

*This opinion is nonprecedential except as provided by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
A22-0189**

Joseph Eilefson,
Appellant,

vs.

Park Nicollet Health Services,
Respondent.

**Filed August 8, 2022
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CV-20-14435

Joseph Ronald Eilefson, Hopkins, Minnesota (pro se appellant)

David M. Wilk, Larson King, L.L.P., St. Paul, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Reyes, Judge; and Wheelock,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this appeal from the district court's summary-judgment dismissal of appellant-employee's claim of employment discrimination and reprisal under the Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01-.50 (2020 & Supp. 2021), appellant argues that he established a prima facie case of religious discrimination and retaliation and that respondent-employer's proffered reason for his termination is pretextual. We affirm.

FACTS

These facts are construed in the light most favorable to appellant Joseph Eilefson as the party against whom summary judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). In 2007, Eilefson began working as a respiratory therapist at Methodist Hospital, which is operated by respondent Park Nicollet Health Services.

Because of the delicate relationship between religion and health care, Park Nicollet maintains a staff of chaplains, chaplain students, and palliative-care physicians to provide spiritual care. These individuals have specialized training and clinical experience to provide care for each patient's and family's spiritual needs. Because of the risks associated with improper spiritual care, only trained employees can provide spiritual care at Methodist Hospital. Eilefson did not have spiritual-care training, so it was outside of his work duties.

Complaints about Eilefson

Eilefson is a Christian and would often share his religion with coworkers and patients. Five patients raised concerns about Eilefson's religious conversations and prayers during his employment with Park Nicollet. Each complaint led to reprimands from one of Eilefson's two supervisors.

The first incident occurred in 2013 when a patient complained to Eilefson's first supervisor that Eilefson asked if she was a Christian. In response, the first supervisor told Eilefson to be "careful" when talking to patients about religion. Eilefson remembers this conversation with his first supervisor. The second incident occurred in May 2014 after Eilefson asked another patient if she was a Christian and began preaching to her. The first supervisor told Eilefson to stop talking with his patients about religion. In June 2014, a

third patient complained, and the first supervisor told Eilefson to refrain from talking about religion unless a patient brings it up.

The fourth complaint occurred in May 2016. Eilefson began an unwanted conversation about religion with a patient, who complained to her physician. The physician contacted the director of spiritual care, who agreed with the physician that Eilefson acted outside the scope of his employment. Eilefson's second supervisor told him to refrain from discussing religious topics or praying with patients unless expressly invited. At the time, the second supervisor did not know of the three other complaints against Eilefson.

The final complaint, and the one immediately preceding Eilefson's termination, occurred in May 2018. Eilefson was caring for a patient who was also receiving palliative care from trained employees. One night, he asked the patient's husband if he was a Christian and if he would like to pray. The husband agreed. Eilefson then knelt by the patient's bed and prayed that God would "add many more good years to [the patient's] life." Eilefson then told the husband a story about a friend with a terminal-cancer diagnosis who was allegedly healed by prayer. After hearing Eilefson's story about his friend, the patient's husband believed that prayer could save his wife and concluded that the doctors were wrong.

The patient later died.

Park Nicollet Terminates Eilefson

The physician primarily responsible for the patient's care reported Eilefson's conduct to Eilefson's second supervisor, while the social worker and palliative-care doctor informed their supervisor. The palliative-care doctor's supervisor filed a formal complaint.

At a meeting with his second supervisor, Eilefson admitted to the conduct. After contacting Human Resources (HR), the second supervisor informed Eilefson that he would meet with HR.

During the HR meeting, Eilefson again admitted to the conduct and became defensive when the HR representative questioned his behavior. Following the meeting, the second supervisor reviewed Eilefson's file and saw the three other complaints. The first supervisor's notes, which were contemporaneous with each of the first three complaints, contradicted Eilefson's memory of each complaint. Based on these contradictions, the second supervisor concluded that Eilefson misled him regarding the previous complaints against him and recommended that Eilefson's employment be terminated. An HR representative agreed. By that time, Eilefson emailed the HealthPartners CEO¹ claiming that his supervisors falsified documents.

Park Nicollet supervisors independently reviewed the termination recommendation. The supervisors agreed that termination of Eilefson's employment was appropriate. Park Nicollet terminated Eilefson's employment on June 7, 2018.

Eilefson's Charge of Discrimination

On April 1, 2019, Eilefson filed a Charge of Discrimination with the federal Equal Employment Opportunity Commission (EEOC).² The charge alleges that Park Nicollet

¹ Park Nicollet is a subsidiary of HealthPartners.

² It is not clear from the record whether Eilefson cross-filed the charge with the Minnesota Department of Human Rights or, if so, what action the Minnesota Department of Human Rights took on the charge.

terminated him because of his religion. The charge did not allege reprisal by Park Nicollet. The EEOC reviewed and dismissed Eilefson's charge.

Eilefson then filed the present claim in district court, which included an allegation of reprisal against his former employer. After the close of discovery, Park Nicollet moved for summary judgment. At the hearing on Park Nicollet's summary-judgment motion, Eilefson submitted what he characterized as a professional reference from his second supervisor dated January 15, 2020. The reference was allegedly sent to Emerald Health Services to help Eilefson secure a new job. The district court excluded the reference as inadmissible hearsay.

In its order granting summary judgment in favor of Park Nicollet, the district court determined that no genuine issue of material fact existed as to whether Park Nicollet discriminated against Eilefson when terminating his employment. The district court also determined that Eilefson's reprisal claim was time-barred. This appeal follows.

DECISION

We discern three issues in Eilefson's pro se brief. First, Eilefson contests the district court's exclusion of the professional reference as inadmissible hearsay. Second, Eilefson argues that he presented a prima facie case of discrimination. Third, Eilefson argues that the district court improperly dismissed his reprisal claim as time barred. We address each issue in turn.

I. The district court did not abuse its discretion by excluding the professional reference.

Eilefson argues that, had the district court considered the professional reference that his second supervisor allegedly sent to Emerald Health Services in January 2020, then it would have determined that the second supervisor committed perjury and fraud and that Eilefson was therefore terminated based on religious discrimination. We are not convinced.

We review evidentiary decisions for an abuse of discretion. *See Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015). Eilefson does not explain how the district court abused its discretion by excluding the purported professional reference as inadmissible hearsay. Therefore, Eilefson fails to meet his burden of proving error on appeal. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (“[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it.”). Similarly, Eilefson failed to brief this issue adequately and no “prejudicial error is obvious on mere inspection.” *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971); *see also Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (stating we decline to address allegations unsupported by legal analysis or citation).

II. Eilefson failed to present a prima facie case of discrimination.

Eilefson next argues that he presented a sufficient prima facie case of religious discrimination. We disagree.

We review de novo a district court's summary-judgment decision. *See Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). "In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Id.* Summary judgment is appropriate if "the [moving party] shows that there is no genuine issue as to any material fact and the [moving party] is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. On appeal, we view the evidence in the light most favorable to the party against whom judgment was granted. *See Fabio*, 504 N.W.2d at 761. Park Nicollet as the moving party has the burden to show that summary judgment is appropriate. *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009). General assertions and speculation by the nonmoving party are not enough to create a genuine issue of material fact for trial. *See Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995).

Eilefson contends that Park Nicollet terminated his employment because he is a Christian. Under the MHRA, an employer may not discriminate against or discharge an employee because of religion. Minn. Stat. § 363A.08, subd. 2. In construing the MHRA, we apply both Minnesota caselaw and "law developed in federal cases arising under Title VII of the 1964 Civil Rights Act." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

Under the MHRA, discriminatory intent may be shown using circumstantial evidence under the three-part burden-shifting test in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04 (1973). *Hoover v. Norwest Priv. Mortg. Banking*, 632 N.W.2d 534, 542 (Minn. 2001). This test first "requires a plaintiff to establish a prima facie case of

discrimination.” *Friend v. Gopher Co.*, 771 N.W.2d 33, 37 (Minn. App. 2009). “Although the prima facie case varies depending on the type of employment decision that is challenged, its purpose is to disprove the most obvious legitimate bases for the employment decision, thereby allowing the inference that the decision was motivated by discrimination.” *Id.*

We conclude that Eilefson failed to present a prima facie case of discrimination and that summary judgment is appropriate.³ A plaintiff presents a prima facie case of discriminatory discharge by asserting that they: (1) are a member of a protected class; (2) were qualified for the position from which they were discharged; (3) were discharged; and (4) were replaced by a non-member of the protected class. *Id.* at 38. The parties only dispute the fourth prong.

Neither party contends that Park Nicollet replaced Eilefson with a non-Christian, but that is not fatal to Eilefson’s claim. Federal caselaw allows for a plaintiff to meet the requirements of the fourth prong if “circumstances exist that give rise to an inference of discrimination.” *See Henry v. Indep. Sch. Dist. No. 625*, 964 N.W.2d 667, 677 (Minn. App. 2021) (citing *Rahlf v. Mo-Tech Corp.*, 642 F.3d 633, 637 (8th Cir. 2011) (applying same test to analyze age-discrimination claim); *Wierman v. Casey’s Gen. Stores*, 638 F.3d 984,

³ Because Eilefson failed to present a prima facie case of discrimination, we need not consider the other two parts of the *McDonnell Douglas* test. If Eilefson presented a prima facie case of discrimination, the burden would have then shifted to Park Nicollet to show legitimate, nondiscriminatory reasons for Eilefson’s termination. *Fletcher*, 589 N.W.2d at 102. If Park Nicollet had met this burden, then the burden would have shifted back to Eilefson to show that Park Nicollet’s reasons for the decision were a pretext for discrimination. *Id.*

993 (8th Cir. 2011) (applying same test to analyze pregnancy-discrimination claim); *Wheeler v. Aventis Pharm.*, 360 F.3d 853, 857 (8th Cir. 2004) (using same test to analyze race-discrimination claim)), *rev. granted* (Minn. Oct. 19, 2021); *see also Fletcher*, 589 N.W.2d at 101 (allowing our use of federal caselaw when reviewing discrimination claims brought under MHRA).

Even under this relaxed standard, Eilefson fails to make a *prima facie* case of discrimination. Other than generally asserting that “he felt he was being discriminated against and persecuted because of his religious beliefs,” Eilefson does not present circumstances showing a discriminatory environment specific to Park Nicollet. Eilefson admitted that he could discuss his religion with his co-workers and the hospital even included a copy of Eilefson’s book on the Old Testament in a breakroom. Further, the decision-making process used that led to Eilefson’s termination did not center on Eilefson praying with the patient’s husband, but that he stepped outside the scope of his employment as a respiratory therapist. Thus, Eilefson did not meet his burden of demonstrating a *prima facie* case of discrimination.

III. Eilefson forfeited his reprisal claim.

Finally, Eilefson argues that he established a *prima facie* case of reprisal. Eilefson’s claim fails. Generally, the MHRA prevents an employer from “intentionally engag[ing] in any reprisal against any person because” that person “opposed a practice forbidden under [the MHRA].” Minn. Stat. § 363A.15. Park Nicollet notes, and we agree, that Eilefson failed to contest its motion for summary judgment on his reprisal claim. “Summary judgment is proper when the nonmoving party fails to oppose the motion by presenting

specific facts which create a genuine issue of fact.” *Michaelson v. Minn. Mining & Mfg. Co.*, 474 N.W.2d 174, 178 (Minn. App. 1991), *aff’d mem.*, 479 N.W.2d 58 (Minn. 1992). Similarly, arguments not raised to the district court are forfeited on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Park Nicollet moved for summary judgment on Eilefson’s reprisal claim, and Eilefson presented no arguments against that motion, either written or oral. Accordingly, Eilefson forfeits any arguments on his reprisal claim on appeal.

Affirmed.