Rel: September 27, 2019

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2019

1180474

Ex parte City of Tuskegee

PETITION FOR WRIT OF MANDAMUS

(In re: Nyasha Redd, administrator of Estate of Yvonne Redd, deceased

v.

City of Tuskegee)

(Macon Circuit Court, CV-14-900007)

WISE, Justice.

The City of Tuskegee ("the City"), the defendant below, petitions this Court for a writ of mandamus directing the

trial court to vacate its order denying the City's motion for a summary judgment as to negligent inspection and negligent failure to provide hydrant and/or water pressure claims asserted against it and to enter a summary judgment for the City as to those claims on the grounds of both substantive immunity and municipal immunity under § 11-47-190, Ala. Code 1975. We grant the petition and issue the writ.

Facts and Procedural History

This case arises from the death of Yvonne Redd ("Yvonne") in a house fire that occurred at a residence located at 804 South Main Street in Tuskegee ("the house") on December 27, 2012. Fred Bascomb, Jr., owned the house, and Yvonne and her sister, Patricia Carlisle, had previously rented the house and had lived there for one or two years. In 2012, they rented the house again, and moved in on or about December 12, 2012.

Yvonne's daughter, Nyasha Redd ("Nyasha"), testified that her mother's health had started deteriorating in 2010 as a result of a series of strokes; that Carlisle and Yvonne had lived together for years; and that, as Yvonne's health deteriorated, Carlisle took care of Yvonne. Nyasha testified

that Yvonne could walk aided by a walker and that Yvonne would periodically use a wheelchair to go out.

The evidence presented in this case indicated that the City's building code required rental properties to have hardwired smoke detectors. Willie Smith, the fire marshal for Tuskegee Fire Department ("TFD"), testified that the City building code required the building inspector or the fire marshal for the City to conduct an inspection of a rental property before the utilities could be turned on for that property; that the person conducting the inspection would ensure that smoke detectors were present and functioning; and that a form would be completed after the inspection. Evidence was presented that utilities would not be turned on at a residence if the residence did not have the required functioning smoke detectors.

Nyasha testified that she helped her mother move and that she had the utilities turned on at the rental house. She also testified that she talked with Bascomb as she was waiting to get the utilities turned on. Nyasha further testified that she was at the City utility board's office arranging to have the utilities turned on; that she was to meet Charlie Bowen,

a building official for the City, at the house for the inspection; that she was talking to Bascomb on her cellular telephone; that a Ms. Cardwell, an employee of the utility board, was on the telephone with Bowen; that Nyasha was told that she did not have to meet Bowen at the house; that Bascomb told Nyasha that Bowen had gone out to the house; that Bowen had also told Cardwell that everything was "fine and ready to move in"; and that Nyasha was told that the power had been turned on.

The City submitted an inspection form for the house that was signed by Bowen and dated December 14, 2012. The form is titled "Safety Inspection Form" and includes an area to mark whether the property being inspected is a single-family dwelling, a multifamily dwelling, or commercial property. In the first comment section on the form, Bowen included the following note:

> "There were no visible hazards found in the House listed above. Utility services can now be issued to Yvonne Redd."

There was a checklist on the form that included the following:

> "Exterior
>
> "_____ Lawn
> "_____ Doorbell

"_____ Doors
"_____ Windows/Screens
"_____ Roof

"Interior

"_____ Switches/Plugs
"_____ Smoke Detector
"_____ Light Fixtures
"_____ Vents
"_____ Ceiling Fans
"_____ Thermostat

"Bathroom

"_____ Bathroom Exhaust
"_____ Shower
"_____ Commode
"_____ Sink/faucets

"Kitchen

"_____ Sink/Faucets
"_____ Stove Fan"

Bowen did not mark any of the items on the form. However, the comments section at the end of the form included the following note:

> "For tenant safety, Smoke Detectors must be installed by the owner(s)."

The City submitted a document on the letterhead of the City's Department of Building, Engineering, and Planning. The

document was dated November 2, 2017, after the commencement of the underlying action, and stated:

> "TO WHOM IT MAY CONCERN:
>
> "THE OWNERS WERE DEMANDING THAT THE TENANTS PAY TO HAVE SMOKE DETECTORS INSTALLED, WHICH IS WHY THAT STATEMENT WAS INSERTED IN THE COMMENTS AT THE BOTTOM OF THE PAGE."

(Capitalization in original.) The document appears to include an electronic signature of Bowen. The City also submitted a 2018 affidavit from Bowen in which he stated:

> "I am the building official for the City of Tuskegee, Alabama, and have been so employed at all times relevant to this suit. In December of 2012, Fred Bascomb completed a rental/lease verification form for the utilities to be turned on at his rental house at 804 South Main Street, Tuskegee, Alabama 36083. When he filled out the verification form, I inspected the premises at 804 South Main Street .... At that time, no deficiencies were observed and I personally saw smoke detectors installed in this house. I have attached to my affidavit the form filled out by Bascomb and the inspection sheet allowing utilities to be turned on at the house. The inspection form states: 'For tenant safety, smoke detector must be installed by the owner(s).' This statement was included to settle any dispute between the owner and the tenant as to which party was responsible for paying for the smoke detectors that were installed."

The City also attached an affidavit from Michael McNeil, in which he stated:

> "I installed the smoke detectors at Fred Bascomb's rental house at 804 South Main Street, Tuskegee, Alabama 36083. After I installed the smoke detectors, Charlie Bowen inspected the smoke detectors."

Bascomb also testified that there were nine smoke detectors in the house; that the smoke detectors were mounted on the ceiling; that the smoke detectors were hardwired and had battery backups; that McNeil was an electrician who performed electrical work for him; and that McNeil installed the smoke detectors.

Nyasha testified that she visited her mother and Carlisle every day while they were living most currently at the house on South Main Street; that she did not see smoke detectors at the house during her visits; that Yvonne and Carlisle were having electrical problems; that some electrical outlets did not work; that the roof leaked; and that rainwater would come through light fixtures. Nyasha testified that Carlisle had told her that, on the morning of December 27, 2012, she had telephoned Bascomb to complain about the rain coming through the light fixtures; that Bascomb had said he would send his maintenance assistant to see about it; that Carlisle had to go to work that day; that Yvonne had been instructed not to open

the door for anyone; and that Bascomb had told Carlisle he would contact her when his maintenance assistant was on his way to the house. Nyasha testified that Joe Ross, a family friend, went to Yvonne's residence that day to feed her lunch; that, although Yvonne could actually feed herself, she could not cook or do anything in the kitchen because she depended on a walker; that Ross warmed up some food in the microwave and gave it to Yvonne; that Ross said that Yvonne had eaten and that everything was fine when he left the house; and that Ross had been gone for about 30 minutes when the fire started.

At approximately 4:15 p.m. on December 27, 2012, the Tuskegee Police Department and TFD were dispatched to the house on a report of a fire. Evidence was presented indicating that an officer with the Tuskegee Police Department and a deputy with the Macon County Sheriff's Department were the first to arrive on the scene. The officers noticed a large amount of smoke coming from the residence and were told that an elderly, bedridden female was inside. Although law-enforcement officers were able to force open the front door, they were not able to make entry because of the amount of

smoke. At that time, the first fire engine arrived, and the scene was turned over to TFD.

TFD arrived on the scene at 4:20 p.m., and the City presented evidence indicating that the fire was fully involved at that time. Ultimately, two pumper trucks -- Engine 1 and Engine 2 -- a ladder truck, and 12 fire personnel from TFD responded to the scene. Engine 2 was the first truck to arrive on the scene; Engine 1 arrived right behind it. Sgt. Uralvin Clark and two firefighters, Robert Bryant and Colby Hicks, were on Engine 2. The City presented evidence indicating that Engine 2 had a 1,250-gallon-a-minute pump and a 1,000 gallon tank. Lt. Wayne Brooks, who was acting as a captain at that time, and Sgt. Jason Levett were on Engine 1. The City presented evidence indicating that Engine 1 had a 1,000-gallon-a-minute pump and a 750 gallon tank. Evidence was presented indicating that Engine 2 connected to hydrant 301 located at the corner of South Main and Laslie Street, which was near Tuskegee Intermediate School; that that hydrant was operational at the time; and that that hydrant was a little over 1,300 feet from the house.

Lt. Brooks testified that, when he arrived on the scene, he did a 360-degree inspection of the scene; that the fire had already ventilated before they arrived; and that smoke and flames were "coming all out the roof and everywhere." Lt. Brooks explained:

> "So what I mean ventilated, it had vented through the roof when I said ventilate, so it done -- you know, it done burned on the inside, just vented out through the roof when we got there. And the whole entire house was just -- you know, I meant to say it was up in the ceiling part of it at first, all over in the ceiling part before it got, you know, on out into the rest of the house."

Lt. Brooks testified that he told Hicks and Bryant to pull both one-and-three-quarter-inch attack lines[1] from Engine 2 and to go to the north side of the house where the fire was burning. Lt. Brooks testified that the attack lines were 100 feet long; that they had fog nozzles with 100 pounds per square inch of pressure; that the gauges of the lines were set at "one hundred by one fifteen or one hundred of pressure that we put through that inch-and-three-quarter line"; and that, when the fire nozzle is turned on and directed at a fire or structure, 125 gallons per minute of water are coming out of

[1]Evidence was presented indicating that attack lines are hoses that are used to fight the fire.

that line. He also testified that he told Sgt. Clark to connect to "the hydrant off their right, right in front of South Main Street"; that they used the hydrant near Tuskegee Intermediate School; and that Sgt. Clark used a three-inch hose, which is called a supply line, to connect to the hydrant. Lt. Brooks agreed that there was another hydrant across the street from the school in the front yard of a law office. When asked whether that other hydrant was operational on the day of the fire, he testified that he was not sure. When asked if he knew whether that other hydrant had been used or attempted to be used, he stated that he did not know; that he did not go with Sgt. Clark to connect the hose to the hydrant; and that he remained at the house. When asked if he knew why the other hydrant was not used, he responded that Sgt. Clark "had seen that one, I guess, and just went to it." Lt. Brooks testified that the hydrant they used was capable of producing 500 gallons of water per minute. Lt. Brooks testified that there was over 1,300 feet of hose between the hydrant and the engine; that the length of the hose would decrease the effectiveness of the water supplied through the line, which is called "friction loss in the line"; and that,

with that length of down-line hose, there would be a pretty substantial reduction of the gallons available per minute. However, he testified that, during the time the hose was connected to the hydrant and pulled down to the house, Engine 2 never ran out of water.

Lt. Brooks's preliminary report regarding the fire included a section labeled "Fire Suppression Factors." The first fire-suppression factor listed was "Locked or jammed doors." The second fire-suppression factor listed was "Hydrants Inoperative." However, the report does not include any additional information about those factors. Additionally, Lt. Brooks testified that TFD did not at any time try to connect to a hydrant that was inoperable.

Lt. Brooks testified that Engine 2 had 1,000 gallons of water when they arrived at the house and that they used that to put water on the north side of the house. Lt. Brooks also testified that, as he and Sgt. Levett were going inside the house, he heard somebody on the side of the house screaming and saying her mother or somebody was still in the house; that the woman said, "She's in this room," which was the front room; that, after Sgt. Clark returned to the truck, Lt. Brooks

and Hicks went inside first with a hand line, which is a hose that could be used to put out any fire in a particular room, to perform a search and rescue. Lt. Brooks testified that he and Hicks went through the front door; that heavy smoke was billowing but that there was not any fire in the front room at the time; that he and Hicks did a search but they could not find anyone; and that they came back out. Lt. Brooks testified that the woman was still screaming, "I know she in there. She in there. That where I left her at." Lt. Brooks testified that they made another attempt to locate the victim, stating:

> "Went back in the same way. And then, I mean, I can hear her saying, 'She might be in the restroom,' so we went -- how her room were was it was [sic]-- you know how the bedroom and the restroom connected --
>
> "....
>
> "[Lt. Brooks:] -- and stuff, so we went down in the -- went back, search again, right-hand search like we normally do, clear the floor with our legs and stuff so we can feel and the bed, feeling. Went out of there, went down in the restroom, and she wasn't in there. Felt around in there and the tub and everything. Then we made an attempt back out, and when we was coming back out, I noticed another room to my left-hand side. I kind of checked that. It was kind of locked. I checked the door, it was locked, before we backed back out. So what I did, I pushed it in, went in there, and it just had a lot of stuff behind it. Pushed it in, went in that

> room, and searched it, too, also, before we came back out, and she wasn't in there. And then after that, I told him we're just going to back on back out and just, you know -- and then about that -- okay."

Lt. Brooks testified that, at that time, Bryant told him that other firefighters had had to force in a side door that had a ramp going up to the north side of the house; that he did not know if the door had some type of bars on it; and that the other firefighters went inside with a hand line and started shooting water.

Lt. Brooks testified that, by that time, and despite their best efforts, the fire was getting more intense and moving toward the front of the house. Lt. Brooks testified that he had to request mutual aid from other fire departments; that he called dispatch for more help; and that he told dispatch that he needed the VA Fire Department[2] to respond. He also testified that a power line attached to the north side of the house had come down and that he had to get the utility board to come out and deal with the electrical line. Ultimately, the VA Fire Department, the Shorter Volunteer Fire Department, the Macedonia Community Volunteer Fire Department,

[2]In his deposition, Lt. Brooks acknowledges that this fire department is the "VA Hospital's Fire Department."

the Notasulga Volunteer Fire Department, and the Chehaw Volunteer Fire Department arrived on the scene to assist.

Lt. Brooks testified that, during that time, they were also trying to make sure that the fire was contained to the house and that it did not spread to adjoining structures or houses. Lt. Brooks testified that, when the Macedonia fire department arrived on the scene, he asked them to go down to Rush Street off South Main, to connect to a hydrant there, and to protect the exposure of the neighboring house. He testified that the neighboring house was getting too hot; that he told the Macedonia fire department to keep water on that other house; and that the other house was south of the house at 804 South Main Street. Counsel for the City told Lt. Brooks that, during the deposition of Chief Fred Iverson of TFD, they had "talked about a fire hydrant -- or hydrant inoperative." Counsel then asked Lt. Brooks if he knew anything about a fire hydrant malfunctioning, and Lt. Brooks replied: "The hydrant that you're probably talking about is the one on Rush Street." When asked about what happened with that, Lt. Brooks testified that he later learned that, when the Macedonia fire department turned on the water at the

hydrant, they caused a "water hammer"; that turning on the water too fast could cause a water hammer; that that blew up the water main hooked up to the hydrant; and that that would cause the water pressure to drop. However, he testified that, at that time, they were receiving water into Engine 2; that they still had water in Engine 2; that the VA Fire Department was there and had 2,000 gallons of water in their truck; that they used the water in the VA Fire Department's truck; and that Engine 2 never ran out of water. Lt. Brooks testified that they had entered defensive mode at that time. He explained that, in offensive mode, firefighters go inside to attack the fire and that firefighters pull back outside a burning structure in defensive mode. Lt. Brooks testified that Bryant had told the firefighters to come out of the house because it was unsafe. Lt. Brooks said that, after that, no one was to go back inside, and he told everyone to go into defensive mode, to just fight the fire, and to contain exposure around the house.

The testimony indicated that Smith arrived on the scene at either 4:27 p.m. or 4:38 p.m. Smith testified that, when he arrived, firefighters were on the scene; that he walked

around the house; and that the house was fully engulfed in fire. He also testified that he saw fire hoses connected to a hydrant at the corner of South Main Street and Laslie Street; that hydrant 301 was located on the school side of the street; that, as far as he knew, that hydrant was working at the time of the fire; and that that hydrant was a little over 1,300 feet from the house. Smith was asked about a chart showing hydrants in the area that was introduced during Smith's deposition. Smith testified that a hydrant that was in blue on the chart was not in place at the time of the fire. He was also asked about hydrant 262, and Smith testified that hydrant 262 was operational on the date of the fire. When asked if hydrant 262 was used at all, Smith responded: "No, sir, I do not know whether it was used or not." He further testified that hydrant 263 was 1,128 feet from the house; that, as far as he knows, that hydrant was operational at the time of the fire; that he did not test the hydrant, but all the hydrants are tested annually; and that he attached to his fire-investigation report a report showing the testing and the pressures for hydrants 301 and 263. Hydrant-flow-test reports for hydrants 263 and 301 showed that both hydrants had been

tested in July 2012. When asked why his report regarding the fire did not include any information about which hydrants were used or why one particular hydrant was used over another hydrant, Smith replied:

> "That is not to be in the fire marshal report. That is in the -- the hydrant use and who determine[s] as to what hydrant they use is left up to the scene commander. When he pulls up, he determine[s] what hydrant he's going to use. Usually, when we go out and do an investigation, it is not all about the hydrant. What we're doing, we'll go into the scene and investigate the scene itself. So we don't really get into all the hydrant and everything."

Chief Iverson arrived on the scene after Smith. Iverson testified that he saw TFD firefighters using water from Engine 2; that they had a good flow rate; and that they were pumping at 150 pounds of water pressure.

Sgt. Clark testified that, at the time of the fire, he was a sergeant with TFD; that he was the driver of Engine 2; and that he, Bryant, and Hicks responded to the fire in Engine 2. Sgt. Clark testified that Engine 2 was the first engine to arrive on the scene and that, when they arrived, he secured his truck and reported to Lt. Brooks. He testified that Lt. Brooks told him to go and "catch a plug," which meant connect a hose to a hydrant and then pull the hose back down to the

house that was on fire. Sgt. Clark testified that he connected to fire hydrant 301 at Laslie Street; that he opened up the hydrant to make sure he had water coming out; that the hydrant had pressure on it; that water came out; and that he connected a three-inch hose to the hydrant. Sgt. Clark testified that he then went back, connected the other end of the hose to Engine 2, and then went back to the hydrant to turn on the water. Sgt. Clark testified that Engine 2 had a 1,000-gallon water tank and that the tank was full when Engine 2 arrived at the scene of the fire. He also testified that his goals, when he turned on the water, were to have the water go into and supply the reservoir of Engine 2 and then use the pumping system of Engine 2 to pump water on the fire. When asked how he knew that the hydrant was supplying the appropriate amount of water pressure to Engine 2, Sgt. Clark said that there were gauges on the truck. When asked about what would happen if the tank on the engine was full when the water was turned on, Sgt. Clark said that there was an overflow valve and the overflow water would run onto the ground. When asked how the system worked and if the line

connected to the hydrant would refill water used from the tank, Sgt. Clark replied:

> "It keeps up with the truck, that's right. And once it gets full, filled back up, it'll run out on the ground."

Sgt. Clark testified that two one-and-three-quarter inch attack lines were pulled from Engine 2; that Lt. Brooks and Hicks were manning the attack lines; and that, at that point, he was manning Engine 2 to make sure all the gauges were working properly and that the water coming in was equal to or replenishing the water going out.

Sgt. Clark testified that, at some point a little further into the fire attack, Lt. Brooks instructed him to get the second attack line and instructed him and Hicks to go search a bedroom on the right side of the house that had a wheelchair-access ramp from the outside. Sgt. Clark testified that that was the only time he left the truck. He testified that he and Hicks entered the house with a hose so they could use it to spray water if any fire came up in the area they were entering. Sgt. Clark testified that they performed a search and that they did not find anyone. At that time, they were pulled out by Bryant, who was at the door and helping

pull the hose. Sgt. Clark said that Bryant said: "Y'all need to come out of here. This roof is fixing to go." Sgt. Clark said that they came out and, shortly thereafter, "bang." He also said that, after coming out of the house, he was sent back to Engine 2 to check his gauges and to make sure everything was up and running well; that he continued to man the truck; and that everything was working fine.

Sgt. Clark testified that, at some point, the Macedonia fire department caused a "water hammer"; that the Macedonia fire department must have turned the water on at the hydrant too fast; that the water hammer blew up the water main supplying the hydrants; and that, when the water main blew, it decreased the water pressure, and he was not getting enough water into Engine 2 to fight the fire. Subsequently, the VA Fire Department and the Shorter Fire Department each supplied Engine 2 with water from their fire trucks. He further testified that they started using Engine 1 to go get water, bring it back, and supply water into Engine 2.

Hicks testified that, when Engine 2 arrived on the scene, he was instructed to pull the attack line from Engine 2. He testified that he pulled the line and stretched the hose, but

he did not have the nozzle. He testified that he had the line waiting on Sgt. Clark to supply them with water; that it was about 30 to 45 seconds before they had water; and that, once a line is charged up, you can feel the water and know that it is ready to go. Hicks testified that, as he was stretching the hose, a woman notified them that someone was inside the house. Hicks said that he and Lt. Brooks advanced the line into the house to search for the woman and that they went into the first room on the right, which was where Lt. Brooks was told that the woman would be located. Hicks testified that he and Lt. Brooks searched that room with a right-hand search pattern; that they did not find anyone; and that they pulled back out after searching that room completely. Hicks testified that there was not any fire in that part of the house at that time. Hicks testified that he then helped Lt. Brooks and Sgt. Levett go back in because they had been told that the woman might be in another room or area of the house. He testified that he helped pull the line inside while Lt. Brooks and Sgt. Levett went to the other room where they were told the woman might be found. However, Lt. Brooks and Sgt. Levett were not able to locate anyone.

Hicks testified that he did not tell Lt. Brooks and Sgt. Levett to back out of the house. He further testified:

> "I'm not even positive when they came out because Bryant, Robert Bryant, he -- he and Clark -- Robert Bryant made a -- I guess the same lady, I'm not sure, but anyway, it was a side room on the -- on the house where he was told she's usually in there, also, so he gains entrance in that room because it had burglar doors on it, and he gained entrance, and I was pulled to assist Clark with the nozzle into that room and search and rescue."

Hicks testified that he and Sgt. Clark went in and searched the side-room area, but they did not find anyone. When asked if they were attacking fire with water when they were in that side room, Hicks replied:

> "After -- after we searched the room, we were about finished -- yea, we were. We were finished or about finished or -- we were actually on our way out, actually. Okay. Yes. We were on our way out, and I happened to look back because I saw a glow, which was fire coming into the room, in the door, from behind the door, and I notified Clark to turn around and start attacking the fire."

Hicks testified that the door behind which he saw the fire was not a door that he had gone through; that either he or Sgt. Clark had pushed the door open and looked into the kitchen area; that that was where the fire was coming from; and that they could not go into the kitchen because the fire was in there. Hicks testified that he told Sgt. Clark to put some

water on that area and that Sgt. Clark did so. However, shortly thereafter, Bryant gave them the order to pull out and told them that he could see that the roof was weakening in that area of the house.

Nyasha testified that she first heard about the fire around 4:30 p.m.; that her cousin telephoned her; that she got dressed and went to her mother's house; and that, when she arrived, the fire was "[f]ull on, ablaze." She testified that firefighters, law-enforcement officers, emergency personnel, and other family members were already on the scene when she arrived. Nyasha testified that she got out of her vehicle at the intermediate school and saw water hoses running from the school. After she arrived, Nyasha was standing across the street from Yvonne's residence. Nyasha testified that she "saw water coming out of the hose equivalent to that of a garden hose." However, she testified that she did not know why the water pressure was low and that she would imagine water pressure would be pretty low if the firefighters were getting the water from that far away from the fire. She testified that, when she saw that the water pressure was low, she did not know if there was just no pressure or if the truck

was running out of water at that time. Nyasha testified that she was told that all of the fire hydrants on South Main Street were "dummy" hydrants; that TFD had arrived with no water in its truck; and that the water pressure was inadequate. However, she could not identify the person who told her those things and said that it was "just information that I heard."

Nyasha testified that her cousin and aunts had arrived before she did and were on the scene while the house was smoldering; that, by smoldering, she meant that they were seeing smoke, but no fire, on the outside of the house; that she was told that the house smoldered for a long time; and that, by the time she arrived, the house was burning. When asked about what else her family told her, Nyasha replied:

> "They were trying -- Well, my aunt and the mayor actually pulled up at the same time, and they were trying to get close to the house first to get in, but that, you know, they wouldn't allow that. And they were just trying to direct the firefighters which, where to go, where she would be, and tried to direct them to the garage. It wasn't a lot telling them to go there to open that and try to go in that way, and just giving them different ways of, of letting them know where her room was and all of that to try to locate her."

She further testified that she was told that Sgt. Clark had tried to go inside and save Yvonne; that her family saw Sgt. Clark going inside; and that she was told that other firefighters had tried to go inside and locate Yvonne.

Nyasha testified that, more than likely, after her mother ate, she would have returned to her room to watch television and would have probably lain down. Nyasha testified that she was told that her mother was found in the kitchen. When asked if she had any idea what her mother was doing in the kitchen or how she got there, the following occurred:

> "[Nyasha:] Well, when my cousin got there, she was actually on one side of the house --
>
> "....
>
> "[Nyasha:] -- that's close to her neighbor, Mr. Cox, beating on the window trying to get help. And so I'm assuming that she headed out that way and was headed to the back door leading to the garage to try to get out, and got turned around, and ended up in the kitchen, because the back door and the kitchen were really close. So I could see her trying to get out that back door, but with all the smoke, she couldn't find the door and went the wrong way."

Nyasha testified that, her cousin was the first one to find the house burning; that her cousin said that her mother was at that window on that side; that her cousin heard Yvonne knocking on the window and trying to get help; and that her

mother was calling, knocking, and trying to get someone to come help her.

Yvonne's body was recovered in the remains of the house the following morning of December 28, 2012. Yvonne was lying on her back in front of the stove. An autopsy determined that Yvonne died from smoke inhalation and thermal burns. It was determined that the fire originated in the kitchen. However, the cause of the fire could not be determined.

Nyasha, Bascomb, who was at the scene, and fire personnel who responded to the fire testified that they did not hear smoke detectors going off inside the house during the fire. Lt. Brooks's report on the fire included a section regarding the "presence of detectors" and included three options -- none present, present, and undetermined. The box for undetermined was checked.

Smith's fire investigation report included information that had been provided by Willie Cox, one of Yvonne's neighbors. Cox stated that he had been in his backyard around 4:00 p.m.; that he had telephoned emergency 911 and reported the fire; that he had seen smoke coming from the roof, but did not know if anyone was home at the time; that a man who was

driving by stopped and asked if anyone was inside the house; that he told the man he did not know; that he and the man then heard something bumping inside the house; that the man ran to the front door twice and tried to get in, but he could not; that the man took one of Cox's chairs and threw it into the front side window of the house; that he gave the man a 2x2 wood board; that the man knocked out the window; that smoke came out; and that the fire department then arrived at the house.

There was nothing in Cox's statement about hearing smoke detectors going off inside the house. Additionally, Smith testified that he did not find any remnants of any device that appeared to be a smoke detector or fire alarm in the remains of the house. Subsequently, the following occurred:

> "[Counsel for the Plaintiff:] And did you find any indication that the structure itself was wired, hardwired to accommodate smoke detectors or smoke alarms?
>
> "[Smith:] No, sir. It was burned too much to even -- even to determine that, because the structure burnt completely up. So that was going to be hard to find."

Smith agreed that it was part of his job as the fire marshal to sift through the debris and to look for clues after a fire.

In looking for those clues in this case, he did not find any evidence of any smoke detector or fire alarm.

On March 27, 2013, Nyasha sent a notice of claim to the City by certified mail. On January 10, 2014, Nyasha, as the administrator of Yvonne's estate, filed a complaint against Bascomb, the City, and various fictitiously named defendants. Nyasha alleged negligence, recklessness, and wantonness against the City. She also asserted various claims against Bascomb.[3] On February 6, 2014, the City filed its answer to the complaint.

On October 5, 2017, Nyasha filed her first amended complaint in which she alleged negligence (including negligent inspection), recklessness, and wantonness claims against the City. In the negligence count against the City, Nyasha alleged:

> "50. On or about December 27, 2012, Plaintiff[']s decedent was caused to be injured resulting in her death as described above while a resident at the subject property located at 804 South Main Street, Tuskegee, Alabama.

[3]According to the City, Nyasha has settled her claims against Bascomb, and Bascomb has been dismissed from the action.

> "51. The Defendant City of Tuskegee, Alabama and/or one or more of the fictitious party defendants listed and described hereinabove, were negligent in providing fire hydrant and/or water pressure which caused and/or contributed to cause the death of the Plaintiff[']s decedent.
>
> "52. On or before the date of the occurrence made the basis of this lawsuit, the Defendant City of Tuskegee, Alabama and one or more of the fictitious party defendants listed and described hereinabove, were guilty of negligent and/or wanton conduct and said negligent, wanton or wrongful conduct of said Defendants was a proximate cause of Plaintiff's decedent's death.
>
> "53. Defendant City of Tuskegee failed to properly inspect the residence located at 804 South Main Street, Tuskegee, Alabama to ensure that it was equipped with proper fire detection and fire alarm systems to warn its inhabitants or residents of the presence of smoke and/or fire in violation of good municipal practices in the approval of utilities and in violation of the residential building codes application to 804 South Main Street as adopted and amended by the Southern Building Code, the National Building Codes and Tuskegee Ordinances."

On October 11, 2017, the City filed its answer to the first amended complaint. In its affirmative defenses, the City asserted, in part, that it was entitled to immunity and substantive immunity. It further asserted that its actions were not the proximate cause of the plaintiff's alleged damage and that it could not be liable for wantonness.

Subsequently, the City filed a motion for a summary judgment. In its summary-judgment motion, the City argued that it was entitled to substantive immunity from Nyasha's negligent-inspection claim. It also argued that Nyasha failed to allege her negligent-inspection claim in the notice of claim she filed with the City. The City further argued that there was "no evidence that the City was negligent in providing fire hydrant and/or water pressure that proximately caused or contributed to the decedent's death." It went on to allege:

> "The City cannot be held liable for the failure of water pressure in the hydrants caused by the acts of Macedonia Fire Department, which had no effect on firefighting efforts. Additionally, a defect in firefighting equipment is not a defect in the streets, public ways, etc. for which the City can be held liable under the provisions of Alabama Code [1975,] § 11-47-190. City of Mobile v. Havard, 280 Ala. 532, 268 So. 2d 805 (1972) (a municipality is governmentally immune from suits arising out of maintenance or operation of fire-fighting equipment). Plaintiff has likewise failed to identify any specific act of any agent of the City which would allow liability against the City under the statute. The City is entitled to immunity from Plaintiff's second theory of liability. Therefore, Plaintiff has failed to raise a theory upon which liability may lawfully attach to the City for the death of the decedent."

The City further asserted that it could not be held liable for wantonness under § 11-47-190, Ala. Code 1975, and that, under § 6-11-26, Ala. Code 1975, it could not be held liable for punitive damages.

On August 12, 2018, Nyasha filed her opposition to the City's motion for a summary judgment. In her opposition, Nyasha argued that the City was not entitled to substantive immunity; that she properly alleged the negligent-inspection claim in the notice of claim; and that there was substantial evidence that the City was negligent. However, Nyasha did not oppose the City's motion for a summary judgment as to her wantonness claim.

On March 18, 2019, the trial court entered an order in which it granted the City's motion for a summary judgment in part and dismissed Nyasha's wantonness claim against the City but denied all other relief requested in the motion. The City petitioned this Court for a writ of mandamus requesting that this Court direct the trial court to vacate its order denying the City's motion for a summary judgment in part and to enter on order granting that motion on the grounds of substantive and municipal immunity.

Standard of Review

> "'"While the general rule is that the denial of a motion for summary judgment is not reviewable, the exception is that the denial of a motion for summary judgment grounded on a claim of immunity is reviewable by petition for writ of mandamus." Ex parte Rizk, 791 So. 2d 911, 912 (Ala. 2000). A writ of mandamus is an extraordinary remedy available only when there is: "(1) a clear legal right 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) the properly invoked jurisdiction of the court." Ex parte BOC Group, Inc., 823 So. 2d 1270, 1272 (Ala. 2001).'

"Ex parte Nall, 879 So. 2d 541, 543 (Ala. 2003). Also,

> "'whether review of the denial of a summary-judgment motion is by a petition for a writ of mandamus or by permissive appeal, the appellate court's standard of review remains the same. If there is a genuine issue as to any material fact on the question whether the movant is entitled to immunity, then the moving party is not entitled to a summary judgment. Rule 56, Ala. R. Civ. P. In determining whether there is a [genuine issue of] material fact on the question whether the movant is entitled to immunity, courts, both trial and appellate, must view the record in the light most favorable to the nonmoving party, accord the nonmoving party all reasonable favorable inferences from the evidence, and resolve all reasonable doubts against the moving party, considering only

> the evidence before the trial court at the time it denied the motion for a summary judgment. Ex parte Rizk, 791 So. 2d 911, 912 (Ala. 2000).'

"Ex parte Wood, 852 So. 2d 705, 708 (Ala. 2002).

> "'"When the movant makes a prima facie showing that there is no genuine issue of material fact, the burden shifts to the nonmovant to present substantial evidence creating such an issue. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989). Evidence is 'substantial' if it is 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.' Wright [v. Wright], 654 So. 2d [542,] 543 [(Ala. 1995)] (quoting West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989))."'

> "Wilson v. Manning, 880 So. 2d 1101, 1102 (Ala. 2003) (quoting Hobson v. American Cast Iron Pipe Co., 690 So. 2d 341, 344 (Ala. 1997))."

Ex parte City of Montgomery, 272 So. 3d 155, 159 (Ala. 2018).

Discussion

I.

First, the City argues that it is entitled to substantive immunity as to Nyasha's negligent-inspection claim. In Hilliard v. City of Huntsville, 585 So. 2d 889, 890-92 (Ala. 1991), this Court addressed the issue whether the City of

Huntsville was entitled to substantive immunity with regard to a claim that the it had negligently inspected the wiring in an apartment complex. Steve Wilson Hilliard and his family occupied an apartment in the complex. An electrical fire in the apartment complex killed Hilliard's wife and children just a month after Huntsville's inspection. Hilliard sued Huntsville, alleging negligence and/or wantonness and asserting a nuisance claim. Huntsville filed a motion to dismiss or, in the alternative, for judgment on the pleadings, and a motion for summary judgment. The trial court entered a judgment on the pleadings in favor Huntsville, and Hilliard appealed. In addressing the issue whether the trial court had erroneously entered a judgment on the pleading, this Court stated:

> "With regard to the negligence and/or wantonness claim, we recognize that before liability for negligence can be imposed upon a governmental entity, there must first be a breach of a legal duty owed by that entity. Shearer v. Town of Gulf Shores, 454 So. 2d 978 (Ala. 1984). In determining whether a claim is valid, the initial focus is upon the nature of the duty. Rich v. City of Mobile, 410 So. 2d 385 (Ala.1985). There must be either an underlying common law duty or a statutory duty of care with respect to the alleged tortious conduct."

585 So. 2d at 890. In discussing the history of municipal liability in Alabama, this Court stated:

> "[I]n 1975, this Court abolished the doctrine of municipal immunity in Jackson v. City of Florence, 320 So. 2d 68 (Ala. 1975). The abolition of sovereign immunity in Jackson did not create any new causes of action for activities that are inherently governmental in nature, but rather gave full effect to a municipal liability statute enacted by the legislature many years earlier. See § 1207, Ala. Code 1907. That statute, presently codified at § 11-47-190, Ala. Code 1975, provides, in part:
>
> > "'No city or town shall be liable for damages for injury done to or wrong suffered by any person or corporation, unless said 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 duty....'
>
> "The Court's ruling in Jackson eliminated the distinction between governmental and proprietary functions, making municipalities liable for negligent performance of a number of activities for which they had previously been immune, thus allowing 'the will of the legislature, so long ignored, [to] prevail.' 320 So. 2d at 74. The Jackson Court expressed the hope that the legislature would provide, through legislation, additional limitations and protections for governmental bodies.
>
> "However, instead of the legislature, it was this Court that next addressed the extent of a municipality's liability for damage resulting from its agent's negligent inspection or negligent failure to inspect; that was in Rich v. City of Mobile, [410 So. 2d 385 (Ala. 1985)]. The

allegations by the plaintiffs in Rich are virtually identical to the allegations by Hilliard in the present case. The Rich complaint alleged that city plumbing inspectors had failed to require the installation of proper materials; had failed to assure that no leaks existed; and had failed to require that the plumbing be installed according to the standard plumbing code. The plaintiffs alleged that the city had made three negligent preliminary inspections and had wholly failed to make a final inspection of the lines and connections. The plaintiffs attempted to characterize those actions as the breach of a duty to the individual homeowners, to which liability attaches.

"The Rich Court initially noted that cases from other jurisdictions considering the duty owed by municipal inspectors had resulted in two distinct lines of reasoning. The Court cited Coffey v. City of Milwaukee, 74 Wis. 2d 526, 247 N.W.2d 132 (1976), Adams v. State, 555 P.2d 235 (Alaska 1976), and Campbell v. City of Bellevue, 85 Wash. 2d 1, 530 P.2d 234 (1975), as cases in which municipalities had been held liable for negligently inspecting a building. Other jurisdictions had rejected municipal liability for negligent inspections. The Court cited Hoffert v. Owatonna Inn Towne Motel, Inc., 293 Minn. 220, 199 N.W.2d 158 (1972), Besserman v. Town of Paradise Valley, Inc., 116 Ariz. 471, 569 P.2d 1369 (Ariz. App. 1977), and Georges v. Tudor, 16 Wash. App. 407, 556 P.2d 564 (1976), for this latter proposition.

"In reaching its holding in Rich, the Court followed the latter line of above-noted cases and refused to hold that the duty imposed upon city plumbing inspectors was owed to individual homeowners. Consequently, the breach of such a duty, the Court held, would not support an action for damages. The Court ruled that substantive immunity applies to those public service activities of municipalities 'so laden with the public interest

as to outweigh the incidental duty to individual citizens.' Rich, 410 So. 2d at 387-88. The Court further opined that public policy considerations

> "'prevent the imposition of a legal duty, the breach of which imposes liability, in those narrow areas of governmental activities essential to the well-being of the governed, where the imposition of liability can be reasonably calculated to materially thwart the City's legitimate efforts to provide such public services.'

"Id. at 387.

"In the present case, Hilliard argues that the trial court erred in relying upon Rich because, he argues, that case was limited to facts identical to the facts of that case. Hilliard contends that the facts in this case do not fall within the ambit of the Rich holding. We disagree.

"The present case is precisely the type of case in which the substantive immunity rule applies. The city, like most municipalities, elects to perform electrical inspections as a benefit to itself and to the general public. While individuals receive a benefit from these inspections, that benefit is merely incidental to the benefit derived by the citizens in general. Although an individual driver benefits by the state's testing and licensing of drivers of motor vehicles, the state in so testing and licensing drivers does not guarantee to individual drivers that all licensed drivers are safe drivers. See Cracraft v. City of St. Louis Park, 279 N.W.2d 801 (Minn. 1975).

"In arguing that Rich is inapplicable to the present case, Hilliard attempts to draw a distinction between sewer inspections and electrical inspections, arguing that the sewer inspection in Rich involved a duty owed to the public at large and

that the inspection in the present case, because it was of the electrical system in one apartment building, was a duty owed to the individual apartment residents. However, this is a distinction without a difference. We find no merit in this argument. The purpose behind both inspections is the same: to ensure compliance with municipal codes.

"Hilliard cites several cases that he says indicate the reluctance of Alabama courts to apply the Rich holding. See Town of Leighton v. Johnson, 540 So. 2d 71 (Ala. Civ. App. 1989); City of Mobile v. Jackson, 474 So. 2d 644 (Ala. 1985); Williams v. City of Tuscumbia, 426 So. 2d 824 (Ala. 1983). However, each of these cases involved facts materially different from those of Rich and those of the present case. For instance, Hilliard cites Town of Leighton v. Johnson, supra, as showing the limits of Rich. However, in Johnson, the city created the defect that caused the injury by knocking a hole in a manhole cover and thereby allowing raw, untreated sewage to flow into a drainage ditch near the plaintiff's property. Alabama municipalities have long been held liable for damage[] caused by negligent operation and maintenance of sewers and drains under their control. See Sisco v. City of Huntsville, 220 Ala. 59, 124 So. 95 (Ala. 1929). Thus, in Johnson, the Court of Civil Appeals merely refused to hold that the substantive immunity rule changed the tort laws governing municipal operations.

"Clearly, the same policy considerations that prevailed in Rich are equally compelling in this case. Although inspections performed by the city's electrical inspectors are designed to protect the public by making sure that municipal standards are met, and although they are essential to the well-being of the governed, the electrical code, fire code, building code, and other ordinances and regulations to which Hilliard refers are not meant

> to be an insurance policy or a guarantee that each building in the city is in compliance. While Hilliard calls to our attention the inherent danger of electricity, it is precisely because of the dangerous nature of that element that immunity should be granted to a municipality that, although not required by law to do so, chooses to provide for the public health, safety, and general welfare of its citizenry through the regulation of this inherently dangerous element.
>
> "The fact that the law does not mandate that a municipality provide inspections in order to protect the lives and property of its residents tends to increase the probability that the imposition of tort liability in this area would serve only to destroy the municipality's motivation or financial ability to support this important service. For these reasons, the same public policy considerations that led to the substantive immunity rule of Rich necessitate its extension to the facts of this case. Therefore, while we sympathize with Hilliard's tragic loss, we are compelled to conclude that the trial court did not err in entering a judgment on the pleadings on Hilliard's claim of 'neglectful, careless, unskillful, negligent or wanton' inspection of the wiring at the apartment complex where he and his family resided."

585 So. 2d at 890-92.

In this case, the evidence established that the City required safety inspections of rental properties before utilities could be turned on at the property. The inspection form indicates that the City inspects multiple areas of the subject property and that it goes beyond merely checking to determine whether required smoke detectors are installed. As

was the case in Hilliard, although individual residents of the City derive a benefit from the inspections, the inspections are designed to protect the public by ensuring that municipal standards are met. Additionally, as in Hilliard,

> "[t]he fact that the law does not mandate that a municipality provide inspections in order to protect the lives and property of its residents tends to increase the probability that the imposition of tort liability in this area would serve only to destroy the municipality's motivation or financial ability to support this important service. For these reasons, the same public policy considerations that led to the substantive immunity rule of Rich necessitate its extension to the facts of this case."

585 So. 2d at 892. Thus, the City is entitled to substantive immunity as to Nyasha's claim that the City was negligent in inspecting the house before allowing utilities to be turned on at the house. Accordingly, the trial court erred when it denied the City's motion for a summary judgment as to Nyasha's negligent-inspection claim.

II.

Next, the City argues that it was entitled to municipal immunity as to Nyasha's claim that the City was "negligent in providing fire hydrant and/or water pressure" and that that

negligence "caused and/or contributed to cause the death of Plaintiff's decedent." Specifically, the City asserts:

> "[T]he City of Tuskegee is entitled to immunity from Plaintiff's claim, as there are no facts to remove this case from the immunity provided under Ala. Code § 11-47-190. Under the statute, a municipality shall be entitled to immunity unless a claim falls within one of the two enumerated exceptions, i.e., a defect in the streets, public ways, etc. for which the City had actual or constructive knowledge and which caused a plaintiff injury, or negligent or unskillful conduct by one of the City's agents for which the City may be liable. Ex parte City of Muscle Shoals, 257 So. 3d 850 (Ala. 2018)."[4]

Section 11-47-190, Ala. Code 1975, 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 after the same had been called to the attention of the council or other governing body or after the same had existed for such an unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the council or other governing body 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

[4]The City does not argue that it is entitled to substantive immunity as to this claim.

> person or corporation, then such person or corporation shall be liable to an action on the same account by the party so injured. However, no recovery may be had under any judgment or combination of judgments, whether direct or by way of indemnity under Section 11-47-24, or otherwise, arising out of a single occurrence, against a municipality, and/or any officer or officers, or employee or employees, or agents thereof, in excess of a total $100,000 per injured person up to a maximum of $300,000 per single occurrence, the limits set out in the provisions of Section 11-93-2 notwithstanding."

In Ex parte City of Muscle Shoals, 257 So. 3d 850 (Ala. 2018), Reginald Harden sued the City of Muscle Shoals based on injuries he sustained when he fell through a grate at a public park owned by Muscle Shoals. Muscle Shoals filed a motion for a summary judgment in which it sought dismissal of the claims against it based on the doctrine of municipal immunity recognized in § 11-47-190. The trial court denied the motion for a summary judgment, and Muscle Shoals petitioned this Court for a writ of mandamus directing the trial court to vacate its denial of Muscle Shoals' motion for a summary judgment and to enter a summary judgment for Muscle Shoals. After noting that Muscle Shoals had invoked immunity from suit pursuant to § 11-47-190, this Court stated:

> "'In a long line of cases, this Court has interpreted th[is] statute to limit

> municipality liability to two distinct classes. In the first classification, the municipality may be liable, under the doctrine of respondeat superior, for injuries resulting from the wrongful conduct of its agents or officers in the line of duty. In the second classification, the municipality may be liable for injuries resulting from its failure to remedy conditions created or allowed to exist on the streets, alleys, public ways, etc., by "a person or corporation not related in service to the municipality." Isbell v. City of Huntsville, 295 Ala. 380, 330 So. 2d 607, 609 (1976); City of Birmingham v. Carle, 191 Ala. 539, 542, 68 So. 22, 23 (1915). The municipality must have actual or constructive notice of the condition....'

"Ellison v. Town of Brookside, 481 So. 2d 890, 891-92 (Ala. 1985).

"For its part, [Muscle Shoals] contends that Harden failed to present substantial evidence that one of the two exceptions to municipal immunity from suit recognized in § 11-47-190 applies in this case. In other words, it contends that Harden failed to present substantial evidence that his injuries were the result of some 'neglect, carelessness, or unskillfulness' on the part of an agent, officer, or employee of [Muscle Shoals], or that [Muscle Shoals] had any notice of the allegedly defective condition of the grate before the accident occurred.

"Harden responds that he did not need to present such evidence because it is undisputed that [Muscle Shoals] had a duty to maintain in safe condition the grounds of Gattman Park, which is a City-owned park. He then argues that issues regarding breach of that duty, causation, and harm are questions for the jury and that summary judgment would be improper. For

this proposition Harden cites Sungas, Inc. v. Perry, 450 So. 2d 1085, 1089 (Ala. 1984), in which this Court stated that 'the existence vel non of a duty resting upon a defendant is a question of law for the trial judge.... On the other hand, questions regarding breach of that duty, contributory negligence, and proximate cause are ordinarily questions of fact for the jury.'[1] Harden therefore argues that the trial court properly denied [Muscle Shoals'] motion for a summary judgment because, he says, it had been established that [Muscle Shoals] owed a duty to Harden to keep the subject premises safe.

"There are at least two problems with this argument. First and fundamentally, doctrines of immunity shield a government from liability for its action or inaction, often irrespective of the duties it may possess. Consequently, even if [Muscle Shoals] had a duty to keep Gattman Park in a safe condition for invitees, that determination does not address the issue whether [Muscle Shoals] is immune from suit under § 11-47-190.

"Second, when an issue of fact implicating whether immunity applies in a given case is disputed, then the issue may be submitted to a jury. See, e.g., Ex parte Wood, 852 So. 2d 705, 708 (Ala. 2002) ('If there is a genuine issue as to any material fact on the question whether the movant is entitled to immunity, then the moving party is not entitled to a summary judgment. Rule 56, Ala. R. Civ. P.'). But 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). Thus, Harden's formulation of the summary-judgment process with regard to immunity is too simplistic.

> "'[W]here a plaintiff alleges a factual pattern that demonstrates "neglect, carelessness, or unskillfulness" the

> plaintiff has stated a cause of action under Ala. Code 1975, § 11-47-190. Whether the plaintiff's allegations state a cause of action and whether the plaintiff has presented substantial evidence creating a genuine issue of material fact can be evaluated by the trial court upon proper motion.'

"Franklin v. City of Huntsville, 670 So. 2d 848, 852 (Ala. 1995) (emphasis added). See also City of Bayou La Batre v. Robinson, 785 So. 2d 1128, 1131 (Ala. 2000) (observing that '[t]he allegations of Robinson's complaint relating to the improper use of a fax machine describe conduct that could constitute "neglect, carelessness or unskillfulness." Assuming Robinson can present substantial evidence to support this allegation, we must conclude that to allow his claim to proceed would not violate the municipality's immunity granted pursuant to § 11-47-190.' (emphasis added)).

"Franklin and Robinson illustrate that Harden is confused as to the elements necessary to qualify for one of the two exceptions to municipal immunity under § 11-47-190. In the face of a properly supported motion for a summary judgment invoking the immunity expressed in § 11-47-190 -- and Harden did not contend below nor does he assert in his response to [Muscle Shoals'] petition that [Muscle Shoals'] motion was deficient -- is incumbent upon the nonmovant to present substantial evidence of 'neglect, carelessness, or unskillfulness' by a municipal agent, officer, or employee, or to present substantial evidence that the municipality had actual or constructive notice of a defect and failed to remedy it and that such negligence or defect caused the plaintiff's injuries.

"_____

> "[1]The statement in Sungas that the existence of a duty is always a question of law for the Court was abrogated in Garner v. Covington Cty., 624 So. 2d 1346 (Ala. 1993). In Garner, we noted that this Court has stated that '"'[w]here the facts upon which the existence of a duty depends, are disputed, the factual dispute is for resolution by the jury.'"' Id. at 1349-50 (quoting Alabama Power Co. v. Brooks, 479 So. 2d 1169, 1175 (Ala. 1985), quoting in turn Alabama Power Co. v. Alexander, 370 So. 2d 252, 254 (Ala. 1979))."

257 So. 3d at 855-57.

In its motion for a summary judgment, the City presented evidence indicating that TFD tests the hydrants in the City annually, and that the testing starts around February and takes about three to four months. The City also presented evidence indicating that, when TFD arrived on the scene, the tanks on Engine 1 and Engine 2 were both full of water; that Engine 1 had a 750-gallon tank and Engine 2 had a 1,000-gallon tank; that Sgt. Clark hooked Engine 2 up to hydrant 301, which was capable of producing five hundred gallons of water per minute; and that he used the gauges on Engine 2 to monitor the water pressure. Additionally, the City presented testimony that the firefighters did not experience any problems with water pressure until the Macedonia fire department hooked its hose up to a hydrant south of the residence; that, when

Macedonia firefighters hooked up to that hydrant, they caused a "water hammer"; that the water hammer blew up the water main that supplied the fire hydrants, which caused a decrease in water pressure; that, at that point, fire trucks from the Shorter Fire Department and the VA Fire Department resupplied Engine 2 with water; that, after that, Engine 1 was used to go back and forth to get water and refill Engine 2; and that TFD was able to continuously fight the fire, even after the water-hammer issue. Additionally, the City presented evidence indicating that, at the time the water hammer occurred, TFD had already ceased rescue efforts because there were concerns about the roof collapsing; that TFD had stopped "attacking" the fire; and that TFD had already shifted to defensive mode to prevent the fire from spreading to other structures.

The City also presented evidence indicating that TFD firefighters entered the residence and made multiple attempts to locate Yvonne; that firefighters searched the areas where Yvonne's family members said she might be located; and that firefighters were not able to locate Yvonne before the fire became too involved for the firefighters to be inside the structure. Additionally, the evidence established that

Yvonne's body was found in the kitchen; that the kitchen appeared to be the hottest area of the fire; that it appeared that the fire started in the kitchen; that, when Hicks and Sgt. Clark were searching one of the rooms, they opened a door that led into the kitchen; that Hicks saw fire in the kitchen; that Hicks and Sgt. Clark were unable to enter the kitchen because of the fire; and that it was at that point Bryant instructed Hicks and Sgt. Clark to get out of the house because it appeared that the roof was about to collapse.

Based on the foregoing, the City presented evidence indicating that it had not been negligent in providing hydrant and/or water pressure to fight the fire at the residence; that any issues with the water pressure were caused by a third party and were not attributable to the City; and that any issues with the water pressure did not affect with the City's ability to fight the fire. The City also presented evidence indicating that the issue with the water pressure caused by the Macedonia Community Volunteer Fire Department did not proximately cause or contribute to Yvonne's death because the water-pressure issue occurred after rescue efforts had ceased and after the firefighters had entered defensive mode.

Finally, the City presented evidence indicating that firefighters entered the residence on multiple occasions to attempt to locate Yvonne but were unable to do so. Thus, the City presented a prima facie case that its actions were not negligent and that it was entitled to municipal immunity under § 11-47-190. Accordingly, the burden shifted to Nyasha to present substantial evidence that the City had been negligent in providing fire hydrant and/or water pressure and that that negligence caused and/or contributed to Yvonne's death. In her brief to this Court Nyasha argues:

> "Here, it is undisputed that Tuskegee Fire Department hooked up to the fire hydrants in front of Tuskegee Intermediary School, more than 1,300 feet from the residence. ... In describing the water pressure emitting from the hydrants close to the school, Nyasha said, 'I saw water coming out of the hose equivalent to that of a garden hose.' ... In using the hydrants in front of the Tuskegee Intermediary School, it is also undisputed that the Tuskegee Fire Department bypassed two, inoperable hydrants closer to the resident. ... Therefore, the City of Tuskegee breached its duty by failing to maintain, including the water supply thereto, of the two hydrants that were bypassed for the hydrants closest to Tuskegee Intermediary School."

Initially, Nyasha did not present any evidence to contradict the City's testimony that it tested the fire hydrants located in the City annually. Further, Nyasha cites

Smith's testimony to support her assertion that the TFD "bypassed two inoperable hydrants closer to" Yvonne's residence. However, on the page cited by Nyasha, Smith was testifying by looking at a map showing fire hydrants in that area. The map included one hydrant in blue, and Smith testified that that hydrant was not in place at the time of the fire. Smith was then asked about another hydrant, hydrant 262. Smith testified that that hydrant was in place at the time of the fire and that it was operational on that date. However, Smith testified that he did not know if it was used at the time of the fire. Thus, the testimony cited by Nyasha does not support her assertion. Also, on subsequent pages of his testimony, Smith testified that hydrant 263 was 1,128 feet from Nyasha's residence; that, as far as he knew, that hydrant was operational at the time of the fire; and that he did not know whether that hydrant had been used to fight the fire at Yvonne's house. Additionally, Nyasha did not present any evidence to establish that the City had attempted to connect to another hydrant that was inoperable.

Even if Nyasha had presented evidence indicating that there may have been a fire hydrant closer to Yvonne's

residence that was not operational, she did not present any evidence to contradict the City's testimony that TFD initially had adequate water pressure to fight the fire. She also did not present any evidence to contradict the City's evidence that the Macedonia fire department had caused the water hammer that resulted in the decrease in water pressure or the City's evidence indicating that the decrease in water pressure did not occur until after TFD had ceased its efforts to rescue Yvonne and had moved into defensive mode. She also did not present any evidence to contradict the City's evidence that other fire trucks resupplied Engine 2 with water; that TFD was able to continuously fight the fire; and that the decrease in water pressure caused by Macedonia did not affect TFD's ability to fight the fire.

Based on the foregoing, we conclude that Nyasha did not present substantial evidence to establish that the City negligently failed to provide hydrant and/or water pressure and that that negligence caused and/or contributed to Yvonne's death. As was the case in Ex parte City of Muscle Shoals, because Nyasha "failed to present substantial evidence in response to the City's property supported motion for a summary

judgment -- evidence indicating that one of the two exceptions to municipal immunity detailed in § 11-47-190 is implicated in this case -- we are forced to conclude that the trial court erred in denying the City's [summary-judgment] motion." 257 So. 3d at 858.

Conclusion

Based on the foregoing, the City is entitled to substantive immunity from Nyasha's negligent-inspection claim. Additionally, it is entitled to municipal immunity under § 11-47-190 from Nyasha's claim that the City was negligent in failing to provide adequate fire hydrant and/or water pressure. Therefore, we grant the City's petition for a writ of mandamus and direct the trial court to vacate the portion of its March 18, 2019, order denying the City's motion for a summary judgment as to those claims and to enter an order granting its motion for a summary judgment as to those claims.

PETITION GRANTED; WRIT ISSUED.

Bolin, Bryan, and Mendheim, JJ., concur.

Parker, C.J., and Shaw, Sellers, and Mitchell, JJ., concur in the result.

Stewart, J., dissents.