THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HAMPTON COUNTY
Perry M. Buckner, Circuit Court Judge

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S.C. Supreme Court

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

REPLY BRIEF OF PETITIONER

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ARGUMENT

I. ANY GOVERNMENTAL ENTITY THAT IS CALLED TO RESPOND TO THE SCENE OF A FIRE IS PROVIDING FIRE PROTECTION WITHIN THE MEANING OF THE FIRE PROTECTION DEFENSE

The Respondents' argument that the fire protection defense does not include an entity traveling to the scene of a fire to provide medical treatment to a person who has been burned in a fire, as in this matter, is based in part on an argument the "there is no evidence that [the Petitioner's] ambulance was driving to the scene of the fire 'to provide medical treatment to the firefighters,'" and that "[t]here is no evidence that a firefighter (or anyone else) was injured and in need of services at the time the EMS unit was dispatched, as implied by EMS's statement of the issue," and thus that "then the only evidence is that at the time EMS was dispatched, there was no known victim at the fire." (Res. Br. pp. 7-8). This argument, however, should not be persuasive, either factually or with regards to its relevance. A reading of the testimony of Jason Schroyer, evidences that the Petitioner's ambulance was called to respond to a "structure fire," and that they were responding to provide medical treatment to firefighters and a burn victim, as needed. (App. P. 39, lines 4-15; p. 53, line 21-p. 54, line 5). Thus, the important issue is that the Petitioner, Hampton County E.M.S., was sending emergency

medical personnel, in response to a fire, or as a "method" of "fire protection."

Similarly, the Respondents' argument that State Senator Larry Martin introduced S. 380, which would have added the following as an exception to the waiver of sovereign immunity, is not instructive on the issue, as Respondents suggest:

> SECTION 1. Section 15-78-60 of the 1976 Code is amended by adding an appropriately numbered item to read:
>
> "( ) an operator or driver of an Emergency Medical Vehicle as defined by Section 56-5-170(A)(3), while operating or driving the Emergency Medical Vehicle in providing emergency services, unless the vehicle is operated or driven in a grossly negligent manner."
>
> SECTION 2. This act takes effect July 1, 2013, and applies to all actions filed on or after this date.

http://www.scstatehouse.gov/sess120_2013-2014/bills/380.htm.

Respondents, in making the argument that this Court should take judicial notice of the legislature's actions on S. 380 during the 2013-2014 legislative session, rely on a footnote in State v. Blackmon, 304 S.C. 270, 274 n. 2, 403 S.E.2d 660, 662 n. 2 (1991). In Blackmon, the Court interpreted a gambling statute, and held that nonmachine cash payouts from video gaming machines were legal under S.C. Code Ann. § 16-19-

60 (Supp.1999). Id. The Court indicated in that footnote that it found persuasive the legislature's proposal and rejection of bills that would have expressly made the defendant's conduct illegal. Id. However, Blackmon, which held that "when the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning," and that the gambling statute at issue was clear and ambiguous, is distinguishable from the matter at issue. Here, the statute is not clear and ambiguous, and neither is the legislature's intent clear and ambiguous, from its actions on S. 380 during its 2013-2014 session. Rather than adding emergency services to the fire protection statute, S.C. Code Ann. section 15-78-60(6), at issue here, the bill as amended was to add a completely separate exception to the Tort Claims Act. While S.C. Code Ann. section 15-78-60(6) protects a "governmental entity," the proposed amended bill would have protected an "operator or driver."

This lawsuit is not, as Respondents suggest, one "against an ambulance driver for negligence in driving to the scene of a fire." (Res. Br. p. 9). Instead, the lawsuit is against a governmental entity.

II. TO THE EXTENT IT IS NECESSARY TO DO SO, PETITIONER CHALLENGES THE TRIAL COURT'S ALTERATE FINDING THAT EMS FAILED TO CARRY ITS BURDEN.

The Respondents incorrectly argue that the Petitioner fails to challenge the trial court's finding that EMS the Petitioner "failed to carry its burden of establishing that [the Respondents'] allegation fell within" the exception to the waiver of immunity." (Res. Br. p. 37). As an initial matter, it is not clear that this is different from the trial court's primary finding. The trial court held that "this statute is not as broad as [Petitioner] urges and does not apply to the facts in this case," and, in a footnote, stated that the Petitioner failed to show that the Respondents' allegation fell within this exception. (Appx.6, n.3). It is not clear what distinction the Respondents are trying to make between the statute not applying and the Petitioner failing to show that the Respondents' allegations fall within the statute, but to the extent there is a distinction, this Court should reject the Respondents' argument.

The Respondents incorrectly assert that the Petitioner does not address in its brief the trial court's finding that the Petitioner failed to show that the Respondents' allegations fall within the fire protection exception. (Res. Br. p. 37) On page 9 of its brief, the Petitioner states that "Clearly, these facts, fall within the purview of the fire protection exception, such that immunity should be afforded the Petitioner." (Pet Br. p. 9). On page 12 of its brief, the Petitioner states that "it is

uncontroverted that EMS personnel were deployed in response to a structure fire at which there was a victim who required their assistance." (Pet Br. p. 9). Thus, to the extent the Petitioner needs to challenge the trial court's footnote, it has done so.

Additionally, the footnote misstates the law. "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." Plyler v. Burns, 373 S.C. 637, 651, 647 S.E.2d 188, 196 (2007) (citation omitted). Thus, the burden in this case was on the Petitioner to demonstrate that it was providing fire protection. The burden was not, as the trial court stated, on the Petitioner to show "that [the Respondents'] allegation fall [sic] within this exception to the waiver of immunity." (Appx.6, n.3).

There is no dispute as to the facts relevant to this appeal: the Petitioner's personnel were en route to a call to a building fire where a person had been burned, and while en route, the Petitioner's personnel were involved in an accident with the Respondents. The Petitioner does not assert that its personnel were employed by the fire department at the

time of the accident.[1] This appeal presents a pure legal question of whether the fire protection defense applies to these facts. This Court should hold that an entity responding to the scene of a fire to treat a person injured in that fire is providing fire protection within the meaning of the statute.

CONCLUSION

Based on the foregoing discussion and analysis, and the argument made in its "Brief of Petitioner," 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 facts of this case fall within the Tort Claims Act's fire protection statute.

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[1] As discussed above, this fact is irrelevant because the statute does not restrict its application to fire departments. See S.C. Code Ann. § 15-78-60(6).

Respectfully submitted,

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August 28, 2014
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I certify that I am a legal assistant at Griffith, Sadler & Sharp, P.A., and on August 28, 2014, I placed a copy of *Reply Brief of Petitioner, Table of Contents,* and *Table of Authorities* in the US Mail, with first-class postage prepaid, and addressed as follows:

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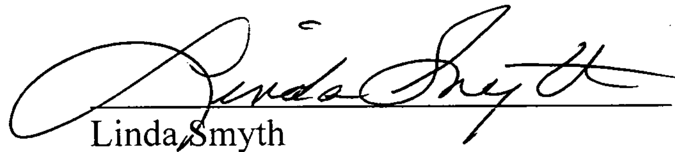
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