

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

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Perry M. Buckner, Circuit Court Judge

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S.C. Supreme Court

Civil Action No. 2009-CP-25-00517
Appellate Case No. 2013-000391

Op. No. 5065 (S.C. Ct. App. filed Dec. 19, 2012)
(Shearouse Adv. Sh. No. 46 at 43)

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

v.

Hampton County E.M.S., Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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SUMMARY OF ARGUMENT

Pursuant to Rules 240(e) and 242, SCACR, Respondents Maria T. Curiel and Martin L. Curiel file the following Return to the Petition for Writ of Certiorari filed by Petitioner, Hampton County E.M.S (“EMS”). Petitioner has failed to present any “special and important reasons” for this Court to grant review of the decision of the Court of Appeals. Furthermore, the ruling in this case does not involve a novel application of the law, and the decision of the Court of Appeals is consistent with this Court’s precedents.

First, the statute at issue is plain and unambiguous. Just because Petitioner contends the language is ambiguous does not make it so. It has long been the law that where the language of a statute is plain, explicit and direct, it is not ambiguous. *Shell v. Duncan*, 31 S.C. 547, 10 S.E. 330 (1889). Here, the legislature used language that is plain, explicit and direct – it is not ambiguous. Divining an ambiguity for ambiguity’s sake is not the function of the court. Instead, where the statute’s language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Storm M.H. ex rel. McSwain v. Charleston County Bd. of Trustees*, 400 S.C. 478, 735 S.E.2d 492 (2012).

Furthermore, the Mississippi law upon which Petitioner bases its argument is meaningfully distinct from the law and facts in this case.

Lastly, the hypothetical situations EMS presents in its Petition are meaningfully distinct from the facts of this case and do not justify this Court’s review of the decision of the Court of Appeals.

Accordingly, the Court should deny the Petition.

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

- I. Does this Case Involve Special and Important Reasons for this Court to Grant Review of the Decision of the Court of Appeals?

- II. Did the Court of Appeals Correctly Apply Rules of Statutory Construction to the Statute That Is at Issue in this Case, 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. (Complaint; Appx pp. 11-13). 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”). (Answer; Appx. pp. 14-17).

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.” (Motion for Summary Judgment of 11/4/10; Appx. p. 18). 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. (Plaintiff's Motion for Summary Judgment; Appx. p. 20).

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. (Order Filed 1/25/11; Appx. pp. 7-10). 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. (Motion to Reconsider; Appx. p. 22).

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; Appx. p. 24).

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. (Order filed 6/8/11; Appx. pp. 3-6). 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, 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 Curiel’s motion for summary judgment.

EMS appealed. Following oral argument, the Court of Appeals issued its opinion affirming the trial court’s decision. The Court of Appeals subsequently denied EMS’s petition for rehearing. This Petition for Writ of Certiorari follows.

FACTS

This matter was before the Court of Appeals on cross-motions for summary judgment. Under this posture the parties agreed that the case was 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 was whether the trial court erred in granting summary judgment to the Curiels because EMS was purportedly entitled to judgment as a matter of law under Section 15-78-60(6).

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. (Tr. 3/15/11, p. 7, l. 22 - p. 8, l. 6; Appx. pp. 26-27).

Furthermore, the appeal in this case was 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 was 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 Second Road 3 in Hampton County. (M. Curiel Dep. p. 18, l. 25 - p. 19, l. 17; Appx. pp.32-33). The roadway was a two-lane road, providing one lane in each direction with a solid double-yellow center line. (M. Curiel Dep., p. 19, ll. 1-24; p. 25, ll. 7-9; Appx. pp. 33, 34). The posted speed limit in the area was 55 miles-per-hour. (Schroyer Dep. p. 27, ll. 23-24; Appx. p. 41).

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. (Schroyer Dep. p. 31, l. 24; Appx. p. 44). Schroyer's supervisor, Shannon Crouch, was also in the

² This recitation of the facts mirrors the recitation of facts in the Brief of Appellant. (App. Br. pp. 2-3; Appx. p. 61-62).

ambulance. (Schroyer Dep. p. 24, l. 19 - p. 25, l. 1; Appx. pp. 39-40). 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. (Schroyer Dep. p. 23, l. 23 - p. 24, l. 15; Appx. pp. 38-39; Crouch Dep. p. 6, ll. 15-17; Appx. p. 29).

Schroyer claimed he was driving about 45 miles-per-hour as he approached the Curiel vehicle. (Schroyer Dep. p. 27, ll. 20-22; Appx. p. 41). He claimed he had the emergency lights and siren in use. (Schroyer Dep. p. 28, l. 24 - p. 29, l. 2; Appx. p. 42-43). Both vehicles slowed and Schroyer believed the Curiel vehicle had stopped. (Schroyer Dep. p. 31, l. 24 - p. 32, l. 2; Pl. Exh. 1; Appx. p. 44-45). Crouch and Schroyer both claimed Schroyer sounded his horn and began to pass the Curiel vehicle. (Schroyer Dep. p. 29, ll. 8-17; Appx. p. 43; Crouch Dep. p. 13, l. 22-23; Appx. p. 30). 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. (Schroyer Dep. p. 35, l. 11 - p. 41, l. 16; Appx. pp. 46-52).

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. EMS appealed and the Court of Appeals affirmed. This Petition follows.

DISCUSSION

I. THIS COURT SHOULD NOT GRANT A WRIT OF CERTIORARI

Rule 242 (b), SCACR, provides:

(b) Considerations Governing Review. A writ of certiorari is not a matter of right, but of sound judicial discretion, *and will be granted only where there are special and important reasons*. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

- (1) Where there are novel questions of law.
- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
- (4) Where substantial constitutional issues are directly involved.
- (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

(Emphasis added). *See also Poston v. State*, 339 S.C. 37, 528 S.E.2d 422 (2000), *overruled on other grounds*, *Douglas v. State*, 369 S.C. 213, 631 S.E.2d 542 (2006) (a petition for writ of certiorari to the Court of Appeals is a discretionary appeal, not an appeal to which petitioner is entitled as a matter of right). This case does not present "special and important" reasons to grant the writ.

EMS contends that the Court should grant this petition on the ground that the issue here is novel so as to fall within Rule 242(b)(1). The issue in this case may be novel, however, only in the sense that the facts of the case are unique. There is nothing

novel about the law the Court of Appeals applied to this case.

EMS also mentions “this is the first and only case where a South Carolina appellate court found that the governmental entity was not entitled to the protection of [Section 15-78-60(6) (2005)], despite the General Assembly’s admonishment that the provisions of the Tort Claims Act ‘must be liberally construed in favor of limiting the liability of the State.’” (Petition, pp. 5-6). The Court should not be persuaded by this contention.

It is true that the Court must liberally construe the Tort Claims Act’s provisions most favorably to limit the State’s liability. S.C. Code Ann. §15-78-20(f) (2005). However, in applying this rule of statutory construction, the Court should not rewrite the statute to include language the legislature did not include. *Vaughan v. McLeod Regional Medical Center*, 372 S.C. 505, 510, 642 S.E.2d 744, 747 (2007) (where statute’s language is clear and explicit, courts cannot rewrite statute and inject matters into statute which are not in the legislature’s language). Even if this Court is “troubled by this result,” the Court is “not at liberty to rewrite the statutes, and any amendment must come from the Legislature.” *Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc.*, 368 S.C. 137, 144, 628 S.E.2d 38, 42 (2006). *See also Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (“While it is true that the purpose of an enactment will prevail over the literal import of the statute, this does not mean that this Court can completely rewrite a plain statute.”).

Nor should the Court torture the statute’s language to achieve the result EMS seeks. *Santee Cooper Resort, Inc. v. South Carolina Public Service Com’n*, 298 S.C. 179,

379 S.E.2d 119 (1989) (court should not torture the meanings of the statute; words used in a statute should be taken in their ordinary and popular significance unless there is something in the statute requiring a different interpretation). As this Court explained in

Santee Cooper Resort:

“There is a marked distinction between a liberal construction of statutes ... and the act of a court in ingrafting upon a law something that has been omitted....” [*Hatchett v. Nationwide Mutual Insurance Co.*, 244 S.C. 425, 431, 137 S.E.2d 608, 611 (1964)]. To hold that the statute authorizes more than its plain language allows is to legislate.

Santee Cooper Resort, at 184, 379 S.E.2d at 122. *See, also, Michau v. Georgetown County ex rel. South Carolina Counties Workers’ Compensation*, 396 S.C. 589, 723 S.E.2d 805 (2012) (words in a statute should be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation).

As discussed below, the Court of Appeals decided this case based upon an application of the well-established rule “*expressio unius est exclusio alterius*” or “*inclusio unius exclusio alterius*,” or “to express or include one thing implies the exclusion of another, or the alternative.” There is nothing novel in the application of this maxim of statutory construction to the statutory provision in this case. The Court should, therefore, deny this Petition.

II. THE COURT OF APPEALS CORRECTLY CONSTRUED THE STATUTE AS A MATTER OF LAW

EMS states the “Question Presented” as follows:

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

(Petition, p. 1). The Court should not grant review based upon this statement of the issue.

First, EMS presented *no* evidence that its ambulance was driving to the scene of the fire “to provide medical treatment to the firefighters.” There is no evidence that a firefighter (or anyone else) was injured and in need of services when the EMS unit was dispatched, as implied by EMS’s statement of the issue. Instead, EMS was proceeding to the fire to be on the scene as a matter of practice in case the EMTs were eventually needed, and it was not until they were en route that they learned there may be a person at the scene who needed medical attention, or that the injured person was a firefighter.

Second, the Court of Appeals correctly construed the statute. The Court held :

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).

Slip at 46. The Court based its decision on the rule of statutory construction that, when determining the effect of statutory language, the canon of construction “*expressio unius est exclusio alterius*” or “*inclusio unius exclusio alterius*” holds that “to express or include one thing implies the exclusion of another, or the alternative.” *City of Rock Hill v. Harris*, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011). This has been the law of South

Carolina for a very, very long time. *See Mairs v. Smith*, 14 S.C. L. (3 McCord) 52 (Ct. App. 1825) (“the express adoption of a specific provision of an act amounts to a virtual exclusion of all the rest”). As Judge Knott stated over 185 years ago:

The act itself contains certain exceptions, and according to the stale maxim, that *expressio unius est exclusio alterius*, we are not to suppose that the legislature intended that any other should be made. The duty of courts is confined to the exposition of the law, and ought not to be extended to supplying supposed omissions of the legislature. We are not therefore authorized to add exceptions to those made by the act.

McCullough's Adm'rx v. Speed, 14 S.C. L. (3 McCord) 455 (Ct. App. 1826).

In Section 15-78-60(6), the legislature specifically limited this particular exception to the waiver of sovereign immunity to “the failure to provide [or] the method of providing police or fire protection.” This language thus plainly provides governmental immunity to four distinct things: (1) the provision of police protection; (2) the method of providing police protection; (3) the provision of fire protections; or (4) the method of providing fire protection. There is nothing in the plain words of the statute that includes emergency medical services, either by expression or by implication. The language is not ambiguous, and the Court need not construe “fire protection” broadly, as EMS suggests. (Petition, pp. 6-7).

The exception found in Section 15-78-60(6) is plain, and protects only those persons who are either deciding the method for fire or police protection or those agencies actually engaged in putting those methods into effect. The underlying lawsuit is not against a municipality for making a negligent decision about how to provide fire protection. It is also not against the agency charged with carrying out the municipality's

decisions about how to provide fire protection for negligence in executing that plan. Instead, the lawsuit is against an ambulance driver for negligence in driving to the scene of a fire that is in progress.

Section 15-78-60 does not embrace EMS within its plain language, and to include them would be to redraft the statute's language. As the Court of Appeals recently stated, "The court has no right to add the words [the legislature] omitted, nor to interpolate them on conceits of symmetry and policy." *Consumer Advocate for State v. South Carolina Dept. of Ins.*, 397 S.C. 599, 602, 725 S.E.2d 708, 710 (Ct. App. 2012), citing *Kinard v. Moore*, 220 S.C. 376, 388, 68 S.E.2d 321, 325 (1951).

EMS contends Respondents' view of this statute is "extremely narrow" and "would not cover such actions as a firefighter entering a burning building to locate a person who is trapped inside." (Petition, p. 7). EMS adds this view "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." (Petition, p. 7). The short answer to these contentions is that none of this is what happened in this case – instead, this case involved the claim that an EMT negligently drove an ambulance and caused a traffic collision, injuring Respondents. Furthermore, the behavior EMS posits in its hypotheticals would likely cover the actions of a firefighter, who is on the scene to provide fire protection to the property and people for whom the firefighter was dispatched to assist.

This Court should deny the Petition on the merits of the arguments presented.

III. THE COURT OF APPEALS'S CONSTRUCTION OF THE PLAIN LANGUAGE OF THE STATUTE SHOULD NOT YIELD TO EMS'S CONTENTION THAT THE EXCEPTION SHOULD EMBRACE ANY GOVERNMENTAL EMPLOYEE AT THE SCENE OF A FIRE OR POLICE MATTER

EMS contends that "fire protection" must "include the government entity's employees defending property by fighting the fire or taking measures to prevent the fire from spreading." (Petition, p. 8). EMS asserts this position was conceded somehow by Respondents. (Petition, p. 7, 8). This is a misstatement of Respondents' position.

In their Brief of Respondent, the Curiels stated:

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.

(Resp. Br. pp. 11-12; Appx. pp. 84-85). This is a far cry from the Curiels stating that "fire protection must...include the government entity's employees defending property by fighting the fire or taking measures to prevent the fire from spreading." (Petition, p. 8).

Furthermore, the Court should reject EMS's argument that the exception must also include "a governmental entity's employee defending life by entering a burning building to retrieve a trapped victim." (Petition, pp. 8-9) First, this interpretation would completely rewrite the section, which this Court may not do. Second, this hypothetical is also far afield from the facts of this case, where a motorist was injured by the negligence

of an EMS ambulance driver while on the roadway. The EMS employees in this case were not “treating burn victims,” nor were they doing anything in the role of fire fighting or fire protection.

EMS points to the Mississippi case of *Estate of Williams ex rel. Williams v. City of Jackson*, 844 So.2d 1161 (Miss. 2003) as “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.” (Petition, pp. 7-8). This is a gross misstatement of the holding of that case.

In *Williams*, the issue was immunity for the government because the plaintiff was engaged in criminal activity at the time of the automobile collision. The statute at issue, Section 11-46-9(1)(c) of the Mississippi Code of Laws, provided:

A governmental entity shall not be liable for any claim:

(c) Arising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities relating to police or fire protection unless the employee acted in disregard of the safety and well-being of any person not engaged in criminal activity at the same time of the injury.

(Emphasis added). The Supreme Court of Mississippi stated: “Fire Truck 20 was answering a fire call and was therefore providing ‘fire protection’ within the meaning of § 11-46-9(1)(c).” The focus of the case, however, was on the fact that the plaintiff in that case was “engaged in criminal activity” at the time of the injury. The Court stated:

It is undisputed that Williams’s blood alcohol content was .20%, two times over the limit allowed under the law of Mississippi, at the time of the accident. Driving under the influence is criminal activity in

Mississippi.

Williams, at 1164. The plaintiff, Williams, contended that the car was stopped at the time of the wreck and, therefore, the fact he was drunk was irrelevant. The Court responded:

Even had plaintiffs' contention been supported by the facts, it would not change the fact that Williams was intoxicated. It is therefore immaterial because it could have had no effect on the outcome of this action. Operating a vehicle involves both the moving and the stopping of a vehicle and when these are done under the influence of alcohol, it is considered criminal activity which, in this instance, operates to limit the duty owed by police and fire personnel under § 11-46-9(1)(c).

Williams, at 1165. The Court added:

Plaintiffs' contention that Williams was safely stopped at the intersection is contradicted by the testimony of several witnesses, the point of impact and rest, and the results of the accident reconstruction. The reality is that Williams either stopped in the middle of the intersection or tried to beat the fire truck through the intersection and failed. Either of these possibilities were poor decisions likely induced by Williams's intoxication. A sober person would not stop in the middle of an intersection with a fire truck coming at them. A sober person would also know that they should not try to beat a fire truck across an intersection. All the other drivers at the intersection yielded to the fire truck.

Id. Hence, the operative fact in the decision in *Williams* was the express grant of immunity where a plaintiff is engaged in criminal activity. Whether the employees in *Williams* were engaged in "fire protection" was irrelevant because even if they were not, plaintiff could not recover. In sum, the language of the Mississippi statute and the facts of *Williams* renders that case meaningfully distinct from this case, and should not affect this Court's decision.

Accordingly, the Court should deny this petition and decline to review this matter.

IV. THIS COURT SHOULD DENY REVIEW 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 challenge this separate ruling in its statement of the issues on appeal in its brief to the Court of Appeals. (Appx. p. 60). Furthermore, there is no argument 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); *Sloan v. Department of Transp.*, 365 S.C. 299, 618 S.E.2d 876 (2005) (failure to appeal an alternative ground of

the judgment below will result in affirmance).

Furthermore, the record supports this finding. Shannon Crouch was the EMS crew chief (R.p.37, ll. 19-25; Appx. p. 39) 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; Appx. p. 29).

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; Appx. p. 36). 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; Appx. pp. 38-39). 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; Appx. p. 53). 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; Appx. pp. 53-54). 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 Petition.

V. THE COURT SHOULD DISREGARD EMS'S CITE TO INFORMATION THAT WAS NOT INCLUDED WITHIN THE RECORD BELOW OR IN THE RECORD ON APPEAL

In its Petition for Rehearing, EMS pointed to other counties which it contended maintain their EMS departments and fire departments within the same department, citing to several Web Sites. (Petition, pp. 4-5; Appx. pp. 117-118). Although EMS did not make this argument in its Petition for Writ of Certiorari, because surreply is not permitted, Respondents raise this point here in anticipation of EMS raising this issue in a Reply. The

Court should disregard this argument for several reasons.

First, EMS did not make this argument below, nor did the trial court rule upon it.

Second, EMS cites to matters that were not presented to the trial court nor included in the Record on Appeal so that its reliance thereon is improper.

Finally, what other counties do with regard to consolidating their first responders is irrelevant here since EMS admits that Hampton County “has chosen to maintain EMS as a separate department from the fire department.” (Petition, p. 4; Appx. p. 117).

VI. THE COURT’S DECISION DOES NOT NEED CLARIFICATION AS TO WHETHER THE GRANT WAS OF PARTIAL SUMMARY JUDGMENT

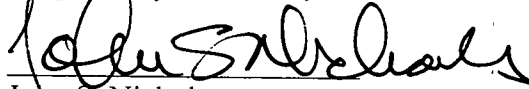
In its Petition for Rehearing, EMS contended that the Court of Appeals must “clarify that the Curiels’ motion for summary judgment was only on the issue of the applicability of the fire protection defense and was not a grant of summary judgment as to their entire case.” (Petition, pp. 5-6; Appx. pp. 118-119). Although EMS did not make this argument in its Petition for Writ of Certiorari, because surreply is not permitted, Respondents raise this point here in anticipation of EMS raising this issue in a Reply.

The Curiels agreed that they would still need to proceed with the case for liability and damages. (Resp. Br. p. 3, n. 1; Appx. p. 76). Nothing needed clarification since the Court of Appeals opinion stated clearly that the only issue was whether EMS was immune from suit under Section 15-78-60(6). There is nothing in the opinion that indicates the Curiels need not move forward to prove the rest of the case. EMS noted as much in its Petition. (Petition, p. 6; Appx. p. 119).

CONCLUSION

For the reasons stated, this Court should deny the Petition for Writ of Certiorari and should permit the Court of Appeals to remit this case to the circuit court for further proceedings consistent with its ruling.

Respectfully submitted,



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April 25, 2013

Counsel for Respondents

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge

RECEIVED

APR 25 2013

Civil Action No. 2009-CP-25-00517
Appellate Case No. 2013-000391

S.C. Supreme Court

Op. No. 5065 (S.C. Ct. App. filed Dec. 19, 2012)
(Shearouse Adv. Sh. No. 46 at 43)

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

v.

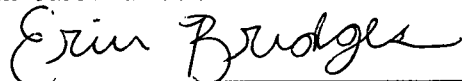
Hampton County E.M.S., Petitioner.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Appellant with a copy of the *Return to Petition for Writ of Certiorari* by mailing a copy of the same by United States Mail with first class postage prepaid to the following address:

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April 25, 2013
Columbia, South Carolina



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