

*This opinion is nonprecedential except as provided by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
A22-0204**

Raymond L. Semler,
Appellant,

vs.

Jodi Harpstead, et al.,
Respondents.

**Filed October 17, 2022
Affirmed
Bratvold, Judge**

Ramsey County District Court
File No. 62-CV-21-3723

Raymond L. Semler, Moose Lake, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Leaf McGregor, Assistant Attorney General, St. Paul,
Minnesota (for respondents)

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant challenges the district court's judgment dismissing his complaint for failure to state a claim upon which relief can be granted. Appellant is civilly committed to the Minnesota Sex Offender Program (MSOP), and his complaint alleges disability discrimination under the Americans with Disabilities Act (ADA) and the Rehabilitation

Act (RA) and employment discrimination under the Minnesota Human Rights Act (MHRA). Because appellant's complaint fails to allege facts from which we may infer either that he has a disability or that he is an employee of either respondent, we affirm.

FACTS

Appellant Raymond L. Semler is committed to MSOP in Moose Lake. Respondent Jodi Harpstead is the commissioner of the department of human services, which operates MSOP. Respondent Nancy Johnston is the executive director of MSOP.

In July 2021, Semler sued the respondents, alleging violations of his rights under federal and state law, specifically, 42 U.S.C. § 12132 (2018) (ADA), 29 U.S.C § 794(a) (2018) (RA), and Minn. Stat. § 363A.08, subd. 2(3) (2020) (MHRA). Semler's complaint alleges that respondents discriminated against him and denied him benefits and programming based on his disability by not allowing him "to receive more than eight hours per week" in the vocational work program (VWP). The complaint further alleges that MSOP policy provides that residents "actively participating in sex offender treatment are given priority hours of programming and placement" for the VWP and that residents who do not participate in treatment are limited to eight hours per week. The complaint also alleges Semler is in the VWP, he does not "actively participate" in MSOP's non-mandatory treatment program, and his VWP hours are limited to eight hours per week.

Respondents moved to dismiss Semler's complaint for failure to state a claim upon which relief can be granted under Minn. R. Civ. P. 12.02(e). Following a hearing, the district court issued a December 2021 order granting respondents' motion, dismissing the complaint, and ordering judgment against Semler. The district court reasoned that Semler's

complaint fails to state a claim under the ADA and RA because “[a]side from Semler’s contention that his civil commitment constitutes an underlying mental impairment, Semler acknowledges that he has no other physical or mental disabilities.” On Semler’s MHRA claim, the district court reasoned that Semler is not an employee of MSOP and “has not shown he has a disability under the MHRA.” In a footnote, the district court added that Semler’s MHRA claim is time-barred.

Semler appeals.

DECISION

When reviewing the dismissal of a complaint under Minn. R. Civ. P. 12.02(e) for failure “to state a claim upon which relief can be granted, [appellate courts] must ‘accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party.’” *Engstrom v. Whitebirch, Inc.*, 931 N.W.2d 786, 790 (Minn. 2019) (quoting *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014)). The sole question on appeal is “whether the complaint sets forth a legally sufficient claim for relief.” *Zutz v. Nelson*, 788 N.W.2d 58, 61 (Minn. 2010) (quotation omitted). We review this question de novo. *Engstrom*, 931 N.W.2d at 790.

In his brief to this court, Semler fails to address the district court’s reasoning for dismissing his complaint. Semler’s brief to this court does not discuss or dispute the district court’s determinations that the complaint (1) fails under the ADA or RA because it does not allege Semler is a person with a disability, nor does it allege discrimination or a denial of benefits based on a qualifying disability; and (2) fails under the MHRA because Semler is not an MSOP employee. Because Semler’s brief fails to identify the district court’s error,

we may consider whether he has forfeited appellate review. *In re Application of Olson for Payment of Servs.*, 648 N.W.2d 226, 228 (Minn. 2002) (noting that “[i]t is axiomatic that issues not ‘argued’ in the briefs are deemed waived on appeal” and that “we have indicated that the threshold is whether an issue was addressed in the ‘argument portion’ of the brief” (quotation omitted)).

Nonetheless, Semler’s brief seeks review of the district court’s decision. Even if we assume without deciding that Semler has not forfeited appellate review, his appeal fails on the merits. We address Semler’s claims under the ADA and RA before turning to his MHRA claim.

A. ADA and RA

The ADA provides that “no qualified *individual with a disability* shall, *by reason of* such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity.” 42 U.S.C. § 12132 (emphasis added). The RA provides that “no otherwise qualified *individual with a disability* . . . shall, *solely by reason of [their] disability*, be excluded from participation in” a program or activity receiving federal financial assistance. 29 U.S.C. § 794(a) (emphasis added). To state a prima facie claim under the ADA and RA, a plaintiff must show “1) he is a person with a disability as defined by statute; 2) he is otherwise qualified for the benefit in question; and 3) he was excluded from the benefit due to discrimination based upon disability.” *Randolph v. Rodgers*, 170 F.3d 850, 858 (8th Cir. 1999). The district court’s analysis of Semler’s complaint focused on the first and third elements.

Semler's complaint alleges he is "exercising his statutory and constitutional rights [by] declining to enter and actively participate in MSOP's non-mandatory treatment program." The complaint also alleges respondents discriminated against him under the ADA because they limited his participation in the VWP "by reason of [his] not actively participating in MSOP's non-mandatory treatment program." Similarly, the complaint alleges respondents excluded Semler from the VWP program by "not allow[ing him] to work more than 8 hours per week."

We agree with the district court that these allegations fail to state a claim under the ADA and RA for two reasons. First, the complaint alleges no facts from which we can infer that Semler is a person with a disability. The ADA and RA share a definition of disability requiring (1) an impairment that substantially limits a major life activity; (2) a record of the impairment; or (3) being considered to have such an impairment. 42 U.S.C. § 12102(1) (2018); 29 U.S.C. § 705(9) (2018).

The complaint does not allege Semler has a disability although it alleges he "is an individual confined at" MSOP. During the hearing on the respondents' motion to dismiss, the district court asked whether Semler claims he is a person with a disability. Semler responded, "Yes," and explained that "part of the basis of [his] disability" is a "mental impairment" that "predisposes one to commit a sexual offense." Even if we assume that Semler's complaint allows us to infer that his alleged disability is the "mental impairment" that led to his MSOP commitment, the complaint fails. The ADA explicitly excludes

“sexual behavior disorders” from the definition of disability. 42 U.S.C. § 12211(b)(1) (2018).¹

Second, even if we assume Semler is a person with a disability, the complaint alleges no facts from which we can infer that the respondents discriminated against him or excluded him from the VWP based on his disability. *See* 42 U.S.C. § 12132 (ADA prohibits discrimination “by reason of” disability); 29 U.S.C § 794(a) (RA prohibits exclusion “solely by reason of” disability). Semler’s complaint alleges respondents excluded him from participating in the VWP for more than eight hours per week because Semler refused to participate in the treatment program. The complaint alleges his refusal to participate was voluntary and does not allege facts from which we may infer that he did not participate in the treatment program because of a disability.

Thus, Semler’s complaint fails to state a claim under either the ADA or the RA because it does not allege that he is a person with a disability, nor does it allege that respondents discriminated against him or excluded him from a program based on a disability.

B. MHRA

The MHRA declares it is an unfair employment practice for an employer, because of an employee’s disability, to discriminate with regard to “compensation, terms, upgrading, conditions, facilities, or privileges of employment.” Minn. Stat. § 363A.08,

¹ The RA does not have this explicit exclusion, and we have been unable to find any legal authority considering whether sexual-behavior disorders are a disability under the RA. Still, Semler’s complaint includes no allegations from which we can infer he is a person with a disability.

subd. 2(3). To establish a prima facie case of disability discrimination under the MHRA, a plaintiff must show that they (1) are a person with a disability under the MHRA; (2) are otherwise qualified to perform the essential functions of the job; and (3) suffered an adverse employment action because of their disability. *Hoover v. Norwest Private Mortg. Banking*, 632 N.W.2d 534, 542 (Minn. 2001).

Semler's complaint alleges that respondent's policy limiting VWP hours violates the MHRA because "it is illegal for an employer to engage in unfair employment practices" and that MSOP policy "discriminated against" him based on his refusal "to actively participate in MSOP's non-mandatory treatment program." The complaint also alleges that the policy limiting VWP hours led to "adverse employment action . . . that caused a material change in the terms or conditions of employment" and that Semler "experience[d] discrimination on a daily basis while working" in the VWP.

We agree with the district court that these allegations fail to state a claim under the MHRA because the relevant statute provides that a VWP participant is not an employee. Minn. Stat. § 246B.06, subd. 7 (2020), states that "[c]ivilly committed sex offenders participating in the [VWP] are not employees of the [MSOP] . . . and are not subject to . . . the [MHRA]." Thus, Semler's complaint fails to state a claim under the MHRA because it does not, and cannot, allege that he is an MSOP employee. Because we reject his MHRA claim for this reason, we need not consider the district court's additional conclusion that Semler's MHRA claim is untimely.

Affirmed.