IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

ESTATE OF MAIA HAYKIN and RICHARD HAYKIN, individually and as personal representative of the ESTATE OF MAIA HAYKIN, Appellants, v. CITY OF BELLINGHAM, a municipal corporation, and BNSF RAILWAY COMPANY, f/k/a BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY, a foreign corporation, Respondents.	)	No. 67713-6-I UNPUBLISHED OPINION FILED: October 15, 2012

Ellington, J. — Bellingham resident Maia Haykin was riding on a public bicycle path when she was struck by a train and killed. On behalf of himself and Maia's estate, Richard Haykin sued the City of Bellingham (City) and the railroad. The court concluded the City and railroad both were immune from suit under RCW 4.24.010, the recreational use statute. This appeal involves only the City. Because the statute confers immunity, we affirm.

BACKGROUND

The "South Bay Trail" is a recreational, mixed use trail that begins in downtown

Bellingham and leads to Boulevard Park on Bellingham Bay. The City charges no fee to use the trail or park.

At the north end of the park, the trail crosses railroad tracks owned and operated by BNSF Railway Company (BNSF). Before 2001, there was no formal, at-grade crossing leading to Boulevard Park. An elevated pedestrian walkway exists, but many people avoided it and walked along the tracks, sometimes scaling cliffs, and crossing at random locations. Despite BNSF's considerable efforts to prevent trespass, people continued to cross the tracks to get to the park.

In 2001, BNSF and the City agreed to construct a formal crossing to improve safety for pedestrians and bicyclists. The City installed "a new crushed rock path to the crossing, a sharp angle in the path to a 90-degree track crossing, a railroad warning sign, a 'crossbuck' symbolic sign, and a stop sign."[1] The sharp angle had two purposes: to force users to slow down, and to provide a path perpendicular to the tracks so an approaching train could be easily seen from either direction.[2] Until this unfortunate event, there had been no complaints or accidents.

On May 20, 2008, Maia Haykin was riding her bicycle on the South Bay Trail,

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[1] Clerk's Papers at 222.

[2] Though BNSF and the City contemplated additional safety measures, none had been implemented by 2008. The agreement provides, "The design of the northern crossing provided for herein is understood to be an interim design pending implementation of a permanent design, including without limitation examination of signalizing or grade-separating the crossing, modifying approaches to provide additional safety, measures to deter trespassing and encourage safety on Railway property, and other measures, all as may be agreed. The [City] and the Railway shall work cooperatively on the permanent design at this crossing, and intend to enter into an agreement thereon by not later than December 31, 2002." Clerk's Papers at 107.

singing as she went. She was not riding "extremely fast."[3] Other users of the trail saw a train approaching and heard its loud whistle, but Haykin apparently did not. The others stopped and waited for the train to pass, but Haykin did not slow or attempt to stop. She was struck by the train and killed.

Haykin's husband, Richard Haykin,[4] filed this suit against the City and BNSF alleging negligence (failure to install flashing lights and dismount barriers at the crossing). Both defendants moved for summary judgment asserting, among other defenses, immunity from suit under the recreational use statute, RCW 4.24.210. The court ruled that the immunity statute barred Haykin's claims, and dismissed.

Haykin appeals dismissal of the suit against the City.

DISCUSSION

We apply the usual standard of review for summary judgment.[5] The only question is whether the City is immune as a matter of law.

The recreational use statute provides in pertinent part:

> [A]ny public or private landowners or others in lawful possession and control of any lands . . . 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. [6]

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[3] Clerk's Papers at 295.

[4] We refer to the plaintiffs collectively as "Haykin."

[5] This court reviews summary judgment de novo. Vallandigham v. Clover Park Sch. Dist. No. 400, 154 Wn.2d 16, 26, 109 P.3d 805 (2005). Summary judgment is affirmed when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Id.; CR 56(c). All facts and reasonable inferences are considered in the light most favorable to the nonmoving party, and summary judgment is appropriate only if, from all the evidence, reasonable persons could reach but one conclusion. Id.

Subject to an exception not applicable here,[7] the plain language of the statute confers immunity from liability for unintentional injuries upon owners or possessors who make land freely available for public recreation. This is exactly the situation here.

Haykin contends the trial court "[found] as a matter of law, that [the City] owned or controlled the railroad crossing at issue."[8] In his brief, Haykin refutes that "finding." The City, in its turn, defends it. This debate is misdirected. First, the court made no such finding. Rather, it concluded simply "that the immunity provisions of RCW 4.24.210 are applicable to the claims of the plaintiff, barring all claims against defendant City of Bellingham in this matter."[9] The court's conclusion does not depend on the City's ownership or possession and control of the crossing; Haykin's claims included allegations that the trail itself was poorly designed. On those claims, the City is immune under the statute.

Second, whether the precise location of the accident was owned by the railroad or the City is not the question because either way, the owner or possessor is immune from liability on claims arising out of use of the land, and an entity not an owner or

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

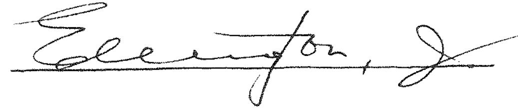
[7] The statute precludes liability unless injuries are caused "by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted." RCW 4.24.210(4). Haykin does not now contend that the train tracks constituted a latent condition.

[8] Appellant's Br. at 6.

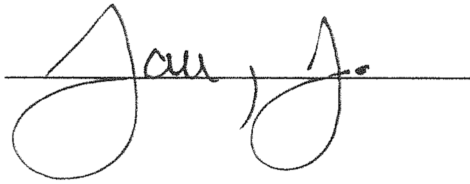
[9] Clerk's Papers at 4.

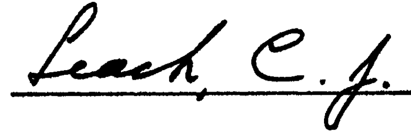
possessor in control "cannot be liable under a premises liability theory."[10]

Thus, if the City is an owner, it is immune, and if not, it has no liability. Dismissal was proper. We affirm.



WE CONCUR:





[10] Ravenscroft v. Washington Water Power Co., 136 Wn.2d 911, 927, 969 P.2d 75 (1998).