STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1271

Brianne Goad,
Respondent,

vs.

City of Duluth,
Appellant,

vs.

Sinnott Blacktop, LLC,
Third-Party Defendant.

Filed June 23, 2025
Affirmed
Wheelock, Judge

St. Louis County District Court
File No. 69DU-CV-22-358

Stephanie M. Balmer, Falsani, Balmer, Peterson & Balmer, Duluth, Minnesota (for respondent)

Terri Lehr, Duluth City Attorney, Paige V. Orcutt, Assistant City Attorney, Duluth, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Worke, Judge; and Connolly, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this interlocutory appeal from the denial of its summary-judgment motion, appellant city argues that the district court erred when it determined that the city was not entitled to discretionary immunity.[1] We affirm the district court's decision on this issue and do not reach the other arguments raised.

FACTS[2]

On an unseasonably warm and clear day at the end of March 2021, when there was no snow or ice on the sidewalk, respondent Brianne Goad was walking to work at a hospital in the early morning and sustained injuries from a fall after she tripped over the base of a traffic sign that rose like a stump a few inches above the sidewalk. At an unknown point in time before Goad fell, the traffic sign had been knocked down and removed from the sidewalk, but the base remained. After Goad tripped, a hospital maintenance manager used an online form to report to appellant City of Duluth that the sign was down, and within an hour of the incident, the city's traffic maintenance worker responded to the report and replaced the sign.

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[1] The immunity at issue may be referred to as discretionary, statutory, or both. *Christopherson v. City of Albert Lea*, 623 N.W.2d 272, 275 (Minn. App. 2001). Because there are other types of statutory immunity, we use the phrase "discretionary immunity."

[2] Because the parties do not dispute the facts set forth in the district court's summary-judgment order, the facts provided in this opinion are taken from that order or are repeated as provided in the record.

During his deposition, the traffic maintenance worker explained that members of the public can report damaged signs via in-person conversations, online form submissions, or phone calls. At the time of the incident, the city did not have a process for tracking those reports. He also explained that no one regularly checked on the signs, so the only way that the city would know that a sign needed to be repaired or replaced was if someone made a report.

Another city employee, the street maintenance supervisor, was also deposed and questioned about the reporting process for damaged signs. He stated that, if property is damaged during plowing, the driver tells the supervisor working at the time, who informs him, and he writes a report. If the damaged property is a sign, the traffic maintenance worker is notified immediately and the damage is repaired "relatively soon."

About a year after the incident, Goad filed a complaint against the city alleging negligence,[3] and about two years after that, the city moved for summary judgment, asserting the defense of discretionary immunity in addition to other arguments. Attached to its reply brief in support of its motion, the city submitted an affidavit from its traffic maintenance worker, the same person who had been deposed, in which he explained that the city has a limited budget and that he uses his "professional judgment to determine [the] priority level of repairs." He stated that there is no "scheduled inspection policy" for traffic signs and that, when he and other city employees notice damaged signs "while out on other

[3] The city filed a third-party complaint against two other parties; the claims against both third-party defendants have been dismissed and are not at issue in this appeal.

repair jobs," they report them. He also reiterated that he did not receive notice of the sign at issue here being damaged or missing until after Goad's accident.

After the district court held a hearing on the city's summary-judgment motion, it issued an order denying the motion, concluding that the city had not met its burden to prove that immunity applied and rejecting the city's alternative arguments for dismissal.

The city appeals.

DECISION

The city argues that the district court erred by denying the city's summary-judgment motion for three reasons. First, the city argues that Goad failed to prove that the city owed a duty of care to her because discretionary immunity applies. The city asserts that Goad's claim "is necessarily a challenge to the City's maintenance procedures and immunity bars that challenge." Second, the city argues that Goad failed to prove that the city owed a duty of care to her because it did not have constructive notice or actual notice of the condition and because Goad cannot prove that the city created the condition. Third, the city argues that Goad's claim cannot succeed because the condition was open and obvious. The city's second and third arguments go beyond its discretionary-immunity argument, and we first consider whether they are within the scope of this appeal, and thus properly before our court, before analyzing the city's assertions of error.

The denial of an immunity defense is immediately appealable. *See Gleason v. Metro. Council Transit Operations*, 582 N.W.2d 216, 218 (Minn. 1998) ("Although denial of a motion for summary judgment is not ordinarily appealable, an exception to this rule arises when the order denies summary judgment based on statutory or official immunity.").

However, interlocutory review of this issue does not extend to all other issues; rather, our review of additional decisions is limited to those decisions that are "inextricably intertwined" with the issue of immunity. *Meier v. City of Columbia Heights*, 686 N.W.2d 858, 863 (Minn. App. 2004), *rev. denied* (Minn. Dec. 14, 2004); *see* Minn. R. Civ. App. P. 103.03 (explaining which orders and judgments are appealable). We have explained that, to be inextricably intertwined with an issue properly before our court, the collateral or pendent issue must be "coterminous with, or subsumed in, the claim before the court on interlocutory appeal" and our resolution of the properly appealed issue must "necessarily resolve[] the pendent claim as well." *Aon Corp. v. Haskins*, 817 N.W.2d 737, 741-42 (Minn. App. 2012) (quotations omitted).

Here, whether the city had notice of the condition or whether the condition was open and obvious is not so connected with the issue of immunity that our resolution of the immunity issue necessarily resolves the other claims. Particularly because we conclude that the district court did not err by determining that the city did not present sufficient evidence to prove immunity, it is not necessary to review the city's other arguments at this time. Because no other issues raised are inextricably intertwined with the discretionary-immunity issue, we address only whether discretionary immunity applies to the city's conduct. To do so, we turn to the merits of the city's immunity argument.

The city asserts that it has discretionary immunity because, at its core, Goad's claim challenges the city's maintenance and inspection procedure, which is a policy determination, and thus that the district court erred when it denied the city summary judgment based on its determination that discretionary immunity does not apply here. In

response, Goad argues that the city failed to prove that a policy existed because the evidence shows only that employees used their personal judgment and that, even if a policy existed, it was only to react to reports of missing or damaged signs and was inadequate to confer immunity because it was a case-by-case determination about how to respond that is the opposite of a standard procedure.

When reviewing a summary-judgment ruling, appellate courts determine "whether there are genuine issues of material fact and whether the district court erred in applying the law" while viewing the evidence "in the light most favorable to the nonmoving party." *Schroeder v. St. Louis County*, 708 N.W.2d 497, 503 (Minn. 2006). "The application of immunity presents a question of law that [appellate courts] review de novo." *Id.*

Municipalities are liable for their torts absent some enumerated exceptions. Minn. Stat. § 466.02 (2024). When reviewing an assertion of discretionary immunity, courts "start from the presumption that a municipality is liable for its tortious acts." *Doe 601 by Doe 601 v. Best Acad.*, 17 N.W.3d 464, 477 (Minn. 2025). One exception from this presumption of liability is if the claim is "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 (2024). This exception "is construed narrowly to avoid precluding Minnesotans from recovering for injuries caused by municipalities' tortious conduct unless necessary to avoid judicial branch interference with policymaking activities best left to the legislative or executive branch." *Doe 601*, 17 N.W.3d at 481.

Whether discretionary immunity applies is determined through a two-step test. *Christopherson*, 623 N.W.2d at 275. First, the court must "identify the precise government

conduct being challenged." *Schroeder*, 708 N.W.2d at 504. Here, the conduct Goad challenges is the city's lack of action—specifically, that the city did not address the potential hazard of the sign base or replace the sign before Goad tripped.

Second, the court must distinguish between planning functions—including policy-making decisions—and operational functions. *Id.*; *Christopherson*, 623 N.W.2d at 275. "[A]lmost every act involves some measure of discretion, and yet undoubtedly not every act of government is entitled to [discretionary] immunity." *Angell v. Hennepin Cnty. Reg'l Rail Auth.*, 578 N.W.2d 343, 346 (Minn. 1998) (quotation omitted). Policy-making decisions involve "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." *Watson by Hanson v. Metro. Transit Comm'n*, 553 N.W.2d 406, 413 (Minn. 1996) (quotation omitted). These types of decisions are immune from courts "conducting an after-the-fact review that second-guesses certain policy-making activities that are legislative or executive in nature." *Id.* at 412 (quotation omitted). "Statutory immunity does not extend to operational-level decisions, those involving day-to-day operations of government, the application of scientific and technical skills, or the exercise of professional judgment." *Schroeder*, 708 N.W.2d at 504.

If a municipality asserts an immunity defense, it must "demonstrate facts showing that it is entitled to immunity." *Gerber v. Neveaux*, 578 N.W.2d 399, 402 (Minn. App. 1998), *rev. denied* (Minn. July 16, 1998). And to prove that a decision is policy-making and not operational, "the municipality must produce evidence of how it made the decision for which it claims immunity. Broad, conclusory assertions that the municipality based its

decision on economic, social, political, and financial factors are insufficient." *Doe 601*, 17 N.W.3d at 479 (quotation omitted). Only in limited instances will a court be able to determine immunity if there is a lack of evidence. *Id.*

The city argues that its policy is to repair signs when it receives reports of damage, not to proactively search for damaged signs, due to its limited budget for maintenance work and that, because this a financial decision, it is policy making and immune from Goad's claim. However, the city presents no evidence to support that this was a financial decision or how this decision was made. The city does not identify any other considerations that were weighed in setting its policy, and although two of the city's employees testified about how the city determines what signs to repair and when and provided an affidavit stating the same, we conclude that the city has not carried its burden to prove that immunity applies.

We look to a recent supreme court decision—*Doe 601*—for guidance as to the evidence that the city must produce to prove its defense. 17 N.W.3d at 464. In that case, the parent of a minor brought a lawsuit against a Minneapolis charter school for negligent hiring. *Id.* at 470, 473. The parent argued that the school was liable because it hired a teacher who was later discovered to have been sexually abusing children. *Id.* at 473. The district court granted the school's motion for summary judgment, determining that discretionary immunity applied to hiring decisions because they were policy-based decisions that required consideration of many competing factors. *Id.* We affirmed, and the supreme court granted review, ultimately reversing our decision. *Id.* at 473-74, 486. The supreme court's opinion explained that the municipality must produce evidence to

demonstrate "how it made the decision for which it claims immunity" and that "conclusory assertions that it based its decision on economic, social, political, and financial factors are insufficient." *Id.* at 479 (quotation omitted). The supreme court stated that only in limited circumstances would a court be able to determine that a municipality weighed these policy considerations without the municipality producing evidence of such deliberations. *Id.* It also provided examples of those limited circumstances that had appeared in previous cases, such as deploying law-enforcement officers, taking judicial notice of a national safety standard, or when there is clearly an "understandable reason for the lack of direct evidence" and the connection between the inference and the circumstantial evidence is "so compelling" that direct proof is not necessary. *Id.* at 479-80 (citing *Watson*, 553 N.W.2d at 413; *Nusbaum v. Blue Earth County*, 422 N.W.2d 713, 722 n.6 (Minn. 1988); *Silver v. City of Minneapolis*, 170 N.W.2d 206, 209 (Minn. 1969)).

The facts here are not analogous to any of these examples. Instead, the city has provided a conclusory affidavit, signed by its traffic maintenance worker, that labels the conduct as the result of policy making without identifying specific facts to support that assertion. The city employees' depositions fail to demonstrate that any policy existed. The city employees stated that they responded to reports and explained the steps that they follow after receiving reports, but these actions, if they amount to a policy, do not explain how the city arrived at this policy. The city, therefore, has not met the standard established in *Doe 601*.[4] We cannot speculate about the policy considerations that underlie the city's

[4] Although *Doe 601* was released after the city submitted its principal brief to this court, and it did not change the law, we note that "appellate courts apply the law as it exists at the

decisions about repair and replacement of traffic signs because the supreme court explicitly stated in *Doe 601* that the city must provide evidence of how it came to the purportedly policy-making decision, including how it weighed various policy considerations, and the city provided no such evidence here. Therefore, we conclude that the city failed to demonstrate that it is entitled to discretionary immunity, and we affirm the district court's order denying the city's summary-judgment motion.

Affirmed.

time they rule on a case." *Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000).