IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CODY HIATT, Appellant, v. AMERICAN MEDICAL RESPONSE AMBULANCE SERVICE, INC., Respondent.	)	No. 67402-1-I DIVISION ONE UNPUBLISHED OPINION FILED: August 27, 2012

Schindler, J. — When responding to an emergency, the driver of an authorized emergency vehicle may park the emergency vehicle without regard to the law that applies to motorists.[1] Because the uncontroverted evidence establishes the American Medical Response Ambulance Service, Inc. (AMR) crew did not breach the standard of care for the safety of others, we affirm summary judgment dismissal of the lawsuit against AMR.

FACTS

At approximately 7:00 a.m. on June 1, 2009, AMR ambulance driver Rose Washington and crew member Taylor Thornton were traveling northbound on Interstate

[1] RCW 46.61.035.

5 (I-5). The weather was clear and sunny and northbound traffic was very light. Shortly after passing Northgate Mall, Washington and Thornton saw a multiple-vehicle rollover accident blocking three of the southbound lanes of I-5.

Washington and Thornton were the first emergency responders to arrive. Washington activated the flashing emergency lights, and parked the ambulance next to the concrete median in the northbound high occupancy vehicle (HOV) lane near the accident. Thornton contacted the AMR dispatcher to request additional emergency and police support.

Washington and Thornton climbed over the concrete median to treat the accident victims. Washington and Thornton determined that the driver of the rollover vehicle needed spinal support. Approximately ten minutes after parking in the HOV lane, Washington returned to the ambulance to get a backboard.

That same morning, Cody Hiatt was riding to work on his motorcycle in the northbound HOV lane, listening to music on his iPod. Hiatt said that after he drove past Northgate Mall, he "saw an accident on I-5 southbound, with lots of lights flashing from ambulances or other aid vehicles." Because northbound traffic was not slowing down, Hiatt assumed the accident was "all contained to the southbound lanes." Hiatt said that he did not notice the AMR ambulance parked in the northbound HOV lane until moments before the collision.

As Washington opened the door of the ambulance to retrieve the backboard, Hiatt crashed into the right rear door of the ambulance. Washington testified that her hand was bruised from "gripping the handle of the door that was struck by the

motorcycle at the time of impact." Hiatt testified that he was traveling at approximately 50 m.p.h. when he hit the ambulance door. Hiatt said that "it all happened so fast," he did not brake but tried to "go to the right." When Washington went to help Hiatt, he asked her, " 'What did I hit? . . . Is everyone okay?' " Moments later, a fire truck that was responding to the accident in the southbound lanes arrived, and parked in the northbound HOV lane behind the AMR ambulance.

Hiatt's left tibia, fibula, and wrist were fractured, and his right thumb was dislocated. Washington State Patrol Trooper Sergeant T. Anderson prepared a traffic collision report. The report identifies the "contributing circumstances" of the accident as Hiatt's inattentiveness and excessive speed.[2] Trooper Anderson cited Hiatt for "speed too fast."

Hiatt filed a complaint for damages against AMR. Hiatt alleged that the collision was the result of AMR's negligence. AMR denied liability and filed a counterclaim against Hiatt for damage to the ambulance.

AMR filed a motion for summary judgment dismissal. AMR asserted that under former RCW 46.61.035 (1969),[3] the AMR crew was entitled to park the ambulance in the northbound HOV lane in order to provide emergency care to the accident victims. Based on the undisputed facts, AMR argued there was no evidence AMR breached the standard of care. AMR stated there was no dispute that at the time of the collision, the ambulance was an authorized emergency vehicle, the emergency lights were activated,

[2] In the collision report, Trooper Anderson identifies the "contributing circumstances" as code "23" ("Inattention") and code "04" ("Exceeding Reas. Safe Speed").

[3] The legislature amended RCW 46.61.035 in 2010 to add the words "or she" to "he" throughout the statute. Laws of 2010, ch. 8, § 9066.

and the AMR crew was providing emergency medical care to the accident victims.

Notwithstanding Hiatt's deposition testimony that "past Northgate Mall, I-5 curves east so I couldn't see straight ahead," AMR submitted photographs showing that Hiatt's view was unobstructed. AMR also submitted a television news helicopter video of the collision. The video shows the accident in the southbound lane, light northbound traffic, and the unobstructed section of I-5 before Hiatt crashed into the parked AMR ambulance.

AMR asserted Hiatt caused the accident by failing to yield the right-of-way to an emergency vehicle. AMR argued that under former RCW 46.61.212(1) (2007),[4] Hiatt failed to yield the right-of-way to an authorized emergency vehicle. Former RCW 46.61.212(1) requires an approaching motorist to

> proceed with caution and, if reasonable, with due regard for safety and traffic conditions, yield the right-of-way by making a lane change or moving away from the lane or shoulder occupied by the stationary authorized emergency vehicle.[5]

In opposition to the motion for summary judgment, Hiatt argued that the AMR driver breached the duty to exercise care for the safety of others by (1) parking in the

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[4] The legislature amended RCW 46.61.212 in 2010 by renumbering the sections and adding news subsections (2) through (5) addressing speed limits, monetary penalties, criminal penalties, and license suspension. Laws of 2010, ch. 252, § 1.

[5] Former RCW 46.61.212(1) states, in pertinent part:

> The driver of any motor vehicle, upon approaching a stationary authorized emergency vehicle that is making use of audible and/or visual signals meeting the requirements of RCW 46.37.190, . . . shall:
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> (1) On a highway having four or more lanes, at least two of which are intended for traffic proceeding in the same direction as the approaching vehicle, proceed with caution and, if reasonable, with due regard for safety and traffic conditions, yield the right-of-way by making a lane change or moving away from the lane or shoulder occupied by the stationary authorized emergency vehicle or police vehicle.
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> . . . .
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> (3) If changing lanes or moving away would be unreasonable or unsafe, proceed with due caution and reduce the speed of the vehicle.

northbound HOV lane next to the median, (2) failing to use flares, and (3) leaving the ambulance unattended. Hiatt also claimed Washington breached the standard of care by turning her back to oncoming traffic when she returned to the ambulance to retrieve the backboard. Hiatt further claimed that Washington and Thornton violated the "AMR Vehicle Safety Policy" by parking in the northbound HOV lane.

In reply, AMR asserted that Hiatt's unsupported conclusory and speculative arguments did not create a material issue of fact, and the uncontroverted testimony established the AMR crew did not breach the standard of care or the AMR Vehicle Safety Policy.

The trial court granted the motion for summary judgment and dismissed the lawsuit against AMR. AMR then filed a motion for summary judgment on its counterclaim, and the court granted the motion. The parties stipulated to the amount of damages on the counterclaim, and the court entered a judgment against Hiatt for approximately $9,200.

ANALYSIS

Hiatt appeals summary judgment dismissal of his lawsuit against AMR and entry of the judgment. To establish AMR was negligent, Hiatt had to prove (1) a duty owed by the defendant to the plaintiff, (2) breach of that duty, and (3) injury proximately caused by the breach. Hansen v. Friend, 118 Wn.2d 476, 479, 824 P.2d 483 (1992).

We review summary judgment de novo. Hartley v. State, 103 Wn.2d 768, 774, 698 P.2d 77 (1985). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to summary judgment as a matter of

law. CR 56(c). All facts and reasonable inferences are considered in the light most favorable to the nonmoving party. Michael v. Mosquera-Lacy, 165 Wn.2d 595, 601, 200 P.3d 695 (2009). But when reasonable minds could reach but one conclusion, questions of fact may be determined as a matter of law. Vallandigham v. Clover Park Sch. Dist. No. 400, 154 Wn.2d 16, 26, 109 P.3d 805 (2005).

The burden is on the defendant to show there is an absence of evidence to support the plaintiff's case. Young v. Key Pharms., Inc., 112 Wn.2d 216, 225, 770 P.2d 182 (1989). If the defendant meets his burden, the plaintiff must present specific evidence that demonstrates a genuine issue of material fact for trial. Young, 112 Wn.2d at 225; Vallandigham, 154 Wn.2d at 26.

The nonmoving party may not rely on speculation or "mere allegations, denials, opinions, or conclusory statements" to establish a genuine issue of material fact. Int'l Ultimate, Inc. v. St. Paul Fire & Marine Ins. Co., 122 Wn. App. 736, 744, 87 P.3d 774 (2004) (citing Grimwood v. Univ. of Puget Sound, Inc., 110 Wn.2d 355, 359, 753 P.2d 517 (1988)).

If the nonmoving party " 'fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial,' " summary judgment is proper. Young, 112 Wn.2d at 225 (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)).

The driver of an authorized emergency vehicle has the duty to act with due care for the safety of others. Brown v. Spokane County Fire Prot. Dist. No. 1, 100 Wn.2d

188, 193, 668 P.2d 571 (1983). Under former RCW 46.61.035, when responding to an emergency, the driver of an authorized emergency vehicle is permitted to park without regard to the rules applicable to motorists, but must act with due regard for the safety of others. Former RCW 46.61.035 states, in pertinent part:

> (1) The driver of an authorized emergency vehicle, when responding to an emergency call . . . , may exercise the privileges set forth in this section, but subject to the conditions herein stated.
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> (2) The driver of an authorized emergency vehicle may:
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> (a) Park or stand, irrespective of the provisions of this chapter;
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> . . . .
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> (3) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of visual signals meeting the requirements of RCW 46.37.190, except that: . . . (b) authorized emergency vehicles shall use audible signals when necessary to warn others of the emergency nature of the situation but in no case shall they be required to use audible signals while parked or standing.
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> (4) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

Here, there is no dispute that the AMR ambulance was an authorized emergency vehicle and that Washington and Thornton were the first emergency responders to the multiple-vehicle accident in the southbound lanes of I-5. There is also no dispute that when Washington parked the ambulance in the northbound HOV lane next to the median, Thornton immediately activated the emergency lights. And while Washington and Thornton treated the accident victims, the ambulance was parked in the northbound HOV lane for approximately ten minutes before Hiatt crashed into the ambulance door.

Hiatt argues that AMR breached the duty of care owed to other motorists by parking in the northbound HOV lane.[6] Hiatt claims that a reasonable trier of fact could

reach the conclusion that AMR breached the standard of care. But the uncontroverted testimony shows that Thornton and Washington did not breach the standard of care by parking in the northbound HOV lane.

Thornton testified that "based on our arrival, we saw that it was a new accident. We were acting as first responders, and our job is patient care. That's what we do, so that was our first focus, was making sure that everybody was okay." Thornton testified that he and Washington discussed whether to "go up and turn around, but collectively we decided that it was not time-effective to travel north to get on the overpass ramp and then try to navigate the southbound traffic." Thornton said it is "common practice" to park on the opposite side of the freeway when responding to an emergency.

Washington also testified that exiting and re-entering I-5 southbound would have significantly delayed their response and treatment of potentially serious injuries.

> I didn't take that route because -- several reasons: One, the accident was taking up the leftmost three lanes of southbound I-5 and was creating a lot of traffic. Secondly, at that time of the morning on Monday morning, the morning commute was creating additional southbound traffic.
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> And the northbound lanes of I-5 had almost no traffic. It was the fastest, most practical place to access the patients who had not been triaged; potentially had significant injuries. There were several of them, and it was the best, fastest way to get to them. It would have taken a lot of time to get to them in the route that I already described with all that traffic having nowhere to go to get around the accident.

Washington's uncontroverted testimony also supports the conclusion that there was no violation of the AMR Vehicle Safety Policy. Paragraph 6.1 of the AMR Vehicle Safety Policy states: "When arriving on-scene, Company vehicles should be parked out of the line of traffic and shielded from the rear by other vehicles or objects

[6] Hiatt also claims that AMR should have equipped the ambulance with traffic cones. Because he raises this issue for the first time on appeal, we do not consider it. RAP 2.5.

whenever possible." Washington testified that she and Thornton considered but rejected approaching the accident in the southbound lanes, and it was not possible to park out of the line of traffic or be shielded from the rear by another vehicle.

Hiatt also argues that there are issues of fact as to whether AMR breached its duty of care by failing to use flares. But again, according to the uncontroverted testimony, flares were used only at night, in the rain, or in other low-visibility conditions. There is no dispute that is was a clear, sunny day and there was no need to use flares. Washington testified, in pertinent part:

> Because the ambulance was in a highly visible position, the emergency lights were on, we were parked very close to the median and because we weren't sure what the condition of the patients was. We didn't -- I saw a large accident on the freeway. People are possibly -- possibly have -- it's likely in that scenario that they have significant injuries, and there were several cars involved. Because the ambulance was so visible, the next step is the patients and that they are the priority.

We affirm summary judgment dismissal of Hiatt's claim against AMR and entry of the judgment on the counterclaim.

WE CONCUR: