

*This opinion is nonprecedential except as provided by  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  
A24-2004**

Jacob Pries,  
Appellant,

vs.

Whitewater Dairy, LLC, et al.,  
Respondents,

vs.

Bruce Kreofsky & Sons, Inc., a/k/a Great River Overhead Door,  
a/k/a Kreofsky Building Supplies, a/k/a Kreofsky Overhead Door,  
a/k/a KBS Companies,  
Respondent.

**Filed September 2, 2025  
Reversed and remanded  
Ross, Judge**

Winona County District Court  
File No. 85-CV-22-937

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Considered and decided by Wheelock, Presiding Judge; Ross, Judge; and Connolly, Judge.

### **NONPRECEDENTIAL OPINION**

**ROSS, Judge**

A worker at Whitewater Dairy opened a tall overhead barn door while Jacob Pries was repairing it, toppling Pries's lift and sending him to the ground, where the falling lift crushed his foot. Pries sued Whitewater for negligence. Whitewater successfully moved for summary judgment on the ground that it owed no duty of care to Pries, an employee of an independent contractor. Pries appeals, arguing principally that there are genuine factual questions about whether Whitewater, as a landowner, owed him a duty of care. Because we conclude that there are factual issues as to whether Whitewater should have anticipated the harm to Pries despite the obvious nature of the danger, we reverse and remand.

### **FACTS**

At this summary-judgment stage in this negligence lawsuit, we derive this factual summary from the undisputed evidence and construe any disputed evidence in the light most favorable to the appellant, against whom the district court entered judgment.

Whitewater Dairy's approximately 15-foot-tall overhead barn doors were functioning improperly in January 2018 because some of their structural screws broke. A Whitewater manager summoned Great River Overhead Door for repairs. Great River is a department within Kreofsky Building Supplies (KBS). KBS's overhead-door department manager believed that replacing the screws with bolts and locknuts would fix the problem, and he assigned Great River employee Jacob Pries, the appellant in this case, to the task.

Pries was a 22-year-old college student who worked part time for Great River. He had worked in KBS's construction business in 2014 and began working for Great River around 2017. By the time his manager directed him to fix Whitewater's doors, Pries had some on-the-job experience with garage doors and operating a scissor lift, but his Whitewater assignment on January 19 was his first time working on a construction project alone. An overhead-door manager at KBS advised Pries on the day of the assignment how to make the repairs. And he told Pries that "everyone [at Whitewater] was aware that [Pries] was going there that day" and that "they know you're coming." Pries went to Whitewater in his KBS truck, transporting the scissor lift.

A Whitewater manager had told a worker at the dairy that Pries would be arriving to fix the doors that morning. Pries arrived at about 8:30. He found the worker already using a boom lift inside the barn on a different project. According to Pries, he and the worker briefly discussed only where each would work inside the barn to avoid interfering with the other. According to the worker, however, he warned Pries that "we are going through the barn feeding pretty much all day." Pries did not place marker cones or caution tape to warn dairy workers not to open the garage doors. Pries did not disengage the doors to prevent them from opening, believing that Whitewater had taken precautions related to his project.

Pries replaced the screws on three of six barn doors and then moved his scissor lift to within two feet of the fourth door. He raised himself inside the lift's basket to the top of the 15-foot door. Meanwhile a dairy worker was feeding cows. That worker had been in and out of the barn three times that morning perhaps before Pries arrived, seeing no one

working on a scissor lift. He had been told about a week earlier that someone would be there to fix the barn doors, “but they never said any time in specific.” Using a remote-control device, the worker activated the barn door that Pries was working on. The door began to open. It raised into Pries’s scissor lift, knocking the lift and Pries over, onto the floor. Part of the lift landed on Pries’s foot, crushing it. Pries spent 30 days in the hospital, had multiple surgeries, and lost part of his crushed foot by amputation.

Pries sued Whitewater for negligence. Whitewater filed a third-party complaint against KBS. The district court granted summary judgment, dismissing Pries’s claim against Whitewater, reasoning in relevant part that Whitewater owed no duty to warn Pries of the open and obvious risk that a barn door might open.

Pries appeals.

## **DECISION**

Pries challenges the district court’s summary-judgment decision favoring Whitewater. We review the decision *de novo*. See *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76–77 (Minn. 2002). Summary judgment is appropriate if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01. We base the decision on the undisputed facts and on the disputed facts construed in the light most favorable to the party against whom summary judgment was granted. See *J.E.B. v. Danks*, 785 N.W.2d 741, 746 (Minn. 2010). Our review under this standard leads us to reverse.

The district court based its decision in part on its conclusion that the undisputed facts establish that Whitewater owed Pries no duty of care on a theory of landowner

liability. The conclusion is mistaken. Although the supreme court has in only limited circumstances held “a hiring company liable for injuries to an independent contractor’s employees,” *Sutherland v. Barton*, 570 N.W.2d 1, 5 (Minn. 1997), the hiring company, as a landowner, has a duty to use reasonable care toward an entrant and may be directly liable for breaching that duty, *see Conover v. N. States Power Co.*, 313 N.W.2d 397, 401–02 (Minn. 1981). For the following reasons, we believe that Whitewater could be held liable depending on how a fact-finder resolves triable issues of fact.

Pries contends that Whitewater is liable both because an unwarned dairy worker on its premises caused the injury by opening the barn door and alternatively (or additionally) because, having failed to prevent workers from opening the door, Whitewater failed to warn Pries of the danger that one of the workers might open it. Pries’s theories of liability based on Whitewater’s status as a landowner find support in the law. A landowner’s duty of reasonable care to invitees may “require [the landowner] to warn the invitee, or to take other reasonable steps to protect him, against [a] known or obvious condition or activity, if the possessor has reason to expect that the invitee will nevertheless suffer physical harm.” *Peterson v. W. T. Rawleigh Co.*, 144 N.W.2d 555, 557–58 (Minn. 1966) (quotation omitted); *see also Senogles v. Carlson*, 902 N.W.2d 38, 42 (Minn. 2017) (observing that a landowner has no duty of care to invitees if the “danger is known or obvious to them, unless the [landowner] should anticipate the harm despite such knowledge or obviousness” (quotation omitted)). The underlying components of this basis for liability—whether a danger is known, whether it is obvious, and whether the landowner could anticipate harm—are generally questions of fact. *See Olmanson v. LeSueur County*, 693 N.W.2d 876, 881

(Minn. 2005). And in this case, the relevant facts are at least somewhat disputed. Pries blends his theories of landowner and direct-action liability, so we examine the bases together in the premises-liability context.

We first identify the dangerous condition that resulted in Pries's injury. The parties and the district court implicitly recognized that the danger to Pries was the possibility that a barn door he was working on would open into his lift while he was repairing the door. We discuss the controlling issues accordingly.

### **Known or Obvious Danger**

Pries argues unconvincingly that factual questions exist as to whether the danger was known or obvious. Whether a danger was known is a subjective consideration that depends on the entrant's "actual appreciation of the danger." *Senogles*, 902 N.W.2d at 44 (quotation omitted). But whether the danger was obvious is an objective consideration, meaning that a danger is obvious "only if both the condition and the risk are apparent to and would be recognized by a reasonable person in the position of the visitor." *Id.* (quotation omitted). The facts construed in Pries's favor allow for the possibility that the danger was not known to him. But they necessarily establish that the danger was objectively obvious. Pries was working about 15 feet off the floor in a lift positioned in front of an overhead door that he failed to disable or to flag with warning tape or cones. Pries admitted in district court briefing that he knew "that a garage door could be opened unexpectedly." The district court properly concluded that the danger of the overhead door opening and colliding with the scissor lift was obvious.

Pries urges us to reject the district court’s conclusion on this issue, citing *Louis v. Louis*, where the supreme court observed that in several prior cases “the danger associated with the condition at issue was found to be clearly visible, or in plain view, meaning the condition itself posed the obvious danger.” 636 N.W.2d 314, 321–22 (Minn. 2001). Pries reads too much into the *Louis* court’s statement, mistakenly suggesting that a danger itself must be “visible, or in plain view” to the entrant to be obvious. The *Louis* court remanded that case, which involved a landowner’s installation of a slide toward the shallow end of a swimming pool, for the district court to “determine if the *activity* or condition involved known or obvious dangers.” *Id.* at 321 (emphasis added). In other words, it was not just the plainly viewable *object* that could constitute an obvious danger; it was the potentially foreseeable *activity* that an entrant might engage in involving the object, which, in that case, was “the danger associated with doing a headfirst belly slide.” *Id.* So while it is true that a dangerous condition that is itself “clearly visible, or in plain view” is a danger that is obvious, *id.*, it is also true that some dangers are instead obvious because of the injury that a reasonable person would expect to result from a predictable course of activity involving plainly viewable but not otherwise dangerous elements, like a remotely controlled barn door and a closely placed scissor lift. And we hold that an objectively reasonable person assigned to repair garage doors would anticipate the danger that could result from an activated garage door during the repair process when other precautions have not been taken. The district court correctly concluded that the danger to Pries was obvious.

### **Whether Whitewater Should Have Anticipated the Harm**

We must next decide whether a factual dispute exists as to whether Whitewater should have anticipated the harm despite the obvious nature of the danger. While a landowner is not ordinarily liable for a known or obvious danger, he will still be liable if he “should anticipate the harm despite such knowledge or obviousness.” *Senogles*, 902 N.W.2d at 42 (quotation omitted). The supreme court has recently characterized this anticipated-harm exception as presenting a question of foreseeability. *Id.* at 43. Whether a risk was foreseeable depends on whether the danger was objectively reasonable to expect, and “not simply whether it was within the realm of any conceivable possibility.” *Id.* (quotation omitted). In cases where “the issue of foreseeability is clear, the court, as a matter of law, should decide it, but in close cases, the issue of foreseeability is for the jury.” *Id.* A wrinkle in this case leads us to believe the question is a close one that ought to go to the jury rather than be resolved at summary judgment.

In many ways, the circumstances here resemble those the supreme court faced in *Sutherland*, where it concluded that the landowner owed no duty of care to an experienced, independently contracted electrician whom the landowner reasonably expected would take necessary precautions to avoid self-electrocution. 570 N.W.2d at 7–8. The *Sutherland* court concluded that, although the danger of electrocution was known and obvious, the landowner who hired the independent contractor could not have anticipated the harm because of the reasonably presumed expertise of the worker and his company. *Id.* Whitewater likewise presumably hired Great River to fix its overhead barn door because fixing overhead doors is what Great River does, and, under most circumstances,

Whitewater would reasonably expect that any repairperson whom Great River sends to perform the task would take the necessary precautions to avoid the obvious danger associated with the opening of a barn door. But the Whitewater manager who knew that Pries would be coming to work in the barn on the morning he was injured acknowledged that, when someone is working in the barn, “you might want to have the farmhands know” about it. The worker who opened the barn door agreed that he regularly entered and exited the barn in the morning and, therefore, “We usually tell everybody noon, after noon is safe.” Did Whitewater unreasonably fail to consider that Pries might not take added precautions, relying instead on Whitewater’s expected warning to its employees? Should Whitewater have expected that Pries would take precautions by disengaging the door when Whitewater instead “usually” warns visitors to avoid the barn in the morning? Should Whitewater have predicted that its employees might open the door while Pries was working? These and related disputed issues of fact bear on whether Whitewater should have anticipated that Pries might suffer physical harm despite the obviousness of the danger.

Whitewater argues relatedly that it owed Pries no duty because his own conduct caused his injury, citing *Baber v. Dill*, 531 N.W.2d 493 (Minn. 1995). In *Baber*, the worker had helped build a retaining wall, leaving metal rods exposed and protruding after the first day’s work. 531 N.W.2d at 494–95. The next day he stood on the “mud-caked,” “slippery,” and partially constructed retaining wall, having not covered the exposed rods with any protection, and then slipped, impaling himself on one of the rods. *Id.* at 495. The supreme court held that the danger the rods created was so obvious that the landowner should not

have anticipated any harm and concluded that “[i]n the present case . . . a landowner has no duty to an invitee to warn or make safe known and obvious conditions when that invitee has assisted in creating those conditions.” *Id.* at 495–96. It is true that Pries increased his risk of injury by not disengaging the barn door and by not placing warning cones or tape. But unlike the plaintiff in *Baber*, who helped physically construct the danger that injured him, Pries did not. Although the placement of the scissor lift and Pries’s failure to disengage the barn door contributed to the injury, the opening of the door by the dairy worker also led to it. Pries has presented sufficient evidence to create a factual dispute, under the specific circumstances of this case, as to whether Whitewater should have anticipated that he could be harmed.

We acknowledge that Pries’s path to prevail at trial is very narrow on these facts. But the supreme court has emphasized in several recent decisions that close calls on the issue of foreseeability should be decided by a jury. *See Senogles*, 902 N.W.2d at 43, 47–48; *Warren v. Dinter*, 926 N.W.2d 370, 378 (Minn. 2019); *Fenrich v. The Blake Sch.*, 920 N.W.2d 195, 205–07 (Minn. 2018); *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 625, 629–31 (Minn. 2017). On the record here we cannot say that it was unforeseeable to Whitewater that Pries could be harmed despite the obvious nature of the danger. We therefore reverse the summary-judgment decision favoring Whitewater.

### **Hazardous-Work Rule**

We are not persuaded otherwise by Whitewater’s suggestion that it is not liable to Pries because he was specialized to do the hazardous work that caused his injuries. The supreme court has stated that “one who hires an independent contractor with employees

specialized to do the hazardous work should not be penalized by being held *vicariously* liable for an injury to those employees.” *Conover*, 313 N.W.2d at 405 (emphasis added); *see also Sutherland*, 570 N.W.2d at 5. We call this concept the hazardous-work rule. The district court here relied in part on the hazardous-work rule, as we characterized it in *Presbrey v. James*, 781 N.W.2d 13, 18–19 (Minn. App. 2010), to conclude that Whitewater did not owe Pries a duty of care under a premises-liability theory. But Whitewater’s vicarious liability is not at issue here. Pries builds his case on a premises-liability theory, and the supreme court and this court have consistently held that premises liability concerns a landowner’s *direct* liability. *See Conover*, 313 N.W.2d at 401; *Sutherland*, 570 N.W.2d at 7; *Zimmer v. Carlton Cnty. Co-op Power Ass’n*, 483 N.W.2d 511, 513–14 (Minn. App. 1992), *rev. denied* (Minn. June 10, 1992). The supreme court’s rationale in *Conover*, and the similar structure of its analysis in *Sutherland*, *see* 570 N.W.2d at 5–7, mean that the hazardous-work rule does not apply to this case.

We recognize that we invoked the hazardous-work rule in our premises-liability analysis in *Presbrey*, observing there that although *Sutherland* and *Conover* discuss the rule in the retained-control context, “we believe [the rule] applies with equal force to premises liability *on the facts of the instant case*.” 781 N.W.2d at 19 (emphasis added). The facts in *Presbrey* are not like the facts here. In *Presbrey*, the landowners hired an experienced 70-year-old independent contractor to repair two “old and possibly structurally unsound” decks. *Id.* at 15. The contractor fell to his death while working alone on the decks on a “misty and drizzling” day. *Id.* at 16. Here, by contrast, Pries fell after an unwarned

person working for the landowner, who another employee knew would be entering and exiting the barn, opened a barn door. We decline to apply the hazardous-work rule here.

### **Primary Assumption of Risk and Comparative Fault**

Whitewater argues that, even if it owed Pries a duty of care, he assumed the risk of injury. The doctrine of primary assumption of risk bars a plaintiff's claim by negating the defendant's duty of care. *Soderberg v. Anderson*, 922 N.W.2d 200, 203 (Minn. 2019). Primary assumption of risk exists "only where parties have voluntarily entered a relationship in which plaintiff assumes well-known, incidental risks." *Id.* (quotation omitted). The doctrine does not apply here. The supreme court recently observed that it has limited the implied-primary-assumption doctrine to only certain types of situations, "largely in the arena of participants and spectators of inherently dangerous sports." *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 191 (Minn. 2019) (quotation omitted). And it emphasized in *Soderberg* that it was "loathe to extend the doctrine . . . to yet another activity." 922 N.W.2d at 205. Because applications of the primary assumption of risk are few and limited mostly to the sport context, we decline to apply the doctrine for the first time to the circumstances here. And Pries correctly emphasizes that apportionment of comparative fault is generally a question for the jury. *See Nimis v. St. Paul Turners*, 521 N.W.2d 54, 59 (Minn. App. 1994).

Because the record presents a fact question about whether Whitewater should have anticipated harm to Pries, the district court erred by concluding as a matter of law that Whitewater owed him no duty of care as a landowner. This question, as well as Pries's role

in causing his injury, is for the jury. We offer no opinion on the consequent issue of whether Whitewater breached any duty to him.

**Reversed and remanded.**