

*This opinion is nonprecedential except as provided by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
A24-0992**

Virginia Rivas - Castro,
Respondent,

vs.

Lorraine P Jansen, et al.,
Appellants.

**Filed March 31, 2025
Reversed
Worke, Judge**

Dakota County District Court
File No. 19HA-CV-23-525

Adriel B. Villarreal, Barna, Guzy & Steffen, Ltd., Minneapolis, Minnesota (for respondent)

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Considered and decided by Worke, Presiding Judge; Connolly, Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

In this interlocutory appeal, appellants, a school district and its bus-driver employee, challenge the denial of their summary-judgment motion on the grounds of official immunity and vicarious official immunity, arguing that the district court erred in determining that whether the bus driver's conduct was ministerial or discretionary was a

fact issue for a jury. Because the bus driver's act was discretionary as a matter of law, we reverse for entry of summary judgment in favor of appellants.

FACTS

In February 2017, respondent Virginia Rivas-Castro and her children sat in her vehicle in a no-parking zone near a school-bus stop awaiting the arrival of the children's school bus. When the school-bus driver, appellant Lorraine P. Jansen, approached the stop, the bus lost traction and slid into Rivas-Castro's vehicle. Jansen was not cited for violating any law and there is no record of Jansen's speed leading up to the collision.

In February 2023, Rivas-Castro sued Jansen and her employer, appellant Independent School District 196 (the school district), alleging that Jansen negligently operated the school bus and that the school district was vicariously liable for Jansen's negligence.

Jansen and the school district moved for summary judgment, claiming "that Jansen's discretionary decision-making at the time of the collision is protected by common law official immunity, which extends vicariously to the [school district]."

In support of the summary-judgment motion, Jansen and the school district attached a transcript of Jansen's deposition. During her deposition, Jansen stated that, when she began working for the school district, she watched training and safety videos. Jansen described the road conditions on the day of the collision as "wet and [icy in] some spots." But Jansen stated that she never believed that the roads were unsafe for driving. Jansen stated that she adequately accounted for the conditions and was not driving too fast for the conditions.

Jansen stated that she applied the brakes as she approached the bus stop, noticed that the road became icy, and felt the bus start to slip. Jansen swerved and successfully moved the bus slightly but could not avoid colliding with Rivas-Castro's vehicle. Jansen described the collision as "unavoidable."

Jansen and the school district also attached a transcript from the deposition of the transportation coordinator for the school district. The transportation coordinator stated that bus drivers have a duty to operate a bus in a safe manner. Bus drivers are provided training material to guide them on how to drive a bus in a safe manner, but the material does not instruct a bus driver on how exactly to drive safely because the material cannot cover every scenario.

The transportation coordinator stated that bus drivers are required to adjust their speed to correspond to road conditions and should slow down on a slippery road "to anticipate . . . a maneuver . . . in advance of having to stop." But she stated that no rule prescribes exactly how to do that because "drivers are allowed to exercise some discretion to determine how to properly operate a . . . school bus based on the road conditions as they are seeing them in real time."

The transportation coordinator stated that Jansen "was operating her school bus as trained," by driving "[the] speed limit, stopping at signs, lights, et cetera." She stated that, according to the accident report, Jansen was pressing the brake, trying to stop the bus, while also steering in a direction to avoid the collision. She stated that Jansen did "everything in her power when she started sliding."

Jansen and the school district provided a transcript from the deposition of the school district's transportation supervisor. The transportation supervisor stated that bus drivers watch training videos and receive an employment manual. Bus drivers are expected "to drive with the same care and caution whether it's regular good roads or winter driving, but with some . . . extra awareness [in the winter]." The transportation supervisor stated that in icy or snowy conditions, when the conditions are inconsistent, a bus driver uses "discretion" to decide the appropriate speed. He stated that there is no "bright-line rule" regarding a bus driver's speed or how much sooner he or she should brake in poor weather conditions "because it's all . . . circumstance specific." He said that Jansen has "discretion to determine the road conditions and drive as a commercially professional driver [would] do. [She has] discretion . . . as long as [she is not driving faster than] the posted speed, to determine what's safe."

The transportation supervisor also listed certain things that are not discretionary and cannot be undertaken while operating a bus—drinking alcohol, using drugs, using a cell phone, speeding, and failing to stop at a stop sign. But he stated that bus drivers use their "professional judgment" in assessing road conditions and have "leeway to operate" the bus safely. He stated that it appeared that Jansen "did everything she could have done."

Jansen and the school district also provided commercial driving manuals, including the school district's school-bus-driver handbook and training videos. The documents identify absolute necessities for bus drivers, including medical and training requirements and a driver's license. Other absolute rules include no alcohol or cell-phone use.

Additional rules describe proper action at railroad crossings, proper following distance, how to use the stop-signal arm, how to move in reverse, and how to adjust mirrors.

The safe-winter-driving video advises on how to avoid accidents and how to protect oneself in cold weather. The video states that precipitation can make road conditions unpredictable and that the best way to avoid accidents is to drive slowly. The video also cautions that skidding can happen to anyone, anywhere, at any time. The safe-braking video instructs on different braking systems, general braking techniques, and safety “reminders.” The video states that a school-bus driver “should” keep in mind the road conditions when applying the brakes.

The documents also provide safety requirements, including “bus drivers must [never] exceed the posted speed limits . . . [and] must never drive at a speed that is faster than reasonable under existing conditions.” Regarding slippery surfaces, the documents provide: “It will take longer to stop, and it will be harder to turn without skidding Wet roads can double stopping distance. You must drive slower to be able to stop in the same distance as on a dry road.” In addition, the documents state: “Reduce speed by about one-third . . . on a wet road. On packed snow, reduce speed by a half, or more. If the surface is icy, reduce speed to a crawl and stop driving as soon as you can safely do so.” Finally, the documents call for drivers to adjust speed to the conditions:

Go slowly and watch far enough ahead to keep a steady speed. Avoid having to slow down and speed up. Take curves at slower speeds and don’t brake while in curves. Be aware that as the temperature rises to the point where ice begins to melt, the road becomes even more slippery. Slow down more.

At the summary-judgment hearing, Rivas-Castro argued that immunity did not apply because Jansen had limited discretion in operating the school bus. Rather, Jansen’s operation of the school bus was controlled by the obligation to follow definite rules established by driving manuals and training videos.

The district court denied the motion for summary judgment because “[w]hether Jansen’s driving conduct constitutes ministerial or discretionary conduct presents a question of material fact that must be resolved by a jury.” The district court specifically determined that “an issue of material fact exists as to whether [the manuals and training videos] created a ‘sufficiently narrow’ standard of conduct to make Jansen’s driving conduct ministerial.” Jansen and the school district appeal.

DECISION

Official immunity

“While denial of a motion for summary judgment is not ordinarily appealable, an exception . . . exists when the denial of summary judgment is based on rejection of a[n] . . . official immunity defense.” *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 655 (Minn. 2004). This court reviews the denial of immunity on summary judgment to “determine 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). Whether immunity applies is a question of law reviewed de novo. *Id.*

“The party asserting an immunity defense has the burden of demonstrating facts showing that it is entitled to immunity.” *Fear v. Indep. Sch. Dist. 911*, 634 N.W.2d 204, 209 (Minn. App. 2001), *rev. denied* (Minn. Dec. 11, 2001). An immunity defense is

designed to protect public officials from personal liability for exercising their judgment or discretion while executing their official duties. *Anderson*, 678 N.W.2d at 655. The doctrine is intended to encourage public officials to use their independent judgment and discretion without fear of potential civil liability. *Jepsen ex rel. Dean v. County of Pope*, 966 N.W.2d 472, 482 (Minn. 2021).

Here, the district court determined: “The fact that the training manual exists and the specificity with which the training videos delineate conduct for bus drivers, when viewed in the light most favorable to [Rivas-Castro]’s position that the conduct is ministerial, preclude summary judgment.” Jansen and the school district argue that the district court erred in determining that whether immunity applies is a jury determination because the applicability of official immunity is a question of law, not a question for a jury.

We agree that the district court was to determine whether immunity applied. *See Vassallo ex rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014) (stating that determination of whether conduct is discretionary or ministerial is a legal question). Jansen and the school district argue that, had the district court conducted a proper analysis, it would have determined that Jansen and the school district are entitled to official immunity and vicarious official immunity. Applying de novo review, we will conduct that legal analysis.

Whether official immunity applies depends on “(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.” *Id.* Here, the conduct at issue is Jansen’s driving conduct while approaching the bus stop. The

roads were described as wet in some spots, icy in some spots, and normal in some spots. Because the road conditions were inconsistent, Jansen’s driving conduct throughout her entire bus route is not the conduct at issue; rather, the particular conduct at issue is Jansen’s driving conduct as she approached the bus stop. *See Watson by Hanson v. Metro. Transit Comm’n*, 553 N.W.2d 406, 411 (Minn. 1996) (stating that court reviewing applicability of immunity “must examine with particularity the nature of the conduct the plaintiff alleges [was negligent]”).

Having identified the conduct at issue, we next consider whether this conduct was discretionary or ministerial. Here, the district court determined that summary judgment was not appropriate because “reasonable minds could and do differ on whether the [training] video was a strict narrow instruction to all bus drivers,” making the conduct ministerial. Jansen and the school district argue that the district court “did not meaningfully engage with the contents of any of the documents and videos . . . to identify whether any of them contained a directive that met the legal definition of a ministerial duty. Nor did the district court fully consider the deposition testimony. . . .”

Whether a policy creates a ministerial duty is ordinarily a question of law. *See Vassallo*, 842 N.W.2d at 465. It follows that whether the school district’s training documents and videos created a ministerial duty presented a question of law that should have been resolved by the district court. Reviewing de novo, we consider whether Jansen’s driving conduct as she approached the bus stop was ministerial or discretionary.

A ministerial duty is “absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts.” *Anderson*, 678

N.W.2d at 656 (quotation omitted). A ministerial duty leaves nothing to discretion; rather, it is “a simple, definite duty arising under and because of stated conditions.” *Larson v. Indep. Sch. Dist. No. 314*, 289 N.W.2d 112, 119 (Minn. 1979) (quotation omitted). A discretionary duty involves “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).

Here, the record establishes that some duties were ministerial for school-bus drivers. For example, while operating a bus, bus drivers were prohibited from drinking alcohol, using drugs, and using a cell phone. Other ministerial duties included medical and training requirements, a driver’s license, along with special precautions at railroad crossings, proper following distance, how to use the stop-signal arm, how to move in reverse, and how to adjust mirrors. These are “definite dut[ies] arising under and because of stated conditions.” *See Larson*, 289 N.W.2d at 119 (quotation omitted).

The question arises whether Jansen’s driving conduct on inconsistent road conditions as she approached an icy area was specifically prescribed by training material or whether she could exercise “professional judgment that necessarily reflects the professional goal and factors of [the] situation.” *See Mumm*, 708 N.W.2d at 490-91 (quotation omitted).

We conclude that the training and safety documents and videos do not impose a ministerial duty upon a bus driver operating on inconsistent road conditions; the only duty imposed on a bus driver operating on inconsistent road conditions is to adjust appropriately

their awareness and speed to the conditions to operate as safely as possible. The record supports our conclusion.

The training and safety material provides guidance. This guidance includes statements such as: “[I]t will be harder to turn without skidding, when the road is slippery. Wet roads can double stopping distance. You must drive slower to be able to stop in the same distance as on a dry road.” The guidance also states: “Reduce speed by about one-third . . . on a wet road. On packed snow, reduce speed by a half, or more. If the surface is icy, reduce speed to a crawl and stop driving as soon as you can safely do so.” And in slippery conditions, the guidance requires drivers to “[g]o slowly[,] . . . watch far enough ahead to keep a steady speed[,] [a]void having to slow down and speed up[,] [t]ake curves at slower speeds[,] . . . don’t brake while in curves[,] [and] [b]e aware that . . . where ice begins to melt, the road becomes even more slippery[,] [so] [s]low down more.”

The use of words and phrases such as “[w]et roads *can* double stopping distance,” “[r]educe speed *by about* one-third . . . on a wet road,” “stop driving *as soon as you [safely] can*,” and “[b]e aware” of slippery areas that require slower speeds, show that the training material is intended to explain what can happen in some circumstances and ways to safely navigate in those circumstances. (Emphasis added.) The training material, however, leaves the actual driving-conduct decision to the bus driver, which is another way of saying that the bus driver has discretion.

Additionally, the depositions indicate that bus drivers are required to adjust speed to correspond to road conditions but have no rule prescribing exactly how to do so “because drivers are allowed to exercise some discretion to determine how to properly operate

a . . . school bus based on the road conditions as they are seeing them in real time.” The transportation coordinator stated that bus drivers are provided guidance on how to drive safely but are not told how exactly to drive safely because not every scenario can be covered in the material.

The transportation supervisor stated that bus drivers are expected “to drive with the same care and caution” regardless of conditions, and when the road conditions are inconsistent, a bus driver uses “discretion” to decide the appropriate speed. He stated that Jansen was required to operate the school bus like “a commercially professional driver [with] discretion . . . to determine what’s safe.” He also stated that bus drivers use “professional judgment” to assess road conditions and have “leeway to operate” the bus safely.

Having concluded that the conduct at issue was discretionary, we would next generally consider whether the conduct was willful or malicious, but Rivas-Castro does not argue that the conduct was willful or malicious and nothing in the record suggests that it was.

Overall, this record does not support the district court’s determination that Jansen’s conduct could be ministerial if the training material, the video in particular, was incorporated into the school district policy. Instead, the record shows that Jansen had to use her professional, discretionary judgment in assessing the road conditions as she neared the bus stop to determine the safe speed and reaction when the school bus began to slide. The road conditions were inconsistent so there was no clear course of action for Jansen to take. Therefore, she had discretion to adjust her driving conduct to be as safe as possible.

Vicarious official immunity

The district court determined that the issue of vicarious official immunity could not be decided until a fact-finder resolved the issue of whether Jansen was entitled to official immunity. Rivas-Castro argues that the school district is not entitled to vicarious official immunity because Jansen is not entitled to official immunity.

“Vicarious official immunity protects a governmental entity from liability” when its employee is entitled to official immunity. *Fedke v. City of Chaska*, 685 N.W.2d 725, 731 (Minn. App. 2004), *rev. denied* (Minn. Nov. 23, 2004). “Generally, if the employee is found to have immunity, the claim against the municipal employer has been dismissed without any explanation.” *Pletan v. Gaines*, 494 N.W.2d 38, 42 (Minn. 1992). We conclude that the school district is entitled to vicarious official immunity based on our conclusion above that Jansen is entitled to official immunity.

Reversed.