

SUPREME COURT LIVE

November 4, 2024

Nome

ORAL ARGUMENT CASE SUMMARY

John D. Rochon,

Appellant,

v.

City of Nome, Allen Wright, and Jackie L. Reader,

Appellees.

Supreme Court Case No. S-18908

Disclaimer: *This summary of the case highlights the major issues raised but is not intended to be comprehensive. It has been prepared for educational purposes only by the Supreme Court LIVE program staff and does not reflect the input or views of any member of the court.*

OVERVIEW OF THE CASE

Can a city that provides ambulance service outside of its city limits be sued when one of its employees allegedly provides negligent care to a person injured in a car crash? John Rochon was involved in a serious wreck on the Nome-Council Road. The Nome Volunteer Ambulance Department responded to the crash scene, which was about 30 miles outside of the Nome city limits. The ambulance transported Rochon to the hospital; he had permanent spinal injuries as a result of the crash. Rochon later sued the City of Nome because he said the medical treatment he got from the ambulance crew made his permanent injuries worse. The City said it could not be sued because of a state law that protects cities when they “gratuitously” offer municipal services outside of the city limits. The City asked the superior court judge to decide, without a trial, that it could not be sued because of this statute. The superior court agreed with the City that it could not be sued, and the court later ordered Rochon to pay the City over \$15,000 for its attorney’s fees and costs in defending the lawsuit. Rochon is asking the Alaska Supreme Court to reverse the superior court’s decisions.

ATTORNEYS

Attorney for Appellant, John Rochon:

Jeffrey J. Barber, Anchorage

*Attorney for Appellees, City of Nome and
Allen Wright:*

Matthew Singer, Lee C. Baxter, and
William C.G. Wright,
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QUESTIONS PRESENTED ON APPEAL

1. Does Alaska Statute 09.65.070 protect the City from being sued when it provided ambulance service to Rochon outside the city limits?
2. Did the superior court award the correct amount of attorney's fees?

MAJOR AUTHORITIES TO CONSIDER

Alaska Statutes

- **AS 09.65.070** Suits against incorporated units of local government
- **AS 01.10.040** Words and phrases

Alaska Rules of Court

- **Alaska Rule of Civil Procedure 42** Consolidation
- **Alaska Rule of Civil Procedure 54** Judgment
- **Alaska Rule of Civil Procedure 56** Summary judgment
- **Alaska Rule of Civil Procedure 68** Offer of judgment
- **Alaska Rule of Civil Procedure 82** Attorney's fees

Alaska Supreme Court Case Law

- ***Lane v. City of Juneau***, 421 P.3d 83 (Alaska 2018).
- ***Pagenkopf v. Chatham Electric, Inc.***, 165 P.3d 634 (Alaska 2007).
- ***Wilson v. Municipality of Anchorage***, 669 P.2d 569 (Alaska 1983).

Other Authorities

Black's Law Dictionary

SUMMARY OF THE CASE

In 2019 John Rochon was involved in a single-car crash on the Nome-Council Road. Rochon severely injured his spine in the accident. Because there was no cell service at the crash site, Rochon and the others who had been in the wreck spent the night in the

car. After someone flagged down another driver the next morning, the City of Nome Volunteer Ambulance Department responded to the accident. The EMTs put Rochon on a backboard but did not strap him down. Rochon was transported to Nome and then medevacked to Anchorage for treatment. The car crash caused severe and permanent injuries to Rochon.

In 2021 Rochon brought two lawsuits related to the accident. He sued the City of Nome and one of the EMTs because he alleged the care he received after the accident was **negligent** and was one reason his permanent injuries were as severe as they were. Rochon alleged that his spinal injury was made worse by the care he received at the accident site and during the trip back to Nome. Because the EMT was a city employee, working for the Ambulance Department, Rochon claimed that the City was responsible for the EMT's negligence. Rochon sought damages in excess of \$100,000 for his injuries.

In a different lawsuit, Rochon sued a person who, he claimed, furnished alcohol to the driver of the vehicle. The City later asked the trial court to consolidate the cases so the court could hear them together because they involved many of the same facts and legal issues about fault for Rochon's damages. The trial court consolidated the cases.

DECISION BELOW

The City asked the trial court to grant **summary judgment**, which would decide that the City won the lawsuit without a trial, against Rochon on the basis that Alaska Statute 09.65.070(d)(4) protected the City (and the Ambulance Department and EMT) from the lawsuit. Alaska Statute 09.65.070(d)(4) does not allow an "action for damages" against a municipality or its employees if the claim "is based on the exercise or performance during the course of gratuitous extension of municipal services on an extraterritorial basis." The City argued that responding to an accident site more than 30 miles from the city limits was a "gratuitous extension" of its ambulance services because the City had no legal obligation to respond to an accident outside of its municipal boundaries. Rochon opposed, arguing that the ambulance services he received were not "gratuitous" because the City charged him for the services, including a mileage fee that was calculated based on the distance the ambulance traveled. He also contended that if the statute applied, it violated the equal protection clause of the U.S. Constitution because it interfered with Rochon's access to the courts.

The superior court held a hearing on the **motion for summary judgment** and agreed with the City. The court interpreted AS 09.65.070(d)(4) by considering (1) the meaning of the words in the statute, (2) the **legislative history** of it, and (3) the legislature's purpose when it enacted the statute. The court agreed with the City that in AS 09.65.070(d)(4) the word "gratuitous" means "without any legal or contractual obligation to do so and without charging anything more than the standard fee" and that when the ambulance responded to the accident, its response was a gratuitous "extraterritorial extension of municipal services."

After the court granted summary judgment to the City, the City asked the court to order Rochon to pay it \$16,133.25 in **attorney's fees**. Under Alaska law, a person who loses a **civil case** has to pay part of the winning party's attorney's fees. Alaska Court Rules govern attorney's fees awards. The City made two different arguments about attorney's

fees. The City told the court it had made a valid **offer of judgment** to Rochon and, because he did not accept the offer of judgment, Rochon should pay 75% of the City's reasonable fees incurred after the offer of judgment. The City alternatively argued that if the court decided the offer of judgment was not valid, Rochon should still pay part of its attorney's fees as the party who lost the lawsuit; under this theory, the City said it should be awarded \$7,577.50 in attorney's fees. Rochon argued in response that he should owe no more than \$5,833.80 in attorney's fees. He contended that the offer of judgment was not valid and also argued that the City could not include in the fee award any legal work done before he filed the lawsuit against the City.

The court awarded the City \$16,133.25 in attorney's fees and \$1,378.59 in costs for a total **final judgment** against Rochon of \$17,511.84.

Rochon **appealed** the trial court's decision to the Alaska Supreme Court, asking the Supreme Court to overturn the trial court's summary judgment order and its award of attorney's fees.

LEGAL ISSUES GENERALLY

Our legal system has more than one source of law. In Alaska, the Alaska Legislature enacts **statutes**, which are codified in the **Alaska Statutes**. The Alaska Statutes apply throughout the state. Local governments like the City of Nome can also enact **ordinances**; ordinances only apply within the boundaries under the local government's control. One of the important legal disputes in this case is about a state statute, but the parties also mention one of Nome's ordinances.

Courts, the **judicial branch** of government, make rules about court procedure.¹ Courts also **interpret statutes** and **the common law** when they decide cases that come before them. The **common law** is judge-made law that began in England but is used in most states because the original colonies were English colonies that used English law. Judges can modify common law rules when they interpret and apply it in cases. The legislature can also change the common law when it enacts statutes.

A statute's meaning is not always clear because words and sentences can be ambiguous. When the parties to a lawsuit dispute a statute's meaning, the court **interprets** or **construes** the statute by attempting to discover what the legislature intended the statute to mean and accomplish. To decide a statute's meaning, the court looks at the words used in the statute; the structure of the statute, including its grammar and punctuation; and the legislature's goals when it enacted the statute. Courts frequently use dictionaries when they interpret statutes because the legislature requires courts to use a word's common meaning unless the word is technical. The main dispute in this case is what "gratuitous" means in the statute shielding municipalities from some lawsuits.

Courts also have some rules of statutory construction about interpreting statutes so that the statutes apply in more or fewer cases. One of these rules is that statutes

¹ Alaska also has administrative agencies, part of the **executive branch** of government, that can implement the Alaska Statutes through regulations. No executive branch laws are involved in this case.

establishing rights that are contrary to the common law are construed narrowly, so that they do not apply in as many circumstances as they might. The parties in this case disagree about how basic rules of construction should apply in this case. Rochon argues that the statute forfeits his right to get full damages for his injuries, so it should be construed narrowly. The City argues that at common law Rochon's lawsuit would be blocked by **sovereign immunity**, a common law doctrine that protects governments from lawsuits, so there is not really any forfeiture.

Rochon's underlying claim for damages is a common law **tort** case. Torts are sometimes called civil wrongs. Unlike **criminal cases**, when the government can put a person in jail because they violate the law, in **civil cases** people can ask for damages from others who have harmed their interests. The common law of torts recognizes that members of society have certain interests that should be protected from harm, and it imposes liability on those who do not act according to standards of care and as a result harm another's interests. For example, society expects that a person driving a car will do so with reasonable care so as not to cause an accident.

Immunity of the City

The most important issue in this case is the meaning of AS 09.65.070(d)(4), which the superior court interpreted to bar Rochon's damages claim against the City.²

Immunity in the law can mean, as it does in this case, an exemption from liability. **Sovereign immunity** existed at common law; it developed in the early common law in England because "the King can do no wrong." After the United States had no king, sovereign immunity was still applied to prevent lawsuits against the government. Over time, sovereign immunity has become limited as governments allowed damages claims to be brought against them. The Alaska Legislature has **abrogated** the state's sovereign immunity for many types of lawsuits.

The legislature allows lawsuits to be brought against incorporated local governments. (Local governments are created under state statutes, so the state can regulate them and the powers they can exercise.) The statute allowing lawsuits against incorporated local governments has some exceptions; one exception is at issue in this case. Alaska Statute 09.65.070(d)(4) does not allow lawsuits for damages against a municipality or one of its employees if the claim "is based on the exercise or performance during the course of a gratuitous extension of municipal services on an extraterritorial basis."

In terms of the statute's language, the two sides here focus their arguments on what "gratuitous" means. They use different dictionaries and different definitions to make their arguments. The parties also discuss some of the **legislative history**, which can include written material the legislature's files as well as legislative hearings, to argue about the statute's meaning and its applicability to Rochon's case. Finally, they discuss some policy goals related to the statute that might affect its meaning.

² Rochon initially argued on appeal that the statute as applied to him was unconstitutional, but he withdrew that claim in his reply brief.

Rochon's Position:

Rochon's argument has three parts. He first argues that the court should interpret the statute narrowly because it deprives him of the ability to sue someone who caused him damage. Because the ability to get damages for torts was a basic common law right and because the statute makes it impossible for him to bring a damages claim against the City, the statute should be interpreted to apply to fewer rather than more cases.

He also argues that the most commonly understood meaning of "gratuitous" is "free," in other words, given without expectation of payment. Because he was charged a per mile fee that made his rescue more expensive than a similar service within the city, he contends that the provision of ambulance service to him was not "gratuitous." He also argues that the legislative history shows that ambulance services are not the kind of municipal service that the legislature meant when it wrote the statute.

The City's Position:

The City responds by pointing out that at common law, sovereign immunity would have blocked a lawsuit against the government, so there is no need to construe the statute narrowly. The City then relies on a definition of "gratuitous" from a frequently used legal dictionary, Black's Law Dictionary: "Done or performed without obligation to do so; given without consideration in circumstances that do not otherwise impose a duty."³ According to the City, this definition more closely fits the statute's meaning. The City argues that the legislative history shows that the legislature exempted local governments from lawsuits in order to encourage them to be "Good Samaritans," that is, people who help strangers in need. The City contends its ambulance crew acted to help Rochon even if the City was not required to do so.

Attorney's Fees

In states other than Alaska, each side in a lawsuit usually has to pay all of their own legal fees, including their own attorney's fees. Alaska is unique among the 50 states because it allows a person who wins a lawsuit to recover part of his attorney's fees from the losing side in almost all **civil cases**. **Alaska Civil Rule 82** governs awards of attorney's fees in most civil cases in Alaska. The amount of Rule 82 attorney's fees is a percentage of the winning party's fees; the rule has a table used to calculate the amount. If the case ends without a money judgment, as happened here, the winning party is awarded 20% of his fees if the case ends before a trial, also as happened here. The purpose of Rule 82 is to partially compensate the winning side for the money spent to win the case.

Rule 82 is not the only Alaska court rule about attorney's fees. Many states that do not routinely award attorney's fees in civil lawsuits *do* allow awards of attorney's fees to encourage **settlements** in lawsuits. Because litigation can be very expensive and time-consuming for the parties and the court, courts have a general policy encouraging

³ "Consideration" is a legal term generally used when discussing contracts; consideration is what one person gives up in order to get something from another.

settlement of claims. **Alaska Civil Rule 68** is a rule intended to encourage settlement by making people who refuse reasonable settlement offers pay part of the other side's attorney's fees after the settlement offer is made.

Under Rule 68, when a party refuses a valid settlement offer, the offer is compared to the result in the case. If the judgment is less than a set percentage of the offer, the person who did not accept the offer is responsible for part of attorney's fees that accrued after the offer was made. A party cannot be awarded attorney's fees under both Rule 68 and Rule 82 in the same lawsuit. In this case, the City offered Rochon \$7,500.00 to settle the claims. Because the superior court decided Rochon could not sue the City, the outcome was less favorable to Rochon than the settlement offer. As a result, if the offer of judgment is valid, the court can order Rochon to pay 75% of the City's reasonable attorney's fees occurring after the offer of judgment.

Not all settlement offers are considered valid for purposes of Rule 68. The City and Rochon dispute whether the City made a valid offer of judgment to Rochon. They also dispute whether, if the Supreme Court decides that Rule 68 does not apply, the City can include its attorney's fees from before Rochon filed his lawsuit against the City in calculating the possible Rule 82 fees.

Rochon's Position:

Rochon argues that the offer of judgment the City made is invalid. He contends the offer is ambiguous and does not resolve all possible claims because it cannot settle his claim against the person who allegedly gave the car's driver alcohol. He concludes that because the offer of judgment is not valid, Rule 68 should not apply.

If Rule 82 rather than Rule 68 applies, he also argues that the City should not be able to include any fees its attorneys incurred before he filed his lawsuit because Rule 82 attorney's fees are related to the costs of defending a lawsuit.

The City's Position:

The City counters that the offer is valid. According to the City, the only way to understand its offer is that the City offered to settle all of the claims Rochon had against it and its employee for \$7,500. The City argues that even though the two cases Rochon brought were consolidated, its offer of judgment clearly involved only the case in which Rochon sued the City. The City maintains that the two cases remained separate, so there was no difficulty in determining what the offer encompassed, who would pay, and which claims would be settled.

The City responds to Rochon's Rule 82 argument by discussing a case that allows a trial court to consider pre-litigation fees when determining a fee award. The City also explains why the case Rochon relied on is different from this case.

QUESTIONS FOR STUDENTS TO CONSIDER

1. The legislature requires that courts use the common meaning of words unless the word has acquired a technical meaning. Consider the dictionaries the two sides are using. Do you think the term "gratuitous" has a technical meaning?

Does your answer have any impact on which dictionary to use, and if it does, how?

2. Read the definition the superior court used for “gratuitous,” which is on page 196 of the Excerpt of Record, and compare it to the two definitions in the briefs (page 7 of Rochon’s Opening Brief and page 17 of the City’s Brief). How does the court’s definition differ from the two definitions in the briefs? How different are the two parties’ definitions of the word?
3. Looking at the legislative history in the Excerpt of Record, what were some reasons that municipalities wanted the legislature to pass a bill that gave them some immunity?
4. Rochon is arguing that ambulance services are different from the services discussed in the legislative history. To evaluate this argument, list services that a local government, like a city or borough, might provide. Which of these services, if any, can be provided outside of the local government’s boundaries? Are those services different from ones that can only be provided within the local government’s boundaries? For services that can be provided outside of a city’s boundaries, should it matter legally if the person getting the services is a resident of the city?
5. Do you think the City’s offer of judgment, which starts on page 225 of the Excerpt of Record, is ambiguous? Why or why not?
6. What do you think of Alaska’s Rule 82? Is it fair to make someone who loses a lawsuit pay part of the other side’s attorney’s fees? Why or why not?
7. What do you think is Rochon’s strongest argument? What is his weakest argument? Explain.
8. What do you think is the City’s strongest argument? What is its weakest argument? Explain.
9. If you were a justice on the Alaska Supreme Court, how would you decide this case? Explain.