

Sometimes, it ain't over until it's over

By Gordy Van

The City of Richland was served with a Claim for Damages followed by a lawsuit for a fatality pedestrian vs. vehicle accident, which occurred in February of 2016. The decedent, an 80-year old man, was struck by a car while crossing the street on a dark rainy night while wearing dark clothing. The accident occurred where a greenbelt trail was intersected by a City street. The trail picked up on the far side of the street but was not directly across from where the trail on the other side of the street ended; it jogged over slightly. There were no crosswalk markings at this location, so it is an unmarked crosswalk. There was a marked unsignalized crosswalk 200 feet east of the trail and a marked, signalized crosswalk 300 feet west of the trail where the plaintiff could have crossed. Because other crossings of the trail at major arterials were curved to match up with signalized crossing, the plaintiff's attorney argued that the City was negligent in their design and signing of this trail crossing.

A lawsuit was filed on behalf of the estate, the decedent's wife and his adult children, who are all entitled to make claims under Washington's wrongful death statute. The plaintiffs argued that the trail crossing was not safe for ordinary use because users were not instructed to cross elsewhere, and the trail did not dovetail into an existing signalized crosswalk as it did at two other points in the City.

Investigation of the accident indicated that the decedent was not crossing from trail end to trail head but instead had crossed the road diagonally toward the street he lived on, likely on his way home rather than continuing to walk on the trail.

Road design cases are often expert intensive and this one was no exception. Our accident reconstructionist opined that the decedent was 70 feet outside of the purported trail crossing, thus we argued the plaintiff was not a trail user at the time of the accident and the absence of a crosswalk was not the cause of the accident as asserted by the plaintiff.

Motions for summary judgment were unsuccessful and the case proceeded to trial in May of 2018. The striking driver's insurer settled out for its policy limits shortly before trial, which left us with an empty chair at trial. The jury returned a unanimous defense verdict in favor of the City.

The plaintiffs then filed a Notice of Appeal, stating that the trial judge allowed us to argue that the rules of the road applied to the plaintiff crossing the street and did not allow them to argue that a construction statute requiring signage when a state highway severs an existing trail should apply. The appeal was finally heard without oral argument in April 2020. The Court of Appeals affirmed the trial court jury verdict.

The plaintiff next filed a Petition for Reconsideration with the Court of Appeals. When this was denied, a Petition for Review was filed with the Supreme Court. In February 2021 the Supreme Court rejected the Petition for Review, thus finally ending the case five years after the accident occurred.

We learned through the long process of this case that road design cases are complicated and carry risk, even when it appears we have great defenses initially. It was also a reminder that even when we take a case through trial and receive a defense verdict, the case may still not be over. We are very thankful for the support of the City of Richland and the efforts of Mike Tardif and Amanda Bley in successfully seeing this case through trial and the appellate process.