STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0987

William Furlow,
Appellant,

vs.

Madonna Summit of Byron,
Respondent,

Jane Doe,
Defendant.

Filed January 27, 2020
Affirmed
Klaphake, Judge[*]

Olmsted County District Court
File No. 55-CV-18-8602

Peter C. Sandberg, Sandberg Law Firm, Rochester, Minnesota (for appellant)

Edward Q. Cassidy, Ashley R. Thronson, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Ross, Judge; and Klaphake, 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

KLAPHAKE, Judge

Appellant William Furlow, patient's duly-assigned representative, challenges the district court's rule 12.02(e) dismissal of his claims under the Minnesota Health Records Act, Minn. Stat. §§ 144.291-.298 (2018), against respondent Madonna Summit of Byron, a health-care facility. Appellant argues that the district court erred in concluding that (1) respondent's employee's social media post about patient was not the release of a "health record" under Minn. Stat. § 144.298, subd. 2(1); and (2) there is no cause of action under Minn. Stat. § 144.298, subd. 2 on a theory of vicarious liability, for unauthorized disclosure of a health record. We affirm.

D E C I S I O N

A complaint must "contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought." Minn. R. Civ. P. 8.01. A district court may dismiss a complaint when the plaintiff fails to state a claim upon which relief can be granted. Minn. R. Civ. P. 12.02(e). On appeal, we review de novo whether the complaint sets forth a legally sufficient claim for relief. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014). This court takes the facts alleged in the complaint as true and draws inferences in favor of the nonmoving party. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). This court reviews legal questions of statutory interpretation de novo. *Larson v. Nw. Mut. Life Ins. Co.*, 855 N.W.2d 293, 301 (Minn. 2014).

On June 17, 2017, V.F. was a resident at Madonna Summit of Byron (Madonna). Madonna is a senior living facility located in Byron, Minnesota and licensed under Minn. Stat. §§ 144A.001-.756 (2018). Jane Doe, a nurse's aide employed by Madonna, took a photo of V.F. and posted it to Jane Doe's personal social-media page.[1] The photograph was taken in a mirror. V.F. is sitting in a chair in the background and Jane Doe is in the foreground, her face covered by the phone. Jane Doe is wearing scrubs, but there is nothing in the photograph to identify anyone by name nor is there anything indicating that the photograph was taken at Madonna. Jane Doe wrote the following caption on the photo: "This little sh-t just pulled the fire alarm and now I have to call 911!!! Woohoo." William Furlow is V.F.'s duly-assigned representative and brought this claim under the Minnesota Health Records Act on V.F.'s behalf.

When applying statutory interpretation "[e]very law shall be construed, if possible, to give effect to all its provisions." Minn. Stat. § 645.16 (2018); s*ee also* Minn. Stat. § 645.17(2) (2018) (establishing presumption that legislature intends entire statute to be "effective and certain").

> We have stated that the goal of all statutory interpretation is to ascertain and effectuate the intention of the legislature. The first step in statutory interpretation is to determine whether the statute's language, on its face, is ambiguous. In determining whether a statute is ambiguous, we will construe the statute's words and phrases according to their plain and ordinary meaning. A statute is only ambiguous if its language is subject to more than one reasonable interpretation. Multiple parts of a statute may be read together so as to ascertain whether the statute is ambiguous. When we conclude

[1] Jane Doe, the employee that posted the picture, is also listed as a party. She did not participate in the district court case, and she is not participating on appeal.

> that a statute is unambiguous, our role is to enforce the language of the statute and not explore the spirit or purpose of the law. Alternatively, if we conclude that the language in a statute is ambiguous, then we may consider the factors set forth by the Legislature for interpreting a statute.

Christianson v. Henke, 831 N.W.2d 532, 536-37 (Minn. 2013) (quotations and citations omitted).

The Minnesota Health Records Act provides that:

> A person who does any of the following is liable to the patient for compensatory damages caused by an unauthorized release or an intentional, unauthorized access, plus costs and reasonable attorney fees . . . negligently or intentionally requests or releases a health record in violation of sections 144.291 to 144.297.

Minn. Stat. § 144.298, subd. 2(1).

The Minnesota Health Records Act defines a "health record" as

> any information, whether oral or recorded in any form or medium, that relates to the past, present, or future physical or mental health or condition of a patient; the provision of health care to a patient; or the past, present, or future payment for the provision of health care to a patient.

Minn. Stat. § 144.291, subd. 2(c).

Furlow argues that the district court erred when it held that the photo and caption did not constitute a "health record" and dismissed the claim. He argues that the social media post is a health record because it relates to V.F.'s "present mental health or condition." Furlow argues that a viewer could infer V.F.'s mental-health status from the content of the photo combined with the caption. He argues that the phrase "little sh-t" is a "condescending, derogatory statement painting for the public . . . a picture of this patient's present mental health or condition as exultant to the playground mentality of a toddler."

Furlow argues that it is not necessary to identify the patient by name for the photo to be considered a "health record." And that because those who view Jane Doe's social-media page may know where she works, they would be aware that V.F. is a patient receiving medical care.

Although Minn. Stat. § 144.291, subd. 2(c) does not provide specific examples of what a "health record" is, other sections of the Minnesota Health Records Act do. These include "copies of the patient's health record, including but not limited to laboratory reports, x-rays, prescriptions, and other technical information used in assessing the patient's health conditions," Minn. Stat. § 144.292, subd 5(1); and "the pertinent portion of the record relating to a specific condition, or a summary of the record." Minn. Stat. § 144.293, subd. 3. However, a "health record" is not limited to one of these forms and can be "any information, whether oral or recorded in any form or medium." Minn. Stat. § 144.291, subd. 2(c).

There is scant caselaw analyzing what constitutes a "health record" under the Minnesota Health Records Act. This court has determined in an unpublished opinion that a Bureau of Criminal Apprehension address verification form that contained a Minnesota Sex Offender Program committed patient's full name, current address, date of birth, height, weight, eye color, hair color, Minnesota driver's license number, Social Security number, place of employment, employer's address, Federal Bureau of Investigation number, Minnesota prison offender identification number, and Bureau of Criminal Apprehension number is not a health record under the statute. *Rhoades v. Lourey*, No. A18-1120, 2019 WL 1006804, at *1-2 (Minn. App. Mar. 4, 2019), *review denied* (Minn. May 28, 2019).

The photograph here contains even less identifiable information than the document at issue in *Rhoades*. Here, V.F. is seen sitting in a chair. While her hair and eye color are visible, and one could infer her approximate age, there is nothing in the photograph to identify any private medical information, condition, or past, present or future treatment. Although Jane Doe is wearing scrubs, there is nothing to identify that she is working at a nursing home or where she is working. The caption refers to V.F. as a "little sh-t" and that she had pulled the fire alarm. Although Furlow argues that this goes directly to V.F.'s mental capacity, it does not expressly state anything about her past, present, or future physical or mental health condition. We concluded in *Rhodes* that the definition of "health record" does not cover a situation where a "person's status as a patient could be inferred." *Id*. at *2 (declining to read into the statute that a health record exists where someone could deduce that someone is a patient of a facility.) While a viewer of the post may infer that V.F. was receiving care in a nursing home, there is nothing explicitly in the photograph or caption that goes to the nature of the care or condition.

The photograph and accompanying caption are certainly not posted in the best taste, but they do not fall under the definition of a "health record" in the Minnesota Health Records Act. We therefore affirm the district court's decision.

Additionally, Furlow argues that Madonna is personally and vicariously liable for the social media post, and Madonna argues that they are not a "person" under the statute and there is no vicarious liability under the statute. Because we have determined that the

photograph and accompanying caption posted here does not constitute a "health record," we need not address these issues.

Affirmed.