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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0006**

Living Springs Church,  
Respondent,

vs.

City of Spring Lake Park,  
Appellant,

Galaxy Mechanical Contractor, Inc.,  
Defendant.

**Filed May 20, 2013  
Reversed and remanded  
Larkin, Judge**

Anoka County District Court  
File No. 02-CV-12-330

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Minnesota (for respondent)

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Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and  
Larkin, Judge.

## UNPUBLISHED OPINION

**LARKIN**, Judge

Appellant challenges the district court's denial of its motion for summary judgment, arguing that it is entitled to the protections of common-law official immunity, as well as statutory immunity under Minn. Stat. § 466.03, subd. 6 (2012). The claims in the underlying lawsuit are based on the conduct of appellant's employees. Because appellant's employees are entitled to common-law official immunity and appellant is vicariously immune from suit arising from its employees' conduct, we reverse and remand for entry of summary judgment in favor of appellant, without addressing the statutory-immunity arguments.

### FACTS

In 1998, the previous owners of the building where respondent Living Springs Church is currently located arranged for the installation of a private water line and connection of the line to appellant City of Spring Lake Park's water-distribution system. A plumbing company installed the private water line and connected it to the city's water mains, but the plumbing company did not cap the end of the private water line in the building. The valve controlling the flow of water from the city's water mains to the newly installed private water line was closed, so water did not flow to the private line.

In 2009, the city undertook a project to map, inspect, and maintain its water-distribution system. The city's water-distribution system contains numerous valves that control the flow of water within the city's water mains (water-main valves) and that allow the water flow to be shut off as needed. Additional valves control the flow of water from

the city's water mains to the numerous private water lines that are connected to the water mains (private valves). The city's water mains, the private water lines, and all control valves are buried underground to avoid freezing. The valves are opened and closed using a long tool that reaches into a small access hole to each valve. The access holes are visible at the ground surface and are covered with metal caps. The caps normally are two sizes. The caps for water-main valves are approximately five inches wide, whereas most caps for private valves are 2.5 inches wide.

The city's water-distribution system is designed such that all water-main valves should remain open, allowing the water to circulate throughout the entire system. Circulation allows the water to remain fresh and ensures greater water pressure in the event of a fire. According to the city, one of the "goals and benefits" of the mapping project was to verify "that all valves were properly open."

On November 30, Ken Prokott, a city employee working on the mapping project, encountered two valve caps in respondent church's parking lot. One cap was 2.5 inches wide, and the other was five inches wide. The valve under the five-inch cap was closed. Prokott talked to the city's Public Works Director Terry Randall and asked how he should proceed. Randall asked whether the closed valve had a five-inch cap and whether it was located on the city's main lines. Prokott responded affirmatively to both questions. Prokott and Randall discussed the presence of the 2.5 inch valve cap in the parking lot, which they believed accounted for the private line to the church. Randall concluded that the valve under the five-inch cap was a water-main valve, and he directed Prokott to open the valve. Unbeknownst to Prokott and Randall, the closed valve controlled the flow of

water from the city's water mains to the uncapped private water line to the church. When the valve was opened, water flowed through the uncapped private water line into the church and caused significant damage.

The church sued the city for damages, claiming negligence and trespass. The city moved for summary judgment, asserting that it was protected by common-law official and statutory immunity. The district court denied the city's motion, concluding that the act of opening the valve was ministerial and therefore not protected by common-law official immunity. The district court also concluded that there were genuine issues of material fact precluding application of statutory immunity. This appeal follows.

## D E C I S I O N

“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). “[D]enial of a motion for summary judgment is not ordinarily appealable, [but] an exception to this rule arises when the order denies summary judgment based on statutory or official immunity.” *Curtis v. Klausler*, 802 N.W.2d 790, 793 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. Oct. 18, 2011). “This is because immunity from suit is effectively lost if a case is erroneously permitted to go to trial.” *Id.* “When reviewing an order denying summary judgment, an appellate court must decide whether there are genuine issues of material fact and whether the district court erred in its

application of the law.” *Id.* “Whether immunity applies is a legal question subject to de novo review.” *Id.*

## I.

The city challenges the district court’s conclusion that it is not protected by common-law official immunity. “[T]he doctrine of common law official immunity provides that a public official charged by law with duties which call for the exercise of his judgment or discretion is not personally liable to an individual for damages unless he is guilty of a willful or malicious wrong.” *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 655 (Minn. 2004) (quotation omitted). “The purpose of official immunity is to protect public officials from the fear of personal liability that might deter independent action and impair effective performance of their duties.” *Id.* (quotation omitted). “Consistent with this purpose, common law official immunity does not protect officials when they are charged with the execution of ministerial, rather than discretionary, functions, that is, where ‘independent action’ is neither required nor desired.”<sup>1</sup> *Id.*

“[A] ministerial duty . . . is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts.” *Id.* at 656

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<sup>1</sup> “Common law official immunity, which protects public officials from individual liability, must be distinguished from statutory immunity, which is accorded to governmental entities.” *Anderson*, 678 N.W.2d at 655 n.4. “The purpose of statutory immunity is to preserve the separation of powers by insulating policy judgments of the other branches of government from review by the courts in tort actions.” *Id.* “Consistent with that purpose, the reach of statutory immunity has been limited to decisions that involve balancing of policy objectives, such as social, political and economic considerations, at the planning or policy level.” *Id.* “In contrast, common law official immunity applies to discretionary decisions made at the operational level.” *Id.*

(quotation omitted). But a conclusion “that the conduct at issue is ministerial is not necessarily enough to deny official immunity. The ministerial-conduct bar to official immunity arises when the allegation is that a ministerial duty was either not performed or was performed negligently.” *Id.* at 660.

When determining whether a defendant is protected by common-law official immunity, a court must first identify the “specific conduct at issue.” *Id.* at 656. The church identifies the specific conduct at issue in this case as “Mr. Prokott’s opening of the valve that serviced Living Springs Church.” The church goes on to argue that “[b]oth Mr. Randall and Mr. Prokott were conducting themselves pursuant to a ministerial duty when they *wrongfully determined that the valve at issue in this case was a city valve.*” (Emphasis added). Thus, the church recognizes that there are two specific acts at issue in this case: the city’s identification of the valve as a water-main valve instead of a private valve and its subsequent opening of the valve. The church argues that each act was ministerial.

We agree that both acts are at issue. In fact, the city’s misidentification of the valve is the crux of the church’s negligence claim. The church argues that

Mr. Randall did not actually conduct any investigation of whether, in fact, the valve serviced the City main line. Despite having encountered this very situation during his work for [another city], Mr. Randall did not investigate the line to see where it went, determine what the line was for or verify that the valve did, in fact, service a city main line as opposed to a private water line like he had done under the same circumstances for [another city].

Because the church's negligence claim relies both on the act of identifying the valve and the act of opening the valve, we consider whether each act was discretionary or ministerial. *See Schroeder v. St. Louis Cnty.*, 708 N.W.2d 497, 505-08 (Minn. 2006) (separately analyzing whether each of the acts underlying a negligence claim, i.e., operating a street grader in the wrong lane and operating it without headlights, was discretionary or ministerial). And because the church's claims arise from the conduct of Randall and Prokott, we first consider whether they are immune from suit and second, if so, whether the city is entitled to vicarious official immunity. *See Anderson*, 678 N.W.2d at 663-64 ("Generally, if a public official is found to be immune from suit on a particular issue, his or her government employer will be vicariously immune from a suit arising from the employee's conduct and claims against the employer are dismissed without explanation.").

### *Identifying the Valve*

The church contends that Randall's identification of the valve was a ministerial act. "[T]he focus of common law official immunity is to determine whether [the employee's] actions called for the exercise of discretion at the operational level or instead were ministerial, constituting merely the execution of a specific duty arising from fixed and designated facts." *Id.* at 657. "The existence of a government policy mandating certain conduct by public officials can influence whether a duty is classified as ministerial or discretionary." *Mumm v. Mornson*, 708 N.W.2d 475, 491 (Minn. 2006).

[I]t is inherent in the concept of ministerial duty that the duty must dictate the scope of the employee's conduct. Because the common law official immunity analysis always involves

evaluation of government employee conduct, that control will most often emanate from a statute, rule, ordinance or other official standard. But there is no logical reason that a sufficiently narrow standard that does not meet an ‘imposed by law’ criterion should not similarly make the conduct ministerial if the employee is bound to follow the standard.

*Anderson*, 678 N.W.2d at 659. In sum, if a governmental employer’s established protocol dictates a specific action by its employee under designated circumstances, the employee’s conduct will be deemed ministerial.

The record here does not contain evidence of a protocol controlling the process of determining whether a valve is a water-main valve or a private valve, or predetermining the conclusion that the closed valve in the church’s parking lot was a water-main valve. The lack of evidence regarding a protocol for identifying valves supports the conclusion that the determination is not a ministerial act. *Cf. id.* (citing record evidence that showed the existence of a protocol dictating the course of conduct relevant to the alleged ministerial duty). It is a discretionary act. And because the church does not allege that Randall’s misidentification of the valve was willful or malicious, he is entitled to common-law official immunity. *See id.* at 655, 662 (stating that “the doctrine of common law official immunity provides that a public official charged by law with duties which call for the exercise of his judgment or discretion is not personally liable to an individual for damages unless he is guilty of a willful or malicious wrong” and that the supreme court has “established a high standard for a finding of a willful or malicious wrong in the context of common law official immunity, by requiring the defendant to have reason to know that the challenged conduct is prohibited” (quotations omitted)).

### *Opening the Valve*

The church contends that the act of opening the valve was ministerial, asserting that the decision was mandated by a predetermined decision to open all water-main valves. The church argues: “Once a city valve was discovered, Mr. Prokott did not have any discretion in deciding how to proceed; he was duty bound to open the valve because his supervisor, Terry Randall, made perfectly clear that ‘we have to have all [city] valves open.’” The city “does not concede [the church’s] characterization of this policy or protocol.” We observe that the record tends to support the church’s contention that the decision to open all water-main valves was predetermined. However, even if there was a ministerial duty to open all water-main valves, the ministerial bar to common-law official immunity does not apply unless the ministerial task was not performed or was performed negligently. *See id.* at 660 (“The ministerial-conduct bar to official immunity arises when the allegation is that a ministerial duty was either not performed or was performed negligently.”). We therefore assume, for the purpose of our analysis, that the act of opening all water-main valves was ministerial.

It is undisputed that Prokott performed the ministerial task by opening the valve after it was identified as a water-main valve. As to the alleged negligent performance of that task, the church argues that Prokott “did not comply with the protocol,” because he “in fact opened a private valve and not a city valve.” But that argument inappropriately conflates the act of identifying the valve with the act of opening the valve. And as explained above, Randall’s identification of the valve was a discretionary act protected by common-law official immunity.

Because the church does not assert any other negligent-performance theory, we conclude that the church's claim presents a challenge to the ministerial duty itself. *See id.* at 660-61 (reasoning that because defendant had complied with the ministerial duty that gave rise to a negligence claim, the claim presented a challenge to the duty itself). An employee "does not forfeit official immunity because his or her own conduct was ministerial if that ministerial conduct was required by a protocol established through the exercise of discretionary judgment that would itself be protected by official immunity." *Id.* at 660. We therefore consider whether the ministerial duty to open all water-main valves was established pursuant to an exercise of discretionary judgment that would itself be protected by official immunity.

The church contends that "[h]aving all city valves open is a consequence of the engineering of the water distribution system, not a 'judgment call' or an act of discretion" and that "the nature of the distribution system demanded that they all be open." We disagree. Although the city's water-distribution system is designed such that all water-main valves *should* remain open, the record does not support the church's contention that they *must* remain open. Indeed, the presence of multiple water-main valves within the system that can be closed to control the flow of water, as well as the fact that some of those water-main valves were closed when the mapping project began, refutes the church's contention. Instead, the decision to open all of the city's water-main valves resulted from Randall's professional judgment. He testified that he "wanted the system looped open to make sure you have full flow. That's why the decision was made to open it." Randall concluded that keeping the valves open would provide for optimum water

circulation, freshness, and water pressure. *See id.* at 661 (stating that “because not all woodcutting procedures could be performed with the blade guard in place . . . professional judgment was required to decide which procedures require the guard and which do not in the first instance”).

Like the supreme court in *Anderson*, we “are not prepared to say that the exercise of that judgment is so ministerial that common law official immunity should not apply.” *Id.* Because the purported protocol to open all city water-main valves was a discretionary decision entitled to common-law official immunity and because Prokott’s negligence allegedly arises from his compliance with the protocol, he is entitled to official immunity unless his action was a “willful or malicious wrong.” *Id.* at 662. Once again, the church does not allege a willful or malicious wrong. Thus, Prokott is entitled to common-law official immunity.

## II.

We next consider whether the city is entitled to vicarious official immunity. “Generally, if a public official is found to be immune from suit on a particular issue, his or her government employer will be vicariously immune from a suit arising from the employee’s conduct and claims against the employer are dismissed without explanation.” *Id.* at 663-64. But “the question of whether to extend vicarious official immunity to a government employer remains a policy question.” *Id.* at 664. Appellate courts “[apply] vicarious official immunity when failure to grant it would focus stifling attention on an official’s performance to the serious detriment of that performance.” *Id.* (quotation omitted). “This standard grants vicarious official immunity in situations where officials’

performance would be hindered as a result of the officials second-guessing themselves when making decisions, in anticipation that their government employer would also sustain liability as a result of their actions.” *Id.*

Here, policy considerations support the conclusion that the city is entitled to vicarious official immunity. Failure to grant the city vicarious official immunity would chill the ability of public-works-department employees to make decisions regarding operation of the city’s water-distribution system and hinder their job performance. *See Kari v. City of Maplewood*, 582 N.W.2d 921, 925 (Minn. 1998) (stating that denying official immunity to an ambulance driver who struck a pedestrian in a crosswalk and vicarious official immunity to the city, “would have a chilling effect on the discretion to be exercised by emergency vehicle drivers enroute to medical emergencies”); *Ireland v. Crow’s Nest Yachts, Inc.*, 552 N.W.2d 269, 274 (Minn. App. 1996) (granting vicarious official immunity to a county in a suit involving a deadly accident and a challenge to the installation of warning signs and rumble strips to “avoid chilling the traffic engineer’s exercise of his independent judgment by allowing him to act without fearing that his conduct may eventually be subject to review by the judiciary and may expose his employer to civil liability”), *review denied* (Minn. Sept. 20, 1996).

We therefore hold that the city is protected by vicarious official immunity. Because our decision regarding vicarious official immunity is dispositive, we do not address the district court’s ruling regarding statutory immunity under Minn. Stat.

§ 466.03, subd. 6. We reverse the district court's denial of the city's motion for summary judgment and remand for entry of judgment dismissing the church's claims.

**Reversed and remanded.**