ADVANCE SHEET HEADNOTE
February 20, 2024

2024 CO 9

No. 22SC671, *Hice v. Giron* — Governmental Immunity — Emergency Vehicles.

In this case, the supreme court considers whether police officers waive their immunity under the Colorado Governmental Immunity Act (CGIA) by failing to use their emergency lights or siren at any point during a high-speed pursuit that ends in an accident. The court holds that an emergency driver waives CGIA immunity when a plaintiff's injuries could have resulted from the driver's failure to use alerts while speeding in pursuit of a suspected or actual lawbreaker.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2024 CO 9

Supreme Court Case No. 22SC671
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 20CA1603

Petitioners:

Justin Hice and Town of Olathe,

v.

Respondents:

Nichele Giron individually and as Personal Representative of the Estate of Walter Giron; Amanda Giron; and Thomas Short, as Personal Representative of the Estate of Samuel Giron.

Judgment Reversed
en banc
February 20, 2024

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JUSTICE HOOD delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT**, **JUSTICE MÁRQUEZ, JUSTICE GABRIEL**, **JUSTICE HART**, **JUSTICE SAMOUR**, and **JUSTICE BERKENKOTTER** joined.

JUSTICE HOOD delivered the Opinion of the Court.

¶1 Walter and Samuel Giron, brothers, died when Officer Justin Hice accidentally collided with the Girons' van as the officer pursued a suspected speeder. The Girons' family and estate representatives—Nicole Giron, Amanda Giron, and Thomas Short ("the Plaintiffs")—brought the underlying wrongful death action against Officer Hice and his employer, the Town of Olathe ("the Defendants").

¶2 The Defendants claim immunity under the Colorado Governmental Immunity Act ("CGIA"). The Plaintiffs counter that the Defendants are not entitled to immunity because Officer Hice failed to use his emergency lights or siren continuously while speeding before the accident. A division of the court of appeals agreed with the Plaintiffs, concluding that "an officer is not entitled to immunity when he does not activate his emergency lights or siren *for the entire time* he exceeds the speed limit and is in pursuit of an actual or suspected violator of the law," *Giron v. Hice*, 2022 COA 85M, ¶ 19, 519 P.3d 1083, 1088 (emphasis added), regardless of whether the failure to use alerts related to the eventual accident, *id.* at ¶ 45, 519 P.3d at 1093.

¶3 We reverse and hold that an emergency driver waives CGIA immunity when a plaintiff's injuries could have resulted from the driver's failure to use alerts while speeding in pursuit of a suspected or actual lawbreaker.

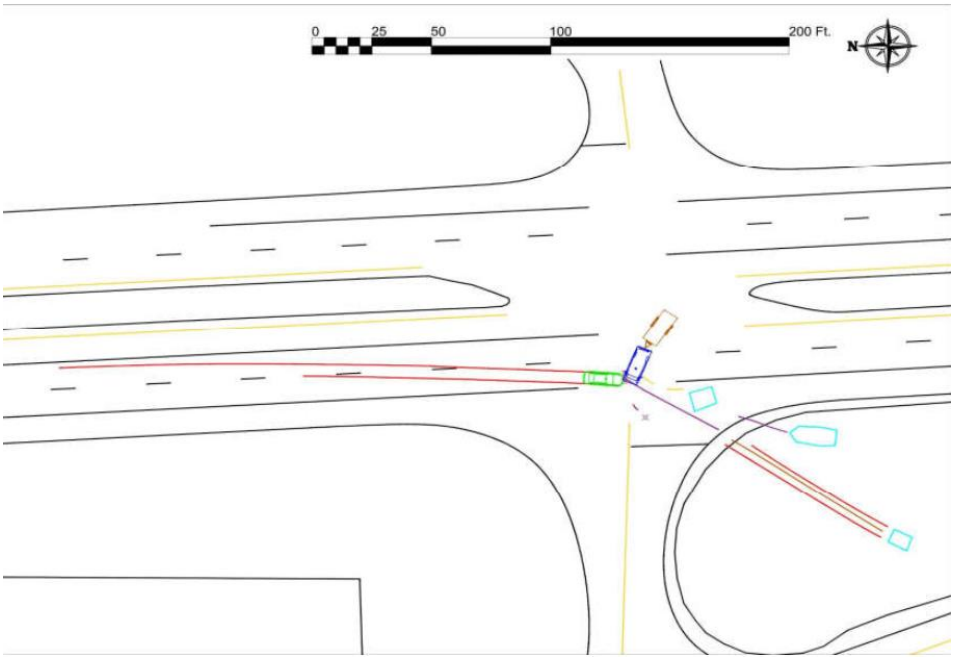
I. Facts and Procedural History[1]

¶4 During the summer of 2018, Officer Hice clocked a speeding vehicle while on radar patrol along Highway 50 in Olathe, Colorado. It was daylight, and the road was flat and dry. Officer Hice made a U-turn and accelerated to pursue the suspected speeder. He didn't turn on his emergency lights or siren as he sped up. About half a mile down the road, Walter and Samuel Giron waited at a traffic light to make a left turn across oncoming traffic.

¶5 After the suspected speeder shot through that intersection, Walter made the left turn. That's when Officer Hice—traveling upwards of 103 miles per hour—suddenly saw the impending accident unfolding before him. He tried to avoid T-boning the Girons by hitting the brakes and swerving to the right. His evasive maneuver failed: Officer Hice struck the passenger side of the brothers' van at seventy-five to eighty miles per hour. Both Walter and Samuel died. Officer Hice was severely injured. Roughly thirty-six seconds passed between the time Officer Hice initiated his pursuit and the accident. Officer Hice engaged his emergency lights for the final five to ten seconds. He never activated his siren.

[1] We base the facts in this case on the district court's findings after a two-day hearing pursuant to *Trinity Broadcasting of Denver, Inc. v. City of Westminster*, 848 P.2d 916 (Colo. 1993).

Sketch of the Accident[2]



¶6 The Plaintiffs sued, but the district court dismissed the action because it determined that the Defendants were immune from suit under the CGIA. The district court reasoned that "Officer Hice had his emergency lights illuminated in sufficient time to provide warning to Mr. Giron," and therefore the Plaintiffs failed to meet their burden of showing that the Defendants waived immunity. The district court also explained that it "d[id] not find that [O]fficer Hice created an unreasonable risk of injury during his pursuit" because of the "favorable" driving conditions and because Officer Hice "had to drive fast to catch a speeder," "had

[2] This sketch, admitted into evidence at the *Trinity* hearing, depicts the crash. Officer Hice's police cruiser is approaching from the left and the Girons' van (and attached trailer) is mid-turn coming from the right.

specific training in driving fast," and "just prior to the collision was decelerating and trying to avoid a crash."

¶7 A division of the court of appeals reversed, concluding that the Defendants waived their immunity because Officer Hice didn't use his emergency lights or siren for the entire time he was speeding in pursuit of the suspected speeder. *Hice*, ¶¶ 2, 6, 519 P.3d at 1085–86, 1093. We agreed to review the division's opinion.[3]

II. Analysis

¶8 We begin by discussing the principles that govern interpretation of the CGIA's immunity provisions. After examining the relevant provisions, we provide the framework for determining when emergency drivers waive CGIA immunity by failing to use alerts while speeding in pursuit of an actual or suspected lawbreaker.

A. Interpreting CGIA Provisions

¶9 Whether CGIA immunity bars a plaintiff's lawsuit is a threshold question of subject matter jurisdiction governed by C.R.C.P. 12(b)(1). *Maphis v. City of Boulder*, 2022 CO 10, ¶ 13, 504 P.3d 287, 291. Plaintiffs shoulder the burden of proving that

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[3] We granted certiorari to review the following issue:

> Whether the court of appeals erred in creating a bright-line rule waiving governmental immunity if an emergency vehicle operator responds to an emergency or pursues a violator of the law and exceeds the speed limit at any point before they activate their emergency lights or sirens.

a government defendant waived CGIA immunity. *Tidwell ex rel. Tidwell v. City & Cnty. of Denver*, 83 P.3d 75, 85 (Colo. 2003). This burden "is a relatively lenient one," *id.* at 86, and plaintiffs are "afforded the reasonable inferences from [their] undisputed evidence," *City & Cnty. of Denver v. Dennis*, 2018 CO 37, ¶ 11, 418 P.3d 489, 494. Further, because statutory immunity operates in derogation of common law, we "strictly construe the statute's immunity provisions" and "broadly construe" the CGIA's waiver provisions. *Springer v. City & Cnty. of Denver*, 13 P.3d 794, 798 (Colo. 2000). This means that we also strictly construe exceptions to those waivers, which are effectively grants of immunity. *Corsentino v. Cordova*, 4 P.3d 1082, 1086 (Colo. 2000).

¶10 We interpret statutes, including the CGIA, de novo. *Tidwell*, 83 P.3d at 81. Starting with the statute's language, we give the words their "plain and ordinary meanings." *McBride v. People*, 2022 CO 30, ¶ 23, 511 P.3d 613, 617. "If the statutory language is unambiguous, then we look no further." *Id.* But if it's ambiguous, which occurs "when it is reasonably susceptible of multiple interpretations," "we may consider other aids to statutory construction," *id.*, such as the purpose of the statute, any legislative history, and the consequences of a particular construction, § 2-4-203(1), C.R.S. (2023).

B. Relevant CGIA Provisions

¶11 The relevant CGIA provisions proceed as follows:

- Section 24-10-106(1), C.R.S. (2023), declares government actors "immune from liability in all claims for injury which lie in tort or could lie in tort."

- Section 24-10-106(1)(a) waives that immunity for "a public entity in an action for injuries resulting from . . . [t]he operation of a motor vehicle . . . except emergency vehicles operating within the provisions of section 42-4-108(2) and (3), C.R.S. [(2023)]."[4]

The cross-referenced traffic code sections include the following provisions:

- Section 42-4-108(2) grants emergency drivers certain privileges, "subject to the conditions stated in this article."

- Section 42-4-108(2)(c) allows an emergency driver to exceed speed limits, "so long as said driver does not endanger life or property."

- Section 42-4-108(3) explains that subsection (2)'s privileges "shall continue to apply to section 24-10-106(1)(a), C.R.S., only when such vehicle is making use of audible or visual signals."[5]

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[4] Section 24-10-106 states:

> (1) A public entity shall be immune from liability in all claims for injury which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant except as provided otherwise in this section. Sovereign immunity is waived by a public entity in an action for injuries resulting from:
>
> > (a) The operation of a motor vehicle, owned or leased by such public entity, by a public employee while in the course of employment, except emergency vehicles operating within the provisions of section 42-4-108(2) and (3), C.R.S.

[5] Section 42-4-108 provides, in relevant part:

> (2) The driver of an authorized emergency vehicle, when responding to an emergency call, or when in pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section,

¶12 In summary, the CGIA grants government entities broad immunity, waives that immunity for the operation of motor vehicles by public entities and their employees, and excludes emergency drivers who comply with the cross-referenced traffic code provisions from that waiver. Simple enough. But here we must determine what time period courts should look to when determining if an emergency driver complied with the lights-or-siren requirement in section 42-4-108(3). Does a failure to comply with that requirement—at *any point* before an accident—automatically and irrevocably waive immunity for any accidents that occur during the rest of the pursuit? Or does the CGIA require a causal nexus between the emergency driver's omission and the plaintiff's injuries?

> but subject to the conditions stated in this article. The driver of an authorized emergency vehicle may:
>
> . . .
>
> > (c) Exceed the lawful speeds set forth in section 42-4-1101(2)[, C.R.S. (2023)] or exceed the maximum lawful speed limits set forth in section 42-4-1101(8) so long as said driver does not endanger life or property;
>
> . . . .
>
> (3) The exemptions and conditions provided in paragraphs (b) to (d), in their entirety, of subsection (2) of this section for an authorized emergency vehicle shall continue to apply to section 24-10-106(1)(a), C.R.S., only when such vehicle is making use of audible or visual signals meeting the requirements of section 42-4-213[, C.R.S. (2023)]
> . . . .

¶13 The division held that an officer waives his immunity by failing to "activate his emergency lights or sirens *for the entire time* he exceeds the speed limit and is in pursuit of an actual or suspected violator of the law." *Hice*, ¶ 19, 519 P.3d at 1088 (emphasis added). The division summed it up this way:

> We conclude that, if the officer and the public entity for whom he works seek to have governmental immunity restored under section 42-4-108(2)(c) and (3) when the officer is operating an emergency vehicle in pursuit of an actual or suspected violator of the law and the officer is exceeding speed limits, the officer must activate lights or sirens as soon as the vehicle exceeds the speed limit. It is not enough for the officer to activate lights or sirens sometime after exceeding the speed limit while in pursuit.

Hice, ¶ 26, 519 P.3d at 1090.

¶14 The division emphasized that under section 42-4-108(3), the "privilege" of the driver to exceed speed limits "*shall* continue to apply" for purposes of restoring governmental immunity "*only when* such vehicle is making use of audible or visual signals." *Id.* at ¶ 27, 519 P.3d at 1090. This interpretation means emergency drivers waive immunity even when there's no possible connection between the failure to use emergency alerts and the plaintiff's injuries. *Id.* at ¶ 45, 519 P.3d at 1093. We find other statutory language (beyond section 42-4-108) more illuminating regarding whether proof of such a causal connection is mandatory.

C. Relevant Time Period

¶15 In our estimation, the plain language of section 24-10-106(1)(a) controls. Recall that an emergency driver waives his immunity "in an action for injuries

resulting from . . . [t]he operation of a motor vehicle . . . except emergency vehicles operating within the provision of section 42-4-108(2) and (3)." § 24-10-106(1)(a) (emphasis added). As we have previously explained, "[t]he phrase 'resulting from' clearly requires some relationship between a plaintiff[']s injuries and the public entity[']s conduct before a waiver of immunity is triggered." *Tidwell*, 83 P.3d at 86. In *Tidwell*, we explored the extent of this relationship. We determined that "resulting from" does not require courts to "reach so far as to determine whether . . . injuries were '*caused by*' [an officer] for purposes of the tort analysis that the finder of fact in the case would ultimately undertake." *Id.* (emphasis added). That's because the CGIA uses the phrase "caused by" to trigger immunity waivers in other provisions, so "we cannot treat 'caused by' and 'resulting from' as synonymous." *Id.* Thus, "resulting from" connotes only "a minimal causal connection between the injuries and the specified conduct." *Id.*

¶16 And beyond giving effect to these legislative distinctions, the required showing is minimal because "resulting from" sits in an immunity waiver provision, and we construe such provisions broadly. *Corsentino*, 4 P.3d at 1086. Here, that means we must read the phrase "resulting from" in a way that favors plaintiffs who seek to demonstrate a waiver in response to a C.R.C.P. 12(b)(1) motion to dismiss. So, the question prompted by "resulting from" is whether the plaintiff has demonstrated a possibility that the officer's failure to use alerts

resulted in the plaintiff's injuries—not whether the officer's omission did *in fact cause* the accident.

¶17 In *Dempsey v. Denver Police Department*, 2015 COA 67, 353 P.3d 928, a division of the court of appeals reached a similar conclusion. There, the plaintiff claimed that an emergency driver waives immunity if she "was speeding and endangering life and property at any point during her response, not just at or near the time of impact." *Id.* at ¶ 30, 353 P.3d at 933. The defendant countered "that the relevant time period was . . . a period prior to impact that *might have affected* what occurred." *Id.* (emphasis added). The division agreed with the defendant, writing that its "view [wa]s consistent with the requirement in section 24-10-106(1) that the waiver of governmental immunity pertains to injuries 'resulting from' the operation of a motor vehicle." *Id.* at ¶ 31, 353 P.3d at 933. The same is true here: the relevant period for an officer's failure to use alerts is the period during which that omission could have affected the accident.

¶18 The Plaintiffs disagree for four reasons. *First*, they contend (as the division held) that "resulting from" doesn't require a connection between the alleged injuries and the officer's failure to use emergency alerts, just a connection between the alleged injuries and the "operation of a motor vehicle" in its most general sense. *See Hice*, ¶ 45, 519 P.3d at 1093. So construed, *all* cases involving injuries from a crash with a police vehicle would necessarily satisfy the minimal causal

connection requirement imposed by the term "resulting from." Thus, the Plaintiffs' argument proves too much.

¶19 Perhaps more importantly, "operation of a motor vehicle" must be read in conjunction with the rest of the sentence: "except emergency vehicles operating within the provisions of section 42-4-108(2) and (3)." § 24-10-106(1)(a). Read together, these phrases provide that a plaintiff's alleged injuries must result from the "operation of a motor vehicle" that is *not* "within the provisions of section 42-4-108(2) and (3)"; in other words, a motor vehicle that is *not* using audible or visual signals while speeding. § 24-10-106(1)(a). Thus, section 24-10-106(1)(a) requires a minimal causal connection between a plaintiff's injuries and the fact that an officer did not use emergency signals while speeding.

¶20 *Second*, the Plaintiffs argue that an emergency driver's privilege to speed under the traffic code is "subject to the conditions stated in this article," § 42-4-108(2), including the lights-or-siren requirement. Therefore, in the Plaintiffs' view, an officer doesn't have the privilege to speed without alerts and thus waives immunity permanently by doing so. This argument conflates the question of CGIA immunity with the question of privilege under the traffic code. The traffic code's privilege to speed—that is, the exemption from traffic laws—has different requirements than CGIA immunity. The traffic code grants emergency drivers the privilege to speed without using alerts while CGIA immunity requires

alerts.[6] Because the traffic code's privilege to speed doesn't require the use of alerts, and because that privilege and CGIA immunity are not the same thing, we reject the Plaintiffs' argument that an officer who speeds without alerts does so without the privilege and thus waives immunity for the whole pursuit.

¶21 *Third*, the Plaintiffs infer that because the lights-or-siren requirement says that immunity applies "only when" alerts are in use, emergency drivers must use alerts as soon as they begin speeding in pursuit of a lawbreaker—or else they waive immunity for the entire pursuit. "When" is defined as "at or during the time that" or "while." *When*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/when [https://perma.cc/F8KV-HJGQ]. This connotes a temporary status subject to change: an emergency driver who uses lights for some parts of a pursuit but not others would have access to immunity at some points but not others. Thus, the plain meaning of "only when" doesn't dictate that an officer use alerts for the entire pursuit. Nor does it suggest that a failure to use alerts, at any point during the pursuit, waives immunity for the

[6]The lights-or-siren requirement pertains only to CGIA immunity. That requirement isn't among the "conditions stated in this article" that govern emergency drivers' privilege to speed under the traffic code. § 42-4-108(2). Rather, those "conditions [are] provided in paragraphs (b) to (d)." § 42-4-108(3). Paragraph (c) provides the only condition tied to emergency drivers' privilege to speed: that "said driver does not endanger life or property." § 42-4-108(2)(c).

whole pursuit. Rather, it means that an officer has access to immunity while speeding only during those times when the officer is using alerts.

¶22 *Fourth*, the Plaintiffs argue that section 42-4-108(3) expressly grants officers discretion to not use alerts while keeping immunity in other contexts. They maintain that by withholding such discretion here, the legislature meant to mandate a waiver if an officer fails to use alerts any time he speeds while in pursuit of a suspected lawbreaker. *See, e.g.*, § 42-4-108(3) (emergency vehicles "need not display or make use of audible or visual signals so long as such pursuit is being made to obtain verification of or evidence of the guilt of the suspected violator").

¶23 This interpretation conflicts with the minimal causal connection required by the term "resulting from." *See Tidwell*, 83 P.3d at 86. Also, it would make little sense to interpret the statutes as waiving immunity if an officer fails to use his alerts for, say, the first five seconds of a five-minute, high-speed pursuit when an accident occurs in the fifth minute. And we "avoid constructions that would yield illogical or absurd results." *Educhildren LLC v. Cnty. of Douglas Bd. of Equalization*, 2023 CO 29, ¶ 27, 531 P.3d 986, 993.

¶24 For these reasons, we hold that under section 24-10-106(1)(a) an emergency driver waives immunity only if the plaintiff's injuries could have resulted from the emergency driver's failure to use alerts.

III. Conclusion

¶25 We reverse the judgment of the court of appeals and remand the case for the court of appeals to determine if Officer Hice's failure to use his lights or siren until the final five to ten seconds of his pursuit could have contributed to the accident. The court of appeals should also analyze whether Officer Hice waived governmental immunity by failing to satisfy the condition that emergency drivers refrain from endangering life or property while speeding. We defer to the court of appeals as to whether further remand to the district court is necessary.