

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ALEXANDRA VAN HORN,

Plaintiff and Respondent,

v.

ANTHONY GLEN WATSON,

Defendant and Appellant;

LISA TORTI,

Defendant and Respondent.

B188076

(Los Angeles County
Super. Ct. No. PC034945)

ORDER MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING

[NO CHANGE IN JUDGMENT]

ALEXANDRA VAN HORN,

Plaintiff and Appellant,

v.

ANTHONY GLEN WATSON et al.,

Defendants and Respondents.

B189254

THE COURT:

It is ordered that the opinion filed herein on March 21, 2007 is modified as follows:

On page 12, the text of footnote 8 is deleted and replaced by the following language:

Torti argues that whether her removal of plaintiff from the car constituted emergency medical care is an issue of fact for the jury, not an issue of law that this court can decide on appeal. We disagree. Torti takes the position that because plaintiff was in extreme pain, she required immediate medical attention which Torti rendered to the extent she was able. We do not take issue with the intermediate conclusion that plaintiff, having been injured in a car accident, required immediate medical attention. However, there is no construction of the facts under which removing her from the car constituted *medical* care. Torti can point to no facts supporting the conclusion that plaintiff's *medical condition* would be *treated* by removing her from the car – unlike the situation of, for example, a carbon monoxide poisoning victim who needs to be moved to a source of fresh air. Indeed, it appears that Torti's removal of plaintiff from the car would have taken place if plaintiff had not been injured at all, but had simply failed to exit the car after the accident for any reason. There was simply no medical treatment motive for Torti's act. Moreover, it is possible that Torti's movement of plaintiff *prevented* plaintiff from receiving appropriate medical care for injured vertebrae, which might have included *immobilization* of the injured woman *prior* to her removal from the car.

We do not conclude that Torti was or was not *negligent* in her determination that plaintiff had to be immediately removed from the car due to the

perceived risk of fire or explosion. Nor do we conclude that Torti did or did not exercise *reasonable care* in the way in which she removed plaintiff from the car. These are both issues for the jury to determine at trial. We do conclude, however, that Torti's act of removing the injured plaintiff from the car was not, under the undisputed facts, emergency medical care.

[There is no change in the judgment.]

Torti's petition for rehearing or, in the alternative, modification of the opinion, is denied in all other respects.