Supreme Court Case No. S152360

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

ALEXANDRA VAN HORN, *Plaintiff and Respondent,* v. ANTHONY GLEN WATSON, *Defendant and Appellant,* LISA TORTI, *Defendant and Respondent.*	B188076 (Los Angeles County Superior Court Case No. PC034945)
ALEXANDRA VAN HORN, *Plaintiff and Appellant,* v. ANTHONY GLEN WATSON, et al., *Defendants and Respondent.*	B189254

REPLY TO ANSWERS TO PETITION FOR REVIEW

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TO THE HONORABLE CHIEF JUSTICE RONALD M. GEORGE AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT:

Respondent and defendant Lisa Torti submits this Reply to the Answers of appellants Glen Watson and Alexandra Van Horn (collectively "Appellants") to the Petition for Review.

INTRODUCTION

The Petition for Review asks this Court to resolve a fundamental issue important to every citizen in this State: the scope of immunity conferred on Good Samaritans by Section 1799.102 of the Health & Safety Code.[1] Ironically, Mr. Watson's Answer succinctly captures the status quo after the Court of Appeal's decision: "... A person who has not created a peril is not liable in tort merely for failure to take affirmative action to assist or protect another ...."[2] By enacting Section 1799.102, however, the Legislature decided that this common law rule of "be safe/do nothing" was not good public policy.

The Court of Appeal decision below constitutes a significant rewriting of the statute. Appellants nevertheless seek to downplay such a change in their respective Answers. First, Appellants suggest that the Court

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[1] Unless otherwise noted, all statutory references shall be to the California Health & Safety Code.

[2] Watson Answer, at p. 5 (quoting *Williams v. State of California*, 34 Cal. 3d 18, 23 (1983)).

of Appeal did not create new law in holding that Section 1799.102 applies only to emergency *medical* care rendered at the scene of a *medical* emergency. This is remarkable. Any substantive interpretation of Section 1799.102 is an issue of first impression in any event; this particular interpretation is unprecedented. Thus, the Court of Appeal's opinion necessarily creates new law.

Second, Appellants contend that while constricting Section 1799.102's unqualified immunity for volunteer Good Samaritans, the Court of Appeal nevertheless left existing, ordinary negligence common law intact. The argument, though, does not remotely address the issue of the scope of Good Samaritan *statutory* immunity. Moreover, the common law's harsh treatment of Good Samaritans is precisely why the Legislature adopted Good Samaritan statutes. If anything, Appellants' all-out assault on this State's public policy to encourage Good Samaritan acts confirms the necessity that this Court review this important legal issue.

In short, Appellants fail to demonstrate why this Court should not grant review and, instead, give this Court an opportunity to see the negative implications of the Court of Appeal's opinion in full effect. Ms. Torti respectfully requests that the Court grant this Petition for Review and, upon review, affirm the Superior Court's judgment.

APPELLANTS DO NOT DEMONSTRATE ANY REASON WHY THIS COURT SHOULD NOT GRANT REVIEW

A. The Common Law Does Not Provide Grounds to Rewrite Section 1799.102.

Under the common law, a Good Samaritan may be liable for injuries that might result from his or her selfless acts. The Legislature recognized that such potential liability deters many people from helping others and adopted statutes to provide unqualified (or, in some cases, qualified) immunity to Good Samaritans. As this Court wrote, the express purpose for adopting Good Samaritan statutes was to "abrogat[e] the 'Good Samaritan' rule." *Nally v. Grace Community Church of the Valley*, 47 Cal. 3d 278, 298 (1988). Appellants nevertheless now argue that the common law is an adequate substitute for the Good Samaritan statutes.

It does not matter whether the common law Good Samaritan rule remains unchanged after the Court of Appeal's opinion. The Legislature adopted Good Samaritan statutes to take these acts outside the realm of ordinary negligence common law. Surely, the Legislature did not adopt Good Samaritan immunity statutes in reaction to the common law with the intention that courts might disregard or rewrite these statutes. Not surprisingly, Appellants do not address this obvious disconnect in their Answers.

Appellants, however, launch an all-out assault on the very existence of Good Samaritan statutes. Appellants posit that Section 1799.102 cannot

be interpreted to confer unqualified immunity on a Good Samaritan who renders emergency care in a medical emergency because that "would be a complete legislative repeal of the common law rule governing the acts of the so called "good Samaritan." (Van Horn Answer, at p. 6.) Thus, Appellants go further than the Court of Appeal opinion and essentially strip Section 1799.102, and all other Good Samaritan statutes, of their force and meaning. All the more reason these unsettled, important issues should be resolved by this Court.

B. The Effect of the Court of Appeal's Opinion on Other Statutes Should Be Decided by this Court.

In direct contradiction to Appellants' arguments, the Court of Appeal's interpretation of Section 1799.102 does change existing law.[3] Interpreting the word "emergency" to mean only "*medical* emergency" strips immunity conferred by other statutes under the Act using identical

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[3] Mr. Watson argues that Ms. Torti raises a new issue in her Petition for Review. (Watson Answer, at p. 4.) The issue -- the proper interpretation of Section 1799.102 -- was briefed extensively before the Court of Appeal. *See* Respondent Lisa Torti's Brief, at pp. 13-40. While Ms. Torti may have raised an additional *argument* or two in her Petition which further demonstrates the widespread, deleterious impact of the Court of Appeal's decision, no new issue has been raised. *See Parris v. Zolin*, 12 Cal. 4th 839, 848 n.7 (1996) (rejecting defendants' argument that plaintiff had raised a new legal issue that not been before the Court of Appeal where the "[p]laintiff's argument, which addresses the full extent of the agency's responsibility under [the statute], is fairly included within the question of the proper construction of the section"). *See also Calif. Rules of Court, rule 8.516(b)(1)* ("The Supreme Court may decide any issues that are raised or fairly included in the petition or answer").

language.[4] Section 1799.107 grants qualified immunity to emergency rescue personnel, e.g., firefighters, for "emergency services."[5] Section 1799.108 grants qualified immunity to trained medical personnel, including emergency medical technicians ("EMTs"). Both statutes use the word "emergency" unqualified by the word "medical." Under the Court of Appeal's interpretation, though, these statutes would no longer provide immunity to these trained professionals in the full course of their regular jobs. Instead, these individuals would only have qualified immunity in "medical" emergencies.

Appellants summarily dismiss these obvious and natural consequences. Without any support from the Court of Appeal's opinion itself, Appellants suggest that the Court of Appeal "did consider the impact of its interpretation .... That is why the Court unanimously concluded that Section 1799.102 was not intended to apply outside of rescues requiring emergency medical care." (Watson Answer, at p. 4.)

In point of fact, the Court of Appeal did not consider the effect its construction of the word "emergency" in Section 1799.102 will have on other statutes in the Act. The Court of Appeal did not mention Section

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[4] Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act, *Health & Safety Code §§ 1797, et seq.*

[5] Emergency services are defined as "first aid and medical services, rescue procedures and transportation, or other related activities necessary to insure the health or safety of a person in imminent peril." *Health & Saf. Code § 1799.107(e).*

1799.107 or Section 1799.108 at all. Such important consequences should have been addressed, and now can only be addressed by this Court.

C. This Court Should Resolve the Arbitrary Distinctions Created by the Court of Appeal's Opinion.

Appellants devote much of their Answers to asserting that the Court of Appeal correctly interpreted Section 1799.102. When examined more closely, however, Appellants' interpretation of the Court of Appeal's opinion is far different than the actual opinion itself.

Mr. Watson decides that the Court of Appeal "simply determined that the Legislature did not intend ... Section 1799.102 ... to apply to non-emergency medical care professionals or laypersons not trained in life-saving techniques." (Watson Answer, at p. 3.) Put simply, Mr. Watson believes that the Court of Appeal interprets Section 1799.102 to apply only to laypersons who are medically trained. Ms. Van Horn also contends that Section 1799.102 only applies to people who render "medical care such as CPR and advanced first aid techniques." (Van Horn Answer, at p. 15.)

This interpretation, however, ignores the Court of Appeal's statement that "any person (whether trained or not)" is granted immunity under the statute. Indeed, the Court of Appeal's hypothetical involving a Good Samaritan pulling a person from a car filled with carbon monoxide does not contemplate any medical training on the Good Samaritan's part. (*See* Petition for Review, Ex. B, at p. 2.) Under the Court of Appeal's unwieldy opinion, however, these inconsistent interpretations will be

regular occurrences for Good Samaritan immunity. Appellants' misunderstanding of whom Section 1799.102 should apply is entirely consistent with Ms. Torti's point that the Court of Appeal's opinion creates unworkable distinctions and negative consequences.

Even Ms. Van Horn admits that the Court of Appeal's opinion leaves open a "myriad of conceivable circumstances that may require further statutory interpretations." (Van Horn Answer, at pp. 15-16.) Fortunately, this State's current and future Good Samaritans may look to this Court to review and settle this important question of law for an equal application to all citizens.[6]

CONCLUSION

Nothing in Appellants' Answers shows why this case should not be reviewed by this Court. Indeed, the Answers only underscore the reasons why the Court of Appeal's opinion is unworkable.

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[6] Both Appellants' Answers attempt to argue and characterize the evidence. The simple fact is that this is a summary judgment case. The Superior Court found based on the undisputed evidence that Ms. Torti acted in good faith at the scene of an emergency. Beyond that, this case presents a single, legal issue of statutory interpretation.

Ms. Torti respectfully requests that the Court grant the Petition for Review, and upon such review, affirm the Superior Court's judgment.

Dated: May 29, 2007

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), counsel for respondent Lisa Torti hereby certify that this Reply to the Answers to the Petition for Review consists of 1,632 words, as counted by the Microsoft Word 2002 word-processing program used to generate this brief.

Dated: May 29, 2007

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Van Horn v. Watson and Torti

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address is 601 South Figueroa Street, Suite 1500, Los Angeles, California 90017.

On May 29, 2007, I served the within **REPLY TO ANSWERS TO PETITION FOR REVIEW** on the parties in said action by placing a true and correct copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box located at Los Angeles, California, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 29, 2007, at Los Angeles, California.

Audrey Rosenbaum

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