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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2229**

Carolyn Godfrey,
Appellant,

vs.

Metropolitan Council,
Respondent.

**Filed August 5, 2013
Affirmed; motion denied
Smith, Judge**

Ramsey County District Court
File No. 62-CV-12-1614

Carolyn Godfrey, St. Paul, Minnesota (pro se appellant)

David Oskie, Oskie, Hamilton & Sofio, P.A., St. Paul, Minnesota (for respondent)

Considered and decided by Chutich, Presiding Judge; Smith, Judge; and Klaphake, Judge.*

UNPUBLISHED OPINION

SMITH, Judge

We affirm the dismissal of appellant's negligence claim for personal injuries sustained as a passenger on respondent's bus because appellant admitted on the record that respondent's action was not the proximate cause of her injuries.

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

FACTS

Appellant Carolyn Godfrey boarded respondent Metropolitan Council's (the council) bus 407, which proceeded eastbound on University Avenue in St. Paul, Minnesota. While in transit, the bus came to a sudden stop that propelled Godfrey forward and knocked her unconscious. Godfrey sustained injuries and filed a complaint, alleging that the "carelessness and negligence" of respondent's bus driver caused her injuries. The council filed an answer, arguing that the vehicle's sudden stop was the "unavoidable" result of a third party's actions "over whom [the council] had no control." In an affidavit, the bus driver stated: "[A] yellow cab passed me on the left and then made a sudden, un signaled right turn. . . . I had to brake hard to avoid a collision."

The council moved for summary judgment, contending that Godfrey had no evidence to sustain a negligence claim. In interrogatory and deposition responses, Godfrey testified that (1) the bus made a sudden stop; (2) she could not see out the windshield when the accident occurred; (3) she had little memory of the accident; (4) she had "no knowledge" to dispute the bus driver's recollection of the accident; and (5) she was unaware of any law the bus driver violated. The council argued that the culmination of these admissions established that Godfrey failed to demonstrate a causal connection between the actions of the bus driver and her injuries.

The district court heard argument on the motion for summary judgment.¹ The district court outlined the undisputed facts regarding the vehicle accident. The council

¹ For reasons not specified in the record, Godfrey's attorney had previously withdrawn from the action. Godfrey proceeded pro se.

then argued that “[Godfrey has] to be able to show duty and breach and causal fault, and [she] can’t do it. So we could try this case, but I think a directed verdict would be inevitable, and I think that this is exactly what summary judgment is for.” The district court proceeded to have the following exchange with Godfrey:

THE COURT: I need to hear something that will allow me to keep your case alive. So far, the submissions you have given me haven’t. . . . What did the bus company do that was negligent and was a direct cause of your injuries.

GODFREY: [The bus driver] continued to drive about a mile after I was knocked unconscious. The accident happened at Hamline and University. When the ambulance took me off the bus, it was at Victoria and University. That’s when he became negligent.

THE COURT: The negligence then was in continuing to drive for approximately one mile. Is that it?

GODFREY: Yes.

THE COURT: How did that change your injuries?

GODFREY: *It didn’t change my injuries.* It made him negligent because he didn’t come to a complete stop in taking care of the passenger that was injured on his bus.

THE COURT: Okay. I guess what I have to hear is do you have anything to tell me about had he stopped, would you have not been injured, had he stopped immediately?

GODFREY: *I would still have been injured.*

THE COURT: Okay. Then how can his failure to stop be a direct cause of your injury?

GODFREY: *His failure to stop wasn’t a direct cause of my injury.*

THE COURT: Okay.

GODFREY: Him failing to stop was his negligence.

THE COURT: A person can be negligent; but unless the negligence directly causes the injury, it doesn’t make any difference. I mean there is nothing you can recover. That’s the problem we have.

GODFREY: Okay.

(Emphasis added.)

The district court granted the council's motion. The district court determined that Godfrey had failed to submit sufficient evidence to support her negligence claim. The district court noted: "[T]he fact that [the bus driver] drove for nearly a mile before stopping the bus did not aggravate her injuries at all. She agreed that his driving for nearly a mile before stopping was not a direct cause of her injuries." This appeal followed.

D E C I S I O N

On appeal, Godfrey contends that the council "had a duty or legal responsibility not to cause harm or injury to [Godfrey]" and that she has "suffered financial loss and injuries as a result of the accident that occurred." The council responded to the appeal by filing a "Motion to Strike Pages from Appellant's Brief," contending that portions of Godfrey's brief explain the nature and extent of her injuries in "an improper effort to garner sympathy." We address the council's motion and then Godfrey's request that we reverse the district court's grant of summary judgment.

I.

"The papers filed in the [district] court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal." Minn. R. Civ. App. P. 110.01. "An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below." *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988).

The council argues that the portions of Godfrey's brief that relate the extent of her injuries and her difficulty in obtaining legal counsel are prejudicial and improper. It is

well known that all statements of material fact in an appellant's brief must be accompanied by a reference to the record. Minn. R. Civ. App. P. 128.02, subd. 1(c). It is undisputed that the challenged portions of Godfrey's brief contain no supportive citations. However, we deem the council's motion moot as we did not rely on any of the challenged materials in reaching our conclusion on the merits. *See Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 233 n.2 (Minn. 2007). We deny the council's motion to strike.

II.

On appeal from summary judgment, we determine whether genuine issues of material fact exist and whether the district court erred in its application of the law. *Fedke v. City of Chaska*, 685 N.W.2d 725, 729 (Minn. App. 2004), *review denied* (Minn. Nov. 23, 2004). This constitutes a de novo review. *Riverview Muir Doran, LLC v. JADT Dev. Grp.*, 790 N.W.2d 167, 170 (Minn. 2010). We are required to view the evidence in the light most favorable to the nonmoving party against whom summary judgment was granted. *Fedke*, 685 N.W.2d at 729. No genuine issue of material fact exists when the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party. *Id.* Establishing a genuine issue of material fact requires substantial evidence. *Id.*

In a negligence action, a defendant is entitled to summary judgment when the record demonstrates a complete lack of proof on *any* of the four essential elements of a negligence claim: (1) the existence of a duty of care; (2) breach of that duty; (3) an injury; and (4) that the breach of the duty was the proximate cause of the injury. *Pond Hollow Homeowners Ass'n v. The Ryland Grp.*, 779 N.W.2d 920, 923 (Minn. App.

2010). “[W]hen the nonmoving party bears the burden of proof on an element essential to the nonmoving party’s case, the nonmoving party must make a showing sufficient to establish that essential element.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

Because negligence claims rely on reasonableness and causation, such actions are typically inappropriate for summary judgment. *See Ill. Farmers Ins. Co. v. Tapemark Co.*, 273 N.W.2d 630, 633-34 (Minn. 1978); *Teas v. Minneapolis St. Ry.*, 244 Minn. 427, 434, 70 N.W.2d 358, 363 (1955). The district court may enter summary judgment on the issue of negligence only when “the material facts are undisputed and as a matter of law compel only one conclusion.” *Sauter v. Sauter*, 244 Minn. 482, 486, 70 N.W.2d 351, 354 (1955).

It is undisputed that the council owed Godfrey a duty of care, as the council constitutes a common carrier and Godfrey was one of its passengers. *See Urban v. Minneapolis St. Ry.*, 256 Minn. 1, 5-6, 96 N.W.2d 698, 700-01 (1959) (recognizing buses as common carriers). However, to sustain her claim, Godfrey must establish that the council breached its duty of care and that its breach caused her injuries. *See Pond Hollow Homeowners Ass’n*, 779 N.W.2d at 923. Godfrey cannot meet this burden. At the summary judgment hearing, Godfrey expressly admitted that the bus driver’s failure to stop was not a proximate cause of her injuries. Throughout litigation, Godfrey has consistently stated that she has no reason to disagree with the description of events provided by the bus driver; namely, that he was cut off by a taxi cab and left with no choice but to suddenly stop the vehicle.

Finally, Godfrey argues that the council's inadvertent destruction of the video recording of the accident hindered her ability to establish what occurred. Because Godfrey failed to raise this argument before the district court, we decline to consider it. *See Thiele*, 425 N.W.2d at 582 (“A reviewing court must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it.” (quotation omitted)). Also, Godfrey now asserts that the council violated its duty of care when the bus driver failed to stop immediately after the accident occurred. However, even if we accepted her assertion, her admission that the bus's continued operation did not proximately cause her injuries remains fatal to her claim. *See Pond Hollow Homeowners Ass'n*, 779 N.W.2d at 923.

Because Godfrey admits that the council did not proximately cause her injuries, she is unable to establish the essential elements of a negligence claim. *See id.* The district court did not err by granting summary judgment to the council.

Affirmed; motion denied.