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Toeppe v. City of San Diego

Court of Appeal, Fourth District, Division 1, California, July 27 - 20172017 WL 3187391 - 17 Cal. Daily Op. Serv. 7214

Visitor to man-made aquatic park brought personal injury action against city, alleging the existence of a dangerous condition on public property after branch from eucalyptus tree planted by city fell on her while she was walking on trail through park.

The Superior Court granted city's motion for summary judgment, and visitor appealed.

The Court of Appeal held that:

- Trail immunity did not apply, and
- Even assuming trail immunity applied, genuine issue of material fact as to whether visitor was on trail or on grass area when she was struck by falling tree limb precluded summary judgment.

Trail immunity did not apply to man-made park visitor's personal injury claim against city alleging the existence of a dangerous condition on public property after branch from eucalyptus tree planted by city fell on her while she was walking on trail through park. While visitor was on trail, trail did not provide the only access to the dangerous condition, tree did not require city to improve trail or alter its design, tree was not part of the trail and was not naturally occurring, and visitor did not allege she was injured by any condition of the trail, but rather alleged that she was injured because of the maintenance of the tree.

Genuine issue of material fact as to whether visitor to man-made aquatic park was on trail or on grass area when she was struck by falling tree limb precluded summary judgment for city in visitor's personal injury action alleging the existence of a dangerous condition on public property, even assuming trail immunity applied.