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Opinion following transfer from Supreme Court

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

RICARDO LOPEZ, Plaintiff and Appellant, v. MICHAEL DAYTON et al., Defendants and Respondents.	A168458 (Contra Costa County Super. Ct. No. C21-00204)

Plaintiff Ricardo Lopez sued defendants Michael Dayton, a certified emergency medical technician (EMT), and American Medical Response West (AMR), Dayton's employer, for negligence after Lopez was injured when his vehicle was struck by an ambulance operated by Dayton. The trial court granted defendants' summary judgment motion on the ground that the suit is barred by the Medical Injury Compensation Reform Act's (MICRA) one-year statute of limitations. (Code Civ. Proc., § 340.5.)

In a prior opinion, we concluded the trial court correctly applied the MICRA statute of limitations and affirmed the judgment on that basis. Subsequently, the California Supreme Court issued its opinion in *Gutierrez v. Tostado* (2025) 18 Cal.5th 222 (*Gutierrez*), holding that the MICRA statute of limitations did not apply to claims asserted against a health care provider for "breach of a duty owed to the public generally, as opposed to a violation of

professional obligations owed to patients." (*Id.* at p. 229.) The high court thereafter transferred the matter back to this court, directing us to vacate our prior decision and reconsider the matter in light of *Gutierrez*. We vacate our prior decision filed on May 23, 2024. Having reconsidered the matter, we conclude the trial court erred in granting summary judgment. Accordingly, we will reverse the judgment and remand for further proceedings.

I. BACKGROUND

The following are undisputed facts in this action. On April 23, 2019, Dayton and another AMR employee, Ross Wilson, responded to a 911 call for emergency medical assistance. They determined that the patient needed emergency transport to the hospital. Dayton drove the ambulance and made a right-hand turn at an intersection. After the turn, he attempted to change lanes. While changing lanes, Lopez's vehicle made a left-hand turn from the other direction, and the vehicles collided. At the time of the collision, the ambulance's emergency lights and siren were not activated.

On January 28, 2021, Lopez filed a complaint against defendants, alleging a single cause of action for motor vehicle negligence.

Defendants filed a motion for summary judgment on the grounds that the alleged negligence constituted "professional negligence" within the meaning of MICRA, and thus MICRA's one-year statute of limitations barred the suit. Defendants also claimed immunity from liability pursuant to the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act (the EMS Act; Health & Saf. Code,[1] § 1797 et seq.).

[1] Undesignated statutory references are to the Health and Safety Code unless otherwise indicated.

The trial court granted summary judgment on the ground that MICRA's one-year statute of limitations applied to bar the suit. The court did not reach defendants' immunity argument. Lopez timely appealed.

II. DISCUSSION

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) A defendant moving for summary judgment based upon the assertion of an affirmative defense " ' "has the initial burden to show that undisputed facts support each element of the affirmative defense". . . . If the defendant does not meet this burden, the motion must be denied.' " (*Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 468, disagreed with on other grounds in *San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, 315.) If, however, the defendant meets its initial burden, the burden shifts to the plaintiff to establish a triable issue of material fact. (*Consumer Cause, Inc.*, at p. 467, citing Code Civ. Proc., § 437c, subd. (o)(2).) The trial court's summary judgment rulings are subject to de novo review. (*580 Folsom Associates v. Prometheus Development Co.* (1990) 223 Cal.App.3d 1, 14.)

Defendants moved for summary judgment based upon the assertion of two affirmative defenses, MICRA's one-year statute of limitations and immunity under the EMS Act. We first address the applicability of the MICRA statute of limitations.

A. MICRA's One-Year Statute of Limitations

The trial court granted defendants' motion for summary judgment on the ground that MICRA's one-year statute of limitations applied to bar Lopez's suit. The MICRA statute of limitations applies "[i]n an action for

injury or death against a health care provider based upon such person's alleged professional negligence . . . ." (Code Civ. Proc., § 340.5.) The statute defines " '[p]rofessional negligence' " as "a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital." (*Id.*, § 340.5, subd. (2).)

Prior to the Supreme Court's decision in *Gutierrez*, at least two appellate courts held that MICRA applied to claims by nonpatients against an EMT for injuries allegedly caused by the EMT's negligence in driving an ambulance. (*Canister v. Emergency Ambulance Service, Inc.* (2008) 160 Cal.App.4th 388, 392; *Lopez v. American Medical Response West* (2023) 89 Cal.App.5th 336, 339.) The *Canister* court concluded that EMT's are "health care providers" under MICRA and that an EMT's "operation of an ambulance qualifies as professional negligence when the EMT is rendering services for which he or she is licensed." (*Canister*, at pp. 403, 407.) It further concluded that MICRA was "not limited to actions by the recipient of professional services." (*Id.* at p. 407.) Following *Canister*, the *Lopez* court held that MICRA applied to claims by a patient's son who had accompanied the patient during transport. (*Lopez* at p. 347.)

The Supreme Court concluded that *Canister* and *Lopez* were wrongly decided "to the extent they suggest that a plaintiff's claim sounds in professional negligence merely because the plaintiff's injuries 'occur[ed] *during* the rendering of services' to a patient." (*Gutierrez*, *supra*, 18 Cal.5th at p. 241.) In *Gutierrez*, an ambulance driven by a licensed EMT struck the plaintiff's vehicle. (*Id.* at pp. 229–230.) Over a year later, the plaintiff sued

the EMT and the EMT's employer for negligence. (*Ibid.*) The trial court granted the defendants' motion for summary judgment on the ground that the MICRA statute of limitations barred the plaintiff's claim, and the appellate court affirmed. (*Id.* at p. 230.) The Supreme Court granted the plaintiff's petition for review. (*Ibid.*)

On review, the Supreme Court held that "[w]here the plaintiff's claim is premised on the violation of a professional obligation owed in the rendering of a patient's medical care, treatment, or diagnoses, the claim sounds in professional negligence and the MICRA statute of limitations will apply. [Citations.] Where, in contrast, the alleged negligence does not implicate a specific professional obligation . . . and violates only the duty of ordinary care owed to the general public, the claim does not involve professional negligence and the MICRA statute of limitations is inapplicable." (*Gutierrez*, *supra*, 18 Cal.5th at p. 238; see also *id.* at pp. 231–237.) The court concluded that MICRA did not apply to the plaintiff's negligence claim because the plaintiff was alleging that the defendants were "negligent in their failure to obey traffic laws applicable to all drivers on the road," and thus, the plaintiff's claim arose from the "breach of a general duty of care owed to the public." (*Id.* at p. 239.) Because the plaintiff's claim was not based on the breach of a professional obligation that the defendants owed to patients, the court concluded that the two-year statute of limitations for general negligence claims was the applicable statute of limitations. (*Id.* at p. 244.)

Applying *Gutierrez*'s reasoning here, we conclude the MICRA statute of limitations does not apply to Lopez's motor vehicle negligence claim. Similar to the plaintiff in *Gutierrez*, Lopez does not allege that Dayton was negligent "in performing 'medical diagnosis or treatment' of the patient whom" he was transporting. (See *Gutierrez*, *supra*, 18 Cal.5th at p. 239.) Rather, as Lopez's

opposition to the summary judgment motion makes clear, his claim is based on Dayton's alleged negligence in driving the ambulance. "[Dayton's] duty to drive with ordinary care was not a duty owed 'by virtue of being a health care provider,' " and thus Lopez's claim "sounds in general negligence and falls outside of MICRA's scope." (*Id.* at p. 240.)

Accordingly, the two-year statute of limitations for general negligence claims applies (Code Civ. Proc., § 335.1), and Lopez's claim is timely. However, because we must affirm the grant of summary judgment on any ground supported by the record (*Jimenez v. County of Los Angeles* (2005) 130 Cal.App.4th 133, 140), we will also address defendants' immunity defense, which both parties have briefed on appeal. (See *Bains v. Moores* (2009) 172 Cal.App.4th 445, 471, fn. 39.)

B. Immunity Under the EMS Act

The EMS Act contains several statutory provisions granting absolute or qualified immunity from civil liability for the provision of emergency care under various circumstances. (§ 1799.100 et seq.; *McAlexander v. Siskiyou Joint Community College* (1990) 222 Cal.App.3d 768, 775–777, declined to follow on another ground by *Saldana v. Globe-Weis Systems Co.* (1991) 233 Cal.App.3d 1505, 1512–1515.) Defendants assert they are immune from liability under two of those statutes, sections 1799.106 and 1799.108.

Section 1799.106, subdivision (a), provides, in pertinent part, that "in order to encourage the provision of emergency medical services by firefighters, police officers or other law enforcement officers, EMT-I, EMT-II, EMT-P, or registered nurses, a firefighter, police officer or other law enforcement officer, EMT-I, EMT-II, EMT-P, or registered nurse who renders emergency medical services at the scene of an emergency or during an emergency air or ground ambulance transport shall only be liable in civil

damages for acts or omissions performed in a grossly negligent manner or acts or omissions not performed in good faith."

Section 1799.108 states, "Any person who has a certificate issued pursuant to this division from a certifying agency to provide prehospital emergency field care treatment at the scene of an emergency, as defined in Section 1799.102, shall be liable for civil damages only for acts or omissions performed in a grossly negligent manner or acts or omissions not performed in good faith."

Defendants bore the initial burden of establishing each element of their immunity defense under sections 1799.106 and 1799.108 in support of their summary judgment motion. (See *Bacon v. Southern Cal. Edison Co.* (1997) 53 Cal.App.4th 854, 858 ["If the moving defendant argues that it has a complete defense to the plaintiff's cause of action, the defendant has the initial burden to show that undisputed facts support each element of the affirmative defense"]; *Quigley v. Garden Valley Fire Protection Dist.* (2019) 7 Cal.5th 798, 809 [statutory immunity "must 'be pleaded and proved by one who seeks thereby to destroy the seemingly tortious character of one's conduct' "].) Defendants have not met that burden because they failed to make an evidentiary showing in support of at least one element of their immunity defense, the existence of an emergency.

Both statutes "limit the immunity to liability for acts at 'the scene of an emergency' " (*McAlexander v. Siskiyou Joint Community College*, *supra*, 222 Cal.App.3d at p. 776) or for acts during an "emergency" transport (§ 1799.106, subd. (a)). While neither statute defines "emergency," section 1797.70 defines "[e]mergency" 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." This definition governs here. (§ 1797.50; see *Van Horn v. Watson* (2008) 45 Cal.4th 322, 329 [using § 1797.70's definition of "emergency" to determine whether the immunity provided by § 1799.102 applied], superseded by statute on other grounds as stated in *Verdugo v. Target Corp.* (2014) 59 Cal.4th 312, 327; *Valdez v. Costco Wholesale Corporation* (2022) 85 Cal.App.5th 466, 475 (*Valdez*) [concluding that courts are to use § 1797.70's definition of "emergency" in determining whether a defendant provided emergency care at "the scene of an emergency" under § 1799.102, subd. (b)].)

Defendants argue that Dayton and Wilson were responding to an emergency as that term is defined by section 1797.70 because they received a 911 call for emergency medical assistance, they perceived a need for immediate medical attention requiring an emergency transport to the hospital, and Wilson "continuously rendered emergency medical aid by conducting a physical assessment, monitoring the patient's vitals, listening to lung sounds, interpreting EKG and pulse oximetry, and administering medication." Defendants also note that after the accident, a second crew of AMR personnel transported the patient to the hospital, a fact defendants claim "underscores the severity of the emergency."

The test used to determine whether an emergency exists within the meaning of section 1797.70 is not a subjective one; rather, it is an objective test based on whether it was "reasonable" for emergency personnel to believe the patient " 'had a need for immediate medical attention' " (*Valdez*, *supra*, 85 Cal.App.5th at p. 474) or "the potential for such need" (§ 1797.70). In other words, "the emergency to which the statute applies must be one that *would be perceived as such by a reasonable person* who confronts the circumstances." (*Van Horn v. Watson*, *supra*, 45 Cal.4th at p. 341 (dis. &

conc. opn. of Baxter, J.).) Thus, an emergency personnel's decision to act must not only be "subjectively done in good faith" under sections 1799.106 and 1799.108 but also must be objectively reasonable under the circumstances.[2] (*Valdez*, at p. 475.)

Applying this test here and strictly construing the evidence against defendants (*Szadolci v. Hollywood Park Operating Co.* (1993) 14 Cal.App.4th 16, 19), we conclude they have not met their initial burden of establishing that Dayton's allegedly negligent acts occurred while he and Wilson were responding to an emergency. Although Dayton and Wilson claimed they perceived the situation as an emergency, the evidence defendants cite does not indicate whether Dayton and Wilson's perception of the situation was reasonable; the evidence simply shows how they responded to the situation. Defendants provided no facts indicating "the gravity, the certainty, and the immediacy of the consequences to be expected if no action is taken." (*Breazeal v. Henry Mayo Newhall Memorial Hospital* (1991) 234 Cal.App.3d 1329, 1338; see *McAlpine v. Norman* (2020) 51 Cal.App.5th 933, 938 ["[a]

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[2] We see no reason to depart from *Valdez* and the *Van Horn* concurrence on this point. The meaning of the phrase "perceived by" in section 1797.70 is consistent with an interpretation that requires an objective test based on the circumstances faced by emergency personnel. (Merriam-Webster Dict. Online (2025) <http://www.merriam-webster.com/dictionary/perceived [as of Dec. 22, 2025] [defining "perceived" as "recognized through the senses"].) Moreover, to employ a purely subjective standard under section 1797.70 would, in many cases, provide immunity to emergency personnel who claim after-the-fact that they perceived an emergency, even if the patient was clearly not in need of immediate medical attention. This is an unreasonable result that does not further the purpose of the EMS Act to encourage the provision of emergency services during a medical emergency. (See §§ 1797.5, 1799.106, subd. (a), 1799.107.) We must follow the interpretation that would lead to the more reasonable result. (*Holmes v. Jones* (2000) 83 Cal.App.4th 882, 889.)

defendant moving for summary judgment bears the burden of persuasion that there is no triable issue of material *fact*" (italics added)].)

Accordingly, defendants failed to establish an essential element of their immunity defense, and thus they did not meet their burden of establishing a complete defense to Lopez's negligence cause of action. Summary judgment therefore should have been denied.[3] (See *Swanson v. Morongo Unified School Dist.* (2014) 232 Cal.App.4th 954, 971.)

III. DISPOSITION

The judgment is reversed. Appellant shall recover his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

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LANGHORNE WILSON, J.

WE CONCUR:

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HUMES, P. J.

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BANKE, J.

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[3] In so concluding, we need not reach defendants' argument that the EMS Act immunity applies because there is no evidence that Dayton or Wilson were grossly negligent or acted in bad faith. We also need not address their argument that AMR is not vicariously liable for the accident since that argument assumes Dayton and Wilson are immune from liability under the EMS Act.