

**FIRST DIVISION
BARNES, P. J.,
MARKLE and HODGES, JJ.**

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September 1, 2026

In the Court of Appeals of Georgia

A26A1281. CITY OF ATLANTA v. QUERISMA.

HODGES, Judge.

Jonathan Querisma filed this premises liability action against the City of Atlanta (the “City”) after he was shot at a public park. The City moved for summary judgment, contending that it is immune from liability under the Recreational Property Act (“RPA”), OCGA § 51-3-20 et seq. Following the trial court’s denial of summary judgment, we granted the City’s application for an interlocutory appeal. We affirm the denial of the City’s summary judgment motion.

“We review the trial court’s ruling on summary judgment de novo, viewing the evidence, and all reasonable inferences drawn therefrom, in the light most favorable

to [Querisma as the] nonmovant.” *Trotter v. Tucker Football League*, 364 Ga. App. 811, 812 (875 SE2d 474) (2022) (punctuation omitted).

So viewed, the evidence shows that on November 25, 2018, Querisma was a guest at a baby shower held at the recreation center in Grant Park. Querisma stayed at the baby shower for a few hours, then went outside to talk on the phone. A group of youths and teenagers were throwing a football around and shooting baskets on the basketball court. They recognized Querisma, a rapper who also had pursued a professional football career, and asked him for money. He gave them some five-dollar bills and tossed a ball around with them, intermittently walking in and out of the recreation center.¹ When Querisma started sweating, he removed money and other items from his pockets, wrapped his shirt around them, and set them on the ground. Then, Querisma saw men approaching him with guns. They asked for the money they had seen him put on the ground. Querisma alleges on appeal that the money totaled “more than ... \$3,000[.]” A tussle ensued, and Querisma was robbed and shot

¹ Although the City’s appellate brief notes that a witness stated that Querisma was playing competitive football for money, and Querisma deposed that he was just throwing a ball around and not betting on games, the City presents no argument regarding this information on appeal, so we do not address it further.

multiple times in the leg, his arm was injured, and he was beaten in the head with a gun.

Querisma sued the city, raising claims of premises liability and nuisance, and alleging that the City knew of other violent crimes at Grant Park and had negligently failed to remedy a known dangerous condition. The City moved for summary judgment, arguing that it is protected from suit through the RPA, and that there is no evidence it waived this immunity by acting maliciously or willfully in failing to guard or warn him. In a brief order, the trial court denied the motion, finding there are genuine issues of material fact requiring jury resolution.

1. The City argues that the trial court erred in denying its summary judgment motion because it is immune from suit under the RPA. We disagree.

The RPA’s purpose is to “limit[] liability for property owners who make their property available to the public for recreational purposes.” *McLamb v. Mayor and Aldermen of Savannah*, __ Ga. __ (2026), S26G0149, slip op. at 1 (Ga. Aug. 11, 2026) (punctuation omitted).

With certain exceptions, the Act gives immunity to those who, without charge, allow the public to use their property for recreational purposes. The codified purpose of the Act, as set forth in OCGA § 51-3-20, “is to

encourage owners of land to make land and water areas available to the public for recreational purposes by limiting the owners' liability toward persons entering thereon for recreational purposes.”

Id. at slip op. 6(II)(A) (citation and punctuation omitted). OCGA § 51-3-23 establishes that:

Except as specifically recognized by or provided in Code Section 51-3-25, an owner of land who either directly or indirectly invites or permits without charge any person to use the property for recreational purposes does not thereby: (1) Extend any assurance that the premises are safe for any purpose; (2) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed; or (3) Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such persons.

OCGA § 51-3-22 further outlines the scope of immunity, providing that:

Except as specifically recognized by or provided in Code Section 51-3-25, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for recreational purposes.

The exceptions to immunity under the Act are listed in OCGA § 51-3-25, which provides:

Nothing in this article limits in any way any liability which otherwise exists:

(1) For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity; or

(2) On a date when the owner of land charges any individual who lawfully enters such land for recreational use and any individual is injured in connection with the recreational use for which the charge was made[.]

Finally, OCGA § 51-3-21(4) defines “[r]ecreational purpose” by listing examples of such activities, which include, “but [are] not limited to, any of the following or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, aviation activities, nature study, water skiing, winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites.”

We turn first to OCGA § 51-3-23’s statement regarding immunity in instances where the owner of the land invites or allows someone to use its property for recreational purposes “without charge.” The record shows that the host of the baby

shower paid \$330.00 to the City to rent the space, but Querisma, as a guest at the shower, was not charged anything.

Under OCGA § 51-3-25(2), as cited above, the City is not immune under the Act if “the owner of land charges *any individual* who lawfully enters such land for recreational use *and any individual* is injured in connection with the recreational use for which the charge was made[.]” (Emphasis added.) The plain language of the statute does not render the City immune simply because Querisma entered the property free of charge, and the City does not argue that his injury occurred outside of any “connection” with the recreational use for which the baby shower’s host was charged.²

The City counters that it is immune based upon *Mayor and Aldermen of the City of Garden City v. Harris*, 302 Ga. 853 (809 SE2d 806) (2018). We note at the outset, however, that *Harris* construes OCGA § 51-3-25 (1965), a different version of the

² On appeal, the City does not argue that the baby shower does not qualify as a recreational purpose under the Act, nor does it argue that Querisma was engaging in anything other than recreational pursuits when he was shot. See generally *McLamb*, slip op. at 5-6(II). In fact, the City specifically states on appeal, as it did in the trial court, that it is “[s]etting aside” any contention regarding “the unusual nature of [Querisma’s] activities on the day that he was shot[.]” As a result, we do not address these issues further.

statute than is applicable in the instant case.³ In *Harris*, a family attended a youth football game in a stadium owned by Garden City. 302 Ga. at 853. The parents paid their own admission fees to enter, but their six-year-old daughter was admitted without charge. Id. at 853-54. During the game, the child fell through the bleachers and was injured. Id. at 854. The question, then, was whether the RPA's statutory exception granted Garden City immunity from liability for the child's injuries because she had not paid to enter the stadium. Under the then-current version of the Act, the Supreme Court found that

[T]he statute specifically and unambiguously references “any person” who is not charged a fee to use a landowner's property for recreational purposes as being such a “person” to whom the landowner does not owe a duty of care. Because the statutory text of OCGA § 51-3-23 is clear and unambiguous, we attribute to the statute its plain meaning of shielding landowners from potential liability to individual persons whom they have invited to use their property for recreational purposes free of charge, and our search for statutory meaning is at an end.

³ *Harris* was decided on January 29, 2018. Several months later, the legislature amended OCGA § 51-3-25, which became effective on July 1, 2018. Ga. L. 2018 at 1083. Querisma was shot on November 25, 2018, so the later version of OCGA § 51-3-25 applies to his case. Here, the City makes no attempt to address the differences between the two versions of the statute.

Harris, 302 Ga. at 855 (punctuation omitted). The case went on to say that its interpretation of the plain meaning of OCGA § 51-3-23, which has not been amended, “is not diminished when the statute is considered in the context of the exceptions to the statute set forth in” what is now the prior version of OCGA § 51-3-25. *Harris*, 302 Ga. at 855.

The prior version of OCGA § 51-3-25(2), which the Supreme Court construed in *Harris*, 302 Ga. at 855-56, provided as follows: “Nothing in this article limits in any way any liability which otherwise exists ... [f]or injury suffered *in any case when the owner of land charges the person or persons who enter or go on the land for the recreational use thereof[.]*” (Emphasis added.) *Harris* went on to find:

A landowner’s liability is limited to those injured persons who have paid to use the landowner’s property for recreational purposes, and there is nothing in the natural reading of the plain text of OCGA [§]§ 51-3-23 and 51-3-25 to suggest that the legislature intended instead to leave in place the potential liability of landowners to persons who have not paid to use an owner’s property for recreational purposes just because the landowner would be potentially liable to others who have paid to use the property for such purposes

302 Ga. at 856 (emphasis omitted).

The current, applicable version of OCGA § 51-3-25(2), however, is significantly different.⁴ It provides that immunity is not waived “when the owner of land charges *any individual* who lawfully enters such land for recreational use and *any individual is injured in connection with the recreational use* for which the charge was made[.]” (Emphasis added.) It is undisputed that the host of the baby shower paid a fee and that Querisma did not; the City does not argue on appeal that Querisma’s injury was unconnected “with the recreational use for which the charge was made[.]” OCGA § 51-3-25(2). We will not read into the applicable version of the statute language that would vary the plain language of the statute. See *City of College Park v. Steele*, 371 Ga. App. 649, 651 (902 SE2d 223) (2024) (“We cannot by construction add to, take from, or vary the meaning of unambiguous words in a statute.”) (punctuation omitted). As a result of this amendment, *Harris* is clearly distinguishable.

Based upon the plain language of the statute, as amended, the City is not immune under the RPA as a matter of law. Accordingly, the trial court did not err in denying the City’s motion for summary judgment. Although the trial court’s order

⁴ The bill underlying this legislation provides that the purpose of the amendment was “to clarify provisions relating to the effect of an owner of land charging an admission price or fee ... [and] to repeal conflicting laws[.]” HB 904 154th General Assembly (2017).

denied the City's motion by finding only that "there are genuine questions of material fact[,]” we may affirm a trial court's summary judgment order if it is right for any reason, and we do so here. See *City of Gainesville v. Dodd*, 275 Ga. 834, 835 (573 SE2d 369) (2002).

2. The City also argues that there is an absence of evidence to show, or even create, a fact question regarding whether it acted willfully or maliciously in failing to warn or protect Querisma.

In so arguing, the City relies on the other exception to immunity, which is listed in OCGA § 51-3-25(1) and provides that the RPA does not limit liability which exists “[f]or willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity[.]” The City argues that there is an absence of evidence of willfulness or maliciousness on its part. See *Gayle v. Frank Callen Boys and Girls Club*, 322 Ga. App. 412, 415 (745 SE2d 695) (2013) (finding, in the context of the RPA, that a willful failure “involves a conscious, knowing, voluntary, intentional failure, rather than a mere inadvertent, accidental, involuntary, inattentive, inert, or passive omission” and that malice involves either “an actual intent to cause the particular

harm produced or the wanton and wilful doing of the act with an awareness of the plain and strong likelihood that harm may result”).

Pretermitted whether the City is correct, and in light of our determination in Division 1, we need not analyze this issue given that OCGA § 51-3-25 is cast in the disjunctive, using “or” to separate the two exceptions to immunity outlined in OCGA § 51-3-25(1) (willfulness or maliciousness) or (2) (payment of a fee for recreational use). See *Gearinger v. Lee*, 266 Ga. 167, 169(2) (465 SE2d 440) (1996) (“where a legislative provision is phrased in the disjunctive, it must be so construed absent a clear indication that a disjunctive construction is contrary to the legislative intent.”).

For the reasons outlined above, we affirm the trial court’s order denying the City’s motion for summary judgment.

Judgment affirmed. Barnes, P. J., and Markle, J., concur.