Circuit Court for Baltimore City
Case No. 24-C-17-001364

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3336

September Term, 2018

DARLENE CORPORAL

v.

MAYOR AND CITY COUNCIL OF BALTIMORE

Berger,
Leahy,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: January 29, 2020

This appeal is from the order entered in the Circuit Court for Baltimore City on December 13, 2018 dismissing the single-count complaint filed by Darlene Corporal, appellant, against the Mayor and City Council of Baltimore (the "City") and Baltimore City Fire Department paramedics Daniel Miller and Charles Smothers ("Paramedics") (collectively, the "Appellees"), among others.[1] In her complaint, Ms. Corporal alleged that the Paramedics' negligence caused her to break her fibula while exiting an ambulance.

Before trial, Appellees filed a motion under Maryland Rule 2-502 for the circuit court to decide questions of law in advance of trial concerning the Appellees' immunity under the Fire and Rescue Company Act, Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article ("CJP"), § 5-604. Ms. Corporal moved to strike the Appellees' motion. Following a hearing, the circuit court issued an order denying Ms. Corporal's motion to strike, granting the Appellees' motion to decide questions of law, dismissing Appellees, and closing the case. Ms. Corporal timely noted her appeal and presents two questions for our review:

> "1. Was the Circuit Court's dismissal of the Defendants clearly erroneous?"
>
> "2. Was the Circuit Court's denial of the Appellant's Motion to Strike clearly erroneous?"

For the reasons stated below, we hold that the circuit court did not abuse its discretion in denying Ms. Corporal's motion to strike, and did not err in determining that

[1] Ms. Corporal also named Peter Hammen, Robert Maloney, and the Baltimore City Fire Department as Defendants in her complaint. Mr. Hammen and Mr. Maloney, both employees of Baltimore City, were dismissed by mutual agreement of the parties on December 6, 2018. The trial court dismissed the Baltimore City Fire Department on December 13, 2018, and the Appellant does not contest that dismissal on appeal.

Appellees were immune from liability under the Fire and Rescue Company Act. Accordingly, we affirm the circuit court's order dismissing the case.

BACKGROUND

The Incident

On March 30, 2014, Ms. Corporal was experiencing psychiatric problems at her home in Baltimore City, during which she threatened suicide. Her caregiver called 9-1-1 and an ambulance was dispatched from the Baltimore City Fire Department to Ms. Corporal's home. Paramedics Daniel Miller, a cardiac rescue technician, and Charles Smothers, an emergency medical technician, among others, responded to the call. When the Paramedics arrived at Ms. Corporal's home, they found her sitting in her bedroom. The Paramedics evaluated Ms. Corporal and found that she was very upset. She told them that she "did not want to live like this." The Paramedics determined that Ms. Corporal should be transported to Johns Hopkins Hospital for further treatment. Ms. Corporal was assisted down the steps of her home and into the ambulance. The Paramedics checked her vital signs and evaluated her on the Glasgow Coma Scale. Noting no other significant physical exam findings, the Paramedics then transported Ms. Corporal to the psychiatric area of the hospital.

Ms. Corporal later alleged in the underlying complaint that "in the course of exiting the ambulance, [she] stepped down and her left ankle severely twisted causing her to sustain a fractured fibula."

Procedural History[2]

Notice of Claim

On September 15, 2014, counsel for Ms. Corporal filed a notice of claim for injuries sustained by Ms. Corporal under CJP § 5-304 with the City.[3] In the notice, counsel listed the date (March 30, 2014), time (9:30 a.m.), and location of Ms. Corporal's injury (4203 Seidel Avenue) and stated: "Ms. Corporal was being transported to Johns Hopkins Hospital when she fell off the stretcher and broke her hip."

Filing of Complaint and Motion to Dismiss

On March 17, 2017, before the expiration of the statute of limitations, Ms. Corporal filed a one-count complaint for negligence against the Appellees in the Circuit Court for Baltimore City. The central allegation of negligence in the complaint was:

> That the Plaintiff, Darlene Corporal, says that the Defendants and each of them, were negligent in that said paramedics were careless, reckless, and negligent, in that they failed to take [Ms. Corporal], who was an [sic] extremely fragile and emotional state, out of the ambulance on a stretcher or in a wheelchair, failed to observe due care and caution to prevent an incident from occurring, failed to properly assist [Ms. Corporal] out of the ambulance, failed to protect [Ms. Corporal] against injury caused by an unreasonable risk

[2] Some of the procedural history is relevant to the issue of the court's discretion in denying the motion to strike in this case.

[3] The version of CJP § 5-304 in effect at the time of Ms. Corporal's accident provided, in pertinent part:

> (b)(1) . . . [A]n action for unliquidated damages may not be brought against a local government or its employees unless the notice of the claim required by this section is given within 180 days after the injury.
>
> (2) The notice shall be in writing and shall state the time, place, and cause of the injury.

> of harm, and that the Defendants [] and each of them were otherwise negligent in the premises.

After filing her complaint, Ms. Corporal's counsel delayed serving the Appellees. On August 1, 2017, the clerk of the circuit court issued a notification of contemplated dismissal pursuant to Maryland Rule 2-507. In response, Ms. Corporal's counsel requested that the clerk reissue the summonses, and counsel served Appellees with process in late August. Ms. Corporal then moved to dismiss the contemplated notice of dismissal on August 30, 2017. The court entered an order dismissing the notice as moot on October 12th.

Appellees filed a timely motion to dismiss on November 17, 2017 and argued that the Fire and Rescue Company Act, CJP § 5-604, provided immunity to the fire department and to the Paramedics for the conduct alleged in the complaint. Specifically, the Appellees relied on *Mayor and City Council of Baltimore v. Chase*, 360 Md. 121, 123 (2000), and its holding that the Fire and Rescue Company Act "applies to municipal fire and rescue departments and their employees[.]" Because the Mayor and City Council were charged with vicarious liability for the negligence of the Paramedics, Appellees continued, the City was entitled to the same immunity, pursuant to the Local Government Tort Claims Act, CJP § 303(e).

Ms. Corporal responded that the Fire and Rescue Company Act did not apply because the City charged her ambulance fees. According to Ms. Corporal, the fees disqualified the Paramedics from immunity under the provisions of a different immunity statute, the Good Samaritan Act, CJP § 5-603. The Appellees, Ms. Corporal argued,

erroneously relied on the *Chase* decision to support their invocation of immunity. Ms. Corporal's argument hinged upon the following footnote in *Chase* in which the Court of Appeals stated that it was not expressing an opinion on whether CJP § 5-603 denied immunity when the City charges a fee:

> Included in the Petition for Writ of Certiorari, which we granted, was a second question, i.e.,
>
> > "Whether a paramedic employed by the Baltimore City Fire Department to provide emergency medical services is denied immunity under Section 5-603 of the Courts and Judicial Proceedings Article because the City of Baltimore charges a fee for transportation to a hospital by a Baltimore City Fire Department ambulance."
>
> We need not now reach that issue and, therefore, neither intimate, nor express any opinion as to its answer.

Chase, 360 Md. at 123 n.2. Ms. Corporal argued that the "Court of Appeals left intact the holding by the Court of Special Appeals that [CJP § 5-603] could be overcome by the charging of a fee by the service provider[.]"

At the hearing on the Appellees' motion to dismiss, the motions court made the following determination (set out in its entirety):

> The complaint alleges negligence by the Baltimore City Fire Department Paramedics Miller and Smothers. The Fire and Rescue Company Act under 5-604 states in pertinent part, "Except for any willful or grossly negligent act," as Counsel has indicated, "a fire company is immune from civil liability."
>
> Frankly, Counsel, I've heard your argument, but I kind of agree with the plaintiff with regard to the Court of Special Appeals leaving it open with regard to fees being charged. And I do have an attachment indicating that a fee was charged in this case.

> The Motion to Dismiss – pursuant to the Court's reading and having heard the argument of counsel, the Motion to Dismiss is denied at this time.

Scheduling Orders, Proposed Modifications, and Further Delay

A few months after denying Appellees' motion to dismiss, on March 29, 2018, the circuit court issued a standard short track scheduling order. The scheduling order set the following deadlines: 1) identify plaintiff's experts by May 10, 2018; 2) identify Appellees' experts by June 24; 3) complete discovery by July 26; and 4) file any dispositive motions by August 25.

The day before Ms. Corporal's deposition, which was scheduled to take place on the same day as the discovery deadline, Ms. Corporal's attorney of record sought to reschedule the deposition, extend the discovery deadline, and let another attorney "take over." On August 27th, the parties filed a joint motion to modify the scheduling order to extend discovery and postpone the trial date from October 25, 2018 to January 15, 2019. The motion noted that Ms. Corporal's counsel of record had retired from the practice of law and that "efforts have been made for [Ms. Corporal] to obtain other Counsel."

The motions court denied the motion on September 10th. The court explained:

> Already, the trial date is after the time standards for completing civil cases. If this motion were granted, it is not clear whether or when [Ms. Corporal] would get new counsel and whether the action would be prepared to go to trial even on the postponed date. The Court will consider a postponement, but only if the status of [Ms. Corporal's] counsel is clarified first, with reasonable assurance that the action will proceed to resolution promptly.

On October 3rd, new counsel entered his appearance as counsel for Ms. Corporal and, on that same day, the parties filed another joint motion to modify the scheduling

order.[4] Two days later, the trial judge sent a fax to the parties which amended the parties' proposed order and set the pretrial conference for November 29, 2018, with a discovery deadline of November 30th. The trial was set to begin on December 5, 2018. The court struck entirely the dispositive motions deadline. The parties moved, unsuccessfully, for reconsideration of the trial court's scheduling order.

Motion for the Court to Decide Questions of Law and Motion to Strike

On December 3rd, two days before the trial was scheduled to begin,[5] Appellees filed "Defendants' Motion for Court to Decide Questions of Law in Advance of Trial" under Maryland Rule 2-502. In their motion, Appellees argued that the Fire and Rescue Company Act, CJP § 5-604, granted the Paramedics immunity from civil liability, except for any willful and grossly negligent acts. Appellees asserted that, because the complaint did not allege a willful or grossly negligent act, the case should either be dismissed with prejudice or judgment should be entered in favor of the Paramedics. According to Appellees, the City was also entitled to immunity pursuant to the Fire and Rescue Company Act and the doctrine of governmental immunity, to the extent that Ms. Corporal alleged

[4] The scheduling order proposed by the parties would have set the discovery deadline for November 30, 2018; the dispositive motions deadline for December 20, 2018; and the trial for February 25, 2019.

[5] Because the circuit court was closed on December 5, 2018 in observance of a national day of mourning to mark the passing of former President George H.W. Bush, the trial date was rescheduled to December 18th.

that the City "is directly liable for alleged negligence in the operation of the [Baltimore City Fire Department]."[6]

A hearing was held before the circuit court on December 6th. After dismissing two defendants by agreement of counsel, the court considered the Appellees' Rule 2-502 motion and a motion to strike presented at the hearing by Ms. Corporal's counsel. Ms. Corporal's counsel argued that the Rule 2-502 motion deviated from the scheduling order, was highly prejudicial, and sought review of an issue that the circuit had previously decided at the hearing on the motion to dismiss. Appellees maintained that their motion was both timely and proper. Relying on *Artis v. Cyphers*, 100 Md. App. 633 (1994), Appellees asserted that whether a defendant possesses qualified immunity is ultimately a question of law for the trial court to decide prior to trial.

The court questioned whether the immunity issue could be raised at trial through a motion for judgment. Ms. Corporal's counsel responded that "[i]n this case immunity has already been overcome, and that's been ruled on already. So I would say, no, they can't rule on that." He argued further that "[i]n our case there's a bill, $451, presented to Ms. Corporal. So there was a fee charged, so then [the Appellees] no longer have the protection of that statute [the Good Samaritan Act (CJP § 5-603)]."

[6] Appellees also argued that Ms. Corporal's claim was barred by the Local Government Tort Claims Act, CJP § 5-304, and that the Baltimore City Fire Department was not an entity subject to suit. Neither party addressed the Local Government Tort Claims Act on appeal, and Ms. Corporal does not contest the dismissal of the Baltimore City Fire Department on appeal.

Counsel for Appellees argued that the court was not bound by the prior judge's preliminary ruling, which, she contended, was based on the mistaken understanding that the immunity issue was to be determined by the Good Samaritan Act (CJP § 5-603), rather than the Fire and Rescue Company Act (CJP § 5-604). The prior judge had denied Appellees' motion to dismiss based on CJP § 5-603, which only provides immunity if the first responder does not charge a fee. Counsel for Appellees, relying on *Chase*, 360 Md. 121, explained that CJP § 5-604 applies to paramedics who work for the Baltimore City Fire Department and does not contain the no-fee requirement. Counsel argued that the Appellees filed the motion properly in advance of trial because the court "need[ed] to decide at the outset whether the Fire and Rescue Company Act applies."

In response to the court's inquiry into why Appellees did not file a motion for summary judgment raising the same issue, counsel explained the protracted procedural history and modified scheduling orders, attributed in part to the withdrawal of Ms. Corporal's former counsel. Instead of filing a "motion for sanctions against a plaintiff who no longer had a counsel," Appellees' counsel stated she worked with Ms. Corporal's new counsel to modify the scheduling order. Because resolution of this matter had encountered significant delay, on October 12, 2018, the circuit court entirely struck the dispositive motions deadline and set a discovery deadline for the next month and a trial date the following week. With "no opportunity permitted by th[e] [circuit court] for the [Appellees] to file [a motion for summary judgment]," the Appellees filed a motion under Maryland Rule 2-502.

Not certain that he would be assigned to preside over the trial, the judge questioned whether he could determine a pretrial issue under Maryland Rule 2-502 that would impact the trial. Counsel agreed to allow the judge to decide both the motion to strike and the motion for the court to decide questions of law. Specifically, Ms. Corporal's counsel argued:

> Your Honor, without prejudicing my position, I would waive that rule [that the trial judge decides pretrial motions] for purposes of Your Honor considering the motion for the following reasons: My client has a deteriorating or degenerative brain disease and is physically handicapped, the Defendants are employees of the City and a very vital function for the City on the ambulance, which is stretched beyond all get out. They have a witness who works in public safety as well. And so to bring everyone to court to have a judge rule on it when we're ready for trial and everyone schedules there, it makes sense to – to flush out this motion in advance of bringing everyone over there, just in case it is dispositive. I'm hoping it's not.
>
> . . . I would agree to allow Your Honor to make this ruling, even though at this time you may or may not be the trial judge.

The court then proceeded to hear additional argument on Appellees' motion. Appellees' counsel contended that because Ms. Corporal only alleged simple negligence in her complaint, the Paramedics were immune from suit under the Fire and Rescue Company Act. The judge questioned how he could determine that there were no facts adduced to support gross negligence. Counsel responded that the "complaint frames the entire case." She pointed out that there was no documentation or other evidence of gross negligence and offered to read Ms. Corporal's deposition into the record or present it to the court.

Ms. Corporal's counsel insisted that whether the Paramedics were grossly negligent was an issue for the trier of fact. Further, counsel continued to assert that whether the

Paramedics could be denied immunity under CJP § 5-603 because the City charged a fee was an "open question" due to the Court of Appeals' opinion in *Chase*, 360 Md. 121.

Although Ms. Corporal's counsel admitted that "the only record we have is the complaint," he proffered the following facts:

> In our case, as alleged, . . . when they did the proper assessment of my client, they were told she has a physical disability, she couldn't ambulate without her walker, they assisted her down the steps. They put her walker in the ambulance. They helped her get into the ambulance. When she came out, they asked her to step out of the ambulance. They didn't help her out of the ambulance. She stepped down.
>
> And she was there on a call for suicide watch. She was distraught and depressed based on her condition at that time. So they assessed her as a suicide threat. And she was, I don't know to what extent she was unruly and screaming, but she certainly was agitated and not – and they're asking her to come out of this ambulance, and she steps down in a way that breaks her ankle.
>
> . . . They carried her, helped her down the steps, they put her walker in the wheelchair – in the ambulance. They took the walker out, and then they don't help her out. That's an indifference. That's a gross indifference, Your Honor.

At the conclusion of the parties' arguments, the circuit court took the matter under advisement. In a written order, entered on December 13, 2018, the circuit court explained that the Fire and Rescue Company Act "provides immunity from civil liability to fire and rescue companies and its personnel for any act or omission within the course of the performance of their duties" except for "any willful or grossly negligent act." Citing *Chase*, 360 Md. at 123, the court noted that the "Court of Appeals has made clear that the immunity extends not only to volunteer fire and rescue companies, but to municipal fire and rescue companies as well." The court found that the complaint "fails to allege any

facts to suggest any willful or wanton conduct on behalf of [the Paramedics]" to establish gross negligence. Accordingly, the "alleged mere negligent conduct on behalf of the [Paramedics] is insufficient to remove the immunity protections of [CJP] § 5-604." Because the circuit court found the Paramedics immune from liability, the circuit court ruled that the suit could not form the basis of a recovery against the City under a theory of vicarious liability, and the City could not be held liable under the Local Government Tort Claims Act.

The circuit court then addressed Ms. Corporal's motion to strike. Although it was "mindful of the difficult procedural posture of this case," the court underscored that,

> where the conduct of the fire and rescue company personnel does not amount to willful or grossly negligent conduct, they are immune from suit. The General Assembly has expressly provided that such immunity is not waived and can be asserted as a defense to any action for damages not involving the negligent operation of a motor vehicle. [CJP § 5-604(b)(2)]. The facts of this case do not amount to the willful or grossly negligent conduct necessary to pierce that immunity.

Accordingly, the circuit court denied the motion to strike, dismissed the Appellees, and directed the clerk to close the case. Ms. Corporal noted her timely appeal to this Court.

Standard of Review

Maryland Rule 2-502 provides:

> If at any stage of an action a question arises that is within the sole province of the court to decide, whether or not the action is triable by a jury, and if it would be convenient to have the question decided before proceeding further, the court, on motion or on its own initiative, may order that the question be presented for decision in the manner the court deems expedient. In resolving the question, the court may accept facts stipulated by the parties, may find facts after receiving evidence, and may draw inferences from these facts. The proceedings and decisions of the court shall be on the record, and the

> decisions shall be reviewable upon appeal after entry of an appealable order or judgment.

Although a dispositive order on a motion under Maryland Rule 2-502 is infrequently the vehicle for an appeal, our cases establish that we review the court's decision as we would "a trial on the merits, with respect to the issues decided." *Bender v. Schwartz*, 172 Md. App. 648, 664 (2007).

"Whether a defendant possesses a qualified immunity is ultimately an issue of law for the court to determine." *Artis v. Cyphers*, 100 Md. App. 633, 653 (1994), *aff'd*, 336 Md. 561 (1994). And whether gross negligence exists is a "question of law only when reasonable men could not differ at the rational conclusion to be reached." *Romanesk v. Rose*, 248 Md. 420, 423 (1968). Accordingly, where factual issues can be resolved by the court, a party "may take advantage of Md. Rule 2–502 and have the court decide those facts, and with them the legal issue of immunity, preliminarily." *Artis*, 100 Md. App. at 653–54. Thus, "as in all actions tried without a jury," pursuant to Maryland Rule 8-131(c),[7] we review legal determinations and "questions of law de novo and shall not set aside the circuit court's findings of fact unless they are 'clearly erroneous.'" *Bender*, 172 Md. App. at 664. *See also Porter v. Schaffer*, 126 Md. App. 237, 259 (1999).

[7] Maryland Rule 8-131(c) states:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

A decision whether to grant a motion to strike is within the sound discretion of the trial court, so our review of the court's denial of Ms. Corporal's motion in this case is for abuse of discretion. *Bacon v. Arey*, 203 Md. App. 606, 667 (2012) (citing *First Wholesale Cleaners, Inc. v. Donegal Mut. Ins. Co.*, 143 Md. App. 24, 41 (2002)). *See also Maddox v. Stone*, 174 Md. App. 489, 501 (2007) (reviewing under the abuse of discretion standard a trial court's decision of whether to grant a motion to strike due to a party's failure to comply with the deadlines in a scheduling order). An abuse of discretion occurs "where no reasonable person would take the view adopted by the trial court . . . or when the court acts without reference to any guiding principles, and the ruling under consideration is clearly against the logic and effect of facts and inferences before the court . . . or when the ruling is violative of fact and logic." *Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC*, 388 Md. 1, 28 (2005) (citation and internal quotation marks and brackets omitted).

DISCUSSION

I.

Immunity

The Court of Appeals recently affirmed that the Fire and Rescue Company Act, CJP § 5-604(a), "unambiguously applies to municipal fire departments, and immunizes them and their employees from simple negligence claims." *Stracke v. Estate of Butler*, 465 Md. 407, 430 (2019). *See also id.* at 453-54 (Wilner, J., dissenting) (agreeing with the majority that "[s]ection 5-604(a) does apply to municipal fire and rescue departments when providing emergency medical service, notwithstanding that some of them charge a fee for their services"). The Court noted, "[o]ur analysis begins and ends with our previous

decision in [*Chase*], in which we concluded that the General Assembly intended the Fire and Rescue Company Act to immunize municipal and private fire departments, as well as their employees, from simple negligence claims." *Id.* at 428 (citing *Chase*, 360 Md. 121). The Fire and Rescue Company Act provides:

> Notwithstanding any other provision of law, except for any willful or grossly negligent act, a fire company or rescue company, and the personnel of a fire company or rescue company, are immune from civil liability for any act or omission in the course of performing their duties.

CJP § 5-604 (a).

Before this Court, Ms. Corporal admits that the Paramedics "were acting in their official capacity as [Baltimore City Fire Department] employees at the time the injuries occurred." She further concedes that "municipal fire department employees are immune from civil liability when acting in their official capacity," in the absence of willful or grossly negligent acts. She acknowledges, in the absence of any evidence of gross negligence in the record, that the complaint is the only operative document. She relies on the allegations in the complaint that the Paramedics were:

> reckless . . . in that they failed to take [Ms. Corporal], who was [in] an extremely fragile and emotional state, out of the ambulance on a stretcher or in a wheelchair, failed to observe due care and caution to prevent an incident from occurring, [and] failed to properly assist [Ms. Corporal] out of the ambulance[.]

According to Ms. Corporal, the trial court committed error by resolving a question which "should have been left ultimately for the trier of fact, especially considering that [her] Complaint had already survived the Dismissal and Summary Judgment phases of the action."

Appellees maintain that failing to help someone step out of an ambulance, without more, cannot be gross negligence and that, at the end of discovery, Ms. Corporal had not offered any facts upon which a jury could find that the Paramedics' behavior was grossly negligent.

Gross Negligence

A gross negligence claim "sets the evidentiary hurdle at a higher elevation" than the "relatively low bar" for a claim for simple negligence. *Beall v. Holloway-Johnson*, 446 Md. 48, 64 (2016). Simple negligence includes "any conduct, except conduct recklessly disregardful of an interest of others, which falls below the standard established by law for protection of others against unreasonable risk of harm." *Id.* at 63-64 (citing *Barbre v. Pope*, 402 Md. 157, 187 (2007)). Gross negligence, alternatively, is:

> an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, and also implies a thoughtless disregard of the consequences without the exertion of any effort to avoid them. Stated conversely, a wrongdoer is guilty of gross negligence or acts wantonly and willfully only when he inflicts injury intentionally or is so utterly indifferent to the rights of others that he acts as if such rights did not exist.

Id. at 64 (citing *Barbre*, 402 Md. at 187). We have explained that "only extraordinary or outrageous conduct can be termed gross negligence—mere recklessness is not enough; there must be reckless disregard for human life." *McCoy v. Hatmaker*, 135 Md. App. 693, 706 (2000) (citation and internal brackets and quotation marks omitted).

Recently, in *Stracke v. Estate of Butler*, the Court of Appeals held that the estate of Kerry Butler, Jr., who died from cardiac arrest, had presented insufficient evidence as a matter of law to generate a jury question as to whether the paramedics who assisted and

transported Mr. Butler were grossly negligent. *Stracke*, 465 Md. at 421-22. After Mr. Butler woke his wife up just after 1:00 a.m. complaining of chest pains, emergency paramedics were called to their home. *Id.* at 414. Mr. and Mrs. Butler were waiting for the paramedics by the front door of the house, Mr. Butler sitting in a chair inside the door with his hand on his chest. *Id.* at 415. When the paramedics arrived, one of the paramedics called out, without entering the house, "what seems to be the problem." *Id.* They were informed that Mr. Butler thought he was having a heart attack. *Id.* "While standing in front of the [] residence, [the paramedic] visually assessed Mr. Butler, in accordance with relevant medical protocols, observing that he was 'a good shape gentleman[.]'" *Id.* According to the paramedic, Mr. Butler walked to the ambulance on his own accord. *Id.* Ms. Butler claimed that Mr. Butler "stood up and staggered the short distance to the ambulance, approximately 30-40 feet, without the aid of [the paramedic] or a stretcher."[8] *Id.*

[8] The dissenting opinion highlighted the following additional testimony presented regarding the paramedics' arrival on the scene:

> According to Ms. Butler, [Mr. Butler] was mumbling, which he did not ordinarily do, and so she spoke for him. She told [the paramedic] that her husband "could barely walk and he could barely talk." Mr. Butler was still holding his chest and was bent forward.
>
> The ambulance was parked 30 to 40 feet away from the house. Notwithstanding Ms. Butler's statement that her husband could barely walk, [the paramedic] responded that he was "going to have to walk." Ms. Butler repeated that he couldn't walk, but [the paramedic] told Mr. Butler again, "you're going to have to walk." Although there was a stretcher in the ambulance, [the paramedic] refused to get it and forced Mr. Butler to walk to the ambulance as a condition of being taken to the hospital.

Inside the ambulance, a paramedic took Mr. Butler's vitals, which "appeared to be baseline, indicating that [Mr. Butler] was in stable condition." *Id.* at 416. The paramedics then transported Mr. Butler to the nearest hospital. *Id.* Upon arriving at the hospital, Mr. Butler exited the ambulance, again without assistance, and sat in a wheelchair. *Id.* Though Mr. Butler complained of chest pains, the paramedics alerted hospital staff that Mr. Butler "had a burning in his throat," and Mr. Butler waited in the emergency room. *Id.* While waiting, Mr. Butler became unconscious and began to slide out of his wheelchair. *Id.* Mr. Butler was then taken to a code room, where he could not be resuscitated. *Id.* at 417.

Mr. Butler's estate and family filed a wrongful death and survival action. *Id.* The suit against the paramedics proceeded to a jury trial to determine whether the paramedics "acted in a willful or grossly negligent manner." *Id.* Following deliberations, the jury found that the paramedics were grossly negligent in their treatment of Mr. Butler and

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* * *

> Having reached the ambulance, he then was forced to hoist himself or climb some steps in order to enter the ambulance, again without any assistance from [the paramedics], who were engaged in a conversation at the time.[]
>
> [The paramedic] told a very different story. He acknowledged that, under the MIEMSS protocols, a report of chest pain was Priority 1. . . . The paramedic said that he told Mr. Butler to "hold tight" while he got a stretcher but that Mr. Butler responded that he was 'ready to go' and walked out of the house on his own accord.
>
> . . . . [The paramedic] acknowledged that MIESS protocols required that he enter the house to ascertain the nature of the problem and that he provide a stretcher to transport the patient, and that he failed to do either.

Stracke, 465 Md. at 434-436 (Wilner, J., dissenting).

awarded Mr. Butler's estate and family $3,707,000. *Id.* at 418. The paramedics moved for judgment notwithstanding the verdict. *Id.* The circuit court granted the motion, concluding that the evidence of gross negligence was insufficient. *Id.* This Court reversed, holding that there was sufficient evidence of gross negligence, and "ordered the circuit court to reinstate the jury's verdict." *Id.* The Court of Appeals issued a writ of certiorari. *Stracke v. Estate of Butler*, 462 Md. 556 (2019).

The Court of Appeals held that the paramedics "did not possess a wanton and reckless disregard for Mr. Butler's life, nor did they present an utter indifference to his rights and well-being," as is required for the issue of gross negligence to be submitted to a jury. *Stracke*, 465 Md. at 427. Neither the paramedics' failure to follow protocols nor the "mere fact that [the paramedics] inaccurately diagnosed and treated their patient" elevated the paramedics' conduct to gross negligence. *Id.* at 426. The paramedics "made a concerted effort to locate Mr. Butler, assess him, take his vitals, and transport him to the nearest hospital for further review and treatment in less than ten minutes." *Id.* at 426-27. These facts, the Court held, demonstrated that the paramedics "provided the care they assessed as necessary for the situation before them."[9] *Id.* at 427.

In *Tatum v. Gigliotti*, we held that a paramedic's failure to properly diagnose an asthma attack and administer the proper life-saving treatment did not amount to gross

[9] The Court noted its concern that, if a plaintiff can submit a claim for a jury to consider gross negligence by offering evidence of negligence, "many first responders will be stripped of the protective shield that the immunity was intended to provide, forcing them to go through the entire litigation process when there is only evidence of simple negligence." *Id.* at 422.

negligence. 80 Md. App. 559, 562-63 (1999). When paramedics arrived at the patient's house, the patient resisted when the paramedics tried to administer treatment for hyperventilation by attempting to place a paper bag over the patient's face. *Id.* at 562. One medic then walked the patient to the ambulance instead of transporting the patient on a stretcher. *Id.* The paramedic testified that, although he attempted to administer oxygen en route to the hospital, the patient again resisted. *Id.* at 563. When the ambulance turned into the hospital, the patient slid off his seat and fell onto the floor of the ambulance. *Id.* Although the paramedic signed a report indicating the patient was stable, an emergency room nurse testified the patient was in cardiac arrest. *Id.* The patient's cause of death was ultimately determined to be lack of oxygen. *Id.* Despite these facts, this Court determined that the trial judge acted properly in granting the defense's motion for judgment. *Id.* at 569. We concluded that the paramedic's actions "may have amounted to negligence, [but] they do not satisfy the threshold of gross negligence," because, as we further explained, the facts were not sufficient to show a "reckless disregard for human life." *Id.*

Likewise, in *McCoy v. Hatmaker*, we held that a paramedic's errors in medical judgment and failure to follow medical protocol were insufficient to establish gross negligence. 135 Md. App. 693, 713 (2000). There, a paramedic concluded the patient, Mr. McCoy, was already deceased after observing that he showed no visible sign of life. *Id.* at 701. Mr. McCoy did not have a pulse or heart sounds; his pupils were fixed and dilated; he had released body fluids; and his body temperature had dropped. *Id.* Instead of administering life-saving treatment, the paramedic began to fill out paperwork and called the police to summon a medical examiner. *Id.* at 702.

Mr. McCoy's estate and survivor brought a wrongful death claim and survival action against the paramedic, a police officer, the Baltimore City Police Department, and the Mayor and City Council of Baltimore City. *Id.* at 698. On motion for summary judgment, the court dismissed the case on the ground that Maryland law afforded the defendants immunity from civil damages in the absence of gross negligence or willful misconduct. *Id.* at 705. On appeal before this Court, Appellant argued that the paramedic failed to follow medical protocol and was grossly negligent. *Id.* at 707-08. We disagreed:

> [W]e cannot equate a well-intended error in medical judgment—even if it costs the patient's life—with wanton and reckless disregard for the life of that patient. Medical protocols seek to establish best practices for successfully treating certain conditions. Failure to follow such protocols might sometimes be deliberate, but more often than not, we believe, such failure to heed them during an emergency would be purely accidental and, therefore, at most simple negligence. Even resolving all inferences in appellant's favor, the undisputed facts here simply do not show that [the paramedic's] failure falls into the former category. **Appellant cannot point to *any* facts that show he made a *deliberate* choice not to give McCoy a chance to survive, and, at the end of the day, it is deliberateness that lies at the core of the *Tatum* standard of willfulness and wantonness.**

Id. at 713-14 (bold emphasis added) (italic emphasis in original).

Analysis

Respecting the foregoing decisional law and the precepts articulated therein, we hold that the circuit court did not err in dismissing the underlying action for the reason that Ms. Corporal failed to offer any facts upon which a jury could find that the Paramedics were grossly negligent. Without this showing, as the court correctly determined, the Appellees were entitled to the dismissal under the Fire and Rescue Company Act because

they are "immune from civil liability for any act or omission in the course of performing their duties." CJP § 5-604(a).

While the trier of fact usually determines whether negligent conduct amounts to gross negligence, due to the difficulty of "ascertaining which side of the line the facts fall on," *Stracke*, 465 Md. at 447 (Wilner, J., dissenting), the "parties may take advantage of Md. Rule 2-502" when "the facts are so clear as to permit a conclusion as a matter of law," *Artis*, 100 Md. App. at 652-654. To support a claim for gross negligence, Ms. Corporal was required to proffer facts that would allow a fact finder to determine that the Paramedics either inflicted injury intentionally or were so utterly indifferent to Ms. Corporal's rights that the Paramedics acted as if they did not exist. *Beall*, 446 Md. at 64. Neither the complaint nor the additional facts proffered by Ms. Corporal's counsel at the December 6th hearing met this burden.[10] Furthermore, despite the benefit of the entire discovery period and Ms. Corporal's deposition having been taken, no evidence was offered to show gross negligence.

The complaint, the only operative document presented by Ms. Corporal's counsel to support her claim for gross negligence, does not allege gross negligence. The complaint utilizes terms customary to articulate a claim of simple negligence—"careless," "reckless," and "negligent"—but does not contain even a conclusory statement that the Paramedics were grossly negligent. The gravamen of Ms. Corporal's single-count complaint is that

[10] While Ms. Corporal's counsel admitted at the December 6th hearing that "the only record we have is the complaint," the majority of the details that Ms. Corporal's counsel proffered were not pleaded in Ms. Corporal's complaint.

the Paramedics were "reckless" in failing "to properly assist [Ms. Corporal] out of the ambulance[.]" But this allegation does not indicate that the Paramedics acted with wanton or reckless disregard for Ms. Corporal's life and welfare. *McCoy*, 135 Md. App. at 706. The complaint simply does not allege facts that could lead to a finding that the Paramedics displayed an utter indifference to Ms. Corporal's rights and welfare to support gross negligence. *Barbre*, 402 Md. at 187.[11]

Ms. Corporal also failed to establish the standard of care that the Paramedics were obliged to follow, and her complaint is, therefore, devoid of any allegation of "an intentional failure to perform a manifest duty." *Barbre*, 402 Md. at 187. What if, for example, the proper protocol for care of a patient experiencing psychiatric problems and

[11] Moreover, merely inserting conclusory allegations of gross negligence in a complaint would not be enough to bring her claim outside of the immunity provisions of the Fire and Rescue Company Act, CJP § 5-604. *See Boyer v. State*, 323 Md. 558, 579 (1991) (holding that, in order to charge officer with gross negligence under the Maryland Tort Claims Act, the plaintiff must plead "*facts* showing that [the officer] acted with a wanton and reckless disregard for others") (emphasis in original). In *Boyer*, the plaintiffs alleged in their complaint that a police officer was grossly negligent:

> in pursuing Farrar, a suspected drunk driver, at an excessively high rate of speed through a heavy traffic area; in continuing to recklessly pursue defendant Farrar at extremely high and dangerous rates of speed; in failing to activate immediately all of the emergency equipment on his police car so as to warn other motorists of the foreseeable dangers to their health and safety created by defendant Titus's negligent and reckless pursuit; and in otherwise failing to adhere to the acceptable police procedures and policies in attempting to apprehend defendant Farrar.

Id. at 579–80. The Court held that these allegations did not amount to gross negligence as a matter of law. *Id.* at 580.

threatening suicide is *not* to try to force the patient onto a stretcher or into a wheelchair? In this case, Ms. Corporal's case is even further deficient without any evidence or allegation as to the proper protocol that the Paramedics were required to follow.

Accordingly, because Ms. Corporal failed to assert any facts upon which a jury could find that the Paramedics were grossly negligent, which would defeat the immunity protections under CJP § 5-604, the circuit court was correct in granting Appellees' Maryland Rule 2-502 motion.[12]

II.

Motion to Strike

Ms. Corporal argues that the trial court abused its discretion in denying her motion to strike the Appellees' Maryland Rule 2-502 motion. Specially, Ms. Corporal argues that Appellees' motion was filed after the time for dispositive motions had passed. Further, according to Ms. Corporal, Appellees should not be entitled to a '"second bite at the apple' by cloaking a renewed dispositive preliminary motion as a legal question for the court to consider prior to trial."

Ms. Corporal's argument is without merit. The plain language of Maryland Rule 2-502 allows the trial court to consider a motion "at any stage of an action." Appellees were not required to undergo a trial for the court to resolve an issue of law, but were free to "take

[12] Appellees argue in their brief on appeal that the "language of the Fire and Rescue [Company] Act makes clear that the General Assembly intended only willful or grossly negligent acts to remove the statute's cloak of immunity." Appellees did not raise this issue before the trial court. Moreover, because we hold that the facts presented do not support gross negligence, we decline to consider whether the Paramedics' alleged failure to assist Ms. Corporal constituted an "act" or an "omission."

advantage of Maryland Rule 2-502" and have the court decide the issue of immunity preliminarily. *Artis*, 100 Md. App. at 653-54. The initial scheduling order that Ms. Corporal complains Appellees violated was no longer in force—due largely to the delays that she caused. Ms. Corporal does not present any legal authority for her assertion that a party is limited to one motion to resolve a question of law. Instead, Maryland law permits multiple avenues to resolve questions of law. *See, e.g.*, Md. Rule 2-322 (motion to dismiss); 2-501 (motion for summary judgment); 2-502 (separation of questions for decision by court); 2-519 (motion for judgment); 2-532 (motion for judgment notwithstanding the verdict).

The trial court's order denying Ms. Corporal's motion to strike did not prejudice her. The trial court's decision to consider this argument on the eve of trial was intended to determine whether a trial was even necessary. Indeed, Ms. Corporal's counsel pressed the circuit court to decide the Appellees' Maryland Rule 2-502 motion on December 6th — instead of at the trial on December 18th—"to accommodate everyone's interest in this case," "just in case it is dispositive." The only prejudice that Ms. Corporal asserts is that her "counsel was forced to divert attention away from preparation for an imminent trial in order to relitigate an immunity question[.]" Discovery was complete, and the trial court provided Ms. Corporal with an opportunity to proffer exactly what facts she would prove at trial. The trial court correctly held that the facts, as Ms. Corporal proffered them, were legally insufficient to warrant a finding of gross negligence. Ms. Corporal has not provided any reason why the outcome at trial or in a motion for judgment at the close of Ms. Corporal's evidence would result in a different outcome.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

The correction notice for this opinion can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/3336s18cn.pdf