Court of Appeal, Second Appellate District, Div. 3
Nos. B188076/B189254

No. S152360

IN THE SUPREME COURT OF CALIFORNIA

ALEXANDRA VAN HORN, Plaintiff and Respondent,

v.

ANTHONY GLEN WATSON, Defendant and Appellant;

LISA TORTI, Defendant and Respondent.

And Consolidated Case.

REPLY BRIEF ON THE MERITS

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I. INTRODUCTION

In 1959, it was well-recognized in California that fear of potential liability deters people from helping others. The California Legislature responded and passed the first, so-called Good Samaritan statute. In doing so, it articulated an unmistakable public policy choice to encourage people to help each other in true emergencies. To this day ordinary people who selflessly come to the aid of others may risk their personal safety, but do not concomitantly risk their financial well-being.

Contrary to this historical background, Appellants[1] Alexandra Van Horn and Anthony Watson ask this Court essentially to reinstate the common law negligence regime, which the Legislature superseded almost fifty years ago. They argue that Section 1799.102 of the Health & Safety Code[2] should apply only to individuals who are "trained" to render "medical care," which would leave many ordinary Good Samaritans outside the statute and subject to the common law. The statute's plain language, however, contains no such limitations. Indeed, the Court of Appeal did not read the statute this narrowly, and at least held that Section 1799.102 may apply to all individuals, whether medically trained or not.

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[1] Ms. Van Horn technically is a respondent in the caption to this proceeding. However, we use the shorthand "Appellants" to refer to Ms. Van Horn and Mr. Watson in this brief, as they are aligned in challenging the Superior Court's grant of summary judgment based on Section 1799.102.

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

Appellants nevertheless posit that, if Section 1799.102 is not judicially limited to volunteers who provide "medical" care, then *any* individual who performs *any* act under *any* circumstance to help another will be absolutely immune from liability. Appellants' overstated doomsday scenario, however, ignores the statutory language as presently written. Section 1799.102 has express safeguards in place: it applies to only individuals who act in *good faith* in a *true emergency*.

Appellants also attack Ms. Torti to support their interpretation of Section 1799.102. They reinvent the factual record to suggest that Ms. Torti *personally* does not deserve Section 1799.102's immunity. On one hand, Appellants paint Ms. Torti as a hysterical drunk. They then suggest that, inebriation aside, Ms. Torti had the foresight in the heat of the moment to seek hero status by trying to save her friend. Such inconsistent characterizations only contradict the undisputed evidence and the trial court's factual findings.

In short, the Superior Court found, based on undisputed evidence, that Ms. Torti believed in good faith that her friend was severely injured in a smoking car and unable to move. Without regard for her own safety, Ms. Torti rushed to the vehicle and removed Ms. Van Horn. Ms. Torti's actions are those of a Good Samaritan under Section 1799.102.

Lastly, and with virtually no discussion, Appellants brush aside the unintended, negative effects that their interpretation of Section 1799.102

would have on other Good Samaritan statutes. However, identical statutory language either would be subject to different meanings, or the breadth of other Good Samaritan protections would significantly be narrowed in, for example, Sections 1799.107 and 1799.108. Dismissing these very real problems out-of-hand does not mean they disappear.

This statute provides a mechanism for individuals -- any individual -- who in good faith help others during true emergencies to provide assistance without fear of financial ruin. In other words, Section 1799.102 as written achieves what the Legislature intended. Ms. Torti respectfully requests that this Court affirm the Superior Court's grant of summary judgment.

II. ARGUMENT

A. Section 1799.102's Plain Language Already Contains The Legislature's Intended And Adequate Safeguards.

Appellants repeatedly contend that this Court must rewrite Section 1799.102 to apply only to *medically-trained* individuals who render *medical* care. (Van Horn Answer Brief, at pp. 8-9; Watson Answer Brief, at p. 16.) Otherwise, according to the argument, Section 1799.102 will apply to *any* individual for *any* act under *any* circumstance. As written, though, Section 1799.102 already safeguards against any such result: The statute only applies to individuals acting in good faith in true emergencies.

On its face, the statute expresses two significant safeguards. First, a person who seeks Section 1799.102 immunity must act "in good faith." This subjective prerequisite necessarily eliminates "every person who does any act at the scene of any emergency, no matter how outrageous, no matter how unnecessary, no matter how harmful ...." (Van Horn Answer Brief, at p. 8.) The good faith standard presupposes the veracity and necessity of the Good Samaritan's intentions and actions. (*See Lowry v. Henry Mayo Newhall Memorial Hosp.* (1986) 185 Cal.App.3d 188, 196 [229 Cal.Rptr. 620] ["Good faith" is "used to describe the state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one's duty or obligation"].)

Second, for purposes of Section 1799.102 and the ordinary Good Samaritan, there must be an objective, true "emergency." The Act[3] defines an "emergency" as "a condition or situation in which an individual has a need for *immediate medical attention*, or where the potential for such need is perceived by emergency medical personnel or a public safety agency." (*Health & Saf. Code § 1797.70* (emphasis added).) The first clause from the above-quoted portion of Section 1797.70 applies under these circumstances, and Ms. Torti had to prove that Ms. Van Horn needed "immediate medical attention." Section 1799.102 thus cannot merely apply

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

to "any act for an accident victim" (Watson Answer Brief, at p. 16), or to "every person who merely moves or transports an accident victim ...." (*Id.*, at p. 14). Rather, the evidence must show (as the undisputed evidence did here[4]) that there was in fact an urgency -- a need for *immediate medical attention* -- not present in a run-of-the-mill fender-bender.

In a related argument about limiting the statute to only medically-trained persons, Mr. Watson contends that Section 1799.102 makes Harbors & Navigation Code § 656(b)[5] superfluous. (Watson Answer Brief, at p. 16.) The argument, though, actually illustrates the significance of the above Section 1799.102 safeguards. While Harbors & Navigation Code § 656(b)[6] confers qualified immunity for a broad array of activities, i.e., "providing or arranging salvage, towage, medical treatment, or other assistance ...," it does not purport to address situations in which an individual needs *immediate medical attention*. Accordingly, nothing on the face of Harbors & Navigation Code § 656(b) conflicts with the plain meaning of or safeguards contained in Section 1799.102.

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[4] *See* Van Horn AA000098-AA000100 & AA000111-000112. "Van Horn AA" refers to the Appellant's Appendix in Lieu of Clerk's Transcript submitted by Ms. Van Horn to the Court of Appeal on December 6, 2005.

[5] Mr. Watson states that Section 656 was enacted in 1959, but cites no authority. It appears from the statute's history that it was enacted in 1956 and that it was last amended in 1986.

[6] Harb. & Nav. Code § 656 grants immunity to "[a]ny person ... who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident, or other casualty without objection by any person assisted ... where the assisting person has acted as an ordinary, reasonably prudent person would have acted under the same or similar circumstances."

As enacted, Section 1799.102 represented a conscious attempt by the Legislature to balance a policy of encouraging ordinary individuals to help others in emergencies versus a need to place rational requirements on the statutory grant of immunity. The Legislature placed these two limitations in Section 1799.102; the Legislature did not intend Appellants or others to conjure additional ones.

B. Attempts to Demonize Ms. Torti Ignore The Undisputed Evidence That She Acted In Good Faith.

Leapfrogging the plain language of Section 1799.102, Appellants contend that Ms. Torti *personally* does not deserve Section 1799.102's protection. For example, Mr. Watson dismisses Ms. Torti's actions as prompted by "alcohol consumption and hysteria." (Watson Answer Brief, at p. 5.) Ms. Van Horn accuses Ms. Torti of acting from a "selfish desire to bask in a hero's limelight." (Van Horn Answer Brief, at p. 7.) Not a shred of evidence, however, supports these accusations.

The Superior Court expressly found that, based on undisputed evidence, Ms. Torti acted in *good faith* when she removed Ms. Van Horn from the wrecked vehicle. Specifically, the Superior Court held that (1) Ms. Torti believed Ms. Van Horn "was in danger from smoke, fire or possible explosion or other further injury if she remained in the vehicle involved in the accident," (2) Ms. Van Horn had tried to exit the vehicle on her own, but could not, and (3) Ms. Van Horn never told Ms. Torti not to

touch or move her. (Watson AA 0663-0664.[7]) The Superior Court thus held that Ms. Torti "had the good faith intention to rescue Plaintiff from what she believed to be a dangerous, life threatening situation." (Watson AA 0664.)

Given the actual record, these personal attacks are nothing more than an untimely and unsubstantiated attempt to contradict the undisputed facts. Ms. Torti believed Mr. Watson's car was smoking and risked her own safety to rescue an immobile Ms. Van Horn. Ms. Torti was not an hysterical drunk, who hungered for the spotlight. She was not an "officious intermeddler." Instead, and as the Superior Court found, Ms. Torti was a Good Samaritan entitled to immunity under Section 1799.102.

C. Common Law Good Samaritan Principles Are No Reason To Rewrite Section 1799.102.

In a paradigmatic example of sticking an outdated cart in front of a modern horse, Appellants argue that Good Samaritan common law principles support rewriting Section 1799.102. According to Appellants, because a Good Samaritan doctrine existed at common law, the plain language of Section 1799.102 should be disregarded. This argument, though, misses the obvious: the Legislature enacted Section 1799.102 and the other Good Samaritan statutes precisely to supersede and avoid

[7] "Watson AA" refers to the Appellant's Appendix of Exhibits filed by Mr. Watson in the Court of Appeal on July 20, 2006.

imposition of common law principles on Good Samaritans in specified circumstances.

As this Court has recognized, Section 1799.102 and its related statutes represent "the trend in the Legislature to encourage private assistance efforts. This public policy goal is expressed in the acts of the Legislature abrogating the 'Good Samaritan' rule." (*Nally v. Grace Community Church of the Valley* (1988) 47 Cal.3d 278, 298 [763 P.2d 948; 253 Cal. Rptr 97].) The impetus for enacting the first Good Samaritan statute in this State -- and in this country -- was that common law negligence principles deterred people from acting to help others. (*See, e.g., Colby v. Schwartz* (1978) 78 Cal.App.3d 885, 890 [144 Cal.Rptr. 624].)

Good Samaritan common law principles still may apply in those limited circumstances in which the Good Samaritan statutes do not. That, however, surely does not argue for repeal or rewriting the statutes. Put differently, the Legislature did not adopt Good Samaritan immunity statutes in reaction to then-existing common law principles and concurrently intend that those statutes' plain meaning might be disregarded in favor of what was being replaced.

Appellants point to *Williams v. State of California* (1983) 34 Cal.3d 18 [664 P.2d 137; 192 Cal.Rptr. 233] and CACI jury instructions relating to common law Good Samaritan principles to buttress their nonsensical argument. They emphasize that *Williams* was decided after Section

1799.102's enactment. Appellants reason that, as a consequence, Good Samaritan common law somehow overrides statutory plain meaning. A close examination of *Williams*' facts and holding, though, shows that the case cannot bear on Section 1799.102's interpretation.

The issue in *Williams* was "whether the mere fact that a highway patrolman comes to the aid of an injured or stranded motorist creates an affirmative duty to secure information or preserve evidence for civil litigation between the motorist and third parties." (34 Cal.3d at 21.) The opinion noted the common law Good Samaritan maxim that there is no duty to protect third persons, *absent a special relationship*. (*Id.* at p. 23.) The opinion then focused on the nature of the duty, if any, police officers owe individual citizens. This Court ultimately held that there is no special relationship between a highway patrolman and a motorist based on the patrolman simply having stopped to provide assistance. (*Id.* at pp. 27-28.)

Williams did not hold that a "non-medical care provider must use due care when attempting to aid an accident victim," as Mr. Watson implies. (Watson Answer Brief, at p. 14.) The opinion simply applies common law Good Samaritan negligence principles that have long existed, but which do not apply to the facts here.

As to the jury instructions, and as noted above, common law principles continue to apply insofar as the Good Samaritan statutes do not. In litigation involving situations falling within those remaining, common

law-controlled situations, jury instructions may be needed. The existence of CACI Nos. 450 and 452 show no more than that non-controversial point.

D. Appellants' Interpretation Of Section 1799.102 Even Exceeds The Court of Appeal Opinion And Replies Upon Illusory Legislative History.

Appellants urge this Court to rewrite Section 1799.102 in a manner that goes beyond even the Court of Appeal's interpretation. The latter concluded that Section 1799.102's immunity applies only to persons who render "emergency *medical* care" in a "*medical* emergency." As noted in Ms. Torti's Opening Brief on the Merits, however, the word "medical" just does not appear in the statute. Nonetheless, the Court of Appeal did recognize that a person can render "medical" care, "*whether trained or not.*" (*See* Petition for Review, Ex. B, at p. 2 (emphasis added).) The Court of Appeal even included a hypothetical in which a Good Samaritan renders emergency care that was not "medical" care, i.e., where a Good Samaritan pulls a person from a car filled with carbon monoxide. (*See id.*) Appellants, though, are far more aggressive in trying to rewrite the statute.

Ms. Van Horn, for example, contends that the Legislature enacted Section 1799.102 to "protect victims from undesirable interference by persons without the requisite qualifications ...." (Van Horn Answer Brief, at p. 7.) Ms. Van Horn does not -- and cannot -- point to any actual authority that supports such an interpretation.

Given the paucity of support, Appellants do rely on the un-enacted Assembly Bill 1252. This 1991 bill was introduced to amend Section 1799.102 to include the word "assistance" at the scene of an emergency. Appellants contend that, since AB 1252 was not enacted, Section 1799.102 was not intended to provide immunity in situations involving non-medical care. The historical background, however, suggests otherwise.

While the legislative record is silent regarding why AB 1252 was not enacted, AB 1252 was considered a "clarification" of existing law. (Request for Judicial Notice in Support of Opening Brief on the Merits ["RJN"], Ex. G, at p. 2 & Ex. J, at p. 2.) Indeed, AB 1252's main opponent -- the California Tort Lawyers' Association -- agreed that adding the word "assistance" to the statute was "declaratory of existing law." (*Id.*, Ex. J, at p. 2.) Whatever their disagreements may have been, none of the interested parties disputed that non-medical care already was included in Section 1799.102.

Ms. Van Horn alternately urges that the Legislature left the word "medical" out of the statute, because it wanted to "eliminate excess verbiage." (Van Horn Answer Brief, at p. 15.) "Medical," though, cannot be "excess verbiage," since the word is found throughout the Act. Rather, we should "not speculate that the legislature meant something other than what it said. Nor may [the courts] rewrite a statute to express an intention not expressed therein." (*McAlexander v. Siskiyou Joint Community Coll.*

(1990) 222 Cal.App.3d 768, 775 [272 Cal.Rptr. 70].) The only legitimate conclusion to be gleaned from the Legislature's omitting "medical" in Section 1799.102 is that it was intentional.

E. Appellants Have No Adequate Answer For The Mischief Their Section 1799.102 Interpretation Would Have On Other Good Samaritan Statutes.

Appellants ask this Court to read related provisions in the Act "in harmony" with Section 1799.102. This apparently is code for inserting the word "medical" in statutes where it does not appear. However, as Ms. Torti discussed in her Opening Brief on the Merits, reading the word "medical" into Section 1799.102 causes problems throughout the Act.

Appellants' and the Court of Appeal's interpretations cannot be read consistently with other provisions in the Act, such as Sections 1799.106, 1799.107 and 1799.108. For example, reading the word "medical" into "emergency" in Section 1799.107 cannot work: Section 1799.107 specifically provides that "emergency" encompasses both medical and non-medical care, i.e., "rescue procedures and transportation, or other related activities necessary to insure the health or safety of a person in imminent peril."

Thus having raised their "harmony" theory, Appellants not surprisingly must abandon it. Indeed, Appellants must argue that these related provisions "are different on several levels and there is absolutely no reason to assume that construction of the language in 1799.102 would

require an identical construction for 1799.107 .... Thus, the two sections address distinct public health and safety concerns and apply to different classes of people." (Van Horn Answer Brief, at p. 16.) Rather than harmonizing the statutory scheme, Appellants amply demonstrate the complexities, unintended consequences and confusion that follows from inserting words into Section 1799.102 that do not exist on its face.

In another "harmony" argument, Mr. Watson urges that Section 1799.102's absolute immunity cannot apply to individuals who render non-medical care, because related statutes for paid professionals only offer qualified immunity for non-medical care. (Watson Answer Brief, at pp. 24-25.) The short answer, though, is that the statutes provide what they provide and, if anything, show that unwritten distinctions between medical and non-medical care should not be created.

Under the Act, paid professionals are entitled to qualified immunity for both non-medical care *and* medical care. (*See Health & Saf. Code §§ 1799.106-1799.108.*) Stated differently, there is no distinction for the type of care rendered. For example, a medical professional is not entitled to absolute immunity when he renders medical care to a stroke victim, and then qualified immunity when he transports that stroke victim to the hospital. A medical professional simply is entitled to qualified immunity except for "acts or omissions performed in a grossly negligent manner or

acts or omissions not performed in good faith." (*See, e.g., Health & Saf. Code § 1799.108.*)

Likewise, Section 1799.102's immunity should not be broken down into different categories. Indeed, Appellants' argument only underscores precisely why Section 1799.102 should be read to include both medical care and non-medical care, since virtually all other related statutes in the Act envision that rescuers will face situations requiring both medical care and non-medical care.

Further, and with respect to the State's Disaster Service Worker Volunteer Program ("DSWVP"), neither Mr. Watson nor Ms. Van Horn even address how convergent volunteers will be immune from liability. Yet, this State relies on Good Samaritans to assist during disasters. The DSWVP also relies on Good Samaritan statutes to provide immunity from liability to those volunteers who converge at the scene to help after a disaster, but are not registered with the DSWVP.

Section 1799.102 is clear: "No person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission." When the statute is interpreted as written, there is no need to twist and distort the Act's other statutes.

III. CONCLUSION

Ultimately, we must ask ourselves: if I was trapped in a smoking car in severe pain and unable to move, would I want someone to move me from the wreckage to safety or would I want that person to second-guess that rescue because of the fear of liability? Ms. Van Horn and Mr. Watson apparently answer "no." With the passage of Section 1799.102 and other Good Samaritan statutes, however, this State has answered with a resounding "yes."

Accordingly, Ms. Torti respectfully requests that this Court affirm the Superior Court's judgment.

Respectfully submitted,

Dated: December 5, 2007

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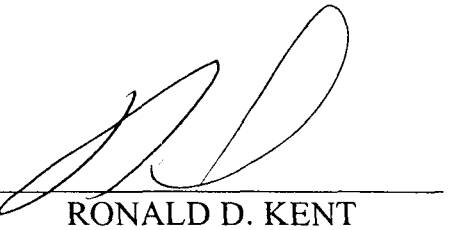
CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), counsel for respondent Lisa Torti hereby certify that this Reply Brief on the Merits consists of 3,331 words, as counted by the Microsoft Word 2002 word-processing program used to generate this brief.

Dated: December 5, 2007 SONNENSCHEIN NATH & ROSENTHAL LLP

By 
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Case No. S152360
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 2500, Los Angeles, California 90017.

On December 5, 2007, I served the within **REPLY BRIEF ON THE MERITS** 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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Executed on December 5, 2007, at Los Angeles, California.

Audrey Rosenbaum