

*This opinion is nonprecedential except as provided by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
A26-0054**

Austin Frederick Hoover,
Appellant,

vs.

Turf Tye Spicer,
Defendant,

Custom Fabricating & Repair, Inc.,
Respondent.

**Filed September 28, 2026
Affirmed
Larson, Judge**

Olmsted County District Court
File No. 55-CV-23-1818

Thomas R. Braun, Restovich Braun & Associates, Rochester, Minnesota (for appellant)

David P. Bunde, Richard D. Snyder, Thomas Wheeler, Fredrikson & Byron, P.A.,
Minneapolis, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Larson, Judge; and Beane, Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Austin Frederick Hoover challenges the district court's decision to grant summary judgment in favor of respondent Custom Fabricating & Repair Inc. (Custom Fabricating) on his negligent-supervision claim. Because Hoover failed to raise any genuine issues of material fact that would preclude summary judgment, we affirm.

FACTS

The following facts are derived from the summary-judgment record, viewed in the light most favorable to Hoover as the nonmoving party. *See Windcliff Ass’n, Inc. v. Breyfogle*, 988 N.W.2d 911, 916 (Minn. 2023).

At the time of the events giving rise to this case, Custom Fabricating employed both Hoover and defendant Turf Tye Spicer. The two men were working on a project in Zumbrota, Minnesota (the worksite) and, along with other Custom Fabricating employees, stayed at a hotel approximately 20 miles away from the worksite (the hotel). Custom Fabricating paid for its employees’ hotel accommodation because staying overnight near the worksite was necessary to complete the project. However, employees were not required to stay at any *specific* hotel and could request alternate lodging arrangements through Custom Fabricating.

On August 24, 2021, after work hours, Hoover and other employees gathered in the hotel parking lot to grill food and drink alcoholic beverages. By 10:30 p.m., Hoover had consumed at least a dozen alcoholic beverages. Around that time, Hoover “jok[ed]” that Spicer was in a “relationship” with his cousin. When Spicer overheard the joke, he became upset and confronted Hoover. Spicer then punched Hoover, causing Hoover to fall backwards and strike his head (the assault). Hoover suffered a traumatic brain injury due to the assault.¹

¹ Spicer was later criminally prosecuted, pleaded guilty, and was convicted of third-degree assault.

The following day, Custom Fabricating began investigating the assault and placed Spicer on unpaid leave. In a report issued after the investigation, Custom Fabricating concluded that Spicer had violated several company policies. Shortly thereafter, Custom Fabricating terminated Spicer's employment.

In March 2023, Hoover served a civil complaint initiating the present lawsuit against Spicer and Custom Fabricating.² Custom Fabricating moved for summary judgment on Hoover's negligent-supervision and negligent-retention claims. Following a hearing, the district court granted Custom Fabricating's motion on both claims.

Hoover appeals, challenging only the judgment on the negligent-supervision claim.

DECISION

Hoover argues the district court erred when it granted Custom Fabricating's motion for summary judgment on his negligent-supervision claim. We review a district court's decision to grant summary judgment de novo. *City of Waconia v. Dock*, 961 N.W.2d 220, 229 (Minn. 2021). In doing so, "we examine whether there [are] any genuine issues of material fact and whether the district court erred in its application of the law." *Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 228 (Minn. 2020). We view the evidence in the light most favorable to the party against whom summary judgment was granted and resolve all doubts and factual inferences in their favor. *Henson v. Uptown Drink, LLC*, 922 N.W.2d

² Hoover asserted four claims in his complaint: assault, battery, negligent supervision, and negligent retention. On September 20, 2023, the district court entered default judgment against Spicer on the assault and battery claims.

185, 190 (Minn. 2019). If “reasonable persons might draw different legal conclusions from the evidence presented, summary judgment must be denied.” *Kenneh*, 944 N.W.2d at 228.

Negligent supervision requires a plaintiff to prove “(1) the employee’s conduct was foreseeable; and (2) the employer failed to exercise ordinary care when supervising the employee.” *C.B. ex rel. L.B. v. Evangelical Lutheran Church in Am.*, 726 N.W.2d 127, 136 (Minn. App. 2007) (quotations omitted). The parties agree that to prove his negligent-supervision claim, Hoover needed to establish the assault occurred within the scope of Spicer’s employment.³ *See Oslin*, 543 N.W.2d at 414. We conclude that this element is determinative.

“[A]n employee acts within the scope of their employment for purposes of vicarious liability when the ‘act is related to the duties of the employee’ and ‘occurs within work-related limits of time and place.’” *Sterry v. Minn. Dep’t of Corr.*, 986 N.W.2d 715, 722

³ It may be an open question in Minnesota law whether a plaintiff must prove the conduct occurred within the scope of employment. *See 4 Minnesota Practice*, CIVJIG 55.25 (2014) (“[I]t appears to be an open question under Minnesota law whether the theory applies to actions of an employee that are within the course and scope of the employee’s work.”); *see also* Restatement (Second) of Torts § 317 (Am. L. Inst. 1965) (providing that an employer may be liable for an employee’s conduct *outside the scope of employment* if the conduct occurs on the employer’s premises or while using the employer’s chattels and the employer knows or has reason to know of the ability and necessity to control their employee). *Compare Oslin v. State*, 543 N.W.2d 408, 414 (Minn. App. 1996) (concluding the basis for liability for negligent supervision is whether “the tortious act is committed in the scope of employment”), *with Yunker v. Honeywell, Inc.*, 496 N.W.2d 419, 422 (Minn. App. 1993) (concluding a negligent-supervision claim only arises if there is a “connection to the employer’s premises or chattels”), *rev. denied* (Minn. Apr. 20, 1993). Because the assault neither occurred on Custom Fabricating’s property or the worksite, nor involved Custom Fabricating’s chattels, we would affirm the district court’s decision to grant summary judgment even if a plaintiff is not required to prove the conduct occurred within the scope of employment.

(Minn. App. 2023) (quoting *Fahrendorff ex rel. Fahrendorff v. N. Homes, Inc.*, 597 N.W.2d 905, 910 (Minn. 1999)), *aff'd*, 8 N.W.3d 224 (Minn. 2024). Generally, whether an employee was acting within the scope of their employment is a question of fact, but “when the evidence is conclusive on all the elements or there is no evidence to support a necessary element, there is no fact issue, and the scope of employment is determined as a matter of law.” *Reetz v. City of Saint Paul*, 956 N.W.2d 238, 247 (Minn. 2021) (quotation omitted).

Hoover argues a genuine issue of material fact exists regarding whether the assault occurred “within work-related limits of time and place.” To support this argument, Hoover first relies on *Yunker*. There, an employee shot and killed a coworker in the coworker’s driveway after having threatened and harassed the coworker both at work and at the coworker’s home. *Yunker*, 496 N.W.2d at 421. Next of kin brought a negligent-supervision claim against the employer. *Id.* We concluded that “negligent supervision is not a viable theory of recovery because [the employee] was neither on [company] premises nor using [company] chattels when he shot [the coworker].” *Id.* at 422. Hoover concedes that, like the assault in *Yunker*, the assault alleged here neither took place on the worksite nor involved company chattels. But Hoover argues the assault was “within work-related limits of time and space” because Custom Fabricating paid for the lodging where the assault occurred—making it company “premises.” We are not persuaded.

This case is akin to *Leaon v. Washington County*. 397 N.W.2d 867 (Minn. 1986). There, the appellant brought several claims against his employer under the doctrine of respondeat superior based upon a coworker’s conduct at a party organized and attended “almost exclusively” by the appellant’s coworkers. *Id.* at 869. The appellant argued that

the party was “like an office party sponsored and supervised by an employer,” but the supreme court rejected this argument, stating:

there is no evidence suggesting the party was sponsored or supervised by [the employer]. The party was not held at the employer’s place of business, nor during normal working hours, nor did the employer furnish any of the refreshments. This was simply a private party by and for people who knew each other at work. An employer is not legally responsible for what his employees choose to do socially when off-duty.

Id. at 874.

Similarly, in *Oslin*, appellant-employees appealed after the district court granted summary judgment on their negligent-supervision claim against their employer. 543 N.W.2d at 411-13. There, “staff attended a Christmas party after work at a local saloon,” during which a supervisor for the employer made unwanted sexual advances toward the appellant-employees. *Id.* at 411. We acknowledged that the appellant-employees “produced evidence that [the staff] . . . believed the Christmas party was an extension of the workplace.” *Id.* at 413. However, citing *Leaon*, we concluded the supervisor’s conduct did not occur “within work-related limits of time and place,” reasoning:

the Christmas party was not sponsored or supervised by the [employer]. The party was not held on the [employer’s] premises, but was held at a saloon, after the employees finished work. There is no evidence that the [employer] furnished any refreshments or contributed to the party in any other manner. The fact that the party was discussed at work and that notices were put up in the staff lounge was not sufficient to make the party a work-sponsored event, as appellants claim.

Id. at 414.

Hoover contends that because he was required to stay at a hotel, *Yunker*, *Leaon*, and *Oslin* are distinguishable. But the record indicates that Hoover could have stayed at a different hotel. And nothing in the record shows that Hoover was required to socialize with his coworkers in a manner that makes this case distinguishable from our precedent. Like in *Leaon* and *Oslin*, there is no evidence that Custom Fabricating sponsored or supervised the parking-lot gathering in any manner. Further, as in *Yunker*, it is undisputed that the assault occurred outside work hours and did not involve any Custom Fabricating-owned property.

Hoover also argues the district court erred when it concluded there was no issue of material fact on whether the assault occurred “within work-related limits of time and place” because Custom Fabricating “admitted” during its independent investigation that the assault occurred within Spicer’s employment.⁴ We, again, are not persuaded. Hoover cites no caselaw to support his contention that statements made during a company investigation or employee discipline amount to an admission that an act occurred “within work-related limits of time and place.” On the contrary, prior appellate decisions suggest the opposite. *See Schaefer v. Cargill Kitchen Sols., Inc.*, No. A16-0154, 2016 WL 6570240, at *2 (Minn. App. Nov. 7, 2016) (concluding that appellant presented no evidence that the incident was related to the employee’s duties, even when the company terminated the employee

⁴ Hoover also claims an interrogatory answer that Custom Fabricating provided to its insurer stating, “a reasonable jury could find that the *allegations in the Hoover complaint* constitute bodily injury . . . aris[ing] out of and in the course of [Hoover’s] employment,” amounted to an admission that the assault occurred “within work-related limits time and place.” But this statement was plainly a characterization of Hoover’s *complaint*, not Custom Fabricating’s description of what actually occurred.

“pursuant to [the company’s] policy handbook”);⁵ *see also Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 584 (Minn. 2008) (concluding, in the context of foreseeability, “[t]he fact that an employer proactively adopts . . . a policy is insufficient, in and of itself, to create a genuine issue of material fact” with respect to foreseeability for the scope-of-employment analysis).

For these reasons, we conclude the district court correctly granted summary judgment on Hoover’s negligent-supervision claim.

Affirmed.

⁵ We may cite nonprecedential opinions as persuasive authority. *See* Minn. R. Civ. P. 136.01, subd. 1(c).