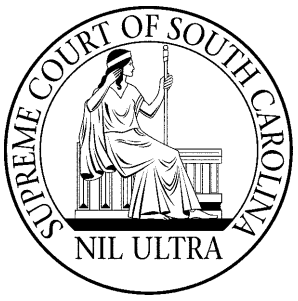

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 42
October 28, 2020
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Chelsea Abdelgheny f/k/a Chelsea Jackson, Appellant,

v.

Gerald L. Moody, Respondent.

Appellate Case No. 2018-000102

Appeal From Pickens County
Perry H. Gravely, Circuit Court Judge

Opinion No. 5780
Heard September 10, 2020 – Filed October 28, 2020

REVERSED

Raymond Talmage Wooten, of Smith, Jordan and Lavery, P.A., of Easley, for Appellant.

Thomas Frank Dougall, of Dougall & Collins, of Elgin; Chad McQueen Graham, of The Ward Law Firm, P.A., of Spartanburg; and Langdon Cheves, III, of Turner Padget Graham & Laney, P.A., of Greenville, all for Respondent.

HILL, J.: A little before 8:00 p.m. on October 26, 2015, Chelsea Abdelgheny had just finished teaching a Zumba class at Mission Fitness in Easley when her boss asked her to check on an order he had placed at the sign store across the street. Wearing a neon pink hooded sweatshirt and bright blue exercise pants, Chelsea

ventured across the street, a broad, four-lane section of Highway 8 with a wide center median. The highway serves as the main thoroughfare between Easley and the city of Pickens, which lies eight miles north. Chelsea chose to cross the highway at the point closest to her in front of Mission Fitness. The nearest cross walk was several hundred yards to the northwest, at a signaled intersection next to an American Waffle restaurant, well above the sign store. It was dark, and a moderate to heavy rain was falling. The traffic was also moderate. Chelsea, who was talking to her boss on her cell phone, reached the center median and stopped to look to make sure all was clear before crossing the southbound lanes.

Driving a pickup truck in the far right southbound lane, Gerald L. Moody was returning from Pickens to Easley. Resuming his journey after stopping for a light at the American Waffle intersection, he reached a speed of twenty-five to thirty miles per hour, his windshield wipers beating, the truck's low beams fixed on a straight stretch of road when he "looked up and . . . saw this lady in front of my driver's headlight with her hand up. She turned and looked at me and made approximately two fast steps, and I hit her with the right passenger headlight." Moody testified that when he looked up and saw Chelsea, she was only ten feet in front of his truck; he hit the brakes but still struck her. The point of impact was the passenger side headlight. Chelsea, her memory of the crash fuzzy, testified she first saw Moody's truck when it hit her. The impact broke her right hip and caused her other significant injuries.

Chelsea brought this negligence action against Moody. Moody's answer averred comparative negligence. The trial court granted Moody summary judgment, ruling Chelsea's negligence in not using the crosswalk exceeded fifty percent of the total fault, and therefore, the doctrine of comparative negligence barred recovery. Chelsea now appeals.

I.

We review a grant of summary judgment using the same yardstick as the trial court: we view the facts in the light most favorable to Chelsea, the non-moving party, and draw all reasonable inferences in her favor. *NationsBank v. Scott Farm*, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct. App. 1995). Moody is entitled to summary judgment only if "there is no genuine issue as to any material fact . . . ." Rule 56(c), SCRCP. Summary judgment is a drastic remedy to be invoked cautiously and must be denied if Chelsea demonstrates a scintilla of evidence in support of her claims. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

To survive summary judgment on her negligence claim, Chelsea must put forth a scintilla of evidence as to each element, including that Moody breached a duty of care he owed to her. The duty at issue here is the duty to act as a reasonably prudent driver would have under the same circumstances. Even if Moody was negligent, the comparative negligence doctrine bars Chelsea from recovery if her own negligence amounted to more than fifty percent of the total fault.

Because reasonableness depends upon the evidence and the rational inferences that may be drawn from them in their context, granting summary judgment in a negligence case is infrequent, for the court's duty at this stage is to presume the credibility of the evidence. When inferences conflict as to a material fact in a comparative negligence case, choosing between them—that is, choosing the facts that bear upon the percent of negligence attributable to the plaintiff and to the defendant—is up to the jury, whose duty is to decide what the facts are, not what they are presumed to be. *Berberich v. Jack*, 392 S.C. 278, 286, 709 S.E.2d 607, 611 (2011). If a reasonable juror looking at the evidence in the light most favorable to the non-movant could draw more than one inference about a material fact from it, summary judgment must be denied. *Thomasko v. Poole*, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002). It is only in the "rare" instance—when the evidence generates only a single inference—that summary judgment is proper in a comparative negligence action. *Bloom v. Ravoira*, 339 S.C. 417, 424–25, 529 S.E.2d 710, 714 (2000).

II.

We agree with the trial court that by crossing the highway outside a crosswalk, Chelsea was negligent. *See* S.C. Code Ann. § 56-5-3150(c) (2018) ("Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk."). But we cannot agree that the only inference a reasonable juror could make is Chelsea's own negligence accounted for more than fifty percent of the fault.

Chelsea and Moody owed each other the duty to keep a proper lookout. Chelsea's unfortunate choice to not use the crosswalk did not excuse Moody from his urgent duty to not only look, but to see. *See Thomasko*, 349 S.C. at 11–12, 561 S.E.2d at 599 (whether driver kept a proper lookout is a jury question if the evidence yields multiple inferences); *Mahaffey v. Ahl*, 264 S.C. 241, 248, 214 S.E.2d 119, 122 (1975) ("It is inescapable that the respondent was in the road to be seen. Whether the driver-appellant should have seen him in time to stop or slow down to avoid the accident was a question of fact for the jury."); *see also* S.C. Code Ann. § 56-5-3230 (2018)

("[E]very driver of a vehicle shall exercise due care to avoid colliding with any pedestrian . . . ."). The law also obligates a driver to adjust his speed to the road conditions. S.C. Code Ann. § 56-5-1520(A) (2018) ("A person shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing."). A reasonable juror could interpret Moody's testimony that he first saw Chelsea when he "looked up" to find her walking ten feet in front of his truck as incompatible with a careful lookout. The same reasonable juror might infer Moody's speed was too fast for the rainy and dark conditions if his range of vision was a mere ten feet. An equally reasonable juror might deem Moody's driving perfectly prudent, or at least less negligent than Chelsea's walking.

Moody sees little difference between his facts and those justifying summary judgment to the driver who struck a pedestrian in *Bloom v. Ravoira*. We see many, starting with the contrast between the broad upland expanse of Highway 8 and the narrowness of the dense, two-lane urban byway of downtown Charleston's Meeting Street, clogged as it was by cars parked upon it. Mr. Bloom, the pedestrian, was wearing dark clothes, the rain more an Irish mist than the downpour here, and Bloom "ran" into the street between two parked cars. 339 S.C. 417, 419–21, 529 S.E.2d 710, 711–12. The driver's speed was five miles per hour less than Moody's. Bloom was struck a "split second" after he ran into the street without warning (but with a taxidermied pig tucked under his arm), while here Chelsea was wearing bright clothes, had managed to cross two lanes of traffic without incident, and paused in the median to look out before proceeding.

We understand how the trial court could have concluded Chelsea's negligence exceeded Moody's and amounted to more than fifty percent of the comparative fault. But arriving at that conclusion required choosing between the multiple inferences emerging from the evidence. Rule 56, SCRCP, reserves that choice to the jury.

The order of summary judgment is

REVERSED.

THOMAS and HEWITT, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Renee Hale Shelley, as Personal Representative of the Estate of Michael Mann Lindler, Appellant/Respondent,

v.

South Carolina Highway Patrol, Respondent/Appellant.

Appellate Case No. 2016-002168

Appeal From Richland County
Alison Renee Lee, Circuit Court Judge

Opinion No. 5781
Heard March 13, 2019 – Filed October 28, 2020

AFFIRMED

C. Carter Elliot, Jr., Lauren Knight Slocum, and Andrew William Kunz, all of Elliot, Phelan & Kunz LLC, of Georgetown, for Appellant/Respondent.

Andrew F. Lindemann, of Lindemann & Davis, P.A., and Joel Steve Hughes, of The Law Office of Kenneth E. Berger, LLC, both of Columbia, for Respondent/Appellant.

WILLIAMS, J.: In this civil action, Renee Hale Shelley, as Personal Representative of the Estate of Michael Mann Lindler (the Estate), appeals the trial court's order granting the South Carolina Highway Patrol's (the Highway Patrol)

motion for a directed verdict. On appeal, the Estate argues the trial court erred in (1) granting the Highway Patrol immunity from liability under the South Carolina Tort Claims Act (the Act)[1] pursuant to subsection 15-78-60(4) of the South Carolina Code; (2) granting the Highway Patrol immunity from liability under subsection 15-78-60(6) of the Act; and (3) finding the custodial immunity in subsection 15-78-60(25) of the Act—which includes a gross negligence exception—did not apply under the facts of this case. The Highway Patrol cross-appeals, arguing the trial court erred in denying the Highway Patrol discretionary immunity from the Estate's claims under subsection 15-78-60(5) of the Act. We affirm.

FACTS/PROCEDURAL HISTORY

On December 17, 2012, South Carolina Highway Patrol Trooper Travis Blackwelder stopped to assist nineteen-year-old Lindler, a disabled motorist. Blackwelder's dash-cam and on-person microphone captured his entire encounter with Lindler. Therefore, a majority of the tragic facts of this case are not in dispute.

Lindler and his girlfriend were traveling westbound on Interstate 20 when his vehicle became disabled. When Blackwelder arrived shortly before 5:00 P.M., Lindler's truck was disabled in the right-hand lane of the interstate. Blackwelder interacted with Lindler and his girlfriend for approximately fourteen minutes. Lindler provided confusing and sometimes contradictory answers to Blackwelder's questions regarding (1) Lindler's vehicle, (2) where Lindler and his girlfriend were coming from and going to, and (3) whether Lindler had taken any medication and what type he took. Lindler also stumbled multiple times, and Blackwelder repeatedly asked him why he was stumbling and if he was all right. Lindler answered he was, providing multiple excuses as to why he was stumbling. Lindler was able to move his vehicle onto the grass beside the roadway. While Blackwelder was in his car relaying Lindler's driver's license number to dispatch, Lindler exited his vehicle, stood in the open doorway of his driver's side door at the edge of the highway, and smoked a cigarette. Blackwelder used his public address system to instruct Lindler to get out of the roadway. Lindler instead approached Blackwelder's patrol car, and Blackwelder repeated his instruction. Lindler apologized and moved to the grass on the right side of the interstate. Blackwelder

[1] S.C. Code Ann. §§ 15-78-10 to -220 (2005 & Supp. 2019).

exited his vehicle and asked Lindler to recite the alphabet, which Lindler did successfully. When Blackwelder repeatedly asked Lindler if he was under the influence of drugs or alcohol, Lindler expressed confidence that he would pass any field test Blackwelder administered. After questioning Lindler further and confirming Lindler had assistance on the way, Blackwelder left to respond to another accident. Approximately forty-two minutes after Blackwelder left the scene, Lindler was struck and killed. A witness testified Lindler was "darting in and out of traffic" before he was hit. The toxicology tests determined Lindler had Methadone and Alprazolam in his system at the time of his death.

On July 11, 2014, the Estate initiated this lawsuit against the Highway Patrol, alleging survivorship and wrongful death causes of action.[2] The complaint alleged Blackwelder was grossly negligent in leaving an "obviously impaired" Lindler on the side of the road after Lindler moved his truck out of the roadway and the Highway Patrol—through Blackwelder—failed to protect Lindler from harm. The complaint also alleged the Highway Patrol failed to terminate Blackwelder despite previous internal policy violations. The Highway Patrol raised multiple defenses in its answer, including the affirmative defense of immunity under the Act.

After both parties presented their cases, the Highway Patrol made multiple renewed motions for a directed verdict. Under one motion, the Highway Patrol argued it was immune from liability under subsections 15-78-60(4), (5), and (6) of the Act.[3] The trial court denied the Highway Patrol's motion as to subsection 15-78-60(5), finding the issue of whether Blackwelder weighed alternatives was a

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[2] The Estate also brought a federal substantive due process claim against Blackwelder. *See Shelley v. Blackwelder*, Civil Action Number 3:15-4989-JFA. United States District Judge Joseph F. Anderson, Jr. granted summary judgment in favor of the Highway Patrol as to that claim on January 17, 2017.

[3] Section 15-78-60 provides "[t]he governmental entity is not liable for a loss resulting from: . . . (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies; (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee; (6) civil disobedience, riot, insurrection, or rebellion or the failure to provide the method of providing police or fire protection . . . ."

factual question that should go to the jury. However, the trial court orally granted the Highway Patrol's renewed motions for a directed verdict as to subsections 15-78-60(4) and 15-78-60(6).

In the written order that followed, the trial court found the Estate's claims that Blackwelder failed to properly follow Highway Patrol policy and that the Highway Patrol failed to terminate Blackwelder for his previous failure to follow policy were failures to enforce the Highway Patrol's policies. Thus, the trial court found the Highway Patrol would not be liable under subsection 15-78-60(4). Under subsection 15-78-60(6), the trial court found "[the Estate's] claims, collectively, essentially [are] a 'failure to protect' claim. [The Estate's] claims are derivative of the notion that Blackwelder should have protected Lindler from harm." Therefore, the trial court concluded the Estate's failure to protect claims were barred under subsection 15-78-60(6) because they dealt with "methods of protection." The Estate filed a motion to reconsider, which the trial court denied. These cross-appeals followed.

ISSUE ON APPEAL

Did the trial court err in granting the Highway Patrol immunity under the Act?[4]

STANDARD OF REVIEW

"In ruling on a motion for directed verdict . . . a court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party." *Clark v. S.C. Dep't of Pub. Safety*, 362 S.C. 377, 382, 608 S.E.2d 573, 576 (2005). "The trial court must deny the motion[] when the evidence yields more than one inference or its inference is in doubt." *Sabb v. S.C. State Univ.*, 350 S.C. 416, 427,

[4] The Highway Patrol's cross-appeal argues the trial court erred in finding a jury question existed as to subsection 15-78-60(5). The Highway Patrol raised subsection 15-78-60(5) as an immunity to the Estate's "failure to protect" claims. Because we affirm the trial court's decision providing the Highway Patrol immunity from those claims under subsection 15-78-60(6), we need not address the argument in the Highway Patrol's cross-appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (finding the appellate court need not address remaining issues when the resolution of a prior issue is dispositive).

567 S.E.2d 231, 236 (2002). "This [c]ourt will reverse the trial court's ruling on a directed verdict motion only whe[n] there is no evidence to support the ruling or whe[n] the ruling is controlled by an error of law." *Clark*, 362 S.C. at 382–83, 608 S.E.2d at 576.

LAW/ANALYSIS

On appeal, the Estate argues the trial court erred in finding (1) the Highway Patrol was entitled to immunity under subsection 15-78-60(4) because the trial court incorrectly found the Estate's allegations of policy violations fell within the confines of subsection 15-78-60(4); (2) the Highway Patrol was entitled to immunity under subsection 15-78-60(6) because the trial court incorrectly found the Estate's claims were essentially failure to protect claims; and (3) custodial liability under subsection 15-78-60(25) did not apply based on the facts of this case.[5] Because we find resolution of the second argument dispositive, we address only that argument. *See Futch*, 335 S.C. at 613, 518 S.E.2d at 598 (finding the appellate court need not address remaining issues when the resolution of a prior issue is dispositive).

The Estate argues the trial court erred in granting the Highway Patrol's motion for a directed verdict pursuant to subsection 15-78-60(6), contending the Act does not grant the police immunity for any act that can be characterized as "police protection." We disagree.

The South Carolina Supreme Court abolished the common law doctrine of sovereign immunity in *McCall by Andrews v. Batson*, 285 S.C. 243, 246–47, 329 S.E.2d 741, 742–43 (1985). In response, the legislature passed the Act, which removed the cloak of immunity that protected the state and its political subdivisions from tort liability.[6] *Wells v. City of Lynchburg*, 331 S.C. 296, 302,

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[5] In its reply brief, the Estate abandoned its argument on the third issue, stating, "[The Estate] concedes there is no path forward on this theory of liability."

[6] "[The Act] is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents"; however, "[n]othing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent

501 S.E.2d 746, 749 (Ct. App. 1998). However, the Act's general waiver of immunity is not an "infinite blue sky" of limitless liability. *Nguyen v. State*, 788 P.2d 962, 964 (Okla. 1990) (interpreting comparable legislation in Oklahoma). The legislature limited the scope of governmental entities' liability through forty carefully crafted exceptions in section 15-78-60 of the Act. "The burden of establishing an exception to the waiver of immunity is on the governmental entity asserting the [exception as a] defense." *Clark*, 362 S.C. at 386, 608 S.E.2d at 578. One of these exceptions, subsection (6), provides a governmental entity is not liable for losses resulting from "civil disobedience, riot, insurrection, or rebellion or *the failure to provide the method of providing police or fire protection*." § 15-78-60(6) (emphasis added). We are required to construe these exceptions liberally in favor of limiting the Highway Patrol's liability. *See* S.C. Code Ann. § 15-78-20(f) (2005) ("The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.").

In *Wells*, this court addressed whether subsection 15-78-60(6) provided a county and a city immunity from liability from claims that they failed to maintain an adequate system of operative fire hydrants. 331 S.C. at 303–05, 501 S.E.2d at 750–51. This court determined that subsection 15-78-60(6) contained a scrivener's error; it was missing the conjunctive "or" between "the failure to provide" and "the method of providing police or fire protection." *Id.* at 303–04, 501 S.E.2d at 750. Based on *Wells*, the correct version of the statute reads, "civil disobedience, riot, insurrection, or rebellion or the failure to provide *or* the method of providing police or fire protection." *Id.* This court ultimately determined subsection 15-78-60(6) immunized the county and the city from the negligence claim. *Id.* at 304–05, 501 S.E.2d at 750–51. In reaching this conclusion, this court relied on reasoning from the Oklahoma Supreme Court in *Shockey v. City of Oklahoma City*, 632 P.2d 406 (Okla. 1981). *Wells*, 331 S.C. at 304–05, 501 S.E.2d at 750–51. In *Shockey*, the Oklahoma Supreme Court found Okla. Stat. tit. 51, § 155(6) (2018) gave a city immunity from a lawsuit that alleged the city failed to regularly check its fire hydrants to ensure proper operation in the event of a fire. 632 P.2d at 408. The *Shockey* court found, "[S]upplying water to fire hydrants was just a part of [the

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to harm, or a crime involving moral turpitude." S.C. Code Ann. §§ 15-78-20(b) & 15-78-70(b) (2005).

city's] overall operation in providing fire protection. Assuming, arguendo, [the city] negligently failed to employ the proper methods in checking its water service for the proper operation of its fire hydrants, [section] 155(6) clearly exempts it from liability." *Id.* In *Wells*, this court agreed with the Oklahoma court in *Shockey* and held subsection 15-78-60(6) barred the appellant's claim that the city failed to maintain an adequate system of operative fire hydrants. 331 S.C. at 305, 501 S.E.2d at 751.

This court again analyzed subsection 15-78-60(6) in *Huggins v. Metts*, 371 S.C. 621, 640 S.E.2d 465 (Ct. App. 2006). In that case, police approached a man carrying two large knives in the woods behind the man's residence. *Id.* at 622, 640 S.E.2d at 465. Police first brought in a negotiator to speak with the man, but he was not receptive. *Id.* at 622, 640 S.E.2d at 465–66. Police then radioed for a taser to subdue the man, but the man stated "you're not going to tase me," and he approached the officers. *Id.* at 622, 640 S.E.2d at 466. Police warned the man they would shoot if he came closer, but the man, still armed with the knives, continued to approach the officers. *Id.* at 622–23, 640 S.E.2d at 466. Police ultimately discharged their firearms and killed the man. *Id.* at 623, 640 S.E.2d at 466. The man's estate brought a negligence action against the police. *Id.* at 624, 640 S.E.2d at 466. This court affirmed the trial court's decision to grant summary judgment by finding the police immune from liability under subsection 15-78-60(6). *Id*. at 624–25, 640 S.E.2d at 466–67. This court found "[t]his action concerns the manner in which the police chose to provide police protection." *Id.* at 624, 640 S.E.2d at 467. This court determined subsection 15-78-60(6) of the Act specifically exempts the police from liability concerning the methods that they choose to utilize to provide police protection. *Id.*

In this case, the trial court found the Estate's claims were "essentially . . . failure to protect claim[s]." The trial court stated "[the Estate]'s claims are derivative of the notion that Blackwelder should have protected Lindler from harm." Therefore, the trial court concluded that to the extent the Estate claimed Lindler should have been protected, such claims fell under police protection and the Highway Patrol was immune from such claims under subsection 15-78-60(6).

We agree with the trial court. The Estate's allegations in paragraph fourteen of its complaint reference a failure to protect Lindler. For example, section (e) specifically alleges negligence "in consciously failing to protect [Lindler]"; section (u) alleges negligence "in consciously failing to take the appropriate action to

safeguard [Lindler]"; and section (v) specifically alleges negligence "in consciously failing to place [Lindler] into protective custody." Additionally, the Estate's policy violation claims—which the trial court held were precluded by subsection (4)—are, in actuality, failure to protect claims because they are "completely intertwined" with Blackwelder's failure to protect Lindler. *Cf. Adkins v. Varn*, 312 S.C. 188, 192, 439 S.E.2d 822, 824–25 (1993) (examining the "gravamen" of the complaint and stating that the acts alleged in the complaint were "completely intertwined" with a subsection providing immunity). The Estate claimed that Blackwelder and the Highway Patrol failed to comply with Section XI of Policy 300.14—titled "Highway Assistance"—which provides "[o]fficers shall ensure the *protection* of stranded persons . . . ." (emphasis added). As to the Estate's claim that the Highway Patrol failed to terminate Blackwelder despite a history of policy violations, this too is a failure to protect claim because it asserts that had Blackwelder been terminated, he would not have responded to the scene and left Lindler unprotected. Therefore, we find the Estate's claims are barred by subsection 15-78-60(6).

On appeal, the Estate seeks for this court to limit the application of subsection 15-78-60(6) to only those situations when negligence is based on an entity "formulating a policy," not situations when "an officer acts negligently in carrying out that policy." Our courts have never limited the application of subsection 15-78-60(6), and we decline to do so here. *See, e.g.*, *Huggins*, 371 S.C. at 622–24, 640 S.E.2d at 465–67 (finding subsection (6) exception to liability applied to police officers' response to an armed and belligerent assailant). Moreover, our supreme court expressly refused to recognize a distinction between "planning and operational activities" in *Clark*, stating, "The [South Carolina Department of Public Safety] contends the Court of Appeals created a distinction between planning and operational activities in determining [the officer]'s conduct was not subject to discretionary immunity. We decline at this time and under the facts of this case to recognize such a distinction."[7] 362 S.C. at 387 n.3, 608 S.E.2d at 579 n.3.

We also reject any notion that subsection 15-78-60(6) provides the police with "blanket immunity." In passing the Act, the General Assembly recognized the "potential problems and hardships each governmental entity may face being subjected to unlimited and unqualified liability for its actions." S.C. Code Ann.

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[7] In *Clark*, our supreme court evaluated discretionary immunity under subsection 15-78-60(5). *See* 362 S.C. at 386–87, 608 S.E.2d at 578–79.

§ 15-78-20(a) (2005). However, through the Act, the General Assembly expressly refused to provide immunity to employees of governmental entities whose conduct (1) is not within the scope of their official duties or (2) constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. S.C. Code Ann. § 15-78-70(b) (2005). Therefore, police officers whose conduct is outside the scope of their official duties or constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude are liable for their torts "in the same manner and to the same extent as a private individual under like circumstances" without any immunity from the Act. S.C. Code Ann. § 15-78-40 (2005); *see* § 15-78-70(b).

CONCLUSION

Based on the foregoing analysis, we find the trial court properly found the Estate's claims were precluded by subsection 15-78-60(6), and we **AFFIRM** the trial court's order granting the Highway Patrol's motion for a directed verdict.

GEATHERS and HILL, JJ., concur.