STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1447

Brian R. Hanson,
Appellant,

Jayne A. Hanson,
Plaintiff,

vs.

David L. Bahma,
Respondent.

Filed March 17, 2014
Affirmed
Connolly, Judge

Cass County District Court
File No. 11-CV-12-1959

Brian R. Hanson, Minnetonka, Minnesota (pro se appellant)

Joseph A. Nilan, Emeric J. Dwyer, Gregerson, Rosow, Johnson & Nilan, Ltd., Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Chutich, Judge; and Hooten, Judge.

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

CONNOLLY, Judge

We affirm the district court's grant of summary judgment because respondent is statutorily immune from civil liability arising from his report to the state fire marshal and because appellant raises no genuine issues of material fact supporting either his breach-of-contract claim or his negligence claim.

FACTS

On January 10, 2008, a fire occurred at the home of appellant Brian Hanson. Hanson told sheriff's deputies that the fire started in a pile of sawdust in a room where he was sanding. About half of the home was damaged by fire and smoke.

At the time of the fire, Hanson was 60 days behind on his mortgage payments. Hanson had previously attempted to refinance the mortgage, but the bank had refused and had threatened to foreclose if Hanson failed to find another lender before January 14, 2008.

After the fire, Hanson's insurance carrier assigned an investigator to determine the cause of the fire. Based on his analysis of the physical evidence in the house, the investigator opined that the fire was "the result of a deliberate incendiary act." He found that the fire had two points of origin, and he ruled out accidental sources of ignition. Carpet samples from one source location tested positive for "an ignitable liquid." The insurance company denied Hanson's insurance claim, and it reported its investigator's findings to the state fire marshal.

Based on the recommendation he received from another investigator, Hanson sought out the services of respondent David Bahma. Hanson contracted with Bahma to take photographs of the fire damage for $1,000. Hanson asked if Bahma had ever worked for Hanson's insurance carrier, and Bahma said that he had not. Hanson did not request any other services from Bahma, and he did not place any restrictions on Bahma's work.

Hanson paid Bahma $1,000 when Bahma arrived to take the pictures. Bahma asked that Hanson leave the house while he worked. When Hanson returned, he found that Bahma had removed three items from the house: a sander, a halogen light, and a brooder light. Bahma offered to maintain the items in safekeeping in case they needed to be analyzed as potential accidental causes of the fire. After confirming that he would not be charged extra for the storage of the items, Hanson agreed. After leaving Hanson's home, Bahma contacted the state fire marshal and opined that the fire was the result of arson.

Pursuant to a search warrant, sheriff's deputies seized the items that Bahma had removed from Hanson's house. Hanson was charged with first-degree arson, but, after another expert disputed the insurance investigator's findings, the charge was dismissed.

Hanson lost the house through foreclosure in 2010. He sued the insurance company, seeking compensation for loss of equity in the house and loss of personal property resulting from its denial of his insurance claim. A jury awarded Hanson $130,000 plus interest.

In July 2012, Hanson then sued Bahma, alleging breach of contract and negligence. Bahma moved the district court for summary judgment, and the district court granted the motion. It held that Bahma was immune from civil liability under Minnesota Statutes section 299F.054, subdivision 4(b) (2012). It further held that "[t]he uncontroverted evidence does not support an action for breach of contract" because "the actions [Bahma] alleged to have breached an implied covenant of good faith and fair dealing are beyond the scope of the parties' oral contract." It also ruled that Hanson's negligence claim was unsustainable as a matter of law because "there is a lack of existence of a duty . . . outside of the parties' contract" and "Minnesota does not recognize an action for negligent breach of a contractual duty." This appeal follows.

D E C I S I O N

I.

Hanson argues that the district court erred by ruling that Bahma was statutorily immune because Bahma does not fulfill the statute's requirement that a protected report to the state fire marshal be made in good faith. We disagree. We review a district court's grant of summary judgment de novo, determining whether there are any genuine issues of material fact that should have precluded summary judgment or whether the district court misapplied the law. *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008). We also review de novo the district court's determination that statutory immunity applies. *J.E.B. v. Danks*, 785 N.W.2d 741, 746 (Minn. 2010). In doing so, however, we construe the factual evidence in the light most favorable to the nonmoving party. *Id.* at 747.

We conclude that Bahma is protected by statutory immunity. Minnesota law provides immunity from civil liability for any "person who, acting in good faith, reports to an authorized person information . . . that is or may be relevant to the investigation of a fire." Minn. Stat. § 299F.054, subd. 4(b). Hanson asserts that Bahma did not make his report to the state fire marshal in good faith because Bahma's report was dishonest, biased, and lacking foundation. He also asserts that Bahma lied about his prior relationship with Hanson's insurance carrier. "Generally speaking, good faith is a matter of subjective intent." *J.E.B.*, 785 N.W.2d at 749. In the context of statutory immunity for reports made to authorities, "a report made without an ulterior motive, made without malice and made for a proper purpose would be a report made in good faith." *Id.* at 750. "Under this standard, the relevant question is whether the reporter honestly believed [he] had a duty to report. A reporter acting in good faith will be immune even if [he] is negligent or exercises bad judgment." *Id.* at 749 (quotation omitted). The assessment of good faith, therefore, relates to Bahma's subjective purpose for making a report to the state fire marshal, not to Bahma's other statements to or interactions with Hanson. Even assuming, therefore, that all of Hanson's assertions about Bahma's behavior are true, they do not implicate Bahma's subjective purpose for making the report to the state fire marshal. Hanson does not allege any malice or other improper motive for Bahma making the report, and nothing in the record contradicts Bahma's testimony that his motive was only to provide "important safety information" to the fire marshal. Lacking allegations that support Hanson's accusation that Bahma did not report in good faith, we affirm the

district court's determination that Bahma is immune from civil liability for his act of reporting to the state fire marshal.

II.

It is not clear whether and to what degree Hanson's breach-of-contract claims derive solely from Bahma's report to the fire marshal. We therefore address the district court's grant of summary judgment to Bahma on Hanson's breach-of-contract claims even though we hold that Bahma was statutorily immune from liability arising from his report to the fire marshal.

Hanson alleges that the district court's grant of summary judgment was erroneous because genuine issues of material fact exist to support a breach-of-contract claim. He alleges numerous breaches, but, other than his allegation that Bahma violated the implied covenant of good faith and fair dealing, Hanson failed to present these allegations to the district court, and we therefore decline to address them. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).[1]

Hanson alleges that Bahma breached the implied covenant of good faith and fair dealing that is a component of any contract. "Under Minnesota law, every contract includes an implied covenant of good faith and fair dealing requiring that one party not unjustifiably hinder the other party's performance of the contract." *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 502 (Minn. 1995) (quotation omitted). Although his allegations of Bahma's bad faith are diverse and wide-ranging, Hanson does

[1] We note in passing that even if we did address Hanson's breach-of-contract arguments on their merits, the record provides no support for Hanson's claim that any of the acts he alleges constituted violations of any of the contract's actual terms.

not allege that any of Bahma's actions interfered with Hanson's ability to perform his own obligations under the contract.[2] Accordingly, we conclude that the district court's grant of summary judgment to Bahma on Hanson's breach-of-contract claim was appropriate.

III.

Hanson also challenges the district court's grant of summary judgment on his negligence claim, alleging that Bahma accepted a duty of care to undertake a full investigation before reporting Hanson's house fire to the state fire marshal. Because this claim derives exclusively from Bahma's report to the state fire marshal, we hold that it is precluded by Bahma's statutory immunity, and we decline to address it further.

Affirmed.

[2] Hanson also argues that "Minnesota law does not limit an implied covenant claim to the unjustifiable hindrance of performance," citing a comment to the Second Restatement of Contracts as support. But although such comments are often useful as illustrations and explications of common-law principles, they do not authorize us to create new causes of action in Minnesota. *See Stubbs v. North Mem'l Med. Ctr.*, 448 N.W.2d 78, 80-81 (Minn. App. 1989), *review denied* (Minn. Jan. 12, 1990). And although Hanson does not specify which of the additional theories of bad faith he relies upon, from our review of the record, we conclude that none of them are supported by the facts here.