

SUPERVISION FAULTED IN CITY CAMPING TRIP FATALITY

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In the case of *Chavez v. City of Santa Fe Springs*, 2011 Cal. App. Unpub. LEXIS 9462 (12/09/2011), teenager John Chavez died from head injuries suffered after he slipped in a mountain stream and went over a waterfall during a city-sponsored camping trip. In a wrongful death claim, Chavez's mother, plaintiff Ramona Chavez (Chavez) alleged the negligence of the City caused her son's fatal fall. The trial court granted summary judgment to the City based upon the terms of a liability release signed by the mother and son.

On appeal, Chavez challenged the validity and enforceability of the liability release. Specifically, Chavez contended that the form she signed would not release the City from liability for gross negligence. Further, Chavez claimed she had been fraudulently induced to sign the liability release based upon false assurances from City staff that participants would be supervised "at all times" during the camping trip.

FACTS OF THE CASE

In August 2008, City of Santa Fe Springs (City) took a group of 20 or more high school students on a five-day City-sponsored camping trip to a state park at the base of Mt. Whitney, near Lone Pine, California in the eastern High Sierra mountains. Mount Whitney is the United States' highest mountain outside of Alaska, rising to an elevation of 14,494 feet above sea level. The events in this case took place in and around a campsite at Whitney Portal, the trailhead for the Mount Whitney Trail at an altitude of about 8,300 feet. (<http://www.mount-whitney.com>.)

At a mandatory pre-trip meeting the City answered parents' questions and concerns about the trip's safety, assuring them that their children would be safe and would be supervised "at all times" during the trip.

The City transported the campers, fed them, and provided all necessary equipment for the trip's planned activities. Seven City staff members (two of whom were law enforcement personnel with no supervisory duties) accompanied the group as chaperones. Participants on the trip were not required to have had any wilderness or camping experience (and there was no evidence that any of them did), and none of the staff members received any special training regarding camping or hiking.

Some of the City's staff members had been on previous City-sponsored trips to the area, had been to a waterfall about a mile from the campsite, and were aware of the risks that someone might slip and fall there. However, in planning for the trip there was no determination of the campers' level of outdoor experience; there was no discussion of the type or condition of the shoes or other equipment the campers should bring on the trip; and there apparently was no staff discussion of the slippery surfaces that might be encountered at the waterfall, of safety guidelines to be imposed on the campers, or of precautions that could or should be taken in light of the risks.

JULY 2012 LAW REVIEW

Decedent John Chavez (John), then 16-1/2 years old, was a camper on the 2008 trip. Before the trip, John and his mother read, signed, and returned to the City a "Liability Release Form." That completed release form stated:

I, John Chavez fully understand that my participation in Mt. Whitney Camping Trip, scheduled for Tuesday, August 5th – Saturday, August 9th, 2008, (the "Event") may expose me to the risk of personal injury, death, or property damage. I hereby acknowledge that I am voluntarily participating in the Event and agree to assume any such risks.

I hereby release, discharge, and agree not to sue the City of Santa Fe Springs, its officers, employees and agents (collectively, the "City"), for any injury, death or damage to or loss of personal property arising out of, or in connection with, my participation in the Event, from whatever cause.

In consideration of being permitted to participate in the Event, I hereby agree, for myself, my heirs, administrators, executors and assigns, that I shall indemnify and hold harmless the City from any and all claims, demands, actions or suits, arising from or in connection with my participation in the Event.

I HAVE CAREFULLY READ THIS DOCUMENT AND FULLY UNDERSTAND ITS CONTENTS. I AM AWARE THAT IT IS A FULL RELEASE OF ALL LIABILITY, AND SIGN IT OF MY OWN FREE WILL.

Dated: 8/1/08

John Chavez [signature]
Participant

Ramona Chavez [signature]
Parent/Guardian (if under age 18)

Chavez also attended a mandatory pre-trip parents' meeting, at which City personnel addressed parents' questions and concerns about safety (among other subjects). The parents at the meeting, including Chavez, were assured that their children would be safe and would be "supervised at all times" during the trip by the staff. However, the trip's itinerary (which apparently was not shared with the parents) included daily planned "free time" during which the teens were not supervised by the staff, and were permitted (and even encouraged) to explore the surrounding area as long as they did not go alone and told a staff member where they were going.

While the City offered no evidence that the parents were shown the itinerary or were told about the unsupervised free time, a staff member thought that the stream and waterfall might have been mentioned at the parents' meeting. Chavez relied on the City's representations in allowing John to go on the trip.

During "free time" on the second day of the trip, John and several other campers, including

Andrew Campero, received permission to hike to a nearby stream and waterfall about a mile from the campsite; they were not accompanied by City staff members. They were not told (then or at any other time) not to climb above or near the waterfall.

At some point, they left the road or trail and hiked along a stream to the base of the waterfall. Some of the campers stopped at the pond area near the waterfall and did not go any further. John and at least two other boys proceeded to climb on the wet rocks in the stream, but at some point the two others declined to go further. John continued across the stream, despite the others' admonitions to stop. John was at least 10 feet ahead of Campero, and was blocked from his view by foliage and rocks, when Campero heard a shout and saw John slide down the wet rocks, and he "must have went over," out of Campero's sight.

After sliding down the rocks until he found an area in the stream where he could walk, Campero found John lying face down in the water, motionless. Campero and others pulled John from the water. Despite their efforts to perform CPR, John died from injuries sustained in the fall.

TRIAL COURT

Chavez sued the City on behalf of herself and John's estate, seeking damages for negligence. The City moved for summary judgment, arguing that Chavez's claims were barred by the release she and her son had signed.

In response, Chavez claimed the release was unenforceable because public policy precluded releasing the City from liability for its gross negligence under the circumstances of this case. In the alternative, Chavez argued the release was unenforceable because her signature had been "obtained by fraud," i.e., based on false assurances that the trip would be supervised "at all times."

The trial court granted summary judgment in favor of the City, effectively dismissing Chavez's claims. In so doing, the trial court held the release was valid and enforceable to absolve the City of responsibility for any ordinary negligence. Moreover, the trial court found no evidence of gross negligence on the part of the City. Chavez appealed.

VALID LIABILITY RELEASE?

As described by the appeals court, "[t]he standards by which release forms are judged are well established:

Waiver and release forms are strictly construed against the defendant. Nevertheless, a release need not achieve perfection to be effective; it suffices if it constitutes a clear and unequivocal waiver with specific reference to a defendant's negligence.

According to the appeals court, "[i]n the absence of circumstances involving public interest, the law permits agreements to absolve a defendant from future liability for *ordinary* negligence." (*Emphasis of court*) In fact, the appeals court found the public interest "may even encourage

such agreements” to provide limited immunity for groups providing youth with recreational opportunities:

The public as a whole receives the benefit of such waivers so that groups such as Boy and Girl Scouts, Little League, and parent-teacher associations are able to continue without the risks and sometimes overwhelming costs of litigation. Thousands of children benefit from the availability of recreational and sports activities. Every learning experience involves risk. In this instance the plaintiff agreed to shoulder the risk. No public policy forbids the shifting of that burden.

GROSS NEGLIGENCE

While public policy may encourage limited immunity from liability for ordinary negligence, the appeals court noted it would not enforce a liability release which would “absolve a party from its future liability for conduct amounting to *gross negligence*.” (*Emphasis of court*) In so doing, the appeals court rejected “policy concerns that the rule barring waiver of liability for gross negligence is unworkable or tends to foster untoward liability.” On the contrary, the court found a rule prohibiting enforcement of liability release agreements for future gross negligence had not triggered the “wholesale elimination of beneficial recreational programs and services” favored by public policy.

The appeals court distinguished ordinary negligence from gross negligence as follows:

[O]rdinary negligence—an unintentional tort—consists of a failure to exercise the degree of care in a given situation that a reasonable person under similar circumstances would employ to protect others from harm. Gross negligence long has been defined in California and other jurisdictions as either a want of even scant care or an extreme departure from the ordinary standard of conduct. The test is objective: if a *reasonable person* in defendant's position would have been aware of the risk involved, then defendant is presumed to have had such an awareness. (*Emphasis of court*)

Further, the appeals court found “the distinction between ordinary and gross negligence reflects a rule of policy that harsher legal consequences should flow when negligence is aggravated instead of merely ordinary.” As a result, the appeals court held “[a] release agreement, to the extent it purports to release liability for future gross negligence, violates public policy and is unenforceable.”

On appeal Chavez had argued the trial court had indeed “erred” in granting summary judgment to the City based upon the liability release because “the City’s conduct constituted gross negligence.”

The appeals court acknowledged that a jury trial is oftentimes necessary to consider “the nature of the act and the surrounding circumstances shown by the evidence” to determine “whether conduct constitutes gross negligence.” Summary judgment, however, had effectively dismissed Chavez’s claims prior to trial. Accordingly, in reviewing the pretrial evidence on which the

summary judgment was based, the appeals court would give Chavez the benefit of the doubt. In so doing, the appeals court would construe every fact and inference in favor of Chavez to have her day in court and argue her case before a jury.

The specific issue before the appeals court was, therefore, whether “the conduct shown by Chavez's evidence could be found to constitute gross negligence” on the part of the City. In other words, if this case was allowed to proceed to trial, did sufficient evidence exist for a reasonable jury to find that “the release in this case was ineffective to absolve the City of liability to Chavez”?

In the opinion of the appeals court, “the record in this case shows far more to justify a finding of gross negligence than a mere isolated lapse” of judgment or supervision indicative of ordinary negligence:

[A] jury could conclude from the record on summary judgment that the City acted with gross negligence by encouraging campers to undertake the potentially hazardous activities of exploring the surrounding terrain and the waterfall, without ever undertaking even minimal precautions or planning for the exposure of the adolescent campers—who could be expected to have enthusiasm exceeding their judgment—to the unfamiliar and untamed environment of the High Sierras.

As characterized by the appeals court, unlike adults, adolescents can “not be expected to exhibit that degree of discretion, judgment, and concern for the safety of themselves and others which we associate with full maturity.”

We should not close our eyes to the fact that boys of seventeen and eighteen years of age, particularly in groups where the herd instinct and competitive spirit tend naturally to relax vigilance, are not accustomed to exercise the same amount of care for their own safety as persons of more mature years.

According to the court, “[d]ealing with these common adolescent characteristics of limited experience and judgment, paired with outsized competitiveness and bravado, acquiescing in even isolated deviations from well-established rules may constitute negligence.” In this instance, however, “when the rules are neither familiar nor well established,” the appeals court found “the risks of violations and resulting injuries are all the greater”:

The area to which the campers were taken is one of extraordinary beauty, extraordinary interest and opportunity for youths from an urban setting, and extraordinary danger to those unfamiliar with its hazards. It will be for a jury to determine the extent to which more thorough planning and closer supervision might have been appropriate or required under the circumstances, and the extent to which it would have been effective in reducing to acceptable levels the risks of injury and death to the campers.

In the opinion of the appeals court, a jury could find the City sponsored camping trip demonstrated “a failure to exercise due care in implementing an otherwise well-conceived plan

for the campers' safety.” Specifically, the appeals court found the evidence was “susceptible to the conclusion that the City failed to consider, or even to recognize, the risks that would potentially face the campers whose safety and well-being the City had undertaken to protect.” Moreover, the court found evidence indicating the City “failed to formulate any plan about how to meet and address those risks” and implement “appropriate supervision, education, discussions, admonitions, or any other means—either to protect the campers from obvious dangers, or to enable them to recognize and guard against those dangers for themselves.”

PROGRAMMATIC FAILURES

Based upon such pretrial evidence, the appeals court, therefore, determined that “a jury could find that the City was guilty of gross negligence.” In so doing, the appeals court reiterated that gross negligence required evidence of “an extreme departure from the ordinary standard of care.” Further, the appeals court noted that reasonable care did not require the City to “monitor and control the campers' every move, to insulate and protect them from every possible danger, or to prevent isolated violations of established rules.” Rather, in this particular instance, the appeals court found the following “programmatic failures” could be found to transform evidence of acts constituting isolated lapses of attention or judgment [i.e. ordinary negligence] into a want of even scant care or ‘an extreme departure from the ordinary standard of conduct’ indicative of gross negligence:

- no requirement of adult supervision during excursions to areas of known danger that might be outside of the experience of city youth, such as running streams, slippery rocks, and waterfalls;
- no rules, warnings, admonitions not to approach—or even *how* to approach—these dangerous areas;
- no staff training or staff awareness with respect to such dangers;
- no education, advice, or discussion with the campers about these dangers;
- no discussion of these dangers with the campers' parents.

SUPERVISION MISREPRESENTED

On appeal, in the alternative, Chavez had also argued that “fraudulent inducement” on the part of the City made the signed liability release invalid and unenforceable. Specifically, Chavez claimed she had been “induced” to sign the liability release and permit John to go on the trip based on false assurances by City staff that the campers would be supervised “at all times.”

As noted by the court, “one who has been induced by fraudulent misrepresentations to sign an agreement is entitled to have agreement set aside.” Accordingly, the City’s liability release would be unenforceable if Chavez could prove she was induced to sign it through a fraudulent “misrepresentation of material facts” regarding the level of supervision on the camping trip.

In this particular instance, the appeals court found sufficient evidence for a reasonable jury to find that the liability release signed by Chavez had, indeed, been “induced by the staff’s misrepresentations that the campers would be supervised at all times, knowing that they would not”:

If a jury were to be persuaded that the City's staff made those representations although they knew the trip's itinerary would afford the campers unsupervised free time, it might be entitled to find that Chavez's signature on the release had been fraudulently induced and that the release is not enforceable against Chavez.

As a result, the appeals court concluded summary judgment based upon the City's liability release was "unjustified" because sufficient facts existed on the record for a jury to reasonably conclude that "the City staff intentionally made meaningful and material misrepresentations to the parents, and that Chavez relied on those promises."

CONCLUSION

Having found sufficient evidence on the pretrial record to allow Chavez's claims proceed to trial, the appeals court reversed the summary judgment of the trial court in favor of the City. At trial, a jury would consider "the enforceability of the release of the City's liability for negligence." In so doing, the jury would consider whether "fraudulent inducement" voided this particular release and/or whether the release was unenforceable because the City's acts and omissions constituted gross negligence.

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