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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**LAWRENCE LEE, JR.,**

**Plaintiff and Appellant,**

**v.**

**CITY OF VALLEJO et al.,**

**Defendants and Respondents.**

**A136708**

**(Solano County  
Super. Ct. No. FCS037811)**

After plaintiff and appellant Lawrence Lee, Jr., was injured by a falling tree branch at a public park, he sued defendants and respondents City of Vallejo (City) and Greater Vallejo Recreation District (GVRD) for damages. Lee now appeals from the trial court’s grant of summary judgment to respondents. We affirm.

**BACKGROUND**

The following facts are not disputed. J.P. Hanns Memorial Park (Hanns Park) is owned by City and managed, operated, and maintained by GVRD, a public entity. There is a 13.56 acre eucalyptus tree grove in Hanns Park, commonly known as “Hanns Grove.” Prior to the incident at issue, GVRD employees regularly conducted visual inspections of the trees in Hanns Grove and trimmed branches as needed.<sup>1</sup>

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<sup>1</sup> Lee stated he had also “sometimes [seen] prison inmates pruning and cutting trees.” Even if true, the “prison inmate” status is not relevant to our resolution of this appeal.

Hanns Grove contains trails for hiking, nature study, and other recreation. One trail leads to a wooden footbridge (the footbridge), which crosses a creek. The footbridge is located in a heavily wooded area and is uncovered.

In October 2010, Lee visited Hanns Park, which he had visited on prior occasions to walk on trails and exercise. During the October 2010 visit, Lee stopped on the footbridge for 10 or 15 minutes to engage in a telephone call. There were no signs nearby warning of falling branches. Lee heard a cracking sound from above and attempted to run off the bridge. As he ran, one of the overhanging branches fell on top of him.

Lee sued respondents for damages, alleging claims under Government Code sections 815.2, 815.4, and 835,<sup>2</sup> as well as a common law premises liability claim. Respondents subsequently moved for summary judgment arguing, among other grounds, they were immunized from the lawsuit by sections 831.2 and 831.4. The trial court agreed respondents were immune from liability and entered judgment for respondents. This appeal followed.

## DISCUSSION

Lee contends the trial court erred in concluding sections 831.2 and 831.4 immunized respondents from this lawsuit.<sup>3</sup> We review the trial court's ruling de novo. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142.)

Section 831.2 provides: "Neither a public entity nor a public employee is liable for an injury caused by a natural condition of any unimproved public property, including but not limited to any natural condition of any lake, stream, bay, river or beach." Section

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<sup>2</sup> All subsequent section references are to the Government Code.

<sup>3</sup> The parties dispute whether other grounds can also support the summary judgment ruling. Because we agree with the trial court that respondents are immunized from the lawsuit, we do not discuss these other grounds. (See *Knight v. City of Capitola* (1992) 4 Cal.App.4th 918, 926, fn. 4 (*Knight*) [finding it appropriate to conduct dispositive statutory immunity analysis without first considering underlying liability], disapproved of on other grounds by *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532, fn. 7; accord, *Geffen v. County of Los Angeles* (1987) 197 Cal.App.3d 188, 192 (*Geffen*).)

831.4 provides, in relevant part, “A public entity . . . is not liable for an injury caused by a condition of: [¶] (a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas . . . . [¶] (b) Any trail used for the above purposes.”

The purpose of these provisions is set forth in formally adopted legislative committee comments, which provide, in part: “ ‘It is desirable to permit the members of the public to use public property in its natural condition and to provide trails for hikers and riders and roads for campers into the primitive regions of the State. But the burden and expense of putting such property in a safe condition and the expense of defending claims for injuries would probably cause many public entities to close such areas to public use. In view of the limited funds available for the acquisition and improvement of property for recreational purposes, it is not unreasonable to expect persons who voluntarily use unimproved public property in its natural condition to assume the risk of injuries arising therefrom as a part of the price to be paid for benefits received.’ ” (*Milligan v. City of Laguna Beach* (1983) 34 Cal.3d 829, 832-833, fn. omitted (*Milligan*)).) Where, as here, “the Legislature has stated the purpose of its enactment in unmistakable terms, we must apply the enactment in accordance with the legislative direction, and all other rules of construction must fall by the wayside.” (*Id.* at p. 831.) Accordingly, this express legislative intent guides our analysis below.

If applicable, the immunities afforded by sections 831.2 and 831.4 bar all of Lee’s causes of action. (*Milligan, supra*, 34 Cal.3d at pp. 832-833 [legislative committee comments state sections provide “ ‘absolute immunity’ ”]; see also § 815, subd. (b) [“[t]he liability of a public entity established by [part 2 (Liability of Public Entities and Public Employees) including §§ 815.2 and 815.4,] is subject to any immunity of the public entity provided by statute”].)<sup>4</sup>

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<sup>4</sup> In addition to the statutes identified in Lee’s complaint, Lee also argues respondents are liable under section 815.6 — providing liability for a public entity’s failure to perform a mandatory duty designed to protect against the resulting injury — due to a local ordinance he contends obliges the City to prune the trees in Hanns Park. We need

## I. Section 831.2

Despite Lee’s arguments to the contrary, we conclude the falling tree branch was “a natural condition of an[] unimproved public property,” thereby immunizing respondents under section 831.2 from the injury it caused.

### A. Unimproved property

Lee argues the trial court erred in finding the property was “unimproved.” We disagree.

Lee argues Hanns Park as a whole is regularly maintained and is, according to language in a lease agreement between the two respondents, operated pursuant to a “planned park and recreation site development program.” However, the relevant inquiry focuses only on the specific location at issue, not the park or area as a whole, because “improvements of a portion of a public park do not remove the immunity from the unimproved areas.” (*Mercer v. State of California* (1987) 197 Cal.App.3d 158, 165 (*Mercer*); accord, *Geffen, supra*, 197 Cal.App.3d at pp. 194-195; *Rendak v. State of California* (1971) 18 Cal.App.3d 286, 288.) “The reasonableness of this rule is apparent. Otherwise, the immunity as to an entire park area improved in any way would be demolished. [Citation.] This would, in turn, seriously thwart accessibility and enjoyment of public lands by discouraging the construction of such improvements as restrooms, fire rings, campsites, entrance gates, parking areas and maintenance buildings.” (*Mercer*, at p. 165, fn. omitted.)<sup>5</sup>

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not decide whether Lee properly pled this claim or should be granted leave to amend his complaint to add it because, if applicable, the immunities provided by sections 831.2 and 831.4 would bar this cause of action as well. (§ 815 (“[t]he liability of a public entity established by [part 2, which includes § 815.6] is subject to any immunity of the public entity provided by statute”); *Prokop v. City of Los Angeles* (2007) 150 Cal.App.4th 1332, 1337-1338 [rejecting argument “section 815.6 somehow ‘takes precedence’ ” over section 831.4].)

<sup>5</sup> Lee also emphasizes that Hanns Park is funded by taxpayers, but fails to explain the significance of this fact. Indeed, the public funding of parks — and its scarcity — is integral to the reason section 831.2 was enacted. (See *Milligan, supra*, 34 Cal.3d at p. 833.)

Turning to the trees in Hanns Grove, Lee contends the maintenance of the trees — inspection and removal of visible low-hanging or broken limbs — rendered them improved. “[T]o qualify public property as improved, so as to take it outside the natural condition immunity, the improvements must change the physical nature or characteristics of the property at the location of the injury to the extent that it can no longer be considered in a natural condition. [Citation.]” (*Mercer, supra*, 197 Cal.App.3d at p. 165.) The pruning and watering conducted in Hanns Grove did not so change the physical characteristics of the trees as to remove them from their natural condition.<sup>6</sup> This case is a far cry from *Buchanan v. City of Newport Beach* (1975) 50 Cal.App.3d 221, 224, cited by Lee, which involved conditions “created by the construction of a jetty, dredging sand from the channel of the harbor entrance adjacent to the jetty, and depositing the dredged sand on what had been submerged sand spits, raising the beach level by 27 feet and causing a steep slope from the shoreline into the water.” “We join the several subsequent cases that have distinguished *Buchanan* on its unusual facts.” (*Knight, supra*, 4 Cal.App.4th at p. 929.)

Lee also appears to argue that, because the footbridge he stood upon at the time of the injury was improved, the natural condition immunity does not apply.<sup>7</sup> A similar argument was recently rejected in *Meddock v. County of Yolo* (2013) 220 Cal.App.4th 170 (*Meddock*). In *Meddock*, a tree fell on the plaintiff as he stood in the parking lot of a county park. (*Id.* at p. 174.) The plaintiff contended that, because he was using an improved portion of the park — the parking lot — when he was injured, the natural condition immunity did not apply. (*Id.* at p. 175.) The Court of Appeal rejected this argument. “The statutory immunity extends to ‘an injury *caused* by a natural condition of any unimproved public property,’ ” and “although the injury *occurred* on improved

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<sup>6</sup> We note Lee does not contend the pruning itself caused his injury, for example, by cutting and weakening the branch that subsequently fell.

<sup>7</sup> To the extent Lee contends conditions of the footbridge itself were a cause of his injury — due to its lack of cover and/or placement under tree branches — respondents are immunized under section 831.4, as we discuss below.

property, that is, the paved parking lot, it was *caused* by the trees . . . located near — and perhaps super-adjacent to — the improved parking lot, but themselves on unimproved property.” (*Id.* at p. 177, fn. omitted.) The court concluded, based on the statutory language and express legislative intent, the immunity applied in such cases. (*Id.* at pp. 177-182.) We agree with this analysis. Lee’s location on the footbridge at the time of his injury does not remove the natural condition immunity.

B. “Hybrid” Condition

Lee argues respondents’ inspection and pruning of the trees in Hanns Grove induced park patrons’ reliance on such pruning being conducted in a nonnegligent manner. He contends his injury was therefore caused by a “hybrid” of natural and artificial conditions, and such hybrid conditions are not covered by section 831.2.

In arguing hybrid conditions are not covered by section 831.2, Lee relies on *Gonzales v. City of San Diego* (1982) 130 Cal.App.3d 882 (*Gonzales*). In *Gonzales*, the plaintiffs’ mother drowned at a city beach for which the city provided lifeguard protection. (*Id.* at pp. 883-884.) The complaint alleged the drowning took place during dangerous riptide conditions, yet the city failed to post warnings or mark the beach as unsafe, thereby creating a reasonable expectation of safety on which the decedent relied when she went swimming. (*Id.* at pp. 884-885.) Thus, the court found, the cause of the injury was “a hybrid dangerous condition, partially natural and partially artificial in character,” specifically, “the existence of a natural dangerous riptide condition, plus [the city’s] voluntarily providing lifeguard service . . . , and its performing that voluntarily assumed service negligently by failing to warn of the known, hazardous, natural condition.” (*Id.* at pp. 885-886.) Under such circumstances, *Gonzales* held, the natural condition immunity does not apply. (*Id.* at pp. 886-887.)

As an initial matter, we note a number of subsequent cases have rejected *Gonzales*’s holding that such hybrid conditions can abrogate the natural condition immunity. (*Morin v. County of Los Angeles* (1989) 215 Cal.App.3d 184, 190-191 [“we decline to follow the ‘hybrid condition’ rationale created by *Gonzales*”]; accord, *Tessier*

*v. City of Newport Beach* (1990) 219 Cal.App.3d 310, 315-316; *Geffen, supra*, 197 Cal.App.3d at pp. 192-193.)

We need not decide whether *Gonzales* is still good law, however, because Lee failed to present critical evidence. Although Lee's declaration states he witnessed employees pruning trees on his previous visits to Hanns Park, he submits no evidence he relied on that tree pruning in deciding, in October 2010, to enter Hanns Park or to linger on the footbridge. "As the justice who wrote the *Gonzales* opinion subsequently pointed out, '[t]he role of reliance within *Gonzales* is significant, for absent reliance the City's conduct would not have been an allegedly independent, contributing and concurring cause of the decedent's drowning.' [Citation.]" (*Knight, supra*, 4 Cal.App.4th at p. 930.) Where, as here, a defendant moves for summary judgment and submits undisputed evidence that a natural condition on unimproved public property caused the plaintiff's injury, and the plaintiff fails to submit evidence that an additional cause was the plaintiff's reliance on conduct by the defendant, summary judgment for the defendant is proper. (*Ibid.* [because "there is no evidence that [the plaintiff] in any sense relied on" the defendant's conduct, "[s]ummary judgment was properly granted"]; *Valenzuela v. City of San Diego* (1991) 234 Cal.App.3d 258, 262 [because "[t]here is no evidence to suggest [the plaintiff] . . . relied upon [the city's conduct]," "the court properly entered summary judgment in favor of the city"].) Accordingly, *Gonzales* does not bar the award of summary judgment to respondents.<sup>8</sup>

Lee also contends respondents' failure to warn him of the possible danger of falling branches was a contributing cause of the injury. He submits evidence that, had such a warning sign been present, he would not have lingered on the footbridge. However, it is well settled that, "absent any affirmative conduct on the part of [a public entity] which contributed to the degree of dangerousness of the natural condition, the absolute immunity under section 831.2 immunizes a public entity from liability under section 835 for failing to warn of known dangerous natural conditions." (*McCauley v.*

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<sup>8</sup> To the extent Lee raises the same argument with respect to respondents' maintenance and repair of the footbridge, we reach the same result.

*City of San Diego* (1987) 190 Cal.App.3d 981, 993; accord, *Arroyo v. State of California* (1995) 34 Cal.App.4th 755, 764; *City of Santa Cruz v. Superior Court* (1988) 198 Cal.App.3d 999, 1006; *Mercer, supra*, 197 Cal.App.3d at p. 167.)

Accordingly, the *cause* of Lee’s injury was a “natural” condition on “unimproved” public property, and respondents are immunized under section 831.2.<sup>9</sup>

## II. Section 831.4

Lee also argues conditions of the footbridge — its location among the trees and its lack of cover — caused his injury. To the extent conditions of the footbridge are the cause, section 831.2 does not apply. However, we find section 831.4 does apply.

Section 831.4 applies to “[a]ny trail used for [certain] purposes” (subd. (b)), including “hiking” (subd. (a)). Respondents presented evidence the footbridge was an integral part of a hiking trail in Hanns Grove; Lee has not disputed this. Instead, Lee focuses on the facts that the footbridge was an improvement maintained by respondents.

“[T]he appellate courts have so far unanimously interpreted the current wording of section 831.4, subdivision (b) to apply full immunity to any trail, paved or unpaved.” (*Farnham v. City of Los Angeles* (1998) 68 Cal.App.4th 1097, 1103.) The maintenance of the footbridge also does not bear on the applicability of section 831.4. (See *Montenegro v. City of Bradbury* (2013) 215 Cal.App.4th 924, 928, 930-931 [regularly maintained pathway is “trail” for purposes of § 831.4].)

Contrary to Lee’s contention, *Treweek v. City of Napa* (2000) 85 Cal.App.4th 221 (*Treweek*) is distinguishable. In *Treweek*, the plaintiff was injured on a city-owned boat ramp. The trial court granted defendant’s motion for judgment on the pleadings on the ground the defendant was immunized under section 831.4. (*Id.* at p. 223.) The Court of Appeal reversed, finding a boat ramp is not a trail and “[n]othing in the complaint or in

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<sup>9</sup> The statement of facts included in Lee’s opening brief notes eucalyptus trees are not native to California and suggests they are therefore not a “natural” condition. However, this contention is neither presented under a separate heading in the argument section nor supported by citation to relevant authority and is therefore forfeited. (*In re Marriage of Carlsson* (2008) 163 Cal.App.4th 281, 294; *Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830-1831, fn. 4.)

any other pleading suggests that the boat ramp is connected at either end to a path arguably constituting a ‘trail’ within the meaning of section 831.4.” (*Id.* at pp. 233-234.) In contrast, respondents have submitted undisputed evidence the footbridge was an integral part of a recreational trail in Hanns Grove.

Moreover, as *Treweek* noted, application of section 831.4 in such cases is consistent with legislative intent, because “it is not unreasonable to fear that the mere specter of liability might persuade public entities to close trails now open to the public if the immunity provided under section 831.4 did not apply to *footbridges*, wooden walkways, stairways, ramps or other constructions that are part of and essential to the ordinary use of an immunized ‘trail.’ [Citation.]” (*Treweek, supra*, 85 Cal.App.4th at p. 233, italics added.) Lee has failed to demonstrate section 831.4 does not apply to the footbridge.

#### DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal.

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SIMONS, J.

We concur.

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JONES, P.J.

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NEEDHAM, J.