

Winter, 2015

GOOD SAMARITAN STATUTES

[Ref. Medical Malpractice, Para. 3.07]

A tractor trailer driver delivered an empty trailer to a contractor's loading dock. The driver then hooked the tractor to another trailer and drove it forward, away from the loading platform, so he could close the trailer door. When he grabbed the trailer to pull himself up onto the loading dock he lost his footing and his leg slipped down between the loading dock and the trailer and he became stuck. There was no one to help him at the loading dock so he began screaming for help. A passerby heard his screams and offered to help. The truck driver told the man to get in the truck and pull it forward. When the man got in the truck, however, he released the air brake which caused the truck to roll backward. The truck and trailer rolled back against the driver's leg, crushing it. Although an ambulance arrived on the scene and the driver was immediately transported to a hospital, his leg had to be amputated. The driver brought a negligence action against the good samaritan who had tried, unsuccessfully, to help.

Every state has a Good Samaritan Statute that provides immunity from liability to those who help at an accident scene. The accident described above occurred in Ohio and the Ohio Good Samaritan Statute, Ohio Rev. Code § 2305.23, states:

No person shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton misconduct.

The plaintiff argued that the statute did not apply in this case because:

- ◆ there was no emergency
- ◆ the statute applies only to the rendering of emergency medical treatment
- ◆ the defendant committed acts of willful or wanton misconduct

Should the plaintiff prevail against the good samaritan?

In *Carter v. Reese*, 2014 Ohio App. LEXIS 5225 (Ohio App. 2014), an Ohio appeals court interpreted the statute to apply to any kind of emergency aid, not just medical treatment, and found that this was just such a situation.

As to whether there was an emergency, the court pointed out that the word “emergency” is not defined in the statute. It looked to the dictionary for guidance and found that the common meaning of the word is “an unforeseen combination of circumstances or the resulting state that calls for immediate action.” The court concluded that because the plaintiff’s leg was pinned between his semi-truck and the loading dock and he was yelling for help, there was an emergency under the statute.

In addition, the court indicated that the statute applies to “emergency care” and is not limited to emergency *medical* care, as the plaintiff argued. The court held that the statute applies to any person who administers any kind of emergency care, medical or otherwise, at the scene of an emergency.

Finally, the court considered the plaintiff’s argument that the defendant committed willful and wanton misconduct by attempting to operate the truck without knowing how to do so. The court explained that the plaintiff had to prove more than negligence to overcome the Good Samaritan Statute’s immunity and that what the defendant did in this case did not amount to willful or wanton misconduct.

The court said:

Willful conduct has been defined as an intentional deviation from a clear duty or from a definite rule of conduct, a deliberate purpose not to discharge some duty necessary to safety, or purposefully doing wrongful acts with knowledge or appreciation of the likelihood of resulting injury.

Wanton misconduct is more than mere negligence; it is the failure to exercise any care whatsoever. Mere negligence is not converted into wanton misconduct unless the evidence establishes a disposition to perversity on the part of the tortfeasor. Such perversity must be under such conditions that the actor must be conscious that his conduct will in all probability result in injury.

The court explained there was no evidence that the defendant did anything with a purpose other than to help the plaintiff. He did not purposefully perform an act with knowledge that it would result in injury to the plaintiff. As a result, the court held that the Ohio Good Samaritan Statute applied to provide the defendant with immunity from liability.

In 38 jurisdictions, including Ohio, a Good Samaritan Statute applies broadly to anyone who renders emergency aid at an accident scene. In 13 other jurisdictions the statute protects only certain classes of medical professionals.

The precise language of the particular statute and case law that interprets it should be looked at carefully to determine in what way a Good Samaritan statute might apply. As noted above, some statutes do not apply to an ordinary passerby.

The following is a list of Good Samaritan Statutes:

Alabama	Code of Ala. § 6-5-332	Nebraska	R.R.S. Neb. § 25-21,186
Alaska	Alaska Stat. § 09.65.090	Nevada	Nev. Rev. Stat. Ann. § 41.500 and § 41.505
Arizona	A.R.S. § 32-1471	New Hampshire	R.S.A. § 508:12
Arkansas	A.C.A. § 17-95-101	New Jersey	N.J. Stat. § 2A:62A-1 and § 26:2K-29
California	Cal Health & Safety Code § 1799.102	New Mexico	N.M Stat. Ann. § 24-10-3
Colorado	C.R.S. § 13-21-108	New York	NY CLS Pub Health § 3000-a
Connecticut	Conn. Gen. Stat. § 52-557b	North Carolina	N.C. Gen. Stat. § 20-166(d) and § 90-21.14
Delaware	16 Del. C. § 6801 and § 6802	North Dakota	N.D. Cent. Code § 32-03.1-02
D.C.	D.C. Code § 7-401	Ohio	ORC Ann. § 2305.23
Florida	Fla. Stat. § 768.13	Oklahoma	76 Ok. St. § 5
Georgia	O.C.G.A. § 51-1-29	Oregon	O.R.S. § 30.800
Hawaii	HRS § 663-1.5	Pennsylvania	Pa. C.S. 42 § 8331
Idaho	Idaho Code § 5-330	Rhode Island	R.I. Gen. Laws § 9-1-27 and § 9-1-27.1
Illinois	745 ILCS 49/1-75	South Carolina	S.C. Code Ann. § 15-1-310
Indiana	Burns Ind. Code Ann. § 34-30-12-1	South Dakota	S.D. Codified Laws § 20-9-3 and § 20-9-4
Iowa	Iowa Code § 613.17	Tennessee	Tenn. Ann. Code § 63-6-218
Kansas	K.S.A. § 65-2891	Texas	Tex. Civ. Prac. & Rem. Code § 74.151 and 152
Kentucky	K.R.S. § 411.148	Utah	Utah Code Ann. § 78B-4-501
Louisiana	La. R.S. 9:2793	Vermont	12 V.S.A. § 519
Maine	14 M.R.S. § 164	Virginia	Va. Code Ann. § 8.01-225
Maryland	Md. Courts & Judicial Procedure Code Ann. § 5-603	Washington	Rev. Code Wash. § 4.24.300
Massachusetts	ALM GL ch. 112 § 12B, 12V	West Virginia	W.Va. Code § 55-7-15
Michigan	MCLS § 691.1501	Wisconsin	Wis. Stat. § 895.48
Minnesota	Minn. Stat. § 604A.01	Wyoming	Wyo. Stat. § 1-1-120
Mississippi	Miss. Code Ann. § 73-25-37		
Missouri	Mo. Rev. Stat. § 537.037		
Montana	MCA § 27-1-714		