STATE OF MINNESOTA
IN COURT OF APPEALS
A17-2078,
A17-2080,
A17-2081,
A18-0015

John Doe 125,
Appellant (A17-2078),

John Doe 126, et al.,
Appellants (A17-2081),

John Doe 123, et al.,
Appellants (A18-0015),

vs.

Peter Hoagland,
Defendant (A17-2078, A17-2081, A18-0015),

Pete's Communication, Inc.,
Respondent (A17-2078, A17-2081, A18-0015),

and

Allstate Insurance Company,
Respondent (A17-2080),

vs.

John Doe 123, et al.,
Co-Appellants (A17-2080),

John Doe 125, et al.,
Appellants (A17-2080)

Filed August 20, 2018
Affirmed
Larkin, Judge

Kandiyohi County District Court
File No. 34-CV-16-489

Melanie E. Baillie, James, Vernon & Weeks, P.A., Coeur d'Alene, Idaho; and

Patrick W. Noaker, Noaker Law Firm, LLC, Minneapolis, Minnesota (for appellants John Doe 123 and John Doe 124)

Scott Wilson, Attorney at Law, Minneapolis, Minnesota; and

Michael Hall III, Carrie A. Loch, Hall Law, P.A., St. Cloud, Minnesota (for appellants John Doe 126 and John Doe 127)

Stacey L. Sever, Stich, Angell, Kreidler & Unke, P.A., Minneapolis, Minnesota (for respondent Pete's Communication, Inc.)

Kay Nord Hunt, Kathleen M. Loucks, Michael R. Moline, Lommen Abdo, P.A., Minneapolis, Minnesota (for respondent Pete's Communication, Inc. and Defendant Peter Hoagland)

M. Ryan Madison, Madison Law Firm, LLC, Anoka, Minnesota (for appellant John Doe 125)

Paul Rajkowski, Rajkowski Hansmeier Ltd., St. Cloud, Minnesota (for respondent Allstate Ins. Co.)

Considered and decided by Reilly, Presiding Judge; Larkin, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

In these consolidated appeals, appellants challenge the district court's summary dismissal of their negligence-based claims against respondent corporation, as well as the district court's award of costs and disbursements to respondent corporation. Appellants also challenge the district court's award of costs and disbursements to respondent-insurer in its declaratory-judgment action to determine its coverage obligations to respondent corporation. We affirm.

FACTS

Peter Hoagland is the sole shareholder, officer, and director of respondent Pete's Communication, Inc. (PCI). PCI previously owned and operated a telecommunications store in Willmar that sold radio equipment, pagers, and cellphones. It also repaired radios and maintained emergency vehicles and radio towers. The store's customers were generally farmers or businesspeople. PCI had five store employees during the store's peak operations. The Willmar store closed in 2016.

At different times between 1980 and 2015, Paul Anderson, Bill Linder, and Steven Linder held shares in PCI. Anderson and Bill Linder also served terms as secretary of PCI. However, Hoagland has always held a controlling interest in PCI. Hoagland was also PCI's president and manager, and he had final say in all business decisions, including the hiring and firing of employees.

The lawsuits underlying these appeals stem from Hoagland's undisputed sexual abuse of five boys, appellants John Does 123, 124, 125, 126, and 127, from approximately

1990 to 2001. Appellants ranged in age from 10 to 17 years old when the abuse occurred. These appeals follow the district court's awards of partial summary judgment and attendant costs and disbursements. The following undisputed facts are taken from the summary-judgment record in district court.

John Does 123 and 124

John Doe 123 met Hoagland at a hockey game through a teammate. Hoagland gave John Doe 123 rides to hockey games and practices, and John Doe 123 frequently spent time with Hoagland at his home and cabin, and at the Willmar store. John Doe 123 did some "odds-and-ends job[s]" for PCI like mowing the lawn. PCI paid him for that work. Hoagland kept a snowmobile helmet for John Doe 123 at the Willmar store.

Hoagland sexually abused John Doe 123 at Hoagland's home and cabin, and at the Willmar store. Hoagland abused John Doe 123 approximately 200 times at the Willmar store, including in Hoagland's cubicle, the lunchroom, the restroom, and the store's back room. The abuse at the Willmar store occurred during and after business hours.

Hoagland sometimes abused John Doe 123 when he sat on Hoagland's lap at the Willmar store. Hoagland would push John Doe 123 off of his lap to conceal the abuse if he heard someone coming to his cubicle. John Doe 123 believes that one of PCI's employees saw him sitting on Hoagland's lap, but none of PCI's employees reported observing the abuse.

John Doe 124 is John Doe 123's younger brother. John Doe 124 met Hoagland through John Doe 123. John Doe 124 spent time with Hoagland at the state fair, at Hoagland's cabin, and at the Willmar store. John Doe 124 also did some "odds-and-ends

job[s]" for PCI, and the company paid him for that work. Hoagland kept a snowmobile helmet for John Doe 124 at the Willmar store.

Hoagland sexually abused John Doe 124 at Hoagland's home and cabin, at the Willmar store, and in Hoagland's car. Hoagland abused John Doe 124 approximately 50 to 100 times at Hoagland's desk at the Willmar store. Hoagland abused John Doe 124 at the store during and after business hours. PCI employees saw John Doe 124 enter the store, but did not observe the abuse.

Sometimes, John Does 123 and 124's mother brought them to the Willmar store. On other occasions, Hoagland brought them. One of the PCI employees who observed John Does 123 and 124 at the Willmar store believed that Hoagland was dating their mother because Hoagland would go to their home for dinner and would go on outings with them and their mother. The employee believed that Hoagland's interactions with John Does 123 and 124 were a "natural extension" of that relationship. When it became clear that Hoagland was not involved in a romantic relationship with their mother, the employee thought that Hoagland acted as a "big brother" to John Does 123 and 124 because their father was largely absent from their lives.

John Doe 125

John Doe 125 lived across the street from Hoagland. John Doe 125 met Hoagland in his neighborhood. John Doe 125 spent time with Hoagland at his home and cabin, and at the Willmar store. While spending time with Hoagland at the Willmar store, John Doe 125 played in police cars that were serviced there and with the electronics that Hoagland repaired. Hoagland gave John Doe 125 a pager with service.

At least two PCI employees observed John Doe 125 at the store. Both employees understood that Hoagland had been giving John Doe 125 money and that there was a conflict between Hoagland and John Doe 125 regarding the financial gifts. Hoagland told one of the employees that he had looked into getting a restraining order against John Doe 125 to prevent him from coming to the store to ask for more money.

Hoagland sexually abused John Doe 125 at Hoagland's home and cabin, and at the Willmar store. Hoagland usually abused John Doe 125 at the store after hours. Appellants John Doe 126 and John Doe 127 were sometimes present when Hoagland abused John Doe 125. On several occasions, Hoagland brought John Doe 125 home late at night after abusing him and told his mother that John Doe 125 had been helping Hoagland with work at the Willmar store.

John Does 126 and 127

John Doe 126 was a friend of John Doe 125 and met Hoagland through him. John Doe 126 spent time with Hoagland at the Willmar store, playing with electronics and walkie-talkies and in police cars that were being serviced there. Hoagland sexually abused John Doe 126 at Hoagland's cabin, in Hoagland's car and boat, at radio towers maintained by PCI, and at the Willmar store. The abuse at the store occurred after hours when no employees were present.

John Doe 127 is John Doe 126's younger brother, and he met Hoagland through John Doe 126. Hoagland took John Doe 127 snowmobiling and waterskiing, and to ham-radio festivals. Hoagland sexually abused John Doe 127 at Hoagland's home and cabin, at a hotel, at a restaurant, at the Willmar store, and in Hoagland's car and boat. The sexual

abuse in the Willmar store occurred in the lunchroom, garage, and storage rooms. PCI employees were present when Hoagland abused John Doe 127, but they did not observe the abuse.

John Does 126 and 127's mother did not suspect that Hoagland was abusing them. She believed that Hoagland wanted to show them his business, give them the opportunity to waterski, and otherwise help her with the children when she was dealing with difficult family circumstances.

The Underlying Litigation

In October 2015, Hoagland pleaded guilty to four counts of second-degree criminal sexual conduct and four counts of fourth-degree criminal sexual conduct stemming from his abuse of appellants and was sent to prison.

Between December 2015 and May 2016, appellants initiated three separate civil actions, asserting sexual-abuse claims against Hoagland and negligence, negligent-retention, and negligent-supervision claims against PCI. In June 2016, PCI's insurer, respondent Allstate Insurance Company, brought a declaratory-judgment action, seeking a declaration that it had "no obligation to defend, indemnify, or otherwise provide coverage . . . to or on behalf of [PCI] and/or Hoagland" in appellants' lawsuits. In 2017, Allstate moved for summary judgment in its declaratory-judgment action, and PCI moved for summary judgment in appellants' actions. PCI argued that appellants' claims failed because they could not show that PCI "could have foreseen the abuse or that Hoagland was acting within the scope of his employment when the abuse happened."

The district court granted PCI's motion for summary judgment, reasoning that, because "the acts of sexual abuse did not relate to Hoagland's position with [PCI], i.e. the business of providing communication services," the "alleged assaults were not within the scope of employment" and Hoagland's knowledge of the acts could not be imputed to PCI. The district court further reasoned that, because Hoagland's knowledge could not be imputed to PCI, his abuse was not foreseeable. The district court also granted Allstate's motion for summary judgment, reasoning that Allstate had "no obligation to indemnify [PCI] for the claims advanced against it, now that the claims are dismissed." The district court determined that there was "no just reason for delay" and ordered that final judgment be entered accordingly. The district court stayed the remaining proceedings against Hoagland pending final resolution of all appeals from the partial judgments.

The district court awarded PCI costs and disbursements of $3,316.38 in John Does 123 and 124's case, $1,522 in John Doe 125's case, and $2,472.50 in John Does 126 and 127's case. The district court awarded Allstate $5,045.88 in costs and disbursements.

These consolidated appeals follow.

D E C I S I O N

I.

Appellants contend that the district court erred by granting summary judgment for PCI on their negligence, negligent-retention, and negligent-supervision claims. "A motion for summary judgment shall be granted 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). 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).

This court reviews a district court's grant of summary judgment de novo. *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 150 (Minn. 2014). "[Appellate courts] view the evidence in the light most favorable to the party against whom summary judgment was granted to determine whether there are any genuine issues of material fact and whether the district court correctly applied the law." *Id.*

"To recover on a claim of negligence, a plaintiff must prove: (1) the existence of a duty of care; (2) a breach of that duty; (3) an injury; and (4) that the breach of the duty was a proximate cause of the injury." *Doe 169 v. Brandon*, 845 N.W.2d 174, 177 (Minn. 2014). A person generally does not have a duty to aid, protect, or warn another regarding harm caused by a third party's conduct. *Id.* at 177-78. However, a person may have a duty to protect another from harm caused by a third party if "(1) there is a special relationship between the parties; and (2) the risk is foreseeable." *Bjerke v. Johnson*, 742 N.W.2d 660, 665 (Minn. 2007). The existence of a duty of care is a question of law that this court reviews de novo. *Domagala v. Rolland*, 805 N.W.2d 14, 22 (Minn. 2011).

An employer is liable for negligent retention when (1) "during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicated his unfitness," (i.e., foreseeability) and (2) "the employer fails

to take further action such as investigating, discharge, or reassignment." *Yunker v. Honeywell*, 496 N.W.2d 419, 423 (Minn. App. 1993) (quotation omitted), *review denied* (Minn. Apr. 20, 1993). An employer is liable for negligent supervision when "(1) the employee's [tortious] conduct was foreseeable; and (2) the employer failed to exercise ordinary care when supervising the employee." *C.B. ex rel. L.B. v. Evangelical Lutheran Church in Am.*, 726 N.W.2d 127, 136 (Minn. App. 2007) (quotations omitted).

In sum, to prevail on their negligence, negligent-retention, and negligent-supervision claims, appellants must show that Hoagland's sexual abuse of appellants was foreseeable.

"[F]oreseeability as a test for negligence . . . means a level of probability which would lead a prudent person to take effective precautions." *Fahrendorff ex rel. Fahrendorff v. N. Homes, Inc.*, 597 N.W.2d 905, 912 (Minn. 1999) (quotation omitted) (distinguishing the degree of foreseeability required in the respondeat superior context from that required in direct negligence cases). "In determining whether a danger is foreseeable, courts look at whether the specific danger was objectively reasonable to expect, not simply whether it was within the realm of any conceivable possibility." *Doe 175 ex rel. Doe 175 v. Columbia Heights Sch. Dist.*, 873 N.W.2d 352, 360 (Minn. App. 2016) (quoting *Whiteford ex rel. Whiteford v. Yamaha Motor Corp., U.S.A.*, 582 N.W.2d 916, 918 (Minn. 1998)). "Sexual abuse will rarely be deemed foreseeable in the absence of prior similar incidents." *Id.* at 360 (quotation omitted). "When the issue of foreseeability is clear, the courts, as a matter of law, should decide it. In close cases, the

question of foreseeability is for the jury." *Whiteford*, 582 N.W.2d at 918 (footnote omitted).

Appellants argue that there is a genuine issue of material fact regarding the foreseeability of Hoagland's sexual abuse because Hoagland's interactions with John Does 123, 124, and 125 raised "red flags" and because Hoagland's own knowledge of his abuse should be imputed to PCI.[1] We address each argument in turn.

"Red Flags"

In *Bjerke*, the supreme court concluded that certain circumstances raised a genuine issue of material fact regarding whether a third party's sexual abuse of a minor female who frequently stayed at the defendant's home was foreseeable to the defendant. 742 N.W.2d at 663, 668-69. The third party was the defendant's adult male friend who resided with the defendant. *Id.* at 663. The relevant circumstances were as follows: the minor ran her fingers through the third-party's hair for 10 to 15 minutes, the minor jumped into the third party's lap, the defendant told a friend that the relationship between the minor and the third party was getting "too sexual," and the defendant's friends and acquaintances observed intimate behavior between the minor and the third party, including the minor rubbing the third party's leg in full view of the defendant. *Id.* at 668-69.

In contrast, in *Doe 175*, this court rejected an argument that the following circumstances established that a coach's sexual abuse of a student was foreseeable to a

[1] John Does 123 and 124 emphasize the "red flags" argument, whereas John Does 125, 126, and 127 emphasize the imputation argument. Because each appellant group appears to endorse the other's arguments, and for ease of readability, we do not distinguish between the two groups in our foreseeability analysis.

school district: the student yelled "I love you" to the coach at a football practice, the coach and the student talked in a parking lot, the student used a computer in the school's weight-room office, and the coach was seen alone with a young girl in the school weight room on a Saturday. 873 N.W.2d at 360-61. This court reasoned that "[t]aken in context," these incidents were "not sufficiently similar to or indicative of sexual abuse as to give the school district notice that an inappropriate relationship existed between [the coach] and [the student]." *Id.* at 361. This court also noted that there was "no evidence that any school district employee observed physical contact or sexual conduct of any kind between [the coach] and [the student]." *Id.* This court concluded that under these circumstances, "[the coach's] sexual abuse of [the student] was not foreseeable." *Id.* at 362.

Appellants argue that the following "red flags" should have caused PCI's employees to foresee Hoagland's sexual abuse of appellants: Hoagland brought John Does 123 and 124 to the Willmar store even though the store did not have children as customers, Hoagland stored John Doe 123's and John Doe 124's snowmobile helmets at the Willmar store, a PCI employee observed John Doe 123 sitting on Hoagland's lap, PCI employees observed John Doe 125 at the store for long periods of time, Hoagland gave John Doe 125 a pager with service, and PCI employees were aware that a conflict had developed between Hoagland and John Doe 125.

Compared to the circumstances in *Bjerke* and *Doe 175*, the "red flags" on which appellants rely were not sufficiently indicative of sexual abuse to put PCI on notice that Hoagland was abusing appellants. Unlike the circumstances in *Bjerke*, and like the circumstances in *Doe 175*, there is no evidence that any PCI employee observed intimate

or sexual behavior by Hoagland toward any of the appellants. Although John Doe 123 testified in his deposition that one of PCI's employees saw him sitting on Hoagland's lap, he also testified that none of the employees saw Hoagland abusing him and that Hoagland concealed the abuse by pushing John Doe 123 off of his lap when employees approached Hoagland's cubicle. John Doe 124 similarly testified that PCI's employees did not see Hoagland abuse him.

In sum, viewing the evidence in the light most favorable to appellants, the "red flags" on which appellants rely do not establish that Hoagland's sexual abuse of appellants was foreseeable.

Imputation

We next consider appellants' argument that Hoagland's own knowledge of the sexual abuse should be imputed to PCI. Appellants rely on corporate-law principles as support for their contention.

"A corporation is an artificial person, created by law, or under authority of law, as a distinct legal entity, with rights and liabilities which are independent from those of the natural persons composing the corporation." *Di Re v. Cent. Livestock Order Buying Co.*, 246 Minn. 279, 283, 74 N.W.2d 518, 523 (1956); *see* Minn. Stat. § 302A.161 (2016) (describing corporation's powers). "[A] corporation is charged with constructive knowledge . . . of all material facts of which its officer or agent . . . acquires knowledge while acting in the course of employment within the scope of his or her authority." *Travelers Indem. Co. v. Bloomington Steel & Supply Co.*, 718 N.W.2d 888, 895-96 (Minn.

2006) (quoting 3 William Meade Fletcher, *Fletcher Cyclopedia of the Law of Private Corporations*, § 790 (2002)).

For example, in *State Bank of Morton v. Adams*, the supreme court stated that "[a] bank is chargeable with knowledge of facts known to an officer transacting its business and pertaining to matters within the scope of its business." 142 Minn. 63, 67, 170 N.W. 925, 927 (1919). In a more recent case, the supreme court charged a corporation with knowledge of facts known to its employees regarding vacant lots acquired by the corporation. *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 857, 866 (Minn. 2011). The supreme court explained:

> [E]mployees at SCI who purchased the vacant lots and paid the property taxes on them were aware of SCI's ownership . . . of the vacant lots. There is no evidence in the record or any contention that the employees who purchased the vacant lots and paid the property taxes on the land were acting outside the scope of their employment when engaging in these activities. Accordingly, their knowledge is imputed to SCI generally.

Id. at 866.

Unlike the preceding examples, Hoagland was not transacting the business of PCI when he abused appellants, and his knowledge of that abuse did not pertain to matters within the scope of PCI's business. Hoagland's sexual abuse in no way stemmed from or related to PCI's business of selling telecommunication devices, services, and repairs. Indeed, there is no evidence that PCI's regular customer-base included children. On this record, a reasonable person could reach only one conclusion: Hoagland was not acting in the course of employment and within the scope of his authority when he sexually abused appellants.

At oral argument to this court, appellants nonetheless asserted that Hoagland's knowledge of the sexual abuse should be imputed to PCI because the "law treats corporate-owner employees of small closely held corporations like [PCI] specially." Appellants indicated that they were not arguing for imputation under the traditional course-of-employment-and-scope-of-authority standard. Instead, appellants explained that their "argument . . . on imputation stands or fails on the question of whether or not Peter Hoagland, this man, this company, that relationship, is always in the capacity of a supervisor when he's on the premises and he sees something horrible happening."

Essentially, appellants argue that imputation should be allowed even if the traditional course-and-scope standard is not satisfied because Hoagland observed the abuse on the premises of the Willmar store and he "essentially [was the] sole owner, sole decision maker, president" of a closely-held corporation. Appellants do not cite any precedential case in which a corporate officer's knowledge was imputed to a corporation without regard to the traditional course-and-scope limitation, and they agree that such an approach raises an issue of first impression.

The closest factual analogue to this case is *Travelers Indem. Co. v. Bloomington Steel & Supply Co.*, 718 N.W.2d at 891-92. In *Travelers*, the sole shareholder, officer, and director of Bloomington Steel assaulted an employee of Key Star, a company that shared a common work area with Bloomington Steel. *Id.* The Key Star employee brought assault and battery claims against the assailant and respondeat-superior, negligent-retention, and negligent-supervision claims against Bloomington Steel. *Id.* at 892.

Bloomington Steel's insurer brought a declaratory-judgment action seeking a ruling that it was not obligated to indemnify Bloomington Steel in the Key Star employee's action. *Id.* at 893. The insurer argued that the corporate assailant's own knowledge of his alleged history of violent behavior in the workplace should be imputed to Bloomington Steel and that the assault should therefore be excluded from coverage as bodily injury "expected or intended from the standpoint of the insured." *Id.* at 893-94. The insurer relied in part on corporate-law principles, arguing that because Bloomington Steel's corporate officer was its sole shareholder, officer, and director, his knowledge should be imputed to the corporation. *Id.* at 894, 895 & n.5.

The supreme court declined to adopt the insurer's suggestion that knowledge acquired by an agent should be imputed to his principal corporation based only on the agent's status as sole shareholder, officer, and director of the corporation. *Id.* at 895 & n.5, 896. Instead, the supreme court held that the language of Bloomington Steel's insurance policy did not require its corporate officer's intent to be automatically imputed to Bloomington Steel. *Id.* at 895-98. The supreme court noted that "general corporate legal principles limit the knowledge that is attributed from agent to principal to that knowledge acquired by the agent 'while acting in the course of employment within the scope of his or her authority.'" *Id.* at 896 (quoting Fletcher, *supra*, § 790). The supreme court stated that it would be up to the finder of fact, on remand, "to determine, based on the knowledge attributed to Bloomington Steel using the [course-of-employment-and-scope-of-authority standard], whether Bloomington Steel, as an entity separate and distinct from [the alleged tortfeasor], expected [his] assault." *Id.* at 897.

In sum, in *Travelers*, the supreme court did not depart from the traditional course-and-scope standard governing imputation of knowledge to a corporation, even though it had the opportunity to do so in a tort case.

Appellants argue that *Travelers* did not foreclose the possibility of a different approach in a tort case, and they urge this court to impute Hoagland's knowledge of his sexual abuse to PCI based on his status as the sole director, controlling shareholder, and manager of PCI, relying on nonprecedential authority as support.[2] For example, appellants cite *Cantrell v. Putnam Cty. Sheriff's Dep't*, an Indiana forfeiture case involving a sole shareholder and corporate president's use of a corporate vehicle to transport cocaine. 894 N.E.2d 1081, 1083 (Ind. Ct. App. 2008). In *Cantrell*, the Indiana Court of Appeals held that the sole shareholder and president's knowledge of the cocaine in the corporate vehicle should be imputed to the corporation, reasoning:

> [The] sole shareholder and president of the Corporation, would directly benefit by a denial of the State's forfeiture request. The trial court was properly concerned that if [the sole shareholder and president's] logic is to be followed, then all people transporting drugs would just incorporate themselves for the avoidance of forfeiture actions. We conclude that, under these circumstances, [the sole shareholder and president's] knowledge of the cocaine should be imputed to the Corporation.

[2] Appellants also rely on sexual-harassment cases in which facts known to supervisors regarding harassment of employees, including harassment by the supervisors themselves, were imputed to the supervisors' employers. *Giuliani v. Stuart Corp.*, 512 N.W.2d 589, 595 (Minn. App. 1994); *Tretter v. Liquipak Int'l, Inc.*, 356 N.W.2d 713, 715 (Minn. App. 1984); *see McNabb v. Cub Foods*, 352 N.W.2d 378, 383 (Minn. 1984) (imputing supervisor's knowledge of other employees' harassment to employer). Because the supervisors' knowledge in these cases was acquired in the course of their employment and within the scope of their authority, these cases are distinguishable.

Id. at 1088 (quotation omitted).

Cantrell is not binding on this court. *See State ex rel. Ulland v. Int'l Ass'n of Entrepreneurs of Am.*, 527 N.W.2d 133, 136 (Minn. App. 1995) ("[T]his court is not bound by precedent from other states or the federal courts."), *review denied* (Minn. Apr. 18, 1995); *see also Jackson ex rel. Sorenson v. Options Residential, Inc.*, 896 N.W.2d 549, 553 (Minn. App. 2017) ("[W]e are bound by precedent established in the supreme court's opinions and our own published opinions."). Moreover, the *Cantrell* court's approach was based on a policy concern arising in the forfeiture context. Appellants instead rely on victim-centered policies as support for imputation of Hoagland's knowledge of his sexual abuse to PCI. Specifically, appellants argue that imputing Hoagland's knowledge of the sexual abuse to PCI would further the policies of "full compensation of innocent victims" and "encouragement of reasonable care and deterrence of negligence." These two policies are undoubtedly important. However, there is an equally important competing policy that would be compromised by appellants' relaxed approach to imputation, namely, the recognition of a corporation as a separate and distinct entity from the natural persons by whom it is owned.

"It is well settled that a corporation possesses a legal existence separate from its stockholders" and that it "must answer for its own contractual obligations and tort liabilities." *Milwaukee Motor Transp. Co. v. Comm'r of Taxation*, 292 Minn. 66, 71, 193 N.W.2d 605, 608 (1971). The separate legal status of a corporation "fills a useful purpose in business life" and is the foundation of corporate law. *Id.* at 75, 193 N.W.2d at 611 (quotation omitted). "The basic theory of corporation law is that a corporation exists as an

entity entirely separate and apart from its shareholders." *Corcoran v. P.G. Corcoran Co.*, 245 Minn. 258, 269, 71 N.W.2d 787, 795 (1955). Courts may disregard a corporation's separate legal status only in "the most carefully limited circumstances." *Cargill, Inc. v. Hedge*, 375 N.W.2d 477, 480 (Minn. 1985).

Imputing knowledge to a closely held corporation based solely on its agent's status as sole decision-maker and president without regard to the traditional course-of-employment-and-scope-of-authority limitation would be inconsistent with well-established policy recognizing corporations as separate and distinct entities. Indeed, appellants' theory seems to be that if a corporate agent is the sole decision-maker and president of the corporation, then the agent and corporation are one and the same and the corporation therefore has knowledge of the agent's actions. This theory completely disregards the corporation's separate legal existence.

Appellant's approach to imputation also implicates the following specific policy concern, which was noted by a Florida district court of appeal in *Agriturf Mgmt., Inc. v. Roe*:

> [A tortfeasor's] knowledge of his own illegal acts cannot be imputed to [his employer if] they were committed outside the scope of his employment. If [a] corporation were deemed to have notice of the illicit conduct of its officer and employee—conduct that furthered only the prurient interest of the actor and had no relation to the company's business—[the corporation] would in effect become the insurer of the independent, illegal actions of its employees. Such a result is neither intended nor desirable under the principles of agency law.

656 So. 2d 954, 955 (Fla. Dist. Ct. App. 1995) (citation omitted).

Appellants' proposal that we abandon the traditional course-of-employment-and-scope-of-authority limitation on imputation of knowledge to a corporation in a tort case such as this one is inconsistent with the corporate policies set forth above and can only be justified based on competing policy concerns. The Minnesota Court of Appeals is an error-correcting court and not a policymaking court. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Although Hoagland's conduct is deplorable, we cannot disregard controlling law based on an argument that doing so would advance worthwhile public policies. "[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court." *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987). Moreover, given that the Minnesota Supreme Court in *Travelers* declined to adopt a rule similar to the one appellants propose, we are not emboldened to do so here.

In conclusion, Minnesota law charges a corporation with constructive knowledge only of those material facts of which its officer or agent acquires knowledge while acting in the course of employment and within the scope of his authority. Because Hoagland's knowledge of his sexual abuse was not obtained in that context, it is not imputed to PCI. And because Hoagland's sexual abuse was not foreseeable to PCI—based on either imputation of Hoagland's knowledge of the abuse to PCI or the purported "red flags"—appellants' negligence, negligent-retention, and negligent-supervision claims fail as a matter of law.

Special Relationship

Although all of appellants' claims fail because Hoagland's sexual abuse of appellants was not foreseeable, we nonetheless consider whether appellants' general negligence claims also fail because PCI did not have a special relationship with appellants.

As noted above, an entity only has a duty to protect another from harm caused by a third party if "(1) there is a special relationship between the parties; and (2) the risk is foreseeable." *Bjerke*, 742 N.W.2d at 665. The existence of a special relationship is a question of law that we review de novo. *H.B. ex rel. Clark v. Whittemore*, 552 N.W.2d 705, 707 (Minn. 1996). In a special relationship, "[t]ypically the plaintiff is in some respect particularly vulnerable and dependent on the defendant, who in turn holds considerable power over the plaintiff's welfare." *Donaldson v. Young Women's Christian Ass'n of Duluth*, 539 N.W.2d 789, 792 (Minn. 1995).

One situation in which the necessary special relationship exists is "when an individual, whether voluntarily or as required by law, has custody of another person under circumstances in which that other person is deprived of normal opportunities of self-protection." *Bjerke*, 742 N.W.2d at 665 (quotation omitted). Appellants rely on this special-relationship scenario and *Bjerke*, arguing that PCI "voluntarily undertook the custody and control of Appellants, thereby giving rise to a special relationship and a duty to protect them."

Once again, in *Bjerke*, a homeowner's adult male friend sexually abused a child while she stayed with the homeowner on multiple occasions. *Id.* at 663. After the child turned 18 years old, she sued the homeowner, alleging that the homeowner was negligent

in failing to protect her from the sexual abuse. *Id*. at 663-64. One of the issues was whether the homeowner had a duty to protect the child from the abuse because the homeowner took custody of the child under circumstances in which the child's "normal means of self-protection were unavailable." *Id*. at 665.

The supreme court noted that, although the homeowner was never given legal custody of the child, there was evidence to show that the homeowner "accepted entrustment of some level of care for [the child]" when the child stayed with the homeowner at a location distant from her parents' home. *Id*. The homeowner provided the child with room and board and adopted rules for the child's conduct. *Id*. The homeowner "had a large degree of control over [the child's] welfare, strongly indicating that there was a special relationship between the two." *Id*. There was also evidence that the homeowner's control over the child increased over time, consistent with the increase in the length and frequency of the child's stays with the homeowner. *Id*. The homeowner "took [the child] into her home as a long-term resident, providing her with a place to live away from her family" and "made it clear that one of her motivations for bringing [the child] to stay at [her home] was to provide her with a more stable environment than could be found in [the child's] home." *Id*. at 666. The supreme court determined, as a matter of law, that at least during the times that the child resided full-time with the homeowner, the child "lacked 'normal opportunities for self-protection' because she was a minor child, living apart from her parents and under the daily care and supervision" of the homeowner. *Id*.

Appellants argue that "[j]ust as the Plaintiff in *Bjerke v. Johnson* lacked normal opportunities for self-protection when she was [at the defendant's home], Appellants in

this case lacked normal opportunities for self-protection when they were at [PCI's] shop." We disagree. The undisputed facts in this case do not suggest that PCI had a degree of control over appellants' welfare comparable to the homeowner's control in *Bjerke*. Although appellants frequently visited the Willmar store, PCI did not provide appellants with room and board or adopt rules for their conduct. Nor is there any indication that PCI intended to act in place of appellants' parents. The record simply does not support a reasonable conclusion that PCI had custody of appellants under circumstances in which they lacked normal opportunities for self-protection. We therefore conclude that PCI did not have a special relationship with appellants giving rise to a duty to protect them.

In conclusion, because PCI did not owe appellants a duty of care and because Hoagland's sexual abuse of appellants was not foreseeable, the district court did not err by summarily dismissing appellants' negligence, negligent-retention, and negligent-supervision claims against PCI.

II.

Appellants contend that the district court erred by awarding Allstate costs and disbursements in its declaratory-judgment action because "Allstate was not the prevailing party."[3] Appellants argue that Allstate was not the prevailing party because its "coverage-

[3] PCI seeks to "join" appellants' challenge to the district court's award of costs and disbursements to Allstate. However, PCI did not file a notice of related appeal from Allstate's declaratory-judgment action and thus cannot challenge the district court's award of costs and disbursements against it. *See* Minn. R. Civ. App. P. 103.02, subd. 2 (stating that a party may seek review of a judgment or order in the same action that another party has appealed "by serving and filing a notice of related appeal"); *In re Guardianship of Pates*, 823 N.W.2d 881, 884-85 (Minn. App. 2012) (holding that, because respondent failed to file a notice of related appeal, she was not entitled to affirmative relief from this court).

related claim for declaratory relief was . . . mooted by an unrelated dismissal of the claims against its insured, [PCI]" and "there was no justiciable controversy for the district court to decide when it entered summary judgment in favor of Allstate."

"In every action in a district court, the prevailing party . . . shall be allowed reasonable disbursements paid or incurred . . . ." Minn. Stat. § 549.04 (2016). "The prevailing party in any action is one in whose favor the decision or verdict is rendered and judgment entered." *Borchert v. Maloney*, 581 N.W.2d 838, 840 (Minn. 1998). "A prevailing party is one who prevails on the merits in the underlying action, not one who was successful to some degree." *Elsenpeter v. St. Michael Mall, Inc.*, 794 N.W.2d 667, 673 (Minn. App. 2011) (quotation omitted). Appellate courts review a district court's award of costs and disbursements, including its prevailing-party determination, for an abuse of discretion. *Posey v. Fossen*, 707 N.W.2d 712, 714 (Minn. App. 2006). The district court abuses its discretion "when its decision is against logic and facts on the record." *Id.*

In arguing that Allstate was not a prevailing party, appellants rely on *HNA Props. v. Moore*, 848 N.W.2d 238 (Minn. App. 2014). In *HNA Props.*, this court concluded that a party who obtained a dismissal based on the opposing party's failure to comply with a procedural rule was not the prevailing party. 848 N.W.2d at 243. Specifically, the losing party's "agent did not file a Power of Authority form" when she filed an eviction complaint, as required by rule. *Id.* at 240.

HNA Props. is distinguishable because this case does not involve a procedural dismissal. The district court considered the merits of the claims against PCI, determined

that PCI was entitled to summary judgment on the merits and that, as a result, Allstate did not have any coverage or defense obligations, which is the relief Allstate sought in its declaratory-judgment action. Although the district court may have based its grant of summary judgment for Allstate on a legal theory other than the one advanced by Allstate, its award was based on a merits determination, and not on a procedural defect.

In sum, Allstate obtained the relief it sought in its declaratory-judgment action based on the district court's consideration of the evidence and the law in the underlying tort action against PCI, which was the impetus for Allstate's declaratory-judgment action. Under these circumstances, the district court did not abuse its discretion by concluding that Allstate was a prevailing party.

III.

John Does 123 and 124 contend that the district court erred in awarding statutory costs to PCI. They argue that "it is unclear what costs [PCI] is seeking from each [appellant], or to what extent it seeks the same costs from multiple Appellants," that the district court did not explain "how the costs sought here are exclusively related" to the appellants' cases as opposed to Allstate's declaratory-judgment action, and that PCI failed to clarify which costs were "actually expended by [PCI] exclusively, or the extent to which the costs were shared with . . . Hoagland." We review the district court's award of costs and disbursements for an abuse of discretion. *See Posey*, 707 N.W.2d at 714.

The district court specified the costs that it awarded PCI. Moreover, the district court recognized that some of PCI's requested costs were incurred by shared counsel for Hoagland and PCI and therefore awarded less than PCI requested. On this record, we do

not discern an abuse of discretion in the district court's award of costs and disbursements to PCI.

Affirmed.