

IN THE SUPREME COURT OF TEXAS

=====
No. 96-0123
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CITY OF AMARILLO, PETITIONER

v.

ERICA SHAE MARTIN, RESPONDENT

=====
ON APPLICATION FOR WRIT OF ERROR TO THE
COURT OF APPEALS FOR THE SEVENTH DISTRICT OF TEXAS
=====

Argued October 9, 1997

JUSTICE SPECTOR, joined by CHIEF JUSTICE PHILLIPS, dissenting.

Under what circumstances does the driver of an emergency vehicle have a duty to drive with due regard for the safety of others as required by article 6701d, section 24(e) of the Revised Civil Statutes? The majority today answers never. I dissent.

Although canons of statutory construction require us to give effect to all the words of the statute if possible, *see* TEX. GOV'T CODE § 311.021(2); *Chevron Corp. v. Redmon*, 745 S.W.2d 314, 316 (Tex. 1987), the majority frames this case as a choice between a pure negligence standard and a pure recklessness standard. There is no attempt to harmonize the apparent conflict between the “due regard” and “reckless disregard” clauses of section 24(e). Instead, the majority shields emergency vehicle drivers from liability for anything less than recklessness in order not to hamper their job performance.¹

It is possible to give effect to both clauses of section 24(e) while still protecting emergency

¹ The majority also expresses concern about subjecting the government to liability in connection with emergency services. However, § 24(e) applies not only to public employees, but also to private ambulance drivers. *See* Act of May 20, 1953, 53rd Leg., R.S., ch. 297, § 1, 1953 Tex. Gen. Laws 749, 750 (formerly codified at TEX. REV. CIV. STAT. ANN. art 6701d, § 2(d)), *repealed by* Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 24, 1995 Tex. Gen. Laws 1025, 1870-71 (current version at TEX. TRANSP. CODE § 541.201(1)) (defining “authorized emergency vehicle”). Sovereign immunity considerations cannot justify exempting these private actors from liability for negligence, which is the effect of the majority’s decision.

drivers' ability to perform their duties. I would hold that the reckless disregard standard applies to the specific activities that emergency vehicle drivers are privileged to perform under section 24(c) and the due regard standard applies to all other conduct.

The relevant subsections of section 24 in force at the time of the accident stated in full:

(b) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(c) The driver of an authorized emergency vehicle may:

1. Park or stand, irrespective of the provisions of this chapter;
2. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
3. Exceed the maximum speed limits so long as he does not endanger life or property;
4. Disregard regulations governing direction of movement or turning in specified directions.

(d) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of audible and visual signals meeting the requirements of Section 124 of this Act, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

(e) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

Act of April 19, 1971, 62nd Leg., R.S., ch. 83, § 11, 1971 Tex. Gen. Laws 722, 727-28 (formerly codified at TEX. REV. CIV. STAT. ANN. art. 6701d, § 24(b)-(e)), *repealed by* Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 24, 1995 Tex. Gen. Laws 1025, 1870-71 (current version at TEX. TRANSP. CODE §§ 546.001-.005). Former section 24(e) has subsequently been revised to read:

This chapter does not relieve the operator of an authorized emergency vehicle from:

- (1) the duty to operate the vehicle with appropriate regard for the safety of all persons; or
- (2) the consequences of reckless disregard for the safety of others.

TEX. TRANSP. CODE § 546.005. By placing the two clauses concerning the driver's standard of liability in separate subsections rather than in a single sentence, the new version of the statute makes even clearer the Legislature's intent to give independent effect to each clause.

The quoted provisions of section 24 as a whole suggest a way to give effect to both the due

regard and reckless disregard clauses of section 24(e). Subsection (b) grants emergency operators “the privileges set forth in this section,” which are “subject to the conditions herein stated.” Subsection (c) defines the acts of emergency drivers which are privileged and, by implication, which ones are not. Subsection (d) limits the privilege to drivers who use the required warning lights and sirens, but leaves unresolved the obvious issue of whether the privilege is absolute or limited by some requirement of care. Subsection (e) provides the answer to that question. It announces two standards of liability that correspond to the two categories of conduct — privileged and non-privileged — established by subsection (c). Privileged acts are protected from liability, but not if they are done recklessly; all other acts of emergency drivers are held only to a due regard or negligence standard.

This construction furthers the Legislature’s decision to extend special protection to the conduct specified in section 24(c), and that conduct only. Each of the activities privileged by subsection (c), although potentially dangerous, deserves protection because it directly enhances the driver’s ability to respond to the emergency call. The majority is correct that protecting those activities “serves the public’s interest in minimizing emergency response delays.” ___ S.W.2d at ___.

The majority fails to recognize, however, that many other risky activities in which an emergency driver might engage do not serve this public interest and therefore should not be exempt from ordinary rules of liability. On the contrary, the public interest in prompt and effective emergency response makes it all the more important that emergency vehicle operators not be careless in these other aspects of their driving. As one of our sister courts has observed:

The object of a fire truck’s journey is not merely to make a show of rushing to a fire, but actually to get there. If the driver is to ignore all elements of safety driving at breakneck speed through obviously imperilling hazards, he may not only kill others en route, but he may frustrate the whole object of the mission and not get there at all!

Horsham Fire Co. No. 1 v. Fort Wash. Fire Co. No. 1, 119 A.2d 71, 75 (Pa. 1956).

For example, the Legislature surely did not intend section 24 to relieve emergency vehicle operators of liability for negligence if they drive after having a few beers or while taking medication that slows their reaction time, or as happened in another case we decide today, if they fail to wear

required corrective lenses. *See Kolster v. City of El Paso*, ___ S.W.2d ___. Unlike speeding and running red lights, this type of careless behavior does not contribute in any way to the driver's ability to reach the emergency scene quickly. Yet under the majority's holding, an injured bystander cannot recover from an emergency vehicle operator who causes an accident by engaging in such behavior unless the emergency driver was reckless. This expansion of section 24's narrowly drawn privilege is unwarranted both as a matter of statutory interpretation and as a matter of public policy.

The majority argues that a negligence standard is overly demanding given the exigent circumstances that emergency vehicle drivers face. But as courts in other states with similar statutes have long recognized, negligence is a relative concept. A proper negligence inquiry does not "measure [the conduct of emergency vehicle drivers] by exactly the same yardstick as the actions of the operators of conventional vehicles." *City of Baltimore v. Fire Ins. Salvage Corps*, 148 A.2d 444, 448 (Md. 1959). Rather, the factfinder must determine whether the defendant's non-privileged conduct met the standard of a reasonable emergency vehicle driver in light of all the circumstances.²

Among the relevant circumstances are the legal privileges of emergency drivers and the corresponding duties imposed on the drivers around them. For example, because article 6701d, section 75(a) requires other drivers to pull over and yield when an emergency vehicle approaches, it is reasonable for an emergency driver to act on the assumption that other drivers will comply with the law and yield the right of way unless it becomes apparent that they will not or cannot do so. *See Brown v. Spokane County Fire Protection Dist. No. 1*, 668 P.2d 571, 575 (Wash. 1983); *Shawnee Township Fire Dist. No. 1 v. Morgan*, 559 P.2d 1141, 1147 (Kan. 1977). Similarly, although an emergency driver's failure to maintain a proper lookout is not privileged and therefore would be subject to a negligence standard, the relevant circumstances would include the fact that emergency drivers are privileged to travel at high speeds which reduces the time reasonably available for lookout. This negligence test respects emergency drivers' need to take risks and make split-second

² This standard of conduct for emergency vehicles is in accord with the current version of § 24(e), which replaces the phrase "due regard" with "appropriate regard." TEX. TRANSP. CODE § 546.005.

decisions without insulating them from responsibility when they fail to exercise “the degree of care and vigilance which circumstances reasonably impose.” *City of Baltimore*, 148 A.2d at 448.

The Court’s decision today frustrates the Legislature’s intent to require due and appropriate care by emergency vehicle drivers. Serious accidents involving emergency vehicles continue to be a significant public safety problem in our state. For example, Texas ranks second nationwide in the number of persons killed in police chases, with 459 deaths since 1980. *See Deadly Pursuits*, PORTLAND OREGONIAN, Jan. 22, 1998, at D1 (citing statistics compiled by National Highway Transportation Safety Administration). This shocking figure does not include people killed by fire engines, ambulances, or police cars involved in emergencies other than the pursuit of suspects, nor does it include the much higher number of nonfatal injuries in collisions involving emergency vehicles. Contrary to the majority’s suggestion, it is entirely appropriate for us to consider these facts. The Code Construction Act authorizes courts to take account of, among other things, the object sought to be attained by the statute, the circumstances under which it was enacted, and the consequences of a particular construction. TEX. GOV’T CODE § 311.023(1), (2), (5). The consequence of construing § 24(e) as establishing only a recklessness standard will be to exacerbate the danger on our roads by removing any financial incentive for emergency drivers and their employers to exercise due regard for the safety of others.

Because this dissenting opinion articulates a new legal standard by which to judge the liability of emergency vehicle drivers, I would reverse and remand for a new trial in the interest of justice. *See City of Lancaster v. Chambers*, 883 S.W.2d 650, 657 (Tex. 1994).

Rose Spector
Justice

Opinion delivered: June 5, 1998