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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2436**

Kallys Albert, Appellant,

vs.

Dungarvin Minnesota, Inc., et al.,
Respondents,
Zurich North America,
Respondent,
Velma J. Korbel, et al.,
Respondents.

**Filed March 3, 2009
Affirmed in part and reversed in part
Ross, Judge**

Hennepin County District Court
File No. 27 CV-07-16619

Kallys Albert, P.O. Box 583352, Minneapolis, MN 55458 (pro se appellant)

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Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Kallys Albert appeals from the district court's dismissal of his civil suit against his former employer, his former supervisor, two of his former employer's clients, his former employer's insurer, the department of human rights, and the department's commissioner. The district court determined that Albert did not state a claim upon which relief can be granted, and it dismissed his complaint entirely. Nearly all of Albert's claims fail as a matter of law, but because we conclude that Albert stated a claim for intentional obstruction of his pursuit of workers' compensation benefits, we affirm in part and reverse in part.

FACTS

This appeal arises from the dismissal of Kallys Albert's extremely wide-ranging lawsuit asserting a host of mostly federal claims for matters arising from his employment with Dungarvin Minnesota. After the Minnesota Department of Human Rights declined to investigate Albert's claims of discrimination against Dungarvin, Albert sued, alleging nine counts of discrimination, retaliation, and other statutory and constitutional violations in the district court. Albert's suit named seven defendants: his former employer, Dungarvin; his former supervisor at Dungarvin, Robin Stepney; two of Dungarvin's residential clients; Dungarvin's workers' compensation insurer, Zurich North America Insurance Company; the Minnesota Department of Human Rights (MDHR); and the MDHR's commissioner, Velma Korbel, in her individual and professional capacities.

Dungarvin and the MDHR moved to dismiss instead of filing answers. The district court dismissed all claims against the MDHR and Commissioner Korbel for lack of subject matter jurisdiction and alternatively on the merits for failure to state a claim upon which relief could be granted. It also dismissed all but three counts against the remaining defendants, warning that those counts would also be dismissed unless Albert amended his complaint within 20 days. Twenty-three days later, Albert filed an amendment to his complaint and the district court dismissed the remaining counts. Albert appeals.

DECISION

I

Albert challenges the district court's decision to dismiss his complaint and enter judgment on the pleadings under rule 12.03. Because the district court concluded that Albert's complaint failed to state a claim upon which relief could be granted, the scope of this court's review is limited to whether Albert "set[] forth a legally sufficient claim for relief." *Elzie v. Comm'r of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980) (quotation omitted). If any allegation supports any of Albert's claims, we must reverse regarding that claim. *Id.* We construe all reasonable inferences in the complaint in favor of Albert's claims. *See Marquette Nat'l Bank v. Norris*, 270 N.W.2d 290, 292 (Minn. 1978) (providing that in a pretrial motion to dismiss, "The factual allegations in the complaint and supporting affidavits are to be taken as true"). Albert, who is not represented by legal counsel in this litigation, has extensive experience in this and other courts. Unrepresented parties must meet the same standards as licensed attorneys and must

follow the same principles of law. *Love v. Anderson*, 240 Minn. 312, 317, 61 N.W.2d 419, 422 (1953); *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001).

Albert's complaint sets forth nine counts against seven defendants. He alleges the following:

- Count 1: All defendants violated 42 U.S.C. § 1985(2) (conspiracy to interfere with civil rights); Minn. Stat. § 363A (Minnesota Human Rights Act); and the Sixth, Ninth, and Fourteenth Amendments to the United States Constitution (guaranteeing, among other things, due process and equal protection).
- Count 2: All defendants violated 42 U.S.C. § 1985(3) (conspiracy to interfere with civil rights).
- Count 3: All defendants violated 42 U.S.C. § 1983 (due process and equal protection violations).
- Count 4: All defendants violated 42 U.S.C. § 1986 (neglect to prevent a conspiracy to interfere with civil rights).
- Count 5: All defendants violated 42 U.S.C. § 1981(a)–(c) (discrimination interfering with a contract).
- Count 6: All defendants violated 28 U.S.C. § 2254(d)(1)–(2) and 28 U.S.C. § 2254(e)(1) (protecting the right of habeas corpus).
- Count 7: All defendants violated 18 U.S.C. § 242 (criminal statute prohibiting deprivation of rights under color of law) and 18 U.S.C. § 1503 (criminal statute prohibiting intimidation of jurors or court officers).
- Count 8: Without specifying by whom, Albert's rights under Minn. Const. art. 1, §§ 1, 2, 4, and 8 and U.S. Const. amends. VI, VII, XIII, and XIV were violated.
- Count 9: Dungarvin and Robin Stepney violated Minn. Stat. § 176.82 (interference with workers' compensation benefits) and 18 U.S.C. § 1503 (criminal statute prohibiting intimidation of jurors or court officers).

Although Albert directed most of his allegations at all of the defendants, his complaint primarily focuses on his dissatisfaction with the MDHR's decision not to pursue his discrimination claim against Dungarvin. The MDHR declined to pursue Albert's discrimination claim under a statute that authorizes the MDHR to "adopt policies to determine which charges are processed" based, among other things, on "administrative

convenience.” Minn. Stat. § 363A.28, subd. 6(h) (2008). Because the MDHR concluded that further use of its resources was unwarranted, it dismissed Albert’s claim. The MDHR informed Albert of its decision by letter,¹ and it informed him of his right to bring charges against his employer in district court.

Albert’s confusing complaint against the MDHR and Commissioner Korbel may be construed (1) to seek judicial review of the MDHR’s administrative decision, (2) to seek judicial evaluation of the validity of the MDHR’s rule allowing refusal to investigate based on administrative inconvenience, or (3) to assert a constitutional right to have the MDHR fully investigate his claim. “[A]bsent an explicit statutory or appellate rule authorizing review,” an administrative agency’s exercise of discretion in a quasi-judicial capacity is not reviewable by the district court. *Tischer v. Housing & Redevel. Auth. of Cambridge*, 675 N.W.2d 361, 363 (Minn. App. 2004). To the extent Albert’s claims constitute attempts to obtain judicial review of the MDHR’s decision not to pursue his case or of the rule authorizing its decision, the district court properly dismissed those claims for lack of subject matter jurisdiction. Minn. Stat. § 14.44 (2008) (requiring actions challenging the validity of an administrative rule be brought directly to the court of appeals in a petition for a declaratory judgment); *Zuehlke v. Indep. Sch. Dist. No. 316*, 538 N.W.2d 721, 725 (Minn. App. 1995). We turn to Albert’s specific claims. Because the constitutional claims constitute the bulk of the complaint, we address them first.

¹ The MDHR’s letter to Albert specifically cites to the statute that authorized its action, although it refers to Minn. Stat. § 363A.28, subd. 6(7), which has been renumbered 6(h).

Counts 3 and 8: Albert's Basic Civil Rights Claims

Albert alleges that his rights under the Minnesota and United States Constitutions were violated, but he fails to specify by whom. Both the federal and state constitutions guarantee due process and equal protection under the law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, §§ 2, 7. The due process rights afforded under each are identical. *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988). Section 1983 of Title 42 of the United States Code gives individuals the right to bring a civil action for due process and equal protection violations under the federal constitution. *Id.* (2006). Although section 1983 provides a cause of action, it creates no substantive rights. *Graham v. Connor*, 490 U.S. 386, 393–94, 109 S. Ct. 1865, 1870 (1989).

To assert a prima facie case under section 1983, a plaintiff must allege that a state actor deprived him of a federal right. *Id.* (governing the behavior of persons acting “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia”); *Parker v. Boyer*, 93 F.3d 445, 447–48 (8th Cir. 1996); *Maras v. City of Brainerd*, 502 N.W.2d 69, 75 (Minn. App. 1993), *review denied* (Minn. Aug. 16, 1993). State action is also a necessary element of a due process claim under the Minnesota Constitution. *State v. Mellett*, 642 N.W.2d 779, 783 (Minn. App. 2002), *review denied* (Minn. July 16, 2002). Albert’s complaint alleges no facts that suggest that any of the private defendants acted on the state’s behalf, at the state’s direction, or in exercise of any state-created right or privilege. The district court properly dismissed these claims against the private defendants.

With respect to his claims against the MDHR and Commissioner Korbel, Albert argues that the department's dismissal unduly deprived him of a right to have his claim fully investigated. He asserts that the decision deprived him of liberty and property interests. We are not persuaded.

Albert suggests that he has been deprived of an "established liberty interest[] in the use of the Agency to resolve his discrimination charges." He offers no reasoning or legal basis to support the assertion that this liberty interest exists, and it is not among the several liberty interests recognized by the Supreme Court. *See Bd. of Regents v. Roth*, 408 U.S. 564, 572, 92 S. Ct. 2701, 2706–07 (1972) (discussing various liberty interests). Albert lacks his claimed liberty interest.

Albert also lacks a property interest in the agency's processes. Constitutionally protected property interests are not created by the Constitution, but by other sources, such as state laws and administrative rules. *Id.* at 577, 92 S. Ct. at 2709. A statute or regulation will precipitate a protected property interest when it contains particularized standards or criteria to guide decisionmakers and when it includes language mandating action and limiting agency discretion. *Jennings v. Lombardi*, 70 F.3d 994, 996 (8th Cir. 1995). Albert mistakenly construes the Minnesota Human Rights Act to require the MDHR to investigate all complaints and conclude for each whether probable cause supports the charge. His interpretation ignores the Act's plain language, which gives the commissioner discretion to adopt rules permitting the MDHR to decline to process claims based on administrative inconvenience. Minn. Stat. § 363A.28, subd. 6(h); *see also* Minn. Stat. § 363A.33, subd. 1(1) (2008) (acknowledging that the commissioner may

dismiss a charge because “further use of department resources is not warranted”). We conclude that the Minnesota Human Rights Act does not confer a protected property interest in having one’s grievance fully determined by the MDHR. Because the MDHR’s decision did not deprive Albert of a protected liberty or property interest, he fails to state a claim for a violation of his due process rights.

Albert appeals to other constitutional provisions irrelevant to his circumstances. Because the proper avenue to challenge the constitutionality of administrative rules is a declaratory judgment action in the court of appeals, *Minn. Chamber of Commerce v. Minn. Pollution Control Agency*, 469 N.W.2d 100, 102 (Minn. App. 1991), *review denied* (Minn. July 24, 1991), and because Albert fails to state a prima facie case of a constitutional violation, the district court properly dismissed his constitutional claims.

Counts 1–2, 4–5: Albert’s Additional Civil Rights Claims

Albert alleges that all of the defendants violated his rights under the Sixth, Ninth, and Fourteenth Amendments to the United States Constitution, allegations he repeated in count eight, which is discussed above. Albert further alleges that all of the defendants violated sections 1981, 1983, 1985, and 1986 of Title 42 of the United States Code, as well as Minnesota Statutes section 363A. These statutes, which generally provide for protection of individual civil rights, do not form the basis of any claim as alleged.

A. Section 1981

To state a prima facie claim under section 1981, a plaintiff must allege (1) membership in a protected class; (2) intent to discriminate on the basis of membership in a protected class; and (3) discrimination interfering with the making and enforcement of a

contract. 42 U.S.C. § 1981 (2006); *see Williams v. Lindenwood Univ.*, 288 F.3d 349, 355–57 (8th Cir. 2002) (setting forth the prima facie case for a section 1981 claim). Albert does not allege that any defendant interfered with the making or enforcement of a contract, only that the defendants intentionally denied him “his protected rights and privileges embodied therein under the laws.” Because Albert’s complaint alleges no interference with a contract, he fails to state a section 1981 claim. The district court properly dismissed this claim.

B. Sections 1985 and 1986

Section 1985 provides a remedy to conspiracies that interfere with civil rights. 42 U.S.C. § 1985 (2006). A prima facie claim under section 1985 must allege “some racial, or perhaps otherwise class-based, invidiously discriminatory animus” motivated by a conspiracy to deprive someone of the right to equal protection. *Griffin v. Breckenridge*, 403 U.S. 88, 102, 91 S. Ct. 1790, 1798 (1971). Claims under section 1986 require a section 1985 conspiracy. 42 U.S.C. § 1986 (2006).

Albert alleges only one fact that suggests a conspiracy: that Dungarvin and Robin Stepney conspired to forge documents to prevent him from obtaining workers’ compensation benefits. Because a corporation cannot conspire with itself through its employees when the employees’ acts are within the scope of employment, *Richmond v. Bd. of Regents*, 957 F.2d 595, 598 (8th Cir. 1992), Albert has alleged no illegal conspiracy and does not state a section 1985 or 1986 claim.

C. Minnesota Statutes Chapter 363A

Albert alleges that all defendants violated the Minnesota Human Rights Act. But he does not specify which sections were violated or what alleged facts constitute violations. A pleading must contain sufficient details to “give fair notice of the claim asserted.” *Roberge v. Cambridge Co-Op Creamery Co.*, 243 Minn. 230, 232, 67 N.W.2d 400, 402 (1954); *see* Minn. R. Civ. P. 8.01 (describing pleading requirements). Because his complaint and appeal briefs comprise a dizzying array of disorganized and often inapposite statements of law, legal theories, and factual allegations, it is hard to say whether this particular count is Albert’s attempt to pursue the claim against his employer that the MDHR declined to investigate and pursue on his behalf. But because his complaint does not satisfy civil pleading requirements, the district court properly dismissed this claim. Despite the significant quantity of legal claims presented, Albert’s complaint does not allege that Dungarvin violated Minnesota Statutes section 363A.08 or section 363A.15, the antidiscrimination statutes that formed the basis of his original complaint to the MDHR.

Counts 6, 7, and 9

Albert alleges that all defendants violated criminally related provisions of the United States Code. Title 28, section 2254 of the United States Code pertains to applications for writs of habeas corpus in federal court. *Id.* (2006). Title 18, sections 242 and 1503 of the United States Code are criminal statutes that do not provide for a private cause of action. *Hanna v. Home Ins. Co.*, 281 F.2d 298, 303 (5th Cir. 1960); *Odell v.*

Humble Oil & Refining Co., 201 F.2d 123, 127 (10th Cir. 1953). The district court properly dismissed these counts for failing to state a legally cognizable claim.

Albert alleges in count nine that Dungarvin and Stepney violated Minnesota Statutes section 176.82. Section 176.82 provides a civil cause of action against individuals who retaliate against or interfere with someone who seeks workers' compensation benefits. Minn. Stat. § 176.82 (2008); *Furrer v. Campbell's Soup Co.*, 403 N.W.2d 658, 660 (Minn. App. 1987), *review denied* (Minn. May 28, 1987). To establish a prima facie case of retaliation under this section, a claimant must allege that (1) he engaged in protected conduct such as pursuit of workers' compensation benefits, (2) the employer took adverse action, and (3) the adverse action was motivated by the protected conduct. *See Hubbard v. United Press Intern., Inc.*, 330 N.W.2d 428, 444 (Minn. 1983) (discussing the test for retaliation with respect to filing a discrimination charge with the MDHR). The statute also provides a remedy when an employer is "intentionally obstructing" an employee's pursuit of workers' compensation benefits. Minn. Stat. § 176.82, subd. 1.

Albert's complaint alleges that Dungarvin and Stepney "violated the law by effecting a discriminatory termination of [his] employment for purported act(s) and conduct(s) for which other similarly situated employees . . . have committed in the past but remained employed at the company." It also alleges that Dungarvin and Stepney "conspired, . . . forged, altered, and falsified" documents pertaining to injuries "and submitted such forged documents to Zurich North America for the main purpose of precluding him from workers compensation benefits." The allegations in Albert's

complaint do not set forth a prima facie case of retaliation, as he alleges no connection between his pursuit of workers' compensation benefits and his termination.

But Albert's complaint does set forth a prima facie case for interference with his pursuit of those benefits. Section 176.82 provides a cause of action against "[a]ny person . . . in any manner intentionally obstructing an employee seeking workers' compensation benefits."

Dungarvin argues that Albert's complaint "provides no factual basis for his claim of *eligibility*" for benefits. It is true that the supreme court has held that a successful claim for interference must allege that a person passively or actively obstructed or hindered workers' compensation benefits that are due to the claimant in an outrageous and extreme manner. *Bergeson v. U.S. Fidelity and Guar. Co.*, 414 N.W.2d 724 (Minn. 1987). But understood in context with its facts, *Bergeson* does not condition all section 176.82 claims on the claimant's proof of eligibility. *Bergeson* addresses the requirements to make out a claim against an employer-insurer interfering with an established benefit to support an award of punitive damages, so as to distinguish the claim from the ordinary penalties that arise from late benefit payments. *See Bergeson*, 414 N.W.2d at 726–27 (describing the court's rationale). *Bergeson* does not attempt to redefine the statute, which, on its plain language, does not require Albert to allege that he was actually eligible for benefits, only that the identified defendants interfered when he sought them. *See* Minn. Stat. § 176.82, subd. 1. We hold that because Albert's complaint alleges that he sought benefits and that Dungarvin and Stepney intentionally interfered with his efforts, the complaint sets forth a prima facie case under section 176.82, subdivision 1.

Because Albert made out a prima facie case for interference with his pursuit of workers' compensation benefits, we conclude that the district court erred when it dismissed this claim on the pleadings.

II

Albert argues that the district court improperly rejected his amended complaint. A district court's decision to refuse leave to amend a complaint will be upheld unless it is an abuse of discretion. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). After concluding that Albert's original complaint failed to state a claim, the district court gave Albert an opportunity to amend his complaint within 20 days so that he might state a factual basis for counts 3, 4, and 9. The district court's instruction required Albert to amend his complaint by Monday, November 5. Because Albert did not amend his complaint until filing on November 7, the district court did not abuse its discretion when it refused to consider the amendment.

Albert argues that rule 6.05 of the Minnesota Rules of Civil Procedure permits him an additional three days beyond the district court's express deadline because he filed his amended complaint by mail. By its terms, that rule applies when a person has a right or obligation to do something after he is served by United States mail, not when he faces a specific filing deadline imposed by the district court in a hearing that he attended. Albert's amendment was not timely filed.

III

Albert raises a number of additional arguments on appeal, including that the district court committed treason by dismissing his case. Because Albert failed to raise

these arguments first in the district court, we decline to consider them. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Affirmed in part and reversed in part.