

*This opinion is nonprecedential except as provided by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
A23-1949**

Charlie Thoemke,
Appellant,

vs.

Christopher Roland Lamke,
Respondent.

**Filed September 9, 2024
Affirmed
Wheelock, Judge**

St. Louis County District Court
File No. 69VI-CV-23-166

Aaron W. Ferguson, Benjamin M. Kline, Aaron Ferguson Law, P.L.L.C., Arden Hills,
Minnesota (for appellant)

Steven L. Reyelts, Eric J. Berg, Trial Group North, Duluth, Minnesota (for respondent)

Considered and decided by Ede, Presiding Judge; Frisch, Judge; and Wheelock,
Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this appeal from the grant of summary judgment, appellant argues that the district
court erred when it determined that the Minnesota Workers' Compensation Act (WCA),

Minn. Stat. §§ 176.001-.862 (2022),¹ bars his personal-injury claim against respondent. Respondent argues by notice of related appeal that the district court abused its discretion by denying respondent's motion for sanctions. We affirm the district court's grant of respondent's motion for summary judgment and denial of his motion for sanctions, and we decline to reach respondent's request for sanctions in this court.

FACTS

Lake States Tree Service Inc. employed appellant Charlie Thoemke and respondent Christopher Roland Lamke. Lamke was Thoemke's supervisor. Lamke had access to a company vehicle and regularly used it to carpool with employees, including Thoemke, to job sites. Lake States did not require Lamke to carpool with other employees; rather, Lamke gave employees with whom he worked the option to carpool with him for their convenience and so they would not have to spend their own money on gas. In his deposition, Lamke testified that, during the time they worked together, Thoemke drove alone in his own vehicle to and from a job site instead of carpooling with Lamke only "a couple times." When Lamke and Thoemke rode together, they took turns driving; one of them would drive to the job site in the morning, and the other would drive back in the afternoon. Lake States' safety coordinator knew about the carpooling arrangement.

On the morning of May 22, 2018, Lamke and Thoemke met at a parking lot to ride together to a job site. Lamke parked the company vehicle in the parking lot and waited for Thoemke. Thoemke testified in his deposition that, as he approached the vehicle, he

¹ We cite to the 2022 statutes in this opinion because, although the legislature amended sections of the WCA in 2023, none of the amended sections are relevant to this case.

observed Lamke sleeping in the driver's seat. Thoemke testified that he offered to drive but that Lamke said he was okay to drive. Lamke testified that he had not been sleeping and that it was likely that he drove that morning because Thoemke chose to drive in the afternoon instead of the morning.

While Lamke was driving on the highway, he dozed off at the wheel. After crossing over the center line and the oncoming-traffic lane, the company vehicle hit a large metal object on the side of the road, collided with an embankment, and flew up off the ground before landing "nose first" in the ditch. Thoemke sustained severe injuries, including ruptured vertebrae in his thoracic spine and fractured bones. He underwent two surgeries, was out of work for at least five years, and suffered long-term, severe pain following the accident. Lamke was also injured and missed work for approximately one week. Lamke returned to work at Lake States and was never disciplined by his employer for the accident. Both Thoemke and Lamke received workers'-compensation benefits through Lake States for their accident-related injuries.

In March 2023, Thoemke initiated a personal-injury lawsuit against Lamke, alleging that Lamke was grossly negligent in choosing to drive on the morning of the accident when he was tired. After discovery ended, Lamke moved for summary judgment, arguing that Thoemke's claim was barred by the WCA's coemployee-immunity provision, Minn. Stat. § 176.061, subd. 5(e). Thoemke opposed summary judgment, arguing that Lamke was not immune from suit because Thoemke had established that the gross-negligence exception to coemployee immunity applied. In his reply, Lamke requested sanctions, including attorney fees, arguing that Thoemke's arguments were frivolous. The district court granted

Lamke’s motion for summary judgment because it determined that Thoemke had not established that an exception to coemployee immunity applied, and it denied Lamke’s request for sanctions.

Thoemke and Lamke each appeal.

DECISION

Thoemke contends that the district court erred by granting summary judgment, arguing that he provided sufficient evidence to prove that the gross-negligence exception to the WCA’s coemployee-immunity provision applies. By notice of related appeal, Lamke argues that (1) the district court abused its discretion by denying his motion for sanctions and (2) this court should sanction Thoemke on appeal because Thoemke’s lawsuit and this appeal are frivolous.

I. The district court did not err by granting summary judgment.

Thoemke argues that summary judgment was improper because he (1) established that Lamke was acting outside the course and scope of employment at the time of the accident—and thus owed him a personal duty—and (2) presented a genuine issue of material fact about whether Lamke was grossly negligent in causing his injuries, and thus, he provided sufficient evidence to prove that the gross-negligence exception to the WCA’s coemployee-immunity provision applies.

“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 “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. “The party opposing summary judgment may not establish genuine issues of material fact by relying upon unverified and conclusory allegations, or postulated evidence that might be developed at trial, or metaphysical doubt about the facts.” *Dyrdal v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 783 (Minn. 2004). “A defendant is entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of the plaintiff’s claim.” *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

When an employee is injured in the course of their employment, the WCA requires the employer to compensate the injured employee regardless of the fault of the employer. Minn. Stat. § 176.021, subd. 1 (“Every employer is liable . . . to pay compensation in every case of personal injury or death of an employee arising out of and in the course of employment without regard to the question of negligence.”). The WCA is premised on the theory that employers, rather than employees, should bear the financial burden for employee injuries as a cost of doing business. *Arens v. Hanecy*, 269 N.W.2d 924, 926 (Minn. 1978). The WCA “is based on a mutual renunciation of common law rights and defenses by employers and employees alike.” Minn. Stat. § 176.001.

When a coemployee causes the injured employee’s injury, the coemployee is immune from liability unless the coemployee caused the injury through gross negligence or the commission of an intentional tort. Minn. Stat. § 176.061, subd. 5(e) (the coemployee exception). The purpose of the coemployee exception is “to allow only a narrow window for coemployee liability” because allowing claims against coemployees for simple

negligence “tends to shift tort liability from employer to fellow employee in a manner never intended by the workers’ compensation system.” *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 755 (Minn. 2005) (quotation omitted).

To establish a claim within the coemployee exception on a gross-negligence theory, as Thoemke seeks to do here, the injured employee must show that

1. the coemployee had a personal duty toward the employee, the breach of which resulted in the employee’s injury, and that the activity causing the injury was not part of the coemployee’s general administrative responsibilities; and
2. the injury arose from gross negligence on the part of the coemployee.

Id. at 754 (citing *Wicken v. Morris*, 527 N.W.2d 95, 98 (Minn. 1995)). The district court determined that Thoemke’s claim failed because he failed to offer evidence sufficient to prove that Lamke owed him a personal duty.

Whether there is a personal duty is a question of law that we review de novo. *Id.* at 755. “To have a personal duty to the injured employee, the coemployee must have (1) taken direct action toward or have directed another to have taken direct action toward the injured employee and (2) acted outside the course and scope of employment.” *Id.* at 757 (citations omitted). The parties dispute only the second prong.

“Scope of employment” is defined as “the field of action in which a servant is authorized to act in the master-servant relationship.” *Black’s Law Dictionary* 1374 (8th ed. 2004). “Course of employment” refers to “[e]vents that occur or circumstances that exist as a part of one’s employment; esp., the time during which an employee furthers an employer’s goals through employer-mandated directives.” *Id.* at 378. Under the workers’ compensation system, we have said that

course of employment refers to the time, place, and circumstances of the incident causing the injury.

Id. at 758. “When determining coemployee immunity, . . . course and scope of employment [has] the same meaning as the course and scope of employment test used to determine whether an employee qualifies for workers’ compensation benefits.” *Id.* at 760. This test is not “the scope of employment test used to determine vicarious liability under respondeat superior.” *Id.* “The burden of proof is upon the claimant to establish without speculation or conjecture that the injury or death arose out of or in the course of the employment.” *Mansfield v. Gopher Aviation Co.*, 221 N.W.2d 135, 138 (Minn. 1974).

The district court determined that Lamke was acting within the course and scope of employment partly because, in his responses to Lamke’s requests for admissions, Thoemke admitted that Thoemke was acting within the course and scope of employment at the time the accident occurred. The district court reasoned, “If [Thoemke] was acting within the course and scope of his employment, [Lamke] was also acting within the course and scope of his employment.” Lamke argues that the district court correctly relied on Thoemke’s admission when it determined that Lamke was acting in the course and scope of employment. Lamke’s specific discovery request and Thoemke’s response stated:

Admit the accident referenced in Plaintiff’s Complaint occurred during the scope of employment with Lake States Tree Service.

Response: Admitted.

Thoemke asserts that his discovery response admitted only that he—Thoemke—was acting in the course and scope of employment and did not admit the same as to Lamke. But it is

unclear from the imprecise wording of the discovery request whether it refers to Thoemke, Lamke, or both. We therefore reject Lamke's contention that Thoemke is precluded from arguing that Lamke was acting outside the course and scope of employment. We conclude, however, that Thoemke's argument fails.

Thoemke argues that Lamke was acting outside the course and scope of employment because Lake States did not require Lamke to transport Thoemke to job sites. He cites *Stringer*, in which the supreme court determined that a trainer and a medical-services coordinator employed by the Minnesota Vikings football team were acting in the course and scope of employment when they cared for a player before the player died of heat stroke during practice. 705 N.W.2d at 762. In reaching that conclusion, the supreme court considered that the employees' "obligations to Stringer directly resulted from their employment," "[t]he Vikings required at least one trainer to remain on the field," and the trainers' job duties included "monitoring practice, providing players with water, and evaluating and treating player injuries." *Id.*

Thoemke argues that we should read *Stringer* to mean that a coemployee tortfeasor is acting in the course and scope of employment only if the coemployee is performing a job duty required by the employer.² We disagree. The *Stringer* court did not restrict

² Thoemke also asserts that this case is like *Swanson v. Timesavers, Inc.*, in which we concluded that a coemployee had a personal duty to an injured employee, not because the coemployee's "conduct was not an administrative activity," but, rather, because the "motivation behind [the coemployee's] conduct was typical of one employee attempting to help another." No. C7-96-1211, 1997 WL 104917, at *2 (Minn. App. Mar. 11, 1997), *rev. denied* (Minn. May 20, 1997). Thoemke argues that *Swanson* is persuasive because Lamke volunteered to help Thoemke get to work. But *Swanson* was decided before the supreme court announced the personal-duty test in *Stringer*. And the dispute in *Swanson* was

“course and scope of employment” to the performance of required job duties; rather, it concluded that the coemployees did not owe Stringer a personal duty because the particular facts in that case showed they acted within the scope of employment.³

As relevant here, the *Stringer* court stated that, “[w]hen an employee engages in acts exceeding his authorization, including the violation of an instruction or a rule, he is acting outside the course and scope of his employment.” 705 N.W.2d at 761 (citing *Bartley v. C-H Riding Stables, Inc.*, 206 N.W.2d 660, 662 (Minn. 1973)). The supreme court further acknowledged that “[w]e have held that an activity not explicitly within the employee’s defined duties can nevertheless be related to the employee’s duties if the work is in

whether the coemployee’s actions invoked a personal duty toward the injured employee rather than a general duty arising from an “administrative activity” under *Wicken*. See *id.* That distinction is relevant only to whether the coemployee took a direct action toward the injured employee. *Wicken*, 527 N.W.2d at 99. Because “course and scope of employment” was not at issue in *Swanson*, we do not find *Swanson* persuasive.

³ Thoemke also contends that *Stringer* was wrongly decided because, if coemployee liability is never available when both the injured employee and the coemployee are acting in the course and scope of employment, the coemployee exception would be “essentially eliminate[d].” Thoemke cites Justice Hanson’s dissent in *Stringer*, which lays out “competing concerns with restricting coemployee liability.” See 705 N.W.2d at 764 (Hanson, J., dissenting). To the extent Thoemke asks this court not to follow the interpretation of the coemployee-immunity exception in the *Stringer* majority opinion, we decline that invitation. See *Brainerd Daily Dispatch v. Dehen*, 693 N.W.2d 435, 439-40 (Minn. App. 2005) (“Although these concerns are not without merit, we are bound to follow Minnesota Supreme Court precedent.”), *rev. denied* (Minn. June 14, 2005); *Lake George Park, L.L.C. v. IBM Mid-Am. Emps. Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998) (“[T]his court, as an error correcting court, is without authority to change the law.”), *rev. denied* (Minn. June 17, 1998). We also observe that the legislature has not amended section 176.061 since *Stringer* was decided, which bolsters our conclusion that *Stringer* is good law.

‘furtherance of the employer’s business.’” *Id.* (quoting *Ramczik v. Winona Mach. & Foundry Co.*, 218 N.W. 545, 545 (Minn. 1928)).

Thoemke did not present sufficient evidence to demonstrate that Lamke was acting outside the course and scope of his employment. Thoemke presented no evidence that Lamke exceeded his authorization by transporting Thoemke to and from job sites. The only evidence in the record on this subject is Lamke’s testimony that (1) the safety coordinator knew about the carpooling arrangement; (2) Lamke nearly always carpooled with other employees, including Thoemke; and (3) Lake States did not discipline Lamke for the accident. To the extent Thoemke argues that the carpooling was not in furtherance of Lake States’ business, the evidence does not support that point. Lamke testified only that he had access to the company vehicle, and that fact says nothing about how carpooling affected the business.

In sum, because the record reflects a complete lack of proof as to whether Lamke’s use of the company vehicle or the carpooling arrangement exceeded Lamke’s authorization or was not in furtherance of Lake States’ business interests, Thoemke failed to present evidence sufficient to show that Lamke was acting outside the course and scope of employment. *See Lubbers*, 539 N.W.2d at 401.⁴ Therefore, Thoemke did not present evidence sufficient to show that Lamke owed him a personal duty, and the WCA’s coemployee-immunity provision bars Thoemke’s personal-injury lawsuit. The district court did not err by granting summary judgment.

⁴ Because we conclude that Thoemke failed to show that Lamke owed him a personal duty, we need not address Thoemke’s argument that Lamke was grossly negligent.

II. The district court acted within its discretion by denying Lamke’s motion for sanctions.

Lamke argues that the district court abused its discretion by denying his request for sanctions because Thoemke’s lawsuit is frivolous and brought in bad faith. A district court has broad discretion in determining whether to impose sanctions under Minn. R. Civ. P. 11, and we will not disturb its decision absent an abuse of discretion. *Peterson v. Hinz*, 605 N.W.2d 414, 417 (Minn. App. 2000) (“In its decision to withhold sanctions, the trial court must be affirmed in the absence of an abuse of discretion, to afford the trial court the flexibility necessary to resolve the initial questions and most readily accomplish the policy goals of the rule.” (quotation omitted)), *rev. denied* (Minn. Apr. 18, 2000).

A court may sanction a party or their attorney when their claims or arguments are not supported by existing law or a nonfrivolous argument for a change in the law. *See* Minn. R. Civ. P. 11.02(b), .03. “Sanctions are not appropriate merely because a party does not prevail on the merits.” *Radloff v. First Am. Nat’l Bank of St. Cloud, N.A.*, 470 N.W.2d 154, 157 (Minn. App. 1991), *rev. denied* (Minn. July 24, 1991). Sanctions should be reserved for “substantial departures from acceptable litigation conduct.” *Wolf v. Oestreich*, 956 N.W.2d 248, 256 (Minn. App. 2021) (quoting Minn. R. Civ. P. 11 2000 advisory comm. cmt.), *rev. denied* (Minn. May 18, 2021). We agree with the district court that, although Thoemke’s arguments were not successful, his lawsuit was not frivolous and does

not depart from acceptable litigation conduct.⁵ We therefore affirm the district court’s denial of Lamke’s request for sanctions.

Affirmed.

⁵ We also note that, even if we concluded that this appeal was frivolous, “[m]onetary sanctions may not be awarded against a represented party” who makes frivolous arguments and thus would not be available against Thoemke. Minn. R. Civ. P. 11.03(b)(1); *see also* Minn. R. Civ. P. 11.02(b). Similar to his request to the district court for sanctions, Lamke urges this court to exercise its “inherent common law authority” to grant him attorney fees on appeal. Minnesota Rule of Civil Appellate Procedure 139.05, subdivision 1, requires parties seeking attorney fees to “submit such a request by motion.” Lamke did not do so, and thus, we decline to reach his request for attorney fees.