IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

BOBBIE RANDALL,	)	
	)	
Plaintiff,	)	
	)	**Case No. 1716-CV23213**
v.	)	**Division 2**
	)	
CITY OF LEE'S SUMMIT,	)	
	)	
Defendant.	)	

JUDGMENT/ORDER OF DISMISSAL

COMES NOW that Court on Defendant's Motion to Dismiss, filed herein October 24, 2017. After reviewing the Motion, considering the suggestions and responses, and being fully advised in the law and premises of the Motion, the Court finds the following:

On or about October 1, 2015, Defendant City of Lee's Summit were called to provide emergency medical services to Plaintiff. Petition, ¶23. Plaintiff's left leg was broken as Defendant City of Lee's Summit paramedics Casey Speer and Curtis Bahl allege they employed a technique they call the "Chicago Carry" to transport Plaintiff out of her house pursuant to this 911 call. Petition, ¶¶ 10-27. Plaintiff's injuries have caused Plaintiff to suffer severe, permanent, and progressive harm resulting in several doctor visits, causing Plaintiff to experience physical deconditioning, pain, suffering, scarring, weakness, and loss of enjoyment of life such that Plaintiff will continue to require medical treatment and therapies for these conditions for the foreseeable future. Petition, ¶¶ 19-20, 25-26.

In her petition for damages, Plaintiff alleges claims of negligence and gross negligence, wanton conduct, and carelessness against the City of Lee's Summit. Petition, ¶¶ 15-21, 22-27. Plaintiff alleges that Defendant City is a "public agency" under MO. REV. STAT. §§ 190.307 and 190.300(6), which states that "any city…which provides or has authority to provide firefighting,

law enforcement, ambulance, emergency medical, or other emergency services" may be liable for civil damages for "willful and wanton misconduct and gross negligence" in connection with the operating any such system.

In sum, Plaintiff alleges that MO. REV. STAT. § 190.307 limits the immunity granted to public entities operating an emergency medical system and their employees, and this statute provides for liability against such entities for "gross negligence." Additionally, even under MO. REV. STAT. § 537.600, sovereign immunity is inapplicable if the public entity's negligence arose from a proprietary rather than governmental function.

I. MO. REV. STAT. § 190.307

MO. REV. STAT. § 190.307 provides

> **1.** No public agency or public safety agency, nor any officer, agent or employee of any public agency, shall be liable for any civil damages as a result of any act or omission except willful and wanton misconduct or gross negligence, in connection with developing, adopting, operating or implementing any plan or system required by sections 190.300 to 190.340.
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> **2.** No person who gives emergency instructions through a system established pursuant to sections 190.300 to 190.340 to persons rendering services in an emergency at another location, nor any persons following such instructions in rendering such services, shall be liable for any civil damages as a result of issuing or following the instructions, unless issuing or following the instructions constitutes willful and wanton misconduct, or gross negligence.

The Missouri General Assembly enacted four new sections[1] relating to 911 emergency telephone services containing an emergency clause, approved by Governor John Ashcroft on June 12, 1990. The 911 Emergency Telephone Service Act provided for the operation of an emergency telephone service and allows the governing body to pay for it by levying an emergency telephone tax for the service. *See* MO. REV. STAT. § 190.305(1).

[1] MO. REV. STAT. §§ 190.305, 190.307, 190.310 and 1.

Here, Plaintiff alleges gross negligence by paramedics Casey Speer and Curtis Bahl in using an improper lift to move the Plaintiff, failing to use the proper lift and/or carrying techniques to move a patient injured as Plaintiff was injured, failing to train emergency personnel on the proper lift procedures, failing to provide and/or have in place the appropriate policies, procedures and/or protocols that would have led to avoiding injury to Plaintiff, failing to provide and/or have in place the proper training, education, instruction, and or guidance that would have led to avoiding injury to Plaintiff, and failing to provide care to Plaintiff in such a way as to avoid fracturing her bones.

However, MO. REV. STAT. § 190.307 does not apply to Plaintiff's allegations. The statute applies to the creation or operation of an emergency 911 system. None of the acts alleged involve a 911 operator or dispatcher of the Defendant giving emergency instructions through the 911 emergency system. *See* MO. REV. STAT. § 190.307(2). Additionally, the acts alleged in the Petition are not connected with developing, adopting, operating or implementing a 911 emergency telephone service. *See* MO. REV. STAT. § 190.307(1).

Plaintiff's reliance on *State ex rel. Golden v. Crawford,* is inapposite to Plaintiff's allegations. 165 SW.3d 147 (Mo. 2005). In *Golden,* the Relator, Diana Golden, was working as a 911 operator for the City of Joplin and a wrongful death suit was levied against her for her alleged negligence in handling of a 911 dispatched call. *See id* at 148. The Missouri Supreme Court held that the legislature intended for the statutory immunity of MO. REV. STAT. § 190.307 to supersede the common law official immunity doctrine for the enumerated individuals and agencies. *See id* at 149. The statute shields entities with a qualified immunity allowing civil liability only in instances where gross negligence can be established. *Id.*

The alleged gross negligence acts in Plaintiff's Petition involve the two paramedics who were dispatched through the system but whose alleged acts against the Plaintiff were not caused by the 911 emergency telephone service (911 operator or dispatcher). Rather, these acts are alleged to have occurred by the subsequent acts of the two paramedics. To interpret this statute in the way Plaintiff suggests would apply this statute to any negligent act committed after a 911 dispatch. Such interpretation expands the statute's reach and flies in the face of the plain, ordinary meaning of the statute and are therefore not actionable under MO. REV. STAT. § 190.307.

Plaintiff additionally alleges that Defendants failed to provide necessary information to paramedics through its 911 ambulance emergency dispatch system and/or failed to act on or direct its paramedics to act on necessary information through its 911 ambulance emergency dispatch system. This particular allegation is actionable under MO. REV. STAT. § 190.307(1). As a result, this alleged omission by the emergency dispatch system for gross negligence in operating the 911 emergency service may proceed under the statute. However, in review of the Petition, allegations regarding the 911 dispatcher factually provide only that "[o]n information and belief, Plaintiff's daughter told Defendant City's 911 emergency dispatch that they could not lift or get Plaintiff Randall back into her bed from the floor." Petition, ¶ 13. Plaintiff then goes on to take the one factual allegation and further allege in her Petition that Defendant breached a duty of care to her through the gross negligence of failing to provide necessary information to paramedics through its 911 ambulance emergency dispatch system and/or failing to act on or direct its paramedics to act on necessary information through its 911 ambulance emergency dispatch system. Petition, ¶ 31(g). While vague, Plaintiff does state a cause of action actionable under MO. REV. STAT. § 190.307 and may proceed on her allegations as to the gross negligence of the 911 operation dispatch.

II. Sovereign Immunity

Now codified, sovereign or governmental tort immunity has long been recognized in Missouri common law and its effect of insulating the government from suit and. MO. REV. STAT. § 537.600. Under sovereign immunity, public entities are immune from suit for their negligent acts unless an express waiver exists. § 537.600.1. Absent an express waiver, sovereign tort immunity is only statutorily excepted in two limited circumstances. *See* MO. REV. STAT. § 537.600.1(1) & (2). These exceptions to sovereign immunity are known respectively as the "motor vehicle exception" and the "dangerous condition exception." *Kraus v. Hy-Vee, Inc.*, 147 S.W.3d 907, 914 (Mo. App. 2004). To succeed under the dangerous condition exception, a Plaintiff must prove: (1) a dangerous condition of the property; (2) injuries directly resulted from the dangerous condition; (3) the dangerous condition created a reasonably foreseeable risk of harm of kind which was incurred; and (4) that a public employee negligently created the condition or that the public entity had actual or constructive knowledge of it. *Alexander v. State*; 756 S.W.2d 539, 541 (Mo. 1988).

Municipal corporations are "public entities" entitled to sovereign immunity within the meaning of § 537.600. However, unlike state entities which receive full sovereign immunity, municipalities are entitled to sovereign immunity only when engaged in "governmental" functions, but not "proprietary" functions. *Southers v. City of Farmington*, 263 S.W.3d 603, 609 (Mo. banc 2008). Proprietary functions are those "performed for the special benefit or profit of the municipality acting as a corporate entity" while governmental functions are those "performed for the common good of all." *Jungerman v. City of Raytown*, 925 S.W.2d 202, 204 (Mo. banc 1996). In determining whether an activity is governmental or proprietary, the general nature of the activity

is looked at. *Richardson v. City of St. Louis*, 293 S.W.3d 133, 137 (Mo. App. 2009). Operation of a city-owned emergency medical service is a governmental function. *Id.* at 138.

While Plaintiff concedes that her cause of action does not stem from a dangerous condition or motor vehicle exception, she argues that Defendant City of Lee's Summit is not protected by MO. REV. STAT. § 537.600's general sovereign immunity doctrine because the City's negligence and gross negligence arose from a proprietary rather than governmental function. However, as established in *Richardson*, emergency medical services and actions taken by EMT's fall under the category of a "government" function, rather than a proprietary function. As such and because § 190.307 does not apply to cover things like patient care or acts outside the operation of the 911 system, dismissal on the basis of sovereign immunity is appropriate as Plaintiff fails to establish any recognized exception to the sovereign immunity doctrine.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss is hereby **GRANTED** as to Petition ¶¶ 31(a)-31(f) and **DENIED** as to Petition ¶ 31(g).

IT IS FURTHER ORDERED that the Court certifies this matter for appeal under Mo. Sup. Ct. R. 74.01(b) as there is no just reason for delay in appealing this Court's Judgment and that issue should be appealed immediately under this rule.

IT IS SO ORDERED.

March 14, 2018
Date

Kenneth R. Garrett III
JUDGE KENNETH R. GARRETT, III

I certify a copy of the above was sent this day to all parties of record via the e-Filing system:

Mary Kate Bird, Law Clerk, The Honorable Kenneth R. Garrett, III, Division 2