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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-971**

Austin Motl, a minor, by Cheryl Motl,
his mother and natural guardian, et al.,
Appellants,

vs.

Powder Ridge Ski Area a/k/a
Powder Ridge Ski Corporation,
Defendant,

Independent School District 47, et al.,
Respondents.

**Filed February 13, 2012
Affirmed
Minge, Judge**

Stearns County District Court
File No. 73-CV-09-6354

L. Michael Hall, III, Hall Law, P.A., St. Cloud, Minnesota (for appellants)

William L. Davidson, Timothy J. O'Connor, Lind, Jensen, Sullivan & Peterson, P.A.,
Minneapolis, Minnesota (for respondent IDS #47, et al.)

Considered and decided by Larkin, Presiding Judge; Klaphake, Judge; and Minge,
Judge.

UNPUBLISHED OPINION

MINGE, Judge

Appellant challenges the district court's grant of summary judgment in favor of the respondents. Appellant argues that the district court erred in applying primary assumption of the risk and that the immunities claimed by the respondent are inapplicable. Because official immunity protects the respondent's actions, we affirm.

FACTS

Appellant Austin Motl, as a 14 year old, was injured while taking part in an annual winter activity day organized by Sauk Rapids Middle School, part of respondent Independent School District Number 47 (the School). The activity day was organized under the supervision of Sauk Rapids Middle School principal, respondent Larry Stracke. As part of the activity day, students could choose to partake in activities outside of the school, including ice fishing, bowling, and winter sports at Powder Ridge Ski Area.

Motl, with the permission of his parents, chose to go snowboarding at Powder Ridge. Powder Ridge has multiple slopes for skiing and snowboarding, including at least two terrain parks. These parks contain man-made features for snowboarding, including rails and boxes to slide down and jumps of potentially significant height. Respondents had arranged for Powder Ridge Ski Patrol to be on the hill; adult chaperones were asked by Powder Ridge staff to assist students in renting snowboards and watching for frostbite. The chaperones were also asked to be "visible" and to remind students to behave and be safe.

After arriving at Powder Ridge with the school group, Motl received a lift ticket and rental snowboard. At the outset, he was required to pass a basic snowboarding proficiency test on a small hill by showing that he could turn and stop on a snowboard. Later in the day, after snowboarding without incident on various runs, Motl and his friends entered a terrain park. This area contained larger and more complex man-made features than Motl had encountered elsewhere in the ski area. To enter this terrain park, Motl went through gates with large warning signs indicating the dangers of using the features, including a warning that injury could result. After using the features of this terrain park for some time, Motl used a ramp to jump into the air. Motl lost control during this jump and landed on his back, suffering a permanent paraplegic injury.

Motl brought suit against the School and principal Stracke (together referred to as respondents), alleging negligent supervision and negligent implementation of safety measures.¹ Respondents moved for summary judgment on the basis of assumption of the risk, common-law official and vicarious immunity, and statutory immunity. The district court granted respondents' motion for summary judgment on assumption of risk. This appeal follows.

DECISION

The parties primarily dispute whether the district court erred in granting summary judgment for respondents on the grounds that Motl primarily assumed the risk of his injury as an inherent risk of snowboarding. After careful consideration of this issue, we

¹ Motl also sued Powder Ridge, but settled after its summary judgment motion was granted. Powder Ridge is not a party to this appeal.

acknowledge the significant complexity at the intersection of the assumption of the risk and negligent supervision doctrines. For the reasons discussed herein, we choose not to address the resolution of that issue.

In addition to the question of whether the district court erred in deciding that assumption of the risk bars Motl's claim, Motl argues that this court should address the issue of immunity despite the district court's decision to decline to address the issue. This court generally does not review matters that are not both presented to and decided by a district court, but it does have discretion to do so. *Thiele v. Stich*, 425 N.W.2d 580, 582–83 (Minn. 1988). This court can exercise this discretion to consider issues not decided by the district court if the parties are not prejudiced, if the issues are fully developed, if there is no fact-finding or judicial discretion required, if the issue is subject to de novo review, and if it is in the interest of judicial economy. *See Day Masonry v. Indep. Sch. Dist. #347*, 781 N.W.2d 321, 331 (Minn. 2010); *Franklin v. Western Nat'l Mut. Ins. Co.*, 574 N.W.2d 405, 407 n.2 (Minn. 1998); *Remodeling Dimensions, Inc. v. Integrity Mut. Ins. Co.*, 806 N.W.2d 82, 90 n.2 (Minn. App. 2011), *review granted* (Minn. Sept. 20, 2011). Because the parties agree that there are no factual issues related to immunity, because the record is fully developed, and because the other considerations are satisfied, we conclude that it is in the interest of judicial efficiency for this court to address the issue of immunity, and we will do so.

“Official immunity protects a public official charged by law with duties that call for the exercise of judgment or discretion unless the official is guilty of a willful or malicious wrong.” *Gleason v. Metropolitan Council Transit Operations*, 582 N.W.2d

216, 220 (Minn. 1998) (quotation omitted). “[O]fficial immunity protects operational discretion and not just policymaking discretion, but the protected conduct must require more discretion than mere ministerial duties.” *Id.* at 220 (quotation omitted). A discretionary decision is one involving individual professional judgment that “necessarily reflects the professional goal and factors of a situation.” *Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 315 (Minn. 1998). Not protected by official immunity are ministerial duties, which are “absolute, certain, and imperative, involving merely execution of a specific duty arising from fixed and designated facts.” *Id.* at 315–16 (quotation omitted). Whether a party is entitled to immunity is a question of law, which is subject to de novo review. *Anderson v. Anoka Hennepin Indep. Sch. Dist. No. 11*, 678 N.W.2d 651, 655 (Minn. 2004). “Generally, if a public official is found to be immune from suit on a particular issue, his or her government employer will be vicariously immune from a suit arising from the employee’s conduct and claims against the employer are dismissed without explanation.” *Id.* at 663–64.

Here, there was no specific and definite protocol that principal Stracke should have followed in approving and overseeing those who supervised the hundreds of students who participated in the School’s winter-activity-day events. The evidence cited by Motl to show that such a protocol existed, but was not followed, instead showed that there were basic principles which guided supervision of students and that the School was not bound by any specific protocol for supervising students. In determining how to address the risks of taking students away from the School premises for these activities, respondent Stracke exercised operational discretion. Because of the inherent difficulty of

monitoring the conduct of several hundred students in outdoor winter activities, Stracke's decisions regarding specifics for protocols for supervision of students were discretionary and were covered by official immunity. Moreover, because the discretionary decisions of principal Stracke afford him immunity from liability, the School is vicariously immune from liability.²

Because respondents' exercise of operational and planning discretion is immune from liability, we conclude that the district court's entry of summary judgment did not result in reversible error.

Affirmed.

Dated:

² Because the negligent act alleged by Motl is the determination of the level of supervision of students, we apply common-law official immunity rather than statutory immunity under Minn. Stat. § 466.03, subd. 6 (2010). Statutory immunity is associated with "policy judgments" whereas "common law official immunity applies to discretionary decisions made at the operational level." *Anderson*, 678 N.W.2d at 655 n.4. Although these distinctions may be elusive, we conclude that common-law official immunity principles are more appropriately applied in this case.