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Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 21-0651

DA 21-0651

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 151N

PETER GRIGG,

Plaintiff and Appellant,

v.

ANDY COIL,

Defendant and Appellee.

APPEAL FROM: District Court of the First Judicial District,
In and For the County of Lewis and Clark, Cause No. ADV-2021-852
Honorable Mike Menahan, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Peter Grigg, Self-represented, Kalispell, Montana

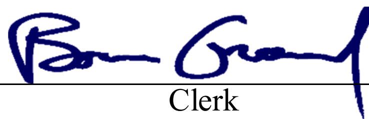
For Appellee:

David M. McLean, Ryan C. Willmore, McLean & Associates, Missoula, Montana

Submitted on Briefs: June 29, 2022

Decided: July 26, 2022

Filed:



Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Plaintiff and Appellant Peter Grigg (Grigg) appeals from the December 9, 2021 Order – Motion to Dismiss issued by the First Judicial District Court, Lewis and Clark County. The District Court's order granted the October 22, 2021 Motion to Dismiss filed by Defendant and Appellee Andy Coil (Coil).[1] We affirm.

¶3 On August 16, 2021, Grigg filed a Petition for Compensation – Loss of Employment, as well as an Affidavit, alleging Coil caused Grigg to be fired from his job as a paramedic on June 2, 2020, after an incident occurred between the two outside of the St. Peter's Hospital emergency room in May 2020. Grigg's Petition alleged: (1) that Coil ordered him to "violate the federal HIPPA [sic] law" and he was terminated from employment after he refused; (2) that Coil "placed tort" upon Grigg's "employer to terminate" him and there was no progressive discipline; (3) that Coil was "negligent in his knowledge of the HIPPA [sic] law," causing Grigg stress and mental anguish; (4) that Coil

[1] In Grigg's District Court complaint, he misspelled Coil's name as "Andy Coile" in the caption. This misspelling remained in the caption throughout the proceedings below and on appeal here. We have amended the caption of this case to "more accurately reflect the actual alignment or status" of the parties. M. R. App. P. 2(4).

admitted negligence and liability, but "refused to disclose such to the Montana Board of Medical Examiners"; and (5) that Grigg had been unable to work as a paramedic since Coil's actions. Grigg's Affidavit asserted Coil verbally abused, harassed, and threatened him in front of emergency room patients, family, and staff, as well as in Grigg's ambulance, and continued to harass and threaten him "throughout the month of May 2020." Grigg's Affidavit claimed he filed incident reports with his employer, St. Peter's Healthcare, and the Montana Board of Medical Examiners, to which Coil "retaliated by placing tort on my employer," causing Grigg to be terminated by his employer on June 2, 2020. Grigg's Affidavit concludes by stating Coil "ordered" Grigg to "violate the federal HIPPA [sic] law," and, when he refused, "retaliation was termination with extreme prejudice."

¶4 On October 22, 2021, Coil responded to Grigg's Petition and Affidavit by filing Andy Coil's Motion to Dismiss, along with a brief in support. Coil moved to dismiss Grigg's complaint for failure to state a claim upon which relief can be granted pursuant to M. R. Civ. P. 12(b)(6). Coil's brief in support asserted "Grigg's claim is for wrongful discharge," and was therefore barred under the applicable one-year statute of limitations provided by Montana's Wrongful Discharge from Employment Act (WDEA). On November 4, 2021, Grigg filed an Objection to Motion to Dismiss, asserting he was seeking compensation for "stress, trauma, & mental anguish" under § 27-1-310, MCA, as well as compensation for "threats, harassment, retaliation, [and] verbal abuse under Civil Rights 1964[.]" Grigg's Objection also stated, "wrongful termination was not included in this case[.]" On November 18, 2021, Coil filed Andy Coil's Reply Brief in Support of Motion to Dismiss. In his reply brief, Coil again asserted Grigg's claim was for wrongful discharge

and barred by the WDEA's statute of limitations. Coil further noted § 27-1-310, MCA, was not applicable. After Coil's motion to dismiss was fully briefed, Grigg filed an Objection to Dismiss on November 26, 2021. Coil filed a motion to strike Grigg's objection pursuant to M. R. Civ. P. 12(f) on December 2, 2021. Grigg filed a response to Coil's motion to strike on December 8, 2021, where he once again asserted he "has never stated a claim of [w]rongful discharge against Andy Coil."

¶5 On December 9, 2021, the District Court issued its Order – Motion to Dismiss. The District Court determined Grigg's complaint was indeed a claim for wrongful discharge from employment, and was therefore barred by the WDEA's one-year statute of limitations. Grigg appeals. We restate the issue on appeal as follows: whether the District Court correctly granted Coil's M. R. Civ. P. 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted.

¶6 We review a district court's ruling on a motion to dismiss for failure to state a claim pursuant to M. R. Civ. P. 12(b)(6) de novo. *Harris v. St. Vincent Healthcare*, 2013 MT 207, ¶ 12, 371 Mont. 133, 305 P.3d 852. The determination of whether a complaint states a claim is a conclusion of law which we review for correctness. *Harris*, ¶ 12. We construe a complaint in the light most favorable to the plaintiffs when reviewing an order dismissing a complaint under M. R. Civ. P. 12(b)(6). *McKinnon v. Western Sugar Coop. Corp.*, 2010 MT 24, ¶ 12, 355 Mont. 120, 225 P.3d 1221 (citing *Jones v. Mont. Univ. Sys.*, 2007 MT 82, ¶ 15, 337 Mont. 1, 155 P.3d 1247). "A claim is subject to M. R. Civ. P. 12(b)(6) dismissal only if it either fails to state a cognizable legal theory for relief or states an otherwise valid legal claim but fails to state sufficient facts that, if true, would entitle the

claimant to relief under that claim." *Anderson v. ReconTrust Co., N.A.*, 2017 MT 313, ¶ 8, 390 Mont. 12, 407 P.3d 692 (collecting cases).

¶7 On appeal, Grigg again asserts he "has not claimed an unlawful dismissal." Coil maintains the District Court correctly determined Grigg's claim was one for wrongful discharge from employment, and therefore correctly dismissed the complaint pursuant to the WDEA's applicable statute of limitations.

¶8 To begin, we must determine if Grigg's complaint was in fact a claim for wrongful discharge from employment under the WDEA. We find it was not. In all of his pleadings before the District Court in this case, Grigg never once identified his employer. The WDEA "provides the exclusive remedy for wrongful termination." *Buck v. Billings Mont. Chevrolet*, 248 Mont. 276, 287, 811 P.2d 537, 543 (1991) (citing *Meech v. Hillhaven West, Inc.*, 238 Mont. 21, 776 P.2d 488 (1989)). "All remedies provided by the [WDEA] run against the employer." *Buck*, 248 Mont. at 287, 811 P.2d at 543. On appeal, for the first time in this case, Grigg identifies his employer as "Eagle EMS." The District Court, without the benefit of Grigg's admission that he was employed by Eagle EMS, determined "Grigg appears to have been employed by St. Peter's Health in the emergency department or ambulance," and found it was "unclear" from Grigg's pleadings whether Coil "was also employed by St. Peter's Health." While this confusion regarding both Grigg's and Coil's employers is understandable due to the nature of Grigg's pleadings before the District Court, those pleadings do ultimately make it clear Coil is not his employer, as Grigg repeatedly references Coil "plac[ing] tort" upon his employer. As Coil is not Grigg's employer, supervisor, or even fellow employee—Coil is an emergency room physician

employed by St. Peter's Health and Grigg was a paramedic employed by a private ambulance company—any claims against Coil are not properly brought under the WDEA because Coil is a stranger to any employment contract between Grigg and his employer.

¶9 While the District Court erroneously determined Grigg's complaint asserted a claim for wrongful discharge from employment under the WDEA and dismissed the case pursuant to the WDEA's statute of limitations, the court did correctly determine Grigg's complaint failed to state a claim upon which relief can be granted and dismissed the case pursuant to M. R. Civ. P. 12(b)(6). We will affirm a district court's result if the result is correct even if the district court reached that result for the wrong reason. *Dennis v. Brown*, 2005 MT 85, ¶ 6, 326 Mont. 422, 110 P.3d 17 (citing *Schaefer v. Egeland*, 2004 MT 199, ¶ 11, 322 Mont. 274, 95 P.3d 724). Because Coil is a stranger to Grigg's contract with his employer, Grigg's complaint was actually one for tortious interference. In order to establish a claim of tortious interference with contractual or business relations, "it must be shown that the defendant's acts (1) were intentional and willful, (2) were calculated to cause damage to the plaintiff in his or her business, (3) were done with the unlawful purpose of causing damage or loss, without right or justifiable cause on the part of the actor, and (4) that actual damages and loss resulted." *Grenfell v. Anderson*, 2002 MT 225, ¶ 64, 311 Mont. 385, 56 P.3d 326 (citing *Bolz v. Myers*, 200 Mont. 286, 295, 651 P.2d 606, 611 (1982)). "The element of malice . . . meaning the intentional doing of a wrongful act without justification or excuse, is an essential element of an action for interference with contract. Such malice is not presumed and cannot be inferred from the commission of a

lawful act." *Taylor v. Anaconda Fed. Credit Union*, 170 Mont. 51, 56, 550 P.2d 151, 154 (1976).

¶10 Motions to dismiss are "viewed with disfavor and rarely granted." *Fennessy v. Dorrington*, 2001 MT 204, ¶ 9, 306 Mont. 307, 32 P.3d 1250. "Dismissal of an action is justified only when the allegations of the complaint clearly demonstrate that the plaintiff does not have a claim." *Fennessy*, ¶ 9 (citing *Buttrell v. McBride Land & Livestock*, 170 Mont. 296, 298, 553 P.2d 407, 408 (1976)). Here, the allegations of Grigg's complaint clearly demonstrate Grigg has no claim because they fail to state a claim for tortious interference upon which relief can be granted. M. R. Civ. P. 12(b)(6). Grigg's Petition in this case makes a conclusory allegation that Coil "ordered" Grigg "to violate the federal HIPPA [sic] law," and that Grigg was fired for refusing.[2] Grigg's Petition and Affidavit provide no clarity on how Coil could "order" him to violate HIPAA or how Coil somehow ordering Grigg to violate HIPAA was calculated to cause Grigg damage in his business. In addition, Grigg's complaint expressly alleged Coil was "negligent in his knowledge of the HIPPA [sic] law[.]" An assertion of negligence cannot support a tortious interference claim, which requires malice, *Taylor*, 170 Mont. at 56, 550 P.2d at 154, therefore Grigg has failed to state a claim.

¶11 Quite simply, Grigg's Petition and Affidavit in this case are a mess of conclusory statements, allegations, and legal conclusions. While, when reviewing a Rule 12(b)(6)

[2] We briefly note no "HIPPA" law exists, and presume Grigg is referring to the Health Insurance Portability and Accountability Act (HIPAA).

motion to dismiss, we take "all well-pled allegations and facts" as true, *Scheafer v. Safeco Ins. Co.*, 2014 MT 73, ¶ 14, 374 Mont. 278, 320 P.3d 967, we are "not required to take as true any allegations in the complaint that are legal conclusions." *Barthel v. Barretts Minerals Inc.*, 2021 MT 232, ¶ 9, 405 Mont. 345, 496 P.3d 541 (citing *Cowan v. Cowan*, 2004 MT 97, ¶ 14, 321 Mont. 13, 89 P.3d 6). In addition, we also note that at least one of the allegations in Grigg's complaint—that he "has been unable to work his chosen profession, paramedic, since [Coil's] actions"—is not "well-pled," because it is simply false and is contradicted both by a filing made by Grigg in this case, which noted Grigg was last employed as a paramedic in January of 2021, several months after he was fired by Eagle EMS, and previous litigation before this Court regarding his termination from Beaverhead Emergency Medical Services on January 29, 2021. *Grigg v. Beaverhead Emergency Med. Servs.*, No. DA 21-0229, 2022 MT 48N, ¶ 3, 2022 Mont. LEXIS 191. "While pro se litigants may be given a certain amount of latitude, that latitude cannot be so wide as to prejudice the other party, and it is reasonable to expect all litigants, including those acting pro se, to adhere to procedural rules." *Greenup v. Russell*, 2000 MT 154, ¶ 15, 300 Mont. 136, 3 P.3d 124. Grigg is no stranger to litigation, having filed eleven appeals before this Court since 2020, and has previously been cautioned "to refrain from filing duplicative, burdensome lawsuits or risk being declared a vexatious litigant." *In re Marriage of Grigg*, No. DA 22-0252, Order (Mont. May 24, 2022). Here, once again, Grigg has filed a lawsuit entirely devoid of merit and placed the burden of responding, both in the District Court and on appeal, on a party to whom Grigg has no cognizable legal claims.

¶12 While the District Court erroneously determined Grigg's complaint was a claim for wrongful discharge from employment, it correctly granted Coil's Rule 12(b)(6) motion to dismiss because Grigg's complaint failed to state a claim upon which relief could be granted.

¶13 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶14 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR
/S/ JIM RICE