ENCANTO PARK CONCESSIONAIRE CANNOT BENEFIT FROM RECREATIONAL USE STATUTE


Normandin v. Encanto Adventures

Arizona Supreme Court, May 16, 2019

By: Eileen GilBride

Pursuant to a concessionaire agreement with the City, Encanto Adventures ("Encanto") operates an amusement park in a fenced-in area of Encanto Park known as Picnic Island. The Agreement allowed Encanto to use an unfenced portion of Picnic Island adjacent to the amusement park as a "piñata area." Encanto's owner inspected and maintained Picnic Island. Encanto does not, however, have exclusive rights to use the piñata area, nor does it control public access to it.

Plaintiff fell in the piñata area of the park while hosting a birthday party for her daughter. She sued the City and Encanto for negligence. The trial court granted summary judgment to the City and Encanto based on the recreational immunity statute, A.R.S. § 33-1551(A). The court of appeals affirmed for both defendants.

The Supreme Court reversed summary judgment for Encanto. The recreational use statute states that the owner, easement holder, lessee, tenant, manager, or occupant of premises is not liable to a recreational user except if it engaged in willful, malicious, or grossly negligent conduct. The statute does not define "manager," but Encanto claimed it was a "manager" of the piñata area because it maintained that area. The Supreme Court disagreed. Analyzing the context of the statute, it held that a manager within the meaning of the statute "is someone imbued with authority to control the public's access to land for recreational use." Any other definition was inconsistent with the other classes of land occupants listed in the statute. This definition also supports that statute's purpose—to "encourage landowners and others to open lands to recreational users and to continue to keep the lands open." Encanto does not have that authority. Thus, Encanto was not entitled to the higher burden of proof in the recreational use statute.

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