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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1538**

Kevin Scott Karsjens,
Appellant,

vs.

Tony Lourey, Commissioner of the Department of Human Services,
Respondent,

Shelby Richardson, et al.,
Defendants.

**Filed May 28, 2019
Affirmed
Connolly, Judge**

Ramsey County District Court
File No. 62-CV-16-5788

Peter Nickitas, Peter Nickitas Law Office, Minneapolis, Minnesota (for appellant)

Keith Ellison, Attorney General, Aaron Winter, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Connolly, Judge; and
Slieter, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant, a client of the Minnesota Sex Offender Program (MSOP), challenges the summary judgment dismissing his claims against respondent commissioner of human services (CHS) under the Minnesota Government Data Practices Act (MGDPA) and the Minnesota Health Records Act (MHRA). Appellant argues that the district court erred in determining that there was no triable issue on damages and in failing to consider appellant's other claims for relief. Because we see no error, we affirm.

FACTS

Appellant Kevin Karsjens was civilly committed to MSOP as a sexually dangerous person in 2010.¹ The incidents giving rise to this lawsuit allegedly occurred in September and November, 2016.

In the September incident, another MSOP client, I.L., was erroneously handed six pages of appellant's Quarterly Treatment Progress Report (QTPR), along with a set of

¹ Since then, he has brought lawsuits in federal and state court. The lawsuits were resolved by publicly available opinions containing information about appellant. *See, e.g., Karsjens v. Piper*, 845 F.3d 394 (8th Cir. 2017) (providing information about appellant, who was the lead plaintiff, and reversing *Karsjens v. Jesson*, 109 F.Supp.3d 1139 (D. Minn. 2015) (holding, after a six-week trial, that the civil-commitment statute violated due process and is unconstitutional on its face and as applied)); *Karsjens v. Jesson*, No. A13-1746, 2014 WL 902860 (Minn. App. Mar. 10, 2014) (providing information about appellant's 30-year history of sexually assaulting women and affirming the dismissal of his request for provisional discharge); *In re Civil Commitment of Karsjens*, No. A10-0489, 2010 WL 3000723 (Minn. App. Aug. 3, 2010) (providing information about appellant's history of sexual offenses and affirming his commitment as a sexually dangerous person (SDP)), *review denied* (Minn. Sept. 29, 2010).

documents I.L. had requested, by W.R., an MSOP employee.² The next day, I.L. noticed the QTPR pages, separated them from his documents, and gave them to his roommate, who knew appellant and delivered the pages to him in his room about ten feet away. It is undisputed that neither I.L. nor his roommate looked at, read, copied, or otherwise used the QTPR pages except to see that appellant's name was on them.

In the November incident, S.H., another MSOP client, retrieved some documents from his mailbox. A week later, he looked through the documents and discovered that one of them had appellant's name and client number on it. It is undisputed that he immediately gave that document to appellant, without reading it or copying it.

Based on these incidents, appellant brought claims under the MGDPA and under the MHRA. Respondent moved for summary judgment. The district court granted the motion on the ground that appellant had produced no evidence that he was damaged by the alleged disclosures. Appellant challenges the grant of summary judgment, arguing that the district court erred based on its conclusion that he failed to show either a genuine issue of material fact in regard to his alleged damages or his entitlement to equitable relief.

D E C I S I O N

Standard of Review

On appeal from summary judgment, this court reviews de novo both whether there are any genuine issues of material fact and whether the district court erred in its application

² While the district court dismissed appellant's MHRA claim against Robinson, appellant does not appear to challenge that dismissal in his brief. Arguments not briefed on appeal are waived. *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997).

of the law. *STAR Centers, Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). There is no genuine issue of material fact “when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). “A defendant is entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of the plaintiff’s claim.” *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

1. Damages

Damages are an essential element of a claim under both the MGDPA and the MHRA. See Minn. Stat. §13.08, subd. 1 (2018) (“[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.”); Minn. Stat. § 144.298, subd. 2 (2018) (A person who “negligently or intentionally. . . releases a health record in violation of sections 144.291 to 144.297” is liable to the patient for compensatory damages caused by an unauthorized release).

[A] plaintiff can recover damages for emotional harm under the MGDPA. However, a plaintiff must still satisfy the standard of proof necessary to recover such damages for emotional harm. . . . [But] claims of mental anguish may be speculative and so likely to lead to fictitious allegations that there is a potential for abuse of the judicial process. . . . [W]e have been careful to limit the availability of such damages to those plaintiffs who prove that emotional injury occurred under circumstances tending to guarantee its genuineness.

Navarre v. S. Washington Cty. Sch., 652 N.W.2d 9, 29-30, (Minn. 2002) (quotations omitted) (holding that, in cases involving violation of a statutory right, emotional-distress damages are not recoverable without evidence of verifiable physical injury or severe emotional distress); *see also Lickteig v. Alderson, Ondov, Leonard & Sween, P.A.*, 556 N.W.2d 557, 560 (Minn. 1996) (holding that a plaintiff must “prove that emotional injury occurred under circumstances tending to guarantee its genuineness”) (quotation omitted).

Here, the disclosures at issue involved much less information about appellant than is and has been publicly available for years in appellant’s civil-commitment documents, in opinions of this court, and in the federal district court opinions in which appellant was the lead plaintiff in a class-action suit.

The district court addressed appellant’s allegations that, as a result of the incidents, he had suffered anxiety, apprehension, anger, fear of identity theft, and emotional distress.

24. [Appellant] described his claim of anxiety as “manifested by worry and fear that the information that was given out will somehow cause me some kind of things happening to me in the future, costing me money, [consisting of] false statements against me. It’s just the unknown, fear of the unknown”

25. [Appellant’s] “apprehension” was related to his concern that he would have one of the documents “coming against [him] somehow.” [Appellant’s] “anger” was related to his belief that MSOP staff should be more careful. [Appellant] stated that he believed the information in his QTPR could be used by a bad actor to apply for a loan, credit card, or ID in his name, or to commit a crime and be identified as [appellant].

. . . .
27. [Appellant] has no evidence that [any MSOP personnel and clients involved in the incidents] obtained or used any information from the QTPR in an inappropriate way, . . . used any of the information from the QTPR in an

inappropriate way, . . . used [appellant's] Client ID in an inappropriate way, and no evidence that anyone other than [those involved] saw any of [appellant's] private data as a result of the data disclosures.

28. [Appellant] has no medical determination that any anxiety he claims to have experienced is related to either of the disclosures in this case.

Based on these findings, the district court concluded that “[appellant] has failed to put forth evidence establishing that his claimed emotional distress damages, if any, were severe” and concluded that the MGDPA claims should be dismissed because there was no genuine issue of material fact as to damages. As to the MHRA claims, the district court concluded that “[appellant] has failed to put forth evidence establishing that his claimed emotional distress damages occurred under circumstances guaranteeing their genuineness” because “[m]any reports relating to [appellant's] treatment and status at MSOP have been introduced and made publicly available in a number of prior court matters” and “[t]he three MSOP clients involved [in] handling the documents in question . . . clearly did not use, retain, or transfer any private information.” The district court then concluded that there was no genuine issue of material fact as to whether circumstances guaranteed the genuineness of appellant's alleged emotional injury and that respondents were entitled to summary judgment as a matter of law.

Appellant relies on *Shqeirat v. U.S. Airways Group, Inc.*, 515 F. Supp. 2d 984, 998 (D. Minn. 2007) (holding that fear of identity theft resulting from disclosure of a social security number is sufficient support for an emotional distress claim) to support his view that fear of identity theft resulting from disclosure of a MSOP identity number will support an emotional distress claim. But he does not refute the district court's observation that

“[t]here is no scenario put forth by [appellant], nor one this [c]ourt can conceive, in which [appellant’s] Client ID or any of the information in his QTPR could be used to steal his identity.”³

2. Equitable Relief

Appellant argues that the district court erred by dismissing his claims for equitable relief, i.e., an injunction “against any MSOP staff from commingling clients’ mail,” exemplary damages, or a declaratory judgment.

Appellant did not make the showing of irreparable damage or irreparable injury needed before an injunction may be issued. *See Matter of Minneapolis Cmty. Dev. Agency of Certain Lands in City of Minneapolis*, 403 N.W.2d 310, 313 (Minn. App. 1987). Without such a showing, the district court did not err in declining to issue an injunction.

Exemplary damages are available only for willful violations of the MGDPA. Minn. Stat. § 13.08, subd. 1. Appellant did not produce any evidence or argue that any of the claimed violations was willful. The district court correctly concluded that, because appellant “has no evidence that either alleged violation was willful,” there was no genuine issue of material fact and respondent was entitled to summary judgment as a matter of law.

As to appellant’s claim for declaratory relief, respondent asserts that appellant did not raise it to the district court, and appellant does not refute this assertion. Therefore, the

³ Appellant also relies on a law-review article to support his argument, but does not explain why a law-review article would be controlling precedent for an appellate court.

argument is not properly before us, and we do not address it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Affirmed.