

67402-1

67402-1

No. 67402-1-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

CODY HIATT

Plaintiff/Appellant,

v.

AMR AMBULANCE SERVICE, INC.

Defendant/Respondent.

APPELLANT'S REPLY BRIEF

KING COUNTY SUPERIOR COURT
CAUSE NO. 09-2-44594-0
HONORABLE JUDGE MICHAEL J. HEAVEY

*Appellate Counsel for Plaintiff/Appellant
Cody Hiatt.:*

DAVID A. WILLIAMS, WSBA #12010
Attorney for Plaintiff
9 Lake Bellevue Drive, Suite 104
Bellevue, WA 98005

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 DEC 15 AM 10:30

TABLE OF CONTENTS

	<u>Page Number</u>
TABLE OF AUTHORITIES.....	<i>i</i>
REPLY TO AMR’S STATEMENT OF THE CASE.....	1
REPLY TO ARGUMENTS	3
<u>AMR claims that the Trial Court “correctly held Hiatt negligent as a matter of law.”</u>	3
<u>AMR claims that Hiatt has “no excuse” for violating RCW 46.61.400 (1), which required him to yield to the parked ambulance.</u>	3
<u>AMR claims that “no reasonable jury could absolve Hiatt of negligence.”</u>	4
<u>AMR claims its drivers were not negligent...</u>	4
<u>AMR claims that “no reasonable jury could find that AMR’s ambulance driver was negligent.”</u>	5
<u>AMR claims that its own driver manual “does not establish a standard of ambulance-parking care that supports his claim.”</u>	5
<u>AMR claims that RCW 46.61.035 (4) doesn’t apply because it only concerns how an emergency vehicle is “driven”, not how it is “parked”</u>	6
CONCLUSION.....	8

TABLE OF AUTHORITIES

TABLE OF CASES

Page Number

Brown v. Spokane County Fire Protection Dist. No. 1
100 Wn. 2d 188, 192-93, 668 P.2d 571 (1983).....5, 7

STATUTES

RCW 46.61.400 (1)3
RCW 46.61.035 (4)6
RCW 46.61.0357, 8

REPLY TO AMR'S STATEMENT OF THE CASE

Tellingly, AMR completely misstates the single most fundamental fact of the case, saying at page 3 of its brief:

“Hiatt asserts that once he had rounded a curve in I-5 and was able to “visualize the accident scene” and “process what I was seeing”, and realize there was something ahead of him, he was left with only five seconds to act and had no time to brake or avoid the ambulance”. (Emphasis added)

What Hiatt actually said—and what is undisputed---was that he had about “five seconds to process what [he] was seeing” and react to it. (CP 138, 129) He saw the ambulance but didn't realize it was parked in his lane until it was too late to avoid a collision. (CP 138) And there is no evidence in the record that a “reasonably prudent driver” would have realized that the ambulance was parked in his lane any sooner than Hiatt.

AMR's brief (page 6) states:

“Hiatt didn't see the AMR ambulance directly ahead of him because he let himself be distracted by the sight of wreckage and EMT drama ahead and to his left as he approached the AMR ambulance, and he returned his attention too late to what was in his own path....”

This false statement is unsupported by any evidence whatsoever (which is undoubtedly why it was placed in the “Argument” section of

AMR's brief, as opposed to its Statement of the Case). Indeed, Hiatt testified to the exact opposite:

Q. Did you kind of look into the southbound lane and curious [sic] about what was going on over there?

A. No, because I'm looking straight ahead, have my eyes on the road. I'm looking at what's in front of me. My eyes can dart over and see the southbound lanes and see the aid workers there. I did not have my head turned.

* * *

A. No I didn't notice the emergency lights on the ambulance. I noticed flashing lights. They appeared to be all contained in the southbound lanes. If the AMR ambulance had their lights on, it wasn't discernable from the lights in the southbound lanes.

CP 130.

AMR's brief (page 7) claims that Hiatt's "first words after the collision were 'what did I hit'? Hiatt disputes that:

Q. Do you remember what happened after the collision, immediately after?

A. I blacked out. When I regained consciousness, I asked if I had hurt anyone and they said---Did I hurt anyone and I remember the response worker saying no, it's just you. I said okay and laid my head back....

CP 131.

Simply put: AMR's Statement of the Case simply refuses to acknowledge Hiatt's undisputed description of the accident, instead asking this Court to affirm summary judgment based on a version of the accident that is unsupported by any evidence in the record, let alone the evidence most favorable to Hiatt.

REPLY TO ARGUMENTS

AMR claims that the Trial Court "correctly held Hiatt negligent as a matter of law". AMR Brief, p. 6. But this claim is based on the false---not "disputed", FALSE---assertion that Hiatt "didn't see the AMR ambulance directly ahead of him." Id, pp. 6-7. What is undisputed is that Hiatt saw the ambulance; he simply didn't realize that it was in his lane, because its flashing lights weren't "discernable from the lights in the southbound lanes", and because there was no appropriate warning.

AMR claims that Hiatt has "no excuse" for violating RCW 46.61.400 (1), which required him to yield to the parked ambulance. AMR Brief, p. 7. This claim is likewise based on the false---not "disputed", FALSE---claim that Hiatt "let the multiple car wreckage in the southbound lanes distract him and failed to drive his motorcycle slowly enough and/or with enough control to avoid colliding with what was directly ahead of him, in plain sight...." Id. Again, the undisputed fact is

that Hiatt saw the ambulance; he simply didn't realize it was parked in his lane.

AMR claims that "no reasonable jury could absolve Hiatt of negligence". This claim attempts to relegate the entire case to a footnote (AMR Brief, p. 10, fn. 28), blithely stating that because Hiatt had "366.65 feet in five seconds" to (1) recognize that one set of the flashing lights tending the Southbound lanes was actually parked in his lane; and (2) apply the brakes or change lanes, he "either was traveling much faster than 50 mph or spent most of the five seconds looking in a direction other than the one in which he was going." No evidence whatsoever supports this statement. All we know is that by the time Hiatt realized the ambulance was parked in his lane, he didn't have enough time to avoid it, and no evidence was offered that anyone on the planet would have realized it any sooner than Hiatt did.

All that said: Summary judgment was improper even if Hiatt were negligent as a matter of law, because there was abundant evidence that AMR was at fault too, making apportionment of fault a fact question.

AMR claims its drivers were not negligent because Washington law "expressly allows ambulance drivers to park or leave their ambulances standing in a highway traffic lane when responding to an emergency."

But AMR doesn't mention that the same statute that authorizes them to do so requires them to exercise "due regard for the safety of all persons under

the existing facts and circumstances”. Brown v. Spokane County Fire Protection Dist. No. 1, 100 Wn. 2nd 188, 192, 668 P.2d 571 (1983). And under Brown, the test for “due regard” is whether the driver “acted as a reasonably careful driver”, not whether (as AMR seems to claim) some specific “statute or regulation” was violated.

AMR claims that “no reasonable jury could find that AMR’s ambulance driver was negligent”. This section of AMR’s brief is nothing more than jury argument, which indeed highlights the impropriety of summary judgment.

AMR claims that its own driver manual “does not establish a standard of ambulance-parking care that supports his claim”. The “standard of ambulance care”, as set forth in Brown, is “due regard for the safety of all persons.” Does AMR seriously suggest that its own driving manual casts no light on that issue?

AMR’s statement (AMR Brief, p. 17) that “Hiatt has never even attempted to explain how AMR’s driver could have parked the ambulance out of the line of traffic, or shielded from the rear” is completely false:

“For obvious reasons, the AMR manual directs drivers to park ‘out of the line of traffic...whenever possible’. The drivers could easily have proceeded to the exit and come back down the southbound lanes, where police would be re-directing traffic, and parked without obstructing traffic”.

Hiatt’s Brief, p. 10.

AMR claims that RCW 46.61.035 (4) doesn't apply because it only concerns how an emergency vehicle is "driven", not how it is "parked".

If so, this claim means one of two things: Either (1) it is not possible to negligently park an emergency vehicle, or (2) the Legislature intended to impose responsibility upon emergency vehicle drivers for "driving" foolishly, but shield them from liability for parking foolishly. The first proposition is absurd, the second contrary to established law.

It takes little imagination (and, therefore, is essentially a waste of time) to conceive of "negligent parking" situations. What if the ambulance were parked so that it was jutting out into traffic just beyond a "blind" corner, such that its lights were invisible until it was too late to react to them? What if it were so parked, just beyond the crest of a steep hill? Would AMR argue that it was "reasonably prudent" to do either; because their flashing lights were on?

AMR's legal argument—such as it is---that the legislature didn't intend RCW 46.61.035 (4) to apply to "parking" is contradicted by the language of the statute itself, as interpreted by our Supreme Court.

First, the statute says that a "driver" may "park" contrary to law, thus unambiguously acknowledging the obvious truth that "driving" includes "parking". (Would AMR argue that "landing" an airplane is not "flying" it?)

Second, the words of the statute specifically extend beyond merely “driving”:

“The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his or her reckless disregard for the safety of others”.
(emphasis added)

Recognizing this, AMR argues that the word “reckless” in the statute requires more than mere “negligence” to impose liability for “parking”. This exact argument was unambiguously dispatched in Brown v. Spokane County Fire Protection Dist. No. 1, 100 Wn. 2d 188, 192-93, 668 P.2d 571 (1983):

“Despite the reference to “reckless” conduct, we believe the Legislature intended to charge the driver of an emergency vehicle with the duty of exercising due regard for the safety of all persons under the existing facts and circumstances. The facts and circumstances of each case include the privileges granted by RCW 46.61.035. Thus, the test of due regard as applied to emergency vehicle drivers is whether, given the statutory privileges of RCW 46.61.035 he acted as a reasonably careful driver”.
(emphasis added)

As AMR points out, its driver’s right to park on the highway was one of the “privileges” granted by RCW 46.61.035. Therefore, under the

unambiguous language above, she had a duty to exercise due regard for the safety of “all persons”.

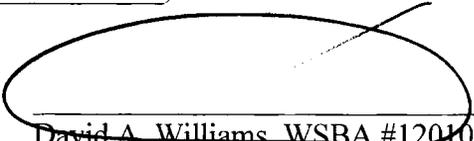
But let us for a moment indulge AMR its absurd argument that once the car was “parked”, it was not being “driven” for purposes of RCW 46.61.035. How, then, would that statute serve as a shield for AMR’s failure to have traffic cones available, or the driver’s failure to use the flares that were, or Rose Washington’s failure to see Hiatt’s approach and warn him? Under AMR’s own argument, those failures would be outside the statute’s protection, as they have nothing to do with “driving” or “parking”.

CONCLUSION

To defend the summary judgment in this case AMR is forced to completely misstate the facts, and ignore established law.

The judgment should be reversed.

DATED this 13 day of December, 2011.


David A. Williams, WSBA #12010

Attorney for Plaintiff
9 Lake Bellevue Drive, Suite 104
Bellevue, WA 98005
(425) 646-7767

AFFIDAVIT OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that I caused a true and correct copy of the foregoing document, "Appellant's Reply Brief" to be delivered in the manner indicated below to the following counsel of record:

<p>Filed in:</p> <p>Court of Appeals, Division 1 State of Washington 600 University Street Seattle, WA 98101-1176</p> <p>Sent VIA:</p> <p><input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Hand Delivery</p>	
<p>Served on:</p> <p>Attorneys for Respondent:</p> <p>Jessie Harris Daniel W. Ferm Williams, Kastner & Gibbs, PLLC 601 Union Street, Suite 4100 Seattle, WA 98101</p> <p>Sent VIA:</p> <p><input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Facsimile</p>	<p>FILED COURT OF APPEALS DIV 1 STATE OF WASHINGTON 2011 DEC 15 AM 10:30</p>

DATED this 14th day of December, 2011.



Joanne Lenz
Paralegal