

DEZIREE LEWIS

NO. 25-C-203

VERSUS

FIFTH CIRCUIT

PROGRESSIVE CASUALTY INSURANCE
COMPANY, ET AL

COURT OF APPEAL

STATE OF LOUISIANA

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE
TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 840-511, DIVISION "M"
HONORABLE SHAYNA BEEVERS MORVANT, JUDGE PRESIDING

June 18, 2025

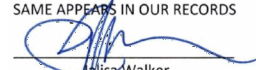
JUDE G. GRAVOIS
JUDGE

Panel composed of Judges Jude G. Gravois,
Stephen J. Windhorst, and Timothy S. Marcel

**WRIT GRANTED; JUDGMENT REVERSED; MOTION FOR LEAVE
GRANTED; MATTER REMANDED**

JGG
SJW
TSM

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS


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GRAVOIS, J.

Relators/defendants, LCMC Health Holdings, Inc. and Liberty Mutual Fire Insurance Company, seek this Court's supervisory review of the trial court's March 24, 2025 judgment which denied their motion for leave to file an amended and supplemental answer to assert the affirmative defense of qualified statutory immunity under La. R.S. 32:24. For the following reasons, we grant this writ application, reverse the trial court's judgment, grant defendants' motion for leave to file an amended answer to assert the affirmative defense of qualified statutory immunity under La. R.S. 32:24, and remand the matter to the trial court for further proceedings consistent with this disposition.

FACTS AND PROCEDURAL BACKGROUND

This matter arises out an automobile accident that occurred on March 31, 2023. Plaintiff, Deziree Lewis, was a passenger in an ambulance operated by LCMC. While en route to a local hospital, the ambulance collided with a vehicle driven by Margaret Glover. On May 8, 2023, Ms. Lewis filed suit against Ms. Glover, Progressive Casualty Insurance Company, LCMC, and Liberty Mutual. LCMC and Liberty Mutual filed an answer and cross-claim on August 7, 2023, wherein defendants asserted numerous affirmative defenses.

On February 14, 2025, defendants filed a motion for leave to file an amended and supplemental answer to assert the affirmative defense of qualified statutory immunity under La. R.S. 32:24.¹ Defendants argued plaintiff would not

¹ La. R.S. 32:24 provides:

- A. The driver or rider of an authorized emergency vehicle, when responding to an emergency call, or when in the 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, but subject to the conditions herein stated.
- B. The driver or rider of an authorized emergency vehicle may do any of the following:
 - (1) Park or stand, irrespective of the provisions of this Chapter.

be prejudiced by the amendment since there were no pre-trial deadlines set.

Defendants claimed there was no evidence of bad faith on their part, and the October 24, 2024 deposition of Ms. Glover revealed additional facts that they feel necessitated an amendment to their answer.

Plaintiff filed an opposition, arguing that no new facts were revealed during Ms. Glover’s deposition that would warrant an amendment to the answer. Plaintiff asserted that this case has been pending for 22 months and this affirmative defense was available at the time of defendants’ original filing. Further, considering that discovery is already underway, plaintiff argued that an amendment would be prejudicial since plaintiff would have to re-depose Ms. Glover, conduct additional depositions and research, and retain an expert.

In reply, defendants argued they are not seeking an amendment as a delay tactic and there is no current discovery cut-off or trial date set. They asserted that during Ms. Glover’s deposition, she claimed that she did not hear the ambulance sirens until after the accident—as opposed to her statement in the Louisiana Uniform Crash Report that she heard the sirens prior to the accident occurring. Defendants argued that Ms. Glover’s prior statement to police would have been a “*per se* violation” of La. R.S. 32:125 (which provides for procedures on approach of an authorized emergency vehicle and passing a parked emergency vehicle), and

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- (2) Proceed past a red or stop signal or stop sign, but only after slowing down or stopping as may be necessary for safe operation.
 - (3) Exceed the maximum speed limits so long as he does not endanger life or property.
 - (4) Disregard regulations governing the direction of movement or turning in specified directions.
- C. The exceptions herein granted to an authorized emergency vehicle shall apply only when such vehicle or bicycle is making use of audible or visual signals, including the use of a peace officer cycle rider’s whistle, sufficient to warn motorists of their approach, except that a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.
- D. The foregoing provisions shall not relieve the driver or rider of an authorized vehicle from the duty to drive or ride with due regard for the safety of all persons, nor shall such provisions protect the driver or rider from the consequences of his reckless disregard for the safety of others.

defendants could have established Ms. Glover's negligence in causing the accident. Absent this admission, they argued that "qualified immunity provided under [La. R.S.] 32:24, which applies regardless of her negligence, became exigible as an affirmative defense."

Following a hearing on March 20, 2025, the trial court denied defendants' motion. In oral reasons for judgment, the trial court noted that when defendants filed their original answer, they knew and alleged then that the ambulance's lights and sirens were on. The trial court could not find that defendants were acting in good faith since they offered no explanation as to their delay in asserting this defense. The trial court also noted that the amendment would delay the case and prejudice plaintiff since Ms. Glover was already deposed. A written judgment denying the motion was signed on March 24, 2025.

ANALYSIS

An affirmative defense is a defense to the action which will have the effect of defeating a plaintiff's demand on the merits and must be specifically pled. *Zulli v. Coregis Ins. Co.*, 05-155 (La. App. 5 Cir. 7/26/05), 910 So.2d 437, 439, *writ denied*, 05-2226 (La. 2/17/06), 924 So.2d 1017. In Louisiana, immunity is an affirmative defense that must be pled by a defendant, and it is susceptible of being waived. *Parker v. State Through Dep't of Transp. & Dev.*, 23-588 (La. App. 5 Cir. 3/13/24), 385 So.3d 354, 357; *Boudreaux v. State, Dep't of Transp. & Dev.*, 01-1329 (La. 2/26/02), 815 So.2d 7, 12.

After an answer has been served, a defendant may amend an answer only by leave of court or by written consent of the parties. La. C.C.P. art. 1151; *Stein v. City of Gretna*, 17-554 (La. App. 5 Cir. 5/30/18), 250 So.3d 330, 340. The decision to grant leave to amend or supplement a pleading is within the sound discretion of the trial court, and its ruling will not be disturbed on appeal, except

where an abuse of discretion has occurred and indicates a possibility of resulting injustice. *Parker, supra*.

Amendment of pleadings should be liberally allowed, providing the movant is acting in good faith, the amendment is not sought as a delaying tactic, the opponent will not be unduly prejudiced, and trial of the issues will not be unduly delayed. *Beard v. Circle K, Inc.*, 554 So.2d 825 (La. App. 1st Cir. 1989). “Good faith” in the context of a motion for leave to amend is a reasonable belief that the facts alleged in the proposed amendment are true. *See Giron v. Housing Authority of City of Opelousas*, 393 So.2d 1267, 1270 (La. 1981); *Rainey v. Entergy Gulf States, Inc.*, 01-2414 (La. App. 1 Cir. 11/8/02), 840 So.2d 586, 589, *on reh’g*, 01-2414 (La. App. 1 Cir. 6/25/04), 885 So.2d 1193; and *Premier Bank, National Assn. v. Robinson*, 618 So.2d 1037, 1039-40 (La. App. 1 Cir. 1993).

Upon review of the writ application and the opposition thereto, we respectfully conclude that the trial court abused its broad discretion in denying defendants’ motion for leave to file an amended and supplemental answer to assert the affirmative defense of qualified statutory immunity under La. R.S. 32:24.

The trial court’s reason for denial of the motion to amend in this case was primarily that defendants did not offer an explanation for failing to plead this affirmative defense. In fact, mover forthrightly admitted that it simply was an oversight. The requirement of good faith in this context does not require mover to provide a sufficient explanation for failing to plead an affirmative defense. While an explanation or sufficient justification may be necessary or helpful to satisfy the remaining elements, a reasonable belief that the allegations of the proposed amendment are true is sufficient. Here, the facts alleged regarding the involvement and possible fault of an emergency vehicle may, in good faith, invoke the provisions of La. R.S. 32:24.

Although defendants alleged in their original answer and cross-claim that the emergency lights and sirens were activated at the time of the accident, they failed to specifically assert the immunity defense at that time. However, it was not established that defendants' delay in pleading this defense is being used as a delay tactic. It is undisputed that only one deposition has been taken in this matter thus far. Further, since causation of the subject accident appears to be highly contested between the parties, we find that there is a distinct possibility of a resulting injustice if defendants are denied their apparent good faith request for leave to file an amended and supplemental answer to assert the affirmative defense of qualified statutory immunity under La. R.S. 32:24. Considering the circumstances presented, and especially that no trial and no pre-trial deadlines have been set and discovery is on-going, we further do not find that the amendment will unduly prejudice plaintiff at this time, or that the trial will be unduly delayed as a result of such filing.

DECREE

Accordingly, for the foregoing reasons, we grant this writ application, reverse the trial court's judgment, grant defendants' motion for leave to file an amended answer to assert the affirmative defense of qualified statutory immunity under La. R.S. 32:24, and remand the matter to the trial court for further proceedings consistent with this disposition.

**WRIT GRANTED; JUDGMENT
REVERSED; MOTION FOR LEAVE
GRANTED; MATTER REMANDED**

JUDGES



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