

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0936**

Jalen Williams,
Appellant,

vs.

Sun Country, Inc., d/b/a Sun Country Airlines,
Respondent,

Rayvone D. Eskridge,
Appellant,

vs.

Sun Country Inc., d/b/a Sun Country Airlines,
Respondent.

**Filed March 8, 2021
Affirmed
Cleary, Judge***

Hennepin County District Court
File Nos. 27-CV-19-19221, 27-CV-19-19205

Zorislav R. Leyderman, The Law Office of Zorislav R. Leyderman, Minneapolis,
Minnesota (for appellants)

Eric R. Sherman, Dorsey & Whitney LLP, Minneapolis, Minnesota (for respondent)

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

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

NONPRECEDENTIAL OPINION

CLEARY, Judge

Appellant-passengers challenge the district court's dismissal of their claims against respondent-airline for failure to state a claim upon which relief can be granted. Because we conclude that all of appellants' state-law claims are impliedly preempted by the Federal Aviation Act (FAA), we affirm.

FACTS

Appellants Jalen Williams and Rayvone Eskridge filed separate actions against respondent Sun Country, Inc., d/b/a Sun Country Airlines, alleging unlawful discrimination based on race and skin color. They each filed an amended complaint containing the following allegations.

Appellants are African American men who reside in Minnesota. Appellants, along with a companion who is also an African American man, purchased first-class tickets from Sun Country for a flight from Minneapolis-St. Paul (MSP) to Los Angeles (LAX) for July 1, 2019. They also purchased first-class tickets for a return flight from LAX to MSP for July 5, 2019. The men scheduled their return flight for July 5 because they wished to attend a friend's funeral in Minnesota on the morning of July 6.

Appellants and their companion traveled to LAX as planned without incident. On July 5, 2019, they boarded their return flight at LAX. However, before the plane departed, Sun Country staff approached the men and directed them to leave the airplane. Appellants and their companion were the only African American passengers in first class, as everyone else was Caucasian. Additionally, they were the only passengers ordered to leave the

airplane. According to appellants, they “did not engage in any inappropriate, illegal, or disruptive behavior prior to being ordered to leave.” When they asked why they were being instructed to leave the airplane, Sun Country staff informed them that “Sun Country staff did not feel safe with [appellants and their companion] traveling on the airline.” The men complied with the demands and exited the airplane. The airplane departed shortly afterward, leaving them at LAX. As a result, they missed their friend’s funeral because they were unable to return to Minnesota until later the following day.

Appellants claimed that “Sun Country staff profiled and targeted [them] solely based on their race and skin color.” Accordingly, they brought three claims against Sun Country: (1) public-accommodation discrimination under Minn. Stat. § 363A.11 (2020), a section of the Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01-.44 (2020); (2) negligence and negligence per se; and (3) unlawful discrimination under the California Unruh Civil Rights Act. All of these claims are based on state law.

Sun Country moved to dismiss the amended complaints for failure to state a claim upon which relief can be granted under Minn. R. Civ. P. 12.02(e). The district court granted those motions to dismiss. It determined that federal law preempted all of appellants’ state-law claims because the FAA makes air safety entirely a federal matter. The district court concluded that, because Sun Country staff claimed they removed appellants and their companion for safety reasons, this case involved airline safety and appellants therefore were required to bring a federal claim. Additionally, the district court dismissed appellants’ MHRA claims on the alternative ground that the alleged discrimination occurred in

California, and the MHRA does not apply to acts committed outside of Minnesota. This appeal follows.

DECISION

On appeal from a district court’s ruling on a motion to dismiss for failure to state a claim under 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 “accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party.” *Id.* We are not, however, bound by legal conclusions in a complaint. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008). “A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader’s theory, to grant the relief demanded.” *Walsh*, 851 N.W.2d at 603.

Appellants challenge the district court’s determination that the FAA preempts all of their claims. Preemption is based on the Supremacy Clause of the U.S. Constitution. *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1479 (2018). That provision provides that the Constitution and the laws of the United States “shall be the supreme Law of the Land.” U.S. Const. art. VI, cl. 2. Accordingly, when a federal law conflicts with a state law, “the federal law takes precedence and the state law is preempted.” *Murphy*, 138 S. Ct. at 1480.

Whether federal law preempts state law is a question of law that we review de novo. *Gretsch v. Vantium Capital, Inc.*, 846 N.W.2d 424, 428 (Minn. 2014). “Congressional purpose is the ultimate touchstone of the preemption inquiry.” *Id.* at 432-33. In preemption

cases, especially those in which “Congress has legislated in a field that the states have traditionally occupied,” we “start with the assumption that the historic police powers of the states were not superseded by the federal act unless that was the clear and manifest purpose of Congress.” *Id.* at 433. Additionally, preemption is generally disfavored. *Id.*

Courts have identified three different types of preemption: “express preemption,” “conflict preemption,” and “field preemption.” *Murphy*, 138 S. Ct. at 1480. Express preemption occurs when Congress uses explicit language to preempt a state law. See *Gretsch*, 846 N.W.2d at 433 (stating that Congress may preempt a state law “by using express language”). Conflict preemption occurs when “state law actually conflicts with federal law” and “it is impossible for a private party to comply with both state and federal requirements.” *In re Qwest’s Wholesale Serv. Quality Standards*, 702 N.W.2d 246, 251 (Minn. 2005) (quotations omitted). Finally, field preemption occurs when “federal law occupies a field of regulation so comprehensively that it has left no room for supplementary state legislation.” *Murphy*, 138 S. Ct. at 1480 (quotations omitted). Otherwise stated, “[a]bsent explicit preemption language, Congress’s intent to preempt state law may be inferred when the federal regulation is ‘so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.’” *Qwest*, 702 N.W.2d at 251 (quoting *Fid. Fed. Sav. & Loan Ass’n v. de la Cuesta*, 458 U.S. 141, 153, 102 S. Ct. 3014, 3022 (1982) (quotation omitted)). Both conflict and field preemption are types of implied preemption. See *id.* at 250-51 (explaining that preemption may be express or implied and that conflict and field preemption occur without explicit preemption language); see also *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 98, 112 S. Ct. 2374, 2383 (1992).

Here, the district court determined that the FAA preempted appellants' state-law claims under the doctrine of field preemption, reasoning that the FAA fully preempts the field of air safety. Sun Country does not contend that any other type of preemption applies here. Whether the FAA impliedly preempts state law in the field of air safety appears to be a question of first impression in Minnesota. We therefore turn to federal caselaw to guide our analysis.

The FAA states that “an air carrier, intrastate air carrier, or foreign air carrier may refuse to transport a passenger or property the carrier decides is, or might be, inimical to safety.” 49 U.S.C. § 44902(b) (2012). Based on the language and regulatory scheme of the FAA, multiple circuit courts have held that “Congress intended to occupy the entire field of air safety and thereby preempt state regulation of that field.” *Goodspeed Airport LLC v. E. Haddam Inland Wetlands & Watercourses Comm’n*, 634 F.3d 206, 210 (2d Cir. 2011); see *US Airways, Inc. v. O’Donnell*, 627 F.3d 1318, 1326 (10th Cir. 2010) (stating that “federal regulation occupies the field of aviation safety to the exclusion of state regulations”); *Montalvo v. Spirit Airlines*, 508 F.3d 464, 473 (9th Cir. 2007) (“Congress’ intent to displace state law is implicit in the pervasiveness of the federal regulations, the dominance of the federal interest in this area, and the legislative goal of establishing a single, uniform system of control over air safety.”); *Greene v. B.F. Goodrich Avionics Sys., Inc.*, 409 F.3d 784, 795 (6th Cir. 2005); *Abdullah v. Am. Airlines, Inc.*, 181 F.3d 363, 367 (3d Cir. 1999); *French v. Pan Am Express, Inc.*, 869 F.2d 1, 6-7 (1st Cir. 1989). We agree with the circuit courts that have examined this issue and conclude that the FAA impliedly preempts state law in the field of air safety.

That is not the end of our inquiry. Although we conclude that Congress intended to occupy the field of air safety, we still must determine whether the circumstances presented in this case fall within that field. *See Goodspeed*, 634 F.3d at 210-11 (stating that the court “must determine not only Congressional intent to preempt, but also the scope of that preemption”). None of the circuit-court cases cited above involved the situation at issue here—an airline’s removal of passengers from a flight for purported safety reasons.

Sun Country argues that a “state-law tort claim falls within the scope of FAA preemption when its adjudication requires a court to review an air carrier’s decision to refuse to transport a passenger for ostensible safety reasons.” In support of that argument, Sun Country identifies several unpublished opinions from federal courts that also involved passengers alleging racial discrimination after airlines removed them from flights for supposed safety purposes.

In *Shaffy v. United Airlines, Inc.*, an airline removed an Iranian passenger from a flight for safety reasons because the passenger brought a dog on the airplane and did not obey the flight attendants’ instructions to keep the dog in its carrier. No. 08-56307, 2009 WL 4882662, at *1 (9th Cir. Dec. 10, 2009). The Ninth Circuit determined that, because the airline claimed to remove the passenger for safety reasons, the FAA preempted her state-law claims. *Id.* at *1-2. In *Register v. United Airlines, Inc.*, an African American man became engaged in a “verbal altercation” with a flight attendant who “bumped” him twice. No. 16-CV-2480 W (BGS), 2017 WL 784288, at *1 (S.D. Cal. Mar. 1, 2017). The flight attendant told a supervisor that she did not feel comfortable with the passenger, and the airline removed him from the airplane. *Id.* The federal district court concluded that

the FAA “preempts all state law impinging upon the circumstances under which an air carrier may remove a passenger from a flight for safety reasons,” and that the passenger’s state-law claims were therefore preempted because the airline’s decision to remove the passenger related to safety. *Id.* at *2-3. And in *Mercer v. Sw. Airlines Co.*, an African American man and his fiancée were removed from a flight after the man argued with a flight attendant about his carryon baggage, and the captain of the flight considered him to be a security threat. No. 13-cv-05057-MEJ, 2014 WL 4681788, at *1-2 (N.D. Cal. Sept. 19, 2014). The federal district court determined that the passenger’s state-law claims were preempted because the FAA fully occupied the field of aviation safety, and the claims required the court to determine whether the passenger in fact posed a safety threat. *Id.* at *5.

Appellants point to other federal cases to support their argument that the FAA does not preempt their state-law claims. The U.S. District Court for the District of Minnesota has stated that, pursuant to 49 U.S.C. § 44902(b), “an airline may be civilly liable for refusing to board a passenger because of safety concerns only if the decision is arbitrary and capricious,” and that “a refusal to board a passenger that is motivated by a passenger’s race is inherently arbitrary and capricious.” *Shqeirat v. U.S. Airways, Inc.*, 515 F. Supp. 2d 984, 1004 (D. Minn. 2007). That court also has determined, in an unpublished opinion, that federal aviation law does not expressly preempt claims under the MHRA. *Alasady v. Nw. Airlines Corp.*, No. Civ.02-3669(RHK/AJB), 2003 WL 1565944, at *10 (D. Minn. Mar. 3, 2003). Furthermore, another federal district court has declared that 49 U.S.C.

§ 44902(b) “does not grant [airlines] a license to discriminate.” *Bayaa v. United Airlines, Inc.*, 249 F. Supp. 2d 1198, 1205 (C.D. Cal. 2002).

We take note of those cases, but we determine that they are distinguishable from this case. The airline in *Bayaa* did not raise the issue of FAA preemption and instead just relied on the language of 49 U.S.C. § 44902(b). *Id.* Similarly, the airline in *Shqeirat* argued that it acted pursuant to its discretion under 49 U.S.C. § 44902(b). 515 F. Supp. 2d at 1004. Although the airline eventually contended that the FAA preempted the passengers’ state-law claims, the district court did not consider that argument because the airline did not clearly raise it in its memoranda of law to support its motion for summary judgment and instead “submit[ted] letters that amount to unsolicited supplemental memoranda of law.” *Id.* at 1008-09. And in *Alasady*, the court concluded only that the FAA, as amended by the Airline Deregulation Act of 1978, did not expressly preempt state-law claims, and it explicitly declined to consider the issue of implied preemption. 2003 WL 1565944, at *3-10. Here, on the other hand, Sun Country does not contend that the FAA *expressly* preempts the MHRA, but rather that the FAA *impliedly* preempts appellants’ MHRA claims by fully occupying the field of air safety. Therefore, the cases on which appellants rely do not directly address the issue in this case. Instead, the courts that have analyzed the specific issue presented here—implied FAA preemption when airlines remove passengers from airplanes for purported safety reasons—have consistently determined that the passengers’ state-law claims against the airlines are preempted.

We now review appellants’ complaints to determine whether their claims fall within the scope of FAA preemption. When doing so, we must accept all alleged facts as true and

construe all reasonable inferences in appellants' favor. Therefore, we assume that appellants were the only African Americans in first class; that they did not engage in any disruptive behavior; and that Sun Country staff informed them that the staff did not feel safe with them on the flight. Sun Country argues that, because Sun Country staff cited safety as the reason for appellants' removal from the airplane, "a court cannot begin to analyze the validity of this statement in the context of [appellants'] state-law claims without intruding upon the exclusive federal governance of aviation safety."

Appellants insist that, with all inferences drawn in their favor, the complaints allege that "Sun Country staff did not feel safe due to [a]ppellants' skin color and that [a]ppellants' race, and nothing else, was the only 'safety' concern." They distinguish *Shaffy*, *Register*, and *Mercer* on the grounds that each safety concern cited by the airline in those cases "was supported by at least some arguable factual basis," whereas there is no factual basis here to support Sun Country's safety concerns.

This argument is unpersuasive. It is true that appellants' complaints do not provide any facts indicating why Sun Country staff felt unsafe with appellants on the flight, aside from their race. But it is undisputed that Sun Country claimed safety reasons as the rationale for removing appellants. Those reasons may or may not have been a pretext, but they place this case within the field of air safety. Because Sun Country invoked safety as its reason for removing appellants from the airplane, appellants' claims will require a determination as to whether appellants actually posed a threat to safety and will necessitate an inquiry into the circumstances under which an air carrier may remove passengers for

safety reasons pursuant to 49 U.S.C. § 44902(b). Therefore, appellants' state-law claims implicate the federally occupied field of air safety and are preempted.

Appellants contend that, if their claims are preempted, then airlines could categorically bar African American passengers from first class under the guise that they pose a safety hazard, and African American passengers would be unable to seek recourse for racial discrimination. We recognize that, under our holding, passengers would be unable to bring discrimination claims under the MHRA or other state law. But passengers would still be able to pursue remedies under federal law. For example, in *Register*, despite concluding that the FAA preempted the plaintiff's state-law claims, the court conducted a separate analysis of the plaintiff's claims under 42 U.S.C. § 1981 (2012) (providing that all persons are entitled to equal rights under the law) and 42 U.S.C. § 2000d (2012) (providing that no person shall be subjected to discrimination based on race, color, or national origin under any program receiving federal financial assistance). 2017 WL 784288, at *3-4. As such, the issue in this case is not whether appellants can bring *any* claims against Sun Country, but whether they must bring federal claims instead of state claims.

In sum, we follow the lead of federal courts that have determined this issue. Although those cases have no precedential effect on this court, we find them to be persuasive. Due to the language of 49 U.S.C. § 44902(b) and the FAA's regulatory scheme, the FAA fully occupies the field of aviation safety. Appellants' state-law claims fall within the scope of that field and are preempted because appellants' removal from the airplane was purportedly based on safety reasons. Therefore, we affirm the district court's

dismissal of appellants' claims. Because all of the claims are preempted, we need not address the district court's dismissal of the MHRA claims on the alternative ground that the MHRA does not apply to acts committed outside of Minnesota.

Affirmed.