Supreme Court Number S242250

In the Supreme Court of the State of California

REBECCA MEGAN QUIGLEY,

Plaintiff and Appellant,

v.

GARDEN VALLEY FIRE PROTECTION DISTRICT, et al.,

Defendants and Respondents.

After a Decision by the Court of Appeal
For the Third Appellate District
Third Civil Case Number C079270

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

Plaintiff/appellant Rebecca Quigley ("Quigley") petitions this court to review the Court of Appeal's recent decision affirming a judgment of nonsuit based on governmental immunity in favor of respondents/defendants Garden Valley Fire Protection District ("Garden Valley"), Chester Fire Department, Jeff Barnhart ("Barnhart"), Frank DelCarlo ("DelCarlo"), and Mike Jellison ("Jellison") (collectively, "respondents").

Quigley claims this court should grant review to settle an "important question of law" regarding application of Government Code section 850.4 ("section 850.4") immunity and "to secure uniformity of decision" regarding whether governmental immunity can be waived.

(Petition for Review, p. 2; see also Cal. Rules of Court, rule 8.500(b)(1).) However, the simple truth of the matter is that there is no such need here as no important question of law remains to be settled, nor is there confusion or a dispute among the Courts of Appeal requiring uniformity of decision.

This case involves basic, straight-forward statutory interpretation based upon the plain language of section 850.4 and relevant legislative intent. Nevertheless, Quigley seeks review based upon the same arguments she made in the Court of Appeal. Even Quigley's "issues presented" in her petition reveal there are no substantial grounds for review as she simply requests that this court determine whether the immunity statute applies to injuries she sustained as she slept at a forest fire base camp. Case law establishes that section 850.4 immunity is to be applied broadly. Review is not necessary because Quigley seeks review based on the unique facts of her case, not to settle an important question of law.

Further, Quigley argues review is necessary to secure uniformity of decision regarding whether section 850.4 can be waived. However, Quigley relies on a single, factually inapplicable case in an attempt to seek review from this court despite the fact that well-established authority confirms that immunity was not waived in this case. The Court of Appeal appropriately addressed and distinguished the case Quigley relies upon to argue governmental immunity must be specifically pled, or is waived.

Quigley has not shown an important question of law needs to be settled by this court or that uniformity of decision needs to be secured. This court should deny her petition for review.

BACKGROUND

A. The Silver Fire and Silver Fire Camp.

In 2009, a wild fire known as the "Silver Fire" broke out in the Plumas National Forest. In response, the U.S. Forest Service set up a Fire Camp at a nearby fairground to support firefighters actively fighting the fire. [1 AA 10, 205, 209.] A firefighting team called The NorCal 1 Team, including respondents Barnhart, DelCarlo and Jellison, established and ran the Fire Camp. [RT 9-10.] Fire Camps are a dynamic place set up in response to an emergency wild fire. They are assembled quickly and are constantly changing in relation to incoming and outgoing resources caused by the unpredictable nature of a wild fire. [See *id.* at pp. 16, 21.]

Quigley was part of a "hot shot" team of approximately 20 firefighters. [RT 2, 4, 6.] The U.S. Forest Service had set up shower units in the grassy infield area of the Fire Camp. [*Id.* at pp. 9-10, 12-13.] Vehicles drove through the grassy infield to deliver clean water and remove dirty grey water from the shower units. [*Id.* at p. 15.] Quigley and her crew worked 16 hours each day fighting the Silver Fire and returned to the Fire Camp to sleep and eat. [*Id.* at pp. 9, 16.] Rather than sleeping in the designated sleeping area, Quigley slept in the infield where the showers were located. [*Id.* at pp. 17-18, 21-22.] While removing grey water from the showers, a Plumas Sanitation truck ran

over Quigley while she slept in the infield. [*Id.* at pp. 3, 22-23.] Quigley sued respondents as a result of injuries she sustained. [1 AA 6.]

B. The Case Proceeds to Trial and the Court Grants Nonsuit.

During opening statements, Quigley's counsel stated that logistics and facilities crews for the camp are required to know the number of firefighters and other personnel at the Fire Camp and the size of the sleeping area. According to Quigley's counsel, respondents were responsible for providing care and services to the firefighters at the Fire Camp. The services allow the firefighters to eat, sleep and rest so the firefighters can resume their duties and go out and fight fires. [RT 16.]

Quigley's counsel argued respondents failed to provide a safe designated sleeping area. [RT 19.] Quigley's counsel stated respondents caused Quigley's injuries and damages by creating an unsecured infield sleeping area and failing to: (1) sign and rope-off the sleeping area; (2) provide a Fire Camp map to the truck driver; (3) set a traffic route for the truck driver; (4) provide a schedule to the truck driver; (5) increase sleeping areas; and (6) identify safety hazards. [*Id.* at pp. 29-30, 34-38.]

At the completion of Quigley's opening statement, respondents moved for nonsuit arguing they were immune from liability under Government Code sections 815, 815.2, 818.6, 820.2, 821.4, 850.2 and

850.4. [RT 52; 1 AA 68, 70-72.][1] Respondents also argued the firefighter's rule barred Quigley's causes of action. [1 AA 73-74.]

The court granted nonsuit in favor of respondents based on immunity provided under section 850.4. [RT 136.] On March 9, 2016, the court entered its order granting respondents' motion for nonsuit. [1 AA 122-126.]

C. The Court Denies Quigley's New Trial Motion.

Quigley later moved for a new trial. [1 AA 136, 146.] Quigley argued the court erred in determining: (1) respondents did not waive the immunity defense; (2) that the Fire Camp was a "firefighting facility" as a matter of law; and (3) the Fire Camp was a firefighting facility within the meaning of section 850.4. [*Ibid.*] Quigley also argued respondents' counsel engaged in misconduct by "concealing" the immunity defense. [*Id.* at pp. 146-147.]

The trial court denied Quigley's motion for new trial. [2 AA 394.] The trial court found that respondents did not waive the immunity defense and that no error of law occurred. [*Id.* at p. 390.] The court further determined that the Fire Camp fell within the plain meaning of the word "facilities" as used in section 850.4 because the parties agreed that a Fire Camp provides firefighters summoned to fight a fire a place to stay and recuperate while actively fighting a fire. [*Id.* at p. 392.]

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[1] Respondents' answer to Quigley's operative first amended complaint asserted governmental immunity as an affirmative defense, specifically Government Code sections 810 through 996.6. [1 AA 60.]

Additionally, applying the firefighter's rule to Quigley's claims would further the public policy considerations behind the firefighter's rule. [*Id.* at pp. 393-394.]

D. The Court of Appeal's Decision.

Quigley appealed from the order granting respondents' motion for nonsuit. The Court of Appeal held section 850.4 provided immunity to respondents because the Fire Camp was a firefighting facility within the meaning of the statute and the plain language of section 850.4 does not limit immunity to conditions of facilities related to the ability to fight fires. (Slip opn., pp. 8, 10-11.) The court also held respondents did not waive the immunity under section 850.4 by not separately pleading the precise immunity statute in their answer because governmental immunity is jurisdictional and may be raised at any time; section 850.4 requires no affirmative showing on the part of the public entity or public employee claiming the immunity. (*Id.* at pp. 5-7.)

ARGUMENT

I.
Supreme Court Review Is Unnecessary Because the Circumstances Are Unique to the Facts of This Case and Do Not Present Grounds for Review.

Pursuant to California Rule of Court, rule 8.500, this court may order review "(1) When necessary to secure uniformity of decision or to settle an important question of law; (2) When the Court of Appeal lacked jurisdiction; (3) When the Court of Appeal decision lacked the concurrence of sufficient qualified justices; or (4) For the purpose of

transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order." As discussed below, these grounds have not been met.

A. The Court of Appeal's Opinion Concerning the Construction and Application of Section 850.4 Is Based upon Straightforward Principles of Statutory Interpretation.

Quigley's petition suggests that review is necessary to secure uniformity of decision and to settle an important question of law. Neither ground, however, is an appropriate basis for review in the present case. Indeed, the Court of Appeal interpreted and applied section 850.4 based on its plain language, supported by legislative intent. Further, the Court of Appeal's holding is specific to the facts of this case, which involved setting up a special fire camp to respond to an active wild fire.

The Court of Appeal appropriately relied upon the plain meaning of the words used in section 850.4 to interpret and apply the statutory immunity to the facts of the case. (See Slip opn., pp. 8-13; *Varshock v. Department of Forestry & Fire Protection* (2011) 194 Cal.App.4th 635, 641.) Section 850.4 provides immunity from liability for public entities and their employees relating to firefighting activities:

> Neither a public entity, nor a public employee acting in the scope of his employment, is liable for any injury resulting from the condition of fire protection ***or*** firefighting equipment or facilities, ***or*** . . . for any injury caused in fighting fires.

(Bold and italics added.)

Quigley argued in the Court of Appeal that section 850.4 did not apply because she was not injured while actively engaged in fighting a fire and that the condition of the Fire Camp that caused her injuries did not relate to fire fighting. (See Appellant's Opening Brief, "AOB," pp. 29-35.)

In turning to the plain language of the statute, the Court of Appeal noted that the Legislature classified two groups of injuries by its use of the word "or" in the statute. Specifically, (1) any injury resulting from the condition of fire protection or firefighting equipment or facilities and (2) any injury caused in fighting fires. (Slip opn., pp. 10-11.) Thus, the Court of Appeal properly held there is no language in the statute limiting the condition of firefighting facilities to those related to the ability to fight fires. (*Id.* at p. 11.)

The Court of Appeal also reviewed the Legislature's intent by reviewing the Commission's Report on its study of governmental tort liability, which gave rise to the Government Claims Act. (Slip opn., pp. 10-12.) The court noted that the Commission, in its comment, also separated injuries caused in fighting fires from those that resulted from failure to properly maintain fire protection equipment and facilities. (*Id.* at p. 12.) Contrary to Quigley's argument in her petition for review, the Commission did not suggest that the immunity related to maintenance of fire protection equipment or facilities be limited to circumstances where the failure to maintain the equipment or facilities affects the ability to fight fires. (*Ibid.*) Thus, the legislative intent demonstrates that immunity is not limited to conditions of firefighting facilities that affect the ability to fight fires. (*Id.* at pp. 12-13.)

The Court of Appeal properly determined that the plain language of section 850.4 and corresponding legislative intent do not limit immunity to injuries caused in fighting fires or conditions related to the ability to fight fires. (Slip opn., pp. 10-11.) As such, this case involves basic, straightforward statutory interpretation. Simply put, this is not the type of dispute that presents this court with an important or disputed legal question. The petition for review should be denied.

B. The Court of Appeal's Construction and Application of Section 850.4 Does Not Require Review Because It Conforms with Prior Decisions.

Quigley does not establish that a conflict in Court of Appeal decisions interpreting section 850.4 requires review. Rather, Quigley argues in her petition, as she did below, that the condition of firefighting facilities to which section 850.4 was intended to apply is a condition that results from a failure of maintenance or repair that results in a defect that impairs or prevents the operation, usefulness or effectiveness of facilities employed to protect against or fight fires. (Petition, pp. 5-6.) However, case authority does not support such a narrow interpretation of section 850.4. Instead, immunity under section 850.4 must be applied broadly. (*Cochran v. Herzog Engraving Co.* (1984) 155 Cal.App.3d 405, 412 [section 850.4 language is "sweeping" and is to be broadly construed]; *Bettencourt v. State of Cal.* (1975) 51 Cal.App.3d 892, 894-896 [section 850.4 provides "expanded immunity"].)

Indeed, as the Court of Appeal stated in its opinion, this issue has already been addressed in *Razeto v. City of Oakland* (1979) 88 Cal.App.3d 349. There, the Court of Appeal, in turning to the legislative

intent of the statute, came to the same conclusion as the Court of Appeal in this case; the statute is clear, unambiguous and explicitly provides immunity for any injury resulting from the condition of fire protection or firefighting equipment even if unrelated to fighting a fire. (*Id.* at pp. 351-353.)

Further, Quigley cannot show that the Court of Appeal's interpretation and application of section 850.4 differs from prior decisions interpreting and applying section 850.4. Rather, case law and public policy supports the broad application of immunity in this case. (*Heick & Moran v. City of Modesto* (1966) 64 Cal.2d 229, 233-234 [section 850.4 applied to failure to turn water main back on after certain construction on water main completed]; *Lainer Investments v. Department of Water & Power* (1985) 170 Cal.App.3d 1, 7-9 [§ 850.4 applied to fire sprinkler system's failure to supply water during a fire]; *New Hampshire Insurance Co. v. City of Madera* (1983) 144 Cal.App.3d 298, 303-305 [section 850.4 applied to closed water valve that resulted in fire damage to property].)

The Court of Appeal in *State of California v. Superior Court* (2001) 87 Cal.App.4th 1409, held that section 850.4 applied to claims associated with a pilot who died while flying an airplane engaged in dropping fire retardant materials on a forest or brush fire caused by "operational" negligence. The Court of Appeal observed that the Legislature enacted section 850.4 and related statutes such as section 850.2, "to protect the discretion of public officials in determining whether fire protection should be provided at all, and, if so, to what extent and with what facilities." (*Id.* at p. 1413.)

Quigley continues to ignore that the sole purpose of the Fire Camp was to provide a facility where firefighters could rest, eat, sleep and recover in order to return back to the fire line. Thus, the Fire Camp played a crucial role in fighting the Silver Fire. Quigley seeks to impose liability for alleged failure to direct traffic, rope-off sleeping areas, or warn drivers of dangerous conditions in the Fire Camp, which firefighters constructed and organized to facilitate the firefighting effort. Thus, Quigley seeks to hold respondents liable for a condition that resulted from an alleged failure of maintenance that impairs or prevents the operation, usefulness or effectiveness of the Fire Camp, which is a facility employed to protect against or fight a wild fire.

Accordingly, the Court of Appeal's holding is consistent with prior decisions applying immunity to a broad range of situations. Indeed, the Fire Camp here most certainly affected the firefighters' "ability to fight a fire" by providing a facility that allowed for firefighters to gain quick access to the Silver Fire. The symbiotic relationship between firefighting activities and the Fire Camp as an active facility for those activities, and Quigley's injuries, could not be clearer.

In summary, the Court of Appeal's decision in this case was a faithful and correct application of past decisions and public policy requiring broad application of section 850.4. Further review by this court is unwarranted.

II.
The Court of Appeal's Holding That Respondents Did Not Waive Section 850.4 Immunity Does Not Conflict with Other Court of Appeal Decisions.

Quigley argues review is also necessary to secure uniformity of decision regarding waiver of section 850.4 immunity. According to Quigley, section 850.4 immunity must be specifically pled as an affirmative defense or it is waived. However, Quigley relies upon a factually inapplicable case to support her argument—*McMahan's of Santa Monica v. City of Santa Monica* (1983) 146 Cal.App.3d 683 (*McMahan's*). The Court of Appeal here addressed Quigley's argument in its opinion citing to several decisions supporting its holding that the immunity under the specific facts of this case is jurisdictional. (Slip opn., pp. 5-7.) Respondents were not required to plead the specific statutory section that provides immunity. (See *Paterson v. City of Los Angeles* (2009) 174 Cal.App.4th 1393, 1404, fn. 5; *Jessen v. Motor Corp.* (2008) 158 Cal.App.4th 1480, 1483 [answer need not specify preemptive statute to raise preemption as defense]; *Richardson-Tunnell v. Schools Ins. Program for Employees* (SIPE) (2007) 157 Cal.App.4th 1056, 1061; *Hata v. Los Angeles County Harbor/UCLA Medical Center* (1995) 31 Cal.App.4th 1791, 1795; *Buford v. State of California* (1980) 104 Cal.App.3d 811, 826.)

This is not a conflict scenario between courts so much as simply the Court of Appeal finding *McMahan's* inapplicable. *McMahan's* is inapposite because immunity in that case was never pled, never tried and was raised for the first time on appeal. Whereas, here, respondents did plead, argue and raise the immunity in the lower court proceedings prior

to the appeal. Further, as the Court of Appeal pointed out, *McMahan's* pertained to application of governmental immunity in an inverse condemnation action, which is unrelated to the facts presented in this case. The Court of Appeal also distinguished section 850.4 from governmental immunities that require an affirmative showing to assert the immunity and thus, must be pled as an affirmative defense. Section 850.4 requires no such showing. (Slip opn., pp. 6-7.)

Therefore, review by this court is unnecessary; there is no split among appellate courts regarding governmental statutory immunity in negligence actions such as presented here.

CONCLUSION

Based on the foregoing reasons, respondents respectfully request that this court deny Quigley's petition for review because review of the Court of Appeal's decision is unnecessary to "secure uniformity of decision" or "settle an important question of law."

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 8.204

I, the undersigned, Jonna Lothyan, declare that:

1. I am an associate in the firm of Lewis Brisbois Bisgaard & Smith LLP, counsel of record for defendants and respondents Garden Valley Fire Protection District, et al.

2. This certificate of compliance is submitted in accordance with rule 8.204 of the California Rules of Court.

3. This answer was produced with a computer. It is proportionately spaced in 14-point Times New Roman typeface. The answer contains 3,001 words, including footnotes.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Diego, California on June 20, 2017.

_____

Jonna D. Lothyan

PROOF OF SERVICE

Quigley v. Garden Valley Fire Protection District, et al.
Supreme Court Number S242250

I, Sherry Bernal, state:

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 701 B Street, Suite 1900, San Diego, California 92101.

On June 20, 2017, I served the following document described as **ANSWER TO PETITION FOR REVIEW** on all interested parties in this action by placing a true copy enclosed in sealed envelopes addressed as stated on the attached service list. I deposited such envelope in the mail at San Diego, California. The envelope was mailed with postage thereon fully prepaid.

I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, this document will be deposited with the U.S. Postal Service on this date with postage thereon fully prepaid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 20, 2017 at San Diego, California.

Sherry Bernal

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