Rel: September 9, 2022

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2022

1210129

Ex parte Huntsville Emergency Medical Services, Inc., Jacob Steele, Dea Calce, Calvin Hui, and Christopher Nunley

PETITION FOR WRIT OF MANDAMUS

(In re: Gloria Owen, as personal representative of the Estate of Robert Owen, deceased

v.

Huntsville Emergency Medical Services, Inc., et al.)

(Limestone Circuit Court: CV-20-900156)

PER CURIAM.

Robert Owen died 11 days after being transferred from Huntsville Hospital to the University of Alabama at Birmingham Hospital ("UAB Hospital") for cardiac treatment. His widow Gloria Owen, as the personal representative of his estate, sued the ambulance company that had transported him, Huntsville Emergency Medical Services, Inc. ("HEMSI"), as well as HEMSI employees Jacob Steele, Calvin Hui, Christopher Nunley, and Dea Calce (HEMSI and its employees are collectively referred to as "the HEMSI defendants"), alleging that events that occurred during Robert's transport had "caused him unnecessary stress, worry, concern, anxiety, and/or a delay in treatment," leading to further heart damage and his eventual death.

During discovery, Gloria sought information from the HEMSI defendants about the previous conduct and employment record of Steele, a licensed emergency medical technician ("EMT") and the assigned driver of the HEMSI ambulance that transported Robert. The HEMSI defendants objected to Gloria's requests and sought a protective order, arguing that the Alabama Medical Liability Act ("the AMLA"), § 6-5-480 et seq. and § 6-5-540 et seq., Ala. Code 1975, governed her claims and

prohibited discovery related to any acts and omissions of a defendant that were not specifically described in the complaint. The Limestone Circuit Court rejected the HEMSI defendants' request for a protective order and directed them to produce the requested discovery; they now petition this Court for mandamus relief, specifically a writ directing the trial court to amend its order to give effect to what they assert are the applicable privilege and discovery protections of the AMLA. We grant the petition in part and deny it in part.

Facts and Procedural History

In April 2019, Robert sought treatment at Huntsville Hospital for chest pain and fatigue. After preliminary tests, Robert's physicians concluded that he should be transferred to UAB Hospital for further evaluation and treatment. Because Robert was considered a high-risk cardiac patient, Huntsville Hospital contacted HEMSI and ordered an advanced-life-support ambulance for the transfer. In response, HEMSI dispatched an ambulance driven by Steele and staffed by Calvin Hui, a licensed paramedic tasked with monitoring Robert throughout the trip to Birmingham.

Steele began either falling asleep or passing out before the ambulance even left Huntsville Hospital. Once on the road, Steele struggled to stay awake, and the ambulance repeatedly left its lane and had to swerve to avoid striking other vehicles. Finally, after missing the interstate exit leading to Birmingham, Steele pulled over and informed Hui that he could not continue driving. When Hui contacted his supervisor Christopher Nunley to apprise him of the situation, Nunley directed Hui and Steele to switch places. The ambulance then proceeded toward Birmingham with Hui driving and Steele in the back with Robert. But instead of monitoring Robert, Steele put on headphones and began watching videos before falling asleep.

At some point during the drive, Robert's chest pain increased and he began to call for help. Steele did not wake up. Eventually, Hui heard Robert's cries and stopped the ambulance on the side of the road. Although Hui had a hard time finding the nitroglycerin that Robert needed, he eventually located and administered the medication and resumed the trip. Steele remained asleep throughout this episode.

When the ambulance finally arrived in Birmingham, Hui could not find UAB Hospital. After about 15 minutes of searching, Hui finally

located the hospital's entrance and completed the transport. Once admitted, Robert complained to his family about the trip and the anxiety it had caused him. His daughter spoke with HEMSI employee Dea Calce about the transport and says that he acknowledged to her that Steele had been involved in other problematic incidents while working for HEMSI.

Robert died while still a patient at UAB Hospital. Following his death, Gloria initiated this action alleging that Steele had been using drugs the night before and the morning of Robert's transport; that Hui, Nunley, and Calce were aware of Steele's drug use and emotional problems and knew that he was unfit to drive an ambulance; and that the events that occurred during Robert's transport had proximately caused his death. Gloria specifically asserted five counts against the HEMSI defendants: (1) a common-law wantonness claim, (2) a common-law negligence claim, (3) a "common carrier" negligence claim,[1] (4) a wantonness claim under the AMLA, and (5) a negligence claim under the AMLA. In short, the first three counts ("the driving claims") made allegations about Steele's reckless driving and HEMSI's wrongful hiring,

[1]See generally Connell v. Call-A-Cab, Inc., 937 So. 2d 71 (Ala. 2006) (recognizing the heightened duty of care that a common carrier owes its passengers).

training, supervision, and retention of him as a driver, and its wrongful entrustment of the ambulance to him, while the latter two counts ("the medical claims") alleged that the HEMSI defendants had breached the relevant standard of care in providing medical services to Robert. Gloria acknowledged that the medical claims were governed by the AMLA but took the position that the driving claims were not. The HEMSI defendants argued that Gloria's claims were in substance all medical-malpractice claims subject to the AMLA and repeatedly asked the trial court to dismiss the driving claims on that basis. In April 2021, the court denied those requests.

After Gloria served discovery requests seeking information about Steele's past conduct and employment record, the HEMSI defendants objected and moved for a protective order. The HEMSI defendants again invoked the AMLA -- repeating their assertion that it governed all of Gloria's claims regardless of how she had denominated them -- and arguing that § 6-5-551 of the AMLA expressly bars plaintiffs in medical-malpractice cases from conducting discovery regarding any act or omission "alleged … to render the health care provider liable" that is not specifically described in the complaint. § 6-5-551, Ala. Code 1975

(explaining that a complaint alleging medical malpractice must include "a detailed specification and factual description of each act and omission alleged by plaintiff to render the health care provider liable to plaintiff" and that a plaintiff "shall be prohibited from conducting discovery with regard to any other act or omission"). Thus, the HEMSI defendants argued, Gloria was prohibited from using the discovery process to obtain information about Steele's past conduct and employment record that was unrelated to the transport of Robert.[2]

In October 2021, the trial court denied the HEMSI defendants' request for a protective order, holding that Gloria was "entitled to conduct discovery about prior conduct of Steele, HEMSI's knowledge of the same, and any reprimands, disciplinary or corrective actions involving Steele." The court specifically explained that the information Gloria sought was relevant because she had "asserted theories of negligent and wanton hiring, training, supervising, retention, and entrustment, and she has alleged HEMSI and its employees had actual or constructive knowledge that Steele had an uncontrolled drug and/or

[2]The HEMSI defendants also filed and served privilege logs identifying the information they had withheld as privileged.

alcohol abuse problem, but allowed him to drive an ambulance anyway." Additionally, the court again rejected the HEMSI defendants' argument that the driving claims were subject to the AMLA because, the court said, those claims "concern[ed] Steele's basic fitness as a driver of a motor vehicle" and did not relate to the provision of medical services. Thus, the trial court concluded, "[§] 6-5-551 presents no obstacle to [the requested] discovery." In the alternative, the court held that -- regardless of whether the driving claims were subject to the AMLA -- Gloria was entitled to the requested discovery based solely on the medical claims because she had "identifie[d] Steele as an incompetent and unfit employee, and [her] discovery requests for prior conduct are limited to those [acts] committed by him." Finally, the court held that Gloria was entitled to the discovery of data on Steele's mobile phone (1) created, generated, or received the day before, the day of, or the day after Robert's transport; (2) pertaining to Robert's transport and Steele's activities the day before, the day of, or the day after that transport regardless of when that data was created, generated, or received; and (3) pertaining to Steele's fitness or ability to operate vehicles as of the date of Robert's transport regardless of when that data was created, generated, or received.

In November 2021, the HEMSI defendants petitioned this Court for mandamus review, arguing that the trial court had exceeded its discretion by denying their request for a protective order and by directing them to produce discovery that they say is privileged under § 6-5-551.

Standard of Review

Mandamus is an extraordinary remedy that will be granted only when the petitioner establishes (1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the court. Ex parte Ocwen Fed. Bank, FSB, 872 So. 2d 810, 813 (Ala. 2003). Here, it is undisputed that the trial court has refused to grant the HEMSI defendants' motion for a protective order based on § 6-5-551. Moreover, this Court has explained that an appeal is not an adequate remedy when the § 6-5-551 privilege is not recognized. See, e.g., Ex parte Gentiva Health Servs., Inc., 8 So. 3d 943, 946-47 (Ala. 2008). Finally, the HEMSI defendants' petition is timely and complies with Rule 21, Ala. R. App. P.[3] Our resolution of this case

[3]Gloria argues that the HEMSI defendants' November 2021 petition is untimely because they failed to seek mandamus review of the April 2021 order in which the trial court denied their motion to dismiss

therefore hinges on the first inquiry -- whether the HEMSI defendants have a clear legal right to the relief they seek.

Analysis

The HEMSI defendants' only argument to this Court is that § 6-5-551 authorizes them to withhold the discovery requested by Gloria; they do not invoke any other statute or privilege, nor do they argue that the requested discovery is barred under the general provisions of Rule 26, Ala. R. Civ. P. Thus, if Gloria's driving claims are outside the scope of the AMLA, § 6-5-551 necessarily does not apply and the HEMSI

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the driving claims because, the court held, those claims were "not subject to [the AMLA]." That order, Gloria states, sufficiently apprised the HEMSI defendants that § 6-5-551 would not apply and started the clock for seeking mandamus review of that issue. We disagree. Although there may be some overlap between the issues decided in the April 2021 and October 2021 orders, it is well settled that, "subject to certain narrow exceptions, the denial of a motion to dismiss is not reviewable by petition for a writ of mandamus." Ex parte Brown, 331 So. 3d 79, 81 (Ala. 2021). Gloria has identified no exception that would have permitted the HEMSI defendants to seek mandamus relief from this Court in April 2021 (the exception making mandamus review appropriate now -- the disregarding of a discovery privilege -- had not yet occurred). See Ex parte Vanderwall, 201 So. 3d 525, 532 (Ala. 2015) (explaining that the petitioner could not use a petition for a writ of mandamus to challenge the trial court's decision "that general tort-law principles, rather than the AMLA," governed the litigation against him but could appropriately challenge a discovery order disregarding the § 6-5-551 privilege). The HEMSI defendants' petition is therefore timely.

defendants are not entitled to the relief they seek. Accordingly, we first consider whether the driving claims are properly viewed as medical-malpractice claims governed by the AMLA and subject to the § 6-5-551 privilege.

A. The applicability of the AMLA to the driving claims

The AMLA applies to "any action for injury, damages, or wrongful death, whether in contract or in tort, against a health care provider for breach of the standard of care." § 6-5-551 (emphasis added). Thus, it is the substance of an action -- rather than its form -- that determines whether the AMLA applies. Ex parte Alabama Dep't of Mental Health & Mental Retardation, 723 So. 2d 11, 13 (Ala. 1998). In Ex parte Vanderwall, 201 So. 3d 525, 537-38 (Ala. 2015), this Court explained that the relevant inquiry is not "who committed the alleged wrongful conduct or when and where that conduct occurred, but … whether the harm occurred because of the provision of medical services." The HEMSI defendants argue that the driving claims are quintessential medical-malpractice claims that "are rooted in the provision of medical services." Petition at 17. In response, Gloria states that "[s]howing up to work drug-free, hiring and retaining workers to drive who are not drug addicts,

and not entrusting vehicles to workers who show up for work on drugs have nothing to do with providing medical services," and, she argues, the AMLA therefore has no application to those claims. Answer at 11.

After reviewing Gloria's complaint, we agree with the HEMSI defendants that the driving claims stem from the provision of medical services. Notable among the "factual averments common to all counts" set forth by Gloria in her complaint are the following facts:

> -- "[A]fter a discussion among Robert, his family and his physicians at Huntsville Hospital, the decision was made that Robert would be transferred to UAB Hospital in Birmingham for evaluation and consideration for surgery and/or medical and cardiac interventions."
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> -- "Huntsville Hospital requested an advanced life support (ALS) ambulance transport from defendant HEMSI to transport Robert to UAB Hospital. In response, defendant HEMSI sent a ground ambulance unit to Huntsville Hospital which was crewed by Jacob Steele, an EMT, and Calvin Hui, a paramedic."
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> -- "Prior to leaving Huntsville Hospital, HEMSI, Calvin Hui and/or Jacob Steele were aware that Robert was a high-risk cardiac patient requiring an ALS/cardiac transport with continuous cardiac monitoring and care by a licensed paramedic."
>
> -- "HEMSI and its employees also agreed and undertook to provide continuous medical care, with the medical care being provided by Calvin Hui, a licensed paramedic."

These alleged facts demonstrate that the decision to transfer Robert to UAB Hospital was medical in nature and had to be made so that he could receive testing and treatment that was not available at Huntsville Hospital. Additionally, his condition dictated that he not be transported by private vehicle or a common carrier such as a shuttle bus or taxicab; rather, as a high-risk cardiac patient, he required a specialized transport capable of providing continuous monitoring and care. Thus, HEMSI's transport was a vital part of the provision of medical services to Robert -- not only would he receive "continuous medical care" throughout the transport, but the transport would make it possible for him to receive the medical care at UAB Hospital that his physicians had concluded was a necessary part of his treatment. The driving claims are therefore properly viewed as medical-malpractice claims that fall within the scope of the AMLA.

This conclusion is buttressed by Gloria's concession that at least some of her claims against the HEMSI defendants are subject to the AMLA. By its terms, the AMLA applies only to actions "against a health care provider for breach of the standard of care." §§ 6-5-548(a) and 6-5-551, Ala. Code 1975 (emphasis added). Ambulance companies, EMTs,

and paramedics are not expressly identified as "health care provider[s]" in the AMLA's definition of that term. See § 6-5-542(1), Ala. Code 1975 (defining a "health care provider" as "[a] medical practitioner, dental practitioner, medical institution, physician, dentist, hospital, or other health care provider as those terms are defined in Section 6-5-481"). But § 6-5-481(8), Ala. Code 1975, further explains that "[a]ny professional corporation or any person employed by physicians, dentists, or hospitals who are directly involved in the delivery of health care services" are considered "other health care providers" for purposes of the AMLA. In explaining what it means for a professional corporation or person to be "employed by" a health-care provider, this Court has stated that "at a minimum a physician, dentist, or hospital must have made use of that corporation or person in the physician's, dentist's, or hospital's delivery of health-care services to the plaintiff-patient." Ex parte Partners in Care, Inc., 986 So. 2d 1145, 1148 (Ala. 2007).

Here, it is undisputed that Robert's physicians and Huntsville Hospital "made use" of HEMSI as part of their delivery of health-care services to Robert -- those physicians made a medical decision to transfer Robert to UAB Hospital for additional medical treatment, and Huntsville

Hospital called HEMSI to conduct that transfer. Thus, not only are the HEMSI defendants "other health care providers" under the AMLA, but, to the extent that the HEMSI defendants were being "used" to deliver health-care services to Robert, any injury Robert suffered due to actions or omissions of the HEMSI defendants that were reasonably related to that "use" was incurred during the provision of medical services. See Vanderwall, 201 So. 3d at 537 ("'"[T]he AMLA applies to conduct that is, or that is reasonably related to, the provision of health-care services allegedly resulting in a medical injury."'" (citation and emphasis omitted)). The AMLA therefore applies to the driving claims asserted by Gloria.

B. The discovery parameters set out by § 6-5-551

Having concluded that the AMLA applies to the driving claims, we now consider the trial court's alternative holding -- that the discovery Gloria has requested about Steele's past conduct and employment record is not privileged even if the AMLA applies. Although many of the rules and principles that govern the discovery process in any civil case apply with equal force in medical-malpractice cases, § 6-5-551 is explicit that it is the AMLA that ultimately "govern[s] the parameters of discovery" in

these cases. Section 6-5-551 notably sets forth one important parameter -- the plaintiff in an AMLA action is "prohibited from conducting discovery with regard to any … act or omission" outside those acts and omissions that are specifically described in the plaintiff's complaint as rendering the defendant liable.

Here, Gloria has alleged that the HEMSI defendants committed various acts and omissions that constitute breaches of the relevant standard of care. With regard to Gloria's claims against Steele, all of her allegations are related to his transport of Robert. If those claims were the only ones that she had asserted, under the plain language of § 6-5-551, she would be "prohibited from conducting discovery with regard to any other act or omission" of Steele's that involved an individual other than Robert. But those are not the only claims in this action. Gloria has also asserted claims alleging that HEMSI negligently or wantonly hired, trained, supervised, or retained Steele as an employee. As this Court has explained in a non-AMLA case, these types of claims require a plaintiff to establish "by affirmative proof that [the employee's] incompetency was actually known by the [employer] or that, had [the employer] exercised due and proper diligence, [it] would have learned that which would

charge [it] in the law with such knowledge." Thompson v. Havard, 285 Ala. 718, 723, 235 So. 2d 853, 858 (1970). A plaintiff meets this burden "by showing specific acts of incompetency and bringing them home to the knowledge of the [employer], or by showing them to be of such nature, character, and frequency that the [employer], in the exercise of due care must have had them brought to [its] notice." Id.

Thus, when an action against a health-care provider contains allegations of negligent or wanton hiring, training, supervision, or retention, evidence of prior acts or omissions by either the health-care provider or the employee -- although not directly related to the provision of health care to the injured party -- may otherwise be relevant to prove the claims. Examples of such evidence would include evidence showing a health-care provider's knowledge of misconduct by an employee that occurred before the employee was hired or evidence of a health-care provider's knowledge of conduct by an employee after hiring that should have demonstrated to the health-care provider that the employee was incompetent.

But the limitation on discovery imposed by § 6-5-551 still applies. In Ex parte Ridgeview Health Care Center, Inc., 786 So. 2d 1112, 1117

(Ala. 2000), this Court considered the operation of § 6-5-551 in cases in which a health-care provider was alleged to have breached the standard of care by negligently hiring, training, supervising, or retaining an employee. The Ridgeview Court noted that, in a case decided the previous year, the Court had held that a "plaintiff was entitled to discover information related to other acts and omissions by the defendant [health-care provider] that were relevant to the plaintiff's allegations that the [defendant] had negligently hired, trained, and supervised its employees." Id. at 1115 (discussing Ex parte McCollough, 747 So. 2d 887 (Ala. 1999)). But the legislature had responded to the McCollough decision by amending § 6-5-551 to expressly state that the AMLA applies to any action "against a health care provider for breach of the standard of care, whether resulting from acts or omissions in providing health care, or the hiring, training, supervision, retention, or termination of care givers." (Emphasis added.) Thus, the Ridgeview Court acknowledged that the holding in McCollough had been superseded by the amendment to § 6-5-551 and that, applying the amended statute to the case before it, the plaintiff was "not entitled to discovery regarding acts or omissions by [the defendant] in the hiring, training, supervising, retaining, or

terminating of employees other than those employees whose acts he detailed specifically and factually described in his complaint as rendering [the defendant] liable." 786 So. 2d at 1117. Gloria thus concedes that under § 6-5-551 she cannot discover information about HEMSI's management of other employees, but she argues that the trial court correctly applied Ridgeview when it held that she was entitled to discover information about Steele's past conduct and employment record.

The HEMSI defendants counter by emphasizing that Ridgeview is not the last time this Court spoke to this issue. In fact, just four weeks after Ridgeview was decided, this Court revisited the issue in Ex parte Coosa Valley Health Care, Inc., 789 So. 2d 208 (Ala. 2000). Citing the amendment to § 6-5-551 and Ridgeview, the Court again held that the plaintiff was not entitled to conduct broad discovery into the employment records of the defendant's employees but was instead only "entitled to discovery of information involving the provision of care and/or services to [the decedent], … not to other persons." 789 So. 2d at 218. The HEMSI defendants seize on this language and argue that Gloria is entitled to discover only that information in Steele's employment record related to the care and services he provided to Robert -- not information related to

the care or services he provided to other individuals. Gloria, meanwhile, argues that Coosa Valley was not intended to limit Ridgeview in this manner and that any difference in the holdings of those cases is simply attributable to the fact that specific employees had been identified in Ridgeview but no specific employees had been named in Coosa Valley.

Neither side has it exactly right. Section 6-5-551 permits discovery related to acts or omissions specifically alleged in the complaint, but it prohibits discovery "with regard to any other act or omission" not properly alleged. Thus, in an action involving negligent or wanton hiring, training, supervision, or retention, § 6-5-551 does not permit discovery of any acts or omissions of employees who are identified in the complaint. Rather, discovery is permissible as to only those acts or omissions that (1) are specifically and factually described in the plaintiff's complaint and (2) are relevant to the plaintiff's claim. See Ridgeway, 786 So. 2d at 1117 (explaining that, when a plaintiff has alleged that a health-care provider breached the standard of care by negligently hiring, training, supervising, or retaining an employee, "then the plaintiff may discover information only concerning those acts or omissions by those employees

whose conduct is detailed specifically and factually described in the complaint as rendering the health-care provider liable").

Here, Gloria's complaint contains specific and detailed allegations about previous acts and omissions attributable to Steele -- and about HEMSI's knowledge of the same -- that are relevant to her claims that HEMSI negligently or wantonly hired, trained, supervised, and retained Steele. First, it is alleged that Calce told Robert's daughter the day after his transport that "HEMSI had received other complaints about Jacob Steele from other transportees and/or their families, that Mr. Steele had emotional/mental problems, and … that Mr. Steele had long been a problem at HEMSI before Robert's transport." Second, Gloria alleged that Steele had been involved in previous on-the-job incidents demonstrating that he was unfit for his job on specific dates -- March 4, 2016; March 1, 2017; August 12, 2017; August 4, 2018; September 24, 2018; December 20, 2018; January 8, 2019; February 27, 2019; March 6, 2019; March 29, 2019; and April 14, 2019 -- and that HEMSI had knowledge of all of these incidents but continued to employ Steele and

allowed him to operate HEMSI ambulances and transport patients in spite of that knowledge.[4]

To be sure, general allegations about an employee's misconduct, drug use, or mental and emotional problems do not meet the level of specificity required by § 6-5-551 to open the door to discovery about that employee's record. But the details in Gloria's complaint go beyond general allegations. She lists specific dates on which Steele is alleged to have had "incidents" that occurred in the line and scope of his employment and that allegedly demonstrated that he was unfit for his job. And she has also alleged specific facts indicating that HEMSI had knowledge of his problematic record. These are sufficiently pleaded allegations of "acts or omissions" relevant to Gloria's claims of negligent

[4]We note that Gloria's original complaint did not refer to these specifically dated incidents, and it is not clear from the materials before us exactly how she learned of them. But the materials submitted by the HEMSI defendants contain a privilege log regarding Steele's employee file that refers to records of "events" that occurred on those same dates; Gloria amended her complaint to include the dates after receiving this privilege log. It thus seems probable that the privilege log was the source for the allegations that Steele was involved in incidents on the dates listed in Gloria's amended complaint. The parties have not addressed whether it is appropriate for a privilege log to be used in this manner, but, because no challenge to the practice was made in the trial court or to us, it is unnecessary for us to decide that issue here.

or wanton hiring, training, supervision, and retention to satisfy § 6-5-551 and to permit discovery into the specifically alleged incidents. We recognize that those incidents may relate to the provision of care to other patients and that the discovery and admissibility of evidence of acts or omissions related to the care of other patients is generally disallowed under § 6-5-551. See Ex parte Tombigbee Healthcare Auth., 260 So. 3d 1, 16 (Ala. 2017) (Shaw, J., dissenting). But they could also be evidence of Steele's alleged "incompetency," and HEMSI's knowledge of them, see Thompson, supra, could be the proof necessary "to render the health care provider liable," § 6-5-551, for the negligent or wanton hiring, training, supervision, or retention of Steele. Thus, Gloria is not restricted from discovering HEMSI records about these incidents. But to the extent that the trial court's October 2021 order permits discovery of other information in Steele's employee file regarding acts or omissions that are not specifically described in Gloria's complaint -- or of information on Steele's mobile phone unrelated to Robert's transport or the other specifically described acts and omissions -- that order is too broad and the HEMSI defendants are entitled to an order limiting the scope of discovery to comply with § 6-5-551.

Conclusion

All the claims asserted by Gloria in this action are governed by the AMLA and subject to the limitations on discovery imposed by § 6-5-551. To the extent that the trial court's October 2021 order did not give effect to the § 6-5-551 privilege, the HEMSI defendants' petition is granted and the trial court is directed to modify that order as discussed herein. But to the extent the HEMSI defendants seek to prevent Gloria from discovering information regarding acts or omissions that are specifically alleged and described in her complaint, their petition is denied.

PETITION GRANTED IN PART AND DENIED IN PART; WRIT ISSUED.

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Mendheim, Stewart, and Mitchell, JJ., concur.

Sellers, J., dissents, with opinion.

SELLERS, Justice (dissenting).

The main opinion holds in part that the plaintiff's first three claims ("the driving claims") fall under the Alabama Medical Liability Act ("the AMLA"), § 6-5-480 et seq. and § 6-5-540 et seq., Ala. Code 1975. Section 6-5-551, Ala. Code 1975, applies to "any action for injury, damages, or wrongful death, whether in contract or in tort, against a health care provider for breach of the standard of care." The AMLA does not expressly identify ambulance companies, emergency medical technicians ("EMTs"), or paramedics as "health care provider[s]." See § 6-5-542(1), Ala. Code 1975. However, it does identify as "other health care providers" professional corporations or persons employed by hospitals and "directly involved in the delivery of health care services." § 6-5-481(8), Ala. Code 1975; this definition could include ambulance drivers, EMTs, and paramedics. Finally, to be "employed by" a health-care provider, the health-care provider must have "made use of that corporation or person in the physician's, dentist's, or hospital's delivery of health-care services to the plaintiff-patient." Ex parte Partners in Care, Inc., 986 So. 2d 1145, 1148 (Ala. 2007). The main opinion correctly notes that Robert Owens's physicians and Huntsville Hospital undisputedly "made use" of

Huntsville Emergency Medical Services, Inc. ("HEMSI"), to deliver health-care services to Robert.

However, this Court has clarified that the relevant inquiry is not just "who committed the alleged wrongful conduct or when and where that conduct occurred, but … whether the harm occurred because of the provision of medical services." Ex parte Vanderwall, 201 So. 3d 525, 537-38 (Ala. 2015). I do not believe that merely driving an ambulance and breaching duties common to every driver on the road can be properly classified as a medical service under the AMLA. Accordingly, I dissent.

Actions that are not medical services can occur in the same room, and in the same window of time, and can be committed by the same actor, as actions that are medical services as contemplated by the AMLA. This Court held in Vanderwall that a claim arising from a sexual assault, committed by a health-care worker during a medical examination within a medical setting, was not governed by the AMLA. The Court noted that the alleged injury did not stem from the provision of medical services, because there was no "therapeutic or medical reason" for the defendant's actions. Ex parte Vanderwall, 201 So. 3d at 538. The question then is not just whether the action occurs in an ambulance or a hospital room, during

transport or examination. Rather, the inquiry is whether the specific action can be fairly characterized as a medical service.

The main opinion cites several facts from the complaint concerning actions underlying the driving claims, which it says stem from the provision of medical services. Granted, the decision to transfer Robert to another hospital, the request for an advanced-life-support ambulance, and the agreement to undertake continuous medical care may all be medical services under the AMLA. However, under Vanderwall, an act may be committed in an ambulance, no matter how advanced its life-support features are, and still not be subject to the AMLA. Thus, although the transport may have been a vital part of the provision of medical services, Steele's reckless driving and alleged drug use had no medical or therapeutic value for Robert and Steele's actions cannot be characterized as the provision of "medical services."

Other states with similar laws have focused on the nature of the action in question. The Texas Medical Liability Act ("TMLA") applies to causes of action against health-care providers under similar circumstances to those contemplated by § 6-5-551 of the AMLA. See Tex. Civ. Prac. & Rem. Code Ann. § 74.001(a)(13). Echoing Ex parte Alabama

Department of Mental Health and Mental Retardation, 723 So. 2d 11,13 (Ala. 1998), a Texas Court of Appeals held that review of whether a claim falls under the TMLA focuses on the "underlying nature of the cause of the action, not the label given to the claim in the pleadings." Coci v. Dower, 585 S.W.3d 652, 655 (Tex. App. 2019). In Coci, the court held that a claim based upon an ambulance operator's driving was not related to the provision of medical services. Id. at 657. Rather, the court held, it stemmed from a legal duty common to every driver on the road. Id.[5] Similarly, in cases in which an ambulance driver's liability stems only from an action related to his or her duty as a driver, and not from his or her position as a health-care provider, I am persuaded that such action is not a "medical service" under the AMLA.

In conclusion, although HEMSI's transport of Robert may have been a vital part of the medical services provided to him, that does not

[5]Other Texas cases considering injuries involving gurneys and wheelchairs have been decided using similar logic. The application of Vanderwall would result in similar outcomes under the AMLA. See Faber v. Collin Creek Assisted Living Center, Inc., 629 S.W.3d 630 (Tex. App. 2021) (holding that TMLA did not govern when rolling walker tipped over due to sidewalk crack, causing injury); and City of Houston v. Houston, 608 S.W.3d 519, 529-531 (Tex. App. 2020) (holding that TMLA governed when injuries stemmed from EMTs' failure to secure patient in accord with established protocols).

mean that every action taken during the transport was as well. To the extent that Jacob Steele's actions related to his duties as a driver, and not his duties as a health-care provider, I would hold that those actions are not medical services under the AMLA.