This opinion is nonprecedential except as provided by Minn.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
A24-0347

Stephen L. Love,
Appellant,

Lincoln Brown,
Appellant,

Christopher J. Marquedant,
Appellant,

Milton Thomas,
Appellant,

Joshua G. Berg, et al.,
Plaintiffs,

vs.

Department of Human Services, et al.,
Respondents,

Melissa Bjergo,
Defendant.

Filed March 3, 2025
Affirmed in part, reversed in part, and remanded
Bratvold, Judge

Ramsey County District Court
File No. 62-CV-22-4902

Stephen L. Love, Moose Lake, Minnesota (pro se appellant)

Lincoln Brown, Moose Lake, Minnesota (pro se appellant)

Christopher J. Marquedant, Moose Lake, Minnesota (pro se appellant)

Milton Thomas, Moose Lake, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Brian M. Card, Assistant Attorney General, St. Paul, Minnesota (for respondents Minnesota Department of Human Services and Jodi Harpstead)

Eric A. Johnson, Samuel T. Westby, T.W. Vending, Inc., River Falls, Wisconsin (for respondent T.W. Vending, Inc.)

Considered and decided by Larson, Presiding Judge; Reyes, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellants Stephen L. Love, Lincoln Brown, Christopher J. Marquedant, and Milton Thomas reside at the Minnesota Sex Offender Program (MSOP) in Moose Lake and are civilly committed to the care and custody of respondent Minnesota Department of Human Services (DHS) and its commissioner. Respondent Jodi Harpstead was the commissioner of DHS at the time the complaint was served, and this opinion refers to DHS and Harpstead collectively as state respondents. Respondent T.W. Vending Inc. is a private company that contracted with DHS to provide canteen services at MSOP's Moose Lake facility.

Appellants seek review of a district court order granting the dismissal of their amended complaint for failure to state a claim upon which relief can be granted. *See* Minn. R. Civ. P. 12.02(e). Appellants argue that the amended complaint sufficiently alleges that state respondents disclosed appellants' private data to T.W. Vending, that respondents allowed other MSOP residents to view the private data, and that respondents failed to notify appellants in violation of the Minnesota Government Data Practices Act (MGDPA), Minn.

Stat. §§ 13.01-.991 (2024). We conclude that the amended complaint alleges sufficient facts to maintain data-practices claims against DHS but fails to state a claim for relief against T.W. Vending. Therefore, we affirm in part, reverse in part, and remand for further proceedings.

FACTS

In September 2022, Love, Brown, and Marquedant served a complaint on state respondents and T.W. Vending, among others, for violations of the MGDPA, seeking damages and costs. Thomas then served an identical complaint, and the district court consolidated the cases. As explained below, appellants later served an amended complaint. The following summarizes the facts alleged in the amended complaint and construes reasonable inferences in favor of appellants as the nonmoving party.

In 2018, MSOP searched for a new canteen vendor to sell personal-care and food items to residents.[1] On October 15, 2018, MSOP informed appellants that canteen kiosks would be installed that week, the kiosks would use a "separate" system for payment, and training would be provided after installation and testing.

On October 25, 2018, MSOP notified appellants that T.W. Vending was the new canteen vendor and that the new kiosks would allow residents to deposit "money on a separate account identified only by" the resident's name.[2]

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[1] The amended complaint refers to MSOP broadly, but we understand the amended complaint's allegations to relate to MSOP's Moose Lake facility.

[2] The amended complaint refers to appellants as clients and patients; this opinion refers to appellants and, when appropriate, to residents of MSOP's Moose Lake facility.

On October 28, 2018, a newly installed kiosk displayed the following information on a screen: Resident "accounts have been imported and you may log onto the kiosk by typing your MREC number for an account code. Upon doing so, you will be prompted to choose your own password." Each appellant received a medical-record number (MREC number) when they were placed in MSOP's Moose Lake facility. According to the amended complaint, MREC numbers are "private, nonpublic, and confidential medical record[s] uniquely identifying health records and billing information."[3]

As each appellant logged into the kiosk, their MREC number appeared on the kiosk screen "in big bold numbers while other third-party clients [were] within viewing distance." The amended complaint added: "This is not to be interpreted to claim third-party clients used this information."

On November 2, 2018, DHS executed a contract for vending services with T.W. Vending (the contract); the effective date was October 29, 2018. According to the amended complaint, T.W. Vending received appellants' MREC numbers and "financial banking information" from state respondents "before the contract was executed."

The amended complaint has two counts and alleges that state respondents and T.W. Vending violated the MGDPA in four ways: (1) state respondents disclosed appellants' MREC numbers to T.W. Vending *before* the contract was executed and without authorization from appellants; (2) state respondents and T.W. Vending did not install adequate safeguards to protect appellants' MREC numbers from other residents before the

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[3] In their brief to this court, state respondents add that MSOP residents use MREC numbers "to purchase items and send money out of the facility."

contract was executed; (3) appellants' MREC numbers are being "continuously disseminated"; and (4) state respondents and T.W. Vending failed to notify appellants of a security breach related to the disclosure of appellants' MREC numbers.

In March 2023, T.W. Vending moved to dismiss appellants' complaint for failure to state a claim upon which relief can be granted under Minn. R. Civ. P. 12.02(e). In May 2023, state respondents also moved under rule 12.02(e) to dismiss the complaint in part. Appellants opposed both motions to dismiss.

In June 2023, after a hearing, the district court granted the motions to dismiss in part (June order).[4] The June order reflects three rulings relevant to this appeal. First, the district court dismissed without prejudice all claims against state respondents for alleged violations of the MGDPA that occurred *after* the effective date of the contract with T.W. Vending.[5] Second, the district court dismissed "with prejudice" all claims against T.W. Vending for alleged violations of the MGDPA that occurred *before* the effective date of the contract. Third, the district court also dismissed "without prejudice" all claims against T.W. Vending for alleged violations of the MGDPA that occurred *after* the effective date of the contract. The district court gave appellants 30 days' leave to file an amended complaint.

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[4] The June order notes that the district court's rationale for its decision was stated on the record during the motion hearing on May 31, 2023. The record on appeal, however, does not include a hearing transcript dated May 31, 2023.

[5] The June order does not state whether the first ruling was a dismissal with or without prejudice. Thus, the dismissal was without prejudice. *See* Minn. R. Civ. P. 41.01(b) ("Unless otherwise specified in the order, a dismissal herein is without prejudice.").

In July 2023, appellants served an amended complaint that included the factual allegations and claims outlined above. In lieu of an answer, state respondents and T.W. Vending filed separate motions under rule 12.02(e) to dismiss the amended complaint for failure to state a claim upon which relief can be granted. Appellants opposed the motions.

At an October 2023 hearing on the motions to dismiss, appellants asked the district court to allow them to voluntarily dismiss their amended complaint without prejudice, which state respondents and T.W. Vending opposed. The district court took appellants' request under advisement along with the pending motions to dismiss.

In December 2023, the district court granted the motions to dismiss all claims against state respondents and T.W. Vending and directed entry of judgment (December order). First, the district court addressed the claims against state respondents and determined that "DHS is statutorily authorized to share" appellants' MREC numbers "with entities under contract," including T.W. Vending, without appellants' signed authorization. Second, the district court determined that DHS was not required to notify appellants of any breach of the MGDPA that occurred *before* the contract because T.W. Vending's access to appellants' MREC numbers was "related to a governmental purpose—namely providing canteen services to MSOP clients."

Third, the district court determined that Harpstead was not liable for any MGDPA violations because she "was not the DHS Commissioner [in 2018] at the time the alleged disclosure occurred" and the "plain language of the MGDPA limits liability to a responsible authority if he or she commits a violation of the statute." Fourth, the district court reasoned in the alternative that the claims in the amended complaint "are the same claims and legal theories as were previously dismissed with prejudice in the original complaint." Because appellants were parties to the prior adjudication and were given an opportunity to be heard on their claims, the district court concluded that collateral estoppel precluded appellants from reasserting the same claims in their amended complaint.

The district court then addressed the claims against T.W. Vending. First, the district court acknowledged that the amended complaint alleges that appellants' MREC numbers "briefly appeared" on the kiosk screen and "that the numbers could have been seen by others," but the district court determined that this did not allege a MGDPA violation because appellants "explicitly [pleaded] that this was not to be interpreted as a claim that the numbers were used by any third parties." The amended complaint therefore failed to state a claim that T.W. Vending caused "an unauthorized person [to view] the data with the intent to use the data for a nongovernmental purpose," as prohibited by the MGDPA. *See* Minn. Stat. § 13.055, subd. 1(c).

Second, the district court concluded that the amended complaint (a) included "no allegation that T.W. Vending failed to have appropriate safeguards protecting the [appellants'] data *after* the effective date of the contract" and (b) failed to state a claim for relief related to the alleged unauthorized viewing of appellants' data that occurred *before* the effective date of the contract because the MGDPA did not apply to T.W. Vending before it executed the contract. Third, and in the alternative, the district court determined that appellants were collaterally estopped from alleging that T.W. Vending violated the

MGDPA *before* the effective date of the contract because those claims were previously dismissed with prejudice.

Love, Brown, Marquedant, and Thomas appeal.[6]

DECISION

The MGDPA "regulates the collection, creation, storage, maintenance, dissemination, and access to government data in government entities." Minn. Stat. § 13.01, subd. 3. The MGDPA seeks "to reconcile the rights of data subjects to protect personal information from indiscriminate disclosure with the right of the public to know what the government is doing." *KSTP-TV v. Ramsey County*, 806 N.W.2d 785, 788 (Minn. 2011) (quotation omitted). The MGDPA "attempts to balance these competing rights within a context of effective government operation." *Id*. (quotation omitted).

The MGDPA imposes three duties relevant for understanding appellants' amended complaint. First, a government entity cannot disseminate an individual's "[p]rivate or confidential data . . . for any purposes other than those stated to the individual at the time of collection" without the individual's informed consent or separate authorization under the statute. Minn. Stat. § 13.05, subd. 4. Based on the amended complaint, we take as true

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[6] In the months leading up to this appeal, appellants, who are self-represented, experienced difficulty ordering a transcript of the October 2023 hearing and filed a declaration with this court stating that they did not receive a copy of the transcript before they prepared their brief. The record on appeal includes the October 2023 hearing transcript.

the allegation that MREC numbers are private or confidential data and that appellants did not consent to disclosure of their MREC numbers.[7]

Second, a "responsible authority" must "establish appropriate security safeguards" for an individual's data, including "procedures for ensuring that data that are not public are only accessible to persons whose work assignment reasonably requires access to the data, and is only being accessed by those persons for purposes described in the procedure." *Id.*, subd. 5(a)(2). A responsible authority in a state agency is "the state official designated by law or by the commissioner as the individual responsible for the collection, use and dissemination of any set of data on individuals, government data, or summary data." Minn. Stat. § 13.02, subd. 16(a).

Third, if a "breach of the security of the data" occurs, the responsible government entity must disclose the breach to the subject of the data. Minn. Stat. § 13.055, subd. 2(a). "'Breach of the security of the data' means unauthorized acquisition of data maintained by a government entity that compromises the security and classification of the data." *Id.*, subd. 1(a). "'Unauthorized acquisition' means that a person has obtained, accessed, or viewed government data without the informed consent of the individuals who are the subjects of the data or statutory authority and with the intent to use the data for nongovernmental purposes." *Id.*, subd. 1(c).

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[7] Appellants' brief to this court contends that the district court erred in its analysis of "private data on individuals" as stated in the MGDPA and therefore erroneously treated appellants' MREC numbers as "public data." We disagree. The district court expressly accepted appellants' allegation that MREC numbers are "private, nonpublic, and confidential" data subject to the MGDPA.

Relatedly, when a government entity executes a contract with a private entity, the private entity is bound by the MGDPA. Minn. Stat. § 13.05, subd. 6. Specifically, if a contract "requires that data on individuals be made available to the contracting parties by the government entity," then the contracting parties "shall maintain the data on individuals which [they] received according to the statutory provisions applicable to the data." *Id.*

Violations of the MGDPA may be remedied by a civil action. Minn. Stat. § 13.08, subds. 1-2. If a "responsible authority or government entity" violates the MGDPA, the person affected by the violation may "bring an action against the responsible authority or government entity to cover any damages sustained, plus costs and reasonable attorney fees." *Id.*, subd. 1. The district court may also grant injunctive relief to prevent violations of the MGDPA. *Id.*, subd. 2.

Appellants ask this court to reverse the district court's order granting respondents' motions under Minn. R. Civ. P. 12.02(e) to dismiss the amended complaint for failure to state a claim upon which relief can be granted. When deciding a rule 12.02(e) motion to dismiss, the district court must "accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Halva v. Minn. State Colls. & Univs.*, 953 N.W.2d 496, 500 (Minn. 2021) (quotation omitted). Because Minnesota is a notice-pleading state, plaintiffs "may plead their case by way of a broad general statement which may express conclusions rather than . . . by a statement of facts sufficient to constitute a cause of action." *Id.* (quotation omitted). A claim survives a rule 12.02(e) motion "if it is *possible*, *on any evidence that might be produced*, to grant the relief demanded." *Id.* at 501 (quotation omitted). The claim must, however, give "fair notice to the adverse party of the incident giving rise to the suit with sufficient clarity to disclose the pleader's theory upon which his claim for relief is based." *Id.* at 503 (quotation omitted). Appellate courts "review the allegations of a complaint subject to dismissal under rule 12.02 de novo." *Id.* at 500.

While a court generally considers only the facts alleged in the complaint when deciding a motion to dismiss, a court "may consider [an] entire written contract when the complaint refers to the contract and the contract is central to the claims alleged." *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 497 (Minn. 1995). Here, as the district court did, we consider the contract between DHS and T.W. Vending when reviewing the motions to dismiss because the contract is central to the claims alleged in the amended complaint. *See id.* (concluding that district court's consideration of a contract central to the claims alleged in the complaint did not convert a motion to dismiss into a summary-judgment motion).

I. The amended complaint alleges sufficient facts to maintain two data-practices claims against DHS.

A. The amended complaint alleges that DHS disclosed appellants' MREC numbers to T.W. Vending before the effective date of the contract.

On appeal, appellants maintain that the amended complaint alleges that DHS disclosed appellants' MREC numbers to T.W. Vending *before* the effective date of the contract.[8] The state respondents argue that the amended complaint "does not allege that

[8] Appellants appear to concede that the amended complaint does not assert a postcontract-disclosure claim against DHS. In their brief to this court, appellants note that "private contractors and their employees are specifically authorized to receive private welfare data from DHS without the consent of the individual subject of the data" when "the

state respondents disclosed appellants' information to T.W. Vending before the contract was executed." While the December order stated that "the alleged unauthorized viewing of the data occurred prior to the effective [date] of the contract," it did not consider whether the amended complaint stated a precontract-disclosure claim against DHS.[9]

In considering the factual allegations in the amended complaint, we look at the entire amended complaint to determine whether it adequately identified "facts that could support a finding of a Data Practices Act violation." *Halva*, 953 N.W.2d at 503. The amended complaint alleges that, in October 2018, MSOP notified appellants that a new canteen vendor, T.W. Vending, would install kiosks at the Moose Lake facility and that appellants would receive training on how to use the kiosks. On October 28, 2018, the newly installed kiosks displayed the following message: "Client accounts have been imported and you may log onto the kiosk by typing your MREC number for an account code." When appellants logged into the kiosks, "their MREC numbers appeared in the upper part of the kiosk screen in big bold numbers."

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disclosure is within the scope of the contract." In the interest of being thorough, we briefly consider whether the amended complaint states a postcontract-disclosure claim against state respondents. The contract authorized DHS to "share information" with T.W. Vending to provide canteen services to MSOP residents at the Moose Lake facility. This included providing information "to properly identify clients and to properly set up such client accounts." Because the amended complaint alleges that DHS provided T.W. Vending with appellants' MREC numbers to provide canteen services at MSOP, we conclude that this disclosure fell "within the scope of the contract." Therefore, the amended complaint fails to state a postcontract-disclosure claim against DHS.

[9] To be clear and as discussed below, the district court concluded that the amended complaint failed to state a claim for relief based on a precontract-disclosure claim against T.W. Vending.

The amended complaint also alleges, and the contract confirms, that DHS and T.W. Vending signed a contract on November 2, 2018, with an effective date of October 29, 2018. The amended complaint alleges that "T.W. Vending received [appellants'] private data including their MREC number and financial banking information from [DHS] *before* the contract was executed." (Emphasis added.) It also alleges that DHS "failed to obtain a signed and dated authorization for release of information prior to . . . signing a contract" with T.W. Vending.

Accepting the alleged facts as true and construing all reasonable inferences in favor of appellants, we conclude that the amended complaint alleges facts sufficient to state a claim against DHS for precontract disclosure of appellants' MREC numbers in violation of Minn. Stat. § 13.05, subd. 4. Therefore, we reverse the district court's dismissal of the precontract-disclosure claim against DHS.

B. The amended complaint alleges that DHS did not establish appropriate safeguards to protect appellants' MREC numbers before the effective date of the contract.

Appellants argue that the amended complaint alleges DHS "failed to institute appropriate safeguards leading to the unauthorized access of Appellants' private data." In their brief to this court, state respondents do not address appellants' appropriate-safeguard claim. The December order also did not address an appropriate-safeguard claim related to DHS, other than to briefly state that the "alleged unauthorized viewing of the data occurred prior to the effective [date] of the contract."

The amended complaint alleges that DHS "failed to install proper safeguards" in two respects: (1) "ensuring unauthorized access or acquisition to private information could not be obtainable/viewable by other patients in violation of clearly established rights under the MGDPA" and (2) "upon the protected information shared with third-party clients, per the contract, including mitigating harmful effects, investigations, corrective actions and notifications to parties of said breaches." We understand these allegations to assert that DHS failed to implement appropriate safeguards to protect the confidentiality of MREC numbers, as required by Minn. Stat. § 13.05, subd. 5(a)(2), before the effective date of the contract.

Accepting the alleged facts as true and construing all reasonable inferences in favor of appellants, we conclude that the amended complaint sufficiently identifies facts to maintain appellants' appropriate-safeguard claim against DHS for the period before the effective date of the contract. Therefore, we reverse the district court's dismissal of the appropriate-safeguard claim against DHS.

C. The amended complaint fails to allege facts sufficient to state an unauthorized-acquisition claim against state respondents and therefore fails to state a breach of the duty to notify appellants of a security breach.

Appellants argue that the amended complaint alleges DHS was "required to notify" appellants that "a breach had occurred" but failed to do so.[10] State respondents counter that

[10] "Breach of the security of the data" does not include "good faith acquisition of or access to government data by . . . [a] contractor . . . for the purposes of the entity . . . if the government data is not provided to or viewable by an unauthorized person, or accessed for a purpose not described" in Minn. Stat. § 13.05, subd. 5. Minn. Stat. § 13.055, subd. 1(a). Appellants argue that DHS's disclosure of their private data to T.W. Vending "was not in good faith." State respondents argue that any disclosure to T.W. Vending "was in good faith and does not constitute a breach." Because we affirm the district court's decision dismissing the unauthorized-acquisition claim on other grounds, we need not reach the good-faith exception.

the amended complaint fails to allege that T.W. Vending or another third party "obtained, accessed, or viewed" appellants' data "with the intent to use the data for nongovernmental purposes" and that, under the relevant statute, "unauthorized acquisition" must include "intent to use the data for nongovernmental purposes." Minn. Stat. § 13.055, subd. 1(c). The state respondents also contend that the amended complaint alleges that T.W. Vending received appellants' MREC numbers for a governmental purpose—to provide canteen services at MSOP's Moose Lake facility—and that, therefore, no unauthorized acquisition occurred and no notice is required. The district court dismissed appellants' unauthorized-acquisition claim against DHS because the "access alleged in the [amended] complaint was [T.W.] Vending's access related to a governmental purpose—namely providing canteen services to MSOP clients."

The amended complaint does not allege that DHS allowed an "unauthorized acquisition" of appellants' MREC numbers, as that term is defined by statute. *See id*. The amended complaint alleges that other MSOP residents were "within viewing distance" of the kiosks that displayed appellants' MREC numbers but asserts that "[t]his is not to be interpreted to claim third-party clients used this information." The amended complaint does not allege that T.W. Vending intended to use appellants' MREC numbers "for nongovernmental purposes" and, in fact, alleges that T.W. Vending purported to use the MREC numbers for canteen vending. *Id.* In their reply brief to this court, appellants appear to concede that the amended complaint "never alleged their data was used for nongovernmental purposes."

We conclude that the amended complaint does not allege an unauthorized-acquisition claim against DHS related to appellants' MREC numbers; therefore, it fails to state a claim for "breach of the security of the data" triggering a duty to notify appellants as provided in Minn. Stat. § 13.055, subd. 2(a). Thus, we affirm the district court's dismissal of the unauthorized-acquisition claim against DHS.

D. Even if we assume that the district court erred by dismissing appellants' claims against Harpstead in her official capacity, any error would be harmless.

As discussed, a "responsible authority" shall "establish appropriate security safeguards" to protect individuals' private data. Minn. Stat. § 13.05, subd. 5(a)(2). For state departments, the commissioner of the department is the responsible authority. Minn. R. 1205.0200, subp. 13 (2023).

It is undisputed that Harpstead was the commissioner of DHS at the time the amended complaint was served but not at the time of the MGDPA violations alleged in the amended complaint. Appellants argue that Harpstead is DHS's "responsible authority" and can be held liable in her official capacity for MGDPA claims that occurred before she became commissioner. In their brief to this court, state respondents acknowledge that "Commissioner Harpstead is DHS's 'responsible authority.'" State respondents argue, however, that the claims against Harpstead were correctly dismissed because she was not the commissioner in 2018 when the alleged violations occurred. State respondents argue that, even if Harpstead was commissioner at the time, "dismissal was still appropriate because Appellants do not allege Commissioner Harpstead personally violated the

MGDPA." The district court dismissed appellants' claims against Harpstead based on state respondents' arguments.[11]

Even if we assume that the district court erred in dismissing appellants' claims against Harpstead, we conclude that appellants failed to show prejudice. If, on appeal, an appellant shows that the district court committed an error, the existence of that error cannot support relief without a showing that the error prejudiced that appellant. *See* Minn. R. Civ. P. 61 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."); *Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008) (citing this aspect of Minn. R. Civ. P. 61).

"Official-capacity suits generally represent another way of pleading an action against an entity of which an officer is an agent . . . . [O]fficial capacity suits are, in all respects other than the name, to be treated as a suit against the entity." *Khalifa v. State*, 397 N.W.2d 383, 389-90 (Minn. App. 1986).[12] Because the amended complaint names

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[11] State respondents and the district court rely on a nonprecedential opinion, *Wills v. Jesson*, which states that the "plain language of the MGDPA limits liability to a responsible authority if he or she commits a violation of the statute." No. A18-0948, 2019 WL 418542, at *3 (Minn. App. Feb. 4, 2019). This court concluded that the statute "does not extend liability to a responsible authority for the actions of his or her employees, agents, or representatives" and that a complaint must allege that the responsible authority individually violated the MGDPA. *Id. Wills* is not binding precedent but may be persuasive. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating that nonprecedential opinions "are not binding authority" but "may be cited as persuasive authority"). For the reasons stated, we need not consider whether *Wills* supports dismissal of appellants' claims against Harpstead.

[12] Official-capacity suits are often brought against new commissioners, and party substitution is contemplated by the Minnesota Rules of Civil Procedure. Minn. R. Civ. P. 25.04 ("When any public officer is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by

Harpstead in her official capacity as the commissioner of DHS, we treat the claims against Harpstead as being against DHS.

As discussed above, the amended complaint sufficiently alleges two data-practices claims against DHS itself. Appellants do not explain how the claims against DHS and against Harpstead in her official capacity are different in any respect. Thus, even if the district court erred by dismissing the claims against Harpstead, any error would be harmless. Therefore, we affirm the district court's dismissal of the claims against Harpstead.

E. Collateral estoppel does not apply to appellants' claims against DHS for the period before DHS's contract with T.W. Vending.

In the alternative, the district court dismissed the claims against DHS based on collateral estoppel. Appellants argue that the district court erred in applying collateral estoppel to preclude their claims. State respondents argue that the amended complaint repeated claims that were identical to those previously adjudicated and dismissed in the district court's June order and that, therefore, collateral estoppel applies.

"Collateral estoppel bars the relitigation of issues that are both identical to those issues already litigated by the parties in a prior action and necessary and essential to the resulting judgment." *State Farm Mut. Auto. Ins. Co. v. Lennartson*, 872 N.W.2d 524, 534

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or against the officer's successor."). In other words, a government entity does not avoid an official-capacity suit because its commissioner changes.

(Minn. 2015) (emphasis omitted) (quotation omitted). Collateral estoppel applies if all of these elements are met:

> (1) the issue must be identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party . . . to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Hauschildt v. Beckingham, 686 N.W.2d 829, 837 (Minn. 2004). "Whether collateral estoppel precludes litigation of an issue is a mixed question of law and fact" that appellate courts review de novo. *Id.*

We conclude that collateral estoppel did not preclude appellants from asserting their claims for MGDPA violations that predate DHS's contract with T.W. Vending in their amended complaint. First, in the June order that dismissed some of appellants' claims against DHS, the district court gave leave for appellants to file an amended complaint. *See* Minn. R. Civ. P. 15.01 (stating that a party may amend their pleading "by leave of court"). Second, while the June order dismissed some claims against DHS, it did so without prejudice. *See* Minn. R. Civ. P. 41.01(b) ("Unless otherwise specified in the order, a dismissal herein is without prejudice."). Third, the June order did not result in a final judgment on the merits for DHS and was thus "subject to revision." *See* Minn. R. Civ. P. 54.02 (stating that a district court's order "is subject to revision at any time" before final judgment).

As explained above, the amended complaint asserts claims against DHS for MGDPA violations that occurred *before* DHS's contract with T.W. Vending. These claims were not "necessarily determined in a previous judgment," given that appellants were granted leave to amend, and as the supreme court has cautioned, appellate courts "do not apply collateral estoppel rigidly, but focus on whether an injustice would be worked upon the party against whom the estoppel is urged." *Mach v. Wells Concrete Prods. Co.*, 866 N.W.2d 921, 927 (Minn. 2015) (quotation omitted).

To be clear, we read the December order to apply collateral estoppel to the amended complaint's claims against DHS for alleged MGDPA violations that occurred *after* DHS's contract with T.W. Vending. In their briefs to this court, appellants do not challenge this ruling, appear to have abandoned all postcontract claims against DHS, and instead pursue those claims exclusively against T.W. Vending. Thus, we need not consider appellants' postcontract claims against DHS.

II. The amended complaint fails to state a data-practices claim against T.W. Vending.

Appellants argue that the amended complaint states a claim for MGDPA violations against T.W. Vending because it was not authorized to receive appellants' MREC numbers before the effective date of the contract. T.W. Vending argues that it was not subject to the MGDPA before the effective date of the contract and therefore could not be held liable for any precontract data-practices claim. The district court considered and rejected appellants' claim that T.W. Vending was liable under the MGDPA before the effective date of its contract with DHS.

A private company is subject to the MGDPA under certain conditions. If the government entity executes a contract with a private company "to perform any of its functions," all data obtained and used by the private company "in performing those functions is subject to" the MGDPA and the private company must comply with the MGDPA "as if it were a government entity." Minn. Stat. § 13.05, subds. 11(a), 6.

We conclude that the amended complaint fails to state a claim for relief against T.W. Vending for alleged violations of the MGDPA that occurred before the effective date of its contract with DHS. Appellants' brief to this court asserts that the amended complaint alleges data-practices violations that occurred before the contract was executed. Thus, T.W. Vending was not under contract with DHS at the time of the MGDPA violations alleged in the amended complaint.

In their briefs to this court, appellants do not argue that the amended complaint alleged a postcontract-disclosure or appropriate-safeguard claim against T.W. Vending.[13] On the other hand, appellants argue, without specifying when, that T.W. Vending was "required to notify" appellants that "a breach had occurred" as provided in Minn. Stat. § 13.055, subd. 2(a), but failed to do so. T.W. Vending maintains that it used appellants' private data for governmental purposes, "namely, providing canteen services to MSOP clients." T.W. Vending also argues that the amended complaint does not allege that a third party "obtained, accessed, or viewed" appellants' MREC numbers "with the intent to use the data for nongovernmental purposes," so no breach occurred and no duty to provide notice was triggered. *See* Minn. Stat. § 13.055, subd. 1(c).

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[13] In the alternative, the district court dismissed the precontract claims against T.W. Vending based on collateral estoppel. In their brief to this court, appellants do not specifically challenge the district court's application of collateral estoppel to those claims. We need not address the collateral-estoppel issue, however, because we affirm the district court's decision to dismiss appellants' claims against T.W. Vending on other grounds.

We conclude, for the same reasons discussed above as to the amended complaint's unauthorized-acquisition claim against DHS, that the amended complaint fails to allege a claim for relief against T.W. Vending related to an "unauthorized acquisition" of appellants' MREC numbers for nongovernmental purposes. Minn. Stat. § 13.055, subd. 1(c). We therefore affirm the district court's dismissal of the unauthorized-acquisition claim against T.W. Vending. We also conclude that the amended complaint fails to allege a data-practices claim against T.W. Vending. Therefore, we affirm the district court's dismissal of the amended complaint's claims against T.W. Vending.

Affirmed in part, reversed in part, and remanded.