

*This opinion is nonprecedential except as provided by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
A24-0596**

Gregory Avery, Jr.,
Appellant,

vs.

State of Minnesota,
Respondent,

Adrian Scott LaFavor Montez,
Respondent,

Park Nicollet Methodist Hospital,
Respondent,

#1A Lifesafer of Minnesota, Inc., et al.,
Respondents.

Filed February 10, 2025

Affirmed

Larson, Judge

Hennepin County District Court
File No. 27-CV-23-12431

Gregory Avery, Minneapolis, Minnesota (self-represented appellant)

Keith Ellison, Attorney General, Janine Kimble, Assistant Attorney General, St. Paul, Minnesota (for respondent State of Minnesota Department of Public Safety)

Jared D. Shepherd, Cole A. Birkeland, Campbell Knutson, PA, Eagan, Minnesota (for respondent Adrian Scott LaFavor-Montez)

Anuradha Chudasama, Bassford Remele, PA, Minneapolis, Minnesota (for respondent Park Nicollet Methodist Hospital)

John E. Radmer, Julia J. Nierengarten, Meagher & Geer, PLLP, Minneapolis, Minnesota
(for respondents #1A LifeSafer of Minnesota, Inc., et al.)

Considered and decided by Slieter, Presiding Judge; Larson, Judge; and Bentley,
Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Self-represented appellant Gregory Avery Jr. challenges the district court’s decision to dismiss his complaint under Minn. R. Civ. P. 12.02(d)-(e), 12.03, and 41.02. Because the district court appropriately dismissed his claims, we affirm.

FACTS

This case arises out of an incident that occurred on March 1, 2020, and resulted in criminal charges against Avery. Avery was arrested for suspected driving while impaired. Law enforcement brought Avery to a facility owned by respondent Park Nicollet Methodist Hospital (Park Nicollet) to obtain a blood sample. A judge issued a warrant authorizing a Park Nicollet “EMT/Paramedic” to complete the blood draw necessary to obtain the blood sample. Avery tested positive for both methamphetamine and amphetamine—schedule II controlled substances under Minn. Stat. § 152.02, subd. 3(d) (2018).

On May 26, 2020, the State of Minnesota charged Avery with one count of second-degree driving while impaired under Minn. Stat. § 169A.20, subd. 1(7) (2018). The criminal charges resulted in respondent Minnesota Department of Public Safety (DPS) revoking Avery’s driver’s license. At some point, Avery was also required to install an

ignition-interlock system in his vehicle, which was supplied by respondent #1A LifeSafer of Minnesota, Inc. (LifeSafer).

Eventually, respondent Adrian Scott LaFavor-Montez (LaFavor-Montez) was assigned as the prosecutor on Avery's case. On January 24, 2023, the state, with LaFavor-Montez acting as prosecutor, dismissed all charges against Avery without prejudice under Minn. R. Crim. P. 30.01.¹ On August 4, 2023, Avery filed for judicial review of his license revocation. The district court found the petition was untimely and dismissed the petition.

On August 3, 2023, Avery brought this civil action. Avery filed an amended complaint on September 18, 2023, naming Ryan Skog from the St. Louis Park Police Department (Skog), DPS, LaFavor-Montez, Park Nicollet, and LifeSafer² as defendants. Avery alleged assault with a deadly weapon, kidnapping, illegal detention, unlawful prosecution without a valid warrant, defamation, and multiple civil-rights violations. Avery submitted an "Affidavit of Service by Mail" for each respondent, purporting to show service of the summons and amended complaint through certified mail. No other proof of personal service was submitted under Minn. R. Civ. P. 4.03.

¹ Rule 30.01 provides that "[t]he prosecutor may dismiss a complaint or tab charge without the court's approval. . . . The prosecutor must state the reasons for the dismissal in writing or on the record." A footnote in the memorandum in support of the state's motion to dismiss explained that the state dismissed the case after LaFavor-Montez contacted the St. Louis Park Police Department to obtain a copy of the blood-draw warrant and was informed "the warrant had not been preserved."

² The district court's order noted that "[i]t is evident that Defendant Lifesafer was incorrectly sued as 'Ignition Interlock Lifesafer' as the correct company name is #1A LifeSafer of Minnesota, Inc."

LaFavor-Montez, Park Nicollet, and DPS separately moved to dismiss the matter under Minn. R. Civ. P. 12.02(d)-(e). LifeSafer moved for judgment on the pleadings under Minn. R. Civ. P. 12.03. Skog did not participate in the proceedings. The district court held a hearing on November 29, 2023, to address each motion.

In a February 22, 2024 order, the district court noted that Avery's "failure to properly serve the [respondents], despite ample opportunity, could be sufficient grounds to dismiss this matter alone for a failure by [Avery] to prosecute this matter and to comply with the Minnesota Rules of Civil Procedure." Nonetheless, the district court addressed the merits of the respondents' motions and dismissed Avery's claims with prejudice for the following reasons: (1) LaFavor-Montez was entitled to prosecutorial immunity; (2) Park Nicollet was entitled to statutory immunity under Minn. Stat. § 169A.51, subd. 7(c) (2024); (3) DPS was entitled to dismissal under rule 12.02(e) because Avery failed to state a claim upon which relief could be granted; and (4) LifeSafer was entitled to dismissal under rule 12.03 on the ground that Avery failed to set forth a legally sufficient claim for relief. Finally, despite Skog's failure to participate in the proceedings, the district court dismissed the claims against him for lack of proper service under Minn. R. Civ. P. 41.02.

Avery appeals.

DECISION

Avery makes numerous challenges to the district court's order dismissing his claims against respondents.³ We begin by examining the district court's decisions to grant

³ In addition to the arguments addressed in this opinion, Avery claims: (1) respondents' motions to dismiss were not valid responses to his summons and complaint; (2) the district

LaFavor-Montez’s, Park Nicollet’s, and DPS’s motions to dismiss. We then address the district court’s decision to grant LifeSafer’s motion for judgment on the pleadings. Finally, we consider the district court’s decision to dismiss the claims against Skog.

I.

We first address whether the district court correctly dismissed Avery’s claims against LaFavor-Montez, Park Nicollet, and DPS under rule 12.02(e). We review this issue de novo. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014). In doing so, we “must consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party.” *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). We evaluate the district court’s reasons for dismissing the claims against LaFavor-Montez, Park Nicollet, and DPS in turn below.

A. LaFavor-Montez

Avery challenges the district court’s decision to dismiss his claims against LaFavor-Montez on the basis that LaFavor-Montez is entitled to prosecutorial immunity. “Prosecutors are entitled to absolute immunity from civil damages arising out of the prosecutor’s conduct in initiating adversarial proceedings and presenting the state’s case.” *Brotzler v. Scott County*, 427 N.W.2d 685, 688 (Minn. App. 1988), *rev. denied* (Minn.

court erroneously declined to reach the merits of the case; and (3) the district court violated the constitution. Avery does not support these arguments with any authority; therefore, they are forfeited. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (“An assignment of error based on mere assertion and not supported by any argument or authorit[y] in appellant’s brief is waived . . . unless prejudicial error is obvious on mere inspection.”).

Sept. 16, 1988). This immunity applies even to “a prosecutor whose malicious or dishonest action deprives [the criminal defendant] of liberty.” *Brown v. Dayton Hudson Corp.*, 314 N.W.2d 210, 213 (Minn. 1981) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 427 (1976)).

Upon reviewing the complaint, we conclude that the district court correctly determined that LaFavor-Montez was entitled to prosecutorial immunity. All of the allegations Avery makes in the amended complaint concerning LaFavor-Montez relate to acts he performed in his role as a prosecutor. Therefore, we affirm the district court.

B. Park Nicollet

Avery challenges the district court’s decision to dismiss his claims against Park Nicollet on the basis that Park Nicollet was entitled to statutory immunity under Minn. Stat. § 169A.51, subd. 7(c). Under Minn. Stat. § 169A.51, subd. 7(c), a qualified emergency medical technician-paramedic “drawing blood at the request of a peace officer for the purpose of determining the concentration of . . . a controlled substance or its metabolite, or an intoxicating substance is in no manner liable in any civil or criminal action except for negligence in drawing the blood.” This protection extends to a hospital when its employees act in conformance with the terms of the immunity provision. *See Lynch v. Comm’r of Pub. Safety*, 498 N.W.2d 37, 39, 39 n.1 (Minn. App. 1993) (recognizing when applying an earlier, but nearly identical, version of statute that immunity extends to hospitals for acts of their employees); *Cunningham v. Healtheast St. Joseph’s Hosp.*, No. A09-2073, 2010 WL 2486319, at *2-6 (Minn. App. June 22, 2010) (extending Minnesota Commitment and Treatment Act’s immunity provision to employees’ hospital when appellant “failed to show

that the hospital’s employees, and therefore the hospital, [were] not entitled to immunity” under that provision).⁴

Taking all the allegations in the complaint as true, Park Nicollet is entitled to immunity. The amended complaint alleges that medical staff at Park Nicollet drew Avery’s blood samples for testing at the direction of law enforcement. Avery makes no allegations that the medical staff were not qualified to perform the blood draw, or that the staff was negligent in drawing the blood. This meets the criteria for statutory immunity and, therefore, the district court correctly determined that Park Nicollet was entitled to statutory immunity.⁵

C. DPS

Avery challenges the district court’s decision to dismiss his claims against DPS on the ground that he failed to allege any specific actions taken by DPS that would entitle him to relief. Reviewing the complaint, Avery referenced DPS twice: (1) “[DPS] defamation of character[,] cruel [and] unusual punishment/IMPLIED consent[, and] personal and emotional damage” and (2) “I was made to look like a public nuisance labeled by [DPS]. Had to walk in the hot summer, cold winter carrying my clothing and food in public-[h]umiliated me for 3 years (plus).” Neither allegation articulates a legal basis for a claim

⁴ This case is nonprecedential and, therefore, not binding. We cite *Cunningham* as persuasive authority only. See Minn. R. Civ. App. P. 136.01, subd. 1(c).

⁵ Avery argues that there was no warrant issued before the blood draw, but the immunity subdivision does not list a warrant as a requirement for the immunity to be valid. See Minn. Stat. § 169A.51, subd. 7(c). Additionally, although law enforcement did not preserve the warrant, the probable-cause statement associated with Avery’s criminal charges references a blood-draw warrant signed by a judge.

against DPS. In fact, other allegations in the complaint indicate that DPS acted well within its administrative capacity when it revoked Avery's driver's license.⁶ We, therefore, conclude the district court correctly granted DPS's motion to dismiss.

D. Conclusion

For the reasons set forth above, we conclude Avery failed to state claims against LaFavor-Montez and Park Nicollet because they are entitled to immunity, and against DPS because Avery failed to state a claim upon which relief could be granted. Accordingly, we affirm the district court.

II.

We next address the district court's decision to grant LifeSafer's motion for judgment on the pleadings. "We review a district court's decision on a Rule 12.03 motion de novo to determine whether the complaint sets forth a legally sufficient claim for relief." *Burt v. Rackner, Inc.*, 902 N.W.2d 448, 451 (Minn. 2017) (quotation omitted). As we did above, "we consider only the facts alleged in the complaint, accepting those facts as true and drawing all reasonable inferences in favor of the nonmoving party." *Id.* (quotation

⁶ Minnesota courts "have made clear in a number of cases the revocation of a driver's license under the implied consent law[] is a civil penalty imposed administratively regardless of the outcome of any criminal proceeding . . . arising from the same incident." *State v. Hanson*, 356 N.W.2d 689, 692 (Minn. 1984). The state's decision to dismiss criminal charges does not invalidate the license revocation, *id.*, and the Minnesota Supreme Court has determined that the implied-consent procedure is constitutional, *Fedziuk v. Comm'r of Pub. Safety*, 696 N.W.2d 340, 342 (Minn. 2005). Additionally, Avery has already unsuccessfully challenged his license revocation, and any claims related to the license revocation are barred by collateral estoppel. See Minn. Stat. § 169A.53 (2022); *In re Tr. Created by Hill*, 499 N.W.2d 475, 484 (Minn. App. 1993), *rev. denied* (Minn. July 15, 1993).

omitted). “To withstand a motion for judgment on the pleadings, [a plaintiff] must state facts that, if proven, would support a colorable claim and entitle [them] to relief.” *Midwest Pipe Insulation, Inc. v. MD Mech., Inc.*, 771 N.W.2d 28, 31 (Minn. 2009).

Avery made only one reference to LifeSafer in the complaint: “Ignition Interlock Life Saver to pay [r]efund for all the monies Mr. Gregory Avery ever paid into the program on this matter[.]” While other portions of the complaint address the ignition-interlock system, there are no other references to LifeSafer. It is plain from the allegations that Avery seeks damages for the money he spent on an ignition-interlock system. But Avery failed to present any legal basis on which he would be entitled to those damages. Under these circumstances, we conclude that Avery failed to set forth a legally sufficient claim, and we affirm the district court.

III.

We finally address Avery’s challenge to the district court’s decision to dismiss his claims against Skog. We “will not reverse a district court’s decision on a rule 41 motion unless the district court abuses its discretion.” *Kelbro Co. v. Vinny’s on the River, LLC*, 893 N.W.2d 390, 398 (Minn. App. 2017) (quotation omitted). Under rule 41.02, “[t]he court may upon its own initiative . . . and upon such notice as it may prescribe, dismiss an action or claim for failure to prosecute or to comply with these rules or any order of the court.” Minn. R. Civ. P. 41.02. A dismissal under this rule “operates as an adjudication upon the merits[.]” unless the court specifies otherwise. *Id.*

Here, the district court dismissed the claims against Skog on the basis that Avery failed to prosecute his claim and comply with the rules of civil procedure. The record

shows that Avery attempted to serve Skog by certified mail, which was not a proper method of service. Minn. R. Civ. P. 4.03; *see also Melillo v. Heitland*, 880 N.W.2d 862, 864-65 (Minn. 2016) (concluding service by certified mail does not comply with rules governing service of summons and complaint). Rather, Avery needed to either serve a copy of the summons and complaint to Skog “personally” or leave a copy of the summons and complaint at Skog’s “usual place of abode with some person of suitable age and discretion then residing therein.” Minn. R. Civ. P. 4.03(a). The district court also put Avery on notice that he had failed to properly serve Skog, but Avery did not correct the issue.

We therefore conclude the district court did not abuse its discretion when it dismissed the claims against Skog under rule 41.02.

Affirmed.