

Ballina Shire Council v Moore [2023] NSWCA 155

Background

On 27 August 2020, Ms Moore (**the respondent**) was riding her electric bicycle on a shared pathway. As she attempted to overtake two pedestrians after ringing her bell and by manoeuvring to the right side of the pathway after the pedestrians moved to the left, she noticed a metal bollard on the path. Ms Moore tried to avoid hitting the pedestrians and the bollard but veered off the path, lost control, fell off her bicycle and injured her hip.

There had previously been two bollards on the pathway. However, one bollard had been damaged and removed approximately four years prior. A report commissioned by the Ballina Shire Council (**the appellant**), six months before the incident, suggested the single bollard was of no utility in slowing down cyclists and posed a medium risk to cyclists.

Ms Moore brought personal injury proceedings against the Council in the District Court of New South Wales at Lismore (**the primary action**) alleging the Council had breached its duty of care by failing to remove the single remaining bollard from the shared pathway. The primary judge found in favour of Ms Moore and awarded her \$193,531.39 in damages, while refusing to find contributory negligence on the part of the Council.

Council appealed the findings that it had breached its duty of care in failing to remove the second bollard, that any breach of duty caused Ms Moore's incident and, if it were found liable, there was no contributory negligence on the part of Ms Moore (**the appeal**).

The Law

Their Honours were asked to consider whether Council had breached its duty of care to Ms Moore, namely in failing to remove the remaining bollard, as well as whether the Ms Moore had been contributorily negligent.

Conclusion

Their Honours noted a shared pathway contained many hazards for cyclists, especially avoiding pedestrians and other cyclists, and that it was self-evident that a cyclist must expect indecision on the part of a pedestrian, particularly when the cyclist is approaching pedestrians from behind because they must ring a bell to draw attention to their presence.

Their Honours held that even on the assumption that two bollards had social utility, but one bollard did not, it does not follow that one bollard constituted an unreasonable 'hazard' requiring removal in the exercise of reasonable care for the safety of cyclists using the pathway. As such, it was held that Ms Moore did not establish that the Council had failed to take reasonable care for her safety in failing to remove the bollard.

As to the issue of contributory negligence, their Honours chose not to interfere with the primary judge's conclusion as to the absence of same, commenting that no purpose was served by addressing this issue in the absence of a finding as to the liability of the Council and that it did not follow that Ms Moore failed to take reasonable care for her own safety in that absence.

The appeal was allowed setting aside the orders of the primary judge and it was ordered that Ms Moore's claim be dismissed, and she be required to pay the Council's costs of the primary action and the appeal.

Lessons Learned

- The possibility of a cyclist suffering injury by colliding, or attempting to avoid a collision, with a bollard on a shared pathway (which is placed in its position to slow down cyclists), is foreseeable and considered a risk of harm that's within the actual knowledge of a public authority.
- However, even on the assumption that two bollards had social utility in slowing down cyclists but one bollard did not, it does not follow that one bollard constituted an unreasonable 'hazard' such that reasonable care required its removal.
- It does not follow from the fact that a defendant is not liable that a plaintiff has failed to take reasonable care for their own safety; accidents frequently occur where parties fail to take reasonable care.

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