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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1302**

Ann P. Shantz,
Respondent,

vs.

City of Waconia,
Appellant.

**Filed March 16, 2026
Reversed
Ede, Judge**

Carver County District Court
File No. 10-CV-23-845

Boris Parker, Parker & Associates, Ltd., Minneapolis, Minnesota; and

Matt Kezhaya, Kezhaya Law PLC, Minneapolis, Minnesota (for respondent)

Patrick L. Arneson, League of Minnesota Cities, St. Paul, Minnesota (for appellant)

Considered and decided by Ede, Presiding Judge; Johnson, Judge; and Harris,
Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

This is an interlocutory appeal from a district court's order denying appellant city's summary-judgment motion in a negligence action alleging that the city's improper maintenance of its sidewalk caused respondent to slip and fall. The city argues that the district court erred in determining that the city was not protected by statutory discretionary

immunity and vicarious official immunity. Because we conclude that the district court erred in ruling that the city is not entitled to vicarious official immunity, we reverse.

FACTS

In this action, respondent Ann P. Shantz claims that she sustained a severe hip injury after slipping and falling on a sidewalk maintained by appellant City of Waconia. Shantz sued the city, asserting that it “negligently managed the sidewalk’s maintenance” and “permitted the ongoing condition of a foreseeably dangerous sidewalk.” The city moved for summary judgment, maintaining that it is entitled to statutory discretionary immunity and vicarious official immunity, among other contentions.¹ The facts below stem from the summary-judgment record and are either undisputed or presented in the light most favorable to Shantz, who was the nonmoving party in the district court.²

The city does not have an official policy governing routine sidewalk maintenance. Around 2006, the city created a draft policy titled, “City of Waconia Sidewalk Inspection, Repair and Replacement Procedures” (the draft policy). But because there is no record of

¹ The city also asserted that summary judgment was appropriate because Shantz’s “claim is time-barred by the statute of repose for improvements to real property” and because “there is no competent evidence that the city had notice of a defect that could have caused [Shantz’s] accident.” The district court denied summary judgment on these grounds, concluding that Shantz’s claim is not barred under the statute of repose and that there is a genuine issue of material fact as to whether the city had notice of the alleged sidewalk defect. The city appropriately does not challenge those determinations in this interlocutory appeal, and thus we do not address them.

² See *Cooper v. USA Powerlifting*, 26 N.W.3d 604, 609, 614 (Minn. 2025) (summarizing “facts [that were] either undisputed or . . . stated in the light most favorable to . . . the nonmoving party” and explaining that, in reviewing a district court’s summary-judgment decision, appellate courts “view the evidence in the light most favorable to the nonmoving party and resolve all doubts and factual inferences against the moving party”).

the city council ever adopting the draft policy, it is not an official city policy and the city's staff were not required to follow it. The draft policy outlines common sidewalk failures and recommendations, a protocol for property-owner reimbursement, and a proposed schedule for annual repairs. As relevant here, the draft policy states that "[t]hree procedures . . . routinely used by the city" are "removal and replacement, mudjacking, and grinding," and that the "many variables to consider when deciding which procedure should be used" include the "age and condition of sidewalk, probabl[e] cause of failure, potential issues with slope[,] and cost of repair." The draft policy also proposes that "[s]idewalks should not be replaced for cosmetic reasons" and that "[o]nly sidewalks hazardous to pedestrians should be repaired or replaced." And the draft policy provides: "If an unreasonable safety hazard is identified, maintenance personnel should paint the sidewalk with a fluorescent paint or place cones and/or barricades to identify the hazard."

In 2021, the public services director decided that the city would patch a portion of the sidewalk on Main Street in Waconia with asphalt. The street maintenance supervisor, along with her work crew, determined what type of asphalt to use and which specific areas of the sidewalk needed to be patched. Although the city's staff did not take any measurements, they visually identified defects in the sidewalk that may be tripping hazards. In 2021 and spring 2022, the city's staff decided not to patch the location of red pavers where, as detailed below, Shantz later fell. At the time the city made these repairs, the city's staff knew that the city planned to replace the entire street and sidewalk as part of the city's capital improvement project.

In May 2022, the city finalized its Americans with Disabilities Act Self-Evaluation and Transition Plan (ADA plan), which referenced some aspects of the city’s capital improvement project. The ADA plan included replacing the sidewalk where Shantz ultimately fell. But the city delayed its capital improvement project until 2023 to allow businesses more time to recover from the effects of the COVID-19 pandemic.³

In June 2022, Shantz slipped, fell, and injured her hip on a sidewalk that was located on Main Street in Waconia and that was maintained by the city. The portion of the sidewalk where Shantz fell was constructed in 1998 and designed with each concrete slab surrounded by decorative red pavers. According to Shantz, she fell when her foot got caught in the space between a red paver and the concrete, where an “irregular surface condition . . . exceede[d] one-inch vertical in four-foot horizontal.” Put differently, Shantz maintained that her injury occurred at a section of the sidewalk at which there was a greater than one-inch raised edge extending about four-feet horizontally.

In her lawsuit, Shantz alleged that the city “negligently managed the sidewalk’s maintenance.” The city moved for summary judgment, asserting that it was entitled to statutory discretionary immunity and vicarious official immunity. After delaying the proceedings to allow the parties more time to incorporate additional documents produced during the litigation, the city filed a second amended motion and memorandum of law. Following a hearing, the district court denied the city’s motion in full.

The city appeals.

³ In 2023, the city replaced the portion of the street where Shantz fell.

DECISION

The city challenges the district court's order denying its summary-judgment motion, asserting that the court erred when it determined that the city was not entitled to statutory discretionary immunity and vicarious official immunity. As explained below, we agree with the city that the district court erred by ruling that the city is not entitled to vicarious official immunity. In light of this conclusion, and given Shantz's express theory of the case, we do not reach the city's statutory-discretionary-immunity argument.

“While denial of a motion for summary judgment is not ordinarily appealable, an exception to this rule exists when the denial of summary judgment is based on rejection of a statutory or official immunity defense.” *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 655 (Minn. 2004). As noted above, “[w]hen reviewing a summary judgment ruling, [appellate courts] consider the evidence in the light favorable to the nonmoving party”; the task of the reviewing court is to analyze “whether there are genuine issues of material fact and whether the district court erred in applying the law.” *Schroeder v. St. Louis County*, 708 N.W.2d 497, 503 (Minn. 2006). Appellate courts review the applicability of immunity defenses de novo. *Kariniemi v. City of Rockford*, 882 N.W.2d 593, 599 (Minn. 2016). “The party asserting a defense of immunity has the burden of proof.” *Christopherson v. City of Albert Lea*, 623 N.W.2d 272, 275 (Minn. App. 2001).

Our analysis begins and ends with our consideration of whether (A) the city's staff is entitled to official immunity and (B) the city has shown that it is protected by vicarious official immunity.

A. The city’s staff is entitled to official immunity as a matter of law.

“The official immunity doctrine provides that a public official charged by law with duties which call for the exercise of [their] judgment or discretion is not personally liable to an individual for damages unless [they are] guilty of a willful or malicious wrong.” *MFK by Kendrick v. Walker-Hackensack-Akeley ISD #113*, 11 N.W.3d 618, 622 (Minn. App. 2024) (quoting *Elwood v. County of Rice*, 423 N.W.2d 671, 677 (Minn. 1988) (quotation omitted)), *rev. denied* (Minn. Nov. 19, 2024). “Official immunity . . . protects public officials from the fear of personal liability that might deter independent action and impair effective performance of their duties.” *Elwood*, 423 N.W.2d at 678. “The immunity is from suit, not just from liability.” *Vassallo by Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014) (quotation omitted). And generally, when a public employee is determined to be immune from suit on a particular issue, their government employer is likewise vicariously immune from an action arising from the employee’s conduct, and no further analysis is necessary. *Anderson*, 678 N.W.2d at 663–64.

To determine whether official immunity applies, courts consider: “(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. Official immunity protects a public official’s ministerial conduct “if that ministerial conduct was required by a protocol established through the exercise of discretionary judgment that would itself be protected by official immunity.” *Anderson*, 678 N.W.2d at 660. But in the absence of a policy, “[o]nly discretionary duties are immunized, and whether a person’s conduct warrants

immunity depends on the facts of each case and the nature of the act.” *MFK*, 11 N.W.3d at 622.

Here, the district court determined that the city is not entitled to vicarious official immunity because the city did not formally adopt an official policy about sidewalk maintenance. The district court reasoned: “The parties discuss a ‘sidewalk policy’ [(i.e., the draft policy)] but it is not clear that this policy has been officially adopted by and implemented by the city.” And the district court ruled that the city could not both “argue that the city staff members were exercising their own judgment and discretion and so they should be protected by official immunity,” and also “discuss[] the ADA plan and formal policies for deciding which sidewalks need replacement.” Alternatively, the district court determined that, “[i]f [the draft policy] was an official policy, and the city staff were exercising ministerial duties, it does not appear that they followed the policy.” The district court reached this conclusion because patching an area with asphalt is not one of the three procedures for sidewalk maintenance recommended in the draft policy.

Consistent with the district court’s reasoning, Shantz argues that the court properly determined that the city is not entitled to vicarious official immunity because such immunity “requires cities to show that they had adopted a policy.” In the alternative, Shantz maintains that the district court correctly decided that the city did not follow the draft policy. By contrast, the city contends that “[t]he district court erred by holding that ‘vicarious official immunity requires implementation of an official policy.’” And the city asserts that it is entitled to vicarious official immunity because the city’s staff “maintain[ed] the subject sidewalk within the course and scope of their employment” and the city

“authorized its staff to use their individual professional judgment and discretion to determine how to maintain the sidewalk.” Applying the official-immunity test described in *Vasallo*, 842 N.W.2d at 462, we conclude that reversal is warranted.

1. The conduct at issue is how the city maintained the sidewalk pending replacement.

“The starting point for analysis of an immunity question is identification of the precise governmental conduct at issue.” *MFK*, 11 N.W.3d at 622 (quoting *Gleason v. Metro Council Transit Operations*, 582 N.W.2d 216, 219 (Minn. 1998)). A court identifies the conduct at issue “‘by looking at the nature of’ [the] plaintiff’s claim,” including the complaint and the plaintiff’s theory of liability. *Raymond for Kelley v. Pine Cnty. Sheriff’s Off.*, 915 N.W.2d 518, 525 (Minn. App. 2018) (quoting *Pletan v. Gaines*, 494 N.W.2d 38, 40 (Minn. 1992)), *rev. denied* (Minn. July 17, 2018).

The city maintains that the issue at hand involves “operational-level conduct,” including the “city staff’s inspection of the subject sidewalk, their determination of which areas needed repair, and their decisions on how to repair the sidewalk.”⁴ Shantz does not appear to dispute the city’s characterization of the conduct at issue, which tracks the

⁴ In support of its statutory-discretionary-immunity argument, the city asserts on appeal that some of its decisions relating to sidewalk maintenance also occurred at the planning level—specifically, “when and how to implement the most robust form of maintenance by fully replacing the sidewalk.” In determining whether a governmental unit is entitled to statutory immunity, appellate courts generally contrast planning-level conduct with operational-level conduct. *See Doe 601 by Doe 601 v. Best Acad.*, 17 N.W.3d 464, 477–78 (Minn. 2025). Although operational-level conduct is not subject to statutory discretionary immunity, officials performing operational-level conduct may be entitled to official immunity, and governmental units, by extension, may be protected by vicarious official immunity. *See Sletten v. Ramsey County*, 675 N.W.2d 291, 300–02 (Minn. 2004).

allegations in Shantz’s complaint that the city “negligently managed the sidewalk’s maintenance” and “permitted the ongoing condition of a foreseeably dangerous sidewalk.” At oral argument, Shantz clarified that her position is that “there is no planning-level decision that was made” by the city and that her “claim is not that [the city] did not replace the sidewalk, it is that [the city] did not maintain the sidewalk pending the eventual replacement.” She also conceded that “there is no wiggle room” in the complaint to argue that this is a planning-level decision and that “the specific language [in the complaint] . . . pertain[s] to maintenance.”

These statements align with Shantz’s express theory of liability in her memorandum of law in opposition to the summary-judgment motion in the district court: that she was injured “by a failure of *maintenance* and *inspection*, i.e., the day-to-day operations of making sure the city’s sidewalks are safe for the public to walk on.” And in her responsive appellate brief, Shantz agrees that the conduct at issue is not the city’s failure to replace the sidewalk; it is “an unmaintained sidewalk that created a trip hazard.” She contends that her injuries “were caused by the failure to maintain [the] sidewalk pending replacement.” Moreover, Shantz asserts: “The challenge at bar is not a failure to replace the sidewalk, timely or otherwise. The city could have maintained the sidewalk in any number of ways short of replacement.”

Our careful review of the record leads us to conclude that, based on Shantz’s consistent characterization of her claims, the “specific conduct at issue” is how the city maintained the sidewalk pending replacement. *See Vassallo*, 842 N.W.2d at 462; *see also Raymond*, 915 N.W.2d at 525.

2. The maintenance of the sidewalk pending replacement by the city's staff was discretionary, and Shantz has not asserted willful or malicious conduct.

Having concluded that the conduct at issue is the city's maintenance of the sidewalk pending replacement, we now consider whether the conduct is discretionary or ministerial. *Vassallo*, 842 N.W.2d at 462. "The distinction between a discretionary and ministerial duty is a nebulous and difficult one." *MFK*, 11 N.W.3d at 622–23 (quotation omitted). Discretionary duties "involve[] more individual professional judgment that necessarily reflects the professional goal and factors of a situation." *Schroeder*, 708 N.W.2d at 506 (quotation omitted). But "the mere existence of some degree of judgment or discretion will not necessarily confer common law official immunity; rather, the focus is on the nature of the act at issue." *Anderson*, 678 N.W.2d at 656. On the other hand, "[m]inisterial duties are those that are absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts, and that lack a need or desire for independent action." *MFK*, 11 N.W.3d at 623 (citation and quotations omitted).

The city contends that the conduct at issue is discretionary because the city's staff had to use their "independent professional judgment" to determine how to maintain the sidewalk and "there were no ministerial policy directives creating absolute, certain, or imperative duties regarding sidewalk maintenance." In addition, the city argues that its "staff had to face uncertain circumstances when conducting their inspections, and [they had to] exercise their independent professional judgment and discretion to react to those circumstances."

We conclude that maintenance of the sidewalk pending replacement by the city's staff was discretionary, not ministerial. Undisputed portions of the summary-judgment record reflect as follows. According to the city administrator, the city's staff use their own judgment to determine whether a sidewalk condition is a hazard and the city does not have a formal policy about sidewalk maintenance. And the street maintenance supervisor testified that whether portions of the sidewalk need to be repaired is an "on-site judgment call." In 2021, the public services director decided that the city would patch a portion of the sidewalk on Main Street with asphalt. The street maintenance supervisor, along with her work crew, used their professional judgment to determine what type of asphalt to use and which specific areas of the sidewalk needed to be patched.

In short, the summary-judgment record shows that the city's staff exercised "significant, independent judgment and discretion," *Pletan*, 494 N.W.2d at 41, over how to maintain the portion of red pavers on Main Street where Shantz fell, including by identifying tripping hazards and using their professional judgment to determine an appropriate repair method. *Cf. Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 316 (Minn. 1998) (holding that a city sidewalk inspector who failed to perform the ministerial function of ordering the immediate repair of a sidewalk, as required by a city ordinance, was not entitled to common-law official immunity). We therefore conclude that the city's staff engaged in discretionary conduct. Given this conclusion and the absence of any assertion by Shantz that the city's staff engaged in willful or malicious conduct, the city's staff are entitled to official immunity as a matter of law. We next consider whether, as a matter of law, the city is protected by vicarious official immunity.

B. The city is entitled to vicarious official immunity as a matter of law.

The city contends that, because the city's staff are entitled to official immunity, it is protected by vicarious official immunity. "When applicable, vicarious official immunity protects the government entity from suit based on the official immunity of its employee." *Wiederholt*, 581 N.W.2d at 316. Although courts "have generally extended official immunity vicariously to governmental entities after a government employee has been allowed official immunity, vicarious immunity is not an automatic grant." *Sletten*, 675 N.W.2d at 300. "Official immunity has generally only been extended to an employer when the employee had performed an operational act within the confines of an assigned duty." *S.W. v. Spring Lake Park Sch. Dist. No. 16*, 592 N.W.2d 870, 877 (Minn. App. 1999) (citing *Olson v. Ramsey County*, 509 N.W.2d 368, 372 (Minn. 1993); *Pletan*, 494 N.W.2d at 43), *aff'd*, 606 N.W.2d 61 (Minn. 2000).

More broadly, "whether to extend vicarious official immunity to a government employer remains a policy question." *Anderson*, 678 N.W.2d at 664. Vicarious official immunity may be proper when a lawsuit might cause the employer to focus too much on the employee's performance to the detriment of that performance. *Schroeder*, 708 N.W.2d at 508 (granting vicarious official immunity to a county because the county's staff used "collective knowledge and experience" to craft a road-grading policy and because declining to grant immunity would discourage the county's staff from doing so in the future). Courts also apply vicarious official immunity "when failure to grant it would focus 'stifling attention' on an official's performance 'to the serious detriment of that performance.'" *Anderson*, 678 N.W.2d at 664 (quoting *Olson*, 509 N.W.2d at 372).

The city contends that, if it is not granted vicarious official immunity, “the fear of liability could dissuade city staff from the decisions and actions necessary to do their jobs” and “could inhibit city staff from exercising their best independent professional judgment while conducting sidewalk maintenance.” And the city maintains that limiting the exercise of professional judgment may lead to the city’s staff “feel[ing] compelled to conduct much more expensive, comprehensive, and arguably unnecessary repairs.” We conclude that these are sufficient policy reasons to support extending vicarious official immunity to the city. The decisions of the city’s staff about which areas of the sidewalk to repair and how to conduct such repairs are more than the execution of specific duties arising from fixed and designated facts. If vicarious official immunity is not extended to the city, discretionary decisions by the city’s staff about day-to-day sidewalk maintenance would be hindered by the fear of liability for future accidents. *See Olson*, 509 N.W.2d at 372 (granting vicarious official immunity to a county because granting official immunity to a county social worker for formulation of a case plan but denying the county vicarious official immunity would put “stifling attention on the social worker’s performance, to the serious detriment of that performance”); *MFK*, 11 N.W.3d at 625 (extending vicarious official immunity to a school district after concluding a softball coach was entitled to official immunity for how the coach supervised practice because the nature of sports practice is discretionary and failing to extend vicarious official immunity to the school district would have a significant impact, as many coaching positions are filled by volunteers and parents).

Shantz contends that, under *S.W.*, the city is not subject to vicarious official immunity in the absence of an official policy. But we did not hold in *S.W.* that vicarious

official immunity applies only when there is an official policy. Instead, we recognized that “generally, immunity attaches vicariously when the nature of the conduct is within the confines of an assigned duty,” and we declined to extend vicarious official immunity to a school district because doing so would reward its “failure to develop and implement a basic security policy” regarding district employees’ duties to intervene when an unidentified individual is on school grounds. *S.W.*, 592 N.W.2d at 877. In other words, we held that the school district was not subject to vicarious official immunity because it had not assigned a duty applicable to the employees’ operational acts. *Id.* That is not the case here, where extending vicarious official immunity would not reward the city for any failure to develop and implement a basic policy because the city did assign its staff the duty to maintain the sidewalks.

And even if the draft policy had been adopted and was binding on the city’s staff, that fact would not alter our decision. Shantz argues that the city’s staff did not follow the draft policy because the repair method they used—patching the sidewalk with asphalt—is not contemplated in the policy. But assuming the draft policy was adopted using the city’s judgment and discretion, the record shows that the conduct of the city’s staff would not have violated any ministerial duty created by the policy. The draft policy does not define the phrase, “hazardous to pedestrians.” It does not direct city maintenance staff to measure and fix every irregular surface of more than one inch. And it does not provide instruction on how specific repairs should be conducted. Instead, the draft policy is intended as guidance for staff “to identify hazards and make repairs quickly in a financially prudent manner.” And while the policy references that “three procedures are *routinely* used,” it

does not expressly limit the city's staff to employ only those three methods, contrary to Shantz's assertions on appeal. The draft policy also states that "[t]here are many variables to consider when deciding which procedure should be used."

Considering these many variables, the city's staff decided to, for financial reasons, patch with blacktop certain portions of the sidewalk that were scheduled to be replaced in three to four years. They also determined what type of asphalt to use and which specific areas of the sidewalk needed to be patched. The city's staff did not identify the portion of the sidewalk where Shantz fell as hazardous. Accordingly, the actions of the city's staff were not inconsistent with the draft policy because "[o]nly sidewalks hazardous to pedestrians should be repaired or replaced under [the draft] policy." And the city's staff was not required to mark the area where Shantz fell with fluorescent paint or cones because the policy only requires such action "*[if] an unreasonable safety hazard is identified.*" (Emphasis added.) The city has therefore met its burden to establish that it is entitled to vicarious official immunity; whether an official policy existed does not affect our conclusion on this point.

In sum, given the nature of Shantz's claim and her express theory of the case both in the district court and on appeal, the court erred by denying the city's summary-judgment motion with respect to vicarious official immunity. And because Shantz clarified at oral argument that her position is that "there is no planning-level decision that was made" by the city and that her "claim is not that [the city] did not replace the sidewalk, it is that [the

city] did not maintain the sidewalk pending the eventual replacement,” we need not reach the city’s statutory-discretionary-immunity argument.⁵

Reversed.

⁵ We acknowledge that we would have needed to address this contention if Shantz had espoused a different theory of her case. But as mentioned above, Shantz was clear at oral argument that “there is no wiggle room” in the complaint to argue that this is a planning-level decision and “the specific language [in the complaint] . . . pertain[s] to maintenance.”