STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1083

Leslie Davis,
Appellant,

vs.

Hennepin County, et al.,
Respondents.

Filed March 19, 2012
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-CV-08-24664

Leslie Davis, Minneapolis, Minnesota (pro se appellant)

Michael O. Freeman, Hennepin County Attorney, Daniel Rogan, Assistant County Attorney, Minneapolis, Minnesota (for respondents)

Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Collins, Judge.*

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

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

LARKIN, Judge

Appellant challenges the district court's dismissal of his complaint under Minn. R. Civ. P. 12, as well as the district court's refusal to allow discovery. We affirm.

FACTS

This appeal stems from events that occurred at a Hennepin County Board meeting in August 2006, at which the board received public comments on a proposed tax increase to fund the new Minnesota Twins baseball stadium. Appellant Leslie Davis pre-registered to testify at the public hearing. When appellant arrived at the hearing, he checked in with staff, and a check mark was placed next to his name on a list titled "Government Meeting Sign-In Sheet." Appellant noted that his name was eighth on the list. When Commissioner Randy Johnson called the meeting to order, he explained the rules of the hearing, stated that he would try to alternate between speakers in favor of and against the proposed ordinance, and advised that each speaker would have three minutes to speak.

After 11 speakers had been called to testify, appellant asked a Hennepin County staff member when he would be called to speak. Appellant alleges that the staff member told him that Commissioner Johnson was not calling speakers in the order shown on the pre-registration list and that the staff member was unable to tell appellant when, or if, he would be permitted to speak. After two more individuals spoke, Commissioner Johnson called the 26th person on the "Government Meeting Sign-In Sheet" to testify. At this point, appellant approached the podium, uninvited, and addressed the board. He

repeatedly asked when he would be permitted to speak. Commissioner Johnson informed appellant that he would be allowed to speak but did not state when. Appellant alleges that while he was at the podium, he was "accosted" by two security officers who escorted him out of the room and into the hallway. Appellant was arrested and charged with disorderly conduct. He was released from custody that evening, and the charges were dropped one week later.

Appellant sued respondents Hennepin County and several Hennepin County commissioners and security officers (collectively respondents), alleging multiple violations of his federal and state constitutional rights, and seeking compensatory and punitive damages. Respondents removed the case to federal court and subsequently moved to dismiss the complaint. A federal magistrate judge recommended that all of appellant's federal claims be dismissed without prejudice and that his state claims be remanded. The federal district court adopted the magistrate's report and recommendation, modifying it only to dismiss appellant's federal claims "with prejudice." Appellant sought review at the Eighth Circuit Court of Appeals, and the judgment of the district court was affirmed.

On remand of appellant's state claims, respondents moved to dismiss the complaint and to stay discovery. The district court granted respondents' motion to stay discovery pending its decision on the motion to dismiss. Respondents argued that Minnesota law does not authorize a private cause of action based on state constitutional violations, that appellant's claims were barred by the doctrine of collateral estoppel, and that the individual respondents were immune from suit. The district court agreed and

granted respondents' motion to dismiss appellant's state claims under Minn. R. Civ. P. 12. This appeal follows.

D E C I S I O N

When reviewing a rule 12 dismissal, "[t]he reviewing court 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) (citing *Marquette Nat'l Bank v. Norris*, 270 N.W.2d 290, 292 (Minn. 1978)). "The standard of review is . . . de novo." *Id.*

On appeal, appellant focuses on the district court's dismissal of his "invidious discrimination" claim.[1] Although appellant's complaint alleges that respondents violated his constitutional right to free speech under the Minnesota Constitution, the complaint does not reference article I, section 3, which provides that "all persons may freely speak." Instead, the complaint references article I, section 2, which guarantees equal-protection under the law. *See, e.g.*, *State v. Cox*, 798 N.W.2d 517, 521 (Minn. 2011) (discussing an equal-protection challenge brought under Minn. Const. art. 1, § 2).

Regardless of the provision or allegation that appellant relies on to support his Minnesota constitutional claims, Minnesota does not allow private actions based on alleged violations of the Minnesota Constitution. *See Guite v. Wright*, 976 F. Supp. 866, 871 (D. Minn. 1997) ("[T]here is no private cause of action for violations of the

[1] In the district court, appellant also argued that respondents violated his constitutional rights to be free from unreasonable search and seizure, to be free from cruel and unusual punishment, and to due process, and that respondents engaged in defamation and slander, and violated the state's open meeting law. The district court analyzed each of these claims and found them to be without merit.

Minnesota Constitution."). Minnesota does not have a statutory equivalent to 42 U.S.C. § 1983 (2008), which allows a private suit for damages based on violations of the United States Constitution. None of the statutes that appellant cites authorizes a private cause of action for alleged violations of his state constitutional right to free speech or equal protection of the laws. *See* Minn. Stat. § 609.43 (2010) (providing criminal penalties for a public officer or employee who refuses to perform a duty of employment, acts in excess of lawful authority, injures another, or falsifies a document); *Valtakis v. Putnam*, 504 N.W.2d 264, 266 (Minn. App. 1993) ("A statute does not give rise to a civil cause of action unless the language of the statute is explicit or it can be determined by clear implication."). Because appellant's private cause of action is not authorized by law, the district court did not err in dismissing his "invidious discrimination" claim.

We nevertheless briefly address the four legal issues set forth in appellant's brief. Appellant first contends that the district court erred in refusing to "address [his] state claim of invidious discrimination." The record belies this argument. The district court's order dismissing appellant's complaint specifically discusses and rejects appellant's "invidious discrimination" claim at pages eight and nine.

Appellant next contends that the district court erred in "assuming that the protocol for selecting speakers at the hearing was content neutral." The federal district and appellate courts concluded that the protocol employed by the board was a content-neutral, time, place, and manner restriction, necessary to serve a significant government interest and narrowly drawn to that interest. *Davis v. Hennepin Cnty.*, No. 08-5320, 2010 WL 1507618, at *15-18 (D. Minn. Mar. 10, 2010); *see Davis v. Hennepin Cnty.*, No. 08-5320,

2010 WL 1507616, at *1 (D. Minn. Apr. 14, 2010) (adopting the federal magistrate court's report and recommendation); *see also Davis v. Hennepin Cnty.*, 402 Fed. Appx. 147, 147-48 (8th Cir. 2010) (affirming the judgment of the federal district court stating "we agree with the district court that Davis's free speech rights were not violated: the pleadings establish that Davis wished to speak in a limited designated public forum [and] the protocol used to regulate the order of speakers was content neutral"). Thus, the state district court correctly determined that the doctrine of collateral estoppel barred relitigation of the issue. *See Aufderhar v. Data Dispatch, Inc.*, 452 N.W.2d 648, 650 (Minn. 2000) (recognizing that a defendant may invoke collateral estoppel to preclude a party from relitigating an issue in subsequent litigation when "(1) the issue was identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party or in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue").

Appellant further argues that the district court erred in "denying [him] discovery." A district court has "wide discretion to issue discovery orders and, absent clear abuse of that discretion, . . . its order with respect thereto will not be disturbed." *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen*, 454 N.W.2d 916, 921 (Minn. 1990). District courts have authority to limit discovery until dispositive issues have been "sufficiently litigated." *Baskerville v. Baskerville*, 246 Minn. 496, 507, 75 N.W.2d 762, 770 (Minn. 1956). And a stay of discovery may be warranted to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Minn. R. Civ. P.

26.03. The district court's decision to stay discovery pending resolution of the motion to dismiss eliminated undue burden or expense and was not an abuse of discretion. Moreover, appellant mainly seeks disclosure of information related to his claim that the speaker-selection protocol was not content neutral. Appellant argues that "[w]ithout discovery it's impossible to state that the hearing was content neutral"; that the district court "should have allowed discovery to determine if the hearing was content neutral"; and that "the courts need to see the list of speakers . . . [o]therwise it's impossible to determine if the hearing was content neutral." Because the doctrine of collateral estoppel bars relitigation of the federal district court's determination that the speaker-selection protocol was content neutral, the requested discovery is outside the proper scope of discovery. *See* Minn. R. Civ. P. 26.02(a) (providing that a party may obtain discovery regarding any matter that is relevant).

Finally, appellant contends that the district court erred by "applying collateral estoppel to [his] claim of invidious discrimination, which was never adjudicated by the federal court." But this argument is moot because, as discussed above, there is no private cause of action for an alleged violation of the Minnesota Constitution. *See Isaacs v. Am. Iron & Steel Co.*, 690 N.W.2d 373, 376 (Minn. App. 2004) ("[A]n issue may be dismissed as moot if an event occurs that . . . renders it impossible to grant effective relief.").

In sum, the district court did not err by staying discovery and dismissing appellant's complaint. We therefore affirm.

Affirmed.