STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0511

Ruth Crosby,
Appellant,

vs.

Champagne D'Argent Rabbit Federation,
Respondent.

Filed May 26, 2020
Affirmed
Rodenberg, Judge

Dakota County District Court
File No. 19HA-CV-18-1832

Bruce Tyler Wick (pro hac vice), Westlake, Ohio (for appellant)

Jeffrey D. Metcalf, Matthew J. Schaap, Dougherty, Molenda, Solfest, Hills & Bauer P.A., Apple Valley, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Rodenberg, Judge; and Peterson, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving 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

RODENBERG, Judge

Appellant Ruth Crosby appeals from the district court's summary judgment dismissing her claims against respondent Champagne D'Argent Rabbit Federation and denying her motions for relief from the judgment and to amend her complaint to add claims not previously pleaded. We affirm.

FACTS

Respondent is a Minnesota nonprofit organization that encourages and promotes the breeding of Champagne D'Argent rabbits. Respondent received unusually large numbers of membership applications in August 2015 and April 2016. After an investigation, respondent concluded that appellant—who had been a member of respondent for several years—and appellant's parents were responsible for the aberrant influx of applications. As a result, respondent's executive committee voted to suspend appellant's membership for one year. Respondent informed appellant by letter that her membership was suspended and that she would be allowed to reapply for membership after the one-year suspension.

Appellant did not reapply for membership. She sued respondent. Appellant's complaint identified no specific legal theory on which respondent was claimed to be liable but claimed generally that respondent did not follow "Minnesota law" when it suspended her membership. Appellant clarified during discovery that her legal claim was that respondent did not comply with the requirements in the Minnesota Nonprofit Corporation Act (MNCA), Minn. Stat. §§ 317A.001-.909 (2018). Specifically, she alleged a violation

of Minn. Stat. § 317A.411, which provides that a nonprofit corporation may not expel, suspend, or terminate a member's membership except by "a procedure that is fair and reasonable and is carried out in good faith."

After discovery closed, respondent moved for summary judgment. In her response to respondent's dispositive motion, appellant argued for the first time that she had a right to bring a wrongful-expulsion claim under Minnesota's private attorney general statute, Minn. Stat. § 8.31, subd. 3a (2018). She further argued, also for the first time, that she "should be allowed to proceed on the alternative theories of breach of contract and/or common law claim for wrongful expulsion" because respondent "violated its own constitution and common law when it suspended [appellant]." Respondent objected to appellant's newly raised claims, argued that these claims should not be considered, and argued that it was entitled to summary judgment on the claimed violation of Minn. Stat. § 317A.411, the only claim that appellant had timely asserted.

The district court granted summary judgment in respondent's favor. Concerning appellant's claim under the MNCA, the district court concluded that appellant failed to join the statutorily required number of plaintiffs in her action and that her MNCA claim therefore failed as a matter of law. The district court also concluded that appellant "improperly" presented her claim under the private attorney general statute. Judgment was entered, dismissing appellant's complaint with prejudice.

On March 12, 2019, appellant filed a "notice of motion and motion for relief from judgment." Approximately two weeks later, appellant filed a notice of appeal from the

district court's summary judgment dismissing her complaint. Then, two days later, appellant moved the district court to amend her complaint after judgment "to add [a] claim for punitive damages and for other purposes." After questioning jurisdiction, this court stayed the appeal until the district court ruled on the pending motions. After a hearing, the district court denied appellant's motions. We dissolved the stay and ordered that this appeal proceed.

D E C I S I O N

The district court did not err by granting summary judgment.

Summary judgment is appropriate "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. A district court's grant of summary judgment is reviewed de novo. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). When reviewing a district court's summary judgment decision, "we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). In conducting this review, "[w]e view the evidence in the light most favorable to the party against whom summary judgment was granted." *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 150 (Minn. 2014).

We first address appellant's argument that the district court erred when it "declined to recognize" her claims for breach of contract and violation of her common law rights.[1] Appellant did not assert claims for breach of contract or violation of common law in her complaint. She asserted those claims for the first time in her opposition to respondent's motion for summary judgment.

A party is bound by her pleadings and a district court need not consider claims raised for the first time in a memorandum in opposition to summary judgment. *See Rios v. Jennie-O Turkey Store, Inc.*, 793 N.W.2d 309, 317-18 (Minn. App. 2011) (holding that district court did not err by declining to consider claim not asserted in complaint); *Roberge v. Cambridge Coop. Creamery Co.*, 67 N.W.2d 400, 403 (Minn. 1954) ("Clearly relief cannot be based on issues that are neither pleaded nor voluntarily litigated.") (footnote omitted). Appellant did not move the district court at or before the summary-judgment hearing to amend her complaint or to extend the discovery period to develop facts that might support amendment of the pleadings. The district court did not err when it declined to consider claims that appellant had not pleaded.

We next address appellant's argument that the district court erred by granting summary judgment on her MNCA claim.[2] The MNCA governs the creation and operation

[1] Appellant does not challenge the district court's conclusion concerning the application of the private attorney general statute. We therefore do not consider the district court's resolution of that issue.

[2] We recognize that appellant did not specifically identify the MNCA (or any other legal basis for relief) in her complaint. But because the district court resolved this issue and the parties argue it on appeal, we review it.

of nonprofit corporations in Minnesota. It contains provisions related to members and membership. Minn. Stat. §§ 317A.401-.467. Relevant here, "[a] member may not be expelled or suspended, and a membership may not be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith." Minn. Stat. § 317A.411, subd. 1. Aggrieved members may assert a statutory cause of action for a nonprofit corporation's violation of chapter 317A:

> If a corporation or an officer or director of the corporation violates this chapter, a court in this state, *in an action brought by at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less*, or by the attorney general, may grant equitable relief it considers just and reasonable in the circumstances and award expenses, including attorney fees and disbursements, to the members.

Minn. Stat. § 317A.467 (emphasis added).

This court considered a situation factually similar to this case in *Jensen v. Duluth Area YMCA*, 688 N.W.2d 574 (Minn. App. 2004). In *Jensen*, the plaintiff sued the YMCA under Minn. Stat. § 317A.467, alleging that the YMCA suspended his membership in violation of Minn. Stat. § 317A.411. 688 N.W.2d at 576-77. The district court granted summary judgment to the YMCA because it was undisputed that the plaintiff was the only YMCA member listed in the lawsuit, meaning that the action was not "brought by at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less." *Id.* at 577. We affirmed. *Id.* at 579.

Appellant conceded in district court that her action required at least 17 of respondent's members with voting rights to be joined as plaintiffs in order to comply with

the requirements of Minn. Stat. § 317A.467. It is undisputed that appellant is the only member of respondent identified as a plaintiff in this case. Accordingly, there is no genuine dispute concerning whether appellant satisfied the requirements for bringing an action under Minn. Stat. § 317A.467. She did not. The district court correctly granted summary judgment to respondent.

Still, appellant argues that the district court "ignored law and evidence" showing that respondent violated the MNCA by terminating her membership by less than a unanimous vote of the board of directors, an alleged violation of Minn. Stat. § 317A.239. But even if everything appellant alleges is true, her failure to join the required number of members as plaintiffs precluded the district court from granting relief under Minn. Stat § 317A.239.

In sum, appellant identified only one theory of entitlement to relief before respondent moved for summary judgment, the district court properly declined to consider appellant's late-noticed claims, and appellant failed to follow the statutory requirements for bringing the only claim for relief that she timely pleaded. The district court did not err by granting summary judgment dismissing plaintiff's complaint with prejudice.

The district court made no legal error and acted within its discretion when it denied appellant's untimely motion to amend her complaint.

After the district court dismissed her complaint by summary judgment, appellant moved the district court for leave to amend her complaint. Respondent argues that the district court did not abuse its discretion by denying appellant leave to amend because appellant moved under the wrong rule of civil procedure, respondent did not consent to the

amendment, respondent objected to the attempt to amend, and appellant failed to serve respondent with her motion to amend.

Appellant's motion, by its terms, was to amend her complaint "to conform pleadings to proof" under Minn. R. Civ. P. 15.02. Under the rule:

> When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment . . . .

We review a district court's denial of a motion to amend a complaint for an abuse of discretion. *See Harry N. Ray, Ltd. v. First Nat. Bank of Pine City*, 410 N.W.2d 850, 856 (Minn. App. 1987).

To amend pleadings under rule 15.02, the claims sought to be added must have been "litigated by either express or implied consent." *Septran, Inc. v. Indep. Sch. Dist. No. 271*, 555 N.W.2d 915, 919 (Minn. App. 1996) (quotation omitted). A claim is not expressly or impliedly consented to or litigated if the party opposing amendment timely objects to litigation of the claim. *Harry N. Ray*, 410 N.W.2d at 856 (citing *Roberge*, 67 N.W.2d at 404). Appellant first asserted her common-law breach-of-contract claims and her claimed authority to proceed under the private attorney general statute in her opposition to respondent's motion for summary judgment. Respondent immediately objected in its reply memorandum. Respondent continued to object to the attempted addition of these claims in opposition to appellant's motion to amend. Respondent did not expressly or impliedly

consent to or litigate these claims. Instead, at every available opportunity, it objected to appellant's attempts to argue that her complaint should survive summary judgment based on legal claims not included in her complaint. The district court clearly acted within its discretion in declining to allow appellant's proposed amendment under rule 15.02.[3]

After the entry of judgment, appellant moved to amend her complaint to add a claim for punitive damages under Minn. Stat. §§ 549.191 and 549.20 (2018). To be granted leave to amend, appellant was required to show by clear and convincing evidence that respondent acted with a "deliberate disregard for the rights or safety of others." Minn. Stat. § 549.20, subd. 1(a).

The district court did not determine whether appellant made the required prima facie showing because it found that appellant failed to serve her motion to amend on respondent. The record does not reflect whether appellant properly served respondent. But even if she did, the district court did not abuse its discretion by denying appellant's motion to amend her complaint. *See Basich v. Bd. of Pensions of Evangelical Lutheran Church in Am.*, 493 N.W.2d 293, 295-96 (Minn. App. 1992) (concluding district court did not abuse discretion by denying appellant's post-judgment motion to vacate summary judgment and amend

[3] Had appellant moved to amend her complaint before the summary judgment hearing, the district court would have had the opportunity to consider the arguments now made on appeal in a procedural posture that might have resulted in a different outcome. *See Gunnufson v. Onan Corp.*, 450 N.W.2d 179, 182 (Minn. App. 1990) (reversing district court's denial of motion to amend complaint to add new claim because the motion "was timely and [the opposing party] provided no evidence that it would be prejudiced by the amendment"). But the motion to amend was not made at that point, and appellant's motion under rule 15.02 was, for the reasons discussed, inappropriate for the post-summary-judgment situation.

complaint). Appellant's motion and supporting affidavits summarily assert that respondent conducted "mass expulsions" of members because of their relationships to appellant and appellant's parents. Appellant presented the district court with no facts showing that any such "mass expulsions" were improper or illegal. The bald allegation of such expulsions falls well short of establishing a prima-facie showing that respondent acted with a "deliberate disregard for the rights or safety of others." *See In re 3M Bair Hugger Litig.*, 924 N.W.2d 16, 24 (Minn. App. 2019) (affirming district court's conclusion that appellants failed to establish prima facie case where their "arguments lacked any support, much less clear and convincing evidence"), *review denied* (Minn. Mar. 27, 2019).

The district court acted within its discretion when it denied appellant's motion for relief from judgment.

Finally, appellant argues that the district court erred by denying her motion for relief from judgment under Minn. R. Civ. P. 60.02. We review the denial of a motion for relief from judgment for an abuse of discretion.[4] *Cole v. Wutzke*, 884 N.W.2d 634, 637 (Minn. 2016).

[4] The district court construed appellant's motion as one for reconsideration and denied it as improperly brought. Appellant does not argue that this was error. Because we review either a motion under rule 60.02 or a request for reconsideration for an abuse of discretion, the district court's treatment of the purported rule 60.02 motion as one for reconsideration is ultimately of no relevance to our resolution of the issue on appeal. *See Lee v. Lee*, 749 N.W.2d 51, 62 (Minn. App. 2008) ("It is within the district court's discretion to rule on a motion despite [movant]'s late filings."), *aff'd in part and rev'd in part on other grounds*, 775 N.W.2d 631 (Minn. 2009).

Appellant's rule 60.02 motion alleged that the district court legally erred when it granted summary judgment in respondent's favor. Legal error is not a basis upon which a district court may grant relief from a judgment under rule 60.02. *See* Minn. R. Civ. P. 60.02; *see also Reid v. Strodtman*, 631 N.W.2d 414, 420 (Minn. App. 2001) ("Rule 60.02 is intended to correct mistake or inadvertence of *a party* and does not allow for correction of judicial error."). But even if it were, as discussed above, the district court *did not err in its legal conclusions*. The district court properly applied the law and acted within its discretion in all respects.[5]

Affirmed.

[5] We also note that appellant does not cite any legal authority in support of her position on appeal, arguably rendering her argument forfeited. *See Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017) ("An 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.") (citing *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971)), *review denied* (Minn. Apr. 26, 2017). In the interest of fairness and completeness, we have not considered appellant's arguments on appeal as forfeited.