

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JUAN ALDASORO, *Plaintiff/Appellant*,

v.

GIOVANI PAVLINCH, et al., *Defendants/Appellees*.

No. 1 CA-CV 25-0533

FILED 09-24-2026

Appeal from the Superior Court in Maricopa County

No. CV2023-053700, CV2023-094787

The Honorable Michael D. Gordon, Judge, *Retired*

REVERSED AND REMANDED

COUNSEL

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OPINION

Judge Andrew J. Becke delivered the opinion of the Court, in which Presiding Judge Samuel A. Thumma¹ and Judge Kent E. Cattani joined.

B E C K E, Judge:

¶1 Plaintiff Juan Aldasoro appeals from the superior court’s entry of summary judgment against him on his negligence claim against the City of Phoenix (“City”) and its police officer, Giovanni Pavlinch, based on common law qualified immunity. We hold that police officers enjoy no common law qualified immunity from negligence claims. We further hold that A.R.S. § 28-624 does not grant police officers statutory immunity and, instead, sets forth a standard of due care. Accordingly, we reverse and remand for proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL HISTORY

¶2 While responding to an emergency call in a marked City police car, Officer Pavlinch drove through a red light and crashed into Aldasoro’s vehicle, which in turn crashed into another vehicle. Pavlinch had his emergency lights on at the time. Whether his siren was on is a disputed fact.

¶3 Aldasoro sued Pavlinch and the City for simple negligence. After the close of discovery, Pavlinch and the City moved for summary judgment, arguing they were entitled to common law qualified immunity.

¶4 Aldasoro responded that common law sovereign immunity was abolished in 1963. *See Stone v. Ariz. Highway Comm’n*, 93 Ariz. 384, 387 (1963), *overruled in part on other grounds by Grimm v. Ariz. Bd. of Pardons & Paroles*, 115 Ariz. 260, 266 (1977). Further, Aldasoro argued, A.R.S.

¹ Judge Samuel A. Thumma was on the panel assigned to this case until retiring effective August 28, 2026. Arizona Supreme Court Chief Justice Ann A. Scott Timmer appointed Judge Thumma to continue to serve on the Court through December 31, 2026, to resolve those cases in which he previously participated like this case. *See Arizona Supreme Court Administrative Order 2026-124.*

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§ 28-624—which permits the driver of an emergency response vehicle to violate certain motor vehicle laws when an audible signal like a siren is activated—did not apply because Pavlinch did not activate his siren.

¶5 The superior court granted summary judgment, concluding there were “no material questions of fact regarding whether Defendant Pavlinch, a law enforcement officer, was exercising discretion when responding to an emergency call,” and therefore, under Arizona’s common law, “Defendants are entitled to qualified discretionary act immunity.” The court also found that § 28-624 “did not preempt the [common law] qualified discretionary act immunity, and it is a viable affirmative defense.”

¶6 We have jurisdiction over Aldasoro’s timely appeal under A.R.S. § 12-2101(A)(1).

DISCUSSION

¶7 Aldasoro argues the superior court erred in granting summary judgment because the City and Pavlinch are potentially liable for his claims. Summary judgment is proper when the moving party is entitled to judgment as a matter of law and there are no genuine disputes of material fact. Ariz. R. Civ. P. 56(a). We review the grant of summary judgment *de novo*, viewing the facts in the light most favorable to Aldasoro. *See Dinsmoor v. City of Phoenix*, 251 Ariz. 370, 373, ¶ 13 (2021). We review *de novo* the existence of common law immunity. *See Spooner v. City of Phoenix*, 246 Ariz. 119, 123, ¶ 7 (App. 2018). We also review questions of statutory interpretation and application *de novo*. *Obregon v. Indus. Comm’n of Ariz.*, 217 Ariz. 612, 614, ¶ 9 (App. 2008).

¶8 The viability of Aldasoro’s claim turns on the existence of a police officer’s immunity from negligence suit based on either (1) common law qualified immunity or (2) a statutory privilege for operators of authorized emergency vehicles.

I. Police Officers Are Not Entitled to Common Law Qualified Immunity from Negligence Claims.

A. *Abolition of the defense of governmental immunity for negligence claims, creation of statutory immunity, and application of the common law*

¶9 Nearly 80 years ago, the Arizona Supreme Court held that a police officer could be liable for negligence. *See Ruth v. Rhodes*, 66 Ariz. 129 (1947). The *Ruth* Court rejected the application of the defense of common

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law immunity in a negligence claim against a highway patrol officer who caused a collision while driving to the scene of an accident in response to a radio dispatch. *Id.* at 134. The court noted with approval the general rule at the time concerning the personal tort liability of state officers:

We think that a sound public policy requires that public officers and employees shall be held accountable for their negligent acts in the performance of their official duties, to those who suffer injury by reason of their misconduct.

Id. at 133 (quoting *Florio v. Schmolze*, 129 A. 470, 472–73 (N.J. 1925)).

¶10 In 1963, the Arizona Supreme Court abolished common law governmental immunity from liability for negligence claims. *Stone*, 93 Ariz. at 392–93. The *Stone* Court explicitly stated that “where negligence is the proximate cause of injury, the rule is liability and immunity is the exception.” *Id.* at 392. *Stone* overruled all contrary precedent. *Id.* at 387.

¶11 And in 1982, the Arizona Supreme Court in *Ryan v. State* reaffirmed the abolition of the common law governmental immunity doctrine and invited the legislature to codify governmental immunity. 134 Ariz. 308, 310–11 (1982), *superseded by statute as stated in Clouse ex rel. Clouse v. State*, 199 Ariz. 196, 203, ¶ 27 (2001) (“*Clouse III*”). The *Ryan* Court stated:

In electing to treat the state like a private litigant, we must hasten to point out that certain areas of immunity must remain. The more obvious of such immunities are legislative immunity, judicial immunity, and high-level executive immunity.

Id. at 310. The *Ryan* Court noted that application of judicial and legislative immunity was clear, but application of high-level executive immunity was difficult. *Id.* at 311. Ultimately, the court stated:

[W]e propose to endorse the use of governmental immunity as a defense only when its application is necessary to avoid a severe hampering of a governmental function or thwarting of established public policy. Otherwise, the state and its agents will be subject to the same tort law as private citizens.

Id. While inviting legislation on the topic, *Ryan* repeated the common law rule of governmental liability in tort stated in *Stone*—liability for negligence is the rule and immunity the exception. *See Clouse III*, 199 Ariz. at 199, ¶ 12 (noting that *Ryan* invited the legislature to address those areas that might

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need the protection of absolute immunity or qualified immunity); *Pritchard v. State*, 163 Ariz. 427, 431 (1990) (stating that *Ryan* “announced” the common law rules of tort liability); *City of Tucson v. Fahringer*, 164 Ariz. 599, 602 (1990) (same).

¶12 In response to *Ryan*, the Arizona Legislature in 1984 enacted the Actions Against Public Entities or Public Employees Act (“the Act”), A.R.S. §§ 12-820 to -826. As relevant here, the Act provides (1) absolute immunity for legislative and judicial functions and for administrative functions that involve the determination of “fundamental governmental policy,” § 12-820.01, and (2) qualified immunity for negligent conduct for eleven discrete acts (none of which are applicable here) when done within the scope of a public employee’s employment, § 12-820.02. In doing so, the Act declared that “the public policy of” Arizona is “that public entities are liable for acts and omissions of employees in accordance with the statutes and common law of this state.” 1984 Ariz. Sess. Laws, ch. 285, § 1(A) (2d Reg. Sess.) (S.B. 1225); accord *Pritchard*, 163 Ariz. at 431. The Act expressly states it does “not affect, alter or otherwise modify any other rules of tort immunity regarding public entities and public officers as developed at common law and as established under the statutes and the constitution of this state.” A.R.S. § 12-820.05(A). The Act codified the holding in *Stone* that “the rule is [governmental] liability and immunity is the exception.” *Backus v. State*, 220 Ariz. 101, 104, ¶ 9 (2009) (alteration in original) (quoting *Stone*, 93 Ariz. at 392).

¶13 Both before and after the Act, Arizona appellate courts have repeatedly permitted negligence suits against public entities and police officers in accordance with the well-settled public policy of this state. See, e.g., *Ryan v. Napier*, 245 Ariz. 54, 62, ¶ 31 (2018) (permitting plaintiff to plead a negligence claim against a police officer for conduct “independent of the intentional use of force” or a claim alleged as an alternative to battery); *Calnimpewa v. Flagstaff Police Dep’t*, 200 Ariz. 567, 572, ¶ 28 (App. 2001) (concluding that because A.R.S. § 12-820.02(A) did not apply to a claim for police officers’ failure to obtain medical care for arrestee, the officers were not immune from simple negligence under the statute and ordinary negligence claims could proceed); *Austin v. City of Scottsdale*, 140 Ariz. 579, 582 (1984) (reversing a directed verdict in favor of the City of Scottsdale on a wrongful death claim for negligence by police department); *Estate of Aten v. City of Tucson*, 169 Ariz. 147, 148, 150–51 (App. 1991) (reversing summary judgment in favor of the City of Tucson on the issue of whether the police pursuit of a fleeing vehicle was negligent); *City of Scottsdale v. Kokaska*, 17 Ariz. App. 120, 123, 130–31 (1972) (affirming judgment for plaintiff on negligence claim against the City of Scottsdale and police officer for

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negligent driving); *City of Phoenix v. Camfield*, 97 Ariz. 316, 318, 320–24 (1965) (affirming denial of the City’s motion for directed verdict on negligent maintenance claim involving police officer and upholding jury verdict against the City). These appellate opinions—spanning 60 years—are all consistent with Arizona’s policy of governmental tort liability for negligence.

¶14 But in 2018, *Spooner v. City of Phoenix*, 246 Ariz. 119 (App. 2018), took a wrong turn by appearing to recognize broad common law police officer immunity for negligence.² *Spooner*, a wrongful arrest case, affirmed judgment as a matter of law for the City in a simple negligence case. It did so on common law immunity grounds, based on the discretionary acts of a police officer investigating criminal activity. *Id.* at 123–25, ¶¶ 7–13. *Spooner* relied heavily on the emphasis of immunity for discretionary, as opposed to ministerial, tasks recognized in the common law defamation case *Chamberlain v. Mathis*, 151 Ariz. 551 (1986). *Spooner*, 246 Ariz. at 123–25, ¶¶ 9–12. In doing so, *Spooner* reasoned that the nature of criminal investigations, with the need for quick decisions as the case develops, calls for deliberation and judgment that should be accorded immunity from simple negligence claims. *Id.* at 124, ¶ 11. In contrast to *Stone*’s mandate that “immunity is the exception,” 93 Ariz. at 392, *Spooner* would allow lawsuits against police officers only when they knowingly violated the law or recklessly disregarded the rights of other persons. 246 Ariz. at 124, ¶¶ 10–11.

² Appellees incorrectly assert that this court held in *Clouse v. State*, 194 Ariz. 473 (App. 1998) (“*Clouse I*”) “that governmental immunity for simple negligence based on claims related to ‘vital’ government functions such as the ‘active investigation and prosecution of crime’ has been the public policy in Arizona for its entire history and police officers can only be held liable for gross negligence for their actions in a police investigation.” But the Arizona Supreme Court vacated *Clouse I*—meaning that decision is not the law—then later vacated its own opinion. *Clouse v. State*, 198 Ariz. 473 (2000) (“*Clouse II*”); *Clouse ex. rel Clouse v. State*, 199 Ariz. 196 (2001) (“*Clouse III*”). *Clouse III* does not bear on common law immunity for simple negligence for police officers and explicitly distinguished statutory immunity from the common law immunity cases of *Rhodes* and *Ryan*. 199 Ariz. at 203, ¶ 27. In any event, *Clouse I* was a statutory immunity case, not a common law immunity case, and held that A.R.S. § 12-820.02(A)(1) (addressing the failure to make an arrest) does not violate the constitution’s anti-abrogation clause. 194 Ariz. at 478, ¶ 22.

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¶15 And *Jennings v. Agne*, 254 Ariz. 174 (App. 2022), continued along the errant course that *Spooner*’s wrong turn had charted. In *Jennings*, a plaintiff brought a simple negligence action against the City of Mesa and a police officer stemming from a collision where the police officer had stopped in an intersection to block traffic for the passage of approaching emergency response vehicles. *Id.* at 176, ¶¶ 2–3. Citing *Spooner* and the common law defamation case *Portonova v. Wilkinson*, 128 Ariz. 501 (1981), the *Jennings* decision noted that “police officers enjoy limited protection from liability when performing an act that inherently requires judgment or discretion.” 254 Ariz. at 178, ¶ 15 (citation modified). Referring to this “discretionary act immunity,” *Jennings* concluded that although “[d]riving is generally a ministerial task that precedes official duties . . . driving in response to an emergency call for police backup is not a ministerial task.” *Id.* ¶¶ 15–17. *Jennings* noted that A.R.S. § 28-624 “recognizes that such conduct is a key part of an officer’s official duties to respond to crime promptly. And speeding toward an active emergency is exactly when an officer needs the discretion to make prompt choices.” *Id.* ¶ 17.

B. *Application of Arizona law to this case*

¶16 With this historical background, we turn to the facts of this case. The narrow question before us is whether there is common law qualified immunity for simple negligence by a police officer.

¶17 Pavlinch and the City argue they have common law qualified immunity for Aldasoro’s negligence claim, relying primarily on *Spooner* and *Jennings*. Recognizing that we are not bound by those cases, and because we are convinced that both *Jennings* and *Spooner* are based on “clearly erroneous principles,” we do not follow them here. See *Castillo v. Indus. Comm’n*, 21 Ariz. App. 465, 471 (1974). Instead, we recognize and apply the common law set forth in various cases decided before *Spooner* and *Jennings*, which leads inexorably to the conclusion that Pavlinch and the City are not absolved from liability for simple negligence based on common law qualified immunity.

1. Inapposite application of defamation cases

¶18 Both *Spooner* and *Jennings* held that common law qualified immunity applied to police officers, either in the discretionary investigative process or in the discretionary response to an emergency. In doing so, *Spooner* and *Jennings* relied on the application of common law qualified immunity in three defamation cases: *Chamberlain*, *Portonova*, and *Patterson v. City of Phoenix*, 103 Ariz. 64 (1968). *Spooner*, 246 Ariz. at 123–24, ¶¶ 9–10

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(citing all three); *Jennings*, 254 Ariz. at 178, ¶¶ 15–16 (citing *Chamberlain* and *Portonova*). But all three cases arose in the meaningfully different defamation context and none of them provide a basis for extending common law qualified immunity to police officers for simple negligence claims.

¶19 In *Patterson*—issued after *Stone*’s abolition of the defense of governmental immunity for negligence claims—the Arizona Supreme Court carved out common law qualified immunity for police officers *in the defamation context*. The court addressed whether under *Stone*, the City of Phoenix could be liable for the discretionary acts—specifically, allegedly defamatory statements—of its police officers acting within the scope of their employment. 103 Ariz. at 66–67. The officer, while investigating a report that two minor children were endangered, contacted the children’s mother’s employer and disclosed information about the incidents to the employer in an attempt to communicate with the mother. *Id.* at 66. In addressing the mother’s defamation claim against the officer and the City, *Patterson* rejected the dichotomy between ministerial and discretionary acts and concluded the City could be liable under the doctrine of respondeat superior for the alleged defamatory acts of its police officer acting within the scope of his employment despite exercising some discretion. *Id.* at 67–68.

¶20 *Patterson* relied on a Texas defamation decision delineating “five prerequisites that must be met before a conditional privilege will be recognized,” including the making of a statement in good faith. *Id.* at 70–71 (citing with approval *Mo. Pac. Ry. Co. v. Richmond*, 11 S.W. 555, 557 (Tex. 1889)). After analyzing the specific facts of the case, *Patterson* noted generally that a conditional privilege could be applied to a defamation claim, stating that:

There is perhaps some logical support for according an officer a qualified or conditional privilege which would protect him from liability for statements made that bear on the prosecution or detection of a crime and that are directed at an individual who is, in some concrete manner, connected in some capacity to that crime.

Id. at 70 (citation modified). *Patterson* ultimately found there was no evidence that the investigating officer acted in bad faith and affirmed summary judgment for the City on the defamation claim. *Id.* at 71. *Patterson*’s analysis turns on five prerequisites for immunity from defamation claims. *Id.* at 70–71. *Patterson*’s adoption of conditional common

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law qualified immunity for police officers applies uniquely to defamation actions; it has no application in negligence actions.

¶21 Next, in *Portonova*, the Arizona Supreme Court again analyzed whether a police officer had common law immunity *for a defamation claim*. A juvenile probation officer brought a defamation action against a police officer for repeating to the press unverified statements by a juvenile that the probation officer told the juvenile to “keep quiet” about the juvenile’s involvement in burglaries and not report them to the police. 128 Ariz. at 502–03. The supreme court cited its recognition in *Patterson* of a police officer’s “conditional immunity from civil liability” in a defamation action. *Id.* at 503. The court recognized a conditional or qualified privilege for defamation claims when the defendant has a “duty of making a communication to a certain other person to whom he makes such communication in the performance of such duty.” *Id.* (quoting *Roscoe v. Schoolitz*, 105 Ariz. 310, 313 (1970)). Ultimately, the *Portonova* Court declined to apply a qualified privilege under the facts of that case, stating that “[r]epetition by a police officer of an unverified statement made by a juvenile known to be an adept fabricator, and nothing more, does not rise to [the] level” of evoking a qualified common law privilege. *Id.* As was the case in *Patterson*, this conditional or qualified privilege to defame when under a duty to communicate has no application in the negligence context.

¶22 Finally, in *Chamberlain*, the Arizona Supreme Court conducted a fact-specific inquiry to determine whether absolute or qualified common law immunity applied *in a defamation action* against a high-level state executive. 151 Ariz. at 554–60. As explained in *Chamberlain*, the framework for analyzing common law immunity in defamation actions requires the court to decide: (1) whether there is an identifiable common law immunity, (2) whether the conduct at issue was performed in the actor’s discretionary or ministerial capacity, and (3) if absolute or qualified immunity applies. 151 Ariz. at 554–56. Citing previous defamation cases, *Chamberlain* found that there was an identifiable pre-existing common law immunity for defamation actions. *Id.* at 555.

¶23 *Chamberlain* noted that both absolute and qualified immunity could only be applied to discretionary acts (such as “setting policy or performing an act that inherently requires judgment or discretion”), but not to ministerial acts (acts not required to advance important public objectives, such as “driving cars, posting warning signs, or moving office furniture”). *Id.* at 555–56 (emphasis added). *Chamberlain* concluded that making allegedly defamatory comments regarding an audit and state employees in the presence of a newspaper reporter was within the high-level executive’s

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discretionary authority and thus “entitled to some level of immunity.” *Id.* at 556. Ultimately rejecting the application of absolute immunity, *Chamberlain* concluded that, in a defamation case, qualified common law immunity protects a high-level public official unless, under an objective reasonableness standard, “he (1) acted outside the outer perimeter of his required or discretionary functions, or (2) acted with malice in that he knew his statements regarding plaintiffs were false or acted in reckless disregard of the truth.” *Id.* at 558–60. In so doing, *Chamberlain* cited *Portonova* with an explanatory parenthetical that *Portonova* granted “qualified immunity for police officer accused of defamation,” but *Chamberlain* did so only in the context of distinguishing between, and deciding whether to confer, absolute or qualified common law immunity in a defamation case. *Id.* at 555. As with *Patterson* and *Portonova*, *Chamberlain*’s reasoning has no application to negligence claims.

¶24 Both *Spooner* and *Jennings* read these three defamation cases too broadly by taking the statement that “a police officer acting within the scope of his authority has at least a conditional immunity from civil liability” out of the defamation context in which it is grounded and grafting it onto negligence claims generally. None of these three Arizona Supreme Court cases broadly grant police officers common law immunity for all causes of action. *Spooner* and *Jennings* improperly expanded common law immunity from its limited application in the defamation context to apply broadly to simple negligence claims against police officers despite the clearly established common law that precludes governmental immunity for simple negligence. *See Stone*, 93 Ariz. at 392; *Ruth*, 66 Ariz. at 133.

2. Discretionary act qualified immunity

¶25 Both *Spooner* and *Jennings* also relied heavily on the dichotomy between ministerial and discretionary functions in applying common law qualified immunity. *Spooner* concluded police investigative work is discretionary, so common law qualified immunity applied. 246 Ariz. at 123–25, ¶¶ 7–12. And *Jennings* stated that driving in emergency situations is discretionary, so common law qualified immunity applied. 254 Ariz. at 178, ¶¶ 15–17.

¶26 But because there is no common law qualified immunity for negligence, it is immaterial whether the conduct at issue is discretionary or ministerial. *See Chamberlain*, 151 Ariz. at 555–56 (distinction between ministerial and discretionary functions is relevant only after first identifying a potentially applicable common law immunity); *Ryan*, 134 Ariz. at 310 (expressing a “hope to avoid the semantic legerdemain

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involved in applying a ‘discretionary acts’ exception to state liability for negligent acts”); *see also Patterson*, 103 Ariz. at 68 (rejecting the distinction between discretionary and ministerial acts in analyzing whether the City was liable for alleged defamation by its police officers acting within the scope of their authority if those acts were discretionary and explicitly noting that the negligence cases of *Ruth* and *Camfield* did not recognize the discretionary-ministerial dichotomy).

¶27 Even if the discretionary vs. ministerial inquiry had some relevance to common law immunity for negligence, *Chamberlain* strongly suggests that operating a motor vehicle falls on the *ministerial* side of that line. 151 Ariz. at 556 (“[I]t is possible to characterize those situations in which no immunity exists as those involving the performance of ministerial acts, *such as driving a car Driving is not a discretionary governmental function* that must be shielded by immunity for government to function effectively.” (emphasis added)).

3. Public policy

¶28 Both *Spooner* and *Jennings* rely on public policy interests attempting to balance the preservation of “independent action” without “deterrence or intimidation by the fear of personal liability and vexatious suit.” *Spooner*, 246 Ariz. at 124, ¶¶ 9, 11; *Jennings*, 254 Ariz. at 178, ¶¶ 15, 17. But, like our supreme court, *see Ruth*, 66 Ariz. at 133, the Arizona Legislature has declared that “the public policy of this state” is “that public entities are liable for acts and omissions of employees in accordance with the statutes and common law of this state.” Laws 1984, ch. 285, § 1(A); *Pritchard*, 163 Ariz. at 431. No statute provides immunity here, and the common law mandates governmental liability for negligence.

¶29 The threat of suit or financial loss is not a reason to override Arizona’s express public policy, particularly when a city employee is insured for negligence claims. *See* A.R.S. § 9-497 (authorizing a city “to procure liability insurance covering their officers, agents, and employees while employed in governmental or proprietary capacities”); *see also Patterson*, 103 Ariz. at 67–68 (taking judicial notice of A.R.S. § 9-497 and concluding that “whatever fear a police officer might suffer with regard to personal financial loss is certainly diminished where liability insurance exists” and given that a “municipality is liable for the tortious acts of its police officers committed within the scope of their employment.”).

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¶30 Both *Spooner* and *Jennings* granted common law immunity for police officers in negligence actions. We expressly reject their holdings for the reasons described here, including Arizona’s public policy that governmental tort liability is the rule and immunity is the exception. Because there is no common law immunity for police officers in negligence actions, we vacate the grant of summary judgment on that basis.

II. A.R.S. § 28-624 Does Not Immunize Defendants for Simple Negligence.

¶31 Aldasoro argues on appeal that A.R.S. § 28-624—which grants the driver of an authorized emergency vehicle a privilege to violate some traffic laws in certain circumstances—does not provide any immunity to Pavlinch and the City. The City and Pavlinch contend Aldasoro’s argument is irrelevant because they did not seek summary judgment based on the application of any statutory “immunity” or “privilege.” The superior court, however, noted that § 28-624 was a “viable affirmative defense” that also provided qualified immunity. Accordingly, and given the need for remand after vacating the grant of summary judgment, we address A.R.S. § 28-624.³

¶32 Section 28-624 provides:

A. If an authorized emergency vehicle is driven in response to an emergency call, in pursuit of an actual or suspected violator of law or in response to but not on return from a fire alarm, the driver may exercise the privileges provided in this section subject to the conditions stated in this section.

B. If the driver of an authorized emergency vehicle is operating at least one lighted lamp displaying a red or red and blue light or lens visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle, the driver may:

1. Notwithstanding this chapter, park or stand.
2. Proceed past a red or stop signal or stop sign, but only after slowing down as necessary for safe operation.
3. Exceed the prima facie speed limits if the driver does not endanger life or property.

³ The City and Pavlinch agree there is a factual dispute whether Pavlinch engaged his siren. If the jury determines he did, § 28-624 may apply.

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4. Disregard laws or rules governing the direction of movement or turning in specified directions.

C. The exemptions authorized by this section for an authorized emergency vehicle apply only if the driver of the vehicle while in motion sounds an audible signal by bell, siren or exhaust whistle as reasonably necessary and if the vehicle is equipped with at least one lighted lamp displaying a red or red and blue light or lens visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red or red and blue light or lens visible from in front of the vehicle.

D. This section does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons and does not protect the driver from the consequences of the driver's reckless disregard for the safety of others.

¶33 When interpreting a statute, we first examine its language to ascertain legislative intent. *In re Estate of Jung*, 210 Ariz. 202, 204, ¶ 12 (App. 2005). We “ascribe plain meaning” to a statute’s terms “unless the legislature assigned a special meaning to one or more terms.” *W. Corr. Grp., Inc. v. Tierney*, 208 Ariz. 583, 587, ¶ 16 (App. 2004). We attempt to give meaning to each provision and word to avoid superfluity. *Nicaise v. Sundaram*, 245 Ariz. 566, 568, ¶ 11 (2019). “When possible, we seek to harmonize statutory provisions and avoid interpretations that result in contradictory provisions.” *Premier Physicians Grp., PLLC v. Navarro*, 240 Ariz. 193, 195, ¶ 9 (2016).

A. *Section 28-624 does not grant immunity.*

¶34 Section 28-624 grants “privileges” and “exemptions” to drivers of authorized emergency vehicles to violate certain vehicular laws (including proceeding past a red light), if sounding an audible bell, siren, or exhaust whistle while driving in response to an emergency call. A.R.S. § 28-624(A) (“privileges”), 28-624(C) (“exemptions”). Both the parties and the superior court referred to § 28-624 as an “immunity” statute. We clarify that § 28-624 does not grant any immunity from tort liability.

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¶35 When the legislature grants immunity, it does so unequivocally, using terms like “not liable” or “immunity.” *See, e.g.*, A.R.S. §§ 9-500.02(A), (B) (“not liable”); 12-713 (“not liable”); 12-820.01 (“immunity” and “shall not be liable”); 12-820.02 (“immunity”); 12-820.03(A) (“not liable”); 12-820.04 (“immunity”); 12-820.05 (“immunity” and “not liable”); 26-314 (“not liable”); 41-621(L) (“immune from liability”); 48-818 (“not liable” and “immunity”).

¶36 In contrast to those statutes, § 28-624 does not use the term “not liable” or “immunity.” The statute provides for “privileges” or “exemptions” from the law. A.R.S. § 28-624(A) (“privileges”), 28-624(C) (“exemptions”). And these are privileges and exemptions to do specific things that might be otherwise unlawful under our traffic laws, like proceeding past a red light or exceeding the speed limit. A.R.S. § 28-624(B). In other words, when an authorized emergency vehicle is using its lights and sirens, its driver may exercise the privilege to violate certain traffic laws.

¶37 To be clear, this privilege *can* impact whether the driver of an emergency vehicle is liable for causing an accident, but not because it renders the driver immune from suit. Rather, the privilege means that a driver operating an emergency vehicle with lights and sirens who, for instance, runs a red light resulting in an accident is not negligent *per se*.

¶38 “Negligence per se ‘describe[s] those instances where certain acts or omissions constitute negligence without further inquiry [into] the circumstances or reasonableness of their occurrence.’” *Ibarra v. Gastelum*, 249 Ariz. 493, 495, ¶ 7 (App. 2020) (alterations in original) (quoting *Deering v. Carter*, 92 Ariz. 329, 333 (1962)). “A person who violates a statute enacted for the protection and safety of the public is guilty of negligence *per se*.” *Alaface v. Nat’l Inv. Co.*, 181 Ariz. 586, 596 (App. 1994). But where the violation of a safety statute is “excusable,” that violation cannot be the basis of liability for negligence *per se*. *See Brannigan v. Raybuck*, 136 Ariz. 513, 518 & n.1 (1983). Section 28-624’s privileges and exemptions render violations of the traffic laws “excusable” and therefore not negligent *per se*. But a party who is not negligent *per se* can still be found negligent under the ordinary “reasonable person” standard, if a plaintiff proves the required elements for such a claim. *See Griffith v. Valley of Sun Recovery & Adjustment Bureau, Inc.*, 126 Ariz. 227, 230 (App. 1980); *Saucedo ex rel. Sinaloa v. Salvation Army*, 200 Ariz. 179, 183, ¶ 14 (App. 2001) (listing the elements of an Arizona common law negligence claim).

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B. *Section 28-624 imposes a due care standard.*

¶39 Rather than conferring immunity, A.R.S. § 28-624 sets forth the standard of care for drivers of authorized emergency vehicles when exercising the privileges and exemptions authorized by the statute. Specifically, the statute provides that:

This section does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons and does not protect the driver from the consequences of the driver's reckless disregard for the safety of others.

A.R.S. § 28-624(D). Subsection (D) refers to (1) "the duty to drive with due regard for the safety of all persons" and (2) the absence of protections "from the consequences of the driver's reckless disregard for the safety of others." *Id.* In *Jennings*, this court analyzed whether the "reckless disregard" language limits liability to reckless acts or whether the "due regard" language calls for an ordinary negligence application. 254 Ariz. at 177, ¶ 10.

¶40 *Jennings* concluded that subsection (D) required "reckless disregard for liability":

The statute uses two descriptions for one standard. "Due regard" generally means "consideration in a degree appropriate to demands of the particular case." With that definition, when the statute requires that first-responders drive with "due regard," it means that drivers must not drive with "reckless disregard." After all, if "due regard" meant ordinary care, the words "reckless disregard" would be meaningless. Said differently, the "duty to drive with due regard" signals the imposition of a specific standard of care, while "reckless disregard" sets that standard.

Id. at 177-78, ¶ 11 (citations omitted). Although *Jennings* couched its analysis in terms of the applicable standard of care, *Jennings* effectively granted immunity to police officers for simple negligence claims based on actions taken in response to an emergency. We disagree with this interpretation of the statute. See *Hayes v. Cont'l Ins. Co.*, 178 Ariz. 264, 273 (1994) ("[W]e will not interpret a law to deny, preempt, or abrogate common-law damage actions unless the statute's text or history shows an explicit legislative intent to reach so severe a result.").

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¶41 *Jennings* implied that § 28-624(D) is ambiguous, using “two descriptions for one standard” and characterizing those descriptions as “seemingly contradictory.” 254 Ariz. at 177, ¶¶ 7, 11. If statutory language is ambiguous—“if it can reasonably be read in two ways—we may use alternative methods of statutory construction,” including an examination of the statute’s “historical background.” *Garibay v. Johnson*, 259 Ariz. 248, 255, ¶ 23 (2025) (citation modified). An examination of § 28-624(D)’s history helps illustrate its meaning.

¶42 Section 28-624 was first enacted in 1950, as part of the Arizona Legislature’s Act “Regulating Traffic on Highways.” 1950 Ariz. Sess. Laws, ch. 3, § 25.1 (1st Spec. Sess.). At that time, subsection (D) read:

The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

Id. But the statutory phrases “due regard for [] safety” and “consequences of [] reckless disregard for the safety of others” are, in fact, far older than 1950.

¶43 A similar provision of Arizona’s 1939 Code conferred a privilege to exceed the speed limit in response to an emergency. The structure of that statute makes it clear that “due regard” and “reckless disregard” are not “two descriptions for one standard” (as *Jennings* would have it) but rather descriptions of two different things:

The speed limitations set forth in this article shall not apply to vehicles when operated with *due regard for safety* under the direction of the police in the pursuit or apprehension of persons charged with or suspected of any violation of law; to fire department or fire patrol vehicles when traveling in response to a fire alarm; or, to public or private ambulances when traveling in emergencies; or, to the vehicles of licensed physicians when actually traveling in response to emergency calls. This exemption shall not however protect the driver of any such vehicle from *the consequences of a reckless disregard of the safety of others*.

1939 Code § 66-105 (emphasis added). Section 66-105 of the 1939 Code was originally enacted in 1927 when the Arizona Legislature first passed the

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Highway Code. *See* 1927 Ariz. Sess. Laws, ch. 2(5), § 5 (4th Spec. Sess.) (using identical language).

¶44 Viewed through this historical lens, “due regard for safety” referred to the manner in which drivers must operate their vehicles in order to take advantage of the privilege to exceed the speed limit. The contemporary understanding of the privilege to speed granted by § 66-105 in the 1939 Code was a privilege that must be exercised *non-negligently*. *See Young v. Campbell*, 20 Ariz. 71, 78 (1918) (describing a driver “having due regard to the traffic” as “not negligent”); *Pickwick Stages Corp. v. Messinger*, 44 Ariz. 174, 176 (1934) (describing negligent driving as “without having due regard to the traffic”); *Beltran v. Stroud*, 63 Ariz. 249, 253 (1945) (contrasting “due regard to the safety of the public” with acting “unreasonabl[y] or negligent[ly]”).

¶45 “Due regard for safety” is, in substance, the same standard employed in every negligence case: the duty to act as a reasonable person would in light of the surrounding circumstances. *Nunez v. Pro. Transit Mgmt. of Tucson, Inc.*, 229 Ariz. 117, 121, ¶¶ 18–19 (2012). We agree with our pre-*Jennings* opinions holding that § 28-624(D)’s use of the phrase “due regard for safety” refers to the ordinary negligence standard of reasonable care. *See Estate of Aten*, 169 Ariz. at 151 (rejecting the argument that § 28-624(D) restricts liability to cases of gross negligence and concluding § 28-624(D) did not preclude the plaintiff from pursuing a negligence action against the City of Tucson stemming from a high-speed chase resulting in the death of a motorist); *Herderick v. State*, 23 Ariz. App. 111, 115 (1975) (interpreting § 28-624(D) as imposing the duty to use due care on users of the highways with citations to “actionable negligence” and general common law negligence standards).

C. Section 28-624 does not set a recklessness standard for liability.

¶46 What then of the “consequences of [] reckless disregard for the safety of others”? As *Jennings* correctly points out, we must “give meaning, if possible, to every word and provision [of a statute] so that no word or provision is rendered superfluous.” *Jennings*, 254 Ariz. at 177, ¶ 7 (citing *Nicaise*, 245 Ariz. at 568, ¶ 11). When viewed in historical context, however, the phrase had a commonly understood meaning that does not immunize emergency vehicle drivers for claims of ordinary negligence.

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¶47 When the Arizona Legislature passed the Highway Code in 1927, the “consequences of [] reckless disregard for the safety of others” fell into three categories: (1) criminal prosecution, (2) exposure to punitive damages, and (3) forfeiture of the defense of contributory negligence.

¶48 First, criminal prosecution. In 1927, the same year the Arizona Legislature passed the Highway Code, our supreme court upheld an aggravated assault conviction for driving “*with reckless disregard of the lives and safety of others*” while intoxicated, at night, without headlights, on the wrong side of the road and in excess of the speed limit. *Brimhall v. State*, 31 Ariz. 522, 524 (1927) (emphasis added). Other cases of that era reached similar results. *E.g.*, *Gutierrez v. State*, 44 Ariz. 114, 118 (1934) (upholding the manslaughter conviction of a driver who drove “with reckless disregard of his own safety, and willful indifference to the consequences likely to follow, and in such manner as to endanger the life or limb of” others); *Keller v. State*, 46 Ariz. 106, 108 (1935) (reversing, on unrelated grounds, the reckless driving conviction of a driver who “in willful and wanton disregard for the rights and safety of others” caused a crash).

¶49 Second, punitive damages. At the time the Highway Code was adopted in 1927, it was well understood that causing harm while acting in reckless disregard for the safety of others could result in the imposition of punitive damages. In upholding a punitive damages award, our supreme court noted: “[i]t is only when there is superadded to the legal wrong some conduct or action showing a *reckless or wanton disregard of the rights of others* that punitive damages are allowed.” *Gila Water Co. v. Gila Land & Cattle Co.*, 30 Ariz. 569, 577 (1926) (emphasis added); *see also Ross v. Clark*, 35 Ariz. 60, 62, 68 (1929) (upholding a punitive damages award against a taxi driver who, while “driving at a reckless speed” and intoxicated, “wantonly, culpably, and with utter disregard of the consequences to the life and limb of plaintiffs” caused a collision); *S. Pac. Co. v. Boyce*, 26 Ariz. 162, 172 (1924) (describing “conduct so malicious and reckless as to justify punitive damages”); *Iaeger v. Metcalf*, 11 Ariz. 283, 291 (Ariz. Terr. 1908) (“If the injury inflicted by the defendant was wanton, malicious, and committed in reckless and willful disregard of the rights of plaintiff, exemplary damages might be allowed.” (citation modified)).⁴

⁴ This discussion of punitive damages is largely academic today, because most operators of emergency vehicles are public employees. Our legislature immunized public entities and public employees from awards of punitive damages in 1984. *See* A.R.S. § 12-820.04. But law enforcement officers were

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¶50 Third, forfeiture of the contributory negligence defense. Before its abolition in 1984,⁵ contributory negligence meant that, where a “plaintiff’s negligence entered into and formed part of the efficient or proximate cause of the injury, it defeated his right of action.” *Salt River Valley Water Users’ Ass’n v. Berry*, 31 Ariz. 39, 47 (1926). Although, as a matter of Arizona constitutional law, the application of the doctrine was always left to the jury, *see id.* (citing Ariz. Const. art. 18, § 5), contributory negligence’s complete bar to recovery was an “often harsh result,” *Lerma v. Keck*, 186 Ariz. 228, 231 (App. 1996).

¶51 But there was an exception. “[A] plaintiff’s contributory negligence does not bar recovery for harm caused by the defendant’s reckless disregard for the plaintiff’s safety.” *Womack v. Preach*, 63 Ariz. 390, 398 (1945) (citing Restatement (First) of Torts § 500 (1939)) (emphasis added); *accord Alabam Freight Lines v. Phx. Bakery, Inc.*, 64 Ariz. 101, 107 (1946); *see also S. Pac. R.R. Co. v. Svensden*, 13 Ariz. 111, 117 (Ariz. Terr. 1910) (“The doctrine that contributory negligence will defeat recovery has no application where the injury is the result of the willful, wanton, reckless conduct of defendant.”). Even where plaintiffs were contributorily negligent in causing their own injuries, defendants’ reckless disregard for the safety of others rendered the defense unavailable.

D. The meaning of A.R.S. § 28-624(D)

¶52 Section 28-624(D) does not render emergency vehicle operators immune from suit for simple negligence, even when using lights and sirens. Looking at the text, and viewing it in its historical context, the meaning is clear. Emergency vehicles operating while “displaying a red or red and blue light” and “sound[ing] an audible signal by bell, siren or exhaust whistle” are privileged to violate the otherwise applicable traffic laws, as set forth in § 28-624(B). Drivers operating emergency vehicles under these conditions are not negligent *per se* for violating traffic laws, even if they cause a collision.

not generally immune from punitive damage awards when the Highway Code first used the phrase “reckless disregard” in 1927. *See Adair v. Williams*, 24 Ariz. 422, 432–33 (1922) (discussing that police officers sued for false imprisonment could introduce evidence of good faith “in mitigation of a claim for punitive or exemplary damages”).

⁵ *See* Arizona’s version of the Uniform Contribution Among Tortfeasors Act, Laws 1984, ch. 237, § 1 (codified at A.R.S. §§ 12-2501 to -2509).

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¶53 But even when utilizing the privilege to violate traffic laws, operators of emergency vehicles must do so with due regard for safety: as a reasonable person would in light of the surrounding circumstances.⁶ They remain liable for injuries caused by the breach of that duty of reasonable care. And if they drive with “reckless disregard for the safety of others,” they can be criminally liable and (if not a public entity or public employee) subject to punitive damages for harm they cause. Our interpretation reconciles the two parts of subsection (D) using the plain language of the statute and does not read into the statute an immunity contrary to the public policy of this state.

CONCLUSION

¶54 Neither Officer Pavlinch nor the City of Phoenix are immune from claims for simple negligence under either common law discretionary act immunity or A.R.S. § 28-624(D). Thus, we vacate the judgment and remand for proceedings consistent with this opinion. We award costs to Aldasoro upon compliance with ARCAP 21.



MATTHEW J. MARTIN • Clerk of the Court
FILED: JR

⁶ To be clear, this standard of reasonable care allows the jury to consider that the driver of an emergency vehicle is responding to an emergency. What is reasonable for a police officer involved in a vehicle chase of a dangerous suspect may not be reasonable in responding to a non-emergency call. We leave the determination of what is reasonable in a given circumstance to the collective wisdom of the jury.