

*This opinion is nonprecedential except as provided by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
A22-0607**

Alexander Aguilar,
Respondent,

vs.

American Indian Community Development Corporation,
Defendant,

Hennepin County,
Appellant.

**Filed February 27, 2023
Affirmed
Halbrooks, Judge***

Hennepin County District Court
File No. 27-CV-20-2243

Seth R. Halpern (pro hac vice), Malkinson & Halpern, P.C., Chicago, Illinois; and

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Considered and decided by Segal, Chief Judge; Gaïtas, Judge; and Halbrooks,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

Appellant-county challenges the district court’s denial of its motion for summary judgment on respondent’s medical-negligence claims. The county argues that it is entitled to summary judgment on the grounds of common-law vicarious official immunity and statutory discretionary-function immunity. Because we conclude that the county has not demonstrated that it is entitled to immunity on either basis as a matter of law, we affirm.

FACTS

The following facts are either undisputed or are recounted in a light most favorable to respondent Alexander Aguilar as the nonmoving party. Appellant Hennepin County contracts with American Indian Community Development Corporation (AICDC) for the provision of a statutorily required detoxification facility (the detox facility).¹ The county also leases part of the third floor of a building that the county owns and manages to AICDC as space for the detox facility. AICDC, which maintains a state-issued license to operate the detox facility, provides treatment to clients who are voluntarily seeking detoxification services and temporarily treats patients who are civilly committed by the district court until beds are available at state treatment facilities. Although the detox facility is locked, other areas of the third floor and other floors in the building are open to the public.

¹ Under the Minnesota Commitment and Treatment Act, the county is statutorily obligated to “maintain or provide by contract a facility for confinement of persons held temporarily for observation, evaluation, diagnosis, treatment, and care.” Minn. Stat. § 253B.045, subd. 2 (2022). The county is also obligated to fund these facilities. Minn. Stat. § 256G.06 (2022).

The county provides security, including security employees who patrol the first floor of the building and who assist with the day-to-day needs of the public. Until March 2018, building security worked with AICDC inside the detox facility and received reports of client elopement. In March 2018, AICDC ended its relationship with building security and began reporting incidents directly to the Minneapolis Police Department (MPD). The county did not implement alternative security measures.

Aguilar was a patient at the detox facility in May 2018. He has an extensive history of severe alcohol dependence and abuse. For years, Aguilar regularly drank hand sanitizer, rubbing alcohol, or other intoxicating household products to the point of unconsciousness, resulting in multiple hospitalizations and, in some cases, intubation.

On May 2, the district court found that Aguilar was a chemically dependent person as defined in Minn. Stat. § 253B.02, subd. 2 (2022), that he was unable to manage his affairs due to habitual and excessive alcohol use, and that his conduct resulting from chemical dependency posed a substantial likelihood of physical harm. The district court committed Aguilar as a chemically dependent person, but stayed the order on the condition that, among other things, Aguilar voluntarily enter a treatment program and refrain from alcohol use.

Aguilar relapsed on his first day at the treatment program. On May 7, 2018, the district court revoked the May 2 stay, committed Aguilar as a chemically dependent person, and ordered that Aguilar “be held” at the detox facility “until transported to a [r]egional [t]reatment [c]enter.” Between May 7 and 9, Aguilar tried to elope from the detox facility

several times. Neither the county nor AICDC took additional precautions to prevent Aguilar's elopement.

On May 17, 2018, a custodian entered the detox facility through a locked door that led to a hallway that is not visible from the nurses' station. Aguilar noticed that the door was left ajar, pushed past the custodian, and took the stairs to the first floor. Aguilar briefly made eye contact with a building security employee on the first floor. That employee did not attempt to prevent Aguilar from leaving the building through an unlocked rear door. The custodian followed Aguilar to the parking lot and tried to convince him to return to the detox facility, but Aguilar refused and left. The custodian then reported Aguilar's elopement to AICDC staff. AICDC staff searched the detox facility for Aguilar and a few hours later reported the elopement to the MPD and filed an elopement report but did not alert building security. A few days later, AICDC informed Aguilar's county social worker that Aguilar eloped. The county made no effort to find Aguilar.

During his elopement, Aguilar drank hand sanitizer and stayed in homeless shelters or at a friend's house. Before sunrise on May 24, 2018, Aguilar, in an intoxicated state, attempted to cross Interstate 94 on foot. He was hit by a car driving at highway speed and sustained extensive injuries. As a result of the accident, Aguilar is a paraplegic and has some lingering effects of a brain injury.

Aguilar sued the county and AICDC, alleging medical negligence by both parties.² Aguilar's medical-negligence claim against the county alleges:

² Aguilar also asserted general negligence, but the district court dismissed that claim as duplicative of the medical-negligence claim.

Despite and/or in disregard of its duties, Hennepin County, by and through its duly authorized staff, agents, contractors, apparent agents, and employees, was careless and negligent and did deviate from the applicable standard of care in one or more of the following respects:

- a. Failing to properly and adequately train employees, agents, and contractors, including but not limited to maintenance personnel, . . . on the importance, method and manner of preventing and responding to elopements, including [Aguilar's];
- b. Failing to ensure that all Hennepin County employees, agents, contractors, and maintenance personnel . . . with known access to the . . . [detox facility] were informed of the importance of keeping entry doors locked and preventing “commitment hold” patients from exiting the facility without authorization, including but not limited to posting appropriate signage;
- c. On or before May 17, 2018[,] and thereafter through May 24, 2018, failing to engage with AICDC, to coordinate efforts to prevent elopement of “commitment hold patients” at the . . . [detox facility] and/or recover such patients attempting to elope;
- d. Failing to have appropriate elopement risk policies and protocols in place for its employees, agents and contractors, including but not limited to maintenance personnel, to prevent elopement and to ensure recovery of eloped “commitment hold” patients from the . . . [detox facility];
- e. Following his elopement on May 17, 2018, failing to take reasonable steps to ensure the safe recovery and return of Aguilar to the facility or another secure facility prior to May 24, 2018; and
- f. Failing to require AICDC or any other operator of the third floor [d]etoxification facility to have appropriate elopement risk policies and protocols in place for its employees, agents, contractors or maintenance personnel to prevent elopement and to ensure recovery of eloped “commitment hold” patients.

At the close of discovery, the county moved for summary judgment, arguing in part that it was entitled to dismissal of all claims under the doctrines of common-law vicarious official immunity and statutory discretionary-function immunity. The district court denied summary judgment determining that, on the record before it, the county is not entitled to immunity.

This appeal follows.

DECISION

I.

The first issue before us is whether the district court erred in determining that the county is not entitled to vicarious official immunity. “In reviewing an appeal from the grant or denial of official immunity on summary judgment, we must determine whether there are genuine issues of material fact and whether the lower court erred in applying the law.” *Thompson v. City of Minneapolis*, 707 N.W.2d 669, 673 (Minn. 2006). The applicability of vicarious official immunity is a question of law that we review de novo. *Kariniemi v. City of Rockford*, 882 N.W.2d 593, 599 (Minn. 2016). The party asserting immunity generally has the burden of proving entitlement to that defense. *Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997). We consider the evidence in a light most favorable to the nonmoving party. *Thompson*, 707 N.W.2d at 673.

“Common law official immunity generally applies to prevent a public official charged by law with duties which call for the exercise of his judgment or discretion from being held personally liable to an individual for damages.” *Schroeder v. St. Louis County*,

708 N.W.2d 497, 505 (Minn. 2006) (quotations omitted). The purpose of official immunity is to protect “public officials from the fear of personal liability that might deter independent action and impair effective performance of their duties.” *Elwood v. Rice County*, 423 N.W.2d 671, 678 (Minn. 1988); *see also Jepsen as Tr. for Dean v. County of Pope*, 966 N.W.2d 472, 482 (Minn. 2021). “In general, when a public official is found to be immune from suit on a particular issue, his government employer will enjoy vicarious official immunity from a suit arising from the employee’s conduct.” *Schroeder*, 708 N.W.2d at 508.

“The starting point for analysis of an immunity question is identification of the precise governmental conduct at issue.” *Gleason v. Metro. Council Transit Operations*, 582 N.W.2d 216, 219 (Minn. 1998) (quotation omitted). This identification is necessarily guided by the plaintiff’s allegations and theories of liability. *See id.* (examining allegations in the complaint to determine the conduct at issue); *Mumm v. Mornson*, 708 N.W.2d 475, 490 (Minn. 2006) (stating conduct challenged as asserted by plaintiff-respondents); *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 656 (Minn. 2004) (examining plaintiff-respondent’s arguments that certain conduct was ministerial).

The second step in determining whether vicarious official immunity applies is determining whether the conduct at issue was discretionary or ministerial. *See Anderson*, 678 N.W.2d at 655 (holding that official immunity does not protect officials when “they are charged with the execution of ministerial, rather than discretionary, functions, that is, where ‘independent action’ is neither required nor desired.”); *see also Briggs ex rel. Briggs v. Rasicot*, 867 N.W.2d 217, 222 (Minn. App. 2015) (holding that police officer who

violated ministerial duty was not entitled to official immunity), *rev. denied* (Minn. Sept. 15, 2015). If the conduct is discretionary, the court must determine whether the challenged conduct constituted a willful or malicious wrong; if so, the plaintiff can recover notwithstanding the discretionary nature of the conduct. *See Vassallo ex rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014); *Gleason*, 582 N.W.2d at 220.

We have recognized that “official immunity applies only in situations involving the act of an individual state official.” *Janklow v. Minn. Bd. of Exam’rs for Nursing Home Adm’rs*, 552 N.W.2d 711, 716 (Minn. 1996). The county contends that “the only allegation that Aguilar makes about any individual Hennepin County employee” is his statement that a building security employee did not stop him from leaving the building.³ The county then asserts that the district court should have focused only on the building security employee’s decision not to stop Aguilar in determining whether official immunity applies.⁴ We disagree.

The allegations in Aguilar’s complaint are far broader than the single interaction between Aguilar and the building security employee. Aguilar alleges a series of negligent acts committed by the county including failing to properly train employees on elopement

³ During oral argument before this court, the county stated that the building security employee had no recollection of this incident, but we view the facts in the light most favorable to Aguilar, as the nonmoving party.

⁴ Though the building security employee was not named as a party in this suit, “a government employer may generally invoke the doctrine of vicarious official immunity even if the individual official whose conduct is at issue is not a named defendant in the suit.” *Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 317 (Minn. 1998).

procedures, failing to have protocols in place for commitment-hold patients, and failure to engage with or require AICDC to establish elopement protocols. Aguilar further alleges failure to prevent his elopement based on the sum of these training and policy lapses and subsequent failure to recover him.

The county asserts that the conduct at issue is the security employee's decision not to prevent Aguilar from exiting the building. The county further argues, based solely on Aguilar's deposition testimony, that the employee used his judgment in deciding not to intervene in Aguilar's departure. The county's argument fails in three ways.

First, official immunity requires a finding that an individual "official" is responsible for the acts alleged and, as established, the conduct underlying this suit is much broader than the actions of the single employee. *See id.* at 717. Second, the county "has the burden to demonstrate facts showing that it is entitled to immunity." *Hoff v. Surman*, 883 N.W.2d 631, 633 (Minn. App. 2016). The county has failed to demonstrate how the employee's failure to stop Aguilar relates to Aguilar's several claims of training and policy failures. And the record before us lacks evidence to support a finding that the employee acted with discretion or, if he did, that such an act was neither willful nor malicious. *See e.g., Briggs*, 867 N.W.2d at 221 (concluding there was a ministerial duty based on a city ordinance and police department policies); *Vassallo*, 842 N.W.2d at 465 (determining based on the record that the district court did not err in finding, as a matter of law, that a deputy did not act willfully or maliciously). Third, even if the record showed that the employee's actions are part of the conduct at issue, that he acted with discretion and that he is entitled to immunity,

that immunity would not extend to allegations of negligence outside the exercise of discretion by that employee.

Because Aguilar’s medical-negligence claims extend beyond his split-second interaction with a building security employee, the county has not demonstrated that it is entitled to official immunity as a matter of law. The district court therefore did not err by denying the county’s motion for summary judgment on this ground.

II.

We next consider whether the district court erred in determining that the county is not entitled to statutory discretionary-function immunity under the Minnesota Municipal Tort Claims Act (MTCA), Minn. Stat. §§ 466.01-.15 (2022). *See* Minn. Stat. § 466.03, subd. 6. The applicability of statutory immunity is a question of law that we review *de novo*. *Sletten v. Ramsey County*, 675 N.W.2d 291, 299 (Minn. 2004).

The MTCA generally provides that “every municipality is subject to liability for its torts and those of its officers, employees and agents acting within the scope of their employment or duties whether arising out of a governmental or proprietary function.” Minn. Stat. § 466.02. The MTCA includes several exceptions to the default rule of tort liability for municipalities. *See* Minn. Stat. § 466.03. According to section 466.03, subdivision 6, municipal liability does not attach to “[a]ny claim based upon the performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.”

When interpreting discretionary-function immunity, the Minnesota Supreme Court has distinguished between decisions made at the “planning” or “policymaking” level from

those made at the “operational” level. *Olson v. Ramsey County*, 509 N.W.2d 368, 371 (Minn. 1993). “[G]overnment conduct is protected only where the state produces evidence that the conduct was of a policy-making nature involving social, political, or economical considerations.” *Nusbaum v. Blue Earth County*, 422 N.W.2d 713, 722 (Minn. 1988). Generally, “conduct at the planning level involves policy considerations and is, therefore, protected. However, on the operational level, conduct is less likely to involve policy-making decisions and will not ordinarily be protected.” *Id.* “Although we recognize that nearly every government decision will involve some level of discretion, the exercise of discretion, alone, does not entitle an act to discretionary function immunity.” *Jepsen*, 966 N.W.2d at 489.

As with the official-immunity analysis, we must first identify the government conduct being challenged in order to determine whether statutory immunity applies. *Nusbaum*, 422 N.W.2d at 722. The county argues that the conduct at issue is its decision to contract with AICDC for detoxification services and its failure to adopt, implement, and train on various “hypothetical” policies and procedures that may have prevented Aguilar’s elopement. But Aguilar’s medical-negligence claim is not based on the county’s decision to contract with AICDC or the county’s decision not to run its own detoxification facilities generally. Instead, Aguilar alleges that the county was negligent because of its failure to train employees, failure to coordinate with AICDC on elopement risks and procedures, failure to implement elopement protocols, failure to adopt policies about elopement and patients under civil-commitment holds, and failure to take steps to recover Aguilar after he eloped.

The county contends that its decision not to train employees or coordinate with AICDC on elopement procedures is a protected policy decision that involves the weighing of several issues. *See Christopherson v. City of Albert Lea*, 623 N.W.2d 272, 276 (Minn. App. 2001) (determining that record evidence showed the city weighed several issues in deciding not to remedy its sewer system, thus entitling it to immunity). The county asserts that it “specifically made the policy decision” not to play a role in the decision-making at AICDC when it “chose instead to outsource this role to an entity qualified to make these kinds of decisions.” Yet the record, although voluminous, is devoid of evidence of any relevant policy or planning-level decisions made by the county.

We construe claims of statutory immunity very narrowly. *Hoff*, 883 N.W.2d at 634. The burden is on the county to provide evidence that supports its claim for statutory immunity. *S.W. v. Spring Lake Park Sch. Dist. No. 16*, 580 N.W.2d 19, 22 (Minn. 1998) (“The party claiming statutory immunity has the burden of proof.”). It is not enough that the allegedly negligent conduct relates to an area in which the county *could have considered* and declined to implement certain policies and procedures. The county must show that it *did consider* social, political, or economic impacts and reached a decision not to implement procedures. *Id.* at 23 (“Were we to hold that the simple absence of a policy or a decision not to have a policy entitles government entities to immunity under the statute, we would be providing government decisionmakers an incentive to avoid making the difficult decisions which the statute was designed to protect.”).

Because the county offered no evidence that its allegedly negligent conduct was based on policy or planning-level decisions, it has not demonstrated that it is entitled to

statutory immunity as a matter of law. The district court therefore did not err by denying the county's motion for summary judgment on this ground.

Affirmed.