STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0685

Michelin Properties LLC,
Plaintiff,

Clean Care LLC,
Appellant,

vs.

Jacobson Environmental, PLLC, et al.,
Respondents,

City & County Credit Union,
Defendant.

Filed January 21, 2025
Affirmed in part, reversed in part, and remanded
Larson, Judge

Hennepin County District Court
File No. 27-CV-22-13458

Brenda M. Sauro, Brock P. Alton, Sauro & Alton, PLLC, Lake Elmo, Minnesota (for appellant)

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Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

This case arises from respondents Jacobson Environmental PLLC and Wayne Jacobson preparing an environmental report prior to appellant Clean Care LLC (Clean Care) purchasing a laundromat. After Clean Care purchased the laundromat, a second environmental report uncovered potential contamination on the site. Clean Care brought claims against respondents for breach of contract, negligent misrepresentation, breach of fiduciary duty, and negligence.[1] The district court granted summary judgment on all of Clean Care's claims. We reverse and remand the district court's decision to grant summary judgment on Clean Care's negligence claim, but otherwise affirm.

FACTS

On June 30, 2020, Clean Care, owned by Kenny Luk and Lit Chee, entered into a purchase agreement to buy a laundromat (the property). Clean Care planned to use borrowed funds to purchase the property,[2] intending to eventually finance the purchase using a Small Business Administration (SBA) loan through City & County Credit Union (the credit union). The same day that Clean Care signed the purchase agreement, the credit union informed Luk that an environmental report was needed before he would qualify for an SBA loan.[3] Luk informed the credit union that he wanted to proceed with the

[1] Clean Care also brought claims against City & County Credit Union, which were stayed pending arbitration and are not a subject of this appeal.
[2] Clean Care agreed to pay a 5.5% interest rate on the borrowed funds.
[3] Clean Care was officially formed on August 28, 2020, after these conversations but prior to closing on the property.

environmental report and, through Michelin Properties LLC,[4] paid the credit union to have an environmental consultant complete a Phase I environmental site assessment (ESA). A Phase I ESA investigates whether any contamination risks or issues appear on the property or affect the building, which may require further investigation and cleanup.

On July 8, 2020, Servion Commercial Loan Resources (Servion), acting on behalf of the credit union, hired Jacobson Environmental to complete a Phase I ESA on the property. Servion and Jacobson Environmental entered into a contract signed by their representatives (the contract). The contract lists Servion and Jacobson Environmental as the parties to the agreement and identifies Servion "and/or" the credit union as the "client/intended user." The contract also provides Luk's name, Luk's phone number, and Michelin Properties' email address as the contact information to access the property, and "TBD – Kenny Luk" as the borrower. The contract includes the following provision:

> No third party beneficiaries
>
> Nothing in this Agreement shall create a contractual relationship between the Consultant or the Client and any third party, or any cause of action in favor of any third party. This Agreement shall not be construed to render any person or entity a third party beneficiary of this Agreement, including, but not limited to, any third parties identified herein.

Luk testified in his deposition that he never saw this contract.

[4] Michelin Properties is another commercial real-estate business owned and operated by Luk and Chee. Michelin Properties was initially a party to the lawsuit. The district court granted summary judgment on Michelin Properties' claims. This decision was not challenged on appeal.

Jacobson Environmental submitted the final Phase I ESA report (the first report) to Servion and the credit union on July 24, 2020. In his deposition,[5] Wayne Jacobson testified that, at the time Jacobson Environmental completed the first report, he knew Luk was the "contemplated purchaser" for the property. He also assumed that Jacobson Environmental was completing the first report as part of the approval process for a commercial loan. Additionally, he knew that: (1) on-site dry cleaners are a typical example of an operation that would indicate contamination issues on the property; (2) if they had found that the property had previously been used as a dry-cleaning operation, a Phase II ESA would have been required; and (3) if a Phase II ESA uncovered contamination, that fact could affect the property's market value.

The first report concluded that "the potential for environmental contamination at the [property] is controlled and at a low level. No additional investigation is recommended at this time." A "LIMITATIONS" section directly followed the first report's conclusion stating, in part, that Jacobson Environmental "conducted this assessment specifically for the use of [Servion] and/or [the credit union]. Any reliance on this report by another party shall be at such party's sole risk."

The credit union provided the first report to Clean Care, and both Luk and Chee reviewed and discussed the first report. Relying on the first report, Clean Care purchased the property on September 8, 2020, believing that the property "was in good condition" and required "no further action" or "additional testing." In their depositions, both Luk and

[5] Wayne Jacobson was deposed in his role as the sole owner and operator of Jacobson Environmental.

Chee testified that Clean Care would not have purchased the property if any additional assessments or costs were required.

After closing on the property, Clean Care began the process to obtain an SBA loan through the credit union. The credit union required Clean Care to pay for a second Phase I ESA, and Servion again hired Jacobson Environmental.[6] Jacobson Environmental issued the second Phase I ESA report on March 17, 2021 (the second report). In it, Jacobson Environmental changed its recommendation and concluded "that a Phase II Environmental Site Assessment should be performed to investigate past potential contamination" from dry-cleaning operations. Jacobson Environmental admitted that it conducted a more thorough investigation to prepare the second report and, in doing so, discovered that two separate dry-cleaning businesses had operated on the property in the 1950s.[7] As a result of the second report, Clean Care had to pay for a Phase II ESA—which found contamination on the property. Consequently, Clean Care faces paying remediation costs.

In July 2022, Clean Care commenced this action. Respondents moved for summary judgment. In opposition to the summary-judgment motion, Clean Care submitted an opinion letter from the Vice President and Principal Scientist at Brauen Intertec Corporation—who is advanced as an expert in Phase I ESAs. The letter opined that Jacobson Environmental's failure to identify the presence of the former dry-cleaning

[6] It appears from the record that the credit union required a second Phase I ESA because the first report was over six months old at the time Clean Care sought the SBA loan.

[7] In his deposition, Wayne Jacobson gave three reasons for why the second report included a more thorough investigation: (1) the fact that the credit union requested a second report; (2) knowledge that Clean Care sought an SBA loan; and (3) changes to ESA standards.

operations when preparing the first report: (1) fell short of conducting an "all appropriate inquiry" under industry standards and (2) breached the appropriate standard of care. On March 7, 2024, the district court granted respondents' summary-judgment motion and dismissed Clean Care's claims.

Clean Care appeals.

DECISION

Clean Care challenges the district court's decision to grant respondents' motion for summary judgment. A motion for summary judgment should be granted "if 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. A genuine issue of material fact exists if, considering the record as a whole, a rational trier of fact could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). "[M]ere speculation, without some concrete evidence, is not enough to avoid summary judgment." *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (quotation omitted). We review a district court's decision to grant summary judgment de novo and view the evidence in the light most favorable to the nonmoving party. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

In its complaint, Clean Care alleged claims arising in both contract and tort. We first address Clean Care's arguments that the district court erroneously granted summary judgment on its breach-of-contract claim. Then, we address Clean Care's arguments that the district court erroneously granted summary judgment on its tort claims.

I.

Clean Care challenges the district court's decision to grant summary judgment on its breach-of-contract claim. Specifically, Clean Care contests the district court's determination that it was not a third-party beneficiary to the contract between Servion, the credit union, and Jacobson Environmental.

Although a stranger to a contract generally has no rights under the contract, "an exception exists if a third party is an intended beneficiary." *Hickman v. SAFECO Ins. Co. of Am.*, 695 N.W.2d 365, 369 (Minn. 2005). Minnesota follows the Restatement (Second) of Contracts to determine whether a third party is an intended beneficiary. *See id.* The Restatement provides that "[u]nless otherwise agreed between promisor and promisee, a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and either": (1) "the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance" (the intent-to-benefit test) or (2) "the performance of the promise will satisfy an obligation of the promisee to pay money to the beneficiary" (the duty-owed test). *Id.* (quoting Restatement (Second) of Contracts § 302 (Am. L. Inst. 1979)). "[I]f recognition of third-party beneficiary rights is 'appropriate' and *either* . . . test is met, the third party can recover as an 'intended beneficiary.'" *Cretex Cos. v. Constr. Leaders, Inc.*, 342 N.W.2d 135, 139 (Minn. 1984). If the third-party fails to meet either test, "it is an incidental beneficiary and has no right to enforce the contract." *Hickman*, 695 N.W.2d at 370. Here, Clean Care asserts that material issues of fact remain on whether it satisfied either test.

A. Intent to Benefit

Clean Care argues that it raised an issue of material fact regarding whether it was a third-party beneficiary to the contract under the intent-to-benefit test. Respondents disagree, pointing to the express disclaimer in the contract excluding third-party beneficiaries.

To satisfy the intent-to-benefit test, there must be "some expression of intent on the part of the contracting parties that the person asserting such rights is to be a beneficiary of that contract." *Buchman Plumbing Co. v. Regents of the Univ. of Minn.*, 215 N.W.2d 479, 483 (Minn. 1974) (emphasis omitted). "This intent must be found in the contract as read in light of all the surrounding circumstances." *Id.* One key question for the intent-to-benefit test is "to whom is performance to be rendered?" *Twin City Const. Co. of Fargo, N.D. v. ITT Indus. Credit Co.*, 358 N.W.2d 716, 718 (Minn. App. 1984) (quoting *Buchman*, 215 N.W.2d at 484). If under the plain terms of the contract there is no intent to benefit a third party, then the third party has not satisfied the intent-to-benefit test. *Buchman*, 215 N.W.2d at 483-84; *see also Hickman*, 695 N.W.2d at 369-70.

Under the Restatement, parties are allowed to include a provision that expressly disclaims third-party beneficiaries. *See* Restatement (Second) of Contracts § 302 (Am. L. Inst. 1981) ("Unless otherwise agreed between promisor and promisee . . . ."). An unambiguous disclaimer indicates that the parties did not intend to benefit a third party, unless the surrounding circumstances clearly indicate otherwise. *See, e.g.*, *Twin City*, 358 N.W.2d at 718-19 (concluding, when third party had to meet "clear preconditions" for

contract to be completed and promisor agreed to make progress payments to the third party in return, that third party was a beneficiary of the contract despite an express disclaimer).

Here, we conclude the plain language of the contract reveals that the contracting parties did not intend to benefit Clean Care. The parties entered into the contract to allow the credit union to decide whether it was willing or able to finance purchase of the property. The contract specifically listed the parties to the agreement and the "intended user[s]"—neither of which included Clean Care. And the contract included a disclaimer that plainly indicates the contracting parties did not intend to "create a contractual relationship between the [contracting parties] and any third party, or any cause of action in favor of any third party." Further, while the contract made references to Luk and Michelin Properties, those references did not give Clean Care any rights or benefits under the contract.

Clean Care disagrees and argues that this case is akin to our decision in *Twin City*. In *Twin City*, we concluded that—despite an express third-party beneficiary disclaimer—the plain language of the contract demonstrated a clear intent to benefit a third-party construction company. 358 N.W.2d at 718-19. We explained that, before the contracting parties would enter the contract, the third party was required to "vacate its enforceable lien in the amount of $600,000, and . . . subordinate its interest in the sum of $650,000 during [the contracted] construction." *Id.* at 719. In exchange for this action, the contracting party agreed to "make progress payments [to the third party] as the [construction work] progressed." *Id.*

Twin City is distinguishable from this case. Unlike *Twin City*, the contract did not require Clean Care to give up any rights prior to the contracting parties entering into the

contract and the contracting parties did not make any direct promises to Clean Care in the contract. *Id.* at 718-19. Instead, performance of the contract was rendered directly from Jacobson Environmental to Servion, and the contract was fully performed when Jacobson Environmental submitted the first report to Servion and the credit union.

For these reasons, we conclude that no issue of material fact remains on whether Clean Care satisfied the intent-to-benefit test. The unambiguous disclaimer and absence of any other surrounding circumstances demonstrating that Clean Care was an intended beneficiary show that the contracting parties did not intend Clean Care to be a beneficiary under the contract. Therefore, we conclude the district court appropriately determined that Clean Care did not raise an issue of material fact regarding the application of the intent-to-benefit test.

B. Duty Owed

Clean Care also argues an issue of material fact remains on whether it satisfied the duty-owed test. To satisfy the duty-owed test, "the promisor's performance under the contract must discharge a duty otherwise owed the third party by the promisee." *Cretex*, 342 N.W.2d at 138. The Restatement requires that the performance of the contractual promise "satisfy an obligation of the promisee to pay money *to the beneficiary*," or fulfill an obligation that is otherwise easily converted into money. *See* Restatement (Second) of Contracts § 302(1)(a) & cmt. b (Am. L. Inst. 1981) (emphasis added).

Clean Care argues the district court erred because the record shows that Luk—through Michelin Properties—paid for the first report, so Clean Care satisfied the duty-owed test. We are not persuaded. While it is true that Luk paid the credit union for

Jacobson Environmental to complete the first report, this monetary obligation is not sufficient to meet the duty-owed test. Instead, the Restatement emphasizes that the duty-owed test applies only when the money obligation flows from the promisor *to* the third-party beneficiary—not from the third-party *to* one of the contracting parties. Restatement (Second) of Contracts § 302 cmt. b (Am. L. Inst. 1981). This understanding of the duty-owed test is supported by caselaw. *See Twin City*, 358 N.W.2d at 718 (concluding that the duty-owed test was met where promisor assumed promisee's obligation to pay the third-party); *Mears Park Holding Corp. v. Morse/Diesel, Inc.*, 427 N.W.2d 281, 285 (Minn. App. 1988) ("The duty-owed test is satisfied if the performance of the promise will satisfy an obligation of the promisee to pay money to the beneficiary." (quotation omitted)); *Minn. Laborers Health & Welfare Fund v. Granite RE, Inc.*, 826 N.W.2d 210, 214 (Minn. App. 2012) ("This generally involves a promise by the promisor of a contract to pay the promisee's debt to another."), *aff'd*, 844 N.W.2d 509 (Minn. 2014).

Because Clean Care has not presented any evidence to indicate Clean Care was entitled to *receive* any monetary or other liquid obligation under the contract, the district court correctly determined that Clean Care did not raise a material issue of fact regarding the application of the duty-owed test.

C. Conclusion

For the reasons stated above, the district court correctly determined that Clean Care was not a third-party beneficiary to the contract because Clean Care failed to raise a genuine issue of material fact regarding the application of either the intent-to-benefit or

duty-owed test. Therefore, we affirm the district court's decision to grant summary judgment on Clean Care's breach-of-contract claim.

II.

Clean Care also challenges the district court's decision to grant summary judgment on its claims arising in tort: negligent misrepresentation, breach of fiduciary duty, and negligence. We review each claim in turn below.

A. Negligent Misrepresentation

Clean Care challenges the district court's decision to grant summary judgment on its negligent-misrepresentation claim. A negligent-misrepresentation claim specifically relates to transactions in which an individual gives guidance and the individual intends or knows the recipient intends to use the guidance to influence their decisionmaking regarding the transaction. *See NorAm Inv. Servs., Inc. v. Stirtz Bernards Boyden Surdel & Larter, P.A.*, 611 N.W.2d 372, 374-75 (Minn. App. 2000) (quoting Restatement (Second) of Torts § 552 (Am. L. Inst. 1977)). To succeed on a negligent-misrepresentation claim, the plaintiff must prove: "(1) a duty of care owed by the defendant to the plaintiff; (2) the defendant supplie[d] false information to the plaintiff; (3) justifiable reliance upon the information by the plaintiff; and (4) failure by the defendant to exercise reasonable care in communicating the information." *Williams v. Smith*, 820 N.W.2d 807, 815 (Minn. 2012). As relevant here, the district court granted summary judgment on the negligent-misrepresentation claim on the ground that Clean Care did not justifiably rely on the first report because it included a disclaimer. While justifiable reliance is typically a fact question for a jury, it "becomes a question of law if there is no evidence supporting a

contrary conclusion." *Greuling v. Wells Fargo Home Mortg., Inc.*, 690 N.W.2d 757, 760 (Minn. App. 2005).

In determining that no issue of material fact was present to show that Clean Care justifiably relied on the first report, the district court cited *Dakota Bank v. Eisland*. 645 N.W.2d 177, 185 (Minn. App. 2002). There, we determined that a third party could not justifiably rely on a compilation of documents that contained a disclaimer that excluded providing any opinion or "other form of assurance on" the documents, because the "disclaimer, in clear and unambiguous language, warned any party seeking to rely on the compiled information of the severe, if not complete, limitations placed on such reliance." *Id.* at 182. In doing so, we reiterated that "Minnesota law recognizes the validity of specific disclaimers." *Id.*

On appeal, Clean Care argues *Dakota Bank* is distinguishable from this case. Instead, Clean Care asserts that we should rely on *Bonhiver v. Graff*, 248 N.W.2d 291 (Minn. 1976), to conclude an issue of material fact remains on whether Clean Care justifiably relied on the first report. In *Bonhiver*, the supreme court concluded that a third party justifiably relied on an unfinalized document submitted by an accountant where the accountant specifically presented the document as containing accurate information. *Id.* at 298-99.

We agree with the district court that this case is more similar to *Dakota Bank*. Here, the first report contained a clear and unambiguous disclaimer explaining that Jacobson Environmental "conducted [the first report] specifically for the use of [Servion] and/or [the credit union]. Any reliance on [the first] report by another party shall be at such party's

sole risk." The evidence presented at summary judgment demonstrates that Luk and Chee read this report, including the disclaimer, prior to Clean Care purchasing the property. And Clean Care's negligent-misrepresentation claim stems purely from Luk's and Chee's reliance on the first report in a manner specifically disclaimed by the first report.

Under the particular facts in this case, we conclude that Clean Care failed to raise an issue of material fact regarding whether it justifiably relied on the first report. We therefore affirm the district court's decision to grant summary judgment on Clean Care's negligent-misrepresentation claim.

B. Breach of Fiduciary Duty

Clean Care next challenges the district court's decision to grant summary judgment on its breach-of-fiduciary-duty claim. A breach-of-fiduciary-duty claim requires a plaintiff to "prove four elements: duty, breach, causation, and damages." *TCI Bus. Cap., Inc. v. Five Star Am. Die Casting, LLC*, 890 N.W.2d 423, 434 (Minn. App. 2017). The district court dismissed this claim at summary judgment on the ground that respondents did not owe Clean Care a duty of care.[8]

[8] Respondents failed to present any argument on appeal regarding the breach-of-fiduciary-duty claim. But because "we may affirm a grant of summary judgment if it can be sustained on any grounds," our review is not limited to Clean Care's arguments. *See Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012); *cf.* Minn. R. Civ. App. P. 142.03 ("If the respondent fails or neglects to serve and file its brief, the case shall be determined on the merits."). Rather, "[w]e will reverse a grant of summary judgment when the district court erred in concluding that there are no disputed material facts," which requires "the party against whom summary judgment was granted [to] present specific admissible facts showing a material fact issue." *Doe*, 817 N.W.2d at 163 (quotation omitted).

Minnesota recognizes two categories of fiduciary relationships that meet the duty element for a breach-of-fiduciary duty claim: "relationships of a fiduciary nature per se, and relationships in which circumstances establish a de facto fiduciary obligation." *Swenson v. Bender*, 764 N.W.2d 596, 601 (Minn. App. 2009), *rev. denied* (Minn. July 22, 2009). No per-se fiduciary relationship existed between Clean Care and respondents, as "[p]er se fiduciary relationships include trustee-beneficiary, attorney-client, business partnerships, director-corporation, officer-corporation, and husband-wife." *Id.* Thus, we must evaluate whether Clean Care presented evidence to create a material issue of fact that a de facto fiduciary relationship existed.

Both before the district court and on appeal, Clean Care failed to present any argument or analysis to explain why a de facto fiduciary relationship exists between Clean Care and respondents. Instead, Clean Care has consistently conflated its breach-of-fiduciary-duty claim with its negligence claim. This is not sufficient to survive summary judgment, as Clean Care bears the burden "to provide the court with specific facts indicating that there is a genuine issue of fact." *Rademacher v. FMC Corp.*, 431 N.W.2d 879, 881 (Minn. App. 1988).

Because Clean Care failed to present any argument to either the district court or this court to explain what material facts exist to show the presence of a de facto fiduciary relationship between Clean Care and respondents, we affirm the district court's decision to grant summary judgment on Clean Care's breach-of-fiduciary-duty claim.

C. Negligence

Finally, Clean Care argues the district court erred when it granted summary judgment on its negligence claim.[9] To prove a claim for negligence, Clean Care must satisfy four elements: "(1) the existence of a duty of care, (2) a breach of that duty, (3) an injury, and (4) the breach of the duty being the proximate cause of the injury." *Pond Hollow Homeowners Ass'n v. The Ryland Grp., Inc.*, 779 N.W.2d 920, 923 (Minn. App. 2010).

The district court granted summary judgment on Clean Care's negligence claim on two grounds. First, the district court relied on the presence of the disclaimer.[10] But while there is no precedential caselaw on point, and there is limited persuasive authority, we discern that the mere presence of a disclaimer—by itself—is not dispositive of whether a defendant owed the plaintiff a duty of care. *See, e.g.*, *Dieter v. Gardner Builders Minneapolis, LLC*, No. 20-CV-2220, 2022 WL 748468, at *1 (D. Minn. Mar. 11, 2022) (analyzing whether defendant owed duty of care despite "the contract documents governing the project specify[ing] that the general contractor was solely responsible for site safety").

Second, the district court determined that Clean Care failed to establish that respondents had a professional duty of care. The district court reasoned that respondents did not owe Clean Care a duty of care because Clean Care was "not bound by" the first

[9] Respondents do not present any arguments on appeal to support affirming the district court on the negligence claim.

[10] The district court relied on a negligent-misrepresentation case to support its decision that respondents did not owe Clean Care a duty of care because of the disclaimer. *See Dakota Bank*, 645 N.W.2d at 182. But in *Dakota Bank*, the import of the disclaimer went to the justifiable-reliance element, not the existence of a duty. *See id.* at 181-82.

report.[11] "The existence of a duty of care is a threshold question because a defendant cannot breach a nonexistent duty." *Doe 169 v. Brandon*, 845 N.W.2d 174, 177 (Minn. 2014). Whether a duty exists is a legal question for the court to determine. *Germann v. F.L. Smithe Mach. Co.*, 395 N.W.2d 922, 924 (Minn. 1986). In Minnesota, "one who undertakes to render professional services is under a duty . . . to exercise such care, skill, and diligence as [a person] in that profession ordinarily exercise[s] under like circumstances." *City of Eveleth v. Ruble*, 225 N.W.2d 521, 524 (Minn. 1974).

The supreme court has noted that a professional duty of care arises for "[a]rchitects, doctors, engineers, attorneys, and others [who] deal in somewhat inexact sciences." *City of Mounds View v. Walijarvi*, 263 N.W.2d 420, 424 (Minn. 1978). And other jurisdictions have explicitly determined that environmental consultants who perform ESAs have a duty to perform that work to a professional standard of care. *See, e.g.*, *BankUnited, N.A. v. Merritt Env't Consulting Corp.*, 360 F. Supp. 3d 172, 185-87 (S.D.N.Y. 2018) (finding environmental consultants who performed ESA to be "professionals" under New York negligence law); *Haw. Motorsports Inv., Inc. v. Clayton Grp. Servs., Inc.*, 693 F. Supp. 2d 1192, 1196-98 (D. Haw. 2010) (denying motion to dismiss professional negligence claim based on environmental consultant preparing allegedly inaccurate Phase I ESA); *Neumann v. Carlson Env't, Inc.*, 429 F. Supp. 2d 946, 952-53 (N.D. Ill. 2006) (denying motion to dismiss negligence claim against environmental contractor for preparation of ESA).

[11] On appeal, respondents argue that "[a]ny duty resulting from a contractual relationship is a duty based only on the terms of the contract." *See Glorvigen v. Cirrus Design Corp.*, 816 N.W.2d 572, 584 (Minn. 2012). However, the duty allegedly breached is not a duty imposed by the contract but rather a duty imposed by law. *Id.*

Contrary to the district court's decision, Minnesota courts have not limited the professional duty of care to situations when the plaintiff was "bound by" the professional's actions. Instead, a professional can owe a duty of care to the parents of a child who was harmed by negligent advice from the child's physician, *Molloy v. Meier*, 679 N.W.2d 711, 719 (Minn. 2004), or a threatened individual who was harmed by a negligent action of a patient's psychiatrist, *Lundgren v. Fultz*, 354 N.W.2d 25, 28-29 (Minn. 1984).

We conclude the district court erroneously granted summary judgment on Clean Care's negligence claim on the ground that respondents did not have a professional duty of care.[12] We therefore reverse the district court's summary-judgment decision on this claim and remand for further proceedings.

Affirmed in part, reversed in part, and remanded.

[12] To satisfy the duty-of-care element, Clean Care must also prove that it was reasonably foreseeable that Clean Care would rely on respondents' services and would foreseeably be harmed by respondents' negligence. *See Waldor Pump & Equip. Co. v. Orr-Schelen-Mayeron & Assocs.*, 386 N.W.2d 375, 377 (Minn. App. 1986). Here, the district court did not make any decision regarding foreseeability, and respondents wholly failed to make any argument with respect to the negligence claim. Therefore, we take no position on this issue.