

Appendix C: Federal and Minnesota Case Law Summaries

TABLE OF CONTENTS

Introduction.....	4
Federal Accessibility Law Cases	6
Ability Center of Greater Toledo v. City of Sandusky	6
American Council of Blind v. Washington Metro. Area Transit Authority	6
Barden v. City of Sacramento	7
Californians for Disability Rights, Inc. v. California Department of Transportation.....	8
Culvahouse v. City of LaPorte.....	9
Disabled in Action of Pennsylvania v. Southeastern Pennsylvania Transportation Authority.....	9
Frame v. City of Arlington	10
Geiger v. City of Upper Arlington	11
George v. Bay Area Rapid Transit	11
Hassan v. Slater	12
Kinney v. Yerusalim	13
Neighborhood Association of the Back Bay, Inc. v. Federal Transit Authority.....	13
New Jersey Protection and Advocacy, Inc. v. Township of Riverside.....	14
Pilling v. Bay Area Rapid Transit	15
Reichenbach v. City of Columbus	16
Schonfeld v. City of Carlsbad.....	17
Uttilla v. Tennessee Highway Department.....	17
Weinrich v. Los Angeles County Metropolitan Transportation Authority.....	18
Federal Authority Cases.....	19
Friends of Potter Marsh v. Peters.....	19
Federal Environmental Justice Cases	19
Senville v. Peters.....	19
Federal Title 23 Cases	20

Appendix C: Case Law Relevant to Pedestrian, Bicycle, and Non-Motorized
Transportation

Calio v. Pennsylvania Dept. of Transportation	20
Federal Title VI Cases	21
Alexander v. Sandoval	21
Bryant v. New Jersey Dept. of Transportation.....	22
Coalition of Concerned Citizens Against I-670 v. Damian.....	22
Darensburg v. Metropolitan Transportation Commission	23
Powers v. CSX Transportation, Inc.	24
Minnesota Authority Cases.....	25
Angell v. Hennepin County Regional Rail Authority	25
Booth v. City of Minneapolis.....	26
C and R Stacy, LLC v. County of Chisago.....	26
City of Lake Elmo v. Metropolitan Council	27
Duffy v. Martin.....	28
Elwood v. Rice County	28
Fisher v. County of Rock.....	29
Holmquist v. State	29
Janklow v. Minnesota Board of Examiners	30
Larson v. Independent School District No. 314.....	30
Matter of Resolution of City of Northfield.....	31
Matter of Resolution of the City of Austin.....	31
Minnesota Center for Environmental Advocacy v. Metropolitan Council	32
Nusbaum v. Blue Earth County.....	33
Spanel v. Mounds View School District No. 621	33
State by Washington Wildlife Preservation, Inc. v. State.....	34
State v. Williams	34
Minnesota Traffic & Safety Cases	35
Becklund v. Daniels	35
Ferguson v. Larson	36
Hernandez v. State	36
Johnson v. City of Thief River Falls.....	37
Kachman v. Blosberg.....	37

Appendix C: Case Law Relevant to Pedestrian, Bicycle, and Non-Motorized
Transportation

Kollodge v. F. and L. Appliances, Inc.	38
Line v. Nourie.....	39
Sikes v. Garrett.....	39
Staloch v. Belsaas.....	40
State v. Greenman.....	40
State v. Hershberger.....	41
Stewart v. Koenig.....	41
Swanson v. Carlson.....	42
Thomas v. Mueller.....	42
Minnesota Human Rights Cases.....	43
Gleason v. Metropolitan Council Transit Operations.....	43
Minnesota Environmental Impact Cases.....	44
White v. Minnesota Dept. of Natural Resources.....	44
Minnesota Discrimination Cases.....	44
Kammuller v. Loomis, Fargo & Co.	44
Sigurdson v. Carl Bolander & Sons Co.	45

INTRODUCTION

Federal and Minnesota state cases presented here were gathered between August 2012 and June 2013. Laws often change and case law can be overturned and overruled, so legal citations and references need to be checked against federal, state, and other legal authorities to verify validity of information. The case law summaries are organized based on the following categories:¹

- **Case Name**

The case name of federal and Minnesota cases includes the names of the two parties involved in the case – the plaintiff and defendant. The plaintiff is the party that initiates a civil suit in a court of law and seeks some type of relief from the court. The defendant is the party that is being sued in a civil suit in a court of law and accused of a legal wrong doing by the plaintiff.

- **Citation**

The citation of federal and Minnesota cases is a classification system used to organize cases that allows for a systematic way of tracking and referring to cases. (The citation system of legal cases is similar to the system of organizing books used by public libraries, through the Dewey decimal system, but for legal cases.)

The citation format for federal and Minnesota cases includes the following general components:

- Names of parties (plaintiff v. defendant)
- Volume of publication where case is published, publication where case is published, page number of case
- Court issuing the decision and date of decision.

Sample citation format:

[Plaintiff v. Defendant], [Volume # of Publication Where Case is Published]
[Name of Publication Where Case is Published] [Page Number of Case],
([Court Issuing Decision, Date/Year of Decision])

(Please note that the format and exact information included in these components may change depending on the court deciding the case, publication issuing the case, and other factors.)

- **Law Interpreted/ Governing Law**

Court cases are brought by a plaintiff based on an allegation that the defendant violated a specific law. The following case summaries identify the law on which the case was based in the “Law Interpreted/ Governing Law” section. Court

cases often involve more than one law, and can include interpretations of federal and state constitutions, statutes, regulations, and case law from earlier cases.

- **Fact Summary**

The fact summary included in the case summaries provides a brief overview of the facts at issue in the case that are relevant to pedestrian, bicycle, and non-motorized transportation. As court cases are based on specific facts that gave rise to the legal action, the relevant factual details of a case are included in written court opinions.

- **Issues**

Court cases are based on specific legal “issues”. A legal issue involves the application of a specific law to a fact scenario and allegation that the defendant’s actions or inactions violated a specific law or create a legal “issue”. The “issue” identified in the case summaries provides a brief summary of the legal dispute raised by the plaintiff as it applies to the specific facts of the case that impact pedestrian, bicycle, and non-motorized transportation.

- **Holdings**

The holdings included in the case summaries provide the court’s determination in a matter of law pivotal to the decision in the case and principles raised by the decision. Court cases can include numerous holdings depending on the issues raised by the case. The holdings identified in the case summaries are limited to those holdings from the cases that are most relevant to pedestrian, bicycle, and non-motorized transportation.

- **Relevance to Pedestrian, Bicycle, and Other Non-Motorized Transportation**

This section of the case summaries provides a brief analysis of the applicability of the facts, issue, and law decided in the case to pedestrian, bicycle, and non-motorized transportation.

FEDERAL ACCESSIBILITY LAW CASES

Ability Center of Greater Toledo v. City of Sandusky

Citation: Ability Ctr. of Greater Toledo v. City of Sandusky, 385 F.3d 901 (6th Cir. 2004).

Law Interpreted/ Governing Law: Title II of the ADA; section 504 of the Rehabilitation Act; 28 C.F.R. § 35.151; 28 C.F.R. § 35.150; 28 C.F.R. § 35.101.

Fact Summary: the plaintiffs, the Ability Center of Greater Toledo, a non-profit organization, and other individuals with disabilities brought a class action suit against the defendant, the city of Sandusky, alleging that the defendant violated the ADA by failing to install curb ramps during street alteration projects.

Issues: whether the federal regulations implementing the ADA and requiring accessibility to public facilities are enforceable as a private right of action.

Holdings: the relevant section of the ADA does not only prohibit intentional discrimination; it also imposes a requirement that public entities provide disabled individuals with meaningful access to public services. The implementing regulations instruct that the remedies available under this section are the same available under the Rehabilitation Act, including a private cause of action.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: This case provides analysis of the specific remedies available under the Rehabilitation Act, and clarifies that those remedies are also those applicable under the ADA. Those remedies become available when a public entity fails to provide meaningful access to its programs and individuals with disabilities.

American Council of Blind v. Washington Metro. Area Transit Authority

Citation: Am. Council of Blind v. Washington Metro. Area Transit Auth., 133 F. Supp. 2d 66 (D.D.C. 2001).

Law Interpreted/ Governing Law: Title II of the Americans with Disabilities Act (49 C.F.R. § 37); the Rehabilitation Act; the Equal Access to Justice Act.

Facts: one of the accessibility requirements under the ADA Standards for Accessible Design (ADAAG) mandates 24 inch detectable warning surfaces running along the

edges of subway and light rail platforms. The defendant here requested multiple time extensions and equivalent facilitation status for its facilities. A grant of equivalent facilitation was given to the defendant in accordance with its plan to install an electric infrared warning system on the edge of its platforms. When the plan was later deemed impossible, the defendant was granted a second equivalent facilitation allowance under its new plans to place 24 inch detectable warning strips within 18 inches of the edge of subway platforms. During the defendant's negotiations with the Federal Transit Authority, plaintiffs brought suit against the defendants for violation of Title II of the ADA. Plaintiff additionally sought legal fees under the Equal Access to Justice act.

Issues: whether defendants violated Title II of the Americans with Disabilities Act; whether defendants owed plaintiffs legal fees under the Equal Access to Justice Act.

Holdings: The defendant's plan to install 24-inch detectable warning surfaces composed of truncated domes, 18 inches from the edge of the platform was deemed an equivalent facilitation under the ADA regulations. Equivalent facilitation status is granted if "the alternative design or technology that the rail operator seeks to provide is 'substantially equivalent or greater to and usability of the facility.'" No, the defendant and the FTA were already in negotiations regarding the defendant's attempts to comply with the ADAAG accessibility requirements for platform edges. When the defendant and FTA reached an agreement resulting in a grant of equivalent facilitation to defendant, the plaintiff's suit against defendant became moot.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: This case establishes that under the ADA, responsible parties must ensure that transportation facilities, including subway and light rail platforms, meet the accessibility requirements under the ADAAG. Additionally, this case clarifies when a plaintiff's case against a transportation authority may be dismissed as moot.

Barden v. City of Sacramento

Citation: Barden v. City of Sacramento, 292 F.3d 1073 (9th Cir. 2002).

Law Interpreted/ Governing Law: Title II of the Americans with Disabilities Act (28 C.F.R. § 35.149-151); section 504 of the Rehabilitation Act.

Facts: the appellants in this case are a group of individuals with mobility and vision disabilities living in or regular visitors to the city of Sacramento. Appellants alleged that the city of Sacramento violated the ADA and Rehabilitation Act when it failed to incorporate curb ramps in the plans for newly-constructed and altered sidewalks. Additionally, the city of Sacramento failed to maintain existing sidewalks so that they were accessible to individuals with disabilities.

Issue: whether public sidewalks in the City of Sacramento are a service, program, or activity of the city within the meaning of the ADA and the Rehabilitation Act.

Holding: the public sidewalks of the city of Sacramento are a service under the broad language of the ADA and the Rehabilitation Act covering “anything a public entity does” and because of the determination made by the Department of Justice that sidewalks constitute a public service.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case provides analysis of the statutory language of the ADA and the Rehabilitation Act. From the case holding, it is clear that the language of the ADA and the Rehabilitation Act has been interpreted to include public sidewalks as a service provided by state and local governments. As such, when the state fails meet to the accessibility standards set by the ADA and Rehabilitation Act, it makes itself subject to lawsuits from the public. This case suggests that any non-motorized transportation improvement project must include plans to incorporate the federal accessibility regulations.

Californians for Disability Rights, Inc. v. California Department of Transportation

Citation: Californians for Disability Rights, Inc. v. California Dept. of Transp., C 06-5125 SBA, 2009 WL 2392156 (N.D. Cal. Aug. 4, 2009).

Law Interpreted/ Governing Law: Americans with Disabilities Act; section 504 of the Rehabilitation Act; 28 C.F.R. § 35.104; 28 C.F.R. § 35.151.

Fact Summary: plaintiffs, a certified class of California residents, alleged that the defendant California Dept. of Transportation’s accessibility design regulations were in violation of federal law and regulations. Additionally, plaintiffs alleged that, though defendant had implemented statewide procedures for ensuring accessibility to pedestrian facilities, defendant was not actually following those procedures.

Issues: whether the defendant’s policies for the design of pedestrian facilities complied with Title II of the ADA, Section 504 of the Rehabilitation act, and Section 35.151 of the Title II implementing regulations; whether the defendant had system-wide procedures to ensure that pedestrian facilities are designed and constructed pursuant to its policies.

Holdings: there were genuine questions of material fact regarding the defendant’s design policies compliance with applicable federal law because of the defendant’s failure to require accessibility on vehicular lanes and shoulders despite their designation as pedestrian pathways and defendant’s failure to show that their policies had been accepted by the FHWA. In addition, the defendant was found to have a system-wide procedure to ensure accessibility to pedestrian facilities, but that it did not enforce those policies, as indicated by plaintiff’s evidence of numerous access barriers.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: here, residents of California with disabilities successfully brought a claim against the California Department of Transportation for its failure to follow federal accessibility laws in constructing and altering pedestrian facilities. Authorities implementing non-motorized transportation facilities may similarly be subject to liability if the development of such facilities does not adequately incorporate and enforce federal accessibility standards.

Culvahouse v. City of LaPorte

Citation: *Culvahouse v. City of LaPorte*, 679 F. Supp. 2d 931 (N.D. Ind. 2009).

Law Interpreted/ Governing Law: Title II of the Americans with Disabilities Act; 28 C.F.R. § 35.104; 28 C.F.R. § 35.130; 28 C.F.R. § 35.133; 28 C.F.R. § 35.150; 28 C.F.R. § 35.151.

Fact Summary: the plaintiffs, two individuals with disabilities living in the City of LaPorte, alleged that the city has violated Title II of the ADA by failing to keep city sidewalks in good repair and making them accessible to individuals with disabilities.

Issue: whether a requirement that property owners pay for sidewalk repairs relieved the city of its duty to make sidewalks accessible under the ADA.

Holding: the city had a responsibility under the ADA to ensure that its existing city sidewalks were accessible to individuals with disabilities.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: authorities implementing non-motorized transportation projects and facilities will not be able to avoid compliance with ADA requirements even if the authority over sidewalks and their repairs lies with private residents who own the property on which the sidewalk is located.

Disabled in Action of Pennsylvania v.

Southeastern Pennsylvania Transportation

Authority

Citation: *Disabled in Action of Pennsylvania v. Southeast Pennsylvania Transp. Auth.*, 635 F.3d 87 (3d Cir. 2011).

Law Interpreted/ Governing Law: the Americans with Disabilities Act; the Rehabilitation Act; 49 C.F.R. § 37.3; 48 C.F.R. § 37.9; 49 C.F.R. § 37.43.

Fact Summary: the plaintiffs brought suit against the Southeastern Pennsylvania Transportation Authority (SEPTA) for failure to comply with the ADA and the Rehabilitation Act. Plaintiffs alleged that the defendants violated the accessibility requirements under both laws when it undertook improvement projects on three separate subway stations but failed to include plans for making those stations accessible for individuals with disabilities.

Issue: whether the defendant had made alterations to transportation facilities, requiring them to make those facilities readily accessible to the maximum extent feasible.

Holdings: yes, the defendant had made alterations to certain transportation facilities, requiring them to make those facilities readily accessible to the maximum extent feasible. Alterations are described as changes to facilities that affect usability. Replacing an old unusable staircase with a new one and adding elevators clearly affected usability. Additionally, in considering what the “maximum extent feasible” requires, economic limitations are not the main concern. Instead, the structure to be altered should be considered in terms of what alterations can actually be undertaken to change it without affecting its use and purpose. Finally, the court held that each station had to be readily accessible because each station served a separate route.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: transportation facilities include more than sidewalks. Under the ADA and Rehabilitation Act, facilities include subway stations, light rail stops, and bus stops. In developing transportation systems in Minnesota, transportation authorities should consider what improvements should be made to these types of facilities as well, in order to provide full access to all transit users, including individuals with disabilities and pedestrians, bicyclists, and other non-motorized transportation users.

Frame v. City of Arlington

Citation: *Frame v. City of Arlington*, 657 F.3d 215 (5th Cir. 2011), *cert. denied*, 132 S. Ct. 1561, 182 L. Ed. 2d 168 (2012).

Law Interpreted/ Governing Law: the Americans with Disabilities Act; section 504 of the Rehabilitation Act; 28 C.F.R. § 35.101; 28 C.F.R. § 35.104; 28 C.F.R. § 35.130; 28 C.F.R. § 35.149; 28 C.F.R. § 35.150; 29 C.F.R. § 35.151; 49 C.F.R. § 37.3.

Fact Summary: disabled residents of the City of Arlington who needed the use of motorized wheelchairs to travel throughout the city filed a lawsuit against the city for failing to make recently built and altered sidewalks readily accessible to individuals with disabilities.

Issue: whether Title II and section 504 (and their implied private rights of action) extend to newly built and altered public sidewalks.

Holding: plaintiffs have a private right of action to enforce Title II and section 504 with respect to newly built and altered public sidewalks.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case provides further support that individuals with disabilities are provided with a private right of action against authorities in control of the design and construction of sidewalks if they fail to accommodate individuals with disabilities.

Geiger v. City of Upper Arlington

Citation: *Geiger v. City of Upper Arlington*, 2:05-CV-1042, 2006 WL 1888877 (S.D. Ohio July 7, 2006).

Law Interpreted/ Governing Law: Title II of the Americans with Disabilities Act; 28 C.F.R. § 35.151.

Fact Summary: the plaintiff alleged that the City of Upper Arlington violated the ADA because it failed to construct sidewalks throughout the municipality. The plaintiff maintained that sidewalks are “a basic public services program pursuant to the ADA.”

Issue: whether the City of Upper Arlington violated the ADA by discriminating against the plaintiff and other individuals with disabilities when it failed to construct city sidewalks.

Holding: the ADA only imposes a duty on municipalities to improve previously existing facilities so that they are accessible to individuals with disabilities. The City’s failure to do so does not amount to discrimination here because all visitors to and residents of the city of Upper Arlington are equally effected by the lack of sidewalks. Additionally, nowhere in the ADA is there an affirmative obligation on municipalities to construct sidewalks where none had existed previously.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: The ADA does not require city or state agencies to build sidewalks where they did not previously exist. As such, any non-motorized transportation improvement plans that transportation authorities undertake will not require the authorities to construct new sidewalks where they did not exist before. However, the authorities will be responsible for ensuring that previously existing sidewalks are accessible to everyone.

George v. Bay Area Rapid Transit

Citation: *George v. Bay Area Rapid Transit*, 577 F.3d 1005, 1007 (9th Cir. 2009).

Law Interpreted/ Governing Law: the Americans with Disabilities Act; the Rehabilitation Act; 49 C.F.R. § 37.9.

Fact Summary: plaintiffs were vision-impaired transit riders seeking to use the services of the defendant rapid transit system. Due to accessibility barriers like unmarked staircases and staircases without accessible handrails, plaintiffs sued defendant alleging violations of the ADA and the Rehabilitation Act.

Issue: whether sight-impaired transit riders can win a lawsuit under the Americans with Disabilities Act if a public transit service system complies with existing federal design regulations for train station accessibility.

Holding: disabled transit riders may not win a lawsuit under the ADA where a public transit service system complies with existing federal design regulations for train station accessibility.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: as long as MnDOT and other transportation authorities comply with the DOT regulations in making improvements to transportation facilities and services, claims made by individuals with disabilities will likely be dismissed.

Hassan v. Slater

Citation: Hassan v. Slater, 41 F. Supp. 2d 343 (E.D.N.Y. 1999), *aff'd*, 199 F.3d 1322 (2d Cir. 1999).

Law Interpreted/ Governing Law: the Americans with Disabilities Act; 28 C.F.R. § 35.130; 49 C.F.R. § 37.47; 49 C.F.R. § 37.49; 49 C.F.R. § 27.3.

Fact Summary: the plaintiff alleged that he is a disabled person within the meaning of the ADA due to his limited vision. As a result of his disability, he had to use mass transit to travel to Manhattan for treatment at a veteran's hospital. The plaintiff alleged that, due to the closing of the Center Moriches Station 1 ¼ mile in walking distance from his home, he could no longer attend his treatment session.

Issue: whether plaintiff was improperly discriminated against because of his disability when defendants chose to close low volume transit stations utilized by the plaintiff.

Holding: the plaintiff had not been improperly discriminated against. When a plaintiff seeks an injunction against a government action that was undertaken pursuant to statutory authority, the plaintiff must show irreparable harm and a likelihood of success on the merits. Plaintiff was unable to show that he would suffer irreparable harm if the closed station was not reopened.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case clarifies when a public entity's actions will amount to discrimination based on disability. Here, the court determined that there were alternative routes of transportation available to the plaintiff. Though the plaintiff's new route of

travel would be longer than his original, it did not result in a barrier to access for the plaintiff.

Kinney v. Yerusalim

Citation: *Kinney v. Yerusalim*, 9 F.3d 1067 (3d Cir. 1993).

Law Interpreted / Governing Law: the Americans with Disabilities Act; section 504 of the Rehabilitation Act; 28 C.F.R. § 35.151; 28 C.F.R. § 35.150; 28 C.F.R. § 35.104; 49 C.F.R. § 27.67.

Fact Summary: plaintiffs, a non-profit organization and twelve individuals with disabilities living and working in Philadelphia, filed a claim arguing that the defendants established policies violating the ADA. The policy at issue required the city to install curb cuts only when the construction project affected the curb or sidewalk or when the street was being completely reconstructed.

Issues: whether resurfacing a road is an alteration within the scope of the relevant sections and implementing regulations of the ADA requiring the installation of curb ramps; and whether a curb ramp is a separate, existing facility from a street.

Holdings: resurfacing a road results has an effect upon the usability of the road and is integral to a road's purpose. When integral changes are undertaken to improve the usability of streets, Congress made clear that when these changes were made to such facilities, the changes must be beneficial to all potential users. This requirement results in a determination that when roads are resurfaced, curb ramps must also be installed to make the changes beneficial to individuals with disabilities.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: the decision in this case clarifies that streets and sidewalks, especially curbs and curb ramps, are part of the same structure or facility. This requires improvements also be made to the curbs when improvements are made on the streets.

Neighborhood Association of the Back Bay, Inc. v. Federal Transit Authority

Citation: *Neighborhood Ass'n of The Back Bay, Inc. v. Fed. Transit Admin.*, 407 F. Supp. 2d 323 (D. Mass. 2005), *aff'd*, *Neighborhood Ass'n Of The Back Bay, Inc. v. Fed. Transit Admin.*, 463 F.3d 50 (1st Cir. 2006).

Law Interpreted/ Governing Law: Title II of the Americans with Disabilities Act; 49 C.F.R. § 37.

Fact Summary: defendants, the Federal Transit Authority and the Massachusetts Bay Transportation Authority, sought to make certain accessibility improvements to Copley Station, one of the oldest subway stations in the country. Plaintiffs intervened, alleging that the improvement plans violated Sections 106 and 110 of the National Historic Preservation Act and Section 4(f) of the Department of Transportation Act.

Issue: whether defendants' plan for improving accessibility to Copley Station as required under Title II of the ADA violated relevant sections of the National Historic Preservation Act and the Department of Transportation Act.

Holding: defendant's determination that there was no adverse effect under the National Preservation Act met the procedural requirements contained in that Act. The defendants here invested time in identifying the historic properties encompassed by the accessibility improvement project and met with and considered the suggestions of the affected parties. Additionally, the finding that there was no adverse effect was supported by appropriate documents, including a report made by the defendants' under Section 106 of the Act. Additionally, the procedural requirements imposed by Section 4(f) of the Department of Transportation Act which mandates a consideration of the impact on the historic properties and a determination about other feasible and prudent alternatives were adequately followed. Here, the potential effects on historic properties were greatly weighed, but it was ultimately determined that no feasible and prudent alternative existed.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: This case addresses the potential conflicts between the transportation facility accessibility requirements of the ADA and Section 106 of the National Historic Preservation Act and Section 4(f) of the Department of Transportation Act. Transportation improvement projects meant to increase accessibility will likely move forward as long as the impact on historic properties and other prudent alternatives are considered.

New Jersey Protection and Advocacy, Inc. v. Township of Riverside

Citation: New Jersey Prot. & Advocacy, Inc. v. Twp. of Riverside, CIV.04-5914(RBK), 2006 WL 2226332 (D. N.J. Aug. 2, 2006).

Law Interpreted/ Governing Law: Title II of the Americans with Disabilities Act; section 504 of the Rehabilitation Act; 28 C.F.R. § 35.104; 28 C.F.R. § 35.150; 28 C.F.R. § 35.151.

Fact Summary: the plaintiff sued the defendant township over the fact that over one hundred intersections in the city were inaccessible to disabled citizens due to structural

barriers such as the lack of curb ramps or curb ramps that fail to meet accessibility specifications.

Issue: whether a public entity with fewer than fifty employees is exempt from the requirements that sidewalks be accessible to all individuals with disabilities under the ADA and Rehabilitation Act.

Holding: Both the legislative histories and implementing regulations of the ADA and Rehabilitation Act make it clear that Congress intended to require improvements to sidewalks for all public entities because of their utility for all individuals in daily life.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: a public entity with less than 50 employees must still comply with the accessibility requirements of the ADA in the provision of non-motorized transportation facilities.

Pilling v. Bay Area Rapid Transit

Citation: *Pilling v. Bay Area Rapid Transit*, C-12-02186 JCS, 2012 WL 3042479 (N.D. Cal. July 25, 2012).

Law Interpreted/ Governing Law: the Americans with Disabilities Act; the Rehabilitation Act; 28 C.F.R. § 35.102; 28 C.F.R. § 35.104; 28 C.F.R. § 35.130; 49 C.F.R. § 37.9; 49 C.F.R. § 37.3, 49 C.F.R. § 37.5, 49 C.F.R. § 37.21, 49 C.F.R. § 37.167.

Fact Summary: because of his colostomy, plaintiff needed an additional 2 to 8 minutes every time he went to the bathroom. Plaintiff was warned that his use of the bathroom violated the defendant's 10 minute policy and despite plaintiff's request for an accommodation, his membership to the defendant's Bike Station was terminated. As a result, the plaintiff lost his position as a foreman. Plaintiff brought this action against the defendants alleging discrimination based on his disability.

Issue: whether defendants were required to provide a reasonable modification or accommodation to the plaintiff in order to avoid discriminating against the plaintiff in violation of the ADA and Rehabilitation Act.

Holding: defendants were required to offer the plaintiff a reasonable modification or accommodation and their failure to do so resulted in discrimination of the plaintiff based on his disability. Public entities generally are required by Department of Justice (DOJ) regulations to make reasonable modifications to avoid discrimination on the basis of disability.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: generally, the DOJ regulations do not apply to transportation because, under Part B of Title II of the ADA, the Department of Transportation is

granted the authority to issue regulations for transportation facilities. However, in cases where the DOT regulations do not apply to the facts at hand, the DOJ regulations will be applicable. This will be important for MnDOT and other transportation authorities in determining which regulations apply to transportation facilities as they are developed or altered in non-motorized transportation improvement plans.

Reichenbach v. City of Columbus

Citation: *Reichenbach v. City of Columbus*, 2:03-CV-1132, 2006 WL 2381565 (S.D. Ohio Aug. 16, 2006).

Law Interpreted/ Governing Law: Title II of the Americans with Disabilities Act, 28 C.F.R. § 35.104, 28 C.F.R. § 35.149-35.151.

Fact Summary: the plaintiff was injured trying to navigate a ramp on a trip to the office of a county service. As plaintiff attempted to dislodge his wheelchair from a hole on the ramp, he fell and injured himself. Subsequently the plaintiff brought action against the city for his injuries that resulted from the inaccessible conditions of the sidewalk in that area. The city had not altered the sidewalk at issue since 1979 when it was originally constructed.

Issue: whether defendant, City of Columbus, violated requirements of Title II of the ADA by failing to make the sidewalk and ramp that caused injury to the plaintiff accessible for all members of the public, including individuals with disabilities.

Holding: the defendant city did not violate the ADA by failing to make the sidewalk and ramp at issue accessible to individuals with disabilities. The plaintiff presented evidence that in 1996, 2000, and 2002 the city had plans to improve the parts of the sidewalk and ramp at issue. However, in 1996, no work was actually performed on the sidewalk. The work performed in 2000 was only made to isolated portions of the sidewalk and were not the kind requiring full alteration of the sidewalk. The alleged 2002 improvements were in fact only estimates for improvement or replacement which could not trigger the duty to alter. The plaintiff also claimed that repairs made in 2004 required the city to improve the entire sidewalk; however, these improvements were made after plaintiff's injury and therefore could not raise a duty for an injury already received.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: the decision in this case reflects some of the limitations to the accessibility requirements under Title II of the ADA. Where the sidewalk at issue was constructed before the implementation of the ADA and no additional construction or alteration has been made, there may not be a claim for the plaintiff. The regulations require more than just plans to improve, estimates for the cost of improvement, or isolated improvements to certain parts of the sidewalk.

Schonfeld v. City of Carlsbad

Citation: *Schonfeld v. City of Carlsbad*, 978 F. Supp. 1329 (S.D. Cal. 1997), *aff'd*, 172 F.3d 876 (9th Cir. 1999).

Law Interpreted/ Governing Law: the Americans with Disabilities Act, section 504 of the Rehabilitation Act, 28 C.F.R. § 35.105, 28 C.F.R. § 35.150, 28 C.F.R. § 35.151.

Fact Summary: plaintiffs are residents of the city of Carlsbad and qualify under the statutory language of the ADA as individuals with disabilities. The plaintiffs allege that, on multiple occasions in 1996, they were unable to access certain services and facilities offered by the defendant, the city of Carlsbad, due to their status as individuals with disabilities. Plaintiffs also alleged that the defendant had failed to improve existing city curb ramps under the required standards.

Issues: whether plaintiffs had standing to challenge defendant's actions regarding the steps undertaken to reach ADA compliance; whether the plaintiff's claims against the defendant were time barred by a statute of limitations; and whether the defendant had complied with the requirements of the ADA under which plaintiffs sought to challenge defendant's actions.

Holdings: plaintiffs were able to show that they suffered from such disabilities and were entitled to the services offered under the ADA; the ADA does not have a specific statute of limitations, so therefore it must be determined which statute of limitations period best applies. Here, the court determined that ADA discrimination proceedings were closest to actions for "fundamental injury to the individual rights of a person" for the purposes of setting a statute of limitations. Finally, the defendant was able to show that they had completed a self-evaluation, altered existing facilities so that viewed in their entirety they are accessible to individuals with disabilities, and had satisfied the requirements of the ADA Standards for Accessible Design (ADAAG) in doing so.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case provides guidance for some initial procedural issues in ADA cases regarding standing and statutes of limitations. These issues may be helpful in providing insight regarding who may have standing in cases that might arise from an ADA challenge.

Uttilla v. Tennessee Highway Department

Citation: *Uttilla v. Tennessee Highway Dept.*, 208 F.3d 216 (6th Cir. 2000).

Law Interpreted/ Governing Law: the 11th Amendment to the U. S. Constitution; the Americans with Disabilities Act; the Rehabilitation Act.

Fact Summary: plaintiffs, individuals with disabilities, filed a class action against the cities of Memphis, Nashville, Knoxville, and Chattanooga, and the Highway Department

of Tennessee, a state entity. In their complaint, plaintiffs alleges that the defendants violated the ADA in failing to conduct self-evaluations, install curb ramps, and accommodate individuals with disabilities needs during construction projects.

Issue: whether 11th Amendment immunity applies to the state entities charged as defendants in this proceeding.

Holding: no, 11th Amendment immunity does not apply if the state official or entity has performed his or her duties in a way that contravenes either the Constitution or a federal law, putting the official or entity outside of the cloak of state immunity.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized Transportation: a properly pled ADA case will defeat 11th Amendment state immunity. Therefore, any transportation authority creating a non-motorized transportation improvement plan should take care to comply with ADA accessibility requirements.

Weinrich v. Los Angeles County Metropolitan Transportation Authority

Citation: Weinreich v. Los Angeles County Metro. Transp. Auth., 114 F.3d 976 (9th Cir. 1997).

Law Interpreted/ Governing Law: Title II of the Americans with Disabilities Act; section 504 of the Rehabilitation Act; 28 C.F.R. § 35.130.

Fact Summary: the Los Angeles County Metropolitan Transportation Authority, the defendant, offered a reduced fare program for elderly and disabled transit users. The plaintiff qualified for the program due to his disability. In 1992, the policy was altered, requiring individuals with disabilities to provide medical information every three years to confirm their disabled status. The plaintiff sought an exemption from this requirement because of his inability to pay. The defendant denied the plaintiff's request, and the plaintiff responded by filing a claim against the defendant for violating the ADA.

Issue: whether the defendant transit authority violated the reasonable accommodation requirement of the ADA by failing to grant the plaintiff an exemption to its medical evidence requirement.

Holding: the defendant was not required to provide the plaintiff with an exemption under the ADA. The ADA only requires accommodations for individuals to prevent discrimination based on disability. The plaintiff sought an exemption based on his economic status, not his disabled status.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized Transportation: under the ADA, not all requests for accommodations made by

individuals with disabilities must be provided. Only those accommodations that are reasonable and required to prevent discrimination on the basis of disability are necessary. MnDOT and other transportation authorities will not be required to provide an accommodation for individuals with disabilities if the reason for doing so is not based on the individual's disabled status.

FEDERAL AUTHORITY CASES

Friends of Potter Marsh v. Peters

Citation: *Friends of Potter Marsh v. Peters*, 371 F. Supp. 2d 1115 (D. Alaska 2005)

Law Interpreted/Governing Law: deference to the FWHA.

Fact Summary: plaintiffs sued on the grounds that an environmental impact statement conducted by the Federal Highway Administration did not adequately assess environmental impacts of a highway construction.

Issue: whether the FHWA's action was reviewable by the court.

Holding: the issue was not ripe for review.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case demonstrates that courts give the FHWA deference in determining whether a facility is to be used for recreation or transportation. The choice to designate a facility as for recreation or transportation can affect how federal funds can be used to fund the project.

FEDERAL ENVIRONMENTAL JUSTICE CASES

Senville v. Peters

Citation: *Senville v. Peters*, 327 F. Supp.2d 335 (D. Vt. 2004).

Law Interpreted/Governing Law: the National Environmental Policy Act (NEPA).

Fact Summary: the plaintiffs filed suit against the Federal Highway Administrator and the Secretary of the Vermont Agency of Transportation, seeking a determination that the defendants' evaluation of a transportation project violated various federal laws.

Issue: whether the Federal Highway Administration violated NEPA by approving the project.

Holding: FHWA improperly determined that the changes would not cause a “significant environmental impact” such that no supplemental EIS was required, since the project would have had indirect effects and cumulative impacts regarding urban sprawl. FHWA therefore violated NEPA, and the project could not move forward.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized Transportation: when constructing non-motorized transportation facilities, governments must take environmental justice criteria into account, such as effects on job growth in nearby urban and outlying areas.

FEDERAL TITLE 23 CASES

Calio v. Pennsylvania Dept. of Transportation

Citation: *Calio v. Pennsylvania Dept. of Transp.*, 101 F.Supp.2d 325 (E.D. Pa. 2000).

Law Interpreted/ Governing Law: 23 U.S.C. § 104(b)(2); 23 U.S.C. § 217

Fact Summary: the Federal Highway Administration (FHWA) and the Pennsylvania Department of Transportation (PennDOT) entered into an agreement whereby FHWA granted PennDOT the authority to certify that its transportation projects complied with federal requirements. Using this authority, PennDOT certified that its current plan to turn a portion of the P & W Railway into a bicycle and pedestrian trail was in accordance with federal regulations that required such paths to serve the purpose of transportation (rather than only recreation) if any federal funds were to be used to complete the project. A group of concerned individuals challenged that finding, arguing that the path did in fact serve recreational purposes and not transportation purposes.

Issue: whether PennDOT’s determination that the trail project would be principally for transportation was supported by the record of the planned project.

Holding: PennDOT stated in its application for federal funds to complete the P & W trail that the trail would facilitate both recreation and transportation. The P & W trail was planned to run parallel to a major city street that provided access to numerous public and private facilities and services. In addition, the trail would intersect with five other commercial roads along its path. PennDOT determined that the addition of a bike path along this street would result in a reduction of vehicle miles traveled, of the number of vehicle trips, and of the amount of congestion in the surrounding area. The Court found that these results clearly indicated transportation usage.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: typically, when bicycle and pedestrian paths are planned, they may not receive federal funding under the Congestion Mitigation and Air Quality program if they only facilitate recreation. If, however, the planned path serves both recreation and transportation purposes, or just transportation purposes, federal money may be utilized to complete the planned path. Where the responsible transportation authority can show that the planned path will have reduce vehicle travel on city streets, it will satisfy the requirement that such paths must facilitate transportation to receive federal funding.

FEDERAL TITLE VI CASES

Alexander v. Sandoval

Citation: *Alexander v. Sandoval*, 532 U.S. 275, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001).

Law Interpreted/ Governing Law: Title VI of the Civil Rights Act of 1964.

Fact Summary: the Alabama Department of Public Safety was responsible for conducting state driver's license exams and only did so in English. The plaintiff acclaimed that this was a violation of Title VI because it had the effect of subjecting non-English speakers to discrimination based on their national origin.

Issue: whether there is an enforceable private right of action for disparate impact created by the regulations implementing Title VI.

Holding: the Court found that section 601 of Title VI of the Civil Rights Act prohibits intentional discrimination and creates a right to sue for private individuals. However, disparate impact regulations do not arise under 601. Instead, disparate impact cases arise under section 602 and its regulations, which make no reference to a private right of action. The Court was also unwilling to infer a private right of action from the language of 602 and instead chose to rely on Congress's exclusion of any reference to a private right action as clear indication that they had not intended to create one.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: when planning changes and improvements to non-motorized transportation facilities, public entities responsible for doing so will have to make certain evaluations about the impact of those changes to surrounding areas and the inhabitants of those areas. If the court can successfully determine that decisions regarding transportation planning were made in an intentionally discriminatory manner, then those individuals who have been discriminated against have a private right of action against the public entity responsible for the discriminatory behavior.

Bryant v. New Jersey Dept. of Transportation

Citation: *Bryant v. New Jersey Dept. of Transp.*, 998 F.Supp. 438 (D. N.J. 1998).

Law Interpreted/ Governing Law: Title VI of the Civil Rights Act of 1964.

Fact Summary: a group of Atlantic City residents filed suit against the New Jersey Dept. of Transportation (NJ DOT) and other parties for violating Title IV of the Civil Rights Act. The NJ DOT had adopted a plan to build a highway extension and tunnel to increase casino access which would go directly through the neighborhoods where the residents lived and would require the demolition of nine homes in the neighborhoods. These neighborhoods, West Side and Venice Park, were alleged to be the remaining stable middle-class African American neighborhood. Bryant and other residents of these neighborhoods argued that negative impacts of the plan would disproportionately affect minority communities.

Issue: whether the plaintiffs had standing under Title VI of the Civil Rights Act of 1964 to sue the NJ DOT.

Holding: yes, the Court found that though under the previous *Simpson* standard the plaintiffs did not have standing, with the Supreme Court's recent decision in *Federal Credit Union Association* standing could be established under the facts presented. The decision in *Federal Credit Union Association* requires a determination of whether the interest sought to be protected by the complainant (here, one particular plaintiff) is arguably within the zone of interest to be protected by the statute. The Court here concluded that the plaintiff was within the scope of interest because it resulted in a disparate racial impact prohibited section 601 of Title VI.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case establishes the rule for standing under Title VI of the Civil Rights Act of 1964. To succeed against a public entity responsible for transportation planning, an individual must show that he or she has an interest that is protected by the statute at issue. If the individual cannot show that, then the public entity will likely succeed in having the claim dismissed against them, including situations where the transportation planning involves non-motorized transportation plans.

Coalition of Concerned Citizens Against I-670 v. Damian

Citation: *Coalition of Concerned Citizens Against I-670 v. Damian*, 608 F.Supp. 110 (S.D. Ohio 1984).

Law Interpreted/ Governing Law: Title VI of the Civil Rights Act of 1964.

Facts: state and federal transportation authorities overseeing transportation projects in the state of Ohio were planning a 5-mile extension to I-670 which would connect the Columbus Innerbelt with the Columbus Outbelt. The proposed route for the I-670 extension resulted in the displacement of hundreds of individuals living in predominately minority neighborhoods. Residents of the affected neighborhood and a Coalition of Concerned Citizens then brought a suit against the state and federal transportation authorities, alleging a Title VI violation.

Issue: whether the Coalition established a Title VI prima facie case of Title VI discrimination.

Holding: yes, the Coalition of Concerned Citizens met their burden of proof requiring them to show that the planned route for the extension to I-670 would have a disparate impact on racial minorities. The Coalition was able to show that the majority of negative impacts resulting from the construction project would fall primarily on neighborhoods mostly comprised of minorities. However, despite meeting the initial burden of proof, the Coalition's Title VI claim fails because the transportation authorities were able to show that they had legitimate nondiscriminatory justifications for proceeding with the I-670 extension, most notably that no other option provided a solution to the traffic congestion problem that would continue to exist without the I-670 expansion.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case discusses how a suing party must establish every element of a Title VI discrimination claim against a public entity responsible for transportation planning. The suing party must first establish that, as a result of the proposed construction or alteration, there will be a disparate effect on racial minorities. However, the public entity may avoid legal responsibility by showing that there were legitimate nondiscriminatory reasons for following the initial plan.

Darensburg v. Metropolitan Transportation Commission

Citation: Darensburg v. Metropolitan Transp. Com'n, 636 F.3d 511 (9th Cir. 2011).

Law Interpreted/ Governing Law: Title VI of the Civil Rights Act of 1964.

Fact Summary: a group of San Francisco Bay area transit users sued the Metropolitan Transportation Commission (MTC) for intentional discrimination and disparate impact after it released its Regional Transportation Expansion Plan (RTEP), because the plan focused predominantly on rail improvement and expansion. African American transit users constituted 66.3% of all bus transit users and those transit users suing the MTC in this case concluded that decision to expand the rail transportation had discriminatory motivation.

Issue: whether MTC had violated state laws prohibiting disparate impact or federal Title VI intentional discrimination laws when it developed and undertook its RTEP, which designated a majority of transportation improvement funds for rail transit.

Holding: the Court found that both issues raised by the transit users, the state disparate impact claim and the federal Title VI claim, failed. In order to succeed in their disparate impact claim, the plaintiffs would have had to show statistical evidence that reliably indicates that two groups, those affected and those unaffected, were being treated differently for facially discriminatory reasons. The Court concluded that the statistics offered by the transit users that bus users were predominately members of minority groups was not enough to support a claim for disparate impact because it did not address the specific ridership of the transit lines to be expanded. Additionally, because the transit users failed to show a disparate impact, they were also unable to prove intentional discrimination under Title VI. When there is no proof of discriminatory impact there cannot be proof of intentional discrimination.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case evaluates both state and federal claims against transportation planning organizations for discriminatory practices. Though it focuses on bus and rail transit, the interpretation of Title VI and the needed showing to succeed on an intentional discrimination claim will also apply to plans for expanding and improving non-motorized transportation connections to transit. If transit users can show that the public entity responsible for transportation planning has acted in a manner that results in a discriminatory impact, then the transit user may succeed in a Title VI intentional discrimination case.

Powers v. CSX Transportation, Inc.

Citation: Powers v. CSX Transp., Inc., 105 F.Supp.2d 1295 (S.D. Ala. 2000).

Law Interpreted/ Governing Law: Title VI of the Civil Rights Act of 1964.

Fact Summary: the plaintiff was a relative of Terrell Powers, an African American man who was struck by a train owned by CSX as he crossed a train crossing. Powers alleges that CSX Transportation (CSX), the Alabama Dept. of Transportation (ADOT), and Rushing, an ADOT office engineer, violated Title IV by failing to provide the same level of safety warning systems at train stops in predominately African American neighborhoods as opposed to predominately Caucasian neighborhoods.

Issue: whether Powers' Title VI claim against ADOT is preempted by 11th Amendment sovereign immunity.

Holding: no, his claim was not preempted. Congress previously stated that "a State shall not be immune under the Eleventh Amendment of the Constitution of the United States...from suit in federal court for violation of Title VI of the Civil Rights Act of 1964... or he provisions of any other federal statute prohibiting discrimination by recipients of

federal financial assistance.” Congress has the power to condition the grants of federal financial assistance under the Spending Clause so long as the condition is not coercive. However, under Title VI of the Civil Rights Act an individual cannot be liable for a violation of the requirements of Title VI if the individual is not a recipient of federal financial funds or programs.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: an 11th Amendment sovereign immunity argument will protect public entities from liability in certain federal cases. This case shows that the application of the 11th Amendment to Title VI claims is limited. If an individual sues a public entity responsible for developing non-motorized transportation projects and the public entity is a recipient of federal financial assistance, an 11th Amendment argument will fail. Additionally, the 11th Amendment can only be used to shield public officials when monetary damages are sought. If an individual seeks equitable relief instead, such as an injunction, in a suit against a public official, an 11th Amendment argument will not protect the public official.

MINNESOTA AUTHORITY CASES

Angell v. Hennepin County Regional Rail Authority

Citation: *Angell v. Hennepin County Regional Rail Authority*, 578 N.W.2d 343 (Minn. 1998).

Law Interpreted/Governing Law: MINN. STAT. § 466.03, subd. 6 (1996); MINN. STAT. § 466.03, subd. 13 (1996).

Fact Summary: the plaintiff, a bicyclist, was injured on the way home after falling off an old loading dock on the defendant Rail Authority’s property. Many bike trails crossed the property, were well traveled, and all appeared open to the public as no “no trespassing” signs, barricades, or warning devices existed to restrict access. Additionally, portions of some of the bike trails, including the one the plaintiff was riding on, were paved.

Issue: whether the defendant’s alleged conduct was the result of a discretionary decision and thus immune from lawsuit, or an operational decision not entitled to immunity.

Holding: the defendant was not entitled to statutory immunity for its failure to restrict access, post warning signs, or erect a barricade at the location. The Authority did not show that the relevant decisions involved anything more than technical and professional evaluations.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case demonstrates a governmental entity's responsibility and liability to non-motorized transportation users that use the entity's land. If these users are not expressly restricted from or warned about a dangerous condition, liability may result for injuries sustained in failing to ensure safety.

Booth v. City of Minneapolis

Citation: *Booth v. City of Minneapolis*, 163 Minn. 223, 203 N.W. 625 (Minn. 1925).

Law Interpreted/Governing Law: the City of Minneapolis Charter, section 2, c. 16, of the City Charter gives the city authority to devise, adopt, and maintain parks in and adjacent to the city.

Fact Summary: the plaintiff sued to try to prevent the city of Minneapolis from purchasing land outside the city limits to use for a golf course.

Issue: whether "home rule" cities can establish recreation areas through their charters.

Holding: home rule cities can establish recreation areas, such as golf courses or parks, through their city charters.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: the ability for cities to create recreation areas and park boards through their charters could be a way to expand non-motorized recreation facilities.

C and R Stacy, LLC v. County of Chisago

Citation: *C and R Stacy, LLC v. County of Chisago*, 742 N.W.2d 447 (Minn. Ct. App. 2007).

Law Interpreted/Governing Law: MINN. STAT. § 160.18 (2006); MINN. STAT. § 394.22-.26 (2006); MINN. CONST. art. XIV; Minnesota Dep't of Transp. State Aid Manual 2007, ch. 1, § III.

Fact Summary: the plaintiff bought a land-locked parcel on condition that the seller apply & receive a conditional use permit (CUP) for driveway access which was approved and issued by the city. The county contacted the seller and advised that it had never approved any driveway access. The plaintiff then changed the language of their building permit to the city, stating that it was "on a proposed street off Co. Rd. 19," and as a result the city issued the permit and the plaintiff commenced construction. When the plaintiff did not stop construction after threatened legal action by the county, the county erected barricades on the driveway prohibiting access to CSAH 19. The plaintiff sued to have the barricades taken down.

Issues: whether the county had the authority to regulate access to CSAH 19 absent a statutory grant of power; whether the grant of authority to regulate public-road access in MINN. STAT. § 160.18 (2006) required an ordinance to be adopted; and whether regulation of public-road access under MINN. STAT. § 160.18 is an “official control” as defined by MINN. STAT. § 394.22–.26 (2006).

Holdings: road authorities may regulate access to public roads through the exercise of their police power and the codification of that power in Minn. Stat. § 160.18 (2006); public-road-access regulations under Minn. Stat. § 160.18 do not require adoption of an enabling ordinance and are not “official controls” as defined by Minn. Stat. §§ 394.22–.26 (2006); and regulation of an abutting landowner's right of access to a public road by a road authority is a taking if the landowner's remaining access is unreasonable.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case reflects the broad authority that counties have to regulate access to public roads through their police power, which is codified in statute. Moreover, it demonstrates potential conflicts between city and county authority. This is an important consideration for local authorities to be aware of when developing non-motorized transportation facilities in areas that may require the development of new accesses to public roads.

City of Lake Elmo v. Metropolitan Council

Citation: City of Lake Elmo v. Metropolitan Council, 685 N.W.2d 1 (Minn. 2004).

Law Interpreted/Governing Law: MINN. STAT. § 473.175, SUBD. 1; MINN. STAT. § 473.866; MINN. STAT. § 14.69; MINN. STAT. § 473.145, MINN. STAT. § 473.146, SUBD. 1; MINN. STAT. §§ 473.851-.871 (2002).

Fact Summary: the City of Lake Elmo submitted its land use plan to the Metropolitan Council for review and approval. The City wanted to retain its rural character by restricting future development. The Council adopted a Resolution requiring the City to make modifications that would allow for continued population growth. The City requested a hearing before a judge on all issues.

Issue: whether the Metropolitan Council had the statutory authority to require modification of Lake Elmo's comprehensive land use plan to conform to the Council's regional system plans.

Holding: the Council possessed the statutory authority to require Lake Elmo to modify its comprehensive plan.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case demonstrates the broad authority of the Metropolitan Council to dictate how a city uses its land and how a city must take into account the entire metropolitan area's land use plans. As non-motorized transportation infrastructure

is incorporated into land use plans, it will be reviewed by the Council, requiring the design of such plans to consider the larger plans of the metropolitan area and surrounding communities.

Duffy v. Martin

Citation: *Duffy v. Martin*, 121 N.W.2d 343 (Minn. 1963).

Law Interpreted/Governing Law: MINN. STAT. § 169.19, subd. 3; Minneapolis Code of Ordinances, § 407.130.

Fact Summary: the plaintiff was rear-ended by the defendant while waiting for a third party to enter the traffic lane after being parked on the side of the street.

Issue: whether the trial court erred in instructing the jury that violation of municipal ordinance constituted negligence, despite the absence in the state statute of the additional requirement of giving an appropriate signal.

Holding: The trial court erred in its instruction. The state Highway Traffic Regulation Act prohibits the adoption of a municipal ordinance that conflicts with state statutes unless the state statute expressly authorized it. In order to provide uniformity in traffic regulations throughout the state, the Minnesota legislature has prohibited the enactment of ordinances by municipalities in conflict with state statutes, except where expressly authorized. The purpose of uniformity required by Minnesota statutes is to enable a driver of a motor vehicle [as well as others, such as pedestrians, bicyclists, etc.] to proceed in all parts of the state without the risk of violating an ordinance with which he/she is not familiar.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: the court determined that state statutes provide the standard by which behavior/negligence will be judged when there is a municipal ordinance in conflict with them. This is important to non-motorized transportation as any rules a municipality passes regarding non-motorized transportation that are in conflict with a state statute will be prohibited.

Elwood v. Rice County

Citation: *Elwood v. Rice Cnty.*, 423 N.W.2d 671 (Minn. 1988).

Law Interpreted/Governing Law: common law official immunity.

Fact Summary: the plaintiffs sued the county after they were subjected to a warrantless search of their home by deputy sheriffs.

Issue: whether the sheriffs were entitled to official immunity related to the incident and therefore could not be sued.

Holding: official immunity is broad and did cover the sheriffs' actions, so they could not be sued.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: if someone is injured or property is damaged as a result of government employees' actions in the provision of non-motorized transportation, the employees may be immune from lawsuits.

Fisher v. County of Rock

Citation: Fisher v. County of Rock, 596 N.W.2d 646 (Minn. 1999).

Law Interpreted/Controlling Law: MINN. STAT. § 466.03, subd. 6 (1998).

Fact Summary: an automobile accident victim's mother sued the County for wrongful death, claiming that the County negligently maintained a bridge on a County State Aid Highway by failing to install approach guardrails or adequately warn drivers that the bridge was hazardous.

Issue: was the County entitled to statutory immunity for not installing approach guardrails?

Holding: the county was entitled to statutory immunity because the decision to fail to install guardrails or warning signs was a planning-level or policy decision.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: if a non-motorized transportation user is injured while using a transportation facility, the government will be immune from a related lawsuit if the injury was caused by a planning or policy-level decision.

Holmquist v. State

Citation: Holmquist v. State, 425 N.W.2d 230 (Minn. 1988).

Law Interpreted/Governing Law: Tort Claims Act of 1976, ch. 331, § 33, Minn. Laws 1282, 1293 (codified at MINN. STAT. § 3.736, subd. 1).

Fact Summary: the plaintiff sued the state after his car rolled in a ditch, claiming that the state had a duty to post signs that warned drivers about dangerous road conditions.

Issue: whether a plaintiff can sue the state for injuries when the state does not post warning signs on a road.

Holding: if the state cannot show that the choice to place (or not place) warning signs on roads involved planning-level policy decisions, then the exception to the Minnesota Tort Claims Act does not apply and the state can be sued if injuries result.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: non-motorized transportation users may be able to collect damages from the state or other governmental body in Minnesota if they are injured as a result of the government's actions while using public transportation facilities.

Janklow v. Minnesota Board of Examiners

Citation: Janklow v. Minnesota Bd. of Examiners for Nursing Home Adm'rs, 552 N.W.2d 711 (Minn. 1996).

Law Interpreted/Governing Law: common law official immunity.

Fact Summary: the plaintiff sued his former employer, the Minnesota Board of Examiners, for firing him after he reported their illegal behavior.

Issue: whether the Board could be sued or if it was immune from lawsuits.

Holding: the Board could be sued since official immunity does not protect intentional or malicious wrongdoing.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: a non-motorized transportation user could sue an employee responsible for aspects of the non-motorized transportation system for actions taken within the scope of their employment that resulted in the user's injury, if the employee was acting in an intentionally or maliciously wrong way.

Larson v. Independent School District No. 314

Citation: Larson v. Indep. Sch. Dist. No. 314, Braham, 289 N.W.2d 112 (Minn. 1979).

Law Interpreted/Governing Law: MINN. STAT. §§ 466.07, subd. 1; 466.12, subds. 2, 3a (1978).

Fact Summary: a child's guardian sued after he was injured in an eighth grade physical education class.

Issue: whether the school district could be held liable for the injuries.

Holding: a principal's decision to pass along the responsibility to someone else to plan the physical education curriculum was not a planning-level policy decision, and

therefore the exception for sovereign immunity for discretionary decision-making did not apply and the school district could be sued and may be liable for the student's injuries.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: unless the decisions involved fall within one of several narrow exceptions, such as the exception that covers planning-level policy decisions, state and local governments in Minnesota can be sued if their actions, such as the maintenance of non-motorized transportation facilities, result in an injury to a person or damage to property.

Matter of Resolution of City of Northfield

Citation: *Matter of Resolution of City of Northfield*, 386 N.W.2d 748 (Minn. Ct. App. 1986).

Law Interpreted/Governing Law: MINN. STAT. §§ 219.072; 219.40 (1978).

Fact Summary: Northfield City Council passed a resolution that an additional railroad crossing was needed over the railroad's tracks in order to alleviate traffic congestion. The administrative law judge concluded the city met its burden of proving the proposed grade crossing is needed to allow a westerly access and to improve east-west traffic flow across the northern part of Northfield. The Commissioner of Transportation adopted the administrative law judge's findings, conclusions, and recommendations.

Issues: whether substantial evidence supports the Commissioner's determination there is a need for the proposed crossing, and whether the Commissioner has authority to allocate the costs of establishing a new grade crossing.

Holdings: yes, substantial evidence supports the need for a new route; and no, the administrative law judge did not consider the question of who should pay the cost of constructing the crossing because "MINN. STAT. § 219.072 is concerned only with need, location and type of warning devices." Cost allocation authority is addressed in MINN. STAT. § 219.40.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case differentiates authority over grade crossings and allocation of costs within the context of MINN. STAT. §§ 219.072 and 219.40. This is relevant to non-motorized transportation if a grade crossing would assist in expanding access for those users.

Matter of Resolution of the City of Austin

Citation: *Matter of Resolution of the City of Austin*, 567 N.W.2d 529 (Minn. Ct. App. 1997).

Law Interpreted/Governing Law: MINN. STAT. § 219.072 (1996); MINN. R. 8830.2710, subp. 2 and 1(B).

Fact Summary: the city requested MnDOT's approval to extend a street, requiring a new public grade crossing over railroad tracks and right-of-way. MnDOT granted the city's petition. The railroad challenged the decision.

Issue: whether MnDOT exceeded its authority in determining that establishing a new railroad grade crossing across Soo Line's right of way without just compensation was acceptable.

Holding: the state has authority under its police power to establish new grade crossings without compensating railroads. MINN. STAT. § 219.072 also authorizes MnDOT to determine the "need, location, or type of warning devices required."

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: the court's discussion of MnDOT's authority and the policy reasons for establishing new grade crossings reflects concepts analogous to those revealed throughout the pedestrian, bicycle, and other non-motorized transportation report.

Minnesota Center for Environmental Advocacy v. Metropolitan Council

Citation: Minnesota Center for Environmental Advocacy v. Metropolitan Council, 587 N.W.2d 838 (Minn. 1999).

Law Interpreted/Governing Law: the Federal Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. §§ 101 et seq. (1994)); MINN. STAT. § 473.146 (1998).

Fact Summary: the Minnesota Center for Environmental Advocacy (MCEA) sought judicial review of the Metropolitan Council's approval of its transportation improvement program (TIP), which included a bridge replacement project. MCEA alleged that the project was inconsistent with the Metropolitan Development Guide/Blueprint (Blueprint) and therefore the Council's approval of the TIP was inconsistent with the requirements of section 134(h)(5) of the Federal Intermodal Surface Transportation Efficiency Act of 1991, 23 U.S.C. §§ 101 et seq. (1994).

Issue: whether the Metropolitan Council's decision was reviewable by the court.

Holding: no; the Council's decision was not a quasi-judicial act but rather a quasi-legislative act, and quasi-legislative acts are not reviewable by the court.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case presents a review of the interplay between federal and state

agencies' oversight responsibility for interstate transportation policy and planning, which may non-motorized transportation projects.

Nusbaum v. Blue Earth County

Citation: *Nusbaum v. Blue Earth Cnty.*, 422 N.W.2d 713 (Minn. 1988).

Law Interpreted/Governing Law: Tort Claims Act of 1976, ch. 331, § 33, Minn. Laws 1282, 1293, (codified at Minn. Stat. § 3.736, subd. 1 (1986)).

Fact Summary: a plaintiff sued the state for posting a speed limit increase sign after he was injured when his car ran off the road and rolled over.

Issue: whether plaintiffs can sue the state for personal injuries related to sign postings such as this.

Holding: the decision to post road signs was not a planning-level policy decision, and therefore the state could have been responsible for his injuries.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: unless the decisions involved fall within one of several narrow exceptions, such as the exception for planning-level policy decisions, state and local governments in Minnesota can be sued if their actions result in an injury to a person or damage to property.

Spanel v. Mounds View School District No. 621

Citation: *Spanel v. Mounds View Sch. Dist. No. 621*, 264 Minn. 279, 118 N.W.2d 795 (Minn. 1962).

Law Interpreted/Governing Law: common law doctrine of sovereign immunity.

Fact Summary: a father sued after his child was injured on a broken slide in his kindergarten classroom.

Issue: whether school districts have sovereign immunity from lawsuits.

Holding: the court does away with the idea of sovereign immunity for governmental entities in Minnesota.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: unless the decisions involved fall within one of several narrow exceptions, state and local governments in Minnesota can be sued if their actions result in an injury to a person or damage to property.

State by Washington Wildlife Preservation, Inc. v. State

Citation: *State by Washington Wildlife Preservation, Inc. v. State*, 329 N.W.2d 543 (Minn. 1983).

Law Interpreted/Governing Law: MINN. STAT. § 84.029, subd. 2 (1980); MINN. STAT. § 85.015 (1980); 49 U.S.C. § 10906 (1982).

Fact Summary: the plaintiffs, members of Washington Wildlife Preservation, Inc., brought this action in response to the purchase of a railroad right-of-way by two defendants, the State of Minnesota and its Department of Natural Resources, from the third defendant, the Soo Line Railroad Company. The plaintiffs, landowners whose property abuts the right-of-way, claim to be the true owners of portions of the right-of-way because they claimed it had been abandoned by the state and the DNR.

Issue: whether the railroad was abandoned after it was no longer used for railroad purposes.

Holding/Conclusion: no, the railroad was not abandoned, since although it was no longer in use as a railroad, it was still in use as a transportation corridor for hikers, bicyclists, etc., which was a valid use for the corridor by the state.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case discusses how railroad rights-of-way have an underlying public purpose of public transportation, and that transformed use into a public recreational trail serves that same purpose. This is relevant to non-motorized transportation as the case demonstrates that railroad beds and rights-of-way easily lend themselves to later use as recreational trails.

State v. Williams

Citation: *State v. Williams*, 415 N.W.2d 351 (Minn. Ct. App. 1987).

Law Interpreted/Governing Law: MINN. STAT. § 169.06, subd. 4 (1986); MINN. STAT. § 169.03, subds. 1, 9 (1986) (renumbered: currently MINN. STAT. § 169.022); MINN. STAT. § 430.011, subds. 1, 2 (1986); Chapter 439 of Minneapolis City Ordinances.

Fact Summary: two different taxicab drivers turned onto Nicollet Mall in downtown Minneapolis despite prominently posted “NO TURNS” signs. Both drivers were charged with failure to obey traffic signs prohibiting turns. The drivers contended that the relevant state statute did not apply to them in a jurisdiction governed by Minneapolis ordinances because the state had granted Minneapolis the exclusive authority to regulate pedestrian malls.

Issues: was the traffic sign was an “official traffic control device” within the meaning of the statute; did the Minnesota statute prohibiting turns in designated locations apply to appellants' turns onto Nicollet Mall; and were appellants permitted under Minneapolis ordinances to turn onto Nicollet Mall at 7th Street?

Holdings: the traffic sign was an official traffic control device; the relevant statute was applicable and uniform throughout the state and in all its political subdivisions and municipalities; and the appellants were therefore not allowed to turn where prohibited by state-posted signs.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case shows that, when a conflict of authority arises between a Minneapolis ordinance and a MN statute regarding traffic control, state statutes apply regardless of what a political subdivision or municipality wants to do. This could apply to signage and other regulation of non-motorized transportation.

MINNESOTA TRAFFIC & SAFETY CASES

Becklund v. Daniels

Citation: Becklund v. Daniels, 230 Minn. 442, 42 N.W.2d 8 (Minn. 1950).

Law Interpreted/Governing Law: MINN. STAT. § 169.21, subd. 2.

Fact Summary: the plaintiff sued the defendant after a collision with the defendant's car. The plaintiff was a pedestrian walking after dark.

Issue: whether pedestrians can be found to also be negligent if they are injured in a collision with a car.

Holding: pedestrians have the right of way at intersections, but a pedestrian who is not taking care as a reasonable person would be can be negligent for their own injuries if they are hurt in a collision with an automobile.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: if pedestrians are hurt in an accident with a motorized vehicle, the presumption is that the driver was negligent, but pedestrians also have to exercise ordinary care when in the road. Therefore, even if intersections are built with signs and signals to encourage walking, pedestrians are not free from the responsibility to take care for their own safety.

Ferguson v. Larson

Citation: *Ferguson v. Larson*, 260 N.W.2d 467 (Minn. 1977).

Law Interpreted/Governing Law: MINN. STAT. § 169.21.

Fact Summary: a pedestrian sued a driver for injuries sustained when he was struck by the defendant's automobile while walking in a crosswalk. The plaintiff testified that the traffic control signal was green in his favor.

Issues: did the trial court err in not instructing the jury that it was improper for the plaintiff to enter the intersection?

Holding: no, the court's instruction was correct. The court included part of a statute in the jury instruction that pedestrians have the right of way when a green signal is showing, and omitted the part of the statute in the jury instruction that forbade pedestrians to start crossing when a "don't walk" sign began flashing. Since there was a "walk" but no "don't walk" signal at this intersection, the pedestrian started walking when the light said "walk" and therefore had the right to finish crossing.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized Transportation: this case establishes some of the rights of pedestrians at intersections.

Hernandez v. State

Citation: *Hernandez v. State*, 680 N.W.2d 108 (Minn. Ct. App. 2004).

Law Interpreted/Governing Law: 49 U.S.C. § 20101 (2000); 23 C.F.R. § 646.214(b)(3), (4) (2004).

Fact Summary: the plaintiff's child sustained injuries when a train at a railroad crossing struck his car. The plaintiff sued the railroad, city, and State of Minnesota for negligence in failing to install additional warning devices at a railroad crossing. The existing safety/warning devices were installed as part of a MnDOT-initiated project to improve safety at grade crossings that was approved and 90% funded by the Federal Highway Administration (FHWA).

Issue: does federal law preempt state-law negligence claims against the State of Minnesota and City of Marshall for failing to timely install additional warning devices?

Holding: yes. A state-law negligence claim against the State of Minnesota and the City of Marshall for allegedly failing to timely install warning devices in addition to those determined adequate by the FHWA is preempted by federal regulation; the state and the city have no common law duty which could be violated by failing timely to install additional warning devices.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case demonstrates both the Minnesota Court of Appeals' and U.S. Supreme Court's stance on how federal law and funding affects state law and liability regarding railroad grade crossings. If warning devices or other signs and signals are required by federal law, state and local government entities will likely be free from a duty to install additional signs and signals beyond what is required by federal law. This interplay between federal laws and between federal law and state law is important to be aware of when grade crossings are improved or developed.

Johnson v. City of Thief River Falls

Citation: *Johnson v. City of Thief River Falls*, 164 N.W.2d 71 (Minn. 1969).

Law Interpreted/Governing Law: MINN. STAT. §§ 169.01, subd. 37, 161.18, 161.20, 169.21, 161.38, subd. 3 (1968); MINN. CONST. art. 14, §§ 2, 11.

Fact Summary: the pedestrian plaintiff sued the City for injuries sustained when she tripped in a hole on a street surface that was part of the state trunk highway system and intersected with a city street.

Issue: is a municipality liable to a pedestrian who is injured as a result of a defect in the surface of a state trunk highway within its municipal boundaries, absent an agreement between the municipality and the state by which the municipality affirmatively assumes the responsibility of maintenance, where the injury occurs in a crosswalk designated and policed by the municipality?

Holding: no, the state was responsible for the maintenance of the highway, even though it was within the boundaries of the municipality and the municipality had designed and policed the intersection. The state is exclusively responsible for the maintenance of the entire state trunk highway system. This exclusive authority and consequent responsibility of the state is not diminished by the legislative delegation to municipalities of police power to regulate traffic on highways within the municipality.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case demonstrates the interplay between municipality and state authority over state trunk highways within municipal boundaries. This is relevant to non-motorized transportation because it informs who is responsible for a non-motorized transportation facility, depending on its location.

Kachman v. Blosberg

Citation: *Kachman v. Blosberg*, 87 N.W.2d 687 (Minn. 1958).

Law Interpreted/Governing Law: MINN. STAT. § 169.21, subds. 2, 3.

Fact Summary: a child's parents sued the motorist defendant for injuries the child sustained when struck by automobile while crossing a highway. There was no crosswalk.

Issue: did the trial court err in instructing the jury on only a portion of 169.21, subd. 2 that applied to rights of pedestrians where no crosswalks exist?

Holding: no. The fact the plaintiff may violated the law in crossing the highway as she did where no crosswalks were available was not sufficient to justify an instruction that she was contributorily negligent as a matter of law. It is the law that, where children are known or may reasonably be expected to be in the vicinity, a high degree of vigilance is required by the driver of a vehicle to measure up to the standard of what the law regards as ordinary care.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case interprets the construction of the statute that governs rights and duties of pedestrians where no intersections or crosswalks exist.

Kollodge v. F. and L. Appliances, Inc.

Citation: Kollodge v. F. and L. Appliances, Inc., 80 N.W.2d 62 (Minn. 1956).

Law Interpreted/Governing Law: MINN. STAT. §§ 169.21, 169.06, 169.18. subd. 4(b) (currently (2)), (d) (currently (4)).

Fact Summary: the pedestrian plaintiff was struck by the driver defendant's truck when walking across an intersection after being waived through by another driver stopped at the intersection.

Issue: Did trial court err in refusing to tell the jury that pedestrians have the right of way at intersections without traffic signals?

Holding: no, the court was correct in refusing to give that jury instruction. When taking the statute as a whole, it is apparent that it was intended to be limited to crosswalks where traffic-control signals are not in operation. In this case, the accident occurred at a controlled intersection. The question of who was responsible for the injury should have gone to the jury.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case discusses important traffic rules such as rights of way for pedestrians and motor vehicles on streets and highways. These rules inform how new crosswalks and other intersections between motorized and non-motorized traffic should be regulated.

Line v. Nourie

Citation: *Line v. Nourie*, 215 N.W.2d 52 (Minn. 1974).

Law Interpreted/Governing Law: MINN. STAT. § 169.21, subd. 5.

Fact Summary: the pedestrian plaintiff sued the driver defendant for injuries sustained when the plaintiff was struck by the defendant's vehicle while walking on the right hand side of a highway.

Issue: did trial court err by not instructing the jury that a pedestrian has a duty to maintain a proper lookout for vehicles?

Holding: yes, the court erred in not instructing the jury that a pedestrian has a duty to look out for cars. Here, the jury should have been able to take into account that the pedestrian was walking on the wrong side of the road, not using available sidewalks, and not watching for cars when evaluating possible comparative negligence.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case is relevant to pedestrians' use of the transportation/traffic system as it dictates the law regarding pedestrians' and drivers' duties to each other on a highway and what kind of behavior will fail to meet the requisite standard of care.

Sikes v. Garrett

Citation: *Sikes v. Garrett*, 262 N.W.2d 681 (Minn. 1977).

Law Interpreted/Governing Law: MINN. STAT. § 169.18, subd. 4, 169.19, subd. 1(1), 169.221, subd. 1.

Fact Summary: there was a collision between plaintiff's bicycle and defendant's automobile in an intersection.

Issue: which party is more negligent?

Holding: the plaintiff positioned himself in such a manner as to make the defendant's view of him impossible. The defendant's lookout was reasonable, and the plaintiff should have taken adequate steps to ascertain the path of the car.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case demonstrates the rule that bicyclists owe the same duties as motor-vehicle drivers when on city streets.

Staloch v. Belsaas

Citation: *Staloch v. Belsaas*, 136 N.W.2d 92 (Minn. 1965).

Law Interpreted/Governing Law: MINN. STAT. § 169.01, subds. 33, 37, 169.21, subd. 3.

Fact Summary: this case was brought on behalf of a pedestrian who died after being struck by an automobile while crossing a highway at intersection with no marked crosswalks after being discharged from a bus.

Issue: did the trial court err in its jury instructions?

Holding: no, the court did not err in instructing the jury that it was unlawful for a person to drive faster than is reasonable and prudent and that drivers should reduce speed at intersections or where special hazards exist with respect to pedestrians.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case discusses pedestrians' and automobile drivers' rights of way with respect to uncontrolled intersections, particularly right after pedestrians have exited from a bus. These rules are important when planning where non-motorized transportation facilities will be located to ensure safety for all travelers.

State v. Greenman

Citation: *State v. Greenman*, 825 N.W.2d 387 (Minn. Ct. App. 2013).

Law Interpreted/Governing Law: Minn. Stat. §§ 169.011, subd. 26, 92 (2012); 169.212 (2002); 169A.03, subd. 15 (2010); 169A.20, subd. 1 (2009); 171.01, subd. 39 (2012).

Fact Summary: the State of Minnesota challenged the dismissal of third-degree driving-while-impaired (DWI) charges against the defendant, contending that the district court erred in concluding that a "Segway" electric personal assistive mobility device (Segway) is not included in the definition of "motor vehicle" in the DWI statute.

Issue: did the district court correctly determine as a matter of law that the defendant was acting as a pedestrian when operating his Segway and thus was not subject to prosecution for driving a motor vehicle under the Minnesota Impaired Driving Code?

Holding: yes, the district court correctly determined that the defendant was a pedestrian while riding his Segway because Segways are designed for use in places where cars and bicycles cannot go, such as in buildings, and are prohibited from operating on roadways when sidewalks are available. As a result, a person riding a Segway cannot be charged with a DWI under the DWI statute.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case demonstrates how the Minnesota courts view drivers of Segways and other electric personal assistive mobility devices as pedestrians with regard to traffic regulation and within the DWI statute. This interpretation may shed light on the classification of other non-motorized vehicle drivers, suggesting that they may be considered pedestrians within the meaning of traffic regulations, unless otherwise specified.

State v. Hershberger

Citation: *State v. Hershberger*, 462 N.W.2d 393 (Minn. 1990).

Law Interpreted/Governing Law: MINN. STAT. § 169.522 (1988); MINN. CONST. art. 1, § 16.

Fact Summary: the Amish appellants were issued traffic citations for the violation of a statute requiring the display of slow-moving vehicle emblem.

Issue: whether the slow-moving vehicle requirement, when applied to these appellants, violates their rights protected by article I, section 16 of the Minnesota Constitution.

Holding: yes, the relevant statute, when applied to the Amish appellants, violates their rights protected by article I, section 16, of the Minnesota Constitution, because the state failed to provide a record which demonstrated that both values embodied by section 16, freedom of conscience and public safety, cannot be achieved through alternative means, such as the use of white reflective tape and a lighted red lantern.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case demonstrates the interplay between a state statute and the Minnesota Constitution with regard to the impact that public safety measures can have on religious beliefs. This is non-motorized transportation because any safety concerns will have to be addressed in a way that is not prohibited by the State Constitution or other governing document like the U.S. Bill of Rights.

Stewart v. Koenig

Citation: *Stewart v. Koenig*, 783 N.W.2d 164 (Minn. 2010).

Law Interpreted/Governing Law: MINN. R. 6100.3400 (2008); MINN. STAT. § 85.015 (2004).

Fact Summary: a bicyclist sued a driver for injuries sustained in a collision between them that occurred at the intersection of a private driveway and a state recreational trail operated by the DNR.

Issue: was the driver a “trail user” at the time, requiring him to yield to the biker’s right of way?

Holding: no, the driver was not a trail user as contemplated by Minnesota law because he was merely crossing the trail to get to the main road rather than utilizing it for one of its permitted uses.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case addresses traffic rules and rights of way on state recreational trails and the applicability of those rules according to the definition of a “trail user.” This is relevant to non-motorized trail users as it dictates rights-of-way on state recreational trails.

Swanson v. Carlson

Citation: Swanson v. Carlson, 43 N.W.2d 217 (Minn. 1950).

Law Interpreted/Governing Law: MINN. STAT. § 169.06, subd. 5(a)(1).

Fact Summary: the plaintiff was struck by the defendant’s truck while crossing an intersection in the crosswalk.

Issue: was the driver’s negligence a question of law (for the court decide) or a decision for the jury?

Holding: the driver’s negligence was a question for the jury, since violation of the statute providing for pedestrians’ right of way while lawfully on a crosswalk is only prima facie evidence of negligence. In this case, there was evidence showing a reasonable explanation for failure to yield the right of way to the pedestrian. A pedestrian must exercise ordinary care for his own safety, even though he is on the crosswalk and has the right of way.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this ruling is relevant to demonstrate how the court applies the traffic control statute to pedestrians in crosswalks, which are a primary transportation facility for pedestrians and other non-motorized transportation users.

Thomas v. Mueller

Citation: Thomas v. Mueller, 251 Minn. 470, 472, 88 N.W.2d 842 (Minn. 1958).

Law Interpreted/Governing Law: MINN. STAT. § 169.06, subd. 5(c)(1).

Fact Summary: the plaintiff sued after being struck by a car in an intersection she was walking across. She had a green walk signal when she was struck.

Issue: whether the plaintiff could have been found partially to blame for the accident.

Holding: the defendant was not automatically liable for the plaintiff's injuries, since the plaintiff was running at night in the rain in dark clothing and may have entered the intersection after the light had already turned red.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: if pedestrians are hurt in an accident with a motorized vehicle, the presumption is that the driver was negligent, but pedestrians also have to exercise ordinary care when in the road. Therefore, even if intersections are built with signs and signals to encourage walking, pedestrians are not free from the responsibility to take care for their own safety.

MINNESOTA HUMAN RIGHTS CASES

Gleason v. Metropolitan Council Transit Operations

Citation: *Gleason v. Metropolitan Council Transit Operations*, 563 N.W.2d 309 (Minn. Ct. App. 1997).

Law Interpreted/Governing Law: MINN. STAT. § 363.03, subds. 3(a)(1), 33 (1996); common law official immunity.

Fact Summary: a discrimination claim was brought by a wheelchair occupant against a bus driver for demeaning comments regarding difficulty in securing the wheelchair for travel on the bus.

Issue: whether the bus driver and Metropolitan Council Transit Operations were immune from lawsuit.

Holding: the bus driver's conduct in this case was not based on discretionary, policy-level decisions, and also was not legally reasonable, so he was could not be protected from lawsuit by official immunity. However, the Metropolitan Council Transit Operations had partial protection from lawsuit because the decision to hire, retain, and train the bus driver did constitute policy-level discretionary decision-making.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case demonstrates that Minnesota courts hold the Minnesota Human Rights Act to apply to public accommodations and transportation facilities.

MINNESOTA ENVIRONMENTAL IMPACT CASES

White v. Minnesota Dept. of Natural Resources

Citation: *White v. Minnesota Dept. of Natural Resources*, 567 N.W.2d 724 (Minn. Ct. App. 1997).

Law Interpreted/Governing Law: MINN. R. 4410.1000, subp. 2-3, 3D; 4410.1300; 4410.1700 (1995).

Fact Summary: the DNR issued a record of decision concluding that a proposed trail extension of the Northshore trail corridor did not have the potential for significant environmental effects and therefore no environmental impact statement (EIS) was required for the project. Citizens sued the DNR, alleging claims under MN Environmental Policy Act (MEPA) and MN Environmental Rights Act (MERA) and seeking judgment compelling the DNR to prepare an EIS and an injunction prohibiting construction.

Issue: whether the DNR was wrong to not prepare an EIS, and whether the project would have a materially adverse impact on the environment.

Holding: the DNR's decision to not prepare an EIS was not arbitrary and capricious and was supported by substantial evidence. However, the court concluded that the citizens did show that the project would have a materially adverse effect on the environment.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: this case demonstrates the analysis Minnesota courts use to determine whether an agency's actions are appropriate with regard to preparing an EIS – a process potentially required if non-motorized transportation projects could have environmental effects; and the extent to which an agency needs to consider environmental impacts of actions and duties under MEPA and MERA.

MINNESOTA DISCRIMINATION CASES

Kammueller v. Loomis, Fargo & Co.

Citation: *Kammueller v. Loomis, Fargo & Co.*, 383 F.3d 779 (8th Cir. 2004).

Law Interpreted/Governing Law: Minnesota Human Rights Act, MINN. STAT. ch. 363A.

Fact Summary: the plaintiff sued his employer after he was fired from his job, claiming that he was fired because he had to attend dialysis appointments due to his chronic kidney disease.

Issue: what the standard is for determining whether discrimination occurred.

Holding: to win on a disability discrimination claim, a plaintiff must first show that the disability materially limited one or more life activities, a lesser standard than the federal standard of substantial limitation of life activities.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: a disabled person could only win on a claim that they were excluded from use of non-motorized transportation facilities if they demonstrated in court that their disability materially limited life activities.

Sigurdson v. Carl Bolander & Sons Co.

Citation: Sigurdson v. Carl Bolander & Sons Co., 532 N.W.2d 225 (Minn. 1995).

Law Interpreted/Governing Law: MINN. STAT. § 363.01.

Fact Summary: the plaintiff sued the defendant, claiming that he was not hired due to age and disability discrimination.

Issue: what the standard is for determining whether discrimination occurred.

Holding: to win on a disability discrimination claim, a plaintiff must first show that the disability materially limited one or more life activities.

Relevance to Pedestrian, Bicycle, and Other Non-Motorized

Transportation: a disabled person could only win on a claim that they were excluded from use of non-motorized transportation facilities if they first demonstrated in court that their disability materially limited life activities.

¹ For further guidance, see the current edition of Black's Law Dictionary.