STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF HENNEPIN **FOURTH JUDICIAL DISTRICT**

Elizabeth Schilling,

Plaintiff,

v.

Ryan Koenig, as an agent and employee of Voson Plumbing, Inc.,

Defendant.

Court File No. 27-CV-24-8835
Judge Joseph R. Klein

ORDER

The above-captioned matter came on before The Honorable Joseph R. Klein, in Minnesota's Fourth District Court, on February 3, 2025, on Defendant's Motion for Summary Judgment. No one appeared on behalf of Plaintiff.[1] Attorney Eric Steinhoff appeared on behalf of Defendant. Based upon the files, exhibits, and record herein, as well as the arguments of counsel, the Court makes the following:

ORDER

1. Defendant's Motion for Summary Judgment is **GRANTED**.
2. The following memorandum of law is incorporated herein.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: 4/8/2025

Joseph R. Klein
Judge of District Court

[1] A detailed discussion of Plaintiff's counsel is contained in the Procedural History section of this memorandum.

UNDISPUTED FACTS AND PROCEDURAL HISTORY

This action arises out of a five-car motor vehicle accident that occurred on March 15, 2022. Plaintiff Elizabeth Schilling ("Schilling") was struck by a driver (not the Defendant) not party to this lawsuit. That collision triggered a chain of events that ultimately caused Schilling to strike the vehicle operated by Defendant Ryan Koenig ("Koenig") on the driver's side door. Defendant Koenig's vehicle was lawfully in its own lane at the time that Plaintiff's vehicle was propelled into it. This version of events is supported by the Accident Report and declarations of witnesses that form a part of the court record.

The procedural history of this case, and particularly the history of developments with Plaintiff's attorney, are lengthy and relevant. On May 29, 2024, Plaintiff filed her Complaint alleging that Koenig had negligently operated his vehicle and collided with the front and then the side of Schilling's vehicle. Plaintiff's first attorney, Michael Lieber, filed notice of his withdrawal as Plaintiff's counsel on June 3, 2024. On June 4, 2024, Defendant filed his Answer and Notice of Motion and Motion for Summary Judgment and served Schilling via mail and email. A hearing on the Motion for Summary Judgment was scheduled to be heard before this court on July 16, 2024.

On July 16, 2024, Attorney Madison Larva appeared on behalf of Defendant. Plaintiff Schilling appeared on behalf of herself. Schilling informed the court that her counsel had withdrawn, that she was seeking new counsel, and she requested that the court continue the hearing on Defendant's Motion until she was represented and could file a response. The hearing was continued until September 17, 2024.

On September 4, 2024, Attorney Michael Vanselow filed a notice of appearance on behalf of Plaintiff. An informal case management conference was held on September 11, 2024 to discuss

the status of the case. At that conference, Attorney Vanselow requested that the court hear a Motion to Extend Discovery. The court ordered the parties to submit brief written memorandums on the matter, with Plaintiff's memorandum to be due September 18, 2024 and Defendant's response memorandum to be due September 25, 2024. Both parties filed their written submissions on September 20, 2024, and a hearing on the motion was scheduled for 8:45am October 9, 2024.

On October 9, 2024, the court opened the Zoom window prior to the scheduled hearing time. Attorney Madison Larva appeared on behalf of Defendant. No one appeared on behalf of Plaintiff. The court asked Ms. Larva whether she had had any contact with Mr. Vanselow ahead of the scheduled hearing. Ms. Larva stated that she had not heard from Mr. Vanselow since his correspondence to the Court on September 20, 2024. The court attempted to contact Mr. Vanselow via phone and email, but Mr. Vanselow did not respond. Shortly thereafter, the Court received a phone call from Ms. Karlowba Powell, a legal assistant for Mr. Vanselow, who informed the court that Mr. Vanselow was experiencing severe medical issues and was in a hospital. The court reconvened the hearing for 10:30am to include Ms. Larva and Ms. Powell. At that time and on the record, Ms. Powell stated that Mr. Vanselow was in incapacitated, in the hospital, suffering adverse effects from medical treatment, and has not had access to email. Ms. Powell stated that Mr. Vanselow was "gravely ill."

An informal case management conference was scheduled for November 18, 2024. Attorney Larva appeared on behalf of Defendant. No one appeared on behalf of Plaintiff.

On November 20, 2024, the court issued an Order Regarding Next Steps in the Case. The Order provided for a new case management conference to be scheduled approximately 30 (thirty) days from the date of the Order, ordered counsel for Plaintiff to either be available or make any other arrangements prior to the conference, and stated that the Defendant's Motion for Summary

Judgment would be reset if Plaintiff's counsel does not respond in accordance with the Order. The Order was e-filed and served on all attorneys as well as Mr. Vanselow's legal assistant Ms. Powell.

The court received no correspondence, filings, or other communication from Plaintiff's counsel. On January 10, 2025, the court issued an Order setting a case management conference for January 16, 2025, and again ordered Plaintiff's counsel to participate in the case. At no time during this period did Plaintiff, or anyone on Plaintiff's behalf, seek any continuance of the proceedings, or any other relief from the court's Order.

The informal case management conference was held as scheduled on January 16, 2025. Attorney Eric Steinhoff appeared on behalf of Defendant. No one appeared on behalf of Plaintiff. In accordance with the court's previous orders, the Court issued an Order reinstating Defendant's Motion for Summary Judgment.

On February 3, 2025, the court heard Defendant's Motion for Summary Judgment. Attorney Eric Steinhoff appeared on behalf of Defendant. No one appeared on behalf of Plaintiff. At the hearing, Mr. Steinhoff stated that he had received a direct email from Plaintiff Schilling on January 30, 2025, stating that she had recently learned her attorney was terminally ill and requesting the Defendant's motion be taken off the court's calendar as she was in the process of retaining another attorney. At the court's request, Mr. Steinhoff filed this correspondence into the case record.

The court has received no correspondence from Mr. Vanselow since his September 20, 2024 filing with the court. The court has also received no correspondence from Plaintiff Schilling. Mr. Vanselow remains the attorney of record for Plaintiff. Mr. Vanselow has not filed any applications for personal leave pursuant to Rule 18 of the Minnesota General Rules of Practice. The only information about Mr. Vanselow's health that the court has received on the record is the

October 9, 2024 statement from Mr. Vanselow's legal assistant, Ms. Powell, who is not an attorney licensed to practice law in the state of Minnesota.

CONCLUSIONS OF LAW

1. Legal Standard

Summary judgment is appropriate when there are no genuine issues of material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. The purpose of summary judgment is not to deprive a litigant of its right to a full hearing on the merits of a real issue of fact, but to eliminate patently unmeritorious and unfounded claims or defenses. *Wall v. Fairview Hosp. and Healthcare Services*, 584 N.W.2d 395, 303 (Minn. 1998); *Cook v. Connolly*, 366 N.W.2d 287, 292 (Minn. 1985). By narrowing a case to triable issues, a motion for summary judgment promotes the "just, speedy, and inexpensive determination" of the action. *DLH Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). The moving party has the burden of showing the absence of a genuine issue of material fact. *Anderson v. State Dep't of Natural Res.*, 693 N.W.2d 181, 191 (Minn. 2005). In deciding a motion for summary judgment, the court must not decide issues of fact, but instead must determine whether genuine issues of fact exist for trial. *Larson v. Northwestern Mut. Life Ins. Co*., 855 N.W.2d 293 (Minn. 2014). "When a motion for summary judgment is made and supported, the nonmoving party must present specific facts showing that there is a genuine issue for trial." *DLH Inc.*, 566 N.W.2d at 69 (internal quotations omitted). The court must grant summary judgment when the existing record, including pleadings and affidavits, shows that the non-moving party has established no genuine issues of material fact and that the movant is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. Summary judgment is an extraordinary remedy – a blunt instrument – and should be granted with caution. *Lundgren v.*

Eustermann, 370 N.W.2d 877, 882 (Minn. 1985); *Katzner v. Kelleher Const.*, 535 N.W.2d 825, 828 (Minn. Ct. App. 1995).

2. Legal Standard for Negligence

Negligence is "the failure to exercise such care as persons of ordinary prudence usually exercise under similar circumstances. The degree of care is that which persons of ordinary prudence usually exercise under similar circumstances." *Mingo v. Extrand,* 230 N.W. 895 (Minn. 1930). There are four elements in a negligence claim: (1) there must be a duty; (2) a breach of duty; (3) the breach must have been the proximate cause of plaintiff's injury; and (4) the plaintiff must have suffered an injury. *See Doe 169 v. Brandon,* 845 N.W.2d 174, 177 (Minn. 2014), *Engler v. Illinois Farmers Ins. Co.,* 706 N.W.2d 764, 767 (Minn. 2005). Motor vehicle drivers are "charged with the responsibility of proceeding with ordinary care," which includes the duties to maintain a proper lookout and to keep the vehicle under reasonable control. *Schubitzke v. Minneapolis, St. P. & S. S. M. R. Co.,* 69 N.W.2d 104, 107 (Minn. 1955)

a. Defendant did not breach a duty to Plaintiff

Duty is a threshold question; "if no duty exists, a court need not reach the remaining elements of a negligence claim." *Kellogg v. Finnegan,* 823 N.W.2d 454, 458 (Minn. Ct. App. 2012). Whether a legal duty exists is a question of law. *Id.* While the question of whether a defendant breached a duty of care is generally a question of fact, "summary judgment may be entered where the material facts are undisputed and as a matter of law compel only one conclusion." *Sauter v. Sauter,* 70 N.W.2d 351, 354 (Minn. 1955).

Here, Plaintiff alleges in her Complaint that the Defendant, acting within the scope of his duties as an agent and employee of Voson Plumbing, Inc., carelessly and negligently operated his vehicle by failing to keep a proper lookout for traffic conditions and traveling too fast for road and

traffic conditions. Plaintiff alleges that, as a result of Defendant's negligent conduct, Defendant struck her vehicle on the front and side of her vehicle, causing injury to her person and her vehicle.

The record contains no facts to support Plaintiff's claim that Defendant breached a duty of care owed to her. As a motor vehicle driver, Koenig owed Schilling and other drivers on the roadway a duty of reasonable care, which includes maintaining reasonable speed and maintaining a proper lookout under the then-existing road conditions. The facts on record show that Koenig was driving in his own lane when Schilling was struck by another vehicle, pushing her out of her lane and into Koenig's lane, where her vehicle collided with Koenig's driver's side door. The accident report cites Schilling for "disregard[ing] other road markings;" Koenig is not cited for speeding or any other infractions or contributing factors. While Schilling alleged in deposition testimony that the police report was inaccurate, Schilling has not introduced any evidence into the record to contradict the police report. Because the material facts of this matter are undisputed, the court finds as a matter of law that Defendant did not breach a duty owed to Plaintiff. Accordingly, Defendant's Motion for Summary Judgment is granted.

b. Defendant was not the proximate cause of Plaintiff's injuries

Even if Defendant would have breached a duty, Plaintiff's claim for negligence would still fail because Defendant was not the proximate cause of Plaintiff's injuries. A negligent act will be the "proximate cause of harm if the act was a substantial factor in the harm's occurrence." *Osborne v. Twin Town Bowl,* 749 N.W.2d 367, 372 (Minn. 2008). While proximate cause is generally a question of fact for a jury, "where reasonable minds can arrive at only one conclusion, proximate cause is a question of law." *Lubbers v. Anderson,* 539 N.W.2d 398, 402 (Minn. 1995).

Here, the facts in evidence do not indicate that any negligence by Defendant was a substantial factor in Plaintiff's injuries. The record indicates that Plaintiff has a history of pre-

existing physical impairments, including a pre-existing neck injury. On the day of the accident, Plaintiff's vehicle was struck by another vehicle, which in turn had been struck from behind by an uninsured motorist. The impact pushed Plaintiff's vehicle into contact with Defendant's vehicle. Plaintiff has not introduced any facts to substantiate her claim that Defendant, as opposed to the vehicle that impacted her own and pushed her into Defendant's vehicle, caused or substantially contributed to her injuries. Absent evidence that Defendant was a substantial factor in Plaintiff's injuries, even if Defendant breached a duty to Plaintiff, the court would find as a matter of law that Defendant is not a proximate cause of Plaintiff's injuries.

c. Voson Plumbing is not liable to Plaintiff under the doctrine of *respondeat superior*

Under the doctrine of *respondeat superior,* "an employee is vicariously liable for the torts of an employee committed within the course and scope of employment." *Fahrendorff v. North Homes, Inc.,* 597 N.W.2d 905, 910 (Minn. 1999) (internal quotations omitted).

Here, Plaintiff states that Defendant was acting within the scope of his duties as an agent and employee of Voson Plumbing at the time of the collision and therefore is liable to Plaintiff under the doctrine of *respondeat superior.* Even if there is no dispute that Koenig was acting within the scope of his duties for Voson Plumbing at the time of the accident Voson is, nevertheless, not responsible to Plaintiff for her claimed damages, as a matter of law. Plaintiff has failed to establish that Defendant Koenig breached any duty of care to her. Because the court finds that Defendant was not negligent, Voson Plumbing is not responsible to Plaintiff under a theory of *respondeat superior*.

JRK