

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1031**

Charles A. Laliberte,
Appellant,

vs.

Dollar Tree, Inc., et al.,
Respondents.

**Filed March 6, 2023
Affirmed
Wheelock, Judge**

Anoka County District Court
File No. 02-CV-21-5204

Charles A. Laliberte, Anoka, Minnesota (pro se appellant)

Colin H. Hargreaves, Patrick R. Martin, Ogletree, Deakins, Nash, Smoak & Stewart, P.C.,
Minneapolis, Minnesota (for respondents)

Considered and decided by Wheelock, Presiding Judge; Worke, Judge; and Smith,
Tracy M., Judge.

SYLLABUS

Under the plain language of the Minnesota Whistleblower Act (MWA), Minn. Stat. §§ 181.931-.935 (2022), the civil penalty identified in section 181.935(b) for failing to timely notify an employee of the reasons for the termination of their employment is available only to an employee who was injured by a violation of section 181.932.

OPINION

WHEELLOCK, Judge

Appellant Charles A. Laliberte sued his former employer, respondent Dollar Tree Inc. (Dollar Tree), alleging that Dollar Tree did not provide him with timely notice of the reason for his termination after he requested it pursuant to Minnesota Statutes section 181.933, subdivision 1, and that he is entitled to the civil penalty provided in Minnesota Statutes section 181.935(b). The district court granted summary judgment in favor of Dollar Tree, interpreting section 181.935(b) to apply only when an employer violates section 181.932, which prohibits retaliation against whistleblowers.¹ We conclude that the district court correctly interpreted the statute; therefore, we affirm the district court's grant of summary judgment to Dollar Tree.

FACTS

Dollar Tree terminated Laliberte's employment on August 5, 2021. Between August 9 and 25, 2021, the store received letters from Laliberte citing Minnesota Statutes section 181.933, quoting from the penalty provision of section 181.935, and requesting that Dollar Tree send him documentation of his work history. On September 9, 2021, Dollar Tree's corporate legal department received a demand letter from an attorney writing on Laliberte's behalf. On September 29, 2021, Dollar Tree replied to the demand letter with

¹ The supreme court has sometimes referred to only section 181.932 as the MWA, *see Hanson v. Dep't of Nat. Res.*, 972 N.W.2d 362, 372 (Minn. 2022); at other times, it has referred to sections 181.931 through 181.935 as the MWA, *see Friedlander v. Edwards Lifesciences, LLC*, 900 N.W.2d 162, 163 (Minn. 2017). We use MWA here to refer to sections 181.931 through 181.935.

Laliberte's personnel file and a letter addressed to Laliberte stating that the reason for Laliberte's termination was "cash handling/register procedure."

Laliberte filed a complaint alleging that Dollar Tree² violated section 181.933 and requesting relief in the form of "a civil penalty twice the amount allocated under [Minn. Stat. §] 181.935." Dollar Tree answered, asserting several defenses, including failure to state a claim, and requesting that the district court dismiss the complaint. Laliberte then moved for summary judgment on his claim, arguing that Dollar Tree failed to demonstrate any genuine issue of material fact. Dollar Tree opposed Laliberte's motion and cross-moved for summary judgment, arguing that Laliberte's claim failed as a matter of law because he did not allege a claim under section 181.932, which, Dollar Tree argued, is a precondition of claiming damages for failure to provide notice of reasons for termination under section 181.935.

After oral argument, the district court filed an order denying Laliberte's motion for summary judgment and granting summary judgment in favor of Dollar Tree. Laliberte appeals.

ISSUE

Did the district court properly apply Minnesota Statutes section 181.935(b) to determine that the undisputed facts demonstrate that Dollar Tree is entitled to judgment as a matter of law?

² Laliberte named Dollar Tree Inc. and Family Dollar as defendants in his complaint. In its brief on appeal as well as in district court, Dollar Tree states that Dollar Tree Stores Inc. is the proper party. It also states that Dollar Tree Inc. and Family Dollar Inc. are improperly named as parties, but to the extent that Family Dollar Inc. is deemed an appropriate party, it adopts all of Dollar Tree's statements and defenses.

ANALYSIS

“A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993); *see* Minn. R. Civ. P. 56.03. “We review a district court’s summary judgment decision de novo. 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.” *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). When the facts are undisputed and the issue turns on the meaning of statutory language, the meaning of the statute is a question of law that we review de novo. *Id.*; *see Hansen v. Robert Half Int’l, Inc.*, 813 N.W.2d 906, 915 (Minn. 2012) (reviewing construction of a statute de novo on appeal from summary judgment).

When interpreting a statute, we look first to whether the statute’s language is clear or ambiguous on its face. *Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000); *see Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999) (applying the principle that a statute’s plain language must be followed in order to effectuate the legislature’s intention). When the language of a statute is clear and unambiguous, the statute shall be construed to give effect to all its provisions. Minn. Stat. § 645.16 (2022).

The statute upon which Laliberte’s request for damages relies—section 181.935(b)—states: “An employer who failed to notify, as required under section 181.933 or 181.934, an employee injured by a violation of section 181.932 is subject to a civil

penalty of \$25 per day per injured employee not to exceed \$750 per injured employee.” Section 181.933 requires that an employer “inform the terminated employee in writing of the truthful reason for the termination” within 10 days of receiving a written request from the employee, as long as the employee makes the written request within 15 days following termination. Minn. Stat. § 181.933, subd. 1.

In reviewing the MWA provisions, including the specific notice-of-termination requirement at issue here, the district court observed that “the only civil penalty for an employer’s failure to comply with Minn. Stat. § 181.933 is found in Minn. Stat. § 181.935(b),” and the application of the penalty provision is “expressly limited by the language ‘an employee injured by a violation of section 181.932.’” The district court determined that this language is unambiguous and means that “an employer’s liability under § 181.935(b) only applies when the employee demonstrates that they were also ‘injured by a violation of section 181.932.’” Because the undisputed facts showed that Laliberte was not injured by a violation of section 181.932 and that he did not even claim such an injury,³ the district court determined that Laliberte was not entitled to a penalty under section 181.935(b), and therefore, Dollar Tree was entitled to judgment as a matter of law.

We agree that the language in the penalty provision of section 181.935(b) unambiguously provides that the civil penalty for an employer’s failure to comply with

³ At the motion hearing, the district court inquired of Laliberte, “I would like to know if you have alleged, or if you are going to amend your complaint to allege a violation of that whistleblower statute?” Laliberte replied twice that he was not claiming any such violation.

section 181.933 applies only when the employee is injured by a violation of section 181.932. The provision clearly states that an employer who failed to notify “an employee *injured by a violation of section 181.932*” is subject to the civil penalty. Minn. Stat. § 181.935(b) (emphasis added). This court has reasoned that when construing the plain language of a statute, enumeration of persons or things to be affected by the statute’s provisions implies the exclusion of others. *City of St. Paul v. Eldredge*, 788 N.W.2d 522, 525 (Minn. App. 2010), *aff’d*, 800 N.W.2d 643 (Minn. 2011). By stating that the penalty applies to employers who failed to notify an employee injured by violation of section 181.932, the statute clearly excludes employees not injured by violation of section 181.932.⁴

⁴ We observe that no Minnesota caselaw has addressed the question of section 181.935(b)’s reach. Several Eighth Circuit cases have concluded that summary judgment dismissing a plaintiff’s claim made pursuant to section 181.935(b) is appropriate when the claim is based solely on the employer’s failure to timely respond to a request for written reasons for termination and the employee is not able to demonstrate injury under section 181.932. *See, e.g., Nichols v. Metro. Ctr. for Indep. Living, Inc.*, 50 F.3d 514, 517 (8th Cir. 1995) (stating that “an employer is only liable under § 181.933 to an employee injured by a violation of section 181.932,” and when a plaintiff failed to prove such violation, “the district court properly granted summary judgment dismissing [plaintiff’s] claim under § 181.933” (quotation omitted)); *Brown v. Diversified Distrib. Sys., LLC*, 801 F.3d 901, 911 (8th Cir. 2015) (citing *Nichols* for the proposition that an employer is only liable under section 181.933 to an employee injured by a violation of section 181.932). Though they do not bind us, we consider federal court opinions for their persuasive value and afford those opinions “due deference.” *Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. App. 2003). We note that the federal caselaw interpreting this statute involved employees alleging they were injured under section 181.932 and failing to support their claims of injury adequately. Here, Laliberte attempts to extend section 181.935(b) by arguing that the civil penalty for “failure to notify” is available to *any* employee who does not receive the notice required by section 181.933, including individuals not claiming injury under section 181.932.

Laliberte argues that section 181.935(b) is ambiguous because the word “individual” in the section’s heading, “INDIVIDUAL REMEDIES; PENALTY,” loses its plain meaning under the district court’s interpretation of the statute. The boldface headnotes before a statute’s sections and subdivisions, however, “are not part of the statute.” Minn. Stat. § 645.49 (2022); *see also Kangas v. Indus. Welders & Machinists, Inc.*, 814 N.W.2d 97, 101 (Minn. App. 2012) (“[A] statute’s heading is not a part of the statute and it does not establish its scope or meaning.”).

Even if we consider the headnote of section 181.935, the inclusion of the word “individual” creates no ambiguity. The headnote accurately conveys that section 181.935 provides for “individual remedies” and “penalt[ies].” Subsection (b) of the statute provides for civil penalties if an employee was “injured by a violation of section 181.932.” If an employee does not allege such an injury, subsection (b) does not provide for a civil penalty. This rule unambiguously applies even though the employee bringing the action is an “individual.” Thus, we disagree with Laliberte’s claim that the statute is ambiguous.

We conclude that the sole reasonable interpretation of the statute’s language is that the penalty provided in section 181.935(b) is available only to employees injured by a violation of section 181.932. *See Hansen*, 813 N.W.2d at 915 (“A statute is ambiguous when the language is subject to more than one reasonable interpretation.”). Thus, the district court correctly construed and properly applied the law.

Laliberte argues that a Missouri Supreme Court decision, *Labrier v. Anheuser Ford, Inc.*, 621 S.W.2d 51 (Mo. 1981), supports his claim that section 181.935(b) provides an employee a cause of action for an employer’s failure to comply with section 181.933’s

notice requirement regardless of the employee's whistleblower status. But *Labrier* applies a Missouri statute that provides certain employees in that state the right to request a "service letter" that explains the reasons why they were discharged or voluntarily quit their employment, Mo. Rev. Stat. § 290.140 (2016). See *Labrier*, 621 S.W.2d at 56 (applying substantially similar version of section 290.140). The statute applied in *Labrier* is not part of, and does not refer to, the Whistleblower's Protection Act in Missouri, Mo. Rev. Stat. § 285.575 (Supp. 2017). Moreover, the Missouri service-letter statute does not contain language or a structure similar to that of the MWA. Unlike the MWA, the Missouri statute does not limit application of the damages provision to employees who have been injured under another statute. See Mo. Rev. Stat. § 290.140.

Although decisions from other states are not binding authority, they may be persuasive as they relate to the legal standard being evaluated. See *Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984). *Labrier*, however, applies the legal standard from Missouri's service-letter statute, which differs materially from the MWA. See *Labrier*, 621 S.W.2d at 56 (considering Mo. Rev. Stat. § 290.140). Laliberte's primary assertion in relying on *Labrier* is that the MWA would be a better law if it more closely resembled Missouri's service-letter statute, but "[t]his court, as an error correcting court, is without authority to change the law." *Lake George Park, L.L.C. v. IBM Mid-Am. Emps. Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998), *rev. denied* (Minn. June 17, 1998). We therefore conclude that Laliberte's argument is without merit.

Laliberte further contends that applying the district court's interpretation of section 181.935(b) leads to an absurd result. Appellate courts "generally do not consider

whether an interpretation of a statute creates absurd results unless that statute is ambiguous.” *Greene v. Minn. Bureau of Mediation Servs.*, 948 N.W.2d 675, 681 (Minn. 2020). “We consider whether an unambiguous statute creates absurd results only in the exceedingly rare cases in which the plain meaning of the statute utterly confounds the clear legislative purpose of the statute.” *Id.* (quotation omitted).

Because we conclude that the statute is unambiguous, we need not consider the question of absurdity unless the plain meaning of section 181.935(b) utterly confounds its clear legislative purpose. And the inclusion of a provision in section 181.935(b) limiting the availability of certain penalties to violations of section 181.932 is entirely compatible with the legislative purpose of the MWA. *See Kidwell v. Sybaritic, Inc.*, 784 N.W.2d 220, 228 (Minn. 2010) (stating the MWA’s purpose is to protect parties who report violations of the law with the public good in mind). Therefore, this is not the “exceedingly rare case” requiring such a step. *Greene*, 948 N.W.2d at 681.

Finally, Laliberte raises new arguments on appeal that section 181.935(b) violates article I, sections 7 and 8, of the Minnesota Constitution. During the district court summary-judgment hearing, Laliberte made brief references to the right to redress in article I, section 8, and the right to due process in article I, section 7, of the Minnesota Constitution. Otherwise, Laliberte provided the district court no argument or authority supporting his constitutional claims, and the district court did not address any constitutional issues in its order denying Laliberte’s motion for summary judgment. Thus, these arguments are not adequately preserved or properly before this court on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that an appellate court will not

consider matters not presented to and considered by the district court). And on appeal, we “generally decline to review the constitutionality of a statute if it has not been previously raised.” *Phelps v. Commonwealth Land Title Ins. Co.*, 537 N.W.2d 271, 277 (Minn. 1995) (citing *Charboneau v. Am. Fam. Ins. Co.*, 481 N.W.2d 19, 23 (Minn. 1992)); *see also Henning v. Village of Prior Lake*, 435 N.W.2d 627, 632 (Minn. App. 1989) (declining to address an equal-protection argument not raised in district court), *rev. denied* (Minn. Apr. 24, 1989).

In addition, Minn. R. Civ. P. 5A requires a party who questions the constitutionality of a state statute in district court to file and serve notice of a constitutional question on the Minnesota Attorney General, and Minn. R. Civ. App. P. 144 requires the party who asserts the unconstitutionality of a legislative act on appeal to file and serve notice of their assertion on the attorney general. Laliberte did not comply with these procedural requirements.

Appellate courts have declined to address constitutional questions when they were not litigated below and when the appellant did not comply with the requirements of Minn. R. Civ. P. 5A and Minn. R. Civ. App. P. 144. *See Charboneau*, 481 N.W.2d at 23. This court has further concluded that without timely notice to the attorney general, an appellant cannot make a facial challenge to a statute’s constitutionality, and we are limited to addressing the constitutionality of the statute as applied. *Markert v. Behm*, 394 N.W.2d 239, 243 (Minn. App. 1986). Laliberte asserts on appeal that section 181.935(b) is a “bad law” and makes repeated comparisons to the Missouri service-letter law on which *Labrier*

relied. We therefore understand Laliberte's argument to be a facial challenge to the statute that we may not address.

For the foregoing reasons, we do not consider Laliberte's arguments challenging the constitutionality of section 181.935(b).

DECISION

The district court properly denied Laliberte's motion for summary judgment and granted summary judgment in favor of Dollar Tree because, applying the plain language of section 181.935(b) of the Minnesota Whistleblower Act, an employer is subject to the civil penalty only if the employee requesting written notice of the reason for the termination was injured by a violation of section 181.932, and Laliberte asserts no such injury.

Affirmed.