THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM HAMPTON COUNTY

Perry M. Buckner, Circuit Court Judge

Civil Action No. 2009-CP-25-00517

Appellate Case No. 2013-000391

Maria T. Curiel and Martin L. Curiel ..... Respondents,

v.

Hampton County E.M.S. ..... Petitioner,

BRIEF OF PETITIONER

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Question Presented

I. Did the Court of Appeals err in affirming the trial court's order granting summary judgment to the Respondents on the issue of the applicability of the fire protection statute where the Petitioner's ambulance was involved in a motor vehicle accident while driving to the scene of a fire to provide medical treatment to the firefighters and a burn victim?

STATEMENT OF THE CASE

On November 17, 2009, Respondents Maria T. Curiel and Martin L. Curiel filed this action against Petitioner Hampton County EMS ("EMS") for damages arising out of a motor vehicle accident that occurred on November 22, 2008. (App. pp. 11–13.) The parties filed cross-motions for summary judgment on the applicability of the fire protection statute, S.C. Code Ann. § 15-78-60(6) (2005), and the court granted summary judgment to the Curiels, holding that the fire protection statute was not applicable to the facts of the case, which had the effect of striking that defense from the Petitioner's answer. (App. pp. 3–10, 18–23.) The Petitioner timely appealed, and in an opinion filed December 19, 2012, the Court of Appeals affirmed. (App. pp. 106–09.) The Petitioner timely filed a Petition for Rehearing, which the Court of Appeals denied, in an order filed January 25, 2013. (App. pp. 110–21.) The Petitioner subsequently filed a Petition for Writ of Certiorari with the Supreme Court of South Carolina, which was granted, by Order dated May 8, 2014.

STATEMENT OF THE FACTS

On November 22, 2008, Ms. Curiel operated Mr. Curiel's minivan in a westerly direction on Secondary Road 3 in Hampton County, South Carolina. Secondary Road 3 provides one lane of travel in each direction with a solid yellow center line. (App. p. 33, lines 1–24; p. 44, lines 2–16). The speed limit in the area is 55 miles per hour. (App. p. 41, lines 23–24.)

At the same time, Jason Schroyer and his supervisor, Shannon Crouch, both Hampton County EMS personnel, received a dispatch to a structure fire. (App. p. 38, line 23–p.39, line 15.) They were dispatched to provide medical treatment to any firefighter who was injured in the fire, and while en route, they were informed that there was also a burn victim at the site. (App. p. 39, lines 4–15; p. 53, line 21–p. 54, line 5.)

While en route, Schroyer drove Appellant Petitioner's ambulance in the same direction as the Curiels on Secondary Road 3 and approached their minivan from the rear. (App. p. 44, line 24.) As the ambulance approached the minivan, Schroyer was traveling 45 miles per hour, (App. p. 41, lines 19–22), with the emergency lights and audible signals in use. (App. p. 42, line 24–p. 43, line 1.) Both vehicles slowed down, and the minivan appeared to be stopped. (App. p. 44, line 20–p. 45, line 3.) Schroyer had a clear view of the road ahead and determined that he could pass the stopped

minivan. (App. p. 44, lines 7–9.) Before starting to pass, Schroyer changed the audible tone on the ambulance by adding the horn to the lights and siren. (App. p. 43, lines 2–17.) When he began to maneuver past the minivan, there were three warnings employed by the ambulance: emergency lights, the siren and the horn. (App. p. 43, lines 8–17; p. 55.) When Schroyer was across the yellow line and starting to move past the minivan, Ms. Curiel began a left turn into a private driveway. (App. p. 46, line 11–p. 48, line 23.) Schroyer attempted to avoid the collision by steering to the right, but he was unable to avoid colliding with the minivan. (App. p. 46, lines 13–25.)

ARGUMENT

I. THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S ORDER GRANTING SUMMARY JUDGMENT TO THE RESPONDENTS ON THE APPLICABILITY OF THE FIRE PROTECTION STATUTE, WHERE THE PETITIONER'S AMBULANCE WAS INVOLVED IN A MOTOR VEHICLE ACCIDENT WHILE DRIVING TO THE SCENE OF A FIRE TO PROVIDE MEDICAL TREATMENT TO FIREFIGHTERS AND A BURN VICTIM.

A. Standard of review

An appellate court reviews a grant of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* Under Rule 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000). Summary

judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000).

On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 230 S.E.2d 447 (1976).

B. An analysis of the fire protection exception under the rules of statutory construction, and in light of the legislative policy of broad immunity, makes clear that emergency medical services provided in response to a fire, fall within its purview.

1. The Court of Appeals erred in its determination that the statute is clear on its face and that there was no need to apply the rules of statutory interpretation.

The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees." *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 607 S.E.2d 711 (Ct.App.2005) (*citing Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct.App.2003). "Notwithstanding any provision of law, this chapter, the 'South Carolina Tort Claims Act', is the exclusive and sole remedy for any tort committed by an employee of a

governmental entity while acting within the scope of the employee's official duty." S.C.Code Ann. § 15-78-200 (2005); *see also Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194, 544 S.E.2d 38 (2001) (observing the Tort Claims Act is the exclusive remedy for tort claims against governmental entities), aff'd, 354 S.C. 161, 580 S.E.2d 440 (2003).

The Act provides: "The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein." S.C.Code Ann. § 15-78-40 (2005). Section 15-78-30(d) defines "governmental entity" as "the State and its political subdivisions." S.C.Code Ann. § 15-78-30(d) (2005); *See Flateau*, 355 S.C. at 204, 584 S.E.2d at 416. "The Tort Claims Act waives sovereign immunity for torts committed by the State, its political subdivisions, and governmental employees acting within the scope of their official duties." *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 121, 542 S.E.2d 736, 739 (Ct.App.2001).

However, the Act's waiver of governmental immunity is limited. *Hawkins v. City of Greenville*, 358 S.C. 280, 291, 594 S.E.2d 557, 563

(Ct.App.2004). Section 15-78-60 currently contains forty exceptions to the waiver of immunity. See S.C.Code Ann. § 15-78-60 (2005 & Supp.2005). The Act expressly preserves all existing common-law immunities. S.C.Code Ann. § 15-78-20(b) ("The General Assembly additionally intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided herein. All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved.") "The Act does not create a new substantive cause of action against a governmental entity." *Hawkins*, 358 S.C. at 292, 594 S.E.2d at 563 (c*iting Moore v. Florence Sch. Dist. No. 1*, 314 S.C. 335, 444 S.E.2d 498 (1994)).

"The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense." *Steinke v. S.C. Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142, (1999).

S.C.Code Ann. § 15-78-60(6), the exception at issue in this matter, reads in pertinent part that: "The governmental entity is not liable for a loss resulting from... the failure to provide [or] the method of providing police or

fire protection." S.C.Code Ann. § 15-78-60(6); *see also Huggins v. Metts*, 371 S.C. 621, 640 S.E.2d 465, (Ct.App. 2006) (recognizing that the omission of the conjunctive "or" was a scrivener's error). In this case, the governmental entity dispatched personnel to provide medical assistance to any firefighters who were injured while fighting a structure fire, and, while en route, they were informed that there was also a burn victim at the scene. (App. p. 39, lines 4–15; p. 53, line 21–p. 54, line 5.) Clearly, these facts, fall within the purview of the fire protection exception, such that immunity should be afforded the Petitioner.

In determining that the Legislature "did not intend to include emergency medical services as an exception to the waiver of immunity in section 15-78-60(6)," the Court of Appeals cited the basic proposition that "[i]f a statute's language is plain, unambiguous, and conveys a clear meaning, 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.'" *Curiel v. Hampton Co. EMS*, 401 S.C. 646, 737 S.E.2d 854 (Ct.App. 2012), *citing Sloan Constr. Co. v. Southco Grassing, Inc.*, 395 S.C. 164, 717 S.E.2d 603 (2011). The court reasoned that while the statute specifically includes police and fire protection as exceptions to the State's waiver of immunity, but does not list emergency medical services, such services were not intended to be included.

However, nothing in S.C.Code Ann. § 15-78-60(6), defines "fire protection," or restricts its application only to "fire departments," "fire fighting," or "fire prevention," so, a finding that on its face, emergency medical services are not included in the term "fire protection," is in error. Instead, the requisite analysis of the statute under the rules of statutory interpretation, makes clear that emergency medical services should be so included.

2. The Legislature intended that the fire protection statute be read broadly, such that emergency medical services should be included in the term "fire protection."

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). In this instance, the Legislature made explicit its intent that the provisions of the Tort Claims Act establishing limitations upon and exemptions from liability of a governmental entity "must be liberally construed in favor of limiting the liability of the State." *See* S.C.Code Ann. §§ 15–78–20(f) & –200 (Supp.1999); *Baker v. Sanders*, 301 S.C. 170, 391 S.E.2d 229 (1990); *See also, Steinke supra.* The term "fire protection" is not defined within the Tort Claims Act, so accordingly, the term should be interpreted broadly, and in context with the other wording in the statute. In that regard, importantly, the

statute uses the words "governmental entity" rather than "fire department," and "fire protection," as opposed to "fire prevention" or "fire fighting." The fire protection statute, then, liberally construed, should be read to include those services logically provided in conjunction with fire prevention and fire fighting, which clearly would include emergency medical personnel sent in response to a fire, in addition to fire fighting personnel.

3. To not include emergency medical services within the term "fire protection" would render an unreasonable and unjust result.

Where the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct.App. 1999). Courts should consider not merely the language of the particular clause being construed, but also the words and their meaning in conjunction with the purpose of the whole statute and the policy of the law. *Whitner v. State*, 328 S.C. 1, 492 S.E.2d 777 (1997); See also *Stephen v. Avins Constr. Co.*, 324 S.C. 334, 478 S.E.2d at 74 (Ct.App. 1996) (statutory provisions should be given reasonable and practical construction consistent with purpose and policy of entire act). Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law.

City of Sumter Police Dep't v. Blue Mazda Truck, 330 S.C. 371, 498 S.E.2d 894 (Ct.App.1998).

Emergency medical services are commonly known to be a health and safety protection offered as a part of fire protection across the state and across the nation. Outside the context of the Tort Claims Act, South Carolina describes "fire department," again, a more narrow term that used in the statute at issue, as "any organization providing rescue, fire suppression, and related activities including any public or government sponsored organizations engaged in rescue, fire suppression, and related activities. S.C. Code Ann § 40-80-10. Similarly, S.C. Code § 6-11-1420, provides that the powers of the appropriate "fire authority" at a " scene of a fire or other emergency involving the protection of life or property or any part thereof," include "the power and authority to direct such operation as may be necessary to extinguish or control the fire, perform any rescue operation, evacuate hazardous areas, investigate the existence of suspected or reported fires, gas leaks, or other hazardous conditions or situations, and of taking any other action necessary in the reasonable performance of their duty."

Thus, unequivocally, emergency medical services should be read to fall within the term "fire protection," where as in this case, it is

uncontroverted that EMS personnel were deployed in response to a structure fire at which there was a victim who required their assistance. Providing an ambulance to respond to a fire in progress to assist a burn victim falls squarely within the protection conferred by the statute. There is no logical reason, and certainly no reason contained within the plain language of the statute, that would restrict the application of the fire protection defense to actions taken solely in defense of property, to the exclusion of all actions taken in defense of life, including the provision of medical treatment to both firefighters and burn victims. Thus, the term logically would include a government entity's employees defending property by fighting the fire or taking measures to prevent the fire from spreading. The term also would logically include a government entity's employee defending life by entering a burning building to retrieve a trapped victim. It would be unreasonable to include only structures within the definition of fire protection services, to the exclusion of people who live in and about the structure. It would also be unreasonable for the government entity to be covered for these actions, but then cease being covered as soon as the victim crosses the threshold of the building and begins receiving medical treatment. It would be equally untenable to include activities such as utilizing a fire hose to extinguish a fire while, at the same time, excluding the rescue of those injured in that

same blaze. Here, where Petitioner's personnel were deployed in response to a structure fire at which there was a victim who required their assistance, they were providing fire protection.

C. The South Carolina Court of Appeals has previously interpreted the fire protection statute broadly, as intended by the Legislature.

Although our courts have not applied the fire protection exception of the Tort Claims Act to facts similar to those of the present case, the Court of Appeals has previously extended the "fire protection" shield from mere fire extinguishment to include the maintenance of fire hydrants and the supply of water for fighting fires. *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct.App. 1998). In *Wells,* a residence was completely destroyed by fire. As a result, the homeowners sued the City of Lynchburg alleging that the city was negligent in failing to inspect and maintain its fire hydrants and/or water lines, of which the city admittedly had notice. Additionally, the homeowners sued Lee County alleging that the county was negligent in failing to provide adequate firefighting personnel and equipment to extinguish the fire. The Court of Appeals noted that the homeowners correctly conceded that their claim against Lee County was barred by § 15-78-60(6), but proceeded with their action against the City of Lynchburg.

The Court of Appeals upheld the grant of summary judgment in favor of the City of Lynchburg. *Id.* at 305, 501 S.E.2d at 751.

In doing so the Court of Appeals held that "the maintenance of fire hydrants and the supply of water for fighting fires clearly is included in the exceptions from liability . . . for the method of providing fire protection and the discretionary act of maintaining the city water system with the resources available." *Id.* The Court cited with authority, *inter alia*, language from a Mississippi Supreme Court case. *City of Columbus v. McIlwain,* 205 Miss. 473, 38 So.2d 921, 923 (1949). The Court of Appeals stated that the Mississippi decision held that a "municipality is not responsible for the destruction of property within its limits by a fire merely because, through the negligence or other default of the municipality or its employees, the members of the fire department failed to extinguish the fire regardless of whether this failure is due to an insufficient supply of water, the interruption of the service during the course of a fire, the neglect or incompetence of the firemen, the defective condition of the fire apparatus, negligence in permitting the fire hydrants to becoming clogged or defective, etc." *Wells at 305*, 501 S.E.2d at 751.

D. Driving to the scene of a fire is included within the definition of "fire protection."

When there is no South Carolina case directly on point, our courts may look to other jurisdictions to determine if the issue has been decided and if the decision is persuasive authority, as the Court of Appeals did in *Wells*, *supra*. *See Williams v. Morris*, 320 S.C. 196, 464 S.E.2d 97 (1995). Another Mississippi case, *Estate of James Stanley Williams v. City of Jackson, Mississippi,* 844 So.2d 1161, (Miss.2003), supports the proposition that driving to the scene of a fire is included within the definition of fire protection. There, the statute at issue provided that

> A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim: . . . (c) Arising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities relating to police or fire protection unless the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of injury . . . .

Miss. Code Ann. § 11 46 9(1)(c). There, the court stated that "Fire Truck 20 was answering a fire call and was therefore providing 'fire protection' within the meaning of § 11 46 9(1)(c)." *Williams*, 844 So. 2d at 1164.

Other Mississippi cases are in accord. See *Maldonado v. Kelly*, 768 So. 2d 906, 912 (Miss. 2000) (holding that a police officer who was involved in an accident while driving his patrol car to the service shop for

maintenance was entitled to immunity under § 11 46 9(1)(c)); *Reynolds v. County of Wilkinson*, 936 So. 2d 395, 396 (Miss.Ct.App.2006) (holding that a sheriff's deputy who was involved in an accident while driving a sheriff's vehicle to a hardware store to have spare keys made for county gas pumps was entitled to immunity under § 11 46 9(1)(c)).

Furthermore, other jurisdictions have also determined that a state's fire protection statute provides immunity to a governmental entity responding to the scene of a fire. *See Varshock v. Dept. of Forestry & Fire* Protection 194 Cal.App.4th 635, 125 Cal.Rptr.3d 141 (2011). ("[T]he Legislature intended immunity to apply to any claim based on death, personal injury, or property damage that results from an act or omission of a public entity or employee while responding to or combating an actual fire."); see also *Jewett v. City of New Haven*, 38 Conn. 368 (Conn. 1871) (holding that the city was immune under the common law when the city's driver of a horse-drawn hose-cart injured the plaintiff while the driver was responding to the scene of a fire).

A subsequent Mississippi case, *Herndon v. Mississippi Forestry Commission,* 67 So.3d 788 (Miss.Ct.App.2010), demonstrates the outer limits to which the fire protection statute extends. In *Herndon*, the driver of

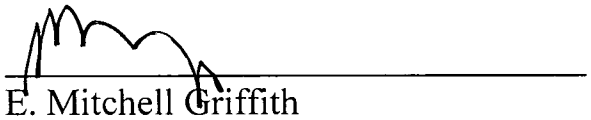
a Mississippi Forestry Commission ("MFC") transport truck was involved in a car accident while traveling to pick up a bulldozer. *Herndon*, 67 So. 3d at 790. The bulldozer was going to be used to create fire lanes and clear storm debris from Hurricane Katrina. *Herndon*, 67 So. 3d at 793. After noting that, "on its face, the statute does not limit such immunity to police officers and fire departments," the court held that the driver's task of picking up the bulldozer was within the scope of the statute and the MFC was therefore entitled to immunity. *Id.*

These cases support Petitioner's position that it is a governmental entity that's provision of emergency medical services in response to a fire, require it to be included of the fire protection exception, particularly given our Legislature's admonishment that the provisions of the Tort Claims Act be liberally construed.

CONCLUSION

Based on the foregoing discussion and analysis, the Petitioner, Hampton County E.M.S., respectfully requests that this Court reverse the decision of the South Carolina Court of Appeals, and hold that the Petitioner is entitled to sovereign immunity.

Respectfully Submitted,

By: 

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