

*This opinion is nonprecedential except as provided by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
A23-1537**

Doe 596,
Appellant,

vs.

Holy Innocents' School Incorporated
a/k/a and d/b/a Holy Innocents' School,
Respondent.

**Filed July 29, 2024
Affirmed
Ede, Judge**

Stearns County District Court
File No. 73-CV-18-10331

Jeffrey R. Anderson, Michael G. Finnegan, Patrick Stoneking, Joshua D. Peck, Jeff Anderson & Associates, P.A., St. Paul, Minnesota; and

Michael A. Bryant, Bradshaw & Bryant, PLLC, Waite Park, Minnesota (for appellant)

Stacey L. Sever, Stich, Angell, Kreidler & Unke, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Wheelock, Presiding Judge; Connolly, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In this appeal from a judgment of dismissal following a court trial, appellant challenges the district court's determination that her public-nuisance claim fails because

she did not establish a causal nexus between the harm she suffered and the alleged nuisance. Because we conclude that the district court did not err as a matter of law in deciding that appellant failed to establish by a preponderance of the evidence that the alleged nuisance injured her, we affirm.

FACTS

The facts below are undisputed on appeal.

From 1978 to 1984, appellant Doe 596 attended Holy Innocents' School (the school), a private institution owned and operated by the Sis/Carlstedt family through respondent Holy Innocents' School Incorporated. The school was founded by Robert and Bernice Sis in 1969. The couple had six children together, all of whom attended the school. Four of the Sis children—Heidi Carlstedt, Jacinta Sis, Juanita Sis, and Maria Sis—eventually worked as teachers at the school.

In December 2018, appellant sued respondent, alleging that the school is a public nuisance, among other claims. Appellant asserted that she attended the school from kindergarten through fifth grade, during which she encountered Father Lawrence Brey (Fr. Brey)—a Roman Catholic priest employed by respondent—as well as Heidi Carlstedt, Robert Sis, Bernice Sis, Maria Sis, and Christopher Sis, who were all employed in various positions at the school. Appellant alleged that each of these individuals “engaged in unpermitted sexual contact” with her several times from 1978 to 1984, when appellant was aged 5 to 11 years old.

Count I of appellant’s complaint, entitled “Public Nuisance (Common Law and Minn. Stat. § 609.74),” alleged that respondent “continues to conspire and engage and/or

ha[s] conspired and engaged in efforts to” conceal the sexual abuse from the public and from civil authorities, to protect the alleged abusers from criminal prosecution, and to solicit families from the public to send their children to the school, where they face the danger of sexual abuse. Count II set forth a private-nuisance claim under Minnesota Statutes section 561.01 (2022), relying on the facts alleged in Count I. Counts III through V asserted negligence claims based on allegations of the sexual abuse described above. Along with monetary damages, appellant sought an injunction requiring that respondent permanently close the school and sell the property on which the school is located. Appellant also requested that Heidi Carlstedt, Robert Sis, Bernice Sis, Maria Sis, and Christopher Sis “be forever prevented from operating or working at a school in the State of Minnesota,” and that they “not be allowed a teaching license in the State of Minnesota or elsewhere in order to abate the nuisance created by [respondent].”

Appellant later filed an amended complaint, which alleged the same claims as the original complaint, but also asserted that respondent “failed to use ordinary care in determining whether its facilities were safe and/or to determine whether [it] had sufficient information to represent its facilities as safe.” The district court later granted respondent’s motion for summary judgment on Counts II through V and dismissed those claims with prejudice. But the district court denied respondent’s summary-judgment motion as to Count I, appellant’s public-nuisance claim.

The matter proceeded to an eight-day court trial on Count I—appellant’s only remaining claim after the order on summary judgment—in August 2022. The district court received several exhibits, including photographs of the school, appellant’s medical records,

inspection and compliance orders from the state fire marshal, and engineering assessment reports. The district court also received testimony from over two dozen witnesses, including the following: appellant; Robert Sis; Juanita Sis; Jacinta Sis; Heidi Carlstedt; former students at the school; a licensed psychologist; a professional engineer; and “an expert in code violations and construction.” On the seventh day of trial, appellant moved for a temporary restraining order and injunction preventing respondent from operating the school for the 2022-2023 school year “until proper fire and safety inspections ha[d] been completed.” The district court denied the motion. The parties later submitted written closing arguments.

In April 2023, the district court filed findings of fact, conclusions of law, an order for judgment, and a judgment for respondent, dismissing appellant’s public-nuisance claim. The district court determined that, although “[i]t [was] clear that [appellant] was sexually assaulted by Robert Sis and Fr. Brey[,]” the childhood sexual and physical abuse that appellant suffered while attending the school from 1978 to 1984 was “the only source of injury attributable to [respondent].” The district court ruled that, “even assuming [that it] agree[d] the building itself is unsafe and that the people running the school should be removed,” appellant “failed to establish by the preponderance of the evidence that the building, the safety concerns, or the manner of operation of the school . . . injured her or anyone else.” Although the district court noted that appellant’s public-nuisance claim presented “a creative legal theory which attempt[ed] to bypass the statute of limitations . . . by alleging some other condition continues to persist that has caused [appellant’s] damages[,]” the district court concluded that, “[w]ithout proving facts to support

[appellant’s] theory, the [district court was] left with an expired sexual assault claim and must deny all relief request[ed] by [appellant].”

This appeal follows.¹

DECISION

Appellant challenges the district court’s determination that there was no nexus between the harm appellant suffered and the alleged public nuisance posed by the school. Appellant maintains that the district court’s decision “does not align with the alleged nuisance, the findings of fact, or the evidence in this case.” Respondent counters that the district court correctly determined that appellant has not established a nexus between

¹ This court has ordered that “[t]his appeal is construed as taken from the April 26, 2023 judgment of dismissal.” We note that appellant filed a May 25, 2023 notice of posttrial motion for judgment as a matter of law (JMOL) and a motion to extend posttrial deadlines and set briefing. Although the district court granted appellant’s motion to extend the posttrial deadlines and set briefing, it ultimately denied appellant’s motion for JMOL in an order filed on August 14, 2023. Appellant did not file this appeal until October 13, 2023, and respondent asserts that we should dismiss it as untimely. We disagree. Appellant’s motion for JMOL complies with the Minnesota Rules of Civil Procedure and was “authorized, and therefore proper” because, “on the face of the document[,] . . . [appellant] filed a motion that is expressly allowed under [Minnesota Rule of Civil Appellate Procedure 104.01,] subdivision 2.” *Madson v. Minn. Min. & Mfg. Co.*, 612 N.W.2d 168, 171-72 (Minn. 2000); *see also* Minn. R. Civ. App. P. 104.01, 2(a) (expressly allowing motions “for judgment as a matter of law under Minn. R. Civ. P. 50.02”). Because the record reflects that, on August 21, 2023, respondent served appellant with notice of filing of the district court’s order denying appellant’s motion for JMOL, we conclude that appellant’s October 13, 2023 filing of this appeal was timely. *See* Minn. R. Civ. App. P. 104.01, subds. 1 (providing that, “[u]nless a different time is provided by statute, an appeal may be taken from a judgment within 60 days after its entry”), 2 (providing that, “if any party serves and files a proper and timely motion [for JMOL], the time for appeal of the . . . judgment that is the subject of such motion runs for all parties from the service by any party of notice of filing of the order disposing of the last such motion outstanding”).

appellant's alleged special and unique damages and her public-nuisance claim. We agree with respondent.

“On appeal from judgment following a court trial, this court reviews whether the district court's findings were clearly erroneous and whether the district court erred as a matter of law.” *In re Distrib. of Att’y’s Fees Between Stowman L. Firm, P.A. & Lori Peterson L. Firm*, 855 N.W.2d 760, 761 (Minn. App. 2014), *aff’d*, 870 N.W.2d 755 (Minn. 2015).

Under Minnesota law, “[w]hoever by an act or failure to perform a legal duty intentionally . . . maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public” is “guilty of maintaining a public nuisance, which is a misdemeanor.” Minn. Stat. § 609.74 (2022). A private individual may pursue a civil action asserting a common-law public-nuisance claim to “redress an injury of this character where the plaintiff has suffered some special or peculiar damage not common to the general public[.]” *Hill v. Stokely-Van Camp, Inc.*, 109 N.W.2d 749, 753 (Minn. 1961) (quotation omitted); *see also Nelson v. Swedish Evangelical Lutheran Cemetery Ass’n of Chisago City*, 126 N.W. 723, 723 (Minn. 1910) (holding that, “[t]o entitle a private individual to enjoin a public nuisance, the injury complained of must be peculiar in kind or nature . . . and the proximate result of the conduct complained of”); *N. Star Legal Found. v. Honeywell Project*, 355 N.W.2d 186, 189 (Minn. App. 1984) (“Private persons may not bring a cause of action for public nuisance unless they allege some special or peculiar injury.”), *rev. denied* (Minn. Jan. 2, 1985).

The determination of whether a private plaintiff has a valid public-nuisance claim is a question of fact for which “proof is necessary as to the effect and consequences of the thing claimed to affect such person . . . injuriously.” *Hill*, 109 N.W.2d at 753. The plaintiff carries the burden of proof by a preponderance of the evidence. *See Canada by Landy v. McCarthy*, 567 N.W.2d 496, 507 (Minn. 1997) (“In an ordinary civil action, the plaintiff has the burden of proving damages caused by the defendant by a fair preponderance of the evidence.”); *see also State by Smart Growth Minneapolis v. City of Minneapolis*, 7 N.W.3d 418, 430 (Minn. App. 2024) (“A plaintiff carries the burden of proof to establish a basis for requested injunctive relief.”).

Here, appellant does not dispute any of the district court’s findings of fact. Instead, appellant posits that “[t]he findings of fact and record in this case clearly establish that the [s]chool is a public nuisance.” Moreover, appellant summarily claims that she has “suffered substantial pecuniary harm from attending the dangerous school” and “has incurred more than \$240,000 in treatment costs trying to heal from the harm the [s]chool caused[] and is expected to require \$162,840 in future treatment.” But the district court’s undisputed factual findings support its determination as a matter of law that appellant failed to prove that the school’s physical condition and policies caused her special and peculiar damages. While the district court acknowledged appellant’s claim that “her unique and special damages consist of her sustained past wage loss, medical treatment costs, and pain and suffering from her time at [the school],” the district court also found that appellant’s “childhood abuse while at [the school] is the only source of injury attributable to [respondent].”

In support of this finding of fact, the district court observed that a licensed psychologist who provided expert testimony on appellant's behalf "offered no opinion as to how the physical condition of [the school], lack of fire safety measures, operation of the school, or being required to help with the Shaklee business^[2] substantially contributed to any of [appellant's] diagnoses." The district court furthermore found that respondent's expert, a board-certified doctor of psychiatry and neurology, had cited appellant's report that "her psychological symptoms were all due to the emotional, physical, and sexual abuse she suffered while a student at [the school]—not as a result of any current concern about [the school's] ongoing education of children." The district court credited the opinion of respondent's expert that "the operation of the [school] was not a concern to [appellant] and . . . she was not injured by the operation of [the school]" as "consistent with its own review of the medical records and testimony." And the district court found that appellant's vocational expert "offered no opinion as to how the physical condition of [the school], lack of fire safety measures, operation of the school, or being required to help with the Shaklee business impacted [appellant's] wage loss." Appellant does not challenge any of these findings of fact on appeal.

Based on these undisputed factual findings, we conclude that the district court did not err as a matter of law by determining that appellant failed to show that she "suffered some special or peculiar damage not common to the general public[.]" *Hill*, 109 N.W.2d at

² Appellant testified that "she and other students were required to help the Sis family sell Shaklee products by packing and unpacking boxes, doing mailings, and folding and stamping envelopes."

753 (quotation omitted). We likewise conclude that the district court did not err as a matter of law by ruling that “the injury [appellant] complained of” was not “the proximate result of the [public-nuisance] conduct complained of.” *Nelson*, 126 N.W. at 723. The district court correctly decided that appellant failed to carry her burden to prove a nexus between the alleged nuisance and injuries to her or others by a preponderance of the evidence. *See Hill*, 109 N.W.2d at 753; *see also Canada by Landy*, 567 N.W.2d at 507; *State by Smart Growth Minneapolis*, 7 N.W.3d at 430.

In sum, appellant does not challenge the district court’s findings of fact, and we conclude that appellant has not established that the district court erred as a matter of law in entering judgment for respondent and dismissing appellant’s public-nuisance claim.³

Affirmed.

³ Because we are otherwise affirming the district court’s judgment of dismissal, we decline to address respondent’s argument that the statute of limitations bars appellant’s public-nuisance claim.