

IN THE SUPREME COURT OF OHIO

DENNIS CARTER and
MARY CARTER,

Appellants,

v.

LARRY REESE, JR.,

Appellee.

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On Appeal from the Butler County
Court of Appeals, Twelfth Appellate
District (Case No. CA 14 04 0095)

Case No. 2015-0108

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STATEMENT OF FACTS

This case arises from personal injuries sustained by Appellant Dennis Carter in a non-moving motor vehicle incident caused by the negligence of Appellee Larry Reese, Jr. Mr. Carter's injuries include the loss of his right leg. His wife, Appellant Mary Carter, seeks damages for her loss of consortium. The Court of Common Pleas for Butler County, Ohio granted Appellee's motion for summary judgment by applying the immunity from tort liability found at Ohio's Good Samaritan statute, R.C. 2305.23 (Statute, Appendix A-24), to the acts of Appellee - a layman. (Judgment, Td. #78, Appendix A-19 to A-22)

Appellants timely appealed from the trial court's judgment. (T.d. #82) A majority of a panel of the Court of Appeals of Butler County, Ohio for the Twelfth Appellate District affirmed the judgment. (Opinion, pages 1-13, Appendix A-4 to A-16) One judge dissented, stating that when the Good Samaritan statute is read in context and construed according to the rules of grammar and common usage, it is clear that to be covered by the statute, one must be providing emergency *medical* care or treatment to another individual. (*Id.*, page 14, Appendix A-17) He also stated that Appellee did not provide any care or treatment to Mr. Carter, let alone *emergency medical* care or treatment. (*Id.*, pages 14-15, Appendix A-17 to A-18) He would have reversed the grant of summary judgment and remanded the case for further proceedings. (*Id.*, page 15, Appendix A-18)

Appellants timely appealed to this Court from the Twelfth District Court of Appeal's judgment. (Notice of Appeal, Appendix A-1 to A-2) This Court accepted the appeal. (Entry, Appendix page A-23) The decisions of the Court of Appeals and this Court to date are reported as *Carter v. Reese*, 2014-Ohio- 5395, 25 N.E.3d 1086 (12th Dist. 2014), appeal allowed, 143 Ohio St.3d 1403 (2015).

Since the trial court granted summary judgment to Appellee, this Court construes the evidence on review most strongly in the non-moving party's favor. *Newberry Township Bd. of Trustees v. Lomak Petroleum (Ohio), Inc.*, 62 Ohio St.3d 387, 390, 583 N.E.2d 302 (1992). The facts essential to this appeal, when construed most strongly in Appellants' favor, are as follows:

Appellant Dennis Carter was a commercial tractor-trailer driver. (Dennis Carter dep., T.d, #39, p. 14) On April 24, 2012, while handling his trailer at a loading dock located in Fairfield, Ohio, Mr. Carter slipped and his right leg became trapped between the trailer and the loading dock. (*Id.*, T.d. #39, pp. 20-26) At this point, Mr. Carter stated that he was not in any pain and was simply stuck. (Dennis Carter dep., T.d, #39, p. 27) Appellant yelled for help and beat on the dock door to try to get someone's attention. (*Id.*, T.d. #39, pp. 27-28)

Appellee responded to Appellant's calls for help. (Larry Reese dep., T.d. #36, p. 8-9) Appellee asked Mr. Carter if he could help, and Mr. Carter told him to pull the rig forward. (Dennis Carter dep., T.d. #39, pp. 49-50) Appellee went to the tractor's cab, climbed into it, and Mr. Carter heard him rev the tractor's motor, and release the air brake. (*Id.*, T.d. #39, pp. 50-51) At that point, the trailer started rolling backward. (*Id.*, T.d. #39, p. 51) Mr. Carter then heard his leg break between the rig and the loading dock and began to bleed. (*Id.*)

Upon the arrival of EMS personnel, the rig was moved by a person who knew how to operate a tractor and Mr. Carter was freed. (*Id.*, T.d. #39, pp. 55-57) Mr. Carter had lost a lot of blood and was transported via helicopter to University Hospital, where he had to have his right leg amputated above the knee. (*Id.*, T.d. #39, pp. 62-63) Mr. Carter testified that had the first attempt to move the rig forward been successful, he would not have lost his leg. (*Id.*, T.d. #39, p. 57)

Appellee version of the facts is that he had arrived at work on the morning of Mr. Carter's crush incident. (Larry Reese dep., T.d. #36, p. 6) Two co-workers and Appellee heard a voice yelling for help because of his leg, and they knew that someone was hurt from across the street from their workplace. (*Id.*, T.d. #36, pp. 6-7) Appellee decided to get into his vehicle to see if he could find the person yelling for help. (*Id.*, T.d. #36, p. 7) Appellee located Mr. Carter across the street with his leg trapped between the rig and the loading dock. (*Id.*, T.d. #36, pp. 9-10) Knowing that his office had already called 911, Appellee informed Mr. Carter that help was on the way. (*Id.*)

Appellee testified that Mr. Carter told him to put the truck in gear and pull it forward. (*Id.*, T.d. #36, p. 10) Appellee then ran to the front of the truck, got in the cab, put his foot on the brake and the other on the clutch, and confirmed that the truck was in neutral. (*Id.*) Appellee then claims to have come to the realization that he did not know how to operate a tractor-trailer rig, so he vacated the cab and told Mr. Carter, "I can't move the truck. If I move the truck, you're going to fall." (*Id.*) Prior to the arrival of EMS personnel, Appellee again went to Mr. Carter, patted him on the back, and told him help was on the way. (*Id.*, T.d. #36, pp. 11-12) Mr. Carter was eventually freed by a qualified operator working under the supervision of the paramedics upon their arrival. (*Id.*, T.d. #36, pp. 11-14)

Appellee is employed as the operations manager of a metal stamping company where he manages the day-to-day operations at the plant. (*Id.*, T.d. #36, p. 5) He was not employed as a physician, nurse, other emergency medical professional or practitioner, or first responder. (*Id.*) Appellee had no training, education, or experience in operating a tractor-trailer rig. ((*Id.*, T.d. #36, pp. 17 and 25-26)

Appellants commenced litigation against Appellee to recover damages caused by his negligent undertaking. (Complaint, T.d. #4) Appellee defended against the negligence and loss of consortium claims on, among other things, the application of Good Samaritan statute to immunize him from these claims. (Answer, T.d.#17, ¶5)

On March 31, 2014, the trial court granted Appellee's motion for summary judgment on Appellants' negligence and consortium claims by applying the Ohio Good Samaritan to non-medical activities rendered by Appellee and immunizing him from any liability for negligence undertaking and consortium loss because his services in moving Appellant's tractor-trailer rig did not amount to wanton or willful conduct. (Judgment, T.d. #78; Appendix A-19 to A-22)

Appellants timely appealed from the trial court's adverse judgment to the Butler County Court of Appeals, Twelfth Appellate District. (Notice of Appeal, T.d. #82) On December 8, 2014, the majority of a panel of the Court of Appeals rendered an *Opinion* affirming the trial court's grant of summary judgment against Appellants on the basis that the Good Samaritan statute applied here and immunized Appellee, a lay person, from any liability for any negligence in administering emergency care and treatment and because his moving a tractor-trailer rig did not amount to wanton or willful conduct. (Opinion, pp. 1–13, Appendix A-4 to A-16) The majority rejected Appellants' contention that the Good Samaritan statute applies only to one providing emergency **medical** care or treatment to another and that Appellee's acts did not constitute the administration of emergency care or treatment. (*Id.*)

One judge of the panel dissented and would have reversed the trial court's grant of summary judgment and remanded the case for further proceedings due to the presence of triable issues of fact. He stated that the Good Samaritan statute has no application because it applies only to the provision of emergency *medical* care or treatment to another individual, and that

Appellee was not providing any care or treatment to Appellant Dennis Carter, let alone emergency *medical* care or treatment. (Opinion, pp. 14-15, Appendix A-17 to A-18)

Appellants timely appealed from the Court of Appeals' judgment. (Notice of Appeal, Appendix A-1 to A-2) This Court accepted the appeal. (Entry, Appendix A-23)

ARGUMENT

Proposition of Law No. 1: The trial court committed reversible error in granting Appellees' motion for summary judgment, and the court of appeals committed error in affirming the judgment, because the protection afforded under the Ohio Good Samaritan statute, R.C. 2305.23, is limited in scope and application to health care responders providing emergency medical care or treatment to another individual at the scene of an emergency who otherwise satisfy the statute.

The majority of the Court of Appeals panel erred in ruling that the Good Samaritan statute applies to *any* person, health care professional or otherwise, who administers emergency care, medical or otherwise, at the scene of an emergency and who meets the remaining requirements of the statute, e.g., their acts do not constitute willful or wanton misconduct. The Court of Appeals also erred in not adopting the views of the dissenting judge that: (i) when the Good Samaritan statute is read in context and construed according to the rules of grammar and common usage, it is clear that one must be providing emergency *medical* care or treatment to another individual to be eligible for immunization, and (ii) Appellee did not provide any care or treatment, let alone emergency medical care or treatment, to Mr. Carter.

In support of their positions on these issues, Appellants present the following argument:

A. Standard of Review.

This Court's review of the grant of summary judgment is conducted under the *de novo* standard. *Doe v. Schaffer*, 90 Ohio St.3d 388, 390, 738 N.E.2d 1243 (2000). A reviewing court affords no deference to the trial court's grant of summary judgment and independently reviews the record to determine whether summary judgment was appropriate. *Hull v. Sawchyn*, 145 Ohio

App.3d 193, 196, 762 N.E.2d 416 (8th Dist. 2001). Therefore, Appellee, the moving party under Civ. R. 56(C), may ultimately prevail here only if: (i) there is no genuine issue of material fact, (ii) he is entitled to judgment as a matter of law, and (iii) it appears from the evidence that reasonable minds can come to but one conclusion when viewing evidence in favor of Appellants, and that conclusion is adverse to them. *Doe v. Schaffer*, 90 Ohio St.3d at 390.

When The Good Samaritan Statute Is Read In Context And Construed According To The Rules Of Grammar, Common Usage, And Its Legislative History, It Is Clear That One Must Be Providing Emergency Medical Care Or Treatment To Another Individual To Be Eligible For Immunization. The Decisions Of Ohio's Appellate Courts To Date Recognize This Limitation Of The Statute's Scope And Application.

Ohio's Good Samaritan Act, R.C. 2305.23 (Appendix A-24), provides:

No person shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton misconduct.

Nothing in this section applies to the administering of such care or treatment where the same is rendered for remuneration, or with the expectation of remuneration, from the recipient of such care or treatment or someone on his behalf. The administering of such care or treatment by one as a part of his duties as a paid member of any organization of law enforcement officers or fire fighters does not cause such to be a rendering for remuneration or expectation of remuneration.

The phrase "Good Samaritan" derives from a New Testament parable told by Jesus in which a Samaritan was the only passerby to aid a man who had been stripped of his clothing, beaten, and left half dead by a group of thieves. Luke 10:29-37. Although the parable of the Good Samaritan is surely aspirational, the common law devolved no affirmative duty upon a bystander to provide affirmative aid to an injured person, even if the bystander had the ability to help. *See, e.g., Estates of Morgan v. Fairfield Family Counseling Center*, 1997-Ohio-194, 77 Ohio St.3d 284, 293, citing Restatement of the Law 2d, *Torts*, Sections 314 to 319 (1965).

However, once a bystander endeavors to help by becoming a rescuer, the common law recognizes a duty to do so reasonably, and the volunteer may be held liable for injuries caused by his or her negligent assistance. *Briere v. Lathrop Co.*, 22 Ohio St.2d 166, 171-172, 258 N.E.2d 597 (1970); *McMullen v. Ohio State University Hospital*, 88 Ohio St.3d 332, 338, 75 N.E.3d 1117 (2000); *Hamisfar v. Baker Concrete Constr.*, 1st. Dist., Hamilton No. C-970228, 1998 WL 173238 at *3 (Feb. 8, 1998). This duty is defined at the Restatement of the Law 2d, *Torts*, Section 323 (1965), cited with approval by the *Briere* Court, and provides:

Negligent Performance of Undertaking to Render Services

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if:

- (a) his failure to exercise such care increases the risk of such harm, or
- (b) the harm is suffered because of the other's reliance upon the undertaking.

The concept of “increasing the risk of harm” means putting a prospective plaintiff in a worse position than if the defendant had never rendered the services. *Fifth Third Bank v. Cope*, 2005-Ohio-4626, ¶35, 162 Ohio App.3d 838 (12th Dist.), quoting *Wissel v. Ohio High School Athletic Assn.*, 78 Ohio App.3d 529, 540, 605 N.E.2d 458 (1st Dist. 1992).

In 1963, Our General Assembly created a statutory exception to the rescuer’s due care requirement by enacting the Good Samaritan statute. Am.Sub.S.B. No. 14, 130 Ohio Laws 648-649 and 1425-1426. The original version of the Good Samaritan statutes provided:

No person shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency outside of a hospital, doctor’s office, or other place having proper medical equipment, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton misconduct.

Nothing in this section applies to the administering of such care or treatment where the same is rendered for remuneration or with the expectation of remuneration. Am.Sub.S.B. No. 14, 130 Ohio Laws 648-649.

In construing this or any other version of the Good Samaritan statute, this Court's objective is to ascertain the intent of our General Assembly in enacting it. *Cleveland Mobile Radio Sales, Inc. v. Verizon Wireless*, 2007-Ohio-2203, ¶12, 113 Ohio St.3d 394, 397. In determining the intent of the statute, this Court looks to the language used, giving effect to the words used. *Id.*, 113 Ohio St.3d at 397-398. A court is neither to insert words that were not used by the General Assembly nor to delete words that were used. *Id.*, 113 Ohio St.3d at 398. Nevertheless, since this statute is in derogation of the common law, or grants a right unknown at common law, it must be applied strictly. *Sabol v. Pekoc*, 148 Ohio St. 545, 552, 76 N.E.2d 84 (1947).

The first opportunity this Court had to examine the Good Samaritan statute was *Primes v. Tyler*, 43 Ohio St.2d 195, 205, 331 N.E.2d 723 (1975), fn. 5. The *Primes* Court's precise holding is "R.C. 4515.02, the Ohio guest statute, is unconstitutional." *Id.*, 43 Ohio St.2d at 195 (syllabus). The *Primes* Court held, among other things, that the guest statute could not survive scrutiny under the federal and Ohio constitutions' equal protection clauses because it did not suitably further a governmental interest by the differential treatment given to paying passengers and non-paying guests. *Id.*, 43 Ohio St.2d at 198-202.

In an attempt to save the guest statute from the equal protection challenge, the automobile driver argued that a legitimate objective furthered by the statute was "the promotion or preservation of hospitality." *Id.*, 43 Ohio St.2d at 201. The *Primes* Court found the argument unpersuasive because ". . . the differential treatment afforded to guests and passengers cannot be

justified by an alleged interest in fostering the amorphous concept of hospitality.” *Id.*, 43 Ohio St.2d at 202. The differential treatment was overly broad in application. *Id.*

As part of its equal protection analysis, the *Primes* Court considered whether “the promotion or preservation of hospitality” can ever be a legitimate governmental interest justifying differential treatment. The Court answered the issue in the affirmative and considered the classification made within the Good Samaritan statute, because it is premised upon the legislative goal of “hospitality,” and found it to pass equal protection muster:

Notions of hospitality underlie R.C. 2305.23, the Ohio good samaritan law. That statute singles out a group of benevolently-disposed individuals for immunity from negligent injury to persons **while rendering medical treatment during the exigencies of an emergency**. However, the favored treatment accorded such “good samaritans” would appear to further a legitimate legislative objective of **providing emergency medical assistance to injured persons where delay might result in death or great bodily injury**. *Id.*, 43 Ohio St.2d at 205, n. 5 (emphasis added).

Thereafter, in 1977, two years after the rendition of the *Primes v. Tyler* decision, our General Assembly amended the Good Samaritan statute to its current configuration, as follows:

No person shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency outside of a hospital, doctor’s office, or other place having proper medical equipment, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton misconduct.

Nothing in this section applies to the administering of such care or treatment where the same is rendered for remuneration, or with the expectation of remuneration, from the recipient of such care or treatment or someone on his behalf. The administering of such care or treatment by one as a part of his duties as a paid member of any organization of law enforcement officers or fire fighters does not cause such to be a rendering for remuneration or expectation of remuneration. S.B. No. 209, §1, 1977 Ohio Laws.

The purpose for the 1977 amendment to the Good Samaritan statute was because “doubts exist among some concerning the status of police officers and fire fighters with regard to

immunity from liability while offering emergency care to injured persons, which is detrimental to the public service rendered by these personnel.” S.B. No. 209, §3, 1977 Ohio Laws.

The General Assembly was presumed to know the state of the law espoused in the 1975 decision of *Primes v. Tyler* at the time it amended the Good Samaritan statute in 1977. *East Ohio Gas Co. v. City of Akron*, 2 Ohio App.2d 267, 270, 207 N.E.2d 780 (9th Dist. 1965), *aff’d.*, 7 Ohio St.2d 73, 218 N.E.2d 608 (1966), *rev’d.* on other grounds, *Cincinnati Bell Telephone Co. v. City of Cincinnati*, 1998-Ohio-339, 81 Ohio St.3d 599. The *Primes* Court unequivocally articulated the state of Ohio law regarding the limited scope and application of the Good Samaritan statute. Armed with that knowledge, the General Assembly declined to amend R.C. 2305.23 to provide immunity to all non-health care practitioners administering voluntary non-medical aid to injured persons in emergency situations. It could easily have done so. The amendment only brought law enforcement officers and fire fighters within the immunity. If the General Assembly truly believed that the Good Samaritan statute’s immunity is as broad as Appellee argues and the courts below held, by encompassing all emergency non-medical care and treatment, then law enforcement officers and fire fighters would have been encompassed by the original 1966 version of the statute and, consequently, the amendment would be deemed surplusage. Of course, “[c]ourts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory.” *Westgate Ford Truck Sales, Inc. v. Ford Motor Company*, 2012-Ohio-1942, ¶14, 971 N.E.2d 967, 971 (8th Dist. 2012) (applying Michigan law). The only way to avoid an interpretation of the 1977 amendment to the Good Samaritan statute as surplusage is to construe the Good Samaritan statute as the General Assembly originally intended – that the statute immunizes only voluntary emergency medical care and treatment of injured persons at scene of an emergency.

The *Primes* Court correctly ruled that the immunity from negligence claims provided by the Good Samaritan statute is limited to persons administering medical care and treatment during the exigencies of an emergency. *Primes*, 43 Ohio St.2d at 205. First, the persons immunized by the statute can and do administer care and treatment to injured persons within “... a hospital, doctor’s office, or other place having proper medical equipment” as those activities are exempted from the immunity. Laymen do not render care and treatment within those kinds of facilities.

Second, the persons immunized by the statute can and do expect remuneration for care and treatment they provide generally in the ordinary course of their professions. Those kinds of providers are health care providers – doctors, nurses, and similar health care providers. These kinds of persons are not laymen. As an aside, law enforcement officers and fire fighters -- trained first responders -- do not receive remuneration or expect it for rendering emergency care or treatment to injured persons. These men and women are compensated because they serve as law enforcement officers or fire fighters for a governmental entity – and not because they render emergency care or treatment to an injured person in any given situation.

Last, Appellee’s expansive interpretation of the Good Samaritan statute would undermine long-standing common law concepts. As discussed above, the general rule in Ohio is that one has no duty to come to the aid of another. *See, e.g., Estates of Morgan v. Fairfield Family Counseling Center*, 77 Ohio St.3d at 293. As explained in the Restatement Second of Torts, cited with approval by the *Morgan* Court, “The origin of the rule lay in the early common law distinction between action and inaction, or misfeasance and non-feasance. Restatement of the Law 2d, *Torts*, Section 314 (1965). Courts were more concerned with affirmative acts of

misbehavior that they were with a person “who merely did nothing, even though another might suffer serious harm because of his omission to act.” *Id.*

While there is no general duty to help, a good samaritan who nevertheless comes to the aid of another is under a duty to exercise reasonable care in rendering the aid. *Briere*, 22 Ohio St.2d at 171-172; *McMullen*, 88 Ohio St.3d at 338; *Hamisfar*, 1998 WL 173238 at *3. The broad interpretation of R.C. 2305.23 imposed by the courts below – that the statute immunizes any person who provides any emergency care at the scene of any emergency – would effectively emasculate this well-established common-law rule. Ohio courts will not presume the General Assembly intended to abrogate or derogate the common law unless such legislative intention appears plainly. *In re: Petition for Annexation of 368.08 Acres of Land, More or Less, in Springfield Township*, 124 Ohio App.3d 256, 268, 706 N.E.2d 1 (4th Dist. 1997), citing *State ex rel. Morris v. Sullivan*, 81 Ohio St. 79, 90 N.E. 146 (1909) (syllabus third paragraph). There is nothing in the legislative history or otherwise overcoming the presumption that the General Assembly did not intend to work such a radical change to the common law. The limited amendment to the Good Samaritan statute in 1977 actually reinforces the presumption against the proposed radical change.

The decisions of the trial court and the majority of the court of appeals contradict the holding of the *Primes* Court and they committed reversible error thereby. First, a majority of the court of appeals characterized the *Primes* Court’s discussion of the Good Samaritan as *dicta* and not binding. Assuming for the sake of discussion that this is the case, the trial court and the majority still committed reversible error in expanding the immunity provided by the Good Samaritan statute. As expressed by the Fourth District Court of Appeals in *State v. Boggs*, 89 Ohio App.3d 206, 624 N.E.2d 204 (4th Dist. 1993):

Be that as it may, the reality of appellate practice is that this court, and others, frequently rely on Supreme Court dicta for resolution of issues. Any court which disregards the Supreme Court's discussion of certain issues merely on the basis that it was not carried into the syllabus would be treading on dangerous and unstable ground. A healthy regard should be maintained for considered dicta. *Id.*, 89 Ohio App.3d at 209.

Second, the two courts of appeal that considered the scope of Good Samaritan statute since the *Primes* Court's decision have followed it. In *Hamisfar v. Baker Concrete Constr.*, 1st. Dist., Hamilton No. C-970228, 1998 WL 173238 (Feb. 8, 1998), the First District Court of Appeals considered the viability of an executrix' negligent undertaking claim. *Id.*, 1998 WL 173238 at *3-*4. The *Hamisfar* Court contrasted the "Good Samaritan Doctrine" with the Good Samaritan statute. *Id.*, 1998 WL 173238 at *3 and *5, n. 2. The *Hamisfar* Court described the scope of the Good Samaritan statute as "absolving health-care providers from liability under certain emergency circumstances." *Id.*, 1998 WL 173238 at *5, n. 2. The ruling is wholly consistent with the *Primes* Court's discussion of the statute's limited immunity from suit and the legislature's intent in enacting the statute.

Further, in *Butler v. Rejon*, 9th Dist. Summit No. 19699, 2000 WL 141009 (Feb. 2, 2000), the Ninth District Court of Appeals held unequivocally that Ohio's Good Samaritan statute only applies to "emergency medical care or treatment." The *Butler* Court held:

Ohio's Good Samaritan statute, R.C. 2305.23, states in pertinent part:

No person shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton misconduct. * * *

In interpreting a statute, "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." R.C. 1.42. In order to be covered by the Good Samaritan statute, one must be providing emergency *medical* care or treatment to another individual. R.C. 2305.23. Consequently, R.C. 2305.23 shields a good

samaritan from civil liability in an action brought by the person to whom emergency *medical* care was rendered. *Id.*, 2000 WL 141009 at *3.

The majority of the court of appeals held that the *Butler* Court's ruling was dicta:

The Ninth District's actual holding in *Butler* is that the Good Samaritan statute generally does not cover *third parties*, and therefore, even though Butler was trying to protect the disabled driver, he did not provide emergency care or treatment to Rejon who was the "third party" in the case. Consequently, Butler could not use the Good Samaritan statute as a shield from liability on Rejon's comparative negligence claim, and thus, the trial court did not err in refusing to charge the jury on the Good Samaritan statute. *Id.* This case, by contrast, does not involve a third party. Opinion at ¶22; Appendix A-12.

It is correct that our case does not involve a third party rescuer; however, under the *Butler* Court's analysis, before one considers the identity of the person rendering the services, one must analyze the nature of the emergency services rendered. *Butler*, 2000 WL 141009 at *3. That being the case, the statute did not immunize the good samaritan's activities in *Butler* because – first and foremost – he was not "providing emergency *medical* care or treatment to another individual." *Id.* This methodology was correctly employed here by the dissenting judge. Opinion, ¶¶38-40; Appendix A-14. The decision by the *Butler* Court is consistent with discussion of the Good Samaritan statute by the *Primes* Court.

Last, the majority of the court of appeals relied upon *Held v. City of Rocky River*, 34 Ohio App.3d 35, 516 N.E.2d 1272 (8th Dist. 1986), in support of the application of the Good Samaritan statute to lay emergency activities. (Opinion, ¶10, Appendix A-13) In *Held*, the Eighth District Court of appeals stated, as an alternative ruling, that a fire fighter's rescue of a colleague who had been knocked to the ground and pinned by a continuous stream of rushing water was an emergency situation and within the scope of the statute. *Id.*, 34 Ohio App.3d at 38-39. Remarkably, this ruling was not part of the case's syllabus and, therefore, is *dicta*. See *Williams v. Ward*, 18 Ohio App.2d 37, 39, n.1, 246 N.E.2d 780 (6th Dist. 1969) ("Where the

opinion of the Ohio Supreme Court contains statements not necessary to reach the actual decision and is not part of the syllabus, it is obiter dicta, and is not binding[.]”).

In any event, fire fighters, as first care providers, are some of the health care responders encompassed by the Good Samaritan statute; *i.e.*, “The administering of such care or treatment by one as a part of his duties as a paid member of any organization of law enforcement officers or fire fighters does not cause such to be a rendering for remuneration or expectation of remuneration.” R.C. 2305.23. Thus, the alternative holding by the *Held* Court is inconformity with the Good Samaritan statute.

C. If The Good Samaritan Statute Is To Bestow Immunity Upon Any Person Providing Any Emergency Care Or Treatment At The Scene Of Any Emergency, The Change Should Be Accomplished Through The Legislative Process.

As discussed above, Ohio courts do not presume the General Assembly intends to abrogate or derogate the common law when enacting a statute unless such intent appears plainly. *In re: Petition for Annexation of 368.08 Acres*, 124 Ohio App.3d at 268. Despite one amendment enacted in 1977 and many other legislative sessions where the General Assembly had the opportunity to amend the Good Samaritan statute from the 1975 holdings in *Primes v. Tyler* and its progeny, R.C. 2305.23 remains unchanged.

The inaction of the Ohio General Assembly should be contrasted to the California legislature’s response to a case decided by the California Supreme Court that interpreted the state’s Good Samaritan statute similar to the decision of *Primes v. Tyler*.

Prior to August 6, 2009, California’s Good Samaritan statute, West’s Ann. Cal. Health & Safety Code §1799.102, was very similar to R.C. 2305.23 and provided that “No person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency

shall not include emergency departments and other places where medical care is usually offered.” (Appendix A-25)

In *Van Horn v. Watson*, 45 Cal.4th 322, 197 P.3d 164, 86 Cal. Rptr.3d 350 (2008), the California Supreme Court was presented with the issue of the scope of that state’s Good Samaritan statute; that is, whether the California legislature intended for the statute to immunize from liability for civil damages any person who renders emergency non-medical aid as well as emergency medical aid. In that case, plaintiff and defendant Torti were passengers in separate vehicles that were involved in a motor vehicle crash. *Id.*, 45 Cal.4th at 325. When the vehicle in which Torti was a passenger pulled off to the side of the road, the driver and she got out to help plaintiff. *Id.* Torti removed plaintiff from the vehicle in which she was riding. *Id.* Plaintiff testified that Torti pulled her from the vehicle by grabbing her by the arm and yanking her out “like a rag doll.” *Id.*

Emergency personnel arrived moments later and plaintiff was treated and transported to the hospital. *Id.*, 45 Cal.4th at 326. Plaintiff suffered various injuries, including injury to her vertebrae and a lacerated liver that required surgery, and was permanently paralyzed. *Id.*

Plaintiff sued Torti, among others, for negligence alleging that even though she was not in need of assistance from Torti after the accident and had only sustained injury to her vertebrae, Torti dragged her out of the vehicle, causing permanent damage to her spinal cord and rendering her a paraplegic. *Id.* After some discovery, Torti moved for summary judgment, arguing that she was immune from plaintiff’s negligence claims under the California Good Samaritan statute. The trial court granted Torti’s motion. *Id.*

The Court of Appeal reversed. *Id.* It held that the California legislature intended for its Good Samaritan statute to apply only to the rendering of emergency *medical* care at the scene of

a *medical* emergency and that Torti did not, as a matter of law, render such care. *Id.*

The California Supreme Court granted review. *Id.* The *Van Horn* Court affirmed the judgment of the Court of Appeals and concluded that the California legislature “intended for [its Good Samaritan statute] to immunize from liability for civil damages only those persons who in good faith render emergency medical care at the scene of a medical emergency.” *Id.*, 45 Cal.4th at 334.

The decision of *Van Horn v. Watson* was final on February 11, 2009. Unlike the non-response of the Ohio General Assembly to the decisions of *Primes v. Tyler* and its progeny, the California legislature responded to the *Van Horn* decision by amending its Good Samaritan statute. As it pertains to lay persons, the California statute now immunizes the rendition of voluntary emergency nonmedical care by providing that:

(b)(1) It is the intent of the Legislature to encourage other individuals [*i.e.*, lay persons] to volunteer, without compensation, to assist others in need during an emergency, while ensuring that those volunteers who provide care or assistance act responsibly.

(2) Except for those persons specified in subdivision (a) [*i.e.*, medical, law enforcement, and other specified emergency personnel], no person who in good faith, and not for compensation, renders *emergency medical or nonmedical care or assistance* at the scene of an emergency shall be liable for civil damages resulting from any act or omission other than an act or omission constituting gross negligence or willful or wanton misconduct. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered. This subdivision shall not be construed to alter existing protections from liability for licensed medical or other personnel specified in subdivision (a) or any other law.

West’s Ann. Cal. Health & Safety Code §1799.102(b)(1) and (2) (emphasis added), effective August 6, 2009 (Appendix 26).

The point of this discussion is that it is for the General Assembly to amend R.C. 2305.23 if it truly intends fundamentally to change Ohio’s common law by having the Good Samaritan

statute immunize all persons who voluntarily administer any emergency *nonmedical* care or treatment at the scene of any emergency. It declined to do so after the *Primes v. Tyler* decision. The Ohio statute was not amended even after the California legislature chose to do so to the California Good Samaritan statute in 2009 in the wake of the *Van Horn* decision. It should not be for the courts to amend R.C. 2305.23 when the General Assembly has declined to act and the courts below incorrectly did so.

D. Appellee Administered No Care Or Treatment To Mr. Carter, Let Alone Emergency Care Or Treatment. The Dissenting Judge Of The Court Of Appeals Panel Correctly So Held.

As noted above, shortly after Appellee arrived on the scene and saw that Mr. Carter had trapped his leg, Appellee went to the tractor's cab, climbed into it, and Mr. Carter heard him rev the tractor's motor and release the air brake. (Dennis Carter dep., T.d. #39, pp. 50-51) Had Appellee waited for a qualified operator to move the tractor under the supervision of EMS personnel, Mr. Carter would not have lost his leg due to the crush caused by Appellee's negligence. (*Id.*, T.d. #39, p. 51)

Conversely, Appellee stated that upon his arrival at the scene, Mr. Carter told him to put the truck in gear and pull it forward. (Larry Reese dep., T.d. #36, p. 10) Appellee then ran to the front of the truck, got in the cab, put his foot on the brake and the other on the clutch, and confirmed that the truck was in neutral. (*Id.*) Appellee then claims to have come to the realization that he did not know how to operate a tractor-trailer rig, so he vacated the cab and told Mr. Carter, "I can't move the truck. If I move the truck, you're going to fall." (*Id.*) All the care and treatment that Appellee gave to Mr. Carter was to approach him twice, patting him on the back once, and telling him help was on the way. (*Id.*, T.d. #36, pp. 9-10 and 11-12) That is all.

The dissenting judge on the Court of Appeals panel would have held on this record that “[A]ppellee clearly was not providing any care or treatment, let alone *emergency medical* care or treatment, to [Mr. Carter] when he attempted to drive appellant’s semi-truck forward to free appellant’s pinned leg, and therefore appellee should not be held immune from liability under R.C. 2305.23 for any civil damages he may have caused appellant in coming to his aid. Whether or not appellee should be held liable for the action he took in coming to appellant’s aid presents a genuine issue of material fact that should have prevented the trial court from granting summary judgment against appellant and in favor of appellee.” (Opinion, pp. 14-15, Appendix A-17-A-18)

It is significant that Appellee testified that he did not move the rig once seated in the driver’s seat. This alone raises triable issues of fact whether Appellee rendered, or actually and reasonably believed he was “administering *emergency* care or treatment at the scene of an emergency.” R.C. 2305.23 (emphasis added).

CONCLUSION

For the reasons discussed above, our General Assembly intended for R.C. 2305.23 to immunize from liability for civil damages only those persons administering emergency medical care at the scene of an emergency. Triable issues of fact exist whether Appellee administered emergency care and treatment to Mr. Carter. Appellants Dennis Carter and Mary Carter request that this Court reverse the judgment of the Court of Appeals and remand this case to the trial court for further proceedings.

Respectfully submitted,



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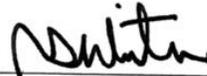
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CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing were served by United States mail, first class postage prepaid, on this 2nd day of September 2015, upon the following:

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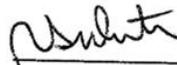
APPENDIX

Notice of Appeal of Appellants Dennis Carter and Mary Carter

Appellants Dennis Carter and Mary Carter hereby give notice of appeal to the Supreme Court of Ohio from the judgment of the Butler County Court of Appeals, Twelfth Appellate District, entered in Court of Appeals Case No. CA 14 04 0095 on December 8, 2014.

The ground for this appeal is that this case involves a question of public or great general interest pursuant to Article IV, Section 2(B)(2)(e) of the Ohio Constitution.

Respectfully submitted,



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I certify that true and correct copies of the foregoing were served by United States mail, first class postage prepaid, on this 21st day of January 2015, upon the following:

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Robert A. Winter, Jr.

FILED BUTLER CO.
COURT OF COMMON PLEAS

DEC 08 2014

CHRISTY L. LAWRENCE
CLERK OF COURTS

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

DENNIS CARTER,

Plaintiff-Appellant,

- vs -

LARRY REESE, JR., et al.,

Defendants-Appellees.

FILED TWELFTH APPELLATE DISTRICT
COURT OF APPEALS

DEC 08 2014

CHRISTY L. LAWRENCE
CLERK OF COURTS

CASE NO. CA2014-04-095

JUDGMENT ENTRY

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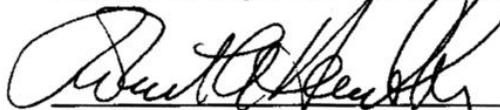
The assignment of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Butler County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

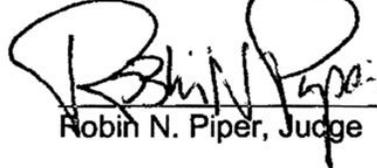
Costs to be taxed in compliance with App.R. 24.

(Dissents)

Robert P. Ringland, Presiding Judge



Robert A. Hendrickson, Judge



Robin N. Piper, Judge

IN THE COURT OF APPEALS

2014 DEC -8 PM 2:05 TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY
CLERK OF COURTS

BUTLER COUNTY

FILED BUTLER CO.
COURT OF APPEALS

DEC 8 2014

MARY L. SWAIN
CLERK OF COURTS

DENNIS CARTER,

Plaintiff-Appellant,

- vs -

LARRY REESE, JR., et al.,

Defendants-Appellees.

CASE NO. CA2014-04-095

OPINION
12/8/2014

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. 2012-09-3942

Eric C. Deters & Partners, P.S.C., Stephanie Collins, 5247 Madison Pike, Independence, KY 41051-7941, for plaintiffs-appellants, Dennis & Mary Carter

Markesbery & Richardson Co., LPA, Katherine A. Clemons, Glenn A. Markesbery, 2258 Victory Parkway, Suite 200, P.O. Box 6491, Cincinnati, Ohio 45206, for defendant-appellee, Larry Reese, Jr.

Andrew D. Bowers, Jackie M. Jewell, Special Counsel for the Attorney General, 612 North Park Street, Suite 300, Columbus, Ohio 43215, for appellee/third party plaintiff, Ohio Bureau of Workers' Comp.

HENDRICKSON, J.

{¶ 1} Plaintiff-appellant, Dennis Carter, appeals the decision of the Butler County Common Pleas Court granting summary judgment in favor of defendant-appellee, Larry Reese, Jr., on appellant's negligence complaint against appellee in which appellant alleged

that appellee failed to exercise ordinary care in coming to appellant's rescue, which necessitated the amputation of appellant's right leg above the knee. For the reasons that follow, we affirm the judgment of the trial court.¹

{¶ 2} Appellant was employed as a truck driver for S&S Transfer, Inc. On April 24, 2012, appellant delivered an empty trailer to AIC Contracting, Inc., in Fairfield, Ohio. After unhooking the empty trailer, he pulled his tractor into AIC's loading dock area and hooked up another trailer. He drove the rig forward approximately four to six inches so he could close the roll-down back door to the trailer. He locked the tractor brake but left the trailer brake "open" or disengaged. When he grabbed the trailer to pull himself up on the loading dock, his right leg slipped down between the loading dock and the trailer and he became stuck. He started beating on the doors of the loading dock and screaming for help, in order to get someone's attention. However, he would later testify at his deposition that he was not in pain at this time

{¶ 3} Approximately ten minutes after he started screaming for help, appellant saw a pick-up truck pull into a company across the street. He kept screaming to get the driver's attention. He then saw the pick-up truck come back out. The next thing he heard was the voice of a young man asking, "Can I help you?" Appellant could not see the man because of the way in which his leg was pinned between the loading dock and the trailer, but he believed the man to be "young" due to the sound of his voice. When the man asked appellant "what can I do?," appellant said to him, "get in my truck, move it forward about a foot, * * * but whatever you do, don't put it in reverse." Appellant heard the man say "no problem."

{¶ 4} The next thing appellant heard was his truck being "revved up." He then heard his truck being revved up again for a little bit longer, which began to cause him concern. He

1. Pursuant to Loc.R. 6(A), we sua sponte remove this case from the accelerated calendar and place it on the regular calendar for purposes of issuing this opinion.

then heard his truck being revved up for a third time, and in between that revving, he heard the sound "pssssh," which signaled that the truck's air brake had been released. Within five seconds of that sound, the truck started rolling backwards. Appellant put both hands against the back of the truck, trying in vain to stop it. Appellant heard his leg break in three places, "pop, pop, pop," and then felt "sheer pain." Appellant "screamed [his] head off." He looked down and saw blood "just squirt everywhere down [his] leg." Thirty seconds later, he heard a man say, "Oh, I'm sorry, Bud. I can't get it in gear." Appellant told him, "It's too damn late now. You've done crushed my leg." The man, whom appellant did not see, replied "Oh, my God. Oh, my God. Oh, my God." Appellant told the man to call 911. Appellant never saw the man who tried to help him and never heard from that man again.

{¶ 5} When the ambulance arrived approximately four minutes later, another man, who was later identified as Jason Burnett, told the paramedics he could move the truck, which he then did, thereby freeing appellant. By this time, however, appellant had suffered considerable blood loss. Appellant was transported by helicopter to University Hospital where his right leg had to be amputated above the knee.

{¶ 6} The man who tried unsuccessfully to help appellant was later identified as appellee. Appellee testified in his deposition that appellant was already injured when he arrived. Appellee acknowledged that he climbed into the cab of the semi-truck but decided not to try to drive it upon realizing that he did not know how to drive such a vehicle. Appellee testified that he went back to comfort appellant and called 911.

{¶ 7} Appellant and his wife filed a complaint against appellee in the Butler County Common Pleas Court, alleging that appellee failed to exercise reasonable care while operating the semi-truck. Appellee moved for summary judgment. The trial court granted summary judgment to appellee on appellant's complaint, finding that Ohio's "Good Samaritan" statute codified in R.C. 2305.23 applied and protected appellee from any liability

since appellee's actions in attempting to move the semi-truck did not constitute willful or wanton misconduct.

{¶ 8} Appellant now appeals and assigns the following as error:

{¶ 9} THE TRIAL COURT COMMITTED PREJUDICIAL AND REVERSIBLE ERROR BY GRANTING APPELLEE'S MOTION FOR SUMMARY JUDGMENT.

{¶ 10} Appellant argues the trial court erred in granting summary judgment to appellee, because (1) genuine issues of material fact exist in this case, including who was at fault in the accident, and (2) his "predicament" of having his right leg "trapped" but "unharmd" between his stopped semi-truck and the loading dock did not satisfy the "Emergence Care" [sic] standard in R.C. 2305.23.

{¶ 11} This court's review of a trial court's ruling on a motion for summary judgment is "de novo." *Grizinski v. Am. Express Fin. Advisors, Inc.*, 187 Ohio App.3d 393, 2010-Ohio-1945, ¶ 14 (12th Dist.). "De novo" review means that this court uses the same standard the trial court should have used. *Morris v. Dobbins Nursing Home*, 12th Dist. Clermont No. CA2010-12-102, 2011-Ohio-3014, ¶ 14. Summary judgment is appropriate when there are no genuine issues of material fact remaining to be litigated, the moving party is entitled to judgment as a matter of law, and reasonable minds can come to only one conclusion, and that conclusion is adverse to the nonmoving party. Civ.R. 56(C); *Williams v. McFarland Properties, L.L.C.*, 177 Ohio App.3d 490, 2008-Ohio-3594, ¶ 7 (12th Dist.). "All evidence submitted in connection with a motion for summary judgment must be construed most strongly in favor of the party against whom the motion is made." *Morris* at ¶ 15.

{¶ 12} R.C. 2305.23, which is captioned, "Liability for emergency care," states:

No person shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton

misconduct.

Nothing in this section applies to the administering of such care or treatment where the same is rendered for remuneration, or with the expectation of remuneration, from the recipient of such care or treatment or someone on his behalf. The administering of such care or treatment by one as a part of his duties as a paid member of any organization of law enforcement officers or fire fighters does not cause such to be a rendering for remuneration or expectation of remuneration.

{¶ 13} We begin by addressing appellant's argument that his "predicament" of having his right leg "trapped" but "unharmd" between his stopped semi-truck and the loading dock did not satisfy the "Emergence Care" [sic] standard in R.C. 2305.23." Appellant contends that R.C. 2305.23 applies only to *medical* emergencies and protects only "health care professionals from liability during truly emergent circumstances" and that, conversely, R.C. 2305.23 does not apply to "non-medically trained individuals." We disagree with these arguments.

{¶ 14} Every state has enacted some type of Good Samaritan statute. Annotation, *Construction and Application of "Good Samaritan" Statutes*, 68 A.L.R.4th 294, Section 2[a] (1989), citing Brandt, *Good Samaritan Laws—The Legal Placebo: A Current Analysis*, 17 Akron L. Rev. 303 (1983). The scope of the immunity protection provided in a Good Samaritan statute varies from jurisdiction to jurisdiction. Waisman, *Negligence, Responsibility, and the Clumsy Samaritan: Is There a Fairness Rationale For The Good Samaritan Immunity?*, 29 Ga. St. U. L. Rev. 609, 631 (2013). The Good Samaritan statutes in a substantial majority of jurisdictions (38) protect any layperson who can meet the statutory requirements. *Id.* However, a sizeable minority of jurisdictions (14) excludes laypersons from the class of persons protected under their Good Samaritan statutes and extends immunity protection only to certain classes of professionals, including physicians, nurses and emergency medical professionals. Ohio is not listed as one of the 14 jurisdictions whose

statutes protect only specified professionals. *Id.*, fn. 106.²

{¶ 15} R.C. 2305.23 states that "[n]o person shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton misconduct." Appellant essentially requests this court to interpret the term "emergency care" to mean only "emergency *medical* care" and to interpret the statute to apply only to health care professionals. However, in construing a statute, a court may not add or delete words. *State ex rel. Cincinnati Bell Tel. Co. v. Pub. Util. Comm.*, 105 Ohio St.3d 177, 2005-Ohio-1150, ¶ 32. The language of R.C. 2305.23 plainly states that "[n]o person" can be held liable for civil damages as result of that person's administering "emergency care" at the scene of the accident, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton misconduct. Additionally, the statute states "emergency care," not "emergency *medical* care." Therefore, we hold that the Good Samaritan statute in R.C. 2305.23 applies to *any* person, health care professional or otherwise, who administers "emergency care," medical or otherwise, at the scene of an emergency and who meets the remaining requirements of the statute, e.g., their acts do not constitute willful or wanton misconduct.

{¶ 16} In support of his claims that we should interpret the phrase "emergency care" in R.C. 2305.23 to mean only "emergency *medical* care" and interpret the statute to apply only to health care professionals, appellant relies on language in the Ohio Supreme Court's decision in *Primes v. Tyler*, 43 Ohio St.3d 195 (1975), as well as the First District Court of

2. The 14 jurisdictions whose statutes protect only specified professionals are Alabama, Connecticut, Illinois, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New York, Pennsylvania, Rhode Island, the Virgin Islands and Utah.

Appeals' decision in *Hamisfar v. Baker Concrete Constr.*, 1st. Dist., Hamilton No. C-970228, 1998 WL 173238 (Feb. 8, 1998), and the Ninth District Court of Appeals' decision in *Butler v. Rejon, Jr.*, 9th Dist. Summit No. 19699, 2000 WL 141009 (Feb. 2, 2000).³

{¶ 17} In *Primes*, the Ohio Supreme Court held that Ohio's "guest statute" in former R.C. 4515.02 was unconstitutional. *Id.* at syllabus. In so holding, the court noted that one of the asserted statutory objectives of the guest statute was "the promotion or preservation of hospitality," *id.* at 201, and in a footnote to its opinion, the court stated:

Notions of hospitality underlie R.C. 2305.23, the Ohio good samaritan law. That statute singles out a group of benevolently-disposed individuals for immunity from negligent injury to persons while rendering *medical* treatment during the exigencies of an emergency. However, the favored treatment accorded such "good samaritans" would appear to further a legitimate legislative objective of providing emergency *medical* assistance to injured persons where delay might result in death or great bodily injury.

(Emphasis added.) *Id.* at 201, fn. 5.

{¶ 18} While the language in footnote 5 of *Primes* lends some support to appellant's argument that the term "emergency care" in R.C. 2305.23 should be interpreted to mean emergency *medical* care, this language is unquestionably dicta, and therefore is not controlling in this case.

{¶ 19} In *Hamisfar*, the First District stated in footnote 2 of its decision that the "'Good Samaritan' doctrine" set forth in the Restatement of the Law 2d, Torts, Section 323, at 135 (1965), "is not to be confused with R.C. 2305.23, the 'Good Samaritan' statute *absolving health-care providers under certain emergency circumstances.*" (Emphasis added.) This language lends some support to appellant's argument that R.C. 2305.23 applies only to

3. Appellant also cites 70 Ohio Jurisprudence 3d, Negligence Section 29 (2014), which states: "The Good Samaritan statute applies to any person who renders emergency *medical* care at the scene of an emergency without remuneration or the expectation of remuneration, including volunteer firefighters whose sole or primary duty is to perform such function. Likewise, the statute applies to volunteer firefighters." (Emphasis added.)

health-care providers and not to laypersons, but it, too, is merely dicta.

{¶ 20} The case that provides the strongest support for appellant's arguments is the Ninth District's decision in *Butler*, but the relevant language in that decision is also dicta. In that case, Butler and his wife were driving on a highway when he spotted a disabled car that was facing oncoming traffic and partially blocking the highway. *Id.* at *1. Butler stopped to see if the driver, who was intoxicated, needed assistance. *Id.* Butler parked his car between the disabled vehicle and the oncoming traffic and turned on his hazard flashers to protect the driver of the disabled vehicle. *Id.* While Butler was waiting for emergency assistance, a car driven by Andrew Rejon crashed into the rear of Butler's vehicle. *Id.* When Butler extricated his wife from the wreckage, he aggravated his pre-existing back injury. *Id.* Butler brought suit against Rejon. *Id.* The jury awarded Butler \$8,000 for his damages but found him 35 percent comparatively negligent, and therefore Butler's award was reduced to \$5,200. *Id.* On appeal, Butler argued the trial court erred by failing to instruct the jury on the Good Samaritan statute. *Id.* at *2. The Ninth District overruled Butler's argument, stating:

In order to be covered by the Good Samaritan statute, one must be providing emergency medical care or treatment to another individual. R.C. 2305.23. Consequently, R.C. 2305.23 shields a good samaritan from civil liability in an action brought by the person to whom emergency medical care was rendered. *We conclude that this statute generally does not cover third parties.* Thus, we find that even though appellant was trying to protect the disabled driver, appellant did not provide emergency care or treatment to Mr. Rejon, and consequently, cannot use R.C. 2305.23 as a shield from liability in a comparative negligence action. Therefore, we hold that the trial court did not err to the prejudice of Mr. Butler when it did not charge the jury on the Good Samaritan statute.

(Emphasis added.) *Id.* at *3.⁴

4. See also *Hutton v. Logan*, 152 N.C. App. 94, 101 (2002) (Good Samaritan statute immunizes rescuer from liability for an ordinary negligence claim brought by the person rescued, but the rescuer must defend, on his or her own, lawsuits brought by third parties who were allegedly injured as a result of the rescuer's negligent conduct during the rescue attempt).

{¶ 21} The Ninth District's statements in *Butler* that "[i]n order to be covered by the Good Samaritan statute, one must be providing emergency medical care or treatment to another individual" and that "R.C. 2305.23 shields a Good Samaritan from civil liability in an action brought by the person to whom emergency medical care was rendered" lend additional support to appellant's arguments that the term "emergency care" should be interpreted to mean emergency *medical care*. *Id.* However, *Butler* is readily distinguishable from this case.

{¶ 22} The Ninth District's actual holding in *Butler* is that the Good Samaritan statute generally does not cover *third parties*, and therefore, even though *Butler* was trying to protect the disabled driver, he did not provide emergency care or treatment to Rejon who was the "third party" in the case. Consequently, *Butler* could not use the Good Samaritan statute as a shield from liability on Rejon's comparative negligence claim, and thus, the trial court did not err in refusing to charge the jury on the Good Samaritan statute. *Id.* This case, by contrast, does not involve a third party.

{¶ 23} Appellant argues that an "emergency" did not exist in this case, for purposes of R.C. 2305.23, because he was merely "trapped," "unharmmed," between his stopped semi-truck and the wall of the loading dock wall when appellee attempted to move the truck. Appellant also argues that even if this court determines that there was an emergency, there is still a genuine issue of material fact as to whether operating a semi-truck constitutes "emergency care" for purposes of the Good Samaritan statute. We find these arguments unpersuasive.

{¶ 24} R.C. 2305.23 does not define "emergency." "In the absence of a definition of a word or phrase used in a statute, the words are to be given their common, ordinary, and accepted meaning." *In re Foreclosure of Liens for Delinquent Land Taxes v. Parcels of Land Encumbered with Delinquent Tax Liens*, 140 Ohio St.3d 346, 2014-Ohio-3656, ¶ 12, citing *Wachendorf v. Shaver*, 149 Ohio St. 231 (1948), paragraph five of the syllabus. An

"emergency" is commonly defined as "an unforeseen combination of circumstances or the resulting state that calls for immediate action," or a "pressing need for help." *Webster's Third New International Dictionary* 741 (1993). The common, ordinary, and accepted meaning of "care," as used in R.C. 2305.23, is to "provide for or attend to needs or perform necessary personal services (as for a patient or a child)." *Id.* at 338.

{¶ 25} An emergency clearly exists where a man's leg is pinned between his semi-truck and a loading dock, yelling so loud for help he is heard across the street. Appellee's actions in trying to move the semi-truck constituted "emergency care" as defined in R.C. 2305.23, because he was trying to resolve the emergency created by appellant. See *Held v. City of Rocky River*, 34 Ohio App.3d 35, 36, 38-39 (8th Dist.1986) (emergency situation clearly existed where firefighter had been knocked down and pinned by a continuous stream of rushing water and off-duty firefighter came upon the scene and dragged the pinned firefighter out of the stream to safety, allegedly injuring him in the process; the off-duty firefighter thus rendered "emergency care" to the allegedly injured firefighter for purposes of the Good Samaritan statute).

{¶ 26} Appellant also argues the trial court erred in granting summary judgment against him and in favor of appellee, because genuine issues of material fact exist in this case, including who was at fault in the accident. In support of this argument, appellant asserts that this court must accept as true, for purposes of summary judgment, that (1) before appellee "intervened," appellant "was simply wedged in between his properly parked semi-trailer, and was uninjured; (2) appellant "began calling for help and looking for a qualified individual to move the tractor trailer" and that "[i]nstead of a qualified individual, [appellee] rushed onto the scene"; (3) appellee has been described by one of his co-workers as a "gung-ho" individual who was "willing to run into a burning building to rescue a child"; (4) when appellee arrived at the scene, he immediately jumped into the truck, revved the engine

and released the air brake, causing the tractor trailer to roll backwards and crush [appellant's] leg."

{¶ 27} Appellant describes as "[i]ncredulous" appellee's deposition testimony that he got into the tractor-trailer, grabbed the steering wheel, revved the engine, put his hand on the gear shift and then "decided not to do anything." Appellant points out that appellee told only one of his co-workers that he got into appellant's tractor-trailer at the time of the accident and that he did not share this information with his other co-workers—a fact which appellant describes as "an incredible omission to your friends after the event." Appellant also notes that appellee "willingly admits * * * that he entered the [tractor-trailer] despite having no knowledge of how to operate the vehicle."

{¶ 28} Appellant is essentially alleging that the trial court failed to look at the evidence presented in the summary judgment proceedings in the light most favorable to him before granting summary judgment in favor of appellee. However, a review of the trial court's decision shows that the trial court did, in fact, construe the evidence in a light most favorable to appellant in ruling on appellee's motion for summary judgment. Specifically, the trial court stated:

The parties and evidence indicate [appellant] created the potential for rescue when he slipped from the loading dock and became wedged behind the trailer of this rig. [Appellant] yelled for help, provoking [appellee's] efforts. [Appellee] entered the cab of the vehicle and attempted to operate it, but instead of effectuating a release of the captive [i.e., appellant], the truck went backward, exacerbating the situation.

{¶ 29} Thus, it is clear that the trial court accepted as true, for purposes of summary judgment, appellant's testimony that appellee attempted to drive the semi-truck forward to free appellant's pinned leg, but allowed the semi-truck to roll backwards, instead, thereby "exacerbating the situation." However, these facts, alone, were not sufficient to establish the existence of a genuine issue of material fact in this case that should have precluded the trial

court from granting summary judgment to appellee.

{¶ 30} R.C. 2305.23 expressly states that "[n]o person shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency * * * for acts performed at the scene of such emergency, unless such acts constitute *willful or wanton misconduct*." (Emphasis added.) Therefore, even if it is accepted as true that appellee released the semi-truck's air brake and tried to drive the semi-truck forward to free appellant, but instead, permitted the semi-truck to roll backward and crush appellant's leg, appellee still cannot be held liable for his actions by appellant so long as appellee's acts in administering the emergency care did not "constitute willful or wanton misconduct."

{¶ 31} Appellant contends that appellee was negligent in trying to drive the semi-truck forward even though he did not know how to do so and in doing nothing after he let the semi-truck roll backwards. He essentially relies on appellee's lack of knowledge on how to operate a semi-truck as the basis for his argument that genuine issues of material fact exist in this case that should have precluded a grant of summary judgment. However, it was not sufficient for appellant to show that appellee was negligent in trying to rescue him once he saw that appellant's leg was pinned between the semi-truck and the loading dock. Instead, appellant was required to show that appellee acted in a "willful or wanton" manner in trying to rescue him. R.C. 2305.23. Even when the evidence in this case is examined in a light most favorable to appellant as the nonmoving party, there is no evidence in the record to show that there is a genuine issue of material fact on whether appellee's conduct was willful or wanton.

{¶ 32} "'Willful conduct' has been defined as 'an intentional deviation from a clear duty or from a definite rule of conduct, a deliberate purpose not to discharge some duty necessary to safety, or purposefully doing wrongful acts with knowledge or appreciation of the likelihood of resulting injury.'" *Brown-Spurgeon v. Paul Davis Sys. of Tri-State Area, Inc.*, 12th Dist. Clermont No. CA2012-09-069, 2013-Ohio-1845, ¶ 50, quoting *Anderson v. Massillon*, 134

Ohio St.3d 380, 2012-Ohio-5711, paragraph two of the syllabus.

{¶ 33} "Wanton misconduct" is more than mere negligence; it is "the failure to exercise any care whatsoever." *Golden v. Milford Exempted Vill. Sch. Dist. Bd. of Edn.*, 12th Dist. Clermont No. CA2010-11-092, 2011-Ohio-5355, ¶ 38. "Mere negligence is not converted into wanton misconduct unless the evidence establishes a disposition to perversity on the part of the tortfeasor. Such perversity must be under such conditions that the actor must be conscious that his conduct will in all probability result in injury." (Internal citations omitted.) *Id.*, quoting *Johnson v. Baldrick*, 12th Dist. Butler No. CA2007-01-013, 2008-Ohio-1794 at ¶ 29.

{¶ 34} Here, appellee's conduct clearly did not rise to the level of willful or wanton misconduct, even when the evidence and all reasonable inferences that may be drawn from it are viewed in the light most favorable to appellant. There is nothing to show that appellee intentionally deviated from a clear duty or definite rule of conduct, with a deliberate purpose not to discharge some duty necessary to appellant's safety, or that appellee purposefully did a wrongful act with knowledge or appreciation of the likelihood of resulting injury. Nor is there any evidence to show that appellee failed to "exercise any care whatsoever" or that establishes "a disposition to perversity" on appellee's part, with such perversity being under such conditions that appellee must have been conscious that his conduct would in all probability result in injury. *Golden*, quoting *Johnson*.

{¶ 35} In light of the foregoing, appellant's assignment of error is overruled.

{¶ 36} Judgment affirmed.

PIPER, J., concurs.

RINGLAND, P.J., dissents.

RINGLAND, P.J., dissenting:

{¶ 37} I respectfully dissent from the majority's opinion. I agree with the majority that this case is distinguishable from *Butler*, 9th Dist. Summit No. 19699. Nevertheless, I find the language in *Butler* regarding the proper interpretation to be given to the Good Samaritan statute in R.C. 2305.23 to be strongly persuasive and would follow that language here, and thus reverse the trial court's decision to grant summary judgment in favor of appellee.

{¶ 38} In *Butler* at *3, the Ninth District stated:

Ohio's Good Samaritan statute, R.C. 2305.23, states in pertinent part:

No person shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton misconduct. * * *

In interpreting a statute, "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." R.C. 1.42. In order to be covered by the Good Samaritan statute, one must be providing emergency *medical* care or treatment to another individual. R.C. 2305.23. Consequently, R.C. 2305.23 shields a good samaritan from civil liability in an action brought by the person to whom emergency *medical* care was rendered.

(Emphasis added.)

{¶ 39} I agree with the Ninth District's determination in *Butler* that when the Good Samaritan statute in R.C. 2305.23 is "read in context and construed according to the rules of grammar and common usage," R.C. 1.42, it is clear that "[i]n order to be covered by the Good Samaritan statute, one must be providing emergency *medical* care or treatment to another individual."

{¶ 40} Here, appellee clearly was not providing any care or treatment, let alone *emergency medical* care or treatment, to appellant when he attempted to drive appellant's semi-truck forward to free appellant's pinned leg, and therefore appellee should not be held

immune from liability under R.C. 2305.23 for any civil damages he may have caused appellant in coming to his aid. Whether or not appellee should be held liable for the actions he took in coming to appellant's aid presents a genuine issue of material fact that should have prevented the trial court from granting summary judgment against appellant and in favor of appellee. Consequently, I would reverse the trial court's decision to grant summary judgment to appellee and remand this matter for further proceedings. Since the majority refuses to do so, I respectfully dissent from their opinion.

FILED

2014 MAR 31 PM 3:09

MARY L. SAGE
BUTLER COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
GENERAL DIVISION
BUTLER COUNTY, OHIO

DENNIS CARTER

Plaintiff,

-v-

LARRY REESE, JR., et al

Defendants.

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Case No.: 2012 09 3492

JUDGE MICHAEL J. SAGE

DECISION AND ENTRY
GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

This matter is before the Court on Defendant Larry Reese's (Reese) Motion for Summary Judgment. For the reasons that follow, this Court grants the motion.

PROCEDURAL BACKGROUND

This action arises out of an April 27, 2012 traffic accident at a trucking firm. Plaintiff, Dennis Carter, (Carter) who became trapped between his truck and the loading dock, submits the injuries occurred when Reese attempted a rescue, crushing Carter between the semi-tractor trailer and the loading dock.

The parties submitted their oral arguments on the issue of summary judgment to the Court on February 20, 2014.

DISCUSSION

A motion for Summary Judgment shall only be granted when there is no genuine issue of any material fact, and the moving party is entitled to judgment as a matter of law. Summary Judgment shall not be granted unless it appears from the evidence that reasonable minds could come to but one conclusion and that conclusion is adverse to the party against whom the motion is made. In reviewing a motion for Summary Judgment, the inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. Civ. R.56(C); *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

On a motion for Summary Judgment, the non-movant is entitled to have any conflicting evidence construed in its favor. *Bowen v. Kil Kare, Inc.* (1992), 63 Ohio St.3d 84.

Judge Michael J. Sage
Common Pleas Court
Butler County, Ohio

Summary Judgment is a procedural device to terminate litigation and to avoid formal trial when there is nothing to try. It must be awarded with caution, resolving doubts and construing evidence against the moving party, and granted only when it appears from the evidentiary material that reasonable minds can reach only an adverse conclusion as to the party opposing the motion. *Norris v. Ohio STD Oil Co.* (1982), 70 Ohio St.2d 1. Because Summary Judgment is a procedural device to terminate litigation, it must be awarded with caution. Doubts must be resolved in favor of the non-moving party. *Osborne v. Lyles* (1992), 63 Ohio St. 3d 326.

The Supreme Court of Ohio has set forth the burden that each party must meet with regard to Summary Judgment. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, at 293. The Court in *Dresher* stated the following:

“[T]he moving party bears the initial burden of demonstrating that there are no genuine issues of material fact concerning an essential element of the opponent’s case... [I]f the moving party has satisfied its initial burden, the nonmoving party then has the reciprocal burden outlined in Civ. R.56(E) to set forth specific facts showing that there is a genuine issue for trial and, if the nonmovant does not so respond, Summary Judgment, if appropriate, shall be entered against the nonmoving party.”

For Summary Judgment to be granted, there can be no genuine issue as to any material fact, and the moving party must be entitled to judgment as a matter of law.

Ohio Rule of Civil Procedure 56(E) states the following:

“When a motion for Summary Judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavit or as otherwise provided in the rule, must set forth specific facts showing that there is no genuine issue for trial. If he does not so respond, Summary Judgment, if appropriate, shall be entered against him.”

In the case at bar, the parties rely upon arguments provided in their respective supporting memoranda; the pleadings; and affidavits.

The remaining claims before the Court turn on the duty of care, if any, owed to the Plaintiff. The law imposes a duty of care in a myriad of ways, but for purposes of this decision, the answer turns solely upon the question of contributory negligence of a rescuer.

Reese argues R.C. §2305.23 absolves him for any actions taken in rendering care to Carter, as “[N]o person shall be liable in civil damages for administering *emergency care* or treatment at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton misconduct.” *emphasis added*

Plaintiff counters no emergency existed, and even if it did, Reese remains negligent in rendering aid outside the scope of his abilities.

The sole question then becomes when does a would-be deliverer become liable to the injured? The query then is a mixed one of law and fact.

The parties and evidence indicate Carter created the potential for rescue when he slipped from the loading dock and became wedged behind the trailer of his rig. Carter yelled for help, provoking Reese's efforts. Reese entered the cab of the vehicle and attempted to operate it, but instead of effectuating a release of the captive, the truck went backward, exacerbating the situation. For the rescue to achieve negligence, it must rise to the level of willful and wanton misconduct.

The word wanton carries a greater level of misbehavior greater than simple incompetence. Wanton conduct must be malicious or unjustifiable, deliberate and without motive or provocation; uncalled-for; headstrong; without regard for what is right, just, humane, etc. And in this case must be joined with willful behavior, defined as deliberate, voluntary, or intentional; unreasonably stubborn or headstrong; self-willed.

<http://dictionary.reference.com>

Reese moved the vehicle, but the evidence does not support a finding of wanton misbehavior. Still, Reese may yet be found liable for his alleged contributory negligence were it not for the law's requirement the Court examine his state of mind, not outsiders or the potential victim.

“...[t]he issue of whether the proposed rescuer is thereafter contributorily negligent in attempting a rescue is determined, not by a consideration of the circumstances of the actual peril at that time of the person to be rescued, but by consideration of the mental state of the rescuer, as to what he reasonably believed from the facts known to him the peril of the person to be rescued to be at that time. More simply stated, the circumstance to be considered is not the fact of peril but the **reasonable belief of continued peril.**” *Emphasis added Marks v. Wagner, (1977)* 52 Ohio App. 3d, 320, 324, 370 N.E. 2d 480, quoting *Wagner v.*

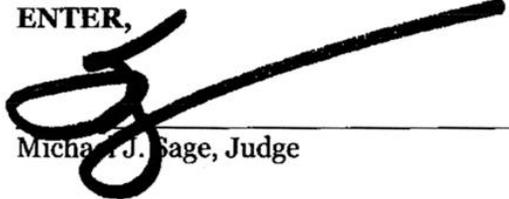
International Ry. Co. (1921), 232 N.Y. 176, 133 N.E. 437, and *57 American Jurisprudence 2d 607*, Negligence, Section 227.

In construing the evidence most favorably to the Plaintiff, including giving the non-moving party all reasonable inferences in his favor, based upon the pleadings in this case and the evidence produced in support of the Motion for Summary Judgment, the Court finds there are no genuine issues of material fact in dispute in this matter and the Defendant, Larry Reese, must prevail as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED the Motion for Summary Judgment is **GRANTED**.

SO ORDERED.

ENTER,



Michael J. Sage, Judge

Copies to:

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P.O. Box 6491
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Judge Michael J. Sage
Common Pleas Court
Butler County, Ohio

FILED

The Supreme Court of Ohio

JUL -8 2015

CLERK OF COURT
SUPREME COURT OF OHIO

Dennis Carter

Case No. 2015-0108

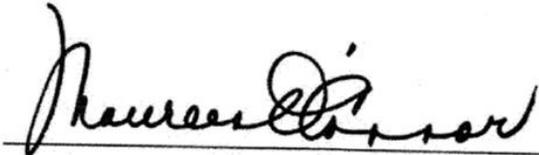
v.

ENTRY

Larry Reese, Jr., et al.

Upon consideration of the jurisdictional memoranda filed in this case, the court accepts the appeal. The clerk shall issue an order for the transmittal of the record from the Court of Appeals for Butler County, and the parties shall brief this case in accordance with the Rules of Practice of the Supreme Court of Ohio.

(Butler County Court of Appeals; No. CA2014-04-095)



Maureen O'Connor
Chief Justice

The Official Case Announcement can be found at <http://www.supremecourt.ohio.gov/ROD/docs/>.

Revised Code Section 2305.23 -- Liability for emergency care

No person shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton misconduct.

Nothing in this section applies to the administering of such care or treatment where the same is rendered for remuneration, or with the expectation of remuneration, from the recipient of such care or treatment or someone on his behalf. The administering of such care or treatment by one as a part of his duties as a paid member of any organization of law enforcement officers or fire fighters does not cause such to be a rendering for remuneration or expectation of remuneration.

CREDIT(S)

(1977 S 209, eff. 8-18-77; 130 v S 14)

West's Ann. Cal. Health & Safety Code § 1799.102

§ 1799.102. Persons rendering emergency medical or nonmedical care at emergency scene for no compensation; legislative intent; application

Prior to August 6, 2009

No person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered.

Credits

(Added by Stats. 1980, c. 1260, p. 4276, § 7.)

West's Ann. Cal. Health & Safety Code § 1799.102

§ 1799.102. Persons rendering emergency medical or nonmedical care at emergency scene for no compensation; legislative intent; application

Effective: August 6, 2009

(a) No person who in good faith, and not for compensation, renders emergency medical or nonmedical care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered. This subdivision applies only to the medical, law enforcement, and emergency personnel specified in this chapter.

(b)(1) It is the intent of the Legislature to encourage other individuals to volunteer, without compensation, to assist others in need during an emergency, while ensuring that those volunteers who provide care or assistance act responsibly.

(2) Except for those persons specified in subdivision (a), no person who in good faith, and not for compensation, renders emergency medical or nonmedical care or assistance at the scene of an emergency shall be liable for civil damages resulting from any act or omission other than an act or omission constituting gross negligence or willful or wanton misconduct. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered. This subdivision shall not be construed to alter existing protections from liability for licensed medical or other personnel specified in subdivision (a) or any other law.

(c) Nothing in this section shall be construed to change any existing legal duties or obligations, nor does anything in this section in any way affect the provisions in Section 1714.5 of the Civil Code, as proposed to be amended by Senate Bill 39 of the 2009-10 Regular Session of the Legislature.

(d) The amendments to this section made by the act adding subdivisions (b) and (c) shall apply exclusively to any legal action filed on or after the effective date of that act.

Credits

(Added by Stats. 1980, c. 1260, p. 4276, §7. Amended by Stats. 2009, c. 77 (A.B. 83), §1, eff. Aug. 6, 2009.)