STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0839

Louis Reis,
Appellant,

vs.

City of Nisswa,
Respondent.

Filed January 31, 2022
Affirmed
Gaïtas, Judge

Crow Wing County District Court
File No. 18-CV-20-4258

Louis Reis, Nisswa, Minnesota (self-represented appellant)

Paul A. Merwin, League of Minnesota Cities, St. Paul, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Smith, Tracy M., Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Louis Reis appeals from the district court's rule 12.02(e) dismissal of his complaint against respondent City of Nisswa, which asserts multiple claims, including due-process and equal-protection violations, defamation, coercion and extortion, and open-record-law violations, all stemming from the city's actions in relation to Reis's property.

Reis argues that the district court erred by determining that his complaint failed to state a valid claim upon which relief may granted. We affirm.

FACTS[1]

Reis owns a cabin home in Nisswa. According to Reis's third amended complaint filed on April 4, 2021 (the complaint),[2] he planned to make some improvements to his property, such as "changes to the principal structure, adding an attached garage, landscape improvements, adding a few new outbuildings, and more," but beginning in approximately 2017 or 2018, the city prevented Reis from making those changes even though other neighbors made similar improvements to their properties. Additionally, according to the complaint, city officials and staff engaged in "ex parte communications," declared that his property was "hazardous" and "needed to be cleaned up," extorted money from him by allowing him to spend money on home-improvement plans that were later blocked, and refused to provide him with "all records . . . that are on file" for his property that he requested under the Freedom of Information Act (FOIA). As a result of the city's actions, Reis alleges that he lost significant amounts of money, that the value of his home was reduced, that he has no garage for storing his belongings, and that he has been deprived of the use and enjoyment of his property. Based on these facts, the complaint asserts five

[1] In reviewing a dismissal under rule 12.02(e), we accept the facts alleged in the complaint as true and construe them in the light most favorable to the nonmoving party. *See DeRosa v. McKenzie*, 936 N.W.2d 342, 346 (Minn. 2019).

[2] Reis—who was self-represented in the district court—filed a complaint and three amended complaints. In considering the motion to dismiss, the district court relied on the third amended complaint, which is the most comprehensive. We likewise focus on the third amended complaint here.

counts against the city: (I) violation of Reis's federal constitutional right to due process; (II) violation of Reis's federal constitutional right to equal protection; (III) defamation; (IV) coercion and extortion under Minnesota's criminal statutes; and (V) violation of the state's open records laws, "which are protected under [FOIA]." Reis's complaint seeks monetary damages and a court order requiring the city "to halt and reverse 'any and all' adverse actions . . . taken against [Reis]" and to "preserve all records including . . . communications, public documents, meeting minutes (for internal and public meetings), and emails pertaining to planning & zoning" for "all properties within [the city's] jurisdiction."[3]

In lieu of filing an answer, the city moved to dismiss the complaint for failure to state a claim upon which relief may be granted under Minnesota Rule of Civil Procedure 12.02(e). The city argued that Reis's "broad and conclusory allegations . . . provide[d] no context or facts" from which the city could determine a legal basis for the complaint.

After a hearing, the district court granted the city's motion, concluding that the complaint failed to articulate a claim supporting his requests for relief, and instead, consisted solely of speculation and legal conclusions.

Reis appeals.

[3] In addition to his complaints, Reis filed numerous documents in the district court, including a subpoena duces tecum, a discovery plan that he unilaterally created, a motion to compel, and discovery requests.

DECISION

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. The district court may, upon motion, dismiss a complaint that "fail[s] to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02(e). Dismissal under rule 12.02(e) is only proper "if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Finn v. All. Bank*, 860 N.W.2d 638, 653 (Minn. 2015) (quotation omitted). It is "immaterial whether or not the plaintiff can prove the facts alleged." *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739 (Minn. 2000).

Appellate courts review de novo whether a complaint sets forth a legally sufficient claim for relief under rule 12.02(e). *DeRosa*, 936 N.W.2d at 346. In doing so, we consider only the facts alleged in the complaint, accepting those facts as true and construing all reasonable inferences in favor of the nonmoving party. *Id.*; *see also Sipe v. STS Mfg, Inc.*, 834 N.W.2d 683, 686 (Minn. 2013). We consider the complaint as a whole, "including the facts alleged throughout the complaint and the attachments to the complaint." *Hardin Cnty. Sav. Bank v. Hous. & Redev. Auth.*, 821 N.W.2d 184, 192 (Minn. 2012). The reviewing court is not bound by any legal conclusions stated in the complaint. *Finn*, 860 N.W.2d at 653-54.

Reis argues that the district court erred in dismissing the complaint because he pleaded sufficient facts to state his claims against the city. He argues that the complaint

"covers facts defining 'who,' 'what,' 'when,'" and therefore establishes that he is entitled to relief.

We first consider Reis's due-process claim. Under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, the state cannot "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Due process "imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). The complaint alleges that the city deprived Reis of due process by somehow preventing him from making certain changes to his property. But beyond listing the property improvements that he hoped to make, the complaint does not identify the constitutionally protected property interest that the city impaired. It does not identify what governmental actions were taken. *See* Minn. Stat. § 462.361, subd. 1 (2020) (stating that a person aggrieved by a municipality's "ordinance, rule, regulation, decision, or order" may challenge the action in the district court). And it does not describe the process that the city should have followed. Thus, the complaint did not adequately plead a due-process violation.

Next, we turn to Reis's equal-protection claim. The Equal Protection Clause provides that "[no state shall] deny to any person within its jurisdiction the equal protection of laws." U.S. Const. amend. XIV, § 1. The Equal Protection Clause "direct[s] that all persons similarly circumstanced shall be treated alike," but "only invidious discrimination" violates the Constitution. *In re Estate of Turner*, 391 N.W.2d 767, 769 (Minn. 1986) (quotation omitted). Thus, unless the discrimination involves a suspect classification or

fundamental right, the state need only have a rational basis for the differential treatment. *Id.* As a factual basis for Reis's equal-protection claim, the complaint alleges that the city allowed his neighbors to make property improvements but blocked him from making similar improvements. Although Reis alleges that the city treated him differently from his neighbors, this allegation alone is not enough to establish an equal-protection claim. The complaint does not explain how Reis and his neighbors were similarly situated. It does not illuminate how the city treated his neighbors and how it treated him. And it does not specify what action the city took that was discriminatory. The complaint therefore failed to adequately plead an equal-protection claim.

Count III of the complaint alleges that the city defamed Reis and his property by making "false & defamatory statements over a long period of time" and by stating that the property was "hazardous" and "needed to be cleaned up." To establish defamation, a plaintiff must prove:

> (1) the defamatory statement was communicated to someone other than the plaintiff; (2) the statement is false; (3) the statement tends to harm the plaintiff's reputation and to lower the plaintiff in the estimation of the community; and (4) the recipient of the false statement reasonably understands it to refer to a specific individual.

McKee v. Laurion, 825 N.W.2d 725, 729-30 (Minn. 2013) (quotations and citations omitted). The complaint does not identify the statements that the city allegedly made about Reis. It simply asserts that "false" and "defamatory" statements were made. A plaintiff, in specifying the basis for a claim, must provide more than legal labels and conclusions. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008) (quoting *Bell Atl. Corp.*

v. Twombly, 550 U.S. 544, 555 (2007)); *see also Halva v. Minn. State Colls. & Univs.*, 953 N.W.2d 496, 501 (Minn. 2021) (clarifying that *legal* conclusions (but not factual conclusions) in a complaint may be insufficient to survive a motion to dismiss). Because Reis's complaint does not articulate what statements the city made about him and only offers a legal conclusion that the city defamed him, it is insufficient to establish his claim for defamation. *See Halva*, 953 N.W.2d at 503 (stating that a pleading must provide fair notice of the incident that gave rise to a claim). Moreover, a statement is only actionable as defamation if it is about the plaintiff. *Huyen v. Driscoll*, 479 N.W.2d 76, 79 (Minn. App. 1991), *rev. denied* (Minn. Feb. 10, 1992). Any statements about Reis's property, which are not about Reis, are not actionable as defamation. Thus, the complaint failed to adequately plead a defamation claim.

The complaint's fourth count alleges that the city engaged in the criminal acts of extortion and coercion and cites to Minnesota Statutes section 609.27 (2020), a criminal statute entitled "Coercion." As a factual basis for Count IV, the complaint alleges that the city "published documents to their website stating that [Reis] owes . . . $5,000 for services." This factual assertion does not alone support a cause of action. We also note that the Minnesota Supreme Court recently struck down subdivision 1(4) of the coercion statute on constitutional grounds. *See State v. Jorgenson*, 946 N.W.2d 596, 605 (Minn. 2020) (invalidating Minn. Stat. § 609.27, subd. 1(4) (2018)—which proscribed "a threat to expose a secret or deformity, publish a defamatory statement, or otherwise to expose any person to disgrace or ridicule"—because it penalized some constitutionally protected activities and therefore was facially overbroad). The invalidated subsection of the coercion

statute is the only portion of the statute that corresponds to the complaint's factual claim. Moreover, a criminal statute does not "give rise to a civil cause of action unless the statute expressly or by clear implication so provides." *Larson v. Dunn*, 460 N.W.2d 39, 47 n.4 (Minn. 1990). Section 609.27 does not provide for a civil action.

Finally, Count V of the complaint alleges that the city violated FOIA[4] and the "state's open records laws" by not responding to the discovery requests and subpoenas that Reis prepared in connection with his first two complaints. Reis's discovery requests and subpoenas were not public records requests that could form the basis for a civil cause of action. *See, e.g.*, Minn. Stat. § 13.08, subd. 4 (2020) (providing that a person seeking data under the Minnesota Government Data Practices Act may bring an action in district court to compel compliance). Rather, they were discovery requests made by a party to litigation, which are governed by the Minnesota Rules of Civil Procedure. The rules provide a remedy for a party's failure to comply with discovery. *See* Minn. R. Civ. P. 37.01 (providing process for addressing a party's failure to comply with discovery requests).[5] Because Count V concerns an alleged violation of the civil-procedure rules and not an independent cause of action, it is not a valid claim.

[4] FOIA outlines the information that federal agencies must make available to the public, and it provides the public the right to request access to such information from any federal agency. 5 U.S.C. § 552 (2018).

[5] Here, the record shows that Reis attempted to avail himself of this remedy by filing a motion to compel. The district court's dismissal of the case obviated the need for a ruling on Reis's motion.

We conclude that none of the allegations in the complaint set forth a legally sufficient claim for relief. *See DeRosa*, 936 N.W.2d at 346. Thus, the district court did not err in granting the city's rule 12(e) motion to dismiss.

In addition to challenging the district court's dismissal of the complaint, Reis argues that the district court erred in granting the city's motion to quash his discovery requests, in denying his request to remove the district court judge for bias, and in failing to accommodate him as a self-represented litigant. Generally, on appeal from a district court's order dismissing a complaint for failure to state a claim under rule 12.02(e), "the only question before [the reviewing court] is whether the complaint sets forth a legally sufficient claim for relief." *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997). But because two of Reis's claimed errors may have affected the judgment, we elect to consider these issues.[6] *See* Minn. R. Civ. App. P. 103.04 (providing that, on appeal from a judgment, this court "may review any order involving the merits or affecting the judgment").

Reis argues that the judge's expeditious decision on the city's motion to dismiss and the fact that the judge "ultimately granted everything that the [city] requested," demonstrate the judge's bias. "A judge is disqualified 'due to an appearance of partiality' if a 'reasonable examiner, with full knowledge of the facts and circumstances, would question the judge's impartiality.'" *State v. Finch*, 865 N.W.2d 696, 703 (Minn. 2015) (quoting *In re Jacobs*, 802 N.W.2d 748, 753 (Minn. 2011)). But "a judge who feels able to preside

[6] We do not consider Reis's argument that the district court erred in dismissing the city's motion to quash his discovery requests after dismissing the complaint because this ruling did not involve the merits or affect the judgment. *See* Minn. R. Civ. App. P. 103.04.

fairly over the proceedings should not be required to step down upon allegations of a party which themselves may be unfair or which simply indicate dissatisfaction with the possible outcome of the litigation." *McClelland v. McClelland*, 359 N.W.2d 7, 11 (Minn. 1984). Reis's allegations of bias, which are solely related to his dissatisfaction with the judge's rulings, do not support any claim that the judge was disqualified to preside in his case.

Additionally, Reis argues that the district court should have accommodated him because he was a self-represented litigant. While courts may make "some accommodations" for self-represented litigants, we have "repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). Even though self-represented litigants are often given some "leeway in attempting to comply with court rules, [they are] still not relieved of the burden of, at least, adequately communicating to the court what it is [they] want[] accomplished and by whom." *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987). Here, the record shows that Reis was accorded significant leeway in the district court. His first request to remove a judge as of right was granted even though it was likely untimely. And in considering the city's rule 12(e) motion to dismiss, the district court reviewed Reis's second and third amended complaints, which were also untimely and filed without leave of opposing counsel or the court. We therefore reject Reis's argument that the district court failed to appropriately accommodate him as a self-represented litigant.

Affirmed.