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## **Tort law – common carriers**

In a case in which disabled plaintiff was sexually assaulted by a driver for a private company that contracted with the Chicago Transit Authority to provide rides for disabled people, trial court correctly held that because the company provides rides only for disabled people, it was not a common carrier that was subject to a heightened standard of care.

The 1st District Appellate Court, 3d Division, has affirmed a ruling by Cook County Circuit Judge [Jennifer Duncan-Brice](#)

Defendant SCR Medical Transportation Services is a medical transportation company that provides "paratransit" services to disabled people. In 1995, SCR entered into a contract with the Chicago Transit Authority to transport disabled people who were unable to use the CTA's regular services.

On July 14, 1995, plaintiff Aisha Browne was a passenger in one of SCR's vehicles pursuant to the contract with the CTA. Brown, who has cerebral palsy and is disabled, alleged in her lawsuit against SCR that SCR driver Robert Britton sexually assaulted her while she was in the vehicle and again a second time inside her home.

The plaintiff alleged that SCR, as a common carrier, owed her a heightened standard of care. SCR filed a motion for summary judgment alleging that because SCR was not a common carrier, it owed its customers an ordinary standard of care and was not liable for the intentional criminal acts of its employee. The circuit court agreed and granted SCR's motion for summary judgment.

On appeal, the plaintiff argued that the trial court erred in granting summary judgment because there was a question of fact as to whether SCR was a common carrier and whether SCR should have known that Britton was unfit to transport disabled people.

The appeals court rejected the plaintiff's argument that SCR was a common carrier. The court said that in Illinois, a common carrier is "one who undertakes for the public to transport from place to place such persons or the goods of such persons. " The court said the test to distinguish a common carrier from a private carrier is whether the carrier serves all of the public alike. A private carrier "undertakes by special agreement to transport persons or property either gratuitously or for hire."

In this case, the appeals court said, at the time of the assaults, SCR did not serve all of the general public. SCR served only those individuals who met its eligibility requirements,

the court said. "SCR could decline to serve anyone based on numerous factors such as location and availability of medical transport vans," the court said.

Because SCR "makes no profession" to carry everyone who applies for service and is not bound to serve everyone who applies for service, SCR was not a common carrier at the time of the assaults, the appeals court said. The appeals court rejected the plaintiff's argument that because of SCR's contractual relationship with the CTA, SCR "stepped into the shoes of the CTA for the purpose of providing service to disabled members of the general public" and became a common carrier.

The appeals court said it failed to comprehend how the SCR's contract with the CTA as well as requirements of the Americans with Disabilities Act "somehow transformed SCR into a common carrier." The court said it was undisputed that SCR transported disabled individuals pursuant to its contract with the CTA and did not serve the general public. "These are not the characteristics of a common carrier," the appeals court said.

The appeals court also rejected the plaintiff's argument that the circuit court erred in granting SCR's motion for summary judgment because a question of fact existed as to whether Browne had established a cause of action against SCR for the negligent hiring of Britton. The court said that SCR didn't know or could not have known about Britton's criminal history. SCR submitted his name to the State Police to ascertain if he had any prior convictions and the State Police responded by saying that "no conviction information was identified."

*Aisha Browne v. SCR Medical Transportation Services Inc.*, No. 1-04-0141. Presiding Justice [Themis N.](#) wrote the court's opinion with Justices [Thomas E. Hoffman](#) and [Leslie E. South](#) concurring. Released March 20, 2005.