STATE OF MICHIGAN

COURT OF APPEALS

DONALD BARTALSKY,

Plaintiff-Appellant,

v

ZACHARY OSBORN, KAITLYN MOUG, and COMMUNITY EMERGENCY MEDICAL SERVICES, INC.,

Defendants-Appellees,

and

WILLIAM BEAUMONT HOSPITAL, JOHN DOE CONSTRUCTION COMPANY, and JOHN ROE, also known as JOHN DOE,

Defendants.

FOR PUBLICATION
May 27, 2021

No. 349317
Oakland Circuit Court
LC No. 2018-164869-NO

Before: SWARTZLE, P.J., and JANSEN and BORRELLO, JJ.

JANSEN, J. (*dissenting*).

Where I would conclude that the trial court correctly granted summary disposition in favor of defendants because they came under the Emergency Medical Service Act's (EMSA) provision for immunity from negligence claims, even though the activities underlying plaintiff's claims involved no emergency, I respectfully dissent.

There is no factual dispute in this case regarding whether an emergency existed at the time of the accident underlying plaintiff's claim. Therefore, I agree with the majority that the issue in this case is whether the liability protection of MCL 333.20965(1) applies in settings involving nonemergency transportation. I also agree with the majority's reading of MCL 333.20965(1) that "emergency medical services" includes the "transport or treatment" of an individual. However, I would conclude that the next question becomes whether the EMSA applies to service providers, such as defendants, where no emergency exits.

In my view, where MCL 333.20965(1) lays out protections for "a medical first responder, emergency medical technician, emergency medical technician specialist," or a "paramedic," it is not describing protected activities, but rather, protected occupations. The express or implied references to emergency responders refer to those practitioners generally, including their nonemergency duties. MCL 333.20965(1) then goes on to specify covered activity, beginning with "providing services to a patient outside a hospital." The parties agree that "providing services" for the purposes of MCL 333.20965(1) means providing "emergency medical services," which is defined by MCL 333.20934(4) to include "the emergency medical services personnel, ambulances . . . , medical first response vehicles, and equipment required for transport or treatment of an individual requiring medical first response life support, basic life support, limited advanced life support, or advanced life support."

Plaintiff maintains that he did not require life support during the time in question. However, MCL 333.20902(6) broadly defines the term "basic life support" as "patient care that may include any care an emergency medical technician is qualified to provide by emergency medical technician education that meets the educational requirements established by the department . . . or is authorized to provide by the protocols established by the local medical control authority . . . for an emergency medical technician." This definition covers the gamut of what an EMT might be required to do in his or her profession, when responding to emergencies or otherwise, including transportation of patients.[1] Moreover, MCL 333.20908(6) defines "patient" as "an emergency patient or a nonemergency patient." Like this Court concluded in *Griffin v Swartz Ambulance Serv*, unpublished per curiam opinion of the Court of Appeals, issued November 29, 2018 (Docket No. 340480), I would conclude that when MCL 333.20965(1) and MCL 333.20908(6) are viewed together, the Legislature did not "impose a condition that only services offered by first responders in emergency situations are entitled to immunity." Therefore, I would affirm.

/s/ Kathleen Jansen

[1] In my view, because so much of defendants' duties involve transportation of patients in various scenarios, emergency or otherwise, to draw a hard line between "transportation" and "treatment" rewrites the statute and creates distinctions that do not exist, and were not intended by our Legislature. The treatment of a patient encompasses the transportation of that patient, and thus transportation in both emergency and nonemergency situations is covered by the EMSA.