This opinion is nonprecedential except as provided by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
A24-1225

JHP 2309 Lyndale, LLC,
Appellant,

vs.

Icon Homes LLC,
Respondent,

Paragon Restoration, LLC,
Respondent,

Installed Building Solutions II, LLC,
Respondent,

Rigid Building Co,
Respondent,

Clark Engineering Corporation,
Respondent,

Gary Larson, et al.,
Respondents,

Grant Benson d/b/a Renovation Services, LLC,
Respondent,

Mike O'Brien Plumbing, LLC,
Respondent,

Midland HVAC, LLC d/b/a Midland Heating & Cooling,
Respondent.

Filed August 4, 2025
Affirmed
Slieter, Judge

Hennepin County District Court
File No. 27-CV-21-1114

Edward E. Beckmann, Beckmann Law Firm, LLC, Bloomington, Minnesota (for appellant)

Paul A. Rajkowski, Matthew W. Moehrle, Paul E. Storm, RGP Law Ltd., St. Cloud, Minnesota (for respondent Icon Homes LLC)

Andrew Brown, Gabriel E. Andrade, Reding & Pilney, LLC, Lake Elmo, Minnesota (for respondent Paragon Restoration, LLC)

Jeffrey M. Markowitz, Corey S. Bronczyk, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis, Minnesota (for respondent Installed Building Solutions II, LLC)

Kristi K. Brownson, Brownson PLLC, Minneapolis, Minnesota (for respondent Rigid Building Co.)

Lenae M. Pederson, Thomas L. Garrity, Meagher + Geer, P.L.L.P., Minneapolis, Minnesota (for respondent Clark Engineering Corporation)

Lars C. Erickson, Stephen F. Buterin, Coleman & Erickson, LLC, Eden Prairie, Minnesota (for respondents Gary Larson, et al.)

Michael J. Tomsche, Samantha P. Flipp, Tomsche, Sonnesyn & Tomsche, P.A., Minneapolis, Minnesota (for respondent Grant Benson)

Rachel B. Beauchamp, Tamara L. Novotny, Cole D. Hoffman, Cousineau Malone, P.A., Minnetonka, Minnesota (for respondent Mike O'Brien Plumbing, LLC)

Janine M. Loetscher, Benjamin D. Gilchrist, Bassford Remele, P.A., Minneapolis, Minnesota (for respondent Midland HVAC, LLC)

Considered and decided by Ede, Presiding Judge; Slieter, Judge; and Kirk, Judge.*

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

NONPRECEDENTIAL OPINION

SLIETER, Judge

This appeal concerns the scope of liability following a pipe burst that occurred at a mixed-use building while it was undergoing significant repairs. Appellant-building owner challenges the district court's dismissal of all of its claims against respondents, who are contractors and other parties who made or designed the repairs. Appellant argues that the district court (1) erred by dismissing its breach-of-warranty claims, (2) erred by dismissing its negligence claims, and (3) erred in its imposition of sanctions against appellant for spoliation.

Because the district court did not err by determining that any transferrable warranties expired and that appellant otherwise did not raise viable breach-of-warranty claims, we affirm the district court's dismissal of appellant's breach-of-warranty claims. And, because the district court properly determined that the respondents lacked a duty of care to appellant, we affirm the district court's dismissal of appellant's negligence claims. Therefore, we need not consider appellant's spoliation argument.

FACTS

In 2010, nonparty Commerce Holdings I LLC acquired at a foreclosure sale real estate which included a mixed-use building consisting of rental apartments and commercial spaces. Upon the recommendation of an engineer, Commerce arranged for extensive repair work due to water infiltration.

Commerce hired respondent Icon Homes LLC to serve as general contractor on the repair work. Icon then subcontracted with respondent Paragon Restoration LLC, which was to directly hire the other subcontractors to perform the various repairs Icon had contracted with Commerce to make. Paragon hired the following subcontractors to complete the repair work, all of which provided a one-year warranty following completion of their work:

- Respondent Installed Building Solutions II LLC (IBS) to provide insulation services;
- Respondent Midland HVAC LLC to install HVAC components;
- Respondent Rigid Building Co. to install Tyvek, siding, and windows, as well as to assist in supervising other subcontractors;
- Respondent Mike O'Brien Plumbing LLC (O'Brien) to install boilers and related equipment; and
- Respondent Grant Benson to perform general labor.

Commerce additionally hired respondent Clark Engineering Corporation, respondent GLA Consulting LLC, and GLA's principal, respondent Gary Larson, to provide engineering and architectural services.

From 2015 to 2018, the respondents performed repair work on the property. As each portion of the repairs was completed, Icon provided owner Commerce with letters that indicated when the one-year warranty on that portion of work would begin—which is the day all work by that subcontractor was completed. Due to the different completion dates by the subcontractors, a portion of these one-year warranties began on May 15, 2017, and the remaining one-year warranties began on April 13, 2018, meaning that all repair work under Commerce's contracts was completed by that date.

On August 20, 2018, Commerce agreed to sell the property to appellant JHP 2309 Lyndale LLC. The purchase agreement provided that JHP would "thoroughly inspect[] and examine[] the Property to the extent deemed necessary by [JHP] . . . to evaluate the purchase of the property." The agreement added that:

> [JHP] represents that, other than as expressly set forth herein, it is relying solely on its own expertise and that of [JHP]'s consultants, and that [JHP] will conduct such inspections and investigations of the Property, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same, and, upon closing, other than the representations and warranties set forth above, *shall assume the risk of any adverse matters*, including, but not limited to, adverse physical and environmental conditions, that may not have been revealed by [JHP]'s inspections and investigations. [JHP] further acknowledges and agrees that [JHP] is acquiring the Property on an *as is*, where is and *with all faults basis, without representations, warranties or covenants, express or implied, of any kind or nature except as expressly set forth in this Agreement*.

(Emphases added.) Commerce and JHP thrice extended the "due diligence expiration date" to allow JHP additional time to inspect the property. The closing on the property sale occurred on November 21, 2018. At closing, Commerce separately agreed to transfer to JHP "[a]ll existing assignable warranties."

In January 2019, JHP entered into a contract with nonparty Washington & Second LLC (W&S) for interior renovation work to the mixed-use building. On January 28, 2019, a pipe burst occurred in a stairwell while W&S was conducting its renovations. JHP reported the pipe burst to its insurance carrier, which inspected the damage on January 31 and February 1. JHP received approximately $210,000 from its insurer for the property damage that occurred. JHP did not directly notify any of the respondents about the pipe burst prior to commencing the lawsuit. In January 2021, JHP commenced this lawsuit and raised the following claims relevant to this appeal: breach of warranty and negligence.[1]

The district court granted summary-judgment dismissal of all of JHP's claims. In granting summary judgment, the district court explained that JHP could not enforce any warranties, that respondents' lack of duty to JHP prevented JHP's recovery on its negligence claims, and that, as to Midland, spoliation stemming from JHP's failure to preserve relevant evidence required dismissal of JHP's claims or exclusion of that evidence.

JHP appeals.

DECISION

"Summary judgment is appropriate if 'there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.'" *Metro. Transp. Network, Inc. v. Collaborative Student Transp. of Minn., LLC*, 6 N.W.3d 771, 778 (Minn. App. 2024) (quoting Minn. R. Civ. P. 56.01), *rev. denied* (Minn. July 23, 2024). Appellate courts review *de novo* "whether a genuine issue of material fact exists and whether the district court erred in its application of the law." *Driscoll v. Standard Hardware, Inc.*, 785 N.W.2d 805, 810 (Minn. App. 2010) (quotation omitted), *rev. denied* (Minn. Sept. 29, 2010).

[1] JHP conceded at oral argument that it does not appeal the dismissal of its breach-of-contract or third-party-beneficiary claims. We therefore do not address these claims, which the district court considered in its summary-judgment order.

I. JHP's breach-of-warranty claims fail.

JHP raises several arguments in challenging the district court's dismissal of its breach-of-warranty claims. Specifically, JHP argues that (1) Minnesota Statutes Chapter 327A (2024) created warranties regarding the work of general contractor Icon, and these warranties transferred to JHP upon the sale of the property and were in effect at the time of the 2019 pipe burst; (2) there are no anti-assignment clauses in the warranties; and (3) the subcontractors provided transferrable warranties that were in effect at the time of the sale. Respondents argue that the relevant warranties had either expired by the time of the pipe burst or that JHP failed to provide notice of its breach-of-warranty claims such that summary-judgment dismissal was proper.

To sustain a breach-of-warranty claim, the claimant must show "(1) the existence of a warranty, (2) breach of the warranty, and (3) causation of damages." *Angeles v. Medtronic, Inc.*, 863 N.W.2d 404, 421 (Minn. App. 2015), *rev. dismissed* (Minn. Dec. 5, 2016). Because the district court's decision only addressed the existence of warranties, we solely consider that element.

Icon's Statutory Warranty

Icon does not dispute that chapter 327A warranties apply to its contract with Commerce and that the warranties transferred to JHP upon its purchase of the property.[2]

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[2] JHP separately asserts that warranty information found on the first page of Icon's contracts created warranties separate from chapter 327A. However, JHP's assertion ignores contractual language providing that "the [contract] and the copy of chapter 327A *together* constitute a written warranty instrument," indicating that Icon intended to create a single warranty.

Icon's primary argument supporting the district court's dismissal of JHP's breach-of-warranty claim is that JHP failed to provide the requisite written notice of a warranty claim. Chapter 327A provides that a party seeking to raise a breach-of-warranty claim must first allow the contractor to inspect the property "for purposes of . . . prepar[ing] an offer to repair," Minn. Stat. § 327A.02, subd. 4, and that, if notice is not provided "within six months after . . . the owner discovers" the damage, coverage under the warranty is excluded, Minn. Stat. § 327A.03(a). It is undisputed that JHP did not initiate this lawsuit until January 2021—approximately two years after the pipe burst. And because that was the first notice that Icon received, JHP's breach-of-warranty claim brought under chapter 327A fails because there was no notice.[3]

Subcontractor Warranties

JHP additionally raised breach-of-warranty claims against subcontractors Paragon, IBS, Benson, Rigid, O'Brien, and Midland. These subcontractors provided separate

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JHP further argues that the letters that Icon provided to original owner Commerce upon completion of each portion of the project created separate warranties. These letters, however, merely identified when the warranty period began and did not provide a separate warranty.

[3] JHP argues that Icon had the requisite notice as the result of its agency relationship with Paragon whom, JHP claims, did receive notice of the pipe burst. To establish an agency relationship, there must be a "manifestation by the principal that an agent act for the principal" and "it must be shown that the principal is in control of the undertaking." *Duluth Superior Erection, Inc. v. Concrete Restorers, Inc.*, 665 N.W.2d 528, 534 (Minn. App. 2003). There is no indication that any of the subcontractors, including Paragon, acted as agents of Icon. *See Urban ex rel. Urban v. Am. Legion Post 184*, 695 N.W.2d 153, 160 (Minn. App. 2005) (explaining that, although independent contractors "contract to do something for the principal, [they] are not subject to any control or right of control with respect to their physical conduct in carrying out the undertaking" (quotation omitted)), *aff'd*, 723 N.W.2d 1 (Minn. 2006).

nonstatutory, one-year labor warranties for their work. The subcontractors and JHP dispute whether these warranties transferred from Commerce to JHP upon JHP's purchase of the mixed-use building. However, we need not resolve that dispute because the undisputed facts in the record support the district court's determination that all warranties expired prior to JHP's commencement of this lawsuit.[4]

Paragon's Warranties

Paragon provided two sets of warranties: a one-year warranty beginning on May 15, 2017, and a one-year warranty beginning on April 13, 2018. The 2017 warranty expired by the time of the 2019 pipe burst. The 2018 warranty expired on April 13, 2019—after the January 2019 pipe burst but well before JHP commenced this lawsuit in 2021. Further, even if these warranties had not expired before commencement of this lawsuit, they do not relate to the pipe burst—the crux of JHP's claim—but rather concern "demo[lition] re[garding] HVAC," "insulat[ion] for new [air conditioning]," and "attic insulation." Although Paragon's 2018 warranty mentions installing insulation for air conditioning, and JHP referenced insulation and air conditioning in its complaint, JHP did not provide evidence indicating how Paragon breached this warranty or how JHP was damaged from any breach of this warranty, particularly given JHP's admission that Midland repaired the air-conditioning units. Because Paragon's warranties expired—and even if they had not—they do not relate to the claimed damage, JHP's breach-of-warranty claim against Paragon

[4] Although the district court determined that there was a genuine issue of material fact as to when Midland's warranties expired, the court granted Midland summary judgment based on spoliation. But, as we explain below, we conclude that Midland provided undisputed evidence that its warranties expired prior to JHP commencing this lawsuit.

fails. *See Angeles*, 863 N.W.2d at 421 (requiring a breach of the warranty and resulting damages to sustain a breach-of-warranty claim).

IBS' Warranties

IBS issued one-year labor warranties beginning on January 1, 2017, and April 3, 2017. These warranties had therefore expired before the 2019 pipe burst and JHP's related claims accordingly fail.

Benson's Warranty

Benson issued a one-year labor warranty beginning on May 15, 2017. This warranty had therefore expired before the 2019 pipe burst and JHP's related breach-of-warranty claim therefore fails.

Rigid's Warranty

Rigid issued a one-year warranty beginning on May 15, 2017. This warranty had therefore expired before the 2019 pipe burst and JHP's related breach-of-warranty claim therefore fails.

O'Brien's Warranty

O'Brien issued a one-year labor warranty beginning on May 15, 2017. This warranty had therefore expired before the 2019 pipe burst and JHP's related breach-of-warranty claim therefore fails.

Midland's Warranty

Midland, which installed heating and air-conditioning equipment, provided a one-year labor warranty regarding the installation of this equipment. The district court denied Midland summary judgment on the basis of expiration of the warranty, though it did grant Midland summary judgment due to JHP's spoliation of evidence. As to why it denied Midland's summary-judgment motion regarding breach of warranty, the district court explained that the "expiration date of Midland's one-year warranty is uncertain because the start date is not specified in writing," determining this to be an issue of disputed fact. On appeal, Midland argues that the district court erred in making this determination because it provided factually undisputed evidence that the one-year warranty had started in September 2017 and, accordingly, expired before the pipe burst in January 2019. JHP argues that Midland did not provide notice as to when the warranty period began and that, therefore, the district court correctly denied summary judgment on this basis.

Upon a careful review of this record, we conclude that Midland provided undisputed evidence that its warranty expired before the pipe burst in January 2019—and also long before JHP commenced this lawsuit. In its summary-judgment materials, Midland attached an invoice outlining the payment due for its work, which it completed by September 2017. In its response to Midland's summary-judgment motion, JHP wrote that Midland's written warranties did not include a start date and did not begin until the project completed in spring 2018. JHP, however, did not point to any facts that disputed Midland's evidence. We previously explained that, to "defeat a properly supported motion for summary judgment, a nonmoving party must offer significant probative evidence." *Mountain Peaks Fin. Servs. v. Roth-Steffen*, 778 N.W.2d 380, 387 (Minn. App. 2010), *rev. denied* (Minn. Apr. 28, 2010). JHP, as the party opposing Midland's summary-judgment motion, bore this burden and failed to meet it. We therefore affirm the district court's grant of summary judgment to Midland on these alternative grounds. *See Doe v. Archdiocese of St. Paul*, 817

N.W.2d 150, 163 (Minn. 2012) (explaining that an appellate court "may affirm a grant of summary judgment if it can be sustained on any grounds" and "need not adopt the reasoning of the district court").[5]

II. JHP's negligence claims fail for lack of duty.

JHP raised three claims of negligence: (1) negligence against Icon, Paragon, IBS, Rigid, Benson, O'Brien, and Midland (the contractor parties); (2) negligence against Clark, GLA, and Larson (the engineer parties); and (3) negligence based on a theory of *res ipsa loquitur* against the engineer parties.

The Contractor Parties

To recover on a negligence claim, "a plaintiff must prove (1) the existence of a duty of care, (2) a breach of that duty, (3) an injury, and (4) that the breach of the duty of care was a proximate cause of the injury." *SECURA Ins. Co. v. Deere & Co.*, 12 N.W.3d 103, 110 (Minn. App. 2024), *rev. denied* (Minn. Dec. 17, 2024). Because the existence of a duty of care is a threshold question, the absence of a duty of care necessarily causes a negligence claim to fail. *Domagala v. Rolland*, 805 N.W.2d 14, 22 (Minn. 2011). The existence of a duty of care is a question of law reviewed *de novo*. *Doe 169 v. Brandon*, 845 N.W.2d 174, 177 (Minn. 2014).

We first address the scope of the contractor parties' duties, if any, to JHP. JHP, citing our decision in *Arden Hills N. Homes Ass'n v. Pemtom, Inc.*, argues that the contractor parties had a duty, independent of their specific contract, to complete their work

[5] JHP additionally brought breach-of-warranty claims against Clark and GLA, which the district court dismissed on summary judgment. JHP does not appeal these summary-judgment dismissals.

"in a reasonably good and workmanlike manner." 475 N.W.2d 495, 500 (Minn. App. 1991), *aff'd as modified*, 505 N.W.2d 50 (Minn. 1993).

The existence of a duty "depends on the relationship of the parties and the foreseeable risk involved." *Smits as Tr. for Short v. Park Nicollet Health Servs.*, 979 N.W.2d 436, 458 (Minn. 2022) (quotation omitted). There is no duty "when the connection between the alleged danger created by a negligent act and the injury caused is too remote." *Id.* at 445. In the construction context, "a contractor has a duty, independent of the contract itself, to erect a building in a reasonably good and workmanlike manner." *Arden Hills*, 475 N.W.2d at 500. However, Minnesota courts have not held that this duty extends to parties beyond the initial contractee. *See Brasch v. Wesolowsky*, 138 N.W.2d 619, 623 (Minn. 1965) ("[A] contractor owes his *contractee* a duty to use due care in the performance of his undertaking and . . . [this] duty is nondelegable." (emphasis added)).

Additionally, JHP purchased the property from Commerce "as is" and "with all faults," and the purchase agreement with Commerce provided that JHP will "thoroughly inspect[] and examine[] the Property to the extent deemed necessary by [JHP] . . . to evaluate the purchase of the property." Courts use "foresight" to determine if a duty was owed. *Dellwo v Pearson*, 107 N.W.2d 859, 862 (Minn. 1961). The foreseeability of harm generally is a question of law for the court. *Domagala*, 805 N.W.2d at 27. Because JHP purchased the property "as is," it did not foreseeably rely upon the quality of work completed by the contractor parties.

In sum, the contractor parties did not have a duty to JHP and therefore JHP's negligence claim against the contractor parties fails. *See id.* at 22.

The Engineer Parties

JHP additionally raised a standard negligence claim and a negligence claim based on *res ipsa loquitur* against the engineer parties.[6] Because both claims require a duty of care, the duty analysis is again dispositive. *See id.* Engineers fall into the class of professionals that must render "[t]he reasonable skill and judgment expected of professionals . . . to those who foreseeably rely upon the services." *Waldor Pump & Equip. Co. v. Orr-Schelen-Mayeron & Assocs., Inc.*, 386 N.W.2d 375, 377 (Minn. App. 1986). Further, engineers must exercise the level of "care, skill, and diligence as [others] in that profession ordinarily exercise under like circumstances." *Pond Hollow Homeowners Ass'n v. The Ryland Grp., Inc.*, 779 N.W.2d 920, 923 (Minn. App. 2010).

As with the negligence claims against the contractor parties, the engineer parties do not have a duty to JHP because they did not contract with JHP. And it was not foreseeable that JHP, which purchased the property on "an as is," "with all faults basis" and had a duty to inspect, would "foreseeably rely" on the engineer parties' services. Because the engineer parties lack a duty to JHP, JHP's negligence claims against these parties also fail.

Affirmed.

[6] *Res ipsa loquitur* is a form of circumstantial evidence that creates a permissive inference of negligence. *Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 864 (Minn. 1984). To submit a negligence claim on this theory, the plaintiff must show that (a) "[t]he event must be of a kind which ordinarily does not occur in the absence of someone's negligence; (b) it must be caused by an agency or instrumentality within the exclusive control of the defendant; and (c) it must not have been due to any voluntary action or contribution on the part of the plaintiff." *Warrick v. Giron*, 290 N.W.2d 166, 169 (Minn. 1980).