

COURT OF APPEALS OF VIRGINIA

Record No. 1097-25-1

DENEDRA TYLER-RICHARDSON

v.

CITY OF NORFOLK

Present: Judges Beales, White and Duffan

Argued at Norfolk, Virginia

Opinion Issued September 1, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

Everett A. Martin, Jr., Judge

Andrew M. Hendrick (Robert J. Haddad; Ruloff, Haddad & Woodward, P.C., on briefs), for appellant.

Anthony S. Cottone (Ren Warden Klinovskiy; Byrne Canaan Law, on brief), for appellee.

MEMORANDUM OPINION BY JUDGE RANDOLPH A. BEALES

Denedra Tyler-Richardson filed a complaint against the City of Norfolk for injuries that she alleged she suffered in a fall at the Norfolk Scope Arena, a recreational facility owned by the City. On June 9, 2025, the Circuit Court for the City of Norfolk issued an order sustaining the City's demurrer to Tyler-Richardson's complaint. On appeal, Tyler-Richardson argues that the circuit court erred when it sustained the City of Norfolk's demurrer because her complaint adequately stated a claim of gross negligence.

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

BACKGROUND¹

On August 21, 2022, Tyler-Richardson attended a comedy show at the Norfolk Scope Arena as a paid ticketholder. The arena was in complete darkness while Tyler-Richardson was trying to find her seat. Since she was having difficulty locating her seat, Tyler-Richardson enlisted the help of an usher. The usher did not have a flashlight, and attendees were not allowed to have their cellphones with them. Tyler-Richardson claims that she lost her footing on some steps while she was following the usher to her seat because of the lack of light. As a result, she suffered substantial injuries including medical bills, lost income, and pain and suffering.²

The usher who led Tyler-Richardson to her seat was an employee of Event Staffing, Inc. (“ESI”). ESI’s contract with the City of Norfolk stated that ESI was an independent contractor and that its workers “shall not be considered to be employees of the City for any purposes whatsoever.” There is little other evidence in the record regarding the nature of ESI and the City’s relationship.

On August 15, 2024, Tyler-Richardson filed a complaint against the City of Norfolk. In her complaint, Tyler-Richardson asked for \$6,275,486.37 in damages resulting from her fall at the Norfolk Scope Arena. She filed an amended complaint on February 24, 2025 requesting the same amount of damages for the same injury. In response, the City of Norfolk filed its answer, a plea in bar, and a demurrer. The City filed another plea in bar and demurrer on March 24, 2025 after Tyler-Richardson filed her amended complaint. In its plea in bar, the City claimed that it

¹ Because the circuit court sustained the City of Norfolk’s demurrer to Tyler-Richardson’s complaint, we accept the facts in her complaint as true. “We apply well-established principles to guide our review of a circuit court’s judgment sustaining a demurrer.” *Martin v. Lafountain*, 79 Va. App. 232, 236 n.1 (2023) (quoting *Dunn, McCormack & MacPherson v. Connolly*, 281 Va. 553, 557 (2011)). “A demurrer tests the legal sufficiency of facts alleged in pleadings, not the strength of proof. Accordingly, we accept as true all properly pled facts and all inferences fairly drawn from those facts.” *Id.* (quoting *Dunn*, 281 Va. at 557).

² The record is silent on the precise nature of Tyler-Richardson’s injuries.

was immune from Tyler-Richardson’s ordinary negligence claims and asserted that recreational facilities operated by cities—including the Norfolk Scope Arena—are immune from such suits since they are liable only for gross negligence. In its demurrer, the City argued that Tyler-Richardson failed to raise a prima facie case of gross negligence in her complaint and that she had therefore failed to state a claim for which relief could be granted. Tyler-Richardson filed a brief in opposition to the City’s plea in bar and demurrer arguing that the facts alleged in her complaint were sufficient to create a gross negligence claim.

The parties met for a hearing on May 28, 2025. During the hearing, the circuit court stated, “The Supreme Court says gross negligence is heedless and palpable violation of the legal duty in respecting the rights of others, which amounts to the absence of slight diligence or one of even scant care.” The circuit court continued, “the defendants provided an usher to get your client to her seat. Isn’t that showing some care for her, even if they didn’t have a flashlight?” In response, Tyler-Richardson’s counsel argued that the City of Norfolk’s decision to provide ushers was not evidence of care on the part of the City because “the usher led [Tyler-Richardson] into the dangerous situation” and “didn’t say, it’s too dark, wait until there’s a break in the show” or try to get a flashlight. The circuit court then ruled from the bench that it was going to “sustain the demurrer.”

On June 9, 2025, the circuit court issued an order sustaining the demurrer with leave to amend the complaint. The order also stated, “If Plaintiff fails to file a Second Amended Complaint within [21 days], this case will be DISMISSED *with prejudice*.” (Emphasis in original). Tyler-Richardson did not amend her complaint, and the circuit court’s June 9, 2025 order became final and appealable. Tyler-Richardson now appeals to this Court.

ANALYSIS

On brief, Tyler-Richardson argues, “The trial court erred by holding that the Plaintiff failed as a matter of law to state a claim for gross negligence and sustaining the Defendant’s demurrer.”

In reviewing a circuit court’s decision on a demurrer, this Court is to “accept as true all factual allegations expressly pleaded in the complaint and interpret those allegations in the light most favorable to the plaintiff.” *Taylor v. Aids-Hilfe Koln, e.V.*, 301 Va. 352, 357 (2022) (quoting *Coward v. Wellmont Health Sys.*, 295 Va. 351, 358 (2018)). This Court is also to accept any factual allegations that “fairly can be viewed as impliedly alleged or reasonably inferred from the facts alleged.” *Hooked Grp., LLC v. City of Chesapeake*, 298 Va. 663, 667 (2020) (quoting *Welding, Inc. v. Bland Cnty. Serv. Auth.*, 261 Va. 218, 226 (2001)). “But we are not bound by the pleader’s conclusions of law that are couched as facts.” *Wright v. Graves*, 78 Va. App. 777, 781 (2023). This Court also “must ‘disregard allegations that “are inherently impossible, or contradicted by other facts pleaded”’ and reject ‘inferences [that] are strained, forced, or contrary to reason.’” *New Age Care, LLC v. Juran*, 71 Va. App. 407, 429 (2020) (alteration in original) (quoting *Parker v. Carilion Clinic*, 296 Va. 319, 330 & n.2 (2018)).

Under Code § 15.2-1809:

No city or town which operates any park, recreational facility or playground shall be liable in any civil action or proceeding for damages resulting from any injury to the person or from a loss of or damage to the property of any person caused by any act or omission constituting ordinary negligence on the part of any officer or agent of such city or town in the maintenance or operation of any such park, recreational facility or playground.

Code § 15.2-1809. However, that statute also states, “Every such city or town shall, however, be liable in damages for the gross negligence of any of its officers or agents in the maintenance or operation of any such park, recreational facility or playground.” *Id.* The parties agree that the

Norfolk Scope Arena—where Tyler-Richardson fell—is a recreational facility within the meaning of Code § 15.2-1809. Thus, the question before this Court on appeal (and the question that was considered by the circuit court below) is whether Tyler-Richardson adequately pled a gross negligence claim in her complaint.

Gross negligence is an “utter disregard of prudence amounting to complete neglect of the safety of another.” *Chapman v. City of Va. Beach*, 252 Va. 186, 190 (1996) (quoting *Frazier v. City of Norfolk*, 234 Va. 388, 393 (1987)). Gross negligence is also “a heedless and palpable violation of legal duty respecting the rights of others.” *Frazier*, 234 Va. at 393 (quoting *Town of Big Stone Gap v. Johnson*, 184 Va. 375, 378 (1945)). “Gross negligence amounts to the absence of slight diligence, or the want of even scant care.” *Id.* (citing *Big Stone Gap*, 184 Va. at 378). Since “the standard for gross negligence [in Virginia] is one of indifference, not inadequacy, a claim for gross negligence must fail as a matter of law when the evidence shows that the defendants exercised some degree of care.” *Commonwealth v. Giddens*, 295 Va. 607, 614 (2018) (alteration in original) (quoting *Elliott v. Carter*, 292 Va. 618, 622 (2016)).

The Virginia Supreme Court held in *Frazier v. City of Norfolk* and in *City of Lynchburg v. Brown*, 270 Va. 166, 171 (2005), that the plaintiffs in those cases failed to make out a prima facie case of gross negligence against a municipality. *Frazier*, 234 Va. at 393. In both cases, the plaintiffs were injured by an open and obvious hazard in a city recreational facility. *Id.* at 392; *Lynchburg*, 270 Va. at 168. The cities did nothing to mitigate the danger posed by the hazards. *Frazier*, 234 Va. at 392-93; *Lynchburg*, 270 Va. at 169.

In *Frazier*, a minor fell while attending a religious convention at Chrysler Hall in Norfolk. 234 Va. at 390. He was on stage as part of a performing orchestra and lost his balance when he leaned over to retrieve a dropped drumstick. *Id.* at 392. The Supreme Court noted that two years prior, a six-year-old child also fell off the stage and into the basement just like the boy

at issue in *Frazier*. *Id.* at 393. The Supreme Court nonetheless held that “the trial court correctly ruled that the plaintiff failed to establish a prima facie case of gross negligence.” *Id.* at 393. The Court found that Norfolk’s

failure to install protective devices or to post warnings for children at a platform edge which was open and obvious amounts, at the most, to ordinary negligence and a failure to exercise reasonable care. Such acts of omission do not rise to that degree of egregious conduct which can be classified as a heedless, palpable violation of rights showing an utter disregard of prudence.

Id.

In *City of Lynchburg*, a woman fell from a bleacher at a local softball field and sued the City of Lynchburg to recover from her injuries. 270 Va. at 167. The woman was watching an evening softball game and “[a] light pole was casting a shadow across the bleachers.” *Id.* at 168. The woman “stepped into that shadow,” fell, and was injured in part due to jagged edges on the bleacher seats of which the city had no notice. *Id.* The Supreme Court ruled “that the trial court erred in refusing to rule as a matter of law that the plaintiff failed to establish the City was guilty of gross negligence.” *Id.* at 171. The Court explained that there was “no evidence of deliberate conduct by municipal employees or of a total disregard of all precautions by them.” *Id.*

The circuit court here did not err when it sustained the City of Norfolk’s demurrer. Tyler-Richardson did not allege that there was anything wrong with the Scope Arena other than the darkness of the arena. The City of Norfolk specifically prepared for that darkness by providing ushers to assist those attending the event. Thus, the City took a precautionary measure and exercised some diligence by recognizing the potential danger and doing something about that danger. *See Giddens*, 295 Va. at 614 (where the Supreme Court stated, “a claim for gross negligence must fail as a matter of law when the evidence shows that the defendants exercised some degree of care” (quoting *Elliott*, 292 Va. at 622)). In addition, like in *City of Lynchburg*, this case concerns a plaintiff who stepped into a dark space and was injured as a result. Here,

unlike the plaintiff in *City of Lynchburg* (who was injured by jagged bleachers), Tyler-Richardson does not allege any defect in the stairs upon which she fell, and furthermore the City of Norfolk hired a company to provide ushers to help attendees find their seats. In addition, like in *Frazier*, there is no “utter disregard of prudence” in this case because Norfolk actively took steps to address the darkness in the arena. Just as the City of Norfolk was not responsible in *Frazier* for the plaintiff’s injury there (even after someone had just been injured only two years prior in the exact same location and way), the City of Norfolk is not liable in this case.

On brief, Tyler-Richardson attempts to compare favorably her own circumstances to two other Supreme Court cases—including one case in which the Supreme Court found that there was credible evidence to support a finding of gross negligence under Code § 15.2-1809. However, neither of those cases support Tyler-Richardson’s position.

In the first case, *Chapman v. City of Virginia Beach*, the city had actual notice of a defective gate because an employee of the city reported the hazard to his supervisor multiple times. 252 Va. at 190-91. The city decided not to repair the gate because “most of the maintenance work that [the City does] on the boardwalk is done in the spring prior to the tourist season.” *Id.* at 191 (alteration in original). The plaintiff’s daughter was killed after she was injured by the broken gate. *Id.* at 188. The Supreme Court determined that the circuit court erred in setting aside the jury’s verdict for the plaintiff. *Id.* at 191. The Supreme Court stated that the city’s own procedures required the gates to be closed, that the city had been repeatedly notified that the gate was broken, and that “[t]he decision not to take any action was deliberate.” *Id.*

In the second case, *Elliott v. Carter*, a boy scout drowned in the Rappahannock River after his scout leader led him into the river. 292 Va. at 620-21. The scout leader walked on a sandbar with his troop into the river, swam back to shore, and told the scouts to walk back the

way that they came. *Id.* at 620. One of the boys, who the scout leader knew could not swim, fell into deep water and drowned. *Id.* at 621. The Supreme Court ruled that “the circuit court did not err in finding that no reasonable jurist could find that [the boy scout leader] did nothing at all for [the boy scout]’s care.” *Id.* at 623. In reaching its decision, the Supreme Court considered (1) that there was no allegation that the boy did not have “difficulty walking out along the sandbar”; (2) that there was no allegation that the boy scout leader was aware “of any hidden danger posed by the sandbar, the river or its current”; (3) that “there was no evidence that conditions” on the sandbar had changed such that walking back along the sandbar “would have been different or more dangerous”; and (4) that the boy scout leader tried to swim back to the boy and save him, “which is indicative that [the boy scout leader] was close enough to attempt to render assistance.” *Id.*

Here, unlike in *Chapman*, the City of Norfolk did not consciously refrain from repairing a known defect. Instead, as stated *supra*, Norfolk’s decision to provide ushers was a precaution that Norfolk took to address the darkness of the Scope Arena where Tyler-Richardson fell. Therefore, this case simply does not include the kind of deliberate decision to overlook a known public safety hazard that was central to the Supreme Court’s decision in *Chapman*. In addition—contrary to Tyler-Richardson’s claims—the Supreme Court’s decision in *Elliott* actually supports the circuit court’s decision to sustain the City’s demurrer in this case. Simply put, if the Supreme Court found the facts insufficient for a claim of gross negligence where the defendant led a boy scout who he knew could not swim and had no life jacket 150 yards into a river, then the facts are certainly insufficient for a claim of gross negligence in this case.³ *Id.* at 624.

³ Because we find that the circuit court did not err when it sustained the City’s demurrer to Tyler-Richardson’s complaint, we need not address whether the ushers that the City provided were independent contractors or agents of the City. See *Hannah v. Commonwealth*, 303 Va. 106, 121 (2024) (“Judicial restraint dictates that we decide our cases on the best and narrowest

CONCLUSION

Therefore, for all of the foregoing reasons (and especially because the City of Norfolk did take precautionary measures by hiring a company to provide ushers to assist attendees at the Norfolk Scope Arena), we simply cannot say that the circuit court erred when it sustained the City of Norfolk's demurrer in this case.

Affirmed.

grounds available to us, favoring dispositions tailored to the facts before us over broad pronouncements of law.”); *Butcher v. Commonwealth*, 298 Va. 392, 396 (2020).