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Memorandum of points and authorities

To: Helen Keane

From: Applicant

Date: February 27, 2024

RE: Panko v. Dahir

We support the motion for summary judgment. First of all, summary of judgment is a procedural device for promptly disposing of a lawsuit without trial if, after viewing the evidence in the light most favorable to the nonmoving party (Panko), there is no genuine issues of material fact.

1) Good Samaritan Act (GSA) states that a person who comes upon the scene of an emergency or accident, or is summoned to the scene of an emergency or accident and, in good faith, gratuitously renders emergency care at the scene of the emergency or accident is immune from civil liability for any personal injury that results from any act or omission by the person in rendering the emergency care. (GSA Col; 34-30 Sec 1 -(b)(1))

Emergency care in statutorily means "any actions which the aider reasonably believed were required to prevent death or serious permanent injury, disability or handicap or reasonably believed would benefit the injured or ill person, depending upon the aider's perception of the nature and severity of the injury or illness and the total emergency situation, and that the aider reasonably believed the aider could successfully undertake. (Delva: CS Sec 34-29(1)). To determine whether genuine issues of material fact exist, the court consider 1) if he reasonably believed actions were required to prevent death or serious injury or 2) he reasonable believed would benefits an injured or ill person and he reasonable believed he could successfully undertake. (Delva)

In Delva, there is no direct evidence showing his own state of mind or why the driver stopped the truck. Moreover, the driver stopped the truck to see if everything was okay, but the passenger actually pull down the window and asked it. There is no direct evidence of the drier's intention and state of mind; therefore, the court reject the summary of judgment.

In our case, unlikely Delva, there is direct evidence showing Dahir own state of mind why he stopped the semi on Route 12 on November 4th, 2022. Although there was heavy fog, he saw a van in the ditch on the side of the road. He also saw the van was upright and its headlights were on, pointing at his semi as he approached, the van's roof windshield and hood were heavily damaged. The drive of Delva merely stopped and his passenger asked "every was okay," but Dahir stopped in the road near the truck, he perceived the two car

collision, and stopped. Dahir saw the damages of the van. Moreover, Dahir actually spoke with the driver of the truck, Ryan Tram because Dahir suspected someone injured.

Although Panko may argue that Dahir, just like Delva's driver, was just wondering to see if everything was okay, which suggests he was not qualified for immunity from civil action, this argument is not persuasive because Dahir saw the damages of the van and he stopped to assist and he perceived Tram might be injured. Dahir rolled down the passenger window and asked Tram directly, unlike the driver of Delva, and asked whether he was okay. Dahir asked him if he wanted me to call 911 for emergency assistance; however, it did not happen because of the second accident with Panko.

2)GSA also states a person who comes upon the scene of an emergency or accident, or is summoned to the scene of an emergency or accident and, in good faith, gratuitously renders emergency care at the scene of the emergency or accident is immune from civil liability for any personal injury that results from any act or failure to act to provide or arrange for further medical treatment of care for the injured person; except for acts or omissions amounting to gross negligence. (Jones; 2007). Gross negligence is defined as a conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party (Palace Exploration, 10th Cir.2004). Moreover, gross negligence is the intentional failure to perform a manifest duty in reckless disregard of the consequences or in callous indifference to the life, liberty or property of another that may result in such a gross want of care for the rights of others and the public that a finding of a willful, wanton, deliberate act is justified. To establish gross negligence, a plaintiff must demonstrate **ordinary negligence** and then prove **gross negligence**, as such the defendant acted with utter unconcern for the safety of others, or with such a reckless disregard for the rights of others that a conscious indifference to consequences is implied in law.

In Jones, the defendant committed ordinary negligent but not gross negligent. The difference is "the level of conduct amounting to a breach of that duty is quite different. (Sharp in Jones). The driver in Jones approached an intersection, stopped at a stop sign, proceeded into the intersection, and struck a vehicle that he had not seen. claiming that it was in his blind spot. The court in Jones, concluded it was ordinary negligence. The driver disregard his duty to look both ways to avoid the accident, but he did not recklessly disregard his duty, he just merely failed to look at the both ways.

Like the driver in Jones, Dahir was not gross negligence. Dahir stopped and parked at the side, not over the center line. There was not enough side space to park his semi. Although he was not sure about the hazard lights was on or not, he kept his foot on the brake, rather than shifting the semi's transmission to park. The semi's rear brake lights activate automatically as long as I press on the brake pedal. Also, the brake lights override the hazard lights and the brake lights are as bright as the hazard lights. Dahir also drove slowly, 35 to 40 miles per hour, which is below the speed limit of 50 miles per hour due to poor disability.

Although Panko argue that Dahir was gross negligence because he disregards his duty for safe drive and parking, that suggest he is not immuned from civil liability, this argument is not persuasive because as mentioned he tried to make the circumstance as safe as possible. The condition (foggy and the narrow road) was not perfect, but Dahir did not disregard all of his duty; therefore, he is not reckless. It seem like Panko is gross negligence because he drove high speed and before the 2nd collision, Panko did not trying to brake to avoid the semi. Also, Dahir did not stop long time, it was only 15 to 30 seconds to assist the van and Tram, which is not consider gross negligent to park at the side. Panko did not slow down even he saw beems to warn by Higg

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