

*This opinion is nonprecedential except as provided by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
A21-0303**

Peter Gerard Lonergan, and on behalf of
all citizens civilly committed under the MCTA,
Appellant,

vs.

Keith Ellison, Attorney General, et al.,
Respondents.

**Filed November 15, 2021
Affirmed
Smith, Tracy M., Judge**

Ramsey County District Court
File No. 62-CV-19-6768

Peter G. Lonergan, Moose Lake, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Brandon Boese, Assistant Attorney General, St. Paul,
Minnesota (for respondents)

Considered and decided by Smith, Tracy M., Presiding Judge; Bjorkman, Judge;
and Reilly, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

On appeal from the district court's dismissal of his amended complaint with
prejudice, appellant Peter Gerard Lonergan argues that the district court (1) applied the
wrong legal standard and otherwise committed legal error, (2) failed to adequately consider

his memorandum of law in opposition to the motion to dismiss, and (3) made procedural errors. We affirm.

FACTS

Lonergan is civilly committed to the Minnesota Sex Offender Program (MSOP) pursuant to the Minnesota Commitment and Treatment Act. Lonergan sued respondents Minnesota Attorney General Keith Ellison, Commissioner of the Minnesota Department of Health and Human Services Jodi Harpstead, and the Executive Director of MSOP Nancy Johnston. His complaint set forth 17 questions regarding the rights of persons civilly committed to MSOP and asked the district court to “issue judgment on” the questions. Respondents moved to dismiss Lonergan’s complaint for failure to state a claim pursuant to Minn. R. Civ. P. 12.02(e). The district court granted respondents’ motion, concluding that the 17 “abstract questions” did not present a justiciable controversy. The district court dismissed Lonergan’s complaint without prejudice and granted him leave to file an amended complaint.

Lonergan thereafter filed the amended complaint that is the subject of this appeal. The amended complaint presented 17 questions that were nearly identical to those raised in his first complaint, as well as an additional allegation that respondents had committed fraud.

Respondents again moved to dismiss pursuant to Minn. R. Civ. P. 12.02(e). A hearing was scheduled but, due to the pandemic, was canceled in favor of written submissions only. Lonergan moved to strike respondents’ memorandum of law in support

of their motion to dismiss. He also filed a memorandum of law in opposition to respondents' motion to dismiss.

The district court granted respondents' motion to dismiss with prejudice. In its order, the district court concluded that Lonergan's complaint failed to meet the heightened pleading standard for fraud claims under Minn. R. Civ. P 9.02 and thus failed to state a claim for fraud. And the district court dismissed his entire amended complaint because it repeated the same questions and requests for relief as the prior complaint that was dismissed without prejudice. In making its ruling, the district court referred to Lonergan's motion to strike but appears to have overlooked Lonergan's memorandum of law opposing the motion to dismiss.

Lonergan appeals.

DECISION

Lonergan argues that the district court erred by dismissing his amended complaint for failure to state a claim upon which relief may be granted under Minnesota Rule of Civil Procedure 12.02(e).

A district court properly dismisses a claim for failure to state a claim under rule 12.02(e) only if "it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 602 (Minn. 2014) (emphasis omitted). Appellate courts apply a de novo standard of review when determining whether a district court erred in granting a motion to dismiss for failure to state a claim. *Id.* at 606. 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 bound by legal conclusions asserted in a complaint. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008).

Lonergan makes three arguments challenging the district court’s dismissal of his amended complaint, which we address in turn.

I. The district court applied the proper legal standard and did not err when it concluded that the amended complaint failed to state a claim for fraud.

Lonergan argues that the district court applied the wrong legal standard and erred when it concluded that the amended complaint failed to state a claim for fraud.¹

Regarding the legal standard, Lonergan contends that the district court “required [him] to prove his case at the dismissal stage of the proceeding” when it should have instead taken the allegations in the complaint as true. He points to the district court’s statement in its order that, to succeed on his fraud claim, Lonergan “must *prove* that [respondents] made a false representation of a past or existing material fact susceptible of knowledge with the intention to induce Plaintiff to act in reliance thereon.” (Emphasis added.)

Lonergan’s argument is without merit. In its order, the district court noted that, under caselaw, to successfully plead a fraud, the party alleging fraud must allege the elements of that claim with a heightened degree of pleading. *See, e.g., Hardin Cnty. Sav. Bank v. Hous. & Redevelopment Auth. of Brainerd*, 821 N.W.2d 184, 191 (Minn. 2012). The district court then identified the elements that a party alleging fraud must “prove” to

¹ Lonergan appears to challenge only the dismissal of his fraud claim, although his amended complaint also includes requests for declaratory judgment. As noted above, those requests are nearly identical to those in his original complaint, and the district court previously concluded that those claims were legally insufficient because they failed to state a claim. Lonergan does not challenge that decision.

succeed on a fraud claim at trial. *See Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 368 (Minn. 2009). The district court then considered those elements when determining whether the amended complaint sufficiently pleaded fraud with the required particularity. Thus, while the district court used the word “prove” when identifying what Lonergan would have to show to prevail on his fraud claim, the district court’s dismissal was not based on Lonergan’s failure to prove those elements—it was based on his failure to plead those elements with the required particularity.

Nor did the district court err when it determined that Lonergan’s amended complaint failed to plead fraud with the required particularity. In general, 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. Every averment in the pleading must be “simple, concise, and direct”; however, no specific or technical form of pleading is required. Minn. R. Civ. P. 8.05(a). But parties pleading fraud must meet a heightened pleading standard: “In all averments of fraud . . . the circumstances constituting fraud . . . shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.” Minn. R. Civ. P. 9.02. This requirement is met when the “ultimate facts are alleged.” *In re Est. & Guardianships of Williams*, 95 N.W.2d 91, 100 (Minn. 1959).

A plaintiff claiming fraud must prove:

(1) a false representation taken by [defendant] of a past or existing material fact susceptible of knowledge; (2) made with knowledge of the falsity of the representation or made without knowing whether it was true or false; (3) with the intention to induce [plaintiff] to act in reliance thereon; (4) that the

representation caused [plaintiff] to act in reliance thereon; and (5) that [plaintiff] suffered pecuniary damages as a result of the reliance.

Valspar, 764 N.W.2d at 368.

In his amended complaint, Lonergan alleged that respondents committed “Acts of Fraud to Institutionalize Plaintiff Due to Animus, Political Hatred; and Not for a Legitimate Government Purpose.” He additionally claimed that the respondents committed fraud when they “obtained Administrative Variances,” diagnosed him “with a faux psychiatric disorder by the misuse of psychiatric tools that [are] directly opposed to best practice,” and “unnecessarily” hospitalized him and held him in captivity. However, Lonergan did not allege specific fraudulent statements in connection with these assertions. Nor did he allege that any statements on the part of respondents were made with the intention to induce him to act or that he acted on these alleged false statements. Absent more, these assertions do not meet the specificity-of-pleading requirements for fraud. *See Williams*, 95 N.W.2d at 100.

Lonergan also claimed that respondents committed fraud when they allegedly made misrepresentations of law in various other court cases. But misrepresentations of law are generally not actionable for fraud. *Northernair Prods., Inc. v. County of Crow Wing*, 244 N.W.2d 279, 281 (Minn. 1976). There are only two situations in which a misrepresentation of law is actionable for fraud: “[t]hose in which the person misrepresenting the law is learned in the field and has taken advantage of the solicited confidence of the party defrauded” and “those in which the person misrepresenting the law stands with reference to the person imposed upon in a fiduciary or other similar relation of trust and confidence.”

Id. at 281-82 (quotation omitted). Neither of these exceptions applies in this case. As for the first exception, Lonergan did not claim that he was the party defrauded by the alleged legal misrepresentation; instead, he claimed that it was the court that was defrauded by the alleged legal misrepresentation. As for the second exception, Lonergan did not allege facts showing a “fiduciary or other similar relation of trust and confidence” between either respondents and Lonergan or between respondents and the state or federal courts.

Moreover, even if the misrepresentations of law were actionable, Lonergan did not allege that he “act[ed] in reliance” on any misrepresentation. *Valspar*, 764 N.W.2d at 368. Instead, he asserted that the courts are the ones who relied on the alleged misrepresentation. Nor did he sufficiently allege that he “suffered pecuniary damages as a result of the reliance.” *Id.* Lonergan’s claim cannot succeed because he did not adequately allege that he is the person harmed by the respondents’ alleged fraud.

For these reasons, Lonergan failed to plead the required elements of fraud sufficient to survive a motion to dismiss for failure to state a claim.

II. Any error by the district court in overlooking Lonergan’s memorandum of law opposing dismissal was harmless.

Lonergan next argues that the district court committed reversible error by failing to consider his memorandum in opposition to respondents’ motion to dismiss. In its order, the district court wrote, “In lieu of a responsive brief, Mr. Lonergan filed a motion to strike the motion to dismiss on October 14, 2020.” The district court continued that it “interprets the motion to strike as a response to this motion.” For purposes of this appeal, we will assume

that these statements by the district court mean that it did, in fact, overlook Lonergan's memorandum of law.

If, on appeal, a complaining party shows that the district court committed an error, the mere existence of that error is insufficient to require reversal—rather, the party must show prejudice resulting from that error. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored). Lonergan thus must show that he was prejudiced by what we are assuming was the district court's error in overlooking his brief. *Id.* He cannot do so, however, because, as noted above, appellate courts review a district court's granting of a motion to dismiss for failure to state a claim under a de novo standard of review. *Walsh*, 851 N.W.2d at 606. And, as explained above, we conclude that, under that standard of review and taking into account the arguments made in Lonergan's brief to this court, his amended complaint is fatally defective.

III. Lonergan's arguments of procedural error fail.

Lonergan next makes two procedural arguments challenging the district court's dismissal. Neither has merit.

He first argues that he was entitled to a hearing on his motion to strike. Minnesota Rule of Civil Procedure 7.02 governs motions and generally provides for hearings. But Lonergan's hearing was suspended in accordance with the administrative order of the Chief Justice of the Minnesota Supreme Court regarding the peacetime emergency due to the COVID-19 pandemic, and the related order of the Chief Judge of the Second Judicial District suspending motion hearings in civil cases and directing that those motions be considered on written submissions. The district court's compliance with those orders was

not erroneous. In any event, Lonergan does not show that he was prejudiced by having his case considered only on the parties' written submissions.

Lonergan next claims that the district court held an improper ex parte hearing on October 13, 2020. He bases this claim on a notation in the district court's register of actions that lists a 7:00 motion that morning and states: "Result: Held Off the Record." Lonergan says that he "is not aware what the communication was, does not declare any improprieties, but does claim that he was prejudiced as a result of the ex parte communication." Although the actual notation is not included in the record on appeal, respondents acknowledge that this is what the register of actions says.² However, respondents argue that they did not have any ex parte communication with the judge, and nothing in this notation indicates that an ex parte communication actually occurred on that—or any other—date.

On appeal, the appellant bears the burden of proving that the district court erred. *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944). Assuming that the docket notation says what Lonergan asserts it says, the notation does not establish that an ex parte communication with respondents occurred.³ Nor does Lonergan explain how he was prejudiced, especially since he does not purport to identify what actually happened at the district court.

² We appreciate respondents' candor on this point.

³ Respondents note that October 13, 2020, was the date of the originally scheduled hearing on respondents' motion to dismiss, which was canceled in favor of a determination on written submissions only.

In sum, Lonergan's challenges to the district court's decision fail. The district court did not err when it dismissed his amended complaint with prejudice.

Affirmed.