Docket No. 124610

IN THE ILLINOIS SUPREME COURT

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

BRIEF AND ARGUMENT OF DEFENDANTS-APPELLANTS LIFELINE AMBULANCE, LLC and JOSHUA M. NICHOLAS

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TABLE OF POINTS AND AUTHORITIES

Docket No. 124610

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NATURE OF THE CASE

The plaintiff, Roberto Hernandez, brought this action seeking to recover damages from the defendants, Life Ambulance, LLC ("Life Ambulance") and its driver, Joshua Nicholas, after their vehicles collided within an intersection. The plaintiffs alternatively alleged that the defendants' operation of their ambulance was negligent or willful and wanton, and that the defendants were providing neither emergency nor non-emergency medical services at the time of the accident. The trial court granted the defendants' section 2-619.1 motion to dismiss, which asserted, *inter alia*, that they were operating the ambulance in the performance of non-emergency medical services at the time of the

accident, and therefore entitled to immunity from negligence under section 3.150(a) of the Emergency Medical Services (EMS) Systems Act ("EMS Act") (210 ILCS 50/3.150(a) (West 2016)). The appellate court (2019 IL App (1st) 180696), over a dissent, reversed the dismissal of the negligence counts and remanded for further proceedings, holding that the defendants were not entitled to immunity for an accident that took place when the ambulance in transit to pick up a patient for a non-emergency medical transport was involved in an accident with a motorist.

ISSUE PRESENTED FOR REVIEW

Whether the appellate court properly reversed the trial court and determined that the limited immunity from negligence set forth in section 3.150(a) of the EMS Act applies only to the transportation of patients to or from health care facilities.

STATEMENT OF JURISDICTION

The plaintiff brought this appeal from a final order pursuant to Supreme Court Rules 304(a). (Ill. S. Ct. R.304(a) (eff. March 8, 2016)). On March 7, 2018, the trial court granted the defendants' section 2-619.1 motion to dismiss counts I and III (R.C138-39). On March 19, 2018, the trial court further found no just reason to stay enforcement or delay appeal pursuant to Rule 304(a) (R.C144). Within 30 days, the plaintiff filed a notice of appeal on March 29, 2018 (R.C145-49). Thereafter, the Illinois Appellate Court, First Judicial District, Fifth Division, rendered its disposition in the form of an opinion on February 1, 2019. No petition for rehearing was filed. The defendants timely filed their petition for leave to appeal within 35 days of the appellate court's opinion on March 5,

2019, pursuant to Supreme Court Rule 315(b). Ill. S. Ct. R.315(b) (eff. July 1, 2018)).[1] On May 22, 2019, this court granted the defendants' Rule 315 petition for leave to appeal.

STATUTE INVOLVED

§ 3.10. Scope of Services.

* * * *

> (g) "Non-emergency medical services" means medical care, clinical observation, or medical monitoring rendered to patients whose conditions do not meet this Act's definition of emergency, before or during transportation of such patients to or from health care facilities visited for the purpose of obtaining medical or health care services which are not emergency in nature, using a vehicle regulated by this Act.

* * * *

P.A. 81-1518, Art. I, § 3.10, added by P.A. 89-177, § 5, eff. July 19, 1995. Amended by P.A. 94-568, § 5, eff. Jan. 1, 2006; P.A. 96-1469, § 5, eff. Jan. 1, 2011; P.A. 98-973, § 25, eff. Aug. 15, 2014; P.A. 99-661, § 5, eff. Jan. 1, 2017; P.A. 100-513, § 120, eff. Jan. 1, 2018.

§ 3.150. Immunity from civil liability.

> (a) Any person, agency or governmental body certified, licensed or authorized pursuant to this Act or rules thereunder, who in good faith provides emergency or non-emergency medical services during a Department approved training course, in the normal course of conducting their duties, or in an emergency, shall not be civilly liable as a result of their acts or omissions in providing such services unless such acts or omissions, including the bypassing of nearby hospitals or medical facilities in accordance with the protocols developed pursuant to this Act, constitute willful and wanton misconduct.

P.A. 81-1518, Art. I, § 3.150, added by P.A. 89-177, § 5, eff. July 19, 1995. Amended by P.A. 89-607, § 85, eff. Jan. 1, 1997; P.A. 95-447, § 5, eff. Aug. 27, 2007.

[1] A copy of the opinion is included in the appendix to this petition for leave to appeal (A.1-A.11).

STATEMENT OF FACTS

Trial Court Proceedings

The plaintiff's three-count first amended complaint sought to recover damages for an accident that took place when the plaintiff's vehicle collided with the defendants' ambulance in Chicago on March 11, 2016 (R.C56-63). The plaintiff alleged that he was driving westbound on Grand Avenue when the defendants' ambulance struck his vehicle as it was traveling southbound on Lake Shore Drive (R.C56-57). The plaintiff alleged that the defendants were not providing emergency or non-emergency medical services at the time of the accident and that the plaintiff was injured as a result of their failure to obey a proper traffic signal (R.C57-59). Counts I and II brought against the ambulance driver were predicated on ordinary negligence (R.C56-59) and willful and wanton negligence (R.C59-61), respectively, whereas count III was a negligence claim brought against Lifeline as the owner and operator of the ambulance based on vicarious liability (R.C61-63).

In lieu of answer, the defendants filed a combined section 2-619.1 motion to dismiss counts I and III and asserted, *inter alia*, that they were operating the ambulance in the performance of non-emergency medical services at the time of the accident, and therefore entitled to immunity under section 3.150(a) of the EMS Act (210 ILCS 50/3.150(a) (West 2016)) (R.C31-54). The defendants' motion was supported by affidavits from the ambulance driver and a second Lifeline employee who was a passenger in the ambulance, stating that they had been dispatched by radio and were in transit to pick up a patient for transport to a second location (R.C51-52; R.C53-54).

The plaintiff filed an opposing response (R.C93-116) and the defendants filed a supporting reply (R.C119-36).

On March 7, 2018, the trial court granted the defendants' section 2-619.1 motion to dismiss counts I and III (R.C138-39). On March 19, 2018, the trial court further found no just reason to stay enforcement or delay appeal pursuant to Rule 304(a) (R.C144). Within 30 days, the plaintiff filed a notice of appeal from the orders on March 29, 2018 (R.C145-49).[2]

The Appellate Court Reverses and Remands

On February 1, 2019, the appellate court, over a dissent, reversed the dismissal of counts I and III and remanded for further proceedings.

After setting forth the procedural history of the appeal and the parties' contentions, the majority held that the immunity from negligence set forth in section 3.150(a) of the EMS Act did not apply while the ambulance was in transit to pick up the patient for non-emergency medical transport. ¶¶ 17-19. After quoting a portion of the statutory definition of "non-emergency medical services" in section 3.10(g) of the EMS Act (210 ILCS 50/3.10(g) (West 2016)), the majority concluded that "Non-emergency medical services" are limited to "medical services rendered to patients *during transportation* to health care facilities" (emphasis in the original). ¶ 19. As the ambulance had not picked up the patient at the time of the accident, section 3.150(a) of the EMS Act did not afford the ambulance owner and its driver with immunity from acts or omissions of ordinary negligence. *Id.*

[2] This action was consolidated with a subrogation action brought by the plaintiff's auto insurer, American Access Casualty Company, against the defendants (R.C28). The insurer did not appeal the dismissal of its action and is not a party to the appeal.

Unlike the majority, the dissent quoted the definition of "Non-emergency medical services" in its entirety:

> Non-emergency medical services means medical care, clinical observations, or medical monitoring rendered to patients whose conditions do not meet this Act's definition of emergency, before or during transportation of such patients to or from health care facilities visited for the purpose of obtaining medical or health care services which are not emergency in nature, using a vehicle regulated by this Act

¶ 24. According to the dissent, the majority read a non-existent limitation into the Act because the legislature did not specifically exclude driving an ambulance to pick up a patient from the limited immunity afforded under the EMS Act. ¶ 25. The dissent noted that the defendants were operating their ambulance in the "normal course of conducting their duties" pursuant to section 3.150(a) and concluded that they were entitled to immunity upon dispatch. ¶ 26. The dissent reasoned that driving to pick up a patient is a service rendered before transportation of the patient to a health care facility, and as much medical care as driving with the patient. *Id.* The dissent would have affirmed the dismissal of counts I and III. *Id.*

The defendants did not file a petition for rehearing. On May 22, 2019, this court granted the defendants' Rule 315 petition for leave to appeal, and this appeal follows.

ARGUMENT

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. Standard of Review: *De Novo*

A section 2-619 motion to dismiss provides a means for disposition of issues of law or easily proved issues of fact at the outset of the case. *Zedella v. Gibson*, 165 Ill. 2d

181, 185, 650 N.E.2d 1000 (1995). A section 2-619 motion to dismiss admits the legal sufficiency of the plaintiff's claim, but asserts certain affirmative matters or defenses outside the pleading that defeat the claim. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31, 976 N.E.2d 318.

The affirmative defense or matter can be apparent on the face of the complaint or supported by affidavit or other evidence. *Epstein v. Chicago Board of Education*, 178 Ill. 2d 370, 383, 682 N.E.2d 1087 (1997). Where, as here, a defendant satisfies the initial burden of going forward with affidavits and evidence in support of a section 2-619 motion to dismiss, the burden then shifts to the plaintiff to establish that the affirmative defense or matter is unfounded or requires resolution of an essential element of material fact before it is proven. *Id.* If after considering the pleadings and affidavits and other evidence, the court finds that the plaintiff has failed to carry the shifted burden of going forward, the motion should be granted and the action dismissed. *Id.*

Review is *de novo* in this case for two reasons: first, because the trial court granted the section 2-619 motion to dismiss (*Patrick Engineering*, ¶ 31), and second, because the motion presented issues of statutory interpretation (*Nelson v. Kendall County*, 2014 IL 116303, ¶ 22, 10 N.E.3d 893)). Because this court reviews the judgment and not the reasoning of the trial court, the court may affirm on any grounds appearing in the record, regardless of whether the trial court relied on those grounds or whether the trial court's reasoning was correct. *Leonardi v. Loyola University of Chicago,* 168 Ill. 2d 83, 97, 658 N.E.2d 450 (1995).

B. 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

Under section 3.150(a) of the EMS Act, an ambulance owner or employee "who in good faith provide emergency or non-emergency 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." 210 ILCS 50/3.150(a) (West 2016). The issue presented by this appeal is whether the limited immunity from negligence set forth in section 3.150(a) applies when an ambulance in transit to pick up a patient for a non-emergency medical transport is involved in an accident with a motorist.

In a 2-to-1 decision, the appellate court held that the immunity did not apply based on the definition of "Non-emergency medical services" set forth in section 3.10(g) of the EMS Act. ¶ 19. That section 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 patients 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" (emphasis added). 210 ILCS 50/3.10(g) (West 2016). The majority omitted the word "before" from its quotation of the statute in its opinion and construed the remaining phrase "during transportation" as extending immunity for negligent acts or omissions committed by the ambulance operator only after the patient is picked up for non-emergency transport. ¶¶ 17-19.

The dissent read the complete phrase "before or during transportation of the patient" differently. ¶ 24. It concluded that the immunity applied because the legislature

did not specifically exclude picking up the patient from the definition of "Non-emergency medical services" in section 3.10(g) and picking up the patient is an integral part of the transport to a health care facility. ¶¶ 25-26.

The issue is one of first impression under the EMS Act. Prior cases from this court have applied the immunity to the failure of paramedics to locate a patient (*American National Bank and Trust Co. v. City of Chicago*, 192 Ill. 2d 274, 282, 735 N.E.2d 551 (2000)) and the failure to properly assess and evaluate the patient (*Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324, 345, 898 N.E.2d 631 (2008)). These decisions have broadly construed the Act and its predecessor to extend immunity for acts and omissions that take place prior to the actual pick up and transportation of the patient unless the conduct rises to the level of willful and wanton negligence. This court's interpretation is considered part of the EMS Act itself until the legislature amends it contrary to that interpretation. *Id.* 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 legislature has not amended the EMS Act contrary to this court's interpretation in *American National Bank* and *Abruzzo*. If anything, the legislature has broadened the EMS Act by amending the statute to include non-emergency medical services in addition to emergency medical services. Nevertheless, the appellate court ignored this court's previous broad interpretation of the EMS Act in this case.

In *Abruzzo*, 231 Ill. 2d at 334-36, this court extensively discussed its decision in *American National Bank.* In *American National Bank*, the plaintiff alleged that the paramedics failed to respond properly to an emergency call for medical assistance.

According to the plaintiff, the decedent suffered an asthma attack in her apartment and called 911. Upon arrival, the paramedics were let into the building but unable to locate the plaintiff and left. That afternoon, when the paramedics returned in response to another emergency call, they were again let in and this time found the decedent on the floor to her apartment. *American National Bank,* 192 Ill. 2d at 276-77. The plaintiff alleged, in pertinent part, that the front door of the apartment was unlocked when the paramedics first arrived, and that they acted negligently, willfully, and wantonly in failing to try the door and enter the apartment. The defendants moved to dismiss the complaint, relying on the immunity provision of a previous version of the EMS Act. *Id.* at 277-78 (quoting 210 ILCS 50/17(a) (West 1994)).

The plaintiff responded that the immunity did not apply to bar the claims. Analogously to the result reached by the majority here, the plaintiff argued that section 17(a) applied only when the emergency responders actually furnished life support treatment and that the provision was inapplicable because the paramedics failed to reach the decedent in time to administer treatment. *Id.* at 282. However, this court rejected the argument, stating that the immunity was not as narrow as the plaintiff contended. *Id.* at 283. Although the prior version of the EMS Act defined the terms "advanced life support—mobile intensive care services," "basic life support services," and "intermediate life support services" to include acts or procedures directly involving patient care, this court noted that those definitions were designed to distinguish one level of care from another. The legislature could have reasonably decided to omit from those definitions conduct common to them all or, as relevant here, though preparatory to providing actual medical care, is no less integral in providing life support services. *Id.* at 283.

Significantly, as further relevant here, this court noted that section 17(a) also referred to transportation of patients, and reasoned 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." *Id.* at 283. Finally, this court observed that the EMS Act's regulation of matters including communications, response time, and ambulance operation standards demonstrated the EMS Act's broad scope. Accordingly, this court held that the term "life support services" must be given an equally broad meaning. *Id.*

This court concluded that the EMS Act's immunity applied, even though the acts and omissions against the paramedics did not relate to providing actual life support treatment. *Id.* The court reasoned that "[l]ocating a person in need of emergency medical treatment is the first step in providing life support services." *Id.* at 286. Similarly, as the dissent reasoned in this case, picking up the person for transport to or from a health care facility is the first step in providing non-emergency medical services under the current version of the EMS Act.

In *Abruzzo*, this court noted that the amended statute was broader than the previous version of the EMS Act at issue in *American National Bank* because it expressly included "non-emergency medical care" in the definitions of advanced, intermediate, and basic life support services. *Id.* at 337 (citing 210 ILCS 50/3.10(a), (b), (c) (West 2004)). This court further noted that the intent of the EMS Act was to:

> *** provide the State with systems for emergency medical services by establishing within the State Department of Public Health a central authority responsible for the coordination and integration of all activities within the State concerning pre-hospital and inter-hospital emergency medical services, *as well as non-emergency medical transports*, and the overall planning, evaluation, and regulation of pre-hospital emergency medical services systems.

(emphasis added). *Id.* at 339. The *Abruzzo* court concluded that the EMS Act is a "comprehensive, omnibus source of rules governing the planning, delivery, evaluation, and regulation of" emergency medical services in Illinois, and reiterated "the broad construction of the immunity provision in *American National Bank* to include preparatory conduct integral to providing emergency treatment continues to be supported by the EMS Act's comprehensive scope." *Id.* at 341. As a result of legislative amendment, the same broad construction of the EMS Act should now apply equally to preparatory conduct integral to providing non-emergency medical services as for emergency medical services.

Nothing in the language of sections 3.10(a), (b) and (c) of the current EMS Act distinguishes between emergency and non-emergency medical services. Section 3.10(e) further defines "Pre-hospital care" as services rendered "precedent to and during transportation of such patient to health care facilities" (210 ILCS 50/3.10(e) (West 2016)) while section 3.10(f-5) defines "Critical care transport" to include pre-hospital and inter-hospital transportation of a critically injured or ill patient by a vehicle service provider. 210 ILCS 50/3.10(f-5) (West 2016). Similar to the "Pre-hospital care" definition in section 3.10(e) above, section 3.10(g) of the EMS Act applies to non-emergency medical services "before or during transportation" without adding any words of limitation.

The statute and this court's broad construction recognize that the immunity extends to conduct before actual transport of the patient inside the ambulance. If, as the legislature has determined, transporting a patient to or from a health care facility is an aspect of non-emergency medical services, then so too is the act of picking up the patient in the first place. *American National Bank*, 192 Ill. 2d at 283. The appellate court was not at liberty to rewrite section 3.10(g) to omit the word "before" in relation to non-

emergency patient transport. The word "before" is as much a part of section 3.10(g) as any other word found in the statute.

The goal of statutory interpretation is to ascertain and give effect to the legislature's intent (*Maksym v. Board of Election Commissioners*, 242 Ill. 2d 303, 318, 950 N.E.2d 1051 (2011)), and the simplest and surest means of effectuating this goal is to read the statutory language itself and give the words their plain and ordinary meaning. *MD Electrical Contractors, Inc. v. Abrams*, 228 Ill. 2d 281, 287, 888 N.E.2d 54 (2008). In construing section 3.10(g), the court's role is not to supply omissions, remedy defects or annex new provisions. *Seaman v. Thompson Electronics Co.*, 325 Ill. App. 3d 560, 564, 758 N.E.2d 454 (3d Dist. 2001). Rather, its role is to construe the statute as it stands and not rewrite its provisions under the guise of construction. *Toys "R" Us, Inc. v. Adelman*, 215 Ill. App. 3d 562, 568, 574 N.E.2d 1328 (3d Dist. 1991). To accept the appellate court's interpretation would rewrite and amend section 3.10(g) by reading out the word "before" from the phrase "before or during transportation" and unduly narrow the interpretation of "transportation" of patients under the guise of statutory construction. This court should respectfully reject that narrow interpretation and enforce section 3.10(g) of the EMS Act as written by the legislature and broadly interpreted by this court.

This court has held that the EMS Act affords immunity from negligence not only in a suit brought by a patient but also where, as here, the suit is brought by a motorist. *Wilkins v. Williams*, 2013 IL 114310, ¶¶ 22-23, 991 N.E.2d 308. Contrary to this court's broad interpretation of the Act, the appellate court has narrowed the scope of immunity and exposed owners and operators of ambulance to liability whenever they are dispatched to pick up patients for non-emergency medical transport. The legislature enacted the

EMS Act to provide Illinois with a comprehensive system for emergency medical services and chose to extend the limited immunity to include non-emergency medical services "before or during transportation" to or from a health care facility. In view of this broad language, this court should reverse the judgment of the appellate court and affirm the judgment of the trial court.

CONCLUSION

For all of the foregoing reasons, 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 brief conforms to the requirements of Rules 341(a) and (b) of the Supreme Court Rules. The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and those matters to be appended to the brief under Rule 3412(a), is 14 pages.

By: /s/ Michael Resis

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APPENDIX

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TABLE OF CONTENTS

2019 IL App (1st) 180696

FIFTH DIVISION
Opinion filed: February 1, 2019

No. 1-18-0696

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

ROBERTO HERNANDEZ, Plaintiff-Appellant, v. LIFELINE AMBULANCE, LLC and JOSHUA M. NICHOLAS, Individually and as an Agent and/or Employee of Lifeline Ambulance, LLC, Defendants-Appellees.	) Appeal from the) Circuit Court of) Cook County))) No. 17 L 2553)))) Honorable) Allen Price Walker,) Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court, with opinion.
Justice Lampkin concurred in the judgment and opinion.
Justice Hall dissented, with opinion.

OPINION

¶ 1 The plaintiff, Roberto Hernandez, filed the instant action seeking to recover damages for injuries he is alleged to have sustained when the vehicle he was driving was struck by an ambulance owned by Lifeline Ambulance, LLC (Lifeline) and being operated by its employee, Joshua M. Nicholas. Nicholas and Lifeline (collectively referred to as the defendants) filed a motion to dismiss both the plaintiff's complaint in the instant case (No. 2017 L 2553) and the complaint of American Access Casualty Company (American) as subrogee of the plaintiff filed

against them in a consolidated action (No. 2017 M1 11458). The circuit court entered an order on March 7, 2018, granting the defendants' motion to dismiss counts I and III of the plaintiff's first amended complaint in the instant action and count I of American's amended complaint in the consolidated action. The plaintiff filed a timely notice of appeal from the dismissal of counts I and III of its first amended complaint. However, no appeal has been taken from the dismissal of count I of American's amended complaint in case 2017 M1 11458. For the reasons which follow, we reverse the judgment of the circuit court dismissing counts I and III of the plaintiff's first amended complaint and remand the matter for further proceedings.

¶ 2 In his first amended complaint, the plaintiff alleged that, on March 11, 2016, he was operating his motor vehicle in a westerly direction on Grand Avenue in Chicago when his vehicle was struck by an ambulance traveling southbound on Lake Shore Drive. The complaint alleged that the ambulance was owned by Lifeline and being operated by its employee, Nicholas. The plaintiff's first amended complaint was pled in three counts and sought damages for injuries he is alleged to have sustained as the result of the collision. Count I was a negligence claim against Nicholas, count II was a claim against Nicholas grounded in allegations of willful and wanton conduct, and count III was a claim against Lifeline predicated upon the alleged negligence of Nicholas and based upon the doctrine of *respondeat superior*.

¶ 3 The defendants filed a combined motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2016)), Subsequent to the filing of that motion, the plaintiff filed his first amended complaint. Further proceedings were conducted on the defendants' motion to dismiss with the grounds set forth therein asserted as against the claims set forth in counts I and III of the plaintiff's first amended complaint and count I of American's amended complaint in the consolidated action.

¶ 4 The defendants moved for dismissal of counts I and III of the plaintiff's first amended complaint and count I of American's amended complaint pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2016)) predicated upon the immunity provision of the Emergency Medical Services (EMS) Systems Act (EMS Act) (210 ILCS 50/3.150(a) (West 2016)). The defendants asserted that Nicholas was operating Lifeline's ambulance in the performance of non-emergency medical services at the time of the collision with the plaintiff's vehicle, and as a consequence, they are immune from civil liability unless Nicholas's acts or omissions constituted willful and wanton misconduct. The defendants' motion was supported by the affidavits of Nicholas and Eric Hagman, a Lifeline employee who was a passenger in the ambulance at the time of the collision with the plaintiff's vehicle. The affidavits state that, prior to the collision with the plaintiff's vehicle, they received a radio dispatch call from Lifeline "directing the ambulance crew to proceed to pick up a patient in the western suburbs for transport to a second location."

¶ 5 The plaintiff responded, arguing both that the immunity provision of the EMS Act does not apply to the operation of an ambulance until it is engaged in providing medical services to a patient and that there exists an issue of fact on the question of whether the ambulance driven by Nicholas at the time of the collision was being operated in the performance of non-emergency medical services. The plaintiff supported his response with the affidavit of Fidel Gonzalez. In his affidavit, Gonzalez averred that he witnessed the collision between the ambulance and the plaintiff's vehicle, and that following the accident, he overheard the driver of the ambulance respond to an inquiry from a firefighter stating that "he was not in service."

¶ 6 The defendants filed a reply in further support of their motion to dismiss attached to which was a second affidavit by Nicholas; the affidavit of John Herlily, "a member of Lifeline;"

copies of Lifeline's time-stamped dispatch log for March 11, 2016; and a copy of the Chicago Police Department report of the accident. In his second affidavit, Nicholas averred that he was never asked whether the ambulance was "in service" at the time of the collision; rather, he was asked whether the ambulance could be driven from the scene of the accident, and he responded that "the ambulance was out of service due to the amount of damage it sustained." In his affidavit, Herlily authenticated copies of Lifeline's time-stamped dispatch log for March 11, 2016, which states that the ambulance driven by Nicholas was dispatched at 12:30:14 p.m. to pick up a patient in Villa Park, Illinois, and that following the collision with the plaintiff's vehicle, the transport was reassigned to another ambulance at 12:38:22 p.m. The Chicago Police Department report states that the collision occurred at 12:34 p.m.

¶ 7 On March 7, 2018, the circuit court entered an order, granting the defendants' section 2-619 motion and dismissed counts I and III of the plaintiff's first amended complaint and count I of American's amended complaint in the consolidated action "with prejudice." Pursuant to the plaintiff's motion, the circuit court entered an order on March 19, 2018, finding that there is no just reason for delaying appeal from the March 7, 2018 order, dismissing counts I and III of the plaintiff's first amended complaint and count I of American's amended complaint. Thereafter, the plaintiff filed a timely notice of appeal from the dismissal of counts I and III of his first amended complaint, invoking our jurisdiction pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016). American did not file a notice of appeal.

¶ 8 Counts I and III of the plaintiff's first amended complaint were dismissed under section 2-619 of the Code. A section 2-619 motion to dismiss admits the legal sufficiency of the complaint but asserts an affirmative defense or other matter defeating the plaintiff's claim. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. The circuit court's

dismissal of a complaint under section 2-619 is reviewed *de novo*. *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1993). In conducting our review, we accept as true all well-pled facts in the plaintiff's complaint, and draw all reasonable inferences from those facts which are favorable to the plaintiff. *Mackereth v. G.D. Searle & Co.*, 285 Ill. App. 3d 1070, 1074 (1996). Our function is to determine "whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law." *Kedzie and 103rd Currency Exchange, Inc.*, 156, Ill. 2d at 116-17.

¶ 9 For his first assignment of error, the plaintiff argues, as he did before the circuit court, that that the immunity provision of the EMS Act does not apply to the operation of an ambulance until it is engaged in providing medical services. He asserts that, at the time of the collision, Lifeline's ambulance was not transporting a patient; rather, it was in route to pick up a patient located in Hillside, Illinois, for a non-emergency transport to a facility in Villa Park, Illinois.

¶ 10 The issue of whether section 3.150(a) of the EMS Act, affords immunity from civil liability for negligence committed by an ambulance driver while traveling to pick up a patient for a non-emergency transport presents a question of statutory construction. The construction of a statute is also reviewed *de novo*. *Nelson v. Kendall County*, 2014 IL 116303, ¶ 22. When construing a statute, our primary objective is to ascertain and give effect to the legislature's intent, best indicated by the plain and ordinary language of the statute. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 25. In determining the plain meaning of a statute, we consider the statute in its entirety, the subject addressed, and the apparent intent of the legislature in enacting the statute. *Blum v. Koster*, 235 Ill. 2d 21, 29 (2009). Undefined terms in the statute must be given their ordinary and popularly understood meaning. *Gruszeczka v. Illinois Workers' Compensation Comm'n*, 2013 IL 114212, ¶ 12. In interpreting a statute, no part should be

rendered meaningless or superfluous. *Hartney Fuel Oil Co.*, 2013 IL 115130, ¶ 25. We are not at liberty to depart from the plain language of a statute by reading into it exceptions, conditions, or limitations that the legislature did not express. *In re N.C.*, 2014 IL 116532, ¶ 50.

¶ 11 If the language of a statute is clear and unambiguous, it should be applied as written without resort to extrinsic aids of construction. *Poris v. Lake Holiday Property Owners Ass'n*, 2013 IL 113907, ¶ 47. If, however, the statute is ambiguous, we may consider extrinsic aids of construction to discern the legislature's intent. *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 13. A statute is ambiguous if it is subject to more than one reasonable interpretation. *Id.* ¶ 11. In construing an ambiguous statute, we may consider the consequences which would result from construing the statute in one way or another, and in doing so, we presume that the legislature did not intend to create absurd, inconvenient, or unjust results. *People v. Marshall*, 242 Ill. 2d 285, 293 (2011).

¶ 12 Section 3.150(a) of the EMS Act provides, in relevant part, as follows:

> "Any person, agency or governmental body certified, licensed or authorized pursuant to this Act or rules thereunder, who in good faith provides emergency or non-emergency 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." 210 ILCS 50/3.150(a) (West 2016).

¶ 13 Section 3.10(g) of the EMS Act defines "Non-emergency medical services" as

> "medical care *** rendered to patients whose conditions do not meet this Act's definition of emergency, *** during transportation of such patients to or from health care facilities visited 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).

¶ 14 The plaintiff argues that, when read in conjunction with the definition of "non-emergency medical services" in section 3.10(g), section 3.150(a) is clear and unambiguous; namely, it affords immunity for non-emergency medical services rendered "during transportation" of a patient, but not for acts or omissions committed by the operator of an ambulance when en route to pick up a patient for a non-emergency transport.

¶ 15 Relying upon the supreme court's decision in *Wilkins v. Williams*, 2013 IL 114310, the defendants correctly assert that section 3.150(a) immunizes the operator of an ambulance from civil liability for negligence committed in the non-emergency transport of a patient. *Id.* ¶¶ 21, 59. They argue that immunity from liability for negligence applies to acts or omissions committed from the time that the ambulance is dispatched to provide non-emergency medical transportation of a patient. We believe that the defendants' reliance upon the holding in *Wilkins* is misplaced.

¶ 16 In *Wilkins*, the defendant ambulance driver was transporting a patient on a non-emergency basis from a hospital to a nursing home when the driver was involved in a collision with a vehicle driven by the plaintiff. *Wilkins*, 2013 IL 114310, ¶ 3. The supreme court found that the accident occurred while the ambulance was transporting a patient, and as a consequence, there was no dispute that the ambulance operator was providing non-emergency medical service. *Wilkins*, 2013 IL 114310, ¶ 21. In the instant case, there was no patient being transported at the time of the accident; the ambulance was in route to pick up a patient for non-emergency transport.

¶ 17 The defendants' contention that section 3.150(a) of the EMS Act immunizes the driver of an ambulance from liability for negligence in the operation of the ambulance from the time that

the ambulance is dispatched to provide non-emergency medical transportation but before the patient is actually in transit, fails to take into consideration the statutory definition of non-emergency medical services. Section 3.150(a) of the EMS Act provides immunity for negligence in the provision of "non-emergency medical services." 210 ILCS 50/3.150(a) (West 2016). Section 3.10(g) defines "non-emergency medical services" as medical services rendered to patients "during transportation of such patient to health care facilities." 210 ILCS 50/3.10(g) (West 2016).

¶ 18 In construing the immunity provided in section 3.150(a), we must consider the EMS Act in its entirety. We are not at liberty to depart from the plain language of a statute by reading into conditions that the legislature did not express. *Wilkins*, 2013 IL 114310, ¶ 22. Had the legislature intended to provide immunity for the negligence of an ambulance driver while in route to pick up a patient for transport as suggested by the defendants, it could have included the activity within the definition of "non-emergency medical services." The legislature did not include the activity within the definition of non-emergency medical services, and we are not at liberty to do so under the guise of statutory construction.

¶ 19 We find the statutory language of the EMS Act to be clear and unambiguous. It provides immunity for any person who in good faith provides non-emergency medical services unless the acts or omissions of the individual constitute willful and wanton misconduct. Non-emergency medical services are statutorily limited to medical services rendered to patients *during transportation* to health care facilities. As the ambulance driven by Nicholas was not transporting a patient to a health care facility at the time of the collision with the vehicle driven by the plaintiff, section 3.150(a) of the EMS Act does not provide Nicholas or Lifeline with immunity from liability for any negligent acts or omissions which proximately resulted in

damages to the plaintiff. We conclude, therefore, that the circuit court erred in granting the defendants' motion and dismissing counts I and III of the plaintiff's first amended complaint, and as a consequence, we reverse the judgment of the circuit court and remand the matter for further proceedings.

¶ 20 Reversed and remanded.

¶ 21 JUSTICE HALL, dissenting:

¶ 22 I respectfully dissent from the majority and agree with defendants that they are entitled to immunity under section 3.150(a) of the EMS Act (210 ILCS 50/3.150(a) (West 2016)). That section states:

> "Any person, agency or governmental body certified, licensed or authorized pursuant to this Act or rules thereunder, who in good faith provides Emergency or non-emergency medical services during a Department approved training course, in the normal course of conducting their duties, or in an emergency, shall not be civilly liable as a result of their acts or omissions in providing such services unless such acts or omissions, including the bypassing of nearby hospitals or medical facilities in accordance with the protocols developed pursuant to this Act, constitute willful and wanton misconduct." *Id.*

¶ 23 The majority notes that defendants correctly assert that section 3.150(a) immunizes the operator of an ambulance from civil liability for negligence committed in the non-emergency transport of a patient, relying on the supreme court's decision in *Wilkins v. Williams*, 2013 IL 114310, ¶¶ 21, 59. However, the majority concludes that defendants' argument that immunity from liability for negligence applies to acts or omissions committed from the time that the ambulance is dispatched to provide non-emergency medical transportation of a patient is misplaced. The majority instead finds that there is no immunity because no patient was being

transported at the time of the accident. I disagree.

¶ 24 Section 3.10(g) of the Act, captioned Scope of Services, states:

> " 'Non-emergency medical services' means medical care, clinical observation, or medical monitoring rendered to patients whose conditions do not meet this Act's definition of emergency, before or during transportation of such patients to or from health care facilities visited 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).

¶ 25 The legislature did not specifically exclude driving an ambulance to pick up a patient from being immunized under section 3.10(g) though it could have done so. When the statutory language is clear and unambiguous, it must be applied without resort to other aids of construction. *Wilkins*, 2013 IL 114310, ¶ 14. Here, the majority reads a limitation into the Act that does not exist. As the supreme court stated in *Wilkins*, "[t]here is no rule of [statutory] construction that authorizes a court to declare that the legislature did not mean what the plain language of the statute imports." *Id.* ¶ 22. Where the legislature has not chosen to limit immunity for driving an ambulance to pick up a patient, it has unambiguously done so. See *Id.* ¶ 22; see also *Bass v. Cook County Hospital*, 2015 IL App (1st) 142665, ¶ 13 (" '[w]e must not depart from the plain language of the Act by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent' " (quoting *Town & Country Utilities, Inc. v. Illinois pollution Control Board*, 225Ill. 2d 103, 117 (2007))). Since the legislature did not include such limitation in the plain language of section 3.10(g), then the legislature must have intended to immunize liability for driving an ambulance to pick up a patient, and thus under section 3.10(g) of the Act, medical services began upon dispatch.

¶ 26 Here, defendants were operating the ambulance in the "normal course of conducting their duties" (210 ILCS 50/3.150(a) (West 2016)) and were therefore immunized when dispatched. Driving an ambulance to pick up a patient is a service rendered before transportation of a patient. I would find that driving to pick up a patient is as much medical care as driving with the patient; it is all in service to the patient. I would therefore affirm the decision of the circuit court granting defendants' motion to dismiss and dismissing counts I and III of plaintiff's first amended complaint.

Order (Rev. 02/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

1 of 2

Hernandez
v.
Lifeline Ambulance LLC
& Joshua M. Nicholas

No. 2017-L-2553
Cons. w/ 2017-M1-114458

CC JMD

ORDER

This matter coming to be heard on Defendants' 5/2-619 Motion to Dismiss, it is hereby ORDERED:

1) The Court grants Defendants' 5/2-619 Motion to dismiss Counts I & III of Plaintiff's First Amended Complaint and finds the affidavits of Gonzalez as to statements by the "driver" are disregarded on foundational grounds.

AND COUNT ONE OF AMERICAN ACCESS' AMENDED COMPLAINT, both WITH prejudice

b) The Court finds that the EMS Act applies when an ambulance has been dispatched for non-emergency medical services and there is no patient in the vehicle.

2) The Court denies the 5/2-619 Motion as to Count II of the First Amended Complaints of both Hernandez and American Access re: Willful & wanton claims.

Attorney No.: 45851
Name: M. Kelly
Atty. for: Plaintiffs
Address: 22 W. Washington Ste. 1500
City/State/Zip: Chicago IL 60602
Telephone: 312.662.1716

ENTERED:

Dated: MAR 07 2019

Associate Judge Allen Price-Walker

Judge

Circuit Court – 2071 Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Order (Rev. 02/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

2 of 2
Line 48

Hernandez
v.
Lifeline Ambulance, LLC

No. 2017-L-2553
cons w/
2017-M1-114587

CC JMD

ORDER

(3) Defendants shall answer Counts II on or before April 4, 2018 to both First Amended Complaints. 42 34

(4) The parties shall answer written discovery on 42 4 or before April 4, 2018.

(5) The Court finds that the dismissal of Counts I & III with prejudice involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the termination of the litigation.

Attorney No.: 45851
Name: McKay
Atty. for: Plaintiffs
Address: 22 W. Washington Ste. 1500
City/State/Zip: Chicago, IL 60602
Telephone: 312.624.1746

Associate Judge
Allen Price Walker

ENTERED: MAR 07 2018
Circuit Court – 2071

Dated: _____, _____

_____ _____
Judge Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Exe 4

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS,
COUNTY DEPARTMENT, LAW DIVISION

ROBERTO HERNANDEZ, Plaintiff, v. LIFELINE AMBULANCE, LLC, and JOSHUA M. NICHOLAS, individually and as an agent and/or employee of LIFELINE AMBULANCE, LLC, Defendants.	)	Case No. 2017-L-2553 Consolidated with No. 2017-M1-11458

CC JMD

ORDER

This matter coming to be heard on Plaintiff's Motion to Reconsider and/or Modify the March 7, 2018 Order, due notice given and the Court being fully advised, it is hereby ORDERED:

1. Plaintiff's Motion is Granted, and the March 7, 2018 is modified as follows: 4284
   a. Section 5 of the March 7, 2018 Order is stricken; 9208
   b. Pursuant to Rule 304(a), the Court finds that there is no just reason for delaying appeal of the dismissal with prejudice of Counts I and III of Plaintiff's First Amended Complaint and Count I of American Access' Amended Complaint. 4271 4231

Dated:

Judge

Associate Judge
Allen Price Walker

MAR 19 2018

Circuit Court – 2071

Prepared By:
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CALENDAR: Z
PAGE 1 of 5
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
LAW DIVISION
CLERK DOROTHY BROWN

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL CIRCUIT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS,
COUNTY DEPARTMENT, LAW DIVISION

ROBERTO HERNANDEZ, Plaintiff-Appellant, v. LIFELINE AMBULANCE, LLC, and JOSHUA M. NICHOLAS, individually and as an agent and/or employee of LIFELINE AMBULANCE, LLC, Defendants-Appellees.	)	Case No. 2017-L-2553 Consolidated with No. 2017-M1-11458

NOTICE OF APPEAL

PLAINTIFF, ROBERTO HERNANDEZ, by and through his attorney, Michael W. Kelly, hereby appeals to the Appellate Court of Illinois, First Judicial District, from that portion of the order dismissing Counts I and III of Plaintiff's First Amended Complaint with prejudice entered in the Circuit Court of Cook County, Illinois by the Honorable Allen P. Walker on March 7, 2018, which order was made final and appealable by the order of March 19, 2018. Copies of each order are attached hereto.

PLAINTIFF, ROBERTO HERNANDEZ, prays that the March 7, 2018 order of dismissal with prejudice in favor of DEFENDANTS, LIFELINE AMBULANCE, LLC and JOSHUA M. NICHOLAS be reversed and this matter be remanded for trial.

Dated: March 29, 2018

ROBERTO HERNANDEZ

By: /s/ Michael W. Kelly
His Attorney

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Firm ID No. 45851
Email: mwkelly.law@gmail.com

TABLE OF CONTENTS OF APPELLATE RECORD

Docket No. 124610

IN THE ILLINOIS SUPREME COURT

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

NOTICE OF FILING

TO: Michael W. Kelly
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Purcell & Wardrope, Chtd.
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PLEASE BE ADVISED that on this 26th day of June, 2019, we caused to be electronically filed with the Clerk of the Illinois Supreme Court, the 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,
Lifeline Ambulance, LLC and Joshua M. Nicholas

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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 brief and argument of defendants-appellants to be served upon the parties listed below on this 26th day of June, 2019, by electronic mail and electronically through the court's Odyssey electronic filing manager.

/s/ Jacqueline Y. Smith

E-FILED
6/26/2019 10:25 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK