STATE OF MINNESOTA

IN SUPREME COURT

A19-0271

Court of Appeals — Thissen, J.

William Jepsen, as Trustee for the Heirs and Next of Kin of Eric Parker Dean,

Appellant,

vs.

County of Pope, et al.,

Respondents,

David Dean, et al.,

Defendants.

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## S Y L L A B U S

1. The immunity provision in the Reporting of Maltreatment of Minors Act (RMMA), Minn. Stat. § 626.556, subd. 4 (2010), abrogated common law official immunity for child protection workers performing specified duties under the RMMA.

2. The district court erred by concluding that respondent county is entitled to discretionary function immunity under Minn. Stat. § 466.03, subd. 6 (2020).

3. Because there is a genuine issue of material fact regarding the claim that the negligent failure of child protection workers to notify local law enforcement about reports of child abuse was a proximate cause of the child's death, the district court erred by granting summary judgment on that claim.

Reversed and remanded.

## O P I N I O N

THISSEN, Justice.

This appeal arises from the tragic death of 4-year-old Eric Parker Dean at the hands of his father's girlfriend following at least seven reports from different sources of suspected child abuse of Eric. Appellant William Jepsen, as trustee for the heirs and next of kin, brought a wrongful death action against respondents Pope County and three child protection workers (collectively respondents). Jepsen alleges that the negligence of the

child protection workers in performing their duties under the Reporting of Maltreatment of Minors Act (RMMA), Minn. Stat. § 626.556 (2010), caused Eric's death.[1]

The district court granted summary judgment to respondents, concluding that common law official immunity and vicarious official immunity provide them immunity from civil liability for the screening and handling of reports of suspected child abuse. The district court rejected Jepsen's argument that the immunity provision in the RMMA, Minn. Stat. § 626.556, subd. 4, abrogates common law official immunity. The district court also concluded that the evidence was insufficient as a matter of law to establish that the failure to cross-report suspected child abuse to local law enforcement was a proximate cause of Eric's death. The court of appeals affirmed.

We hold that the RMMA abrogated the defense of official immunity as to duties undertaken to comply with subdivisions 10 and 11 of section 626.556 or related rules and provisions of law.[2] We also hold that statutory discretionary function immunity under

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[1] Because the conduct at issue here occurred in 2011 and 2012, we refer to the 2010 version of the RMMA in this opinion. In 2020, the Legislature renumbered and reorganized the Act and enacted several amendments. Act of June 18, 2020, 1st Spec. Sess., ch. 2, art. 7, 2020 Minn. Laws 866, 1080–1120. The Legislature repealed Minn. Stat. § 626.556. *Id.*, ch. 2, art. 7, § 39, 2020 Minn. Laws at 1120. The immunity provision at issue here is now found at Minn. Stat. § 260E.34 (2020).

[2] During all times relevant to this litigation, subdivision 4 provided that RMMA immunity extends to persons "complying with subdivisions 10 and 11 or section 626.5561 or any related rule or provision of law." Minn. Stat. § 626.556, subd. 4(b). Those subdivisions address the duties a local welfare agency must perform upon receipt of a report of abuse or neglect or a report of prenatal exposure to controlled substances, as well as the recordkeeping and data requirements related to the local welfare agency's response. Section 626.5561, which requires reporting on prenatal exposure to controlled substances, is not at issue in this case. Accordingly, the Legislature intended RMMA immunity to

Minn. Stat. § 466.03, subd. 6 (2020), does not apply in this case. Finally, we conclude that a genuine issue of material fact exists on the issue of whether the failure to cross-report suspected child abuse to local law enforcement was a proximate cause of Eric's death. Therefore, we reverse the decision of the court of appeals and remand to the district court for further proceedings.

## FACTS

This case requires the interpretation and application of the RMMA. To understand the facts, it is important to provide a brief background on the statute.

The Legislature enacted the RMMA to "protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse." Minn. Stat. § 626.556, subd. 1. The RMMA and the Minnesota Child Maltreatment Screening Guidelines promulgated by the Minnesota Department of Human Services established a detailed and comprehensive scheme for reporting, considering reports, and responding to reports of alleged child maltreatment and abuse.

Under the statute as it existed in 2011 and 2012, certain persons who interacted with children in a professional capacity were required to report suspected child maltreatment. *See id.*, subd. 3(a). The RMMA also authorized voluntary reports by persons who were not otherwise mandated to report. *Id.*, subd. 3(b). When a county social services agency

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cover conduct performed by public officials to comply with their investigatory and recordkeeping duties under those subdivisions as well as any rules or provisions of law related to those subdivisions. *See Vill. Lofts at St. Anthony Falls Ass'n v. Hous. Partners III-Lofts, LLC*, 937 N.W.2d 430, 435 (Minn. 2020) (stating that we apply the plain language of a statute). The statute has since been amended and no longer includes the reference to subdivisions 10 and 11. Minn. Stat. § 260E.34(b) (2020).

received a report of maltreatment, it was required to determine within 24 hours whether to accept the report for assessment or investigation. *Id.* subd. 7(a); Minnesota Child Maltreatment Screening Guidelines (Sept. 2012).[3] Only reports of alleged conduct that met the legal definition of child maltreatment and that included sufficient content to identify the child, offender, reporter, and nature of the alleged abuse could be accepted. *See* Minn. R. 9560.0216, subp. 3(A )(1) (2011); Minnesota Child Maltreatment Screening Guidelines (Sept. 2012). The Legislature's express definition of maltreatment was broad and included physical abuse,[4] sexual abuse,[5] neglect,[6] and mental injury.[7] Minn. Stat. § 626.556, subd. 10e(f) ; *see also* Minn. R. 9560.0214, subp. 18. The process of determining whether a report had sufficient information and met the definition of child maltreatment is what the parties refer to as the "Screening In" process.

The statute required that if the report alleged child maltreatment by a parent, guardian, or individual functioning within the family unit as a person responsible for the

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[3] The 2012 Minnesota Child Maltreatment Screening Guidelines are included in the district court record as Exhibit 5 to the Affidavit of Theresa Cashdollar-Powell.

[4] The RMMA defined "physical abuse" as any

> physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized [under statute].

Minn. Stat. § 626.556, subd. 2(g) (2010).

[5] Minn. Stat. § 626.556, subd. 2(d) (defining "sexual abuse").

[6] Minn. Stat. § 626.556, subd. 2(f)(1)–(9) (defining "neglect").

[7] Minn. Stat. § 626.556, subd. 2(m) (defining "mental injury").

child's care, the local welfare agency was required to conduct a "family assessment" or "investigation" immediately. Minn. Stat. § 626.556, subd. 10(a). When there was evidence of substantial child endangerment, an investigation was required. *See id*., subd. 10(a)(1). The Legislature defined the conduct that constituted substantial child endangerment in the RMMA. *Id.*, subd. 2(c).

When the report alleged maltreatment, but not substantial endangerment, a family assessment was appropriate. *Id.*, subd. 10(a)(3). After a family assessment, a local welfare agency employee determined the risk of future maltreatment and the services that might be necessary to address the safety of the child and other family members. *Id.*, subd. 10e(b). The employee was required to create a written plan within 30 days of the determination that child protective services were needed. *Id.*, subd. 10m. On the other hand, if during the family assessment the evidence suggested that substantial child endangerment existed, the county social services agency was mandated to conduct an investigation and determine whether substantial child endangerment had in fact occurred and what protective interventions were needed to protect the child from maltreatment. *Id.*, subds. 10(a)(2), 10e(f)–(g).

The RMMA also set forth additional duties of local welfare agency employees. For instance, the statute required the local welfare agencies to notify and forward reports of maltreatment immediately to local police departments or their county sheriff. *Id.* , subds. 3(a)–(b), 7; *see also* Minn. Stat. § 626.556, subd. 6a (providing that if a local welfare agency receives a report under subdivision 3, paragraph (a) or (b), and fails to notify the

local police department or county sheriff as required by those provisions, the person in the agency responsible for ensuring notification is made shall be subject to discipline).

The RMMA also gave local welfare agency employees the authority to interview the alleged victim and other minors in the household without prior parental consent. Minn. Stat. § 626.556, subd. 10(c). The statute set forth requirements for gathering information during a family assessment or investigation. *Id.*, subd. 10(h). It mandated that county social services agencies "collect available and relevant information to determine child safety, risk of subsequent child maltreatment, and family strengths and needs." *Id.*[8]

The RMMA also required county social services agency employees to conduct "face-to-face contact" with both the child reported to be maltreated and the child's primary caregiver upon receipt of a report of maltreatment so that the agency could complete a safety assessment and ensure immediate safety of the child. *Id.*, subd. 10(i). This contact was to occur either immediately when substantial child endangerment was alleged or within five days for all other reports. *Id.* If the alleged offender was not the primary

[8] The statute provided a nonexclusive list of information the county social services agency employee should gather, including (1) the child's age, sex, prior reports of maltreatment, information relating to developmental functioning, information relating to the credibility of the child's statement, and whether the information collected is consistent with other information collected during the investigation or assessment; (2) the alleged offender's age, a records check for prior reports of maltreatment by the alleged offender, as well as the alleged offender's criminal convictions and charges; and (3) collateral source information regarding alleged maltreatment and care of the child, including medical examinations and prior medical records relating to alleged maltreatment or care; interviews with child caretakers including parents, teachers, child care providers, family members, counselors, or other people who may have knowledge regarding alleged maltreatment and care of the child; and information on the existence of domestic abuse, violence in the child's home, and substance abuse. *Id.*, subd. 10(h)(1)–(4).

caregiver, the county social services agency was also required to conduct a face-to-face interview with the alleged offender during the early stages of the assessment or investigation. *See id.* Finally, the RMMA required county social services agencies to use a "question and answer" format with nondirective questioning whenever possible to elicit spontaneous responses. *Id.*, subd. 10(j). The statute also mandated that all interviews conducted during an investigation be audio recorded whenever possible. *Id.*

With this statutory framework in mind, we turn to the facts of this case. Eric Parker Dean was born in 2008. By late 2010, Eric was living with his father, David Dean, his father's girlfriend, Amanda Peltier, and five other children. He lived with them until his death in February 2013. From July 2011 to August 2012, Pope County received at least seven reports of suspected child abuse regarding Eric. We summarize those reports here.

On July 20, 2011, a hospital social worker reported to Pope County that Eric had suffered an arm fracture after purportedly falling down the stairs. The hospital personnel made the report because Eric suffered a spiral fracture, which suggested trauma from twisting, not falling. A Pope County child protection worker (one of the respondents in this case) screened in the report and opened a full investigation. The child protection worker conducted face-to-face interviews with Peltier, Eric's father, and the other children in the household. The child protection worker also consulted with various medical professionals, most of whom admitted the fracture could have occurred because of a fall. Dr. Mark Hudson, an independent provider, reported that Eric's accompanying bruised eye was a red flag but concluded that the fracture was likely caused by the fall. The consulting medical professionals were not given Eric's full history of abuse allegations, despite

requests for the information. Later, during Peltier's criminal trial, Dr. Hudson testified that had he been given Eric's full record, he would have reached a different conclusion; namely, that the broken arm suggested abuse. Based on her investigation and consultations, the child protection worker concluded that no maltreatment occurred and no child protective services were needed. Pope County closed the investigation on August 10, 2011. Pope County and the child protection workers did not notify local law enforcement about this report of abuse. Jepsen asserts that the child protection worker failed to comply with her duties under the RMMA while investigating the July 20, 2011 fracture and was negligent.

On October 25, 2011, Pope County received another report of abuse. Eric's preschool teacher contacted Pope County and reported bite marks on Eric's ears and cheek, bruising on his forehead and chest, and a scrape on his back. The child protection workers did an initial screening. Peltier told Eric's preschool teacher that Eric's cousin bit him. The preschool teacher reported this to the child protection workers, noting that the teeth marks were reportedly consistent with child bite marks. The child protection workers ultimately determined that the information did not meet maltreatment criteria and screened out the report. However, Pope County opened a child welfare assessment and, through a Parent Support Outreach Program, discussed with Eric's father "the need for increased supervision" of Eric. Eric's father rejected the assistance. The case was closed. Jepsen asserted that the child protection workers' handling of the October 25, 2011 report was negligent and not in conformity with their obligations under the RMMA.

On November 14, 2011, Pope County received another report of suspected abuse. Eric's preschool teacher once again contacted Pope County to report that Eric had arrived

at preschool with a head injury and was limping. The teacher described Eric's injury as an "egg-sized lump" on his head with "cuts or scabbed over bloody spots." The child protection workers determined that the report did not indicate child maltreatment and screened out the report with no further assessment or investigation. The child protection workers noted that if a "future report comes in because of lack of supervision," it would be screened in. Jepsen asserted that the child protection workers' handling of the November 14, 2011, report was negligent and not in conformity with their obligations under the RMMA.

On January 24, 2012, Pope County received another report of abuse. This time, Eric's new daycare provider and an early childhood education teacher reported the suspected maltreatment. Both stated that Eric had bite marks, and one noted that Eric had bruising on his face. The daycare provider claimed that, after "coaching" from Peltier, Eric said that he had hurt himself sleeping and that he "bit himself." The daycare provider also reported that when Eric was in trouble, Peltier yelled at him and pushed him against the wall. Childcare workers (and other county child protection workers) screened in the report, determined it indicated child maltreatment, and initiated a family assessment. As part of the family assessment, child protection workers interviewed Eric's father, Peltier, Eric's siblings and stepsiblings, and Eric's daycare provider. During the interviews, the daycare provider and one of Eric's teachers expressed concern to a child protection worker about Eric's repeated bruising and injuries. A child protection worker suggested to Eric's father and Peltier that they enroll Eric in play therapy. In the family assessment, the child protection workers found a "high" risk of abuse/neglect but concluded that Eric was

"conditionally safe" at home with his father and Peltier. Accordingly, on February 24, 2012, Pope County closed the family assessment with no further services or supervision. The child protection workers did not cross-report this incident to local law enforcement. Jepsen asserted that the child protection workers' handling of the January 24, 2012 report was negligent and not in conformity with their obligations under the RMMA.

On February 3, 2012, Pope County received another report of abuse. Once again, Eric's daycare provider contacted Pope County to report that Eric came to daycare with visible injuries—this time with a bruised ear and swollen lip. The explanations for the injuries were conflicting. Peltier told the provider that Eric had tripped and hit his lip on a table. One of the children in the household said that Eric had hit his lip on the couch. The child protection workers determined that the case did not sufficiently indicate child maltreatment and screened out the report without further assessment or investigation. Jepsen asserted that the child protection workers' handling of the February 3, 2012, report was negligent and not in conformity with their obligations under the RMMA.

On March 12, 2012, Pope County received yet another report of suspected abuse. Throughout February 2012, the daycare provider noticed several bruises on Eric's face, forehead, and neck, as well as swollen cheeks, scratches, a black eye, and a bleeding ear. Peltier provided several explanations as to how Eric was injured, including that Eric hit himself on a doorframe and, on another occasion, he threw a "temper tantrum" and beat himself up. Child protection workers screened in the case and determined that it indicated child maltreatment. Again, the child protection workers conducted a family assessment (rather than a more rigorous investigation).

The child protection workers interviewed the daycare provider, who stated that she was unsure about who harmed Eric and whether Eric was in danger. Eric's pediatrician also examined Eric and although she found several bruises, did not suggest that there were child maltreatment issues. In addition, child protection workers interviewed Eric's father, Peltier, and Eric's siblings and stepsiblings. The child protection workers suggested parenting style changes, communication classes, play therapy, and a psychological assessment of Eric. Following the assessment, a child protection worker found a "high" risk level but concluded that Eric was "safe." The child protection workers determined that there was no need for ongoing services and closed the family assessment. The child protection workers did not cross-report the incident to local law enforcement. Jepsen asserted that the child protection workers' handling of the March 12, 2012, report was negligent and not in conformity with their obligations under the RMMA.

On August 2, 2012, Pope County received a final report of suspected abuse. Eric's daycare provider reported that Peltier wanted Eric to sit at a desk all day at the daycare as punishment for having run away at the county fair. The provider declined and requested that Peltier "manage the discipline herself." When Peltier arrived to pick up Eric, he was crying uncontrollably; the provider picked up Eric to comfort him, prompting Peltier to yank him out of the provider's arms and put him down. The provider also indicated that Eric had some scratches on his cheek. The child protection workers screened out the report, finding that it did not indicate maltreatment of Eric. Jepsen asserted that the child protection workers' handling of the August 2, 2012, report was negligent and not in conformity with their obligations under the RMMA.

In February 2013, Peltier threw Eric against a wall, perforating his bowel. On February 28, 2013, Eric died. Eric was 4 years old when Peltier killed him. Subsequently, Peltier was convicted of first-degree murder while committing child abuse and sentenced to life with eligibility for supervised release after 30 years. *See State v. Peltier*, 874 N.W.2d 792, 796 (Minn. 2016).

Jepsen brought this wrongful death action against Pope County and three child protection workers.[9] Jepsen alleged that the child protection workers acted negligently in carrying out many of their duties, including decisions to screen out several reports of abuse so that no family assessment or investigation followed. Jepsen argued that the child protection workers failed to carry out specific and designated statutory duties, including a failure to notify law enforcement under Minn. Stat. § 626.556, subd. 7; a failure to establish face-to-face contact with Eric and other children in the household under Minn. Stat. § 626.556, subd. 10(c), (i); a failure to interview daycare providers under Minn. Stat. § 626.556, subd. 10(h)(3); a failure to consider prior reports of maltreatment under the information collection procedure when performing family assessments under Minn. Stat. § 626.556, subd. 10(h)(1); and a failure to send an independent doctor, who investigated the initial July 2011 arm fracture, Eric's prior history—evidence the doctor later testified would have caused him to reach a different conclusion about whether Eric was likely being abused.

[9] Eric's father and Amanda Peltier's mother, Elizabeth Peltier, were also named as defendants but are not parties to this appeal. Eric's father did not answer Jepsen's complaint, while Elizabeth Peltier was dismissed from the case pursuant to a *Pierringer* release.

Jepsen also claims that Pope County is vicariously liable for the negligence of the child protection workers. Pope County and the child protection workers asserted various immunity defenses in response to the claims, including common law official immunity, vicarious official immunity, statutory immunity under Minn. Stat. § 466.03, subd. 6, and immunity under the RMMA immunity provision, Minn. Stat. § 626.556, subd. 4.

The district court granted summary judgment to the child protection workers and the County. The district court concluded that the child protection workers and the County are immune from liability regarding the screening and handling of the reports of child abuse, based on official immunity and vicarious official immunity. The district court also concluded that the evidence is insufficient as a matter of law to establish that the failure to cross-report the suspected child abuse to law enforcement was a proximate cause of Eric's death.

The court of appeals affirmed. *Jepsen ex rel. Dean v. County of Pope*, 938 N.W.2d 60 (Minn. App. 2019). As a preliminary matter, the court of appeals held that the immunity provision in the RMMA does not abrogate the common law doctrine of official immunity. *Id.* at 70–71. The court of appeals next concluded that the district court did not err by determining that the child protection workers are "entitled to official immunity with respect to their screening and handling of the reports" of child abuse and that Pope County is entitled to vicarious official immunity. *Id.* at 72. Because this conclusion was "dispositive with respect to that conduct," the court of appeals did not "reach the question of whether statutory immunity applies as well." *Id.* Finally, the court of appeals concluded that the district court did not err by determining that Jepsen did not produce sufficient evidence to

establish that the failure to cross-report suspected child abuse to law enforcement was a proximate cause of Eric's death. *Id.* at 73.

We granted further review.

## ANALYSIS

### I.

We first turn to the question of whether the Legislature's enactment of the RMMA immunity provision, Minn. Stat. § 626.556, subd. 4, abrogated common law official immunity for claims arising from actions taken by child protection workers under the RMMA. The application of official immunity presents a question of law which we review de novo. *Thompson v. City of Minneapolis*, 707 N.W.2d 669, 673 (Minn. 2006). Statutory interpretation also is a question of law which we review de novo. *Graff v. Robert M. Swendra Agency, Inc.*, 800 N.W.2d 112, 120 (Minn. 2011).

### A.

*Common Law Official Immunity*

Common law official immunity is a judicial response to the concern that the prospect of tort liability may impair a public official's ability or willingness to exercise independent judgment and perform duties effectively. *See Vassallo ex rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014). The common law response to that concern was to establish a rule limiting the circumstances under which tort liability may attach to the conduct of a public official while that public official is performing his or her duties. The common law rule holds that tort liability does not attach when the public official's duties at issue in the litigation call for the exercise of that official's independent judgment

or discretion. *Elwood v. Rice Cnty.*, 423 N.W.2d 671, 677 (Minn. 1988). Stated another way, official immunity generally allows public officials to avoid liability when their negligent conduct harms someone if the conduct involved the exercise of independent judgment or discretion. Although official immunity applies to individual public officials, when public officials are immune from suit on a particular issue, their government employer generally has vicarious official immunity from a suit arising from the public officials' conduct. *Schroeder v. St. Louis Cnty.*, 708 N.W.2d 497, 508 (Minn. 2006). Application of official immunity means that persons who suffer injuries as a result of a public official's discretionary conduct generally have no civil recourse against the negligent public official (and often against the government itself) and are left to bear the costs and burdens of their injuries themselves.

Official immunity is subject to two limitations. First, if the public official's exercise of independent judgement or discretion is a willful or malicious wrong—meaning that the public official intentionally performs a wrongful act without legal justification or excuse or willfully violates a known right of the plaintiff—then tort liability may attach. *Rico v. State*, 472 N.W.2d 100, 107 (Minn. 1991). Second, tort liability may also attach if the public official fails to perform or negligently performs an act that is deemed "ministerial." *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 660 (Minn. 2004).

Unlike acts requiring the exercise of discretion, "ministerial acts" are acts that are "absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts." *Id*. at 656 (citation omitted) (internal quotation marks omitted). In *Anderson*, we clarified that official immunity protects public officials from

liability for ministerial acts when the public official is simply carrying out a protocol established through the exercise of policy discretion by the governmental body for whom the public official works. *Id*. at 660-61 (holding that a high school shop teacher was protected by official immunity in connection with a claim arising from a student's injury where the teacher was following an established school protocol, reasoning that in reality the student's claim was a challenge to the protocol itself). But ministerial acts are not protected by official immunity when the public official either fails to perform the ministerial act or performs the act negligently. *Id.* at 660.

In sum, public officials are not subject to tort liability for conduct during the performance of their official duties unless they intentionally act without legal justification or excuse, commit a willful violation of a known right, or fail to perform a ministerial duty or perform the ministerial duty negligently.

*RMMA Immunity*

In enacting the RMMA immunity provision, the Legislature undertook the same project that we did when we created the common law official immunity rule: to set forth a rule that would create the space the Legislature deemed necessary to allow public officials to effectively perform the duties required by the RMMA. At the time of the relevant conduct here, the immunity provision enumerated certain categories of persons who are "immune from any civil or criminal liability that otherwise might result from their actions, if they are acting in good faith," including "any person with responsibility for performing duties under this section or supervisor employed by a local welfare agency." Minn. Stat. § 626.556, subd. 4(a)(2). The immunity provision also provided, in relevant part:

> A person who is a supervisor or person with responsibility for performing duties under this section employed by a local welfare agency . . . complying with subdivisions 10 and 11 . . . or any related rule or provision of law is immune from any civil or criminal liability that might otherwise result from the person's actions, if the person is (1) acting in good faith and exercising due care, or (2) acting in good faith and following the information collection procedures established under subdivision 10, paragraphs (h), (i), and (j).

*Id.*, subd. 4(b).

Immunity under the RMMA does not make a distinction between discretionary acts and ministerial acts. When child protection workers take actions in complying with their duties under subdivisions 10 and 11 of the RMMA as well as related rules or provisions of law to respond to reports of abuse and neglect and properly maintain records related to those responses, those workers are liable for *all* their conduct when they are not "acting in good faith and exercising due care." *Id.* That is true whether the duties are discretionary or ministerial under the official immunity rubric. *Id.* Therefore, by the Legislature's conscious design, the circumstances under which tort liability may attach to child protection workers under the RMMA immunity provision are *broader* than the circumstances under which tort liability may attach to public officials under our common law doctrine of official immunity.

B.

With this backdrop in mind, we turn to the question of whether the Legislature's adoption of an express immunity provision abrogated the common law official immunity

rule that would otherwise have shielded the three child protection workers from liability for negligent discretionary acts.[10] This is a question of statutory interpretation.

When interpreting a statute, our job is to ascertain and effectuate the intention of the Legislature. Minn. Stat. § 645.16 (2020). This principle also applies to statutes that may limit or abrogate common law rules. *See, e.g.*, *Ellis v. Doe*, 924 N.W.2d 258, 262 (Minn. 2019) (noting that the issue of whether the rent-escrow statute abrogated the common law habitability defense was a matter of ascertaining and effectuating the Legislature's intent); *Kremer v. Kremer*, 912 N.W.2d 617, 623 (Minn. 2018) (stating that determining whether the statute setting forth the procedural requirements for antenuptial agreements meant that the common law rules no longer applied would be analyzed using statutory interpretation tools aimed at "effectuating the intent of the Legislature").

Because we have been reluctant to take away Minnesotans' common law rights and remedies, we have required that legislative intent to do so be "expressly declared or clearly indicated in the statute."[11] *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 73 (Minn. 2012).

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[10] Jepsen does not claim that the child protection workers acted willfully or with malice when performing their duties under the RMMA.

[11] Alternatively, we have said that "abrogation must be by express wording or necessary implication." *See, e.g.*, *Ly v. Nystrom*, 615 N.W.2d 302, 314 (Minn. 2000). We have never stated that this is a different test and we have provided little explanation of the concept of "necessary implication." The most detailed treatment was in *Urban v. American Legion Department of Minnesota*, 723 N.W.2d 1 (Minn. 2006). In *Urban*, we reasoned that a provision of the Civil Damages Act, which made the holder of an establishment's liquor license responsible for the conduct of its employees, impliedly abrogated the common law doctrine of respondeat superior. *Id.* at 5. We found abrogation by necessary implication because to determine otherwise would have rendered the provision imposing liability on an establishment for the sale of alcohol by its employees superfluous or

We presume that statutes are consistent with the common law, and we "do not presume 'that the legislature intended to abrogate or modify a rule of the common law on the subject any further than that which is expressly declared or clearly indicated.' " *Getz v. Peace*, 934 N.W.2d 347, 354 (Minn. 2019) (quoting *Rosenberg v. Heritage Renovations, LLC*, 685 N.W.2d 320, 328 (Minn. 2004)).

But our presumptions regarding the common law cannot undermine legislative intent. Although we have said that we construe statutes in abrogation of the common law "strictly," we do not construe them "so narrowly" that "we disregard the Legislature's intent." *Swanson v. Brewster*, 784 N.W.2d 264, 280 (Minn. 2010) (citing *Maust v. Maust*, 23 N.W.2d 537, 540 (Minn. 1946)).

Accordingly, our job here is to determine whether the RMMA immunity provision manifests the clear intent of the Legislature to abrogate official immunity and replace it with a different immunity rule. Because the statute does not expressly reference official immunity, we consider whether that intent is clearly indicated in the statute. *Cf. Brekke v. TMH Biomedical, Inc.*, 683 N.W.2d 771, 776 (Minn. 2004) (assessing whether the statutory language provides any "evidence of an intent to abrogate . . . equitable defenses"). Based on the statutory scheme and mandates of the RMMA, we conclude that the RMMA immunity provision clearly implies a legislative intent to abrogate the doctrine of official

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insignificant. *Id.* That superfluity or insignificance was a clear indication as a matter of statutory interpretation principles that the Legislature intended to abrogate the common law.

immunity for child protection workers who are performing specified duties identified in the immunity provision, subdivision 4 of the Act.

We start with the fact that the Legislature enacted a specific immunity provision in the RMMA. It is hard to understand why the Legislature would have enacted a specific, narrower, immunity provision under the RMMA had the Legislature intended for the broader rule of official immunity to also apply to the conduct of child protection workers. Indeed, allowing child protection workers to assert the defense of official immunity would essentially swallow the RMMA immunity provision.

As discussed above, an immunity rule strikes a balance between providing space for public officials to perform their duties and holding them accountable when their conduct harms others. We have recognized that some duties of a child protection worker require "the exercise of judgment in determining what services should be provided, who should provide them, their frequency, and the nature and extent of agency supervision." *Olson v. Ramsey Cnty.*, 509 N.W.2d 368, 372 (Minn. 1993). Under the official immunity doctrine, public officials performing such discretionary duties generally have immunity except when they are "guilty of a willful or malicious wrong." *Kariniemi v. City of Rockford*, 882 N.W.2d 593, 600 (Minn. 2016). We have described official immunity as "near complete immunity." *Janklow v. Minn. Bd. of Exam'rs for Nursing Home Adm'rs*, 552 N.W.2d 711, 716 (Minn. 1996). Accordingly, under official immunity, child protection workers facing civil liability for the negligent performance of a discretionary duty would simply have to show that their conduct was "not willful or malicious" to be entitled to official immunity.

*Brown*, 842 N.W.2d at 463–64 (evaluating official immunity in the context of the discretionary actions of a sheriff's deputy when responding to an emergency call).

In contrast, the Legislature created a different, narrower immunity standard for child protection workers. Under the RMMA, child protection workers have immunity only when they are "acting in good faith and exercising due care."[12] Minn. Stat. § 626.556, subd. 4(b). As noted, that is true whether the duty in question is discretionary or ministerial in official immunity parlance. Accordingly, the RMMA provides that a child protection worker facing civil liability for the negligent performance of a specified discretionary duty would not be immune from liability. Consequently, if the child protection worker is protected by official immunity, the Legislature's decision under the RMMA to not extend immunity to child protection workers for negligent discretionary acts is meaningless. We "presume that every statute has a purpose," *Urban v. Am. Legion Dep't of Minn.*, 723 N.W.2d 1, 5 (Minn. 2006), but the RMMA immunity provision serves no purpose when official immunity also applies.

In short, the RMMA immunity provision and its language makes clear that the Legislature chose to strike a balance for child protection workers performing duties under the RMMA that is different from the balance we struck when adopting official immunity for public officials. This legislative decision is understandable in view of lawmakers'

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[12] When a plaintiff alleges that the child protection worker's information collection was flawed and caused harm, that worker is immune from liability if the worker acted in good faith and complied with the information collection procedures set forth in section 626.556, subdivision 10(h)–(j). The information collection procedures in subdivision 10(h)–(j) establish the standard of care.

express public policy for the RMMA: "to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse." Minn. Stat. § 626.556, subd. 1.

In an amicus brief, the Minnesota Department of Human Services suggests that the RMMA immunity provision serves the purpose of providing *additional* protections for child protection workers carrying out ministerial duties. The Department points out that official immunity generally does not apply to the failure to perform ministerial duties. *See Schroeder*, 708 N.W.2d at 505. Recall, however, that official immunity covers ministerial duties when the worker is complying with a protocol established through the exercise of policy discretion by a governmental body. *Anderson*, 678 N.W.2d at 660. So any extension of immunity as suggested by the Department would have to extend immunity to workers who performed ministerial duties negligently or failed to perform them at all. *Id.* But the RMMA expressly provides that workers who do not act in good faith and exercise due care are not immune from suit. We cannot reconcile a worker's negligent performance of, or the failure to perform, a ministerial duty with performing that duty in good faith and with due care. The Department's interpretation runs contrary to our presumption that statutory language should not be deemed "insignificant." *See Urban*, 723 N.W.2d at 5. Moreover, had the Legislature intended to create additional targeted immunity for a child protection worker who acted in good faith and with due care while failing to carry out a ministerial duty, the Legislature would have used language that specified that intent instead of crafting a broadly worded immunity provision.

We have meaningfully addressed the statutory abrogation of official immunity in only one other case, *State ex rel. Beaulieu v. City of Mounds View*, 518 N.W.2d 567 (Minn. 1994), and our analysis there confirms the result here. In *Beaulieu*, we concluded that the defense of official immunity was available to police officers sued for racial discrimination under the Minnesota Human Rights Act. *Id.* at 571. In reaching that conclusion, we considered whether applying official immunity would undermine the remedial purpose of the Minnesota Human Rights Act. *Id.* at 570. Importantly, the Minnesota Human Rights Act did not include an express immunity provision like the one in the RMMA.

Because the standard for finding willfulness or malice under the doctrine of official immunity and the standard for finding discrimination under the Minnesota Human Rights Act are parallel, we concluded that "the practical impact of allowing official immunity to be asserted as a defense to discrimination claims" would "be at most negligible." *Id.* at 570–71 (stating that "there are few circumstances where a public official might be deemed to have committed a discriminatory act" under the Minnesota Human Rights Act "and yet be deemed not to have committed a malicious or willful wrong" under the official immunity standard). That is not true here. Because the difference between the "not willful or malicious" standard under official immunity, *Brown*, 842 N.W.2d at 465, and the "good faith and due care" standard under the RMMA is significant, we conclude that allowing a child protection worker to assert the defense of official immunity would be inconsistent with the purpose of the RMMA, *see Radke v. County of Freeborn*, 694 N.W.2d 788, 798 (Minn. 2005) (stating that "it is manifest that the legislature intended to provide safety and protection for children in abusive and neglectful situations and for the county social

services department and its child protection workers to act immediately when they receive specific reports of abuse or neglect").

In urging us to reach a contrary result, Pope County cites *Olson v. Ramsey County*, 509 N.W.2d 368 (Minn. 1993), but that case is distinguishable. In *Olson*, we concluded that a county social worker who formulated a case management plan for a mother and her abused child was protected by official immunity. *Id.* at 371–72. But in *Olson* we were not presented with the question of whether the RMMA immunity provision abrogated the common law. Not only is the RMMA immunity provision not mentioned in the opinion, no provision of the RMMA is mentioned. Rather, we simply presumed that official immunity applied in *Olson*. Therefore, *Olson* does not stand for the proposition that the RMMA immunity provision did not abrogate official immunity.[13] We also note that in 2005 (after our 1993 decision in *Olson*), we held that a civil cause of action will lie against a county for negligence in investigating reports of child abuse under the statute. *Radke*, 694 N.W.2d at 799. Pope County's position on the preservation of official immunity would severely undercut the viability of that cause of action.

Finally, Pope County and amici raise public policy concerns associated with the complicated judgment calls that child protection workers must make in child maltreatment

[13] We do not consider the interpretive principle that the Legislature acts with full knowledge of existing case law because that principle makes sense only when we actually have interpreted a statute. *See* Minn. Stat. § 645.17(4) (2020) (stating the presumption that "when a court of last resort has *construed the language of a law*, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language" (emphasis added)).

cases. We agree entirely that child protection workers face a significant and difficult tension in seeking to protect children from neglect and abuse while also trying to keep families together. *See* Minn. Stat. § 626.556, subd. 1 (articulating the public policy goals of the RMMA). But that is not a justification for ignoring the Legislature's enactment of a specific immunity provision that applies to child protection workers. The Legislature is best positioned to consider the competing public policy tensions and chose to provide immunity only when child protection workers act in good faith and exercise due care. Minn. Stat. § 626.556, subd. 4.[14] These questions of public policy are for the Legislature, not the courts. *Mattson v. Flynn*, 13 N.W.2d 11, 16 (Minn. 1944); *see also State v. Khalil*, 956 N.W.2d 627, 633 (Minn. 2021) (deferring to Legislature's balancing of competing policy interests because "legislators are the elected representatives of the people and . . . legislative bodies are institutionally better positioned than courts to sort out conflicting interests and information surrounding complex public policy issues").

We cannot ignore the fundamental fact in this case: Eric Dean is dead. Further, accepting the facts in the light most favorable to Jepsen, the record shows that an expert in the field believes that his death would likely have been prevented had respondents performed their jobs under the RMMA with due care. The concern of the RMMA—protecting the health and safety of Eric Dean and all other vulnerable children in Minnesota—was plainly not served here. *See* Minn. Stat. § 626.556, subd. 1. By

[14] As mentioned, the RMMA is an often-amended statute. If our conclusion that the Legislature intended to abrogate common law official immunity for child protection workers is incorrect, the Legislature has the power to amend the statute and clarify the scope of the immunity provision.

specifically describing in the RMMA the level of care that child protection workers must bring to their work, the statutory immunity provision is central to how the Legislature attempted to balance the competing interests of maintaining child safety and preserving families. We cannot simply disregard the RMMA immunity provision and defer to child protection workers because they have an admittedly difficult job. We therefore hold that the immunity provision in the RMMA, Minn. Stat. § 626.556, subd. 4, abrogated common law official immunity for child protection workers performing specified duties under the RMMA.

II.

We now turn to the question of whether Pope County is immune from liability under the Municipal Tort Claims Act (MTCA). Minn. Stat. § 466.03 (2020) ("discretionary function immunity"). This is a question the court of appeals did not reach after concluding that "Pope County and its social workers are entitled to official immunity with respect to their screening and handling of the reports of maltreatment." *Jepsen ex rel. Dean v. County of Pope*, 938 N.W.2d 60, 72 (Minn. App. 2019). But the district court reached this question and concluded that the acts at issue "require evaluating and balancing competing factors and policy objectives" and therefore are "discretionary policymaking decisions" that are protected by discretionary function immunity. Rather than remand to the court of appeals, we address this question in "the interests of judicial economy." *Hoffman v. N. States Power Co.*, 764 N.W.2d 34, 48 (Minn. 2009). We conclude that the district court erred by

concluding that Pope County is entitled to discretionary function immunity under Minn. Stat. § 466.03, subd. 6.

The applicability of statutory immunity is a question of law which we review de novo. *See Sletten v. Ramsey Cnty.*, 675 N.W.2d 291, 299 (Minn. 2004). The MTCA generally provides that "every municipality is subject to liability for its torts and those of its officers, employees and agents acting within the scope of their employment or duties whether arising out of a governmental or proprietary function." Minn. Stat. § 466.02 (2020). The MTCA abrogated the longstanding doctrine of sovereign immunity for local governments and created a default rule that municipalities are subject to tort liability. *See generally Spanel v. Mounds View Sch. Dist. No. 621*, 118 N.W.2d 795 (Minn. 1962).

But the MTCA also contains several statutory exceptions to the default rule of tort liability for municipalities. *See* Minn. Stat. § 466.03. Discretionary function immunity is one of those statutory exceptions to municipal tort liability. *Id*., subd. 6. According to the statute, municipal liability does not attach to "[a]ny claim based upon the performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused." *Id*. The municipality is liable for the failure to exercise or perform a discretionary function or duty "only in accordance with the applicable statute[;] and where there is no such statute, every municipality shall be immune from liability." *Id*., subds. 1, 6.

Discretionary function immunity is "designed to assure that the courts do not pass judgment on policy decisions entrusted to coordinate branches of government." *Holmquist v. State*, 425 N.W.2d 230, 231 (Minn. 1988). This statutory design is essential to "preserve

the separation of powers" that grounds our constitutional system. *See Anderson*, 678 N.W.2d at 655 n.4.

We have interpreted discretionary function immunity to distinguish between decisions made at the "planning" and "policymaking" level and those made at the "operational" level. *Olson*, 509 N.W.2dat 371. Discretionary function immunity "protects governmental conduct at the planning or policymaking level, while conduct at the operational level is not protected." *Id.* Planning level decisions are "those involving questions of public policy, that is, the evaluation of factors such as the financial, political, economic, and social effects of a given plan or policy." *Holmquist*, 425 N.W.2d at 232. In simpler terms, planning level decisions require the "balancing of policy objectives." *Nusbaum v. Blue Earth Cnty.*, 422 N.W.2d 713, 722 (Minn. 1988).

Conversely, operational level decisions involve decisions relating to the "ordinary day-to-day operations of the government." *Holmquist*, 425 N.W.2d at 232. Decisions are operational, even when they involve professional judgment or "the application of scientific and technical skills in carrying out established policy," as long as the decision does not involve a balancing of objectives in setting a policy. *Id.* at 233; *Nusbaum*, 422 N.W.2d at 722. Further, although we recognize that nearly every government decision will involve some level of discretion, the exercise of discretion, alone, does not entitle an act to discretionary function immunity. As we stated in *Holmquist*:

> Read literally, the discretionary function exception would preserve immunity for almost all government acts because almost everything a government employee does, from driving a snowplow to formulating toxic waste disposal regulations, involves the exercise of some discretion. We have recognized, however, that the legislature did not intend the discretionary function

> exception to swallow the general rule of allowing recovery for those injuries negligently inflicted in the performance of government operations.

425 N.W.2d at 231.

In response to reports of abuse of Eric, the child protection workers' duties under the RMMA were operational and "day-to-day" in nature and, as such, unprotected by discretionary function immunity. Jepsen alleges that the child protection workers failed to carry out specific statutory duties, including the failure to notify law enforcement under Minn. Stat. § 626.556, subd. 7; the failure to establish face-to-face contact with Eric and other children in the household under Minn. Stat. § 626.556, subd. 10(c), (i); the failure to interview daycare providers under Minn. Stat. § 626.556, subd. 10(h)(3); the failure to consider prior reports of maltreatment under information collection procedures when performing family assessments under Minn. Stat. § 626.556, subd. 10(h)(1); and the failure to send prior history of abuse to the independent doctor investigating the arm fracture. Each of these duties is expressly set forth and required by the statute or rule.

While the child protection workers exercised some level of discretion in the day-to-day performance of these duties, the tasks that the child protection workers were to carry out were established and defined by the Legislature in the RMMA and developed by the Department of Human Services in rules and guidance. Stated another way, the policy decision to require that each of these tasks be performed was made when the Legislature enacted the statute. Accordingly, while the requirements afford the child protection workers room to exercise professional judgment, those decisions are not planning or policy

decisions. Rather, the child protection workers put the Legislature's policy decisions into operation on a day-to-day basis in response to specific cases.

Even the child protection workers' decisions to screen reports of suspected abuse to determine whether a further assessment or investigation is warranted, and further decisions regarding the steps to be taken in response to such assessments or investigations, are operational rather than policymaking acts. The Legislature balanced competing policy factors when it enacted the RMMA and, subsequently, amended the statute over several decades to include increasingly detailed rules for carrying out the functions of screening reports and conducting assessments and investigations.

The RMMA and accompanying rules and guidance issued by the Department of Human Services require child protection workers to screen in and conduct an assessment or investigation when a report suggests that a child is being maltreated—a condition that is defined in specific detail in the statute. Minn. Stat. § 626.556, subd. 10(a) (stating that if the report alleges neglect or abuse by a parent, guardian, or individual functioning within the family unit as a person responsible for the child's care, the county social services agency shall immediately conduct a family assessment or investigation); *see also* Minn. R. 9560.0214, subp. 18 (defining maltreatment), .0216, subp. 3 (describing the screening in process) (2011). Further, child protection workers must conduct a family assessment when there is evidence of child maltreatment in a report but no substantial child endangerment. Minn. Stat. § 626.556, subd. 10(a)(3); Minn. R. 9560.0216, subp. 3(B)(3). The Legislature also expressly defined substantial child endangerment. *See* Minn. Stat. § 626.556, subd. 2(c). In a family assessment, the child protection worker must determine whether services

are necessary to address child safety, safety of other family members, and risk of subsequent maltreatment. *Id.*, subd. 10e(b). If so, they must develop a plan. *Id.*, subds. 10(a), 10m.

The RMMA further provides that if it becomes clear during the assessment or investigation that no maltreatment occurred, the county social services agency can close the case and retain immunity. *Id.*, subd. 10(h). The Legislature has mandated that the county provide appropriate services or take other steps to protect the child when, during an investigation, the county social services agency determines that child maltreatment has occurred and that the child is at significant risk of maltreatment. *Id.*, subd. 10e(f)–(g).

The detailed statutory scheme set forth in the RMMA resolved the high-level planning and policy decisions regarding the screening and handling of reports of abuse. The role of the county social services agency employees is to carry out those policy decisions on a case-by-case basis.

Our holding in *Olson* supports this conclusion. In *Olson*, a trustee brought a wrongful death action against Ramsey County and one of its employees assigned a child protection case in connection with the death of a child who had been abused by his mother. 509 N.W.2d at 370. Before his death, the child was the subject of a case management plan intended to end the abuse. *Id*. The social worker's case plan contained several requirements, including a requirement that the social worker be in contact with the child's parents biweekly and monitor the progress of the mother's treatment plan. *Id*. Less than six months after the case plan was developed, the child was admitted to a hospital with a head injury and subsequently died. *See id*. The mother pleaded guilty to second-degree

murder of the child. *Id*. The child's trustee sued Ramsey County. *Id*. We rejected Ramsey County's assertion of discretionary immunity, holding that the formulation and implementation of the case plan "involved planning at the operational level of government, and discretionary function immunity is inapplicable." *Id*. at 371.

Like the social worker developing and implementing a case plan in *Olson*, the child protection workers' conduct here was to follow the requirements of the RMMA. And for the same reasons as in *Olson*, discretionary function immunity is not available to protect Pope County from liability.

III.

We finally turn to the question of whether the district court erred by granting summary judgment on Jepsen's claim that Pope County and the child protection workers violated the RMMA by failing to notify local law enforcement of the reports of suspected child abuse.

The RMMA requires a local welfare agency to notify and forward reports of child maltreatment to the local police department or county sheriff. Minn. Stat. § 626.556, subds. 3(a)–(b), 7. Under subdivision 7, "[c]opies of written reports received by a local welfare department or the agency responsible for assessing or investigating the report shall be forwarded immediately to the local police department or the county sheriff." Minn. Stat. § 626.556, subd. 7. The record is undisputed that Pope County failed to forward at least some of the reports about Eric to local law enforcement as required by the RMMA.

The dispute here concerns whether the failure to notify local law enforcement of all the reports of child abuse was a proximate cause of Eric's death. Proximate cause is an

essential element of a negligence claim. *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995). A negligent act is the proximate cause of an injury when the act was "a substantial factor in the happening of that result." *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 372 (Minn. 2008) (citation omitted) (internal quotation marks omitted). Proximate cause generally is "a question of fact for the jury." *Lubbers*, 539 N.W.2d at 402.

In support of summary judgment, Pope County submitted an affidavit from the Pope County Human Services Director, which stated that Pope County Human Services had "a practice of not providing child protection intakes to law enforcement." The affidavit also stated that Pope County law enforcement had a policy of not independently investigating or assessing reports of child abuse. Because local law enforcement did not investigate reports of child abuse, the Director stated, providing reports to law enforcement "would serve no value and not enhance the child protection function at all."

In response to Pope County's motion for summary judgment, Jepsen submitted an expert affidavit from a licensed independent clinical social worker with more than 3 decades of experience, including more than a decade of experience working in child protection services in Hennepin County. The expert social worker reviewed the extensive records in this matter, including the records of the criminal investigation following Eric's death. During the criminal investigation, Peltier and Eric's siblings admitted that Peltier was abusing Eric, including biting him. This was information the child protection workers failed to discover when responding to the multiple reports of child abuse. The expert social worker opined that had Pope County forwarded all these reports to local law enforcement, law enforcement would have undertaken a more thorough investigation, including forensic

interviews. The expert social worker further opined that such an investigation likely would have produced evidence that Peltier had been abusing Eric, requiring Pope County (or law enforcement) to take action to protect Eric from Peltier. The expert social worker expressly stated that Eric's death likely would have been avoided had law enforcement been notified of all the reports of abuse.

The district court granted summary judgment to Pope County and the child protection workers on the claim that the failure to cross-report to law enforcement resulted in Eric's death. The district court found that Pope County violated the RMMA by not providing notice "to law enforcement as mandated." Nonetheless, "despite this statutory violation," the district court reasoned that "there is nothing in the record to suggest cross reporting to law enforcement would have changed this horrible tragedy, given law enforcement by its policy did not independently investigate or assess any of these claims."

In deciding the issue of proximate cause as a matter of law, the district court relied on the existence of the Pope County law enforcement policy of not independently investigating or assessing reports of child abuse. At the time, Minnesota law provided that the "local law enforcement agency has responsibility for investigating any report of child maltreatment if a violation of a criminal statute is alleged." Minn. Stat. § 626.556, subd. 3f. Therefore, at the time, Pope County's alleged law enforcement policy was contrary to *state* law. In addition, the district court did not mention the expert affidavit of the social worker who opined that Eric's death would have been avoided had law enforcement received all the reports of child abuse. The court of appeals affirmed summary judgment, concluding that Jepsen did not produce sufficient evidence to establish that the failure to

cross-report the suspected child abuse to law enforcement was a proximate cause of Eric's death. *Jepsen*, 938 N.W.2d at 73–74.

We conclude that the expert affidavit of the social worker creates a genuine issue of material fact on causation that precludes summary judgment. Pope County argues that the expert affidavit is not credible because she had experience in Hennepin County, and her testimony regarding cross-reporting was "not the practice in Pope County." But the cross-reporting duties and law enforcement obligations are a matter of state law set forth in state statute. Further, issues of credibility are for the jury, *Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 233 (Minn. 2020), and "[w]eighing the evidence and assessing credibility on summary judgment is error." *Hoyt Props., Inc. v. Prod. Res. Grp., LLC*, 736 N.W.2d 313, 320 (Minn. 2007). Accordingly, we reverse the decision of the court of appeals and remand to the district court on the claim that Pope County and the child protection workers are liable for Eric's death for the failure to notify local law enforcement of the reports of child abuse as required by the RMMA.

## CONCLUSION

For the reasons stated above, we reverse the decision of the court of appeals and remand to the district court for further proceedings.

Reversed and remanded.