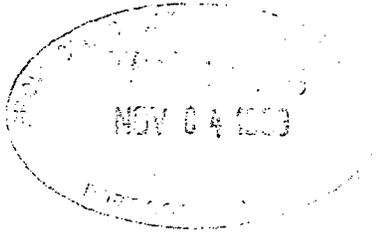


fall on # 2/5
design bike path



C05735
New Westminster
Registry

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

Small Claims Division

Between:)	
)	
CHARLOTTE D. YATES)	
)	REASONS FOR JUDGMENT
Claimant)	
)	OF THE HONOURABLE JUDGE
And:)	
)	M. R. BULLER BENNETT
CITY OF PORT MOODY)	
)	
Defendant)	

Appearances: Ms. Yates, in person
D. Huang and I. Khan,
for the Defendant

Dates of Trial: June 30, 1999 and
October 12, 1999

Date of Judgment: November 4, 1999

Introduction

Ms. Yates is seeking damages for injuries she suffered as result of a fall on a path in Inlet Park, in Port Moody B.C. Ms. Yates alleges that the City of Port Moody was negligent in its design of the path and, as a result, breached its duty to her under the Occupiers Liability Act. The City of Port Moody denies any negligence or breach of its duty to Ms. Yates.

The Facts

Inlet Park is located in Port Moody, B.C. The park borders on Burrard Inlet. In 1993, the City planned a bicycle path that would allow public access to the shoreline, with minimal interference with the environment. At the time, the City had neither guidelines nor bylaws for the design of such paths. The City planned a route that took the path over a stream. The City had the following options for this section of

the path: to remove some trees and build a bridge over the stream; to relocate the culverts and a large metal grate; or, to add turns in the path and narrow the path over the two existing culverts and beside the metal grate. The estimated cost of building a bridge was \$50,000 to \$60,000. Relocating the culverts would involve costs, as well. Based on costs of the options, as well as environmental concerns, the City chose to add turns to the path and narrow the path over the existing culverts. The path was built in 1993. It is paved with asphalt and is three meters wide in most places. In the area of the culverts, the path narrows to 1.9 meters wide.

The open grate remained so that the culverts could be inspected and maintained. The grate remained elevated by a six inch high concrete curb, as it would pose a hazard if level with the path. Cyclists could easily ride onto the top of the grate and get their tires caught in the metal ribs of the grate.

City staff members check the path weekly. They clean the path and look for problems. Repairs and maintenance are carried out on a regular basis. The City has a budget for the repair and maintenance of the path.

In March, 1994, a private consulting firm, along with City staff, developed guidelines for paths based on type and use. The guidelines set out a minimum width for two-way cycling paths, such as this one, as 2.2 meters, with a recommended width of three meters. A width of three meters provides optimum clearance for cyclists and other users. The guidelines state that:

“Final selection of path width should be determined based on the desired character of the route, available space and site terrain.” (Ex. 2, pg. 4)

The City did not change the narrow part of the path to comply with the guidelines.

Ms. Yates started rollerblading in April, 1995. Her husband, Mr. Graham, taught her to rollerblade. She went rollerblading several times a week. Mr. Graham described Ms. Yates as “not being a very good skater”. With one or two exceptions, Ms. Yates had been able to stop quickly, but she had fallen when trying to come to a sudden stop. Ms. Yates was familiar with the path at Inlet Park as she had run and rollerbladed along the path. She did not think that there was any risk in using the path, as she knew that there were parts where she would have to slow down. She also knew that pedestrians and cyclists use the path.

The evening of July 30, 1995, was a pleasant summer evening. Ms. Yates, Mr. Graham and some friends went rollerblading on the Inlet Park path. Mr. Graham was ahead of Ms. Yates as they came to a part of the path that goes downhill. They both slowed down to go downhill and came around a right hand turn in the path. Ahead of them about ten meters, they could see where the path makes a sharp lefthand turn, then narrows to go over two culverts. On the left side of the path ahead they could also see a man standing at a railing above the culverts. They could see a large metal grate, elevated about 6 inches by a concrete curb directly across the path from the railing. Since both Ms. Yates and Mr. Graham were familiar with the path, they proceeded slowly. Mr. Graham was two to three feet ahead of Ms. Yates and to her left as they approached the sharp lefthand turn and the culverts. Mr. Graham, followed by Ms. Yates, rollerbladed through the sharp left hand curve. Then, much to their surprise, a boy stepped from beside the man into the middle of the path about two meters in front of them. They had not seen the boy before this. There was no time to yell at the boy to move out of the way. Mr. Graham veered to the right to avoid hitting the boy. He fell on the path at about the same place where the boy was standing. Mr. Graham is an experienced rollerblader, but he did not know why he fell.

Ms. Yates said that she lost control before she came to the culverts. She saw Mr. Graham go to the right hand side of the path and fall directly in front of her. She wanted to avoid colliding with the boy, so she veered to the right hand side of the path, towards the grate. Ms. Yates said that Mr. Graham did not obstruct her way. Ms. Yates was going at such a speed that if the man was at the railing and the boy had not stepped out into the path, she would be able to pass through without falling. When Ms. Yates veered to the right, she rollerbladed into the grate and fell. When Ms. Yates fell, her tailbone struck the corner of the concrete edge around the grate. Immediately, she felt intense pain in her lower back. Ms. Yates feared that she had broken her back. Her friends caught up to her and were able to get help. The Fire Department and ambulance attended. Ambulance attendants put her on a spine board and took her to hospital. In the meantime, the man and the boy had disappeared.

Fortunately, Ms. Yates did not break her back. However, she had lower back pain for over one year. She missed time from work. Her daily routine was greatly affected. Additionally, Ms. Yates was unable to enjoy a family wedding. Although she and Mr. Graham went on their vacation to Whistler as planned, she certainly did not do all of the things she had planned. Nor did she enjoy the holiday as much as she had hoped. Ms. Yates had both massage therapy and physiotherapy treatments.

This part of the path rebuilt earlier this year, as a result of a cyclist losing control due to speed. The cyclist ended up in the creek. The path was straightened, leveled and new bridge was built. The grate is in the same place. The cost of the work done was \$46,000 to \$50,000.

Discussion

Ms. Yates submits that the design of the path caused her injury. Specifically, the narrowing of the path caused her fall and the raised curb for the grate caused her injury. She further submits that it would be reasonably foreseeable that someone could be injured on the curb. Maintenance and repair of the path is not in issue. In issue, then, is the decision by the City to design and build the path as it did.

Some decisions by governments are exempt from liability. Governments must consider a variety of social, political and economic factors when making decisions. These are considered policy decisions. If, for example, a government makes a decision on a financial basis, or allocation of financial resources, a court cannot hold the government liable for damages flowing from that decision. If a court could, in effect, second guess those decisions, then courts would become involved in political decision making which is an inappropriate role for the courts. Also, such involvement would limit a government's ability to make decisions. Governments can make other types of decisions that are termed operational decisions. A government can be held liable for this type of decision. For example, a government may decide to use a certain type of sign. If the signs are negligently installed so they are not visible and someone suffers as a result, it is possible that the government will be held liable. (Just v. B.C. [1990], 1 W.W.R. 385, S.C.C.)).

In this case, the basis for the City's decision about the path was cost, as well as environmental concerns. This was a policy decision. Clearly, the City made this policy decision in a bona fide exercise of its discretion. As a result, City cannot be held liable for Ms. Yates' loss.

Ms. Yates also relies on the Occupiers Liability Act. The applicable section of the Act, is section three, subsection one. It states:

"An occupier of premises owes a duty to take that care that in all the circumstances of the case is reasonable to see that a person, and the person's property, on the premises, and the property on the

premises of a person, whether or not that person personally enters on the premises, will be reasonably safe in using the premises.”

It is clear from the wording of this section that the City as occupier owed a duty of care to Ms. Yates, as a recreational user of an outdoor path that she had to share with a variety of other users. The City was obliged to see that Ms. Yates was reasonably safe when using the path. That duty of care is one that in all of the circumstances of the case is reasonable, to see that the person will be reasonably safe.

This section of the Act was considered in the decision, Vannan v. Kamloops [1992], 2 W.W.R. 759 (B.C.S.C.). In that case, an infant fell from a piece of equipment in a playground. She was seriously injured. The court held:

“.....it must be remembered that the tests to be applied in situations of this kind are one of reasonableness and not one of perfection. The occupier in instances such as these, is not an insurer.” (pg. 746)

The City, therefore, did not have to protect Ms. Yates from all risks.

What is reasonable in this case? Certainly, the City should be expected to design and build the path so it can be used safely by a variety of users. However, it cannot be expected to design and build a path that will protect users from all risks. That would not be reasonable in the circumstances and contrary to the law. The narrowing of the path was clearly visible, as was the curb around the grate. The City did consider the location and nature of the grate and curb in its decision. Ms. Yates had passed through this part of the path in the past without incident. According to Ms. Yates' own testimony, she would have been able to proceed safely through the area had the boy not stepped into the path. Simply stated, the boy stepped out into the path, at a point across from the grate, at the same time that Ms. Yates and Mr. Graham came along the path. In my view, these are exceptional circumstances. To hold the City in breach of its duty of care would go well beyond what could be considered reasonable and would make the City an “insurer”.

The City did not alter the route to conform with the guidelines, but that does not assist Ms. Yates as the guidelines leave much discretion as to the final design. The City later rebuilt this part of the path, but does not assist Ms. Yates as it is not necessarily an admission by the City of negligent design. Therefore, I conclude that the City did not breach its duty of care to Ms. Yates under the Act.

Finally, the design of the path did not cause Ms. Yates' fall and injuries. It is abundantly clear from the evidence that it was a combination of the boy stepping into the path, Mr. Graham's fall and Ms. Yates loss of control that caused her fall. Perhaps due to inexperience, Ms. Yates skated directly into a visible curb. She was injured as a result of her own actions.

Decision

For the reasons stated above, I dismiss the claim with costs to be set by the Registrar.



M. R. Buller Bennett, P.C.J.