Supreme Court No. 100947-0
Court of Appeals, Division I No. 823299
King Co. Superior Court Cause No. 19-2-32361-2

WASHINGTON STATE SUPREME COURT

SVETLANA NATALICHEVA and GREGORY GRIDIN,
and the marital community composed thereof,

Plaintiffs-Petitioners,

vs.

CITY OF REDMOND, WASHINGTON,
a municipal corporation,

Defendant-Respondent.

PETITION FOR REVIEW

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IDENTITY OF PETITIONERS

Svetlana Natalicheva and her husband, Gregory Gridin ("Natalicheva"), ask this Court to accept review of the Court of Appeals decision below.

CITATION TO COURT OF APPEALS DECISION

The City of Redmond cleared natural vegetation and created and maintained a grassy area for picnicking and other forms of recreation located in what the City itself describes as the "target zone" of cottonwood trees that are prone to Summer Limb Drop (SLD) in Idylwood Park. The City is well aware of the danger to park users in the target zone, describing it as a "safety concern" and a "high risk." The park is used by tens of thousands of people each year, but park users are completely unaware of the danger to themselves because the City created and maintained the area for them to use, provided no warning of SLD or the target zone, the trees outwardly appeared to be normal and healthy, and the target zone was not marked or otherwise apparent.

Like many people, Natalicheva took her children to Idylwood Park in the Summer of 2017, so that her children could go swimming in Lake Sammamish. Along with others, she sat in the recreation area created and maintained by the City in the shade of the cottonwood trees to watch her children swim. A large limb in one of the trees broke off due to SLD, fell into the target zone where Natalicheva was sitting, hit her on the head and shoulders, and caused her to suffer severe and permanently disabling injuries while her children were only a short distance away.

Natalicheva and her husband filed suit against the City to recover for her injuries. The City raised an affirmative defense of recreational use immunity and sought summary judgment on this defense. The City admitted that the condition of its park was dangerous and that it failed to warn park users of the danger. However, the City argued that it was nonetheless immune because the condition was not "artificial," "latent," or "known"

within the meaning of the limitation on recreational use immunity in RCW 4.24.210(4)(a).

The superior court granted the City's motion and the Court of Appeals affirmed. *Natalicheva v. City of Redmond*, 2022 WL 896349 (Div. I, Mar. 28, 2022). Both courts ruled as a matter of law that the relevant "condition" was a falling tree branch in isolation from the recreation area created by the City in the target zone of trees prone to SLD, and that this condition was not "artificial" within the meaning of the recreational use statute.

A copy of the Court of Appeals decision is in the Appendix at A-1 through A-5. Natalicheva filed a timely motion to publish the Court of Appeals decision, and a copy of the order denying reconsideration is in the Appendix at A-6.

ISSUES PRESENTED FOR REVIEW

On de novo review, are there genuine issues of material fact regarding the City of Redmond's affirmative defense of recreational use immunity? In particular:

1. Under the limitation on recreational use immunity in RCW 4.24.210(4)(a), the relevant "condition" is "the specific object or instrumentality that caused the injury, viewed in relation to other external circumstances in which the instrumentality is situated or operates." *Davis v. State*, 144 Wn.2d 612, 617, 30 P.3d 460 (2001). "Identifying the condition that caused [the plaintiff's] injury is a factual determination." *Van Dinter v. City of Kennewick*, 121 Wn.2d 38, 44, 846 P.2d 522 (1993). Must the relevant "condition" in this case be defined solely in terms of a falling tree limb? Or, could a reasonable jury conclude that the relevant condition is a recreational area created and maintained by the City in the target zone of a stand of cottonwood trees prone to Summer Limb Drop?

2. The limitation on recreational use immunity in RCW 4.24.210(4)(a) involves factual issues to be decided by a jury. *Ravenscroft v. Washington Water Power Co.*, 136 Wn.2d 911, 926, 969 P.2d 75 (1998). Could a reasonable jury conclude that a recreational area created and maintained in the target zone of a stand of cottonwood trees prone to Summer Limb Drop is:

    a. An "artificial … condition" within the meaning of RCW 4.24.210(4)(a) because the area was transformed through human effort rather than the result of natural causes?

    b. A "latent condition" within the meaning of RCW 4.24.210(4)(a) because the target zone is not marked or apparent, ordinary users are unaware of SLD, and the trees outwardly appear to be normal and healthy?

    c. A "known … condition" within the meaning of RCW 4.24.210(4)(a) because the City created the

condition and has actual knowledge of SLD and the target zone where SLD poses a danger to park patrons?

3. "Because recreational use immunity is an affirmative defense, the landowner asserting it carries the burden of proving entitlement to immunity under the statute." *Camicia v. Howard S. Wright Constr. Co.*, 179 Wn.2d 684, 693 (2014). Does an injured person have the burden to disprove a landowner's entitlement to immunity under the limitation on recreational use immunity in RCW 4.24.210(4)(a)?

STATEMENT OF THE CASE

A. The City of Redmond cleared natural vegetation and created and maintained a grassy area for picnicking and other forms of recreation in the target zone of a stand of cottonwood trees that were known by the City to be prone to "Summer Limb Drop."

The City of Redmond owns and operates a park known as Idylwood Park on the shores of Lake Sammamish. CP 8-9 & 17. The Park is used by tens of thousands of visitors during the summer months alone. CP 146. There were 43,459 visitors in the summer of 2016, the year before Natalicheva was injured, and 40,982 in the summer of 2017, the year she was injured. *Id*.

Idylwood Park contains a number of large cottonwood trees, many of which "are in the most heavily trafficked areas of

the Park, including near the swimming beach" on Lake Sammamish. CP 158. The City identified "thirty cottonwood trees in high use areas of the Park[.]" CP 149. There was "a stand of black cottonwood trees" at the beach-side location where Natalicheva was injured, "18 of which were subsequently removed by the City[.]" CP 56.

Cottonwood trees are prone to SLD. "It is a phenomenon that has been observed and written about for decades, and is common knowledge among arborists and tree care professionals." CP 968. It "is especially common in cottonwoods." CP 970. It occurs during hot summer afternoons when cottonwood trees transpire heavily to compensate for the heat, and the weight of the added water in the tree limbs, along with the weight of the leaves are too much for the limb to hold, causing large diameter limbs to suddenly break off and fall to the ground, even without any wind. CP 42 & 210-11.

While SLD has been a matter of common knowledge among arborists for a long time, the average person is unaware

of the phenomenon. CP 956 & 994. The phenomenon cannot be directly observed because the tree outwardly appears to be normal and healthy. CP 42, 251, 956 & 994.

The City knew about SLD in cottonwood trees, both as a general proposition and specifically at Idylwood Park, well before Natalicheva was injured. In 2013—four years before her injury—the City's Park Operations Supervisor, Teresa Kluver, received a call from a concerned neighbor of Idylwood Park, raising concerns about an eight-inch diameter cottonwood tree limb that had broken off and was overhanging a fence on the property boundary. CP 376. Ms. Kluver directed an arborist employed by the City, Christopher Tolonen, to remove the limb and assess the trees for other safety concerns. CP 189-90, 205-06 & 376. Mr. Tolonen confirmed that the limb fell due to SLD. CP 210-14 & 252.

In 2014—three years before Natalicheva's injury—Mr. Tolonen removed a cottonwood tree at a different park because of multiple SLD incidents. CP 43 & 214-16. In 2015—two years

before her injury—another large cottonwood limb fell at Idylwood Park, "nearly striking a park user" and prompting Mr. Tolonen to have the tree pruned. CP 378.

In 2016—the year before Natalicheva was injured—the City received an inquiry from a homeowner about a cottonwood tree growing close to her home. CP 379-80. Mr. Tolonen replied to the homeowner's inquiry, noting that cottonwood trees pose a "high risk" to children and others located below them:

> The native black cottonwood that you are talking about can be problematic in the urban forest when targets are nearby …. in the heat of the summer there is a phenomena called sudden branch drop …. So, consider the area below the tree. Will there be constant occupancy like a house or a parking area or frequent occupancy like a back yard? This will lead to your risk rating of the cottonwood tree. No target – no risk. Childs [*sic.*] summer play area below the tree – high risk. Then, decide on a prescription for the tree. We have these trees along lake Sammamish at Idylwood park[.]

CP 379.[1]

[1] The quoted email is reproduced in the Appendix.

"Basic Tree Risk Assessment Forms" used by the City and Mr. Tolonen describe the area below a tree as the "target zone." CP 228-29. The target zone includes areas beneath the "drip line" of the tree, i.e., the tips of the longest branches, and extends up to 1.5 times the height of the tree. CP 53 & 228-29.

Nonetheless, the City created a recreation area in the target zone under the stand of cottonwood trees at Idylwood Park where Natalicheva was injured. When the park was originally developed, underbrush at the site was cleared and the natural environment was changed. CP 243 & 292. Grass was seeded, cultivated, and manicured in the target zone. The City irrigates the grass to keep it green. CP 657 & 663.

The City also performs "turf maintenance" in the area under the cottonwood stand. "The grass is cut and groomed … to make it aesthetically look good[.]" CP 653. The City fertilizes, CP 654, aerates, CP 424 & 654, and thatches the turf, CP 654, and performs weed control, CP 657, and over seeding, CP 424, & 562-63. The City prevents new cottonwood trees from taking

root in the turf by removing "suckers." CP 870-72. The City keeps out any other native or invasive species from the manicured turf. CP 658-59. The City maintains a defined edge between the turf and the beach. CP 318, 325, 465, 659, 681, 930. The City also maintains a defined edge between the turf and the adjacent natural area. CP 658-59.

As a result of the City's continual efforts, the target zone under the cottonwood trees was transformed into an attractive and inviting area for picnicking and other types of recreational activities that looks like this:

CP 978.[2]

Without the City's continual efforts, the target zone under the cottonwood trees would not be inviting or suitable for recreational use and would look like this:

[2] A full-size color copy of the photograph is reproduced in the Appendix.

CP 977.[3]

Despite creating and maintaining a recreational area in the target zone under the cottonwood trees, the City never performed a "risk rating" or assessment like the one the City's arborist, Mr. Tolonen, recommended to the homeowner concerned about cottonwood trees on her property. CP 19. After the 2013 SLD incident involving a cottonwood tree at Idylwood Park, a

[3] A full-size color copy of the photograph is reproduced in the Appendix.

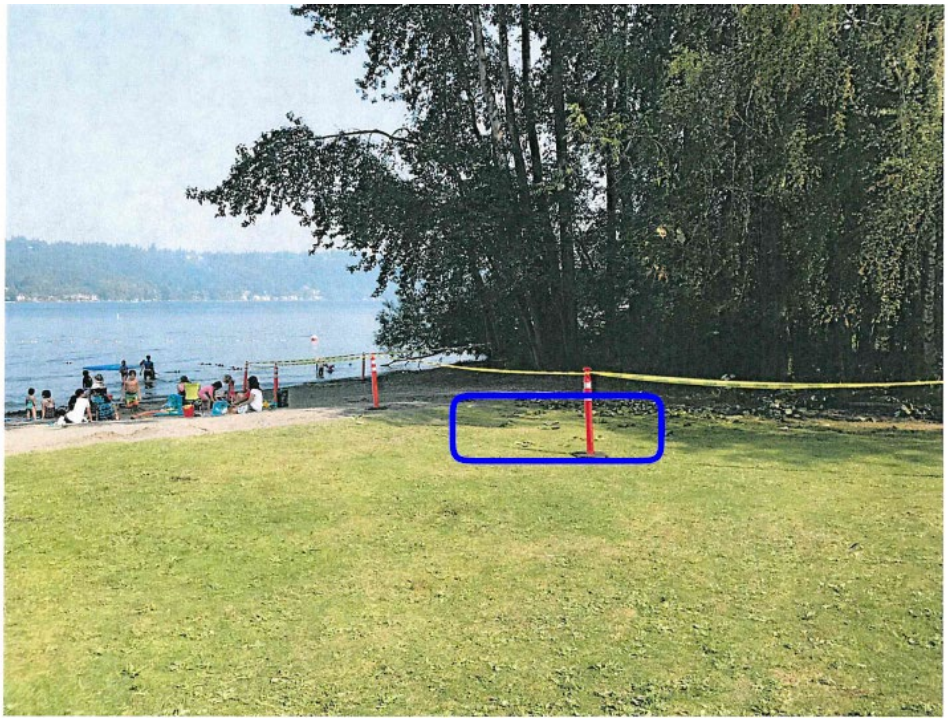
reasonable park owner would have engaged a qualified arborist to conduct a thorough risk assessment and recommend measures to ameliorate the risk to park users in the target zone. CP 958 & 994-95. However, there is no evidence the City performed any assessment or took any remedial action in the intervening time before Natalicheva was injured. CP 224, 254-55, 257-58, 263-64 & 401-02.

Just over two weeks after Natalicheva's injury, another cottonwood tree limb in Idylwood Park broke due to SLD. CP 537-41. The limb came crashing down on a picnic table on an adjacent property, where a family had been picnicking earlier in the day. *Id.* This incident finally prompted the City to conduct a risk assessment of the trees in the park. CP 256-59 & 404-05. As a result of the assessment, the City removed 30 trees that posed a danger to park users. CP 259-61, 437 & 536. Eighteen of the trees were removed from the stand of cottonwood trees where Natalicheva was injured. CP 56.

B. A large limb from a cottonwood tree fell due to Summer Limb Drop and hit Svetlana Natalicheva while she was using the recreation area that the City created and maintained, causing her to suffer severe and permanently disabling injuries.

On August 10, 2017, Natalicheva took her two children to Idylwood Park to meet a friend and her friend's children, so the children could go swimming together. CP 983-84 & 988-89. The Park was very crowded when they arrived. CP 984 & 989.

Natalicheva and her friend wanted to sit close to the water, so they could keep an eye on their children while the children were swimming. CP 989. They also wanted to sit in the shade so they would be protected from the hot sun. *Id.* Near the beach, there is only one shady area, created by a stand of cottonwood trees. *Id*. The location where they sat is depicted by the blue marking on the following photograph:



CP 992.[4] Others were sitting in the same area, including mothers with babies. CP 984 & 989.

While they were watching their children, Natalicheva and her friend heard a very loud cracking noise. CP 984. They looked up and it appeared that an entire tree was starting to fall down. *Id*. They tried to run away, but a large limb from the tree hit Natalicheva on the head. *Id*. She lay on the ground bleeding and

[4] A full-size color copy of the photograph is reproduced in the Appendix.

unresponsive. CP 984-85. Someone had to lift the tree limb off her. CP 985. A nurse who was visiting the park turned her on her side so she would not choke on the blood in her mouth. CP 985. Her children were traumatized at the sight of her in this condition. *Id*.

Natalicheva was taken to the emergency room, where she underwent a craniotomy to stop internal bleeding. CP 982. She "suffered a traumatic brain injury affecting her speech, multiple skull fractures, a C7 spinal facet fracture, a left acromion fracture, left brachial plexus injury, avulsion of C7, C8, and T1 roots, a C5 and C6 injury with post injury scarring, a 2nd metacarpal fracture, retrobulbar hematoma, partial 6th cranial nerve palsy with horizontal diplopia, nasal fracture, T6 compression fracture, bilateral lung contusion, left lateral clivus fracture, left temporal lobe epidural hematoma, among other injuries." CP 981-82. After further surgery and rehabilitation, she still "has no meaningful use of her left hand, wrist, elbow or shoulder." CP 982.

The cottonwood limb that hit Natalicheva in the recreation area created by the City fell due to SLD. CP 225-26, 235, 292, 956 & 994. The only reason that Natalicheva was in the target zone of the cottonwood tree is because the City created and maintained the area to be appealing to park visitors like her. CP 992. Had the City not transformed the natural condition of the target zone, Natalicheva would not have been able to use the area and she would not have been injured. CP 977.

C. Without reaching the issue of the City's negligence, the superior court dismissed Natalicheva's claims and the Court of Appeals affirmed.

Natalicheva and her husband filed suit against the City to recover for her injuries. CP 1-7. The City denied liability and alleged an affirmative defense based on the recreational use statute, RCW 4.24.210. CP 13. The City subsequently moved for summary judgment on its affirmative defense. CP 15-35. The City admitted that the condition of its park was dangerous and that it failed to warn park users of the danger. However, the City argued the relevant "condition" that injured Natalicheva

consisted solely of the falling tree limb, and that this condition was not "artificial," "latent," or "known" within the meaning of the limitation on recreational use immunity in RCW 4.24.210(4)(a). *Id.*

Natalicheva responded to the City's motion, first by noting that the City's characterization of the relevant "condition" was too narrow, and that the injury causing condition must instead be viewed in relation to the surrounding circumstances. CP 110-40. Viewed properly, the relevant condition consists of a recreational area in the target zone of cottonwood trees that are prone to SLD. *Id.* Natalicheva argued that this condition was both artificial and known because it was created and maintained by the City rather than being left in its natural condition. *Id.* She further argued that this condition was latent because ordinary recreational users cannot see, and are generally unaware of, SLD or the target zone that exists beneath cottonwood trees and the trees outwardly appear to be normal and healthy. *Id.*

The superior court accepted the City's characterization of the relevant condition as the falling tree limb in isolation from the recreational area created and maintained in the target zone. The court then granted summary judgment in the City's favor on grounds that the limb was not "artificial." RP 20:8-14. The Court of Appeals affirmed on the same grounds as the superior court. *Natalicheva,* 22 WL 896349, at *2-3. Neither court ruled on the City's arguments that the condition was not latent and not known, and neither court reached the issue of the City's negligence.

ARGUMENT

A. Overview of landowner liability to public invitees, recreational use immunity, and the limits of such immunity.

Landowners owe a duty to exercise ordinary care to keep their property in a reasonably safe condition for invitees. *Van Dinter*, 121 Wn.2d at 41-42. Invitees include those who are either expressly or impliedly invited onto the premises for some purpose for which the premises are held open to the public, such

as patrons of municipal parks. *McKinnon v. Washington Fed. Sav. & Loan Ass'n*, 68 Wn.2d 644, 650-51, 414 P.2d 773 (1966) (recognizing public invitees); *Swanson v. McKain*, 59 Wn. App. 303, 313, 796 P.2d 1291 (1990), *rev. denied,* 116 Wn.2d 1007 (1991) (noting patrons of municipal parks are public invitees).

The reason for imposing a duty of ordinary care with respect to these public invitees is that the landowner, "by his arrangement of the premises or other conduct, has led the entrant to believe that the premises were intended to be used by visitors, as members of the public, for the purpose which the entrant was pursuing, and that reasonable care was taken to make the place safe for those who enter for that purpose." *McKinnon*, 68 Wn.2d at 649.

To encourage landowners to open up land for recreational purposes, the Legislature enacted the recreational use statute, which limits landowners' liability toward a subset of public invitees consisting of recreational users. RCW 4.24.200-.210; *Lockner v. Pierce Cty.*, 190 Wn.2d 526, 532, 415 P.3d 246 (2018)

(noting the statute creates the classification of "recreational users"). Under the statute, landowners have a form of immunity and can generally avoid liability for negligently causing injury to such recreational users. RCW 4.24.210(1). In this way, the statute creates "an exception to Washington's premise liability law regarding public invitees." *Camicia*, 179 Wn.2d at 694.[5]

However, landowners' immunity from their normal common-law liability is subject to several express limitations set forth in the text of the recreational use statute. RCW 4.24.210(1), (4)(a) & (4)(b). The limitation pertinent to this case states that "[n]othing in [the statute] shall prevent the liability of a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted." RCW 4.24.210(4)(a). Of course, a landowner who is not entitled to immunity is not automatically

[5] RCW 4.24.200 and .210 are reproduced in the Appendix.

or strictly liable. A recreational user still must prove public invitee status, negligence, causation, and damages as well as overcome any other landowner defenses.

B. The Court of Appeals' definition of the relevant "condition" as a falling tree limb in isolation from the recreational area created and maintained by the City in the target zone of trees prone to Summer Limb Drop conflicts with this Court's decisions in *Van Dinter, Ravenscroft,* and *Davis*, warranting review under RAP 13.4(b)(1).

Under the limit on recreational use immunity in RCW 4.24.210(4)(a), the relevant "condition" is "the specific object or instrumentality that caused the injury, viewed in relation to other external circumstances in which the instrumentality is situated or operates." *Ravenscroft*, 136 Wn.2d at 921 (citing *Van Dinter*); *accord Davis*, 144 Wn.2d at 617 (quoting *Ravenscroft*). "Identifying the condition that caused [the plaintiff's] injury is a factual determination." *Van Dinter*, 121 Wn.2d at 44. On summary judgment, the court must adopt the non-moving party's view of the injury-causing condition as long as it is supported by the facts. *Id.* at 43-44.

The external circumstances that must be considered part of the relevant condition are those ***causally related*** to the plaintiff's injury. The causal relationship is grounded in the text of the recreational use statute, which refers to "injuries sustained to users by reason of a … condition." RCW 4.24.210(4)(a). Thus, in *Van Dinter*, this Court held that a caterpillar-shaped piece of playground equipment must be viewed in relation to the surrounding border and an adjacent grassy play area that brought the plaintiff into contact with the equipment, thereby causing the plaintiff's injury. 121 Wn.2d at 43-44. The Court referred to the causal relationship no less than eight times in the relevant portion of its opinion. *Id.*

Likewise, in *Ravenscroft*, this Court held that a tree stump in a reservoir must be viewed in relation to its location in the water channel and the water level because they combined to cause the plaintiff's injury, referring to the causal relationship three times in the course of its opinion. 136 Wn.2d at 914-15, 921-22 & 923 n.4.

In contrast, in *Davis*, where the plaintiff was injured by "launching" his motorcycle off of a 20-to-30-foot drop-off, the Court held that tire tracks made by other riders leading to the drop off were not part of the condition because the tracks were too causally attenuated from the drop off itself. 144 Wn.2d at 617. A rider could follow the tracks to the edge of the drop off without going over and in this way, the tracks and the drop off could be encountered independently. *Id.* at 618. The Court in *Davis* applied the same causation analysis as *Van Dinter* and *Ravenscroft*, but distinguished *Ravenscroft* on grounds that "[t]he relationship between the tracks and the drop-off is more attenuated than the relationship between the stump and the artificial control of the watercourse and water level in *Ravenscroft*." *Id.* at 619.

In this case, the relevant condition consists of the recreation area created and maintained by the City in the target zone of cottonwood trees prone to SLD because the location of the recreational area is causally related to—and indeed is

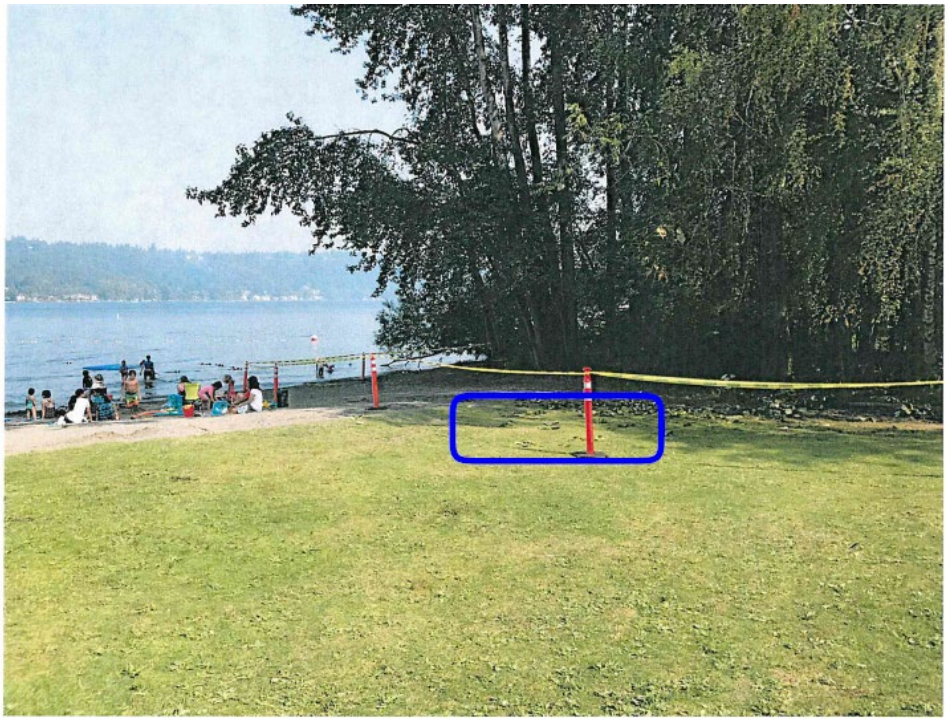
inseparable from—the target zone where falling limbs can injure park patrons. The causal relationship is confirmed by the City's recognition that the recreational area is located in the target zone.

Like *Ravenscroft,* where the landowner's actions of altering the watercourse and water level brought the plaintiff into contact with a submerged stump, the City's actions of clearing natural vegetation and creating and maintaining a grassy area for picnicking and other forms of recreation in the target zone brought Natalicheva into contact with the falling tree limb. Unlike *Davis,* where the tire tracks and the drop off could be encountered independently, the recreational area created and maintained by the City in the target zone cannot be encountered independently precisely because the area is located in the target zone. As a result, the requisite causal relationship between the specific object or instrumentality that caused Natalicheva's injury (the falling limb) and the other external circumstances in which the instrumentality is situated or operates (a recreational

area created and maintained in the target zone of trees prone to SLD) is satisfied.

However, the Court of Appeals rejected Natalicheva's definition of the injury causing condition as a matter of law on grounds that "[h]ad the City not maintained the area underneath the tree, Natalicheva still could have walked underneath the tree susceptible to SLD in its natural state." *Natalicheva*, 2022 WL 896349, at *3. The Court of Appeals' reasoning is counterfactual and contrary to the standard for summary judgment because Natalicheva was, in fact, located in the recreation area created and maintained by the City in the target zone when she was hit by the falling limb. As noted above, the City transformed the area from this:

CP 977; to this:



CP 992. Natalicheva would not have been injured if the area had remained in its natural state because there would have been no way for her (or other members of the public) to sit in the target zone while watching her children swim.

More importantly, the lower court's decision is contrary to *Van Dinter's* holding that the court must adopt the non-moving party's view of the injury-causing condition when supported by the facts. 121 Wn.2d 43-44. It is also contrary to the holdings of *Van Dinter, Ravenscroft,* and *Davis* that the relevant "condition"

is "the specific object or instrumentality that caused the injury, viewed in relation to other external circumstances in which the instrumentality is situated or operates." *Id.* at 43; *Ravenscroft*, 136 Wn.2d at 921; *Davis*, 144 Wn.2d at 617. The conflicts with this Court's decisions warrant review under RAP 13.4(b)(1).

C. The Court of Appeals decision that the recreational area created and maintained by the City in the target zone of trees prone to Summer Limb Drop is not an "artificial" condition conflicts with this Court's decisions in *Ravenscroft* and *Davis*, warranting review under RAP 13.4(b)(1).

A condition is "artificial" within the meaning of RCW 4.24.210(4)(a) if it is "contrived through human art or effort and not by natural causes detached from human agency[.]" *Ravenscroft,* 136 Wn.2d at 922; *accord Davis,* 144 Wn.2d at 617 (quoting *Ravenscroft*). A condition is considered artificial, even if it is comprised of natural elements, if the natural elements are physically altered or otherwise transformed by human effort. Thus, in *Davis*, 144 Wn.2d at 617 & n.2, the Court recognized that tire tracks created by users in the dirt are artificial, and in

Ravenscroft, 136 Wn.2d at 921, the Court recognized that alteration of a watercourse and water level of a reservoir that obscured an injury-causing stump was artificial. "The determination of whether a condition is … artificial … is often fact specific." *Id.* at 923.

In this case, the City's decision to create and maintain a recreation area in the target zone of cottonwood trees prone to SLD involves at least as much human agency as the tire tracks in *Davis* or the alteration of the watercourse and water level in *Ravenscroft*. Natural underbrush was cleared away from the target zone where Natalicheva was injured and grass was seeded in its place. The City irrigates, fertilizes, aerates, and thatches the grass, performs weed control, over seeding, and "turf maintenance," and removes cottonwood "suckers," all to keep the area desirable for recreational activities and to prevent it from reverting to its natural condition. This is more than enough human intervention to transform the natural elements into an artificial condition.

The Court of Appeals below largely sidestepped the issue of artificiality by defining the relevant condition solely as a falling tree limb in isolation from the recreational area created and maintained in the target zone of trees prone to SLD. Nonetheless, the court's determination as a matter of law that the condition was not artificial conflicts with this Court's decisions in *Ravenscroft* and *Davis* and further warrants review under RAP 13.4(b)(1).

D. The Court of Appeals decision placing the burden of disproving the City's affirmative defense of recreational use immunity on Natalicheva is contrary to this Court's decision in *Camicia* and the required strict construction of recreational use immunity, warranting review under RAP 13.4(b)(1).

The recreational use statute "is an affirmative defense" and "the landowner asserting [the defense] carries the burden of proving entitlement to immunity under the statute." *Camicia*, 179 Wn.2d at 693. This placement of the burden of proof is consistent with, if not required by, the rule of strict construction that applies to the recreational use immunity statute because it is

in derogation of the common law. *Van Scoik v. State, Dep't of Nat. Res.*, 149 Wn. App. 328, 334, 203 P.3d 389 (2009) (citing *Matthews v. Elk Pioneer Days,* 64 Wn.App. 433, 437, 824 P.2d 541, *rev. denied,* 119 Wn.2d 1011 (1992)); *accord Michaels v. CH2M Hill, Inc.*, 171 Wn.2d 587, 600, 257 P.3d 532 (2011) (citing *Matthews* for strict construction of analogous immunity statute).

Contrary to *Camicia* and the underlying rule of strict construction, the Court of Appeals imposed the burden of disproving recreational use immunity on Natalicheva. *Natalicheva*, 2022 WL 896349, at *1. The court held that this Court's decision in *Jewels v. City of Bellingham*, 183 Wn.2d 388, 395, 353 P.3d 204 (2015), implicitly shifted the burden of proof when it said that "an injured party may overcome [recreational use] immunity by showing" that an exception applies. 183 Wn.2d at 395. However, *Jewels* did not expressly address the burden of proof, nor did it cite, let alone qualify or limit, the Court's prior express holding regarding the burden of proof in *Camicia*. The

conflict between decision below and *Camicia* warrants review under RAP 13.4(b)(1).

E. The Court of Appeals decision is based on public policy-type arguments regarding the scope of recreational use immunity that warrant review under RAP 13.4(b)(4).

Ultimately, the Court of Appeals gave the City immunity because of public policy concerns about "a chilling effect on the availability of outdoor recreation on lands opened to the public for such use," given the number of trees susceptible to SLD that exist across the state. *Natalicheva,* 2022 WL 896349, at *3. This concern is not supported by the record or litigation reflected in published decisions since this Court recognized claims by public invitees in 1966 against a landowner who, "by his arrangement of the premises or other conduct, has led the entrant to believe that the premises were intended to be used by visitors, as members of the public, for the purpose which the entrant was pursuing, and that reasonable care was taken to make the place

safe for those who enter for that purpose." *McKinnon*, 68 Wn.2d at 649.

Moreover, the Court of Appeals' concern is based on a caricature of Natalicheva's argument and hyperbolically overstates landowners' potential liability. Landowners would rarely be subject to liability for SLD because they are entitled to immunity unless injury results from "a known dangerous artificial latent condition." RCW 4.24.210(4)(a). Even with respect to such conditions, landowners retain immunity if they post a warning sign. *Id.* In the absence of a warning, landowners are not automatically or strictly liable for injuries resulting from such conditions. The injured person must still prove public invitee status, negligence, proximate cause, and damages and overcome other landowner defenses.

In any event, to the extent that public policy concerns form the basis for giving the City immunity, such concerns present "issue[s] of substantial public interest that should be determined by [this] Court." RAP 13.4(b)(4).

CONCLUSION

The Court should grant review, reverse the decisions below, vacate summary judgment, and remand for trial.

RAP 18.17 CERTIFICATE

This petition contains 5,343 words, which is 343 more than permitted by RAP 18.17(c)(10). A separate motion for leave to file overlength brief is filed contemporaneously herewith.

Respectfully submitted this 23rd day of May, 2022.

s/George M. Ahrend
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CERTIFICATE OF SERVICE

The undersigned does hereby declare the same under oath and penalty of perjury of the laws of the State of Washington:

On the date set forth below, I electronically filed the foregoing with the Washington State Appellate Court's Secure Portal system, which will send notification and a copy of this document to all counsel of record:

Attorneys for Defendant:
Jessica B. Jensen
Ogden Murphy Wallace, PLLC
jjensen@omwlaw.com

Co-Attorneys for Plaintiff:
Jonathan J. Lee
Premier Law Group, PLLC
jon@premierlawgroup.com

Signed at Ephrata, Washington on May 23, 2022.

Shari M. Canet, Paralegal

APPENDIX

2022 WL 896349
Only the Westlaw citation is currently available.

NOTE: UNPUBLISHED OPINION, SEE WA R GEN GR 14.1

Court of Appeals of Washington, Division 1.

Svetlana NATALICHEVA and Gregory Gridin, and the marital community composed thereof, Appellants,
v.
CITY OF REDMOND, a Washington Municipal Corporation, Respondent.

No. 82329-9-I
|
FILED 3/28/2022

Honorable Douglass A. North, Judge

Attorneys and Law Firms

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Jessica B. Jensen, Attorney at Law, 901 5th Ave., Ste. 3500, Seattle, WA, 98164-2008, for Respondent.

UNPUBLISHED OPINION

Hazelrigg, J.

***1** Svetlana Natalicheva appeals from an order granting summary judgment dismissal of her negligence claim against the City of Redmond. She argues the court erred in finding the City was entitled to recreational use immunity under RCW 4.24.200 and .210. Because Natalicheva fails to raise a material issue of fact as to the artificial condition exception to statutory immunity, dismissal was proper.

FACTS

In August 2017, Svetlana Natalicheva sustained life-altering injuries at Idylwood Park in Redmond, Washington after a tree limb fell over 80 feet and struck her. Natalicheva and a friend were in the park sitting in the shade under a tree as their children swam in a nearby lake when Natalicheva was knocked unconscious by the branch and suffered numerous serious injuries such that she effectively lost the use of her left arm. She sued the City of Redmond (City) for negligence, alleging the City knew the cottonwood trees at Idylwood Park posed a risk of "sudden limb drop" (SLD), a condition where otherwise healthy trees lose their branches without warning.[1] The City moved for summary judgment, seeking dismissal of the claim under the recreational use immunity authorized by RCW 4.24.200, .210. The City also moved to strike portions of Natalicheva's expert witness declarations as too attenuated from their fields of expertise. The trial court granted the motion to strike and the motion for summary judgment dismissal. Natalicheva timely appealed.

[1] The phenomenon is also referred to as "summer limb drop."

ANALYSIS

I. Summary Judgment Standard and Recreational Use Immunity

This court reviews a decision on summary judgment de novo, conducting the same inquiry as the trial court. Schwartz v. King County, 14 Wn. App. 2d 915, 926, 474 P.3d 1092 (2020). " 'We consider all facts submitted and all reasonable inferences from the facts in the light most favorable to the nonmoving party.' " Id. (quoting Rublee v. Carrier Corp., 192 Wn.2d 190, 199, 428 P.3d 1207 (2018)). If, based on the record, "there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law," summary judgment is proper. Swinehart v. City of Spokane, 145 Wn. App. 836, 844, 187 P.3d 345 (2008).

RCW 4.24.200 and .210 provide statutory immunity for

"landowners who open their land to the public for recreational purposes, free of charge." Jewels v. City of Bellingham, 183 Wn.2d 388, 395, 353 P.3d 204 (2015). The statutes aim to "encourage landowners to open their lands to the public for recreational purposes." Davis v. State, 144 Wn.2d 612, 616, 30 P.3d 460 (2001) (citing RCW 4.24.200).

Natalicheva correctly notes in her opening brief that the recreational use immunity is an affirmative defense. See Camicia v. Howard S. Wright Const. Co., 179 Wn.2d 684, 696–97, 317 P.3d 987 (2014). As an affirmative defense, the landowner must demonstrate that the land: " '(1) was open to members of the public (2) for recreational purposes and [that] (3) no fee of any kind was charged.' " Id. at 695–96 (alterations in original) (quoting Cregan v. Fourth Mem'l Church, 175 Wn.2d 279, 284, 285 P.3d 860 (2012)). Once the landowner has made this showing, they are entitled to immunity. Jewels, 183 Wn.2d at 395. However, an injured party " 'may overcome this immunity by showing' " an exception applies, including where an individual is injured " 'by reason of a known dangerous artificial latent condition for which no warning signs were posted.' " Id. (quoting Davis, 144 Wn.2d at 616). Natalicheva argues because recreational use immunity is an affirmative defense, the landowner bears the burden to show the exception does not apply. This is contrary to our case law. Natalicheva does not contest that the statute applies, therefore under Jewels, she bears the burden to demonstrate the artificial condition exception applies.

***2** Our courts "have consistently held that the four terms: 'known,' 'dangerous,' artificial,' and 'latent' modify the term 'condition,' not one another." Swinehart, 145 Wn. App. at 845 (quoting Van Dinter v. City of Kennewick, 121 Wn.2d 38, 46, 846 P.2d 522 (1993)). The injury-causing condition, therefore must be known, dangerous, artificial, and latent. Id. "If one of the four elements is not present, a claim cannot survive summary judgment." Davis, 144 Wn.2d at 616. Natalicheva does not argue the recreational use immunity statute does not apply, but rather focuses on the application of the exception. The City does not argue the condition is not dangerous, concentrating its analysis on the other three elements (known, artificial, and latent).

II. Known Dangerous Artificial Latent Condition

Natalicheva first argues the trial court erred by analyzing the injury-causing condition as the falling tree limb "in isolation" from the area underneath the tree ("target zone"), which is maintained by the City. The "target zone" or "target area" was defined by an arborist employed by the City as describing the physical space underneath the canopy of a tree where a tree limb might land if it fell. Natalicheva argued before the trial court that by altering the grass area beneath a cottonwood tree, the City "invited" individuals to sit in this "target zone" where a falling tree branch might land. She contends the injury-causing condition should be viewed as the cottonwood tree susceptible to SLD and the area underneath the tree maintained by the City because the artificially altered grassy area is an external circumstance causally related to her injury.

In analyzing the artificial condition exception to recreational use immunity, the court's first step "is to identify the injury-causing condition." Swinehart, 145 Wn. App. at 845. Because we view all facts and reasonable inferences in the light most favorable to the nonmoving party, the court "must adopt" the nonmoving party's "view of the injury-causing condition" if it is supported by facts in the record. See Id. at 846. Our state Supreme Court has held "[t]he condition is the specific object or instrumentality that caused the injury, viewed in relation to other external circumstances in which the instrumentality is situated or operates." Ravenscroft v. Wash. Water Power Co., 136 Wn.2d 911, 921, 969 P.2d 75 (1998). For example, in Ravenscroft the injury-causing condition was not simply trees in their natural state, but trees cut down to stumps viewed in relation to "the water channel and the water level." Id. This was because the landowner there had not only cut down the trees, leaving the stumps behind, but also artificially raised the water level such that the stumps were not immediately visible to anyone using the waterway. Id. at 923. In Swinehart, Division III of this court found the injury-causing condition was the exit of a slide "as it rest[ed] on a bed of wood chips." 145 Wn. App. at 846. In Van Dinter, the injury-causing condition was a caterpillar-shaped piece of playground equipment and its placement, "rather than the caterpillar as viewed in isolation." 121 Wn.2d at 44.

Here, Natalicheva argues the injury-causing condition is not the cottonwood tree "viewed in isolation," but "the target zone where falling limbs can injure park patrons" in relation to the grassy area maintained by the City. In her response in opposition to the City's motion for summary judgment, Natalicheva argued the City's maintenance of the grassy area underneath the tree acted as a "lure" which "invites the unsuspecting public" into danger. Our state Supreme Court analyzed a similar argument in Davis, where tire tracks leading up to a natural drop-off were not "so closely related as to create a single artificial condition," distinguishing the case from the court's earlier

decision in Ravenscroft, 144 Wn.2d at 617, 618. The Davis court stated "the artificial condition in Ravenscroft was unique," because the artificial external circumstance "completely altered the natural condition of that object," such that "[t]he two conditions could not reasonably be analyzed as independent circumstances." Id. at 618. This close relationship between the injury-causing condition "and an artificial external circumstance [like the one found in Ravenscroft] is rare." Id. In contrast, the tracks leading to the drop-off in Davis had a more attenuated relationship because "the drop-off itself remained in its natural state." Id. at 619. Had the plaintiff "walked up to the drop-off following a set of artificial tire tracks, he still would have encountered the drop-off in its natural condition." Id.

***3** Natalicheva attempts to distinguish Davis by arguing the "recreational area and the target zone cannot be encountered independently." While we must adopt the nonmoving party's definition of the condition, we are not bound to a definition unsupported by facts in the record or a reasonable inference. Even viewing the evidence in the light most favorable to Natalicheva, it is not reasonable to define the condition as the maintained grassy area in the "target zone" and the tree. The "specific object or instrumentality that caused the injury" was the cottonwood limb that succumbed to SLD and fell, striking Natalicheva. See Ravenscroft, 136 Wn.2d at 921. Had the City not maintained the area underneath the tree, Natalicheva still could have walked underneath the tree susceptible to SLD in its natural state. The artificial "lure" of a grassy area, like the tire tracks in Davis, was not so closely related to the natural condition as to become one artificial condition. The relationship is so attenuated that this question may be determined as a matter of law, and summary judgment in favor of the City was proper.

Further, if this court held as Natalicheva urges, our decision would run contrary to the express public policy underlying the recreational use immunity statute. Christopher Tolonen, on behalf of the City, testified that SLD is observed in several species of trees common to western Washington: "maple, alder, sycamore and cottonwoods, among others." Natalicheva submitted no evidence to contest this testimony. Further, Natalicheva's own experts agreed a tree suffering from SLD "would generally appear to be healthy." To hold the City, or other landowners, liable for injuries from trees that appear healthy would contravene recreational use immunity, which seeks to "encourage landowners to open their lands to the public for recreational purposes" by providing immunity from liability. See Davis, 144 Wn.2d at 616. Given the proliferation in Washington of the sorts of trees susceptible to SLD, the limitation on recreational use immunity proposed by Natalicheva would have a chilling effect on the availability of outdoor recreation on lands opened to the public for such use. We recognize the seriousness of Natalicheva's injuries and the harm she has suffered, but we must also recognize, and defer to, the public policy identified and implemented by our state legislature.

Because Natalicheva has failed to raise a material issue of fact as to the element of artificiality such that an exception to recreational use immunity applies, judgment as a matter of law in favor of the City is proper.[2]

[2] Because Natalicheva must raise a material issue of fact as to all four elements in order to avoid summary judgment dismissal based on recreational use immunity, we need not reach the other two contested elements (knowledge and latency). As we find dismissal in favor of the City was proper, the court's denial of Natalicheva's motion to reconsider the summary judgment order was not error.

III. Order Striking Expert Declarations

Natalicheva also argues the trial court erred in granting the City's motion to strike portions of her expert declarations. The court struck several paragraphs in declarations from Zeb Haney and Favero Greenforest, finding they contained improper evidence. At the motion hearing, the court stated the opinions were beyond the expertise of the declarants to the extent the opinions discussed "risk management" or "how to manage parks."

When the ruling is on materials that are submitted in connection with summary judgment, this court conducts a de novo review. Keck v. Collins, 181 Wn. App. 67, 82, 325 P.3d 306 (2014). We may affirm the trial court's decision "on any basis supported by the record." Bavand v. OneWest Bank, 196 Wn. App. 813, 825, 385 P.3d 233 (2016).

Under ER 702, if "specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue," an expert witness "may testify." This requires a determination that "the testimony will assist the trier of fact and that the witness qualifies as an expert." Behr v. Anderson, 18 Wn. App. 2d 341, 374, 491 P.3d 189 (2021). Finally, a court may exclude expert testimony if the expert testifies about " 'information outside [their] area of expertise.' " Watness v. City of Seattle, 11 Wn. App. 2d 722, 749, 457 P.3d 1177 (2019) (quoting In re Marriage of Katare, 175 Wn.2d 23, 38, 283 P.3d 546

(2012)).

A. Common Knowledge

***4** If the expert opinion is a matter of common knowledge, and the court "needs no expert testimony as an aid to understanding, the court may exclude it." Ball v. Smith, 87 Wn.2d 717, 725, 55 P.2d 936 (1976). Paragraph 22 of the Haney declaration opines that the target zone "invited beach patrons (targets) to sit or recline in the shaded area." This opinion is no more than common knowledge and is therefore unhelpful to the court as expert testimony. Paragraph 26 of the Haney declaration concludes the City's maintenance of the target area "was an act of converting a natural state of the land." This is also common knowledge and unhelpful to the court as expert testimony. It is improper under ER 702.

Paragraph 22 of the Greenforest declaration also suggests the maintained area "would invite beach patrons" to sit or recline. This is also common knowledge unhelpful to the court. Paragraph 25 of the Greenforest declaration states the area where Natalicheva was injured looked like exhibits D and E, which are photos of the actual area. This again is common knowledge and unhelpful to the court, which could simply look at the photos of the actual area, which the City agreed it maintained.

The court properly struck paragraphs 22 and 26 of the Haney declaration and paragraphs 22 and 25 of the Greenforest declaration as they contained nothing more than common knowledge unhelpful to the court.

B. Legal Conclusions

An expert may give testimony "embracing the ultimate issue," but testimony "must be disregarded to the extent that it contains purely legal conclusions." Tortes v. King County, 119 Wn. App. 1, 13, 84 P.3d 252 (2003). Paragraph 23 of the Haney declaration states the City's maintenance of the grassy area "[was a] factor[ ] that contributed to [the] Plaintiff's injuries," and had the City not maintained the area "[the] Plaintiff's injuries would not have occurred." This is an improper legal conclusion that attempts to reach the elements of Natalicheva's negligence claim. Paragraph 23 of the Greenforest declaration opines maintaining the area "was an intentional act by the City to convert a natural state of the land to an artificial one." This too is an improper legal conclusion.

The court properly struck Paragraph 23 of the Haney declaration and Paragraph 23 of the Greenforest declaration under ER 702.

C. Outside Scope of Expert Knowledge

Finally, a court may also exclude expert testimony if the expert testifies about "information outside [their] area of expertise." Watness, 11 Wn. App. 2d at 749 (quoting Katare, 175 Wn.2d at 38).

Haney declared he is a "Board Certified Master Arborist," a registered consulting arborist, and is qualified in tree risk assessment. He does not state any experience directly related to park management, but does have experience in tree risk management and "tree risk assessment," which he testifies includes knowledge about mitigation plans to prevent injuries. Based on this expertise, paragraphs 21, 24, and 25 are not beyond Haney's scope of expertise as it relates to vegetation growth, risk mitigation, and tree risk assessment. These paragraphs were improperly excluded.

Greenforest is also a certified arborist and is qualified to conduct tree risk assessment. Like Haney's, Paragraph 21 of Greenforest's declaration opines about potential risk mitigation strategies the City could have used. This was proper given his risk assessment experience. Paragraph 24 describes what the natural state of the area might look like without maintenance, which is also within Greenforest's area of expertise. Paragraphs 21 and 24 of the Greenforest declaration should have been considered by the court.

***5** While the court erred in excluding several paragraphs of Natalicheva's expert declarations, this does not end our analysis of the issue. "When a trial court makes an erroneous evidentiary ruling, the question on appeal becomes whether the error was prejudicial." Driggs v. Howlett, 193 Wn. App. 875, 903, 371 P.3d 61 (2016). Only if an error "affects the outcome of the case," will it constitute grounds for reversal. Id. Even considering the portions of Natalicheva's expert declarations the trial court ordered stricken, she fails to raise a material issue of fact as to artificiality and her claim fails as a matter of law. As a result, the trial court's error is harmless and does not justify reversal.[3]

[3] Although we conclude under a de novo review that the court erred in striking portions of the expert declarations, we review an order denying a motion for reconsideration for an abuse of discretion. Phillips v.

> Greco, 7 Wn. App. 2d 1, 9, 433 P.3d 509 (2018). Because the court's decision was not based on untenable grounds or reasons, and as the error is harmless, the court did not err in denying Natalicheva's motion for reconsideration of the order striking portions of the expert declarations.

While Natalicheva's injuries are unquestionably horrific, to hold as she suggests would directly contradict the express intention of the legislature when it created recreational use immunity to encourage landowners to open their properties for public use. The trial court appropriately applied the standard set out in Davis and properly dismissed the suit against the City based on statutory immunity.

Affirmed.

WE CONCUR:

Coburn, J.

Smith, J.

All Citations

Not Reported in Pac. Rptr., 2022 WL 896349

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SVETLANA NATALICHEVA and GREGORY GRIDIN, and the marital community composed thereof, Appellants, v. CITY OF REDMOND, a Washington Municipal Corporation, Respondent.	)	No. 82329-9-I DIVISION ONE ORDER DENYING MOTION TO PUBLISH

The appellants, Svetlana Natalicheva and Gregory Gridin, filed a motion to publish the court's opinion filed on March 28, 2021. The majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion to publish the opinion is denied.

For the Court:

Judge

West's Revised Code of Washington Annotated
Title 4. Civil Procedure (Refs & Annos)
Chapter 4.24. Special Rights of Action and Special Immunities (Refs & Annos)

West's RCWA 4.24.200

4.24.200. Liability of owners or others in possession of land and water areas for injuries to recreation users--Purpose

Currentness

The purpose of RCW 4.24.200 and 4.24.210 is to encourage owners or others in lawful possession and control of land and water areas or channels to make them available to the public for recreational purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

Credits

[1969 ex.s. c 24 § 1; 1967 c 216 § 1.]

Notes of Decisions (6)

West's RCWA 4.24.200, WA ST 4.24.200
Current with all effective legislation from the 2022 Regular Session of the Washington Legislature. Some statute sections may be more current, see credits for details.

End of Document

West's Revised Code of Washington Annotated
Title 4. Civil Procedure (Refs & Annos)
Chapter 4.24. Special Rights of Action and Special Immunities (Refs & Annos)

West's RCWA 4.24.210

4.24.210. Liability of owners or others in possession of land and water areas for injuries to recreation users--Known dangerous artificial latent conditions--Other limitations

Effective: July 23, 2017

Currentness

(1) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners, hydroelectric project owners, or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, aviation activities including, but not limited to, the operation of airplanes, ultra-light airplanes, hang gliders, parachutes, and paragliders, rock climbing, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, kayaking, canoeing, rafting, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to twenty-five dollars for the cutting, gathering, and removing of firewood from the land.

(4)(a) Nothing in this section shall prevent the liability of a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted.

(i) A fixed anchor used in rock climbing and put in place by someone other than a landowner is not a known dangerous artificial latent condition and a landowner under subsection (1) of this section shall not be liable for unintentional injuries

resulting from the condition or use of such an anchor.

(ii) Releasing water or flows and making waterways or channels available for kayaking, canoeing, or rafting purposes pursuant to and in substantial compliance with a hydroelectric license issued by the federal energy regulatory commission, and making adjacent lands available for purposes of allowing viewing of such activities, does not create a known dangerous artificial latent condition and hydroelectric project owners under subsection (1) of this section shall not be liable for unintentional injuries to the recreational users and observers resulting from such releases and activities.

(b) Nothing in RCW 4.24.200 and this section limits or expands in any way the doctrine of attractive nuisance.

(c) Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

(5) For purposes of this section, the following are not fees:

(a) A license or permit issued for statewide use under authority of chapter 79A.05 RCW or Title 77 RCW;

(b) A pass or permit issued under RCW 79A.80.020, 79A.80.030, or 79A.80.040;

(c) A daily charge not to exceed twenty dollars per person, per day, for access to a publicly owned ORV sports park, as defined in RCW 46.09.310, or other public facility accessed by a highway, street, or nonhighway road for the purposes of off-road vehicle use; and

(d) Payments to landowners for public access from state, local, or nonprofit organizations established under department of fish and wildlife cooperative public access agreements if the landowner does not charge a fee to access the land subject to the cooperative agreement.

Credits

[2017 c 245 § 1, eff. July 23, 2017; 2012 c 15 § 1, eff. June 7, 2012. Prior: 2011 c 320 § 11, eff. July 1, 2011; 2011 c 171 § 2, eff. July 1, 2011; 2011 c 53 § 1, eff. July 22, 2011; 2006 c 212 § 6, eff. June 7, 2006; prior: 2003 c 39 § 2, eff. July 27, 2003; 2003 c 16 § 2, eff. July 27, 2003; 1997 c 26 § 1; 1992 c 52 § 1; prior: 1991 c 69 § 1; 1991 c 50 § 1; 1980 c 111 § 1; 1979 c 53 § 1; 1972 ex.s. c 153 § 17; 1969 ex.s. c 24 § 2; 1967 c 216 § 2.]

OFFICIAL NOTES

Findings--Intent--2011 c 320: See RCW 79A.80.005.

Effective date--2011 c 320: See note following RCW 79A.80.005.

Intent--2011 c 171: "This act is intended to reconcile and conform amendments made in chapter 161, Laws of 2010 with other legislation passed during the 2010 legislative sessions, as well as provide technical amendments to codified sections affected by chapter 161, Laws of 2010. Any statutory changes made by this act should be interpreted as technical in nature and not be interpreted to have any substantive policy or legal implications." [2011 c 171 § 1.]

Effective date--2011 c 171: "Except for section 129 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 c 171 § 142.]

Finding--2003 c 16: "The legislature finds that some property owners in Washington are concerned about the possibility of liability arising when individuals are permitted to engage in potentially dangerous outdoor recreational activities, such as rock climbing. Although RCW 4.24.210 provides property owners with immunity from legal claims for any unintentional injuries suffered by certain individuals recreating on their land, the legislature finds that it is important to the promotion of rock climbing opportunities to specifically include rock climbing as one of the recreational activities that are included in RCW 4.24.210. By including rock climbing in RCW 4.24.210, the legislature intends merely to provide assurance to the owners of property suitable for this type of recreation, and does not intend to limit the application of RCW 4.24.210 to other types of recreation. By providing that a landowner shall not be liable for any unintentional injuries resulting from the condition or use of a fixed anchor used in rock climbing, the legislature recognizes that such fixed anchors are recreational equipment used by climbers for which a landowner has no duty of care." [2003 c 16 § 1.].

Purpose--1972 ex.s. c 153: See RCW 79A.35.070.

Notes of Decisions (195)

West's RCWA 4.24.210, WA ST 4.24.210
Current with all effective legislation from the 2022 Regular Session of the Washington Legislature. Some statute sections may be more current, see credits for details.

End of Document

From: Christopher Tolonen
Sent: Thursday, May 5, 2016 11:09 AM PDT
To: Susan Robertson
Subject: RE: Cottonwood Trees

Hi Susan,

The native black cottonwood that you are talking about can be problematic in the urban forest when targets are nearby. The wood is very brittle and results in limb breakage in wind events, twig breakage in low to medium winds. Also, in the heat of the summer there is a phenomena called sudden branch drop. It is when the tree is transpiring heavily to compensate for the heat and the weight of the added water in the limbs and leaves are too much for the brittle wood to hold. Large diameter, long limbs break suddenly with no wind, potentially causing damage to targets below.

So, consider the area below the tree. Will there be constant occupancy like a house or a parking area or frequent occupancy like a back yard ? This will lead to your risk rating of the cottonwood tree. No target - no risk. Childs summer play area below the tree - high risk.

Then, decide on a prescription for the tree. We have these trees along lake Sammamish at Idylwood park and a few years back I had them successfully pruned for weight reduction for this very problem. And, it worked because we have way less limb breakage from these three cottonwoods since. This can be a costly treatment however, considering a follow up pruning would be needed 8-12 years later and so on, throughout the life of the tree. You may need to remove the tree and replace with a more suitable species. I have had to do this on a cottonwood at Grass Lawn park that failed too many times resulting in too many close calls on a neighbor's house/yard.

Check out this link which may be valuable to you: http://inexpensivetreecare.com/hot-summer-sudden-branch-drop/

Hope this helps,
Chris

Chris Tolonen
Lead Maintenance Worker | City of Redmond
L: 425.556.2369 |:: ctolonen@redmond.gov | Redmond.gov
MS: MOCPK | 18120 NE 76th St. | Redmond, WA 98073

-----Original Message-----
From: Susan Robertson [mailto:susan.robertson819@gmail.com]
Sent: Wednesday, May 04, 2016 2:59 PM
To: Christopher Tolonen
Subject: Cottonwood Trees

Hi Chris,

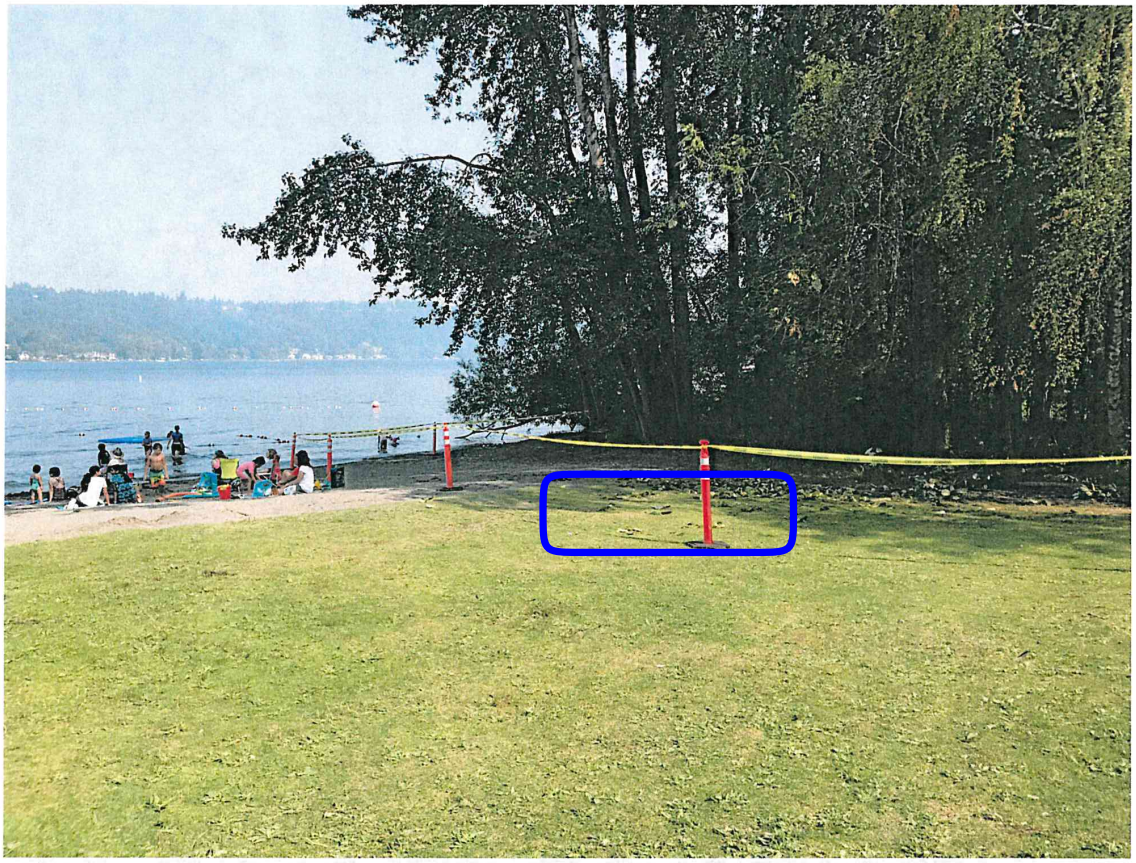
I have received a query from a homeowner regarding a tall cottonwood near her home in Abby Road (Education Hill). The tree in question is in fairly close quarters to two homes, and hasn't yet achieved its full, mature height. At guess, its about 80 feet tall and appears healthy, without damage or disease that would be apparent to a lay person.We know cottonwoods can get a lot taller than 80 feet (80 feet x 2, per a nature guide I have if that is accurate).

The question from the homeowner is whether there are known lifecycle issues with cottonwood trees that would suggest removal of a healthy tree at half its potential height (now) in a close-quarters situation. Such issues might include brittleness, greater propensity to storm damage than would be seen with other tree species, or etc.

Any general observations you might have re known cottonwood vulnerabilities would be very helpful.

Thank you very much,

Susan Robertson




CP 977

AHREND LAW FIRM PLLC

May 23, 2022 - 10:33 AM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	Svetlana Natalicheva and Gregory Gridin, Appellants v. City of Redmond, Respondent (823299)

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