

*This opinion is nonprecedential except as provided by  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  
A23-1985**

Amanda Buxton,  
as trustee for the next-of-kin Tom Buxton, deceased,  
Appellant,

vs.

Jamie Meyer, in his individual capacity as an officer  
of the Mower County Sheriff's Office, et al.,  
Respondents,

City of Austin, et al.,  
Defendants.

**Filed August 5, 2024**  
**Affirmed in part, reversed in part, and remanded.**  
**Jesson, Judge\***

Mower County District Court  
File No. 50-CV-22-1660

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Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Jesson,  
Judge.

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

## **NONPRECEDENTIAL OPINION**

**JESSON**, Judge

Appellant Amanda Buxton appeals the district court's summary-judgment dismissal of her wrongful-death action primarily based on its determination that respondents (officers, detention deputies, and Mower County) are entitled to official immunity for their conduct while booking and supervising her father. Central to this case are two Mower County Jail (MCJ) policies. The first requires staff booking inmates to complete a medical questionnaire with each inmate to identify medical issues. The second establishes a procedure for caring for inmates under the influence of, or detoxing from, drugs or alcohol. We conclude that the district court erred in its analysis of the first prison policy, but not with regard to the second policy. We further determine that the district court abused its discretion in denying part of Buxton's motion to amend her complaint. Accordingly, we affirm in part, reverse in part, and remand for further proceedings.

### **FACTS**

On an afternoon in 2021, Buxton's father, Tom Buxton (Tom), arrived at the MCJ after being arrested for suspected driving while intoxicated.<sup>1</sup> Multiple deputies, including respondents Mallory Sorenson, Adam Dahl, and Drew Szyszkowski, conducted well-being checks on Tom every 15 minutes while he was incarcerated. They observed Tom unconscious on the toilet and at one point had to offer Tom a change of clothes because he

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<sup>1</sup> These facts are taken from the summary-judgment record and viewed in the light most favorable to Buxton as the nonmoving party.

soiled himself. Based on his observations, Szyszkowski later testified<sup>2</sup> that he believed Tom was intoxicated on methamphetamine and showing signs of withdrawal. And Dahl testified that Tom exhibited what he described as “telltale signs of heroin use.” Buxton would later allege that the deputies’ actions violated MCJ policy J-G-07(1)(c) (the intoxication-monitoring policy), which describes the procedure for caring for inmates under the influence of, or detoxing from, drugs or alcohol. The policy states, “When intoxication or withdrawal is suspected, the practitioner is contacted for treatment orders.” (Emphasis in original.) The policy also states that “[t]he protocols are guidelines and should not be misconstrued as standing orders.” (Emphasis in original.)

Due to an unruly inmate, Tom was not fully booked into MCJ until approximately 8:00 p.m., when Sorenson began her shift. Sorenson booked Tom and completed his medical questionnaire under MCJ policy 13.14(.4)(i) (the medical-intake policy). The medical-intake policy requires staff booking inmates to complete a medical questionnaire with each inmate to monitor for injury or other medical issues. Under that policy, if an inmate admits to any of nine enumerated conditions, MCJ “staff should initiate a medical protocol and contact the Jail Medical Provider at the earliest convenience” and “[t]he inmate shall be housed in [i]ntake until medically cleared by a licensed medical professional.” Sorenson testified that after observing Tom’s lapses in consciousness and general inattention, she “knew” that Tom was under the influence of opiates.

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<sup>2</sup> In this opinion, testimony refers to deposition testimony.

During Tom's medical screening, Sorenson learned that Tom had suffered from high blood pressure, persistent cough, chills, seizures, opiate use, and withdrawals from drugs or alcohol (last use being that morning) and had been hospitalized within the last six months for withdrawal. He also had tuberculosis in 2018. Sorenson admitted that she did not sign the medical questionnaire and did not remember if she placed it in the nurse's "medical box," as was required. She also testified that although she was concerned for Tom because she knows opiates are dangerous, she did not personally believe that Tom's condition warranted contacting the jail nurse. Early the next morning deputies found Tom unresponsive in his cell. Tom was transferred to the hospital and died several days later.

A jail nurse, K.E., was working at the MCJ on the day that Tom was booked. According to his testimony, the nurse's responsibilities included reviewing inmates' booking paperwork to determine whether an inmate needed medical care. MCJ often received inmates under the influence of opiates—information communicated to K.E. through the medical questionnaire. K.E. was never notified of Tom's condition. But he testified that if he had known about the information in Tom's medical questionnaire, he would have evaluated Tom.

In July 2022, Buxton brought a wrongful-death action against several patrol officers, detention deputies, Mower County, and the City of Austin. During discovery, an MCJ shift sergeant was deposed. She testified that, based on Tom's symptoms, deputies should have contacted the jail nurse. Buxton also offered an expert's opinion that because Tom's autopsy report suggested methamphetamine and opiate toxicity, his symptoms should have

been treated, and if they had been, “he would have lived and very likely made a full recovery.”

Tom’s medical questionnaire was not signed or dated. On April 11, 2023, Buxton deposed the MCJ administrator, who testified that he was “[f]airly confident” that Dahl completed Tom’s questionnaire. But when Dahl was deposed in April 2023, he testified that it was “[m]ost likely” Sorenson who completed Tom’s questionnaire. Not until Sorenson was deposed in July 2023 did Buxton confirm Sorenson was responsible for conducting Tom’s medical intake. Discovery closed on July 31, 2023, and the parties could file non-dispositive and dispositive motions until August 31, 2023.

On August 28, 2023, Buxton moved to amend her complaint to add Dahl and Sorenson as defendants. Three days later, respondents moved for summary judgment based on official immunity and vicarious immunity. The district court granted summary judgment for respondents, determining that the officers and deputies were entitled to official immunity because their decisions not to seek medical treatment for Tom were discretionary and not willful or malicious.<sup>3</sup> Finally, the district court determined that Buxton failed to show a *prima facie* case of causation.<sup>4</sup>

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<sup>3</sup> Buxton does not challenge the dismissal of her claims against the City of Austin and certain patrol officers and detention deputies, or the district court’s dismissal of her claims of negligent supervision and training against the county as barred by statutory discretionary immunity. Buxton has therefore waived review of these rulings on appeal. *See McIntire v. State*, 458 N.W.2d 714, 717 n.2 (Minn. App. 1990) (explaining that arguments not raised in the principal brief are waived on appeal), *rev. denied* (Minn. Sept. 28, 1990).

<sup>4</sup> Respondents argue that Buxton failed to establish causation. But at the summary-judgment hearing, respondents’ attorney stated that she was “staying [her] arguments on causation” and planned to “address it at trial, if necessary.” Accordingly, it is unclear

The district court further denied Buxton's motion to amend, reasoning that the motion was untimely, prejudicial, and that deputies Dahl and Sorenson were also entitled to official immunity. This appeal follows.

## DECISION

Buxton makes three arguments on appeal. First, Buxton argues that the district court erred in determining that Sorenson, Dahl, and Szyszkowski are entitled to official immunity. Second, Buxton asserts that the district court abused its discretion by denying her motion to amend her complaint. Third, Buxton contends that the district court erred in determining that the county is entitled to vicarious official immunity. We address each argument in turn.

**I. The district court erred in determining that Sorenson is entitled to official immunity with respect to the medical-intake policy but did not err in determining that Sorenson, Dahl, and Szyszkowski, are entitled to official immunity with respect to the intoxication-monitoring policy.**

On appeal from summary judgment, we review de novo a district court's application of the law and its determination that there are no genuine issues of material fact. Minn. R. Civ. P. 56.01; *Mumm v. Mornson*, 708 N.W.2d 475, 481 (Minn. 2006). And we review the evidence in the light most favorable to the party against whom judgment was granted. *Mumm*, 708 N.W.2d at 481.

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whether causation was formally presented to the district court and whether the issue is properly before this court on appeal. But even if it were, neither respondents nor the district court offers any reasoning why Buxton cannot establish causation, for purposes of summary judgment, when she offered expert testimony that if Tom had received proper medical care he would have survived. The expert's credibility is a question reserved for the fact-finder. *See Hoyt Props., Inc. v. Prod. Res. Grp., L.L.C.*, 736 N.W.2d 313, 320 (Minn. 2007) (explaining that determining credibility on summary judgment is improper).

We begin our review with an examination of the doctrine of official immunity. At its core, official immunity is designed to protect public officials from personal liability for exercising their judgment or discretion while executing official duties. *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 655 (Minn. 2004). The doctrine is intended to encourage public officials to use their independent judgment and discretion without fear of potential civil liability. *Jepsen ex rel. Dean v. County of Pope*, 966 N.W.2d 472, 482 (Minn. 2021). But the application of official immunity may leave persons injured by public officials without civil recourse and left to bear the costs of their injuries. *Id.* Accordingly, the party asserting official immunity has the burden of showing they are entitled to its protection. *Meier v. City of Columbia Heights*, 686 N.W.2d 858, 863 (Minn. App. 2004), *rev. denied* (Minn. Dec. 14, 2004).

Whether official immunity applies to an officer's actions depends on “(1) the conduct at issue; (2) whether the conduct is discretionary or ministerial and, if ministerial, whether any ministerial duties were violated; and (3) if discretionary, whether the conduct was willful or malicious.” *Vassallo ex rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014). A district court's official immunity determination is a question of law that this court reviews de novo. *Gleason v. Metro. Council Transit Operations*, 582 N.W.2d 216, 219 (Minn. 1998).

Before this court determines whether official immunity applies, it must first identify the challenged conduct. *Mumm*, 708 N.W.2d at 490. Here, Buxton first challenges Sorenson's failure to initiate a medical protocol based on Tom's responses to a medical questionnaire under the medical-intake policy. Buxton further challenges Sorenson, Dahl,

and Szyszkowski's failure to initiate a medical protocol for intoxicated inmates under the intoxication-monitoring policy. Having identified the challenged conduct, we turn to whether the conduct at issue is discretionary or ministerial in nature. *See id.* Because Buxton does not argue that respondents' actions were willful or malicious, respondents are entitled to official immunity unless they violated a ministerial duty.

A discretionary act requires "individual professional judgment that necessarily reflects the professional goal and factors of a situation." *Id.* at 490-91 (quotation omitted). In 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." *Anderson*, 678 N.W.2d at 656 (quotation omitted). "[A] policy that sets a sufficiently narrow standard of conduct will make a public employee's conduct ministerial if he is bound to follow the policy." *Mumm*, 708 N.W.2d at 491. When interpreting written guidelines, courts read the individual policy along with the surrounding policies. *Vassallo*, 842 N.W.2d at 464. Accordingly, we turn next to Sorenson, Dahl, and Szyszkowski's entitlement to official immunity under each policy.

**A. The district court erred in determining that Sorenson is entitled to official immunity as to the medical-intake policy.**

Buxton argues that Sorenson's failure to initiate a medical protocol for Tom under the medical-intake policy was ministerial and not protected under the doctrine of official immunity. The medical-intake policy states

For inmates who admit to a significant medical concern (High Blood Pressure/Cardiac Arrest/Stroke History, Diabetes Pregnancy, Respiratory Illnesses, Seizures, Tuberculosis, Ebola, Drug or Alcohol Withdrawals) staff *should* initiate a



medical protocol and contact the Jail Medical Provider at the earliest convenience. The inmate *shall* be housed in Intake until medically cleared by a licensed medical professional.

(Emphasis added.)

Respondents insist that the medical-intake policy's use of "should" means the policy is discretionary. We are not persuaded that the use of "should" renders a policy discretionary when it means "[u]sed to express obligation or duty." *The American Heritage Dictionary of the English Language* 1623 (5th ed. 2018). And our conclusion is supported by caselaw.

In *Mumm*, the Minnesota Supreme Court held that a police department policy created a ministerial duty when it stated "[o]fficers *shall* not initiate a pursuit or *shall* discontinue a pursuit in progress" when the officer establishes the offender's identification, unless one of several enumerated felonies exists. 708 N.W.2d at 491 (emphasis added). Focusing on the policy as a whole, the supreme court determined that "officers [had] no discretion to exercise independent judgment" because the policy "impose[d] a narrow and definite duty on an officer facing a particular set of circumstances." *Id.*

In contrast, the police department policy in *Pletan v. Gaines* imposed a duty on officers to "continually question whether the seriousness of the violation reasonably warrant[ed] continuation of [a] pursuit," and stated that a pursuit "*should* be discontinued when there is a clear danger to the pursuing officers or the public." 494 N.W.2d 38, 41 n.3 (Minn. 1992) (emphasis added). The policy also stated that officers "*must consider* present danger, seriousness of the crime, length of the pursuit, and the possibility of identifying the suspect at a later time when determining whether or not to continue." *Id.* (emphasis added).

The officers' decision to continue pursuing fleeing criminals was considered discretionary because the policy required officers to weigh many factors under emergency conditions with little time for reflection. *Id.* at 41. The *Pletan* court did not, as respondents assert, base its decision on the use of "should" to mean discretionary. *See id.*

Unlike *Pletan*, Sorenson was not acting in emergency conditions. *See id.* Nor was she required to weigh multiple factors when determining whether the medical-intake policy mandated she alert medical staff of Tom's condition. Instead, similar to *Mumm*, Sorenson faced a particular set of facts, whether an inmate admitted to an enumerated "significant medical concern" which imposed a narrow and definite duty to contact jail medical staff. *See Mumm*, 708 N.W.2d at 492.

In the context of jail policies, two cases are instructive: *Wendt v. County of Mille Lacs*, No. A13-0114, 2013 WL 4711210, at \*1 (Minn. App. Sept. 3, 2013), *rev. denied* (Minn. Nov. 12, 2013); and *Brenner v. Asfeld*, No. 18-CV-2383, 2019 WL 2358451, at \*11 (D. Minn. June. 4, 2019).<sup>5</sup>

In *Wendt*, this court analyzed both a jail house policy, which included medical-staff instructions, and a statutory duty. 2013 WL 4711210, at \*5-6. First, we held that a jail employee's decision to return an inmate, Wendt, to general population after jail medical practitioners wrote instructions to give Wendt medication, take vitals every hour for two hours, and house her in a "holding cell," was discretionary. *Id.* at \*4. Because "the written instructions did not require a particular period of monitoring [Wendt] . . . that was absolute,

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<sup>5</sup> We cite nonprecedential opinions as persuasive authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

certain, or imperative[,]”officers had discretion to move her. *Id.* But the discretionary conduct under that instruction was in contrast to the county’s decision to provide Wendt with oversized footwear—resulting in a fall that severely injured Wendt—which violated a statutory duty requiring counties to “provide suitable jail clothing” to inmates. *Id.* at \*5-6 (quotation omitted). We reasoned that the statute imposed a duty that left no room for discretion, despite the county’s argument that it made its decision based on its limited shoe supply. *Id.* at \*6.

Similar to *Wendt*, several jail policies were at issue in *Brenner*. In *Brenner*, the plaintiffs sued the county and four of its correctional officers for wrongful death based on alleged negligence in caring for a suicidal inmate. 2019 WL 2358451, at \*1, 10-12. First, the plaintiffs alleged that the intake officer, who knew of the inmate’s risk of self-harm, was negligent in failing to “initiate any further medical evaluation” after placing the inmate in maximum security pending administrative review. *Id.* at \*11-12. Similarly, the plaintiffs alleged that the medical-screening officer was negligent in failing to request review of the inmate’s status before relocating him. *Id.* at \*12. The court concluded that the officers’ actions were discretionary because the plaintiffs failed to allege that an internal policy required the officers to initiate further evaluation. *Id.* In contrast, the court concluded that the plaintiffs alleged sufficient facts that the other two correctional officers’ failure to conduct 30-minute well-being checks, as instructed by jail policy, was ministerial because the jail “policies required the well-checks be completed in a particular manner” and the officers failed to act accordingly. *Id.*

In *Brenner*, like the officers who received medical instructions in *Wendt*, the first two officers were entitled to official immunity because no facts showed a policy or rule existed that provided clear instruction on the challenged conduct. *See id.* But when the challenged conduct was governed by a specific policy, like the manner to conduct well-being checks in *Brenner* and the statutory requirement that inmates be provided suitable footwear in *Wendt*, an officer's failure to follow the policy was considered ministerial. *See id.*; *Wendt*, 2013 WL 4711210, at \*6.

Here, the medical-intake policy is akin to the well-being-check policy in *Brenner* and the footwear policy in *Wendt*. It provides deputies specific instructions on what to do in a prescribed situation: if an inmate admits to an enumerated medical condition, then the deputy initiates a medical protocol and contacts the jail medical provider.

Because we conclude that the medical-intake policy is ministerial, we must assess whether Sorenson's conduct violated that policy. Buxton answered "Yes" to these questions identifying a "significant medical concern": (1) "Have you ever been told that you have tuberculosis," (2) "Have you ever been told that you have high blood pressure," (3) Have you recently experienced a persistent cough," (4) "Have you been hospitalized within the last 6 months" (for withdrawal symptoms), (5) Have you ever had withdrawals from alcohol or drug[s]" (last use that morning), (6) "Do you use opiates ie (Heroin, Prescription Pills)," and (7) Have you ever been told that you have seizures." At no time did Sorenson initiate a medical protocol or contact the jail medical provider. Thus, respondents have not met their burden to establish, for purposes of summary judgment, that Sorenson's actions related to the medical-intake policy were discretionary conduct.

Nor have respondents established that Sorenson fulfilled the duties imposed under the policy.

Accordingly, we conclude that Sorenson is not entitled to official immunity for her alleged violations of the medical-intake policy.<sup>6</sup>

**B. The district court did not err in determining that Sorenson, Dahl, and Szyszkowski are entitled to official immunity as to the intoxication-monitoring policy.**

A similar analysis applies to the intoxication-monitoring policy, which provides, “When intoxication or withdrawal is suspected, the practitioner is contacted for treatment orders.” (Emphasis in original.) The challenged conduct here is whether deputies Sorenson, Dahl, and Szyszkowski violated the duty to inform medical staff of Tom’s intoxication when they testified that they knew or suspected he was intoxicated but did not alert medical staff. Two factors inform our analysis on whether that conduct is discretionary or ministerial.

First, like the medical-intake policy, the directive in the intoxication-monitoring policy is clear: when a narrow set of facts are presented, a deputy suspects intoxication or withdrawal, a fixed outcome must occur, the practitioner “is” contacted. But unlike the

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<sup>6</sup> Respondents also argue that the medical-intake policy’s list of “significant medical concern[s]” distinguishes between past and present conditions. And they argue that, to qualify as a “significant medical concern,” an inmate must presently be experiencing drug or alcohol withdrawal. Accordingly, they submit that because there is no evidence that Buxton was experiencing withdrawal at the time of his medical intake, he was not experiencing a significant medical concern. We are not persuaded. First, the medical-intake policy does not include respondents’ proffered distinction. Second, as referenced above, the medical questionnaire itself asks inmates whether they have “ever” experienced an enumerated condition. We conclude that this language encompasses the past and present conditions that Tom admitted applied to him.

medical-intake policy, the intoxication-monitoring policy explains that its protocols are *guidelines* and not “standing orders.” This language suggests that officers have discretion because the duty does not apply continuously. *See Thompson v. City of Minneapolis*, 707 N.W.2d 669, 675 (Minn. 2006) (holding that policy requiring officers to use sirens “in a *continuous* manner” left nothing to officer’s discretion and was ministerial (emphasis added) (quotation omitted)). Second, the intoxication-monitoring policy uses the term “suspect” which means “[t]o consider (something) to be true or probable on little or no evidence.” *American Heritage*, *supra*, at 1755. In this context, the term “suspect” suggests deputies retain discretion to determine whether an inmate is intoxicated or experiencing withdrawals before contacting the practitioner.

For these reasons we are persuaded that the intoxication-monitoring policy creates a discretionary duty. Because Buxton has not alleged that Sorenson, Dahl, or Szyszkowski acted willfully or maliciously, we conclude that the district court did not err in determining that the deputies are entitled to official immunity with respect to alleged violations of the intoxication-monitoring policy and granting summary judgment on that basis.

**II. The district court abused its discretion in denying Buxton’s motion to amend her complaint to add Sorenson as a defendant but did not err in denying her motion to add Dahl as a defendant.**

Buxton argues that the district court abused its discretion by denying her motion to amend her complaint to add Sorenson and Dahl as defendants. The district court denied Buxton’s motion to amend as (1) untimely, (2) unfairly prejudicial, and (3) lacking evidence that Sorenson and Dahl were not entitled to official immunity. Because we have determined that Dahl is entitled to official immunity, the district court did not abuse its

discretion by denying Buxton's request to add him as a defendant. *See Stead-Bowers v. Langley*, 636 N.W.2d 334, 341 (Minn. App. 2001) (stating motions to amend may be denied if additional claim fails), *rev. denied* (Minn. Feb. 19, 2002). But because we determined that Sorenson violated a ministerial duty, we analyze Buxton's argument that the district court abused its discretion by denying her motion to add Sorenson as a defendant.

Under Minnesota Rule of Civil Procedure 15.01, "[a] party may amend a pleading once as a matter of course at any time before a responsive pleading is served." But "a party may [also] amend a pleading [] by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Minn. R. Civ. P. 15.01. District courts should generally grant motions to amend unless the adverse party would be prejudiced. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). We review a district court's denial of a motion to amend for an abuse of discretion. *Id.*

Buxton's motion was not untimely. Generally, a motion is untimely if it violates a district court's scheduling order or is filed after the opposing party moves for summary judgment. *See Hempel v. Creek House Tr.*, 743 N.W.2d 305, 313 (Minn. App. 2007) (determining that "[a]ppellants did not show good cause for their delay" in adding known defendant five months after respondent moved for summary judgment and two months after deadline). Here, Buxton did not violate any court deadlines.

Nor are we persuaded that Buxton unduly delayed in moving to add Sorenson to the complaint. Tom's medical questionnaire was not signed or dated. Buxton did not discover that Sorenson may have been responsible for Tom's questionnaire until Dahl was deposed

in April 2023. Sorenson was then deposed in July 2023, less than two months before Buxton moved to amend her complaint. Respondents point to no authority that the passage of less than two months between confirmation of a defendant's identity and moving to add that defendant renders the motion to amend untimely.

Finally, it is the burden of the nonmoving party to show they would be prejudiced by allowing a party to amend their complaint. *Coyle v. City of Delano*, 526 N.W.2d 205, 208 (Minn. App. 1995). A motion to amend may prejudice a party if it would require further discovery or that the trial be rescheduled. *See Metag v. K-Mart Corp.*, 385 N.W.2d 864, 866 (Minn. App. 1986) (determining sufficient prejudice when appellant moved to amend six months after pretrial conference), *rev. denied* (Minn. June 23, 1986).

Respondents here did not argue to the district court, nor do they argue on appeal, why they would be prejudiced by Buxton's motion. Most notably, respondents do not refute Buxton's claims that no new discovery would be required, as Sorenson was deposed. Respondents have not carried their burden to show prejudice.<sup>7</sup>

In sum, we conclude that the district court abused its discretion in denying Buxton's motion to amend her complaint to add Sorenson as a defendant but did not err in denying her motion to add Dahl as a defendant.

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<sup>7</sup> We are not persuaded otherwise by the district court and respondent's reliance on *Cybyske v. Indep. Sch. Dist. No. 196*, 347 N.W.2d 256, 264 (Minn. 1984). In *Cybyske*, the appellant moved to add her husband as a plaintiff a year after filing her complaint and on "the eve of the defendants' summary judgment motion." *Id.* But the supreme court ultimately determined that the appellant did not have standing to assert her husband's claim. *Id.*



**III. The district court erred in determining that the county is entitled to vicarious official immunity for Sorenson's conduct but did not err as to Dahl and Szyszkowski.**

Generally, “[w]here an employee or agent is protected by official immunity, the government entity will not be called on to indemnify that individual nor will the government entity be liable under the doctrine of respondeat superior.” *Watson v. Metro. Transit Comm’n*, 553 N.W.2d 406, 415 (Minn. 1996). District courts grant vicarious official immunity if the “officials’ performance would be hindered as a result of the officials second-guessing themselves when making decisions, in anticipation that their government employer would also sustain liability as a result of their actions.” *Anderson*, 678 N.W.2d at 664. Ultimately, whether an employer is protected by vicarious official immunity is a policy question. *Id.*

Here, the district court determined that Buxton’s claims against the county were barred by vicarious official immunity because the “failure to grant [] immunity to [the county] in this case would have a detrimental chilling effect on law enforcement and corrections officials in the exercise of their duties and would sharply discourage qualified individuals from serving the public in those essential areas.” But the district court predicated its conclusion that the county was entitled to vicarious immunity upon its determination that *all* the deputies made discretionary decisions which are cloaked by immunity. And on appeal, the county—while strongly asserting that Sorenson’s acts were discretionary—fails to argue why immunity should be granted to the county if her actions are, as we have determined, ministerial. As a result, we are not persuaded that respondents

have carried their burden to show that the county is entitled to vicarious immunity for Sorenson's actions.

With regards to vicarious immunity as to the other deputies, Buxton argues that the district court erred in granting the county official immunity because public policy supports reinforcing jail policies to ensure that inmates, who are under the influence of substances, receive the medical care that they cannot secure for themselves, which is not so burdensome to corrections staff. The county responds that failing to extend immunity to the county would cause corrections staff to overreport inmate intoxication, strain public resources, and discourage individuals from pursuing similar professions. Given our determination that Dahl and Szyszkowski are entitled to immunity for their discretionary decisions not to contact the jail medical provider when they testified that they observed Tom showing symptoms of intoxication or withdrawal, and the policy implications that the county asserts, we hold that the county is entitled to immunity for their actions. *See Watson*, 553 N.W.2d at 415 (explaining that, generally, an employee's immunity will extend to his or her employer).

Accordingly, we reverse the district court's determination that the county is entitled to vicarious immunity for Sorenson's acts, but we affirm as to Dahl and Szyszkowski.

**Affirmed in part, reversed in part, and remanded.**