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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MANJU DEVGAN, Individually and as Successor in Interest, etc., Plaintiff and Appellant, v. CITY OF SANTA MONICA, Defendant and Respondent.	B332479 (Los Angeles County Super. Ct. No. 23SMCV02124)

APPEAL from a judgment of the Superior Court of Los Angeles County, Edward B. Moreton, Jr., Judge. Affirmed.

The Dolan Law Firm, Christopher B. Dolan, Cioffi C. Remmer, Allison Leah Stone; The Arkin Law Firm and Sharon J. Arkin for Plaintiff and Appellant.

Douglas Sloan, City Attorney, Catherine M. Kelly, Chief Deputy City Attorney, Karen S. Duryea, Deputy City Attorney; Berry Silberberg Stokes and Carol M. Silberberg for Defendant and Respondent.

Appellant Manju Devgan alleges that emergency responders from respondent City of Santa Monica (City) failed to adequately protect her husband Baldev's neck when he fell and hit his head at home.[1] After his fall, Baldev became quadriplegic. The trial court sustained demurrers to the complaint without leave to amend and dismissed the lawsuit.

On de novo review, we conclude that the pleading does not and cannot state a claim for negligence, absent facts showing emergency responders' bad faith or gross negligence. As a result, City is immune from liability. (Health & Saf. Code, §§ 1799.106, 1799.107.) Demurrers were properly sustained to the elder abuse claim because City did not have a substantial, ongoing caretaking or custodial relationship with Baldev. We affirm.

ALLEGATIONS IN THE COMPLAINT

Manju and Baldev were medical doctors. On April 27, 2022, Baldev fell at home, hitting his head on the bathtub. Manju found her husband on the bathroom floor and called 911. She did not move him because she was concerned that he may have sustained orthopedic injury or brain trauma.

Manju informed City's emergency medical technicians (EMT's) that she is a doctor, and that they needed to protect and stabilize Baldev's neck before moving him because he had hit his head. They replied that they "are professionals and you need to let us do our job," and pushed her out of the bathroom.

Manju witnessed the EMT's actions through the doorway. They did not put a cervical spine (C-spine) immobilization collar

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[1] The complaint uses first names. Baldev died in 2024, during this appeal, and Manju became his successor in interest in this action. (Code Civ. Proc., § 377.11.)

on Baldev, or take precautions to protect his spine, contrary to Manju's warning. They moved him, had him sit up, and tried to get him to stand. They opined that " 'he looks ok' " and was able to move his extremities. They sat him on a chair.

When EMT's placed Baldev on a gurney, he voiced concern that no precautions were being taken to protect his spine from further injury. Nonetheless, they put the gurney in an upright position and moved him downstairs "with a bouncing, jarring motion with each step." Baldev expressed discomfort and distress, and Manju protested. The EMT's put Baldev in a supine position to load him in the ambulance, further jarring him. He complained of pain, and asked the EMT's to place supports on him for safety when the vehicle's movement jostled him while it drove down the road. They ignored his requests.

Baldev was evaluated at a nearby hospital. A CT scan showed a serious neck injury. Physicians placed a C-spine collar on him and transferred him to UCLA for emergency surgery for a spinal cord injury. He became quadriplegic after his fall.

PROCEDURAL HISTORY

The Devgans sued after City rejected their Government Code claim, alleging that Baldev was permanently injured by City's EMT's. The complaint asserts claims for medical negligence; negligence; government entity negligence; elder abuse; loss of consortium; and emotional distress.

City demurred, claiming the complaint did not show "gross negligence," and it is immune from claims of ordinary negligence. City argued that the pleading did not state a claim for elder abuse: It had no custodial or caretaking relationship with Baldev and there was no showing of "recklessness." City asserted

immunity from Manju's emotional distress and loss of consortium claims.

In opposition, the Devgans argued that they sufficiently pleaded gross negligence to overcome City's claim of immunity. They cited facts to show neglect, recklessness, or oppression sufficient to state a claim of elder abuse while Baldev was in City's care. Manju's claims of loss of consortium and emotional distress are allowed under the Government Code. They requested leave to amend, but did not offer any additional facts to bolster their claims.

THE TRIAL COURT'S RULING

The trial court sustained the demurrers without leave to amend. It wrote, "Plaintiffs have not identified any statute supporting their negligence claims. Accordingly, the claims are barred by the Government Claims Act." EMT's use of an ineffective or disfavored technique was not gross negligence. City is immune from liability. The pleading shows that EMT's assessed Baldev, saw him move his extremities and sit in a chair. They put him on a gurney and drove him to a hospital. This was not scant care or an extreme departure from ordinary care.

The court wrote that City did not have a custodial relationship with Baldev, nor does the pleading show recklessness, and the Devgans did not allege "neglect" within the meaning of the Elder Abuse Act. The remaining common law claims are barred by the Government Claims Act. The court dismissed the lawsuit and entered judgment for City.

DISCUSSION

1. Appeal and Review

Appeal lies from a judgment of dismissal after demurrers are sustained without leave to amend. (Code Civ. Proc., §§ 581d,

904.1, subd. (a)(1); *Serra Canyon Co. v. California Coastal Com.* (2004) 120 Cal.App.4th 663, 667.) We review pleadings de novo to determine if a cause of action has been stated, accepting the truth of the complaint's facts but not the truth of contentions or conclusions of fact or law. (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125; *Vichy Springs Resort, Inc. v. City of Ukiah* (2024) 101 Cal.App.5th 46, 53.) If leave to amend was denied, we determine "whether there is a reasonable possibility that the defect can be cured by amendment." (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.)

2. Government Claims Act

The Government Claims Act applies to lawsuits against public entities. (Gov. Code, § 810 et seq.) It provides that " 'a public entity is not liable for injury arising from an act or omission except as provided by statute.' " (*Hoff v. Vacaville Unified School Dist.* (1998) 19 Cal.4th 925, 932 (*Hoff*); Gov. Code, § 815, subd. (a).)

Appellant cites Government Code section 815.2 as the basis for her claims.[2] Section 815.2 applies the doctrine of respondeat superior to a public entity, which is " 'liable for the torts of an employee committed within the scope of employment if the employee is liable.' " (*Hoff, supra,* 19 Cal.4th at p. 932.) A public employee, in turn, "is liable for injury cause by his act or omission to the same extent as a private person." (Gov. Code, § 820.) A public entity is thus " 'vicariously liable for any injury which its

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[2] "A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee." (Gov. Code, § 815.2, subd. (a).)

employee causes [citation] to the same extent as a private employer.' " (*Hoff* at p. 932.)

A government claim "is subject to any immunity of the public entity provided by statute." (Gov. Code, § 815, subd. (b).) An action against a public entity "requires facts to be pleaded with particularity, showing every fact essential to the existence of statutory liability as well as the nonexistence of statutory immunity." (*Orr v. City of Stockton* (2007) 150 Cal.App.4th 622, 633; *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795.)

3. Emergency Responder Statutes

City asserts immunity, citing Health and Safety Code sections 1799.106 and 1799.107, which give "*qualified immunity* for public agencies and their rescue personnel by limiting their liability to acts of gross negligence or bad faith." (*Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1181 (*Eastburn*).) Appellant recognizes that these statutes apply to this lawsuit.[3]

Section 1799.106 states that to "encourage the provision of emergency medical services," firefighters, EMT's, police and others who render services at the scene of an emergency "shall only be liable in civil damages for acts or omissions performed in a grossly negligent manner or acts or omissions not performed in good faith"; an agency employing the emergency responder is not liable for civil damages if the employee is not liable.

Section 1799.107 applies to public entities and emergency rescue personnel, "whenever there is a need for emergency

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[3] Undesignated statutory references are to the Health and Safety Code.

services," and provides "qualified immunity from liability" to entities and personnel. (*Id.*, subd. (a).) It reads, "[N]either a public entity nor emergency rescue personnel shall be liable for any injury caused by an action taken by the emergency rescue personnel acting within the scope of their employment to provide emergency services, unless the action taken was performed in bad faith or in a grossly negligent manner." (*Id.*, subd. (b).) The statute encompasses city fire department personnel. (*Id.*, subd. (d).) " '[E]mergency services' includes, but is not limited to, first aid and medical services, rescue procedures and transportation, or other related activities necessary to insure the health or safety of a person in imminent peril." (*Id.*, subd. (e).)

Gross negligence means " ' "the want of even scant care or an extreme departure from the ordinary standard of conduct." ' " (*Eastburn, supra,* 31 Cal.4th at p. 1185–1186; *Sanchez v. Kern Emergency Medical Transportation Corp.* (2017) 8 Cal.App.5th 146, 153.) Gross negligence is not equivalent to the "reasonable person" standard used to assess ordinary negligence. (*Mubanda v. City of Santa Barbara* (2022) 74 Cal.App.5th 256, 264; *City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 753–754.) It "shall be presumed that the action taken when providing emergency services was performed in good faith and without gross negligence." (§ 1799.107, subd. (c).)

4. Sufficiency of the Allegations

a. Negligence Claims

The first three causes of action are for negligence. The medical malpractice claim alleges that City's employees breached their duty to use reasonable skill or care in rendering aid, transporting, and caring for Baldev. The second claim alleges that City breached its duty to use reasonable care in hiring,

training, and supervising its agents. The third claim alleges that City is liable for its EMT's actions under Government Code section 815.2. (See fn. 2, *ante*.) As noted in the preceding section, the standard for EMT's is bad faith or gross negligence, meaning a want of scant care or extreme departure from ordinary care. (*Eastburn, supra,* 31 Cal.4th at pp. 1185–1186.)

Appellants maintain that City's rendition of care was grossly negligent because (1) Manju is a doctor who told EMT's to protect Baldev's neck before moving him because he hit his head, (2) Baldev told EMT's he was uncomfortable and in pain, and asked them to place support around him during the ambulance ride, (3) the standard of care required immobilization on suspicion of spinal injury from a fall, and (4) EMT's failure to take precautions amounted to gross negligence.

The complaint shows that EMT's assessed Baldev; saw him move his extremities; put him on a gurney; and took him to a hospital. This is not a "want of even scant care." (*Eastburn, supra,* 31 Cal.4th at pp. 1185–1186.)

Appellant cites *Zepeda v. City of Los Angeles* (1990) 223 Cal.App.3d 232, in which a shooting victim died because EMT's refused to render aid until police arrived. This court found EMT's "provided no form of assistance and were not obligated to do so," justifying dismissal of the case on demurrer. (*Id.* at pp. 237–238.) Here, EMT's provided care by taking Baldev to the hospital.

Appellant relies on *Williams v. State of California* (1983) 34 Cal.3d 18, 24, imposing an ordinary standard of care on highway patrol officers. The claim in *Williams* was that officers "negligently and carelessly investigated [an] accident" by not identifying witnesses or pursuing the operator of the vehicle that

caused the accident. (*Id.* at pp. 21–22). The Health and Safety Code sections regarding emergency care—and requiring gross negligence—did not apply in *Williams*.

Appellant cites *Wright v. City of Los Angeles* (1990) 219 Cal.App.3d 318. In *Wright*, EMT's incorrectly surmised that a person was "loaded" (i.e., intoxicated), did a 60-second visual scan, did not check his vital signs, and departed without him. In reality, the victim had been beaten by a robber, was in crisis, and died at the scene. (*Id.* at pp. 327, 337.) A jury found gross negligence. (*Id.* at p. 343–344.) The court concluded that substantial evidence supported the verdict: Had the victim been given oxygen and fluids, and taken to a hospital, he would have lived. (*Id.* at pp. 347–348.) *Wright* is distinguishable. City's EMT's did not abandon Baldev.

The issue is whether EMT's efforts were grossly negligent. However, the pleading does not show an "extreme departure" from the standard of care.[4] Baldev was awake, alert, talking, moving his extremities, and able to sit in a chair. If EMT's undertake triage measures and arrange transport to a hospital, it is immaterial if their acts or omissions are alleged to be below the standard of care: Efforts that are ultimately unavailing are not an "extreme departure" from the standard of care. (*Maxwell v. County of San Diego* (9th Cir. 2017) 714 Fed.Appx. 641, 644.) In *Maxwell*, EMT's had immunity despite failing to intubate a shooting victim, who died.

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[4] Appellant does not claim that the EMT's acted in bad faith, the other basis for liability under sections 1799.106–1799.107.

In *Sampson v. Ukiah Valley Med. Ctr.* (May 5, 2017) 2017 U.S. Dist. Lexis 69265, EMT's tried to move a car accident victim from one hospital to another, "departing in an ambulance with certain pieces of non-functioning equipment," then failing to transfuse blood or return to the hospital when the patient "coded." (*Id.* at *15.) Care was "actually provided" so there was no gross negligence: Because steps were taken, unsuccessfully, to try to save his life, "no reasonable jury could find that [the] conduct amounted to an extreme departure from the ordinary standard of conduct." (*Id.* at *16–*17.)

At most, Manju asserts that EMT's did not follow her advice to use an immobilization device. However, authority for patient care is vested in EMT's at the scene of an emergency, in the absence of someone certified to render emergency medical care. (§ 1798.6, subd. (a).) Manju does not claim that she is certified to provide emergency care. EMT's cannot be expected, in an emergency, to conduct interviews with strangers regarding their qualifications to give medical instructions.

Failure to provide prompt, adequate medical care is not actionable. In *Eastburn*, plaintiffs called 911 when their child was electrocuted: She suffered permanent injury because EMT's delayed in responding to the emergency. (*Eastburn, supra,* 31 Cal.4th at pp. 1179, 1185.) The court determined that the complaint did not allege gross negligence and was properly dismissed on demurrer, absent allegations demonstrating "extreme conduct." (*Id.* at pp. 1185–1186.)[5]

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[5] Appellant cites California Civil Jury Instruction No. 501, which states the ordinary standard of care; the instruction applies to nonspecialist physicians, surgeons, and dentists, according to its directions for use. It does not apply to EMT's.

EMT's need not "pursue all possible options" to avoid liability for gross negligence, "only that they exercise some care." (*Decker v. City of Imperial Beach* (1989) 209 Cal.App.3d 349, 361 [emergency personnel not liable for failing to rescue a surfer before he drowned].) City's EMT's are similarly not liable for failing to pursue all possible options for a patient who was able to move his extremities and was seemingly "ok."

We must presume that an "action taken when providing emergency services was performed in good faith and without gross negligence," (§ 1799.107, subd. (c)), and "a plaintiff must plead sufficient facts to overcome that presumption" at the demurrer stage. (*Freeny v. City of San Buenaventura* (2013) 216 Cal.App.4th 1333, 1347.) Appellant did not overcome the presumption in favor of City.

Our Division has held that emergency rescue personnel have no duty to the public to come to the aid of others or assist them. (*Zepeda v. City of Los Angeles, supra,* 223 Cal.App.3d at pp. 235-236 ["City's paramedics had no general duty to render aid to plaintiffs' decedent."].) To the extent they did render assistance, no facts presented show gross negligence to undercut immunity. City's EMT's did not engage in "extreme" conduct. Actual care was provided, steps were taken to evaluate Baldev, and he was promptly taken to a hospital. EMT's were not required to pursue "all possible options." (*Decker v. City of Imperial Beach, supra,* 209 Cal.App.3d at p. 361.)

Appellant also relies on a case in which the court was *not* asked to apply the gross negligence standard in section 1799.106, *T.L. v. City Ambulance of Eureka, Inc.* (2022) 83 Cal.App.5th 864, 880, footnote 11.

Appellant argues that expert testimony is required to establish if there was an extreme departure from the standard of care. She cites *Avivi v. Centro Medico Urgente Medical Center* (2008) 159 Cal.App.4th 463, a malpractice case against licensed physicians, who are held to a different standard than EMT's. *Avivi* did not involve government immunity, which may be decided as a matter of law on demurrer.

"Although the determination of whether conduct constitutes gross negligence ordinarily is a question of fact [citations], where there are no facts showing an extreme departure from the ordinary standard of conduct, the gross negligence exception to immunity fails" as a matter of law. (*Mubanda v. City of Santa Barbara, supra,* 74 Cal.App.5th at p. 264.) The facts here show ordinary negligence, not gross negligence. The Legislature has chosen to give immunity to EMT's who must make rapid decisions without the benefit of a testing device, such as a CT scanner, that would show injury.[6]

Appellant's opening brief briefly touches on negligent hiring and supervision, arguing that "the City can be subject to direct liability for breaching its duty to reasonably select, train and supervise its employees who, as a result, cause injury to another." Appellant has not alleged with any particularity how City failed to properly select, train, and supervise employees. She relies on *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, in which the court focused on the relationship between a school and its students (*id.* at p. 869). The C.A. case *rejected* applicability of "the qualified immunity

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[6] The dissent does not convince us a trial is necessary to establish whether EMT's assessment of Baldev's condition was an extreme departure from ordinary negligence.

defense that governed vicarious liability in *Eastburn*" to a school district that hired a counselor who sexually abused a student. (*Id.* at p. 873). Applying a negligent hiring theory here would thwart the legislative purpose of encouraging public entities to provide emergency services.

b. Elder Abuse Claim

Appellant claims that City's EMT's are liable for injury to Baldev, an elder over age 65, while he was in their custody. Their actions allegedly "rose to the level of neglect and/or abuse when they failed to assure his safety and deprived him of the care and services necessary to avoid physical harm or mental suffering."

The main purpose of the elder abuse law is "the elimination of the institutional abuse of the elderly in health care facilities." (*Delaney v. Baker* (1999) 20 Cal.4th 23, 35–36 (*Delaney*).) Elder abuse is "[p]hysical abuse, neglect, abandonment, . . . or other treatment with resulting physical harm or pain or mental suffering," or "deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering." (Welf. & Inst. Code, § 15610.07, subd. (a)(1)–(2).)[7]

The law applies to a defendant with "a substantial caretaking or custodial relationship, involving ongoing responsibility for one or more basic needs, with the elder patient." (*Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 152 (*Winn*).) Under this standard, a clinic is not liable for failing to properly treat an elderly patient during medical visits over a

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[7] Neglect includes failure to assist in personal hygiene; provide food, clothing or shelter; protect from health and safety hazards; and prevent malnutrition or dehydration. (Welf. & Inst. Code, § 15610.57, subd. (b).)

decade because the statutory scheme does not encompass "a casual or temporally limited affiliation." (*Id.* at p. 161.)

Though fire departments are listed as a "[c]are custodian" (Welf. & Inst. Code, § 15610.17, subd. (w)), this does not mean they have a custodial relationship as a matter of law. "[T]he statute requires a separate analysis to determine whether such a relationship exists." (*Winn, supra,* 63 Cal.4th at p. 164 [noting that it is unclear how fire departments could have a custodial or caretaking relationship with an elder or dependent adult].) "[I]ntermittent outpatient medical treatment" does not forge a custodial or caretaking relationship. (*Id.* at p. 165.)

Applying our Supreme Court's analyses, appellant cannot state a claim for elder abuse. Baldev's treatment by City's EMT's did not forge a custodial or caretaking relationship. He was not left lying in feces for extended periods of time at a nursing facility (*Delaney, supra,* 20 Cal.4th at p. 27), nor was he deprived for eight weeks of proper nutrition, hydration, medication, and sanitary care at a nursing facility while suffering from Parkinson's disease (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 777–778 (*Covenant*)).

City did not have "ongoing responsibility for one or more basic needs" and the caretaking relationship was not "robust." (*Winn, supra,* 63 Cal.4th at pp. 152, 158.) Baldev's fleeting encounter with EMT's did not make City his caregiver or custodian. His case is distinguishable from the skilled nursing relationships described in *Delaney* and *Covenant*. Baldev's relationship with City was less than that in *Kruthanooch v. Glendale Adventist Medical Center* (2022) 83 Cal.App.5th 1109, in which a man hospitalized for two days failed to state a claim for

elder abuse because the hospital's engagement with him was brief and " 'circumscribed.' " (*Id* at p. 1132.)

Apart from lacking a caretaking or custodial relationship with Baldev, City cannot be liable because "neglect refers not to the substandard performance of medical services but, rather, to the 'failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults.' " (*Covenant, supra,* 32 Cal.4th at p. 783.) Elder abuse "is not an injury that is 'directly related' " to a health care provider's services. (*Id.* at p. 786.) Appellant's elder abuse claim arises from City's allegedly substandard medical services, not from any failure to attend to Baldev's basic needs and comforts, and is thus not permitted under the governing California Supreme Court authorities.

c. Remaining Claims

Manju's emotional distress and loss of consortium claims hinge upon the viability of the negligence and elder abuse claims. As discussed, the negligence and elder abuse claims cannot succeed. Accordingly, the derivative claims cannot proceed.

5. Leave to Amend

Appellant renews on appeal her request for leave to amend. The trial court did not allow an opportunity to do so. " 'Denial of leave to amend is appropriate only when it conclusively appears that there is no possibility of alleging facts under which recovery can be obtained.' " (*Tarrar Enterprises, Inc. v. Associated Indemnity Corp.* (2022) 83 Cal.App.5th 685, 689.)

Appellant's proposed amendment would allege that the standard of care requires EMT's to immobilize trauma patients who have a possible C-spine injury; Manju instructed EMT's to use C-spine techniques on Baldev; EMT's ignored Manju and did not immobilize him; in an extreme departure from the standard

of care, EMT's put Baldev in a sitting position, tried to have him stand, put him in a chair, raised the head of his gurney, bumped it down the stairs, and placed it in the ambulance; Baldev told EMT's he was uncomfortable and in pain, and requested support for his neck; EMT's refused his request and jarred him on the way to the hospital.

Appellant's brief does not alter the facts set forth in the complaint. There is no new factual information offered. The main addition is that she wishes to state that the existing facts in the complaint show "an extreme departure from the standard of care." This is a legal theory or a contention, not a new fact. (Compare *Keyes v. Santa Clara Valley Water Dist.* (1982) 128 Cal.App.3d 882, 889–890 [plaintiff asked to amend to allege a new fact—an artificial condition—to avoid the defendant's immunity for "natural" conditions].) Moreover, merely alleging an extreme departure does not make it so. As explained in part 4, *ante*, the alleged failures in this case did not amount to gross negligence. Appellant does not attempt to show bad faith. There was more than scant care, and EMT's failure to use a certain technique is not extreme conduct.

In *Eastburn*, our Supreme Court refused to allow amendment to the complaint to allege a legal theory in a case involving the alleged negligence of fire department employees. The plaintiff asked "to add a general allegation of gross negligence or bad faith," but the "briefs fail[ed] to set forth any additional relevant facts that might support a finding of gross negligence or bad faith." (*Eastburn, supra,* 31 Cal.4th at p. 1185.) The court concluded that "the trial court properly sustained the demurrer without leave to amend." (*Id.* at p. 1186.)

The same reasoning applies here. The complaint shows that EMT's evaluated Baldev, believed he was stable, and provided emergency transportation to a hospital. In short, "Nothing in plaintiffs' pleadings or appellate briefs points to . . . extreme conduct." (*Eastburn, supra,* 31 Cal.4th at p. 1186.) Demurrers were properly sustained without leave to amend.

DISPOSITION

The judgment of dismissal is affirmed. Respondent is entitled to recover its costs on appeal.

NOT TO BE PUBLISHED.

LUI, P. J.

I concur:

CHAVEZ, J.

Manju Devgan v. City of Santa Monica, B332479

ASHMANN-GERST, J., Concurring and Dissenting.

I agree with my colleagues that the trial court properly sustained respondent City of Santa Monica's demurrer without leave to amend as to the elder abuse claim. I respectfully disagree, however, as to the negligence claims.

The immunity conferred upon public entities and emergency rescue personnel by Health and Safety Code section 1799.107 is qualified.[1] It does not apply if "the action taken was performed"—as relevant here—"in a grossly negligent manner." (§ 1799.107, subd. (b).) Gross negligence is defined "as "'the want of even scant care or an extreme departure from the ordinary standard of conduct.'" [Citations.]" (*Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1185–1186 (*Eastburn*).)

Here, the complaint alleges that "[s]pinal precautions, including but not limited to cervical spine precautions, should be instituted immediately on suspicion of injury in a fall potentially involving the spine to prevent any injury being caused by movement of the injured party." Appellant Manju Devgan informed responding emergency medical technicians (EMTs) that her husband, Baldev Devgan (Baldev), had hit his head. Despite this information, the EMTs failed to "put a cervical spine ('c-spine') immobilization collar" on Baldev or "otherwise secure and protect his spine" before proceeding to sit him up. The EMTs moved Baldev to a gurney, converted the gurney into a sitting

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[1] All further statutory references are to the Health and Safety Code unless otherwise indicated.

position, and brought it down two flights of stairs "with a bouncing, jarring[] motion with each step." "With each jarring movement[,]" Baldev indicated his distress, "informing the [EMTs] of [the] discomfort the movements were causing him." Once loaded into the ambulance, Baldev again informed the EMTs of his discomfort, including spinal pain, and requested support as he continued to be jarred by the motion of the ambulance. These requests were ignored. As a result, Baldev was rendered quadriplegic.

These allegations, which "must be accepted as true" and "must be liberally construed with a view to attaining substantial justice among the parties" (*Metabyte, Inc. v. Technicolor S.A.* (2023) 94 Cal.App.5th 265, 274), sufficiently describe an extreme departure from the ordinary standard of conduct and, thus, gross negligence. This remains true even given the presumption "affecting the burden of *proof*" that emergency services were rendered without gross negligence. (§ 1799.107, subd. (c), italics added).[2] The complaint thus pleads around the qualified immunity conferred by section 1799.107.

In my view, the cases relied upon by the majority are distinguishable.

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[2] Of course, whether the EMTs in fact deviated from the standard of care and, if so, the degree of that deviation are factual issues that would require expert testimony. (See *Avivi v. Centro Medico Urgente Medical Center* (2008) 159 Cal.App.4th 463, 467.)

Eastburn, *supra*, 31 Cal.4th 1175 involved allegations that a 911 operator failed to dispatch emergency medical personnel after being informed that a child had suffered an electric shock while bathing. (*Id.* at p. 1179.) In appellate briefs, the plaintiffs added an "allegation that the 911 dispatcher put them 'on hold' during their telephone conversation[.]" (*Id.* at p. 1185.) The California Supreme Court concluded that "such conduct would hardly amount to gross negligence or bad faith" (*ibid.*) and that the defendants' demurrer had been properly sustained without leave to amend (*id.* at p. 1186). I do not find *Eastburn* to be factually analogous to the instant case, which deals with the failure to employ cervical spine immobilization techniques when responding to and transferring a patient suspected of suffering a spinal injury.

Maxwell v. County of San Diego (9th Cir. 2017) 714 Fed.Appx. 641 and *Sampson v. Ukiah Valley Med. Ctr.* (May 5, 2017) 2017 U.S. Dist. Lexis 69265 are procedurally distinguishable, as they are cases that were resolved on summary judgment. Neither considered the sufficiency of allegations of gross negligence at the pleading stage.

Because, liberally construed, the complaint here states a cause of action for gross negligence, it cannot be said at this early juncture that the City of Santa Monica is entitled to section 1799.107 immunity as a matter of law.[3] I would therefore reverse the trial court's order sustaining without leave to amend

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[3] Contrary to the majority's characterization (see Maj. Opn., at p. 12, fn. 6), I do not conclude that a trial would be necessary here. I proffer that appellant has sufficiently pled gross negligence or, at a minimum, should be permitted an opportunity to amend the complaint.

the demurrers as to the negligence causes of action. (See *Minsky v. City of Los Angeles* (1974) 11 Cal.3d 113, 118 ["It is axiomatic that if . . . the pleading liberally construed can state a cause of action, a demurrer should not be sustained without leave to amend"].)

_____, J.
ASHMANN-GERST