

COA Opinion: An EMT is not required to report suspected child abuse pursuant to MCL 722.621 if the perpetrator does not have a close or familial relationship with the victim

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On Tuesday, July 13, 2010, the Michigan Court of Appeals published its unanimous opinion in *Joe Doe v. John Doe I*, No. 285655. In *Doe*, the Court concluded that an Emergency Medical Technician (“EMT”) was not liable for his failure to report suspected child abuse in accordance with MCL 722.623, where the perpetrator of the abuse was another EMT who was not related to the child, did not have substantial and regular contact with the child, had no close personal relationship with the child’s parents, and was not a person responsible for the child’s health or welfare.

In *Doe*, the victim was sexually molested while traveling in an ambulance from the hospital to a psychiatric facility following her suicide attempt. There were two EMTs in the ambulance. Mr. O’Connell was driving the vehicle while the perpetrator, Mr. DeFillippo, was traveling in the rear of the ambulance with the victim. During the ride, Mr. O’Connell became suspicious of his partner and contacted his supervisor to express his suspicions and concerns. The call resulted in a police investigation and criminal charges against Mr. DeFillippo. However, Mr. O’Connell never contacted CPS to report the suspected abuse. As a result, the victim, through her next friend, filed this lawsuit seeking damages for Mr. O’Connell’s failure to report child abuse in accordance with MCL 722.623.

Writing for the majority, Judge Talbot explained that the language of MCL 722.623, which appears to mandate reporting of child abuse by EMTs to Child Protective Services (“CPS”), is limited by the definition of “child abuse” in MCL 722.622(f), of “person responsible for the child’s health or welfare” in MCL 722.622(u), and of “nonparent adult” in 722.622(t).

Specifically, the Michigan Child Protection Law defines “child abuse” as harm or threatened harm to a minor committed by a parent, legal guardian, teacher, teacher’s aide, clergyman, person responsible for the child’s health or welfare. MCL 722.622(f). MCL 722.622(u) dictates that a “person responsible for the child’s health or welfare” is a parent, legal guardian, nonparent adult, or a owner, operator, volunteer, or employee of a child care organization or adult foster care home. Finally, the statute defines “nonparent adult” as an individual 18 years or age or older residing in the child’s house who meets all of the following criteria: 1) has substantial and regular contact with the child; 2) has a close personal relationship with the child’s parent or person responsible for the child’s health and welfare; and, 3) is not related to the child by blood or affinity to the third degree.

After reviewing each of these definition sections, the majority concluded that MCL 722.623(1)(a) only requires an EMT to report suspected child abuse to CPS where the perpetrator has a very specific relationship with the victim. In this case, the Court concluded that no special relationship existed between Mr. DeFillippo and the victim. Therefore, Mr. O'Connell was not required to report the suspected abuse to CPS. Accordingly, the Court of Appeals reversed the trial court's denial of defendants' motion for summary disposition.