**Docket No. 124610**

**IN THE ILLINOIS SUPREME COURT**

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| ROBERTO HERNANDEZ,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>LIFELINE AMBULANCE, LLC, and JOSHUA M. NICHOLAS, individually and as an agent and/or employee of LIFELINE AMBULANCE, LLC<br><br>Defendants-Appellants. | On Appeal from the Illinois Appellate Court, First Judicial District<br><br>Appellate Docket No. 1-18-0696<br><br>There Heard on Appeal from the Circuit Court of Cook County, Illinois County Department, Law Division<br><br>Docket No. 17 L 2553 Consolidated with No. 17 M1 11458<br><br>The Honorable Allen Price Walker, Judge Presiding |

# REPLY BRIEF OF DEFENDANTS-APPELLANTS LIFELINE AMBULANCE, LLC and JOSHUA M. NICHOLAS

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# REPLY BRIEF OF DEFENDANTS-APPELLANTS LIFELINE AMBULANCE, LLC and JOSHUA M. NICHOLAS

## ARGUMENT

### Introduction

The plaintiff argues that the appellate court should be affirmed in its result, "if not in its analysis" (Br., at 5). However, the result that the appellate court reached, as well as its analysis, is contrary to the comprehensive purpose and broad language of the EMS Act. If the appellate court is affirmed, the scope of the immunity will be unduly narrowed and ambulance owners and operators will be exposed to liability for ordinary negligence whenever in the normal course of their duties they are dispatched to pick up patients for nonemergency medical transport to or from a health-care facility.

The facts relevant to the issue on appeal are not in dispute. The defendants were operating an ambulance under dispatch to provide nonemergency medical services to a dialysis patient at the time of the accident (R.C51-52; R.C53-54; R.C128-30). The Act defines "non-emergency medical services" as "medical care *** rendered to patients whose conditions do not meet this Act's definition of emergency, before or during transportation of such patient to or from health care facilities for the purpose of obtaining medical or health care services which are not emergency in nature, using a vehicle regulated by this Act." 210 ILCS 50/3.10(g) (West 2016). Under section 3.150(a) of the Act, an ambulance owner or employee "who in good faith provides emergency or non-emergency medical services *** in the normal course of conducting their duties shall not be civilly liable unless such acts or omissions *** constitute willful and wanton misconduct." 210 ILCS 50/3.15(a) (West 2016). Notably, the immunity from liability for ordinary negligence in section 3.150(a) applies equally to emergency and non-emergency medical services.

Neither the plain language of the Act nor the case law requires the patient to be inside the ambulance for the immunity to apply. The appellate court read the definition of "non-emergency medical services" too narrowly by stating that they were limited to "medical services rendered to patients *during transportation* to health care facilities" (emphasis in the original). *Hernandez v. Lifeline Ambulance, LLC*, 2019 IL App (1st) 180696, ¶ 19, 125 N.E3d 149. This court has recognized that conduct preparatory to providing actual medical care is protected by the immunity (*Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324, 345, 898 N.E.2d 631 (2008)), and that "[i]f transporting a patient to a hospital is an aspect of life support services, then so too is locating a patient in the

first place." *American National Bank and Trust Co. v. City of Chicago*, 192 Ill. 2d 274, 283, 735 N.E.2d 551 (2000). It should be sufficient that the ambulance has been dispatched for nonemergency medical transport of the patient to or from the health care facility. Reaching the patient with a properly staffed and equipped ambulance is integral to providing medical services. The appellate court should be reversed and the trial court's dismissal of counts I and III of the first amended complaint should be affirmed.

## THE APPELLATE COURT ERRED IN NARROWING THE SCOPE OF SECTION 3.150(a) OF THE EMS ACT TO LIMIT THE IMMUNITY ONLY TO TRANSPORT WHILE THE PATIENT IS INSIDE THE AMBULANCE

### A. Section 3.150(a) of the EMS Act Applies Whenever an Ambulance In Transit to Pick up a Patient for a Non-Emergency Medical Transport is Involved in an Accident

The plaintiff quotes out of context this court's decision in *Wilkins v. Williams*, 2013 IL 114310, ¶ 58, 991 N.E.2d 308 ("It is clear that section 3.150(a) immunity extends only to those providing emergency or nonemergency medical services, which would not include driving to and from work"). The *Wilkins* Court's statement that the immunity did not extend to those driving to or from work is not relevant here. As the dispatch log shows (R.C128-29) and the plaintiff acknowledges in his brief, at the time of the accident, the Lifeline ambulance had been dispatched by radio for nonemergency medical transport of a dialysis patient to a health care facility (Br., at 4).

What *is* relevant from *Wilkins* is the Court's holding that the EMS Act bars a negligence action brought by a motorist who collides with the ambulance where, as here, the ambulance is operating on a nonemergency basis, without its lights and siren. In reaching its decision, the *Wilkins* Court held that the immunity did not distinguish between claims of patients and claims of third-parties (at *id.* ¶ 22), or between

ambulances operating under lights and sirens and those not operating under lights and sirens. *Id.* at ¶¶ 54-55. Rather, the *Wilkins* Court found that "the statute broadly declares that a person shall not be civilly liable as a result of their act or omissions in providing nonemergency medical services," without limiting or placing conditions on those acts or omissions. *Id.* at ¶ 20. As further relevant here and quoting from *Abruzzo*, 231 Ill. 2d at 345, the *Wilkins* Court reaffirmed its holding that "the EMS Act's immunity provision has been interpreted broadly to include preparatory actions integral to providing emergency treatment." ¶ 29. The *Wilkins* Court observed that "given the broad scope of the EMS Act, as well as the broad language in the immunity provision," the statute provided immunity to claims by all persons "negligently injured by an act or omission resulting from the provision of emergency or nonemergency medical services." *Id.* at ¶ 30. The *Wilkins* Court concluded that the plain language of section 3.150(a) demonstrated the legislature's intention to grant immunity from ordinary negligence for those persons and entities governed by the EMS Act:

> The statutory language in the EMS Act is clear that any person who in good faith provides nonemergency medical services in the normal course of conducting their duties shall not be civilly liable as a result of their acts or omissions in providing such services, unless such acts or omissions constitute willful and wanton misconduct.

*Id.* at ¶ 59. Likewise, the fact that the defendants' ambulance operated without its lights and siren while in transit to provide a dialysis patient with nonemergency medical transport did not remove it from the protection of the EMS Act. Getting to the patient is preparatory action integral to providing nonemergency medical services.

According to the plaintiff, the EMS Act did not apply because no special driver's license or training was needed for Nicholas to drive the ambulance without a patient

inside (Br., at 7). This argument proves nothing. The same can also be said when an ambulance is used for nonemergency medical transport as was true in *Wilkins*. The ambulance driver did not need a special driver's license to transport the patient, but the immunity in section 3.150(a) still applied.

Contrary to the plaintiff's argument (Br., at 7), the EMS Act governed Lifeline and Nicholas, its EMT-Basic driver (R.C51), from the moment they were dispatched to provide nonemergency medical services until they arrived at the health care facility. The EMS Act regulates the persons and entities authorized to provide emergency and nonemergency medical services on such subjects as licensing, scope of practice, training and continuing education of EMTs and other medical personnel. *Abruzzo*, 231 Ill. 2d at 340-41. The EMS Act describes the services an EMT-Basic can provide and grants the Illinois Department of Public Health ("IDPH") the "authority and responsibility" to establish the licensure standards, procedures and testing of the various EMT levels, including renewal, discipline and revocation of the licenses. 210 ILCS 50/3.50(a)-(e) (West 2016); 210 ILCS 50/3.55(a)-(d) (West 2016). It is no exaggeration to say that the EMS Act governed all aspect of Lifeline's operations in providing ambulance services to its patients, including the specific nonemergency medical transportation of the dialysis patient at the time of the accident. The EMS Act made the IDPH responsible for regulating ambulances and other emergency vehicles, including design, specifications, equipment and staffing requirements as well as operation and maintenance standards. 210 ILCS 50/3.85 (West 2016); *Abruzzo*, 231 Ill. 2d at 341. The EMS Act granted the IDPH the "authority and responsibility" to establish licensing standards and requirements for Vehicle Services Providers ("VSP") (210 ILCS 50/3.85(b)(3)-(4) (West 2016)), including

procedures for renewal, suspension and revocation of those licenses. 210 ILCS 50/3.85(b)(5)-(7) (West 2016). The IDPH also had the authority to govern all aspects of the ambulances used in performing the services by developing standards and regulations for the design, specification, operation and maintenance standards of ambulances as well as equipment and staffing requirements. 210 ILCS 50/3.85(b)(3)(A)-(D) (West 2016); *Abruzzo*, 231 Ill. 2d 341.

Moreover, the EMS Act granted the IDPH the "authority and responsibility" to regulate how Lifeline conducted its business. The Act allows the IDPH to require a VSP "to have primary affiliation with an EMS System within the EMS region in which its Primary Service Area is located, which is the geographic areas in which the providers render the majority of its emergency responses." 210 ILCS 50/3.85(b)(2) (West 2016). The Act also prohibits any employer from permitting any employee from performing services that the employee is not licensed to perform. 210 ILCS 50/3.160 (West 2016).

Accordingly, the EMS Act ensured that the defendants' ambulance was designed, maintained, equipped and staffed properly to provide nonemergency medical transportation services to the dialysis patient. Indeed, whether the defendants could even accept the nonemergency medical transport of the patient was governed by the EMS Act's requirements that Lifeline be licensed to accept the nonemergency medical transport and be part of an EMS System covering the geographic location. As a result, contrary to the plaintiff's argument, the defendants were governed by the EMS Act while the ambulance was in transit to provide nonemergency medical services regardless of whether or not Nicholas needed any special driver's license to operate the ambulance.

The plaintiff argues that, even if the immunity applies to preparatory action integral to providing emergency medical services, the immunity should not apply to preparatory actions integral to providing nonemergency medical services (Br., at 10). Given the legislative history of the EMS Act, this distinction cannot withstand scrutiny. This Court noted in *Abruzzo* that the EMS Act has been amended to include "non-emergency medical services" (231 Ill. 2d at 337) so that the distinction that the plaintiff asks this Court to draw between emergency and nonemergency medical services does not exist under the Act, and the plaintiff's argument should be rejected. The same broad construction of the EMS Act should apply to preparatory conduct integral to providing nonemergency medical services as for providing emergency medical services.

The Illinois Trial Lawyers Association ("ITLA") goes one step further to argue that the immunity should not apply to any preparatory conduct, whether of an emergency or nonemergency nature (Br., at 3). It asks this court to overrule settled precedent going back more than twenty years in *American National Bank and Trust Co.* (Br., at 3-4). ITLA ignores that this court's interpretation is considered part of the EMS Act itself until the legislature amends it contrary to that interpretation. *Abruzzo*, 231 Ill. 2d at 343 (citing *Henrich v. Libertyville High School,* 186 Ill. 2d 381, 387, 712 N.E.2d 298 (1998), citing *Miller v. Lockett,* 98 Ill. 2d 478, 483, 457 N.E.2d 14 (1983)).The EMS Act has not been amended contrary to this court's interpretation in *American National Bank and Trust Co*. and subsequent decisions. *Ries v. City of Chicago*, 242 Ill. 2d 205, 227, 950 N.E.2d 631 (2011), which ITLA cites, did not involve an unbroken line of decisions from this court, and for that reason, does not support its argument. This court should decline ITLA's invitation to overrule *American National Bank and Trust Co.*

### B. The Plaintiff's Reliance on Section 3.10(h) of the EMS Act is Misplaced

Section 3.10(h) of the EMS Act provides that:

> The provisions of this Act shall not apply to use of an ambulance or SEMSV, unless and until emergency or non-emergency medical services are needed during the use of the ambulance or SEMSV.

210 ILCS 50/3.10(h) (West 2016). The definition of "ambulance" and "SEMSV" ("specialized emergency medical services vehicle") are set forth in section 3.85(a)(1)-(a)(2) of the EMS Act. 210 ILCS 50/3.85(a)(1)-(a)(2) (West 2016).

The plaintiff (Br., at 9) and ITLA (Br., at 4-5) argue that this provision shows that the use of the ambulance is not protected by the immunity until and unless medical services are needed while the patient is on board. The provision as written does not support their argument.

This provision makes clear that the use of the ambulance when emergency or nonemergency medical services are not needed is outside the EMS Act's protection. That would be true, if for example, as recognized in *Wilkins*, the ambulance was used to drive to or from the place of employment. 2013 IL 114310, ¶ 58. The provision ensures that the EMS Act governs the ambulance's use only when the ambulance is dispatched to a patient who needs emergency or nonemergency medical services during the use of the properly equipped and staffed ambulance.

The plaintiff invites this Court to rewrite section 3.10(h) to state that the EMS Act applies only when there is a "contemporary need" for nonemergency medical services during the ambulance's use (Br., at 9). This Court should decline the plaintiff's invitation to insert words of limitation which are not part of the statute. Section 3.10(h) does not distinguish between the time during which an ambulance is in transit to reach the patient

and the time during which it is transporting the patient. Getting an ambulance to the patient is part of the emergency or nonemergency medical services. Here, the nonemergency medical services were needed when the ambulance was dispatched for transport of the dialysis patient to or from a health care facility. The EMS Act applied from the precise moment the ambulance personnel were notified that nonemergency medical services were needed and the ambulance was dispatched until the ambulance reached the intended destination with the patient. Nothing more was required for the statutory immunity to apply to the use of the ambulance.

## CONCLUSION

For all of the reasons set forth in this reply brief, the opening brief and the petition for leave to appeal, the defendants-appellants, Lifeline Ambulance, LLC and Joshua M. Nicholas, respectfully request that this court reverse the opinion and judgment of the Illinois Appellate Court, First Judicial District, Fifth Division, in favor of the plaintiff-appellee, Roberto Hernandez, and that it affirm the judgment of the trial court dismissing counts I and III of the first amended complaint or that it remand for the entry of a judgment of dismissal of counts I and III of the first amended complaint in their favor.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b) of the Supreme Court Rules. The length of this reply brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, and the Rule 341(c) certificate of compliance, is 9 pages.

By: /s/ Michael Resis

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**PLEASE BE ADVISED** that on this 14th day of August, 2019, we caused to be electronically filed with the Clerk of the Illinois Supreme Court, the reply brief and argument on behalf of the defendants-appellants, Lifeline Ambulance, LLC and Joshua M. Nicholas, in the above-entitled cause, a copy of which, along with this notice of filing with affidavit of service, is served upon you.

Respectfully submitted,

By: /s/ Michael Resis
One of the Attorneys for Defendants-Appellants,
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**AFFIDAVIT OF SERVICE**

The undersigned, Jacqueline Y. Smith, a non-attorney, under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, certifies that the statements set forth in this instrument are true and correct, and that I caused the foregoing notice of filing and reply brief and argument of defendants-appellants to be served upon the parties listed above on this 14th day of August, 2019, by electronic mail and electronically through the court's Odyssey electronic filing manager.

/s/ Jacqueline Y. Smith