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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1977**

Scott Euteneuer,
Appellant,

vs.

Dakota County,
Respondent.

**Filed July 23, 2012
Affirmed
Muehlberg, Judge***

Dakota County District Court
File No. 19HA-CV-09-7647

William Kvas, Richard L. Carlson, Hunegs, LeNeave & Kvas, P.A., Minneapolis,
Minnesota (for appellant)

James C. Backstrom, Dakota County Attorney, Kathryn M. Keena, Assistant Dakota
County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Bjorkman, Judge; and
Muehlberg, Judge.

UNPUBLISHED OPINION

MUEHLBERG, Judge

In this negligence action, appellant Scott Euteneuer challenges the district court's
summary judgment granted to respondent Dakota County, arguing that the district court

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

erred by determining that the county was immune from suit. Because the county's employees were engaged in discretionary decision-making at an operational level, we conclude that the county is protected from suit by the doctrine of vicarious official immunity. We therefore affirm.

FACTS

Appellant was born with spina bifida and, as a consequence, is a paraplegic and must use a wheelchair. On December 26, 2008, appellant's wife called police to report a domestic assault. Appellant has a prior conviction for domestic abuse. He became combative when Eagan police officers indicated that they were arresting him and had to be subdued and handcuffed. Appellant was charged with gross-misdemeanor domestic assault, disorderly conduct, and obstructing legal process. The Eagan police officers took appellant to the Dakota County jail but for unexplained reasons they did not take appellant's customized wheelchair to the jail.

At the jail, appellant was placed in one of the Dakota County jail's wheelchairs, which did not have footrests. Because of appellant's medical condition, he had very little sensation in his feet and used footrests on his own wheelchair to prevent his feet from dragging on the ground. Appellant requested footrests and was informed on at least three occasions that the deputies would not put footrests on the wheelchair because they could be removed and used as weapons. Appellant was provided with a jumpsuit, tube socks and plastic sandals.¹

¹ In his original complaint, appellant alleged that the jail had provided him with paper slippers; this allegation was removed from the amended complaint.

Because of appellant's complaints and because he fell the next day while transferring himself from his wheelchair, allegedly because of defective brakes, deputies tried but were unable to locate footrests or an alternative wheelchair. On December 28, 2008, appellant's daughter was given permission to bring appellant's wheelchair to the jail for his use. Appellant was released from jail on December 29, 2008; he went directly into a mental-health unit at United Hospital to deal with psychiatric issues, with a following admission to St. Joseph's Hospital for chemical-dependency treatment. During these hospitalizations, appellant received treatment for problems with his feet. After his release from St. Joseph's on January 13, 2009, appellant received other medical treatment for his feet. About two months later, appellant went to the emergency room at United Hospital, where doctors discovered that he had necrotizing fasciitis. As a result, both of appellant's legs were amputated to approximately the knee. Appellant subsequently sued the county for negligence. Appellant alleged in the amended complaint that he suffered cuts and injuries to his feet at the jail caused by dragging his feet on the ground because of the lack of footrests.

The county moved for summary judgment based on the doctrine vicarious official immunity, claiming that the decision not to provide appellant with a wheelchair with footrests was a discretionary decision. The district court agreed and granted summary judgment on that basis.² This appeal followed.

² The relative merits of the negligence claim were not before the court on the summary-judgment motion and there are significant disputes about causation.

DECISION

The district court must grant summary judgment when, based on the entire record, there are no genuine issues of material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. We review the district court's decision de novo, to determine whether there are genuine issues of material fact and whether the district court erred in applying the law. *Savela v. City of Duluth*, 806 N.W.2d 793, 796 (Minn. 2011). The district court does not decide questions of fact or weigh evidence on a summary-judgment motion. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997). Evidence is viewed in the light most favorable to the nonmoving party. *Gradjelick v. Hance*, 646 N.W.2d 225, 231 (Minn. 2002). A genuine issue of material fact exists when reasonable persons can draw different conclusions from the same set of facts. *Id.* at 234. “[W]hen determining whether a genuine issue of material fact for trial exists, the court is not required to ignore its conclusion that a particular piece of evidence may have no probative value, such that reasonable persons could not draw different conclusions from the evidence presented.” *DLH*, 566 N.W.2d at 70. If the nonmoving party has the burden of proving an essential element of a claim, sufficient evidence of the element must be produced to withstand summary judgment. *Id.* at 71.

Generally, “[t]he applicability of immunity is a question of law” subject to de novo review. *Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 315 (Minn. 1998).

The common law doctrine of official immunity provides that a public official who is charged by law with duties calling for the exercise of judgment or discretion is not personally liable to an individual for damages unless the official is guilty of a willful or malicious act. Official

immunity thus protects government officials from suit for discretionary actions taken in the course of their official duties. The doctrine is designed to protect officials from the fear of personal liability that might deter independent action.

Id. (quotation and citations omitted). Vicarious official immunity protects the governmental unit from liability based on the official immunity of its employee. *Id.* at 316. “Official immunity provides immunity from suit, not just from liability.” *Sletten v. Ramsey Cnty.*, 675 N.W.2d 291, 299 (Minn. 2004). The applicability of an immunity claim is usually determined before trial and does not usually require the intensive factual inquiries that an affirmative defense might entail. *Id.* at 299-300.

A public official is immune for injuries arising out of discretionary decisions that rely on the use of professional judgment and the weighing of various factors. *Wiederholt*, 581 N.W.2d at 315. But a public official is not immune for ministerial duties, which involve carrying out absolute, fixed, and certain tasks that involve no discretion and that are based on “fixed and designated facts.” *Id.* (quotation omitted). Official immunity covers discretionary actions that occur at the operational level, rather than at a policymaking level; thus, it involves day-to-day decisionmaking that includes making discretionary choices. *Johnson v. State*, 553 N.W.2d 40, 46 (Minn. 1996) (citing as examples a social worker deciding what level of services to provide a client or a police officer deciding whether to engage in a car chase). Ministerial duties, which are not protected by official immunity, include adherence to known policies, statutes, or rules. *Sletten*, 675 N.W.2d at 307. “The determination of whether to grant immunity in each case depends on the kind of discretion which is exercised and whether or not the

challenged government activities require something more than the performance of ministerial duties.” *Id.* at 307.

According to appellant’s amended complaint, his negligence claim is grounded in the county’s failure to provide him with footrests. Appellant’s claim is that the county had a policy that jail inmates must either be permitted to use their personal wheelchairs or must be provided a wheelchair with footrests. Appellant asserts that because the county had a fixed and determined policy, the decision of whether to provide footrests or to obtain appellant’s personal wheelchair was a ministerial act that was not protected by official immunity.

Our review of the record reveals no immutable county policy requiring the jail deputies to provide either footrests or an inmate’s personal wheelchair during the relevant time period. Appellant’s claim of a policy is based on the deposition of the jail nursing supervisor, Y’Vonne Berryman. In Berryman’s deposition, she is asked general questions about her knowledge regarding spina bifida, the type of medical equipment a person with spina bifida generally requires, whether such a person has decreased pain sensation, whether pain sensation is important for prevention of injuries, and whether persons with sensory impairment need to take special care. Appellant’s counsel’s next question was “And that was the policy that was in effect from the time you became the nursing supervisor in August of 2008, correct?” After Berryman’s counsel objected that no policy had been set forth, appellant’s counsel asked if Berryman knew about the increased risk of injury to people with limited pain sensation in 2008. Berryman replied, “Yes.”

Appellant's counsel next asked Berryman which inmates get footrests. She said only

[w]hen it's absolutely mandatory that they need a footrest [Such as] [c]ongenital, people that are paralyzed or say they have a broken leg in a cast and their knee won't bend, you know, that kind of thing. But then they are segregated out, they cannot be in [the] general population.

Finally, Berryman was asked about whether there was a policy about inmates who own a specialized wheelchair. Berryman replied, "Am I aware that there's any policy. I don't understand the real question." The following exchange took place:

Q. Let's go back to December 2008. If an individual is brought to the jail that you learn has a disability and that [] person also ha[s] a specialized wheelchair, are you allowed to have that wheelchair in that facility?

A. Yes.

Q. And was that the case back in December of 2008?

A. Was what the case?

Q. That they could bring a personalized wheelchair in the facility?

A. Yes.

Q. And would an inmate or would you expect that an inmate would be told that at the time that they're brought in that they have the right to have their specialized wheelchair?

A. Definitely, and we want them to have it.

Q. And are the police departments or were the police departments encouraged at the time of the arrest to where possible if there's a specialized wheelchair, bring it with the inmate to the facility?

A. I don't know because I don't talk to that area.

Q. But to step ahead, if that isn't done then when the inmate arrives at least then there is some effort to make them aware that they have the right to have their specialized wheelchair?

A. Yeah, we're, yes. I mean we want them to have their own wheelchair if they have one.

Q. And that was true –

A. That's almost, that's mandatory. How they get here without it is, I don't understand that.

Although Berryman's testimony provides a medical basis for providing inmates in appellant's condition with footrests, it does not set forth an immutable, nondiscretionary policy that jail deputies must follow, which would support a finding that a duty is ministerial in nature.

In addition to Berryman, Correctional Sergeant Charles Stemig testified that footrests are provided "if we know the inmate is not a threat to . . . the staff or himself. The footrests can be removed and used as a weapon. There may be a time where it's going to be left on because the inmate may need to keep one leg, if it's in a cast, you know, constantly supported. That's basically when we would have a footrest." Stemig also testified that personal wheelchairs are first checked for functionality and contraband before an inmate is permitted to use one. Finally, Stemig testified that since December 2008, there had been a policy change; the county now requires that arresting officers bring specialized chairs or medical equipment with inmates who require them. When read in context, Stemig's and Berryman's deposition testimonies do not set forth a mandatory, non-discretionary jail policy regarding wheelchairs or footrests; rather, deputies have the discretion to determine whether an inmate could have footrests, based on the inmate's disability and the probability that the inmate would misuse the footrests. This position is further affirmed by appellant's testimony; he stated that he was told three times by various deputies that he could not have footrests because they could be used as weapons.

A careful reading of the record does not support the conclusion that the county had a fixed policy regarding the use of footrests or personal wheelchairs, despite appellant's characterization of Berryman's testimony. Even on summary judgment, when evidence must be viewed in the light most favorable to the nonmoving party, the court is not obliged "to ignore its conclusion that a particular piece of evidence may have no probative value." *DLH*, 566 N.W.2d at 70. The district court did not err by granting summary judgment to the county on the basis of vicarious official immunity.

Affirmed.