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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 BRIEF

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

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Cody Hiatt.:*

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INTRODUCTION

On the morning of June 1, 2009, Appellant Cody Hiatt (“Hiatt”) was riding his motorcycle on his way to his job as an accountant. He was in the northbound HOV lane of Interstate 5, just north of the Northgate Shopping Mall. The highway angles “softly” to the right as it approaches the 130th street exit.

As he swung around the turn, continuing North, Hiatt saw that there had been an accident in the southbound lanes up ahead. He saw flashing lights, and an ambulance. Traffic was continuing to flow normally in the northbound lanes, and Hiatt continued on.

Suddenly he realized that the ambulance was *parked in his lane*. The ambulance’s brake lights weren’t on, and there were no flares, or cones, or “flagger,” or any other warning of any kind to alert him that the ambulance was parked in the northbound lanes while its occupants tended to an accident scene in the southbound lanes.

Hiatt tried to avoid the ambulance but didn’t have time. He hit the right rear of the ambulance, nearly full speed, and suffered serious injury.

Hiatt sued AMR, who counterclaimed for damage to its ambulance. Discovery revealed that AMR's own policy manual commands that ambulances be "parked out of the line of traffic..... whenever possible". Discovery also revealed that there were warning flares aboard the ambulance that could easily have been deployed. Indeed, the ambulance driver was preparing to open the back door of the ambulance as Hiatt approached, but hadn't looked behind her.

On the other hand, no evidence, expert or otherwise, was ever generated that Hiatt---a young, athletic, experienced motorcyclist with excellent vision---appreciated that the ambulance was parked in his lane any later than a "reasonably prudent" operator would have under the circumstances.

Nonetheless, the trial court granted AMR's motion for summary judgment, finding the accident to have been 100 per cent Hiatt's fault, and entered judgment against him on AMR's counterclaim for damage to its ambulance.

Thus were obvious fact questions in this classic "comparative fault" case resolved against the non-moving party?

ASSIGNMENTS OF ERROR

The trial court erred in entering Summary Judgment in favor of AMR and against Hiatt on his claim, and on AMR's counterclaim.

Issue 1: Is an emergency vehicle crew that has activated the vehicle's emergency lights relieved of any further duty of care?

Issue 2: Could a reasonable fact-finder find AMR and AMR's employees to have been negligent, for:

Parking and abandoning the ambulance in the northbound HOV lane while tending to an accident in the southbound lanes, instead of exiting the freeway (just up the road), and re-entering the southbound lanes; and/or

Parking "very close" to the median; and/or

Parking "in line" instead of at an angle, and/or

Not deploying the flares that were aboard the ambulance, to alert oncoming traffic; and/or

Not having traffic cones aboard the ambulance; and/or

Not having one of the crew remain behind as "flagger"; and/or

The driver not even looking behind her when she returned to the ambulance to fetch a "back board"?

STATEMENT OF THE CASE

Defendant AMR's ambulance driver Rose Washington ("Washington") and her partner Taylor Thornton ("Thornton") were traveling north on Interstate 5 near Northgate when they observed an accident in the southbound lanes. (CP 142) Washington had been an ambulance driver for about a year. (CP 149) She had never answered a freeway emergency call before. (CP 150) She had never parked an ambulance in the carpool lane. (Id).

Though they were very near an exit by which they could have left the northbound lanes and accessed the southbound lanes, Washington parked the ambulance in the northbound HOV lane of Interstate 5, where northbound commuters were proceeding at normal highway speed. (CP 150) Washington and her partner Taylor Thornton actually discussed exiting the northbound freeway and approaching in the southbound lanes, but decided not to. (CP 163) Washington parked the ambulance "very close" to the median separating the northbound and southbound lanes. (CP 148)

AMR's "Vehicle Safety Policy" manual was produced in discovery. It states in part:

“When arriving on-scene, company vehicles should be parked out of the line of traffic and shielded from the rear by other vehicles or objects whenever possible.” (CP 153) (emphasis added)

She parked the ambulance “straight.” (CP 148)

Washington and Thornton left the ambulance unattended, jumped the median, and began attending the occupants of the vehicles that had crashed. (CP 161, 162)

There were warning flares available onboard the ambulance. (CP 147) None were deployed behind the ambulance to alert northbound traffic---which was moving at normal freeway speed---that the ambulance was (1) parked; (2) in the northbound lane. (Id.) Washington “doesn’t recall” whether she ever considered using flares. (CP 148) She had never deployed flares. (Id.) Thornton testified that there was “no discussion” of using flares. (CP 163)

Hiatt was riding his motorcycle to work. Just north of Northgate Shopping Mall, Interstate 5 “bends” nearly 45 degrees to the right; until completing that “bend”, Hiatt couldn’t have seen the accident scene ahead of him. (CP129) From his experience in driving the route since, Hiatt

testified that at freeway speed, one can visualize the accident scene for only about 5 seconds before arriving at it. (CP 129)

Hiatt saw the ambulance but didn't realize it was parked in his lane until it was too late to avoid a collision. (CP 130) He had seen the flashing lights but "they appeared to be all contained in the southbound lanes." (Id.)

Meantime, Washington had returned to the ambulance to fetch a "back board." (CP 145) She had her back to the HOV lane and was completely oblivious to Hiatt's approach, thus negating any final opportunity to alert him. (CP 143) Her first awareness that he was bearing down upon her was impact. (CP 143)

Hiatt's motorcycle hit the right rear of the ambulance, just to Washington's right. (CP 143) With even slightly earlier warning he could have avoided the ambulance.

Hiatt sued AMR and AMR counterclaimed for damage to its ambulance. (CP 1, 3)

AMR moved for summary judgment dismissing Hiatt's claim, contending that under RCW 46.61.212 (requiring motorists to yield the right of way to a parked emergency vehicle that has its lights on), "as long as visual signals are displayed, as they were in this case, the duty to avoid a collision rests entirely upon approaching motorists". (CP 8)

The Court granted AMR's Motion and dismissed Hiatt's claims. (CP 77) AMR then brought a Motion for Summary Judgment on its counterclaim, which the Court also granted. (CP 95) The court entered judgment against Hiatt, who timely appealed. (CP 99, 105)

ARGUMENT

Review of the Court's Orders on Summary Judgment is de novo.

It is axiomatic that review of a summary judgment is de novo. Roe v. Teletech Customer Care Management (Colorado) LLC., 171 Wn. 2d 736, 744, 257 P.3rd 586 (2011)

Our Supreme Court has already held that emergency vehicle operators have a duty of care for the safety of "all persons", that extends beyond merely turning on the vehicle's flashers.

In Brown v. Spokane County Fire Protection Dist. No. 1, 100 Wn. 2d 188, 192, 193, 668 P.2d 571 (1983), our Supreme Court discarded the exact argument advanced by AMR and, apparently, adopted by the trial court:

“We recognize that the standards of care charged to the driver of an emergency vehicle and to the driver of an ordinary vehicle, while similar, are not precisely the same. The privileges granted to the driver of an emergency vehicle under RCW 46.61.035, such as the privilege to proceed past stop signals and the privilege to exceed maximum speed limits, are not available to the driver of an ordinary vehicle. Notwithstanding these provisions, the statute requires the driver of an emergency vehicle to drive with "due regard for the safety of all persons," and further provides that the privileges granted therein do not "protect the driver from the consequences of his reckless disregard for the safety of others." RCW 46.61.035(4). 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)

Even more precisely, in Brown the Supreme Court went on to say, at 100 Wn., 2d 193:

“RCW 46.61.035(4) and RCW 46.61.210(2) make it clear that at no point, including the circumstances where another driver fails to yield

the right of way, is an emergency vehicle driver relieved of the duty to drive with due regard for the safety of all persons. (emphasis added)

Negligence is a question of fact.

Again, it is axiomatic that negligence is ordinarily a fact question, generally not susceptible to summary judgment. Bodin v. City of Stanwood, 130 Wn. 2d 726, 735, 927 P2 240 (1996); Gilbert Moew Company v. Island Steel Erectors, Inc., 128 Wn. 2d 745, 759, 912 P2 472 (1996).

A reasonable fact finder could infer that the AMR crew was negligent in a variety of ways.

Consider:

1. Parking in the northbound HOV lane made no sense in the first place. The many dozens of hospitals in King County all lie south of the accident scene! This includes (1) Northwest Hospital, less than a mile away from the scene, and (2) Harborview Medical Center, where any major trauma case will be taken. Whether the injuries at the scene were major (and they weren't) or minor, there would be no sense in leaving the ambulance pointed north, because any transport would be southbound.

2. Parking in the northbound HOV lane directly violated AMR's own Manual. 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.

3. The failure to deploy the flares that were available in the ambulance was foolish. Washington admitted at deposition there were warning flares in the ambulance. She tried to excuse their failure to use them by claiming that flares are used only at night or in low visibility conditions. Any experienced driver knows this statement to be nonsense. Flares and/or cones are routinely used during the daytime at accident scenes.

Notably, nothing in AMR's Safety Manual supports Washington's claim. AMR offered no evidence from any source that its drivers are trained to use flares "only at night".

4. There were no traffic "cones" in the ambulance. The ambulance was not equipped with the type of traffic cones routinely seen to "mark" hazards on roadways during the day.

A reasonable fact finder could determine that one, some, or all of these were negligent under the circumstances.

CONCLUSION

The trial court resolved obvious fact questions against the non-moving party. The judgment should be reversed.

DATED this 24 day of October, 2011.



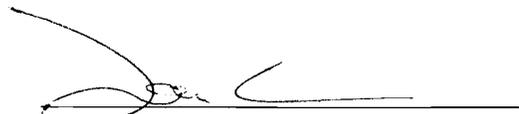
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AFFIDAVIT OF SERVICE

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 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 Samantha Noonan 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 checked="" type="checkbox"/> Facsimile</p>	<p>FILED COURT OF APPEALS DIV 1 STATE OF WASHINGTON 2011 OCT 24 AM 11:12</p>

DATED this 21st day of October, 2011.


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