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FIRST DIVISION
July 20, 2015

No. 1-14-1352
2015 IL App (1st) 141352-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LUCILLE LOCKHART, as Special Administrator)	Appeal from the
of the Estate of Isaiah Lockhart,)	Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 10 L 6689
)	
COUNTY OF COOK, a municipal corporation,)	
)	Honorable
)	Marcia Maras,
Defendant-Appellee.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Summary judgment was proper where plaintiff's allegation that defendant was negligent for failing to use a cardiac monitor amounted to an allegation that defendant failed to diagnose, and moreover, patient was not prescribed treatment, making defendant immune from liability in plaintiff's suit.

¶ 2 Plaintiff, Lucille Lockhart, as special administrator of the estate of her son, Isaiah Lockhart (Isaiah), appeals from an order of the circuit court that granted summary judgment to the County of Cook on plaintiff's medical malpractice action. On appeal, plaintiff contends the

court improperly found that the Local Governmental and Governmental Employees Tort Immunity Act (the Act) (745 ILCS 10/6-101 *et seq.* (West 2008)) immunized defendant from plaintiff's medical malpractice claims. We affirm.

¶ 3 This matter concerns Isaiah's visit to the emergency room of John H. Stroger, Jr. Hospital (Stroger) on July 30, 2008. While at Stroger, Isaiah entered a persistent vegetative state and died on January 19, 2011. On February 17, 2011, plaintiff filed her first amended complaint against defendant, asserting survival and wrongful death claims for alleged acts of medical negligence at Stroger, which plaintiff alleged was operated and maintained by defendant.

¶ 4 Pursuant to section 2-622 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-622 (West 2008)), plaintiff attached to the complaint a statement from Dr. John Ortinau that a reasonable and meritorious cause existed for filing her action. Dr. Ortinau's review of various records revealed the following. Isaiah initially went to a facility known as the Haymarket Center, presumably to be evaluated and treated for substance abuse. However, it was felt that Isaiah needed a medical evaluation because he complained of shortness of breath, dizziness, a productive cough, and weight loss. Isaiah was subsequently transported to Stroger via ambulance and arrived at 10:26 p.m. on July 30, 2008. Once in the emergency department, triage personnel documented that Isaiah was suffering from dizziness, abdominal pain, and nausea and vomiting. Isaiah's vital signs were recorded and he was directed to a waiting area, but there was no determination of his cardiac rhythm, no electrocardiogram was obtained, and no auscultation of his heart was performed. At midnight, Isaiah was brought to treatment room "Red 22," where he was assessed by a member of the nursing staff, who noted his vital signs and his complaints of dizziness, abdominal pain, and vomiting. Again, there was no assessment of his cardiac rhythm by electrocardiogram, cardiac monitoring, or auscultation of his heart. Isaiah

was left alone in the room, and at 12:20 a.m., he was found in cardiac arrest and ventricular fibrillation. Although a prolonged period of treatment was successful in restoring his cardiac function, Isaiah suffered a hypoxic brain injury that left him in a persistent vegetative state before his death.

¶ 5 According to Dr. Ortinau, the standard of care for a patient like Isaiah required an immediate assessment of his cardiac rhythm using a cardiac monitor when he arrived at the hospital. Dr. Ortinau stated that a cause of dizziness can be an unstable heart rhythm, which can only be adequately determined by electronically monitoring the heart. Dr. Ortinau further asserted that had Isaiah been placed on a cardiac monitor before his cardiac arrest, it is more likely than not that an irregular cardiac rhythm would have been identified. In turn, early intervention would have rapidly restored a stable heart rhythm and prevented the prolonged period of time when no blood or oxygen was delivered to Isaiah's brain.

¶ 6 In her complaint, plaintiff alleged that defendant was negligent in one or more of the following ways: (1) failing to provide an immediate assessment of Isaiah's cardiac rhythm; (2) failing to place Isaiah on a cardiac monitor upon his arrival at the hospital; (3) failing to place Isaiah on a cardiac monitor after he was taken to an examination room; and (4) failing to diagnose Isaiah's electrolyte imbalance. Plaintiff further alleged that as a direct and proximate cause of defendant's negligence, Isaiah's brain was deprived of oxygen, he developed severe hypoxic encephalopathy, he required extensive medical treatment, and he required constant medical attention from July 31, 2008, until his death. We note that this appeal only concerns plaintiff's allegations related to a cardiac monitor.

¶ 7 The record includes a triage report, a list of orders submitted for Isaiah in the emergency room, and an emergency nursing assessment. The triage report indicated that at around 10:35

p.m. on July 30, a nurse took Isaiah's vital signs and noted his complaints of dizziness, abdominal pain, and nausea/vomiting. The list of orders indicated that at around 10:38 p.m., Stroger staff ordered blood tests that would show Isaiah's lipase level, amylase level, basic metabolic profile, and a complete blood count with differential. Additionally, a urinalysis was ordered. Finally, the emergency nursing assessment, with its first entry listed at midnight on July 31, 2008, indicates that Isaiah was received at "Red #22," he was alert and oriented, and his vital signs were taken.

¶ 8 On December 23, 2013, defendant filed a motion for summary judgment pursuant to section 2-1005 of the Code (735 ILCS 5/2-1005 (West 2012)). Defendant asserted it was immune from plaintiff's allegations of negligence pursuant to sections 6-105 and 6-106 of the Act (745 ILCS 10/6-105, 6-106 (West 2012)). According to defendant, the Act's immunity provisions for failing to diagnose and treat applied to the material facts of the case. Defendant asserted that plaintiff's cause of action, in part, criticized defendant for failing to diagnose and treat an arrhythmia. However, during the relevant time, no medical workup had been done yet, and no doctor had examined Isaiah and diagnosed him with anything. Defendant further stated that Isaiah was found unresponsive before any medical examination occurred.

¶ 9 In response, plaintiff asserted that a specific diagnosis is not required before treatment occurs. Plaintiff contended that "triaging is by definition treatment" because in triage, providers take a patient's history, examine the patient, and reach a conclusion about the patient's medical condition based on their findings. Plaintiff further stated that "[t]hey obviously had not reached a final determination at that point in time as to his specific problem, but that does not matter." Plaintiff also stated that any healthcare provider can make a diagnosis and a diagnosis occurred here, with the treatment for Isaiah's symptoms being immediate monitoring. According to

plaintiff, monitoring "is part of the management of a patient who comes in with vomiting, dizziness and a history of alcohol withdrawal," and constitutes treatment instead of diagnosis.

¶ 10 In its reply, defendant reiterated that Isaiah was never diagnosed with any medical condition and was never treated for a condition, including arrhythmia, before he was found unresponsive. Defendant further stated that for treatment to occur, a doctor must first examine the patient and order treatment, and moreover, nurses do not initiate treatment before a doctor conducts a medical examination and writes medical orders. According to defendant, there was no case law to show that conducting triage, inputting a request for basic laboratory tests, and exercising nursing judgment not to place Isaiah on a monitor constituted a diagnosis, differential diagnosis, or treatment.

¶ 11 The record includes the deposition testimony of four experts, two for plaintiff and two for defendant. The first of plaintiff's experts, Dr. Ortinau, an attending physician in emergency medicine at Alexian Brothers and the EMS medical director for the Northwest Community EMS program at the time, opined that from the time Isaiah arrived at the hospital, he should have been taken directly to a bed and placed on a monitor. Dr. Ortinau further stated that although Isaiah was put in a room with a cardiac monitor around midnight, he was not actually placed on the monitor. According to Dr. Ortinau, a patient who is put in the red zone at Stroger—the zone for patients with potentially more serious problems—should be placed on the monitor for even the slightest reason.

¶ 12 Further, Dr. Ortinau asserted that Isaiah should have been placed on a cardiac monitor for three specific reasons: (1) he had complained of dizziness; (2) he had complained of abdominal pain with nausea and vomiting; and (3) he was suffering from alcohol withdrawal and significant nausea and vomiting, which is a common circumstance for electrolyte disturbances that in turn

frequently cause or contribute to cardiac arrhythmias. According to Dr. Ortinau, there is "a broad list of reasons for dizziness," and "certain diagnostic maneuvers" are required to find out if the dizziness is serious and if the life-threatening causes of dizziness are alterations in the cardiovascular system, including cardiac arrhythmias. Dr. Ortinau explained that if a patient is on a cardiac monitor has an arrhythmia and the alarm goes off, the staff becomes immediately aware that an arrhythmia has occurred and has an opportunity to immediately correct it with medication, defibrillation, or electrolyte infusion. Dr. Ortinau further stated that the failure to put Isaiah on a monitor was a deviation from the standard of care, and moreover, this deviation "precluded the ability" of the diagnosis of arrhythmia to be made, "short of physically watching" Isaiah, which also did not occur. Dr. Ortinau also stated that the failure to diagnose Isaiah's arrhythmia caused a delay in his resuscitation, which caused the hypoxic injury to his brain, and in turn, his ultimate outcome. Additionally, Dr. Ortinau discussed triage, describing its purpose as "to determine where people will go. Triage is sorting ***."

¶ 13 Plaintiff's second expert, Nurse Starlyn Reynolds, worked at Mercy Hospital in Missouri, served as an independent legal nurse consultant, and was an education specialist with Phelps County Regional Medical Center. According to Reynolds, Isaiah required cardiac monitoring because his chief complaint was dizziness, he was shaking, he had been vomiting, and he was at high risk due to his withdrawal symptoms. Reynolds stated that in her experience, all patients who complain of dizziness are placed on a cardiac monitor and it was a breach of the standard of care not to place Isaiah on a cardiac monitor. Reynolds asserted that arrhythmia could have been the cause of Isaiah's dizziness, but the nurse interacting with him would not have known if he was having an arrhythmia because no assessment was done. According to Reynolds, an

assessment could have been done with a cardiac monitor, an apical pulse, or a palpation and radial pulse.

¶ 14 Reynolds also discussed triage, stating that its purpose is to "determine the level of need" for a patient and determine a life threat, emergency, or need for treatment. Reynolds agreed that the purpose of triage was not to do a complete assessment of the patient.

¶ 15 Defendant's experts were Dr. Timothy Rittenberry and Nurse John Ratko. Dr. Rittenberry, an attending physician in emergency medicine at Illinois Masonic Medical Center, stated that dizziness "requires further investigation as to what the patient means by dizziness." Dr. Rittenberry further asserted that "the dizziness complaint is fairly complex" and usually requires a doctor to "tease out exactly what that is." As to Isaiah, Dr. Rittenberry stated that nothing individually or in combination indicated that he needed a cardiac monitor to assess his heart rhythm. Dr. Rittenberry also stated that Isaiah had "begun to have a medical evaluation in that he was triaged," but he had not been evaluated by a doctor. Dr. Rittenberry additionally asserted that often in triage, a nurse conducts a quick physical exam, and from that information makes a triage decision of the patient's severity level and where the patient needs to go. Dr. Rittenberry further stated that "[t]he information obtained in triage is not considered to be the entirety of what's available. It's a screening process. And the physician is expected to explore further in his interview."

¶ 16 In his deposition, Ratko testified that he had previously worked at Metro South Medical Center and was currently employed by Empower Systems, an electronic health records software company. According to Ratko, there was no indication that a cardiac monitor needed to be immediately applied to Isaiah. Additionally, Ratko stated that "the essence of the triage process" is to conduct a focused assessment of the chief complaints at hand, which differs from "a full

blown head-to-toe nursing assessment." Ratko also affirmed that the purpose of triage is to sort and prioritize patients based on other demands.

¶ 17 The court entered an order granting defendant's motion for summary judgment on April 8, 2014. During arguments held on the same day, defendant asserted that it was immune from liability under sections 6-105 and 6-106(a) of the Act. Defendant noted that plaintiff alleged that the proximate cause of Isaiah's outcome was a medical diagnosis, but no diagnoses were made and no treatment plan was implemented. Defendant further asserted that signs and symptoms were not diagnoses or forms of treatment, and moreover, there must be a diagnosis before there can be treatment. Defendant further asserted that a doctor would have to examine anything that a cardiac monitor would show and then make a diagnosis as to whether there was an arrhythmia. Additionally, defendant stated that plaintiff's own expert acknowledged that triage is a very brief sorting process.

¶ 18 Plaintiff contended that the premise that there must be diagnosis before treatment was "completely contrary to our ordinary experience in going to the emergency room." Plaintiff asserted that the emergency room staff understood Isaiah's condition, but did not treat it correctly. Plaintiff contended that Isaiah was treated when the hospital characterized him as "a level two," ordered diagnostic testing, and put him in a room. According to plaintiff, the triage process itself is a diagnosis, and once the hospital staff determines the level of care needed, the staff is required to follow-up on that level of care. Plaintiff also stated that a heart monitor was not diagnostic testing, but was instead a monitor and thus was treatment.

¶ 19 In its ruling, the court noted that no case stated that triage is diagnosis and treatment. The court also found that per the definitions of diagnosis and treatment, neither occurred in triage. The court further stated there was no diagnosis made in the hospital records, and

symptoms do not equate to a diagnosis. Accordingly, the court stated that defendant was immune under sections 6-105 and 6-106(a) of the Act due to a failure to perform tests and because no diagnosis or treatment occurred. The court additionally stated that its order was final.

¶ 20 On appeal, plaintiff contends that the Act does not immunize defendant from liability in this case. Plaintiff argues that defendant is liable under section 6-106(d) of the Act (745 ILCS 10/6-106(d) (West 2008)), which imposes liability for negligent or wrongful acts or omissions in administering treatment that proximately causes injury. Plaintiff argues that the negligence at issue here was the failure of Stroger's nurses to place Isaiah on a cardiac monitor. According to plaintiff, treatment occurred in two ways: 1) Stroger's healthcare providers were taking care of a sick person, Isaiah, and using nursing remedies or means, albeit negligently, to combat what was affecting him, and 2) Isaiah was under the providers' management and care for the purpose of combating his disorder. Plaintiff also notes that the Act does not state that a doctor must first diagnose a patient's condition before treatment can be provided.

¶ 21 This matter is an appeal from a grant of summary judgment, which is proper where the pleadings, admissions, depositions, and affidavits demonstrate there is no issue as to any material fact and the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2012); *Hastings v. Jefco Equipment Co.*, 2013 IL App (1st) 121568, ¶ 4. "[A]ll evidence before a court considering a summary judgment motion must be considered in the light most favorable to the nonmoving party." *Bourgonje v. Machev*, 362 Ill. App. 3d 984, 994 (2005). Further, a court should deny summary judgment if there are disputed facts or if reasonable people could draw different inferences from the undisputed facts. *Id.* During the summary judgment phase, a plaintiff does not need to prove her entire cause, but she must present some evidentiary facts to support the elements of her cause of action. *Wallace v. Alexian Brothers Medical Center*, 389

Ill. App. 3d 1081, 1085 (2009). Additionally, "[s]ummary judgment is a drastic measure and should only be granted if the movant's right to judgment is clear and free from doubt." *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). We review a summary judgment ruling *de novo*. *Id.*

¶ 22 We consider whether the Act immunizes defendant from liability for the medical malpractice that plaintiff alleges. Governmental units are liable in tort on the same basis as private tortfeasors unless a valid statute dealing with tort immunity imposes conditions on that liability. *Lloyd v. County of Du Page*, 303 Ill. App. 3d 544, 549 (1999). Under the Act, the immunities afforded to units of local government "operate as an affirmative defense which, if properly raised and proven by the public entity, precludes a plaintiff's right to recover damages." *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 503 (2000). While plaintiff asserts that Isaiah received negligent treatment, defendant contends that this matter concerns a failure to examine or a failure to diagnose—conduct for which it is immune under the Act. Section 6-105 of the Act states that local public entities and public employees acting within the scope of their employment are not liable for injury caused by the failure to make a physical or mental exam, or by the failure to make an adequate physical or mental exam. 745 ILCS 10/6-105 (West 2008). Section 6-106(a) of the Act, which is the focus of defendant's argument, provides that local public entities and public employees acting within the scope of their employment are not liable for injuries that result from diagnosing or failing to diagnose that a person is afflicted with an illness or failing to prescribe for an illness. 745 ILCS 10/6-106(a) (West 2008). Lastly, section 6-106(d), the focus of plaintiff's argument, states that public employees can be liable for injury proximately caused by a negligent or wrongful act or omission in administering treatment prescribed for an illness. 745 ILCS 10/6-106(d) (West 2008).

¶ 23 With these sections of the Act in mind, we must determine whether this matter involves a failure to diagnose or a negligent or wrongful act or omission in administering prescribed treatment—that is, whether section 6-106(a) or 6-106(d) applies. In her opening brief, plaintiff asserts that Isaiah was negligently treated in the emergency room because the nurses failed to place him on a cardiac monitor. Plaintiff contends in her reply brief that this matter concerns the hospital nurses' failure to monitor a high-risk patient by not placing him on the monitor. For its part, defendant contends that that a cardiac monitor is merely a diagnostic tool, and moreover, defendant is entitled to immunity because this matter concerns the failure to diagnose Isaiah's arrhythmia.

¶ 24 Our supreme court has stated that "diagnosis" in section 6-106(a) of the Act is defined as the " 'art or act of identifying a disease from its signs and symptoms,' and as an 'investigation or analysis of the cause or nature of a condition, situation, or problem.' " *Michigan Avenue National Bank*, 191 Ill. 2d at 510 (quoting Webster's Third New International Dictionary 622 (1993)). "Diagnosis" is also defined as " 'the art of distinguishing one disease from another' and as 'the determination of a nature of a case of disease.' " *Michigan Avenue National Bank*, 191 Ill. 2d at 510 (quoting Sloan-Dorland Annotated Medical-Legal Dictionary 199 (1987)). Additionally, "treatment" in section 6-106 of the Act is defined as " 'the action or manner of treating a patient medically or surgically, ' *** '[t]he care of a sick person, and the remedies or means employed to combat the disease affecting him,' " and " '[t]he management and care of a patient for the purpose of combating disease or disorder.' " *Michigan Avenue National Bank*, 191 Ill. 2d at 511-12 (quoting Webster's Third New International Dictionary 2435 (1993); B. Maloy, *Medical Dictionary for Lawyers* 681 (3d ed. 1960); and Sloan-Dorland Annotated Medical-Legal Dictionary 746 (1987)).

¶ 25 Examining plaintiff's complaint and the record, including the experts' deposition testimony, we believe that plaintiff's action concerns a failure to diagnose Isaiah's condition, conduct for which defendant is immune. Plaintiff's complaint alleged that defendant was negligent in one or more of the following ways: (1) failing to provide an immediate assessment of Isaiah's cardiac rhythm; (2) failing to place Isaiah on a cardiac monitor upon his arrival at the hospital; (3) failing to place Isaiah on a cardiac monitor after he was taken to an examination room; and (4) failing to diagnose Isaiah's electrolyte imbalance. As noted above, plaintiff focuses her appeal on Stroger's failure to place Isaiah on a cardiac monitor. Although both of plaintiff's experts agreed that Isaiah should have been placed on a monitor, their testimony strongly suggests that the cardiac monitor would have been a diagnostic tool, rather than treatment. Dr. Ortinau stated that "certain diagnostic maneuvers" are required to find out if a patient's dizziness is serious and if the cause of the dizziness is an arrhythmia. Dr. Ortinau's testimony indicated that a cardiac monitor helps identify arrhythmias, having explained that when a patient with an arrhythmia is on a cardiac monitor and the alarm goes off, the staff becomes aware that an arrhythmia has occurred. Significantly, Dr. Ortinau further testified that not placing Isaiah on the monitor "precluded the ability" of a diagnosis of arrhythmia to be made. Reynolds, plaintiff's other expert, testified that a nurse would not have known if Isaiah was having an arrhythmia because no assessment was done, such as with a cardiac monitor or other means. According to the testimony of plaintiff's own experts, the cardiac monitor would have been a tool for investigating the cause of Isaiah's symptoms, and therefore a way to diagnose Isaiah's condition. See *Michigan Avenue Bank*, 191 Ill. 2d at 510 (diagnosis is an " 'investigation or analysis of the cause or nature of a condition, situation, or problem' "). See also *Mabry v. County of Cook*, 315 Ill. App. 3d 42, 57-58 (2000) (section 6-106(a) of Act granted immunity to

defendants for failure to follow through with an ordered CAT scan because the alleged negligence "consisted of the failure of defendants to engage in a course of diagnostic care that would have led them to the actual medical illness"). Overall, the focus of plaintiff's complaint—that defendant failed to place Isaiah on a cardiac monitor—amounts to a claim that defendant failed to diagnose his arrhythmia.

¶ 26 Additionally, the experts and the Stroger records illustrate that the triage area was not a place where either diagnosis or treatment occurred in this case. For defendant to be potentially liable under the Act, there must be a correct diagnosis and treatment for that diagnosis must be prescribed. *Antonacci v. City of Chicago*, 335 Ill. App. 3d 22, 29 (2002). Here, all of the experts described triage as a screening area. Dr. Ortinau defined triage as "sorting" and a means to determine where patients will go. Reynolds explained that the purpose of triage is to "determine the level of need" for a patient and stated that its purpose is to determine a life threat, emergency, or need for treatment. Dr. Rittenberry stated that Isaiah had begun to have a medical evaluation and that, often, triage is a screening process where after a quick exam, a triage nurse makes a decision about a patient's severity level. Ratko stated that the essence of triage was an assessment focused on the chief complaints at hand.

¶ 27 While these descriptions leave open the possibility that diagnosis or treatment could occur in triage, the record indicates that neither occurred here. A triage report indicates that a nurse took note of Isaiah's complaints, took his vital signs, and assigned him a triage destination: "WR-Red." Additionally, various tests were ordered when Isaiah arrived in triage, but there is no evidence that any actions were taken based on those tests. The emergency nursing assessment notes that Isaiah was placed in the red zone at midnight, his complaints and vital signs were taken, and that he was alert and oriented. This assessment does not indicate that, when Isaiah

was placed in the room, he was diagnosed with a disease or that anything was prescribed to combat a disease or disorder that was affecting him. The record thus indicates that Isaiah was neither diagnosed nor given a treatment plan in triage. Instead, he was given a basic assessment and screened for his level of need. No measures were prescribed to treat any of Isaiah's symptoms. *Contra Mills v. County of Cook*, 338 Ill. App. 3d 219, 223 (2003) (no immunity under section 6-105 or 6-106(a) of the Act where a doctor correctly examined and diagnosed the patient's condition and prescribed treatment, but the treatment prescribed was inadequate in that the doctor omitted necessary antibiotics and respiratory monitors). Because plaintiff's claim amounts to alleging that defendant failed to diagnose his arrhythmia using a cardiac monitor, and because no treatment was prescribed, defendant is immune under section 6-106(a) of the Act.

¶ 28 Although it also involves an emergency setting, plaintiff's reliance on *Antonacci*, 335 Ill. App. 3d 22, does not convince us that summary judgment was improper. In *Antonacci*, the plaintiff alleged that paramedics correctly diagnosed the decedent with a heart attack, but negligently treated him by failing to conduct an EKG test or defibrillation. *Antonacci*, 335 Ill. App. 3d at 28. Defendant contended in part that a heart attack was too vague and general a diagnosis to trigger liability and that an EKG was a diagnostic tool, not a method of treatment. *Id.* In vacating the order that granted the defendant's motion to dismiss, the court found that none of the appellate court decisions it relied on dealt with "paramedic conduct or the lack of it." *Id.* at 31. The court, which had before it only the plaintiff's complaint and a physician's report, concluded it required a better record to resolve the immunity issue—whether or not there was a diagnosis and prescribed treatment. *Id.* at 27, 31. Here, we have a much more developed record than the court in *Antonacci*. In addition to plaintiff's complaint and the summary judgment briefing from below, we have the benefit of hospital records and the deposition testimony of four

experts. The undisputed evidence illustrates that Isaiah was neither diagnosed nor prescribed treatment while in triage at Stroger, and therefore defendant is immune under the Act.

¶ 29 We note that plaintiff raises the valid concern that citizens who enter emergency rooms of local public hospitals and have not yet been diagnosed by a doctor should expect to receive treatment that is consistent with the standards of the health profession. We are sensitive to plaintiff's concern, but are bound by precedent and note that "[i]f the statute as enacted seems to operate in certain cases unjustly or inappropriately, the appeal must be to the General Assembly, and not to the court." (Internal quotation marks omitted.) *Michigan Avenue National Bank*, 191 Ill. 2d at 522.

¶ 30 Lastly, we consider plaintiff's request in her reply brief that we *sua sponte* enter an order that defendant has waived any argument in oral argument and on petition for rehearing relating to section 6-105 of the Act and to a breach of the standard of care. We deny plaintiff's request. Plaintiff asserts that, under Illinois Supreme Court Rules 341(h)(7) and 341(i) (eff. Feb. 6, 2013), defendant has waived any argument relating to section 6-105 of the Act because it did not make any argument relating to that section in its brief. Defendant stated in its brief that sections 6-105 and 6-106(a) of the Act confer immunity, although as stated above, its argument focused on section 6-106(a). Nonetheless, oral argument did not occur in this case and any order relating to a petition for rehearing would be premature at this point, given that plaintiff made her request well before the timeframe for even filing a petition for rehearing. See Ill. S. Ct. R. 367(a) (eff. Jan. 1, 2015) (a petition for rehearing may be filed within 21 days after the filing of the judgment). Generally, courts "do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided." (Internal quotation marks omitted.) *Doe v. Northwestern Memorial Hospital*, 2014 IL App (1st)

140212, ¶ 47. Because an order relating to plaintiff's concern about section 6-105 of the Act would be premature at this point, we decline to issue one.

¶ 31 Also premature is plaintiff's contention that defendant waived any argument about whether the Stroger nurses breached the standard of care. The issue in this case concerned the threshold question of whether defendant was immune under the Act. Whether there was a breach of the standard of care was not directly relevant to the issue on appeal, and therefore it would not be expected that either brief would address the standard of care. As such, we decline to find the matter waived.

¶ 32 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 33 Affirmed.