STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0241

Andrew Olson,
Appellant,

vs.

County of Dakota, et al.,
Respondents.

Filed August 23, 2021
Reversed and remanded
Frisch, Judge

Dakota County District Court
File No. 19HA-CV-20-3439

Andrew D. Olson, West St. Paul, Minnesota (attorney pro se)

Kathryn M. Keena, Dakota County Attorney, William M. Topka, Assistant County Attorney, Hastings, Minnesota (for respondents)

Considered and decided by Johnson, Presiding Judge; Bryan, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant challenges the Rule 12.02(e) dismissal of his complaint that the government improperly refused to produce rejected-absentee-ballot data pursuant to the Minnesota Government Data Practices Act, Minn. Stat. §§ 13.01-.90 (2020) (MGDPA). We reverse and remand.

FACTS

The following facts are alleged in appellant Andrew Olson's complaint. On February 26, 2020, Olson hand-delivered an absentee ballot for the presidential nomination primary to an employee at Dakota County's Northern Service Center in the City of West St. Paul (the city). On February 27, Olson's absentee ballot was mailed from the Northern Service Center to the West Saint Paul City Hall, but the city did not receive the absentee ballot until one day after the primary. After learning that his absentee ballot was rejected, Olson requested the number of primary absentee ballots rejected as untimely from certain city and county officials, including respondent Dakota County manager Matthew Smith.[1] The city informed Olson that it had rejected 44 absentee ballots.

On June 24, the city informed Olson that it did not have physical possession of the rejected absentee ballot return envelopes or a list of individuals whose ballots were rejected. Thereafter, Olson sent a data request to respondents, requesting access to (1) "[t]he front and back of each absentee ballot return envelope pertaining to the presidential nomination primary that was rejected by the West Saint Paul city clerk's office due to being received" after the statutory deadline, (2) "[t]o the extent a list exists separate from the return envelopes themselves, the names of the individuals whose absentee ballot return envelopes" were rejected, and (3) "the date that each individual's return envelope was received by the City of West Saint Paul."

[1] We refer to Dakota County and Matthew Smith collectively as "respondents."

Respondents informed Olson that "[e]lection data is governed by Minn. Stat. [§] 201.091" and that they "consider[ed] this data to not be available for public inspection." But they also stated that officials were "asking the Minnesota Secretary of State's office for guidance" and would let Olson know if respondents would make the data available to him. Olson responded that there was "no plausible argument that the names of those who cast rejected absentee ballots constitute[d] not public data," that Minn. Stat. § 203B.12, subd. 7 (2020), foreclosed any such argument, and that Minn. Stat. § 201.091 (2020) made only "the political party preference of presidential nomination primary voters" private. Olson also clarified that he was not requesting data regarding political party affiliation and that if any such reference appeared on the face of the return envelopes, respondents could redact that information. Respondents then reiterated the denial of Olson's data requests because "the specific data elements [Olson] requested are not among the data listed in [Minn. Stat. § 201.091, subd. 4] that are available for public inspection" and Minn. Stat. § 201.091, subd. 4a, protected "the names of individuals that chose to vote in a presidential primary election, including the names of individuals with ballots that were not accepted."

Olson served respondents with a complaint requesting, in pertinent part, an order compelling respondents to produce the requested data. Respondents filed a motion to dismiss Olson's complaint for failure to state a claim upon which relief could be granted. The district court granted the motion and dismissed the complaint. This appeal follows.

DECISION

A party may move to dismiss a complaint based upon a claimant's "failure to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02(e). "We review a district

court's grant of a motion to dismiss for failure to state a claim . . . de novo to determine whether the pleadings set forth a legally sufficient claim for relief." *Abel v. Abbott Nw. Hosp.*, 947 N.W.2d 58, 68 (Minn. 2020). A claim is legally sufficient "if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014); *see also Halva v. Minn. State Colls. & Univs.*, 953 N.W.2d 496, 500 (Minn. 2021) (addressing notice-pleading standard for MGDPA claims). "The reviewing court must consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party." *Abel*, 947 N.W.2d at 68 (quotation omitted).

Minn. Stat. § 13.03, subd. 1, specifies that, with respect to data on individuals, "[a]ll government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute . . . as private or confidential." Minn. Stat. § 13.03, subd. 3(a), permits individuals to inspect and copy public government data. An action to compel compliance with the MGDPA may be commenced pursuant to Minn. Stat. § 13.08, subd. 4. Minn. Stat. § 13.607, subd. 6, provides that "[a]ccess to registered voter lists is governed by section 201.091." Minn. Stat. § 13.607, subd. 7, meanwhile provides, "[d]isclosure of names of voters submitting absentee ballots is governed by section 203B.12, subdivision 7."

The parties dispute which provision governs Olson's data requests and whether the data are public or private. Respondents argue that dismissal was proper because, under Minn. Stat. § 201.091, the requested data are classified as private and Olson is therefore

not entitled to receive the requested data pursuant to the MGDPA. Minn. Stat. § 201.091, subd. 4a, governs the "[p]residential primary political party list" and provides:

> The secretary of state must maintain a list of the voters who voted in a presidential nomination primary and the political party each voter selected. Information maintained on the list is private data on individuals as defined under section 13.02, subdivision 12, except that the secretary of state must provide the list to the chair of each major political party.

The district court agreed, determining that Minn. Stat. § 201.091, subd. 4a, conflicts with and controls over Minn. Stat. § 203B.12, subd. 7, which provides that the "names of voters who have submitted an absentee ballot to the county auditor or municipal clerk that has not been accepted may not be made available for public inspection until the close of voting on election day."

We need not address whether the district court erred in its analysis because we conclude that the record does not support a preliminary determination that Minn. Stat. § 201.091, subd. 4a, applies to the requested data.

The essence of the complaint calls into question whether any of the requested data are part of a Minn. Stat. § 201.091, subd. 4a, list of "voters who voted in a presidential nomination primary" as maintained by the secretary of state. The ballot return envelopes subject to the data request were rejected, and none of the votes were cast. Indeed, there is no allegation in the complaint or other information in the record at this preliminary stage as to how the government maintains or classifies the requested data.

The nature of the data requests is particularly important in this context. The complaint does not contain any allegation that the data requested—44 *rejected* absentee

ballot return envelopes, names of individuals whose return envelopes were rejected, and the date those rejected return envelopes were received—overlaps with the list maintained by the secretary of state pursuant to section 201.091, subdivision 4a. And at this early stage, the parties have not had an opportunity to conduct discovery to determine any overlap. We therefore cannot determine whether the relief requested in Olson's complaint is precluded as a matter of law by Minn. Stat. § 201.091, subd. 4a, because it cannot be determined whether Minn. Stat. § 201.091 applies to the data requests in the first instance.

Furthermore, the district court did not set forth any basis for the dismissal of Olson's complaint as it relates to his requests to access the exterior of the absentee ballot return envelopes and the dates those return envelopes were received, and, on de novo review, we discern none.[2] Olson's complaint states a claim that respondents failed to make available envelope and date-received data in violation of the MGDPA and Minn. Stat. § 203B.12, subd. 7, and as stated above, we cannot conclude at this early stage that Minn. Stat. § 201.091, subd. 4a, nevertheless bars these claims. The district court erred when it failed

[2] Respondents argue that Olson is precluded from challenging the district court's failure to address whether the exterior of the return envelopes constitute public data because the district court did not decide the issue. Respondents also suggest that Olson did not properly preserve the issue for appeal through a motion "for reconsideration, amended findings, or something similar." Our rules do not require a litigant to engage in additional motion practice before the district court following a Rule 12 dismissal of a complaint. A motion for amended findings pursuant to Minn. R. Civ. P. 52.02 is unavailable where a case is not tried and where the district court made no findings. And Minn. R. Gen. Prac. 115.11 *prohibits* motions to reconsider in the absence of express permission by the district court. That the district court dismissed Olson's entire complaint without thoroughly addressing each of his claims does not preclude Olson from timely appealing the judgment of dismissal and challenging the order of the district court.

to address these requests entirely. *See Abel*, 947 N.W.2d at 68 (stating that pleadings "set forth a legally sufficient claim for relief" to survive a Rule 12 motion so long as it is possible based on the allegations set forth in the complaint, accepted as true, that evidence "might be produced, consistent with the pleader's theory, to grant the relief demanded").[3]

The district court therefore erred by dismissing the complaint at the Rule 12 stage, before discovery could be conducted to determine the proper statutory framework applicable to Olson's data requests and by failing to address the totality of Olson's data requests. We reverse the dismissal by the district court and remand for discovery and further proceedings consistent with this opinion.

Reversed and remanded.

[3] Respondents also argue that we should not decide the issue of whether the district court erred by failing to address whether the dates requested are public data because Olson never argued the issue to the district court, the dates constitute not public data, and Olson failed to allege the county possessed the data requested. But Olson responded to the issues raised by respondents in the motion to dismiss, and *respondents* did not argue to the district court that this data was not public or otherwise unavailable, so we deem the issues forfeited *by respondents* on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).