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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

COREY ROMAGNANO, a Minor, etc.,
et al.,

Plaintiff and Appellant,

v.

RANCHO SIMI RECREATION AND
PARK DISTRICT,

Defendant and Respondent.

2d Civil No. B201555
(Super. Ct. No. SC042605)
(Ventura County)

A minor was severely injured when he fell down a steep hill at a public park. He sued the park district alleging a dangerous condition of public property. The district demurred to the minor's second amended complaint pursuant to Government Code section 831.2, providing public entities immunity for injuries arising from a natural condition of unimproved public property.¹ The trial court sustained the demurrer without leave to amend, and judgment was entered against the minor. We affirm.

FACTS

Second Amended Complaint

On April 15, 2004, Corey Romagnano, then 12 years old, went to Santa Susana Park, which is owned and controlled by the Rancho Simi Recreation and Park

¹ All statutory references are to the Government Code.

District (District). The park has a baseball diamond at the foot of a steep hill. Corey and three friends decided to walk up the hill to watch a Little League team practicing on the diamond.

The boys decided to walk up the right side of the hill because it was an easy walk. That it was an easy walk indicated to the boys that it was not dangerous. On the way up the hill, the boys saw empty cans, bottles and other trash, also indicating it was not dangerous because other people had been there. There were no signs warning of any danger. When the boys got to the top of the hill, they sat and watched the practice. They did not sit near an edge where they could fall off the hill.

After watching practice, Corey got up to leave. As he got up, he slipped and slid forward down the slope of the rock about 15 feet, where a friend lost sight of him. Corey fell about 100 feet in all. He suffered a traumatic brain injury that has rendered him unable to recall or discuss the incident.

Corey's second amended complaint alleges that his injuries were caused by a dangerous condition of the District's property. He alleged that the dangerous condition was created by a combination of factors.

One alleged factor is that the District made the area from which Corey fell more slippery. An expert retained by Corey, Stephen Wexler, Ph.D., a civil and safety engineer, discovered pinholes drilled into the rock in the area where the boys were when Corey fell. Vegetation was growing in the holes and there was moss around them. Wexler slipped on the moss. Wexler spoke on the phone to Bill Schmidt who the District had hired in 1994 to remove loose rock from the hill and repair and replace the ball field fencing. Schmidt drilled pinholes at the top of the hill to secure a safety line that allowed him to scale the rocks. The complaint states: "Based on the scope of work Schmidt was to perform, his admission to Dr. Wexler he made the holes, the fact that there is vegetation growing in the holes, moss around the holes and not further down the slope of the rock, that Dr. Wexler slipped on the moss on the holes, it is more likely than not that Defendant altered the area where Plaintiff fell from before the incident making it more slippery but not detectable to persons, including Plaintiff. In other words, it is more likely

than not that there was vegetation and grass/dirt present in the area of the holes before the holes were placed and that the area was cleared for the holes making it more slippery[.]"

Other factors that the second amended complaint alleges collectively created the dangerous condition are: improving the property by placing a baseball diamond in front of the hillside; clearing away dirt at the bottom of the hill and replacing it with large rocks, thus likely increasing Corey's injuries; allowing Little League activities on the baseball field, knowing that children would be attracted to watch games or practices from the hill; knowing more children would be present during spring break; knowing that children would routinely walk up the hill and look down on the field; knowing that children would walk up the hillside, get trapped, and need to be rescued; knowing that the presence of debris on the hillside would give a false impression of safety; knowing that children would be enticed to go up the hillside and would lack the capacity to avoid risks and appreciate danger; maintaining the hillside which allows access to the observation area on the hill; marketing the premises as safe; providing protective services to the public with the understanding that the public would rely on them; failing to warn that the hillside is dangerous; and failing to block access to the hillside. Warning about the danger and blocking access to the hillside would have stopped the boys from going up the hillside.

Demurrer

The district demurred to the second amended complaint on the grounds that it has immunity under section 831.2. The demurrer requested that the court take judicial notice of portions of Schmidt's deposition and the depositions of Corey's friends, who were with him when he fell, and a number of photographs of the area.

The District's request for judicial notice was to show that the allegations of the second amended complaint were a sham. The District claimed the evidence showed the pinhole allegedly drilled by Schmidt was covered by a patch of dirt at the time of the accident; that the hole was at least three feet from where Corey was sitting at the time of the accident; and that Schmidt did not perform any work on the surface of the rock in the area of Corey's fall.

The trial court granted the District's request for judicial notice over Corey's objection. In granting the District's demurrer without leave to amend, the trial court stated that the allegations of the complaint were contradicted by Schmidt's deposition testimony, and that the testimony is uncontroverted.

DISCUSSION

I

The function of a demurrer is to test the sufficiency of a pleading by raising questions of law. (*Postley v. Harvey* (1984) 153 Cal.App.3d 280, 286.) In assessing the sufficiency of a demurrer, all facts pleaded in the complaint must be deemed true. (*Holland v. Thacher* (1988) 199 Cal.App.3d 924, 928.) But we do not assume the truth of contentions, deductions or conclusions of fact or law. (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.)

II

Corey contends the trial court erred when it sustained the District's demurrer pursuant to section 831.2.

Section 831.2 provides in part: "Neither a public entity nor a public employee is liable for an injury caused by a natural condition of any unimproved public property[.]" The section provides absolute immunity for public entities against claims for injuries caused by natural conditions of unimproved public property. (*Arroyo v. State of California* (1995) 34 Cal.App.4th 755, 761.)

Corey argues it was error for the trial court to grant the District's request to take judicial notice of the depositions. But even without considering the matters of which the trial court took judicial notice, the District's demurrer was properly sustained.

Corey relies on *Gonzales v. City of San Diego* (1982) 130 Cal.App.3d 882. Indeed, his complaint appears tailored to its specifications. In *Gonzales*, plaintiff's mother drowned in dangerous rip currents at a public beach. The city voluntarily provided lifeguard services, but posted no warnings of the hidden danger. The Court of Appeal rejected the city's reliance on section 831.2. The Court assumed the beach was unimproved, but stated the statute's requirement of a natural condition was not present.

(*Id.* at p. 885.) The court reasoned that the complaint describes a "hybrid dangerous condition[.]" (*Ibid.*) The dangerous condition was a combination of the natural riptide, and the city's negligent performance of its voluntarily assumed protective lifeguard service. (*Id.* at pp. 887-888.)

As the court in *Geffen v. County of Los Angeles* (1987) 197 Cal.App.3d 188, 192-193, pointed out, *Gonzales* has been cited in a number of cases, but consistently in the context of distinguishing it rather than following it. *Gonzales* finds liability in the mixture of passive negligence and a dangerous condition on unimproved property; neither could support a judgment alone. (*Morin v. County of Los Angeles* (1989) 215 Cal.App.3d 184, 193, quoting *Rombalski v. City of Laguna Beach* (1989) 213 Cal.App.3d 842, 863, conc. opn. of Crosby, Acting P. J.) Nor can they together. (*Ibid.*) *Gonzales's* hybrid theory of liability has been soundly and consistently rejected. We join those courts in rejecting the hybrid theory.

In an attempt to show the District modified the natural condition at the top of the hill, Corey relies on the pinholes allegedly drilled by Schmidt on behalf of the District. The complaint alleges there is vegetation growing in the holes, moss around the holes and that Wexler slipped on the moss. From these alleged facts, the complaint concludes: "[I]t is more likely than not that Defendant altered the area where Plaintiff fell from before the incident making it more slippery but not detectible to persons, including Plaintiff. In other words, it is more likely than not that there was vegetation and grass/dirt present in the area of the holes before the holes were placed and that the area was cleared for the holes making it more slippery[.]"

It is not clear whether the complaint concludes it is more likely than not Corey fell because he stepped on the moss growing around a pinhole, or that he fell because he slipped on an area made more slippery when the District removed grass and dirt before the holes were drilled. What is clear from the complaint, however, is that nobody knows what caused Corey to slip and fall. The complaint does not allege that Corey, in fact, stepped on moss surrounding a pinhole; or that the District, in fact, removed dirt and vegetation from the area where Corey slipped; or that any such

removal, in fact, made the area more slippery. Instead, the complaint alleges it is "more likely than not" some condition created by the District caused Corey to slip and fall. Any number of naturally occurring conditions could have caused the fall. There is simply no basis stated in the complaint for the conclusion that the fall was more likely than not caused by something the District did. Speculation and conclusion are insufficient to support a complaint. (See *Moore v. Regents of Univ. of Cal.*, *supra*, 51 Cal.3d at p. 125 [we do not assume the truth of contentions, deductions or conclusions].)

Moreover, ". . . [H]uman-altered conditions, especially those that have existed for some years, which merely duplicate models common to nature are still "natural conditions" as a matter of law for the purposes of . . . section 831.2. [Citations.]' [Citations.]" (*Knight v. City of Capitola* (1992) 4 Cal.App.4th 918, 928 [beach reconstructed by the city 17 years prior to plaintiff's body surfing accident qualified as a natural condition for the purpose of immunity], joining other cases restricting *Buchanan v. City of Newport Beach* (1975) 50 Cal.App.3d 221 to its "unusual facts.")

Here the work that allegedly caused Corey to fall was completed more than 10 years prior to the accident. The moss on which Corey allegedly slipped is naturally occurring. Similarly, the removal of dirt and vegetation that allegedly made the surface of the hill top more slippery often occurs naturally. The conditions on the hill top, which Corey alleges caused him to slip and fall, were long-standing and simply duplicate those found in nature. They are natural conditions for the purpose of immunity provided by section 831.2.

Corey also alleges the District cleared away dirt at the bottom of the hill and replaced it with large boulders. Corey does not allege the boulders caused the accident. Instead, he alleges the boulders "likely" increased his injuries. Even assuming immunity for the condition that caused the fall would not extend to all resulting injuries, the boulders qualify as a natural condition. They were placed at the bottom of the hill more than 10 years prior to the accident, and duplicate models common to nature. Thus the District has immunity under section 831.2. (See *Knight v. City of Capitola*, *supra*, 4 Cal.App.4th at p. 928.)

Corey alleges that the placement of a baseball diamond at the bottom of the hill was a factor comprising the dangerous condition of the park. But in order to avoid immunity under section 831.2, the improvements must change the physical characteristics of the property at the location of the injury. (*Mercer v. State of California* (1987) 197 Cal.App.3d 158, 165.) Here the baseball diamond was not the location of the injury.

A number of the alleged factors comprising a dangerous condition involve the District's knowledge of the danger and failure to warn. But it is well settled that liability for failure to warn is inconsistent with the absolute immunity provided by section 831.2. (*Arroyo v. State of California* (1995) 34 Cal.App.4th 755, 763.) "' . . . The immunity applies *whether the dangerous condition amounted to a hidden trap or whether the public entity had knowledge of it.* [Citations.]" (*Ibid.*) It follows that liability for failure to erect a physical barrier is inconsistent with the absolute immunity provided by the statute.

Corey argues immunity under section 831.2 does not apply because the District voluntarily assumed to manage the risks at the park. Corey points to allegations in his complaint that the park was marketed to the public as safe, and the District provided protective services through park rangers. But the provision of ranger services and even an official publication referring to the regulation of park use in the interest of visitor safety, do not tend to show that a public entity voluntarily assumed to protect park users. (*Mercer v. State of California, supra*, 197 Cal.App.3d at p. 167.) Corey's complaint alleges insufficient facts to show a voluntary assumption of the management of the risks.

Corey argues immunity does not apply if the District's conduct actively increases the degree of dangerousness. In support of his argument, Corey cites *McCauley v. City of San Diego* (1987) 190 Cal.App.3d 981, 989, footnote 7. Corey's opening brief does not specify in what way the District's conduct actively increased the degree of dangerousness of a natural condition. The brief states only that "Plaintiff has set forth detailed factual allegations that [the District's] conduct, as detailed above, actively

increased the degree of dangerousness of the hillside, including the location of Plaintiff's injuries."

We are apparently left to our own devices to determine which conduct Corey believes "actively increased" the degree of dangerousness. Three allegations come to mind: the drilling of the pinholes, the placement of large rocks at the bottom of the hill, and the placement of the baseball diamond. As we have explained, all those acts are encompassed by the absolute immunity of section 831.2. No liability can be based on those allegations or any other allegation in the complaint. Corey does not request leave to amend or suggest how the complaint might be amended to state a cause of action.

The judgment is affirmed. Costs are awarded to respondent.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

COFFEE, J.

Thomas J. Hutchins, Judge
Superior Court County of Ventura

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