**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A19-1514**

Oscar Lee Adams,
Appellant,

vs.

Jodi Harpstead, Commissioner of the
Minnesota Department of Human Services,
Respondent,

Shelby Richardson,
Defendant.

**Filed July 6, 2020**
**Affirmed**
**Segal, Chief Judge**

Ramsey County District Court
File No. 62-CV-16-4717

Peter J. Nickitas, Peter J. Nickitas Law Office, Minneapolis, Minnesota (for appellant)

Keith Ellison, Attorney General, Brandon Boese, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and Kirk, Judge.[*]

**S Y L L A B U S**

To sustain a claim for emotional-distress damages under the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. §§ 13.01-.90 (2018), a plaintiff must produce

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

evidence to establish that emotional harm has occurred under circumstances tending to guarantee its genuineness.

## O P I N I O N

**SEGAL**, Chief Judge

Appellant challenges summary judgment denying his claims against respondent-commissioner under the MGDPA, arguing that the district court erred by (1) concluding that he failed to demonstrate a fact issue as to damages, (2) denying his claims for nonmonetary relief, (3) relying on an unpublished opinion, and (4) denying his motion to supplement the record. We affirm.

## FACTS

Appellant Oscar Adams, a client-patient committed to the Minnesota Sex Offender Program (MSOP), initiated this action against respondent Jodi Harpstead, Commissioner of the Minnesota Department of Human Services, in her official capacity,[1] alleging that his private data was disclosed in violation of the MGDPA on two separate occasions in June and July of 2016. Adams alleged that the disclosures caused him "emotional distress, anxiety, and fear of monetary and emotional consequences to him," and sought damages, a civil penalty, and injunctive, declaratory, and mandamus relief.[2] Most of the facts related to the two alleged disclosures are undisputed.

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[1] Adams's complaint named Emily Johnson Piper, the commissioner at the time. Because Harpstead is the current commissioner, she has been "automatically substituted as a party." Minn. R. Civ. App. P. 143.04.

[2] Adams initially alleged violations of both the MGDPA and the Minnesota Health Records Act (MNHRA), Minn. Stat. §§ 144.291-.298 (2018); named Shelby Richardson, Executive

The first alleged disclosure occurred in late June 2016, when Adams asked an MSOP employee to deliver two items: (1) an envelope to be mailed to the Hennepin County Human Services and Public Health Department (the county), containing documents regarding his public-assistance appeal; and (2) an MSOP client request form,[3] dated June 28, with a one-page attachment (the June 28 form) to be delivered to another MSOP employee that related to a personal-property dispute Adams was pursuing against MSOP. Adams alleges that he sealed the envelope to the county in front of the MSOP employee and separately handed her the June 28 form. Yet, Adams received correspondence back from the county a couple of weeks later that included a copy of the June 28 form, returning the form to him because it was unrelated to his appeal. Both Adams and the MSOP employee who assisted him with the mailing deny placing the June 28 form in the envelope to be mailed to the county, but the commissioner does not dispute that the details of Adams's property dispute with MSOP are generally private data under the MGDPA, not to be disclosed without his consent.

The second alleged disclosure involved an MSOP invoice addressed to Adams that was delivered to another MSOP client-patient, M.O. The invoice contained Adams's

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Director of MSOP, as a second defendant; and sought exemplary damages. He subsequently withdrew his claims against Richardson and his MNHRA claim against the commissioner. And the district court dismissed Adams's claim for exemplary damages. He purports to challenge that dismissal in his reply brief but has forfeited any such challenge by failing to address it in his principal brief. *Superior Glass, Inc. v. Johnson*, 896 N.W.2d 137, 142 (Minn. App. 2017).

[3] A client request form is a one-page document used by client-patients to communicate with MSOP staff.

medical records (MREC) number, which is connected to his MSOP personal financial account. As soon as M.O. saw Adams's name on the document, he brought it to MSOP staff, who delivered it to Adams. M.O. denies that he saw Adams's MREC number or other details of the contents. The commissioner does not dispute that MREC numbers are private data under the MGDPA.

The commissioner moved for summary judgment on all claims. Adams opposed the motion and filed his own motion seeking partial summary judgment as to liability.

The district court denied Adams's summary-judgment motion reasoning that, although it is unlikely that the commissioner can be held vicariously liable under the MGDPA for the acts of her employees, fact questions exist concerning who is responsible for the alleged disclosures, particularly the disclosure of the June 28 form. The district court, however, granted the commissioner's summary-judgment motion. The district court concluded that Adams was not entitled to relief on his claim for compensatory damages because he failed to present evidence to create a genuine issue of material fact on an essential element of the claim—that the alleged disclosures caused him damage. It also concluded that Adams is not entitled to injunctive, declaratory, or mandamus relief. Adams appeals.

## ISSUES

I. Did the district court err by concluding that Adams failed to demonstrate a fact issue as to damages?

II. Did the district court err by denying Adams's claims for noncompensatory relief?

III. Did the district court err in its consideration of an unpublished opinion?

IV. Is Adams entitled to relief based on the district court's denial of his motion to supplement the record brought on the day of the summary-judgment hearing?

## ANALYSIS

The MGDPA prohibits government entities from disseminating an individual's "private" data "for any purposes other than those stated to the individual at the time of collection," absent the individual's informed consent. Minn. Stat. § 13.05, subd. 4. If a "responsible authority"—in this case, the commissioner—violates the MGDPA, the person damaged may "bring an action against the responsible authority . . . to cover any damages sustained, plus costs and reasonable attorney fees." Minn. Stat. § 13.08, subd. 1; *see* Minn. Stat. § 13.02, subd. 16(a) (defining "responsible authority"). The MGDPA also provides for injunctive relief against a responsible authority "to prevent the use or employment by any person of any practices which violate" the MGDPA. Minn. Stat. § 13.08, subd. 2.

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01. On an appeal of a grant of summary judgment, we review de novo whether genuine issues of material fact preclude summary judgment and whether the district court properly applied the law. *Harlow v. State Dep't of Human Servs.*, 883 N.W.2d 561, 568 (Minn. 2016). "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," while viewing the evidence in the light most favorable to the nonmoving party and resolving any doubts about the existence of material facts in that party's favor. *Leeco, Inc. v. Cornerstone Bank*, 898 N.W.2d 653, 657 (Minn. App. 2017), *review denied* (Minn. Sept. 27, 2017); *see MacDonald v. Brodkorb*, 939

N.W.2d 468, 475 (Minn. App. 2020). The interpretation of the MGDPA is a question of law subject to de novo review. *Harlow*, 883 N.W.2d at 566.

**I.**

The first issue in this appeal is whether the district court erred in its conclusion that Adams failed to bring forward competent evidence that he sustained damages as a result of the alleged disclosures. Proof of damages is an essential element of a claim for compensatory relief under the MGDPA. Minn. Stat. § 13.08, subd. 1. Here, Adams's claim for compensatory damages is premised exclusively on his claim that he has suffered emotional injury. The MGDPA permits recovery of "any damages" suffered as a result of a violation, including the recovery of damages for emotional harm. Minn. Stat. § 13.08, subd. 1; *Navarre v. S. Wash. Cty. Schs.*, 652 N.W.2d 9, 30 (Minn. 2002). The district court, however, ruled that Adams failed to produce "evidence establishing that his claimed emotional distress damages occurred under circumstances guaranteeing their genuineness." Adams asserts that the *Navarre* case established a "lenient" or "low" threshold for emotional-distress damages under the MGDPA. He argues that the district court erred by requiring too high a threshold of evidence to support such a claim. We disagree.

In its decision in *Navarre*, the Minnesota Supreme Court squarely rejected Adams's argument that the threshold of proof required under the MGDPA to maintain a claim for emotional-distress damages can be satisfied merely by a conclusory allegation without more. *Navarre*, 652 N.W.2d at 30. The supreme court stressed that, while emotional harm is a compensable type of damages under the MGDPA, plaintiffs must "still satisfy the

standard of proof necessary to recover . . . damages for emotional harm." *Id.* The court cited its historic reluctance to expand the availability of emotional-distress damages because of concerns regarding liability and the potential for abuse. *Id.* In concluding that medical evidence is not required to support a plaintiff's burden of proof to establish emotional-distress damages under the MGDPA, the supreme court pointed to its requirement in tort cases that there must be some evidence above and beyond conclusory statements of having suffered distress to demonstrate that the alleged injury "occurred under circumstances tending to guarantee its genuineness."[4] *Id.* (quoting *Lickteig v. Alderson, Ondov, Leonard & Sween, P.A.*, 556 N.W.2d 557, 560 (Minn. 1996)).

It is against this backdrop that we consider whether Adams has presented competent evidence to support his claim for emotional-distress damages. Turning first to the alleged disclosure of the June 28 form, Adams claims emotional harm from disclosure to the county of his client request form, and one-page attachment to the form, regarding a personal-property dispute with MSOP. The only personal information on the client request form,

[4] The commissioner argues that, pursuant to the supreme court's ruling in *Navarre*, evidence of "severe emotional distress" is required to establish a triable claim for such damages under the MGDPA. We reject that characterization of the court's opinion. In *Navarre*, the supreme court affirmed that plaintiff's evidence of emotional distress was sufficient to reach a jury, despite the fact that the evidence of emotional harm was "conclusory and not substantiated by any medical evidence." 652 N.W.2d at 30. The court only reversed on the grounds that defendant should have been allowed to impeach plaintiff's evidence of distress. The court, thereby, did not require proof of "severe emotional distress" as a necessary threshold for recovery of such damages in all cases. What the court did require as a prerequisite to recovery of emotional-distress damages under the MGDPA, as we are requiring in this case, is that a plaintiff must produce evidence that the emotional injury "occurred under circumstances tending to guarantee its genuineness." *Id.* (quotation omitted).

itself, is Adams's name and his unit and room number. The attachment to the form sets out Adams's objection to the alleged lack of investigation and handling of his dispute. Adams acknowledges, however, that the property dispute addressed in the attachment was substantially the same dispute at issue in a prior lawsuit he filed against MSOP employees, and that the information on the attachment was, therefore, already publicly available.[5] He further acknowledges that, because the county already had lawful access to some of his private data as the government entity that civilly committed him and administers his public assistance, the disclosure of the client request form did not reveal any new information and therefore did not cause him damage.

To substantiate his claim of emotional harm, Adams points to his own testimony that the disclosure diminished his trust in MSOP staff and that he related the incident to others in his treatment group. But he does not indicate that the claimed loss of trust has interfered with his ability to interact with staff. To the contrary, the record is replete with evidence that Adams continues to rely on staff to relay communication within and outside of MSOP. Adams also acknowledged that he did not seek treatment for emotional distress and experienced no physical symptoms, such as loss of sleep.

Regarding the July disclosure, in which an MSOP invoice for Adams that contained Adams's MREC number was mistakenly delivered to fellow client-patient M.O., Adams claims emotional harm in the form of concern about "repeated small discrepancies in his financial accounts" and "nearly being framed by an MSOP financial identity theft

[5] Moreover, there is no evidence that the June 28 form was disseminated to anyone other than the county public assistance appeals personnel who returned the form to him by mail.

perpetrator."[6] However, these incidents of alleged financial discrepancies and attempted identity theft occurred more than a year after the alleged disclosure and were perpetrated by a different client-patient, not M.O. Adams presents no evidence that the incidents resulted from the alleged disclosure, or that the alleged disclosure could reasonably lead to similar incidents. It is undisputed that the July disclosure was very limited—M.O. claimed he saw only Adams's name and immediately brought the document to MSOP staff without showing the document to anyone else or seeing Adams's MREC number. And again, Adams has presented no evidence that any concerns he has about financial discrepancies or identity theft have led him to seek treatment for emotional distress or experience physical symptoms.

The circumstances surrounding the alleged MGDPA violations in this case are in contrast to those in *Navarre.* The plaintiff in *Navarre*, who was a school teacher, alleged that the school district violated the MGDPA by disclosing information about its investigation of complaints that she was an incompetent teacher. 652 N.W.2d at 16, 19. The school district's leadership widely broadcast this private personnel data in communications with parents and in interviews that appeared on television news and in the newspaper. *Id.* at 16-18. Similar to the present case, the plaintiff in *Navarre* offered only "conclusory" statements of having suffered emotional harm and did not provide any

[6] Adams also refers to an IRS document that he sought to add to the record pursuant to a motion to supplement the record brought on the day of the summary-judgment hearing. Because the district court denied the motion, the document is not in the record and we do not consider it as evidence supporting his claim of damages from the July disclosure. We address Adams's appeal of the district court's denial of his motion to supplement the record in section IV below.

supporting medical evidence. *Id.* at 30. But the circumstances surrounding the alleged violations in *Navarre* are quite different from the circumstances of the MGDPA violations that Adams alleges. The MGDPA violations in *Navarre* involved widespread distribution of private data challenging her competence as a teacher. The alleged violations, thus, had the reasonable effect of making "her extremely upset and caus[ing] her to be afraid to go out in public." *Id.* This is the very type of objective evidence required by the supreme court to support an emotional-distress damages claim under the MGDPA—evidence that the "emotional injury occurred under circumstances tending to guarantee its genuineness." *Id.* (quotation omitted).

This type of evidence is lacking in the present case. Here, the alleged disclosures were limited in scope, involving only county personnel and the misdelivery of mail to a single fellow client-patient. There was no general public disclosure. In addition, the disclosure to the county involved information about Adams's property dispute with MSOP that he acknowledges contained no new information from that he had already made public in his prior lawsuit. The disclosure to Adams's fellow client-patient, M.O., involved a document that listed Adams's MREC number, but M.O. saw only Adams's name; no evidence indicates that M.O. actually saw or recalled the number or communicated it to anyone else. These circumstances are a far cry from the scenario in *Navarre*. On this record, we conclude that Adams failed to bring forward competent evidence that his alleged emotional injury occurred under circumstances tending to guarantee its genuineness and affirm the grant of summary judgment on this issue.

## II.

In addition to damages, Adams also sought injunctive, declaratory and mandamus relief. The district court concluded that Adams is not entitled to any of the three forms of noncompensatory relief. Adams challenges that conclusion. We review de novo a district court's determination that a party is not entitled to particular relief as a matter of law. *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 861 (Minn. 2011).

**Injunctive Relief**

Adams seeks an injunction to prevent the commissioner from making "future unauthorized disclosures of [his] private data . . . without lawful authority or his lawful, written informed consent." He essentially requests an injunction to prevent the commissioner, generally, from violating the MGDPA in the future. But that is not the purpose of an injunction. The district court may enjoin a responsible authority when it "violates or proposes to violate" the MGDPA. Minn. Stat. § 13.08, subd. 2. "The court may make any order or judgment as may be necessary to prevent the use or employment by any person of any practices which violate [the MGDPA]." *Id.* Thus, the purpose of an injunction is to prevent specific ongoing practices or anticipated acts that violate the statute. Adams neither alleges nor has presented any evidence of an ongoing violation or proposed future conduct that would violate the MGDPA. Accordingly, the district court did not err by concluding that Adams is not entitled to injunctive relief.

**Declaratory Relief**

Adams seeks a declaration that the commissioner violated his rights under the MGDPA. Declaratory judgments do not determine violations of law; they determine "rights, status, and other legal relations." Minn. Stat. § 555.01 (2018). In the context of the MGDPA, that means determining whether an entity is subject to an MGDPA requirement, *S. Minn. Mun. Power Agency v. Boyne*, 578 N.W.2d 362, 366 (Minn. 1998), or determining whether particular records are public, private, or confidential, *Demers v. City of Minneapolis*, 468 N.W.2d 71, 74 (Minn. 1991). It is not a remedy that is available to determine that a responsible authority violated the MGDPA. Moreover, declaratory relief, like injunctive relief, is "preventative." *In re Petition for Improvement of Cty. Ditch No. 86, Branch 1 v. Phillips*, 625 N.W.2d 813, 821 (Minn. 2001). Because Adams has not presented any evidence of a proposed violation that a declaratory judgment would enable him to prevent, the district court did not err by denying such relief.

**Mandamus**

Adams seeks a writ of mandamus ordering the commissioner "to recover, retrieve, or 'claw back' any unauthorized dissemination of private data on [Adams], and to destroy the said data." Mandamus is a means of compelling either "the performance of an official duty clearly imposed by law" or "the exercise of discretion when that exercise is required by law." *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 171 (Minn. 2006) (emphasizing that mandamus is an "extraordinary legal remedy" (quotation omitted)); *see* Minn. Stat. § 586.01 (2018). Nothing in the MGDPA requires a responsible authority to recover even wrongfully disseminated data. Accordingly, Adams was not

seeking to compel the performance of an official duty clearly imposed by law. Moreover, it appears that copies of any such data have already been returned. In the case of the June disclosure, Adams provided evidence that the county returned the client request form and attachment to him and disposed of any copies. Similarly, with regard to the July disclosure, the evidence shows that the MSOP invoice was immediately turned over to MSOP staff by M.O. after he realized it was not his mail. It appears that there is no further action that the commissioner could take at this point. On this record, the district court did not err by denying mandamus relief.

**III.**

Adams's next issue on appeal is that the district court erred in relying on an unpublished opinion of this court. "Unpublished opinions of the court of appeals are not precedential." Minn. Stat. § 480A.08, subd. 3 (2018). As such, they "should not be cited by the district courts as binding precedent." *Vlahos v. R&I Constr. of Bloomington, Inc.*, 676 N.W.2d 672, 676 n.3 (Minn. 2004). But they may be "persuasive." *Donnelly Bros. Constr. Co. v. State Auto Prop. & Cas. Ins. Co.*, 759 N.W.2d 651, 659 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009).

Adams argues that the district court erred by relying on the unpublished opinion of *Wills v. Jesson*, No. A18-0948, 2019 WL 418542 (Minn. App. Feb. 4, 2019), in which this court held that the MGDPA does not extend liability to a responsible authority for the actions of her employees, agents, or representatives. Adams mischaracterizes the district court's use of *Wills*. That opinion was released shortly after the summary-judgment hearing in this matter, and the district court asked the parties to address it. But while the

district court considered *Wills* "persuasive" and "instructive," it expressly acknowledged that *Wills* is not binding and therefore "address[ed] the merits of [Adams]'s claim that [the commissioner] violated the MGDPA through the acts of [her] employees, agents and representatives." The district court did not err in its limited consideration of *Wills*.

**IV.**

For his final argument, Adams asserts that the district court "erred in failing to grant leave to supplement the record with newly discovered material evidence." On the day of the summary-judgment hearing, Adams made a motion to the district court to supplement the record. He proffered two items of "newly discovered" evidence: (1) records of the commissioner's settlements with 12 other MSOP client-patients regarding their MGDPA claims, "with no indicated special damages," and (2) a January 14, 2019 letter from the Internal Revenue Service assigning him a personal identification number for his 2018 taxes "because he had been reported as a victim of identity theft." The district court denied the motion.

Adams claims error by the district court in denying his motion, but fails to support his assignment of error with any argument or citation to legal authority. It is axiomatic that "[a]n assignment of error on mere assertion, unsupported by argument or authority, is forfeited and need not be considered unless prejudicial error is obvious on mere inspection." *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017), *review denied* (Minn. Apr. 26, 2017). Nevertheless, because our inspection of the record confirms the district court's determination that the evidence in question is not material to Adams's claims, we discern no error in denying the motion to allow the evidence into the record.

## D E C I S I O N

The district court did not err by granting the commissioner's summary-judgment motion, because Adams failed to present competent evidence that his alleged emotional harm occurred under circumstances tending to guarantee that it is genuine and failed to establish a basis for noncompensatory relief. We further conclude that the district court committed no error in considering an unpublished opinion only for its persuasive value or denying Adams's motion to supplement the record brought on the day of the summary-judgment hearing with evidence that was not material to the issues.

**Affirmed.**