

*This opinion is nonprecedential except as provided by  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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A24-1536**

Progressive Preferred Insurance Company,  
Appellant,

vs.

Adventurer Manufacturing, Inc.,  
Respondent.

**Filed May 19, 2025  
Reversed and remanded  
Harris, Judge**

Hennepin County District Court  
File No. 27-CV-23-2690

Michelle D. Hurley, Alyssa L. Johnson, Yost & Baill, LLP, Minneapolis, Minnesota (for appellant)

Steven D. Pattee, Paul E. Darsow, Tewksbury & Kerfeld, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Bentley, Presiding Judge; Ede, Judge; and Harris, Judge.

**NONPRECEDENTIAL OPINION**

**HARRIS**, Judge

Appellant challenges the district court's decision to grant summary judgment in favor of respondent on appellant's subrogation claim. Because we conclude that the district court erred by granting summary judgment to respondent and there is no alternative basis to affirm, we reverse the district court's order and remand for further proceedings.

## FACTS

This case concerns a subrogation action by appellant Progressive Preferred Insurance Company against respondent Adventurer Manufacturing Inc. arising from fire damage to a recreational vehicle (the RV) owned by Progressive's insured, Matthew Peterson. Progressive brought claims for negligence, strict liability, and breach of warranties against Adventurer. The district court granted Adventurer's motion for summary judgment based on its determination that Progressive failed to put forward sufficient evidence to support its claims. The following facts are based on the record at summary judgment and presented in the light most favorable to Progressive.<sup>1</sup>

In September 2020, Peterson purchased the RV from Adventurer. The RV was designed, manufactured, and distributed by Adventurer. It was equipped with an electrical system with four rechargeable batteries. The batteries could be recharged using solar panels on the roof of the RV, an inverter-charger connected to an external power source, or a combination of both. The RV did not originally come with battery heaters for the batteries. Adventurer added the battery heaters to the RV to allow Peterson to charge the batteries in cold weather.

In November 2020, the RV caught fire while parked in Peterson's driveway and was destroyed. It was approximately 27-degrees Fahrenheit on the night of the fire and Peterson

---

<sup>1</sup> See *Commerce Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015) (indicating that, on appeal from summary judgment, we “view the evidence in the light most favorable to the party against whom summary judgment was granted”).

plugged the RV into an external power source because he did not want the RV's systems to freeze.

Peterson held an insurance policy with Progressive, which included coverage for the RV. Progressive paid Peterson an amount for damages to the RV pursuant to this policy. Progressive then demanded this amount in subrogation from Adventurer. Adventurer rejected the demand on the ground that "[t]he RV was plugged in and charging at the time the fire began. The temperature outside at the time the [fire] began was around 27 [degrees Fahrenheit], well below freezing." Adventurer noted that the RV's manual specifically warned against charging a frozen battery and asserted that the fire was likely the result of the RV being plugged into an external power source in sub-freezing temperatures.

Progressive subsequently filed a subrogation action against Adventurer to recover the damages paid to Peterson. It asserted causes of action for negligence, strict liability, and breach of express and implied warranties. Progressive also retained two experts to inspect the RV and investigate the cause of the fire.

Progressive retained a consulting engineer with Hallman Engineering to inspect and examine the RV to determine the origin and cause of the fire. The engineer opined that the fire originated in the battery compartment. He did not find any "evidence of a failure or malfunction . . . on the inverter/charger or the associated installation and wiring to the batteries." And he noted that "the batteries themselves exhibited greater damage than the inverter/charger and associated wiring," further supporting a conclusion that the batteries caused the fire.

In addition to the report prepared by Hallman Engineering, Progressive submitted a report from a forensic electrical expert. The electrical expert determined that the fire began inside the battery compartment. He noted that he did not find evidence of a failure or malfunction on the inverter, which suggested that the fire began in the battery compartment. And he further noted that the batteries themselves showed greater damage than the inverter, and one of the batteries showed evidence of an “internal rupture.” The electrical expert concluded that, “[t]he only source of ignition inside the battery compartment were the batteries themselves.” However, he cautioned that “[t]he exact cause of a battery failure is not known at this time.” The electrical expert stated that Peterson’s care and use of the RV did not cause or contribute to the fire. The report stated that: “Peterson was aware the owner’s manual warned against charging the batteries in sub-zero temps, but when he purchased the RV, he was informed by [Adventurer] that they installed heat pads to warm the batteries to a safe charging temperature.” Despite this assurance, however, the electrical expert indicated that no evidence of heaters was found on or near any of the four batteries.

Adventurer also retained two experts to investigate the fire. Adventurer’s forensic engineer considered multiple possible sources of ignition for the fire, including an extension cord, the inverter-charger, the battery heaters, the batteries themselves, and the wiring. The forensic engineer concluded that each of these items were a possible source of ignition. However, he noted that the RV was “completely destroyed” and “all of the possible sources of ignition were severely damaged or were not collected for examination.” For these reasons, the forensic engineer concluded that “none of the possible sources of

ignition [could] be ruled out,” and that “[a] source of ignition for this fire cannot be determined with any reasonable degree of engineering certainty.” Adventurer’s second investigator reviewed the evidence and reports and concluded that, “[b]ased on the analysis of all available data, there remains insufficient evidence to establish a specific ignition source, fuel first ignited, or the ignition sequence could not be conclusively established.”

Following expert disclosures, Adventurer moved for summary judgment, claiming that Progressive failed to establish a specific defect that caused the fire. The district court granted Adventurer’s summary-judgment motion and dismissed Progressive’s complaint.

Progressive appeals.

## **DECISION**

Summary judgment is appropriate when “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. We “review a district court’s summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment.” *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). We construe the evidence in the light most favorable to the party against whom summary judgment was granted. *Windcliff Ass’n, Inc. v. Breyfogle*, 988 N.W.2d 911, 916 (Minn. 2023).

Progressive raises two issues on appeal. First, it claims that the district court erred in its application of the law in granting the summary-judgment motion because it weighed the evidence provided by the parties’ experts, rather than viewing the evidence in the light most favorable to Progressive, the nonmoving party. Second, it maintains that the district

court erred in determining that Progressive failed to provide sufficient, direct evidence of a defect to support its product-liability claims. We address each argument in turn.

**I. The district court erred by weighing the evidence and concluding that there were no genuine issues of material fact.**

A party seeking summary judgment bears the burden of making a prima facie showing that there is no genuine issue of material fact. Minn. R. Civ. P. 56.03(a) (stating that the party claiming no genuine fact issue “must support the assertion” with admissible evidence); *Citizens State Bank Norwood Young Am. v. Brown*, 849 N.W.2d 55, 62 (Minn. 2014). When the moving party makes that showing, “the burden of establishing that the facts raise a genuine issue falls to the opposing party.” *Citizens State Bank*, 849 N.W.2d at 62 (citation omitted). To meet its burden, the nonmoving party may not “rely upon speculation.” *Limberg v. Mitchell*, 834 N.W.2d 211, 219 (Minn. App. 2013) (quotation omitted); *see also Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993) (“Mere speculation, without some concrete evidence, is not enough to avoid summary judgment.”). Rather, the nonmoving party must produce competent, admissible evidence that creates a genuine issue for trial. *Twin Cities Metro-Certified Dev. Co. v. Stewart Title Guar. Co.*, 868 N.W.2d 713, 720 (Minn. App. 2015).

Here, the district court noted that each of Progressive’s claims required a showing that the RV was defective. Progressive’s experts concluded that battery failure was the cause of the fire. But the district court found that “all the counts fail” because Progressive “failed to submit sufficient evidence that the battery was defective and that this defect was the source of the fire.” The district court noted that none of Progressive’s experts could

“point to a defect in the battery,” and that “[t]here is no evidence of a defect.” The district court determined that Progressive provided only circumstantial evidence of a defect in the battery. It continued: “When, as here, there is no direct evidence of a defect and there are equally plausible explanations for the cause of the harm, then Progressive has not met its burden to prove proximate cause, which is a necessary element in all three counts.”

On appeal, Progressive contends that the district court erred in granting summary judgment because genuine issues of material fact exist as to the cause and origin of the fire. Progressive asserts that the district court improperly weighed the evidence in the expert reports submitted by the parties, which is a task properly reserved for the jury. And it argues that the district court applied the wrong standard on summary judgment by requiring “substantial evidence” and failing to recognize that there are disputed facts in the record. We agree.

Adventurer, as the party seeking summary judgment, bore the burden of making a prima facie showing that there were no genuine issues of material fact remaining for trial. Minn. R. Civ. P. 56.03(a). To that end, Adventurer presented evidence in the form of expert reports from a forensic engineer and an investigator that there could have been multiple causes for the fire. Adventurer’s forensic engineer stated that the fire could have been caused by the extension cord, the inverter-charger, the batteries, the battery heaters, or a problem with the wiring. Both experts agreed that a source of ignition for the fire could not be conclusively determined. Based on these reports, Adventurer raised doubts about the precise cause of the fire. But it has not made a prima facie showing that there are *no* disputed facts—an initial burden that Adventurer, not Progressive, bears.

Instead, Progressive presented facts raising a genuine issue for trial on causation. “If a nonmoving party has the burden of proof on an issue, it does not need to show substantial evidence to withstand summary judgment, but merely sufficient evidence to allow reasonable persons to reach different conclusions on the issue.” *BFI Waste Sys. of N. Am., LLC v. Bishop*, 927 N.W.2d 314, 323 (Minn. App. 2019) (citation omitted). Here, Progressive pointed to its own experts, who identified the batteries as the source of the fire and ruled out other potential causes of the fire. Progressive’s consulting engineer opined that the fire’s area of origin was where the batteries were located and that the batteries themselves were the cause of the fire. He noted that there was no evidence of a failure or malfunction on the inverter-charger or the wiring. Progressive’s electrical expert echoed this opinion and stated that the fire began inside the battery compartment and that “[t]he only source of ignition inside the battery compartment were the batteries themselves.” This expert also excluded Peterson as a possible source of the fire, stating that, in his opinion, Peterson’s care and use of the RV did not cause the fire. We are satisfied that these expert reports qualify as competent, admissible evidence creating a genuine issue for trial. And this evidence, when viewed in the light most favorable to Progressive as the nonmoving party, creates a genuine dispute of fact precluding summary judgment.

In its decision, the district court found that Progressive had “not met its burden to prove proximate cause,” and could not “establish a defect that proximately caused the fire.” However, Progressive, as the nonmoving party, “is not required to demonstrate or prove [its] claim in order to avoid summary judgment,” but merely “furnish evidence creating genuinely disputed material facts.” *Geist-Miller v. Mitchell*, 783 N.W.2d 197, 202 (Minn.



App. 2010). Summary judgment is not appropriate if the nonmoving party is able to point to or identify evidence which, if fully believed by the trier of fact, would support the nonmoving party's position on a material issue. *See id.* at 201-02 (stating this proposition more generally and asking only whether the nonmoving party's evidence, if fully believed, would "support a claim").

Progressive has furnished such evidence here. The parties dispute the cause and origin of the fire. Adventurer asserted that there are multiple possible causes of the fire. Progressive identified evidence in the way of reports from its experts that battery failure was the likely cause of the fire and that other sources of ignition could be ruled out. These conflicting expert opinions raise genuine issues of material fact to be resolved by the factfinder. *See Warren v. Dinter*, 926 N.W.2d 370, 375 (Minn. 2019) (recognizing that "summary judgment is inappropriate when reasonable persons might draw different conclusions from the evidence presented" (quotation omitted)). And it is for the jury to weigh conflicting evidence and make credibility determinations, not the district court. *See Hoyt Props., Inc. v. Prod. Res. Grp., LLC*, 736 N.W.2d 313, 320 (Minn. 2007) (noting that "[w]eighing the evidence and assessing credibility on summary judgment is error"); *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997) (cautioning that district court "must not weigh the evidence on a motion for summary judgment").

Based on our de novo review, we determine that the district court erred by misapplying the law, weighing the evidence, and assessing the credibility of the competing experts. Because genuine issues of material fact preclude summary judgment, we reverse.

**II. The district court erred in determining that Progressive was required to show direct evidence of a defect at the summary-judgment stage.**

Progressive next asserts that the district court erred by concluding that it must show direct—rather than circumstantial—evidence of a defect to prove a product-liability claim. Progressive asserted claims for breach of express and implied warranties. For a plaintiff to prevail on a breach-of-warranty claim, the plaintiff must prove “the existence of a warranty, a breach, and a causal link between the breach and the alleged harm.” *Peterson v. Bendix Home Sys., Inc.*, 318 N.W.2d 50, 52-53 (Minn. 1982). Minnesota courts have held that “generally no specific defect need be alleged, and a defective condition can be proved by circumstantial evidence.” *Int’l Fin. Servs., Inc. v. Franz*, 534 N.W.2d 261, 266 (Minn. 1995) (quotation omitted). “Moreover, circumstantial evidence may be sufficient to show the causal relationship between the product and the injury [that] followed its use.” *Id.* (quotation omitted).

The district court determined that there was “no direct evidence of a defect” that caused the fire, and that Progressive relied on “circumstantial evidence.” The district court continued: “When, as here, there is no direct evidence of a defect and there are equally plausible explanations for the cause of the harm, then Progressive has not met its burden to prove proximate cause, which is a necessary element in all three counts.” The district court concluded that Progressive “failed to meet its burden to show proximate causation” because it did not “rule[] out” other “equally likely causes of the fire.”

Progressive asserts on appeal that it has offered sufficient evidence, including circumstantial evidence and direct evidence in the form of expert testimony, for a

reasonable juror to find the presence of a defect in the RV. And it claims that the district court erred by placing the burden on Progressive to “prove” a product-liability claim at the pretrial stage. We agree that the district court erred.

At this stage of the proceedings, Progressive is not required to “prove” proximate causation. *See, e.g., Nelson v. Wilkins Dodge, Inc.*, 256 N.W.2d 472, 476 (Minn. 1977) (determining that summary judgment was not appropriate because cause of damage to vehicle was a jury question). Minnesota law is clear that “causation in a breach-of-warranty case presents a factual issue.” *Driscoll v. Standard Hardware, Inc.*, 785 N.W.2d 805, 816 (Minn. App. 2010), *rev. denied* (Minn. Sept. 29, 2010). The district court’s acknowledgement that there are “equally plausible explanations” for the fire indicates that there is a genuine issue of material fact. And in considering a motion for summary judgment, “all inferences from circumstantial evidence and all doubts must be resolved against the movant, without undertaking to determine credibility.” *Forsblad v. Jepson*, 195 N.W.2d 429, 430 (Minn. 1972).

The district court recognized in its order that the “alternative causes [for the fire asserted by Adventurer] are as likely as Progressive’s theory,” and that the “jury would have to speculate” as to the cause of the fire. But caselaw instructs that weighing the evidence and assessing witness credibility is the proper role of the jury. *DLH, Inc.*, 566 N.W.2d at 70 (advising that the district court “must not weigh the evidence on a motion for summary judgment”). It is for the jury to assess and evaluate the evidence presented on Progressive’s claims.

Finally, we note that, “if any doubt exists as to the existence of a genuine issue as to a material fact, the doubt must be resolved in favor of finding that the fact issue exists.” *Rathbun v. W. T. Grant Co.*, 219 N.W.2d 641, 646 (Minn. 1974). Whether a defect in the RV caused the fire rests on the resolution of disputed material facts and credibility determinations. Because the district court erred by granting summary judgment in favor of Adventurer and against Progressive, we reverse and remand.

**Reversed and remanded.**