IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

DIANA KRADLE and JOSEPH SISLER, as Co-Independent Administrators of the Estate of JACKSON KRADLE, Deceased, Plaintiffs, v. MATTHEW HERPSTREITH, AMY HUBBLE, REBECCA FREDERICK, SHERIFF OF CARROLL COUNTY, ILLINOIS, CARROLL COUNTY, ILLINOIS, SCOTT MARTH, CITY OF MT. CARROLL, ILLINOIS, CITY OF SAVANNA, ILLINOIS, SAVANNA COMMUNITY AMBULANCE ASSOCIATION, 834 S JACKSON, LLC d/b/a THE COPPER COW, SIPPI-SIDE PUB & LIQUOR STORE INC., and SANDBURR RUN, LLC, Defendants.	Case No. 3:25-cv-50314 Honorable Rebecca R. Pallmeyer Honorable Margaret J. Schneider Magistrate Judge

SAVANNA COMMUNITY AMBULANCE ASSOCIATION'S
REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS
COUNT XIV OF PLAINTIFFS' SECOND AMENDED COMPLAINT

Defendant, SAVANNA COMMUNITY AMBULANCE ASSOCIATION ("SCAA"), by and through its attorneys, submits this Reply Brief in further support of its Motion to Dismiss Count XIV of Plaintiffs' Second Amended Complaint under Federal Rule of Civil Procedure 12(b)(6).

INTRODUCTION

Plaintiffs' Response fails to meaningfully rebut—and, in many instances, concedes—the dispositive deficiencies in Count XIV. Instead of engaging with the well-established legal standards governing duty, scope of employment, causation, and immunity, Plaintiffs rely on

conclusory allegations and factual speculation. Rule 8 does not allow Plaintiffs to substitute labels and conclusions for plausible facts. Count XIV remains fatally flawed on its face and warrants dismissal with prejudice.

ARGUMENT

I. PLAINTIFFS HAVE NOT PLED FACTS SUPPORTING A PLAUSIBLE INFERENCE THAT HUBBLE ACTED WITHIN THE SCOPE OF EMPLOYMENT

A. Conclusory Allegations of Agency Are Insufficient as a Matter of Law

Plaintiffs seek to invoke a theory of vicarious liability under which SCAA could be held responsible for the alleged misconduct of its purported agent or employee—even if SCAA itself did not engage in any negligent conduct. This theory, however, presumes that Plaintiffs have adequately pled the existence of an agency relationship. To do so under Illinois law, Plaintiffs must allege specific facts—not mere legal conclusions—showing that: (1) a principal-agent relationship existed; (2) the principal controlled or had the right to control the agent's conduct; and (3) the conduct at issue occurred within the scope of that agency. H*ankins v. Alpha Kappa Alpha Sorority, Inc.*, 447 F. Supp. 3d 672 (N.D. Ill. Mar. 22, 2020) (citing *Bogenberger v. Pi Kappa Alpha Corp., Inc*., 2018 IL 120951, ¶ 28. Plaintiffs allege none of these required elements.

Plaintiffs base their respondeat superior theory on two conclusory allegations: that Hubble was "an agent and/or employee" of SCAA and that she "voluntarily undertook to provide medical care" on the night in question. Conspicuously absent from both their Complaint and their response are any factual allegations addressing:

- whether Hubble was on duty at the time;
- whether SCAA dispatched her to the scene;
- whether she was performing any function for, or at the direction of, SCAA;
- whether she was acting within any authorized time or space limits; or

- whether she was motivated, even in part, by a purpose to serve SCAA.

The Complaint itself affirmatively alleges that Hubble had been drinking at a retirement party and, while off-duty and intoxicated, encountered the decedent. Such allegations negate any inference of conduct within the scope of employment. *See Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 170 (2007) (employee not acting within scope when conduct was personal, unauthorized, and contrary to employer's interest).

B. Federal Pleading Standards Do Not Excuse a Failure to Plead Facts

Plaintiffs mischaracterize Rule 8(a) as permitting purely conclusory pleading. The Supreme Court has held that "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Wood v. Moss*, 572 U.S. 744, 757-58 (2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). This standard has been widely adopted and applied by lower courts, including the Seventh Circuit, which has reiterated that a complaint must present a story that "holds together" and allows the court to infer liability. *Orr v. Shicker*, 147 F.4th 734, 741 (7th Cir. 2025). Repeating a legal conclusion—"Hubble was acting in the course of her employment"—does not meet this standard.

Rule 12(b)(6) demands more. Plaintiffs have failed to plead even the most minimal facts necessary to satisfy the elements of agency or scope of employment. Count XIV should be dismissed on this basis alone.

II. SCAA OWED NO LEGAL DUTY TO THE DECEDENT AT A MATTER OF LAW

A. Duty Cannot Be Based on an Employee's Off-Duty Conduct

Plaintiffs contend that SCAA owed a duty of care because Hubble allegedly "voluntarily undertook" to assess the decedent's condition. That argument, however, disregards well-established principles of Illinois tort law. A duty of care arises only when the defendant itself—

here, SCAA—undertakes to perform services for the plaintiff, or when a special relationship exists that gives rise to such a duty. *LM ex rel. KM v. United States*, 344 F.3d 695, 700 (7th Cir. 2003). Plaintiffs allege no facts showing that SCAA, as an organization, directed, authorized, ratified, or even knew of Hubble's off-duty conduct.

Hubble's alleged unilateral decision to examine the decedent—while intoxicated and off duty—cannot establish a duty on the part of SCAA. Illinois courts are clear: an employer bears no liability for an employee's unauthorized, off-duty, and purely personal conduct. *See Graham v. McGrath*, 363 F. Supp. 2d 1030, 1033–34 (S.D. Ill. 2005); *Holder v. Ivanjack*, 39 F. Supp. 2d 965, 971 (N.D. Ill. 1999).

B. Plaintiffs Cite No Authority Imposing Duty on a Nonprofit EMS Provider Under These Circumstances

Plaintiffs cite no authority—and SCAA is aware of none—imposing a legal duty on an EMS provider to supervise or prevent off-duty, private conduct of an employee, particularly at a time when the employee is not on call, on duty, or engaged in any organizational function.

Duty is a question of law for the Court. Because Plaintiffs have not and cannot allege a legally cognizable duty, their negligence claim fails as a matter of law. *Mitchell v. Archibald & Kendall, Inc.*, 573 F.2d 429, 433 (7th Cir. 1978).

III. STATUTORY IMMUNITIES INDEPENDENTLY BAR PLAINTIFFS' CLAIMS

A. EMS Act Immunity Applies and Has Not Been Overcome

The Illinois Emergency Medical Services Systems Act provides complete immunity from civil liability to an EMS "provider" or "entity" absent willful and wanton misconduct. 210 ILCS 50/3.150(a). SCAA is unquestionably an EMS provider within the meaning of the statute.

Plaintiffs argue that the Act does not apply because they alleged willful and wanton conduct. But to overcome immunity, Plaintiffs must plead specific facts showing that SCAA consciously disregarded a known and serious risk. They do not.

Hubble's alleged intoxication—while perhaps evidence of negligence—does not establish SCAA's own intentional misconduct. Nor does it establish corporate willfulness. Plaintiffs cannot bootstrap alleged individual misconduct to avoid statutory immunity for the organization.

B. Tort Immunity Act Bars Claims Against SCAA

Plaintiffs all but admit that determining the status of SCAA under the Local Governmental and Governmental Employees Tort Immunity Act is a legal issue, yet offer no basis for concluding that SCAA is not a public entity entitled to immunity.

Courts routinely recognize ambulance associations, fire protection districts, and other public safety agencies as "local public entities" under 745 ILCS 10/1-206. Immunity under Sections 2-201 (discretionary acts) and 2-202 (execution or enforcement of law) is appropriately applied at the pleading stage where, as here, the allegations themselves establish entitlement to immunity.

Dismissal under the Act is warranted.

IV. PLAINTIFFS HAVE FAILED TO PLAUSIBLY ALLEGE PROXIMATE CAUSE

Under Illinois law, negligence liability cannot rest on speculation or conjecture. Proximate cause must be established with reasonable certainty that the defendant's conduct caused the alleged injury. *Aalbers v. LaSalle Hotel Properties*, 2022 IL App (1st) 210494, ¶ 21.

Plaintiffs allege that the decedent was struck by a vehicle traveling at highway speed at approximately 3:33 a.m. and sustained fatal injuries. They assert—without any medical or factual

support—that he was "alive," "breathing," and "could have survived" had Hubble summoned an ambulance sooner. This assertion is pure speculation.

Even accepting Plaintiffs' allegations as true, they plead no facts showing that any delay in medical response caused or contributed to the decedent's death. Plaintiffs' conclusory claim that the decedent was "denied a chance to survive" is legally insufficient to establish proximate cause. That failure is fatal to Count XIV.

CONCLUSION

Plaintiffs have not pleaded—and cannot plead—facts capable of establishing:

1. That Hubble was acting within the scope of any employment or agency relationship;
2. That SCAA owed a legal duty to the decedent;
3. That SCAA is not entitled to immunity under the EMS Act and Tort Immunity Act; or
4. That any alleged act or omission proximately caused decedent's death.

The Complaint fails as a matter of law. Plaintiff's invitation to proceed to discovery based on speculative and conclusory allegations must be rejected. For these reasons, and those set forth in SCAA's motion, Count XIV of the Second Amended Complaint should be dismissed with prejudice.

DATED: November 5, 2025

Respectfully submitted,

SAVANNA COMMUNITY AMBULANCE ASSOCIATION

By: *<u>/s/ Joseph S. Davidson</u>*

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