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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0328**

Waasohn Dorliae,
Appellant,

vs.

Metro Transit,
Respondent.

**Filed November 4, 2019
Affirmed
Rodenberg, Judge**

Hennepin County District Court
File No. 27-CV-17-17848

Waasohn Dorliae, Minneapolis, Minnesota (pro se appellant)

Jeannie Provo-Peterson, Daniel J. Stahley, Provo-Petersen & Associates, P.A., Lake Elmo, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Cleary, Chief Judge; and Larkin, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Waasohn Dorliae appeals from the district court's order granting respondent Metropolitan Council's motion for summary judgment dismissing appellant's complaint with prejudice. Appellant argues that the district court erred in concluding that respondent is not liable as a common carrier because appellant's injury was unforeseeable

and that respondent has both statutory and vicarious official immunity from liability. We affirm.

FACTS

Appellant sued respondent for damages she claims were caused by an altercation that occurred on respondent's Metro Transit bus on October 20, 2017. Surveillance video of the event shows appellant seated near the rear exit of the bus. Standing near that exit is an unidentified man. The beginning of the recording depicts no physical or verbal contact between appellant, the unidentified man, or the bus driver.

Approximately six minutes into the surveillance video, appellant requests that the bus stop. As she moves to get off the bus, there is a physical altercation between appellant and the unidentified man. The video recording does not reveal what provoked the altercation. The bus driver can be seen and heard directing both appellant and the unidentified man to leave the bus. Both of them get off the bus.

On December 8, 2017, seven weeks after her claimed injuries, appellant sued respondent. She alleged that, as she attempted to leave the bus, she was assaulted at knifepoint by an unidentified male passenger, and that she sustained injuries as a result. Appellant contended that the bus driver asked her "to get off the bus with the person who assaulted [her]."

During discovery, appellant contended that respondent was withholding portions of the surveillance video because the recording that was provided to her through discovery did not begin until approximately six minutes before the altercation. She argued that, before the disclosed recording began, she boarded the bus and the unidentified man

harassed her. Appellant maintained that respondent ought to have retained the recording from the time appellant got on the bus. Respondent contended to the district court that, due to the limited internal storage space for the recording system on Metro Transit busses, surveillance videos are recorded over in the normal course of business unless specifically downloaded. The disclosed record was retained because police requested that recording shortly after the incident as part of a police investigation. No other request for downloading more of the recording of the bus ride was made until appellant requested the recording several months after the altercation. The recording from October 20 was, by then, no longer available.

Respondent moved to dismiss appellant's complaint for failure to comply with discovery or, in the alternative, for summary judgment. Appellant appeared pro se and did not provide affidavits or other motion papers. The district court granted respondent's motion for summary judgment. It found that the record presented no genuine issue of material fact, and concluded that there was no evidence in the record to support a claim that respondent's bus driver should have foreseen the altercation. Therefore, it held respondent is not liable to appellant as a common carrier as a matter of law. The district court also determined that respondent would also be entitled to both statutory immunity under Minn. Stat. § 466.03, subd. 6 (2018), and vicarious official immunity on the record as constituted.

This appeal followed.

DECISION

A district court's grant of summary judgment is reviewed de novo. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). In doing so, we determine whether genuine issues of material fact exist and whether the district court erred in its application of law. *Fedke v. City of Chaska*, 685 N.W.2d 725, 729 (Minn. App. 2004), *review denied* (Minn. Nov. 23, 2004). Appellate courts view the evidence in the light most favorable to the nonmoving party against whom summary judgment was granted. *Id.* “[S]ummary judgment is inappropriate when reasonable persons might draw different conclusions from the evidence presented.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). A genuine issue of material fact must be established by substantial evidence. *Id.*

Although we view the evidence in the light most favorable to the nonmoving party, the nonmoving party is required to present more than “mere averments” to withstand a motion for summary judgment and must produce “specific facts showing that there is a genuine issue for trial.” *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995) (quotation omitted). “Speculation, general assertions, and promises to produce evidence at trial are not sufficient to create a genuine issue of material fact . . .” *Id.*

Appellant argues on appeal that “the district court erred in finding this [assault] sudden and unforeseeable,” thereby relieving respondent of common-carrier liability.

A person generally has no legal duty to act on behalf of or to protect another person, even if the person knows that action is imperative. *Erickson v. Curtis Inv. Co.*, 447 N.W.2d

165, 169 (Minn. 1989). The existence of a legal duty “depends . . . on the relationship of the parties and the foreseeable risk involved.” *Id.* at 168-69.

A legal duty to act for the protection of an individual arises when there is a special relationship between the parties. *Donaldson v. Young Women’s Christian Ass’n of Duluth*, 539 N.W.2d 789, 792 (Minn. 1995). The Minnesota Supreme Court has determined that common carriers have a special relationship giving rise to a duty to protect passengers. *Id.* But, despite this special relationship, a common carrier’s duty to protect passengers is limited to foreseeable harm. *Erickson*, 447 N.W.2d at 168.

In a case such as this one, where one passenger is alleged to have attacked another, the common carrier’s liability depends on whether the common carrier knew or had reason to know that danger existed. *See Boone v. Martinez*, 567 N.W.2d 508, 510 (Minn. 1997) (holding that liability exists only when a proprietor has notice of the danger, an adequate opportunity to protect the injured party, fails to take reasonable steps to protect the injured party, and that the resulting injury is foreseeable). In the absence of foreseeable danger, the common carrier has no duty to act. *Id.*

The video record here depicts appellant seated quietly on the bus. The unidentified man is standing nearby. The two have no contact or interaction for several minutes. The record does not reveal what, if anything, provoked the altercation. The district court reviewed the record and could discern “no warning at all—no appreciable indication that either [appellant] or the unidentified man were contemplating any sort of attack.” Appellant presented the district court no other admissible evidence to suggest that respondent’s bus driver could or should have foreseen trouble. In her deposition, appellant

admitted that she did not communicate any concerns she had to the bus driver before the altercation. And the record contains no evidence that appellant or anyone else advised the bus driver of any danger on the bus before the altercation.

Appellant argued to the district court that the unidentified man harassed her before the start of the surveillance footage, and that the unseen events should have alerted the bus driver that there was a safety risk. But, aside from appellant's personal assertion that the bus driver should have foreseen the risk despite having not been alerted to it, appellant produced no evidence to the district court suggesting that the altercation was foreseeable. As the district court correctly noted, the altercation took place on a busy bus with many witnesses. No witness statements or depositions from other passengers were produced to support appellant's claim that the altercation was foreseeable. Appellant's lone argument is that the bus driver, with whom she had not communicated at all before the altercation, should have foreseen trouble. This is insufficient to survive summary judgment. The district court concluded that, "[e]ven viewing the evidence available in [the] light most favorable to [appellant], there is simply nothing in the record that would support a finding that the attack that day was foreseeable," and that summary judgment was therefore appropriate. Upon careful review of the record, we agree with the district court in all respects.

In the alternative, the district court determined that respondent is also entitled to both statutory and vicarious official immunity on these facts. Although it is not necessary to our decision, we see no error in the district court's alternative reasoning. Official immunity applies to respondent's bus drivers when they make judgments about what to do

when an altercation occurs on a bus. *See Watson by Hanson v. Metro Transit Comm'n*, 553 N.W.2d 406, 414 (Minn. 1996) (holding that official immunity protects discretionary rather than ministerial duties). Given the spontaneous altercation depicted on the surveillance video, respondent's bus driver was required to exercise his discretion. He did so by directing both belligerents to get off the bus. Appellant challenges that exercise of discretion as negligence, but provides no legal argument supporting her contention that the supreme court's reasoning in *Watson* is inapplicable here. We see no error in the district court's alternative basis for summarily adjudicating appellant's claim by way of official immunity. Likewise, appellant provides no cognizable legal argument on appeal as to why the district court's statutory-immunity analysis is in error. Her argument is that respondent should be "a neutral party and not let hate exist," and she cites no legal authority beyond generalities of this sort. We decline to reach the statutory-immunity issue because appellant has waived this assignment of error by inadequately briefing it. *See Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (declining to address claims on appeal that are not supported by any legal analysis or citation).

In short, appellant fails to show error in the district court's immunity analysis just as she fails to demonstrate on appeal that there is a genuine issue of material fact remaining for trial on respondent's liability as a common carrier.

The district court did not err in granting summary judgment.

Affirmed.