

*This opinion is nonprecedential except as provided by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
A25-0069**

Jerry Lynn Schmidt,
Appellant,

vs.

James Ernest Grotluschen, et al.,
Respondents.

**Filed August 18, 2025
Affirmed
Cochran, Judge**

Wilkin County District Court
File No. 84-CV-23-366

Matthew J. Barber, Jessica A. Servais, Hannah R. Mielke, Phillip H. Wagner, Schwebel,
Goetz & Sieben, P.A., Minneapolis, Minnesota (for appellant)

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(for respondents)

Considered and decided by Cochran, Presiding Judge; Reyes, Judge; and Schmidt,
Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant brought an action for negligence and vicarious liability against respondents, a county employee and county department, after a snowplow driven by the county employee collided with appellant's pickup truck. Appellant challenges the district court's grant of summary judgment to respondents on the basis of official immunity and

vicarious official immunity. Because the undisputed material facts, taken in the light most favorable to appellant, establish that the county employee was engaged in discretionary snow-removal activities within the course and scope of his employment when the collision occurred, we affirm.

FACTS¹

On January 28, 2022, following a snow event, respondent Wilkin County Highway Department (the county) dispatched employees to plow and clear snow from roads in the county. One of those employees was respondent James Ernest Grotluschen. Grotluschen operated a motor grader with a plow and a wing blade attached (the snowplow). According to the county, the wing blade was used to clear “snow off the shoulders to prevent drifting” and to clear intersections of snow and debris. The clearing of snow from the road shoulders occurred after the road had already been plowed.

On the morning in question, Grotluschen was clearing the shoulders of County Road 168 as he approached the intersection with Highway 9. A stop sign was posted at the intersection for traffic traveling on County Road 168 but not for traffic on Highway 9. As Grotluschen approached the intersection, he looked both ways for traffic and did not see any vehicles. He then elected to proceed through the intersection without stopping because he wanted “to clean off the shoulder at the intersection and did not want to leave behind piles or ridges of snow at the intersection that can be caused by stopping or slowing down

¹ The following facts are based on the evidence viewed in the light most favorable to appellant as the nonmoving party. *See STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002) (stating that on appeal from summary judgment, appellate courts view the facts in the light most favorable to the nonmoving party).

too much.” When he went through the intersection, Grotluschen did not see appellant Jerry Lynn Schmidt approaching on Highway 9. Grotluschen’s snowplow then struck Schmidt’s vehicle, causing Schmidt’s vehicle to overturn.

Under Minnesota Statutes section 169.035, subdivision 1(a) (2024), all individuals conducting work upon the highway, including snowplow operators, are exempt from general traffic laws, including laws governing stopping at stop signs. In January 2022, at the time of collision, the county had no written policy requiring snowplow operators to stop at stop signs. According to the county supervisor in charge of road maintenance, “plow operators have to use their own best judgment on how to best plow so the road surface is smooth, without creating piles or ridges that can lead to drifting.” In his view, “[h]ard and fast rules on how to plow wouldn’t work.” Instead, when a snowplow operator approaches an intersection, the operator “has to make a judgment on how to plow based on existing conditions because no two intersections are the same and the conditions can vary from day to day.” Specifically, the snowplow operator needs to “take into account changes in elevation at the intersection, the conditions of the road surface, the amount of the snow or ice on the road, wind speed, direction and visibility, whether to slow or stop at an intersection and other factors that may exist at the time.” When a snowplow operator is driving a motor grader with a wing blade, “[s]topping at an intersection can . . . leave a dangerous ridge of snow.” For these reasons, county snowplow operators “are not required to stop at intersections.” Instead, “they have to make a decision whether it is safest to continue plowing through the intersection or to slow and stop.”

While there was no specific policy requiring snowplow operators to stop at intersections, the Wilkin County Employee Handbook in effect at the time contained a policy that required operators of county vehicles to “obey all traffic laws regarding the operation of a motor vehicle.” And the Wilkin County Safety Program contained safety policies including that county employees “[r]efrain from any unsafe act that might endanger themselves, fellow workers, or others” and that they “[a]ssume their share of responsibility for negligent or deliberate acts that cause injury to themselves, their fellow workers or others.”

Schmidt sustained injuries as a result of the collision and filed suit seeking damages. Schmidt alleged negligence on the part of Grotluschen and vicarious liability on the part of the county. Grotluschen and the county (respondents) moved for summary judgment on the basis of official immunity. Respondents argued that official immunity barred Schmidt’s claims because Grotluschen was engaged in the discretionary act of snow removal, within the scope and course of his employment, at the time of the collision. Schmidt responded that genuine issues of material fact exist as to whether Grotluschen was engaged in snow removal activities at the time of the collision and as to whether Grotluschen violated a ministerial duty established by the Wilkin County Employee Handbook and the Wilkin County Safety Program.

The district court granted respondents’ motion for summary judgment. The district court concluded that the undisputed facts established that Grotluschen “made the discretionary decision to drive through the intersection without stopping to reduce snow ridges” on the date of the accident and therefore he was entitled to official immunity. The

district court also rejected Schmidt’s argument that there was a genuine issue of material fact as to whether county policies mandated that snowplow operators stop at all stop signs, thereby eliminating any professional judgment giving rise to official immunity. In reaching this decision, the district court relied on Minnesota Statutes section 169.035, subdivision 1(a). Finally, the district court concluded that, because Grotluschen was entitled to official immunity, the county could not be held vicariously liable for his driving conduct.

Schmidt appeals.

DECISION

A district court properly grants summary judgment when 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; *Staub v. Myrtle Lake Resort, LLC*, 964 N.W.2d 613, 620 (Minn. 2021). “A fact is ‘material’ for purposes of summary judgment if its resolution will affect the outcome of the case.” *Sayer v. Minn. Dep’t of Transp.*, 790 N.W.2d 151, 162 (Minn. 2010). Appellate courts review de novo the grant of summary judgment to determine “whether there are genuine issues of material fact and whether the district court erred in its application of the law.” *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). A reviewing court views the evidence in the light most favorable to the party against whom summary judgment was granted. *STAR Ctrs., Inc.*, 644 N.W.2d at 76-77. “All doubts and factual inferences must be resolved against the moving party.” *Montemayor*, 898 N.W.2d at 628 (quotation omitted).

To preclude summary judgment, “[a] genuine issue of material fact ‘must be established by substantial evidence.’” *McBee v. Team Indus., Inc.*, 925 N.W.2d 222, 230 (Minn. 2019) (quoting *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69-70 (Minn. 1997)). “Denials or general averments” by a nonmoving party are not sufficient to create a genuine issue of material fact. *Southcross Com. Ctr., LLP v. Tupy Props., LLC*, 766 N.W.2d 704, 707 (Minn. App. 2009). Instead, to defeat a motion for summary judgment, the nonmoving party must point to “specific facts to show that there is a genuine issue of material fact for trial.” *Id.*

Schmidt argues that the district court erred when it concluded that respondents were entitled to summary judgment based on official immunity. “Under the doctrine of official immunity, a public official charged by law with duties which call for the exercise of . . . judgment or discretion is not personally liable to an individual for damages unless he is guilty of a willful or malicious wrong.” *Vassallo by Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014) (quotation omitted). “The purpose of official immunity is to protect public officials from the fear of personal liability that might deter independent action and impair effective performance of their duties.” *Shariss v. City of Bloomington*, 852 N.W.2d 278, 281 (Minn. App. 2014) (quotation omitted). “Official immunity can apply to any act that involves an exercise of independent judgment, even at the ‘operational level.’” *Vassallo*, 842 N.W.2d at 462 (quoting *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 657 (Minn. 2004)). Vicarious official immunity generally protects the governmental employer. *Schroeder v. St. Louis County*, 708 N.W.2d 497, 508 (Minn. 2006).

Whether official immunity applies turns 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*, 842 N.W.2d at 462. In determining whether a duty is discretionary or ministerial, we focus on the nature of the act. *Mumm v. Mornson*, 708 N.W.2d 475, 490 (Minn. 2006). A duty is discretionary “if it involves more 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 leaves nothing to discretion; it is a simple, definite duty arising under and because of stated conditions.” *Id.* at 490 (quotations omitted). We look to the “nature, quality, and complexity” of a duty to distinguish whether a duty is discretionary or ministerial. *Schroeder*, 708 N.W.2d at 507-08.

Schmidt does not argue that Grotluschen engaged in willful or malicious conduct. Instead, the focus of Schmidt’s appeal relates to whether Grotluschen was engaged in a discretionary or ministerial duty when he drove through the intersection without stopping and collided with Schmidt’s vehicle. Because “plowing snow is often hazardous, and snowplow operators are generally allowed to choose the manner and means of doing the job,” a snowplow operator is normally entitled to official immunity for decisions made while the snowplow operator is actively engaged in snow-removal activities. *Shariss*, 852 N.W.2d at 282-83. Official immunity typically applies because the snowplow operator is “responding to uncertain circumstances that require the weighing of competing values on the grounds that these circumstances offer little time for reflection and often involve incomplete and confusing information such that the situation requires the exercise

of significant, independent judgment and discretion.” *See id.* at 282 (emphasis omitted) (quotations omitted). “But when a snowplow driver is not actively engaged in snow-removal operations and performs a discrete act that requires little or no independent judgment,” the operator is performing a ministerial task not protected by official immunity. *Id.* at 283.

Schmidt argues that the district court erred when it determined that there is no genuine issue of material fact as to whether Grotluschen was engaged in a discretionary duty. Specifically, Schmidt argues that genuine issues of material fact exist as to (1) whether Grotluschen was actively engaged in snow-removal operations at the time of the collision, and (2) whether county policy documents applicable to all employees created a ministerial duty that required Grotluschen to stop at all stop signs. We address each argument in turn and conclude that neither is persuasive.

Snow-Removal Operations

Schmidt first argues that there is a genuine issue of material fact as to whether Grotluschen was engaged in discretionary snow-removal operations at the time of the collision with Schmidt’s vehicle. Schmidt contends that the evidence, viewed in the light most favorable to Schmidt, would allow a reasonable jury to conclude that Grotluschen was *not* actively engaged in snow-removal operations at the time of the accident. In support of his argument, Schmidt points to his own deposition in which he stated that, as he was driving down Highway 9, he “could see [Grotluschen], you know, coming down *the plowed*, . . . the gravel road.” (Emphasis added.) Schmidt also points to Grotluschen’s deposition testimony in which Grotluschen admitted that the “wing blade” on the motor

grader was “raised” up after the accident, and that he “probably” raised it after the accident, but did not know for sure. Schmidt argues that, taken together, this evidence creates a reasonable inference that Grotluschen was not actively engaged in snow clearing at the time he entered the intersection, but instead he was merely proceeding through the intersection and his vision was obscured by the position of the plow blades when he struck Schmidt’s car. This inference, Schmidt asserts, creates a genuine issue of material fact as to whether Grotluschen was engaged in snow-removal operations at the time of the collision and consequently a genuine issue of material fact as to whether Grotluschen was engaged in a discretionary duty entitling him to official immunity. We are not persuaded.

By focusing on evidence that County Road 168 was already plowed and Grotluschen’s plow blades may have been up at the time of the collision, Schmidt’s argument construes the official immunity granted to snowplow operators too narrowly. Schmidt’s argument fails to consider the undisputed evidence that Grotluschen was dispatched to clear the shoulders of County Road 168 to prevent snow drifting, not to clear the road itself. Clearing snow off the shoulders of a road is within the scope of a snowplow operator’s discretionary snow-removal operations. *See In re Alexandria Accident of Feb. 8, 1994*, 561 N.W.2d 543, 549 (Minn. App. 1997) (affirming the grant of official immunity for the act of plowing snow off the shoulder of a highway), *rev. denied* (Minn. June 26, 1997). And, at the time Grotluschen entered the intersection of County Road 168 and Highway 9, he was still driving his assigned route for purposes of clearing snow from the shoulders. Additionally, the county supervisor’s affidavit states that the decision of a snowplow operator to enter an intersection requires the operator to evaluate a variety of

factors such as “changes in elevation at the intersection, the conditions of the road surface, the amount of the snow or ice on the road, wind speed, direction and visibility, . . . and other factors that may exist at the time.” Schmidt has presented no evidence that calls into question the county supervisor’s affidavit in this regard.

Consequently, because the undisputed evidence shows that Grotluschen’s decision to enter the intersection without stopping required the exercise of his professional judgment and the weighing of several factors while engaged in snow clearing operations, we conclude that Grotluschen was engaged in a discretionary duty at the time of the collision. *See Mumm*, 708 N.W.2d at 490-91 (stating that a duty is discretionary “if it involves more individual professional judgment that necessarily reflects the professional goal and factors of a situation” (quotation omitted)). Schmidt’s reliance on evidence that the road was plowed and that Grotluschen’s plow blades may have been up at the time of the collision focuses too narrowly on the moment of the accident rather than the larger act of clearing snow. The argument therefore fails to give rise to a disputed issue of material fact as to whether Grotluschen was engaged in the discretionary act of snow-removal operations. *See Shariss*, 852 N.W.2d at 283 (looking at a snowplow operator’s conduct as a whole to determine whether they were “actively engaged in snow-removal operations” and within the scope of official immunity); *see also Alexandria Accident*, 561 N.W.2d at 549 (recognizing official immunity for the act of plowing the shoulder of a highway).² As a

² We find additional support for our conclusion in two of our nonprecedential decisions. *See Honcik v. Norman County*, No. A23-1821, 2024 WL 3250561 (Minn. App. July 1, 2024), *rev. denied* (Minn. Oct. 15, 2024); *Gustafson v. Semmer*, No. A09-1201, 2010 WL 608017 (Minn. App. Feb. 23, 2010). In *Honcik*, we affirmed the district court’s

result, Schmidt’s argument that there are genuine issues of material fact precluding summary judgment is unavailing.

In sum, we conclude that the district court did not err in determining that there is no genuine issue of material fact as to whether Grotluschen was engaged in discretionary snow-removal operations at the time he entered the intersection and collided with Schmidt’s vehicle.

County Policies

Schmidt next argues that, even if Grotluschen was engaged in snow-removal operations at the time of the collision, there is a genuine issue of material fact as to whether the county had a policy that required Grotluschen to stop at the stop sign, thereby transforming an otherwise discretionary duty into a ministerial duty. Schmidt does not

grant of official immunity to a snowplow operator who proceeded through an intersection controlled by a stop sign without stopping to facilitate the clearing of a snow drift. 2024 WL 3250561, at *1. There, we reasoned that we “look at the evidence as a whole” rather than at a specific moment in time when determining whether a particular act is discretionary. *Id.* at *4. And in *Gustafson* we concluded that the position of the plow blades on a snowplow when turning around on the highway was “part of the larger act of operating a plow, an activity that includes multiple discretionary decisions.” 2010 WL 608017, at *2.

To persuade us otherwise, Schmidt relies on this court’s nonprecedential decision in *Ayers v. Kalal*, in which this court affirmed the denial of summary judgment on the basis of official immunity. No. A15-0694, 2015 WL 9264116, at *2-3 (Minn. App. Dec. 21, 2015). The facts in *Ayers* are distinguishable. In *Ayers*, the city “had a policy that required all plow operators to obey all traffic laws.” *Id.* at *2. Here, it is undisputed that the county had no such policy specific to snowplow operators. Also, in *Ayers*, there was a genuine issue of material fact as to whether the county employee was engaged in salting and sanding when the accident occurred. *Id.* at *1. Here, it is undisputed that Grotluschen was plowing the shoulders of the road. Thus, to the extent that we consider the persuasive value of our nonprecedential opinions in reaching our decision, *Honcik* and *Gustafson* are more persuasive. See Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating that nonprecedential opinions are not binding authority but may be cited as persuasive authority).

dispute that, at the time of the collision, there was no specific county policy that required snowplow operators to stop at all stop signs while conducting snow-removal operations. Instead, Schmidt points to language in two county documents—the Wilkin County Employee Handbook and the Wilkin County Safety Program—to support his argument. Respondents counter that neither document creates a county policy that requires snowplow operators to stop at all stop signs. We agree with respondents.

“[G]overnmental entities have the authority to eliminate by policy the discretion of their employees” *Mumm*, 708 N.W.2d at 493. This occurs when the governmental entity “sets a sufficiently narrow standard of conduct” and the employee “is bound to follow the policy.” *Vassallo*, 842 N.W.2d at 462-63 (quotation omitted). But policies that do not impose a duty that is “absolute, certain, and imperative,” do not impose a ministerial duty. *See id.* at 463.

Schmidt argues that a genuine issue of material fact exists as to whether the county has established a ministerial duty that requires snowplow operators to stop at all stop signs through its employee handbook and safety program policy. Schmidt first focuses on the Wilkin County Employee Handbook to support his argument. He contends the handbook creates a duty for all county employees to stop at all stop signs because it includes a policy that requires operators of county vehicles “to observe and obey all traffic laws regarding the operation of a motor vehicle, including speed limits.” However, state law exempts persons “actually engaged in work upon [a] highway” from complying with general traffic laws, including laws relating to stop signs. *See* Minn. Stat. §§ 169.035 subd. 1(a), .30(b) (2024). Because Grotluschen was “actually engaged in work upon [a] highway” when he

entered the intersection, there was no law requiring him to stop at the stop sign. Therefore, Schmidt's reliance on the handbook language fails. As a result, Schmidt has not demonstrated that the handbook creates a genuine issue of material fact as to whether the county had a policy that required Grotluschen to stop at all stop signs while operating the snowplow. *See Vassallo*, 842 N.W.2d at 463 (stating that "a government 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*" (emphasis added) (quotation omitted)).³

Schmidt also argues that county policies found in the Wilkin County Safety Program support his contention that there is a factual dispute as to whether Grotluschen violated a ministerial duty when he did not stop at the stop sign. Schmidt notes that the safety program requires employees to "[r]efrain from any unsafe act that might endanger themselves, fellow workers, or others" and "[a]ssume their share of responsibility for negligent or deliberate acts that cause injury to themselves, their fellow workers or others." But these policies in the safety program do not impose an absolute or certain duty to complete a specific task and therefore do not establish a ministerial duty. *See id.* at 462 (stating that a ministerial duty is one that is "absolute, certain, and imperative, involving merely the execution of a specific duty" (quotations omitted)). Consequently, Schmidt has

³ Schmidt argues that we should not consider respondents' argument based on section 169.035, subdivision 1, because respondents did not rely on that statutory provision in their principal memorandum in support of summary judgment, and only did so in their reply memorandum. Because we may affirm the grant of summary judgment on any grounds, we reject this argument. *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012) (stating that "we may affirm a grant of summary judgment if it can be sustained on any grounds").

not demonstrated that a genuine issue of material fact exists as to whether the county had a policy requiring Grotluschen to stop at the stop sign while operating the snowplow. *See id.* at 463 (stating that government policy must set a “sufficiently narrow standard of conduct” to create a ministerial duty (quotation omitted)).

In sum, the district court did not err when it concluded that there is no genuine issue of material fact as to whether Grotluschen was engaged in discretionary snow-removal operations at the time of the collision with Schmidt’s vehicle. The undisputed evidence reflects that Grotluschen exercised judgment when he decided to enter the intersection without stopping after looking for vehicles and while engaged in snow-removal operations. Therefore, Grotluschen is entitled to official immunity for his actions. Additionally, as Schmidt does not dispute, the county is entitled to vicarious official immunity based on Grotluschen’s immunity from suit. *See Schroeder*, 708 N.W.2d at 508. The district court therefore properly granted summary judgment in favor of respondents. *See Staub*, 964 N.W.2d at 620 (stating that summary judgment is appropriate when “there is no genuine issue of material fact and a party is entitled to judgment as a matter of law” (quotation omitted)).

Affirmed.