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 CENCOM 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. 18-L-61,The Honorable Heinz M. Rudolf, Judge Presiding.

REPLY BRIEF OF PLAINTIFF-APPELLANT

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E-FILED
8/25/2021 6:19 PM
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ORAL ARGUMENT REQUESTED

ARGUMENT

I. Defendants have failed to present any analysis of the conflict between §4-102 of the Tort Immunity Act and §15.1 of the Emergency Telephone System Act in line with this Court's opinions that have analyzed recently-enacted public safety statutes.

In their argument that §4-102 of the Tort Immunity Act overrides the limited immunity provisions contained in §15.1 of the Emergency Telephone System Act, Defendants rely upon this Court's opinion in *DeSmet Estate of Hays* v. *County of Rock Island* as controlling authority to dismiss Plaintiff's case. *DeSmet Estate of Hays* v. *County of Rock Island,* 219 Ill. 2d 491 (2006). According to Defendants, *DeSmet* is "dispositive" of the scope of immunity that applies in the instant case for one reason: Plaintiff asked the 9-1-1 dispatcher to send police, thus involving police protective services which are afforded absolute immunity under §4-102 of the Tort Immunity Act. 745 ILCS 10/4-102. In their argument, Defendants do not address the glaring factual inconsistency that exists between DeSmet and the present case. Plaintiff has not sued the police in the instant case; He has sued only entities/persons who control, supervise, and provide emergency services to the general public in St. Clair County, Illinois and whose authority, positions, and employment that allows them to dispatch emergency services to the public exist pursuant to the Illinois' legislature's enactment of the Emergency Telephone System Act. 50 ILCS 750/0.01 et. seq.. Defendants' stated reason for relying upon *DeSmet* as authority for absolute immunity under the facts of this case will not withstand scrutiny under the analysis this Court has utilized in previous cases where recently-enacted limited statutory immunity provisions are at odds with §4-102 of the Tort Immunity Act and require an analysis of the conflicting statutes to determine

legislative intent and fashion its resolution of the statutory conflict accordingly.

This Court's opinions in *Moore v. Green* and *Abruzzo v City of Park Ridge* provide Illinois Courts and litigants struggling to resolve statutory inconsistencies between the Tort Immunity Act and public safety statutes with an analytical approach to determine legislative intent. *Moore v Green*, 219 Ill. 2d 470 (2006); *Abruzzo v City of Park Ridge*, 231 Ill. 2d 324 (2008). The analyses of competing immunity statutes evolved by necessity in response to the government's expanding control of services designed to protect the citizens of Illinois. According to this Court, a key to analyzing the statutes to discern legislative intent in such cases is affording words their plain and ordinary meaning, then applying two presumptions: specific statutory provisions prevail over general ones and the more recent legislative enactment on the same subject should control. In spite of the guidance this Court has provided in prior cases on how to determine legislative intent, which is integral to any analysis of the tort immunity issue in this case, Defendants do not offer an analysis to determine legislative intent because a well-reasoned analysis would likely require them to concede reversal of the Appellate Court's decision in this case. Consideration of the plain language of the statutory provisions of the ETSA refutes the notion propelled by Defendant that §4-102 of the Tort Immunity Act provides absolute immunity because police protective services were sought by Plaintiff Schultz. To the contrary, the more specific and recent provisions of the ETSA that apply to any Illinois citizen's request for emergency services through 9-1-1 limit absolute immunity and should be applied to resolve in inconsistency in the immunity statutes at issue in this case. §15.1 of the ETSA lists quick police response as one of its stated purposes, identifies the "handling of a telephone request for emergency services" as

the most critical aspect of the design of any system", and identifies specific government entities under the duty to provide services that are not reckless or grossly negligent. The legislature intended that the ETSA contain an exception to the blanket immunity afforded to local government entities under the police protection provision of §4-102 of the Tort Immunity Act. This exception to blanket immunity complements the stated purpose of the ETSA wherein requests for police services are specifically identified as integral to achieving its purpose of protecting the public. In the complaint dismissed by the trial court under §4-102, Plaintiff alleges that a 9-1-1 dispatcher refused on two occasions to dispatch police to intervene before his wife, possibly intoxicated, could return to her car and drive away. These allegations sufficiently allege conduct of the type that could create liability for the dispatcher/government under §15.1 of the ETSA.

In *Moore* and *Abruzzo*, this Court applied the limited immunity provisions contained in the Domestic Violence Act and Emergency Medical Services Systems Act, respectively, over absolute immunity in the Tort Immunity Act. Paramount to these decisions was the "singular concern" to "ascertain and give effect to the intent of the legislature. *Moore v Green*, 219 Ill. 2d at 488, 848 N.E. 2d 1015 (2006). The Court opined that the Act (Domestic Violence Act) "reflects a comprehensive statutory scheme for reform of the legal system's historically inadequate response to domestic violence. It begins with a broad statement of its purposes and a broad statement of the persons it protects" *Id.* At 488-89, 1015. Likewise, in *Abruzzo*, this Court recognized that the EMS Act is directed at accomplishing the broad purpose of planning, delivery, evaluation, and regulation of emergency medical services, and that the immunity provisions therein applied to all people agencies, and governmental bodies licensed or authorized under the

Act to provide those services. *Abruzzo v City of Park Ridge*, 231 Ill. 2d 324 (2008). While the Domestic Violence Act and the Emergency Medical Services Systems Act were fashioned to address large portions of the general public in need of assistance, it is through the Emergency Telephone System/9-1-1 that these services and benefits are regularly accessed, making it imperative that dispatchers provide services that are not dangerously substandard. The function of the emergency telephone system in Illinois controls, to a great extent, the success of the Domestic Violence Act and the EMS Act in providing emergency police assistance and medical services to Illinois residents. Immunizing dispatchers from liability under all circumstances could have a far reaching impact upon all of the specially protected classes recognized by the legislature and should not be allowed.

In the case before the Court, Defendants have refused to address the "plain language" of §15.1 of the ETSA in spite of this Court's directives in previous cases. Defendants do not analyze or otherwise address this Court's opinions since *DeSmet* that determine legislative intent for more recently enacted public safety statutes and their compatibility, or lack thereof, with §4-102; Defendants have ignored the evolution of this Court's opinions in light of the public policy expressed by the Illinois legislature in its statutory changes for the stated purposes of safeguarding its citizens. Instead, Defendants have chosen a "one and done" approach to its analysis of the issue, based upon this Court's decision in *DeSmet*. Not only are the facts in *DeSmet* dissimilar to those in the instant case, the analysis turns on police involvement and the now obsolete public duty rule. Even more telling as to Defendant's misplaced reliance upon *DeSmet*, this Court expressly made the following comment within its opinion that could be interpreted as an

open invitation to revisit absolute immunity under §4-102 in light of legislative enactments such as the Domestic Violence Act, or in this case, the ETSA:

"Although we recognize that there may be additional exceptions to the application of section 4-102 where a legislative enactment identifies a specially protected class of individual to whom statutorily mandated duties are owed. . . . ..we do not encounter such a scenario here." *DeSmet* at 505.

The plaintiff in *DeSmet* did not assert limited immunity based upon the ETSA that would have encouraged this Court to analyze the conflict between any limited tort immunity under the ETSA that existed in 2006 and the Tort Immunity Act. Since *DeSmet* was decided, the legislature has expanded §15.1 of the ETSA to include the "performance" and "provision" of emergency services. *50 ILCS 750/15.1.* As early as 2006, this Court recognized that legislation such as that contained in §15.1 of the ETSA may override the absolute immunity for police protection services contained in §4-102 of the Tort Immunity Act.

In *Coleman v East Joliet Fire Protection District*, this Court opined that it was abolishing the public duty rule that immunized police officers for three reasons:
1) application of the rule created muddled and inconsistent jurisprudence;
2) determination of public policy is primarily a legislative function; and
3) determination of public policy is primarily a legislative function and the legislature's enactment of statutory immunities has rendered the public duty rule obsolete.

Colman v East Joliet Fire Protection District, 2016 IL 117952, 46 N.E. 3d 741. This same reasoning should apply to eliminate absolute immunity under §4-102 of the Tort Immunity Act in all cases where a public safety statute such as the ETSA has been

enacted whose stated purpose is to protect members of the general public seeking emergency services by limiting the immunity available for acts or omissions within its statutory reach. In this context, no reasonable argument can be made that the legislature intended to shield bad actors employed by the government from accountability by providing an immunity that may encourage unsafe conduct in the delivery of services to members of the public that the legislature sought to protect.

Plaintiff/Appellant, Larry Schultz, prays that this Honorable Court reverse the decision of the Appellate Court and remand this cause to the trial court for further proceedings consistent with it ruling.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Rhonda D. Fiss 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 and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 6 pages.

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Appellant's Motion for Leave to File Brief Instanter was submitted for filing to the Illinois Supreme Court Clerk's Office by Electronic means on August 25, 2021, and that a copy of same was served on all counsel of record via Odyssey eFileIL.

/s/ Rhonda D. Fiss
RHONDA D. FISS

Under the penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the above are true and correct.

/s/ Rhonda D. Fiss
RHONDA D. FISS