

CASE REPORT

RECREATIONAL USE IMMUNITY - LANDOWNER LIABILITY TO PUBLIC INVITEES. Recreational use immunity under RCW 4.24.210 is not extended to landowners that have opened land to the public for non-recreational purposes. Recreational immunity will not apply due to the presence of incidental recreational uses on land that is otherwise open to the public. *Camicia v. Howard S. Wright Construction Co.*, No. 85583-8, Washington Supreme Court (Jan. 30, 2014).

I. Facts. Susan Camicia suffered severe injuries when she was thrown from her bicycle after colliding with a wooden post on a portion of the I-90 bicycle trail located in the City of Mercer Island. The I-90 bicycle trail was built by WSDOT and runs from Seattle to Mercer Island, across Lake Washington, and to other areas in the Puget Sound. Prior to conveying the trail to the City, WSDOT published an evaluation of whether the trail was primarily a public park/recreation area or a transportation corridor for purposes of federal law.¹ WSDOT concluded that the I-90 trail was primarily for transportation and was an integral part of the local transportation system, providing the only means for non-motorized access to Mercer Island and across Lake Washington. It was constructed using federal and state highway funds, and no funds designated for recreational facilities were used in constructing the trail. Moreover, when WSDOT conveyed the trail to the City, the quitclaim deed stated, “It is understood and agreed that the . . . property is transferred for road/street purposes only, and no other uses shall be made of said property without obtaining prior written approval of the grantor.” The City, however, treated the trail as primarily recreational and was maintained by the city parks department. Camicia sued the City following her accident, and the City moved to dismiss, asserting immunity under Washington’s recreational use immunity statute, RCW 4.24.210.

II. Applicable Law and Analysis. The recreational use immunity statute provides that “public or private landowners or others in lawful possession and control of any lands” who allow the public “to use them for the purposes of outdoor recreation,” without charging a fee, are immune from liability for unintentional injuries to such users. The Washington Supreme Court held that because disputed issues of fact existed with respect to whether the trail was used for recreation or transportation, early dismissal through summary judgment was inappropriate.

Underlying the Supreme Court’s decision is the premise that, in enacting the recreational use immunity statute, the legislature intended to encourage landowners to make their land available to the public for recreational purposes by granting a limitation on liability. Thus, according to

¹ The Secretary of Transportation may approve a transportation project’s use of a public park or recreation area only if no reasonable alternative exists and all measure to reduce harm are taken. However, these conditions are not applicable where officials having jurisdiction over the site determine that recreation is not a major purpose of the land and is only a secondary or occasional purpose. 23 U.S.C. § 138; 49 U.S.C. § 303 (commonly known as “Section 4(f)”).

the Supreme Court, where land is also intended to be opened to the public for some other purpose - for example as a public transportation corridor - immunity should not apply because the inducement of immunity is not necessary. In other words, the land would already be held open to the public even in the absence of the recreational use; therefore, the immunity granted should not apply. From this premise, the Court reasoned that recreational immunity does not arise because of the mere presence of incidental recreational uses on land that is otherwise open to the public. Rather, to benefit from the grant of immunity, the landowner must establish: (1) it opened the land to the public for recreational purposes; and (2) it holds "continuing authority to determine whether the land should be open to the public," *i.e.*, the landowner must have authority to close the land to the recreating public and it cannot have already been open to the public for another use. In this case, the Court questioned whether the City had the authority to close the land given WSDOT's deed restriction requiring that the land be used for "road/street purposes only" absent prior written approval of WSDOT and questioned whether the trail had been opened for the purpose of recreation. The Court noted that bicycling is not necessarily a recreational activity.

Finally, the Court held that a landowner's recreational use immunity does not depend on the plaintiff's activity at the time the injury occurred. Because the landowner cannot control how a plaintiff uses the land (for recreational or other purposes), it would not sufficiently protect the landowner to base immunity on the activity of the plaintiff at the time of injury. Rather, the relevant questions are described above, which focus on the landowner's intent in opening the land to the public.

III. Conclusion. City officials should be aware of the limited nature of the immunity granted by RCW 4.24.210. Recreational immunity only applies where the landowner has intended to open the land for recreational purposes. This case raises many questions regarding the application of recreational immunity where the landowner intends to open land to the public for both recreational and nonrecreational uses. Caution must be exercised in crafting project descriptions involving multi-use facilities if it is intended that the recreational immunity will apply. If land has been granted to a city with deed restrictions regarding uses other than recreation, those restrictions may also render the immunity inapplicable.