

THE UTAH COURT OF APPEALS

ARMANDO AYALA AND ASHLIE MAUGER,
Appellants,

v.

UNIFIED POLICE DEPARTMENT OF GREATER SALT LAKE AND
ETHAN ANDRUS,
Appellees.

Opinion

Nos. 20250290-CA, 20250291-CA

Filed September 11, 2026

Third District Court, Salt Lake Department
The Honorable Robert P. Faust
No. 220902360

Daniel F. Bertch, Attorney for Appellant
Armando Ayala

Roberto Hernandez, Attorney for Appellant
Ashlie Mauger

R. Scott Young, Attorney for Appellees

JUDGE AMY J. OLIVER authored this Opinion, in which JUDGES
GREGORY K. ORME and MICHELE M. CHRISTIANSEN FORSTER
concurred.

OLIVER, Judge:

¶1 Armando Ayala and Ashlie Mauger were driving together in Ayala's truck when they were involved in a vehicle collision with Officer Ethan Andrus of the Unified Police Department of Greater Salt Lake (UPD). Ayala and Mauger sued UPD and Andrus, who in turn asserted they were immune from suit under the Governmental Immunity Act of Utah. The district court agreed, granting summary judgment to UPD and Andrus. On appeal, Ayala and Mauger contend that summary judgment was

improper because there were genuine issues of material fact as to whether the statutory requirements for immunity had been met. We agree with Ayala and Mauger, and we therefore reverse the grant of summary judgment and remand the case for further proceedings.

BACKGROUND¹

The Accident

¶2 On the afternoon of August 4, 2020, Ayala was driving his truck eastbound on 7000 South in West Jordan, Utah, with Mauger in the passenger seat. At the same time, several UPD officers, including Andrus, were responding to another agency’s call for assistance with the pursuit of a fleeing criminal suspect. The UPD officers were attempting to get ahead of the fleeing vehicle in order to deploy spike strips to deflate its tires.

¶3 As Ayala approached the intersection of 7000 South and 1300 West, he observed one of the UPD officers enter the intersection with emergency lights and siren activated. The officer made a left-hand turn, going from westbound 7000 South to southbound 1300 West. A second UPD officer approached moments later, traveling southbound on 1300 West with lights and siren activated. That officer “slowed down to a creep and then went through” the intersection.

¶4 Ayala—believing the coast was now clear and having a green light to proceed eastbound—then entered the intersection,

1. “In reviewing a district court’s grant of summary judgment, we view the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party and recite the facts accordingly.” *Crosbie v. 750 W. Owners Ass’n*, 2026 UT App 9, n.1, 586 P.3d 10 (cleaned up).

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where he was struck by a third UPD officer, Andrus. Andrus was driving southbound on 1300 West, directly behind the second officer, when he entered the intersection against a red light and struck Ayala's vehicle. He had his emergency lights activated and later claimed that he had his siren activated as well, though there was some dispute on this point. A nearby gas station security camera captured the entire incident on video. While lacking sound, the video shows all three officers traversing the intersection with emergency lights flashing, followed by the collision between Ayala and Andrus.

The Lawsuit

¶5 Ayala and Mauger sued UPD and Andrus for negligence, seeking damages related to the injuries they sustained in the collision. A few months before trial was set to begin, UPD and Andrus filed a motion for summary judgment, invoking the Governmental Immunity Act of Utah. *See* Utah Code § 63G-7-201(4)(r). They argued the undisputed evidence showed that "Officer Andrus was driving his police vehicle in accordance with" all applicable requirements—such as activating his emergency lights and siren and acting "in a reasonably prudent manner"—thus rendering UPD immune from suit. In particular, they asserted that there could be no dispute Andrus acted reasonably "because he was operating his vehicle exactly like the two officers who went safely through the intersection before him" and that there was "no other admissible evidence that Officer Andrus was acting unreasonably under the circumstances."

¶6 Ayala and Mauger opposed the motion, asserting there was a genuine dispute of fact as to whether the statutory requirements for governmental immunity had been met. As to whether Andrus had acted reasonably, they averred that he had failed to slow down sufficiently before entering the intersection and, furthermore, had failed to comply with the emergency

driving policy in the UPD Policy Manual. They presented a copy of the emergency driving policy as well as a disciplinary report that included UPD's finding that Andrus violated the following policy provisions:

- Policy 312.5: "Officers shall exercise sound judgment and care with due regard for life and property when responding to an emergency call. Officers shall reduce speed at all street intersections to such a degree that they shall have complete control of the vehicle."
- Policy 312.5.1: "Members will slow to a safe and reasonable speed (not greater than 10 MPH), and if necessary stop before proceeding through intersections against a red light or stop signs, and shall determine that all cross traffic has yielded before crossing said intersection."

¶7 Once the motion for summary judgment had been fully briefed, UPD filed a request to submit the motion to the court and asked for oral argument.² Later that same day—and without holding oral argument—the district court granted the motion in a single-sentence written ruling: "After review of the pleadings,^[3] the Court grants the Motion for Summary Judgment as Defendants have established facts to show they complied with the statutory requirements for governmental immunity under U.C.A. § 63G-7-201(4)(r) and § 41-6a-212."

2. Throughout the remainder of our opinion, we will use UPD to refer to UPD and Andrus collectively.

3. Although the district court referred to "the pleadings," which in this case would have been only the complaint and answer, *see* Utah R. Civ. P. 7(a), presumably it meant the moving papers in support of and in opposition to summary judgment.

ISSUE AND STANDARD OF REVIEW

¶8 Ayala and Mauger assert the district court erred by granting UPD’s motion for summary judgment. “We review summary judgment decisions for correctness, viewing the facts in a light most favorable to the losing party below and giving no deference to the district court’s conclusions of law.” *Brinkerhoff v. Fleming*, 2023 UT App 92, ¶ 10, 536 P.3d 156 (cleaned up).

ANALYSIS

¶9 Summary judgment is appropriate only “if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” Utah R. Civ. P. 56(a). Ayala and Mauger assert that the district court’s grant of summary judgment was improper because there were genuine issues of material fact as to whether the statutory requirements for governmental immunity had been met.

¶10 To succeed on a motion for summary judgment, a moving party who “would bear the burden of proof at trial . . . must establish each element” of a claim in order to show entitlement to judgment as a matter of law. *Vanderwood v. Woodward*, 2019 UT App 140, ¶ 32, 449 P.3d 983 (cleaned up). The movant “must produce affirmative evidence that demonstrates an absence of a genuine issue of material fact,” and “if the movant does so, then the burden shifts to the nonmoving party to present evidence that is sufficient to establish a genuine issue of material fact.” *Id.* (cleaned up). If the district court “finds that there is a genuine issue of material fact that bears on its legal determination or if it finds, as a matter of law based on the undisputed facts, that the moving party is not entitled to a legal ruling in its favor,” then it must deny the motion. *Normandeau v. Hanson Equip., Inc.*, 2009 UT 44, ¶ 9, 215 P.3d 152.

¶11 Here, UPD bore the burden of proving its governmental immunity defense. *See, e.g., Fritsche v. Deer Valley Ridge at Silver Lake Ass’n of Unit Owners*, 2022 UT App 11, ¶ 40, 504 P.3d 761 (“When a party raises an affirmative defense, it bears the burden of proof for that defense.”); *Salo v. Tyler*, 2018 UT 7, ¶ 33 n.2, 417 P.3d 581 (“The assertion of governmental immunity is an affirmative defense . . .”). UPD was thus required to “produc[e] affirmative evidence in support of the essential elements” of its defense when it sought summary judgment on that ground. *Salo*, 2018 UT 7, ¶ 26. Upon UPD’s production of such evidence, the burden then shifted to Ayala and Mauger “to establish a genuine issue of material fact.” *Vanderwood*, 2019 UT App 140, ¶ 32 (cleaned up).

¶12 The district court determined that UPD had “established facts to show they complied with the statutory requirements for governmental immunity,” but offered no further explanation. Accordingly, we do not know what facts the district court believed were established.⁴ But on our review of the record, we identify multiple disputes of material fact that precluded the conclusion that UPD was immune from suit as a matter of law.

I. The Governmental Immunity Act of Utah

¶13 The Governmental Immunity Act of Utah provides, in relevant part,

A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment, if the injury arises

4. While we owe no deference to a district court’s grant of summary judgment, we nonetheless benefit from the insight of our district court bench when additional explanation is offered.

out of or in connection with, or results from: . . . the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6a-212.

Utah Code § 63G-7-201(4), (4)(r).

¶14 Utah Code section 41-6a-212, in turn, identifies various privileges and requirements related to the operation of an emergency vehicle. It provides that when “responding to an emergency call,” “in the pursuit of an actual or suspected violator of the law,” or “responding to . . . a fire alarm,” *id.* § 41-6a-212(2)(a)–(c), “[t]he operator of an authorized emergency vehicle may,” as relevant here, have the privilege of “proceed[ing] past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation,” *id.* § 41-6a-212(3), (3)(b).

¶15 But certain requirements must be met in order for this privilege to apply. The requirements differ somewhat depending on whether the emergency vehicle operator is or is not “involved in a vehicle pursuit.” *Compare id.* § 41-6a-212(4) (outlining requirements for an emergency vehicle not involved in a vehicle pursuit), *with id.* § 41-6a-212(5) (outlining requirements for an emergency vehicle involved in a vehicle pursuit). When not involved in a vehicle pursuit, the operator of an emergency vehicle must “sound[] an audible signal under Section 41-6a-1625” or “use[] a visual signal with emergency lights in accordance with rules made under Section 41-6a-1601, which is visible from in front of the vehicle.” *Id.* § 41-6a-212(4)(a)(i)–(ii). By contrast, the operator of an emergency vehicle who is involved in a vehicle pursuit is required to use both audible *and* visual signals, *see id.* § 41-6a-212(5)(a)(i)(A)–(B), as well as have been trained per his or her agency’s vehicle pursuit policy—the requirements of which are further laid out in the statute, *see id.* § 41-6a-212(5)(a)(ii)–(iii), (b). But in either case, section 41-6a-212 instructs

that, absent a limited exception, “the privileges granted under this section do not relieve the operator of an authorized emergency vehicle of the duty to act as a reasonably prudent emergency vehicle operator under the circumstances.” *Id.* § 41-6a-212(7)(a).

¶16 In the present case, the parties do not dispute that, when the collision occurred, Andrus was operating “an authorized emergency vehicle” and “responding to an emergency call.” *See id.* § 41-6a-212(2), (2)(a). UPD asserts that “Officer Andrus was not involved in a vehicle pursuit” and was thus privileged to proceed through the red light so long as he activated his emergency lights or siren and acted reasonably.⁵ But even if we assume, without deciding, that UPD is correct on this point, UPD did not establish its entitlement to judgment as a matter of law.

A. The Audible or Visual Signal Requirement

¶17 For an emergency vehicle operator not involved in a vehicle pursuit, section 41-6a-212 requires the use of “an audible signal under Section 41-6a-1625” or “a visual signal with emergency lights in accordance with rules made under Section 41-6a-1601, . . . visible from in front of the vehicle.” Utah Code § 41-6a-212(4)(a)(i)–(ii). UPD claims there is no dispute as to this element of its defense because the “security video clearly confirms that all three officers had activated their emergency lights before entering and traveling through the intersection.”

¶18 While the security video footage does show that Andrus’s emergency lights were activated, noticeably absent from the

5. UPD appears to contend that assisting with another agency’s vehicle pursuit—such as by attempting to place spike strips ahead of a fleeing suspect—does not amount to being “involved in a vehicle pursuit.” *See* Utah Code § 41-6a-212(4)(a); *see also id.* § 41-6a-212(5)(a). But because Ayala and Mauger have not argued to the contrary, we need not evaluate that contention here.

record is any evidence showing that Andrus's emergency lights were of the type required by the statute. Section 41-6a-1601 of the Utah Code, cited in section 41-6a-212, instructs the Department of Public Safety (DPS) to create rules "setting minimum standards covering the design, construction, condition, and operation of vehicle equipment," including "standards for the emergency lights of authorized emergency vehicles." *Id.* § 41-6a-1601(2)(a), (b)(iv). At no point did UPD attempt to establish that the emergency lights atop Andrus's police vehicle complied with any applicable standards promulgated by DPS. But given the applicable statutory requirement, it was required to do so to obtain summary judgment.

¶19 The necessity of such a showing is illustrated by our supreme court's decision in *Clegg v. Wasatch County*, 2010 UT 5, 227 P.3d 1243. In *Clegg*, a sheriff's deputy had struck another vehicle with his patrol car while responding to an emergency call. *Id.* ¶ 2. The parties did not dispute that the deputy's emergency lights and siren were activated at the time of the collision. *Id.* ¶ 16. When the driver of the other vehicle sued the deputy and Wasatch County for negligence, the county asserted immunity under the Governmental Immunity Act of Utah and moved for summary judgment, which the district court granted. *Id.* ¶ 3.

¶20 On appeal, the supreme court reversed the grant of summary judgment, concluding a dispute of material fact remained as to "the adequacy of the [deputy's] audible and visual signals." *Id.* ¶ 7. At the time, the statutory requirements for an emergency vehicle's lights and siren, as referenced in the Governmental Immunity Act of Utah, were that such signals must be audible or visible from at least "500 feet under normal conditions." *Id.* ¶ 13 (cleaned up). While there was no dispute that the deputy's lights and siren had been on, the county had presented "no evidence . . . regarding the distance from which the signals could be seen or heard." *Id.* ¶ 36. The court held that

because there was no evidence the deputy's lights and siren complied with the statute, "a disputed issue of material fact remain[ed]," rendering summary judgment on the basis of governmental immunity improper. *Id.*

¶21 While the requirements of the current version of the statute differ in some ways from those applicable in *Clegg*, *see supra* ¶ 15, the governing principle from *Clegg* remains the same. It is not enough to simply show that an officer's lights or siren were activated; to qualify for governmental immunity, a party must also show that the officer's lights or siren were adequate under the governing statute. *Clegg*, 2010 UT 5, ¶ 14; *see also Kouris v. Utah Highway Patrol*, 2003 UT 19, ¶ 14, 70 P.3d 72 (reversing a grant of summary judgment on governmental immunity grounds where the statutory adequacy of a highway patrol trooper's emergency lights remained a "question[] of material fact yet to be determined"). Applying *Clegg* to the present case, we thus conclude UPD failed to establish its compliance with the visual signal requirement.

¶22 UPD fares no better on the audible signal alternative. On this point, UPD claims there is no dispute because Andrus testified he had activated his patrol vehicle's siren and Ayala and Mauger "testified they heard sirens." Ayala admitted hearing the first officer's siren, but both Ayala and Mauger testified they did not hear Andrus's siren before the collision. Even the officer who had been traveling directly in front of Andrus testified he could not tell if Andrus's siren was activated because he "couldn't hear over [his own] siren." Viewing the facts in the light most favorable to Ayala and Mauger, as we must, such testimony creates a dispute of material fact.

¶23 Yet even if we discount this testimony and assume that Andrus's siren was activated, here too UPD made no effort to establish that Andrus's siren was of the type required by statute.

Section 41-6a-1625 of the Utah Code, cited in section 41-6a-212, requires that “[a]n authorized emergency vehicle shall be equipped with a siren, whistle, or bell capable of emitting sound audible under normal conditions from a distance of not less than 500 feet.” Utah Code § 41-6a-1625(4)(a). It further provides that “[t]he type of sound” used for the siren must be approved by DPS. *Id.* § 41-6a-1625(4)(b). At no point did UPD attempt to establish that Andrus’s siren complied with such requirements.

¶24 As set forth in *Clegg*, the failure to show that an officer’s lights or siren was adequate under the governing statute is fatal to a motion for summary judgment.

B. The Duty to Act as a Reasonably Prudent Emergency Vehicle Operator Under the Circumstances

¶25 Utah courts “have long recognized that drivers of emergency vehicles owe a duty of reasonable care to other motorists on the road.” *Clegg v. Wasatch County*, 2010 UT 5, ¶ 9, 227 P.3d 1243. In order to qualify for governmental immunity, “the operator of an authorized emergency vehicle” must “act as a reasonably prudent emergency vehicle operator under the circumstances.” Utah Code § 41-6a-212(7)(a). UPD argues there can be no dispute that “Officer Andrus acted like a reasonably prudent emergency vehicle operator,” in large part because he proceeded through the intersection in a similar manner as—and mere seconds after—the other two officers.⁶

6. UPD also contends Andrus acted reasonably because Ayala had a duty to yield the right-of-way. *See* Utah Code § 41-6a-904(1) (instructing drivers to yield the right-of-way to “an authorized emergency vehicle using audible or visual signals under Section 41-6a-212 or 41-6a-1625”). But because UPD never established that
(continued...)

¶26 In contrast, Ayala and Mauger contend it was improper for the district court to conclude that Andrus had acted reasonably as a matter of law. They first assert that a dispute of material fact remained regarding whether Andrus had slowed down to the extent necessary for safe operation of his vehicle considering the existing traffic conditions. *See* Utah Code § 41-6a-212(3)(b) (establishing that an emergency vehicle operator’s privilege of running a red light is qualified by first “slowing down as may be necessary for safe operation”).⁷ Ayala and Mauger both testified that a large dump truck impeded their view of any oncoming southbound traffic on 1300 West. Andrus, too, admitted his view of eastbound traffic on 7000 South was obstructed by the other vehicles stopped at the intersection. In light of this undisputed “blind spot” caused by the afternoon traffic, Ayala and Mauger argue Andrus should have further reduced his speed before entering the intersection. Viewing this fact in the light most favorable to Ayala and Mauger, we agree that whether Andrus slowed down to the extent necessary given existing traffic conditions was a material fact that remained in dispute.

¶27 Ayala and Mauger also claim that the UPD Policy Manual was relevant to assessing Andrus’s reasonableness and that because Andrus undisputedly “violated several provisions of the [UPD Policy] Manual, the [district] court erred by concluding, as a matter of law, that he drove reasonably.” In response, UPD

Andrus’s emergency lights or siren were statutorily adequate, *see supra* ¶¶ 21–24, this argument fails.

7. We note that while “slowing down as may be necessary for safe operation” is a distinct requirement under the statute, *see* Utah Code § 41-6a-212(3)(b), whether an emergency vehicle operator has done so may also go to whether that operator has “act[ed] as a reasonably prudent emergency vehicle operator under the circumstances,” *id.* § 41-6a-212(7)(a).

insists its internal policies are not relevant to determining whether Andrus acted reasonably and considering them would “confuse[] UPD’s internal review standards with the standards for immunity and negligence.” But UPD is incorrect. When faced with a similar argument in *Clegg*, the supreme court held that “violation of the Policy Manual will be relevant to the question of negligence, but will not necessarily be determinative.” 2010 UT 5, ¶ 29. Because the UPD Policy Manual is relevant to evaluating whether Andrus breached his duty to act reasonably, we agree with Ayala and Mauger that UPD’s own determination that Andrus violated the UPD Policy Manual precluded any conclusion that Andrus had driven reasonably as a matter of law.⁸

¶28 For the foregoing reasons, we conclude UPD was not entitled to judgment as a matter of law that Andrus operated his

8. UPD also asserts the disciplinary report containing UPD’s findings is wholly inadmissible because it “constitutes a subsequent remedial measure” under rule 407 of the Utah Rules of Evidence. The report does include a written warning and mentions potential “additional discipline.” With respect to these portions, we are persuaded by UPD’s rule 407 argument. But we see no reason that the portion of the report describing UPD’s investigative conclusions—namely, that Andrus violated certain provisions of the UPD Policy Manual—would also be inadmissible under this rule. See *Packard v. City & County of Denver*, 173 F.4th 1247, 1260 (10th Cir. 2026) (“[P]ost-event investigative tests or reports are generally not subsequent remedial measures”); *Bullock v. BNSF Ry. Co.*, 399 P.3d 148, 158 (Kan. 2017) (“[I]t is not unusual for some evidence to include information that is permissible, such as investigative conclusions, and information that is impermissible, such as employee discipline.”). Those portions of the report meting out the warning and referencing potential additional discipline could simply be redacted.

patrol vehicle “in accordance with the requirements of Section 41-6a-212.” *See* Utah Code § 63G-7-201(4)(r).

CONCLUSION

¶29 Viewing the facts in a light most favorable to Ayala and Mauger, we conclude that multiple disputes of material fact remain regarding the elements of UPD’s governmental immunity defense and that UPD failed to establish its entitlement to judgment as a matter of law. The district court thus erred by granting summary judgment. Accordingly, we reverse and remand this case for further proceedings.
