

*This opinion is nonprecedential except as provided by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
A24-0564**

Troy K Scheffler,
Appellant,

vs.

Costco Wholesale Corporation,
Respondent.

**Filed December 30, 2024
Affirmed
Bratvold, Judge**

Crow Wing County District Court
File Nos. 18-CV-22-3219, 62-CV-22-1081

Troy K. Scheffler, Merrifield, Minnesota (pro se appellant)

Andrew L. Marshall, Benjamin D. Gilchrist, Bassford Remele, P.A., Minneapolis,
Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant sued a retail store, seeking civil damages related to two occurrences. In the first occurrence, a store employee asked appellant to show his receipt in the store's exit area and appellant refused. Appellant and the employee reentered the store's interior; appellant showed his receipt to two managers and then left. In the second occurrence, a

different store employee told appellant that store policy required him to wear a face mask or face shield inside the store; appellant refused and did not enter the store. On summary judgment, the district court rejected appellant's three claims—assault and false imprisonment for the first occurrence and disability discrimination under the Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01-.50 (2022), for the second occurrence. In this appeal, appellant argues that genuine issues of material fact make summary judgment inappropriate. Because the record evidence shows the material facts are not disputed and because the district court did not err in its application of the law, we affirm.

FACTS

In December 2021, appellant Troy K. Scheffler served respondent Costco Wholesale Corporation with a complaint alleging three claims: (1) “common law false imprisonment,” (2) “common law assault,” and (3) disability discrimination under Minn. Stat. §§ 363A.17, .33. After discovery closed, in November 2023, Costco moved for summary judgment on all claims. The following summarizes the record evidence in a light most favorable to Scheffler, the nonmoving party.

Costco is a membership warehouse club, and Scheffler has been a member since 2018. Costco's membership agreement states that all customers must stop at the exit and show their receipt at an employee's request. Scheffler admitted that, before the first occurrence, he had shown a store employee his receipt upon exiting the store. The evidence

submitted on summary judgment detailed two occurrences involving Scheffler at a Costco store in Baxter (Baxter store or store).¹

On February 22, 2020, Scheffler went to the Baxter store. Scheffler picked up a prescription and purchased items using a self-checkout lane. As Scheffler left the store, an employee was checking shopper receipts and, according to Scheffler, the line was “longer than [he had] ever seen it before.” Scheffler testified that he “stood there for a little bit in line and then . . . just went around everybody.” Scheffler walked past one set of doors and entered the “vestibule between the two doors.” He “made it to the second door,” where the employee “cut [him] off” by standing “in front of [Scheffler] on [his] right” and told him that he had to “stop” and “give [his] receipts.”

Scheffler and the employee went “back and forth.” Scheffler told the employee he wanted to leave, and the employee told Scheffler he needed to show his receipt. Scheffler asked the employee if he was being “detained” and whether he had to go back inside the store. The employee answered, “Yes.” Scheffler later indicated that the employee did not touch or “grab[]” him, stating that, if the employee had put “his hands on [Scheffler],” he would have “retaliate[d].” Scheffler did not show his receipt to the employee, and Scheffler and the employee reentered the store.

¹ Relevant to the issues on appeal, the evidence on summary judgment included, among other things, Scheffler’s deposition transcript; audio recordings and transcript of videos taken by Scheffler during the February 22, 2020 and December 8, 2020 incidents; records of Scheffler’s litigation history; copies of Emergency Executive Orders 20-74 and 20-81; Costco’s face-mask policy; Costco’s membership application; and Scheffler’s purchase history at the Baxter store.

Scheffler was “really angry and . . . had management come over.” At that point, Scheffler began recording the conversation with management. Two managers spoke to Scheffler. After speaking to the managers for six and a half minutes, Scheffler showed them his receipt, and one manager checked the receipt. Scheffler spoke with the managers for about two more minutes and then left the store.

On December 8, 2020, Scheffler tried to enter the Baxter store to pick up a prescription. Scheffler was not wearing a face mask or face shield. During the COVID-19 pandemic, Costco implemented a policy, effective November 16, 2020, requiring that “[m]embers and guests must wear a face mask that covers their mouth and nose at all times” and that “[i]ndividuals who are unable to wear a face mask due to a medical condition must wear a face shield.”

Before Scheffler entered the store, an employee told Scheffler that he “need[ed] a mask or face shield to come in.” Scheffler refused, and the employee offered him alternatives to wearing a face mask, including (a) wearing a face shield provided by Costco, (b) placing an order online, or (c) asking someone to pick up Scheffler’s order. Scheffler refused and left the store without picking up his prescription. In his deposition, Scheffler testified that the only reasonable accommodation would have been to allow him to enter the store without a face mask or face shield.

Costco’s summary-judgment motion included three issues. First, Costco argued that Scheffler’s assault claim lacked any evidence of “an unlawful threat to do bodily harm.” Second, Costco argued that Scheffler’s false-imprisonment claim failed because no evidence suggested that the store employee threatened Scheffler or acted in a manner

indicating the employee intended to confine Scheffler or that Scheffler was ever “actually confined without a reasonable means of escape.” Third, Costco argued that Scheffler’s disability-discrimination claim failed because Scheffler “did not have a disability” and, “[e]ven if he did, Costco offered at least three reasonable accommodations.” Costco also argued that it had “a legitimate business purpose in complying with the Governor’s Executive Orders and protecting its members’ health and safety.” Scheffler opposed summary judgment. After a hearing, the district court granted summary judgment to Costco on all claims.

Scheffler appeals.

DECISION

A district court “shall grant summary judgment 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. Appellate courts “review the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of law.” *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). In an appeal from a grant of summary judgment, appellate courts “view the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).²

² Costco argues in its brief to this court that Scheffler is a frequent litigant who files “frivolous lawsuits so he can exploit a quick settlement.” Costco claims that “Scheffler has been a party in 71 cases in Minnesota State Courts” and “44 Minnesota Federal Court

I. Scheffler’s assault claim fails as a matter of law because no evidence would allow a reasonable juror to find or infer that the store employee threatened bodily harm by words or conduct.

Scheffler’s assault claim rests on evidence relating to the February 22, 2020 incident during which Scheffler initially refused an employee’s request to show his store receipt. The district court determined that summary judgment was appropriate because “at no time does [Scheffler] describe anything that could be considered an ‘unlawful threat to do bodily harm.’”

Civil assault has three elements: (1) “an unlawful threat to do bodily harm to another with present ability to carry the threat into effect” that (2) causes “reasonable apprehension of immediate bodily harm” and (3) is intentional, which “may be inferred from all facts and circumstances, such as exhibitions of anger, threats, gestures, and other conduct.” *Dahlin v. Fraser*, 288 N.W. 851, 852-53 (Minn. 1939).

Caselaw has explained what is required to prove the first element, which was the basis for the district court’s decision against Scheffler. “Mere words or threats alone do not constitute assault” but can be an assault when “accompanied by a threat of physical violence under conditions indicating a present ability to carry out the threat.” *Id.* at 852. In *Dahlin*, the supreme court affirmed a judgment after a jury trial because the “evidence justifie[d] the finding of assault.” *Id.* at 853. The supreme court explained that the defendant “threatened to strike” the plaintiff, “came at her with clenched fists,” and was

actions.” We do not consider Costco’s claim because our analysis is based on the record evidence and applicable caselaw.

“close enough to [the plaintiff] to cause her apprehension of immediate bodily harm.” *Id.* at 852.

Scheffler argues on appeal that the store employee “aggressively assaulted” him by “chas[ing] him down and [telling] him he was not free to leave the premises” unless he showed his receipt. Scheffler claims that he “reasonably believed that [the employee’s] approach would use force of immediate battery.” He also contends that the employee agreed that Scheffler was being “detained,” which “necessarily denotes the intention of the immediate and imminent use of force,” and that “any person” would fear “an immediate battery” because the employee was standing near Scheffler.³ Costco argues that “Scheffler was not threatened” and that the incident involved “no display of force” or “suggestion of anger or violence.”

When we view the record evidence in a light most favorable to Scheffler, it does not show that the store employee threatened Scheffler with bodily harm. Scheffler testified that the employee “cut[]” [him] off” by coming up “in front of [him] on his right” and told him that “he had to stop” and “give his receipts.” Scheffler also stated in the recording that the employee in the vestibule did not touch or “grab[]” him. Scheffler testified that, when

³ Scheffler also argues that Costco did not properly “disclose” the identity of the store employee who checked receipts. Costco counters that it disclosed the employee’s identity and that Scheffler did not depose the employee. Costco argues that the employee’s testimony “is not of significance here because Costco has relied upon Scheffler’s own testimony and recordings.” Indeed, Scheffler does not explain how testimony from the employee would impact this court’s analysis of the first element. Because we view the evidence in the light most favorable to Scheffler and he testified about his interactions with the employee, we conclude the absence of deposition testimony from the employee does not impact our analysis.

Scheffler asked, the employee agreed that Scheffler was being “detained” and needed to return to the store.

The evidence fails to create a genuine issue of material fact on the first element of assault for two reasons. First, the store employee did not make any statements threatening to do harm. The employee agreed that Scheffler was being detained, which is not a threat of physical violence and is therefore insufficient evidence as a matter of law. *See id.* (stating that “[m]ere words or threats alone do not constitute assault” but must be “accompanied by a threat of physical violence under conditions indicating present ability to carry out the threat”). Unlike Scheffler’s evidence, the evidence in *Dahlin* showed that the defendant threatened to “strike” the plaintiff and “came at” the plaintiff “with clenched fists,” which the supreme court described as a threat to do harm. *Id.*

Second, the store employee’s conduct did not allow a reasonable inference that he would use force on Scheffler. Scheffler stated in the recording that the employee did not touch or grab Scheffler. While Scheffler argues that he “reasonably believed that [the employee’s] approach would use force of immediate battery,” we disagree. Reasonableness is an objective standard. *Id.* (recognizing that words accompanied by threats of violence may prove assault, but “[t]he display of force must be such as to cause plaintiff *reasonable* apprehension of immediate bodily harm” (emphasis added)); *see also Schmitz v. U.S. Steel Corp.*, 831 N.W.2d 656, 668 (Minn. App. 2013) (interpreting *Dahlin* as requiring that apprehension of immediate bodily harm be “objectively reasonable” and affirming summary judgment for employer on a statutory claim for threats to discharge an employee seeking workers’-compensation benefits), *aff’d*, 852 N.W.2d 669 (Minn. 2014). Here, a

reasonable person would not fear physical violence based on an employee standing in front of a shopping cart and asking to see a receipt, especially when showing a receipt is part of the normal practice at the store and the person had showed their receipt before exiting the store on previous occasions.

Even when viewing the record evidence in a light most favorable to Scheffler, there was no evidence from which a reasonable juror could find or infer that the employee unlawfully threatened Scheffler with bodily harm. Thus, the district court did not err by granting summary judgment to Costco on Scheffler's assault claim.

II. Scheffler's false-imprisonment claim fails as a matter of law because no reasonable juror could find or infer that the employee or managers confined Scheffler.

Scheffler's false-imprisonment claim also stems from the February 22, 2020 incident and focuses on the point at which Scheffler refused the store employee's request to show his store receipt. The district court determined that Scheffler did not provide evidence to establish that "he was actually confined" or that the employee "undertook any intentional act which caused [Scheffler] to be confined." The district court noted that, while the employee agreed that Scheffler was being detained, the "word 'detain' in this context does not create a material issue of fact." The district court reasoned that Scheffler "was asked to show his receipt and declined to do so" then "re-entered the store and asked to speak with management." When speaking with management, Scheffler "remained in the open area between the checkout lanes and store exit." Scheffler "voluntarily spoke with the assistant managers, at his own request, knowing the whole time" that the employee's "only requirement" was to "show his receipt."

“The elements of false imprisonment are (1) words or acts intended to confine, (2) actual confinement, and (3) awareness by the plaintiff that he is confined.” *Blaz v. Molin Concrete Prods. Co.*, 244 N.W.2d 277, 279 (Minn. 1976). We focus on caselaw related to the second element because that was the basis for the district court’s decision. Confinement can “be committed by acts, or by words, or by both.” *Durgin v. Cohen*, 209 N.W. 532, 533 (Minn. 1926). False imprisonment does not require evidence of a defendant’s *use* of force, but confinement may be proved by a defendant’s *threat* of force. *Id.* The Minnesota pattern jury instructions state that confinement can include (1) “the use of physical barriers,” (2) “[t]he use of physical force, or” (3) “[t]he threat of the immediate use of physical force” when the plaintiff believed that the person making the threat “had the ability to carry out the threat.” 4A *Minnesota Practice*, CIVJIG 60.70 (2024).

Scheffler does *not* argue that he has offered evidence of confinement by use of physical barriers or physical force. Scheffler instead contends that he has offered evidence of confinement because the store employee’s conduct supports the inference of a threat to use physical force. An individual “is deemed to have been put under restraint” by the defendant’s threat to use force “if words or acts induced a reasonable apprehension that force would be used if he did not submit.” *Durgin*, 209 N.W. at 533.⁴ Costco counters that (1) Scheffler was not confined by a threat of physical force, (2) Scheffler had a “reasonable

⁴ There are some exceptions to this general rule. “If one is aware of a reasonable means of escape that does not present a danger of bodily or material harm, a restriction is not total and complete and does not constitute unlawful imprisonment.” *Peterson v. Sorlien*, 299 N.W.2d 123, 128 (Minn. 1980) (affirming a jury’s determination that a plaintiff’s “behavior constituted” consent to confinement). Consent is also a defense to a claim for damages based on false imprisonment. *Id.*

means of escape,” and (3) Scheffler, as a member, consented to Costco’s policy that an employee checks receipts before the customer can leave the store.

We are not persuaded by Scheffler’s claim that he has offered evidence from which a reasonable juror may infer a threat of physical force, as discussed above. Even if we assume that Scheffler believed that he was not free to leave the store when the employee asked for his receipt, Scheffler has offered no evidence of a reasonable apprehension that force would have been used if he had not submitted. *See Durgin*, 209 N.W. at 533.

Importantly, the material facts are not disputed. The employee asked Scheffler for his receipt, and Scheffler refused to show his receipt to the employee. Scheffler asked to see the managers, and when Scheffler showed his receipt, he then left the store. Even when we view the record evidence in the light most favorable to Scheffler, it shows that he left the store once he showed his receipt. Also, no evidence would allow a reasonable juror to find or infer that Scheffler reasonably apprehended the employee’s use of physical force if Scheffler did not show his receipt. Accordingly, the district court did not err by determining on summary judgment that Scheffler lacked any evidence of either actual confinement or that the employee’s words or actions threatened confinement.

Thus, the district court did not err by granting summary judgment to Costco on Scheffler’s false-imprisonment claim. We therefore need not address Costco’s other arguments that Scheffler had a reasonable means of escape and that Scheffler consented to an employee checking his receipt before exiting the store by becoming a Costco member.

III. Scheffler’s disability-discrimination claim fails as a matter of law because Costco’s face-mask policy was based on a legitimate business purpose as stated in Emergency Executive Order 20-81.

Scheffler claims that Costco discriminated against him by requiring that he wear a face covering to shop inside the store on December 8, 2020, during the COVID-19 pandemic. The district court granted summary judgment to Costco because Costco had “a legitimate business purpose in preventing [Scheffler] from entering the store without a face covering.” The district court determined that there were three nondiscriminatory reasons for Costco’s actions: “(1) the governor’s Emergency Executive Order (EEO) required masks or face shields”; (2) “Costco and its employees could face criminal and/or civil sanctions for failure to comply with the [EEO]; and (3) Costco had a legitimate business purpose in complying with the [EEO] and protecting its members’ health and safety.”

The parties disagree about whether Scheffler has a disability. For this appeal, we assume without deciding that Scheffler has a disability. With this assumption in mind, we consider Scheffler’s claim that Costco violated the MHRA, which provides that

[i]t is an unfair discriminatory practice for a person engaged in a trade or business . . . to *intentionally refuse to do business with*, to refuse to contract with, or to discriminate in the basic terms, conditions, or performance of the contract *because of a person’s* race, national origin, color, sex, gender identity, sexual orientation, or *disability, unless the alleged refusal or discrimination is because of a legitimate business purpose.*

Minn. Stat. § 363A.17(3) (Supp. 2023) (emphasis added). According to the MHRA’s language, discrimination based on a “legitimate business purpose” is a statutory defense.

*Id.*⁵ A district court may grant summary judgment based on a defense when the material facts related to the defense are undisputed. Minn. R. Civ. P. 56.01; *see, e.g., Bradley v. First Nat'l Bank of Walker, NA*, 711 N.W.2d 121, 122 (Minn. App. 2006) (affirming summary judgment for the defendant based on a statute-of-limitations defense); *May v. First Nat'l Bank of Grand Forks*, 427 N.W.2d 285, 289-90 (Minn. App. 1988) (same), *rev. denied* (Minn. Oct. 26, 1988).

Scheffler argues that the district court improperly granted summary judgment because Costco lacked a legitimate business purpose for requiring him to wear a face mask. Scheffler contends that the EEO did not require the use of face masks or face shields by persons with a disability and that the EEO did not provide that businesses could be criminally or civilly liable for not requiring compliance. Scheffler also argues that Costco lacked a legitimate business reason for its face-mask policy because he was allowed into the store without wearing a face mask on other dates and saw employees who were not “properly wearing” face masks in the store. Costco responds that its face-mask policy served a legitimate business purpose as stated in the EEO, which did include criminal and civil penalties.

Scheffler’s argument that the EEO did not require the use of face masks or face shields by persons with a disability lacks merit. On July 22, 2020, Governor Tim Walz issued Emergency Executive Order 20-81 (EEO), *Requiring Minnesotans to Wear a Face*

⁵ We note that this court has determined that “the phrase ‘legitimate business purpose’ is equivalent to the phrase ‘legitimate, non-discriminatory reason.’” *Cooper v. USA Powerlifting*, 5 N.W.3d 689, 706 (Minn. App. 2024), *rev. granted* (Minn. July 9, 2024).

Covering in Certain Settings to Prevent the Spread of COVID-19, which stated that “[b]eginning on Friday, July 24, 2020, at 11:59 p.m., Minnesotans must wear a face covering in indoor businesses and indoor public settings.” This order remained in effect at the time of the December 2020 incident. The EEO did not exempt persons with disabilities; it required accommodations for individuals with medical conditions and disabilities. The EEO stated that

[b]usinesses must require that all persons, including their workers, customers, and visitors wear face coverings, . . . [and w]hen possible, businesses *must provide accommodations* to persons including their workers and customers, *who state they have a medical condition, mental health condition, or disability* that makes it unreasonable for the person to maintain a face covering, *such as permitting use of an alternate form of face covering* (e.g., face shield) or providing service options that do not require a customer to enter the business.

(Emphasis added.)

Similarly, Scheffler’s claim that the EEO did not compel compliance has no support. The EEO provided for criminal penalties, stating that business owners, managers, and supervisors who did not comply with the EEO would be “guilty of a misdemeanor and upon conviction must be punished by a fine not to exceed \$1,000, or by imprisonment for no more than 90 days.” Additionally, “the Attorney General, as well as city, and county attorneys may seek any civil relief available . . . including civil penalties up to \$25,000 per occurrence.”

Finally, we easily conclude that Costco had a legitimate business reason to adopt a policy that complied with the EEO face-covering requirements. Protecting customer health and avoiding criminal and civil penalties are legitimate business purposes. *See Johnson v.*

Schulte Hosp. Grp., Inc., 66 F.4th 1110, 1115 (8th Cir. 2023) (determining on summary judgment that, under the MHRA, a hotel had a legitimate, nondiscriminatory, and not pretextual reason to impose enhanced check-in procedures due to “social protests and the COVID-19 pandemic,” noting that, during the pandemic, businesses had to respond to “an extraordinary, evolving medical and regulatory landscape”); *Hustvet v. Allina Health Sys.*, 910 F.3d 399, 408-09 (8th Cir. 2018) (determining on appeal from summary judgment that requiring “a class of employees . . . to undergo a health screen was . . . consistent with a business necessity” under the Americans with Disabilities Act in part because it was “in furtherance of Allina’s overarching internal policy of ensuring employee and patient safety by decreasing the risk of communicable disease exposure and transmission”).

Scheffler does not contend that Costco’s face-mask policy did not track the parameters of the EEO, including providing accommodations for persons with disabilities. We are not convinced by Scheffler’s claim that he can prove that he has sometimes entered the Baxter store without a face covering. Scheffler neither supports the claim with specific evidence nor does he offer reasoning or legal authority to show that the unmasked entries are relevant to assess the legitimate business purpose. *Hunt v. IBM Mid Am. Emps. Fed. Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986) (stating that, on summary judgment, the nonmoving party cannot rely on allegations or averments but must produce evidence and specific facts).

Here, it is undisputed that, upon being informed that Scheffler had a disability, Costco’s employee followed the face-mask policy and offered Scheffler accommodations, including wearing a face shield, ordering online, and having another person pick up

Scheffler’s prescription. Costco had a legitimate business reason for requiring Scheffler to wear a face covering while shopping in the store, and Costco therefore did not unlawfully discriminate against Scheffler based on his disability. Thus, the district court did not err by granting summary judgment to Costco on Scheffler’s MHRA claim.⁶

Affirmed.

⁶ The parties’ briefs to this court include arguments about whether Costco’s accommodations were reasonable. Costco cites Minn. Stat. § 363A.11 (2022). The district court discussed evidence that Costco provided “numerous alternative options” for Scheffler to “complet[e] his shopping” but did not determine whether the accommodations Costco offered were reasonable under Minn. Stat. § 363A.11. Because we affirm on other grounds, we need not address whether the accommodations Costco offered were reasonable under Minn. Stat. § 363A.11.