

*This opinion is nonprecedential except as provided by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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0518**

Lauren Peterson,
Appellant,

vs.

City of Minneapolis, et al.,
Respondents.

**Filed December 12, 2022
Affirmed
Bryan, Judge**

Hennepin County District Court
File No. 27-CV-21-3182

Tim Phillips, Law Office of Tim Phillips, Minneapolis, Minnesota (for appellant)

Kristyn Anderson, Minneapolis City Attorney, Gregory P. Sautter, Assistant City Attorney,
Minneapolis, Minnesota (for respondents)

Considered and decided by Bryan, Presiding Judge; Bjorkman, Judge; and Slieter,
Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

Appellant challenges the summary judgment dismissal of her claims for malicious prosecution and negligence, arguing that genuine issues of material fact preclude summary judgment on both claims. We conclude that because the record contains no evidence of malice, the district court did not err in granting summary judgment on appellant's malicious

prosecution claim. In addition, because the alleged acts in support of the negligence claim involved the exercise of discretion, respondents are immune from liability and the district did not err in granting summary judgment on this claim. We affirm.

FACTS

The parties do not dispute the following facts. On August 24, 2020, a journalist for Alpha News, R.B., was assaulted while covering a protest. R.B. captured the assault on camera and the video was posted to the Alpha News Facebook page. R.B. reported the assault to the Minneapolis Police Department (MPD). Dean Christiansen,¹ a Sergeant with MPD, saw the video on the Alpha News Facebook page while at home, and the next day he assigned himself to investigate possible assault charges.

Christiansen spoke to R.B. who stated she and Alpha News had “gotten a couple tips” regarding the identity of the woman who assaulted her in the video. Based on this information, R.B. believed that the woman was appellant Lauren Peterson. Following their conversation, Christiansen searched the Bureau of Criminal Apprehension website and found a Lauren Peterson who lived in St. Anthony. He saw the driver’s license photo and believed that she was the same person as the assailant in the video. Christiansen then uploaded Peterson’s driver’s license photo to the evidence system. After their conversation, R.B. forwarded Christiansen a message from another person, A.A., who identified Peterson as the assailant and described Peterson’s prior education and place of

¹ Christiansen passed away during the proceedings, and the district court granted a request by Respondent City of Minneapolis to substitute itself for Christiansen and to dismiss Christiansen’s estate with prejudice. We refer to both initial parties as “respondents.”

work. Christiansen emailed A.A., requesting the Facebook link for Peterson's Facebook account. Christiansen compared Peterson's social media photographs and her driver's license photo to the Alpha News video and concluded that she was the individual in the video. He believed Peterson was wearing the same glasses in the Facebook photographs as the person in the Alpha News video.

Christiansen submitted a complaint intake form to the Minneapolis City Attorney's Office to request charges against Peterson. Christiansen's complaint intake form was assigned to Assistant City Attorney Clair Cole. After reviewing the evidence provided by Christiansen, Cole decided to charge Peterson and drafted the probable cause statement in the criminal complaint. Both Christiansen and a deputy city attorney signed the complaint and submitted the complaint to a judge in the Fourth Judicial District who also signed the complaint, initiating criminal charges against Peterson.

Christiansen emailed a copy of the criminal complaint to R.B. Alpha News later published the criminal complaint online. Two days later, Peterson received a "very derogatory and crude" Facebook message from a stranger. She later received another Facebook message with a link to an Alpha News article. Peterson discovered from reading the article that "someone with [her] name, living in St. Anthony, had been charged." Peterson contacted a criminal defense attorney who confirmed that she had been charged. Peterson's attorney then informed Cole that Peterson was not the person in the video, providing evidence that at the time of the assault, Peterson was out of town. After obtaining this information, the city attorney dismissed the criminal complaint against Peterson. Cole informed Christiansen that the case was dismissed because of the receipt of "credible

documents and pictures that this Lauren Peterson was out of town at the time of the offense.” Christiansen responded, “Wow, sorry about that. I thought I had a good ID. I’ll start looking again.”

Peterson filed a complaint against respondents, alleging one claim of malicious prosecution and one claim of negligence. Respondents moved for summary judgment on both claims. The district court conducted a hearing and subsequently granted the motion, dismissing the two claims with prejudice. Specifically, the district court concluded that both claims failed on their merits, and alternatively, that respondents were immune from liability for both malicious prosecution and negligence. Peterson appeals.

DECISION

A defendant is entitled to summary judgment as a matter of law “when the record reflects a complete lack of proof on an essential element of the plaintiff’s claim.” *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995). We review a district court’s application of the law and its determination that there are no genuine issues of material fact de novo. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76–77 (Minn. 2002). The evidence is examined in the light most favorable to the party against whom judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). In opposing summary judgment, however, “general assertions” are not enough to create a genuine issue of material fact. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). Instead, “[t]o present a genuine issue of material fact, affidavits must be based on personal knowledge and set forth facts that would be admissible in evidence.” *Dunham v. Roer*, 708 N.W.2d 552, 569 (Minn. App. 2006), *rev. denied* (Minn. Mar. 28, 2006). In

addition, “[m]ere speculation or conjecture about a fact will not prevent summary judgment.” *Smits as Tr. for Short v. Park Nicollet Health Servs.*, 979 N.W.2d 436, 454 (Minn. 2022).

I. Because there is no evidence of malice in the appellate record, the district court did not err when it granted summary judgment on Peterson’s malicious prosecution claim.

The elements of a malicious prosecution claim are as follows: (1) the action was brought without probable cause; (2) the action was instituted and prosecuted with malicious intent; and (3) the action terminated in favor of the charged individual. *Kellar v. VonHoltum*, 568 N.W.2d 186, 192 (Minn. App. 1997) (citing *Jordan v. Lamb*, 392 N.W.2d 607, 609 (Minn. App. 1986), *rev. denied* (Minn. Oct. 29, 1986)), *rev. denied* (Minn. Oct. 31, 1997). Malice is “a state of mind to be proved as a fact,” *Allen v. Osco Drug, Inc.*, 265 N.W.2d 639, 646 (Minn. 1978) (quoting *Hanowitz v. Great N. Ry. Co.*, 142 N.W. 196, 197 (Minn. 1913)), and has been defined as “institut[ing] a groundless prosecution knowingly and willfully,” *Dunham*, 708 N.W.2d at 570-71, n.4. A cause of action for malicious prosecution “has always been carefully circumscribed, and not favored in law” because “public policy favors prosecutions and affords such protection of another in good faith and on reasonable grounds as is essential to public justice.” *Lundberg v. Scoggins*, 335 N.W.2d 235, 236 (Minn. 1983) (quotation omitted).

In this case, Peterson surmises that the criminal complaint was filed with malice, but only points to the facts that Christiansen viewed the video while at home and later assigned himself to investigate the case. Without more, these facts cannot establish that

Christiansen knowingly and willfully initiated a groundless prosecution. Thus, the district court did not err when it granted summary judgment on the malicious prosecution claim.

II. Because the acts alleged in support of Peterson’s negligence claim involve the exercise of discretion, respondents are immune from Peterson’s negligence claim.

“Official immunity . . . protects public officials from the fear of personal liability that might deter independent action and impair effective performance of their duties.” *Elwood v. Cnty. of Rice*, 423 N.W.2d 671, 678 (Minn. 1988). “Consistent with this purpose, common law official immunity does not protect officials when they are charged with the execution of ministerial, rather than discretionary, functions, that is, where ‘independent action’ is neither required nor desired.” *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 655 (Minn. 2004) (citation omitted). Thus, the “critical distinction” is whether the acts involved are discretionary or ministerial. *Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 315 (Minn. 1998). “A discretionary decision is one involving more individual professional judgment that necessarily reflects the professional goal and factors of a situation.” *Id.* By contrast, “a ministerial duty is one in which nothing is left to discretion; it is absolute, certain, and imperative, involving merely execution of a specific duty arising from fixed and designated facts.” *Id.* (quotation omitted). “[T]he existence of a policy that sets a sufficiently narrow standard of conduct will make a public employee’s conduct ministerial if he is bound to follow the policy.” *Mumm v. Mornson*, 708 N.W.2d 475, 491 (Minn. 2006).

In this case, we conclude that the acts involved required the exercise of discretion for two reasons. First, Peterson only points to a single policy, MPD Policy 10-203, as

evidence of the ministerial nature of Christiansen’s conduct, but that policy is inapplicable to this case. According to an MPD officer who provided a declaration, MPD Policy 10-203 “exclusively concerns the management of informants who are registered with the MPD as sources for evidence on criminal activity.” A.A., the tipster in this matter, was not an informant registered with the MPD. Instead, A.A. voluntarily provided the information, and MPD Policy 10-203 does not cover or address voluntary informants. Peterson has thus failed to point to a policy and articulate a specific ministerial duty.

Second, the primary act at issue centers on Christiansen’s decision to request that the city charge Peterson with a crime. Christiansen’s recommendation is based on a probable cause determination, reflecting individual and professional judgment. Christiansen’s probable cause analysis required that he weigh specific facts given his professional experience, including the comparison he made between the person in the video and Peterson’s driver’s license photo as well as the determination he made regarding Peterson’s glasses. This analysis cannot be accurately characterized as a certain, absolute, or imperative determination arising from fixed facts.²

² One exception to official immunity exists when the official acts with malice in carrying out a discretionary act. *E.g.*, *Kariniemi v. City of Rockford*, 882 N.W.2d 593, 600 (Minn. 2016) (noting that official immunity protects a public official from liability for discretionary acts “unless the official is guilty of a willful or malicious wrong”). We already determined that the record does not contain evidence that Christiansen acted with malice, so this exception to official immunity does not apply.

III. Because official immunity protects Christiansen, the city of Minneapolis is protected from liability as well.

While official immunity protects public officials acting in their official capacity from suit, “[v]icarious official immunity protects a governmental entity from liability based on the acts of an employee who is entitled to official immunity.” *Dokman v. Cnty. Of Hennepin*, 637 N.W.2d 286, 297 (Minn. App. 2001) (citing *Wiederholt*, 581 N.W.2d at 316), *rev. denied* (Minn. Feb. 28, 2002); *see also, e.g., Pletan v. Gaines*, 494 N.W.2d 38, 42-43 (Minn. 1992) (holding that official immunity extends vicariously to city in lawsuit concerning the acts of a police officer). Because official immunity protects Christiansen, the city of Minneapolis is protected as well, and the district court properly granted summary judgment in favor of the city.

Affirmed.