

*This opinion is nonprecedential except as provided by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
A20-0778**

Trevor Johnson,
Appellant,

vs.

Mathiowetz Construction Company,
Respondent,

PCiRoads, LLC,
Respondent.

**Filed February 8, 2021
Affirmed
Smith, Tracy M., Judge**

Steele County District Court
File No. 74-CV-19-1044

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(for appellant)

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Considered and decided by Smith, Tracy M., Presiding Judge; Hooten, Judge; and
Frisch, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Trevor Johnson challenges the summary-judgment dismissal of his negligence claim against respondents Mathiowetz Construction Company and PCiRoads, LLC. Johnson's claim arises out of personal injuries that he suffered when he crashed his motorcycle after driving over spilt gravel on a road near a road-construction project on which respondents were working. Johnson argues that the district court erred by determining that Johnson had not submitted evidence sufficient to establish that either respondent owed and breached a duty of care. We affirm.

FACTS

The following facts are uncontested. Mathiowetz is a road-construction company and was awarded a construction project on Highway 14 in Steele County. Mathiowetz subcontracted with PCiRoads to perform concrete paving work for the project. Highway 14 runs east and west. Near the construction-project site, Highway 14 is intersected by Lemond Road, which runs at a southwest-to-northeast angle. As part of its work on the Highway 14 construction project, PCiRoads operated a concrete batch plant adjacent to Lemond Road just to the north of the Highway 14 project site. PCiRoads leased the property for its batch plant from a private property owner.

On July 2, 2012, at around 9:00 p.m., Johnson was driving his motorcycle northbound on Lemond Road on his way to Owatonna. As he drove past the PCiRoads batch-plant location, Johnson slowed his motorcycle to allow a concrete truck to exit the batch-plant property onto the roadway in front of him. Johnson observed the truck drop

pea- to marble-sized gravel onto the road, but he did not observe any names or markings on the truck.

Several hours later, Johnson was heading toward home, driving southbound on Lemond Road. Just north of Highway 14, near the batch-plant site, Johnson was negotiating a curve when he lost control of his motorcycle, crashed, and sustained serious injuries. Johnson contends that respondents' negligence led to debris in the roadway that caused him to crash. He alleges that the gravel debris dropped from the unidentified truck caused him to lose control of his motorcycle and crash and that the companies involved in the nearby Highway 14 construction—Mathiowetz and PCi—are responsible.

The remaining facts, while not all accepted by Johnson, are nevertheless established by respondents' evidence and not contradicted by any other evidence. During construction, Mathiowetz and its subcontractors, including PCi, operated the construction site from 7:00 a.m. to 7:00 p.m. each workday. Mathiowetz's standard practice was to sweep the project site, including the Highway 14 roadway, before the close of work operations. PCiRoads would also clean its work site. Mathiowetz last used Lemond Road as a northbound haul route four days before Johnson's crash. At the time of Johnson's crash, there were no Mathiowetz trucks or equipment along Lemond Road or Highway 14.

PCiRoads used the batch plant to produce the concrete for the project's paving work. The property that PCiRoads leased for the batch plant was privately owned and was used by other contractors to store materials and conduct various construction-related activities. When PCiRoads transported concrete from the batch plant to the Highway 14 project site, PCiRoads used a private frontage road, not Lemond Road.

A month before the crash, between June 4 and June 7, 2012, PCiRoads demobilized the batch plant and moved its operation to Worthington. PCiRoads did not have any concrete hauling trucks or concrete manufacturing equipment near Johnson's crash site until nine days after the crash. When PCiRoads did return to the project site, it did not use the batch plant but instead used ready-mix trucks for the remaining concrete paving work.

Johnson sued Mathiowetz and PCiRoads for negligence. Both respondents moved for summary judgment. The district court determined that Johnson had not produced evidence sufficient to prove that respondents owed and breached a duty of care. Specifically, the district court concluded that Johnson had not presented evidence that either respondent was hauling gravel from the batch plant on the evening of July 2, 2012.

This appeal follows.

DECISION

“We review a district court’s summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment.” *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). Summary judgment is appropriate “when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993); *see* Minn. R. Civ. P. 56.03. On appeal, reviewing courts view the evidence in the light most favorable to the party against whom judgment was granted. *Fabio*, 504 N.W.2d at 761.

The party moving for summary judgment has the burden to show that summary judgment is appropriate. *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009). The party opposing summary judgment “may not rest upon the mere averments” in the complaint but “must present specific facts showing that there is a genuine issue for trial.” *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995) (quotation omitted). General assertions and speculation are not enough to create a genuine issue of material fact. *Id.*

A district court may grant summary judgment for a defendant in a negligence action “when the record reflects a complete lack of proof” on any one of the four elements of the claim: (1) the existence of a duty of care, (2) a breach of that duty, (3) an injury, or (4) the breach of duty being the proximate cause of the injury. *Louis v. Louis*, 636 N.W.2d 314, 318 (Minn. 2001) (citing *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995)). Here, the district court granted summary judgment for respondents based on its conclusion that respondents did not owe Johnson a duty of care.

Two Minnesota cases are instructive in understanding a highway-construction company’s duty of care. In *Ferguson v. Benson*, the supreme court affirmed a jury verdict for the plaintiffs when highway-construction contractors allowed dirt to be deposited on a roadway and rain caused muddy conditions resulting in a devastating car crash. 244 N.W.2d 116, 117-18 (Minn. 1976). The crash occurred within the “highway construction zone,” as equipment used to haul fill had been crossing the highway where the crash occurred. *Id.* at 118. *Ferguson* confirms that a highway-construction company may be held

liable for creating and failing to remedy, or warn the public of, hazards within the construction zone. *Id.* at 119.

The inverse is also true. In *Williams v. Harris*, this court held that a highway-construction company owes no duty of care to the public for hazards that are outside of the construction zone. 518 N.W.2d 864, 868 (Minn. App. 1994), *review denied* (Minn. Sept. 28, 1994). In *Williams*, we affirmed summary judgment for the defendant highway-construction companies because the car crash at issue occurred along a detour route that was neither designed nor maintained by the companies. *Id.*

Johnson, quoting *Ferguson*, argues that respondents had a duty to “take adequate measures to protect the safety of the public’ within a construction zone.” As to Mathiowetz, he argues that “there is no evidence to show this duty was adequately met” and that the question of whether Mathiowetz “met its duty to clean the road should be left to the jury to decide.” As to PCi, Johnson argues that the batch plant was near the construction site and that, although PCiRoads did not have the batch plant set up on the day of the crash, it had access to the facility and a jury could reasonably find that PCiRoads was “in control” of the batch-plant site and had failed to keep the roadway clear of gravel.

We begin with Mathiowetz. Mathiowetz’s uncontradicted evidence establishes that its hauling trucks last used the haul route on Lemond Road four days before Johnson’s crash and that Mathiowetz swept after that use. On the evening of Johnson’s crash, construction operations had already ceased and there were no Mathiowetz trucks or equipment along Lemond Road or Highway 14. Mathiowetz ended its construction activities each workday by 7:00 p.m., and its regular practice was to sweep the roadway to

clear gravel and debris, as it did at the Highway 14 project site. Because the undisputed evidence establishes that Mathiowetz had no equipment operating along Lemond Road during the evening of Johnson's crash, there is no genuine dispute that the crash occurred outside of the construction zone. Thus, on this record, Mathiowetz owed no duty to Johnson. *See Williams*, 518 N.W.2d at 868.

We turn to PCi. The undisputed evidence establishes that Lemond Road was not used by PCiRoads as a haul route, even when the batch plant was operational. Instead, PCiRoads transported concrete from the batch plant to the Highway 14 project site using a private frontage road. Moreover, PCi's concrete production operation was demobilized at the batch plant almost a month before Johnson's accident and relocated to Worthington; PCiRoads did not return to the Highway 14 project site until about nine days after Johnson's crash. In sum, PCi's unchallenged evidence establishes that, on the evening of Johnson's crash, PCiRoads did not have any concrete-hauling trucks on site, had no crews working on Lemond Road, and was not manufacturing concrete. It would thus be "mere speculation" to conclude that the truck that Johnson saw dropping gravel on Lemond Road on the evening of the crash was PCi's. *See Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993) ("Mere speculation, without some concrete evidence, is not enough to avoid summary judgment.").

Johnson suggests that a jury could find that PCiRoads nevertheless was "in control" of what happened at the batch-plant site on the date of the crash because PCiRoads had access to the site. But the undisputed evidence establishes that PCiRoads was just one of a number of companies that leased the privately owned site and that those other companies

used the site to haul gravel and concrete onto Lemond Road. Johnson put forth no evidence to show that PCiRoads had some responsibility over those companies.

Because the undisputed evidence establishes that at no point did PCiRoads transport concrete on Lemond Road and that PCiRoads was not operating its batch plant site on the date of the crash, there is no genuine dispute that the site of Johnson's crash was not within PCi's construction zone. PCiRoads therefore owed no duty to Johnson. *See Williams*, 518 N.W.2d at 868.

Based on the uncontested facts, and taking all inferences in his favor, we conclude that Johnson has failed to present sufficient evidence to link either respondent to the gravel on Lemond Road that caused his crash. The undisputed evidence establishes that the site of the crash was outside the construction zone on July 2, 2012. Respondents therefore owed no duty to Johnson, and the district court did not err by granting summary judgment for respondents on Johnson's claim.¹

Affirmed.

¹ Because we conclude that respondents did not owe Johnson a duty of care, we need not address whether the evidence is sufficient to survive summary judgment on the question of breach of that duty.