No. 126856

In the Supreme Court of Illinois

LARRY E. SCHULTZ,

Plaintiff-Appellant,

vs.

ST. CLAIR COUNTY, a Unit of Local Government in the State of Illinois; St. CLAIR COUNTY CEN-COM 9-1-1, a Public Safety Agency and Answering Point Within the State of Illinois; EMERGENCY TELEPHONE SYSTEM BOARD OF ST. CLAIR COUNTY; and JOHN DOE/JANE DOE,

Defendants-Appellees.

Appeal from the Appellate Court of Illinois, Fifth Judicial District, No. 5-19-0256, there was heard on appeal from the Circuit Court of St. Clair County, Illinois, No. 13 L 71, The Honorable Heinz M. Rudolf, Judge Presiding.

AMICUS CURIAE BRIEF OF ILLINOIS TRIAL LAWYERS ASSOCIATION, IN SUPPORT OF PLAINTIFF-APPELLANT

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E-FILED
5/4/2021 11:51 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

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POINTS AND AUTHORITIES

STATUTES INVOLVED

50 ILCS §750/15.1. Public body; exemption from civil liability for developing or operating emergency telephone system.

(a) In no event shall a public agency, the Commission, the Statewide 9-1-1 Advisory Board, the Administrator, the Department of State Police, public safety agency, public safety answering point, emergency telephone system board, or unit of local government assuming the duties of an emergency telephone system board, or carrier, or its officers, employees, assigns, or agents be liable for any civil damages or criminal liability that directly or indirectly results from, or is caused by, any act or omission in the development, design, installation, operation, maintenance, performance, or provision of 9-1-1 service required by this Act, unless the act or omission constitutes gross negligence, recklessness, or intentional misconduct.

….

(b) Exemption from civil liability for emergency instructions is as provided in the Good Samaritan Act [745 ILCS 49/1 et seq.].

745 ILCS §10/4-102. Failure to provide adequate police protection

Neither a local public entity nor a public employee is liable for failure to establish a police department or otherwise provide police protection service or, if police protection service is provided, for failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals. This immunity is not waived by a contract for private security service, but cannot be transferred to any non-public entity or employee.

INTEREST OF THE *AMICI CURIAE*

The Illinois Trial Lawyers Association (ITLA) is not-for-profit organization consisting of trial attorneys located throughout the state. As an organization, ITLA works to promote access to the courts and protect the interests of those who have been injured or wronged by others.

The outcome of this case will have a specific impact and a more general impact, both of which are relevant to ITLA's members and their clients. First, the outcome of this case will set precedent for every case involving 911 dispatcher conduct going forward. Second, and on a more general level, this case will set precedent for analyzing conflicting immunity provisions. ITLA believes the position of the plaintiff-appellant should prevail, and therefore submits this brief in support of the plaintiff-appellant.

This brief does not repeat the arguments of plaintiff-appellant's brief but rather discusses unaddressed issues relevant to ITLA's members. Specifically, this brief focuses on the following issues relating to legislative intent and statutory construction between two immunity statutes in derogation of the common law:

(1) ***Plain Meaning and Strict Construction:*** *Plain meaning is the best indicator of legislative intend, and immunity statutes in derogation of the common law must be strictly construed against the public entity asserting the immunity;*

(2) ***The Specificity Principle:*** *When one statute speaks in general terms and one speaks in specific terms, the more specific statute prevails;*

(3) ***History of the Enactment and Amendments to §15.1:*** *The timing of the enactment and the amendments of the ETSA indicate the legislature intended for the immunity provision to operate separately from §4-102;*

(4) ***Other Sections of the ETSA Show Legislative Intent:*** *Other sections of the ETSA indicate (a) the legislature considered police response and (b) the legislature intended to improve communications and shorten time for emergency response;*

(5) ***In Pari Materia****: The only way to harmoniously construe these statutes is by focusing on the conduct at issue;*

(6) ***Legislative History:*** *Legislative history indicates the bill is targeted at the actions of 911 dispatchers.*

ARGUMENT

By its plain language, §15.1 of the Emergency Telephone System Act (ETSA) should apply when the conduct at issue is that of a public agency or employee's operating, performing, maintaining, or providing 911 service required by the Act. The tools of statutory construction, ranging from plain meaning to legislative history, indicate that §15.1 of the ETSA operates independently of §4-102 of the Tort Immunity Act (TIA). When there is potential overlap between the two statutes and dispatcher conduct is the issue, §15.1 of the ETSA controls as the more specific statute.

(1) ***Plain Meaning and Strict Construction:*** *Immunity statutes are in derogation of the common law and must be strictly construed against the public entity asserting the immunity*

The appellate court interpreted the opening phrase of §15.1, "in no event," to indicate this statute was a catch-all immunity in case no other immunity applied. This interpretation goes beyond the plain language of the statute. Moreover, section (b) of §15.1 expressly defers to the Good Samaritan Act civil liability exemptions. The legislature could have done the same with the TIA, but did not. Under the principles of strict construction, the phrase "in no event" must be limited to its plain meaning.

A. A plain reading of the phrase "in no event" does not incorporate separate immunity statutes.

The best and "most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning." *Gaffney v. Board of Trustees*, 2012 IL 110012, ¶ 56. The appellate court held that the language "in no event"

indicated that this section was a catch-all for other immunities that may apply. The court specifically stated that "[t]his is a reasonable interpretation of that section that gives effect to section §15.1, as well as to all the potentially implicated provisions of the Tort Immunity Act." *Schultz v. St. Clair Cty.*, 2020 IL App (5th) 190256.

But that interpretation goes beyond the plain language of the statute. The phrase "[i]n no event" does not specifically state that the legislature intended on deferring to the TIA for civil liability exemptions. To the contrary, a plain reading of the phrase "in no event" does implicate any other immunity statutes, but rather states that those operating the 911 system will not be held liable under any circumstances unless they are guilty of gross negligence, recklessness, or intentional misconduct. As shown in the next section, if the legislature intended on deferring to the TIA for civil liability exceptions, it could have plainly said so.

B. The legislature expressly deferred to other immunities in the language of §15.1(b) and could have deferred to the TIA

While §15.1 of the ETSA is silent as to the TIA, it does reference a different immunity act. Specifically, section (b) of §15.1 provides that "[e]xemption from civil liability for emergency instructions is as provided in the Good Samaritan Act." Clearly the legislature was contemplating how §15.1 would interact with other immunity provisions. If the legislature wanted to defer to the TIA, it would have stated that "[e]xemption from civil liability for" failing to provide police, fire, or emergency services is as is provided in the TIA.

C. Reading the phrase "in no event" to be a catch-all subservient to other immunities presupposes the legislature was implying (but not plainly stating) a reference to other immunity statutes. This implication is not proper under principles of strict construction.

The appellate court went beyond the plain language of the statutes, and in doing so held that the statute "potentially implicated" the Tort Immunity Act. But by its plain language, the Act does not do so. Under principles of strict construction, the statute must be read to effect the least change in the common law. *Adams v. Northern Illinois Gas Co.,* 211 Ill. 2d 32, 69 (2004).

After this Court abolished sovereign immunity, the legislature amended the Illinois Constitution to indicate that the legislature would prescribe the boundaries of governmental immunity by statute. Illinois Const., Art. XIII, § 4. Thus, unless a statute specifically immunizes a governmental entity's conduct, that entity will be held liable in tort under the common law just like private entities. *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 192 (1997).

Immunity statutes like the Tort Immunity Act are in derogation of the common law, and therefore must be strictly construed against public entities. *Monson v. City of Danville*, 2018 IL 122486, ¶ 15. Statutes in derogation of the common law are limited "to their express language, in order to effect the least- rather than the most- change in the common law." *Adams*, 211 Ill. 2d at 69. Courts do not read any implication into such statutes. *Bush v. Squellati*, 122 Ill. 2d 153, 161-62 (1988).

Under the common law, a 911 dispatcher would be liable just like a private citizen for negligence in performing his or her duties. The legislature,

however, determined that 911 dispatchers and those who operate the 911 system would be held accountable for willful and wanton conduct. 50 ILCS §750/15.1. This reading makes the least change to the common law.

Given that the TIA is not directly mentioned in §15.1, holding that the phrase "in no event" potentially implicates other immunity statutes means the language is at the very least open to multiple interpretations. If the language of a statute in derogation of the common law is ambiguous, however, it must be strictly construed against the public entity. *Hood v. Illinois High School Ass'n*, 359 Ill. App. 3d 1065, 1070 (2nd Dist. 2005).

A strict construction of §15.1 does not implicate other immunity statutes. To the contrary, it is a deliberate statement as to when public agencies and their employees will be held liable for conduct in operating the 911 system.

(2) ***History of the Enactment and Amendments to §15.1:*** *The timing of the enactment and the amendments of the ETSA indicate the legislature intended for the immunity provision to operate separately from Section 4-102*

§15.1 of the ETSA was passed while the public duty rule still immunized local public entities' failure to provide police services. Specifically, §15.1 was passed by the 80th General Assembly in 1977. Emergency Telephone System Act §15.1, PUBLIC ACT 80-744 (1977) (codified as 50 ILCS 750/15.1). Until this Court abandoned the rule in 2016, the public duty rule provided that a local public entity did not owe a duty of care to provide police services, fire protection services, or other governmental services. *Coleman v. East Joliet Fire*

Protection District (In re Estate of Coleman), 2016 IL 117952, ¶ 1. Thus, at the time the legislature enacted §15.1, it knew that local public entities would not be held liable for the failure to provide police protection services.

Section §4-102 of the TIA was enacted in 1986 and has never been amended. PUBLIC ACT 84-1413. Ten years later, in 1996, §15.1 was amended to specify what civil liability limitations would not be covered by the Act. As discussed above, the legislature stated that "[e]xemption from civil liability for emergency instructions is as provided in the Good Samaritan Act [745 ILCS 49/1]." Public body; exemption from civil liability for developing or operating emergency telephone system, PUBLIC ACT 89-607.

Section 15.1 of the ETSA was again updated in 2015. The Act was broadened to ensure that those operating and performing 911 service would be subject to civil liability exemption of §15.1:

> **[Previous Version]** "No public agency…shall be held liable for any civil damages as a result of any act or admission, except for willful and wanton misconduct**,** in connection with developing, adopting, operating, or implementing any plan or system required by this Act."
>
> **[Current Version]** "In no event shall a public agency… be liable for any civil damages … that directly or indirectly results from, or is caused by, any act or omission in the development, design, installation, operation, maintenance, performance, or provision of 9-1-1 service required by this Act, unless the act or omission constitutes gross negligence, recklessness, or intentional misconduct.

Since the enactment of §4-102, the legislature has twice updated §15.1 and made no comment that civil liability for 911 dispatchers would be governed by §4-102. The 2015 amendment came long after this Court's *DeSmet* decision,

and that amendment added further clarification as to what services would be covered. *DeSmet v. County of Rock Island*, 219 Ill. 2d 497, 501 (2006). If the legislature wanted the civil liability exemption of §15.1 to be subservient to §4-102, it would have so stated.

(3) ***The Specificity Principle:*** *When one statute speaks in general terms and one speaks in specific terms, the more specific statute prevails*

This Court has held that, when two statutes potentially govern the same area, the more specific statute prevails over a more general statute. In *Murray v. Chicago Youth Center*, the plaintiff was injured when participating in a supervised tumbling class at defendant's facility. 224 Ill. 2d 213, 234 (2007). On appeal to this Court, the primary issue was whether the immunity and exceptions of §3-109 for hazardous recreational activities applied, and whether §3-109 took "precedence over sections 2–201 [discretionary immunity] and 3–108(a) [failure to supervise activity on public property] of the Act." *Id.* at 229.

In finding that §3-109 did take precedence over §2-201 and §3-108(a), this Court relied in part on the fact that §3-109 more specifically applied to the facts of the case. This Court explained the "well-settled rule of statutory construction" that when one statute speaks in general terms and applies to cases generally, a more particular statute, relating to one subject, prevails over the general statute. *Id.* at 233. Applying this rule to the facts before it, this Court held that while §2-201 and §3-108 would normally provide immunity under the facts, trampolining was specifically mentioned in §3-109, and held that §3-109(c) directly applied to those facts.

When dispatcher conduct is at issue, and there is potential overlap between §15.1 and §4-102, the ETSA must control over the TIA. The ETSA speaks specifically about 911 service providers, whereas the TIA speaks generally about a public entity's failure to provide adequate police protection. As the more specific statute, §15.1 must take precedence over §4-102 when dispatcher conduct is involved.

(4) ***Other Sections of the ETSA Show Legislative Intent:*** *Other sections of the ETSA indicate (a) the legislature considered police response and (b) the legislature intended to improve communications and shorten time for emergency response*

When read as a whole, the ETSA supports the finding that the legislature intended for §15.1 to take precedence over other immunities as it relates to 911 dispatcher conduct. The primary goal of statutory construction is to ascertain the intent of the legislature. *People v. Eppinger*, 2013 IL 114121, ¶ 21. In addition to the plain and ordinary meaning of the statutory language, "legislative intent can be ascertained from consideration of the statute in its entirety, its nature and object, and the consequences of construing it one way or the other." *Id.* Here, the legislative intent was to improve and quicken responses to callers requesting emergency services. The legislature also considered that a police response be available to those operating the 9-1-1 system.

(a) The Act was enacted to improve communication procedures and shorten the time for emergency response.

The legislative intent behind the statute was to improve communications, which is made clear in other portions of the ETSA. The General Assembly explains that "it is in the public interest to shorten the time for a citizen to request and receive emergency aid." 50 ILCS 750/1. An additional purpose of the Act is to "encourage units of local government…to improve communication procedures and facilities in such a manner as to be able to quickly be able to respond to any person calling [9-1-1] seeking police, fire, medical, rescue, and other emergency services." *Id.*

(b) Police response was considered when enacting the Act.

The legislature intended that police be part of the response available to 911 operators. Section 15.1 specifically mentions that public agencies and the Department of State Police will not be held liable for operating the 911 service unless their conduct constitutes gross negligence, recklessness, or intentional misconduct. The Act defines "public agency" as any unit of local government that "provides or has the authority to provide firefighting, police, ambulance, medical, or other emergency services." 50 ILCS 750/2.

The 2015 amendment clarified that, by July 1, 2017, every local public agency was to be within the jurisdiction of a 9-1-1 system. 50 ILCS 750/3. The legislature also explained what was to be included in said system: "Every system shall include police, firefighting, and emergency medical and ambulance services, and may include other emergency services . . . ." 50 ILCS

750/4. In other words, a police response was deliberately contemplated by the legislature.

The key phrase of §15.1 is that qualified immunity exists for "any act or omission in the development, design, installation, operation, maintenance, performance, or provision of 9-1-1 service required by this Act." 50 ILCS 750/15.1. There is no distinction between what type of emergency response is requested, because the conduct at issue is that of those operating the 911 system. Every system is required to have police, firefighting, and medical responses. If there is willful and wanton conduct by a public agency or its employees/agents in operating the 911 system, the legislature prescribed liability regardless of the response sought.

(5) ***In Pari Materia****: The only way to harmoniously construe these statutes is by focusing on the conduct at issue*

To the extent this Court believes §15.1 is susceptible to more than one reasonable reading, courts look to statutory aids in such situations. One of those aids is "*in pari materia*, under which two statutes, or two parts of one statute, concerning the same subject must be considered together in order to produce a 'harmonious whole.'" *People v. Rinehart*, 2012 IL 111719, ¶ 26.

The only way to harmoniously construe §15.1 and §4-102 is by focusing on the conduct at issue. §15.1 addresses a very specific set of conduct – gross negligence, recklessness, or intentional misconduct in the realm of dispatcher conduct. To the extent the dispatcher conduct falls into the §4-102 sphere, the more specific provision would apply. In other words, when the alleged

wrongdoing is due to operating the 9-1-1 system, the ETSA applies. When the alleged wrongdoing is relating to the failure to provide adequate police protection – i.e. the wrongdoing is in the police response or lack thereof, and not dispatcher conduct—4-102 applies. The plaintiff in *DeSmet* did not call 9-1-1, and thus this Court did not need to consider whether the ETSA applied. *DeSmet v. County of Rock Island*, 219 Ill. 2d 497, 501 (2006).

This is not a case such as *Harris v. Thompson,* where this Court held that sections of the Vehicle Code relating to emergency vehicles were not in conflict with the TIA because each Act stood in its own "sphere." 2012 IL 112525, ¶ 23. The same logic was applied with respect to the School Code and the TIA in *Henrich v. Libertyville High School*. 186 Ill. 2d 381, 392, (1998).

To begin, neither the Motor Vehicle Code nor the School Code specifically stated that it applied to public agencies. The ETSA explicitly sets the liability exemptions for public agencies operating the 911 service.

Moreover, neither the Motor Vehicle Code nor the School Code were immunity statutes. *See also Monson v. Danville,* 2018 IL 122486 (holding that it did not matter that §3-102 of the TIA was more specific than §2-201 of the TIA, where §3-102 was a duty provision and §2-201 was an immunity provision). That problem does not exist here. Section §15.1 is an immunity provision. The issue here is which immunity controls.

To the extent there are overlapping spheres as in *Harris* and *Henrich*, those spheres would be (1) the ETSA applies to 911 dispatcher conduct

including dispatcher conduct in the realm of police services, and (2) §4-102 applies to conduct for failure to provide any or adequate police protection services outside of dispatcher conduct. In other words, the coverage of §15.1 might overlap with other immunity provisions, but it is its own sphere as it only applies those operating the 911 system.

(6) ***Legislative History:*** *Legislative history indicates the bill is targeted at the actions of 911 dispatchers*

Finally, the appellate court in this matter held that §15.1 applies not to dispatcher conduct, but rather to local entities on an infrastructure level. (Opinion, at ¶17). While the 2015 amendment specifically references operation and performance of the 911 service, legislative history also indicates that the General Assembly intended for the section to apply to dispatcher conduct. This Court has used legislative history to support an interpretation of a statute, despite the fact that the plain language of a statute is the best indicator of legislative intent. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 50. Plaintiff-appellant's brief addresses the plain language argument regarding the 2015 amendment, and thus that argument will not be repeated here.

The legislative history, however, also supports the plain language of the statute. In a house vote on this specific immunity, the representative presenting the bill stated that the bill "is to set up a Good Samaritan Law with regard to 911." (80th Ill. Gen. Assem., House Proceedings, May 12, 1977, at 66 (statements of Representative Katz). He further explains that "like all of the Good Samaritan Laws [this bill] provides that there will be liability in the

event of willful or wanton conduct." *Id.* at 66. The representative puts forth a hypothetical in which the 911 operator provides instructions to an individual having a heart attack. He explains that the 911 operator would not be liable for giving those instructions unless he is engaged in willful or wanton misconduct. *Id.* at 67.

The legislative history is provided to show that the legislature intended 911 dispatcher conduct to be included within the purview of §15.1 since its enactment. The 2015 amendment adding language regarding operating and providing the 911 service clarified that dispatcher conduct was governed by §15.1.

CONCLUSION

The legislature expressed its intent that 911 dispatchers and those providing 911 service be held liable for gross misconduct, recklessness, and intentional misconduct. If the legislature intended on §4-102 and other immunities taking precedence over §15.1 of the ETSA, it could have said so as it did with the Good Samaritan Act.

The principles of statutory construction outlined above indicate that, when dispatcher conduct is at issue, §15.1 takes precedence over §4-102.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 16 pages.

By: /s/ Stephen Blecha