2016 IL App (2d) 151166-U
No. 2-15-1166
Order filed August 17, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

SUSAN K. McCAULEY, as Administrator of the Estate of KYLE D. McCAULEY, Deceased, Plaintiff-Appellant, v. OSWEGO FIRE PROTECTION DISTRICT, BRIAN STROUB, MICHAEL DABNEY, ROBERT TOWERY, and KYLE SHELY, Defendants-Appellees.	)	Appeal from the Circuit Court of Kendall County. No. 13-L-46 Honorable Stephen L. Krentz, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting summary judgment in favor of defendants when there was no genuine issue of material fact as to whether defendants engaged in willful and wanton conduct while providing emergency medical services to decedent.

¶ 2 Plaintiff, Susan K. McCauley, as administrator of the estate of Kyle D. McCauley, appeals the trial court's grant of summary judgment in favor of defendants, Oswego Fire Protection District, Brian Stroub, Michael Dabney, Robert Towery, and Kyle Sheley. Plaintiff

claims that a genuine issue of material fact exists as to whether defendants engaged in willful and wanton conduct when they provided emergency medical services to decedent. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Procedural Background

¶ 5 On May 28, 2013, plaintiff, on behalf of decedent's estate, filed a two-count complaint against defendants under the Wrongful Death Act (740 ILCS 180/1 *et seq.* (West 2012)) and the Survival Act (755 ILCS 5/27-6 (West 2012)). Predicated upon a theory of *respondeat superior*, the complaint alleged that Stroub, Dabney, Towery, and Sheley were employed by the Oswego Fire Protection District as paramedics and ambulance attendants. The complaint further alleged that defendants engaged in willful and wanton conduct by failing to take certain actions in providing emergency medical services to decedent, and certain of those omissions were in contravention of the applicable Standard Operating Procedures (SOPs). The SOPs are a set of authorized procedures and instructions that a medical director (a licensed physician) issues to paramedics for use in providing emergency medical services. The complaint alleged that defendants' actions and/or failure to act in accordance with the SOPs caused decedent's death.

¶ 6 On March 6, 2015, defendants filed a motion for summary judgment, arguing that, as a matter of law, their actions did not constitute willful and wanton conduct pursuant to section 3.150(a) of the Emergency Medical Services Systems Act (EMS Act) (210 ILCS 50/3.150(a) (West 2012)). Specifically, defendants argued that they provided "extensive" treatment to decedent and that all treatment provided was in accordance with the SOPs.

¶ 7 B. Factual Background

¶ 8 The following factual summary is derived from the numerous exhibits attached to the parties' memoranda in connection with the motion for summary judgment, which included depositions, documents, and affidavits. Additional facts will be addressed in the analysis where appropriate.

¶ 9 On May 25, 2012, decedent suffered an asthma attack in the early morning. An asthma attack results in difficulty breathing and is caused by "bronchospasms" in the lower part of an individual's airways; the airways become inflamed and mucus is produced, which prevents the individual from fully inhaling and exhaling air. Upon experiencing the attack, decedent woke plaintiff, his wife, by saying her name in a labored manner. At 6:05 a.m.[1], plaintiff called 911 to request help, informing the operator that decedent was in "extreme respiratory distress." Defendants Stroub and Dabney arrived at decedent's house at 6:12 a.m. They found decedent standing at the kitchen sink, and they assessed him as a "time-sensitive patient" in severe respiratory distress. Decedent was conscious, but he was unable to speak and was having difficulty breathing. Plaintiff informed Stroub and Dabney that decedent had a history of asthma. Shortly thereafter, decedent began to lose consciousness, and they assisted him to the ground.

¶ 10 At 6:15 a.m., Stroub and Dabney requested additional paramedics. They needed assistance in transporting decedent (who weighed between 230 and 250 pounds) out of the kitchen, down a flight of stairs, and into the ambulance. While waiting for the additional manpower, Stroub and Dabney placed a pulse oximeter on decedent's finger to measure his

[1] The times referred to in the background section are from the dispatch report, which is a document prepared by an independent dispatch center that recorded and listed the times of the 911 calls and the times that the ambulances were dispatched to and from the scene.

oxygen level and monitor his vitals. The pulse oximeter measured decedent's oxygen level at 44 percent, which would place him at risk of imminent respiratory or cardiac arrest. Both Dabney and Stroub testified at their depositions that the oxygen level measurements were not accurate, because decedent's diaphoresis (profuse sweating) interfered with accurate readings. Additionally, all deponents testified that certain issues, such as diaphoresis or cold hands, interfere with accurate readings from pulse oximeter devices.

¶ 11 Before the second ambulance arrived, Dabney attempted to start intravenous (IV) therapy, but decedent pulled his arms away. Stroub applied a bag valve mask, an advanced airway support, to provide oxygen. Stroub also administered two medications through the bag valve mask: albuterol and atrovent. He noticed that decedent's chest was rising and falling, thus indicating that decedent had a patent (open and clear) upper airway. Dabney administered a dose of epinephrine. Both Stroub and Dabney testified that an endotracheal tube was not required, because decedent had a pulse, had a patent upper airway, and was receiving oxygen and medication through the bag valve mask. An endotracheal tube secures only the upper portion of an individual's airway.

¶ 12 At 6:22 a.m., defendants Robert Towery and Kyle Sheley arrived in a second ambulance. All four paramedics placed decedent on a backboard and transported him out of the kitchen, down the stairs, and into the ambulance. Once they placed him in the ambulance, Towery established an IV. Sheley then began to administer magnesium sulfate to decedent through the IV. Magnesium sulfate is a medication that helps stop the bronchospasms that occur in the lower part of the airway during an asthma attack. All four defendants testified that they established the IV before departing for the hospital because it is easier to do so in a stationary ambulance. They

also connected decedent to a cardiac monitor and continued to provide oxygen and medication through the bag valve mask. The ambulance departed for the hospital at approximately 6:33 a.m.

¶ 13 While en route to the hospital, decedent went into respiratory and cardiac arrest at 6:37 a.m. Defendants immediately began to perform cardiopulmonary resuscitation (CPR) on decedent, which they continued for the remainder of the ride to the hospital. Immediately after decedent went into respiratory and cardiac arrest, Towery twice attempted to perform an endotracheal intubation, but his efforts were unsuccessful due to decedent's short, thick neck and anterior vocal chords. Per the applicable SOPs, defendants were limited to only two attempts at an endotracheal intubation. Towery then placed a "King LT rescue intubation," which secures access into the lungs of a patient. Sheley also administered Vasopressin, a resuscitation medication that provides stimulation for the heart to "re-start and to beat again."

¶ 14 The ambulance arrived at Rush-Copley Hospital at 6:45 a.m. Dr. Christopher Hwang, the emergency-room physician, testified at his deposition that defendants were administering CPR and the bag valve mask upon their arrival; those efforts were continued by a hospital technician and a respiratory doctor, respectively. Dr. Hwang removed the King LT device and successfully intubated decedent with an endotracheal tube. Ultimately, Dr. Hwang was able to obtain a cardiac rhythm within five to ten minutes of decedent's arrival at the hospital. Nevertheless, decedent never regained consciousness and was placed on life-saving support systems. Decedent died four days later on May 29, 2012. The cause of death was respiratory failure and anoxic encephalopathy. Dr. Hwang testified that he had no criticism of defendants' treatment of decedent, and he believed that defendants "tried to provide the best care they could."

¶ 15 Plaintiff responded to defendants' motion for summary judgment by attaching the affidavit of Guy Haskell, an attorney and part-time paramedic for Indianapolis Emergency

Medical Services. Haskell averred that he was a licensed emergency medical technician in Indiana and was familiar with the "national standard of care" for paramedics. He became familiar with the local standard of care, which was set by the SOPs that were used by the Oswego Fire Protection District, by reviewing relevant documents.

¶ 16 Haskell averred that at the time of the incident, decedent was a "time-sensitive patient" who needed urgent respiratory assistance**,** and the applicable SOPs required that time-sensitive patients receive either continuous positive airway pressure (C-Pap) or immediate intubation. Because decedent was unconscious, C-Pap was not available. He also averred that per the SOPs, defendants were thus required to immediately intubate decedent upon establishing an IV. Defendants did not attempt intubation until decedent went into cardiac and respiratory arrest, which was 17 minutes after an IV was established. Additionally, Haskell averred that defendants violated the "emergent transport" protocol of the SOPs, because they did not leave the "scene" until 12 minutes after decedent was placed in the ambulance. Haskell opined that defendants deviated from the standard of care when they failed to (1) immediately intubate decedent and (2) leave the scene immediately. Moreover, those deviations were "unconscionable and inexcusable delays," which constituted an "utter indifference to[] or conscious disregard of" decedent's safety.

¶ 17 C. Trial Court's Ruling

¶ 18 On November 10, 2015, the court issued a written order granting defendants' motion for summary judgment. The court rejected plaintiff's argument that defendants' purported violation of the SOPs, alone, was sufficient to demonstrate willful and wanton conduct. Moreover, the court found that defendants did not violate the applicable SOPs. Ultimately, the court found that, as a matter of law, plaintiffs could not prove that defendants were willful and wanton in their

emergency treatment, because no facts supported a finding that defendants acted with an utter indifference to or a conscious disregard of decedent's safety.

¶ 19 Plaintiff timely appealed.

¶ 20 II. ANALYSIS

¶ 21 Plaintiff argues that the trial court erred in granting defendants' motion for summary judgment, because a genuine issue of material fact exists as to whether defendants' treatment of decedent constituted willful and wanton misconduct. We will begin our analysis by reiterating the familiar standards applicable to summary judgment. We will then consider the EMS Act and its application to plaintiff's causes of action.

¶ 22 Summary judgment is appropriate when the pleadings, depositions, and admissions on file, together with any affidavits, show that there is no genuine issue of material fact such that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2014). A reviewing court will construe the record strictly against the movant and liberally in favor of the nonmoving party. *Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 280 (2007). Summary judgment should not be granted unless the moving party's right to judgment is clear and free from doubt. *Forsythe*, 224 Ill. 2d at 280. Summary judgment should be denied if there is a dispute as to a material fact or if the undisputed material facts could lead reasonable observers to divergent inferences. *Forsythe*, 224 Ill. 2d at 280. We review an order granting summary judgment *de novo*. *Forsythe*, 224 Ill. 2d at 280.

¶ 23 A defendant moving for summary judgment can meet its burden of production by (1) affirmatively showing that an element of the cause of action must be resolved in its favor or (2) demonstrating that the plaintiff cannot produce evidence necessary to support his or her cause of action. *Fabiano v. City of Palos Hills*, 336 Ill. App. 3d 635, 641 (2002). If the defendant

satisfies its initial burden, the burden shifts to the plaintiff to present a factual basis that would arguably entitle it to judgment. *Fabiano*, 336 Ill. App. 3d at 641. Mere speculation or conjecture is insufficient to withstand summary judgment. *Lee v. Six Flags Theme Parks, Inc.*, 2014 IL App (1st) 130771, ¶ 61.

¶ 24 Defendants' liability for their actions in providing emergency medical care and treatment to decedent is governed by the EMS Act. 210 ILCS 50/1 *et seq.* (West 2012). The purpose of the EMS Act is to provide for the overall planning, evaluation, and regulation of pre-hospital emergency medical services in Illinois. 210 ILCS 50/2 (West 2012). Section 3.150 of the EMS Act provides that emergency medical service providers are immune from civil liability, except for willful and wanton conduct. 210 ILCS 50/3.150(a) (West 2012).

¶ 25 There is no separate and independent tort of willful and wanton conduct. *Jane Doe-3 v. McLean County Unit District. No. 5 Board of Directors*, 2012 IL 112479, ¶ 19. Instead, it is regarded as an aggravated form of negligence. *Jane Doe-3*, 2012 IL 112479, ¶ 19. To recover damages based on willful and wanton conduct, a plaintiff must plead and prove the elements of a negligence claim: (1) that the defendant owed a duty to the plaintiff, (2) that the defendant breached that duty, and (3) that the breach was the proximate cause of the plaintiff's injury. *Jane Doe-3*, 2012 IL 112479, ¶ 19. A plaintiff must additionally plead and prove willful and wanton conduct. *Jane Doe-3*, 2012 IL 112479, ¶ 19.

¶ 26 Willful and wanton conduct means either (1) an actual intent to harm or (2) an "utter indifference" to or "conscious disregard" for the safety of others. *Pfister v. Shusta*, 167 Ill. 2d 417, 421 (1995). It may also be demonstrated by the failure to discover an impending danger through recklessness or carelessness when it could have been discovered by the exercise of ordinary care. *Bowden v. Cary Fire Protection District*, 304 Ill. App. 3d 274, 280 (1999). The

failure to discover, however, must have been committed under circumstances exhibiting a "reckless disregard" for the safety of others. *Bowden*, 304 Ill. App. 3d at 280. Here, plaintiff has not alleged that defendants intentionally harmed decedent. Thus, our analysis will focus solely on whether a genuine issue of material fact exists regarding whether defendants acted with an utter indifference to or conscious disregard for decedent's well-being. See *Vilardo v. Barrington Community School District 220*, 406 Ill. App. 3d 713, 724 (2010).

¶ 27 As a preliminary matter, plaintiff contends that defendants conceded the issue of proximate causation for purposes of their motion for summary judgment, because they only advanced the argument that their acts or omissions in providing emergency medical services to decedent did not constitute willful and wanton conduct. Defendants deny that they are conceding proximate causation, and contend that the immunity analysis under the EMS Act focuses solely on whether there was a breach of duty and the "nature" of that breach.

¶ 28 Proximate causation is immaterial to the present appeal. Indeed, willful and wanton conduct is a separate and distinct consideration from proximate causation. Whether a defendant engages in willful and wanton conduct is an issue that relates to whether that party breached his or her duty to the plaintiff; hence, that determination is separate from and preliminary to the issue of proximate causation. See, *e.g.*, *Winfrey v. Chicago Park District*, 274 Ill. App. 3d 939, 945 (1995) ("[P]laintiff was required to allege adequately that defendant had a duty, which it breached by engaging in willful and wanton conduct, and that such conduct proximately caused his injury."); see also *Pfister*, 167 Ill. 2d at 420 (Persons "owe each other a duty to refrain from willful and wanton or intentional misconduct and are liable for injuries caused by willful and wanton conduct."). Moreover, plaintiff has provided no legal authority for the assertion that a defendant concedes proximate causation when arguing that his or her acts did not constitute

willful and wanton conduct, nor has our independent research uncovered any such authority. See *Vilardo,* 406 Ill. App. 3d at 720 ("Contentions supported by some argument but by absolutely no authority do not meet the requirements" of Supreme Court Rule 341 (eff. Jan. 1, 2016) and are thus forfeited).

¶ 29 As to the substance of the motion for summary judgment, plaintiff contends that defendants exhibited an utter indifference to or conscious disregard for decedent's safety when they violated certain provisions of the SOPs by failing to immediately (1) intubate decedent once the IV was established and (2) leave for the hospital once decedent was placed in the ambulance.

¶ 30 The Oswego Fire Protection District adopted the Southern Fox Valley Standard Operating Procedures as its own SOPs. While the SOPs contain instructions for a multitude of medical scenarios, the relevant provisions of the SOPs were attached to defendants' motion for summary judgment.[2] The two relevant provisions were titled "ASTHMA/COPD with Respiratory Distress" (respiratory distress SOP) and "General Patient Assessment."

¶ 31 In support of her claim that defendants violated the SOPs by failing to immediately intubate decedent, plaintiff relies on the respiratory distress SOP. Per that SOP, however, immediate intubation is not required for every patient suffering severe respiratory distress. Instead, immediate intubation is merely classified in the SOP as a "special consideration" for paramedics to consider when treating patients who are suffering from severe respiratory distress. Indeed, the respiratory distress SOP also provided alternative instructions for patients with a history of asthma. Those alternative instructions listed a series of medications to be administered sequentially: epinephrine, albuterol/atrovent, and magnesium sulfate. The respiratory distress SOP indicates that it was thus within the paramedics' discretion to choose which course of action

[2] The SOPs were attached as "Tab 10" to defendants' motion for summary judgment.

they deemed appropriate.[3] Even Haskell acknowledged at his deposition that no language in the SOP automatically mandated immediate intubation for a patient in severe respiratory distress.

¶ 32 Defendants complied with the respiratory distress SOP when they followed the provision of the SOP that pertained to patients with a history of asthma. Upon their arrival, plaintiff informed Stroub and Dabney that decedent historically suffered from asthma. Stroub administered albuterol and atrovent through the bag valve mask, while Dabney administered a dose of epinephrine. Once Towery established an IV inside of the ambulance, Sheley administered the magnesium sulfate to help stop the bronchospasms.

¶ 33 Plaintiff also argues that defendants were willful and wanton when they violated the "General Patient Assessment" SOP by failing to immediately transport decedent to the hospital. She is mistaken. The pertinent subsection of the General Patient Assessment SOP provided that "time-sensitive" patients "require time-sensitive assessments, and/or interventions at the hospital. This does not authorize accelerated transport speed, but emphasizes rapid patient packaging and limiting on-scene time (barring prolonged [patient] access) to a minimum (Goal: 10 min or less)." The plain language of that provision unambiguously identifies a *goal* of transporting a time-sensitive patient within ten minutes. It does not establish an absolute time constraint. The uncontradicted evidence shows that defendants faced additional challenges in departing the scene, due to decedent's size and weight. Specifically, decedent weighed between 230 and 250

[3] In the respiratory distress SOP, both the "special considerations" and "History of ASTHMA" course of actions were labeled with the numerical step of "2" within the sequential list of instructions under "SEVERE distress." There was also a step labeled "2" under "MILD to MODERATE distress."

pounds and defendants needed to transport him out of the kitchen, down a flight of stairs, and into the ambulance. A second ambulance crew was called immediately to assist.

¶ 34 Even so, plaintiff relies on Haskell's testimony to contend that defendants should have conducted a "load and go." Specifically, according to Haskell, once decedent was placed in the ambulance, the ambulance should have immediately departed for the hospital. Nothing in the SOPs, however, mandates immediate departure. The unrefuted evidence shows that, after decedent was placed in the ambulance, defendants only waited to depart for the hospital until an IV was established. The IV was necessary to administer the magnesium sulfate. All deponents testified that it is easier to place an IV in a stationary ambulance as opposed to one that is moving. Both Haskell and Dr. Hwang agreed with that conclusion.

¶ 35 Nevertheless, plaintiff appears to contend that defendants failed to act or otherwise render emergency medical services when they did not immediately intubate or transport decedent to the hospital. To support her proposition that inaction constitutes willful and wanton conduct, plaintiff relies on *American National Bank & Trust Co. v. City of Chicago*, 192 Ill. 2d 274 (2000). Plaintiff's reliance is misplaced.

¶ 36 In *American National Bank*, our supreme court held that the plaintiff sufficiently alleged willful and wanton misconduct to survive a motion to dismiss. *American National Bank*, 192 Ill. 2d at 286. Specifically, the plaintiff alleged that the decedent suffered an asthma attack, called 911 to request assistance, and provided her address and the floor of the apartment building in which she lived. *American National Bank*, 192 Ill. 2d at 276. The 911 dispatcher failed to attempt to keep the decedent on the telephone, as required by the applicable SOPs. *American National Bank*, 192 Ill. 2d at 276, 285. Additionally, the paramedics arrived at the apartment, but left without attempting to enter the apartment or otherwise locate the decedent. *American*

National Bank, 192 Ill. 2d at 276-77. The court noted that the paramedics failed to follow the "vital and basic precepts of their training" in attempting to locate persons in need of emergency medical treatment, which was the "first step" in providing life-support services. *American National Bank*, 192 Ill. 2d at 286.

¶ 37 Unlike *American National Bank*, defendants here located decedent immediately, provided care, and transported him to the hospital. They took more than the "first step" in providing life-support services. This is not a case where defendants failed to follow the "vital and basic precepts of their training" or otherwise took no action.

¶ 38 Plaintiff, relying on *Kirwan v. Lincolnshire-Riverwoods Fire Protection District*, 349 Ill. App. 3d 150 (2004), also argues that defendants' "delay" in providing emergency medical services constituted willful and wanton conduct. In *Kirwan*, the plaintiff sufficiently pleaded "reckless" willful and wanton misconduct to survive a motion to dismiss. *Kirwan*, 349 Ill. App. 3d at 156. The plaintiff alleged that the decedent suffered an allergic reaction to walnuts and that the paramedics knew upon their arrival to the scene that the decedent was having difficulty breathing due to the reaction. *Kirwan*, 349 Ill. App. 3d at 152. Based on their training, applicable SOPs, and accepted emergency practices, the paramedics should have administered three specific medications within the first minute of their arrival. *Kirwan*, 349 Ill. App. 3d at 153. The paramedics waited seven minutes before administering two of the medications, and they failed to administer the third. *Kirwan*, 349 Ill. App. 3d at 153. This court commented: "In cases of life-threatening emergencies, seven or eight minutes can be a significant delay that *could* amount to 'utter indifference' or 'conscious disregard' for decedent's safety." *Kirwan*, 349 Ill. App. 3d at 157 (emphasis added).

¶ 39 *Kirwan* is distinguishable, as it dealt with the dismissal of a suit at the pleadings stage. Here, we are reviewing the grant of a motion for summary judgment. Even accepting plaintiff's timeline of events,[4] no evidence in the record even marginally supports the conclusion that defendants inordinately or recklessly delayed or withheld providing emergency medical services to decedent. Indeed, it is undisputed that, at all times, defendants were attempting to provide emergency medical services to decedent. The record shows that those services were provided in accordance with the applicable SOPs, as well as defendants' professional judgment.

¶ 40 Moreover, while plaintiff asserts that defendants delayed in providing the required "life saving" intubation, all deponents testified that an asthma attack is caused by bronchospasms that occur in the *lower* part of an individual's airway. Stroub and Dabney testified at their depositions that they did not believe that endotracheal intubation was required, because decedent had a "patent upper airway," as evidenced by his chest rising and falling and his respiratory rate of "10" (which was within the acceptable range established in their protocol). Defendants'

[4] Plaintiff asserts that: the second ambulance arrived at 6:20 a.m.; defendants placed decedent on a backboard and moved him out of the kitchen, down the stairs, and into the ambulance at 6:20 a.m.; defendants then established an IV at 6:20 a.m.; and they administered the magnesium sulfate at 6:21 a.m. Those times are from the Patient Care Record, a document drafted by Dabney an hour after the ambulance arrived at the hospital. All deponents unequivocally testified that the times in that report were mere estimates and that nobody was contemporaneously monitoring the time. Plaintiff ignores the dispatch report, prepared by an independent dispatch center, which provides that the second ambulance arrived at decedent's house at 6:22:41 a.m. Nevertheless, we are mindful that we must construe the record liberally in favor of plaintiff, the nonmovant. *Forsythe*, 224 Ill. 2d at 280.

actions thus comported with the applicable respiratory distress SOP when they administered the requisite medications of albuterol, atrovent, epinephrine, and magnesium sulfate. Unlike in *Kirwan*, the SOPs did not establish a timeframe for administering the medications, and defendants administered all required medications. Furthermore, no facts in the record suggest that defendants exhibited an utter indifference to or conscious disregard for decedent's safety by not departing for the hospital immediately. As mentioned, no language mandated immediate departure. Defendants only waited to depart until they could establish an IV to administer the magnesium sulfate. Thus, defendants were taking steps to improve decedent's health at all times.

¶ 41 We find analogous and highly persuasive the case of *Bowden v. Cary Fire Protection District*, 304 Ill. App. 3d 274 (1999), in which this court upheld a grant of summary judgment in favor of the defendant-paramedics on the basis that the plaintiff was unable, as a matter of law, to establish willful and wanton conduct. *Bowden*, 304 Ill. App. 3d at 283. In *Bowden*, the decedent experienced severe respiratory arrest as a result of an asthma attack. *Bowden*, 304 Ill. App. 3d at 276. The defendants who responded to the call immediately assessed the decedent's condition, obtained his medical history, placed a bag valve mask to provide oxygen, monitored his pulse and lung sounds, unsuccessfully attempted to intubate him once he went into arrest, suctioned his airway after the failed intubation attempt, and gave him CPR after he arrested. *Bowden*, 304 Ill. App. 3d at 281-82**.** This court found that the defendants' conduct was in conformity with the written SOPs, they did not attempt any life support service beyond their level of training, and they provided "extensive care and treatment[.]" *Bowden*, 304 Ill. App. 3d at 282. While the defendants' unsuccessful attempts at intubation "might" have been sufficient

to support a negligence theory, we held that conduct did not demonstrate a willful or conscious disregard for the decedent's safety. *Bowden*, 304 Ill. App. 3d at 283.

¶ 42 As in *Bowden*, defendants' conduct here was in conformity with the SOPs, they did not attempt emergency medical services beyond their training, and they provided extensive care and treatment. Although defendants unsuccessfully attempted to intubate decedent twice after he went into cardiac and respiratory arrest, Haskell himself testified at his deposition that a failed attempt at intubation does not violate the standard of care.

¶ 43 Thus, after reviewing the record in the light most favorable to plaintiff, we conclude that no evidence supports the conclusion that defendants acted with an utter indifference to or a conscious disregard of decedent's safety. Thus, as a matter of law, plaintiff is unable to prove that defendants engaged in willful and wanton conduct when they provided emergency medical services to decedent.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, the judgment of the circuit court of Kendall County is affirmed.

¶ 46 Affirmed.