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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0559**

Joshua Ferry,
Appellant,

vs.

Discount Tire Company of Minnesota, Inc.,
Respondent.

**Filed November 25, 2024
Affirmed
Larkin, Judge**

St. Louis County District Court
File No. 69DU-CV-23-2554

Katherine E. Rollins, Shawn J. Wanta, Wanta Thome PLC, Minneapolis, Minnesota (for appellant)

Kathryn Mrkonich Wilson, Emily A. McNee, Michelle A. Christy, Littler Mendelson, P.C., Minneapolis, Minnesota (for respondent)

Considered and decided by Harris, Presiding Judge; Larkin, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the district court's rule 12 dismissal, without prejudice, of his claims under the Minnesota Human Rights Act and the Minnesota medical cannabis therapeutic research act. Because the district court correctly dismissed appellant's claims as unripe and nonjusticiable, we affirm.

FACTS

Our recitation of the facts is based on the allegations in the underlying complaint, which we assume to be true. Appellant Joshua Ferry is a participant in the Minnesota medical cannabis program. Ferry suffers from post-traumatic stress disorder. Respondent Discount Tire Company of Minnesota, Inc. is an employer with a location in Duluth.

Around May 2023, Ferry contacted TG, an assistant manager at Discount Tire's Duluth location, and discussed Ferry's potential employment at Discount Tire. Ferry knew TG because he was a friend of Ferry's brother. TG informed Ferry that Discount Tire would be hiring after college students left for the summer. Ferry later contacted TG and asked about applying for an open position. TG told Ferry he "thought [Discount Tire] would not hire [Ferry] due to [Ferry's] medical cannabis use."

On May 24, 2023, Ferry texted TG and asked "whether [TG] had asked his manager if [Ferry] could still be hired." TG responded, "[H]e still said you would have to pass the drug screening." Ferry sent TG a text in response saying, "It's discrimination," and he attached excerpts from articles describing Minnesota's medical cannabis law.

That same day, Ferry called Discount Tire's Duluth location a second time to inquire about employment opportunities. This time Ferry spoke to an employee who was identified by first name only, whom we refer to as "D." Ferry told D that he had a medical cannabis card as a member of the Minnesota Cannabis Registry. D told Ferry that he did not believe Ferry would be hired because Ferry would not pass a drug test. Ferry asked D to "ask his boss" whether Ferry could be hired if he passed a drug test for all other substances and

presented his medical cannabis card. D placed Ferry on hold for 15 to 20 minutes, and then told Ferry he could not be hired because he would not pass a drug test.

Ferry did not apply for a job at Discount Tire.

Ferry filed a civil complaint against Discount Tire asserting discrimination based on his participation in the Minnesota medical cannabis program in violation of the Minnesota medical cannabis therapeutic research act (MCTRA), Minn. Stat. §§ 152.22-.37 (2022 & Supp. 2023), the Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01-.50 (2022 & Supp. 2023), and the Minnesota drug and alcohol testing in the workplace act (DATWA), Minn. Stat. §§ 181.950-.957 (2022 & Supp. 2023).

The district court dismissed Ferry's complaint, reasoning in part that Ferry's claims were not ripe because he never applied for a job with Discount Tire, Discount Tire never denied him a job, and Discount Tire never asked Ferry to complete a drug test. Thus, "there [was] no justiciable controversy for the [c]ourt to decide."

Ferry subsequently filed a second complaint against Discount Tire alleging the same claims that he had raised in his first complaint.¹ The district court dismissed Ferry's second complaint without prejudice, reasoning that "[Ferry's] claims remain the same as in [the first complaint], and thus the prior court's analysis remains the same as the facts have not changed in any material way." The district court once again concluded that Ferry's claims were not ripe because he never applied for a job with Discount Tire, he was not denied a job with Discount Tire, and he was never asked to complete a drug test. However, the

¹ Later, Ferry dismissed his claim under DATWA voluntarily, and that claim is not before us on appeal.

district court said that “[i]f [Ferry] applies to the position and is denied employment, he may re-file.”

Ferry appeals.

DECISION

We are called on to review the district court’s rule 12 dismissal of Ferry’s lawsuit.² A claim may be dismissed for “failure to state a claim upon which relief can be granted.” See Minn. R. Civ. P. 12.02(e). Appellate courts “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). They “accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party.” *Id.*

I.

Ferry raises multiple challenges to the district court’s rule 12 dismissal of his second complaint against Discount Tire. Because the district court correctly determined that Ferry’s claims were not ripe for adjudication, we limit our analysis to that issue.³

² Discount Tire moved to dismiss under Minn. R. Civ. P. 12.02(a), for lack of jurisdiction over the subject matter, and under rule 12.02(e), for failure to state a claim on which relief could be granted. The district court’s dismissal order repeatedly referred to language from rule 12.02(e), regarding failure to state a claim. But the district court cited rule 12.02(f), regarding failure to join a party. Under the circumstances, we assume the district court’s citation to rule 12.02(f) was a typographical error.

³ We recognize that the doctrines of standing and ripeness are related and that the analysis of each issue overlaps, but both must exist to seek relief from a court. See *Grove v. Simon*, 2 N.W.3d 490, 499-500 (Minn. 2024) (stating that “[t]o have standing, a party must have ‘a sufficient stake in a *justiciable controversy* to seek relief from a court’” and that if an issue is “not ripe for adjudication,” it is “not justiciable”) (emphasis added) (quotation omitted)); *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 338 (Minn. 2011) (stating that “[b]ecause the justiciability issue in this case focuses on when [individuals may bring a challenge]—not who may bring the challenge—we believe that the relevant issue here is

Earlier this year, the Minnesota Supreme Court summarized the law regarding ripeness as follows.

We now turn to the question of ripeness. We cannot exercise jurisdiction over petitioners' claim unless a justiciable controversy exists. A justiciable controversy does not exist unless the claim is capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion. We decide present problems, not hypothetical ones: Issues which have no existence other than in the realm of future possibility are purely hypothetical and are not justiciable. Such issues are not ripe for adjudication and so are not justiciable.

Growe, 2 N.W.3d at 499-500 (quotations and citations omitted).

Applying those principles, the *Growe* court held that “petitioners’ claim that it would be error for the Secretary of State to place former President Trump’s name on the 2024 general election ballot” was not ripe because:⁴

The Republican National Convention, at which the candidate for the Republican Party will be chosen, will not occur until July 15-18, 2024. At the time we issued our order in November 2023, multiple candidates were seeking the Republican nomination for president in 2024. Indeed, in December, the Republican Party of Minnesota designated five candidates to appear on its presidential nomination primary ballot in 2024: former New Jersey Governor Chris Christie, Florida Governor Ron DeSantis, former South Carolina Governor and former U.N. Ambassador Nikki Haley, Vivek Ramaswamy, and former President Trump. The Republican Party also did request that the ballot include a blank line for write-in candidates. Between now and July 15, 2024, when the Republican National Convention begins, all the states and

ripeness, not standing”) (emphasis omitted)). Because we conclude that Ferry’s claims are not ripe and that the district court therefore lacked jurisdiction to consider them, we do not separately determine whether he had standing.

⁴ The supreme court ordered the petition dismissed, but without prejudice, on November 8, 2023, with an opinion to follow. *Growe v. Simon*, 997 N.W.2d 81, 83 (Minn. 2023).

territories of the United States must choose the delegates who will represent them at the national convention. The national convention must be held. Following the convention, the major party chairs have until August 26, 2024—71 days before the November 5, 2024, general election—to certify to the secretary of state the names of the persons nominated as presidential electors, the names of persons nominated as alternate presidential electors, and the names of the party candidates for president and vice president. History tells us that a lot may happen in this election between now and the national conventions.

Id. at 500-01 (footnote omitted) (quotation and citations omitted).

Thus, the supreme court concluded that the dispute regarding “whether former President Trump should be excluded from the 2024 general election ballot is too remote and hypothetical to be a ripe, justiciable controversy at this time.” *Id.* at 501. Accordingly, the supreme court said, “we lack jurisdiction to consider petitioners’ claim that it would be error for the Secretary of State to place former President Trump’s name on the 2024 general election ballot.” *Id.* To be clear, the supreme court said that it “would not have jurisdiction to decide” claims that “are not ripe.” *Id.*

“Justiciability is an issue of law, which we review de novo.” *Dean v. City of Winona*, 868 N.W.2d 1, 4 (Minn. 2015).

In dismissing Ferry’s lawsuit, the district court reasoned that his claims were “not ripe because . . . he never applied for, nor was he denied a job with [Discount Tire], and he was never asked to complete a drug test.” Thus, there was “no justiciable controversy for the [c]ourt to decide and the [c]omplaint must be dismissed.” The district court’s reasoning is sound. As the district court noted in its order, Ferry’s “injuries remain hypothetical and speculative.” He “has yet to suffer any real harm and has failed to demonstrate that he

went beyond an initial inquiry with two employees with dubious—at best—hiring authority.” “Moreover, the employees did not refuse [Ferry’s] application, nor explicitly state that he would not be hired. Both stated that the hiring was contingent on passing a drug test.” But Ferry “never filled out an application, asked for an application, indicated what type of employment he sought from [Discount Tire], or interviewed with [Discount Tire].”

We agree with the district court’s assessment of Ferry’s claims: “[his] request for pay and benefits is purely speculative in the absence of an application, a denial of employment, the extension of an offer, and a retraction of the offer based on a positive drug test.” That conclusion is consistent with *Grove* and our own caselaw. For example, we have held that “[if] no final authoritative decision has been made respecting [the] effect of regulation on land, [a] takings claim is not ripe for adjudication.” *Thompson v. City of Red Wing*, 455 N.W.2d 512, 514 (Minn. App. 1990), *rev. denied* (Minn. June 6, 1990). We reasoned that “[e]conomic impact and interference with expectation interests cannot be evaluated until after a final application of the regulations to the land in question.” *Id.* at 516.

Similarly, in *Hunkins v. City of Minneapolis*, we held that “[a] property owner cannot pursue inverse condemnation without first obtaining [a] final determination of how [a] zoning regulation affects property.” 508 N.W.2d 542, 543 (Minn. App. 1993), *rev. denied* (Minn. Jan. 27, 1994). We reasoned that, because Hunkins failed to obtain a final determination regarding the effect of the zoning on his property, his claim was “premature” and that whether the zoning regulation had “gone too far cannot be measured.” *Id.* at 544.

And in *State by Friends of Riverfront v. City of Minneapolis*, we upheld the district court’s dismissal of contract claims on ripeness grounds because it was clear that the contract had yet to be breached. 751 N.W.2d 586, 593 (Minn. App. 2008), *rev. denied* (Minn. Sept. 23, 2008). We reasoned that “merely planning” the construction of a facility did not violate a restrictive covenant and that the potentially actionable conduct would be “the actual construction” and “not the course of conduct leading up to its construction.” *Id.* at 593.

Finally, in *In re Civil Commitment of Travis*, we held that “[r]ight-to-treatment arguments are not ripe until after a person has been committed and deprived of treatment.” 767 N.W.2d 52, 54 (Minn. App. 2008). In doing so we reasoned:

To the extent that respondent’s argument involves his right to treatment, the issue is not ripe. Respondent’s injury is neither direct nor imminent because the district court has not found that he meets the commitment criteria—only that commitment is likely. Without commitment as an SDP or SPP to MSOP, treatment at MSOP will not occur, and respondent’s injury is only a hypothetical possibility.

Id. at 58.

The circumstances here are very similar to those in *Thompson*, *Hunkins*, *Friends of Riverfront*, and *Travis*: the alleged harm-causing event that was the basis for Ferry’s lawsuit—Discount Tire’s refusal to hire him based on his participation in Minnesota’s medicinal marijuana program—has not occurred. And it cannot occur until he applies for employment with Discount Tire. Thus, his claimed injury is only a hypothetical possibility and not ripe for adjudication.

Ferry cites *International Brotherhood of Teamsters v. United States* for the proposition that his application would have been futile and that he therefore was not required to apply for employment with Discount Tire before bringing his discrimination claim before the district court. 431 U.S. 324, 365-66 (1977).

In *Teamsters*, the United States initiated litigation against a company and proved that the company engaged in a systemwide pattern or practice of employment discrimination against minority union members in violation of Title VII by regularly and purposefully treating such members less favorably than white persons. *Id.* at 328-32. The case made its way to the Supreme Court, and one of the issues before the Court concerned the relief to be afforded to the members of the “‘affected class’ of discriminatees” and, as is relevant here, whether members who had never applied for employment at the company could obtain relief. *Id.* at 331, 357. The company contended that “unless a minority-group [member] actually applied for a . . . job, . . . he has suffered no injury from whatever discrimination might have been involved in the refusal of such jobs to those who actually applied for them.” *Id.* at 363. The Supreme Court rejected that contention, stating:

[T]he company’s assertion that a person who has not actually applied for a job can *never* be awarded . . . relief cannot prevail. The effects of and the injuries suffered from discriminatory employment practices are not always confined to those who were expressly denied a requested employment opportunity. A *consistently enforced discriminatory policy* can surely deter job applications from those who are aware of it and are unwilling to subject themselves to the humiliation of explicit and certain rejection.

If an employer should announce his policy of discrimination by a sign reading “Whites Only” on the hiring-office door, his victims would not be limited to the few who ignored the sign and subjected themselves to personal rebuffs.

The same message can be communicated to potential applicants more subtly but just as clearly by an employer's actual practices—by his consistent discriminatory treatment of actual applicants, by the manner in which he publicizes vacancies, his recruitment techniques, his responses to casual or tentative inquiries, and even by the racial or ethnic composition of that part of his work force from which he has discriminatorily excluded members of minority groups. *When a person's desire for a job is not translated into a formal application solely because of his unwillingness to engage in a futile gesture he is as much a victim of discrimination as is he who goes through the motions of submitting an application.*

Id. at 365-66 (emphasis added) (footnote omitted).

But the Supreme Court also stated, “[t]o conclude that a person’s failure to submit an application for a job does not inevitably and forever foreclose his entitlement to . . . relief under Title VII is a far cry, however, from holding that nonapplicants are always entitled to such relief.” *Id.* at 367. “A nonapplicant must show that he was a potential victim of unlawful discrimination.” *Id.* Because a nonapplicant claims that “he was deterred from applying for the job by the employer’s discriminatory practices, his is the not always easy burden of proving that he would have applied for the job had it not been for those practices.” *Id.* at 367-68. The nonapplicant is “in a position analogous to that of an applicant” only if that burden is met. *Id.* at 368.

The Supreme Court rejected the government’s reliance on “its proof of an extended pattern and practice of discrimination as evidence that an application from a minority employee for a . . . job would have been a vain and useless act.” *Id.* The Supreme Court explained:

We cannot agree. While the scope and duration of the company’s discriminatory policy can leave little doubt that the

futility of seeking . . . jobs was communicated to the company's minority employees, that in itself is insufficient. The known prospect of discriminatory rejection shows only that employees who wanted . . . jobs may have been deterred from applying for them. It does not show which of the nonapplicants actually wanted such jobs, or which possessed the requisite qualifications.

Id. at 369. The Supreme Court emphasized the need to establish a nonapplicant's qualifications, stating that a nonapplicant "must bear the burden of coming forward with the basic information about his qualifications that he would have presented in an application." *Id.* n.53.

We are not persuaded that *Teamsters* supports Ferry's argument that his discrimination claim against Discount Tire is justiciable even though he never applied for employment at Discount Tire. *Teamsters* is not a case addressing ripeness of an individual discrimination claim. Instead, it addresses the remedies available following proof of a pattern and practice of discrimination under Title VII. To the extent *Teamsters* provides a persuasive analogy regarding the issue of whether Ferry's claims under the MCTRA and MHRA are ripe, Ferry does not meet its requirements.

Under *Teamsters*, to be treated as an applicant, Ferry must prove that he would have applied for a job with Discount Tire had it not been for his knowledge of a pattern and practice of discrimination. The record here, which is limited to the allegations in Ferry's complaint, does not allege a consistently enforced discriminatory policy, much less a policy comparable to the one that was proved in *Teamsters*. Indeed, Ferry's complaint does not allege the discriminatory treatment of anyone other than Ferry. Thus, the record before us is vastly different than the one that provided the context for application of the futility

doctrine in *Teamsters*. In addition, to be treated as an applicant under *Teamsters*, Ferry must present basic information regarding his qualifications for the job that he sought. He has not done so.

Moreover, we question whether the *Teamsters* futility doctrine can be applied to justify jurisdiction over a nonapplicant's hiring-discrimination claim if there is no allegation of "a consistently enforced discriminatory policy" that could "surely deter job applications from those who are aware of it."⁵ *Id.* at 365. Regardless, we are not persuaded that the responses of the two Discount Tire employees to Ferry's casual employment inquiries justify application of the futility doctrine as described in *Teamsters*.

Because Ferry's discrimination claim is too remote and hypothetical to constitute a ripe, justiciable controversy at this time, it is nonjusticiable and the district court lacked jurisdiction to consider it. We therefore affirm the district court's dismissal of Ferry's lawsuit without prejudice.

Affirmed.

⁵ Although the decisions are not binding on us, we note that the Eighth Circuit has recognized the narrow application of the doctrine. *Lockridge v. Bd. of Trs. of Univ. of Ark.*, 315 F.3d 1005, 1011 (8th Cir. 2003) ("[T]here is no claim here that there was a consistently enforced practice of refusing to hire black individuals for the position of dean, such that a black applicant would face certain rejection [N]o reasonable person could conclude from the present record that gross and pervasive discrimination made it futile for Mr. Lockridge to apply for the promotion." (quotations omitted)); *Beveridge v. Nw. Airlines, Inc.*, 259 F. Supp. 2d 838, 856 (D. Minn. 2003) ("As [*Teamsters*] makes plain, the futile gesture doctrine is predicated upon the existence of a pattern and practice of discrimination which is entrenched, gross and pervasive. No such showing has been made, here." (quotation omitted)).