STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0260

Edgard Mariano,
Appellant,

vs.

Raiser, LLC,
Respondent.

Filed December 11, 2023
Affirmed in part, reversed in part, and remanded
Connolly, Judge

Ramsey County District Court
File No. 62-CV-22-5351

Bradley Kirscher, Kirscher Law Firm, PA, Roseville, Minnesota (for appellant)

Susan K. Fitzke, Lehoan (Hahn) T. Pham, Littler Mendelson, P.C., Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Segal, Chief Judge; and Smith, John, Judge.*

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

On appeal from an order granting respondent's motion to dismiss, appellant argues that the district court erred by (1) dismissing all claims against respondent for failure to

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

state a claim, (2) dismissing the complaint for lack of subject matter jurisdiction, and (3) dismissing all claims with prejudice. Because we conclude that the district court erred in dismissing appellant's claims for breach of contract and breach of the implied covenant of good faith and fair dealing as they relate to respondent's refusal to arbitrate, we reverse and remand the district court's dismissal as to those claims. We affirm the dismissal of the remaining claims.

FACTS

Appellant Edgard Mariano had been a driver for respondent Raiser, LLC d/b/a/ Uber for six years before respondent permanently deactivated his driver account in May 2021. Drivers' access to respondent's ride-share technology is governed by a contract known as the Platform Access Agreement (PAA).[1] Upon signing the PAA, drivers are authorized to use respondent's technology to pick up people seeking transportation. Respondent may permanently deactivate a driver account if it determines, in its sole discretion, that a material breach or violation has occurred. The PAA defines a "material breach or violation" as "deceptive, fraudulent, unsafe, illegal, or harmful" actions by the driver, or a violation of the agreement. An arbitration provision governs disputes between individual drivers and respondent unless the driver chooses to opt out of arbitration. By not opting

[1] Appellant disputes the district court's use of the PAA, a document outside of the complaint, in the fact section of its decision. However, if a complaint contains a contract-based claim, "the court may consider the entire written contract when the complaint refers to the contract and the contract is central to the claims alleged." *Baker v. Best Buy Stores, LP*, 812 N.W.2d 177, 180 (Minn. App. 2012) (quotation omitted), *rev. denied* (Minn. Apr. 25, 2012).

out, a driver agrees not to participate in or seek to "recover monetary or other relief in connection with, any . . . class, collective or representative lawsuit." Appellant did not opt out of the arbitration provision.

In May 2021, respondent sent a message to appellant informing him that his account was deactivated due to problematic behavior and safety concerns. After requesting more information and asking that respondent investigate the complaints in an attempt to informally negotiate with respondent, appellant initiated arbitration with respondent pursuant to the arbitration provision in the PAA. Respondent refused to arbitrate.

Appellant filed a complaint against respondent in which he alleged claims of breach of contract; breach of the implied covenant of good faith and fair dealing; and deceptive trade practices, in violation of the Minnesota Deceptive Trade Practices Act (MDTPA), Minn. Stat. § 325D.44, subd. 1 (2022). He also requested permanent injunctive relief and damages. Specifically, he alleged that respondent breached the PAA by failing to investigate the complaints, by "inducing [appellant] to not further investigate the allegations against him," "by failing to identify the alleged safety concerns," and "by failing to identify the complaining customers." With reference to his claim for breach of contract, appellant alleged that "[t]he implied covenant of good faith and fair dealing applies to the [PAA]." Appellant also alleged that respondent engaged in "deceptive, unfair, and misleading trade practices" when respondent refused to comply with the terms of the "mandatory arbitration clause in the [PAA]" due to its dispute with the provider for the alternative dispute resolution, JAMS, over JAMS' "Employment Arbitration Minimum Standards" (EMS).

Appellant requested that the district court issue a permanent injunction to either bar respondent's use of the "mandatory arbitration agreements in its contracts with its drivers" or require that respondent comply with the arbitration clause and "arbitrate all future disputes with its drivers using the JAMS Employment Arbitration Minimum Standards." Respondent subsequently moved to dismiss for failure to state a claim and lack of subject matter jurisdiction under Minn. R. Civ. P. 12.02(e), and 12.02(a), respectively.

On December 29, 2022, the district court granted respondent's motion to dismiss for failure to state a claim, concluding that appellant failed to point to any express term in the PAA that respondent allegedly breached. The district court further determined that appellant did not state a legally viable claim under the MDTPA or properly allege that respondent breached the implied covenant of good faith and fair dealing. And because appellant did not opt out of arbitration, therefore waiving his ability to request collective injunctive relief under the PAA, the district court found that it did not have subject matter jurisdiction to consider appellant's request for injunctive relief. Ultimately, the district court dismissed all of appellant's claims and his request for injunctive relief with prejudice.

Appellant filed this appeal, challenging the district court's grant of respondent's motion to dismiss for failure to state a claim and lack of subject matter jurisdiction.

DECISION

I. The district court erred in part by granting respondent's motion to dismiss for failure to state a claim.

"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). Under Minn. R.

Civ. P. 12.02(e), a pleading may be dismissed for "failure to state a claim upon which relief can be granted." "We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Walsh*, 851 N.W.2d at 606; *see also Engstrom v. Whitebirch, Inc.*, 931 N.W.2d 786, 790 (Minn. 2019). A claim survives 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.

Appellant asserts that the district court erred in dismissing his claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and violation of the MDTPA for failure to state a claim, and that the court improperly made findings of fact in its decision.

A. The district court erred in dismissing appellant's breach-of-contract claim as it relates to respondent's refusal to arbitrate.

Appellant asserts on appeal that the district court failed to make all reasonable inferences in his favor in reviewing whether the complaint set forth legally sufficient claims for breach of contract. We conclude that the district court erred in part by dismissing appellant's breach of contract claim as it related to arbitration.

A claim "shall 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. As a notice-pleading state, Minnesota only requires that pleadings contain "information sufficient to fairly notify the opposing party of the claim against it." *Walsh*, 851 N.W.2d at 605 (quotation omitted). Therefore, "[n]o longer is a pleader required to

allege facts and every element of a cause of action." *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963). In a sufficiently pleaded breach-of-contract claim, the promise at issue must "be part of the parties' bargain." *Lyon Fin. Servs., Inc. v. Ill. Paper and Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014).

The complaint expressly alleged that respondent breached the PAA by: (1) "failing to investigate the complaints against" appellant; (2) "misleading [appellant], and inducing [him] to not further investigate the allegations against him, by stating that no further action would be taken on the prior complaints"; (3) "failing to identify the alleged safety concerns that led to [appellant's] termination"; and (4) "failing to identify the complaining customers that made allegations." Under the PAA, respondent has the sole power to terminate any account without notice, if it determines, in its discretion, that a material breach of violation of the PAA occurred. Beyond this provision, the contract contains no terms regarding the investigation of complaints. In fact, the PAA clearly states that respondent has no obligation to verify riders' ratings of drivers. The action or inaction appellant claims was required of respondent must be expressed in the contract. *See id.* We conclude that the district court did not err in dismissing these claims.[2]

[2] Appellant also asserts that the district court imposed a heightened pleading standard by finding that appellant failed to (1) point to an express term of the PAA respondent breached and (2) specifically allege that respondent breached the implied covenant of good faith and fair dealing. We disagree. The district court cited to *Lyon* and *Walsh*, in concluding that neither claim was sufficiently pleaded. Nothing in the district court's order suggests that the court applied a heightened pleading standard, only that appellant did not give respondent fair notice about the nature of his claims. Although we ultimately conclude that the district court did not make all reasonable inferences in appellant's favor as to some claims, we do not agree that it imposed a heightened pleading standard in doing so.

However, under the rule 12.02(e) standard, we agree with appellant that a reasonable inference could be made that appellant sufficiently pleaded a claim that respondent breached the PAA by refusing to arbitrate. In several places, the complaint expressly alleged that respondent refused to arbitrate. The complaint also states that appellant commenced arbitration against respondent pursuant to the "mandatory arbitration clause." The PAA sets out certain steps drivers must follow to properly commence arbitration. The complaint states that appellant "commenced arbitration with JAMS pursuant to the terms of the [PAA]."

Under rule 12.02(e), we conclude that appellant's claim for breach of the arbitration clause of the PAA is sufficient under *Walsh*. *See*, 851 N.W.2d at 605 (holding that Minnesota requires "only information sufficient to fairly notify the opposing party of the claim against it"). Accordingly, the district court erred by failing to make all reasonable inferences in favor of appellant with respect to a claim for breach of contract through respondent's refusal to arbitrate.

B. The district court erred in dismissing appellant's breach of the implied-covenant-of-good-faith-and-fair-dealing claim as it relates to respondent's refusal to arbitrate.

Appellant also alleges that the district court failed to make all reasonable inferences in his favor in dismissing his alternatively pleaded claim for breach of the implied covenant of good faith and fair dealing. We Agree.

Under Minn. R. Civ. P. 8.05, parties may allege breach of the implied covenant in the alternative, based on the same conduct alleged in their breach-of-contract claim. *Columbia Cas. Co. v. 3M Co.*, 814 N.W.2d 33, 38-39 (Minn. App. 2012), *rev. denied*

(Minn. Mar. 26, 2012). The covenant is included in every contract and requires that "one party not unjustifiably hinder the other party's performance of the contract." *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 502 (Minn. 1995) (quotation omitted). However, the implied covenant "does not extend to actions beyond the scope of the underlying contract." *Id*. at 503.

Appellant did not properly allege breach of the implied covenant of good faith and fair dealing as to respondent's failure to investigate complaints. Under the PAA, respondent had no express or implied duty to investigate complaints. Appellant may not seek to create new duties under the PAA, only existing express or implied duties. *See id*.; *see also Minnwest Bank Cent. v. Flagship Props., LLC*, 689 N.W.2d 295, 303 (Minn. App. 2004) (concluding that where a party has no contractual duty to perform, plaintiff cannot sufficiently plead breach of the implied covenant of good faith and fair dealing). As such, the district court did not err in dismissing appellant's claim for breach of the implied covenant of good faith and fair dealing as to respondent's failure to investigate complaints.

The complaint also appears to assert that respondent breached the implied covenant of good faith and fair dealing by refusing to arbitrate. In addition to alleging that the covenant applied to the PAA, it alleged that respondent refused to comply with the mandatory arbitration provisions in the contract because of respondent's dispute with JAMS, an alternative dispute resolution provider respondent required appellant to use in arbitration proceedings. We conclude that these are allegations sufficient to plead that respondent unjustifiably hindered appellant's carrying out of the arbitration provision in the PAA. *See Columbia Cas.*, 814 N.W.2d at 39-40 (holding that pleadings, which describe

a party's "rejection of performance for unstated and unsupported reasons," are sufficient to survive a motion to dismiss) (quotation omitted); *see also In re Hennepin Cnty.*, 540 N.W.2d at 503 (noting that a breach-of-the-implied-covenant-of-good-faith-and-fair-dealing claim contains allegations of an unjustifiable hinderance of a party's performance of the contract).

Just as we concluded above that appellant sufficiently pleaded a breach-of-contract claim as to respondent's failure to arbitrate, we also conclude that appellant sufficiently pleaded, in the alternative, a breach of the-implied covenant of good faith and fair dealing as to the same conduct, giving respondent notice of the claims against it. *See Columbia Cas.*, 814 N.W.2d at 39 (holding that "claims for breach of the implied covenant of good faith and fair dealing are permissible even if they are based on the same conduct as . . . claims for breach of the express terms of the [contract]"); *see also Walsh*, 851 N.W.2d at 605 (stating that a complaint need only give sufficient notice to the opposing party of the claims against it).

Minn. R. Civ. P. 12.02(e) sets a broad standard for pleadings. While there are logical and structural issues with the complaint,[3] our duty on review is to consider the overall complaint and determine if any evidence could be produced consistent with pleader's theory. *Walsh*, 851 N.W.2d at 603. The district court erred in dismissing appellant's claim for breach of the implied covenant of good faith and fair dealing as it relates to respondent's refusal to arbitrate. However, we note that appellant cannot recover

[3] The complaint does not have separate enumerated counts.

separate damages for breach of contract and breach of the implied covenant as the claims are based on the same conduct, which is respondent's refusal to arbitrate. *See Colombia Cas.*, 814 N.W.2d at 37 (noting that a party pleading alternative claims "cannot recover damages on both theories for the same conduct").

C. The district court did not err in dismissing appellant's claim that respondent violated the MDTPA.

Appellant also alleged that respondent's refusal to comply with the terms of the arbitration provision constitutes a "deceptive, unfair, and misleading trade practice" in violation of the MDTPA. The district court dismissed this claim on the merits as not legally viable, because appellant did not allege which provision of the Act respondent violated, and no provisions were applicable to appellant's theory. We agree.

Under the MDTPA,

> "[a] person engages in a deceptive trade practice when, in the course of business, vocation or occupation, the person:
>
> (1) passes off goods or services as those of another;
>
> (2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
>
> (3) causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;
>
> (4) uses deceptive representations or designations of geographic origin in connection with goods or services;
>
> (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

(6) represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;

(7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) disparages the goods, services, or business of another by false or misleading representation of fact;

(9) advertises goods or services with intent not to sell them as advertised;

(10) advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(11) makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(12) in attempting to collect delinquent accounts, implies or suggests that health care services will be withheld in an emergency situation;

(13) engages in (i) unfair methods of competition, or (ii) unfair or unconscionable acts or practices; or

(14) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

Minn. Stat. § 325D.44, subd. 1.

Appellant asserts that the allegations in the complaint sufficiently pleaded a violation of the MDTPA's fifth enumerated factor. *See* Minn. Stat. § 325D.44, subd. 1(5). Appellant cites *Baker v. Sunbelt Bus. Brokers*, No. A07-0514, 2008 WL 668608 (Minn. App. Mar. 11, 2008) to support his position. First, *Baker* is nonprecedential. *See* Minn. R. Civ. App. P. § 136.01, subd. 1(c) ("Nonprecedential opinions . . . are not binding authority

except as law of the case, res judicata or collateral estoppel . . ."). Second, *Baker* held that to establish a claim under subdivision 1(5), a plaintiff must allege that the defendant "represented that its services have characteristic or benefits that they do not have." *Baker*, 2008 WL 668608, at *6 (quotation omitted). In *Baker*, the allegation that a broker service "falsely stated that Sunbelt would represent his interest" was sufficient for this court to conclude that Baker set forth a legally sufficient claim that the broker service violated Minn. Stat. § 325D.44, subd. 1(5). *Id*. at *7.

Here, the complaint alleged that respondent's "refusal to comply with the terms of the mandatory arbitration clause" because of their dispute with JAMS "is a deceptive, unfair, and misleading trade practice." However, nowhere in the complaint did appellant suggest that respondent represented the arbitration provision in the contract as a "benefit" or "characteristic" of a good or service respondent carries, and it would be unreasonable to infer otherwise.[4] We conclude that the complaint does not state a legally viable claim under the MDTPA.

D. The district court did not commit reversible error in using the header "Findings of Fact."

Appellant challenges the district court's use of "Findings of Fact" as a header in its order. A district court does not make findings of fact in an order granting a motion to dismiss under Minn. R. Civ. P. 12.02(e). Minn. R. Civ. P. 52.01.

[4] We are aware of no case where this court has expanded the scope of the MDTPA to include dispute resolution clauses as a benefit or characteristic of a good or service, particularly where the plaintiff is the service provider that uses the technology of the defendant to provide that service.

Although the district court used the caption "Findings of Fact," which can cause confusion in a rule 12 posture, the relevant question is whether the district court failed to accept the facts alleged in the complaint as true. *See Walsh*, 851 N.W.2d at 606. Appellant asserts that by using the header "Findings of Fact," the district court inherently failed to accept as true the allegations in the complaint and failed to make all reasonable inferences in appellant's favor. We are not persuaded. The district court's order merely reflects a summary of the factual allegations asserted in the complaint and makes no findings concerning disputed facts.[5] Notwithstanding that the PAA was attached to respondent's declaration, the district court also permissibly relied on the PAA in stating the facts, because the PAA was referenced in the complaint.[6] *See Baker*, 812 N.W.2d at 180 ("In deciding a motion to dismiss, the court may consider the entire written contract when the complaint refers to the contract and the contract is central to the claims alleged." (quotation omitted)).

[5] Both parties rely on a nonprecedential case, *Rabbe v. Farmers State Bank of Trimont*, which affirmed the district court's dismissal under 12.02(e) that contained the header "Findings of Fact," noting that "despite the caption, the district court made no findings concerning disputed facts." No. A19-1353, 2020 WL 2312931, at *5, n.3 (Minn. App. May 11, 2020), *rev. denied* (Minn. July 23, 2020).

[6] Respondent attached the PAA to a declaration it filed with its memorandum in support of its motion to dismiss. Appellant lists the district court's failure to strike respondent's declaration as an issue on appeal. However, no motion to strike the declaration exists in the record. We decline to decide issues that appellant failed to raise in the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally must consider only the issues that the record shows were presented to and considered by the district court in deciding the matter before it.)

II. The district court did not err in dismissing appellant's complaint for lack of subject matter jurisdiction as it related to injunctive relief.

Appellant challenges the district court's grant of respondent's motion to dismiss for lack of subject matter jurisdiction as it related to injunctive relief. Because appellant waived his right to bring an action for collective injunctive relief, the district court did not err.

Whether the district court has subject matter jurisdiction is a question of law, which this court reviews de novo. *Daniel v. City of Minneapolis*, 923 N.W.2d 637, 644 (Minn. 2019). "Subject matter jurisdiction is the court's authority to hear the type of dispute at issue and to grant the type of relief sought." *Musta v. Mendota Heights Dental Ctr.*, 965 N.W.2d 312, 317 (Minn. 2021) (quotation omitted). "[R]egardless of the type of proceeding involved, a justiciable controversy must exist in order for a litigant's claim to be properly before the court." *State v. Colsch*, 284 N.W.2d 839, 841 (Minn. 1979). Where a party lacks standing, "a court does not have jurisdiction to hear the matter." *Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 18 (Minn. App. 2003).

In addition to damages, appellant requests a permanent injunction against respondent to either (1) preclude respondent from "including a mandatory arbitration agreement in its contracts with its drivers," or (2) require respondent "to comply with the mandatory arbitration agreement and arbitrate all future disputes with its drivers" using JAMS' EMS. The PAA's arbitration provision bars appellant from participating in or seeking relief through class, collective, or representative actions.

Appellant has neither a justiciable controversy nor standing to allow a court to grant collective injunctive relief. The complaint identifies no concrete assertions of right in the PAA (or other legal sources) allowing appellant to request this type of injunction; in fact, the PAA disallows such requests. Appellant waived the right to request collective injunctive relief by not opting out of the arbitration provision; therefore, appellant lacked standing to bring this request for relief, and the district court did not have authority to hear it. *See Musta*, 965 N.W.2d at 317 (stating that a court must have the authority to grant the type of relief sought to have subject-matter jurisdiction). We conclude that the district court did not err in dismissing appellant's request for "collective injunctive relief" for lack of subject matter jurisdiction.

III. The district court did not abuse its discretion by dismissing some of appellant's claims with prejudice.

This court reviews the district court's dismissal of all claims with prejudice under the abuse of discretion standard. *Minn. Humane Soc'y. v. Minn. Federated Human Soc'ys.*, 611 N.W.2d 587, 590 (Minn. App. 2000). Dismissal with prejudice on the merits is appropriate where a complaint fails to state a claim upon which relief can be granted. *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 748 (Minn. 2000) (holding that where the district court granted a motion to dismiss for failure to state a claim on the merits, the "complaint should be dismissed with prejudice").

The district court did not abuse its discretion in dismissing appellant's claims related to respondent's alleged failure to investigate complaints and under the MDTPA, as those determinations were made on the merits. Additionally, the court was barred from

considering appellant's request for permanent injunctive relief on behalf of all drivers, so it did not abuse its discretion in dismissing appellant's request for such relief with prejudice.

Affirmed in part, reversed in part, and remanded.