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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-392**

Blia Moua, as Trustee for the Heirs
and Next of Kin of Chauncy Moua, Decedent,
and Blia Moua, individually,
Appellant,

v.

Joseph F. Hastings,
Respondent,

Gail Lee Hastings, et al.,
Respondents.

**Filed April 8, 2008
Affirmed
Hudson, Judge**

Hennepin County District Court
File No. 27-CV-06-10719

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Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

On appeal from summary judgment in a wrongful-death action, appellant argues that the district court erred by granting summary judgment in favor of respondents. We affirm.

FACTS

In September 2005, appellant Blia Moua and her husband, Chauncey Moua, left their home in Minneapolis to pick up their daughter from work. After driving a few blocks, they noticed that the weather suddenly worsened. Appellant and her husband became fearful and decided to return home after they saw tree branches falling due to the heavy rain and wind.

When appellant and her husband got home, they stopped their vehicle in front of their own home. But Mr. Moua, who was driving, decided to move the vehicle because he was worried that the storm would cause the branches of the neighbors' tree to fall and damage their vehicle. Respondents lived next door to the Mouas, and some branches of a tree in their front yard hung over the Mouas' yard. Mr. Moua parked the vehicle in front of respondents' home. Mr. Moua got out of the vehicle first. As appellant was starting to get out of the vehicle, she heard a loud crash. Appellant ran into her home and asked her children whether they had seen their father. When the children told her that they had not seen him, appellant ran back outside to look for him. Appellant found her husband lying in the street behind their vehicle; Mr. Moua had been struck by branches that broke off of

the tree in respondents' yard. Appellant was unable to revive him, and a neighbor assisted her in summoning help.

When a police officer arrived, he found Mr. Moua lying face-up in the street near a tree branch, having suffered a "very severe head injury." The emergency medical personnel at the scene determined that Mr. Moua was dead. A medical examiner later concluded that Mr. Moua died as the result of "blunt force craniocerebral injuries."

Respondent Joseph Hastings, who had lived next door to the Mouas since 2002, later stated that Mr. Moua usually parked in front of the Mouas' home. But he also stated that it was not unusual for Mr. Moua to park in front of the Hastings home, as Mr. Moua had on the night of the accident, and that Mr. Moua had parked in the same spot "many times" before.

Appellant later explained that she and Mr. Moua chose not to park directly in front of their own house, where they had lived since 1999, because the wind was so strong that "all of the branch[es] were hanging over and going toward our house property." And because the storm had knocked out electricity to the area, appellant and her husband were unable to open their garage door to park in the garage. Appellant admitted that she saw respondent's tree on a daily basis and had never noticed any dead branches; neither she nor her husband had ever asked respondent to trim the tree.

Appellant, both as trustee for the heirs and next of kin of her husband and individually, filed a wrongful-death complaint under Minn. Stat. § 573.02 (2006) against respondents. In the complaint, appellant alleged wrongful death "sounding in" negligence, trespass, and nuisance.

Respondents moved for summary judgment on all three of appellant's claims, and appellant moved for partial summary judgment on her claim of wrongful death due to trespass. The district court granted respondents summary judgment on all three claims.

The district court explained that

[g]iven the fact that the tree appeared to be healthy from a reasonable landowner's perspective, and given the power of the storm on the night of Mr. Moua's death, the Court concludes that [respondents] did not have actual or constructive notice that the tree was a dangerous condition, and that the tragic death of Mr. Moua was not due to any negligence by [respondents], but rather was an act of God.

The district court also explained that "[e]ven if this Court were to find that the tree branches that overhung the Mouas' property were trespassing, the injury caused by the tree was not on the Mouas' land." The district court concluded that appellant had not "establish[ed] how these branches interfered with her use and enjoyment of her property, and the only danger caused by the tree's branches was due to a severe storm that was noted as one of the worst in several years." This appeal follows.

DECISION

On appeal from summary judgment, this court asks whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). This court views the evidence "in the light most

favorable to the party against whom judgment was granted.” *Id.* No genuine issue of material fact exists when “the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). “A party need not show *substantial evidence* to withstand summary judgment. Instead, summary judgment is inappropriate if the nonmoving party has the burden of proof on an issue and presents *sufficient evidence* to permit reasonable persons to draw different conclusions.” *Schroeder v. St. Louis County*, 708 N.W.2d 497, 507 (Minn. 2006).

Appellant challenges only the adverse grant of summary judgment on her claim of wrongful death as a result of trespass. She has not challenged the summary judgment dismissing her wrongful-death claim based on negligence or nuisance.

In Minnesota, a cause of action for wrongful death “is purely a creature of the legislature.” *Hachmann v. Mayo Clinic*, 150 F. Supp. 468, 469 (D. Minn. 1957) (citing *Cashman v. Hedberg*, 215 Minn. 463, 466, 10 N.W.2d 388, 390 (1943)). Minnesota law provides that “[a] cause of action arising out of an injury to the person dies with the person of the party in whose favor it exists, except as provided in section 573.02.” Minn. Stat. § 573.01 (2006). Section 573.02, subdivision 1, Minnesota’s wrongful-death statute, provides that a cause of action for wrongful death exists “[w]hen death is caused by the wrongful act or omission of any person or corporation.” Although causation is generally a question of fact for the jury, “where reasonable minds can arrive at only one

conclusion,” causation becomes a question of law, and it may be disposed of by summary judgment. *Lubbers v. Anderson*, 539 N.W.2d 398, 402 (Minn. 1995).

The tort of trespass “encompasses any unlawful interference with one’s person, property, or rights, and requires only two essential elements: a rightful possession in the plaintiff and unlawful entry upon such possession by the defendant.” *Wendinger v. Forst Farms, Inc.*, 662 N.W.2d 546, 550 (Minn. App. 2003) (quotation omitted), *review denied* (Minn. Aug. 5, 2003). Here, the district court concluded that even if there was a trespass, there was no causal link between that trespass and the tragic injury that occurred. We agree.

The undisputed facts in this case show that the injury to Mr. Moua did not occur on the Mouas’ property—it occurred on the public street in front of respondents’ house. Even looking at the evidence in the light most favorable to appellant, we conclude that, as a matter of law, appellant failed to present a causal link between the alleged trespass by respondents’ tree branches and Mr. Moua’s death in the street. Therefore, we conclude that the district court did not err by granting summary judgment in favor of respondents on appellant’s wrongful-death claim.

Affirmed.

Dated: _____

Judge Natalie E. Hudson