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Court of Appeals, Division III No. 361870

Benton County Superior Court No. 16-2-01880-4

COURT OF APPEALS

DIVISION III, STATE OF WASHINGTON

THE ESTATE OF WAI MON CHIN, by and through
STANLEY CHIN, in his capacity as Personal Representative
and for the benefit of beneficiaries SHIRLEY CHIN,
STANLEY CHIN, SANDY CHIN and WILLIAM CHIN,

Appellants,

v.

CITY OF RICHLAND, a municipality,

Respondent.

REPLY BRIEF OF APPELLANTS

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I. INTRODUCTION

The City of Richland, in the interest of improving the Shelter Belt Trail System, created an obvious hazard that turned deadly. Waimon (Ray) Chin accepted the invitation of the City to use the trail system and cross Van Giesen Street, one of the busiest streets in Richland, pursuant to the trail invitation. The City, unapologetically and blatantly, ignored its obligation to provide appropriate signage when trails cross roadways. The City successfully confused the Trial Court (a new civil judge) in asking it to apply the rules of the roadway. The City now asks the Court of Appeals to ignore its statutory mandate to design trails across roadways in a safe manner. The approach of the City should be rejected and the case must be re-tried.

II. ARGUMENT

- A. The recreational trail interference statute applies in this case to describe the duty of the City when designing the Shelter Belt Trail System.

Review of RCW 47.30, et. seq. demonstrates that the legislature intended for recreational trails to be designed in a safe manner. Along these lines, the legislature required certain signage to be placed upon trails crossing highways. In construing a statute, the fundamental objective is to carry out the intent of the legislature. *Camicia v. Howard S. Wright Construction Co.*, 179 Wn.2d 684, 693, 317 P.3d 987 (2014). The intent

of the legislature is determined from the statutory language. *Id.* Statutes are to be interpreted in harmony with their purpose. *Id.* at 694.

For more than a decade, the City planned and sought funding for the creation of the Shelter Belt Trail to be a continuous trail traveling from Thayer to the south, all the way to Spangler on the north, approximately five miles long. In each depiction of the planned trail, the intent was to have a continuous trail to cross minor and major intersections such as: Duportail, Swift, **Van Giesen**, Jadwin, Spangler and Saint.¹ The City now takes the perplexing position that the legislature intended for there to be chicken or egg analysis and seeks the strained outcome that the recreational trail interference statute does not apply since the road was not built over the trail, but rather, vice versa. That is wholly contrary to the intent of the legislature.

In *Camicia*, Justice Madsen, in dissenting opinion, pointed out that RCW 47.30 and the creation thereof demonstrated that trails open to pedestrian, bicycle and equestrian uses are fundamentally different from city streets. *Id.* at 713. Thus, they must be treated as such. Prior to *Camicia*, the State Supreme Court, in *Lawson v. State*, 107 Wn.2d 444, 730 P.2d 1308 (1986), commented that:

¹ Notably, the Van Giesen street trail crossing is the only trail crossing which exists in the 5 mile Shelter Belt Trail without any signage whatsoever.

“We note the legislature has an enacted a number of statutes designed to foster development and maintenance of recreational and bicycle trails in past. See RCW 47.30; RCW 35.75.060; RCW 35.77.010; RCW 35.77.015; RCW 36.75.240; RCW 36.81.121-122 ...”

Lawson, 107 Wn.2d at 461.

Plainly absent from the State Supreme Court’s thoughts on statutes that are related to the design and maintenance of recreational trails was the rules of the roadway, 46.61, RCW, for which the City applies. For good reason. See *Riksem v. City of Seattle*, 47. Wn. App. 506, 510, 736 P.2d 275 (1987), commenting:

“The emphasis of the ‘trails and paths’ statute (RCW 47.30.050, et. seq.), is on the establishment and planning for new trails and paths, providing funding, and preserving one once they have been constructed.”

The City was required, before creating the Shelter Belt Trail, to consider public safety. RCW 47.30.040(1). It was of paramount importance and a condition to receiving funds. In fact, when obtaining funding for the final portion of the trail, the City cited the need for the funds to enhance the trail’s safe usage by pedestrians, stressing safe use for children and the elderly. In other words, the ‘at risk’ population that needed more assistance than the average user.

Despite the mandate for public safety, the City completed the Shelter Belt Trail at Van Giesen with an angular crossing, curb cuts on both the north and south side of Van Giesen, inviting users to travel across Van Giesen and no signage “sufficient to ensure safety.” RCW 47.30.010. The City knew that the trail was a trail of substantial usage. It was the intent of the City to create safe passage for the users of the trail for a five mile stretch parallel to a state highway.

The City further attempts to misapply the recreational trail interference statute by suggesting that substantial usage is limited to only the Van Giesen crossing. The statute specifically identifies that if the highway crosses “a recreational trail of substantial usage for pedestrians,” signage must be provided. RCW 47.30.010(2). At best, it was a jury decision to determine if the recreational trail was of substantial usage for pedestrians so as to require signage. The Trial Court failed to instruct the jury. The Trial Court erroneously failed to instruct the jury on a ruling of law. Thus, this Appellant Court should review the refusal to properly instruct the jury on the recreational trail interference statute de novo. *State v. Ayalaponce*, 166 Wn. App. 409, 416, 269 P.3d 408 (2012). Each side is entitled to have the jury instructed on the theory of its case if there is sufficient evidence to support the theory. *Id.* There was substantial

evidence to support Chin's theory and thus, the Trial Court erred as a matter of law.

- B. The instructions related to the rules of the road apply to the relationship between the driver, Brenda Nelson, and the deceased pedestrian, Ray Chin.

Mr. Chin's claim against the City of Richland was one for negligent design of the Shelter Belt Trail and its crossing at Van Giesen. The Trial Court, at the City's urging, gave rules of the road instructions under Title 46.61, RCW. Title 46, Chapter 61 refers to vehicles upon highways and not to the design of highways by municipalities. See RCW 46.61.005. The rules of the road define the relationship between drivers on highways and pedestrians. See RCW 46.61.230; RCW 46.61.235; RCW 46.61.240; RCW 46.61.245. Title 46, Chapter 61 defines the level of care for which drivers must use when encountering pedestrians. RCW 46.61.245; RCW 46.61.250. No place in Title 46, Chapter 61 will you find any reference to the design of the highway, a trail crossing, signage required for purposes of safety or any other described duty between a user of a highway and the municipality who designed, created and/or maintains it. Their statutory obligations are found in Title 47, RCW.

In seeking and receiving instruction numbers 9, 10, 12, 13, 14, & 15, the City effectively shifted its obligation to safely design the Shelter Belt Trail (particularly when crossing the busiest street on the trail) to the

driver/deceased. The jury had no chance in finding for the Chin family because they were not properly instructed as to the City's duty under the law. Stated differently, the City was able to steer its legal duty in creation/design of a safe crossing away from itself and consequently enabled the City to place all responsibility upon the driver, Brenda Nelson, and the deceased user of the trail, Ray Chin. It was a complete error to instruct the jury on rules of the road given Plaintiff's claim for negligent design of a recreational trail.

C. Instructing the jury on the City's duty of ordinary care did not absolve the Trial Court of defining the duty to include the legislative mandate of signage upon trail interference.

It is well settled that the City had a duty to exercise ordinary care and that maintenance and repair of its highways and to keep them in such a condition that they are reasonably safe for ordinary travel by persons using them in a proper manner and exercising ordinary care on safety. *Ruff v. County of King*, 125 Wn.2d 697, 704, 887 P.2d 886 (1995). But that is not all. Included in the notion of 'acting within ordinary care' is the obligation to follow legislative mandates. In this case, the Court was required to instruct the jury that the City had to follow RCW 47.30.010 specifically, the requirement to provide "signing sufficient to insure safety". The legislature did not suggest the signage requirement, rather it

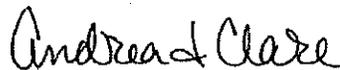
qualified the signage requirement "shall be provided". The Trial Court's refusal to adequately instruct constitutes significant prejudicial error.

III. CONCLUSION

Based on the forgoing, the Appellant's respectfully request the Court remand for a new trial with mandate to properly instruct the jury.

RESPECTFULLY SUBMITTED, this 6th day of November, 2019.

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CERTIFICATE OF SERVICE

On the 6th day of November, 2019, I caused to be served a true and correct copy of the within document described as REPLY BRIEF OF APPELLANTS to be served on all interested parties to this action as follows:

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DATED this 6th day of November, 2019.

TELARE LAW, PLLC

By: 
DAVID GAMBOA, *Legal Assistant*

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