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CLIFFORD'S NOTES

ON THE MEND?

High court may alter liability rules for ambulance drivers

By BOB CLIFFORD

A 55-year-old self-employed caterer exits Lake Shore Drive at Grand Avenue when a private ambulance not transporting a patient runs a red light, striking his vehicle. The man suffers a fractured vertebra and other injuries.

The ambulance did not have its siren or lights on. A witness observed the ambulance enter the intersection against the red light and stated in an affidavit she heard the driver tell the police that the ambulance was "not in service."

The ambulance driver and his partner were unable to provide any type of care, monitoring or observation of a patient at the time of the accident because they were en route to pick up the person. A call was made for another ambulance to pick up the patient in a distant suburb that was to be answered between 11:59 a.m.-1:45 p.m. that day — nothing that constituted an emergency.

Hernandez v. Lifeline Ambulance, LLC, 2019 Il App (1st) 180696 provides an example of a driver on his way to pick up a patient from a medical facility in the suburbs to transport him home. That patient had completed dialysis in Hillside and was already in the care of a medical facility, not the ambulance emergency medical technicians.

The ambulance driver was the third driver called to travel the 15 to 20 miles to return the patient home. There was no emergency nor was the driver administering any emergency or nonemergency care. The patient had not yet been picked up.

The trial judge dismissed the complaint, but the appellate court reversed stating defendants weren't entitled to immunity from liability under its view of the statute. The state's high court agreed to hear the matter, including a brief by the Illinois Trial Lawyers Association.

A majority of the appellate court held the issue is one of statutory construction. As the appellate court held, this cause of action should be determined on its facts and not as a matter of law by a trial judge. The statute was meant to protect EMTs when in the process of caring for a patient.

Under Section 3.150(a) of the Emergency Medical Services Act, immunity for negligence committed by an ambulance driver is not allowed when its personnel are merely driving to pick up a patient for a nonemergency transport.

The appellate court found the statute was clear: "We are not at liberty to depart from the plain language of a statute by reading into it exceptions, conditions or limitations that the legislature did not express." Notably, the appellate court examined two sections of the EMS Act.

Section 3.150(a) states that the ambulance driver must "provide emergency or nonemergency medical services" to qualify for immunity. The appellate court quotes from Section 3.10(g) that defines nonemergency medical services as occurring "during transportation of such patients to or from health-care facilities visited for the purpose of obtaining medical or health-care services which are not emergency in nature." The court noted it would interpret the statute in its entirety.

Section 3.10(h) of the EMS Act states, "The provisions of this [a]ct shall not apply to the use of an ambulance … unless and until emergency or nonemergency medical services are needed during the use of the ambulance."

The legislature obviously contemplated accidents like this to occur and could have included explicit immunity for ambulance drivers in the language of the statute if it wanted to. The courts cannot add such language that simply isn't there.

"We find the statutory language of the EMS Act to be clear and unambiguous. …. Nonemergency medical services are statutorily limited to medical services rendered to patients during transportation to health-care facilities."

The driver here was not transporting a patient to a health-care facility at the time of the collision. As the court held in *Wilkins v. Williams*, 2013 IL 114310, "The immunity set forth in [S]ection 3.150(a) looks to the nature of the services rendered, and not to the recipient of those services." *Wilkins* at 314.

The issue is whether nonemergency driving to a location to pick up a patient constitutes rendering medical care or even should be deemed "pretreatment activities while the EMS Act only provides immunity once treatment has begun."

Abruzzo v. City of Park Ridge, 2013 IL. App. (1st) 122360, quoting *Abruzzo v. City of Park Ridge*, 374 Ill. App. 3d 743, 749 (1st Dist. 2007). The *Abruzzo* case went up to the Illinois Supreme Court that remanded the matter for trial because the court held the jury should decide whether the paramedics' lack of treatment of a 15-year-old who later died amounted to willful and wanton conduct. The jury returned a verdict for $5.187 million that was later affirmed on appeal.

If the state's highest court adopts a broad view, as unanticipated by the state legislature, then virtually all driving by private ambulance drivers would be immunized from liability, even as in this case when the ambulance or the EMTs were nowhere near the patient. CL

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