

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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MAR 28 2013

APPEAL FROM HAMPTON COUNTY, S.C. Supreme Court
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

APPENDIX

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge

Case No. 2009-CP-25-00517

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

v.

Hampton County E.M.S., Appellant.

RECORD ON APPEAL

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CERTIFICATE OF COUNSEL54

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

IN THE COURT OF COMMON PLEAS
C/A#: 09-CP-25-517

MARIA T. CURIEL and MARTIN L. CURIEL,)
)
)

Plaintiffs,)

vs.)

HAMPTON COUNTY E.M.S.,)

Defendant.)

**ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER THE DENIAL
OF ITS MOTION FOR SUMMARY
JUDGMENT AND GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

This matter came before me on March 15, 2011, on ^{Ph.D} Defendant's motion to reconsider the denial of its motion for summary judgment based on the ground that S.C. Code Ann. § 15-78-60(6) provides the Defendant with complete immunity for the claims made against it in this lawsuit. Previously, the court heard cross motions for summary judgment on the applicability of S.C. Code § 15-78-60(6) as a defense in this case, but to date had not ruled on Plaintiff's motion. This section of the Tort Claims Act provides that a governmental entity is not liable for a loss resulting from certain enumerated events, including: "the failure to provide [or] the method of providing police or fire protection."¹ Defendant contends that this section of the Tort Claims Act gives Hampton County E.M.S. complete immunity from the claims in this case, while the Plaintiffs contend that the defense does not apply to the facts and that the Defendant cannot meet its burden with respect to the defense. For the reasons that follow, this Court agrees with the

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2011 MAR 15 AM 8:14
CLERK OF COURT
HAMPTON COUNTY S.C.

¹ Our appellate courts have held that this statute contains a scrivener's error and that the conjunctive "or" is missing from the statute. Therefore, the statute is properly read as the governmental entity is not liable for the failure to provide or the method of providing police or fire protection. See, Wells v. City of Lynchburg, 331 S.C. 296, 304, 501 S.E.2d 746, 750 (S.C.

Plaintiffs.

#2
2/25

This matter arises out of a motor vehicle collision between a vehicle being driven by Maria Curiel and an ambulance driven by Jason Schroyer, a Hampton County E.M.S. employee. The collision occurred when the ambulance attempted to pass the Plaintiffs' vehicle on a solid yellow line as Maria Curiel was making a left turn. Hampton County E.M.S. admits that at the time of the wreck, Schroyer was acting within the course and scope of his employment as an EMT Basic. Further, Schroyer testified that at the time of the wreck he was not working for the Hampton County fire department and was not responding to a fire for the fire department. Moreover, he testified that was not responding to provide any fire protection and was not responding in that capacity. Similarly, Shannon Crouch, Schroyer's supervisor and also an EMT in the ambulance at the time of the wreck, testified that they were not responding on behalf of the fire department at the time of the wreck and were not going to fight the fire, but instead they were responding to a patient who had been burned. Hampton County E.M.S. argues that because the E.M.S. was responding to render medical care to someone who had been injured in a fire, it is immune from liability for the wreck based on argument that driving to render care to someone who has been burned in a fire is or relates to fire protection.

Although Hampton County E.M.S. acknowledged that there are no cases directly on point to support its argument, it argued that the case of Huggins v. Metts, 371 S.C. 621, 640 S.E.2d 465 (S.C. Ct. App. 2007) supports its position. In Huggins, the Lexington County Sheriff's Department was sued for the shooting of a suspect who was threatening to burn several homes and to commit suicide. When the police approached the suspect he was armed with two large

Ct. App. 1998).

butcher knives. The police ordered the suspect to drop the knives, but he refused and stated that the police would have to kill him. Ultimately, the suspect refused to comply with the police's orders and was shot and killed.

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PnB

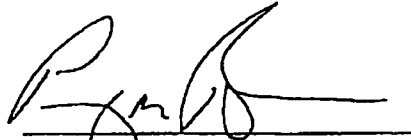
The Huggins court held that the plaintiff's claims concerned the manner in which the police chose to provide police protection and because the Act specifically exempts the police from liability concerning the methods which they choose to utilize to provide police protection there was no genuine issue of fact such that summary judgment was appropriate. The facts in Huggins seem wholly different from those presented here. First, in Huggins the police were responding to provide and were providing police protection to not only the plaintiff who was shot but also to all persons that he was threatening (the public and the officers). Secondly, the allegations in Huggins specifically related to how the police had performed their police protection duties. Here, however, the E.M.S. was not sued for the failure to provide fire protection nor the method it utilized to provide fire protection. Instead, it was sued for an automobile collision which occurred while the EMT was operating a vehicle within the course and scope of his duties as an EMT. Even the EMT acknowledges in his deposition that he must exercise due care when responding to an emergency and that the activation of his emergency light does not force or guarantee the right of way.²

It is the opinion of this Court that this statute is not as broad as Hampton County E.M.S.

² Similarly in Wells v. City of Lynchburg, 331 S.C. 296, 304, 501 S.E.2d 746, 750 (S.C. Ct. App. 1998), there was a direct relation between the plaintiff's allegations and the exception to the waiver of immunity in that the plaintiff's claims were that the City had failed to provide fire protection services because it had failed to promptly provide adequate firefighting personnel and had negligently maintained the fire hydrants. The Court held that the maintenance of fire hydrants and the supply of water for fighting fires clearly is included in the exceptions from

urges and does not apply to the facts in this case.³ If the burn victim was then negligently treated at a governmental hospital would that medical malpractice too relate to the method of fire protection? This Court thinks not. Here the E.M.S. was not providing fire protection and it is not alleged to have failed to provide fire protection or ^{PMB}utilized the wrong method of providing fire protection. It is the opinion of this Court that neither ~~the~~ words of the statute nor the intent of the statute were intended to apply to the facts in this case. Accordingly, the Defendant's motion for reconsideration of the denial of its motion for summary judgment is DENIED and the Plaintiffs' motion for summary judgment is GRANTED.

IT IS SO ORDERED.



Honorable Perry M. Buckner, III
Presiding Judge, Fourteenth Judicial Circuit

Walters, South Carolina
May 27, 2011

liability for the method of providing fire protection.

³ Furthermore, as the burden of proof is on the governmental entity asserting a limitation upon liability, this Court finds that Hampton County E.M.S. has failed to meet its burden of showing that Plaintiffs' allegation fall within this exception to the waiver of immunity. See, Wooten v. S.C.D.O.T., 326 S.C. 516, 485 S.E.2d 119 (S.C. Ct. App. 1997).

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HAMPTON 2011 JAN 25 AM 10:30 C/A#: 09-CP-25-517

MARIA T. CURIEL and MARTIN CURIEL,)
CLERK OF COURT)
HAMPTON COUNTY, S.C.)

BY _____)

Plaintiffs,)

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

vs.)

HAMPTON COUNTY E.M.S.,)

Defendant.)

This matter came before me on January 4, 2011, on cross motions for summary judgment on the applicability of S.C. Code § 15-78-60(6) as a defense in this case. This section of the Tort Claims Act provides that a governmental entity is not liable for a loss resulting from certain enumerated events, including: "the failure to provide [or] the method of providing police or fire protection."¹ Defendant contends that this section of the Tort Claims Act give Hampton County E.M.S. complete immunity from the claims in this case, while the Plaintiffs contend that the defense does not apply to the facts. For the reasons that follow, this Court denies Defendant's Motion for Summary Judgment.

#1
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This matter arises out of a motor vehicle collision between a vehicle being driven by Maria Curiel and an ambulance driven by Jason Schroyer, a Hampton County E.M.S. employee. The collision occurred when the ambulance attempted to pass the Plaintiffs' vehicle on a solid

¹ Our appellate courts have held that this statute contains a scrivener's error and that the conjunctive "or" is missing from the statute. Therefore, the statute is properly read as the governmental entity is not liable for the failure to provide or the method of providing police or fire protection. See, Wells v. City of Lynchburg, 331 S.C. 296, 304, 501 S.E.2d 746, 750 (S.C. Ct. App. 1998).

yellow line as Maria Curiel was making a left turn. Hampton County E.M.S. admits that at the time of the wreck, Schroyer was acting within the course and scope of his employment as an EMT Basic. Further, Schroyer testified that at the time of the wreck he was not working for the Hampton County fire department and was not responding to a fire for the fire department. Moreover, he testified that was not responding to provide any fire protection and was not responding in that capacity. Similarly, Shannon Crouch, Schroyer's supervisor and also an EMT in the ambulance at the time of the wreck, testified that they were not responding on behalf of the fire department at the time of the wreck and were not going to fight the fire, but instead they were responding to a patient who had been burned. Hampton County E.M.S. argues that because the E.M.S. was responding to render medical care to someone who had been injured in a fire, it is immune from liability for the wreck as driving to render care to someone who has been burned in a fire is or relates to fire protection.

#2
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Although Hampton County E.M.S. acknowledges that there are no cases directly on point to support its argument, it argues that the case of Huggins v. Metts, 371 S.C. 621, 640 S.E.2d 465 (S.C. Ct. App. 2007) supports its position. In Huggins, the Lexington County Sheriff's Department was sued for the shooting of a suspect who was threatening to burn several homes and to commit suicide. When the police approached the suspect he was armed with two large butcher knives. The police ordered the suspect to drop the knives, but he refused and stated that the police would have to kill him. Ultimately, the suspect refused to comply with the police's orders and was shot and killed.

The Huggins court held that the plaintiff's claims concerned the manner in which the police chose to provide police protection and because the Act specifically exempts the police

from liability concerning the methods which they choose to utilize to provide police protection there was no genuine issue of fact such that summary judgment was appropriate. The facts in Huggins seem wholly different from those presented here. First, in Huggins the police were responding to provide and were providing police protection to not only the plaintiff who was shot but all persons that he was threatening (the public and the officers). Secondly, the allegations in Huggins specifically related to how the police had performed their duties. Here, however, the E.M.S. was not sued for the failure to provide fire protection nor the method it utilized to provide fire protection. Instead, it was sued for an automobile collision which occurred while the EMT was operating a vehicle within the course and scope of his duties as an EMT. Even the EMT acknowledges in his deposition that he must exercise due care when responding to an emergency and that the activation of his emergency light does not force or guarantee the right of way.²

#3
PMB
It is the opinion of this Court that this statute is not as broad as Hampton County E.M.S. urges and does not apply to the facts in this case.³ If the burn victim was then negligently treated at a governmental hospital would that medical malpractice too relate to the method of fire protection? This Court thinks not. Here the E.M.S. was not providing fire protection and it is

² Similarly in Wells v. City of Lynchburg, 331 S.C. 296, 304, 501 S.E.2d 746, 750 (S.C. Ct. App. 1998), there was a direct relation between the plaintiff's allegations and the exception to the waiver of immunity in that the plaintiff's claims were that the City had failed to provide fire protection services because it had failed to promptly provide adequate firefighting personnel and had negligently maintained the fire hydrants. The Court 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.

³ Furthermore, as the burden of proof is on the governmental entity asserting a limitation upon liability, this Court finds that Hampton County E.M.S. has failed to meet its burden of showing that Plaintiffs' allegation fall within this exception to the waiver of immunity. See, Wooten v. S.C.D.O.T., 326 S.C. 516, 485 S.E.2d 119 (S.C. Ct. App. 1997).

not alleged to have failed to provide fire protection or utilized the wrong method of providing fire protection. It is the opinion of this Court that neither to words of the statute nor the intent of the statute were intended to apply to the facts in this case. Accordingly, the Defendant's motion for summary judgment is DENIED.

IT IS SO ORDERED.



Honorable Derry M. Buckner, III
Presiding Judge, Fourteenth Judicial Circuit

Walterboro, South Carolina
January 21, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HAMPTON)
)
 MARIA T. CUIREL and MARTIN L.)
 CUIREL;)
)
 Plaintiffs,)
)
 vs.)
)
 HAMPTON COUNTY E.M.S.,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 CIA#: 09-CP-25- 577

COMPLAINT
 (JURY TRIAL DEMANDED)
 (AUTOMOBILE WRECK)

NOV 17 4:11:21
 CLERK OF COURT
 HAMPTON COUNTY, S.C.

The Plaintiffs would respectfully show:

1. Plaintiffs are citizens and residents of Hampton County, South Carolina, and were citizens and residents of Hampton County, South Carolina, at the time of the incident described herein.
2. Defendant is a governmental entity organized and existing under and by virtue of the Constitution and other laws of the State of South Carolina; this action is brought pursuant to the S.C. Tort Claims Act, S.C. Code Ann. § 15-78-100(b) et. seq., which makes venue proper in Hampton County where the acts and/or omissions giving rise to this claim took place.
3. At all times relevant herein, the E.M.S. personnel referred to herein, including but not limited to Jason G. Schroyer, were agents, servants, and/or employees of Defendant and were acting within the scope and course of their official duties with Defendant.
4. On or about November 22, 2008, Plaintiff Maria T. Curiel was operating Plaintiff Martin L. Curiel's vehicle in a westerly direction on Secondary Road 3 in Hampton

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County, South Carolina; Jason Schroyer was operating Defendant's vehicle in the same direction and lane of travel behind Plaintiffs' vehicle; suddenly and without warning, as Plaintiff Maria T. Curiel was making a proper left turn into a private driveway, Defendant's vehicle attempted to pass Plaintiff thereby colliding with Plaintiffs' vehicle and causing the collision.

5. As a result of this incident, Plaintiff Maria T. Curiel suffered injuries to her back, neck, abdomen and other parts of her body; these injuries have caused and will in the future cause her to endure great physical pain, suffering, mental anguish, emotional distress, and impairment of health and bodily efficiency; have caused Plaintiff Maria T. Curiel to spend money for medical services; and have caused a permanent disability.

6. As a further result of this incident, Plaintiff Martin L. Curiel suffered property damage, depreciation and loss of use of his vehicle.

7. Defendant, by and through the acts and/or omissions of its agents, servants, and/or employees, was negligent, careless, reckless, grossly negligent, willful and wanton at the time and place above-mentioned in the following particulars:

- a. In failing to maintain a proper lookout;
- b. In failing to maintain proper control of his vehicle;
- c. In failing to take evasive action to avoid the collision;
- d. In improperly passing Plaintiff's vehicle;
- e. In following too closely;
- f. In failing to properly hire, train and supervise its drivers;
- g. In traveling too fast for existing conditions;
- h. In failing to use proper emergency warnings;

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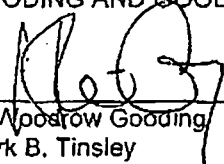
- i. In failing to properly follow its own policies and procedures;
- j. In failing to exercise the degree of care and caution that a reasonably prudent person would have exercised under the same or similar circumstances; and
- k. In such other and further particulars as the evidence in trial may show;

all of which combined and concurred as a direct and proximate cause of the injuries and damages suffered by Plaintiffs herein, said acts being in violation of the statutes and laws of the State of South Carolina.

WHEREFORE, Plaintiffs pray for judgment against Defendant in a sum sufficient to adequately compensate for actual damages as a jury may reasonably award, for the costs of this action, and for such other and further relief as this Court may deem just and proper.

GOODING AND GOODING, P.A.

BY: _____


H. Woodrow Gooding
Mark B. Tinsley
P.O. Box 1000
Allendale, SC 29810
(803) 584-7676
Attorneys for Plaintiffs

Date: 11/16/09

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2009 DEC 17 10:24 AM) CASE NO. 2009-CP-25-517

COUNTY OF HAMPTON)
MARIA T CURIEL and)
MARTIN L. CURIEL,)
B)
_____)

Plaintiff,

ANSWER

vs.

HAMPTON COUNTY E.M.S.,)

Defendant.)
_____)

TO: H. WOODROW GOODING, ESQUIRE AND MARK B. TINSLEY, ESQUIRE,
ATTORNEYS FOR THE PLAINTIFFS:

NOW COME the Defendant, Hampton County E.M.S., which denies each and every allegation in the Complaint not specifically admitted, and in answer to the Complaint states as follows:

1. As to Paragraph No. 1 of the Complaint, the Defendant admits the allegations contained therein, upon information and belief.
2. As to Paragraph No. 2 of the Complaint, the Defendant admits it is a governmental entity organized and existing under and by virtue of the Constitution and other laws of the State of South Carolina; the remaining allegations contained in Paragraph No. 2 of the Complaint are assertions of jurisdiction and venue and make no allegation against the Defendant, and therefore, no answer is required; to the extent that an answer is required, the Defendant denies each and every allegation contained therein and demands strict proof thereof.
3. As to Paragraph No. 3 of the Complaint, the Defendant admits that the E.M.S. personnel at all times acted within the scope and course of their official duties with

the Defendant: as to the allegations remaining within Paragraph No. 3, the Defendant denies each and every allegation contained therein and demands strict proof thereof.

4. As to Paragraph No. 4 of the Complaint, the Defendant admits that, on or about November 22, 2008, Plaintiff Maria T. Curiel was operating Plaintiff Martin L. Curiel's vehicle in a westerly direction on Secondary Road 3 in Hampton County, South Carolina, and Jason Schroyer was operating Defendant's vehicle in the same direction and lane of travel behind Plaintiffs' vehicle, and a collision occurred, but denies each and every remaining allegation contained in Paragraph No. 4 of the Complaint and demands strict proof thereof.
5. As to Paragraph No. 5 of the Complaint, the Defendant denies each and every allegation contained therein and demands strict proof thereof.
6. As to Paragraph No. 6 of the Complaint, the Defendant denies each and every allegation contained therein and demands strict proof thereof.
7. As to Paragraph No. 7 of the Complaint, the Defendant denies each and every allegation contained therein, including all subparts, and demands strict proof thereof.
8. The Defendant denies that the Plaintiffs are entitled to the relief sought.

WHEREFORE, having answered the Complaint, the Defendant prays that the Complaint will be dismissed, for costs and for such other and further relief as the Court may deem just and proper.

AFFIRMATIVE DEFENSES

As to each affirmative defense set forth below, the Defendant repeats and realleges all preceding paragraphs as fully and effectively as if set forth herein verbatim.

- A. The Defendant pleads the provisions of the South Carolina Tort Claims Act, South

Carolina Code Section 15-78-10, *et seq.*, including all the immunities, limitations and defenses granted or preserved by the Act.

- B. The Defendant alleges that if the Plaintiffs sustained any injuries or damages as set forth in their Complaint, the same were due to the acts and conduct of the Plaintiff, Maria T. Curiel, which combined with, concurred with and exceeded any conduct on the part of the Defendant, which is specifically denied, to bring about the said injuries and damages, if any, as the Proximate Cause therefor and without which the same would not have occurred, and therefore, bars any recovery by the Plaintiffs; but if the Defendant is equally as negligent as the Plaintiff, Maria T. Curiel, or more negligent than the Plaintiff, Maria T. Curiel, which is specifically denied, the amount of recovery of damages, if any, must be reduced in proportion to the amount of the Plaintiff's negligence.
- C. The Defendant would show that attorney fees are not recoverable against a government entity and, therefore, the Defendant moves to strike any demand for attorney fees from the Complaint.
- D. The Defendant reserves the right to timely assert any affirmative defense not currently known to the Defendant.

WHEREFORE, having fully answered the Complaint, the Defendant prays that the Court dismiss the Complaint, award it costs and such other and further relief as the Court may deem just and proper.

DATED this 16 day of December 2009 at Beaufort, South Carolina, and

Respectfully submitted,

GRIFFITH, SADLER & SHARP, P.A.



MARSHALL H. WALDRON, JR.

KELLY A. DENNIS

Post Office Drawer 570

Beaufort, South Carolina 29901

(843) 521-4242 Telephone

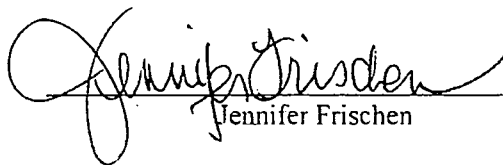
(843) 521-4247 Facsimile

ATTORNEYS FOR THE DEFENDANT

CERTIFICATE OF SERVICE

I, Jennifer Frischen, legal assistant to Marshall H. Waldron, Jr. and Kelly A. Dennis attorneys for the Defendants, hereby certify that on this 16th day of December, 2009, I served the Defendants' Answer upon counsel for the Plaintiff by depositing same in the United States mail, postage prepaid to:

H. Woodrow Gooding, Esquire
Mark B. Tinsley, Esquire
Gooding & Gooding, PA
Post Office Box 1000
Allendale, South Carolina 29810



Jennifer Frischen

2009 DEC 17 PM 3:24
JENNIFER FRISCHEN
LEGAL ASSISTANT
MARSHALL H. WALDRON, JR.
KELLY A. DENNIS
ATTORNEYS FOR THE DEFENDANTS
BY

16

Beaufort, South Carolina

ROA 000015

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	CASE NO. 2009-CP-25-517
COUNTY OF HAMPTON)	
)	
MARIA T CURIEL and)	
MARTIN L. CURIEL,)	
)	
Plaintiff,)	
)	
vs.)	MOTION FOR SUMMARY JUDGMENT
)	
HAMPTON COUNTY E.M.S.,)	
)	
Defendant.)	

TO: H. WOODROW GOODING, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant Hampton County E.M.S. will move before the Presiding Judge of the Fourteenth Judicial Circuit at the Hampton County Courthouse, Hampton, South Carolina, at such time and place as may be set by the Court, for an Order, pursuant to Rule 56, SCRPC, granting summary judgment to the Defendant on all claims brought by the Plaintiffs Maria and Martin Curiel.

This Motion is based upon S.C. Code Ann. § 15-78-60(6) which provides immunity to the Defendant for the method of providing police and fire protection. The Defendant's motion is based upon the pleadings, the Deposition of Maria Curiel, the Rules of Court and any memorandum of law to be provided to the Court.

[Signature on the following page.]

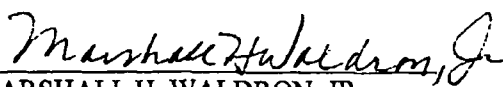
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 2010 NOV -4 AM 11:34
 MYLINDA G. HEATH
 CLERK OF COURT
 HAMPTON COUNTY, S.C.
 BY _____

ROA 000016

DATED at Beaufort, South Carolina this 4th day of November 2010, and

Respectfully submitted,

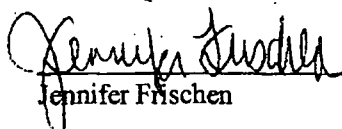
GRIFFITH, SADLER & SHARP, P.A.


MARSHALL H. WALDRON, JR.
P.O. Drawer 570
Beaufort, South Carolina 29901
(843) 521-4242 Telephone
(843) 521-4247 Facsimile
ATTORNEY FOR THE DEFENDANT

CERTIFICATE OF SERVICE

I, Jennifer Frischen, Legal Assistant to Marshall H. Waldron, Jr., hereby certify that on this 4th day of November 2010, I served the Defendants' Motion for Summary Judgment upon the Plaintiff and counsel for the codefendants by email transmission, facsimile transmission and by depositing same in the United States mail, postage prepaid to:

H. Woodrow Gooding, Esquire
Mark B. Tinsley, Esquire
Gooding & Gooding, PA
P.O. Box 1000
Allendale, SC 29810



Jennifer Frischen

Beaufort, South Carolina

ROA 000017

GOODING AND GOODING, P.A.

By: _____


H. Woodrow Gooding
Mark B. Tinsley
Attorneys for Plaintiffs
P.O. Box 1000
Allendale, SC 29810
(803) 584-7676

Dated: November 10, 2010

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have mailed a true and correct copy of the within Motion/Pleading/Document to all counsel of record by mailing a copy properly addressed with sufficient postage affixed thereto this 10th day of November, 2010.

By: _____


Rhonda F. Lawson, Paralegal

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HAMPTON)
)
 MARIA T CURIEL and)
 MARTIN L. CURIEL,)
)
 Plaintiff,)
)
 vs.)
)
 HAMPTON COUNTY E.M.S.,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 CASE NO. 2009-CP-25-517

MOTION TO RECONSIDER

FILED
 2011 FEB -9 AM 10:29
 KYLINDA D. NETTLES
 CLERK OF COURT
 HAMPTON COUNTY, S.C.
 BY _____

TO: H. WOODROW GOODING, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant, Hampton County E.M.S. (hereinafter "the Defendant") will move before the Presiding Judge of Court of Common Pleas for the Fourteenth Judicial Circuit, Hampton County, on the tenth (10th) day of service hereof, or as soon thereafter as counsel may be heard, for:

An Order vacating the Court's Order dated January 21, 2011, and filed January 25, 2011, issued by the Honorable Perry M. Buckner, III, which denied the Defendant's Motion for Summary Judgment. This Motion is based on the grounds that S.C. Code Ann. § 15-78-60(6) provides immunity to the Defendant for the method of providing police and fire protection, and the testimony on the record is uncontroverted that, at the time of the collision alleged in the Plaintiffs' Complaint, the employees of the Defendant were responding to a fire.

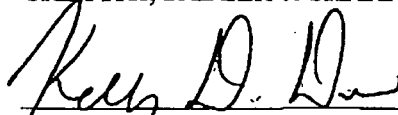
This Motion is made pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, and based upon the pleadings and depositions, the Rules of Court, any memorandum of law to be provided to the Court, and upon such other law as is applicable.

[SIGNATURE BLOCK ON FOLLOWING PAGE.]

DATED at Beaufort, South Carolina this 3 day of February, 2011, and

Respectfully submitted,

GRIFFITH, SADLER & SHARP, P.A.



MARSHALL H. WALDRON, JR.

KELLY DENNIS DEAN

P.O. Drawer 570

Beaufort, South Carolina 29901

(843) 521-4242 Telephone

(843) 521-4247 Facsimile

ATTORNEY FOR THE DEFENDANT

ROA 000021

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)
)
MARIA T CURIEL and)
MARTIN L. CURIEL,)
)
Plaintiff,)
)
vs.)
)
HAMPTON COUNTY E.M.S.,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
CASE NO. 2009-CP-25-517

NOTICE OF WAIVER OF CERTAIN
TORT CLAIMS ACT DEFENSES

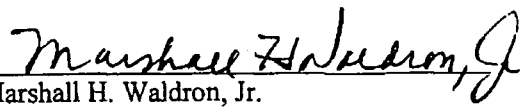
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2011 MAR 10 AM 11:44
MYLRODA D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

TO: H. WOODROW GOODING, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant, having pled in its Answer all of the immunities, limitations and defenses granted or preserved by the provisions of the South Carolina Tort Claims Act, South Carolina Code Section 15-78-10, *et seq.*, hereby waives all such immunities, limitations and defenses, except the immunity afforded in South Carolina Code Section 15-78-60(6).

DATED this 9th day of March 2011, at Beaufort, South Carolina,

GRIFFITH, SADLER & SHARP, P.A.


Marshall H. Waldron, Jr.
P.O. Drawer 570
Beaufort, South Carolina 29901
(843) 521-4242
(843) 521-4247 Facsimile
ATTORNEY FOR THE DEFENDANT

State of South Carolina)	
)	In the Court of Common Pleas
County of Hampton)	
)	
Maria Curiel, et al,)	
)	
Plaintiff,)	Case No: 2009-CP-25-00517
)	
versus)	Date: March 15, 2011
)	
Hampton County EMS,)	Hampton, South Carolina
)	
Defendant.)	
)	

TRANSCRIPT OF RECORD

B E F O R E:

The Honorable Perry M. Buckner

A P P E A R A N C E S:

Mark Tinsley, Esquire
ATTORNEY FOR THE PLAINTIFF

Marshall Waldron, Jr., Esquire
ATTORNEY FOR THE DEFENDANT

PROVIDED FOR: Marshall Waldron, Jr., Esquire

FOR COPIES CONTACT: DeeAnne Varnadoe
dvarnadoe@sccourts.org
Official Court Reporter
South Carolina Judicial Department

TRANSCRIPT PREPARED FOR MARSHALL WALDRON, JR., ESQUIRE

ROA 000023

1 Your order does not address at all Mr. Tinsley's cross
2 motion.

3 THE COURT: And you're correct in that my order did
4 not address it, but I certainly did not grant summary
5 judgement to the plaintiff.

6 And by -- and I recognize that Mr. Tinsley sent me an
7 order granting summary judgement to him and it was in front
8 of me on cross summary judgement motions. My intent was to
9 deny your motion.

10 However, I was not aware that there was -- that's why
11 I find it dangerous to put facts in a summary judgement
12 order. I understand that you believe these facts are very
13 much either not supported by the record or in dispute,
14 which is another reason that summary judgement is not
15 appropriate if they are in dispute, but I will hear from
16 Mr. Tinsley.

17 I understand the basis of your Motion for
18 Reconsideration.

19 MR. WALDRON: Thank you, Your Honor.

20 THE COURT: Mr. Tinsley?

21 MR. TINSLEY: Yes, Your Honor.

22 First, Judge, my Motion for Summary Judgement was only
23 to a specific defense. It does not grant me summary
24 judgement in the case. It is whether or not this provision
25 in the Tort Claims Act applies. We can't get the case

1 resolved ---

2 THE COURT: Well, if I deny his motion for summary
3 judgement on that basis, I believe that takes care of that
4 matter. But that's semantics. Go ahead.

5 MR. TINSLEY: I don't -- the case would still go to
6 the jury as it is right now.

7 THE COURT: Well, I don't know that the case would go
8 to the jury; that would be up to the trial judge. But
9 summary judgement would not be granted on the basis of the
10 Tort Claims Act. Are you with me?

11 MR. TINSLEY: Yes, sir.

12 THE COURT: But, of course, we're not there and I'm
13 not ordering that the case has to go to a jury because that
14 obviously can't be done at this stage.

15 MR. TINSLEY: Judge, I think -- I guess I'm just
16 confused. We made cross motions to take this issue so we
17 could either go up and get it resolved or we get the case
18 settled. The -- not the Insurance Reserve Fund, but
19 whoever it is that took over Southeastern Claims -- but the
20 adjuster contends they've got complete immunity so we're
21 not going to get the case settled with this issue.

22 So, we're going to try the case and then go up and get
23 the answer.

24 There may be a dispute of facts but I don't think
25 that there's a dispute on the issues that relate to this

TRANSCRIPT PREPARED FOR MARSHALL WALDRON, JR., ESQUIRE

ROA 000025

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON)

MARIA T. CURIEL and MARTIN)
L. CURIEL,)

Plaintiffs,)

-versus-)

HAMPTON COUNTY E.M.S.,)

Defendant.)
_____)

Civil Action Number

COPY

Deposition of **SHANNON CROUCH**, taken by
Counsel for the Plaintiffs on the 10th day of
December 2010, at the Law Offices of Peters,
Murdaugh, Parker, Eltzroth & Detrick, 101
Mulberry Street, Hampton, South Carolina,
commencing at approximately 10:18 a.m.

Betty Anderson & Associates

Professional Court Reporters
6020 Dowlingwood Drive
Beaufort, South Carolina 29902
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ROA 000026

1 Q. LaGrange?

2 A. LaGrange, Georgia.

3 Q. Okay.

4 (Brief off-the-record conversation.)

5 BY MR. TINSLEY:

6 Q. When did you move to Hampton?

7 A. I don't live in Hampton.

8 Q. Where do you live?

9 A. I live in Barnwell.

10 Q. Okay. Who do you work for?

11 A. Hampton County EMS.

12 Q. Do you work for the Hampton County Fire
13 Department?

14 A. No.

15 Q. All right. On this call were you responding on
16 behalf of the fire department?

17 A. We were responding to a patient that was burned.

18 Q. Okay. So the answer would be no?

19 A. No.

20 Q. You weren't going to fight the fire?

21 A. No.

22 Q. How long have you worked for Hampton County EMS?

23 A. At this point, for --

24 Q. At which point? Today or --

25 A. Today.

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Direct by Mr. Tinsley

Page 6 of 25

ROA 000027

1 the speed?

2 A. I don't feel like we were accelerating.

3 Q. All right. So you were going the same speed? Or
4 you don't know?

5 A. I don't know.

6 Q. Okay. Do you know where the impact between the
7 two vehicles occurred on the road?

8 A. Where exactly on the actual highway?

9 Q. Yeah.

10 A. Uh-huh.

11 Q. Where? Where was the van?

12 A. The van was turning to the left and we hit them
13 in the rear corner panel on the driver's side.

14 Q. There's a picture of the road, if it helps you.
15 There's a driveway depicted in the photograph. Was any
16 part of the van in the driveway at the impact?

17 A. I do not know.

18 Q. Okay. Why don't you know?

19 A. Because at the time of impact, I was nervous
20 about the impact.

21 Q. Okay. Did Jason take any evasive action?

22 A. He did. Whenever we were approaching the
23 vehicle, he changed the siren tones.

24 Q. All right. Let's make sure you understand. Now,
25 you're reading from your --

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ROA 000028

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON)

MARIA T. CURIEL and MARTIN)
L. CURIEL,)
)
Plaintiffs,)
)
-versus-)
)
HAMPTON COUNTY E.M.S.,)
)
Defendant.)

Civil Action Number

COPY

Deposition of **MARIA T. CURIEL**, taken by
Counsel for the Defendant on the 25th day of
October 2010, at the Law Offices of Gooding &
Gooding, 265 Barnwell Highway, Allendale, South
Carolina, commencing at approximately 2:20 p.m.

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ROA 000029

1 Q. Did you have to give your deposition, like what
2 we're doing today?

3 A. No.

4 Q. Do you remember what it settled for?

5 A. 14,000.

6 Q. And who did you treat with? Which doctors did
7 you treat with as a result of that accident?

8 A. In my office where I work, they see me, and Dr.
9 Green, the chiropractor. That's it.

10 Q. That's it? Have you ever been involved in any
11 other types of accidents that required medical treatment,
12 such as a slip-and-fall, falling off a ladder, or anything
13 like that?

14 A. No.

15 Q. Other than the lawsuit that we're here to talk
16 about today, and the one that you just mentioned as a
17 result of that December 2009 accident, have you ever been
18 involved in any other lawsuits?

19 A. No.

20 Q. Have you ever made a claim for workers'
21 compensation?

22 A. No.

23 Q. Have you ever filed for disability?

24 A. No.

25 Q. All right. We're here today about an accident

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ROA 000030

1 that happened on November 22nd, 2008. Do you recall what
2 day of the week that was?

3 A. The week? It was a Saturday.

4 Q. And what time of day did this accident happen?

5 A. In the morning.

6 Q. What was the weather like that day?

7 A. It was cloudy.

8 Q. Was it raining at all?

9 A. No.

10 Q. Were the roads wet?

11 A. No.

12 Q. And where exactly did this accident take place?

13 A. In front of my house.

14 Q. And where's your house?

15 A. It's in Estill.

16 Q. Is that Highway 3?

17 A. Yeah, Highway 3.

18 Q. And what does the road look like at that
19 particular location? How many lanes are going in either
20 direction?

21 A. Two.

22 Q. Two lanes in each direction?

23 A. No. It's only one -- like the way you go and the
24 other car coming.

25 Q. Okay. And how are those lanes of travel

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ROA 000031

1 accident?

2 A. No.

3 Q. Do you remember what you and Rosario were doing
4 immediately prior to the impact?

5 A. I was driving and she was listen her music.

6 Q. How was she listening to her music?

7 A. She got --

8 Q. An Ipod and headphones?

9 A. I don't remember what she has.

10 Q. Was she wearing headphones?

11 A. No.

12 Q. Could you hear the music?

13 A. No.

14 Q. Were you listening to music?

15 A. No.

16 Q. So you don't remember anything about the impact?

17 A. No, ma'am.

18 Q. Okay. And the next thing you remember is waking
19 up in the hospital?

20 A. Yes.

21 Q. Okay. Which hospital were you at?

22 A. In Hampton.

23 Q. Had you ever gone to Hampton Regional Medical
24 Center for medical treatment before this accident?

25 A. Yes.

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ROA 000032

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON)

MARIA T. CURIEL and MARTIN)
L. CURIEL,)
)
Plaintiffs,)
)
-versus-)
)
HAMPTON COUNTY E.M.S.,)
)
Defendant.)
_____)

Civil Action Number

(C) (C) P P Y

Deposition of **JASON SCHROYER**, taken by
Counsel for the Plaintiffs on the 10th day of
December 2010, at the Law Offices of Peters,
Murdaugh, Parker, Eltzroth & Detrick, 101
Mulberry Street, Hampton, South Carolina,
commencing at approximately 9:15 a.m.

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ROA 000033

1 Q. How long have you held that position full time?
2 A. Since June of 2008.
3 Q. All right.
4 A. Full time.
5 Q. And you're how old?
6 A. Twenty-one.
7 Q. You from Hampton?
8 A. Yes, sir, I am.
9 Q. Tell me your relatives with a last name other
10 than -- how do you say your last name?
11 A. Schroyer.
12 Q. Schroyer?
13 A. Yes, sir.
14 Q. By blood or marriage. In other words, if you had
15 a sister who's gotten married and now a -- who knows who?
16 A. My dad's Jake Schroyer.
17 Q. Okay.
18 A. His wife is Connie Schroyer. She's from
19 California. He's over -- currently overseas. And my mom's
20 Wanda Walker. She's from here in Hampton -- or Brunson,
21 Pond Town. And her husband's Ed Walker. And then my
22 oldest brother, Darren, he's an officer in Savannah, a
23 police officer in Savannah. His last name is Schroyer, as
24 well.
25 Q. Okay. What do you do other than work for Hampton

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ROA 000034

1 County EMS?

2 A. I work at Allendale County EMS part time. I'm
3 also on Brunson's fire department, a volunteer, and then
4 Fairfax and Allendale County.

5 Q. Brunson volunteer fire department?

6 A. That's right. And the volunteer fire department
7 in Fairfax and Allendale County.

8 Q. How does that work? I mean, are there certain
9 days of the week that you're working for Brunson or on call
10 for Brunson and then --

11 A. Whenever I'm off from my own -- my full-time job
12 here in Hampton, or Allendale, if a call goes out, we
13 respond and we go to it.

14 Q. Okay. Whether there's a call in Brunson or a
15 call in --

16 A. Yes, sir.

17 Q. -- Allendale?

18 A. Just whatever one, goes out first.

19 Q. All right. One other rule to make sure. Let me
20 finish my question before you start answering it. You're
21 anticipating and you're doing a good job of knowing what it
22 is I'm asking. But I want you to answer my question.

23 A. Okay.

24 Q. Now, how about with EMS in Allendale? You work
25 there, sort of moonlight part time when you're not working?

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ROA 000035

- 1 A. No, sir. Not off the top of my head.
- 2 Q. Have you actually read the policies in Hampton?
- 3 A. Yes, sir.
- 4 Q. And did you actually read the policies from
5 Allendale?
- 6 A. I have.
- 7 Q. Okay.
- 8 A. I've only -- like I said, I've only worked there
9 part time and I was out a majority of the time with my
10 surgery and stuff. But I have, yes, sir.
- 11 Q. And when did you start working in Allendale?
- 12 A. Or, actually, I don't remember my start date, to
13 be honest with you. I'm thinking maybe mid February, if I
14 recall right.
- 15 Q. February of this year?
- 16 A. This past year, yes, sir.
- 17 Q. What's this past year? Is that --
- 18 A. 2010.
- 19 Q. That's right. Do you recall this accident?
- 20 A. Yes, sir, I do.
- 21 Q. All right. Do you recall the day of the week?
- 22 A. Not of the top of my head, no, sir.
- 23 Q. All right. Tell me, when you -- at the time of
24 the wreck were you responding to a call?
- 25 A. Yes, sir. We had just left Hampton Hospital to

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ROA 000036

1 respond to a structure fire.

2 Q. Tell me -- what do you mean a "structure fire"?

3 A. A house fire.

4 Q. Okay. And when you got the call, it's called in
5 as a structure fire?

6 A. Yes, sir.

7 Q. All right. Any other details?

8 A. Not at the time. But then they did tell us we
9 did have a burn patient.

10 Q. You did have a burn --

11 A. We did have a burn patient on the scene.

12 Q. At what point?

13 A. When we was en route..

14 Q. All right. Before the wreck or after the wreck?

15 A. It was just before the wreck, I do believe.

16 Q. All right. Well, when you were told that, did
17 that change in any way how you were driving the vehicle?

18 A. No, sir, it did not.

19 Q. All right. And who was in the vehicle with you?

20 A. At the time, it was Shannon Pearson. She's now
21 Shannon Crouch. She's just recently married.

22 Q. Is that the girl that was in here before?

23 A. That's correct.

24 Q. Is she your partner?

25 A. She is my partner. She's my crew chief, that's

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Direct by Mr. Tinsley

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Page 24 of 52

ROA 000037

1 correct.

2 Q. All right. Just the two of you in the vehicle?

3 A. Yes, sir.

4 Q. Is she still your partner or crew chief?

5 A. Yes, sir, at times. She's a supervisor now --

6 Q. Okay.

7 A. -- at times.

8 Q. All right. The -- so you leave Hampton Hospital
9 and you're going where?

10 A. To Grant Hill Road in the Scotia Furman area.
11 The Scotia Garnet area.

12 Q. Okay. What's that you're reading off of?

13 A. This is my incident report from the day of the
14 accident.

15 Q. Okay.

16 MR. TINSLEY: Can we mark that? I don't
17 think I've seen that.

18 MS. DEAN: Yeah, you can mark that.

19 (WHEREUPON, a document was marked as
20 Plaintiff's Exhibit Number 1 for identification to the
21 Schroyer Deposition.)

22 BY MR. TINSLEY:

23 Q. Okay.

24 A. It's pretty much everything that happened from
25 when I left the hospital until what happened.

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Direct by Mr. Tinsley

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ROA 000038

1 A. A 1050 is MVA for us. We use 10 codes.

2 Q. Okay. Now, this guy that you list in here,
3 Michael, who was in a personal car, said he was a Beaufort
4 County EMS worker. Do you know his last name?

5 A. I know I'm going to say it wrong. I do believe
6 it's Cappuccino.

7 Q. Okay.

8 A. Something like that.

9 Q. How do you know him?

10 A. He works -- actually, he's in a personal care
11 ambulance or personal care vehicle, a van, and he come up
12 on the wreck. He works -- he's a paramedic for Beaufort
13 County.

14 Q. Okay. He's still -- so you know who he is?

15 A. Yes, sir. I've seen him before.

16 Q. Did he see the wreck?

17 A. He didn't see the accident, no, sir. He come up
18 on it.

19 Q. Okay. All right. You get on Highway 3, you go
20 through several roads and you get on Highway 3. How fast
21 are you driving on Highway 3 when you first see the minivan?

22 A. Approximately 45 miles an hour.

23 Q. What's the speed limit?

24 A. 55.

25 Q. And at that point do you know that there's a burn

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Direct by Mr. Tinsley

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ROA 000039

1 victim?

2 A. I do -- I don't remember.

3 Q. Why are you going 45 if the speed limit's 55, and
4 you're responding to an emergency?

5 A. Because we were approaching the -- we were
6 approaching the brown minivan, and we're also in a diesel
7 truck. It takes a few minutes to get going.

8 Q. All right. When you turn on Highway 3, how far
9 down Highway 3 before you come up, see the minivan?

10 A. It's not -- it wasn't far.

11 Q. Can you estimate it at all?

12 A. I'm not good with that, to be honest with you,
13 estimating-wise.

14 Q. All right. Well, can you tell me, the road you
15 turned off of to get on Highway 3 is --

16 A. We turned off of Highway 601 and onto Highway 3.

17 Q. Now, you say, "came down Highway 278, made a left
18 onto 601 South, then made a right onto 3 and Browning Gate
19 Road." Is Browning Gate Road --

20 A. Yeah, Highway 3.

21 Q. It's the same road?

22 A. Yes, sir. Some people call it Highway 3, some
23 people call it Browning Gate Road.

24 Q. All right. And you say that you had your lights
25 and your siren?

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Direct by Mr. Tinsley

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ROA 000040

1 A. That's correct.

2 Q. And you even changed the tone when you went to
3 pass the minivan?

4 A. That's correct.

5 Q. You don't know which tone? Or do you know?

6 A. I don't remember off the top of my head. No,
7 sir, I do not recall.

8 Q. Now, your statement says you changed the tone of
9 the siren and blew the horn.

10 A. Yes, sir. 'Cause you can press two buttons at
11 one time.

12 Q. Okay. So you did both those things?

13 A. Yes, sir.

14 Q. So you had three different audible warnings
15 going?

16 A. That's right. The horn, the siren and the
17 lights.

18 Q. And if they're working, the people that alongside
19 the road should have been able to hear it, as well as the
20 person in the vehicle?

21 A. That's correct.

22 Q. All right. When you first turn onto Highway 3,
23 can you see the minivan?

24 A. Yes, sir.

25 Q. As soon as you make the --

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Direct by Mr. Tinsley

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Page 29 of 52

ROA 000041

1 A. Oh, I'm sorry.

2 Q. So you're saying that you can do that? You can
3 just pass on a solid yellow line?

4 A. On due regard, yes.

5 Q. What is due regard? Due regard for the people
6 coming around the curve?

7 A. It wasn't a straight curve. You could see -- you
8 could see around. I could see around her and I had
9 clearance to go around her.

10 Q. All right. Does a solid yellow line -- you'll
11 agree that controls movement in the lane that you were
12 driving in?

13 A. Yes.

14 Q. All right. And what is your understanding of
15 what the solid yellow line means?

16 A. No pass.

17 Q. All right. How far behind her vehicle were you
18 when you began to pass?

19 A. I don't remember.

20 Q. Did you come up on the minivan? Did you -- let
21 me start over. Did you catch up to the minivan and ride
22 behind it for any period of time or did you come up on it
23 and just go to pass?

24 A. No. We come up behind her for a period of time,
25 because I didn't know what she was doing. She had no turn

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Direct by Mr. Tinsley

Page 31 of 52

ROA 000042

1 signal on and she was slowing up, and that's when she come
2 pretty much to a complete stop in the road. She had no
3 turn signal on that she was turning.

4 Q. All right. Wait just one second. You can tell
5 me all that. When you came up behind her for a period of
6 time, whatever you just said --

7 A. She was slowing up.

8 Q. All right. So y'all are riding along?

9 A. Uh-huh.

10 Q. That's a yes?

11 A. That's correct.

12 Q. All right. And how close behind her are you?

13 A. I mean, I wasn't on her bumper but, I mean, we
14 had distance between us. I'm not -- I don't really
15 remember.

16 Q. All right. Is that when you were going 45 miles
17 an hour?

18 A. That's correct. 'Cause we was slowing up because
19 she was coming -- she was slowing down and we were slowing
20 down.

21 Q. Okay. And had you ever -- from the time you
22 turned onto 301 to the time you come up behind her and
23 start slowing down, had you ever exceeded 45 miles an hour?

24 A. No, sir. I don't believe I did, no, sir.

25 Q. So --

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ROA 000043

1 A. Connie Schroyer.

2 Q. What's her maiden name?

3 A. I don't even know, to be honest with you. She's
4 from California.

5 Q. Okay.

6 A. Layman.

7 Q. All right. Can you tell me, is that called a van
8 that you were driving? What do y'all call it? Unit? Van?
9 What do you call it?

10 A. Truck, whatever.

11 Q. Truck? Okay. Was your truck completely in the
12 oncoming lane when it was hit?

13 A. Yes, sir. We was in the -- when I noticed she
14 was turning, I just snatched the wheel to try to avoid the
15 accident to miss her.

16 Q. All right.

17 A. But yes, I was in the other lane.

18 Q. You were completely in the other lane when you
19 noticed she was turning?

20 A. Yes.

21 Q. All right. And you snatched the wheel to the
22 left?

23 A. To the right. To the right. 'Cause I was in the
24 left lane and I was going to move to the right to miss her.
25 That's why I hit the left backside of the van.

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ROA 000044

1 Q. All right. I'm a little bit confused now. I'm
2 more confused than I've been.

3 A. I'm sorry.

4 Q. That's all right. You're riding along and it's a
5 two-lane road; correct?

6 A. That's right.

7 Q. (Counsel makes drawing) I'm just drawing this for
8 me. And you're in -- you're in the right lane when you
9 come up behind her; correct?

10 A. That's right.

11 Q. And then you get over into the left lane?

12 A. That's correct.

13 Q. And she's still ahead of you when you see her
14 turning to the left; correct?

15 A. Yeah, pretty much. Because when I seen -- when I
16 seen her turning, is when I snatched the wheel.

17 Q. And when you --

18 A. Tried to avoid the accident.

19 Q. All right. But you snatched the wheel back to
20 the right?

21 A. Yep. To try to avoid it.

22 Q. All right. When you see her turning, can you
23 tell me, is she still ahead of you? Is she even with you?

24 A. I don't remember. 'Cause, I mean, we hit -- we
25 hit the back left corner of the driver's side of the

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ROA 000045

1 vehicle. I believe that's right.

2 Q. Right.

3 A. Yep. Back side of the driver's side. Like I
4 said, 'cause we almost missed her. I mean, if I could have
5 got over sooner, hopefully, I would have tried.

6 Q. All right. If you -- okay. So when you see her
7 vehicle -- well, let me back up. Her vehicle is almost
8 into the driveway that she's going into when you snatched
9 the wheel; correct?

10 A. Umm --

11 Q. She's turning in this driveway up here, she's
12 almost in there and you hit her and spin her around in the
13 ditch; correct?

14 A. Yeah. 'Cause she was actually past her driveway.

15 Q. Past her driveway?

16 A. Yep.

17 Q. You talking about after?

18 A. She spun?

19 Q. Right.

20 A. Yeah.

21 Q. She wasn't turning in past her driveway, she was
22 turning into the driveway; correct?

23 A. That's what she said, yes, sir.

24 Q. Well, I mean, did you see her?

25 A. Yes. Yes, I seen her, but I don't remember

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ROA 000046

1 exactly, you know, where the driveway was, you know, of
2 impact, 'cause I was watching the road.

3 Q. All right.

4 A. 'Cause, like I said, I was paying attention -- I
5 wasn't paying attention to, you know, the driveways and all
6 that stuff. I was paying attention to what was going on
7 ahead of me.

8 Q. Okay. How long was she at a complete stop there
9 in the road?

10 A. I really don't remember, you know, a specific
11 time frame. Or, I mean, she -- you know, she appeared to
12 be at a complete stop and there was nobody else coming, you
13 know, that I could see, so I eased around her.

14 Q. Okay. And you don't know how far you were from
15 her when you began your pass?

16 A. I don't.

17 Q. But however far it was, you were completely
18 established in that lane whenever you snatched the wheel
19 back to the right; correct?

20 A. Yes.

21 Q. The oncoming lane?

22 A. That's correct.

23 Q. And her vehicle is -- at least the front part of
24 it is in the driveway at that point in time?

25 A. Somewhere in that area, yes, sir.

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ROA 000047

1 Q. And the impact happens where? Could you -- if we
2 drew the road out or I showed you a picture, can you say
3 the impact -- the front portion of my truck hits the back
4 corner of hers here? Here? Can you do that?

5 A. Like I said, I really don't even remember exactly
6 where, you know, my ambulance was on -- I could say I was
7 on this side of the -- on this side, but where actually, I
8 can't tell you. It's been two years.

9 Q. You said she appeared to be at a stop. Are you
10 certain whether she stopped or not?

11 A. She appeared to be at a stop. She had no turn
12 signal on. So she wasn't moving -- or I don't recall her
13 moving. I recall her at a stop.

14 Q. Okay.

15 A. Just like my statement said.

16 Q. Well, you don't -- there's a slight difference,
17 and maybe it's only a difference to me, whether "I don't
18 recall her moving" versus "she wasn't moving."

19 A. Yes, sir.

20 Q. And is it you don't recall her moving or you know
21 she wasn't moving?

22 A. Let me look right here. (Witness peruses
23 exhibit.)

24 Q. What do you recall today? Then you can -- I
25 mean, you can read your statement, but what do you recall

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ROA 000048

1 right now? Or you just don't know?

2 A. I just don't know.

3 Q. Okay. And if you read your statement, what is --
4 does it refresh your memory where you're able to -- or are
5 you just guessing if you say --

6 A. No, sir. It refreshes my memory.

7 Q. All right. And if you refresh your memory, what
8 do you -- did she stop? Or just appeared to stop? Or you
9 don't know?

10 A. She appeared to be stopped.

11 Q. Okay. And do you know for how long she appeared
12 to be stopped?

13 A. No, sir, I don't remember.

14 Q. Do you know how much of her van was in the
15 driveway at the point of impact?

16 A. No, sir, I do not recall.

17 Q. And you don't know how far back you were when you
18 began your -- to pass?

19 A. Like I said, we wasn't right on her bumper or
20 anything. There was some distance between us, but I don't
21 know exactly, you know, how far apart it was.

22 Q. How long did you ride along behind her at 45
23 miles an hour, distance-wise?

24 A. I'm not good with all that judging, you know, how
25 far and all that stuff. I really don't know, 'cause I

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ROA 000049

1 don't want to say something and it not be accurate. I
2 don't remember.

3 Q. But you remember for some period of time, for
4 some distance, that you rode along with the car and both
5 the cars seemed to be going at the same speed?

6 A. That's correct.

7 Q. They maintained an equal distance between each
8 other?

9 A. That's correct.

10 Q. And then all of a sudden, she stops?

11 A. That's right. She comes to -- yes, sir.

12 Q. And you're going 45 miles an hour at the time of
13 the wreck?

14 A. Yes, sir. We slowed down. We started slowing
15 down, as well. When she slowed down, we slowed down, until
16 I made sure we had clearance.

17 Q. What was Shannon doing at this point in time?

18 A. She was pretty much sitting, and she was
19 answering the radio if need to be.

20 Q. Well, I understand she's answering it if need be.

21 A. Yes, sir.

22 Q. But what was she doing at this point in time as
23 y'all were approaching this vehicle? If you don't know,
24 then the answer is, "I don't know."

25 A. She was just sitting in the truck, I mean...

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ROA 000050

1 A. Yes, sir.

2 Q. Answered it truthfully and to the best of your
3 knowledge?

4 A. Yes, sir.

5 Q. Do you work for the fire department in Hampton?
6 Were you working for the fire department at the time of
7 this wreck?

8 A. No, sir, I do not believe I was.

9 Q. Okay.

10 A. I was only in Hampton for a brief period of time,
11 then I got sick.

12 Q. Right. I understand. But when you were
13 responding to the call and driving that ambulance, you
14 weren't working for the --

15 A. No. Not the --

16 Q. -- fire department?

17 A. -- fire department, no, sir.

18 Q. And you weren't responding to provide any fire
19 protection. You weren't responding to the fire in that
20 capacity, were you?

21 A. No, sir. We were there for rehab. Of course,
22 our -- we had our patient was our number one priority. We
23 were also there for, you know, rehab of the firefighters if
24 some -- if some injury were to occur, we would be there.

25 Q. Okay. Well, were y'all there to rehab the

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ROA 000051

1 firemen or were you called out to this burn victim?

2 A. We didn't know about the burn victim at first, so
3 -- but as soon as we -- if we'd have made it on scene and
4 we knew we had a burn victim, that burn victim was the
5 number one priority.

6 Q. I gotcha.

7 MR. TINSLEY: All right. That's all the
8 questions I have for you.

9 MS. DEAN: I don't have anything.

10 (WHEREUPON, the deposition was concluded at
11 approximately 10:12 a.m.)

12

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ROA 000052

**HAMPTON COUNTY EMERGENCY MEDICAL SERVICES
INCIDENT REPORT**

Date: _____
Time: _____
Type: _____
Location: _____

Medic 3 was dispatched to a 10-70 structure fire on Grant Hill rd. Medic 3 was responding from the ER. Medic 3 came down Hwy 278 made a left onto 601 south then made a right onto Hwy 3 and Browning Gate rd. When medic 3 made right onto Hwy 3, medic 3 came up behind a brown mini van. Medic 3 had lights and siren on. The van appeared to be stopped in the road. I, Jason Schroyer, driver of the ambulance, changed the tone of the siren and blew the horn. The van still appeared that it was stopped in the road. I slowed up when approaching the vehicle. I made sure that I had clearance. I attempted to pass the vehicle with the siren, lights and horn still going. The mini van made a left turn when I attempted to pass it causing medic 3 to strike the rear left side of the van. The van fishtailed into the ditch on the left hand side of the road. After impact I asked Emt-I Pearson if she was ok and she stated that she was ok and for me to go check on the other pts. Emt-I Pearson notified dispatch of the vehicle collision and requested Eng 55 that was enroute to the structure fire divert to our location. I stopped the ambulance took my seat belt off and immediately went to check on the other patients. A man from a Personal Car ambulance stopped and stated his name was Michael and he was a paramedic with Beaufort County Ems. He then started to assess the patients. I assisted in the patient care until further help arrived on scene. Emt-I Meyer took over the pt care. I was then interviewed by highway patrol. After that, I was transported to HRMC ER by medic 2 to be evaluated.

Submitted by: _____
Signature: _____
Supervisor On Duty: _____
Received by: _____
Date of Report: _____
Investigated by: _____



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Were disciplinary action taken: (yes) (no) If yes please explain

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge

Case No. 2009-CP-25-00517

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

v.


Hampton County E.M.S., Appellant.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included
by any of the parties and not any other material.

January 17, 2012

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ROA 000054

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2009-CP-25-517

MARIA T CURIEL and
MARTIN L. CURIEL,

Respondents,

v.

HAMPTON COUNTY E.M.S.,

Appellant.

APPELLANT'S FINAL BRIEF

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STATEMENT OF ISSUE ON APPEAL

- I. Whether the trial court erred in granting summary judgment in favor of the Respondents, thus precluding the Appellant from asserting the affirmative defense, raised in the pleadings, that the governmental entity is not responsible for loss caused by the method of providing fire protection.

STATEMENT OF THE CASE

This is an action brought by the Appellees, Maria Curiel and Martin Curiel, against the Appellant, Hampton County E.M.S.

Appellee Maria Curiel was driving her husband Martin's vehicle in a westerly direction on Secondary Road 3 in Hampton County, South Carolina. At the same time, Jason Schroyer drove the Appellant's ambulance in the same direction and approached the Curiel vehicle from behind. The ambulance driver and his supervisor were en route to a fire with a reported burn victim. The ambulance driver employed his emergency lights and audible signals. As the ambulance attempted to pass the Appellee on her left, she attempted a left turn. The vehicles collided causing injury to Ms. Curiel.

On November 17, 2009, the Curiels filed the instant lawsuit pursuant to the South Carolina Tort Claims Act. (R. pp. 9-11.) The Complaint asserts a cause of action in negligence based upon, inter alia, negligent operation of the ambulance and failure to properly hire, train and supervise its drivers. On December 17, 2009, the Appellant answered asserting the immunities afforded by to the South Carolina Tort Claims Act. (R. pp. 12-15.)

Following discovery, the Appellant and the Appellees filed cross motions for summary judgment. (R. pp. 17-20.) Those motions were heard by Circuit Court Judge Perry M. Buckner on January 4, 2011. (R. p. 5.) By order filed January 25, 2011, Judge Buckner denied the Appellant's motion for summary judgment but did not rule on the Appellees' cross motion. (R.

pp. 5–8.) Pursuant to the Appellant’s motion for reconsideration, Judge Buckner heard from the parties on March 15, 2011, and issued a subsequent order, filed on June 8, 2011. (R. pp. 1–4.) The Order of June 8, 2011, denied the Appellant’s motion for summary judgment and granted the Appellees’ motion.

The Appellant subsequently filed a Notice of Appeal to this Court.

STATEMENT OF THE FACTS

On November 22, 2008, Appellee Maria Curiel operated her husband Martin’s vehicle in a westerly direction on Secondary Road 3 in Hampton County, South Carolina. Road 3 provides one lane of travel in each direction, (R. p. 31, lines 1–24), with a solid yellow center line. (R. p. 32, lines 7–9). The speed limit in the area is 55 miles per hour. (R. p. 39, lines 20–24.)

At the same time, Jason Schroyer drove the Appellant’s ambulance in the same direction on Secondary Road 3 and approached the Curiel vehicle from the rear. (R. p. 42, line 24.) Schroyer and his supervisor, Shannon Crouch, had received a dispatch to a structure fire, and while in transit they were informed that there was a burn victim at the fire site. (R. p. 36, line 23–p. 37, line 15; R. p. 27, line 17.)

As the ambulance approached the Appellees’ vehicle, Jason Schroyer was traveling 45 miles per hour, (R. p. 39, lines 20–22), with the emergency lights and audible signals in use. (R. p. 40, line 24–p. 41, line 2.) Both vehicles slowed down and the driver of Appellees’ vehicle appeared to be stopped. (R. p. 53.) Schroyer had a clear view of the road ahead and determined that he could pass the stopped car. (R. p. 42, line 7.) Before starting to pass, Schroyer changed the audible tone on the ambulance by adding the horn to the lights and siren. (R. p. 28, lines 22–23.) When he began to maneuver past the Appellees’ car, there were three warnings employed

by the ambulance, emergency lights, the siren and the horn. (R. p. 41, lines 8-17; R. p. 53.)

When Schroyer was across the yellow line and starting to move past the car, Appellee Maria Curiel began a left turn into a private driveway. Schroyer attempted to avoid the collision by steering to the right but was unable to avoid colliding with the Appellees' vehicle. (R. p. 44, lines 13-25.)

ARGUMENT

Because the Appellant is entitled to immunity, pursuant to S.C. Code Ann. § 15-78-60(6), the trial court erred in granting summary judgment to the Appellees.

The testimony presented to the trial court demonstrates that the Appellant is entitled to immunity from liability pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60(6).

The trial court's ruling, that the statute is not as broad as Hampton County E.M.S. urges and that it does not apply to the facts in this case, was erroneous. The lower court's finding, that the E.M.S. was not providing fire protection is belied by the testimony before it. The decision below, that neither the words of the statute nor the intent of the statute were intended to apply to the facts in this case, must be reversed. The effect of the lower court's ruling is to deny the Appellant, a governmental entity pursuant to the South Carolina Tort Claims Act, the benefit of a substantial defense. The Appellant urges this Court to find that the trial court erred in his ruling and to hold that the Appellee is not entitled to summary judgment as a matter of law.

A. Standard of Review

A motion for summary judgment should be granted only in the event that "the pleadings, depositions, answers to interrogatories, 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." Rule 56(c), SCRPC.

"In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." Bovain v. Canal Ins., 383 S.C. 100, 105 (2009). An appellate court

reviews a grant of summary judgment under the same standard applied by the trial court under Rule 56(c), SCRPC. Brockbank v. Best Capital Corp., 341 S.C. 372, 379 (2000).

Summary judgment is a drastic remedy and should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial. Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631 (2004).

B. Law and Argument

1. The Tort Claims Act

“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).¹

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. The Act is a limited waiver of sovereign immunity. Richland County v. Carolina Chloride, Inc., 382 S.C. 634, 648, 677 S.E.2d 892, 899 (Ct. App. 2009). “The provisions of [the Tort Claims Act] establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.” S.C. Code Ann. § 15-78-20(f).

“The Act waives sovereign immunity while also providing specific, enumerated exceptions limiting the liability of the state and its political subdivisions in certain circumstances.” Huggins v. Metts, 371 S.C. 621, 624, 640 S.E.2d 465, 466 (Ct. App. 2006).

S.C. Code Ann. § 15-78-60(6) affords immunity to the Appellant in the instant case. This Court first considered the application of this provision in Wells v. City of Lynchburg, 331 S.C.

¹ The conjunctive "or" is missing from the statute. This Court ruled that the omission of the word "or" in section 15-78-60(6) is apparently a scrivener's error. Wells v. City of Lynchburg, 331 S.C. 296, 303-304 (Ct. App. 1998).

296, 501 S.E.2d 746 (Ct. App. 1998). Following Wells, South Carolina's appellate courts, presented with this statutory provision and given the opportunity to alter its application, have not changed their view. Jones v. Lott, 379 S.C. 285 (Ct. App. 2008); Jones v. Lott, 387 S.C. 339, 349 (2010); Jones v. Sumter County Sheriff's Office, 2011 S.C. App. Unpub. LEXIS 59 (Ct. App. Feb. 15, 2011).

In Wells, the plaintiff's home, located in the City of Lynchburg, South Carolina, caught on fire, completely destroying the home and its contents. The homeowners sued, alleging that the City was negligent in failing to inspect and maintain the fire hydrants and/or water lines and in failing to notify the Lee County Fire Department that certain fire hydrants were inoperative. The evidence was uncontradicted that the City of Lynchburg had notice of one malfunctioning hydrant at least three weeks before the fire and that it had not been repaired. The trial court granted summary judgment in favor of the defendants, stating although certain matters of fact were in dispute, "the resolution of these factual issues are not necessary for a resolution of the motion" for summary judgment. The court concluded the action was barred by the Tort Claims Act.

In Wells, the Court of Appeals examined § 15-78-60(6), interpreted its language, determined that the South Carolina Tort Claims Act precluded the action, 331 S.C. at 306, 501 S.E.2d at 751, and affirmed the grant of summary judgment. The Court held that the defendants' actions were "included in the exceptions from liability in section 15-78-60 for the method of providing fire protection...." even though the result was a lack of fire protection. Wells v. City of Lynchburg, 331 S.C. 296, 305, 501 S.E.2d 746, 751 (Ct. App. 1998).

In the instant matter, the Appellees argued below that the facts do not demonstrate that the EMTs were providing fire protection. This attempt to limit the provision is too restrictive.

The statute uses the words “fire protection,” as opposed to fire prevention or fire fighting. The Court must view the statute using the words chosen by the legislature. The words of the statute must be given their plain meaning. Michael P. v. Greenville County Dept. of Social Services, 385 S.C. 407, 415, 684 S.E.2d 211, 215 (Ct. App. 2009). Section 15-78-60(6) must be construed and applied in light of the intended purpose of the statute, Id., which protects the government from decisions made by its employees in providing police and fire protection. Wells, supra, Huggins v. Metts, supra, at 621.

Although the Court cannot extend application of the statute beyond the Legislature’s intent, fire protection must be read to include those services logically provided in conjunction therewith. It would be absurd 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 be equally untenable to include activities such as pouring water on a fire while, at the same time, excluding the rescue of those injured in that same blaze. In this case, it is uncontroverted that the EMTs 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.

The application of the immunity is illustrated by Huggins v. Metts, supra. On July 19, 2001, the Lexington County Sheriff’s Department responded to a call from Huggins stating his son was threatening to burn down several homes and to commit suicide. Police did not find the son at home but with the use of bloodhounds, located him in the woods behind his residence. When the police approached, they observed that he was armed with two large butcher knives. Police ordered him to drop the knives, but he did not and stated to them that they were going to have to kill him. The police brought in a negotiator, but the man was not receptive to

speaking with the negotiator. After a period of time, the police radioed for a taser. Upon hearing this, the man stated "You're not going to tase me." He indicated that he was "going home" and began walking towards his residence. The police attempted to keep themselves between him and the residence. When he continued to advance towards one of the officers, he was warned, "Do not come any closer or I will shoot." Still armed with two large butcher knives, he continued forward. Once he got to within fifteen feet, the officer shot him. After being shot, the man continued toward the officer, at which point two other officers shot and killed him.

This Court found that the manner in which the police chose to provide police protection gave the officers immunity. The Court ruled that, "[T]he Act specifically exempts the Police from liability concerning the methods which they choose to utilize to provide police protection...." Id. at 625. The Court stated further, "Even were we to accept all of Huggins's assertions as true, it would not remove the immunity which the legislature has bestowed on the Police in this situation. Id., 624-625.

The important holding in Huggins is: Employees of governmental entities are immune for the methods they choose to utilize in providing protection. In the case at bar, the choice made by Jason Schroyer, to pass the Appellees' vehicle, falls within the immunity afforded by the statute. This Court in Huggins affirmed the grant of immunity to the police officers in the field for the decision they made, on the scene, on how to deal with an emerging situation. The same result must apply here. This Court must grant immunity for the Appellant's decision to overtake the Curiel vehicle in order to deliver medical attention to a burn victim at a fire location.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant, Hampton County E.M.S., respectfully requests that this Court reverse the orders of Judge Perry M. Buckner granting summary judgment in Appellees' favor.

Respectfully submitted,

GRIFFITH, SADLER & SHARP, P.A.

BY: 

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January 17, 2012

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge

Case No. 2009-CP-25-00517

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

v.

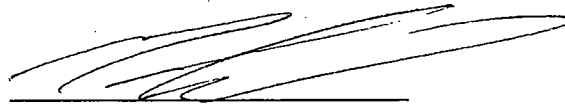
Hampton County E.M.S., Appellant.

CERTIFICATE OF COUNSEL

I certify that Appellant's Final Brief complies with Rule 211(b).

January 17, 2012

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Peety M. Buckner, Circuit Court Judge

Case No. 2009-CP-25-517

Maria T. Curiel and Marinal Curiel Respondents

Hampton County EMS Appellant

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COUNTER-STATEMENT OF THE ISSUES ON APPEAL

- I. Did the Circuit Court Correctly Rule That Section 15-78-60(6) of the South Carolina Code of Laws Did Not Apply to this Case as a Matter of Law So That Plaintiffs Maria and Martin Curiel Could Proceed with Their Tort Claims Against EMS?

- II. Should this Court Affirm Based upon the Unchallenged Finding by the Trial Court That EMS Failed to Meet its Burden of Showing That the Curiels' Allegations Fell Within the Exception to the Waiver of Immunity Found in Section 15-78-60(6) of the South Carolina Code?

COUNTER-STATEMENT OF THE CASE

This is an automobile wreck case. On November 17, 2009, Maria T. Curiel and Martin L. Curiel filed an action against Hampton County Emergency Medical Services ("EMS"), claiming Mrs. Curiel was injured when her car was struck by an EMS ambulance which attempted to pass her as she made a proper left turn. Mr. Curiel sought to recover for property damage to the vehicle, which he owned. (R.pp.9-11).

EMS filed an answer admitting the wreck occurred, but denying liability. EMS also raised the affirmative defense of sovereign immunity under the South Carolina Tort Claims Act ("the Act"). (R.pp.12-15).

Following discovery the parties filed cross-motions for summary judgment. EMS filed its motion on November 4, 2010, and asserted it was entitled to judgment because it was immune under Section 15-78-60(6) of the Act "for the method of providing police and fire protection." (R.p.16). The Curiels filed their motion on November 15, 2010, and asserted they were entitled to judgment because EMS was not entitled to immunity under Section 15-78-60(6) as a matter of law. (R.p.18).

On January 4, 2011, the circuit court heard arguments on the cross-motions for summary judgment. On January 25, 2011, the court denied EMS's motion for summary judgment, holding there was no evidence the EMS crew was responding to a fire so as to provide any fire protection services. (R.p.5-8). The court also held the Curiels did not sue EMS for the failure to provide fire protection nor the method it utilized to provide fire protection, but instead sued EMS for the automobile collision which occurred while the employee was operating the vehicle within the course and scope of his duties as an

Emergency Medical Technician (EMT). The court held that neither the statute nor the intent of the statute were meant to apply to the facts of the case, and thus denied EMS's motion.

On February 3, 2011, EMS moved for reconsideration and argued the uncontroverted evidence in the record established the employees were responding to a fire at the time of the wreck. (R.pp.20-21).

On March 9, 2011, EMS filed a "Notice of Waiver of Certain Tort Claims Act Defenses." EMS waived all immunities, limitations and defenses "except the immunity afforded in South Carolina Code Section 15-78-60(6)." (Notice of Waiver, R.pp. 22).

On March 15, 2011, the court heard arguments on EMS's motion for reconsideration. On June 8, 2011, the court entered an order denying EMS's motion. (R.pp.1-4). In that same order the court granted the motion for summary judgment filed by the Curiels, holding the defense provided by Section 15-78-60(6) did not apply to this case, and holding EMS was not providing "fire protection," and was "not alleged to have failed to provide fire protection or utilized the wrong method of providing fire protection."¹

On June 22, 2011, EMS filed and served a notice of appeal from the June 8, 2011, order denying its motion for reconsideration and granting the Curiels' motion for summary judgment.

¹ This was a motion for partial summary judgment only as to this defense. The Curiels will still need to proceed with the case for liability and damages. (R.p. 24, l. 22 - p. 25, l. 6).

FACTS

This matter is before the Court on cross-motions for summary judgment. Under this posture the parties have agreed that the case is before the Court for its decision as a matter of law. See, e.g., *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 705 S.E.2d 432 (2011) (where cross motions for summary judgment are filed, the parties concede the issue before the appellate court should be decided as a matter of law). The narrow issue in this case is whether the trial court erred in granting summary judgment to the Curiels because EMS is purportedly entitled to judgment as a matter of law under Section 15-78-60(6).

Furthermore, the appeal in this case is not from the denial of EMS's motion for summary judgment, for that ruling is never appealable. See, e.g., *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 580 S.E.2d 440 (2003) (the denial of a motion for summary judgment is not appealable, even after final judgment).

Finally, because this appeal is from the grant of the Curiels' cross-motion for summary judgment, this Court must apply the same standard used by the trial court under Rule 56(c), SCRCP, in reviewing the trial court's decision. *Spence v. Wingate*, 395 S.C. 148, 716 S.E.2d 920 (2011); *Bass v. Gopal, Inc.*, 395 S.C. 129, 716 S.E.2d 910 (2011). This Court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to EMS, who was the party opposing the motion that is the subject of this appeal. *Spence*.

Against this backdrop the facts are as follows.² On November 22, 2008, Mrs. Curiel was driving Mr. Curiel's car along Secondary Road 3 in Hampton County. (R.p. 30, l. 25 - p. 31, l. 17). The roadway was a two-lane road, providing one lane in each direction with a solid double-yellow center line. (R.p.31, ll. 1-24; p.32, ll. 7-9). The posted speed limit in the area was 55 miles-per-hour. (R.p.39, ll. 23-24).

EMT Jason Schroyer was driving the EMS ambulance in the same direction along the same roadway as Mrs. Curiel and approached her vehicle from behind. (R.p.42, l. 24). Schroyer's supervisor, Shannon Crouch, was also in the ambulance. (R.p.37, l. 19 - p.38, l. 1). They had received a dispatch to a structure fire and while in route they were informed that there was a burn victim at the site of the fire. (R.p.27; p.36, l. 23 - p.37, l. 15).

Schroyer claimed he was driving about 45 miles-per-hour as he approached the Curiel vehicle. (R.p.39, ll. 20-22). He claimed he had the emergency lights and siren in use. (R.p.40, l. 24 - p.41, l. 2). Both vehicles slowed and Schroyer believed the Curiel vehicle had stopped. (R.p.42, l. 24 - p.43, l. 2). Crouch and Schroyer both claimed Schroyer sounded his horn and began to pass the Curiel vehicle. (R.p.41, ll. 8-17; p.28, l. 22-23). Schroyer crossed the center yellow line to move past the Curiel vehicle at the same time that Mrs. Curiel began a left turn into her driveway; Schroyer steered to the right but was unable to avoid colliding with the Curiel vehicle. (R.p.44, l. 11 - p.50, l. 16).

² This recitation of the facts mirrors the recitation of facts in the Brief of Appellant. (App. Br. pp. 2-3).

Following discovery both parties moved for summary judgment. The trial court heard argument and initially issued an order denying EMS's motion. EMS moved for reconsideration and the trial court heard argument again. The court issued an order denying EMS's motion for reconsideration and granting the Curiel's motion for summary judgment as to the Tort Claim Act defense.

This appeal follows.

ARGUMENTS

I. Did the Circuit Court Appropriately Grant Summary Judgment to Respondents in Light of Appellant's Claim of Entitlement to Judgment Pursuant to S.C. Code Ann. § 15-78-60(6) (2005)?

EMS argues it was entitled to immunity pursuant to Section 15-78-60(6) of the South Carolina Code so that the circuit court erred in granting summary judgment to Plaintiffs. (App. Br. p. 4). The upshot of the argument, however, is that the trial court erred in denying EMS's motion because it was entitled to absolute immunity as a matter of law. This argument should not be persuasive.

First, the argument is tantamount to a complaint that the trial court erred in denying EMS's motion for summary judgment. That ruling is never appealable, even after judgment. *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 580 S.E.2d 440 (2003) (the denial of a motion for summary judgment is not appealable, even after final judgment). EMS states the issue in its heading to the argument as follows:

Because the Appellant is entitled to immunity, pursuant to S.C. Code Ann. § 15-78-60(6), the trial court erred in granting summary judgment to the Appellees.

(App. Br. p. 4). EMS contends that "the effect of the lower court's ruling is to deny the Appellant, a governmental entity pursuant to the South Carolina Tort Claims Act, the benefit of a substantial defense." (App. Br. p. 4). Inasmuch as this is a claim that EMS should have received judgment, this Court should refuse to address it.

EMS also argues that under Section 15-78-60(6), EMS is entitled to immunity because it was engaged in services "logically provided in conjunction" with "fire protection" at the time of the wreck. (App. Br. p. 7). EMS contends that "fire protection"

necessarily includes “the rescue of those injured” in the fire. (App. Br. p. 7). The Court should reject this argument.

Section 15-78-60 provides:

The governmental entity is not liable for a loss resulting from:

* * *

- (6) civil disobedience, riot, insurrection, or rebellion or the failure to provide [or] the method of providing ... fire protection;

S.C. Code Ann. § 15-78-60(6) (2005); *Huggins v. Metts*, 371 S.C. 621, 624 n. 2, 640

S.E.2d 465, 467 n. 2 (Ct. App. 2006) (Court of Appeals noted statute contains a

scrivener’s error and is missing the conjunctive “or” as indicated in brackets as cited).

EMS contends this provision creates immunity for the EMT’s “decision to overtake the Curiel vehicle in order to deliver medical attention to a burn victim at a fire location.”

(App. Br. p. 8). This argument should not be persuasive.

The statute does not define “fire protection.” Further, it only immunizes the failure to actually provide fire protection as well as “the failure to provide the method of providing ... fire protection.” The immunity under the Act is not as broad as EMS contends it should be.

Other states have addressed this provision, and the analysis should be persuasive.

For instance, the Florida Supreme Court has stated:

The decisions of how to properly fight a particular fire, how to rescue victims in a fire, or what and how much equipment to send to a fire, are discretionary judgmental decisions which are inherent in this public safety function of fire protection. A substantial majority of jurisdictions that have addressed the issue of governmental liability for asserted negligent conduct in responding to and fighting fires have reached this

same conclusion. [citations omitted] To hold a city liable for the negligent decisions of its fire-fighters would require a judge or jury to second guess fire-fighters in making these decisions and would place the judicial branch in a supervisory role over basic executive branch, public protection functions in violation of the separation of powers doctrine.

We distinguish these types of discretionary fire-fighting decisions from negligent conduct resulting in personal injury while fire equipment is being driven to the scene of a fire or personal injury to a spectator from the negligent handling of equipment at the scene. Governmental entities are clearly liable for this type of conduct as a result of the enactment of section 768.28, Florida Statutes (1983) [Florida's general waiver of sovereign immunity under its Tort Claims Act].

In conclusion, we hold that if there is to be a duty to individual property owners upon which the liability of a governmental entity and its taxpayers is to be based for the discretionary actions of fire-fighters in combating fires, that duty must be established by an enactment of the legislature and not by judicial fiat.

City of Daytona Beach v. Palmer, 469 So.2d 121, 123 (Fla. 1985) (Emphasis added).

Hence, the Florida court drew a distinction between injuries caused by the activities in deciding the means for actually combating the fire and injuries caused by fire fighters while the equipment to fight the fire is being driven to the scene. That is, the immunity embraces those discretionary fire-fighting decisions inherent in government functions and not those activities that are not part of that realm, such as driving an EMS ambulance to the scene of a fire to transport a person who was burned in the fire.

Georgia's Tort Claims Act provides an exception to the waiver of immunity for "losses resulting from ... the failure to provide, or the method of providing law enforcement, police, or fire protection." OCGA § 50-21-24(6). This provision was examined in *Georgia Forestry Comm v. Canady*, 280 Ga. 825, 632 S.E.2d 105 (2006), in which the Georgia Court of Appeals held the Georgia Forestry Commission (GFC) was

not entitled to judgment as a matter of law on the basis of the “fire protection” exception to the waiver of sovereign immunity. Faced with GFC’s assertion of sovereign immunity in response to Canady’s allegation that GFC was negligent in failing to notify other governmental agencies it was probable that visibility on a state highway would be obscured by smoke from a fire which had started as a “controlled burn” permitted by GFC, the Court of Appeals addressed a question of first impression and declined to construe “fire protection” so broadly “as to include notification of other governmental entities of the possibility of reduced visibility [due to smoke] after a fire.” *Georgia Forestry Commission v. Canady*, 274 Ga. App. 556, 617 S.E.2d 569 (2005).

The Georgia Supreme Court granted review and examined the term “method” in the statute. *Georgia Forestry Comm v. Canady*, 280 Ga. 825, 632 S.E.2d 105 (2006). The Court noted that Texas and West Virginia have construed their exceptions to provide sovereign immunity to those acts or omissions which constitute the execution of or the actual making of those policy decisions by a governmental unit in charge of providing police and fire protection. The Court added that both the Texas and West Virginia Supreme Courts saw as a purpose of the exception to avoid a judicial review that would question the wisdom of a government’s exercise of its discretion in making policy decisions. The Georgia Court held the term “method” connotes an orderly procedure or process and adopted the definition used by Texas and West Virginia, concluding:

[W]e construe the exception to the waiver of sovereign immunity found in OCGA § 50-21-24(6) as authorizing the application of sovereign immunity to the making of policy decisions by state employees and officers including those relating to the amount, disbursement, and use of equipment and personnel to provide law enforcement, police or fire

protection services, and to the acts and omissions of state employees and officers executing and implementing those policies.

280 Ga. at 830, 632 S.E.2d at 110. Thus, the governmental employees who make policy decisions regarding the means for fire protection services, and those employees who take those decisions and implement them, fall within the waiver of sovereign immunity. For example, an employee who buys certain equipment, hires certain employees, or engages in other activities in response to direction from the policy makers also enjoys protection from the waiver of sovereign immunity. Driving an ambulance to the scene of a fire to transport an injured party does not fall within the ambit of activities designed to carry out discretionary decisions about the means for fire protection, nor is it related to the provision of fire protection.

EMS contends "it is uncontroverted that the EMTs 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." (App. Br.p.7). This Court should reject this argument.

Simply being deployed to retrieve and transport a burn victim has nothing to do with "the method of providing ... fire protection." The EMTs may just as well have been dispatched to the scene of an automobile wreck, a choking patron at a diner, a heart attack victim at a home, or an injured child at a school. EMS was sent to the scene of the structure fire in this case to stabilize injured persons at the scene and then transport the persons to the hospital. The EMTs were not there to help fight the fire or to take measures to prevent the fire itself from spreading, nor is there any evidence that having an EMS

unit with EMTs aboard present at a fire was part of the discretionary decision to provide fire protection. The fact that there was a fire at all meant nothing to the EMTs' activity.

The trial court noted that taking EMS's argument a short step further "if the burn victim was then negligently treated at a governmental hospital would that medical malpractice too relate to the method of fire protection?" (R.p.4). As the trial court held, EMS was not providing fire protection, it was not alleged to have failed to provide fire protection, and it was not alleged to have utilized the wrong method of providing fire protection. (R.p.4). The trial court correctly held that neither the words of the statute nor the legislative intent behind the statute support a finding that the statute applied in this case. (R.p.4).

EMS primarily relies upon two South Carolina cases it contends supports its position.³ However, each of these cases is distinguishable in a meaningful way.

The first case is *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998). In *Wells*, the plaintiffs' home was destroyed by fire. They sued the City of Lynchburg claiming negligence in failing to inspect and maintain the fire hydrants and/or water lines for three nearby fire hydrants, and in failing to notify the fire department that the hydrants were not operational. Plaintiffs claimed Lee County was negligent in failing to promptly provide adequate personnel and equipment to extinguish the fire.

The Court of Appeals noted that the "essence" of the complaint against the

³ EMS also cites to *Jones v. Sumter County Sheriff's Office*, 2011-UP-058 (S.C. Ct. App. filed Feb. 15, 2011). (App. Br. p. 6), in violation of Rule 268(d)(2), SCACR (unpublished opinions should not be cited except in proceedings in which they are directly involved). Further, the opinion is a one-paragraph memorandum opinion filed pursuant to Rule 220(b)(1), SCACR, and contains no detailed analysis of the issues in the case. The Court should disregard this cite.

County was that it failed to provide adequate firefighting personnel and equipment, and that the plaintiffs conceded Section 15-78-60(6) barred that claim. However, the plaintiffs contended their remaining claim against the City for failure to inspect and/or maintain a system of fire hydrants and to notify the proper authorities of inoperative fire hydrants survived despite Section 15-78-60(6).

The Court of Appeals disagreed. The Court first noted that in *Shockey v. Oklahoma City*, 632 P.2d 406 (Okla.1981), the Oklahoma Supreme Court interpreted its version of section 15-78-60(6) based on facts similar to the facts in *Wells*. In *Shockey*, the plaintiff alleged the city negligently failed to properly maintain a fire hydrant or to warn the plaintiffs of its malfunction. In sustaining the dismissal of the plaintiffs' action, the Court explained:

The general rule is that the operation and maintenance of a fire department by a municipal corporation is an exercise of a governmental function so as to accord it sovereign immunity from liability when acting in such capacity. Oklahoma, by enactment of [its tort claims act] has statutorily recognized that a municipality's immunity from tort liability applies to it while engaged in fire protection and prevention.

Under § 155(6) appellee is exempted from liability for failure to provide, or the method it employs in providing, fire protection. Fire hydrants, as such, are a part of the physical structure of the fire department and their maintenance, including an adequate supply of water, and their repair are incidental to the operation of the fire department. The fire hydrants were installed for the purpose of fire protection. Although appellants' damages may have resulted from a failure of the water service, supplying water to the fire hydrants was just a part of appellee's overall operation in providing fire protection. Assuming, arguendo, appellee negligently failed to employ the proper methods in checking its water service for the proper operation of its fire hydrants, § 155(6) clearly exempts it from liability.

Wells, 331 S.C. at 304, 501 S.E.2d at 750, quoting *Shockey* at 408 (citations omitted)

(underline added). The Court of Appeals held:

We agree with the reasoning of the Oklahoma court in *Shockey* and hold the South Carolina Tort Claims Act precludes Appellants' action. The maintenance of fire hydrants and the supply of water for fighting fires clearly is included in the exceptions from liability in section 15-78-60 for the method of providing fire protection and the discretionary act of maintaining the city water system with the resources available. See, e.g., *Pierce v. Village of Divernon*, 17 F.3d 1074 (7th Cir.1994) (Illinois tort claims act codifies common law rule that a municipality owes the public no general duty of fire protection and that it therefore cannot be held liable either for failing to provide or negligently providing fire protection services; an alleged failure to provide sufficient water or water pressure could be viewed either as a complete failure to provide fire protection or as a failure to provide sufficient facilities to suppress or contain a fire; either way, the municipality is immune); *Lainer Invs. v. Department of Water and Power*, 170 Cal. App.3d 1, 215 Cal. Rptr. 812 (1985) (where California code provided no public entity is liable for the failure to provide or maintain sufficient personnel, equipment, or other fire protection facilities, the city was immune from tort liability for inadequate water supply where valve to city water line was not fully open); *Gans Tire Sales Co. v. City of Chelsea*, 16 Mass. App. Ct. 947, 450 N.E.2d 668 (1983) (actions against city for negligently failing to supply sufficient water to sprinkler systems to avert fire damages were barred as a matter of law by the doctrine of municipal immunity); *City of Columbus v. McIlwain*, 205 Miss. 473, 38 So.2d 921 (1949) (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 fire hydrants to become clogged or defective, etc.); *Ross v. City of Houston*, 807 S.W.2d 336 (Tex. App.1990) (city's policy of inspecting fire hydrants was directly connected to the city's method of providing fire protection; therefore, the state tort claims act exclusion from governmental liability for claims arising from the failure to provide or the method of providing fire protection barred suit by homeowner).

Wells, 331 S.C. at 304-305, 501 S.E.2d at 750-751. The activities alleged as a basis for liability (failing to inspect, maintain, and warn of defective hydrants) are obviously within

the ambit of providing fire protection. *Wells* actually supports the trial court's ruling that driving an ambulance to the scene of a fire to treat and transport injured parties is not providing fire protection, nor is it the method of providing fire protection.

The second case EMS relies upon is *Huggins v. Metts*, 371 S.C. 621, 640 S.E.2d 465 (Ct. App. 2006). In *Huggins*, the Lexington County Sheriff's Department responded to a call from Charles Huggins, Jr. (Huggins), stating his son, Charles Huggins, III (Deceased) was threatening to burn down several homes and to commit suicide. The Sheriff's deputies did not find Deceased at his home but with the use of bloodhounds, found him in the woods behind his residence. When the deputies approached Deceased, they observed that he was armed with two large butcher knives. The deputies ordered Deceased to drop the knives, but he did not and stated to them that they were going to have to kill him. The deputies brought in a negotiator to attempt to speak with Deceased, however, he was not receptive to speaking with the negotiator. After a period of time, the deputies radioed for a taser to subdue Deceased, but upon hearing this, Deceased stated "you're not going to tase me." Deceased indicated that he was "going home" and began walking towards his residence. The deputies attempted to keep themselves between Deceased and the residence and continued to demand that Deceased drop the knives. When Deceased continued to advance towards one of the officers, he was told "do not come any closer or I will shoot." Deceased, still armed with two large butcher knives, continued to approach the officer, and once he got to within fifteen feet, the officer discharged his weapon and shot Deceased. After being shot, Deceased continued toward the officer at which point two other officers shot Deceased. Deceased died as a result of

his gunshot injuries.

Huggins filed suit against the Sheriff's Department, and the circuit court granted summary judgment for the Department. This Court affirmed, noting:

Huggins argued before the circuit court that unlike the federal claim, this state claim was about the preparation and events leading up to the time immediately preceding the shooting of Deceased. This action concerns the manner in which the police chose to provide police protection. Because the Act specifically exempts the Police from liability concerning the methods which they choose to utilize to provide police protection, we need not address Huggins's other claims. Even were we to accept all of Huggins's assertions as true, it would not remove the immunity which the legislature has bestowed on the Police in this situation. We find no genuine issues of material fact, and, therefore, we affirm the circuit court's granting of summary judgment.

Huggins, 371 S.C. at 624-625, 640 S.E.2d at 467.

The actions alleged against the Sheriff's Department in *Huggins* all involved actual provision of police protection as well as assertions aimed at the methods the Sheriff's Department adopted for providing police protection. That is, the plaintiff was suing a police department for engaging in police protection activities. In this case, the Curiels are suing an ambulance service for negligence in engaging in ambulance service activities, not fire protection. *Huggins* is completely inapposite to this case.

EMS contends the holding in *Huggins* is very, very broad: "Employees of governmental entities are immune for the methods they choose to utilize in providing protection. In the case at bar, the choice made by Jason Schroyer, to pass the Appellee's vehicle, falls within the immunity afforded by the statute." (App. Br. p. 8). EMS would read the words "police" and "fire" right out of the statute, and declare the legislature intended to immunize any agency engaged in any form of "protection." EMS would also

read the word "method" as applying to all decisions by anyone in that chain of activity, regardless of whether those decisions are the result of the discretionary decisions made by agencies charged with deciding upon the method of providing police or fire protection.

Contrary to the position EMS urges this Court to take, the Court should rule that Schroyer's "decision to overtake the Curiel vehicle in order to deliver medical attention to a burn victim at a fire location" (App. Br. p. 8) does not constitute either the provision of fire protection or the method of providing fire protection. Schroyer's negligent operation of an ambulance on the way to get a burn victim at the scene of a fire does not concern the manner in which the fire fighting authorities chose to provide fire protection.

Accordingly, this Court should affirm the trial court's decision to grant summary judgment for the Curiels as to EMS's assertion of complete immunity under Section 15-78-60(6).

II. This Court Should Affirm Based upon the Unchallenged Finding by the Trial Court That EMS Failed to Meet its Burden of Showing That the Curiels' Allegations Fall Within the Exception to the Waiver of Immunity Found in Section 15-78-60(6)

In a footnote, the trial court stated:

Furthermore, as the burden of proof is on the governmental entity asserting a limitation upon liability, this Court finds that Hampton County E.M.S. has failed to meet its burden of showing that Plaintiffs' allegation[s] fall within this exception to the waiver of immunity. See, *Wooten v. S.C.D.O.T.*, 326 S.C. 516, 485 S.E.2d 119 (S.C. Ct. App. 1997).

(R.p.4, n. 3). This is a separate ruling that even if the exception to the waiver of immunity under Section 15-78-60(6) was implicated, EMS failed to carry its burden of establishing that the Curiel's allegations in the complaint fell within it.

EMS did not argue in the brief that this finding by the court is erroneous; in fact, there is no challenge at all to it. Accordingly, this ruling is now the law of this case. See, e.g., *Robinson v. Estate of Harris*, 391 S.C. 114, 705 S.E.2d 41 (2011) (an unchallenged ruling, right or wrong, is the law of the case); *Garnett v. WRP Enterprises, Inc.*, 380 S.C. 206, 669 S.E.2d 591 (2008) (an unchallenged finding becomes the law of the case). This ruling is therefore an appropriate basis to affirm the trial court's decision. See *Portman v. Garbade*, 337 S.C. 186, 522 S.E.2d 830 (Ct. App. 1999) (unappealed alternative ground stands as the law of the case and constitutes a basis for affirming the trial court).

Furthermore, the record supports this finding. Shannon Crouch was the EMS crew chief (R.p.37, ll. 19-25) and was in the ambulance at the time of the wreck. In her deposition, Ms. Crouch stated:

Q. * * * On this call were you responding on behalf of the fire department?

A. We were responding to a patient that was burned.

Q. Okay. So the answer would be no?

A. No.

Q. You weren't going to fight the fire?

A. No.

(R.p.27, ll. 15-21).

In his deposition, EMT Jason Schroyer, who was driving the ambulance, stated that he worked part-time for Allendale County EMS and was a volunteer fireman with the Brunson Volunteer Fire Department. (R.p.34, l. 25 - p.35, l. 5). When asked whether he

was responding to a call at the time of the wreck, Schroyer stated, "Yes, sir. We had just left Hampton Hospital to respond to a structure fire." (R.p.36, l. 23 - p.37, l. 1). However, when asked if he was working for the fire department in Hampton at the time of the wreck, Shroyer stated, "No, sir, I do not believe I was." (R.p.51, ll. 6-8). The following colloquy then took place:

- Q. * * * But when you were responding to the call and driving that ambulance, you weren't working for the - -
- A. No. Not the - -
- Q. - - fire department?
- A. - - fire department, no, sir.
- Q. And you weren't responding to provide any fire protection. You weren't responding to the fire in that capacity, were you?
- A. No, sir. We were there for rehab. Of course, our - - we had our patient was our number one priority. We were also there for, you know, rehab of the firefighters if some - - if some injury were to occur, we would be there.
- Q. . . . Okay. Well, were y'all there to rehab the firemen or were you called out to this burn victim?
- A. We didn't know about the burn victim at first, so - - but as soon as we - - if we'd have made it on scene and we knew we had a burn victim, that burn victim was the number one priority.

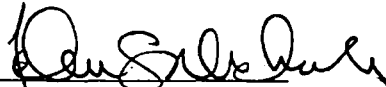
(R.p.51, l. 12 - p.52, l. 5). EMS did not present any evidence that the EMTs were engaged in any activity that constituted providing fire protection, or the method of providing fire protection.

Accordingly, this Court should determine this unappealed ruling is the law of the case and is dispositive of this appeal.

CONCLUSION

For the reasons stated, this Court should affirm the trial court's order denying EMS's motion for summary judgment as well as the court's order granting summary judgment for Respondents.

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February 21, 2012.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge

Case No. 2009-CP-25-00517

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

v.

Hampton County E.M.S., Appellant.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

- I. THIS APPEAL IS PROPERLY BEFORE THIS COURT BECAUSE THE TRIAL COURT'S ORDER HAS THE EFFECT OF STRIKING ONE OF THE APPELLANT'S DEFENSES.

Appellant Hampton County E.M.S. ("EMS") acknowledges that the denial of a motion for summary judgment is never appealable because it "does not finally determine anything about the merits of the case and does not have the effect of striking any defense since that defense may be raised again later in the proceedings." Ballenger v. Bowen, 313 S.C. 476, 477-78, 443 S.E.2d 379, 380 (1994). Here, however, the trial court did not merely deny EMS's motion; the court also granted the Respondents' motion for partial summary judgment as to the Tort Claims Act's fire protection defense.¹ Unlike with the standard denial of a motion for summary judgment contemplated in Ballenger, EMS cannot raise this defense later in the proceedings. Thus, this appeal is properly taken from the trial court's order granting the Respondents' motion for partial summary judgment, (see R. p. 4), and should be decided by this Court as a matter of law and without any particular deference to the trial court. See Wiegand v. U.S. Auto. Ass'n, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011).

¹ "The governmental entity is not liable for a loss resulting from . . . the failure to provide [or] the method of providing . . . fire protection." S.C. Code Ann. § 15-78-60(6) (2005); see also Huggins v. Metts, 371 S.C. 621, 624 n.2, 640 S.E.2d 465, 467 n.2 (Ct. App. 2006) (recognizing that the omission of the conjunctive "or" was a scrivener's error). This "defense" is actually an exception to the waiver of sovereign immunity, but for simplicity's sake, it will be referred to as a defense throughout this brief.

II. 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, (see Resp't Br. 11), is primarily based on two out-of-state cases that are not on point.

The first case the Respondents cite, City of Daytona Beach v. Palmer, 469 So. 2d 121 (Fla. 1985), is based on facts entirely different from the facts of this case. In Palmer, a property owner sued the city for the fire department's alleged negligence in fighting a fire in his office building, which he claimed was the proximate cause of the destruction of his office equipment, library, and professional records. See Palmer, 469 So. 2d at 122. The court noted that before a governmental entity may be held liable for its employee's negligence, there must be an underlying common law or statutory duty of care with respect to the employee's conduct. See id. The court held that the complaint should be dismissed because a city does not have a common law or statutory duty to provide fire protection services. See id.

The Respondents rely on two sentences in which the court opined that a governmental entity could be liable for injuries resulting from fire equipment being negligently driven to the scene of a fire. See id. at 123. These two sentences of dicta are completely unrelated to the holding of the case, and the only discussion or citation that the court provided for this assertion was Fla. Stat. § 768.28, which is merely Florida's general waiver of sovereign immunity statute. See id. There was no mention of any fire protection defense. See id.; cf. Estate of Williams v. City of Jackson, 844 So. 2d 1161,

1164 (Miss. 2003) (holding that a city was providing fire protection within the meaning of Mississippi's fire protection defense, and thus entitled to sovereign immunity, where a firefighter was involved in an accident while driving a fire truck to a fire). Accordingly, this Court should disregard these two sentences of unsupported dicta from an out-of-state opinion based on a factual situation entirely different from this case.

The second out-of-state case cited by the Respondents, Georgia Forestry Commission v. Canady, 632 S.E.2d 105 (Ga. 2006), is also based on facts entirely different from the facts of this case, but actually supports EMS's argument. In Canady, the plaintiff argued that the Georgia Forestry Commission ("GFC") "was negligent in failing to notify other governmental agencies it was probable that visibility on a state highway would be obscured by smoke from a fire which had started as a 'controlled burn' permitted by GFC." Canady, 632 S.E.2d at 106. The GFC, relying on a fire protection defense that is substantially the same as South Carolina's,² argued that it was entitled to summary judgment, and the trial court and Court of Appeals agreed. See id. The Georgia Supreme Court adopted Texas's and West Virginia's interpretation of similar statutes, which construe the fire protection defense "as providing sovereign immunity that covers the acts or omissions of state employees in executing policy as well as in making policy." Id. at 109. The court recognized that under this construction, "negligent acts of employees acting pursuant to policy would be subject to the application of sovereign immunity while negligent acts of employees not acting pursuant to policy

² Compare Ga. Code Ann. § 50-21-24(6) ("The state shall have no liability for losses resulting from . . . the failure to provide, or the method of providing, . . . fire protection."), with S.C. Code Ann. § 15-78-60(6) ("The governmental entity is not liable for a loss resulting from . . . the failure to provide [or] the method of providing . . . fire protection.").

would not.” Id. at 109 n.2.

The court looked at two tiers of governmental decisions: (1) decisions with respect to the amount, type, and disbursement of equipment and personnel in anticipation of future needs for fire protection services; and (2) decisions with respect to the amount, type, and disbursement of equipment and personnel in response to an immediate need for fire protection services. See id. at 109. The court noted that decisions in anticipation of future needs would come under the immunity for discretionary decision-making,³ while decisions in response to immediate needs would come under the immunity for the method of providing fire protection. See id. Applying the Canady analysis to this case, sending an ambulance to treat a person burned in a fire is a policy decision made in response to an immediate need for fire protection, and any negligence of an employee acting pursuant to this policy is protected by sovereign immunity. See id. at 109 n.2.

The Respondents would apparently limit the application of the fire protection defense to situations where the governmental entity is “help[ing] fight the fire or [taking] measures to prevent the fire itself from spreading.” (Resp’t Br. 13.) This Court should not adopt such a narrow application. “Fire protection” should be interpreted to include activities that are incidental to responding to a fire, including treating people at the scene who are injured in the fire.

³ Georgia’s immunity for discretionary decision-making is substantially the same as South Carolina’s. Compare Ga. Code Ann. § 50-21-24(2) (“The state shall have no liability for losses resulting from . . . [t]he exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a state officer or employee, whether or not the discretion involved is abused.”), with S.C. Code Ann. § 15-78-60(5) (“The governmental entity is not liable for a loss resulting from . . . the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee.”).

Notably, the statute does not restrict its application to fire departments; it provides that “[t]he governmental entity is not liable for a loss resulting from . . . the failure to provide [or] the method of providing . . . fire protection.” S.C. Code Ann. § 15-78-60(6) (emphasis added). The trial court noted, and the Respondents repeat, a concern with line-drawing and question whether EMS’s argument would include in the fire protection defense a government hospital that negligently treats a burn victim. (See R. p. 4; Resp’t Br. 14.) This concern is overstated. To the extent a line needs to be drawn, it should be drawn at entities that are called to respond to the scene of a fire. This would not include entities that are not called to the scene, such as a government hospital, but would include the fire department, an ambulance, and any other entity that is called to the scene, such as a county hazmat team responding to a situation involving a chemical explosion. Cf. Emergency Servs. Billing Corp. v. Vitran Express, Inc., No. 1:11-cv-0492-RLY-TAB, 2011 U.S. Dist. LEXIS 140891, at *2–3 (S.D. Ind. Dec. 7, 2011) (discussing a fire department, various police agencies, a county hazmat team, and a county emergency management agency responding to the scene of a chemical leak).

Drawing the line there would allow this Court to avoid making an artificial distinction between those entities that are actually attempting to put out the fire and those that are providing support services related to the fire, including providing medical treatment for those injured in the fire. Additionally, the Respondents’ contention that the fire protection defense only applies to those who are “help[ing] fight the fire or [taking] measures to prevent the fire itself from spreading,” (Resp’t Br. 13), allows for the absurd result of those firefighters who are spraying water on the burning building being protected by the statute, but not a firefighter who pulls a person out of a burning building

or a firefighter who provides medical treatment to the person after he has been pulled from the burning building. This Court should avoid this absurd result and hold that entities that are called to respond to the scene of a fire are providing fire protection within the meaning of the statute.

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

The Respondents' incorrectly argue that EMS fails to challenge the trial court's finding that EMS "has failed to meet its burden of showing that [the Respondents'] allegation fall [sic] within this exception to the waiver of immunity." (R. p. 4 n.3.) 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 [EMS] urges and does not apply to the facts in this case," and, in a footnote, stated that EMS failed to show that the Respondents' allegation fell within this exception. (See R. p. 4 & n.3.) It is not clear what distinction the Respondents are trying to make between the statute not applying and EMS 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 EMS does not address in its brief the trial court's finding that EMS failed to show that the Respondents' allegations fall within the fire protection exception. (See Resp't Br. 20.) On page 4 of its brief, EMS states that "[t]he lower court's finding, that the E.M.S. was not providing fire protection is belied by the testimony before it." (EMS Br. 4.) On page 7 of its brief, EMS states that "it is uncontroverted that the EMTs were deployed in response to a structure fire at which there

was a victim who required their assistance.” (EMS Br. 7.) Finally, on page 8 of its brief, EMS states that the ambulance driver’s choice to pass the Respondents’ vehicle falls within the statute, and asks this Court to “grant immunity for [EMS’s] decision to overtake the [Respondents’] vehicle in order to deliver medical attention to a burn victim at a fire location.” (EMS Br. 8.) Thus, to the extent EMS needs to challenge the trial court’s footnote, EMS 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 EMS to demonstrate that it was providing fire protection. The burden was not, as the trial court stated, on EMS to show “that [the Respondents’] allegation fall [sic] within this exception to the waiver of immunity.” (R. p. 4 n.3.)

There is no dispute as to the facts relevant to this appeal: EMS personnel were en route to a call to a building fire where a person had been burned, and while en route, the EMS personnel were involved in an accident with the Respondents. EMS does not assert that its personnel were employed by the fire department at the time of the accident.⁴ 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.

⁴ 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).

CONCLUSION

For the reasons stated, the trial court erred in granting the Respondents' motion for partial summary judgment. Accordingly, EMS asks this Court to reverse the trial court's order and hold that EMS is entitled to sovereign immunity pursuant to S.C. Code Ann. § 15-78-60(6).

DATED this 17th day of January 2012, at Beaufort, South Carolina, and

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge

Case No. 2009-CP-25-00517

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

v.

Hampton County E.M.S., Appellant.

CERTIFICATE OF COUNSEL

I certify that the Final Reply Brief of Appellant complies with Rule 211(b).

January 17, 2012

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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

v.

Hampton County E.M.S., Appellant.

Appellate Case No. 2011-194827

Appeal From Hampton County
Perry M. Buckner, Circuit Court Judge

Opinion No. 5065
Heard October 30, 2012 – Filed December 19, 2012

AFFIRMED

Marshall H. Waldron, Jr. and Matthew David Cavender,
both of Griffith Sadler & Sharp, PA, of Beaufort, for
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John S. Nichols, of Bluestein Nichols Thompson &
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Mark Brandon Tinsley, both of Gooding & Gooding, PA,
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KONDUROS, J.: Hampton County E.M.S. (Hampton) appeals the trial court's grant of summary judgment in favor of Maria and Martin Curiel, arguing the trial court erred in finding it was not entitled to tort immunity pursuant to the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-70(6) (2005). We affirm.

FACTS

On November 22, 2008, Maria was driving Martin's car on a two-lane road in Hampton County. Emergency Medical Technician (EMT) Jason Schroyer was driving the ambulance with his partner, Shannon Crouch. They were driving in the same direction on the same road as Maria and approached her vehicle from behind. The ambulance was in route to a structure fire where a burn victim was in need of care.

Schroyer claimed he was driving forty-five miles-per-hour in a fifty-five miles-per-hour zone, as he approached Maria. He stated he had the emergency lights and siren on. Both vehicles slowed down and Schroyer believed Maria had stopped. Both Schroyer and Crouch stated Schroyer sounded his horn and began to pass Maria. When Schroyer crossed the center yellow line to pass Maria's vehicle, Maria turned left into her driveway. Schroyer steered right, but was unable to avoid colliding with Maria.

Both parties filed motions for summary judgment. On January 25, 2011, the trial court denied Hampton's motion for summary judgment and did not rule on the Curiels' motion. Hampton filed a motion for reconsideration, and the trial court held a hearing on March 15, 2011. The trial court filed an order on June 8, 2011, denying Hampton's motion for reconsideration and granted the Curiels' motion for summary judgment. The trial court's order stated, "It is the opinion of this [c]ourt that neither the words or the statute nor the intent of the statute were intended to apply to the facts in the case." Footnote 3 of the order states, "Furthermore, as the burden of proof is on the governmental entity asserting a limitation upon liability, this [c]ourt finds that Hampton County E.M.S. has failed to meet its burden of showing that Plaintiffs' allegations fall within this exception to the waiver of immunity." No further motion for reconsideration was filed. This appeal followed.

STANDARD OF REVIEW

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRPC; summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.

Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004).

LAW/ANALYSIS

Hampton argues the trial court erred in determining Hampton's ambulance was not engaging in "fire protection" pursuant to section 15-78-60(6) of the South Carolina Code (2005). We disagree.

The Tort Claims Act "is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)." *Wells v. City of Lynchburg*, 331 S.C. 296, 302, 501 S.E.2d 746, 749 (Ct. App. 1998); see S.C. Code Ann. § 15-78-200 (2005) ("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."). 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." *Proctor v. Dep't of Health & Envtl. Control*, 368 S.C., 279, 290, 628 S.E.2d 496, 502 (Ct. App. 2006) (quoting S.C. Code Ann. § 15-78-40 (2005)). "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." *Id.* at 291, 628 S.E.2d at 502.

"The Tort Claims Act is a limited waiver of governmental immunity." *Hawkins v. City of Greenville*, 358 S.C. 280, 293, 594 S.E.2d 557, 564 (Ct. App. 2004). Under the Act, a governmental entity is not liable for a loss resulting from certain enumerated events including "civil disobedience, riot, insurrection, or rebellion or the failure to provide the method of providing police or fire protection." S.C. Code Ann. § 15-78-60(6) (2005). "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." *Proctor*, 368 at 292, 628 at 503; see *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 324, 566 S.E.2d 536, 540 (2002) ("The governmental entity claiming an exception to the waiver of immunity under the Tort Claims Act has the burden of establishing any limitation on liability.").

"The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Sloan Constr. Co. v. Southco Grassing, Inc.*, 395 S.C. 164, 170, 717 S.E.2d 603, 606 (2011). "If 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.'" *Id.* (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 582 (2000)). When interpreting a statute, the court "must read the language 'in a sense that harmonizes with its subject matter and accords with its general purpose.'" *Ranucci v. Crain*, 397 S.C. 168, 172, 723 S.E.2d 242, 244 (Ct. App. 2012) (quoting *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)). An "inclusion in [a] statute of certain specified exclusions leaves the inference that the Legislature intended no other exclusions from the exemption." *W. Va. Pulp & Paper Co. v. Riddock*, 225 S.C. 283, 288, 82 S.E.2d 189, 190 (1954).

By including police and fire protection as exceptions to the State's waiver of immunity, but not specifically listing emergency medical services, the Legislature did not intend to include emergency medical services as an exception to the waiver of immunity in section 15-78-60(6). Accordingly, the trial court did not err in granting the Curiels' summary judgment motion. Therefore, the trial court's decision is

AFFIRMED.

SHORT and LOCKEMY, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Civil Action No. 2009-CP-25-00517

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

v.

Hampton County E.M.S., Appellant,

PETITION FOR REHEARING

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SC Court of Appeals

YOU WILL PLEASE TAKE NOTICE that Appellant Hampton County E.M.S. ("EMS") hereby petitions this Court for a rehearing of the matters heard on October 30, 2012, and hereby petitions this Court for reconsideration and appropriate alteration or amendment of the Court's opinion filed December 19, 2012, Opinion No. 5065.

This Petition is made pursuant to Rules 221(a) and 240, SCACR, and is based on the following grounds:

1. The Court erred in determining that the fire protection defense does not apply to emergency medical services personnel responding to the scene of a fire to provide medical treatment to those injured in the fire. The statute does not define "fire protection," and it should be interpreted to include government entities that are responding to the scene of a fire to render medical assistance.
2. Even if the Court is not inclined to reconsider its decision, EMS respectfully requests, for the benefit of the Bench and Bar, that the Court clarify that the Curiels' motion for summary judgment was not a grant of summary judgment as to their entire case.

Accordingly, EMS respectfully requests that the Court grant a rehearing of this appeal and find that EMS is entitled to summary judgment.

[SIGNATURE PAGE FOLLOWS]

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Civil Action No. 2009-CP-25-00517

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

v.

Hampton County E.M.S., Appellant,

MEMORANDUM IN SUPPORT OF
PETITION FOR REHEARING.

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SC Court of Appeals

Appellant Hampton County E.M.S. (“EMS”) hereby petitions this Court for a rehearing of the matters heard on October 30, 2012, and hereby petitions this Court for reconsideration and appropriate alteration or amendment of the Court’s opinion filed December 19, 2012, Opinion No. 5065. The grounds for the petition are as follows:

I. The Court erred in basing its decision solely on the fact that emergency medical services are not specifically listed in S.C. Code Ann. § 15-78-60(6) as exceptions to the waiver of immunity.

The Court erred in holding 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’s based its decision solely on the fact that emergency medical services are not specifically listed in the statute, but this is not a proper interpretation. The statute provides that “[t]he governmental entity is not liable for a loss resulting from: . . . (6) civil disobedience, riot, insurrection, or rebellion or the failure to provide [or] the method of providing police or fire protection.” S.C. Code Ann. § 15-78-60(6) (2005); *see also Huggins v. Metts*, 371 S.C. 621, 624 n.2, 640 S.E.2d 465, 467 n.2 (Ct. App. 2006) (recognizing that the omission of the conjunctive “or” was a scrivener’s error). Nothing in the plain text of the

statute defines “fire protection” and nothing in the plain text of the statute restricts its application only to police or fire departments.

The Court cites the elementary rule 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.’” *Sloan Constr. Co. v. Southco Grassing, Inc.*, 395 S.C. 164, 170, 717 S.E.2d 603, 616 (2011) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 582 (2000)). However, there is nothing plain, unambiguous, and clear about the term “fire protection.” The Curiels believe that the term should be limited to situations where the governmental entity is “help[ing] fight the fire or [taking] measures to prevent the fire itself from spreading.” (Resp’t Br. 13.) However, this is an extremely narrow scope that would not cover such actions as a firefighter entering a burning building to locate a person who is trapped inside. It would also cover neither a firefighter who provides immediate medical attention to a person who the firefighter has just pulled from a burning building, nor a member of the fire department or other government entity responding to the scene of the fire to render assistance, whether in defense of life or property. *Cf. Estate of Williams v. City of Jackson*, 844 So. 2d 1161, 1164 (Miss. 2003) (holding that a city was providing fire protection within the meaning of Mississippi’s fire protection

defense, and thus entitled to sovereign immunity, where a firefighter was involved in an accident while driving a fire truck to a fire). Because the term "fire protection" is not clear on its face whether it covers some or all of these scenarios, the rule regarding plain and unambiguous terms is not applicable here.

"Fire protection" must be interpreted broadly enough to provide the protection envisioned by the Legislature. *See* S.C. Code Ann. § 15-78-20(f) (2005) ("The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State."). Fire protection must, as the Curiels also believe, include the government entity's employees defending property by fighting the fire or taking measures to prevent the fire from spreading. It must logically also include a government entity's employee defending life by entering a burning building to retrieve a trapped victim. It is unlikely that there is a significant, or any, dispute about both of these scenarios being covered. If these are covered, it would be illogical 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. 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 in defense of property, to the exclusion of all actions taken in defense of life, including by providing medical treatment to both firefighters and burn victims. Of course, both of these actions—defending property by fighting the fire and defending life by treating burn victims—require the government entity to travel to the scene of the fire, and they are therefore providing fire protection when they do so. *See Estate of Williams*, 844 So. 2d at 1164. Accordingly, the Court should hold that government entities that are responding to the scene of a fire are providing fire protection while en route and while on scene, and that EMS is therefore entitled to summary judgment.

Additionally, to the extent the Court did so, it erred in basing its decision on the fact that Hampton County has chosen to maintain EMS as a separate department from the fire department. While Hampton County has chosen to maintain them as separate departments, many other counties and other government subdivisions maintain their emergency medical services department and fire departments within the same department. *See, e.g., Aiken County Emergency Services*, <http://www.aikencountysc.gov/DspDept.cfm?qDeptID=ESD> (last visited Dec. 20, 2012) (maintaining

emergency medical services and fire service within the Emergency Services Department); Fripp Island Public Service District, <http://www.fipsd.org/firedepartment.html> (last visited Dec. 20, 2012) (maintaining fire suppression and medical emergency response services within the fire department); Clemson University, <http://www.clemson.edu/campus-life/campus-services/cufd/index.html> (last visited Dec. 20, 2012) (maintaining fire and emergency medical services within Fire and Emergency Medical Services, a branch of the university's Department of Public Safety). This form of discretionary decision-making is specifically covered by the Tort Claims Act and should not have any impact on the Court's decision. *See* S.C. Code Ann. § 15-78-60(5).

II. Even if the Court is not inclined to reconsider its decision, the Court should clarify that the Curiels' motion for summary judgment was only a partial motion for summary judgment on the issue of the applicability of the fire protection defense.

For the benefit of the Bench and Bar, EMS respectfully requests that the Court revise its opinion to clarify that the Curiels' motion for summary judgment was only on the issue of the applicability of the fire protection defense and was not a grant of summary judgment as to their entire case. A judge or attorney reading this opinion may be left with the impression that

the parties filed cross-motions for summary judgment as to the entire case and that the Curiels were entitled to summary judgment based on the facts presented in the opinion. However, the Curiels' motion only involved the applicability of the Tort Claims Act defenses, particularly the fire protection defense, and was not a motion to grant them summary judgment as to their entire claim. (See R. pp. 18-19.) If the Court does not reconsider its opinion and the Supreme Court declines to grant *certiorari* or affirms, then this case will return to the trial court for further discovery and trial on the issue of whether or not the accident was proximately caused by EMS's negligence. Accordingly, EMS respectfully requests that the Court revise its opinion to clarify that the Curiels' motion was not a motion for summary judgment as to their entire case.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

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Attorneys for the Appellant

December 28, 2012
Beaufort, South Carolina

The South Carolina Court of Appeals

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

v.

Hampton County E.M.S., Appellant.

Appellate Case No. 2011-194827

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul G. Short, Jr.

J.

[Signature]

J.

[Signature]

J.

Columbia, South Carolina

cc:

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John S. Nichols
H. Woodrow Gooding
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FILED

January 25, 2013