Filed 6/12/24

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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| DIANA ESCODA,<br>Plaintiff and Appellant,<br>v.<br>CITY OF PLEASANTON,<br>Defendant and Respondent. | A168135<br><br>(Alameda County<br>Super. Ct. No. RG21100367) |

Plaintiff Diana Escoda appeals from the trial court's entry of judgment in favor of the City of Pleasanton (City) after the court granted the City's motion for summary judgment. The court concluded the City was immune from Escoda's personal injury suit because Escoda fell on a pathway, a bike route that ran alongside a City street that was near three different recreational areas, that was a "trail" under Government Code section 831.4, subdivision (b) (section 831.4(b)).[1] Escoda contends the court abused its discretion by ignoring altogether her expert's opinion that the pathway was a sidewalk rather than a trail, and that she raised material issues of fact

[1] It has been held that "[t]he words 'trail' and 'path' are synonymous" (*Carroll v. County of Los Angeles* (1997) 60 Cal.App.4th 606, 609 (*Carroll*), but we intend by our use of the term "pathway" to neutrally describe where Escoda was injured.

regarding the pathway's design and use, its accepted definitions, and whether the application of immunity was consistent with the purpose of section 831.4(b). We disagree with Escoda's contentions and affirm.

## I. BACKGROUND

In July 2021, Escoda filed a first amended complaint against the City in Alameda County Superior Court, alleging general negligence and premises liability.[2] Escoda alleged she was riding her bicycle on a City sidewalk alongside Valley Avenue in Pleasanton when her bicycle struck a three-inch raised concrete section of the sidewalk, causing her to fall and suffer a permanent eye injury, permanent traumatic brain injury, and psychological injuries such as post-traumatic stress disorder. She further alleged the City had notice of the dangerous condition, had time to repair it, and failed to warn of it, rendering it liable for damages under Government Code sections 835 and 835.4.[3]

In October 2022, the City moved for summary judgment on the ground that it was immune from Escoda's suit under section 831.4(b) because she was injured riding her bicycle recreationally on a pathway that was a "recreational trail." Escoda opposed the motion, contending the pathway was a City sidewalk and not a trail. The trial court granted the City's motion.

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[2] The first amended complaint also contained a loss of consortium claim by Escoda's husband. We do not discuss his claim further because Escoda does not raise any issues regarding it and her husband is not a party to this appeal.

[3] Most relevant here, Government Code section 835, subdivision (b) provides that, except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property that created a reasonably foreseeable risk of injury, and "[t]he public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition."

Escoda filed a notice of appeal from "judgment" a few weeks later, and the court entered judgment in favor of the City a couple of weeks after that.[4]

## II. DISCUSSION

### A. *Standard of Review*

An order granting summary judgment is reviewed de novo. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.) We are not bound by the issues decided by the trial court but will affirm the judgment if it is correct on any of the grounds asserted by the movant. (*Lee v. Department of Parks & Recreation* (2019) 38 Cal.App.5th 206, 210–211 (*Lee*).)

Where, as here, "the defendant moves for summary judgment [and] . . . the plaintiff would have the burden of proof by a preponderance of the evidence, the defendant must present evidence that would preclude a reasonable trier of fact from finding that it was more likely than not that the material fact was true [citation], or the defendant must establish that an element of the claim cannot be established, by presenting evidence that the plaintiff 'does not possess and cannot reasonably obtain, needed evidence.' " (*Kahn v. East Side Union High School Dist.* (2003) 31 Cal.4th 990, 1003.)

Upon a defendant making such a showing, " 'the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to that cause of action . . . .' " (*Nalwa v. Cedar Fair, L.P.* (2012) 55 Cal.4th 1148, 1153–1154, quoting Code of Civ. Proc., § 437c, subd. (p)(2).)

" 'There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of

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[4] We "may treat a notice of appeal filed after the superior court has announced its intended ruling, but before it has rendered judgment, as filed immediately after entry of judgment." (Cal. Rules of Court, rule 8.104(d)(2).)

proof.' " (*Burgueno v. Regents of University of California* (2015) 243 Cal.App.4th 1052, 1057–1058 (*Burgueno*).) "A motion for summary judgment should be granted if 'all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " (*Lee*, *supra*, 38 Cal.App.5th at p. 210.)

B. ***Trail Immunity Law***

"Section 831.4—the 'trail immunity' statute—provides that a public entity is not liable for an injury caused by a condition of: '(a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, . . . water sports, recreational or scenic areas . . . [¶] (b) Any trail used for the above purposes.' (Gov. Code, § 831.4, subds. (a), (b).) The purpose of trail immunity is to 'encourage public entities to open their property for public recreational use, because "the burden and expense of putting such property in a safe condition and the expense of defending claims for injuries would probably cause many public entities to close such areas to public use." ' " (*Lee*, *supra*, 38 Cal.App.5th at p. 211.) Trail immunity applies to all manner of defects in the trail's condition. (*Loeb v. County of San Diego* (2019) 43 Cal.App.5th 421, 431 (*Loeb*).)

"Whether a property is considered a 'trail' under section 831.4 turns on 'a number of considerations,' including (1) the accepted definitions of the property, (2) the purpose for which the property is designed and used, and (3) the purpose of the immunity statute." (*Lee*, *supra*, 38 Cal.App.5th at p. 211, citing *Amberger-Warren v. City of Piedmont* (2006) 143 Cal.App.4th 1074, 1078–1079 (*Amberger-Warren*).) Courts have focused on the design and use of the pathway, as it " 'will control what [a pathway] is, not the name.' " (*Lee*, at p. 212, quoting *Farnham v. City of Los Angeles* (1998) 68 Cal.App.4th 1097, 1103 (*Farnham*); see also *Amberger-Warren*, at p. 1083 [pathway can be deemed a trail "even though it could also be characterized as a 'walkway,' a

'path,' or even, in the broadest sense of the term, a 'sidewalk' "; further "no triable issue arises as to a property's status under [section 831.4] simply by virtue of what people may call it"].) "The purpose for which a trail is used is ordinarily viewed as a factual issue, but it becomes a question of law if only one conclusion is possible." (*Armenio v. County of San Mateo* (1994) 28 Cal.App.4th 413, 418 (*Armenio*).)

The applicable principles governing what constitutes a "trail" under section 831.4(b) are well-established. First, immunity attaches to trails providing access to recreational activities as well as to trails on which those recreational activities take place. (*Armenio*, *supra*, 28 Cal.App.4th at p. 417.) Second, when subdivision (b) of section 831.4 is "read in conjunction with subdivisions (a) and (c), it [is] apparent the Legislature intended that '. . . the nature of the trail's surface is irrelevant to questions of immunity.' " (*Carroll*, *supra*, 60 Cal.App.4th at p. 609.) Thus, section 831.4 applies to paths, regardless of whether they are paved or unpaved. (*Id.*; *Farnham*, *supra,* 68 Cal.App.4th at p. 1101; *Lee*, *supra*, 38 Cal.App.5th at p. 211.)

Consistent with the principle that the design and use of a pathway controls, not its denomination, courts have held that "trails" include "mixed use" pathways (*Burgueno*, *supra*, 243 Cal.App.4th at p. 1061 [bikeway on a college campus used for recreation was a "trail" despite its "primary use" as a bicycle commuting route to and from campus]; *Loeb*, *supra*, 43 Cal.App.5th at pp. 424–425 [park's pathway used "in part, for recreational purposes" was a trail]) and pathways that are located outside of larger recreational areas (*Burgueno*, at p. 1061 [campus bikeway]; *Montenegro v. City of Bradbury* (2013) 215 Cal.App.4th 924, 926, 929–930, 932 (*Montenegro*) [pathway only 0.6 miles long, running entirely along a roadway, elevated above the street

and separated by a curb, designated by the city council as a park and recreational trail, and with landscaping added, was a trail]).

**C. *Analysis***

Applying the foregoing principles, we agree with the trial court's conclusion that "Plaintiff fails to raise a triable issue of fact as to the design or use of the recreational path upon which the accident occurred" and that "trail immunity applies to bar Plaintiff's claims. The incident area constitutes a 'trail' for purposes of immunity under section 831.4, subdivision (b)." Upon our own independent review of the record, our assessment of Escoda's claims of error is as follows.

**1. The Evidence and Arguments in Support of the City's Summary Judgment Motion**

Relying on documents and declarations from City officials (i.e., the City's traffic engineer, its planning and permit center manager/deputy director of community development, and a senior civil engineer in the land development section of the City's engineering department, the City contends the following facts are undisputed:

(1) the City was concerned about the subject path "becom[ing] a major bicycle route for the users of Shadow Cliff's Park and the bike trail [running] along Stanley Boulevard," so design modifications were adopted in the 1980s to "establish a bike trail/pedestrian path along one or both sides of Valley Avenue" and "show a minimum 8 ft. wide combination bicycle/pedestrian path within the 30 ft. wide landscape strip which runs along the Valley Avenue frontage" of Valley Business Park; (2) following the Pleasanton City Council's adoption of these modifications in an authorizing ordinance, the pathway was constructed on the west side of Valley Avenue as an eight-foot-wide bicycle pathway—which the City also referred to at times as a "sidewalk trail"—consistent with the City's standards for a multi-use path;

(3) elsewhere in the City, the width of pedestrian-only paths is five to six feet; (4) the public uses the pathway for general recreation, and Escoda was using it recreationally when she was injured; (5) the public also uses the pathway to reach the Shadows Cliffs Regional Recreational Area, the Pleasanton BMX Park, and the Iron Horse Trail, each being a recreational destination in itself; and (6) several signs along the pathway direct bicyclists that the pathway is a "Bike Route" and to "Walk Bike in Crosswalk."

The City points out that Escoda was injured on a pathway located on the west side of Valley Avenue that was designed to be, and is used as, a recreational bicycle path itself and as a way to reach three recreational areas.[5] Escoda contests the legal conclusion the City draws from this basic factual scenario, but presents nothing that creates a genuine conflict in the evidence. It is undisputed that she was injured between where Busch Road and Boulder Street intersect Valley Avenue, that the Iron Horse Regional Trail ends in the southern direction on the east side of Valley Avenue at Busch Road, and that there is a traffic crossing at Boulder Street. It is also undisputed that bicyclists traveling south on Valley Avenue who want to go to the Shadows Cliffs Regional Recreational Area and BMX Park can use the pathway to ride towards Stanley Avenue where, upon going east on Stanley Avenue for some distance, they arrive at those recreational areas. Most significantly, the signage along the pathway makes one of the pathway's purposes obvious and indisputable. It is clearly marked as a "Bike Route."

Invoking the policy behind section 831.4(b), the City further argues that the application of immunity on the undisputed facts presented here advances the purpose of immunity, consistent with the *Farnham* court's

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[5] Escoda concedes that "bike riders traditionally ride their bikes recreationally."

observations about the difficulty cities and counties might face in inspection and repair. Paved trails, the City points out, are subject to changing irregularity of surface conditions due to seismic movement, natural settlement, or stress from traffic, and the weather can cause dirt or sand to be blown on a trail, creating an unsafe surface for almost any user. Rocks, tree branches and other debris often find their way onto a trail, it argues. (*Farnham*, *supra*, 68 Cal.App.4th at p. 1103.)

According to the City, bicycle paths (or bikeways) are not velodromes, and are not necessarily designed for a user to travel as fast as she or he can, although some people often do. In today's litigious society, we are told, it does not take a very large crystal ball to foresee the plethora of litigation cities or counties might face over bicycle paths, which are used daily by a variety of people (bicyclists, skateboarders, rollerbladers, rollerskaters, joggers and walkers) all going at different speeds. (*Farnham*, *supra*, 68 Cal.App.4th at p. 1103; see also *Armenio*, *supra*, 28 Cal.App.4th at p. 417 [the purpose of trail immunity is "to encourage public entities to open their property for public recreational use, because 'the burden and expense of putting such property in a safe condition and the expense of defending claims for injuries would probably cause many public entities to close such areas to public use.' "].)

**2. Escoda's Contentions in Summary Judgment Opposition**

Escoda purports to dispute virtually all of the undisputed facts on which the City relies. But a close reading of her factual contentions reveals she does not present any evidence to dispute what is material here: that the pathway was designed and is used for recreational purposes, including bicycle riding and reaching three different recreational areas in the general area; that the pathway's definition includes, as its signage states, that it is a

"Bike Route"; and that applying section 831.4's "trail immunity" provision here would serve the purpose of the statute.

*a. Design and Use*

Escoda tries in several ways to create a material issue of fact regarding the pathway's design and use. Relying primarily on the declaration of her expert and his review of various documents, Escoda contends the pathway is a sidewalk rather than a trail in that it does not comply with California Department of Transportation (Caltrans) and City standards for the construction of a Class I bicycle path[6] due to such things as a 100-foot section of the pathway near Stanley Avenue that is only four or five feet wide and the pathway's interruption by too much cross-traffic, including because of industrial facility driveways; that the pathway is in an area zoned as heavy industrial rather than recreational; that the City permits bicycle traffic on all City sidewalks; that the City is planning on extending the Iron Horse Regional Trail, and currently has a temporary connector that begins at Busch Road on the east side of Valley Avenue and crosses over to the west side of Valley Avenue at Boulder Steet (south of where Escoda was injured) until it reaches Stanley Avenue; that the City provides a bicycle lane on the Valley Avenue roadway that runs parallel to the pathway; and that there are no crosswalks or ramps at Busch Road and Valley Avenue for bicycle riders to access the pathway from the end of the Iron Horse Regional Trail, which is on the east side of the street.

None of Escoda's factual assertions contests the facts material to the City's showing that the pathway constitutes a "trail" under section 831.4(b). For example, while cases have found Class I bicycle paths to be trails (e.g.,

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[6] See Street and Highway Code section 890.4 (defining Class I, Class II, Class III, and Class IV bikeways).

*Farnham*, *supra*, 68 Cal.App.4th at pp. 1099, 1101; see also *Prokop v. City of Los Angeles* (2007) 150 Cal.App.4th 1332, 1338), Escoda does not cite, and we are not aware of, any legal authority that *requires* a bicycle path to be a Class I path in order to qualify as a trail. Indeed, in *Prokop*, the court rejected the similar argument that section 831.4(b) immunity did not apply in light of the city's failure to comply with its " 'mandatory duty' " under other Government Code and Streets and Highway Code provisions to meet Caltrans's minimum uniform specifications and symbols for signs, markers and traffic control devices for the subject pathway. (*Prokop*, at pp. 1336–1337.) The court reasoned that to conclude otherwise would "render section 831.4 meaningless" and that the argument was mistaken in light of the text of the relevant statutory provisions and case law. (*Id.* at pp. 1337–1341.) We are persuaded by its reasoning. Our duty here is consider whether the pathway involved has been designed and used for recreational purposes without also determining whether it complies with state or local design standards.[7]

Nor is it significant that the pathway is in an industrial area rather than in or by a recreational one, or that it runs alongside Valley Avenue's roadway. Escoda does not provide legal authority, and we are not aware of any, that requires a pathway to be in or directly associated with a recreational area and away from a roadway. She contends that Government Code section 831.4 itself and *Amberger-Warren* provide an exception to immunity for "sidewalks that are adjacent to city streets or highways,"

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[7] To be clear, the City asserted the pathway had all the characteristics of a "Class I Multi-Use Trail Along Roadway" because it was eight feet wide, had an asphalt or concrete surface, and was adjacent to a public road typically separated by a curb, barrier, and/or planted buffer.

including because "[s]idewalks are considered part of the street."[8] But this contention apparently rests on Government Code section 831.4, subdivision (a), not section 831.4(b)[9]; and most importantly, she does not provide any legal authority establishing that a "sidewalk," as that term is used in subdivision (a), is part of a "street." *Amberger-Warren* indicates that a " 'sidewalk' is ordinarily defined as something that is next to, or part of a street or highway,' " and has been defined as " '[t]hat part of a public street or highway designed for use of pedestrians' " (*Amberger-Warren*, *supra*, 143 Cal.App.4th at pp. 1080–1081). The court also noted that a sidewalk is defined under Vehicle Code section 555 as " 'that portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel' " and under Streets and Highway Code section 5600 as, "for purposes of the chapter on sidewalk maintenance, to include enumerated objects 'in the area between the property line and the street line.' " (*Amberger-Warren*, at p. 1081.) The court further noted that in one case, *In re Devon C.* (2000) 79 Cal.App.4th 929, 932–933, the court held that a

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[8] Escoda also cites *Treweek v. City of Napa* (2000) 85 Cal.App.4th 221, in which Division Two of this district raised concerns about expanding the definition of "trail" so broadly as to incentivize government entities to call anything for which it sought immunity a trail. (*Id.* at pp. 229–232.) However, that case expressed these concerns regarding whether a boat dock ramp, standing alone, was a "trail" under section 831.4(b), a circumstance which is a far cry from those we consider here.

[9] Government Code section 831.4, subdivision (a) provides that a public entity is not liable for an injury caused by a condition of "[a]ny unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas and *which is not a (1) city street or highway* or (2) county, state or federal highway or (3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways." (Italics added.)

minor riding a bicycle on a sidewalk was riding on a "street" within the meaning of bicycle helmet law. (*Amberger-Warren*, at p. 1081.)

Escoda's contentions do not raise a material issue of fact for two reasons. First, the *Amberger-Warren* court's discussion was a part of its *rejection* of the appellant's contention that a park path was a "sidewalk" in light of Government Code section 831.4, subdivision (c)'s reference to a "paved trail, walkway, path, or sidewalk," which terms the appellant argued were exclusive of each other and, therefore, that immunity under section 831.4(b) did not apply. (*Amberger-Warren*, *supra*, 143 Cal.App.4th at pp. 1080–1083.) The court, after also noting that the terms " 'trail, walkway, path, or sidewalk' " "can overlap to some extent in common usage," and after reviewing the legislative history for Government Code section 831.4, held, "the pathway here can be deemed to be a trail under subdivision (b), even though it could also be characterized as a 'walkway,' a 'path,' or even, in the broadest sense of the term, a 'sidewalk,' within the meaning of subdivision (c). These terms in subdivision (c) are not mutually exclusive and do not limit the application of subdivision (b)." (*Amberger-Warren*, at pp. 1081–1083.) Moreover, the court neither held that a pathway adjacent to roadways *cannot* be a trail nor that such a pathway was part of the "street" as that term is used in Government Code section 831.4, subdivision (a).

Second, contrary to Escoda's claim that no case discusses a trail that is not within a park or recreational area or that runs adjacent to a city street or highway, case law indicates a trail does *not* need to be in or by a recreational area and *can* run alongside a roadway. (*Burgueno*, *supra*, 243 Cal.App.4th at pp. 1055, 1061 [college campus bikeway used for recreation was a "trail," including because some bicyclists rode the trail and then traveled through campus to reach mountain bike paths]; *Montenegro*, *supra*, 215 Cal.App.4th

at pp. 929–930, 932 [pathway running entirely along a roadway that was used for recreational purposes and to access other recreational areas was a trail].) "Courts have . . . concluded section 831.4 applies to any trail or path specifically put aside and developed for recreational uses, without regard to its unnatural condition or urban location, and have consistently defined paved, multipurpose paths located in metropolitan areas as 'recreational trails' for purposes of section 831.4, subdivision (b) immunity." (*Montenegro*, at p. 931, and the cases cited therein.)

We view Escoda's arguments regarding the Iron Horse Regional Trail as immaterial to whether the pathway is a "trail." That the pathway does not provide direct access to the Iron Horse Regional Trail because of the lack of crosswalks or ramps at Busch Road, where the regional trail ends in the southern direction, does not eliminate that the pathway is very close to that regional trail and could be used to access it by crossing from Valley Avenue's west side to its east side at an appropriate crossing, such as at Boulder Street. (See *Burgueno*, *supra*, 215 Cal.App.4th at pp. 1055, 1061 [college campus bikeway was a "trail," including because some bicyclists traveled through campus to reach mountain bike paths after riding the trail].) Also, we fail to see the significance of the City's plans to extend the regional trail or its use of a temporary connector from the trail to Stanley Avenue, or, for that matter, the City's providing of a bike lane in the Valley Avenue roadway that runs parallel to the pathway. There is no indication that these matters are anything other than plans in addition to the pathway, and do not alter the fact that the pathway itself serves as a "Bike Route" for recreational purposes.

Finally, as for Escoda's assertion that the City permits bicycle traffic on all of its sidewalks (which, she argues, means that the City could claim

immunity from suit for any injury occurring on its sidewalks), she ignores that a court's section 831.4(b) review is to be done on a case-by-case basis by analyzing such things as the design and use of the particular pathway involved, accepted definitions for the property, and the purpose of section 831.4(b). (*Loeb*, *supra*, 43 Cal.App.5th at pp. 434–435 [rejecting a similar argument that extending immunity to the subject pathway would mean " ' "every sidewalk in a public park is a trail" ' "].) Here, for example, there is indisputable evidence, such as the "Bike Route" signage, that the pathway is intended for recreational bicycle use, something that we doubt can be said about all of the City's sidewalks.

*b. Accepted Definitions of the Pathway*

Escoda contends that the pathway's use and purpose have been changed over time, as indicated by the City's changing definitions of the pathway, or lack thereof, in its own more recent public documents and the lack of signage and warnings on the pathway regarding any "trail." Perhaps most pertinent here, she contends that the pathway is not marked as a multi-use recreational trail on the City's maps, its master trails plan, and its bikeways master plan that were in effect at the time of Escoda's injury, and that that the term "sidewalk trail" only pertains to sidewalks in parks or recreational areas.[10]

Her reliance on the City's definitions does not raise a triable issue of fact because, whether or not the City has published documents identifying the pathway as a "trail," "bicycle path," "sidewalk path," or anything else does not call into question that the pathway is itself marked with signage

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[10] Escoda concedes that, as the City points out, some maps indicate that the pathway was for use by bicyclists, even if they do not indicate it to be a "Class I bikeway," a "trail," or a "sidewalk trail."

indicating it is a "Bike Route." In our view, this signage is by far the most significant of any of the terms debated between the parties because it is on the pathway itself for all to see and irrefutable in its meaning, i.e., this pathway is for bicyclists.

In any event, the case law makes clear that the design and actual use of the pathway is the far more important consideration. (See *Lee*, *supra*, 38 Cal.App.5th at p. 212 [" 'design and use will control what [a pathway] is, not the name,' " quoting *Farnham*, *supra*, 68 Cal.App.4th at p. 1103]; *Amberger-Warren*, *supra*, 143 Cal.App.4th at pp. 1080–1083 [pathway can be deemed a trail "even though it could also be characterized as a 'walkway,' a 'path,' or even, in the broadest sense of the term, a 'sidewalk' "].) Escoda does not and cannot dispute that the pathway was designed for use by recreational bicyclists and is being used by bicyclists, including herself, both for recreation and to access three recreational areas in the general area. Her failure to contest these facts is fatal to her appeal.

*c. Expert Opinion*

Apart from all of her attempts to characterize as "disputed" facts that are not genuinely disputed, Escoda relies on an expert, Richard Haygood, a licensed traffic engineer and civil engineer with 40 years of experience. She complains that the trial court failed to consider Haygood's opinion, a contention we find to be unsupported by the record. She appears to draw that inference solely because the court rejected her assertions that her expert's views created a material issue of fact. In so arguing, she is legally incorrect.

Haygood opined that Escoda's accident did not occur on a "Class I Bike Path" or a sidewalk trail. He further opined that the plans for the extension of Valley Avenue to Stanley Boulevard were approved in 1986 and the City would have had to follow the 1983 Caltrans Highway Design Manual for

design and construction of a "Bike Path." The 1986 plans, according to Haygood, did not call for a sidewalk trail. He contended "sidewalk trails" do not exist in the Highway Design Manual and the only example Haygood was aware of trails on sidewalks existed exclusively in parks or recreational areas, not adjacent to city streets. Thus, he attempted to dispute whether some category of mixed use pathway can exist at all.

Underlying this opinion were certain legal premises (i.e., only a "Class I Bike Path" qualifies for trail immunity, and the City was obligated to follow the categories of trails in the Caltrans Highway Design Manual). To the extent an expert's opinion rests on legal premises like these, it cannot create a dispute of fact any more than legal argument from counsel can create a dispute of fact. Escoda provides no legal authority for Haygood's assumptions. Stripping away his legal premises, we see nothing in his opinion that controverts the City's summary judgment showing *factually*.

*d. Statutory Purpose*

Finally, Escoda argues that applying immunity here does not serve the purpose of section 831.4(b) because the City "would never threaten to close off sidewalks in industrial areas simply because [it] would have a duty to maintain the sidewalks." This argument misses the point—the issue is not whether the City would shut down the pathway, but whether it would withdraw its designation of it as a "Bike Route" if it were required to defend itself against suits such as Escoda's. The City could well be so incentivized if immunity did not apply here, making its application unquestionably consistent with the purpose of section 831.4(b).

In short, the trial court correctly granted the City's motion for summary judgment because all the papers submitted show there is no material triable issue of fact; as a matter of law, the pathway is a "trail"

under Government Code section 831.4. (See *Armenio, supra*, 28 Cal.App.4th at p. 418.)

## III. DISPOSITION

The judgment is affirmed. Costs on appeal shall be awarded to the City.

STREETER, Acting P. J.

WE CONCUR:

GOLDMAN, J.
HITE, J.*

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* Judge of the Superior Court of California, City and County of San Francisco, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.