



2013

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Nicholas B. Hawkins

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Recommended Citation

Hawkins, Nicholas B. (2013) "Recent Developments: TransCare Md., Inc. v. Murray: A Commercial Ambulance Company Does Not Have Immunity under the Good Samaritan Act or the Fire and Rescue Act for the Negligent Actions of Its Employees," *University of Baltimore Law Forum*: Vol. 44 : No. 1 , Article 11.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol44/iss1/11>

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RECENT DEVELOPMENT

TRANSCARE MD., INC. V. MURRAY: A COMMERCIAL AMBULANCE COMPANY DOES NOT HAVE IMMUNITY UNDER THE GOOD SAMARITAN ACT OR THE FIRE AND RESCUE ACT FOR THE NEGLIGENT ACTIONS OF ITS EMPLOYEES.

By Nicholas B. Hawkins

The Court of Appeals of Maryland held that neither Maryland's Good Samaritan Act nor the Fire and Rescue Act relieve a commercial ambulance company from liability for the negligent actions of its employees when providing assistance to patients. *TransCare Md., Inc. v. Murray*, 431 Md. 225, 64 A.3d 887 (2013) (citing MD. CTS. & JUD. PROC. ART. § 5-603; MD. CTS. & PROC. ART. § 5-604). The court found that the Good Samaritan Act was not designed to grant immunity to private, for-profit entities, and did not grant immunity to a company simply because its employee was immune under the Act. *Id.* at 242-43, 64 A.3d at 887. The court further held that a commercial ambulance company must function as a rescue company to receive immunity from liability for negligence under the Fire and Rescue Act. *Id.* at 252, 64 A.3d at 903.

On November 15, 2007, Bryson Murray ("Murray") was taken to Easton Memorial Hospital in Talbot County where he received an endotracheal breathing tube after experiencing congestion and troubled breathing. Hospital officials then transferred Murray by helicopter to the pediatric intensive care unit at the Medical Center of the University of Maryland Medical System ("UMMS") in Baltimore. A flight paramedic team traveled with Murray to UMMS, along with Chris Barbour ("Barbour"), a licensed emergency medical technician-paramedic employed by TransCare Corporation and TransCare Maryland, Inc. (collectively "TransCare"). TransCare is a commercial ground ambulance transport company that contracted with UMMS to provide ground ambulance services for patients. Shortly after takeoff, Murray's heart rate and oxygen blood level dropped because the endotracheal tube became dislodged, blocking his airway. It was not until the helicopter landed and the flight paramedic could retrieve a pediatric air mask that Murray's cardiac activity returned to normal. The incident left Murray blind, deaf, and mentally disabled.

Murray, through his mother, sued TransCare in the Circuit Court for Talbot County alleging that the company was vicariously liable for the negligence of its employee, Barbour. TransCare moved for summary judgment asserting immunity from liability under both the Good Samaritan Act and the Fire and Rescue Act. The trial court initially denied TransCare's motion finding disputes of material fact, and tentatively concluded that neither the Good Samaritan Act nor the Fire and Rescue Act applied to

commercial ambulance companies. TransCare then filed a motion for reconsideration. After a hearing on the issue of TransCare's immunity under the Acts, the trial court concluded there were no remaining disputes of material fact and granted summary judgment in TransCare's favor. Murray appealed to the Court of Special Appeals of Maryland, which reversed the trial court by holding that neither statute applied to private, for-profit entities. The Court of Appeals of Maryland granted TransCare's petition for certiorari to determine if TransCare could be immune under either statute.

The Court of Appeals of Maryland reviewed the circuit court's decision *de novo*, considering the facts in the light most favorable to Murray as the non-moving party. *TransCare*, 431 Md. at 231-32, 64 A.3d at 891. The court first considered whether the plain language of the Good Samaritan Act granted TransCare immunity. *Id.* at 234-35, 64 A.3d at 892-93. TransCare asserted immunity under Section 5-603(b)(3) of the Good Samaritan Act, which included members of volunteer fire departments and ambulance and rescue squads, but also expanded immunity to a volunteer entity as a whole. *Id.* at 234-35, 64 A.3d at 892-93. The original 1963 version of the Good Samaritan Act "applied only to physicians who provided free medical assistance at the scene of an accident." *Id.* at 236, 64 A.3d at 893. In 1969, the legislature expanded the statute to include members of volunteer, nonprofit ambulance and rescue squads. *Id.* at 236-37, 64 A.3d at 893-94. The court found that although the word "volunteer" had been removed and reinserted in the statute's language over the years, the statute did not apply to for-profit organizations. *Id.* at 237-38, 64 A.3d at 894. Therefore, TransCare, as a for-profit entity, could not seek protection from liability under the Good Samaritan Act. *Id.* at 241, 64 A.3d at 896.

The court next considered whether Section 5-603(b)(3) of the Good Samaritan Act granted TransCare immunity through its already immune employee, Barbour. *TransCare*, 431 Md. at 241, 64 A.3d at 896. In an agency relationship, the principle must find immunity on its own and cannot enjoy immunity simply because its agent is already immune. *Id.* at 242, 64 A.3d at 897 (quoting *D'Aoust v. Diamond*, 424 Md. 549, 605-07, 36 A.3d 941 (2012)). Therefore, even if Barbour were immune under Section 5-603(b)(3), TransCare would nevertheless have to establish an independent basis for protection. *TransCare*, 431 Md. at 242-43, 64 A.3d at 897.

Having concluded that TransCare did not have immunity under the Good Samaritan Act, the court then analyzed whether TransCare had immunity under the Fire and Rescue Act. *TransCare*, 431 Md. at 243, 64 A.3d at 897-98. The Fire and Rescue Act confers immunity on both organizations and their employees without explicitly differentiating between commercial and nonprofit rescue companies. *Id.* at 244, 64 A.3d at 898 (citing *Mayor and City Council v. Chase*, 360 Md. 121, 132, 756 A.2d 987, 993 (2000)). In determining whether the Fire and Rescue Act applied to TransCare, the court noted that the statute did not specifically define a "rescue company" and therefore looked again at the statute's legislative history for analysis. *TransCare*, 431 Md. at 244, 64 A.3d at 898.

Similar to the court's findings regarding the Good Samaritan Act, the Fire and Rescue Act did not confer immunity on all fire and rescue companies, but instead extended governmental immunity to only volunteer fire departments and similar entities. *TransCare*, 431 Md. at 244-45, 64 A.3d at 898. The legislature drafted the Fire and Rescue Act after the decision in *Utica Mutual Ins. Co. v. Gaithersburg-Wash. Grove Fire Dep't*, where the Court of Special Appeals of Maryland found that a fire department was not protected by government immunity, nor were its members because they were not public officials. *TransCare*, 431 Md. at 245-46, 64 A.3d at 899 (citing *Utica Mutual Ins. Co. v. Gaithersburg-Wash. Grove Fire Dep't*, 53 Md. App. 589, 455 A.2d 987 (1983)). In response, the 1983 Fire and Rescue statute granted immunity to all fire and rescue companies and their personnel with the intent to expand government-like protection to volunteer fire departments. *TransCare*, 431 Md. at 246-48, 64 A.3d at 899-901.

The court then looked at the Maryland Code's definition of the term "rescue" to determine whether *TransCare* qualified as a "rescue company." *TransCare*, 431 Md. at 249-50, 64 A.3d at 901-02. A "rescue company" generally handles emergency situations, whereas *TransCare* engaged in non-emergency patient transportation between local hospitals. *Id.* at 249-50, 64 A.3d at 901-02. The court found this differentiation important, rejecting *TransCare*'s argument that it qualified as a "rescue company" simply because it may have provided emergency services. *Id.* at 251, 64 A.3d at 902. Therefore, because *TransCare* did not fit the description of a "rescue company," it could not seek protection under the Fire and Rescue Act. *Id.* at 251-52, 64 A.3d at 902-03. The court noted, however, that if a commercial ambulance company could demonstrate that it functions as a "rescue company" it would be entitled to immunity under the Act. *Id.* at 252, 64 A.3d at 903.

In *TransCare*, the Court of Appeals of Maryland held that *TransCare*, a private, for-profit ambulance company, could not receive immunity under the Good Samaritan Act. Additionally, the Fire and Rescue Act does not apply to ambulance companies similar to *TransCare* that do not function as a "rescue company" within the meaning of the statute. The court acknowledged that the purpose of immunity statutes is to incentivize medical providers to act without fear of liability for ordinary negligence. The histories of both the Good Samaritan Act and the Fire and Rescue Act, however, make clear that neither Act was created to protect non-emergency, for-profit ambulance companies. The court's conclusion that a commercial ambulance company must prove that it functions as a "rescue company" for protection under the Fire and Rescue Act does little to provide an answer for these entities in circumstances where emergency situations occur during a non-emergency transport. Since the consideration of whether a company satisfies the definition of a "rescue company" is a factual determination, practitioners should review recent case law and the legislative history of the immunity statutes to determine whether liability exists for the alleged negligence of an employee that arises in a medical transfer situation.