Cook County**

**Appellate Court of Illinois, First District, Fifth Division - September 30, 2016 - N.E.3d - 2016 IL App (1st) 160873 - 2016 WL 5706935**

Administrator of deceased bicyclist's estate brought survival and wrongful death action against county forest preserve district alleging negligence and willful and wanton conduct.

The Circuit Court dismissed counts based on negligence and certified questions. Both parties filed petitions for leave to appeal questions, which were allowed and consolidated.

The Appellate Court held that:

- Forest preserve grove was intended to be used for recreational purposes, but
- Tree with limb that broke off and fell onto bicyclist was not condition of trail.

Forest preserve grove, including tree located seven feet from edge of bicycle path, which had limb overhanging approximate width of path that broke off and fell onto bicyclist on path, was intended to be used for recreational purposes, and, thus, county forest preserve district was immune from liability for negligence under provision of Tort Immunity Act setting forth immunity for property used for recreational purposes in survival and wrongful death action brought by administrator of deceased bicyclist's estate. According to brochure, grove was suitable for picnicking, hiking, cycling, in-line staking, cross-country skiing, and fishing, which were quintessentially recreational activities.

Tree located seven feet from edge of bicycle path, which had limb overhanging approximate width of path that broke off and fell onto bicyclist on path, was not condition of trail under provision of Tort Immunity Act setting forth immunity for access roads and trails and, thus, county forest preserve district was not immune from liability in survival and wrongful death action brought by administrator of deceased bicyclist's estate. While path was trail, as it ran through forest preserve grove, and there were trees, shrubs, and other vegetation in close proximity to edges of path, plain language of provision required that injury be caused by condition of trail and only reasonable interpretation of language was that for there to be immunity, there had to be something on trail itself that caused injury, and, thus, tree from which limb broke off and fell onto bicyclist was not condition of trail.