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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1586**

Samuel Zean,
Appellant,

vs.

Mary T. Inc., et al.
Respondents.

**Filed April 22, 2019
Affirmed
Florey, Judge**

Hennepin County District Court
File No. 27-CV-17-18118

Samuel Zean, Brooklyn Park, Minnesota (pro se appellant)

George R. Wood, Brandon Haugrud, Littler Mendelson, P.C., Minneapolis, Minnesota (for respondents)

Considered and decided by Bjorkman, Presiding Judge; Connolly, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Appellant challenges the dismissal of his defamation and related claims arising out of the termination of his employment following a maltreatment investigation. He asserts that the district court erred by dismissing counts one through ten of his third amended

complaint, denying his efforts to file a fourth amended complaint and denying his motion for relief from judgment under Minn. R. Civ. P. 60.02. We affirm.

FACTS

This appeal concerns the dismissal of appellant Samuel Zean's claims against respondent Mary T. Inc. (Mary T) and respondent Maria Kangas (Kangas). Appellant worked for Mary T between June 2013 and October 2015. Mary T is a corporation that provides healthcare services to people with special needs and living options for seniors. Kangas worked as an internal investigator for Mary T.

In October 2015, appellant was accused of maltreatment of vulnerable adults. Consequently, Mary T suspended appellant. Kangas investigated the maltreatment accusation and issued a maltreatment-investigation report. According to that report, several residents of a group home, Palm Village, disclosed to a Palm Village staff member, S.C., that appellant had been verbally abusive. S.C. reported her concerns on a vulnerable-adult "intake line," appellant was suspended, and the investigation was commenced.

The report contained summaries of interviews with appellant, S.C., three vulnerable adults, and three Mary T employees. The report concluded that abuse could not be substantiated "with certainty," but noted that appellant had no desire to form relationships with the group-home residents, it was likely that appellant was "cold and dismissive" to the residents, and there was "no reason to doubt" that the residents were "actually scared" of appellant. The report recommended that the program director, program supervisor, and human resources "review the evidence" and "make a decision on whether or not to terminate [appellant] or move him to another program/position."

In November 2015, two human-resources employees met with appellant and informed him that he was being terminated for “unprofessional conduct” based upon information gathered during the investigation, though appellant was told that the results of the maltreatment investigation were “unsubstantiated.” Appellant asserts that the allegations against him were false.

In January 2016, appellant filed a discrimination charge against Mary T with the Minnesota Department of Human Rights (MDHR). He asserted that he was discharged under false pretenses. He also filed a charge with the United States Equal Employment Opportunity Commission (EEOC). In response, Mary T submitted position statements to the MDHR and EEOC denying that appellant was subject to discrimination. Mary T also submitted the investigation report. Appellant contends that a number of statements contained in those documents are “willfully fabricated” misrepresentations.¹

On November 22, 2017, appellant filed a lengthy civil complaint against respondents Mary T and Kangas. Eight days later, he filed an amended complaint. *See* Minn. R. Civ. P. 15.01 (stating that “[a] party may amend a pleading once as a matter of course at any time before a responsive pleading is served”). He then filed a “proposed second amended complaint,” and on January 10, 2018, he filed a motion seeking permission to again amend the complaint to “add other newly discovered facts and claims,”

¹ The district court, in dismissing appellant’s claims, considered the investigation report, appellant’s discrimination charge filed with the MDHR, and position statements submitted by respondents to the MDHR and EEOC, and we likewise consider those documents, as they are referenced in the complaint. *See N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004) (stating that a district court, in addressing a motion to dismiss, may consider documents referenced in a complaint).

add claims for punitive damages, and add S.C. as a defendant. Respondents opposed appellant's motion to amend.

On January 17, 2018, the district court issued an order granting, in part, appellant's motion to amend. The district court gave appellant until February 16, 2018, to submit an amended complaint. The district court denied, without prejudice, appellant's requests to add a claim for punitive damages and add a defendant. The district court stated at the motion hearing that appellant could renew those requests "down the road."

On January 23, 2018, appellant filed his third amended complaint, raising the following eleven claims:

- Count 1: A claim against Mary T for violating the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. §§ 13.01-.90 (2018), specifically, Minn. Stat. §§ 13.43, subd. 2(a)(5), .46, subds. 3, 12b, 13.
- Count 2: A claim against Mary T and Kangas for defamation.
- Count 3: A second claim against Mary T and Kangas for defamation.
- Count 4: A third claim against Mary T and Kangas for defamation.
- Count 5: A fourth claim against Mary T and Kangas for defamation.
- Count 6: A claim against Mary T and Kangas for "compelled self-publication" defamation.
- Count 7: A second claim against Mary T and Kangas for "compelled self-publication" defamation.
- Count 8: A claim against Mary T and Kangas for "defamation by implication."
- Count 9: A claim against Mary T and Kangas for intentional infliction of emotional distress (IIED).
- Count 10: A claim against Mary T and Kangas for falsified reporting under Minn. Stat. § 626.557, subd. 6 (2018).

Count 11: A claim against Mary T for fraud or misrepresentation.

Respondents moved to dismiss appellant's third amended complaint. On February 22, 2018, in a motion challenging respondents' dismissal motion, appellant moved to amend his complaint "to add party/joiner," and he simultaneously filed a "fourth amended complaint," adding S.C. as a named defendant.

On June 4, 2018, the district court filed an order dismissing the claims in appellant's third amended complaint. Appellant's first ten claims were dismissed with prejudice, and the eleventh claim, alleging fraud or misrepresentation, was dismissed without prejudice. In addition, appellant's fourth amended complaint was "rejected" because appellant failed to obtain leave under Minn. R. Civ. P. 15.01. The district court gave appellant until July 5, 2018, to request permission to file a fourth amended complaint.

Regarding the MGDPA claim, the district court concluded both that appellant lacked standing and that Mary T was authorized to disclose the report. The court also concluded that Minn. Stat. § 13.46, subds. 12b, 13, of the MGDPA "do not exist." Regarding the defamation claims, counts two through eight, the court concluded that respondents were immune from liability under Minn. Stat. § 626.557, subd. 5 (2018). Regarding the IIED claim, count nine, the court concluded both that respondents were immune under the aforementioned statute, and that appellant failed to show extreme or outrageous conduct. Regarding count ten, the falsified-reporting claim under Minn. Stat. § 626.557, subd. 6, the court concluded that appellant failed to allege that respondents made a "report," as contemplated under the statute. Regarding the claim of fraud or

misrepresentation, count eleven, the court concluded that appellant failed to plead fraud with sufficient particularity.

On July 3, 2018, appellant moved the district court for permission to file a fourth amended complaint. He again sought permission to add S.C. as a defendant. He filed a proposed fourth amended complaint, stating claims for wrongful discharge arising from misrepresentation, breach of agreement arising from misrepresentation, defamation arising from misrepresentation, defamation, IIED, unauthorized disclosure of data, and falsified reporting. He did not raise a fraud claim.

On August 21, 2018, the district court denied appellant's motion for leave to amend the complaint. The court concluded that appellant's proposed fourth amended complaint contained claims that had already been dismissed or could have been brought earlier, and the claims were therefore barred. The court also concluded that appellant's claims were barred because respondents were immune under Minn. Stat. § 626.557, subd. 5. The court acknowledged that it had previously denied, without prejudice, appellant's motion to add S.C. as a defendant, but concluded that appellant did not offer any new reason for S.C. to be added. The court also noted that there were no claims for S.C. to be added to because they were all barred. On August 31, 2018, the district court filed an order for judgment because "no claims remain." Judgment was entered on September 4, 2018.

Appellant moved for relief from the final judgment under Minn. R. Civ. P. 59.01 and 60.02. On September 11, 2018, the district court denied appellant's motion. The court concluded that appellant was not entitled to a new trial, under Minn. R. Civ. P. 59.01,

because there had been no trial in the matter, and that there was no evidence of fraud or mistake to justify relief from the judgment under rule 60.02. This appeal followed.

D E C I S I O N

I. The district court did not err by dismissing counts one through ten of appellant’s third amended complaint.

Appellant argues that the district court erred by dismissing counts one through ten of his third amended complaint.² 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 party may move to dismiss a complaint for failure to state a claim upon which relief can be granted. Minn. R. Civ. P. 12.02(e). “We review de novo whether a complaint sets forth a legally sufficient claim for relief.” *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014). We must accept the allegations contained in the complaint as true; whether the plaintiff can prove the alleged facts is immaterial to our analysis. *See Elzie*, 298 N.W.2d at 32. We will not uphold a dismissal “if it is possible on any evidence which might be produced, consistent with the pleader’s theory, to grant the relief demanded.” *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739-40 (Minn. 2000) (quotation omitted).

² Appellant argues that the district court ignored “hundreds of pages of direct and compelling evidence.” However, whether or not appellant can prove his alleged facts is immaterial at this stage. *See Elzie v. Comm’r of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980).

Count 1: A claim against Mary T for violating the MGDPA, specifically, Minn. Stat. §§ 13.43, subd. 2(a)(5), .46, subds. 3, 12b, 13.

We can quickly dispose of several of appellant's alleged MGDPA violations. Section 13.46, subdivisions 12b and 13, do not exist, and appellant does not challenge the dismissal of his claim with respect to section 13.43, subdivision 2(a)(5). We, therefore, focus on the alleged violation of section 13.46, subdivision 3.

Appellant's argument for liability under subdivision 3 is based on his assertion that Mary T "is a licensing facility under the welfare system and/or the Department of Human Services (DHS)," such that its investigation report was government data. See Minn. Stat. § 13.46, subds. 1(c)-(f) (defining welfare system to include private licensing agencies), 2 (designating as private data certain information collected by welfare system), 3 (prohibiting disclosure of data on persons collected by welfare system). But appellant has alleged no factual basis to support this assertion. To the contrary, Mary T is a corporation that provides healthcare services; it may be *licensed* by DHS, but nothing in the record supports that it is a *licensing* agency. Accordingly, appellant has failed to state a claim for violation of Minn. Stat. § 13.46, subd. 3.

Counts 2-8: Various defamation claims against Mary T and Kangas.

Appellant's defamation theory is that the statements submitted to the MDHR and EEOC contained in the investigation report and position statements were defamatory. For example, he asserts that the following statements prepared by Kangas were "willfully fabricated" misrepresentations:

I pointed out to [appellant] in the interview that it was a little unsettling to me that when I disclosed to him that the clients had stated that they were actually scared of him that he reacted only with anger and did not appear to be surprised or bothered in the least by this news. Even as I pointed this out, he seemed to have little or no insight into this or concern about it.

During the interview with [appellant], his voice was often loud and sounded aggressive.

He was sitting within three feet of me, without a table or desk separating us during the interview. When [appellant] raised his voice or seemed to try to be making a point, on several occasions, he took his pointer finger and pointed very close to my face.

He did not seem to have insight on how angry or aggressive his body language, including gestures like pointing his finger in my face, or tone might come off to those around him.

It is likely that he has at the very least been cold and dismissive to all three of the Palm Village residents. This investigat[or] also has no reason to doubt that the three clients are actually scared of [appellant].

“To establish a defamation claim, a plaintiff must prove three elements: (1) the defamatory statement is communicated to someone other than the plaintiff, (2) the statement is false, and (3) the statement tends to harm the plaintiff’s reputation and to lower the plaintiff in the estimation of the community.” *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919-20 (Minn. 2009) (quotations omitted). If the statement “affects the plaintiff in his business, trade, profession, office or calling, it is defamation per se and thus actionable without any proof of actual damages.” *Id.* at 920 (quotations omitted).

The district court concluded that appellant’s defamation claims failed because respondents had statutory immunity under Minn. Stat. § 626.557, subd. 5, which provides

immunity to persons who make “a good faith report” concerning the maltreatment of a vulnerable adult, as well as those who participate “in good faith” in the investigation of alleged maltreatment.³

On appeal, appellant asserts that statutory immunity under section 626.557, subdivision 5, is inapplicable. Statutorily created immunity is narrowly construed. *Bol v. Cole*, 561 N.W.2d 143, 147 (Minn. 1997). “The application of immunity is a question of law that we review de novo.” *J.E.B. v. Danks*, 785 N.W.2d 741, 746 (Minn. 2010).

While we recognize that whether an effort is undertaken in “good faith” is generally a fact question, we conclude, as a matter of law, that statutory immunity under section 626.557, subdivision 5(c), is applicable. *See id.* at 742, 748. Under section 626.557, subdivision 5(c):

A person who knows or has reason to know a report has been made to a common entry point and who in good faith participates in an investigation of alleged maltreatment is immune from civil or criminal liability that otherwise might result from making the report, or from failure to comply with the reporting obligation or from participating in the investigation.

The facts in the complaint, and documents referenced in the complaint, establish the applicability of the good-faith statutory immunity to appellant’s defamation claims. As for the good-faith component, “[c]ase law defines bad-faith conduct as the commission of a

³ The district court also discussed qualified privilege, which is a type of privilege that defends against a defamation claim. *See Minke v. City of Minneapolis*, 845 N.W.2d 179, 182 (Minn. 2014). Statutory immunity, however, is distinct from qualified privilege. Generally, a good-faith immunity statute “provides complete immunity from suit, not simply a defense to liability.” *Mjolsness v. Riley*, 524 N.W.2d 528, 530 (Minn. App. 1994).

malicious, willful wrong.” *Mjolsness*, 524 N.W.2d at 530. In his complaint, appellant fails to offer a cognizable theory of the case involving malicious or willful conduct. He merely makes conclusory assertions that respondents willfully fabricated the statements in the investigation report. “A plaintiff must provide more than labels and conclusions.” *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010). Further, in his complaint, appellant asserted that the statements in the investigation report were necessarily false because the maltreatment allegations were ultimately deemed unsubstantiated. However, this is a false equivalence. There are no facts, consistent with appellant’s theory, that would constitute a lack of good faith, and therefore appellant’s defamation claims were properly dismissed. *See Martens*, 616 N.W.2d at 739-40.

Count 9: A claim against Mary T and Kangas for IIED.

An IIED claim has four elements: “(1) the conduct must be extreme and outrageous; (2) the conduct must be intentional or reckless; (3) it must cause emotional distress; and (4) the distress must be severe.” *Langeslag v. KYMN Inc.*, 664 N.W.2d 860, 864 (Minn. 2003) (quotation omitted). “Conduct is extreme and outrageous when it is so atrocious that it passes the boundaries of decency and is utterly intolerable to the civilized community.” *Id.* at 865 (quotations omitted).

The district court concluded that appellant’s IIED claim was barred because respondents are afforded immunity under Minn. Stat. § 626.557, subd. 5. The district court also concluded that respondents’ conduct was not extreme and outrageous. Regardless of immunity, appellant failed to plead extreme and outrageous conduct, and, therefore, dismissal was appropriate. We agree that respondents’ statements in the investigation

report and position statements do not constitute conduct that is “so atrocious that it passes the boundaries of decency and is utterly intolerable to the civilized community.” *Langeslag*, 664 N.W.2d at 865 (quotation omitted). The district court properly dismissed count nine of the third amended complaint.

Count 10: A claim against Mary T and Kangas for falsified reporting under Minn. Stat. § 626.557, subd. 6.

Appellant claims that the statements in the maltreatment-investigation report are “false, defamatory, and malicious,” and, therefore, he is entitled to relief under Minn. Stat. § 626.557, subd. 6. Under section 626.557, subdivision 6, which concerns the false reporting of maltreatment of vulnerable adults: “A person or facility who intentionally makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the reported facility, person or persons and for punitive damages up to \$10,000 and attorney fees.”

The district court concluded that neither Mary T nor Kangas made a “report.” The term “report” is defined as “a statement concerning all the circumstances surrounding the alleged or suspected maltreatment, as defined in this section, of a vulnerable adult which are known to the reporter at the time the statement is made.” Minn. Stat. § 626.5572, subd. 18 (2018). “The application of a statute to undisputed facts involves a legal conclusion we review de novo.” *Anderson v. Christopherson*, 816 N.W.2d 626, 630 (Minn. 2012).

The “report” referenced in section 626.557, subdivision 6, is the initial report of maltreatment “to the common entry point,” in this case, the report made by S.C. See Minn. Stat. § 626.557, subds. 3, 4(a). Section 626.557 clearly differentiates between reports and

subsequent investigations. See Minn. Stat. § 626.557, subd. 1 (stating that “it is the policy of this state to require the reporting of suspected maltreatment of vulnerable adults, to provide for the voluntary reporting of maltreatment of vulnerable adults, [and] to require the investigation of the reports”). Moreover, section 626.557, subdivision 5(c), provides immunity for “[a] person who knows or has reason to know a report has been made to a common entry point and who in good faith participates in an investigation.” The maltreatment investigation was not a “report” under section 626.557, subdivision 6. The district court properly dismissed appellant’s claim.

II. The district court did not abuse its discretion by rejecting appellant’s fourth amended complaint, filed without leave, or by rejecting appellant’s subsequent request for leave to file a fourth amended complaint, add S.C. as a defendant, and add a claim for punitive damages.

Appellant argues that the district court abused its discretion by rejecting his efforts to file a fourth amended complaint. We review for an abuse of discretion a district court’s denial of a motion to amend the complaint. *Utecht v. Shopko Dep’t Store*, 324 N.W.2d 652, 654 (Minn. 1982). A party may amend a pleading by leave of court, “and leave shall be freely given when justice so requires.” Minn. R. Civ. P. 15.01. Appellant challenges both the district court’s June 2018 order, rejecting his fourth amended complaint, which was filed without leave, and the district court’s August 2018 order, rejecting appellant’s request for leave to file a fourth amended complaint. See *Hunt v. Univ. of Minn.*, 465 N.W.2d 88, 95 (Minn. App. 1991) (stating that “an amendment to a complaint may properly be denied when the additional alleged claim cannot be maintained”). We first address the district court’s June 2018 order.

On June 4, 2018, the district court rejected appellant's fourth amended complaint, which appellant filed on February 22, 2018, without first obtaining leave from the court.⁴ The district court concluded that appellant "failed to file a corresponding motion seeking leave to amend the [t]hird [a]mended [c]omplaint," and "failed to seek leave of the [c]ourt for reconsideration" of the order filed on January 17, 2018. The district court also found that "allowing [appellant] to bring a [f]ourth [a]mended [c]omplaint would be futile."

Contrary to the district court's finding, appellant simultaneously filed a fourth amended complaint and ostensibly moved, on February 22, 2018, to amend his complaint and add a party, though the caption of appellant's motion made no mention of amending the pleadings. Still, even presuming appellant properly moved on February 22 to amend his complaint, he filed his fourth amended complaint without first obtaining leave. *See* Minn. R. Civ. P. 15.01.

On appeal, appellant appears to argue that the district court erred in its June 2018 order because he "was not required to seek leave" given he previously sought leave in January 2018, and that request was denied without prejudice. We are unpersuaded by appellant's argument. Although there was some confusion regarding appellant's voluminous filings, appellant did not obtain leave prior to filing his fourth amended

⁴ In his brief, appellant asserts that he sought leave to amend his complaint at a March 6, 2018 hearing on respondents' motion to dismiss. However, the record does not reflect that appellant properly sought leave at the hearing. Counsel for respondents stated at the hearing, "[Appellant] hasn't made a motion to amend his complaint[.]" and appellant made no effort to correct that assumption. This, perhaps, explains why the district court found that appellant had not moved to amend his complaint.

complaint, and therefore the district court did not err in rejecting that complaint. *See id.* Contrary to appellant's argument, a dismissal without prejudice is not a grant of leave.

Appellant challenges the district court's order of August 21, 2018. He argues that the district court erred by denying his request for leave to file a fourth amended complaint, add S.C. as a defendant, and add a claim for punitive damages. Appellant has forfeited review of this issue. He cites no authority and fails to make any cognizable argument to support his assertion that an error was made. In what constitutes a conclusory assertion, unsupported by specific allegations, appellant contends that he "clearly and unequivocally established and convincingly prove[d] that [Mary T] wrongfully fired him and retaliated against him." *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." (quotation omitted)). The district court did not abuse its discretion by rejecting appellant's fourth amended complaint and subsequent request for leave.

III. The district court did not abuse its discretion by denying appellant's rule 60.02 motion.

Lastly, appellant argues that the district court erred by denying him relief from the final judgment under Minn. R. Civ. P. 60.02. Rule 60.02 provides that a district court may relieve a party from a final judgement for reasons such as mistake or fraud. We apply an abuse-of-discretion standard of review to a district court's denial of a rule 60.02 motion. *In re Welfare of Children of Coats*, 633 N.W.2d 505, 510 (Minn. 2001).

Appellant accuses respondents and their attorney of forgery and fraud. Appellant, however, fails to offer specifics other than to assert that respondents removed appellant's identifying information (name, address, and phone number) from an investigation report. "Fraud by an adverse party may justify relief under Minn. R. Civ. P. 60.02(c), if the party alleging fraud establishes by clear and convincing evidence that the adverse party engaged in fraud or other misconduct which prevented it from fully and fairly presenting its case." *Turner v. Suggs*, 653 N.W.2d 458, 466 (Minn. App. 2002) (quotation omitted). "Whether a party has committed fraud or misconduct is within the district court's discretion as the fact finder and evaluator of the weight and credibility of the evidence." *Id.* at 465. "We review a district court's findings of fact to determine whether they are clearly erroneous." *Id.* The district court found that there was no evidence of fraud or mistake "or any other reason to justify granting relief from the final judgment." We agree.

Affirmed.