United States Court of Appeals
for the Eighth Circuit

No. 20-3027

Central Specialties, Inc.

Plaintiff - Appellant

v.

Jonathan Large; Mahnomen County

Defendants - Appellees

Appeal from United States District Court
for the District of Minnesota

Submitted: May 11, 2021
Filed: November 24, 2021

Before SMITH, Chief Judge, SHEPHERD and GRASZ, Circuit Judges.

SHEPHERD, Circuit Judge.

Central Specialties, Inc. (CSI), which won a contract to perform road work on state highways across three Minnesota counties, filed this action against Mahnomen County and its Engineer, Jonathan Large, after Large stopped two of CSI's trucks for exceeding the posted weight limit on the road on which they were

traveling. CSI asserted claims under 42 U.S.C. § 1983 for violations of the Fourth and Fourteenth Amendments and claims under state law for trespass to chattel and tortious interference with contract. The district court[1] granted summary judgment in favor of defendants, and CSI appeals. Having jurisdiction under 28 U.S.C. § 1291, we affirm.

I.

In late 2016, CSI, a road and highway construction company, was awarded a contract by the Minnesota Department of Transportation (MnDOT) to perform road work on State Highway 59, which crosses three Minnesota counties: Becker, Polk, and Mahnomen. As part of its contract, CSI proposed certain existing county roads be designated haul roads, which CSI would use to haul material away from the project site. Although CSI was responsible for proposing haul roads, MnDOT retained the ultimate authority to determine which roads would be designated as haul roads. When a haul road is designated, it comes under the jurisdiction of MnDOT and is no longer under the purview of the county in which the road is located. However, counties retain an interest in the selection of haul roads because counties are responsible for the maintenance and upkeep of all county roads, and the specific uses of a given road can impact the road's condition. When the haul road is released back to a county,

[1] The Honorable Michael J. Davis, United States District Judge for the District of Minnesota.

MnDOT reimburses the county for the use, but additional expenses related to any deterioration of the road from its use as a haul road are difficult to ascertain, often leaving the county with the responsibility to pay for repairs.

In April 2017, at a preconstruction meeting, CSI proposed the roads it wished to be designated as haul roads. CSI proposed that it use County State Aid Highways (CSAH) 5, 6, and 10, each with an 80,000-pound limit. Large, who as the County Engineer for Mahnomen County was responsible for the maintenance and upkeep of all county roads, objected to the designation of the specific CSAH as haul roads because they were already in generally poor condition and he did not believe they could sustain CSI's proposed loads over the course of the construction project. Large further objected to the designation of CSAH 5 and 10 as haul roads because they were scheduled to undergo extensive repairs later in 2017. MnDOT conducted testing of the roads based on Large's stated concerns and confirmed Large's belief that the roads were in generally poor condition, which could be exacerbated by use as haul roads. In an email with a county engineer from another county, Large expressed the necessity of an agreement between Mahnomen County and MnDOT for payment of damages sustained to haul roads during their period of designation because, without an agreement, he believed that MnDOT would not be able to hold CSI accountable for damages sustained to the haul roads and that Mahnomen County would ultimately be left financially responsible for any repair

costs. In May 2017, MnDOT notified CSI that it would designate as haul roads portions of CSAH 5 and 10 with a nine-ton weight restriction and CSAH 6 with a seven-ton weight restriction. MnDOT did not designate all of the roads CSI proposed to be used as haul roads.

After construction began, CSI notified both Large and MnDOT that it intended to use portions of CSAH 6 and 10 that were not designated as haul roads as a return route for its empty trucks and that it would continue using the designated portions of CSAH 5 and 10. Large responded by reiterating to CSI that it needed to use designated haul roads for all truck trips, regardless of whether trucks were loaded or unloaded, noting that CSI did not have an agreement with Mahnomen County to use a non-designated route. Large also referenced ongoing construction on CSAH 10. CSI then emailed the MnDOT Project Manager, asking him to designate the roads as to their legal limits or to direct CSI to not use the road. On July 17, 2017, the MnDOT Project Manager responded that MnDOT had already designated haul roads for the project and that if CSI chose to use alternate routes, the matter was solely between CSI and the local road authority. Despite this directive, CSI stated that it intended to use the roads without any agreement with Large or Mahnomen County.

On the morning of July 18, 2017, the Mahnomen County Board of Commissioners approved a weight restriction to CSAH 10, lowering it from a five-ton axle weight to a five-ton total weight limit. County officials

posted signs with the new weight restrictions before noon that day, and Large spoke with the MnDOT Project Manager just before 1:00 p.m. to inform him of the change. Large asked the Project Manager to inform CSI of the weight restriction change, which he did via an email sent at 1:19 p.m. Shortly after 2:00 p.m., Large observed two CSI trucks driving on CSAH 10 in a work zone. Large was unable to ascertain whether the trucks were loaded or unloaded but concluded that even an empty truck would be in violation of the new, reduced weight restriction. Large, driving in a marked Mahnomen County truck, used his vehicle to block the road and motioned to the drivers to pull over. The drivers complied with Large's request to pull over, after which Large called the local sheriff's office, which told him that it did not have the capacity to handle the situation. Large then called the White Earth Tribal Police, who responded to the scene but determined that they did not have authority to cite the drivers. Finally, state troopers arrived and weighed the vehicles. The troopers cited the driver of the first CSI truck for exceeding the posted weight limit. This driver later testified that she pulled over when she came upon Large's vehicle blocking the road. She stated that Large told her that she could not haul on the road, pointed to a sign showing the new weight restriction, and stated that she needed to wait until law enforcement arrived. The driver asserted that she and the second truck driver stayed at the location from 2:11 p.m. until 5:30 p.m. Large testified that he was at the scene for roughly one and a half to two hours before leaving and that law enforcement also permitted the trucks to

leave. The driver of the second CSI truck testified that, while he and the other truck were stopped, he observed individuals changing the weight restriction signs along CSAH 10. He also observed other large trucks driving on the highway without being stopped by Large.

CSI then filed this action against Large and Mahnomen County, bringing claims under 42 U.S.C. § 1983 for violation of the Fourth and Fourteenth Amendments. Specifically, CSI alleged that Large violated the Fourth Amendment by exceeding the scope of his authority and detaining the CSI trucks for roughly three hours and asserted that the County was liable as Large's employer. CSI also alleged that Large violated the Fourteenth Amendment by depriving CSI of equal protection and due process when he selectively changed and then selectively enforced the weight limits against CSI and by failing to give appropriate notice of the change in the weight restrictions, again asserting that the County was liable as Large's employer. CSI also brought state law claims of tortious interference with contract and trespass to chattel, asserting that defendants interfered with CSI's performance of its contract with MnDOT by changing the weight restrictions and enforcing them and that Large's detention of the trucks was so significant as to amount to a trespass.

Large and the County moved for summary judgment on all claims, which the district court granted. As to CSI's Fourth Amendment claim, the district court determined that the defendants were entitled to

qualified immunity because even assuming that Large had seized the vehicles, the duration of the seizure was reasonable and Large, with his responsibilities as County Engineer, had sufficient reason to investigate the trucks after witnessing what he believed to be the trucks in violation of the posted weight limits. In addition to the absence of a constitutional violation, the district court also determined that it was not clearly established that only a law enforcement officer could request commercial activity to come to a brief halt to ensure compliance with local laws. As to the Fourteenth Amendment claims, the district court determined that defendants were entitled to qualified immunity on both CSI's equal protection and due process claims. With respect to the due process claim, the district court concluded that CSI failed to show a constitutional violation because CSI's assertion that it had no notice of the change in weight restrictions was unsupported, and regardless, CSI presented no authority recognizing a right to pre-deprivation notice in the context of the lowering of the highway weight limit. The district court also determined that it was not clearly established that a county could not change the weight restrictions on a road based on specific indications that its roads would be used for increased loads or traffic. With respect to the equal protection claim, the district court determined that CSI failed to demonstrate a constitutional violation because Large had a rational basis to stop the trucks given the road's condition, the road's lack of designation as a haul road, and CSI's stated intention to use the road for hauling purposes. The district court also determined that it

was not clearly established that every road restriction violation must be enforced and similarly concluded that CSI had presented no evidence of other companies that had been treated differently than CSI.

Finally, the district court also granted summary judgment on CSI's state law claims. As to the tortious interference with contract claim, the district court concluded that Large had justification to change the weight limits and stop CSI's trucks. As to the trespass to chattel claim, the district court concluded that the duration the trucks were stopped was not substantial and that Large did not exercise the requisite degree of dominion and control over the trucks to sustain a trespass to chattel claim. CSI appeals.

II.

CSI asserts that the district court erred in granting summary judgment to defendants on each of its constitutional claims, asserting that the district court engaged in impermissible fact finding and ignored record evidence demonstrating that Large intentionally violated CSI's rights. "We review de novo the district court's grant of summary judgment, 'viewing all evidence and drawing all reasonable inferences in favor of the nonmoving party.' " Odom v. Kaizer, 864 F.3d 920, 921 (8th Cir. 2017) (citation omitted). "Summary judgment is proper when there is no genuine dispute of material fact and the prevailing party is entitled to judgment as a matter of law." Scudder v. Dolgencorp,

LLC, 900 F.3d 1000, 1004 (8th Cir. 2018) (citation omitted).

A.

"Qualified immunity shields officials from civil liability in § 1983 actions when their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Morgan v. Robinson, 920 F.3d 521, 523 (8th Cir. 2019) (en banc) (citation omitted). While qualified immunity is most typically seen in the context of law enforcement, it also applies to other government officials like Large. See, e.g., Thurmond v. Andrews, 972 F.3d 1007, 1010-13 (8th Cir. 2020) (concluding county jail employees were entitled to qualified immunity on § 1983 claim alleging Eighth Amendment violation); Doe v. Flaherty, 623 F.3d 577, 580, 586 (8th Cir. 2010) (concluding school principal was entitled to qualified immunity on § 1983 claims stemming from sexual abuse of student by basketball coach). In considering a claim of qualified immunity, we apply the familiar two-prong framework, first considering "whether the plaintiff has stated a plausible claim for violation of a constitutional or statutory right," and second, "whether the right was clearly established at the time of the alleged infraction." Kulkay v. Roy, 847 F.3d 637, 642 (8th Cir. 2017) (citation omitted). "Courts are 'permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first.'" Id. (citation omitted).

CSI asserted claims under the Fourth and Fourteenth Amendments. Under the Fourth Amendment, CSI alleges Large unlawfully seized CSI's trucks. See United States v. Jacobsen, 466 U.S. 109, 113 (1984). Under the Fourteenth Amendment, CSI asserts that defendants deprived CSI of its due process rights when they changed the weight limits without sufficient notice, see Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542 (1985), and that Large violated CSI's equal protection rights by treating it as a "class of one" when he enforced the new weight restrictions against only CSI, see Barstad v. Murray Cnty., 420 F.3d 880, 884 (8th Cir. 2005) (citation omitted).

Although CSI asserts that the district court made factual findings to determine that no constitutional violations occurred, we need not address that argument because our inquiry begins and ends with the clearly established prong. "A clearly established right is one that is 'sufficiently clear that every reasonable official would have understood that what he is doing violates that right.'" Morgan, 920 F.3d at 523. In determining whether a right is clearly established, the Supreme Court has "repeatedly" cautioned courts "'not to define clearly established law at a high level of generality.' The dispositive question is 'whether the violative nature of *particular* conduct is clearly established.' This inquiry 'must be undertaken in light of the specific context of the case, not as a broad general proposition.'" Mullenix v. Luna, 577 U.S. 7, 12 (2015) (per curiam). "There need not be a case 'directly on point, but existing precedent must have placed the statutory or

constitutional question beyond debate.' . . . [Q]ualified immunity 'gives government officials breathing room to make reasonable but mistaken judgments, and protects all but the plainly incompetent or those who knowingly violate the law.'" Morgan, 920 F.3d at 524 (citation omitted).

CSI simply presents no case that comes close to demonstrating that the rights it alleges were violated were clearly established. Under the unique circumstances of this case, we cannot say that it was clearly established that Large, a county engineer tasked with oversight of all county roads, could not prevent trucks that he had reason to believe were operating above the posted weight limit from passing over and damaging the roadway or could not call law enforcement to investigate compliance with the new, reduced weight restrictions.

The dissent argues that by finding that any alleged constitutional violation was not clearly established, we have, in effect, sanctioned the deputization of county engineers to perform traffic stops. The record does not bear this out. Although Large impeded the CSI trucks' progress on the highway, Large did not conduct a traffic stop or detain the drivers. See United States v. Dortch, 868 F.3d 674, 677 (8th Cir. 2017) ("[A] person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." (alteration in original) (citation omitted)). Large motioned for the CSI drivers to pull over and called law

enforcement for assistance, but there is no evidence in the record that the CSI drivers were not free to simply turn around and drive away before law enforcement arrived. Indeed, in his deposition testimony, Large acknowledged that he did not have the authority to perform a traffic stop, stating instead that his authority as County Engineer allowed him to close or control traffic on the highway in question. See id. ("Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." (quoting Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968)). Moreover, the record demonstrates that any detention or seizure occurred at the hands of law enforcement; it was law enforcement who cited one of the CSI drivers and who kept the same drivers on the side of the road until the ultimate conclusion of their investigation, a fact further evidenced by Large's departure from the scene before law enforcement concluded their investigation and released the drivers. The record reflects that Large, as County Engineer with responsibility for oversight of county roads, merely prevented the CSI trucks from traveling on a county highway before the drivers complied with his request to wait for the arrival of law enforcement. The record does not support the dissent's notion that Large's conduct amounted to an unlawful traffic stop.

Nor was it clearly established that the defendants could not change the weight restrictions in response to CSI's stated intention to use the CSAHs despite the lack of designation as a haul road or that Large could

not seek law enforcement's assistance in investigating CSI's trucks' weights after the weight limit change and CSI's stated intention to use the roads despite the reduction in weight limit. To find that a right is clearly established, we must find "controlling Eighth Circuit authority placing the question beyond debate, []or a 'robust consensus of cases of persuasive authority.'" De La Rosa v. White, 852 F.3d 740, 746 (8th Cir. 2017) (citation omitted). Far short of this standard, we find *no* cases considering this issue, or even cases considering remotely similar facts. We thus find that there was no clearly established right, and we therefore conclude that the district court properly granted summary judgment to Large on the basis of qualified immunity.

Although the district court also granted summary judgment to the County, it did so on the basis of qualified immunity, to which the County is not entitled. See Thurmond, 972 F.3d at 1013 ("Unlike the individual officers . . . , municipalities do not enjoy qualified immunity."). However, CSI's constitutional claims against the County fail for an independent reason, and we may affirm on any basis in the record. Interstate Bakeries Corp. v. OneBeacon Ins. Co., 686 F.3d 539, 542 (8th Cir. 2012) ("We may affirm the judgment of the district court 'on any basis disclosed in the record, whether or not the district court agreed with or even addressed that ground.'" (citation omitted)). In its amended complaint, CSI's constitutional claims against the County are premised solely upon the County's status as Large's employer. But a county cannot be held liable *solely* based on a theory of respondeat superior. Monell

v. Dep't of Soc. Servs., 436 U.S. 658, 691 (1978) ("[T]he language of § 1983, read against the background of the same legislative history, compels the conclusion that Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort. In particular, we conclude that a municipality cannot be held liable solely because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a respondeat superior theory."). As CSI's claim did not allege any policy or custom of the county related to Large's conduct, this claim fails as a matter of law. We thus affirm the grant of summary judgment to the County on CSI's constitutional claims.

B.

CSI finally argues that the district court erred in granting summary judgment to defendants on its state law claims, asserting that the district court erroneously concluded that CSI did not present sufficient evidence to sustain a trespass to chattel claim and engaged in inappropriate fact-finding regarding the tortious interference with contract claim, an error which it compounded by resolving the factual disputes in favor of defendants. We are unpersuaded by each of CSI's contentions.

As to the tortious interference with contract claim, under Minnesota law, "[a] cause of action for wrongful interference with a contractual relationship requires: '(1) the existence of a contract; (2) the alleged

wrongdoer's knowledge of the contract; (3) intentional procurement of its breach; (4) without justification; and (5) damages.'" Kjesbo v. Ricks, 517 N.W.2d 585, 588 (Minn. 1994) (en banc) (citation omitted). Tortious interference is a claim that is broader than a typical breach of contract claim, "in that the former includes 'any act injuring or destroying persons or property which retards, makes more difficult, or prevents performance, or makes performance of a contract of less value to the promisee.'" Cont'l Rsch., Inc. v. Cruttenden, Podesta & Miller, 222 F. Supp. 190, 198 (D. Minn. 1963) (quoting Royal Realty Co. v. Levin, 69 N.W.2d 667, 671 (Minn. 1955)). Thus, an explicit breach of contract is not required. Id. CSI asserts that it presented sufficient evidence to defeat summary judgment by demonstrating that defendants maliciously changed the weight limit and stopped CSI's trucks to interfere with CSI's performance of its contract with MnDOT. "A defendant may avoid liability, however, by showing that his actions were justified by a lawful object that he had a right to pursue." Langeland v. Farmers State Bank of Trimont, 319 N.W.2d 26, 32 (Minn. 1982) (en banc). "Ordinarily, whether interference is justified is an issue of fact, and the test is what is reasonable conduct under the circumstances. The burden of proving justification is on the defendants." Kjesbo, 517 N.W.2d at 588 (citation omitted).

CSI argues that justification "is a question of fact, which must go to a jury." Appellant Br. 37. However, while the Minnesota Supreme Court stated that justification as a defense to interference with a contract is

"ordinarily" a question of fact, it left open the possibility that, as here, cases may arise in which a court may determine that, as a matter of law, a defendant had justification for its alleged interference. Even when viewing the facts in the light most favorable to CSI, we agree with the district court that the record demonstrates that, as a matter of law, defendants had justification for their actions—the County and Large modified the weight restrictions on the roads due to Large's longstanding concern about the use of the roads as haul roads given their condition, which was confirmed by subsequent testing, and Large's concern that if CSI used a haul road without designation, the County would be left financially responsible for any damages to the roads. See Kjesbo, 517 N.W.2d at 588 ("There is no wrongful interference with a contract where one asserts 'in good faith a legally protected interest of his own . . . believe[ing] that his interest may otherwise be impaired or destroyed by the performance of the contract or transaction.'" (alterations in original) (citation omitted)). The record simply does not support a finding that Large and the County were unjustified in changing the weight restrictions.

Further, Large's responsibilities as County Engineer included oversight of all county roads, which provided him with "a lawful object that he had a right to pursue" in the form of ensuring compliance with the new weight restrictions. See Langeland, 319 N.W.2d at 32. Although the record does support the inference that defendants were motivated by CSI's statement that it intended to utilize non-designated roads, defendants'

protection of the interests of Mahnomen County does not undercut the justification for their actions, regardless of the consequences CSI complained it suffered in the form of project delays and related costs. See Spice Corp v. Foresight Mktg. Partners, Inc., Civil No. 07-4767 (JNE/JJG), 2011 WL 6740333, at *19 (D. Minn. Dec. 22, 2011) ("Every business decision is likely to have downstream consequences. . . . Mere knowledge that a decision might affect other parties' contracts is not the same as intentional, unjustified interference."). Because defendants were justified, as a matter of law, in changing the weight restrictions and stopping CSI's trucks, the district court properly granted summary judgment to defendants on CSI's tortious interference claim.

As to the trespass to chattel claim, under Minnesota law, "[a] trespass to chattel may be committed by intentionally (a) dispossessing another of the chattel, or (b) using or intermeddling with a chattel in the possession of another." Olson v. LaBrie, No. A12-1388, 2013 WL 1788531, at *3 (Minn. Ct. App. Apr. 29, 2013) (quoting Restatement (Second) of Torts § 217).[2] "'Trespass to chattel differs from conversion

[2] This opinion was designated as unpublished by the Minnesota Court of Appeals and may be used as precedent only in certain enumerated circumstances, pursuant to Minn. Stat. § 480A.08 subdiv. 3. However, when interpreting state law, "[if] the highest state court has not decided an issue we must attempt to predict how the highest court would resolve the issue, with decisions of intermediate state courts being persuasive authority." Progressive N. Ins. Co. v. McDonough, 608 F.3d 388, 390 (8th Cir. 2010). The Minnesota Supreme Court has recognized the tort of trespass to chattel as stated in the Restatement (Second) of Torts, see

"only in degree'" and 'typically involves less than a complete divestment of the plaintiff's possessory rights in his property.'" Strei v. Blaine, 996 F. Supp. 2d 763, 792 (D. Minn. 2014) (citation omitted).

> Dispossessing includes taking the chattel from the person in possession without his consent, obtaining possession of the chattel by fraud or duress, "barring the possessor's access to the chattel," or destroying the chattel while it is in another's possession. [Restatement (Second) of Torts] § 221 (1965). "Intermeddling" means intentionally coming into physical contact with the chattel. Id. § 217 cmt. e (1965). Liability arises if the defendant dispossesses the possessor of the chattel, impairs its condition, quality, or value, or deprives the possessor of the chattel's use for a substantial period of time. Id. § 218 (1965)[.]

Olson, 2013 WL 1788531, at *3.

CSI asserts that it has offered sufficient evidence to defeat summary judgment, arguing that Large exercised control over the CSI trucks when he used his truck to physically block them from continuing and detained them for roughly three hours. But Minnesota law demands something more than the evidence CSI

Herrmann v. Fossum, 270 N.W.2d 18, 20-21 (Minn. 1978), but we find no other authority from the Minnesota Supreme Court delineating the contours of a trespass to chattel claim. We rely on Olson as persuasive authority as to how the Minnesota Supreme Court would address a trespass to chattel claim; however, we note that Olson largely recounts the standards set forth in the Restatement, which the Minnesota Supreme Court has adopted.

has presented; Large's impeding the path of the trucks is not a sufficient exercise of control to sustain a trespass to chattel claim. Large did not dispossess the drivers of the trucks, nor did he bar the drivers of CSI's trucks from access to their trucks or make physical contact with either truck. Large merely impeded their forward progress, and there is nothing in the record suggesting that Large forcibly detained the drivers. Although Large told the drivers to wait until law enforcement arrived, the record does not suggest that he used any force that would amount to trespass to achieve this aim, nor does the record reflect that the three-hour delay was caused by Large. Because Large did not exercise the requisite dominion and control over CSI's trucks, the district court properly granted summary judgment in favor of defendants on the trespass to chattel claim.

III.

For the foregoing reasons, we affirm the judgment of the district court.

GRASZ, Circuit Judge, concurring in part and dissenting in part.

There's a new sheriff in town.

Today, the court holds that a local official in charge of road design and maintenance is entitled to summary judgment on a claim against him for exercising the

authority of a law enforcement officer and making traffic stops and seizing vehicles and their drivers.[3] The holding implicitly cloaks such officials with near-absolute immunity for their actions since there are no existing cases circumscribing or defining the scope of this newly discovered, unwritten law enforcement authority. Because this holding runs counter to precedent dictating qualified immunity is not available in this context,[4] I respectfully dissent from those portions of the court's opinion granting qualified immunity to County Engineer Jonathan Large as to CSI's Fourth

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[3] The court claims Large did not make a traffic stop or detain the drivers, and opines "there is no evidence in the record that the CSI drivers were not free to simply turn around and drive away before law enforcement arrived." *Ante*, at 8. Putting aside the practical question of whether a truck that big could just "turn around" on a county road, the court's characterization of the encounter is impermissible at the summary judgment stage. We are supposed to resolve all facts in favor of the non-moving party. The driver of the first truck stopped by Large asserted that "Large used his vehicle as a roadblock to block CSI's truck for [sic] continuing." Decl. of Peggy Strommen, ¶ 1, ECF No. 74. After the driver stopped the truck, Large called law enforcement and told the driver she "had to wait until law enforcement arrived." *Id.* at ¶ 2. She claimed she was "detained from 2:11 until 5:30 p.m." *Id.* Viewing the facts in the light most favorable to CSI, this was in fact a stop and detention.

[4] The district court also wrongly determined Mahnomen County was entitled to qualified immunity. Qualified immunity is simply not available to a county. *See Walden v. Carmack*, 156 F.3d 861, 868 (8th Cir. 1998) (holding a county's argument that it was entitled to qualified immunity was "without merit because a municipality may not assert qualified immunity as a defense"). However, I concur with the panel in its alternative ground for affirming judgment in favor of the County as to CSI's constitutional claim.

Amendment unlawful seizure claim and Fourteenth Amendment equal protection claim.

I.

The court's analysis of CSI's Fourth Amendment unlawful seizure and Fourteenth Amendment equal protection claims against Large "begins and ends" with its qualified immunity analysis. *Ante*, at 7. But qualified immunity is not applicable here.

We have "held that an official acting outside the clearly established 'scope of his discretionary authority is not entitled to claim qualified immunity under § 1983.'" *Johnson v. Phillips*, 664 F.3d 232, 236 (8th Cir. 2011) (quoting *Hawkins v. Holloway*, 316 F.3d 777, 788 (8th Cir. 2003)). In doing so we "adopted the rationale [of the Fourth Circuit] in *In re Allen*, 106 F.3d 582 (4th Cir. 1997)." *Id.*

The question, then, is what authority Large had as a county engineer. But first, it is important to identify what this inquiry entails and what it does not.

"In determining the scope of an official's authority, and whether the act complained of was clearly established to be beyond that authority, the issue is neither whether the official properly exercised his discretionary duties, nor whether he violated the law." *Allen*, 106 F.3d at 594. "Instead, a court must ask whether the act complained of, if done for a proper purpose, would be within, or reasonably related to, the outer perimeter of an official's discretionary duties." *Id.*

And whether Large's seizure of CSI's trucks was "clearly established" as beyond his authority is not a function of finding similar cases involving road engineers making traffic stops. Rather, it entails reviewing the statutes governing county engineers in Minnesota. *See Johnson*, 664 F.3d at 239 (analyzing a city ordinance to determine whether an Auxiliary Reserve Police Officer had the power to arrest or search incident to arrest and holding that because he did not, he was not entitled to qualified immunity); *Allen*, 106 F.3d at 595 (relying on the Supreme Court cases of *Doe v. McMillan*, 412 U.S. 306, 321–24 (1973), and *Barr v. Matteo*, 360 U.S. 564, 574–75 (1959) (plurality opinion), for the proposition that "the scope of an official's authority depends upon an analysis of the statutes or regulations controlling the official's duties").

II.

So, the task before us is to look to Minnesota law to see whether making traffic stops, enforcing traffic laws, or seizing and detaining vehicles and drivers to investigate potential weight limit violations is within Large's discretionary authority. It is not.

To begin with, there is no statute giving a county engineer authority to stop and detain individuals. The governing statute provides, "The county board of each county shall appoint and employ . . . a county highway engineer who may have charge of *the highway work* of the county and the forces employed thereon, and who shall make and prepare all surveys, estimates, plans,

and specifications which are required of the engineer." Minn. Stat. § 163.07, subdiv. 1 (emphasis added). And a separate statute, Minn. Stat. § 163.02, subdiv. 3 provides, "The county board, or the county engineer if so authorized by the board, may impose weight and load restrictions on any highway under its jurisdiction."

Nowhere is there the slightest hint in Minnesota law that a county engineer is a peace officer, a constable, or someone "charged with the enforcement of the law, *Green v. United States*, 289 F. 236, 238 (8th Cir. 1923),[5] so as to have authority to make arrests or seizures of persons on public highways. In *Allen*, the court noted that West Virginia law "narrowly circumscribes the powers of the Attorney General" of that state, and "that the Attorney General does not enjoy broad common law powers." 106 F.3d at 595–96. So too does Minnesota law narrowly circumscribe the powers of county engineers. Indeed, Minnesota courts do not liberally construe an official's authority to make investigatory stops. In *State v. Horner*, 617 N.W.2d 789, 793–94 (Minn. 2000), the Minnesota Supreme Court held that even "special deputies" (in that case, water patrol officers authorized "to enforce water safety laws") were not peace officers.[6] *Id.* at 793 (explaining "state law does

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[5] In *Green*, we explained that under the common law, four types of officials could conduct warrantless arrests in certain circumstances: a justice of the peace, a sheriff, a coroner, or a constable. 289 F. at 238 (citing 4 William Blackstone, *Commentaries*, *292).

[6] Under Minnesota transportation law, "'[p]olice officer' means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic rules." Minn. Stat. § 169.011,

not explicitly recognize a special deputy as a form of peace officer"). The court stated, "[W]e hesitate to liberally construe the definition of peace officer. . . . [I]t is a misdemeanor for anyone not a peace officer to perform an act reserved by law for licensed peace officers." *Id.* at 794. The court further held that, as private citizens, the deputies had no authority to make an investigatory stop. *Id.* at 795. As a result, the court affirmed the suppression of evidence the special deputies had gathered. *Id.* at 796.

If a water patrol officer authorized to enforce water safety laws does not have authority to make an investigatory stop under Minnesota law, then surely a county engineer does not. The Minnesota Supreme Court has described the duties of a county engineer: "The statute provides that he should have charge of the highway work of the county and the forces employed thereon[.]" *State ex rel. Sprague v. Heise*, 67 N.W.2d 907, 911 (Minn. 1954) (quoting *State ex rel. Michie v. Walleen*, 241 N.W. 318, 318 (Minn. 1932)). "He is the highest authority in the county as to his official duties; all road work in the county must be done under his supervision; the success of his department depends on his engineering technique." *Id.* (quoting same).

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subdiv. 56. And a "peace officer" is an official "licensed by the board" and "charged with the prevention and detection of crime and the enforcement of the general criminal laws of the state[.]" *Pena v. Kindler*, 863 F.3d 994, 998–99 n.4 (8th Cir. 2017) (quoting Minn. Stat. § 626.84, subdiv. 1(c)(1)).

Notably absent from the court's description of the duties are any that relate to those of a peace officer. As a county engineer, Large is not charged with detecting crime and enforcing the general criminal laws of the state of Minnesota. And even as a private citizen, he had no authority to make an investigative stop. *See Horner*, 617 N.W.2d at 795.

Put simply, Large is not a law enforcement officer. When he stopped and detained CSI's trucks and drivers, he possessed no warrant and had no authority to determine whether probable cause existed to seize CSI's trucks. Indeed, he had no authority to make traffic stops, enforce traffic laws, seize vehicles that may be in violation of weight limits, or detain drivers or vehicles to investigate violations of the law. Consequently, the doctrine of qualified immunity has no application to a county engineer in this situation, and Large cannot avail himself of its protections.

I cannot square the court's contrary conclusion with our decision in *Johnson*, or the Minnesota Supreme Court's decision in *Horner*. Accordingly, I respectfully dissent from the court's opinion as to the Fourth Amendment unlawful seizure claim.[7]

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[7] I also dissent from the court's opinion on the equal protection claim. It is true that a class-of-one equal protection claim generally cannot, without malicious conduct, be used to attack an officer's investigative decisions. *See Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 602–04 (2008); *Robbins v. Becker*, 794 F.3d 988, 995 (8th Cir. 2015). This is because such claims are deemed to be incompatible with the discretion held by law enforcement officers. *See id.*; *Novotny v. Tripp County*, 664 F.3d 1173, 1179

(8th Cir. 2011). But this principle has no application where, as here, the defendant is not a law enforcement officer. As discussed in the context of the Fourth Amendment unlawful seizure claim, Large had no law enforcement investigative authority and, therefore, no investigative discretion. Consequently, the class-of-one exception does not apply to this case. Large thus is not entitled to qualified immunity on CSI's Fourteenth Amendment equal protection claim.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Central Specialties, Inc.

Plaintiff,

v.

Jonathan Large and Mahnomen County,

Defendants.

MEMORANDUM OPINION AND ORDER
Civil No. 17-5276
(MJD/LIB)

Hugh D. Brown and Kyle E. Hart, Fabyanske Westra Hart & Thomson, PA, and Jeffrey A. Wieland, Moss & Barnett, Counsel for Plaintiffs.

Michael T. Rengel and Ryan D. Fullerton, Pemberton Law, P.L.L.P, Counsel for Defendants.

This matter is before the Court on Defendants' Motion for Summary Judgment. [Doc. No. 64]

I. Factual Background

In late 2016, Plaintiff Central Specialties, Inc. ("CSI") submitted the lowest bid to the Minnesota Department of Transportation ("MnDOT") for road work to be performed on State Highway 59 which spanned Becker, Polk and Mahnomen Counties. (Large Aff. ¶¶ 7 and 8; Ex. A.) As part of the contract, CSI was to propose haul roads to be used by CSI to haul material from the material pits located near the project. (Fullerton Aff, Ex. A (Sweep Dep. at 26).) Pursuant to its

"Standard Specifications for Construction" MnDOT has the ultimate authority to determine which roads will be used as haul roads. (Id. at 60, Ex. 7 (Specification 2051.3).)

Mahnomen County ("the County") asserts the selection of the haul road is significant to a county, as the county is responsible for the maintenance and upkeep of all of its county roads. (Large Aff. ¶ 2.) The type of use, weight and strain placed on the road, the existing condition of the road at the time of use and the time of year, all have an impact on the road. (Id. ¶ 3.)

Once a haul road is designated by MnDOT, the road is removed from county jurisdiction and MnDOT's contractors are permitted to use the road in connection with a project. See Minn. Stat. § 161.25. Once the haul road is released back to the county, state law requires MnDOT to reimburse the county for that use. Id.

The Standard Specifications for Construction apply to all MnDOT contracts, unless varied for a particular project. (Fullerton Aff., Ex. C.) Applicable here, Specification 1515, Control of Haul Roads, provides:

> Haul Roads are those public Roads (other than trunk Highways) that the Contractor may use for the purposes specified in 2051.2 "Maintenance and Restoration of Haul Roads, Definitions."
>
> Haul Roads do not include a connection between a natural material source and a public Road. The Contractor must secure the Rights Of Way for, construct, and maintain such connections between a material source and a public Road, without

compensation from the Department other than payment received for the Contract Items.

The Department may, but is not required to, designate haul Roads in accordance with Minnesota Statutes § 161.25. If the Department has made a written designation of a haul Road, then the Department will have jurisdiction over the public Roads and Streets included in such designation. The requirements of 2051, "Maintenance and Restoration of Haul Roads," will govern the maintenance and restoration of such haul Roads.

If the Department has not made a written designation of a haul Road, then the Contractor will be responsible for the following:

(1) Arranging for the use of Roads not under the jurisdiction of the Department,

(2) Performing any maintenance and restoration as required by the applicable Road authority as a condition of using such Road as a haul Road, and

(3) Paying any fees, charges, or damages assessed by the applicable Road authority as a condition of using such Road as a haul Road.

All actions and costs with respect to non-designated haul Roads will be without compensation from the Department, other than payment received for the Contract Items.

In preparing its Proposal, the Contractor is not entitled to assume that the Department will designate a haul Road, or that the haul Road

> designated will be the most convenient and direct route or not subject to reduced weight limits. The Department will not consider its decision to designate or not designate a requested haul route as a basis for a contract revision.

(Id.)

As the above specification makes clear, a contractor cannot assume a particular road will be designated the haul road for a particular project.

After CSI's bid was accepted, a preconstruction meeting was held in April 2017 at the MnDOT offices in Detroit Lakes, Minnesota. (Id., Ex. A (Sweep Dep. at 32).) At the meeting were CSI representative Alex Sweep, MnDOT project manager Ross Hendrickson, Mahnomen County Engineer Jonathan Large, as well as others involved in the Highway 59 project. (Id.) As County Engineer, Large is responsible for overseeing all county roads in Mahnomen County, and is responsible for the maintenance and upkeep of all county roads. (Large Aff. ¶ 2.) At this meeting, CSI proposed that it would ask MnDOT to designate County State Aid Highways ("CSAH") 5, 6 and 10 as the haul roads, as well as roads in other counties. (Id.) CSI also proposed that it would haul 80,000 pound loads across the haul roads, which would exceed the spring weight restrictions on those roads. (Id. at 34.) Large made it known at that meeting that he objected to the use of CSAH 5, 6 and 10 as haul roads because he knew those roads were in poor condition, and he did not believe they could sustain that type of load over the course of the project and because portions of CSAH 5 and 10

would be undergoing construction in 2017. (Large Aff. ¶ 10.)

On May 5, 2017, Large sent an email to his counter-part at Norman County to inform her of his intent to get an agreement for damages to haul roads with MnDOT. (Brown Decl., Ex. N.) He further stated: "I said we will need something like this in place prior to allowing CSI to haul, because if we don't there is no way MnDOT is going to be able to hold CSI accountable without a lawsuit . . . and we get the shaft." (Id.)

Another meeting was held on May 9, 2017, during which MnDOT informed CSI and Large that MnDOT would conduct testing on the proposed haul roads, including the use of a pavement rating van and a falling weight deflectometer. (Id. ¶ 11; Fullerton Aff., Ex. A (Sweep Dep., Ex. 3 (Hendrickson email dated May 10, 2017 to CSI and Large, in which he noted that MnDOT would not designate CSAH 5, 6 and 10 as haul roads pending further investigation of the condition of the roads in question).) The testing confirmed Large's concerns about the lack of strength of CSAH 5, 6 and 10. (Large Aff. ¶ 11.)

On or about May 18, 2017, Hendrickson spoke with CSI representatives and was informed that Large had told them that the County planned to leave the spring restrictions in place until MnDOT comes up with a plan in writing to compensate the County for damages on County routes. (Brown Decl, Ex. O.) Later that day, Hendrickson decided he was going to designate only some of the haul routes that CSI had

proposed, and that CSI would have to make arrangements with the governing authority with regard to the non-designated roads and fix any damage to those roads as a result of their use as a haul road. (Id., Ex. P.)

On May 26, 2017, MnDOT informed CSI that it would designate portions of CSAH 5 (9 ton portion) and 10 (9 ton portion) as haul roads with a nine-ton weight restriction and that it would designate CSAH 6 as a haul road with a seven-ton weight restriction. (Fullerton Aff. Ex. A (Sweep Dep., Ex. 5).) A map was also provided which set forth the routes to be used. (Id. Ex. 1.) MnDOT did not designate all of the haul roads proposed by CSI. (Id. Ex. 2.)

After construction began, CSI informed Large and MnDOT that CSI planned to use portions of CSAH 6 and 10 that were not designated as haul roads as a return route for its empty trucks starting the following week, and that it would continue using CSAH 5 and 10 (9 ton portion) into the west side of Mahnomen. (Id. Sweep Dep., Ex. 6 (email dated July 14, 2017).) Large responded by reiterating that CSAH 10 is not a haul road, and that the County does not have an arrangement with CSI to use that route. (Id.) He further stated that shouldering had not been completed on the road, and that the contractor completing the shouldering would be doing the work the following week, and pavement after that. He concluded by stating "I cannot allow this as a haul route at this time." (Id.) CSI responded that it believed it did not need an agreement to use the road as the road was open and they

would be using the road pursuant to the posted limits. (Id.) Large responded by telling CSI to "[m]ake all vehicle trips, both loaded and unloaded, between material sources and the project on designated haul roads." (Id.) Later that same day, CSI sent an email to Hendrickson stating: "Ross, Please designate these roads for the legal posted limits or direct us to not use the road." (Id.)

Hendrickson responded in an email dated July 17, 2017, in which he wrote: "Alex, Any use of the county roads is with an agreement between CSI and the local road authority per specification. MnDOT has already designated routes for this project as stated in a prior email; if you shall choose to use alternate routes, it is solely at the discretion of CSI and the local road authority." (Id.) Despite being told by MnDOT not to use the road without agreement with the local road authority, CSI responded that they would use the road with legal loads. (Id.)

During the morning of July 18, 2017, the Mahnomen County Board of Commissioners approved a change to the weight restriction on CSAH 10 from five-ton axle weight to five-ton total weight. (Id. Ex. A (Sweep Dep. at 12); Large Aff. ¶ 16.) Before noon that day, County employees posted the new restrictions. (Large Aff. ¶ 16.) Large spoke with Hendrickson just prior to 1 p.m. to inform him of the change in weight restriction on CSAH 10 and asked him to contact CSI and let them know of the weight change. (Id. ¶ 17.) Hendrickson then sent CSI an email at 1:19 p.m. notifying them of the weight change. (Id. Ex. B.)

At approximately 2 p.m., Large observed two CSI trucks operating on CSAH 10 in a Mahnomen County work zone. (Id. ¶ 18.) Initially, he did not know if the trucks were loaded, but he concluded that a loaded truck would have been in violation of the new weight restrictions, as well as the prior weight restriction, and an empty truck would have been in violation of the new weight restriction. (Id.)

Large motioned the drivers to pull over. (Id. ¶ 19.) The first CSI truck stopped by Large was driven by Peggy Strommen. (Strommen Decl. ¶ 1.) In her declaration, she said on July 18, 2017, she was stopped near the junction of CSAH 5 and 10 at approximately 2:11 p.m. when she encountered Large's vehicle blocking the road. (Id.) Large told her she couldn't haul on the road and then he pointed to the new weight restriction sign. (Id. ¶ 2.) She was then told she had to wait until law enforcement arrived. (Id.) A second CSI truck driven by Mark Koelln was also stopped. (Id.) She asserts she and Koelln were detained from 2:11 to 5:30 p.m. (Id.)

Large first called the local sheriff's office, who told him they did not have the capacity to address the reported situation, so the White Earth police department responded instead. (Large Aff. ¶ 19.) The White Earth Tribal Police did arrive on the scene, but they also determined they could not do anything, and that the State Troopers had to be called. (Brown Decl., Ex. K.)

When the State Troopers arrived at the scene, both CSI trucks were weighed, and Ms. Strommen was

told her truck exceeded the weight limit and would be issued a citation. (Id.)

Large asserts he remained on the scene for approximately two hours, after which he and the trucks were permitted to leave by law enforcement. (Id. ¶ 19.)

In an email sent the next morning, Alex Sweep wrote to Allan Minnerath, CSI owner and head project manager, that Mark Koelln had reported to him that while he and Strommen were stopped, he witnessed two separate county workers changing signs for CSAH 5 going east of CSAH 10 from 7 ton axle weight to 5 ton. (Brown Decl, Ex. R.) He also witnessed an Aggregate Industries mixing truck and another gravel truck drive by and that Large did not react. (Id.)

II. Standard for Summary Judgment

Summary judgment is appropriate if, viewing all facts in the light most favorable to the non-moving party, there is no genuine dispute as to any material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). The party seeking summary judgment bears the burden of showing that there is no disputed issue of material fact. Celotex, 477 U.S. at 323. "A dispute is genuine if the evidence is such that it could cause a reasonable jury to return a verdict for either party; a fact is material if its resolution affects the outcome of the case." Amini v. City of Minneapolis, 643 F.3d 1068, 1074 (8th Cir. 2011) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 252

(1986)). The party opposing summary judgment may not rest upon mere allegations or denials but must set forth specific facts showing that there is a genuine issue for trial. Krenik v. County of Le Sueur, 47 F.3d 953, 957 (8th Cir. 1995).

III. Discussion

CSI has asserted the following claims against Defendants: Count I – Violation of Fourth and Fourteenth Amendment Rights under 42 U.S.C. § 1983; Count II – Trespass to Chattels; Count III – Tortious Interference with Contract.

A. Section 1983

1. Qualified Immunity

A government official that is sued under Section 1983 in his individual capacity may raise the defense of qualified immunity. Sisney v. Reisch, 674 F.3d 839, 844 (8th Cir. 2012). "Qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Id. (citations omitted).

To determine whether Large is entitled to qualified immunity, the Court must conduct the following inquiry: "(1) whether the facts that a plaintiff has alleged . . . make out a violation of a constitutional right and (2) whether the constitutional right violated was

clearly established at the time of defendant's alleged misconduct." Id.

CSI asserts that Large violated its Fourth Amendment rights when he exceeded the scope of his duties by detaining two CSI trucks for over three hours. CSI further alleges that Defendants violated its rights under the Fourteenth Amendment by 1) depriving it of equal protection of the laws by selectively changing its road weight limits to damage CSI and then selectively enforcing those weight limits only against CSI; and 2) failing to give appropriate notice of the change in the road weight restrictions, and then depriving it of its liberty and property by detaining its trucks for over three hours.

a. Fourth Amendment Violation

CSI alleges that Large exceeded the scope of his duties when he detained two CSI trucks for over three hours. A "seizure" occurs "when there is some meaningful interference with an individual's possessory interests in that property." United States v. Jacobsen, 466 U.S. 109, 113 (1984). To be lawful, the seizure must be reasonable; that is based on "individualized suspicion of wrongdoing." City of Indianapolis v. Edmond, 531 U.S. 32, 37 (2000). An unreasonable seizure occurs "only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." Terry v. Ohio, 392 U.S. 1, 19 n. 16 (1968); see also California v. Hodari D., 499 U.S. 621, 627 (1991) (finding that an arrest requires either a

show of force or submission to the assertion of authority); United States v. Mendenhall, 446 U.S. 544, 554 (1980) (finding that "a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave").

CSI asserts the three-hour detention was a meaningful interference with its right to use its trucks, and that such seizure was not reasonable because it is not clear that holding the trucks for over three hours was necessary for road safety or that Large had the authority to do so. CSI further alleges that Large acted maliciously, because only CSI trucks were detained on the day in question while other similar trucks were allowed to use CSAH 10.

Under the facts presented in the case, the Court finds that even if a seizure occurred, the duration of the seizure was not overly long and was reasonable under the circumstances. Large, who is responsible for the maintenance and upkeep of county roads in the County, had sufficient reason to investigate upon witnessing the CSI trucks operating on CSAH 10 in obvious violation of the road posting and of his previous directives. The record is undisputed that a loaded truck would have violated the prior weight restrictions on CSAH 10 as well as the new restrictions put in place on July 18, 2017. (Fullerton Aff., Ex. A (Sweep Dep. at 12).) Further, when Large saw the two CSI trucks operating on CSAH 10 on July 18, 2017, and motioned for them to pull over, Large informed the drivers that he

was going to call law enforcement to the scene to handle the matter further.

But even assuming that CSI has established a violation of its Fourth Amendment rights, the Court finds that CSI has failed to put forth any authority or evidence demonstrating there is a bright-line rule that only a law enforcement officer may request that commercial activity on a public road come to a brief halt while compliance with local laws is confirmed. On the other hand, there is authority to support traffic control or detention mechanisms or actions taken by non-police officers. See e.g., Minn. Stat. § 629.37 (authorizing an arrest by private person under limited circumstances); Minn. Stat. § 169.06, subd. 4a ("A flagger in a work zone may stop vehicles, hold vehicles in place, and direct vehicles to proceed when it is safe.") Under these circumstances, the Court finds that Defendants are entitled to qualified immunity as to the Fourth Amendment claim.

b. Fourteenth Amendment Violation

CSI further alleges that Defendants violated its rights under the Fourteenth Amendment by 1) depriving it of equal protection of the laws by selectively changing its road weight limits to damage CSI and then selectively enforcing those weight limits only against CSI; and 2) failing to give appropriate notice of the change in the road weight restrictions, and then depriving it of its liberty and property by detaining its trucks for over three hours.

i. Procedural Due Process

"Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." Mathews v. Eldridge, 424 U.S. 319, 332 (1976). These types of claims are examined under a two-part test: "whether there exists a liberty or property interest which has been interfered with by the government"; and "whether the procedures attendant upon that deprivation were constitutionally sufficient." Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989). "An essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity or hearing appropriate to the nature of the case.'" Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542 (1985) (citation omitted).

CSI claims it had no notice that the weight restrictions had been changed on CSAH 10 before being deprived of its rights to use its trucks for allegedly violating the new weight restrictions. The record does not support this claim, however. Prior to the incident at issue here, CSI was aware of Large's concern of using CSAH 10 as a haul route, and that up until the CSI trucks were stopped, it knew that MnDOT and Large had not permitted the use of CSAH 10 as proposed. Further, CSI was notified of the change of the weight restrictions on CSAH 10 in an email from Hendrickson to Alex Sweep and Allen Minnerath of CSI at 1:19 p.m.,

and the CSI trucks were then stopped at 2:11 p.m. (Strommen Decl. ¶ 2.)

Finally, CSI has provided no authority suggesting that any pre-deprivation notice is required in the context of a traffic stop. Thus, even if there was a deprivation, CSI was entitled to no more notice than any other driver would be entitled to: a posting of the applicable weight restrictions. Minnesota law provides that notice of weight restrictions are to be given via a posted sign. Minn. Stat. § 169.87. In her declaration, driver Peggy Strommen states that Large told her she couldn't haul on the road and pointed to the posted sign. (Strommen Decl. ¶ 2.) That Strommen acknowledges a posted sign as to weight places the issue of whether or not CSI had notice of the change in weight beyond dispute.

Again, even assuming that CSI has established its constitutional rights under the Fourteenth Amendment were violated, the Court finds that CSI has failed to put forth any authority or evidence demonstrating there is a bright-line rule that a county or local authority cannot change its weight restrictions following credible indications that its roads will imminently come under increased load or traffic. Large, as county engineer, is charged with ensuring Mahnomen County roads are in good repair. He made his concerns known at the preconstruction meeting, and testing conducted by MnDOT confirmed his concerns. (Large Aff. ¶ 11.) CSI has not presented any testing of its own, only visual observation by CSI staff, to show that Large's concerns were unwarranted. Further, CSI has not

demonstrated that Large violated the law by keeping the spring weight restrictions in place longer than usual, or when he obtained permission from the County Board to change the posted weight restrictions on the portion of CSAH 10 at issue here. Accordingly, Defendants are entitled to qualified immunity on CSI's claim that Defendants violated its right to due process.

ii. Equal Protection Violation

> The Equal Protection Clause requires that the government treat all similarly situated people alike. The Supreme Court recognizes an equal protection claim for discrimination against a class of one. The purpose of a class-of-one claim is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. It is recognized law that a class-of-one claimant may prevail by showing she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.

Barstad v. Murray County, 420 F.3d 880, 884 (8th Cir. 2005) (citations omitted).

To prove an equal protection claim, a plaintiff must prove: the person, compared with others similarly situated, was selectively treated; and 2) that such selective treatment was based on impermissible considerations such as race, religion, intent to inhibit or punish the exercise of constitutional rights, or

malicious or bad faith intent to injure a person. Advantage Media LLC v. City of Hopkins, 379 F. Supp. 2d 1030, 1045-46 (D. Minn. 2005). Where a plaintiff constitutes a class of one and does not allege membership as part of a class or group, a plaintiff must establish 1) that he has been treated differently than others similarly situated; and 2) that there is no rational basis for the difference in treatment. Willowbrook v. Olech, 528 U.S. 562, 564 (2000).

CSI claims that Large deprived it of equal protection of the laws by changing the road weight specifically to damage CSI, and by selectively enforcing those weight limits only against CSI. It was only when CSI announced it would use CSAH 10 did Large seek to reduce the weight limitations on that road. Also, after Large stopped the two CSI trucks, Large allowed other similarly sized trucks to use CSAH 10 freely. CSI claims that Defendants have failed to show there was any rational basis for the difference in treatment. The Court disagrees.

The record supports a finding that Large had a rational basis to stop the CSI trucks. While CSI would attribute Large's actions to Large's personal malice, the record shows that CSI had indicated that it intended to use the roads notwithstanding MnDOT's refusal to designate them and remove them from County control, as well as Large specifically informing CSI not the use the road. (Fullerton Aff., Ex. A (Sweep Dep. Ex. 6).) Large had a rational basis to stop the CSI trucks because the road in question had not been designated a haul road, which meant the County could not have

looked to MnDOT to restore the roads or correct any damage done by CSI's hauling activities. (Id. Ex. D (MnDOT standard specification 2051.3).)

As to the claim of selective enforcement, CSI offers no authority supporting its position that every road restriction violation must be enforced against every single known violator of the restriction. For example, no court has held that an equal protection claim can stand where the alleged violation is simply that one speeding vehicle was pulled over while other cars sped by.

There is also no evidence other companies were treated differently than CSI. Knife River was present on CSAH 10 after the new weight restriction was posted because it was working in connection with a County project to complete the shouldering on that road. (Second Fullerton Aff., Ex. A (Large Dep. at 62).) Further, CSI has not put forth sufficient evidence to demonstrate there is a genuine issue of material fact that other trucks that were allowed to use the road on the day in question were similarly situated to the CSI trucks.

But even if CSI was targeted, Large had a rational basis for confronting CSI because CSI had already announced its intention to violate MnDOT's directive that CSI work with the County to arrange for hauling on County roads. Under these circumstances, the Court finds that CSI has failed to demonstrate that its rights to Equal Protection were violated. Accordingly, the Court finds that qualified immunity applies, and

CSI's claim of an Equal Protection violation must be dismissed.

B. Tortious Interference with Contract

CSI claims that Large intentionally and improperly prevented CSI from using CSAH 10 in the performance of its contract with MnDOT by maliciously changing the highway weight limit signs and stopping CSI's trucks thereby causing CSI to incur additional costs and expenses in the form of project delays and related costs.

A claim for tortious interference with contract has the following elements: 1) the existence of a contract; 2) knowledge of the contract by the alleged wrongdoer; 3) intentional procurement of its breach; 4) no justification for the interference; and 5) damages. Kjesbo v. Ricks, 517 N.W.2d 585, 588 (Minn. 1994). Where there is no induced breach of contract, recovery is possible where the defendant commits an act "injuring or destroying persons or property which retards, makes more difficult, or prevents performance" of the contract. Continental Research, Inc. v. Cruttenden, Podesta & Miller, 222 F. Supp. 190, 198 (D. Minn. 1963).

CSI argues that because there are fact questions as to whether the proposed roads were acceptable, summary judgment on this claim is inappropriate. In support, CSI refers to a parallel state court proceeding it has brought against MnDOT in which the court determined there were fact questions as to whether the proposed haul roads were "acceptable." (Brown Decl.

Ex. S at 6).) Assuming it will ultimately prove the roads were acceptable, CSI argues that MnDOT should have designated them, and CSI would have had a contractual right to use the haul roads in question.

Defendants argue, and the Court agrees, that whether the MnDOT contract was actually breached is not relevant to CSI's interference claim in this action because CSI has not alleged a tortious interference claim which arises from a breach of contract. Instead, CSI alleges that Large intentionally and maliciously prevented CSI from using CSAH 10 in the performance of its contract with MnDOT and that Large's actions caused CSI's performance to be more expensive. (Am. Comp. ¶¶ 52 and 53.)

CSI also claims that Large was not justified when he prevented CSI trucks from using CSAH 10 for hauling. First, CSI argues justification is typically a fact question reserved for a jury. Kjesbo, 517 N.W.2d 585, 588 (Minn. 1994). Second, there is evidence in the record that shows that the means by which Large interfered with CSI's contract were contrary to the law – that Large stopped the trucks despite knowing that he had no legal right to do so. Finally, CSI claims that Large acted improperly when he maintained the spring weight restrictions at improper times and for improper means. CSI argues that spring weight restrictions are typically imposed for an approximate eight week period, and if counties wish to impose continued weight restrictions, it can only do so where the road, by reason of rain, snow or other climatic conditions will be seriously damaged or destroyed unless the

use of vehicles thereon is prohibited or the permissible weights thereof reduced. Minn. Stat. § 169.87, subd. 1(a). CSI alleges that Large violated these requirements because he continued the spring weight restrictions long past the time they are usually removed in an effort to obtain additional repair money from MnDOT, and by doing so, Large was attempting to end run around the statutory scheme permitting MnDOT to take over haul roads in exchange for restoring the streets to as good condition as they were prior to the designation of the same as a temporary trunk highway. Minn. Stat. § 161.25.

"A defendant may avoid liability [for a tortious interference claim] by showing that his actions were justified by a lawful object that he had a right to pursue." Langeland v. Farmers State Bank of Trimont, 319 N.W.2d 26, 32 (Minn. 1982); Harman v. Heartland Food Co., 614 N.W.2d 236, 241 (Minn. Ct. App. 2000) (an action for interference with contract does not lie where the alleged interferer had a legitimate interest, economic or otherwise, in the contract and employed no improper means).

Here, there is no dispute that as county engineer, Large was responsible for overseeing all county roads and that they be properly maintained. (Large Aff. ¶ 2.) Further, a county engineer, if authorized by the county board, "may impose weight and load restrictions on any highway under its jurisdiction." Minn. Stat. § 163.02, subd. 3. The record further demonstrates that Large had concerns that portions of the proposed haul roads at issue could not sustain the type of load

proposed by CSI over the course of the project, and that his concerns were affirmed through MnDOT testing. (Id. ¶ 11.) Based on his concerns, and his knowledge that CSI intended to use a portion of CSAH 10 notwithstanding the fact it was not designated a haul road, Large concluded continued weight restrictions were appropriate. Thereafter, the county board authorized Large to modify the weight limits on CSAH 10 to impose additional restrictions. (Large Aff. ¶¶ 5 and 16.) Based on these undisputed facts, the Court finds that Large acted within the law when he maintained the spring weight restrictions and posted new weight restrictions on CSAH 10 on July 18, 2017. As a result, Large's exercise of authority over that road which was under his jurisdiction is not an unjustified and intentional interference into CSI's contract involving the desired use of that road. See Spice Corp. v. Foresight Marketing Partners, Inc., No. 07-4767, 2011 WL 6740333, at *19 (D. Minn. Dec. 22, 2011) ("Mere knowledge that a decision might affect other parties' contracts is not the same as intentional, unjustified interference.").

Based on the facts presented, and the applicable law, the Court finds that Defendants are entitled to summary judgment on its claim of tortious interference with contract as any interference by Large was justified.

C. Trespass to Chattels

A claim of trespass to chattels involves one who intentionally dispossessed another of the chattel or used or intermeddled with a chattel in the possession of another. Restatement (Second) Torts § 217 (1965). Such a claim "typically involves less than a complete divestment of the plaintiff's possessory rights in his property." Buzzell v. Citizens Auto. Fin., Inc., 802 F. Supp.2d 1014, 1024 (D. Minn. 2011). To succeed on a claim for trespass for chattels, a plaintiff must demonstrate the defendant's control over his property was wrongful or without legal justification. Strei v. Blaine, 996 F. Supp.2d 763, 792 (D. Minn. 2014).

> A trespass to a chattel may be committed by intentionally (a) dispossessing another of the chattel, or (b) using or intermeddling with a chattel in the possession of another." Restatement (Second) of Torts § 217 (1965). Dispossessing includes taking the chattel from the person in possession without his consent, obtaining possession of the chattel by fraud or duress, "barring the possessor's access to the chattel," or destroying the chattel while it is in another's possession. *Id.* § 221 (1965). "Intermeddling" means intentionally coming into physical contact with the chattel. *Id.* § 217 cmt. e (1965). Liability arises if the defendant dispossesses the possessor of the chattel, impairs its condition, quality, or value, or deprives the possessor of the chattel's use for a substantial period of time.

Olson v. Labrie, No. A12–1388, 2013 WL 1788531, at *3 (Minn. Ct. App. April 29, 2013).

CSI claims that summary judgment on this claim is inappropriate as there are fact questions as to whether Large intended to interfere with CSI's possessory rights to its trucks. However, even when viewing the facts in CSI's favor, CSI has failed to demonstrate that Large exercised any control over the trucks without legal justification. See Strei v. Blaine, 996 F. Supp.2d 763, 792 (D. Minn. 2014). Further, CSI must also show that the alleged intrusion over the trucks was for a substantial amount of time. Id. In this case, the trucks were stopped for approximately three hours, and during that time, there is no evidence that Large exercised the degree of dominion or control over the trucks or challenge CSI's ownership interest to support a claim of trespass to chattels. Accordingly, the Court finds that Defendants are entitled to summary judgment on this claim as well.

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment [Doc. No. 64] is **GRANTED.** This matter is hereby dismissed with prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date: August 31, 2020 s/ Michael J. Davis
Michael J. Davis
United States District Court

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-3027

Central Specialties, Inc.

Appellant

v.

Jonathan Large and Mahnomen County

Appellees

Appeal from U.S. District Court for the
District of Minnesota
(0:17-cv-05276-MJD)

ORDER

The petition for rehearing *en banc* is denied. The petition for rehearing by the panel is also denied.

Judge Grasz would grant the petitions for rehearing *en banc* and panel rehearing

January 11, 2022

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans Appellate

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

CENTRAL SPECIALTIES, INC., **Plaintiff,** **v.** **JONATHAN LARGE and MAHNOMEN COUNTY,** **Defendants.**	**Case No.: 0:17-CV-05276-MJD-LIB** **AMENDED COMPLAINT**

Plaintiff, Central Specialties, Inc., by and through its attorneys, for its complaint against Jonathan Large and Mahnomen County, states and alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this action against Mr. Large in his personal capacity pursuant to 42 U.S.C. § 1983 for his violations of Plaintiff's rights under the Fourth and Fourteenth Amendments to the United States Constitution, and also seeks recovery of damages resulting from his violations of state tort law.

2. Plaintiff brings this action against Mahnomen County as Mr. Large's employer pursuant to 42 U.S.C. § 1983 for Mr. Large's violations of Plaintiff's rights under the Fourth and Fourteenth Amendments to the United States Constitution, and also seeks recovery of

damages resulting from the County's violations of state tort law.

JURISDICTION AND VENUE

3. This Court has original jurisdiction over this action, pursuant to 28 U.S.C. § 1331, because Plaintiff's claims arise under 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution.

4. This Court has supplemental jurisdiction over Plaintiff's state law claims, pursuant to 28 U.S.C. § 1367, because those claims form part of the same case or controversy as Plaintiff's federal claim.

5. Venue in this District is proper under 28 U.S.C. § 1391 because Mr. Large and the County reside in this District and the events giving rise to Plaintiff's claim occurred in this District.

PARTIES

6. Plaintiff Central Specialties, Inc. ("Central Specialties") is a Minnesota corporation with its principal place of business located in Alexandria, Minnesota. Central Specialties is a general contracting construction company.

7. Defendant Jonathan Large is a resident of Mahnomen, Minnesota. At all times relevant hereto, Mr. Large was employed as the County Highway Engineer for the County of Mahnomen.

8. Mahnomen County is a political subdivision of the state of Minnesota.

STATEMENT OF FACTS

9. As of July 2017, Plaintiff was engaged in a contractual relationship with the Minnesota Dept. of Transportation ("MnDOT") for road work on State 2 Highway 59. The contract required constant use of Plaintiffs trucks for hauling excavation, base, millings and bituminous mix. Mahnomen County Highway 10, 6 & 5 were the most efficient and cost-effective route for Plaintiff to use in the performance of its contract.

10. Central Specialties contacted Mr. Large and expressed its interest in utilizing a recently reconstructed portion of Mahnomen County Highway 10 south of Highway 5 as a route for Central Specialties' empty trucks.

11. Throughout the spring and early summer of 2017, that portion of Mahnomen County Highway 10 was posted as open to trucks up to 5 ton axle weight.

12. That section of Mahnomen County Highway 10 was open to public use, but Central Specialties, out of courtesy, communicated with Mr. Large in an attempt to avoid any potential conflict their usage might have had with any ongoing construction work.

13. In response to Plaintiff's attempt to coordinate their use of the road, Mr. Large indicated his preference that such use by Central Specialties not occur during times at which Knife River Corporation ("Knife

River") was actively performing construction work on the road.

14. Central Specialties responded on Friday, July 14, 2017, indicating that it would begin sending its trucks on the route on Monday, July 17, 2017.

15. Mr. Large replied, stating that Central Specialties' should not use Mahnomen County Road 10 south of Highway 5 on Monday, July 17, 2017, because Knife River would be performing shoulder work on that day.

16. On the afternoon of Monday, July 17, 2017, after discovering that no construction was actively being performed and being assured by Knife River that no further construction was planned until Friday, Central Specialties started routing its empty trucks along that section of Mahnomen County Highway 10.

17. The road was open to traffic and Central Specialties' trucks met the posted 5 ton axle weight limitation.

18. At the time Central Specialties began using the road on Monday, July 17, 2017, it verified that the road was still posted as being usable by trucks with a 5 ton axle weight or less.

19. The next day, Tuesday, July 18, 2017, Central Specialties again began using the road for its empty trucks.

20. On July 18, 2017, Mr. Large appeared before the Mahnomen County Board and asked for

permission to repost weight limits on roads associated with the Highway 59 project. The Board granted Mr. Large's request.

21. That same day, after learning that Central Specialties had begun using the road, Mr. Large, and/or County employees under his direction, began changing signs on Mahnomen County Highway 10 south of Highway 5. The new signs drastically lowered the road's weight limitation from 5 ton axle weight to 5 ton total weight.

22. Shortly after Central Specialties began using the road on July 18, 2017, and as signs were still being changed, Mr. Large created a roadblock on northbound Mahnomen County Highway 10 south of Highway 5 using a Mahnomen County vehicle.

23. Mr. Large stopped two Central Specialties trucks and refused to remove his roadblock until Minnesota State Patrol arrived on the scene.

24. Mr. Large called law enforcement, who were only told that the trucks had been "stopped by the county." It was not until later that the Minnesota State Patrol learned that the trucks had been stopped by the county engineer, not by a law enforcement officer.

25. The Central Specialties trucks were detained by Mr. Large for more than three hours.

26. While Central Specialties' trucks were detained by Mr. Large, Mr. Large continued to direct county employees to change more truck weight

limitation signs, including signs for adjoining sections of Mahnomen County Highway 5.

27. Mr. Large also stated that he was also considering similarly changing signs on Mahnomen County Highway 10 north of Highway 5, which he knew Central Specialties was using as a haul route.

28. While Central Specialties' trucks were detained by Mr. Large, other large trucks passed by without being stopped.

29. In addition to the physical roadblock, Central Specialties, as a general contractor, believed it had little choice but to submit to Mr. Large's traffic stop because of Mr. Large's supervisory and policy-making authority with respect to much of the construction work in Mahnomen County.

30. Ultimately, Central Specialties' drivers did not receive citations because the Minnesota State Patrol determined that the trucks had been illegally stopped and detained by Mr. Large.

31. Mr. Large's unconstitutional seizure of Central Specialties' trucks caused harm to Central Specialties because it delayed its work.

32. Mr. Large is not entitled to qualified immunity. His authority as the County Highway Engineer does not include the power or discretion to conduct traffic stops. Mr. Large knew or should have known that, because he was not a law enforcement officer, it was unlawful for him to conduct a traffic stop. In light

of well-established law, Mr. Large's actions were objectively unreasonable.

33. Mr. Large is further not entitled to qualified immunity because his actions were intentional and malicious. Mr. Large ordered the change in posted weight limits solely to prevent use of the road by Central Specialties. And, he only stopped Central Specialties' trucks while permitting other trucks of similar size to pass.

34. Because of Mr. Large's actions, Central Specialties was forced to reroute its trucks for the duration of their ongoing construction project, causing project delays and additional costs.

CAUSES OF ACTION

Count I

Deprivation of Rights Under the Fourth and Fourteenth Amendments and 42 U.S.C. § 1983

35. Plaintiff incorporates all preceding paragraphs as if fully restated herein.

36. Plaintiff brings this action against Mr. Large in his individual capacity and against the County under a vicarious liability theory.

37. Mr. Large, in violation of Plaintiff's Fourth and Fourteenth Amendment rights, seized Plaintiff's vehicles and equipment, and detained its employees, by conducting an illegal and unreasonable traffic stop.

38. Mr. Large acted under color of state law. By using a marked Mahnomen County vehicle to illegally stop two Central Specialties trucks, Mr. Large misused power he possessed by virtue of state law. Mr. Large's misuse of power was made possible only because he was clothed with the authority of state law.

39. Mr. Large intentionally and maliciously abused his governmental authority by using a Mahnomen County vehicle to conduct an unauthorized traffic stop of Plaintiff's vehicles. Such actions unreasonably deprived Plaintiff of its Fourth and Fourteenth Amendment rights in violation of 42 U.S.C. § 1983. Mr. Large's wanton and oppressive actions represented a reckless and/or callous indifference to the constitutional rights of Plaintiff.

40. Because Mr. Large was not a law enforcement officer at the time he conducted the traffic stop, Mr. Large's seizure of Plaintiff's vehicles and employees was per se unreasonable in violation of Plaintiff's Fourth and Fourteenth Amendment Rights.

41. As a direct and proximate result of the foregoing, Plaintiff was damaged, including but not limited to project delays and related costs, as well as additional fuel and employee salary costs.

42. The County, as Mr. Large's employer, is also liable for the damages resulting from Mr. Large's actions.

Count II

Trespass to Chattels

43. Plaintiff incorporates all preceding paragraphs as if fully restated herein.

44. On July 18, 2017, Plaintiff was in possession of two trucks traveling northbound on Mahnomen County Highway 10.

45. Mr. Large intentionally blocked the road and prevented those trucks from continuing until law enforcement eventually arrived and allowed the trucks to depart.

46. Mr. Large's's actions deprived Plaintiff of the use of its trucks for more than three hours.

47. As a result of Mr. Large's's actions, Plaintiff suffered damages, including but not limited to costs of employee salaries and work delays.

48. As Mr. Large's employer, the County is also liable for the damages resulting from Mr. Large's actions.

Count III

Tortious Interference with Contract

49. Plaintiff incorporates all preceding paragraphs as if fully restated herein.

50. As of July 18, 2017, Plaintiff was engaged in a contractual relationship with MnDOT for roadwork on State Highway 59. The contract required constant

use of Plaintiffs trucks for hauling excavation, base, millings and bituminous mix. Mahnomen County Highways 10, 6 & 5 were the most efficient and cost-effective route for Plaintiff to use in the performance of its contract.

51. Mr. Large had knowledge of Plaintiff's ongoing contract requiring its use of Mahnomen County Highway 10, 6 & 5 or had knowledge of facts which, if pursued by reasonable inquiry, would have disclosed such relations.

52. Mr. Large intentionally and improperly prevented Plaintiff from using Mahnomen County Highway 10 in the performance of its contract with MnDOT by maliciously changing the highway weight limit signs and stopping Plaintiff's trucks that were using the route.

53. Mr. Large's's actions caused Plaintiff's performance under its contract with MnDOT to be more expensive and burdensome, causing Plaintiff to incur damages in the form of project delays and related costs, as well as additional fuel and employee salary costs.

54. The County, as Mr. Large's employer, is also liable for the damages resulting from Mr. Large's actions.

WHEREFORE, Plaintiff requests the following relief against Mr. Large and Mahnomen County:

a. Judgment in its favor against Defendants pursuant to 42 U.S.C. § 1983;

b. Compensatory damages in an amount to be determined by a jury;

c. Punitive damages in an amount to be determined by a jury;

d. Costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

e. Such other and further relief the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of any and all issues in this action so triable.

Dated: May 29, 2018 Respectfully submitted,

FABYANSKE, WESTRA, HART & THOMSON, P.A.

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