Rel: March 15, 2024

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

SC-2023-0150

Ex parte City of Huntsville and Reychal Lewis

PETITION FOR WRIT OF MANDAMUS

(In re: Avery Meyers, a minor, by and through his mother, next friend, and legal custodian, Shelia Swett

v.

Reychal Lewis and City of Huntsville)

(Madison Circuit Court: CV-21-900684)

BRYAN, Justice.

Avery Meyers, a minor, by and through his mother, next friend, and legal custodian, Shelia Swett, sued the City of Huntsville ("the City") and

Reychal Lewis seeking recovery for negligence and wantonness. Meyers's claims arose from injuries he received when, while riding his bicycle on a street in Huntsville, he collided with a City bus driven by Lewis. The City and Lewis petition this Court for a writ of mandamus directing the Madison Circuit Court ("the trial court") to enter a summary judgment for them on grounds that they are entitled to municipal and State-agent immunity. We grant the petition and issue the writ as to the City but deny the petition as to Lewis.

Background

The collision occurred on June 7, 2019, on Venona Avenue in Huntsville where the street makes a sharp curve. Meyers was 10 years old at the time of the collision. He had been riding his bike without a helmet in a parking lot with a friend. In the afternoon the boys rode uphill into a driveway. From there, they rode their bikes downhill and into the curve on Venona Avenue. Meyers did not recall how many times they had done so that day. He admitted that, at the time of the collision, they were racing.

The last time the boys raced downhill and onto Venona Avenue, they encountered the City bus being driven in the opposite direction by

Lewis. Meyers did not remember what side of the street he was on at the time of the collision. He swerved his bike but was unable to avoid the bus. He hit the driver's side of the bus and suffered injuries as a result, including a lacerated spleen, four broken ribs, a broken leg, and cuts on his chin.

The part of Venona Avenue where the accident occurred is on a City bus route driven by Lewis. Lewis lived near the area and had driven the route approximately nine times a day, five days a week, for four years. The route takes approximately 50 minutes to complete. Lewis admitted that, if she finishes the route early, she has a longer break before she begins the route again.

Bus stops are located in the curve on Venona Avenue on both sides of the street. The bus stop that Lewis was approaching was located behind trees so that, according to her affidavit testimony, it was "impossible to see passengers at the bus stop until right before you reach the bus stop." Lewis said that, as she entered the curve before the collision, she was preparing to stop the bus, if necessary, to pick up passengers.

Lewis testified that, when she first saw Meyers and his friend, Meyers was in her lane and closer than a bus length to her. A passenger on the bus, Victoria Robinson-Tomlin, confirmed by affidavit that Meyers had appeared "out of nowhere" in front of the bus and was on the wrong side of the street at the time of the collision. Likewise, video from cameras mounted inside the bus show that Meyers was riding his bike in the bus's lane of travel.

Meyers testified that he and his friend had seen the bus, had had time to remark that it was moving fast, and had attempted to swerve to avoid it. Lewis did see Meyers try to swerve. However, Lewis testified that, when she first saw Meyers, he had his head turned so he could not see the bus. Robinson-Tomlin also said that, before the collision, Meyers was not looking up to see where he was going.

Lewis testified that the bus never left the correct lane of travel. Robinson-Tomlin agreed that the bus had been in the correct lane. A witness to the accident, Jimmy Grimsley, also testified that the bus had not left its lane of travel. When asked by his lawyer at his deposition, "Did the bus get over into your lane a little bit as you swerved?", Meyers answered, over objection from the City's counsel, "Yes, sir." Meyers

admitted that photographs of the scene showed the bus where it was at the time of the collision. Those photos show the bus on the correct side of the reflector that marks the center of Venona Avenue.

When she saw Meyers in the street, Lewis applied the brakes and stopped. Lewis testified that she had been able to bring the bus to a controlled stop before the impact with Meyers. She denied making a sudden stop. However, Robinson-Tomlin said that Lewis had had to slam on the brakes.

The speed limit on Venona Avenue was not posted, but the street had a standard residential speed limit of 25 miles per hour. The Director of Traffic Engineering for the City, Nicholas Nene, testified by affidavit that, "[a]s a driver approaches the curve from the east, there are yellow signs warning of the upcoming sharp right curve and stating '15 MPH.' This is an advisory speed only." Nene relied on the Manual on Uniform Traffic Control Devices to describe the sign as providing a warning only and not a mandatory speed limit. He explained that the

> "inclusion of an advisory speed plaque does not imply or suggest that the City of Huntsville has determined that the advisory speed is the maximum speed at which the curve can be safely driven. Instead, it is simply a warning to road users of a condition that might not be readily apparent."

In his brief, Meyers characterizes the warning sign as a "directive." However, he offers no evidence, regulation, or statute showing that the warning sign set a maximum speed limit of 15 miles per hour for the curve on Venona Avenue. Thus, Nene's affidavit is the only evidence showing the effect of the warning sign.

Meyers said that his friend had remarked before the collision, "[O]h, snap, she's kind of moving fast." Lewis did not recall how fast the bus was going at the time of the collision, and she did not recall the speed limit on Venona Avenue. She testified that she had been preparing to stop at the bus stop in the curve and had not been traveling at an unreasonable speed. Robinson-Tomlin said that, before the collision, Lewis was not driving at an excessive speed. She offered her lay opinion that Lewis could not have avoided the collision. Grimsley said that the bus had not been moving very fast at all and agreed that it was stopped or almost stopped at the time of impact. He did not think it had been going 25 miles per hour. He offered his lay opinion that Lewis could not have avoided the collision because, he said, at the time of the collision, Meyers was going right at the bus.

The video from the cameras mounted on the bus includes, among other data, information about the bus's speed. This data is not an image of the bus's speedometer, but several lines of text in black space below the video images. Meyers argues that this data shows that the bus was traveling at 29 miles per hour before the collision and at 24 miles per hour at the time of impact. The City and Lewis note that the data also shows that the bus was traveling at 19 miles per hour when the video plainly shows the bus to be stopped. Indeed, it takes a full four seconds after the bus stopped for the data to show a reading of 0 miles per hour. Thus, the City and Lewis argue that there is a delay in the speed displayed and that the data should not be taken as evidence of the bus's actual speed at the moment of or immediately before impact.

Lewis testified that she never saw children in the street on her route and had never before seen children riding bikes in the curve on Venona Avenue. She said that she had seen them in parking lots, but not on the streets. Meyers testified that he had occasionally ridden his bike on Venona Avenue. He explained, however, that, when he and his friends had traveled on Venona Avenue, they had usually walked their bikes to a gas station and had stayed on the side of the road. Grimsley

testified that children were frequently in the street and that it was not unusual for children to be riding bikes on Venona Avenue, including in the curve. He said that he did not think the bus drivers knew children would race in the street. He did not recall having seen children racing when a bus was present.

At the time of the collision, Grimsley was waiting at the bus stop on the opposite side of Venona Avenue and had a view of the street looking into the curve. He saw Meyers and his friend racing. He said that he had yelled to the boys and had warned them to be careful, lest they get hurt. He testified that they had responded that he should mind his own business and had kept racing. Meyers remembered seeing Grimsley but denied that Grimsley had said anything.

Meyers was hospitalized for eight days after the collision. He had surgery to repair his spleen as well as two surgeries on his leg. At the time of his deposition, Meyers had completed treatment for all of his injuries. He no longer played basketball because running caused pain in his leg. He continued to take medication for pain as needed.

Meyers sued the City and Lewis in the Madison Circuit Court on June 3, 2021, asserting claims of negligence and wantonness. The City

and Lewis each filed a motion to dismiss the action. The trial court dismissed the wantonness claim against the City but denied the motions as to the remaining claims. The City and Lewis later moved for a summary judgment asserting municipal immunity under § 11-47-190, Ala. Code 1975, and State-agent immunity. All parties submitted arguments and evidence. The trial court denied the summary-judgment motion, without explaining its reasoning, on January 24, 2023. The City and Lewis petitioned this Court for a writ of mandamus on February 27, 2023. We ordered an answer and briefs.

Standard of Review

Generally, the denial of a summary-judgment motion is not reviewable by a mandamus petition, but an exception to that general rule exists here. The denial of a summary-judgment motion grounded on a claim of immunity is reviewable by a mandamus petition. Ex parte Turner, 840 So. 2d 132, 135 (Ala. 2002).

> "A writ of mandamus is an extraordinary remedy, and it will be 'issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court.' Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993)."

Ex parte Empire Fire & Marine Ins. Co., 720 So. 2d 893, 894 (Ala. 1998).

Moreover,

> "[i]n reviewing a trial court's ruling on a motion for a summary judgment, we apply the same standard the trial court applied initially in granting or denying the motion. Ex parte Alfa Mut. Gen. Ins. Co., 742 So. 2d 182, 184 (Ala. 1999).
>
> > "'The principles of law applicable to a motion for summary judgment are well settled. To grant such a motion, the trial court must determine that the evidence does not create a genuine issue of material fact and that the movant is entitled to judgment as a matter of law. Rule 56(c)(3), Ala. R. Civ. P. When the movant makes a prima facie showing that those two conditions are satisfied, the burden shifts to the nonmovant to present "substantial evidence" creating a genuine issue of material fact.'
>
> "742 So. 2d at 184. '[S]ubstantial evidence is evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.' West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989)."

Swan v. City of Hueytown, 920 So. 2d 1075, 1077-78 (Ala. 2005). See Ex parte Price, 256 So. 3d 1184, 1186-87 (Ala. 2018). These standards apply in cases involving municipal immunity as well as in cases involving State-agent immunity. See Ex parte City of Muscle Shoals, 257 So. 3d 850, 854-56 (Ala. 2018).

Analysis

I. Municipal Immunity

The only claim pending against the City is Meyers's negligence claim. The City argues that under § 11-47-190, Ala. Code 1975, it is immune from suit on that claim. That section provides:

> "No city or town shall be liable for damages for injury done to or wrong suffered by any person or corporation, unless such injury or wrong was done or suffered through the neglect, carelessness, or unskillfulness of some agent, officer, or employee of the municipality engaged in work therefor and while acting in the line of his or her duty, or unless the said injury or wrong was done or suffered through the neglect or carelessness or failure to remedy some defect in the streets, alleys, public ways, or buildings … and whenever the city or town shall be made liable for damages by reason of the unauthorized or wrongful acts or negligence, carelessness, or unskillfulness of any person or corporation, then such person or corporation shall be liable to an action on the same account by the party so injured."

This Court explained in Ex parte City of Muscle Shoals that this statute has long been held to limit municipal liability to two situations. 275 So. 3d at 855. First, municipalities may be liable for injuries caused by the wrongful conduct of their agents performed in the line of duty. Second, municipalities may be liable for injuries caused by their failure, upon notice, to remedy defects in public streets or buildings. Id. Under

§ 11-47-190, therefore, the City may not be liable for Meyers's injuries unless his claim falls within one of these two situations.

Meyers has not alleged that his injuries resulted from any defect in the public streets or buildings. Therefore, for the City to avoid municipal immunity on Meyers's negligence claim against it, Meyers's injuries must have been caused by Lewis's neglect, carelessness, or unskillfulness in performing her duties as a bus driver for the City. The City argues that Lewis did not breach any standard of care and that undisputed evidence shows no genuine issues of material fact. The City also argues that Meyers has not raised substantial evidence to show that any action by Lewis caused his injuries. Thus, the City argues that it is immune from suit under § 11-47-190 and has a clear legal right to the entry of a summary judgment in its favor.

As an initial matter, Meyers argues that questions about Lewis's actions and about the causation of his injuries relate to the merits of his claim and thus are not appropriate for review by mandamus. He insists that they are "secondary" to questions of immunity, citing Ex parte Kelley, 296 So. 3d 822 (Ala. 2019). In that case, this Court considered whether a foster-care provider and a Department of Human Resources

caseworker were entitled to State-agent immunity in a wrongful-death action. In stating the standard of review, this Court emphasized that it will not consider other grounds for a summary judgment when reviewing a petition for a writ of mandamus challenging a trial court's determination regarding immunity. Id. at 826. Ex parte Kelley correctly states this general rule. However, that case did not involve municipal immunity under § 11-47-190 or the exceptions provided in the statute. Thus, that decision provides little guidance for our review of the trial court's determination regarding whether the City is entitled to immunity under § 11-47-190.

The City relies on this Court's decision in Ex parte City of Muscle Shoals to show that the language of § 11-47-190 allows summary judgment, and review by mandamus, on the questions whether Lewis acted neglectfully, carelessly, or unskillfully and whether her actions caused Meyers's injuries. In Ex parte City of Muscle Shoals, the plaintiff was injured when he fell through an apparently defective grate in a city park. The City of Muscle Shoals sought a summary judgment based on § 11-47-190 immunity, thus raising questions regarding whether the plaintiff's evidence satisfied the second exception to municipal immunity

noted above. This Court issued a writ of mandamus on the city's petition and directed the trial court to enter a summary judgment in favor of the city.

This Court acknowledged that "when an issue of fact implicating whether immunity applies in a given case is disputed, then the issue may be submitted to a jury." 257 So. 3d at 856. However, the Court explained that "the availability of immunity 'is ultimately a question of law to be determined by the court.' Suttles v. Roy, 75 So. 3d 90, 100 (Ala. 2010)." Id. As a result, "'whether the plaintiff has presented substantial evidence creating a genuine issue of material fact can be evaluated by the trial court upon proper motion.'" Id. (quoting Franklin v. City of Huntsville, 670 So. 2d 848, 852 (Ala. 1995))(emphasis omitted)." Id. Therefore, "[i]n the face of a properly supported motion for a summary judgment invoking the immunity expressed in § 11-47-190 … it is incumbent upon the nonmovant to present substantial evidence of 'neglect, carelessness, or unskillfulness' by a municipal agent, officer, or employee … and that such negligence or defect caused the plaintiff's injuries." 257 So. 2d at 856-57. Because the plaintiff in Ex parte City of Muscle Shoals had not presented substantial evidence to support the

exceptions to municipal immunity in § 11-47-190, this Court granted the city's petition.

Meyers makes no attempt to distinguish this Court's decision in Ex parte City of Muscle Shoals. Like the plaintiff's argument in Ex parte City of Muscle Shoals, Meyers's "formulation of the summary-judgment process with regard to immunity is too simplistic." 257 So. 3d at 856. The plain language of § 11-47-190 creating the exceptions to municipal immunity makes the questions of Lewis's conduct and causation central to the determination whether municipal immunity is available to the City. We thus proceed to those questions.

The City argues that no genuine issues of material fact exist and that undisputed evidence shows that Lewis did not act with "neglect, carelessness, or unskillfulness." The City relies on the following evidence. Lewis was in the correct lane of travel. The curve on Venona Avenue prevented Lewis from seeing Meyers until Meyers was quite close to the bus and Lewis thus was unable to avoid the collision. Meyers was racing his bike toward the bus and was in the wrong lane. Meyers appeared unexpectedly in front of the bus.

Lewis was preparing to stop the bus at the next stop on her route. The 15-miles-per-hour warning sign, the City argues, did not set a mandatory speed limit or amount to a determination that 15 miles per hour was the maximum safe speed for the curve. Lewis was experienced at navigating the curve. She and two witnesses testified that she had been traveling at a reasonable speed. Lewis was able to stop the bus either immediately before or at the time of impact.

The City directs us to cases involving accidents with children to argue that this evidence is sufficient to meet the prima facie showing that Lewis did not act neglectfully, carelessly, or unskillfully. In Tinsley v. Henderson, 613 So. 2d 1268 (Ala. 1993), a child riding his bicycle into an intersection was struck and killed by a pickup truck. The truck was traveling within the speed limit at 50 miles per hour before the accident. The driver of the truck did not see the child because an embankment, trees, and tall grass blocked his view until the truck was almost in the intersection. The driver braked and slowed his truck to 45 miles per hour before impact. 613 So. 2d at 1269-70.

The plaintiff in Tinsley relied on inconsistencies in the evidence produced about the speed at which the truck was traveling and the fact

that the driver did not see the child in time to avoid the accident. Id. at 1271-72. This Court considered that evidence to be insufficient to create a genuine issue of material fact because it did not show that the truck was traveling at an excessive speed or that the driver actually could have avoided the accident with the exercise of due care. Id. Thus, the disputes about "minor ambiguities and inconsistencies" in the evidence, id. at 1271, were insufficient to overcome a motion for a summary judgment in favor of the driver. Id. at 1271-72.

Similarly, in Howell v. Roueche, 263 Ala. 83, 81 So. 2d 297 (1955), a car struck a young child in a bank parking lot. Children were known to frequent the parking lot, but with their parents. Thus, it was "in no sense a playground for children." 263 Ala. at 87, 81 So. 2d at 301. This Court determined that there was not enough evidence to show that the area was such as to put the driver of the car on notice that children were more likely to be in the parking lot than in any other area. Id.

This Court noted that

> "'a driver proceeding along a street or highway in a lawful manner using ordinary and reasonable caution for the safety of others, including children, will not be held liable for striking a child whose presence in the street could not reasonably be foreseen.' Blashfield's Cyclopedia of Automobile Law and Practice, Vol. 2A, § 1498, p. 406."

Id. Further, this Court observed, because the driver was looking, driving at a reasonable speed, and stopped when his passenger alerted him to the child's presence, he did not do anything unreasonable. 263 Ala. at 87, 81 So. 2d at 301-02. This Court reversed a judgment entered on a jury verdict for the plaintiff, noting that a judgment could not rest on "pure speculation and conjecture" and that the mere fact of the accident was insufficient to show negligence. 263 Ala. at 87, 81 So. 2d at 302.

The City does not concede that Lewis was driving at a speed that was neglectful, careless, or unskillful. It further argues that, even if she was, there was no evidence showing that the bus's speed was the cause of the accident. The City cites Lemley v. Wilson, 178 So. 3d 834, 842 (Ala. 2015) (holding that merely exceeding speed limit does not establish negligence or wantonness and that, based on evidence of improper safety equipment as alternative cause, jury could have found that speed was not proximate cause), and Odom v. Schofield, 480 So. 2d 1217, 1218 (Ala. 1985) (holding that exceeding speed limit does not establish negligence and that jury could properly have found that speed did not proximately cause accident when vehicle was struck by "an oncoming car traveling in the wrong lane"). Thus, it argues that Meyers's racing his bike in Lewis's

lane proximately caused the collision and that no evidence creates a genuine issue of material fact as to the causation required by § 11-47-190.

Meyers does not attempt to distinguish any of the cases cited by the City. We find them similar to this case and persuasive to show that the evidence produced by the City presented no genuine issue of material fact regarding whether Lewis acted neglectfully, carelessly, or unskillfully or whether her acts proximately caused the collision. Like the drivers in Tinsley and Howell, Lewis saw Meyers suddenly. Like the driver in Howell, she was able to stop the bus quickly. Like in Odom, Meyers was in the wrong lane of travel. And like in each of the cases cited, no evidence showed that Lewis could have done anything to avoid Meyers but failed to do so. Thus, under § 11-47-190, the City's motion was properly supported. It thus was incumbent upon Meyers to present substantial evidence to show Lewis's neglect, carelessness, or unskillfulness and that her acts proximately caused the collision.

Meyers points us to the video data showing that the bus was traveling at 29 miles per hour before the collision. He assumes that, at the time of the collision, the bus was traveling far in excess of the 15 miles

per hour posted on the warning sign, which he characterizes as a "directive" by the City for safe navigation of the curve. Coupled with this assumption, Meyers relies heavily on Lewis's knowledge of the "character" of the neighborhood. He says that Lewis knew that children "would be likely present and playing in the streets." Meyers's brief at 32. As to causation, Meyers does not point to evidence but, rather, makes conclusory statements that he would have been able to avoid the collision if the bus had not been traveling so fast or had not crossed the center of the street.

Taking the last points first, "[t]he arguments of counsel are not evidence." Deng v. Scroggins, 169 So. 3d 1015, 1028 (Ala. 2014). Moreover, mere "'[s]peculation and conclusory allegations are insufficient to create a genuine issue of material fact.'" Tinsley, 613 So. 2d at 1271 (quoting Brooks v. Colonial Chevrolet-Buick, Inc., 579 So. 2d 1328, 1330 (Ala. 1991)). Meyers does not point to any evidence creating an inference that any act by Lewis caused his injuries, especially in light of the evidence indicating that he was racing into a sharp curve in the wrong direction in the bus's lane of travel.

Meyers points to his own testimony that the bus crossed into the opposing lane "a little bit." However, this evidence is not "'"evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment c[ould] reasonably infer"'" that Lewis's conduct caused Meyers's injuries in light of the testimony of three other witnesses that the bus never left the correct lane of travel and the photographic evidence that confirmed that fact. Swan, 920 So. 2d at 1077-78 (citations omitted). The City correctly cites Ex parte City of Montgomery, 272 So. 3d 155, 165 (Ala. 2018), in which this Court adopted the rationale of the United States Supreme Court in such circumstances. "'When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.'" Id. (police dashboard-camera video contradicted plaintiff's version of facts) (quoting Scott v. Harris, 550 U.S. 372, 381 (2007) (video contradicted plaintiff's version of events)). Meyers does not attempt to distinguish Ex parte City of Montgomery or Scott.

As to the "character" of the neighborhood, Meyers's evidence does not support his inferences about Lewis's knowledge that children were

likely to be in the street. The testimony of Grimsley and Lewis did conflict about whether and how often children played or rode bikes on Venona Avenue. Lewis said that they did not and that they played only in the parking lots adjoining the streets. Grimsley said that children frequently were on the street and had been racing bikes on the street for two to three months before the collision. For his part, Meyers himself testified that he and his friends usually walked their bikes along the side of Venona Avenue and did not ride on the street. Viewing this evidence in a light most favorable to Meyers, however, does not support Meyers's conclusory statements about Lewis's knowledge. Like the parking lot in Howell, Venona Avenue is "in no sense a playground for children." 263 Ala. at 87, 81 So. 2d at 301. Lewis denied knowing that children were likely to be in the curve on Venona Avenue. And Grimsley himself testified that the bus drivers "could not have been" aware that children had been racing on that part of the street. There simply is not substantial evidence showing that Lewis knew children were likely to be on the street, as Meyers insists.

Finally, the evidence of the bus's speed is not so clear as Meyers presumes. Meyers makes no attempt to account for the time delay that

the City correctly notes is apparent in the data recorded on the bus's video display. He instead bases his argument on the assumption that the display is an accurate real-time recording of the bus's speed. This inference simply is not supported by the video. Given the delay, the data provides little or no evidence of the bus's actual speed immediately before the collision.

Although Lewis did not recall the bus's speed at the moment of the collision, it is undisputed that she was preparing to stop in the curve to pick up passengers at the bus stop if necessary. The two witnesses to the collision confirmed that the bus was not traveling fast. Meyers testified that his friend said, "[O]h, snap, she's kind of moving fast." But this alone does not rise to the level of substantial evidence necessary to create a genuine issue of material fact that Lewis acted neglectfully, carelessly, or unskillfully and thus caused the collision. Therefore, none of the evidence Meyers has presented is sufficient to bring his claim within the first exception to municipal immunity.

For these reasons, the City is entitled to immunity from Meyers's negligence claim under § 11-47-190. Therefore, the petition for a writ of mandamus is granted as to the City. The trial court is directed to vacate

its order insofar as it denies the motion for a summary judgment on Meyer's negligence claim against the City and to enter a summary judgment on that claim.

The City and Lewis also argue that, by concluding that the City is entitled to municipal immunity under § 11-47-190, this Court has effectively decided that no genuine issue of material fact exists regarding Lewis's liability to Meyers for negligence and wantonness. However, even assuming that their argument in this regard is correct, the only basis for mandamus review presented is immunity, see Ex parte Turner, 840 So. 2d at 135, and the City and Lewis have cited no authority indicating that Lewis is entitled to municipal immunity under the plain language of § 11-47-190. Thus, although the trial court may conclude that Lewis is entitled to a summary judgment on the ground that no genuine issue of material fact exists regarding the merits of Meyers's claims against her, this Court cannot consider that issue in its evaluation of this mandamus petition. Thus, we must next address Lewis's assertion of State-agent immunity to determine whether the trial court should have entered a summary judgment in favor of Lewis on that basis.

II. State-Agent Immunity

Lewis asserts that she is entitled to State-agent immunity under this Court's statement of the standard in Ex parte Cranman, 792 So. 2d 392 (Ala. 2000) (plurality opinion), as adopted by the Court in Ex parte Butts, 775 So. 2d 173 (Ala. 2000). See also § 36-1-12, Ala. Code 1975. That standard provides:

> "A State agent shall be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent's
>
> "(1) formulating plans, policies, or designs; or
>
> "(2) exercising his or her judgment in the administration of a department or agency of government, including, but not limited to, examples such as:
>
> "(a) making administrative adjudications;
>
> "(b) allocating resources;
>
> "(c) negotiating contracts;
>
> "(d) hiring, firing, transferring, assigning, or supervising personnel; or
>
> "(3) discharging duties imposed on a department or agency by statute, rule, or regulation, insofar as the statute, rule, or regulation prescribes the manner for performing the duties and the State agent performs the duties in that manner; or

> "(4) exercising judgment in the enforcement of the criminal laws of the State, including, but not limited to, law-enforcement officers' arresting or attempting to arrest persons[, or serving as peace officers under circumstances entitling such officers to immunity pursuant to § 6-5-338(a), Ala. Code 1975]; or
>
> "(5) exercising judgment in the discharge of duties imposed by statute, rule, or regulation in releasing prisoners, counseling or releasing persons of unsound mind, or educating students.
>
> "Notwithstanding anything to the contrary in the foregoing statement of the rule, a State agent shall not be immune from civil liability in his or her personal capacity
>
> "(1) when the Constitution or laws of the United States, or the Constitution of this State, or laws, rules, or regulations of this State enacted or promulgated for the purpose of regulating the activities of a governmental agency require otherwise; or
>
> "(2) when the State agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law."

Ex parte Cranman, 792 So. 2d at 405 (bracketed language is a modification added by Hollis v. City of Brighton, 950 So. 2d 300, 309 (Ala. 2006)).

> " 'This Court has established a "burden-shifting" process when a party raises the defense of State-agent immunity.' Ex parte Estate of Reynolds, 946 So. 2d 450, 452 (Ala. 2006). A State agent asserting State-agent immunity 'bears the burden of demonstrating that the plaintiff's claims arise from a function that would entitle the State agent to immunity.' 946

> So. 2d at 452. Should the State agent make such a showing, the burden then shifts to the plaintiff to show that one of the two categories of exceptions to State-agent immunity recognized in Cranman is applicable."

Ex parte Kennedy, 992 So. 2d 1276, 1282 (Ala. 2008).

The parties' primary point of contention is whether Lewis, as a City bus driver, was performing a function that would entitle her to State-agent immunity. Lewis asserts immunity under the third category of conduct identified in Ex parte Cranman. However, as Meyers correctly notes, each of the cases Lewis cites as support for her argument involved different categories of State-agent conduct identified in Ex parte Cranman. See Burton v. Hawkins, 364 So. 3d 962 (Ala. 2022); Edwards v. Pearson, 309 So. 3d 1216 (Ala. 2020); Ex parte City of Montgomery, 272 So. 3d 155 (Ala. 2018); and Ex parte Mason, 146 So. 3d 9 (Ala. 2013).

Specifically, in Burton, this Court held that educators were entitled to State-agent immunity under the fifth Ex parte Cranman category for their decisions regarding how far to walk from the roadway while supervising college students engaged in a geological survey along the side of a road. In Edwards and Ex parte Mason, students were struck by automobiles as they attempted to cross streets to or from school buses. In both decisions, this Court reasoned that the bus drivers were

exercising their judgment in the discharge of their duties to supervise students within the fifth Ex parte Cranman category. Similarly, in Ex parte City of Montgomery, this Court's reasoning focused on the specific duties and regulations governing peace officers and their use of lights and sirens while driving emergency vehicles under the fourth Ex parte Cranman category.

In light of the foregoing, we conclude that Lewis has not demonstrated a clear legal right to State-agent immunity based on the third Ex parte Cranman category. See Ex parte Empire Fire & Marine Ins. Co., 720 So. 2d at 894. Although this Court has discussed the scope of discretionary-function immunity for municipal officers, see Ex parte City of Birmingham, 624 So. 2d 1018 (Ala. 1993), Lewis does not address that precedent in the mandamus petition. Instead, as noted, her argument is limited to the applicability of the third Ex parte Cranman category, which applies only when the conduct at issue involves

> "(3) discharging duties imposed on a department or agency by statute, rule, or regulation, insofar as the statute, rule, or regulation prescribes the manner for performing the duties and the State agent performs the duties in that manner …."

792 So. 2d at 405.

Because Lewis has cited no authority indicating that, by obeying traffic laws, a municipal bus driver is properly considered a State agent performing her duties in the manner prescribed by statutes, rules, or regulations imposed on a State department or agency, we conclude that she has not demonstrated a clear legal right to a writ of mandamus directing the trial court to enter a summary judgment in her favor based on State-agent immunity, as contemplated by the third Ex parte Cranman category.

Conclusion

The City has shown a clear legal right to municipal immunity in this case. Lewis has not shown a clear legal right to State-agent immunity. Although the City argues that our conclusion regarding municipal immunity also effectively disposes of the merits of Meyers's claims against Lewis, we cannot at this time consider that question in our evaluation of this mandamus petition asserting immunity, even if the trial court may ultimately enter a summary judgment in favor of Lewis in light of this Court's decision. See Ex parte Turner, 840 So. 2d at 135. Based on the foregoing, we deny the petition as to Lewis, grant the

petition as to the City, and issue a writ of mandamus directing the trial court to enter a summary judgment in favor of the City.

PETITION GRANTED IN PART AND DENIED IN PART; WRIT ISSUED.

Parker, C.J., and Shaw, Wise, Mendheim, Stewart, and Mitchell, JJ., concur.

Cook, J., concurs specially, with opinion.

Sellers, J., concurs in part and dissents in part, with opinion.

COOK, Justice (concurring specially).

I concur fully with the main opinion.[1] I write separately to suggest that, when specifically asked to do so by parties in a future case, we should consider extending mandamus relief in situations in which our grant of mandamus relief to one party necessarily disposes of the plaintiff's claim with respect to another party.

As explained in the main opinion, the City of Huntsville argued that it was entitled to municipal immunity under § 11-47-190, Ala. Code 1975, because, it said, there was no evidence that Avery Meyers's injuries were caused by the "neglect, carelessness, or unskillfulness" of its agent, Reychal Lewis, while she was "acting in the line of … her duty." In

[1]In addition to concurring with the main opinion's decision to grant mandamus relief to the City of Huntsville based on municipal immunity, I also concur with the main opinion's decision to deny Reychal Lewis mandamus relief on her State-agent immunity claim because she failed to adequately support her assertion that she is entitled to such immunity under the third category of conduct set forth in Ex parte Cranman, 792 So. 2d 392 (Ala. 2000). In addition to her other arguments regarding this category, Lewis argues that her adherence to the Rules of the Road would qualify as "discharging duties imposed on a department or agency by statute, rule, or regulation" under the third Cranman category. Notably, the Rules of the Road normally apply to all drivers -- not just State agents -- which may, or may not, affect a court's analysis of this issue. None of the parties cite any caselaw or other authority on whether the Rules of the Road fit within this third Cranman category. Thus, the main opinion does not reach the question, and I do not either.

addressing the City's assertion, the main opinion thoroughly discusses the evidence produced by both the City and Meyers and concludes that the evidence presented by the City clearly showed that there was "no genuine issue of material fact regarding whether Lewis [the bus driver] acted neglectfully, carelessly, or unskillfully or whether her acts proximately caused the collision." ____ So. 3d at ____ (emphasis added).[2] Accordingly, the main opinion correctly holds that the City is entitled to municipal immunity.

The City and Lewis also argue, however, that, by concluding that the City is entitled to municipal immunity under § 11-47-190, this Court has effectively decided that no genuine issue of material fact exists regarding Lewis's liability to Meyers for negligence and wantonness. In response, Meyers argues that we should "not consider secondary arguments about the denial of summary judgment on other grounds or review the trial court's conclusion on other issues, decided at the same

[2]The main opinion also concludes that Meyers's evidence "does not rise to the level of substantial evidence necessary to create a genuine issue of material fact that Lewis acted neglectfully, carelessly, or unskillfully and thus caused the collision." ____ So. 3d at ____.

time as the immunity issue." Meyers's brief at 29.[3]

The main opinion correctly acknowledges that the plain language of § 11-47-190 made the questions of Lewis's conduct and causation central to the determination of whether the City was entitled to municipal immunity. In making that determination, our Court not only had to reach those questions, but also had to decide that Lewis did not act "neglectfully" or "carelessly" and that her actions did not "proximately cause[]" Meyers's injuries. Those conclusions are now the law of the case and effectively dispose of Meyers's negligence and wantonness claims against Lewis. See Honea v. Raymond James Fin. Servs., Inc., 279 So. 3d 568, 570-71 (Ala. 2018) ("An appellate court's decision is final as to the matters before it, becomes the law of the case, and must be executed according to the mandate. Generally, a lower court 'exceeds its authority'

[3]In support of his assertion, Meyers relies on our Court's recent decision in Ex parte Kelley, 296 So. 3d 822 (Ala. 2019), which is plainly distinguishable. In Kelley, a wrongful-death case, this Court was asked to decide only whether a Department of Human Resources caseworker was entitled to parental immunity and State-agent immunity under Ex parte Cranman, 792 So. 2d 392 (Ala. 2000). Municipal liability was not at issue. Thus, in addressing the caseworker's immunity claims, this Court did not analyze or decide the issues of duty of care or causation. Instead, we decided only whether State-agent immunity barred the negligence and wantonness claims against the caseworker.

by addressing issues already decided by an appellate court's decision in that case." (internal citation omitted)).

Given that a trial court's failure to apply the law of the case is itself grounds for mandamus relief, see Ex parte Williford, 902 So. 2d 658, 662 (Ala. 2004), there is a real argument that it is futile to return this case to the trial court for that court to announce a judgment when we have already decided this issue. Indeed, we should always strive to make sure that our procedure for reviewing extraordinary writs is administered "so as to assure the just, speedy, and inexpensive determination of every appellate proceeding on its merits." Rule 1, Ala. R. App. P. Returning the case to the trial court for further proceedings when we have already decided the elements of a claim does not appear to me to be "just," "speedy," or "inexpensive."

Nevertheless, the main opinion correctly concludes that we cannot reach the question whether a genuine issue of material fact exists regarding Lewis's liability because "the only basis for mandamus review presented [here] is immunity." ____ So. 3d at ____ (citing Ex parte Turner, 840 So. 2d 132, 135 (Ala. 2002).

Although Lewis argues that her "entitlement to summary judgment

is inextricably linked to the City's entitlement to immunity," Petition at 24 n.4, she does not address the fact that our current caselaw does not extend mandamus relief to the circumstances presented in this case. She also does not explain why we should overrule or otherwise expand that caselaw. Such a request is normally necessary before our Court will even consider overruling or changing our caselaw. To emphasize the point, a party should assume that it must actually ask us to overrule or change the law and tell us why.[4]

Why do we have this prerequisite? It is not in a procedural rule,

[4]See Ex parte McKinney, 87 So. 3d 502, 509 n.7 (Ala. 2011) (explaining that "this Court has long recognized a disinclination to overrule existing caselaw in the absence of either a specific request to do so or an adequate argument asking that we do so"). See also Eickhoff Corp. v. Warrior Met Coal, LLC, 265 So. 3d 216, 224 (Ala. 2018) (refusing to overrule controlling caselaw with no request to do so); American Bankers Ins. Co. of Fla. v. Tellis, 192 So. 3d 386, 392 n.3 (Ala. 2015) (quoting Moore v. Prudential Residential Servs. Ltd. P'ship, 849 So. 2d 914, 926 (Ala. 2002)) (explaining that "'[s]tare decisis commands, at a minimum, a degree of respect from this Court that makes it disinclined to overrule controlling precedent when it is not invited to do so'"); Ex parte Alabama Dep't of Hum. Res., 999 So. 2d 891, 896 (Ala. 2008) (noting that the respondent had not "offered any arguments or support for the conclusion that precedent ... should be overruled or modified in any way"); and Clay Kilgore Constr., Inc. v. Buchalter/Grant, L.L.C., 949 So. 2d 893, 898 (Ala. 2006) (noting the absence of a specific request by the appellant to overrule existing authority and stating that, "[e]ven if we would be amenable to such a request, we are not inclined to abandon precedent without a specific invitation to do so").

and our caselaw does not indicate that it is jurisdictional. We need such a request because it provides all parties with notice of the law, notice of the request, and an opportunity to bring counterarguments to the table. Our Court will get the law correct more often when everyone is on notice of a request to overrule or expand our existing caselaw. And it is our job to get the law right.

I make the above observations for two reasons. First, I emphasize to the members of the bar that they should specifically request that we overrule or expand existing caselaw if they want us to do so. Second, I suggest that, in a future appropriate case, a party request and provide an explanation as to why our Court should consider extending mandamus relief to situations in which our grant of mandamus relief with respect to one petitioner necessarily disposes of the plaintiff's claim with respect to another petitioner. See, e.g., Ex parte City of Vestavia Hills, 372 So. 3d 1143, 1150-51 (Ala. 2022) (Mitchell, J., concurring specially, joined by Bolin, J.) (noting that our Court "should consider extending mandamus relief to encompass situations such as this one, in which our grant of mandamus relief to an individual defendant necessarily disposes of the plaintiff's claim with respect to that defendant's employer" because

"[t]his holding, which is now law of the case, necessarily precludes the City's liability …." (footnote omitted; emphasis added)). It is for all of these reasons that I concur specially.

SELLERS, Justice (concurring in part and dissenting in part).

I agree that the City of Huntsville has shown a clear legal right to municipal immunity under § 11-47-190, Ala. Code 1975, and thus concur in the main opinion as to that issue. I dissent, however, from the main opinion's position that this Court cannot reach the issue of Reychal Lewis's liability for negligence and wantonness. In determining that the City is entitled to municipal immunity because there is no evidence demonstrating that Avery Meyers's injuries were proximately caused by Lewis's conduct or that Lewis acted with neglect, carelessness, or unskillfulness, we have implicitly determined that no genuine issue of material fact exists regarding Lewis's liability to Meyers. In my view, the determination regarding the lack of evidence is now the law of the case, and because it is inherently fatal to Meyers's claims against Lewis, I see no reason to return the matter to the trial court. Rather than return the case to the trial court, I would dispose of the issue of Lewis's liability now. See generally Ex parte City of Vestavia Hills, 372 So. 3d 1143, 1150-51 (Ala. 2022) (Mitchell, J., concurring specially, joined by Bolin, J.) (noting that our Court "should consider extending mandamus relief to encompass situations such as this one, in which our grant of mandamus

relief to an individual defendant necessarily disposes of the plaintiff's claim with respect to that defendant's employer" because "[t]his holding, which is now law of the case, necessarily precludes the City's liability …." (footnote omitted)).