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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0487**

Kay L. Briden,
Respondent,

vs.

Transit Team, Inc., et al.,
Appellants.

**Filed January 24, 2022
Affirmed in part, reversed in part, and remanded
Larkin, Judge**

Hennepin County District Court
File No. 27-CV-20-5264

Mark M. Nolan, Robert J. Leighton, Jr., Jodell M. Galman, Nolan, Thompson, Leighton & Tataryn, PLC, Hopkins, Minnesota (for respondent)

Kay Nord Hunt, Michelle K. Kuhl, Kathleen M. Loucks, Lommen Abdo, P.A., Minneapolis, Minnesota (for appellants)

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

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellants challenge the district court's denial of summary judgment in this personal-injury case, arguing that they are entitled to official immunity. We affirm in part, reverse in part, and remand.

FACTS

Metropolitan Council (Met Council) is a public corporation and political subdivision of the State of Minnesota. Minn. Stat. § 473.123, subd. 1 (2020). It is required by statute to implement Metro Mobility, which provides transportation service in the metropolitan area for the elderly, people with disabilities, and others with special transportation needs. Minn. Stat. § 473.386, subd. 1(a) (2020). Appellant Transit Team, Inc., is an independent contractor that provides Metro Mobility services. Appellant Getachew Woldeyesus worked as a driver for Transit Team in 2018.

On July 10, 2018, respondent Kay Briden was injured while riding on a Metro Mobility bus that Woldeyesus was driving. Briden was 76 years old at that time. She has multiple sclerosis, is legally blind, and uses a motorized scooter because she has difficulty walking. She had ridden on Metro Mobility buses numerous times. Because Briden rode a scooter, she used a lift on the bus to enter and exit the bus. Briden remained on her scooter when she rode on the bus. She wore a seat belt, and the driver secured her scooter to the floor of the bus with straps.

On the day of the accident, a personal care attendant was riding with Briden. When the bus arrived at Briden's house, the personal care attendant exited the bus, and Woldeyesus unfastened the straps that had secured Briden's scooter to the floor of the bus. Woldeyesus told Briden that she could back up her scooter and reposition it toward the lift.¹ He then walked to the front of the bus to exit the bus, open the side door, and lower

¹ Metro Mobility does not allow drivers to operate passengers' scooters.

the lift. While Briden was backing up, her scooter tipped over, and she fractured her femur. Woldeyesus immediately ran back to Briden and lifted her off the floor with the help of the personal care attendant. According to the personal care attendant, Woldeyesus threw the straps on the floor instead of stowing them properly, and Briden's scooter tipped because it ran over the straps. Woldeyesus insists that he properly stowed the straps and did not leave them on the floor of the bus.

Briden sued Woldeyesus and Transit Team in March 2020, claiming that Woldeyesus was negligent and that Transit Team is vicariously liable for her damages. Appellants moved for summary judgment, arguing that Woldeyesus is entitled to common-law official immunity and that Transit Team is entitled to vicarious official immunity. The district court denied that motion, concluding that official immunity did not protect Woldeyesus from Briden's lawsuit. This appeal follows.

DECISION

An order that denies summary judgment based on an immunity is immediately appealable. *Mumm v. Mornson*, 708 N.W.2d 475, 481 (Minn. 2006). Summary judgment is appropriate if the moving party shows that “there is no genuine issue as to any material fact” and that the moving party is “entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. When reviewing a summary-judgment ruling, “we must determine whether there are genuine issues of material fact and whether the district court erred in applying the law.” *Mumm*, 708 N.W.2d at 481. We view the evidence “in the light most favorable to the nonmoving party.” *Id.*

“Official immunity is a common law doctrine that protects government officials from suit for discretionary actions taken by them in the course of their official duties.” *Sletten v. Ramsey County*, 675 N.W.2d 291, 299 (Minn. 2004). The purpose of official immunity is “to protect public officials from the fear of personal liability, which might deter independent action and impair effective performance of their duties.” *Id.* Official immunity provides immunity from suit, not just immunity from liability. *Id.* The existence of official immunity is a legal question that we review de novo. *Id.*

I.

Because official immunity protects public officials, a threshold issue is whether the party seeking immunity is a “public official.” *Kariniemi v. City of Rockford*, 882 N.W.2d 593, 600 (Minn. 2016). Here, Woldeyesus was not an employee of the state. Instead, he was an employee of an independent contractor for the state. The district court nonetheless concluded that Woldeyesus was a government actor eligible for official immunity. Briden challenges that determination on appeal, arguing that Woldeyesus is not a public official and that, therefore, neither he nor Transit Team is eligible for official immunity.²

The district court’s conclusion that Woldeyesus was a government actor was based on the Minnesota Supreme Court’s decision in *Kariniemi*. In that case, the supreme court

² Briden filed a notice of related appeal to this court challenging that determination. This court issued an order stating that Briden’s notice did not create a cross-appeal because Briden was not aggrieved by the district court’s summary-judgment order and Briden’s alternative argument would be moot if we affirmed on direct appeal. We noted that Briden could raise this argument on appeal. *See Doe 76C v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012) (stating that when considering the district court’s ruling on summary judgment, we need not adopt the district court’s reasoning).

extended official immunity to a private engineering firm that designed and oversaw the construction of a stormwater drainage system for a city. *Id.* at 596-97. The private firm worked pursuant to a contract with the city in which it agreed to perform the functions of the city engineer. *Id.* at 596. Generally, only the employees of a governmental entity are considered public officials, and “a mere contract with the government does not transform an independent commercial actor” into a public official. *Id.* at 600. The supreme court nevertheless determined that the private firm was a public official because of the “function performed” and the “special relationship” between it and the city. *Id.*

The function performed in *Kariniemi* was the design of a stormwater drainage system, which was a governmental function that public officials often carried out. *Id.* at 601. The position of city engineer is essential for a municipal government, and Minnesota statutes impose specific duties upon city engineers. *Id.* at 601-02. As for the special relationship between the city and the firm, the contract authorized the firm to perform the official function of city engineer, such that it acted as the city’s agent and had the authority to bind the city. *Id.* at 602. The contract contemplated “close collaboration” between the city and the firm, causing the firm to effectively operate as an extension of the city government rather than an independent commercial actor. *Id.*

Briden argues that independent contractors are generally not protected by a state’s official immunity and cites several decisions of this court as support. But only one of those decisions is precedential, and it is not useful because it predates, and therefore did not

apply, the analysis that the Minnesota Supreme Court used in *Kariniemi*.³ See *Koelln v. Nexus Residential Treatment Facility*, 494 N.W.2d 914, 921-22 (Minn. App. 1993), *rev. denied* (Minn. Mar. 22, 1993). We apply the reasoning of *Kariniemi* here.

Here, the function performed is the provision of public transportation. That is a governmental function often performed by public officials. Transit Team operates pursuant to a contract with Met Council, and Met Council is a political subdivision of the state. Minn. Stat. § 473.123, subd. 1. Met Council is required by statute to provide the Metro Mobility services that Transit Team provides. Minn. Stat. § 473.386, subd. 1(a). The statute specifically requires Met Council to “contract with public, private, and private nonprofit providers” when it is “feasible and cost-efficient.” *Id.*, subd. 3(2) (2020). Those circumstances demonstrate that Transit Team performs a governmental function.

As to the existence of a special relationship, several provisions of the contract that governs Met Council’s relationship with Transit Team contemplate close collaboration. Under that contract, Met Council furnishes and owns all the vehicles that Transit Team uses to provide public transportation. The contract requires Transit Team to appoint employees to specific management positions and to ensure that all drivers receive specific types of training. At its sole discretion, Met Council can require Transit Team to remove

³ Unpublished opinions are not precedential authority, but they may be persuasive. *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993). We have reviewed the unpublished decisions on which Briden relies and do not find them to be persuasive. See *RK Midway, LLC v. Metro. Council*, No. A16-0530, 2017 WL 279567, at *5 (Minn. App. Jan. 23, 2017), *rev. denied* (Minn. Apr. 18, 2017); *DeMars v. Bergman*, No. C7-99-1062, 1999 WL 1057226, at *1-2 (Minn. App. Nov. 23, 1999), *rev. denied* (Minn. Feb. 23, 2000); *M.H. v. Barber*, No. C6-99-16, 1999 WL 343806, at *1-2 (Minn. App. June 1, 1999), *rev. denied* (Minn. Aug. 18, 1999).

an employee if it determines that the employee's conduct is detrimental. The contract calls for Transit Team staff to participate in regular performance meetings with Met Council. Additionally, the contract sets forth extensive requirements governing Transit Team's daily operations, including reserving and scheduling rides, interacting with passengers, and collecting fares. Those provisions enable Met Council to control many of Transit Team's actions and require close collaboration.

Given the governmental function that Transit Team performs and the close collaboration required under its contract with Met Council, Transit Team effectively operates as an extension of Met Council, similar to the circumstances in *Kariniemi*. Thus, Woldeyesus and Transit Team may be entitled to the protections of official immunity.

II.

We now determine whether appellants are in fact protected by official immunity as a matter of law. When analyzing whether official immunity applies, courts must determine whether the conduct at issue involves ministerial or discretionary duties. *Mumm*, 708 N.W.2d at 490. Generally, official immunity protects officials only when they are charged with the execution of discretionary duties, not ministerial duties. *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 655 (Minn. 2004). If the conduct is ministerial, the public official is not immune if "the allegation is that a ministerial duty was either not performed or was performed negligently." *Id.* at 660. If the conduct is discretionary, the public official is immune from suit unless he is "guilty of a willful or malicious wrong." *Kariniemi*, 882 N.W.2d at 600.

To determine whether conduct is discretionary or ministerial, we focus on “the nature of the act.” *Vassallo ex rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014) (quotation omitted). “A discretionary duty involves individual professional judgment that necessarily reflects the professional goal and factors of a situation.” *Id.* (quotation omitted). “By contrast, a ministerial duty is one that is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts.” *Id.* (quotations omitted). “Some degree of judgment or discretion will not necessarily confer discretionary immunity on an official; the crucial focus is upon the nature of the act.” *Elwood v. County of Rice*, 423 N.W.2d 671, 677 (Minn. 1988).

As a general matter, conduct is more likely to be discretionary when it involves an emergency. In emergency situations, officials must “exercise significant independent judgment based on the facts before them” and therefore “are afforded a wide degree of discretion precisely because a more stringent standard could inhibit action.” *Id.* at 678. But “an emergency situation need not exist for official immunity to apply.” *Watson by Hanson v. Metro. Transit Comm’n*, 553 N.W.2d 406, 415 (Minn. 1996). For example, a road-grader operator’s decision to grade against traffic was discretionary because an established county policy gave him discretion to operate against traffic. *Schroeder v. St. Louis County*, 708 N.W.2d 497, 506 (Minn. 2006).

With those principles in mind, we turn to the acts at issue here. Briden presents three theories of negligence. First, Briden alleges that after Woldeyesus unfastened the straps that secured her scooter to the floor of the bus, he tossed them on the floor instead of storing them properly and her scooter tipped when it ran over the straps.

An administrative rule requires that if a transportation service vehicle has wheelchair-securement devices, the driver must ensure that the securement devices are “stored when not in use to prevent tripping.” Minn. R. 7450.0700(C) (2019).⁴ The regulation is absolute, certain, and imperative, and it allows the driver no discretion to leave the straps on the floor of the bus. Thus, the act of properly storing the straps was a ministerial duty. Woldeyesus is therefore not entitled to official immunity against Briden’s negligence claim to the extent that it is based on his alleged failure to properly store the straps.

Briden’s second negligence theory asserts that Woldeyesus should have exited the bus, deployed the lift, unfastened the straps securing Briden’s scooter, and then escorted Briden to the lift. Briden’s third theory asserts that Woldeyesus should have unfastened the straps and guided her scooter to face the lift before he left the bus to deploy the lift.

Under the statute that governs Metro Mobility, “[o]perators and assistants shall provide the help necessary for door-through-door service, including help in entering and leaving the vehicle.” Minn. Stat. § 473.386, subd. 6 (2020). Transit Team’s safety manual provides additional guidance regarding escorting passengers. It states that drivers must “oversee” passengers in their use of scooters and “must always offer their assistance when escorting.” When assisting passengers, “consideration of how the passenger wants to be

⁴ An identical requirement is currently set forth in statute. Minn. Stat. § 299A.13, subd. 4(d) (2020). That statute came into effect in August 2019, after Briden’s injury. 2019 Minn. Laws 1st Spec. Sess. ch. 3, art. 3, § 86, at 775.

handled is important.” The safety manual further discusses the procedures that drivers must follow when passengers exit the bus on a scooter:

When passengers in mobility devices are departing, we should whenever possible, ride down the lift with the passenger. That may mean that we deploy the lift and make certain that it is even with the floor of the vehicle, prior to releasing tie downs. Or in inclement weather, such as extreme heat or cold, we will remove all but one tie down and deploy the lift, then release the last tie down to minimize the [e]ffects of the temperature. Again if the mobility device is too large this would mean being on the ground and pulling the device onto the lift. We never have the passenger sitting on the lift without an employee in physical contact with the mobility device.

A different provision states, “When escorting wheelchair passengers, we will walk with electric chair passengers and passengers using scooters and open doors as needed.”

Appellants argue that the statutory requirement to provide the “help necessary” grants drivers discretion to determine what type of help is necessary under the circumstances. They also argue that the statute does not outline any specific duties for the driver, that the safety manual specifically calls for the driver to use his discretion by requiring him to consider how the passenger “wants to be handled,” and that drivers are taught to use their judgment regarding how much assistance passengers need. Briden counters that the protocols in the safety manual “are couched in mandatory language and allow for little to no discretion.”

Appellants have the better argument. The statute’s requirement to provide the “help necessary” allows for a variety of situations and actions and is too broad to establish a ministerial duty, as are the safety manual’s instructions to “oversee” passengers and “offer

... assistance.” Moreover, the provision discussing the unloading of passengers with scooters says that the driver “may” deploy the lift before releasing the straps that secure the scooter. The use of the word “may” indicates that a driver has some discretion regarding when to unfasten the straps. And the provisions in the safety manual requiring the driver to ride on the lift with passengers and to remain in physical contact with the scooter are not relevant because they apply only when the passenger is on the lift. Here, the allegedly negligent conduct occurred before Briden was on the lift, when she was maneuvering her scooter to the lift.

In sum, there is no clear requirement that a driver lower the lift before unfastening the straps securing a scooter to the floor of the bus. Nor is there a clear requirement that a driver remain with a scooter passenger once those straps are removed and the scooter can be moved within the bus. Instead, the manual permits drivers to use their discretion and to determine the amount of assistance that a passenger needs and desires when exiting the bus. Unlike the regulatory duty to store straps, Woldeyesus did not have an absolute, certain, and imperative duty to lower the lift gate before he unfastened the straps to Briden’s scooter or to stay with her while she maneuvered her scooter to the lift gate. Instead, Woldeyesus was allowed to exercise discretion. Woldeyesus is entitled to official immunity for such discretionary conduct.

III.

Appellants alternatively contend that they are entitled to summary judgment because there is no genuine issue of material fact regarding whether Woldeyesus properly

stowed the straps. Briden argues that appellants' alternative argument is not properly before this court.

The denial of a motion for summary judgment is generally not appealable unless it was based on the denial of official immunity. *Gleason v. Metro. Council Transit Operations*, 582 N.W.2d 216, 218 (Minn. 1998). We nonetheless address appellants' alternative argument because it is easily rejected. *See Soucek v. Banham*, 503 N.W.2d 153, 163 (Minn. App. 1993) (reviewing the denial of summary judgment on alternative grounds in "the interests of both justice and judicial economy" after affirming the denial of summary judgment based on immunity).

Briden's fall on the bus was captured in an audio-visual recording. Appellants argue that the video clearly shows that Woldeyesus properly stowed the straps because all his movements are consistent with stowing the straps and the video does not reveal any actions or statements consistent with an object being on the floor. But Briden's personal care attendant stated during her deposition that she saw a strap lying on the floor immediately after Briden fell and surmised that the scooter tipped because it ran over the strap. Appellants argue that this court should reject the statements of the personal care attendant, made two years after the accident, based on the video evidence.

When reviewing a ruling on summary judgment, we must view the evidence "in the light most favorable to the nonmoving party." *Mumm*, 708 N.W.2d at 481. Moreover, a court may not weigh the evidence when considering a motion for summary judgment. *Hoyt Props., Inc. v. Prod. Res. Grp., L.L.C.*, 736 N.W.2d 313, 320 (Minn. 2007). Credibility determinations are entrusted to the fact-finder at trial. *Id.*

Summary judgment is inappropriate if reasonable people can draw different conclusions from the evidence presented. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). The video does not conclusively show that Woldeyesus stored the straps properly. The entire floor of the bus is not visible, and it is not clear whether Briden's scooter ran over anything on the floor before it tipped over. As a result, reasonable people can draw different conclusions from the video, which the district court correctly described as "inconclusive." Thus, a fact-finder must determine whether to believe the inference of compliance that the video supports or the conflicting account of a firsthand witness. In sum, there is a genuine issue of material fact regarding whether Woldeyesus properly stored the straps consistent with his regulatory duty.

IV.

Finally, we address the issue of vicarious official immunity for Transit Team. "Generally, if a public official is found to be immune from suit on a particular issue, his or her government employer will be vicariously immune from a suit arising from the employee's conduct and claims against the employer are dismissed without explanation." *Anderson*, 678 N.W.2d at 663-64. Whether to grant vicarious official immunity is a policy question. *Id.* at 664. A government employer has vicarious official immunity if an official's performance would be hindered as a result of the official second-guessing himself when making decisions, "in anticipation that [his] government employer would also sustain liability as a result of [his] actions." *Id.*

We discern no reason not to apply the general rule here. Transit Team is entitled to vicarious official immunity and protected from suit to the same extent as Woldeyesus.

V.

In conclusion, appellants are not entitled to official immunity on Briden's claim that Woldeyesus breached his regulatory duty to properly store the straps that were used to secure Briden's scooter to the bus floor. And there is a genuine issue of material fact regarding whether Woldeyesus properly stored those straps. But appellants are entitled to official immunity on Briden's remaining negligence theories, which are based on Woldeyesus's failure to lower the lift gate before he unfastened the straps to Briden's scooter and Woldeyesus's failure to remain with Briden while she maneuvered her scooter to the lift gate. We therefore affirm the denial of summary judgment in part, reverse it in part, and remand for further proceedings only on the portion of Briden's negligence claim that is based on Woldeyesus's alleged failure to properly store the straps.

Affirmed in part, reversed in part, and remanded.