

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0481**

Tyler Halva,
Appellant,

vs.

Minnesota State Colleges and Universities,
Respondent.

**Filed December 16, 2019
Affirmed
Worke, Judge**

Ramsey County District Court
File No. 62-CV-18-3910

Jared M. Goerlitz, Goerlitz Law, PLLC, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, Kathryn M. Woodruff, Assistant Attorney General,
St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and
Klaphake, Judge.*

S Y L L A B U S

The Minnesota official records act (MORA), Minn. Stat. § 15.17 (2018), does not
create a private cause of action.

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

OPINION

WORKE, Judge

Appellant argues that the district court erred by dismissing his claim for damages under the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. §§ 13.01-.90 (2018), after concluding that appellant already pursued an administrative action under section 13.085. Appellant also argues that the district court erred by granting respondent's motion for judgment on the pleadings on appellant's claims under the MORA after concluding that the MORA does not provide a private cause of action. We affirm.

FACTS

In March 2015, respondent Minnesota State Colleges and Universities (MnSCU) posted a request for proposal (RFP) for a professional/technical services contract—software for an online registration system for continuing education and customized training. The RFP included general selection criteria upon which proposals would be evaluated, and explained that proposals failing to address the RFP requirements may be disregarded.

Four vendors submitted proposals, including appellant Tyler Halva. During a WebEx video meeting, the selection committee evaluated Halva's proposal and electronically highlighted Halva's proposal's cover letter using Adobe Acrobat Reader's highlight function. When the document was closed on the computer, the committee's highlights were not saved. The committee disqualified Halva's proposal because he failed to provide required information.

In December 2015, Halva requested, pursuant to the MGDPA, that MnSCU provide him with the names of the other vendors that submitted proposals. On February 19, 2016, MnSCU responded to Halva's request and stated that the contract had been awarded to a vendor other than Halva. Halva then sent four additional requests for information to MnSCU. MnSCU responded in August 2016, but, because Halva believed that MnSCU's response was untimely and incomplete, he filed a data-practices complaint with the Office of Administrative Hearings (OAH) on September 20, 2016. After Halva filed the complaint, he received additional information from MnSCU, but ultimately, MnSCU did not send Halva information regarding his own RFP submission, including the highlighted copy of Halva's cover letter, because it did not understand his request to include data on himself.

In January 2017, an administrative-law judge (ALJ) determined that MnSCU failed to comply with the MGDPA and ordered MnSCU to provide Halva a copy of his original RFP submission and a copy of the highlights made to Halva's cover letter if it had retained a copy. MnSCU provided Halva documents in response to the ALJ's order. But Halva objected, claiming that the data was insufficient because he submitted his proposal on a CD and MnSCU provided him a paper copy, and MnSCU determined that it had not retained the highlighted copy of Halva's cover letter. In response to Halva's objections, the ALJ determined that MnSCU was not obligated to provide data that was not recorded in physical form, or required to acquire particular software to create a permanent record of an electronic conversation or meeting.

In June 2018, Halva filed a complaint in district court. In count one, Halva sought a declaratory judgment that MnSCU's contract with the winning vendor is "void for failure to comply with the competitive bidding requirements." In count two, Halva sought to permanently enjoin MnSCU from performing under the contract. In count three, Halva sought to compel MnSCU's compliance with the MORA and the MGDPA. And in count four, Halva sought damages for MnSCU's violation of the MGDPA.

MnSCU moved to dismiss under Minn. R. Civ. P. 12.02. MnSCU argued that count one failed because Halva failed to join a necessary party, the winning vendor. It argued that count two failed because Halva sought a permanent injunction, which is a remedy, not a cause of action. MnSCU argued that count three should be dismissed because Halva's action to compel compliance under the MGDPA was moot, and the documents that Halva sought were not records within the meaning of the MORA. Lastly, MnSCU argued that count four should be dismissed because Halva's claim for damages contained only legal conclusions and he made no allegations as to how MnSCU caused him injury.

The district court granted MnSCU's motion to dismiss counts one and two.¹ The district court also granted MnSCU's motion to dismiss counts three and four, but only to the extent that Halva purported to state a claim under the MGDPA. The district court concluded that because Halva commenced his MGDPA action in the OAH, he could not relitigate the MGDPA matters in district court. But to the extent that counts three and four

¹ Halva's appeal relates only to counts three and four.

purported to state a claim under the MORA, the district court denied MnSCU's motion because the ALJ did not make a decision under the MORA, deeming it outside the jurisdiction of the OAH.²

MnSCU then moved for judgment on the pleadings, arguing that the MORA does not create a private cause of action. On February 1, 2019, the district court granted MnSCU's motion, concluding: "Halva's claim is that [MnSCU] either did not create an official record in the first place or that it did not preserve an official record which had been created. The MORA does not provide a remedy, which would require [MnSCU] to go back and create or recreate an official document." Judgment was entered, and this appeal followed.

ISSUES

- I. Did the district court err in granting respondent's motion to dismiss appellant's claim for damages under the MGDPA?
- II. Did the district court err in granting respondent's motion for judgment on the pleadings for appellant's claims for remedies under the MORA?

ANALYSIS

Damages under the MGDPA

The district court granted MnSCU's motion to dismiss Halva's MGDPA claim under Minn. R. Civ. P. 12.02(e) for failing to state a claim upon which relief can be granted. This court "review[s] de novo whether a complaint sets forth a legally sufficient claim for relief. . . . [A]ccept[ing] the facts alleged in the complaint as true and constru[ing] all

² The district court construed count four to include a claim for damages under the MORA despite Halva claiming damages under only the MGDPA.

reasonable inferences in favor of the nonmoving party.” *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014) (citation omitted).

Halva argues that the district court erred by dismissing his claim for damages under the MGDPA after concluding that he could not commence an action in district court after prevailing in the OAH. Halva claims that, under the MGDPA, an action to compel compliance may be commenced in the OAH, and then damages may be sought in district court. Whether the district court properly applied the MGDPA presents an issue of statutory interpretation, which this court reviews *de novo*. *See Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016).

Under Minn. Stat. § 13.08, subd. 4, “[a]ctions to compel compliance [with the MGDPA] may be brought either under [section 13.08, subdivision 4] or section 13.085.” Section 13.085 governs administrative remedies. Thus, an action to compel compliance with the MGDPA may either be brought in district court or filed in the OAH. However, section 13.085 further provides that an OAH decision regarding compliance “is not controlling in any subsequent action brought in district court alleging the same violation and seeking damages.” Minn. Stat. § 13.085, subd. 5(e). Therefore, Halva is correct; he could file a complaint in the OAH seeking to compel MnSCU’s compliance with the MGDPA and then file a complaint in district court seeking damages based on the same alleged violation.

MnSCU argues that even if Halva is correct, Halva failed to sufficiently plead damages in district court. We agree. At the pleading stage, the plaintiff cannot allege mere “labels and conclusions.” *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010). He

also is not entitled to recovery of damages that are “remote and speculative.” *Jackson v. Reiling*, 249 N.W.2d 896, 897 (Minn. 1977). In his complaint, Halva claimed only that he “has been injured by [MnSCU]’s failure to provide an opportunity to participate in a competitive bidding process,” and alleged that he “has been aggrieved by these violations of the MGDPA and has suffered damages in an amount to be determined at trial, including costs, disbursements, and reasonable attorney’s fees.” These alleged damages are conjectural.

Halva argues that this court cannot consider an alternative basis to affirm the district court’s decision because MnSCU did not file a notice of related appeal (NORA). But a NORA is required when a respondent seeks review of a district court ruling that was adverse to respondent. *Day Masonry v. Indep. Sch. Dist.* 347, 781 N.W.2d 321, 332 (Minn. 2010). Here, although MnSCU argued to the district court that Halva failed to adequately allege damages, the district court did not decide that issue. Thus, there is no ruling adverse to MnSCU on that issue, and a NORA was not required. Further, in reviewing an order dismissing a claim under rule 12.02, the only issue before this court is whether the pleadings are adequate, and this court will affirm a dismissal “if it is clear that no relief can be granted under any set of facts that can be proved consistent with the allegations.” *Nelson v. Productive Alts., Inc.*, 715 N.W.2d 452, 454 (Minn. 2006). Halva failed to sufficiently plead damages in his complaint. Therefore, no relief can be granted, and we conclude that the district court appropriately dismissed Halva’s claim for damages under the MGDPA.

Remedies under the MORA

The district court granted MnSCU's motion for judgment on the pleadings, dismissing Halva's claims for compliance and damages under the MORA. This court reviews a district court's grant of a motion for judgment on the pleadings "to determine whether the complaint sets forth a legally sufficient claim for relief." *Burt v. Rackner, Inc.*, 902 N.W.2d 448, 451 (Minn. 2017) (quotation omitted). In doing so, this court accepts the facts alleged in the complaint as true and draws all reasonable inferences in favor of the nonmoving party. *Id.* Whether a complaint sets forth a legally sufficient claim for relief is a question of law reviewed de novo. *Id.*

Interpretation of the MORA is an issue of statutory interpretation, which this court reviews de novo. *See Cocchiarella*, 884 N.W.2d at 624; *see also Becker v. Mayo Found.*, 737 N.W.2d 200, 207 (Minn. 2007) (stating that whether a statute creates a private cause of action is a question of statutory interpretation). The goal of statutory interpretation is to ascertain and effectuate the intent of the legislature. Minn. Stat. § 645.16 (2018). In interpreting a statute, courts give words and phrases their plain and ordinary meanings. *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72 (Minn. 2012). This court reads a statute as a whole and gives effect to all of its provisions. *See In re Welfare of J.J.P.*, 831 N.W.2d 260, 264 (Minn. 2013).

Halva claims that MnSCU violated the MORA, and that he may bring an action against MnSCU for that violation because, as an unsuccessful bidder, he may bring a claim against an entity that violated a statute in awarding a public contract. In count three of his complaint, Halva asserted that the MORA requires that official activity be recorded and

that a “public-bidding procedure such as [MnSCU’s] RFP is official activity.” Halva claimed that by failing to create official records, MnSCU violated the MORA. Halva sought an order compelling the production of the public data or a declaration that MnSCU violated the MORA. In count four, Halva asserted that he was “aggrieved by [MnSCU’s] violations of the MGDPA and has suffered damages.” The district court stated that when the case began it “might” have been characterized as a bid-letting case, but counts three and four are “stand-alone claim[s].” The district court determined that the MORA “says nothing about creating a cause of action for damages or a vehicle for any of the other requested relief Halva seeks.”

A statute gives rise to a private cause of action only if “the language of the statute is explicit or it can be determined by clear implication.” *Becker*, 737 N.W.2d at 207. Courts are reluctant to recognize a cause of action under a statute when one does not clearly exist. *Krueger v. Zeman Constr. Co.*, 781 N.W.2d 858, 863 (Minn. 2010). Courts are equally reluctant to imply a cause of action when a statute explicitly provides for an alternative remedy. *Becker*, 737 N.W.2d at 207. Here, there is no indication, based upon a review of the plain statutory language of section 15.17, that the legislature intended to create a private cause of action. *Cf.* Minn. Stat. § 13.08 (recognizing a private cause of action for violation of the MGDPA).

The MORA provides that public officers “shall make and preserve all records necessary to a full and accurate knowledge of their official activities.” Minn. Stat. § 15.17, subd. 1. Each agency must also “carefully protect and preserve government records from deterioration, mutilation, loss, or destruction.” *Id.*, subd. 2. Additionally, every custodian

of government records is required to deliver to a successor in office all government records. *Id.*, subd. 3. Finally, the MORA provides access to all records containing government data, pursuant to section 13.03 of the MGDPA, and section 138.17 for archived government records. *Id.*, subd. 4. Section 13.08 of the MGDPA provides a cause of action for any violation of any provision of the chapter, which would include section 13.03. Minn. Stat. § 13.08. Therefore, the district court did not err in determining that the MORA does not provide for a separate private cause of action and did not err in granting MnSCU judgment on the pleadings, dismissing counts three and four of Halva's complaint.

D E C I S I O N

Because Halva did not adequately plead damages, the district court did not err in granting MnSCU's motion to dismiss Halva's claim for damages under the MGDPA. And because the MORA does not create a private cause of action, the district court did not err in granting MnSCU's motion for judgment on the pleadings for Halva's claims under the MORA.

Affirmed.