STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0611

Roy A. Day on behalf of himself and
as class action on behalf of others similarly situated,
Appellant,

vs.

Target Corporation,
Respondent,

Brian C. Cornell,
Respondent,

Jane Doe,
Respondent,

Starbucks Corporation,
Respondent.

Filed December 24, 2018
Affirmed
Cleary, Chief Judge

Hennepin County District Court
File No. 27-CV-18-5152

Roy A. Day, Tarpon Springs, Florida (pro se appellant)

Target Corporation, Minneapolis, Minnesota (respondent)

Starbucks Corporation, Seattle, Washington (respondent)

Considered and decided by Cleary, Chief Judge; Bjorkman, Judge; and Rodenberg, Judge.

U N P U B L I S H E D O P I N I O N

CLEARY, Chief Judge

Roy A. Day appeals the district court's order denying his in forma pauperis petition. The district court did not abuse its discretion in finding the action to be frivolous, and for that reason we affirm.

FACTS

In his complaint, appellant Roy A. Day alleges the following. Appellant attempted to deposit five dollars in his Starbucks account at a Starbucks located inside a Target store. However, when he checked his receipt the next day, he discovered that only one dollar had been deposited. Appellant believed this to be part of a larger scheme orchestrated by Target and Starbucks to enable cashiers to steal from consumers. The purported scheme was relatively simple: when a consumer attempted to deposit five dollars to their account, the cashier only credited the account one dollar and pocketed the rest. However, appellant believed, the cashier was only capable of carrying out the theft because Starbucks's computer system has a five-dollar minimum per deposit but Target's has a one-dollar minimum.

Appellant sought to proceed in a class action against Target and Starbucks, arguing three theories for recovery: fraud, negligence, and intentional infliction of emotional distress. He also filed a petition to proceed in forma pauperis. The district court denied appellant's in forma pauperis petition, finding that the action was frivolous. Appellant's

case was then closed—presumably without prejudice—for failure to pay the filing fee.[1] In response, appellant filed a motion to disqualify the referee and to vacate the district court's order. In the alternative, appellant requested in forma pauperis status for his appeal. The district court granted this last request, and appellant now appeals the denial of his first in forma pauperis petition.

D E C I S I O N

A district court shall allow a litigant to proceed in forma pauperis if it finds that the person meets financial eligibility requirements and the action is not frivolous. Minn. Stat. § 563.01, subd. 3 (2018). A claim is frivolous if it is without any reasonable basis in law or equity and cannot be supported by a good-faith argument for the modification of existing law. *Maddox v. Dep't of Human Services*, 400 N.W.2d 136, 139 (Minn. App. 1987). The district court has broad discretion in determining whether an action is frivolous, and the decision will be affirmed absent an abuse of discretion. *Id.*

Appellant argues that his action is not frivolous because he has sufficiently pleaded claims for fraud, intentional infliction of emotional distress, and negligence. To be sufficient, pleadings must contain a short and plain statement of each claim showing that appellant is entitled to relief. Minn. R. Civ. P. 8.01. The court addresses each of appellant's theories in turn.

[1] Our view of the record is that it remains available to appellant to file his complaint with a filing fee or, alternatively, to amend his complaint to properly plead a cause of action and again petition to proceed in forma pauperis.

A claim of fraud must be pleaded with specificity that there was (1) a false representation of a past or existing material fact susceptible of knowledge, (2) made with knowledge of the falsity of the representation or made without knowing whether it was true or false, (3) with the intention to induce action in reliance on the representation, (4) the claimant relied upon the representation, (5) damages, and (6) the representation was the proximate cause of the damages. *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 747 (Minn. 2000). Even generously construed, appellant's claim of fraud fails. Appellant has failed to plead with specificity that there was a false statement, he relied upon that false statement, and his reliance resulted in the loss of his money.

Appellant has also failed to sufficiently plead a claim for intentional infliction of emotional distress. Intentional infliction of emotional distress has four elements: conduct that is extreme and outrageous, the conduct must be intentional or reckless, it must cause emotional distress, and the distress must be severe. *Langeslag v. KYMN, Inc.*, 664 N.W.2d 860, 864 (Minn. 2003). Extreme and outrageous conduct is "so atrocious that it passes the boundaries of decency and is utterly intolerable to the civilized community." *Id.* at 865. Although appellant may conclude that the alleged theft of his four dollars is outrageous, such an occurrence is not utterly intolerable to the civilized community. *See id.* ("Liability . . . does not extend to insults, indignities, threats, annoyances, petty oppressions, or other trivialities.") (quotation omitted).

Finally, appellant has failed to properly plead a cause of action for negligence. It appears that he is attempting to make a claim for negligent hiring, negligent training, or negligent supervision. But Minnesota does not recognize a claim for negligent training.

Johnson v. Peterson, 734 N.W.2d 275, 277 (Minn. App. 2007). Furthermore, both negligent supervision and negligent hiring claims must allege physical harm and appellant only claims economic and emotional damages. *Id.* at 277-78 ("[E]motional distress is not a physical injury.").

In sum, appellant has failed to plead a cause of action. Accordingly, the district court did not abuse its discretion in finding the action frivolous and in denying the petition to proceed in forma pauperis.

Appellant further asserts that the referee of the district court should be disqualified because she has conspired with opposing counsel, placed herself in the position of counsel, and "has a mental attitude of denying the law, facts, and evidence exist when they pertain to a [pro se litigant]." A judicial officer is disqualified due to an appearance of partiality if a reasonable person would question the officer's impartiality after reviewing the facts and circumstances. *State v. Finch*, 865 N.W.2d 696, 703 (Minn. 2015). Appellant's accusations are based solely on the denial of his motion. Because "adverse rulings are not a basis for imputing bias to a judge," appellant's argument fails. *Ag Servs. of Am., Inc. v. Schroeder*, 693 N.W.2d 227, 236-37 (Minn. App. 2005).

The rest of appellant's arguments are unavailing. Appellant argues that Minnesota has established a "two tier system of justice" and that it is "self-evident" that he is being denied due process and equal protection. He believes that he is being harassed and forced to use "piecemeal litigation" solely to increase litigations costs. And finally, appellant asserts that the district court's order is "'vague, ambiguous[,] and overly broad,' and with no specificity." These assertions are not supported by the record. Nor are they supported

by argument or citation to legal authority. Accordingly, the assertions will not be considered. *State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008) (Appellate courts "will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority.").

Affirmed.