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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1101**

Nathan Mead,
Appellant,

Amy Mead,
Plaintiff,

vs.

BNSF Railway Company,
Respondent,

Ture Lee,
Respondent on related appeal,

and

BNSF Railway Company,
Respondent

vs.

Jerry Lee,
Respondent on related appeal.

**Filed May 10, 2021
Affirmed
Jesson, Judge**

Hennepin County District Court
File No. 27-CV-15-10789

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Considered and decided by Jesson, Presiding Judge; Worke, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant-plaintiff Nathan Mead was involved in a car accident while working for respondent-defendant BNSF Railway Company. Mead brought this lawsuit against BNSF, prepared to introduce expert testimony that BNSF was negligent for failing to maintain the driver's seat recliner mechanism—which, according to the expert, failed during the accident and caused Mead to propel into the truck's rear window.

The district court granted summary judgment to BNSF three times. Mead appealed the district court's decision each time (this being the third appeal). In each of the first two appeals, we reversed the district court's grant of summary judgment and remanded for further proceedings. *Mead v. BNSF Ry. Co.*, No. A17-0480, 2018 WL 414318 (Minn. App. Jan. 16, 2018) (*Mead I*); *Mead v. BNSF Ry. Co.*, No. A18-1965, 2019 WL 4745138 (Minn. App. Sept. 30, 2019) (*Mead II*). In this appeal, Mead seeks review of the district court's grant of summary judgment premised on its decision to exclude an expert from testifying to his opinions about the cause of the seat reclining, BNSF's failure to properly maintain the seat, and whether the company that BNSF uses to repair its trucks should have known about the defective mechanism that purportedly caused the seat to recline.

We conclude that the district court erred by excluding expert testimony on one opinion, but acted within its discretion in excluding the others. As a result, the district court did not err in granting summary judgment because without the properly excluded opinions, no material disputed facts remained on the essential element of breach of duty. Accordingly, we affirm.

FACTS

To explain the relevant facts of this case, we first describe the accident at issue and then turn to the litigation history.

The Accident

Mead worked as a carman for BNSF, where his duties included maintaining and repairing rail cars.¹ On August 12, 2012, Mead's supervisor directed him to drive a specific BNSF truck from Fridley to a job site in Saint Paul. Mead inspected the truck and complained about several issues to his supervisor (none of which were related to the driver's seat recliner mechanism), but the supervisor insisted that Mead take the truck.

On Interstate 94, on his way to Saint Paul, Mead was rear-ended by an intoxicated driver—Jerry Lee. According to Mead's deposition testimony, his truck's driver's seat reclined backwards upon impact. The reclined seat acted as a ramp, sending Mead's body backwards and resulting in his head crashing into the truck's rear window. Mead suffered significant injuries in the accident.

¹ We have discussed the facts of this case in more detail in our previous opinions, but to provide context, we briefly describe the incident at issue and the procedural posture of the case leading to this third appeal.

After the accident, Bona Brothers Auto and Truck Services—the company that serviced all BNSF’s trucks—inspected and repaired the truck. Bona Brothers had experience with this truck and had done over \$80,000 worth of maintenance and repairs in the past. The driver’s seat was reclined when the truck was brought to Bona Brothers. But Bona Brothers determined, after inspecting the truck, that the recliner mechanism was intact and functioning properly.

The Litigation History

Mead sued BNSF, alleging negligence under the Federal Employers’ Liability Act. 45 U.S.C. § 51 (2020).² He alleged that the driver-seat recliner mechanism failed, causing his injuries. He asserted that BNSF was negligent because it failed to properly maintain the mechanism.

To prove that BNSF was negligent, Mead retained the services of several expert witnesses, including Dr. Scott Benson and William Muzzy III. Mead expected Dr. Benson to testify about medical causation and his opinion that hitting the rear window was what caused Mead’s injuries. Muzzy was to testify to several opinions regarding the cause of the seat reclining in the accident, including that (1) the seat reclined because the recliner mechanism failed; (2) the cause of the mechanism’s failure was improper or inadequate maintenance; and (3) Bona Brothers knew or should have known that the mechanism was prone to failure due to poor maintenance.

² The parties brought several other claims that are not pertinent to this appeal. Mead sued Ture Lee (who owned the vehicle that Jerry Lee was driving) for negligence. BNSF brought a third-party complaint against Jerry Lee and asserted cross-claims against Ture Lee, alleging that the Lees were liable to it, to the extent that BNSF was liable to Mead.

Mead also relied, in part, on another BNSF employee's statement. The employee wrote in a statement that "both before and after [Mead's] accident, the [driver's] seat [of the truck at issue] would recline to rear without touching the adjustment mechanism." But at a subsequent deposition, the employee qualified that statement, testifying that he noticed an issue "one time, and only one time" in which he leaned back on the seat and the seat was "loose, like it didn't catch." He got back out of the truck, "jarred the seat," and the seat "caught." The admissibility of Muzzy's testimony is the central focus of this appeal, but a discussion of the previous summary judgment proceedings provides necessary context for our decision.

Early in the case, BNSF made two motions. First, BNSF moved for summary judgment. Separately, BNSF moved to exclude the expert testimony of Dr. Benson and Muzzy, and the testimony of other witnesses. Without addressing BNSF's motion to exclude expert testimony, the district court granted summary judgment to BNSF on the grounds that there was no evidence to support that BNSF had notice that the mechanism might fail or that the mechanism's malfunction was foreseeable to BNSF.³

Mead then filed his first appeal, challenging summary judgment. *Mead I*, 2018 WL 414318. We reversed, concluding, among other things, that there existed genuine issues of material fact regarding whether BNSF had notice of issues with the seat and whether it was foreseeable that the mechanism would fail. *Id.* at *4-6. In reaching our conclusion, we relied, in part, on Muzzy's report and opinions. We did not expressly indicate that

³ The district court referenced Muzzy's expert report in its analysis without indicating whether the testimony regarding the report was admissible.

Muzzy's opinion was admissible, and did not discuss the admissibility of any evidence. We remanded to the district court for further proceedings.

On remand, BNSF renewed its motion to exclude expert testimony. The district court granted BNSF's motion to exclude both Dr. Benson's and Muzzy's testimony.

After the district court excluded the expert testimony, BNSF again moved for summary judgment—based solely on the exclusion of Dr. Benson's testimony and the lack of evidence regarding medical causation of Mead's injuries. The district court granted the motion and Mead again appealed. In *Mead II*, we examined the district court's decision to exclude Dr. Benson's testimony. 2019 WL 4745138, at *3-4. We concluded that the district court abused its discretion by excluding the testimony, and therefore, that the district court erred by granting summary judgment based solely on the lack of testimony regarding medical causation. We declined to address Mead's arguments regarding the admissibility of Muzzy's testimony because, as Mead conceded, resolving whether Muzzy's testimony was admissible was not necessary to resolve the appeal. *Id.* at *2-3. We again remanded for further proceedings.

On remand once again, BNSF moved for summary judgment a third time—this time based on the exclusion of Muzzy's testimony. BNSF argued, and Mead conceded, that Muzzy's testimony was essential to Mead's case and that his negligence claim against BNSF failed without it. Mead asked that the district court reconsider its order excluding

Muzzy's testimony. The district court denied Mead's request to reconsider and granted summary judgment in BNSF's favor.⁴ This appeal follows.

DECISION

Mead challenges the district court's decision to grant summary judgment predicated on its ruling that Muzzy's expert opinion testimony was inadmissible. Thus, the focus of our review is whether the district court abused its discretion by excluding Muzzy's expert opinion testimony.

Before addressing Mead's specific arguments, we briefly discuss the nature of Mead's claims under the Federal Employers' Liability Act. Then we turn to the admissibility of Muzzy's testimony—first addressing whether the district court erred by failing to adhere to the law-of-the-case doctrine before turning to whether the district court abused its discretion by excluding Muzzy's opinion testimony for lack of foundational reliability.

We begin by reviewing the Federal Employers' Liability Act, which underpins Mead's claim. Under this Act, common carriers like BNSF are liable to their employees for injury resulting “in whole or in part from the negligence of any of the officers, agents, or employees” of the carrier or “by reason of any defect or insufficiency, due to its negligence in its cars, engines . . . or other equipment.” 45 U.S.C. § 51. The specific claim at issue here is that BNSF was negligent in its *failure to properly maintain* the truck's *recliner mechanism* which resulted in him being injured in the accident.

⁴ Based on the judgment in BNSF's favor, the district court also dismissed BNSF's third-party claims and cross-claims against the Lees.

The elements of a negligence claim under the Federal Employers' Liability Act are the same as those in an ordinary negligence action, including duty, breach, and causation. *See Fulk v. Ill. Cent. R.R. Co.*, 22 F.3d 120, 124 (7th Cir. 1994); *see also Smith v. Soo Line R.R. Co.*, 617 N.W.2d 437, 439 (Minn. App. 2000) (citing *id.*), *review denied* (Minn. Nov. 21, 2000). But the plaintiff's burden of proof under the Act is less than in a common-law negligence case. *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 692, 131 S. Ct. 2630, 2637 (2011) (Act calls for a "relaxed standard of causation" (quoting *Consol. Rail Corp. v. Gottshall*, 512 U.S. 532, 543, 114 S. Ct. 2396, 2404 (1994).)); *see also Smith*, 617 N.W.2d at 439.

At its core, Mead's argument in this appeal is an evidentiary one. While the Act is a federal law, when it comes to the issue here—that of expert testimony admissibility—state court procedures apply. *Alby v. BNSF Ry. Co.*, 934 N.W.2d 831, 833 (Minn. 2019). Thus, the state rules of evidence, including our rules regarding the admissibility of expert testimony, govern. Mead intended to introduce Muzzy's expert testimony to prove that BNSF owed him a duty to remedy a foreseeable hazard—the allegedly improperly maintained mechanism—and that the failure to properly maintain the mechanism was a breach of duty that caused Mead's injuries. When the district court excluded Muzzy's testimony, Mead conceded that he could not satisfy his burden of proof that BNSF was negligent. Thus, Mead's arguments on appeal attack the district court's conclusion that Muzzy's testimony was inadmissible.

I. *Mead I* did not establish, as law of the case, that Muzzy’s expert opinion testimony was admissible under Minnesota Rule of Evidence 702.

Mead first argues that because we purportedly decided that Muzzy’s testimony was admissible under Minnesota Rule of Evidence 702 in *Mead I*, the law-of-the-case doctrine applies to that issue and that the district court erred in excluding Muzzy’s testimony. We review de novo whether the law-of-the-case doctrine applies to an issue on remand. *See, e.g., Sigurdson v. Isanti County*, 448 N.W.2d 62, 66 (Minn. 1989) (reviewing the application of the doctrine de novo); *Mattson v. Underwriters at Lloyds of London*, 414 N.W.2d 717, 720-21 (Minn. 1987) (same); *Sylvester Bros. Dev. Co. v. Great Cent. Ins. Co.*, 503 N.W.2d 793, 795-96 (Minn. App. 1993) (*Sylvester II*) (same).

The law-of-the-case doctrine is intended to “effectuate the finality of appellate decisions.” *Loo v. Loo*, 520 N.W.2d 740, 744 n.1 (Minn. 1994); *see also Sylvester II*, 503 N.W.2d at 795 (observing that the doctrine is “based on a policy requiring issues once fully litigated to be set at rest”). The doctrine provides that “when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990) (emphasis omitted) (quotation omitted). Thus, the law-of-the-case doctrine applies when an appellate court has “ruled on a legal issue” and remanded to the district court for further proceedings. *Sylvester II*, 503 N.W.2d at 795. On remand, any issue not decided in the appeal may be litigated, but the issues *decided* in the appeal may not be relitigated in district court or reconsidered in a second appeal. *Id.*

Here, to discern whether we decided Muzzy’s testimony was admissible, we address two issues. First, does the law of the case doctrine apply to implicit decisions?⁵ Second, if so, did we actually decide the admissibility question? We address each question in turn.

The answer to the first question is simple—the doctrine is generally understood to apply to issues that are implicitly decided. *See* 18B Charles Alan Wright et al, *Federal Practice and Procedure* § 4478, at 632 (3d ed. 2019) (collecting cases that support that the doctrine applies to issues decided by necessary implication). The parties do not dispute this general understanding.

But while the doctrine may apply to an implicitly decided issue, that issue must be “decided” or “ruled on.” *Sylvester II*, 505 N.W.2d at 795. The law-of-the-case doctrine, therefore, applies only to issues that were litigated. *Sigurdson*, 448 N.W.2d at 66. Similarly, the doctrine does not apply to an issue raised in a previous appeal but not decided. *Id.* at 63; *see also Cayse v. Foley*, 110 N.W.2d 201, 205 (Minn. 1961). Thus, the determinative factor in whether an issue has become law of the case is whether the issue was raised and actually decided by the appellate court—either expressly or by necessary implication.

To determine what an appellate court has actually decided, we logically turn to what the opinion says. The effect of an appellate opinion reversing a district court order or judgment depends on the ground for reversal, “as expressed in the decision reversing it.”

⁵ At oral argument, Mead argued that we expressly decided that Muzzy’s testimony was admissible in *Mead I*. We reject that assertion. Our opinion in *Mead I* contains no discussion of the admissibility of evidence.

Mattson, 414 N.W.2d at 720 (quotation omitted). The scope of finality of an appellate opinion “depends on what the court intends to be final.” *Id.* And we determine what the appellate court intended to be final by examining what the court’s decision says. *Id.*

Applying these principles here, we examine our decision in *Mead I*. In that case, we observed that Muzzy’s report raised a fact issue regarding whether it was foreseeable that the recliner mechanism was defective, stating that

Muzzy, Mead’s expert, explained in his report that it would have been prudent for Bona Brothers to just replace the entire seat structure, and that they either knew or should have known that the driver’s seat recliner was worn and defective. This report on its own raises a fact issue for the jury on whether it was foreseeable that the recliner mechanism was defective.

Mead I, 2018 WL 414318, at *5. Thus, because there was some evidence to establish foreseeability, we concluded that the district court erred by granting summary judgment based on a lack of evidence of foreseeability. *Id.* But we did not discuss the *admissibility* of Muzzy’s opinion—we instead considered the same evidence that the district court considered and concluded that that evidence established a genuine issue of material fact regarding foreseeability. Nothing in *Mead I* supports the conclusion that we intended to rule on the admissibility of Muzzy’s testimony. Rather, we assumed the admissibility of the testimony.⁶

⁶ We recognize that it is well-established that only admissible evidence should be considered in determining whether summary judgment is appropriate. *See* Minn. R. Civ. P. 56.03(b) (“A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.”); *Hopkins v. Empire Fire & Marine Ins. Co.*, 474 N.W.2d 209, 212 (Minn. App. 1991) (observing that “[e]vidence offered to support or defeat a motion for summary judgment must be such evidence as

The procedural posture of the case, in addition to the language of the opinion, supports our conclusion. At the time that *Mead I* was decided, the district court had not yet addressed BNSF’s motion to exclude Muzzy’s testimony.⁷ Because we generally do not decide issues that the district court has not “passed on,” it would have been unorthodox for us to address the admissibility of Muzzy’s testimony when the district court had not yet ruled on the issue, even though BNSF raised the issue in its appellate brief. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

In short, the admissibility of Muzzy’s testimony was an issue that was raised but not decided in *Mead I*. *Sigurdson*, 448 N.W.2d at 63; *Cayse*, 110 N.W.2d at 205. Our decision cannot be read to have implicitly decided that Muzzy’s testimony was admissible. Thus, the law-of-the-case doctrine does not apply.

II. The district court abused its discretion by excluding testimony regarding one of Muzzy’s opinions, but acted within its discretion in excluding testimony about the other two opinions.

Mead alternatively argues that the district court abused its discretion by excluding Muzzy’s expert testimony based on a lack of foundational reliability. See Minn. R. Evid. 702. We review the district court’s ruling on the admissibility of expert testimony for an abuse of discretion. *Doe v. Archdiocese of St. Paul & Minneapolis*, 817 N.W.2d 150, 164 (Minn. 2012); see also *Reinhardt v. Colton*, 337 N.W.2d 88, 93 (Minn. 1983) (stating that exclusion of expert testimony “lies within the sound discretion of the trial court, and

would be admissible at trial”). But here, there is no indication in our opinion that we even considered the issue.

⁷ The district court, in fact, noted Muzzy’s expert report in its summary judgment order without addressing the admissibility of his testimony.

its ruling will not be reversed unless it is based on an erroneous view of the law or it constitutes an abuse of discretion”).

We begin our analysis of the district court’s decision to exclude Muzzy’s expert opinion testimony with an examination of the law governing the admission of such testimony. Expert opinion testimony is admissible if it “will assist the trier of fact to understand the evidence or to determine a fact in issue.” Minn. R. Evid. 702. The expert witness must be qualified to render the opinion, and his or her opinion must have “foundational reliability.” *Id.* Thus, to present expert opinion testimony, the proponent must show that the testimony passes a four-part test: “(1) The witness must qualify as an expert; (2) the expert’s opinion must have foundational reliability; (3) the expert testimony must be helpful to the trier of fact; and (4) if the testimony involves a novel scientific theory, it must satisfy the *Frye-Mack* standard.” *Doe*, 817 N.W.2d at 164.

Here, the district court excluded Muzzy’s expert opinion testimony based on a lack of foundational reliability. We focus our analysis on that factor.

An expert’s opinion testimony has foundational reliability if the opinion is based on a reliable theory and methodology and if the opinion has a factual foundation supported by the record. *Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 56 (Minn. 2019). To determine whether an expert’s opinion testimony has foundational reliability, the district court must consider the reliability of the expert’s theory, “as well as the reliability of the evidence in the particular case, with a view toward the purpose for which the expert testimony is offered.” *Id.* (quotation omitted).

An “essential element” of foundational reliability is the expert’s familiarity with the facts of the case, and whether the facts supporting the expert’s opinion are supported by the evidence—otherwise known as the “factual foundation” for the expert’s opinion testimony. *Id.* (quotation omitted). The showing required to establish an adequate factual foundation supporting expert opinion testimony is not high. An expert’s opinion testimony lacks foundational reliability due to an inadequate factual foundation if (1) the expert’s opinion does not include the facts or data that the expert relied on in rendering the opinion, (2) the expert does not explain the basis for his or her opinion, or (3) the facts that the expert assumed or relied on in forming the opinion are not supported by the evidence. *Id.* Alleged deficiencies in a factual foundation generally speak to the weight of the expert’s opinion, not its admissibility. *Id.* at 60. These alleged deficiencies are usually best tested by cross-examination and arguments to the jury, not a foundational-reliability determination. *Id.*

Turning to the district court’s ruling here, we observe that the district court properly considered the foundational reliability of Muzzy’s proposed testimony in light of the purposes for which it was offered. The district court identified that Mead offered Muzzy’s testimony to prove that (1) the recliner mechanism failed, (2) it failed due to ineffective or defective maintenance, and (3) Bona Brothers knew or should have known that the mechanism was worn and defective. Because the admissibility of the testimony should be considered in light of its purposes, we take the same approach in reviewing the district court’s decision.

A. The district court abused its discretion by excluding Muzzy's opinion testimony that the recliner mechanism failed.

The district court first addressed whether Muzzy's opinion that the recliner mechanism failed had foundational reliability. The district court noted that Muzzy's opinion was based on Mead's deposition testimony that the seat reclined in the accident, the employee's pre-deposition statement that he had issues with the seat spontaneously reclining, and photographs showing the driver's seat reclined after the accident. The district court commented on the credibility and weight of this evidence⁸ and then observed that there was also evidence that Bona Brothers had inspected the seat after the accident and determined that the recliner mechanism was intact and functioning. Based on these issues with the evidence, the district court concluded that Muzzy's opinion that the recliner mechanism failed lacked foundational reliability.

The district court abused its discretion in this analysis for two reasons. First, the district court did not take into account another factual basis for Muzzy's opinion—that the accident caused a positive change in velocity in the truck of between 11.2 and 13.4 miles per hour. Second, the district court strayed into the weight and credibility of the evidence supporting Muzzy's opinion—which should instead be tested by cross-examination at trial. *Id.* Muzzy's opinion that the recliner mechanism failed had an adequate factual foundation because (1) he identified the facts in the record that he relied upon in forming his opinion (Mead's deposition testimony and the physics of the accident), (2) he explained the basis

⁸ Specifically, the district court observed that Mead did not claim that the seat had reclined in the accident until the litigation began, suggesting that the testimony may not be credible.

for his opinion (that Mead’s testimony that the seat spontaneously reclined and the change in velocity in the accident demonstrate that the mechanism failed), and (3) the record supports the facts he relied upon in forming his opinion. *Id.* at 56.

This reliability does not evaporate because Muzzy did not personally inspect the truck. An expert need not personally conduct tests or gather data to render an opinion. *See* Minn. R. Evid. 703(a) (noting that “the facts or data in the particular case upon which an expert bases an opinion or inference may be perceived *or made known to the expert at or before the hearing*” (emphasis added)). Nor does the existence of evidence contradicting Muzzy’s opinion remove its foundation. *Kedrowski*, 933 N.W.2d at 56 (observing that alleged deficiencies in the expert’s factual foundation speak to the weight, not the admissibility, of the expert’s opinion testimony).

But while we conclude that the district court abused its discretion in excluding Muzzy’s testimony as to whether the recliner mechanism failed, we reach a different conclusion regarding the district court’s decision to exclude Muzzy’s other opinions.

B. The district court did not abuse its discretion by excluding Muzzy’s testimony regarding the cause of the mechanism’s failure and whether Bona Brothers knew or should have known that the mechanism might fail.

The district court also excluded Muzzy’s expert opinion testimony that the mechanism failed due to inadequate maintenance and his opinion that Bona Brothers knew or should have known that the mechanism was worn and defective. Mead again argues that the district court abused its discretion because these opinions also carried foundational reliability.

For these opinions, the district court identified a different reason for concluding that Muzzy’s opinions lacked foundational reliability—that Muzzy did not cite to any evidence linking the wear to the seat cushion or to the vehicle as a whole to wear of the recliner mechanism. The court therefore concluded that Muzzy’s testimony to these opinions was speculative. We agree.

The inadequacy in Muzzy’s factual foundation for these opinions does not arise from contradictory evidence in the record—rather, it arises from his failure to explain how the facts he identifies support his conclusions. Muzzy’s opinion that improper maintenance caused the mechanism to fail appears to be based solely on the circumstances of the accident. Muzzy concluded that “[s]eat back failure/collapse in a collision of this severity is due purely to ineffective and defective maintenance.” But Muzzy offers no explanation for why he reached that conclusion. And while he discusses earlier in his report evidence that (1) the vehicle was heavily used, (2) the vehicle had been subject to a significant amount of repairs in the past, and (3) the driver’s seat cushions had to be replaced due to extensive wear, Muzzy did not link the general use and wear to the vehicle to wear on the mechanism.⁹ Nor does Muzzy identify what proper maintenance would entail, and therefore why the mechanism was improperly maintained here. Instead, Muzzy merely suggests that it would have been “prudent” to rebuild or replace the entire seat when Bona Brothers replaced the seat cushions. Muzzy’s opinion lacks foundational reliability because he fails to explain the basis for his opinion. *Kedrowski*, 933 N.W.2d at 56.

⁹ We also observe that Muzzy does not explain in his report how the mechanism might have failed.

For essentially the same reasons, Muzzy’s opinion that Bona Brothers knew or should have known that the mechanism would fail lacks foundational reliability. Muzzy opined that Bona Brothers knew or should have known that the mechanism was worn and defective based on the truck’s heavy use and previous repairs. But again, Muzzy does not explain how the heavy use and previous repairs would also cause the specific component at issue here, the recliner mechanism, to become worn and defective. Muzzy does not explain what maintenance or inspection procedures BNSF, or Bona Brothers, should have followed, and why those procedures would have revealed to Bona Brothers that the mechanism was purportedly worn and defective. And the only inspection conducted on the vehicle—which occurred after the accident—led Bona Brothers to conclude that the mechanism was intact and functional. We therefore conclude that the district court did not abuse its discretion by determining that Muzzy’s opinion that Bona Brothers knew or should have known that the mechanism was worn and defective also lacked foundational reliability because Muzzy failed to explain the basis for his opinion. *Id.*¹⁰

¹⁰ Our conclusions regarding the admissibility of Muzzy’s expert opinion testimony necessarily leads us to conclude that the district court did not err by granting summary judgment based on the exclusion of that testimony. We 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).

In his appellate brief, Mead acknowledges that Muzzy’s testimony is necessary to establish BNSF’s breach of duty. Mead asserts that the breach of duty is established by Muzzy’s opinion that the recliner mechanism failed due to ineffective maintenance. But the district court acted within its discretion in excluding that Muzzy’s testimony regarding that opinion. Because the district court correctly concluded that no genuine issues of material fact remained regarding BNSF’s alleged breach of duty, the district court did not err by granting summary judgment. *See Jane Doe 43C v. Diocese of New Ulm*, 787 N.W.2d

In sum, the district court abused its discretion by excluding Muzzy's testimony that the recliner mechanism failed during the accident, but did not abuse its discretion by excluding Muzzy's other opinions based on a lack of foundational reliability. Because the properly excluded opinions are the evidence that Mead relies upon to establish breach of duty, the district court did not err in granting summary judgment despite its error in its evidentiary ruling.¹¹

Affirmed.

680, 686 (Minn. App. 2010) (observing that summary judgment is appropriate when the plaintiff fails to establish an essential element of her claim).

¹¹ BNSF filed a cross-appeal, arguing that if we were to reverse and remand, its third-party claims and cross-claims against the Lees should be reinstated. Because we affirm, we do not reach these arguments.