

*This opinion is nonprecedential except as provided by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
A25-1233**

Birkholz & Associates, LLC.,
Respondent,

vs.

Zachary James Lyons,
Appellant.

**Filed June 8, 2026
Affirmed
Rasmusson, Judge**

Blue Earth County District Court
File No. 07-CV-24-2346

Michelle K. Kuhl, Lauren E. Nuffort, Nathan Z. Heffernan, Lommen Abdo, P.A.,
Minneapolis, Minnesota (for respondent)

Zachary James Lyons, Eagle Lake, Minnesota (self-represented appellant)

Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and
Rasmusson, Judge.

NONPRECEDENTIAL OPINION

RASMUSSON, Judge

This appeal is taken from a judgment in favor of respondent on its breach-of-contract claim and appellant's counterclaim. Appellant asserts that the district court erred by (1) determining that his answer to the complaint stated a legal-malpractice counterclaim, leading it to dismiss the counterclaim based on his failure to provide an

affidavit of expert review, and (2) granting summary judgment to respondent on its breach-of-contract claim when genuine issues of material fact remain in dispute. We affirm.

FACTS

Appellant Zachary James Lyons hired respondent Birkholz & Associates LLC to represent him in a dissolution-of-marriage proceeding. The parties signed a contract outlining the services Birkholz would provide to Lyons. After completion of the proceedings, Lyons objected to his bill and did not pay the final portion of his legal fees. Birkholz initiated conciliation-court proceedings, and the conciliation court issued judgment in Birkholz's favor. Lyons removed the case to the district court, and the district court vacated the conciliation-court judgment.

Birkholz then filed its breach-of-contract claim for nonpayment of legal fees with the district court, and Lyons utilized a standardized form to complete his answer and counterclaim as a self-represented party. The form listed a series of affirmative defenses, but Lyons did not mark any of the suggested defenses. Instead, in the section titled "Facts that support my affirmative defense(s):" he wrote "I believe I have affirmative defenses, and I respectfully ask the court to allow me to answer these after securing an attorney. This is in progress but I was unable to retain the attorney before this deadline."

The next section of the form pertained to counterclaims. Lyons marked the box that he had a counterclaim and included the following narrative: "I am in the process of hiring

a lawyer and will be filing a counterclaim against Plaintiff for fraud and legal malpractice. I respectfully ask the court to allow me to update this once I have retained the attorney.”¹

Under the section outlining prayers for relief, Lyons marked the box preceding the words, “Dismiss Plaintiff’s complaint, enter judgment for me, and award me costs and disbursements allowed by Minn. Stat. § 549.11.” He also included the following narrative:

I believe the Birkholz firm has committed malpractice and fraud. They lied to me, withheld discovery from the court, advised me to lie on my discovery, failed to argue my case, [and] refused to address the billing concerns I raised. When I file my counterclaim, I will ask the court to enter judgment for me and order the Birkholz firm to compensate me for financial losses and mental, emotional and physical abuse caused [to] my child due to their incompetent representation.

On August 26, 2024, Birkholz personally served Lyons with a demand for an affidavit of expert review prepared pursuant to Minn. Stat. § 544.42, subds. 2(1), 6 (2024). Lyons did not produce an affidavit of expert review within the statutory 60-day deadline. On November 6, 2024, Birkholz moved for partial summary judgment asking the district court to dismiss Lyons’s legal-malpractice counterclaim. After a hearing, the district court granted partial summary judgment in favor of Birkholz.

Lyons made a series of requests to the district court, including a request for permission to file a motion for reconsideration of the order granting summary judgment to Birkholz, a motion for sanctions against Birkholz “for bringing a claim in bad faith,” and “for punitive damages . . . due to egregious behavior and gross negligence on the part of [Birkholz].” Lyons also moved “for partial summary judgment and the dismissal of

¹ Lyons never retained legal counsel.

[Birkholz's] claim" because the work was "done by a lawyer lacking competency." About two weeks later, Lyons sent a letter to the district court, asking for permission to amend his pleadings to include a counterclaim and affirmative defenses.

Birkholz then moved for summary judgment on its breach-of-contract claim. Lyons filed a responsive memorandum in which he explained that his current claims of attorney negligence or legal malpractice were a defense to Birkholz's breach-of-contract claim, not a counterclaim. After hearing arguments on all the motions, the district court denied Lyons's motions and granted Birkholz's motion for summary judgment on its breach-of-contract claim.

Lyons appeals from the resulting final judgment.

DECISION

Lyons raises two issues on appeal. He challenges the district court's grant of partial summary judgment dismissing his legal-malpractice counterclaim and its grant of summary judgment in favor of Birkholz on its breach-of-contract claim.

Appellate courts review a grant of summary judgment de novo. *Fletcher Props., Inc. v. City of Minneapolis*, 24 N.W.3d 287, 299 (Minn. 2025). A district court "shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. In reviewing a district court's summary-judgment decision, appellate courts "examine whether there are any genuine issues of material fact and whether the district court properly applied the law." *Henry v. Indep. Sch. Dist. No. 625*, 988 N.W.2d 868, 880 (Minn. 2023). A genuine issue of material fact exists if a rational trier of fact, considering the record as a

whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). “We view the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

I. The district court did not err by granting partial summary judgment to Birkholz.

Lyons argues that the district court erred in determining he raised a valid counterclaim, contending that his answer (1) lacked the mandatory demand for judgment required by Minnesota Rule of Civil Procedure 8.01, (2) was too ambiguous to provide notice of a legal-malpractice counterclaim, and (3) should have been construed liberally as an intent to amend his pleading in the future rather than a present counterclaim.

A. Mandatory Demand for Judgment

Lyons first contends that his pleading lacked the mandatory demand for judgment required by Minnesota Rule of Civil Procedure 8.01 because it did not seek any “final, immediate relief.” “A pleading which sets forth a claim for relief . . . 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. Lyons completed the section that demanded relief by marking the box preceding the words, “Dismiss Plaintiff’s complaint, enter judgment for me, and award me costs and disbursements allowed by Minn. Stat. § 549.11.” He also stated that he planned to ask the district court “to enter judgment” for him and order Birkholz “to compensate [him] for financial losses and mental, emotional and physical abuse caused [to his] child due to their incompetent representation.” By

completing the section demanding relief, Lyons satisfied the rule. The district court did not err by determining that Lyons's pleading demanded judgment as required by the rule.

B. Minnesota's Notice-Pleading Standard

Lyons next contends that the district court erred by not liberally construing his pleading as an intent to add a counterclaim rather than as a present counterclaim for malpractice. In so doing, he points to testimony wherein he stated that he did not file a counterclaim but intended to in the future.

Minnesota is a notice-pleading state. *Halva v. Minn. State Colls. & Univs.*, 953 N.W.2d 496, 500 (Minn. 2021). Notice pleading permits a plaintiff to plead a claim “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.” *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 602 (Minn. 2014) (quotation omitted). “The functions of a pleading today are simply to 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.* (quotation omitted). Although “absolute specificity in pleading is not necessary,” the information in the complaint must sufficiently put the opposing party on fair notice of the claims against it. *Halva*, 953 N.W.2d at 500 (quotation omitted). Appellate courts review de novo whether a complaint sets forth a legally sufficient claim for relief. *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 831 (Minn. 2011).

“To state a claim for legal malpractice, a plaintiff must allege (1) the existence of an attorney-client relationship; (2) acts constituting negligence or breach of contract; (3) that such acts were the proximate cause of the plaintiff's damages; [and] (4) that but for

the [attorney-]defendant's conduct the plaintiff would have been successful in the prosecution or defense of the action." *Frederick v. Wallerich*, 907 N.W.2d 167, 173 (Minn. 2018) (quotation omitted).

Lyons admits in his pleading and throughout the record that there was an attorney-client relationship between him and Birkholz. He stated in his answer that he was going to file a counterclaim against Birkholz "for fraud and legal malpractice" because Birkholz "lied to [him], withheld discovery from the court, advised [him] to lie on [his] discovery, failed to argue [his] case, [and] refused to address the billing concerns [he] raised." Lyons further alleged that Birkholz's "incompetent representation" caused him "financial losses" and caused his child to experience "mental, emotional and physical abuse."

Lyons raises several concerns about defects in his answer and counterclaim. However, the functions of a pleading are simply to 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." *Halva*, 953 N.W.2d at 503. Birkholz had sufficient notice of a malpractice counterclaim to demand the production of the affidavit of expert review pursuant to Minn. Stat. § 544.42, subds. 2(1), 6, demonstrating that it had fair notice of the incident giving rise to the dispute.

We conclude that the district court did not err by determining that Lyons's answer sufficiently pleaded a legal-malpractice counterclaim.

C. Compulsory Counterclaim

Lastly, Lyons argues that the district court erred by determining that his answer stated a malpractice counterclaim because his initial answer was clearly “an intent to amend,” rather than a pleaded counterclaim. The district court determined that Lyons “had no legal ability to reserve his counterclaim” because the legal-malpractice claim was a ripe, compulsory counterclaim “when he filed his Answer and Counterclaim.”

“A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction that is the subject matter of the opposing party’s claim” Minn. R. Civ. P. 13.01. A counterclaim is compulsory if “a cause of action exists for which a lawsuit may properly be commenced and pursued.” *Leiendecker v. Asian Women United of Minn.*, 731 N.W.2d 836, 841 (Minn. App. 2007), *rev. denied* (Minn. Aug. 7, 2007). A party who fails to assert a compulsory counterclaim when answering the complaint is barred from bringing it later. *House v. Hanson*, 72 N.W.2d 874, 877 (Minn. 1955).

Here, Lyons’s legal-malpractice counterclaim arises out of the same transaction as Birkholz’s breach-of-contract claim because they both relate directly to Birkholz’s legal representation of Lyons in the marital-dissolution case. Therefore, the legal-malpractice counterclaim was compulsory. In fact, had the district court not determined that Lyons properly pleaded a legal-malpractice counterclaim, he would have been barred from bringing it later due to its compulsory nature.

Based on the foregoing analysis we conclude that the district court properly determined that Lyons pleaded a legal-malpractice counterclaim. In light of this

conclusion, we evaluate whether the district court properly granted partial summary judgment to Birkholz on Lyons's counterclaim.

The district court dismissed Lyons's legal-malpractice counterclaim because he did not present an affidavit of expert review. Under circumstances like those in this case, Minnesota Statutes section 544.42, subdivision 2, requires a claimant to "serve upon the opponent with the pleadings an affidavit [of expert review]." When the claimant fails to comply with this requirement "within 60 days after [a] demand for the affidavit," subdivision 6(a) mandates "dismissal of each cause of action with prejudice."

There is no dispute that Lyons failed to serve the required expert affidavit within 60 days of Birkholz's demand. Because Lyons sufficiently pleaded a legal-malpractice counterclaim but did not provide the affidavit of expert review as required by section 544.42, we conclude that the district court did not err by granting partial summary judgment to Birkholz.

II. The district court did not err by granting summary judgment to Birkholz on its breach-of-contract claim.

Lyons argues that, because material facts were at issue, the district court improperly granted summary judgment to Birkholz on its breach-of-contract claim.

At the hearing to address Lyons's motion and request for reconsideration, Lyons testified that his defense to Birkholz's breach-of-contract claim was that Birkholz committed legal malpractice. Birkholz argued that Lyons was simply relitigating his already-dismissed legal-malpractice claim.

Even if we were to construe the legal-malpractice defense as proper, Lyons's argument is unpersuasive because the district court did not misapply the law. "To litigate [a malpractice defense] fully, the parties would need to offer expert witness testimony on complicated issues of causation and damage." *Thomas A. Foster & Assocs., Ltd. v. Paulson*, 699 N.W.2d 1, 8 (Minn. App. 2005). This is because "[w]ithout such expert testimony, a jury would not be able to determine the standard of care and whether respondents breached that standard of care" *Spannaus v. Larkin, Hoffman, Daly, & Lindgren, Ltd.*, 368 N.W.2d 395, 399 (Minn. App. 1985), *rev. denied* (Minn. Aug. 20, 1985). Lyons contends that, even though he offered no expert evidence or the required affidavit, his case is an exception to the general rule requiring expert testimony because Birkholz's negligence is obvious. Lyons offers no legal authority to support his contention. Additionally, his allegations involve complicated issues of causation and damage, exactly the types of claims that require expert testimony to establish. *See Foster*, 699 N.W.2d at 8.

We therefore conclude that the district court properly granted summary judgment in favor of Birkholz on its breach-of-contract claim.

Affirmed.