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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1996**

Melissa Casanova,
Appellant,

vs.

Tri-County Community Corrections,
Respondent.

**Filed July 27, 2020
Affirmed
Cochran, Judge**

Polk County District Court
File No. 60-CV-18-2160

Darren M. Sharp, Lauren A. D’Cruz, Schaefer Halleen, LLC, Minneapolis, Minnesota (for appellant)

Margaret A. Skelton, Frank E. Langan, Ratwik, Roszak & Maloney, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Cochran, Judge; and Smith, John, Judge.*

UNPUBLISHED OPINION

COCHRAN, Judge

Appellant Melissa Casanova appeals the summary-judgment dismissal of her claims under the Minnesota Human Rights Act (MHRA) and her claim for tortious interference

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

with contract against respondent Tri-County Community Corrections. Because no genuine issues of material fact exist and because the district court did not err in its application of the law, we affirm.

FACTS

Respondent Tri-County Community Corrections (TCCC) is a government entity formed by Norman, Polk, and Red Lake counties to provide correctional services. TCCC operates the Northwest Regional Corrections Center (the NWRCC), a jail facility located in Crookston, Minnesota. At all times relevant to this appeal, appellant's then-husband David Casanova (David) was employed by TCCC as the jail administrator at the NWRCC.

TurnKey Corrections is a company that provides commissary services to correctional facilities. TurnKey has a contract with TCCC to provide commissary items and vending services to inmates at the NWRCC. Appellant was a part-time, at-will employee of TurnKey. Her job duties included filling vending machines and commissary orders at the NWRCC. TCCC granted appellant a security clearance to access the NWRCC and fulfill her job duties for TurnKey. In November 2017, following events discussed in more detail below, TCCC revoked appellant's security clearance, making it impossible for her to fulfill her TurnKey duties at the NWRCC. Appellant was not an employee of TCCC at the time her security clearance was revoked or any other relevant time.¹

¹ Appellant argued to the district court that she was both a TCCC employee and a TurnKey employee. The district court found that appellant was not a TCCC employee, and appellant does not challenge that finding on appeal.

Appellant sued TCCC, alleging claims of (1) marital discrimination in employment in violation of MHRA, (2) marital discrimination in public services in violation of the MHRA, (3) sex discrimination in employment in violation of the MHRA, (4) sex discrimination in public services in violation of the MHRA, (5) reprisal in violation of the MHRA, and (6) common-law tortious interference with contract. TCCC moved for summary judgment on all of appellant's claims, which the district court granted. Only the latter three claims are at issue in this appeal. The parties do not disagree on the fundamental facts underlying appellant's latter three claims, but they disagree over the legal implication of those facts. The evidence in the record, viewed in the light most favorable to appellant, establishes the following:

In September 2017, appellant went to David's office at the NWRCC. David was not present. She looked at David's phone, which was on his desk, and saw that David had received a text message from a subordinate TCCC employee asking him for a kiss. When David returned to his office, appellant asked him about the message. David told appellant that the subordinate had accidentally sent the message to him. Appellant did not believe David. She attempted to leave David's office with his phone to show the message to David's boss, the executive director of TCCC. Appellant planned to show the message to David's boss because she believed that TCCC's policies prohibited David from having a romantic relationship with a subordinate. David told appellant that the executive director would not believe her because he had already told the executive director "a bunch of things about her." According to appellant, David blocked her from leaving his office with the phone, and smashed her fingers in his office door in the process. He also threatened to use

to the “man down” button if she did not give him the phone back. Appellant took a picture of the text message with her own phone, and David eventually let her leave his office without the phone. Another TCCC employee heard the altercation in David’s office and cleared inmates out of the adjacent hallway.

On the day of this incident, appellant called TCCC’s executive director and left a voicemail message. Appellant called the executive director intending to inform him about the text message between David and his subordinate. Appellant does not remember exactly what she said in the voicemail, but testified at her deposition that she provided her name and indicated that she had “some concerning information” about David. The executive director received the message but did not call appellant back.² Before appellant called the executive director, David had told the executive director that he and appellant had a confrontation over a phone in his office and that appellant might be calling him. David did not inform the executive director about the subordinate’s text message at that time.

Between September 2017 and November 2017, appellant and David’s relationship was “rocky.” When they argued, David “regularly” threatened to revoke her NWRCC security clearance or have it revoked. On November 20, 2017, appellant sent her TurnKey

² The executive director claims that he called appellant back after he received the voicemail. He testified at his deposition that he called appellant back, she did not answer, and he did not leave a voicemail. We recite the facts in a light most favorable to appellant, consistent with our standard of review in summary-judgment appeals. *See Commerce Bank v. West Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015) (indicating that on appeal from summary judgment, “[w]e view the evidence in the light most favorable to the party against whom summary judgment was granted”).

superiors an email informing them that David had threatened to revoke her security clearance. She indicated in the email that she wanted to continue working for TurnKey.

On November 21, 2017, appellant and David got into another argument at their home. Appellant, still suspicious that David was having an affair with the subordinate, grabbed David's phone out of his pocket. David told appellant to give his phone back, but she would not. David pushed appellant onto a couch, held her down, and told her not to read his messages. David eventually let appellant go and the two agreed to read his messages together later in the day. Appellant then left the house and brought David's phone with her. Before she returned home, she began reading David's messages. The messages were being deleted as she read them. The messages that she read unambiguously demonstrated that David was having an affair with the subordinate.

Appellant returned home and argued with David. She called the subordinate, who answered but denied having a relationship with David. Appellant again threatened to tell TCCC's executive director about David's affair. A physical altercation ensued. According to appellant, David trapped her in their bedroom and threw a laptop. The laptop shattered into pieces, some of which hit her. Appellant escaped the room and David followed her into the kitchen. Appellant recalled that David picked up a knife while in the kitchen and then threatened to cut his hand and report that appellant had cut him. Appellant suffered bruises on her hands and face as a result of the incidents on that day.

That night, David reported his version of the November 21 events to TCCC's executive director. He told the executive director that he and his wife had a major dispute,

that he had left the house, and that his wife had taken his phone. A few days later, appellant told David that she wanted a divorce.

On November 22, the next day, TCCC's executive director decided to revoke appellant's security clearance. The executive director felt that it was not appropriate for appellant to continue to work at the NWRCC for TurnKey because it would exacerbate existing tensions in the workplace to have David and appellant in the same building. That day, appellant learned from TurnKey that her security clearance for the NWRCC had been revoked.

In deciding to revoke appellant's security clearance, TCCC's executive director relied exclusively on information provided by David. He did not speak with appellant about either the September or November incidents, or conduct any other investigation. But he testified at his deposition that David never mentioned the idea of revoking appellant's security clearance.

TCCC's executive director reached out to TurnKey management to inform them of the decision to revoke appellant's security clearance. At his deposition, TCCC's executive director testified the reason that he revoked appellant's security clearance was "the relationship and resulting dysfunction within the home, which has the potential to infringe and impact the work environment." TCCC's executive director told TurnKey management that the decision to revoke appellant's security clearance was not based on performance and that he would not object to appellant working at another correctional facility for TurnKey. TurnKey offered appellant a position at another facility, but she declined the offer based on the hours and a longer commute.

On November 25, 2017, appellant sent an email to TCCC's executive director and TCCC's board of commissioners explaining her relationship with David, exposing David's affair with the subordinate, and telling her version of the recent incidents. She attached pictures of her bruising from the November incident and pictures of David's text messages with the subordinate. In response to appellant's email, TCCC's executive director placed David on paid administrative leave. TCCC paid for an independent, outside investigation into the allegation of employment misconduct against David. After interviewing appellant, TCCC's executive director, David, and the subordinate, the investigator concluded that TCCC's executive director alone decided to revoke appellant's security clearance, and that David was not involved in that decision. TCCC ultimately decided to terminate David's employment as jail administrator based on David's failure to disclose his relationship with the subordinate.

TCCC did not reinstate appellant's security clearance. TCCC's executive director testified at his deposition that, because the subordinate still worked at the NWRCC, there was a possibility that there would be conflict between appellant and the subordinate.

Based on the evidence in the record, the district court granted summary judgment to TCCC on all of appellant's claims in a thorough and detailed order. This appeal follows.

D E C I S I O N

Appellant argues that the district court erred in granting summary judgment to TCCC on her claims of tortious interference with contract, reprisal under the MHRA, and sex discrimination in public services under the MHRA. We address appellant's arguments with respect to each claim in turn, but we first address the applicable standard of review.

A district court must grant a motion for summary judgment “if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. Summary judgment is “inappropriate when reasonable persons might draw different conclusions from the evidence presented.” *Warren v. Dinter*, 926 N.W.2d 370, 375 (Minn. 2019) (quotation omitted).

On appeal from summary judgment, we apply a de novo standard of review. *Visser v. State Farm Mut. Auto. Ins. Co.*, 938 N.W.2d 830, 832 (Minn. 2020). “[W]e examine whether there are any genuine issues of material fact and whether the district court erred in its application of the law.” *Kenneh v. Homeward Bound, Inc.*, ___ N.W.2d ___, ___, 2020 WL 2893352, at *3 (Minn. June 3, 2020). In doing so, we view the evidence in the light most favorable to the party against whom summary judgment was granted and resolve all doubts and factual inferences against the moving party. *Warren*, 926 N.W.2d at 375. We “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).

I. The district court did not err in granting summary judgment to TCCC on appellant’s tortious-interference-with-contract claim.

Appellant’s tortious-interference-with-contract claim alleges that TCCC and David intentionally “procured the breach of [appellant’s] TurnKey employment contract.” The district court granted summary judgment to TCCC on this claim based on its conclusion that TCCC, as a government entity, was entitled to vicarious official immunity against the claim. The district court also concluded that even if TCCC was not entitled to vicarious official immunity, appellant could not establish all of the elements of her claim.

Appellant argues that the district court erred in granting summary judgment on the claim. Appellant contends that TCCC is not entitled to vicarious official immunity because the decision to revoke appellant's security clearance was based on false information provided by David to TCCC's executive director and because David provided this false information to further his malicious desire to have appellant's security clearance revoked. According to appellant, under the "cat's paw" theory of liability, David's malicious intent may be imputed to TCCC and, as a result, TCCC is not entitled to vicarious official immunity against the claim. Appellant also challenges the district court's alternative conclusion that TCCC is entitled to summary judgment because the evidence does not establish all of the elements of a tortious-interference-with-contract claim.

We first address the applicability of the "cat's paw" theory of liability to this claim. We then turn to the district court's determination that TCCC is entitled to vicarious official immunity, and finally we discuss the district court's alternative conclusion that appellant's evidence failed to establish all elements of this claim.

A. The "cat's paw" theory of liability does not apply to appellant's tortious-interference-with-contract claim because appellant was not an employee of TCCC.

The "cat's paw" theory of liability has been applied by courts in the context of employment-discrimination claims brought by an employee against an employer. "In the employment discrimination context, 'cat's paw' refers to a situation in which a biased subordinate, who lacks decisionmaking power, uses the formal decisionmaker as a dupe in a deliberate scheme to trigger a discriminatory employment action." *Qamhiyah v. Iowa State Univ. of Sci. & Tech.*, 566 F.3d 733, 742 (8th Cir. 2009) (describing the "cat's paw"

theory in a case brought by a professor against her university-employer, where the professor alleged that the board of regents denied her tenure application based on discrimination that existed at lower-levels of her tenure review). “The purpose of this rule is to ensure that an employer cannot shield itself from liability for unlawful termination by using a purportedly independent person or committee as the decisionmaker where the decisionmaker merely serves as the conduit, vehicle, or rubber stamp by which another achieves his or her unlawful design.” *Cherry v. Siemens Healthcare Diagnostics, Inc.*, 829 F.3d 974, 977 (8th Cir. 2016).³

Appellant argues that we should apply the “cat’s paw” theory to her tortious-interference-with-contract claim against TCCC, a third-party who contracted with her employer. Appellant contends that because TCCC’s executive director relied exclusively on false and misleading information provided by her then-husband David when deciding to revoke appellant’s security clearance, the “cat’s paw” theory of liability applies

³ The origins of the theory, and its name, have been described by the Seventh Circuit Court of Appeals:

In the fable of the cat’s paw (a fable offensive to cats and cat lovers, be it noted), a monkey who wants chestnuts that are roasting in a fire persuades an intellectually challenged cat to fetch the chestnuts from the fire for the monkey, and the cat does so but in the process burns its paw. In employment discrimination law the “cat’s paw” metaphor refers to a situation in which an employee is fired or subjected to some other adverse employment action by a supervisor who himself has no discriminatory motive, but who has been manipulated by a subordinate who does have such a motive and intended to bring about the adverse employment action.

Cook v. IPC Int’l Corp., 673 F.3d 625, 628 (7th Cir. 2012).

to her tortious-interference-with-contract claim.⁴ Appellant contends that the evidence of David’s malicious bias against her—evidence that David regularly threatened to have her security clearance at NWRCC revoked, evidence that David physically prevented her from taking his phone to show the executive director his text messages, and evidence that David assaulted her in their home when appellant again threatened to disclose his affair to the executive director—is evidence that TCCC’s decision to revoke her security clearance, made by TCCC’s executive director, was motivated by that same malice.⁵

TCCC argues that the “cat’s paw” theory applies only to employment-discrimination claims against an employer, and accordingly, does not apply to appellant’s claim for tortious interference with contract. We agree.

As noted above, the “cat’s paw” theory of liability has been applied in the employment law context. The federal circuit courts of appeals and the Supreme Court have all adopted some version of “cat’s paw” liability in employment-discrimination cases or employment-retaliation cases. *See Staub v. Proctor Hosp.*, 562 U.S. 411, 422, 131 S. Ct. 1186, 1194 (2011) (applying “cat’s paw” theory to an employment-discrimination claim under the Uniformed Services Employment and Reemployment Rights Act); *Qamhiyah*, 566 F.3d at 742; *Ossanna v. Nike, Inc.*, 365 Or. 196, 207 (Or. 2019) (observing, in a case involving a lawsuit brought by a former employee against

⁴ TCCC argues that appellant did not raise her “cat’s paw” theory argument to the district court. We have reviewed the record and determined that she did raise the argument.

⁵ It is clear that, when the evidence is viewed in a light most favorable to appellant, there is sufficient evidence to establish that David had a motive to terminate appellant’s security clearance either to prevent appellant from reporting his affair with the subordinate or to retaliate against appellant for discovering and complaining to him about the affair.

his former employer, that all of the federal circuit courts of appeals have adopted the “cat’s paw” theory “in an employment discrimination or retaliation case”). We too have recognized the applicability of “cat’s paw” liability to employment-discrimination claims in non-precedential unpublished opinions. *See, e.g., Abou v. Univ. of Minn.*, No. A16-1948, 2017 WL 2836175, at *5 n.3 (Minn. App. July 3, 2017) (discussing “cat’s paw” liability in a case involving a lawsuit brought by an assistant professor against his employer). But there is no case that we are aware of applying the “cat’s paw” theory of liability to a tortious-interference-with-contract claim. And, appellant has not identified any caselaw to support her argument that the “cat’s paw” theory of liability applies more broadly than only to employment claims.⁶

Appellant also argues that “cat’s paw” liability is generally applicable because it is simply a method of determining proximate cause. We are not persuaded. The theory is not a method of determining proximate cause—it instead requires a showing of proximate cause as a prerequisite to its applicability. *See Staub*, 562 U.S. at 422, 131 S. Ct. at 1194 (“We therefore hold that if a supervisor performs an act motivated by antimilitary animus that is *intended* by the supervisor to cause an adverse employment action, and if that act is

⁶ Appellant cites *Dinkens v. New Dawn Enterprises, LLC*, 8 F. Supp. 3d 1313, 1319-20 (D. Kan. 2014), to imply that the “cat’s paw” theory has been applied to a claim of tortious interference. In *Dinkens*, the federal district court discussed *Staub* and the “cat’s paw” theory of liability in addressing a tortious interference with an expected business relationship. 8 F. Supp. 3d at 1318. But the *Dinkens* court explicitly noted that the case was “not a cat’s paw case.” *Id.* Thus, the court did not apply the “cat’s paw” theory of liability. *Id.*

a proximate cause of the ultimate employment action, then the employer is liable under the USERRA.” (Footnote omitted)).

Our review of the caselaw leads us to conclude that “cat’s paw” liability has been applied to claims for employment discrimination or retaliation against an employer. Appellant asks us to extend the application of “cat’s paw” liability to her tortious-interference-with-contact claim against TCCC, who was not her employer. As an error-correcting court, it is not our role to extend the law or create public policy. *See Clark v. Connor*, 843 N.W.2d 785, 788 (Minn. App. 2014) (“[B]ecause this court is limited in its function to correcting errors it cannot create public policy.”). For these reasons, we decline to apply the “cat’s paw” theory of liability to appellant’s tortious-interference-with-contract claim against TCCC.

B. The district court did not err in concluding that TCCC was entitled to vicarious official immunity against appellant’s tortious-interference-with-contract claim.

The district court granted summary judgment to TCCC on appellant’s tortious-interference-with-contract claim based on its conclusion that TCCC was entitled to vicarious common-law official immunity concerning the executive director’s decision to revoke her security clearance. “Common law official immunity generally applies to prevent a public official charged by law with duties which call for the exercise of his judgment or discretion from being held personally liable to an individual for damages.” *Schroeder v. St. Louis County*, 708 N.W.2d 497, 508 (Minn. 2006) (quotation omitted). The purpose of official immunity is to “insure that the threat of potential liability does not unduly inhibit the exercise of discretion required of public officers in the discharge of their

duties.” *Rico v. State*, 472 N.W.2d 100, 107 (Minn. 1991) (quotation omitted). “Official immunity does not extend to officials charged with the execution of ministerial, rather than discretionary, functions.” *Schroeder*, 708 N.W.2d at 505 (quotation omitted). And, “[o]fficial immunity does not apply: (1) when a ministerial duty is either not performed or is performed negligently, or (2) when a willful or malicious wrong is committed.” *Id.* “In general, when a public official is found to be immune from suit on a particular issue, his government employer will enjoy vicarious official immunity from a suit arising from the employee’s conduct.” *Id.* at 508 (citing *Anderson v. Anoka Hennepin Indep. School Dist. 11*, 678 N.W.2d 651, 663-64 (Minn. 2004)).

Here, the district court concluded that TCCC, a government entity, was entitled to vicarious official immunity because TCCC’s executive director made a discretionary decision, without malicious intent, to terminate appellant’s security clearance. Appellant argues that the district court erred by extending vicarious official immunity to TCCC because the willful-or-malicious-wrong exception applies to TCCC’s decision to revoke her security clearance.

For the purposes of the willful-and-malicious-wrong exception, “[m]alice means nothing more than the intentional doing of a wrongful act without legal justification or excuse, or, otherwise stated, the willful violation of a known right.” *Rico*, 472 N.W.2d at 107 (quotation omitted). “In the official immunity context, willful and malicious are synonymous.” *Id.* To defeat official immunity, the “defendant must have reason to know that the challenged conduct is prohibited,” meaning that the official must know his act is wrongful at the time he commits the act. *Id.*

Appellant’s argument that the willful-and-malicious-wrong exception applies relies on the “cat’s paw” theory. Appellant contends that David influenced TCCC’s executive director’s decision to revoke appellant’s security clearance and, as a result, David’s malicious intent precludes vicarious official immunity. But as discussed above, we conclude that appellant’s “cat’s paw” theory is inapplicable to this tortious-interference-with-contract claim. And, according to the executive director’s undisputed testimony, David never discussed revoking appellant’s security clearance with him and it was the executive director alone who revoked appellant’s security clearance. Moreover, appellant does not contend that the executive director acted maliciously when he revoked her security clearance.

Because TCCC’s executive director made the decision to revoke appellant’s security clearance, and because his decision—while misinformed—was not malicious, we conclude that the district court did not err in determining that TCCC was entitled to common-law vicarious official immunity against appellant’s tortious-interference-with-contract claim.

C. There is no evidence that TCCC intentionally procured a breach in appellant’s contract with TurnKey.

The district court alternatively concluded that the evidence in the record did not establish the elements of a tortious-interference-with-contract claim. “[T]ortious interference with contract has five elements: (1) the existence of a contract; (2) the alleged wrongdoer’s knowledge of the contract; (3) intentional procurement of its breach; (4) without justification; and (5) damages.” *Sysdyne Corp. v. Rousslang*, 860 N.W.2d 347,

351 (Minn. 2015) (quotation omitted). The district court determined that there was no genuine issue of material fact that TCCC did not intentionally procure a breach of appellant's employment contract with TurnKey and that TCCC had a legitimate justification for revoking appellant's security clearance. Appellant argues that the district court erred because, considering the evidence of David's malicious intent, there are genuine issues of material fact regarding whether TCCC intentionally procured a breach of contract and whether TCCC's justification for revoking her security clearance was justified.

In our de novo review of the record, we agree with the district court's assessment that no genuine issues of material fact exist regarding whether TCCC intentionally procured a breach of appellant's contract with TurnKey. *Intentional* procurement of breach is an element of a tortious interference with contract claim. *See Sysdyne*, 860 N.W.2d at 351. Intent, or intentionally, means that the actor wants to cause the consequence of his act or knows that his act is substantially certain to cause those consequences. *See Victor v. Sell*, 222 N.W.2d 337, 339-40 (Minn. 1974); *see also* 4A *Minnesota Practice*, CIVJIG 60.10 (Supp. 2019) (defining "intent" for intentional torts). As discussed above, we conclude that the "cat's paw" theory does not apply to this case and that David's malice is not imputed to TCCC. Further, the undisputed evidence shows that when the executive director revoked appellant's security clearance, he explained to TurnKey management that he was not revoking appellant's security clearance based on performance issues, and that he would not object to appellant working for TurnKey at a different facility. TurnKey, in fact, did offer appellant a position at a different correctional facility, but appellant turned

the offer down based on a longer commute and the hours she would be required to work. Even viewing the evidence in a light most favorable to appellant, we conclude that there is no genuine issue of material fact regarding intent. The undisputed facts demonstrate that TCCC did not *intend* to cause appellant to lose her job with TurnKey when it revoked her security clearance.

II. The district court did not err in dismissing appellant’s reprisal claim at summary judgment.

The next claim at issue is appellant’s reprisal claim, brought under the MHRA. It is an “unfair discriminatory practice” to “intentionally engage in any reprisal against any person because that person . . . opposed a practice forbidden under [the MHRA].” Minn. Stat. § 363A.15 (2018). “A reprisal includes, but is not limited to, any form of intimidation, retaliation, or harassment.” *Id.* Appellant’s reprisal claim alleged that TCCC revoked her security clearance because she opposed a practice forbidden under the MHRA—specifically, what she reasonably believed to be David’s sexual harassment of the subordinate.

The district court granted TCCC summary judgment on this claim because the evidence, viewed in the light most favorable to appellant, failed to establish that appellant held a good-faith, reasonable belief that the practice she opposed was sexual harassment within the meaning of the MHRA. Appellant asserts that the district court erred in granting summary judgment because genuine issues of material fact exist regarding whether her purported belief that David was engaged in sexual harassment was reasonable.

A plaintiff may prove a reprisal claim by the direct method or by “using circumstantial evidence in accordance with the three-part burden-shifting test set out by the United States Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 [(1973)].” *Hoover v. Norwest Private Mortg. Banking*, 632 N.W.2d 534, 542 (Minn. 2001); *see also Friend v. Gopher Co.*, 771 N.W.2d 33, 37-40 (Minn. App. 2009) (explaining the direct method of proof). Appellant argues that she put forth sufficient evidence to survive summary judgment under either the direct method or the *McDonnell Douglas* method. We conclude that, regardless of whether the direct method or the *McDonnell Douglas* analysis applies, there are no genuine issues of material fact regarding whether the conduct underlying appellant’s reprisal claim—her purported objections to sexual harassment perpetrated by David—was statutorily protected conduct.

Our supreme court has acknowledged two possible standards to govern whether a plaintiff has alleged statutorily protected conduct under the MHRA—one standard that requires the plaintiff to “plead opposition to a practice that is actually forbidden under the MHRA” and one standard that merely requires the plaintiff to plead “a good-faith, reasonable belief that the opposed practice was forbidden under the MHRA.” *Bahr v. Capella Univ.*, 788 N.W.2d 76, 82 (Minn. 2010). The Minnesota Supreme Court has not yet decided which of these standards apply to a reprisal claim under the MHRA. *See id.* (declining to decide whether a plaintiff must demonstrate that she opposed a practice that was actually forbidden under the MHRA to establish a reprisal claim). The parties appear to agree that the good-faith, reasonable-belief standard applies. Because we conclude that appellant’s reprisal claim fails even under the good-faith, reasonable-belief

standard—a standard that is more favorable to appellant—we need not determine which standard applies.

Although the Minnesota Supreme Court has not adopted the good-faith, reasonable-belief standard, it has discussed the federal courts' application of the standard and provided some helpful guidance on its application:

When determining whether a party has a reasonable belief, federal courts in Title VII cases appear to use two different tests: (1) whether a reasonable fact-finder could believe that the conduct complained of was unlawfully discriminatory, *see, e.g., Wilkerson v. New Media Tech. Charter Sch. Inc.*, 522 F.3d 315, 322 (3d Cir.2008) (“[I]f no reasonable person could have believed that the underlying incident complained about constituted unlawful discrimination, then the complaint is not protected.”); or (2) whether the party’s belief is unreasonable in light of applicable substantive law, *see, e.g., Butler v. Ala. Dep’t of Transp.*, 536 F.3d 1209, 1214 (11th Cir.2008) (stating that a party’s belief is unreasonable if “binding precedent squarely holds that [the] particular conduct is not an unlawful employment practice,” and “no decision of [the presiding court] or of the Supreme Court has called that precedent into question or undermined its reasoning”).

Bahr, 788 N.W.2d at 83. The supreme court acknowledged that “the reasonableness of a party’s belief must be connected to the substantive law” and that “for there to be statutorily protected conduct a party does have to allege that the party had a good-faith, reasonable belief that the opposed practices were prohibited by the MHRA.” *Id.* at 83-84. The supreme court indicated that “[i]f a practice is not unlawful under the plain terms of the MHRA, a party’s belief that the practice is unlawful cannot be reasonable,” and that the “position that the basis for reasonable belief need not be tied to substantive law, in some way, would allow a plaintiff to rely entirely on the plaintiff’s own reasoning and sense of

what is discriminatory.” *Id.* at 84. “[T]here is both a subjective and objective element to a good-faith, reasonable-belief standard.” *Id.* at 82.

Because a plaintiff’s good-faith, reasonable belief must be rooted in the substantive law for there to be statutorily protected conduct, we turn to the text of the MHRA. The MHRA defines “sexual harassment”:

“Sexual harassment” includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when:

- (1) submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;
- (2) submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual’s employment, public accommodations or public services, education, or housing; or
- (3) that conduct or communication has the purpose or effect of substantially interfering with an individual’s employment, public accommodations or public services, education or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment.

Minn. Stat. § 363A.03, subd. 43 (2018).

The district court concluded that appellant did not have a reasonable, good-faith belief that David’s relationship with the subordinate was a practice forbidden under the MHRA (i.e. “sexual harassment”) because the information available to appellant demonstrated that the subordinate was a “willing participant in the affair.” The district court concluded that “no reasonable jury could conclude that [appellant] believed that the

sexual contact between David Casanova and [the subordinate] was unwelcome, constituted a quid pro quo, or otherwise interfered with [the subordinate's] employment, so as to objectively constitute 'sexual harassment' under the MHRA."

Appellant argues that the evidence, viewed in a light most favorable to her claim, demonstrates that she had a good-faith, reasonable belief that David was engaged in sexual harassment. She argues that her reprisal claim does not fail simply because her good-faith, reasonable belief that David's conduct constituted "sexual harassment" was ultimately incorrect. Appellant argues that she believed David's relationship violated TCCC's policy, that it was impossible for her to know whether David's relationship with the subordinate was consensual because David lied about it, and that the power imbalance between a supervisor and a subordinate is inherently suspect. We are not persuaded that the evidence in the record leaves a genuine issue of material fact regarding whether appellant held an objectively reasonable belief that David's affair with the subordinate constituted sexual harassment under the MHRA.

While appellant may have reasonably believed that David's affair with the subordinate violated TCCC's policy,⁷ we disagree that her belief is sufficient to demonstrate a good-faith, reasonable belief that David's conduct violated the MHRA. As noted above, a good-faith, reasonable belief must be rooted in the substantive law, not in

⁷ TCCC's policy noted that sexual harassment "is a form of employee misconduct that is demeaning to another person, undermines the integrity of the employment relationship, and is strictly prohibited." We agree that the evidence, viewed in a light most favorable to appellant, demonstrates that appellant had a good-faith, reasonable belief that David's relationship with the subordinate violated TCCC's policy.

the policies of a particular employer. *Bahr*, 788 N.W.2d at 83-84; *cf. Kenneh*, 2020 WL 2893352, at *6-7 (rejecting appellant’s argument that her MHRA claim should be evaluated based on her former employer’s “employee guide” and holding that the text of the MHRA defines the conduct that violates the act). And, as the district court found, there was no information available to appellant to suggest that David’s affair with the subordinate was unwelcome. Appellant’s suspicion that David was engaged in an affair was based on a text message *from* the subordinate asking David for a kiss. While there is precedent to support the premise that a supervisor may use his position to inconspicuously harass a subordinate, not all relationships between a supervisor and their subordinate employee constitute sexual harassment. *Cf. Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 763, 118 S. Ct. 2257, 2269 (1998) (recognizing that “a supervisor’s power and authority invests his or her harassing conduct with a particular threatening character”). Appellant presented no evidence that would suggest that David used his position to harass the subordinate who sent him the text asking for a kiss.

In the absence of any information to suggest that David’s conduct towards the subordinate was unwelcome or constituted sexual harassment, we conclude that the district court did not err when it determined that there was no genuine issue of material fact regarding the reasonableness of appellant’s belief. Consequently, we conclude that it was not error to grant summary judgment to TCCC on appellant’s reprisal claim on the grounds that the evidence could not establish that appellant opposed conduct that she reasonably believed to be prohibited by the MHRA.

III. The district court did not err in dismissing appellant’s sex-discrimination-in-public-services claim under the MHRA.

Finally, appellant argues that the district court erred by dismissing her sex-discrimination-in-public-services claim under the MHRA. “It is an unfair discriminatory practice to discriminate against any person in the access to, admission to, full utilization of or benefit from any public service because of . . . sex.” Minn. Stat. § 363A.12, subd. 1 (2018). The MHRA defines “public service” as “any public facility, department, agency, board or commission, owned, operated or managed by or on behalf of the state of Minnesota, or any subdivision thereof, including any county, city, town, township, or independent district in the state.” Minn. Stat. § 363A.03, subd. 35 (2018). Appellant claims that she was deprived of the full utilization and benefit of TCCC because she was deprived of her security clearance, and that TCCC revoked her clearance because of her sex.

There are two ways to establish discrimination in public services. “A finding that an unfair discriminatory practice has occurred may be made when the record establishes (1) an adverse difference in treatment with respect to public services of one or more persons when compared to the treatment accorded others similarly situated except for the existence of an impermissible factor such as race, color, creed, sex, etc.; or (2) treatment so at variance with what would reasonably be anticipated absent discrimination that discrimination is the probable explanation.” *See City of Minneapolis v. Richardson*, 239 N.W.2d 197, 202 (Minn. 1976). The purpose of these two standards is to “guide the evaluation and review of evidence in discrimination cases.” *Id.*

We first observe that appellant's claim that TCCC revoked her security clearance based on her sex is inconsistent with her theory of the case. Her theory asserts that David caused the revocation of her security clearance in an effort to prevent her from disclosing his affair with the subordinate. She claims that TCCC's executive director was duped by David's false and misleading information about the September and November incidents. Neither David nor the executive director, according to appellant's theory of the case, decided to revoke appellant's security clearance because she is female.

We next turn to the district court's analysis of her claim. The district court concluded that appellant's sex-discrimination claim failed the similarly-situated standard. It determined that appellant failed to identify a similarly-situated male contract service provider who was involved in or accused of similar conduct but disciplined differently. The district court also determined that appellant and David were not similarly situated, and rejected appellant's assertion that evidence of favorable treatment afforded to David is evidence that appellant was discriminated against based on her sex.

On appeal, appellant maintains that the district court erred by failing to consider David a person "similarly situated" except for his gender. She maintains that a "relaxed standard" of comparison applies when the plaintiff submits evidence of pretext or discrimination beyond merely evidence of disparate treatment. *See Scott v. County of Ramsey*, 180 F.3d 913, 917 (8th Cir. 1999) (indicating that a "strong showing" of discrimination is needed only "when the only evidence of pretext or discrimination is disparate treatment"). TCCC argues that the district court properly concluded that

appellant is not similarly situated to David, and that a proper comparator under *Richardson* must be similarly situated in *all* respects except the comparator's gender.

We conclude that, even if a relaxed standard of comparison applies, David was so dissimilarly situated from appellant that evidence of TCCC's treatment towards him is not evidence that TCCC discriminated against appellant based on her sex. David was a TCCC employee—the jail administrator of the NWRCC. Appellant was a TurnKey employee with limited access to the NWRCC. Appellant's job duties, relationship to TCCC, and access to the facility were not comparable to those of David. The only similarity between appellant and David in this context is that both were involved in the incidents that led to TCCC's decision to revoke appellant's security clearance. We conclude that, even viewing the evidence in a light most favorable to appellant, comparison between TCCC's treatment of David to TCCC's treatment of appellant does not demonstrate sex discrimination.

The district court also concluded that the evidence failed to establish sex discrimination under the so-at-variance standard, which would require a showing that TCCC's treatment of appellant was "so at variance with what would reasonably be anticipated absent discrimination that discrimination is the probable explanation." *See Richardson*, 239 N.W.2d at 202. Appellant argues on appeal that the district court erred because the evidence, viewed in a light most favorable to her claim, establishes a genuine issue of material fact regarding whether her treatment was so at variance with reasonable expectations that the probable explanation is that TCCC revoked her security clearance based on her sex.

In applying the so-at-variance standard, a court must examine the totality of the circumstances surrounding the alleged discriminatory conduct. *State by Beaulieu v. City of Mounds View*, 518 N.W.2d 567, 572 (Minn. 1994). “The very purpose of the so-at-variance standard is to address less blatant acts of wrongful discrimination by allowing a fact finder to examine misconduct and weigh the circumstances to determine underlying motives by indirect evidence.” *Minneapolis Police Dept. v. Kelly*, 776 N.W.2d 760, 768 (Minn. App. 2010), *review denied* (Minn. Mar. 30, 2010).

Appellant argues that TCCC’s treatment of her was “so at variance” of what would reasonably be expected because (1) there was no investigation, (2) the executive director stated that he revoked appellant’s security clearance based on her marital problems with David, (3) appellant had never violated TCCC’s policies, (4) David received favorable treatment, and (5) the executive director gave warnings to other third-party-contractor employees before he revoked their security clearance. She argues that, given these circumstances, a jury could reasonably conclude that TCCC’s conduct was so at variance with what would reasonably be anticipated that discrimination on the basis of sex is the likely explanation.

We are not persuaded that there exists a genuine issue of material fact regarding whether TCCC’s decision to revoke appellant’s security clearance was “so at variance” with what would reasonably be expected that discrimination *based on sex* is likely. Appellant does not identify what treatment would be reasonably expected under these circumstances. She argues that the executive director gave warnings to other third-party-contractor employees before he revoked their security clearance. But the record

demonstrates that those contractor employees were women. The fact that they received a warning does not support an argument that appellant was treated differently based on her sex. The only evidence in the record to support a finding of sex discrimination is that David is male and appellant is female. We conclude that the district court did not err in determining that appellant's evidence, even viewed in a light most favorable to her claim, and under either the similarly-situated standard or the so-at-variance standard, failed to demonstrate that TCCC revoked her security clearance based on her sex.

Because the evidence, viewed in the light most favorable to appellant, failed to establish that TCCC revoked appellant's security clearance based on her sex, the district court did not err in dismissing appellant's sex-discrimination-in-public-services claim at summary judgment.

In sum, we affirm the district court's grant of summary judgment on all counts because no genuine issues of material fact exist and TCCC is entitled to judgment as a matter of law. We decline to extend the "cat's paw" theory of liability to appellant's tortious-interference-with-contract claim against a non-employer. We conclude that the district court did not err in concluding that TCCC is entitled to common-law vicarious official immunity against appellant's tortious-interference-with-contract claim and that the evidence does not support a conclusion that the willful-and-malicious-wrong exception applies. Alternatively, we determine that the evidence, viewed in a light most favorable to appellant, failed to establish that TCCC *intentionally* procured a breach of appellant's employment contract with TurnKey. We conclude that appellant's reprisal claim under the MHRA fails because the evidence does not establish that appellant held a good-faith,

reasonable belief that David was sexually harassing the subordinate. And we conclude that appellant's sex-discrimination-in-public-services claim fails because, under either the similarly-situated standard or the so-at-variance standard, the evidence does not support a finding that TCCC revoked appellant's security clearance based on her sex.

Affirmed.