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Porchia v. City of Las Vegas, 138 Nev. Adv. Op. 4 (Feb. 17, 2022)

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APPLYING THE PUBLIC DUTY DOCTRINE AND THE GOOD SAMARITAN STATUTE
TO PUBLIC OFFICERS WHO ACT BASED ON SOCIOECONOMIC STATUS

Summary

In an opinion drafted by Justice Herndon, the Court considered whether the district court erred in dismissing the appellant Larry Porchia's complaint in its entirety. Porchia alleged that he was denied medical treatment and transportation by the EMTs after they negligently misdiagnosed him because he was experiencing homelessness and was uninsured. The district court dismissed his complaint with the rationale that the claims were barred by the public duty doctrine and the Good Samaritan statute. However, the Court reasoned that accepting Porchia's allegations as true, the EMT's failure to provide medical assistance or transportation to the hospital based on the appellant's socioeconomic status may be gross negligence and an affirmative act exempted from the public duty doctrine. Thus, the Good Samaritan statute would be inapplicable. The Court held that the district court erred in dismissing the complaint in its entirety.

Facts and Procedural History

This opinion comes from an appeal from an Eighth Judicial District Court order granting a motion to dismiss a tort action. On August 26, 2015, at 3:45am, Porchia was suffering from severe stomach pain, vomiting, and hot flashes. His friend called for emergency help. Las Vegas Fire and Rescue dispatched EMTs Stephen Massa and Nicholas Pavelka. Massa and Pavelka put Porchia on a stretcher, took his vitals, and asked him questions about how he was feeling. Porchia requested to be taken to the hospital. Porchia's complaint stated that once he told Massa and Pavelka that he was experiencing homelessness and did not have insurance, they diagnosed him with gas pain and took him off the stretcher. Massa and Pavelka concluded that Porchia did not need to go to the hospital.

At 11 a.m. the same day, another one of Porchia's friends called emergency services because he had continuing severe pain. When Las Vegas Fire and Rescue were dispatched this time, with different EMTs, they immediately transported Porchia to the hospital. Porchia had emergency surgery for a bowel obstruction. Porchia stated that the doctor and nurse let me know that if he had received treatment earlier, he would not have needed emergency surgery.

Porchia brought a claim pro se against the respondents. The district court granted the respondents motion to dismiss on the basis that they couldn't be held liable because of the public duty doctrine, NRS 41.0336, and the Good Samaritan statute, NRS 41.500(5). The Court of Appeals affirmed the district court's order and the Supreme Court granted Porchia's petition for review.

¹ By Sarah Voehl.

Discussion

The public duty doctrine

The Court first clarified that they would review the district court's decision to dismiss a complaint under a de novo standard of review.² Then, they addressed whether the public duty doctrine applied. After reviewing past case law on the public duty doctrine, the Court explained that the doctrine shields public entities such as fire departments and ambulances services, from liability on the basis that they should not be inhibited by their good faith efforts to serve the community.³ The doctrine applies even when the outcome of their care is less than desirable. The public duty doctrine was codified in the Nevada Revised Statutes and states that public officers assisting in an emergency are not liable for the negligent acts or omissions unless: (1) the officer made a promise or representation to a person who then relied on the promise or representation to their detriment, resulting in the officer assuming a duty to that person; or (2) the conduct of the officer "affirmatively caused the harm."⁴ The public duty doctrine does not revoke the common law principal that governmental entities owe a duty to the public, not individuals.⁵

The special duty exception

Porchia argued that the first exception to the public duty doctrine, the special duty exception, applied to his case. The Court explained that there are two ways to establish a special duty, (1) if a statute or ordinance creates "mandatory acts" for the protection of an individual, or (2) if an officer "acting within the scope of official conduct, assumes a special duty by creating specific reliance on the part of certain individuals."⁶ The Court held that the first way did not apply because Porchia did not point to a law that required the officers to transport him to the hospital under the circumstances. The Court pointed out that if an EMT has exercised a duty of care and determined that further intervention was unnecessary, the EMT does not have to transport the patient to the hospital. Next, the Court held that Porchia further failed to show a special duty created by a promise from the officers that he relied upon to his detriment. Porchia did not claim that the officers promised to take him the hospital.

The affirmative harm exception

Porchia also argued that the affirmative harm exception applies to his case because Massa and Pavelka refused him transport after learning about his socioeconomic status. He alleged that they took affirmative steps by taking him off the stretcher. The Court stated that in order to invoke the affirmative harm exception, Porchia must have alleged facts to demonstrate that Massa and Pavelka created a situation that led directly to Porchia's harm and that they "actively

² Dezzani v. Kern & Assocs., Ltd., 134 Nev. 61, 64 (2018).

³ See Bruttomesso v. Las Vegas Metro. Police Dep't, 95 Nev. 151, 153 (1979); Scott v. Dep't of Commerce, 104 Nev. 580, 585-86 (1988).

⁴ NEV. REV. STAT. § 41.0336.

⁵ *Id.*

⁶ Coty v. Washoe Cnty., 108 Nev. 757, 760-61 n.6 (1992) (internal quotations omitted).

and continuously” brought about the harm.⁷ The Court acknowledged that they had only considered the affirmative harm exception in one other case,⁸ which did not have analogous facts to Porchia’s claim, so they looked to other jurisdictions. Comparing the facts to cases in D.C. and Utah, the Court held that the facts alleged by Porchia would establish an affirmative action by Massa and Pavelka, not an omission of action or medical misdiagnosis. Thus, they concluded that the district court erred in dismissing Porchia’s amended complaint under the public duty doctrine.

The Good Samaritan statute

Finally, Porchia claims the district court erred in its decision that the Good Samaritan statute applied because the facts alleged in his complaint demonstrate Massa’s and Pavelka’s failure to provide medical service based on his socioeconomic status and would establish gross negligence. The Good Samaritan statute, NRS 41.400(5) does not define gross negligence, but the Court has defined it as “an act or omission respecting legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care.”⁹ The Court concluded that taking Porchia’s allegations as true, the actions of the EMTs might rise to the level of gross negligence and could also amount to an aggravated act. Thus, the Court held that the district court erred in dismissing Porchia’s amended complaint under the Good Samaritan statute.

Conclusion

The Nevada Supreme Court held that the district court properly concluded that the specific duty exception to the public duty doctrine did not apply. They also held that to the extent that Porchia’s claim for negligence was based on misdiagnosis, the affirmative action exception did not apply. However, the Court held that accepting Porchia’s claims as true, the Massa and Pavelka’s refusal to transport Porchia due to his socioeconomic status would mean that the affirmative action exception to the public duty doctrine could apply. Thus, the Court affirmed the district court’s order to the extent it dismissed Porchia’s claims regarding misdiagnosis, reversed it for the claims based on socioeconomic status, and remanded for further proceedings on the surviving claims.

⁷ *Id.* at 760.

⁸ *See id.* at 758-62.

⁹ *Cornella v. Justice Ct.*, 132 Nev. 587, 594 (2016)