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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0720**

Wade S. Nukala,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 15, 2021
Affirmed
Gaïtas, Judge**

St. Louis County District Court
File No. 69VI-CV-19-308

Scott Wilson, Scott Wilson Law Firm, PLLC, Minneapolis, Minnesota; and

James W. Balmer, Falsani, Balmer, Peterson & Balmer, Duluth, Minnesota (for appellant)

Keith Ellison, Attorney General, Kathryn Iverson Landrum, Julianna F. Passe, Assistant Attorneys General, St. Paul, Minnesota (for respondent)

Considered and decided by Gaïtas, Presiding Judge; Connolly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Wade Nukala challenges the summary-judgment dismissal of his negligence claim against respondent Minnesota Department of Natural Resources (DNR) arising out of a snowmobile accident on a state trail. Nukala asserts that the district court

erred by concluding that his claim is barred by recreational-use immunity under Minnesota Statutes section 3.736, subdivision 3(i) (2020). He argues that there are genuine issues of material fact regarding whether the trespasser exception to recreational-use immunity applies. Because there are no genuine issues of material fact barring the application of recreational-use immunity, we affirm.

FACTS¹

The accident

On a mostly sunny morning in February 2018, Nukala was snowmobiling with his adult son on the Arrowhead Trail, which is a state trail in northern Minnesota maintained by the DNR for public recreational use. Nukala was traveling north at about 50 miles per hour, which was the posted speed limit, and his son was ahead of him and out of sight.

After rounding a curve, Nukala saw a snow berm² ahead, located where the Arrowhead Trail intersected a private driveway. On the other side of the driveway, there was a second berm, with both berms running perpendicular to the trail. The berms were at least one-foot high, and Nukala believed they were caused by earlier plowing of the driveway. Nukala also saw a stop sign marking the intersection of the Arrowhead Trail and driveway. The distance between the curve and the stop sign, based on photographs

¹ The facts are derived from the summary-judgment record and are presented in the light most favorable to Nukala. See *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002).

² The parties use the term “berm” to refer to a mound of snow.

taken later, was about 200 to 250 feet. Nukala's son had also observed the berms and stop sign upon rounding the curve, but continued without stopping and "jumped" the berms.

When Nukala initially saw the first berm, he slowed down and stood up slightly to get a better view. He then decided that he did not have time to stop before reaching the berm, so he accelerated and attempted to jump it. He was unsuccessful and crashed his snowmobile, which caused injuries, including to his back.

Immediately after the crash, another snowmobiler approached, jumped the berm, and stopped. That snowmobiler ran back up the trail to signal his approaching companion. The two snowmobilers then assisted Nukala. Meanwhile, Nukala's son eventually circled back and found Nukala. The two rode their snowmobiles back to the son's house, and Nukala later went to the emergency room.

DNR trail maintenance and policies

Some intersections along the Arrowhead Trail are marked not only by stop signs, but also by "stop ahead" signs in advance of the stop signs. On the day of the accident, there was no "stop ahead" sign before the intersection with the private driveway on the northbound side of the trail, where Nukala was traveling. But the southbound side of the trail did have a "stop ahead" sign before the intersection.³ The DNR Maintenance and Grooming Manual, which describes policies pertaining to sign placement, requires stop signs to mark trail intersections with traveled public roads or railroads. "Stop ahead" signs

³ The DNR notes that, although it does not concede the absence of a sign, for the purposes of the summary-judgment motion and viewing the evidence in the light most favorable to Nukala, there was no northbound "stop ahead" sign present on the day of the accident.

must also be placed at least 300 feet before traveled public roads or railroads. Stop signs and “stop ahead” signs may also be used in other circumstances, such as for private roads, at the discretion of DNR staff. According to DNR staff, “stop ahead” signs are not often placed at infrequently used, nonpublic intersections. DNR policy discourages the overuse of signage, as the presence of too many signs can result in trail users becoming desensitized and ignoring them.

During the snowmobiling season, DNR trail groomers groom each segment of the Arrowhead Trail twice per week. Trail groomers also monitor whether necessary trail signage is in place. According to DNR records and testimony from the trail groomer responsible for the relevant segment of trail, the intersection where the accident occurred had been groomed within the last two days. The groomer also testified that if he became aware of any snow berms on his stretch of trail, he would clear them immediately. He believed he had cleared snow berms at the private driveway only a few times over the past ten or so years.

The groomer was not aware of any missing signage near the intersection and, before Nukala’s accident, the DNR had not received any citizen complaints or reports of problems related to the intersection. DNR staff believed the private driveway to be infrequently used or plowed in the winter. The DNR does not plow private driveways.

This lawsuit

Nukala sued the DNR, alleging that the DNR was negligent in failing to adequately warn snowmobilers about the intersection between the Arrowhead Trail and the private driveway. After the close of discovery, the DNR moved for summary judgment, arguing

that Nukala’s claim is barred by recreational-use immunity, vicarious official immunity, and statutory immunity, and asserting that no genuine issue of material fact exists as to proximate causation. The district court granted summary judgment in favor of the DNR on the basis of recreational-use immunity, and declined to reach the DNR’s alternative arguments.

This appeal follows.

DECISION

Appellate courts “review the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law.” *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). A moving party is entitled to 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. “Summary judgment is appropriate when a governmental entity establishes that its actions are immune from liability.” *In re Alexandria Accident of Feb. 8, 1994*, 561 N.W.2d 543, 546 (Minn. App. 1997), *review denied* (Minn. June 26, 1997). The applicability of governmental immunity is a matter of law that is reviewed de novo. *Johnson v. State*, 553 N.W.2d 40, 45 (Minn. 1996).

The district court determined that the DNR is immune from liability in this lawsuit based on the recreational-use immunity statute, Minnesota Statutes section 3.736, subdivision 3(i). The recreational-use immunity statute provides that the State of Minnesota and its agencies are immune from liability for losses “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.” *Id.* Recreational-use immunity is intended to preserve Minnesota’s resources for outdoor recreational opportunities by limiting the state’s tort liability. *Green-Glo Turf Farms, Inc. v. State*, 347 N.W.2d 491, 495 (Minn. 1984); *see Ariola v. City of Stillwater*, 889 N.W.2d 340, 354 (Minn. App. 2017) (discussing trespasser exception to recreational-use immunity), *review denied* (Minn. Apr. 18, 2017). In limiting the state’s potential liability for injuries that may occur in Minnesota’s expansive outdoor recreation system, “the legislature weighed the policies behind the Outdoor Recreation Act against the potential cost of compensating injuries that unfortunately and tragically may occur in the outdoor recreation system.” *Zacharias v. Minn. Dep’t of Nat. Res.*, 506 N.W.2d 313, 321 (Minn. App. 1993) (citation omitted), *review denied* (Minn. Nov. 16, 1993); *see also Green-Glo Turf Farms, Inc.*, 347 N.W.2d at 494-95 (explaining that “[n]atural conditions are to be expected in a recreational area, and the owner should not be required to patrol the area or to make it safe for those who enter upon it”).

The Arrowhead Trail is designated a state trail by Minnesota Statutes section 85.015, subdivision 13(a)(3) (2020), and qualifies as part of the “outdoor recreational system.” Minn. Stat. § 86A.04 (2020). Nukala sued the DNR for negligence, alleging that the DNR failed to adequately warn snowmobilers about the intersection between the Arrowhead Trail and the private driveway. His claim accordingly falls squarely within the recreational-use immunity statute, and the parties agree that the claim fails as a matter of law unless the trespasser exception referenced in that statute applies. *See* Minn. Stat. § 3.736, subd. 3(i).

In interpreting the trespasser exception referenced in the recreational-use immunity statute, Minnesota courts have adopted the Restatement (Second) of Torts § 335 (1965). *Sirek by Beaumaster v. State, Dep't of Nat. Res.*, 496 N.W.2d 807, 810-12 (Minn. 1993). As a general rule, landowners do not owe a duty of care to trespassers. *Id.* at 809. Under the Restatement's trespasser exception, "a landowner will be liable only for failing to exercise reasonable care to warn trespassers about hidden, artificial dangers created or maintained by the landowner." *Id.* at 810 (summarizing the Restatement (Second) of Torts § 335). The landowner is not under a duty to trespassers to remove such conditions, but instead to give "adequate warning." *Id.* Accordingly, to prevail under the trespasser exception to recreational-use immunity, a plaintiff "must establish that injury or death was caused by (a) a concealed or hidden artificial condition that was (b) created or maintained by the [defendant], and that (c) the [defendant] knew that the condition was likely to cause death or serious bodily harm." *Ariola*, 889 N.W.2d at 354.

The district court granted the DNR's summary-judgment motion because it determined that Nukala could not establish that his injury was caused by a condition that was hidden or concealed, that the DNR had knowledge the condition was likely to cause death or serious bodily harm, or that the DNR failed to exercise reasonable care in warning about the risk. Nukala challenges each of these determinations on appeal.

As an initial matter, Nukala argues that the "condition" that caused his injury was the intersection of the Arrowhead Trail and the private driveway. He asserts that the intersection "is a hazard because of activity at the intersection that foreseeably interferes with traffic on the trail—like plowing." In other words, he argues that the intersection

itself is a dangerous condition because it creates the possibility of snow berms that endanger snowmobilers.

The DNR urges us to reject Nukala's contention that the intersection is the condition that caused his injury, as his own deposition testimony identifies the snow berm as the cause of the accident. The district court, for its part, noted that Nukala's identification of the dangerous condition at issue has shifted during this lawsuit; Nukala initially identified it as either the snow berm or the lack of a "stop ahead" sign before settling on the intersection. The district court applied the trespasser-exception analysis as Nukala requested, using the intersection as the condition, but noted that the argument would fail if the berm were the condition because it was neither "concealed nor artificial."

We are not persuaded that the Arrowhead Trail's intersection with the private driveway was the "condition" that caused Nukala's injury for the purposes of applying the trespasser-exception analysis. Nukala asserts that the crash occurred when he unsuccessfully tried to "jump" the snow berm, which he alleges was not visible in time to stop. The berm accordingly seems to be the "condition" that caused the injury.

When we apply the trespasser-exception analysis to the berm as the condition, Nukala's argument necessarily fails. Nothing in the record suggests that the DNR "created or maintained" the snow berm. *Ariola*, 889 N.W.2d at 354. To the contrary, the trail groomer assigned to the intersection testified that he removes snow berms "immediately" once he becomes aware of them. And Nukala himself testified that he believed the berm was caused by the plowing of the private driveway. DNR personnel do not plow private driveways. There is also no indication that the DNR had any knowledge of the snow berm

before the accident because the record shows that the intersection had been groomed within the last two days and any berms would have been removed. Accordingly, even viewing the evidence in the light most favorable to Nukala, there are no genuine issues of material fact as to the creation and knowledge elements of the trespasser exception, and the exception does not apply as a matter of law. *See STAR Ctrs., Inc.*, 644 N.W.2d at 76; *Ariola*, 889 N.W.2d at 354-55, 360.

But even if the intersection—rather than the berm—can properly be considered the condition that caused Nukala’s injury, the district court correctly determined that no genuine issue of material fact exists as to whether the trespasser exception to recreational-use immunity applies. Again, to invoke the trespasser exception and overcome the DNR’s recreational-use immunity, Nukala needed to point to facts that show that the intersection was “(a) a concealed or hidden artificial condition that was (b) created or maintained by the [DNR], and that (c) the [DNR] knew that the condition was likely to cause death or serious bodily harm.” *Ariola*, 889 N.W.2d at 354. We focus our analysis on the third element—that the DNR knew the condition was likely to cause death or serious bodily harm—as we conclude that it is dispositive. Because Nukala must prove each element to show that the trespasser exception applies, and because we may affirm a summary-judgment award if it can be sustained on any ground, we need not reach the other two elements. *See id.* at 353.

The third element of the trespasser-exception to recreational-use immunity contains two prongs. Under the first, Nukala must show that the intersection was in fact likely to

cause death or serious bodily harm, and under the second, he must show that the DNR had actual knowledge of that likelihood. *See id.* at 354-55. We address each prong in turn.

Conditions likely to cause death or serious bodily harm “generally have inherently dangerous propensities, such as high voltage electrical wire.” *Stiele ex rel. Gladieux v. City of Crystal*, 646 N.W.2d 251, 255 (Minn. App. 2002) (quotation and citation omitted). It is not enough that the condition “might” cause serious bodily harm; such harm must be *likely*. *Id.* “The injury suffered does not define the requirement. Otherwise, any artificial condition ‘could be’ likely to cause death or serious bodily harm under the right circumstances.” *Johnson v. State*, 478 N.W.2d 769, 773 (Minn. App. 1991), *review denied* (Minn. Feb. 27, 1992).

Nukala argues that the intersection was likely to cause death or serious bodily harm based on “logic alone.” He asserts that any intersection “may, at varying intervals, interfere with traffic, and thus presents a danger of death or seriously bodily harm.” Nukala argues that this is especially true when the traffic on the Arrowhead Trail consists of fast-moving snowmobiles. He also asserts that obstructions of traffic—such as snow berms—necessarily occur at intersections.

The DNR responds that Nukala cannot show that the Arrowhead Trail’s intersection with the rarely used private driveway created a condition likely to cause death or serious bodily harm. Additionally, the DNR argues that Nukala makes no clear connection between the presence of intersections and the possibility of snow berms, which were the cause of the accident. The DNR points out that there is no record evidence showing that a snow berm is a common condition at intersections, nor is there evidence that snow berms

at intersections predictably lead to death or serious bodily harm. The district court agreed with the DNR, noting that snowmobile trails “commonly and necessarily intersect with private driveways” and that Nukala had not presented evidence that these types of intersections are likely to cause death or serious bodily harm.

Based on our review of the record we agree—Nukala has not provided any specific evidence suggesting that the intersection between the Arrowhead Trail and the private driveway posed a likelihood of death or serious bodily harm. A party opposing summary judgment must offer more than “general assertions” to show a genuine issue of material fact. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). The party “must extract *specific*, admissible facts from the voluminous record and particularize them for the [court].” *Kletschka v. Abbott-Northwestern Hosp., Inc.*, 417 N.W.2d 752, 754 (Minn. App. 1988), *review denied* (Minn. Mar. 30, 1988). Nukala’s assertions about the dangers of trail intersections with private driveways are mere conjecture. In contrast, the unrefuted record evidence suggests that the private driveway at issue was rarely used or plowed in the winter. The trail groomer responsible for that section of the trail testified that, to his recollection, snow berms had only appeared near this location a few times in the past ten-plus years. And the DNR had not received any citizen complaints or reports of problems connected to the private driveway.

Moreover, Nukala does not point to evidence suggesting that snow berms like the one at issue here—assuming, as he suggests, that berms are a common occurrence at intersections—are likely to cause death or serious bodily harm. At most, Nukala has shown that intersections and their accompanying berms generally create a *possibility* of death or

serious bodily harm. But the mere possibility that a death or serious bodily harm could result is not enough to satisfy the trespasser exception; such an outcome must be likely. *Stiele*, 646 N.W.2d at 255. Accordingly, the district court correctly concluded that there is no genuine issue of material fact as to whether the intersection between the Arrowhead Trail and the private driveway was a condition likely to cause death or serious bodily harm.

Even if the intersection was a condition likely to cause death or serious bodily harm, Nukala must also show that the DNR had actual knowledge⁴ of the dangerous condition. *Ariola*, 889 N.W.2d at 356. It is not enough that the defendant have general knowledge about circumstances surrounding an accident; the defendant must specifically have “actual knowledge of a condition that is *likely* to cause death or serious bodily injury.” *Id.* at 357. And “[t]he lack of complaints has been held to be sufficient to demonstrate lack of knowledge.” *Prokop v. Indep. Sch. Dist. No. 625*, 754 N.W.2d 709, 715 (Minn. App. 2008).

Nukala contends that the district court failed to construe all reasonable inferences in his favor in regards to evidence of the DNR’s knowledge, and he asserts that a genuine issue of material fact accordingly exists for trial. Specifically, to demonstrate the DNR’s

⁴ Nukala asks us to overrule our recent precedent and adopt a constructive-knowledge, as opposed to actual-knowledge, standard for the trespasser exception. In *Ariola*, we surveyed precedent on the knowledge requirement and found that six published cases of this court applied an actual-knowledge requirement, while only one required just constructive knowledge. 889 N.W.2d at 355. On the basis of stare decisis, and because an actual knowledge requirement comports with the text of the Restatement (Second) of Torts § 335, we overruled the outlier case and solidified the actual-knowledge requirement. *Id.* at 356 (overruling *Noland v. Soo Line R.R.*, 474 N.W.2d 4, 6 (Minn. App. 1991)). We see no compelling reason to now overrule *Ariola* and the cases it cites, and accordingly apply the actual-knowledge requirement.

knowledge, he points to a statement by the trail groomer that the groomer “expected” that a “stop ahead” sign was present at the intersection. Nukala argues that this “expectation” gives rise to a reasonable inference that the groomer thought that a “stop ahead” sign should have been present, and therefore the intersection was dangerous. He also points to a statement by another DNR employee that snowmobilers often disregard stop signs, arguing that this statement permits a reasonable inference that intersections that lack “stop ahead” signs are dangerous.

The DNR responds that, while the record evidence shows it had general knowledge of the intersection, no evidence suggests it had actual knowledge that the intersection was likely to cause death or serious bodily injury. According to the DNR, the record confirms that its employees never received complaints or reports about the conditions at this intersection, and believed the private driveway to be rarely used or plowed in the winter.

We agree with the DNR. While the record evidence that Nukala cites may permit a reasonable inference that the DNR knew private driveways intersecting snowmobile trails pose *some degree* of risk to snowmobilers, it does not support a reasonable inference that the DNR knew that the specific intersection—the intersection of the Arrowhead Trail and the private driveway where the accident occurred—was *likely to cause death or serious bodily harm*. Nukala has not offered more than “general assertions” as to the DNR’s knowledge of the type of serious risk required by the trespasser exception. *See Nicollet Restoration, Inc.*, 533 N.W.2d at 848; *Stiele*, 646 N.W.2d at 255. And again, the undisputed evidence shows that the driveway was rarely used or plowed in the winter and that the DNR had never received complaints about this intersection. *See Prokop*, 754

N.W.2d at 715. The district court correctly concluded that there is no genuine issue of material fact as to whether the DNR knew that the intersection was likely to cause death or serious bodily harm.

Again, because Nukala has failed to show a genuine issue of material fact as to the third element of the trespasser exception to recreational-use immunity, and the record conclusively shows that the DNR did not have actual knowledge that the intersection was likely to cause death or serious bodily harm, we need not reach the other elements of the exception. *See Ariola*, 889 N.W.2d at 353. Nukala's claim that the trespasser exception applies to the intersection fails as a matter of law.

In sum, the district court correctly determined that Nukala cannot overcome the recreational-use immunity protection afforded to the DNR by reliance on the narrow trespasser exception to that immunity. *See* Minn. Stat. § 3.736, subd. 3(i). The record shows that the snow berm that caused the accident was not created or maintained by the DNR and that the DNR did not have any knowledge of it. *See Ariola*, 889 N.W.2d at 543. And even if the intersection caused the accident, the record evidence does not permit a reasonable conclusion that the intersection was likely to cause death or serious bodily harm or that the DNR had actual knowledge of that likelihood. *See id.* The district court properly granted summary-judgment dismissal of Nukala's negligence claim.⁵

Affirmed.

⁵ The DNR argues that Nukala's negligence claim is also barred by statutory immunity and common-law official immunity, and that the negligence claim fails as a matter of law on the causation and breach elements. Because we hold that recreational-use immunity bars the claim, we need not consider those alternative arguments.