This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0224

Lacey C. Washington,
Respondent,

vs.

State of Minnesota, et al.,
Defendants,

Minnesota Department of Corrections,
Appellant.

Filed September 7, 2021
Reversed and remanded
Worke, Judge

Ramsey County District Court
File No. 62-CV-19-5691

Zorislav R. Leyderman, The Law Office of Zorislav R. Leyderman, Minneapolis, Minnesota (for respondent)

Keith Ellison, Attorney General, Janine Kimble, Assistant Attorney General, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Cochran, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant argues that the district court erred in denying its motion for summary judgment on respondent's negligent-supervision claim. Because appellant has statutory

immunity from the negligent-supervision claim, we reverse and remand for the district court to enter summary judgment in favor of appellant.

FACTS

Michael J. Martin, a sentence-to-service (STS) supervisor for appellant Minnesota Department of Corrections (the DOC), was charged with several counts of criminal sexual conduct after respondent Lacey C. Washington reported that he coerced her into performing sexual acts on numerous occasions while she was incarcerated and working on the STS crew. The complaint summarizes the incidents by stating:

> In summary, [Martin] took [Washington] out on the crew and got her alone. He asked her to perform fellatio or have sexual intercourse. In return, he provided her with extra freedoms not allowed by jail rules, cigarettes and pop, and would drop her off to see her kids and tell her that it would "cost her" for doing that. [Martin] also told [Washington] not to tell anyone about the sexual relationship as she would get into trouble and he "knows people." He also said he is a person with power. [Washington] was afraid that if she did not do as [Martin] wanted, she would get into trouble at the jail or not be taken to see her kids.

Martin pleaded guilty to two counts of criminal sexual conduct.

The DOC terminated Martin and completed an internal investigation on Martin's supervisor. The investigation revealed that Martin did not complete his required 40 hours of annual training since his first year, and the supervisor agreed that he should have marked Martin below standard on his performance evaluations because of this. The investigation did not find anything to indicate that the concerns of Martin bringing inmates to buy pop and cigarettes were brought to the supervisor's attention.

The supervisor stated that there was no policy preventing one officer transporting a single inmate of the opposite gender. He also stated that who led the STS transports was limited based on the number of STS crew leaders assigned to an area. He stated that "because Martin was the only STS crew leader for Yellow Medicine and Chippewa [C]ounties, he would be the only DOC driver for taking crew members to/from jail and project sites, regardless of the size or gender makeup of the work crew." Finally, the supervisor noted that he is generally not present with the STS work crew when they are on project sites.

Washington filed a civil complaint against the state, the DOC, the commissioner of corrections, and Martin. The DOC moved to dismiss Washington's claims against it. The district court granted the DOC's motion on every claim except two: discrimination and sexual harassment under the Minnesota Human Rights Act (MHRA) and negligent supervision. The DOC moved for summary judgment on the remaining claims. The district court granted the DOC's motion in part by dismissing the MHRA claim as untimely. The district court denied the DOC's motion on the negligent-supervision claim. The district court concluded that "a reasonable jury could find that the [DOC] was negligent in its supervision of . . . Martin and that the source of [Washington]'s assault was related to . . . Martin's employment and a foreseeable risk of the profession." This appeal followed.

DECISION

The DOC argues that the district court erred by not granting summary judgment in its favor on Washington's negligent-supervision claim because the DOC has immunity.

“[D]enial of a motion for summary judgment is not ordinarily appealable, [but] an exception to this rule exists when the denial of summary judgment is based on rejection of a statutory or official immunity defense.” *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 655 (Minn. 2004). “We review a district court’s summary judgment decision de novo. In doing so, we determine 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) (citation omitted). We review the facts in the light most favorable to the nonmoving party. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017).

We review de novo whether immunity applies to the government. *Shariss v. City of Bloomington*, 852 N.W.2d 278, 281 (Minn. App. 2014). The party asserting immunity bears the burden of proving entitlement to that immunity. *Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997).

The DOC argues that it is entitled to statutory discretionary immunity under Minn. Stat. § 3.736, subd. 3(b) (2020). The district court recited the caselaw for this analysis in its order but concluded that there was a genuine issue of material fact regarding the foreseeability of Martin’s conduct.

Minn. Stat. § 3.736, subd. 3(b) states that “the state and its employees are not liable for . . . a loss caused by the performance or failure to perform a discretionary duty, whether or not the discretion is abused.” “A discretionary act is one which requires a balancing of complex and competing factors at the planning, rather than the operational, stage of

development." *Koelln v. Nexus Residential Treatment Facility*, 494 N.W.2d 914, 919 (Minn. App. 1993) (quotation omitted), *review denied* (Minn. Mar. 22, 1993). "Statutory immunity is narrowly construed because it is the exception to the general rule of government liability." *Gleason v. Metro Council Transit Operations*, 563 N.W.2d 309, 320 (Minn. App. 1997)*, aff'd in part on other grounds*, 582 N.W.2d 216 (Minn. July 30, 1998). "We have previously determined that decisions involving supervision and retention of employees are discretionary acts entitled to statutory immunity." *Id.*

Washington alleged in her complaint that the DOC owed her "a duty to control and prevent . . . Martin from intentionally or negligently inflicting personal injuries upon [her]. [The DOC] breached this duty of care when [it] failed to take action to prevent . . . Martin from sexually abusing [her]." Based on her brief and oral argument, it appears that the conduct she challenges is the policy allowing for single-officer transports of opposite-sex offenders and the negligence of Martin's supervisor. These claims are both discretionary because they are based on policy-level activity.

The district court misapplied the law by not applying and following the *Gleason* holding. The DOC is statutorily immune from Washington's negligent-supervision claim. We reverse the district court's order denying in part the DOC's motion for summary judgment and remand for the district court to enter summary judgment in favor of the DOC on the remaining claim.

Reversed and remanded.