

Bond Case Briefs

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City of Alpharetta v. Hamby

Court of Appeals of Georgia - October 25, 2019 - S.E.2d - 2019 WL 5538086

Pedestrian, who fell over an 18-foot retaining wall and injured his right heel, left leg, shoulder, and back, brought a negligence action against city.

City filed a motion for summary judgment, which was denied, and the case went to trial. The trial court entered judgment on jury verdict awarding pedestrian \$459,575. City appealed.

The Court of Appeals held that:

- City was immune from liability for its discretionary decision not to erect a barrier above retaining wall, and
- Pedestrian failed to establish that city's failure to construct a barrier at the top of retaining wall constituted a defect.

Pedestrian failed to establish that city's failure to construct a barrier at the top of retaining wall constituted a defect, as the term was used in statute imposing liability upon a city for defects in the public roads and municipal street system, in negligence action filed by pedestrian after he fell over an 18-foot retaining wall; there was no evidence showing the retaining wall was part of the physical road on which the general public traveled, and even assuming that the retaining wall was part of the physical condition of the road, expert testified that the structure of the retaining wall was sound.

Pedestrian failed to establish that the area where retaining wall was located was intended by city to be used by the general public such that city was required to keep it reasonably safe, in negligence action against city after pedestrian fell from 18-foot retaining wall; testimony showed that the retaining wall itself was not a sidewalk, expert admitted that there was no path along the side of the retaining wall for public use, and there was no evidence that the City intended for the area near the retaining wall to be used by the public.