

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0948**

Wesley E. Wills,
Appellant,

vs.

Lucinda Jesson, et al.,
Respondents.

**Filed February 4, 2019
Affirmed
Dietzen, Judge***

Ramsey County District Court
File No. 62-CV-17-5750

Wesley E. Wills, Moose Lake, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Matthew M. Hart, Assistant Attorney General, St. Paul,
Minnesota (for respondents)

Considered and decided by Dietzen, Presiding Judge; Kalitowski, Judge;** and
Klaphake, Judge.**

* Retired justice of the Minnesota Supreme Court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10, and Minn. Stat. § 2.724, subd. 3 (2018).

** Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

DIETZEN, Judge

Appellant Wills, who is civilly committed in the Minnesota Sex Offender Program (MSOP), brought this action alleging that respondent Jesson, in her individual and official capacities, violated the Minnesota Health Records Act (MHRA), Minn. Stat. §§ 144.291-.298 (2018), and the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. §§ 13.01-.90 (2018), when another MSOP patient improperly received and read a portion of Wills's quarterly treatment progress report. The district court granted respondent's motion to dismiss on the ground that Wills failed to state a claim against Jesson for which relief may be granted. Because we conclude that the district court did not err, we affirm.

FACTS

Appellant Wesley E. Wills is a civilly-committed patient in the MSOP facility in Moose Lake, Minnesota. Wills alleges the following facts¹: In October 2014, Wills's quarterly treatment progress report was mistakenly placed in the mailbox of another MSOP patient. The other patient did not realize he had the incorrect report until after he had started reading the document. The report included information concerning Wills's medical history, criminal record, and mental diagnoses. The other patient notified MSOP staff about the mistake, and the report was forwarded to Wills. Wills does not have information as to how the report was given to the wrong patient, or by whom.

¹ Because this case reaches us on appeal from a dismissal for failure to state a claim, *see* Minn. R. Civ. P. 12.02(e), the factual record is still undeveloped and the facts recited here are drawn from Wills's complaint.

In October 2017, Wills filed a complaint against Lucinda Jesson, former Commissioner of the Minnesota Department of Human Services—in both her individual and official capacities—alleging violations of the MHRA and the MGDPA. Jesson filed a motion to dismiss Wills’s complaint for failure to state a claim. Emily Johnson Piper, the acting Commissioner of the Minnesota Department of Human Services at the time the lawsuit was initiated, joined Jesson’s motion.² Following a hearing in April 2018, the district court granted the motion and dismissed the complaint.

DECISION

On appeal, Wills argues that the district court erred in granting Jesson’s motion to dismiss his complaint for failure to state a claim upon which relief can be granted, pursuant to Minn. R. Civ. P. 12.02(e). Specifically, Wills contends that his complaint against Jesson, in both her individual and official capacities, sets forth cognizable claims for the wrongful disclosure of his MSOP medical records in violation of the MHRA and MGDPA. We review *de novo* a district court’s decision to grant a motion to dismiss pursuant to rule 12.02(e) to determine if the facts alleged in the complaint set forth a legally sufficient claim for relief. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014).

² As Wills acknowledges, Jesson is no longer the Commissioner of the Minnesota Department of Human Services. At the time this lawsuit was initiated, that role was held by Emily Johnson Piper. As of January 2019, the role of commissioner is held by Tony Lourey. Minn. R. Civ. App. P. 143.04 provides that if a “public officer . . . resigns or otherwise ceases to hold office during the pendency of an appeal or other appellate proceeding to which the officer is a party in an official capacity, the action does not abate and the successor in office is automatically substituted as a party.” Because Wills sued Jesson in both her individual and official capacities, Jesson remains a party as to the individual-capacity claim, and Lourey is substituted as a party as to the official-capacity claim.

A complaint must “contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought.” Minn. R. Civ. P. 8.01. A defending party may move to dismiss another party’s complaint for failure to state a claim upon which relief can be granted. Minn. R. Civ. P. 12.02(e). Minnesota courts have rejected the federal plausibility standard for pleading set forth in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937 (2009). *Walsh*, 851 N.W.2d at 606. Instead, Minnesota courts have held that a claim is sufficient to survive a motion to dismiss “if it is possible on any evidence which might be produced, consistent with the pleader’s theory, to grant the relief demanded.” *Id.* at 603 (emphasis omitted) (quotation omitted). “We consider only those facts alleged in the complaint, accepting those facts as true and construing all reasonable inferences in favor of the non-moving party.” *In re Individual 35W Bridge Litig.*, 806 N.W.2d 811, 815 (Minn. 2011). But a legal conclusion in the complaint does not bind this court, and a plaintiff must provide more than mere labels and conclusions. *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010). In general, we hold pro se parties to the same standards as attorneys and require that the parties comply with procedural rules. Minn. R. Gen. Prac. 1.04; *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001); *Ronay v. Ronay*, 369 N.W.2d 12, 14 (Minn. App. 1985).

This case also requires us to interpret statutory law. Statutory interpretation is a question of law that we review de novo. *Graphic Commc’ns Local 1B Health & Welfare Fund A v. CVS Caremark Corp.*, 850 N.W.2d 682, 689 (Minn. 2014). The object of all statutory interpretation is to ascertain and effectuate the intention of the legislature. Minn.

Stat. § 645.16 (2018). We construe a statute to give its words and phrases their plain and ordinary meaning. *35W Bridge Litig.*, 806 N.W.2d at 815. When the language of a statute is free from ambiguity, “our role is to enforce the language of the statute, and not explore the spirit or purpose of the law.” *Id.*

The complaint sets forth separate claims pursuant to the MHRA and the MGDPA against Jesson in her individual and official capacities. The complaint does not set forth a claim against the Minnesota Department of Human Services. We will discuss each claim in turn.

A. MHRA Claim

In his complaint, Wills alleges that MSOP staff improperly disclosed the report in violation of the MHRA. The district court dismissed the claim on the ground that Wills did not allege Jesson released the report.

The MHRA prohibits the release of a patient’s health records without the patient’s authorization or consent. Minn. Stat. § 144.293, subd. 2. It is undisputed that Wills did not consent to the release of the report. The question is whether Wills pleaded a cognizable claim against Jesson. The answer is set forth in Minn. Stat. § 144.298, subd. 2(1), which provides a “person” who negligently or intentionally requests or releases a patient’s health records is liable to the patient for compensatory damages. Thus, a claim may only be brought against a person for wrongful disclosure of the report.

Wills’s complaint, however, does not allege Jesson released the report. Consequently, the complaint failed to plead an MHRA claim against Jesson individually or in her official capacity for which relief may be granted. To avoid the failure to allege

Jesson was personally responsible for the release, Wills argues for the first time on appeal that he should have been given an opportunity to identify the person responsible for the disclosure through discovery. Wills failed to bring this discovery-related argument before the district court at any point. Accordingly, this argument is forfeited. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Moreover, even if we reached the argument, it would still fail. Wills’s claim is against Jesson, not against a third person not named in the complaint. Because Wills does not allege that Jesson bears personal responsibility for the release of the report, the district court did not err in dismissing this portion of Wills’s MHRA claim.

Alternatively, Wills asserts that Jesson is vicariously liable for the actions of her “agents, employees, or representatives.” But the MHRA explicitly imposes liability on *the person* who improperly discloses a patient’s health records, and not on anyone else. Minn. Stat. § 144.298, subd. 2. Accordingly, vicarious liability is unavailable for this claim.

B. MGDPA Claim

Wills alleges in his complaint that Jesson, individually and in her official capacity, violated the MGDPA. The district court rejected Wills’s MGDPA claim on the grounds that the statute does not allow a claim against Jesson in her individual capacity and that the claim in her official capacity fails because Wills did not plead actual damages as a result of the alleged violation. On appeal, Wills contends that Jesson is liable on the grounds that she was the “responsible authority,” and that his complaint alleges sufficient damages to survive a motion to dismiss.

The MGDPA provides for civil remedies to persons who suffer damages due to a violation of its provisions. Minn. Stat. § 13.08, subd. 1. The statute provides:

[A] responsible authority or government entity which violates any provision of this chapter is liable to a person . . . who suffers any damage as a result of the violation, and the person damaged . . . may bring an action against the responsible authority or government entity to cover any damages sustained.

Id. To plead a claim under the MGDPA, Wills must allege that: (1) Jesson was a “responsible authority”; (2) the responsible authority (Jesson) violated the MGDPA; and (3) as a result of the violation of the MGDPA, Wills suffered damage.

The MGDPA defines the “responsible authority” in a state agency as “the state official designated by law or by the commissioner as the individual responsible for the collection, use and dissemination of any set of data on individuals, government data, or summary data.” Minn. Stat. § 13.02, subd. 16(a). Wills alleges that Jesson is the responsible authority, and we accept that fact as true for purposes of this appeal. *35W Bridge Litig.*, 806 N.W.2d at 815. Thus, the complaint satisfies this portion of the statute.

Wills alleges that Jesson, “through her agents, employees, or representatives,” violated the MGDPA, and that Jesson is liable under the common-law doctrine of respondeat superior. But the plain language of the MGDPA limits liability to a responsible authority if he or she commits a violation of the statute; specifically, the statute does not extend liability to a responsible authority for the actions of his or her employees, agents, or representatives. Thus, Wills has not alleged the required second element of a viable MGDPA claim.

Because Wills did not allege the required second element of Minn. Stat. § 13.08, subd. 1, it is not necessary for us to reach the third element of the statute regarding damages.

We do, however, take this opportunity to make two observations. First, a plaintiff can recover damages for emotional harm under the MGDPA. *Navarre v. S. Wash. Cty. Schs.*, 652 N.W.2d 9, 30 (Minn. 2002); *accord. Shqeirat v. U.S. Airways Grp., Inc.*, 515 F. Supp. 2d 984, 998 (D. Minn. 2007) (holding that plaintiff’s allegations of emotional harm and fear of possible identify theft were sufficient to state a claim for damages under MGDPA). Second, “a plaintiff must still satisfy the standard of proof necessary to recover such damages for emotional harm,” and the court should be “careful to limit the availability of [emotional harm] damages to those plaintiffs who prove that emotional injury occurred under circumstances tending to guarantee its genuineness.” *Navarre*, 652 N.W.2d at 30 (quotations omitted).

Here, the district court was rightly concerned that Wills’s complaint does not allege with particularity the nature or extent of the emotional harm he alleges. Our rule 12.02 dismissal standard, however, requires the court to accept the facts alleged in the complaint and all reasonable inferences as true. But we need not decide this point, as we have already concluded Wills has failed to allege that Jesson was the one who violated the MGDPA.

In sum, we conclude that Wills failed to allege a cognizable claim against Jesson for alleged violations of the MHRA and MGDPA for the disclosure of his medical records without his consent. Therefore, the district court did not err by dismissing Wills’s complaint for failure to state a claim upon which relief can be granted.

Affirmed.