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Design Immunity Applies To Reasonable Design Decisions.

In broad daylight, outside the south hall of the Los Angeles Convention Center, Cynthia Dobbs walked into a round concrete bollard 17.5 inches wide and 17.5 inches tall. Three rows of these pillars ring the Convention Center, protecting the site from car bombs. Dobbs walked right into one of them and sued the City of Los Angeles because it allegedly created a dangerous condition that caused her to trip and fall.

About two million people visit the convention center yearly, and for the nine years preceding Dobbs's accident, no one filed any claim with the City alleging injuries attributable to the bollards.

At trial, the City moved for summary judgment, invoking a statutory defense called design immunity. Design immunity shields public entities from personal injury claims when a public employee reasonably exercised discretionary authority when approving the design at issue. The defense requires that a public entity establish: (1) There is causal relationship between the design and the accident; (2) The agency made a discretionary approval of the design; and (3) Substantial evidence supports the reasonableness of the plan.

At oral argument on the City's Motion, Dobbs stipulated to the first element that there was a connection between the design of the bollard and her injury. Dobbs then attacked the City's assertion that it approved of the pillar's design. Specifically, Dobbs objected to the sworn declaration of a project manager with 14 years of experience regarding the City's design approval process, because he did not approve the design in question. The trial court considered the project manager's qualifications to testify to the process and concluded that the project manager's experience was substantial and sufficient before overruling Dobbs's objection. The trial court noted that the third element is a question of law, not fact, and that in order to establish reasonableness of the plan, the parties need not necessarily agree that the design was reasonable. The trial court concluded that the evidence provided by the City regarding the reasonableness of the design was substantial. As a result, the trial court granted the City summary judgment against Dobbs, having concluded that the City established all three necessary elements. Following the grant of summary judgment to the City, Dobbs appealed the decision.

On appeal, the Court considered whether the trial court properly granted summary judgment, specifically whether the City properly established the second and third elements of its defense.

With respect to the second element, the Court of Appeal examined the project manager's declaration and concluded that the trial court was correct in overruling Dobbs's objections. The Court stated that even though the City Engineer ultimately approved the plans for the bollards, the project manager's declaration was adequate and that discretionary approval need not be established with testimony of the people who actually approved the project. Further, the Court found that testimony about the entity's discretionary approval custom and practice can be proper even though the witness was not personally involved in the approval process.

Regarding the third element, the Court reiterated the trial court's finding that the design immunity statute grants immunity as long as the design is reasonable, even if the parties disagree whether a design should have been approved. The Court stated that the design need not be perfect, but merely reasonable under the circumstances. Here, the Court of Appeal found the design of the bollards reasonable under the circumstances because they were large and conspicuous.

Before affirming the trial court's grant of summary judgment, the Court of Appeal rejected Dobbs's argument concerning a declaration that referenced two rows of bollards, instead of three. The Court concluded that the number of rows of bollards does not matter when the important thing from a tripping perspective is the size of the one bollard into which Dobbs walked.

Dobbs v. City of Los Angeles (2019) __ Cal.App.5th __ [2019 WL 5206043].

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