Rel: June 24, 2022

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

1200759

Ex parte City of Warrior and Town of Trafford

PETITION FOR WRIT OF MANDAMUS

(In re: James B. Griffin, as personal representative of James R. Olvey, deceased

v.

Donald Hornsby Wright II et al.)

(Jefferson Circuit Court, CV-18-903480)

SHAW, Justice.

The City of Warrior ("Warrior") and the Town of Trafford ("Trafford") petition for a writ of mandamus directing the Jefferson

Circuit Court to vacate its order denying their motions for a summary judgment in this tort action commenced by the plaintiff, James B. Griffin, as the personal representative of the estate of James R. Olvey, deceased, and to enter a summary judgment in Warrior's and Trafford's favor on the basis of immunity. We grant the petition and issue the writ.

Facts and Procedural History

At around 10:00 p.m. on the night of September 7, 2016, Officer James Henderson, a police officer employed by Warrior, witnessed a vehicle being operated by Donald H. Wright II "run" through a red traffic light. As Wright's vehicle passed, Officer Henderson also observed, through an open passenger window, something dangling from one of Wright's arms. Officer Henderson decided to follow Wright. After Wright "ran" a second red light, Officer Wright activated the emergency blue lights and siren on his patrol vehicle and attempted to initiate a traffic stop of Wright's vehicle. Wright, however, refused to stop and increased the speed of his vehicle. As Officer Henderson pursued Wright's vehicle, additional on-duty patrol officers in the area, including Sergeant Stephen

Scott, who was also a Warrior police officer,[1] and Officer Dylan McCoy, a Trafford police officer, joined the pursuit. Both Sgt. Scott and Officer McCoy also activated the emergency blue lights and sirens on their patrol vehicles.

In an apparent attempt to elude the officers, Wright engaged in numerous additional traffic violations, including exceeding the posted speed limit, driving on the wrong side of the road, and ignoring stop signs. Eventually, Wright managed to drive his vehicle onto Interstate 65, traveling northbound in the southbound lanes.

At that point, Sgt. Scott, as the ranking officer, terminated the pursuit. Sgt. Scott and Officer McCoy remained stationed at a southbound exit ramp of the interstate with the emergency blue lights and sirens on their vehicles activated as a warning intended to alert approaching motorists. Although he was no longer pursuing Wright, Officer Henderson drove onto an interstate on-ramp leading to the northbound lanes where, traveling in the proper traffic direction, he

[1]Sgt. Scott is also employed part-time as Trafford's chief of police.

planned to attempt to catch up to and proceed parallel to Wright, who continued to travel northbound into oncoming traffic in the southbound lanes of the interstate. According to Officer Henderson, however, he never regained sight of Wright's vehicle.

Approximately three quarters of a mile from where the officers ceased their pursuit of Wright, and while Officer Henderson was still on the interstate on-ramp, Wright's vehicle collided head-on with a vehicle driven by Olvey in a southbound lane. Olvey died as a result of the collision.

When Wright was apprehended at the collision scene, a syringe was found hanging from his right arm. Subsequent testing revealed that, at the time of the collision, he was under the influence of both marijuana and cocaine. Wright was subsequently criminally indicted in connection with Olvey's death.

Griffin, as the personal representative of Olvey's estate, later sued, among others, Wright, Trafford, Warrior, Sgt. Scott, Officer Henderson, and Officer McCoy. The complaint alleged, among other things, that

Olvey died as the result of the allegedly unskillful, negligent, and/or wanton conduct of Sgt. Scott, Officer Henderson, and Officer McCoy in pursuing Wright while carrying out duties for their respective employers. As to each municipality, Griffin further alleged, based on a theory of respondeat superior, that they were vicariously liable for the purported wrongful conduct of the officers.

All three officers, who had been substituted for fictitiously named defendants included in Griffin's original complaint, later moved for a summary judgment in their favor on the ground that, as to them, the claims were allegedly untimely and thus barred by the applicable statute of limitations. The trial court denied the officers' motions, and they petitioned this Court for mandamus relief. Ex parte McCoy, 331 So. 3d 82 (Ala. 2021). This Court held that because Griffin had failed to exercise due diligence to discover the officers' identities before filing his original complaint, his claims against them were barred by the applicable statute of limitations. Id. at 88. The trial court later dismissed the officers from the case.

Subsequently, both Warrior and Trafford separately moved for a summary judgment. Relying on numerous exhibits, including the testimony of the officers and expert testimony, Warrior and Trafford argued, among other grounds, that, because the officers were at all pertinent times engaged in "discretionary law-enforcement functions," they were entitled to peace-officer immunity and/or State-agent immunity pursuant to § 6-5-338(a), Ala. Code 1975, and/or Ex parte Cranman, 792 So. 2d 392 (Ala. 2000) (plurality opinion), as modified by Hollis v. City of Brighton, 950 So. 2d 300 (Ala. 2006).[2] Thus, Warrior and Trafford contended that, as the officers' employers, they could not be vicariously liable for their officers' alleged misconduct. See Ex parte City of Montgomery, 272 So. 3d 155, 169 (Ala. 2018), and Ex parte City of Homewood, 231 So. 3d 1082, 1090 (Ala. 2017) ("Section 6-5-338(b), Ala.

[2]Although Ex parte Cranman was a plurality decision, the restatement of the law governing State-agent immunity set forth in Ex parte Cranman was subsequently adopted by a majority of this Court in Ex parte Butts, 775 So. 2d 173 (Ala. 2000). See also § 36-1-12, Ala. Code 1975.

Code 1975, provides that the immunity enjoyed by peace officers extends to 'governmental units or agencies authorized to appoint peace officers.'").

Griffin disputed that peace-officer immunity or State-agent immunity applied because, he argued, the officers exceeded their discretion in continuing to pursue Wright in violation of both traffic laws and departmental policies and procedures. Griffin submitted, as support for his responses in opposition to the municipalities' summary-judgment motions, expert testimony aimed at establishing a causal link between the officers' conduct during the pursuit and the collision that caused Olvey's death.

The trial court entered an order denying the municipalities' summary-judgment motions, stating:

> "Here, the Court determines that ... [Griffin] has presented evidence from which a reasonable juror could conclude that officers employed by both [Warrior and Trafford] exceeded their discretion by, for example, failing to terminate the chase when required by city procedures and/or a supervising officer's commands, otherwise violating policy/procedure, or failing to follow all roadway safety laws excepting those inapplicable to emergency vehicles in Code of

> Alabama § 32-5A-7. Further, ... [Griffin] presents expert testimony opining that the [officers'] conduct contributed to cause [Wright's] continued reckless driving, or at least that [Wright] would have likely stopped sooner but for certain decisions the officers made in pursuing [him].... This Court offers no opinion on the credibility of said expert testimony, but [Griffin's] evidence at minimum meets the burden outlined in Seals [v. City of Columbia, 575 So. 2d 1061, 1064 (Ala. 1991)], and therefore ... Warrior and Trafford are not entitled to summary judgment in their favor regarding whether their officers' actions caused [Griffin's] damages as a matter of law. The ... Motions for Summary Judgment are DENIED to the extent they seek a judicial finding that the officers' conduct did not proximately cause ... [Griffin's] damages."

This mandamus petition followed. The Court subsequently ordered answers and briefs.

Standard of Review

> "'"This Court has stated:
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> > "'"'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 grounded on a claim of immunity is reviewable by petition for writ of mandamus. Ex

> parte Purvis, 689 So. 2d 794 (Ala. 1996)....
>
> "'"'"...."'
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> "'"Ex parte Turner, 840 So. 2d 132, 135 (Ala. 2002) (quoting Ex parte Rizk, 791 So. 2d 911, 912-13 (Ala. 2000)). A writ of mandamus is an extraordinary remedy available only when the petitioner can demonstrate: '"(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 Nall, 879 So. 2d 541, 543 (Ala. 2003) (quoting Ex parte BOC Group, Inc., 823 So. 2d 1270, 1272 (Ala. 2001))."
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> "'Ex parte Yancey, 8 So. 3d 299, 303-04 (Ala. 2008).'

"Ex parte Jones, 52 So. 3d 475, 478-79 (Ala. 2010).

> "'In reviewing a trial court's ruling on a motion for a summary judgment, we apply the same standard the trial court applied initially in granting or denying the motion. Ex parte Alfa Mut. Gen. Ins. Co., 742 So. 2d 182, 184 (Ala. 1999).

> "'"The principles of law applicable to a motion for summary judgment are well settled. To grant such a motion, the trial court must determine that the evidence does not create a genuine issue of material fact and that the movant is entitled to judgment as a matter of law. Rule 56(c)(3), Ala. R. Civ. P. When the movant makes a prima facie showing that those two conditions are satisfied, the burden shifts to the nonmovant to present 'substantial evidence' creating a genuine issue of material fact."
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> "'742 So. 2d at 184. "[S]ubstantial evidence is evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989).'
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> "Swan v. City of Hueytown, 920 So. 2d 1075, 1077-78 (Ala. 2005)."

Ex parte Brown, 182 So. 3d 495, 502 (Ala. 2015) (emphasis omitted).

Discussion

In their petition, Warrior and Trafford contend that the trial court exceeded its discretion in refusing to enter a summary judgment in their

favor because, they say, at the time of the pursuit and collision, their officers were indisputably acting as peace officers; that the officers are therefore entitled to immunity pursuant to § 6-5-338(a) and Ex parte Cranman, supra, as modified by Hollis, supra; that none of the exceptions to State-agent immunity apply; and, thus, that Warrior and Trafford are entitled to immunity as to Griffin's claims against them, which are premised on the doctrine of respondeat superior. See § 6-5-338(b) and Ex parte City of Montgomery, 272 So. 3d at 169. We agree.

> "Section 6-5-338(a), Ala. Code 1975, states:
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> > "'Every peace officer ... who is employed or appointed pursuant to the Constitution or statutes of this state, whether appointed or employed as a peace officer ... by the state or a county or municipality thereof, ... and whose duties prescribed by law, or by the lawful terms of their employment or appointment, include the enforcement of, or the investigation and reporting of violations of, the criminal laws of this state, and who is empowered by the laws of this state … to arrest and to take into custody persons who violate … the criminal laws of this state, shall at all times be deemed to be officers of this state, and as such shall have immunity from tort liability arising out of his or her conduct in performance of any

> discretionary function within the line and scope of his or her law enforcement duties.'
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> "This Court has also stated:
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> "'It is well established that, if a municipal peace officer is immune pursuant to § 6-5-338(a), then, pursuant to § 6-5-338(b), the city by which he is employed is also immune. Section 6-5-338(b) provides: "This section is intended to extend immunity only to peace officers and governmental units or agencies authorized to appoint peace officers." ... See Ex parte City of Gadsden, 781 So. 2d 936, 940 (Ala. 2000).'

"Howard v. City of Atmore, 887 So. 2d 201, 211 (Ala. 2003) (emphasis omitted).

"This Court has held that '[t]he restatement of State-agent immunity as set out by this Court in Ex parte Cranman ... governs the determination of whether a peace officer is entitled to immunity under § 6-5-338(a). Ex parte City of Tuskegee, 932 So. 2d 895, 904 (Ala. 2005).' Ex parte City of Montgomery, 99 So. 3d 282, 292 (Ala. 2012). Specifically,

> "'peace officers are afforded immunity by Ala. Code 1975, § 6-5-338(a), and the test for State-agent immunity set forth in Ex parte Cranman, 792 So. 2d 392 (Ala. 2000), as modified in Hollis v. City of Brighton, 950 So. 2d 300 (Ala. 2006) (incorporating the peace-officer-immunity standard provided in § 6-5-338(a) into the State-agent-immunity analysis found in Cranman).... Under that formulation,

> "'"'[a] State agent shall be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent's
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> "'"'....
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> "'"'(4) exercising judgment in the enforcement of the criminal laws of the State, including, but not limited to, law-enforcement officers' arresting or attempting to arrest persons, or serving as peace officers under circumstances entitling such officers to immunity pursuant to § 6-5-338(a), Ala. Code 1975.'"

"'Hollis, 950 So. 2d at 309 (quoting and modifying Cranman, 792 So. 2d at 405). In certain circumstances, a peace officer is not entitled to such immunity from an action seeking liability in his or her individual capacity:

> "'"(1) when the Constitution or laws of the United States, or the Constitution of this State, or laws, rules, or regulations of this State enacted or promulgated for the purpose of regulating the activities of a governmental agency require otherwise; or

> "'"(2) when the State agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law."
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> "'Cranman, 792 So. 2d at 405.'

"Suttles v. Roy, 75 So. 3d 90, 94 (Ala. 2010) (emphasis omitted).

> "'A State agent asserting State-agent immunity "bears the burden of demonstrating that the plaintiff's claims arise from a function that would entitle the State agent to immunity." [Ex parte Estate of Reynolds,] 946 So. 2d [450,] 452 [(Ala. 2006)]. Should the State agent make such a showing, the burden then shifts to the plaintiff to show that one of the two categories of exceptions to State-agent immunity recognized in Cranman is applicable.'

"Ex parte Kennedy, 992 So. 2d 1276, 1282-83 (Ala. 2008); see also Wilson[v. Manning], 880 So. 2d [1101] at 1111 [(Ala. 2003)] (noting that, when the burden at summary-judgment stage has shifted to the nonmovant, the nonmovant must present 'substantial evidence from which a reasonable juror could infer' the existence of the fact at issue).

"In order to establish that [Griffin's] claims arose from a function that would entitle [Warrior and Trafford] to State-agent immunity, [Warrior and Trafford] were required to 'establish (1) that [their respective officers were] peace officer[s] (2) performing law-enforcement duties at the time of

> the accident and (3) exercising judgment and discretion.' Ex parte City of Homewood, 231 So. 3d 1082, 1087 (Ala. 2017)."

Ex parte City of Montgomery, 272 So. 3d at 159-61 (emphasis added; footnote omitted).

The officers in this case were peace officers who, during the pursuit of Wright, were performing law-enforcement duties that, although governed by policies, procedures, and applicable law, involved the officers' exercise of judgment and discretion. Specifically, Warrior and Trafford established that their respective officers were performing a discretionary law-enforcement function in attempting to arrest Wright, who was evading a lawful traffic stop. See Telfare v. City of Huntsville, 841 So. 2d 1222, 1228 (Ala. 2002) (holding that "[g]enerally, arrests and attempted arrests are classified as discretionary functions" for the purpose of establishing peace-officer immunity). Warrior and Trafford submitted undisputed evidence that Wright had failed to comply with Officer Henderson's clear attempt to effectuate a traffic stop for multiple traffic offenses committed in that officer's presence; therefore, the officers had probable cause to arrest him. The Court has previously observed

that arresting a driver "for refusing to comply with a lawful order or direction of a police officer" is "clearly a discretionary function" because "[t]here is no hard and fast rule concerning when there is probable cause to arrest a person pursuant to § 32-5A-4, Ala. Code 1975.[3]" Ex parte Duvall, 782 So. 2d 244, 248 (Ala. 2000).

Further, when asked by Griffin's counsel during his deposition as to "the elements that determine … when you engage in a high-speed pursuit," Officer Henderson identified the following: "crime, speed, traffic and weather." Officer McCoy stated that the decision to pursue a suspect hinges on "what laws have been broken" and noted that a chase should continue only "until it gets dangerous." Additionally, in his deposition testimony, Griffin's expert witness, Charles Drago, specifically acknowledged that the decision to pursue a person fleeing after committing a traffic violation "involves a balancing test of all the facts

[3]That Code section provides: "No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer or fireman invested by law with authority to direct, control or regulate traffic."

and circumstances that the officers [are] aware of" and requires consideration of the "totality of the circumstances confronting an officer." According to Drago, although an officer's evaluation and resulting judgment with regard to whether to pursue a fleeing suspect "is not just subjective," the process indisputably does have a subjective element. Although, Griffin criticized how the officers' discretion was exercised, he failed to demonstrate that they actually had lacked the discretion to act as they did. The evaluation required in assessing the attendant elements before undertaking pursuit clearly illustrate the discretionary nature of the decision to pursue. Accordingly, Warrior and Trafford met their burden of establishing that the officers' attempts to effectuate Wright's arrest fell within their discretionary law-enforcement duties outlined in § 6-5-338, so as to afford them -- and, by extension, Warrior and Trafford -- immunity.

Griffin concedes that, generally, arrests and attempted arrests are properly classified as law-enforcement functions. However, he maintains that he demonstrated a dispute both as to whether the officers were

properly performing their duties preceding the collision and as to whether they properly exercised their discretion during the pursuit. Griffin argues that Warrior and Trafford failed to establish either "their initial entitlement to a presumption of immunity" or a lawful exercise of the officers' judgment because, he says, he presented evidence from which reasonable jurors could conclude that the officers improperly and/or illegally performed their law-enforcement functions. Specifically, Griffin maintains that "[a] state-agent cannot establish that a claim arises out of a function entitling them to immunity when, while in the course of performing the function, the agent breaks a law or rule." Griffin's answer at 11. In support of that argument, Griffin cites alleged violations by the officers of "laws, policies, or procedures" during their pursuit of Wright. This argument appears to be another way of stating that the alleged violations bring the officers' conduct within the second exception to Ex parte Cranman: "when the State agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law." 792 So. 2d at 405 (emphasis added).

Griffin first cites the officers' alleged violation of the departmental pursuit policies issued by Warrior and Trafford governing officer conduct during high-speed pursuits. The departmental pursuit policies each specifically provided criteria for evaluating whether to continue or to terminate a pursuit. Those criteria included, among other things, continual evaluation of attendant risks and a determination regarding whether the danger of continuing the pursuit outweighs any potential benefit, thereby providing, generally, considerable discretion to officers. For example, Trafford's departmental pursuit policy, as noted by Drago, Griffin's expert, left all pursuit-related decisions entirely to the officer's discretion. Further, during his deposition, Drago agreed that the interaction between departmental policy and officer behavior requires that "[the officer] takes those parameters and then he exercises judgment and discretion" -- just as the officers whose actions are at issue in this case described themselves as doing before and during their pursuit of Wright. "Because the polic[ies of Warrior and Trafford both] provide[] that the procedure for all pursuits is subject to an officer's or the officer's

supervisor's exercise of discretion with the safety of innocent parties being the primary focus, the polic[ies] and procedure[s] constitute guidelines, not 'detailed rules and regulations, such as those stated on a checklist' that must be followed by an officer" in order for State-agent immunity to apply. Ex parte Brown, 182 So. 3d at 506 (quoting Ex parte Butts, 775 So. 2d 173, 178 (Ala. 2000)) (initial emphasis added).

Further, Griffin did not present substantial evidence indicating that the officers failed to abide by specific portions of those departmental pursuit policies during their pursuit of Wright. See Brown, 182 So. 3d at 506.[4] First, Griffin maintains that Officer McCoy improperly used his patrol vehicle as a barricade to block lanes of travel during the pursuit of Wright. As Griffin correctly notes, the Warrior departmental pursuit

[4]None of the officers involved in the pursuit of Wright were subjected to disciplinary action in connection with that pursuit. Compare City of Birmingham v. Benson, 631 So. 2d 902, 904 (Ala. 1993) (noting that the result of an internal investigation indicated that the actions of an officer working as a part-time security guard, which led to the death at issue in that case, amounted to a violation of department rules and regulations, resulting in termination of the officer's employment).

policy specifically prohibited, among other conduct, the use of "roadblocks" in the absence of supervisor direction, while the Trafford departmental pursuit policy provided that "if the violator being pursued is known to have committed a misdemeanor only, … barricading the roadway or using firearms is prohibited." However, even assuming that Officer McCoy was subject to the departmental pursuit policies of both Warrior and Trafford,[5] his actions did not amount to a violation of either policy. There is nothing in the materials suggesting that Officer McCoy actually used his patrol vehicle to barricade or block Wright's lane of travel. Instead, Officer McCoy testified that, upon hearing the radio traffic indicating the direction of the pursuit back toward the corporate limits of Warrior, "[he] pulled up at the [Exit] 280 access ramp and

[5]The materials suggest that Officer McCoy was employed in the capacity of a part-time officer for both municipalities, but was on duty in his capacity as an officer of the Town of Trafford at all pertinent times. According to John Jack Ryan, the retained defense expert, despite the overlap in dual employment and accompanying familiarity with both departmental pursuit policies, "the Trafford officer … would be subject to the Trafford policy and … the Warrior officer would be subject to the Warrior policy."

blocked lanes of traffic going toward the interstate." As he described his actions, Officer McCoy was "attempting to block the interstate from [Wright]" as opposed to attempting to create a roadblock on the road where Wright was traveling in an attempt to stop the flight.[6]

John Jack Ryan, an expert responsible for writing vehicle-pursuit policies for law-enforcement agencies in numerous states, also disputed that Officer McCoy's actions amounted to implementing a "barricade." Instead, he indicated that "a barricade would be putting your car across the road so the [suspect's] … vehicle can't proceed through the area where you are" and/or as "actually blocking the road so that [the suspect] cannot proceed forward."

Additionally, when questioned about his orders to Officer McCoy during the events, Sgt. Scott, the ranking officer involved and the self-described "supervisor" of the officers participating in the pursuit of Wright, explained: "Officer McCoy told me he was going to block the road

[6]After passing Officer McCoy's position, Wright later accessed the interstate at a different ramp.

going on to the [Exit] 280 access and I told him '10-4, go ahead.' " Thus, Officer McCoy, by attempting to keep Wright from leaving local roadways and entering onto the interstate, was arguably acting in direct accordance with the approval of his supervisor.

Next, Griffin asserts that both Sgt. Scott and Officer McCoy violated Warrior's departmental pursuit policy, which prohibits pursuit of suspects in the wrong direction on any roadway, by "turn[ing] the wrong way onto the I-65 exit ramp and reach[ing] the top of the ramp before the chase was terminated." Again, even assuming that Officer McCoy was bound by the Warrior departmental pursuit policy, see note 5, supra, we disagree. Instead, contrary to Griffin's characterization, the materials indicate that Sgt. Scott and Officer McCoy immediately terminated the pursuit and proceeded into the emergency lane along the shoulder of the exit ramp precisely in order to avoid following Wright. Sgt. Scott specifically denied seeing any officer involved in the pursuit "drive their vehicles onto the interstate traveling north in the southbound lanes while pursuing … Wright." It is clear that Sgt. Scott

and Officer McCoy did not drive in the wrong direction on the interstate -- they instead stopped on the exit ramp with the purpose of terminating the pursuit at that point. Further, as Drago's testimony acknowledged, this did not result "in any of the police officers damaging the person or property of another."

Finally, Griffin argues that, during the pursuit of Wright, Officer Henderson and Sgt. Scott also violated the Warrior departmental pursuit policy's prohibition against reaching speeds affecting an officer's ability to maintain control of the patrol vehicle. Griffin, however, relies on nothing in support of this particular claim aside from the fact that evidence suggested that the officers potentially reached speeds approaching 80 or 90 miles per hour during the pursuit. Drago, Griffin's expert witness, acknowledged, however, that the significance of that fact depends upon the circumstances in which those speeds were being driven.

Officer Henderson testified that, at the time of the pursuit, the weather was "[d]ry" and traffic conditions in the area were "extremely

light," noting that the officers encountered only "three or four" other motorists during the entirety of the pursuit. Sgt. Scott similarly stated that, during the pursuit, there was "[n]ot much traffic at all," and Officer McCoy testified that "it was not raining that night." Griffin failed to provide evidence suggesting that any officer actually lost control of his vehicle as a result of the speeds reached during the pursuit or that the cited speeds contributed to the collision and Olvey's death. No question of fact indicating that the officers violated either departmental pursuit policy in this regard has been shown, and we see nothing connecting this alleged violative conduct with the subject collision.[7]

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[7]Assuming that Griffin may have also intended to assert that any alleged violation by the officers of Alabama's Rules of the Road, see § 32-5A-1 et seq., Ala. Code 1975, deprived the officers of immunity under the first Ex parte Cranman exception, the Court rejects that notion. Griffin made no showing below, and there is nothing before this Court suggesting, that any alleged violation of traffic laws by the officers was, in the present case, undertaken without the requisite regard for public safety and was thus unauthorized. See § 32-5A-7, Ala. Code 1975 (permitting "[t]he driver of an authorized emergency vehicle, … when in the pursuit of an actual or suspected violator of the law," to disregard traffic signals, specified traffic direction, and posted speed limits so long as the driver abides by the "duty to drive with due regard for the safety of all persons"), and Ex parte Brown, 182 So. 3d at 508 (emphasizing the

To the extent that the trial court, in finding the existence of a fact question as to the officers' proper exercise of their discretion, apparently relied on Drago's opinion that the officers should have discontinued pursuit of Wright immediately upon noticing his dangerous and erratic driving,[8] we disagree. First, no law is cited suggesting that officers must

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lack of substantial evidence indicating that an officer's vehicle pursuit was unreasonable and/or that the officer engaged in reckless driving and endangered the lives of others or exhibited a reckless disregard for the safety of others). According to Officer Henderson, at no time before Wright's entrance onto the interstate was the pursuit, in his judgment and experience, unreasonably dangerous to the public at large or other motorists. Officer Henderson's assessment of the danger to other motorists was confirmed through the testimony of Sgt. Scott. Griffin's expert, Drago, when asked to identify evidence indicating that any officer violated Alabama law or failed to use "due regard and not to put the public at risk," admitted that the only available evidence of the circumstances surrounding the pursuit of Wright were the reports and testimony of the officers themselves, which he was unable to dispute. Further, Griffin's reliance on Blackwood v. City of Hanceville, 936 So. 2d 495 (Ala. 2006), in support of this claim is misplaced. Blackwood, in which the subject officer testified that, in responding to an accident scene "as backup," he had been traveling between 90 and 100 miles per hour despite approaching a dangerous intersection in which he collided with another driver, is clearly distinguishable. Id. at 507.

[8]According to Drago, Officer Henderson should have terminated any attempted pursuit when, after initially activating the blue lights and siren of his patrol vehicle following Wright's commission of the second

allow a driver who is obviously engaging in unsafe practices to escape; in fact, this Court has held: "'"'The rule governing the conduct of [a] police [officer] in pursuit of an escaping offender is that he must operate his car with due care and, in doing so, he is not responsible for the acts of the offender. Although pursuit may contribute to the reckless driving of the pursued, the officer is not obliged to allow him to escape.'"'" Ex parte Brown, 182 So. 3d at 509 (citations omitted). Furthermore, it is speculation to presume that Wright would have slowed his speed and resumed obeying traffic laws had Officer Henderson opted not to pursue him further or immediately discontinued the pursuit. As Drago specifically testified, it is impossible to predict a suspect's behavior with total accuracy. See Ex parte Alabama Peace Officers' Standards & Training Comm'n, 34 So. 3d 1248, 1252 (Ala. 2009) ("'"[S]ummary judgment is not prevented by 'conclusory allegations' or 'speculation' that a fact issue exists."'") (citations omitted)). Moreover, Drago conceded

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traffic violation, Wright accelerated and it became apparent that he was attempting to flee the traffic stop.

that he was unable to state to what extent Wright's erratic behavior might have resulted from the fact that Wright was driving under the influence of controlled substances, rather than from the stress of the pursuit itself.

Finally, Drago acknowledged that there was no evidence indicating that any officer involved in the pursuit of Wright had acted maliciously, had acted with the intent to hurt anyone, or had committed any alleged violation of a departmental pursuit policy in bad faith.[9] As set out above, the officers did not exceed their authority during the pursuit of Wright, either by violating Alabama traffic laws or the applicable departmental pursuit policy. Thus, we hold that Griffin failed to meet his burden of demonstrating that the officers acted in violation of an applicable departmental pursuit policy so as to establish an exception to immunity under Ex parte Cranman.

[9]To the extent that Griffin alleges that negligent or wanton conduct alone falls within the second Ex parte Cranman exception, this Court has rejected that argument. See Ex parte City of Montgomery, 272 So. 3d at 168.

Conclusion

Warrior and Trafford have demonstrated a clear legal right to a summary judgment in their favor on the basis of immunity. Accordingly, the trial court is directed to enter a summary judgment in favor of each on Griffin's claims against them.

PETITION GRANTED; WRIT ISSUED.

Parker, C.J., and Bolin, Wise, Bryan, and Mendheim, JJ., concur.

Mitchell, J., concurs specially, with opinion.

Sellers and Stewart, JJ., concur in the result.

MITCHELL, Justice (concurring specially).

I join the main opinion because it reaches the correct result and faithfully applies our precedents. As the main opinion notes, some of our earlier cases have stated that the common-law immunity doctrine set out in Ex parte Cranman, 792 So. 2d 392 (Ala. 2000), and its progeny "'"governs the determination of whether a peace officer is entitled to immunity under § 6-5-338(a)."'" ___ So. 3d at ____ (citations omitted). In my view, this formulation from our precedents is imprecise and potentially confusing.

While it's true that this Court in Hollis v. City of Brighton, 885 So. 2d 135, 143 (Ala. 2004), exercised its inherent power to broaden the State-agent common-law immunity doctrine so that it encompasses the same or similar immunity protections set forth in § 6-5-338, Ala. Code 1975, neither Hollis nor any of our other decisions gives this Court the power to judicially supersede § 6-5-338. See Ex parte Carlton, 867 So. 2d 332, 338 (Ala. 2003) ("[T]his Court is not at liberty to rewrite statutes or to substitute its judgment for that of the Legislature."). Hollis may have

created a duplicate common-law protection similar to the protection required by § 6-5-338, but it did not subject § 6-5-338 to common-law "govern[ance]."

Moreover, as I've noted elsewhere, the test for immunity under § 6-5-338 is broader and more straightforward than the common-law test under Cranman and its progeny. See Nix v. Myers, 330 So. 3d 818, 828-29 (Ala. 2021) (Mitchell, J., dissenting). Accordingly, I would prefer to resolve this case through simple analysis of the statutory text, rather than through the more complex analysis required by our common-law immunity precedents. Nonetheless, because the main opinion correctly recognizes that common-law immunity provides an independent basis for relief, and because it correctly applies our common-law precedents to the facts of this case, I concur.