**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A12-1326**

League of Minnesota Cities Insurance Trust, et al.,
Respondents,

vs.

Owners Insurance Company,
Appellant.

**Filed March 25, 2013**
**Affirmed**
**Hooten, Judge**

Ramsey County District Court
File No. 62-CV-11-6917

John E. Hennen, League of Minnesota Cities, St. Paul, Minnesota (for respondents)

Michael J. Morley, Morley Law Firm, Ltd., Grand Forks, ND (for appellant)

Considered and decided by Cleary, Presiding Judge; Hooten, Judge; and Ross, Judge.

**U N P U B L I S H E D  O P I N I O N**

**HOOTEN**, Judge

Appellant-insurer challenges the district court's decision granting summary judgment and dismissing its petition for no-fault arbitration and subrogation arising out of a fatal collision between a vehicle driven by appellant's insured and an ambulance insured by respondent. Because the district court did not err by concluding that

appellant's claims for no-fault arbitration and subrogation are barred by common law official immunity, we affirm.

## FACTS

In the late morning or early afternoon of November 9, 2009, Julie Dulka, a certified EMT, was "on call" for the Red Lake Falls Ambulance Service in a volunteer capacity when she was dispatched to transport a patient from Red Lake Falls to a hospital in Grand Forks. Prior to picking up the patient in Red Lake Falls, she was informed that the patient "cut his hand severely on a table saw" and that she had to transport him to a hand surgeon in Grand Forks "as quickly as [she] could." Proper treatment was not available at the Red Lake Falls clinic, or at the nearest medical facility in Crookston, so the treating physician at the Red Lake Falls clinic arranged for treatment in Grand Forks.

Dulka did not know exactly what part of the patient's hand was cut or if stitches had been administered, but observed that "the whole limb was bandaged up." She was told that a pressure bandage had been applied to the hand, but she did not know the thickness of the bandage or if the wound was still bleeding. She received no information regarding how or where the accident occurred or how the patient arrived at the clinic in Red Lake Falls. Dulka described the patient as "alert and oriented times three" with regard to "[p]erson, place and time," and acknowledged that his condition was not serious or critical aside from his hand. She stated that the patient suffered from "limb threat[ening]" injuries as opposed to life-threatening injuries.

After departing, Dulka drove the ambulance while another EMT attended to the patient in the back of the ambulance. Dulka was not aware of the specific treatment

administered to the patient by the other EMT, nor was she aware of any changes or developments in the patient's condition during transit. She admitted that she drove faster than the posted speed limit because she "was told it was urgent to get this man to the hand surgeon to avoid damage and permanent loss." Dulka drove with the ambulance's emergency flashing lights and sirens activated. Dulka opined that, though she could not be sure because she is not a doctor, the patient's condition "could have" worsened if she had complied with all traffic regulations.

The accident occurred in East Grand Forks, Minnesota, at the intersection of Highway 2 and Highway 220, which is controlled by traffic lights. The ambulance's sirens and flashing lights were activated as Dulka drove west on Highway 2 and approached the intersection. A red light was displayed to vehicles approaching the intersection in the direction of the ambulance on Highway 2. Dulka assumed that the traffic signal indicated a green turn-signal to vehicles traveling south on Highway 220. She also stated that the traffic light's emergency flasher was not operating as she entered the intersection. Dulka saw that all other vehicles at the intersection were stopped as she entered the intersection on a red light, but a vehicle driven by appellant's insured entered the intersection heading south on Highway 220 and collided with the ambulance. After the collision, Dulka rendered care to the driver of this vehicle, who was unconscious, while the other EMT in the ambulance cared for the patient, who was transported to Grand Forks in another ambulance. The driver of the other vehicle died.

Appellant Owners Insurance Company, insurer of the deceased's vehicle, paid property damage and medical benefits in the approximate amount of $27,000 to the

deceased's estate. Appellant filed a subrogation claim against Dulka and Red Lake Falls, which operated the ambulance service, and also commenced a no-fault arbitration proceeding against respondent League of Minnesota Cities Insurance Trust, the insurer of Red Lake Falls, in the amount of $22,000, plus costs and interest. Respondent then filed an action for declaratory judgment and application to stay arbitration in Ramsey County. The district court granted respondent's motion for summary judgment, concluding that Dulka and Red Lake Falls are immune from suit pursuant to common law official immunity and statutory immunity. On appeal, appellant argues that the district court erred in concluding that Dulka and Red Lake Falls are immune from suit, claiming that Dulka's driving conduct was not discretionary and that the district court improperly determined that the transport of the patient from Red Lake Falls to Grand Forks constituted an emergency situation.

**D E C I S I O N**

Minn. R. Civ. P. 56 permits "a court to dispose of an action on the merits if there is no genuine dispute regarding the material facts, and a party is entitled to judgment under the law applicable to such facts." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). "The district court's function on a motion for summary judgment is not to decide issues of fact, but solely to determine whether genuine factual issues exist." *Id.* at 70. It "must not weigh the evidence." *Id.* "[T]here is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential

element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *Id.* at 71.

"In reviewing an appeal from the grant or denial of official immunity on summary judgment, we must determine whether there are genuine issues of material fact and whether the lower court erred in applying the law." *Thompson v. City of Minneapolis*, 707 N.W.2d 669, 673 (Minn. 2006). Evidence is viewed "in the light most favorable to the party against whom summary judgment was granted," and "[a]ny doubt as to whether issues of material fact exist is resolved in favor of the party against whom summary judgment was granted." *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995). "The application of immunity is a question of law subject to de novo review." *Kari v. City of Maplewood*, 582 N.W.2d 921, 923 (Minn. 1998).

Appellant argues that, contrary to the finding of the district court, Dulka was driving in a non-emergency situation, and that, pursuant to the Red Lake Falls' volunteer ambulance run procedure, she was required to adhere to all traffic laws. Under these circumstances, appellant argues, Dulka and Red Lake Falls are not entitled to either form of immunity because driving the ambulance was not discretionary, but merely ministerial. "The common law doctrine of official immunity protects government officials from suit for discretionary actions taken in the course of their official duties." *Id.* "Official immunity applies when the official's conduct involves the exercise of judgment or discretion, but malicious conduct is not immunized."[1] *Id.* The critical determination with regard to the application "of official immunity is whether the public official's conduct is

[1] Appellant does not argue that Dulka's driving conduct was malicious.

discretionary or ministerial." *Id.* "A discretionary act requires the exercise of individual judgment in carrying out the official's duties. In contrast, a ministerial act is absolute, certain and imperative, involving merely execution of a specific duty arising from fixed and designated facts." *Id.* (citation and quotation omitted).

"The starting point for analysis of an immunity question is identification of the precise governmental conduct at issue." *Gleason v. Metro. Council Transit Operations*, 582 N.W.2d 216, 219 (Minn. 1998) (quotation omitted). "Whether an officer's conduct merits immunity turns on the facts of each case." *Nisbet v. Hennepin Cnty.*, 548 N.W.2d 314, 317 (Minn. App. 1996).

The supreme court has "recognized that an official who is responding to an emergency must weigh myriad factors in making virtually instantaneous decisions about how to respond." *Kari*, 582 N.W.2d at 923.

> [C]onsiderations leading to the immunity of police officers in emergency circumstances also apply to paramedics driving emergency medical vehicles. The dark shadow of liability for conduct in responding to an emergency would conflict with the policy we firmly established in *Pletan* that absent malice, drivers of vehicles engaged in emergency missions of public safety should not be subject to second-guessing in the operation of their vehicles.

*Id.* at 924. In *Pletan v. Gaines*, the supreme court stated that, when considering an official's instantaneous decisions, often made on the basis of incomplete information, "[i]t is difficult to think of a situation where the exercise of significant, independent judgment and discretion would be more required." 494 N.W.2d 38, 41 (Minn. 1992). In such situations, immunity applies "because the community cannot expect its police

officers to do their duty and then to second-guess them when they attempt conscientiously to do it." *Id.* Likewise, in *Nisbet,* this court concluded that "the rationale provided in . . . *Pletan* for applying official immunity to the conduct of officers responding to emergency situations applies with equal force to ambulance drivers who must make split second decisions about the safest and most efficient way to get to the scene of an emergency." 548 N.W.2d at 317.

We conclude that the holdings of *Pletan*, *Kari* and *Nisbet* govern Dulka's decision to treat the transport of the patient as an emergency and drive through the red light. These cases recognize that public officials and employees are protected by official immunity in the exercise of his or her discretion as to whether a particular situation constitutes an emergency, and how they respond to such emergency. In *Kari*, the paramedic "received a medical emergency call regarding an unconscious person." 582 N.W.2d at 923. In *Nisbet*, this court simply noted that "[t]he ambulance was responding to an emergency call" without any further discussion of the details of the emergency. 548 N.W.2d at 316. In *Pletan*, the supreme court held that a police officer was entitled to official immunity based upon his decision to pursue an individual suspected of "'snatch and grab' shoplifting" in a high speed chase that resulted in the death of a young student. 494 N.W.2d at 39.

When considering whether to engage in a police chase, the supreme court has noted that a police officer must consider, "with little time for reflection and often on the basis of incomplete and confusing information," the dangerousness of the suspect and the importance of catching the suspect, the extent to which the chase might be dangerous to

others in light of the time, weather, and road and traffic conditions, as well as possible alternatives to a chase. *Pletan*, 494 N.W.2d at 41. The particular extent or seriousness of an emergency is most reasonably characterized simply as one of the myriad of considerations facing an official responding to an emergency. *See Nisbet*, 548 N.W.2d at 317 (noting that "split second decisions about the safest and most efficient way to get to the scene of an emergency [] . . . involve consideration of factors such as road and traffic conditions, the urgency of responding quickly to a particular call and the nature of the proposed extraordinary conduct").

Official immunity applies not merely because of the existence of an emergency or life-threatening situation, but to avoid second-guessing an official's conduct.

> If an ambulance driver, or other driver of an emergency vehicle, will be held liable for negligent conduct, he or she will be more inclined to wait in traffic than to take a chance, no matter how small, by going around traffic, fearing that his or her conduct may later be judged negligent. Meanwhile, lives may be lost or buildings may burn to the ground.

*Id.* at 318. Thus, the existence of an emergency is not merely a factual matter to be determined by the trier of fact, but a central aspect of the legal justification for applying official immunity to police officers and paramedics.

On an abstract level, one might reasonably suggest that a severe hand wound is less severe than an unconscious person or reports of a possibly armed man threatening himself and his ex-wife, as was the case in *Elwood v. Rice Cnty.*, 423 N.W.2d 671, 678 (Minn. 1988). However, it is also reasonable to assert that a severe hand injury threatening permanent loss of limb is more serious than responding to a suspected theft

with no apparent risk of harm to others, as was the situation in *Pletan*. These considerations display the futility of appellant's characterization of the situation at issue as a non-emergency situation, acceptance of which would require officials and first-responders to engage in unwarranted speculation about the nature and seriousness of a particular unknown situation, consider how their actions fit into a vague hierarchy of emergencies that may or may not excuse negligent conduct, and possibly display dangerous hesitation while responding to emergencies of all types. This is directly contrary to the underlying rationale of applying official immunity in such situations.[2]

Applying these principles to the current matter, it is undisputed that Dulka was required to transport a patient with a serious hand wound to a relatively distant hospital for specialized treatment in a hurried manner. Dulka did not know all details about the injury, but did know that permanent damage or loss may have resulted if she did not arrive in Grand Forks within a limited though undetermined period of time. These considerations, as well as her decision to exceed the speed limit and proceed into an intersection through a red light, represent a heightened level of judgment and discretion justifying the application of official immunity.

[2] Notably, this court has concluded that, for purposes of applying the Good Samaritan statute, a person offering assistance at the scene of an emergency need not be responding to "grave or life-threatening injuries" or transport someone straight to a medical facility. *Swenson v. Waseca Mut. Ins. Co.*, 653 N.W.2d 794, 799–800 (Minn. App. 2002), *review denied* (Minn. Feb. 26, 2003). In doing so, we commented that "an accident victim does not need to be suffering from a life-threatening injury in order for an emergency to exist," and that a heightened standard for a requisite emergency "would require good samaritans to determine the severity of an injury before offering assistance." *Id.*

Moreover, the underlying circumstances constituting the emergency situation involve facts relevant to the summary judgment inquiry that are not reasonably disputed. *See Riedel v. Goodwin*, 574 N.W.2d 753, 756 (Minn. App. 1998) ("Where facts are established, whether governmental action is protected by immunity is a question of law."), *review denied* (Minn. Apr. 30, 1998). Appellant highlights all the ways in which the patient was not experiencing a life-threatening injury during transport. However, this analysis ignores Dulka's explanations about the patient's hand injury as "limb threat[ening]" and her instructions to transport him to a hand surgeon in Grand Forks "as quickly as [she] could" "to avoid damage and permanent loss." Appellant also ignores the undisputed fact that the transport to the hand surgeon in Grand Forks was specifically authorized by a doctor to bypass a closer hospital where required treatment was unavailable. The fact that the patient was otherwise healthy, aside from the severe cut to his hand, does not reasonably negate the existence of a medical emergency under these circumstances.

This matter is distinguishable from two cases relied upon by appellant, both of which reasonably limit the application of common law official immunity in appropriate instances. In *Mumm v. Mornson*, 708 N.W.2d 475, 491–92 (Minn. 2006), the supreme court concluded that a police department's written vehicular pursuit policy specifically prohibiting the initialization of a pursuit or requiring the discontinuation of a pursuit in certain circumstances imposed a ministerial duty because it set forth "a narrow and definite duty on an officer facing a particular set of circumstances." The supreme court distinguished the factual situation in *Mumm*, in which a police pursuit was found to be a

ministerial duty, from that in *Pletan*, in which a police pursuit was found to be discretionary because the written police department policy in *Pletan* contained only "vague terms" regarding police pursuits which gave "little specific guidance to police and set few limits on their independent exercise of judgment." *Id.* at 492–93. In *Thompson*, the supreme court concluded that specific language from a written pursuit policy requiring continuous use of lights and sirens similarly created a ministerial duty, the violation of which would preclude application of official immunity for claims arising from the failure to adhere to the policy. 707 N.W.2d at 674–75.

There is no basis upon which to apply *Mumm* and *Thompson* to Dulka's driving conduct. In contrast to the specific requirements set forth in the written vehicular pursuit policies in *Mumm* and *Thompson*, the city's "Basic Ambulance Run Procedure" states that "[o]peration of the ambulance on the road will vary with the patient's condition." "In a non-emergency (routine transfers, etc.) the ambulance should be operated without the flashing lights or siren and all traffic laws must be obeyed. In an emergency situation, both the siren and flashing lights must be turned on." The written policy also provides that the "[s]afety of the patients and attendants in the ambulance must be of primary concern. The ambulance must not be driven in a manner which needlessly endangers the life of patients or attendants." The policy does not elaborate on the definitions of, or any distinctions between, emergency and non-emergency situations beyond the singular reference to a routine transfer. Instead, it specifically provides that driving conduct varies according to a particular patient's condition. The general, non-specific import of this policy places it squarely within "the vague terms of the policy in

*Pletan* [that] gave little specific guidance to police and set few limits on their independent exercise of judgment." *Mumm*, 708 N.W.2d at 493.

Appellant, citing *Mumm* and *Thompson*, argues that it is a fact question for the jury as to whether a particular situation constitutes an emergency or a routine transfer. In *Mumm* and *Thompson*, the police departments had specific policies in place which were to be implemented by the police officers, as a ministerial act, in determining whether an emergency existed or not. The facts in this case are distinguishable from those in *Mumm* and *Thompson* in that it was within Dulka's discretion to determine if the situation was an emergency and how to respond.

Because Dulka exercised her judgment and discretion when deciding to treat the transport of a patient with a "limb-threatening" injury as an emergency and in responding to the emergency, the district court did not err in concluding that her conduct is protected by the doctrine of common law official immunity.[3] In light of the application of common law official immunity to the undisputed material facts in this case, we conclude that the district court correctly granted summary judgment and dismissed appellant's petition for no-fault arbitration and subrogation.

**Affirmed.**

[3] Appellant does not dispute that if Dulka's conduct is immune under the doctrine of official immunity, immunity also extends to her employer. *See Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 316 (Minn. 1998). Also, in light of our conclusion that Dulka's driving conduct is protected by the doctrine of common law official immunity, we need not address appellant's argument that the district court erred by concluding that Dulka's conduct is also protected by statutory immunity.