

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

S.S. and J.E.,

Appellants,

v.

Julie Rizen, Ryan Rizen, Mercy
Ambulance of Evansville, Inc.,
and American Medical Response
Ambulance Service, Inc.,

Appellees.

November 29, 2023

Court of Appeals Case No.
23A-CT-765

Appeal from the Vanderburgh
Superior Court

The Honorable Thomas A.
Massey, Judge

Trial Court Cause No.
82D07-2109-CT-4452

Memorandum Decision by Judge Brown
Judges Vaidik and Bradford concur.

Brown, Judge.

- [1] S.S. and J.E. (“Plaintiffs”) appeal the entry of summary judgment in favor of Julie Rizen, Ryan Rizen, Mercy Ambulance of Evansville, Inc., and American Medical Response Ambulance Service, Inc. (collectively, the “AMR Defendants”). We affirm.

Facts and Procedural History

- [2] At approximately 5:46 a.m. on March 17, 2020, American Medical Response Ambulance Service, Inc., (“AMR”) received a 911 call related to an unresponsive person. AMR’s crew consisted of Julie Rizen, an EMT, and Ryan Rizen, a paramedic. Julie and Ryan Rizen (the “Rizens”) arrived at the scene at about 5:51 a.m. and were taken to O.E., an eighty-year-old unconscious female. The Rizens transported O.E. to Ascension St. Vincent Evansville (“St. Vincent”), arriving at 6:10 a.m., and provided a report to the emergency department. AMR’s Patient Care Report provided:

Responded to a 911 call for an unresponsive person. On arrival we were met by a female who took us upstairs to a bedroom. Pt is an 80 year old female. Patient was unconscious and only would respond to painful stimuli. Patient was in a bed, naked with her son laying next to her. The son stated his mother (the patient) likes to sleep naked, had been feeling ill for several days and that he had been with her in bed for 20 plus hours. . . . Patient had vomit on the bed sheet that was brown in color. Patient was placed on a cardiac monitor Family stated that the patient has atrial fibrillation but does not take any medication for it. . . . Patient was given the Cincinnati stroke test and tested positive. Patient could not hold her left arm up. Patient would squeeze strong with her right hand but very weak with her left. . . . IV started in the right hand Patient became

combative and pulled the IV out and pulled the electrodes off. Patient vomited and was suctioned. . . . 2nd IV inserted Patient again pulled the IV out after becoming more combative. Patient . . . transported code one to SVE ED. SVE ED contacted via cell phone and a stroke alert was given. Inspection of the body showed several bruises in various stages of healing. On arrival SVE the patient was moved to room #5 via cot. Patient moved to the ED bed via mega mover. Patient report and care was given to the ED doctor and RN.

Appellants' Appendix Volume II at 78 (capitalization omitted).

[3] A note by Malayna Douglas, R.N., stated:

Patient comes in per EMS for “unresponsive.” EMS reports that family was on scene with the patient. The patient was found lying naked in her bed, and her son laying next to her. The patient was on her side, laying in vomit. The son reported to EMS that the patient “has not been normal for 24-30 hours.” Son states that he has been giving her Phenergan suppositories “around the clock.” “She has been hallucinating after this” - he reported to Dr. [Timothy] Almquist and EMS. EMS states upon arrival, the patient was completely flaccid on her left side. . . . Upon arrival to the ER, the patient’s right side has withdrawal to pain. The left side has no purposeful movement, but slight sporadic movement. . . . The patient has multiple bruises throughout her body that are different in ages. One large bruise is located on the right shoulder, along with bruising on the bilat knees, shins and sternum. . . . Patient appears to have well kept nails, hair, etc.

Id. at 89.

[4] A note authored by Dr. Timothy Almquist stated:

The patient is an 80 year old female presenting to the Emergency Department via EMS secondary to being unresponsive. Per EMS,

the patient was found to be naked in bed on her side surrounded and covered in vomit upon their arrival. EMS states that the patient has been mainly unresponsive and lethargic while in route. They state that the patient will occasionally arouse but will become combative. . . . The family states that the patient has not been acting right for over the past 24 hours. EMS states that the patient has had some left upper extremity weakness but has been moving her right arm. EMS states that the patient has been having some brown colored vomit. They state that the patient did last receive a Phenergan suppository around 0700 yesterday morning. EMS denies any blood thinners for the patient. EMS states that the patient was found naked in her bed and her son was also in the bed naked with her.

The patient's son states that the patient was last normal to him over 24 hours ago. He states that he has been with her for the past 24 hours. He states that he called the patient around 30 hours ago and she responded to him and told him that she was feeling nauseous and was vomiting. . . .

History provided by the patient's son and EMS. Complete HPI and ROS unobtainable due to patient being unresponsive.

Id. at 92-93. A note by Dr. Steven Basinski indicated a "CT head without contrast" was performed and stated: "Impression: Large right greater the left subdural hemorrhage, severe right-to-left shift with subfalcine/uncal herniation. Trapping of the left lateral ventricle." *Id.* at 97.

[5] A note by Dr. Almquist under a heading for "Medical Decision Making" stated, "[d]ue to the suspicion of the patient's injuries and her having several bruises, I will ask EPD to come speak with me regarding the patient's case and her family member (son)," "[h]er son did inform me that he stayed with the patient for the past 24 hours," "[h]e is now asking for the patient's bed sheet

that she was found [on] to be given to him,” “I find this situation suspicious and I would like the sheet tested and placed into police custody at this time,” “I informed the EPD office of the patient’s case and presentation to the Emergency Department,” and “I have asked them to investigate the patient’s case, which they agree with.” *Id.* at 105. The note also stated: “Patient arrived appearing as if she was having a stroke with COPD, but CT head revealed bilateral subdural hemorrhages. The patient was activated as a 911 trauma.” *Id.* A document titled “Adult Trauma Flowsheet” indicated ecchymosis to O.E.’s right shoulder, right arm, right shin, both knees, and sternum. *Id.* at 108. O.E. died on March 18, 2020.

[6] In an amended complaint filed in March 2022, Plaintiffs alleged that O.E. was their mother and that, when the Rizens arrived at O.E.’s home, they found O.E. in her bedroom “laying nude under the covers in her bed.” *Id.* at 123. They alleged that J.E. was seated on his mother’s bed and was fully clothed when the Rizens entered the bedroom. Under “Count I – Defamation Per Se Against Rizens, AMR, and Mercy,” the complaint alleged “[t]he Rizens, while acting in the course and scope of their employment with AMR and Mercy, stated to someone at St. Vincent Hospital that J.E. and O.E. were both nude and under the covers of O.E.’s bed when he [sic] arrived at O.E.’s home,” “[t]his statement was false because J.E. was fully clothed and sitting on the bed when the Rizens arrived,” and “[t]his statement was defamatory and constituted defamation per se under Indiana law because it imputes criminal and/or sexual misconduct on the part of J.E.” *Id.* at 126-127. The complaint

also raised a claim for punitive damages against the AMR Defendants under Count II and a claim of negligent infliction of emotional distress against the AMR Defendants under Count III.¹

[7] On September 27, 2022, the AMR Defendants filed a motion for summary judgment and designated medical records and photographs. They argued that, pursuant to Ind. Code § 12-10-3-11, they were immune from liability for the claims asserted by Plaintiffs. Plaintiffs filed a response arguing, “[n]eedless to say, the statement that a man was sleeping nude in the bed with his mother who was also nude would be defamatory” and the AMR Defendants “designated no evidence that statement was made in good faith.” *Id.* at 54. On March 6, 2023, the court held a hearing. The trial court granted the AMR Defendants’ motion for summary judgment based on Ind. Code § 12-10-3-11.²

Discussion

[8] We review an order for summary judgment *de novo*, applying the same standard as the trial court. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). The moving party bears the initial burden of making a prima facie showing that there are no genuine issues of material fact and that it is entitled to judgment as

¹ In addition to the AMR Defendants, Plaintiffs named St. Vincent, Dr. Almquist, Dr. Matthew Field, Dr. David Weaver, Evansville Surgical Associates, Inc., Evansville Surgical Associates, LLC, Neurosurgical Consultants, and Emergency Professionals of Indiana, P.C., as defendants.

² The court also entered summary judgment in favor of Dr. Almquist, Dr. Field, Evansville Surgical Associates, Inc., Evansville Surgical Associates, LLC, and Emergency Professionals of Indiana, P.C. In this appeal, Plaintiffs challenge only the entry of summary judgment in favor of the AMR Defendants.

a matter of law. *Manley v. Sherer*, 992 N.E.2d 670, 673 (Ind. 2013). If the moving party succeeds, then the nonmoving party must come forward with evidence establishing the existence of a genuine issue of material fact. *Id.* We resolve all doubts as to the existence of a material issue against the moving party. *Id.* Our review is limited to those materials designated to the trial court. *Mangold v. Ind. Dep't of Nat. Res.*, 756 N.E.2d 970, 973 (Ind. 2001). Whether immunity provided by statute applies is a question of law for the court. *See F.D. v. Ind. Dep't of Child Servs.*, 1 N.E.3d 131, 136 (Ind. 2013).

[9] Plaintiffs claim the trial court erred in granting the AMR Defendants' motion for summary judgment and assert, without citation to the record, that they "filed the Amended Complaint because, upon arrival at [St. Vincent], the AMR Defendants told the responding [St. Vincent] staff that J.E[.] was naked in bed with his mom, O.E., which was a blatant lie." Appellant's Brief at 9-10. They contend: "Akin to the old adage, 'you can't be a little bit pregnant,' a person is either naked or they have on clothing." *Id.* at 10. They assert "[t]he material fact that remains in dispute is whether or not Plaintiff J.E[.] was naked when the AMR Defendants entered O.E.'s bedroom." *Id.* They also argue "the trial cannot resolve any doubt regarding the AMR Defendants' claim of responsibility (or contribution) for [Dr. Almquist and Emergency Professionals of Indiana, P.C.'s] actions surrounding their contacting the Evansville Police Department which arguably satisfied the qualified immunity statute without an evidentiary showing of causal link between them." *Id.* at 13.

[10] The AMR Defendants argue the designated evidence established there was ample reason to believe O.E. may be an endangered adult. They contend “[t]he Rizens reported their concerns to the receiving hospital staff, which set in motion the chain of events that led to a report being made to the Evansville Police Department by hospital staff, which falls squarely within the purview of reporting through the chain of command in one’s professional capacity that is described by Ind. Code §12-10-3-9(b)” and falls within the plain language of Ind. Code § 12-10-3-11. Appellees’ Brief at 15. They argue “the documentation of the hospital nursing staff clearly states that the report given by the Rizens upon the transition of care was that ‘The patient was found lying naked in her bed, and her son laying next to her,’ with no reference whatsoever to J.E. being nude.” *Id.* at 16 (citing Appellants’ Appendix Volume II at 89). They also argue Plaintiffs failed to designate any evidence that the AMR Defendants’ conduct fell outside the scope of the immunity statute’s protections.

[11] Ind. Code § 12-10-3-2 provides in part that “endangered adult” means an individual who is at least eighteen years of age, incapable by reason of physical or mental incapacity of providing or directing the provision of self-care, and harmed or threatened with harm as a result of neglect, a battery offense, or exploitation of the individual’s personal services or property. Ind. Code § 12-10-3-6 provides “an individual has ‘reason to believe’ that a particular adult is an endangered adult if the individual has been presented with evidence that, if presented to an individual of similar background and training, would cause the

individual to believe that the adult is an endangered adult.” Ind. Code § 12-10-3-9 provides:

- (a) An individual who believes or has reason to believe that another individual is an endangered adult shall make a report under this chapter.
- (b) If an individual is required to make a report under this chapter in the individual’s capacity as a member of the staff of a medical or other public or private institution, school, hospital, facility, or agency, the individual shall immediately notify the individual in charge of the institution, school, hospital, facility, or agency, or the individual’s designated agent, who also becomes responsible to report or cause a report to be made.

[12] Ind. Code § 12-10-3-11(a) provides:

A person, other than a person against whom a complaint concerning an endangered adult has been made, who in good faith:

- (1) makes or causes to be made a report required to be made under this chapter;
- (2) testifies or participates in any investigation or administrative or judicial proceeding on matters arising from the report;
- (3) makes or causes to be made photographs or x-rays of an endangered adult; or
- (4) discusses a report required to be made under this chapter with the division, the adult protective services unit, a law enforcement agency, or other appropriate agency;

is immune from both civil and criminal liability arising from those actions.

[13] The designated evidence includes only the written reports and photographs referenced above and reveals the AMR Defendants responded to a call related to an unresponsive person and, upon arrival at the location, were directed to a bedroom where they found O.E., who was unconscious, in a bed. The Rizens transported O.E. to St. Vincent and provided a report to the emergency department. The AMR Defendants' patient care report included the statement: "Patient was in a bed, naked with her son laying next to her." Appellants' Appendix Volume II at 78. While St. Vincent's record includes a note by Dr. Almquist that "EMS states that the patient was found naked in her bed and her son was also in the bed naked with her," *id.* at 93, the AMR Defendants' patient care report did not state that O.E.'s son was naked. Further, St. Vincent's record includes a nurse's note stating "[t]he patient was found lying naked in her bed, and her son laying next to her" and which did not mention that O.E.'s son was naked. *Id.* at 89.

[14] In addition, the AMR Defendants' patient care report provided that O.E.'s son stated that O.E. liked to sleep naked and that O.E. "had been feeling ill for several days and that he had been with her in bed for 20 plus hours," there was vomit on the bed sheet, and "[i]nspection of the body showed several bruises in various stages of healing." *Id.* at 78. A nurse's note stated O.E. had "multiple bruises throughout her body that are different in ages. One large bruise is located on the right shoulder, along with bruising on the bilat knees, shins and sternum," *id.* at 89, and a document titled "Adult Trauma Flowsheet" indicated the locations of ecchymosis on O.E.'s body. *Id.* at 108. St. Vincent's record

also revealed Dr. Almquist's note stating O.E. "arrived appearing as if she was having a stroke with COPD, but CT head revealed bilateral subdural hemorrhages," J.E. indicated he had been with O.E. for the prior twenty-four hours, J.E. asked for O.E.'s bed sheet which Dr. Almquist found suspicious, and that, "[d]ue to the suspicion of the patient's injuries and her having several bruises," he would contact law enforcement. *Id.* at 105.

[15] The AMR Defendants provided information to the medical staff at St. Vincent, who in turn, based on that information as well as O.E.'s bruising and hemorrhaging and J.E.'s statements, made a report to law enforcement. We find the AMR Defendants participated in actions and provided information which "cause[d] to be made" a report as referenced in Ind. Code § 12-10-3-11 and conclude the trial court did not err in finding the designated evidence established the AMR Defendants are immune from civil liability pursuant to the statute with respect to Plaintiffs' claims. *See Anonymous Hosp. v. A.K.*, 920 N.E.2d 704, 709 (Ind. Ct. App. 2010) (holding with respect to an immunity statute related to suspected child abuse that, "[u]pon review of the statute's plain language, it is clear that the statute provides immunity for any individual making a report, as well as for any individual participating in any actions that cause the report to be made").³

³ The statute discussed in *A.K.* provides "a person . . . who: (1) makes or causes to be made a report of a child who may be a victim of child abuse or neglect . . . is immune from any civil or criminal liability . . ." Ind. Code § 31-33-6-1.

[16] For the foregoing reasons, we affirm the trial court.

[17] Affirmed.

Vaidik, J., and Bradford, J., concur.