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COURT OF APPEALS, STATE OF COLORADO
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Appeal from the District Court of the 10th Judicial District County of Pueblo, State of Colorado
Honorable Allison P. Ernst, presiding
Trial Court Case No.: 2017CV30670

Plaintiffs-Appellants: DELORES CRUZ AND JOE CRUZ,

v.

Defendants-Appellees: STATE OF COLORADO, COLORADO DEPARTMENT OF AGRICULTURE, THE COLORADO STATE FAIR AUTHORITY.

COURT USE ONLY

Case No.: 2018CA2236

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PLAINTIFFS/APPELLANTS' OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

■ It contains 6,419 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

■ **For each issue raised by the appellant**, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

□ **In response to each issue raised, the appellee** must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

/s/ William S. Finger
Signature of attorney or party

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INTRODUCTION

Appellants, Delores and Joe Cruz bring this Appeal as a result of the dismissal of claims relating to injuries suffered at the State Fair Grounds, following the trial court's holding that the Plaintiffs' claims were precluded by the Governmental Immunity Act and that the waiver provisions contained in C.R.S. § 24-10-106(1)(c) and (e), as amended, were not applicable. Plaintiffs assert that this ruling is legally incorrect based on the facts of the case and the definition of a dangerous condition as found at C.R.S. § 24-10-103(1.3), as amended, that includes both a physical condition of a facility or the use thereof, that constitutes an unreasonable risk to the health and safety of the public. Here the Public Entity permitted a ramp at one State Fair building, that was allegedly constructed for the purpose of bringing and taking out freight, to be used as means of public ingress and egress, despite the fact that this ramp's use for pedestrian ingress and egress was in violation of safety and building code requirements because it was too steep and lacked handrails. Plaintiffs seek reversal of the order and dismissal and remand to the trial court for further proceedings.

I. STATEMENT OF ISSUES PRESENTED FOR REVIEW

Plaintiffs assert that the following issues are presented on appeal:

1. Did the trial court, below, erroneously hold as a matter of law that the Plaintiffs' claims relating to personal injury suffered by Mrs. Cruz and her husband's loss of consortium claim were barred by the provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10- 101 *et seq*. and thus the Court lacked jurisdiction.

2. Did the Defendant, in allowing use of a ramp for pedestrian ingress and egress, which was part of a public building at the State Fair Grounds, constitute a waiver of Governmental Immunity, when the ramp was designed for non-pedestrian commercial vehicle use and was not in compliance with safety and building codes for pedestrian use, because it was too steep and lacked handrails, and where Defendant knew or should have known of this non-compliance, pursuant to C.R.S. § 24-10-106(c) and (e) as amended.

II. STATEMENT OF THE CASE

Plaintiffs initiated the underlying legal proceeding on September 11, 2017 with the filing of their complaint with multiple exhibits attached to the complaint, including the Governmental Immunity Notice that was furnished to the Attorney General. (CF, pp 1-40). The complaint asserted various claims centered upon negligence on Defendants' part because of the dangerous condition of a public building or public facility located in a park or recreational area. The public

building, park and recreational area was at the State Fair Grounds in Pueblo, and specifically the building known as the Agricultural Palace with a ramp on the west side of the building. Defendants sought an extension of time to answer or respond, which was granted by the Court on September 28, 2017. (CF, p 53). Defendants then filed a Motion to Dismiss the Complaint with various attachments and exhibits on October 10, 2017. (CF, pp 54-74). Defendants argued that governmental immunity applied and had not been waived. Plaintiffs, on October 31, 2017, filed a response to the Motion to Dismiss with a Request for an Evidentiary Hearing. (CF, pp 75-180). This response contained numerous exhibits, including affidavits and an expert report. This expert report concluded that the ramp that the Defendants were allowing pedestrians to use for ingress and egress to the building was in violation of applicable safety standards and was unsafe and unsuitable for pedestrian traffic to enter and exit the building. (CF, pp 87-88). Defendants sought a brief extension to file a Reply and then filed a Reply on November 9, 2017. (CF, pp 185-194.)

The trial court on March 1, 2017 entered an order with a finding of fact that the Palace of Agriculture is a "public building" within the meaning of C.R.S. § 24-10-106(1)(c) and that an evidentiary hearing was necessary for the Court to make additional findings on the issue of Governmental Immunity. (CF, pp 195-199).

Discovery was authorized in this order. (CF, p 199). A notice of Status Conference and Evidentiary Hearing was filed on March 16, 2018, with the hearing being set for August 14, 2018. (CF, p 201-202).

Plaintiff conducted discovery by way of a Rule 30(b)(6) deposition and the notice of the deposition was filed with the Court. (CF, pp 203-212). Plaintiffs also noticed and conducted a witness preservation deposition of their expert, Mr. J. P. Purswell, on August 2, 2018. That testimony was filed with the Court on August 15, 2018, as part of the Evidentiary Hearing process. (CF, pp 225-280).

The evidentiary hearing occurred on August 14, 2018 before the Honorable Allison Ernst, District Court Judge. (TR August 14, 2018, pp 1-78). Four witnesses testified in person and the Court accepted the preserved testimony of Mr. Purswell and ordered that the transcript be filed with the Court.

On October 29, 2018, the District Court Judge entered her order regarding the Motion to Dismiss and granted the Motion. (CF, pp 283-290). The order analyzed the physical condition of the ramp and maintenance for liability purposes, but did not analyze the ramp's change in use for pedestrian ingress and egress, which was a critical aspect of Plaintiffs' case. Defendants filed a Motion for Attorney Fees on November 19, 2018. (CF, pp 291-294). Plaintiffs timely filed their Notice of Appeal on November 27, 2018 and Advisement of Filing Notice of

Appeal was given to the District Court on November 29, 2018. (CF, pp 311-312). The Court entered an Order of Stay on the Issue of Attorney Fees, pending appeal. (CF, p 319). Plaintiffs timely filed the Designation of Record.

III. STATEMENT OF FACTS

Plaintiffs submit that the facts of this case, which are generally acknowledged by the Defendants, fully support Plaintiffs' position that Governmental Immunity has been waived. The following are the fully developed facts.

Mr. and Mrs. Cruz on August 30, 2016 went to the Colorado State Fair Grounds, during the State Fair's Senior Citizen Day, for entertainment purposes. They were driven there by their daughter. (TR 8-14-18, pp 8-13 and p 15:8-13). During this outing Mr. and Mrs. Cruz visited the Agricultural Palace, entered by way of the North Entrance, and were at that location for approximately one hour to one and a half hours. (TR 8-14-18, p 15:14-19 and p 9:15-21).

Mr. and Mrs. Cruz left the Agricultural Palace by way of a west side entrance-exit, through a larger door, which is depicted in photographs (Ex. 2, 8-14-18 hearing, pp 15:20 – 16:1). Mrs. Cruz started down a permanent ramp on the west side, depicted in three photographs (Ex 2 8-14-18 hearing, pp 4-6). Once on the ramp, Mrs. Cruz lost her balance or footing and fell. The fall took her over the

side of the ramp and onto the asphalt ground almost three foot below (TR, 8-14-18 p 16:2-7 and CF pp 154-159). The fall resulted in serious permanent injuries to Mrs. Cruz. (CF, pp 154-159). The ramp was unsafe and had no railings and was too steep for pedestrian use. (TR, 8-14-18 p 20:12-14 and CF p 263:1-20). There were no signs giving any warnings about the exit or ramp, or signs indicating that the exit should not be used. No one inside the Agricultural Palace indicated or told the Plaintiffs that it was safer to use a different exit. No warning of any type was given to the Plaintiff about the exit or ramp (TR 8-14-18, p 20:4-25).

Michelle Hines, the Director of Operations for the State Fair, who had responsibility for certain safety issue in the facility operations, did not know when the ramp on the western side of the building was constructed. The blueprint plans that were introduced into evidence, dating back to 1982, 1940, and 1938, do not show the ramp. (TR 8-14-18, p 33:10-22).

A facility audit report from 1998 done for all of the State Fair Buildings, that includes the Agricultural Palace, does not evaluate any ramp of the west side of the building, but did address an entrance and ramp on the south side of the building, indicating it needed to be modified to have it A.D.A. accessible and that the stairs needed to be repaired. The reason that the west side ramp was not addressed was presumptively because the ramp was not used as an entrance or exit for the public,

according to the testimony. (TR 8-14-18 p 36:13-20).

In calendar year 2007 a Historic Structures Assessment was done that refers to the Palace of Agriculture. Part of the assessment dealt with Building Code Compliance for the Palace of Agriculture. This assessment did not address the ramp on the west side of the building that is at issue, but did discuss a temporary ramp on the west side of the building that is referenced in Exhibit 6 from the hearing. (TR 8-14-18, p 38:7–40:23). The document indicates that if the temporary ramp is for vehicle use only, then it should be removed when not in use. It additionally indicates that the alternative is to replace the temporary ramp with a permanent compliant ramp with the width to correspond with existing requirements for maximum occupancy of the sunken area at a 1:12 slope with three landings (top, middle, and bottom) and required edge protection and handrails. (TR 8-14-18 pp 40:24-42:15). The estimated cost for creating a compliant building code structure for ingress and egress on the west side of the building was estimated at $5,750.00 in the report. (EX 6, hearing 8-14-18 p 93).

The ramp that was built on the west side of the building, which occurred presumably after the 2007 Historic Assessment, was not in compliance with the specified code requirements as appeared in the 2007 report. The ramp did not have handrails that were needed for safety and was too steep. (TR 8-14-18, pp 40:18-

42:15). This same 2007 assessment indicates that the building needed to be brought up to A.D.A. requirements, including ramps, hardware, countertop heights et. cetera, if it was the building was to continue in its present use. (TR 8-14-18, pp 42:16-44:10).

Ms. Hines admitted that the ramp on the west side of the building that was apparently built after 2007, when the A.D.A. requirements were specified, was not intended for pedestrian use as an exit or entrance, and that it was for vendors or person to load and unload items. (TR 8-14-18 pp 44:24-45:19). Despite admitting that the use of the ramp was not intended for pedestrian use to exit or enter the building, and that the ramp did not conform to code requirements that were specified in the evaluation and report of 2007, Ms. Hines admitted that the ramp on the west side of the building was allowed to be used for pedestrian traffic by the Defendants and the Defendants did not restrict the public from using the ramp on the west side of the building for ingress and egress. Further, it was admitted there are no signs on either the inside or the outside telling the public not use the ramp on the west side of the building. (TR 8-14-18, pp 45:20-46:24 and p 48:10-18).

The ramp on the west side of the building, according to the testimony of Mr. Purswell, Plaintiffs' expert in the field of Ergonomics and Safety, who was recognized as an expert witness by the Court, was not safe for the general public

use as a means of ingress and egress. The ramp was not safe to be used by the general public for ingress and egress because of the slope and because it lacked handrails. (TR 8-14-18, pp 61:11-62:11; CF pp 26-27 (see item 3 on p. 27 - Report of Purswell). (CR p 263:l-264:6 – deposition page 39:6 preservation deposition of Purswell).

Defendants provided no testimony that the ramp was not used from the time it was built after 2007 as a means of ingress or egress, or provided any rationale why the ramp was allowed to be used for ingress or egress after the 2007 report. Defendants provided no evidence why the ramp could be considered as safe or that any safety inspection was done after the ramp was built to justify it use for pedestrian egress and ingress.

IV. SUMMARY OF ARGUMENT

1. Governmental Immunity is legislatively created and courts must broadly construe waivers of Governmental Immunity in the interest of compensating victims of governmental negligence. This is a matter of public policy. *Springer v. City and County of Denver*, 13 P. 3d 794, 798 (Colo. 2000).

2. Governmental Immunity is waived for a dangerous condition of any public building, or a dangerous condition of any…public facility located in any park or recreational area maintained by a public entity. C.R.S. § 24-10-106(1)(c)

and (e). The Colorado State Fair Buildings and the Grounds fit one or both of the definitions for waiver, and the Court held that the Agricultural Palace with the ramp was a public building under the Colorado Governmental Immunity Act.

3. "Dangerous condition" is defined pursuant to C.R.S. 24-10-103 as "(A) physical condition of a facility **or the use thereof** that constitutes an unreasonable risk to the health and safety of the public, which is known to exist or which in the exercise of reasonable care should have been known to exist and which condition is proximately caused by a negligent act or omission by the public entity in constructing or maintaining such facility." (**emphasis added.)** The language is disjunctive, either requiring the danger to arise from a physical condition of a facility or the use of public facility. Both elements are not required.

4. The dangerous condition requirement in this case is met because Defendants after the 2007 Historic Assessment built a ramp on the western side of the Agricultural Palace in non-conformity with specified building codes and A.D.A. requirements for pedestrian use, knowing or anticipating the public would use the ramp for ingress and egress and accepting responsibility for the dangerous condition, or alternatively built the ramp knowing that the ramp should not be used for public ingress and egress because it posed a danger, but then improperly chose to accept liability by allowing a different form of use that was known to be unsafe

for the pedestrian public. In either case Defendants had knowledge of the danger posed to pedestrians who would use the ramp, or should have known of the danger. This was clear from the 2007 evaluation, before the ramp was built.

5. The District Court failed to make critical findings of fact that were undisputed, including findings relating to the 2007 Historic Assessment and failed to recognize that the Plaintiff was entitled to the reasonable inferences from the undisputed evidence, and that Plaintiff's burden is a lenient burden. *City and County of Denver v. Dennis,* 418 P. 3d 489 (Colo. 2018). The trial court further improperly evaluated the legal requirements for waiver and did not consider or evaluate how the ramp was used in contravention of code requirements for pedestrian use, making it a dangerous condition. Thus the trial court's determination was contrary to the facts and law.

V. LEGAL ARGUMENT

A. Standard of Review

The standard of review for a determination of Governmental Immunity is that the factual determinations of the trial court, where the facts are disputed, are to be accepted, unless they are clearly erroneous and unsupported by the record. *City and County of Denver v. Dennis*, 418 P. 3d 489 (Colo. 2018). Upon resolution of the historical facts, including the uncontested facts and the reasonable inferences

arising from those facts to which a Plaintiff is entitled, the question of whether governmental entitlement to immunity, is one of law and the review is de novo. *Dennis, supra*; *Lopez v City of Grand Junction*, 2018 WL 3384674. The totality of the record is subject to review, not only those findings made in the trial court order, because the Trinity hearing relates to contested factual issues. Plaintiffs submit that the only factual issues which are not clear from the record is when the ramp in question was built, which by reasonable inference was after 2007, following the safety evaluation that prescribed A.D.A. and safety compliance if the ramp was to be used for pedestrian ingress and egress; when and why Defendants decided to use the ramp in violation of safety requirements for pedestrian traffic. There is no question that Defendants before building the ramp knew of safety risks involving pedestrians using a ramp that did not comply with A.D.A. and code requirements.

B. Legal Argument

In 1971 the Supreme Court decided three cases that fundamentally altered the law relating to governmental immunity. *Evans v. Board of County Commissioners*, 482 P. 2d 968 (Colo. 1971); *Flournoy v. School District No. 1*, 482 P. 2d 966 (1971) and *Proffitt v. State*, 482 P. 2d 965 (Colo. 1971). These decisions abrogated claims of common law governmental immunity, and left it to the legislature to define the perimeters for governmental immunity. The legislature

enacted provisions relating to governmental immunity relating to suits against public entities and the employees of public entities. Governmental immunity, because it is legislatively created and an abrogation of the common law is strictly construed relating to protecting the public entity interest. *Bertrand v Board of County Commissioners*, 872 P. 2d 223, 227 (Colo. 1994). In contrast, the legislatively-enacted waivers of governmental immunity are broadly construed as a public policy to see that there is fair compensation for the victims of governmental negligence. *Corsentino v. Cordova*, 4 P.3d 1082, 1086 (Colo. 2000); *Walton v. State,* 968 P. 2d 636, 643 (Colo. 1998); *Springer v. City and County of Denver*, 13 P. 3d 794 (Colo. 2000). Here there is clear evidence in the record of substantial physical injury to the Plaintiff, when the Plaintiffs attended the State Fair as invitees, paying patrons, and Mrs. Cruz fell on and off the ramp on the West side of the Agricultural Palace. The evidence is also clear and unrefuted that the Defendant permitted and allowed the use of this ramp for pedestrian ingress and egress, after it was built (post 2007) knowing it was unsafe for such use. Clearly these facts show governmental negligence, if not reckless conduct, that resulted in injury to an elderly member of the public that could have been and should have prevented.

The purpose and intent of the waiver of governmental immunity is to

provide reasonable and fair compensation in such situations, including such situation where a third party is actually managing a governmental facility. See *Springer, supra*. holding that there is non-delegable duty relating to a dangerous condition on governmental property. The District Court's opinion overlooks the obvious issue that there existed a dangerous condition on Defendants' property, as the property was used by the Defendants, and such a danger was known or should have been known.

In this case, the Court determined before the Trinity hearing that the Agricultural Palace with the ramp on the State Fair Grounds was a public building. The waiver of immunity under Section 24-10-106(1)(c) is "A dangerous condition of any public building." Because the Court held that Section 106(1)(c) applied, Plaintiffs are first providing an analysis under Section 106(1)(C) of the act. The issue waiver of governmental liability turns on the issue of statutory construction of what is meant by 'DANGEROUS CONDITION'. In construing the term of dangerous condition, the effect of the intent of the legislature is paramount. The language of a statute is critical, and the Court should give words their plain and ordinary meaning. *Springer, supra*. If the words are unambiguous and demonstrate a clear legislative intent, then Court need not examine legislative history or other information for interpretation of the statute. *Jones v. Cox 828,* P. 2d 218 (Colo.

1992); *Springer, supra*. Here the language is clear for statutory interpretation and application of the facts to Plaintiffs' claims.

Section 24-10-103 (1) defines "DANGEROUS CONDITION". The critical aspect of the definition as applied to this case, is that it relates to a physical condition of a facility **or the use thereof** which constitutes an unreasonable risk to the health or safety of the public. The language "or use thereof" is disjunctive, giving an alternative to merely a condition of a building when it was initially constructed. If the legislature had intended to limit the waiver of liability to just the physical condition of a building then it would not have included the language concerning use. Clearly the legislature foresaw that a building or a portion of a building could be non-dangerous if used in one way, but if used in another way there would be a clear danger to the public. See *Walton v. The State of Colorado,* 968 P.2d 636 (Colo. 1998) expressly adopting such an analysis. Likewise the phrasing of "which is known to exist or which in the exercise of reasonable care should have been known" demonstrates an intent of the legislature to require foreseeability on the part of a public entity. *Walter, supra.* Changing the usage of a public building from a use that meets code requirements to a use that does not meet code or safety requirements can clearly create a waiver, when there is an injury as a result of using the building or part of the building in way that violates

building code or safety requirements. In this case allowing the use of the ramp for a purpose that was not lawful and originally not intended constitutes the waiver of immunity. Alternatively, if the ramp was intended to be used for public ingress and egress then the construction was improper because it did not conform to code requirements. Requiring a public entity to conform to building and safety code requirements in how it uses its buildings and structures clearly meets the legislative intent to make public entities responsible for a harm arising from negligent acts. *Walton, supra.*

This interpretation is also supported by language in C.R.S. § 24-10-103(1.3), that "A dangerous condition shall not exist solely because a design of any facility is inadequate". This language implicitly supports the concept that a structure's use coupled with design creates a liability situation. For example, if there is building code requirement for a weight limit on a public structure's second floor, and the building is designed consistent with that weight limit, but the public entity overloads the second floor, exceeding the weight limit and the floor collapses because of the weight, then liability should be imposed. The reason for imposing such liability is that the public entity has overtaxed the structure and affected the structural efficiency and the structure cannot do what it was supposed to do.

The trial court below neglected the concept that when a building structure

has its use changed that its efficiency can be affected for the intended use and purpose. The court below looked at the definition of "Maintenance," as set forth in Section 24-10-103(2.5), and narrowly construed that language to eliminate liability for the undisputed unsafe use of the ramp, neglecting that the use of the ramp from no pedestrian to one where pedestrian traffic was allowed created by law to unsafe use. The affidavit of Sarah Cummings, who identified herself in the affidavit as the General Manger of the State Fair, which affidavit was filed with the Defendants' Motion to Dismiss, acknowledges that the ramp or ramps were not intended for use by fair visitors. (CF pp 64-66 – see paragraph 13). Section 24-10-103(2.5) defines "maintenance" to include efficiency: "Maintenance means the act or omission of a public entity or public employee in keeping a facility in the same general state of repair or **efficiency** as initially constructed…" (emphasis added.) The statutory definition also states "Maintenance does not include any duty to upgrade, modernize, modify, or improve the design or construction of a facility." This language makes it clear that the public entity in this case had no responsibility to modernize the ramp, so long as its use and efficiency stayed the same, which was for loading and unloading, but not pedestrian use. There is nothing in the statute that expressly states or even implies that if a public entity changes the use of a building, or a part of a building, so that it violates safety or code requirements,

that the public entity should be excused from liability. If the ramp was constructed solely for vehicles and bringing in equipment, the change in use would affect efficiency because adding pedestrian traffic would change the nature of the use. It would substantially increase the likelihood of injury. It would increase the potential costs for liability insurance and would require adaptation of the ramp to meet code standards, including the addition of handrails and other cost measures to prevent the Defendants' from being cited for violations of the law. It would result in a finding of improper use, as was found by Plaintiff's expert witness.

Appellants' counsel has been unable to find any case law that interprets how "efficiency" in the context of Governmental Immunity is interpreted, however in employment law, the term "efficient service" is generally accepted to mean proper or effective service, not to be in violation of established standards. See *Bourie v. Department of Higher Education*, 929 P.2d 18 (Colo. App. 1996). Cert. Denied 1997. The same type of meaning should be ascribed here. The change in use was not efficient because it caused the ramp's use to be a violation of established standards. The unsafe use or condition was different than the original intended use. The case of *Swieckowski v City of Fort Collins*, 934 P. 2d 1380 (Colo. 1997) and cases cited therein supports such an interpretation concerning the duty to return state owned property to its original condition and not increase the risk of

injury. In this case such a return would have been for the ramp to be used for non-pedestrian traffic in compliance with code and safety requirements and not to increase the risk of injury by altering its use, that would violate code and safety requirements. In *Medina v. State*, 35 P. 3d 443 (Colo. 2001), the Supreme Court clearly articulated that the obligation of the public entity was not to increase the risk causing or contributing to injury. The trial court below cites the language about change in use contained in *Medina, supra* for its conclusion that Plaintiff has failed to meet the definitional requirement relating to a "dangerous condition". The "change in use" referenced in *Medina* is an increase in the amount of traffic, not a change that alters the original purpose of the road to carry traffic. That change is clearly distinguishable from a change that creates a code or safety violation. The language referenced earlier in the brief concerning defining dangerous condition, that includes the language of "use thereof" simply doesn't square with the District Court's analysis. The record clearly demonstrates that the Defendants knowingly allowed pedestrians to use the ramp, that was not intended for pedestrian use, and designed not to have pedestrian traffic. Defendants knew that the ramp created a dangerous condition for the pedestrians because building and safety codes required greater protections and Defendants waived governmental immunity by substantially increasing the risk of harm and injury and not returning

the ramp to its sole original usage or making it safe for pedestrians. This is no different from turning a stop sign around. See *Stephen v. City and County of Denver*, 659 P. 2d 666 (Colo. 1983). Both cases involve maintenance for safety, where the public entity has the obligation to avoid increasing the risk to the public by omitting to act, or not correcting a safety problem. The trial court failed to construe the controlling statutes in a broad and required fashion, and also failed to allow the Plaintiffs the reasonable inferences from the evidence that was in the record and introduced at hearing.

The trial court below additionally determined that C.R.S. § 24-10-106(1)(e) was not controlling as a waiver based on the same rationale as it used to determine the issues relating to Section 24-10-106(1)(c). The term public facility has a broader meaning than public building. The term applies to permanent-brick-and-mortar structures as well as a collection of individual items that, considered together promote a broader purpose. *St. Vrain Valley School Dist., RE-1J v. A.R.L*, 325 P. 2d 1014 (Colo. 2014). The State Fair Grounds is a recreational area. On the day in question the Plaintiffs went to the Fair Grounds for entertainment and recreational purposes, including going to the rodeo and doing other recreational activities. TR. 8-14-18, p 21:7-10) . The incorporation of a man-made item, like the ramp at the Agricultural Palace, brings the item or structure that is incorporated

into the meaning and definition of a public facility. *Rosales v. City and County of Denver*, 89 P. 3d 507 (Colo. App. 2004). *St. Vrain Valley School District, supra.*

The Court erroneously determined that the ramp was not a dangerous condition of a public facility, ignoring the use question and fact that the ramp was intended to be used to load and unload items for recreational purposes and then was improperly and contrary to safety and building code requirements used for pedestrian ingress and egress. This transition was a form of improper maintaining the facility for the purpose for which it was intended. It did not keep the facility in the same state of efficiency as its original design and construction and directly caused Mrs. Cruz to have severe injuries. This is documented in the court file through the affidavits of Mr. and Mrs. Cruz, and their son Joseph Charles Cruz. (CF pp 156-159).

VI. CONCLUSION

The Governmental Immunity Statutes balance the rights of citizens and members of the general public, allowing for recovery for governmental negligent wrongdoing, versus the economic costs to the government for remediation of wrongdoing and fiscal uncertainty. The exemptions from immunity are entitled to broad application and in any Trinity Hearing all reasonable inferences from the evidence in the record and evidences adduced at hearing are resolved in favor of

the Plaintiff(s). The record in this case is clear. There has been governmental wrong doing and Mrs. Cruz was severely injured from this wrongdoing.

The record is also clear that the wrongdoing by government related to operation of a public building or public facility and use of the building or facility. The record is additionally clear that the Defendants failed to maintain the building or structure and its operation as it was intended to be maintained and operated and changed its use. Under these facts and the legal principles that guide the Court, the ruling of the District Court, dismissing the case, should be overturned and the case remanded for further proceedings and trial. To do otherwise would create an unjust determination and allow public entities to create unsafe conditions in public buildings by changing the usages of portions of public buildings to violate code and other legal requirements. The Court must and should interpret the language concerning usage contained in the definition of "Dangerous Condition" in a broad manner. The court should also broadly construe the language relating "efficiency as initially constructed" to apply in a case like this where the public entity changes uses and violates code requirements.

Respectfully submitted this 28th day of February, 2019.

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CERTIFICATE OF SERVICE

I certify that on this 28th day of February, 2019, a true and correct copy of the foregoing **Plaintiffs/Appellants' Opening Brief** was filed via ICCES, with service to the following:

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