STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2175

J. E. B., et al.,
Appellants,

vs.

Debora Danks,
Respondent.

Filed August 18, 2009
Affirmed and remanded
Johnson, Judge

Ramsey County District Court
File No. 62-CV-07-1667

Paul D. Peterson, Jordan A. Handrich, Harper & Peterson, P.L.L.C., 3040 Woodbury Drive, Woodbury, MN 55129; and Bradford S. Delapena, P.O. Box 40418, St. Paul, MN 55104 (for appellants)

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Considered and decided by Connolly, Presiding Judge; Peterson, Judge; and Johnson, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

A pre-teen girl confided in a friend by saying that her brother had touched her in inappropriate ways. The friend's mother made a report of possible sexual abuse to the county's child-protection authorities. The girl's family sued the friend's mother, alleging

common-law claims of defamation and invasion of privacy and a statutory claim of making a false report of maltreatment of a child. The district court granted summary judgment to the friend's mother on the ground that she is immune from liability pursuant to Minn. Stat. § 626.556, subd. 4(a)(1) (2008). We affirm the grant of summary judgment but remand to the district court for resolution of a pending motion for attorney fees.

FACTS

This case arises out of the relationship between two families that live in the same neighborhood in Ramsey County. Each family includes a pre-teen daughter, and the two girls often socialized with each other. On April 30, 2006, while the girls were playing a game they called "Secrets," the girl in appellants' family (whose last name begins with the letter B) told Debora Danks's daughter that a boy in the B family sometimes pulled down her pants and touched her buttocks when they were alone and sometimes put his face near her buttocks.

The Danks girl, who was very concerned by the information, told her parents. The next day, Danks returned from an out-of-town vacation and called Ms. B to request that they meet to discuss a matter, which she did not disclose. When Ms. B visited the Danks home, Danks related what Ms. B's daughter had told Danks's daughter and expressed her concern. During this conversation, Danks mentioned to Ms. B that, as a teacher, Danks may be required by law to report her suspicions of sexual abuse. At the conclusion of a difficult conversation, Ms. B said to Danks that the family would seek therapy.

The B family did visit with a therapist. After an initial assessment on May 16, 2006, the therapist determined that no sexual contact or abuse had occurred. On May 22, 2006,

Ms. B informed Danks that the family was in therapy. Ms. B did not tell Danks that the therapist had concluded that no abuse occurred but simply told Danks that "it wasn't what [Danks] was claiming it to be." Danks asked follow-up questions about what the B family had told the therapist and, in the course of doing so, expressed her belief that the B family was not being truthful with the therapist. Ms. B refused to answer all of Danks's follow-up questions.

Because she believed that oral communications were not productive, Danks then began composing an e-mail message to the parents of the B family, which she eventually sent on May 31, 2006. In the e-mail message, Danks expressed her concern about the possible abuse and stated that she was unsure whether she had a responsibility to make a report to the appropriate authorities. She expressed disappointment that the B family had not addressed the problem adequately and concern that the B girl was not being protected. She proposed, as an alternative to her making a report, that she be permitted to contact the B family's therapist directly to tell the therapist what the B girl had told the Danks girl.

The summary judgment record includes a considerable amount of undisputed evidence that Danks deliberated extensively and earnestly over whether she should make a report to the county. Danks testified in deposition that "it was an agonizing time." Before she sent the e-mail messages to the B parents, Danks spoke with her sister and with a friend, neither of whom knows the B family. She said that she felt "just stuck" and did "everything [she] could think of to find a solution." While she was composing her e-mail message, Danks consulted with J.S., another friend and a neighbor of both families who also is a teacher and, thus, familiar with the obligations of a person who is required by law to

report suspicions of sexual abuse. When J.S. visited the Danks home one day, Danks showed J.S. a draft of her e-mail message and asked J.S. for advice on whether she should make a report.

In June, the B family began to feel as though people in the community were ostracizing them. Thus, they retained an attorney, Ms. B's brother, to send a letter to Danks, demanding that she stop spreading rumors and to disclose the identities of all persons to whom she had revealed information concerning the B girl's statement about her brother. Danks retained an attorney, who responded in late July 2006 by denying the accusations.

After receiving the letter from the B family's attorney, Danks continued to consider whether she should make a report to the county. She testified in a deposition that she had communications with her attorney on that subject. She also called the Ramsey County Attorney's office to inquire into whether she could report anonymously and to discuss the possibility of legal action by the B family against her. In late July or early August, she made a report to the Ramsey County Child Protection Services department by telephone.

In early September 2006, the county's child-protection services department assigned an investigator to the case. With the consent of the B family, the investigator interviewed the therapist. On the basis of the therapist's assessment that no abuse had occurred, the investigator determined that no maltreatment had occurred, that protective services were not required, and that the report of abuse was "false." In a subsequent deposition, the investigator testified that she had no knowledge whether the reporter knew that the information she conveyed to the county was false and had no reason to believe that the report was made in bad faith. The county took no further action.

In August 2007, members of the B family (the mother, the father, and the son referenced by the girl's original statement) commenced this action against Danks. The complaint alleges five counts -- one statutory claim and four common-law claims. In count III, the statutory claim, appellants allege a cause of action under Minn. Stat. § 626.556, subd. 5 (2008), for making a false report. In count I, appellants allege a cause of action of slander based on Danks's alleged disclosures to members of the community and her report to Ramsey County. In count II, appellants allege a cause of action of libel, which also is based on Danks's alleged disclosures to members of the community and her report to Ramsey County. In count IV, appellants allege a cause of action of intrusion upon seclusion based on Danks's follow-up inquiries to Ms. B concerning the information that the B family had provided to the family's therapist. And in count V, appellants allege a cause of action of public disclosure of private facts based on Danks's alleged disclosures of the B girl's secret to "several persons."

In October 2008, the district court granted Danks's motion for summary judgment on the ground that Danks is immune from liability under the statute governing reports of maltreatment of minors. The B family appeals.

D E C I S I O N

A district court must grant a motion for summary judgment "when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993); *see also* Minn. R. Civ. P. 56.03. "On an appeal from summary judgment, we ask two questions:

(1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We apply a *de novo* standard of review to the district court's decision, viewing the evidence in the light most favorable to the non-moving party. *See Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008).[1]

I. Danks's Immunity Defense

Section 626.556 of the Minnesota Statutes, which was first enacted in 1975 and has been amended numerous times, is intended "to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse." Minn. Stat. § 626.556, subd. 1 (2008). The legislature "recognized that most parents want to keep their children safe" but that "sometimes circumstances or conditions interfere with their ability to do so" and wished to provide for "interventions that . . . address immediate safety concerns and ongoing risks of child maltreatment." *Id.* Thus, the legislature sought, among other things, "to require the reporting of neglect, physical or sexual abuse of children in the home, school,

[1]The parties disagree on two procedural issues: first, whether the district court applied the correct summary judgment standard and, second, what standard of review applies on appeal. With respect to the first issue, appellants argue that the district court analyzed the evidence improperly by stating that no "substantial evidence" had been presented in response to the summary judgment motion. Appellants are correct. *See Schroeder v. St. Louis County*, 708 N.W.2d 497, 507 (Minn. 2006) (describing *substantial evidence* as "incorrect legal standard" and clarifying that "summary judgment is inappropriate if [there is] *sufficient evidence* to permit reasonable persons to draw different conclusions"). Second, appellants argue that we should conduct a *de novo* review of the district court's ruling, while Danks argues that we should review for abuse of discretion. Appellants are correct on this point as well. *See Conlin v. City of Saint Paul*, 605 N.W.2d 396, 400 (Minn. 2000) (applying *de novo* standard of review to summary judgment ruling that defendant entitled to statutory immunity).

and community settings" and "to provide for the voluntary reporting of abuse or neglect of children." *Id.*

To fulfill these expressed policies, the act contains two provisions concerning reports of maltreatment. The first requires certain persons to make a report of maltreatment; the second permits all persons to make a voluntary report of maltreatment. The provision concerning the mandatory duty states:

> A person who knows or has reason to believe a child is being neglected or physically or sexually abused, . . . or has been neglected or physically or sexually abused within the preceding three years, shall immediately report the information to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person is:
>
> (1) a professional or professional's delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, correctional supervision, probation and correctional services, or law enforcement; or
>
> (2) employed as a member of the clergy and received the information while engaged in ministerial duties . . . .

Minn. Stat. § 626.556, subd. 3(a) (2008). The provision concerning a voluntary report states:

> Any person may voluntarily report to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person knows, has reason to believe, or suspects a child is being or has been neglected or subjected to physical or sexual abuse.

Minn. Stat. § 626.556, subd. 3(b) (2008).

In addition, the legislature conferred immunity from liability on persons who, in good faith, make a report of maltreatment or suspected maltreatment: "The following persons are immune from any civil or criminal liability that otherwise might result from their actions, if they are acting in good faith: (1) any person making a voluntary or mandated report under subdivision 3 . . . ." Minn. Stat. § 626.556, subd. 4(a) (2008).

The central issue in this appeal is whether Danks is entitled to the immunity arising from subdivision 4(a)(1). Because she is asserting immunity as an affirmative defense, Danks bears the burden of proving the facts on which immunity depends. *See Rehn v. Fischley*, 557 N.W.2d 328, 332-33 (Minn. 1997). She may obtain summary judgment on her immunity defense only if there are no genuine issues of material fact. *See Osborne*, 749 N.W.2d at 371.

A. Evidence Relevant to Immunity

Appellants contend that Danks is not entitled to summary judgment because of genuine issues of material fact on two issues: first, whether Danks "[knew] or ha[d] reason to believe a child is . . . or has been neglected or physically or sexually abused within the preceding three years," Minn. Stat. § 626.556, subd. 3(a), and, second, whether Danks "act[ed] in good faith," *id.*, subd. 4(a). We address each of these contentions in turn. In analyzing the two factual issues, we must keep in mind both appellants' various claims and the various factual bases of those claims. Appellants' five claims are based on three separate actions by Danks: her report to Ramsey County in August 2006, her alleged statements to members of the community in May 2006, and her communications with Ms. B in May 2006. It appears that the evidence concerning whether Danks knew or had reason to

believe that maltreatment had occurred applies in the same manner to each of the three actions. The evidence concerning whether Danks acted in good faith, however, arguably could be different with respect to the three actions.

1. Knew or Had Reason to Believe

Appellants argue that the district court erred by concluding, as a matter of law, that Danks knew or had reason to believe that the B girl was being sexually abused or had been sexually abused within the preceding three years. *See* Minn. Stat. § 626.556, subd. 3(a). The district court noted that Danks relied on what her daughter had said about the B girl's statement and on additional information obtained from Ms. B.

Appellants contend that "the record supports a conclusion that, by the time Danks reported to Ramsey County *in early August 2006* the allegations she had heard on April 30, 2006, she no longer had reason to believe that abuse had occurred." Appellants' contention depends heavily on the family therapist's determination that no abuse had occurred. But appellants have no evidence that Danks knew that the therapist had come to that conclusion. It is undisputed that Ms. B told Danks on May 22, 2006, that no abuse had occurred. But there is no evidence in the record that Ms. B told Danks specifically that the therapist had come to the conclusion that no abuse had occurred. Thus, appellants cannot rely on the therapist's conclusion that no abuse had occurred as a basis for concluding that Danks did not have reason to believe that abuse had occurred.

Appellants also contend that Danks should have figured out that no abuse had occurred because Danks knew that the B family was in counseling, knew that therapists are mandatory reporters, knew that a report of abuse would have caused the county to remove

the B boy from the household, and knew that the B boy still was in the home. But Danks believed that the B family had not fully disclosed to the family therapist everything that the B girl had told Danks's daughter, and Danks made that accusation directly to Ms. B. In light of that belief, Danks also believed that Ms. B was not making a full disclosure of facts to her. And when Danks asked follow-up questions about what the B family had told the therapist, how the therapist responded, and whether the B girl had undergone an assessment, Ms. B refused to answer most of her questions. Danks and Ms. B had no further direct communication after the May 22 conversation. The information identified by appellants does not necessarily alter Danks's prior belief that abuse had occurred. In addition, Ms. B testified in her deposition that she had no basis for questioning the genuineness of Danks's belief that the B girl had been abused.

Thus, the district court did not err by concluding that there was no genuine issue of material fact concerning whether Danks knew or had reason to believe that abuse had occurred.

2. Good Faith

Appellants also argue that the district court erred by concluding, as a matter of law, that Danks acted "in good faith." *See* Minn. Stat. § 626.556, subd. 4(a). The district court reasoned that Danks's good faith is demonstrated by her testimony about her deliberations and the evidence that she consulted with law enforcement authorities and her attorney before deciding to make a report to Ramsey County. The district court concluded by saying, "it can hardly be argued that [Danks's] decision to report was made in bad faith."

As stated above, appellants' five causes of action are based on three discrete actions by Danks. We analyze separately whether Danks acted in good faith with respect to each of those actions.

a. Report to Ramsey County

Appellants point to evidence that, they contend, creates a genuine issue of material fact concerning whether Danks acted in good faith.

First, appellants argue that Danks's lack of good faith can be inferred from the fact that she waited more than three months after learning of the B girl's disclosure before reporting the matter to Ramsey County, during which time she initially decided not to make a report and later changed her mind. But Danks has explanations for the passage of time, which appellants have not rebutted. After she decided to not make a report, circumstances changed in ways that caused her to become more suspicious of the B family and, thus, more concerned about the B girl. After receiving the letter from the B family's attorney, Danks began to believe that the B girl "was not going to be protected." Danks's delay in making a report is consistent with her testimony that she was hesitant to make a report because of her concern for the B family's privacy and the potential for embarrassment. The considerations revealed by Danks are ones that reasonably could have caused a person to change her earlier decision not to make a report. Appellants have not identified any evidence that undermines Danks's explanation.

Second, appellants argue that Danks lacked good faith because she made the report for purposes of retroactively obtaining immunity for actions that she had taken before the report. For this argument, appellants rely on evidence that Danks consulted with an attorney

and made inquiries of the county concerning immunity. But Danks's consultation with an attorney is not something from which a negative inference may be drawn, *cf. Bahr v. Capella Univ.*, 765 N.W.2d 428, 437 n.6 (Minn. App. 2009), *pet. for review filed* (Minn. June 18, 2009), especially in light of the fact that Danks retained an attorney because she received a strongly worded letter from the B family's attorney. In fact, the letter from the B family's attorney demanded a response, and Danks was entitled to retain an attorney to assist with the response. In addition, the evidence shows that Danks's conversations with an assistant county attorney concerning immunity were general in nature and oriented primarily toward immunity for making the subsequent report, not for any prior incident.

Third, appellants argue that Danks's lack of good faith can be inferred from evidence that she had a hostile attitude toward appellants. For this argument, appellants rely on Danks's e-mail message, which states that Ms. B had become "hostile and abusive" toward Danks, and on Danks's testimony that she was very upset after receiving the cease-and-desist letter from appellants' attorney and felt that appellants were treating her unfairly. None of this evidence, however, actually shows that Danks had a hostile attitude toward the B family. It shows merely that the potential existed for her to develop such an attitude or that she may have had a legitimate basis for harboring ill feelings toward the B family. But the mere potential for a hostile attitude is too speculative to support a finding that Danks did not have good faith.

In general, all of the evidence concerning Danks's state of mind and outward conduct indicates that she made the report to Ramsey County in good faith. Appellants' arguments concerning good faith are not based on evidence so much as speculative assertions about her

motives that require inferences from peripheral facts. As the supreme court has explained, "there is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). In light of the evidence in the summary judgment record, even when viewed in the light most favorable to appellants, there is no genuine issue of material fact concerning whether Danks acted in good faith when she made her report to Ramey County.

b. Communication with J.S.

In their complaint, appellants allege that Danks made tortious statements to unidentified members of the community. After discovery, and in response to Danks's summary judgment motion, appellants identified by name only one person to whom Danks made a statement concerning the secret that the B girl shared with Danks's daughter, and that person is J.S., the parties' mutual friend.

Danks testified that she shared information with J.S. because she was looking for guidance and because J.S. is a teacher, which makes her knowledgeable about the law concerning reports of suspected sexual abuse. It is undisputed that Danks's conversation with J.S. focused on whether Danks should make a report to the county. Appellants have not submitted any evidence that Danks's disclosure to J.S. was for any other purpose, nor have appellants submitted any evidence that Danks's motives were less worthy at the time of this conversation than at the time of the report.

Thus, in light of the evidence in the summary judgment record, viewed in the light most favorable to appellants, the district court did not err by concluding that there is no genuine issue of material fact concerning whether Danks acted in good faith when she made allegedly tortious statements to J.S.

c. Communication with Ms. B

In their complaint, appellants allege that Danks committed the tort of intrusion upon seclusion based on her follow-up questions to Ms. B related to the B family's therapy. Danks argues that she was seeking additional information because she was trying to decide whether to make a report to the county. Appellants have not submitted any evidence that Danks's inquiries of Ms. B were for any other purpose, nor have appellants submitted any evidence that Danks's motives were less worthy at the time of this conversation than at the time of the report. Thus, in light of the evidence in the summary judgment record, viewed in the light most favorable to appellants, the district court did not err by concluding there is no genuine issue of material fact concerning whether Danks acted in good faith when she made follow-up inquiries of Ms. B.

B. Scope of Immunity

Having concluded that there are no genuine issues of material fact concerning whether Danks is entitled to immunity, it is necessary to consider whether the district court properly determined the scope of that immunity. This issue consists of two parts: first, whether immunity applies to all actions of Danks for which appellants seek to hold her liable and, second, whether immunity applies to all causes of action pleaded in the complaint. The parties' arguments present issues of statutory interpretation, to which we

apply a *de novo* standard of review. *Bol v. Cole*, 561 N.W.2d 143, 146-47 (Minn. 1997) (interpreting section 626.556).

1. Applicability to Danks's Actions

To reiterate, the statute at issue states: "The following persons are immune from any civil or criminal liability that otherwise might result from their actions, if they are acting in good faith: . . . any person making a voluntary or mandated report under subdivision 3 . . . ." Minn. Stat. § 626.556, subd. 4(a)(1). The parties do not dispute that the statute applies to the act of making a mandatory or voluntary report to the county. But the parties dispute whether the statute also applies to the other conduct for which appellants seek to hold Danks liable. Appellants argue that subdivision 4(a)(1) applies only to "the act of making a 'report' of suspected abuse" or, in the alternative, to that act and to other "acts necessary to facilitate and complete a proper investigation." For this reason, appellants argue, subdivision 4(a)(1) is not broad enough to encompass Danks's statements to J.S. or Danks's follow-up inquiries of Ms. B. In response, Danks argues that subdivision 4(a)(1) applies to any action that is "part of the deliberative process" that leads to a report.

The plain language of the statute is not limited to the making of a report. Rather, the statute states that persons who make a report "are immune from any civil or criminal liability that otherwise might result *from their actions*." Minn. Stat. § 626.556, subd. 4(a) (emphasis added). The statute does not define or limit the actions or types of actions that may be immunized. In *Bol*, the supreme court held that a child psychologist, a mandatory reporter, was not immune from liability for giving copies of her written reports to a parent of the child at issue, after the reports had been submitted. 561 N.W.2d at 147. The

psychologist's actions were not necessary to the reports, which already had been made, and do not appear to have served any purpose of the statute. *Id.* at 145. In this case, Danks's statement to J.S. and inquiries of Ms. B were made in furtherance of significant purposes of the statute, specifically, to encourage reports with a factual basis, *see* Minn. Stat. § 626.556, subd. 3(a), (b), and to discourage false reports, *see id.* subd. 5. Danks gathered factual information concerning whether sexual abuse had occurred and solicited advice concerning whether she should make a report. Danks's communications with J.S. and Ms. B occurred before her report and were a reasonable part of the process of making a report. Thus, we conclude that all of the actions at issue are protected by subdivision 4(a)(1).

2. Applicability to Appellants' Causes of Action

As stated above, appellants pleaded five causes of action in their complaint. One of those claims, count III, is a cause of action arising under Minn. Stat. § 626.556, subd. 5, which creates a cause of action for a false report of maltreatment:

> Any person who knowingly or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury, plus costs and reasonable attorney fees.

Minn. Stat. § 626.556, subd. 5. The parties do not dispute that the immunity arising from subdivision 4(a) applies to the cause of action created by subdivision 5. Thus, as a matter of law, Danks is entitled to summary judgment on count III.

The other four claims -- counts I, II, IV, and V -- are common-law causes of action. The parties dispute whether the immunity arising from subdivision 4(a)(1) applies to common-law causes of action, as the district court concluded. Appellants argue that

subdivision 4(a)(1) does not apply to common-law causes of action but, rather, applies only to the false-report cause of action in subdivision 5. The parties' arguments present an issue of statutory interpretation, to which we apply a *de novo* standard of review. *Bol*, 561 N.W.2d at 146.

The act states, "The following persons are immune from *any* civil or criminal liability that otherwise might result from their actions . . . ." Minn. Stat. § 626.556, subd. 4(a) (emphasis added). The plain language of the statute supports Danks's argument. Appellants have not identified any basis for qualifying or limiting the term "any." As a matter of statutory interpretation, we must refrain from imposing such a qualification or limitation because "[t]he word 'any' is given broad application in statutes." *Hyatt v. Anoka Police Dep't*, 691 N.W.2d 824, 826 (Minn. 2005) (applying plain meaning of phrase "any person" in Minn. Stat. § 347.22 (2004)); *see also Olson v. Ford Motor Co.*, 558 N.W.2d 491, 494 (Minn. 1997) (interpreting phrase "any litigation . . . resulting from the use or operation of any motor vehicle" in Minn. Stat. § 169.685, subd. 4 (1996), by "look[ing] no further than the express language of the statute"). If a statute is reasonably susceptible to more than one meaning, it is ambiguous, *American Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001), but if "a statute's meaning is plain, judicial construction is neither necessary nor proper." *Occhino v. Grover*, 640 N.W.2d 357, 359 (Minn. App. 2002), *review denied* (Minn. May 28, 2002). Because the text of subdivision 4(a) is unambiguous, there is no legal basis for appellants' argument that the immunity provided by subdivision 4(a)(1) applies only to the statutory false-report cause of action of subdivision 5. *See In re PERA Police & Fire Plan Line of Duty Disability Benefits of Brittain*, 724 N.W.2d

512, 519 (Minn. 2006) (holding that phrase "any act of duty" in Minn. Stat. § 353.656, subd. 1 (2004), is unambiguous).

Appellants have not identified any basis for making a distinction between the cause of action created within the act and pre-existing, common-law causes of action. Thus, we conclude that the immunity provided by section 626.556, subdivision 4(a), applies to common-law causes of action. Accordingly, Danks is entitled to summary judgment on counts I, II, IV, and V.

C. Danks's Alternative Arguments

In the district court, Danks argued alternative grounds for granting her motion for summary judgment. Specifically, she argued with respect to count III that there is no evidence that she made a false report or acted knowingly or recklessly in violation of subdivision 5; with respect to counts I and II that her report to Ramsey County and other statements are not defamatory and, if so, are protected by a qualified privilege; with respect to count IV that there is no evidence of publicity or that the matter was not of legitimate public concern; and with respect to count V that there is no evidence of intrusion upon seclusion and that the B family did not have a reasonable expectation of privacy.

The district court did not address these alternative arguments because it concluded that Danks is entitled to summary judgment on all claims on the basis of the immunity provided by section 626.556, subdivision 4(a)(1). Because we reach the same conclusion, and because there is no district court analysis to review, we also decline to address Danks's alternative arguments.

II. Attorney Fees

Appellants also challenge the district court's rulings concerning Danks's request for attorney fees. The act provides, "If a person who makes a voluntary or mandatory report under subdivision 3 prevails in a civil action from which the person has been granted immunity under this subdivision, the court may award the person attorney fees and costs." Minn. Stat. § 626.556, subd. 4(d) (2008).

In its order granting summary judgment, the district court stated, "Defendant is awarded her costs, including reasonable attorneys' fees, incurred in defending this action and shall submit a fee petition relating to such costs within ten days of this Order." Danks submitted a timely fee petition. Before the district court took any action on the fee petition, the B family appealed pursuant to the district court's rule 54.02 determination. The district court then reserved ruling on the fee petition due to the pendency of the appeal. We note that it is preferable for a district court to decide a motion for attorney fees prior to an appeal. *See American Family Mut. Ins. Co. v. Peterson*, 380 N.W.2d 495, 496 (Minn. 1986). In addition, because a motion for attorney fees is "collateral to the merits of the underlying litigation," a district court retains jurisdiction to consider a motion for attorney fees while an appeal is pending. *Kellar v. Von Holtum*, 605 N.W.2d 696, 700 (Minn. 2000), *superseded by rule on other grounds*, Minn. R. Civ. P. 11.03.

Appellants argue that, even if this court affirms the grant of summary judgment on the grounds of immunity, any award of attorney fees to Danks must not include attorney fees incurred for legal services related to appellants' common-law claims. In the current procedural posture, appellants' argument presents only abstract questions. The district court

has not yet made an award of attorney fees, let alone made any rulings concerning the type of legal services for which an award may be made or the amount of attorney fees to which Danks may be entitled. The issue is not ripe for review by this court at this time. Thus, we remand the case to the district court for a complete determination of Danks's motion for attorney fees.

Affirmed and remanded.