

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0443**

Andrew Ellis, et al.,
Respondents,

vs.

City of Minneapolis,
Appellant.

**Filed February 22, 2021
Affirmed
Florey, Judge**

Hennepin County District Court
File No. 27-CV-18-5786

John R. Shoemaker, Paul F. Shoemaker, Shoemaker & Shoemaker, PLLC, Bloomington,
Minnesota (for respondents)

James R. Rowader, Jr., Minneapolis City Attorney, Sara J. Lathrop, Tracey N. Fussy,
Assistant City Attorneys, Minneapolis, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Florey, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this interlocutory appeal, appellant City of Minneapolis challenges the district court's denial of its summary-judgment motion on the ground of official immunity against respondent landlords' claims arising out of allegedly unlawful orders of housing-code violations. Because we agree the inspector's conduct was ministerial in nature, we affirm.

FACTS

On July 31, 2017, the City received an anonymous complaint regarding one of the rental units (Unit 5) in a multi-dwelling residential property owned by respondents Andrew and Harriet Ellis (respondents). On August 4, a city inspector conducted an inspection of this unit. On August 15, the inspector issued an Order to Correct Notice (the August Notice), citing 19 conditions to correct (correction orders) before respondents could rent out the unit again. In this August Notice, each code violation cited the applicable section of the Minneapolis Code of Ordinances (M.C.O.) and also provided a brief description of the issue and required remedial action. As noted in this original notice, the correction orders were to be fixed by September 15, after which time a re-inspection of the unit would be conducted.

Two days after the August Notice was issued, respondents sent a letter to the inspector regarding their inability to understand the notice and outlining a number of errors that respondents believed it contained. These purported errors included: incorrect locations of alleged violations, an incorrect term for referring to the building heating facility, incorrect assertions about conditions, inaccurate claims regarding the non-presence of carbon monoxide and smoke detectors, incorrect orders to replace City-approved fire-rated doors, duplicate orders, and orders too vague to understand. Respondents asked the inspector to reconsider the August Notice and to void the incorrect citations.

Approximately one month later, the inspector issued an Extension Notice for the correction orders, which extended the due date for corrections to October 25. Shortly thereafter, respondents, through counsel, sent a second letter requesting that the inspector

void a number of correction orders and provide them additional guidance on other correction orders. In mid-October, respondents sent another letter to the inspector, again expressing concerns regarding alleged inaccuracies in the August Notice and the lack of response/action to remedy these previously raised issues.

On October 25—the previously extended due date to correct the code violations and schedule a re-inspection of the unit—respondents sent the inspector another letter requesting clarification on the correction orders and stating that the unit was nearly ready to rent out again. Two days later, the inspector sent respondents a letter responding to their concerns regarding the August Notice. In this correspondence, the inspector confirmed that several of the original correction orders were accurate but voided six other correction orders, stating that some of those orders had been “wrong” or duplicative and not providing a specific reason for canceling other orders.

On October 30, respondents called the inspector regarding his prior letter and requested that he void more correction orders, including an additional order requiring a licensed pest exterminator to treat the unit. Per respondents’ request, the inspector voided the incorrect extermination order. On October 31, respondents sent the inspector another letter requesting that further errors be revised and that additional correction orders be voided. On November 16, the inspector issued another extension notice which included 12 remaining correction orders, some of which respondents still believed were mistaken or erroneous, as well as a corresponding order to keep the rental unit vacant through mid-December, when the postponed re-inspection would be due to occur.

After continued non-resolution of these citation issues, respondents filed suit against the City in April 2018, alleging unlawful enforcement of the Minneapolis Housing Code and requesting an injunction against enforcement of the correction orders. In November 2019, appellant moved for summary judgment, arguing that respondents' claims against the City were barred by official immunity. In its order, the district court denied the City complete summary judgment, concluding that the issuance, written notification, and canceling of various housing-maintenance-code violation orders were ministerial acts that were not protected by official immunity. This interlocutory appeal by the City follows.

DECISION

Appellant argues that the district court erred when it denied complete summary judgment in the City's favor by concluding that some of respondents' claims against the City were not barred by common-law official immunity.

On a motion for summary judgment, "[t]he 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. "While denial of a motion for summary judgment is not ordinarily appealable, an exception to this rule exists when the denial of summary judgment is based on rejection of a statutory or official immunity defense." *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 655 (Minn. 2004). This is because "immunity from suit is effectively lost if a case is erroneously permitted to go to trial." *Gleason v. Metro. Council Transit Operations*, 582 N.W.2d 216, 218 (Minn. 1998).

On appeal from summary judgment, we must determine whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). When reviewing a denial of summary judgment based on a claim of immunity, we assume the facts alleged by the nonmoving party are true. *Burns v. State*, 570 N.W. 2d 17, 19 (Minn. App. 1997). “Whether government entities and public officials are protected by . . . official immunity is a legal question which this court reviews de novo.” *Johnson v. State*, 553 N.W.2d 40, 45 (Minn. 1996). The party asserting immunity has the burden of demonstrating entitlement to that defense. *Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997).

“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.” *Schroeder v. St. Louis County*, 708 N.W.2d 497, 505 (Minn. 2006) (quotations omitted). “[W]hether official immunity applies turns on: (1) the conduct at issue; (2) whether the conduct is discretionary or ministerial and, if ministerial, whether any ministerial duties were violated; and (3) if discretionary, whether the conduct was willful or malicious.” *Vassallo ex rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014). “The purpose of official immunity is to protect public officials from the fear of personal liability that might deter independent action and impair effective performance of their duties.” *Ireland v. Crow’s Nest Yachts, Inc.*, 552 N.W.2d 269, 272 (Minn. App. 1996) (quotation omitted).

But “common law official immunity does not protect officials when they are charged with the execution of ministerial, rather than discretionary, functions.” *Anderson*, 678 N.W.2d at 655.

Imposing liability for discretionary acts would deter public officials from exercising their judgment when making the difficult decisions often necessary to effectuate the public policies mandated by law. On the other hand, imposing liability for ministerial acts merely encourages public officials to exercise care while performing duties that require little or no independent judgment.

S.W. v. Spring Lake Park Sch. Dist. No. 16, 592 N.W.2d 870, 875 (Minn. App. 1999) *aff’d*, 606 N.W.2d 61 (Minn. 2000).

“[T]he discretionary-ministerial distinction is a nebulous and difficult one.” *J.W. ex rel. B.R.W. v. 287 Intermediate Dist.*, 761 N.W.2d 896, 902 (Minn. App. 2009). When determining whether conduct is discretionary or ministerial, we “focus . . . on the nature of the act.” *Mumm v. Mornson*, 708 N.W.2d 475, 490 (Minn. 2006). A duty is discretionary if it involves “individual professional judgment that necessarily reflects the professional goal and factors of a situation.” *Id.* at 490-91; *see Vassallo*, 842 N.W.2d at 463-65 (holding that police officer’s decision to proceed through intersection at high speed with squad car’s lights on but sirens off was discretionary); *Kari v. City of Maplewood*, 582 N.W.2d 921, 925 (Minn. 1998) (holding that paramedic’s driving in response to emergency was discretionary); *Watson v. Metro Transit Comm’n*, 553 N.W.2d 406, 415 (Minn. 1996) (holding that bus driver’s decision not to stop bus when gang members assaulted and threatened to kill passengers was discretionary); *Pletan v. Gaines*, 494 N.W.2d 38, 41

(Minn. 1992) (holding that police officer’s decision to engage in high-speed chase was discretionary).

By contrast, a “ministerial duty is one that is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts.” *Anderson*, 678 N.W.2d at 656 (quotation omitted). A ministerial duty need not be “imposed by law” and may arise from an “unwritten policy” or “protocol” that dictates a particular course of conduct. *Id.* at 657-59. And the “mere existence of some degree of judgment or discretion will not necessarily confer common law official immunity; rather, the focus is on the nature of the act at issue.” *Id.* at 656; see *Schroeder*, 708 N.W.2d at 506-08 (holding that road grader’s decision to grade against traffic was discretionary but operation of the grader after sunset without activating lights was “clearly ministerial”); *Anderson*, 678 N.W.2d at 657-59 (holding that unwritten protocol imposed ministerial duty on high-school teacher concerning safe operation of table saw); *Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 316 (Minn. 1998) (holding that city ordinance imposed ministerial duty on sidewalk inspector to immediately repair broken sidewalk slabs); *Williamson v. Cain*, 245 N.W.2d 242, 244 (Minn. 1976) (holding that state employees demolishing abandoned house were not entitled to immunity even though job required some degree of decision-making).

Here, the district court determined that the conduct at issue on appeal—issuing violation notices, giving written notice, and canceling incorrect correction orders—consisted of all ministerial acts that required minimal discretion or professional judgment.

When first evaluating the inspector's issuance of violation notices, the district court reasoned:

The notices involved a specific duty arising from fixed and designated facts. . . . Under M.C.O. § 244.40 and 244.50, the term “professional state of maintenance and repair” is defined to mean “such maintenance and repair shall be made in a reasonably skillful manner.” Whether something qualifies as “reasonably impervious to moisture” or whether it is in a “clean and sanitary condition” does not require discretion. Every code section at issue here calls for the exercise of less discretion than the code section at issue in *Press* [*Press v. City of Minneapolis*, 553 N.W.2d 80 (Minn. App. 1996)] that was deemed to provide for purely ministerial action.

No code section at issue requires an inspector to exercise the type of professional judgment or discretion entitling him to official immunity. The code sections contain specific rules and provide for particular actions. Rule drafters endeavor uniform interpretation and application of explicit rules. This is not a situation where individual discretion in application is favored because a uniform application of the housing code is preferred. . . . Generally, an objective standard is called for which holds an inspector to apply the code sections uniformly for every inspection in the city; application here does not call for a subjective standard allowing an inspector to make individual determinations based on myriad competing factors.

The task of identifying code violations is unlike other conduct protected by official immunity. There is little harm in second-guessing the actions of a housing code inspector because it merely encourages inspectors to exercise care and to act reasonably while citing violations. Denying immunity under this circumstance does not implicate the concerns of chilling independent action and efficient performance that official immunity is designed to prevent. Therefore, the conduct of a Fire Inspections Specialist issuing violation notices under the Minneapolis Housing Code is a ministerial act and is not afforded the protection of official immunity.

Similar to issuing violations, the district court determined that providing written notice of such violations was also ministerial because: “The ordinance provides clear and definite requirements to satisfy proper notice. Specifying the violation does not require the exercise of discretion. Providing written notice does not require the evaluation of complex factors or the exercise of independent judgment.” Likewise, the district court reasoned that the inspector’s duty to cancel inaccurate orders also “arises from a fixed set of facts” that “require[] a specific and certain action,” and that “[i]ndividual judgment and discretion are not required” for voiding such orders.

The City argues that the inspector’s issuance of violations required him to exercise discretion and professional judgment because he was applying ambiguous terms from the housing-maintenance code. In particular, the City points to a number of terms that were directly implicated in the correction orders issued by the inspector in this case, including: “professional state of repair,”¹ “reasonably skillful manner,”² “good working condition,”³ “reasonably impervious to water,”⁴ “safe and unobstructed,”⁵ and “clean and sanitary

¹ “Every interior partition, wall, floor, door, window, trim surface, radiator and ceiling shall be kept in a *professional state of repair*.” M.C.O. § 244.510.

² Under M.C.O. § 244.40 and 244.50, the term “professional state of maintenance and repair” is defined to mean “such maintenance and repair shall be made in a reasonably skillful manner.”

³ “Every dwelling unit shall contain a kitchen sink, a water closet, a bathtub or shower and hand lavatory all in good working condition, and properly connected to a water supply and sewage system.” M.C.O. § 244.290.

⁴ “Every toilet room floor and bathroom floor shall be so constructed and maintained as to be reasonably impervious to moisture and all such floor and floor coverings shall be kept in a clean and sanitary condition.” M.C.O. § 244.570.

⁵ “Every habitable unit shall have a safe unobstructed means of egress.” M.C.O. § 244.960.

condition.”⁶ The City argues that, in considering each of these “subjective” terms, the inspector “utilized his discretion and judgment in applying the housing-maintenance code to the circumstances he saw during his inspection” as he determined what each term meant in the particular instances where he decided to issue a correction order.

We agree with the district court that the inspector’s issuance and written notification of violations, as well as his failure to cancel incorrect notices, did not involve the sort of complex, selective decision-making that is protected by common-law official immunity. Official immunity typically protects the conduct of public officials responding to uncertain circumstances that require the weighing of competing values on the grounds that these circumstances offer “little time for reflection” and often involve “incomplete and confusing information” such that the situation requires “the exercise of significant, independent judgment and discretion.” *Pletan*, 494 N.W.2d at 41. When a job is “simple and definite” and involves “merely execution of a specific duty arising from fixed and designated facts,” there is no entitlement to immunity. *Williamson*, 245 N.W.2d at 244.

As the district court emphasized, “There either is or is not a violation of the housing code. The sink either works or it does not. Smoke detectors are present and functional or they are not.” The applicable code provisions contain specific rules, provide for particular actions, and the facts of a housing inspection are simple and definite. Applying discrete terms that are readily understandable to someone of common intelligence, such as “good

⁶ “Every owner of a dwelling containing three (3) or more dwelling units shall be responsible for maintaining in a clean and sanitary condition the communal, shared or public areas of the dwelling and premises thereof.” M.C.O. § 244.610.

working condition” or “professional state of maintenance and repair” (defined in another provision as “made in a reasonably skillful manner”), does not require the sophisticated degree of discretion or professional judgment official immunity covers. *See Elwood v. Rice County*, 423 N.W.2d 671, 677 (Minn. 1988) (“Some degree of judgment or discretion will not necessarily confer discretionary immunity on an official; the crucial focus is upon the nature of the act.”). While the inspector undoubtedly had to make certain decisions in doing his job, “the nature, quality, and complexity of [his] decision-making process,” as much as is discernable from the limited record before us, does not entitle the City to immunity from suit in this case. *See Williamson*, 245 N.W.2d at 244. Nothing in the record establishes that the inspector received, let alone relied on, any sort of specialized experience or training in writing and issuing correction orders. Indeed, the precise conduct in which the inspector engaged and the specific decisions he made are notably absent from the record. Overall, the district court did not err as a matter of law in determining that the inspector’s conduct was ministerial and thus not protected by official immunity.⁷

Finally, appellant asserts that holding the City liable under these circumstances will deter inspectors from finding valid violations and chill overall enforcement of the housing-maintenance code, undermining public safety and welfare. This policy argument by the City is unpersuasive. As the district court concluded:

There is little harm in second-guessing the actions of a housing code inspector because it merely encourages inspectors to exercise care and to act reasonably while citing violations. Denying immunity under this circumstance does not implicate

⁷ Our opinion is limited to the question of official immunity, and we express no opinion as to the viability of respondents’ claims on the merits.

the concerns of chilling independent action and efficient performance that official immunity is designed to prevent.

Affirmed.