

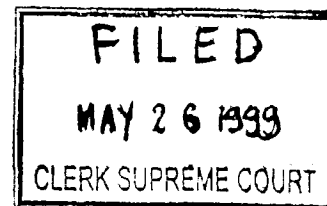
IN THE COURT OF APPEALS OF IOWA

No. 9-037 / 98-0881

JASON JOYCE,
Appellant,

vs.

CITY OF CRESTON,
Appellee.



Appeal from the Iowa District Court for Union County, William H. Joy, Judge.

Jason Joyce appeals a district court order granting defendant's motions for summary judgment in plaintiff's action for damages against the city based on an alleged sexual assault by a city police officer. **AFFIRMED.**

Theodore F. Sporer and Zorica Ilic of the Sporer Law Firm, P.C., West Des Moines, for appellant.

Wade R. Hauser III of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C., Des Moines, for appellee.

Heard by Sackett, C.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

Plaintiff-Appellant Jason Joyce appeals a district court order granting Defendant-Appellee City of Creston's motions for summary judgment in plaintiff's action for damages against defendant based on an alleged sexual assault by a city police officer. We affirm.

I. Factual Background. The City of Creston (hereinafter "Creston") hired police officer Rudy Saville on June 10, 1987. Saville had previously served with the cities of Osceola and Mount Ayr. In May 1988, Creston, through its chief of police Robert Kessler, learned Saville may have been involved in the alleged sexual abuse of a minor child. Specifically, Kessler discovered the mother of a second, different minor child had contacted Union County Sheriff John Coulter because of a concern with problems the child was having with police cars and Saville. During the conversation between the mother and Coulter, the mother was apparently led to believe Saville had been charged with child sexual abuse in Ringgold County in 1973 while he was employed with the Mount Ayr Police Department. During this conversation, the mother apparently made no specific allegations about Saville to Coulter.

Upon learning of this conversation, Kessler began an investigation into the Mount Ayr child abuse rumor as well as the problems the second minor child was allegedly having with police cars and Saville. He interviewed the minor child, his parents, Saville's past co-workers, and the parents of a third minor child who had also allegedly had problems with Saville. The second minor child gave conflicting

statements about his fear of the police. Saville's former co-workers stated they knew of no rumors of sexual misconduct by Saville and attested to his character. During the investigation, Saville was not questioned.

In late May 1988, Kessler completed a final report concerning his investigation and a copy was forwarded to the city mayor. Kessler reported the parents of the second minor child were allowed to read the statements of those interviewed during the investigation of Saville. He further reported the parents expressed satisfaction with the investigation and the father stated he had been "misinformed about everything." Kessler concluded in his final report and letter to the mayor that Coulter should have informed the parents that he had never verified Saville had been accused of wrongdoing in Mount Ayr, and his failure to do so implanted a false impression of Saville in the minds of the parents.

Kessler closed his investigation, noting in his opinion that Saville is a good, hard-working officer, accepts responsibility, and has had no unusual problems. Kessler later stated in his deposition he had not considered the investigation of the parents' concerns to be the result of a specific complaint against Saville. Rather, he stated he thought the matter was nothing more than a simple investigation of rumor.

On January 26, 1995, Jason Joyce told Chief Kessler that Officer Saville had sexually assaulted him earlier that day. Joyce claims the incident occurred in a secluded location, in one of Creston's squad cars, while Saville was on duty and after

Joyce and Saville had been riding around in the squad car together for some time.¹ Saville was subsequently suspended pending a full investigation. He committed suicide a few days later on January 31, 1995.

II. Procedural Background. On January 23, 1997, Joyce filed a petition in the Union County District Court stating several causes of action. For purposes of this appeal, Joyce stated two claims: (1) City of Creston is vicariously liable for the wrongful acts of Rudy Saville; and (2) City of Creston is liable for wrongful acts in hiring, training, and supervising Saville. Creston subsequently filed a motion for summary judgment on both claims. Creston later withdrew the second part of its motion, reserving the right to augment and refile at a later date.

On September 23, 1997, the district court granted Creston's motion for summary judgment on Joyce's vicarious liability claim. The court found Creston was not vicariously liable for Saville's alleged sexual assault because those actions were, as a matter of law, outside the scope of Officer Saville's employment or duties.

On January 20, 1998, Creston filed a second motion for summary judgment on the claim it was liable for wrongful acts in hiring, training, and supervising Saville. Joyce filed a memorandum brief in resistance to the motion on training and supervision grounds.² On March 23, 1998, the district court granted Creston's second

¹ The record reveals that Joyce and Saville were acquainted prior to the time of the alleged incident and that Joyce had previously accompanied Saville on several police "ride alongs" similar to the one in question here.

² Joyce admitted in his resistance brief, and does on appeal as well, that there is insufficient evidence to maintain a cause of action for negligent hiring.

summary judgment motion, finding the hiring, supervision, and retaining decisions involved a discretionary function, thereby immunizing Creston from liability on those claims. On April 24, 1998, the court denied Joyce's 179(b) motion to amend and enlarge findings. On April 24, 1998, Joyce filed his notice of appeal.

Joyce argues on appeal the district court erred in: (1) concluding there was no question of material fact as to the municipal employee's scope of employment since the instrumentalities of a police officer's employment relationship was instrumental in his ability to perpetrate a sexual battery; (2) granting summary judgment where a fact issue remained regarding the duty and breach elements of his negligence claim; and (3) granting summary judgment since the discretionary function exemption does not immunize the defendant.

III. Vicarious Liability. On appeal of this issue, we are preliminarily faced with a jurisdictional question raised by Creston. The court's jurisdiction over a case may be questioned at any time. *See State v. Soppe*, 374 N.W.2d 649, 651 (Iowa 1985)

Our rules of appellate procedure require notices of appeal to "specify the parties stating the appeal and the decree, judgment, order or part thereof appealed from." Iowa R. App. P. 6(a). In ascertaining whether a notice of appeal satisfies this requirement, we are guided by the principles established in *Hawkeye Sec. Ins. Co. v. Ford Motor Co.*, 199 N.W.2d 373, 378 (Iowa 1972), and reiterated in *Miller v. Wellman Dynamics Corp.*, 419 N.W.2d 380, 382 (Iowa 1988). In discussing rule 336, the predecessor to current rule 6(a), the *Hawkeye* court stated:

Substantial compliance with the provisions of rule 336 is sufficient. In considering the sufficiency of the content of the notice we now hold that if the intent of the appellant to appeal from a judgment may be inferred from the text of the notice and if the appellee has not been misled by the defect the appeal will be entertained. This more liberal rule of construction is consistent with our oft repeated preference for disposition of cases on the merits and not on mere technicalities.

Hawkeye Sec. Ins. Co. v. Ford Motor Co., 199 N.W.2d 373, 378 (Iowa 1972), *quoted in Miller v. Wellman Dynamics Corp.*, 419 N.W.2d 380, 382 (Iowa 1988) (citations omitted). Thus, substantial compliance with the notice requirements of Iowa Rule of Appellate Procedure 6(a) is sufficient so long as the notice does not confuse, mislead, or prejudice the appellee. *See McBride v. City of Sioux City*, 444 N.W.2d 85, 88 (Iowa 1989).

Joyce's notice of appeal stated the following:

COMES NOW the Plaintiff, Jason Joyce, by and through his undersigned counsel and hereby gives notice pursuant to Iowa R. App. Pro. 6 of his appeal to the Supreme Court of the State of Iowa of all judgments adverse to him in the Order of this Court dated April 24, 1998 and certifies that said Order is final judgment within the meaning of Iowa R. App. Pro. 1 and that said controversy meets the requirements for an appeal to the Iowa State Supreme Court.

Joyce's notice of appeal plainly states he seeks appeal on the order dated April 24, 1998. Under our case law, the April 24 order on Joyce's motion to amend and enlarge encompasses the original order to which it applies. *Cf. In re Guardianship and Conservatorship of Ankeney*, 360 N.W.2d 733, 735-36 (Iowa 1985) (earlier order granting visitation inhered in subsequent order establishing a visitation schedule). However, the September 23, 1997 ruling (summary judgment on vicarious liability), was not specifically referenced in either the March 23, 1998 ruling or in the April 24,

1998 ruling. Nor did those rulings address the issues ruled upon in the September 23 ruling. For these reasons, we cannot say the earlier September 23 ruling inheres in those later rulings. *Cf. Jensen v. State*, 312 N.W.2d 581, 583 (Iowa 1981) (rulings on application for postconviction relief and on motion to correct sentence did not “inhere” in trial court’s earlier judgment of sentence from which defendant appealed).

There is no reference in the March 23 and April 24 rulings to other summary judgment rulings nor an inference in the notice of appeal that Joyce meant also to appeal other summary judgment rulings. We thus determine Joyce has not complied with our rules of appellate procedure with regard to his vicarious liability summary judgment claim. *Cf. McBride v. City of Sioux City*, 444 N.W.2d at 88 (although text of plaintiff’s notice of appeal referred only to a final judgment in a slander trial, plaintiff’s post-trial 179(b) motion also referred to earlier civil service and termination summary judgments; therefore, from this information, the defendant could discern plaintiff’s intent to appeal from the earlier summary judgment as well); *In re Guardianship and Conservatorship of Ankeney*, 360 N.W.2d at 735–36 (determining a notice of appeal on a later order sufficiently included an appeal of a directly related earlier order where, among other things, the notice of appeal stated the appellant “hereby appeals to the Supreme Court of Iowa from the order entered in this matter . . . and from each and every order and ruling inhering therein”).

We agree issues should be disposed of on the merits and not on mere procedural technicalities. We also recognize Creston has not shown it has been confused, misled, or prejudiced by the appellant’s notice of appeal. Nevertheless, it

is inappropriate to entirely ignore our rules of appellate procedure. *See Jensen v. State*, 312 N.W.2d at 582 (“[T]his court has a duty to determine its own jurisdiction and to refuse . . . to entertain an appeal not authorized by rule.”); *Uchtorff v. Dahlin*, 363 N.W.2d 264, 267 (Iowa 1985) (determining the court lacks subject matter jurisdiction may cause a seemingly harsh result, but it nevertheless reflects the seriousness with which courts view jurisdictional matters). Joyce has neither technically nor substantially complied with our appellate notice rules. Therefore, we lack jurisdiction to review Joyce’s vicarious liability claim. We now turn to Joyce’s negligence arguments arising out of the summary judgment ruling entered on March 23, 1998.

IV. Negligence. Joyce contends the district court erred in granting Creston’s motion for summary judgment on Joyce’s claims Creston negligently trained and supervised Saville. We disagree.

A. Scope of Review. Review of an appeal from a summary judgment generally involves a two-step process. *See Diggan v. Cycle Sat, Inc.*, 576 N.W.2d 99, 102 (Iowa 1998) (first, examining the entire record to determine whether genuine issues of material fact exist; and second, if no factual dispute exists, determining whether the district court correctly applied the law).

However, our courts have implicitly held that whether a governmental subdivision has immunity under Iowa’s Tort Liability of Governmental Subdivisions Act, Iowa Code section 670.4(3) (1997), is a question of law. *See Keystone Elec. Mfg. v. City of Des Moines*, 586 N.W.2d 340, 342 (Iowa 1998). It is also a question

of subject matter jurisdiction. *Cf. Lloyd v. State*, 251 N.W.2d 551, 556 (Iowa 1977) (discretionary function exception under the State Tort Claims Act is a subject matter prohibition); *Morris Plan Co. v. Bruner*, 458 N.W.2d 853, 857 (Iowa App. 1990) (district court is without subject matter jurisdiction to decide a case involving an exercise, by State employees, of a discretionary function). Because subject matter jurisdiction is a purely legal question, our review is at law for correction of legal errors. *See* Iowa R. App. P. 4; *Wilson v. IBP, Inc.*, 558 N.W.2d 132, 137 (Iowa 1996) (appellate review of proceedings concerning subject matter jurisdiction is at law for legal errors); *S.S. v. Iowa Dist. Court*, 528 N.W.2d 130, 132 (Iowa 1995) (subject matter jurisdiction is a legal question).

In granting Creston's motion for summary judgment, the district court found training, supervision, and retaining decisions involved discretionary policy making, and therefore immunized the city from liability under the Municipal Tort Claims Act. *See* Iowa Code ch. 670 (1997).³ On appeal, Joyce argues that on the record, a reasonable trier of fact could find the Creston Police Department had a duty under its

³ For purposes of this appeal, the most pertinent part of the Municipal Tort Claims Act reads:

670.4 Claims Exempted. The liability imposed by section 670.2 shall have no application to any claim enumerated in this section.

3. Any claim based upon an act or omission of an officer or employee of the municipality, exercising due care, in the execution of a statute, ordinance, or regulation whether the statute, ordinance or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the municipality or an officer or employee of the municipality, whether or not the discretion is abused.

Iowa Code § 670.4(3) (1997).

own police manual to investigate complaints lodged against its police officers, it breached this duty with regard to Officer Saville, and therefore the retention of Saville was not a policy decision subject to immunity.

Joyce implies summary judgment is not the proper forum for disposing of his claims. However, as we noted above, whether Creston is immune from liability under the discretionary function exception is a question of law. Summary judgment, therefore, is a proper mechanism for resolving his claims.

B. Applicable Law and Analysis. Our state courts have regularly looked to federal decisions for guidance in applying our Iowa State Tort Claims Act; we do so again today. *See Goodman v. City of Le Claire*, 587 N.W.2d 232, 236 (Iowa 1998) (holding federal decisions are relevant interpreting the federal immunity provision are persuasive authority in our interpretation of the municipal immunity provision); *Feltes v. State*, 385 N.W.2d 544, 547 (Iowa 1986) (the legislature intended the Iowa State Tort Claims Act to have the same effect as the Federal Tort Claims Act, and for this reason we give great weight to relevant federal decisions interpreting the federal act).

Joyce in part argues there are factual disputes between the parties regarding the extent of Creston's investigation, and that a jury should have been permitted to settle these disputes. However, those disputes are irrelevant to determining whether the city's acts were discretionary. *See Barnson v. United States*, 816 F.2d 549, 553 (10th Cir. 1987); *Hylin v. United States*, 755 F.2d 551, 553 (7th Cir. 1985).

As a matter of law, we will determine whether the Creston Police Department had discretion in conducting its investigation of Officer Saville. If so, Joyce has no

claim against the city concerning the conduct of that investigation, even if it was allegedly conducted negligently. If, on the other hand, we determine the city did not have discretion in conducting its investigation, the discretionary function exception will not immunize the city from liability.

Our review of discretionary function claims is controlled by our Supreme Court's recent decision in *Goodman v. City of Le Claire*, 587 N.W.2d 232 (Iowa 1998). In that decision, the court first held the planning/operational dichotomy announced in *Dalehite v. United States*, 346 U.S. 15, 73 S. Ct. 956, 97 L. Ed. 1427 (1953), and followed by our courts in *Keystone Elec. Mfg. v. City of Des Moines*, 586 N.W.2d 340, 347 (Iowa 1998); *Butler v. State*, 336 N.W.2d 416, 419 (Iowa 1983); and *Stanley v. State*, 197 N.W.2d 599, 603 (Iowa 1972), would no longer be used to determine whether challenged action fell within the discretionary function exception to governmental tort liability. See *Goodman v. City of Le Claire*, 587 N.W.2d at 238. Instead, the court held the two-part federal test outlined in *Berkovitz v. United States*, 486 U.S. 531, 108 S. Ct. 1954, 100 L. Ed. 2d 531 (1988), and expounded upon in *United States v. Gaubert*, 499 U.S. 315, 111 S. Ct. 1267, 113 L. Ed. 2d 335 (1991), would control such determinations under our state and municipal tort claims acts. *Id.*

Under *Goodman*, we first consider the nature of the conduct and determine whether it involves an element of judgment or choice. See *Goodman v. City of Le Claire*, 587 N.W.2d at 237. "Government conduct does not involve an element of judgment or choice, and thus is not discretionary, if 'a federal statute, regulation, or policy specifically prescribes a course of action for an employee to follow, because

the employee has no rightful option but to adhere to the directive.” *Ochran v. United States*, 117 F.3d 495, 499 (11th Cir. 1997) (quoting *Gaubert v. United States*, 499 U.S. at 322, 111 S.Ct. at 1273, 113 L.Ed.2d at 346 (citations and quotations omitted)); see also *Goodman v. City of Le Claire*, 587 N.W.2d at 237.

Second, “if the conduct at issue involves the exercise of judgment, we must determine whether that judgment is grounded in considerations of public policy.” *Ochran v. United States*, 117 F.3d at 499 (citing *Gaubert v. United States*, 499 U.S. at 322, 111 S. Ct. at 1273, 113 L. Ed. 2d at 346); see also *Goodman v. City of Le Claire*, 587 N.W.2d at 237. In particular, “a court must determine whether that judgment is of the kind that the discretionary function exception was designed to shield.” *Goodman v. City of Le Claire*, 587 N.W.2d at 237 (quoting *Berkovitz v. United States*, 486 U.S. at 536, 108 S. Ct. at 1959, 100 L. Ed. 2d at 54). We must bear in mind:

[t]he basis for the discretionary function exception was Congress’ desire to “prevent judicial ‘second-guessing’ of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort.”

Id.

Joyce argues Creston’s conduct in investigating Saville is not protected by the discretionary function exception because such conduct is specifically prescribed by the City of Creston Police Manual. His argument is premised on the following passage of the manual:

All complaints made by citizens or other persons against members of the police department shall be thoroughly investigated. The results of

such investigation put in writing with such remarks as may be necessary, together with the original complaint, and any transcripts that may be taken, shall be forwarded to the chief of police.

Joyce argues this policy requires a specific course of action. To wit, that citizen complaints against Creston police officers be thoroughly investigated. Joyce apparently contends Creston did not conduct a “thorough investigation” of the 1988 incident and that it had no discretion to do otherwise. Joyce charges failure to conduct a thorough investigation led to the negligent retention of Saville.

We agree the cited passage requires the police department to investigate complaints made against police officers.⁴ There is no discretion in this matter shielding the department from liability under the tort claims act.

We are not convinced, however, the cited passage governs the situation presently before us. A complaint connotes something concrete. That is, something more than mere rumor or speculation. Having reviewed the record, we do not believe the police department was presented with a “complaint” of the type requiring investigation under its police manual rules. Sheriff Coulter offered the following testimony in his deposition:

Q. Sheriff Coulter, when you talked to [the mother] in May or thereabouts in 1988, did she make any specific allegation of an incident of sexual misconduct between Officer Saville and her son?

A. No. It was not a specific allegation. It was a concern that that might be a — might be going on. She didn’t give me a date, time, place

⁴ Because the issue has not been raised, we assume without deciding, for purposes of this appeal, the police manual cited by Joyce is the type of statute, ordinance, or regulation which could be considered in determining whether police have performed or failed to perform a discretionary or nondiscretionary function.

that her son had said this happened or anything. She was just concerned that that might be a possibility.

Creston Police Chief Kessler offered similar testimony:

Q. Could you tell me the difference between the complaints that you heard in 1988 and Jason Joyce's complaints?

A. 1988, I never heard a complaint. I heard rumors. After finding out where the rumor started from, I started an investigation.

We do not believe a "complaint" was actually lodged against Saville. Rather, in 1988 a general observation was expressed by a mother regarding her child's apparent fear of the police. In particular, we note there were no specific allegations made against Saville. Not faced with a "complaint" as contemplated by its police manual investigation guidelines, the Creston Police Department was therefore not obligated pursuant to those guidelines to conduct an investigation. Whether Joyce contends Creston did or did not properly conduct a thorough investigation is irrelevant because the regulation requiring a "thorough investigation" is inapplicable.

Even assuming, *arguendo*, the 1988 incident amounted to a complaint requiring investigation, we cannot say Creston failed to uphold its investigatory obligations. Joyce argues the city was specifically directed to conduct a "thorough investigation" of the alleged misconduct. Though he points to no regulations that define "thorough investigation," he claims a reasonable trier of fact could determine a thorough investigation was not conducted because Creston did not interview Saville or other "important" witnesses.

Whether a reasonable trier of fact could find Creston did not conduct a thorough investigation is not the question that must be answered. Rather, Joyce must show Creston lacked discretion in conducting the investigation of Saville as a matter of law by virtue of some statute, regulation, or departmental policy. Joyce's claim fails in this regard. He points to no regulations defining what the police department must do in conducting a "thorough investigation." He has not even shown the existence of any departmental policies or other informal guidelines that indicate lack of discretion in conducting investigations of police officers. *See Irving v. United States*, 162 F.3d 154, 164–65 (1st Cir. 1998) (citing *United States v. Gaubert*, 499 U.S. at 324, 111 S.Ct. at 1274–75, 113 L.Ed.2d at 347–48, for the proposition that even informal agency rules and similar pronouncements may at times bind agency personnel for the purposes of discretionary function exception analysis); *McMichael v. United States*, 856 F.2d 1026, 1033–34 (8th Cir. 1988) (holding when internal agency guidelines directed government inspectors to follow a detailed regime, discretionary function exception did not apply).

We do not believe the language "thorough investigation" is alone sufficient to remove from the hands of the Creston police department discretion in how it conducts investigations of citizen complaints against police officers. State and municipal statutes, regulations, or policies do not specifically prescribe a course of action for the department to follow when conducting such investigations. We therefore determine Creston's investigation of Saville involved the type of judgment decisions that shield it from liability by virtue of the discretionary function exception. *See, e.g., Domme*

v. United States, 61 F.3d 787, 791 (10th Cir. 1995) (applying discretionary function bar when none of the relevant statutes, regulations, or internal agency guidelines specified the “precise manner” in which the Department of Energy was to conduct safety appraisals); *Layton v. United States*, 984 F.2d 1496, 1502-03 (8th Cir. 1993) (holding that, in the absence of specific guidelines, the manner of inspection is a matter of discretion, and distinguishing situations “in which [a] government inspector is controlled by precise regulations establishing specific steps he is required to perform in his inspections”); *Cooper v. American Auto. Ins. Co.*, 978 F.2d 602, 612 (10th Cir. 1992) (holding that discretionary function exception bars negligent investigation claim absent any statute or “regulation mandating particular inquiries to be made or methods of making them”).⁵

Joyce nevertheless implies Creston sought to “whitewash” the incident by rigging the investigation to exonerate Saville. We determine the evidence does not support this conclusion. From the record, we are satisfied the Creston Police Department judged the credibility of the rumors of sexual misconduct, weighed that credibility against available resources and other pressing law enforcement concerns, and conducted the investigation in the manner it best saw fit. As a product of

⁵ Joyce also contends Creston failed to preserve original witness statements and failed to make or retain transcripts of interviews, as is required by police regulations, and that failure to do so was violation of a non-discretionary function — not, consequently, a product of judgment or choice — and therefore not subject to the discretionary function immunity. We simply note Joyce presents no evidence that statements and transcripts must be made and preserved. At most, we find only a duty that transcripts, *if made*, are to be forwarded along with the results of an investigation to the Chief of Police. There is not a requirement interviews be conducted or recorded.

judgment, the conduct of the investigation meets the first prong of the discretionary function analysis.

Furthermore, we believe the discretion in the investigation of complaints against police officers is necessarily governed by social and economic realities, including the size of a police force and availability of investigating officers, the amount of time allocable to such an investigation in light of the department's other numerous responsibilities, and the money available to conduct such investigations. Judgment decisions regarding the conduct of investigations are grounded in public policy and are of the type the discretionary function exception was designed to shield. Other courts have reached similar conclusions:

Deciding how to investigate, who to investigate, and how to present evidence to the proper authorities are classic examples of immunized prosecutorial conduct . . . [s]uch conduct is exclusively within the province of the executive branch making it exactly the type of conduct the discretionary function exception was intended to protect from judicial branch interference.

Bradley v. United States, 615 F. Supp. 206, 209 (E.D. Pa. 1985), *aff'd sub nom.*

Pooler v. United States, 787 F.2d 868 (3d Cir. 1986).

We conclude the conduct of investigations in this case involves exactly the type of policy decisions our governmental tort immunity laws are designed to shield from liability. Absent constitutional or clear statutory violations, we are loathe to interfere with such decisions. Assuming an investigation was mandated in this situation, Creston is immune from liability because conduct of that investigation

involved judgment decisions of the type intended to be protected by the discretionary function exception.

Furthermore, insofar as Joyce alleges Creston not only failed to properly investigate Saville, but did so negligently, that claim is also barred by the discretionary function exception. Iowa Code section 670.4(3) provides municipalities are immune for claims related to discretionary functions “whether or not the discretion is abused.” Consequently, that the investigation was allegedly conducted negligently is irrelevant because the discretionary function exception provides immunity even for discretionary acts conducted negligently. *See Keystone Elec. Mfg., Co. v. City of Des Moines*, 586 N.W.2d at 346 (holding “a municipality is not liable for claims arising from an officer or employee’s failure to exercise or perform a discretionary function”); *Morris v. Leaf*, 534 N.W.2d 388, 391 (Iowa 1995) (the municipal tort claims act “does not create liability for the acts of police officers that involve mere negligence”). Federal courts have reached the same conclusion that sovereign immunity is retained where “the alleged negligence consists in flaws in the government’s performance of a discretionary function or duty.” *Graves v. United States*, 872 F.2d 133, 137 (6th Cir. 1989); *see also Good v. Ohio Edison Co.*, 149 F.3d 413, 419 (6th Cir. 1998); *Grammatico v. United States*, 109 F.3d 1198, 1203 (7th Cir. 1997); *Atallah v. United States*, 955 F.2d 776, 784 n.13 (1st Cir. 1992); *Barnson v. United States*, 816 F.2d 549, 553 (10th Cir. 1987); *General Public Utilities Corp. v. United States*, 745 F.2d 239, 245 (3d Cir. 1984).

We finally note that upon the completion of the investigation, Kessler's findings and conclusions were put in writing, and the Office of the Chief of Police and the city mayor were provided with copies of the written report. After finishing his report, Kessler made a conscious decision to retain Saville as a Creston police officer, a decision which required Kessler to decide whether to dismiss a police officer in the face of unfounded rumors. The record shows he was guided by his judgment that reliable, hard-working police officers should remain on active duty in the face of investigated and ultimately unsubstantiated rumors of sexual misconduct. Importantly, the record shows dismissal was not required; rather, that decision resided within the discretion of the City of Creston. *See, e.g., Burkhart v. Washington Metro. Area Trans. Auth.*, 112 F.3d 1207, 1217 (D.C. Cir. 1997) (holding hiring, training, and supervising of WMATA employees is discretionary in nature where no law or policy specifically prescribes guidelines for the hiring, training, or supervision of WMATA employees). Furthermore, employment decisions in public agencies are necessarily grounded in public policy and involve the type of decisions intended to be shielded by the discretionary function exception. *See, e.g., Burkhart v. Washington Metro. Area Trans. Auth.*, 112 F.3d at 1207 (hiring decisions of a public entity require consideration of numerous factors, including budgetary constraints, public perception, economic conditions, individual backgrounds, office diversity, experience, and employer intuition). For these reasons, we will not question Creston's decision to retain Saville. We determine Joyce has no claim against

Creston for negligent retention. *See, e.g., Tonelli v. United States*, 60 F.3d 492, 496 (8th Cir. 1995) (holding “issues of employee supervision and retention generally fall within the discretionary function exception”).

Similarly, any claims Joyce may have against Creston for negligent training or supervision of Officer Saville are also barred. Creston has wide discretion in training and supervising its police force. Supervisory decisions involve “a complex balancing of budgetary considerations, employee privacy rights, and the need to ensure public safety.” *See, e.g., Burkhart v. Washington Metro. Area Trans. Auth.*, 112 F.3d at 1217. Training decisions involve “consideration of fiscal constraints, public safety, the complexity of the task involved, the degree of harm a wayward employee might cause, and the extent to which employees have deviated from accepted norms in the past.” *Id.* We determine Creston is immune from liability for any claims Joyce may have for negligent supervision or training. *See, e.g., Kirchmann v. United States*, 8 F.3d 1273, 1277 (8th Cir. 1993) (holding supervision of government contractors is a discretionary function); *K.W. Thompson Tool Co. v. United States*, 836 F.2d 721 (1st Cir. 1988) (holding failure to properly train and supervise Environmental Protection Agency personnel falls within the discretionary function exception).

We determine the district court correctly found Creston’s actions were discretionary functions protected from immunity. The district court properly dismissed the negligence claims against the City of Creston.

AFFIRMED.

No. 98-0881. [9-037] JOYCE v. CITY OF CRESTON

Appeal from the Iowa District Court for Union County, William H. Joy, Judge.
AFFIRMED. Heard by Sackett, C.J., Mahan, and Zimmer, JJ. Opinion by Zimmer, J.
(20 pages \$8.00)

Jason Joyce appeals a district court order granting City of Creston's motions for summary judgment in plaintiff's action for damages against Creston based on an alleged sexual assault by a Creston police officer. For purposes of this appeal, Joyce stated two causes of action in district court: (1) the City of Creston is vicariously liable for the wrongful acts of Officer Rudy Saville; and (2) the City of Creston is liable for wrongful acts in hiring, training, and supervising Saville. The district court granted summary judgment for Creston on both claims. The court found Creston was not

vicariously liable for Saville's alleged sexual assault because those actions were, as a matter of law, outside the scope of Officer Saville's employment or duties. It also found hiring, supervision, and retaining decisions involved a discretionary function and thus Creston was immunized from liability under the Municipal Tort Claims Act for Joyce's claims relating to those activities. Joyce appeals. **OPINION HOLDS: Vicarious Liability.** Our rules of appellate procedure require notices of appeal to "specify the parties stating the appeal and the decree, judgment, order or part thereof appealed from." Iowa R. App. P. 6(a). Joyce has neither technically nor substantially complied with our appellate notice rules. Therefore, we lack jurisdiction to review Joyce's vicarious liability claim. **Negligence.** Whether a governmental subdivision has immunity under Iowa's Tort Liability of Governmental Subdivisions Act, Iowa Code section 670.4(3) (1997), is a question of law. Because it also involves the purely legal question of subject matter jurisdiction, our review is at law for correction of legal errors. Joyce alleges Creston had a duty to investigate Saville because of past claims of sexual misconduct against him. He claims summary judgment was improper because a reasonable trier of fact could find Creston had this duty and because a reasonable trier of fact could find Creston breached this duty in failing to "thoroughly investigate" Saville. However, immunity is a matter of law, and therefore summary judgment was a proper mechanism for resolving these issues. We determine summary judgment properly disposed of the claims against Creston. State and municipal statutes, regulations, or policies do not specifically prescribe a course of action for Creston to follow when conducting investigations of police officers. Furthermore, decisions regarding the conduct of investigations of citizen complaints against police officers are grounded in public policy. We determine Creston had broad discretion in investigating Saville and that this discretion is of the type the discretionary function exception was designed to shield. Furthermore, insofar as Joyce alleges Creston not only failed to properly investigate Saville, but did so negligently, that claim is also barred by the discretionary function exception. Additionally, Joyce has no claim against Creston for negligent retention or training because retention and training decisions in public agencies are grounded in public policy and involve the type of decisions intended to be shielded by the discretionary function exception.