STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1981

Pamela Ristau, on behalf of her minor child Mitch Ristau
and Mitch Ristau, individually,
Appellants,

vs.

Roger Ristau, et al.,
Respondents.

Filed May 30, 2017
Affirmed
Schellhas, Judge

Fillmore County District Court
File No. 23-CV-14-504

Andrew L. Davick, Meshbesher & Spence, Ltd., Rochester, Minnesota (for appellants)

Troy A. Poetz, Matthew W. Moehrle, Eric S. Oelrich, Rajkowski Hansmeier Ltd., St. Cloud, Minnesota (for respondents)

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and Toussaint, Judge.*

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

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellants challenge the summary-judgment dismissal of their negligence claim. We affirm.

FACTS

This case arises from a tragic accident that occurred on November 11, 2008, on a farm owned by Roger Ristau and his wife, Ella Ristau.[1] At the time of the accident, Roger had retired, leaving the day-to-day farming operations to his sons, Gary Ristau and Lynn Ristau. Neither Roger nor Ella was present at the scene of the accident.

On the day of the accident, Gary asked his 13-year-old son, appellant Mitch Ristau, to climb into a silo on the property to help get the silo's unloader unstuck. Mitch climbed into the silo and called to his father to turn on the unloader while he pushed on it until it became unstuck. Gary turned on the unloader. Mitch then stepped over the unloader's turning drive shaft, and a bolt sticking out of the shaft caught his right boot. The drive shaft turned Mitch's right leg underneath it and broke several bones in Mitch's leg and foot. Because of his injuries, Mitch underwent a below-the-knee amputation of his right leg.

Mitch and his mother, appellant Pamela Ristau, sued Roger and Ella for negligence as landowners. The district court concluded that Roger and Ella owed no duty of care to Mitch and granted summary judgment in their favor. This appeal follows.

[1] Because the parties in this case share the same last name, we will refer to them by their first names throughout the opinion.

D E C I S I O N

Pamela and Mitch argue that the district court erred by dismissing their negligence claim on summary judgment. This court reviews "a district court's summary judgment decision de novo," analyzing "whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). "[Appellate courts] view the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76–77 (Minn. 2002). "A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). An appellate court "may affirm a grant of summary judgment if it can be sustained on any grounds." *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012).

"To recover on a claim of negligence, a plaintiff must prove: (1) the existence of a duty of care; (2) a breach of that duty; (3) an injury; and (4) that the breach of the duty was a proximate cause of the injury." *Doe 169 v. Brandon*, 845 N.W.2d 174, 177 (Minn. 2014). "Summary judgment is appropriate when the record lacks proof of any of the four [negligence] elements." *Kellogg v. Finnegan*, 823 N.W.2d 454, 458 (Minn. App. 2012). "The existence of a duty of care is a threshold question because a defendant cannot breach

a nonexistent duty." *Doe 169*, 845 N.W.2d at 177. Whether a duty exists is a legal question that we review de novo. *Bjerke v. Johnson*, 742 N.W.2d 660, 664 (Minn. 2007).

Duty of Care

Landowners generally owe entrants onto their property a duty of reasonable care for their safety.[2] *Olmanson v. LeSueur County*, 693 N.W.2d 876, 880 (Minn. 2005). This includes an ongoing duty to inspect and keep the property free of unreasonable risks of harm, and, with respect to dangerous conditions discoverable through reasonable efforts, "the landowner must either repair the conditions or provide invited entrants with adequate warnings." *Id.* at 881.

Roger and Ella argue that they did not owe a duty of care to Mitch because they were not in "possession or control" of the farm at the time of the accident. In support of their position, they cite *Peterson v. Balach*, 294 Minn. 161, 173, 199 N.W.2d 639, 647 (1972). In *Peterson*, the supreme court abandoned the previously controlling common-law distinction between licensees and invitees and held that an entrant's status as a licensee or invitee is but one element to be considered in determining a landowner's liability under ordinary negligence standards. 294 Minn. at 173, 199 N.W.2d at 647. The court further held that "[t]he duty required of a landowner (or the person charged with responsibility for

[2] At oral argument before this court, Pamela and Mitch argued that Roger and Ella had a duty to supervise Mitch's activity based on the existence of a special relationship. *See Donaldson v. Young Women's Christian Ass'n of Duluth*, 539 N.W.2d 789, 792 (Minn. 1995) ("A legal duty to act for the protection of another person arises when a special relationship exists between the parties."). Because the issue was not briefed on appeal, we decline to consider it. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (deeming "waived" an issue that was not adequately briefed).

the condition of the land) as to licensees and invitees is no more and no less than that of any other alleged tortfeasor . . . ." *Id.* at 174, 199 N.W.2d at 647. Roger and Ella argue that because Gary and Lynn were in charge of the farming operations at the time of the accident, Gary and Lynn were "person[s] charged with responsibility for the condition of the land," and therefore any duty owed to Mitch belonged only to them. But nothing in *Peterson* suggests that the duties of landowners and others with responsibility for the condition of the land are mutually exclusive. Because Roger and Ella point to no authority suggesting that their duty of care as landowners was obviated because their sons managed the day-to-day farming operations, we conclude that, as landowners, they owed Mitch the general duty to inspect, repair, and warn. *See Olmanson*, 693 N.W.2d at 881. We therefore conclude that the district court erred by concluding that Roger and Ella owed no duty to Mitch because they were not directly involved in farming operations.

Duty Breach

Roger and Ella argue alternatively that, even if they owed a duty of care to Mitch, the record lacks any proof that they breached their duty of care, an element of appellants' negligence claim. *See Kellogg*, 823 N.W.2d at 458 ("Summary judgment is appropriate when the record lacks proof of any of the four elements."). We agree.

Mitch and Pamela have not presented sufficient evidence to create a genuine issue of fact that Roger and Ella breached their duty to inspect, repair, or warn. No evidence suggests that the silo unloader needed repair or that inspection would have uncovered a dangerous condition. And regarding warnings, Pamela and Mitch do not articulate what particular warning was necessary. Indeed, Mitch testified in a deposition that he understood

that he needed to be careful when doing anything on the farm and that farming is "probably one of the more dangerous things to do"; that he felt he had enough working knowledge and proper instruction on how a silo unloader worked; that he had previously worked on the silo unloader, including doing "wrench work"; that he did not feel that Gary or Roger had failed to warn him about the dangers of the silo unloader; and that he did not believe Roger or Ella had done anything wrong with respect to the accident. In fact, Mitch acknowledged that the day of the accident was not the first time that he had helped get the silo unloader unstuck. Mitch also testified that he was not aware of any alterations or changes ever being made to the silo unloader on which he was injured, and he did not believe the silo unloader on which he was injured was more dangerous than other ground-driven unloaders.

Because we conclude that no genuine issue of material fact exists as to whether Roger and Ella breached their duty of care, we do not address the parties' arguments regarding whether the negligence claim also fails because the danger posed by the silo unloader was known or obvious. *See Olmanson*, 693 N.W.2d at 881 ("A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness." (quotation omitted)). We also do not reach the issue of whether the doctrine of primary assumption of the risk applies to the activity here. *See Bjerke*, 742 N.W.2d at 669 ("Primary assumption of the risk completely negates a defendant's negligence.").

Affirmed.