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SUPREME COURT, STATE OF COLORADO
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Opinion by the Court of Appeals
Case No. 2011CA2141, Fox, J.; Carparelli, J. dissenting.

Appeal from Arapahoe County District Court
Case No. 2011CV664, The Hon. Gerald J. Rafferty

SARA L. BURNETT,

Petitioner,

v.

STATE OF COLORADO/DEPARTMENT OF NATURAL RESOURCES/DIVISION OF PARKS & OUTDOOR RECREATION,

Respondent.

▲COURT USE ONLY▲

Case No: 2013SC306

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PETITIONER'S AMENDED REPLY BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

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For the party raising the issue:

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❑For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

☑I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

/s/ *Timms R. Fowler*
Timms R. Fowler

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I. SUMMARY

The State sets forth the same facts as those relied upon by Burnett (Answer Brief at 8-11). The State also acknowledges that the Colorado Governmental Immunity Act (CGIA) must be construed to give effect to its plain language and ordinary meaning (*Id.* at 15-16). Finally, the State concedes that the CGIA must be construed broadly as to waiver, and construed narrowly as to immunity (*Id.* at 16).

Nevertheless, the State's fundamental position is that the cottonwood trees are not part of Campsite No. 14 and, therefore, the recreational waiver set forth by C.R.S. § 24-10-106(1)(e) does not apply to Burnett's injuries. The State's position, although well-articulated, is untenable as a matter of fact and law.

The State does not view the facts realistically or in accord with the plain text, ordinary meaning, and structure of the CGIA. Instead, the State misconstrues the CGIA by departing from its plain text, reading it narrowly and artificially, which is the error made by the district court, the court of appeals in this case, and the division in *Rosales v. City & County of Denver*, 89 P.3d 507 (Colo. App. 2004).

Here, the stipulated facts and photographs of Campsite No. 14 establish that the trees are part of Campsite No. 14, the trees are part of the campground overall, and the trees are part of the improved public facilities used by Burnett when she

was injured. Burnett was injured while using the improved facilities of Campsite No. 14 just as the State had intended and invited her to use those facilities.

Burnett was using Campsite No. 14 for overnight camping, and she was in her tent located on the *improved* tent pad when she was injured. Campsite No. 14, its improvements, and its improved tent pad are all nestled in, among, and beneath a stand of cottonwood trees as admittedly designed, built, and maintained by the State.

The State's assertions that Burnett's injuries were not caused by her use of the facilities or the physical condition of Campsite No. 14 are contrary to the record. The State attempts to view the trees in absolute isolation — separate and apart from the design, purpose, use, condition, and proximity of Campsite No. 14's facilities. The State views the trees purportedly as purely natural features, existing merely in their natural state, and situated on wholly unimproved property. The State's views, however, are not well founded.

If the trees were not incorporated into Campsite No. 14, as the State contends, then Burnett would not have been injured. Burnett could not have been injured by the falling branch if the trees had no impact upon the use, or physical condition, of Campsite No. 14. Nevertheless, Burnett was using the campsite as designed, situated, intended, and provided when she occupied her tent pitched on

the improved tent pad and the branch fell from a tree above causing her injuries. Accordingly, Burnett's injuries fall within the scope of the recreational waiver and the definition of a dangerous condition.

II. ARGUMENT

A. In its Answer Brief, the State now concedes that the trees in, around, and overhanging Campsite No. 14 were made part of the site because they were included as part of the State's "design."

The State's argument that the trees were not sufficiently "integrated" into Campsite No. 14 to constitute part of those facilities fails for a host of reasons set forth in Burnett's Opening Brief and as discussed more below.[1] However, the State now concedes, in its Answer Brief, that the "risk of the branches falling" on a camper was "designed into" the campsite. Answer Brief at 16-22. As such, the State's assertions that the trees are not part of the campsite, do not impact the campsite's physical condition, and do not impact the campsite's use, are unavailing.

The State explicitly asserts that the "risk of branches falling from the trees onto the campsite was thus *inherent in the design* and accepted [by the State] at the time the campground was constructed." *Id.* at 18 (emphasis added). By arguing that immunity exists based on solely the "design risk" posed by situating the

[1] Opening Brief at 10-11, 13, 20-26.

campsite in, among, and under the trees, the State concedes that the trees were "designed into" the campsite. *See id.*

Because the trees are part of the "design" of Campground No. 14, it follows that the trees were integrated "by design." Therefore, the trees "by design" impact the use and physical condition of Campsite No. 14. *See id.* The State's concession undercuts, if not refutes, the State's unfounded assertions that the trees had no impact on the physical condition of Campsite No. 14 or Burnett's use of the campsite. *See* Answer Brief, Section III. A. and B. at 22-28.

The State's arguments about design support Burnett because her injuries were not caused by merely the design alone. Her injuries resulted from the trees' growth over many years, the aging of the trees, the deterioration of the trees, the lack of maintenance, and the falling branch, which struck Burnett at night while in her tent pitched on the improved tent pad.

The Park was established in 1959, and the State contends that the trees in, around, and overhanging Campsite No. 14 existed when it was built. Hence, the trees supposedly were "original equipment" in a sense. Therefore, the trees were at least 51 years old when the branch fell and injured Burnett on July 18, 2010. Moreover, as the State admits, it pruned and maintained the trees before Burnett was injured. Answer Brief at 7.

The new effort by the State to seek immunity based solely upon a design defect fails. The argument was not preserved or presented below. *See* Motion to Dismiss, R:31-38; Answer Brief in the court of appeals.

The State admits in its Answer Brief that its motion to dismiss was narrow and limited to just whether the trees were part of a public facility. Answer Brief at 6. *See also* Motion to Dismiss, R:31. Moreover, Burnett alleged a failure to maintain the trees was a cause of her injuries.[2] But, more importantly, Burnett's allegations, not put at issue by the State's limited motion to dismiss, show that the State admittedly maintained the trees of Campsite No. 14 as part of those facilities.

The State stipulated that the trees had been pruned in the past. "Park personnel, or individuals contracted by the Park, had trimmed trees adjacent to the improved campsite on past occasions." Answer Brief at 7, Opening Brief at 5-7; R:56, R:67, 76-77 (¶6 of the stipulated facts). Burnett's photographs also depict a

[2] Burnett alleged that the State through its employees, agents, and representatives was aware of the dangerous condition of the trees, meaning the dead branches on trees surrounding the campsites, and that before Burnett was injured, the State had taken precautions to protect the public by trimming the dead branches. R:7, ¶27.

Burnett also alleged that the State knew of the danger posed by the cottonwood trees immediately adjacent to the designated campsites and that dead branches falling from the cottonwood trees would pose a danger to campers. R:7, ¶28. She also alleged that the knowledge of the danger was evident to the State based upon its admitted prior practice to prune or trim the cottonwood trees immediately adjacent to and overhanging the area where Burnett pitched her tent before she was injured. R:7, ¶28.

tree where a branch had been pruned or sawed off. R:56 (Appx. 1 to Opening Brief). Therefore, Burnett's injuries were not the sole result of a design defect.

In opposing the State's motion to dismiss, Burnett contended that the State must have been aware of the danger from falling branches as evidenced by the steps taken to eliminate the dangerous condition depicted by the branch that had been pruned. R:49, 55-57. Furthermore, according to a statement by a park ranger, the State used to trim and remove dead tree limbs. R:57. Burnett asserted that the State, despite knowing of the danger to campers, made a "conscious decision to stop trimming the dead branches." R:49, 55-57. Burnett argued there had been "no storm or wind, and she had no way of knowing the campsite specifically designated for overnight camping could lead to severe injury from a falling tree limb." R:57.

The State's motion to dismiss, however, was limited to the "question of whether the trees were part of a 'public facility.'" Answer Brief at 6. Therefore, the district court did not address whether a design defect was the *sole cause* of Burnett's injuries, or whether maintenance was *a cause* of Burnett's injuries as alleged.

In any event, the State now concedes that as laid-out, built, and improved, Campsite No. 14 places campers at risk to be injured by falling tree limbs based

upon the campsite's original "design" as accepted by the State in 1959. Thus, the trees in, around, and overhanging Campsite No. 14 are part of those facilities.

B. The State fails to view Campsite No. 14 as a "functional system" as mandated by this Court.

Any purportedly natural features should be viewed with the man-made features in a unified and functional way. Here, the State fails to consider the campground, and specifically Campsite No. 14, as a functional system used to facilitate and promote the purpose of overnight camping. No discrete line exists between the purportedly purely natural features, the trees, and the constructed improvements of the electrical hookup, sewer hookup, paved pad, gravel pad, table, etc. That is so because the trees were "designed into" Campsite No. 14 as the facts and photographs establish and the State effectively concedes.

When construing a waiver pertaining to a dangerous condition of a public facility, the facility must be viewed as a functional system. *See State v. Moldovan*, 842 P.2d 220, 223-24 (Colo. 1992). *Moldovan* analyzed *Stephen v. City & County of Denver*, 659 P.2d 666, 668 (Colo. 1983), which evaluated the provisions granting the waiver for public roads and highways, pursuant to C.R.S. § 24-10-106(1)(d). The Court concluded that the "legislative emphasis on maintenance of roads and highways in a condition that promotes the safe movement of traffic

reflects concern that those *facilities function* in a way consistent with that purpose." *Stephen*, 659 P.2d at 668 (emphasis added); *Moldovan*, 842 P.2d at 224.

Moldovan explained that "[v]iewing a road and street system functionally, it is apparent that stop signs are integral parts of roads and highways." *Moldovan*, 842 P.2d at 224. *See also Medina v. State*, 35 P.3d 443, 458 (Colo. 2001).

"We believe that to construe 'dangerous condition' to be limited to the physical condition of the road surface gives too cramped a reading to the statute and ignores the purpose for which this exception to sovereign immunity was created." *Id.*

In *Medina*, the Court explained that the subject highway was "built without shoulders, without ditches, and with very steep highway clearance rock cuts. Inherent in such a design is a risk of rocks dislodging from the cut slope and striking vehicles traveling below." *Medina*, 35 P.3d at 460 (the slopes were cut and altered, and not in their natural condition).

Here, the State admitted that Campsite No. 14 is a highly improved site. It contains amenities including electrical hookup, utility hookup, sewer hookup, parking area, picnic table, and an improved tent pad for camping. Having laid-out, built, and improved Campsite No. 14, the State admits that by "design" it placed campers at risk to be injured by tree limbs falling upon them from the adjacent

trees. This is similar to the risk of a cow wandering onto the roadway surface in *Moldovan* and risk of a boulder tumbling down onto the roadway striking the claimant's car in *Medina*.

The Court in *Medina* stated that the "real question is whether the plaintiffs' injuries were solely attributable to the risk of rocks falling inherent in the original design of the slope – or whether their injuries were at least *partly* attributable to an increase in the risk of rocks falling that developed over time as a result of lack of maintenance." *Medina*, 35 P.3d at 460 (emphasis added). Here, the State admits performing maintenance on the trees in the campground by pruning them.

The State sufficiently incorporated the trees into the campground facility, and specifically the facilities of Campsite No. 14, to warrant maintenance. The State would not trim or prune the branches of trees in their purely natural condition located on wholly unimproved property. *See* C.R.S. § 24-10-103(2.5) ("'Maintenance' means the act or omission of a public entity … in keeping a facility in the same general state of repair or efficiency as initially constructed *or in preserving a facility from decline or failure.*") (emphasis added).

Here, Burnett was injured not merely because of the risk posed by a falling branch "inherent in the design" of Campsite No. 14, but because her injuries "were at least partly attributable to an increase in the risk" of branches "falling that

developed over time as a result of lack of maintenance." *Id., see Medina*, 35 P.3d at 460. Accordingly, the State waived its immunity with regard to the injuries sustained by Burnett.

With regard to causation, the State waived immunity by creating the dangerous condition whereby Burnett was hit by a falling tree branch, while sleeping on the improved tent pad provided by the State. Her use was of an extended duration, meaning overnight, while her vigilance was relaxed. Burnett was invited to use and did use the campground, and specifically Campsite No. 14, precisely as the State had intended and invited her to use it.

Contrary to the State's fears about unlimited liability (Answer Brief at 31-32), this Court need not decide whether immunity is waived where a visitor frolics in a meadow, or hikes along a trail, and passes a tree in an unimproved portion of the park and is hit by a falling branch. Burnett's case is different.

The recreational waiver is limited explicitly in its scope by the *plain text* of § 24-10-106(1)(e) to include only dangerous conditions of a recreational facility and to exclude all natural conditions on unimproved property. Therefore, no unlimited liability exists and the "parade of horribles" is unfounded. Also, the clarity of the text renders the purported "legislative history" espoused by the State irrelevant.

Burnett was using the *improved* campsite situated in and among a stand of cottonwood trees when she was injured by the falling branch. The State situated the tent pad immediately in, among, and underneath a stand of cottonwood trees. The State now admits it created the "risk of injury" from falling branches "by design." No natural condition located on unimproved property caused Burnett's injuries. The State's assertions to the contrary are unfounded.

C. Burnett's injuries fall within the recreational waiver of C.R.S. § 24-10-106(1)(e) because her injuries were caused by the physical condition of the improved campsite and the use of the campsite as intended.

1. Introduction.

The facts and photographs of Campsite No. 14 support Burnett's position that the State waived its immunity because her injuries were caused by the condition and use of the camping facilities located on improved property, specifically Campground No. 14. The State ignores the fact that Burnett was injured while she *occupied* the improved facilities.

The stipulated facts and photographs establish that the trees are part of Campsite No. 14 and its facilities at the "campsite level." The stipulated facts and photographs also establish that the trees are part of campground and its facilities at the "campground level." Burnett's position is consistent with the text and structure of the CGIA, as well as how this Court has directed that it be construed.

2. Burnett's injuries were caused by the physical condition of Campsite No. 14 as built, situated, and maintained.

The physical condition of the Campsite No. 14 includes the adjacent and overhanging cottonwood trees. The CGIA does not provide any explicit definition or limit on what constitutes the physical condition of a facility and does not define what constitutes a "public facility" with regard to a park or recreational area.

However, "in *Walton* distinguishing *Jenks* demonstrates that the case-by-case jurisdictional inquiry methodology requires courts to take into account varying definitions of 'physical condition,' 'constructing,' and 'maintaining.'" *Padilla ex rel. Padilla v. School Dist. No. 1 in City & County of Denver*, 25 P.3d 1176, 1181 (Colo. 2001).

"For example, in discussing a 'physical condition' in *Jenks*, we referred to a 'structural defect in the building.' While such a structural defect is a 'physical condition' within the immunity waiver, we held in *Walton* that this term also includes other physical conditions that the governmental entity creates in association with constructing or maintaining a facility." *Padilla*, 25 P.3d at 1181 (citing *Jenks v. Sullivan*, 826 P.2d 825, 830 (Colo. 1992)).

Here, the pictures of Campsite No. 14 are compelling and the stipulated facts establish that the State designed, built, situated, maintained, and provided this improved campsite in, among, and under the cottonwood trees from which the

branch fell injuring Burnett. *See* the photographs (attached as Appendix 1 to Opening Brief) and the stipulated facts. Whether or not other campsites were nestled in, among, and under other cottonwood trees is irrelevant, because only Burnett's use of Campsite No. 14 is at issue here.

As Burnett contended on appeal and the dissent explains, to conclude the trees are not effectively part of the campsite facilities because the trunks are not completely surrounded by some man-made improvement is contrary to common sense — as well as the purpose, intent, and text of the CGIA. *Burnett v. State*, 2013 COA 42, 2013 WL 1245366, __ P.3d __ (2013), dissent at ¶¶49-50, 53-67.

Nothing in the CGIA precludes a natural feature from being incorporated into a facility especially where the natural feature runs under, around, and over the man-made improvements. *See City of Colorado Springs v. Powell*, 48 P.3d 561, 566 (Colo. 2002) ("The city seeks to narrow the scope of section 24-10-106(1)(f) to negligence regarding the concrete flume through which the water runs. Such a narrow view disregards the reality that areas immediately surrounding a facility often affect the overall condition of the facility."). The photographs show a tree is situated in the campsite and located between the picnic table and paved portion of the campsite.

Here, the State stipulated that Campsite No. 14 was an improved, public facility. R:67; 74, ¶6; 75, ¶8. Viewing Campsite No. 14 as a functioning facility, the trees are visibly incorporated into the campsite. That is consistent with the State's admission that the trees were included "by design," as discussed above.

Furthermore, the trees certainly are located inside of the designated campground itself. The State stipulated that the Park contained a "designated camping area." R:74, ¶6. Moreover, the State stipulated that "*Plaintiff was camping in a tent at Cherry Creek State Park in a designated camping area, at an improved campsite, at the time she was injured*." R:67, ¶2 (emphasis added).

The impact of the trees on the physical condition of Campground No. 14 is further established because the State stipulated that the branch which struck Burnett fell from an adjacent tree. R:67, ¶4; 74, ¶7; 75, ¶9.

If the trees were remote and not part of this campsite, Burnett could not have been injured by the trees when using the site. The admitted mechanism of injury includes the trees as a causal factor. *See, e.g., Powell,* 48 P.3d at 566; *Medina; Moldovan.*

The trees affected the physical condition of Campsite No. 14 as an improved camping facility. Therefore, Burnett's injuries fall within the recreational waiver even if the trees' trunks are not located precisely within a fabricated improvement,

as discussed above. *See Burnett*, dissent at ¶66. The plain text and ordinary meaning of the recreational waiver are broad and do not limit the scope of the waiver as the State construes it.

3. Burnett's injuries were caused by using Campsite No. 14 as intended and as the facility was provided to her.

The General Assembly waived immunity for Burnett's injuries because she was injured while using the campground facilities precisely as intended by the State. Burnett was injured at night while sleeping in her tent that was pitched in the campground, specifically in Campsite No. 14, which was highly improved.

Burnett's injuries did not arise from a rogue, third-party intervening tortfeasor as in *Jenks v. Sullivan*, 826 P.2d 825, 827 (Colo. 1992), *overruled in part on other grounds*, *Bertrand v. Bd. of County Commrs. of Park County*, 872 P.2d 223, 227 (Colo. 1994).

Jenks indicates that the use need only be related to the "state" of a public facility to constitute a dangerous condition. This Court has noted that the "linchpin of our 'use' inquiry under *Jenks* is that 'the statute refers to an injury arising from the state of the building itself *or the use of a state of the building*.'" *Walton v. State*, 968 P.2d 636, 645 (Colo. 1998) (quoting *Jenks*, 826 P.2d at 827).

"Although in *Jenks* we said the words 'use thereof' in that phrase modify 'physical condition,' we then employed a broad description of 'physical condition'

to include a '[m]ode or state of being; state or *situation*.'" *Padilla*, 25 P.3d at 1181 (quoting *Jenks*, 826 P.2d at 827) (emphasis added).

Here, the proximity of the trees impacted the "state" of the subject camping facility and how the facility was "situated." The State admits the trees were part of the campsite's "design" as discussed above. The canopy towering above the campsite impacted the state of the site and its use. Therefore, Burnett's use falls within the second definition of a dangerous condition based on the "use" of a public facility that allegedly poses an unreasonable risk of harm.

D. How the State "designed," situated, and maintained Campsite No. 14 relative to the trees establishes that the trees are not merely a natural condition located on unimproved property.

Burnett's injuries do not fall within the purview of the stated exception to the recreational waiver for injuries "caused by the natural condition of any unimproved property" set forth in § 24-10-106(1)(e). The trees' natural condition was altered by the State's placement of a highly improved campsite under their canopy, over their roots, and within inches of their trunks. Trees do not naturally nestle themselves around, under, and over a highly improved campsite. Therefore, the cottonwood trees ceased to be in their natural condition long before Burnett was injured.

The State also admitted that it had maintained the trees by pruning them (R:67, ¶6), which removed them from their natural condition. They were pruned or trimmed, and thereby maintained by the State as part of the campground and Campsite No. 14. *See id.*

The trees ceased to be a natural condition because of such maintenance. Accordingly, Burnett's injuries were caused by the physical condition of the Campsite No. 14 and not a natural condition of some unimproved property.

Finally, the trees' roots reached under the improved campsite, the trees' canopy arched over the campsite, and their trunks surrounded the paved and gravel pads, all as depicted in Burnett's photographs. One tree sits between the picnic table and paved pad.

E. The purported legislative history relied on by the State is irrelevant and unpersuasive given the plain text of the statutory provisions, the structure of the CGIA, and the fact that the purported legislative history is not the law.

The plain text and structure of the CGIA support Burnett's position and the dissenting opinion. The CGIA provides only two stated exceptions to the recreation waiver. One is for backcountry landing facilities. The second exception, of course, is for the natural condition of unimproved property. That exception is inapplicable, as discussed above.

The plain text of the recreational waiver and the existence of those two exceptions demonstrate that the General Assembly could have limited the scope of the recreational waiver or created explicit exceptions for campgrounds or campsites, but did not do so. Accordingly, any purported legislative history cannot add to or alter the plain text and structure of the CGIA. Any such material is irrelevant today.

In 2002, the General Assembly carved out an exception from the recreational waiver for backcountry landing facilities. In creating that exception, the General Assembly expressly included all the "appurtenant" natural features, including "any land or water appurtenant to such area". C.R.S. § 24-10-106(1.5)(c).[3] Therefore, by implication, if such appurtenant land must be explicitly included in the exception, such appurtenant lands would otherwise be subject to the waiver. Therefore, the trees appurtenant to Campsite No. 14 are included in the waiver of immunity.

The State, however, ignores this structural feature and recent amendment to the recreational waiver and does not address it. Instead of dealing with the plain

[3] 2002 Colo. Legis. Serv. Ch. 26 (S.B. 02–105) (West).

text and structure of the CGIA, the State retreats to look for some gloss in an outdated and equivocal report created in 1968.

The General Assembly could have narrowed the scope of the recreational waiver or created an explicit exception regarding campsites or camping facilities, but did not do so. Similarly, the General Assembly could have created an explicit exception for adjacent trees, but did not. The State, therefore, cannot rely on a report from 1968 to alter the plain text and structure of the CGIA as it has been amended in 2002, long after the Act's enactment in 1971.

Absent some limiting definition provided by the General Assembly, the term "facility" should be given its ordinary and broad meaning. Burnett addressed this issue in her Opening Brief at 28, 35, 37-38, but the State avoids any discussion of the sweeping and ordinary meaning of the word "facility."

However, viewing Campsite No. 14 as a functional facility, considering its design, intended use, and historical maintenance, that includes pruning the overhanging trees, those trees are part of the campsite's facilities and more generally the campground's facilities.

F. *Rosales* is distinguishable from the facts presented by Burnett.

The nature and extent of the improvements of Campsite No. 14 distinguish this case from the mere picnic table in *Rosales*. Campsite No. 14 was designed,

built, and maintained to provide for overnight camping with amenities such as electricity, sewer hookup, and a designated tent pad. As such, Campsite No. 14 is an improved public facility, as discussed above.

Campsite No. 14 is also part of the campground overall, which is a public facility improved and designated by the State. As such, both the campground and specifically Campsite No. 14 fall within the scope of the waiver for park and recreation facilities.

The division in *Rosales* was not presented with any of the facts presented here proving that the property was highly improved or that the trees involved had been maintained. The existence of just a picnic table in *Rosales* does not compare to the level of the improvements made to Campsite No. 14. Accordingly, *Rosales* is distinguishable on the facts.

III. CONCLUSION

As the most basic level, the State of Colorado waived immunity for Burnett's injuries because they are the direct result of using the improved facilities located in a dedicated, public park maintained by the State, as set forth by the provisions of C.R.S. § 24-10-106(1)(e).

More specifically, a waiver of immunity exists because Burnett's injuries were the direct result of using the improved *campground* facilities located in

Cherry Creek State Park as those camping facilities were intended to be used and as they were provided to Burnett. *See id.*

Finally, at the most detailed level, a waiver of immunity exists because Burnett's injuries were admittedly the direct result of using a highly improved *campsite*, Campsite No. 14. Burnett used the improved site as intended and doing what the State had invited her to do — camp in her tent at night, on an improved tent pad, which the State situated in, among, and beneath a stand of cottonwood trees. And the State admits it pruned the adjacent trees and thereby maintained them before Burnett was injured. *See id.*

The State admits that the trees were "designed into" the campsite itself. The photographs of Campsite No. 14 depict that the tree trunks adjacent to that improved campsite are part of the campsite. The campsite is situated in, among, and beneath the trees. They surround and overhang the improved tent pad. The trees' trunks are within inches of the campsite's improvements. The trees also impact the condition and use of the campsite as a facility.

The State, district court, and the majority opinion each view the evidence too narrowly. They also read the text of the recreational waiver too narrowly. They have frustrated the General Assembly's intent to waive immunity for injuries to the public from dangerous conditions when using recreational facilities. Therefore,

dismissal of Burnett's Complaint and the court of appeals' affirmance should be reversed. The case should be remanded and Burnett's Complaint reinstated.

RESPECTFULLY SUBMITTED this 29th day of April, 2014.

LAW FIRM OF ALAN G. MOLK

/s/ *Alan G. Molk*
Alan G. Molk

THE FOWLER LAW FIRM, LLC

/s/ *Timms R. Fowler*
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of April, 2014, the foregoing **PETITIONER'S AMENDED REPLY BRIEF** was filed with the Court and served via ICCES to the following:

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Pursuant to C.A.R. 30(f), this document with original signatures will be maintained by the filing party and made available for inspection by other parties or the Court upon request.