STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1692

Richard R. Fageroos, Jr.,
Appellant,

vs.

Tony Lourey, et al.,
Respondents.

Filed June 24, 2019
Affirmed
Bjorkman, Judge

Ramsey County District Court
File No. 62-CV-18-239

Richard R. Fageroos, Jr., Moose Lake, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Ali P. Afsharjavan, Assistant Attorney General, St. Paul, Minnesota (for respondents)

Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and Reyes, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellant-patient challenges the dismissal of his claims under the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. §§ 13.01-.90 (2018), and the Minnesota Health Records Act (MHRA), Minn. Stat. §§ 144.291-.298 (2018), against respondents, the commissioner of human services and Minnesota Sex Offender Program (MSOP) employees. Appellant argues that the district court erred by determining that the complaint fails to state a claim upon which relief could be granted because he sufficiently pleaded disclosures in violation of both acts and resulting damages. We affirm.

FACTS

Appellant Richard Fageroos is confined as a patient at MSOP. On November 2, 2017, he received his MSOP banking account statement in the mail. It contained his banking information on one side and the banking information of another patient on the other side. The other patient received the same two-sided statement, including Fageroos's information. Fageroos did not authorize his banking statements to be disclosed to anyone other than himself. He reported the disclosure to a security counselor but did not wish to have the two-sided statement secured or placed in evidence at that time.

Fageroos subsequently initiated this action against respondent Commissioner Tony Lourey[1] of the Minnesota Department of Humans Services and respondents Cheryl Balluo, Tina Joseph, and Kris Berg, in their individual capacities and as MSOP employees. The complaint alleges that Lourey violated the MHRA and all respondents violated the MGDPA by disclosing his banking information without his knowledge or consent, and seeks damages and declaratory and injunctive relief. Respondents moved to dismiss for

[1] Fageroos named then-commissioner Emily Johnson Piper in his complaint. Tony Lourey has since replaced Piper as commissioner. Lourey is therefore substituted for Piper as to Fageroos's official-capacity claims. *See* Minn. R. Civ. P. 143.04.

failure to state a claim upon which relief can be granted. The district court granted the motion, dismissing all of Fageroos's claims with prejudice. Fageroos appeals.

D E C I S I O N

A district court may dismiss a complaint when the plaintiff fails to state a claim upon which relief can be granted. Minn. R. Civ. P. 12.02(e). On appeal, we review de novo whether the 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 take the facts alleged in the complaint as true and draw inferences in favor of the nonmoving party. *See Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). We review legal questions, such as immunity and statutory interpretation, de novo. *Larson v. Nw. Mut. Life Ins. Co.*, 855 N.W.2d 293, 301 (Minn. 2014) (statutory interpretation); *Breaker v. Bemidji State Univ.*, 899 N.W.2d 515, 520 (Minn. App. 2017) (immunity).

I. The district court did not err by dismissing Fageroos's MHRA claim.

The MHRA prohibits the release of a patient's "health records" without the patient's consent or authorization in law. Minn. Stat. § 144.293, subd. 2. The MHRA also creates a private cause of action against any "person" who negligently or intentionally violates that provision. Minn. Stat. § 144.298, subd. 2(1).

The district court dismissed Fageroos's MHRA claim against Lourey because (1) Lourey is immune from suit for damages in his official capacity and (2) the MHRA does not provide for injunctive relief. We agree in both respects.

First, immunity bars an MHRA claim for damages against Lourey. A suit against the commissioner of a state agency is effectively a suit against the state itself and therefore barred by sovereign immunity unless the state has expressly or otherwise clearly waived immunity. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71, 109 S. Ct. 2304, 2312 (1989); *Breaker*, 899 N.W.2d at 520. The provision in the MHRA for a private action against a "person" does not clearly waive sovereign immunity. *See Nichols v. State*, 858 N.W.2d 773, 777 (Minn. 2015) (holding that permitting suit against "broad categories of entities" like person, firm, association, corporation, and organization does not waive the state's immunity). Fageroos is not entitled to recover damages against Lourey under the MHRA.

Second, the MHRA does not afford injunctive relief. By its plain terms, the MHRA provides only one form of relief: "compensatory damages . . . plus costs and reasonable attorney fees." Minn. Stat. § 144.298, subd. 2; *cf.* Minn. Stat. § 13.08 (providing for damages or injunctive relief as remedies for MGDPA violation). "[W]here a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it." *Becker v. Mayo Found.*, 737 N.W.2d 200, 207 (Minn. 2007) (quotation omitted). Accordingly, Fageroos's claim for non-compensatory relief under the MHRA fails as a matter of law.

II. The district court did not err by dismissing Fageroos's MGDPA claims.

Under the MGDPA, "[p]rivate or confidential data on an individual shall not be collected, stored, used, or disseminated by government entities for any purposes other than those stated to the individual at the time of collection . . . ." Minn. Stat. § 13.05, subd. 4. To ensure that nonpublic data are only accessible to "persons whose work assignment reasonably requires access to the data," and only accessed for appropriate purposes, the "responsible authority" is charged with "establish[ing] appropriate security safeguards for all records containing data on individuals." *Id.*, subd. 5(a)(2). The "responsible authority" in a state agency or system is "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). If "a responsible authority or government entity" violates "any provision" of the MGDPA, "the person damaged . . . may bring an action against the responsible authority or government entity to recover any damages sustained, plus costs and reasonable attorney fees." Minn. Stat. § 13.08, subd. 1. The MGDPA also provides for injunctive relief against the responsible authority. *Id.*, subd. 2.

The district court dismissed Fageroos's MGDPA claims because (1) the MGDPA does not support a claim against individuals such as Balluo, Berg, and Joseph; (2) Balluo, Berg, and Joseph are not responsible authorities subject to suit under the MGDPA; (3) Fageroos failed to plead damages as a result of Lourey's alleged MGDPA violation; and (4) Fageroos is not entitled to non-compensatory relief. Again, we agree in all respects.

As noted above, the MGDPA only creates liability on the part of "a responsible authority or government entity." Minn. Stat. § 13.08, subd. 1. Thus, MSOP employees Balluo, Berg, and Joseph are not subject to suit as individuals. *Walker v. Scott County*, 518 N.W.2d 76, 78 (Minn. App. 1994), *review denied* (Minn. Aug. 24, 1994). Likewise, they cannot be liable in their official capacities because only Lourey, as the commissioner, is the "responsible authority." Minn. Stat. § 13.02, subd. 16(a). Fageroos emphasizes that the three employees are factually "responsible" for disclosing his private banking information. But that does not make them subject to liability under the MGDPA.

With respect to Lourey, Fageroos challenges the district court's determination that he failed to plead damages from the alleged violation. Fageroos contends he did so by alleging that the disclosure of his banking account information "caused him to experience anxiety, emotional distress, and fear of identity theft and fraud." We disagree. First, the complaint contains no such allegations; it states only that Fageroos's "privacy rights were violated," disclosure of "private and protected information would be highly offensive to a reasonable person," and the disclosure of Fageroos's banking account information "inflicted consequences to him" or "inflicted damages upon [him] in excess of $50,000." Second, even if Fageroos amended his complaint to conform with his argument on appeal, it is insufficient. Emotional injury supports relief under the MGDPA only if the "plaintiff[] prove[s] that [it] occurred under circumstances tending to guarantee its genuineness." *Navarre v. S. Wash. Cty. Schs.*, 652 N.W.2d 9, 30 (Minn. 2002). At the pleading stage, the plaintiff must allege such circumstances, not rely on mere "labels and conclusions," *see Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010), or speculate that such circumstances may arise, *Jackson v. Reiling*, 249 N.W.2d 896, 897 (Minn. 1977) (precluding "remote" or "speculative" damages). Fageroos's complaint did not meet this standard.

Finally, Fageroos did not state an actionable claim for injunctive relief. The MGDPA permits an injunction "to *prevent* the use or employment by any person of any practices which violate this chapter." Minn. Stat. § 13.08, subd. 2 (emphasis added).

Fageroos has not identified any type of injunctive relief that would address the limited and completed disclosure that he alleges. And his claim for declaratory relief fails because he does not seek a declaration distinct from his substantive claims.

In sum, because Fageroos wholly failed to state a claim for which relief could be granted under either the MHRA or the MGDPA, the district court properly dismissed his complaint with prejudice. *See Martens v. Minn. Mining & Mfg.*, 616 N.W.2d 732, 748 (Minn. 2000) (approving dismissal with prejudice when complaint "fall[s] far short of the established requirements").

Affirmed.