

*This opinion is nonprecedential except as provided by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
A24-0155**

Justin Bolton,
Appellant,

vs.

Soderburg Roofing & Contracting, LLC,
Respondent.

**Filed September 16, 2024
Affirmed
Halbrooks, Judge***

Hennepin County District Court
File No. 27-CV-22-8384

Steven R. Little, SRL Law, PLLC, St. Paul, Minnesota (for appellant)

Jordan T. Vassel, Timothy D. Johnson, Smith Jadin Johnson, PLLC, Bloomington,
Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

In this construction-defect case, appellant-homeowner challenges the district court's
order granting summary judgment in favor of respondent-contractor. We affirm.

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

FACTS

Appellant Justin Bolton owns a residence in Inver Grove Heights.¹ On September 17, 2021, a tree fell on the roof of his residence during a storm. On October 14, Bolton entered into a contract with respondent Soderburg Roofing & Contracting, LLC to replace and repair the roof. The contract, in relevant part, authorized Soderburg to inspect the damage, discuss the repairs with the insurance company, and perform the repairs for the scope and price proposed by the insurance company.

Soderburg performed work at the residence. After Soderburg completed the work, Soderburg sent Bolton an invoice. Bolton paid some of the invoice, but he refused to pay the remaining balance of \$11,476.49. Bolton also stated that he paid another company \$4,300 to install gutters, work that he believes was originally supposed to be done by Soderburg.

Bolton brought an action against Soderburg alleging breach of contract, negligence, and breach of warranty. In his complaint, Bolton alleged that Soderburg “had failed to replace the roof deck, had drilled through the F-Bar, failed to replace the damaged F-Bar, failed to replace the soffits, improperly installed trim, and failed to replace the gutters on the Property, among other things.” Soderburg answered and filed a counterclaim for breach of contract for the remaining balance on the invoice, and for unjust enrichment.

¹ Where relevant, we present the facts in the light most favorable to Bolton as the nonmoving party. *See Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 629 (Minn. 2017).

Soderburg subsequently moved for summary judgment, arguing principally that Bolton's claims all failed for lack of factual support because he failed to produce "an expert report or any factual support for his claims." Soderburg provided a report from an expert who inspected the property and noted that the insurance company's original quote only included instructions to replace part of the deck and that Soderburg's installation and repairs complied with the relevant codes and industry practices. The inspector also indicated that, while there are holes in the F-bar, they are not functionally significant, and the soffits and gutters were like new.

Bolton opposed the motion by relying on his own affidavit. In the affidavit, he reasserted that Soderburg "failed to replace the roof deck, had drilled through the F-Bar, failed to replace the damaged F-Bar, failed to replace the soffits, improperly installed trim, and failed to replace the gutters on the Property, among other things." He also stated that Soderburg "failed to replace the roof decking and that, as a result, the shingle warranty is void." Bolton attached exhibits to his affidavit, including photographs which Bolton asserts are of Soderburg's "substandard work" and text messages. There is no additional explanation concerning the photographs, and the text messages are illegible. The affidavit purports to attach a document from the City of Inver Grove Heights, but it is not attached.

The district court granted Soderburg's motion for summary judgment, dismissed Bolton's complaint with prejudice, and entered judgment in favor of Soderburg in the amount of \$11,476.49 plus interest. The district court reasoned, primarily, that Bolton failed to provide evidence to support his claim and instead relied on mere averments, which are insufficient to establish a *prima facie* case. A few days later, the district court issued a

second order addressing costs, disbursements, and attorney fees and determined that \$3,227 in costs and \$15,000 in attorney fees should be added to the award. As a result, the judgment entered in favor of Soderburg totaled \$29,703.

This appeal follows.

DECISION

Bolton argues that the district court erred by granting Soderburg's motion for summary judgment.² A motion for summary judgment should be granted "if the movant shows that 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. A genuine issue of material fact exists if, considering the record as a whole, a rational trier of fact could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). "[M]ere speculation, without some concrete evidence, is not enough to avoid summary judgment." *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (quotation omitted). "[T]he nonmoving party must do more than rest on averments." *Citizens State Bank Norwood Young Am. v. Brown*, 849 N.W.2d 55, 61 (Minn. 2014). We apply a de novo standard of review to a district court's legal conclusions and view the evidence in the light most favorable to the nonmoving party. *Staub v. Myrtle Lake Resort, LLC*, 964 N.W.2d 613, 620 (Minn. 2021).

Bolton argues that the district court erred by determining that he was required to provide an expert report to support his negligence claim. But as Soderburg contends,

² On appeal, because Bolton only appears to challenge the summary dismissal of his negligence claim, our analysis is limited to that claim.

Bolton's argument misconstrues the district court's order. The district court did not hold that Bolton was required to provide expert testimony. In its order, the district court repeatedly notes that Bolton failed to establish a prima facie case on any of his claims because he provided no evidence to support his claims. The district court states, in response to Soderburg's challenge for lack of expert testimony, that expert testimony could be one possible means for Bolton to provide evidence of his claims. However, the district court does not hold or imply that Bolton was required to provide expert testimony to survive summary judgment in this case.

Regardless, we agree with the district court that summary judgment is appropriate. Bolton has the burden to demonstrate that Soderburg had a duty to Bolton and breached it. *See Domagala v. Rolland*, 805 N.W.2d 14, 22 (Minn. 2011) (noting that duty and breach are both essential elements of a negligence claim). The district court determined that Bolton did not establish a prima facie case that Soderburg breached any duty. Bolton did not provide specific evidence to demonstrate that Soderburg failed to comply with its obligations under the contract, failed to comply with state or city codes, or otherwise performed substandard work. Bolton's affidavit contains general assertions, but neither in his affidavit nor otherwise does Bolton demonstrate what specific duties Soderburg had and breached. And, on appeal, Bolton again simply offers assertions. It is Bolton's duty to demonstrate error. *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (holding that appellant has the "the burden of showing error"). He has not done so.

The district court did not err in granting summary judgment in favor of Soderburg.³

Affirmed.

³ Because we conclude that the district court did not err in granting summary judgment, we need not address Bolton's second argument about awarding monetary judgment.