



Bar Beat

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A Sharply Divided Court of Appeals Limits the Protections Afforded to Emergency Responders

In a New York State Court of Appeals decision that is likely to have serious ramifications on municipal emergency responders and municipal governing boards alike, a sharply divided Court of Appeals recently held in Kabir v. County of Monroe² that the reckless disregard standard of care in

Vehicle and Traffic Law § 1104 (e) (VTL), only applies when a driver of an authorized emergency vehicle involved in an emergency operation engages in the specific conduct exempted from the rules of the road by Vehicle and Traffic Law section 1104 (b).³ The majority concluded that any other injury-causing conduct of such a driver is governed by the principles of ordinary negligence.⁴ This ruling is a significant departure from the previously held assumption that the reckless disregard standard applied in all collision cases where emergency responders were in emergency status.

Kabir v. County of Monroe

In this case, the defendant, a road patrol deputy in the Monroe County Sheriff's Department ran into the back of the plaintiff's vehicle, when the deputy briefly looked down at his vehicle's terminal display screen in order to get directions to a reported burglary.

When the collision occurred, Deputy Sheriff DiDomenico had not activated his emergency lights or siren on the vehicle; he was traveling at a speed of 25 to 30 miles per hour in a 40 mile-per-hour zone, and does not recall if he speeded up or slowed down after receiving the dispatch.⁵

The plaintiff appealed the trial court's decision to the Appellate Division⁷ which reversed with two justices dissenting. The majority in the Appellate Division decision held that the reckless disregard standard in section 1104 (e) is limited to accidents caused by conduct privileged under sec-

...t he majority reads a limitation into section 1104(e) [VTL] that I believe is unworkable, incompatible with our precedent and unwarranted given the language in the statute.¹

– Hon. Victoria Graffeo, NYS Court of Appeals

At the trial, the Supreme Court ruled in favor of Monroe County and concluded that DiDomenico's conduct was covered by section 1104 [VTL] and that [the plaintiff] had not raised a triable issue of fact as to whether [the deputy] acted with reckless disregard.⁶

tion 1104 (b).⁸ The Appellate Division further determined that because DiDomenico's injury-causing conduct was not exempt under section 1104 of the VTL that the applicable standard for determining liability [was] the standard of ordinary negligence.⁹ The two dissenting judges in the

Appellate decision interpreted section 1104 of the VTL to apply to any injury causing conduct of a driver of an emergency vehicle involved in an emergency operation.¹⁰

The Court of Appeals, in a sharply divided decision, affirmed the Appellate Division's decision and held that the heightened reckless disregard standard would not apply in this case because Deputy Sheriff DiDomenico was not engaged in conduct specifically listed in section 1104 (b) of the Vehicle and Traffic Law.

The safe harbors outlined in Vehicle and Traffic Law § 1104(b) permits authorized emergency vehicles involved in an emergency operation to:

1. Stop, stand, or park irrespective of the provisions of this title;
2. Proceed past a steady red signal, a flashing red signal or a stop sign, but only after slowing down as may be necessary for safe operation;
3. Exceed the maximum speed

limits so long he does not endanger life or property; and
4. Disregard regulations governing directions of movement or turning in specified directions.

Because the deputy was not engaged in any of the above-listed activities, the majority held that he should be judged under the ordinary negligence standard.

However, Judge Graffeo argued in her dissenting opinion:

Thus, the majority holding has the perverse effect of encouraging conduct directly adverse to the public policy of requiring emergency responders to exercise the utmost care during emergency operation. As we observed in Saarinen v. Kerr (84 NY2d 494 [1994]), section 1104 (e) provides emergency responders with the benefit of the heightened 'reckless disregard' standard of liability in recognition of the fact that these

responders must make split-second decisions (that sometimes include violating traffic laws) in service of a greater good.¹¹

The dissent further noted:

Since Saarinen, Vehicle and Traffic Law section 1104 has been understood to impose a two-part test: if the driver was operating an 'authorized emergency vehicle' and was involved in an 'emergency operation' as those terms are defined in the statutory scheme, the driver was entitled to the qualified immunity afforded by the reckless disregard standard. The majority now adds a third component to the question, precluding emergency responders from obtaining the benefit of the reckless disregard standard unless ironically they violated one of the traffic rules listed in section 1104 (b).¹²

Judge Graffeo correctly points out that, under the majority's holding,

emergency responders who obey traffic signals or travel within the speed limit are out of luck if they are involved in an accident.¹³

Legislative Action

Without legislative action to address the decision handed down in Kabir v. County of Monroe, local governments across the state risk far greater costs associated with defending lawsuits against emergency responders who are not covered by the reckless disregard standard as enumerated by section 1104 of the VTL.

Currently, Senator Jack Martins has introduced legislation (S.4417) which would overturn the ruling by the Court of Appeals in Kabir v. County of Monroe and clarify that the actions of an emergency vehicle operator is to be judged by the standard of reckless disregard for the safety of others when involved in an emergency operation. At present, Senator Martin's bill has only been

introduced in the Senate. NYCOM is hopeful that Senator Martin's bill will get the necessary sponsor in the Assembly to keep this important legislation moving forward.

Conclusion

The Court of Appeals decision in Kabir v. County of Monroe, has created confusion as municipalities attempt to interpret the ramifications of the decision. Judge Graffeo appropriately notes in her dissent that the new rule will:

Lead to an unusual shifting of positions: plaintiffs will now argue that the emergency responder that caused the accident scrupulously adhered to the rules of the road (meaning that liability should be determined under the ordinary negligence standards) while emergency responders will emphasize all the traffic laws they violated on the way to the accident (in an effort to gain the benefit of

the reckless disregard standard).¹⁴

If you would like a copy of the Kabir v. County of Monroe decision or a copy of Senator Martin's legislation, please contact John Mancini, NYCOM Counsel at 518.463.1185 or by email jmancini@nycom.org.

Endnotes

1. Kabir v. County of Monroe, 16 N.Y.3d 217, 945 N.E.2d 461, 920 N.Y.S.2d 268, 2011 Slip op. 01069, at 9.
2. Kabir v. County of Monroe, 16 N.Y.3d 217, 945 N.E.2d 461, 920 N.Y.S.2d 268, 2011 Slip op. 01069.
3. *Id.* at 2.
4. *Id.*
5. *Id.*
6. *Id.* at 3.
7. Kabir v. County of Monroe, 68 A.D.3d 1628, 892 N.Y.S.2d 714, 2009 N.Y. Slip Op. 09737.
8. Kabir v. County of Monroe, 16 N.Y.3d 217, 945 N.E.2d 461, 920 N.Y.S.2d 268, 2011 Slip op. 01069.
9. *Id.* at 3.
10. *Id.* at 3.
11. *Id.* at 9.
12. *Id.* at 10.
13. *Id.* at 10.
14. *Id.* at 15.