

January 8, 2002

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

LEANA SAMBRANO V. CITY OF SAN DIEGO, ET AL.
SUPERIOR COURT CASE NO. GIC738268

INTRODUCTION

On December 7, 2001, in a published opinion, the Fourth District Court of Appeal ruled in the City's favor by upholding a grant of summary judgment on a dangerous condition case in which a two-year-old child was burned in a concrete fire ring in De Anza Cove at Mission Bay Park.

FACTS

On August 14, 1999, Plaintiff Laurie Sambrano brought her daughters to a family reunion at De Anza Cove beach park in Mission Bay. Family members had arrived around 8:00 a.m. that morning and staked out a fire ring on the beach. The fire ring did not have an active fire, only sand and ashes visible within the fire ring walls. After lunch, the youngest daughter, two-year-old Leana Sambrano, was playing with her cousins on the sand about a foot or two away from the fire ring wall. Leana entered the fire ring and suffered third degree burns on her feet, which required treatment with skin grafts.

Each of the the nine fire rings at De Anza Cove has a four foot square interior fire compartment with exterior walls that are five feet across. The rings stand 15 inches high and are painted with red warning signs stating "CAUTION, HOT." Two days before the incident, routine maintenance was performed on all nine fire rings, which involves using heavy equipment to lift and move the 1,700 pound fire ring, compact and remove the debris, and then replace the ring. City lifeguards supervise the beach and sand areas. They receive instructions to check fire rings for active fires and to check for fires outside of the fire rings. On the morning of the incident, the lifeguard on duty checked the fire rings and did not see any active fires.

LITIGATION

Plaintiffs, Leana Sambrano, her mother, and her two older sisters, sued the City of San Diego, alleging the existence of a dangerous condition of public property and negligent infliction of emotional distress. The City filed a motion for summary judgment on the ground

that the fire ring in which Leana was burned did not constitute a dangerous condition of public property. The City supported its motion with photographs of the fire ring, warning signs and surrounding areas, declarations by risk management and lifeguard personnel, and an expert declaration by a safety engineer. The City also provided evidence that, despite numerous visitors to De Anza Cove, lifeguards had not received any reports of similar incidents involving children being burned in fire rings during the past five years.

In their opposition to the City's summary judgment motion, Plaintiffs argued that the signs instructing park users to dispose of hot coals in the fire rings were confusing, because they did not instruct park users to douse the coals with water. Plaintiffs also argued that the City should have had a policy requiring lifeguards to douse each of the fire rings with water at the beginning of morning lifeguard shifts. Finally, Plaintiffs submitted an incident report from a state beach park in Carlsbad, California, stating that a small child who was dragging a boogie board behind him had tripped and fallen into a smoldering fire ring on June 24, 1997.

The trial court granted the City's motion for summary judgment and Plaintiffs appealed. Oral argument was held on November 14, 2001, and the Court subsequently issued a published opinion on December 7, 2001, affirming the Superior Court judgment. The Court of Appeal found that the fire ring was not a dangerous condition of public property, because, when used with due care in a reasonably foreseeable manner, the risk of injury from it is minor. In this case, the Court found that evaluating the standard of due care involved looking at the circumstances of this incident as a whole, including the supervision Leana was receiving at the time of the incident. The Court also found that the safety history offered by the City, the lack of prior accidents over five years' use of the park, was relevant to the definition of dangerous condition. The Court stated that the incident in Carlsbad was not substantially similar to the incident in this case and thus irrelevant to the dangerous condition analysis. The lack of prior accidents also defeated Plaintiffs' claim that the City was on notice that the fire rings constituted a dangerous condition of public property.

In addition, the Court made a significant procedural ruling, holding that trial courts may no longer decline to rule on evidentiary objections brought in summary judgment motions and oppositions, because such an approach is inconsistent with standard rules of appellate review.

Deputy City Attorney Shoshana Lazik handled the case on behalf of the City in both the trial and appellate courts.

Respectfully submitted,

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