

*This opinion is nonprecedential except as provided by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
A25-0096**

Zev Oman,
Appellant,

vs.

Sharei Chesed Congregation, et al.,
Respondents.

**Filed September 22, 2025
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CV-23-6010

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Minnesota (for appellant)

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Considered and decided by Connolly, Presiding Judge; Schmidt, Judge; and Harris,
Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges the summary-judgment dismissal of his claims for breach of contract and negligence per se stemming from appellant's purchase of rights to burial lots from respondent-congregation. We affirm.

FACTS

In 2012, appellant Zev Oman purchased 24 rights to burial lots from respondent Sharei Chesed Congregation (congregation). The rights to burial lots were located in Gemelus Chesed Cemetery (cemetery), which is owned by the congregation. At all relevant times, the cemetery was managed and supervised by an independent contractor, respondent Michael J. Morris, LLC, which is owned by respondent Michael J. Morris.¹

The purchases are reflected in two documents entitled “Grant of Burial Lot Agreement” and in three cemetery deeds. In the first rights-to-burial-lot agreement, signed in March 2012, Oman purchased eight rights to burial lots that are identified by lot numbers. The lot numbers are contiguous. In the second rights-to-burial-lot agreement, signed in December 2012, Oman purchased 16 rights of burial lots that are also identified by lot numbers. These lot numbers are also contiguous but located in a separate row from the first group of eight lots that Oman purchased. The two agreements contain the following language:

2. RIGHT OF BURIAL. The right of burial herein purchased belongs solely to the GRANTEE(S), and is not transferable, except with the prior written consent of the CEMETERY. The CEMETERY reserves the right to withhold such consent solely within its own discretion. The right of burial shall be granted only to persons of the Jewish faith.

3. TITLE NOT ACQUIRED. The PURCHASER and the GRANTEE(S) shall not acquire by this Grant of Burial any title to any lot or any other interest in CEMETERY property except such rights of interment in the above described location(s). Such rights in any part of said locations(s) shall

¹ Michael J. Morris, LLC, Michael J. Morris, and the congregation will collectively be referred to as respondents.

not be vested in the GRANTEE(S) or GRANTEE(S) heirs until the purchase price has been fully paid, unless the CEMETERY, in writing, agrees otherwise.

....

10. ENTIRE AGREEMENT. This contract contains all the agreements between the PURCHASER and the CEMETERY relating to this Grant of Burial Agreement. The PURCHASER understands and agrees that no official or other representative of the CEMETERY or funeral director or counselor has any authority to make any oral or written statements or binding agreements not contained in this contract.

From 2013 to 2015, the congregation provided Oman three cemetery deeds for 19 of the 24 lots. The cemetery deeds described the lot numbers consistent with the burial-lot agreements. The deeds contain the following language:

That the said party of the first part, in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, to it in hand paid by the said party of the second part, receipt whereof is hereby acknowledged, does hereby Grant, Bargain, sell, and convey unto the said party of the second part, his heirs and assigns, Forever, all the tract or parcel of land lying and being in the Gemelus Chesed Cemetery, in the County of Hennepin, State of Minnesota, described as follows [lot numbers.]

Before purchasing the rights of burial lots, Oman visited the cemetery with Morris in early 2012, to view the burial lots. Oman informed Morris that he “wanted to purchase all of the available contiguous [lots] in the orthodox section of the cemetery.” Morris showed Oman the available contiguous burial lots, for which Oman ultimately purchased the rights.

Sometime between 2012 and 2017, Morris remeasured the area of the two groupings of lots where Oman purchased his rights of burial lots. He did so at the request of other

families who wished to have burial lots near their family members. In the vicinity of Oman's eight contiguous lots, Morris "determined that, lo and behold, we could fit in another four lots in this area based on the re-measurement." These four additional lots were placed adjacent to Oman's eight contiguous lots. In the vicinity of Oman's 16 contiguous lots, Morris determined three additional lots fit in the area. These three additional lots were placed adjacent to Oman's 16 contiguous lots.

In 2017, Oman visited the cemetery for a funeral and noticed that "there were persons buried in the location of [his lots] that were not [his] family members." Oman expressed his concerns to Morris and the congregation, and Morris wrote in a letter to Oman that the area was remeasured and additional burial lots were added to the row.

Oman buried his mother in one of the lots that he purchased. The burial occurred after he learned that the additional lots were added to the area.

In 2023, Oman initiated the current lawsuit against respondents, asserting various claims. Relevant to this appeal, Oman alleged that the congregation breached the contract by changing the location and size of the lots. He also alleged negligence per se, claiming that the congregation "was required to obtain [his] consent prior to subdividing or rearranging the [c]emetery" under Minn. Stat. § 307.01 (2024), and that the congregation "breached its duties owed" to him under the statute.

Respondents moved for summary judgment, arguing that Oman's breach-of-contract claim failed because the parties' contracted for burial rights in identified lot numbers that Oman still retained. And they argued that Oman's negligence-per-se claim failed because they did not rearrange the cemetery in violation of the statute. Respondents

supported their argument with exhibits of the burial-lot agreements, the cemetery deeds, and deposition testimony of Oman and Morris. Oman opposed summary judgment on his breach-of-contract and negligence-per-se claims. Oman included his affidavit, spreadsheets that Morris created of the lots, and an expert-witness affidavit of a land surveyor.² The district court granted summary judgment on the breach-of-contract and negligence-per-se claims.

Oman appeals.

DECISION

We review the district court’s grant of summary judgment de novo. *City of Waconia v. Dock*, 961 N.W.2d 220, 229 (Minn. 2021). “When conducting this review, we view the evidence in the light most favorable to the nonmoving party . . . and resolve all doubts and factual inferences against the moving parties.” *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 190 (Minn. 2019) (quotation omitted). Summary judgment is properly granted only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01; *Lund v. Calhoun Orange, Inc.*, 20 N.W.3d 871, 875 (Minn. 2025). “A genuine issue of material fact exists when there is sufficient evidence regarding an essential element to permit reasonable persons to draw different conclusions.” *St. Paul Park Refin. Co. LLC v. Domeier*, 950 N.W.2d 547, 549 (Minn. 2020) (quotations omitted). But “the nonmoving party must do more than rest on mere averments to create a genuine issue of material fact that precludes summary

² Respondents moved to strike the land surveyor’s affidavit, which the district court denied as moot after granting summary judgment to respondents.

judgment.” *Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 172 (Minn. 2021) (quotation omitted).

Oman first challenges the district court’s summary-judgment dismissal of his breach-of-contract claim, arguing that a dispute relating to material facts exists. He then challenges the summary-judgment dismissal of his negligence-per-se claim, arguing that summary judgment is precluded because Minn. Stat. § 307.01 protects him, and respondents violated the statute by “rearranging” his burial lots. We begin with the breach-of-contract claim.

Breach of Contract

The three elements of a breach-of-contract claim are: “(1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant.” *Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014) (quotation omitted).

In granting summary judgment on the breach-of-contract claim, the district court determined that the burial-lot agreements clearly and unambiguously provide Oman rights of interment and that respondents’ addition of adjacent lots did not interfere with Oman’s rights. The district court further stated that there “was no reduction in the number of burial sites, there [was] no evidence that the dimensions of those sites are insufficient for burial, and there was no relocation of those burial sites to another part of the [c]emetery.”

The parties dispute whether the district court correctly determined that respondents did not breach the contract; namely, the two burial-right agreements and three cemetery

deeds. But the dispute turns on the terms of the contract. Oman asserts that he purchased “all of the burial [lots]” located in specified areas, that “the size of each burial [lot] was necessarily reduced” when respondents added the adjacent lots, and that he “lost the full benefit of his bargain.” He contends that respondents breached the contract by “rearranging” the cemetery to add burial lots adjacent to the ones he purchased. Respondents argue that Oman was not granted land, rather he was granted 24 rights of burial in specified lots. We agree with respondents.

The goal of contract interpretation is “to determine and enforce the intent of the parties.” *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 913 N.W.2d 687, 692 (Minn. 2018) (quotation omitted). “[A] contract is ambiguous if it is susceptible to two or more reasonable interpretations.” *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). But “[a] contract’s terms are not ambiguous simply because the parties’ interpretations differ.” *Staffing Specifix*, 913 N.W.2d at 692. “Summary judgment is inappropriate where terms of a contract are at issue and those terms are ambiguous or uncertain,” but if the terms “may be given their plain and ordinary meaning, construction of the contract is a matter for the court and summary judgment may be appropriate.” *Bank Midwest Minn., Iowa, N.A. v. Lipetzky*, 674 N.W.2d 176, 179 (Minn. 2004).

Oman’s assertion that he purchased “all of the burial [lots] located in the area” between certain lots acquired by others overstates the agreements reached between him and the congregation. We agree with the district court that the burial-right agreements clearly

and unambiguously grant Oman rights of interment in specified lots.³ The location of the lots are described as follows: “LOT NUMBERS: 488-7[;] 487-1,2,3,4,5[;] 486-1,2” and “LOT NUMBER[S]: 502-4,5[;] 501-1,2,3,4,5[;] 500-1,2,3,4,5[;] 499-1,2,3,4.” The agreements do not grant Oman an area in the cemetery marked by other burial lot numbers. Nor do they guarantee that respondents will not add additional adjacent lots to the area where Oman’s lots are situated. And the burial-lot agreements state that Oman does not acquire “any title to any lot or any other interest in cemetery property except such rights of interment in the above described location(s).” (Emphasis omitted.) Because Oman was granted 24 rights of burial in certain lots, and not an interest in a general area of land, respondents did not breach the contract by adding adjacent lots.

Turning to the cemetery deeds, we note that the district court did not mention the cemetery deeds in its memorandum, but upon our de novo review, we conclude that the deeds do not convey a specific area of land. In *State v. Lorentz*, the supreme court described the nature of acquiring cemetery lots through deeds as follows: “the grantee can use the land purchased for burial purposes only. The rights in the lot are limited and circumscribed. It is not an ordinary sale of real estate.” 22 N.W.2d 313, 315 (Minn. 1946).

The deeds here stated that the congregation:

³ In his brief, Oman appears to point to additional documents to interpret the parties’ agreements, including the expert affidavit of a land surveyor and a spreadsheet created by Morris identifying the lots where eight of Oman’s rights are located. Extrinsic evidence beyond the four corners of a contract is inadmissible to explain the meaning of a contract that is unambiguous and fully integrated. *Alpha Real Est. Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 312 (Minn. 2003). During oral argument, Oman conceded that we need only consider the burial-lot agreements and cemetery deeds.

Grant[s], Bargain[s], sell[s], and convey[s] unto [Oman], his heirs and assigns, Forever, all the tract or parcel of land lying and being in the Gemelus Chessed Cemetery, in the County of Hennepin, State of Minnesota, described as follows, to-wit: [Lot Numbers]

all situated in the Gemelus Chessed Cemetery . . . according to the plat of said Gemelus Chessed Cemetery on file and of record in the office of the Register of Deeds in and for the County of Hennepin, State of Minnesota.

TO HAVE AND TO HOLD the same subject to the Statutes of the State of Minnesota, now in full force, or which may hereafter be enacted

The congregation issued the deeds for 19 of the 24 burial lots where Oman's rights of interment are located. The deeds described the lots consistent with the burial-lot agreements. And like the burial-lot agreements, these descriptions of the lots do not convey to Oman a general area in the cemetery marked by other burial lots.

Although the deeds purport to convey to Oman "all the tract or parcel of land lying and being in" the cemetery, contrary to the burial-lot agreements, they also expressly state that such conveyance is subject to Minnesota law. Under Minnesota law, "[e]very religious corporation owning such cemetery may sell and convey lots therein for burial purposes only. Deeds thereof may be executed by the treasurers of such corporations, or by one or more of the trustees . . . authorized by resolution duly adopted by its board of trustees." Minn. Stat. § 307.04 (2024). As such, consistent with the burial-lot agreements, the deeds convey 19 specific lots for burial purposes; they do not convey a specific amount or area of land.

Oman alternatively argues that the agreements and deeds create ambiguity as to whether the burial lots he purchased must remain consistent with the recorded plat map, which does not include the additional adjacent lots. We disagree. As discussed above, the documents unambiguously convey to Oman the burial rights to specific lots, which still exist.

Oman also contends that he “lost the full benefit of his bargain.” We are not persuaded. Oman has burial rights in 24 lots in the cemetery. He has used one of those lots to bury his mother. As noted by respondents, Oman does not argue that respondents have interfered with these rights by preventing him from using his lots.

Oman seems to argue that there are genuine issues of material fact precluding summary judgment based on his assertion that the size of each individual burial lot was reduced. He asserts that the district court made an erroneous finding that the lots are “still the original size.”⁴ But the undisputed facts show that the size of Oman’s lots did not change. In two separate letters written by Morris, he explained that “each burial space is allocated 40 inches across by 8 feet long for a single grave.” During Morris’s deposition, he maintained that burial lots are allocated a space of 40 inches wide. And during Oman’s deposition, when asked if he knew how wide the lots were when he purchased them, he

⁴ We note that this finding is originally contained in the district court’s order denying Oman’s motion for temporary injunctive relief, which is an order that Oman does not challenge on appeal. In its summary judgment memorandum, the district court repeated that finding only in a paragraph summarizing the prior order denying temporary injunctive relief. To the extent that Oman challenges the order denying temporary injunctive relief, his contention is outside the scope of his appeal. *See* Minn. R. Civ. App. P. 103.04 (describing appellate court’s scope of review).

responded, “[n]o.” When asked if he knew “how wide each of [his] remaining spaces are now,” he again said, “[n]o.”

Attempting to demonstrate a factual dispute, Oman points to his own affidavit, which states:

6. When Defendants re-platted in this area, four (4) additional burial plots (486-2A, 486-2B, 486-2C and 486-2D) were added between my eight (8) burial plots and the [R.M.] burial plot, *thereby reducing the size of each [of] the burial plots I had previously purchased*

. . . .

8. When this area was re-platted by Defendants, three (3) new burial plots were added (502-3A, 502-3B and 502-3C), and these three (3) burial plots are located between my burial plot at 502-4 and [H.S.’s] plot, *thereby reducing the size of each of the sixteen (16) burial plots I had previously purchased.*

(Emphasis added.)

“A self-serving affidavit that contradicts other testimony is not sufficient to create a genuine issue of material fact.” *Risdall v. Brown-Wilbert, Inc.*, 759 N.W.2d 67, 72 (Minn. App. 2009). Oman’s affidavit contradicts Morris’s testimony and is self-serving. It is also inconsistent with his deposition testimony that he does not know how wide the plots were or are. It therefore does not create a factual dispute. Oman has not pointed to any other facts that indicate the size of the lots have been altered. The undisputed evidence demonstrates that burial lots are 40 inches wide by eight feet long and that Oman’s 24 lots remain the same size.

In sum, summary judgment on Oman’s breach-of-contract claim was appropriate because respondents did not breach the burial-lot agreements or deeds conveying the lots

to Oman for burial purposes. Oman apparently hoped to preclude any other families from purchasing burial lots in a specific area of the cemetery, but the agreements and deeds do not give him that right. Nor did the agreements and deeds preclude the congregation from rearranging the lots to accommodate more burial requests.

Negligence Per Se

“[N]egligence per se is a form of ordinary negligence that results from violation of a statute. To prove a negligence claim, the plaintiff must show that the defendant breached a duty of care that proximately caused the plaintiff damage.” *Johnson v. Paynesville Farmers Union Co-op. Oil Co.*, 817 N.W.2d 693, 706 (Minn. 2012) (quotations and citation omitted). *Id.* In a negligence-per-se claim, a statutory duty of care substitutes the ordinary prudent person standard of care “such that a violation of a statute . . . is conclusive evidence of duty and breach.” *Gradjelick v. Hance*, 646 N.W.2d 225, 231 n.3 (Minn. 2002). But violation of a statute does not constitute negligence per se unless (1) “the victim of the harm was intended to be protected by the statute” and (2) “the harm suffered is of the kind intended to be prevented by the statute.” *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 662–63 (Minn. 2004). Interpretation of a statute is a question of law reviewed de novo. *Dock*, 961 N.W.2d at 229.

Oman’s negligence-per-se claim is based on respondents’ alleged violation of Minn. Stat. § 307.01, which states:

Any private person and any religious corporation may establish a cemetery on the person’s or corporation’s own land in the following manner: The land shall be surveyed and a plat thereof made. A stone or other monument shall be established to mark one corner of such cemetery, and its location shall be

designated on the plat. The plat and the correctness thereof shall be certified by the surveyor, whose certificate shall be endorsed thereon, and with such endorsement shall be filed for record with the county recorder in the county where the cemetery is located, showing the area and location of the cemetery. *Any person or association owning such private cemetery may subdivide or rearrange the same, from time to time, as may be necessary in the conduct of the business, but no plat of such subdivision or rearrangement shall interfere with the rights and privileges of the several lot owners of such cemetery without their consent*, nor need same be filed in the office of the county recorder; provided, that a plat of the same shall be kept for public inspection at such cemetery; and, provided, further, that there shall be placed at the corner of each lot of such subdivision or rearrangement cement or other nondestructible markers three inches or more in diameter and eight inches or more in length, one of such markers showing the number of the lot.

(Emphasis added.)

The district court determined that Oman did not have a viable negligence-per-se claim for two reasons. First, the court concluded that respondents did not violate the statute because “the addition of the adjacent burial plots did not interfere with Oman’s ‘rights and privileges’ insofar as he still has the agreed-upon burial rights.” Second, the district court concluded that “the statute is not intended to protect lot owners such as Oman from the addition of adjacent burial plots.”

Oman argues that respondents violated Minn. Stat. § 307.01 by rearranging burial lots in a manner that interferes with his contractual rights. The statute explicitly permits cemetery owners to rearrange the cemetery as necessary when conducting business. That is what occurred here. Morris remeasured the areas in which Oman’s lots were located upon a request from other families to bury their loved ones near each other. And he

determined that additional lots could fit in those areas. The additional lots are located adjacent to Oman's two sets of contiguous lots; they are not located in the middle of the contiguous lots. The statute prohibits rearrangement if it interferes with the rights of lot owners and those owners do not consent to rearrangement. As discussed above, Oman's contractual rights are for 24 rights of interment. Oman's rights of interment were not interfered with by the additional lots being placed in the area. There is no genuine issue of material fact that Oman's lots still exist, and that Oman can exercise his 24 rights of interment in the lots that he purchased.

Because we conclude that the rearrangement did not interfere with Oman's rights in violation of Minn. Stat. § 307.01, we need not reach Oman's additional contention that the district court erred in determining as a matter of law that appellant was not among the class of persons intended to be protected by the statute. *See Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012) (concluding that we "may affirm a grant of summary judgment if it can be sustained on any grounds"). We also do not consider respondents' alternative bases to affirm.

In sum, respondents did not violate Minn. Stat. § 307.01, and summary judgment on Oman's negligence-per-se claim was appropriate. While we can appreciate the fervently held desire of appellant to have all of his family buried together, separate and apart from anyone else, we are obligated to follow the law.

Affirmed.