STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0271

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.

Filed December 23, 2019
Affirmed
Smith, Tracy M., Judge

Pope County District Court
File No. 61-CV-17-58

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Considered and decided by Florey, Presiding Judge; Reyes, Judge; and Smith, Tracy M., Judge.

S Y L L A B U S

Minn. Stat. § 626.556, subd. 4(b) (2018)[1] does not abrogate the common-law doctrine of official immunity for county social workers.

O P I N I O N

SMITH, TRACY M., Judge

On appeal from partial summary judgment in favor of respondents on appellant's negligence claims arising out of the wrongful death of a child, appellant argues that the district court erred by deciding (1) that Pope County and its child-protection social workers were immune from liability under the doctrines of official immunity and statutory immunity and (2) that, as a matter of law, the evidence was insufficient to establish that the social workers' failure to cross-report suspected child abuse to law enforcement was a proximate cause of the child's death. We affirm.

FACTS

This case arises out of the tragic death of a child, Eric Parker Dean.[2] In March 2013, Eric died from internal injuries after his father's girlfriend, Amanda Peltier, threw him against a wall. Eric was four years old.

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[1] We cite the most recent version of Minn. Stat. § 626.556, subd. 4(b), because it has not been amended during the relevant period in a way that affects the abrogation issue. *See Interstate Power Co. v. Nobles Cty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, "appellate courts apply the law as it exists at the time they rule on a case").

[2] Throughout this opinion, we refer to the child by his first name, Eric, to avoid confusion with his father, who has the same last name.

Appellant William Jepsen is the trustee for Eric's heirs and next of kin. The trustee sued respondents Pope County and Pope County Human Services (PCHS) social workers Kelly Lurken-Tvrdik, Amy Beckius, and Mary Schley for negligence, gross negligence, and wanton and willful negligence for the wrongful death of Eric.[3] The following facts, which the district court determined to be uncontested in its summary-judgment order, are not challenged on appeal. The parties instead dispute the legal implications of those facts.

Eric lived with his mother and father, David Dean, until they separated in early 2010. Eric then lived with his mother until late 2010, when Pope County child protection removed him from his mother's home based on multiple reports of abuse. Eric was placed in his father's home, and his father was granted permanent physical custody and legal custody. From July 20, 2011, until August 2, 2012, there were multiple reports to PCHS of suspected abuse perpetrated against Eric. During that time, Eric was living with Dean, Peltier, their five other joint and nonjoint children, and, for most of that time, Peltier's mother.

Minnesota's statute governing the reporting of maltreatment of minors, Minn. Stat. § 626.556 (2018) (RMMA),[4] controls the handling of reports of child abuse. The statute

[3] The trustee also sued David Dean (Eric's father) and Elizabeth Peltier (Amanda Peltier's mother), but they are not parties to this appeal. In this opinion, "Peltier" refers to Amanda Peltier, not Elizabeth.

[4] Parties refer to this statute by different names in their briefs. The trustee refers to section 626.556 as the "Reporting of Maltreatment of Minors Act" or "RMMA." Respondents refer to it as the "Child Abuse Reporting Act" or "CARA." It has been referred to by both names in previous cases. *Compare, e.g., R.S. v. State*, 459 N.W.2d 680, 682 (Minn. 1990) ("Minnesota Reporting of Maltreatment of Minors Act"), *with, e.g., Becker v. Mayo Found.*, 737 N.W.2d 200, 203 (Minn. 2007) ("Child Abuse Reporting Act"). RMMA

addresses the screening of and responses to reports of child abuse by local welfare agencies. *See, e.g.*, Minn. Stat. § 626.556, subd. 10. It also requires that local welfare agencies cross-report child-abuse reports to local law enforcement. *See, e.g.*, *id.*, subd. 7.

The Minnesota Department of Human Services provides child-maltreatment screening guidelines to aid social workers in assessing and responding to reports of child maltreatment. Under the guidelines as they existed during the relevant time period for this case, upon receiving a report of child maltreatment, child-protection staff first had to determine whether the report met the legal definition of child maltreatment. Only reports meeting the legal definition could be accepted, with each report being considered independently from any prior referral history in determining whether to accept the report. Once a report was accepted, the guidelines provided two child-protection response types: a family assessment or a full investigation. The guidelines stated that a family assessment was "the preferred response when conditions of safety permit."

The first report in this case was made on July 20, 2011. Eric was treated for a broken arm after reportedly falling down the stairs. Doctors who treated Eric believed that the type of fracture could indicate child abuse and made a report to PCHS. PCHS screened the report, accepted it, and opened a full investigation; Lurken-Tvrdik conducted the investigation. Lurkin-Tyrdik interviewed Dean and Peltier, among others. She also consulted with a pediatrician specializing in child abuse, who indicated that there were some red flags but that the injury could have occurred from falling. The investigation

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appears to be more common and is used within the statutes themselves, *e.g.*, Minn. Stat. § 256.01, subd. 15 (2018), so that is the acronym we use here.

concluded that no abuse had occurred. PCHS social workers did not cross-report the incident to law enforcement.

On October 25, a month after the investigation closed, a preschool teacher made another report to PCHS about bite marks and bruising on Eric. Beckius took the intake information, and the report was then screened by Beckius, Schley, Lurken-Tvrdik, and two others. They determined there was not enough information to meet child-maltreatment criteria. They still decided to offer services to Dean and Peltier, but Dean declined the services.

On November 14, the same preschool teacher again reported visible injuries suffered by Eric. The teacher indicated that Eric said that his brother had hit him. The teacher also said that Eric reported that he had fallen down the stairs the previous weekend. Schley, Beckius, and another social worker discussed the report and decided it did not meet child-maltreatment criteria.

Reports of suspected child maltreatment were also made on January 24, 2012, this time by Eric's new daycare provider and an early childhood education teacher who worked with Eric. They indicated that Eric had bite marks and bruising on his face and that, when they asked Eric about what happened, he said that he had hurt himself. Schley, Beckius, Lurken-Tvrdik, and three others screened the report, determined it met child-maltreatment criteria, and elected to respond with a family assessment. They chose a family assessment, rather than a full investigation, because they concluded the case did not involve "substantial endangerment." As part of the assessment, PCHS social workers interviewed Dean, Peltier, and their children, and also assessed Eric's behavior at daycare. Dean admitted that he did

sometimes spank the children with his hand. The children indicated that Eric hurt himself, but they also admitted that sometimes they would bite and pinch each other. The reporting daycare provider told PCHS interviewers that Eric had unexplained bite marks and bruises and that she had never seen him harm himself. Dean and Peltier indicated that they would supervise Eric more and that they would start him in play therapy, so Lurken-Tvrdik determined that no further child-protection response was necessary. The social workers did not cross-report this incident to law enforcement.

The same daycare provider then reported, on February 3, that Eric had suffered new injuries—a bruised right ear and swollen lip. When the provider asked Peltier about what had happened, she said that Eric tripped and hit his lip on a table. When the provider asked one of Eric's siblings what had happened, he said that Eric hit his lip on the couch the night before. Eric simply said that he "got hurt." The report was screened by Beckius and Lurken-Tvrdik, who determined that the allegations did not meet child-maltreatment criteria.

The last report that was accepted as meeting child-maltreatment criteria occurred on March 12, 2012. The same daycare provider reported a number of injuries that Eric had suffered during the previous month. Throughout February, the provider noticed a variety of bruises on Eric's face, head, and neck, swollen cheeks, scratches, a black eye, and a bleeding ear. Peltier gave various explanations of how Eric was injured to the daycare provider, including that Eric had hit himself on a door frame and that, on one occasion, he had thrown a temper tantrum and beaten himself up. Beckius, Schley and another PCHS employee screened the case, determined it met child-maltreatment criteria, and opted for another family assessment.

As part of the assessment, the daycare provider submitted a written report indicating that Eric had frequently come to daycare with bruises on his face and that Peltier had frequently changed her explanations for the injuries. The provider indicated that she had seen Peltier discipline Eric "in a mean way." Despite this, she reported that she was unsure of who had harmed Eric and that she was unsure if Eric was in danger. Eric's pediatrician also examined Eric and found a number of bruises but did not suggest that there were child-maltreatment issues, noting that Eric was "extremely active" and that he was "crashing into" things during the examination.

Beckius and Lurken-Tvrdik also went to the family home unannounced to again interview Dean, Peltier, and their children. While there, the social workers suggested parenting-style changes, communication classes, play therapy, and a psychological assessment of Eric. During the interviews, all of the children asserted that Eric's own actions had caused his bruising. The social workers also arranged to have Eric tested for iron deficiencies and blood clotting and to have his vision checked because Peltier claimed that he had depth-perception issues. The tests revealed that Eric was slightly farsighted but did not indicate that he had a problem with depth perception. Beckius also left a phone message for Peltier after learning that Peltier had failed to take Eric to a scheduled play-therapy session. Beckius then determined there was no need for ongoing services, and the family assessment was closed. PCHS social workers did not cross-report the incident to law enforcement.

The daycare provider reported a final incident on August 2, 2012. She reported that Peltier wanted Eric to have to sit at a desk all day at the daycare as punishment for having

run away at the county fair. The provider confronted Peltier about this, and Peltier "yanked [Eric] out of [the provider's] arms and put him down." The provider stated that Peltier might have thrown Eric down but that she was not sure because she was in shock from the incident. The provider also indicated that Eric had some scratches on his cheek. Schley, Lurken-Tvrdik, and another social worker screened the report and found it did not meet child-maltreatment criteria.

No other reports were made to PCHS. Approximately seven months later, on March 26 or 27, 2013, Peltier threw Eric against a wall. Eric died on March 28 from internal injuries. Just a couple of days before he was injured, Eric was seen by a public health nurse, who indicated that he was in good health and that there were no signs of child maltreatment.

The trustee brought this case in 2016, alleging that the Pope County social workers were negligent in failing to take additional action to protect Eric and not cross-reporting to law enforcement and that Pope County was vicariously liable for their negligence. Pope County and its social workers asserted that they were entitled to official immunity and statutory immunity. Pope County and its social workers filed a motion for summary judgment. Before that motion was heard, the trustee moved for partial judgment on the pleadings, seeking to have Pope County and its social workers' immunity defenses dismissed.

The district court denied the trustee's motion to dismiss the immunity defenses. The district court then granted Pope County's summary-judgment motion. The district court determined that Pope County and its social workers were entitled to both official immunity and statutory immunity for their actions in screening and investigating reports of

maltreatment. The district court also concluded that, as a matter of law, the trustee had presented insufficient evidence to establish that the failure to cross-report the incidents to law enforcement was a proximate cause of Eric's death. A final partial judgment was entered under Minn. R. Civ. P. 54.02, and this appeal followed.

ISSUES

I. Are Pope County and its social workers entitled to common-law official immunity as a matter of law?

II. Did the trustee produce evidence that creates a genuine issue of material fact as to whether Pope County social workers' failure to cross-report to law enforcement was a proximate cause of Eric's death?

ANALYSIS

A district court "shall grant summary judgment if the movant shows that 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. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). Appellate courts apply a de novo standard of review to a district court's legal conclusions on summary judgment and view the evidence in the light most favorable to the nonmoving party. *RAM Mut. Ins. Co. v. Rohde*, 820 N.W.2d 1, 6 (Minn. 2012). Appellate courts will affirm summary judgment if it can be sustained on any ground. *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012).

I. Pope County and its social workers are entitled to official immunity with respect to their screening and handling of reports of maltreatment.

The trustee argues that the district court erred by concluding that the Pope County social workers are entitled to official immunity—and that Pope County is entitled to vicarious official immunity—with respect to the social workers' screening and handling of maltreatment reports. The trustee's primary argument is that the defense of common-law official immunity is abrogated by the RMMA. Trustee also makes a more limited argument that, even if not abrogated, common-law official immunity does not apply to the conduct in this case. Before turning to our analysis of these issues, we first describe the general contours of common-law official immunity.

A. Official immunity under the common law

The common-law doctrine of official immunity provides that "a public official charged by law with duties which call for the exercise of his [or her] judgment or discretion is not personally liable to an individual for damages unless he is guilty of a willful or malicious wrong." *Vassallo ex rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014) (alteration in original) (quotation omitted). The purpose of the official-immunity doctrine is to ensure that "individual government actors [are] able to perform their duties effectively, without fear of personal liability that might inhibit the exercise of their independent judgment." *Kariniemi v. City of Rockford*, 882 N.W.2d 593, 599-600 (Minn. 2016) (quotation omitted). "In general, when a public official is found to be immune from suit on a particular issue, his government employer will enjoy vicarious official immunity from a

suit arising from the employee's conduct." *Schroeder v. St. Louis County*, 708 N.W.2d 497, 508 (Minn. 2006).

To determine whether a public official is entitled to official immunity, courts conduct a three-step inquiry. At the first step, courts identify "the conduct at issue." *Kariniemi*, 882 N.W.2d at 600. At the second step, courts determine whether that conduct is discretionary or ministerial in nature. *Kari v. City of Maplewood*, 582 N.W.2d 921, 923 (Minn. 1998). A public official's conduct is discretionary if it "requires the exercise of individual judgment in carrying out the official's duties." *Id.* The conduct is ministerial if it arises from duties that are "absolute, certain, and imperative, [and] involv[e] merely execution of a specific duty arising from fixed and designated facts," thereby "leaving nothing to the discretion of the official." *Kelly v. City of Minneapolis*, 598 N.W.2d 657, 664 (Minn. 1999) (quotation omitted). At the third step of the analysis, a public official who engaged in discretionary conduct will be entitled to official immunity unless his or her conduct was willful or malicious. *Kariniemi*, 882 N.W.2d at 600; *Kelly*, 598 N.W.2d at 664. A public official who engaged in ministerial conduct, on the other hand, will be entitled to official immunity unless the ministerial duty "was either not performed or was performed negligently." *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 660 (Minn. 2004).

The application of immunity is a question of law, which appellate courts review de novo. *Vassallo*, 842 N.W.2d at 462.

B. The RMMA does not abrogate social workers' common-law official immunity.

We now turn to the question of statutory abrogation of the common-law defense of official immunity. The trustee and amicus Minnesota Association for Justice (MAJ) argue that the legislature abrogated common-law official immunity for county social workers when it provided them immunity in the RMMA. Under subdivision 4(b) of the RMMA, a county social worker is immune from any civil or criminal liability related to their actions in performing their duties under that law "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)." Minn. Stat. § 626.556, subd. 4(b). The trustee and MAJ argue that this language displaces any official immunity under the common law.

Courts presume that statutes are consistent with the common law. *Ly v. Nystrom*, 615 N.W.2d 302, 314 (Minn. 2000); *see also Shaw Acquisition Co. v. Bank of Elk River*, 639 N.W.2d 873, 877 (Minn. 2002) ("Unless statutory provisions instruct otherwise, the conclusion we reach under the common law will stand.") "[I]f a statute abrogates the common law, the abrogation must be by express wording or necessary implication." *Ly*, 615 N.W.2d at 314.

The RMMA does not include any express wording abrogating common-law official immunity, and the trustee agrees that the legislature "has been silent on the issue." But the trustee contends that the immunities that are provided by the RMMA abrogate the common-law doctrine of official immunity by necessary implication. He argues that the

plain language, operation, and history of the RMMA necessarily imply legislative intent to abrogate the common law. Specifically, the trustee contends that, by expressly providing RMMA immunity in a narrow set of circumstances that, according to the trustee, would already be covered by common-law official immunity, the legislature must have intended to limit immunity to only those narrow circumstances.

We disagree that the plain language of the RMMA necessarily implies a contraction of the immunity defenses available to a social worker. Subdivision 4 of the RMMA addresses the topic of immunity for persons with responsibilities under the statute. *See* Minn. Stat. § 626.556, subd. 4. The clause at issue here—subdivision 4(b)—states that a social worker "is immune" when the social worker performs duties under the RMMA in good faith and exercises due care or follows identified information-collection procedures. *See id.*, subd. 4(b). Similarly, subdivision 4(a), which immediately precedes the clause in dispute here, states that "[t]he following persons are immune" if they take action under the RMMA in good faith. *See id.*, subd. 4(a). This language affirmatively grants immunities; it does not necessarily suggest that those are the only immunities available and that other immunities are extinguished. *Cf. Brekke v. THM Biomedical, Inc.*, 683 N.W.2d 771, 775-76 (Minn. 2004) (holding that common-law waiver and estoppel defenses were not abrogated by statute listing other exceptions to liability under the statute). Under the trustee's theory, subdivision 4(b) of the RMMA would remove almost all of the immunity defenses available to social workers by providing them immunity only after they had already shown they satisfied the statutory standard. The RMMA thus would not only be assuring social workers of immunity for performing statutory duties in satisfaction of the

RMMA immunity standard but also would be revoking the broader common-law immunity they otherwise might have. We do not see that result necessarily implied by the language.

Nor do we see abrogation necessarily implied by the operation of the statute and its interplay with the common law. In some cases, Minnesota courts have determined that a statute abrogates the common law by necessary implication when it would be impossible for both the common law and the statute to apply. *See Swanson v. Brewster*, 784 N.W.2d 264, 270 (Minn. 2010) (holding that the collateral-source statute, which prohibits double recoveries in certain cases, partially abrogated the common-law rule that a plaintiff's recovery cannot be reduced by certain payments the plaintiff received outside the scope of their case); *Barr/Nelson, Inc. v. Tonto's, Inc.*, 336 N.W.2d 46, 53 (Minn. 1983) (noting the longstanding rule that attorney fees are not recoverable under the common law, unless a statute or specific contract says otherwise); *Beck v. Groe*, 70 N.W.2d 886, 891-92 (Minn. 1955) (explaining how Minn. Stat. § 573.02 (1954) permits a wrongful-death claim by relatives, despite the common law originally prohibiting such claims); *First Class Valet Servs. v. Gleason*, 892 N.W.2d 848, 851-52 (Minn. App. 2017) (holding that a statute requiring an employer to indemnify an employee abrogated the common-law right of the employer to recover damages which the employer had to pay due to the employee's negligence). In each of these cases, it would not be possible for both the common law and the statute to apply: a damages award cannot be both reduced and not reduced by a collateral source, a party cannot both recover attorney fees and be prohibited from doing so, and an employer cannot both absolve their employee of responsibility and hold them responsible for their negligence.

Here, in contrast, it is possible to consistently apply both RMMA immunity and common-law official immunity in the same case. Both common-law official immunity and statutory immunities can coexist, even if they overlap. *Cf. State by Beaulieu v. City of Mounds View*, 518 N.W.2d 567, 570-71 (Minn. 1994) (holding that the Minnesota Human Rights Act (MHRA) does not abrogate common-law official immunity because the doctrine is consistent with the terms of the MHRA and its remedial purpose). The operation of the statute thus does not necessarily imply abrogation.

The trustee points to Minnesota's Civil Damages Act (CDA) as an example where the supreme court found that a statute abrogated common law by necessary implication because of its interplay with the common law. In *Urban v. Am. Legion Dep't of Minn.*, plaintiffs brought a claim under the CDA against a local American Legion post for illegally serving alcohol to a drunk driver. 723 N.W.2d 1, 2-3 (Minn. 2006). They also brought respondeat-superior claims against the national and regional entities of the American Legion. *Id.* The supreme court, noting that the CDA created a new cause of action not based in the common law, decided that the CDA abrogated certain common-law respondeat-superior claims. *Id.* at 5. It pointed out that, if respondeat-superior claims were available, a section of the CDA making "licensees" responsible for the actions of their employees would be redundant. *Id.*

But *Urban* is distinguishable from this case. *Urban* involved the attempted use of a common-law doctrine to extend a cause of action based entirely in statute. *Id.* Respondeat superior would have effectively expanded the scope of the CDA, which specified similar, but more limited, claims. *Id.* The *Urban* court noted the specific context of the CDA,

observing that "[l]itigation under the CDA is entirely a creation of the legislature" and the CDA is to be "strictly construed in the sense that it cannot be enlarged beyond its definite scope." *Id.* at 5-6 (quotation omitted). This case, in contrast, involves the use of an existing immunity defense against a negligence action. The common law is not being used to extend or enlarge a statutory creature. Instead, the common law provides an immunity defense that already existed independently of the immunities described in the RMMA. Furthermore, there is no special, case-law context indicating that courts should make efforts to strictly construe the RMMA to avoid enlarging it, as there was with the CDA.

We also disagree with the trustee that the history of the statute necessarily implies abrogation. The trustee argues that the history of the RMMA supports abrogation because the legislature added immunity for social workers in the RMMA in 1983 against a backdrop of already existing and broader official immunity. *See* 1983 Minn. Laws ch. 229, § 1, at 801. But, again, the fact that the legislature codified specific immunities related to the performance of duties imposed by the RMMA does not necessarily imply that the legislature intended to abrogate common-law immunity.

Moreover, the history of the statute may also be viewed as supporting the continued viability of official immunity. In a number of cases since 1983, Minnesota appellate courts—while not presented with the question of abrogation—have applied common-law official immunity to social workers in negligence cases. In *Olson v. Ramsey County*, the supreme court applied the doctrine of official immunity to county social workers in a negligence action for the wrongful death of a child. 509 N.W.2d 368, 371-72 (Minn. 1993). And, in *S.L.D. v. Kranz*, this court applied official immunity to the screening decisions of

county social workers in a case involving child sexual abuse. 498 N.W.2d 47, 52 (Minn. App. 1993). These cases, both decided in 1993, were not overturned by the legislature, despite numerous subsequent amendments made to section 626.556.[5] If the legislature intended to abrogate common-law immunity in 1983, it is arguably unlikely that it would have ignored the fact that the courts have not implemented the abrogation. The statute's legislative history does not necessarily imply abrogation.

Finally, we note that the parties and amici raise policy arguments in support of their respective positions. The trustee and amicus MAJ stress that the legislature intended to protect children from abuse in passing the RMMA. They argue that this policy purpose supports the conclusion that the RMMA abrogates official immunity, as it would encourage greater care in child-protection decisions. Amicus Minnesota Defense Lawyers Association, however, points out a competing policy concern: the legislature would also want to protect children from premature removal from their families; it would not want to encourage officials to inappropriately remove children from their homes for fear of liability. This court has, itself, noted these same competing policy objectives when considering Minn. Stat. § 626.556. *S.L.D.*, 498 N.W.2d at 53. The policy concerns on both sides of the issue are substantial, but, because they pull in opposite directions, they do not persuade us that the necessary implication is that the RMMA abrogates the common-law official immunity.

[5] For instance, section 626.556 was modified three times in 1994 and twice in 1995. 1994 Minn. Laws ch. 434, §§ 8-10, at 252-56; 1994 Minn. Laws ch. 631, § 31, at 1892; 1994 Minn. Laws ch. 636, art. 2, §§ 57-59, at 2222-25; 1995 Minn. Laws ch. 187, §§ 1-7, at 789-96; 1995 Minn. Laws ch. 229, art. 4, § 20, at 1965.

In sum, in light of the presumption that the legislature intends for statutes to be consistent with the common law, we conclude that the language, operation, and history of the RMMA do not lead to the necessary implication that the legislature abrogated common-law official immunity. Rather, the RMMA may be interpreted to indicate that the legislature intended to add to or ensure the immunities of social workers, not to contract them. Thus, the district court did not err by concluding that Minn. Stat. § 626.556, subd. 4(b), does not abrogate common law official immunity.

C. The district court correctly determined that the Pope County social workers were partially protected by official immunity.

We turn next to the application of official immunity in this case. The first step of official-immunity analysis is to identify the conduct in question. The conduct in question here falls into two categories: (1) the screening and assessment/investigation of reports of child maltreatment and (2) the cross-reporting of these reports to law enforcement. The district court concluded that the screening and handling of reports of maltreatment were discretionary actions protected by official immunity. As for the failure to cross-report suspected abuse to law enforcement, the district court did not make any explicit determination about whether that conduct was protected by official immunity but instead concluded that the failure to cross-report could not have been a proximate cause of Eric's death. We examine in this section whether official immunity applies to respondents' screening and assessment/investigation of reports of child maltreatment. As for the failure to cross-report, we assume without deciding that it is a ministerial action not protected by official immunity and address the proximate-cause issue in the next section.

Respondents point out that the trustee does not appear to dispute the district court's determination that, if common-law official immunity has not been abrogated, then it applies to Pope County and its social workers. It is certainly true that the trustee focuses his arguments on whether the RMMA abrogates official immunity. But the trustee does make other arguments that implicate the application of official immunity. For example, the trustee highlights that the RMMA requires certain information-collection procedures to be followed, suggesting that the procedures describe ministerial tasks rather than discretionary ones.

This court has held that county social workers' determinations of whether a report involves the maltreatment of a child is a discretionary action that qualifies for common-law official immunity and that a county is vicariously immune from claims arising from those determinations. *See S.L.D.*, 498 N.W.2d at 52-53. The supreme court has held that social workers are also entitled to official immunity in developing a case plan to address a report of child maltreatment. *See Olson*, 509 N.W.2d at 371-72.

This court has also determined, however, that social workers engage in ministerial activities for which the official-immunity protections are not as broad. *S.L.D.*, 498 N.W.2d at 53-55. In *S.L.D.*, we held that a social worker (and thus the county) did not have immunity for failures to accurately convey complete information to colleagues because conveying information was a ministerial task rather than a discretionary one. *Id.*

Here, the district court determined that, with respect to screening and handling the reports of abuse, the "PCHS social workers were making judgments and discretionary decisions as to what steps they would need to take." It reasoned that the workers were not

merely executing a specific plan but instead were asked to make discretionary judgments as to what to do next. They were thus entitled to official immunity, with Pope County, in turn, receiving vicarious official immunity.

The district court's analysis parallels the analysis in *S.L.D.* with respect to the social workers' screening and assessment/investigation of the reports. "The legislature did not, and indeed could not, articulate every conceivable fact pattern that would constitute neglect." *S.L.D.*, 498 N.W.2d at 52. Instead, social workers have to determine, based on their professional judgment, whether or not a reported set of alleged facts constitutes neglect under a set of general criteria described in Minn. Stat. § 626.556, subd. 2(g).[6] If they screen the report in, they must then apply their independent judgment in investigating the situation and evaluating appropriate solutions that balance an array of policy concerns. Additional guidelines exist, but these decisions are complicated and involve assessing difficult circumstances on a case-by-case basis.

Because screening, assessment, and investigation of child-maltreatment reports involve the exercise of independent judgment, these actions constitute discretionary conduct under the official-immunity doctrine. The social workers here are entitled to official immunity in the context of this conduct, as there are no allegations that their conduct was willful or malicious. Pope County, in turn, is entitled to vicarious official immunity, as there do not appear to be any circumstances that warrant a departure from the

[6] The definition of "neglect" was found in subdivision 2(c) at the time of *S.L.D. See* Minn. Stat. § 626.556, subd. 2(c) (1992). It has since been moved to subdivision 2(g). S*ee* Minn. § 626.556, subd. 2(g) (2018).

general rule that a government employer receives vicarious official immunity when its employee receives official immunity on a given issue. *See Schroeder v. St. Louis County*, 708 N.W.2d at 508.

The district court did not err by determining that Pope County and its social workers are entitled to official immunity with respect to their screening and handling of the reports of maltreatment of Eric. Because this conclusion is dispositive with respect to that conduct, we do not reach the question of whether statutory immunity applies as well.

II. The district court did not err by determining that, as matter of law, the trustee did not produce sufficient evidence to establish that Pope County's failure to cross-report to law enforcement was a proximate cause of Eric's death.

Without explicitly rejecting the application of official immunity to PCHS's failure to cross-report to law enforcement,[7] the district court turned to the merits of the negligence claim based on that conduct and concluded that the trustee had failed to produce sufficient evidence to establish that the failure to cross-report was a proximate cause of Eric's death. We assume, without deciding, that immunity does not apply, and we turn to the issue decided by the district court.

The elements of a negligence claim are: (1) the existence of a duty of care, (2) a breach of that duty, (3) an injury was sustained, and (4) breach of the duty was the proximate cause of the injury. *Engler v. Ill. Farmers Ins. Co.*, 706 N.W.2d 764, 767 (Minn. 2005). A negligent act is the proximate cause of a harm if "the act was a substantial factor

[7] The district court, likewise, did not explicitly reject the application of statutory immunity to this conduct. We do not reach Pope County's contention that statutory immunity applies to the failure to cross-report.

in the happening of that result." *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 372 (Minn. 2008). "Whether proximate cause exists in a particular case is a question of fact for the jury to decide." *Id.* at 373. But summary judgment is appropriate if the party asserting the negligence claim has failed to present material facts that could demonstrate causation. *Hastings v. United Pac. Ins. Co.*, 396 N.W.2d 682, 684 (Minn. 1986). Appellate courts review such a determination de novo. *See RAM Mut. Ins. Co. v. Rohde*, 820 N.W.2d 1, 6 (Minn. 2012) (noting that appellate courts review "legal decisions on summary judgment under a de novo standard").

The district court concluded that, while the failure to cross-report the child-maltreatment reports to law enforcement violated Minn. Stat. § 626.556, subd. 7, this failure was not the proximate cause of Eric's death. It was undisputed that local law enforcement had a policy of not independently investigating or assessing any child-abuse allegations, instead leaving the investigation to PCHS. Thus, the district court reasoned, the failure to report to law enforcement could not have been the proximate cause of Eric's death.

The trustee argues that there is a genuine issue of material fact with respect to causation such that summary judgment was inappropriate. He points out that the record contained an affidavit from an expert who opined that, based on her own experiences in child-protective services in Hennepin County, had Pope County's employees reported the incidents to local law enforcement, law enforcement would have conducted a more thorough investigation of the abuse allegations. The expert pointed to interviews subsequent to Eric's death as evidence that law enforcement would have investigated and

prevented the death because, in those interviews, Peltier and Eric's siblings told law enforcement that Peltier abused Eric.

This expert's affidavit appears to be the extent of the trustee's causation evidence. But, even assuming that the expert's affidavit correctly described the situation in Hennepin County, the undisputed evidence established that this was not the practice in Pope County. An affidavit from the PCHS director described how local law enforcement had indicated it was going to "do no independent investigation or assessment beyond what Pope County Human Services was going to do." The affidavit explained that, while PCHS had child-protection investigative experts, the sheriff's department and local law enforcement did not have trained child-protection investigators at that time. Instead, it was the practice for PCHS child-protection investigators to send reports to law enforcement only when the investigator believed there was a safety issue necessitating the involvement of law enforcement. Thus, as the district court explained, "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." Without evidence of proximate cause, the district court correctly concluded that the negligence claim failed as a matter of law.

D E C I S I O N

Because the RMMA does not abrogate common-law official immunity, that common-law defense remains available to county social workers performing discretionary functions in handling child-maltreatment reports. The district court did not err by applying common-law official immunity to respondents Pope County and its social workers with

respect to their conduct in screening and handling reports of abuse of Eric Dean. As for respondents' failure to cross-report the maltreatment reports to law enforcement, the district court did not err by concluding that, as a matter of law, appellant trustee could not establish negligence because he did not submit evidence that the failure to cross-report was the proximate cause of the child's death.

Affirmed.