

*This opinion is nonprecedential except as provided by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
A20-0657**

Freedom Kerkula,
Respondent,

vs.

City of Moorhead, et al.,
Appellants,

Minnesota Department of Natural Resources,
Cross-Respondent.

**Filed February 22, 2021
Affirmed in part, reversed in part, and remanded
Frisch, Judge**

Clay County District Court
File No. 14-CV-19-3419

Eric J. Magnuson, Philip L. Sieff, Kaitlin M. Ek, Robins Kaplan LLP, Minneapolis,
Minnesota; and

William L.H. Lubov, Lubov Anderson, LLC, Golden Valley, Minnesota (for
respondent/cross-appellant Freedom Kerkula)

Kenneth H. Bayliss, Quinlivan & Hughes, P.A., St. Cloud, Minnesota (for appellants/cross-
respondents City of Moorhead and Moorhead Police)

Keith Ellison, Attorney General, Cicely R. Miltich, Assistant Attorney General, St. Paul,
Minnesota (for cross-respondent Minnesota Department of Natural Resources)

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

NONPRECEDENTIAL OPINION

FRISCH, Judge

This appeal follows the district court's decisions regarding the application of statutory recreational-use immunity in a wrongful-death action arising out of the drowning of a child in a pond maintained by the department of natural resources while the child was enrolled in a summer camp operated by a municipality. The municipality challenges the district court's denial of its motion to dismiss the wrongful-death action on immunity grounds. The child's parent challenges the district court's dismissal of her wrongful-death action against the department of natural resources on immunity grounds. We affirm the district court's denial of the municipality's motion to dismiss. We affirm in part and reverse in part the dismissal of the wrongful-death action against the department of natural resources. And we remand for further proceedings.

FACTS

Nine-year-old Grace Bettie drowned in an artificial pond owned, maintained, and operated by the Minnesota Department of Natural Resources (the DNR) while participating in a summer youth program run by the City of Moorhead and the Moorhead Police Department (collectively, the municipality). Freedom Kerkula, Grace's mother, was appointed trustee for Grace's next of kin and initiated a wrongful-death action against the DNR and the municipality. The DNR and the municipality each filed rule 12 motions to dismiss, claiming immunity from suit. The district court granted the DNR's motion and denied the municipality's motion. For the purposes of this appeal, we accept the following

allegations set forth in the complaint as true. *See Abel v. Abbott Nw. Hosp.*, 947 N.W.2d 58, 68 (Minn. 2020).

During 2018, the municipality operated a summer youth program in Moorhead. Grace was a program participant. The municipality used police officers, employees, chaperones, mentors, and volunteers in the program. The DNR solicited the municipality to conduct program activities at the Buffalo River State Park. The municipality scheduled activities at the park for June 27, 2018, and notified approximately 177 program participants that the activities would include swimming at an artificial pond constructed and maintained by the DNR.

The DNR employed lifeguards to work at the pond and those lifeguards were present on June 27, 2018. The municipality arranged for the DNR's lifeguards to inform participants of the importance of wearing lifejackets, but neither the municipality nor the DNR furnished or provided lifejackets to the children. In fact, the municipality advised parents *not* to provide lifejackets to their children.

The pond had cloudy water, varying levels of depth, and a sudden drop-off that was hidden from view by the cloudy water. The municipality and the DNR were aware of these conditions but failed to advise Grace of them. They also knew that Grace could not swim. Even so, the municipality and the DNR permitted Grace to enter the pond without affording any extra level of supervision.

Other program participants saw Grace struggling in the water at the deep end of the pond shortly before she submerged and failed to resurface. They notified a program chaperone and a DNR lifeguard. Lifeguards searched for Grace on land for 11 minutes

before searching the water. After an additional five minutes of searching the water, lifeguards located Grace's body in the deep end of the pond. Resuscitation efforts failed, and Grace was pronounced dead.

In her complaint, Kerkula set forth allegations of negligence and recklessness against the DNR and the municipality. Generally, she alleged that the DNR constructed and maintained the pond in a dangerous condition; the DNR and the municipality both knew of a dangerous condition likely to cause death or serious injury; they both failed to properly supervise Grace; they both failed to properly train or equip program participants; they both failed to train their agents; they both failed to assess Grace's swimming skill; and they both failed to assist Grace.

The DNR moved to dismiss Kerkula's claims for failure to state a claim upon which relief can be granted pursuant to Minn. R. Civ. P. 12.02(e), arguing that it was entitled to recreational-use immunity pursuant to Minn. Stat. § 3.736, subd. 3(i) (2020), which provides that "the state and its employees are not liable" for "a loss incurred by a user arising from the construction, operation, or maintenance of the outdoor recreation system . . . except that the state is liable for conduct that would entitle a trespasser to damages against a private person." The municipality also moved to dismiss Kerkula's claims for failure to state a claim and for judgment on the pleadings pursuant to Minn. R. Civ. P. 12.03, arguing that it was also entitled to recreational-use immunity pursuant to Minn. Stat. § 466.03, subd. 15 (2020), which affords immunity to municipalities against "[a]ny claim . . . if the same claim would be excluded under [Minn. Stat. §] 3.736, if brought against the state."

Kerkula opposed the motions, arguing that her allegations supported application of the trespasser-liability exception to recreational-use immunity. She also offered additional evidence and invited the district court to convert the rule 12 proceedings into summary-judgment proceedings under Minn. R. Civ. P. 56.01. But the district court expressly declined to convert the rule 12 proceedings into summary-judgment proceedings, concluding that the additional evidence was unnecessary to its decision.

The district court granted the DNR's motion to dismiss. It observed first that the DNR was immune except to the extent its conduct would entitle a trespasser to damages against a private landowner. *See* Minn. Stat. § 3.736, subd. 3(i). Next, it considered that a landowner owes a reasonable duty of care to warn trespassers of hidden artificial dangers on the land. It therefore concluded that the allegations set forth in the complaint failed to support the trespasser-liability exception because “[t]he facts in the [c]omplaint provide that [Grace] knew of the [p]ond, was going swimming in the [p]ond, and appreciated the risk of swimming as she reported that she was a non-swimmer when asked about her swimming ability.”

The district court denied the municipality's motion. The district court reasoned that the municipality was not entitled to section 3.736-like immunity because Kerkula's claims against the DNR were different than the claims against the municipality because the claims against the municipality “do not concern the outdoor recreation system” but instead extended “into the supervision and operation of the youth program in which [Grace] was participating.”

These appeals follow.

DECISION

Kerkula argues that dismissal of her claims against the DNR was improper because the allegations in the complaint establish an exception to the DNR's recreational-use immunity. The municipality argues that the district court erred by concluding that it was not entitled to section 3.736-like immunity.

Whether a party is immune raises a question of law, which we review de novo. *Olson v. Lesch*, 943 N.W.2d 648, 652 (Minn. 2020). To the extent that question requires us to interpret statutes, we do so de novo. *See id.* Typically, we review a district court's rule 12 decision de novo, accepting as true the allegations set forth in the complaint and drawing "all reasonable inferences in favor of the nonmoving party."¹ *DeRosa v. McKenzie*, 936 N.W.2d 342, 346 (Minn. 2019).

¹ Kerkula argues that the district court actually converted the rule 12 proceedings into summary-judgment proceedings because it relied on evidence outside of the complaint in reaching the conclusion that Grace "appreciated the risk of swimming as she reported that she was a non-swimmer." But the complaint contains allegations to support the district court's conclusion, including that "the DNR had actual and/or constructive knowledge that Grace could not swim"; the DNR "[f]ailed to restrict Grace and other non-swimmers to the shallow end of the Pond"; and most importantly, the DNR made an "inquiry of the participants regarding their swimming ability." (Emphasis added.) The district court's conclusion that Grace "reported that she was a non-swimmer" is a reasonable reading of Kerkula's allegations. Accordingly, we agree with the district court that it did not consider evidence outside of the pleadings in deciding the motion to dismiss.

The parties make various substantive arguments in the summary-judgment context based on evidence specifically excluded by the district court. Because we conclude that the district court did not convert the rule 12 proceedings, we do not address the parties' summary-judgment arguments.

I. The district court erred in part by dismissing the claims against the DNR.

Kerkula argues that the district court erred by dismissing her claims against the DNR because her allegations supported application of the trespasser-liability exception to recreational immunity as set forth in Minn. Stat. § 3.736, subd. 3(i). The DNR contends that Kerkula's allegations fail to support application of the trespasser-liability exception. But as a threshold issue, both parties dispute which standard of care applies in the context of the exception.

A. The child-trespasser standard of care does not apply.

The district court concluded that Kerkula failed to allege facts supporting an exception to the DNR's recreational-use immunity based on conduct that would entitle an *adult* trespasser to damages. Kerkula contends that her allegations support the trespasser-liability exception on alternative theories: one premised on the DNR's breach of the standard of care owed to adult trespassers, and the other arising from the DNR's breach of the heightened standard of care owed to child trespassers. The DNR contends that only the general standard of care owed to adult trespassers applies.

The state and its employees are not liable for “a loss incurred by a user arising from the construction, operation, or maintenance of [an] outdoor recreation system . . . except that the state is liable for conduct that would entitle a trespasser to damages against a private person.” Minn. Stat. § 3.736, subd. 3(i). Minnesota follows the Second Restatement of Torts, *see Sirek by Beaumaster v. State, Dep't of Nat. Res.*, 496 N.W.2d 807, 810 (Minn. 1993), which sets forth the general standard of care applicable to adult trespassers and the heightened standard of care owed to child trespassers. The general standard provides:

A possessor of land who knows, or from facts within his knowledge should know, that trespassers constantly intrude upon a limited area of the land, is subject to liability for bodily harm caused to them by an artificial condition on the land, if

- (a) the condition
 - (i) is one which the possessor has created or maintains and
 - (ii) is, to his knowledge, likely to cause death or serious bodily harm to such trespassers and
 - (iii) is of such a nature that he has reason to believe that such trespassers will not discover it, and
- (b) the possessor has failed to exercise reasonable care to warn such trespassers of the condition and the risk involved.

Restatement (Second) of Torts § 335 (1965). The provision applicable to child trespassers provides:

A possessor of land is subject to liability for physical harm to children trespassing thereon caused by an artificial condition upon the land if

- (a) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass, and
- (b) the condition is one of which the possessor knows or has reason to know and which he realizes or should realize will involve an unreasonable risk of death or serious bodily harm to such children, and
- (c) the children because of their youth do not discover the condition or realize the risk involved in intermeddling with it or in coming within the area made dangerous by it, and
- (d) the utility to the possessor of maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to children involved, and
- (e) the possessor fails to exercise reasonable care to eliminate the danger or otherwise to protect the children.

Restatement (Second) of Torts § 339 (1965). The scope of the DNR’s duty to Grace—that is, whether the general- or child-trespasser standard of care applies—presents a question of law we review de novo. *See Zacharias v. Minn. Dep’t of Nat. Res.*, 506 N.W.2d 313, 319 (Minn. App. 1993) (“The scope of respondents’ legal duty is a question of law for the court to decide.”), *review denied* (Minn. Nov. 16, 1993); *see also Johnson v. Washington County*, 518 N.W.2d 594, 599-600 (Minn. 1994).

Minnesota courts have consistently applied only the general standard of care in similar cases. In *Sirek*, the supreme court considered whether the DNR was immune from suit in an action brought by the parents of a child injured when she was struck by a vehicle while crossing a road in a state park. 496 N.W.2d at 809. The supreme court considered evidence that children were rarely unaccompanied by adults in the park and agreed with the premise that “[w]hen small children are being watched by their parents, or entrusted persons in supervision, landowners may be relieved of a duty to warn them of or remove dangerous instrumentality [sic] the danger from which is apparent.” *Id.* at 811 (quotation omitted). The *Sirek* court further explained that imposition of a heightened duty would “swallow the immunity” contemplated by the legislature and would effectively require the DNR and similar entities to childproof state parks. *Id.* It therefore applied the general standard rather than the child-trespasser standard. *Id.* The supreme court reached a similar conclusion in *Johnson*, 518 N.W.2d at 597-99, reasoning that the child-trespasser standard of care was inapplicable because the decedent was accompanied by adult supervisors from his school district. And in *Zacharias*, we concluded that the child-trespasser standard did

not apply when the injured child was accompanied by two adults at a pond. 506 N.W.2d at 319.

The same analysis applies here. Kerkula argues that Grace was “in effect” not accompanied or supervised by the municipality’s agents given their inattention. We see no distinction between the ineffective adult supervision in *Sirek*, *Johnson*, and *Zacharias* and the ineffective adult supervision here. The complaint contains allegations that Grace visited the pond as part of the summer program and “was under the care and supervision of the Police and the Program.” As the supreme court explained in *Sirek*, when children are entrusted to another’s care and supervision, the duty to supervise rests primarily with the entrusted person. 496 N.W.2d at 811. Accepting the allegations in the complaint as true, the DNR owed Grace the same duty of care that it owed to adult trespassers.

B. The allegations in the complaint support an exception to the DNR’s recreational-use immunity based on its failure to warn of a concealed danger.

The district court reasoned that the trespasser-liability exception did not apply because Grace knew of the pond and appreciated the risk of swimming in it. Kerkula argues that the allegations that the DNR failed to warn Grace of concealed dangers within the pond were sufficient to support the trespasser-liability exception. The DNR responds that dismissal was appropriate because Kerkula failed to allege the existence of hidden or non-obvious danger and because she alleged that DNR staff warned Grace of the danger of swimming.

To support the trespasser-liability exception, Kerkula was required to allege that: (1) the DNR knew or should have known that trespassers constantly intrude into the park; (2) there was an artificial condition on the land; (3) the condition was created or maintained by the DNR; (4) the DNR knew the condition was likely to cause death or serious bodily harm to trespassers; (5) the condition was “of such a nature” that the DNR had reason to believe trespassers would not discover it; and (6) the DNR failed to exercise reasonable care to warn trespassers of the condition and risk involved. *See* Restatement (Second) of Torts § 335.

The complaint contains allegations as to each element of the trespasser-liability exception to the DNR’s recreational-use immunity. Kerkula alleged that the DNR created and maintained the pond in a dangerous condition based on its “lack of clarity” and its “varying depths . . . including a sudden drop-off in depth.” She alleged that those dangers were hidden and not obvious and that the DNR *knew* the pond “had concealed dangers including . . . lack of clarity of the water and sudden changes in depth of the water, and that those dangers were likely to cause serious injury or death.” And she alleged that the DNR “failed to exercise reasonable care to warn Grace of the condition and risks involved.” These allegations, taken as true, meet the elements of the trespasser-liability exception.

The DNR argues that the pond itself is not an artificial condition “of such a nature that [the DNR had] reason to believe that . . . trespassers [would] not discover it.” Restatement (Second) of Torts § 335(a)(iii).² “Usually, recovery will be permitted only

² The municipality suggested at oral argument that the pond and drop-off were not “artificial conditions” for the purposes of our analysis because they duplicated natural

where . . . the condition is hidden or otherwise non-obvious.” *Sirek*, 496 N.W.2d at 812 (quotation omitted). And the supreme court has acknowledged that “[i]t is generally conceded that the ordinary body of water, even though it be artificial, while it does involve the risk of death or serious harm, does not constitute an unreasonable risk thereof because even a child to some extent appreciates the risks that are connected with it.” *Davies v. Land O’Lakes Racing Ass’n*, 69 N.W.2d 642, 647 (Minn. 1955).

But Kerkula does not allege that the pond *by itself* constitutes a dangerous condition upon the land and instead alleges that the hidden drop-off *within* the pond is a dangerous condition. Our caselaw recognizes that, in addition to a general risk posed by a body of water, other dangers might be concealed within it. See, e.g., *Johnson*, 518 N.W.2d at 600 (rejecting claim of hidden dangers where pool had “gradually-sloped bottom with no drop-offs and . . . no unusual currents”); *Davies*, 69 N.W.2d at 647 (stating “a possessor of land will not ordinarily be held liable for injuries occurring in . . . artificial bodies of water *that are free from traps or concealments*” (emphasis added)); *Zacharias*, 506 N.W.2d at 319

conditions. See *Johnson v. Washington County*, 506 N.W.2d 632, 637 (Minn. App. 1993) (concluding that Lake Elmo Preserve pond was not artificial condition because change in natural environment duplicating nature does not create artificial condition), *aff’d*, 518 N.W.2d at 599-600 (stating apparent agreement with conclusion that pond was not artificial condition). But the municipality did not raise this argument in their principal or reply briefs, and we need not address arguments raised for the first time at oral argument. See *Getz v. Peace*, 934 N.W.2d 347, 353 n.3 (Minn. 2019). The municipality also raised for the first time in their reply brief an argument that the cloudy water was not an “artificial condition.” Parties generally may not raise new arguments for the first time in reply briefs. See *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010). Even if that argument were not forfeited, the municipality conflates the danger of the drop-off with the condition concealing the danger—the cloudy water.

(involving swimming pond where children knew of deep area in the pond, were warned against going near it, and where pond “did not involve any hidden dangers”).

The allegations set forth in the complaint distinguish this case from *Johnson* and *Zacharias*. Unlike *Johnson*, which involved a pool with a gradual slope and no drop-off, 518 N.W.2d at 600, and *Zacharias*, which concerned children warned of a deep area in a swimming pond containing no hidden dangers, 506 N.W.2d at 319, Kerkula alleged that the drop-off was concealed from Grace’s view by murky waters. We decline to limit our analysis of the “condition” to the pond itself, and instead conclude that the “condition” may include dangers concealed within the pond. By stating that the pond’s murky waters concealed the drop-off, Kerkula alleged the existence of a condition of such a nature that the DNR had reason to believe that trespassers would not discover it.³

Accordingly, we reject the DNR’s argument that Grace appreciated the danger of swimming in the pond because she reported she was a non-swimmer. This argument rests on the mistaken premise that the only relevant condition is the pond itself as a body of water rather than the concealed drop-off specifically within the pond.

The DNR alternatively argues that the allegations in the complaint do not support application of the trespasser-liability exception because the DNR warned participants of the dangers of swimming and therefore satisfied its duty to exercise reasonable care to warn

³ The parties dispute the applicability of the supreme court’s analysis in *Senogles v. Carlson*, in which the court concluded that fact questions existed regarding whether a river posed an open and obvious danger to a child invitee given his experience and knowledge. 902 N.W.2d 38, 43-47 (Minn. 2017). Because we address the nature of a condition allegedly concealed within the pond rather than the pond generally, *Senogles* is inapposite.

trespassers of the condition and risk involved. *See* Restatement (Second) of Torts § 335(b). The DNR refers to the allegation in the complaint that the municipality “arranged for the DNR to provide a safety discussion to participants in the Program that included information regarding the importance of U.S. Coast Guard Approved life jackets.” To the extent the allegation can be construed as a warning of a risk, such a warning only relates to the *general* risk of the pond itself as opposed to an advisory regarding the hidden danger of the concealed drop-off within the pond.⁴

Accordingly, and based upon the “particular facts” as alleged in this case, *see Davies*, 69 N.W.2d at 647, the complaint sets forth allegations sufficient to support application of the trespasser-liability exception. The district court erred by dismissing Kerkula’s claims against the DNR arising from its alleged failure to warn Grace of the concealed, dangerous condition within the pond. We reverse in part the dismissal of Kerkula’s claims against the DNR and remand for further proceedings.

C. The DNR is immune from liability for claims premised on the DNR’s failure to adequately supervise Grace.

The DNR contends that it is immune from claims related to the alleged failure of its lifeguards to adequately supervise and assist Grace. Kerkula contends that her failure-to-supervise allegations are “part and parcel of [her] claim that the DNR failed to warn Grace about or protect her from the hidden dangers of the Pond.”

⁴ The municipality argues that Kerkula’s counsel conceded before the district court that a DNR naturalist specifically warned the children about the drop-off. Kerkula’s counsel referred to summary-judgment evidence that was explicitly excluded by the district court, and the statement was made in the broader context of Kerkula’s counsel urging the district court to convert the rule 12 proceedings into summary-judgment proceedings.

The DNR is immune from claims premised on the failure of its lifeguards to supervise or assist Grace. In *Zacharias*, we explained that recreational-use immunity precluded claims against a lifeguard and maintenance worker because their duties were “operations” of the state park. 506 N.W.2d at 320. We also concluded that the legislature intended to provide immunity even in cases of negligent lifeguarding when the state *elected* to staff its facilities with lifeguards. *Id.* at 321. In *Johnson*, the supreme court adopted this analysis from *Zacharias* and held that a county was immune from a wrongful-death claim because its lifeguards “were providing recreational services as part of the *operation* of the park” and so “[t]heir actions . . . [were] covered by the immunity granted in Minn. Stat. § 466.03, subd. 6e.” 518 N.W.2d at 600 (emphasis added).

These cases control the outcome here. The DNR’s lifeguards were engaged in the operation of the park. The allegations that they failed to adequately supervise or assist Grace are distinguishable from allegations that they failed to *warn* Grace of dangerous, concealed conditions within the pond. Further, the trespasser-liability exception to recreational-use immunity concerns an artificial condition on the land and the landowner’s failure “to warn such trespassers of the condition and the risk involved.” Restatement (Second) of Torts § 335(b). The exception does not contemplate a landowner’s failure to supervise or assist a trespasser.

To the extent Kerkula alleged wrongful-death claims premised on the DNR’s lifeguards’ failure to adequately supervise Grace, we affirm the district court’s dismissal of those claims.

II. The district court properly denied the municipality’s motion to dismiss and for judgment on the pleadings.

The municipality argues the district court erred in declining to extend section 3.736-like immunity pursuant to Minn. Stat. § 466.03, subd. 15, which provides that municipalities are immune from “[a]ny claim against [the] municipality, if the same claim would be excluded under section 3.736, if brought against the state.”⁵ The municipality argues that because Kerkula’s claims of negligent supervision would fail against the DNR, such claims must also fail against the municipality. Kerkula contends that the DNR is not immune, that the municipality is not immune even if the DNR is, and that the municipality is liable because it assumed a special relationship with Grace and Kerkula.

As we have already decided, Kerkula’s claims arising from the failure of DNR lifeguards to supervise or assist Grace are barred pursuant to Minn. Stat. § 3.736, subd. 3(i).

⁵ The municipality argues that Kerkula forfeited any opposition to the immunity claim because she argued that immunity was not warranted under Minn. Stat. § 466.03, subd. 6e (2020), as opposed to subdivision 15. “[F]orfeiture is the failure to make the timely assertion of a right.” *State v. Beaulieu*, 859 N.W.2d 275, 278 n.3 (Minn. 2015). Typically, issues which are not briefed are forfeited. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). Whether a party forfeited an argument is a question of law. *See, e.g., State v. Pakhnyuk*, 926 N.W.2d 914, 918 (Minn. 2019).

It is true that Kerkula failed to specifically address subdivision 15 in her responsive memorandum. She also argued that the municipality was not immune because it did not own the park or the pond, an argument specific to subdivision 6e. But Kerkula further argued that the plural “Defendants” were not immune because the trespasser-liability exception applied to their conduct. And although Minn. Stat. § 466.03, subd. 6e, was not the basis for the municipality’s motion to dismiss, it contains the same trespasser-liability exception as Minn. Stat. § 3.736, subd. 3(i). Kerkula argued that the municipality knew of the drop-off, had a duty to provide better supervision, and failed to adequately supervise and protect Grace. Regardless of Kerkula’s failure to specifically address the appropriate subdivision, she presented arguments that recreational-use immunity did not bar her claims against the municipality and therefore did not forfeit her opposition to the municipality’s defense.

The municipality insists that there “is no meaningful difference in the position of the DNR and the [municipality].” We disagree.

Unlike the DNR, the municipality did not own the park, construct the pond, or employ lifeguards to safeguard the pond’s visitors. The distinction is crucial. In *Zacharias*, we rejected a claim arising from the “negligent supervision and negligent performance [of a lifeguard] *while on duty*” because the employee was “operating . . . part of the outdoor recreation system at the time of [his] allegedly negligent acts.” 506 N.W.2d at 320 (emphasis added). Thus, the statute immunized the state and the lifeguard against claims of negligent supervision because they arose from the “operation” of the outdoor recreation system. *See id.*

Although Kerkula alleged that the municipality and the DNR similarly failed to supervise and assist Grace, Kerkula did not allege that the municipality was in any way operating the park. Instead, the agents of the municipality were visitors at the park. And because the allegedly negligent supervision of Grace did not occur as an “operation” of the outdoor recreation system, such a claim would not be excluded pursuant to Minn. Stat. § 3.736, subd. 3(i). Accordingly, Minn. Stat. § 466.03, subd. 15, did not afford the municipality section 3.736-like immunity. We therefore affirm the district court’s denial of the municipality’s motion.⁶

Affirmed in part, reversed in part, and remanded.

⁶ We do not address Kerkula’s argument that the municipality assumed a special relationship with her and Grace. The special-relationship doctrine concerns the circumstances in which a duty to protect arises, *see Bjerke v. Johnson*, 742 N.W.2d 660, 665 (Minn. 2007), but has no bearing upon the application of immunity at issue here.