FOR THE RECORD

BY CRAIG M. SANDBERG

Illinois Supreme Court Rules EMS Act Trumps Tort Immunity Act

On October 2nd, the Illinois Supreme Court reversed two lower courts allowing a 2004 wrongful death lawsuit against the City of Park Ridge to continue in the case of *Abruzzo v. The City of Park Ridge* (Docket No. 104935) in holding that the limited immunity provision of the Emergency Medical Services ("EMS") Systems Act ("EMS Act") (210 ILCS 50/3.15(a)) applies to these facts over the Tort Immunity Act.

On October 31, 2004, at approximately 1:06 a.m., 15-year old Joseph Furio's father, Lawrence Furio, called 911 to request emergency assistance for Joseph, "a nonresponse child who required CPR." The City of Park Ridge dispatched a fire engine and an ambulance staffed by emergency medical technicians ("EMTs"), paramedics, and firefighters. Upon their arrival, Joseph was unresponsive. Plaintiff alleged the EMTs, paramedics, and firefighters did not evaluate, assess, provide advanced life support, or transport Joseph to a hospital despite his condition requiring medicate medical treatment. Thereafter, apparently, the EMTs left the home of Lawrence and Joseph.

Lawrence, again, called 911 at 9 a.m. When emergency personnel arrived, they found the teenager in cardiac arrest. The emergency responders began resuscitation and transported Joseph to a local hospital where he died. The cause of death was anoxic encephalopathy due to cocaine and opiates intoxication.

Jo Ann Abruzzo sued the City of Park Ridge on behalf of the estate of her son, Joseph Furio. The suit alleged that EMTs responding to a call that Joseph had collapsed left without reviving Furio or transporting him to a hospital for treatment. The plaintiff's Section 622 physician's report concluded that failure of the emergency responders were a proximate cause of Joseph's death.

The circuit court dismissed the case on the city's claim that the Tort Immunity Act protected the city from prosecution, which was affirmed by the Appellate Court of Illinois, First District. However, the Illinois Supreme Court found the EMS Act limited liability provision governs here over Sections 6-105 and 6-106(a) of the Tort Immunity Act. The Court reversed the dismissal of the complaint and remanded the matter to the circuit court for further proceedings.

The Court determined, on review, that the EMS Act was a comprehensive, omnibus source of rules governing the planning, delivery, evaluation, and regulation of emergency medical services in Illinois. As such, the EMS Act includes preparatory actions integral to providing emergency treatment, such as those alleged by the plaintiff.

Notably, the defendant did not challenge the existence of duty to provide emergency medical assistance in this case. In fact, the defendant admitted the legal sufficiency of plaintiff's tort claims, including the existence of a duty, by filing a motion to dismiss the complaint under section 2-619. The only issue on appeal was whether an immunity applied to the case at bar.

U.S. Supreme Court Strikes Down "Millionaire's Amendment" of Bipartisan Campaign Reform Act of 2002 as Unconstitutional

On June 26th the Supreme Court of the United States *(Davis v. Federal Election Commission;* No. 06-6330) ruled that provisions of the Bipartisan Campaign Reform Act ("BCRA") known as the "Millionaires' Amendment" (2 U.S.C. §319(a) and (b)) unconstitutionally burden the First Amendment rights of self-financed

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candidates. The decision overturned an earlier ruling by the U.S. District Court for the District of Columbia that the "Millionaires' Amendment" posed no threat to self-financed candidates' First Amendment or Equal Protection rights.

On March 30, 2006, the plaintiff, Jack Davis, declared his candidacy for the House seat in New York's 26th District. Davis intends to spend over $350,000 of his own funds on his campaign, expenditures which will trigger the requirements of the "Millionaires' Amendment", and may result in increased contribution limits for his opponent.

Under the "Millionaires' Amendment," candidates who spend more than certain threshold amounts of their own personal funds on their campaigns might render their opponents eligible to receive contributions from individuals at an increased limit. 2 U.S.C. §§441a-1. For House candidates, the threshold amount is $350,000. This level of personal campaign spending could trigger increased limits for the self-financed candidate's opponent depending upon the opponent's own campaign expenditures from personal funds and the amount of funds the candidate has raised from other sources. If increased limits are triggered, then the eligible candidate may receive contributions from individuals at three times the usual limit of $2,100 per election (individual limit for 2005-06 cycle) and may benefit from party coordinated expenditures in excess of the usual limit.

Before considering the constitutionality of "Millionaires' Amendment" the Court rejected the Federal Election Commission's ("FEC") arguments that Davis lacked standing and that the case was moot. On the issue of standing, the FEC argued that Davis lacked standing to challenge the unequal contribution limits of the "Millionaires' Amendment", 2 U.S.C. §319(a), because Davis' opponent never received contributions at the increased limit and therefore, Davis had suffered no injury. The Court rejected this argument, noting that a party facing prospective injury has standing whenever the threat of injury is real, immediate and direct. The Court further noted that Davis faced such a prospect of injury from increased contribution limits at the time he filed his suit.

The FEC also argued that Davis' argument was moot because the 2006 election had passed and Davis' claim would be capable of repetition only if Davis planned to self-finance another election for the U.S. House of Representatives. The FEC also argued that Davis' claim would not evade review as he could challenge the Amendment in court should the FEC file an enforcement action regarding his failure to file personal expenditure reports. Considering that Davis had subsequently made a public statement expressing his intent to run for a House seat and trigger the "Millionaires' Amendment" again, the Court concluded that Davis' challenge is not moot.

In considering Davis' claim that imposing different fundraising limits on candidates running against one another impermissibly burdens his First Amendment right to free speech, the Court noted that it has never upheld the constitutionality of such a law. The Court referred to Buckley v. Valeo, 424 U.S. 1, 965 S. Ct. 612 (1976) in which it rejected a cap on a candidate's expenditure of personal funds for campaign speech and upheld the right of a candidate to "vigorously and tirelessly" advocate his or her own election. While the "Millionaires' Amendment" did not impose a spending cap on candidates, it effectively penalized candidates who spent large amounts of their own funds on their campaigns by increasing their opponents' contribution limits. The Court determined that the burden thus placed on wealthy candidates is not justified by any governmental interest in preventing corruption or the appearance of corruption, and that equalizing electoral opportunities for candidates of different personal wealth was not a permissible Congressional purpose. The Court remanded the matter for action consistent with its decision. ■