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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0606**

Pharaoh El-Forever Left-i Amen El,
Appellant,

vs.

Jeff Titus, et al.,
Respondents.

**Filed May 24, 2021
Affirmed
Cleary, Judge***

Chisago County District Court
File No. 13-CV-18-441

Pharaoh El-Forever Left-i Amen El, Bayport, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Janine Kimble, Assistant Attorney General, St. Paul,
Minnesota (for respondents)

Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and Cleary,
Judge.

NONPRECEDENTIAL OPINION

CLEARY, Judge

This appeal is taken from a judgment dismissing appellant's claims alleging various
civil rights violations during his confinement at a state correctional facility. Appellant

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

argues that the district court erred by (1) denying his requests for payment of certain expenses under the in forma pauperis (IFP) statute, Minn. Stat. § 563.01 (2020); (2) declining to reinstate his claim regarding confrontations with other inmates upon his rule 60.02 motion for relief; and (3) granting summary judgment in favor of respondents as to his claims regarding food, water, and housing. We affirm.

FACTS

Pro se appellant, Pharaoh El-Forever Left-i Amen El, a/k/a Desean Lamont Thomas, is an inmate of the Minnesota Department of Corrections (DOC). He was formerly housed at Minnesota Correctional Facility (MCF)-Rush City before being transferred to his current placement at MCF-Stillwater. During his time at MCF-Rush City, appellant initiated several lawsuits against prison administration and staff, alleging various constitutional violations. *See, e.g., Thomas v. Rancourt*, No.13-CV-17-563 (Minn. Dist. Ct. Aug. 16, 2017); *Thomas v. Dep't of Corrs. Comm'r*, No. 13-CV-17-236 (Minn. Dist. Ct. Apr. 6, 2017). He brought this lawsuit in May 2018, suing 16 individuals (respondents) associated with MCF-Rush City in their official and individual capacities.¹

¹ Appellant later moved to voluntarily dismiss the claims against respondents in their individual capacities, leaving only the official-capacity claims.

Complaint, initial dismissal, and partial reinstatement of claims

Appellant's complaint asserts a host of claims under 42 U.S.C. § 1983 (2018) that allegedly implicate his First, Fifth, Sixth, Eighth, and Fourteenth Amendment rights. The alleged bases for his claims include that MCF-Rush City personnel subjected him to retaliatory discipline, exposed him to "mentally deficient inmates," "stage[d] confrontations" by placing incompatible inmates together, provided inadequate food services, provided inadequate drinking water, and confiscated Uniform Commercial Code (U.C.C.) documents.

Respondents moved to dismiss the complaint on several grounds, including failure to state a claim upon which relief may be granted and res judicata. After a hearing, the district court granted respondents' motion in November 2018. The district court dismissed several of appellant's claims for failure to state a claim upon which relief may be granted, and dismissed the remainder as barred by res judicata.

Appellant filed a motion for relief from and reconsideration of the order dismissing the complaint under Minn. R. Civ. P. 60.02. The district court granted appellant's rule 60.02 motion in part. It concluded that the complaint stated a viable claim, not barred by res judicata, for Eighth Amendment violations regarding appellant's housing, food, and water allegations. Accordingly, the district court reinstated that claim but concluded that the remainder of the claims had been properly dismissed.

Housing, food, and water claims dismissed on summary judgment

The parties proceeded to discovery on the reinstated housing, food, and water claims. The facts in the record, briefly summarized, are as follows.

Housing

Appellant's complaint alleges that respondents "housed [him] with mentally deficient inmates that posed a threat to [appellant], the facility, and themselves." Specifically, he asserts that he was housed with "a mentally invalid elder" sometime in 2017. He also asserts that he was housed with an individual, "P.K.," in June 2018, and that he reported to DOC personnel that P.K. was "a threat."

To support the housing claim, appellant offered a kite² that he sent to DOC staff in May 2017 that expressed that his cellmate was "extremely mentally ill" and smelled "horrific" due to poor hygiene. The kite shows that DOC personnel wrote appellant back in June and explained that his cellmate had been confused about when he could leave the cell, that the cellmate was properly placed with appellant, and that staff would continue to monitor him. As to P.K., appellant does not point to any specific kite correspondence, but DOC records indicate that P.K. was housed with appellant from June 4, 2018, and June 19, 2018.

Appellant also submitted affidavits from two other inmates regarding perceived problems with "mentally ill inmates" housed within the general prison population. One asserted that he had been "exposed to mentally incompetent inmates" and that the exposure caused him "mental irritations," and the other asserted that "mentally ill inmates" in his cell block would "scream" at night and cause tension. Appellant later submitted his own affidavit stating that that a "mentally ill cellmate made sexual advances on [him]."

² A kite is a method by which prisoners communicate in writing with DOC staff.

Respondents, for their part, submitted a body of information on DOC policies related to housing and cell assignments. DOC policy provides that “[a]ll general population offenders at level two through four facilities are presumed eligible for assignment to multiple occupancy cells/rooms, unless they have been assigned a single cell restriction consistent with this policy.” The policy further indicates that the facility psychological services director determines whether an offender has a mental-health condition that requires assignment to a single cell.

Offenders are assigned to multiple occupancy cells based on a variety of enumerated considerations, but may request placement changes based on “legitimate, verifiable security concerns.” Policy further provides that while “[o]ffenders must immediately notify staff of legitimate threats to their safety,” they “are not permitted to manipulate the cell/room assignment process.”

Food

As to food, appellant’s complaint alleges that from 2016 to 2018, he was “provided with incompatible combinations of food, nutritiously deficient amounts of food, [and] inhumane selections of food.” Later in his summary-judgment briefing, appellant asserted that he was served beef marked “not for human consumption” and that he received insufficient calcium.

The record shows that in March 2018, appellant sent a kite stating that the DOC should remedy the following “unhealthy combinations”: “1) cheese and bread; 2) milk and cold cereal; 3) fish and rice.” The kite stated the meals are not compatible because “[a]cid and alkali are incompatible.” Appellant also obtained an affidavit from a fellow inmate

stating that the food “does not seem nutritious,” and another stating that it does not satisfy hunger.

Respondents disclosed a significant amount of material regarding the food services at MCF-Rush City. DOC policy provides that “[a]n experienced full-time Minnesota state-certified food service supervisor manages food services at each facility.” All sites utilize menu software to ensure compliance with nutritional policies. A licensed dietitian must review and approve menus to ensure they meet “nationally recommended allowance for basic nutrition and established menus goals.” Sample MCF-Rush City menus from 2018 state that they provide “an average of 2600-2800 calories daily.” Respondents also submitted a DOC assessment chart for the fall and winter of 2018-2019 that compares a MCF-Rush City general menu analysis with dietary guidelines for Americans. The chart shows that DOC menus for male inmates generally fall within national guidelines; in the underperforming categories, it notes barriers and potential ways to improve.

Water

As to water, appellant’s complaint asserts that from 2016 to 2018, MCF-Rush City “failed to provide safe potable drinking and bathing water.” He has since more specifically asserted that he and other inmates were provided with water that was “excessively contaminated w[ith] radium[,] amongst other contaminants” from 2016 to 2019; that, at times, the water he was provided had a metallic or salty taste; and that the water caused eczema on his skin.

Appellant sent several kites to DOC personnel expressing concerns about water. Relevant here,³ he sent one in September 2017 stating that inmates had been told not to consume water but were not provided an alternative. DOC personnel responded to the kite stating they were unaware of any directives not to consume water and suggested that appellant contact the safety officer or talk with unit staff for more information. In November 2017, appellant asked why the water had been salty at 4:00 a.m., and was told that if this reoccurred again, he should bring it to staff's attention so that maintenance could look into it.

Almost two years later, in July 2019, appellant again sent kites to maintenance expressing that the water was salty. Maintenance responded that they were aware of the issue and that the facility's water softeners were being serviced. At the end of that month, maintenance informed appellant that the water-softener issue had been resolved. Appellant similarly asked about salty water in August and September 2019, and also asked why the water was cold one day in September.

In addition to the kite correspondence, appellant supports his water-quality allegations with affidavits from other inmates expressing that the water seemed to contain "excessive chemicals" and caused them skin irritation and other problems. He also points to city records regarding water testing.

³ Appellant challenged water fluoridation, or use of fluoride in the water, in another lawsuit, so that kite correspondence is not relevant here. See *Thomas*, No. 13-CV-17-236. Fluoridation is a commonly used practice to prevent tooth decay and is required under state law. See Minn. Stat. § 144.145 (2020).

MCF-Rush City gets its water from the city of Rush City. City records reflect that the city regularly tests its water through a third party. Appellant highlights an October 2017 quarterly water report to the Rush City Council regarding the levels of radiochemicals, specifically radium and alpha emitters (which are naturally occurring contaminants in groundwater) found in city water samples. The report indicates that samples are regularly tested and that, if the annual average at any point exceeds the maximum contaminant level (MCL), the city needs to notify the public and take corrective action. Appellant also highlights that the city issued a public notice in April 2019 that recent testing had shown the annual average of radium and gross alpha emitters exceeded the MCL. The notice provides that the situation was “not an emergency” and that city residents did not need an alternative source of water.

After the close of discovery, respondents moved for summary judgment. Following a hearing, the district court issued an order granting respondents’ motion for summary judgment and entered final judgment in April 2020.

IFP expense requests

At the commencement of this action, the district court granted appellant’s request to proceed IFP without paying filing fees, service and publication fees, and copy fees. Throughout the course of the litigation, appellant submitted various supplemental requests for additional expenses under the IFP statute, Minn. Stat. § 563.01.

In September 2018, appellant filed a supplemental affidavit for proceeding IFP that requested expenses for an “assumed name certificate,” a typewriter, co-counsel, and an investigator. He also submitted a motion that asked the court to appoint standby counsel.

The district court did not appoint standby counsel and denied the IFP expense requests without prejudice, as it found that the requests were “not justified” and that the signatory was not the legal name of the requesting party.

Appellant later filed supplemental affidavits in July and August 2019, requesting \$255.85 for “assumed name certificate publishing,” and “\$17,000+” for expert witnesses and an investigator. The district court denied these requests as not authorized by the IFP statute and because appellant had not set forth a sufficient basis for the court to analyze the witness-fee request. Shortly after respondents moved for summary judgment, appellant again submitted a supplemental affidavit requesting expenses for witnesses and experts on water issues, mental health, prison-reform advocacy, and for a stenographer. The district court denied these requests as well, concluding that appellant had not presented evidence or information to enable the court to properly determine entitlement to the requested expenses.

Appellant now brings this appeal.

DECISION

Appellant’s brief appears to raise three primary challenges. First, he challenges the district court’s denial of various IFP-expense requests and argues that these decisions denied him equal access to the court. Second, he contends that his amended complaint stated a viable claim for “staging confrontations,” which the district court ought to have recognized in its order granting in part and denying in part his rule 60.02 motion. Third, he challenges the district court’s grant of summary judgment in favor of respondents. We address each issue in turn.

I. The district court properly denied appellant's requests for expenses under the IFP statute.

Appellant argues that the district court erroneously denied his requests for expenses under the IFP statute. His main contention, to which he devotes a substantial portion of his briefing, is that by denying the IFP requests, the district court denied him equal access to the courts and otherwise discriminated against him in violation of his constitutional rights.

Respondents counter that appellant cannot raise his constitutional challenges to the IFP denials for the first time on appeal and that, in any event, the district court did not abuse its discretion in denying the requests. For the following reasons, we agree with respondents.

A. Appellant's constitutional challenges to the IFP decisions are not properly before this court.

On appeal, litigants are generally confined to the theory or theories “upon which the action was actually tried below.” *Annis v. Annis*, 262-63, 84 N.W.2d 256, 261 (Minn. 1957). Appellate courts do not typically consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). The rule that a new issue cannot be raised in the first instance on appeal applies to constitutional questions. *See In re Welfare of C.L.L.*, 310 N.W.2d 555, 557 (Minn. 1981). In addition, the appellant generally bears the burden of providing an adequate record. *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995). We decline to consider issues if the record is not sufficient to support review. *See Noltimier v. Noltimier*, 157 N.W.2d 530, 531 (Minn. 1968).

Here, appellant argues that he was “denied equal access to the court, when the lower court denied requests for court appointed funds for expenses related to the litigation.” He also asserts that certain “statistical disparities imply discrimination in [the] Minnesota judicial system, relative to equal access to the courts,” and that such discrimination and unequal access have infringed upon his First, Fifth, and Fourteenth Amendment rights under the United States Constitution, along with the equivalent rights under the Minnesota Constitution.

Our review of the record confirms that appellant did not raise these constitutional challenges to the IFP-expense denials in the district court.⁴ He did not ask the district court to reconsider the expense denials on the basis of unequal access or other violations of his rights. Accordingly, appellant forfeited appellate review of the arguments that he now raises on appeal. *See Thiele*, 425 N.W.2d at 582; *State v. Beaulieu*, 859 N.W.2d 275, 278 n.3 (Minn. 2015) (explaining that forfeiture is the failure to make the “timely assertion of a right”). And even if appellant could make these arguments now, the record does not contain evidence sufficient to review his claims about unequal court access; the record lacks, for example, any “statistical evidence” of discrimination. *See Noltimier*, 157 N.W.2d at 531 (declining to consider issue where appellate record was insufficient to permit review). We accordingly will not consider whether the district court’s denial of

⁴ Appellant asserts in his reply brief that he “challenged the denial of IFP requests at the 2nd Motion 60 hearing held 2020.11.16.” The record does not contain a transcript of such a hearing, though, nor does it contain a district court order on a rule 60 request regarding the summary-judgment order.

certain IFP expenses in this matter resulted in a violation of appellant's constitutional rights.

B. The district court did not abuse its discretion by denying the IFP requests.

We turn next to whether the district court abused its discretion by denying the IFP requests, assuming without deciding that appellant preserved a more general challenge to the denials for appellate review. “The [district] court has broad discretion in determining whether expenses should be paid under the IFP statute.” *Thompson v. St. Mary's Hosp. of Duluth*, 306 N.W.2d 560, 563 (Minn. 1981). This court reviews a district court's denial of IFP requests for an abuse of discretion. *See State v. Scheffler*, 932 N.W.2d 57, 60 (Minn. App. 2019). A district court abuses its discretion if its decision is “against logic and the facts in the record.” *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017).

While the district court authorized appellant to proceed IFP under Minn. Stat. § 563.01 without paying filing fees, service and publication fees, and copy fees, appellant contends that the court should also have granted his requests for supplemental IFP expenses. Specifically, he believes the district court erred by denying funds for a “stenographer for depositions, mental health experts, physician experts, nutritionist experts, prison experts on official misconduct, standby counsel and investigators.”

The provisions of Minn. Stat. § 563.01 applicable to appellant's requests provide:

Subd. 5. **Witness fees.** If the court finds that a witness, including an expert witness, has evidence material and necessary to the case and is within the state of Minnesota, the court shall direct payment of the reasonable expenses incurred in subpoenaing the witness, if necessary, and in paying the fees and costs of the witness.

Subd. 6. **Deposition expenses.** If the court finds that a deposition and transcript thereof are necessary to adequately prepare, present or decide an issue presented by the action, the court shall direct payment of the reasonable expenses incurred in taking the deposition and in obtaining the transcript thereof.

Appellant's first supplemental affidavit for IFP expenses, submitted in September 2018, requested funds for an "assumed name certificate," a typewriter, an investigator, and co-counsel. In conjunction with his "co-counsel" request, appellant also submitted a motion requesting standby counsel. He did not provide specific explanations or analysis regarding these requests.

The district court did not abuse its discretion by denying this set of IFP expense requests. Nothing in section 563.01 permits IFP expenses for co-counsel, and appellant has not otherwise shown that he is entitled to standby counsel in this civil action. In criminal proceedings, a defendant may waive his or her constitutional right to counsel, and "[t]he court may appoint advisory counsel to assist a defendant who voluntarily and intelligently waives the right to counsel." Minn. R. Crim. P. 5.04, subd. 2. But appellant points to no such rule, statute, constitutional or common-law authority for standby counsel in a pro se civil action brought under 42 U.S.C. § 1983. Accordingly, he has not shown that the district court abused its discretion by denying him standby counsel in this matter.

As to the other requests, section 563.01 does not authorize expenses for an "assumed name certificate," a typewriter, or an investigator. To the extent appellant's requests could be construed as fitting within subdivision 5 (witness fees) or subdivision 6 (deposition expenses), appellant did not offer any explanation as to how his requested expenses were

reasonable or necessary. As a result, the district court properly declined to authorize the expenses.

Appellant next requested \$255.85 for “assumed name certificate publishing” and “\$17,000+” for expert witnesses and an investigator. As with his first set of requests, appellant did not provide the district court with an adequate basis to determine whether the unnamed witnesses he sought “ha[d] evidence material and necessary to the case,” Minn. Stat. § 563.01, subd. 5, and to determine whether the requested expense amount was reasonable. The district court accordingly did not abuse its discretion by denying these requests.

Appellant’s final supplemental affidavit—which requested expenses for witnesses and experts on “water issues,” “mental health issues,” and “prison-reform,” and for a stenographer to “record [their] testimony”—included an attached list of specific people he wished to present as witnesses and very brief descriptions of their expertise. But he did not request a specific amount of money for witness fees, nor did he specify how the witnesses had evidence material and necessary to the case. *See* Minn. Stat. § 563.01. Again, the district court properly declined to authorize these expenses in light of the scant information that appellant submitted in support of his substantial requests.

In sum, we conclude that the district court did not abuse its broad discretion by denying appellant’s supplemental requests for IFP expenses. *See Thompson*, 306 N.W.2d at 563.

II. The district court did not abuse its discretion when it denied appellant’s rule 60.02 motion with respect to his claim about confrontations with other inmates.

Appellant’s next argument appears to be that the district court erred by declining to reinstate his claim about respondents “staging confrontations” between inmates. The district court dismissed this claim in its November 2018 order dismissing the amended complaint. Appellant sought relief from that order under Minn. R. Civ. P. 60.02.

Rule 60.02 provides that “[o]n motion and upon such terms as are just, the court may relieve a party . . . from a final judgment . . . order, or proceeding and may order a new trial or grant such other relief as may be just” if any of six listed grounds for relief apply. Minn. R. Civ. P. 60.02. One of the grounds is “[m]istake, inadvertence, surprise, or excusable neglect.” *Id.*, 60.02(a). To establish excusable neglect under rule 60.02(a), a party must show (1) a reasonable excuse; (2) that he acted with due diligence after notice of the judgment; (3) that he has a meritorious claim; and (4) that no substantial prejudice will result to the opposing party. *Finden v. Klass*, 128 N.W.2d 748, 750 (Minn. 1964). “All four factors must be met before the district court may grant relief.” *Cornell v. Ripka*, 897 N.W.2d 801, 807 (Minn. App. 2017).

A party may alternatively be relieved from a final judgment under rule 60.02(f), for “[a]ny other reason justifying relief from the operation of the judgment.” Minn. R. Civ. P. 60.02(f). Rule 60.02(f) allows for relief in “exceptional circumstances.” *Kern v. Janson*, 800 N.W.2d 126, 133 (Minn. 2011) (quotation omitted). A party seeking relief under subpart (f) “must first establish a meritorious claim.” *W. Lake Superior Sanitary Dist. v. Interpace Corp.*, 454 N.W.2d 449, 452 (Minn. App. 1990).

An appellate court “reviews a district court’s denial of a rule 60.02 motion for an abuse of discretion.” *In re Civil Commitment of Johnson*, 931 N.W.2d 649, 655 (Minn. App. 2019). “A district court abuses its discretion if its decision is against logic and the facts in the record.” *Scheffler*, 932 N.W.2d at 60.

Appellant alleged in his amended complaint that respondents “stage[d] confrontations” between inmates in violation of his First Amendment, Eighth Amendment, and equal-protection rights. Specifically, the amended complaint alleges that appellant informed DOC staff that he did not want to be housed with an inmate, “C.T.,” but that C.T. was nevertheless placed several cells away from him. The complaint also alleges that another individual, J.M., offered false testimony at appellant’s criminal trial, and that appellant told DOC staff that he was incompatible with J.M.

In his rule 60.02 motion for relief from the district court’s order dismissing his complaint, appellant asserted that his claims “relating to Report No. 533150, quality of water & food and [appellant’s] housing conditions” had been dismissed *without prejudice* in another matter. The district court “broadly construe[d]” appellant’s motion as a request for relief under rule 60.02 subparts (a) and (f), and granted it under subpart (a) with respect to only the housing, food, and water claims because, contrary to its prior determination, those claims were not barred by res judicata.⁵

⁵ The district court went on to conclude that even if appellant was not entitled to relief under rule 60.02(a), he would be entitled to identical relief (reinstatement of the claims) under rule 60.02(f). The Minnesota Supreme Court has explained that “because [r]ule 60.02(f) is a residual clause, parties can obtain relief under [r]ule 60.02(f) only where the reason for vacating the judgment does not fall under some other part of rule 60.02.” *Kern*, 800 N.W.2d at 133.

Appellant now asserts that “[t]o the extent the [rule 60] order implied that the staging-confrontations [claim] was not viable, appellant disagrees.” But his brief does not contain any argument as to why the district court should have reinstated his staging-confrontations claim under rule 60.02.⁶ He does not address the *Finden* factors to show entitlement to relief under subpart (a), nor does he point to any “exceptional circumstances,” *Kern*, 800 N.W.2d at 133, that would justify relief under subpart (f).

A meritorious claim is a necessary prerequisite to relief under either subpart (a) or (f) of rule 60.02. See *Finden*, 128 N.W.2d at 750; *W. Lake Superior Sanitary Dist.*, 454 N.W.2d at 452. Here, appellant asserts that he had a valid Eighth Amendment claim regarding his allegations of respondents “staging confrontations.” The Eighth Amendment prohibits “cruel and unusual punishment.” U.S. Const. amend. VIII. A “prison official’s ‘deliberate indifference’ to a substantial risk of serious harm to an inmate” can constitute such punishment. *Farmer*, 511 U.S. at 828, 114 S. Ct. at 1974.

Our independent review of the complaint confirms that appellant did not assert a meritorious Eighth Amendment claim based on his allegations about staging

⁶ Appellant simply cites two cases, *Farmer v. Brennan*, 511 U.S. 825, 114 S. Ct. 1970 (1994); and *Jensen v. Clarke*, 94 F.3d 1191 (8th Cir. 1996), but does not provide any additional argument or analysis. Under *Farmer*, a “prison official’s ‘deliberate indifference’ to a substantial risk of serious harm to an inmate violates the Eighth Amendment.” 511 U.S. at 828, 114 S. Ct. at 1974. And in *Jensen*, the Eighth Circuit applied *Farmer* and affirmed the district court’s decision—which was notably “fact intensive”—that prison officials had exhibited deliberate indifference to a pervasive risk of harm via a policy of “randomly assigning incoming inmates to cells without assessing whether the new cellmates would be compatible.” 94 F.3d at 1195, 1197-98, 1204. Neither case suggests that the district court erred by declining to reinstate appellant’s specific claim in this matter.

confrontations. In regards to the inmate by the initials of C.T., the amended complaint merely asserts that appellant did not want to be housed with C.T. and that C.T. believed he and appellant were “incompatible,” but that C.T. was nevertheless placed several cells away from appellant. The complaint does not explain, nor did appellant explain in his rule 60.02 motion, how being placed near C.T. created a substantial risk of serious harm to appellant. *See id.* Regarding the inmate by the initials of J.M., the complaint merely asserts that J.M. testified falsely against appellant, and that appellant accordingly informed DOC staff that he was incompatible with J.M. Again, appellant did not explain in his complaint or in his rule 60.02 motion how this created a substantial risk of serious harm to him, nor did he assert any “deliberate indifference” to such risk on the part of respondents. *See id.*

Because appellant did not show that he had a meritorious Eighth Amendment claim based on his staging-confrontations allegations, the district court did not abuse its discretion by declining to reinstate this claim upon appellant’s rule 60.02 motion.

III. The district court properly granted summary judgment in favor of respondents on appellant’s housing, food, and water claims.

Finally, appellant’s principal brief appears to challenge the merits of the district court’s summary-judgment order, as a short section summarizes the evidence submitted in support of his housing, food, and water claims and, in closing, appellant asks this court to reverse the order. As respondents note, though, it seems that appellant’s primary challenge to the summary-judgment order relies on his arguments that the district court erroneously

denied his IFP-expense requests.⁷ As we have already explained, the district court did not err by denying the IFP expense requests. We turn, then, to a brief examination of whether summary-judgment dismissal of appellant’s housing, food, and water claims was otherwise erroneous.

A. The mootness doctrine does not bar review of the housing, food, and water claims.

As an initial matter, respondents argue that we should affirm the summary-judgment decision because appellant’s transfer from MCF-Rush City to MCF-Stillwater rendered his claims moot. Respondents presented the same mootness argument in the district court, and the district court rejected it. The district court declined to apply the mootness doctrine because it held that this case is “functionally justiciable and present[s] important questions of statewide significance,” quoting *In re Guardianship of Tschumy*, 853 N.W.2d 728, 731 (Minn. 2014).

“We consider de novo whether an appeal is moot.” *In re Civil Commitment of Breault*, 942 N.W.2d 368, 374 (Minn. App. 2020). “If the court is unable to grant effectual relief, the issue raised is deemed to be moot resulting in dismissal of the appeal.” *Houck v. E. Carver Cnty. Schs.*, 787 N.W.2d 227, 231 (Minn. App. 2010) (quotation omitted). But “[m]ootness is . . . a flexible discretionary doctrine, not a mechanical rule that is invoked automatically.” *Id.* (quotation omitted).

⁷ Appellant confirms as much in his reply brief, stating that “[r]elief from summary judgment in the majority is contingent on finding that the [district] court was duty bound to allot IFP funding because the funds would ultimately substantially enlarge discovery.”

Minnesota courts have accordingly invoked exceptions to the mootness doctrine. A well-known exception applies where an issue before the court is “capable of repetition yet evade[s] review.” *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015). Another applies when an issue before the court is technically moot but “functionally justiciable and present[s] important questions of statewide significance.” *Tschumy*, 853 N.W.2d at 731. A case is considered to be “functionally justiciable” if the record contains enough information or “raw material,” as well as “effective presentation [by] both sides of the issues raised,” for the court to make an informed decision. *State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984).

As the district court observed, the parties in this case “made cogent arguments about whether ongoing Eighth Amendment violations exist at MCF-Rush City,” and “supplemented the record with case law, affidavits and records that can only be described as voluminous.” And appellant raised issues of statewide significance, as he claimed to have suffered facility-wide inhumane treatment at a state correctional facility that houses many other people from across Minnesota. Accordingly, we will not invoke the mootness doctrine to affirm dismissal of his claims.⁸

⁸ On appeal, respondents do not specifically argue that the functionally justiciable, statewide significance mootness exception does not apply, but instead generally assert that when inmates bring official-capacity claims based on treatment at one facility, transfer to another facility “generally moots the claims.” They cite several Eighth Circuit opinions for support. *See Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985) (concluding that an inmate’s claims for declaratory and injunctive relief to improve general prison conditions were moot when he was transferred to another facility); *Smith v. Hundley*, 190 F.3d 852, 854-55 (8th Cir. 1999) (same); *Hickman v. Missouri*, 144 F.3d 1141, 1142 (8th Cir. 1998) (same). But those cases do not involve the exception applied by the district court here. Indeed, the *Hickman* case notes that there is no “general public-interest

B. The district court properly granted summary judgment as to appellant’s housing, food, and water claims.

Appellate courts “review the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law.” *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted); *see also Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 228 (Minn. 2020). We “view the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

Summary judgment is proper if the movant shows, by citing to particular parts of the record, including depositions, documents, affidavits, admissions, and interrogatory answers, that “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01, 56.03(a). A genuine issue of material fact exists “when reasonable persons might draw different conclusions from the evidence presented.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). While the court views the record in the light most favorable to the nonmoving party, a party opposing summary judgment must offer more than “general assertions” to show a genuine issue of material fact. *See Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). The party “must extract *specific*, admissible facts from the voluminous record and

exception to mootness” in federal courts, even though “state law may save a case from mootness based on public interest.” 144 F.3d at 1144 (quotation omitted).

particularize them for the [court].” *Kletschka v. Abbott-Northwestern Hosp., Inc.*, 417 N.W.2d 752, 754 (Minn. App. 1988), *review denied* (Minn. Mar. 30, 1988).

The specific claims dismissed on summary judgment were that respondents violated appellant’s Eighth Amendment rights by (1) housing him with mentally ill inmates; (2) providing him with inadequate food services; and (3) failing to provide him with safe, potable water.

Again, the Eighth Amendment prohibits cruel and unusual punishment. U.S. Const. amend. VIII. A “prison official’s ‘deliberate indifference’ to a substantial risk of serious harm to an inmate” can rise to the level of cruel and unusual punishment. *Farmer*, 511 U.S. at 828, 114 S. Ct. at 1974. In order to act with “deliberate indifference,” an official must know of and disregard an excessive risk to inmate health or safety. *Id.* at 836-37, 114 S. Ct. at 1978-79. The Eighth Circuit has interpreted *Farmer* to mean that two requirements must be met: a prisoner must show that they were “incarcerated under conditions posing a substantial risk of serious harm,” and that prison officials knew of such a risk, but failed to respond in a reasonable way. *Nelson v. Shuffman*, 603 F. 3d 439, 446 (8th Cir. 2010) (quotations omitted).

Regarding food, correctional facilities are constitutionally required to provide a nutritionally adequate diet to inmates. *Burgin v. Nix*, 899 F.2d 733, 734 (8th Cir.1990). In order to prevail on an Eighth Amendment claim for inadequate food, a plaintiff must show that they were denied “the minimal civilized measure of life’s necessities” (including food), or that they were forced to live under conditions “posing a substantial risk of serious harm,” and that the defendant(s) acted with deliberate indifference to inmate health or safety.

Simmons v. Cook, 154 F.3d 805, 807 (8th Cir.1998) (quoting *Farmer*, 511 U.S. at 834, 114 S. Ct. at 1977). And, as with nutritious food, a sufficient quality and quantity of water for drinking and basic personal hygiene is a minimal life necessity. See, e.g., *Scott v. Carpenter*, 24 Fed. Appx. 645, 647-48 (8th Cir. 2001).

1. The district court properly dismissed appellant’s housing claim.

Appellant claims that respondents violated his Eighth Amendment right to be free from cruel and unusual punishment by housing him with “mentally deficient inmates.” His primary contention appears to be a general one: that respondents should not, as a matter of policy, house inmates with mental illness with “competent” inmates.

In support of his housing allegations, appellant offered kites that he sent to DOC personnel and affidavits expressing broad concerns about mentally ill inmates. These documents, though, do not describe with specificity any actual, serious harm that appellant has suffered, or any substantial risk of such harm. He accordingly has not offered facts suggesting that respondents knew of any such risk, or that they failed to respond appropriately. To the contrary, the kites show that to the extent appellant expressed his concerns to DOC staff, DOC staff reasonably and promptly responded.

Respondents, on the other hand, offered substantial evidence about their policies and procedures regarding housing and cell assignment. Appellant does not point to specific facts or evidence that suggest the DOC’s housing policies create a substantial risk of serious harm to him and other inmates. Accordingly, the district court properly granted summary judgment for respondents, as appellant’s “general assertions” about the housing

arrangements do not give rise to a genuine issue of material fact. *See Nicollet Restoration, Inc.*, 533 N.W.2d at 848.

2. The district court properly dismissed appellant's food claim.

Regarding food, appellant alleged that respondents violated his Eighth Amendment rights by providing him with "incompatible combinations of food, nutritiously deficient amounts of food, [and] inhumane selections of food."

Appellant asserts that he provided evidence about nutritiously inadequate food in the form of "menus and inmate affidavits." But the menus in the record, submitted by respondents, do not suggest inadequate nutrition. To the contrary, the menus and other evidence suggest that the DOC has comprehensive policies and practices in place to ensure that the meals provided to inmates supply adequate nutrition and comply with national guidelines.

Appellant's own evidence, on the other hand, again consists of general assertions unsupported by specific facts, for instance that he has been served "unhealthy combinations" of food such as cheese and bread because "acid and alkali are incompatible." Appellant also offers his own affidavit asserting that he saw beef marked "not for human consumption" in the kitchen, but he does not offer evidence that he brought this to respondents' attention or that respondents exhibited indifference to the alleged problem. Whenever appellant did submit kites to DOC staff about food, he received appropriate and timely responses.

Ultimately, our review of the record confirms that there is no genuine issue of material fact as to appellant's food claim, and the district court properly granted summary judgment.

3. The district court properly dismissed appellant's water claim.

Lastly, appellant suggests that he sufficiently supported his water claim with "chemical level(s), reports by municipal water testing source, MDH reports, kites to officials, etc."

As with his food concerns, appellant's correspondence with DOC staff does not show a deliberate indifference on the part of respondents to any water-based problems. DOC personnel informed appellant that maintenance was servicing the facility's softeners, for example, when he asked about a salty taste in the water. And as to the city reports about radiochemicals in the drinking water, these reports show, at most, that the entire city of Rush City had slightly elevated levels of certain naturally occurring contaminants in the drinking water during limited periods. Appellant fails to provide specific facts showing that these levels created a deprivation of "minimal civilized measures of life's necessities." *Revels v. Vincenz*, 382 F.3d 870, 875 (8th Cir. 2004) (quotation omitted). Moreover, appellant has not shown that the respondents associated with MCF-Rush City—which relies on Rush City for its water supply—were deliberately indifferent to "excessive risk to inmate health or safety." *Id.* The district court accordingly did not err by granting summary judgment as to appellant's water claim.

Affirmed.