MISSOURI COURT OF APPEALS
WESTERN DISTRICT

WD88448

ALEXANDRIA VARGAS,
Appellant,

v.

JACKSON COUNTY, MISSOURI, ET AL,
Respondents.

Opinion Filed: November 17, 2026

Appeal from the Circuit Court of Jackson County, Missouri
The Honorable Sarah Anne Castle, Judge

Before Division Four : Edward R. Ardini, Jr., Chief Judge, Presiding, Lisa White Hardwick, Judge and Gary D. Witt, Judge

Alexandria Vargas appeals the judgment of the Circuit Court of Jackson County, Missouri ("trial court"), granting Mark Estrada's motion for summary judgment. On appeal, Vargas claims that the trial court erred in finding that Estrada's conduct was protected by official immunity in that: (1) Estrada's conduct in operating his vehicle was ministerial in nature, not discretionary; and (2) Estrada acted with malice in operating the vehicle when he had serious vision problems, which he concealed from his employer. We affirm the judgment of the trial court.

Factual and Procedural Background

On September 4, 2018, there was a collision between Vargas's vehicle and Estrada's patrol vehicle; Estrada was a Jackson County Sherriff's Deputy. Vargas, who was pregnant, was injured in the collision, and, tragically, she lost her child as a result of the collision.

On January 5, 2023, Vargas filed a petition in the trial court asserting claims of negligence, negligence per se, and wrongful death against Estrada and Jackson County ("the County"). On October 31, 2024, Estrada filed a motion for summary judgment arguing that he was entitled to judgment as a matter of law due to the doctrine of official immunity. On January 17, 2025, Vargas filed a response to the motion for summary judgment, alleging new facts, *inter alia*, that Estrada had undergone surgery to repair a detached retina at some time prior to the collision and that he had not notified the County of his condition.

The trial court originally denied Estrada's motion for summary judgment, finding that there was a genuine issue of material fact as to whether Estrada had a red traffic light and failed to stop at the red light, which, in a non-emergency situation,[1] he had no discretion to have done. Estrada sought a writ of prohibition in the Missouri Supreme Court. The Supreme Court issued a preliminary writ of prohibition, commanding the trial

[1] Estrada was on his way home from work in his patrol vehicle. The parties agree, for purposes of the summary judgment record, he was acting in the course of his employment, so this is not an issue we need address. The County is named as a defendant under a theory of respondeat superior. No allegations are separately raised against the County other than that Estrada was in its employ at the time of the collision.

court either to set aside its order denying summary judgment and entering an order granting Estrada's motion for summary judgment or to show cause why the Supreme Court should not issue a permanent writ of prohibition. The trial court entered an order granting Estrada's motion for summary judgment, which, at Vargas's request, was denominated a judgment and certified as a final judgment for purposes of appeal as to all claims against Estrada.[2] The Supreme Court then dismissed the writ petition as moot. This appeal of the grant of Estrada's motion for summary judgment follows.

Standard of Review

We review summary judgments de novo. *LaBranche v. Kan. City Pub. Schs.*, 671 S.W.3d 801, 807 (Mo. App. W.D. 2023). "[W]e do not defer to the trial court's decision, but instead use the same criteria that the trial court should have employed in initially deciding whether to grant the motion." *Id.* Summary judgment is proper when the moving party establishes that there is no genuine issue of fact and that the movant is entitled to judgment as a matter of law. *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 452 (Mo. banc 2011). "The record below is reviewed in the light most favorable to the

[2] Vargas's claims against the County remain, but claims that are fully resolved with respect to one party, even if they remain with respect to another party, and even if the claims against the various parties arise out of the same set of facts, may be certified as a final judgment pursuant to Rule 74.01(b) as long as the trial court determines there is no reason for delay in allowing the matter to proceed to appeal. *Butala v. Curators of Univ. of Mo.*, 620 S.W.3d 89, 93 (Mo. banc 2021). When "a judgment resolves all legal issues and leaves open no remedies against a particular *party*, it can be certified as final for purposes of appeal under Rule 74.01(b)." *Id.* at 94 (emphasis added).

party against whom judgment was entered, and that party is entitled to the benefit of all inferences from the record." *Id.* (internal quotation marks omitted).

Analysis

Vargas's first point on appeal is that the trial court erred in granting Estrada's motion for summary judgment on the ground that he had official immunity because Estrada's conduct in operating his vehicle in a non-emergency situation was ministerial, not discretionary, in that if Estrada's traffic light was red, he had no discretion not to stop. "Official immunity. . . protects public officials sued in their individual capacities from liability for alleged acts of negligence committed during the course of their official duties for the performance of discretionary acts." *State ex rel. Barron v. Beger*, 655 S.W.3d 356, 360 (Mo. banc 2022) (internal quotation omitted). Official immunity protects a defendant not merely from judgment but from suit altogether. *Id.*

Official immunity does not apply when the public officer fails to perform a ministerial duty. *Forester v. May*, 671 S.W.3d 383, 387 (Mo. banc 2023). A ministerial duty is one that requires a certain act to be performed in a prescribed manner according to a "mandate of legal authority, and without regard to the public official's judgment or opinion concerning the propriety or impropriety of the act to be performed." *Id.* (internal quotation marks omitted). "[T]he central question is whether there is any room whatsoever for variation in when and how a particular task can be done. If so, that task—by definition—is not ministerial." *Id*. (internal quotation marks omitted).

Recent Missouri Supreme Court cases have clarified that even mandatory actions may not be ministerial. In *Forester*, a children's division caseworker failed to timely

perform the actions she was required to perform by statute and by a provision of the children's division's child welfare manual; the governing statute used the word "shall," and the child welfare manual used the word "must." *Id.* at 388. But the Court found that, since "there was room . . . for variation in when and how" the caseworker could perform the tasks, the duty was not ministerial, and official immunity applied. *Id.* (internal quotation marks omitted).

In *State ex rel. Barron v. Beger*, the Court found that official immunity shielded a State Highway Patrol Trooper who injured another driver during a non-emergency pursuit of a speeding motorist because the Trooper's driving decisions "could have been made in various different ways and were subject to [her] discretion." 655 S.W.3d 356, 361 (Mo. banc 2022). This included discretion over vehicle speed and whether to use emergency lights or sirens, even though it was not an emergency. *Id.* The fact the Trooper violated her employer's policies during the pursuit was not dispositive. *Id.* at n.1.

Similarly, in *State ex rel. Love v. Cunningham*, four supervisory employees of the Missouri Highway and Transportation Commission failed to ensure the placement of a protective vehicle shielding road workers and to provide training and a safety plan, all of which were required by MHTC rules, policies, and procedures, the tragic result being the death of a road striper and her unborn child. 689 S.W.3d 489, 493 (Mo. banc 2024). The Court found that, even though the provision of the safety measures was "mandatory," the "pertinent inquiry is whether the nature of the act itself is ministerial or clerical[,]" and that "the acts of ensuring placement of a protective vehicle and providing the required

ongoing training and a safety plan are not clerical or ministerial acts." *Id.* at 496. Rather, "[t]o 'ensure' and to 'train' are inherently supervisory [and] highly discretionary." *Id.* Accordingly, official immunity required judgment to be entered in favor of the supervisors. *Id.* at 498.

Finally, in *State ex rel. Morales v. Alessi*, the Court found that official immunity protected several healthcare workers at a government-run rehabilitation center after they failed to perform several care and safety procedures required by a patient's individual support plan ("ISP"), which sadly resulted in his death. 679 S.W.3d 467 (Mo. banc 2023). The ISP was itself required by state and federal regulations. *Id.* at 472 n.2. Despite the mandatory nature of the duties the employees failed to perform, the Court reiterated that "[w]hen even slight discretion exists, the duty is not ministerial[,]" and that the *manner* in which the employees would have performed the actions, had they done so, would have involved the use of discretion. *Id.* at 473.

In this case, under the facts as we view them in reviewing the grant of summary judgment, Estrada had a red traffic light, and he had a mandatory statutory duty to stop for the light pursuant to section 304.281, RSMo. However, *how* he performed the stop necessarily involves discretion, as does most operation of a motor vehicle. A driver's act of stopping depends on factors such as speed, road conditions, obstacles, weather, other traffic, and vehicle characteristics. As the cases above instruct, the failure to perform a mandatory act that would have required discretion had the act been performed does not turn the discretionary duty into a ministerial duty. Driving is discretionary, and thus official immunity protects Estrada from suit.

Point I is denied.

Vargas's second point on appeal is that official immunity fails to shield Estrada because he acted with malice in that he operated a vehicle knowing his vision was negatively impacted by an earlier detached retina. "[I]t is generally held that official immunity applies to all discretionary acts except those done in bad faith or with malice." *Love*, 689 S.W.3d at 496 (quoting *State ex rel. Twiehaus v. Adolf*, 706 S.W.2d 443, 447 (Mo. banc 1986)). "The relevant definition of bad faith or malice in this context ordinarily contains a requirement of actual intent to cause injury." *Twiehaus*, 706 S.W.2d at 447. "A defendant acts with malice when he wantonly does that which a man of reasonable intelligence would know to be contrary to his duty and which he *intends* to be prejudicial or injurious to another." *State ex rel. Alsup v. Kanatzar*, 588 S.W.3d 187, 190 n. 7 (Mo. banc 2019) (emphasis added) (quoting *Twiehaus*, 706 S.W.2d at 447).

Vargas fails to raise any factual allegations in her petition that could give rise to a finding that Estrada had "a malicious motive or purpose or of conscious wrongdoing" and the petition therefore fails to state a claim which is not barred by official immunity. *Throneberry v. Missouri State Highway Patrol*, 526 S.W.3d 198, 204 (Mo. App. W.D. 2017). In Vargas's response to Estrada's motion for summary judgment, she includes a section entitled "Plaintiff's Additional Statement of Uncontroverted Material Facts" wherein she alleges that prior to the collision Estrada had suffered from a detached retina, which had been surgically repaired, and that Estrada did not know if the surgery fully repaired his eye or whether he has any continued vision loss as a result. She further alleged that Estrada had failed to inform the County of his detached retina. However,

none of these allegations are contained in the petition and there are no allegations in the petition of "a malicious motive or purpose or of conscious wrongdoing." *Id.*

Further, Vargas points to no admissible evidence supporting her allegation that Estrada's detached retina in one of his eyes, which occurred several years prior to the accident and was surgically repaired, caused vision impairment sufficient to impair his driving on September 4, 2018. Evidence that Estrada drove with a significant vision impairment would establish negligence or possibly recklessness, both of which are subject to the application of official immunity. *Love*, 689 S.W.3d at 497. Even had she amended her petition to include these factual allegations, Vargas alleges no facts that would establish an intention on Estrada's part to harm her or any driver. Accordingly, her argument that malice prevents Estrada from the protection of official immunity fails.

Point II is denied.

Conclusion

For all of the above-stated reasons, we affirm the judgment of the trial court.



Gary D. Witt, Judge

All concur.