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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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MICHAEL WOODHEAD, et al., *Plaintiffs/Appellants*,

*v.*

CITY OF PHOENIX, et al., *Defendants/Appellees*.

LIBERTY INSURANCE CORPORATION, *Intervenor/Appellee*.

No. 1 CA-CV 16-0274  
FILED 10-3-2017

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Appeal from the Superior Court in Maricopa County  
Nos. CV2012-055322  
CV2013-011626  
The Honorable John R. Hannah, Judge

**AFFIRMED**

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## MEMORANDUM DECISION

Presiding Judge Paul J. McMurdie delivered the decision of the Court, in which Judge Peter B. Swann and Justice Rebecca White Berch joined.<sup>1</sup>

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**M c M U R D I E**, Judge:

¶1 Michael Woodhead appeals the superior court's grant of summary judgment in favor of the City of Phoenix, Valley Metro Rail, Inc., Parsons Brinckerhoff, Inc., Stantec Consulting, Inc., AECOM USA, Inc., and

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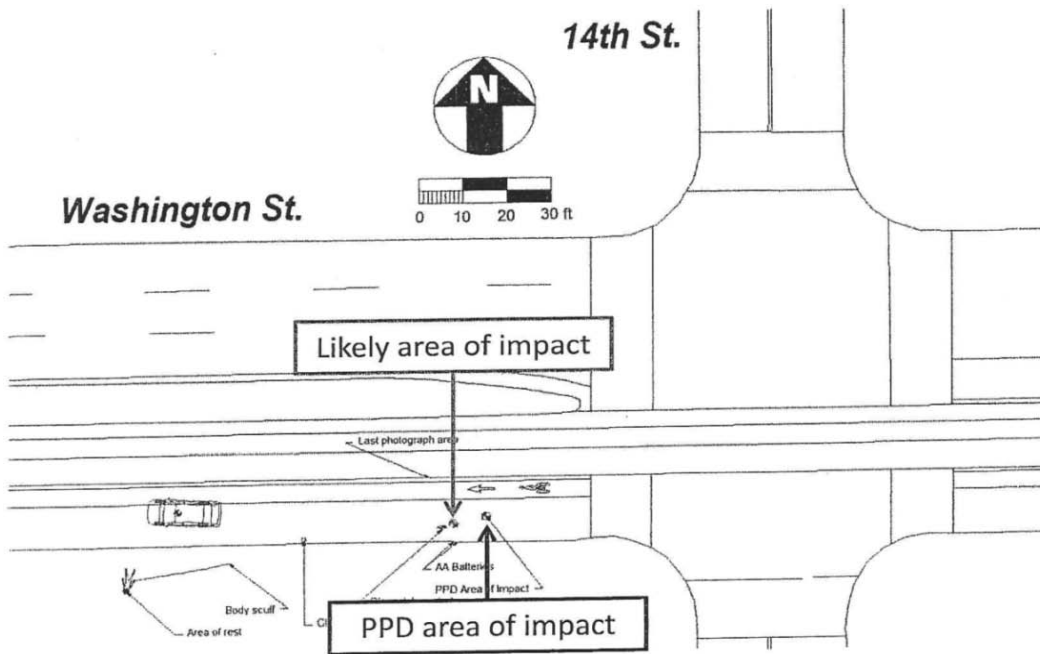
<sup>1</sup> The Honorable Rebecca White Berch, retired Justice of the Arizona Supreme Court, has been authorized to sit in this matter pursuant to Article VI, Section 3, of the Arizona Constitution.

WOODHEAD, et al. v. PHOENIX, et al.  
Decision of the Court

Archer Western Contractors, LLC, (“Defendants”).<sup>2</sup> For the following reasons, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 On September 13, 2011, Woodhead was struck by a motor vehicle near the intersection of Washington and 14th Street adjacent to the light-rail tracks. Woodhead sustained serious life-altering injuries. From the north side of the street, Washington Street consists of three westbound motor vehicle lanes with a posted speed limit of 35 m.p.h., a light-rail guideway, and a frontage road, which is comprised of a bicycle lane and a single westbound motor vehicle lane with a speed limit of 25 m.p.h. The following diagram prepared by Woodhead’s expert witness, Dr. Joseph Peles, demonstrates the location of the accident.



¶3 Before the accident, Woodhead was standing on the light-rail guideway approximately 24 feet west of the signalized crosswalk. Two eyewitnesses observed Woodhead looking down at his camera as he stepped off the guideway and walked into the bicycle lane portion of the frontage road. These witnesses stated that Woodhead did not look for oncoming traffic before entering the vehicle lane of frontage road. A motorist driving westbound on Washington Street struck Woodhead while

<sup>2</sup> Intervenor Liberty Insurance Corporation did not file a brief. Its appeal is therefore submitted for decision on the record.

WOODHEAD, et al. v. PHOENIX, et al.  
Decision of the Court

he was in the middle of the vehicle lane. The motorist told police immediately after the accident that she was in the vehicle lane when she struck Woodhead. An eyewitness testified the motorist was “driving appropriately within the lane” at the time of the accident. The wheels of the motorist’s vehicle came to rest on the painted stripe of the bicycle lane after the collision. Woodhead has no memory of the accident.

¶4 The City of Phoenix standards in place at the time of the design phase for the roadway provided that “through traffic lanes” be 10 feet wide (absolute minimum) for each direction of travel, but 9-foot wide frontage road lanes were acceptable in low volume, low speed conditions. The City’s standards specifically state, “[t]hese dimensions include the width of the gutter where one exists,” a practice exercised for the past several decades. It was undisputed that the design of Washington Street at the accident location complied with the City of Phoenix standards, the AASHTO guidelines,<sup>3</sup> and the Federal Highway Administration Guidelines.<sup>4</sup>

¶5 Woodhead’s traffic engineering expert witness, Anthony Voyles, measured the vehicle lane to be 9 feet, 3 inches wide. The measurement did not include the 18-inch-wide gutter. Voyles measured the bicycle lane to be 5 feet wide. The design criteria required the minimum width of a bicycle lane to be 4 feet. Defendants’ traffic engineering expert witness, Jim Lee, measured the frontage road to be 4 inches narrower than

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<sup>3</sup> AASHTO stands for the American Association of State Highway and Transportation Officials. AASHTO guidelines are published for road design to be followed if a local jurisdiction has not adopted specific standards.

<sup>4</sup> The 2007 Federal Highway Administration guidelines for acceptable lane widths for local roads provide a range of 9 to 12 feet and state narrower lane widths encourage lower travel speeds. Lane widths may be adjusted to incorporate other cross-sectional elements, such as medians for access control, bike lanes, on-street parking, and landscaping.

WOODHEAD, et al. v. PHOENIX, et al.  
Decision of the Court

the design plans required,<sup>5</sup> a difference within the acceptable construction tolerances. From 2009 to 2014, there were no accidents involving pedestrians or bicyclists on the frontage road between 12th and 16th Street, other than the Woodhead accident.

¶6 The superior court granted summary judgment regarding causation in favor of all the Defendants. The court concluded that “[t]he alleged breach of the duty of due care did not cause the plaintiffs’ injury, as a matter of law, because the injury was not within the scope of the risk created by the allegedly negligent act,” as “[t]he risk that a person would be hit by a car in the bike lane (if that is what happened) is not the risk that the lane-width design criteria were meant to prevent” and “[a] fifteen-miles-per-hour speed limit in a school zone is meant to protect school children.” The court further reasoned that Woodhead’s “conduct was an ‘intervening cause’ that broke the causal chain between the defendants’ alleged negligence and the harm that befell Mr. Woodhead[.]” Woodhead timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (“A.R.S.”) sections 12-120.21(A)(1) and 12-2101(A)(1).

### DISCUSSION

¶7 Woodhead argues the superior court erred by granting summary judgment for the Defendants on the element of causation because the jury should have apportioned fault based on principles of comparative fault. He argues that even if he was negligent, (1) the Defendants negligently designed, constructed, approved, maintained, or owned a dangerously narrow frontage road, and (2) the City of Phoenix failed to properly regulate the frontage road’s speed limit.

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<sup>5</sup> Lee measured the vehicle lane, including its gutter, to be 10 feet and 9.5 inches wide, and the bicycle lane to be 4 feet and 10.5 inches wide. The total width of the frontage road was, per Lee, 15 feet and 8 inches. Lee opined the frontage road was, thus, built 4 inches narrower than the design developed by Stantec Consultants, Inc. (15 feet 8 inches instead of 16 feet from face of curb to face of curb), but one inch wider than the minimum width of 15 feet 7 inches required by the Valley Metro Rail Design Criteria used for “single tracks with frontage roads.” The Valley Metro Rail design guidelines list the absolute minimum lane width at 10 feet, a lane width typically used by the City of Phoenix and other agencies for arterial and collector streets. Voyles opined the through traffic lane was an arterial road and not a frontage road.

WOODHEAD, et al. v. PHOENIX, et al.  
Decision of the Court

¶8 In reviewing an order granting summary judgment, we view the facts in the light most favorable to Woodhead, the party against whom summary judgment was granted, and determine “*de novo* whether there are any genuine issues of material fact and whether the trial court erred in its application of the law.” *Galati v. Lake Havasu City*, 186 Ariz. 131, 133 (App. 1996). “We will uphold the trial court’s decision if it is correct for any reason.” *Citibank (Ariz.) v. Van Velzer*, 194 Ariz. 358, 359, ¶ 5 (App. 1998).

¶9 A negligence claim requires proof of four elements: “(1) a duty requiring the defendant to conform to a certain standard of care; (2) breach . . . of that standard; (3) a causal connection between the defendant’s conduct and the resulting injury; and (4) actual damages.” *Gipson v. Kasey*, 214 Ariz. 141, 143, ¶ 9 (2007). Whether a duty exists “is a matter of law for the court to decide,” while the remaining elements are “factual issues usually decided by the jury.” *Gipson*, 214 Ariz. at 143, ¶ 9.

¶10 Duty is “a legal obligation that requires a defendant ‘to conform to a particular standard of conduct in order to protect others against unreasonable risks of harm.’” *Monroe v. Basis Sch., Inc.*, 234 Ariz. 155, 157, ¶ 4 (App. 2014); *see Markowitz v. Ariz. Parks Bd.*, 146 Ariz. 352, 355 (1985) (“[T]he existence of a duty is not to be confused with details of the standard of conduct.”). In Arizona, the state and its political subdivisions have a duty to “keep . . . roadways reasonably safe for travel.” *Booth v. State*, 207 Ariz. 61, 66, ¶ 13 (App. 2004); *see also Coburn v. City of Tucson*, 143 Ariz. 50, 52 (1984).

¶11 The Defendants owed a duty to Woodhead to keep Washington Street reasonably safe because Woodhead was a pedestrian using it. Absolving the Defendants of their duty could invite future careless design, construction, and maintenance of roadways. *See Guerra v. State*, 237 Ariz. 183, 192–93, ¶ 45 (2015) (Bales, J., dissenting) (“Although potential liability may discourage some desirable conduct, recognizing a duty of care serves the important goals of deterring unsafe conduct and compensating those injured by another’s carelessness.”).

¶12 However, “[t]he existence of a duty of care is a distinct issue from whether the standard of care has been met in a particular case.” *Gipson*, 214 Ariz. at 143, ¶ 10. The standard of care is defined as “[w]hat the defendant must do, or must not do . . . to satisfy the duty.” *Id.* (quoting *Coburn*, 143 Ariz. at 52). “Whether the defendant has met the standard of care—that is, whether there has been a breach of duty—is an issue of fact that turns on the specifics of the individual case.” *Id.*

WOODHEAD, et al. v. PHOENIX, et al.  
Decision of the Court

¶13 “The city is not bound to provide perfect intersections or streets, but only those which are ‘reasonably safe.’” *Coburn*, 143 Ariz. at 54. “What is ‘reasonably safe’ takes into consideration certain minimal expectations that travelers follow the usual rules of the road.” *Tobel v. State, Arizona Dept. of Pub. Safety*, 189 Ariz. 168, 171 (App. 1997) (quoting *Coburn*, 143 Ariz. at 54). Undisputed evidence that a person failed to follow the rules of the road does not establish, or even suggest, that the city breached its duty to provide reasonably safe streets. *Tobel*, 189 Ariz. at 172–73.

¶14 Not every case of a breach of duty will, therefore, require a decision by the jury. *Booth*, 207 Ariz. at 68, ¶ 20; see *Markowitz*, 146 Ariz. at 357 (“[I]t may be said in some cases as a matter of law that defendant’s actions or inactions do not breach the applicable standard of conduct.”); *Coburn*, 143 Ariz. at 52–53 (municipalities have a duty to keep streets reasonably safe but affirming trial court’s legal determination that claimant had not presented adequate facts from which jury could conclude duty had been breached); *Church of Jesus Christ of Latter Day Saints v. Superior Court (Connelly)*, 148 Ariz. 261, 263 (App. 1985) (acknowledging city’s duty to keep streets reasonably safe for travel but reversing trial court’s denial of summary judgment where claimant did not present sufficient facts from which jury could conclude duty had been breached). *But cf. Dunham v. Pima County*, 161 Ariz. 304, 306 (1989) (reversing directed verdict in favor of county where evidence showed 65 accidents at an intersection over the course of several years, 52 of which were similar to plaintiff’s); *Booth*, 207 Ariz. at 68, ¶ 21 (“[T]he reasonableness of the state’s inaction in addressing and seeking to remedy the risk to drivers was a question for the jury,” where uncontested facts revealed 168 elk- or deer-related collisions on an 11-mile stretch of a highway within seven years).

¶15 Here, as in *Coburn* and *Church of Jesus Christ (Connelly)*, it is undisputed that Woodhead failed to follow several rules of the road. This case presents no evidence Woodhead “acted with due regard for his own safety.” *Tobel*, 189 Ariz. at 173. First, he disregarded his safety and violated the City of Phoenix Code when he stepped into the light-rail guideway. See City of Phoenix Code § 36-403(6) (pedestrians are prohibited from being present on the light-rail guideway, except as necessary to board a transit vehicle). Then, he stepped into the bicycle lane, in violation of A.R.S. § 28-815(C) (a lane designated as a bicycle lane “is for the exclusive use of bicycles”). Next, he attempted to cross the frontage road approximately 24 feet from a signalized intersection, in violation of A.R.S. § 28-793(C) (pedestrians are prohibited from crossing the road at any place except in a marked crosswalk “between adjacent intersections at which traffic control signals are in operation”). Most importantly, Woodhead failed to either

WOODHEAD, et al. v. PHOENIX, et al.  
Decision of the Court

look before he entered the frontage road or “yield the right-of-way to all vehicles on the roadway.” See A.R.S. § 28-793(A).

¶16 Woodhead argues the frontage road was dangerously narrow, which induced drivers to move into the bicycle lane. He argues that this partially caused the accident.<sup>6</sup> Woodhead measured the total frontage road’s width to be deficient by 15 inches, but did not include the 18-inch wide gutter in his calculation. The Defendants conceded the frontage road was built 4 inches narrower than the design plans required. Viewing the facts in the light most favorable to Woodhead, no reasonable jury would conclude that a road narrower by 15 inches was not reasonably safe for a pedestrian following the usual rules of the road. See *Coburn*, 143 Ariz. at 54 (an assessment of reasonableness of road’s safety must consider “certain minimal expectations that travelers follow the usual rules of the road”); *Church of Jesus Christ (Connelly)*, 148 Ariz. at 263.

¶17 Woodhead further argues the speed limit of 25 m.p.h. on the frontage road should have been 15 m.p.h. because there was a nearby elementary school. According to Woodhead’s expert witness, however, “light rail construction has necessitated a traffic signal . . . to resolve conflicts between the street traffic and the trains.” However, the Arizona Department of Transportation Traffic Safety for School Areas Guidelines<sup>7</sup>

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<sup>6</sup> How this caused the accident is not clear, since the available evidence shows that Woodhead was struck approximately in the middle of the traffic lane, not at or near the bicycle lane. Woodhead’s own accident reconstruction expert witness, Dr. Peles, admitted he could not opine the van was ever in the bicycle lane. Furthermore, Peles’ opinions regarding causation were largely unsupported by admissible facts and insufficient to create a genuine dispute of a material fact. See *Pipher v. Loo*, 221 Ariz. 399, 402, ¶ 8 (App. 2009) (“[T]he test for admissibility of an expert’s opinion based on facts not in evidence is whether the source relied upon by the expert is reliable . . . [and] the [superior] court has wide discretion when making this determination.”); *Adams v. Amore*, 182 Ariz. 253, 254 (App. 1994) (“[W]hen the admissibility of expert opinion evidence is a question of ‘law or logic,’ it is the [appellate] court’s responsibility to determine admissibility.”).

<sup>7</sup> The Arizona Department of Transportation, Traffic Safety for School Areas Guidelines 22–23 (2006), available at <https://www.azdot.gov/docs/business/adot-traffic-safety-for-school-area-guidelines.pdf>.



WOODHEAD, et al. v. PHOENIX, et al.  
Decision of the Court

discourage municipalities from maintaining a 15-m.p.h. school crossing at a signalized intersection, stating that “[a] signalized intersection, in conjunction with an adult guard, provides the safest, most controlled environment for locations where students must cross.” The City’s task force recommended and began implementing the removal of 15-m.p.h. school zones at signalized intersections. Woodhead also failed to present evidence that the 25-m.p.h. speed limit was not reasonable – he merely asserted that a lower speed “would have been reasonable and prudent.”

¶18 Finally, no other pedestrian accidents occurred on this part of the road. A reasonable jury could not conclude the Defendants should have foreseen, without any statistical evidence, that the frontage road, otherwise complying with generally applicable standards, was unreasonably dangerous to a pedestrian in Woodhead’s position. *See Booth*, 207 Ariz. at 65-66, ¶ 11.

¶19 Woodhead failed to present sufficient evidence that Defendants breached their duty to provide a reasonably safe roadway to Woodhead, an adult who failed to comply with rudimentary rules of the road. *See Coburn*, 143 Ariz. at 54. And when there is no evidence from which a reasonable jury could find breach of duty, comparative fault principles do not come into play. *See Ariz. R. Civ. P. 56(a)*. Defendants were entitled to summary judgement.

CONCLUSION

¶20 For the reasons stated above, we affirm the superior court’s judgment, and award to the Defendants costs on appeal upon compliance with Arizona Rules of Civil Appellate Procedure 21.



AMY M. WOOD • Clerk of the Court  
FILED: AA