

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0846**

Devon T. Hogan, et al.,
Appellants,

vs.

William F. Brass,
Respondent.

**Filed March 8, 2021
Reversed and remanded
Ross, Judge**

Lac Qui Parle County District Court
File No. 37-CV-19-101

Pamela J. Spaulding, Meshbesh & Spence, Ltd., Minneapolis, Minnesota (for appellants)

C. Todd Koebele, Ryan F. Brackin, HKM, P.A., St. Paul, Minnesota (for respondent)

Considered and decided by Bryan, Presiding Judge; Segal, Chief Judge; and Ross,
Judge.

SYLLABUS

The immunity from civil liability afforded by Minnesota Statutes section 317A.257, subdivision 1 (2020), to a nonprofit organization’s agent for actions done “within the scope of the person’s responsibilities as a[n] . . . agent” does not include the person’s actions that exceed the organization’s express limits on the scope of its services.

OPINION

ROSS, Judge

Youth mentor William Brass brought a 12-year-old boy to his farm for a weekend of outdoor activities and allowed the boy to drive an all-terrain vehicle without a helmet or supervision. The boy, who suffered permanent serious injuries after he lost control of the ATV, sued Brass for negligence. The district court granted summary judgment dismissing the suit, concluding that the Minnesota Nonprofit Corporations Act immunized Brass from civil liability for his alleged negligence. We reverse and remand for further proceedings because the act applies only to a volunteer's actions that are undertaken "within the scope of the person's responsibilities as a[n] . . . agent," and the nonprofit organization through which Brass and the boy became associated provides only same-day mentoring services, expressly declining a role in interactions that involve overnight or extended arrangements.

FACTS

Parenting With Purpose (PWP) is a faith-based nonprofit organization that connects adult mentors with children affected by a parent's incarceration. PWP informs prospective and active volunteers about their mentorship role through PWP with details stated in a mentor application, a volunteer agreement, a mentor job description, and one-on-one training. Mentors are advised to provide "social/recreational development, emotional support, spiritual guidance . . . companionship," and "experiences in healthy family relationships." Most relevant to the issue on appeal, PWP does not fashion itself as an organization that administers or monitors overnight or extended mentoring activities.

Instead, PWP encourages each volunteer mentor to “connect[] with the child on a weekly basis for one to four hours.”

William Brass has volunteered to serve as a mentor to PWP clients since January 2009 and began mentoring Devon Hogan in 2010. Some of the activities in the Brass-Hogan relationship were consistent with the same-day parameters of the PWP mentoring framework, but others extended for longer periods. Brass attended sporting events with Devon, attended movies, attended church, dined out, and rode all-terrain vehicles, among other activities.

When Brass informed PWP of his interest in taking Devon on extended hunting trips and overnight stays, PWP offered Devon’s father a permission slip in September 2012, allowing Devon “to attend multiple overnight stays and hunting events with Bill Brass [for] overnight stays and hunting activities on various dates in this year of 2012 and 2013 to be determined.” The permission slip restated the limit to PWP’s mentorship oversight, declaring, “[O]vernight stays are not part of the mentoring role of Bill Brass.” Devon’s father signed the permission slip.

Brass picked up then 12-year-old Devon from school in Saint Paul on September 6, 2013, and drove him to his Dawson farmstead about 160 miles away. The next day, Brass, Devon, and at least four others shot at clay pigeons with shotguns, but their pigeon-launching machine broke. Brass remained on site but directed three children, including Devon, to drive all-terrain vehicles to a house to get a replacement launcher. Devon was not wearing a helmet. And along the way he lost control of the ATV. He crashed into a house while he was moving at about 50 miles per hour. Devon was hospitalized for

two weeks, suffering from one or more broken bones, an injured brain, and partial blindness. He remains blind in one eye.

Devon and his father sued Brass in November 2018, alleging negligent entrustment and supervision. Brass moved for summary judgment, claiming statutory immunity.

The district court granted Brass's motion. It reasoned that, by offering the permission slip to Devon's father, PWP expanded Brass's mentorship role to include Devon's extended stays at Brass's farmstead. The district court added that Hogan's injuries did not occur during an overnight stay because he crashed the vehicle at 5 p.m., "not in the nighttime." It concluded that the Minnesota Nonprofit Corporations Act immunized Brass from civil liability and dismissed the suit with prejudice.

This appeal follows.

ISSUE

Did the district court properly conclude that the Minnesota Nonprofit Corporations Act immunized Brass from civil liability for his alleged negligence?

ANALYSIS

Devon challenges the district court's summary-judgment decision dismissing his negligence suit against Brass. We review the district court's grant of summary judgment de novo. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). We will affirm the district court's grant of summary judgment only if there is no genuine issue of material fact and the moving party "is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. Devon challenges the district court's decision that, on the undisputed material facts, Brass is entitled to judgment as a matter of law based on statutory immunity.

We must decide whether the statute that the district court applied here immunizes Brass from liability for the alleged negligence that caused Devon’s injuries. The question of immunity should be resolved early, preferably even before discovery, and it requires the district court to make mixed findings of fact and determinations of law. *Rehn v. Fischley*, 557 N.W.2d 328, 332–33 (Minn. 1997). We review legal determinations de novo. *Id.* at 333. Our answer to this appeal turns on the legal question of the meaning of a provision in the Minnesota Nonprofit Corporations Act. Under the act, a person volunteering for a nonprofit organization “is not civilly liable for an act or omission by that person if the act or omission was in good faith, was within the scope of the person’s responsibilities as a[n] . . . agent, . . . did not constitute willful or reckless misconduct,” and did not personally and directly cause the injury. Minn. Stat. § 317A.257, subds. 1, 2(b) (2020). To be clear, what we list as the fourth element is more literally an exception to civil immunity, in that one does not qualify for the immunity if he personally and directly caused the injury. The phrase, “within the scope of the person’s responsibilities as a[n] . . . agent” of the organization draws our focus.

We begin by deciphering what the statute means by an “agent,” and we do so in the context of the statute as a whole:

Except as provided in subdivision 2, a person who serves without compensation as a director, officer, trustee, member, or agent of an organization exempt from state income taxation under section 290.05, subdivision 2, or who serves without compensation as a fire chief of a nonprofit fire-fighting corporation or municipal volunteer fire department, or of a public corporation established by law but not considered a municipality, is not civilly liable for an act or omission by that person if the act or omission was in good faith, was within the

scope of the person's responsibilities as a director, officer, trustee, member, agent, or fire chief of the organization, and did not constitute willful or reckless misconduct.

Id., subd. 1. "Agent" is not defined in the statute or elsewhere in chapter 317A. We assume that the legislature meant the term "agent" to take on its ordinary legal meaning, which is one who has the authority to act on another's behalf. *See Black's Law Dictionary* 75–76 (10th ed. 2014); *see also Hockemeyer v. Pooler*, 130 N.W.2d 367, 377 (Minn. 1964) ("The agent's authority cannot be greater than the authority of the principal."). A person cannot act on an organization's behalf by engaging in conduct that extends well beyond the actual and express limits that the organization imposes on itself. In other words, Brass could not have been providing mentoring services "within the scope" of his responsibilities *as an agent of PWP* if his mentoring behavior or duration exceeded PWP's mentoring parameters.

The district court recognized that immunity here turns on whether Brass was acting within the scope of his responsibilities as an agent of PWP, and it recognized that PWP limited its mentoring role so as to exclude overnight stays. And the parties do not dispute that PWP consistently defined its mission as limited to providing mentoring experiences in relatively brief, volunteer-to-client encounters lasting "one to four hours" and involving no overnight stays. The district court nevertheless treated the permission slip as an expansion of PWP's limited role. It did so by construing the term "overnight stays" not so as to define PWP's mentoring service in *duration* but in *content*. It said, "The Court interprets the term 'overnight stays' to mean events and activities that happen at night." We see nothing in the record, including the plain statements of the permission slip, to support this interpretation.

The permission slip on which the district court based its interpretation stated, “I, Douglas Hogan, hereby give Devon Hogan permission to attend multiple overnight stays and hunting events with Bill Brass . . . on various dates . . . to be determined.” It immediately added, “I understand that Parenting With Purpose is not liable for any injury that may occur during the attendance of these events,” and “I also understand that overnight stays are not part of the mentoring role of Bill Brass.” The “permission slip” in substance is more accurately a waiver of liability. It concluded by confirming Hogan’s understanding that “therefore Parenting With Purpose is not liable for any injury or incidence that may occur during these events.” We cannot agree that these statements establish that PWP’s mentoring role included all events and activities except those “events and activities that happen at night.” PWP’s permission slip is worded consistently with its mission to provide mentoring experiences that occur within a matter of hours and not over a period of days. It did so plainly, by expressly denying that Brass had any PWP-based mentoring role during any of the events—including “overnight stays”—listed on the slip. According to the slip, it was because Brass had no mentoring role “during these events” that PWP would not be liable for “any injury” that resulted “during these events.” And Brass identifies nothing else in the record from which we could conclude that PWP’s mentoring role and, by extension as agent, Brass’s PWP-based mentoring role, included any activities occurring during the trip to Brass’s farm.

We are not persuaded otherwise by Brass’s reliance on *Rehn*, 557 N.W.2d at 328. The *Rehn* analysis and holding instead support our conclusion. The *Rehn* court considered the statutory immunity of a board-of-directors member of the nonprofit organization,

Animal Humane Society. *Id.* at 330. That board member, who was also a veterinarian, had recommended and then provided a chemical to be used by a Humane Society employee to disinfect cat cages. *Id.* at 331. After the employee allegedly suffered injuries by using the chemical, he sued the board member for negligence. *Id.* at 330. The district court entered a directed verdict favoring the board member during the trial, concluding that the Minnesota Nonprofit Corporations Act immunized her from liability. *Id.* at 331–33. The supreme court affirmed the district court’s immunity decision in the face of the argument that the board member could not benefit from the immunity provision because she had acted beyond the limited duties of a board member by recommending and providing a cage-cleaning chemical. *Id.* at 334–35. Applying the statute, the *Rehn* court reasoned that “a director acting outside the specific scope of his or her duty as [a] member[] of the board will receive the statute’s protection so long as the director *is acting on behalf of the nonprofit corporation.*” *Id.* at 335 (emphasis added).

The *Rehn* rationale supports rather than contests our holding today. It allows for immunity for any volunteer acting beyond her own assigned role but within the organization’s role. *Rehn* does not suggest that a volunteer who acts beyond the scope of activity of *any* volunteer role in the organization is immune from civil liability. The *Rehn* board member was entitled to statutory immunity specifically because she was “acting on behalf of the nonprofit corporation.” *Id.* Disinfecting cat cages was indisputably within the scope of the nonprofit organization’s mission, and providing the chemicals was therefore an action “on behalf of” the organization. By contrast, here, Brass is not entitled to statutory immunity because he was engaging in conduct outside the organization’s expressly limited

mission, meaning that although he might have been acting on his own behalf or on Devon's father's behalf, he was not acting on PWP's behalf. And although PWP sanctioned Hogan's all-terrain-vehicle riding (and supervising Hogan during this activity would have therefore fallen within the scope of PWP mentorship under other circumstances) the activity occurred during an excursion that was expressly outside the durational scope of Brass's PWP-based mentorship duties. Unlike the volunteer in *Rehn*, Brass therefore does not qualify for immunity under the statute.

But we do infer from the district court's grant of summary judgment to Brass that it concluded Brass did not personally and directly cause Hogan's injury. And we see no error in the district court's conclusion on this point because the facts demonstrate that Brass stayed behind when Hogan left on the ATV, meaning that Brass did not personally and directly cause Hogan's injuries.

We do not intend our opinion to imply any disapproval of the effort Brass demonstrated in his volunteer activities. In terms of time and energy and expense, the record overwhelmingly demonstrates that Brass's generosity toward Devon over the years was nothing short of extraordinary. Devon referred to his relationship with Brass as "[w]onderful" and, given Brass's sacrifices on Devon's behalf, this is no surprise. He added, "[Brass] was the only one that I could fully communicate with I like getting out and doing things and he was the only one that took me fully out to do those things." But we look to the law and "strictly construe statutory immunity from common-law remedies." *Jackson ex rel. Sorenson v. Options Residential, Inc.*, 896 N.W.2d 549, 555 (Minn. App. 2017). The statute does not afford immunity based on good intentions and

exemplary dedication, and courts lack the constitutional authority to extend statutory immunity beyond stated limits.

DECISION

The district court erroneously concluded that the Minnesota Nonprofit Corporations Act immunizes Brass from civil liability for his alleged negligence during an engagement outside the scope of PWP's mentoring range. It therefore improperly granted summary judgment dismissing the lawsuit. We reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.