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STATE OF MICHIGAN

COURT OF APPEALS

CHARLES C. WILLIS,

Plaintiff-Appellant,

v

COMMUNITY EMERGENCY MEDICAL SERVICE, INC. and ERIC JOSEPH NORRIS,

Defendants-Appellees.

UNPUBLISHED
November 24, 2020

No. 351871
Macomb Circuit Court
LC No. 2018-004914-NO

Before: O'BRIEN, P.J., and BECKERING and CAMERON, JJ.

PER CURIAM.

On December 28, 2015, after spending two and a half months in William Beaumont Hospital in Troy, undergoing numerous medical procedures, plaintiff, Charles C. Willis, was being transported by ambulance to Beaumont Hospital in Grosse Pointe when the ambulance in which he was riding slid off the road and flipped onto its side. The ambulance was associated with defendant Community Emergency Medical Services, Inc., and driven by defendant Eric Norris, an emergency medical technician (EMT). Plaintiff filed a complaint for negligence against defendants, and defendants sought summary disposition under MCR 2.116(C)(7) and MCR 2.116(C)(10). The trial court entered an order denying defendants' motion under (C)(7), but granting their motion under (C)(10). Plaintiff appeals by right from this order. As explained below, we affirm in part, reverse in part, and remand the matter for further proceedings.

I. RELEVANT FACTS

The facts surrounding the accident at issue are derived from the depositions of plaintiff, Norris, Norris's partner Patrick Salo, and Fadi Beydoun, a witness to the accident. Norris testified that, on the evening of December 28, 2015, he and Salo were dispatched to transport plaintiff from Beaumont Hospital in Troy to a step-down facility at Beaumont Hospital in Grosse Point. The transport was deemed a priority 3 nonemergency transport, which did not entail using overhead lights or sirens and which required Norris to honor all traffic regulations. Once plaintiff was ready to depart, Norris and Salo put him on a gurney and wheeled him into the ambulance. Norris said

that plaintiff was in a "semi-Fowler position," which means that he was not lying flat, but was in as much of a sitting position as comfort allowed. Plaintiff was strapped down and the gurney was locked into place in the ambulance. Plaintiff testified that he could see out the ambulance's back windows.

Weather conditions were not unusual for a late-December evening in Michigan. Norris testified that there was ice on the ground and a mix of rain, snow, and sleet. Plaintiff testified that the "night was wet with a little bit of slushiness, not enough to make the roads dangerous, but if you changed lanes, it would create a mist . . . ." He said that he saw about half an inch of slush between the lanes, but that "[t]raffic was having no problems with what was coming down." Beydoun testified that weather conditions were pretty bad, it was snowing, road conditions were not good, and traffic was "moving pretty slowly."

Norris pulled out of the hospital onto Dequindre, then took Hall Road/M-59 toward I-94. Plaintiff testified that Norris was driving too fast for the weather conditions and was weaving in and out of traffic. Plaintiff said Norris was "passing everything, including police cars," "constantly pulling over and going around every vehicle . . . and then immediately pulling back in very rudely," and that "[h]e was driving faster than anyone." Plaintiff thought Norris's driving rude because passing someone and then pulling back in "probably splatter[ed] the windshield of whatever car it was." He said he could see the headlights of the cars behind the ambulance "backing way off" and that, "[Norris] was not being very polite about where he was cutting back in on people, and I didn't consider him a good driver."

Norris testified that there was a "decent amount" of traffic on the road and he remembered changing lanes, but not how many times, and he said that the vehicle did not slip while he was changing lanes. Plaintiff testified otherwise. Plaintiff said that every time Norris drove through the slush as he was changing lanes, he experienced "a little bit of a shimmy." He was concerned with how fast they were going and he thought he may have asked the person in the back how good the vehicle handled in those conditions. Plaintiff testified that he did not remember much about Norris's exiting Hall Road to merge onto I-94. Describing the moment of the accident, plaintiff said the ambulance

> went past what we would call a shimmy and went to the left. And whatever correction was made, it came back and went even further to the right, which then swung violently to the left. I'm not sure how many fishtails, if you want to call them that or whatever that we did. All of a sudden, it just must have turned sideways. I think it turned sideways, but whatever. We started rolling. I thought I was going to die. It came to a rest some—on its—somewhat on its side in a ditch.

When Norris walked around to the back and observed the post-crash damage, plaintiff testified that Norris said, "Holy F**k. I'm going to lose my job."[1] Asked what injuries he believed he suffered in the accident, plaintiff said "A compression fracture back, spine. A compression spine."

Norris described the accident somewhat similarly. According to him, he took the exit ramp to I-94, and as he accelerated to merge onto I-94, he "hit black ice"[2] Then,

> [t]he back end of the vehicle started sliding out towards the middle. I tried to over correct and straighten it back up and then it slid back over to the ditch. I started heading over to the ditch and we stopped and it just fell on its side, on my side, on the driver's side.

Beydoun, who was deposed around four years after the accident, testified that he was approximately four or five car lengths behind the ambulance as it was on the ramp and entering the freeway, and that he slowed down to allow the ambulance to merge into his lane. He recalled the accident as follows:

> And I — what I remember, the ambulance was trying to enter the freeway on the on-ramp and appeared that he—that it started to slide. Might have hit, you know, a patch of ice or what have you, and it looked like he tried to regain control of it when it happened. He was not able to do so maybe, and he — it just kind of, again, lost control and it just flipped over and went down the embankment.

Beydoun explained that it appeared to him that the ambulance hit a patch of ice because "when he [i.e., Norris] was on the on-ramp . . . there was [sic] no sudden movements or anything like that by the driver, from what I can tell. It was just kind of instantaneously just started to slide."

Salo was in the back of the ambulance with plaintiff. He testified that, from his perspective, they "were going around the ramp, you could start to feel the back move out towards the left and then the next thing was [Norris] just said brace yourself and that was when we overturned." Asked if the vehicle flipped, Salo replied, "No. It was more just overturned on its side."[3] A second ambulance arrived and took plaintiff to McLaren Macomb Hospital.

Plaintiff filed a one-count complaint to recover damages pursuant to MCL 500.3135 (tort liability for noneconomic loss). He alleged, in essence, that Norris's negligent operation of the

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[1] Norris testified that he did not recall what he said to his partner after the accident.

[2] Norris testified that he presumed he slid on black ice because he did not see anything visible on the freeway and that "as soon as [he] started applying more pressure to the gas, the back end slipped." But he also admitted there was light snow and sleet on the road.

[3] Regarding the extent of the damage to the ambulance, Norris testified that there was a crack in the windshield that enabled someone to pull the windshield back so that he could climb out of the ambulance. Plaintiff testified that people at the scene could not open the ambulance's back doors, and that "EMS arrived with those jaws and opened it up that way."

ambulance violated the duty of care defendants owed to him, causing him to suffer serious injuries, including compression fractures of his L2 and L3 vertebrae, and the exacerbation of pre-existing conditions. Defendants filed an answer denying liability, and affirmative defenses claiming, among other things, immunity under the Emergency Medical Services, Act (EMSA), MCL 333.20901 *et seq*.

Defendants sought summary disposition under MCR 2.116(C)(7) (immunity granted by law), and (C)(10) (no genuine issue of material fact). Regarding their motion under (C)(7), defendants contended that they were entitled to immunity under the EMSA because they were providing medical services to plaintiff when the accident occurred, and plaintiff had not pled, and could not prove, that their acts or omissions constituted gross negligence or willful misconduct. With respect to (C)(10), defendants asserted that there was no evidence that Norris drove the ambulance negligently, considering that plaintiff could not see out the ambulance's windows through the snow, Norris's testimony that he hit a patch of black ice, and Beydoun's testimony that Norris's driving was appropriate for snowy conditions. Plaintiff responded by denying that the EMSA applied to the facts of this case, and asserting that deposition testimony raised a genuine issue of material fact that the accident occurred because Norris was driving too fast for the weather conditions.

In a written opinion and order filed after oral argument, the trial court denied defendants' summary disposition motion under MCR 2.116(C)(7), stating it was not convinced that the EMSA provided immunity under the circumstances presented by this case, but granted their motion under MCR 2.116(C)(10), reasoning that there was no evidence that Norris was driving negligently at the time of the accident. After filing an unsuccessful motion for reconsideration, plaintiff filed this claim of appeal.

II. ANALYSIS

Plaintiff contends that the trial court erred in granting summary disposition to defendants because, viewed in the light most favorable to him, the evidence creates a fact question regarding whether Norris was driving too fast for the weather conditions. We agree.

A. STANDARD OF REVIEW

We review de novo a trial court's decision on a motion for summary disposition. *Brickey v McCarver*, 323 Mich App 639, 641; 919 NW2d 412 (2018). The trial court granted summary disposition to defendants under (C)(10). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). The moving party has the initial burden to identify issues about which it believes there is no material factual dispute, MCR 2.116(G)(4), and to support the grounds asserted in its motion with "[a]ffidavits, depositions, admissions, or other documentary evidence," MCR 2.116(G)(3). If the nonmoving party has the burden to prove the claim at trial, the moving party may satisfy its burden "by submit[ting] affirmative evidence that negates an essential element of the nonmoving party's claim, *or* by demonstrat[ing] to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim." *Lowrey v LMPS & LMPJ*, 500 Mich 1, 9; 890 NW2d 344 (2016) (quotation marks and citation omitted).

When deciding a motion for summary disposition brought pursuant to MCR 2.116(C)(10), the court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. See MCR 2.116(G)(5); *Joseph*, 491 Mich at 206. It must draw all reasonable inferences in favor of the nonmoving party. See *Dextrom v Wexford Co*, 287 Mich App 406, 415-416; 789 NW2d 211 (2010). Circumstantial evidence can create a factual issue for trial. See *Bergen v Baker*, 264 Mich App 376, 387; 691 NW2d 770 (2004). The court may not make findings of fact or weigh credibility in deciding a motion for summary disposition. *Patrick v Turkelson*, 322 Mich App 595, 605; 913 NW2d 369 (2018). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

B. NEGLIGENCE

To establish a claim of negligence, a plaintiff must prove (1) that the defendant owed him a duty of care, (2) that the defendant breached that duty, (3) that the plaintiff was injured, and (4) that the defendant's breach caused the plaintiff's injuries. *Henry v Dow Chem Co*, 473 Mich 63, 71-72; 701 NW2d 684 (2005). Negligence is the failure to use ordinary care. *Case v Consumers Power Co*, 463 Mich 1, 7; 615 NW2d 17 (2000). What constitutes ordinary care, the care "an ordinarily prudent person would exercise under the same or similar circumstances," is usually a fact question for the jury. *Muth v W P Lahey's, Inc*, 338 Mich 513, 523; 61 NW2d 619 (1953). Defendants do not dispute that they owed a duty of ordinary care to plaintiff. At issue is whether defendants breached that duty. Defendants argue on appeal that plaintiff's testimonial evidence did not create a genuine issue of material fact as to whether Norris exercised ordinary care under the circumstances because it was not "contemporaneous" with the accident. They assert that, because plaintiff cannot establish an essential element of his negligence claim, his claim fails as a matter of law. *Lowrey*, 500 Mich at 9.

Viewed in the light most favorable to plaintiff, *Joseph*, 491 Mich at 206, plaintiff's testimony was sufficient to create a question of fact regarding whether Norris was negligent by driving too fast for the weather conditions. Norris, plaintiff, and Beydoun testified to the wintry conditions on the night of the accident. Norris testified that there was ice on the ground and a falling mix of rain, sleet, and snow. Plaintiff testified to about half an inch of slush on the roads, and said that traffic "was having no problems with what was coming down." That traffic was "having no problems with what was coming down," taken together with Beydoun's testimony that the weather was pretty bad, road conditions were not good, and traffic was "moving pretty slowly," suggests that motorists had adjusted their driving to the weather conditions. Indeed, Beydoun surmised that he was driving about 50 miles per hour on I-94, where the posted speed limit is 70.

Given these weather conditions, plaintiff thought Norris had been driving too fast. Plaintiff based this conclusion on what he saw and what he felt while riding in the back of the ambulance. Plaintiff said that Norris was "constantly" cutting in and out of his lane of travel, "passing everything," and "driving faster than anyone," and that each time Norris passed through slush to change lanes, plaintiff felt "a little bit of a shimmy." Defendants do not dispute these observations. In fact, Norris acknowledged that he changed lanes while transporting plaintiff. Rather, defendants contend that plaintiff's testimony fails to create a genuine issue of material fact as to whether

Norris was driving negligently because it pertains only to how Norris was driving on Hall Road, not how he was driving at the moment of the accident. However, if plaintiff's testimony is properly viewed in the light most favorable to him, *Joseph*, 491 Mich at 206, all reasonable inferences are drawn in his favor, see *Dextrom*, 287 Mich App at 415-416, and it is recognized that circumstantial evidence—such as the apparent absence of any other slide-offs in the area—can create a factual issue for the jury, *Bergen*, 264 Mich App at 387, then plaintiff's testimony is sufficient to allow a reasonable jury to find that Norris was driving too fast for the weather conditions while he was on Hall Road, and to reasonably infer that he continued to drive too fast for the weather conditions as he attempted to merge onto I-94, sliding off the highway after putting his foot on the gas pedal.

Contrariwise, defendants assert that the evidence actually establishes that Norris was *not* driving negligently. Norris testified that he drove 20 to 25 miles per hour while on the exit ramp, and accelerated to about 30 miles an hour as he attempted to merge onto I-94. However, that Norris seemed to be traveling at low speeds is not necessarily evidence that those speeds were appropriate for the weather conditions. Defendants contend that the testimony of Beydoun establishes that Norris was not driving negligently on the ramp or as he attempted to merge onto I-94. But viewing Beydoun's testimony as dispositive requires assessing his credibility positively and favoring it over plaintiff's testimony and the reasonable inferences drawn therefrom. This is contrary to the obligation of a trial court determining a motion for summary disposition to draw all reasonable inferences in favor of the nonmoving party, see *Dextrom*, 287 Mich App at 415-416, and to refrain from weighing credibility, *Patrick*, 322 Mich App at 605.

In light of the foregoing, we conclude that the trial court erred in granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). Specifically, the trial court erred by failing to view the evidence in the light most favorable to plaintiff and to draw all reasonable inferences in his favor, and by weighing credibility. Plaintiff may not be able to establish his claim for negligence ultimately, but he has at least raised a genuine issue of material fact regarding whether the accident at issue occurred because Norris was negligent by driving too fast for the weather conditions. Accordingly, we reverse that portion of the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10).

C. IMMUNITY

Defendants contend that, should this Court conclude that the trial court erred in granting their motion for summary disposition under MCR 2.116(C)(10), they are entitled to immunity under the EMSA and the trial court erred in determining otherwise. We disagree.

> MCR 2.116(C)(7) tests whether a claim is barred because of immunity granted by law, and requires consideration of all documentary evidence filed or submitted by the parties. This Court must consider all well-pleaded allegations as true and construe them in favor of the nonmoving party. If the facts are not in dispute and reasonable minds could not differ concerning the legal effect of those facts, whether a claim is barred by immunity is a question for the court to decide as a matter of law. [*Grahovac v Munising Twp*, 263 Mich App 589, 591; 689 NW2d 498 (2004).]

MCL 333.20965 provides, in relevant part:

(1) *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*:

* * *

(d) The life support agency or an officer, member of the staff, or other employee of the life support agency. [Emphasis added.]

Pertinent to this appeal, MCL 333.20965(1) affords immunity to EMTs and "life support agenc[ies]" in the treatment of a patient as long as their acts or omissions do not result from gross negligence or willful misconduct. MCL 333.20904(7) defines "emergency medical technician" as "an individual who is licensed by the department to provide basic life support," and § 20906(1) defines "life support agency" to include an "ambulance operation." At all times relevant to the instant appeal, Norris fit the EMSA's definition of an EMT, having received his license in 2012,[4] and there is no dispute that defendant Community Emergency Medical Service, Inc., is an "ambulance operation." Thus, the dispositive issue is whether the transport of plaintiff under the circumstances presented here constitutes "treatment of a patient" for purposes of the EMSA. Defendants rely on *Griffin v Swartz Ambulance Serv*, unpublished per curiam opinion of the Court of Appeals, issued November 29, 2018 (Docket No. 340480)[5], as support for their position that their transport of plaintiff constituted "treatment of a patient" under the EMSA. Unpublished opinions of this Court have no precedential effect, but may be considered persuasive. MCR 7.215(C)(1). However, we do not find *Griffin* persuasive. Rather, we believe it to be wrongly decided and factually distinguishable from the case at bar.

At issue in *Griffin* was "whether the grant of immunity established under the EMSA applies to the alleged negligence of defendant's ambulance driver, [Mary] Shifter, with respect to her

[4] Norris also testified that he considered himself a first responder. MCL 333.20906(8) defines "medical first responder," in relevant part, as "an individual who has met the educational requirements of a department approved medical first responder course and who is *licensed to provide medical first response life support as part of a medical first response service or as a driver of an ambulance that provides basic life support services only*."

[5] The decision was nonunanimous, with one judge standing in dissent.

operation of the ambulance while transporting plaintiff to a hospital for treatment." *Griffin*, unpub op at 2. This Court recounted the relevant facts as follows:

> [P]laintiff was involved in an automobile accident in which he sustained a leg injury, including a dislocated knee. One of defendant's [i.e., Swartz Ambulance Service's] ambulance units responded to the scene and began transporting plaintiff to the hospital. On the way to the hospital, the ambulance collided with a vehicle driven by Sarah Aurand. A second ambulance then transported plaintiff to the hospital.
>
> Plaintiff filed this action against Aurand and defendant, alleging, in pertinent part, that defendant's employee, Mary Shifter, a licensed emergency medical technician (EMT) and the driver of defendant's ambulance, was negligent in causing the second accident, that this negligence delayed plaintiff's treatment for his original injury, and that the delay in treatment resulted in a portion of plaintiff's leg being amputated. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that it was immune from liability pursuant to MCL 333.20965(1), which establishes immunity for EMTs and other medical first responders who provide services in the treatment of a patient absent a showing of gross negligence or willful misconduct. Defendant argued that plaintiff's allegations and evidence established, at most, that Shifter was negligent; therefore, it was immune from liability under the EMSA. [*Id*. at 1-2.]

The trial court granted summary disposition to defendant, and plaintiff appealed.[6] *Id*. at 2.

The dispositive question on appeal was "whether Shifter's operation of the ambulance in this case qualifies as conduct involving 'the treatment of a patient' within the meaning of MCL 333.20965(1)." *Id*. at 3. Because the EMSA does not define "treatment," the panel consulted a dictionary, as allowed under the rules of statutory construction. *Koontz v Ameritech Servs*, 466 Mich 304, 312; 645 NW2d 34 (2002). The Court observed:

> The *Merriam-Webster Collegiate Dictionary*(11th ed) defines the term "treatment," in relevant part, as follows:
>
> > **a:** The act or manner or instance of treating someone or something: HANDLING, USAGE <the star requires careful ~> **b:** the techniques or actions customarily applied in a specified situation. [*Griffin*, unpub op at 4.]
>
> Adopting this definition, the Court reasoned as follows:

[6] After the trial court's decision, the plaintiff agreed to the dismissal of Aurand from the suit. Thus, the appeal involved only the plaintiff and the defendant ambulance company. *Griffin*, unpub op at 2.

> [T]he term "treatment" would include the handling of a patient in an ambulance or techniques customarily applied when caring for ambulance patients, consistent with the training of first responders. Thus, "treatment" would not be limited to the actual medical services rendered to patients being transported by ambulance but would include activities by first responders acting within the scope of their duties and training as first responders. [*Id*.]

Applying this conclusion to the facts of *Griffin*, the Court rendered the following holding:

> We believe that the immunity afforded by MCL 333.20965(1) applies to Shifter's operation of the ambulance as a motor vehicle in this case where the operation was serving the needs of the plaintiff, a patient seeking immediate medical care. Plaintiff was being transported from an accident site to a hospital to receive immediate medical treatment for an injury. . . . In this context, the term "treatment" can reasonably be construed as including the safe and timely transportation of the patient to the hospital to receive medical care. The evidence showed that (1) Shifter was a medical first responder or EMT who was part of the defendant's ambulance staff; defendant is a life-support agency; (2) defendant was providing emergency services to plaintiff when the collision occurred, and (3) the collision occurred while plaintiff was being transported to the hospital for prompt medical care. We conclude that under these circumstances, Shifter's operation of the ambulance at the time of the second accident qualifies as conduct involving "the treatment of a patient" within the meaning of MCL 333.20965(1). [*Id*.]

Accordingly, the Court affirmed the trial court's grant of summary disposition to the defendant ambulance company. *Id*.

We believe that *Griffin* was wrongly decided. The plaintiff's application for leave to appeal this Court's decision in *Griffin* was pending in the Michigan Supreme Court while this case was being litigated in the trial court. At issue in the Supreme Court was "whether the operation of the ambulance in this case by the appellee's employee constitutes an 'act[ ] . . . in the treatment of a patient' within the meaning of MCL 333.20965(1)." *Griffin*, 504 Mich 968; 933 NW2d 43 (2019). After considering supplemental briefs and hearing oral arguments addressing this issue, the Supreme Court denied the application for leave to appeal. *Griffin v Swartz Ambulance Serv*, ___ Mich ___; 947 NW2d 826 (Mem) (2020).[7] Justices Zahra and Viviano dissented from the decision, albeit for different reasons. We find the reasoning in Justice Zahra's dissent compelling.

Justice Zahra observed that "the text of the EMSA offers critical clues to suggest that the transport of a patient is not included in the scope of "treatment" as contemplated by MCL 333.20965(1)." *Griffin*, 947 NW2d at 828 (ZAHRA, J., dissenting). Specifically, the EMSA "uses the words 'treatment' and 'transport' in close conjunction, yet clearly denoting *separate and*

[7] "A denial of leave to appeal has no precedential value." *Tebo v Havlik*, 418 Mich 350, 363 n 2; 343 NW2d 181 (1984).

distinct concepts." *Id*. For example, MCL 333.20902(5) defines "ambulance operation" as "a person licensed under this part to provide emergency medical services and patient transport, for profit or otherwise." *Id*. In turn, MCL 333.20904(4) defines "emergency medical services" as certain services 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." *Id*. at 829. MCL 333.20969 addresses when it is appropriate to provide "medical treatment for *or* transportation to a hospital" of someone who "objects to the treatment *or* transportation" as follows:

> This part and the rules promulgated under this part do not authorize medical treatment for or transportation to a hospital of an individual who objects to the treatment or transportation. However, if emergency medical services personnel, exercising professional judgment, determine that the individual's condition makes the individual incapable of competently objecting to *treatment or transportation*, emergency medical services may provide *treatment or transportation* despite the individual's objection unless the objection is expressly based on the individual's religious beliefs. [*Id*. at 829 (footnotes omitted).]

These examples demonstrate that the Legislature differentiated between "treatment" and "transportation" for purposes of the EMSA. To overlook this distinction, and to interpret "transportation" as "treatment" for purposes of the EMSA impermissibly renders "transportation" surplusage or nugatory. *Omelenchuk*, 466 Mich at 528 ("[E]very word should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory."). We are convinced by Justice Zahra's analysis that the plain language of the EMSA distinguishes between "transportation" and "treatment." According to this reasoning, Norris's mere transportation of plaintiff cannot be construed as an act "in the treatment of a patient" for purposes of MCL 333.20965(1), and defendants are not entitled to summary disposition on the ground that the EMSA affords them immunity for Norris's actions.[8]

[8] We need not arrive at a definition for "treatment." It is enough to conclude that "treatment" is not tantamount to "transportation" for purposes of the EMSA. However, we do question the *Griffin* Court's adoption of a definition of "treatment" inappropriate for the context of the EMSA. MCL 8.3a provides that in the construction and interpretation of statutes, "technical words and phrases . . . shall be construed and understood according to such peculiar and appropriate meaning." Courts may use a dictionary to ascertain a word's common meaning, *People v Laidler*, 491 Mich 339, 347; 817 NW2d 517 (2012), but technical terms should be given a construction consistent with the "experience and understanding of those who would be expected to use and interpret the act," *Prod Credit Assoc of Lansing v Dep't of Treasury*, 404 Mich 301, 312; 273 NW2d 10 (1978). See also *Stand Up For Democracy v Secretary of State*, 492 Mich 588, 611-612; 822 NW2d 159 (2012) (giving the terms "type" and "point" their technical meaning in the printing field). "The fair and natural import of the terms employed, in view of the subject matter of the law, is what should govern." *People v Morey*, 461 Mich 325, 330-31; 603 NW2d 250, 253 (1999), quoting *People ex rel Twitchell v Blodgett*, 13 Mich 127, 168 (1865)(Cooley, J.). In light

Even if we believed *Griffin* to have been properly decided, defendants still would not be entitled to immunity under the EMSA because the facts of *Griffin* are distinguishable from those of the current case, and the distinctions are significant. *Griffin* involved an EMT's operation of an ambulance while transporting an accident victim to the hospital for immediate medical care. The present case does not. It involves an EMT providing nonemergency transport to take plaintiff from one hospital to a step-down facility for long-term acute care and rehabilitation. As a priority 3 nonemergency transport, Norris did not activate his overhead lights or siren and he admits he was required to follow the rules of the road, just like any other nonemergency vehicle on the road that evening. This distinction is crucial because the Court limited its holding in *Griffin* to instances where an EMT ambulance driver is transporting a patient to a hospital for immediate medical care for an injury. In not just any context may transport by ambulance be arguably understood as "treatment" for the purposes of MCL 333.20965(1), but in the context of a plaintiff "being transported from an accident site to a hospital to receive immediate medical treatment for an injury." *Id*. at 4. "In *this* context, the term 'treatment' can reasonably be construed as including the safe and timely transportation of the patient to the hospital to receive medical care." *Id*. (emphasis added). In not just any set of circumstances does an EMT's transport of a patient by ambulance qualify as "conduct involving 'the treatment of a patient' within the meaning of MCL 333.20965(1)," but in circumstances involving transport to a hospital for prompt medical care. See *id*. The Court tailored its holding in *Griffin* to a particular context and set of circumstances that are not present here. Accordingly, *Griffin* does not support defendants' overgeneralization that "MCL 333.20965(1) provides immunity from negligence claims brought against pre-hospital care providers, including EMTs, while they are providing services outside a hospital that are consistent with the individual's licensure and/or training."[9]

We conclude that *Griffin* does not support defendant's claim to immunity under the EMSA. Contrary to the decision in *Griffin*, transportation is not tantamount to "the treatment of a patient" for purposes of the EMSA. And even if it were, the context and circumstances critical to this Court's analysis and holding in *Griffin* are not present in the case at bar. Accordingly, defendants

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of these principles of statutory construction, the majority's generic definition of "treatment" seems inapt for a law, the subject matter of which is emergency *medical* services.

[9] Defendants assert that "immunity per the EMSA has also been extended to emergency vehicle operation in other cases." However, the cases cited in support of this assertion are inapposite. Two of them, *Alex v Wilfong*, 460 Mich 10; 594 NW2d 469 (1999), and *Curtis v City of Flint*, 253 Mich App 555; 655 NW2d 791 (2002), involve governmental immunity not immunity under the EMSA. The third case, *Castle v Battle Creek Area Ambulance*, unpublished per curiam opinion of the Court of Appeals, issued March 19, 2009 (Docket No. 277068), involved an emergency situation that arose when a patient being transported from one facility to another stopped breathing and "flatlined" during the transport, thus prompting the attendant EMTs to attempt life-saving measures, including taking the patient to an alternate hospital. Thus, *Castle* presents facts more similar to those in *Griffin* than to those in the case at bar. Accordingly, it does not support defendants' contention that they, too, are entitled to immunity under the EMSA.

are not entitled to the immunity granted by the EMSA, and the trial court did not err by denying defendants' motion for summary disposition under MCR 2.116(C)(7).

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Colleen A. O'Brien
/s/ Jane M. Beckering
/s/ Thomas C. Cameron