STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0863

Donald G. Heilman,
Appellant,

vs.

Patrick C. Courtney,
as Program Manager for Minnesota Department of Corrections,
Respondent.

Filed August 26, 2019
Affirmed
Florey, Judge

Ramsey County District Court
File No. 62-CV-16-4240

A.L. Brown, Capitol City Law Group, L.L.C., St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, Janine Kimble, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Bratvold, Judge; and Florey, Judge.

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

FLOREY, Judge

Appellant, a former inmate of the Minnesota Department of Corrections (DOC), filed a civil suit against respondent, a DOC employee. Appellant alleged that he was incarcerated beyond his conditional-release term. The district court granted judgment on

the pleadings and dismissed appellant's claims. On appeal, this court conducted a summary-judgment review because the district court had looked beyond the pleadings. *See Heilman v. Courtney*, 906 N.W.2d 521, 524 (Minn. App. 2017), *rev'd*, 926 N.W.2d 387 (Minn. 2019). We affirmed on the ground that appellant's conditional-release term did not commence when he alleged, and he was, therefore, not incarcerated beyond his conditional-release term. *Id.* at 526. The supreme court reversed, concluding that appellant's conditional-release term commenced at the time alleged, and remanded for consideration of appellant's unaddressed arguments. *See Heilman*, 926 N.W.2d at 395. Because appellant's previously unaddressed arguments are unavailing, and no genuine issue of material fact remains, we affirm.

FACTS

In 2004, appellant Donald G. Heilman was sentenced to a stayed 51-month prison term for first-degree driving while impaired. The district court also imposed a five-year conditional-release term. Following a probation-revocation hearing, appellant's prison sentence was executed on May 22, 2007.

In December 2007, appellant entered the DOC's Challenge Incarceration Program (CIP). The CIP consists of three phases. *See* Minn. Stat. § 244.172 (2018). In July 2008, appellant entered phase II, which allowed him to live at home; at that time he was "released from prison" and his five-year conditional-release term commenced. *See Heilman*, 926 N.W.2d at 395. Appellant progressed from phase II to phase III of the CIP in January 2009. Had he successfully completed phase III, he would have been "placed on supervised release for the remainder of the sentence." *See* Minn. Stat. § 244.172, subd. 3. But, in April 2009,

the DOC returned him to phase II because he failed to remain sober. A few months later, he again failed to remain sober. The DOC then revoked his conditional release and ordered his return to custody.

On December 27, 2010, the DOC again released appellant. By this date, he had served two-thirds of his original 51-month sentence, the statutorily required "minimum term of imprisonment." *See* Minn. Stat. § 244.101, subd. 1 (2018). He therefore began his supervised-release term.

On March 12, 2014, appellant was arrested for failing to complete inpatient chemical-dependency treatment. On March 25, 2014, the DOC held a hearing and issued an order revoking appellant's release for 180 days from the date of arrest. The DOC then released appellant on May 14. Why the DOC released appellant 50 days after the hearing, and 63 days after his arrest, is unclear.

In July 2016, appellant filed a complaint against respondent Patrick C. Courtney, the DOC's program manager, alleging false imprisonment, negligence, and the right to redress of injuries. He alleged that his conditional-release term expired in July 2013. He claimed that respondent was responsible for calculating his release date, and if a person challenged his release date, respondent, and those under his charge, were responsible for investigating and making necessary corrections. He claimed that he informed various prison officials that his scheduled release date was incorrect, and despite being aware of a risk that appellant's release date was miscalculated, respondent, and those under his charge, failed to investigate. He alleged that, because his term of conditional release expired in July 2013, his incarceration in March and May of 2014 was unlawful.

Respondent moved for judgment on the pleadings. The district court granted respondent's motion and dismissed appellant's complaint with prejudice. The court dismissed the false-imprisonment claim because appellant failed to plead an intentional act by respondent to imprison appellant, and because appellant's imprisonment was legally justifiable and based on a valid warrant of commitment. The court dismissed the negligence claim because appellant "failed to establish a duty" on the part of respondent. The court dismissed the right-to-redress-of-injuries claim on the ground that it was not an independent cause of action.[1] Lastly, the court relied on the favorable-termination rule, set forth in *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364 (1994), as a further basis for dismissal.

On appeal, we conducted a summary-judgment review because the district court had looked beyond the pleading in dismissing appellant's claims. *Heilman*, 906 N.W.2d at 524. We affirmed on the ground that appellant was not "released from prison" when he entered phase II of the CIP, and he was, therefore, not incarcerated beyond his conditional-release term. *See id.* at 525-26. The supreme court reversed and remanded, concluding that appellant was "released from prison" when he entered phase II of the CIP, and therefore his conditional-release term commenced at that time. *Heilman*, 926 N.W.2d at 395, 397-98. The supreme court instructed this court "to address the remaining issues in this appeal." *Id.* at 398.

[1] Appellant does not appeal the dismissal of his right-to-redress claim.

D E C I S I O N

The supreme court concluded that we properly treated respondent's motion as one for summary judgment. *Id.* at 393. "On appeal from summary judgment, we review whether there are any genuine issues of material fact and whether the district court erred in its application of the law." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002). "We view the evidence in the light most favorable to the party against whom summary judgment was granted." *Id.* at 76-77. We review de novo the district court's application of the law and whether a genuine issue of material fact exists. *Id.* at 77.

I. No genuine issues of material fact remain on appellant's false-imprisonment claim because the claim lacks an act by respondent intended to confine, and because appellant's imprisonment was based upon valid orders.

Appellant argues that the district court erred by concluding that his false-imprisonment claim failed for lack of intent. He contends that respondent's deliberate indifference to his potential over-incarceration was a form of intent. He also asserts that, because judgment was granted on the pleadings, he was denied an opportunity to provide evidence of intent. Respondent contends that appellant has failed to make a requisite showing of intent, in part, because the complaint failed to allege that respondent "took any action or made any decision" to incarcerate appellant. We agree with respondent.

Appellant alleges that respondent, despite being aware of a "risk" that appellant's conditional-release term was miscalculated, failed to "conduct an audit." This theory of false imprisonment lacks the requisite words or acts intended to confine to sustain such a claim. While we appreciate the procedural posture of this case—a summary-judgment standard applied following judgment on the pleadings—under applicable caselaw there is

simply no evidence that appellant could produce *consistent with his theory of false imprisonment* to warrant relief. *See Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739-40 (Minn. 2000) (discussing dismissal for failure to state a claim).

False imprisonment is an intentional tort. *Wild v. Rarig*, 234 N.W.2d 775, 792 (Minn. 1975). A claim of false imprisonment requires "(1) words or acts intended to confine, (2) actual confinement, and (3) awareness by the plaintiff that he is confined." *Blaz v. Molin Concrete Prods. Co.*, 244 N.W.2d 277, 279 (Minn. 1976). Minnesota draws on the Restatement (Second) of Torts to define false imprisonment, under which false imprisonment requires an "act" intended to confine another. *Id.*; Restatement (Second) of Torts § 35 (1965). It is not necessary that force be used; words or acts may be sufficient. *Durgin v. Cohen*, 209 N.W. 532, 533 (Minn. 1926); *see* 4A *Minnesota Practice*, CIVJIG 60.70 (2014); Restatement (Second) of Torts § 35 cmt. d. However, appellant's theory lacks any affirmative act; rather, appellant's claim is premised on a failure to conduct an official inspection based on a "risk" of over-incarceration. We are aware of no caselaw supporting such a theory and must conclude that appellant's false-imprisonment claim is deficient. *See Palmentere v. Campbell*, 344 F.2d 234, 238 (8th Cir. 1965) ("An affirmative act is necessary to render one liable for false imprisonment."); *see also* 35 C.J.S. *False Imprisonment* § 42 (2009) (stating that "one must personally participate by direct act or by indirect procurement in order to be liable for false imprisonment," and "an affirmative act is necessary to render one liable for false imprisonment, and consent to or acquiescence in another's acts for which one is not otherwise responsible cannot be used as a basis for imposition of liability for false imprisonment").

Appellant points to *Vance v. Rumsfeld*, 701 F.3d 193, 204 (7th Cir. 2012), a case concerning mistreatment of military prisoners wherein a federal appellate court stated that deliberate indifference to a known risk is a form of intent. But in *Vance*, the court went on to state that for such deliberate indifference to be sufficient, the tortfeasor would have to know of a substantial risk to the plaintiff and ignore that risk because he wanted the plaintiff to be harmed. Here, appellant makes no allegation that respondent wanted appellant to be harmed or overly incarcerated. Therefore, even accepting appellant's theory of deliberate indifference, taken from *Vance*, appellant's claim is deficient.

Appellant argues, in the alternative, that respondent qualifies as a joint tortfeasor for aiding and abetting false imprisonment. "One who instigates or participates in the unlawful confinement of another is subject to liability to the other for false imprisonment." Restatement (Second) of Torts § 45A (1965). However, again, there are no allegations that respondent affirmatively instigated appellant's confinement. "Instigation consists of words or acts which direct, request, invite or encourage the false imprisonment itself." Restatement (Second) of Torts § 45A cmt. c. Unless a person's conduct rises to the level of instructing that the detention occur, no liability can be imposed. *See Smits v. Wal-Mart Stores, Inc.*, 525 N.W.2d 554, 558 (Minn. App. 1994) (stating that "[u]nless a person's conduct rises to the level of instructing the police to arrest a person, no liability can be imposed"), *review denied* (Minn. Feb. 14, 1995).

Beyond lacking an affirmative act, appellant's false-imprisonment claim fails because appellant was confined based upon valid orders. A prison official may defend against a claim of false imprisonment by a prisoner held beyond his sentence if the

detention was pursuant to a warrant of commitment valid on its face. *Peterson v. Lutz*, 3 N.W.2d 489, 489 (Minn. 1942). Here, appellant's confinement was legally justifiable under the warrant of commitment and March 2014 order from the DOC revoking his release, and appellant makes no claim that these orders were not facially valid. Because respondent's defense, that appellant was confined under valid orders, does not raise any genuine issues of material fact, judgement for respondent is appropriate. *See Kleidon v. Glascock*, 10 N.W.2d 394, 397 (Minn. 1943) (stating that false imprisonment must not be legally justifiable).

II. No genuine issue of material fact remains on appellant's negligence claim, which lacks a requisite duty of care on the part of respondent.

Appellant also challenges the dismissal of his negligence claim. The district court dismissed the claim for lack of a duty owed by respondent. As a threshold matter, appellant argues that the district court sua sponte raised the issue of duty. Respondent argues that appellant has not been prejudiced by the district court's act of raising the issue sua sponte, and therefore the district court was within its powers to dismiss the negligence claim for lack of a legal duty.

The district court acted properly by deciding appellant's negligence claim as a matter of law after raising the issue of duty at the hearing on respondent's motion to dismiss, and allowing the parties to respond. District courts have the inherent authority to summarily dispose of litigation when there is no genuine issue of material fact. *See Del Hayes & Sons, Inc. v. Mitchell*, 230 N.W.2d 588, 592 (Minn. 1975) ("We hold that under the circumstances of this case the trial court properly exercised its power in granting

summary judgment sua sponte."). Regardless, neither party argues that the issue of duty is not properly before this court.

To establish a negligence claim, a plaintiff must show: "(1) the existence of a duty of care; (2) a breach of that duty; (3) an injury; and (4) that the breach of the duty was a proximate cause of the injury." *Doe 169 v. Brandon*, 845 N.W.2d 174, 177 (Minn. 2014). "The existence of a duty of care is a threshold question because a defendant cannot breach a nonexistent duty." *Id.* Generally, whether a duty of care exists is a legal question subject to de novo review. *Domagala v. Rolland*, 805 N.W.2d 14, 22 (Minn. 2011); *Gilbertson v. Leininger*, 599 N.W.2d 127, 130 (Minn. 1999) ("The existence of a legal duty to protect another person presents an issue of law that we review de novo.").

"A person generally has no duty to act for the protection of another," and whether any such duty exists "depends on two factors: (1) the relationship of the parties, and (2) the foreseeability of the risk involved." *Gilbertson*, 599 N.W.2d at 130. Historically, a "special relationship" giving rise to a legal duty to protect another "is only found on the part of common carriers, innkeepers, possessors of land who hold it open to the public, and persons who have custody of another person under circumstances in which that other person is deprived of normal opportunities of self-protection." *Id.* at 130-31 (quotation omitted). "Typically, the plaintiff is in some respect particularly vulnerable and dependent on the defendant, who in turn holds considerable power over the plaintiff's welfare." *Donaldson v. Young Women's Christian Ass'n of Duluth*, 539 N.W.2d 789, 792 (Minn. 1995). Here, the district court properly determined, as a matter of law, that respondent

owed no duty of care to appellant. There was no special relationship between the parties, and the risk of unlawful incarceration was not a foreseeable danger.

No "special relationship" existed because appellant was not deprived of normal opportunities for self-protection. As stated in *H.B. ex rel. Clark v. Whittemore*, "Instances where a special relationship has created a duty . . . typically involve some degree of dependence," and "[s]uch a duty might exist on the part of one who has custody of another under circumstances where the party seeking protection is deprived of or lacks the capacity for normal opportunities of self-defense." 552 N.W.2d 705, 708 (Minn. 1996). Appellant claims that respondent, and those under his charge, were "aware of the risk" that appellant's conditional-release term was miscalculated, but failed to "conduct an audit of conditional release periods." However, appellant could have filed a habeas action to challenge his incarceration and determine when his period of conditional release commenced.

"In order to find that a special relationship exists, it must be assumed that the harm to be prevented by the defendant is one that the defendant is in a position to protect against and should be expected to protect against." *Gilbertson*, 599 N.W.2d at 131 (quotation omitted). Given the issue of when appellant's conditional-release term commenced was legally undetermined at the time in question, respondent could not have been expected to protect appellant, who was sufficiently capable of challenging the legality of his imprisonment.

In addition to the lack of any special relationship, the risk of injury to appellant was not foreseeable. "Whether a risk was foreseeable depends on whether the specific danger was objectively reasonable to expect, not simply whether it was within the realm of any

conceivable possibility." *Senogles v. Carlson*, 902 N.W.2d 38, 43 (Minn. 2017). Appellant does not allege that respondent created the risk of injury. He claims that respondent was aware of a "risk" of miscalculated release dates "for several persons," and he therefore had a duty to conduct an audit to investigate appellant's release date. This connection to appellant's injury is "too attenuated" and remote. *See Doe 169*, 845 N.W.2d at 178-79 ("If the connection between the danger and the defendant's own conduct is too remote, there is no duty."). A determination of whether appellant was unlawfully incarcerated required a determination of when appellant was "released from prison," which was not conclusively decided until the supreme court issued its decision on the matter. Accordingly, appellant's unlawful incarceration was not a specific or objectively apparent danger.

No genuine issue of material fact remains on appellant's false-imprisonment and negligence claims. As such, we need not address appellant's argument that the district court erred by applying *Heck* as an additional basis for dismissal.

Affirmed.