STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0956

Carol Gorman,
Respondent,

vs.

SEIU Healthcare Minnesota, et al.,
Appellants.

Filed March 2, 2020
Affirmed
Worke, Judge

Ramsey County District Court
File No. 62-CV-18-4744

Patrick T. Tierney, Collins, Buckley, Sauntry & Haugh, P.L.L.P., St. Paul, Minnesota (for respondent)

Justin D. Cummins, Cummins & Cummins, LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Florey, Judge.

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

WORKE, Judge

Appellants challenge the denial of their motion to dismiss respondent's defamation claim, arguing that: (1) the claim is preempted by federal labor law; and (2) the statements are protected by an absolute privilege. We affirm.

FACTS

Appellant SEIU Healthcare Minnesota (SEIU), a labor union comprised of healthcare workers throughout the state, represents food-service workers employed by Sodexo. Respondent Carol Gorman was the food-service administrator for the Rochester Mayo Clinic. Gorman led a team tasked with making recommendations to the Mayo Clinic regarding its food-service vendors. Based on the recommendations of Gorman's team, the Mayo Clinic announced in June 2016 that it would transition its food services from Sodexo to Morrison Healthcare.

In August 2016, SEIU filed a grievance with the clinic alleging that the decision to change vendors was influenced by a conflict of interest due to Gorman's long-standing personal relationship with a Morrison executive. SEIU also issued a press release detailing the substance of its grievance with the clinic. Gorman asserts that the following statements in the press release defamed her:

> (1) SEIU[], the union that represents many of the food service workers that Mayo wants to outsource to a multi-national corporation, filed a formal complaint Monday regarding an apparent conflict of interest that was not disclosed when Mayo announced the plan on June 30th.
>
> (2) The grievance alleges the decision was "primarily influenced by food services administrator Carol Gorman. The Union believes Carol Gorman has a conflict of interest due to a long standing personal relationship with a Morrison executive."
>
> (3) "We are angered that Mayo would make a decision like this, one that affects [sic] the lives of 700 families in our community, especially now that it appears the decision was made under a cloud of dubious ethics," said Gulley. "We believe Mayo executives are already aware of the apparent

> conflict of interest and we are demanding that Mayo make public any initial findings from their investigation immediately."

SEIU issued a second press release in October 2016, again stating that it believed that Gorman possessed a conflict of interest due to her relationship with the Morrison executive. Gorman asserts that the following statement from the October 6 press release defamed her: "The Union contends that there may have been a conflict of interest with Gorman due to a long standing personal relationship with a Morrison executive."

In July 2018, Gorman filed a complaint in district court seeking damages from SEIU and appellant Jamie Gulley, SEIU's president, for defamation. SEIU and Gulley moved to dismiss the complaint, asserting, in part, that federal labor law preempted Gorman's state law defamation claim, and that the statements at issue were privileged. Following a hearing, the district court denied appellants' motion. This appeal followed.

D E C I S I O N

Federal preemption

Appellants assert that the district court erred by denying their motion to dismiss because federal labor law preempts aspects of state libel law when the allegedly defamatory statement pertains to a labor dispute. "When federal preemption bars relief under any set of facts consistent with the pleadings, the complaint fails to state a claim and must be dismissed." *Leonard v. Northwest Airlines, Inc.*, 605 N.W.2d 425, 428 (Minn. App. 2000), *review denied* (Minn. Apr. 18, 2000). "We review de novo whether a complaint sets forth a legally sufficient claim for relief. We accept the facts alleged in the complaint as true

and construe all 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).

In *Old Dominion Branch No. 496 v. Austin*, the Supreme Court emphasized its obligation to ensure the protection of speech under federal labor laws. 418 U.S. 264, 282, 94 S. Ct. 2770, 2780 (1974). "This obligation, derived from the supremacy of federal labor law over inconsistent state regulation . . . requires us to determine whether any state libel award . . . would be inconsistent with the protection for freedom of speech in labor disputes recognized in *Linn*." *Id.* (citing *Linn v. United Plant Guard Workers of America, Local 114*, 383 U.S. 53, 86 S. Ct. 657, (1966)).[1] In *Linn*, the Supreme Court limited "the availability of state remedies for libel [stemming from a labor dispute] to those instances in which the complainant can show that the defamatory statements were circulated with malice and caused him damage." 383 U.S. at 64-65, 86 S. Ct. at 664.

Here, SEIU and Gulley argue that Gorman's complaint should have been dismissed because she failed to plead that the allegedly defamatory statements were made with malice, i.e., were either knowingly false or made with reckless disregard for their truth or falsity. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 280, 84 S. Ct. 710, 726 (1964). The district court determined that Gorman sufficiently pleaded that the allegedly

[1] Gorman contends that *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 105 S. Ct. 1904 (1985), stands for the proposition that federal labor law only preempts state tort law when the claim involves interpretation of a collective bargaining agreement. However, *Lueck* involved a breach-of-contract dispute, where the Supreme Court held that because the duties and rights at issue were purely matters of contract, preemption did apply. *Id.*, 471 U.S. at 218-19, 105 S. Ct. at 1915. *Lueck* did not discuss, let alone distinguish, *Linn*. *See also Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 108 S. Ct. 1877 (1988).

defamatory statements were made with malice and that she suffered actual damages as a result, and therefore denied appellants' motion to dismiss.

In determining that Gorman pleaded malice, the district court relied on Gorman's averments that: SEIU and Gulley "made, published and distributed these false and defamatory statements with knowledge that the statements were false, or with a reckless disregard for the truth"; "Mayo Clinic investigated the SEIU complaint and advised [d]efendants that it had thoroughly explored the allegations involving Carol Gorman and found no evidence to substantiate the allegations . . . and without providing any evidence to support the complaint, [d]efendants continued to repeat the false and defamatory allegations"; and that as a direct result of the publications, Gorman's "reputation has been harmed, she has been humiliated and embarrassed, she has suffered emotionally, and she has otherwise suffered damages" in excess of $50,000.

SEIU and Gulley argue that Gorman failed to establish that their statements regarding Gorman's potential conflict of interest were either knowingly false or made with reckless disregard for their truth. However, Minnesota is a notice-pleading state. *Hansen v. Robert Half Int'l, Inc.*, 813 N.W.2d 906, 917-18 (Minn. 2012) ("Minnesota is a notice-pleading state that does not require absolute specificity in pleading, but rather requires only information sufficient to fairly notify the opposing party of the claim against it."). On this basis, Gorman sufficiently alleged that SEIU and Gulley made defamatory statements with actual malice so as to put them on notice of the nature of the claim against them. Whether or not Gorman can substantiate her allegations of malice in order to survive a motion for summary judgment is not presently before us.

In addition to sufficiently pleading malice under a notice-pleading standard, Gorman also sufficiently pleaded that she suffered actual harm under that standard. In her complaint, Gorman alleged that she suffered reputational harm and embarrassment as a result of appellants' allegedly defamatory statements. *See Linn*, 383 U.S. at 65, 86 S. Ct. at 664 (holding that in order to recover damages, a plaintiff must establish "proof of such harm, which may include general injury to reputation, consequent mental suffering" and other damages generally recoverable under state tort law).

Privilege

SEIU and Gulley next argue that the district court erred by denying their motion to dismiss because the allegedly defamatory statements were privileged. Appellants rely on an unpublished Minnesota federal district court case, which in turn principally relies on *Hasten v. Phillips Petroleum Co.* for the proposition that "communications made within the context of proceedings provided for by [a] collective bargaining agreement and its provisions for a grievance machinery" are absolutely privileged. 640 F.2d 274, 278 (10th Cir. 1981).

Even though the Tenth Circuit attempted to distinguish *Linn* in *Hasten*, it went on to state that "[d]espite our holding that the unqualified privilege recognized in *Mendicki*[2] applies here, that privilege would not entitle the defendants to publish statements such as were made in the discharge letter to persons beyond those who would necessarily receive the communication pursuant to the bargaining process." *Id*. at 279. While appellants cite

[2] *General Motors Corp. v. Mendicki*, 367 F.2d 66 (10th Cir. 1966).

a series of cases regarding a union's right to communicate with the general public,[3] none of these cases provide for a privilege to publish defamatory material with malice. Therefore, because SEIU and Gulley published their statements to the public at large, the absolute privilege discussed in *Hasten* does not apply.

Affirmed.

[3] *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. and Constr. Trades Council*, 485 U.S. 568, 108 S. Ct. 1392 (1988) (involving a union's right to distribute handbills to consumers); *Thomas v. Collins*, 323 U.S. 516, 65 S. Ct. 315 (1945) (involving a prior restraint on a union organizer's attempt to solicit members); *Am. Fed'n of State, Cty., and Mun. Emps. v. Woodward*, 406 F.2d 137 (8th Cir. 1969) (involving a § 1983 action by public employees discharged for joining a union).