

When an Invitation Is an Invitation: Court of Appeal Rules That Recreational Use
Immunity Defense May Not Apply When a Minor Child Invites Another Onto His
Parent's Property

By: Edward F. Morrison, Jr., Esq.
Larry A. Schwartz, Esq.

Under California law, owners of property enjoy a limited recreational use immunity under Civil Code section 846. Civil Code section 846 provides:

846. (a) 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.

There is an exception to this defense that applies when the injured person has been "expressly invited" onto the property by the "landowner." Quoting Civil Code section 846(d)(3):

d) This section does not limit the liability which otherwise exists for any of the following: (3) Any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner." (Civ. Code, §846, subd. (d)(3).)

But what if the person that invited the invitee onto the property is not the owner of the property but a minor child of the owner? And what if the owners (parents) were not aware of the invitation and did not invite the individual on to their property?

A divided panel from the California Court of Appeal, Second Appellate District, has now ruled that an invitation from a minor child, albeit not the landowner, can result in the exception for "express invitations" to apply even if the parents were not specifically aware of the invitation and were not present at the time of the accident. That ruling occurred in Mikayla Hoffman v. Christina M. Young (2020) Westlaw 6375391 ("Hoffman" case). In the Hoffman case, Mikayla Hoffman ("Mikayla"), then fifteen years old, was severely injured in a collision with another motorcycle ridden by her friend, Gunner Young ("Gunner"). The collision was caused (allegedly) by the improper design of the track and a lack of directional signs. The track and an adjacent residence were on property owned by Gunner Young's parents. Both Gunner and his parents lived there. Gunner was a minor child (seventeen years old) at the time that Mikayla was invited.

Prior to the accident, Gunner drove over to Makayla's home in his truck. Makayla had her own motorcycle and Gunner put it in the back of his truck and drove he and Makayla back to Gunner's parent's home. Gunner's parents were not aware that Makayla had arrived and did not invite her on to the track that day (however, there was no evidence that Gunner's parents prohibited him from inviting guests onto the property, although there was some evidence that only family members were allowed to ride on the motocross track).

After sustaining serious injuries, Makayla sued Gunner's parents. At trial, Gunner's parents successfully claimed that they were immune from liability for the collision pursuant to the recreational use immunity defense in Civil Code section 846. On appeal, a divided Court of Appeal reversed, ruling that where 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). In its holding, the Court's majority ruled that Gunner's "express invitation" of Mikayla stripped his parents of the immunity that would otherwise have been provided to them by section 846. On that basis, the Court ruled that the judgment as to the two causes of action as to which the jury found no liability based on the immunity defense. i.e., the first and second causes of action for general negligence and premises liability, was reversed with the judgment in favor of the parents to be set aside.

It bears mention that the panel of the Court was divided. The two member majority even addressed the dissent accusing the theory of the dissent being a "slave to literalism." In his dissent, Justice Perren accused the majority of re-writing "unambiguous language in the statute to include language that is neither stated nor reasonably inferred."

We may not have heard the last of this issue. However, for the time being, unless parent owners prohibit their children from inviting others on to their property, the minor's invitation can and will likely be construed as an express invitation by the owner.

About the Authors: Edward F. Morrison, Jr. is the founding partner and Larry A. Schwartz is Of Counsel to The Morrison Law Group, a professional corporation. Their biographies can be viewed at .

Publication Note: The Morrison Law Group wishes to disseminate this publication to all clients and colleagues of the Firm who wish to receive it. Should any recipient desire to be removed from the distribution list, or wishes to have a colleague added, please contact Jim Van Dusen at The Morrison Law Group at 213 356-5504.

Disclaimer Note: The legal article presented above is intended to provide general information which may be of interest or use to clients and colleagues of The Morrison Law Group and should not be construed as legal advice on any matter.