



## MUNICIPAL LEGAL ALERT

**KTJ**

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### **Public Body Not Entitled to Absolute Immunity From Liability For Injury Suffered By Cyclist On Area Bike Path**

#### ***No Absolute Immunity***

A biker who suffered serious injuries when she rode her bicycle over a defective area of a bike path and was thrown off sued the City (the City had assumed responsibility for the path by agreement with the County). The Illinois Appellate Court concluded that while a path does not have to be unpaved and natural to qualify as a “trail” under the Tort Immunity Act, that to qualify for absolute immunity under the Tort Immunity Act the trail must primarily be a “marked path through a forest or mountainous region.” To be a “biking trail” under the Tort Immunity Act then, a path must satisfy two requirements: be used by cyclists (or hikers or both) AND be located within a “forest or mountainous region”. The Court stated that it was clear that this biking path in Highland Park was not in a mountainous region, nor was it located in a forest. Rather, the path was lined with some shrubs, grass and trees, but the immediate vicinity consisted of industrial and commercial uses, houses, parking lots, railroad tracks, and major highways. The Court wryly noted “[t]he case for considering the path a riding trail would not succeed even if utility poles could be considered trees with power lines for branches.”

#### ***Required to Maintain Paths and Walkways in Reasonably Safe Condition for Ordinary Use***

Absent such absolute immunity, the standard for liability for a public body under these circumstances would remain that it has a duty of care to maintain its paths and parkways in a reasonably safe condition for normal pedestrian use. See *Marshall v City of Centralia*, 143 Ill.2d 1 (1991). The Tort Immunity Act provides, regarding this duty, that a local public entity “shall not be liable for injury unless it is proven that it has actual or constructive notice of the existence of such a condition that is not reasonably safe in reasonably adequate time prior to an injury to have taken measures to remedy or protect against such condition.” Notice is either actual notice or “constructive” notice. Constructive notice can be found when a condition has existed for such a length of time or was so conspicuous that public authorities, in the exercise of reasonable care and diligence, could have known of the hazardous condition. *Burke v Grillo*, 227 Ill.App.3d 9 (1992)

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2016 Il App (2d) 160035

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**Absolute Immunity Intended to Cover Undeveloped Recreational Areas In Their Natural Condition**

Where a person was injured riding their bike through a city park along a paved bike path when they collided with a tree that had fallen across the path that went through a public park the Court held that "the paved bike path located in a developed city park" was not a riding trail. *The Court noted that the provisions of the Tort Immunity Act that created absolute immunity for biking or hiking trails, even for willful and wanton conduct, only apply to "unimproved property which is not maintained by the local governmental body and which is in its natural condition with obvious hazards as a result of that natural condition."* The court explained that absolute immunity covers unimproved hiking, riding, fishing or hunting trails in undeveloped recreational areas that remain in their natural condition. The policy supporting absolute immunity is due to the burden in both time and money to the local governmental entity if it had to maintain these such property in a safe condition. Furthermore, requiring such maintenance would defeat the very purpose of these types of recreational areas, that is, the enjoyment of activities in a truly natural setting. *Goodwin v. Carbondale Park District*, 268 Ill.App.3d 489 (1994).

**Corbett v. The County of Lake;  
2016 IL App (2d) 160035**

**FACTS**

As part of a group of cyclists riding together, a cyclist rode her bicycle over a defective area of a bike path and was thrown off. She hit the ground and was severely injured. The bike path was controlled and maintained by the City of Highland Park under an agreement with the County. The City assumed responsibility for routine maintenance of the path, including repairing the pavement. Prior to the accident, the biker alleges the City was aware that weeds and other vegetation were growing through the asphalt, making portions of the path broken, bumpy, and elevated. The injured biker sued the City for her injuries. The City claimed absolute immunity from liability due to the condition of the path asserting the path was a protected "biking trail" under Section 3-107(b) of the Tort Immunity Act.<sup>1</sup>

**ANALYSIS**

The injured cyclist alleged that the City was liable for the defects in the path that caused her fall. The established law in Illinois is that public bodies have absolute immunity from liability under the Tort Immunity Act (even if the failure to maintain was wilful and wanton) for any injury which occurs on a "riding trail". The Act provides "[n]either a local public entity nor a public employee is liable for an injury caused by a condition of ... [a]ny hiking, riding, fishing or hunting trail." The Tort Immunity Act does not define "riding trail", but Illinois Courts have analyzed this issue on several occasions.

The City argued that the bike path was a "riding trail" because it was intended for recreational bicycling, surrounded by shrubs, trees, and wild grasses, separated from residences and commercial businesses and set back from the roadway.

The bike accident here took place on a part of the path that intersects with a two lane busy public road. The path was about 6 feet wide and paved with asphalt. At that intersection, there is a stop sign for bikers using the bike path but not for cars using the road. The path at the site of the accident was lined with varying vegetation on both sides with trees, including some shrubs and a small amount of grass. The path was separated from residences and commercial businesses, and was set back from the highway.

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<sup>1</sup> The underlying purpose of Section 3-107(b) providing for the grant of absolute immunity under the Tort Immunity Act for riding and hiking trails, even for willful and wanton conduct, is the recognition of "the burden in both time and money if the local governmental entity were required to maintain these types of property in a safe condition" and that "requiring such maintenance would defeat the very purpose of these types of recreational areas, that is, the enjoyment of activities in a truly natural setting." *Goodwin v. Carbondale Park District*, 268 Ill.App.3d 489, 493 (1994)



Court found however that this did not constitute a “riding trail” located within a natural, wilderness area. The Court noted that the general area within which the path was located was urban and largely developed. The path lies between a major highway, U.S. Route 41, which is located less than a block to the east of the path, with a railway line located less than a block to the west. There are commercial buildings on both sides of the path, with numerous businesses having erected cyclone fences adjacent to the path and industrial materials stored right behind the fencing. Lining the entire length of the path, with numerous power lines suspended overhead, are large Com Ed utility poles.

Based on these facts, the Court found that this path did not qualify as a “biking trail” under the Tort Immunity Act, noting that while some development around a path does not *automatically* mean the path cannot qualify as a “trail,” the presence of industrial and residential development *all around* a path does mean that the path is not located within a required “natural and scenic wooded area. A bona fide, natural forest preserve is a “forest,” even with a some limited improvements within and near the preserve. The Court concluded that where the character of an area is industrial/commercial/residential, it cannot qualify as a “forest” under the Tort Immunity Act simply due to narrow, contained green spaces with some trees.

The Court concluded that while a path does not have to be unpaved and natural to qualify as a “trail” under the Tort Immunity Act, that to qual-

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A full copy of the Court Decision can be found at the below link.

***Corbett v. The County of Lake;***  
**2016 IL App (2d) 160035**