IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JENNIFER MINATO, by and through her parents, MICHAEL AND CHERYL MINATO, her legal guardians, Appellants, v. KING COUNTY, a municipal corporation; and RANDALL WORSECH, Respondents.	)	NO. 67579-6-I DIVISION ONE UNPUBLISHED OPINION FILED: October 1, 2012

Lau, J. — Bicyclist Jennifer Minato was seriously injured when she collided with another bicyclist, Randy Worsech, on the Cedar River Trail in Maple Valley. Minato sued Worsech and King County, alleging personal injuries. She challenges the summary judgment order dismissing her claims against the County premised on the recreational use statute's immunity provision, RCW 4.24.210. This provision limits landowners' liability toward persons using their lands for free unless, among other exceptions, the injuries are caused by a known, dangerous, artificial, latent condition

for which warning signs have not been conspicuously posted. Because Minato fails to establish a material issue of fact regarding latency, we affirm.

FACTS

The Cedar River Trail

King County contains about 300 miles of regional trails. Of these trails, the County has various levels of responsibility for about 175 miles, including some or all of the Burke-Gilman Trail, Sammamish River Trail, Marymoor Connector Trail, East Lake Sammamish Trail, Preston-Snoqualmie Trail, Snoqualmie Valley Trail, Green River Trail, Interurban Trail, Redmond Ridge Trails, East Plateau Trails, Green-to-Cedar Rivers Trail, Soos Creek Trail, Lake Youngs Trail, Tolt Pipeline Trail, Issaquah-Preston Trail, and Cedar River Trail. Millions of user trips occur annually on this network of trails.

Specific to the Cedar River Trail (CRT or trail), in 1988 the King County Department of Transportation's Road Services Division began a substantial capital improvement project to replace a structurally deficient bridge and install a new roadway going north from State Route (SR) 169 in Maple Valley. From approximately May 2000 to April 2004, Larry Jaramillo served as project manager for the Road Services Division on the project.

The most substantial part of the project was construction of a new bridge over the Cedar River. Beginning in 1996 and continuing until construction completed in 2005, King County contracted with engineering design firm ABKJ to provide engineering, design, and consulting services for the project. ABKJ designed a reroute

of the CRT "under 154th Place S.E. so that the bike trail did not cross at grade with the intersection of SR 169 and 154th Place S.E." The rerouted trail approaches the intersection of SR 169 and 154th Place Southeast from the west, parallel to SR 169. It then curves sharply to the north away from SR 169. After a short distance, it curves to the east, passes through a bicycle underpass tunnel beneath 154th Place Southeast, and curves sharply south, back toward SR 169. After another short distance, the trail makes a fourth sharp curve to the east, bringing it once again parallel to SR 169. The fourth curve is the subject of this appeal. At that location, the trail is divided by a solid yellow centerline that creates two lanes—one for each direction of travel. The speed limit throughout the CRT is 15 mph, which is posted in numerous spots along the trail. No speed limit signs are posted at the specific curve at issue here, but a sign with a "90-degree turn" arrow is posted for bicyclists traveling westbound toward the curve.

Project general contractor Pacific Road & Bridge installed the new route. After completion in 2005, the Road Services Division's involvement with the trail in this area ended. Jaramillo's declaration testimony described the completed trail:

> There is nothing hidden or dangerous about the condition of the bike path. It is simply a paved path with a center line stripe with standard straight and curved sections along its route. Unless a person was blind, it is not possible that people about to ride around this curve would not know they were about to do so.

The King County Department of Natural Resources and Parks then assumed management responsibility for this section of the trail.

Robert Foxworthy is the regional trails coordinator for the King County Parks and Recreation Division. His declaration testimony confirmed that the portion of the CRT

referenced above is operated by and part of King County's regional trail system. He stated that the CRT is open to the public for recreational use and the County does not charge a user fee. To the best of his knowledge, the new section of trail near SR 169 and 154th Place Southeast "was designed and constructed to established professional engineering guidelines."

October 2007 Bicycle Accident

In October 2007, Jennifer Minato and her friend Jesse Yourkowski were riding their bicycles on the CRT between Renton and Maple Valley. They rode side-by-side while traveling east on the portion of the trail that runs parallel to SR 169. They curved to the north, traveled a short distance, curved back to the east, passed through the underpass tunnel under 154th Place Southeast, curved to the south, traveled a short distance, and approached the fourth curve that would take them back to the east and again parallel to SR 169. Bicyclist Randall Worsech approached this curve from the westbound direction.

Worsech's declaration testimony described himself as an experienced bicyclist who had ridden this new section of the trail approximately 100 times. He rode within his lane on the right side of the trail at approximately 12 to 15 mph. He approached the curve and looked ahead to see if the path was clear. As he negotiated the curve, he saw Yourkowski and Minato riding side-by-side toward him without helmets on. According to Worsech, Yourkowski rode in the proper lane but Minato rode in Worsech's lane. Worsech and Minato collided head-on. Worsech described the accident:

> There was no indication, verbally or physically, that Ms. Minato was going to move from her position in my lane. The only option I had to avoid a collision was to go between the oncoming cyclists. Ms. Minato suddenly moved to her right, directly into my path, just as I was moving between her and Mr. Yourkowski. Therefore, I was unable to avoid a collision with Ms. Minato.

Worsech testified that he spoke to Yourkowski after the accident. Yourkowski "apologized, saying that just prior to the collision, he and Ms. Minato spoke about riding in the oncoming lane and that she shouldn't ride in the oncoming lane or she might get hit." Worsech also described the trail conditions:

> There were no hidden conditions on the trail and there was nothing about the condition of the trail that caused this collision. It was a nice, sunny fall day. It was light out. The trail was dry with no debris or defects in the pavement. I knew exactly where I was going. I knew the speed limit. I knew the trail curved to the right. And I knew there was a lane designated for each direction. I therefore rode my bike within the speed limit. I was fully in my designated lane. And I was in complete control of my bike as I entered the curve.

Minato sustained severe head injuries in the crash. She is expected to require long-term care in a skilled nursing or assisted living facility.

Washington State Patrol Trooper Scott Eng responded to the accident. He observed the bike path and interviewed witnesses at the scene. His written report noted, "At the area of the collision, there are no posted speed limit signs for bicyclists" and at the corner in question, "the path curves to the right sharply with limited sight distance around the curve." Yourkowski told Trooper Eng that "he and Ms. Minato were riding side-by-side prior to the collision and that he told her to 'move or you might get hit.'" Trooper Eng's declaration testimony described the trail condition:

> The portion of the trail where this accident occurred is paved and flat. There is one lane of travel for each direction on the bike path which is divided by a solid yellow centerline. Traveling westbound on the trail approaching 154th Place SE, the path curves fairly sharply to the right and a rider is unable to see all the way

> around the curve. However, the curve in the trail is obvious to users in each direction. The pavement appeared to be in good condition, and I noticed no holes, bumps or other defects in the trail.

Trooper Eng continued:

> Based on my investigation, I concluded that this collision resulted from Jennifer Minato riding her bicycle on the wrong side of the bike path. Additionally, Ms. Minato's failure to wear a bicycle helmet may have played a role in the severity of her injuries. I did not find any evidence that Mr. Worsech rode his bike in a negligent manner.

Minato sued Worsech[1] and King County for damages. She alleged that Worsech breached the duty of care when he crossed the centerline and hit her.[2] Minato alleged that the County breached its duty of care by failing to adequately warn of latent dangers present at the CRT curve where she was injured. She claimed that prior to the accident, "[d]efendant King County received several warnings from citizens regarding the dangers of cyclists traveling on King County trails at excessive speeds."[3]

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[1] Minato later settled her claims against Worsech.

[2] Minato offered Christie Shimizu and Michael Brundage's declarations to contradict Worsech and Eng's account of the accident. Shimizu testified that she was walking with a baby stroller on the Cedar River Trail on October 5 near where the accident occurred. She saw Yourkowski and Minato riding at a "casual pace" and said they briefly crossed the yellow centerline to go around her stroller. According to Shimizu, both Yourkowski and Minato returned to their appropriate lane immediately after passing her and remained on the right-hand side of the yellow centerline at all times thereafter, although Minato's tires "were sometimes close to the center line." Shimizu testified that as Yourkowski and Minato approached the fourth curve, Worsech "came around the corner at a high rate of speed and impacted Ms. Minato."

Brundage testified that he stopped his car to offer assistance at the accident scene. He helped tend to Minato and then asked Worsech what had happened. According to Brundage, Worsech replied, "I was going too fast and couldn't hold the corner."

[3] In her response to the County's summary judgment motion, Minato cited several e-mails the County received from members of the public to argue that the

She also argued that the County failed to post signs warning bicyclists to reduce their speed around the curve or warning them of "diminished sightlines" at the curve. The County moved for summary judgment, claiming immunity under Washington's recreational land use statute, RCW 4.24.210. Along with Worsech's testimony and other evidence, the County presented Foxworthy's declaration testimony: "I am familiar with the trail section where the accident occurred, and the curve is open and obvious to users in each direction under normally anticipated circumstances. I am not aware of any hidden defects or dangerous latent conditions in the trail at this or any other location." Foxworthy also testified that except for Minato's accident, he knew of no other reported accidents at that particular trail location. His subsequent supplemental declaration reaffirmed his opinion that the curve where Minato's accident occurred was not dangerous and that "the corner where this accident occurred is obvious to users of the trail."

Minato's opposition to summary judgment relied on Trooper Eng's declaration, quoted above, and his "Report of Investigation" that stated "[a] limited sight distance around the curve did not allow for either party to make maneuvers to avoid the collision when the hazard was perceived." She claimed the County adopted the American Association of State Highway and Transportation Officials (AASHTO) Guide for the Development of Bicycle Facilities regarding appropriate design speed and minimum sight distances on bicycle trails. She submitted a declaration by professional engineer William E. Haro, an experienced bicycle trail designer. Haro conducted an engineering

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County had prior knowledge of dangers associated with the curve in the trail.

analysis of the CRT's operation and design at the injury location. He testified based on the AASHTO guidelines that "the maximum design speed for this section of trail should have been between 12.5 and 13.1 MPH." He determined that "the sight distance for bicyclists negotiating the curve was obstructed by a dense growth of trees and the placement of an informational kiosk located on the inside portion of the curve."

Haro calculated that only 75 feet of sight distance was available on this curve and according to AASHTO guidelines, "bicyclists should have been required to reduce speed to no more than 10 MPH on the curve where [Minato] was injured." He opined that the County—in violation of AASHTO and Manual on Uniform Traffic Control Devices (MUTCD) guidelines—failed to post adequate signage warning CRT users to reduce speed and informing them of the curve's severity.[4] CP 140. He testified:

> Based upon my education training and experience, and further based upon my investigation, the dangerous condition posed by the inadequate Sight Stopping Distances and excessive design speeds of the portion of the Cedar River trail where Ms. Minato was injured would not have been readily apparent to the general class of users of the trail. My opinion is on a more probable than not basis, based upon a reasonable degree of engineering certainty.

The court granted the County's motion and dismissed Minato's claims, ruling that because the trail conditions were not latent, the County was immune under RCW 4.24.210. Minato appeals.

ANALYSIS

We review summary judgment de novo and consider the facts and all reasonable

[4] No signs advised bicyclists of limited sight distances or warned them to slow down before the curve. The trail's 15 mph speed limit was posted along with all other trail rules on signs placed at various locations along the trail. Haro testified that these signs did not comply with MUTCD regulations for traffic control devices.

inferences in the light most favorable to the nonmoving party. Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 501, 115 P.3d 262 (2005). Summary judgment is appropriate only if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Bulman v. Safeway, Inc., 144 Wn.2d 335, 351, 27 P.3d 1172 (2001). A party cannot rely solely on the allegations in his or her pleadings, on speculation, or on argumentative assertions that unresolved factual issues remain. White v. State, 131 Wn.2d 1, 9, 929 P.2d 396 (1997).

The recreational land use statute, RCW 4.24.210, provides immunity to landowners for unintentional injuries to recreational users of the land. The statute applies if a landowner who is in lawful possession and control allows the public to use the land for recreational purposes without charging a fee. RCW 4.24.210 provides in relevant part:

> (1) . . . any public or private landowners . . . 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 . . . bicycling . . . without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.
> . . . .
> (4) 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. . . .

The statute modifies a landowner's common law duty in order “to encourage landowners to open up their lands to the public for recreational purposes.” Davis v. State, 144 Wn.2d 612, 616, 30 P.3d 460 (2001).[5] Because the recreational land use

[5] RCW 4.24.200 states, “The purpose of RCW 4.24.200 and 4.24.210 is to

statute is in derogation of common law, it is strictly construed. Matthews v. Elk Pioneer Days, 64 Wn. App. 433, 437, 824 P.2d 541 (1992). The "limited circumstances" under which landowners "may not escape liability" are when "(1) a fee for the use of the land is charged; (2) the injuries were intentionally inflicted; or (3) the injuries were sustained by reason of a known dangerous artificial latent condition for which no warning signs were posted." Davis, 144 Wn.2d at 616. Specific to the exception for a known dangerous artificial latent condition, "each of the four elements, 'known,' 'dangerous,' 'artificial,' and 'latent' [must be] present in the injury causing condition" in order to establish a recreational use landowner's liability. Ravenscroft v. Wash. Water Power Co., 136 Wn.2d 911, 933, 969 P.2d 75 (1998). "If one of the four elements is not present, a claim cannot survive summary judgment." Davis, 144 Wn.2d at 616. The parties dispute the latency and knowledge elements.[6]

Latency

We first address the injury-causing condition. The County asserts the injury-causing condition was simply the "bike path curve," while Minato argues that we "must

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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."

[6] The trial court ruled only on the latency issue. The County does not dispute that the condition was "artificial" within the meaning of RCW 4.24.210. A condition is "dangerous" if it poses an unreasonable risk of harm. Tabak v. State, 73 Wn. App. 691, 697, 870 P.2d 1014 (1994). Minato argues in her brief that the condition was "dangerous," but the County does not address dangerousness other than to argue that Minato failed to establish a latent, dangerous condition.

consider all external factors, including the curve's limited sight lines, excessive design speed, sight obstructions."[7] Resp'ts' Br. at 19; Appellant's Reply Br. at 3. We assume without deciding that the injury-causing condition as alleged by Minato includes the curve, the presence or lack of signage, the limited sight lines, the design speed, and the sight stopping distance. Swinehart v. City of Spokane, 145 Wn. App. 836, 846, 187 P.3d 345 (2008) ("For purposes of summary judgment, we must adopt [the nonmoving party's] view of the injury-causing condition.").

Turning to the latency issue, "'Latent' as used in RCW 4.24.210 means 'not readily apparent to the recreational user.'" Ravenscroft, 136 Wn.2d at 924 (quoting Van Dinter v. City of Kennewick, 121 Wn.2d 38, 45, 846 P.2d 522 (1993); Gaeta v. Seattle City Light, 54 Wn. App. 603, 609, 774 P.2d 1255 (1989)). The question is not whether "the specific risk" the condition poses is readily apparent but, instead, whether the injury-causing condition itself is readily apparent. Ravenscroft, 136 Wn.2d at 924. "[A] landowner will not be held liable where a 'patent condition posed a latent, or unobvious, danger.'" Cultee v. City of Tacoma, 95 Wn. App. 505, 522, 977 P.2d 15

[7] Minato relies on Ravenscroft, which held that the injury causing 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 924. She also cites Van Dinter v. City of Kennewick, 121 Wn.2d 38, 846 P.2d 522 (1993), which held that a condition "cannot properly be regarded . . . in isolation from its surroundings." Van Dinter, 121 Wn.2d at 43. Minato specifically alleges that the condition consisted of "(1) the failure to post adequate speed limit signage at the location of the collision despite prior warnings of the danger of collision on the CRT; (2) excessive design speeds . . . in violation of the AASHTO guidelines; (3) inadequate sight lines caused by the location of dense trees and the placement of a man-made informational kiosk on the inside portion of the curve; and (4) inadequate Sight Stopping Distance according to the guidelines relied upon by King County for trail design." Appellant's Br. at 23.

(1999) (quoting Van Dinter, 121 Wn.2d at 46). Although latency is a factual question, "'when reasonable minds could reach but one conclusion from the evidence presented, questions of fact may be determined as a matter of law, and summary judgment is appropriate.'" Van Dinter, 121 Wn.2d at 47 (quoting Cent. Wash. Bank v. Mendelson-Zeller, Inc., 113 Wn.2d 346, 353, 779 P.2d 697 (1989)).

Van Dinter and Ravenscroft demonstrate our Supreme Court's approach to the latency element. In Van Dinter, the court distinguished between latent conditions and latent dangers in finding that a condition was not latent. Van Dinter struck his eye on a protruding metal antenna of a caterpillar-shaped playground toy located next to a grassy area at a park. Van Dinter, 121 Wn.2d at 41. He stated, "[H]e did not realize someone on the grass could collide with any part of the caterpillar." Van Dinter, 121 Wn.2d at 40. On summary judgment, Van Dinter submitted installation specifications and Consumer Product Safety Commission guidelines indicating that the caterpillar did not comply with either the specifications or the guidelines. Van Dinter, 121 Wn.2d at 41. The trial court granted the City's summary judgment motion under RCW 4.24.210. Van Dinter appealed, arguing that "a condition is latent for purposes of RCW 4.24.210 if its injury-producing aspect is not readily apparent to the ordinary recreational user," and asserting that "while the caterpillar was obvious, its injury-causing aspect was not." Van Dinter, 121 Wn.2d at 45.

Our Supreme Court disagreed and held that "RCW 4.24.210 does not hold landowners potentially liable for patent conditions with latent dangers. The condition itself must be latent." Van Dinter, 121 Wn.2d at 46. The court explicitly acknowledged

that "it may not have occurred to Van Dinter that he could injure himself in the way he did" but concluded that "this does not show the injury-causing condition—the caterpillar's placement—was latent." Van Dinter, 121 Wn.2d at 46. The court held, "The caterpillar as well as its injury-causing aspect—its proximity to the grassy area—were obvious." Van Dinter, 121 Wn.2d at 46. Thus, regardless of whether the City complied with installation specifications or safety guidelines, the resulting condition was obvious.

Our courts have repeatedly cited Van Dinter's reasoning when affirming summary judgment on the latency element. See Swinehart, 145 Wn. App. at 849 (improperly or insufficiently maintained playground surface that lacked the required depth of wood chips was not latent because the wood chips' condition was obvious); Widman v. Johnson, 81 Wn. App. 110, 114-15, 912 P.2d 1095 (1996) (regardless of what the particular user saw or failed to see, the intersection of a logging road and a state highway was not latent because it was readily apparent to the general class of recreational users despite the lack of warning signs); Tennyson v. Plum Creek Timber Co., 73 Wn. App. 550, 554-56, 872 P.2d 524 (1994) (rejecting the argument that latency depends on the vantage point of the particular recreational user and holding that despite lack of warning signs, excavation on the back side of a gravel mound was not latent because it was readily apparent to anyone who examined the mound as a whole).

In contrast, Ravenscroft held a material issue of fact existed on latency where the injury-causing condition was entirely submerged. There, the plaintiff was injured

when the boat he was riding in hit a submerged tree stump in a water channel that formed part of a dam reservoir. Ravenscroft, 136 Wn.2d at 915-16. The injury-causing condition was the "man-created water course, containing a submerged line of tree stumps" that was "created by [the defendant] cutting down trees, leaving stumps near the middle of a water channel, then raising the river to a level which covered the stumps." Ravenscroft, 136 Wn.2d at 923. The boat driver and other witnesses testified that the submerged stumps were not readily apparent. Ravenscroft, 136 Wn.2d at 925.

The court concluded issues of fact on latency remained because "[t]he record does not support a conclusion that the submerged stumps near the middle of the channel were obvious or visible as a matter of law." Ravenscroft, 136 Wn.2d at 926. Similar cases have concluded that issues of fact on latency exist where a condition is submerged or completely hidden from the general class of recreational users. See Tabak, 73 Wn. App. at 693-94, 698 (issues of fact on latency remained where underwater bolts holding together a group of docks were broken and nothing put users on notice of the bolts' condition); Cultee, 95 Wn. App. at 508-10, 523 (when plaintiff died after her bicycle fell over the edge of a road covered with water, an issue of fact on latency remained: "whether a 'general class of recreational users' would have been able to see the edge of the road, given that it was eroded and covered with a two to four inch layer of muddy water.").[8]

[8] Minato also cites Davis as an example of a court determining that issues of fact remained on latency. In Davis, the plaintiff was injured when he unexpectedly encountered a sudden drop-off while riding a motorcycle over sand dunes in a recreation area owned and maintained by the defendant. Davis, 102 Wn. App. at 180. Applying RCW 4.24.210, Division Two of this court upheld summary judgment in favor

In arguing the condition here was latent, Minato relies on Worsech's alleged statement that he "was going too fast and couldn't hold the corner," Trooper Eng's statement that "[a] limited sight distance around the curve did not allow for either party to make maneuvers to avoid the collision when the hazard was perceived," and Haro's declaration testimony that "the dangerous condition . . . would not have been readily apparent to the general class of users of the trail." Under Washington's well-established latency case authority, neither this evidence nor any other evidence in this case establishes a material issue of fact on latency.

In a case with similar facts, Riksem v. City of Seattle, 47 Wn. App. 506, 736 P.2d 275 (1987), Riksem was bicycling on the Burke-Gilman Trail. While attempting to pass another cyclist, Riksem collided with a jogger on the trail, resulting in substantial injury to both. Riksem, 47 Wn. App. at 507-08. Riksem sued the City of Seattle for personal injuries, arguing the City

> negligently and recklessly designed, constructed, maintained and operated the Burke-Gilman Trail by failing to provide adequate signs, trail markings or any traffic control and allowing multiple vehicular and pedestrian uses without such devices, controls, markings, rules or regulations.

Riksem, 47 Wn. App. at 508. The trial court granted the City's summary judgment motion. Riksem contended on appeal that the recreational land use statute did not apply for several reasons, including "the City knew of the existence of a dangerous artificial latent condition." Riksem, 47 Wn. App. at 509. We rejected his argument that

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of the defendant on grounds other than latency. Davis, 102 Wn. App. at 189. The court's rationale that the plaintiff established the sudden drop-off was a latent condition constitutes dicta. Davis, 102 Wn. App. at 193. Davis did not hold that an issue of fact existed on latency.

the City's failure to adequately sign the trail proximately caused his injuries. We concluded that the recreational land use statute limited the City's liability:

> As here, the facts in Power v. Union Pac. R.R., 655 F.2d 1380 (9th Cir.1981) indicate the injury resulted from an activity, not from a condition of the land. In Power, the Circuit Court reasoned, "Moreover, in no way could the presence of a speeding locomotive be considered 'latent'. The tracks without more, put a reasonable person on notice that a train may appear . . . " Power, at 1388. In this case, Riksem had ridden more than 12 1/2 miles on the trail. He had ridden the Burke-Gilman Trail before. He certainly knew of the possibility of joggers, as he had aborted one attempt to pass another cyclist because of a runner before the unsuccessful pass on the right. The trail itself would put a reasonable person on notice to watch out for joggers, pedestrians and other cyclists.

Riksem, 47 Wn. App. at 511 (emphasis added).

Minato's latency claim relies on Tabak, Ravenscroft, and Cultee. But unlike those cases, Minato's case involves no injury-causing condition that was submerged or completely hidden.[9] This case is more like Riksem, Van Dinter, and Swinehart. As in Van Dinter, "[a]t most," the testimony here "shows that the present situation is one in which a patent condition posed a latent, or unobvious, danger." Van Dinter, 121 Wn.2d at 46. Trooper Eng testified that despite the sharp curve and limited sight distance, "the curve in the trail is obvious to users in each direction." Worsech testified, "There

[9] While submersion is indeed a factor courts consider, we note that Minato mischaracterizes the trial court's statement in her case regarding submersion. Minato claims the trial court erred because it "suggested that the only circumstances where immunity under the Recreation Land Use statute should not be granted are when 'the injury causing condition was truly not able to be perceived because it was hidden under murky water.'" Appellant's Br. at 32 (quoting Clerk's Papers at 208). Minato cites only part of the court's statement. The trial court did not state that immunity should only be denied under circumstances involving submersion. The court merely stated the fact that "[t]he only reported cases that have survived summary judgment have been cases in which the injury causing condition was truly not able to be perceived because it was hidden under murky water." (Emphasis added.) Other circumstances may also present issues of fact regarding latency, but Minato's case is not one of them.

were no hidden conditions on the trail and there was nothing about the condition of the trail that caused this collision." His alleged statement that he was going too fast and failed to hold the corner does not inherently implicate the trail condition.

Neither does Haro's testimony that "the dangerous condition . . . would not have been readily apparent to the general class of users of the trail" establish a genuine issue of material fact whether the condition was latent. On summary judgment, the nonmoving party may not rely on speculation, mere allegations, denials, or conclusory statements to establish a genuine issue of material fact. Int'l Ultimate, Inc. v. St. Paul Fire & Marine Ins. Co., 122 Wn. App. 736, 744, 87 P.3d 774 (2004). A party's own self-serving opinions and conclusions are insufficient to defeat a motion for summary judgment. Grimwood v. Univ. of Puget Sound, Inc., 110 Wn.2d 355, 359-61, 753 P.2d 517 (1988). Even construing Haro's testimony most favorably to Minato, Haro merely points out dangers associated with a sharp curve in which sight lines are diminished by trees or other obstacles.

Minato asserts that Haro's study shows the County failed to follow trail design guidelines. But her case is similar to Van Dinter. There, although the plaintiff alleged that the City failed to follow specifications and guidelines in installing playground equipment, the court still concluded that the resulting condition was obvious. Van Dinter, 121 Wn.2d at 41, 46. Under controlling authority discussed above, what the County could or should have done on this particular stretch of trail is insufficient to defeat summary judgment. See Swinehart, 145 Wn. App. at 849 (even if City insufficiently or improperly maintained a playground surface, the displacement and

condition of the surface was obvious); Van Dinter, 121 Wn.2d at 41, 46 (despite plaintiff's claim that City improperly installed playground equipment, the resulting condition was not latent); Riksem, 47 Wn. App. at 511 (despite plaintiff's numerous theories alleging City's negligence or recklessness, claim resulting from a collision between two bike riders on the Burke-Gilman Trail was barred by RCW 4.24.210 because "the injury resulted from an activity, not from a condition of the land" and "[t]he trail itself would put a reasonable person on notice to watch out for joggers, pedestrians and other cyclists.").[10]

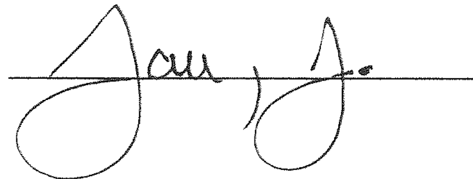
Minato attempts to recast potentially latent dangers as a latent condition. Here, the undisputed evidence establishes that the curve in relation to its components and surroundings was readily apparent to recreational bicyclists. As discussed above, "under the recreational use statute, the question is whether the injury-causing condition—not the specific risk it poses—is readily apparent to the ordinary recreational user." Ravenscroft, 136 Wn.2d at 925. The photographs submitted on summary judgment clearly show the sharp curve, the lack of signage on Minato's

[10] Minato argues, "Cyclists would have had no way to know that travelling the trail at the posted speed limit was exposing them to a serious risk of injury." Appellant's Reply Br. at 13. In fact much of her argument is premised on the 15 mph speed limit, which she claims contributes to the inadequate sight stopping distance and constitutes defective trail design. This argument fails. In Riksem, we rejected the plaintiff's allegations that the City "negligently and recklessly designed, constructed, maintained and operated the Burke-Gilman Trail by failing to provide adequate signs, trail markings or any traffic control and allowing multiple vehicular and pedestrian uses without such devices, controls, markings, rules or regulations." Riksem, 47 Wn. App. at 508. Similar to Riksem, here, the trail itself would put a reasonable person on notice that lower speed and other precautions might be necessary to navigate the curve.

approach, and the limited sight distances due to vegetation and an informational kiosk beside the trail. Like in Riksem, the injury here resulted from an activity. Minato demonstrates no latent condition at the disputed trail curve. The recreational land use statute and controlling authority bar her negligence claim against the County.[11] Given our disposition, we need not address whether the condition was known, dangerous, or artificial. Davis, 144 Wn.2d at 616 ("If one of the four elements is not present, a claim cannot survive summary judgment.").

CONCLUSION

In order to trigger RCW 4.24.210(4)'s exception for known, dangerous, artificial, and latent conditions, the plaintiff must prove all four elements. Minato failed to establish that any claimed injury-causing condition was latent. Under our well-established latency jurisprudence, the trial court properly granted the County's summary judgment motion dismissing Minato's claims. We affirm.



[11] The County claims that even if there was a known dangerous artificial latent condition here, it is immune under RCW 4.24.210(4)(a) because it posted a prominent and conspicuous "90-degree turn" sign at the curve. Resp'ts' Br. at 18. Minato argues the sign was inadequate because it was posted on only one approach to the curve at issue and did not warn riders to reduce their speed. Because Minato fails to show a latent condition, we need not address this argument. RCW 4.24.210(4)(a).

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WE CONCUR:

Leach, C.J.

Ellington, J.