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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1439**

Patrice Nerad,
Appellant,

vs.

Regions Hospital, et al.,
Respondents.

**Filed March 26, 2012
Affirmed
Worke, Judge**

Ramsey County District Court
File No. 62-CV-10-11582

Kenneth R. White, Mankato, Minnesota (for appellant)

Gregory P. Bulinski, Charles E. Lundberg, Ellie K. Vilendrer, Bassford Remele, P.A.,
Minneapolis, Minnesota (for respondents)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court (1) erred in dismissing her claim because she alleged medical malpractice, rather than a collateral attack on her civil commitment as a mentally ill person; (2) abused its discretion in denying her a continuance; and

(3) abused its discretion in sealing the file. Respondents challenge the district court's order, arguing that their actions are protected by official immunity. We affirm.

D E C I S I O N

Appellant Patrice Nerad argues that the district court erred in dismissing her case pursuant to Minn. R. Civ. P. 12.02(e). “When reviewing a case dismissed pursuant to Minn. R. Civ. P. 12.02(e) for failure to state a claim on which relief can be granted, the question before this court is whether the complaint sets forth a legally sufficient claim for relief.” *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008) (citing *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997)). “The 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)). Our standard of review is de novo. *Id.*

In February 2011, appellant filed a complaint against respondents Regions Hospital, Health Partners, Dr. Barclay Jones, ABC Corporation, and John/Jane Doe, physicians, claiming that respondents negligently civilly committed her and wrongfully forced her to be treated with antipsychotic and neuroleptic medications. Appellant alleged in her complaint that in November 2006, law enforcement transported her to the emergency room at Regions Hospital asserting that she had exhibited suicidal behavior.

Appellant was civilly committed.¹ Appellant alleged that respondents acted negligently in her treatment and that negligence resulted in her wrongful civil commitment.

In considering only the facts alleged in the complaint, and accepting those facts as true, those facts relate only to appellant's civil commitment. She claims that she was wrongfully civilly committed, but she failed to challenge the civil-commitment orders. As the district court appropriately concluded, appellant's complaint is a collateral attack on her civil commitment, as she seeks to challenge or undermine the previous commitment orders. *See In re Wretlind*, 225 Minn. 554, 564, 32 N.W.2d 161, 168 (1948) (defining collateral attack to include "every proceeding in which the integrity of the judgment is challenged").

Appellant also argues that the district court abused its discretion in denying her a continuance, which she sought in order to have her civil commitment vacated. "[W]hether to grant or deny a continuance is within the sound discretion of the district court, and its decision will not be reversed unless it has abused its discretion." *Dunham v. Roer*, 708 N.W.2d 552, 572 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006). Appellant's civil commitment occurred in 2007. She states no reason why she should now be granted a continuance in order to vacate an order that was issued in 2007. The district court did not abuse its discretion in denying appellant a continuance.

¹ On January 3, 2007, a district court order was issued for appellant's civil commitment and treatment with neuroleptic medication. On January 22, 2007, a district court order was issued denying a rehearing of appellant's petition, concluding that the evidence did not support dismissal of the commitment and treatment orders.

Appellant also argues that the district court abused its discretion in sealing a portion of the district court file. A district court's decision regarding access to court documents is reviewed for an abuse of discretion. *Star Tribune v. Minn. Twins P'ship*, 659 N.W.2d 287, 295 (Minn. App. 2003). In opposing respondent's motion to dismiss and/or for summary judgment, appellant relied on a report prepared by the ombudsman's office that investigated her complaint against respondents. Respondents moved to seal the ombudsman's report, claiming that it was preliminary and contained only appellant's version of events. At the time of the hearing on April 12, 2011, respondents had not responded to the ombudsman's request for information, asserting that they had not yet reached their response deadline. The district court ordered sealing of the file until further court order. The record does not indicate whether appellant sought a court order regarding access to the sealed file. Because there has not been a final determination, this issue is not ripe for review. *See In re Civil Commitment of Travis*, 767 N.W.2d 52, 58 (Minn. App. 2009) (stating that an issue is not ripe if it "involves only a hypothetical possibility").

Respondents argue that the district court should have determined that immunity applied. When respondents moved to dismiss and/or for summary judgment, they asserted that appellant's claim was barred by the Minnesota Commitment and Treatment Act, which provides immunity to all persons acting in good faith who assist in a commitment of an individual. Under the act,

All persons acting in good faith, upon either actual knowledge or information thought by them to be reliable, who act pursuant to any provision of this chapter or who

procedurally or physically assist in the commitment of any individual, pursuant to this chapter, are not subject to any civil or criminal liability under this chapter. Any privilege otherwise existing between patient and physician, patient and psychologist, patient and examiner, or patient and social worker, is waived as to any physician, psychologist, examiner, or social worker who provides information with respect to a patient pursuant to any provision of this chapter.

Minn. Stat. § 253B.23, subd. 4 (2010). But as the district court determined, in order to conclude that respondents were entitled to immunity, it would have had to engage in fact-finding to determine whether respondents acted in “good faith.” *See Bodah*, 663 N.W.2d at 553 (stating we consider only the facts alleged in the complaint). Thus, the district court did not err in declining to consider whether respondents were immune from suit, because the district court granted the motion to dismiss for failure to state a claim upon which relief can be granted. *Cf. Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (“When matters outside the pleadings are presented to a court considering a motion to dismiss, and . . . are not excluded by the court when it makes its determination, the motion to dismiss shall be treated as one for summary judgment.”).

Affirmed.