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Supreme Court of California
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IN THE SUPREME COURT OF CALIFORNIA

MIKAYLA HOFFMANN, a Minor, etc.,
Plaintiff and Appellant,

v.

CHRISTINA M. YOUNG et al.,
Defendants and Respondents.

AFTER A DECISION BY THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION SIX
CASE NO. B292539

PETITION FOR REVIEW

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PETITION FOR REVIEW

ISSUE PRESENTED

Under Civil Code section 846, a landowner generally owes no duty of care to persons who enter or use the property for a recreational purpose. There is an exception, however, for "persons who are expressly invited rather than merely permitted to come upon the premises by the landowner." (Civ. Code, § 846, subd. (d)(3).) This petition presents a question that has divided the Courts of Appeal and the federal courts: Can an invitation by a nonlandowner, made without the landowner's knowledge or express approval, abrogate the landowner's recreational use immunity?

INTRODUCTION
WHY REVIEW SHOULD BE GRANTED

Civil Code section 846 (section 846) protects property owners from liability arising from the recreational use of their property. Under the statute, a property owner "owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose," or to warn of hazardous conditions on the property. (§ 846, subd. (a).) Section 846 is often called the recreational use immunity statute. (See *Hubbard v. Brown* (1990) 50 Cal.3d 189, 195.)

This immunity is intended to be "extremely broad" (*Ornelas v. Randolph* (1993) 4 Cal.4th 1095, 1105 (*Ornelas*)) and is subject to only a few, narrow exceptions. This petition involves what is known as the " 'express invitation' " exception. (*Jackson v. Pacific Gas & Elec. Co.* (2001) 94 Cal.App.4th 1110, 1116

(*Jackson*).) That exception withholds recreational use immunity if the plaintiff was "expressly invited rather than merely permitted to come upon the premises by the landowner." (§ 846, subd. (d)(3).)

On its face, the exception applies only to persons "expressly invited . . . by the landowner." (§ 846, subd. (d)(3).) Nothing in the statute suggests that an express invitation by a *nonlandowner* can trigger the exception, yet courts have taken conflicting stances on the issue. In keeping with the statute's text, several decisions say that the exception applies only when the invitation is issued *by the landowner*. (See, e.g., *Johnson v. Unocal Corp.* (1993) 21 Cal.App.4th 310, 317 (*Johnson*).) Other decisions suggest, as a variation on that rule, that the exception will encompass an invitation by a nonlandowner if the landowner expressly authorizes the invitation. (See, e.g., *Ravell v. U.S.* (9th Cir. 1994) 22 F.3d 960, 963 & fn. 3 (*Ravell*).) But another decision takes a conflicting position, treating the landowner's express authorization as unnecessary—without explaining why the statute permits that result. (See *Calhoon v. Lewis* (2000) 81 Cal.App.4th 108, 113–114 (*Calhoon*).)

The Court of Appeal's decision here aggravates this conflict in the law. In a divided, published opinion, the court holds that a child's decision to invite a friend onto his parents' property without his parents' knowledge constitutes an invitation by the landowner parents. According to the majority, the express invitation exception does not require that the invitation come from the landowner. Instead, a child who lives with his

landowner parents enjoys implied authority to issue invitations on his parents' behalf. Under the majority's rule, an invitation by the child presumptively strips the parents of immunity even if the parents never approved the invitation or even knew about it.

As the dissenting justice explains, the majority's holding conflicts with the plain language of section 846 and past decisions interpreting the statute. Unless this Court grants review, trial courts will be forced to choose between competing rules of law, producing inconsistent results in the many cases in which recreational use immunity is a make-or-break issue.

The need for guidance extends beyond the California courts. When a plaintiff injured on federal land sues the United States government, premises liability turns on whether the government would be liable if it were a private party sued under state law. (See *Klein v. United States* (2010) 50 Cal.4th 68, 74 (*Klein*).) As a result, federal courts routinely apply section 846 and its express invitation exception—and, of course, they look to California courts for guidance when they do so.

STATEMENT OF THE CASE

A. Gunner Young invites Mikayla Hoffmann to his parents' property without telling his parents. While on the property, Mikayla is injured in a motorcycle accident.

Eighteen-year-old Gunner Young lived at home with his parents, Donald and Christina Young. (Typed opn. 1; see typed

opn. 7.) Gunner's parents own the property. (Typed opn. 1.)[1] Along with the family residence, the property includes a motocross track. (Typed opn. 1.)

Gunner invited a friend, Mikayla Hoffmann, to visit the property. (Typed opn. 1.) Gunner's parents had never met or seen Mikayla before. (4 RT 956:10–15; 6 RT 1605:11–12; 7 RT 1903:27–1904:4; 8 RT 2138:16–25.) Mikayla had never been to the property, and Gunner's parents had never invited her over. (4 RT 956:16–18; 6 RT 1605:13–15; 8 RT 2139:2–8.)

Mikayla accepted Gunner's invitation, and she brought her own motorcycle with her. (See typed opn. 1.) Gunner did not tell his parents that he was inviting Mikayla to their property that day. (8 RT 2182:1–5.) As a result, Gunner's parents did not know that Mikayla was coming over. (6 RT 1605:14; 7 RT 1903:23–26; 8 RT 2138:27–2139:11; see 8 RT 2182:1–5.)

Once on the property, Mikayla rode her motorcycle on the motocross track. (Typed opn. 1.) Mikayla's motorcycle collided with Gunner's motorcycle, and she was injured. (*Ibid.*)

B. Mikayla sues Gunner and his family. Gunner's parents successfully assert recreational use immunity.

Mikayla sued Gunner, his brother, and his parents, alleging negligent design of the motocross track and negligent provision of medical care. (See typed opn. 2.) Gunner's parents

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[1] For the sake of brevity, we generally refer to individual parties by their first names. We refer to Donald and Christina Young together as "Gunner's parents."

asserted a recreational use immunity defense to Mikayla's negligent track-design claim. (See *ibid.*) In response, Mikayla invoked the express invitation exception. (See typed opn. 7.) The trial court suggested that the exception did not apply because there was no evidence that Gunner's parents invited Mikayla to their property and because Gunner, who did extend the invitation, was not the landowner. (Typed opn. 6–7.)[2]

Given this ruling, the trial court instructed the jury that the express invitation exception applies only if one of Gunner's parents invited Mikayla to their property. (Typed opn. 7.) The jury returned a defense verdict on all claims. (3 CT 704–713.) On Mikayla's negligent track-design claim, the jury found that recreational use immunity bars recovery. (3 CT 705.)[3]

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[2] The trial court later granted Christina's motion for a partial directed verdict on the negligent track-design claim because there was no evidence that she had designed, approved, maintained, or failed to maintain the track. (11 RT 3008:5–21.) As a result, the only negligent track-design claim submitted to the jury was Mikayla's claim against Donald. (3 CT 705–708.)

[3] The verdict form did not ask the jury to make any findings on the express invitation exception. (Typed opn. 6.) Since it was undisputed that the invitation came from Gunner, not his parents, the jury instruction necessarily decided the issue against Mikayla. (Typed opn. 7.)

C. In a divided, published opinion, the Court of Appeal holds that Gunner's invitation to Mikayla falls within the express invitation exception.

Mikayla appealed, challenging the trial court's ruling that the express invitation exception requires an invitation by Gunner's parents.

A divided panel of the Court of Appeal sided with Mikayla in a published opinion. The majority acknowledged it was undisputed that Gunner—not Gunner's parents—invited Mikayla onto the property. (Typed opn. 1–2, 7.) Even so, the majority held that "Gunner's express invitation of [Mikayla] stripped his parents of the immunity that would otherwise have been provided to them by section 846." (Typed opn. 2.) The majority asserted that by allowing Gunner to live on their property, Gunner's parents had "impliedly permit[ted] him to invite friends to the property." (Typed opn. 5.) In the majority's view, this implied authority meant that Gunner was acting as his parents' agent when he invited Mikayla, so his "invitation is deemed to have been expressly extended by his parents, the landowner[s]." (*Ibid.*) The majority found "persuasive" the Court of Appeal's decision in *Calhoon*, *supra*, 81 Cal.App.4th 108, which treated an invitation by the landowners' son as an invitation by the landowners. (Typed opn. 4; see typed opn. 9.)

The majority then restated its holding in broader terms "as a guidepost for the trial courts and the bar." (Typed opn. 8.) "Where the landowner and the landowner's child are living together on the landowner's property with the landowner's

consent, the child's express invitation of a person to come onto the property operates as an express invitation by the landowner within the meaning of section 846, subdivision (d)(3), unless the landowner prohibited the child from extending the invitation." (*Ibid.*; see typed opn. 2.)

In light of this holding, the court reversed and remanded for a new trial on Mikayla's negligent track-design claim. (Typed opn. 6–7, 10.)[4]

Justice Perren dissented. He concluded that the "clear and specific" language of section 846's express invitation exception instructs that "only the landowner may issue the invitation unless the landowner expressly authorizes an agent to do so." (Dis. typed opn. 2–3.) He noted a long line of authority reiterating that the exception requires a direct, personal invitation by the landowner. (Dis. typed opn. 4, citing *Wang v. Nibbelink* (2016) 4 Cal.App.5th 1, 32 (*Wang*), *Jackson*, *supra*, 94 Cal.App.4th at p. 1116, and *Ravell*, *supra*, 22 F.3d at p. 963.) He added that his division's own prior decision in *Johnson*, *supra*, 21 Cal.App.4th 310 "undermines" the majority's approach. (Dis. typed opn. 4.)

Justice Perren lamented the majority's decision to create a new presumption that a child's invitation is deemed an express invitation by the child's parents. (Dis. typed opn. 2–3.) In his view, the majority had improperly "rewritten the unambiguous

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[4] The Court of Appeal affirmed the judgment for defendants on the claims for negligent provision of medical care. (Typed opn. 8–9.)

language in the statute," judicially amending it to encompass " 'persons who are expressly [*or by implication*] invited rather than merely permitted to come upon the premises by the landowner.' " (Dis. typed opn. 3, quoting § 846, subd. (d)(3).)

Defendants petitioned for rehearing, asking the Court of Appeal to address undisputed facts that compel affirmance of the judgment based on recreational use immunity. The majority denied the petition, and Justice Perren dissented from that denial.

LEGAL ARGUMENT

I. This Court should grant review to decide whether the express invitation exception applies to an invitation by a nonlandowner without the landowner's knowledge or approval.

A. Courts are divided on this question.

The express invitation exception is limited to "persons who are expressly invited rather than merely permitted to come upon the premises by the landowner." (§ 846, subd. (d)(3).) The statute draws the line between those who are "expressly invited" by the landowner and those who are "merely permitted" by the landowner to enter. (*Ibid.*) But despite the statute's apparent clarity, lower courts have interpreted the exception in conflicting ways.

One line of cases interprets the statute to mean what its plain language suggests: that the exception applies only if the landowner makes a direct, personal invitation to the plaintiff. *Johnson* exemplifies this rule. There, Unocal owned picnic

grounds, which it made available for recreational use by the public. (*Johnson*, *supra*, 21 Cal.App.4th at p. 312.) Plaintiff's employer, Abex, reserved the property for its annual company picnic. (*Ibid.*) Abex employees "knew they could attend simply by purchasing a ticket" from the company. (*Id.* at p. 313.) Plaintiff bought a ticket and attended the picnic, where he injured himself. (*Ibid.*) He then sued Unocal, asserting that the express invitation exception abrogated Unocal's recreational use immunity. (*Id.* at pp. 313, 317.) The Court of Appeal rejected plaintiff's contention, however, because there was no evidence of "a direct, personal request *from Unocal to [plaintiff]* to attend this picnic." (*Id.* at p. 317, emphasis added.) This meant plaintiff was "not an express invitee of Unocal," and he thus did "not fall within the exception to immunity established by section 846 for express invitees." (*Ibid.*) *Johnson*'s holding is clear: for the exception to apply, the invitation must come from the landowner.

Other California decisions have reaffirmed that the term " '[e]xpress invitation' in section 846 refers to a direct, personal request *by the landowner* to persons whom the landowner *personally selects* to come onto the property." (*Wang*, *supra*, 4 Cal.App.5th at p. 32, emphasis added; *Jackson*, *supra*, 94 Cal.App.4th at p. 1116 ["This 'express invitation' exception requires a direct, personal request from the landowner to the invitee to enter the property"].) This makes sense because the statutory term " 'landowner' " has a specific, narrow meaning: it "can only logically refer to the owner of the fee." (*Jackson*, at p. 1118.)

The Ninth Circuit and federal district courts have adopted the same interpretation. (See *Ravell*, *supra*, 22 F.3d at p. 963 [exception requires a "direct personal invitation" from the landowner, and "*Johnson* correctly sets forth the law of California"]; *Kolar v. U.S.* (C.D.Cal. 2020) 445 F.Supp.3d 628, 634 (*Kolar*) [exception requires "a direct, personal request by the landowner"]; *Spence v. U.S.* (E.D.Cal. 2009) 629 F.Supp.2d 1068, 1089 (*Spence*) [exception did not apply because plaintiff failed to show a "purported Government express invitation to [plaintiff] to come onto [federal land]"].)

In some of these cases, the plaintiff was expressly invited to the property by someone other than the landowner. But unlike the Court of Appeal's decision here, these cases conclude that an express invitation by someone else does not strip the landowner of immunity unless the landowner expressly authorizes the invitation.

Ravell applied this approach. There, a servicemember stationed at a United States military base invited his mother to attend an air show at the base. (*Ravell*, *supra*, 22 F.3d at p. 961.) She tripped and fell at the air show, then sued the federal government. (*Ibid.*) Although her son had expressly invited her to the base, the Ninth Circuit held that the son's invitation did not bring the case within the express invitation exception because there was no evidence "to indicate that [the son] was, in any sense, authorized to make express invitations on behalf of the United States." (*Id.* at p. 963, fn. 3.)

Likewise, in *Jackson*, the Court of Appeal held that an easement holder did not lose its recreational use immunity even though the landowner's daughter expressly invited children to play on the property. (*Jackson*, *supra*, 94 Cal.App.4th at pp. 1116–1119.) The Court of Appeal presumed that the landowner could grant her daughter authority to extend an invitation on the landowner's behalf, but no evidence showed that the easement holder authorized the invitation (or even could have done so). (*Ibid.*; see *Prince v. Pacific Gas & Electric Co.* (2009) 45 Cal.4th 1151, 1160, fn. 5 [describing *Jackson* as a case in which plaintiff "received an express invitation from [the landowner's daughter] to enter the . . . property, under authority given to [her] by [the landowner]"].)

Applying the same rule, a federal district court held on summary judgment that the exception potentially applied because senior military officials had "told" a National Guard officer "to bring his family" and reiterated that instruction in two newsletters. (*H.S. by and through Parde v. United States* (S.D.Cal., Aug. 13, 2019, No. 3:17-cv-02418-BTM-KSC) 2019 WL 3803804, at p. *1 (*H.S.*) [nonpub. opn.].) Thus, unlike in *Ravell*, a jury could have inferred that the officer "*was* authorized to extend an invitation on behalf of the United States." (*Id.* at p. *5.)

The conflict in the case law stems from *Calhoon*, *supra*, 81 Cal.App.4th 108. There, the defendants were homeowners. (*Id.* at p. 111.) Their son, who lived at home, invited a friend onto the property. (*Id.* at pp. 111–112.) The friend hurt himself while

skateboarding in the driveway. (*Id.* at pp. 110–111.) The Court of Appeal reasoned that because the son "personally invited [his friend] to come onto the . . . property," "[t]his would seem to easily bring this case into [the statute's] 'expressly invited' exception." (*Id.* at p. 113.) Given this express invitation, the court held that section 846 did not shield the parents from liability. (*Id.* at p. 114.)

Calhoon invites competing interpretations. The parents did not dispute that their son's invitation should be attributed to them, so the Court of Appeal treated the son's invitation *as if* it were an invitation by the parents, without addressing whether that distinction matters. (See *Calhoon*, *supra*, 81 Cal.App.4th at pp. 113–114; RB 37–38 & fn. 9 [discussing the briefing in *Calhoon*, of which the Court of Appeal took judicial notice in this case].) Thus, *Calhoon* is arguably a sui generis decision.

Yet *Calhoon* could also be read to support another, more extreme interpretation of the statute: that the landowner's authorization is unnecessary, at least when the invitation comes from the landowner's child. *Calhoon* arguably treats the invitation by the son as enough, standing alone, to "easily" fall within the exception, without suggesting that his parents'

knowledge and approval was required. (*Calhoon*, *supra*, 81 Cal.App.4th at p. 113.)[5]

B. The Court of Appeal's erroneous decision aggravates this conflict in the law.

The decision below turns this muddle into an open conflict. The majority follows *Calhoon*, *supra*, 81 Cal.App.4th 108, finding its "reasoning" to be "persuasive." (Typed opn. 3–4.) Indeed, the majority adopts an extreme interpretation of *Calhoon*, asserting that the "fair import of *Calhoon*" is that "there is implied agency to let [the] son invite, and expressly consent, to allow a person to come onto his parents' land," thereby stripping his parents of section 846 immunity even if they were unaware of the invitation. (Typed opn. 9–10.) The majority's approach aggravates the conflict in the law, and does so in the wrong direction.

Most obviously, the majority deepens the conflict by rewriting section 846. Brushing aside the express invitation exception's plain language, the majority chides the dissent as a "slave to literalism" for hewing to the statutory text. (Typed opn. 9.) By holding that the phrase "expressly invited . . . by the landowner" (§ 846, subd. (d)(3)) should not be read literally, the

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[5] The Court of Appeal in *Calhoon* nevertheless affirmed the judgment for defendants based on the assumption of risk doctrine. (*Calhoon*, *supra*, 81 Cal.App.4th at pp. 115–118.) The injured friend petitioned for review, but presumably did not seek review of the express invitation issue because the Court of Appeal decided that issue in his favor. (See *Calhoon*, review den. Dec. 20, 2000, S089805.)

majority's approach conflicts with *Johnson* and other decisions that say the exception requires a direct, personal invitation from the landowner. (*Johnson*, *supra*, 21 Cal.App.4th at p. 317; see *Wang*, *supra*, 4 Cal.App.5th at p. 32; *Jackson*, *supra*, 94 Cal.App.4th at p. 1116; *Ravell, supra*, 22 F.3d at p. 963.)

Though the majority acknowledges *Johnson*, it purports to distinguish it because *Johnson* did not involve an invitation from a landowner's child. (Typed opn. 4.) Yet the majority fails to consider the underlying rationale for *Johnson*'s holding: the statute says the invitation must be made by the landowner, and that rule applies regardless of the specific factual setting. (See *Johnson*, *supra*, 21 Cal.App.4th at p. 317.) By holding that the exception applies here—where the landowners did *not* extend the invitation and did not even know that the invitation had been made—the majority rejects *Johnson*'s reading of the statute. (See dis. typed opn. 4–5 [noting conflict with *Johnson*].)

The majority's approach also conflicts with decisions suggesting the exception may apply to invitations by nonlandowners, but only where the landowner has expressly authorized the invitation. (See *Jackson*, *supra*, 94 Cal.App.4th at pp. 1116–1119; *Ravell*, *supra*, 22 F.3d at p. 863 & fn. 3; *H.S.*, *supra*, 2019 WL 3803804, at pp. *5–*6; see also *Wang*, *supra*, 4 Cal.App.5th at p. 32 [to trigger the exception, the guest must have been "personally select[ed]" by the landowner]; dis. typed opn. 3 [suggesting exception should apply if the landowner issues the invitation *or* if "the landowner expressly authorizes an agent to do so"].) Here, by contrast, the majority holds that no express

authorization or personal selection is necessary. (Typed opn. 5, 9–10.) The majority finds Gunner had implied authority due to the court's newly created presumption—based on "a modicum of common sense"—that parents "impliedly permit [their children] to invite friends to the property." (Typed opn. 5.)

The majority misreads the statute. Section 846 distinguishes between guests who are "expressly invited" onto the property by the landowner and those who are "merely permitted to come upon the premises by the landowner." (§ 846, subd. (d)(3).) Thus, the Court of Appeal's conclusion that Gunner's parents "impliedly *permit*[*ted*]" him to invite friends over (typed opn. 5, emphasis added) should end any discussion as to whether the express invitation exception applies in this case. That finding, even if correct, shows only that the parents "merely permitted" their son's friends to come to their property—which is precisely what the statute says is *not* enough to defeat immunity. (§ 846, subd. (d)(3).)

In *Ravell*, for instance, the federal government permitted servicemembers to invite their family members onto the base for an air show. (*Ravell*, *supra*, 22 F.3d at p. 961.) Yet the express invitation exception did not apply because nothing suggested that the government authorized plaintiff's son, who was stationed there, to invite plaintiff "on behalf of the United States." (*Id.* at p. 863, fn. 3.) From the government's perspective, plaintiff was no different than other members of the public who were permitted (but not personally invited) onto the base to attend the air show. (See *id.* at pp. 862–863.)

More generally, the majority's decision disrupts settled approaches to interpreting section 846. By relying on an implied agency theory that appears nowhere in the statute, the majority rewrites the exception to add words the Legislature left out. (See dis. typed opn. 3.) But as this Court has made clear, courts must refrain from reading into section 846 language the Legislature omitted. (See *Klein*, *supra*, 50 Cal.4th at pp. 79–80 [adopting rule consistent with section 846's plain language because "it would have been a simple matter" to write alternative rule into the statute had the Legislature wanted to do so]; *Ornelas*, *supra*, 4 Cal.4th at p. 1108 ["assuming, as we must, that the Legislature chose its words carefully," the Legislature did not intend section 846 to include a requirement absent from the statutory text].) That holds true for the exceptions to recreational use immunity, which should be construed narrowly. (*Johnson*, *supra*, 21 Cal.App.4th at p. 315 [given statutory purpose to encourage recreational use of private property, courts "should therefore construe the exceptions . . . narrowly"]; see *Wang*, *supra*, 4 Cal.App.4th at p. 18 [rejecting plaintiffs' interpretation of express invitation exception because "Plaintiffs' construction would have us add language not placed there by the Legislature"].)

Adding to the mischief created by its decision, the majority distorts longstanding principles of agency law. Contrary to the majority's holding, a child is not his parents' agent just because of their familial relationship. (*Van Den Eikhof v. Hocker* (1978) 87 Cal.App.3d 900, 904–905; *Casas v. Maulhardt Buick, Inc.* (1968) 258 Cal.App.2d 692, 703; see *Angus v. London* (1949) 92

Cal.App.2d 282, 285 ["The relationship of father and child, standing alone, does not prove the agency of either"].) Instead, the existence of an agency relationship is a question of fact that must be proven by the party alleging agency. (*Harley-Davidson, Inc. v. Franchise Tax Bd.* (2015) 237 Cal.App.4th 193, 214; *Burbank v. National Cas. Co.* (1941) 43 Cal.App.2d 773, 781.) Inverting these settled principles, the majority creates a newfound presumption of agency, placing the burden on landowner parents to prove that a child who lives at home is *not* their agent. (See typed opn. 2, 8.) As the majority admits, that presumption may be overcome only in "very unusual circumstances, such as an express order not to bring a friend to the property." (Typed opn. 5.)

C. Review is needed to settle this question of statewide importance.

This Court should intervene to secure uniformity of decision on this important question of law. (Cal. Rules of Court, rule 8.500(b)(1).) There are now two competing rules for invitations by nonlandowners: one that requires evidence that the landowner expressly authorized the invitation, and another that does not. Unless this Court intervenes, trial courts will be forced to choose between these competing approaches, producing inconsistent outcomes. (See *Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450, 456.)

Consistent application of the exception is an issue of statewide importance. Section 846 applies to a broad range of recreational activities that can occur on many types of property.

The statute features a long, nonexhaustive list of qualifying activities, from fishing to sightseeing. (§ 846, subd. (b); *Ornelas*, *supra*, 4 Cal.4th at pp. 1100–1102.) Indeed, the cases cited in this petition illustrate the statute's breadth. (See typed opn. 1 [riding motorcycles]; *Wang*, *supra*, 4 Cal.App.5th at pp. 5–6 [historical reenactment of wagon train]; *Jackson*, *supra*, 94 Cal.App.4th at pp. 1114–1115 [retrieving a kite]; *Calhoon*, *supra*, 81 Cal.App.4th at pp. 110–111 [skateboarding]; *Johnson*, *supra*, 21 Cal.App.4th at p. 313 [playing horseshoes at a picnic]; *Ravell*, *supra*, 22 F.3d at p. 962 [attending an air show]; *Kolar*, *supra*, 445 F.Supp.3d 628 at pp. 630–631 [hiking]; *Spence*, *supra*, 629 F.Supp.2d at p. 1084 [bicycling]; *H.S.*, *supra*, 2019 WL 3803804, at pp. *1–*2 [playing in a bounce house].) The statute applies regardless of whether the property is developed, and there is no requirement that the property be deemed "suitable" for recreation. (See *Ornelas*, at p. 1105.)

Further, the question of *whose* invitation falls within the express invitation exception is likely to be a key issue in many cases. There are only two other exceptions to recreational use immunity: willful or malicious conduct and entry for consideration. (§ 846, subd. (d)(1), (2).) In many cases, it will be clear that neither exception applies, making the express invitation exception the only way around section 846 immunity. And because a plaintiff need not prove he or she was specifically invited to the property for a recreational purpose, the source of the invitation matters more than its content. (See typed opn. 7; *Calhoon*, *supra*, 81 Cal.App.4th at p. 114.)

The importance of this issue for private parties and California courts is enough to warrant review. But the issue matters for another reason: federal courts must routinely apply section 846 to claims against the United States government brought under the Federal Tort Claims Act. That statute creates premises liability for the federal government, but "only if a private person would be liable in the same circumstances under state law." (*Klein*, *supra*, 50 Cal.4th at p. 74.) Because California courts have provided conflicting answers, federal courts have struggled to decide how the exception applies to invitations by nonlandowners. (See *H.S.*, *supra*, 2019 WL 3803804, at *p. 5 [noting lack of "prior decisions that directly define what constitutes a 'direct, personal' request or what it means for a landowner to 'personally select' a person to invite"].) The sheer amount of federal land in California ensures that this issue will continue to arise. (See *Klein*, at pp. 76–77 [noting that the Ninth Circuit asked this Court to interpret an aspect of section 846 in part because the federal government owns millions of acres of land in this state].)

Moreover, this case provides an ideal vehicle to decide the issue presented. As Mikayla's counsel has recognized, application of the express invitation exception is the "overarching, dispositive issue" in this appeal. (AOB 14.) Whether the exception applies is the difference between affirmance and reversal of the judgment. (Compare typed opn. 10 with dis. typed opn. 5.)

That is a purely legal question, because the pertinent facts are undisputed. Mikayla has not challenged the jury's finding that she entered the property for a recreational purpose. (See 3 CT 705; AOB 21, fn. 8.) In fact, both sides agree that she did so. (See 12 RT 3346:11–27, 3379:15–16.) The parties agree that Mikayla was invited by Gunner, who was not a landowner, rather than by Gunner's parents, the landowners. (Typed opn. 1–2, 7.) And there is no evidence that Gunner's parents expressly authorized Gunner's invitation.[6] The only way to find the exception applies would depend on the majority's theory of implied authorization. As a result, this case cleanly presents the Court with a chance to clarify the correct approach and bring order to an area of the law that is now in disarray.

---

[6] As noted above, Gunner did not tell his parents he was inviting Mikayla (8 RT 2182:1–5), whom his parents had never met (4 RT 956:10–15; 6 RT 1605:11–12; 7 RT 1903:27–1904:4; 8 RT 2138:16–25) and who had never been to the property before (4 RT 956:16–18; 6 RT 1605:13–15; 8 RT 2139:2–8). Gunner's parents were not aware Mikayla was coming over that day. (6 RT 1605:14; 7 RT 1903:23–26; 8 RT 2138:27–2139:11; see 8 RT 2182:1–5.)

CONCLUSION

For all these reasons, this Court should grant the petition for review.

December 8, 2020

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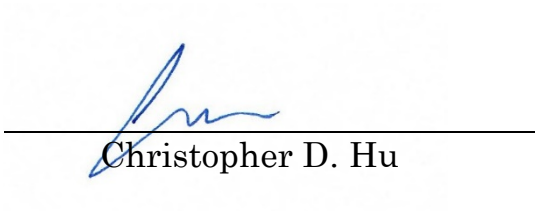
CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.504(d)(1).)

The text of this petition consists of 4,883 words as counted by the program used to generate the petition.

Dated: December 8, 2020



Christopher D. Hu

Attachments

(Cal. Rules of Court, rule 8.504(b)(4), (e)(1)(B.)

1. **10/30/20 Court of Appeal Opinion 28**

2. **11/18/20 Order Denying Rehearing 44**

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

MIKAYLA HOFFMANN, a Minor, etc., Plaintiff and Appellant, v. CHRISTINA M. YOUNG et al., Defendants and Respondents.	2d Civil No. B292539 (Super. Ct. No. 16CVP0060) (San Luis Obispo County) COURT OF APPEAL – SECOND DIST. FILED Oct 30, 2020 DANIEL P. POTTER, Clerk P. Silva Deputy Clerk

While riding her motorcycle on a motocross track, Mikayla Hoffmann (appellant) was severely injured in a collision with another motorcycle ridden by Gunner Young (Gunner), appellant's 18-year-old friend. According to appellant's expert witness, the collision was caused by the negligent design of the track and lack of directional signs. Appellant was a minor at the time of injury but is now an adult.

The track and an adjacent residence were on property owned by Gunner's parents. Both Gunner and his parents lived there. Gunner not only invited appellant to come onto the property, he drove his truck to her house, loaded her motorcycle into the bed of the truck, and drove her to the property. There is

no evidence that Gunner's parents prohibited him from inviting guests onto the property. There is some evidence that only family members were allowed to ride on the motocross track.

Appellant sued respondents (Gunner and his parents). A jury found that they had no liability for the collision or the allegedly negligent medical care provided to appellant after the collision.

Gunner's parents successfully claimed that they are immune from liability for the collision pursuant to the recreational use immunity defense of Civil Code section 846 (section 846).[1] But there is an exception to this defense that applies when the injured person has been "expressly invited" onto the property "by the landowner." (§ 846, subd. (d)(3).) Appellant had been expressly invited by Gunner. We hold that where, as here, a child of the landowner is living with the landowner on the landowner's property and the landowner has consented to this living arrangement, the child's express invitation of a person to come onto the property operates as an express invitation by the landowner within the meaning of section 846, subdivision (d)(3), unless the landowner has prohibited the child from extending the invitation. Thus, Gunner's express invitation of appellant stripped his parents of the immunity that would otherwise have been provided to them by section 846.

---

[1] Section 846, subdivision (a) provides: "An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on those premises to persons entering for a recreational purpose, except as provided in this section."

In the trial court appellant's attorney relied upon and cited the relevant case of *Calhoon v. Lewis* (2000) 81 Cal.App.4th 108 (*Calhoon*). This fell upon deaf ears and the trial court erroneously instructed the jury that the express invitation exception to the immunity defense applies only if one of Gunner's parents, i.e., the actual landowner, expressly invited appellant onto the property. The erroneous instruction struck at the heart of the case and prejudiced appellant. Moreover, the court erroneously instructed the jury that the express invitation must be for a recreational purpose. "[I]mmunity is abrogated by an [express] invitation for any purpose." (*Pacific Gas & Electric Co. v. Superior Court* (2017) 10 Cal.App.5th 563, 588.)

We therefore reverse the judgment on two causes of action as to which the jury found no liability based on the immunity defense. They are the first and second causes of action for general negligence and premises liability. In all other respects, we affirm.

Calhoon v. Lewis

Appellant contends that, pursuant to *Calhoon*, *supra*, 81 Cal.App.4th 108, Gunner's invitation to appellant was tantamount to an express invitation from the landowner (his parents) within the meaning of section 846, subdivision (d)(3). In *Calhoon* the plaintiff was invited by his friend, Wade, to come over to Wade's parents' residence where Wade lived. (The opinion does not indicate the age of plaintiff or Wade.) While waiting for Wade at the residence, plaintiff injured himself riding a skateboard on the driveway. He sued Wade's parents. The parent's defended, inter alia, on the theory that they were immune from tort liability under the immunity defense as codified in section 846.

"The trial court found [plaintiff's] claims were barred by the immunity set forth in section 846." (*Calhoon*, *supra*, 81 Cal.App.4th at p. 113.) The Court of Appeal disagreed. It said that Wade's invitation of plaintiff was sufficient to negate recreational use immunity. The Court of Appeal concluded that Wade's invitation "would seem to easily bring this case into [the] . . . 'expressly invited' exception." (*Ibid.*) We find *Calhoon's* reasoning persuasive.

Johnson v. Unocal Corp.

Respondents argue that affirmance of the judgment is compelled by this court's decision in *Johnson v. Unocal Corp.* (1993) 21 Cal.App.4th 310 (opn. of Gilbert, J., Stone, P. J., Yegan, J., concurring). We disagree. The plaintiff in *Johnson* was employed by Abex Corporation. Abex was given permission by Unocal Corporation to hold a picnic on Unocal's property. During the picnic, plaintiff was injured while playing a game of horseshoes. He leaned against a fence railing that collapsed. He sued Unocal. The trial court granted summary judgment in favor of Unocal on the theory of recreational use immunity as provided by section 846. Plaintiff argued that he fell within the express invitation exception to the immunity defense. We affirmed because the landowner, Unocal, did not extend to plaintiff "a direct, personal request . . . to attend this picnic." (*Johnson*, *supra*, at p. 317.) Unlike the instant case, in *Johnson* there was not an express invitation from the landowner's child who was living with the landowner on the property.

Express Invitation by Landowner's Child
Is Tantamount to Express Invitation by Landowner

If a person is living with his parents, must he ask his parents for permission to bring a friend onto his parents'

property? Or do his parents, by allowing him to live on the property, impliedly permit him to invite friends to the property? We use a modicum of common sense in selecting the latter alternative. Absent very unusual circumstances, such as an express order not to bring a friend to the property, it is reasonable to say that, so long as they are living together, a child may invite a guest onto the parents' property.

We recognize that the language chosen by the Legislature says that the exception applies only to persons "expressly invited . . . by the landowner" (§ 846, subd. (d)(3)). Gunner was not the landowner. But the statute does not preclude a landowner from delegating authority to a child to invite guests onto the property for social purposes. Such a delegation creates an agency relationship. (*Channel Lumber Co. v. Porter Simon* (2000) 78 Cal.App.4th 1222, 1227.) The existence of such a delegation of authority from Gunner's parents to Gunner may be implied here. (*Borders Online v. State Board of Equalization* (2005) 129 Cal.App.4th 1179, 1189 ["An agency relationship 'may be implied based on conduct and circumstances'"].) Because Gunner was acting as his parents' agent when he expressly invited appellant onto the property, the invitation is deemed to have been expressly extended by his parents, the landowner. (See *Southern Pacific Co. v. Von Schmidt Dredge Co.* (1897) 118 Cal. 368, 371 [""the act of the agent, in signing the agreement in pursuance of his authority, is in law the act of the principal""].)

Our holding does not undermine the purpose of section 846, which was enacted in 1963. "The statutory goal was to constrain the growing tendency of private landowners to bar public access to their land for recreational uses out of fear of incurring tort liability. [Citations.]" (*Hubbard v. Brown* (1990) 50 Cal.3d 189,

193.) Section 846 immunity from tort liability remains as to persons from the general public. Appellant was not a member of the general public. She was an expressly invited guest.

Trial Court's Erroneous Instruction Prejudiced Appellant

The trial court erred in instructing the jury that the express invitation exception to the immunity defense applies only if one of Gunner's parents expressly invited appellant onto the property. "In order to persuade an appellate court to overturn a jury verdict because of instructional error, an appellant must demonstrate that 'the error was prejudicial [citation] and resulted in a "miscarriage of justice."'" (*Lundquist v. Reusser* (1994) 7 Cal.4th 1193, 1213.)

Respondents claim that the erroneous instruction was not prejudicial: "[Appellant] never proposed a verdict form question . . . that would have allowed the jury to find that Gunner's invitation abrogated [his parents'] immunity. . . . Consequently, the jury was never asked to make any findings on the 'express invitation' issue. . . . Therefore, even if the jury had been instructed differently, the outcome would be no different because absent an appropriate question on the verdict form, the jury had no way of returning a verdict that the 'express invitation' exception abrogated [Gunner's parents'] immunity."

Respondents correctly note that the special verdict form omitted a question on the applicability of the express invitation exception to the immunity defense. The verdict form instructed the jury to find Gunner's parents not liable for the collision if appellant had entered the "property for a recreational purpose" and the parents had not "willfully or maliciously fail[ed] to protect others or willfully or maliciously fail[ed] to warn others about a dangerous condition or activity on the property."

But we cannot fault appellant for not requesting that the verdict form include a question on the express invitation exception. Over appellant's objection, the trial court had previously ruled that the exception did not apply because "there is no evidence that there was an express[] invitation by either Christina Young or Donald Young [Gunner's parents] to have [appellant] come to the property." The court explained: Appellant "was invited to [the parents'] property by their adult son, Gunner." Appellant "did not know either Donald Young or Christina Young before this accident, so they couldn't have been the people that had invited her."

The court's erroneous ruling was incorporated into its jury instruction on the express invitation exception. Pursuant to that instruction, the exception was inapplicable as a matter of law because it was undisputed that Gunner, not his parents, had expressly invited appellant. Thus, there was no reason for appellant to insist that the verdict form include a question on the express invitation exception. The court's jury instruction necessarily decided the issue adversely to appellant. The prejudice caused by the erroneous instruction was unavoidable.

CACI No. 1010

The trial court instructed the jury with CACI No. 1010, which provides in part that the express invitation exception to the immunity defense applies only if the invitation was for a "recreational purpose." This language is erroneous and should be deleted from the instruction. Nowhere in the statute (§ 846, subd. (d)(3)) is there such a requirement. (*Calhoon*, *supra*, 81 Cal.App.4th at p. 114; *Pacific Gas & Electric Co. v. Superior Court*, *supra*, 10 Cal.App.5th at p. 588; *Jackson v. Pacific Gas & Electric Co.* (2001) 94 Cal.App.4th 1110, 1116.)

Holding

One of the institutional functions of the California Court of Appeal is to state its holding in clear language as a guidepost for the trial courts and the bar to properly evaluate cases. (*In re Marriage of Boswell* (2014) 225 Cal.App.4th 1172, 1176-1177.) We therefore repeat our holding: Where the landowner and the landowner's child are living together on the landowner's property with the landowner's consent, the child's express invitation of a person to come onto the property operates as an express invitation by the landowner within the meaning of section 846, subdivision (d)(3), unless the landowner has prohibited the child from extending the invitation.

Trial Court's Allegedly Erroneous Denial of Appellant's Motion for New Trial

Appellant's fourth cause of action alleged that respondents had provided negligent medical care after her injury. Appellant contends that the trial court erroneously denied her motion for a new trial as to this cause of action because the court's "evidentiary rulings denied her due process of law." "Generally, rulings on new trial motions are reviewed for an abuse of discretion." (*Wall Street Network, Ltd. v. New York Times Co.* (2008) 164 Cal.App.4th 1171, 1176.)

Appellant has forfeited the new trial issue because she failed to make a cognizable argument explaining why the trial court abused its discretion and why the allegedly erroneous evidentiary rulings prejudiced her. Although the trial court issued a detailed written ruling explaining its denial of the motion for new trial, appellant does not refer to the ruling. She makes no attempt to show that the court's stated reasons for denying the motion were flawed.

"""[A]n appealed judgment is presumed correct, and appellant bears the burden of overcoming the presumption of correctness." [Citation.] As a result, on appeal "the party asserting trial court error may not . . . rest on the bare assertion of error but must present argument and legal authority on each point raised. [Citation.]" [Citations.] When an appellant raises an issue "but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citations.]" [Citation.]' [Citation.]" (*Hernandez v. First Student, Inc.* (2019) 37 Cal.App.5th 270, 277.)

Reply to Dissent

The dissent theory is a slave to literalism. Yes, the statute affording immunity only uses the word, "landowner." But an appellate court should not subscribe to the dictionary rule of jurisprudence. (See, e.g., *Unzueta v. Ocean View School Dist.* (1992) 6 Cal.App.4th 1689, 1705; see also the dissenting opinion by Justice Gilbert.) The statute does not even purport to deal with the law of agency, which is a staple of both common and statutory law. By the dissent theory, only a fee simple owner of property is a "landowner" and only he or she, personally, can give consent. We do not purport to confer principal-agent status to son for business or other purposes. We only hold that for purposes of section 846 immunity, the son of a "landowner" can invite, i.e., expressly consent, to bring a person onto the land. This eviscerates section 846 immunity and this is the fair import of *Calhoon*.

Can a managing agent of real property, expressly employed for such purpose, expressly consent for a person to come upon his principal's land with the principal still enjoying section 846 immunity? No. Here, of course, there is no express agency. But,

there is implied agency to let son invite, and expressly consent, to allow a person to come onto his parents' land. This eviscerates section 846 immunity.

Finally, we have noted the reason for the rule, as expressed by the California Supreme Court for section 846 immunity (slip opn. at p. 5). Here, the reason for the rule has ceased with consent. So should the rule itself. (See Civ. Code, § 3510.)

Disposition

The judgment on the first and second causes of action is reversed. In all other respects, the judgment is affirmed. Appellant shall recover her costs on appeal.

CERTIFIED FOR PUBLICATION.

YEGAN, Acting P. J.

I concur:

TANGEMAN, J.

PERREN, J.

I respectfully dissent.

Eighteen-year-old Gunner Young invited his friend, fifteen-year-old Mikayla Hoffmann, to accompany him onto property owned by his parents, Donald and Christina Young (landowners). They stopped briefly on the property intending to continue to ride in a nearby riverbed not on the property. Before continuing, however, Gunner told Mikayla that he was going to warm up his motorcycle on a motocross track on the property. He told her not to follow him. Gunner went on the track travelling in a clockwise direction. Mikayla decided to warm up her motorcycle and chose to travel on the track in a counter-clockwise direction. The inevitable became the actual; they collided and both were injured.

Prior to the accident, the landowners did not know of Mikayla's presence. They had not "expressly invited" or even "merely permitted" her on the land. (Civil Code, § 846, subd. (d)(3).)[1] Gunner denied he had invited Mikayla to ride on the track because its use was limited to family members.

"An owner of any estate or any other interest in real property . . . owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose . . . except as provided in this section." (§ 846, subd. (a).) This statute is all encompassing. Though usually referred to as the "recreational use immunity," it casts a far wider net. Subdivision (b) alleviates any doubt regarding the scope of activities included.

With equal clarity, section 846 specifies three exceptions to the immunity provision. Only one is pertinent here: Immunity is not available if "persons . . . are expressly invited rather than

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[1] All statutory references are to the Civil Code unless otherwise stated.

merely permitted to come upon the premises *by the landowner*." (*Id.,* subd. (d)(3), italics added.) The majority and I agree the land upon which the accident occurred qualifies for section 846 immunity and that it is the landowner who must "expressly invite[]" the person subsequently injured. (*Ibid.*) We part company on the meaning of the statute's directive that the "express invitation" be the invitation of the "landowner." I would hold that the statute is clear and specific, and that its purpose is to protect the landowner through its grant of immunity. (*Ibid.*)

The majority "holds," however, that the landowner's express invitation may be made by (1) a child of the landowner, (2) who lives on the landowner's property, (3) with the landowner's consent, and (4) who has not been prohibited from inviting guests onto the property (with the burden on the landowner to prove the negative). (Maj. opn. *ante*, at pp. 5, 8.) The "authority" for this proposition is "a modicum of common sense" that by allowing a child to live on the property, the parent landowners "impliedly permit him to invite friends to the property," and the fact that section 846, subdivision (d)(3) does not preclude a landowner from delegating authority to a child to invite guests onto the property. (Maj. opn. *ante*, at pp. 2, 5.) As the majority phrases the rule, it becomes one of implication not invitation.[2]

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[2] For this proposition, the majority cites *Channel Lumber Co. v. Porter Simon* (2000) 78 Cal.App.4th 1222, which addresses the obligation of a corporation to indemnify its attorney agents under Corporations Code section 317. (*Channel Lumber*, at p. 1227; see also *Southern Pacific Co. v. Von Schmidt Dredge Co.* (1897) 118 Cal. 368, 371 [construing a written contract to determine the liability of a disclosed principal for damages to two river barges].) (See Maj. opn. *ante*, at p. 5.)

The majority, in effect, has rewritten the unambiguous language in the statute to include language that is neither stated nor reasonably inferred. "'Appellate courts may not rewrite unambiguous statutes'" or "rewrite the clear language of [a] statute to broaden the statute's application." (*In re David* (2012) 202 Cal.App.4th 675, 682.) Nothing in the statute contemplates that the landowner's express invitation may be *implied* from an invitation issued by the landowner's child. As the majority would amend section 846, it would read: "(d) This section does not limit the liability which otherwise exists for any of the following: . . . [¶] . . . (3) Any persons who are expressly [*or by implication*] invited rather than merely permitted to come upon the premises by the landowner." (Civ. Code, §846, subd. (d)(3).)

"[T]he Legislature has demonstrated that, if it intends to establish [a certain] requirement[], it knows how to draft statutory language expressly doing so." (*Estate of Joseph* (1998) 17 Cal.4th 203, 220 (dis. opn. of Chin, J.); see *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 735 [The Legislature has shown it "knows how to create an exemption from the anti-SLAPP statute when it wishes to do so"].) The Legislature's omission of any language giving a child the implicit authority as an agent to issue an express invitation on behalf of a parent landowner means only the landowner may issue the invitation unless the landowner expressly authorizes an agent do so. (See § 846, subd. (d)(3).) No such claim is asserted here.

Moreover, the majority's decision is contrary to the common definition of "'expressly,' [which] means 'in an express manner; in direct or unmistakable terms; explicitly; definitely; directly' [Citations.]." (*Le Ballister v. Redwood Theatres, Inc.* (1934) 1 Cal.App.2d 447, 448; accord *City of Lafayette v. County of*

Contra Costa (1979) 91 Cal.App.3d 749, 756, fn. 3.) "Explicit" is a synonym of "express," and "explicit" is an antonym of "implicit." (The Merriam-Webster Thesaurus (2005) pp. 221-222, 321.) Caselaw supports this view. As reiterated in *Wang v. Nibblelink* (2016) 4 Cal.App.5th 1, "'[e]xpress invitation' in section 846 refers to a direct, personal request by the landowner to persons whom the landowner selects to come onto the property." (*Id.* at p. 32; accord *Jackson v. Pacific Gas & Electric Co.* (2001) 94 Cal.App.4th 1110, 1116; *Ravell v. United States* (9th Cir. 1994) 22 F.3d 960, 963.)

The cases cited by the majority also are not persuasive. (See maj. opn. *ante*, at pp. 3-5.) In *Calhoon v. Lewis* (2000) 81 Cal.App.4th 108, the trial court granted summary judgment for the defendants based on the section 846, subdivision (d)(3) immunity. (*Calhoon*, at p. 112.) The Court of Appeal disagreed that this exception to immunity requires an express invitation to participate only in recreational activities but affirmed on different and distinguishable grounds. (*Id.* at pp. 112, 115-118.) The court emphasized the Legislature's intent to encourage "property owners to provide access for the owner's personal guests. This distinction makes sense. Property owners do not need governmental encouragement to permit personal guests to come onto their land." (*Id.* at p. 114.)

Here, Gunner was not a landowner and Mikayla was not the landowners' personal guest. According to the majority, she was the landowners' implicit guest which, in its view, is tantamount to an "expressly invited" guest. (§ 846, subd. (d)(3).) There is no authority for this proposition. If anything, our decision in *Johnson v. Unocal Corp.* (1993) 21 Cal.App.4th 310 undermines that view. In that case, the plaintiff was not an

express invitee to a company picnic because the defendant landowner did not personally request that the plaintiff attend. (*Id.* at p. 317.)

Nothing in the record suggests Gunner's parents had any knowledge of Mikayla's presence on the property or had given him express permission to invite her on their behalf. (§ 846, subd. (d)(3).) Again, it makes no sense for a statute to state the *landowner* must issue an express invitation and then apply an implied agency theory to hold that a child living on the property can implicitly issue an express invitation on the parent landowner's behalf.

In sum, limiting the express invitation language in section 846, subdivision (d)(3) to "the landowner" not only is tidier, but it also is what the statute says. (See *County of Los Angeles v. Financial Casualty & Surety, Inc.* (2013) 216 Cal.App.4th 1192, 1196 ["When interpreting a statute we begin with the plain meaning of its language. If that language is unambiguous the plain meaning controls"].) It follows that the jury was properly instructed on who had the authority to "expressly invite[]" appellant onto the property. (§ 846, subd. (d)(3).)[3]

I would affirm.

CERTIFIED FOR PUBLICATION.

PERREN, J.

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[3] I concur with the majority, however, that the trial court erred in giving CACI No. 1010 in its current iteration. As the majority notes, "[t]his language is erroneous and should be deleted from the instruction." (Maj. opn. *ante*, at p. 7.)

Linda D. Hurst, Judge

Superior Court County of San Luis Obispo

Andrade Law Offices and Steven R. Andrade, for Plaintiffs and Appellants.

Horvitz & Levy, Dean A. Bochner and Joshua C. McDaniel; Henderson & Borgeson, Jay M. Borgeson and Royce J. Borgeson, for Defendants and Respondents.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION 6

COURT OF APPEAL – SECOND DIST.
FILED
Nov 18, 2020
DANIEL P. POTTER, Clerk
awinters Deputy Clerk

MIKAYLA HOFFMAN,
Plaintiff and Appellant,
v.
DONALD G. YOUNG et al.,
Defendants and Respondents.

B292539
San Luis Obispo County Super. Ct. No. 16CVP0060

THE COURT:

Petition for rehearing is denied.

YEGAN, ACTING P.J.

TANGEMAN, J.

I would grant.

PERREN, J.

PROOF OF SERVICE

Hoffmann v. Young et al.
Case No. S_____
Court of Appeal Case No. B292539

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On December 8, 2020, I served true copies of the following document(s) described as **PETITION FOR REVIEW** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

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Hoffmann v. Young et al.
Case No. S_____
Court of Appeal Case No. B292539

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Hon. Linda D. Hurst San Luis Obispo County Superior Court Paso Robles Branch 901 Park Street Paso Robles, CA 93446 (805) 706-3600	Trial Court Judge Case No. 16CVP0060 *(Via U.S. Mail)*
Office of the Clerk California Court of Appeal Second Appellate District, Division 6 Court Place 200 East Santa Clara Street Ventura, CA 93001 (805) 641-4700	Case No. B292539 *(Via TrueFiling)*

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/s/Christopher Hu

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Hu, Christopher (176008)

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