

*This opinion is nonprecedential except as provided by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
A23-1821**

James W. Honcik,
Appellant,

vs.

Norman County, Minnesota,
Respondent.

**Filed July 1, 2024
Affirmed
Jesson, Judge***

Norman County District Court
File No. 54-CV-22-231

Craig E. Johnson, Johnson, Mottinger & Greenwood, PLLP, Fargo, North Dakota
(for appellant)

Thomas H. Schaefer, Erstad & Riemer, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Wheelock, Presiding Judge; Ede, Judge; and Jesson,
Judge.

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

NONPRECEDENTIAL OPINION

JESSON, Judge

Justin Wilhelm, a snowplow driver for respondent Norman County, drove his snowplow through an intersection without stopping. Wilhelm did not see appellant James Honcik's car approaching when he did so. The car and the plow collided.

Honcik sued Norman County for negligence. He argued that the intersection was clear of ice and snow, so Wilhelm was required to stop at the stop sign like all other drivers. Wilhelm claimed that he proceeded through the intersection to maintain proper speed to clear a snowdrift on the other side of the intersection. The district court granted the county's motion for summary judgment, reasoning that Wilhelm's action was discretionary and thus protected under the official immunity doctrine. Honcik appeals.

Because the undisputed material facts, taken in the light most favorable to Honcik, establish that any claimed negligence originated from Wilhelm's discretionary decision-making, we affirm.

FACTS

On the cold, clear Monday morning of Valentine's Day 2022, Wilhelm was clearing snowdrifts for Norman County after the county dispatched its fleet of snowplows to clear snowdrifts and icy conditions created on roads by strong winds over the weekend. By 8:30 a.m., Wilhelm had cleared both directions of Highway 39. He then began clearing an intersecting road, Highway 4.

When Wilhelm approached the controlled intersection of Highway 4 and Highway 39, he saw a snowdrift on the side of the road near the stop sign past the intersection. He

intended to proceed through the intersection without stopping—and with the wing blade of the plow down—so that he could effectively throw snow and clear the drift. The snowplow’s lights were engaged. Generally, the county affords its snowplow drivers the discretion to determine the most effective way to clear the roads. It has no explicit policy requiring snowplow drivers to stop at stop signs.

Wilhelm slowed the snowplow as he neared the intersection to determine if it was safe to proceed through the intersection without stopping. But Wilhelm did not see Honcik’s car approaching. Wilhelm stated that Honcik must have been in his blind spot. When the snowplow entered the intersection without coming to a stop, Honcik’s car struck the snowplow’s side wing blade. Honcik was injured in the accident.

Honcik filed a negligence claim against Norman County. He asserted that Wilhelm negligently operated the snowplow and Wilhelm’s negligence is attributable to the county. Norman County moved for summary judgment, arguing that Wilhelm was engaged in a discretionary act that is protected by official immunity. The district court granted the county’s summary judgment motion. Honcik appeals.

DECISION

When we review a grant of summary judgment, we determine whether there are genuine issues of material fact and whether the district court erred in applying the law. *St. Matthews Church of God & Christ v. State Farm Fire & Cas. Co.*, 981 N.W.2d 760, 764 (Minn. 2022). We view the facts in the light most favorable to the nonmoving party. *Id.* Our review of a district court’s summary-judgment dismissal of a claim based on immunity is de novo. *Id.* And the party asserting official immunity—here, Norman County—has the

burden to show facts which establish immunity. *Podruch v. State, Dep't of Pub. Safety*, 674 N.W.2d 252, 254 (Minn. App. 2004), *rev. denied* (Minn. Apr. 20, 2004).

Common-law official immunity protects government officials from being sued for taking discretionary actions in the course of their duties. *Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 315 (Minn. 1998). Generally, official immunity extends to the government employer vicariously. *Id.* To determine whether official immunity applies, we look to “(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 ex rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014).

Here, the parties agree that the conduct in question is Wilhelm’s failure to stop at the stop sign. Honcik does not argue that Wilhelm’s conduct was willful or malicious. Nor does Honcik dispute that Wilhelm’s immunity—if it exists—extends to Norman County. Accordingly, the issue before us is whether Wilhelm’s conduct was discretionary or ministerial.

A discretionary duty “involves more individual professional judgment that necessarily reflects the professional goal and factors of a situation.” *Mumm v. Mornson*, 708 N.W.2d 475, 490-91 (Minn. 2006) (quotation omitted). But the mere existence of some freedom of choice does not render a “simple and definite” act discretionary as a matter of law. *Williamson v. Cain*, 245 N.W.2d 242, 244 (Minn. 1976). We distinguish between these simple acts and truly discretionary ones by analyzing the “nature, quality, and complexity”

of both the act and the decision-making process that precedes the act. *Schroeder v. St. Louis County*, 708 N.W.2d 497, 507-08 (Minn. 2006).

By contrast, a ministerial duty involves an “absolute, certain, and imperative” requirement which arises from “fixed and designated facts.” *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 656 (Minn. 2004) (quotation omitted). Ministerial duties can arise from government protocols that direct a sufficiently narrow standard of conduct. *Id.* at 659. These protocols encompass any standard that the employee is bound to follow, including statutes, ordinances, and unwritten practices. *Id.* at 659, 662 n. 11. In short, a protocol creates a ministerial duty when it defines acceptable conduct so narrowly that independent action is “neither required nor desired.” *Id.* at 655, 659.

Applying these principles to the snowplowing context, Minnesota caselaw seeks to avoid “detering snowplow drivers from exercising their judgment when making the difficult decisions that may arise in the often-hazardous activity of snow removal.” *Shariss v. City of Bloomington*, 852 N.W.2d 278, 283 (Minn. App. 2014). For example, in *In re Alexandria Accident*, a driver, plowing a median he determined to be a hazard, inadvertently created whiteout conditions which led to a crash that killed seven people. 561 N.W.2d 543, 545-46 (Minn. App. 1997), *rev. denied* (Minn. Jun. 26, 1997). The driver was subject to a policy that recommended drivers delay plowing a shoulder if the snow is not hazardous and plowing could cause visibility problems. *Id.* at 546. We held that the driver’s decision to plow was discretionary because the policy authorized him to “assess the existing conditions and rely on his judgment to determine the best time and manner for plowing,” and he did so in choosing to plow the median. *Id.* at 549.

But snowplow drivers are not cloaked with official immunity when engaged in ministerial tasks. In *Shariss*, we held that a snowplow operator who was blocking traffic while waiting in line to dump snow was not entitled to official immunity for backing into the path of another car. 852 N.W.2d at 280, 283-84. The snowplow driver intended to follow the “standard operating procedure” of not blocking traffic. *Id.* at 283. We reasoned that reversing the snowplow in this context was a “simple and definite” job, especially compared to the hazardous and often discretionary task of “snow-removal operations.” *Id.*

As both parties note, we have applied these rules to similar facts in nonprecedential opinions, which we consider for their persuasive value. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c). In one case, we concluded that a snowplow driver’s decision to cross into oncoming traffic was ministerial: he did so only because the snowplow “took off to the left” without explanation, and he did not make “decisions regarding speed, time, and manner of plowing.” *Fernow v. Gould*, No. A10-223, 2010 WL 3463694, at *3 (Minn. App. Sept. 7, 2010) (quotation omitted). In contrast, in another case we held that a snowplow driver was entitled to immunity when he crossed over to plow the other side of a highway because, even though he was not actively plowing, crossing over was “part of the larger act of operating a plow, an activity that includes multiple discretionary decisions.” *Gustafson v. Semmer*, No. A09-1201, 2010 WL 608017, at *2 (Minn. App. Feb. 23, 2010).

Applying the principles in these cases to the facts before us, we conclude that Wilhelm’s decision to proceed through the stop sign without stopping was discretionary.

Here, Norman County gave snowplow drivers broad discretion in operating their snowplows. Snowplow drivers throughout Minnesota are exempt from general traffic regulations “while actually engaged in work upon the highway.” Minn. Stat. § 169.035, subd. 1(a) (2022). Nonetheless, Norman County could have required snowplow drivers to follow traffic statutes. It did not. *See Thompson v. City of Minneapolis*, 707 N.W.2d 669, 674-75 (Minn. 2006) (internal protocols can create ministerial duty). Instead, the county authorized snowplow drivers to “exercise professional judgment and discretion” in determining “the best means and methods” to clear the roads. One method the county authorized is proceeding through a stop sign without stopping if it is safe to do so.¹ We have held that similar protocols create a discretionary duty. *See, e.g., Schroeder*, 708 N.W.2d at 506-08 (policy that authorized but did not require grading against traffic created discretionary duty); *Alexandria Accident*, 561 N.W.2d at 549 (policy that authorized but did not mandate plowing median created discretionary duty).

Having established that Norman County grants snowplow drivers discretion in clearing the roads, we turn to whether Wilhelm acted within the scope of that discretion. The record before us demonstrates that he did. It is undisputed that, at the time of the accident, Wilhelm was driving a county-owned snowplow on his assigned route with his

¹ Norman County’s requirement that snowplow drivers stop if it is unsafe is not narrow enough to create a ministerial duty. Analyzing a “textbook example” of a discretionary duty, the supreme court concluded that a requirement for emergency vehicles to “slow down as necessary for safety” was not ministerial. *Vasallo*, 842 N.W.2d at 463 (quotation omitted). The court reasoned that a driver would need to exercise judgment to determine the appropriate speed. *Id.* The same is true here: Wilhelm had to make a snap judgment about whether it would be safe to proceed through the stop sign.

lights on and side wing down. Wilhelm testified that he saw a snowdrift encroaching onto Highway 4 near the controlled intersection and determined the drift would become hazardous if he did not clear it. He considered proceeding through the intersection without stopping so that he could maintain the speed necessary to effectively clear snow and ice. Wilhelm reasoned that the environment was proper for such a maneuver: he was “out in the open” and there were not “trees and hills.” He slowed his plow as he approached the intersection and looked for oncoming traffic, but he did not see Honcik.

Wilhelm was not presented with a “simple and definite” decision when he approached the stop sign. *See Shariss*, 852 N.W.2d at 283 (quotation omitted). He was required to weigh several competing factors and make a split-second decision. This undisputed evidence demonstrates that Wilhelm exercised his discretion to fulfill the objective of snow removal in what he perceived to be the best manner possible.

To persuade us otherwise, Honcik argues that official immunity only protects snowplow drivers who are actively removing snow. He relies on Minnesota Statutes section 169.035, subdivision 1(a), which generally exempts snowplow drivers from traffic regulations while “actually engaged in work upon the highways,” and our snowplow official immunity cases which emphasize the discretionary nature of active snow-removal. *See Shariss* 852 N.W.2d at 283. And he points to weather records indicating there was no active snow event on that day, as well as pictures and testimony that he claims demonstrate a lack of snow upon the roadway. Finally, he points out that Wilhelm was not actually moving snow within the intersection when he drove through it. As a result, Honcik asserts that Wilhelm was required to stop at the stop sign because he was only exempt from traffic

statutes when actually engaged in the removal of snow or ice. His act, Honcik therefore asserts, was not a discretionary one protected by official immunity.²

We disagree. As discussed above, when we assess whether an act is discretionary, we ask whether the act involved the exercise of judgment. *Id.* at 281. We do not isolate one frame of an imaginary video and ask: was it snowing in that frame? Was the plow throwing snow at that moment? Rather, we look at the evidence as a whole. And here that evidence demonstrates that Wilhelm decided, after slowing down, to proceed through the intersection with the snowplow's side wing engaged to clear a snow drift on the other side. Like in *Gustafson*, he was not actively pushing snow at the time of the collision. 2010 WL 608017, at *2. But in both situations, the snowplow driver was engaged in "the larger act of operating a plow, an activity that includes multiple discretionary decisions." *Id.* Granting immunity only to snowplow drivers who are actively pushing snow is "too narrow a treatment of the act of plowing." *Id.* Because we focus on the exercise of discretion instead of whether a snowplow driver was pushing snow at the precise time of the challenged act, Honcik's argument fails.

² Honcik's reliance on the traffic exemption statute, section 169.035, subd. 1, is misplaced. A traffic exemption statute does not dictate whether official immunity applies. *Kari v. City of Maplewood*, 582 N.W.2d 921, 924 (Minn. 1998) (concluding that emergency-vehicle driver was entitled to official immunity even though driver exceeded statutory exemption by failing to yield to pedestrian). We apply official immunity to protect an officials' exercise of judgment; whether the legislature has also exempted that official from state law is immaterial to determining whether official immunity applies. *Id.* at 924-25.

Even if we were to conclude that the traffic exemption statute is relevant to our official immunity analysis, we would reach the same result because Wilhelm was engaged in "work upon the highway" at the time of the accident. *See* Minn. Stat. § 169.035, subd. 1(a).

Nor are we persuaded by Honcik’s comparisons to cases where we declined to extend official immunity. Wilhelm’s decision to cross without stopping was considerably more complex than the *Shariss* snowplow driver’s decision to drive in reverse while waiting in line to dump snow. 852 N.W.2d at 283. Wilhelm had to make a snap judgment about the hazards posed by a snowdrift near the intersection, his ability to safely cross, and the most efficient way to plow his route. And in *Fernow*, the snowplow driver could not prove that he exercised discretion because he provided “no explanation” for why his snowplow “took off to the left” into oncoming traffic. 2010 WL 3463694, at *3 (quotations omitted). Here, Wilhelm testified that his decision to proceed through the intersection was calculated to effectively plow a snowdrift on Highway 4. In short, Wilhelm appeared to “consider road and weather conditions to determine the appropriate speed, time, and manner for plowing.” *Shariss*, 852 N.W.2d at 282.

In sum, Wilhelm exercised judgment by weighing several factors and deciding that the best way to achieve his goal of effectively clearing the road was to proceed through the intersection without stopping. Norman County afforded him this discretion. Therefore, the district court did not err in granting summary judgment to Norman County.

Affirmed.