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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-276**

Marvin Pirila,
Appellant,

Gail Francette,
Plaintiff,

vs.

Duane Grace,
Respondent,

John Gulland, et al.,
Respondents.

**Filed August 22, 2011
Affirmed
Worke, Judge**

Carlton County District Court
File No. 09-CV-10-934

Marvin Pirila (pro se appellant)

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Minnesota (for respondent Duane Grace)

Paul D. Reuvers, Stephanie A. Angolkar, Iverson Reuvers, Bloomington, Minnesota (for
respondents John Gulland, et al.)

Considered and decided by Worke, Presiding Judge; Wright, Judge; and Willis, Judge.*

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges the district court's grant of summary judgment, arguing that the district court erred by according respondents immunity as municipal authorities acting within their official capacities. We affirm.

DECISION

Appellant Marvin Pirila challenges the district court's grant of summary judgment in favor of respondents Thomson Township, John Gulland, Duane Grace, and Jeffrey Juntunen. When reviewing a grant of summary judgment, this court determines whether there are genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Summary judgment is appropriately 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) (citing Minn. R. Civ. P. 56.03). "We 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). Whether a genuine issue of material fact exists and

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

whether the district court erred in its application of the law are reviewed de novo. *Id.* at 77.

In cases involving municipalities, summary judgment is appropriate when a governmental entity has established that its actions are immune from civil liability. *Gutbrod v. County of Hennepin*, 529 N.W.2d 720, 723 (Minn. App. 1995). A municipality may be liable for torts committed by municipal officials, subject to certain exceptions. Minn. Stat. § 466.02 (2010). One such exception exists for claims “based upon the performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.” Minn. Stat. § 466.03, subd. 6 (2010). A “discretionary act,” for the purposes of official immunity, is an act involving “the exercise of individual judgment in carrying out [] official [] duties.” *Kari v. City of Maplewood*, 582 N.W.2d 921, 923 (Minn. 1998). Whether government immunity exists is a question of law, which this court reviews de novo. *Sletten v. Ramsey County*, 675 N.W.2d 291, 299 (Minn. 2004).

Appellant purchased a municipal building in Thomson Township, intending to remodel it into a mixed commercial and residential property. The project halted when appellant failed to obtain the requisite building permits and certificates of occupancy. Appellant commenced this action against respondents, which the district court dismissed on the ground that respondents are entitled to municipal immunity. Appellant first argues that the district court erred by granting Gulland, the township’s building official, immunity because he incorrectly interpreted the Minnesota building code throughout the renovation process. But even if Gulland erred in interpreting the building code, as

appellant alleges, such an error would have occurred within his discretionary role as a municipal official. *See Anderson v. City of Minneapolis*, 287 Minn. 287, 288, 178 N.W.2d 215, 217 (1970) (concluding that a city employee's oversight of a zoning ordinance was within the discretionary function of his permit-granting role and, therefore, entitled to immunity). The district court did not err by granting statutory immunity to Gulland.

Appellant also asserts that Grace, a building- and fire-code consultant, was not entitled to statutory immunity, arguing that Grace should have advocated for the use of an alternative building code earlier in the planning process. Grace was hired by Thomson Township and, therefore, was also acting in an official capacity on behalf of a municipality. Thus, like Gulland, Grace is protected by municipal immunity. *See id.*, 178 N.W.2d at 217. The district court did not err by granting statutory immunity to Grace.

Appellant also challenges the district court's extension of statutory immunity to Juntunen, the township's fire chief, arguing that Juntunen engaged in unprotected municipal conduct by instructing the township's fire department not to enter the building if there was a fire. But the record indicates that Juntunen believed that the roof of the building would collapse if the building caught fire, and Juntunen also expressed concern over the various fire hazards on the property. "Choice of the use of police and fire manpower involves the use of discretion and falls squarely within the statutory exception from liability expressed in subd. 6 of [section] 466.03." *Silver v. City of Minneapolis*, 284 Minn. 266, 271, 170 N.W.2d 206, 209 (1969). Assuming that Juntunen instructed

the fire department not to enter the building in the event of a fire, such an instruction would be entitled to immunity as a discretionary function. *See Larson v. Indep. Sch. Dist. No. 314*, 289 N.W.2d 112, 121 (Minn. 1979) (stating that statutory immunity applies to a municipal employee “whose policy-making duties include choosing between various alternatives, even if one of the alternatives is to do nothing”). The district court did not err by granting statutory immunity to Juntunen.

Because Gulland, Grace, and Juntunen were all entitled to statutory immunity, Thomson Township cannot be held liable for the actions of these officials. *See Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 316 (Minn. 1998) (stating that vicarious immunity “protects the governmental entity from suit based on the official immunity of its employee”); *Watson by Hanson v. Metro. Transit Comm’n*, 553 N.W.2d 406, 414 (Minn. 1996) (stating that a municipality is not liable for the torts of its officials when immunity protects the official from personal liability). The district court did not err by granting summary judgment in favor of respondents and dismissing appellant’s claims. Because we conclude that the district court did not err by granting summary judgment on the grounds of statutory immunity, we do not reach appellant’s official-immunity argument. *See Winkler v. Magnuson*, 539 N.W.2d 821, 827 (Minn. App. 1995) (stating that we may affirm summary judgment if it can be sustained on any ground), *review denied* (Minn. Feb. 13, 1996).

Affirmed.