

*This opinion is nonprecedential except as provided by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
A25-1653**

Jonathan David Fritz,
Respondent,

vs.

City of Rochester,
Appellant.

**Filed April 27, 2026
Reversed
Beane, Judge**

Olmsted County District Court
File No. 55-CV-24-6294

Daniel A. McIntosh, Knutson+Casey Law Firm, Rochester, Minnesota (for respondent)

Julia C. Kelly, League of Minnesota Cities, St. Paul, Minnesota (for appellant)

Considered and decided by Bentley, Presiding Judge; Beane, Judge; and Florey,
Judge.*

NONPRECEDENTIAL OPINION

BEANE, Judge

Respondent Jonathan David Fritz fell and was injured while skating at appellant City of Rochester's ice rink. Fritz sued the city, alleging that the city's negligent maintenance of the ice rink caused his fall. The city asserted recreational-use immunity

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

under Minnesota Statutes section 466.03, subdivision 6e (2024), in a motion for summary judgment. The district court denied the city’s motion, concluding that genuine issues of material fact exist as to two elements of the trespasser exception to recreational-use immunity. Because we conclude that no genuine issue of material fact exists as to one of those elements—the city’s actual knowledge of the alleged dangerous condition that caused Fritz’s injury—we reverse.

FACTS¹

The city owns and operates the Rochester Recreation Center, a public facility that includes two indoor ice rinks—the North Rink and South Rink—used for community skating and youth hockey. On September 15, 2023, Fritz was coaching a youth hockey practice on the North Rink. During the practice, Fritz skated near the Zamboni doors and fell. Fritz testified that the fall felt different from an ordinary skating fall because his right skate abruptly stopped while the rest of his body continued forward, causing him to twist and fall. Another coach testified that he saw Fritz skating toward the boards near the Zamboni doors and that Fritz’s leg appeared to suddenly stop and turn. After Fritz fell, he was helped from the ice, left the recreation center to seek medical care, and ultimately needed surgery to repair a broken ankle. The youth hockey practice Fritz had been coaching continued after he left.

¹ Because this is an appeal from an order on a motion for summary judgment, the following facts are undisputed or are stated in the light most favorable to Fritz, as the nonmoving party. *See Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 190 (Minn. 2019).

Fritz did not inspect the ice surface by the Zamboni doors on the night he was injured. Another coach inspected the area where Fritz had fallen and later described seeing a narrow gap or separation near the ice edge by the Zamboni doors, which he believed could catch a skate blade. He did not tell the city about the incident, though he told the youth hockey players to avoid the area of the ice where Fritz had fallen.

In the days following the incident, others observed and documented the condition of the ice surface near the Zamboni doors on the North Rink. Fritz's friend, who is also a hockey coach, took pictures and recorded a short video of the area in front of the open Zamboni doors one or two days after the incident. Fritz's brother later took additional pictures and video of the same general area.

Fritz sued the city, alleging that the city's negligence in maintaining the ice surface on the North Rink caused his fall. During discovery, the recreation center's manager testified about ice-rink operations and maintenance practices, including routine ice resurfacing and edging work performed by city staff. She also testified that she had not received any complaints or reports of a gap in the area where Fritz fell and was not notified of the alleged condition until a month after the incident. The manager further testified that a gap in the ice surface capable of catching a skate blade would pose a risk to skaters, and she agreed that, if such a gap existed, it would be dangerous enough to prompt the city to close the rink for repairs.

After the close of discovery, the city moved for summary judgment based on recreational-use immunity under Minnesota Statutes section 466.03, subdivision 6e. The district court denied the city's motion, concluding that genuine issues of material fact exist

as to two elements of the trespasser exception to recreational-use immunity: (1) whether the city had actual knowledge of the alleged dangerous condition and (2) whether the condition was hidden or concealed.

The city appeals.

DECISION

The city argues that the district court erred in denying its motion for summary judgment based on recreational-use immunity. An order denying summary judgment based on an assertion of immunity is immediately appealable. *McGovern v. City of Minneapolis*, 475 N.W.2d 71, 73 (Minn. 1991).

We review a district court’s summary-judgment decision de novo to “determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment.” *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). A genuine issue of material fact exists “when reasonable persons might draw different conclusions from the evidence presented.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). Whether statutory immunity applies is a question of law. *Johnson v. State*, 553 N.W.2d 40, 45 (Minn. 1996).

Under the Minnesota Municipal Tort Claims Act, municipalities are generally liable for their tortious conduct. Minn. Stat. § 466.02 (2024). Recreational-use immunity is an exception to that general rule and protects municipalities against liability for the following claims:

Any claim based upon the construction, operation, or maintenance of any property owned or leased by the municipality that is intended or permitted to be used . . . for the

provision of recreational services, . . . if the claim arises from a loss incurred by a user of park and recreation property or services.

Minn. Stat. § 466.03, subds. 1, 6e (2024). But recreational-use immunity is not absolute. When the municipality’s conduct would entitle a trespasser to damages against a private person, recreational-use immunity does not apply. *Id.*, subd. 6e; *Ariola v. City of Stillwater*, 889 N.W.2d 340, 354 (Minn. App. 2017), *rev. denied* (Minn. Apr. 18, 2017).

This so-called trespasser exception renders the municipality liable for injuries caused by an artificial condition the municipality created or maintained “only if (1) the artificial condition is likely to cause death or serious bodily harm; (2) the landowner has actual knowledge of that danger; and (3) the danger is concealed or hidden from the trespasser.” *Lundstrom v. City of Apple Valley*, 587 N.W.2d 517, 520 (Minn. App. 1998) (citing *Sirek v. State*, 496 N.W.2d 807, 809-10 (Minn. 1993), and Restatement (Second) of Torts § 335 (Am. L. Inst. 1965)); *see also Johnson v. Washington County*, 518 N.W.2d 594, 599 (Minn. 1994) (applying Restatement (Second) of Torts § 335 in a municipal immunity case). A plaintiff must establish all three elements of the trespasser exception to defeat a municipality’s immunity claim. *Krieger v. City of St. Paul*, 762 N.W.2d 274, 276 (Minn. App. 2009). Consequently, to survive summary judgment on this issue, a plaintiff must demonstrate that a genuine issue of material fact exists for trial on each element. *See Prokop v. Indep. Sch. Dist. No. 625*, 754 N.W.2d 709, 714 (Minn. App. 2008).

Here, the parties do not dispute that the North Rink is a municipal recreation facility to which recreational-use immunity could apply. Instead, the focus of the parties’ dispute is whether Fritz can present evidence to establish that the trespasser exception applies. Fritz

argues that a gap between the ice surface and the closed Zamboni doors caught his skate blade and that the gap was an artificial condition maintained by the city that was concealed from skaters but of which city workers must have known. The city disputes that such a gap existed but argues that, even if it did, the city lacked the requisite knowledge of a dangerous condition on the North Rink.

As to the requirement that a plaintiff establish a municipality's knowledge of the alleged injury-causing condition, we have held that actual—not constructive—knowledge must be proved. *Ariola*, 889 N.W.2d at 355-56 (collecting cases and observing that our supreme court has not addressed this question); *Prokop*, 754 N.W.2d at 715 (rejecting constructive-knowledge argument). Therefore, to establish the trespasser exception, Fritz must present evidence that the city had actual knowledge of a gap between the ice surface and the closed Zamboni doors. In doing so, he may rely on direct or circumstantial evidence. *Ariola*, 889 N.W.2d at 356-57.

We first observe that no evidence in the record indicates that any city employee was told about the alleged gap before Fritz fell. The record contains no evidence that the city received complaints or repair requests related to a gap in the ice surface near the Zamboni doors on the North Rink. The recreation center manager's testimony that no one told the city about the gap until more than a month after Fritz's injury is uncontradicted. Because the absence of prior complaints "has been held to be sufficient to demonstrate lack of knowledge," *Prokop*, 754 N.W.2d at 715, the city contends that this should end our analysis. We disagree with the city's suggestion that *Prokop* creates a categorical rule that a lack of complaints about a hazard necessarily mandates a conclusion that a municipality

lacked actual knowledge of that hazard. But even so, we ultimately conclude that the other evidence in the record is not sufficient to create a genuine issue of material fact that the city had actual knowledge.

Fritz argues, and the district court agreed, that two categories of evidence establish a genuine issue of material fact as to the city's actual knowledge of a gap in the ice surface near the Zamboni doors on the North Rink: (1) photos and videos taken of the alleged gap after Fritz's fall coupled with testimony that city employees regularly worked in the area where he fell, and (2) reports of previous, unrelated injuries on the ice rink and past instances of degraded ice conditions on other parts of the North and South Rinks. For its part, the city contends this evidence is insufficient because (1) it requires improper speculation that city employees should have known about the gap, which in any event establishes only constructive knowledge; and (2) evidence pertaining to conditions on other parts of the ice is not probative of the city's knowledge of the specific condition in a specific location at issue here. We agree with the city.

Even crediting Fritz's evidence that a gap existed between the ice surface and the Zamboni doors, the record does not support a reasonable inference that city workers actually knew about the gap. The record contains no testimony from the city employees tasked with performing regular maintenance on the North Rink on the date of Fritz's injury, so the only available evidence about the work they performed on that date is the recreation center manager's testimony about the city's typical practices. That maintenance work includes running a Zamboni over the ice between skating sessions and then manually clearing excess water and snow from the ice surface over the threshold of the Zamboni

doors and into a drain, all of which is done with the Zamboni doors open. Fritz argues that the gap was obvious, particularly with the Zamboni doors open, so the city employees working in that area must have seen the gap. But the specific hazard alleged to have caused Fritz's injury is a gap between the ice surface and the *closed* Zamboni doors. It is undisputed that when the Zamboni doors are closed, they cover the edge of the ice surface at the threshold of the Zamboni doors. Even if city workers would have seen a gap between the ice surface and the threshold of the Zamboni doors with the doors open, Fritz's argument that they then should have discovered that the gap extended beyond the closed Zamboni doors and created a hazard is a constructive-knowledge argument. Our caselaw establishes that constructive knowledge is inadequate to satisfy the trespasser exception. *Ariola*, 889 N.W.2d at 355-56. Fritz's argument is like the constructive-knowledge argument we rejected in *Prokop*, in which the plaintiff claimed that school-district employees had observed a damaged piece of safety equipment and should have known it posed an obvious danger. 754 N.W.2d at 715. We cannot reach a different conclusion here.

Fritz also relies on the recreation center manager's testimony that, if there had been a gap, the employees working in that area would have noticed it and alerted her. But the manager was not directly involved in performing maintenance on the ice at the time of Fritz's injury, and she further testified that she was unaware of the gap that allegedly injured him or any other gaps in the ice. At most, this testimony is speculative as to what other city employees working in the area would have seen. Such speculation is not sufficient to create a genuine issue of material fact at summary judgment. *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008).

Fritz's reliance on evidence of other unrelated injuries and complaints about ice conditions on separate parts of the North and South Rinks is also unavailing. The record includes six years' worth of injury reports documenting many incidents of injuries, none of which involved the alleged condition that injured Fritz. The fact that other skaters were injured on the North and South Rinks on different dates, by different hazards, and in different locations is not germane to whether the city knew of the hazard alleged to have caused Fritz's injury. *See Prokop*, 754 N.W.2d at 715. Similarly, testimony about degraded ice conditions on areas of the North Rink other than where Fritz fell and on dates other than when Fritz was injured is not pertinent here. Even if such testimony would permit an inference that the city had general knowledge of "ongoing issues with the ice quality," as Fritz suggests, it cannot support an inference that the city had actual knowledge of the specific hazard that allegedly caused Fritz's injury. The evidence in the record pertaining to injuries and degraded ice conditions in areas other than where Fritz fell therefore does not create a genuine issue of material fact as to the city's actual knowledge of the gap in the ice that caused Fritz's fall.

Because the record does not contain evidence from which a reasonable person could find that the city had actual knowledge of a dangerous condition, the trespasser exception does not apply. The city is therefore entitled to recreational-use immunity, and we need not consider the city's separate argument as to whether the alleged condition was hidden or concealed.

Reversed.