This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0472

Michael Noel,
Appellant,

vs.

Lutheran Social Service of Minnesota,
Respondent.

Filed November 25, 2019
Affirmed
Connolly, Judge

Ramsey County District Court
File No. 62-CV-18-3484

Michael Noel, Tallahassee, Florida (pro se appellant)

Grant T. Collins, Felhaber Larson, Minneapolis, Minnesota (for respondent)

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

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

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the denial of his motion to amend his complaint by adding claims for (1) hostile work environment and discrimination under the Minnesota Human Rights Act (MHRA), (2) aiding and abetting under the MHRA, and (3) constructive discharge. Because we see no abuse of discretion in the denial, we affirm.

FACTS

Appellant Michael Noel was employed by respondent Lutheran Social Service of Minnesota as a part-time direct-support professional in May 2016. Respondent reimbursed its employees for expenses they incurred on a monthly basis. Appellant turned in expenses of $311.02 for July 2017. On August 9, he received $43.76. In March 2018, he received an additional reimbursement of $259.72, reducing the amount he claims to be owed to $7.54.[1]

By the time he received the last reimbursement in March 2018, appellant had already brought a January 2018 claim for $350 in "reimbursement wages" against respondent in conciliation court. In February 2018, he filed an amended claim seeking $980. The conciliation court referee dismissed his claim.

In May 2018, he removed the matter to the district court; in July, the matter was set for trial in January 2019. In August, appellant moved to amend his complaint, seeking to add 19 claims and alleging more than $3.9 million in damages. Although he filed a 39-

[1] $43.76 + $259.72 = $303.48; $311.02 - $303.48 = $7.54

page affidavit and more than 500 pages of exhibits, he filed neither a supporting legal memorandum nor a proposed amended complaint. In October, after a hearing, the district court denied appellant's motion to amend. Following trial, the district court denied appellant's original claim.

On appeal, he challenges only the denial of the motion to amend by adding claims of hostile work environment and discrimination under the MHRA, of aiding and abetting under the MHRA and of constructive discharge.[2]

D E C I S I O N

"Generally, the decision to permit or deny amendments to pleadings is within the discretion of the district court and will not be reversed absent a clear abuse of discretion." *Johns v. Harborage I, Ltd.*, 664 N.W.2d 291, 295 (Minn. 2003). "Whether the district court has abused its discretion in ruling on a motion to amend may turn on whether it was correct in an underlying legal ruling." *Doe v. F.P.*, 667 N.W.2d 493, 500-01 (Minn. App. 2003), *review denied* (Minn. Oct. 21, 2003).

At the end of the hearing, the district court presented three reasons for denying appellant's motion. First, appellant's claim was removed to the district court in May and his motion to amend was brought in August. Amendment of claims in cases removed to district court from conciliation court is allowed "if, within 30 days after removal is perfected, the party seeking the amendment serves on the opposing party and files with the

[2] We note that, because appellant does not challenge the district court's denial of his motion to amend by adding 15 other claims, he has waived his right to appeal the denial of the motion to add those claims. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (issues not briefed on appeal are waived).

court a formal complaint conforming to the Minnesota Rules of Civil Procedure." Minn. R. Gen. Prac. 522. The district court ruled that the amendment "[was] untimely, and therefore denied." Appellant does not challenge this ruling.

Second, Minn. R. Gen. Prac. 522 also provides that a party may amend a pleading at another time in accord with Minn. R. Civ. P. 15.01, which requires either "leave of court or . . . written consent of the adverse party." But it is not an abuse of discretion to deny leave to amend "when the amendment does not state a cognizable legal claim," *Envall v. Indep. Sch. Dist. 704*, 399 N.W.2d 593, 597 (Minn. App. 1987), or when the amendment "would result in prejudice to the other party." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). The district court found that appellant's proposed amendment "[did] not contain any substantive allegations setting forth the elements of any claim" and "would force [respondent] to defend against a moving unclear target of indeterminate allegations and multiple allegations in significant damages which have not been substantiated." Thus, under *Fabio*, the district court did not abuse its discretion in denying the amendment.[3]

Finally, the district court denied the motion to amend because appellant "completely failed to establish any cause, good . . . or otherwise[,] for the delay" in moving to amend, and Minn. R. Civ. P. 16.02 requires good cause to be shown when, as here, the proposed amendment would necessitate changing a scheduling order. Appellant does not dispute this on appeal.

---

[3] Appellant argues that his amendment would not prejudice respondent because "[its] defense will not have to change to make a complete defense to the additional claims." But he does not explain how a defense to respondent's actual debt of $7.54 could also serve as a defense to its alleged liability of over $3.9 million.

Separately and collectively, these reasons indicate that the district court did not abuse its discretion in denying appellant's motion to amend and support affirming the denial. However, in the interest of completeness, we address the merits of the claims appellant raises on appeal. When determining whether a complaint sufficiently states a claim, courts consider "only those facts alleged in the complaint, accepting those facts as true and construing all reasonable inferences in favor of the non-moving party." *In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 826-27 (Minn. 2011).

1. Hostile Work Environment and Discrimination Under the MHRA

Appellant argues that his female coworkers were reimbursed for all expenses incurred, while he was not reimbursed for expenses incurred in July 2017, and that this supported claims for hostile work environment and discrimination under the MHRA. He argues that "it makes a lot of sense to think that this would cause lots of hostility that would permeate and affect the job."

An MHRA hostile-work-environment claim requires that an individual be a member of a protected group and be subject to unwelcome harassment based on the individual's membership in the protected group and affecting a term, condition or privilege of the individual's employment. *LaMont v. Indep. Sch. Dist. No. 728*, 814 N.W.2d 14, 20-21 (Minn. 2012). An MHRA discrimination claim requires that the plaintiff show he is a member of a protected class, was qualified to perform his job, and suffered an adverse employment action under circumstances giving rise to an inference of discrimination. *See Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 444 (Minn. 1983).

At the hearing, the district court questioned appellant as to elements of both claims.

> Q: What's your protected class?
> A: Age. Gender.
> Q: How old are you?
> A: 23.
> Q: Okay. And you're also claiming that they're discriminating against you . . . because you're a male?
> A: I'm a male. . . . My boss is a female and I'm a male, and most of the people are either in college or like 40's or 50's, or something, like retirees. . . . They all went to the University and I was like the only person who went to the community college.
> Q: So they're discriminating against you based on the college you went to?
> A: I think that was something.
> . . . .
> Q: Do you actually think that when . . . your boss tells you to do something and you think it's weird that somehow that . . . becomes an actionable claim where you can sue your employer . . . and initiate a lawsuit and drag everybody into court?
> A: I think in the whole light of everything, yes, definitely.
> Q: And what's the legal basis for that belief?
> . . . .
> A: . . . [I]t wouldn't be part of my discrimination claim because of the statute of limitations would be up. . . . It's like financial abuse, physical abuse and emotional abuse. But that's exactly what they did to me. . . . And it's like the guy, I don't know, you get what I'm saying? I mean, my affidavit –
> Q: No, I don't know what you're saying. That's the problem.

Appellant does not offer support for his view that white, 23-year-old, male community-college graduates are a protected class, nor does he indicate how his membership in that class was the basis of the "harassment" of paying him $7.54 less than he claimed or of the delay in his receiving payment. Moreover, a hostile-work-environment claim requires that the conduct complained of "was severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive." *Diaz v. Swift-Eckrich, Inc.*, 318 F.3d

796, 800 (8th Cir. 2003) (quotation omitted). Appellant does not mention any conduct of respondent that a reasonable person would find hostile or abusive.

Appellant has not shown that either his hostile-work-environment claim or his discrimination claim was a "cognizable legal claim." *See Envall*, 399 N.W.2d at 597.

2. Aiding and Abetting under the MHRA

Appellant does not identify any person or entity that respondent aided and abetted. His argument that his supervisor, an employee of respondent, violated the MHRA and thereby aided and abetted respondent fails because respondent was vicariously liable for its employee's acts. *See Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 801 (Minn. 2013) (holding that the "aiding and abetting liability" theory under the MHRA does not apply to employees acting as agents of their employers). Appellant's aiding-and-abetting claim also was not a "cognizable, legal claim." *See Envall*, 399 N.W.2d at 597.

3. Constructive Discharge

Appellant claims that he was constructively discharged when he resigned in January 2018 because he did not receive the last amount owed for expenses incurred in July 2017 until March 2018.

> [But] constructive discharge is not an independent, free-standing cause of action. Rather, constructive discharge is a doctrine that may be invoked by a plaintiff in some employment-related actions to prove that, even though the plaintiff resigned from his or her job, the defendant should be deemed to have made an adverse employment action.

Coursolle v. EMC Ins. Grp. Inc., 794 N.W.2d 652, 660 (Minn. App. 2011). The plaintiff must show that "intolerable working conditions [were] created by the employer with the

intention of forcing the employee to quit." *Pribil v. Archdiocese of St. Paul and Minneapolis,* 533 N.W.2d 410, 412 (Minn. App. 1995) (quotation omitted). Appellant does not specify any intolerable working conditions created by respondent to force him to quit, and, in any event, constructive discharge is not "a cognizable, legal claim." *See Envall*, 399 N.W.2d at 597.

Affirmed.