

JARI ALMONTE and YAHAIRA
ALMANZAR, individually and as
parents and natural guardians of Jeremy
Almonte, an infant

Plaintiffs-Appellants,

v.

TOWNSHIP OF UNION;
TOWNSHIP OF UNION
FIRE DEPARTMENT;
TOWNSHIP OF UNION
VOLUNTEER AMBULANCE
SQUAD;
ATLANTIC AMBULANCE
CORPORATION;
UNION EMERGENCY MEDICAL
UNIT; DANIEL PERNELL;
DENYEL CUSIMANO;
R. IUNGERMAN;
"JOHN" BIEDRZYCKI;
NITI SHARMA, M.D.;
OVERLOOK MEDICAL CENTER;
"JOHN DOE" Nos. 1-20 (said names
being fictitious) and "ABC
COMPANY" Nos. 1-20 (said names
being fictitious),

Defendants-Respondents.

SUPREME COURT OF NEW JERSEY
DOCKET NO.: 090169

SUPERIOR COURT OF NEW
JERSEY APPELLATE DIVISION
DOCKET NO.: A-2968-22

CIVIL ACTION

ON PETITION FROM THE FINAL
DECISION OF THE SUPERIOR
COURT OF NEW JERSEY,
APPELLATE DIVISION,
ARGUED: OCTOBER 22, 2024
DECIDED: NOVEMBER 18, 2024

SAT BELOW:

HON. MORRIS SMITH, J.A.D.
HON. CHRISTINE VANEK, J.A.D.

AMENDED PETITION FOR CERTIFICATION

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STATEMENT OF THE MATTER INVOLVED

A. Introduction.

This Petition involves the interpretation of N.J.S.A. 26:2k-14 which grants immunity from liability for civil damages to a paramedic who causes harm while providing advanced life support (ALS) services “in good faith” and “in accordance with this act.”

The underlying suit seeks to recover damages for personal injuries sustained by infant plaintiff, Jeremy Almonte, on August 18, 2012, during Jeremy’s transport to University Hospital. Jeremy, two years old at the time, fell at home, struck his head and began to have seizures and difficulty breathing. His mother called 9-1-1 at 2110 (9:10 pm). Paramedics Pernell and Denyel Cusimano, employees of Atlantic Ambulance Corp., responded to this call. They arrived at the house at 2110 and initially called their Medical Command for instructions at 2117. They left for the hospital at 2123. At 2130, they contacted Medical Command again, requested and received permission from their Medical Command physician to intubate Jeremy to protect his airway. That effort failed by 2135. They arrived at the hospital at 2137 as Jeremy’s breathing was being assisted manually with an ambu-bag. Upon arrival, rather than continue to “bag” Jeremy and bring him directly into the ER about 50 feet away, they concluded, without any input from Medical Command, that it would be better, and quicker, to intubate him before transferring him. They then delayed his

transfer into the ER to try again to intubate him. At 2145, on their third attempt, believing the intubation tube was finally in his airway, they got him out of the ambulance and at 2147, transferred him to the care of the ER personnel. Unfortunately, as they were doing that, he had a cardiac arrest and lost all oxygen for nine minutes, causing a serious hypoxic brain injury.

Suit was filed alleging the paramedics were both negligent and grossly negligent for intentionally delaying Jeremy's delivery into the ER to intubate him, despite specific regulations prohibiting them from doing so, for failing to maintain communication as required by statute with their Medical Command physician, the only person authorized to change Jeremy's course of treatment before he reached the ER, and for acting outside the scope of their practice as paramedics. (Pa37)

After the exchange of expert reports and depositions, plaintiffs moved to strike the affirmative defenses of paramedic immunity (Pa181) and charitable immunity. Defendants moved for summary judgment seeking dismissal of the complaint on those same grounds. The Law Division judge found defendants had acted in subjective good faith when rendering their ALS services to Jeremy, granted summary judgment based on paramedic immunity, denied plaintiffs' motions on the affirmative defenses, and dismissed their complaint. (Pa20) Plaintiffs appealed and after oral argument on October 22, 2024, the Appellate Division entered an order on November 18, 2024, affirming the order granting summary judgment. Plaintiffs filed

a Notice of Petition on November 25, 2024. On this petition, plaintiffs contend the Appellate Division erred in finding that these paramedics met *either* of the two statutory requirements for immunity—that the ALS service that caused harm had been rendered “in good faith” and that it had been rendered “in accordance with the act.” They also claim the Appellate Division erred in affirming the Law Division’s refusal to consider the defendants’ numerous violations of the regulations governing paramedic practice on the issue of immunity and separately as cumulative evidence amounting to gross negligence.

B. N.J.S.A. 26: 2K-14, THE IMMUNITY PROVISION OF THE EMERGENCY MEDICAL SERVICES ACT (EMSA), IS UNCLEAR AS WRITTEN.

N.J.S.A. 26: 2K-14 sets forth a two-prong test for paramedic immunity: First, the paramedic must establish that the services which caused harm were ALS services rendered “in good faith” and second, that they were rendered “in accordance with this act”. However, the statute does not define “good faith”, nor does it explain what is meant by “in accordance with this act.” This case raises two important issues that should be decided by the Supreme Court.

i) What constitutes “Good Faith” for the purposes of immunity under N.J.S.A. 26:2k-14 of the Emergency Medical Services Act?

“In good faith” is a phrase commonly found but not defined in many New Jersey statutes granting immunity to emergency responders. New Jersey case law initially held that good faith under N.J.S.A. 59 :9-1 et seq. , the Tort Claims Act

(TCA)) may be established by proof of “subjective good faith”, defined as “honesty of purpose and integrity of conduct without knowledge, either actual or sufficient to demand inquiry, that the conduct is wrong.” *Marley v. Borough of Palmyra*, 193 N.J. Super. 271 (Law Div.1983). In its 1991 decision in *Bombace v. City of Newark*, 125 N.J. 361 (1991), the Supreme Court expanded immunity under the TCA, so that it was also available so long as the defendant’s conduct was objectively reasonable. The *Bombace* decision left subjective good faith in place as an alternative basis for immunity. Thus, after *Bombace*, negligent conduct that was *either* objectively reasonable *or* rendered in subjective good faith, was entitled to immunity. This approach is in keeping with the declared intent of the legislature that under the TCA, immunity is the rule, and liability the exception. However, the EMSA is an act in derogation of the common law; its immunity must be construed narrowly so as to effect the least change in the common law. The Appellate Division ruling approving subjective good faith as a viable basis for immunity under N.J.S.A. 26:2k-14 thus expanded the availability of immunity, contrary to Supreme Court decisions in *Velazquez v. Jiminez*, 172 N.J. 240 (2002) and *Marshal v. Klebanov*, 188 N.J. 23, 37 (2006) and should be reversed.

ii) What did the Legislature mean when it granted immunity for injury caused by ALS services rendered “in accordance with this act”?

The Emergency Medical Services Act (EMSA) was enacted to set up

a system to deliver limited medical care outside a hospital setting using certified paramedics to carry out the orders of remote emergency medicine physicians. As originally enacted, EMSA allowed paramedics to perform just six procedures, all enumerated in the statute, and provided immunity for injuries caused while performing these procedures in good faith. There was no requirement that paramedics render those services "in accordance with the act" to receive immunity. In 1984, the statute was amended to expand the list of approved Advanced Life Support (ALS) procedures to ten, all enumerated in the statute, plus "other techniques and procedures authorized in writing by the commissioner" (N.J.S.A. 26:2K-7(a)). The amendment also empowered the Commissioner of Health to promulgate such regulations as he deemed appropriate to effectuate the purposes of the Act (N.J.S.A. 26:2K-17). These regulations are found at N.J.A.C. 8:41-1 et seq.

The amended statute, together with the regulations effectuating it, thus constitutes the full legislative scheme governing paramedicine. Under that scheme, after assessing the patient at the scene, paramedics must contact their Medical Command (an emergency medicine physician or nurse) to report their assessment and receive orders. Prior to that contact, paramedics may only administer treatment as outlined in the "Standing Orders" set forth in the regulations. Once direct and specific orders are received from Medical Command, the paramedics must carry out those orders and may not change them or substitute their own judgment about what

to do for the patient, unless communication with Medical Command fails. N.J.A.C. 8:41-9.6(f). This scheme specifically left all decision making in the hands of doctors.

The Law Division judge and the Appellate Division panel found the wording of N.J.S.A. 26:2k-14, unambiguous, and because it did not specifically mention the regulations, declined to consider evidence of multiple regulatory violations, as outlined by plaintiff's expert, Kevn Brown, M.D. on the issue of immunity. This was error because individual sections of a statute should not be read in isolation but in relation to the *entire* legislative scheme to provide a coherent interpretation. Throughout this litigation, plaintiffs have argued that the second requirement for immunity, acting "in accordance with this act", requires compliance not only with directives spelled out *in the statute*, such as maintaining direct voice communication with medical command, but *also* those contained in the Administrative Code regulations governing paramedicine which are part and parcel of the legislative scheme for the delivery of emergency medical services and should not have been ignored by the court when evaluating the conduct of these paramedics. The Supreme Court should clarify whether paramedic immunity may be granted based on compliance with the statute, or on compliance with the statute and its related regulations.

THE PROCEEDINGS BELOW

Suit was filed on November 21, 2018 by Jari Almonte and Yahaira Almanzar, as parents and natural guardians of Jeremy Almonte, in Superior Court, Union County seeking damages for the severe and permanent personal injuries sustained by their son Jeremy on August 18, 2012. Named as defendants were Union Township, the Union Township Fire Department, the Union Township Volunteer Ambulance Squad, Atlantic Ambulance Corporation; Union Emergency Medical Squad and John Doe defendants. On March 14, 2019, a stipulation of dismissal was filed as to all defendants except Atlantic Ambulance Corp. which answered on April 1, 2019. Pursuant to leave granted, plaintiffs filed an amended complaint on March 20, 2020, adding as defendants the individual BLS responders R. Iungerman and "John" Biedrzycki, the Atlantic Ambulance Corporation, paramedics David Pernell (incorrectly identified as Daniel Pernell) and Denyel Cusimano, Niti Sharma, M.D. the medical command physician on duty on the night in question, and her employer, AHS/Overlook Hospital. After all defendants answered and discovery ended, stipulations of dismissal with prejudice were filed as to all defendants except David Pernell, Denyel Cusimano, Atlantic Ambulance Corp. and AHS/Overlook Hospital. On February 23, 2023, plaintiffs filed motions to strike the paramedics' affirmative defenses of immunity under N.J.S.A. 26:2k-14, and charitable immunity. Defendants filed motions for summary judgment based on those same statutes. Oral

argument was held on March 31 and April 21, 2023. Finding no question of fact that these defendants had acted in subjective good faith when rendering ALS services to Jeremy, the Law Division judge granted the defense motion for summary judgment on paramedic immunity, denied plaintiffs' motions to strike the affirmative defenses, and dismissed plaintiffs' complaint. It did not address the defense motions based on charitable immunity. Plaintiffs filed their Notice of Appeal on June 2, 2023. Oral argument on the appeal was heard on October 22, 2024. On November 18, 2024, the Appellate Division entered an order affirming the order granting summary judgment. Plaintiffs filed their Notice of Petition on November 25, 2024.

QUESTIONS PRESENTED

- A. Did the Appellate Division err when it decided that the plain language of N.J.S.A. 26:2k-14 "favored a subjective definition rather than one reliant on "objective reasonableness"? What is the proper test for immunity under the Emergency Medical Services Act: subjective good faith or objectively reasonable conduct or both?
- B. Did the Appellate Division err in deciding that these paramedics met the second requirement for immunity under N.J.S.A. 26:2k- 14 – that they acted "in accordance with the act"-- when they did not communicate with their Medical Command physician for 15 minutes while their patient deteriorated, including over eight minutes after arriving at the hospital ER parking lot, and then decided on their own without Medical Command input that it was too risky to transport Jeremy into the hospital without first being intubated?
- C. Did the Appellate Division err by declining to consider 1) the detailed and extensive body of regulations that govern the practice of paramedicine, and 2) the opinions of plaintiff's

expert showing how those regulations were violated, when they were evaluating whether a paramedic has “acted in accordance with the act” for purposes of immunity from civil liability?

- D. Was it error to dismiss plaintiffs’ claim of gross negligence when there was evidence of multiple violations of numerous administrative regulations governing the practice of paramedicine, which cumulatively could support such a claim, pursuant to *Steinberg v. Sahara Sam’s Oasis, LLC* 226 N.J. 344 (2016)?

POINT I

THE APPELLATE DIVISION ERRED IN APPROVING THE USE OF SUBJECTIVE GOOD FAITH WHEN DETERMINING ENTITLEMENT TO IMMUNITY UNDER N.J.S.A. 26:2K-14.

In his Statement of Reasons, the Law Division judge accepted without question the paramedics’ testimony that “were concerned about Jeremy’s condition and felt they needed to stabilize him prior to transport from the ambulance to the hospital” (Pa37) and, deciding their testimony conclusively established subjective good faith under N.J.S.A. 26:2k-14, dismissed the complaint. The Appellate Division agreed and affirmed, holding that subjective good faith was an appropriate test for immunity under N.J.S.A. 26:2k-14. (Pa19) As noted above, this was error because of the fundamental difference between the Tort Claims Act and statutes providing immunity to emergency medical providers because the statutes serve very different legislative purposes.

In 1991 in *Bombace v. City of Newark*, 125 N.J. 361, 372–73, 593 A.2d 335 (1991), the Supreme Court expanded Tort Claims Act immunity to include objective

good faith, which required proof that the defendant's conduct, even if negligent, was objectively reasonable. This dual approach for use in Tort Claims Act cases was followed in *Fielder v Stonack*, 141 N.J. 101, 661 A. 2d 231 (1995) and *Canico v. Hurtado*, 144 N.J. 361, 676 A. 2d. 1083 (1996). In *Canico*, the Court explained why:

As between the public policy favoring the compensation of injured parties and that favoring vigorous law enforcement, the Legislature has chosen enforcement of the law. *Id.* at 117, 661 A.2d 231. **That choice is consistent with the underlying legislative purpose of establishing immunity as the general rule and liability as the exception. *Bombace v. City of Newark*, 125 N.J. 361, 372–73, 593 A.2d 335 (1991).** (emphasis supplied)

As a result, under the TCA, virtually all acts short of intentional harm can be immunized, if the defendant can show he acted with subjective good faith. Such an interpretation is appropriate under the Tort Claims Act, where immunity is the rule, not the exception.

Since 1987, courts considering immunity under statutes *other* than the TCA, including the EMSA, have followed the lead of *Bombace*, *Fielder* and *Canico*, *supra*, and granted immunity on the basis of *either* subjective or objective good faith. See *Frields v. St. Joseph's Hospital and Medical Center*, 305 N.J. Super. 244, 702 A.2d 353 (App. Div., 1997) and *Murray v. Plainfield Rescue Squad*, 418 N.J. Super. 574, 15 A. 3d 30 (App. Div. 2011) rev'd. Those cases were wrongly decided.

Immunity provisions in statutes *other* than in the TCA are in derogation of the right of citizens under common law allowing redress for wrongful conduct and as such they must be *narrowly* construed. See *Velazquez v. Jiminez* 172 N.J. 240, 257 (2002) in which the Supreme Court adopted a narrow interpretation of the immunity provisions in the Good Samaritan Act, N.J.S.A.) because that interpretation:

“does the least violence to our citizens' common-law right to institute tort actions against those whose negligence injures them. It thus conforms to our rules regarding the interpretation of statutes in derogation of the common law and statutes granting immunity. Moreover, it gives full throat to the goals underlying the legislation: to encourage the rendering of medical care to those who would not otherwise receive it, by physicians who come upon such patients by chance, without the benefit of the expertise, assistance, equipment or sanitation that is available in a hospital or medical setting.

The Appellate Division here erred in approving the use of subjective good faith as a benchmark for granting immunity under the EMSA without reconciling its decision with the Supreme Court holdings in *Velazquez v. Jiminez* 172 N.J. 240, 257 (2002) or *Marshal v. Klebanov* 188 N.J. 23, 37 (2006). Except for cases under the TCA, allowing two pathways to immunity results in much broader immunity than necessary to effectuate the purposes of the statute, in part because subjective immunity is not based on facts but on proof of intent and motive, elements difficult to challenge or disprove. In its 1984 amendment of the EMSA,

the legislature indicated it wanted to make immunity *more* difficult to obtain, by adding a second requirement for it. Those courts that made it easier to obtain immunity, by adding a a second path to it, erred. The Supreme Court should confirm that subjective good faith is limited to TCA cases and under the EMSA, immunity depends solely on proof of objectively reasonable conduct.

POINT II

THE APPELLATE DIVISION ERRED IN FINDING THESE PARAMEDICS RENDERED SERVICES “IN ACCORDANCE WITH THE ACT”.

a) The paramedics failed to comply with each requirement of the statute itself.

Because an immunity statute must be strictly construed, a defendant seeking immunity must comply with each and every statutory requirement. Here there was no proof of that the paramedics performed their services “in accordance with this act.” In addition to training and certification requirements, Section 2k-10 imposes an *operational* requirement: paramedics are not allowed to provide any ALS service unless they “maintain direct voice communication with their Medical Command physician and are taking orders from him or her.” These paramedics chose to ignore their Medical Command physician for 17 minutes at the height of a crisis. Further, because they never called back, they never got an order from Medical Command allowing them to delay Jeremy’s delivery into the ER first just to intubate him; they did that on their own. Putting aside whether 17 minutes of radio silence can

realistically be considered “maintaining direct voice communication”, the Appellate Division erroneously concluded that plaintiff’s expert, Dr. Kevin Brown had agreed that “direct voice communication does not mean a constant, live stream of communication”, and concluded he found the 17 minutes of radio silence here was acceptable. (Pa22) There is no such concession in Dr. Brown’s report or deposition testimony. On the contrary, Dr. Brown’s testified at his deposition that while being on speakerphone at all times was not required, communication was mandatory when the patient’s condition changed or when intubation was proving difficult. Thus, at the very least, a question of fact was presented as to whether 17 minutes of radio silence at that crucial time met the requirements of this statute. Therefore, it was error to grant summary judgment.

b) The paramedics failed to comply with the regulations promulgated to effectuate the statute.

Defendants rely on the absence of a reference to the regulations in the immunity section as evidence of a legislative intent that regulations must be ignored when evaluating a request for immunity under this statute. noting that N.J.S.A. 26:2k-9 does refer to compliance with both the act and the regulations in the context of paramedic certification. However, a statute's plain language “should not be read in isolation, but in relation to other constituent parts so that a sensible meaning may be given to the whole of the legislative scheme.” *Wilson ex rel. Manzano v. City of Jersey City*, 9 N.J. 558, 572, 39 A.3d 177 (2012). “[W]hen all is said and done,

the matter of statutory construction ... will not justly turn on literalisms, technisms or the so-called formal rules of interpretation; it will justly turn on the breadth of the objectives of the legislation and the commonsense of the situation.” *J.H. v. R&M Tagliareni, LLC*, 454 N.J. Super. 174, 187, 184 A.3d 922 (2018) (quoting *Jersey City Chapter, P.O.P.A. v. Jersey City*, 55 N.J. 86, 100, 259 A.2d 698 (1969)). Thus, “where a literal interpretation would create a manifestly absurd result, contrary to public policy, the spirit of the law should control.” *Hubbard v. Reed*, 168 N.J. 387, 392, 774 A.2d 495 (2001) (quoting *Turner v. First Union Nat’l Bank*, 162 N.J. 75, 84, 740 A.2d 1081 (1999)); see also *Gallagher v. Irvington*, 190 N.J. Super. 394, 397, 463 A.2d 969 (App. Div. 1983) (“[a]n absurd result must be avoided in interpreting a statute.”). The overall purpose of this statute is to medical care outside a hospital setting through the use of trained paramedics instead of physicians. It was error to interpret N.J.S.A. 26:2k-14 without referring to that purpose. Failing to include violations of the regulation when considering immunity inherently lessens the importance of the regulations in the practice of paramedicine, by making them less relevant, resulting in immunity being easier to obtain. Before the 1984 revision, immunity was available based solely on a paramedic’s good faith in performing an ALS service. By authorizing the promulgation of detailed regulations telling paramedics how to perform their tasks, and then adding a second requirement that the service be rendered “in accordance with this act” to be immune,

the legislature signaled its intent to 1) increase control over the practice of paramedicine for the protection of the patients and 2) reduce the availability of immunity when a paramedic fails to practice as required. If paramedics can be immunized despite their violation of numerous regulations, they will be incentivized to *ignore* those regulations and to do whatever *they* feel is appropriate for the patient at any given time, without obtaining Medical Command's input. This is not what the legislature intended and therefore, it was error to grant immunity without measuring the paramedics conduct against those regulations.

POINT III

THE DEFENDANTS' MULTIPLE VIOLATIONS OF THE REGULATIONS SHOULD HAVE BEEN CONSIDERED ON THE GROSS NEGLIGENCE CLAIM.

The Appellate Division found no evidence that could be characterized as a failure to exercise slight care or indifference and affirmed the dismissal of the claim for gross negligence. (Pa22-24). In its opinion, the Appellate Division listed the items supporting its decision (PA24) but did not consider the multiple regulatory violations listed by plaintiff's expert in his report on the issue of gross negligence. (Pa24) Because the regulations governing paramedicine are intended to protect the safety of the public, those regulations, specifically N.J.A.C. 8:41-8.5 for pediatric endotracheal intubation, were relevant. That regulation states in part:

(a) The standing orders in (b) below for endotracheal intubation are authorized in the event that a pediatric patient presents:

1. In respiratory arrest;
2. In respiratory failure with associated inadequate spontaneous ventilatory volume; and/or
3. Unconscious with absent protective gag reflex.

(b) Advanced interventions shall only be attempted after all BLS interventions have been instituted, at which point the patient may be intubated by the orotracheal route. Nasotracheal intubation shall not be performed on pediatric patients.

1. It is imperative that ALS crewmembers initiate contact with the medical command physician as soon as possible after the above treatment has been rendered. These procedures shall not delay the transportation of a patient in the event of a difficult intubation, nor shall contact with the medical command physician be delayed by a difficult intubation.” (emphasis supplied)

See also N.J.A.C. 8:41-11.6, which states in pertinent part:

(c) Except as provided for in the event of communications failure or standing orders authorized by this chapter, no ALS crewmember shall perform any skill or procedure, administer any pharmaceutical agent or engage in any other activity patently within his or her approved scope of practice unless that person has received the direct and specific order of a physician.

(e) ALS crewmembers shall provide the medical command physician with an appropriate report of patient assessment, patient condition, patient updates after treatment has been rendered and any other information required by the physician.

Heeding these regulations would have resulted in Jeremy being brought into the ER immediately or a consultation with Medical Command about what to do.

Therefore, it was for the jury to weigh the paramedics' conduct against them and determine if their actions amounted to gross negligence. *Steinberg v. Sahara Sam's Oasis, LLC* 226 N.J. 344, 142 A.3d 742(2016).

THE ERRORS COMPLAINED OF

The Appellate Division erred when it applied an inappropriate test to decide whether these paramedics were entitled to immunity. This panel, like those in *Murray* and *Frields, supra*, mistakenly followed the lead of courts deciding immunity under the Tort Claims Act, where immunity is the rule, not the exception. The EMSA must be construed *narrowly*, so as to result in the *least* change in the common law, not the most. The Appellate Division thus failed to reconcile its decision with *Velazquez v. Jiminez, supra*, where this Court said at page:

Further, a statute enacted in derogation of the common law must be construed narrowly. *Oswin v. Shaw*, 129 N.J. 290, 310, 609 A.2d 415 (1992). Where a statute alters common law, the most circumscribed reading of it that achieves its purpose is the one that should be adopted. Doubt about its meaning should be resolved in favor of the effect which makes the least rather than the most change in the common law. The rule has been declared by the United States Supreme Court, as follows: "No statute is to be construed as altering the common law, farther than its words import. It is not to be construed as making any innovation upon the common law which it does not fairly express."

Further, allowing the use of subjective good faith improperly expanded immunity far beyond the Legislature's intent. The Appellate Division also erred in failing to

consider the state regulations on the issue of immunity and, independently, on the issue of gross negligence.

REASONS FOR GRANTING CERTIFICATION

New Jersey Court Rule 2:12-4 allows certification only if an appeal presents a question of general public importance which has not been but should be settled by the Supreme Court or in other matters if the interest of justice requires. Here several panels of the Appellate Division, including this one, have adopted a definition for good faith that expansively interprets an immunity statute contrary to the decisions of this Court in *Velazquez* and *Marshal*, supra. They failed to appreciate that **it is inconsistent to use a definition intended to establish immunity as the rule, not the exception, when reviewing a statute under which immunity must be the exception, not the rule.** The correct standard should be decided by the Supreme Court.

The issue raised here has not been considered by those earlier courts. None looked at the overall purpose of the two statutes, and none recognized that N.J.S.A. 26:2k-14 had to be construed narrowly. Because the objectives of EMSA can be attained by immunizing objectively reasonable but negligent conduct, there is no reason to allow subjective good faith to play any role. Immunizing objectively unreasonable conduct does not advance the EMSA goal of providing safe emergency medical care in the field. Similarly, the Supreme Court should also

decide whether the regulations governing paramedic conduct should be considered when evaluating their conduct for the purposes of awarding them immunity from civil liability which involves statutory interpretation, and on whether their conduct amounted to gross negligence. This is an issue likely to recur in the future.

COMMENTS ON THE APPELLATE DIVISION OPINION

The Appellate Division, like the motion judge, was impressed with the actions taken by the paramedics to help Jeremy after they arrived at the University Hospital ER parking lot without seeing that arrival, their choices were limited to bringing him into the ER or calling Medical Command for instructions if they felt something other than that should be done, and that the need for their “heroics” only came about because the paramedics changed their primary task from getting Jeremy to the hospital to getting him intubated first. Only when communications with Medical Command fail and the patient’s life is hanging in the balance may a paramedic use their discretion and do what they think is best for the patient. N.J.S.A. 26:2K-11. That was not the situation here.

Immunity should not have been granted for actions that ignore the scheme of controls over paramedics set up by the legislature. Finally, loss of subjective good faith immunity will not inhibit a paramedic from doing his job properly. Rather, it will deter him from doing it improperly. He will still have the comfort of knowing he can be immune *even if negligent*, if he acted in an objectively

reasonable manner.

CONCLUSION

This Court should clarify the standard to be used in cases involving immunity for emergency medical providers. It should also decide whether the regulations enacted as part of the EMSA should be considered when evaluating a claim for immunity, and whether cumulative violations of those regulations should be considered as evidence of gross negligence, even if irrelevant to immunity. After review of those issues, it is respectfully submitted that this Court should reverse the order granting summary judgment dismissing plaintiffs' complaint.

SULLIVAN PAPAIN BLOCK
MCMANUS COFFINAS & CANANVO

BY: Hugh M. Turk
HUGH M. TURK, ESQ.

DATED: December 12, 2024

JARI ALMONTE and YAHAIRA
ALMANZAR, individually and as
parents and natural guardians of Jeremy
Almonte, an infant

Plaintiffs-Appellants,

v.

TOWNSHIP OF UNION;
TOWNSHIP OF UNION
FIRE DEPARTMENT;
TOWNSHIP OF UNION
VOLUNTEER AMBULANCE
SQUAD;
ATLANTIC AMBULANCE
CORPORATION;
UNION EMERGENCY MEDICAL
UNIT; DANIEL PERNELL;
DENYEL CUSIMANO;
R. IUNGERMAN;
"JOHN" BIEDRZYCKI;
NITI SHARMA, M.D.;
OVERLOOK MEDICAL CENTER;
"JOHN DOE" Nos. 1-20 (said names
being fictitious) and "ABC
COMPANY" Nos. 1-20 (said names
being fictitious),

Defendants-Respondents

SUPREME COURT OF NEW JERSEY
DOCKET NO.: 090169

SUPERIOR COURT OF NEW
JERSEY APPELLATE DIVISION
DOCKET NO.: A-2968-22

CIVIL ACTION

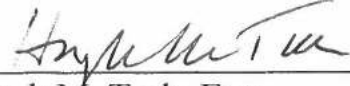
ON PETITION FROM THE FINAL
DECISION OF THE SUPERIOR
COURT OF NEW JERSEY,
APPELLATE DIVISION,
ARGUED: OCTOBER 22, 2024
DECIDED: NOVEMBER 18, 2024

SAT BELOW:
HON. MORRIS SMITH, J.A.D.
HON. CHRISTINE VANEK, J.A.D.

**CERTIFICATION OF GOOD FAITH
PURSUANT TO RULE 2:12-7A**

HUGH M. TURK, an attorney at law of New Jersey, hereby certifies under
penalty of perjury as follows:

I hereby certify that the Amended Petition for Certification filed herewith
represents a substantial question and is filed in good faith and not for the purpose of
delay.



Hugh M. Turk, Esq.

DATED: January 8, 2025