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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0017**

Alyssa M. Sweesy,
Appellant,

vs.

Joseph S. Ramirez, et al.,
Respondents.

**Filed October 19, 2020
Affirmed
Connolly, Judge**

Anoka County District Court
File No. 02-CV-18-3186

Richard J. Cohen, St. Paul, Minnesota (for appellant)

Evan C. Tsai, Ryan M. Zipf, League of Minnesota Cities, St. Paul, Minnesota (for
respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the summary-judgment dismissal, on grounds of official
immunity and vicarious official immunity, of her claims against respondents arising out of

her motor-vehicle collision with a vehicle driven by respondent-police officer. Appellant argues that the district court erred by granting summary judgment in favor of respondents because there is a genuine issue of material fact as to whether respondent-police officer's conduct was willful or malicious. We affirm.

FACTS

At approximately 3:00 p.m., on September 4, 2011, appellant Alyssa Sweesy was injured when the vehicle she was driving was struck by a marked police squad car owned by respondent City of Blaine (city), and operated by respondent Officer Joseph Ramirez of the Blaine Police Department (BPD).¹ At the time of the collision, Officer Ramirez was one of several officers responding to an emergency call involving a woman who was threatening to jump off a bridge onto Interstate 35W in Blaine. Officer Ramirez was the lead vehicle responding to the call. While en route to the scene, he communicated with other officers via their squad-car radios to determine the appropriate tactical response to the emergency. The officers determined that squad-car sirens should not be activated because the sirens would give the individual advanced warning of their arrival and might cause the person to jump off the bridge before the officers arrived at the scene.

The weather was clear and traffic was light, and as Officer Ramirez drove to the scene with his emergency lights activated and the siren turned off, his squad car reached speeds above the posted speed limit. In addition to using his squad-car radio to communicate with other officers, Officer Ramirez was listening to his squad-car AM/FM

¹ The city and Officer Ramirez will be hereinafter collectively referred to as "respondents."

radio. And, because he had his emergency lights on, the Opticom system was activated, which illuminated a bright light from the traffic signals facing all directions at intersections.

As Officer Ramirez traveled on Radisson Road approaching the intersection at 95th Avenue, he observed two cars. At that juncture, Radisson Road has two lanes of travel in each direction. Officer Ramirez observed one vehicle traveling in the opposite direction on Radisson Road that was stopped at the intersection. He also observed one vehicle traveling in the same direction and stopped in the same lane in which Ramirez was traveling. To avoid the car stopped in his lane of travel, Officer Ramirez moved from the left lane to the right lane and slowed as he approached the intersection.

Sweesy was traveling on 95th Avenue in a “tiny Saturn,” and as she approached the intersection with Radisson Road, she observed that the Opticom light was activated. Sweesy understood that an activated Opticom light meant that emergency vehicles may be in the area. But, despite the illumination of the Opticom light, Sweesy had a green arrow and she proceeded into the intersection at 95th Avenue and Radisson Road so that she could turn left onto Radisson Road.

As 95th Avenue approaches the Radisson Road intersection, there is a curve in the road, and 95th Avenue has tall grass growing close to the intersection. Officer Ramirez initially did not see Sweesy’s vehicle or any other vehicles in motion at the intersection at 95th Avenue and Radisson Road. But as he proceeded through the intersection, Officer Ramirez suddenly saw Sweesy’s vehicle. Although Officer Ramirez applied the brakes “as hard as [he] could,” he “was unable to avoid [a] collision” with Sweesy’s vehicle, and Sweesy was seriously injured.

Officer Ramirez testified at his deposition that he believed that he was traveling at approximately 70 miles per hour when he entered the intersection. But the Power Control Module retrieved from Officer Ramirez's squad car following the crash indicated that Officer Ramirez was driving 60-65 miles per hour and applying his brakes seconds before the collision. And, although Officer Ramirez did not know if he had a green light as he entered the intersection, his squad-car video shows that the light was red as he entered the intersection.

BPD policy follows Minn. Stat. § 169.03, subd. 5 (2018), which requires that emergency vehicles follow all traffic rules and regulations "except when such vehicle is operated in response to any emergency call." Under BPD's policy, an "emergency call" includes "life threatening situations." In addition, BPD defines a "policy" as "a statement of guiding principles which should be followed in activities which are directed toward the attainment of department objectives." In relation to the emergency operation of police vehicles, the BPD policy states:

It is the policy of the [BPD] that its officers operate their police vehicles during emergency situations in a manner consistent with delivering their public safety responsibilities, in accordance with State Law and applicable City and Department policies, and using due regard for the safety of persons using the street.

And section 347.03 of the BPD General Order provides:

Blaine officers responding to emergency calls as an emergency vehicle are required to operate **both** the siren and emergency lighting system unless significant tactical reason(s) exist for justifying the sole use of either the siren or the emergency lighting system.

....

This provision does not relieve the officer driving an authorized emergency vehicle from the duty to drive with due regard for the safety of persons using the street, nor does it protect the officer from the consequences of a reckless disregard of the safety of others.

Following the incident involving Sweesy, Officer Ramirez received a Notice of Disciplinary Action-Oral Reprimand for violating section 347.03 of the BPD's General Order. Specifically, it was determined that by entering "into an intersection on a red light where other traffic is present, at 50 MPH," Officer Ramirez failed to exercise "due regard for the safety of others."

Sweesy commenced this lawsuit against respondents in June 2017, alleging that Officer Ramirez operated his squad car "in a negligent, careless, and unlawful manner," causing the collision with Sweesy. Respondents subsequently moved for summary judgment, asserting that the "discretionary acts of Officer . . . Ramirez at the time of the subject accident are protected by common law official immunity, which extends to the city through vicarious immunity." The district court granted respondents' motion, determining that there were no genuine issues of material fact, and that based on the undisputed facts, Officer Ramirez's "actions were not willful or malicious." Thus, the district court concluded that Officer Ramirez was protected by official immunity, and that his immunity extended to the city. This appeal follows.

DECISION

Appellant challenges the summary-judgment dismissal of her claim against respondents. A district court "shall grant summary judgment if the movant shows that

there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court applies a de novo standard of review to a district court’s legal conclusions on summary judgment and views the evidence in the light most favorable to the nonmoving party. *Commerce Bank v. West Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

The common-law doctrine of official immunity provides that “a public official charged by law with duties which call for the exercise of his judgment or discretion is not personally liable to an individual for damages unless he is guilty of a willful or malicious wrong.” *Vassallo ex rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014) (alteration in original) (quotation omitted). The purpose of the official-immunity doctrine is to ensure that “individual government actors [are] able to perform their duties effectively, without fear of personal liability that might inhibit the exercise of their independent judgment.” *Kariniemi v. City of Rockford*, 882 N.W.2d 593, 599-600 (Minn. 2016) (quotation omitted). “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 v. St. Louis County*, 708 N.W.2d 497, 508 (Minn. 2006).

To determine whether a public official is entitled to official immunity, courts apply a three-step inquiry. At the first step, courts identify “the conduct at issue.” *Kariniemi*, 882 N.W.2d at 600. At the second step, courts determine whether that conduct is

discretionary or ministerial in nature. *Kari v. City of Maplewood*, 582 N.W.2d 921, 923 (Minn. 1998). A public official's conduct is discretionary if it "requires the exercise of individual judgment in carrying out the official's duties." *Id.* The conduct is ministerial if it arises from duties that are "absolute, certain, and imperative, and involve[s] merely execution of a specific duty arising from fixed and designated facts," thereby "leaving nothing to the discretion of the official." *Kelly v. City of Minneapolis*, 598 N.W.2d 657, 664 (Minn. 1999) (quotation omitted). At the third step of the analysis, a public official who engaged in discretionary conduct will be entitled to official immunity unless his or her conduct was willful or malicious. *Kariniemi*, 882 N.W.2d at 600; *Kelly*, 598 N.W.2d at 664. A public official who engaged in ministerial conduct, on the other hand, will be entitled to official immunity unless the ministerial duty "was either not performed or was performed negligently." *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 660 (Minn. 2004). The application of immunity is a question of law, which we review de novo. *Vassallo*, 842 N.W.2d at 462.

Here, the conduct at issue concerns Officer Ramirez driving his squad car through an intersection at a high rate of speed and against a red light with his emergency lights activated, but not the siren. We agree, as do the parties, that this conduct was discretionary because it involved Officer Ramirez's consideration of several factors in determining how to respond to the emergency involving a suicidal individual. *See Kari*, 582 N.W.2d at 923 (stating that a public official's conduct is discretionary if it "requires the exercise of individual judgment in carrying out the official's duties"). Thus, the disputed issue in determining whether immunity is applicable is whether Officer Ramirez's conduct was

willful or malicious. See *Kariniemi*, 882 N.W.2d at 600 (stating that a public official who engaged in discretionary conduct will be entitled to official immunity unless his or her conduct was willful or malicious).

Sweesy argues that the grant of summary judgment was inappropriate because there is a genuine issue of material fact as to whether Officer Ramirez's conduct was willful or malicious. This argument fails. "Malice is not negligence. It is the intentional doing of a wrongful act without legal justification or excuse, or, otherwise stated, the willful violation of a known right." *Vassallo*, 842 N.W.2d at 465 (quotation omitted). The exception to immunity for malicious acts allows liability "only when an official intentionally commits an act that he or she then has reason to believe is prohibited." *Rico v. State*, 472 N.W.2d 100, 107 (Minn. 1991). Malice can be found only if the court's findings that "the wrongful act so unreasonably put at risk the safety and welfare of others that as a matter of law it could not be excused or justified." *Kari*, 582 N.W.2d at 925.

In *Vassallo*, a sheriff's deputy was responding to an emergency call involving a potential burglary and was traveling at 54 miles per hour in a 50 mile-per-hour speed zone. 842 N.W.2d at 460. Because of a recent snowfall, road conditions were poor. *Id.* Shortly before entering an intersection, the deputy had turned off his siren to avoid alerting the suspects of his approach; his emergency lights remained on. *Id.* The deputy also observed multiple cars that had pulled over to give way to his vehicle. *Id.* The deputy then entered the intersection on a red light and collided with a car coming from the opposite direction. *Id.* The deputy did not see the car until the last minute and swerved to avoid it, but could not. *Id.*

The district court granted summary judgment in favor of the deputy, determining that his actions were not willful or malicious as a matter of law. *Id.* at 465. The supreme court affirmed, relying on the “undisputed facts” that the deputy “simply failed to see [the other] car until the last minute, and then made every effort to avoid [it].” *Id.* The supreme court also noted that there was no evidence showing that the deputy willfully or maliciously violated a known right. *Id.*

The circumstances in *Vassallo* are similar to the circumstances presented here. Like the deputy in *Vassallo*, Officer Ramirez was responding to an emergency call and made a discretionary decision not to use his squad-car siren in order to avoid alerting the suicidal individual of the arrival of the officers.² Officer Ramirez was also traveling at a rate of speed in excess of the speed limit and entered an intersection on a red light. And, although Officer Ramirez observed two cars that were stopped at the intersection, he did not see Sweesy’s vehicle until they were both proceeding through the intersection. Finally, like the deputy in *Vassallo*, Officer Ramirez attempted to avoid hitting Sweesy’s vehicle by stepping on the brakes, but he was unable to avoid a collision. As the district court determined, these undisputed facts compel “the same conclusion as the *Vassallo* court.”

Sweesy argues that *Vassallo* is not controlling because “the issue in *Vassallo* revolved around the violation of the ministerial duty and not necessarily the discretionary duty of [the deputy].” We disagree. Although the supreme court in *Vassallo* initially

² We note that the department policy in *Vassallo* stated that law enforcement personnel were required to use both emergency lights and sirens when responding to an emergency. *Vassallo*, 842 N.W.2d at 464. In contrast, BPD’s policy permitted officers to turn off their sirens for tactical reasons.

addressed the application of a ministerial duty, and determined that the department's policy did not create a ministerial duty, the court went on to discuss whether the deputy's conduct was willful or malicious. *Id.* at 463-66. The supreme court then determined that the deputy was entitled to official immunity because there was no evidence that he willfully or maliciously violated a known right. *Id.* at 465.

Sweesy also argues that the issue of whether Officer Ramirez acted with malice is an issue of fact that precludes summary judgment. We acknowledge that the supreme court has noted that “whether an officer acted maliciously is usually a question of fact for the jury.” *Kelly*, 598 N.W.2d at 664 n.5. But our supreme court has also noted that if no genuine issue of material fact exists, the court should decide the issue as a matter of law. *See Senogles v. Carlson*, 902 N.W.2d 38, 50 n.2 (Minn. 2017) (noting that “on a motion for summary judgment when there is no genuine issue of material fact, the court should decide the case as a matter of law without submitting it to the jury”); *see also Vassallo*, 842 N.W.2d at 465 (concluding that the deputy was entitled to official immunity where the undisputed facts showed that he did not act willfully or maliciously). Here, like in *Vassallo*, the facts are undisputed. As a result, the district court was free to decide the issue as a matter of law.

Sweesy further argues that the circumstances presented here, which included Officer Ramirez's dual playing of the AM/FM radio while he was listening to the two-way police band radio, the issuance of an oral reprimand relative to his behavior, and his excessive speed, create an issue of material fact that should be “placed in front of a jury.” To support her position, Sweesy relies on *Davis v. Hennepin County*, 559 N.W.2d 117 (Minn. App.

1997), *review denied* (Minn. May 20, 1997), arguing that the “framework” established in that case supports a determination that Officer Ramirez’s conduct was willful and malicious.

Sweesy’s reliance on *Davis* is misplaced. In that case, a county employee brought claims against the county under the Minnesota Human Rights Act (MHRA) for alleged sexual harassment by a co-worker. *Davis*, 559 N.W.2d at 120. This court stated that “[a]n official’s actions are legally unreasonable if the official commits those acts while having reason to believe they are prohibited.” *Id.* at 123. The court then determined that there were material disputes of fact as to the nature of the harassment, and evidence indicating that county officials knew that a county employee continued to engage in offensive conduct after his supervisors intervened. *Id.* This court concluded that the district court erred in dismissing the suit based on official immunity because, if the jury determines that the plaintiff’s claims are meritorious, it impliedly determines that the county officials acted with malice or willfulness and they, therefore, may not invoke the protection of official immunity. *Id.* at 124.

Here, unlike in *Davis*, there are no issues of material fact as to the nature of Officer Ramirez’s conduct. Rather, the undisputed facts demonstrate that Officer Ramirez simply failed to see Sweesy’s vehicle until the last second and then applied the brakes to avoid hitting her. Moreover, Officer Ramirez’s after-the-fact reprimand for failing to exercise “due regard for the safety of others,” does not support Sweesy’s position that Ramirez intentionally committed an act that, at the time of the act, he had reason to believe was prohibited. Instead, Officer Ramirez made tactical decisions not to use his siren to avoid

alerting the suicidal individual of the arrival of police officers, and then drove through a red light at a speed in excess of the speed limit in an attempt to arrive at the scene before the individual jumped off the bridge. As in *Vassallo*, none of these undisputed facts demonstrate that Officer Ramirez acted willfully or maliciously. See *Vassallo*, 842 N.W.2d at 465 (concluding that deputy was entitled to official immunity where there was no evidence that the deputy willfully or maliciously violated a known right and, therefore, the district court did not err in finding as a matter of law that the deputy's actions were not willful or malicious); see also *Elwood v. Rice County*, 423 N.W.2d 671, 679 (Minn. 1988) (concluding that sheriff's deputies were entitled to summary judgment based on official immunity on trespass and battery claims stemming from the deputies' investigation of a domestic assault where the record, "[a]t worst," indicated "overzealous investigation by peace officers who reasonably, if mistakenly, believed their action was necessary to prevent suicide or random violence arising from a domestic dispute"). Although the facts may demonstrate that Officer Ramirez was negligent by listening to the AM/FM radio while talking on his squad-car radio, and driving at speeds in excess of the speed limit, negligence is not malice. See *Vassallo*, 842 N.W.2d at 465 ("Malice is not negligence."). Accordingly, the district court did not err in determining that Officer Ramirez was entitled to official immunity.

Because Officer Ramirez is entitled to official immunity, the city is entitled to vicarious official immunity as well. See *Schroeder*, 708 N.W.2d at 508 ("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.”). We therefore conclude that the district court did not err by granting summary judgment in favor of respondents.

Affirmed.