

entity whose neglect, willful omission, or intentional willful or culpable conduct resulted in that injury.

See also NY Gen. Mun. Law 205-e.

STATE APPELLATE COURT OPINION

Some state appellate courts have issued opinions that have limited the Fireman's Rule. For example:

- Arizona's Supreme Court has now confirmed the Fireman's Rule does not apply to off-duty conduct: *Espinoza v. Schulenburg*, 129 P.3d 937 2006 (Ariz. March 15, 2006); Ariz. LEXIS 27. The Arizona Supreme Court held that the Fireman's Rule does not bar an off-duty firefighter, who stops to aid at a motor vehicle accident and is injured, from suing the person whose negligence caused the accident. This case is reviewed in Chapter 2.
- Michigan court has declined to apply the Fireman's Rule to EMS personnel: see *McKim v. Forward Lodging, Inc.*, 266 Mich. App. 373, 702 N.W.2d 181, 2005 Mich. App. LEXIS 1108 (Court of Appeals of Michigan, 2005). Paramedic Katrina McKim responded to a person who fell on ice on a parking lot outside a hotel and conference center. The assistant manager who came to the aid of the person also slipped and broke her ankle. After assessing the assistant manager, the paramedic walked back to her ambulance for equipment, and she also fell on the ice, hitting her head and injuring herself. The paramedic filed a lawsuit against the hotel, but the trial court dismissed the case finding that the hotel did not have a duty to warn the paramedic of the obvious icy conditions. The trial judge refused to consider later evidence that the day prior to the accident, the hotel maintenance staff had sprayed hot water on the roof to dislodge ice and the water flowed over the parking lot. The Court of Appeals reversed and remanded the case for trial, finding that the common-law Fireman's Rule had been abolished by the Michigan legislature, Mich. Comp. Laws 600.2967, and the paramedic was an "invitee" of the hotel, rendering aid for the hotel's benefit.
- South Carolina court has refused to follow the Fireman's Rule: *Minnich v. Med-Waste, Inc.*, 564 S.E.2d 98 (S.C. 2002). A public safety officer employed by the Medical University of South Carolina was injured when he was assisting in loading medical waste onto a tractor-trailer owned by Med-Waste, Inc. The unoccupied truck began to roll forward, and Jeffrey Minnich was injured as he jumped inside and stopped the truck.

◆ CASE STUDIES

CASE STUDY 18-1 EMT Injured by Toxic Fumes—Files Suit against Chemical Company

Kapherr v. MFG Chemical, Inc., 625 S.E.2d 513 (9a. App. 2005).

FACTS

EMT Terrie Melissa Kapherr, an emergency medical technician, responded to a call to evaluate and treat personnel injured by a highly toxic gas and vapor cloud that had escaped from a local chemical plant owned by MFG Chemical, Inc. When she entered the toxic hazard zone, Kapherr developed chest pain, muscle tightness around her abdomen and back, and shortness of breath, symptoms that became a permanent asthmatic condition for her.

Kapherr and her husband filed suit; The trial judge dismissed it on the basis of the Fireman's Rule. They filed an appeal and argued that the Fireman's Rule (which precludes actions by public safety employees for injuries received as a result of the negligence causing the emergency to which they are responding) does not apply to emergency medical technicians generally and did not apply to her specific set of circumstances.

YOU BE THE JUDGE

Does the Fireman's Rule apply to EMTs?

HOLDING

Yes.

The three-judge Court of Appeals wrote,

Finding that the Fireman's Rule does apply, we affirm.

Kapherr sued MFG Chemical, alleging negligent release of the toxic chemicals. MFG Chemical moved for judgment on the pleadings on the ground that as an EMT responding to an emergency situation, Kapherr was precluded under the Fireman's Rule from recovering for injuries caused by the very circumstance that occasioned her presence at the scene. Kapherr responded by filing an affidavit that she had no firefighting duties and that under her employer's policy, she could only treat persons at secure scenes. The trial court granted the motion, entering judgment against Kapherr and her husband. Kapherr and her husband appeal, arguing that the Fireman's Rule does not apply to EMTs and in any case does not apply to her particular set of circumstances.

1. The Fireman's Rule in Georgia is a public policy of the State of Georgia that a public safety employee cannot recover for injuries caused by the very negligence that initially required his presence in an official capacity and subjected the public safety employee to harm; that public policy precludes recovery against an individual whose negligence created a need for the presence of the public safety employee at the scene in his professional capacity.

The Fireman's Rule provides that a public safety officer may not recover for the negligence that caused the situation to which he responded.

Here, the facts alleged in the complaint show that Kapherr was injured as a result of the negligence (accidental release of toxic fumes) that necessitated her presence at the scene. The primary question on appeal, therefore, is whether the Fireman's Rule applies to EMTs such as Kapherr. This hinges on whether an EMT is a public safety officer or employee as understood in this rule.

To answer this question, we look to the policy reasons behind this rule. First is the assumption of risk doctrine.

"[I]t is the nature of the job undertaken for the employee to be subjected to risks of injury created by people he or she is called upon to serve. By accepting that job the employee assumes a general or primary risk of injury.... The justification for imposing this general or primary risk is that the employee is paid to encounter it and trained to cope with it." EMTs, who like firefighters and police are the first responders to emergency situations where hazards are inherent, would appear to assume this general risk of injury.

(L)ike firefighters, EMTs "know that they will be expected to provide aid and protection to others in... hazardous circumstances", (by the nature of his job, stadium security guard assumed risk of encountering an armed robber and being injured thereby). We see no reason not to apply this policy to Kapherr.

Second, it would be too burdensome to charge all who negligently cause a need for emergency services with the injuries suffered by the first responders trained to come and deal with the effects of those inevitable, although negligently created, occurrences. Indeed, "it offends public policy to say that a citizen invites private liability merely because he happens to create a need for those public services. Citizens should be encouraged and not in any way discouraged from relying on those public employees who have been specially trained and paid to deal with these hazards." [Citation and punctuation omitted.] (A)bsent the firefighter's rule, individuals who fear liability may hesitate to call for assistance in fighting a fire; "it is also well recognized public policy that the doctrine seeks to prevent a chilling effect that may occur if citizens in need of help were not free to solicit the assistance of professional rescuers for fear of tort liability." Here, when faced with an accidental release of toxic fumes, manufacturers like MFG Chemical should be encouraged to call on emergency services such as EMTs to handle the resulting injuries without fear of inviting additional liability.

Third, as stated by the California Supreme Court, "it is somehow unfair to permit a [public safety officer] to sue for injuries caused by the negligence that made his or her employment necessary." It is the emergency personnel's business to deal with emergency situations, (emergency medical personnel and other first responders "respond to public emergencies or crises for which they have been employed and specially trained"); thus, such a public safety employee or officer "cannot complain of negligence in the creation of the very occasion for his engagement." Here, Kapherr as an EMT was responding to a public emergency for which she had been employed and trained; she should not be allowed to complain of the negligence that created the very reason for her employment. "(P)ublic safety officers, whose occupation necessarily exposes them to certain risks of injury, cannot complain of negligent acts that create the very reason for their employment" [punctuation omitted].

Beyond the policy reasons that indicate that EMTs are "public safety employees" for purposes of the Fireman's Rule, other factors indicate that this phrase normally includes EMTs. OCGA § 31-22-9.1 (23), which concerns HIV tests, defines "public safety employee" as "an emergency medical technician, firefighter, law enforcement officer, or prison guard." The court referred to 28 CFR § 32.2 (j) (for purposes of death and disability benefits, "public safety officer" includes law enforcement officers, firefighters, rescue squad members and ambulance crew members) to determine to whom the Fireman's Rule applies. One state that codified the Fireman's Rule expressly included EMTs. N.H. Rev. Stat. Ann. § 507:8-h (I).

Accordingly, many other jurisdictions have concluded that the Fireman's Rule applies to EMTs. See *City of Oceanside*, supra at 629 (IV) (A) (California); *Melton*, supra at 875-877 (D.C.); *Randich v. Pirtano Constr. Company* (Illinois); *Sam v. Wesley* (Indiana); *Maggard v. Conagra Foods* (Kentucky); *Pinter*, supra at 111 (Wisconsin). But see *Kowalski v. Gratopp* (Michigan); *Krause v. U. S. Truck Co.* (Missouri). See generally Annot., "Application of 'Firemen's Rule' to Bar Recovery by Emergency Medical Personnel Injured in Responding to, or at Scene of, Emergency," 89 ALR4th 1079 (1991). Based on the policy reasons for the rule, we concur and hold that the Fireman's Rule applies to EMTs.

2. Kapherr maintains, however, that under her particular set of circumstances, the Fireman's Rule does not apply since under her employer's policy, she was to treat the injured at the scene only if the scene were secure. However, this argument ignores that as a first responder and professional rescuer, Kapherr necessarily assumed the risk of the hazardous circumstances at the scene, particularly at a scene involving the toxic release of chemicals. It also ignores the other policy reasons behind the Fireman's Rule, such as

the unfairness of allowing an EMT to recover for the very negligence that created the need for her employment.

The policies of Kapherr's particular employer do not diminish the dispositive nature of this inquiry.

Judgment affirmed.

LEGAL LESSONS LEARNED

EMTs and firefighters must understand the risks of their jobs. If the run is for individuals unconscious in a building, emergency personnel should always wear SCBA.

CASE STUDY 18-2 EMT Severely Injured in Gas Explosion—Sues Company Laying Underground Cable That Punctured Gas Line

Todd Randich v. Pirtano Construction Company, 804 N.E.2d 581, 589 (Ill. App. Ct. 2004).

FACTS

The EMT sued for negligence and willful and wanton misconduct. The trial court dismissed plaintiff's amended complaint under section 2—619(a)(9) of the Code of Civil Procedure, (735 ILCS 5/2—619(a)(9) (West 2000)).

Defendants are construction contractors. On April 29, 1999, they were working for Western Cable Communications (Western) installing underground television cable along a public utility easement granted to Western at the Wespark housing subdivision in Romeoville. Defendants' employees laid the cable underground through the use of a directional boring machine. In the process of boring into the ground, the defendants' employees punctured a natural gas main.

Northern Illinois Gas Company (NICOR) employees and members of the Lockport Fire Protection District (LFPD) were dispatched to the scene to contend with the gas leak and ensure safety. The plaintiff, an emergency medical technician, was one of the members of the LFPD sent to the scene.

The plaintiff was in the vicinity of the leaking gas when it was ignited by an unknown source within the housing development. A resulting explosion and fire completely destroyed two houses and damaged several others. More importantly, several NICOR employees and members of the LFPD were injured. The plaintiff was among the members of the LFPD who were injured in the explosion, sustaining "serious and permanent injuries."

On November 14, 2001, the plaintiff filed his amended complaint, alleging negligence and willful and wanton misconduct on the part of defendants. Specifically, the plaintiff's negligence claim alleges that the defendants failed to (1) investigate and ascertain the precise location of underground gas mains in the vicinity where they were operating the directional boring machine; (2) properly expose the gas main by hand digging before boring into the ground; and (3) arrange with NICOR in advance to turn off the gas prior to digging. The plaintiff's claim of willful and wanton misconduct basically sets forth the same factual allegations as the negligence claim, but it adds that the defendants acted with actual knowledge that a gas main was located within the utility easement where the defendants were conducting their drilling activities.

In response, the defendants filed a motion to dismiss under section 2—619(a)(9) of the Code [735 ILCS 5/2—619(a)(9) (West 2000)]. The trial judge granted the