IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Tiffany A. DeRiggi,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 20 L 5019
	)	
Superior Air-Ground Ambulance Service Inc. d/b/a Superior Ambulance, and Khristopher Mallo,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Summary judgment is appropriate if the record presents no dispute of material fact and the movant is entitled to judgment as a matter of law. Here, the undisputed facts indicate that: (1) the defendant's alleged negligence occurred while on the way to pick up an infant for interhospital transport; and (2) the ambulance crew was not monitoring the infant's medical condition or otherwise providing medical services during the trip. For those reasons, the plaintiff's motion for partial summary judgment on the issue of whether the defendants are entitled to immunity is granted.

Facts

On June 20, 2018, a neonatologist at St. Joseph Hospital in Chicago determined that an infant in the hospital's care needed to be transferred to a higher-level neonatal intensive care unit (NICU). The neonatologist contacted the attending physician in the NICU at Rush University Medical Center, requesting the transfer of the infant to Rush. The Rush physician called Superior Air-Ground Ambulance Service to dispatch an ambulance for the transport. Superior paramedics, Khristopher Mallo and Shawna Cowhick, received the dispatch call and reported to the Rush NICU where they collected specialized NICU equipment to place on the ambulance. Mallo and Cowhick were also joined by a specialized, three-member NICU transport team from Rush. One of the members of the Rush NICU transport team was Tiffany DeRiggi.

While *en route* to St. Joseph on North Lake Shore Drive, DeRiggi observed white smoke coming from the vents in the back cabin. DeRiggi notified the driver, Mallo, and instructed him to "pull over now." Mallo did not pull over immediately, but took the next exit off Lake Shore Drive and

stopped at the end of the exit ramp to let everyone out. DeRiggi was the third and final member of the Rush NICU team to exit the ambulance. DeRiggi jumped out of the ambulance, a drop of approximately two feet, and injured her knee when she landed.

A second Superior ambulance eventually arrived at the scene. The crew transferred the specialized NICU transport equipment to the replacement ambulance. That ambulance drove to St. Joseph, picked up the infant, and completed the transfer to Rush.

The specialized NICU transport equipment gave the transport team the ability to monitor the infant's condition at St. Joseph. The crew would receive a call by cell phone if something happened to the infant, such as a change in vital signs. No such monitoring or notification occurred prior to picking the infant up.

DeRiggi filed a two-count complaint. Count one alleges that Mallo was negligent, while count two alleges that Superior was vicariously liable for Mallo's negligence and directly liable for its failure to train and supervise Mallo properly. The parties filed cross-motions for summary judgment. Mallo and Superior argue that they are entitled to immunity pursuant to the Emergency Medical Services Systems Act (EMS Act), while DeRiggi argues the defendants are not. The parties fully briefed both motions.

Analysis

The Code of Civil Procedure authorizes the issuance of summary judgment "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005. The purpose of summary judgment is not to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. *See Land v. Board of Educ. of the City of Chicago*, 202 Ill. 2d 414, 421, 432 (2002).

Each of the defendants' motions implicates the application of the EMS Act. The Act's immunity provision states, in part, that:

> Any person . . . who in good faith provides emergency or non-emergency medical services . . . in the normal course of conducting their duties, or in an emergency, shall not be civilly liable as a result of their acts or omissions in providing such services unless such acts or omissions . . . constitute willful and wanton misconduct.

210 ILCS 50/3.150(a). DeRiggi's complaint does not allege that the defendants acted willfully and wantonly; consequently, the only relevant question is whether, in driving the ambulance to St. Joseph, Mallo and Superior were providing emergency or non-emergency medical services that could trigger application of the EMS Act's immunity provision. *See id.*

The phrase "emergency medical services" is not directly defined in the EMS Act, but "non-emergency medical services" are defined as those provided to "patients whose conditions do not meet this Act's definition of emergency, before, after, or during transportation of such patient[s] to health care facilities." 210 ILCS 50/3.10(g). By implication, "emergency medical services" are those medical services provided to patients whose conditions do meet the Act's definition of emergency. *See id.*; 210 ILCS 50/3.5 (defining "emergency" and "emergency medical services personnel"). The statute defines an "emergency" as "a medical condition of recent onset and severity that would lead a prudent layperson, possessing an average knowledge of medicine and health, to believe that urgent or unscheduled medical care is required." 210 ILCS 50/3.5.

The Illinois Supreme Court has construed the EMS Act's immunity provision on several occasions, and held in *Wilkins v. Williams* that the immunity extends to negligent conduct that injures non-patients. 2013 IL 114310, ¶ 22. *Wilkins* is, however, factually distinguishable from this case because the defendant-ambulance driver in *Wilkins* had already picked up the patient when the alleged negligence occurred. *See id.*, ¶ 3. In other words, it was undisputed in *Wilkins* that the ambulance driver was providing medical services, thereby triggering application of the EMS Act's immunity provision. *Id.*, ¶ 21.

The Supreme Court has also held that immunity applies to "preparatory conduct integral to providing emergency treatment." *Abruzzo v. City of Park Ridge*, 231 Ill. 2d 331, 341 (2008); *see also American Nat'l Bank & Trust Co. v. City of Chicago*, 192 Ill. 2d 274, 283 (2000). In *Abruzzo*, the court held that the immunity applied to emergency medical technicians (EMTs) who found a 15-year-old boy unresponsive but left without examining or treating him. 231 Ill. 2d at 333 (holding that EMTs' failure to treat boy was omission subject to immunity unless willful and wanton). Similarly, in *American National Bank*, the court held that the EMS Act's immunity applied to paramedics who responded to a 9-1-1 caller's reported asthma attack, but failed to open an unlocked door to locate her. 192 Ill. 2d at 286. In elaborating on its holding, the court stated that, "[l]ocating a person in

need of emergency medical treatment is the first step in providing life support services."[1] *Id.*

More recently, the court clarified these holdings in *Hernandez v. Lifeline Ambulance, LLC.* 2020 IL 124610. In *Hernandez,* a private ambulance driver who was on the way to pick up a patient for non-emergency transport ran a red light and struck the plaintiff's car. *Id.,* ¶¶ 3, 5. The court reaffirmed its *American National Bank* holding, writing:

> If locating the caller at the scene of an emergency is the integral preparatory first step of providing the services that trigger the immunity, then it follows that the simple act of driving many miles before reaching the scene of a nonemergency transport cannot be integral preparatory conduct that triggers the immunity involved in rendering nonemergency medical care to a patient.
>
> * * *
>
> [T]he preparatory actions contemplated by our case law begin at the scene with the attempt to locate the patient. We conclude, therefore, that the only logical meaning of "before . . . transportation" must be that its reach is limited to the medical care, clinical observations, or medical monitoring rendered (or not rendered due to omission) to the patient once the EMTs arrive at the scene of the pickup to attempt to contact the patient.

Id., ¶¶ 32, 37.

Mallo and Superior make much of the distinction between emergency and non-emergency services to argue that because the situation at issue in this case was an emergency, *Hernandez,* which analyzed preparatory conduct for non-emergency services, does not apply. To support this distinction, Mallo and Superior cite only to *dicta* in *Hernandez,* in which the court analyzed whether the acts of driving to pick up a patient and running a red light were integral to the provision of non-emergency medical services. *See* 2020 IL 124610, ¶¶ 32-33. The court concluded that these acts could not be considered integral, in part because: (1) the patient's dialysis was being conducted not by the ambulance crew, but by the health care facility where he was to be picked up; (2) the window of time for the patient's pickup was approximately two hours, meaning that the call was not particularly urgent; and (3) the transport could be completed by virtually any ambulance or crew.

---

[1] The immunity statute in *American National Bank* referred to "life support services." The legislature subsequently amended the statute to refer more broadly to "emergency or non-emergency medical services." *Abruzzo,* 231 Ill. 2d at 336-39.

Id., ¶ 32. Plainly, the court's discussion does not pertain to the emergency/ non-emergency distinction that Mallo and Superior attempt to broaden. *See id.* Rather, the court was simply ruling out possible alternative explanations that could conceivably make the ambulance driver's conduct integral to the patient's medical services. *See id.*

Granted, the EMS Act recognizes the emergency/non-emergency distinction, but when it comes to construing the phrase, "provides emergency or non-emergency medical services," that is a distinction without a difference. The canons of statutory construction confirm this. If a word is used in different parts of the same statute, Illinois courts presume that the word carries the same meaning throughout the statute. *People v. Maggette,* 195 Ill. 2d 336, 349 (2001). Thus, by extension, the phrase, "provides . . . medical services," which appears only once here, must be given the same meaning with respect to both "emergency" and "non-emergency." The inexorable conclusion is that whether the need to transfer the infant from St. Joseph to Rush was an emergency is irrelevant. What is relevant is whether Mallo was providing medical services. *Hernandez* stands for the proposition that, in this case, Mallo was not providing medical services because he had not yet arrived at St. Joseph and it is undisputed that the team was not monitoring the infant while *en route* to St. Joseph. *See* 2020 IL 124610, ¶¶ 32, 37.

For the same reasons, Superior's argument that it is entitled to immunity on DeRiggi's *respondeat superior* claims—failure to train and failure to supervise—fails. The statute provides for employer immunity for acts or omissions that occur "in connection with activities within the scope of this Act." 210 ILCS 50/3.150(b). Superior has not offered any support for concluding that activities not connected with the provision of medical services should be considered within the statute's scope.

Conclusion

For the reasons presented above, it is ordered that:

1. The plaintiff's motion for partial summary judgment is granted; and
2. The defendants' summary judgment motion is denied.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

JAN 18 2023

Circuit Court 2075