114 Pacifica, Suite 250, Irvine, CA 92618-3321
(949) 341-0400 – phone (949) 341-0444 – fax

www.rodolfflaw.com
info@rodolfflaw.com

Quick Links:

Volume 7, Issue 2

Appellate Court Allows Not-on-the-Premises Liability

The legal concept of premises liability typically comes up in cases claiming a business or a landowner should be held liable for an injury — a slip-and-fall, say — that occurred on the owner's property. The injured plaintiff argues the owner should have done more to prevent or warn against the dangerous condition located there on the property.

Once in a while, though, a premises owner may face liability over an accident that took place somewhere else. That's what a California Court of Appeal concluded about a Sacramento church being sued by a man who was injured in the middle a busy street as he crossed from an off-site parking lot the church was using.

The fact that the man was injured crossing a public street "that was not owned, possessed, or controlled by [the church] is not dispositive of the issue of duty where, as here, property that was owned, possessed, or controlled by [the church] was maintained in such a manner as to expose persons to an unreasonable risk of injury offsite," the appellate court concluded in *Vasilenko v. Grace Family Church*.

The accident happened on a night the church held a function that drew so many people the church's parking lot filled up. For that situation, the church had arranged to borrow the lot at a swim school across the street. Attendants at the church would send drivers to the school's lot, where other attendants from the church directed them where to park.

To walk back from the school's lot to the church, however, people had to cross a stretch of a busy, five-lane road. Even the intersection some distance away "lacked a marked crosswalk or traffic signal," the court noted.

That night, the plaintiff followed another couple taking the direct route in the middle of the block. They got across the two eastbound lanes, waited a minute in the central universal turn lane and then headed into the westbound lanes.

Halfway across, they spotted oncoming headlights and started running. The plaintiff was struck and injured.

He sued the church, claiming that by using an overflow lot "with a dangerous avenue of approach," it created a foreseeable risk of harm. The church countered that it "'did not have a duty to assist [the plaintiff] with or provide instruction about how to safely cross a public street' that it did not own, possess, or control."

The trial court granted summary judgment for the church, but the appellate court reversed in a 2-1 decision.

Generally, landowners have no duty to prevent injuries or warn about risks on adjacent property. But a landowner does have "a duty to avoid exposing persons to risks of injury that occur off site if the landowner's property is maintained in such a manner as to expose persons to an unreasonable risk of injury offsite," the court said.

In this case, the church did control the choice of an overflow parking lot "that required invitees to cross a busy thoroughfare that it knew lacked a crosswalk or traffic signal." The church also temporarily controlled the lot's operation.

"[B]y maintaining its overflow lot across the street from the church, [the church] exposed its invitees who utilized that lot to an unreasonable risk of harm, and thus, owed them a duty to take steps to protect against that risk," the court held.

In a dissent, one justice noted that as cities become ever more crowded, more parking lots will be built along busy streets. "There is no compelling reason to refashion the rules of premises liability or principles of negligence to impose a duty on parking lot operators or owners of land adjacent to busy thoroughfares to guarantee the safety of pedestrians who cross such roadways," he wrote.

Hospital Bed's Failed Rail Caught by Medical Malpractice Law

The statute of limitations in California for a personal injury negligence action is two years. Under the Medical Insurance Compensation Reform Act, on the other hand, the limitations period for medical negligence is only one year.

Yet as the state Supreme Court has noted, "the dividing line between 'ordinary negligence' and 'professional malpractice' may at times be difficult to place."

The court drew that dividing line more clearly in a recent case brought by a woman injured when the rail on her hospital bed collapsed under her. Did the hospital commit ordinary negligence by failing to keep its furniture in good repair? Or was it medical malpractice? Reversing a lower appellate court, the unanimous Supreme Court attributed the railing failing to professional negligence.

"A hospital's negligent failure to maintain equipment that is necessary or otherwise integrally related to the medical treatment and diagnosis of the patient implicates a duty that the hospital owes to a patient by virtue of being a health care provider," the court held in *Flores v. Presbyterian Intercommunity Hospital*.

The patient in the case, Catherine Flores, was trying to get out of her hospital bed on March 5, 2009, "when the latch on the bedrail failed and the rail collapsed, causing her to fall to the floor." She sued the hospital for her injuries almost two years later, on March 2, 2011.

The trial court ruled MICRA's one-year limitations period applied and granted a demurrer for the hospital. The Court of Appeal reversed, ruling that keeping equipment working properly is not "the rendering of professional services," which is a key phrase in MICRA's definition of professional negligence.

At the Supreme Court, Flores argued that "professional services" refers to activities requiring "a particularized degree of medical skill." The hospital countered the phrase covers any services "for which the health care provider is licensed."

The court said both sides were wrong. The plaintiff's view was too narrow because a provider can commit medical negligence doing something that doesn't require a special skill, such as by giving the wrong food to a patient on a special diet. The hospital's broad approach would apply MICRA to "the duties that hospitals owe to all users — including personnel and visitors — simply by virtue of operating a facility that is open to the public."

The correct answer lies in between. MICRA and its one-year statute of limitations should only cover "the provision of medical care to patients." Whether maintaining equipment poorly is professional negligence "depends on the nature of the relationship between the equipment or premises in question and the provision of medical care to the plaintiff."

Therefore, the court held, if the hospital negligently maintained equipment "reasonably required to treat or accommodate a physical or mental condition of the patient, the plaintiff's claim is one of professional negligence."

MICRA would not apply when someone is injured on a broken chair in a waiting room or slips on a freshly mopped floor, the court noted.

But in this case, the plaintiff had conceded that her doctor ordered the rails on her bed raised. In effect, she was alleging that the hospital "failed to properly implement the doctor's order."

"When a doctor or other health care professional makes a judgment to order that a hospital bed's rails be raised in order to accommodate a patient's physical condition and the patient is injured as a result of the negligent use or maintenance of the rails, the negligence occurs 'in the rendering of professional services' and therefore is professional negligence for purposes of section [MICRA]," the Supreme Court ruled.

Skateboarder Assumed the Risk of Fatal Downhill Ride

California's doctrine of primary assumption of the risk generally prevents someone injured while participating in a sport or recreational activity from suing to hold another participant, coach or venue liable. A pitcher isn't liable to a batter struck by a wild pitch, for instance, and a ski resort isn't liable to a skier upended by a mogul.

Sometimes, though, determining whether a particular activity is or isn't recreational can be challenging. Some activities can be either, depending on the circumstances, as a decision from a state Court of Appeal last month shows.

In *Bertsch v. Mammoth Community Water District*, the activity was skateboarding. Sadly, it ended in tragedy.

A father and his two sons were vacationing in a friend's condo in Mammoth Lakes. One morning, the boys went out "cruising" around the neighborhood on their skateboards, having arranged to rendezvous later with their father at a major intersection to go rock climbing.

When the father arrived, he saw his sons — 18-year-old Brett and younger brother Richard — skateboarding down a hill at about 8 to 10 miles an hour. Brett's board stopped abruptly when his wheels snagged in a gap between the roadway and the cement collar around a manhole cover. Brett was thrown from the board; his head hit the pavement. He was not wearing a helmet.

He died later that day from a traumatic brain injury.

The father and brother brought a wrongful death suit against the community association that maintained the road and the water district that owned the manhole. The trial court applied primary assumption of the risk and granted summary judgment for the defendants, which the appellate court upheld.

The plaintiffs argued that, as he cruised the streets, Brett was not involved in a sport or recreational activity nor did he attempt a "high risk maneuver." His skateboarding was simply a mode of transportation.

They pointed to an earlier decision in which a Court of Appeal held an 11-year-old girl injured when she fell off her scooter was not engaged in sports or recreation. She wasn't "doing anything more than riding the scooter to get from one place to another," the court noted.

But in this case, the facts were different, the appellate court said. Here, the evidence showed that Brett "was doing more than riding his skateboard as a means of transportation." He and his brother had come down the same hill once. They then hiked back up so they could come down again. "They went up the hill to experience the thrill and excitement of coming back down on their skateboards."

Further, they came down the hill on the wrong side of the road, which the court concluded was inherently more dangerous. "Riding a skateboard down a hill in this manner is far more analogous to attempting [a certain skateboarding trick] than simply riding a bicycle or scooter as a means of transportation — and quite likely more dangerous than [that] trick," the court said.

Turning to another issue in assumption of the risk cases, the appellate court held that requiring owners of roads and water districts to make manhole locations "safe for skateboarding would amount to an unnecessary burden."

Barry L. Rodolff

The founder and president of The Rodolff Law Firm, APC, Barry L. Rodolff, is a highly experienced lawyer who has been assisting clients faced with civil litigation for more than two decades. Mr. Rodolff developed his skills with two well-respected defense firms, Schell & Delamer, and Haight, Brown & Bonesteel. He also worked in-house at Travelers Insurance Company, representing a variety of insured companies in many types of litigation. His clients have ranged from small businesses to multinational corporations. Mr. Rodolff brings extensive experience and knowledge in the defense of litigation involving premises liability, business, product liability, personal injury, employment, construction defect, and intentional torts.