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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1201**

Collin Gustafson,
Respondent,

vs.

Dain Semmer,
Respondent,

Timothy Lasserre, et al.,
Appellants.

**Filed February 23, 2010
Reversed
Klaphake, Judge**

Ramsey County District Court
File No. 62-CV-08-9465

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Considered and decided by Klaphake, Presiding Judge; Peterson, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellants Timothy Lasserre and the State of Minnesota challenge the district court's order denying their motion for summary judgment based on common-law official immunity and vicarious immunity from claims raised against them by respondents Collin Gustafson and Daim Semmer.

Because appellant Lasserre was engaged in a discretionary act, snowplowing, at the time of the accident and was thus protected by official immunity, and because the state, as his government employer, is vicariously immune from liability, we reverse.

DECISION

An order denying summary judgment on a defense of immunity is reviewable in an interlocutory appeal. *Rasivong v. Lakewood Cmty. College*, 504 N.W.2d 778, 781 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993). The usual standard of review for summary judgment applies: whether there are genuine issues of material fact and whether the district court misapplied the law. *Schroeder v. St. Louis County*, 708 N.W.2d 497, 503 (Minn. 2006). Where, as here, there are no material facts in dispute, the application of immunity presents a question of law to be reviewed de novo by this court. *Id.*

Official Immunity

“Common law official immunity generally applies to prevent a public official charged by law with duties which call for the exercise of his judgment or discretion from being held personally liable to an individual for damages.” *Id.* at 505 (quotation

omitted). The purpose of official immunity is to protect officials from liability so that they are not deterred from exercising independent action or judgment, which could impair the effective performance of their duties. *Anderson v. Anoka Hennepin Sch. Dist.* 11, 678 N.W.2d 651, 655 (Minn. 2004).

Official immunity protects a public official only during the performance of discretionary duties or functions; if the official is charged with execution of a ministerial duty, the doctrine does not apply. *Id.* Ministerial duties are those that are “absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts.” *Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 315 (Minn. 1998) (quotation omitted). *Wiederholt* offers one of the clearest examples of a ministerial duty: by ordinance, the city required immediate repair of any sidewalk slab protruding more than one inch above an adjacent slab. *Id.* The city inspector noted a slab needing repair but failed to take immediate action. *Id.* The plaintiff was injured during the time between the inspection and submission of the repair request. *Id.* The supreme court concluded that the district court was correct in refusing to grant official immunity, stating that the duty to repair was a ministerial duty, with performance standards clearly set forth in the ordinance and by city policy; the city inspector had no discretion to ignore or delay the required sidewalk repair. *Id.* at 316.

In contrast, official immunity protects discretionary decisions made at the operational level. *In re Alexandria Accident*, 561 N.W.2d 543, 549 (Minn. App. 1997), *review denied* (Minn. June 26, 1997). Such decisions involve “discretion and balancing of several factors.” *Id.* In *Alexandria Accident*, which involved snow removal from

Interstate 94, this court noted that the plow operator had to make decisions based on road and weather conditions about the appropriate speed of the plow, which equipment to use, and the best time and manner for plowing. *Id.* Although this court stated that such decisions “did not rise to the level of discretion required for [statutory] discretionary immunity,” they nevertheless “involved sufficient discretion to fall within the protection of [common law] official immunity.” *Id.*¹

Here, Lasserre was plowing southbound Interstate 35 (I-35) and observed that these lanes had already been plowed by another MnDOT plow operator. Lasserre decided to enter a crossover to reverse directions and plow the left lane of northbound I-35. Lasserre plowed the crossover, but then lifted his blade momentarily before entering northbound I-35; he did this because he did not want to push snow from the crossover onto the freeway below and because this action provided greater traction. Respondent’s vehicle struck the plow from behind after he entered the highway and lowered his blade. The district court agreed that Lasserre was engaged in a discretionary act when he decided to turn around and plow northbound I-35, but it concluded that Lasserre was performing a ministerial act when he lifted his plow blade and decided to pull out into the northbound lanes. This is too narrow a treatment of the act of plowing: the various discrete decisions made by Lasserre are part of the larger act of operating a plow, an

¹ We have affirmed snow removal as a discretionary activity protected by official immunity in a series of unpublished opinions: *Koivisto v. Dale*, No. A06-2349 (Minn. App. Sept. 11, 2007); *Kelley v. Jerde*, No. A06-898 (Minn. App. May 29, 2007); *Schaffer v. Ramsey County*, No. C0-01-2006 (Minn. App. July 2, 2002); *Simmons v. Olson*, No. C2-01-653 (Minn. App. Dec. 4, 2001); *Menk v. County of Cottonwood*, No. C0-99-12 (Minn. App. May 25, 1999), *review denied* (Minn. July 28, 1999); *Jenkins v. ISD No. 709*, No. C1-97-1456 (Minn. App. Jan. 20, 1998).

activity that includes multiple discretionary decisions. The district court erred by determining that Lasserre was not entitled to official immunity.

Vicarious Official Immunity

“In general, when a public official is found to be immune from suit on a particular issue, his government employer will enjoy vicarious official immunity from a suit arising from the employee’s conduct.” *Schroeder*, 708 N.W.2d at 508. The concept of vicarious official immunity is based on the same reasoning as official immunity: it seeks to prevent a public official from refusing to exercise discretion because of fears that his government employer would be found to be liable for his actions. *Id.*

Because we conclude that Lasserre is entitled to official immunity, we likewise conclude that his employer, the state, is entitled to vicarious official immunity.

Reversed.