REL: January 29, 2021

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1190297

Randall C. Pruitt

v.

James D. Oliver

Appeal from Jefferson Circuit Court
(CV-14-903996)

MENDHEIM, Justice.

Randall C. Pruitt appeals from a summary judgment entered against him and in favor of James D. Oliver with respect to Pruitt's claims of

negligence and wantonness stemming from a collision between Oliver's car and Pruitt's wheelchair. We affirm in part, reverse in part, and remand.

I. Facts

Pruitt suffers from severe cerebral palsy and requires a motorized wheelchair to move around. At the time of the accident, Pruitt's wheelchair was equipped with a seat belt, two six-beam flashlights on the footrest, two flashing red bicycle lights on the back of his arm rests, some red reflectors on the back of the wheelchair, and an orange vest with reflective yellow tape that was draped over the back of the wheelchair. According to Amanda Brooks, a witness to the accident who submitted an affidavit, the reflective vest was "the same type vest police and street crews use while working on a roadway." The wheelchair was not equipped with a rearview mirror, a horn, brakes, or brake lights. The maximum speed of the motorized wheelchair was five miles per hour.

On the night of April 13, 2013, between 8:00 and 9:00 p.m., Pruitt was traveling home on a bus to his apartment after attending a Wednesday night meal at his church, a regular outing for him during the previous four years. According to Pruitt, it was a "pretty" night with no

precipitation of any kind. Pruitt was dropped off from the bus on Valley Avenue in Homewood. Pruitt's apartment was located on Palisades Boulevard, which is a four-lane road that intersects with Valley Avenue. There is a traffic light at the intersection of Valley Avenue and Palisades Boulevard. Two lanes of Palisades Boulevard go southbound and two lanes go northbound; there is a grassy median with planted trees that separates the southbound lanes from the northbound lanes. There are no sidewalks or shoulders on Palisades Boulevard; instead, there are curbs on the sides of each of the two-lane portions of the roadway. There are no crosswalks across Palisades Boulevard near Pruitt's apartment complex. Pruitt traveled down Valley Avenue and turned into the southbound left lane of Palisades Boulevard.[1] In that direction, Palisades Boulevard goes downhill. Pruitt was traveling down Palisades Boulevard, passing a tree planted in the median, and was coming close to the left-hand turn lane he would have entered to turn left into his apartment complex. Both Pruitt

[1]There is a dispute of fact as to whether Pruitt crossed the two northbound lanes of Palisades Boulevard and turned left from Valley Avenue onto Palisades Boulevard or whether he turned right from Valley Avenue into the southbound lanes on Palisades Boulevard.

and Oliver testified that Pruitt was traveling in the middle of the left lane, but Brooks testified that Pruitt had "moved over to the left side of Palisades Boulevard and hugged the curb to the best of his ability." Also according to Brooks, Pruitt's wheelchair was "very visible" because of the lights, the reflectors, and the reflective vest on the wheelchair and that "[t]here was also a streetlight in the area that helped visibility." Pruitt testified that, before he reached the turn for his apartment complex, a vehicle hit the back of his wheelchair, causing his wheelchair to be pushed forward and then to flip over. Pruitt stated that he was still strapped into the wheelchair by the seat belt after the accident.

Oliver testified that he was on his way to a date after work on the evening of the accident and that he was "[t]hree cars back" when he came to the intersection of Valley Avenue and Palisades Boulevard.[2] Specifically, he said, "[a] bus [and] a car" were in front of him. Oliver testified that he came to a complete stop at the intersection and then he

[2]In his brief, Oliver repeatedly cites the police report of the accident in support of his version of events, but the trial court granted Pruitt's motion to strike the police report from evidence.

performed a left-hand turn into the left southbound lane of Palisades Boulevard. Oliver further testified on cross-examination:

> "A. ... All I know is I was sitting at the light -- or sitting behind the vehicles and started moving forward, and I don't really remember if the bus turned right, the car turned right, and I went forward. I don't really remember. The bus could have turned left for all I know.
>
> "All I know is that when I came down the incline, hit the straight plane, and you go over a crest, there was a wheelchair below the crest of that hill, and I'm looking right at the back of it.
>
> "Q. Right.
>
> "A. So did I see [Pruitt] cross that road, no. Was he hidden from me, you darn right.
>
> "Q. When you say hidden, will you elaborate on that, like what --
>
> "A. The crest of the hill allows a slope --
>
> "Q. Oh, okay.
>
> "A. -- all right, and you're going down. You're straightening out, and you're going down, okay.
>
> "Q. Right.
>
> "A. Okay, so as you're going down, you're straightening up, it's almost like as if you're going up and then come back down.

"Q. Right.

"A. And the height of the wheelchair below the hill, you couldn't see it, let alone it's 8:00 at night, between 8 and 9, and it's not very well lit as far as lights.

"Q. Got you.

"A. Did I see him right off the bat, no. Did I hit him at thirty or forty miles an hour, why hell no. At least I did get to see him, and when I hit him in the back, the car hit him or I should say, I hit the wheelchair directly in the middle of my car, which says he was directly in the middle of that lane.

"Q. Right.

"A. And that's when his my bumper hit his -- the back of his chair.

"Q. Got you.

"A. And I don't know whether I should say, it appeared to be -- what would you call that, he had the protrusion outside of the back of his wheelchair, the trailer hitch -- trailer hitch off the back of his wheelchair. And I don't know what kind of a boat he pulls --

"Q. Yeah.

"A. -- but it hit me right in the middle of my bumper, and there was over two thousand bucks worth of damage on the bumper of my car. And because -- it intruded into the actual bumper, but it didn't get to the actual radiator, didn't get to the other interior of the car."

Brooks testified about the accident in her affidavit as follows:

> "On 04/19/2013, around 8:35 p.m., I witnessed a traffic accident from my driver side mirror that involved a Lexus and an electric wheelchair. The accident occurred on Palisades Blvd. right at the entrance of Sandpiper Apts. in the Homewood area of Birmingham. I had watched the man in the wheelchair as he crossed Valley Ave. after getting off the bus because of being worried about him. ... When the man in the wheelchair crossed Valley Ave., he moved over to the left side of Palisades Boulevard and hugged the curb to the best of his ability while attempting to turn into his apartment complex. Just before the crash, I saw the Lexus that hit him make a quick turn onto Palisades Blvd from Valley Ave. as if he were trying to beat a yellow light. He made the turn at a high rate of speed and hit the electric wheelchair from behind. The man in the chair was launched out of his seat and landed in the roadway. I could tell the chair had significant damage."

On September 23, 2014, Pruitt commenced this action against Oliver in the Jefferson Circuit Court, asserting claims of negligence and wantonness. On August 17, 2015, Oliver filed a summary-judgment motion. In the motion, Oliver contended that Pruitt's wheelchair was a "motor vehicle" as defined in § 32-1-1.1(33), a part of Alabama's motor-vehicle and traffic code, Title 32 of the Alabama Code of 1975, and, further, that Pruitt had violated provisions of the motor-vehicle and traffic code that require certain equipment on motor vehicles. Specifically,

Oliver noted that Pruitt's wheelchair lacked brakes, a horn that could be heard at a distance of 200 feet, a rearview mirror, lighted head lamps and tail lights that could be seen from a distance of 500 feet, head lamps that could be illuminated beginning a half hour after sunset, and a reflective triangle of a particular size and variety for slow-moving vehicles.[3] Oliver argued that, because Pruitt's wheelchair lacked the foregoing equipment, Pruitt was "contributorily negligent per se and, as a matter of law, should be barred from recovering on his [negligence] claim." In the alternative, Oliver argued that Pruitt "fits within the category of a pedestrian, [and Pruitt] was still in violation of the Rules of the Road." Specifically, Oliver contended that Pruitt had violated rules for crossing a street where there is no crosswalk because he had failed to yield the right-of-way to Oliver's car, he had failed to run his wheelchair "as near as practicable to the outside edge of a roadway," he had failed to "walk only on the left side of the roadway," and he had failed to "yield the right-of-way to all vehicles

[3]See Ala. Code 1975, §§ 32-5-212, -213, -214, -240(b)(1) & (c)(1), -240(a)(1)a., -246, and -247.

upon the roadway."[4] Oliver also contended that there was no evidence indicating that he had acted in a wanton fashion and that, therefore, he was also entitled to a summary judgment on Pruitt's wantonness claim.

On September 28, 2015, Pruitt filed a response in opposition to Oliver's summary-judgment motion. Pruitt argued that contributory negligence was not a defense available to Oliver because, Pruitt said, he had "acted exactly as a reasonable, prudent person would under the circumstances" given that there was no sidewalk on Palisades Boulevard. Pruitt also contended that there were issues of fact that precluded the entry of a summary judgment, including whether Oliver was subsequently negligent by failing to see Pruitt's wheelchair. Pruitt further contended that there was substantial evidence of Oliver's wanton conduct based on Brooks's account of the accident because she stated that Pruitt was clearly visible and that Oliver hit Pruitt's wheelchair while traveling at "a high rate of speed." Finally, Pruitt moved to strike the police report of the accident from Oliver's submissions of evidence in support of his motion.

[4]See Ala. Code 1975, §§ 32-5A-212, -215(b), -215(c), and -215(d).

The trial court twice set the case for trial but later continued both of those trial settings. On September 15, 2016, the trial court entered an order granting in part and denying in part Oliver's summary-judgment motion. Specifically, the trial court granted the summary-judgment motion with respect to Pruitt's wantonness claim because, it reasoned, "standing alone, Brooks's affidavit evidence is not sufficient to dispute whether there is clear and convincing evidence Oliver's conduct rose to the level of wantonness." The trial court denied the summary-judgment motion with respect to Pruitt's negligence claim because, it reasoned, certain statements in Brooks's affidavit -- that Pruitt's wheelchair "was very visible" and that Oliver made "a quick turn ... at a high rate of speed" -- constituted substantial evidence indicating that Oliver was possibly negligent. The trial court rejected Oliver's defense of contributory negligence because, it concluded, "[i]t is clear to this Court that motorized wheelchairs such as Pruitt's fall into the classification of 'electric personal assistive mobility device'[5] rather than 'motor vehicle' or 'pedestrian.' "

[5]See § 32-1-1.1(16), Ala. Code 1975. During the pendency of these proceedings, § 32-1-1.1 was amended twice. See Act No. 2018-286, Ala.

Accordingly, the trial court reasoned, the applicable rules of the road regarding the operation of Pruitt's wheelchair are located in § 32-19-1, Ala. Code 1975, and Oliver did not show that Pruitt had violated any of the requirements of that Code section. Finally, the trial court granted Pruitt's motion to strike the police report of the accident.

Subsequently, the trial court set the case for a trial to be held on February 27, 2017. On February 22, 2017, Oliver filed a "motion to reconsider" the trial court's denial of his summary-judgment motion with respect to Pruitt's negligence claim. In that motion, Oliver contended that the trial court had erred in concluding that Pruitt's motorized wheelchair was an "electric personal assistive mobility device" because, Oliver asserted, that term was only "intended to address use of devices commonly

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Acts 2018, effective June 1, 2018, and Act No. 2019-437, Ala. Acts 2019, effective September 1, 2019. As part of the 2019 amendments, the definition of "electronic personal assistive mobility device" was moved from § 32-1-1.1(15.1) to § 32-1-1.1(16), with some minor changes, but he definition remained substantially the same. Unless otherwise noted, see note 12, infra, the other defined terms from § 32-1-1.1 discussed in this opinion were renumbered as a result of the 2018 and 2019 amendments to § 32-1-1.1, but the definitions remained unchanged. For the sake of simplicity, we cite the current version of § 32-1-1.1 in this opinion.

referred to as Segways." Oliver further argued that the definition of "pedestrian" in a specific section of the United States Code as well as "persuasive authority" from other jurisdictions support the proposition that Pruitt "is properly categorized as a pedestrian." Oliver reasoned that, because Pruitt was a pedestrian, Pruitt was clearly contributorily negligent per se; Oliver specifically asserted that, if Pruitt had been traveling in the right lane of the northbound lanes of Palisades Boulevard, as Oliver contends would have been required of a pedestrian, see § 32-5A-215(c), Ala. Code 1975, there would have been no way Oliver could have collided with Pruitt's wheelchair.

On March 20, 2017, Pruitt filed a response to Oliver's motion to reconsider in which Pruitt argued that he cannot conceivably fit within the definition of a "pedestrian" in § 32-1-1.1(42) because the definition is simply "[a]ny person afoot" and he obviously does not travel on foot. The trial court then continued the case and asked for further briefing from the parties on the subject of the proper classification for Pruitt or his wheelchair.

On April 7, 2017, Oliver filed a supplemental brief in which he reiterated his previous positions (a) that Pruitt's wheelchair did not fit the definition of an "electric personal assistive mobility device"; (b) that Pruitt should be classified as a "pedestrian" based on persuasive authority and that, therefore, Pruitt was contributorily negligent per se; and (c) that, even if Pruitt's wheelchair was classified as a "motor vehicle" under § 32-1-1.1(33), the wheelchair did not have several safety features required by the motor-vehicle and traffic code that could have prevented the accident and, therefore, Pruitt was still contributorily negligent per se. Oliver also reiterated that the evidence was insufficient to support forwarding the issue of his alleged subsequent negligence to a jury.

On April 21, 2017, Pruitt filed a responsive supplemental brief. In that filing, Pruitt contended that Oliver had failed to demonstrate that Pruitt or his wheelchair fit within any of the mentioned statutory classifications, i.e., "pedestrian," "motor vehicle," or "electric personal assistive mobility device," and that, therefore, Pruitt could not be held to be contributorily negligent for violating the rules of the road applicable to any of those classifications. Pruitt "concede[d] that, if any classification

applies, Mr. Pruitt and/or his wheelchair would be considered a pedestrian" but that, even if he could be considered a "pedestrian," there existed, at a minimum, a jury question as to whether he could have practically complied with the statutory requirements applicable to a pedestrian in this instance. Finally, Pruitt reiterated that he believed substantial evidence existed regarding the issue of Oliver's alleged subsequent negligence so as to allow that issue to be forwarded to the jury.

On October 2, 2019, the trial court entered an order granting Oliver's summary-judgment motion with respect to Pruitt's negligence claim. Concerning the question of how to classify Pruitt or his wheelchair, the trial court reasoned and concluded as follows:

> "Alabama law surrounding the classification issue in this case is vague, and even intense application of statutory construction principles results in unclear results. The argument that 'electronic personal assistive mobility devices' is only intended to apply to Segways is compelling given the close timeframes and nearly identical statutory language in multiple jurisdictions. Furthermore, the definition does require the device be 'two-wheeled,' which Pruitt's wheelchair undisputedly is not. Motorized wheelchairs are inherently 'electronic personal assistive mobility devices' and jurisdictions

such as Washington or Minnesota classify them statutorily as such.

"While a motorized wheelchair would meet the definition of a 'motor vehicle' on its face, this classification makes the least amount of sense given the numerous onerous safety requirements that would then apply to motorized wheelchairs and the impossibility of these vehicles operating at required minimum speeds on public roadways. Opening the roadways to the free use of motorized wheelchairs operating as equals of automobiles would be an absurd result of this construction. Though it may defy 'common sense for the legislature to have carved out an infinitely narrow exception in the law solely for Segways, while excluding motorized wheelchairs,' it does appear that the Alabama Legislature has done so here.

"Both Pruitt and Oliver appear open to categorizing Pruitt as a pedestrian. However, on its face the statutory definition would not literally apply to Pruitt[:] riding in his motorized wheelchair is not, literally, a 'person afoot'; rather, he is a 'person moving'. But clearly, each is simply trying to get from one spot to another spot, but by different means. Though definitionally a person in a motorized wheelchair is not 'afoot,' the Court believes it reasonable here to expand the Alabama definition of 'pedestrian' to include motorized wheelchairs as a reasonable equivalent to a person physically 'afoot.' This classification makes the most sense given persuasive federal law, the law of many other jurisdictions, and the MUTCD [Manual on Uniform Traffic-Control Devices for Streets and Highways].

"Therefore, the Court, upon RECONSIDERATION, now CONCLUDES that in its ORDER ON SUMMARY judgment ... it INCORRECTLY classified PRUlTT's motorized wheelchair as an electronic personal assistive mobility device under

> § 32-1-1.1([16]), and as such, the Court's application of § 32-19-1 was also wrong. The Court now DETERMINES as a matter of law that on the night of April 19, 2013, when PRUITT was undisputedly riding in his motorized wheelchair in the middle of the left lane of Palisades Boulevard, a dedicated, public roadway, he was a 'pedestrian' as by § 32-1-1.1([42]), and therefore bound by related statutes."

After classifying Pruitt as a "pedestrian" under § 32-1-1.1(42) of the Alabama motor-vehicle and traffic code, the trial court then concluded that Pruitt was contributorily negligent per se because, it determined, the accident would not have occurred if Pruitt had been traveling in a northbound lane of Palisades Boulevard, as a pedestrian would have been required to do, rather than in a southbound lane. In reaching that conclusion, the trial court rejected Pruitt's contention that he could not have reasonably complied with the rules of the road for pedestrians. Finally, the trial court concluded that "the undisputed evidence is insufficient to support a finding that [Oliver] is liable for subsequent negligence." Because the trial court had concluded in its previous summary-judgment order that there was not substantial evidence supporting Pruitt's wantonness claim, the trial court entered a final judgment in favor of Oliver.

On October 30, 2019, Pruitt filed a postjudgment motion seeking to alter, amend, or vacate the trial court's October 2, 2019, judgment. The trial court denied that motion on December 3, 2019. Pruitt filed a timely appeal.

II. Standard of Review

> "This Court reviews a summary judgment de novo, 'apply[ing] the same standard of review as the trial court.' Slay v. Keller Indus., Inc., 823 So. 2d 623, 624 (Ala. 2001). 'In order to enter a summary judgment, the trial court must determine: 1) that there is no genuine issue of material fact, and 2) that the moving party is entitled to a judgment as a matter of law.' Williams v. Ditto, 601 So. 2d 482, 484 (Ala. 1992). This Court must view the evidence in the light most favorable to, and draw all reasonable inferences in favor of, the nonmoving party. Nationwide Prop. & Cas. Ins. Co. v. DPF Architects, P.C., 792 So. 2d 369, 372 (Ala. 2001)."

Gustin v. Vulcan Termite & Pest Control, Inc., [Ms. 1190255, Oct. 30, 2020] ___ So. 3d ___, ___ (Ala. 2020).

III. Analysis

Pruitt appeals both the trial court's summary judgment in favor of Oliver on Pruitt's negligence claim in the October 2, 2020, order, and the trial court's summary judgment in favor of Oliver on Pruitt's wantonness claim in the September 15, 2016, order. We will first address the

negligence claim. We begin by observing that Oliver never contested that an issue of fact existed with respect to whether he was negligent in hitting Pruitt's wheelchair with his car. Instead, Oliver contended, and the trial court ultimately concluded, that Pruitt was contributorily negligent per se, i.e., as a matter of law. That conclusion depends upon the proper legal classification of Pruitt or his motorized wheelchair.

A. The Proper Legal Classification of Pruitt or His Wheelchair

As we recounted in the rendition of the facts, the parties and the trial court examined whether Pruitt or his motorized wheelchair should be classified under § 32-1-1.1 of Alabama's motor-vehicle and traffic code as a "pedestrian," a "motor vehicle," or an "electric personal assistive mobility device." We begin by setting forth the definitions of the pertinent terms.

> "The following words and phrases when used in this title [i.e., Title 32, Ala. Code 1975], for the purpose of this title, shall have meanings respectively ascribed to them in this section, except when the context otherwise requires:
>
> "....
>
> "(16) Electric Personal Assistive Mobility Device. A self-balancing, two non-tandem wheeled device designed to

> transport only one person with an electric propulsion system with an average power of 750 watts (1 h.p.), that has a maximum speed on a paved level surface, when powered solely by such a propulsion system while ridden by an operator who weighs not more than 170 pounds, of less than 20 m.p.h. The term shall not include a motorized bicycle, motorized scooter, or motorized skateboard.
>
> "....
>
> "(33) Motor Vehicle. Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except for electric personal assistive mobility devices.
>
> "....
>
> "(42) Pedestrian. Any person afoot.
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> "....
>
> "(86) Vehicle. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks or electric personal assistive mobility devices; provided, that for the purposes of this title, a bicycle or a ridden animal shall be deemed a vehicle, except those provisions of this title, which by their very nature can have no application."

§ 32-1-1.1.

The trial court found that classifying Pruitt in his motorized wheelchair as a "pedestrian" "makes the most sense given persuasive

federal law, the law of many other jurisdictions, and the MUTCD [Manual on Uniform Traffic-Control Devices for Streets and Highways]." In so concluding, the trial court seemingly found some merit in Oliver's argument that wheelchairs have effectively been included in the definition of a "pedestrian" through the Manual on Uniform Traffic-Control Devices for Streets and Highways ("the MUTCD"). Oliver explains that Alabama's motor-vehicle and traffic code provides for the adoption of a manual that correlates with and conforms to the MUTCD:

> "(a) The Department of Transportation is authorized to classify, designate, and mark both interstate and intrastate highways lying within the boundaries of this state.
>
> "(b) The Department of Transportation shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this chapter [i.e., the Alabama Rules of the Road Act, §§ 32-5A-1 et seq., Ala. Code 1975] and other state laws for use upon highways within this state. Such uniform system shall correlate with and so far as possible conform to the system set forth in the most recent edition of the Manual on Uniform Traffic-Control Devices for Streets and Highways and other standards issued or endorsed by the federal highway administrator.
>
> "(c) No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction

> of the Department of Transportation except by the latter's permission."

§ 32-5A-30, Ala. Code 1975. Oliver contends that "the City of Birmingham has enacted ordinances to regulate traffic on roadways within its city limits, including adoption of the MUTCD. See Birmingham City Code § 10-7-1, et seq." Oliver's brief, pp. 8-9. Oliver then notes that the MUTCD contains a definition of "pedestrian" that includes a person in a wheelchair.

> "03 The following words and phrases, when used in this Manual, shall have the following meanings:
>
> "....
>
> "138. Pedestrian -- a person on foot, in a wheelchair, on skates, or on a skateboard."

MUTCD § 1A.13.03(138).

The problem with Oliver's citation to the MUTCD, as Pruitt observes, is that it applies in Alabama only with respect to signs and traffic-control devices. The Commentary to § 32-5A-30 explains that the MUTCD is "the national standard for uniformity among traffic-control devices." On appeal, Oliver's argument with respect to the General Code

of Birmingham and the MUTCD is very general, but in the trial court Oliver cited the General Code of Birmingham, §10-7-2, for his assertion that the city of Birmingham had "adopted" the MUTCD. That section provides:

> "All traffic control signs, signals and devices shall conform to the manual and specifications approved by the department of public safety or resolution adopted by the council. All signs and signals required under this title for a particular purpose shall, so far as practicable, be uniform as to type and location throughout the city. All traffic control devices so erected and not inconsistent with the provisions of state law or this title shall be official traffic control devices."

That section clearly speaks only to traffic-control devices; it says nothing about adopting the general definitions provided in the MUTCD.[6] Therefore, we find the MUTCD to be irrelevant to the proper classification of Pruitt or his motorized wheelchair.

In further support of classifying Pruitt as a "pedestrian," Oliver cites -- and the trial court apparently found persuasive -- a portion of the United States Code. Specifically, 23 U.S.C. § 217(j) provides:

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[6]No party explains whether the Birmingham General Code is, in fact, applicable to the roads in Homewood, where the accident occurred.

> "(j) Definitions. -- In this section, the following definitions apply:
>
> "....
>
> "(3) Pedestrian. -- The term 'pedestrian' means any person traveling by foot and any mobility-impaired person using a wheelchair.
>
> "(4) Wheelchair. -- The term 'wheelchair' means a mobility aid, usable indoors, and designed for and used by individuals with mobility impairments, whether operated manually or motorized."

However, the definition of "pedestrian" in 23 U.S.C. § 217(j) is part of the Transportation Equity Act for the 21st Century enacted in 1998. It is not a universal definition of "pedestrian" used in the United States Code, and there is no contention it has been adopted in Alabama.

As we previously noted, the trial court also mentioned that many other states define the term "pedestrian" in their motor-vehicle codes to include persons in wheelchairs. Indeed, a survey of other jurisdictions reveals that, currently, the vast majority of states categorize persons in

wheelchairs as pedestrians.[7] In contrast, currently only a handful of states define the term "pedestrian" in their motor-vehicles codes in a manner identical or nearly identical to Alabama's definition of "any person afoot" without addressing wheelchairs.[8] Still other states have chosen to

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[7]States that categorize persons in wheelchairs as pedestrians include: Arizona (Ariz. Rev. Stat. Ann. § 28-101(51)), California (Cal. Veh. Code § 467(b)), Colorado (Colo. Rev. Stat. § 42-1-102(68)), Hawaii (Haw. Rev. Stat. § 291C-1), Idaho (Idaho Code § 49-117), Illinois (625 Ill. Comp. Stat. 5/11-1004.1), Kansas (Kan. Stat. Ann. § 8-1446), Kentucky (Ky. Rev. Stat. Ann. § 189.010), Louisiana (La. Stat. Ann. § 32:1), Maine (Me. Stat. tit. 29-A, § 101), Maryland (Md. Code Ann., Transp. § 21-501.1), Michigan (Mich. Comp. Laws § 257.39), Minnesota (Minn. Stat. § 169.011), Mississippi (Miss. Code. Ann. § 63-3-121), Montana (Mont. Code Ann. § 61-8-501), Nevada (Nev. Rev. Stat. § 484A.165), New York (N.Y. Veh. & Traf. Law § 130), North Carolina (N.C. Gen. Stat. § 20-175.5), Ohio (Ohio Rev. Code Ann. § 4511.491), Oklahoma (Okla. Stat. tit. 47, § 11-501.1), Oregon (Oregon Rev. Stat. § 801.385), Pennsylvania (75 Pa. Cons. Stat. § 102), Tennessee (Tenn. Code Ann. § 55-8-101), Texas (Tex. Transp. Code Ann. § 552A.0101(b)), Utah (Utah Code Ann. § 41-6a-102), Vermont (Vt. Stat. Ann. tit. 23, § 4), Washington (Wash. Rev. Code § 47.04.010), West Virginia (West Va. Code § 17C-1-30), Wisconsin (Wis. Stat. § 340.01), and Wyoming (Wyo. Stat. Ann. § 31-5-102).

[8]States that define "pedestrian" in a manner identical or similar to Alabama and do not appear to categorize wheelchairs in any way include: Alaska (Alaska Admin. Code tit. 13, § 40.010), Arkansas (Ark. Code Ann. § 27-49-114), Georgia (Ga. Code Ann. § 40-6-96), Iowa (Iowa Code § 321.1), Nebraska (Neb. Rev. Stat. § 39-101), New Mexico (N.M. Stat. Ann. § 66-1-4.14), and South Dakota (S.D. Codified Laws § 32-27-1.1).

separately categorize motorized wheelchairs.[9] Finally, some states have not categorized persons in wheelchairs as "pedestrians," but they have expressly excluded motorized wheelchairs from the categories of "vehicles" or "motor vehicles."[10]

Although the vast majority of states include a person in a wheelchair within their definitions of "pedestrian," we find that the foregoing survey of other states' laws counsels a conclusion opposite of that reached by the trial court. That is, the fact that several states have specifically incorporated a person in a wheelchair into their definitions of "pedestrian" while other states have not done so indicates deliberate choices in defining the term. Indeed, it would seem that one reason numerous states have

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[9]States that separately categorize motorized wheelchairs include: Delaware (Del. Code Ann. tit. 21, § 101), Florida (Fla. Stat. § 316.1303(2)), Missouri (Mo. Rev. Stat. § 304.034), New Jersey (N.J. Stat. Ann. § 39:1-1), Rhode Island (31 R.I. Gen. Laws § 31-18-20.1), and Virginia (Va. Code Ann. §§ 46.2-100 and 46.2-677).

[10]States that have expressly excluded motorized wheelchairs from their categories of "vehicles" or "motor vehicles" include: Connecticut (Conn. Gen. Stat. § 14-1(59)), Indiana (Ind. Code § 9-13-2-196), Massachusetts (Mass. Gen. Laws ch. 90, § 1), North Dakota (N.D. Cent. Code § 39-06.2-02), and South Carolina (S.C. Code Ann. § 56-1-2030(18)). New Hampshire categorizes motorized wheelchairs as "vehicles" that do not require a certificate of title (N.H. Rev. Stat. Ann. § 261:3).

deemed it necessary to expressly incorporate a person in a wheelchair into their definitions of the term "pedestrian" is that, by ordinary understanding, a person in a wheelchair would not be considered a "person afoot." Nothing has prevented the Alabama Legislature from amending its definition of "pedestrian" to expressly include a person in a wheelchair; indeed, the legislature amended the motor-vehicle and traffic code in 2003 to insert the definition of "electric personal assistive mobility devices." Yet, despite the expanded definition of the term "pedestrian" found in many other states and in portions of federal law, the definition of "pedestrian" in Alabama's motor-vehicle and traffic code has remained "[a]ny person afoot."

> "The cardinal rule of statutory interpretation is to determine and give effect to the intent of the legislature as manifested in the language of the statute. Gholston v. State, 620 So. 2d 719 (Ala.1993). Absent a clearly expressed legislative intent to the contrary, the language of the statute is conclusive. Words must be given their natural, ordinary, commonly understood meaning, and where plain language is used, the court is bound to interpret that language to mean exactly what it says."

Ex parte State Dep't of Revenue, 683 So. 2d 980, 983 (Ala. 1996).

The definition of "pedestrian" in the applicable Alabama Code section is "[a]ny person afoot." § 32-1-1.1(42). It is obvious, as Pruitt contends, that he is not a "person afoot" because he is confined to a wheelchair. Even if it just "makes sense" to "expand the Alabama definition of 'pedestrian' to include motorized wheelchairs as a reasonable equivalent to a person physically 'afoot,' " as the trial court explained in its ruling, " '[t]his Court's role is not to displace the legislature by amending statutes to make them express what we think the legislature should have done. Nor is it this Court's role to assume the legislative prerogative to correct defective legislation or amend statutes.' " Grimes v. Alfa Mut. Ins. Co., 227 So. 3d 475, 488–89 (Ala. 2017) (quoting Siegelman v. Chase Manhattan Bank (USA), Nat'l Ass'n, 575 So. 2d 1041, 1051 (Ala. 1991)). Accordingly, we conclude that Pruitt cannot be classified as a "pedestrian" under the statutory definition of that term.

Adherence to the wording of our statutes requires the same conclusion with respect to whether Pruitt's wheelchair can be categorized as an "electric personal assistive mobility device" ("EPAMD"). Pruitt's wheelchair has six wheels and power that generates a maximum speed of

5 miles per hour, but § 32-1-1.1(16) describes an EPAMD as "[a] self-balancing, two non-tandem wheeled device ... with an electric propulsion system with an average power of 750 watts (1 h.p.)." The statutory definition of an EPAMD is such that Pruitt admits that "the Legislature did not expressly include a motorized wheelchair in the definition of 'electric personal assistive mobility device.' " Pruitt's brief, p. 19. Nonetheless, he argues that, because his wheelchair is a device that assists a person who is otherwise immobile, it makes the most sense to consider his wheelchair an EPAMD.[11] Again, however, we are not at liberty to amend statutes to conform to what we might think the legislature should have done. Regardless of whether the definition of an EPAMD in § 32-1-1.1(16) refers only to Segway devices, it does not describe a motorized wheelchair.[12]

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[11]A wheelchair is designated as an "assistive device" in the New Assistive Devices Warranty Act, § 8-39-1 et seq., Ala. Code 1975, a separate statutory scheme from Alabama's motor-vehicle and traffic code. See § 8-39-2(1)1., Ala. Code 1975.

[12]We note that a section in the federal regulations promulgated pursuant to the Americans with Disabilities Act provides:

"Other power-driven mobility device means any mobility

As the trial court observed, "a motorized wheelchair would meet the definition of a 'motor vehicle' on its face." Specifically, § 32-1-1.1(86) defines a "vehicle" generally as "[e]very device in, upon, or by which any person ... is or may be transported or drawn upon a highway, excepting devices moved by human power," and § 32-1-1.1(33) defines a "motor vehicle" generally as "[e]very vehicle which is self-propelled." Pruitt's motorized wheelchair is a self-propelled device by which he may be transported upon a highway. Despite the fact that Pruitt's motorized wheelchair fits within the definitions of those terms, the trial court

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> device powered by batteries, fuel, or other engines -- whether or not designed primarily for use by individuals with mobility disabilities -- that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section."

28 C.F.R. § 36.104 (emphasis added). Thus, it appears that the term EPAMD usually refers to Segway devices, not to motorized wheelchairs. However, it is interesting to note that the definition of a "scooter," which was added as part of the 2019 amendments to § 32-1-1.1, lists EPAMDs separately from Segway devices, stating: "This term does not include an e-bike, EPAMD, Segway, motorcycle, or moped." § 32-1-1.1(60).

refused to classify Pruitt's wheelchair as a motor vehicle because, it reasoned, "[o]pening the roadways to the free use of motorized wheelchairs operating as equals of automobiles would be an absurd result of this construction." In its reasoning, the trial court plainly relied upon the notion that "[i]f a literal construction would produce an absurd and unjust result that is clearly inconsistent with the purpose and policy of the statute, such a construction is to be avoided." City of Bessemer v. McClain, 957 So. 2d 1061, 1075 (Ala. 2006). However, courts must be cautious about employing the so-called doctrine of absurd results because it is a tool easily misused to avoid consequences a court merely does not like rather than those consequences that are genuinely beyond the pale of reason. " ' "If a statute is not ambiguous or unclear, the courts are not authorized to indulge in conjecture as to the intent of the Legislature or to look to consequences of the interpretation of the law as written." ' " Ex parte Morris, 999 So. 2d 932, 938 (Ala. 2008) (quoting Gray v. Gray, 947 So. 2d 1045, 1050 (Ala. 2006), quoting in turn Ex parte Presse, 554 So. 2d 406, 411 (Ala. 1989)).

It may seem absurd to classify a motorized wheelchair as a "motor vehicle" because, although such devices are capable of traversing roadways, they are not designed to transport persons on roadways. After all, as Oliver observed in his arguments to the trial court, motor vehicles are required to have several features -- such as brakes, horns, rearview mirrors, brake lights, and head lamps -- that motorized wheelchairs do not possess. See §§ 32-5-212, -213, -214, -240, Ala. Code 1975. But many other vehicles that are not ordinarily used on Alabama's roadways -- such as riding lawn mowers, golf carts, all-terrain vehicles, and go-karts -- also lack at least some of the safety features Alabama's motor-vehicle and traffic code requires motor vehicles to possess, yet the lack of such features does not mean that those vehicles are not "motor vehicles"; it simply means such motor vehicles lack certain safety devices our legislature has deemed necessary for their use on Alabama's roadways. Other statutes in the Alabama Code specifically draw a distinction between motor vehicles that are designed for use on the roadways and those that are not. Alabama's "Lemon Law," § 8-20A-1 et seq., Ala. Code 1975, defines a "motor vehicle" in part as "[e]very vehicle intended

primarily for use and operation on the public highways which is self-propelled ...." § 8-20A-1(2), Ala. Code 1975 (emphasis added). The Mandatory Liability Insurance Act, § 32-7A-1 et seq., Ala Code 1975, defines a "motor vehicle" as "[e]very self-propelled vehicle that is designed to be operated on the streets and highways of Alabama, but not operated upon rails." § 32-7A-2(12), Ala. Code 1975 (emphasis added). But the definition of a "motor vehicle" in § 32-1-1.1(33) does not draw such a distinction, and thus a motorized wheelchair meets the definition of a "motor vehicle" under that statute.[13]

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[13]We also note that § 32-8-80, Ala. Code 1975, a part of the Alabama Uniform Certificate of Title and Antitheft Act, § 32-8-1 et seq., Ala. Code 1975, provides:

> "This article [i.e., § 32-8-80 through § 32-8-88, Ala. Code 1975] does not apply to the following unless a title certificate has been issued on such vehicles under this chapter [i.e., the Alabama Uniform Certificate of Title and Antitheft Act, § 32-8-1 et seq., Ala. Code 1975]:
>
> "(1) A vehicle moved solely by animal power;
>
> "(2) An implement of husbandry;
>
> "(3) Special mobile equipment; and

However, it does not follow from the fact that Pruitt's motorized wheelchair qualifies as a "motor vehicle" under § 32-1-1.1(33), and that therefore Pruitt violated some Code requirements because his wheelchair did not possess certain safety equipment, that Pruitt was negligent per se. As this Court has explained:

> "[N]ot every violation of a statute or an ordinance is negligence per se. This Court has stated that four elements are required for violation of a statute to constitute negligence per se: (1) The statute must have been enacted to protect a class of persons, of which the plaintiff is a member; (2) the injury must be of the type contemplated by the statute; (3) the defendant must have violated the statute; and (4) the defendant's statutory violation must have proximately caused the injury."

Parker Bldg. Servs. Co. v. Lightsey, 925 So. 2d 927, 931 (Ala. 2005) (emphasis added). If Pruitt had been traveling in a car with a broken tail light or a faulty horn, instead of in a motorized wheelchair, it could not be concluded as a matter of law that those deficiencies were the proximate cause of the accident with Oliver. Likewise, it cannot be concluded as a

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> "(4) A self-propelled wheelchair or invalid tricycle."

(Emphasis added.) Thus, § 32-8-80 confirms that a motorized wheelchair is a "vehicle," and because a motorized wheelchair is self-propelled, it follows that it is also a "motor vehicle."

matter of law that the accident would not have occurred if Pruitt's wheelchair had been equipped with more reflective devices, brake lights, headlamps, brakes, or a horn. Indeed, given that Oliver contends that there was a dip in the roadway that obstructed his view of Pruitt's wheelchair, it would seem difficult to surmise that any of the motor-vehicle safety features missing from Pruitt's wheelchair proximately caused the accident. Therefore, an issue of fact exists concerning whether Pruitt's operation of his motorized wheelchair on Palisades Boulevard constituted contributory negligence. Accordingly, the trial court's summary judgment in favor of Oliver on Pruitt's negligence claim, based on a finding of negligence per se, is reversed.

B. Whether Substantial Evidence of Subsequent Negligence Exists

As we noted in the rendition of the facts, the trial court concluded that there was insufficient evidence to support a conclusion that Oliver was subsequently negligent. Pruitt disputes this conclusion, arguing that the facts presented in Brooks's affidavit were sufficient to warrant submitting the issue of Oliver's alleged subsequent negligence to a jury.

> "Contributory negligence ... is no defense to subsequent negligence. In other words, 'a victim's initial contributory negligence in placing himself in a position of peril is no defense to [a claim of] subsequent negligence on [the] part of the defendant.' Dees v. Gilley, 339 So. 2d 1000, 1002 (Ala. 1979). The elements of proof of subsequent negligence are: (1) that the plaintiff was in a perilous position; (2) that the defendant had knowledge of that position; (3) that, armed with such knowledge, the defendant failed to use reasonable and ordinary care in avoiding the accident; (4) that the use of reasonable and ordinary care would have avoided the accident; and (5) that plaintiff was injured as a result."

Zaharavich v. Clingerman, 529 So. 2d 978, 979 (Ala. 1988).

The trial court adopted Oliver's argument that there was no evidence indicating that Oliver had actual knowledge of Pruitt's perilous position before the collision. This was so, Oliver argued, because (1) he had testified that there was a crest in the roadway and a subsequent downward slope that hid Pruitt from Oliver's view; (2) the accident occurred at night and the road was not well lit; and (3) Pruitt's wheelchair did not have adequate lighting equipment that would have made it clearly visible. Additionally, Oliver noted that this Court has held that "[t]he doctrine of subsequent negligence on the part of the plaintiff or defendant is not to be applied in a case where the manifestation of peril and the

catastrophe are so close in point of time as to leave no room for preventive effort." Owen v. McDonald, 291 Ala. 572, 575, 285 So. 2d 79, 81 (1973). Oliver argued that, because he testified that he had not seen Pruitt until just before his car collided with Pruitt's wheelchair, this was a case in which the manifestation of the plaintiff's peril and the accident were virtually simultaneous.

The problem with that conclusion, as Pruitt notes, is that it relies on Oliver's version of the event even though, when considering a summary-judgment motion, a court must view the evidence in the light most favorable to the nonmovant. See Gustin, supra. As we recounted in the rendition of facts, Brooks testified by affidavit that Pruitt's wheelchair was "very visible" because of the lights, the reflectors, and the reflective vest on the wheelchair, and that "[t]here was also a streetlight in the area that helped visibility." Brooks also made no mention of a crest in the roadway. Based on the account presented by Brooks, Pruitt contends that Oliver's knowledge of Pruitt's position can be inferred, at least sufficiently for the issue of subsequent negligence to be presented to a jury.

We agree with Pruitt. In Dees v. Gilley, 339 So. 2d 1000, 1002 (Ala. 1976), this Court stated that "actual knowledge [required for finding subsequent negligence] may be inferred from proof that the driver was looking in the direction of the victims and that her view was unobstructed." See also Scotch Lumber Co. v. Baugh, 288 Ala. 34, 42, 256 So. 2d 869, 876 (1972). Although Oliver testified that his view was obstructed, Brooks testified that Pruitt was "very visible." Oliver argues that actual knowledge cannot be established without testimony from the defendant admitting that he or she saw the victim well before the accident in question, but our cases do not establish any such definitive rule. For example, in Campbell v. Burns, 512 So. 2d 1341, 1342 (Ala. 1987), the Court inquired regarding the issue of subsequent negligence: "Is there any evidence, or are there any logical inferences that can be drawn from the evidence, that Ms. Campbell had actual knowledge that Burns was in a position of peril?" (Emphasis omitted.) Although Campbell was decided under the previous, less stringent scintilla-of-the-evidence rule rather than the substantial-evidence standard, the point that actual knowledge can be established based on logical inferences from the evidence rather

than just by testimony from the defendant remains true. See, e.g., Southern Ry. Co. v. Williams, 243 Ala. 429, 432, 10 So. 2d 273, 275 (1942) ("Actual knowledge of peril, as a basis for subsequent negligence, may come from any source."); Johnson v. Birmingham Ry., Light & Power Co., 149 Ala. 529, 538, 43 So. 33, 36 (1907) ("[T]his actual knowledge may be inferred from the existence of other facts, shown in the evidence; but the existence of such facts should not rest purely in conjecture or speculation."). Expounding on the idea of actual knowledge, this Court has explained: "[K]nowledge of the plaintiff's peril in a subsequent negligence case may not be 'imputed' to a defendant; the defendant's knowledge may, however, be 'inferred,' if such an inference would be reasonable under the totality of the circumstances." Zaharavich, 529 So. 2d at 980. The totality of the circumstances in this case includes both Oliver's testimony and Brooks's testimony about the incident, which present a conflict that requires resolution by a jury. Accordingly, the trial court's determination that there was insufficient evidence of subsequent negligence to support a triable issue is reversed.

C. Pruitt's Claim of Wantonness Against Oliver

Pruitt also challenges the trial court's summary judgment on his wantonness claim in the September 15, 2016, order. As we noted in the rendition of the facts, the trial court concluded that, "standing alone, Brooks's affidavit evidence is not sufficient to dispute whether there is clear and convincing evidence Oliver's conduct rose to the level of wantonness." More specifically, the trial court reasoned that the only evidence of wanton conduct in Brooks's affidavit was her testimony that Oliver was traveling at a "high rate of speed," but this Court has held in multiple cases that speeding, by itself, does not constitute wantonness. See, e.g., Knowles v. Poppell, 545 So. 2d 40, 42 (Ala. 1989) ("Speed alone does not import wantonness, and a violation of the speed law does not of itself amount to wanton misconduct."). Pruitt concedes that Oliver's speed alone does not constitute wantonness, but he argues that more evidence of wantonness exists:

> "While the trial court correctly stated that speed, without more, generally is not wantonness, there is substantial evidence of the 'more' here. Amanda Brooks testified that Mr. Pruitt was clearly marked and visible. Mr. Oliver claims that he somehow just did not see the reflective devices and the

> marking that made the wheelchair so visible. This is substantial evidence that Mr. Oliver, while at excessive speed and trying to turn and run a yellow light before it turned red, crossed though an intersection while completely abdicating his duty to be on the lookout for others."

Pruitt's brief, p. 45.

This Court has stated that, "although speed alone does not amount to wantonness, 'speed, coupled with other circumstances, may amount to wantonness.' " Serio v. Merrell, Inc., 941 So. 2d 960, 966 (Ala. 2006) (quoting Hicks v. Dunn, 819 So. 2d 22, 24 (Ala. 2001)). Wantonness is " 'the conscious doing of some act or the omission of some duty while knowing of the existing conditions and being conscious that, from doing or omitting to do an act, injury will likely or probably result.' " Hood v. Murray, 547 So. 2d 75, 79 (Ala. 1989) (quoting McDougle v. Shaddrix, 534 So. 2d 228, 231 (Ala. 1988)).

> " ' "Wantonness is not merely a higher degree of culpability than negligence. Negligence and wantonness, plainly and simply, are qualitatively different tort concepts of actionable culpability. Implicit in wanton, willful, or reckless misconduct is an acting, with knowledge of danger, or with consciousness, that the doing or

> not doing of some act will likely result in injury. ...
>
> "'"Negligence is usually characterized as an inattention, thoughtlessness, or heedlessness, a lack of due care; whereas wantonness is characterized as ... a conscious ... act. 'Simple negligence is the inadvertent omission of duty; and wanton or willful misconduct is characterized as such by the state of mind with which the act or omission is done or omitted.' McNeil v. Munson S.S. Lines, 184 Ala. 420, [423], 63 So. 992 (1913). ..."'"

Tolbert v. Tolbert, 903 So. 2d 103, 114–15 (Ala. 2004) (quoting Ex parte Anderson, 682 So. 2d 467, 470 (Ala. 1996), quoting in turn Lynn Strickland Sales & Serv., Inc. v. Aero–Lane Fabricators, Inc., 510 So. 2d 142, 145–46 (Ala. 1987)) (emphasis added).

The additional circumstances Pruitt contends are evidence of wantonness really just amount to evidence of inadvertence: Oliver's alleged failure to see Pruitt despite clear visibility because of the streetlight and the reflective devices on Pruitt's wheelchair. There is no evidence indicating that Oliver committed a conscious act or had knowledge that an injury would probably result from his manner of

driving. Therefore, we conclude that the trial court correctly entered a summary judgment in favor of Oliver on Pruitt's wantonness claim.

IV. Conclusion

Based on the foregoing, we conclude that the legislature has categorized motorized wheelchairs as "motor vehicles" under § 32-1-1.1(33), the pertinent provision of Alabama's motor-vehicle and traffic code, but that an issue of fact exists as to whether Pruitt's violation of safety-feature requirements for motor vehicles in the applicable statutes was the proximate cause of the accident. We also conclude that the trial court erred in finding that there was not substantial evidence of Oliver's alleged subsequent negligence, and, therefore, that issue also must be submitted to a jury. However, we affirm the trial court's summary judgment in favor of Oliver with respect to Pruitt's wantonness claim.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Bolin, Wise, Bryan, Sellers, Stewart, and Mitchell, JJ., concur.

Parker, C.J., concurs in part and concurs in the result.

Shaw, J., concurs in the result.

PARKER, Chief Justice (concurring in part and concurring in the result).

I agree with the main opinion except as to the breach and causation issues. After correctly holding that the circuit court erred by failing to classify Randall Pruitt's motorized wheelchair as a motor vehicle, the main opinion appears to also conclude that Pruitt committed a breach by violating safety-feature requirements for motor vehicles. I would not reach the latter issue, which has been neither ruled on by the circuit court nor argued by James Oliver as an alternative basis for affirmance. This Court's ruling on it sua sponte deviates from the ordinarily prudent course of our summary-judgment review, see Byrne v. Galliher, 39 So. 3d 1049, 1059 (Ala. 2009); Blair v. Fullmer, 583 So. 2d 1307, 1312 (Ala. 1991), and could have unforeseen consequences on remand.

Further, the main opinion holds that there was an issue of fact regarding whether those alleged vehicle-safety violations caused the accident. I would not reach that causation issue because Pruitt does not advance it as a basis for reversal. See Fenn v. Ozark City Schs. Bd. of Educ., 9 So. 3d 484, 486 (Ala. 2008) ("[T]his Court will not craft arguments for parties."); Ex parte Kelley, 296 So. 3d 822, 829 (Ala. 2019) ("[T]his

Court will not reverse a trial court's judgment based on arguments not made to this Court.").

Accordingly, on the negligence claim, I would reverse the summary judgment based only on the circuit court's errors relating to classification and subsequent negligence.