STATE OF MICHIGAN

COURT OF APPEALS

EDDIE LEE,

Plaintiff-Appellant,

v

DOWAGIAC VOLUNTEER FIRE DEPARTMENT AMBULANCE SERVICE, INC., and KATHY MCFADDEN,

Defendants-Appellees.

UNPUBLISHED
June 10, 2010

No. 289605
Cass Circuit Court
LC No. 08-000148-NO

Before: OWENS, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order, which granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) and (10). We affirm.

I. APPLICATION OF EMSA

Plaintiff first argues that the trial court's grant of summary disposition was improper, claiming that immunity under the emergency medical services act (EMSA), MCL 333.20901 *et seq.*, does not apply in this case, because defendants were merely transporting a patient, and not providing treatment for the patient at the time of injury. We review de novo a trial court's grant of summary disposition, *Amburgey v Sauder*, 238 Mich App 228, 231; 605 NW2d 84 (1999), and also review de novo the proper interpretation and application of a statute. *Ford Motor Co v Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006).

MCL 333.20965(1) provides in relevant part:

> Unless an act or omission is the result of gross negligence or willful misconduct, the acts or omissions of a medical first responder, emergency medical technician, emergency medical technician specialist, paramedic, medical director of a medical control authority or his or her designee, or, subject to subsection (5), an individual acting as a clinical preceptor of a department-approved education program sponsor while providing services to a patient outside a hospital, in a hospital before transferring patient care to hospital personnel, or in a clinical setting that are consistent with the individual's licensure or additional training required by the medical control authority including, but not limited to,

> services described in subsection (2), or consistent with an approved procedure for that particular education program do not impose liability in the treatment of a patient on those individuals or any of the following persons:
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> (d) The life support agency[1] or an officer, member of the staff, or other employee of the life support agency.

Under MCL 333.20965(1), individuals are shielded from liability "in the treatment of a patient." The primary goal of statutory construction is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). The statute does not define the term "treatment"; thus, we look to the dictionary to discern the term's ordinary meaning. See *Haynes v Neshewat*, 477 Mich 29, 36; 729 NW2d 488 (2007). The relevant definition of "treatment" is "the application of medicines, surgery, therapy, etc., in treating a disease or disorder." *Random House Webster's College Dictionary* (1997).

The trial court essentially concluded that transportation and transfer of a patient in need of emergency medical services, such as plaintiff in this case, "is part and parcel" of the "treatment" of that patient which is shielded from liability in the EMSA immunity provision. On this record, we agree that the incident falls within the treatment of the plaintiff, where the emergency providers were called to plaintiff's home, assessed his situation and administered medical treatment to him at his residence, decided he should go to the hospital, moved him to an ambulance and continued to provide care en route to the hospital. This is not a case of merely transporting a patient from one location to another; rather, the emergency responders transported plaintiff to the hospital because of a complained of medical condition. Notably, the record reflects that defendant Kathy McFadden was licensed to provide advanced life support as a paramedic, and that she provided such treatment for plaintiff at the scene and en route to the hospital in this emergency situation. Thus, the immunity provided for pursuant to MCL 333.20965 is applicable in the instant case, except upon a showing of gross negligence or willful misconduct, because defendants were engaged "in the treatment of a patient" where they were "providing services to a patient outside a hospital . . . that are consistent with [their] licensure or additional training required by the medical control authority." The EMSA provided immunity to defendants for ordinary negligence. Plaintiff therefore had to demonstrate the existence of a question of material fact related to gross negligence in order to prevail. See *Costa v Community Medical Services*, 263 Mich App 572, 580; 689 NW2d 712 (2004), aff'd in part and remanded 475 Mich 403 (2006).

II. GROSS NEGLIGENCE

Plaintiff next asserts that a question of fact exists in this case as to whether defendants' conduct amounted to gross negligence. Under EMSA, "emergency medical technicians and

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[1] MCL 333.20906(1) defines "life support agency" in part as "an ambulance operation."

paramedics are not liable for services they provide absent gross negligence or willful misconduct." MCL 333.20965. There is no record support that defendants' conduct constituted willful misconduct, which required a showing of intentional harm. *Jennings v Southwood*, 446 Mich 125, 142; 521 NW2d 230 (1994), superseded in part on other grounds by MCL 333.20965(2). Thus, we must decide whether factual questions exist regarding gross negligence. For claims implicating gross negligence, "[s]ummary disposition is appropriate only where reasonable minds could not have reached different conclusions with regard to whether the defendant's conduct amounted to gross negligence." *Haberl v Rose*, 225 Mich App 254, 265; 570 NW2d 664 (1997). Generally, once a standard of conduct is established, the reasonableness of conduct under that standard is a question for the factfinder. *Jackson v Saginaw Co*, 458 Mich 141, 146; 580 NW2d 870 (1998) (quotation omitted). "However, if, on the basis of the evidence presented, reasonable minds could not differ, then the motion for summary disposition should be granted." *Id.* (quotation omitted).

The EMSA's "gross negligence" language requires evidence of "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." *Jennings*, 446 Mich at 136-137. Thus, "a plaintiff must adduce proof of conduct 'so reckless as to demonstrate a substantial lack of concern for whether an injury results.'" *Maiden v Rozwood*, 461 Mich 109, 123; 597 NW2d 817 (1999). Significantly, "the content or substance of the evidence proffered must be admissible in evidence." *Id.* "[E]vidence of ordinary negligence does not create a material question of fact concerning gross negligence." *Id.* at 122-123.

The admissible evidence and testimony in this case demonstrated that McFadden and Emergency Medical Technician (EMT) Sandra McGuire[2] could not get the ambulance cot into plaintiff's residence, but left it on the front porch while they assessed plaintiff inside. Next, they placed plaintiff onto the cot on the porch, and secured three straps over plaintiff's chest, hips, and legs, and raised the side rails. The cot was "a little bit less than halfway" raised in terms of its height. McFadden provided a plausible explanation at her deposition as to why the cot was set in such position. Next, she proceeded down the single irregularly sized step to the driveway at the "foot end" of the cot. The wheels of the foot end of the cot were on the driveway as McGuire moved onto the step. At this point, the cot began to tip or shift towards the residence. McFadden told McGuire to "hold on," but they could not return the cot to an upright position with plaintiff on it.

It is unclear why the cot tipped. Nevertheless, the evidence indicated that the emergency responders did not drop plaintiff or let him fall; rather, they lowered the cot to the ground sideways and plaintiff was released from the straps. There is no indication that plaintiff's weight, 268 pounds at the time of the incident, was the cause of the tipping. Further, there is no indication that the cot could not be used to transport a patient in the position described by McFadden. According to the cot's manual, even in its highest position, the cot can be used for patient transfer or cot rolling.

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[2] The EMSA provides that an EMT provides basic life support, while a paramedic provides advanced life support. MCL 333.20904(7); MCL 333.20908(5).

This case is akin to *Costa*, 263 Mich App at 580, where plaintiff's allegations sounded only in ordinary negligence and did not allege the gross negligence needed to overcome EMSA immunity. Viewing the evidence in the light most favorable to plaintiff, we conclude that reasonable minds could not differ as to whether defendants engaged in conduct "so reckless as to demonstrate a substantial lack of concern for whether injury resulted." *Jennings*, 446 Mich at 136-137. Even if the emergency responders were negligent in conveying plaintiffs from the porch to the driveway, evidence of ordinary negligence does not create a question of fact regarding gross negligence. *Maiden*, 461 Mich at 122. The trial court properly granted summary disposition in favor of defendants.

Affirmed.

/s/ Donald S. Owens
/s/ Peter D. O'Connell
/s/ Michael J. Talbot