NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2026 IL App (4th) 250643-U

NO. 4-25-0643

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 10, 2026
Carla Bender
4th District Appellate
Court, IL

AARON WILDER, Individually as Special Administrator of the Estate of Racheal Garrett and as Next Friend of Racheal Garrett's Minor Children, A.C., An. S., and Ad. S.; and ANDRELL SINGLETON SR., as next Friend of M.S., a Minor,	)	Appeal from the Circuit Court of Winnebago County No. 17L238
Plaintiffs-Appellants,	)	
v.	)	
ROCKFORD HOUSING AUTHORITY, an Illinois Municipal Corporation, and SECURITAS SECURITY SERVICES, USA, INC., a Delaware Corporation, also d/b/a Security Management & Investigations, The Security Professionals, Inc., and Securitas ES, Inc.,	)	Honorable Lisa R. Fabiano, Judge Presiding.
Defendants	)	
(Rockford Housing Authority, Defendant-Appellee).	)	

JUSTICE VANCIL delivered the judgment of the court.
Presiding Justice Steigmann and Justice Lannerd concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's order dismissing plaintiffs' complaint against the Rockford Housing Authority (RHA) for negligence and willful and wanton conduct in failing to protect a tenant, Racheal Garrett, from a bullet that penetrated her wall and killed her, finding (1) plaintiffs failed to plead facts showing that the RHA voluntarily undertook a duty to protect Garrett from the criminal acts of third parties, except possibly for plaintiffs' claim of negligent hiring and (2) the RHA was immune from liability for its discretionary decision to hire Securitas Security Services, USA, Inc., to provide security services (745 ILCS 10/2-109, 2-201) (West 2024)).

¶ 2 On December 4, 2015, Racheal Garrett, her children, and her stepdaughter, M.S., were at Garrett's home, a townhouse operated by defendant, the Rockford Housing Authority (RHA), when someone outside the residence fired a gun. The bullet penetrated the walls of

Garrett's residence and struck and killed her. Plaintiffs, Aaron Wilder, special administrator of Garrett's estate and next friend of Garrett's children, and Andrew Singleton, M.S.'s father, acting as next friend of M.S., sued the RHA, defendant Securitas Security Services, USA, Inc. (Securitas), and other defendants under the Wrongful Death Act (740 ILCS 180/0.01 *et seq.* (West 2016)) and Probate Act of 1975 (755 ILCS 5/27-6) (West 2016)). Plaintiffs alleged that the RHA's and Securitas's negligent and willful and wanton acts contributed to Garrett's death and other resulting damages. The trial court dismissed plaintiffs' claims against the RHA and granted summary judgment in Securitas' favor.

¶ 3 Plaintiffs appeal the trial court's dismissal of their claims against the RHA. Plaintiffs claim that the court erred in concluding (1) that the RHA was immune from liability under section 4-102 of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/4-102 (West 2024)), which provides governmental immunity related to police protection services; (2) that the RHA was immune from liability for some of plaintiffs' claims under the discretionary immunity provision in sections 2-109 and 2-201 of the Tort Immunity Act (*id.* §§ 2-109, 2-201); and (3) that the RHA owed no duty to protect Garrett from a third party's criminal acts. Plaintiffs do not appeal the court's ruling with respect to Securitas.

¶ 4 For the reasons that follow, we affirm.

¶ 5 I. BACKGROUND

¶ 6 In 2015, Garrett lived in a townhouse at the RHA's Fairgrounds Valley housing complex in Rockford, Illinois. On December 4, 2015, someone outside Garrett's residence fired a gun. The bullet penetrated the walls of Garrett's residence and struck her, killing her. Garrett's three children, A.C., A.S.J., and A.S., and her stepdaughter, M.S., were present when Garrett was

shot. In December 2015, the RHA had a short-term contract with Securitas to provide security guard services on RHA properties.

¶ 7 Plaintiffs sued the RHA and Securitas. They ultimately proceeded on their fourth amended complaint, which raised multiple counts of negligence and willful and wanton conduct against the RHA and Securitas. Plaintiffs claimed that there had been "at least one other instance of gunshots being fired into [Garrett's] townhouse" before the fatal shooting. They also alleged that before and on December 4, 2015, "there was gang activity, fighting, selling of drugs, gun violence and other violence occurring outside the townhouse," and the RHA knew or should have known about these activities. Plaintiffs alleged that the RHA had a "duty to exercise ordinary care in the ownership, operation, management, maintenance and/or control of its property to see that it was reasonably safe for the use of persons lawfully on the property."

¶ 8 Paragraph No. 8 of the fourth amended complaint alleged that the RHA negligently breached its duty of care to Garrett because the RHA:

> "a. Failed to keep and maintain its property in a reasonably safe condition for occupancy by [Garrett];
>
> b. Failed to take steps, or adequate steps, to safeguard [Garrett] from the gang activity, fighting, selling of drugs, gun violence and other violence occurring outside the townhouse occupied by [Garrett];
>
> c. Failed to follow its own guidelines, regulations, policies and procedures regarding transfers and/or emergency transfers set forth in Chapter 12 of its guidelines to protect the life, health and safety of [Garrett] and other occupants;
>
> d. Breached its voluntary undertaking to protect the life, health and safety of [Garrett] and other occupants;

e. Was negligent in its voluntary undertaking to provide security measures to protect the life, health and safety of [Garrett] and other occupants;

f. Was negligent in the hiring and retention of [Securitas], who were acting as agents of [the RHA], whose security measures were inadequate to protect the life, health, and safety of [Garrett] and other occupants;

g. Permitted and allowed the area outside [Garrett's] townhouse to become and remain unsafe;

***

i. Failed to effect a transfer of [Garrett] in accordance with its own policies, procedures, guidelines and/or regulations, although the request for the transfer had been made, when the defendant knew or should have known of the gang activity, fighting, selling of drugs, gun violence and other violence occurring outside the townhouse occupied by [Garrett];

j. Designed a security plan that was ineffective and/or rendered ineffective[;]

k. Failed to provide sufficient and/or extra patrol coverage to protect the life, health and safety of [Garrett] and other occupants;

l. Knew or should have known that [Securitas was] involved with the individuals selling drugs outside the townhouse occupied by [Garrett] which resulted in security to [Garrett] being ineffective and/or rendered ineffective;

m. Retained [Securitas's] services despite their services being ineffective and/or rendered ineffective;

n. Encouraged the gang activity, fighting, selling of drugs, gun violence and

other violence occurring outside the townhouse occupied by [Garrett];

o. Violated a duty not to create a condition of increased danger that left [Garrett] in a worse position than she was in before the defendant undertook the security measure; and

p. Was otherwise careless and negligent in its ownership, operation, management, maintenance, repair and/or control of the property***."

Later, plaintiffs clarified subparagraph (h) to allege that the RHA,

"Failed to provide protection against bullet penetration into the unit occupied by [Garrett], which could readily have been done using conventional construction assembly such as clay brick or concrete masonry exterior walls."

In the six counts seeking damages from the RHA, plaintiffs repeated similar allegations but added that the RHA acted recklessly and with utter indifference to or conscious disregard for Garrett's safety, and they asserted damages based on harm to the minor children.

¶ 9 Securitas moved for summary judgment on the claims against it. Securitas attached to its motion a set of documents demonstrating that the shooting occurred around 4 p.m., and Securitas did not contract to provide services at this time.

¶ 10 The RHA moved to dismiss plaintiffs' fourth amended complaint under sections 2-615(a) and 2-619(a) of the Code of Civil Procedure. 735 ILCS 5/2-615(a), 2-619(a) (West 2018). The RHA argued that it was immune from liability for plaintiffs' claims under section 4-102 of the Tort Immunity Act, which protected public entities from liability for failure to provide adequate police protection services. 745 ILCS 10/4-102 (West 2018). The RHA further relied on discretionary immunity in section 2-201 of the Tort Immunity Act. 745 ILCS 10/2-201 (West 2018). Citing *Johnson v. Mers*, 279 Ill. App. 3d 372 (1996), the RHA argued that all hiring

decisions are inherently discretionary, and it was therefore immune from liability for its decision to hire Securitas. Finally, the RHA argued that plaintiffs failed to allege facts that would constitute willful and wanton conduct, and it asked the trial court to dismiss the counts based on willful and wanton conduct for failure to state a cause of action.

¶ 11 After the RHA filed its motion to dismiss, the parties completed additional discovery. The record on appeal includes some of the products of that discovery. The following paragraphs summarize the relevant documents the parties cite on appeal.

¶ 12 Garrett's lease with the RHA listed the RHA's obligations to its tenants. Those obligations included "(A) To maintain the dwelling unit and development in a decent, safe, and sanitary condition," and "(B) To comply with the requirements of applicable city building codes, housing codes, and [Department of Housing and Urban Development (HUD)] regulations materially affecting health and safety."

¶ 13 The record on appeal also includes a packet of the RHA's policies and procedures. Chapter 12 of the policies is labeled, "Transfer Policy." A subsection labeled "Transfers Requested by Tenants" states, "HUD provides the [RHA] with discretion to consider transfer requests from tenants. The only requests that the [RHA] is required to consider are requests for reasonable accommodation. All other transfer requests are at the discretion of the [RHA]."

¶ 14 The record also includes a copy of the contract between Securitas and the RHA. Per the contract, Securitas agreed to provide "On-site Guarding" for 112 hours per week, beginning October 1, 2015. (A45). This "Guarding" consisted of two unarmed guards who would patrol seven RHA sites from 6 p.m. to 2 a.m. An attached form, entitled "Duties at [RHA] (Temporary Coverage)" stated, "Officers are to *conduct random patrols* checking all areas of the parking lots and client facilities looking for suspicious/illegal activity." (Emphasis in original). It also provided,

"If a trespasser comes on the property[,] Officers should instruct them to leave. If the individual(s) refuse to leave, officers should call the Rockford Police Department if necessary." The contract was signed by Ronald Clewer, the chief executive officer (CEO) of the RHA, and Michael Newcomb, the branch manager for Securitas.

¶ 15 Plaintiffs deposed RHA CEO Clewer. During his testimony, Clewer acknowledged the RHA was governed by HUD regulations and that HUD policies required "[s]afe, decent and affordable" housing. He agreed with the statement that Garrett's lease required the RHA to maintain the dwelling unit in a "safe" condition. But he added,

> "If you're asking me if I personally agree with it, no, I disagree with the statement. I have been in real estate development for several decades, and we never include anything in a lease that says we have to guarantee one's safety because there is no way we can guarantee one's safety.
>
> However, this is a requirement by the federal government and HUD that this be included in the lease. I disagree with the inclusion, but had no authority to remove it, because it's a requirement by the federal government."

Later, Clewer indicated he understood the phrase "safe housing" to refer to "physical housing" and to meeting "physical standards" of a project. He explained that federal government inspectors evaluate properties and consider their condition, adding, "So, you know, do you have trip and fall hazards. Do you have appropriate outlet covers. Is the property clean? Those are the things that they are judging physical standard in the safety of the unit or the property by."

¶ 16 Clewer explained that, in September 2015, the RHA's previous security service contractor informed the RHA that they would cease providing services in seven days. The RHA was not required to have security guards when this contract ran out, and they could have waited

until the next long-term contract bidding period was completed to replace the security guards. However, Clewer used his authority as CEO to solicit three proposals from security firms to provide a temporary replacement until a long-term contract could be approved. Clewer had authority to sign a contract for up to $100,000. He explained that, to evaluate the proposals, the RHA "would check references and make sure that they came recommended. That their work was of quality. That the history that they claim to have is actually the history that they do have."

¶ 17 Clewer testified that Securitas's reputation was "highly recommended." Clewer further testified that the number of security guards to be employed was determined by the RHA, not Securitas, and the decision to hire two guards was "budget driven." He testified that the most important time on the properties was between 10 p.m. and 2 a.m., because "those were the times historically [they] saw [activity]." He testified that they decided to have the guards start their shifts earlier in the evening so that they would have the opportunity to meet residents and build rapport. He also explained that Securitas provided "roving patrols" between different RHA properties. The patrols followed no set route so that their presence in a specific location could not be predicted.

¶ 18 Plaintiffs deposed Sybil Mueller, the housing policy manager at the RHA. She was asked what steps she took to reduce gun violence at RHA properties. She answered that she attended crime reduction meetings. If staff noticed any vehicles regularly driving around the property, they would provide police the license plate numbers. They would also alert police if any banned individuals were on the premises. They would also issue eviction notices to residents found with illegal guns, drugs, or ammunition. She understood that the RHA had directed staff to call the police if there were "groups" hanging out on its property.

¶ 19 Plaintiffs also deposed Newcomb, the former Rockford branch manager for Securitas. Newcomb testified that Securitas's temporary contract to provide security services was

agreed to by him and Clewer. He explained that Securitas "officers are not police officers. They are security officers who are unarmed." They had no authority to tell people on public ways to move. If they saw something suspicious, they would call the police.

¶ 20 Plaintiffs filed a response to the RHA's motion to dismiss. Plaintiffs claimed that section 4-102 immunity applied only if the public entity provided police protection services, and the RHA did not provide such services. Plaintiffs further argued that many of its allegations did not allege a failure to provide such services. Plaintiffs then denied that the decision to hire Securitas was both a determination of policy and exercise of discretion under section 2-201, which would likewise have entitled the RHA to immunity. Plaintiffs briefly argued that the RHA voluntarily assumed a duty to protect its residents. Finally, plaintiffs argued that the fourth amended complaint sufficiently alleged willful and wanton conduct because it alleged the RHA knew about other shootings in which bullets pierced walls at Fairgrounds Valley, including one shooting outside Garrett's residence before the fatal shooting. Plaintiffs attached police reports from the Rockford Police Department related to the previous shootings. Plaintiffs also attached an affidavit from Garrett's aunt describing a previous shooting at Garrett's residence.

¶ 21 The RHA replied to plaintiffs' response, repeating its claims from its motion to dismiss. The RHA further claimed that Clewer's deposition testimony supported its section 2-201 argument for immunity. The RHA attached selections from Clewer's deposition testimony to its reply.

¶ 22 The trial court dismissed all six counts against the RHA with prejudice. Citing *Barnes v. Chicago Housing Authority*, 326 Ill. App. 3d 710 (2001), and *Hill v. Chicago Housing Authority*, 233 Ill. App. 3d 923 (1992), the court found that section 4-102 immunity applied "for the majority of plaintiffs' allegations against the RHA." In rejecting plaintiffs' arguments against

immunity, the court found that Securitas was hired to provide security guard services, which constituted police protection services, thus qualifying the RHA for immunity. The court further reasoned that even if the RHA voluntarily undertook to provide police protection services, any duty it accepted did not overcome its immunity. The court also found that the RHA was immune from liability for any allegations related to the hiring or retention of security services because hiring decisions were discretionary.

¶ 23 The trial court then addressed plaintiffs' allegation that the RHA failed to protect Garrett's residence from gunshots. Citing *MacDonald v. Hinton*, 361 Ill. App. 3d 378 (2005), the court reasoned that regardless of whether this was characterized as police protection services, parties generally had no duty to protect another from a third person's criminal acts. The court concluded that no exceptions to this rule applied. The court rejected plaintiffs' claim that the RHA's internal rules and guidelines provided a basis to conclude that the RHA voluntarily undertook to protect Garrett. The court found that "self-imposed rules or internal guidelines do not impose a legal duty." See *Lacey v. Perrin*, 2015 IL App (2d) 141114, ¶ 45.

¶ 24 Plaintiffs filed a motion to reconsider. Plaintiffs argued that the RHA contracted to protect Garrett's life, health, and safety, and this included a duty to protect walls from bullet penetration and to transfer Garrett out of a dangerous unit. Plaintiffs then argued that the trial court erred by relying on the principles that a party has no duty to protect another from a third party's criminal acts and that internal rules do not create a duty because the RHA did not raise these arguments in its motion to dismiss.

¶ 25 At a hearing on plaintiffs' motion to reconsider, plaintiffs' counsel argued that the trial court erred by ruling on issues that the RHA did not raise and which plaintiffs did not have the opportunity to rebut. The court then asked counsel how he responded to the merits of the view

that the RHA did not voluntarily undertake any duties. Counsel responded that the RHA voluntarily undertook a duty to protect its residents based on its agreement with Securitas, the RHA's efforts to reduce gun violence, and the RHA's general duty to maintain its property in a reasonably safe condition.

¶ 26 The trial court denied plaintiffs' motion. The court found that, even if the RHA voluntarily undertook some duty to provide security, a voluntary duty is limited to the extent of the undertaking. See *Castro v. Brown's Chicken & Pasta, Inc.*, 314 Ill. App. 3d 542, 547 (2000). The court reasoned that regardless of whether Securitas was contracted to provide police protection services, Garrett was killed at a time of day when Securitas was not contracted to provide any security. Therefore, the RHA did not voluntarily undertake to provide any security services at the time of the shooting. The court also found that the RHA's contract with Securitas did not create a duty to reinforce Garrett's walls.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 Plaintiffs appeal the trial court's order dismissing their fourth amended complaint under sections 2-615(a) and 2-619(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-615(a), 2-619(a) (West 2024)). In claiming that the court erred by dismissing the fourth amended complaint, plaintiffs argue that (1) the RHA voluntarily undertook a duty to protect Garrett from gunshots, including a duty to transfer her to a different unit; (2) section 4-102 of the Tort Immunity Act does not give the RHA immunity from liability because the RHA did not provide police protection services; and (3) plaintiffs' claims did not implicate any discretionary policy-making that would entitle the RHA to immunity under sections 2-109 and 2-201 of the Tort Immunity Act. Plaintiffs clarify that they "are not seeking reversal of the dismissal of [allegations] f., l., m., n.,

and o." in their fourth amended complaint.

¶ 30 A. Duty of Care

¶ 31 First, we consider dismissal under section 2-615 of the Code. A motion to dismiss under section 2-615 "challenges the legal sufficiency of a complaint based on certain defects or defenses apparent on the face of the complaint." *Walworth Investments-LG, LLC v. Mu Sigma, Inc.*, 2022 IL 127177, ¶ 39; see 735 ILCS 5/2-615(a) (West 2018). As with a dismissal under section 2-619, we review a dismissal under section 2-615 *de novo*. *Walworth Investments-LG*, 2022 IL 127177, ¶ 40.

¶ 32 1. *The Trial Court's Ruling*

¶ 33 In the discussion that follows, we conclude that plaintiffs' fourth amended complaint failed to state a cause of action, except perhaps for negligent hiring, because it failed to plead facts showing that the RHA had any duty that it breached. Before proceeding to the substance of this discussion, we first address our ability to consider this issue at all.

¶ 34 Plaintiffs claim that the trial court improperly relied on arguments or principles of law that the RHA did not raise in its motion to dismiss. In finding certain specific allegations did not demonstrate a duty, the court relied on the principle that a party has no duty to protect against a third party's criminal acts and the principle that self-imposed rules do not impose legal duties. See *MacDonald*, 361 Ill. App. 3d at 382; see also *Lacey*, 2015 IL App (2d) 141114, ¶ 45. The RHA did not rely on these principles in its motion to dismiss or its reply to plaintiffs' response.

¶ 35 Plaintiffs claim that the trial court erred by relying on arguments the RHA did not make. Plaintiffs cite *Miwel, Inc. v. Kanzler*, 2019 IL App (2d) 180931, ¶¶ 9-14. There, a trial court granted summary judgment for the defendants on grounds the defendants had not raised. *Id.* ¶ 7. On appeal, the Appellate Court, Second District, reversed and remanded, finding that the trial court

denied the plaintiffs sufficient notice and opportunity to argue the points relied upon by the court. *Id.* ¶¶ 12-16. Plaintiffs contend the same result is appropriate here.

¶ 36 We find *Thompson v. LaSpisa*, 2023 IL App (1st) 211448, more compelling. There, as in *Miwel*, the trial court granted summary judgment for the defendant on grounds not raised by the defendant. *Id.* ¶ 11. On appeal, the plaintiff argued this was improper. *Id.* ¶ 19. The appellate court disagreed with *Miwel*'s conclusion that this improper procedure warranted remand. *Id.* ¶ 25. The court explained,

> "[O]ur review is *de novo*, meaning we sit in exactly the same position as the trial judge, without any deference to the trial court's judgment. [Citation.] For all practical purposes, the parties are litigating the summary judgment motion anew before three judges of the appellate court. And this time, [the plaintiff] faces no ambush; she can and did argue the substance of the ruling on its merits." *Id.* ¶ 27.

The *Thompson* court added that the appellate court could affirm on any basis in the record, including a basis not relied upon by the trial court. *Id.* ¶ 28. The court concluded that the more sensible approach was to evaluate the parties' arguments on appeal rather than remand for a new hearing. *Id.* ¶ 29; see *Blanton v. Illinois High School Ass'n*, 2025 IL App (2d) 240599-U, ¶¶ 53-57 (finding that *Thompson* "presents a compelling rationale not to follow *Miwel*" where the appellate court also reviewed the trial court's order *de novo*.)

¶ 37 Much of *Thompson*'s analysis is applicable to our review of the trial court's order granting the RHA's motion to dismiss. As in *Thompson*, our review here is *de novo*, and we can affirm on any basis in the record. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 578-79 (2006); *Raintree Homes, Inc., v. Village of Long Grove*, 209 Ill. 2d 248, 261 (2004); *Lutkauskas v. Ricker*, 2013 IL App (1st) 121112, ¶ 18 ("This court may affirm the circuit court's

dismissal for any reason appearing in the record.") We agree with *Thompson* that, even if the trial court considered some issues that the RHA did not raise, we may still consider those issues on appeal.

¶ 38 However, there is an added complication here that was not present in *Thompson*. In *Thompson*, the trial court granted the defendant's motion for summary judgment, and the appellate court affirmed for reasons not argued by the defendant. Here, the RHA moved to dismiss for failure to state a cause of action under section 2-615 only as to the claims for willful and wanton misconduct in counts II, IV, and VI. The RHA moved to dismiss other counts against it under section 2-619, but the RHA's section 2-615 motion applied only as to those three counts. However, the trial court dismissed at least some of the allegations in other counts based on a lack of duty under section 2-615, even though the RHA did not move that all these counts be dismissed for failure to state a cause of action.

¶ 39 We acknowledge that the RHA did not formally move to dismiss all the counts against it under section 2-615. Nevertheless, we find that we can affirm the dismissal of all counts if plaintiffs failed to state a cause of action, even if the RHA did not make this request in its motion to dismiss. In *Mayle v. Urban Realty Works, LLC*, 2022 IL App (1st) 210470, ¶ 69, the appellate court observed that some of the defendants moved to dismiss based on only an affirmative defense under section 2-619, rather than based on a failure to state a cause of action under section 2-615. The appellate court explained,

> "However, while an appellant may not raise a point for the first time on appeal, an appellee may argue any point in support of the judgment on appeal, even if it was not ruled on by the trial court, so long as the factual basis for that point was before the trial court." *Id.*

The court added, "Because [the] defendants' arguments rest on the sufficiency of the complaint, we consider whether dismissal under section 2-615 was appropriate as an alternate basis for affirming the trial court's judgment." *Id.*; see *AIDA v. Time Warner Entertainment Co.*, 332 Ill. App. 3d 154, 157-60 (2002) (affirming the dismissal of the plaintiff's complaint based on the affirmative defense of lack of standing, even though the defendant did not file a section 2-619 motion in the trial court); see also *Mayfield v. ACME Barrel Co.*, 258 Ill. App. 3d 32, 37 (1994).

¶ 40 The same reasoning applies here. Whether plaintiffs adequately alleged that the RHA owed any duty concerns the sufficiency of the complaint, which is in the record before us. If we conclude that the RHA owed no duty of care to plaintiffs, then plaintiffs have failed to state a cause of action. Importantly, in their appellate briefs, both parties briefed the issue of whether the RHA owed any duty of care to plaintiffs. We decline to evaluate the parties' arguments on a decisive question while ignoring that the question is decisive. Instead, we can affirm the trial court's dismissal of plaintiffs' fourth amended complaint because it failed to allege facts necessary to establish a duty of care. See *Mayfield*, 258 Ill. App. 3d at 37.

¶ 41 We acknowledge that "the appellate court should not consider different theories or new questions not raised in the trial court if they might have been refuted or overcome had they been presented below." *Geaslen v. Berkson, Gorov & Levin, Ltd.*, 155 Ill. 2d 223, 230 (1993). "Further, the appellate court should take care that litigants are not deprived of an opportunity to present argument." *Id.*

¶ 42 Here, plaintiffs have not been deprived of an opportunity to present argument. Their appellate brief addressed the issue of the RHA's duty of care. Moreover, they commented on this issue in their response to the RHA's motion to dismiss before the trial court, and they argued this issue in their motion to reconsider and during oral argument before the trial court.

¶ 43 *2. Plaintiffs' Fourth Amended Complaint*

¶ 44 When we now turn to whether plaintiffs' fourth amended complaint sufficiently stated a claim. Our task is to determine "whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, and taking all well-pleaded facts and all reasonable inferences that may be drawn from those facts as true, are sufficient to establish a cause of action upon which relief may be granted." *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305 (2008). "In ruling on such a motion, only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered." *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009).

¶ 45 Illinois is a fact-pleading jurisdiction. *Marshall v. Burger King, Corp.*, 222 Ill. 2d 422, 429 (2006). "While this does not require the plaintiff to set forth evidence in the complaint, it does demand that the plaintiff allege facts sufficient to bring a claim within a legally recognized cause of action." *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶ 26. "[T]he requirement that a complaint set forth facts necessary for recovery under the theory asserted is not satisfied, in the absence of the necessary allegations, by the general policy favoring the liberal construction of pleadings." *Teter v. Clemens*, 112 Ill. 2d 252, 256-57 (1986). "To state a cause of action for negligence, a complaint must allege facts that establish the existence of a duty of care owed by the defendant to the plaintiff, a breach of that duty, and an injury proximately caused by that breach." *Marshall*, 222 Ill. 2d at 430. To state a cause of action for willful and wanton conduct, a plaintiff must plead the elements of a negligence claim, as well as either deliberate intention to harm or a conscious disregard for the plaintiff's welfare. *Brooks v. McLean County Unit District No. 5*, 2014 IL App (4th) 130503, ¶ 20.

¶ 46 Because we find the issue of duty decisive, we focus on the RHA's duties to Garrett,

or lack thereof. "Whether a duty exists is a question of law for the court to decide subject to our *de novo* review, and thus to determine whether dismissal was proper, we must examine whether the plaintiff alleged sufficient facts, which if proven, establish a duty of care." *Gress v. Lakhani Hospitality, Inc.*, 2018 IL App (1st) 170380, ¶ 14. "In the absence of allegations that would show the existence of a duty, no recovery by the plaintiff is possible." *MacDonald*, 361 Ill. App. 3d at 382.

¶ 47 In the briefs before this court, plaintiffs rely on certain evidence and documents in the record to establish that the RHA voluntarily assumed a duty to protect Garrett from shootings while she was in her home. Specifically, plaintiffs rely on Garrett's lease with the RHA, certain statements in Clewer's and Mueller's testimonies, and the RHA's contract with Securitas. Plaintiffs contend that all this evidence created a reasonable inference that the RHA voluntarily assumed a duty to provide housing that was safe from bullets.

¶ 48 These documents cannot establish the sufficiency of the complaint. When considering a dismissal under section 2-615, "the court may not consider affidavits, products of discovery, documentary evidence not incorporated into the pleadings as exhibits, or other evidentiary materials." *Cwikla v. Sheir*, 345 Ill. App. 3d 23, 29 (2003); see *Vogt v. Round Robin Enterprises, Inc.*, 2020 IL App (4th) 190294, ¶ 14. Instead, we rely solely on the facts apparent from the face of the fourth amended complaint. See *Pooh-Bah Enterprises*, 232 Ill. 2d at 473.

¶ 49 Plaintiffs' fourth amended complaint asserted that the RHA owned and operated Garrett's residence. It asserted, "[The RHA] had a duty to exercise ordinary care in the ownership, operation, management, maintenance and/or control of its property to see that it was reasonably safe for the use of persons lawfully on the property, including [Garrett]." The fourth amended complaint further alleged that the RHA knew or should have known about prior shootings at the

residence and about gang activity nearby. Finally, it alleged that the RHA breached its duty in various ways. For example, it alleged the RHA was negligent in hiring Securitas. Notably, the fourth amended complaint contains no details on the RHA's agreement with Securitas. Similarly, the fourth amended complaint contends that the RHA failed to follow its transfer policies in chapter 12 of its regulations. But, once again, it does not provide any information on what those policies are.

¶ 50 At most, plaintiffs fourth amended complaint alleges the following facts to establish a duty of care: the RHA owned Garrett's residence, the RHA knew about prior shootings and gang activity, the RHA had policies governing transferring out of a residence, and the RHA hired Securitas to provide certain unspecified security measures.

¶ 51 These facts, alone, do not establish that the RHA owed a duty to protect Garrett and the children from a shooting. Generally, a party owes no duty of care to protect another against a third party's harmful or criminal acts. *MacDonald*, 361 Ill. App. 3d at 382. Although certain "special relationships" provide exceptions to this rule, the relationship between landlords and tenants is not such an exception. See *Rowe v. State Bank of Lombard*, 125 Ill. 2d 203, 216 (1988) (rejecting the plaintiff's claim that landlords have "a general duty to protect tenants, and those on the premises with the tenant's consent, from foreseeable criminal activity on the premises"); *Pippin v. Chicago Housing Authority*, 78 Ill. 2d 204, 208 (1979) ("The appellate court correctly states the common law in Illinois: a landlord does not owe a tenant or social guest (licensee) a duty to protect the latter from criminal acts."). Therefore, the fact that the RHA owned the premises does not establish any duty, even if it knew about prior criminal activity in the area. See *Rowe*, 125 Ill. 2d at 216.

¶ 52 The fourth amended complaint also claimed that the RHA "[b]reached its *voluntary*

undertaking to protect the life, health and safety of [Garrett] and other occupants." (Emphasis added). "[W]hen any party voluntarily or contractually assumes a duty to protect another from the harmful acts of a third party," that voluntary undertaking provides an exception to the general rule against liability for protection against a third party's crimes. *MacDonald*, 361 Ill. App. 3d at 382. Illinois courts rely on sections 323 through 324A of the Restatement (Second) of Torts (Restatement (Second) of Torts §§ 323 through 324A (1965)) in defining liability based on a voluntary undertaking. *Bell v. Hutsell*, 2011 IL 110724, ¶ 12. Those sections state:

> "§ 323. Negligent Performance of Undertaking to Render Services
>
> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if
>
> (a) his failure to exercise such care increases the risk of such harm, or
>
> (b) the harm is suffered because of the other's reliance upon the undertaking.
>
> § 324A. Liability to Third Person for Negligent Performance of Undertaking
>
> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if:
>
> (a) his failure to exercise reasonable care increases the risk of such harm, or
>
> (b) he has undertaken to perform a duty owed by the other to the third person, or

(c) the harm is suffered because of reliance on the other or the third person upon the undertaking." Restatement (Second) of Torts §§ 323, 324A (1965).

"The duty of care imposed upon a defendant under a voluntary undertaking theory of liability is limited to the extent of the undertaking." *Elam v. O'Connor & Nakos, Ltd.*, 2019 IL App (1st) 181123, ¶ 41. "This theory is narrowly construed." *Id.*; See *Bell*, 2011 IL 110724, ¶ 12.

¶ 53 Although the fourth amended complaint asserted that the RHA voluntarily undertook a duty to protect Garrett, it does not provide facts to establish what duty the RHA undertook. It did not cite any language in the RHA's lease with Garrett, its agreement with Securitas, or its own policies. Plaintiffs did not attach any lease, contract, or policy handbook to the pleading. Instead, the fourth amended complaint simply asserts that the RHA undertook a broad duty to protect Garrett.

¶ 54 On appeal, plaintiffs rely on Garrett's lease with the RHA to demonstrate that the RHA voluntarily undertook a duty to protect Garrett. The relevant provision of Garrett's lease with the RHA stated, "The RHA is obligated: (A) To maintain the dwelling unit and development in a decent, safe, and sanitary condition. (B) To comply with the requirements of *** HUD regulations materially affecting health and safety." Plaintiffs' claim depends on the words "safe" and "safety." Plaintiffs imply that these words obligated the RHA to protect Garrett from any harm she might suffer in her home, including from criminal acts of third parties.

¶ 55 As stated above, plaintiffs failed to attach the lease to the fourth amended complaint. Accordingly, we cannot consider this provision in evaluating whether the fourth amended complaint adequately stated a cause of action. See *Cwikla*, 345 Ill. App. 3d at 29.

¶ 56 The fourth amended complaint also refers to the RHA's agreement with Securitas as a basis for the RHA's duty. Once again, the fourth amended complaint provides no further

details. Because the duty under a voluntary undertaking is limited to the extent of the undertaking, this general reference cannot establish that the RHA had a duty to protect Garrett from crimes. See *Cook Au Vin, LLC v. Mid-Century Insurance Co.*, 2023 IL App (1st) 220601, ¶ 19 ("A plaintiff must allege facts and may not rely on mere conclusions of law or facts unsupported by specific factual allegations.").

¶ 57 Plaintiffs' cite *Bourgonje v. Machev*, 362 Ill. App. 3d 984 (2005), and *McKenna v. AlliedBarton Security Services, LLC*, 2015 IL App (1st) 133414, ¶¶ 23-33, to argue that "[c]ourts have consistently held that where a landlord enters into a security contract to protect its residents, the landlord has voluntarily assumed a duty to protect its residents from the criminal acts of third parties."

¶ 58 Courts have not "consistently" held this. Indeed, our supreme court clearly rejected this proposition in *Pippin*, 78 Ill. 2d at 210. There, the plaintiff claimed that a public housing authority undertook a duty to protect against criminal acts by hiring a private security contractor to provide security guards. The supreme court disagreed, explaining,

> "Because the [housing authority] did not undertake to perform the guard services itself, it cannot be held to have had a duty to protect [plaintiff]. The [housing authority's] duty was limited by the extent of the undertaking, *viz.*, to use reasonable care in engaging [the security contractor] to provide the guard services. The [housing authority] can therefore be liable at most for the negligent hiring of [the security contractor]." *Id.*

However, the court found that the private security contractor assumed a duty to exercise reasonable care in its contractual obligation to protect persons. *Id.* at 212.

¶ 59 Certainly, our supreme court clarified that "liability is imposed upon a landlord

who voluntarily undertakes to provide security measures, but performs the undertaking negligently, if the negligence is the proximate cause of injury to the plaintiff." *Phillips v. Chicago Housing Authority*, 89 Ill. 2d 122, 126 (1982). Still, as with all voluntary undertakings, this liability is limited to the extent of the undertaking. *Id.* at 126-27. A contract to hire unarmed security guards is not a promise to prevent all crimes.

¶ 60 Here, as in *Pippin*, the RHA did not undertake a duty to prevent all crimes on its premises simply by hiring Securitas. Moreover, because the fourth amended complaint does not specify the terms of the RHA's agreement with Securitas and plaintiffs did not attach the agreement, plaintiffs failed to establish the extent of any undertaking.

¶ 61 *Pippin* acknowledged the possibility of liability for negligent hiring. There, the plaintiff's complaint "allege[d] that the [housing authority] employed [a security contractor] without proper investigation and with negligence." *Pippin*, at 210. This was sufficient to raise a question of fact. But here, plaintiffs do not challenge the dismissal of their claim based on the RHA's relationship with Securitas or its allegedly negligent hiring on appeal. Moreover, even if the RHA had a duty to exercise reasonable care in hiring Securitas, as explained below, we find discretionary immunity applies to the hiring decision and the RHA's determination of the specific services Securitas provided. The issue of whether the RHA had a duty to exercise reasonable care in hiring is therefore irrelevant, as the RHA would be immune from liability resulting from a breach of this duty.

¶ 62 Finally, the fourth amended complaint's reference to the RHA's internal transfer policies does not establish a voluntary undertaking. It contains no details on these policies, and plaintiffs did not attach the policies. Therefore, the fourth amended complaint did not establish the extent of the RHA's undertaking. See *Cook Au Vin, LLC*, 2023 IL App (1st) 220601, ¶ 19.

¶ 63 In *Salte v. YMCA of Metropolitan Chicago Foundation*, 351 Ill. App. 3d 524, 525 (2004), the plaintiff husband suffered a heart attack while exercising at a YMCA. Although a staff paramedic was nearby, there was no defibrillator on the premises. After about eight minutes, county paramedics arrived and provided treatment. The plaintiffs sued the YMCA, claiming that the YMCA's failure to provide a staff paramedic with a defibrillator exacerbated the husband's injuries. *Id.* The trial court dismissed the complaint under section 2-615, and the appellate court affirmed. The appellate court found that the plaintiffs' complaint had failed to allege sufficient facts to show that the YMCA voluntarily undertook a duty to provide a paramedic equipped with a defibrillator. The court explained,

> "[P]laintiffs' complaint does not allege whether the paramedic on defendant's staff was specifically employed to perform paramedic duties or whether he or she was employed as a[n] athletic or fitness trainer. Additionally, although the complaint alleges that the paramedic was 'duly qualified,' the complaint fails to indicate whether the paramedic was certified and licensed and whether the paramedic was trained or qualified to use the defibrillator that plaintiff asserts should have been on the premises. Accordingly, plaintiffs' complaint fails to sufficiently allege the existence of a voluntary undertaking." *Id.* at 530-31.

The court added, "Whatever defendant's undertaking might have entailed in terms of the provision of first aid, it clearly did not include an additional undertaking to equip the paramedic with a defibrillator." *Id.* at 531. Because the plaintiffs did not plead facts to establish the extent of the defendant's undertaking, dismissal was proper. *Id.*

¶ 64 Like the complaint in *Salte*, plaintiffs' fourth amended complaint failed to plead facts that could demonstrate a voluntary undertaking. The fourth amended complaint did not

indicate what the RHA agreed to in the lease with Garrett, what its policies stated, or what its agreement with Securitas provided. Without such facts, the pleading failed to establish a duty, thereby failing to state a cause of action, except perhaps for negligent hiring.

¶ 65 B. Section 2-619 Affirmative Defenses

¶ 66 In the discussion above, we referred to the possibility that the fourth amended complaint asserted a claim for negligent hiring. Accordingly, we address the portion of the RHA's section 2-619 motion directed against this claim, which is based on discretionary immunity under section 2-201 of the Tort Immunity Act. "A motion to dismiss under section 2-619 admits the sufficiency of the complaint, but asserts affirmative matter that defeats the claim." *Leetaru v. Board of Trustees of the University of Illinois*, 2015 IL 117485, ¶ 40; see 735 ILCS 5/2-619(a)(9) (West 2018). "[W]hen ruling on a section 2-619 motion, a court must interpret all pleadings and supporting documents in favor of the nonmoving party." *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21. We review a dismissal under section 2-619 *de novo*. *In re Application of the County Treasurer and ex officio County Collector*, 2017 IL App (4th) 160707, ¶ 12.

¶ 67 Before proceeding with our analysis, we observe that the RHA attached no affidavits or any evidentiary support to its motion to dismiss. When a defendant moves for dismissal under section 2-619, "[t]he 'affirmative matter' asserted by the defendant must be apparent on the face of the complaint or supported by affidavits or certain other evidentiary materials." *Epstein v. Chicago Board of Education*, 178 Ill. 2d 370, 383 (1997); see 735 ILCS 5/2-619(a)(9) (West 2018) ("If the grounds do not appear on the face of the pleading attacked the motion shall be supported by affidavit *** [t]hat the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim.").

¶ 68 In its initial motion, the RHA's section 2-201 defense relied on only the claim in

plaintiffs' complaint that it decided to hire Securitas as a third-party contractor, along with a citation to *Johnson*, 279 Ill. App. 3d at 372. The motion did not explain which RHA employee decided to hire Securitas or how this decision was made.

¶ 69 After the RHA filed its motion to dismiss, the parties completed additional discovery. Plaintiffs responded to the RHA's motion, and then the RHA filed a reply brief, with attached sections from Clewer's deposition. Based on that deposition, the RHA's reply elaborated on the claim from its motion that hiring Securitas was an act of discretion. Plaintiffs did not move to strike the deposition testimony.

¶ 70 On appeal, both parties refer to documents throughout the record as though they are properly before us, and neither party asks us to limit our discussion to the material attached to the pleadings. Ultimately, because Clewer was deposed after the RHA filed its motion, the RHA attached sections from Clewer's deposition to its reply, and plaintiffs have not objected to this evidence, even on appeal, we will consider this deposition in evaluating the RHA's immunity argument, although it was not attached to RHA's initial motion to dismiss. See *Schroeder v. Winyard*, 375 Ill. App. 3d 358, 367 (2007) (finding that the appellate court could consider a letter attached to the defendant's reply to the plaintiff's response to the defendant's motion for summary judgment because the plaintiff failed to object in the trial court and therefore waived any claim that the letter was legally insufficient); see also *Manisca v. Rakstang Associates, Inc.*, 256 Ill. App. 3d 756, 761 (1993) (considering deposition testimony in determining whether a genuine issue of material fact remained for purposes of summary judgment, even though the testimony possibly contained objectionable material, because the defendant failed to challenge the denial of its motion to strike on appeal, and accordingly waived any challenge to the evidence).

¶ 71 The RHA claims that it was immune from liability for plaintiffs' claim of negligent

hiring. Reviewing this argument requires interpreting the Tort Immunity Act, which presents a question of law that we review *de novo*. *Monson v. City of Danville,* 2018 IL 122486, ¶ 14. "When construing a statute, this court's fundamental objective is to ascertain and give effect to the intent of the legislature." *People ex rel. Madigan v. Wildermuth*, 2017 IL 120763, ¶ 17. "The most reliable indicator of legislative intent is the statutory language itself, giving it its plain and ordinary meaning." *Id.* "Words and phrases should not be viewed in isolation but, rather, must be considered in light of other relevant provisions in the statute." *Monson*, 2018 IL 122486, ¶ 14.

¶ 72 The Tort Immunity Act shields public entitles and public employees from liability for government activities. *Id.* ¶ 15. "Unless a specific immunity provision in the [Tort Immunity] Act applies, a public entity is liable in tort to the same extent as a private party." *Id.* The Tort Immunity Act is in derogation of the common law, and we strictly construe it against the public entity claiming immunity. *Andrews v. Metropolitan Water Reclamation District of Greater Chicago*, 2019 IL 124283, ¶ 23.

¶ 73 The trial court found that the RHA was immune from liability for hiring Securitas because hiring decisions are acts of discretion under section 2-201 of the Tort Immunity Act. Although plaintiffs explicitly state in their appellate brief that they do not seek reversal of the dismissal of the allegations related to hiring Securitas, plaintiffs also included an argument challenging the court's section 2-201 ruling in their brief. Because plaintiffs briefed this issue, we will address it.

¶ 74 Section 2-201 states, "Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused." 745 ILCS 10/2-201 (West 2024). This immunity extends

to public entities like the RHA under section 2-109. *Id.* § 2-109 ("A local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable.") "Immunity under section 2-201 is absolute, covering both negligent and willful and wanton conduct." *Monson*, 2018 IL 122486, ¶ 29.

¶ 75 To show it is entitled to immunity under this provision, a public entity must show that its employee held "either a position involving the determination of policy or a position involving the exercise of discretion" and that "the act or omission giving rise to the injuries was both a determination of policy and an exercise of discretion." *Id.* Policy determinations are decisions that require balancing competing interests, such as safety, cost, and convenience, and making "a judgment call as to what solutions will best serve each of those interests." *Andrews*, 2019 IL 124283, ¶ 28. Discretionary decisions "involve the exercise of personal deliberation and judgment in deciding whether to perform a particular act, or how and in what manner that act should be performed." *Wrobel v. City of Chicago*, 318 Ill. App. 3d 390, 394-95 (2000); see *Monson*, 2018 IL 122486, ¶ 30. Discretionary acts are contrasted with ministerial acts, which can be a basis for liability. *Monson*, 2018 IL 122486, ¶ 30. "[M]inisterial acts are those which a person performs on a given state of facts in a prescribed manner, in obedience to the mandate of legal authority, and without reference to the official's discretion as to the propriety of the act." *Snyder v. Curran Township*, 167 Ill. 2d 466, 474 (1995). "Determining whether an act or omission is discretionary should be made on a case-by-case basis depending on the particular facts and circumstances." *Andrews*, 2019 IL 124283, ¶ 28.

¶ 76 We agree with the trial court that section 2-201 immunity applies to Clewer's decision to sign the contract hiring Securitas to provide certain temporary security guard services.

¶ 77 Plaintiffs do not discuss whether Clewer's position qualified for immunity under

section 2-201 or whether the relevant decisions were acts of discretion. We address these issues only briefly. First, as CEO, Clewer held a position involving the determination of policy or exercise of discretion. For example, Clewer had authority to solicit proposals and sign a contract for short-term security services without seeking approval, as long as the value of the contract was less than $100,000. Second, Clewer exercised discretion in hiring Securitas. This decision was not a direct application of existing rules. See *Snyder*, 167 Ill. 2d at 474. " 'A corporation acts judicially, or exercises discretion, when it selects and adopts a plan in the making of public improvements, such as constructing sewers or drains.' " *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 194 (1997) (quoting *City of Chicago v. Seben*, 165 Ill. 371, 378 (1897)). The same reasoning applies to Clewer's selection and adoption of a plan for temporary private security services at RHA properties. HUD regulations did not state that the RHA was required to hire two unarmed Securitas security guards to provide 112 hours of on-site guarding per week during specific hours. Instead, Clewer exercised discretion in hiring Securitas. See *Johnson*, 279 Ill. App. 3d at 380 ("The hiring decision is not one which is made when certain specific factors are present, with no regard to the hiring officials' discretion.").

¶ 78 Plaintiffs only argument against section 2-201 immunity is that Clewer and the RHA could not make policy decisions because the RHA policy was set by HUD, including the HUD requirement that the RHA provide "safe" housing. During Clewer's deposition, he stated that HUD policies controlled, even if Clewer did not agree with them. According to plaintiffs, because HUD regulations governed the RHA, the RHA could not make policy.

¶ 79 We reject plaintiffs' claim that a local organization cannot make any policy when a state or national authority provides rules or regulations. First, this conclusion does not follow from the definition of policy determinations. The general fact that a governing authority sets some

policy does not, alone, foreclose the possibility that local actors will be tasked with balancing competing interests, such as safety, cost, and convenience, or making judgement calls. See *Andrews*, 2019 IL 124283, ¶ 28. Apart from this abstract reasoning, there are certainly cases of government actors who are controlled by authoritative rules and regulations still setting policy. For example, in *Richter v. College of Du Page*, 2013 IL App (2d) 130095, ¶ 41, the College of Du Page's (College) policy for handling sidewalk damage had a three-step approach: "first, placing orange cones to alert individuals to the deviation; second, applying yellow paint; and third, physically altering the sidewalk, if necessary." Despite this general policy, the College's buildings-and-grounds manager still made policy when determining which response was best for each individual sidewalk deviation. *Id.* Similarly, in *D.M. ex rel. C.H. v. National School Bus Service, Inc.*, 305 Ill. App. 3d 735, 739 (1999), the appellate court found that assigning a student to a particular school bus was a policy decision because it required consideration of factors like the number of buses and drivers, route distances, and bus capacity, even though a state statute required the bus service to provide "transportation to all of its students who live[d] more than 1 1/2 miles from school." (citing 105 ILCS 5/29-3 (West 1996)). We reach the same conclusion here. HUD's policies did not wholly eliminate the need for Clewer and the RHA to balance competing interests.

¶ 80 The specific decisions at issue here were policy decisions. In deciding whether to sign a contract for temporary security services, what company to hire, and what services to contract for, Clewer had to evaluate different options after considering various factors, including proposals from three different security firms, the RHA's limited budget, the short time frame to procure services, and the RHA's specific preferences. The decision to hire two unarmed Securitas security guards during particular hours was based on the RHA's specific needs and budget. These decisions, which are precisely the decisions for which plaintiffs seek to hold the RHA accountable,

were made based on personal deliberation after balancing competing interests. Therefore, they were policy decisions. Accordingly, we agree with the trial court that the RHA was immune from liability for hiring Securitas to provide specific security services.

¶ 81 C. Dismissal With Prejudice

¶ 82 For the reasons discussed above, we affirm the trial court's order dismissing plaintiffs' fourth amended complaint. When asked about defects in the pleading at oral argument, plaintiffs' counsel asked that we remand to the trial court to allow plaintiffs leave to replead. Plaintiffs' counsel claimed that, at the hearing on plaintiffs' motion to reconsider, he at least requested leave to amend the claim that the RHA failed to transfer Garrett out of the residence.

¶ 83 We find no such request in the record. At the hearing on plaintiffs' motion to reconsider, counsel argued the trial court erred by discussing issues the RHA did not argue, and he asked for the opportunity to fully brief and argue those issues. But he did not ask for leave to file another amended complaint. Instead, in response to the trial court's finding that the RHA's transfer policies did not impose a duty, counsel stated, "[I]t's also our position that if you struck the language from the allegation regarding, you know, not following those rules or guidelines, we still believe that there's a sufficient allegation of negligence because they knew about the prior incident and they didn't effect the transfer." Rather than request leave to amend, counsel insisted that the fourth amended complaint's allegations were more than adequate.

¶ 84 We affirm the trial court's dismissal with prejudice. "No absolute right exists for a plaintiff to amend a pleading. [Citation.] The decision whether to grant or deny an amendment rests within the sound discretion of the trial court and will not be disturbed absent an abuse of that discretion." *Matanky Realty Group, Inc. v. Katris*, 367 Ill. App. 3d 839, 844 (2006); see *Phillips v. DePaul University*, 2014 IL App (1st) 122817, ¶¶ 90-92. Plaintiffs first filed this case

in 2017, based on Garrett's death in 2015. Nearly 11 years after Garrett's death, and after four amendments to the complaint, plaintiffs have still failed to allege sufficient facts to state a cause of action. See *Vogt*, 2020 IL App (4th) 190294, ¶ 29 ("[S]ince we are reviewing the dismissal of the amended complaint, we are mindful that plaintiff did receive a prior opportunity to amend."). Where plaintiffs' counsel did not even request leave to amend again until oral argument on appeal, we find that dismissal with prejudice is appropriate. See *Phillips*, 2014 IL App (1st) 122817, ¶ 91. ("Plaintiffs here never sought leave to amend their first-amended class action complaint and, accordingly, the circuit court committed no abuse of discretion in dismissing it with prejudice."). Accordingly, we affirm.

¶ 85 III. CONCLUSION

¶ 86 For the reasons stated, we affirm the trial court's judgment.

¶ 87 Affirmed.