

***Hoffman v. Young*, No. B292539 (2nd Cir. Oct. 30, 2020)**

When the child of a landowner invites a person onto the landowner's property, the child's invitation acts as an express invitation by the landowner such that the landowner may be liable for the invitee's injuries.

**FACTS/PROCEDURE**

Plaintiff-Appellant Mikayla Hoffmann was invited by her friend, Gunner Young, to ride their motorcycles together along a nearby riverbed. Young picked up appellant and her motorcycle from her home and then drove home to his parents' property to get his motorcycle. Young decided to warm up his motorcycle on their private motorcross track before driving to the riverbed. Young began riding in a clockwise direction along the track and told appellant not to follow him. Appellant decided to warm up her motorcycle as well but began riding counterclockwise along the track. As a result, the pair collided, and both were injured. Appellant sued Young and his parents for her injuries. Respondents alleged they were immune from liability under the recreational use immunity defense of Civil Code section 846, but appellant argued the express invitation exception within the statute negated their immunity. (Civ. Code, § 846, subd. (d)(3).) The trial court rejected appellant's argument on the ground that the exception only applies when the landowner (not the landowner's child) extends an invitation to the plaintiff. Here, since Gunner Young invited to appellant onto his parents' property, the express invitation exception did not apply. The jury ultimately found for respondents, and plaintiff appealed.

**HOLDING/DISCUSSION**

The Court of Appeal for the Second District reversed. The express invitation exception states that landowners who expressly invite guests onto their property may be liable for subsequent injuries their guests incur. (Civ. Code, § 846, subd. (d)(3).) On its face, this exception appears to be limited to only invitations made directly by the landowner. However, under an implied agency theory, the court expanded the scope of the provision to apply to express invitations made by a landowner's children as well. An agency relationship may arise through implication when the conduct of the parties and the circumstances demonstrate the principal's intention to delegate authority to the agent. For the purposes of the express invitation exception, the court will find an implied agency relationship when a landowner and a landowner's children are living together on the landowner's property with the landowner's consent. If these conditions are present, and the parents have not expressly forbidden their children from inviting guests, the express invitation provision will apply. Here, the court found an implied agency relationship between Gunner Young and his parents, because Young lived with his parents, on their property, and with his parents' consent. Even though Young's parents were not aware of appellant's presence on the day of the incident, the court held Young's invitation to appellant must be treated as an express invitation by his parents. Therefore, appellant's claim fell within the express invitation provision, and Young and his parents may be held liable for her injuries.

Perren, J., Dissenting. The dissent argued that the plain language of the statute unambiguously limits its scope to invitations by the landowner alone. The Legislature would not "state the *landowner* must issue an express invitation and then apply an implied agency theory" to expand the breadth of the statute to a landowner's child.