

The Rescue Doctrine

BY LAURA MARTINEZ

This article explores the rescue doctrine's history and its application in Colorado and other jurisdictions.

The rescue doctrine authorizes a person injured while rescuing another to bring a negligence claim against the party whose conduct created the need for rescue.¹ Though well-developed nationally, the doctrine was minimally developed in Colorado until the Colorado Supreme Court's recent opinion in *Garcia v. Colorado Cab Co.*, where the Court held that physical intervention is not necessary to qualify as a rescuer under the rescue doctrine.² This holding is consistent with rulings nationwide that seek to ensure that persons attempting to help someone in a genuine emergency can recover for injuries incurred during the rescue.

This article discusses the development and current state of the rescue doctrine in Colorado.

History of the Rescue Doctrine

The rescue doctrine derives from public policy that seeks to encourage rescue. Across the nation, a majority of courts have recognized that rescue is a human instinct that should be encouraged. As a result, rescuers may recover damages for injuries suffered while placing themselves in danger to undertake a rescue.³

The seminal rescue doctrine case, *Wagner v. International Railway Co.*, was decided in 1921 by then-Judge Cardozo.⁴ In *Wagner*, plaintiff and his cousin boarded a rail car operated by defendant. The conductor's failure to close the train doors caused plaintiff's cousin to be thrown from the train as it turned a curve on a bridge. Plaintiff then exited the train to search for his cousin. He walked along the trestle for 445 feet to the bridge, lost his footing in the dark, and was injured when he fell off the bridge. The New York Court of Appeals recognized the applicability of the rescue doctrine, noting that "danger invites rescue" and reasoned that

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the wrong that endangered the victim also constituted a wrong to the rescuer.⁵ Although the court recognized the rescue doctrine, it remanded the case for a new trial to determine whether plaintiff's conduct was in response to an emergency and was reasonable.⁶

In the century since *Wagner* was decided, courts have widely held that the rescue doctrine supports a rescuer's recovery from the person or entity that placed both the party needing

rescue and the rescuer in danger. The widespread acceptance of the doctrine is illustrated by its inclusion in the *Restatement (Third) of Torts*, which provides:

[I]f an actor's tortious conduct imperils another or the property of another, the scope of the actor's liability includes any harm to a person resulting from that person's efforts to aid or to protect the imperiled person or property, so long as the harm arises from a risk that inheres in the effort to provide aid.⁷

The Rescue Doctrine in Colorado

Historically, few Colorado courts analyzed or developed the rescue doctrine. The first Colorado case to discuss the rescue doctrine was *Maloney v. Jussel*.⁸ In *Maloney*, plaintiff was hit by a car and injured while standing next to a driver who had just been in a car accident. The Colorado Supreme Court held that the rescue doctrine did not apply because there was no "imminent peril" when plaintiff was injured, so plaintiff was not a rescuer.⁹

Similarly, in *Connelly v. Redman Development Corp.*, plaintiff fell and was injured while approaching a woman and a crying baby lying in a parking lot.¹⁰ The trial court held that the rescue doctrine did not apply because plaintiff failed to prove that the woman and baby were "in imminent peril, requiring immediate action to avoid physical harm."¹¹ The Colorado Court of Appeals affirmed, explaining that the woman and baby may have needed assistance, but there was no evidence of imminent peril justifying an immediate rescue.¹²

In addition to rescuers of persons, courts have applied the rescue doctrine to rescuers of property. In *Estate of Newton v. McNew*, defendant started a fire to burn trash and then left the fire site.¹³ Neighborhood children began playing with the fire and caused a fire on a neighboring property. Plaintiff, who lived near the neighboring property, assisted the fire department in putting out the fire and shortly thereafter suffered a heart attack and died. Plaintiff's estate brought a wrongful death action against defendant, who contended he did not owe plaintiff a duty of care because plaintiff acted as a rescuer of property rather than of a person in imminent peril. The Colorado Court of

Appeals held that the rescue doctrine applies to rescuers of persons and rescuers of property.¹⁴ But in light of *Garcia*, it is now unclear whether *Newton's* holding is still good law.¹⁵

In *Garcia*, the Colorado Supreme Court considered and clarified the rescue doctrine's application in Colorado.¹⁶ There, plaintiff saw a taxi driver being physically assaulted by his passenger. Plaintiff approached the cab to help the driver by sticking his head into the cab and yelling at the passenger to stop. This gave the driver an opportunity to exit the vehicle. The passenger then commandeered the taxi and used it to run over plaintiff, causing plaintiff severe injuries. Plaintiff filed an action against the cab company alleging that it was liable for his injuries because it had knowledge of prior attacks on its drivers and failed to implement safety measures. At trial, the jury found for plaintiff and awarded him \$1.6 million in total

damages, with 45% fault allocated to defendant and 55% to the passenger. However, the Colorado Court of Appeals reversed, holding that the cab company did not owe a duty to plaintiff as a rescuer because "to be deemed a rescuer, the plaintiff must have taken some concrete physical action—that is, some bodily movement and effort—to save another person from imminent peril."¹⁷ According to the Court, plaintiff's efforts failed to meet this standard because there was no evidence that he "attempted to physically intervene; he didn't, for example, get between the two men or try to pull one away from the other."¹⁸

The Supreme Court reversed, finding that the physicality requirement improperly narrowed the rescue doctrine and that the rescue doctrine "does not require that a person exert physical action to qualify as a rescuer."¹⁹ The Court reasoned that under the Court of Appeals holding,



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a plaintiff who threw a punch at an attacker could qualify as a rescuer, but a plaintiff who approached the attacker and told him to stop could not, despite the fact that both rescuers put themselves in harm's way to stop the violence and prevent the injury.²⁰ Rather, to qualify as a rescuer under the rescue doctrine, a plaintiff must have (1) intended to aid or rescue a person, (2) reasonably believed that the person was in imminent peril, and (3) acted in such a way that could have reasonably succeeded or succeeded in preventing or alleviating such peril.²¹

Regarding the intent to aid or rescue element, the Court reasoned that the rescue doctrine “seeks to protect only those who genuinely act on the instinct to help” as opposed to merely investigating the scene of an accident.²² As to the reasonable belief of imminent peril, the Court explained that the doctrine must be based on the rescuer's reasonable belief that someone is in imminent peril, though it is not necessary that the person actually be in imminent peril.²³ Regarding whether the rescuer could have succeeded or actually succeeded in the rescue, the Court noted that the rescue attempt must “stand a chance at substantially helping the person(s) in peril” and a “mere warning or observation” is not sufficient.²⁴ In so holding, the Court noted that the doctrine “is one way the law acknowledges the human instinct to help those in need, even at the risk of one's own safety”²⁵ and that the “doctrine seeks to encourage the instinct to help.”²⁶ The Supreme Court remanded for the Court of Appeals to address the cab company's remaining issues argued on appeal.²⁷

Application of the Rescue Doctrine Nationally

Although Colorado courts' analysis and application of the rescue doctrine is limited, the rescue doctrine is well-recognized and developed in other jurisdictions. Accordingly, cases from other jurisdictions provide guidance to Colorado practitioners evaluating the rescue doctrine.

In *Garcia*, the Colorado Supreme Court quoted *Barnes v. Geiger*,²⁸ in which the Appeals Court of Massachusetts held that “[t]o achieve the status of a rescuer, a claimant's purpose must be more than investigatory,” and there

must be “some specific mission of assistance.”²⁹ The Court also cited an Indiana case in which a plaintiff who was hurt after slipping on ice while

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attempting to reach the scene of an accident was held to be not a rescuer, because a rescuer must “in fact attempt to rescue someone.”³⁰

More recently, in *Smith v. Woolace Electric Corp.*, the Sixth Circuit Court of Appeals consid-

ered the rescue doctrine's applicability where a plaintiff who stopped and exited his vehicle to peer into an overturned van was hit by a car.³¹ Relying on the rescue doctrine, plaintiff sued the driver of the overturned van. The case proceeded to trial, and the jury determined that the driver was not negligent. The Sixth Circuit applied Ohio law to conclude that the rescue doctrine did not apply because a rescuer can only recover against one found negligent.³²

Karahodzic v. JBS Carriers, Inc. involved application of the Illinois Joint Tortfeasor Contribution Act (Act) in a rescue doctrine case.³³ In *Karahodzic*, Thompson, an employee of JBS Carriers, Inc. (JBS), was driving a tractor-trailer on Interstate 70 when he pulled his trailer to the shoulder of the road to fix a malfunctioning light. After fixing the light and with his four-way flashers illuminated, he reentered the highway and was traveling approximately 15 mph when a commercial truck driven by Karahodzic crashed into the back of his trailer, killing Karahodzic instantly and setting his truck on fire. At the same time, Karahodzic's son Edin came upon the scene, saw that his father's truck was on fire, parked his vehicle, and ran to help his father, believing he was still alive. Edin suffered burns to his hands and face, watched as his father's body burned, and then notified his brothers and mother, all of whom suffered severe emotional trauma.

Edin brought a claim against Thompson and JBS under the rescue doctrine to recover for the injuries he suffered attempting to rescue his father. He also brought claims for wrongful death as personal representative of his father's estate. Thompson and JBS filed claims against Karahodzic's estate for contribution pursuant to the Act. The jury found in favor of Edin on both claims. On the wrongful death claim, the jury allocated 55% fault to Thompson and JBS and 45% fault to Karahodzic, and the jury's verdict on the wrongful death claim was reduced from \$5 million to \$2.75 million in accordance with the fault allocation. Edin was awarded \$625,000 on his individual rescue doctrine claim. Thompson and JBS appealed, contending the court should have (1) entered judgment in their favor and against Karahodzic's estate on the contribution counterclaim they filed in

response to Edin’s rescue doctrine claim, and (2) found Karahodzic’s estate liable for 45% of the \$625,000 in damages the jury awarded to Edin on the rescue doctrine claim.

The Illinois Court of Appeals examined the Act, which applies “where two or more persons are *subject to liability* in tort arising out of the same *injury* to person or property, or the same wrongful death.”³⁴ Accordingly, the statute provides for a right of contribution against a tortfeasor, so defendants’ contribution claim required a finding that Karahodzic was negligent toward Edin.³⁵ However, the jury was asked to determine whether Karahodzic’s estate was contributorily negligent in causing Karahodzic’s wrongful death, not whether Karahodzic was negligent toward Edin.³⁶ The court rejected defendants’ theory, which presumed that Karahodzic’s contributory negligence to his own death was identical to Karahodzic’s liability as a possible defendant in a rescue doctrine case.³⁷ The court noted that its conclusion may have been different if the jury had been asked to determine whether Karahodzic breached a duty to Edin (or a rescuer generally) and whether that breach caused Edin’s damages.³⁸

Professional Rescuers

The rescue doctrine generally does not apply to professional rescuers. In *Sanders v. Alger*, the Supreme Court of Arizona held that the firefighter’s rule, which provides that a rescuer who could otherwise recover cannot do so when performing professional firefighter duties, is an exception to the rescue doctrine.³⁹ Notably, the rule is construed narrowly and does not prohibit recovery for off-duty firefighters.⁴⁰ The firefighter’s rule has also been held not to apply to acts of intervening parties not responsible for bringing the rescuer to the scene.⁴¹


Common Law Negligence Defenses

Courts have also held that several common law negligence defenses do not apply in rescue doctrine cases. For example, courts have rejected contributory negligence as an absolute bar to recovery, instead imposing a reckless standard (though comparative negligence has replaced contributory negligence in many jurisdictions).⁴² Foreseeability has consistently been rejected

as a defense under the rescue doctrine as “it is always foreseeable that someone may attempt to rescue a person who has been placed in a dangerous position,” and as such, courts have consistently held that a tortfeasor owes an independent duty to the rescuer.⁴³ Courts have also rejected arguments that a rescuer’s decision to intervene is a superseding and/or intervening cause.⁴⁴

Conclusion

The rescue doctrine allows persons who were injured while attempting to rescue a third party to recover from the person whose conduct created the danger. Although well-established nationally, this important doctrine was minimally developed in Colorado until the recent *Garcia* opinion. It is now clear that to qualify as a rescuer in Colorado, a plaintiff must meet the three-element *Garcia* test. To better understand

how Colorado courts may interpret and apply the rescue doctrine, practitioners should keep abreast of other states’ law on the doctrine, which is more developed. 



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NOTES

1. *Garcia v. Colo. Cab Co. LLC*, 467 P.3d 302 (Colo. 2020), *reh’g denied* (July 27, 2020) (courts adopted the rescue doctrine, which


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ensures that negligent actors who put others at risk may be held liable when their negligence injures a third-party rescuer. See also *Williams v. Foster*, 666 N.E.2d 678, 681 (Ill.App. 1996) (“if the defendant is negligent toward the rescuer, he is also negligent toward the rescuer.”).

2. *Garcia*, 467 P.3d at 303.
3. See *Destefano v. Children’s Nat’l Med. Ctr.*, 121 A.3d 59, 71 (D.C. 2015) (“majority of jurisdictions recognize . . . that ‘it is commendable to save a life,’ and that therefore ‘a [rescuer] . . . is not precluded from recovering damages for injury suffered as a consequence of having interposed.’”) (internal citations omitted); *McCoy v. Am. Suzuki Motor Corp.*, 961 P.2d 952, 956 (Wash. 1998) (doctrine reflects “societal value judgment that rescuers should not be barred from suit for knowingly placing themselves in danger to undertake a rescue.”); *Govich v. N. Am. Sys., Inc.*, 814 P.2d 94, 100 (N.M. 1991) (doctrine “reflects the assumption that rescue is a commendable human urge to be encouraged, not penalized.”).
4. *Wagner v. Int’l Ry. Co.*, 133 N.E. 437 (N.Y. 1921).
5. *Id.*
6. *Id.* at 438.
7. *Restatement (Third) of Torts: Liability for Physical and Emotional Harm* § 32 (Am. Law Inst. 2010) (hereinafter *Restatement*).
8. *Maloney v. Jussel*, 241 P.2d 862 (Colo. 1952).
9. *Id.* at 867. See also *Estate of Keck v. Blair*, 856 P.2d 740, 746 (1993) (“Whether peril was imminent for purposes of the rescue doctrine is a factual determination for the trier of fact to make.”).
10. *Connelly v. Redman Dev. Corp.*, 533 P.2d 53, 54 (Colo.App. 1975) (not published).
11. *Id.* at 55 (citing *Maloney*, 241 P.2d 862).
12. *Id.*
13. *Estate of Newton v. McNew*, 698 P.2d 835, 837 (Colo.App. 1984).
14. *Id.*
15. See also *Welch v. Hesston Corp.*, 540 S.W.2d 127, 129 (Mo.App. 1976) (“Unlike a majority of other jurisdictions, Missouri has extended the benefits of this doctrine only to rescuers of persons and not to rescuers of property[.]”).
16. *Garcia*, 467 P.3d at 307.
17. *Id.* at 304.
18. *Garcia v. Colo. Cab Co. LLC*, 2019 COA 3 at ¶ 19, *rev’d*, 467 P.3d 302.
19. *Garcia*, 467 P.3d at 304.
20. *Id.* at 306.
21. *Id.* at 303.
22. *Id.* at 306.
23. *Id.*
24. *Id.* at 306.
25. *Id.* at 303.
26. *Id.* at 306.
27. The Court of Appeals ordered the parties to submit supplemental briefing on whether Colorado Cab argued in its opening brief that it did not owe a duty its driver to protect him from assaults by passengers, and how the

Colorado Supreme Court’s recent decision in *Planned Parenthood v. Wagner*, 2020 CO 51, affects the analysis of whether Colorado Cab’s alleged breach of the duty of care was the proximate cause of plaintiff’s injuries. *Garcia v. Colo. Cab Co. LLC*, Order for Supp. Br., 2017CA 1381 (Oct. 14, 2020).

28. *Barnes v. Geiger*, 446 N.E.2d 78 (Mass.App. Ct. 1983).
29. *Garcia*, 467 P.3d at 305.
30. *Id.* (citing *Lambert v. Parrish*, 492 N.E.2d 289, 291 (Ind. 1086)). See also *Hassanein v. Avianca Airlines*, 872 F.Supp. 1183, 1187–88 (E.D.N.Y. 1995) (directing traffic and offering to house emergency personnel not a rescue attempt).
31. *Smith v. Woolace Elec. Corp.*, 822 F. App’x 409, 410–411 (6th Cir. 2020).
32. *Id.* at 410–414. See also *Keisha v. Dundon*, 809 S.E.2d 835, 836 (Ga.App. 2018) (holding that liability in rescue cases is predicated on a defendant’s conduct in negligently creating the peril that inspired the attempted rescue and explaining that “the doctrine has no application where the defendant’s conduct was not negligent or a tortious wrong.”).
33. *Karahodzic v. JBS Carriers, Inc.*, 881 F.3d 1009, 1013 (7th Cir. 2018). The relevant language in the Illinois Joint Tortfeasor Contribution Act, §§ 740 ILCA 100/0.01 et seq., is nearly identical to Colorado’s Contribution Among Tortfeasors Act, CRS §§ 13-50.5-101 et seq.
34. *Karahodzic*, 881 F.3d at 1019 (emphasis in original).
35. *Id.* at 1021–22.
36. *Id.*
37. *Id.*
38. *Id.* at 1022.
39. *Sanders v. Alger*, 394 P.3d 1083 (Ariz. 2017). See also *Beaupre v. Pierce Cty.*, 166 P.3d 712 (Wash. 2007).
40. *Sanders*, 394 P.3d at 1087. See also *Walker Hauling Co. v. Johnson*, 139 S.E.2d 496, 498 (Ga. App. 1964) (off-duty firefighter injured while fighting fire pursuant to fire chief’s request for volunteers to help combat fire entitled to benefits of rescue doctrine).
41. *Beaupre*, 166 P.3d at 716.
42. *Garcia*, 467 P.3d at 305 (“the doctrine seeks to prevent wrongdoers from using typical negligence defenses—such as rules related to duty or contributory negligence—as an escape hatch to avoid liability to rescuers”) (citing *Restatement* § 32 cmt. b (“‘rescue doctrine’ addresses a mélange of issues that arise when a rescuer is injured in attempting to assist another. These issues include duty, scope of liability, superseding cause, contributory negligence, and assumption of risk.”)). See also *Ha-Sidi by Ha-Sidi v. S. Country Cent. Sch. Dist.*, 148 A.D.2d 580, 582 (N.Y.App. Div. 1989) (“doctrine was created to avoid a plaintiff being found contributorily negligent as a matter of law when he voluntarily placed himself in a perilous situation to prevent another person from suffering serious injury or death.”); *Ouellette v. Carde*, 612 A.2d 687, 690 (R.I. 1992) (rescue doctrine survived

adoption of comparative negligence statute, and principles of comparative negligence were not applicable to situation where plaintiff rescuer did not act recklessly or negligently); *Restatement* § 32 (“With the adoption of comparative responsibility, many courts appropriately have applied that doctrine to rescuers, permitting the factfinder to assign comparative responsibility to a rescuer who acts unreasonably in undertaking or conducting a rescue.”). See also *Govich*, 814 P.2d at 101 (“majority of comparative negligence jurisdictions . . . have shifted to a ‘reasonableness’ standard.”).

43. *Williams v. Foster*, 666 N.E.2d 678, 681 (Ill. App. 1996). See also *Bole v. Erie Ins. Exch.*, 50 A.3d 1256, 1260 (Pa. 2012) (“A tortfeasor who places . . . another in peril is presumed to foresee that people will come to render aid”; *Wagner*, 133 N.E. at 438 (“The wrongdoer may not have foreseen the coming of a deliverer. He is accountable as if he had.”); *Espinoza v. Schulenburg*, 129 P.3d 937, 939–40 (Ariz. 2006) (“the rescue doctrine expands tort responsibility by extending the duty of care of the negligent person who caused the accident to those who risk their safety to engage in the rescue . . .”).
44. *Solomon v. Shuell*, 457 N.W.2d 669, 683 (Mich. 1990) (“fact that the rescuer voluntarily exposed himself to an increased risk of harm was not . . . a superseding cause of the rescuer’s injuries[.]” and “when the rescue attempt itself was reasonable, the rescuer’s recovery was not otherwise absolutely barred by the affirmative defense of contributory negligence merely because the rescuer voluntarily exposed himself to an increased risk of injury in order to save a third person.”). *Walker Hauling Co.*, 139 S.E.2d at 499 (“[T]he chain of causation remains intact, since it is reasonably to be anticipated that, once such peril to life or property is initiated and brought into being by the negligence of a defendant, reasonable attempts will be undertaken to alleviate and nullify the consequences of such peril.”); *Hollingsworth v. Schminkey*, 553 N.W.2d 591, 597–98 (Iowa 1996) (concerning a vehicle fire that occurred when a motorist drove the vehicle despite knowing that a malfunctioning exhaust system was emitting carbon monoxide into the passenger compartment. The driver was overcome by fumes and crashed. The crash was a foreseeable risk of the motorist’s automobile operation and thus was not a “superseding cause” relieving the motorist of liability to a rescuer who allegedly sustained back injuries while removing the motorist from the automobile.); *Thomas v. Garner*, 672 N.E.2d 52, 57 (Ill.App. 1996) (“rescue doctrine arises when a plaintiff brings an action based on negligence against a defendant whose negligence has placed a third party in a position of peril. If the plaintiff is injured in the attempt to rescue that third party, then he is allowed to negate a presumption that his intentional act of rescue is the superseding cause of his injuries, thereby allowing him to prove that defendant’s negligence is the proximate cause of his injuries.”).