No. 124610

IN THE
SUPREME COURT OF ILLINOIS

ROBERTO HERNANDEZ,

Plaintiff-Appellee,

v.

LIFELINE AMBULANCE, LLC, and JOSHUA M. NICHOLS, individually and as an agent and/or employee of LIFELINE AMBULANCE, LLC,

Defendants-Appellants.

On Appeal from the Illinois Appellate Court,
First District, No. 1-18-0696

There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Division, Law Department, No. 17 L 2553
Honorable Allen P. Walker, Judge Presiding

BRIEF AMICUS CURIAE OF THE ILLINOIS TRIAL LAWYERS ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLEE

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POINTS AND AUTHORITIES

ISSUES PRESENTED

1. Whether driving to an address to pick up a patient requesting non-emergent transportation to a second location constitutes rendering "medical care, clinical observation, or medical monitoring" to the patient. 210 ILCS 50/3.10(g).

2. Whether, at the time of the collision, "medical care, clinical observation, or medical monitoring" was "needed during use of the" subject private ambulance. 210 ILCS 50/3.10(g), (h).

ARGUMENT

Plaintiff was injured when a private ambulance driver ran a red light in downtown Chicago while en route to the western suburbs to pick up a patient requesting a non-emergent transport to a second location. The appellate court properly rejected defendants' immunity defense on grounds that the ambulance crew was not rendering medical care to a patient at the time of the collision, Op. ¶¶ 17-19, and this Court should affirm on that basis. See 210 ILCS 50/3.10(g) (defining "non-emergency medical services" to require at least "medical care, clinical observation, or medical monitoring rendered to patients…."). Affirmance is also warranted based on section 3.10(h) of the EMS Act, which clarifies that immunity for use of an ambulance is not triggered "unless and until emergency or non-emergency medical services are needed during the use of the ambulance…." 210 ILCS 50/3.10(h).

II. THE APPELLATE COURT CORRECTLY CONCLUDED THAT DRIVING TO PICK UP A NON-EMERGENT PATIENT SEEKING TO BE TRANSPORTED TO ANOTHER LOCATION IS NOT RENDERING "MEDICAL CARE, CLINICAL OBSERVATION, OR MEDICAL MONITORING."

Under the familiar legal standards that apply to statutory construction, the appellate court's decision should be affirmed. In interpreting a statute, this Court's primary goal is to ascertain and give effect to the General Assembly's intent. Wilkins v. Williams, 2013 IL 114310, ¶ 14. The best indicator of the General Assembly's intent is the statutory language, given its plain and ordinary meaning. Id. Where the language is clear and unambiguous, "we are not at liberty to depart from the language's plain meaning." Ries v. City of Chicago, 242 Ill. 2d 205, 215 (2011). The litigants in this case agree that the statutory language is clear and unambiguous; thus, this Court should construe the immunity statute according to its text.

In applying the immunity statute's plain language, this Court should conclude that defendants are not entitled to immunity because they were not rendering "medical care, clinical observation, or medical monitoring" to any patient at the time of the collision. 210 ILCS 50/3.10(g). When the crash occurred, the ambulance crew was driving in downtown Chicago, assertedly en route to Hillside, Illinois, to pick up a patient, over 15 miles away. C. 51-52, 128. As the appellate court properly emphasized, see Op. at ¶¶ 17-19, the ambulance crew was not engaged in providing any medical care, clinical

observation, or medical monitoring to any patient. That much should be beyond dispute, and should be the end of the matter.

Defendants emphasize that the words "before or during transportation" appear in the definition of "non-emergency medical services." Defs.' Br. 8 (complaining that the appellate majority "omitted the word 'before' from its quotation of the statute"). But those words follow the words "medical care, medical monitoring, or clinical observation." Thus, the immunity extends to medical care, medical monitoring, or clinical observation, rendered before or during transportation. Put another way, immunity does not attach to all any or all acts that occur "before… transportation" – only to "medical care, medical monitoring, or clinical observation." 210 ILCS 50/3.10(g).

To be sure, this Court has previously stated that "preparatory conduct integral" to rendering medical care to a patient is also immunized. Abruzzo v. City of Park Ridge, 231 Ill. 2d 324, 341 (2008) (citing American National Bank v. City of Chicago, 192 Ill. 2d 274 (2000)). We urge this Court to reconsider that view because it is wholly unsupported by the language of the EMS Act. As the three dissenting justices in American National Bank put it: "The majority seems to believe that because the statute applies to the transportation of patients, it necessarily applies to the locating of patients as well. There is absolutely nothing in the statute to support such a reading." 192 Ill. 2d at 288 (Heiple, J., dissenting). Where prior precedent fails to heed

the plain text of an immunity provision, it ought to be overruled. See Ries, 242 Ill. 2d at 221-27. Beyond that, driving to a location where a patient is requesting to be picked up for a non-emergent transport should not be deemed "preparatory conduct integral" to rendering medical care. On that view, virtually any act or omission by any private ambulance crew that occurs within the scope of employment would be deemed immunized because "preparatory" to patient care. That is plainly not what the General Assembly intended when it granted immunity to ambulance crews who are rendering "medical care, medical monitoring, or clinical observation" to a patient. 210 ILCS 50/3.10(g).

III. ANY DOUBT AS TO WHETHER THE IMMUNITY FITS THIS CASE IS RESOLVED IN THE NEGATIVE BY SECTION 3.10(h).

All that said, section 3.10(h) of the EMS Act should remove all doubt as to whether the conduct at issue here is immunized. That section provides, "The provisions of this Act shall not apply to the use of an ambulance or SEMSV, unless and until emergency or non-emergency medical services are needed during the use of the ambulance." 210 ILCS 50/3.10(h). Construing this section as according to its plain language, preparatory acts are not immunized where the plaintiff's claim relates to use of an ambulance. Although Abruzzo and American National Bank did not involve use of an ambulance, the allegations in this case, which concern negligent operation of the ambulance, plainly implicate "use of the ambulance." Thus, in this context, the General Assembly has made clear that immunity shall not apply

"unless and until… non-emergency medical services (i.e., medical care, clinical monitoring, or medical monitoring) are needed during the use of the ambulance." And there was plainly no medical care, clinical monitoring, or medical monitoring underway, from over 15 miles away, when the crash occurred in this case. Thus, to the extent prior cases have considered preparatory acts to be immunized, those cases do not control here by operation of section 3.10(h), which clarifies that when use of an ambulance is at issue, the immunity does not apply unless and until medical care, clinical monitoring, or medical monitoring is actually occurring.

CONCLUSION

This Court should affirm the decision of the appellate court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is five pages.

/s/ John K. Kennedy
JOHN K. KENNEDY, Attorney

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PLEASE TAKE NOTICE that on August 2, 2019, I caused a copy of the Illinois Trial Lawyers Association's **Brief Amicus Curiae in Support of Plaintiff-Appellee** to be electronically submitted to the Clerk of the Illinois Supreme Court, 200 East Capitol Avenue, Springfield, IL 62701.

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CERTIFICATE OF FILING

I certify that I served the attached notice of filing in accordance with Ill. Sup. Ct. R. 11(c) via an approved Electronic Filing Service Provider, OdysseyeFileIL, on August 2, 2019, which will send notice to the attorneys listed on the notice of filing at the email address indicated.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ John K. Kennedy
JOHN K. KENNEDY, Attorney