

Kamloops man sues 10-year-old girl after jogging into her bike

Maryse Zeidler · CBC News · Posted: Mar 30, 2018 6:00 AM PT

A man who sued a young girl and her grandparents after he was injured when he jogged into the back wheel of her bike has lost his case in B.C. Supreme Court.

In a recently released judgement, Justice S. Dev Dley determined that the girl was not liable for the accident that took place on a residential street in Kamloops, B.C., in August 2014, when she was 10 years old.

The jogger, Rosario Perilli, also included the girl's grandparents, Wendy and Patrick Marlow, in the lawsuit on the basis that they didn't properly teach her to ride a bike safely. The judgment also clears them of liability.

Dley determined that although the girl's actions were not perfect at the time of the accident, they were consistent "with what a similarly aged young girl would have reasonably done in the circumstances."

Riding 3 abreast against traffic

According to the judgment, the girl was cycling alongside two friends on Robson Street when the accident occurred.

Her friends were on the sidewalk and she was on the road. All three were riding against traffic, on the only side of the road with a sidewalk.

Perilli was jogging behind the trio when he caught up with them and tried to pass the girl on the right. The girl testified that she had moved closer to the sidewalk after she looked back and saw Perilli about to pass.

The girl also testified that when she looked back again, the jogger had fallen behind. No longer expecting him to overtake them, she moved back into her spot farther from the sidewalk.

That's when Perilli struck her back wheel, causing him to fall and injure his shoulder severely enough that he later required surgery.

Allegations dismissed

Perilli alleges that the girl breached the duty of care by contravening Motor Vehicle Act laws governing cyclists on the road — including cycling without due care and attention, changing direction or speed without signalling and cycling on a sidewalk while riding abreast with other

cyclists.

He also alleged that she failed to "maintain an adequate lookout" and failed to "take any or adequate steps to avoid colliding with the plaintiff."

The judge dismissed those allegations.

Dley said the girl had no need to signal because she wasn't actually turning at the time of the accident. The judge also pointed out that she hadn't been riding on the sidewalk — her friends had.

As for cycling without due care and attention, the judge accepted the girl's testimony that she had looked back when she heard Perilli's footsteps and tried to accommodate him.

Dley also pointed out that it would have been easier and safer for the jogger to see in front of him than for the cyclist to continually look behind her.

Different standards for children

The judgment also pointed out that, as a 10-year-old, the girl couldn't be held to the same standards as an adult.

"A momentary lapse in awareness may be expected from children; such a lapse does not result in a finding of legal responsibility," wrote the judge. Dley determined that the girl was paying proper attention to her surroundings, and concluded that "she acted with due care and attention and did not conduct herself in a manner that imperilled others or was the cause of Mr. Perilli's damages."

The lawsuit was dismissed with costs.