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CASE NO. A11-187

**STATE OF MINNESOTA
IN COURT OF APPEALS**

Timothy William Klausler and City of Lakeville,

Appellants,

vs.

Angélique Marie Curtis,

Respondent.

**APPELLANTS TIMOTHY WILLIAM KLAUSLER AND CITY OF
LAKEVILLE'S BRIEF AND ADDENDUM**

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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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STATEMENT OF THE LEGAL ISSUES

- I. When a wild deer crashes into a City owned vehicle causing an accident, are Appellants entitled to wild animal immunity as set forth in Minn. Stat. §§ 3.736, subdiv. 3(e), and 466.03, subdiv. 15?

The district court ruled in the negative.

List of apposite authority: Minn. Stat. § 3.736, subdiv. 3(e); Minn. Stat. § 466.03, subdiv. 15; *Woller v. City of Granite Falls*, C0-94-2616, 1995 Minn. App. LEXIS 939 (1995) (unpublished opinion – copy attached).

STATEMENT OF THE CASE

Respondent Angelique Curtis (“Respondent”) alleges she was injured on October 21, 2009 as she was driving on Highway 5 in Burnsville Minnesota when her vehicle was struck by a van driven by Appellant Timothy Klausler (“Klausler”). The van was owned by Appellant City of Lakeville (“City”) and operated by its employee Klausler. Immediately prior to the collision with Respondent, Klausler was knocked unconscious when the City van he was driving was struck by a wild deer running across the roadway. While Mr. Klausler was unconscious, the van crossed the center of the roadway and collided with Respondent’s vehicle. Respondent alleges Klausler negligently operated the City vehicle and failed to avoid a collision with the deer.

Appellants moved for summary judgment dismissal of Respondent’s claims on the grounds of (1) wild animal immunity pursuant to Minn. Stat. §§ 3.736, subdiv. 3(e), 466.03, subdiv. 15; and (2) Respondent’s failure to establish the necessary elements of a prima facie negligence claim. In an order dated December 20, 2010, Dakota County District Court Judge Timothy J. McManus denied Appellants’ summary judgment motion holding that the wild animal immunity statute did not apply and that fact issues precluded summary judgment on the prima facie negligence claim. Appellants appealed the district court’s denial of their motion for summary judgment on the immunity issue by Notice of Appeal filed on January 31, 2011.

STATEMENT OF THE FACTS

This case arises out of a motor vehicle accident that occurred at approximately 4:40 p.m. on October 21, 2009. Klausler, a City employee, was driving a van owned by the City southbound on Highway 5 in Burnsville Minnesota. *Plaintiff's Complaint* ¶ 1; *Deposition of Angelique Curtis* (hereinafter *Curtis Depo.*) p. 24; *Defendants' Answers to Plaintiff's Interrogatories No. 7*. While driving down the roadway, a wild deer ran out from the woods and collided with Klausler's van on the driver's side door. *Curtis Depo.* p. 27 and *Depo. Photos 3F and 3G; Klausler Depo.* pp. 24-25. The force of the collision caused Klausler to lose consciousness and control of the vehicle. As a result, Klausler's vehicle crossed over the centerline of the roadway and collided with Respondent's vehicle. *Schiffman Affidavit* ¶ 7.

The Accident Site.

At the time of the accident Klausler had fellow employee Jim Schiffman riding with him. *Schiffman Affidavit* ¶ 1; *Klausler Depo.* p. 12. Traffic was light and it was still daylight. *Curtis Depo.* p. 27; *Klausler Depo.* p. 17. Klausler was familiar with the area, having driven on the road for many years. *Klausler Depo.* p. 13. Highway 5 has four lanes with a paved median area marked with yellow striping. *Klausler Depo.* p. 14; *Curtis Depo.* pp. 36-39; *Depo. Photo Exhibits 3E, 3F, 3G, 5b, 5g, and 5R*. Klausler was proceeding southbound on Highway 5 and was driving at or below the posted 45 m.p.h. speed limit in the left traffic lane (closest to the center of the road). *Klausler Depo.* pp. 15-16.

The Accident.

Prior to the October 21, 2009 accident, Klausler was in good health. He had no health-related restrictions on his driving activities and did not have any medical condition that could have caused him to lose consciousness. *Klausler Affidavit* ¶ 11.

At the time of the collision with the deer, Klausler was driving down the road and having a conversation with Jim Schiffman about the area through which they were driving. *Klausler Depo. pp. 18-19*. The next thing Klausler remembered is being in a foggy cloudlike or dreamlike state and Jim Schiffman saying something about an accident and telling him that he was going to be okay. *Id.* Klausler never saw the deer prior to it impacting with his van. *Klausler Depo. p. 18*. He testified that he never saw the deer because it came from the left side, behind him, or was hidden behind the pillar between the windshield and the door. *Klausler Depo. p. 23*.

As a result of the force of the deer colliding with the driver's side door of the van, Klausler lost consciousness. *Klausler Depo. pp. 20, 28; Schiffman Affidavit* ¶¶ 4-7. As a result of the deer striking his left side, Klausler sustained a fracture of his left shoulder blade and had glass and portions of the deer's body, including fur, imbedded in the left side of his face. *Id.* Klausler's left ear was lacerated and he had other lacerations all over the left side of his face from the glass of the driver's side window shattering. *Id.* Klausler has no recollection of the subsequent collision with Respondent's car. *Klausler Depo. pp. 17, 19-20, 28*.

Passenger Schiffman did not lose consciousness in either the collision with the deer or with Respondent's car. *Schiffman Depo. pp. 8, 14, 17*. He testified that he did

not see the deer prior to the impact because it came from the left (driver's side) rather than from the front of the vehicle. *Schiffman Depo. p. 8.* Schiffman felt the impact, and saw and heard the deer crash into and through the glass of the driver's side door of the van. After the accident, Schiffman observed parts of the deer in the front seat passenger compartment of the van. *Schiffman Affidavit ¶ 3.* Immediately after the deer struck the van, Mr. Schiffman noticed that Klausler suddenly and abruptly stopped talking, and that the van began drifting over the middle of the road and into the oncoming lane of northbound traffic. *Schiffman Affidavit ¶ 4.* Mr. Schiffman saw a black car swerve to miss the van. He then saw Respondent's car and thought, "Oh crap, I'm going to die." *Schiffman Depo. pp. 10-11.* Mr. Schiffman braced for impact and closed his eyes. *Id.* The vehicles then collided. *Schiffman Depo. pp. 9-10; Curtis Depo. pp. 35, 125.* According to Mr. Schiffman, the collision with the deer felt worse than the crash with Respondent's vehicle. *Schiffman Depo. p. 12.*

Based on what he observed, it appeared to Mr. Schiffman that Klausler was either knocked unconscious or sustained some other disabling injury when the deer crashed through the driver's side door and window. *Schiffman Affidavit ¶¶ 4, 7; Schiffman Depo. pp. 9, 18-19, 22.*

After the collision with Respondent's car, Schiffman looked over and saw that Klausler was injured and unconscious. *Schiffman Depo. pp. 14-15, 17, 21; Klausler Depo. pp. 18-19, 28.* Based on all the blood he saw inside the passenger compartment of the van, Schiffman initially thought Klausler was dead. *Schiffman Depo. p. 15.* Schiffman called 911 and then went over to Respondent's car to check on her. *Schiffman*

Depo. pp. 14, 17. He told Respondent not to move and that help was on the way.

Schiffman Depo. p. 17. Schiffman was transported to the hospital in the same ambulance as Klausler. *Id.* Klausler started to regain consciousness while being transported to the hospital in the ambulance. *Schiffman Depo. p. 21; Klausler Depo. pp. 19-21.*

Respondent's Observations.

While proceeding northbound on Highway 5, Respondent Curtis observed a deer come out of the woods to her right and run across the road a few car lengths in front of her. *Curtis Depo. pp. 27-28, 35, 39.* Respondent cannot estimate how many feet the deer was in front of her car when it crossed the road other than her estimate that it was a few car lengths in front of her. *Curtis Depo. pp. 28, 127.* Respondent testified that she had never seen deer in that area before. *Curtis Depo. p. 28.* She did not know where the deer was going, where it came from, or the angle the deer was traveling when it crossed the road. *Curtis Depo. p. 29.* However, Respondent remembers the deer running and being in motion the entire time she saw it. *Curtis Depo. pp. 27-28, 35.* The deer she observed was alone, appeared to be a wild deer, and had antlers on its head. *Curtis Depo. pp. 126-127.*

According to Respondent, only seconds elapsed from the time she saw the deer crossing the road until the deer collided with the City van, which then collided with her car. *Curtis Depo. p. 35.* She did not see the deer hit the City van. *Curtis Depo. pp. 28-29, 33, 35.* Respondent did not notice the City van until it collided with her car. *Curtis Depo. pp. 124-125.* Respondent has no idea of the speed of the van prior to the collision. *Id.*

Post-Accident Inspection of the Deer-Van Collision.

Subsequently, in the post accident inspection, Klausler examined the van.

Klausler Depo. pp. 26-27; Klausler Affidavit ¶ 2. He observed deer fur, blood, entrails, teeth, and flesh scattered inside the front passenger compartment of the van. *Klausler Affidavit ¶ 3.* There was also deer fur and glass inside the van as a result of the driver's side window shattering upon impact with the deer. *Klausler Affidavit ¶ 4.* Additionally, Klausler observed a deer tooth and shattered glass on the front passenger seat of the van. *Klausler Affidavit ¶ 5; Klausler Depo. p. 26.*

The post accident inspection also revealed that the driver's side door window frame was bent by the deer going through the driver's side window and that part of a deer antler was found embedded in the driver's side door window frame. *Klausler Affidavit ¶ 7; Klausler Depo. pp. 26-27.* The driver's side door frame was further creased back by the body of the deer coming through the window. *Klausler Depo. p. 27.* The inspection revealed deer flesh, blood, and hair on the steering wheel of the van. *Klausler Depo. pp. 26-27; Klausler Affidavit ¶ 8.* Finally, the inspection indicated that the deer hit the inside ceiling of the passenger compartment of the van above Klausler's head. *Klausler Depo. p. 26; Klausler Affidavit ¶ 10.*

STANDARD OF REVIEW

A district court's denial of a motion for summary judgment based on governmental immunity is immediately reviewable by interlocutory appeal. *McGovern v. City of Minneapolis*, 475 N.W.2d 71, 73 (Minn. 1991); *Gleason v. Metro. Council Transit Operations*, 582 N.W.2d 216, 218 (Minn. 1998).

On appeal from summary judgment, the role of the appellate court is to review the record for the purpose of answering the questions: (1) whether there are any genuine issues of material fact; and (2) whether the trial court erred in its application of law. *Hedglin v. City of Willmar*, 582 N.W.2d 897, 901 (Minn. 1998); *Offerdahl v. Univ. of Minn. Hosp. & Clinics*, 426 N.W.2d 425, 427 (Minn. 1988). Summary judgment is proper when no material facts exist and one party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. A material fact is one that changes the outcome of the case. *Zappa v. Fahey*, 310 Minn. 555, 245 N.W.2d 258, 259-60 (1976).

The Minnesota Court of Appeals reiterated the appropriateness of granting summary judgment against a party who fails to establish an essential element of that party's claim. *See Davis v. Midwest Discount Sec. Inc.*, 439 N.W.2d 383 (Minn. App. 1989). A party opposing summary judgment must present specific facts showing that there is a genuine issue for trial, and cannot rely upon mere unsupported allegations of fact. *See Minn. R. Civ. P. 56.05; Lundgren v. Eustermann*, 370 N.W.2d 877, 881 (Minn. 1985). A nonmoving party must offer significant probative evidence tending to support its Complaint. *See DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. App. 1989).

The application of immunity is a legal question to be determined by the Court. *Snyder v. City of Minneapolis*, 441 N.W.2d 781, 786 (Minn. 1989); *Johnson v. State*, 553 N.W.2d 40, 45 (Minn. 1996). A district court's immunity decision is subject to *de novo* review. *Id.*

Courts have held that immunity is intended to make municipal actors immune from the claim itself. *See Sletten v. Ramsey County*, 675 N.W.2d 291, 299 (Minn. 2004) (holding immunity is immunity from suit, not just immunity from liability). Immunity is effectively lost if the case is erroneously permitted to go to trial. *Id.*

LEGAL ARGUMENT

The Minnesota legislature has enacted statutes providing for immunity for both state and municipal entities and their employees in tort claims. *See* Minn. Stat. §§ 3.376, 466.03. Klausler, acting in the course of his employment with the City, was involved in an accident which was directly caused by the unexpected impact of a wild animal in its natural state. As such, Klausler and the City are entitled to wild animal immunity under specific statutory authority. As a result, the decision of the district court should be reversed and Klausler and the City's summary judgment motion should be granted as a matter of law.

I. APPELLANTS ARE ENTITLED TO WILD ANIMAL IMMUNITY BECAUSE A WILD ANIMAL, IN ITS NATURAL STATE, CAUSED THE ACCIDENT WITH RESPONDENT.

Minn. Stat. § 3.736, subdiv. 3(e) immunizes both Klausler and the City from liability and bars Respondent's claims. The statute reads;

Without intent to preclude the courts from finding additional cases where the state and its employees should not, in equity and good conscience, pay compensation for personal injuries or property losses, the legislature declares that the state and its employees are not liable for the following losses . . . *a loss caused by wild animals* in their natural state . . .

Minn. Stat. § 3.736, subdiv. 3(e) (emphasis added). Statutory authority further clarifies that municipalities are also entitled to immunity under this section. *See* Minn. Stat. § 466.03, subdiv. 15. Klausler, as an employee of the City, is likewise protected under the immunity provisions specifically set forth in § 3.736.

Despite the clear and unambiguous language of the statute, the district court erroneously ruled that Appellants are not entitled to wild animal immunity. However, the requirements of the statute are clear; for wild animal immunity analysis the pertinent inquiry is whether a wild animal, in its natural state, caused the accident in question.

A. The plain language of Minn. Stat. § 3.736 is clear and unambiguous.

Statutory construction is a question of law. *Vlahos v. R&I Constr. of Bloomington, Inc.*, 676 N.W.2d 672, 679 (Minn. 2004). “The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16. When the language of a statute is plain and unambiguous, the plain language must be followed. *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 210 (Minn. 2001). The courts construe words and phrases according to the rules of grammar and accord their most natural and obvious usage. *See* Minn. Stat. § 645.08(1); *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999).

The first step in statutory construction is to simply read the statute. *Gomon v. Northland Family Physicians, Ltd.*, 645 N.W.2d 413, 416 (Minn. 2002) (stating “when interpreting a statute, a court must first determine whether the statute’s language, on its face, is clear or ambiguous.”). If the words of a statute are “clear and free from all ambiguity,” further construction is neither necessary nor permitted. Minn. Stat. § 645.16. A court may not read ambiguity into an otherwise clear statute under the guise of statutory interpretation. *Tuma v. Comm’r of Econ. Sec.*, 386 N.W.2d 702, 706 (Minn. 1986).

In the instant case, the statutory language is clear and unambiguous: a municipality “and its employees are not liable for the following losses . . . a loss caused by wild animals in their natural state.” Minn. Stat. § 3.736, subdiv. 3(e). Thus Minn. Stat. § 3.736, subdiv. 3(e) clearly grants immunity to a City if the accident was caused by a wild animal in its natural state.

B. The accident was caused by a wild animal in its natural state.

Because the plain language of the statute is clear and unambiguous on its face, the City is entitled to immunity from suit. Due to the clear language of the statute, previous cases discussing the application of § 3.736, subdiv. 3(e) are lacking. In fact, this Court has reviewed the application of the wild animal immunity statute in only one prior case. *See Woller v. City of Granite Falls*, C0-94-2616, 1995 Minn. App. LEXIS 939 (1995) (unpublished opinion, copy attached in Addendum).

In *Woller*, plaintiff swerved to avoid a deer and as a result lost control of her vehicle and subsequently rolled her vehicle into the ditch. *Id.* at *1. Woller sued the city claiming that the road was negligently maintained and the city failed to have warning signs at the location. *Id.* at *2. The City asserted wild animal immunity. *Id.* On appeal, this Court specifically held that because Woller raised an alternative theory of how the accident occurred, a question of material fact remained as to whether the deer or the alleged defective design and maintenance of the road was the actual cause of the accident. *Id.* at *7. *Woller* specifically produced evidence that the design, construction, and maintenance of the road (i.e., steep slope from road surface to adjacent ditch, drop off at the edge of the pavement, and a history of prior accidents) was evidence of a

superseding cause. *Id.* at *6. For these reasons, this Court ruled summary judgment was inappropriate. *Id.* at *9.

However, the holding in *Woller* is factually distinguishable from this case. First, unlike *Woller*, here it is an *undisputed* fact that a wild deer actually collided with a City van causing its driver to lose consciousness and veer into Respondent's lane. In *Woller*, by contrast, the plaintiff never made contact with the deer. *Id.* at *1. In this case the record is undisputed that the deer/van collision directly caused Klausler to lose consciousness and ultimately lose control of his vehicle, thereby resulting in the collision with Respondent's vehicle.

Second, whether the wild deer actually caused the accident was directly at issue in *Woller*, unlike the instant case. There is no indication from the record that Klausler was driving erratically or carelessly and that his vehicle would have collided with Respondent's vehicle had the deer not collided with his vehicle first. In fact, the record is undisputed that Klausler was operating the van in a legal, safe, and reasonable manner before he was unexpectedly hit by the wild deer.

Third, there is no indication in *Woller* that immunity would not have applied had the court in *Woller* determined the deer caused the accident. Here, the record is undisputed that the deer caused the accident and thus, the wild animal immunity statute clearly applies to this case.

Finally, unlike the situation in *Woller*, there is no allegation made by Respondent that the City of Lakeville was somehow negligent in the design of the roadway or for lack

of warning signs.¹ In short, unlike the specific factual situation in *Woller*, here there is neither any allegation of nor evidence of any defective road condition contributing to the cause of this accident.

Moreover, other courts across the country have held that when the sudden occurrence of a wild animal is a key element of plaintiff's suit against a municipality, dismissal of the claim must be granted based on immunity grounds.² Additionally, those foreign jurisdictions have consistently held wild animal immunity statutes should be construed in favor of granting immunity to municipalities.³ When available, such immunity statutes protect municipalities from liability when a wild animal directly caused the accident. Questions concerning application of wild animal immunity only

¹ Because this accident happened in Burnsville, Burnsville is responsible for the design, construction or maintenance of the road where the accident occurred. *See Schiffman Depo. p. 8.*

² *See Rippy v. Fogel*, 529 A.2d 608 (Pa. Commw. Ct. 1987) (holding that the city was not liable for a claim of negligent maintenance of a road); *see also White v. Murdock*, 877 P.2d 474, 478 (Mont. 1994) (holding that summary judgment was appropriate in favor of state where plaintiff brought suit after she collided with a moose that suddenly appeared in the highway because state cannot be held liable when "no evidence was produced or established that the portion of the highway in question was a known moose crossing"); *see also Arroyo v. State*, 40 Cal. Rptr. 2d 627 (Cal. Ct. App. 1995) (holding that, under California's wild animal immunity statute, the state could not be held liable when a mountain lion suddenly attacked a nine-year-old boy hiking on a state maintained hiking trail).

³ *Bradley v. Pennsylvania Turnpike Com.*, 550 A.2d 261, 263 (Pa. Commw. Ct. 1988). A strict construction of § 3.736, subdiv. 3(e) in favor of municipalities is consistent with other governmental immunity rulings put forth by the courts in Minnesota. *See Stiele v. City of Crystal*, 646 N.W.2d 251, 255 (Minn. App. 2002) (when recreational use immunity applies, plaintiff's recovery is barred unless he can satisfy all of the requirements of the applicable exception).

arise when a party questions whether the animal involved in the accident is 'wild' under the definition of the statute.⁴

Like other jurisdictions, the Minnesota Legislature has established a clear exception to liability for municipalities by the enactment of the wild animal immunity statute. Here the record provides uncontroverted evidence that a wild animal, in its natural state, was the direct cause of the losses suffered by Respondent. The record is undisputed that Klausler was safely operating the City van and driving under the posted speed limit when a deer unexpectedly struck the driver's side door and crashed through the window. As a direct result of that unforeseen collision with the wild animal, Klausler was knocked unconscious, which caused his van to drift into the opposite lane, colliding with Respondent.

Under both Minnesota law, as well as persuasive authority from foreign jurisdictions, the City and Klausler are immune under the wild animal immunity statute from Respondent's claim of negligence. There is nothing in the record to support Respondent's claim that the accident was caused by anything other than a wild deer. The facts and testimony are clear; the deer ran into the side of Appellant's van causing the accident. Unlike *Woller*, Respondent submits no other alternative theory for the cause of the actual accident, other than to assert that Klausler should have somehow seen and

⁴ See *Deluca v. Whitmarsh Twp.*, 526 A.2d 456, 457 (Pa. Commw. Ct. 1987) (stating that wild animal immunity statutes clearly extend immunity to Townships for injuries caused by wild animals). In addition, a deer has been determined to be a wild animal as a matter of law. See *Hudson v. Janesville Conservation Club*, 484 N.W.2d 132, 134 (Wis. 1992) (holding that a deer, even when in captivity, is a 'wild animal' under the meaning of the Wisconsin wild animal immunity statute).

avoided the wild deer. *See Respondent's Statement of the Case.* However, Respondent's mere speculation, without any admissible evidentiary support, is insufficient to avoid the application of immunity and summary judgment for the City and Klausler. *Fownes v. Hubbard Broadcasting, Inc.*, 302 Minn. 471, 474, 225 N.W.2d 534, 536 (1975); *Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993); and *Carlisle v. City of Minneapolis, supra.* The district court erred in denying Klausler and the City immunity. Therefore, Klausler and the City are entitled to summary judgment as a matter of law.

CONCLUSION

Appellants City of Lakeville and Timothy Klausler respectfully request that this Court reverse the district court's denial of their summary judgment motion on the basis of the wild animal immunity statute.

LEAGUE OF MINNESOTA CITIES

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