

DEFENDANT JOHN DAHIR'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

ARGUMENT

A. Defendant John Dahir is Entitled to a Motion for Summary Judgment Because there is No Genuine Issue of Material Fact Regarding Whether Mr. Dahir Gratuitously Rendered Emergency Care and Mr. Dahir Did Not Engage in Gross Negligence

A court shall grant a motion to summary judgment, thereby disposing of a lawsuit without trial if, after viewing the evidence in the light most favorable to the nonmoving party, there are no genuine issues of material fact. Chung. A fact is material if it would change the result. Chung.

1. Mr. Dahir Is Immune from Liability Under the Good Samaritan Act Because He Acted Reasonably When He Gratuitously Rendered Aid.

A person who comes upon the scene of an emergency or accident, or is summoned to the scene of an emergency or accident and, in good faith, gratuitously renders emergency care at the scene of the emergency or accident is immune from liability for personal injury that results from (1) any act or omission by the person in rendering the emergency care, or (2) any act or failure to act to provide or arrange for further medical treatment or care for the injured person unless the conduct or omission amounts to gross negligence. GSA.

Emergency care means actions which the aider reasonably believed were required to prevent death or serious permanent injury, disability or handicap, or reasonably believed would benefit the injured or ill person, depending upon the aider's perception of the nature and severity of the injury or illness and the total emergency situation, and that the aider reasonably believed the aider could successfully undertake. CS Sec 34-29(1). Stopping at the side of the road at the scene of an accident to inquire whether any assistance is required may constitute rendering aid or assistance under the GSA. Chung.

To have rendered aid or assistance necessary or helpful in the circumstances, the defendant must show either (1) the defendant rendered actions which they reasonably believed was required to prevent death or serious injury and they reasonably believed they could successfully undertake such actions, or (2) that the defendant rendered actions they reasonably believed would benefit an injured or ill person and reasonably believed they could successfully undertake such action.

In Chung, the court held the movant failed to prove there was no genuine issue of material fact because the movant presented no direct evidence showing his state of mind or why he stopped, there was no affidavit or deposition testimony on the matter, or

any other evidence addressing those questions and, at most, the movant showed he stopped the truck, the passenger's window was rolled down, the passenger asked whether everything was ok, the movant testified he did not talk to the driver of the truck, and was unsure why the passenger rolled down his window. The court further reasoned the movant failed to show there was no genuine issue of material fact because even if the movant stopped his truck to ask whether everything was ok, there was no direct evidence he actually intended to provide aid or assistance, or to what extent he would have been willing and able to provide assistance if it was needed and there was no evidence the movant believed he could reasonably undertake any required actions even if he, in fact, intended to provide them.

Here, there is no genuine dispute of material fact regarding whether Mr. Dahir rendered emergency aid because, as stated in his deposition testimony and unlike the defendant in Chung who did not testify that he pulled over for the purpose of providing emergency aid, Mr. Dahir pulled over specifically because he saw an accident where a man, Mr. Tram, was visibly drunk or injured wandering around a van that was in a ditch on the side of the road to see if he could help Mr. Tram. Additionally, unlike in Chung where there was no direct evidence the defendant intended to provide aid, there is direct evidence that Mr. Dahir stopped to provide aid because Mr. Dahir pulled over because he saw the van on the side of the road and Mr. Tram in distress and intended to provide aid, if necessary.

Additionally, there is no genuine issue of material fact regarding whether Mr. Dahir pulled over to render aid to benefit an injured person and reasonably believed he could successfully undertake such action because he saw Mr. Tram in distress, asked whether he was ok, and asked Mr. Tram if he would like him to call 911, to which Mr. Tram responded "yes." Asking whether Mr. Tram is ok and offering to call 911 are both designed to render aid and both are actions which Mr. Dahir was reasonably capable of undertaking because Mr. Dahir could easily have made the phone call had Panko not hit his truck.

Finally, Mr. Dahir's actions are the exact type the legislature contemplated when passing the GSA given that the purpose of the GSA is to encourage those who do not have a preexisting duty to voluntarily act in times of emergency by limiting the threat of civil liability for actions taken and Mr. Dahir did precisely what the court contemplated – stopping at the scene of an accident to assess an apparent emergency situation and to learn whether assistance is required. See Chung.

Although it is true that generally issues involving the reasonable prudent person standard and a person's subjective state of mind are inappropriate for summary judgment, which suggests the court should deny this motion, this argument is unpersuasive because the court has ruled there will be cases in which immunity under the GSA is appropriate for summary judgment and the court listed inferences that could be drawn from the facts in Chung where summary judgment could be appropriate which exist here – there is direct evidence Mr. Dahir intended to provide aid and assistance,

he was willing to at least call 911, he intended to call 911, and reasonably could make that phone call given that he is a competent adult.

Thus, there is no genuine dispute of material fact regarding whether Mr. Dahir acted reasonably in providing emergency care when assisting Mr. Tram and, as such, Mr. Dahir is entitled to judgment as a matter of law.

2. Mr. Dahir is Immune from Liability under the Good Samaritan Act Because There is No Genuine Issue of Material Fact Regarding Whether Mr. Dahir Acted with Gross Negligence when Assistance Mr. Panko.

Gross negligence is defined as a conscious, voluntary act or omission in reckless disregard of a legal duty and the consequences to another party. Palace Exploration. To establish gross negligence, a party must demonstrate ordinary negligence and must then prove the defendant acted with utter unconcern for the safety of others or with such a reckless disregard for the rights of others that a conscious indifference to consequences is implied in law. Miller. The level of conducting amount to a breach of duty when comparing negligence to gross negligence is quite different. Sharp. The question of whether an act or omission constitutes gross negligence is often a question of fact; however, it may become a question of law when the facts are undisputed and only a single inference can be drawn from those facts.

In Miller, the court held the facts were undisputed and indicated the defendant was not grossly negligent because the defendant approached an intersection, stopped at a stop sign, looked both ways, proceeded into the intersection, and struck a vehicle that he had not seen, claiming that it was in his blind spot.

Here, there is no genuine dispute of material fact that Mr. Dahir did not act with gross negligence similar to the defendant in Miller because Mr. Dahir did not recklessly disregard a legal duty demonstrating utter unconcern for the safety of others because Mr. Dahir testified that he checked his side mirrors as he slowed to a halt, there was virtually no shoulder he could pull his truck into, he looked for signs of vehicles approaching from behind, parked in such a way that would allow him to move his truck down the road quickly, and had his brake lights on in such a way that another driver on the road that morning noticed them. Mr. Dahir's actions, taken together, demonstrate he did not disregard his duty in such a way that warrants a finding of gross negligence because he did more than the defendant in Miller and, as such, his regard for others in checking for other drivers, pulling over as safely as possible, putting his lights on, and trying to assist Mr. Tram cannot amount to a finding of gross negligence.

Additionally, Mr. Dahir's brake lights should have been visible to Mr. Panko because they were visible to Ms. Higgins, who was present at the scene that morning because she saw Mr. Dahir's lights and also pulled over to help.

Although it is unclear whether Mr. Dahir turned on his hazard lights, which suggests Mr. Dahir may have acted with gross negligence, this argument is unpersuasive because

Mr. Dahir's hazards would have been overridden by his brake lights, which were illuminated, Ms. Higgins had her hazard lights on, which should have warned Mr. Panko about the hazards on the road. Further, Ms. Higgins attempted to warn Mr. Panko about the accident because she noticed that Mr. Panko was not slowing down, waved her arms, and yelled to him to stop. All of this suggests that even if Mr. Dahir would have had on his hazard lights, it would have done nothing to prevent Mr. Panko from running into Mr. Dahir's truck.

Thus, there is no genuine issue of material fact with regarding whether Mr. Dahir acted with gross negligence and Mr. Dahir is immune from liability under the GSA as a matter of law.

