

NO. A08-2175

State of Minnesota
In Supreme Court

OFFICE OF
APPELLATE COURTS

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J.E.B., P.M.B., and R.J.B.,

Appellants,

v.

Deborah Danks,

Respondent.

APPELLANTS' BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUES

1. In *Thompson v. City of Minneapolis*, 707 N.W.2d 669 (Minn. 2006), the Court ruled that, where there is a genuine dispute concerning predicate facts material to an immunity claim, “there can be no summary judgment.” Here, however, citing *Rehn v. Fishley*, 557 N.W.2d 328 (Minn. 1997), the district court engaged in judicial factfinding on summary judgment concerning such predicate facts and—on the basis of judicially found facts—granted Danks summary judgment based on immunity. The court of appeals refused to acknowledge this judicial factfinding, but nevertheless reviewed the lower court’s decision as though that court’s findings were entitled to deference. Did the district court err by finding facts on summary judgment?

Thompson v. City of Minneapolis, 707 N.W.2d 669 (Minn. 2006)

Rehn v. Fishley, 557 N.W.2d 328 (Minn. 1997)

Maxfield v. Maxfield, 452 N.W.2d 219 (Minn. 1990)

2. In *Bol v. Cole*, 561 N.W.2d 143 (Minn. 1997), the Court held that immunity under Minn. Stat. § 626.556, subd. 4(a)(1) must be “construed narrowly” and did *not* bar a common law defamation claim. Here, the lower courts ruled that this statutory immunity barred both Appellants’ statutory false-report claim and their common law claims—including defamation. Did the lower courts err by broadly construing this statutory immunity to bar common law claims?

Bol v. Cole, 561 N.W.2d 143 (Minn. 1997)

Car Lease Inc. v. Kitzer, 149 N.W.2d 673 (Minn. 1967)

3. Whether the district court erred in awarding attorney fees and, even if an award had been proper, whether it erred in awarding fees for claims other than Appellants’ false-report claim under Minn. Stat. § 626.556.
 - Having improperly concluded that Danks was entitled to immunity under Minn. Stat. § 626.556, subd. 4, the district court awarded Danks costs, including reasonable attorney fees.

Collins v. Minnesota School of Business, Inc., 655 N.W.2d 320 (Minn. 2003)

STATEMENT OF THE CASE

In early August 2006, Respondent Debora Danks reported to child protection authorities: (a) that in April, Appellants' 14-year-old son R.J.B. had sexually abused his 10-year-old sister L.R.B.; (b) that Appellants knew of the alleged abuse, but "had done nothing" about it; and (c) that L.R.B. was still being sexually abused. Danks had previously disclosed these allegations of sexual abuse and parental neglect to a friend. Ann Foster, a Ramsey County child abuse investigator with 30 years of experience, subsequently determined that Danks' formal report was *affirmatively false*.

On July 31, 2007, Appellants filed a Complaint in Ramsey County District Court alleging: (a) that in violation of Minn. Stat. § 626.556, subd. 5 (2006),¹ Danks had made a false report of child abuse to authorities; (b) two counts of common law defamation; and (c) one count of common law intrusion upon seclusion.

After discovery, Danks moved for summary judgment claiming she was immune from all of Appellants' claims by virtue of Minn. Stat. § 626.556, subd. 4(a)(1), which immunizes from civil liability any person making a "good faith" report of child abuse to proper authorities. Appellants opposed summary judgment arguing, *inter alia*, that Danks' months-long delay in making a formal report, her *pre-report* inquiry to authorities about obtaining immunity from possible suit, and the demonstrably false and exaggerated nature of her report, all rendered the "good faith" factual predicate to Danks' immunity claim a disputed issue of material fact, thereby making the claim unsuitable for summary judgment.

¹ All statutory citations are to the 2006 version of Minnesota Statutes.

The district court, however, granted in full Danks' motion for summary judgment. Citing *Rehn v. Fishley*, 557 N.W.2d 328 (Minn. 1997), the court concluded that it possessed "discretion" to resolve factual disputes concerning the factual predicates to Danks' immunity claim. Exercising this purported discretion, the district court *selected* from Danks' deposition and correspondence exclusively those statements that supported her claim of good faith; disregarded other of Danks' statements undermining that claim (and, indeed, revealing an ulterior motive for making a formal report); and ignored the exaggeration and manifest falsity of portions of Danks' formal report. Utterly in spite of the true contents of the record, the court stated that, "[t]he Plaintiff [sic] has not presented any *substantial evidence* that indicates that the Defendant was acting in bad faith."

Based upon improper judicial factfinding and this erroneous conclusion about the content of the record, the district court ruled that Danks was immune from all civil liability because she had acted in "good faith." This factual determination, however, (even if the court had possessed the authority to make it) could justify summary judgment only on Appellants' statutory false-report claim. For in *Bol v. Cole*, 561 N.W.2d 143 (Minn. 1997), this Court held that immunity under Minn. Stat. § 626.556, subd. 4(a)(1) must be "construed narrowly," and does *not* bar a common law defamation claim. Nevertheless, on the basis of this very immunity provision, the district court granted Danks summary judgment on both Appellants' statutory false-report claim and their common law claims—including defamation.

On appeal, the parties sharply disputed whether the district court had "discretion" to engage in factfinding concerning the factual predicates to Danks immunity claim. The

court of appeals refused to acknowledge that the district court—based on its reading of *Rehn*—had engaged in judicial factfinding. *See J.E.B. v. Danks*, 2009 WL 2498747, at *3 (Minn. Ct. App. Aug. 18, 2009). It nevertheless reviewed the district court’s decision as though the lower court had been a legitimate factfinder entitled to deference on its weighing of evidence. *See id.* at *3 to *7 (essentially justifying district court’s factual inferences and findings). This Court granted Appellants’ petition for further review.

STATEMENT OF FACTS

Appellants are mother P.M.B. (Mrs. B), father J.E.B. (Mr. B.), and son R.J.B. In this brief, however, “Appellants” will refer exclusively to parents Mr. and Mrs. B.

A. April 30, 2006: The Playdate

Appellants have three children. The oldest is R.J.B., a boy who was 14 years old during the relevant period. The youngest is L.R.B., a girl who was 10 at the time. L.R.B. was friends with M.D., Respondent Danks’ 10-year-old daughter.

On Sunday, April 30, 2006, Appellants invited M.D. to play in their home with L.R.B. After learning that an adult would not be present the whole afternoon, however, Danks suggested that the girls should play at her house instead (App. 2).²

Danks did not want M.D. near R.J.B. without adult supervision because six months earlier, in November 2005, R.J.B. had “pantsed” L.R.B. while the children were roughhousing (App. 18, 21). Although Appellants had immediately forbidden further roughhousing, (*Id.* at 21), Danks told Mrs. B that R.J.B. might already have molested

² “App.” refers to the Appendix to this brief.

both of her daughters (*Id.* at 19). Danks also declared that boys of R.J.B.'s age were "sexually impulsive," and opined that the family should seek therapy (*Id.* at 18-19).

Deferring to Danks' wishes about the site of the playdate, Mrs. B dropped off L.R.B. at Danks' home. While the girls were playing in Danks' closet, M.D. engaged L.R.B. in a game called "Secrets," a version of truth or dare (App. 24, 48). During "Secrets," M.D. told L.R.B. a secret about a friend, then encouraged L.R.B. to tell a secret (*Id.* at 24). L.R.B. recycled for M.D. the pantsing incident involving R.J.B.

There is, of course, no verbatim record of what L.R.B. actually said to M.D. on the afternoon of April 30, 2006. In a videotaped statement M.D. gave one month later, however, during which Danks repeatedly demanded that M.D. repeat the precise words L.R.B. had used, M.D. said, among other things, the following:

- "[L.R.B.] told me that [R.J.B.] had been, like, pulling down her pants and like touching her bottom... She was saying, like, sometimes like when I was alone, [R.J.B.] would pull down my pants and, like, touch my bottom and stuff."
- "[L.R.B.] said, like, this happened, like, [R.J.B.] would pull down her pants and like touch and like sometimes put his cheek on.... She just said cheek on her bottom... She said it would happen often and he started not doing it when [L.R.B.] started saying no."

(App. 110-11, 114). L.R.B. later gave her own account of the conversation: "I told my friend that my brother pulled down my pants. My friend thought I could be unsafe. My brother was just making me feel uncomfortable." (C.App. 1-9).³

After L.R.B. went home, M.D. told her father that she needed to speak with Danks, who had just begun a one-week vacation in Brainerd (App. 147). On the telephone, M.D.

³ "C.App." refers to Appellants' Confidential Appendix.

told Danks what L.R.B. had said during “Secrets” (*Id.* at 148-49). Danks determined that she needed to speak in person with Mrs. B right away, cut short her planned vacation, and drove home the next morning (*Id.* at 149-50).

B. May 1, 2006: Danks Contacts Mrs. B About M.D.’s Report

Danks telephoned Mrs. B the next morning and said she needed to discuss an important matter in person (App. 24). Later that day, Mrs. B drove to Danks’ home with L.R.B., who remained in the car while the adults spoke inside (*Id.* at 26). The parties differ concerning what was said during this encounter. Mrs. B testified that Danks “brought up pretty much right away that she believed, from the comments that [L.R.B.] had made to [M.D.], that [R.J.B.] was sexually abusing her.” (*Id.*). When Mrs. B asked what basis Danks had for this conclusion,

[s]he says, she knows. She knows from the terminology and how [L.R.B.] talked, that’s how she knows, and she also gave me an ultimatum of doing the right thing, as a family, because she’s a mandatory reporter and she should be reporting this, but she was putting faith in us, because she knows us, and I was still pleading for her to consider that this could be something other than what she’s accusing us of, pleading.

(App. 26).

Mrs. B also pleaded with Danks to stop calling R.J.B. “a sexual abuser” (App. 27). Danks insisted that L.R.B. was being sexually abused, and suggested that if the abuser was not R.J.B., then it might be someone else (*Id.*). And, Danks again suggested that R.J.B. was probably sexually abusing Mrs. B’s other daughter as well (*Id.*). Although the conversation had been difficult, it ended “[w]ith a hug and an embrace and that ... our family would be going to therapy.” (*Id.*).

Danks characterized the conversation differently. She testified that Mrs. B vacillated between the view that L.R.B. had made up the story, and Danks' own view that L.R.B.'s allegations were true (App. 65). Danks stated that children "that age, we know they're impulsive. Could they be sexually impulsive? I don't know." (*Id.*). Danks agreed that although the conversation had been difficult, it ended warmly (*Id.*). Danks said things were left as follows:

[Mrs. B] said, you call me because I won't be good about that... And she said, we're going to go to counseling and we've been talking about that for a while anyway.

But she said clearly if [L.R.B.] is telling these stories that they need to go into counseling, [L.R.B.] needs to go into counseling, but they were going to do something as a group.

(App. 67). Danks testified that she "applauded that." (*Id.*).

C. May 16, 2006: Appellants' Family Attends Professional Counseling

Although Mrs. B believed that Appellants had adequately dealt with the pantsing incident by immediately prohibiting roughhousing (App. 21), she was troubled by Danks' comments (*Id.* at 20-21). Thus, to ensure that her children were indeed safe, Mrs. B arranged on May 3, 2006, for the family to enter counseling (C.App. 11). The family's first session at White Bear Lake Counseling Center occurred on May 16, 2006 (App. 21; C.App. 11). "We, as parents, took what [Danks] said and did to our family very seriously... And we wanted to make sure ... that all that was involved is what we had already handled as a family" (App. 21). After conducting an assessment, Jane Bacon, a licensed therapist, determined that no sexual contact or abuse had occurred, and that the conduct L.R.B. described to M.D. was not sexual in nature (*Id.* at 126).

D. May 22, 2006: Danks Rejects Therapist Bacon's Finding Of No Abuse

On May 22, 2006, Mrs. B communicated to Danks by telephone therapist Bacon's finding of no sexual abuse. (App. 26). Mrs. B testified that she thanked Danks for "[c]oming to me about this issue and this incident with L.R.B., that we are in therapy and that I was very thankful it wasn't what she was claiming it to be" (*Id.*).

Danks, however, rejected Bacon's finding, and told Mrs. B that Mrs. B "was not telling the whole truth to the therapist." (App. 26). Danks said "you are not admitting to sexual abuse in your house." (*Id.* at 27). Mrs. B again emphasized that "we had gone through an assessment, it was unfounded, nothing – no sexual intent was involved in this" (*Id.*). Danks nevertheless told Mrs. B that

[s]he knows from past experience that the things – and how [L.R.B.] talked, that she is being sexually abused, and I told her she could not know and how can she tell me that she knows more than going through an assessment with a woman who has done therapy for over 20 years.

(App. 27).

Danks now told Mrs. B that "she had [anonymously] contacted County Services, and they stated to her that they would remove [R.J.B.]" if the alleged abuse were formally reported (App. 27). Mrs. B testified that Danks "wanted me to self-report the abuse and [said] that she would not be happy until – not happy, she would not be content and would not let matters go until we did." (*Id.*). When Mrs. B refused, and repeated that there was no abuse to report, she said Danks "threatened again and again to do it herself, that she's a mandatory reporter, and that I'm leaving her no options" (*Id.*). Mrs. B then insisted that Danks go ahead and formally report the matter because Mrs. B "couldn't live with

[Danks] lording this over my family's head." (*Id.*; *see also id.* ("I kept telling her, then do it, then do it.")).⁴

Mrs. B testified that Danks next threatened to tell a mutual friend, Julie Stonehouse, about the alleged abuse because Appellants had allowed Stonehouse's daughter to sleep at their house. (App. 28). Danks also demanded the identity of the family's therapist, which Mrs. B provided (*Id.* at 27-28). Mrs. B testified that this conversation ended with her agreeing to contact Danks concerning the results of further therapy (*Id.* at 27-28).

Danks' account of the conversation again was different. As an initial matter, Danks confirmed that she had contacted Ramsey County Child Protection before receiving Mrs. B's call on May 22, 2006 (App. 74). Danks said she told intake worker Becky Hilderman about "possible sexual abuse by a sibling." (*Id.* at 73). Hilderman immediately responded that "we would take the abuser out of the house." (*Id.*). Hilderman confirmed that this would be done even if the family self-reported (*Id.*). She explained that "there would be an assessment and then they would, you know, go from there, if it was something that needed investigating or not." (*Id.* at 74).

⁴ In speaking with Mrs. B, Danks repeatedly asserted that she was a "mandatory reporter" (because she *formerly* held a teaching license) (App. 25, 27, 53, 55, 70, 72). Danks admitted, however, that she never ascertained whether this was actually so (*Id.* at 75-76). Mandatory reporters must "immediately" report suspected abuse to authorities and must also make a written report within 72 hours. *See* Minn. Stat. § 626.556, subs. 3(a), 7. Danks likely was *not* a mandatory reporter because she was not currently a licensed teacher (App. 55, 76). *See id.* subd. 3(a) (mandatory reporters include "a professional ... who *is engaged* in ... education ..."). Had Danks been a mandatory reporter, however, she clearly would have violated the statutory requirement of immediate reporting.

Danks testified that during the call on May 22, 2006, Mrs. B told her about Appellants' family's having received counseling (App. 68). Mrs. B told Danks that

the account that [L.R.B.] gave to [M.D.] was not what had happened, that she was referring to a game of – that they played at home, that they referred to as 'wedgie,' and where [R.J.B.] would pull down the girl's pants in an attempt to get access to their undergarments and pull up their undergarments

(App. 68). Danks believed that this did not match the scenario that L.R.B. had described to M.D. (*Id.*). Danks testified that she "asked [Mrs. B] specifically, so you didn't tell the counselor about what [L.R.B.] had said to [M.D.]? And [Mrs. B] said, no." (*Id.*).

Danks testified that "I was very frank with [Mrs. B] and I said, well, I have a problem because I think I'm a mandated reporter, and this statement needs to be addressed and I'm trying to figure out how to get out of this." (App. 69).

E. May 23-30, 2006: Danks Feels Snubbed By Appellants

Shortly after the May 22, 2006 phone call, Danks encountered Mrs. B at school (App. 70). Danks said Mrs. B pointedly ignored her and instructed her daughters to do the same (*Id.*). Danks also encountered Appellants at a soccer event (*Id.*). During that event, Danks learned that Julie Stonehouse's daughter was to sleep over at Appellants' house that evening (*Id.* at 71). Danks said that she "just wanted to go over to [Mr. B], and say, is this a good – are you sure about this? Is this a good idea?" (*Id.*). Although Danks did not do so, she said she "felt terrible because [the child's] mother is a best friend, I have this information. Do I have a responsibility here? I don't know... I was very uncomfortable about what kind of position this had me in" (*Id.*).

Danks explained that her discomfort caused her to draft a letter to Appellants. Making good her earlier threats to Mrs. B, Danks soon shared the draft with Julie Stonehouse (App. 72). Danks testified that, "I thought that Julie would be the person [Appellants] would be most comfortable with." (*Id.* at 71). Danks said Stonehouse cried when she read the letter (*Id.*). Danks told Stonehouse that Mrs. B "was saying no, it's not happening." (*Id.* at 76).

F. May 27-31, 2007: Danks Videotapes A Statement By M.D. And Sends Appellants Two Email Messages

On May 27, 2006, Danks caused M.D. to give a videotaped statement (quoted above) about what L.R.B. had told her a month earlier. *See generally* App. 108-17 (Transcript of Conversation Between Defendant and M.D. of May 27, 2006). Four days after creating this videotape, Danks sent Appellants, on May 31, 2006, two similar email messages, one during the afternoon and a slightly different version that evening (App. 77). *See generally* App. 137-42 (emails from Danks to Mr. and Mrs. B dated May 31, 2006).

Danks said she hoped that if she summarized in writing the statement M.D. had attributed to L.R.B., and if Appellants then "brought this to their counselor ... that any responsibility I might have could be handed over to an appropriate entity who could then make a determination of their own ... And it seemed like the best case scenario for [Appellants] in the situation like this." (App. 77). Danks' two e-mail messages express her absolute certainty that abuse had occurred, saying, among other things, the following:

- "From any logical and ethical angle there is no question that I am bound to report."

- “The crux of the issue and the reason I continue to be unwillingly stuck in the center of it is this: ABUSE OCCURRED.”
- “[E]ven if you are in therapy you are continuing to deal with it as if it were a distortion, a misunderstanding or a lie. (“There was no abuse. There was no fingering. My son is not an abuser.”) You are refusing to accurately report to your therapist that actual acts of abuse did happen.”
- “You are making decisions about the safety of children, yours and others, as if no abuse has occurred.”
- “There is no distortion in the transfer of vital information. One of your children is abused and one of your children is abusing.”
- “... intervention is necessary.”
- “I have knowledge of abuse, however alleged, and know of other classmates spending the night. Must it become my responsibility to tell the parents of these children?”
- “I cannot be responsible for allowing other children to be potentially placed at risk as well.”
- “I have no small amount of unhappiness with you both for failing to take this into your own hands and handling it properly. Had you been willing to deal with this for what it is, a valid and truthful statement of abuse, I would not have been a part of this at all. Had you handled this as an abuse issue, a report to the department of child protection would never be necessary.”
- “[Mrs. B], you have become hostile and abusive with me, implying that the allegations of touching were products of my or my daughter’s minds”
- “You have run out of time and options. As far as I can see, the only other option to reporting is for me to contact your therapist directly to inform her of what [L.R.B.] has reported to us.”
- “You are not admitting or treating abuse. [L.R.B.’s] abuse has not been fully reported [R.J.B.] has not undergone appropriate treatment, nor will he, without full disclosure of the abuse.”

See generally App. 137-43.

Danks testified that after sending the emails, “I just let it go,” (App. 80), and that she abandoned any intention of making a formal report to proper authorities (*Id.*).

G. Appellants Feel Ostracized In Their Community

Appellants came to believe Danks had made good on her recent threats to publicize allegations of sexual abuse in their home (App. 28, 31, 32, 43). At two soccer events during the summer of 2006, R.J.B. noted that—rather than approaching him to make conversation—people instead were keeping their distance and staring at him. *See* App. 178 (Plaintiffs’ Response to Defendant’s First Set of Interrogatories at 7). The number of playdates Appellants’ children received fell sharply over the summer and fall of 2006, and children who formerly played at Appellants’ home no longer accepted invitations. *See id.* During the summer of 2006, Michelle Warner expressed surprise to Mrs. B that Appellants were hosting a Spanish teacher in their home during Fall Term “with everything that was ‘going on with us’ at (Appellants’) house.” *See id.* at 179.

H. June 29, 2006: Appellants’ Counsel Sends Danks A Cease-And-Desist Letter

Fearing that Danks might continue publishing in the community allegations of sexual abuse that therapist Jane Bacon had already determined were baseless, Appellants contacted Mrs. B’s brother, attorney James Baldwin (App. 28). On June 29, 2006, Baldwin sent Danks a cease-and-desist letter. *See* App. 143-44 (Letter from James F. Baldwin to Debra Danks dated June 29, 2006). The letter stated, among other things:

- “It is apparent your threats to disseminate defamatory statements regarding [Appellants] have been fully realized. Your overly active imagination and resulting, but unwarranted, accusations have created an environment of revulsion surrounding the family, causing severe emotional distress.”
- “I propose that you ... assist [Appellants] in restoring their reputation and assist the healing of the emotional distress you have created.”
- “Immediately cease and desist from any further public comment regarding [Appellants]”

- “Provide the names of, and the substance of statements made to, persons with whom you have discussed your unwarranted belief regarding [Appellants].”
- “Provide a disclaimer acceptable to [Appellants] which retracts statements made ... and which apologizes for your unwarranted intrusion into the privacy of [Appellants].”

See id. Baldwin’s letter stated that time was of the essence and requested a response. *Id.*

I. July 20, 2006: Danks’ Counsel Responds

Danks said she was baffled by Baldwin’s letter, which she received on July 3, 2006 (App. 80). Danks testified that Julie Stonehouse was the only person in the community to whom she had disclosed the allegations, and was confident that Stonehouse had kept them to herself (*Id.* at 82).

In response to Baldwin’s letter, Danks contacted attorney Bridgid E. Dowdal (App. 82). Danks said, “I just know I needed to answer their lawyer” (*Id.* at 83). On July 20, 2006, Dowdal sent Baldwin a formal response. *See* App. 145 (Letter from Bridgid E. Dowdal to James F. Baldwin dated July 20, 2006). “Suffice it to say we disagree with every assertion and request contained in [Baldwin’s] correspondence.” *Id.* Dowdal’s letter also proposed a mutual disengagement: “We have advised [Danks] not to make any contact with [Appellants] and we would appreciate your cooperation in advising your clients to refrain from any future contact with [Danks] and her family.” *Id.*

J. Early August 2006: Danks Makes A Formal Report With Ramsey County Child Protection Alleging That R.J.B. Sexually Abused His Sister

Danks testified that before receiving Baldwin’s letter she had abandoned any intention of making a formal report to Child Protection (App. 85). After sending

Appellants the emails on May 31, 2006, “I decided not to report. I’m not proud of it, but I decided not to report, and then I got a letter from Mr. Baldwin.” (*Id.* at 80).

Danks testified that she was “very much” upset by Baldwin’s letter, and believed that Appellants were treating her unfairly (App. 85). More importantly, Danks interpreted Baldwin’s letter as threatening legal action (*Id.* at 82, 84). She testified that receipt of the letter prompted her to again contact Child Protection (*Id.* at 82-83). “I called and again got Becky Hilderman and asked about – *asked about myself, immunity.*” (*Id.* at 84) (emphasis added). Danks testified that she made a formal report of sexual abuse in direct response to Baldwin’s letter:

[T]his action showed that – caused me to report for two reasons because clearly the issue with [L.R.B.] – that [L.R.B.] was still left unattended.

I still – I had believed that despite what they had told me, they would have somehow handled it, and this showed that it would not – that [L.R.B.] was not going to be protected.

And secondly, *I felt that every time someone looked funny at them, that I would be getting letters from lawyers for the rest of my life* for the actions that have nothing to do with me and nothing that I have done, and there needed to be – a report needed to be made.

(App. 85) (emphasis added).

Becky Hilderman testified that this second call, during which Danks made her formal report to Child Protection, occurred in early August 2006 (App. 148). Hilderman said that Danks had previously called during the spring alleging that she knew a child who was possibly being “sexually abused” by her brother (*Id.*). Danks was unwilling at that time, however, to identify either herself or the alleged victim because the family was getting counseling (*Id.* at 148, 151).

Hilderman said that during the August call, Danks “was again telling me that this child *was still being sexually abused* by her brother, *that the family hadn’t done anything about it*” (App. 148) (emphasis added). Danks now furnished Hilderman with Appellants’ name, address and school (*Id.*).

Hilderman testified that she paraphrases as little as possible when preparing intake summaries, and instead attempts to use the reporter’s exact words (App. 150). Her intake report in this case includes the following:

“[L.R.B.] reported to her friend that her brother, [R.J.B.], is sexually abusing her. [L.R.B.] stated that he will remove her underwear, look at her, fondle her and will put his face near her genitals. [L.R.B.] stated it has happened more than once and she told him to stop. [L.R.B.] stated [R.J.B.] threatened to beat her up if she told anyone.”

“The initial reporter was [L.R.B.]’s friend’s mom. She stated that she initially found out about the abuse in the Spring but thought the family was handling it on their own and getting help. She recently found out that the family has done nothing and the mother states [L.R.B.] is a liar who likes attention.”

See C.App. 1-9 (Intake Summary – Child Protection dated Sept. 11, 2006).

K. September 11-13, 2006: Child Protection Investigates And Concludes That Danks Made A False Report

Child protection assigned the case on September 11, 2006, to intake investigator Ann Foster, who had worked for 30 years in the child protection area (App. 119, 128, 149, 158). Foster testified that the report actually contained two significant allegations: (1) one of abuse by R.J.B., and (2) one that Appellants were neglecting L.R.B. because they were aware of sexual abuse but had done nothing to prevent it (*Id.* at 122). Before interviewing L.R.B., Foster consulted with the White Bear Police Department, which had also received a copy of Danks’ report, and which instructed Foster to proceed with her

investigation and to report back if she concluded that further action on their part was warranted (*Id.* at 123).

Foster interviewed L.R.B. at school on September 11, 2006 (App. 123). When Foster asked L.R.B. about the safety of her home, L.R.B. declared, "I know what this is about," and asked for her mother (*Id.*). Foster terminated the interview and telephoned Mrs. B to disclose that she had just interviewed L.R.B. (*Id.* at 29, 123-24). Mrs. B complained to Foster about ongoing harassment by Danks since April (*Id.* at 29, 124). After consulting with Mr. B, Mrs. B immediately drove to the White Bear Community Counseling Center to sign an authorization allowing Foster to speak directly with therapist Jane Bacon and to review the family's therapy file (*Id.* 124).

Foster ultimately determined: (a) that no maltreatment had occurred; (b) that no protective services were required; and (c) that Danks' report was false (App. 121, 125, 126). White Bear Police agreed that no further action was required (*Id.* at 125). Foster sent police a letter for their file "stating there is no maltreatment and that the report was deemed false" (*Id.*).

Foster explained that there is a difference between finding that no maltreatment occurred and finding that a report is "false" (App. 133). "In some cases something may have happened, but you haven't met the standards of the preponderance of the evidence. So you make a finding of no maltreatment" (*Id.*). In contrast, "a false report means that there was no evidence whatsoever that there was sexual abuse." (*Id.*). Foster reiterated that she deemed Danks' report to be "false."

It was an unusual case in the first place. It was extremely rare that -- to be assigned a case that did not come in from a verified source....

It was a disturbing interview with the child... I really felt like I was imposing or intruding on her when I was interviewing her, like I was causing harm.

Jane Bacon was very credible in her -- and her descriptions made a lot of sense. I had no reason to go beyond that.

I mean, I totally agreed with the screeners at [Midwest Children's Resource Center] that at best this was maybe inappropriate behavior, but it didn't meet the standards of sexual abuse and shouldn't -- especially the stuff -- *there were whole statements in here that were, you know, fondling her, threatening her, that weren't included in the information, so that part of it was false.*

(App. 126) (emphasis added).

Foster concluded: (a) that L.R.B. had not complained of "sexual abuse"; (b) that L.R.B. had not stated that R.J.B. put his face near her genitals; (c) that since no abuse occurred, L.R.B. had not said it occurred more than once; and (d) that L.R.B. had not complained that R.J.B. threatened her (App. 133-34). Foster also concluded that Danks' statement that the family "hasn't done anything" was false (*Id.* at 135).

ARGUMENT

I. THE DISTRICT COURT ERRED BY GRANTING DANKS SUMMARY JUDGMENT BECAUSE ITS CONCLUSION THAT DANKS WAS ENTITLED TO IMMUNITY RESTED ENTIRELY UPON IMPROPER JUDICIAL FACTFINDING AT THE SUMMARY JUDGMENT STAGE.

The summary judgment standard is among the most familiar in American law. A detailed explication of that standard is necessary in this case, nevertheless, because the district court concluded that the normal rules governing summary judgment did not apply to Danks' immunity claim. Specifically, the court concluded that because: (1) Danks asserted immunity, and (2) immunity claims should be resolved as early as possible, the court had "discretion" to resolve disputes about the factual predicates to Danks' immunity claim. Controlling precedent, however, demonstrates that a district court has no such factfinding authority when immunity is asserted on summary judgment.

Section A of this Argument briefly discusses Minnesota Statutes section 626.556, which furnishes the basis for both Appellants' false-report claim and Danks' immunity defense. Section B summarizes the district court's summary judgment decision and highlights its reliance on *Rehn v. Fishley*, 557 N.W.2d 328 (Minn. 1997) for the proposition that it possessed "discretion" to engage in judicial factfinding concerning Danks' immunity claim. Section C discusses *Thompson v. City of Minneapolis*, 707 N.W.2d 669 (Minn. 2006), in which this Court ruled that, where there is a genuine dispute concerning predicate facts material to an immunity claim, "there can be no summary judgment." Section D shows that *Rehn* and *Thompson* are easily harmonized.

Finally, Section E demonstrates that, under the *proper* summary judgment standard, disputed issues of material fact preclude summary judgment on Danks' immunity claim.

In reviewing an appeal from the grant or denial of immunity on summary judgment, a reviewing court must determine whether there are genuine issues of material fact and whether the lower court erred in applying the law. *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 655 (Minn. 2004). Like the district court, the appellate court views the evidence in the light most favorable to the nonmoving party. *Gleason v. Metro. Council Transit Operations*, 582 N.W.2d 216, 217 (Minn. 1998); *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). The application of immunity presents a question of law an appellate court reviews de novo. *Id.* at 219. *See also Thompson*, 707 N.W.2d at 673; *Johnson v. State*, 553 N.W.2d 40, 45 (Minn. 1996). The reviewing court is not bound by, and need not give deference to, a district court's decision on a purely legal issue. *Frost-Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984).

A. Governing Statute

Minnesota Statutes section 626.556 provides in part that “[a]ny person may voluntarily report to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person knows, has reason to believe, or suspects a child is being or has been neglected or subjected to physical or sexual abuse.” Minn. Stat. § 626.556, subd. 3(b). Persons making reports are “immune from any civil or criminal liability that otherwise might result from their

actions, *if they are acting in good faith.*” See *id.*, subd. 4(a)(1) (emphasis added). The statute also creates a cause of action for malicious and reckless reports:

Malicious and reckless reports. Any person who knowingly or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury, plus costs and reasonable attorney fees.

Minn. Stat. § 626.556, subd. 5 (2006). Section 626.556 thus implements complementary legislative objectives: (1) it furnishes immunity to encourage good faith reports; and (2) it creates a new statutory cause of action to deter false and malicious reports.

B. The District Court’s Summary Judgment Decision

Following discovery, Danks moved for summary judgment claiming that under Minn. Stat. § 626.556, subd. 4(a)(1), she was immune as to Appellants’ statutory false-report and common law claims. Appellants opposed summary judgment arguing that, on the record summarized above, the district court could not possibly conclude *as a matter of law* that Danks had acted in “good faith.” The district court nevertheless granted Danks’ motion for summary judgment.

After setting out the proper summary judgment standard, the court commented that “[t]he first threshold issue ... is whether [Danks’] report to Ramsey County Child Protection falls under the protection of Minn. Stat. § 626.556 making her immune from civil liability.” App. 165-66. The court recognized that the statute’s immunity provision “limits protection to those cases where: 1) the person knows or has reason to believe abuse occurred, and 2) the report is made in good faith.” *Id.* at 166. It also correctly

noted that “[t]he burden remains with [Danks] to present facts sufficient for a court to determine *as a matter of law* that the immunity applies.” *Id.* at 167 (emphasis added).

The district court then went badly astray, however, by concluding that the normal rules governing summary judgment did *not* apply to Danks’ immunity claim. The district court’s memorandum makes clear that—based on its reading of *Rehn v. Fishley*—the court believed it possessed “discretion” to weigh evidence as a factfinder when evaluating Danks’ immunity claim:

[Appellants] argue that the timing of [Danks’] report raises a fact issue for determination by a jury on the question of [Danks’] good faith. *Normally, [Appellants’] position would be correct.* However, as discussed above, in cases where the trial court needs to determine if statutory immunity applies, *mixed questions of fact and law are left to the discretion of the trial court in the interest of judicial economy.* *Rehn v. Fishley*, 557 N.W.2d 328, 333 (Minn. 1997).

(App. 168) (emphasis added).

This excerpt reveals two critical aspects of the district court’s analysis. The first emphasized passage indicates that, had the court applied the normal summary judgment standard, “[Appellants] ... would be correct” that “the timing of [Danks’] report raises a fact issue for determination by a jury on the question of [Danks’] good faith.” The court thus recognized that—absent its purported “discretion” to find facts—Danks’ immunity claim was not ripe for summary judgment. The second emphasized passage reveals that the district court did not apply the normal summary judgment standard but, instead, departed from that standard by engaging in judicial factfinding to resolve Danks’ immunity claim. This was clearly error.

C. The District Court Erred In Determining That It Possessed “Discretion” On Summary Judgment To Resolve Fact Disputes Concerning The Factual Predicates To A Statutory Immunity Claim.

Although the district court initially identified the correct summary judgment standard, it ultimately concluded that, under *Rehn v. Fishley*, it had “discretion” to resolve factual disputes related to an immunity claim. This Court’s recent decision in *Thompson v. City of Minneapolis*, however, conclusively demonstrates that a district court has no such factfinding authority. Notably, a proper reading of *Rehn* demonstrates that it is not inconsistent with *Thompson*.

1. The Settled Summary Judgment Standard Prohibits A Court From Engaging In Factfinding.

Summary judgment is proper only where there is no genuine issue of material fact in dispute and a determination of the applicable law will resolve the controversy. *Gaspord v. Washington County Planning Commission*, 252 N.W.2d 590, 590-91 (Minn. 1977). A fact is “material” if it would “affect the outcome of the suit under governing law,” and a dispute about a genuine issue of material fact exists if the evidence is such that “a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Summary judgments are to be granted with great caution and are not intended as a substitute for trial when there are fact issues to be determined. *Lundgren v. Eustermann*, 370 N.W.2d 877, 882 (Minn. 1985).

“The district court’s function on a motion for summary judgment is not to *decide* issues of fact, but solely to determine whether genuine factual issues *exist*.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997) (emphasis added). The court must not weigh the

evidence. *Id.* Instead, the court must view the evidence in the light most favorable to the nonmoving party. *State ex rel. Beaulieu v. City of Mounds View*, 518 N.W.2d 567, 571 (Minn. 1994). This is so because “summary judgment is inappropriate when reasonable persons might draw different conclusions from the evidence presented.” *DLH*, 566 N.W.2d at 69 (citing *Illinois Farmers Ins. Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978)). All doubts and factual inferences must be resolved against the movant and in favor of party opposing the motion. *City of Shakopee v. Kopp & Associates, Inc.*, 159 N.W.2d 901, 903 (Minn. 1968).

To survive summary judgment, therefore, the non-moving party need only point to specific evidence that would permit reasonable persons to draw different conclusions. *Gradjelick v. Hance*, 464 N.W.2d 225, 231 (Minn. 2002). The court must resolve any doubt as to whether a dispute of material fact exists in favor of trial. *Harvet v. Unity Medical Ctr., Inc.*, 428 N.W.2d 574, 578 (Minn. Ct. App. 1988).

2. This Court Recently Held In *Thompson v. City of Minneapolis* That The Settled Summary Judgment Standard Applies To Immunity Claims.

This Court recently reiterated that a district court may not engage in factfinding when confronted with an immunity claim on summary judgment. *Thompson v. City of Minneapolis*, 707 N.W.2d 669 (Minn. 2006). Pedestrian Kristin Thompson was hit by an SUV being chased by two police officers. *Id.* at 670. Thompson sued the officers alleging, *inter alia*, that they had been negligent during the chase. *Id.* The district court granted the officers’ motion for summary judgment on the basis of official immunity. *Id.* This Court reversed.

The Court noted that “[a] public official is not protected by immunity in the performance of his duties when he fails to perform a ministerial act, or when his performance of a discretionary act is willful or malicious.” *Thompson*, 707 N.W.2d at 673. The availability of immunity in *Thompson* turned on whether the officers had engaged in “pursuit” as defined by department policy. *Id.* at 674-75. The case was not ripe for summary judgment because “[c]ompeting versions of the events support different conclusions of what actually happened” and “additional analysis as to what in fact occurred would be wholly speculative and call for fact-finding,” which would be improper on summary judgment. *Id.* at 675 (citing *State ex rel. Beaulieu v. City of Mounds View*, 518 N.W.2d 567, 573 (Minn. 1994)).

The *Thompson* Court quoted with approval *Ludwig v. Anderson*, 54 F.3d 465 (8th Cir. 1995), in which the Eighth Circuit clarified that “a case should be submitted to the jury when the facts giving rise to the applicability of qualified immunity [are] disputed.” *Thompson*, 707 N.W.2d at 675 (emphasis added).

“Although it is a question of law whether particular facts entitle police officers to summary judgment based on qualified immunity, where, as here, ‘there is a genuine dispute concerning predicate facts material to the qualified immunity issue, *there can be no summary judgment.*’”

Thompson, 707 N.W.2d at 675 (quoting *Ludwig*, 54 F.3d at 474) (emphasis added).

Although recognizing that immunity is intended to protect a party from *suit* (rather than just from *liability*), the *Thompson* Court emphasized that “when predicate facts are in dispute, we cannot determine whether official immunity applies until the factual disputes

are resolved.” *Id.* (citing *State ex rel. Beaulieu v. City of Mounds View*, 518 N.W.2d 567, 573 (Minn. 1994)). In such cases, trial is necessary.⁵ *Id.*

Thompson leaves no doubt that the conventional rules governing summary judgment apply to the factual predicates to an immunity claim. Even as to such facts, therefore, a district court may not engage in factfinding, but must view the evidence in the light favorable to the nonmoving party. Many other cases implement this same approach, and conclude that summary judgment based on immunity is inappropriate where, viewing the evidence in the light most favorable to the nonmoving party, the record contains sufficient evidence to create a fact dispute about a predicate of the defendant’s immunity claim. *Compare, e.g.,*

- *Schroeder v. St. Louis County*, 708 N.W.2d 479, 507-08 (Minn. 2006) (reversing summary judgment on basis of official immunity where defendant road-grader operator claimed his lights were on during evening collision with decedent’s car, but record contained passing motorist’s affidavit that grader’s lights were off just minutes before collision, thus creating fact question for jury resolution because “summary judgment is inappropriate if the nonmoving party ... presents sufficient evidence to permit reasonable persons to draw different conclusions”); and
- *Johnson v. Morris*, 453 N.W.2d 31, 41-42 (Minn. 1990) (reversing summary judgment on basis of official immunity where “[v]iewing the claimed facts in the light most favorable to [plaintiff], we conclude that a fact issue exists whether [defendant police officer] committed an assault” and holding that “[w]hether or not an officer acted maliciously or willfully is usually a question of fact to be resolved by a jury”); *with*

⁵ *Thompson* reiterates the familiar rule that the availability of immunity must be resolved as early in a case as possible if immunity is to serve its intended purpose of protecting a party from *suit*. *Thompson*, 707 N.W.2d at 675. It also makes clear, however, that where availability requires factfinding to determine “what actually happened,” early resolution simply is not possible. *Id.* *Thompson* thus shows that the early-resolution rule does not transfer from juries to judges basic factfinding authority.

- *Rico v. State*, 472 N.W.2d 100, 108-09 (Minn. 1991) (affirming summary judgment on basis of official immunity where plaintiff did not allege “any facts to demonstrate that [defendant official] knew or had reason to know that his intentional removal of [plaintiff] ... was proscribed at the time he acted,” and, consequently, the court could “hold that as a matter of law [defendant] did not commit a willful or malicious wrong”); and
- *Elwood v. County of Rice*, 423 N.W.2d 671, 679 (Minn. 1988) (reversing denial of summary judgment on basis of official immunity where, although recognizing that allegation of willful or malicious wrong “may raise a fact question for the jury, we find no such genuine issue here. Viewing the facts in the light most favorable to plaintiffs’ position, no reasonable jury could find the deputies acted with bad faith or malicious intent.”).

These cases (the *Thompson* line of cases) confirm that the conventional rules of summary judgment govern immunity claims, and that a district court may not engage in factfinding concerning such claims, but instead must view the evidence in the light most favorable to the nonmoving party.⁶

⁶ Court of appeals’ cases fall into a parallel dichotomy. Compare, e.g., *Metge v. Central Neighborhood Improvement Ass’n*, 649 N.W.2d 488, 501 (Minn. Ct. App. 2002) (reversing summary judgment on basis of statutory immunity because evidence that defendant’s allegedly wrongful actions “were the product of ill will toward [plaintiff] in response to the conflict-of-interest issues she raised” created jury question on issue of defendant’s “good faith”) and *Soucek v. Banham*, 503 N.W.2d 153, 161 (Minn. Ct. App. 1993) (affirming denial of summary judgment on the basis of official immunity because evidence in the record “contradict[ed] the officers’ version of the facts”) with *Pahnke v. Anderson Moving & Storage*, 720 N.W.2d 875, 883-84 (Minn. Ct. App. 2006) (affirming summary judgment on basis of official immunity where, even assuming plaintiff’s version of events, no dispute of material fact existed because officers’ conduct, as a matter of law, did not constitute malice). See also *Semler v. Klang*, 743 N.W.2d 273, 278-79 (Minn. Ct. App. 2007), rev. denied (Minn. Feb. 19, 2008); *Davis v. Hennepin County*, 559 N.W.2d 117, 123-24 (Minn. Ct. App. 1997); *Kalia v. St. Cloud State University*, 539 N.W.2d 828, 832 (Minn. Ct. App. 1995).

D. *Rehn* Is Not Inconsistent With The *Thompson* Line Of Cases.

The district court's judicial factfinding theory—which Respondent adopted and vigorously pressed in the court of appeals⁷—relies squarely upon a passage in *Rehn* setting forth the standard of appellate review for mixed questions of law and fact. Specifically, *Rehn* states that a district court's determination of whether immunity applies “will include mixed questions of law and fact. In this situation, we will correct erroneous applications of law, but accord the trial court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard.” *Rehn*, 557 N.W.2d at 333 (citing *Maxfield v. Maxfield*, 452 N.W.2d 219, 221 (Minn. 1990)). In evaluating whether this statement truly authorizes judicial factfinding on summary judgment, it is critical to consider both the issues presented in *Rehn*, and the Court's citation to *Maxfield*.

1. *Rehn* Did Not Involve—And Does Not Authorize—Judicial Factfinding On Summary Judgment.

Rehn, an employee of the Greater Anoka County Animal Humane Society, was injured when using a disinfectant recommended and provided by Fischley, a veterinarian who volunteered on the Society's board of directors. *Id.* at 330-31. At the close of *Rehn*'s case in chief for negligence, Fischley moved for a directed verdict under Minn. Stat. § 317A.257, which provides immunity from suit (under certain circumstances) to uncompensated directors of nonprofits. *Id.* at 331-32. The trial court granted the directed verdict, but the court of appeals reversed. *Id.* at 332.

⁷ Respondent strenuously asserted in the court of appeals that the district court possessed the discretion to find facts on summary judgment, and had properly exercised that discretion. See Respondent's Court of Appeals' Brief at 13-14, 17-23.

On further review, this Court began its analysis by contrasting immunities and affirmative defenses. *See id.* at 332-33. Although the Court commented that “the application of an immunity typically is a matter of law,” *id.* at 332, it noted that a defendant asserting immunity was still required to prove the predicate facts of its immunity claim, *id.* at 333. “[T]he burden remains with the defendant to allege facts sufficient for a court to determine *as a matter of law* that the immunity applies.” *Id.* at 333 (emphasis added). Applying this standard to the relevant immunity statute, the Court ruled that Fischley had to prove *factually* that her acts: “1) were done in good faith, 2) were within the scope of her responsibilities as a member of the board of directors, 3) were not willful or reckless misconduct, and 4) did not personally and directly cause [Rehn’s] physical injury.” *Id.*

Rehn’s statement that the application of immunity typically involves “mixed questions of law and fact” does not—as the district court concluded—authorize judicial factfinding on summary judgment. Instead, it simply reiterates the familiar proposition that a court’s conclusion about a defendant’s entitlement to immunity—an issue of law—necessarily incorporates, and relies upon, a particular recitation or version of material facts. *See, e.g., Thompson, 707 N.W.2d at 675.* The critical question here, of course, is who *finds* material facts when conflicting evidence places them in dispute. The *Thompson* line of cases directly holds that a jury—not the district court—must find the material facts under such circumstances. *Rehn* does not compel or even suggest a contrary conclusion.

Indeed, *Rehn* itself involved no judicial factfinding concerning the four factual predicates to Fischley's immunity claim. First, Rehn never disputed that Fischley had acted in good faith. *Rehn*, 557 N.W.2d at 334. Second, interpreting the scope of the relevant immunity provision, this Court determined as a matter of law that Fischley's *undisputed acts* were protected. *Id.* at 334-35. Third and fourth, it concluded that "the trial court did not abuse its discretion in finding that Dr. Fischley met her burden of providing facts sufficient to prove that her actions were neither willful nor reckless, and that her conduct, although arguably negligent, did not personally and directly cause Mr. Rehn's physical injuries." *Id.* at 335.

In light of *Rehn's* earlier statement that a defendant must "allege facts sufficient for a court to determine *as a matter of law that the immunity applies*," *id.* at 333 (emphasis added), this final passage indicates only that the district court did not err in recognizing plaintiff Rehn's failure to present evidence creating a material fact dispute concerning either willfulness and causation, the last two factual predicates to defendant Fischley's immunity claim. As a result of this failure, no predicate fact was disputed, and the district court could properly conclude *as a matter of law* that Fischley was entitled to immunity.

Rehn did not involve—and does not authorize—judicial factfinding on summary judgment. Instead, like certain cases in the *Thompson* line, it simply affirmed a district court's conclusion that a defendant was entitled as a matter of law to immunity because the evidence in the record did not create a material fact dispute about any factual

predicate to the defendant's immunity claim. A district court does not—per *Rehn*—have “discretion” to engage in judicial factfinding on summary judgment.

2. Proper Application Of The Appellate Standard Of Review For Mixed Questions Of Law And Fact Depends Upon The District Court's Role In The Particular Proceeding.

The critical passage in *Rehn* recites a *general* standard of review for mixed questions, the proper application of which depends upon the district court's role in the particular proceeding. A brief discussion of *Maxfield*, the case cited by *Rehn* for the standard of review, clarifies the point.

Maxfield was a divorce case involving child custody. *Maxfield v. Maxfield*, 452 N.W.2d 219, 219 (Minn. 1990). Consequently, the district court's role included both factfinding and adjudication. *Id.* at 221. This Court's explication of the standard of review under such circumstances is worth quoting at length:

Particularly in cases of this kind, where the trial court is weighing statutory criteria *in light of the found basic facts*, the trial court's conclusions of law will include determination of mixed questions of law and fact, *determination of “ultimate” facts*, and legal conclusions. In such a blend, the appellate court may correct erroneous applications of the law. As to the trial court's conclusions on the ultimate issues, mindful of the discretion accorded the trial court in the exercise of its equitable jurisdiction, the reviewing court reviews under an abuse of discretion standard.

Maxfield, 452 N.W.2d at 221 (emphasis added).

This passage from *Maxfield* makes clear that *Rehn* sets forth a general standard of review for mixed questions—one that governs even where a district court has both factfinding and adjudicatory authority. In such situations, each separate component of the stated standard of review (basic facts, ultimate facts, legal conclusions) applies to

some aspect of the lower court's actual authority. Where, however, a district court faces a mixed question but does *not* possess the authority to find facts—either basic facts or ultimate facts—the components of the standard relating to “basic” and “ultimate” facts can have no possible application.

In the summary judgment context, a district court lacks factfinding authority, and instead must view the evidence in the light most favorable to the nonmoving party. Because the application of law to a particular constellation of facts presents a question of law, *Thompson*, 707 N.W.2d 675, the only component of the *Rehn* standard that logically can apply in the summary judgment context is that concerning “erroneous applications of law.” *See Rehn*, 557 N.W.2d at 333 (noting that the appellate court “will correct erroneous applications of law”). Therefore, when properly applied in light of the district court's limited role on summary judgment, the *Rehn* standard is identical to the settled standard of review for summary judgment: whether the lower court erred in applying the law. *See, e.g., Bol v. Cole*, 561 N.W.2d 143, 146 (Minn. 1997) (applying this standard in evaluating on summary judgment an immunity claim under Minn. Stat. § 626.556).

E. Under The Proper Summary Judgment Standard, Disputed Issues Of Material Fact Preclude Summary Judgment On Danks' Immunity Claim.

The district court dismissed every count in Appellants' complaint based on its conclusion that Danks was entitled to immunity under Minn. Stat. § 626.556, subd. 4(a)(1). This result could be valid only if the record *compels as a matter of law* the existence of the two factual predicates to immunity: (1) “that [Danks] had a reasonable belief that abuse had occurred,” (App. 167); and (2) “that [Danks] made her report in

good faith,” (*id.* at 168). If the record instead contains evidence that would allow reasonable persons to reach a contrary conclusion as to either or both of these predicates, however, then the district court invaded the factfinding province of the jury and improperly granted summary judgment. This is plainly what occurred.

1. The Lower Courts Applied Incorrect Standards When Evaluating Danks’ Immunity Claim.

The district court concluded it had “discretion” to weigh evidence in evaluating Danks’ immunity claim, and plainly did so. The court’s memorandum demonstrates that it *selected* from Danks’ deposition and correspondence exclusively those statements that supported her claim of good faith; disregarded other of Danks’ statements seriously undermining that claim; and ignored the exaggeration and manifest falsity of portions of Danks’ formal report (App. 167-68). The court’s exercise of purported factfinding authority is confirmed by its statement that Appellants had not “presented any *substantial evidence* that indicates that the Defendant was acting in bad faith.” (*Id.* at 168) (emphasis added). The “substantial evidence” standard, however, concerns the quantum of evidence necessary to support a district court’s factual findings. *See, e.g., In re Children of T.A.A.*, 702 N.W.2d 703, 708 (Minn. 2005) (holding appellate court reviews district court’s factual findings to determine “whether those findings are supported by substantial evidence”). In marked contrast, however,

[a] party need not show *substantial evidence* to withstand summary judgment. Instead, summary judgment is inappropriate if the nonmoving party ... presents *sufficient evidence* to permit reasonable persons to draw different conclusions.

Schroeder v. St. Louis County, 708 N.W.2d 479, 507 (Minn. 2006) (court’s emphasis).

The court of appeals refused to acknowledge that the district court had engaged in judicial factfinding. *See Danks*, 2009 WL 2498747 at *3 & n.1 (setting forth conventional summary judgment standard of review). Worse, it reviewed the district court's decision as though that court had been a legitimate factfinder entitled to deference on its weighing of facts. *See id.* at *4 to *7 (essentially justifying district court's factual inferences and findings). To take a single example, the appellate court said with respect to Danks' delay in reporting: "Danks has explanations for the passage of time, which [Appellants] have not rebutted." *Id.* at *6. But this simply *assumes* that the district court legitimately found Danks' explanation credible. A jury, however, could plainly reject it outright as implausible and self-serving. *See, e.g., Kramer v. Kramer*, 162 N.W.2d 708, 715 (Minn. 1968) (holding that witness credibility "is a matter solely for the jury to pass upon with freedom to accept or reject the witness's testimony as trier of fact").

The lower courts applied, respectively, incorrect decisional and review standards. Reviewing the matter *de novo*, this Court should conclude that disputed issues of material fact preclude summary judgment.

2. Evidence In the Record Demonstrates That Two Factual Predicates To Danks' Immunity Claim Are Sharply Disputed, Thus Precluding Summary Judgment.

A person may report abuse to authorities "if the person knows, has reason to believe, or suspects a child is being or has been neglected or subjected to physical or sexual abuse." Minn. Stat. § 626.556, subd. 3(b). A jury could conclude from the record, however, that by the time Danks reported to Ramsey County *in early August 2006*, she no longer had reason to suspect abuse.

The playdate occurred on April 30, 2006. On May 1, Danks related to Mrs. B the allegations M.D. had attributed to L.R.B. Appellants' family attended their first counseling session with therapist Jane Bacon on May 16 (App. 21; C.App. 11). On May 22, Mrs. B telephoned Danks and related Bacon's conclusions that no sexual contact or abuse had occurred, and that the conduct L.R.B. described to M.D. was not sexual in nature (App. 26-27, 126).

In addition, Danks knew that Appellants' family was scheduled for further counseling; indeed, she demanded that Appellants show Bacon the emails she had sent Appellants on May 31st (App. 27-28, 77). Yet by her own admission, Danks never inquired whether Appellants complied with this demand (*Id.* at 78). This failure to inquire is important because Danks knew that family therapists such as Jane Bacon are mandatory reporters (*Id.* at 73). Given this evidence, a jury could easily conclude that—even if Danks may *once* have had reason to suspect abuse had occurred—that suspicion was no longer justified at the time she eventually made her formal report in August.

More importantly, a jury could conclude for several reasons that Danks did not make her formal report in “good faith.”⁸ First, the record contains evidence that Danks ultimately made a formal report specifically to obtain immunity from an anticipated lawsuit by Appellants. Danks explained that after sending Appellants two emails on May 31, 2006, “I just let it go.” (App. 80). On July 3, 2006, however, Danks received attorney Baldwin’s cease-and-desist letter. Danks testified that she was “very much” upset by the letter, and believed that Appellants were treating her “unfairly.” (*Id.* at 85). “I [had] decided not to report. I’m not proud of it, but I [had] decided not to report, *and then I got a letter from Mr. Baldwin.*” (*Id.* at 80) (emphasis added).

Danks testified that she interpreted Baldwin’s letter as threatening legal action (App. 82, 84). Soon after Danks received the letter, her lawyer “presented [her] with all the statutes.” (*Id.* at 76). Then, in early August 2006, Danks renewed contact with Ramsey County Child Protection “and again got Becky Hilderman and asked about – *asked about myself, immunity.*” (*Id.* at 82) (emphasis added). Danks likewise called the Ramsey County Attorney’s Office to discuss immunity (*Id.* at 85). Danks *subsequently*

⁸ Whether a person has acted in “good faith” typically presents a fact question for jury resolution. *See, e.g., Harlow v. Fitzgerald*, 457 U.S. 800, 816 (1982) (noting that subjective good faith in context of qualified immunity is fact question for jury); *Olson v. Penkert*, 90 N.W.2d 193, 202 (Minn. 1958) (“The question of the defendant’s good faith in terminating the authority of his broker was for the jury. Clearly, the question of the plaintiff’s good faith, in acting for the owner as his agent, must also be determined by the jury.”); *Sviggum v. Phillips*, 15 N.W.2d 109, 111-12 (Minn. 1944) (holding that whether landlord proceeded in good faith under Office of Price Administration rent regulation to recover possession of premises from tenant for use as a personal dwelling presented a question of fact for the jury); *Cokley v. City of Ostego*, 623 N.W.2d 625, 630-31 (Minn. Ct. App. 2001) (whether an employee makes a report in “good faith” under the Minnesota Whistleblower Act, Minn. Stat. § 181.932, is a question of fact).

made her formal report to Ramsey County Child Protection—a full three months after first learning of the allegations M.D. had attributed to L.R.B.

The record thus supports a conclusion that Danks made her formal report *to retroactively acquire immunity* for acts she had already committed (*e.g.*, publication of allegations of sexual abuse to Julie Stonehouse), and for which she feared Appellants might sue her. It also supports the conclusion that Danks feared her previously published allegations might cause the community to further ostracize Appellants, and that she therefore sought to acquire immunity *prospectively* for reputational damage Appellants had not yet discovered: “I felt that every time someone looked funny at them, that I would be getting letters from lawyers for the rest of my life for the actions that have nothing to do with me and nothing that I have done, and there needed to be – a report needed to be made.” (App. 85). Danks own testimony directly supports the conclusion that she made a formal report to acquire immunity—both retroactive and prospective. Given this evidence of a self-interested motivation, a jury could easily conclude that Danks did not make her report in “good faith.” *See, e.g., Minnwest Bank Central v. Flagship Properties LLC*, 689 N.W.2d 295, 303 (Minn. Ct. App. 2004) (absence of “good faith” can be established by showing ulterior motive).

Second, the record contains evidence that Danks made her report from personal malice, to injure and embarrass Appellants. Danks’ May 31st emails to Appellants, *inter alia*: (a) stated that, “I have no small amount of unhappiness with you both for failing to take this into your own hands and handling it properly”; and (b) complained to Mrs. B that “you have become hostile and abusive with me.” (App. 137-43). Danks testified

that Baldwin's cease-and-desist letter "very much" upset her, and that she believed Appellants were treating her unfairly and threatening to sue her (*Id.* at 82, 84-85).

As a former school teacher who had thrice contacted child protection, Danks knew that a formal report of sexual abuse would generate an official investigation (App. 73, 97-99). Indeed, she had recently confirmed that police (rather than a social worker) would be sent to Appellants' home, and that authorities would likely remove R.J.B. from the home (*Id.* at 73). Danks appreciated that, at a minimum, an official investigation would embarrass Appellants (*Id.* at 96). Given this evidence, a jury could conclude that malice rather than "good will" prompted Danks' report. *See, e.g., Bauer v. State*, 511 N.W.2d 447, 449 (Minn. 1994) (defining "malice" as ill will, improper motive, or intent to injure the claimant without cause); *Metge v. Central Neighborhood Improvement Ass'n*, 649 N.W.2d 488, 501 (Minn. Ct. App. 2002) ("good faith" predicate to immunity not established as matter of law on summary judgment where record contained evidence that defendant's allegedly improper actions "were the product of ill will toward [plaintiff] in response to the conflict-of-interest issues she raised").

Finally, a jury could conclude that Danks did not make her formal report in "good faith" because the record contains evidence that Danks' report was exaggerated in some respects and outright false in others. Ann Foster—a Ramsey County child-abuse investigator with 30 years experience—concluded: (a) that L.R.B. did not complain to M.D. about "sexual abuse"; (b) that L.R.B. did not state that R.J.B. put his face near her genitals; (c) that since no incident of abuse occurred, L.R.B. did not say that abuse occurred more than once; and (d) that L.R.B. did not complain that R.J.B. threatened her

(App. 133-34). These exaggerated portions of Danks' formal complaint plainly bear on the existence of good faith. *See, e.g., Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 921 (Minn. 2009) (exaggeration relevant to malice)

Other aspects of Danks formal report were quite simply false. Whereas Danks knew that Appellants' family had entered counseling almost immediately after the playdate, and that they were scheduled for further counseling, Danks stated in her formal report that she recently learned the family "has done nothing." (App. 135, 151). Forster found this allegation affirmatively false (*Id.* at 135).

More importantly, although Danks had heard no additional allegations of abuse between April and August 2006, she told intake worker Becky Hilderman "that this child *was still being sexually abused* by her brother" (App. 148) (emphasis added). The clear falsity of Danks' formal report is also relevant to good faith. *See State ex rel. Beaulieu v. City of Mounds View*, 518 N.W.2d 567, 573 (Minn. 1994) (reversing district court's grant of summary judgment on basis of official immunity were defendant officers' "false statement to [plaintiff arrestees] that they had been stopped because their vehicle matched a description received by defendants may be evidence of bad faith").

Based on all of the evidence in the record, a jury could conclude that Danks made an exaggerated and false report to Ramsey County both to acquire immunity and to injure Appellants for having treated her "unfairly." Reasonable minds could plainly differ on whether Danks acted in "good faith." Because good faith is a predicate to immunity, summary judgment on the basis of immunity was improper.

II. THE DISTRICT COURT ERRED IN DISMISSING APPELLANTS' COMMON LAW CLAIMS BECAUSE THE IMMUNITY CONFERRED BY MINN. STAT. § 626.556, SUBD. 4, APPLIES EXCLUSIVELY TO LIABILITY FOR THE ACT OF MAKING A "REPORT" OF SUSPECTED ABUSE TO PROPER AUTHORITIES, NOT TO ENTIRELY SEPARATE DISCLOSURES ON OTHER OCCASIONS TO OTHER PERSONS.

As just demonstrated, the district court erred by concluding that Danks was entitled as a matter of law to immunity under Minn. Stat. § 626.556, subd. 4(a)(1). But even if the court had been correct, it would still have erred by concluding that such immunity barred Appellants' common law defamation and intrusion-upon-seclusion claims. The district court's sweeping grant of immunity is incompatible with the both the language of section 626.556 and *Bol v. Cole*, 561 N.W.2d 143 (Minn. 1997), in which this Court held that immunity under Minn. Stat. § 626.556, subd. 4(a)(1) must be "construed narrowly" and did *not* bar a common law defamation claim.

The correct interpretation of a statute is a question of law an appellate court reviews de novo. *A & H Vending Co. v. Comm'r of Revenue*, 608 N.W.2d 544, 547 (Minn. 2000). Sections of a statute should be construed together, giving the words their plain meaning. *Glen Paul Court Neighborhood Ass'n v. Paster*, 437 N.W.2d 52, 56 (Minn. 1989). The goal of statutory interpretation is to effectuate the intent of the legislature, and every law must be construed, if possible, to give effect to all its provisions. Minn. Stat. § 645.16 (2006).

Minnesota Statutes section 626.556 declares that, "it is the policy of this state to require the reporting of neglect, physical or sexual abuse of children in the home, school, and community settings; to provide for the voluntary reporting of abuse or neglect of

children; [and] ... to require an investigation when the report alleges substantial child endangerment” Minn. Stat. § 626.556, subd. 1. The statute thus requires and authorizes persons suspecting child abuse to “report the information to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff” *Id.*, subds. 3(a), 3(b) (both containing quoted language).

Consistent with this statutory directive concerning *the proper recipients of reports*, the statute provides, “[r]eport’ means any report received by the local welfare agency, police department, county sheriff, or agency responsible for assessing or investigating maltreatment pursuant to this section.” *Id.*, subd. 2(h).

The statute also furnishes immunity to persons making a “report” under the foregoing provisions:

Subd. 4. **Immunity from liability.** (a) The following persons are immune from any civil or criminal liability that otherwise might result from their actions, if they are acting in good faith:

(1) any person making a voluntary or mandated report under subdivision 3 or under section 626.5561 or assisting in an assessment under this section or under section 626.5561;

Minn. Stat. § 626.556, subd. 4(a)(1). Finally, the statute creates an entirely new cause of action against “[a]ny person who knowingly or recklessly makes a false report under the provisions of this section” *Id.*, subd. 5.

Taken together, these provisions demonstrate that section 626.556 is concerned with “reports” of child abuse to “the local welfare agency, police department, county sheriff, or agency responsible for assessing or investigating maltreatment” Minn. Stat. § 626.556, subd. 2(h). The act the statute mandates and encourages is quite specific:

making a justified “report” to a proper agency. *See* Minn. Stat. § 626.556, subd. 3 (reporter must know or have reason to suspect child abuse and must report to proper agency). To be entitled to immunity, the “report” must have been made in “good faith.” *Id.*, subd. 4(a)(1). The act the statute deters is likewise specific: making a false “report” to a proper agency. *Id.*, subd. 5.

The statute’s several provisions should be interpreted in light of its overall purpose of encouraging factually justified, good-faith reports to proper authorities. As relevant here, the statute’s immunity provision should be interpreted no more broadly than is necessary to advance this purpose. *See, e.g., Car Lease Inc. v. Kitzer*, 149 N.W.2d 673, 675 (Minn. 1967) (stating general principle that statutory immunity in derogation of common law right should be narrowly construed).

Plainly, subdivision 4 must be interpreted as furnishing immunity for the act of making a justified, good-faith report to a proper agency. Likewise, immunity under the statute must extend to acts necessary to facilitate and complete a proper investigation. *See* Minn. Stat. § 626.556, subd. 4(a)(2)-(3), 4(b) (conferring immunity on persons required to facilitate and complete investigations). The statute should not, however, be interpreted to provide immunity for an act of publication that does not qualify as a “report,” and that is not addressed to proper authorities. Certainly, the statute should not be interpreted as allowing a person to make a formal report to authorities *for the purpose*

*of acquiring retroactive immunity for prior acts of publication not addressed to proper authorities.*⁹ Yet, by Danks' own account, that is precisely what she did (App. 82-84).

The foregoing analysis is consistent with, and even compelled by, this Court's decision in *Bol v. Cole*, 561 N.W.2d 143 (Minn. 1997). Defendant Cole, a psychologist, treated five-year-old SP in relation to a report of possible sexual abuse. *Id.* at 145. SP eventually told Cole that Bol had abused him. *Id.* Cole made several official "reports" to authorities naming Bol as the abuser. *Id.* She also disclosed these reports to SP's mother, however. *Id.* Bol commenced a defamation action against Cole for the latter disclosure. *Id.* In response, Cole argued, among other things, that section 626.556, subd. 4(a), furnished her with immunity from Bol's defamation claim. *Id.* at 146-47. This Court squarely rejected that argument. *Id.* at 147.

The Court recognized that Cole was a mandatory reporter under section 626.556, but noted that the statute expressly required that abuse reports be made "to the local welfare agency, police department, or sheriff." *Id.* The Court emphasized that the statute "neither requires nor authorizes a person to report suspected abuse to a parent." *Id.* After noting that "statutorily created immunity should be construed narrowly," *id.*, the Court ruled that "nothing in the Child Abuse Reporting Act indicates that the legislature intended to grant immunity to a person who releases a child abuse report to a parent." *Id.* Consequently, the Court rejected Cole's claim of immunity under the Act. *Id.*

⁹ Correspondingly, the statute's cause of action for false reporting should not apply to a present or former false allegation of abuse that does not qualify as a "report" under the statute and that was not addressed to proper authorities.

In this case, the district court erred by concluding that Danks was entitled as a matter of law to immunity under Minn. Stat. § 626.556, subd. 4(a)(1). *See supra*, Arg. § I. But even if the court had been correct, it would still have erred by concluding that *scope* of immunity conferred by that provision barred Appellants' common law defamation and intrusion-upon-seclusion claims.

Appellants' claims for slander and libel were based in large measure on acts of publication to community members Danks committed during the months *before* she made her formal "report" to Ramsey County in early August 2006. *See* Plaintiffs' Mem. Opp'n Def.'s Mot. Summ. J. at 39-48. Nevertheless, having found that Danks was entitled to immunity under section 626.556 *for the act of making a formal "report,"* the district court held—without any explanation or analysis—that "[Appellants'] claims for slander and libel must be dismissed." App. at 169.

Appellants' intrusion-upon-seclusion claim was likewise based largely on Danks' demand for information about Appellants' family counselor and the content of their counseling sessions, conduct that occurred in May 2006. *See* Plaintiffs' Mem. Opp'n Def.'s Mot. Summ. J. at 51-52. Although this cause of action, too, was based on conduct committed months before Danks' made her report to Ramsey County, the district court again concluded that the statutory immunity *for the act of reporting* required dismissal. App. at 170.

Because the immunity conferred by Minn. Stat. § 626.556, subd. 4, applies exclusively to liability for the act of making a "report" of suspected abuse to proper authorities—not to entirely separate disclosures made on other occasions to other

persons—the district court’s dismissal of Appellants’ common law claims was erroneous as a matter of law. This Court should reinstate Appellants’ common law claims and remand the case to the district court for trial.

III. THE DISTRICT COURT ERRED IN AWARDING ATTORNEY FEES AND, EVEN IF AN AWARD HAD BEEN PROPER, ERRED IN AWARDING FEES FOR CLAIMS OTHER THAN APPELLANTS’ FALSE-REPORT CLAIM UNDER MINN. STAT. § 626.556.

If this Court reverses the district court’s award of summary judgment on the basis of immunity, it should vacate the lower court’s award of attorney fees because Danks will no longer have obtained immunity—a prerequisite to a fee award. But even if this Court concludes that Danks is entitled to immunity, it should rule that the district court erred by awarding fees, especially for claims other than Appellants’ false-report claim under Minn. Stat. § 626.556.

Generally, a reviewing court “will not reverse a [district] court’s award or denial of attorney fees absent an abuse of discretion.” *Becker v. Alloy Hardfacing & Eng’g Co.*, 401 N.W.2d 655, 661 (Minn. 1987) (holding that equitable determinations of attorney fees are reviewed for abuse of discretion). When, however, the propriety of the award itself involves interpreting a statute, the issue is a question of law an appellate court reviews de novo. *Collins v. Minnesota School of Business, Inc.*, 655 N.W.2d 320, 327 (Minn. 2003). Likewise, “[a]lthough the reasonable value of attorney fees is a question of fact, ... when considering whether the district court employed the proper method to calculate the amount of an attorney lien, [a reviewing court] undertake[s] a de novo

review....” *Thomas A. Foster & Assocs. v. Paulson*, 699 N.W.2d 1, 4 (Minn. Ct. App. 2005).

There are several reasons in this case for either eliminating or restricting any award of attorney fees. First, as demonstrated above, the district court erred in granting Danks summary judgment based on immunity. *See supra* Arg. § I. Because entitlement to such immunity is a prerequisite to a fee award, this Court should vacate the lower court’s order granting attorney fees.

Second, an award of fees in this case is neither mandated nor equitable. Minnesota Statutes section § 626.556 contains two different attorney fee provisions. Subdivision 5 directs that attorney fees *shall be* awarded when a person knowingly or recklessly makes a false report. *Id.* subd. 5. Subdivision 4(d) provides that fees *may* be awarded “[i]f a person who makes a voluntary or mandatory report ... prevails in a civil action from which the person has been granted immunity under this subdivision.” *Id.* subd. 4(d). Under the plain meaning of the statute, then, reporters entitled to immunity are not *necessarily* entitled to an award of fees. The Legislature thus intended that some parties seeking damages, even though not prevailing, would not incur liability for the immunized reporter’s attorney fees. This is not unusual.

When a party prevails under a statute authorizing an award of fees to the prevailing party without expressly distinguishing between the plaintiff and the defendant, the standard for awarding fees to a prevailing defendant is stricter. In *Christiansburg Garment Co. v. E.E.O.C.*, 434 U.S. 412 (1978), for example, the United States Supreme Court refused to apply an “evenhanded rule” and instead held that, unlike prevailing Title

VII plaintiffs, prevailing Title VII defendants may recover their attorney fees only “upon a finding that the plaintiffs action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith.” *Id.* at 421.

Here, although the district court explained its grant of immunity, there is no analysis of why it also granted Danks attorney fees and costs and, more specifically, no analysis of Appellants’ reasonableness in bringing the suit. *See, e.g., Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (noting that it is important “for district court to provide a concise but clear explanation of its reasons for the fee award”). In light of evidence in the record (a) supporting an inference that Danks made her report of abuse from an improper motive, and (b) demonstrating that Child Protection determined that Danks report was affirmatively “false,” a finding that Appellants’ action was “frivolous, unreasonable, or without foundation” would be error as a matter of law.

Here, the applicable statute does not automatically award attorney fees to a person granted immunity. Even if this Court were to agree that Danks is entitled to immunity under the statute, it should nevertheless conclude that the lower court abused its discretion by awarding attorney fees because Appellants brought their claims with substantial justification. Stated otherwise, it would be an abuse of discretion for the Courts of this State to give Danks a fee award when a child protection investigator with 30 years of experience determined that Danks made a false report.

Even if an award of attorney fees were proper in this case, that award should be substantially limited for two reasons. First, Danks’ failed to request the application of immunity until the close of discovery. This failure to timely seek immunity, despite the

judicial preference for early resolution of immunity issues, renders any substantial award of fees inequitable in this case. Immunity is specifically intended to avoid protracted litigation and discovery. That public purpose is not served in a case like this, where Danks waited until all discovery was complete before seeking immunity. If this Court concludes that *some* fee award is appropriate, it should instruct the lower court to address the timing of Danks' motion in computing any award.

Second, if this Court concludes that some award is proper, it should still conclude that the district court erred as a matter of law by granting Danks attorney fees for claims other than Appellants' false-report claim under Minn. Stat. § 626.556, subd. 5. As demonstrated above, the immunity conferred by section 626.556, subd. 4(a)(1), extends exclusively to liability for the act of making a "report" of suspected abuse to proper authorities. *See supra* Arg. § II. Just as the lower court erred by improperly expanding the scope of that immunity, it also erred as a matter of law by improperly expanding the scope of the attorney fee award concomitant to that immunity. Accordingly, if the court concludes that some grant of attorney fees was proper, it should remand the case for proper calculation of that award.

CONCLUSION

For all of the foregoing reasons, Appellants request that this Court reverse the decision of the district court granting Danks summary judgment, vacate the lower court's order granting Danks costs and attorney fees, and remand the case for trial.

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Respectfully submitted,

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