

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

Electronically Filed
Sep 14 2020 12:50 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

LARRY PORCHIA,
Appellant(s),

vs.

CITY OF LAS VEGAS; STEPHEN
MASSA; NICHOLAS PAVELKA;
WILLIAMS HEADLEE; MARINA
CLARK; JASON W. DRIGGERS; AND
LVER RISK MANAGEMENT,
Respondent(s),

Case No: A-17-758321-C

Docket No: 78954-COA

RECORD ON APPEAL VOLUME 4

ATTORNEY FOR APPELLANT
LARRY PORCHIA #1481565,
PROPER PERSON
330 S. CASINO CENTER BLVD.
LAS VEGAS, NV 89101

ATTORNEY FOR RESPONDENT
BRADFORD R. JERBIC, ESQ.
495 S. MAIN ST., 6TH FLOOR
LAS VEGAS, NV 89101

I N D E X

<u>VOLUME:</u>	<u>PAGE NUMBER:</u>
1	1 - 230
2	231 - 460
3	461 - 664
4	665 - 693

INDEX

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
2	03/30/2018	(AMENDED COMPLAINT) NRS CONCURRENT TORT FEASOR LAWSUIT "PUBLIC SERVICE NEGLECT" GROSS NEGLIGENCE	342 - 356
1	08/25/2017	AFFIDAVIT OF SERVICE	33 - 33
1	08/31/2017	AFFIDAVIT OF SERVICE	38 - 39
1	10/09/2017	AFFIDAVIT OF SERVICE	105 - 109
1	10/19/2017	AFFIDAVIT OF SERVICE	152 - 152
1	11/29/2017	AFFIDAVIT OF SERVICE	228 - 228
1	11/29/2017	AFFIDAVIT OF SERVICE	229 - 229
2	01/20/2018	AFFIDAVIT OF SERVICE	284 - 285
2	01/20/2018	AFFIDAVIT OF SERVICE	286 - 287
2	01/25/2018	AFFIDAVIT OF SERVICE	291 - 292
3	02/19/2019	AMENDED COMPLAINT CIVIL RIGHTS COMPLAINT PURSUANT TO 42 U.S.C. 1983	572 - 579
3	02/19/2019	APPLICATION TO PROCEED IN FORMA PAUPERIS FOR INMATE (CONFIDENTIAL)	580 - 582
1	07/06/2017	APPLICATION TO PROCEED IN FORMA PAUPERIS (CONFIDENTIAL)	1 - 5
3	06/18/2018	APPOINTMENT OF ARBITRATOR	491 - 493
3	06/27/2018	ARBITRATION FILE	509 - 517
3	06/04/2018	CASE APPEAL STATEMENT	646 - 648
3	03/19/2019	CERTIFICATE OF SERVICE	605 - 605
4	09/14/2020	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
3	08/01/2018	CHANGE OF ADDRESS AND MOTION TO SEND PLAINTIFF ALL UPDATED MOTION IN CASE #758321	518 - 520
2	04/18/2018	CITY DEFENDANTS' ANSWER TO PLAINTIFF LARRY PORCHIA'S AMENDED COMPLAINT	383 - 388
3	05/10/2018	CITY DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS	484 - 488
3	01/28/2019	CITY DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT	556 - 557
3	05/24/2019	CIVIL ORDER TO STATISTICALLY CLOSE CASE	632 - 632
3	09/04/2018	COURT DOCKET	521 - 522

INDEX

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	09/11/2017	DEFAULT	51 - 52
1	10/26/2017	DEFAULT	162 - 164
2	12/13/2017	DEFENDANT AMERICAN MEDICAL RESPONSE, INC.'S OBJECTION TO PLAINTIFF'S "JUDICIAL NOTICE PURSUANT TO NRS 47.130 AMR ADMITTED MASSA AND PAVELKA NO LONGER WORK FOR THEM"	234 - 239
1	09/11/2017	DEFENDANT AMERICAN MEDICAL RESPONSE, INC.'S MOTION AND NOTICE OF MOTION TO DISMISS PRO SE PLAINTIFF'S COMPLAINT	53 - 77
1	09/15/2017	DEFENDANT AMERICAN MEDICAL RESPONSE, INC.'S NOTICE OF SERVICE OF PLEADINGS UPON PLAINTIFF	90 - 100
1	10/27/2017	DEFENDANT AMERICAN MEDICAL RESPONSE, INC.'S NOTICE OF SERVICE OF PLEADINGS UPON PLAINTIFF	190 - 196
2	01/19/2018	DEFENDANT AMERICAN MEDICAL RESPONSE, INC.'S NOTICE OF SERVICE OF PLEADINGS UPON PLAINTIFF	278 - 283
2	02/23/2018	DEFENDANT AMERICAN MEDICAL RESPONSE, INC.'S NOTICE OF SERVICE OF PLEADINGS UPON PLAINTIFF	316 - 320
2	03/16/2018	DEFENDANT AMERICAN MEDICAL RESPONSE, INC.'S NOTICE OF SERVICE OF PLEADINGS UPON PLAINTIFF	336 - 341
2	01/19/2018	DEFENDANT AMERICAN MEDICAL RESPONSE, INC.'S REPLY RE: DEFENDANT'S SUPPLEMENTAL MOTION TO DISMISS PRO SE PLAINTIFF'S COMPLAINT	270 - 277
1	10/27/2017	DEFENDANT AMERICAN MEDICAL RESPONSE, INC.'S SUPPLEMENTAL MOTION TO DISMISS PRO SE PLAINTIFF'S COMPLAINT	165 - 189
2	02/23/2018	DEFENDANT AMERICAN MEDICAL RESPONSE, INC., 'S COUNTERMOTION TO STRIKE PLAINTIFF'S "JUDICIAL NOTICE PURSUANT TO NRS 47.130," "RESPONSE TO DEFENDANTS REPLY TO PLAINTIFFS' VOLUNTARY DISMISSAL IN CASE A-17- 749899-C," AND "SUPPLEMENTAL COMPLAINT	301 - 309
2	12/13/2017	DEFENDANT AMERICAN MEDICAL RESPONSE, INC., 'S NOTICE OF SERVICE OF PLEADINGS UPON PLAINTIFF	240 - 245

INDEX

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
2	02/23/2018	DEFENDANT HEADLEE'S JOINER TO AMERICAN MEDICAL RESPONSE, INC.'S MOTION TO DISMISS, SUPPLEMENTAL MOTION TO DISMISS, AND REPLY RE: SUPPLEMENTAL MOTION TO DISMISS IN THE ALTERNATIVE	310 - 312
2	04/25/2018	DEFENDANTS AMERICAN MEDICAL RESPONSE, INC. AND HEADLEE'S MOTION AND NOTICE OF MOTION TO DISMISS PRO SE PLAINTIFF'S AMENDED COMPLAINT ON ORDER SHORTENING TIME (CONTINUED)	389 - 460
3	04/25/2018	DEFENDANTS AMERICAN MEDICAL RESPONSE, INC. AND HEADLEE'S MOTION AND NOTICE OF MOTION TO DISMISS PRO SE PLAINTIFF'S AMENDED COMPLAINT ON ORDER SHORTENING TIME (CONTINUATION)	461 - 483
3	02/13/2019	DEFENDANTS AMERICAN MEDICAL RESPONSE, INC. ERRONEOUSLY SUED AND SERVED AS "AMERICAN MEDICAL RESPONDERS AND WILLIAM HEADLEE'S NOTICE OF SERVICE OF ENTRY OF ORDER RE: PLAINTIFF'S "MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT"	565 - 571
2	12/21/2017	DEFENDANTS MASSA AND PAVELKA'S MOTION TO DISMISS	246 - 250
2	02/22/2018	DEFENDANTS MASSA AND PAVELKA'S REPLY IN SUPPORT OF THEIR MOTION TO DISMISS	298 - 300
3	03/18/2019	DEFENDANTS' MOTION TO DISMISS	596 - 601
3	03/28/2019	DENY MOTION TO DISMISS COMPLAINT	606 - 612
3	10/09/2018	DENY MOTION TO DISMISS COMPLAINT (42 U.S.C. 1983)	532 - 539
3	06/28/2019	DISTRICT COURT MINUTES	649 - 664
1	09/11/2017	INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)	78 - 80
2	02/23/2018	INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)	313 - 315
1	11/29/2017	JUDICIAL NOTICE PURSUANT NRS 47.130 PLAINTIFF SERVED UPON THE FIRE AND RESCUE SUMMONS AND COMPLAINT (CONTINUED)	230 - 230
2	11/29/2017	JUDICIAL NOTICE PURSUANT NRS 47.130 PLAINTIFF SERVED UPON THE FIRE AND RESCUE SUMMONS AND COMPLAINT (CONTINUATION)	231 - 231
2	12/04/2017	JUDICIAL NOTICE PURSUANT TO NRS 47.130 PLAINTIFF SERVED UPON THE AMERICA MEDICAL RESPNDER SUMMON AND COMPLAINT	232 - 233

INDEX

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	10/31/2017	JUDICIAL NOTICE PURSUANT TO NRS. 47.130 A.M.R. ADMITTED MASSA AND PAVELKA NO LONGER WORK FOR THEM	197 - 202
2	04/09/2018	MOTION FOR A PRETRIAL CONFERENCE	362 - 381
2	02/01/2018	MOTION FOR CLARIFICATION	293 - 296
3	10/02/2018	MOTION FOR CLARIFICATION AND PETITION FOR CORAM NOBIS AND CONTINUANCE PETITION FOR WRIT OF CORAM NOBIS AND MOTION FOR CLARIFICATION	526 - 530
2	01/22/2018	MOTION FOR CONSIDERATION	288 - 290
3	11/05/2018	MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT	540 - 545
3	12/27/2018	MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT	546 - 552
1	10/24/2017	MOTION FOR ENLARGEMENT OF TIME	156 - 159
3	06/03/2019	MOTION FOR FUNDS	642 - 645
3	04/15/2019	MOTION FOR SUMMARY JUDGMENT	614 - 618
3	05/16/2019	MOTION TO REQUEST FINAL JUDGMENT AND FINAL TRANSCRIPT	625 - 627
1	08/25/2017	NOT FOUND AFFIDAVIT	34 - 34
1	08/25/2017	NOT FOUND AFFIDAVIT	35 - 37
1	09/06/2017	NOT FOUND AFFIDAVIT	40 - 42
2	01/12/2018	NOT FOUND AFFIDAVIT	265 - 265
2	01/12/2018	NOT FOUND AFFIDAVIT	266 - 268
2	01/12/2018	NOT FOUND AFFIDAVIT	269 - 269
3	06/03/2019	NOTICE OF APPEAL	633 - 641
2	04/09/2018	NOTICE OF CHANGE OF ADDRESS	357 - 358
3	06/25/2018	NOTICE OF ENTRY OF ORDER	500 - 503
2	03/15/2018	NOTICE OF ENTRY OF ORDER DENYING DEFENDANT'S MASSA AND PAVELKA'S MOTION TO DISMISS	332 - 335
3	05/16/2019	NOTICE OF ENTRY OF ORDER GRANTING CITY DEFENDANTS' MOTION TO DISMISS	628 - 631
2	03/14/2018	NOTICE OF ENTRY OF ORDER RE: DEFENDANT AMERICAN MEDICAL RESPONSE, INC.'S MOTION TO DISMISS PRO SE PLAINTIFF'S COMPLAINT, SUPPLEMENTAL MOTION TO DISMISS, AND COUNTERMOTIONS TO STRIKE	327 - 331

INDEX

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
3	06/26/2018	NOTICE OF ENTRY OF ORDER RE: DEFENDANT AMERICAN MEDICAL RESPONSE, INC.'S MOTION TO DISMISS PRO SE PLAINTIFF'S AMENDED COMPLAINT	504 - 508
3	02/13/2019	NOTICE OF ENTRY OF ORDER RE: PLAINTIFF'S "MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT"	560 - 564
3	03/19/2019	NOTICE OF HEARING	604 - 604
3	04/17/2019	NOTICE OF HEARING	619 - 619
1	09/11/2017	NOTICE OF INTENTION TO ENTER DEFAULT	49 - 50
1	09/13/2017	NOTICE OF INTENTION TO ENTER DEFAULT	89 - 89
1	10/09/2017	NOTICE OF INTENTION TO ENTER DEFAULT	114 - 115
1	10/26/2017	NOTICE OF INTENTION TO ENTER DEFAULT	160 - 161
2	02/01/2018	NOTICE OF MOTION	297 - 297
2	04/09/2018	NOTICE OF MOTION	361 - 361
2	04/09/2018	NOTICE OF MOTION	382 - 382
1	09/28/2017	NOTICE OF NO OPPOSITION TO DEFENDANT AMERICAN MEDICAL RESPONSE, INC.'S MOTION TO DISMISS PRO SE PLAINTIFF'S COMPLAINT	101 - 104
3	06/25/2018	NOTICE OF RECUSAL	496 - 497
2	02/28/2018	NOTICE OF TELEPHONIC HEARING	321 - 322
3	06/11/2018	NOTICE OF TELEPHONIC HEARING	489 - 490
1	10/12/2017	NOTICE OF TELEPHONIC HEARING FOR ORAL ARGUMENT	118 - 119
1	10/16/2017	OPPOSITION TO DEFENDANT AMERICAN MEDICAL RESPONSE, INC.'S. MOTION AND NOTICE OF MOTION TO DISMISS PRO SE PLAINTIFF'S COMPLAINT	120 - 151
1	11/16/2017	OPPOSITION TO DEFENDANT AMERICAN MEDICAL RESPONSE, INC.'S SUPPLEMENTAL MOTION TO DISMISS PRO SE PLAINTIFF'S COMPLAINT	203 - 227
2	03/13/2018	ORDER DENYING DEFENDANTS MASSA AND PAVELKA'S MOTION TO DISMISS	323 - 324
3	06/20/2018	ORDER GRANTING CITY DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS	494 - 495
3	05/15/2019	ORDER GRANTING CITY DEFENDANTS' MOTION TO DISMISS	623 - 624

INDEX

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
3	06/25/2018	ORDER RE: DEFENDANT AMERICAN MEDICAL RESPONSE, INC.'S MOTION AND NOTICE OF MOTION TO DISMISS PRO SE PLAINTIFF'S AMENDED COMPLAINT ON ORDER SHORTENING TIME	498 - 499
2	03/14/2018	ORDER RE: DEFENDANT AMERICAN MEDICAL RESPONSE, INC.'S MOTION TO DISMISS PRO SE PLAINTIFF'S COMPLAINT, SUPPLEMENTAL MOTION TO DISMISS, AND COUNTERMOTIONS TO STRIKE	325 - 326
3	02/11/2019	ORDER RE: PLAINTIFF'S "MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT"	558 - 559
1	07/13/2017	ORDER TO PROCEED IN FORMA PAUPERIS (CONFIDENTIAL)	6 - 8
3	03/07/2019	ORDER TO PROCEED IN FORMA PAUPERIS (CONFIDENTIAL)	588 - 589
3	01/14/2019	PROOF OF SERVICE	554 - 555
3	03/18/2019	PROOF OF SERVICE	602 - 603
3	09/24/2018	REQUEST AND MOTION FOR REQUEST	523 - 525
2	04/09/2018	REQUEST FOR LEAVE FOR A TELEPHONE CONFERENCE ON A STATUS CHECK ON AN ORDER TO AMEND COMPLAINT	359 - 360
3	10/02/2018	REQUEST FOR SERVICE	531 - 531
3	01/14/2019	REQUEST FOR TRANSPORTATION	553 - 553
3	03/28/2019	REQUEST FOR TRANSPORTATION	613 - 613
3	04/26/2019	REQUEST FOR TRANSPORTATION	620 - 622
2	01/12/2018	RESPONSE TO DEFENDANT'S OBJECTION TO PLAINTIFF'S JUDICIAL NOTICE PURSUANT TO NRS 47.130 A.M.R. ADMITTED MUSSA AND PARELKA NO LONGER WORK FOR THEM.	251 - 261
2	01/12/2018	RESPONSE TO DEFENDANTS MOTION TO DISMISS	262 - 264
1	09/06/2017	SUMMONS - CIVIL	43 - 44
1	09/06/2017	SUMMONS - CIVIL	45 - 46
1	09/06/2017	SUMMONS - CIVIL	47 - 48
1	10/19/2017	SUMMONS - CIVIL	153 - 155
1	07/13/2017	TORT ACTION CONCURRENT TORT FEASOR LAWSUIT "PUBLIC SERVICE NEGLECT" GROSS NEGLIGENCE	9 - 32
4	09/14/2020	TRANSCRIPT OF HEARING HELD ON APRIL 30, 2019	665 - 693

A-17-758321-C

LARRY PORCHIA vs. AMERICAN MEDICAL RESPONDERS

INDEX

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
3	03/08/2019	UNFILED DOCUMENT(S) DEFAULT REJECTION SLIP W/COPY OF UNFILED AFFIDAVIT OF SERVICE	590 - 595
1	10/09/2017	UNFILED DOCUMENT(S) DEFAULT REJECTION SLIP W/COPY OF UNFILED MOTION FOR ENLARGEMENT OF TIME	110 - 113
3	02/21/2019	UNFILED DOCUMENT(S) DEFAULT REJECTION SLIP W/COPY OF UNFILED SUMMONS IN A CIVIL ACTION	583 - 587
1	10/09/2017	UNFILED DOCUMENT(S) DEFAULT REJECTION SLIP W/COPY OF UNSIGNED DEFAULT	116 - 117
1	09/13/2017	UNFILED DOCUMENT(S) DEFAULT REJECTION SLIP W/COPY OF UNSIGNED DEFAULT, JUDGMENT BY DEFAULT (ENTRY BY CLERK)	81 - 88



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 LARRY PORCHIA,)
8 Plaintiff,) CASE#: A-17-758321-C
9 vs.) DEPT. XXVI
10 AMERICAN MEDICAL)
11 RESPONDERS,)
12 Defendant.)

13
14 BEFORE THE HONORABLE GLORIA STURMAN
15 DISTRICT COURT JUDGE
16 FRIDAY, APRIL 30, 2019

17 **RECORDER'S TRANSCRIPT OF HEARING:**
18 **MOTION TO DISMISS**

19 APPEARANCES:

20
21 For Larry Porchia: PRO SE
22 For American Medical
23 Responders: JEFFRY M. DOROCAC, ESQ.

24
25 RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 Las Vegas, Nevada, Friday, August 30, 2019

2 [Hearing commenced at 8:51 a.m.]

3 THE COURT: Go on the record in 758321, Porchia versus –
4 well, it says AMR, but technically it's City of Las Vegas. We'll get the
5 appearances of the Plaintiff and Defendant.

6 MR. DOROCAC: Good morning, Your Honor, Jeff Dorocak for
7 the City of Las Vegas –

8 THE COURT: Okay.

9 MR. DOROCAC: -- and City's Firefighter Paramedics' Massa
10 and Pavelka.

11 THE COURT: Thank you.

12 THE DEFENDANT: Good morning, Your Honor, Larry
13 Porchia.

14 THE COURT: Mr. Porchia, thanks.

15 All right. So this is the Defendant's motion, so we'll hear from
16 the Defendant.

17 MR. DOROCAC: Yes, Your Honor, this is the City's Motion to
18 Dismiss Mr. Porchia's Amended Complaint. We've been here before –

19 THE COURT: Uh-huh.

20 MR. DOROCAC: -- so the facts are fundamentally the same.
21 Per his Complaint, Mr. Porchia was experiencing excruciating stomach
22 pain and hot flashes. Las Vegas Fire and Rescue was called out. That
23 would be Firefighter Paramedics' Massa and Pavelka. They rendered
24 care, said Mr. Porchia had gas, did not transport him to the hospital. Mr.
25 Porchia then called AMR. They did transport him to the hospital, and

1 Mr. Porchia alleges that because the City did not transport him that – or
2 had the City transported him, he would not have needed the surgery that
3 he subsequently received, I believe at UMC.

4 The City's arguments here: One of them is the same that we
5 brought forth a few months ago which is, first of all, that the Public Duty
6 Doctrine is a general duty owed to everyone in the public. The City does
7 not owe a individual duty to transport Mr. Porchia just because they
8 show up to render care. The only way around that would be a specific
9 promise from the firefighters that they said: Okay, we're going to – we're
10 going to transport you. Or if they did something affirmatively in terms of
11 conduct that caused his hot flashes or pain.

12 Obviously there's no allegations of anything affirmatively done
13 by Mr. Pavelka or Massa that caused what they were there to treat. And
14 then despite the Amended Complaint, Mr. Porchia didn't really get to this
15 point, but I'll get to it just so we can preempt the argument which is, his
16 language is, he wouldn't have needed the surgery if Mr. Massa or Mr.
17 Pavelka would have transported him.

18 So again, we're still kind of just in the transport public duty
19 situation. If we considered that to be a claim of negligence because the
20 care wasn't rendered correctly, well Massa – Mr. Massa and Mr. Pavelka
21 are immune from a negligence claim under NRS Chapter 41, Section
22 500, subsection 5. Because they are firefighters, they are paramedics,
23 EMTs of a city agency, they are immune from any damages, liabilities.

24 So like, the Public Duty Doctrine takes duty off the table for a
25 negligence claim. This immunity will take damages off the table which

1 will eliminate the negligence claim as well. Because of the two – the
2 Public Duty Doctrine and the 41.500 good samaritan, essentially,
3 immunity for the firefighters and paramedics, EMTs throughout the
4 State. We would ask that the Complaint be dismissed today. Thank you.

5 THE COURT: Thank you. Okay. So Mr. Porchia.

6 THE DEFENDANT: Yes, ma'am.

7 On my behalf, my argument is plain and simple and, as it was.
8 And I understand the Public Duty Doctrine. But to every law there's an
9 exception, and to the Public Duty Doctrine there's an exception. It's
10 called the Special Duty Doctrine to where if I – if, if – to the point to
11 where I call 9-1-1 and I'm seeking to be transported to a hospital, I
12 understand that they can be sued under the Public Duty Doctrine. But
13 they also can be sued up under the Special Duty Doctrine to which
14 seeks that if our response – if, if I reasonably believe that I need to be
15 taken to a hospital, it's their duty.

16 The 9-1-1 call was made to dispatchers. They was [sic] aware
17 of the situation when they got there. They already knew the, the severity
18 of it. I'm in and out of hot flashes and they misdiagnosed me, said: I
19 have gas. That's a job for a doctor, not an EMT. I was seeking to go to
20 the hospital, that's why I called 9-1-1. I mean they, they are – you're
21 correct, they are a medical – they are EMTs.

22 But EMTs cannot misdiagnose me and say what I have if I'm
23 seeking – I'm telling 9-1-1; tell 'em I'm having stomach pain. They can't
24 come to say: Oh, you guys have gas. That's a doctor's – that's a
25 doctor's duty, a job to do.

1 And AMR was not the second one called. I called 9-1-1 again,
2 Las Vegas Fire & Rescue showed up for the second time. This time
3 they noticed how big my stomach was and AMR which do all the
4 transporting for the Las Vegas Fire & Rescue, they don't do no
5 transporting. They call AMR, a second entity to do the transport. That's
6 how AMR transported me.

7 Any time a 9-1-1 call is made, they are contracted by the state
8 board and the hospitals to do their job, to upheld [sic] their, their
9 obligations, up under their oath or whatever you want to call it, to take
10 somebody to the non -- to the hospital. If I was refusing to go to the
11 hospital I would have signed a refusal.

12 Obviously I'm seeking a 9-1-1 call. I'm in and out of flashes.
13 I'm in and out of a coma. I need some medical care. Because I'm
14 homeless, because I don't have no insurance, I'm not entitled to, to
15 medical care? That's not right.

16 We've been fighting this for almost, since 2016, they keep
17 saying the same thing over. It's going to be the same, Your Honor.
18 Nothing can -- nothing can -- I mean, I had a surgery. I, I had to -- they
19 cut me open. They had to reconstruct my whole lower alignment. They
20 had to staple me up with 28 staples. They had to cut out my intestines.
21 They had to reset them.

22 All of this could have been prevented if they would have just
23 took me to the hospital when I first made the 9-1-1 call. I'm not -- I'm not
24 going to make a 9-1-1 call just to be playing around with 'em.

25 THE COURT: Okay, so the two, two different things that

1 you've raised there. One, nobody's denying that you did ultimately have
2 surgery for bowel obstruction and had – underwent very serious surgery
3 and had a serious medical condition. So assuming – we still have to get
4 to the whole issue of whether there's anything that the paramedics did
5 that contributed or led to that. So your – is your position that you should
6 be entitled to do discovery to see if it was – there's anything that having
7 been transported earlier – because it was a matter of hours, I believe.

8 If having been transported earlier there would have been any
9 change in your medical condition that you could have avoided that
10 surgery. Is that – is it your belief that the surgery would have been
11 avoided if the treatment had started sooner?

12 THE DEFENDANT: It's not just my belief. I mean, the nurse
13 and the doctor that, that seen me. As soon as I get there I'm in and out
14 of conscious [sic].

15 THE COURT: Uh-huh.

16 THE DEFENDANT: I have – I have the med – they said I
17 came in a spinal position and they had, immediately they, they, they
18 prepped me. They rushed me to surgery.

19 THE COURT: Okay.

20 THE DEFENDANT: If I would – if I'da been – if I'da been
21 there sooner all this could have been prevented.

22 THE COURT: Okay, so –

23 THE DEFENDANT: My, my bow [sic].

24 THE COURT: So, so you believe that that the failure to
25 transport resulted in a – the need for more serious medical care? So, I

1 mean, that's kind of the ultimate point that you're -- you would be trying
2 to prove. So in order to -- because I mean, as Counsel indicated, you
3 know, they didn't do anything to cause this bowel obstruction. They did
4 not -- but the point is that, had they transported you immediately you
5 could have gotten care sooner. And that, that care might have either
6 avoided the surgery all together or might have made it a little bit easier
7 to, to treat your medical condition. So that's kind of the ultimate point
8 here.

9 But how do we -- how do we get there in a claim against a
10 governmental entity which has -- so your position is that because there's
11 a, a statute on EMTs that, you know, they're not supposed to make
12 diagnoses. That's -- so it's not that they made an incorrect diagnosis,
13 that's not their job. They don't do diagnosis; they're EMTs.

14 THE DEFENDANT: Correct.

15 THE COURT: They're to render aid, transport, stabilize, those
16 kinds of things, stabilize in the field and get you to where you can get
17 medical care. So you're saying that there was some basic standard of
18 EMT licensure that they breached in -- instead of just making a transport
19 and saying: You know, this is for a doctor to diagnose; I'm not a doctor,
20 I'm just an EMT. I'm going to transport you.

21 That they breached their standard as EMTs, and so -- or that
22 they were improperly trained, because they didn't know that that was the
23 -- what's the proper standard for an EMT, and that somehow that then
24 the City had failed to train its EMTs to understand and properly respond
25 to a situation like you were in --

1 THE DEFENDANT: Correct.

2 THE COURT: -- so.

3 THE DEFENDANT: And even in that this the first time we
4 went for this dismissal, the Counsel, he even admitted that they did a
5 breach of duty. It was a negligence. They should have transported me.
6 Now all of a sudden they shouldn't of. I mean, I don't, I don't -- I'm just
7 trying to get some clarification here too. I mean --

8 THE COURT: Right.

9 THE DEFENDANT: -- all the way around --

10 THE COURT: Well, because see what we have to -- we have
11 to get past the fact that as -- because you're suing not a private company
12 but a governmental entity, and they are entitled to certain immunities.
13 As was indicated, their duties are owed to the public, they're not owed to
14 an individual. But you're point is that, even if the duty is to the public
15 that it's not, you know, you owe me a duty to pick me up and transport
16 me whenever I want you to transport me; that's not what you're saying.

17 You're saying that when presented with a patient in an
18 extreme condition like you were in, as EMTs, instead of making their
19 own diagnosis and saying: We're not going to transport you, they should
20 have said: This is a question for a doctor. I'm not a doctor, I'm going to
21 transport this patient, and I'll leave it to a doctor to make this diagnosis.

22 THE DEFENDANT: Correct.

23 THE COURT: And so that's where they breached their duty
24 as EMTs. That is not a duty -- not a public duty, but is just specifically
25 their obligations and how they're supposed to fill out -- fill their job duties

1 as their licensure permits.

2 THE DEFENDANT: Correct.

3 THE COURT: Okay. Okay.

4 THE DEFENDANT: Now under –

5 THE COURT: And that's 450 – 450(b)0703. 450(b)073 and
6 095.

7 THE DEFENDANT: And NRS 12.105.

8 THE COURT: Okay. So just that – not, not – that the public
9 duty doesn't shield the Public Duty Doctrine that the immune – the Civil
10 Immunity Doctrine which would shield paramedics from their negligent
11 acts if they're government employees; that those shields are there for
12 them because there is a failure in their training. Instead of – it wasn't up
13 to them to make this diagnosis. That they should not have – that's a
14 failure in their training.

15 They, they – instead of just saying: Our obligation is to
16 transport a patient who presents himself in, you know, some extreme
17 circumstance. If it's – if the doctor gets you at the emergency room and
18 says: Yeah, guy's got gas, goodbye; that's for the doctor to decide. It's
19 not for the paramedic to say: We're not going to even transport you.
20 And I mean, we still have – we still have a second problem which we're
21 not too yet, and that's the second problem of: You had a bowel
22 obstruction.

23 THE DEFENDANT: Uh-huh.

24 THE COURT: Getting to the hospital an hour earlier is going
25 to save you from undergoing a surgery? No, that's for a doctor to say,

1 but – so before we could even get to that point, we got to get past this
2 idea of: Can you even sue a paramedic for this? I mean a – when
3 they're employed by a public agency. Because remember, you're not
4 suing the private company, you're suing the government agency. So
5 there are only certain things a government agency can be sued for.
6 Very limited. Very, very limited. Okay. Thanks.

7 MR. DOROCAC: Yeah, thanks, Your Honor. Obviously the
8 City's position is that this case should be dismissed today because of –
9 there's two immunities now.

10 THE COURT: Right.

11 MR. DOROCAC: We have the public duty which essentially is
12 – there, there is no specific duty for Mr. Porchia here. Secondly, even if
13 we want to strip all that away, we want to get to the, what happened?
14 The diagnosis, non-diagnosis. These firefighters are protected under
15 NRS 41.500. They are not civilly liable for damages. Damages is an
16 essential part of a negligence claim. We don't need to proceed to
17 discovery. The whole point I suspect of that section of Chapter 41 is to
18 prevent such discovery.

19 So at the very least if, if this isn't dismissed today, I'm going to
20 need to know – I'd like to know precisely what the duty is that Mr.
21 Porchia is suggesting the City breached, because I've heard various
22 formulations. And obviously, I've tried myself to formulate them so we
23 can kind of figure it out.

24 But there just is no duty to transport. They show up, they are
25 not obligated to take him to the hospital. They are there to render care

1 and the transport is just a general –
2 THE COURT: So if –
3 MR. DOROCAK: -- public duty.
4 THE COURT: -- if they're – if they were wrong just that –
5 they're wrong.
6 MR. DOROCAK: Right.
7 THE COURT: I mean, I mean – because we have to get past
8 the fact --
9 MR. DOROCAK: What they did there was wrong, let's say.
10 THE COURT: We have to – we have to –
11 MR. DOROCAK: Yeah.
12 THE COURT: -- get past.
13 MR. DOROCAK: Yeah.
14 THE COURT: And this is Mr. Porchia's point –
15 MR. DOROCAK: Right.
16 THE COURT: -- is everybody admits he had this surgery. I
17 mean, there's no denying the fact that he had an intestinal blockage. He
18 underwent a surgery for that. It was a significant surgery. He underwent
19 significant medical care --
20 MR. DOROCAK: Right.
21 THE COURT: -- for that. There's no denying that he had this.
22 This was – this – it wasn't caused by the City.
23 MR. DOROCAK: Right.
24 THE COURT: Nobody did anything to him. It's just he, he
25 had this medical emergency, and so there's no getting around that.

1 MR. DOROCAK: Right.

2 THE COURT: But the point is that the firefighters, when they
3 arrive and they are wrong. When they say: Oh, this is just gas, we're
4 not going to transport him; it's just gas.

5 MR. DOROCAK: Right.

6 THE COURT: That there's no liability for that, because they're
7 not liable for being wrong.

8 MR. DOROCAK: Right.

9 THE COURT: You can't be liable for their misdiagnosis. We
10 were wrong about this. Mr. Porchia did have a serious medical
11 emergency condition that, upon being transported to UMC, was
12 discovered and treated appropriately. He recovered from his intestinal
13 blockage after significant medical treatment. So they're not liable for just
14 being flat out wrong in diagnosing him with gas instead of saying: Oh,
15 we need to take this guy to a doctor and see if a doctor can say what
16 he's got going on.

17 MR. DOROCAK: Correct. And I think that's what it boils down
18 to help everybody out. Your Honor, if they get through the case, you
19 know, for the last couple of months when it's popped up, the argument to
20 be made – he's made, which would be well, something was diagnosed
21 incorrectly.

22 THE COURT: Uh-huh.

23 MR. DOROCAK: Okay, well, unfortunately, you know, for him,
24 and as Your Honor's mentioned, government agencies, government
25 employees, especially when they're tasked with rendering care like this,

1 have immunity so they can go out in the field and do their job.

2 And so I'll just read, for everyone's sake, what 41.500 is:

3 Any person employed by a firefighting agency to render
4 emergency medical care, and obviously that's what we're
5 talking about here, they are called out. Emergency medical
6 care at the scene of an emergency is not liable for any civil
7 damages as a result of any act or omission.

8 Everything they do is essentially immune, because
9 they're there to render care. And they need to do whatever
10 they essentially think they need to do by the person in
11 rendering that care, or as a result of any act or failure to act
12 again, reiterating act or omission.

13 Anything they do to provide or arrange for further
14 medical treatment for the injured or ill person, even failure to
15 provide for the additional treatment, which is essentially kind
16 of what we're talking about here, does not amount to a
17 negligence claim. Under 41.500, they're immune from that.

18 And all of that makes sense, because they need to be able to
19 go out and perform the care that they are there to do. Whether
20 something's misdiagnosed, you know, again, unfortunately for Mr.
21 Porchia, it's just explicit in the statute, the Good Samaritan Statute, that
22 paramedics, EMTs are immune from any act or omission that could be
23 negligent.

24 There's one – I mean, for complete disclosure, obviously and
25 I'm sure Your Honor's read the statute. There's one little area to get

1 through on it, but it is totally not been pled here, which would be,
2 essentially, gross negligence. It's something reckless. Well, there's
3 nothing reckless here. We're all at, at most we're --

4 THE COURT: What about failure to train? Because that --
5 because I wasn't really clear.

6 MR. DOROCAK: Right, right.

7 THE COURT: I wasn't really clear, because I did this work
8 myself for 20 years.

9 MR. DOROCAK: Right.

10 THE COURT: I wasn't really clear if your allegation was --
11 since the paramedics themselves are protected from liability for
12 negligence. They're just wrong. I mean, they were --

13 MR. DOROCAK: Right.

14 THE COURT: -- flat out wrong about him, and that's a fact we
15 can't get around. They're just wrong about it, but they have immunity for
16 that.

17 MR. DOROCAK: Right.

18 THE COURT: However, the question is: Why were they
19 wrong? Were they wrong because they were improperly trained? Were
20 they wrong because they had not been properly trained as paramedics
21 by the City to say: Oh, we can't tell what's going on here, we really need
22 to transport this person. Did they somehow fail in that aspect of it, which
23 is not so much on what they -- they're immune for the actual failure to
24 diagnose properly, but they're not -- they're not there to diagnose.

25 MR. DOROCAK: Right.

1 THE COURT: They're EMTs, they're not there to diagnose.
2 So the question is: Did they otherwise fail in a duty they had which is
3 what -- what's your job as a paramedic --

4 MR. DOROCAK: Uh-huh.

5 THE COURT: -- to respond to emergency situations, transport
6 patients if they're in need. So how were they trained? Were they
7 trained in these situations to make this kind of a diagnosis? We don't --
8 we don't know. We -- it -- this case is -- it's very preliminary. We have no
9 idea. So are you saying that, that because the paramedics themselves
10 are protected from liability for their fail -- their improper diagnosis, which
11 you know --

12 MR. DOROCAK: Uh-huh.

13 THE COURT: -- we can't get around, it happened. That the
14 City would also be immunized with respect to its supervision and
15 training.

16 MR. DOROCAK: Short answer is yes. And this is actually an
17 issue I thought about after the last hearing. I thought this would be
18 another route, and Your Honor's obviously picked up on it. If, if he's
19 allowed to proceed under a failure to train claim against the City that
20 opened -- that essentially negates the immunity here. Whenever an
21 employee, firefighter, paramedic's responding and you allege well, they
22 didn't render care. Well, we would point to the immunity here.

23 Well, then they go: Well, they weren't trained well enough, so
24 that's why they didn't render the care. Well then, what's -- the immunity
25 now is out the door, and no matter what the government agency's going

1 to be on the hook. So the employees are taken off the hook, but
2 somehow the agency's still on the hook. That – I don't think that's
3 obviously the –

4 THE COURT: Okay.

5 MR. DOROCAK: -- scheme here that the State Legislature
6 intended. The goal was to provide immunity for the employees of the
7 agency, and the agency itself from what they're there to do is to provide
8 care to the public.

9 THE COURT: Right. And so then the, the one remaining
10 issue then, Mr. Porchia has cited to the – to the EMT statutes.

11 MR. DOROCAK: Right.

12 THE COURT: And so, even though there are statutes there
13 that say: Here's what, you know, here's what paramedics are supposed
14 to do.

15 MR. DOROCAK: Uh-huh.

16 THE COURT: Here's what their – what their standards are,
17 here's what their licensure is. This is what they're trained to do that –
18 because unfortunately he is suing here a governmental entity.

19 MR. DOROCAK: Uh-huh.

20 THE COURT: And because the Legislature has seen fit to
21 protect governmental agencies, with immunity, from the mere negligence
22 of their employees and, you know I, because we have to accept certain
23 things as true.

24 MR. DOROCAK: Uh-huh, uh-huh.

25 THE COURT: Mr. Porchia absolutely had a serious medical

1 condition. The EMTs were wrong about that medical condition. They
2 thought he had gas. They thought he didn't need transport to, to an
3 emergency room. They refused to transport him. He continued to
4 experience pain. He eventually got the medical care he needed. He
5 was transported, and they discovered serious medical condition. He has
6 an intestinal blockage, could have died.

7 MR. DOROCAC: Uh-huh.

8 THE COURT: He didn't because he got the medical care that
9 he needed and he underwent the treatment, and it was pretty serious.
10 Now, you know, whether, ultimately, that would have been – he would
11 have still needed that, whether they transported him immediately or only
12 because they didn't transport him immediately. You know, who knows. I
13 mean, that's a – who, who even knows. I mean, I don't even know if we
14 need to get there.

15 MR. DOROCAC: Uh-huh.

16 THE COURT: The problem is it was an emergency medical
17 unit from a governmental entity --

18 MR. DOROCAC: Uh-huh.

19 THE COURT: -- and governmental entities are -- have an
20 immunity from the negligent acts of their employees, absent, as you
21 said, something that we can find here.

22 MR. DOROCAC: Right.

23 THE COURT: And this doesn't sound like gross negligence to
24 me. It's not being pled that. I mean, if they had gone and had coffee
25 instead of responding, maybe that would have been gross negligence,

1 but instead they respond. They do whatever they do and –
2 MR. DOROCAK: They made a diagnosis.
3 THE COURT: -- they're wrong. They're wrong.
4 MR. DOROCAK: Yeah, you're right.
5 THE COURT: I, I mean –
6 MR. DOROCAK: Yeah, no, I, I –
7 THE COURT: -- nobody's denying –
8 MR. DOROCAK: -- yeah, that's, that's –
9 THE COURT: -- that part of it.
10 MR. DOROCAK: -- my view as well. And, you know,
11 obviously yeah, the City sympathizes with everything Mr. Porchia's gone
12 through. It's just – these immunities are there for situations like this --
13 THE COURT: Right.
14 MR. DOROCAK: -- so that the employees ultimately can do
15 their job the best that they can, and that the agency isn't necessarily on
16 the hook for something that goes potentially awry when it's, you know, it
17 doesn't even amount maybe to even negligence let alone –
18 THE COURT: And so that, that –
19 MR. DOROCAK: -- gross negligence.
20 THE COURT: -- that was my next question –
21 MR. DOROCAK: Yeah.
22 THE COURT: -- then was, so, even if then, the employees
23 are -- they're simply wrong and so, but they nevertheless have their
24 immunity, then is there anything else out there with respect to, you
25 know, your failure to respond in the search – and this particular situation

1 was wrong, but, you know, is there other – are they otherwise exposed?
2 And that was my question about training.

3 And, you know, to say they were negligently trained or
4 supervised as you – your argument being, well, it obviates the immunity.

5 MR. DOROCAK: Right.

6 THE COURT: If they're immune from doing their job then their
7 employer's got to be immune from failing to train them.

8 MR. DOROCAK: Correct, that's – that would be our position if
9 anything like that were to go forward thinking it through. I thought that
10 was the only kind of alternative path, but it – as Your Honor mentioned, it
11 would essentially obviate what 41.500 was meant to do, so – and it
12 would just put agencies always on the hook, and you wouldn't need a
13 name -- the individual employees which would be an odd situation –

14 THE COURT: Uh-huh.

15 MR. DOROCAK: -- for this type of thing. And on the
16 paramedic statute, I think it was Chapter 450.

17 THE COURT: Yes.

18 MR. DOROCAK: I, I don't think the – I couldn't find anything
19 that was, to me, jumped out as something that he could use as a strong
20 negligent claim. It seemed more of the, the rules and regs for
21 paramedics. And then, you know, that's what you need for licensure,
22 that's what you need to do your job. This is, you know, to meet all the
23 standards, and once you are those things, essentially, the immunity
24 under 41 attaches.

25 And –

1 THE COURT: If you're – if you are a governmental
2 employee?

3 MR. DOROCK: Correct. And there's – they got the
4 volunteer services in there. They've got – I, I – I'm – maybe even AMR
5 could have used it but, yeah, definitely as Your Honor said, the
6 government can use it, so.

7 THE COURT: Okay. All right. Great. Thanks. So Mr.
8 Porchia, as I said: We've been talking about this from, you know, from
9 day one about this problem with immunity. And as I – as I told Counsel,
10 this is – this is what I did as an attorney before I became a Judge. I
11 defended Clark County, not the City of Las Vegas, but I defended Clark
12 County in similar kinds of cases.

13 The Legislature has seen fit to protect governmental entities
14 with immunity so that they can feel free to go out and do these jobs and
15 not be facing liability for things – as I said, the things that we have to
16 admit are on the face of your case, we all recognize are there. They
17 responded to you, they thought you had gas, you didn't; you had
18 intestinal blockage that required surgery.

19 And as you said, you know, if you hadn't gotten that treatment
20 you would have died.

21 THE DEFENDANT: Uh-huh.

22 THE COURT: But you ultimately did get the treatment, thank
23 God. It was – it was a bad surgery but you, you went through it and you
24 recovered. But, you know, the question is: Can you then sue these
25 paramedics? And not even getting to the whole question of: Would you

1 still have had to had the surgery no matter what? That's not an issue.
2 That is not our issue here. Our issue here is one thing and one thing
3 only, and that is, because of this statute that says: Governmental
4 entities and their employees cannot be sued for their negligent failure to
5 perform a job duty.

6 I had a case once involving a gentleman who the firefighters –
7 he was in a wheel chair, they didn't find him when they went through a
8 fire. An apartment up above was on fire. They went through and
9 cleared the building. They didn't find this gentleman who was in the
10 wheelchair because he'd fallen out of his wheelchair and was down
11 behind some boxes. And it was horrible, it was a horrible thing. They
12 felt terrible. They're not liable for that, because they were responding to
13 an emergency situation. And they're doing their job under emergency
14 situations.

15 We have to make sure they're there for the next person who
16 might need their care. Yes, they failed you, I understand that, and
17 nobody is denying that. That is a fact in your case, but are they liable for
18 that? Did they harm you in a way that there -- that is beyond just an
19 appropriate emergency response? And that's the thing that, to me, I'm
20 missing here.

21 This seems to me like they went out on a call. They got it
22 wrong. I am not denying, they got it wrong. And they should have
23 transported you sooner. Maybe it would have been a less serious
24 surgery, or maybe you wouldn't have needed surgery, you know, we're
25 not; we don't know. But the fact is, they are government employees and

1 they're shielded by their immunity.

2 That's been our problem since day one, was figuring out who
3 it was responded and who it was you were trying to sue, because if it
4 was the governmental EMTs, they have immunity. And we, we finally
5 got there. We finally figured out which of the guys it was, and
6 unfortunately they're the ones who are employed by the government.
7 And because they're employed by the City, that statute provides them
8 immunity.

9 It's, you know, it's just something that the Legislature has
10 chosen to, to protect emergency response like this even when they're
11 wrong. And there's no denying they were wrong, but being wrong is just
12 being – it's negligent, and you know, they're protected from they're –

13 THE DEFENDANT: So under –

14 THE COURT: -- from liability for that.

15 THE DEFENDANT: So under NRS 12.105, it says that:

16 A violation in the performance or failure to perform
17 obligation created by a person of duty, a failure to exercise
18 even the slightest care in protecting someone's right, is an
19 indifference to someone's right. I mean, they say the State
20 and local government agencies may be sued without naming
21 member of their governing body.

22 THE COURT: Right. Uh-huh.

23 THE DEFENDANT: I mean, especially –

24 THE COURT: But there's – but there is an immunity and that
25 – the statute that you're citing does not overcome the governmental

1 immunity for just doing their job and that's, that's all that you're alleging
2 they were doing here. It wasn't something unusual or something outside
3 their scope or something they shouldn't have been doing. They were
4 doing their job. What's their job? Responding to emergency medical
5 calls. They get there and they misdiagnose you. They shouldn't have
6 done that. They shouldn't have even have diagnosed you; they're not
7 doctors. They should have taken, they should have transported you.
8 Okay.

9 I understand your argument. I understand what you're saying.
10 I get it. That, you know, they – because of them not transporting you
11 immediately, you believe your surgery was required or necessitated or
12 worse. I understand taking all those facts as true. I understand
13 everything that you're saying.

14 But I believe, as Counsel has argued here, that the statute
15 that provides for governmental immunity protects just this situation. And
16 immunity means we're immune. It's like getting a vaccine for the
17 measles. You're immune, you're not going to ever get it, and that's what
18 this statute does. It provides immunity. It immunizes them from liability.

19 So I believe Counsel is correct as a matter of law. This is not
20 even a question of any of these facts. And since we're based on facts
21 there'd still be, you know, I would have to say: No, it's a fact question
22 whether they did or didn't fail to diagnose him or whether they did or
23 didn't do something.

24 If it were a question of fact, you would survive this, but it's not.
25 It's strictly a question of law. Is what Mr. Porchia – taken everything Mr.

1 Porchia says is correct; I don't doubt you one bit. They showed up, they
2 said: This guy's got gas. He doesn't have anything that needs
3 treatment. In fact, you did. You needed an emergency surgery. You
4 had the surgery. All those facts are true. That's fine.

5 Are they immune from liability for what they did, because it
6 was part of their regular job duties and they're immune from just
7 negligently doing, just being bad at their job. They are. It's an
8 unfortunate circumstance, but that's why I said we had to figure out
9 whether you were suing AMR, that is private entity EMTs, or were you
10 suing government EMTs? You were suing government EMTs. They
11 have statutory immunity. It's a matter of law. It's not even a question of
12 fact.

13 All your facts can be true. I'll take all your facts as true. Are
14 they still immune from that? Yes. And that's why I asked the, the further
15 question: Well, okay, so just because the EMTs may be immune, what
16 about their employer? Is there may be some way to say the employer's
17 at fault here?

18 And Counsel's addressed that question as well, that it can't be
19 a question of failure to train. That these guys were just, you know,
20 hadn't been trained to properly recognize when it was appropriate to
21 transport somebody. Because that falls back into the immunity
22 standard.

23 They're – what they're training people for is this emergency
24 response. Got an emergency medical call, you're immune from what
25 happens as a result of that call no matter how bad the outcome. So it's,

1 it's purely a statute. It's a question of what the Legislature has put in
2 place. And that's, I said why we had to sort it out, figure out who you
3 were actually suing. We've been talking about this since the beginning
4 of the case --

5 THE DEFENDANT: Yeah.

6 THE COURT: -- about governmental immunity and how that
7 was ultimately going to be what we were going to come down to. And
8 we finally -- we finally got here. We finally got it figured out. And as a
9 matter of law, I'm going to have to grant Counsel's motion because it
10 has nothing to do with your facts. I take all your facts as true. That
11 everything that you say that these guys did, I understand it and I take it
12 as true, and that's why you ended up having the surgery you had.

13 THE DEFENDANT: So they can just come on scene and just
14 do whatever they want to do, that's what you tellin' me.

15 THE COURT: As long as they don't -- are not grossly
16 negligent. Like I said, if they had -- instead of even responding to your
17 call, stopped and had doughnuts or something, that's gross negligence.
18 That's, you know, a total failure to even show up is gross negligence.
19 But everything you're saying is, they showed up, they put you on a
20 stretcher, they checked you out. They came to the wrong conclusion
21 about you and there is no denying.

22 And I understand your point being that you -- they -- you feel
23 they did that because you told them you were homeless and had no
24 insurance.

25 THE DEFENDANT: Right.

1 THE COURT: I understand your, your point about that, but
2 what you sued for here is saying they misdiagnosed me, and because
3 they misdiagnosed me, I ended up having to call somebody else. Those
4 people took me to the hospital, and the hospital diagnosed me properly
5 and put me through this surgery and saved my life.

6 I understand all of that. It's the kind of thing that the
7 government – that the State Legislature has written an immunity for
8 them for. You – if they are immune, then the statute you're talking about
9 under Chapter 12, they're immune from that. They've got immunity
10 because they are EMTs responding to an emergency service.

11 The Legislature has seen fit to protect all of the people who do
12 that so that we can have that available for the next person who needs
13 that kind of service. That's what the Legislature chose to do. It's a
14 question of law. It's got nothing to do with your facts. I understand
15 every fact you pled, I get it. I understand what you said they did wrong.

16 Even if they were totally incorrect, and because they were
17 incorrect, you had to have that surgery and you wouldn't have otherwise,
18 all that can be true. It doesn't change this legal issue which is this
19 immunity issue. And we've been talking about this, you know, for all the
20 attorneys who've been showing up here.

21 And you and I are the only ones who are still here after all this
22 time, but we've been talking about this since your case started. That we
23 had to figure out who it was you were saying was responsible for this, so
24 we could determine if they had this immunity or not. And we're finally
25 there and, so, unfortunately, I'm sorry it took us this long that we – took

1 us this long to figure this out, under the circumstances, but we're here.

2 Now I've got the legal issue before -- properly before the
3 Court, and it is a purely legal issue. It's got nothing to do with your facts.
4 I understand everything you've said factually. I'm taking it all as true.
5 But if I take all that as true, and there's still a legal issue over here that
6 trumps everything, I -- I'm controlled by the legal issue. And in this case
7 it's this statutory immunity that the Legislature -- it's not something I'm
8 making up. The attorney didn't make it up, it's in the statute.

9 The Legislature put this in place to protect all the firefighting
10 agencies in the entire State. Because if they were subject to liability for
11 -- if they do something -- if they mess up -- if they mess up as badly as
12 they messed up with you, every single time they go out they wouldn't be
13 able -- they wouldn't be there. They wouldn't be there to do anything for
14 anybody, so they have -- the State's decided to protect them. I'm sorry
15 but that's just a factual -- it's just the facts.

16 THE DEFENDANT: So protect them but not correct them?

17 THE COURT: Unless they're grossly negligence. Unless they
18 are grossly negligent. Like they, you know, trying to think of what could
19 be gross negligence in an -- in an emergency medical run.

20 THE DEFENDANT: I mean, I see it's negligence all the way
21 around the board --

22 THE COURT: It is.

23 THE DEFENDANT: -- not gross, but it's negligence.

24 THE COURT: I understand. I understand that, but they're
25 immune from it. They can be negligent as long as they're just merely

1 negligent. They can be – they can – they can be negligent; they're
2 immune. If they're grossly negligent – and that's, you know, I'm trying to
3 think of, you know, I don't know, they're grossly negligent. They – I don't
4 know, in taking you off the gurney, they dropped you on your head.

5 I mean, I'm trying to think what could be gross negligence in a
6 situation like this? They're just grossly negligent. Gross negligence is
7 just like intentionally like – yeah, they dumped you off the gurney, I
8 guess; that'd be gross negligence. But – and that, you know, because
9 you got dropped off the gurney you broke your leg, maybe we'd have
10 something to talk about there, because that would be grossly negligent.

11 But this was just – they showed up, they misdiagnosed you,
12 refused to transport you and because they did, you were delayed in
13 getting the medical treatment you needed, because you needed the
14 medical treatment. There's no getting around the facts. The facts are
15 what they are. Were they negligent? Yes, they were, okay. Were they
16 merely negligent? Yes.

17 If they're merely negligent they have immunity. It's just a
18 choice – I haven't made that choice, the Legislature has made that
19 choice, and I have to enforce the law they put in place. It's a law put in
20 place by the Legislature, not – he didn't make it up, I didn't make it up,
21 the Legislature put that law in place, and we have to live with it.

22 So I have to grant his motion to dismiss on that basis. So
23 Counsel if you'll prepare that.

24 MR. DOROCAC: It – I will Your Honor.

25 THE COURT: And then that means that the hearing on the

1 30th is vacated. So thank you, Mr. Porchia. I'm sorry it's taken this long
2 for us to reach this point. You and I have been talking about this case
3 for over a year, and we finally got here.

4 Thank you very much.

5 MR. DOROCAK: Thank you, Your Honor.

6 THE COURT: And you'll prepare that and send it over,
7 findings of fact, conclusions of -- do we need findings of fact, conclusion
8 -- it's a motion to dismiss.

9 MR. DOROCAK: I was just going to -- yeah.

10 THE COURT: Motion to dismiss. Okay. Thank you, Mr.
11 Porchia, I --

12 MR. DOROCAK: Short and simple.

13 THE COURT: -- you have certain rights. Mr. Porchia you
14 have the right to appeal, so keep track of the appeal time.

15 Thank you very much.

16 MR. DOROCAK: Thank Your Honor.

17 THE COURT: Okay, appreciate it, thank you.

18 [Hearing concluded at 9:28 a.m.]

19 * * * * *

20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video proceedings in the above-entitled case to the best of my ability.

23 
24 _____
25 Kerry Esparza
Court Recorder/Transcriber

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Court of Appeals order dated August 24, 2020, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the supplemental trial court record for the case referenced below. The record comprises volume four with pages numbered 665 through 693.

LARRY PORCHIA,

Plaintiff(s),

vs.

CITY OF LAS VEGAS; STEPHEN MASSA;
NICHOLAS PAVELKA; MARINA CLARK;
JASON W. DRIGGERS; LVER RISK
MANAGEMENT,

Defendant(s),

Case No: A-17-758321-C

Dept. No: XXVI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 14 day of September 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk